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Artificial intelligence, automation, and the future of the legal industry

Top cats
Insider tips on how to be the best in-house lawyer you can be

Keeping it under wraps
A recent case addressed HIV, the right to privacy, and the public interest

gazette

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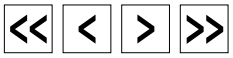

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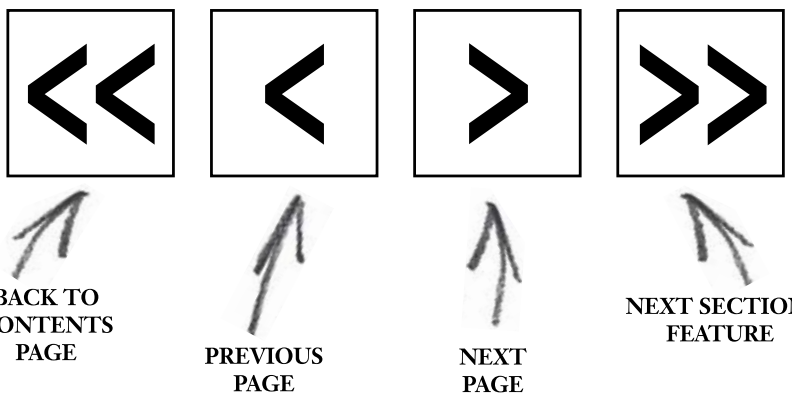

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CELEBRATING A LIVING NATIONAL TREASURE

On behalf of the Law Society, director general Ken Murphy recently gave the nominating address at the Irish Law Awards, at which the lifetime achievement award was presented to Ms Justice Catherine McGuinness.

Ken praised her personal kindness and rapier-like legal mind, describing her as "a living national treasure". She had provided a 'triple crown' of service as a judge of the Circuit Court, High Court and Supreme Court, among many other distinctions, and is the recipient of honorary doctorates from no less than five separate universities. We are very pleased to see one of Ireland's most distinguished jurists recognised in this way (see page 11 of this *Gazette*).

The cluster season continues – the latest event took place at The Inn at Dromoland, where over 150 Clare and Limerick colleagues brushed up on their legal skills, with contributions from distinguished speakers. These remain one of the most valued and valuable aspects of the Society's CPD programme, supported by Law Society Finuas Skillnet.

Bullying endemic

At the recent IBA conference in Budapest, one of the main themes was the issue of bullying and harassment in the legal profession. Recent research confirms the suspicion that such bullying and harassment is endemic in law firms throughout the world – and it is likely that Ireland is no exception. An IBA report in this regard will be going before the Law Society Council shortly for consideration, about which the *Gazette* will keep you informed.

I officiated at the annual Justice Media Awards (JMAs) on 27 June. This annual event recognises excellence in legal journalism. Speaking with the assembled journalists, I referenced the fact that we are lucky in Ireland to have a free, objective, reliable and generally honest press.

The importance of having the Fourth Estate in good health increases day by day, as the dissemination of false information through social media and 'fake news' makes it more and more difficult for people to form an objective view of affairs. I congratulate our winners, and would like to think that the JMAs contribute significantly to public discourse about justice matters in Ireland.

Holiday mode

As you read this, most people will be gearing up for the summer vacation. Please make sure that you make time to take holidays. There is an increasing emphasis on mental health and well-being, and time away from the office is critical to all of us for our good health and wellbeing. Summer is upon us, even if the weather doesn't quite know it yet, so make the best of it!

As ever, if you have any comments, questions or queries, please do not hesitate to contact me at president@lsi.ie.

LAW SOCIETY OF IRELAND

> THE JUSTICE MEDIA AWARDS CONTRIBUTE SIGNIFICANTLY TO PUBLIC DISCOURSE ABOUT JUSTICE MATTERS IN IRELAND

PATRICK DORGAN,
PRESIDENT

gazette
LAW SOCIETY

PIC: SHUTTRSTOCK

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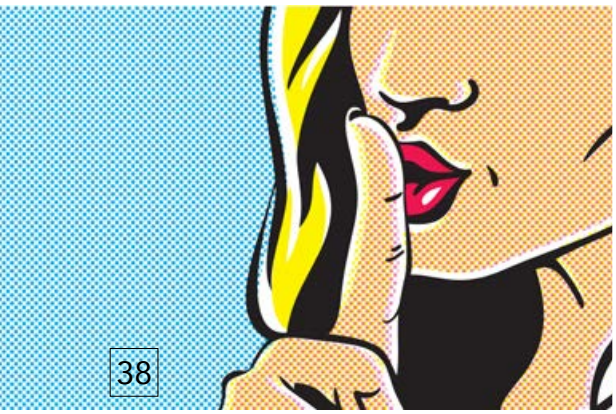
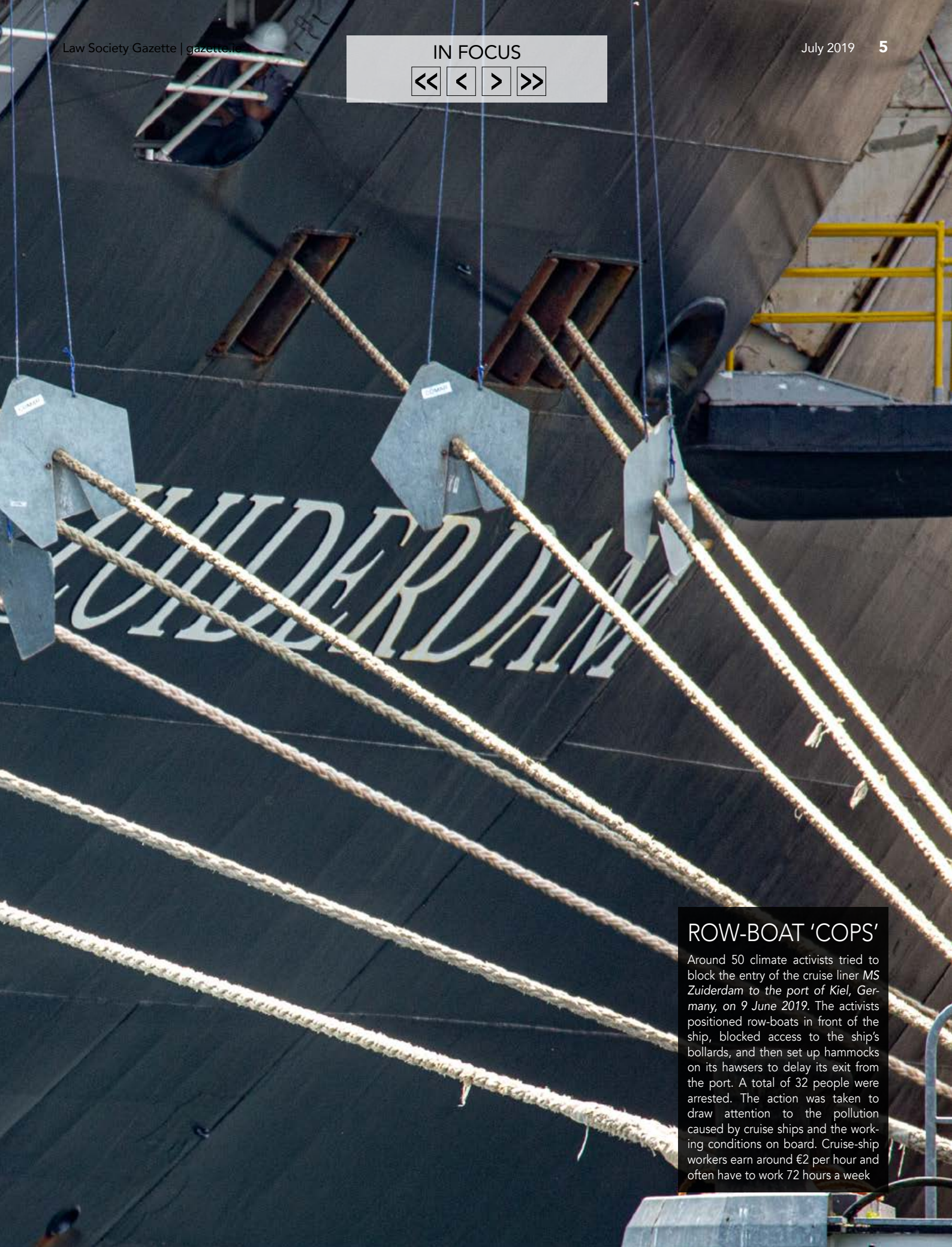


FEATURES

REGULARS

THE BIG PICTURE

PIC: EPA-EFE/JONAS NOLDEN



ROW-BOAT 'COPS'

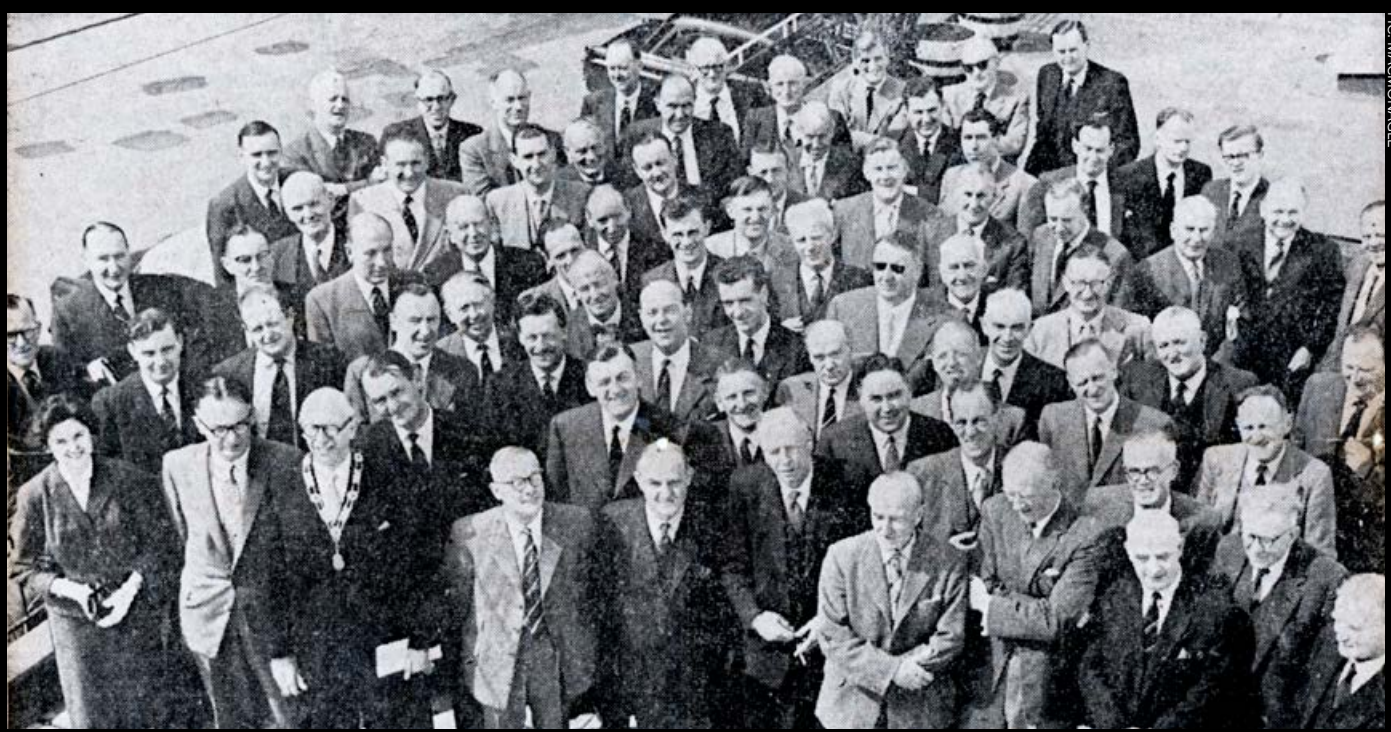
Around 50 climate activists tried to block the entry of the cruise liner *MS Zuiderdam to the port of Kiel, Germany, on 9 June 2019*. The activists positioned row-boats in front of the ship, blocked access to the ship's bollards, and then set up hammocks on its hawsers to delay its exit from the port. A total of 32 people were arrested. The action was taken to draw attention to the pollution caused by cruise ships and the working conditions on board. Cruise-ship workers earn around €2 per hour and often have to work 72 hours a week

A WARM WICKLOW WELCOME

PIC: SARAH MCMANUS

The Wicklow Bar Association (WBA) welcomed Law Society President Patrick Dorgan and director general Ken Murphy to its AGM on 16 May 2019, which was held at the Glenview Hotel. The association elected its new president Paul McKnight, who was congratulated by outgoing president Catriona Murray on behalf of the members. *(Front, l to r)*: Michael Moran, Damien Conroy, Ken Murphy (director general), Catriona Murray (outgoing president, WBA), Paul McKnight (newly elected president, WBA), Patrick Dorgan (president, Law Society) and Naomi Gardner; *(second row, l to r)*: Rory Benville, Finnola Freehill, Jennifer Haughton, Rosemary Gantly, Barbara Lydon, Michael O'Neill and Donal O'Sullivan; *(third row, l to r)*: David Lavelle, Cathal Louth, Patrick Jones, Ian Bracken, David Tarrant, Charlotte Finnegan and Brian Robinson; *(back row, l to r)*: Pauric Hyland, Patrick McNeice, Mark Maguire, Joseph Maguire, Brendan Maloney, Fergus Kinsella and Karl Carney

HISTORIC AGM OUTSIDE THE PALE



PIC: MACMONAGLE

This *Cork Examiner* photo, dated Monday 25 April 1959, shows solicitors from all over the country attending the AGM of the Incorporated Law Society of Ireland (as it then was) at the International Hotel, Killarney. This was the first time the Society held its AGM outside Dublin since its establishment on 24 June 1830. (It was incorporated by royal charter on 5 April 1852.) Included in the front row is then president Mr John R Halpin

MEETING OF MINDS IN THE MIDLANDS

Attending the Laois symposium for midlands-based practitioners at the Midlands Park Hotel, Portlaoise, on 17 May were Brian Reidy, Matt Malone, Aisling Irish, Jane Harte, Michelle Hurley, Liz Walsh and Charlene Butler

Leo Buckley, Brendan Weldon, David Osborne and Eric Boland

Fintan O'Reilly, John Cummins, Eddie Tynan and Owen Carty

Conal Boyce and Christina Dobbyn

Duncan Hodgins and JJ Fitzgerald

Conor O'Toole and Martin Callanan

Elizabeth Cass and Brendan O'Flaherty

ALL PICS: AARON LEAVY PHOTOGRAPHY

THE BEST IN THE NORTH-WEST

ALL PICS: CHRISTINA J IRWIN

At the North-west General Practice Update on 14 June 2019, held at Lough Eske Castle Hotel, Co Donegal, were *(front, l to r)*: Geraldine Coughlin (president, Inishowen Bar Association), Margaret Mulrine (president, Donegal Bar Association) and Niall McWalters (secretary, Donegal Bar Association); *(back, l to r)*: Fergal Mawe (solicitor, Regulation Department, Law Society), Attracta O'Regan (head of Law Society Professional Training), Michelle McLoughlin (M McLoughlin & Co, Solicitors, Sligo), Margaret Finlay (Finlay and Co, Solicitors, Dublin), Anne Stephenson (Stephenson Solicitors, Dublin), Colette Reid (programme manager, Law Society) and Katherine Kane (programme manager, Law Society)

Walter Hegarty, Tara Hegarty, Ray Lannon and David Henry

Nicholas Ruck, Dearbháil Mulhern, Hugh McGarry and Stanislaus Hart

Alison Parke, Laura Buchanan, Gillian McGough, Jolene McElhinney and Patrick McMyler

Brendan Kelly, D Marshall McCloughan, Noreen McCusker and Rachael Gallagher

SUN SHINES ON CORK'S CALCUTTA RUN

Cork's Calcutta Run took place on Sunday 19 May. Over 150 participants, young and old (some four legged!) ran, walked, strolled or were pushed in buggies along the 5k route. So far, over €10,000 has been collected in support of local Cork Charity SHARE and the Hope Foundation. Pictured at the event is the team from Michael Powell & Co Solicitors *(front, l to r)*: Sadhbh Powell-O'Halloran, Jenny Powell with her twins Iseult and Etain, four-legged friends 'Suzi' and 'Frances', and Helena O'Leary; *(back, l to r)*: Sheila Collins, Lorraine O'Driscoll, Clara McMahon, Shauna Meehan, Jade Sheehan, Seán Durcan (SLA council member) with his son John (overall winner), and Miriam McNamara with dog 'Sherlock'

The SLA organising team Michael Joyce, Dermot Kelly, Joan Byrne, Law Society President Patrick Dorgan (enjoying an ice-cream), and SLA council member Gerard O'Flynn

Say 'double cheese'! The smile on the face of Javier O'Connor (third in the boys' category) says it all!

Overall winner John Durcan (PwC) receives his medal from Richard Hammond (SLA president)

HOWDY, PARDNERS

Wayne Finn, Lorraine Power, Piarais Neary, Harry Fehily (managing partner), Michael Murphy, Anna Owens and Pat McInerney

Holmes O'Malley Sexton has announced the appointment of six new partners in the firm's core practice areas of litigation, insurance, commercial property and private client.

The appointments – based in the Dublin and Limerick offices – show the continued growth at the firm, which now has 14 partners across four offices and a combined team of over 150 professionals.

This expansion follows the opening of a Cork office in 2018 and a London office in 2017.

Lorraine Power is a partner in the property, corporate and commercial departments. Pat McInerney is a partner in the public administrative law and commercial litigation departments. Michael Murphy, Anna Owens, Wayne Finn, and Piarais Neary are partners in the litigation department.

MIND HOW YOU GO

The annual conference of the Younger Members Committee, titled 'The Mindful Lawyer', will take place on 10 October 2019, from 2-5pm in the Green Hall at Blackhall Place, Dublin.

Conference speakers will explore different facets of the 'mindful lawyer', from the experience of mental-health practitioners and a lawyer turned coach. Antoinette Moriarty (manager of the Law School's counselling service) will open the conference and will chair the Q&A session in the afternoon.

Attendees will receive management and professional development CPD hours (by group study). The seminar can be booked through Law Society Professional Training at www.lawsociety.ie.

RNLI COUNCIL WELCOMES KATIE ON BOARD

Castlebar-based Katie Cadden has been appointed to the Royal National Lifeboat Institution (RNLI) Council for Ireland and, separately, to the RNLI Council (UK). Council members advise the trustee board on policy and strategy issues facing the rescue service, both domestically and internationally.

A qualified solicitor, though no longer practising, Katie has worked with a variety of charities and voluntary organisations. In April 2014, she was appointed to the board of the Charities Regulator – Ireland's first statutory regulator of charities – and was appointed for a second term in October 2018. She currently chairs its regulatory committee. She is a regular lecturer in charity law at the Law Society's Diploma Centre.

FOILED YA! PHILIP LEE TAKES GOLD

Cognac, the French town most noted for its brandy, was host to the European Veterans' Fencing Championships during the June bank holiday weekend. Among the 'artful dodgers' taking part was Philip Lee of the eponymous Dublin firm.

Philip defeated two-time world champion Paul Wedge from Britain and was crowned European champion in the 'Foil Over 60s' category. He is the first Irishman to win the gold medal at the championships.

Philip is a member of the Pembroke Fencing Club. His previous best was sixth place in the World Championships in 2017.

LIFETIME ACHIEVEMENT AWARD FOR 'NATIONAL TREASURE'

Representatives from over 100 Irish law firms, legal practitioners and in-house legal teams gathered at the Clayton Hotel, Burlington Road, on 14 June, for the eighth annual Travelers Irish Law Awards.

This year's lifetime achievement award was presented to Ms Justice Catherine McGuinness, in recognition of her contribution to the legal profession in Ireland over the last 40 years.

Making the citation for the lifetime achievement award, Law Society director general Ken Murphy said that Ms Justice McGuinness had the unique "triple crown" of service as a judge, successively, of the Circuit Court, High Court and Supreme Court, among many other distinctions, including representing Dublin University in Seanad Eireann. Murphy praised her personal kindness and rapier-like legal mind, and described her as "a living national treasure".

In her speech, McGuinness said that her work with the Forum for Peace and Reconciliation in the 1990s had been most fulfilling as someone originally from the North and with many connections there.

'Law firm of the year' went to Philip Lee, in recognition of its status as one of Ireland's fastest-growing commercial law firms with offices in London, Brussels and San Francisco. Beauchamps was presented with the corporate/commercial law team/lawyer of the year award, while Tracey Solicitors brought home the award for excellence in client services. The 'lawyer of the year' title went to Sinead Lucey from FLAC.

Solicitor Cian O'Carroll from Cashel, Co Tipperary, won a special merit award for his "unrelenting quest for right and justice for the women negatively affected by cervical cancer misdiagnoses". O'Carroll initially studied for a science degree before being admitted as a solicitor in 1996.

He told the audience that he was accepting the award on behalf of all "brave and terribly wronged clients."

In January 2018, he said that nobody knew about "what secrets lay beneath the national cervical-screening service: "And secrets they were, accompanied by repeated, written instructions from the screening company to its consultants around the country not to inform the families of those who had already died.

"The instruction simply said: 'Place the record of the misread smear on their chart'."

O'Carroll complained that the State had denied in public and in court that it had any obligation to women in the running and management of the service, since the screening had been outsourced.

Damien Murran (RSM Ireland), Ms Justice Catherine McGuinness and Law Society director general Ken Murphy

IRISH LAW AWARDS – WINNERS

- Law firm of the year: Philip Lee,
- Lifetime achievement award: Justice Catherine McGuinness,
- Special merit award: Cian O'Carroll,
- Connacht/Ulster and Munster employment law firm/team/lawyer of the year: Alastair Purdy & Co Solicitors,
- Leinster (including Dublin) employment law firm/team/lawyer of the year: Anne O'Connell Solicitors,
- In-house (non-civil service/public sector) legal team/lawyer of the year: Rachel Curran (Ulster Bank),
- Lawyer of the year: Sinead Lucey (FLAC),
- Service provider to the legal profession: LEAP legal software,
- Sole practitioner of the year: Bernadette Barry (Bernadette Barry & Co),
- Sole principal of the year: Susan Cosgrove (Cosgrove Gaynard Solicitors),
- Pro bono/community law firm/lawyer of the year: Public Interest Law Alliance,
- Public sector in-house legal team/lawyer of the year: ESB legal department.

APPROVAL FOR BODYCAM LEGISLATION

PIC: SHUTTERSTOCK

Justice Minister Charlie Flanagan has received approval from Cabinet to draft legislation that will provide a legal basis for the use of devices such as body cameras.

It is claimed that body cameras would improve transparency, reduce assaults on gardaí, and help in collecting evidence – though many campaigners object on privacy grounds.

The constitutional right to privacy and the *European Convention on Human Rights* will be considered during the drafting process. The Irish Human Rights and Equality Commission and the Data Protection Commission will also be consulted.

NEW JUDICIAL APPOINTMENTS

Ms Justice Aileen Donnelly of the High Court has been named by the Government for appointment to the Court of Appeal. The vacancy arose following the appointment of Ms Justice Mary Irvine to the Supreme Court last month.

Donnelly was appointed to the High Court in September 2014. She was educated at University College Dublin and the King's Inns. She was called to the Bar in 1988 and to the Inner Bar in 2004.

The new President of the Circuit Court is Judge Patricia Ryan. Judge Ryan was appointed in July 2002 and was educated at UCD and the King's Inns. She was called to the Bar in 1984.

Judge Colin Daly of the District Court (and a former solicitor) has been appointed as President of the District Court. This appointment to a presidential role in the courts marks a historic first for a former Law Society Council member.

Newly appointed President of the District Court, Judge Colin Daly

LAW SOCIETY TEAM BAGS COVETED *CORN ADOMNÁIN*

A Law Society team has won this year's *Corn Adomnáin* in international humanitarian law. The award is organised by the Irish Red Cross for Irish law students.

Now in its fifth year, the trophy is named after *An Cáin Adomnáin* or the 'Law of Innocents' – an early IHL treaty signed in Birr, Co Offaly, in 697AD.

In the five years of the competition, the Law Society of Ireland is the only institution to have won the all-Ireland competition twice.

Queen's University Belfast (last year's winners) and other third-level institutions around Ireland proved strong competition for the Law Society's two teams, comprising Grainne Hussey and Aneta Szczurek on one team; and Jaymee Cronolly, Claudine O'Driscoll and Aoife O'Neill on the other.

At the presentation of the Irish Red Cross *Corn Adomnáin* were *(l to r)*: Lorraine Whitty (Irish Penal Reform Trust), Nadya Lazarova (secretary, Law Society Human Rights Committee), Aneta Szczurek (winner), Rosemarie Hayden (Law Society student advisor), Grainne Hussey (winner), Valerie Peart (chair, Law Society Guidance and Ethics Committee) and Maeve Delargy (chair, Irish Women Lawyers' Association)

Post-PPC1 trainee solicitors Grainne Hussey (Eversheds Sutherland) and Aneta Szczurek (Kennedys) won the day, impressing the judges with their quick thinking and keen advocacy skills.

LAWYERS LIAISE ON KEY TOPICS

PIC: LENSMEN

The Law Society and Bar of Ireland Liaison Committee met at Blackhall Place on 25 June 2019. *(Front, l to r)*: Ken Murphy, Michele O'Boyle, Patrick Dorgan (president, Law Society), Micheál P O'Higgins SC (chairman, Bar of Ireland), Nuala Butler SC and Ciara Murphy; *(back, l to r)*: Michael Quinlan, James MacGuill, Colette Reid, Joe O'Malley, Joseph O'Sullivan BL, Moira Flahive BL, Rachel Baldwin BL, Garrett Cooney BL, Liam Kennedy and Conor Dignam SC

Twice every year, the leaders of the Law Society and the Bar of Ireland meet to share information and insights on matters of mutual interest. On 25 June, it was the Law Society's turn to host the meeting.

Brexit was top of the agenda, specifically the Brexit Legal Services Initiative, which was adopted by Government earlier this year on the basis of a joint proposal of the Bar of Ireland and the Law Society. Its funding, implementation, board composition, next steps and other issues were discussed.

How best to ensure the continuing joint contribution and involvement of both branches of the profession with Government, on this initiative, was also considered.

Next on the agenda was the implementation of the *Legal Services Regulation Act 2015*. The progress on seven separate aspects of the legislation was reviewed. It was noted that the Legal Services Regulatory Authority's latest planned date for commencement of part 6 of the act (on the handling of complaints against solicitors and barristers) is 7 October 2019.

There was disappointment that no effort has been made to explain to either branch of the profession why the Attorney General's office is now of the view that legal partnerships and limited liability partnerships cannot be commenced until 7 October, contrary to what had been consistently indicated until very recently.

The implementation of the recommendations of the Personal Injuries Commission was also considered. Finally, there was a discussion of the impact on asylum and immigration list cases of High Court Practice Direction 81.

SCOPE OF *PERJURY BILL* BROADENED

On 18 June, Justice Minister Charlie Flanagan announced that the Government had approved amendments that would broaden the scope of the *Perjury and Related Offences Bill*, *writes Mark McDermott*.

The bill seeks to make perjury a statutory offence. Currently a common law offence, perjury is rarely prosecuted.

The minister said that the new provisions would help cut down on the number of cases of insurance fraud. A clearly defined statute that made perjury an offence would act as a deterrent to "those who wish to chance their arm".

"This is a part of a package of measures dealing with insurance issues, insurance fraud and exaggerated claims," Flanagan said. "Of course, it will have general application as well. It's a clear message to anyone giving evidence in court that they need to be mindful of the need to tell the truth, and in the event of a fraudulent claim, an exaggerated claim or evidence, then there are strong penalties involved here."

Tribunals included

The bill's primary sponsor is Senator Pádraig Ó Céidigh. It has been agreed to broaden the scope of the bill to include commissions of investigation and tribunals of inquiry. It is also proposed to amend the bill so that the maximum penalty on indictment should be harmonised with the equivalent maximum penalties for similar offences in the *Civil Liability and Courts Act 2004*. This act stipulates that a person who commits an offence is liable:

- On summary conviction to a class B fine or to imprisonment for a term not exceeding 12 months, or to both,
- On conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding ten years, or to both.

Commenting on the new bill, Law Society director general Ken Murphy said that there was already both a common law crime of perjury and – specifically to facilitate the prosecution of perjury in personal injuries cases – key provisions of the *Civil Liability and Courts Act of 2004*.

"Where perjury occurs, in personal injuries cases or anywhere else in the legal system, it should be prosecuted vigorously," Murphy said. "Those convicted should go to jail. Perjury insidiously undermines justice and the rule of law. There should be zero tolerance of it in our justice system."

Ken Murphy: 'Has there been a lack of will to bring perjury prosecutions and, if so, why?'

Murphy commented that there had been extremely few, if any, prosecutions under the 2004 act: "This is surprising, given the requirement for plaintiffs to swear verifying affidavits and the allegations subsequently made by defendants, in a small minority of cases, that the facts in the affidavits were false and known to have been false by the individual who swore they were true.

"In such cases, a prosecution for perjury should, on the face of it, be very straightforward," he said. "Has there been a lack of will to bring such prosecutions? If so, why?"

Murphy concluded: "In relation to any perjury committed in personal injuries cases, what is really needed is not new law, but a new will of the gardaí to investigate and prosecute."

FLYING THE FLAG AT BLACKHALL

PIC: CIAN REDMOND

The Law Society flew the Pride flag for the first time at Blackhall Place on 27 June. Director general Ken Murphy described it as "a small but significant piece of Law Society history". The flag was flown for the duration of the Dublin Pride weekend. President of the Law Society Patrick Dorgan and the director general represented the Law Society at the Dublin Pride Parade on 29 June as guests of OUTLaw, the LGBT+ network for individuals and supporters in the Irish legal sector. It was OUTLaw's first time to march as a community group at the annual event

BUSY TIMES AS IWLA GEARS UP FOR AGM

(Front, l to r): Vivian Neal (president, AFELL) and Maeve Delargy (chair, IWLA); *(back, l to r)*: Rosemarie Hayden (IWLA), Irina Chayee (Liberia Solidarity Group), Anastasia Crickley (chair of the National Consultative Committee on Racism and Interculturalism), Fiona McNulty (IWLA), Zoe Doe (National Coordinator for Noncommunicable Diseases at Liberia's Ministry of Health), and Ursula Quill (IWLA)

They say that if you want something done, then ask a busy person, and the adage certainly rings true for the Irish Women Lawyers' Association, *writes Rosemarie Hayden (IWLA committee member)*.

The association started the year with a meeting of minds and exchange of ideas with our Liberian counterparts in January. Representatives from the Association of Female Lawyers of Liberia (AFELL), led by association president Vivian Doe Neal, gave a very impressive update to the IWLA delegation, which was led by Maeve Delargy (IWLA chair) and Fiona McNulty (vice-chair), regarding AFELL's work in the area of sexual gender-based violence, and the setting up of the youth criminal justice system in Liberia.

Inspired by this conversation, IWLA held a fully-booked CPD session at the Law Society, where Dr Melrona Kirrane (associate professor of organisational psychology, DCU), Raphael King (Raphael King Communications) and Hannah Carney (Hannah Carney & Associates) co-presented on the topic of 'Building and sustaining the career you want'. The event raised valuable funds for AFELL, while those attending gleaned valuable management and professional development CPD points.

It's not all about work, however, and, in February, the IWLA put the International Women's Day 2019 theme of 'Balance for better' into practice with a showing of *On the Basis of Sex*, the biopic of renowned US Supreme Court Judge Ruth Bader Ginsburg, with an introduction by IWLA president and former Supreme Court Justice Catherine McGuinness, and an address by the IWLA chair. The night was a complete sell-out and furthered the networking and social-inclusion aims of the association.

March provided another opportunity for the IWLA to join in celebrating a wonderful trio of Irish women lawyers, when the annual Hibernian Law Medal was presented by IWLA founder member Senator Ivana Bacik to IWLA president Ms Justice Catherine McGuinness and esteemed lawyer and former President of Ireland Mary McAleese. On what was to have been 'Brexit Day', both medal recipients noted that this was a true 'all-island' event, with two jurists from both communities in Northern Ireland being celebrated together, showing the true values that bind us.

The IWLA has a full programme of events planned for the latter half of the year. Two dates for your diary: the association's AGM on Wednesday 10 July at 6.30pm and the Annual Gala on Saturday 19 October, both taking place this year at Blackhall Place.

IMRO PROFESSOR APPOINTED

TP Kennedy (director of education, Law Society), Dr Mark Hyland (IMRO and Law Society adjunct professor of intellectual property law) and Eleanor McEvoy (chair, IMRO)

A new copyright professor has been appointed to the Law School at Blackhall Place. Dr Mark Hyland has been announced as the inaugural Irish Music Rights Organisation (IMRO) and Law Society adjunct professor of intellectual property law.

Hyland is a lecturer in international IP law at Bangor Law School in Wales. His current research covers website-blocking injunctions in an IP context, and how geolocation and geoblocking technologies can be used to facilitate the territorial licensing of digital copyright works.

Director of education TP Kennedy commented: "IMRO's work in protecting the rights of Irish composers, authors and songwriters is being achieved in conjunction with solicitors and barristers. It is lawyers who are spearheading the implementation of these rights and, therefore, we need to train up the next generation of graduates."

ENDANGERED LAWYERS

FELIX AGBOR BALLA

Cameroon is a country of 25 million people. A territory between Nigeria and the rest of the country has been English-speaking since colonial days, making up around 20% of the population, while the rest of Cameroon is Francophone. The Anglophone region had considerable autonomy following independence in 1961, with its own prime minister.

The government feared secession and loss of the natural resources of the territory. It held a 'unilateral referendum' in 1972 and abolished its autonomous status. Efforts by the region to achieve independence have taken many forms since that time, and the issue remains unresolved and tips into insurgency.

Barrister Felix Agbor Balla (now 49) came to prominence in 2016 as a leader of the Cameroon Anglophone Civil Society Consortium, protesting against the appointment of Francophone judges in the Anglophone regions. The activists demanded protection of the common law system of the Anglophone regions and opposed the civil law system used by the Francophone magistrates. They asked for laws to be translated into English, and for the common law system to be taught at local universities. There were crackdowns, police brutality and strikes.

Balla was not exempt. He was arrested in January 2017 with others, and was charged with treason, terrorism, civil unrest and jeopardising the peace and unity of the country. His military court trial was repeatedly adjourned for seven months between 1 February and 27 August 2017, while he remained in prison. Significant international pressure was brought to bear, including by Canada, the US, France and Britain. Prof Sean O'Brien (director of the International Human Rights LLM at the University of Notre Dame), who taught Balla at the university, filed a petition to the UN's Human Rights Council for his immediate release.

On 31 August, President Paul Biya issued a presidential decree ordering the Yaounde military court tribunal to release Balla and others in connection with the protests.

Balla says that he would like to see a two-state federation of equal status in Cameroon as a solution to solve the Anglophone crisis, which has effects on the legal system, but also on the entire society. He continues with his civil society activism to achieve a political solution and human rights work, including the release of other protestors from prison. He is a member of the Centre for Human Rights and Democracy in Africa.

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

BOOK NOW

LAW SOCIETY OF IRELAND

LAW SOCIETY GALA 2019

SUPPORTING THE SOLICITORS' BENEVOLENT ASSOCIATION

Friday 11 October 2019

Shelbourne Hotel, Dublin.

SPECIAL GUEST:
Oliver Callan
Star of 'Callan's Kicks', Ireland's top impressionist 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**

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.

BRUCE ST JOHN BLAKE 1936 – 2019

Bruce St John Blake, the longest-surviving past-president of the Law Society, died on 27 April 2019.

Although born in Dublin, Bruce was first and foremost a proud 'Tribesman'. His father Henry (Harry), having served in the Canadian Army, returned to his native Galway after World War I, qualified as a solicitor and established a thriving practice. Henry threw himself into the sporting and business life of the city and into his profession, becoming president of the Law Society in 1946.

Bruce, his eldest son, was born in 1936 and was a pupil at Coláiste Iognáid in Galway and later at Glenstal Abbey. He studied at UCG for his BCL and in UCD for his LLB and, while in college in Galway, became deeply involved in student politics.

On arrival in Dublin, he became very active in the Solicitors' Apprentices Debating Society. It was there that he met Mary Grace Hanna from Belfast, who was to become his wife. UCD was a very different place in 1959, with a student body of about 1,500, mostly concentrated at Earlsfort Terrace, so that all were one family in whatever faculty. Bruce, with his stature and presence, was unmissable.

On qualifying, he became an assistant to Denis Greene and very soon established his own practice, Bruce St John Blake & Co in Dublin, in partnership with Grace. Later, they opened an office in Galway, continuing the connection with his father, who had died in 1957.

Bruce was a founder and first chairman of the Society of Young Solicitors, which, apart from its educational and social aspects, was instrumental in supporting the election of younger members of the profession to the Council of the Law Society. At the time of his election, 15 of the 31 member of Council were past-presidents. Bruce became president in 1976, becoming the youngest president up to that point, aged 40.

He was a very energetic president, travelling widely at home and abroad, and becoming actively engaged in the International Bar Association, in particular in the field of medical negligence.

His practice had a particular focus on industrial relations, in which he had come to specialise. He was a member of the Government commissions on industrial relations (1979-81) and on health and safety at work (1980-83).

As legal adviser to British-based trade unions, he was a regularly attendee at TUC annual conferences.

On a more practical level, his son Carl, in his eulogy, related how, returning from a family holiday in France, a dispute arose between bus drivers and lorry drivers on priority boarding the ferry. Bruce stepped forward and, using his combined French language and industrial relations skills, negotiated a compromise that worked, up to a point. But when the port manager failed to enforce the terms, Bruce hastened to the aid of the aggrieved party.

He had a deep interest in history, especially Irish and European, and could recount in great detail and with accurate timelines all the major events, and how they related to the personalities involved.

Bruce had a lifelong interest in sports, as a player in his youth and as a voluntary administrator in later life. He served as president of Galwegians RFC from 1989-90, emulating his father. Then, in 1994, he became president of another city club, UCG RFC – a post he held for 11 years. During this time, he memorably managed an Irish Universities Touring Party to Australia in 1997. In 2005, he once again succeeded his father when he was elected president of the Connacht Branch of the IRFU.

Bruce and Grace had the joy and responsibility of rearing eight children. Madeleine, their eldest, who was destined to follow them into their profession, passed away in 1994 after a five-year battle with cancer. This was a cruel blow to both her parents and siblings.

While he retired from practice, Bruce maintained his contacts with the Law Society and with all his sporting interests. Despite the effects of problematic hip surgery that affected his mobility, he resolutely refused to allow this to restrict his activities.

Grace's death in 2011, after almost 50 years of marriage, was another hard blow, but he was sustained by his loving family and had the joy of seeing his grandchildren on both sides of the Atlantic beginning their journeys in life.

Bruce is survived by his children, Carl, Alanna, Gráinne, Brídín, Colm, Mary and Dermot, his seven grandchildren, and by his sister Easter and brother Henry.

He was laid to rest in Menlo, on the shores of Lough Corrib, with Madeleine and Grace. May their gentle souls rest in peace.

JD

LOOKING FOR AN 'OUT' IN THE FACE OF DEFEAT!

The first 'North v South' IronLaw challenge was a testing affair and, despite a Northern victory, the real winner was the Solicitors Benevolent Association – to the tune of €30k, writes **Stuart Gilhooly**

STUART GILHOOLY IS A PARTNER AT HJ WARD & CO AND IS A PAST-PRESIDENT OF THE LAW SOCIETY OF IRELAND

There's always someone madder than you. By 'mad', I mean fitter, stronger, more determined. My friends and family constantly wonder aloud what level of crazy makes me want to cycle hundreds of kilometres, usually up very steep hills. I'm not really sure of the answer, except to reply with another question – have you never met a triathlete?

Which brings me to an old joke. How do you know there's a triathlete in the room? They tell you.

This is, in fact, deeply unfair. Most triathletes I know are very modest but, by God, they are animals. Competition is one of humanity's basest instincts, and this sport breeds competitive dynamos.

I have never dreamed of being one. Mainly for the very simple reason that I can neither run nor swim. But that is why the concept of the relay Ironman was created. An Ironman event is a 3.8k swim, a 180k cycle, and a marathon.

Thanks to the unbounded enthusiasm and relentless persuasion of Brian McMullin, six of us began our day on Friday 17 May at 6.15am and concluded at 8.30pm that evening, as the last of the teams crossed the finishing line. The North/South Iron Law challenge saw the solicitors of the South pitted against our counterparts in the North. It was not for the fainthearted, and I would love to say it was close. But it wasn't. Spoiler alert – we finished second.

The beneficiary was the Solicitors Benevolent Association, the all-Ireland charity for solicitors and their families who have fallen on hard times.

> AS NORTH/SOUTH CONFLICTS GO, THIS ONE WAS SECOND ONLY TO THE AMERICAN CIVIL WAR, AND TOOK NEARLY AS LONG TO COMPLETE

Losers: Ivan Feran, Brian McMullin and Stuart Gilhooly

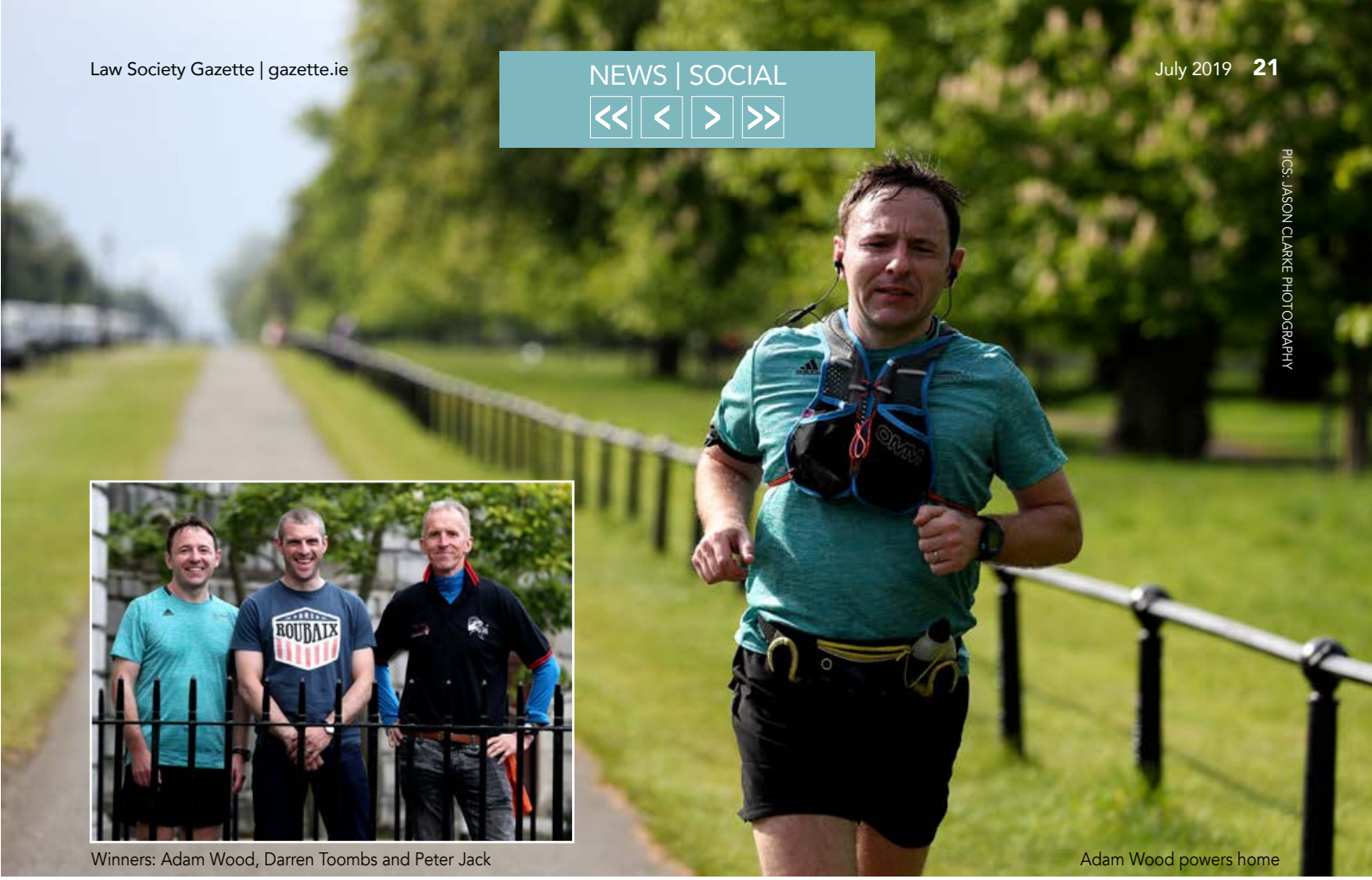
Phoney war

After months of meticulous preparation, the training and the phoney war were over. As North/South conflicts go, this one was second only to the American Civil War (and took nearly as long to complete).

Ivan Feran and Peter Jack were due to swim Lough Melvin, but due to cold conditions and very cold feet (of the metaphorical kind), as well pesky water temperature regulations, we shifted to Ballyshannon Leisure Centre. Now, 3.8km is still 3.8km, so 150 lengths later, Ivan emerged first and handed the baton to me.

All the segments are difficult, but the cycle is arguably the easiest – while also the most important – as that is the one where you can lose the most time. So, no pressure then. And I was only up against probably the best cyclist the North's legal profession can produce, Darren Toombs. The equivalent cannot be said for my talents. To add to the trauma, the move from Lough Melvin to Ballyshannon also added another 14km to the cycle. Commencing at 7.40am, I was off.

Twenty kilometres later, it was no surprise that Darren (riding with his equally talented friend



Winners: Adam Wood, Darren Toombs and Peter Jack

Adam Wood powers home

Adrian for company) had caught me. A hefty pace continued, with me holding grimly (though not literally) onto the back of his wheel for a further 55km.

At this point, the natural order was restored: they took off, and I spent the rest of the cycle in the company of Mark, another proper triathlete who was helping with the organisation. If you ever feel the need to be brought back down to earth, a chat with Mark will have the desired effect. Not content with doing several Ironmans, including two in a row, next month will see him attempt the Deca. This is a mere ten Ironman triathlons in successive days. My pathetic 194km cycle was a stroll in the park by comparison.

In through the out door

As the towns of Cavan and Meath disappeared into a blur, seven hours later, with Mark as my new best friend, the end of the cycle section came into sight. Maynooth was the handover and the final 10km flew by at an average of 40km per hour as we became demob happy and tired legs got the inevitable adrenalin rush.

Unfortunately for Team South, Darren Toombs had long ago handed the baton to Adam Wood, who was already beating a path towards Blackhall Place when I let Brian McMullin off the leash. Accompanied by his wife Julie (who regards a marathon as a training run) and for part of it by the insatiable Mark, Brian pounded the 26 miles to Dublin with the zest of a man who saw a plan coming together.

While Adam was safely home by the time Brian passed through the 'in' gate at Blackhall Place, a diplomatic incident then ensued. It appeared that Adam had, in fact, entered through the 'out' gate, which is clearly both illogical and grounds for disqualification. The kindness of Team South, who did not wish to win on a technicality, ensured the Northern team scored their deserved victory.

As an event, it was a triumph. The camaraderie between the two teams was warm and genuine throughout (notwithstanding the 'OutGate' scandal). While the main purpose of the event was to raise as much funds as possible for the SBA, a secondary and important factor was the solidarity between the jurisdictions of this island in these uncertain times. The presidents of both societies were involved in launching and closing the event, and it is fair to say that relations have never been better.

The fundraising was a success, with over €30,000 raised so far. Many thanks to all involved in arranging the event. Huge kudos to Brian who dreamt up an idea, which appears to be unparalleled worldwide, and then proceeded to organise the entire day seamlessly.

We are very grateful to all those who assisted on the day: Mark, Daniel, Paul, Gareth and Ronan. Also, thanks to our sponsors Xpediate, Willis Towers Watsons and O'Leary Insurance Group. Finally, the generosity of the Sandhouse Hotel who put us up the night before, and Barry Britton who provided the artwork for free, will not be forgotten.

We intend to make it an annual event and open it up to a wider participation next year. So, if you're mad enough, start prepping for IronLaw 2020. g

DONATE

You can still help the cause, as both teams are still seeking donations. All proceeds go to the Solicitors' Benevolent Association. Contact Stuart at stuart.gilhooly@hjward.ie, Brian at bmcmullin@brianjmcmullin.com, or Ivan at ivanferan@feran.ie. Alternatively, you can make a donation at the JustGiving website – search for 'Solicitors Benevolent Association (Ireland)'.

AS TIERS GO BY

General counsel don't have to pay top dollar for external work. That was the advice at an in-house and public sector panel discussion on sourcing and value in legal services. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST AT THE *LAW SOCIETY GAZETTE*

IN-HOUSE CONTENT

Getting and demonstrating value for money was the theme of this year's In-house and Public Sector Panel Discussion, which took place at Blackhall Place on 16 May.

When dealing with external counsel, attendees heard that they need to think carefully about which level of the market they should approach for advice.

Speakers also cautioned against chopping and changing external counsel too often, but also against penny-pinching and seeking to renegotiate rates downwards at payment time.

There are huge savings to be had by reaching for a mid-tier rather than top-level firm, the attendees heard, but if your job requires 'expensive thinking', then don't hesitate to seek it.

The challenges of forming and managing external legal panels were also on the agenda, with potential pitfalls flagged. External panels are a necessary support to the general counsel, since one lawyer can't provide all the services needed by a large commercial entity. A panel does not guarantee that cost effectiveness will happen automatically. The in-house counsel will have to work to ensure this.

Fit and finish

Eamonn Kennedy (former director of legal affairs at RTÉ) suggested that 'fit' was very important for complex, non-standard work. Intellectually demanding complex work commanded higher rates. "Work should be done on the basis of what it is worth – not which firm is doing it," he said. Each set of instructions needed to be judged on its merits.

Ongoing monitoring of firm performance is also important, particularly where your business sends out a lot of work. Regular reviews using set criteria help to identify service issues that may require remediation or could be helpful in future panel selection.

Harmonising fee rates

AIB group general counsel Helen Dooley said that there were various reasons for needing a legal panel, such as harmonising fee rates with the same terms and conditions agreements across the board.

Another reason might be that your business typically has had a

> THE FOCUS HAS NOW CHANGED TO RECRUITING STAFF AND GETTING THE WORK DONE AND 'OUT THE DOOR' IN REASONABLE TIME

Some members of the In-house and Public Sector Committee, with panel members *(front, l to r)*: Brendan Cooke, Helen Dooley, Patrick Dorgan (president, Law Society), Mark Cockerill (chair, In-house and Public Sector Committee), Louise Campbell, Rachael Hession (Law Society) and Emer Durkan; *(back, l to r)*: Deirdre McDermott, Gwen Considine, Aideen Neylon, Patrick Ambrose, David Rowe (speaker), Richard O'Sullivan and Eamonn Kennedy

ALL PICS: CIAN REDMOND

relationship with a law firm that has become too 'cosy'.

"If you are proposing to set up a panel, go into it knowing the reasons you are doing it," she advised, "because setting up a panel can become a burden that doesn't yield the expected benefit." This can happen when an external firm feels 'put through the wringer' as regards fee negotiations, but isn't subsequently chosen for the work.

Three pillars

Patrick Ambrose (chief legal officer at finance company DLL) said that the in-house and public service sector delivered value through three pillars – service, sourcing, and delivery. He said that 'providing legal advice' was not a sufficient description to cover the breadth of the general counsel's role.

It was always important to ask the question: "Are we being asked for legal advice or commercial advice in the context of the regulatory framework?"

A general counsel might have a team of generalists working for him or her, he said, but they also required specialist services when the situation demanded it.

The most important thing you have as an in-house lawyer is your reputation, so guard it carefully, he warned. "Friendships based on good business are always better than business based on good friendships."

Smart working

Emer Durkan (legal and compliance director at Johnson Hana International) contends that technology in and of itself is not sufficient to drive efficiencies or demonstrate value, but that technology used in conjunction with smart business models can.

She commented that she had witnessed an uncomfortable attitude to technology and innovation while in private practice, with a view that technology wasn't really for the lawyers, but more for the support staff.

Durkan moved to a job at the KBC compliance function

where there was no choice but to embrace technology. At KBC, she analysed the case-management, diary and workflow technology available, and saw how useful online training platforms were in replacing the requirement of face-to-face training to upwards of 900 people.

However, she cautioned that the misuse of technology could lead to inefficiencies and time-wasting.

She recognised that resource allocation was a key challenge for companies, especially where there was an unexpected event that required massive and immediate reallocation of resources.

Durkan warned that if workflow 'pinch points' and long hours became the norm, then these could lead to a high rate of staff attrition.

She said that she had moved to Johnson Hana, which is a legal process outsourcer, having had three children in 16 months, knowing that she couldn't commit to long hours on a regular basis.

"Our business model focuses on disaggregating legal services, between legal advisory work and volume-heavy process work," she said. "We also provide our consultants with flexibility and, more importantly, certainty of hours."

Consumers of legal services were getting disillusioned with the cost, she observed, and lawyers were frustrated with increasingly demanding legal workloads that forced them to "deprioritise life".

Time of plenty

David Rowe, of consulting firm Outsource, told the in-house practitioners: "You need to be smarter and more inventive to find value in the current market."

He observed that, during the financial crash, in-house counsel bought in legal services at very competitive rates. There has been gradual improvement for law firms since then but, while firms were getting bigger, they were not necessarily becoming more profitable. Often, they continued to operate tender rates that were set six to eight years previously.

David Rowe commented that work volumes have been stronger than ever in recent years, albeit at much lower profit margins due to sharply rising costs and a competitive market. But while there is more work on desks, there is a huge difficulty in finding staff to do the work.

The focus has now changed to recruiting staff and getting the work done and 'out the door' in reasonable time. However, cost-base pressures have eroded profit margins, he said, with salary increases significantly above inflation in some sectors of the market.

Fee improvements have been best for the 'big six' firms doing high-end work: "The big six are not pitching for unprofitable tenders," he said. "We're in a time of plenty at the moment, and law firms are refusing work they don't want, or filtering out what is non-remunerative."

In addition, due to resourcing issues, work was getting pushed down the 'expertise chain', while some junior and mid-level people were refusing to do work for particular clients because of the unrealistic targets being set.

Greater flexibility

He suggested that mid-sized firms could offer greater flexibility and were happy to discount for large batches of work. "However, they get very upset if asked for further discounts at the payment stage," he observed.

As for companies inviting tenders for legal work, Rowe advised against an annual tendering process, favouring a three-year period instead. This is due to the work involved on both sides – for those submitting as well as those reviewing tender documentation, and the associated filtering process.

Rowe warned that law firms were likely to get upset if they won a tender, but subsequently got little or no work – echoing Helen Dooley's earlier point.

In addition, firms disliked overly onerous reporting requirements. Also regarded as unfair was inflexibility in relation to payments, where there was clearly more work involved than originally anticipated.

He suggested that in-house lawyers should pay close attention to which tier of the market they should be looking towards for different streams of work: "There are five tiers to the legal market, and that market intelligence will literally save you thousands."

Rowe advised that the top six firms offer specialised expertise, but general counsel don't always need to pay €450 an hour. However, certain types of work required "expensive thinking" and "top-six prices". The skill lay in knowing when such advice was required.

Building relationships with a trusted provider was important, Rowe said, but general counsel should be looking at the market every three years: "However, if you get a fair price with your current firm, then renew," he said.

"If you shop around too much, you will run out of friends." And too much discounting is demotivating and results in a deteriorating service.

Also, firms have ways of telling you that they don't want your business: "They will quote a huge margin, because they don't want you, except at high rates," he said. g

DATE FOR YOUR DIARY
ANNUAL CONFERENCE

The annual conference of the Law Society's In-House and Public Sector Committee will be brought forward this year, so that it takes place before the Law Society's Council elections in 2019. The idea is to try to encourage more in-house practitioners to put themselves forward for the Council.

Although approximately 20% of the profession is now in-house, only two from the sector sit on the 48-member Council.

BLACK IS THE COLOUR

Diversity goes hand-in-glove with inclusivity. **Tarisai May Chidawanyika** asks us to confront the inequality she encounters daily – and to understand the persistent struggles that face many promising black lawyers in Ireland

TARISAI MAY CHIDAWANYIKA IS A TRAINEE SOLICITOR AT MATHESON

> I JUST WANT TO BE A YOUNG BLACK LAWYER IN IRELAND. I TRY TO CREATE MY OWN IDENTITY EVERY DAY, BUT OTHER PEOPLE JUST SEE MY COLOUR – THEY DON'T SEE ME

Everyone's story is different, and mine is very simple. So many people always ask me where I'm from, when I moved to Ireland and – most frequently – why I moved to Ireland. They want to know my story when they hear my accent, see the colour of my skin, or are fascinated by the style of my hair.

Last year, I spent the summer travelling around South-East Asia with my friend. Even across the world, people still wanted to know my story. They always asked how an Irish person and an African person ended up hiking the tallest mountain in Vietnam together. I moved to Ireland when I was 13 years old and I am still here today – my story continues.

I was born and raised in Zimbabwe. My parents emigrated to Britain about 20 years ago before finally settling in Ireland. Then, I moved to Ireland to be with my family and to advance my education.

My first introduction to the Irish education system was at my secondary school, St Raphaela's, Stillorgan. Here, I was lucky to have been taught by Ms Kinsella, who believed in me so much. Even though I was so introverted, when she looked at me, she saw potential and always pushed me to achieve more.

On the other hand, there were people who just assumed I did not speak or understand any English, just from looking at me. Students and teachers alike always asked me whether I understood English. I would simply reply with a 'yes', but what I really wanted to do was to give them a quick history lesson and educate them about how Zimbabwe had once been a British colony, with a similar history to Ireland.

Young, gifted and black

I went on to receive many academic accolades. I decided to study law, which was an easy choice for me. I loved to read, enjoyed overthinking simple things, and consistently challenged people.

I chose University College Dublin because of how international it prides itself on being. This was crucial to me as a result of the confusion of cultures I was experiencing. Being in a multicultural setting is what I thought I needed.

During my first two years at UCD, I noticed that there were few people of colour studying law. It was very hard to ignore that I was in a lecture hall holding up to 300 people and yet I could use one hand to count the black faces.

This motivated me to go on Erasmus during my third year, to immerse myself in a different cultural setting. I was selected to go to Utrecht University in the Netherlands, and to this day I am forever grateful, because it was a time of personal growth. At Christmas time, I was introduced to 'Black Pete', Santa's friendly helper. To the Dutch, Black Pete is culturally acceptable, as he is just a man with soot on his face helping Santa deliver presents. For me, however, this was an awakening of the realisation that bigotry exists, and even though I had never experienced it first-hand in Ireland, I recognised then that, in my chosen profession, I would not be able to escape it.

A year later, I graduated from UCD. It was a proud moment because education is always the greatest achievement. However, it was also a bleak moment, because I was the only black person to graduate in my class. Starting out on my career, I realised that I would constantly be one of the very few black people in the room, wherever my career took me.

Don't let me be misunderstood

Afterwards, I successfully completed the FE1 entrance exams to qualify for my course of study in the Law Society of Ireland. During my studies there, I realised, once more, that there were very few black trainee solicitors in the entire class of 448 students – two others to be specific. This did not bother me at the outset but, towards the end, I was very frustrated. The need to continuously prove that I was qualified to be in the same room as my peers upset me.

Some tutors would remark on how good my level of English was, which reminded me that things had not changed much since my secondary school days. I wanted so much to remind them

'We desperately need this conversation, and the dialogue starts now'

that I took the same exams as everyone – in English.

I waited six months for a solicitor or barrister of colour to come and give a lecture or tutorial, to show that there were some people of colour out there in prominent spaces. It never happened.

What I am trying to show is that the same issues have followed me since I started my education and my pursuit to become a lawyer. I have experienced subtle and explicit racial insensitivity, and those who know me know that it is no secret.

I have asked myself so many times, and now I ask you: should I compromise who I am in order to navigate the workplace and fit into occupational structures?

Imagine realising you are the 'diversity' in the organisation and being reminded of it every single day. This comes with a lot of pressure to represent the minority and to perform accordingly. There is also pressure to conform and to mould yourself to fit a certain image that is expected by the majority.

The more I see you

Today, I just want to be a young black lawyer in Ireland. I want to be able to have lunch at work with the other black person without being asked if she is my sister. I try to create my own identity every day, but other people just see my colour – they don't see me.

I want to advocate for equality and representation in the legal industry, and to develop strategic moves to raise the visibility of other black lawyers. I did not ask to be an ambassador, but it seems that I have taken on some responsibility to bring about inclusivity – after all, change starts with me.

I invite you to ask yourself: how meaningful would it be to make a change in someone's life and to abandon your misconceptions of the anonymous black person trying to make it? How meaningful would it be to confront inequality and to understand the persistent struggles that face many promising black lawyers in Ireland every day?

I am genuinely overjoyed to be part of this space, conversation and movement. We desperately need this conversation, and the dialogue starts now.

FOCAL POINT

DIVERSE LAW STUDENTS' NETWORK

Tarisai is now planning to establish a network for diverse students. This will consist of a mentoring programme for people of black or minority ethnicity and other diverse students studying law, with a likely focus on commercial law. Tarisai is using LinkedIn to reach out to students. "The goal of the programme is to be a source of support and to connect promising students with successful role models in the legal profession," says Tarisai.

GET OFF OF MY CLOUD

The US *CLOUD Act* is limited to helping law enforcement agencies fight international criminal and terrorist activity. It does not give those agencies free access to data stored in the cloud, argues **Michael Punke**

MICHAEL PUNKE IS THE VICE PRESIDENT OF GLOBAL PUBLIC POLICY AT AMAZON WEB SERVICES

WE WILL CONTINUE TO RESIST REQUESTS, INCLUDING THOSE THAT CONFLICT WITH LOCAL LAW, SUCH AS THE GDPR IN THE EUROPEAN UNION, TO DO EVERYTHING WE CAN TO PROTECT CUSTOMER DATA

An important event took place recently in London. US Deputy Assistant Attorney General Richard W Downing addressed the myths and realities of the *Clarifying Lawful Overseas Use of Data Act* (*CLOUD Act*) in a speech at the Academy of European Law Conference.

Following the speech, the US Department of Justice (DOJ) published a white paper and FAQ clarifying the purpose and scope of the *CLOUD Act* and addressing many of the misunderstandings of this law. I strongly encourage people to read the speech, the white paper, and the FAQ to understand what the act actually does and does not do.

Simply put, the *CLOUD Act* provides minor updates to a decades-old law that is strictly limited to helping law enforcement agencies fight and deter international criminal and terrorist activity. It does not, as some have suggested, give US law enforcement agencies free access to data stored in the cloud.

We see the DOJ's speech and guidance as a step in the right direction, but more needs to be done by governments around the world to educate cloud-computing customers about important issues regarding access to data. In this article, I wish to highlight a few of the key misunderstandings about the act in order to help customers understand that this law should not change how they use cloud services.

Cloud of unknowing

In 1986, Congress enacted the *Stored Communications Act* (SCA), which addressed law enforcement access to electronic communications. Although the SCA was considered forward-looking at the time, courts have struggled over the years to apply it to technologies like internet applications and cloud computing that did not exist when the SCA was passed.

One area of debate related to whether US law enforcement agencies could obtain data located outside the US. The *CLOUD Act* resolved this debate. It made clear that providers subject to US law, such as an entity doing business in the US (including foreign-based entities with US subsidiaries), can be served with a warrant and court order under the SCA to provide data under their control, regardless of where it is stored.

To be clear, despite suggestions to the contrary, the *CLOUD Act* does not introduce a new concept. Governments across the globe have long had the ability to obtain evidence of crimes located outside of their jurisdiction. As the DOJ noted in its white paper, most countries require disclosure of data wherever it is stored, consistent with the *Budapest Convention*, which was the first international treaty aimed at improving cooperation and investigations in cyber and computer crimes.

Indeed, French courts have long allowed police to obtain data outside of France, so long as it is accessible from a computer in France. Most recently, in February 2019, Britain passed the *Crime (Overseas Production Orders) Act*, which allows British law enforcement agencies to obtain stored electronic data from a company or person based outside of Britain.

This practice is consistent with a centuries-old principle of international cooperation. Countries use a number of tools, ranging from domestic laws to international treaties, to seek potential evidence located beyond their borders and establish a tradition of cross-border cooperation. This serves as the foundation for what trusted and respected organisations like Europol do, and the *CLOUD Act* simply reflects what these other law enforcement agencies and other countries have been doing for many years.

Cloud of dust

One of the most common misunderstandings about the *CLOUD Act* is that it is applicable to only US companies. This is not true. The act applies to all electronic communication service or remote computing service providers that are subject to US jurisdiction, including email providers, telecom companies, social media sites, and cloud providers, whether they are established in the US or in another country. This means

PIC: SHUTTERSTOCK

that any foreign company with an office or subsidiary in the US is subject to the act.

As Downing said in his speech, US courts have ruled that even non-US websites that have been used by customers based in the US have been subject to US jurisdiction and, therefore, could be subject to the *CLOUD Act*.

Another common misunderstanding about the act is that it somehow provides the US Government with unfettered access to data held by cloud providers. This is simply false. The act does not grant law enforcement agencies free access to data stored in the cloud. Law enforcement can compel service providers to provide data only by meeting the rigorous legal standards for a warrant issued by a US court. US law sets a high bar for obtaining a warrant, requiring that an independent judge conclude that law enforcement has reasonable grounds to request the information, that the information requested directly relates to a crime, and that the request is made clearly, accurately, and proportionally. This is the opposite of unfettered access.

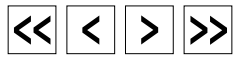
Above the clouds

When Amazon Web Services (AWS) receives a request for data located outside the US, we have tools to challenge it and a long track record of doing so. In fact, our challenges typically begin well before we go to a court. Each request from law enforcement agencies is reviewed by a team of legal professionals.

As part of that review, we assess whether the request would violate the laws of the United States or of the foreign country in which the data is located, or would violate the customer's rights under the relevant laws. We rigorously enforce applicable legal standards to limit – or reject outright – any law enforcement request for data coming from any country, including the US. We actively push back on law enforcement agencies to address concerns, which frequently results in them withdrawing their request.

In the event that we cannot

> WE RIGOROUSLY ENFORCE APPLICABLE LEGAL STANDARDS TO LIMIT – OR REJECT OUTRIGHT – ANY LAW ENFORCEMENT REQUEST FOR DATA COMING FROM ANY COUNTRY, INCLUDING THE US. WE ACTIVELY PUSH BACK ON LAW ENFORCEMENT AGENCIES TO ADDRESS CONCERNS, WHICH FREQUENTLY RESULTS IN THEM WITHDRAWING THEIR REQUEST



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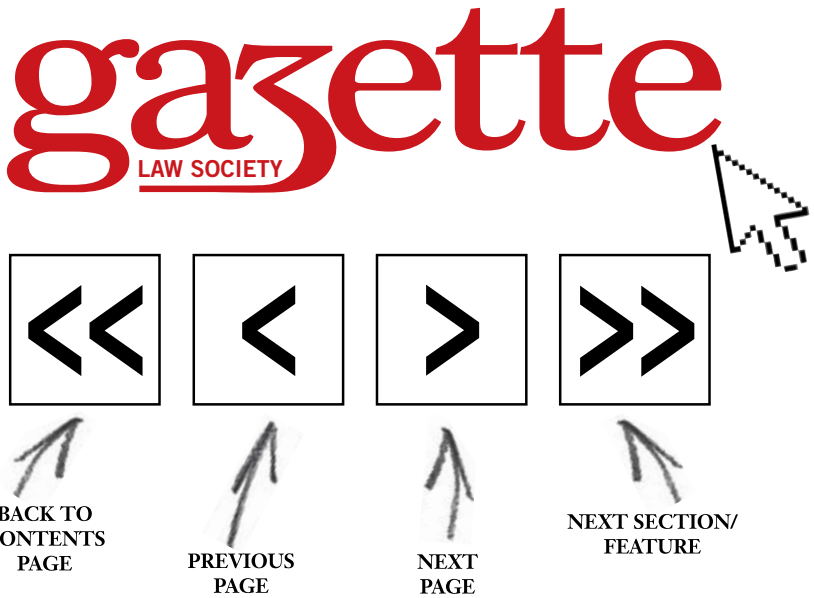

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resolve a dispute, we do not hesitate to go to court. Amazon has a history of formally challenging government requests for customer information that we believe are too broad or otherwise inappropriate. We will continue to resist requests – including those that conflict with local law, such as the *GDPR* in the European Union – to do everything we can to protect customer data.

We will also continue to notify customers before disclosing content, and we provide advanced encryption and key management services that customers can use to protect their content further. We have industry leading encryption services that give our customers a range of options to encrypt data in-transit and at rest, and to manage encryption/decryption keys – because encrypted content is rendered useless without the applicable decryption keys.

Kickin' the clouds away

AWS is vigilant about its customers' privacy and security. We are committed to providing all customers, including governmental agencies that trust us with their most sensitive content, with the most extensive set of security services and features to help ensure complete control of their data.

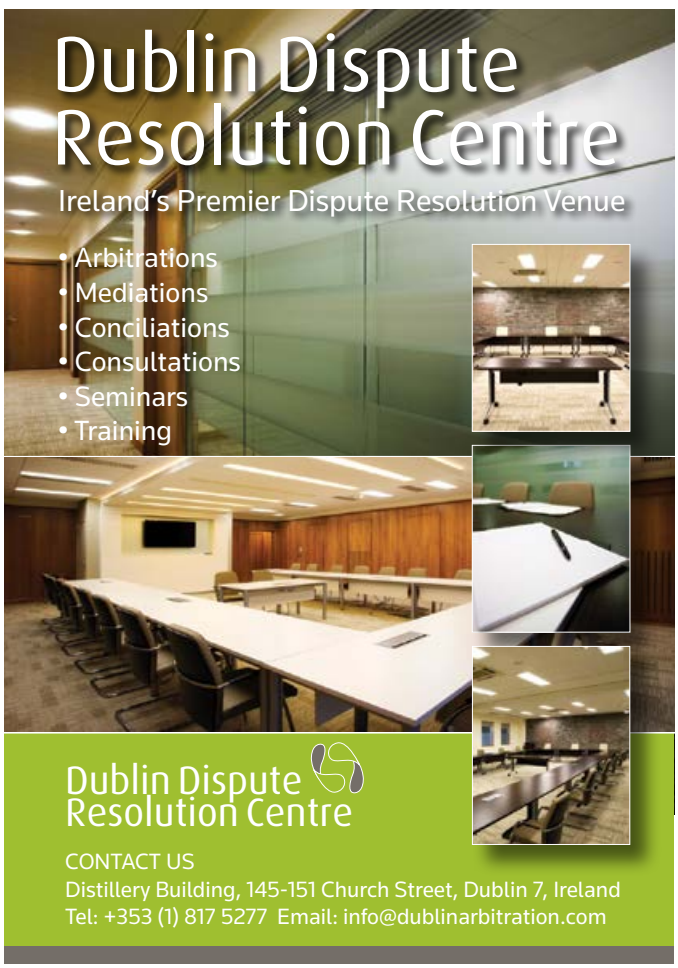
The *CLOUD Act* did not alter or weaken this commitment. On the contrary, the act recognises the right of cloud providers to challenge requests that conflict with another country's laws or national interests, and requires that governments respect local rules of law.

Additionally, foreign governments concerned about the risk of government data disclosure may be entitled to sovereign immunity. The US recognises that, under the principle of sovereign immunity, foreign governments have effective legal means under US law to prevent disclosure of their data.

At AWS, we are constantly helping our customers and partners to understand their position in relation to new compliance standards and laws. It is the only way we believe organisations can ensure that they are able to protect their end users.

The reality is that cloud computing is having a positive effect on lives around the world in all kinds of ways. With AWS technologies, our customers are creating forward-thinking technologies that shape the ways we live and learn, whether through photo sharing and video streaming, increased access to financial services and e-commerce/trade, processing geospatial data for new discoveries, creating or promoting greater opportunities for education and skills development, or helping industries evolve with accessible artificial-intelligence and machine-learning services.

Our customers are also leveraging the cloud for good: working to prevent human trafficking, prevent violent crime, improve citizen services in cities, and to make medical breakthroughs. What would be incredibly disappointing would be for all of this to be slowed due to fundamental misunderstandings about the *CLOUD Act*.



Safe as houses?

Is your office safe or fireproof cabinet harbouring a hidden killer? **Alan Donohoe Redd** shares some concerning research about the presence of asbestos in older safes and filing cabinets – and the dangers of buying second-hand

ALAN DONOHOE REDD IS AN NSAI EXPERT SITTING ON THE EUROPEAN TECHNICAL COMMITTEE THAT DRAFTS STANDARDS FOR SECURE CABINETS, SAFES, AND STRONG ROOMS

PIC: SHUTTERSTOCK

The very real danger of workplace asbestos exposure arising from pre-European certification (1997) safes, fireproof filing cabinets, and vaults has gone completely unnoticed – and unmentioned – in Ireland. This is in stark contrast with the high level of awareness of the issue among the safe and vault industry, health authorities, and waste-management companies in other EU countries.

According to the European Security Systems Association (ESSA), the majority of safe and data-cabinet manufacturers were using asbestos at least until the introduction of European certification for these products in 1997. Given the legal profession's obvious need for fire-resistant safes, vaults, and filing cabinets, it is therefore highly likely that many legal practices in Ireland may find that their work environment harbours a potentially potent and long-term danger to staff health.

This is due, in no small part, to a surprising absence of information on the asbestos issue coming from the safe and vault industry in these islands – an industry that, quite worryingly, has had a long-term financial interest in the sale of second-hand safes and cabinets, more often than not manufactured during decades when it is known that asbestos was being widely used in their construction.

In recent years, I made a number of enquiries with various industry groups, and directly with suppliers of second-hand safes, regarding the use of asbestos contained in fire seals, as a cement curing agent, and a body fill in safes and fireproof filing cabinets manufactured before the introduction of European certification in 1997.

I had also been in touch with several manufacturers of these pre-European certification units that are still in business. The replies were always that my concern was unwarranted and that this was a very minor problem affecting very few models, and not really worth discussion.

Recently, after a number of questions on the subject from the insurance industry in Ireland, and after encountering suspected asbestos in a second-hand safe on a client's premises, I decided to conduct my own investigation, the result of which paints an entirely different picture.

AT A GLANCE

- Most fireproof safe and data-cabinet manufacturers were using asbestos at least until 1997
- It is therefore highly likely that many law firms in Ireland may find that their work environment harbours a potentially potent and long-term danger to staff health
- Any safe or fire cabinet manufactured before 1997 should be of particular concern, and expert advice should be sought
- The only way to be 100% sure that a safe or cabinet contains no asbestos is if the unit in question has accredited European certification

PIC: SHUTTERSTOCK

Every breath you take

Chrysotile asbestos fibres – which, in the case of safe and cabinet manufacturing, are the main type of asbestos we are concerned with – are highly carcinogenic if inhaled. Breathing in air containing asbestos fibres, which may result from the opening and closing of a safe or filing cabinet door fitted with asbestos door seals, can lead to asbestos-related diseases, for example, asbestosis and cancers of the lungs and chest lining.

Considering that the majority of pre-European certification and second-hand safes in Ireland are of British, German, or US manufacture, my first port of call was the internet to see whether this issue had ever been investigated in Britain.

I quickly came across an article from *Locks & Security Magazine* (April 2012) that outlined the results of asbestos testing, commissioned by a conscientious second-hand safe supplier on their own stock. Samples were collected by Vintec Environmental Management and then submitted to scientific scrutiny by Spectra Analysis Services Ltd. The results revealed that, "out of nine samples, eight contained chrysotile asbestos".

Following their investigations, the supplier in question was "forced to dispose of a considerable number of their stock of used document safes. Products featuring asbestos include models by major manufacturers such as Stratford, Tann, Rosengrens, Guardian, Chatwood Milner, Chubb, Kardex, Hagger & Daniels, and Sperry Remington, but this is by no means a definitive list. As a result of their experience, their operatives were trained and licensed to remove and dispose of safes and cabinets containing asbestos."

I next contacted Falko Adomat, project manager at ESSA. After some searching of ESSA's archives, Mr Adomat was able to shed some light on the situation regarding German safe production before the introduction of the European certification regime.

An informal survey conducted in 1992 by FuP (Forschungs- und Prüfgemeinschaft Geldschränke und Tresoranlagen) – a German safe manufacturers' organisation – on the use of asbestos in German safes revealed that asbestos was still being widely used in German safe production at that time. However, this stopped when asbestos was banned in Germany a year later, in 1993.

In the absence of facts, the picture concerning other safe manufacturing countries that would likely have supplied Ireland is open to speculation. We can safely say that it is only when chrysotile asbestos bans were introduced nationally that

> WE CAN SAFELY SAY THAT IT IS ONLY WHEN CHRYSOTILE ASBESTOS BANS WERE INTRODUCED NATIONALLY THAT ASBESTOS WOULD NOT HAVE BEEN PRESENT IN THE MANUFACTURE OF SAFES AND FIREPROOF CABINETS ORIGINATING FROM THE RELEVANT COUNTRIES

PIC: SHUTTERSTOCK

asbestos would not have been present in the manufacture of safes and fireproof cabinets originating from the relevant countries. The dates of national chrysotile asbestos bans for most of these relevant countries are, as follows: Denmark – 1980, Sweden – 1982, Norway – 1984, United States – 1989, Austria – 1990, Italy – 1992, Germany – 1993, France – 1996, Poland – 1997, UK – 1999 and Ireland – 2000.

The only way to be 100% sure that a safe or cabinet contains no asbestos is if the unit in question has accredited European certification as, according to clause 5.6 of the EN1143-1:1997 standard for safes and

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> A UNIT THAT WAS PURCHASED SECOND-HAND, AND WHICH DOES NOT BEAR A CERTIFICATION MARK, SHOULD BE OF PARTICULAR CONCERN, DUE TO THE LONG-TERM DUMPING OF THESE UNWANTED UNITS ON THE IRISH MARKET

secure cabinets (which has remained in subsequent standards 2005, 2012, 2019), a unit cannot undergo testing if it contains any materials that could "generate harmful substances during testing" – and this, of course, includes asbestos.

Outside of this, we can be reasonably sure that a pre-European-certification safe or filing cabinet does not contain asbestos if it carries a nationally accredited certification badge that includes the date of manufacture and the country of origin of the unit, which should be cross-referenced against the relevant national asbestos ban.

Unfortunately, there is no way to be sure that asbestos does not exist in the case of units manufactured before these national asbestos ban dates. In fact, the older the unit, the more likely it is that asbestos will be present, even if it has a national accredited certification badge.

There is certainly no way to be sure that asbestos hasn't been used in a safe or cabinet that bears no accredited certification mark. A unit that was purchased second-hand, and which does not bear a certification mark, should be of particular concern, due to the long-term dumping of these unwanted units on the Irish market.

As a result of the facts uncovered in researching this article, the European Security Systems Association has added this subject to the agenda of the AGM of the European safe manufacturing industry, which will be held in November 2019 at the Mechanical Engineering Industry Association's headquarters in Frankfurt.

The Health and Safety Authority and Private Security Authority have been contacted with a view to issuing advisory notes to the locksmith and safe industry regarding the health risks inherent in pre-European certification safes and fireproof filing cabinets.

FOCAL POINT

FIRE AND WATER

- Chrysotile asbestos was most widely used in door seals on safes, fireproof safes, and fireproof filing cabinets. This invariably took the form of woven asbestos tape adhered around the door frame, against which the door would close. It is this woven tape that causes many to be concerned. Abrasion caused by the opening and shutting of the safe or filing cabinet door is a high-risk issue, particularly as someone could be opening and closing a unit for decades in a closed environment, such as an office.
- Any pre-certification safe or cabinet is quite likely to have a lock-out event at some stage due to its age. On many occasions, this requires the safe body or door to be drilled. There has been little or no awareness among safe technicians, locksmiths, and their clients that, in drilling a pre-certification unit, the resulting dust may often contain asbestos in its most dangerous form, due to its incorporation as an anti-combustion filling material or in the form of cement.
- During a fire, asbestos material can be subject to excessive heat, resulting in toxic asbestos fibres being released into the air. Firefighters are trained to use their safety equipment at all times for this reason and then to decontaminate their gear after use. However, if released, asbestos will be found in ashes and debris, posing a significant health risk.
- Most forms of asbestos require a specialist contractor to be engaged for its removal and disposal. Dangers regarding asbestos disposal only arise when asbestos control procedures aren't followed. This is a particular problem where pre-certification safes and filing cabinets are sold back onto the market or dumped at a facility that is not licensed to accept asbestos waste.

I would suggest that any such advisory notes should be communicated directly to members of the legal and banking professions (and others) who possess office safes and fireproof filing cabinets to protect their clients' precious documents and valuables. Any safe or fire cabinet manufactured before 1997 should be of particular concern, and expert advice should be sought.

It is important to note that the majority of those operating in the safe and vault industry in Ireland have overlooked (or have been unaware of) this issue for a long time.

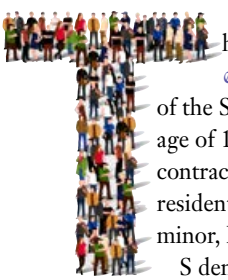
If you are worried about an older safe or suspect that you may have bought a second-hand safe or fireproof filing cabinet that does not bear a certification mark, you should contact the independent Irish Safes Ratings Group at www.isrg.ie. Alternatively, get in touch with an approved safe and vault operator with documented qualifications in European standards, such as Certified Safes Ireland (www.certifiedsafesireland.ie).

Most queries can be dealt with by photographic identification of the safe or cabinet in question. This service is provided free of charge. g

Keeping schtum

A recent High Court case addressed HIV, the right to privacy, public interest, and personal responsibility. **Aisling Mulligan** and **Fiona Wood** dissect the complexity of the competing interests raised

AISLING MULLIGAN IS A PRACTISING BARRISTER AND A RECENT GRADUATE OF THE ROYAL COLLEGE OF SURGEONS IN HEALTHCARE ETHICS AND LAW. FIONA WOOD IS AN ASSOCIATE IN THE HEALTH AND SOCIAL CARE DEPARTMENT OF BYRNEWALLACE



The seminal case of *Child and Family Agency v AA & Anor* involved a child ('S') who was in the care of the State and the subject of a full care order to the age of 18, pursuant to the *Childcare Act 1991*. Having contracted HIV *in utero*, S was now 17 years old and, in residential care, had begun to spend time with another minor, H.

S denied any sexual relationship between the two but, due to the conduct of the two young people, the Child and Family Agency (CFA) had cause for concern that they were engaging in sexual activity. Of significance to the CFA was the fact that S had previously been unable to maintain his medication regimen with sufficient regularity to ensure virological suppression.

In circumstances where the CFA believed that S was having unprotected sexual intercourse with H, and where S had previously been unable to maintain his medication, the CFA was concerned that the chance of transmission of HIV to H was a real possibility.

While it was clear that the CFA had an obligation to S as his guardian, there was a competing responsibility towards H, which, arguably, the non-State guardian might not have had.

In light of the competing interests of S and H, and the conflicting duties of the State to same, did the obligation to protect H override the right to confidentiality of S? Presented with this significant ethical and legal dilemma, the CFA sought a declaration from the High Court confirming that it was lawful to breach S's confidentiality for the benefit of H.

AT A GLANCE

- *Child and Family Agency v AA & Anor* attempted to weigh up the right to privacy, public interest, and personal responsibility
- The CFA wished to protect H from a potential risk known to it by virtue of its status as guardian to S. Presented with a significant ethical and legal dilemma, the CFA brought the matter to the High Court
- The court found that there was a greater public interest in ensuring that persons with HIV were not disincentivised from seeking proper medical attention and complete disclosure with their doctor

Section 3 obligations

Section 3 of the *Childcare Act 1991* imposes, as a primary function of the CFA, a duty to promote the welfare of children who are not receiving adequate care and protection. This statutory obligation, having been considered in the 1998 case of *MQ v Gleeson*, outlined in the broadest possible terms that the CFA had a duty to protect all children.

As set out by Barr J in *MQ*, this duty imposed on the State (identified then as the Health Board) extended not just to children who had been exposed to a known risk, but also to children who were likely to be subject to a specific potential risk that might arise.

Where that risk may be known or may reasonably be suspected of occurring, there is an obligation on the CFA to protect the children from this prospective harm. In other words, there is a duty to prevent harm from

PIC: SHUTTERSTOCK

> PRESENTED WITH THIS SIGNIFICANT ETHICAL AND LEGAL DILEMMA, THE CFA SOUGHT A DECLARATION FROM THE HIGH COURT CONFIRMING THAT IT WAS LAWFUL TO BREACH S's CONFIDENTIALITY FOR THE BENEFIT OF H

occurring, as well as to stop the perpetuation of harm.

The CFA, in recognition that its obligations were not limited to children in statutory care, wished to take steps to protect H from a potential risk that was known to the CFA by virtue of its status as guardian to S.

Standard of proof

The court found on the facts that S and H could be engaging in sexual activity but, in order to conclude that fact, on the balance of probabilities, something more was required.

In particular, the issue of proofs merits consideration. The minor S was in the care of the State. He was monitored in a way that few private adult citizens might be (save, perhaps, in psychiatric inpatient care). The two young people had been found in bed together, their social media accounts had been considered, and S's residential unit had logged records of his comings and goings. While it is acknowledged that S denied any intimacy within this relationship, it is difficult to see circumstances where the burden of proof would be discharged to breach confidentiality on foot of a denial by the 'patient' when the above evidence was not considered sufficient.

The court considered previous case law in relation to patient confidentiality, in particular the 1990 case of *W v Edgell* and *Tarasoff v Regents of University of California* (1976). In endorsing *Edgell*, the court confirmed that, where there was a significant risk of death to a member or members of the public from a known killer, a doctor will be entitled to breach patient confidentiality in order to seek to prevent the death of an innocent third party.

The court further remarked that not only would they be entitled to breach confidentiality, but they would have an *active duty* to seek to prevent innocent death. This right to break confidentiality may also result in liability for failure to exercise that right where the failure leads to a personal injury to a third party.

These remarks (see paragraph 60 in

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12 Sept	**Training of Lawyers on the Protection of Rights of Unaccompanied Migrant Minors**	5.5 General (by Group Study)	Complimentary	
12 Sept	**Probate Practice & Procedure Masterclass** Radisson Blu, Limerick	3.5 General (by Group Study)	€160	€186
20/21 Sept & 19 Oct	**Advising clients in Garda Custody** **Application deadline 25 July 2019**	Full General CPD requirement for 2019 (by Group Study)	€350	€425
20 Sept	**Probate Masterclass: New Forms and Procedures** Law Society of Ireland	6 General (by Group Study)	€210	€255
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27 & 28 Sept	**Fundamentals of Clinical Negligence Course** (Friday Afternoon & Full-day Saturday)	10 hours including 1 Hour Regulatory Matters (by Group Study)	€350	€425
3 Oct	**Annual Litigation Conference –** in collaboration with the Law Society's Litigation Committee	3.5 General (by Group Study)	€160	€186
10 Oct	**Younger Members Conference –** in collaboration with the Younger Members Committee	3 M & PD Skills (by Group Study)	€135	
11 Oct	**Annual In-house and Public Sector Conference: Technology – the influence on in-house counsel** in collaboration with the In-house and Public Sector Committee	2 General plus 3 M & PD Skills Total 5 Hours (by Group Study)	€160	€186
11 Oct	**North East CPD Day** Glencarn Hotel, Castleblaney, Co Monaghan	7 Hours (by Group Study) *	€135 *Hot lunch and networking drinks included in price*	
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particular) do not appear to have drawn a distinction between the CFA's obligations to the minor and an individual doctor's responsibilities. The court remarked that the facts of this case could just as easily be a medical professional with the same information as the CFA seeking the order. However, one has to question whether or not the level of detailed information that the CFA had as a result of their specific parentage and guardianship of a child led to a rather unique set of circumstances.

Not only is the minor H known to the CFA in terms of the exact nature of his drug compliance, his whereabouts and his day-to-day life are known in the detail that, except for the most significant medical intervention, would not be available to a medical professional.

By contrast, the CFA, as the guardian of a minor, will oftentimes find themselves in receipt of significant materials and information that may relate to the actions of a minor in their care. On that basis alone, the duties and responsibilities of the CFA must be different to that of a doctor.

Confidentiality

So, is there a duty to breach confidentiality where the risk of harm falls short of death? The court, having considered this question, found that the disclosure could be made where there was a risk of death or very serious harm. The court found that the public interest in protecting unsuspecting members of the public from very serious harm should take precedence over the interest of the patient keeping medical information confidential.

The court concluded that, while HIV is still a significant disease, it had regard to the medical evidence that it was no longer a terminal disease; rather, it is a chronic condition that people can manage.

It was for this reason that the court found that there was a greater public interest in ensuring that persons with HIV were not disincentivised from seeking proper medical attention and complete disclosure with their doctor. In refusing the application, the court ultimately found that HIV did not amount to very serious harm.

Personal responsibility

Among the final remarks of the court worth considering is its view on personal responsibility. A pertinent factor contemplated by Mr Justice Twomey, in deciding against the applicant, was whether there was any scope for a civil or criminal action against a parent, to include the State agency.

While such actions are possible under the *Civil Liability and Courts Act 2004*, and the *Non-Fatal Offences Against the Person Act 1997*, it was the view of the court that H must bear some responsibility for any potential outcome in deciding to engage in unprotected sex with S (if such activity was, in fact, occurring).

Endorsing the 2017 decision of *O'Flynn v Cherry Hill Inns Ltd*, Mr Justice Twomey approved the proposition that adults must take responsibility for their own safety and cannot absolve themselves of accountability for their actions. While the court accepted that S and H were minors, the court was cognisant that both were imminently due to turn 18.

It was the view of the court that H was taking a known risk if engaging in unprotected sexual activity and, while the risk of disease transference was, in fact, real as opposed to hypothetical, she could not be considered an 'innocent party' if she chose to take such a risk.

Perhaps one criticism of this judgment might be the amalgamation of duties of the CFA with those of doctors. The court, in its eagerness to consider the obligation of medical professionals, did not substantially deal with the extremely difficult position in which the CFA found itself.

On the one hand, the CFA had a specific duty to provide S with care and protection and, on the other, it also had a particular duty to protect H from a harm that was known to it. The *dicta* in *MQ* couched this obligation in the strongest possible terms.

While it was the court's view that it was irrelevant whether it was the CFA or the medical practitioner that brought the application, it is difficult to agree with this conclusion. While it is clear that the duty of a medical doctor to protect third parties may exist, it is not a statutory duty. While patients often divulge significant information to their doctors, can it be said that a doctor is as likely to hold as much information on a child as a parent?

The conflicting obligations of the CFA as both parent and guardian of children at large brought with it significant conflict between private life rights, confidentiality, and public interest. While clarity on the rights and obligations of confidentiality is welcome, the *dicta* identified above may serve to undermine the State's section 3 responsibilities in due course. g

> WHILE CLARITY ON THE RIGHTS AND OBLIGATIONS OF CONFIDENTIALITY IS WELCOME, THE DICTA IDENTIFIED MAY SERVE TO UNDERMINE THE STATE'S SECTION 3 RESPONSIBILITIES IN DUE COURSE

LOOK IT UP

CASES:

- *Child and Family Agency v AA & Anor* [2018] IEHC 112
- *MQ v Gleeson* [1998] 4IR85
- *O'Flynn v Cherry Hill Inns Ltd* [2017] IEHC 8211
- *Tarasoff v Regents of University of California* [1976] 17 Cal.3d 425, 551p.2d
- *W v Edgell* [1990) WLR 471

LEGISLATION:

- *Childcare Act 1991*
- *Civil Liability and Courts Act 2004*
- *Non-Fatal Offences Against the Person Act 1997*

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What impact will AI have on how you do your job? And what are the legal and ethical problems arising that will affect the development of the law and regulation? **David Cowan** goes beyond the hype

DR DAVID COWAN IS AN AUTHOR, JOURNALIST AND TRAINER

If you visit a website called willrobotstakemyjob.com, you can discover the probability of automation, at some point in the future, rendering your job either obsolete or safe. Since the *Gazette* is for lawyers, I can save you the bother – it is 4%.

This compares with a mere 0.8% for priests, 11% for journalists, 67% for bus drivers, and 94% for accountants and auditors, which perhaps goes a long way towards explaining why the 'Big Four' auditing and accountancy firms are making inroads into the legal space!

The calculation is based on a methodology developed by Oxford University researchers looking at the future of employment. While 4% appears reassuring, the website adds a rider that "our poll suggests a higher chance of automation: a 39% chance of automation within the next two decades".

The area of automation that causes the most consternation is artificial intelligence (AI), but we need to look beyond the fear and hype. The real question about AI is not whether your job as a solicitor will be replaced, but to ask two questions that are currently very much in flux, and not easily answered.

First, what impact will AI have on how you do your job? Second, what are the legal and ethical problems arising that will affect the development of the law and regulation?

The problems of AI are not really technological, which is not to deny there is much nuance to this point. The idea of rampaging robots or 'Big Brother' AI remain at the levels of fantasy, but we are certainly on the threshold, and now is the time for lawyers to be thinking about how these technologies are, and will be, used by the profession, and what the law needs to do about them in society. The problem is that AI, which includes autonomous machines and machine-learning technologies, does raise fundamental problems for humanity.

AT A GLANCE

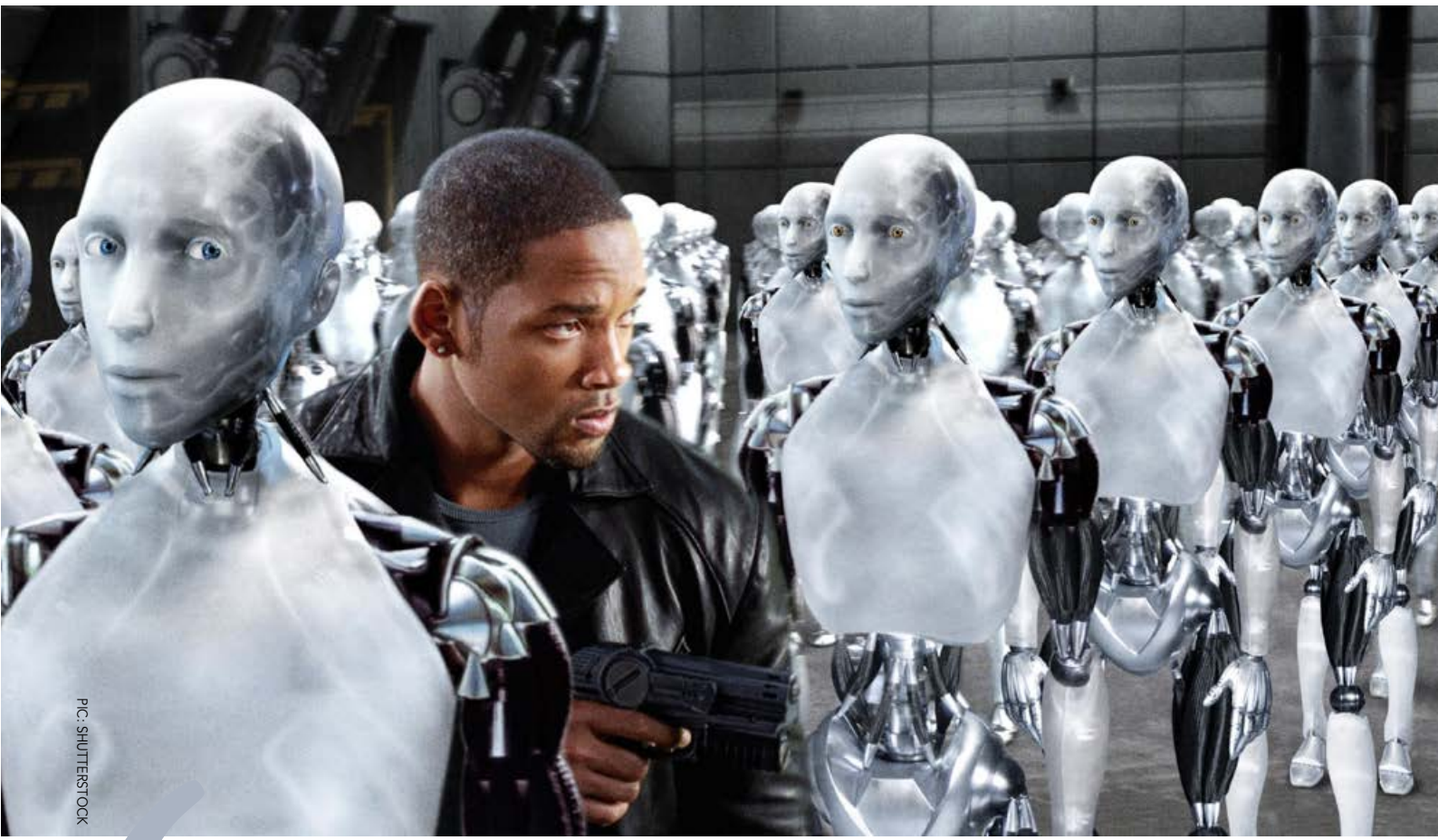
- The area of automation that causes the most consternation is artificial intelligence, but we need to look beyond the fear and hype
- Automation – like a lot of what is labelled 'AI' – is not really AI at all. It is merely a fast process that can handle big data
- The intersection of big data, business, risk and delivering better legal services is where AI can make a significant impact

2030 transformation

Richard Susskind, an author and guru on the subject of technology's impact on the law, wrote his doctorate on AI and law at Oxford in the early to mid-'80s. He says: "I believe that most of the short-term predictions about the impact of AI on law are overstated. At the same time, I think that the long-term predictions understate its likely impact. The legal world will not change fundamentally in the next couple of years. But, by 2030, I expect many aspects of legal service and court service will have been transformed."

By 2030, according to a report by PwC, AI could be contributing $15.7 trillion to the global economy. A Thomson Reuters report *Ready or Not: Artificial Intelligence and Corporate Legal Departments*, looked ahead to 2025. Their report stated that corporate counsel believe they are tech savvy, but acknowledge that their comfort level and confidence with technology have limitations, specifically around artificial intelligence. Less than 15% of survey respondents believed their legal departments were effectively using big data to deliver legal services.

The intersection of big data, business, risk and delivering better legal services is where AI can make a significant impact. The Thomson Reuters report highlighted the potential of using AI to automate



PIC: SHUTTERSTOCK

> WE CAN REFLECT ON HOW AI IS USED BY LAWYERS, AND SEE THAT AI'S DISRUPTION OF THE LEGAL BUSINESS WILL INCREASINGLY PUT A PREMIUM ON THE HUMAN LAWYER

invoice review and complete contracts, with one attorney specifying: "Hopefully, AI will be able to take over record-keeping roles like entity and document management. I could see some significant AI document preparation as well." This is all more mundane than the realms of AI fantasy.

Larger legal departments are the most receptive to adopting AI tools, with only 26% of respondents in departments with more than 11 attorneys stating that their departments were not interested in AI. However, 67% of respondents who work in legal departments with six to ten attorneys reported their departments were not interested in AI technologies, while 62% of respondents in legal departments with fewer than six attorneys indicated that their departments weren't ready. It would not be a great leap of the imagination to suggest that this is where Irish client legal departments are situated on the issue. More notably, only 4% of respondents, overall, indicated their departments were seriously considering purchasing technology tools with AI.

Key benefits

The key benefits of AI are currently perceived as reducing costs and saving time, and these benefits are not seen as being tangible enough as yet. This is where we find the end of the 'hype road'.

There are three barriers that need to be overcome before we reach the transformative effects of AI that Susskind predicts for 2030. They are: cost, ethical concern, and fear of – and resistance to – change. We can deal with cost rather quickly – it is arguably the most straightforward. There is a lot of funding in research and development just now, and this will result in new products and adoption of AI in the fullness of time. Costs come down, like all technologies, and 2030 seems like a realistic timeframe for this process.

> WE NEED TO ASK WHETHER THERE ARE ANY DECISIONS AI SHOULD NEVER BE ABLE TO TAKE

The other two factors can be taken in tandem. The European Commission has already started looking at ethics through the High Level Expert Group on Artificial Intelligence. In December 2018, the group issued *Draft Ethics Guidelines for Trustworthy AI*, stating: "Artificial intelligence is one of the most transformative forces of our time, and is bound to alter the fabric of society."

We can expect to see continued discussion in reports and on conference platforms. These discussions will be interdisciplinary, bringing lawyers together in dialogue with technologists, futurologists, business leaders, policymakers, civil servants, neurologists, psychologists, ethicists, philosophers, theologians and other specialists.

Automation v autonomy

The real nexus of the discussion is the distinction between automation and autonomy in relation to AI. To understand this critical point, we can reflect on how AI is used by lawyers, and see that AI's disruption of the legal business will increasingly put a premium on the human lawyer. Let's start with so-called 'smart contracts'.

Automating tedious and repetitive tasks is a good thing, AI proponents believe. These are tasks undertaken by juniors, and many argue it is indispensable to training new lawyers, but AI advocates believe this is not what young lawyers have in mind when they walk through the doors of a law firm. Aside from any training value, traditionally, this work has been billable and profitable.

However, it is being automated, but – like a lot of what is labelled 'AI' – it is not really AI at all. It is merely fast automation that can handle big data. Thus, 'smart' contracts are not as smart as the name implies. It is smart in the sense of handling the volume of work, but it is not smart in the sense of understanding that data.

A good example is JP Morgan, which deployed software called 'Contract Intelligence', or COIN. They dramatically reduced the time taken to review legal documents to the extent that 360,000 human hours now takes seconds. That is smart, but it is simply automation. It is also a good example of where clients can do work they previously paid law firms to undertake.

This raises the question of threat, but this is not a threat from AI – it is a threat from automation. *Autonomy* is really what AI is about. When we talk about the hype of AI, what we are really seeing is imagination driving people's perception about what AI is and what it might do.

Josh Hogan, partner at McCann FitzGerald, notes: "Cutting through the hype, there is a lot of talk, interest and potential, but the tangible issues are still being worked through." One way that law firms are working through the issues is by incubating a range of AI applications, working with various disruptive technologies and partners.

This does not mean lawyers have to write their own code or become tech providers. Hogan explains that he had built an app himself, but doesn't believe this is the way to go. He says that, while it's a good app, and he is proud of the achievement, "our experience was that, although the client liked it, what they really want is the advice. That was an important lesson for me. Building apps is not what lawyers need to do. Clients want good tools, but what they really want from us is good advice and communication."

He continues: "There are two questions to ask. First, how does technology improve the client experience? Second, what does it do for us as a firm – how can we improve?" Hogan argues that the lens through which this can be answered is collaboration: within the firm, with clients, and with other partners.

AI will develop through collaboration, and we know we have a long way to go when participants in the debate are questioning the very term itself, with both words – artificial and intelligence – under challenge. What do we mean by 'artificial'? Is AI really that intelligent?

> THE INTERSECTION OF BIG DATA, BUSINESS, RISK AND DELIVERING BETTER LEGAL SERVICES IS WHERE AI CAN MAKE A SIGNIFICANT IMPACT

Others advocate a change to the term, with candidates being 'augmented intelligence' and 'extended intelligence'. However, Jacob Turner, a barrister and author of *Robot Rules*, says: "We are probably stuck with the term – it is in common use. There might be better ways of phrasing it, but that would be a bit of a fool's errand."

The autonomy question

It is the 'intelligence' part of the term that brings us back to the important distinction to be made between automatic and autonomous machines. Turner says in respect to AI: "Autonomous is the sense in which I use 'AI', rather than 'automated'. This is the legally interesting area."

To understand this distinction, it is useful to go back to the barriers to adoption. The first point of cost and efficiency savings will be achieved by 'smart' automation and, to a certain extent, will override resistance to change.

There are significant data protection issues, including concerns about spying, and GDPR has been a major step forward in addressing these issues. The collection of data, which may or may not be used by big-data companies against our permission, is the kind of novel innovation lawyers have historically been up to dealing with. Automation still leaves us with problems, but they fit more closely with existing legal paradigms.

However, the autonomy question is the bigger and longer-term focus of legal questions to be asked today. It also raises the issue of other aspects of change, which morph into questions of ethics.

Jacob explains: "There are two ethical issues involved. First, how AI takes these decisions, which encompasses moral dilemmas, how they are decided upon, what trade-offs are being made. If the algorithm makes a recommendation, that recommendation may shape actions going forward or encourage certain behaviours. We also have questions around bias and explainability. Second, we need to ask whether there are any decisions AI should never be able to take. For instance, interest groups like Big Brother Watch want facial recognition banned. Other areas include autonomous weapons, and life and death medical decisions."

FOCAL POINT

THE BIG QUESTIONS

- Employment – will AI lead to fewer jobs?
- Regulation – what effective regulation is required?
- Freedom – how far can we push data freedoms to enable more powerful AI?
- Accountability – what harms might be directly caused by AI?
- Explainability – in an AI and machine-learning black box, can machines explain their decisions?
- Bias – is AI neutral or are we encoding bias?

Ireland's 'AI moment'

These are long-term debates, and it is around the issue of autonomy that we will discover the way to 2030. This means we have an 'AI moment' in Ireland. There is a wealth of legal, technological and academic talent on the island, and there are a lot of technology companies – big and small – that can contribute to this discovery.

Ireland also has the benefit of size, where bringing everyone together to debate the issues can be done. This is on the agenda of a Dublin-based meeting on 1 August 2019, which is part of a virtual World Legal Summit 2019 (see https://worldlegalsummit.org/dublin-host-page).

The AI debate swings from the mundane to the fanciful, leading some to say it's all hype, and others raising the spectre of today's sci-fi being tomorrow's must-have consumer product. It is a debate where the legal profession can offer reasoned intellectual and practical input, both for the sake of the profession and the island.

In 2017, Oxford Insights created the world's first *Government AI Readiness Index*, produced with the support of the International Development Research Centre (IDRC). They asked how well placed national governments were to take advantage of the benefits of AI in their operations and delivery of public services.

In 2017, the index rated Ireland in 17th place, with a score of 6.697. In the expanded 2019 index of 194 countries and territories, Ireland is in 34th place, scoring 6.542, which is a move in the wrong direction. Countries above Ireland are investing. Last year, Emmanuel Macron announced a €1.5 billion investment in AI in France, and Angela Merkel announced a €3 billion investment in AI in Germany.

Taoiseach Leo Varadkar recently warned that robots and AI posed a risk to people's jobs, saying that most jobs were "vulnerable to digitalisation or automatisation" and people would be replaced. However, he added: "The important thing now is that we think ahead."

He then joked: "I'm not sure if we'll have artificial intelligence to replace TDs and senators, or robot ministers – who knows? You get accused of being robotic sometimes."

Perhaps now is the time to move beyond the joke, and for Ireland's lawyers to seize their 'AI moment'. g

The inside track

Veteran in-house legal practitioner **Richard O'Sullivan** shares the inside track on his hard-won experience, which could help you become 'top cat' in your chosen career

RICHARD O'SULLIVAN IS GENERAL COUNSEL AT GLOBAL SHARES, CLONAKILTY, CO CORK. HE HAS SPENT ALMOST HALF OF HIS PROFESSIONAL CAREER WORKING IN-HOUSE

These days, in-house lawyers make up over 20% of our profession. Working in-house is now a perfectly viable alternative to a career in private practice. While many in-house lawyers are refugees from law firms (and a significant proportion are barristers), an increasing number are starting their careers in-house, having eschewed private practice altogether.

There are some real advantages to working in-house. We don't have to market to our clients or chase them for unpaid bills. We usually don't have to engage in time-billing – the bane of many a law firm lawyer's life. However, it is not an easy route, and in-house lawyers face many challenges that our private practice colleagues do not. Often, the in-house lawyer has to face those challenges alone, without the backup of a firm full of colleagues.

As with every career, it suits some, but not others. But when it works, it is a wonderful alternative, offering an exciting and varied workload and the opportunity to work with, and learn from, non-legal colleagues across the business.

I wrote about my top ten tips for in-house lawyers a while ago ('Wishing well', July 2017 *Gazette*, p56). Having discussed those tips with countless colleagues since then, it became clear that I needed to supplement that list. The tips below are aimed both at colleagues who are considering a move in-house, as well as those of us who are a bit longer in the tooth.

Be efficient

Let's face it. Your 'to do' list is growing faster than you could ever hope to clear it. You need to use every trick in the book to help you to do a better job more efficiently. Enter technology: if you have the budget for a full-featured enterprise-level case-management system, good for you.

For the other 90% of us, all is not lost. There are some excellent free tools available to help you. These range from simple, but powerful, work-management tools like Trello (www.trello.com) to the functionality of Google's free online office suite, GSuite (gsuite.google.com).

There are also many excellent online articles on productivity for in-house lawyers. It is worth reviewing some of those, especially for tips on handling information overload and slaying the email dragon.

Monkey on your back

Many of us work in businesses that carry out customer satisfaction surveys. So why don't you do the same? You can create a free SurveyMonkey survey and use it to get feedback from your colleagues/clients in your organisation.

When doing this, you need to press the pause button on your ego. If you want valuable feedback, you will need to accept criticism with an open mind. Not only will you gather helpful advice, but you will have sent a powerful message to your colleagues/clients that you are listening to them and are there to help them.

The power of 'no'

Having listened to your internal clients, you also need to recognise that, sometimes, the best response you can give them is 'no'. That doesn't

AT A GLANCE

- In-house lawyers now comprise over 20% of the solicitors' profession
- While working in-house has undoubted advantages, budding in-house counsel should be aware of the many challenges they can face when moving in-house
- It offers a wonderful alternative to working for a firm, as well as an exciting and varied workload

PIC: SHUTTERSTOCK

> IN-HOUSE LAWYERS ALSO NEED TO GRASP PERFORMANCE METRICS FOR THE LEGAL FUNCTION

mean that you say 'no' to everything, but it does mean that you select and prioritise your work carefully.

If your internal client wants you to join a two-hour meeting, just in case something legal might come up, that is likely a poor use of your time and the company's money. Say 'no' to your colleague, but promise them that if something legal does come up, you will be on standby to join the meeting

Learn the language

Lawyers operate with words, but businesses operate with numbers. As in-house lawyers, we must learn how to understand key 'business numbers' like the accounts and business-performance metrics. There are many excellent online courses that provide the training we need for this (for example, online one-day 'finance for non-financial people' courses).

In-house lawyers also need to grasp performance metrics for the legal function. That may be as simple as tracking every file you open, how long it takes to complete it, how many files you open and close each month, and how much that would have cost if done externally (for example, by applying a notional hourly rate or fixed-fee per file). If you want a seat at the business table, you need to speak the business language, and that language is numbers.

Watch your budget

Remember that the in-house legal function is a support service for the profit-making parts of the business. As such, it is a cost – like electricity and stationery. You will likely have a fixed or, at least, an informal budget to deliver the legal service for the year. Spend it wisely. Make sure you maximise your use of free online resources, such as Lexology, Getting the Deal Through, Mondaq, Bailii and others.

Consider using smaller boutique law firms instead of the biggest commercial firms. Build up libraries of legal advice and template agreements for future use. Attend CPD talks provided by law firms. Expand your network of in-house colleagues in other organisations, and share templates with them (suitably anonymised, of course).

These are all ways to show that your organisation is getting the biggest bang-for-its-buck on its legal spend. And, of course, you should be able to use clear legal department metrics to report on this.

Remember your independence

As the workload grows and budgets tighten, in-house lawyers often feel that they can't stand in the way of key corporate projects, even if they have concerns. No one wants to be the negative voice, the 'naysayer'.

But remember that you are not the same as everyone else. You are a member of a separate, distinct profession with its own rules and ethics. No job is worth compromising your independence or your integrity for. But it doesn't have to. Turn your independence into a virtue. In any given meeting, there will often be a lot of 'yes men' (and women) and group think. Your voice as the honest, independent devil's advocate may well be the most valuable voice in the room.

Build a team

This tip seems obvious if you are in the lucky position of either already being in an in-house team or having sufficient budget to create one. But even if you are a sole in-house lawyer with no hiring budget, fear not. If you can't build an internal team, build an external one.

Find other like-minded in-house lawyers in your region, whether they are in your industry sector or not. Set up a WhatsApp group, meet for coffee, share thoughts and ideas. Welcome to your new team!

The indisputable leader of the gang

Educate yourself

The worlds of law and business are changing at an exponential rate. GDPR, Brexit, artificial intelligence, and a million other topics vie for our attention. A good in-house lawyer will identify any issues that could have an impact on their organisation and will keep up to date with them. There is a wealth of cutting-edge information freely available online on every imaginable topic.

There are daily updates from *Gazette.ie*, Lexology, podcasts, blogs, and an unending selection of lectures and talks available on YouTube. Make sure that you set aside at least 30 minutes every day for education and self-improvement. Never stop learning.

Contracts – a primer

As an in-house lawyer, contracts are likely the lifeblood of your work. With that in mind, it is worth focusing on them. Perhaps you could revise all your organisation's contracts, bringing them up to date and giving them a similar look and feel. Once that is done, you could create a contracts playbook for your sales team, so that they understand what is in the contracts and which parts they can negotiate.

You might follow that with a programme of training, not just on the contracts themselves, but also on key issues, such as data protection, risk management and contract lifecycle management (CLM). Not only will your colleagues appreciate this, but it is another good way to demonstrate your continuing added value to the organisation.

Speaking of CLM, that's another way that you can add value. If you record all the key elements of a contract in a database (whether it is an *Excel* spreadsheet or a dedicated CRM system), you can be the person who flags upcoming contract expiry and negotiation dates to the sales team, and point out potential up-selling opportunities.

Risky business

Regardless of your organisation's business sector, risk is a key issue that needs to be properly tracked and managed. In-house lawyers are particularly good at this, as we are trained to identify risk and find ways to mitigate it or work around it.

If your organisation does not already have a risk function, perhaps you could offer to set it up and run it. There are many online resources that will help you to understand risk management and how to set up a good risk register for your organisation.

Even if your organisation has an established risk function, you can still contribute in the areas of legal and regulatory risk. Not only will this be a way of linking with colleagues across the organisation, but it will also give you a deeper understanding of the business. Lastly, it is another great way to show your added value and to place you at the heart of the business.

Bonus tip – mind your mind

Life as an in-house lawyer can be wonderful and varied, but also stressful and lonely in equal measure. There are never-ending demands across a range of topics, often with unreasonable deadlines and even

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more unreasonable expectations.

From time to time, we all feel unloved and under-appreciated by our business colleagues. It would be easy for an in-house lawyer to buckle under the pressure, particularly if he or she works as a sole lawyer. Remember that no matter how heavy your workload is, you need to make time for yourself. You need to be able to switch off and leave the emails and 'to do' lists behind you.

It is critical to schedule time for self-care, whether that involves exercise, hobbies, or something more obviously relaxing like spending time with family or mindfulness. Don't view that time as avoiding work or shirking your responsibilities. You will be better able to tackle your 'to do' list and be a much more effective advisor for your organisation if you are relaxed and well-rested.

Also, do not underestimate the power of talking with other in-house colleagues in your network. While they may not have instant solutions for you, you may be surprised how many of them have been through similar situations and can relate to how you feel. As the saying goes: 'A problem shared is a problem halved'.

So go ahead and halve your problems!

LOOK IT UP

RISK MANAGEMENT:

- www.law.com/corpcounsel/2019/02/19/risk-management-strategy-top-tips-for-lawyers
- www.inhouselawyer.co.uk/mag-feature/managing-risk-the-in-house-view
- www.pmi.org/learning/library/risk-analysis-project-management-7070

PRODUCTIVITY:

- https://fiveminutelaw.com/2018/01/08/top-5-productivity-tips-for-lawyers-and-other-humans
- www.onelegal.com/blog/email-management-tips-for-attorneys-and-paralegals
- www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2019/MA2019/MA19DigitalToolkit

Irish ways and Irish laws

This year marks the 850th anniversary of the Norman invasion of Ireland. **James Meighan** considers the Brehon legal system that was in place before the invasion and discusses its common law replacement

JAMES MEIGHAN IS A SOLICITOR UNDERTAKING A PHD IN LAW WITH THE UNIVERSITY OF LIMERICK ON THE SEPARATION OF POWERS AND ITS INFLUENCE ON THE FREE STATE CONSTITUTION

In 1167, Diarmait Mac Murchada sought the English King Henry II's help against the High King of Ireland, Ruaidhrí Ua Conchobhair, who had deposed Mac Murchada as king of Leinster.

On 1 May 1169, Mac Murchada, assisted by Norman mercenaries, launched an invasion at Wexford to regain his throne. The Second Earl of Pembroke, Richard de Clare (Strongbow), who had been promised to succeed Mac Murchada as king of Leinster, landed in Ireland in August 1170. De Clare assisted Mac Murchada in the task of taking control in Ireland, until Mac Murchada's death in May 1171. In October that year, Henry II landed with a large army and consolidated Norman control of Ireland.

The Norman conquest of England had occurred in 1066, which saw the Duke of Normandy, the future King William (the Conqueror), defeat the House of Wessex to take control of England. It would be 113 years before King Henry II (the first Angevin king) would invade Ireland.

Four green fields

Before the Norman invasion of Ireland, the Irish operated a unique legal system, sophisticated by contemporary standards, and quite unique from other legal systems in operation in Europe during the period.

The Brehon legal system, as it was known, was operated by the ruling tribes or chiefs. The word 'Brehon' derived from the old Irish word *brithemain*, meaning judge or jurist, and was based upon custom. The legal system was administered by judges known as Brehons. The origin of the system is unclear. However, it is evident from the early manuscripts and language used in texts during the period that a version of the Brehon system was in place in what are commonly referred to as Celtic times. Experts in early Irish legal history argue that many of the essentials of the early Irish legal system go back at least as far as the 'Common Celtic period' (circa 1000 BC). The Brehons were the descendants of the *fili* (member of an elite class of poets in Ireland), who were the poets or historians of the druids.

The system of law was developed from customs that were passed down orally from one generation to the next. There was a formalisation of the laws in the seventh century, when details of the laws were first committed to writing.

The Brehon system was progressive, in that a number of law schools were established where jurists were trained in Brehon law and learned the rules

AT A GLANCE

- Before the Norman invasion, the Irish operated a unique legal system that was sophisticated by contemporary standards
- The Brehon system was unusual, in that it recognised divorce, certain limited protections for the environment, and equal rights between the genders
- Henry VIII sought to finally replace the Brehon system following his break with Rome, but the accession of the common law as supreme was not completed until the *Supreme Court of Judicature Act (Ireland) 1877*

PIC: SHUTTERSTOCK

Stormin' Normans

BOTH MAC MURCHADA'S REQUEST FOR ASSISTANCE AND *LAUDABILITER* WERE KING HENRY II'S JUSTIFICATION FOR THE INVASION OF IRELAND IN 1169

and legal principles of the Brehon legal system. The system divided Ireland into approximately 50 different local jurisdictions or *túath*.

While the Brehons exercised judicial functions, in the exercise of those functions, they were more like arbitrators than judges. The sources of law of the Brehon system were legislation (legal rules and principles, canon law and certain ordinances of kings) and case law. While the principle of *stare decisis* was not rigidly adhered to, the Brehons did regularly hear similar cases, which led to a loose adherence to the principle of precedents.

The Brehon system was progressive, in that it recognised divorce, certain limited protections for the environment, and equal rights between the genders. The criminal jurisdiction called for restitution rather than punishment – for example, homicide and bodily injury were punishable by means of a fine, all of which were determined by a standard scale. The legal system did not afford all the entitlement to access the law – it was based on the class system in operation at the time.

The system placed restrictions on parties entering into contracts. If a party could not meet their potential obligations under a particular contract, either as a party or a surety, that person was prohibited from entering such a contract. The class system also played a role in the punishment for breach of the rules. If an offence was committed upon a person of high rank, the punishment would be far more severe than an offence committed on a lower-ranking person. The law of evidence in operation under the Brehon system automatically favoured persons of higher rank – such a person's evidence on oath outweighed the evidence of a lower-ranking person.

One major distinction between the Brehon system and that of the common law was on the area of enforcement. The Brehon system was largely self-enforcing – there was no police

system in existence to enforce the judgments or rulings of the Brehons. While, in the main, no enforcement apparatus was required, there were situations where adherence was not complied with. In these situations, enforcement was handled by the ordinary people and, if required, occasionally a lord might be asked to assist.

Irrespective of the nature of the wrong – civil or criminal – as there was no penal system in place, the judgments of the Brehons ordered the payment of compensation. If the defendant failed to comply with the judgment, the successful plaintiff could seize the property of the wrongdoer (known as 'distraint'). The plaintiff could undertake a fast or hunger strike outside the house of the defendant (and if the defendant ate during the plaintiff's fast, he was required to pay double the original judgment amount, known as *troscud*), or, the most serious of all, the plaintiff could verbally assault the defendant: if compensation went unpaid, the plaintiff could satirise the wrongdoer, which was seen as a challenge to the defendant's honour.

Tabhair dom do lámh

Setting the stage for the Norman invasion of Ireland, Pope Adrian IV (the only Englishman to ever serve as pope) issued the Papal Bull *Laudabiliter* in 1155. The document (no copy remains in existence) supposedly commissioned King Henry II to intervene in Ireland to assist in the reform of the governance of the Irish church and the Irish system of governance according to the Roman (Latin Rite) ecclesiastical system.

Both Mac Murchada's request for assistance and *Laudabiliter* were King Henry II's justification for the invasion. At the Council of Curia Regis (or King's Council) in Waterford in 1171, Henry declared "the laws of England were by all freely received and confirmed". In 1172, Henry appointed the first Justiciar of Ireland, Hugh de Lacy (chief governor of Ireland). The *Treaty of Windsor* was signed in 1175 between Henry and the High King of Ireland, Ruaidhrí Ua Conchobair. The treaty divided Ireland into two sections, one to be controlled by Conchobair and the other by Henry. By 1177, the treaty had broken down, for failure to comply with the treaty by both sides. In 1204, King John (the king who conceded the *Magna Carta*) authorised the issue of writs directing that Irish courts apply the common law.

In 1366, the *Statute of Kilkenny* sought to reconfirm the supremacy of the English parliament over the Irish parliament. *Poynings' Law*, as passed in 1494, provided that if the Irish wished to hold parliament, the king's consent was first required, and that all proposed statutes passed by the Irish parliament be approved by the king.

Only our rivers

The development of the common law in Ireland was a slow process. There were a number of reasons for its slow development; primary among these was the fact that the common law was still bedding down in England. It wasn't until after the Norman Conquest of 1066 that it began to take

> ONE MAJOR DISTINCTION BETWEEN THE BREHON SYSTEM AND THAT OF THE COMMON LAW WAS ON THE AREA OF ENFORCEMENT. THE BREHON SYSTEM WAS LARGELY SELF-ENFORCING

> SOME OF THE INVADERS WHO HAD SETTLED IN IRELAND SAW NO PARTICULAR REASON TO EXTINGUISH THE BREHON SYSTEM IN FAVOUR OF COMMON LAW

hold in a structured manner. Also, with the passage of time, some of the invaders who had settled in Ireland saw no particular reason to extinguish the Brehon system in favour of common law.

However, the Tudors under Henry VIII sought to replace the Brehon system following his break with the Catholic Church and the dissolution of the monasteries. The *Treaty of Mellifont* of 4 April 1603 officially finalised the Tudor conquest of Ireland. And while *Laudabiliter* commissioned King Henry II to reform the Irish institutions, the Brehon system and common law coexisted for almost 500 years until two seminal cases finally rejected the Brehon system in favour of the common law, specifically *Gavelkind* ([1605] Dav 49) and *Tanistry* ([1607] Dav 28).

The accession of the common law as supreme was completed with the *Supreme Court of Judicature Act (Ireland) 1877*, which amalgamated the previous separate courts of common law and equity.

Sí bheag, sí mhór

Over the centuries, generations have pinpointed 1169 as the starting point of the English influence in Ireland and the loss of the Irish identity. However, this is not a view that is shared by all.

Historian Goddard Henry Orpen, writing extensively on the period, stated: "There has been a strong tendency among Irish writers to assume that nothing but evil resulted to Ireland from the Norman invasion. An independent study of the primary sources of the period, however, has led me to think that the results which followed the coming of the Normans were, on the whole, distinctly beneficial to Ireland."

Orpen argues that one of the most beneficial structures introduced by the English was the common law.

It is interesting to note the recent comments of Mr Justice Gerard Hogan on the future of the common law system in this jurisdiction, post-Brexit. Mr Justice Hogan said that Brexit could tear Ireland away from the common law system. If this did come to pass, we would move closer to the civil law system operating in the majority of states in the European Union.

The primary objective of *Laudabiliter* was the reform and modernisation of Ireland. The English invaded Ireland in 1169, and the common law English legal structure did not become the justice system in Ireland for 436 years – a considerable delay, even by modern standards!

TOGETHER IN ELECTRIC DREAMS

The so-called 'digital revolution' is creating challenges for competition regulators throughout the world. **Cormac Little** asks where you want to go today

CORMAC LITTLE IS HEAD OF THE COMPETITION AND REGULATION UNIT OF WILLIAM FRY AND VICE-CHAIR OF THE LAW SOCIETY'S EU AND INTERNATIONAL AFFAIRS COMMITTEE

COMMENTATORS HAVE ARGUED FOR A GREATER ROLE FOR COMPETITION ENFORCEMENT IN TACKLING THE INCREASED PRIVACY/DATA PROTECTION CONCERNS ARISING FROM THE GROWTH OF ONLINE PLATFORMS

News from the EU and International Affairs Committee. Edited by TP Kennedy, director of education, Law Society of Ireland

Innovative methods of both connecting people with businesses and compiling/storing large amounts of information are becoming increasingly prominent in the global economy.

Increasingly, commentators are questioning whether current EU competition laws (or their US equivalent) are fit for purpose or being interpreted and enforced in an effective manner.

More broadly, there is a debate about whether competition rules or privacy laws (or a combination of both) are the best mechanisms to curtail the alleged market excesses of the major technology companies.

Let's work together

Mindful of the ongoing debate regarding whether EU competition rules are sufficiently robust to meet the challenges posed by the digital revolution, the European Commission launched a public consultation. This process resulted in the April 2019 publication of a report, *Competition Policy for the Digital Era*.

The report focuses on the key characteristics of the digital economy, including the disproportionate returns compared with the cost of production of online services, network externalities/effects (such as the increased attractiveness of using a platform when more people use it), and the role of data. Each of these characteristics can obviously give a competitive advantage to incumbent companies.

While the report concludes that there is no need to rethink EU competition law's fundamental goals, the authors nonetheless advocate adapting and refining established concepts, doctrines and methodologies and, indeed, competition enforcement more generally. For example, the report states that a dominant platform's strategies aimed at reducing competition should be forbidden in the absence of clearly documented consumer welfare gains. The authors also recommend a reduced emphasis on market definition, with a greater focus on theories of competitive harm.

Where only a limited number of platforms in certain areas may be realistic, the report highlights the importance of promoting both competition 'for the market' and competition on a dominant platform. Regarding data, the report notes that antitrust issues must be assessed in light of specific circumstances, – for example, the market, the type of data, and its usage.

Bad company

As outlined in the report, ownership/possession of data clearly confers a significant advantage on certain companies. For example, Google and Facebook's data on the preferences of users is of huge benefit to their respective sales of digital advertising.

Conversely, the lack of access to big data can act as a barrier to entry. Accordingly, the refusal of dominant firms to grant their competitors access to data may constitute an abuse of a dominant position under the 'essential facilities' doctrine.

In 2014, France's competition regulator fined Cegedim, a healthcare technology company, €5.7 million for refusing to sell medical information data to certain laboratories.

Separately, the increasing use by companies of algorithms to improve decision-making and automate processes could lead to collusive conduct within the meaning of article 101 of the *Treaty on the Functioning of the European Union* or section 4 of the *Competition Act 2002*. This can occur explicitly or by encouraging tacit collusion. For example, the monitoring of competitors' prices by computers, without human intervention, could lead to price coordination. Any such 'machine learning' could induce competitors to react instantly to each other's price changes, reducing the incentive to compete.

Commentators have argued for a greater role for competition enforcement in tackling the increased privacy/data protection concerns arising from the growth of online platforms/websites.

In February 2019, Germany's

PIC: SHUTTERSTOCK/BEASTLING

competition authority ruled that Facebook had abused its dominant position under national law by 'forcing' unwitting users to accept a term whereby the social media giant would collect users' data, not only from platforms such as Facebook, Instagram, and WhatsApp, but also from their use of third-party websites. In effect, the social media giant was able to combine users' data from multiple sources to build a unique database on each individual German-based user. This conduct breaches German data protection rules.

This case is particularly interesting given that Facebook does not charge customers a fee to use its service. (Typically, abuse of dominance tends to involve the imposition of unfair trading conditions, such as predatory or excessive prices.) Nonetheless, the authority concluded that Facebook, which holds a market share above 90% in social networks in Germany, had abused its dominant position by imposing exploitative business terms with the result that users suffered a loss of control because they were unable to use Facebook without accepting these terms.

Although no fine was imposed, Facebook was obliged to remove this obligation from its terms of service. Certain commentators have argued that the authority has 'overextended' the reach of German abuse of dominance rules, perhaps motivated by the patchy record of data protection regulators. This and other issues will be addressed by Facebook's appeal against the ruling.

Hip to be square

The digital revolution has also given rise to the so-called 'hipster antitrust' movement in the

COMMENTATORS QUESTION WHETHER CURRENT EU COMPETITION LAWS (OR THEIR US EQUIVALENT) ARE FIT FOR PURPOSE

US. This term is more of a criticism than a compliment. Advocates of this proposed approach to antitrust enforcement would likely prefer to refer to the trend as the 'new Brandeis movement' or 'new progressive antitrust movement'. Nevertheless, this phenomenon has exposed the divisions between two schools of antitrust thought.

The Chicago School, broadly speaking, sees the goal of antitrust as maximising consumer welfare by making the economy as efficient as possible. This approach favours free markets.

By contrast, the Harvard School favours government intervention to counteract market failures, above all in areas where the structure of competition may lead to greater antitrust risks. In recent years, the approach of the former school has held more sway over antitrust regulators in the US.

The 'hipster antitrust' movement seeks to tackle non-traditional/unorthodox goals of antitrust law, such as income inequality, wage growth, and the concentration of power in the hands of a few. The orthodox view of the goal of antitrust policy in the US is the 'consumer welfare' standard. Under this regime, which follows the Chicago School, antitrust should be concerned solely with whether competition delivers benefits such as lower prices, greater choice, etc.

Big data is often seen as the main target of the hipster antitrust movement. According to its proponents, strong intervention is required to counteract the rapid changes brought about by technological progress.

The supporters of this approach also argue that the power of corporations that possess vast amounts of consumer data should be curbed. Such businesses are viewed as the modern equivalent of the large railroad and oil companies targeted in the late 19th and early 20th centuries during the inception of strong US antitrust enforcement.

Advocates of the new approach also argue that the tools available to antitrust regulators are static (observing the final effects on consumers to determine how competitive a market is), whereas the companies they seek to regulate are highly dynamic.

Proponents have called for more aggressive enforcement (for example, by prohibiting mergers that are unlikely to lead to price increases). Others argue that new tools are required to tackle the problems posed by big data.

By contrast, the detractors of the hipster antitrust movement argue that big data does not, in fact, confer significant advantages on its owners. Under this view, it is argued that data is akin to a raw material, or a resource, with little intrinsic value. Data owners reap benefits only by processing information intelligently.

Furthermore, the emergence of large technology companies in recent years is the result of a sound antitrust policy that promotes innovation. This is seen as largely to the benefit of consumers, who remain in control of the data they provide and the services they use (in the case of Facebook and Google, largely for free). There is thus no reason to depart from the consumer welfare standard.

> BIG DATA IS OFTEN SEEN AS THE MAIN TARGET OF THE HIPSTER ANTITRUST MOVEMENT. ACCORDING TO ITS PROPONENTS, STRONG INTERVENTION IS REQUIRED TO COUNTERACT THE RAPID CHANGES BROUGHT ABOUT BY TECHNOLOGICAL PROGRESS

Trust

In June 2019, the US Department of Justice (DOJ) and Federal Trade Commission (FTC), which share responsibility for antitrust oversight, agreed upon a proposed investigation into Google, Facebook, Amazon and Apple. According to newspaper reports, the DOJ will investigate Google and Apple, while the FTC will examine potential antitrust issues at Facebook and Amazon. This followed an announcement by the US House of Representatives that it would launch an investigation into competition in digital markets.

Big data is clearly here to stay. The challenges brought about by the emergence of large technology companies will also persist for the foreseeable future. The debate as to whether competition or data privacy regulators are better placed to meet the relevant challenges will continue to rage.

Merging the two, respected academics recommend the establishment of super-regulators with powers to investigate and enforce a range of laws, including both competition and privacy rules in order to meet the relevant challenges most effectively. Watch this space. g

CONVEYANCING COMMITTEE

NPPR – FURTHER CLARIFICATION

The committee has been asked to provide further clarification around its practice note published on 6 April 2018 on NPPR.

The confusion arises because unpaid NPPR is a charge on property. Accordingly, it is necessary, on the sale of a residential property to which the legislation applies, to account for NPPR for each of the five years from 2009 to 2013 inclusive. As pointed out in the previous practice note, on a sale of a principal private residence (PPR), prior to 1 January 2012 (the date that section 19 of the *Local Government (Household Charges) Act 2011* came into effect), it was not possible to obtain a Certificate of Exemption, as the requirement to furnish a Certificate of Exemption on the sale of a PPR was only introduced by the 2011 act.

Large numbers of residential properties changed hands between 2009 and 2011 where, if there was no liability to the tax, a statutory declaration confirming that the property was a PPR was (in accordance with recommended practice) provided by a vendor.

Section 8A(4) of the *Local Government (Charges) Act 2009* (as inserted by section 19(1)(j) of the 2011 act) introduced a requirement that a vendor furnish either a Certificate of Exemption or Discharge on the sale of a property to which the legislation applied in respect of each year in which a liability date fell since the date of the last sale of the property.

In an effort to assist the profession, the committee has set out a number of examples.

First sale of a PPR since 31 July 2009

On the first sale of a PPR since 2009, where the property was the PPR of the vendor from 31 July 2009 to 31 March 2013 (inclusive), the vendor must furnish a Certificate of Exemption to cover all years from 2009 to 2013.

Second sale of a PPR since 31 July 2009, where the property was previously sold on or after 31 July 2009 but prior to 1 January 2012

Mr Smith is selling his PPR that he purchased from Mrs Jones in December 2010. The property was Mrs Jones' PPR from 31 July 2009 to December 2010 and, on closing, Mrs Jones, in accordance with the recommended practice at that time, furnished a statutory declaration declaring that the property was her PPR on 31 July 2009 and 31 March 2010. On selling the property in 2019, Mr Smith now provides the following:

- A Certificate of Exemption for the years 2011, 2012 and 2013 to cover his period of ownership,
- The statutory declaration of Mrs Jones covering the period of her ownership (2009 and 2010).

There is no need to obtain and furnish a Certificate of Exemption to cover the period of ownership of the first vendor in 2009 to 2010, as furnishing the Certificate of Exemption to cover the current vendor's ownership (2011 to 2013 inclusive) complies with the requirement in section 8A(4) of the 2009 act to furnish such a certificate. The statutory declaration of Mrs Jones is acceptable evidence that there is no NPPR charge on the property for the years 2009 to 2010.

Second sale of a PPR since 31 July 2009 where the PPR was previously sold on or after 1 January 2012

Mr Murphy is selling his PPR that he purchased from Mrs Doyle in July 2012. The property was Mrs Doyle's PPR from 31 July 2009 to July 2012. As that sale completed after the enactment of section 19 of the 2011 act, Mrs Doyle furnished a Certificate of Exemption in respect of the NPPR tax for liability dates 31 July 2009, 31 March 2010, 31 March 2011, and 31 March 2012 to Mr Murphy on closing. On selling the property, Mr Murphy now provides the following:

- A Certificate of Exemption to cover his period of ownership (31 March 2013),
- The Certificate of Exemption received from Mrs Doyle in respect of her period of ownership (2009 to 2012).

NPPR

Prior to 1 January 2012, the legislative requirement on the sale of an NPPR was to obtain and furnish a receipt for payment of the charge and/or a letter of discharge of the statutory charge from the local authority. The 2011 act introduced the requirement that a vendor furnish either a Certificate of Exemption or Discharge on the sale of a property to which the legislation applied from the date of the last sale. In practice, for simplicity, solicitors for vendors are furnishing the receipts to local authorities and obtaining Certificates of Discharge in respect of those years.

First sale of an NPPR since 31 July 2009

On the first sale of a property since 31 July 2009, where the property was not the PPR of the vendor from 31 July 2009 to 31 March 2013 (inclusive), and where an exemption is not claimed, the vendor furnishes a Certificate of Discharge of the tax for the years 31 July 2009 to 31 March 2013.

CONVEYANCING COMMITTEE and TECHNOLOGY COMMITTEE

SHARING CONDITIONS OF SALE AND TITLE DOCUMENTS IN ELECTRONIC FORM

In 2006, the Conveyancing and Technology Committees issued a joint practice note dealing with the issue of booklets of title by builders' solicitors on CD-ROM/DVD. The 2006 practice note approved the use of CD-ROMs and DVDs only in Land Registry cases, and for new estates only, and recommended that the documents should be available to the purchaser's solicitors in hard copy at any time, and that all documents handed over at closing should be in hard copy.

Technology has moved on, and copy title documents and booklets of title are now being issued on other forms of electronic storage and media. The practice of issuing documents via electronic media is now not limited to new houses/apartments or to Land Registry cases. The committees have been asked for their view on this development.

While the committees are not opposed to developments in technology that would enhance or simplify the conveyancing process, some of the reasons behind the committees' 2006 recommendation still apply.

The Certificate of Title scheme agreed with the lending institution requires delivery of hard copies of the title documents.

There are risks in connecting electronic storage devices to an IT system or accessing other forms of electronic media, and this is resisted by managers of such system.

Finally, there is the ever-present risk that new forms of technology may soon become old forms of technology and eventually obsolete.

Recommendations

A purchaser's solicitor cannot be compelled to accept documents via electronic media, and is entitled to receive hard copies of the title at any stage of the transaction.

If the respective solicitors agree to use electronic media, a number of factors must be considered:

- The furnishing of documentation by electronic media should be by agreement only and should not be imposed.
- The documents must be available to the purchaser's solicitor in hard copy at any time on request.
- Maps should be coloured.
- Electronic copy booklets of title should be clearly accessible, labelled, paginated and indexed, and the naming convention should be consistent with and correspond to the descriptions in the documents schedule in the Conditions of Sale.
- Documents should be in a format capable of being downloaded, saved and printed.
- The integrity and readability of the original documents must be preserved.
- In this regard, it is recommended that practitioners save documents in 'PDF/A' format to reduce the risk of the document being unreadable in years to come. PDF/A is an ISO-standardised version of the portable document format (PDF) specialised for use in the archiving and long-term preservation of electronic documents.
- In the case of the sale of new units in a development, hard-copy booklets of title must be furnished on closing, with a certificate confirming that such hard-copy documents mirror the documentation issued by electronic media, in addition to the usual certificate that such documents are true copies of the originals.
- Hard copies must be furnished on closing in accordance with the conditions of sale, to the intent that, on closing, the purchaser's solicitor shall have a full set of hard-copy title documents (whether an original, certified copy or copy in accordance with the conditions of sale).

CONVEYANCING COMMITTEE

FAMILY LAW DECLARATIONS AND REGISTRATION OF TITLE – CLARIFICATION

The Conveyancing Committee published a practice note on the above topic in the August 2018 *eZine* and in the August/September 2018 issue of the *Gazette* recommending that practitioners continue to obtain family law declarations and keep them with the title deeds to a property, even though the Property Registration Authority may not require them for registration purposes.

The final paragraph of the practice note confirmed that the Law Society's standard Requisitions on Title would continue to raise requisitions on title in relation to the *Family Home Protection Act 1976*, the *Family Law Act 1995* and the *Family Law (Divorce) Act 1996*, as family law issues continue to be a matter of title and title registration.

This paragraph overlooked listing the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*.

It is confirmed that the earlier practice note also applies to the shared home and that the *Requisitions on Title 2019* have taken account of the shared home and the 2010 act.

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 Thomas D'Alton, a solicitor practising as James J Kearns & Son, Solicitors, Portumna, Co Galway, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT114, 2018/DT03, and High Court record 2018 no 126 SA]
Law Society of Ireland (applicant)
Thomas D'Alton (respondent solicitor)

2017/DT114

On 25 October 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 January 2017 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

2018/DT03

On 25 October 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

1) Allowed a deficit of €54,860 on his client account as of 30 April 2016, which was subsequently reduced to €46,860 by the introduction of €8,000 in June 2016,
2) Used €10,000 of clients' moneys on 9 March 2015 to help discharge a personal revenue liability,
3) Took client moneys of €10,000 in September 2014 and €7,800 in July 2006 from a named estate, which moneys were used to reduce the office account overdraft,
4) Took client moneys of €8,000 from the estate of a named person in September 2015, which moneys were used to reduce the office account overdraft,
5) Took client moneys of €15,813.57 from a named estate in June 2014, which moneys were used to reduce the office account overdraft,
6) Took client moneys of €5,000 from the client account to the office account in July 2016,
7) Created a debit balance on the account of a named client of €5,002,
8) Failed to comply with anti-money-laundering legislation in the sample of clients' files examined.

The tribunal directed that both matters be sent forward to the President of the High Court and, on 26 March 2019, in High Court proceedings entitled *Law Society (Applicant) v Thomas D'Alton*, the High Court made orders that the respondent solicitor be suspended from the Roll of Solicitors until 1 April 2020. Upon cessation of that suspension, the respondent solicitor may be issued with a practising certificate subject to the following conditions:

1) He will not be permitted to practise as a sole practitioner or in a partnership, but only as an employed solicitor,
2) He must act under the control and supervision of a solicitor who will be approved of in writing in advance by the Law Society,
3) He will not be permitted to give undertakings of any sort save with the written consent obtained in advance from the supervising solicitor,
4) He will not be permitted to have any drawing rights on the client or other accounts of the practice in which he may be employed.

The said conditions will apply to every practising certificate granted to him for a period of seven years following his restoration to the Roll of Solicitors in 2020.

In the matter of Alan Lloyd, a solicitor formerly practising in the firm of AM Maloney & Co, Solicitors, Harbour Street, Tullamore, Co Offaly, 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* [2018/DT38 and High Court record 2019/6 SA]
Law Society of Ireland (applicant)
Alan Lloyd (respondent solicitor)

On 20 November 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Practised as a solicitor/provided legal services while there was not a practising certificate for the practice year 2016 in respect of him in force, contrary to section 55 of the principal act and/or section 56(1) and/or (2) of the *Solicitors (Amendment) Act 1994*,
2) Held himself out as a person entitled to practise/provide legal services during the practice year 2016 while there was not a practising certificate in respect of him in force,
3) Attended at Tullamore Garda Station on 12 August 2016 and provided legal services and/or held himself out as a person entitled to provide legal services in respect of a person detained under section 2 of the *Criminal Justice (Drug Trafficking) Act 1996* while not qualified to do so, by reason of there not being a practising certificate in respect of him in force,
4) Attended at Tullamore Garda Station on 15 September 2016 and provided legal services and/or held himself out as a person entitled to provide legal services in respect of a person detained under section 4 of the *Criminal Justice Act 1984* while not qualified to do so, by reason of there not being a practising certificate in respect of him in force,
5) Practised as a solicitor/provided legal services while there was not a practising certificate for the practice year 2017 in respect of him in force, contrary to section 55 of the principal act and/or section 56(1) and/or (2) of the *Solicitors (Amendment) Act 1994*,
6) Held himself out as a person entitled to practise/provide legal services during the practice year 2017 while there was not a practising certificate in respect of him in force,
7) Attended at Birr Garda Station on 3 and/or 4 March 2017 and provided legal services and/or held himself out as a person entitled to provide legal services in respect of a person detained for alleged offence(s) of sexual assault while not qualified to do so, by reason of there not being a practising

certificate in respect of him in force,

8) On or around 4 March 2017, misrepresented to a Garda sergeant that he was a solicitor entitled to practise and to represent a detainee in custody,
9) Caused, permitted, or allowed fees to be paid in respect of his attendance(s), while an unqualified person, at Birr Garda Station on 3 and 4 March 2017,
10) By his actions in practising and/or providing legal services and/or holding himself out as a person entitled to provide legal services, while unqualified by reason of not holding a valid practising certificate, acted with reckless disregard for the interests of clients/prospective clients and/or for the administration of justice, thereby tending to bring the profession into disrepute.

The tribunal ordered that the matter should go forward to the High Court and, on 20 May 2019, the High Court ordered that:

1) The name of the respondent be struck from the Roll of Solicitors,
2) The respondent pay a sum of costs, measured by the tribunal, to the applicant,
3) The respondent pay the applicant its costs of the High Court application, with taxation in default of agreement. g

WILLS

Burke, Thomas (deceased), late of Portacloy, Carratigue, Ballina, Co Mayo, who died on 5 January 2019. Would any person having knowledge of a will made by the above-named deceased please contact Tracey Murray, Solicitors, Chambers House, Ellison Street, Castlebar, Co Mayo; tel: 094 902 3789, email: traceymurray@eircom.net

Burns, Stephen Francis (deceased), late of 59 Ferndale Avenue, Glasnevin, Dublin 11, a retired garda. Would any person having knowledge of a will made by the above-named deceased please contact Ferrys Solicitors, Inn Chambers, 15 Upper Ormond Quay, Dublin 7; D07 YK6A; ref: BUR640/0001/BOD; tel: 01 677 9408, email: info@ferrysolicitors.com

Carey, Donna (née Fitzpatrick) (deceased), late of 105 Sandyhill Gardens, Ballymun, Dublin 11 (and formerly of 87 Shangan Avenue, Ballymun, Dublin 9) who died on 8 February 2015. Would any person having knowledge of any will made by the above-named deceased please contact Donal Reilly & Collins Solicitors, 20 Manor Street, Dublin 7; tel: 01 677 3097, email: dorothy@drcollins.ie

Duffy, Mary (otherwise May) (deceased), late of 6 White Chapel Park, Clonsilla, Dublin 15, who died on 4 May 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Elaine Byrne, Regan McEntee & Partners, Solicitors, High Street, Trim, Co Meath; DX 92002 Trim; tel: 046 943 1202, email: ebyrne@reganmcentee.ie

Dunne, Thomas (deceased), late of 141 JKL Avenue, Carlow, Co Carlow. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 25 January 2018, please contact John S O'Sullivan, Solicitors, 14 Castle Street, Carlow, Co Carlow; tel: 059 913 0833, email: reception@jos.ie

Gibbons, Frank (deceased), late of Tallagh, Belmullet, Co Mayo, and formerly of Attycunnane, Belmullet, Co Mayo, who died on 11 April 2019 at Aras Deirbhle, Belmullet, Co Mayo. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact P O'Connor & Son, Solicitors, Swinford, Co Mayo; tel: 094 925 1333, email: law@pconsol.ie

Griffin, Sandra (deceased), late of 12 Ballyowen Way, Lucan, Co Dublin, who died on 4 March 2019. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Ciara Cloake, Tracy Horan & Company, Solicitors, Kingsbridge House, 17-22 Parkgate Street, Dublin 8, tel: 01 646 1004, email: ciarac@tracyhoransolicitors.ie

Heffernan, Michael (deceased), late of 2 Meadowvale, Charleville, Co Cork, and Bridhaven Nursing Home, Mallow, Co Cork, who died on 21 December 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Declan Duggan, Declan Duggan & Co, Solicitors, New Line, Charleville, Co Cork; tel: 063 437 2425, email: info@dugganandcosolicitors.ie

Kehoe, Daniel (deceased), late of 3 Allen Dale Park, Baltinglass, Co Wicklow, and formerly of Weaver Square, Baltinglass, Co Wicklow, who died on 5 April 2019. Would any solicitor or person having knowledge of a will made by the above-named deceased please contact Doyle Murphy & Co, Solicitors, Weaver Square, Baltinglass, Co Wicklow, email: info@doylemurphysolicitors.ie

Lindsay, Derek (deceased), late of 1 Tree Park Drive, Kilnamanagh Park, Dublin 24, who died on 14 August 2009. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased please contact Christopher Horrigan, Blake Horrigan Solicitors, McKeever House, 4/5 Usher's Court, Usher's Quay, Dublin 8; tel: 01 897 2130, email: law@blakehorrigan.com

Murray, John Francis (deceased) (retired lorry driver), late of St John's Community Hospital, Sligo, Co Sligo, and formerly of Cloonanure, Gurteen, Ballymote, Co Sligo, who died on 26 January 2019. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact O'Connor Johnson, Solicitors, O'Connell Street, Ballymote, Co Sligo; DX 241001; tel: 071 918 3304, fax: 071 918 3526, email: ocj@oconnorjohnson.ie

Paleoca, Alexandru (deceased), late of 15 Villa Bank, Phibsboro, Dublin 7, or Flat 4, 23 Belvedere Road, Dublin 1, who died on 5 October 2017. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above- named deceased, or if any firm is holding same, please contact Ciara Cloake, Tracy Horan & Company, Solicitors, Kingsbridge House, 17-22 Parkgate Street, Dublin 8; tel: 01 646 1004, email: ciarac@tracyhoransolicitors.ie

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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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND.** Send your small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: gazettestaff@lawsociety.ie. **Deadline for Aug/Sept 2019 *Gazette*: 14 August 2019.** For further information, contact the *Gazette* office on tel: 01 672 4828.

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*.

Scanlon, Kathleen (Cathy) (deceased), late of 47 New Row Square, Dublin 8, who died on 19 April, 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding her will, please contact Doherty Ryan Associates, Solicitors, Merrion House, 1-3 Fitzwilliam Street Lower, Dublin 2; tel: 01 678 5192, email: info@dohertyryan.com

MISCELLANEOUS

Interested in selling your practice? Retiring, merging your practice, partnership, working part-time? Contact in the strictest confidence: managing partner, Ferrys Solicitors, 15 Upper Ormond Quay, Dublin 7; tel: 01 677 9408, fax: 01 677 9408, email: info@ferrysolicitors.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises now known as 16A, 16B and 16C French Street in the city and county of Cork and in the matter of an application by Firgrove Investments Limited

Take notice that any person or persons having a superior interest in the following premises: the plot of ground demised by a lease dated 26 July 1837 made between Sarah Lester of the one part and Samuel Newsom of the other part and therein described as "a yard and linney containing in front to French Church Street 15 feet, 11 inches and depth 33 feet, ten inches, and also a store adjoining said yard containing in front to French Church Street aforesaid 21 feet, four inches, and in depth 37 feet, four inches, be the said several admeasurements (which include walls) more or less, lately and for some years past in the tenancy and occupation of the said Thomas Lester (deceased) and more particularly delineated, figured and described on the map or terchart thereof drawn on these presents, which said demised premises are situate lying and being in French Church Street in the parish of Saint Paul in the city of Cork, meared and bounded on the north by a store lately in the possession of Mr George Richardson, gunmaker, but now in that of Mr Denis Newsom and used as a stable on the east by French Church Street aforesaid on the west partly by the rear of a dwellinghouse in the possession of Morgan O'Donovan and partly by the rear of a house belonging to Mistress Ann Barnes, and on the south by a store partly belonging to Mr Carey, earthenware seller, and partly belonging to said Mistress Ann Barnes, together with all and singular the ways, easements, passages, rights, members privileges, appendances and appurtenances to the said demised premises belonging or in any wise appertaining" and now known as 16A, 16B and 16C French Church Street in the city and county of Cork and held by the applicant for the term of 200 years from 1 May 1837, subject to the yearly rent of £15 (€19.05), should give notice of their interest to the undersigned solicitors.

Take notice that Firgrove Investments Limited intends to submit an application to the county registrar for the county and city of Cork for the acquisition of all superior interests in the aforesaid premises, and any person or persons asserting that they hold an interest therein is called upon to furnish evidence of their title to the undersigned solicitors within 21 days from the date of this notice.

In default of any such notice of interest being received, Firgrove Investments Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county and city of Cork for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all or any of the superior interests in the above premises are unknown or unascertained.

Date: 5 July 2019

Signed: AMOSS (solicitors for the applicant), Warrington House, Mount Street Crescent, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the property known as 40 Dublin Street, Longford, and in the matter of an application by Patrick Byrne

Any person having a freehold interest or any intermediate interest in all that and those the property known as 40 Dublin Street, Longford in the county of Longford (hereinafter called 'the property'): take notice that Patrick Byrne of 40 Dublin Street, Longford, in the county of Longford, being the party now entitled to the lessees' interest in the property, intends to submit an application to the county registrar for the county of Longford for acquisition of the freehold interest in the aforesaid property, and any party asserting that they have a superior interest in the aforesaid premises are 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 applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Longford 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 and unascertained.

Date: 5 July 2019

Signed: Karen M Clabby (solicitors for the applicant), Earl Street, Longford

In the matter of the *Landlord and Tenants 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 Kateo Investments Limited

Any person having a freehold estate or any intermediate interest in all that and those the premises at no 12 Aungier Street, Dublin 2, held by the applicant Kateo Investments Limited as lessees under a lease dated 27 October 1938 made between Patrick J Brady of the one part and Patrick O'Looney and Arthur J Rhatigan of the other part for a term of 200 years from 1 September 1938 at a rent of £52 per annum.

Take notice that Kateo Investments Limited intends to apply to the county registrar of the county of Dublin to vest in them the fee simple and any intermediate interests in the said 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, Kateo Investments Limited intend to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply to the Dublin county registrar 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 July 2019

Signed: Smith Foy & Partners (solicitors for the applicants), 59 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of 14 Leinster Square, Rathmines, Dublin 6, and in the matter of an application by Aine Lynch

Take notice that any person having an interest in the freehold estate of the following property: premises formerly known as number 8 Leinster Square, and now known as 14 Leinster Square, situate, lying, and being in the area formerly known as the urban district of Rathmines and Rathgar in the parish of Rathmines, barony of Uppercross, formerly in the county but now in the city of Dublin, held under lease made 4 September 1928 between Godfrey Robert Wills Sandford and Howard Guinness of the first part, Amy Henrietta Wills Sandford Wills of the second part, and Charles Joseph Priest, Frederick James Priest, Edward Percy Maybury Butler, and Herbert Wood of the third part, for the term of 153 years from 25 March 1928, subject, together with the other premises thereby demised, to the yearly rent of £59 and to the covenants and conditions therein contained.

Take notice that Aine Lynch intends to submit an application to the county registrar for the county and city of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of their title to the aforesaid premises to the below named within 21 days from the date of this notice.

In default of such evidence being received, Aine Lynch intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county and 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 is unknown or unascertained.

Date: 5 July 2019

Signed: Hanley & Lynch (solicitors for the applicant), 24 Clonskeagh Road, Dublin 6

In the matter of the *Landlord and Tenants 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 in respect of the premises known as 23 and 23a Leinster Square, Rathmines, Dublin 6

Any person having an interest in 23 and 23a Leinster Square, Rathmines, Dublin 6, the subject of an indenture of lease dated 4 September 1928 between Godfrey Robert Wills Sandford and Howard Rundell Guinness of the first part and Amy Henrietta Wills Sandford Wills of the second part, and Charles Joseph Priest and Frederick James Priest and Edward Percy Maybury Butler and Herbert Wood of the third part, whereby the premises then known as 14, 15, 16, 17, 18 and 19 Leinster Square, and now known as 20, 21, 22, 23, 24 and 25 Leinster Square, Rathmines, in the city of Dublin, were demised to Charles Joseph Priest, Frederick James Priest, Edward Percy Maybury Butler and Herbert Wood for the term of 153 years from 25 March 1928, subject to the yearly rent of £59.

Take notice that Brian Cusack and Maureen Cusack intend to submit an application to the county registrar for the city of Dublin for the acquisition of the fee simple and any intermediate interest in that part of the premises demised by the lease and known as 23 and 23a Leinster Square, Rathmines, Dublin 6, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of their title to the below named within 21 days from the date of this notice.

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

Date: 5 July 2019

Signed: Rochford Gibbons (solicitors for the applicants), 16/17 Upper Ormond Quay, Dublin 7

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 Alcove Ireland Six Limited

Any person having a freehold estate or any intermediate interest in no 56 Mary Street, Dublin 1, held under an indenture of surrender and lease dated 15 August 1962 between the Honourable Theodore Conyingham Kingsmill Moore and James Kennedy of the one part and Shaun Boylan of the other part for a term of 99 years from 25 March 1962 at a rent of £575.

Take notice that Alcove Ireland Six Limited intends to apply to the county registrar of the county of Dublin to vest in it the fee simple and any intermediate interests in the said 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, Alcove Ireland Six Limited intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply to the Dublin county registrar 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 July 2019

Signed: Smith Foy & Partners (solicitors for the applicant), 59 Fitzwilliam Square, Dublin 2

DE MINIMIS NON CURAT LEX

BIKE RIDE TO THE MOON

A cyclist who knocked down a woman crossing a busy London street claims he faces bankruptcy from the resulting costs, *the* Law Society Gazette *of England and Wales reports*.

Gemma Brushett was awarded £4,161 in damages by a London court after the judge ruled she was equally to blame for the collision as cyclist Robert Hazeldean. Brushett had been looking at her phone while she crossed the street at London Bridge, while Hazeldean had a green light and had sounded his bell to warn the pedestrian. In a statement issued through Levi Solicitors, the cyclist stated that covering the costs and compensation will personally cost him £20,000 and will leave him bankrupt.

Levi Solicitors says the claimant has sought almost £100,000 in costs, a figure that will be contested at a future hearing as an abuse of process. The firm said that Hazeldean's costs would have been limited to around £7,000 if he had been insured. If he had sought legal advice earlier, the firm says it would also have advised him to counterclaim, given he has been left with permanent scarring, and to ensure he was protected against a large costs order.

AT LEAST IT WASN'T THE BENCH

A lawyer who smashed a chair over a judge's head following "a minor disagreement" has been jailed for over 18 years, *reports Legal Cheek*.

Imran Manj is said to have attacked judge Khalid Mehmood during a hearing on 25 April in the city of Jaranwala, Pakistan.

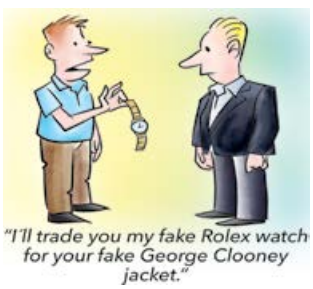
According to Pakistan Today, Manj fled the scene but was later arrested by local police after judges threatened to go on strike. A case was filed against him in an anti-terrorism court.

The lawyer was sentenced to 18 years and six months in prison and fined Rs250,000 (£2,830).

CLOONEY CLONE IN THAI STORY

After six years on the run, an Italian man accused of impersonating George Clooney in order to sell a line of clothing has been arrested, *the BBC reports*.

After a surveillance operation that included the use of a drone, police surrounded a luxury villa in Pattaya, Thailand, where Francesco Galdelli (58) and his wife, were holed up. They bankrolled their life in Thailand by selling fake Rolex watches online, authorities said. The real George Clooney sued the couple, saying they used his name to advertise their fashion business, and testified against them in Italy in 2010.



The couple sold the clothing line, called GC, in private sales to individuals. They claimed the clothes had Clooney's endorsement, displaying his signature and doctored photos showing them with the star.

Galdelli and Goffi were convicted and sentenced to prison in 2014, but fled the country. Galdelli was arrested also in Thailand in 2014, but he escaped after bribing the guards in charge of transferring him.

COP COPS 'COP'

A man who was pretending to be a police officer pulled over a motorist – only to discover that the driver was an undercover cop, *The Examiner reports*.

According to the Hillsborough County Sheriff's Office, Matthew Joseph Erris turned on red and blue flashing lights in his white Chevrolet Trailblazer and tried to pull over a vehicle in Florida. Erris is now facing a charge of impersonating a law enforcement officer. An airsoft pistol was found under his passenger seat.

The sheriff's office said they were unsure how many times Erris had pulled the trick, and that anyone who believes they might have been a victim should get in touch.

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