



Two gentlemen of the law

The lives of 19th century Law Society pioneers Josias Dunn and Richard Meade



The Hand of the King

Working as an in-house solicitor is a very different sort of game



Voice of authority

LSRA chairman Don Thornhill on the challenges the authority faces before it opens

gazette

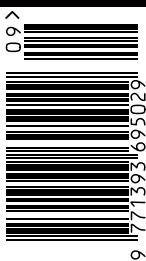
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BLOOD SIMPLE

**The Chinese trade
in human organs**

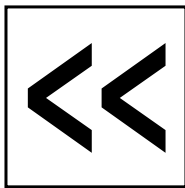




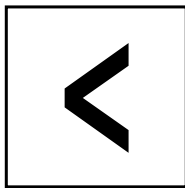
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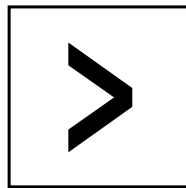
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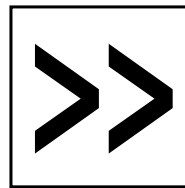
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Does your client have a claim eligible for ASR Hip ADR?

The ADR Process gives claimants a neutral non-binding evaluation of eligible claims

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To apply, submit a completed Form B to McCann FitzGerald solicitors. Form Bs are available from McCann FitzGerald and from www.hipadr.ie. On receipt of Form B McCann FitzGerald may ask for additional information or documents, such as necessary medical records or details of any special damages claimed. If the claimant's case is eligible, Form B will be endorsed and returned to the claimant's solicitor. Both parties prepare written submissions which are submitted to an independent Evaluator who issues a written evaluation stating the amount of any damages assessed. The parties have 45 days to accept or reject the evaluation.

- Claimants in the ADR Process do not have to prove liability; only causation and quantum are relevant
- There is no fee to submit a claim to the ADR Process
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Eligible claims

Claimants may avail of the ADR Process if:

- Proceedings have issued
- The index surgery of the ASR product took place in Ireland
- Revision surgery took place in Ireland not earlier than 180 days and not later than 10 years after the index surgery
- Injuries Board authorisation has been obtained
- The claim is not statute barred
- Revision surgery was not exclusively due to dislocation; trauma; infection; fracture of the femoral head; or any issue related to the femoral stem

For further information, or to discuss settlement of any eligible claim, please contact McCann FitzGerald (DFH/RJB) on 01 829 0000 or email hipadr@mccannfitzgerald.com



CHANGING OF THE GUARD

Not much happens during the 'silly season'. While half the legal world is on holidays, the other half is looking out the window wondering why summer always misses the flight to this country. And, of course, we all engage in the global pastime of Trump-watching. Like a good horror movie: one part entertaining, two parts terrifying. For lawyers, there are interesting aspects though. In his eight months in office, at time of writing, common consensus agrees that his only significant achievement to date has been the appointment of a Supreme Court justice. They take their Supreme Court very seriously in the US, perhaps because of the political nature of the appointments.

Thankfully, we have a very different regime here – and one that is entirely free of political bias – but I'm glad to see more recognition of the importance of the role of the Chief Justice. The retirement of Mrs Justice Susan Denham and the appointment of Mr Justice Frank Clarke to that position garnered more column inches than I recall in previous changings of the guard. And with good cause. Rarely has the departure of one legal behemoth been so lamented, but her replacement, of equal stature, been so universally welcomed.

Pioneer

Much has been said and written about Susan Denham since her retirement in July, and word space in this column would not do justice to another valedictory paean. Suffice to say, she was a pioneer – a juristic giant who wore her brilliance lightly.

Ruadhán MacCormaic, in his excellent book *The Supreme Court*, wrote on several occasions about how intimidating a place the highest court in the land can be. Even the most experienced litigator can feel the beads of sweat at the back of the neck and heart rate increase as soon as they step inside.

Susan Denham used a magician's nonchalance to perform the nigh impossible balancing act of putting lawyers and litigants at ease, while maintaining and steadily increasing the standards of advocacy and presentation in her court.

She will be missed and, at times like this, it is customary to say that we may never see her like again. To some extent, that is correct – and she was unique. But to those of us who have watched Frank Clarke's almost inevitable ascent from the highest echelons of the Inner Bar to Chief Justice, and how he has made it seem so effortless, it almost feels like a seamless transition.


Man of the people


For make no mistake, Frank Clarke is as bright as any of his 11 predecessors and would hold his own in any Mensa gathering, but he brings

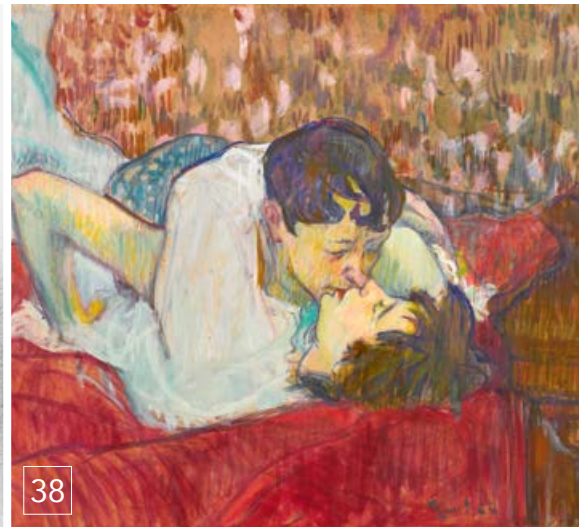


SHE WAS A PIONEER – A JURISTIC GIANT WHO WORE HER BRILLIANCE LIGHTLY

an air of insouciance, which fits the modern concept of Chief Justice so well. He is a man of the people. Approachable, friendly, an 'ordinary bloke' with extraordinary talents. He loves rugby, racing, and recounting stories. As comfortable in a social setting as he is writing seminal judgments.

Much has been said and written about our judiciary in the last few months, but most are agreed that we are very well served by those we have appointed. The quality we have enjoyed in Chief Justice appointments, however, should be the envy of the world – and quite probably is. 


STUART GILHOOLY,
PRESIDENT



COVER: SHUTTERSTOCK/
NUALA REDMOND

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This year is the 170th anniversary of the death of the first President of the Law Society – Josias Dunn. Mary Gaynor and Mairead O'Sullivan delve into the archives to uncover his story

gazette

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"When life gives you lemons verify you're in compliance with local authority regulations before making lemonade."

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 - Forthcoming events, as well as the fully interactive version of the *Gazette* and the magazine's indices
 - Employment opportunities
 - The latest CPD courses
 - ... as well as lots of other useful information

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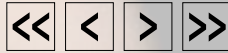


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THE BIG PICTURE





LICENCE TO KILL?

Persida Rueda-Acosta (Philippines' chief public attorney) presents a photo of 17-year-old Kian Loyd delos Santos at a Senate inquiry in Pasay City on 24 August. The student was killed on 16 August during a two-night anti-drugs operation that claimed 58 lives. Police maintain that Santos resisted arrest, but media reports and witnesses say he was innocent, and killed as he begged for his life. President Rodrigo Duterte's 'war on drugs' has led to more than 7,000 deaths by police and vigilantes since Duterte was sworn in on 30 June 2016



COMPILED BY KEITH WALSH, PRINCIPAL OF KEITH WALSH SOLICITORS

MONAGHAN

MONAGHAN CPD FULL TO CAPACITY

Law Society President Stuart Gilhooly and director general Ken Murphy were welcomed by the Monaghan Bar Association (MBA) at the Western Arms Hotel, Monaghan, on 12 July. Association president Kevin Hickey and secretary Maria Connolly delivered the welcome.

Over 50 solicitors from Co Monaghan and the surrounding counties attended the event, which featured CPD presentations from Joe Thomas (chairman, Conveyancing Committee) on the 2017 conditions of sale and recent practice notes, Eoghan Cole BL on residential tenancies and recent updates in the legislation, Rebecca Lacy BL on the *General Data Protection Regulation* and data compliance, and Kate Butler BL on the *Assisted Decision-Making (Capacity) Act 2015* and the role of the court in capacity declarations, review of wards of court, enduring power of attorney, and advance healthcare directives.



Claire Gormley (treasurer, Monaghan Bar Association), Stuart Gilhooly (Law Society president), Maria Connolly (secretary, MBA), Kevin Hickey (president, MBA), Justine Carty (Law Society Council member), Ken Murphy (director general), and Ann McGarry (Law Society Litigation Committee)

SLIGO

DID SOMEBODY MENTION CHRISTMAS?

The Sligo Bar Association is planning to build on the success of its summer soirée at Markree Castle by organising a Christmas party at the same venue. A joint seasonal party for all legal office staff across the region is planned

for Friday 15 December.

At €55 each, tickets will include a four-course dinner with a glass of wine, followed by a disco.

To secure your tickets, email lyndalenehan@hotmail.com.

KILDARE

BEEF UP AT BARBERSTOWN

The Kildare Solicitors' Bar Association organised a CPD seminar at the Osprey Hotel, Naas, on 15 June, followed by a barbecue. Another CPD event will take place on 29 September at Barberstown Castle in Straffan.

Chaired by Mr Justice Gerard Griffin, the seminar will include sessions on tort and personal injury litigation, data protection,

the Personal Injuries Assessment Board, family law, and licensing. The event will finish with a Q&A session.

The cost will be €100 per person, including lunch and coffee breaks. To book, contact Elaine Farrell (Patrick J Farrell Solicitors, Charlotte Street, Newbridge, Co Kildare) or tel: 045 431 542.

CORK

CASK A BARREL OF LAUGHS

The SLA, courtesy of John Fuller and Jonathan Lynam (social committee) and Sean Durcan (SLA treasurer), organised a social evening in Cask on MacCurtain Street on 15 June. The large turnout enjoyed tapas, wines, and cocktails at one of Cork's newest venues.



Aisling Maher, Rachel Finn and Sarah McNulty (Cantillons)

Anne Stephenson visited the city on 23 June and delivered a seminar entitled 'The long shadow of the Inland Revenue Affidavit – what Revenue does with the answers'. As is customary with Anne Stephenson lectures, she held the audience rapt with her nuggets of wisdom.

SLA president Terence O'Sullivan and recruitment consultant Tina Coy delivered a lunchtime seminar on the employment relationship. Ms Coy provided useful insights into how to attract, engage, and retain staff. Terence O'Sullivan followed up with a presentation on 'The employment relationship – from advertisement to termination'.

GALWAY

GALWAY GEARS UP

The Galway Solicitors' Bar Association is offering two CPD dates this autumn.

A regulatory CPD seminar will take place on Friday 22 September at 2pm in Galway Courthouse.

Outsource will be holding its annual seminar, which comprises three management and one regulatory hours (with an optional extra of a discounted two CPD hours online in regulatory matters, covering anti-money-laundering and the *Solicitors Accounts Regulations*) on Friday 6 October at 2pm in Galway Courthouse.



ABOLISH DOMESTIC VIOLENCE LEGAL FEES FOR MOST VULNERABLE

The Law Society has sought the removal of economic barriers for the vulnerable in domestic violence cases.

In its recent submission to the Department of Justice on the *Domestic Violence Bill*, the Society made eight recommendations and indicated its support for the Free Legal Aid Centre proposal that people who experience domestic violence should not have to contribute to the cost of civil legal aid when they apply for court protection.

Keith Walsh (chair of the Society's Family and Child Law Committee) says: "Around one



Keith Walsh: 'Access fee for legal aid is outdated'

in five women in Ireland who have been in a relationship have been abused by a current or for-

mer partner, and evidence shows there is a growing trend in men reporting being abused as well.

"We call on the Minister for Justice to urgently review the matter," he continued.

"The Law Society and its members believe in access to justice and the protection of legal aid in the State. We support the view that this access fee to legal aid is outdated and, as we have seen reported, can result in outcomes that do not serve to protect the victims of domestic violence."

The Law Society's [submission](http://www.lawsociety.ie) is at www.lawsociety.ie.

IWLA 'WOMAN LAWYER OF THE YEAR'



The Irish Women Lawyers' Association, in collaboration with Law Society Skillnet and the Bar of Ireland, have announced that the annual Women Celebrating Women Lawyers Gala Dinner will be held on 14 October 2017 in the Presidents' Hall at the Law Society of Ireland.

This year, the IWLA 'Woman Lawyer of the Year' award will be presented to Irish ambassador to France Patricia O'Brien.

Tickets will go on sale shortly, for members only at first, and will then be opened for general sale. For updates, visit www.iwla.ie; or email admin@iwla.ie.

FREE FORUM ON CPO ARBITRATIONS

The Chartered Institute of Arbitrators (CI Arb) Ireland is hosting a free ADR forum on the topic of 'Compulsory purchase order arbitrations' at the Clayton Hotel, Cork, on Thursday 21 September 2017. The event begins at 5.30pm (tea/coffee), with speaker presentations running from 6pm to 6.50pm, followed by a networking reception. The event is open to all (including members of the public).

CI Arb Ireland chairman Bill Holohan will chair the event. Speakers will include Siobhán Stack SC and Dermot Flanagan SC. Ms Stack has significant expe-



rience of arbitrations arising from CPOs, while Mr Flanagan specialises in planning, environmental and public infrastructure law and has presented a large number of public infrastructure consent projects before An Bord Pleanála.

Pre-registration is essential for this free event. Tickets can be booked at www.ciarb.ie (under 'Education, training and events'). The forum is being sponsored by Comyn Kelleher Tobin Solicitors.

MASTER AND COMMANDER

The Law Society's Younger Members Committee, in conjunction with Law Society Professional Training, will host its 2017 seminar 'Mastering the solicitor/client relationship' on 12 October. It will examine how best to manage the expectations of the

'24/7, always-on' client and the effect such expectations have on traditional work practices.

Attendees will receive three CPD hours (management and professional development skills by group study). Bookings can be made at www.lawsociety.ie under

the 'Courses and events' section (see CPD courses).

To learn more about the work of the Younger Members Committee, check out the webpage at www.lawsociety.ie or contact committee secretary Judith Tedders at j.tedders@lawsociety.ie.

WEXFORD FIRM LAUNCHES

Wexford solicitors Cormac Mullen and Catherine O'Connor have established a new firm, O'Connor Mullen, at 1 Glana Terrace, Spawell Road, Wexford; tel: 053 919 8555, email info@oconnormullen.ie.



HUMAN RIGHTS FOCUS AT SYS CONFERENCE



The SYS committee attending the 2016 conference at the Limerick Strand Hotel: Lucy O'Neill, Aisling Gannon (then chair), Aoife Kelly-Desmond, Maire Neary (chair, 2017), Eimear Bell, James Meehan, and (seated) Tom Mulligan and Hannah Cooney

The annual conference of the Society of Young Solicitors will take place from 10-12 November at the Mount Wolesey Hotel Spa and Golf Resort, Tullow, Co Carlow.

This year's conference theme is human rights and will be chaired by Law Society director general Ken Murphy. Speakers will include:

- Mary Condell (legal advisor to SAGE – the support and advocacy service for older people in Ireland – and member of the Law Society's Task Force on Mental Capacity),
- Gareth Noble (partner in KOD Lyons, who specialises in child and disability law),
- Michéal Murphy BL (barrister and doctoral candidate in human rights at TCD), and
- Hannah Cahill BL (Department of Justice and Equality).

The conference will be followed by a black-tie gala ball on Saturday night – tickets for the con-

ference weekend are open to all junior solicitors and will go on sale on Tuesday 26 September 2017, priced at €210 per person, which includes two nights B&B, entry to the conference (which carries three CPD points), and a ticket to the black-tie gala ball. Tickets will be sold on a per-room basis (double, twin or triple rooms are available).

Visit www.sys.ie for further details or see the SYS social media pages, including Facebook, Twitter (@SYSIreland) and LinkedIn.

There has been a 484% increase in the number of new patents for legal services technology filed globally in the last five years.

According to data from the World Intellectual Property Organisation, 579 legal tech patents were notified in 2016, up from just 99 in 2012.

The patent statistics world-

RECENT DEATHS SADDEN PROFESSION



Thomas D Shaw



James Osborne

The solicitors' profession is deeply saddened to learn of the recent deaths of former Law Society president Thomas D Shaw, and James Osborne, former managing partner of A&L Goodbody.

Past-president Thomas D Shaw (1987/1988) passed away suddenly at his home in Mullingar, Co Westmeath, on 25 August. He is mourned by his wife Yvonne and children John, Tom, Sandra, Anne, Freddie and Jillian, and his sisters Maeve Murphy and Felicity Cuthbert, a wide family circle and his many friends and colleagues.

Both Tom's father, Dermot, and son, John, also served as presidents of the Law Society – a unique distinction.

Warm tributes have also been paid by colleagues of James Osborne, who died suddenly on 17 August 2017 in Donegal at the age of 68.

His former colleagues at A&L Goodbody said that they were "deeply saddened by the death of our former managing partner and dear friend, James Osborne. James was an enormously charismatic individual who was held in the highest esteem by everyone he worked with through the years.

"He was the driving force behind the outward-looking, commercial, international law firm that A&L Goodbody now is. He made an exceptional contribution to our firm, and who we are, and will be greatly missed by us all."

LEGAL TECH PATENTS SOAR

wide indicate a rise in the use of technology and outsourcing by traditional law firms in Britain, the US and East Asia. The US filed 38% of patents, China filed 34%, and South Korea 15%.

According to Charlotte Rushon of Thomson Reuters: "Traditional law firms are facing increased competition, so many

are adopting cutting-edge technology to streamline processes and reduce operating costs, or are outsourcing to an external provider. Systems such as matter management analytics allow law firms to coordinate live deals and business-development programmes throughout their global networks."



HUMAN RIGHTS AND IMPRISONMENT

The 15th annual Human Rights Conference will take place on Saturday 7 October at Blackhall Place, Dublin 7, from 10am until 2pm.

It will explore the role of prison in the Irish criminal justice system, examining the impact of prison on offenders, their human rights, and society as a whole. The conference offers an important opportunity to consider the function of prison and the social justice issues raised, including cyclical problems of poverty, unemployment and drug abuse.

The conference is aimed at legal practitioners, members of the public, academics, human rights organisations, and civil



society organisations, with a view to bringing these groups together to analyse the issues from a social and legal perspective.

Speakers include Minister for Justice Charlie Flanagan, Vivian Geiran (director, Irish Probation Service), Prof Mary Rogan (as-

sociate professor in law, TCD), John O'Keeffe, (criminologist, lecturer in forensic psychology, and Garda Representative Association spokesperson), Deirdre Malone (executive director, Irish Penal Reform Trust), and an ex-offender (the Saol Project).

The conference will be hosted by the Law Society's Human Rights Committee in partnership with the Irish Probation Service and Law Society Professional Training.

The event is free of charge, and four CPD points (by group study) are available. For more information and to book your place, see www.lawsociety.ie/Courses--Events/cpd.

DEALING WITH MENTAL DISTRESS

LawCare supports and promotes good mental health and well-being across the legal community. Its volunteers understand life in the law and have helped thousands of legal professionals cope with a range of issues.

LawCare is also aware of recent deaths by suicide in the Irish legal profession and would ask everyone to encourage a potentially suicidal colleague to

reach out and ask for vital help.

In Ireland, Pieta House provides a free, therapeutic approach to people who are in suicidal distress and those who engage in self-harm. It has also taken over the suicide bereavement counselling service previously offered by Console. Contact Pieta House at www.pieta.ie or freecall 1800 247 247.

Turn the Tide of Suicide

(3Ts), was founded in 2003 and offers a wealth of information, advice, and support in helping to recognise the signs and symptoms of mental health problems. Visit www.3ts.ie.

LawCare's support service is our free, confidential, and inde-

pendent helpline. Our trained staff and volunteers are there to listen and support with any issues. Call 1800 991 801, 365 days a year, from 9am-7.30pm weekdays, or 10am-4pm weekends and bank holidays. Visit www.lawcare.ie.

SUPERIOR COURTS RULES CHANGE REMINDER

Members are reminded that the *Rules of the Superior Courts* changed last October in relation to time stopping for the long vacation.

Time for amending or delivering a pleading now runs as normal during September.

Order 122 of the rules has been amended by SI 471/2016, and rules 4 and 5 have now been substituted with the following:

- “4) Subject to rule 5, a party may deliver or amend a pleading during the long vacation.
- 5) Save on consent of the parties or by direction of the court, the month of August shall not be reckoned in the computation of the times appointed or allowed by these rules for amending, or delivering a pleading.”

IRISH REPORTS: UPDATE

Justis and the Incorporated Council of Law Reporting for Ireland (ICLR) have reached an agreement to make recent judgments available on Justis as soon as their editorial steps have been completed.

This means that the most authoritative Irish cases will be accessible well before the availability of the cases in hard copy. Some 2017 cases have already been added to *The Irish Reports* on Justis and more will be added, including cases from previous years. The decision to add new cases to the electronic

version of *The Irish Reports* on Justis was made by the ICLR following the appointment of barristers Aoife McCarthy as editor and David Boughton as deputy editor of *The Irish Reports*, with effect from June 2017.

Nuala Butler SC (chairperson, ICLR) welcomed the development: “Significant work has been done by the council and its new editorial team to provide up-to-date electronic publication of the Irish reports,” she said. “We look forward to the ongoing provision of this service, in association with Justis.”



THE NEW FACE OF MEMBER SERVICES

The new face of Law Society Member Services will be familiar to anyone who has used the library facilities at Blackhall Place. Judith Tedders has moved from her former role in the library to take up the new position of member services executive.

A graduate in English from UCD, Judith's career to date has been both interesting and varied, incorporating postgraduate training in journalism and PR. She also holds postgraduate qualifications in teaching and library science. As well as all this, Judith is a qualified solicitor who spent several years working in private practice.

After her English degree, she worked with the Heritage Society in her home town of Dun Laoghaire in Co Dublin, carrying out a folklore project that led to the publication of a well-regarded book of folk memories called *In the Mind's Eye*.

"I really enjoyed interviewing, talking to people and getting their stories. That led me to doing a postgrad in journalism at UCG," says Judith. "After working for some time abroad, I decided to return home and study law," she explains.

"I went back to college and did the Diploma in Legal Studies in DIT Aungier Street, which was a one-year full-time course."

Following this, Judith qualified as a solicitor in 2001. This led to a number of years in private practice. Eventually, the multitalented Judith joined the research team in the library of the Law Society at Blackhall Place, where she has worked since 2010.

"Working in the Law Society Library and being a qualified solicitor was a huge advantage, because I knew where the users were coming from and what they needed," she says.



PICT: CIAN REDMOND

This broad gamut of professional experience means that Judith will be uniquely positioned to serve the Law Society membership in her new role.

"I can relate to members' concerns, since, as a former practitioner, I have travelled the same road as them. I hope I have a good understanding of what members' needs are," she says.

Judith expects to be the first point of contact for many practitioners in their dealings with the Law Society and, in this front-

of-house role, she will help them to navigate the many services on offer.

"I believe the Law Society has an excellent offering for members. I hope to extend awareness about the wealth of services being provided," she says. "These range from financial services to professional guidance, career guidance, practice advisory services, mental health and personal supports, and mentoring programmes," she points out. Judith will also be involved

in the upcoming Law and Women Mentoring Programme in 2018.

She is already working on the *Member Services' Directory* for 2018 and has plans to enhance the visibility of the wealth of services on offer from the Law Society.

She is planning also to get out and about, meeting members, and will travel to cluster events, including Tralee in September.

"This job is about communications. I have the benefit of my experience in practice, and I can absolutely relate to the members as practitioners but, mostly, I want to hear from them what they want.

"A practitioner may only come into contact with the Law Society a few times in their career, and it can be daunting. I think it's important that there is a contact who can put them in touch with the right person.

"Really, I will be helping the members to navigate what can be a big and complex organisation," she concludes.

COURT RULES AVAILABLE IN IRISH

The Department of Justice has published the Irish version of the 1986, 1997 and the 2001 consolidations of the Rules of the Superior Courts, the District Court Rules and the Circuit Court Rules and their amendments, including the Rules of the Superior Courts (Court of Appeal Act 2014).

Justice Minister Charlie Flanagan presented the new Irish language Rules of the Superior Courts to incoming Chief Justice Frank Clarke at the Department of Justice on 27 July.

Speaking as Gaeilge at the launch, the minister thanked



the interdisciplinary Fiontar department of Scoil na Gaeilge at DCU, which has published the information on their electronic

dictionary, www.tearma.ie.

Excerpts from the rules are also available on their parallel site www.gaois.ie.



LRC SEEKS VIEWS ON SUSPENDED SENTENCES

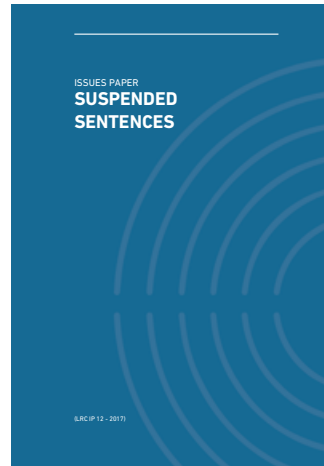
The Law Reform Commission is currently reviewing a range of issues concerning both the principles and the procedural issues related to suspended sentences.

The commission is seeking the views of all those who have a particular interest in, or specialist knowledge of, suspended sentences. It has published its *Issues Paper: Suspended Sentences* (LRC IP 12-2017), available at www.lawreform.ie.

The commission is asking interested parties to consider

the paper and warmly welcomes views and input, however brief, on the questions raised.

Submissions will be received up to Friday 20 October 2017. In principle, these will be subject to the possibility of disclosure under the *Freedom of Information Act 2014*. However, the commission has stated that any person making a submission “on a confidential basis, especially if it contains personal information” will treat such submissions as confidential, in as far as possible. In the event that it



receives a request for any material to be disclosed under FOI, it will, before releasing the information, contact the person concerned for their views.

Details of how to engage with the commission are contained within the issues paper. Those wishing to respond should use the online comment boxes or respond separately by email to p4p5@lawreform.ie or by post to Law Reform Commission, 35-39 Shelbourne Rd, Ballsbridge, Dublin 4, D04 A4E0.

UPCOMING PROFESSIONAL TRAINING CONFERENCES

Law Society Professional Training has announced its list of annual autumn conferences, in collaboration with Law Society committees. The fee for attending is €176 (or €150 for Law Society Skillnet members), unless specified otherwise:

- 27 September – criminal law,
- 28 September – employment law update,

- 5 October – litigation update,
- 7 October – human rights (complimentary),
- 12 October – ‘The smart client – mastering the solicitor/client relationship’,
- 19 October – property law,
- 26 October – probate and tax,
- 2 November – EU and International Affairs Committee event (complimentary),
- 9 November – in-house and public sector,
- 17 November – business law,
- 24 November – family and child law conference.

For more details, email lspt@lawsociety.ie or visit www.lawsociety.ie/CPD.

DIPLOMA CENTRE'S NEW AUTUMN SCHEDULE

Six new programmes have been added to the Law Society's autumn diploma schedule:

- Diploma in Construction Law,
- Diploma in Regulation Law and Practice,
- Certificate in Juvenile Justice,
- Certificate in Strategic Development for In-House Practice,
- Certificate in Enhanced Negotiation Skills and Practice, and
- Certificate in Pensions and Applied Trusteeship.

A complimentary copy of this academic year's prospectus is included with this issue of the Gazette. Additional copies are available from diplomateam@lawsociety.ie and the full autumn programme is at www.lawsociety.ie/diplomacentre.

Early bookings are advised due to the high demand for these courses.

ARE YOU GOING TO SAN FRANCISCO?

Matheson has announced the opening of a new office in San Francisco. This will be the firm's third US office – its fifth globally – and is in response to client demand on the West Coast for Irish legal services.

Matheson's managing partner Michael Jackson says: “The new office will provide immediate access to Irish legal advice and support on the most complex legal matters.”

The office will be led by Matheson's West Coast head partner Mark O'Sullivan, together with technology and innovation partner Chris Bollard, who joined the firm on 1 August.



At the announcement of the opening of the new office are Mark O'Sullivan (West Coast head partner), Anne-Marie Bohan (head of technology and innovation), Chris Bollard (partner, technology and innovation), Michael Jackson (managing partner), Emma Doherty (partner, international business group) and Robert O'Shea (head of the corporate and commercial department)



SKILLNET CLUSTER AUTUMN ROADSHOW

The first of the autumn's Law Society Skillnet cluster events took place on 7 September in Ballygary House, Tralee. The Kerry Law Society played host, with over 100 practitioners attending. The topics included AML – a litigation update, the new contract for sale and requisitions on title, banks and repossessions, s150 costs, and cybersecurity. This was followed by a networking reception.

The Skillnet roadshow will continue with the two-day Connaught Solicitors' Symposium in Breaffy House Hotel, Castlebar, on 12 and 13 October.

Bookings will open shortly for the remaining dates.

Save the date

- 20 October – north-east CPD day at the Glencarn Hotel, Castleblayney, Co Monaghan,
- 9 November – Law Society Finuas Network practice and



- regulation symposium at the Mansion House, Dublin,
- 17 November – practitioner update at the Kingsley Hotel,

- Cork, and
- 24 November – general practice update at Hotel Kilkenny, Kilkenny.

For the full list of speakers and topics, see www.lawsociety.ie/Skillnetcluster or email the team at skillnetcluster@lawsociety.ie.

SOLICITOR LINES OUT AS RUGBY PLAYERS' CEO

In his rugby-playing days, solicitor Simon Keogh was a hybrid winger/scrum-half for Leinster and Harlequins.

And in his new position as chief executive at Rugby Players Ireland (RPI), Keogh will have a hybrid role as both legal representative and players' welfare advocate for Ireland's professional oval-ball sportsmen.

With a background as a professional rugby player himself, and with a 2009 Heineken Cup medal for Leinster under his belt, the board of RPI concluded that qualified solicitor Keogh was their ideal candidate.

He graduated from UCD with a BA in economics and politics. He describes himself as "very fortunate" in being able to combine his career as a



professional rugby player, with both Leinster and Harlequins in Britain, with his postgraduate legal studies.

He was on the Leinster Heineken Cup-winning squad in 2009 at the same time as studying for his PPC at Blackhall Place. Throughout his ten-year playing career, Keogh was actively involved in both the

Rugby Players' Association in England and the Irish Rugby Union Players Association upon his return to Dublin in 2008.

Professionally, a two-year stint at the family legal practice, Paul W Keogh and Co on Dublin's Baggot Street, was followed by a move to Arthur Cox, where Simon gained experience in corporate law and commercial property law.

In 2013, Keogh took up the position of head legal advisor at the Irish Rugby Union Players' Association (which was rebranded as Rugby Players Ireland last April) and, from there, he set about grappling with the contractual framework for professional rugby players in this country.

"I worked on reframing the agent regulations model for

Irish rugby. Prior to 2015, there were no barriers to entry as a rugby agent. We have tightened things up and there are now 15 registered agents representing 260 professional players, all of whom are members of Rugby Players Ireland.

"We provide assistance to the players in a range of areas, including employment, taxation and insurance. Any relevant information can now be relayed directly back to the players and their agents."

RPI also negotiates on behalf of players with the IRFU on contract and other issues.

"We have got ourselves to a point where we can now be considered a world leader in terms of player representation and welfare," Simon concluded.



LAW SOCIETY CALLS FOR RADICAL REFORM OF POOR-BOX SYSTEM

The Law Society’s support for proposed radical reform of the ‘poor-box’ system was reiterated by director general Ken Murphy on RTÉ Radio One’s *Drivetime* on 21 August.

Murphy pointed to a well-researched article in *The Irish Times*, which drew a contrast between the highest sum of €394,000 paid into the poor box in a District Court in Co Kerry, compared with the most recent figures of €200 in Roscommon and €450 in Cavan in the same year. The employment of the poor-box system by judges in Co Kerry had been, for many years, vastly greater than in other counties in Ireland.

One of the major problems with the poor-box system, he argued, was the inconsistency in its application across the country, and the problem whereby justice might seem to be administered differently – depending on which side of a particular county boundary or District Court boundary the offence, or alleged offence, might have occurred.

The system also raised questions about fairness and

transparency. “The ‘fairness’ problem is the perception that it may be possible for somebody to buy their way out of a conviction. In other words, if you can afford to make a contribution to the poor box, then you may avoid a conviction; whereas, if you can’t, you may suffer a conviction,” he said.

The issue of ‘transparency’ arose in relation to how the finances were being used. “It seems to be a matter solely for the discretion of an individual District Court judge, for his or her personal favourite charities.”

21st century system needed

“This is wrong,” the director general said. “The Law Society has been supportive for many years of reform in this area. The Law Reform Commission produced a major paper on this matter as far back as 2005 – all of 12 years ago. Having carried out a study and consultation, the former Minister for Justice Alan Shatter proposed the scheme of a bill in 2014, called the *General Scheme of Criminal Justice (Community Sanctions) Bill*,



Murphy: ‘Victims of crime should benefit rather than a judge’s favourite charities’

essentially to bring this system into the 21st century.

“It is important to understand that this poor-box system doesn’t exist on any statutory basis. It is an ad hoc system – though one of great antiquity. As the Courts Service has identified, it goes back prior to the foundation of the State. But, in our view, it really needs to be put on a 21st century basis.”

The director general supported the position that there was merit in discretion resting with a judge – “and it should rest in a judge

in any proper system, where, following the evidence sustaining the possibility of a conviction, the judge finds that the breaches of the law are minor.”

Judicial discretion supported

“It may be a first-time offender, somebody unlikely to reoffend. And, of course, the discretion should rest with the court to avoid a conviction in those circumstances. But the difficulty with the poor-box system – and this was Minister Shatter’s proposal, which, I believe, was supported by his successor and former Minister for Justice Frances Fitzgerald – is that it needs to be fair, equitable and transparent. The Law Society supports that.”

Murphy concluded: “It does envisage that payments would be made in those circumstances, but they would be made into a State fund, which would be used for victim support and for contributions to the Criminal Injuries Compensation Tribunal. So, the victims of crime might benefit from it, rather than a judge’s favourite charities.”

PAUL HANNON’S COLLEAGUES IN ST JAMES’S FUNDRAISER

On 20 July, over 100 runners from the Central Bank took part in the Liberties Run in memory of their colleague and much-missed friend Paul Hannon. As reported in the *May Gazette*, Paul tragically died following a road traffic accident in March.

Paul was a keen runner, having competed in the Berlin and other marathons, and had signed up to participate in the



Paul Hannon

Liberties Run this year (as he did last year).

All proceeds from the four-mile run will go towards upgrading the Emergency Department at St James’s Hospital.

If you would like to remember Paul and raise much-needed funds for St James’s Hospital, you can make a donation at www.gofundme.com/Phannon-JamesHospital.



HOME IS WHERE THE HEART IS

This spring, seven Law Society students travelled to Zambia to volunteer with the housing charity Habitat for Humanity Ireland. The team spent a fortnight in the community of Twapia, Ndola, helping local woman Margaret and her son Gilbert to build a home, as well as contributing to another for Victoria Kangwa.

The team also trained vulnerable families in succession planning and will-writing in order to increase their knowledge of the importance of will-writing to protect orphans and vulnerable children from property grabbing.

Volunteer John Milligan said: “The trip has definitely changed my outlook on life. I appreciate the small things more now. I will never forget my time in Twapia, and the lovely people that I spent a great two weeks with.”

Another volunteer, Ruth Bannan, added: “The closing ceremony was the highlight of the trip for me. It was great to finally see the house completed, and handing over the keys to Margaret was fantastic.”

Habitat for Humanity has been building homes in Zambia since 1984, focusing on vulnerable



The Law Society of Ireland team with members of the local community outside one of the finished Habitat homes in Twapia, Zambia

groups and dealing with issues such as security of tenure and inheritance rights.

Its overseas volunteering programme is open to members of the Irish public – no construction experience is necessary. Says Miriam Hickey (Law Society and Habitat for Humanity volunteer): “Margaret and Victoria were two widows who lived in little mud shacks. They and their sons



Team members taking a break on site with local builders

helped out on the build. I loved every minute of it – especially building and cooking with the women.”

Susanne Cunningham concurred, adding: “It was really great to get to know the people who would be living in the house.”

The team thanks everyone who supported the trip. For more, visit www.habitatireland.ie.

ALL PICS: HABITAT FOR HUMANITY IRELAND

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FACING LEGAL AUDIENCE RANKS RIGHT UP THERE WITH THE ALL BLACKS' HAKA

Law Society President Stuart Gilhooly addressed the topic of judicial selection at the Law Society's annual dinner on 14 July. Speaking in front of an audience of 173 guests, he praised Ireland's "fine judiciary – of which the country can be very proud".

Despite uninformed opinions to the contrary, however, he said that the Law Society's position on the modernisation of the judicial selection system had been both well thought out and thoroughly researched. The draft scheme of the Government's *Judicial Appointments Commission Bill 2016* had been the subject of a long debate at Council, at the end of which the Council members had unanimously agreed that the proposed bill was a forward-looking, inclusive and contemporary approach to reforming the judicial-selection system.

Gilhooly welcomed the Legal Services Regulatory Authority chairman Dr Don Thornhill, along with acting chief executive Renee Dempsey and members of the authority's board. He wished them well in their task of establishing the new body and looked forward to a positive working relationship in the future.

Shane's life in law

The president warmly welcomed the guest speaker, former Leinster, Ireland and Lions rugby star Shane Horgan, who joked that speaking before the distinguished audience was as intimidating as facing the Haka before playing against the All Blacks!

The audience thoroughly enjoyed his witty address about his life in law and in rugby. His insights about touring New Zealand with the Lions were particularly topical.



Tánaiste Frances Fitzgerald, Law Society President Stuart Gilhooly, guest speaker Shane Horgan, and Minister for Justice and Equality Charlie Flanagan

Nowadays the managing director of Teneo Sports and a print and TV rugby commentator, Shane Horgan is also a solicitor. He originally qualified as a sports law specialist in England and Wales, but is now also on the Roll in Ireland. The president pointed out that Shane was following in the footsteps of many famous solicitor rugby players who had worn the green with great distinction over the decades, including Donal Spring, Kevin Mays, Colin Patterson, Trevor Ringland, Simon Geoghegan, Mike Gibson and, of course, Law Society past-president Tony Ensor.

Horgan made his debut for Ireland against Scotland in the 2000 Six Nations Championship, scoring a try in the process and going on to score four tries in his first three internationals. He won 65 caps for Ireland and scored 21 international tries, making him the fifth-highest Irish international try-scorer in history.

He won two Heineken Cups

with Leinster, three Triple Crowns with Ireland, and played for the British and Irish Lions in their tour of New Zealand in 2005, appearing in all three tests for the Lions against the All Blacks. This was a night to remember for the Law Society's guests.

In attendance

Among those in attendance were Tánaiste Frances Fitzgerald, Charlie Flanagan (Minister for Justice), Eoghan Murphy (Minister for Housing, Planning and Local Government), David Stanton (Minister of State for Justice), Josepha Madigan TD, Jim O'Callaghan TD (Fianna Fáil spokesperson on justice and equality), as well as Senator Paul Coghlan (Leas-Cathaoirleach, Seanad Éireann) and Senator Martin Conway. Attorney General Seamus Wolfe SC was also present.

Members of the judiciary included Mr Justice Frank Clarke of the Supreme Court, Mr Justice George Birmingham, Mr Justice John Edwards, Mr Justice

Gerard Hogan, Mr Justice Alan Mahon, Mr Justice Michael Peart and Mr Justice Garrett Sheehan (all Court of Appeal); Mr Justice Bernard Barton, Mr Justice Donald Binchy, Ms Justice Eileen Creedon, Mr Justice Anthony Hunt, Mr Justice Brian McGovern, Mr Justice Charles Meenan, Mr Justice Michael Moriarty, Ms Justice Bronagh O'Hanlon and Mr Justice Michael Twomey (all High Court); and Mr Justice Nicholas Kearns (chairman, Personal Injuries Commission) and Col Michael Campion (military judge, Defence Forces).

Other eminent guests included Claire Loftus (DPP), Niall Cody (chair, Revenue Commissioners), Brendan Ryan (CEO, Courts Service), Liz Pope (Property Registration Authority), John McDaid (CEO, Legal Aid Board), Maureen O'Sullivan (Registrar of Companies), Joe Egan (president, Law Society of England and Wales), Paul McGarry SC (chair, Bar of Ireland), and Ciara Murphy (director, Bar of Ireland).



LAW SOCIETY ANNUAL DINNER

ALL PICS: LENS MEN



Tánaiste Frances Fitzgerald, Shane Horgan (solicitor and rugby legend), Josepha Madigan TD and Ken Murphy (director general)



Mary Keane (deputy director general, Law Society) and Patricia Golden (director of corporate services, National Gallery of Ireland)



Don Thornhill (chair, LSRA), Niall Cody (chair, Revenue Commissioners) and Michael V O'Mahony (past-president, Law Society)



Dermot Jewell and Angela Black (LSRA board members) with Renee Dempsey (acting CEO, LSRA)



Minister Eoghan Murphy and Tánaiste Frances Fitzgerald



Attorney General Seamus Woulfe SC, Jim O'Callaghan (Fianna Fáil justice spokesman) and director general Ken Murphy



ALL PICS: LENS MEN



The Society's main hosts at the dinner were senior vice-president Michael Quinlan, President Stuart Gilhooly, and junior vice-president James Cahill



Mr Justice Gerard Hogan (Court of Appeal), Ms Justice Eileen Creedon (High Court) and Áine Hynes (president, Dublin Solicitors' Bar Association)



Claire Loftus (Director of Public Prosecutions), Jimmy McCourt (past-president, Law Society) and Rosemary Horgan (President of the District Court)



Frank Clarke (since appointed Chief Justice) and Paul McGarry SC (chair, the Bar of Ireland)



Eamon Harrington (chair, Law Society Finance Committee) and Mary Keane (deputy director general)



PIC: MARTINA HANUSOVA/TONY G MURRAY PHOTOGRAPHY

Members of the Kildare Solicitors' Bar Association gathered for a CPD seminar at the Osprey Hotel, Naas, on 15 June, which was followed by a barbecue. (Front, l to r): Sinead Dooley, Niall Farrell, Geraldine Carty, Dermot Fullam, David Powderly (president, KBA), Stuart Gilhooly (president, Law Society), Ken Murphy (director general), Rionagh Bracken, Avril Field and Mary Bennett; (middle, l to r): Sharon Murphy, Helen Coughlan, Sarah Pierce, Helen Dawson, Oonagh McCormack, Eoin O'Connor, Frank Taaffe, Tos Quinn, Eva O'Brien and Marianne Thyne; (back, l to r): Elaine Farrell, Dermot Weldon, Lesley Ryan, Cairbre Finan, Tom Stafford, Robert Coonan, Elaine Cox, Andrew Cody, David Osborne, Conor O'Toole, Stephen Byrne, Seamus Boyle and David Osborne



PIC: RORY GEARY

Monaghan Bar Association hosted a visit by Law Society President Stuart Gilhooly and director general Ken Murphy at the Westenra Arms Hotel, Monaghan, on 12 July. Kevin Hickey (president, Monaghan Bar Association) and Maria Connolly (secretary) delivered welcoming addresses. Approximately 50 solicitors from Co Monaghan and the surrounding counties attended. (Front, l to r): Sarah Gormley, Dan Gormley, Maria Connolly, Stuart Gilhooly, Kevin Hickey, Ken Murphy, Justine Carty, Adrian McEntee and Paul Mc Cormack; (middle, l to r): Grainne Dolan, Edel Traynor, Elena Healy, Pauline Barry, Ann Mc Garry, Charlie Murtagh, Melissa McCague, Patricia Reilly, Claire Gormley, Ann Skinnader, Nicola Kelly, Niamh Mulligan, Kieran Fitzpatrick and Eithne Harte; (back, l to r): Shane Kennedy, Peter Coyle, Enda O'Carroll, Seamus Mallon, Paul Boyce, Brian Morgan, Tim Ahern and Martin Mulligan



PICTURE: DERMOT LYNCH/DIGITAL PHOTOGRAPHY LIMERICK

Members of the Limerick Solicitors' Bar Association met with Law Society President Stuart Gilhooly and director general Ken Murphy on 12 June 2017 at the Savoy Hotel, Limerick. Topics discussed included Setanta, costs and the Sheehan case, and the *Legal Services Regulation Act*. (Front, l to r): Darach McCarthy, Ken Murphy, Stephanie Power, Stuart Gilhooly, Niamh White, Elisa McMahon and Derry O'Donovan; (back, l to r): Michelle Hayes, Mark Potter, Michael O'Connor, Ellen Twomey, Jerry Twomey, Ian Hayes, St John Dundon, Catherine Dundon and Niall Hayes



The Law Society's Diploma Centre team recently received the AIB Irish Law Award 2017 for 'Service provider to the legal profession'. Pictured are (front, l to r): Aedin Twamley, Siobhán Phelan, TP Kennedy (director of education), Dr Freda Grealy (head of Diploma Centre), Rebecca Raftery and Hazel Bradley; (back, l to r) Shane Farrell, Keith Kierans, John Lunney, Rory O'Boyle, Steve Collender, Joanne Martin and Claire O'Mahony



At the recent launch of *Employment Law* (2nd edition), published by Bloomsbury Professional, were Maeve Regan (consultant editor), Donal Spring, Ms Justice Mary Laffoy and Ailbhe Murphy (general editor)



Pictured at the recent judicial conferral ceremony for the Certificate in Mediation, at Blackhall Place, were (front l to r): Judge Maire Quirke, Judge Anne Watkins, Judge Catherine Staines, Mr Justice Alan Mahon, Stuart Gilhooly (Law Society President), Mr Justice Paul Gilligan, Mr Justice Brian McGovern, Judge Mary O'Malley Costello, Judge Patrick McMahon and Judge Alison Lindsay; (back, l to r): Dr Geoffrey Shannon, Judge Rosemary Horgan, Judge Keenan Johnson, Judge Mary Collins, Judge Paul Kelly, Judge Catherine Murphy, Judge John O'Neill, Judge Brendan Toale, Mr Justice Raymond Fullam, Judge David McHugh, Mr Justice Henry Abbott, Judge Geoffrey Browne, Judge Verona Lambe, Judge Susan Ryan, Judge Patrick Meghen and Judge Seán Ó Donnabháin



WILLIAM T 'BILL' ROBINSON III 1945 – 2017

With the recent passing, at the age of 72, of the former president of the American Bar Association William T 'Bill' Robinson III, the legal profession in Ireland has lost a great friend and an influential champion.

It is probably unprecedented for an appreciation to appear in the *Gazette* for a lawyer who was not Irish. But no such precedent is being set here – because Bill *was* Irish.

Although born a proud son of Northern Kentucky, where he lived all of his life, practising law throughout his very distinguished 45-year career 'across the river' in Cincinnati (Ohio), Bill's Galway grandmother entitled him to the Irish passport, which he regularly used on his international travels.

His year as president of the 400,000-member ABA was 2011-12. That turned out to be a very dangerous year for the independence – from indirect but completely inappropriate Government control – of the legal profession in Ireland. And Bill Robinson played a very important role in protecting that independence.

Bill was utterly passionate about the independence of the legal profession. He didn't just recognise, as so many lawyers everywhere do, that the independence of the legal profession is vital in the public interest to ensure democracy, justice, and the defence of the individual citizen against overreaching by the overwhelming power of the State. He was genuinely and deeply committed to the defence of that independence in the United States, and wherever else it was under threat.

The *Legal Services Regulation Bill*, published in October 2011, contained provisions that subtly, but significantly, undermined that independence. Bill was truly shocked that such a measure could be proposed in Ireland of all places. It took very little for the Law Society of Ireland to persuade him that he should not simply be shocked. He should do something practical about it.

What he did was travel to Ireland, not once but twice, solely focused on this issue. In doing so, he brought to bear not only his standing



as president of the American Bar Association, but his business experience as a former president of the Cincinnati Chamber of Commerce. On 5 December 2011, along with other distinguished international speakers, including the executive director of the International Bar Association Mark Ellis and the president of the Bars and Law Societies of Europe Marcella Prunbauer-Glaser, Bill inspirationally addressed a packed audience of more than 600 solicitors and barristers in Dublin's National Convention Centre. He spoke with insight and authority of how American business leaders would view this measure – expanding on a theme he had earlier raised in an interview published in *The Irish Times*. If enacted, "this legislation will have a negative impact on foreign direct investment in Ireland", he pointed out. That

certainly caught the Irish Government's attention! It quickly realised that the draft legislation had gone much too far.

In May 2012, accompanied by his wife Joan, Bill returned to Ireland to speak at the Law Society's annual conference in Castlemartyr, Co Cork. There he shared a platform and debated with the bill's proposer, Minister for Justice Alan Shatter. By then, however, the Government had listened to the arguments that Bill Robinson and others had made. The provisions in the draft legislation that had threatened the independence of the legal profession had been completely changed in recognition of – and to remove fully – that threat.

In a tribute, current ABA president Linda Klein observed that Bill "was always positive and optimistic, evidenced by his trademark phrase 'Onward and upward!', with which he often used to end his communications. He was an indefatigable champion of the rule of law and an independent judiciary, never too busy to help out a friend".

In late 2011, the Irish legal profession was a friend in need. In Bill Robinson, it had a friend indeed.

Ar dbeis Dé go raibb a anam dílis.



JUDGING JUSTICE – HOW SOLICITORS' EXPERTISE CAN IMPROVE THE COURTS SYSTEM

From: Dr Brian Barry, Department of Law, Dublin Institute of Technology, Aungier Street, Dublin 2

Solicitors are a critically important source of information and expertise in ongoing efforts to research and improve the Irish courts system.

This has been an eventful year for the judiciary and the Irish courts system. There has been considerable debate on the issue of judicial appointments and what format legislative reforms should take. Debate has not only taken place in the media and in the Oireachtas, but the Association of Judges of Ireland also took the unusual step of contributing to the debate by expressing concerns with the *Judicial Appointments Commission Bill*.

Outgoing Chief Justice Susan Denham used her retirement as an opportunity to criticise successive governments' failures to establish a judicial council. The Department of Justice established a group to review the civil justice system.

During this time of scrutiny and legislative change for the Irish courts system, it makes sense that the views of litigation solicitors should be canvassed and be central to developments.

Solicitors who practise in litigation regularly engage with the entire court process, from pre-trial processing, through to receiving the decision of a court. They are, therefore, uniquely placed to compare consistency and quality within and across different courts, from case processing and case-management issues, to how court hearings are run by judges, to the quality and consistency of the judgments of courts.

Litigation solicitors also witness at first-hand how their cli-



ents experience the courts system, and their response to their interactions with the Courts Service, the judiciary, and court facilities.

Owing to this unique perspective, litigation solicitors offer, perhaps, the richest resource of knowledge and understanding on what works well and what needs to improve within the Irish courts system. Their views can, and should, inform policymakers and Government on ongoing developments in the area.

With this in mind, the Department of Law at the Dublin Institute of Technology is currently undertaking a nationwide study of litigation solicitors' views on the Irish courts system and the judiciary.

I recently conducted the first stage of this study, interviewing litigation solicitors practising in a variety of different court circuits and court levels in Ireland. The anonymised views expressed by solicitors who participated in these confidential interviews will be used to refine and augment the development of a nationwide survey of solicitors' views on the Irish courts system, which will soon be disseminated.

Readers who practice in the area of employment law or industrial relations law may recollect a

similar practitioner survey that I conducted last year with my colleagues in the Employment Law Association of Ireland. Over 100 specialist employment law and industrial relations practitioners provided their views on the initial operations of the Workplace Relations Commission and revised Labour Court – one year after that two-tier dispute resolution structure for resolving workplace disputes was introduced by the *Workplace Relations Act 2015*. The collective, informed perspective of this pool of practitioners offered incisive and practical feedback on what was working well, and what needed improving within the new system.


The WRC relied on the results of the survey to implement improved procedures and case-management processes. The survey demonstrated the benefits of canvassing the views of those who legally represent participants in a particular dispute resolution system. By extension, collating the views of litigation solicitors should yield informed, practical feedback on how the Irish courts system is operating.

Reflecting on the preliminary, small-scale, interview stage of the current DIT study, it may tentatively be suggested that litigation

practitioners perceive the overall standard of judging to be reasonably high. Some expressed specific concerns about inefficiencies in court listing procedures and difficulties and inconsistencies in aspects of pre-trial case processing by the Courts Service. However, it is important to emphasise that further stages of the study – in particular, the comprehensive survey to follow – will provide much more substantive data on these and other possible trends on how solicitors view the system.

The DIT study is timely in light of the recent establishment of the Department of Justice and Equality's Review of the Civil Justice System, chaired by President of the High Court Mr Justice Peter Kelly. The review group has set a number of aims, including improving access to justice, reducing the cost of litigation, improving court procedures, removing obsolete, unnecessary or over-complex rules of procedure, reviewing the law of discovery, and reviewing the use of electronic communication.

The review group would undoubtedly benefit from the collated views of litigation solicitors on these matters. I would urge the litigation solicitor community to participate in DIT's upcoming nationwide survey of litigation solicitors' views on the Irish courts system, and in other similar research projects.

It is imperative that the knowledge, understanding and experience that they possess is researched and communicated clearly to Government and policy developers. It will lead to a fairer, more efficient courts system for all. 

To contact Dr Brian Barry about the research project, email brian.barry@dit.ie



'WE WILL BUILD FIRST, SO THAT WE ARE FULLY PREPARED'

LSRA chairman Dr Don Thornhill speaks to the *Gazette* about the milestones the authority has achieved to date – and the challenges it faces before it officially opens for business. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE

"Resources will be key in how the LSRA delivers on its remit," says Dr Don Thornhill, the chairman of the new Legal Services Regulatory Authority.

Speaking to the *Gazette* following a Law Society parchment ceremony on 6 July, Dr Thornhill pointed out that while "finance is not our problem at the moment", one of the biggest problems the LSRA faces is in finding suitable office premises, "because Dublin is booming".

"We ideally want offices that are capable of expansion, as we don't want to have to move a second time any time soon.

"Also, there will be some staff coming to us from the Law Society. They have the right of transfer because they operate in a very specialised area. Equally, we want to ensure that, for them, the transfer isn't disruptive of their lives."

The LSRA was established in October 2016 without staff or offices, and with part-time board members. The process for appointing a permanent chief executive is well advanced. The appointee will take over from the interim CEO, Renee Dempsey (formerly CEO of the Equality Authority and subsequently of the Irish Human Rights and Equality Commission).

The new authority is taking over key

areas, such as inspections of solicitor firms, public complaints, and the new legal business models. The sequencing requires careful planning, so that the various commencements are correctly executed, including those that relate to each other – and that the replacement of existing regulatory regimes leaves no unintended gaps.

The steps often involved in setting up a State body (with a core staff in place) were not followed for the LSRA. Dr Thornhill says that this was deliberate, because the Government wished to ensure that, not only was the LSRA independent, but that it was seen to be so. The authority is currently functioning from a temporary office on St Stephen's Green.

Legal partnerships

"We were also faced with a number of statutory deadlines and reports to be produced within six months of our establishment," he added.

One of those reports is on the subject of legal partnerships, which Dr Thornhill said would be of real interest to newly qualified solicitors, now that there was a statutory commitment in the *Legal Services Regulation Act 2015* to establishing such partnerships.

The legislation contains a framework that

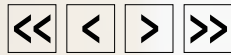
allows for the introduction of new legal business models. There will be public consultation on these new structures, which could see the early introduction of legal partnerships between barristers and solicitors, or between barristers themselves.

The new act also opens up other aspects of legal practice. For example, it allows employed or corporate lawyers to act in proceedings on behalf of their employers and for direct access to barristers on non-contentious business. It also allows barristers sharing premises to advertise themselves as such. These had all been prevented by existing codes.

The aim of opening up these areas is to offer greater choice in how legal services may be provided, and in how they can be accessed by consumers on a more competitive basis.

"We were also asked to look into the issue of multidisciplinary partnerships," says Dr Thornhill, "and we were invited to look into whether barristers should hold clients' moneys – and whether there should be direct access to barristers in non-contentious issues.

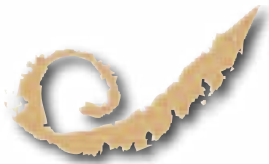
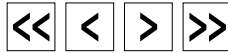
"We have a number of other things in line, like education of lawyers and whether there should be a new profession of conveyancer, so all of these things will be in the pipeline.



PICS: JASON CLARKE PHOTOGRAPHY



WE WILL BUILD FIRST, SO THAT, WHEN WE OPEN FOR BUSINESS, WE ARE FULLY PREPARED. IT IS CERTAINLY NOT MY INTENTION TO START OFF ON AN, 'AH SURE, IT'LL DO' BASIS



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RESOURCES WILL OBVIOUSLY BE KEY IN HOW THE LSRA DELIVERS ON ITS REMIT. FINANCE IS NOT OUR PROBLEM AT THE MOMENT. OUR PROBLEM IS IN FINDING OFFICE PREMISES, BECAUSE DUBLIN IS BOOMING

“Those things we were statutorily bound to do, we have done, so we have met all the statutory reporting deadlines.”

New regime

The LSRA couldn't start functioning until late October 2016 because the membership of the authority wasn't fully constituted until then. Dr Thornhill said they were continuing with the work of building up the organisation – the crucial step being the appointment of a permanent chief executive.

“There is quite a lot of work to be done before we open for business with all the bells and whistles,” he said. “We're conscious that our mandate has significant implications for the provision of legal services and the administration of justice, for the public, and for legal professionals.



“We will build first, so that, when we open for business, we are fully prepared. It is certainly not my intention to start off on an, ‘Ah sure, it'll do' basis!”

The new structures will provide greater focus and depth to the process of modernisation and change that the reformed regulatory regime is intended to deliver.

Asked when he expected the LSRA to be fully functioning, Dr Thornhill explained: “We have completed a legal analysis on the interlocking nature of the legislation, because there are a number of sections that can't become operational unless other sections are operational. It's like a jigsaw. Currently, we have someone working on an operational timetable – I can't give a precise date yet.

“Our job will be a very complex one when we do get up and running,” he said. “In my view, and in the view of the authority, we should not open until we are ready to do our job properly, both with personnel and office space and with all the relevant pieces of legislation commenced.

“There are a number of parts of the act that still have to be commenced, and we will want a smooth, integrated process.

“There is little point, and little public value, in commencing the provisions for legal partnerships if there aren't adequate protections for the public and adequate disciplinary procedures in place for those in legal partnerships.”

Disciplinary matters

Asked about the impact that the LSRA would have on disciplinary matters, Dr Thornhill explained: “Once that comes into operation, the Law Society will stop receiving and dealing with disciplinary cases. In other words, there will be a clean handover. The Law Society will see through the cases that it is handling now, and which have been reserved to it, and then the new process will begin.

“The Office of the Taxing Master is a separate matter and is not part of our brief. We are obviously aware of it, and it is, in our view, a very important innovation.”

Q FOCAL POINT

WHAT'S IT ALL ABOUT AGAIN?

The LSRA is charged with the oversight of legal services and legal practitioners. There will be a new and independent legal practitioners' disciplinary tribunal to adjudicate on serious misconduct by both solicitors and barristers.

There will also be an enhanced legal-costs regime, bolstered by a set of legal-costs principles, that will place more extensive obligations on both solicitors and barristers to keep clients informed about the details of their legal costs.

Separately, the new Office of the Legal Costs Adjudicator will assume the role of the existing Office of the Taxing Master and keep a public register of its legal-costs determinations.

The authority consists of 11 members, of whom a majority (six, including the

chair) are lay persons nominated by six prescribed non-legal bodies. The remaining five members are nominated by prescribed legal bodies. The members are Dr Don Thornhill (Higher Education Authority), Angela Black (Citizens Information Board), Deirdre McHugh (Competition and Consumer Protection Commission), Prof Gerry Whyte (Irish Human Rights and Equality Commission), Stephen Fitzpatrick (Institute of Legal Costs Accountants), Dermot Jewell (Consumers' Association of Ireland), David Barniville (Bar Council), Joan Crawford (Legal Aid Board), Eileen Barrington SC (King's Inns, who was nominated to replace Mr Justice Nicholas Kearns who stepped down due to other responsibilities), and Geraldine Clarke and James MacGuill (Law Society).



'I WILL ARISE AND GO NOW'

Warm tributes have been paid to Chief Justice Susan Denham on her retirement, following “a lifetime of exceptional and extraordinary achievements”.

Mary Hallissey reports

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE

Mr Justice Donal O'Donnell paid handsome tribute to his Supreme Court colleague Chief Justice Susan Denham on her retirement on 29 July.

The day brought to a happy end one of the most remarkable chapters in Irish legal history. The Chief Justice's retirement, after 26 years as a judge and as the longest-serving member of the Supreme Court, “puts her in the Mount Rushmore category”, he said.

Referring to what he termed “a lifetime of exceptional and extraordinary achievements”, Mr Justice O'Donnell said that being a judge was hard and difficult work and that most of the work was hidden – referring to it as “the iceberg principle”.

The Chief Justice's career had been characterised by an insistence on being clear, straightforward, direct and approachable, with the hallmark of simplicity, self-effacement and methodical efficiency.

Mr Justice O'Donnell referred to the US judge whose parting words were “I won't be in on Monday”, and revealed that the Chief Justice had requested that he keep his words short.

Mrs Justice Susan Denham's career had been characterised by loyalty to her country, to the administration of justice and, most of all, to the Supreme Court, where she has served as Chief Justice for the past six years, he added.

He praised her steeliness of character, pointing out that niceness and decency were not to be confused with softness. Much of Mrs Justice Denham's career could be seen as an exercise, not just in loyalty, but “as a determination to be loyal to a broader

and more generous vision of Irishness”.

Family roots in Belfast meant that Mrs Justice Denham was steeped in a non-conformist identity that refused to be included in Unionism or excluded from Nationalism.

“In Susan's career, there is much of patriotism, of keeping the community ordered by justice and patriotism – and of loyalty, courage, and also sacrifice.”

Seeking to encapsulate the monumental work that has been the hallmark of Mrs Justice Denham's legal career, he recalled the epitaph to the great architect Sir Christopher Wren in St Paul's Cathedral: ‘*Lector, si monumentum requiris, circumspice*’ (‘Reader, if you seek a monument, look around you’). He paid tribute to the Chief Justice's work in reforming the legal system, which had been completely transformed since being called to the Bar in 1971.

“There is probably no reform of the last 25 years that did not start with a Denham report,” Mr Justice O'Donnell remarked.

Law Society tribute

Senior vice-president of the Law Society Michael Quinlan thanked the retiring Chief Justice on behalf of the solicitors' profession and their clients, saying: “As indicated so eloquently by the previous speakers, you are the most transformational figure in the history of the court system in Ireland.”

Listing the litany of her achievements, he reminded those present that she had been:

- The first woman to be a judge of the Supreme Court,
- The court system's greatest moderniser and reformer,

- The central figure in the introduction of the Courts Service,
- The central figure in the introduction of the Court of Appeal,
- A key figure in the introduction of the Commercial Court, and
- A key figure, also, in the modernisation and liberalisation of the jurisprudence of the Supreme Court across countless legal topics.

Mr Quinlan added: “In an address you gave to the Australasian Institute of Judicial Administration in 2010, you said: ‘I was called to the Bar in 1971. When I commenced practising, I felt a sense of stepping into a timeless institution that had existed for centuries. I was frequently the only woman barrister in a busy court – no women were judges of the superior courts, nor were any registrars, and jurors were usually men. I was in a world evocative of the 19th century, in an institution preserved in time.’

“Well, the courts system has certainly changed since then,” he stated. “In many ways, it has changed beyond recognition. And no one has done nearly as much to change it as you have.”

Looking to the future, the vice-president commented: “I know you mentioned to the Society's director general earlier this week that among your short-term plans are that you and your husband Brian will travel to the Galapagos Islands. As Charles Darwin found when he first visited the Galapagos in 1835, it is a timeless place that the rest of the world has simply passed by – come to think of it, much like the Irish courts were in 1971!



I HAVE ENJOYED THE HONOUR AND PRIVILEGE OF BEING A JUDGE OF THIS STATE



Mrs Justice Susan Denham served as a judge for 26 years and was the longest-serving member of the Supreme Court

“I just hope that, when you and Brian step onto the islands, you can resist the habits of a lifetime and will not immediately form a working group and set in train a programme of modernisation!”

On behalf of the solicitors’ profession and their clients, Mr Quinlan concluded by thanking the Chief Justice, “not just for your reforming zeal but for your profound dedication to the principles of justice and, not least, for the kindness, respect and courtesy you have extended throughout your career to all who have had anything to do with you”.

Pioneering feature

Attorney General Seamus Woulfe thanked the Chief Justice for doing a hard job so well, and for so long. “Whatever the substantive difficulties, you always engaged with those difficulties in a supremely courteous and civil manner,” he said.

He reiterated the sincere thanks and huge appreciation of the Government and the people of Ireland for the public service given by the Chief Justice.

The retiring Mrs Justice Denham is the 11th Chief Justice of Ireland and the first and only graduate of Trinity College to hold the office.

In her closing remarks, she said it had been a great honour to have had the duty of upholding the Constitution of Ireland.

“*Bunreacht na bEireann* was the first in the common law world to give expressly to the Supreme Court the powerful role of reviewing the constitutionality of legislation. This was a pioneering feature,” she said.

“The Irish Constitution was ahead of its time, with five articles devoted to the protection of fundamental rights. I have referred to it as a prescient constitution,” she said.

The retiring Chief Justice thanked journalists for their reporting on the work of the

Supreme Court during her tenure.


“For the rule of law to flourish in a democracy, an understanding of what happens in our courts is essential. It is vital that the public be kept informed of court proceedings by the media.

“Journalists reporting on Supreme Court cases are to be commended for their excellent reporting, often a matter of minutes after the delivery of judgments on complex matters,” she remarked.

The Chief Justice thanked her husband Brian and her family for their loving support during the often long hours of work.

“I have enjoyed the honour and privilege of being a judge of this State,” she said.

“So, for the final time, following the steps of Yeats, ‘I will arise and go now’, she concluded, to warm applause.

Mrs Justice Denham is planning to enjoy some travel in retirement, and to pursue her hobby of breeding Connemara ponies. 



AN INVITATION TO SERVE

What should the in-house solicitor do if asked to serve as a trustee of a pension scheme for their employer's staff? The In-House and Public Sector Committee assesses the invitation

Like the position with directorships, there is no regulatory rule or guidance on this question in Ireland so, in principle, in-house solicitors are free to serve as trustees of their employers' pension schemes.

The subject of pensions has not been a good news story for many in recent years. While stock markets are currently making good gains, this may not continue, given the current volatile global political and economic environment. The continuing low interest rate environment and lack of high-yielding investment assets has impaired the growth of many

pension funds, increased the cost of providing pension benefits, and put pressure on the funding – and in some cases the solvency – of pension schemes.

Many defined benefit pension schemes (which provide a proportion of final salary as a pension) have sought to modify the benefits made available to active and deferred members. Some of these schemes have been forced into wind-up, have closed entry to new members, or been restructured as defined contribution schemes (under which members receive a pension return based on the investment gains (or losses) on contributions made by them). In

turn, many defined contribution schemes will provide less valuable pension benefits for their members.

The current situation, which is set to continue for many schemes, has had negative effects for employers, employees and pensioners, and the current uncertainty does not look like changing into the future.

The trustee's role

As one of a small group of individual trustees or as a director of a corporate trustee, a pension scheme trustee's duty is to safeguard and invest the scheme's assets for the benefit of its

FOCAL POINT

MITIGATING NEGATIVE EFFECTS

As well as considering whether you have the experience, skills and support for the role, carry out your own due diligence before accepting an invitation to serve as a trustee.

The best starting point is the trustees' annual reports and accounts, and the trust deed and rules. Does the scheme meet all relevant funding standards?

Has the employer always made all contributions required of it, on time? Does the scheme comply with pensions law and with the governance codes issued by the Pensions Authority? Does the scheme have access to the full range of independent professional advisers, from investment advisers and investment managers to actuaries and administrators (and, of course, solicitors)? If there is an indemnity in the trust deed, is it unconditional? Is adequate directors' and officers' insurance provided?

Assess how risky the role is likely to be or to become, especially in light of the scheme's and the employer's financial condition, and assess the governance standards and practices in the scheme and the company.

Explain your analysis of the advantages and disadvantages to the group CEO and your line manager. They need to know the risks and, especially, to know that – however unlikely this may be – you could be professionally required to abstain from decisions, or even resign from the trustee board in some circumstances.

Ensure that external legal advisers are in place and, where required, can be called on to advise the board (including you as a trustee) on any decision that carries obvious risk (this will also reduce the risk of losing privilege). If you do give legal advice to the board of which you are a member, ensure that this is either identified separately in the minutes or documented outside the trustee board minutes.

Finally, ensure that you receive regular training, updates and information from appropriate sources to ensure you stay up to date with developments, and have the necessary skills and information to enable you to carry out your duties as a trustee (or to remove yourself from the position, if required).



Invitation

PICTURE: SHUTTERSTOCK

members, as well as administer the payment of pensions.

As the title 'trustee' suggests, the position carries fiduciary responsibilities, so a very high level of attention is required to fulfil these duties, although trustees typically have access to a range of relevant internal and external professional advisers. Trustees are also regulated in their role directly by the Pensions Authority, which regards the enforcement of trustees' obligations as one of its main duties.

Advantages

For the in-house solicitor, advantages of acting as a pension trustee can include:

- Gaining valuable experience in the area of pensions, finance, investments, trustee duties, governance, etc,
- Understanding the client's business better,
- Having a direct influence on a key benefit for employees, and
- Giving an opportunity to demonstrate added value to the employer.

An in-house solicitor can also add commercial experience, professionalism, impartiality, and independence to the trustee group or board. The in-house solicitor may also be asked to provide legal advice to the pension and/or the

employer. While this can create issues (see below), it is an advantage for the business client to have legal input directly at trustee level on a continuous basis.

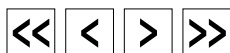
Disadvantages

- *Conflicting duties* – as a practising solicitor, your duty as an officer of the court is paramount. This is already an area of sensitivity for in-house counsel in other areas of their work, so acting as a trustee may increase the possibility of conflicts occurring between your duty to the corporation and your duty as a solicitor.
- *Conflicting duties* – funding issues, which are arising more and more frequently, cause an

acute potential conflict between a solicitor's duty as a trustee, and his role as a senior employee and in-house solicitor. Unless a solution to the funding issue that will be acceptable to all involved is clear at the outset, such conflicts can give rise to severe difficulties.

- *Legal advice* – it may not be appropriate for an in-house solicitor who also acts as a trustee to provide legal advice to the trustees or the employer in relation to the pension, in which case legal advice should be obtained from a different source (see further detail on this below).
- *Conflicting interests* – although not unique to an in-house solicitor who is also a trustee, if you are also a member of the pension

AS WELL AS CONSIDERING WHETHER YOU HAVE THE EXPERIENCE, SKILLS AND SUPPORT FOR THE ROLE, CARRY OUT YOUR OWN DUE DILIGENCE BEFORE ACCEPTING AN INVITATION TO SERVE AS A TRUSTEE



Fáilte Ireland
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11th September 2017 is the deadline for all listed sectors to renew their Fáilte Ireland Quality Assurance for 2018.

Listed sectors include: Irish Home Bed & Breakfasts, Historic Houses, Fáilte Ireland Welcome Standard, Individual Self Catering Cottages and Apartments.

15th October 2017 is the deadline for all statutory sectors to renew their [Fáilte Ireland Quality Assurance] statutory registrations for 2018.

Statutory sectors include: Hotels, Guest Houses, Holiday Hostels, Youth Hostels, Holiday Camps, Caravan & camping, Holiday Cottages and Holiday Apartments.

Full details on how to apply for registration online can be found on <http://www.failteireland.ie/Supports/Get-quality-assured.aspx>

Practitioners are also asked to note where acting for the Transferor or the Transferee of premises in the statutory sector that in any case where the registered proprietor (Transferor) of registered premises, transfers the said premises and the business carried on there on sale or otherwise to another person (Transferee), until the Transferee has applied to Fáilte Ireland and been registered as registered proprietor of the said premises, the Transferor shall continue to be the registered proprietor for the purposes of the Tourist Traffic Acts 1939-2016.

REVISED HOTEL REGULATIONS AND HOTEL CLASSIFICATION CRITERIA

Revised Hotel Regulations were introduced in August 2016 and Fáilte Ireland, in conjunction with the Irish Hotels Federation, have also developed new Hotel Classification Criteria. For full details please see <http://www.failteireland.ie/qualityassurance>



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AS THE TITLE ‘TRUSTEE’ SUGGESTS, THE POSITION CARRIES FIDUCIARY RESPONSIBILITIES, SO A VERY HIGH LEVEL OF ATTENTION IS REQUIRED TO FULFIL THESE DUTIES

scheme, you should consider whether any conflict arises between your position as a trustee and a beneficiary. As well as making full disclosure and ensuring that such a conflict is permitted by the trust deed, this may require you to remove yourself from certain decisions that create such a conflict of interest.

- *Higher exposure to personal liability* – it is obvious in a general sense that you are more at risk of personal civil, regulatory and criminal liability through actions (or omissions) as a trustee than you already are as a solicitor.
- *Uncertainty about availability of insurance cover* – any professional indemnity policy you

hold as a solicitor or employee may not provide cover in relation to your acts or omissions as a trustee.

- *Further erosion of legal privilege* – the defences of legal professional privilege continue to suffer erosion (witness the latest English Court of Appeal decision in the RBS rights issue litigation). There is no reason to believe that communications (or even legal advice) made by a solicitor acting in the capacity of a trustee will automatically attract legal advice privilege or litigation privilege.

For the business client, the disadvantages include all of the above, plus:

- The solicitor acting as a trustee may be (or be perceived to be) less independent as a result of their participation in trustee decisions. This can lessen their value to the corporation.
- There might be a negative impact on the corporation if the solicitor is put in a position where they have to resign as a trustee or remove themselves from decisions relating to the pension scheme.

See the *March 2017* issue of the Gazette (p13), which discusses the issues to be considered by in-house solicitors when asked to serve on the board of directors of companies within their clients’ groups.

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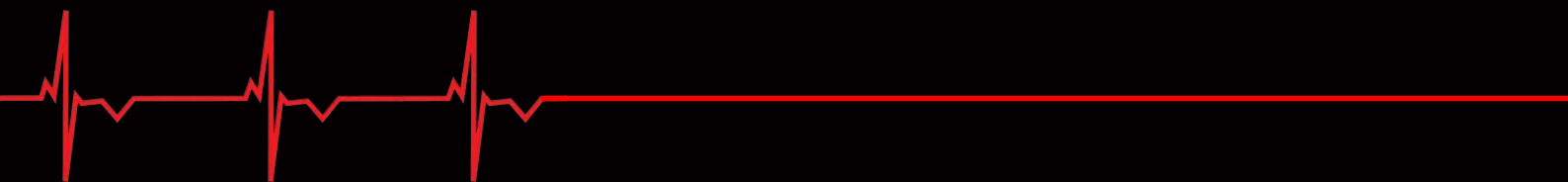


Change of heart

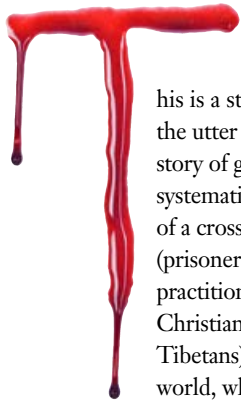
The Joint Oireachtas Committee on Foreign Affairs and Trade recently heard evidence on the harvesting and trafficking of human organs in China.

Lorcan Roche spoke to two of those who gave evidence

LORCAN ROCHE IS AN AWARD-WINNING JOURNALIST



COVER STORY



his is a story about morality. Or the utter absence of it. It is also a story of genocide. State-sponsored, systematic, ongoing. The genocide of a cross-section of humanity (prisoners – chiefly Falun Gong practitioners – but also House Christians, Uyghurs, Buddhists and Tibetans) in a dark corner of our world, where humans are being harvested for a very valuable crop – livers, hearts, pancreases, corneas, kidneys.

This story is not new, but it has had a tough time emerging – due, some would argue, to China's increased global influence in world trade. Slowly but surely, however, the story, its barbaric vista, its appalling scale, is being brought to light by, among others, a former surgeon called Enver Tohti Bughda and a human rights lawyer called David Matas.

Matas is intellectually brilliant – and dogged. Alongside a former Canadian politician, he has been nominated for the Nobel Peace Prize. He has devoted his career to the pursuit of justice and represents the head, or 'thinking' aspect of the story.

≡ AT A GLANCE

- The grisly trade in organ harvesting from prisoners in China
- Human organ transplants on demand
- Moral obligation on Irish citizens and lawyers
- Technological development and the precautions required to prevent its abuse
- The move to change human organ transplant legislation around the world

The former surgeon is an equally brave man. His life has also been a struggle, particularly his move from ignorance to awareness. He represents the heart of this story.

Let's listen to the heart. We go back to 1995, when Enver was an ambitious 32-year-old surgeon working in a railway hospital. One

day, Enver's boss, the chief surgeon, called him into his office. He said: "Do you want to do something wild?"

"I was young," says Enver. "I was excited by the question. The idea of 'doing something wild' appealed to me. I was told to assemble a team. Two nurses and two assistants and a mobile operation kit in a van, and to be at the hospital gates at 9.20. I did as I was told. We met with the two chief surgeons and followed them in their car to the Western Mountain Execution Grounds. I was told to wait until I heard the sound of shots. We were waiting behind a hill for the sound. After the shots came, we drove in. A police officer showed us to a parking place. Then the bodies were brought out. Five or six. The police officer pointed to the body that was lying to the far right. The other bodies were wearing prison uniforms and had their heads shaved. The body to the far right did not. That body was brought into the van. My instructions were to extract the liver and two kidneys. I noticed the bullet marks were to the right and wide of the heart and that the body was still warm, that there was still a pulse..."

Q FOCAL POINT

OIREACTHAS COMMITTEE DISCUSSES ORGAN HARVESTING IN CHINA

The Joint Oireachtas Committee on Foreign Affairs met on 6 July to discuss organ harvesting in China. Committee chair Brendan Smith welcomed a number of witnesses, including Canadian human rights lawyer David Matas, Ethan Gutmann, Dr Enver Tohti Bughda, Dr James McDaid, Dr Conall O'Seaghdha and Ms Dongxue Dai.

Urging the Irish Government to ban 'organ tourism', Chinese doctor Enver Tohti said that his aim, and those of the other witnesses, was to see legislation introduced in Ireland that would ban people from travelling abroad to avail of transplant operations where organs had been obtained illegally or inhumanely.

Despite claims from the Chinese government that transplants from living

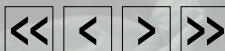
humans were no longer permitted, human rights defender Ethan Gutmann said that China's US\$8-9 billion transplant industry was "business as usual".

Dr Conall O'Seaghdha from the National Kidney Transplant Service said that, while there was no official data available, there had been cases of Irish patients travelling abroad for kidney transplants before returning to Ireland for post-transplant care. Most of these patients, he said, had been born outside Ireland, but he was aware of at least one Irish citizen who had taken advantage of transplant tourism.

Canadian human rights lawyer David Matas urged Ireland to condemn organ transplant abuse in China. He asked the Irish Government, the Council of Europe, the EU, the UN Human Rights Council, and

the Office of the UN High Commissioner for Human Rights to conduct an investigation into abuses there and in other countries. Transplant tourism should be considered a crime, he said, with the prosecution of all parties involved.

The committee chair said that, despite its small population, Ireland had an attachment to human rights and the dignity of the individual. He agreed that international cooperation was required on the matter. A legislative process was needed, he added, to implement the Council of Europe *Convention against Trafficking in Human Organs*, and the Department of Health must introduce certain legislative measures "to ensure there are no unforeseen delays in introducing these measures".



P.C. SHUTTERSTOCK

“MY INSTRUCTIONS WERE TO EXTRACT THE LIVER AND TWO KIDNEYS. I NOTICED THE BULLET MARKS WERE TO THE RIGHT AND WIDE OF THE HEART AND THAT THE BODY WAS STILL WARM, THAT THERE WAS STILL A PULSE

The prisoner was still alive? So the execution had been botched?

“No. You do not understand. They had deliberately missed the target. You are wondering, ‘What was I thinking?’ – I was thinking nothing.”

Sorry, Enver, I need to be clear. In 1995, aged 32, you performed organ harvesting on a prisoner who was still alive?

“Yes.”

Naive mindset

Has he been able to forgive himself, and, if so, how?

Enver Tohti Bughda explains, patiently, that Western journalists approach this story with a mindset, worthy but naive, that inevitably brings them to just such an impasse.

He clarifies: “This is about absence of morality. About a particular mentality. The kind of mentality you find in George Orwell’s *1984*. The Chinese communist system has no ethics. No humanity. When you let go of the sort of thinking that presumes the system is good or kind or fair, the curtain can lift and you can begin to see ... you must understand that a surgeon born into that society has been brainwashed from birth. Therefore, the

procedure I was performing was, in my mind, ‘normal’.”

He says that guilt was not an issue. At what stage did he become aware of what he had done?

“I was ‘aware’ while I performed the procedure. But I was not yet conscious. I first had to discover real freedom, real democracy. Then I had to come to understand that every person has equal rights. I had to come to see that no one person’s life or rights are subject to the wishes of another.”

So he doesn’t blame himself?

“I do blame myself – but not entirely. Since I cannot decide where I am born, I am not guilty for what the society I am born into teaches me. But I am responsible for how I change.”

Enver has made it his life’s work, his vocation, to make us understand that what is happening in China, right now, is human-rights abuse on an epic scale: “The Chinese today can tell you that in four hours’ time they will have a liver for you. Or that in two weeks’ time they will have a heart. How do they know somebody will die in two weeks’ time and his blood and tissue will match yours? How can they do this? No other country can. But the Chinese can. Right now, if you look at certain

hospital websites in China, they are able to offer two-for-one deals on organs... how? I know of a patient who got a liver transplant. It failed. But the next day they were able to perform a second transplant. How can they do this? Tell me, please – how can they do this?”

Here’s how: by taking tissue and blood samples from prisoners. By building a vast database. By waiting until a rich, desperate Taiwanese, Korean, Japanese, Indonesian or Gulf State caller, or his or her agent, requests a healthy heart, or a disease-free liver – ideally from one of those Falun Gong people who don’t drink or smoke and who exercise daily. By matching the request for a new organ to a number on a computer screen. By butchering. By believing it is ‘normal’.

A lawyer’s perspective

So why should we care about the organ harvesting of prisoners in China? What moral obligation is there on Irish citizens to do something about organ harvesting there?

International human rights lawyer David Matas has been investigating organ harvesting in China since 2006. He responds: “Because human rights violations are never self-contained. They spread. If we don’t

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DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
21 Sept	THE IN-HOUSE SOLICITOR – SETTING UP A LEGAL FUNCTION AND KEY RESPONSIBILITIES - Kingsley Hotel, Cork	€150	€176	1 Regulatory Matters, 3 M & PD Skills plus 2 General (By Group Study)
29/30 Sept & 13/14 Oct	THE FUNDAMENTALS OF DISTRICT COURT CIVIL PROCEDURE, DRAFTING & ADVOCACY SKILLS - (Focus on General Tort & Personal Injuries Litigation)	€750	€850	20 CPD hours including 6 M & PD Skills plus 1 Regulatory Matters (by Group Study)
4 Oct	LAW SOCIETY FINUAS NETWORK -PROFESSIONAL WELLBEING FOR A SUCCESSFUL PRACTICE – Kingsley Hotel Cork	€150	€176	5 M & PD Skills (by Group Study)
Starts 6 Oct	LAW SOCIETY FINUAS NETWORK -EXECUTIVE LEADERSHIP	€3,400	€4,080	For full details contact Finuas@lawsociety.ie
12/13 Oct	CONNAUGHT SOLICITORS' SYMPOSIUM 2017 PART I & II - Breaffy House Hotel, Castlebar, Mayo		€170	6 General, 3 M & PD Skills plus 1 Regulatory Matters (Accounting and AML compliance) (by Group Study)
20 Oct	NE CPD DAY 2017 Glencarn Hotel, Castleblayney, Monaghan		€115	7 Hours (by Group Study) details tbc
3/4 Nov	LAW SOCIETY SKILLNET CONSTRUCTION LAW An intense, practical series of lectures and case studies	€350	€425	10 General (By Group Study)
9 Nov	LAW SOCIETY FINUAS NETWORK PRACTICE & REGULATION SYMPOSIUM– Mansion House, Dublin in collaboration with the DSBA		€115	7 M & PD Skills and Regulatory Matters (by Group Study) details tbc
17 Nov	PRACTITIONER UPDATE CORK 2017 – Kingsley Hotel, Cork		€115	3 General, 1.5 M & PD Skills & 1.5 Regulatory Matters - Accounting plus AML compliance (By Group Study)
24 Nov	GENERAL PRACTICE UPDATE 2017, Hotel Kilkenny, Kilkenny		€115	6 CPD Hours (by Group Study) details tbc
Starts 1 Dec	LAW SOCIETY SKILLNET CPD CERTIFICATE IN PROFESSIONAL EDUCATION	€1,250	€1,450	For full details contact Lspt@lawsociety.ie
Starts 8/9 Dec	PROPERTY TRANSACTIONS MASTERCLASS ATTEND 1, 2 OR ALL 3 MODULES	€500 Per module	€600 Per module	CPD Hours per module: 10 Hours including 2 M & PD Skills



I HAD TO COME TO UNDERSTAND THAT EVERY PERSON HAS EQUAL RIGHTS. I HAD TO COME TO SEE THAT NO ONE PERSON'S LIFE, OR RIGHTS, ARE SUBJECT TO THE WISHES OF ANOTHER

do anything about stopping the killing of innocents for their organs when we can, then it is going to be too late when people come to us and start trying to kill us for our organs.”

Are there specific obligations on members of the legal community?

“I would say that every member of humanity has the same moral obligation to human rights. But where there exists a particular skill in, say, addressing mechanisms to bring about changes, then there is an increased obligation, yes.

“Also, lawyers do not want the legal system abused in order to repress human rights – which is always a possibility. Lawyers do not want a legal system to turn a blind eye to violations of the law.”

How did Matas first become involved with this campaign?

“I was asked. I am asked to do a lot of stuff. A lot of them were easier to deal with because there was already an organisation or there was a movement. Or there's a media story and you can get it dealt with that way. Or you can go to a member of parliament.

“This was more complicated because what you're dealing with is, first of all, a country where there is a great deal of intense repression, so locals cannot deal with it – they become victims themselves if they start to object. Secondly, it is not immediately obvious – it is not like the hold-up of a grocery store where you can go to see the damage. It took a lot of research to get to the bottom of what was going on, so it was the kind of work where I felt I could make an individual contribution.

And I wasn't sure that anyone else was going to do it.

“China is different from the rest of the world in a lot of ways ... there are peculiarities in the Chinese Communist Party that led to this. Granted, some of it is common to all communist regimes, I mean you look at the Constitution of the People's Republic and, in particular, the descriptions of the proletariat, and it is what you saw in the Soviet Union, Eastern Europe, Cuba, and so on – but, yes, China is different.

“We have become accustomed to stories from those kinds of regimes of people being ‘disappeared’ or confined – in the case of Cuba, to mental institutions – but we have never been aware that organ harvesting was taking place.

“Technology is neutral. I am confident that the people who developed organ-transplant technology never imagined it would be used to kill innocent political prisoners. So, when a technology is developed, precautions should be put in place to prevent its abuse. And, clearly, they are not in place, and then you get perpetrators who take advantage of the technology for their own agenda. That is what is happening in China.”

And to do that, they need to see the prisoner as less than human?

“That's true. Before the killing of Falun Gong prisoners began, there was, for a number of years, an intensive propaganda campaign, a vilification campaign, to justify the oppression. That had the effect of dehumanisation,

depersonalisation and marginalisation, so that particular individuals in the system – the surgeons, the gaolers – they view the Falun Gong as less than human. It becomes easier, thus, to kill them.”

Why does the Communist Party fear Falun Gong?

“We have the actual memorandum where the President of the People's Republic of China [Jiang Zemin] tells the party his views – it was leaked. For instance, he doesn't like the fact that it is ‘backward’ and seemingly in conflict with Chinese modernism. He is concerned about the fact that there are a lot of them. Primarily, he is concerned that they believe in something different from Chinese communism.”

How does he feel now about his campaign, ten years on?

“There are a lot more people involved. There is momentum. The laws have been changed in Spain, Italy, Taiwan and Israel. The World Health Organisation has come out with some principles. The UN has gotten involved. The transplant agencies are coming together.”

Does his faith or philosophical outlook assist him in his campaign?

“I'm Jewish. I'm not a survivor and neither were my parents. We were not affected by the Holocaust personally – but, all the same, I am well aware that if the Axis rather than the Allied powers had won World War 2, neither I nor any other Jewish person would be alive today, and so I have been very impacted, philosophically, by the Holocaust. And one of the lessons I have learned from it is the need for people everywhere to protest human rights violations, particularly in countries where the victims themselves cannot do anything.”

*David Matas and David Kilgour won the 2009 Human Rights Award from the German-based International Society for Human Rights for their investigative work on organ harvesting. They were nominated for the Nobel Peace Prize in 2010. Their report, *Bloody Harvest*, is at <http://organharvestinvestigation.net>.*

FOCAL POINT

A GRISLY CHINESE INDUSTRY

By examining consistent purchases of specific post-transplant drugs in a cross-section of hospitals, and extrapolating these figures nationwide, observers claim that the numbers of prisoners being

executed range from 60,000 to 100,000 a year. In this multimillion-dollar organ-harvesting industry, overseas patients typically pay \$30,000 for a cornea, \$60,000 for a kidney, and \$150,000 for a heart.



Ars gratia artis

While there is no specific Irish legislation that regulates commercial art transactions, a thorough knowledge of the legal challenges and financial dynamics is essential, particularly when multi-jurisdictional disputes arise. **Rosanne McDonnell** frames the scene

ROSANNE MCDONNELL IS AN ACADEMIC LAWYER WHO WORKS WITH A NETWORK OF ART PROFESSIONALS, PRIVATE CONSULTANTS, AND COLLECTORS



Lawyers who act for clients in high-value art transactions play a crucial role in the art market, particularly when wealthy clients wish to make certain provisions for benefactors in a trust or under a will as part of their estate planning, or wish to diversify their investments into art and/or seek to liquefy existing assets as part of a financial restructuring scheme.

The treatment of art as an asset has arguably arisen from an international art market focus on the results of public auctions by powerhouses Sotheby's and Christie's. These fierce rivals are excellent brand ambassadors for Old Masters and post-war contemporary modern art. In recent years, they have also extended their business models into private treaty sale, thereby squeezing more modest art dealers into the periphery. This development, coupled with increasingly glamorous international art fairs, such as Frieze and Art Basel, has made purchasing art while observing economics an attractive prospect for interested parties.

While the art business has broken away from its former shadowy traditionalism, residual undertones of concealment, forgery, and allegations of money laundering

continue to fuel speculation and scandal. Under the restraints of commercial anonymity, the legal parameters of due diligence also place a significant onus on the purchaser, the extent of which remains dependent upon court interpretations of the general principles of domestic law. Although this requirement is difficult to comprehend, lawyers must be thorough in their application of general law to such transactions.

Role of the agent

The role of the agent was examined in the 2008 US case of *Brady v Lyons*, wherein a buyer acquired an apparently counterfeit painting through a series of five agents and brokers. He subsequently sued for fraud and misrepresentation against a number of intermediaries. In granting the defendants' motion to dismiss, the New York Federal District Court noted that "for liability to exist for negligent misrepresentation or fraud ... there must be a relationship between the parties which gives rise to a duty owed". The court observed that, although the defendants knew that the work was a forgery and did not seek out Brady to so inform him, this did not, as a matter of law, give rise to liability.

More recently, the media has been following the saga of the 'Bouvier affair', which epitomises the vagaries that provoke bitter disagreements surrounding agency in the art market. The ramifications of the controversy concerning Swiss art dealer Yves

AT A GLANCE

- Lawyers who act for clients in high-value art transactions play a crucial role in the art market
- They should be conversant with both jurisdictional laws and the domestic laws of the other transacting party, as legal principles of good faith and imperatives of due diligence are highly variable
- Advising lawyers should also be familiar with the extensive international codes of practice and ethics



P.C.: WIKIMEDIA COMMONS

TO AVOID BEING UNWITTINGLY USED TO SET UP FRAUDULENT SCHEMES, A PRUDENT LAWYER MUST GATHER INFORMATION AND EVIDENCE TO SUBSTANTIATE INFORMATION PROVIDED BY THE CLIENT

Bouvier and Dmitry Rybolovlev, a Russian oligarch and art collector, entangled many along the way, including Sotheby's. *Au Lit: Le Baiser*, by Henri Toulouse-Lautrec (above), was consigned to Sotheby's in 2015. When it was subsequently sold for \$16 million, Mr Rybolovlev accused Sotheby's of not exercising due care and caution in facilitating the sale without knowledge of actual ownership. This emerged to be a trust controlled by Mr Rybolovlev, which deployed offshore shell companies to obscure his ownership of art. This case continues, and its legal outcome is eagerly awaited.

The above scenarios illustrate the complex layering and lack of accountability that art transaction anonymity creates. Lawyers should therefore be conversant with both jurisdictional laws and the domestic laws of the other transacting party, as legal principles

of good faith and imperatives of due diligence are highly variable. In Switzerland, for instance, art trade and auction professionals engaging in transactions concerning cultural property must comply with specific duties of diligence. These include verifying the seller's identity, recording and maintaining transaction documents, and granting relevant authorities access to the business premises. The Netherlands has also made a concerted effort to codify the concept of due diligence by seeking detailed circumstances of the acquisition of art and the steps taken by the buyer, commercial dealer, and auctioneer in order to establish good faith. In Ireland and Britain, however, the notion of due diligence in art transactions remains free of an obligatory legal framework.

In addition to knowledge of differing national laws, the advising lawyer should also

be familiar with the extensive international codes of practice and ethics – such as the *UNESCO International Code of Ethics for Dealers in Cultural Property*, the *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*, and the *code of ethics* of the International Confederation of Art Dealers – as violations of these codes can result in sanctions such as warnings, disciplinary actions, or dismissal from a professional body.

Judicial objectivity

The courts rely on judicial objectivity to make judgments in this area of law. In the *Malevich case*, presented before the Swiss Supreme Court, the collector had undertaken substantial research prior to buying the painting in 1989, including consulting an expert in Russian avant-garde art as to the authenticity of the work. It transpired that



THE SWISS SUPREME COURT CONCLUDED THAT THE COLLECTOR HAD NOT SHOWN SUFFICIENT DILIGENCE IN THIS CASE, AS IN LIGHT OF THE EXPERT'S WARNING HE SHOULD HAVE SOLICITED THE OPINION OF ANOTHER EXPERT TO DISPEL ANY DOUBT AS TO THE ORIGIN OF THE WORK

the expert had cautioned the collector about a stolen painting by Malevich thought to be on the market, but did not identify the relevant painting as the work in question. The Swiss Supreme Court concluded that the collector had not shown sufficient diligence in this case as, in light of the expert's warning, he should have solicited the opinion of another expert to dispel any doubt as to the origin of the work. On that basis, the court held that the collector had not employed all necessary due diligence when buying the painting, thus placing an arduous onus on the collector.

The courts applied a similarly severe interpretation of the law in the 2013 case *ACA Galleries Inc v Kinney*, which appeared before the New York Southern District Court in relation to business-to-business transactions. In this case, an art gallery sued an art dealer for selling a forged Milton Avery painting. The court dismissed the fraud claims, holding that ACA could not "establish justifiable reliance [on the dealer's misrepresentations] because it had the opportunity to fully investigate the authenticity of the painting but failed to do so". The court observed that, depending on the circumstances, diligence might entail seeking authentication through an artist's foundation, calling upon additional experts, requesting detailed documents, or consulting lawyers.

Both of the above cases generated a lengthy and costly onus on the purchaser of the painting, which inevitably stunted the fluidity of the art transaction.

The following trial highlights the conflict of interest between the art dealer owing a duty of care to its client and the rules surrounding *caveat emptor* imposed upon the art collector purchasing a work of art. In November 2011, the highly esteemed New York Knoedler Gallery became entangled in a fraud scandal when it was alleged to have sold dozens of previously unknown 'masterworks' by

well-known abstract expressionist artists to innocent collectors. In spite of numerous allegations that simmered under its commercial surface, it was not until the gallery sold to Pierre Lagrange, a financier and investment art collector, a purported Jackson Pollock for \$15.3 million, previously acquired by them for \$950,000, that legal action was brought. The resultant lawsuit before the Southern District of New York culminated in the closure of the gallery on 1 December 2011. An FBI investigation began the following day and a plethora of lawsuits against the gallery ensued, most settling within a short period of time.

However, it was not until January 2016 that a trial appeared before the US District Court in Manhattan, wherein Domenico De Sole, chairman of Tom Ford International and Auction House Executive, testified to the 2004 purchase of a fake Rothko from the Knoedler Gallery for the sum of \$8.3 million. The allegations made against the defendants were predicated on the gallery's:

- Duty to disclose material facts,
- Knowledge of material facts by a party bound to make such disclosures,
- Failure to discharge a duty to disclose,
- Scierter – a mental state embracing intent to deceive, manipulate, or defraud, which requires the purchaser to prove that the seller had prior knowledge that the artwork was not authentic, and
- Reliance.

Although no formal contract was created between the parties, the written statement accompanying the invoice was sufficient for De Sole to prove breach of warranty in contending that the identity of an artist was a material aspect of the art purchase and a fundamental breach, leading to economic loss and depriving him of what he was "entitled to expect". Frustratingly, this case settled for

an undisclosed amount the day before the gallery's director was due to take the stand, and legal clarification of these issues remain outstanding.

Authentication

As the contemporary art market has been flooded with fakes so exceptional they can deceive even the most diligent experts, so the increased potential for experts to be held liable for incorrect opinions resulting in costly litigation and reputational damage – including those made in good faith – has culminated in effectively silencing authentication boards and independent experts. This has inevitably hampered the verification of both unknown 'sleeper' works by well-established artists and lesser-known older works coming to the market.

Even the revered Sotheby's and Christie's experts have been duped. One instance occurred in 2016, when specialist experts from Sotheby's incorrectly authenticated a forged work of art from collector Giulano Ruffini. The painting in question, *Portrait of a Man*, had been attributed to the artist Frans Hals (hereinafter referred to as the 'Hals'). Sotheby's subsequent investigation revealed that the work had never been exhibited in the 350 years since the artist's death in 1666 and that its origins could only be traced to 2008. It further transpired that Ruffini had previously approached Christie's in Paris to examine it. They had also confirmed its authenticity and applied for a licence to export the painting to its London headquarters. However, this request was denied when the French Ministry of Culture declared it a national treasure, enabling the Louvre time to acquire the Hals for €5 million. In spite of a highly esteemed international panel of experts convened by the Louvre confirming it was an original, concerns regarding the lack of documentation in terms of provenance and title to the work



led them to relinquish their interest in the Hals. Shortly thereafter, a London-based art dealer, Mark Weiss, purchased the Hals from Mr Ruffini for a reported \$3 million. Sotheby's then received the work on consignment for sale from Mr Weiss in 2011 and sold it for \$10 million.

As a lawyer, expert opinion alone can be ineffectual, and it is therefore advisable to incorporate warranty clauses into the contract of sale. Some dealers include limited liability clauses stating that the dealer or seller does not make any warranties as to the authorship of a work and that liability is limited in reference to authenticity. Dealers may also include 'as is' clauses that specify that the work comes without any warranties as to its authenticity.

Concealment, layering, integration of forged works of art, and money laundering are just some of the advantages that anonymity brings to potential criminality. These are easily achieved through the purchase of high-value paintings via a myriad of corporate entities registered in offshore jurisdictions, the establishment of trust accounts to mitigate tax, and issuance of fake invoices executing fictitious purchases or fake auctions, where an accomplice buys an artwork with funds provided by the seller himself.

The frequent dilemma then is in determining how far a lawyer should investigate the background of the transaction. To avoid being unwittingly used to set up

fraudulent schemes, a prudent lawyer must gather information and evidence to substantiate information provided by the client.

An example of this was the subject of a recent *New York Times* article, which reported that US authorities had accused Malaysian officials of converting billions of dollars of embezzled public funds into art investments. The scam involved masterworks purchased at Christie's being held by a Cayman Island company that used them as collateral to obtain a \$107 million loan from Sotheby's in 2014.

Scope of due diligence

The scope of legal due diligence obligations in the art market is complex and wide-ranging. To optimise information flow, lawyers are urged to cooperate with neutral organisations that promote transparency throughout art transactions. The most dependable watchdog is the Art Loss Register, which uses a global team of experts to facilitate the recovery of stolen art, or art that has been misappropriated, by registering a lien or burden on the work of art. It is now customary art-market practice to carry out a pre-sale search in the register as part of the due-diligence process.

The reality of investing in the art market is that a middle ground must be found. No single sector is causing it to fail, and all market players must be accountable. Referrals to external apparatus, such as the Art Loss Register or art title insurance used as part of

art investment and corporate funds, may help to improve the overall efficacy of the market. An additional advantage of such external systems is that buyers need not incur the substantial personal costs of hiring specific experts on this matter.

Debates rage on as to whether lawyers should be the 'guardians' of the art market, or whether more regulation is needed in relation to art lawyers' due diligence obligations. These matters and a wide range of investment strategies will form the discussion base of the [ArtSummit Ireland Conference](#) to take place at The Merrion Hotel on 3 November 2017. [g](#)

LOOK IT UP

CASES:

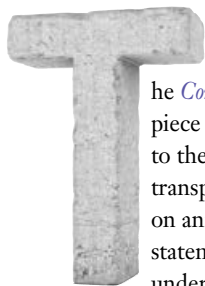
- *ACA Galleries Inc v Kinney*, no 1:2009cv06649 – Document 24 (SDNY 2013)
- *Brady v Lyons*, US Dist LEXIS 43512 (SDNY, 2 June 2008)
- *Decision of the Swiss Supreme Court ATF 139 III 305 (Malevich)*
- *De Sole v Knoedler Gallery*, 974 F Supp 2d 274 (SDNY 2013)
- *Lagrange v Knoedler Gallery*, no 11-cv- 8757 (SDNY, 1 December 2011)



Ringling the changes

The *Companies (Accounting) Act 2017* makes significant changes to part 6 of the 2014 *Companies Act* and removes various anomalies from it. **Karen Dunleavy** sets the alarm

KAREN DUNLEAVY IS CORPORATE KNOWLEDGE LAWYER AT MASON HAYES & CURRAN



The *Companies (Accounting) Act 2017* is a substantial piece of legislation that makes many new changes to the *Companies Act 2014*. Its main purpose is to transpose into Irish law the EU *Accounting Directive* on annual financial statements, consolidated financial statements, and related reports of certain types of undertakings. It also:

- Includes miscellaneous provisions to introduce new legal requirements for certain companies and also amends and clarifies other provisions of the 2014 act in order to fix a number of anomalies,
- Introduces a new part 26 of the 2014 act (payments to governments), which requires reporting on payments to governments by companies active in the mining, extractive and logging industries, and
- Amends part 6 (financial statements, annual returns, and audit) of the 2014 act and the related schedules to introduce changes to the preparation and governance of financial statements and related reports of companies,

including the introduction of an optional simplified regime for micro-companies, and more simplified accounting and disclosure requirements for small companies.

The legislation that commences the 2017 act is [SI 246 of 2017 \(*Companies \(Accounting\) Act 2017 \(Commencement\) Order 2017*\)](#) ('the first commencement order'), as amended by [SI 250 of 2017 \(*Companies \(Accounting\) Act 2017 \(Commencement\) \(No 2\) Order 2017*\)](#) ('the second commencement order').

Most of the provisions of the 2017 act came into force on 9 June 2017. Article 4 of the first commencement order provides that, subject to section 14 of the 2017 act, the act will apply to any financial year that commenced on or after 1 January 2017.

The 2017 act (section 14) actually allows companies to elect to adopt the new accounting provisions for financial years commencing on or after 1 January 2015. The coming into force of two provisions is deferred, and details relating to these are set out below.

The Companies Registration

AT A GLANCE

- The *Companies (Accounting) Act 2017* transposes the EU *Accounting Directive* into Irish law
- The directive deals with annual financial statements, consolidated financial statements, and related reports of certain types of undertakings, among other matters
- The 2017 act introduces changes to the preparation and governance of financial statements and related reports of companies



P.C. SHUTTERSTOCK

THE SCR AND MCR, SUBJECT TO MEETING CERTAIN THRESHOLDS, ARE AVAILABLE TO LTDs, CLGS, DACs AND ULCS. THEY ARE NOT AVAILABLE TO PLCs, PULs AND PULCS OR CERTAIN TYPES OF INELIGIBLE COMPANIES

Office (CRO) has confirmed that any related filing obligations will only be applicable for financial years beginning on or after 1 January 2017.

Anomalies and technical issues

After the *Companies Act 2014* came into force, a number of anomalies and technical issues were identified as arising under its provisions. The 2017 act addresses some of these issues. It is anticipated that the *Companies (Statutory Audits) Bill 2017* will fix more anomalies and issues identified under the 2014 act.

The issues addressed include:

- *Debt securities admitted to trading or listed*: the 2017 act clarifies the position concerning private companies limited by shares that converted to an LTD under the 2014 act and that had debt securities that were validly admitted to trading or listed before 1 June 2015. It provides that restrictions on LTDs having debt securities, which are admitted to trading or listed on any market, only apply to securities issued after 1 June 2015.
- *Merger relief*: under the 2014 act, merger relief was only available under section 72 to share-for-share transactions involving two Irish incorporated companies. Section

72 provided that, where an Irish company acquires at least a 90% interest in another Irish company in exchange for the issue of shares in the acquiring company, then the acquiring company is not required to record any share premium on the transaction. Under the 2017 act, the merger relief provisions have been amended to include transactions where the acquired company is a 'body corporate', which means they now apply to foreign companies too.

- *Definition of credit institution*: the 2014 act expressly states that an LTD "shall not carry on the activity of a credit institution". The 2017 act amends the



THE MAJORITY OF THE 2017 ACT INTRODUCES ACCOUNTING RELATED CHANGES TO THE PREPARATION AND GOVERNANCE OF FINANCIAL STATEMENTS, THE AUDIT OF IRISH COMPANIES, AND THE FILING OF ANNUAL RETURNS

during liquidation. The court noted that an amendment to the law would be necessary “to reverse the undoubtedly unsatisfactory outcome of this decision”. The 2017 act amends the 2014 act to provide that the crystallisation of a floating charge by notice prior to a liquidation, as was the case in the *Belgard Motors* case, will not affect the priorities of preferential creditors in that liquidation, who will rank ahead of the holders of floating charges.

Unlimited company name

Under the 2014 act, the registered names of all unlimited companies are required to end in ‘unlimited company’ (UC) or the Irish language equivalents. The 2014 act gives the minister the power to exempt a company from ending its name accordingly in special circumstances. The 2017 act removes this exemption. However, any companies that were granted the ministerial exemption prior to the commencement of the 2017 act will not be affected.

End of ‘non-filing structures’

The scope for unlimited companies to avoid filing their financial statements in the CRO has been reduced significantly under the 2017 act. This is because the 2017 act amends the definition of ‘designated ULC’ to make it much broader. Under the 2014 act, Irish unlimited companies, at least one of whose members was a non-EEA incorporated unlimited liability company, fell outside the definition of a ‘designated ULC’ and, therefore, were not required to file financial statements. Many Irish groups availed of this measure and put in place what are known as ‘non-filing structures’.

However, as a result of the new, much broader definition of a ‘designated ULC’, most types of unlimited companies that currently form part of a typical non-filing structure will fall within the scope of the new definition. As a result, they will be required to file financial statements with the CRO for financial years commencing on or after 1 January 2017. The new definition of ‘designated ULC’ also includes an unlimited company that is a holding company with a limited liability subsidiary, but this specific part of the definition will only come into operation for financial years beginning on or after 1 January 2022.

definition of ‘credit institution’ to “a company or undertaking engaged in the business of accepting deposits or other repayable funds from the public and granting credit for its own account”. This change means that any group companies that engage in intra-group lending or act as treasury companies will no longer run the risk of being regarded as ‘credit institutions’. The consequence of the amended definition also means that a group treasury company can be an LTD.

- *Clarification on requirement to register charges over shares in a foreign company:* the 2017 act clarifies the position that a charge over shares in a foreign body corporate is not required to be registered in the CRO in order to be enforceable.



- *Priority of preferential debts over floating charges:* in a 2015 Supreme Court case (*Re JD Brian Motors Ltd* – the ‘Belgard Motors’ case), the court held that a notice served prior to the commencement of a winding-up can validly crystallise a floating charge. This gave priority to that charge over the claims of preferential creditors

FOCAL POINT

NEW THRESHOLDS

The criteria for companies to qualify as ‘micro’, ‘small’ and ‘medium-sized’ are set out in the table below. To qualify for a category, a company must not exceed two of the three thresholds set out in the

table. The new thresholds are a significant increase from the thresholds applicable to ‘small’ and ‘medium’ companies under the 2014 act, which are set out in italics in the table below.

	MICRO	SMALL	MEDIUM
Net turnover	€700,000	€12,000,000 <i>(€8,800,000)</i>	€40,000,000 <i>(€20,000,000)</i>
Balance sheet total	€350,000	€6,000,000 <i>(€4,400,000)</i>	€20,000,000 <i>(€10,000,000)</i>
Employees	10	50	250



MOST TYPES OF UNLIMITED COMPANIES THAT CURRENTLY FORM PART OF A TYPICAL NON-FILING STRUCTURE WILL BE REQUIRED TO FILE FINANCIAL STATEMENTS WITH THE CRO FOR FINANCIAL YEARS COMMENCING ON OR AFTER 1 JANUARY 2017

Branch of an external company

Part 21 of the 2014 act applies to foreign limited liability bodies corporate that establish an operation that constitutes a 'branch' in Ireland. Such foreign companies are required to file certain information and documents with the CRO. In addition, they must file accounts every year.

The 2017 act proposes to expand the application of part 21 to include any foreign undertaking whose members' liability is unlimited and that is a subsidiary undertaking of a body corporate whose members have limited liability. The relevant section of the 2017 act is section 80.

While the first commencement order sought to commence this provision, the second commencement order has now delayed its commencement. Once commenced, this change will require many more foreign entities to comply with part 21 of the 2014 act.

Disclosure of payments

The 2017 act introduces a new part 26 of the 2014 act. Its provisions require the directors of a company that is a larger company or a relevant company, where such company operates in the mining or extractive industries or is involved in the logging of primary forests, to prepare and file annual reports on payments made to governments.

Accounting changes

The majority of the 2017 act introduces accounting-related changes. These amendments will introduce changes to the preparation and governance of financial statements, the audit of Irish companies, and the filing of annual returns.

The 2017 act introduces a new micro-company regime (MCR) and more relaxed accounting and disclosure requirements for companies that qualify under the small-company regime (SCR).

The SCR and MCR, subject to meeting certain thresholds, are available to LTDs, CLGs, DACs and ULCs. They are not available to PLCs, PULs and PULCs or certain types of ineligible companies.

Micro and small-sized companies will be exempt from certain disclosures in their financial statements, with more extensive disclosure exemptions for micro-companies, including an exemption from disclosing details of directors' remuneration.

Abridged financial statements

The 2017 act removes the exemption available to medium-sized companies from filing abridged financial statements and, as a result, they must file full financial statements. The revised small-company thresholds will be the criteria for abridgement of financial statements and also apply when deciding whether a company can avail of the audit exemption.

More companies with subsidiaries will need to produce group financial statements, as the exemption on the grounds of size is limited to micro and small companies.

Financial reporting framework

The 2017 act provides that companies may change their financial reporting framework from International Financial Reporting Standards (IFRS) entity financial statements to *Companies Act* entity financial statements every five years in the absence of a relevant change of circumstances.

Guarantee exemption


A subsidiary of an EEA holding company is exempt from attaching its financial statement to its annual return and must instead file the statutory financial statements of its parent company if it satisfies certain conditions. One of the conditions is that the parent company gives an irrevocable guarantee in favour of its subsidiary for the whole of the relevant

financial year. The breadth of the parent guarantee has been widened under the 2017 act to cover any "commitments entered into by the company", including amounts shown as liabilities in the statutory financial statements of the company.

New obligations for funds

A new obligation is introduced under the 2017 act, which provides that investment companies and UCITS registered under the 2014 act must file financial statements and directors' reports in the CRO.

The 2017 act makes significant changes to part 6 of the 2014 act. These changes will affect financial years of companies, commencing on or after 1 January 2017. The 2017 act makes a number of helpful amendments to other provisions of the 2014 act to remove various anomalies.

It is important for companies and their advisers to assess and understand how these new company law changes will affect them. 

LOOK IT UP

LEGISLATION:

- [Accounting Directive \(2013/34/EU\)](#)
- [Companies \(Accounting\) Act 2017](#)
- [Companies \(Statutory Audits\) Bill 2017](#)
- [Companies Act 2014](#)
- [SI 246 of 2017 \(Companies \(Accounting\) Act 2017 \(Commencement\) Order 2017\)](#)
- [SI 250 of 2017 \(Companies \(Accounting\) Act 2017 \(Commencement\) \(No 2\) Order 2017\)](#)

CASES:

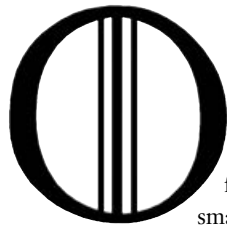
- [Re JD Brian Motors Ltd \[2015\] IESC 62](#)



Game of thrones

Working in-house is a very different sort of game to private practice. **Eamonn Kennedy** outlines the practical aspects of the work of an in-house solicitor

EAMONN KENNEDY IS A SOLICITOR AND DIRECTOR OF LEGAL AFFAIRS AT RTÉ



Overall, the experience of practising law in the setting of a corporation is quite different from the experience of a law firm, big or small. The most obvious difference is that practising law in a firm centres around the encouragement of clients in the door, the obtaining of valuable instructions, the carrying out of work, and ensuring that the firm receives payment of the fees invoiced.

In contrast, in a legal department or solicitor's office in a corporation, the key concern is the business of the corporation. While the in-house lawyer must still provide high quality work to the client/employer, the absence of billing and time recording (for the purposes of invoicing) will be the most obvious difference to somebody moving from private practice to in-house work.

The most important action a new in-house solicitor can take is to learn as much about the business, as soon as possible. Most executives within a company will not expect a new legal advisor to be completely aware of the issues and realities of the particular industry in which the company operates – but there will be an expectation that, relatively

soon, the legal advisor will get to grips with the most important issues and be seen to be developing an empathy with the various managers and executives and the problems they face.

There is a close correlation between an in-house solicitor having extensive knowledge of both the corporation and the environment in which it operates, and the expectation of the client/employer that such a solicitor will be able to deliver practical legal advice in a relatively short time frame, for example, a day, a couple of hours or indeed within minutes!


This is to be contrasted with how practitioners in private practice operate, particularly in the context of offering commercial advice and assistance to corporate clients.

≡ AT A GLANCE

- In a legal department or solicitor's office in a corporation, the key concern is the business of the corporation
- It is essential that the in-house solicitor has an understanding with the client/employer as to the circumstances in which outside legal assistance should be sought
- It is important for the in-house solicitor to ensure that the client/employer is appropriately managed, including the expectations of that client/employer

Cost/benefit analysis

This leads me on to the discussion of whether a company will or should expect the in-house solicitor to tackle all legal problems or issues that arise. The essential reason why a company has decided to employ a solicitor in-house is a financial one. It believes that having a solicitor on what is effectively a retainer (the salary) means that legal advice or assistance can be obtained more

GOING TO IN-HOUSE PRACTICE FOR EVEN A SHORT PERIOD OF TIME CAN BE VERY USEFUL FOR CAREER DEVELOPMENT

cheaply relative to what a law firm would bill on a case-by-case basis.

However, given the complexity of modern life, it is unlikely that the in-house solicitor or his colleagues will be able to handle all legal work. Therefore, it is essential that the in-house solicitor has an understanding with the client/employer as to the circumstances in which outside legal assistance should be sought and, in particular, the circumstances in which external solicitors firms should be briefed. Indeed, it could be said that the in-house solicitor is under an obligation to indicate relatively early after a request is received to do particular work, whether or not the solicitor or his colleagues can actually handle that work competently and efficiently.

If in reality there are difficulties with carrying out the instructions, then the client/employer is best served by an early indication that an external firm should be briefed. You will not be thanked for failing to flag a significant issue as early as possible.

Differences in workload

In a firm, the workload usually involves distinct projects to be completed over a period of time, usually weeks or months. In the context of the corporate environment, there are usually a lot more 'quick answer' type problems to be dealt with. New problems will arise on a daily, if not hourly basis, from the flow of the business – and the challenge for the in-house solicitor

is therefore to juggle the expanding and changing workload, and to decide what matters are to be dealt with as a matter of priority. In these circumstances, it is often the case that the request received by way of a short telephone call may well be more important and will take precedence over the file containing many drafts of documents and correspondence.

In such circumstances, the in-house solicitor must be able to think fast on his or her feet, to get to the core of the issue, and to outline or point out to the manager or executive, relatively quickly, the appropriate direction that is advisable. Obviously one cannot be expected to provide exact advice without the necessary research, time, and



Q FOCAL POINT

RULES OF THE GAME

The third edition of *A Guide to Good Professional Conduct of Solicitors* (October 2013) has useful guidance for the solicitor employed in an organisation/corporation.

Three particular matters that should be of concern are dealt with in the guide:

- The independence of the solicitor employed in an organisation (p3),
- The issue of how a solicitor in an organisation receives instructions (p8), and
- The duties of a solicitor as an officer of the court (p37).

In relation to the independence of the solicitor, the guide indicates that, in situations where an employer instructs a solicitor to act in a way that, in the opinion of the solicitor, would amount to unprofessional conduct or may even be illegal, the solicitor should advise the employer that those instructions cannot be acted upon. It is pointed out that the solicitor will share the common objectives of the organisation but, at the same time, should maintain an objective and professional stance.

The guide contains some important and practical advice in relation to instructions and points out a reality for most in-house solicitors – instructions come from one or more employees in an organisation. However, the reporting context within which a solicitor operates is very important: "If it is too limited, it makes the exercise of the solicitor's function very difficult".

It is suggested that when difficulties arise, it is important that the senior or sole solicitor has effective lines of communication, if not direct access, to an executive director. This is particularly important in the context of significant matters for a corporation, where the chief executive or other executive directors should be fully apprised of the legal advice and not have to rely on second-hand accounts.

The guide acts as a reminder that, not only do solicitors have duties and responsibilities in relation to clients, but of equal importance are the duties of solicitors as officers of the court. While no exhaustive list of these duties is provided for by legislation, case law has given some guidance. The superior courts have a supervisory role over solicitors as officers of the court, different to that of the Law Society or Legal Services Regulatory Authority, and can discipline or penalise solicitors who have failed in their duties as officers of the court.

The prudent course of action for all in-house practitioners is to inform the chief executive and secretary of the company concerned of the above important Law Society ethical guidelines – that is, the fact of the legal independence of the solicitor employed and the necessity to have clear reporting rights to senior management in a corporation, up to and including the chief executive and/or board member.

In this context, it would be very useful to point out to the chief executive/secretary the text contained in the first paragraph of p15 of the Law Society's *Guide for Solicitors Employed in the Corporate and Public Sectors* (2012): "Solicitors acting in private practice and in-house share the same professional conduct obligations, including maintenance of professional independence, conflict of interest problems and confidentiality. All solicitors admitted to the Roll must observe the highest professional standards and adhere strictly to their duties as officers of the court, as required by the *Solicitors Acts 1954 to 2011*. Moreover, it should be emphasised that the concept of 'misconduct' in the *Solicitors Acts* applies equally to solicitors working in-house as it does to private practitioners. 'Misconduct', as defined in the *Solicitors Acts*, in summary, comprises:

- The contravention of a provision of the *Solicitors Acts* or any order or regulation made thereunder,
- Conduct tending to bring the solicitors' profession into disrepute."

One would also do well to bear in mind the statement of Mr Justice Kelly in *Balla Lease Developments Ltd v Keeling* ([2006] IEHC 415): "The court is entitled to expect the highest standards of probity and ethical behaviour on the part of solicitors. That is particularly so in the conduct of litigation."

thought. However, the in-house solicitor will be expected to look at issues pragmatically and exhibit good judgement, even if time pressure is such that little or no written advice can be given to the person from whom sometimes hurried instructions are received.

Risk assessment

In my opinion, the in-house solicitor who develops the ability to analyse and come quickly to opinions on risk assessment

across the variety of problems that face the company will likely be appreciated and better rewarded. Obviously, certain skills are expected, regardless of whether or not the solicitor is in private practice or retained in-house – for example, good writing skills.

The ability to view the proposed business, financial, or other corporate decision or plan in the round is where the in-house solicitor can uniquely contribute most. The in-house legal advisor is surely in the best position

to stand back from the detail of a given transaction and take a view on the overall legal risk and opportunity on the basis of the quality of his understanding of both business and client.

Day-to-day management

It is the lot of the in-house lawyer to be involved in 'firefighting'. But it is also the case that many 'fires' can and should be avoided. An important duty and function of



THE IN-HOUSE LEGAL ADVISOR IS SURELY IN THE BEST POSITION TO STAND BACK FROM THE DETAIL OF A GIVEN TRANSACTION AND TAKE A VIEW ON THE OVERALL LEGAL RISK AND OPPORTUNITY ON THE BASIS OF THE QUALITY OF HIS UNDERSTANDING OF BOTH BUSINESS AND CLIENT

in-house legal advisors is to contribute to the management of legal risk by:

- Helping, on an ongoing basis, to identify areas of legal risk that merit priority,
- Contributing to management discussion to enable processes to be put in place to minimise risk and to ensure regulatory compliance,
- Contributing to establishing processes for relationship management with suppliers, clients, and other third parties, and
- Developing training sessions and materials to raise awareness of legal issues.

It is particularly important for the in-house solicitor to have considered, prior to any issue or problem arising, how conflicts or disagreements over the carrying out of work or strong disagreements about a legal opinion are to be handled.

It is essential that the in-house solicitor, at an early stage of the relationship, makes it clear (without being trenchant) that he is required by law to be independent and cannot be expected to change his opinion for no good reason, or to engage in any practice that would be seen to be unethical and bring the risk of disciplinary proceedings.

If there is any degree of unhappiness in the relationship between a solicitor and client, the solicitor in private practice has the luxury of being able to cease to act for the particular client. In the in-house situation, the matter is obviously more extreme, in that if the relationship breaks down, then the in-house solicitor will, in all probability, have to end the employment relationship.

However, just like private practice, it is important for the in-house solicitor to ensure that the client/employer is appropriately managed, including the expectations of that client/employer. We all



are familiar with the situation of struggling to cope with the workload and to get matters completed within deadlines. We can't be successful all the time – accordingly, it is appropriate and necessary that we manage the relationship and ensure that we monitor the work and communicate properly with those who instruct us to ensure that any problems or delays are brought to their attention and issues are dealt with on a timely and professional basis.

In recent years, the significance of in-house legal practice has increased considerably in Ireland. Where at one time in-house practice was considered to

be unchallenging and second rate, this is no longer the case, as corporations of a significant size see the advantages of retaining an in-house legal function.

From the perspective of the in-house solicitor, it can, in many instances, give an opportunity to specialise in an area where the person has a particular interest and enable that person to pursue a rewarding career.

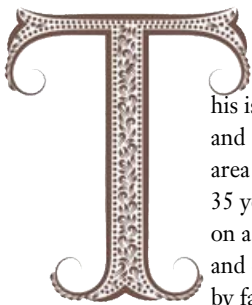
In terms of career experience, it is fair to say that going to in-house practice for even a short period of time can be very useful for career development and is to be recommended.



A tale of two gentlemen

This year is the 170th anniversary of the death of the first President of the Law Society – Josias Dunn. **Mary Gaynor** and **Mairead O’Sullivan** delve into the archives to uncover the story of Dunn and his partnership with Richard Meade

MARY GAYNOR IS HEAD OF LIBRARY AND INFORMATION SERVICES AND
MAIREAD O’SULLIVAN IS DEPUTY LIBRARIAN AT THE LAW SOCIETY



his is the story of two solicitors, Josias Dunn and Richard Meade, both natives of the Kinsale area of Co Cork. Although they qualified over 35 years apart, their lives were intertwined, both on a professional level in their legal practice, and on a personal level by family connections.

They both held important offices in the history of the establishment of the Society of Attorneys and Solicitors – Josias Dunn becoming its first president in 1841-1847, while Richard Meade served as vice-president from 1848-1860.

Father of the profession

Elected by his peers to become the first president of the Law Society of Ireland in 1830, Josias Dunn also became the president of its successor, the Society of the Attorneys and Solicitors of Ireland, in 1841. His appointments were the culmination of a highly successful legal career, and also an acknowledgment

of his endeavours to secure independent and professional representation for solicitors.

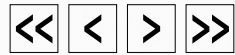
Josias Dunn was born in Kinsale in 1760, the eldest son of William Dunn and Mary Kean. Very little information exists about his early life, but we do know that he was admitted to the

King’s Inns in Easter 1782 and married Elizabeth Stephens in St Bride’s Church, Dublin, in 1787.

At the time when Dunn was admitted to the King’s Inns, there were rumblings of discontent among his solicitor and attorney colleagues in relation to the regulation of the profession. Many were dissatisfied with their situation and felt that they, as a body, lacked an independent voice. Eric Plunkett writes: “Although, numerically, attorneys formed a substantial, if not the larger, part of the membership of the King’s Inns, and paid yearly dues in common with the barrister members, they had no share in the government of the Inns, the Benchers being selected from among

AT A GLANCE

- Josias Dunn and Richard Meade both held important offices in the history of the establishment of the Society of Attorneys and Solicitors
- In 1791, Josias Dunn became a founding member of the Law Club of Ireland
- The Law Society of Ireland was founded in 1830, and Josias Dunn was elected its first president
- Richard Meade became a member of the Law Club and was also involved in the formation of the Law Society



Josias Dunn.

Lafayette



To the Right Hon. and Hon. the Benchers of the
Hon. Society of the King's Inns.

THE MEMORIAL OF *Josias Dumas*
SHEWETH,

THAT he is a Member of this Society, and an At-
torney of the Courts of *King's Bench Common*
Place & Exchequer

THAT he resides in *N^o 8 Kildane*
Street, in the City of Dublin, and attends regularly His Majesty's Courts
of Justice therein.

THAT he has but *two* — Apprentices
and is desirous to take *Rich^d. Meade* — to be
an Apprentice, if the Benchers shall approve thereof.

AND the Petition of the said *Josias Dumas*
SHEWETH,

THAT he is the *third* Son of *John Meade* ^{*late*} of *Kinsale*
in the *County* of *Cork* *Co.* and *deceased*. *Richard Meade*
otherwise ~~Wife~~ *Cooker* *his* *Wife*

THAT he is of the full Age of Sixteen Years, as
by the annexed * Affidavit may appear.

THAT he was educated at the School of *St. Peter's*
Hewart in the *town* of *Kinsale* and was instructed in
the Latin Language in the following Latin Books, viz., *Cornelius Nepos*
Sallustius, *Virgil* *Horace* & *Terence*

Petitioner therefore prays that the above named
may be permitted to take him as an Apprentice.

Richard Meade

*The Affidavits of Age and Education must be Sworn either before a Judge or Master in Chancery,
a Master Extraordinary, or Commissioners, will not answer.



AT THE TIME WHEN DUNN WAS ADMITTED TO THE KING'S INNS, THERE WERE RUMBLINGS OF DISCONTENT AMONG HIS SOLICITOR AND ATTORNEY COLLEAGUES IN RELATION TO THE REGULATION OF THE PROFESSION

the barristers only” (*Record of the Centenary of the Charter of the Incorporated Law Society of Ireland: 1852-1952*). Certainly, there was a strong appetite for professional independence and a leaning towards secession.

After qualifying as a solicitor, Dunn opened up a practice at 8 Kildare St, Dublin, now the location of the National Library of Ireland. His first apprentice was his nephew Josias Dunn Jr, who was admitted to the King's Inns in 1824. He was the second son of Josias's younger brother George Newman Dunn, a brewer and malster from The Glen, Kinsale.

In 1791, Josias Dunn became a founding member of the Law Club of Ireland, the first institution formed for the advantage of attorneys and solicitors as a body. Very little information is known about the club, but we do know that it originally had 100 members and occupied the whole of 13 Dame St in Dublin.

According to Plunkett: “It is not unreasonable to suppose that the idea of forming the Law Society of Ireland was born in the Law Club.” A similar society had been founded in London in 1739, and “the success which had attended that society's efforts to improve the position of its members, was an example to the attorneys of Dublin”.

Founding days

The Law Society of Ireland was founded in 1830, and Josias Dunn was elected as its first president. The Society's main objectives were “the preservation of the rights and privileges of attorneys, the promotion of useful communication and good feeling among members of the profession, fair and honourable practice, and the adoption of such measures as may best be calculated to ensure responsibility to the profession and advantage to the public” (*Record of the Centenary of the Charter of the Incorporated Law Society of Ireland: 1852-1952*).

In 1841, the Society was reconstituted as the Society of the Attorneys and Solicitors of

Ireland, and Dunn was re-elected as its first president. The formation of the new Society was the culmination of a long and protracted negotiation with the Benchers to acquire “new rooms for the use of members at the rere of the Four Courts” (minutes, 19 May 1841, available to view on the Law Society Library's catalogue).

Dunn's practice flourished, and he also acted as examiner in the Court of King's Bench and solicitor to the Auditors of Public Accounts and the Office of Minors and Lunatics.

Josias Dunn led a productive life outside his work in the legal profession. He joined the Royal Dublin Society in 1802 after being nominated by William Furlong and Jeremiah D'Olier. He was also an elected member of the natural philosophy committee, 1816-1820, and he became a trustee to the Mechanics' Institution in 1825.

Numerous charitable donations by Dunn are recorded in the *Freeman's Journal*, including donations for the erection of a new Roman Catholic Church of the Nativity at Chapelizod in 1843, donations to Blanchardstown Parochial Schools for poor children to “receive the benefits of a moral and useful education without any religious distinction” (*Freeman's Journal*, 22 September 1827) and to the Cry of the Poor, Stranger's Friend Society for visiting and relieving distressed strangers and the sick and industrious poor of every persuasion (*Freeman's Journal*, 12 March 1830). He also donated £2.0s.0d to the distressed family of a Mrs Leonard, whose entire property on Dame Street was “lately consumed by fire” (*Freeman's Journal*, 12 February 1829) and gave a donation also to the family of Mr Daniel Lawrence, 9 Nassau Street, whose house blew down in a hurricane in 1839.

Dunn died on 10 August 1847, aged 87, at his home in Ashtown Lodge, Castleknock, Dublin. The following year, on 13 May

1848, at the general quarterly meeting of the members of the Society, his colleagues gathered for the reading of the seventh annual report of the Society, where it is recorded that the Society's members lamented the passing of their esteemed colleague and described him as the “time-honoured and universally respected president of this society, who had filled the office of president of the former law society – a gentleman who, by the strictest integrity, and the faithful exemplary discharge of his various professional duties, had elevated himself to a high position in the legal profession of which he was justly considered an ornament, and who by his amiable disposition and most conciliating manner averted every feeling of envy, and secured to himself the respect of all who had the pleasure of his acquaintance”.

At the same meeting, the committee also recorded that they were “indebted to Mrs Dunn for a very splendid bust of her late respected husband, which had been but recently executed in marble, by the eminent artist Mr Christopher Moore” (*Dublin Morning Register*, 7 April 1825). Unfortunately, no record of the bust's location exists today, and it is thought to have been destroyed by the fire at the Four Courts in 1922.

By the time Josias Dunn died, he had established a long-standing business partnership with solicitor Richard Meade, who was originally his apprentice and who had married his wife's niece. Richard Meade continued to practise at 8 Kildare Street under the title of Meade & Son.

Solicitor and philanthropist

Richard Meade was born 40 years after Josias Dunn, in 1801. He was the third son of Rev John Meade of Kinsale and Alice Corker, who was the daughter of Venerable Chambre Corker of Ballymaloe and Glanmire, archdeacon of Ardagh.



IT WAS DECIDED TO APPLY THE FUNDS OF THE MEADE MEMORIAL TO ESTABLISH A CHARITY FOR THE RELIEF OF DISTRESSED ATTORNEYS AND SOLICITORS, THEIR WIDOWS AND CHILDREN TO BE CALLED ‘THE SOLICITORS’ BENEVOLENT ASSOCIATION’

Richard’s forefathers were clergymen. His paternal grandfather was Rev William Meade of the parish of Ringcurran, Kinsale, and his paternal grand-uncles were Rev Robert Meade of Dunderrow and Rev John Meade of Ballymartle, Co Cork. Richard’s

grandfather and grand-uncles were cousins of John Meade, first Earl of Clanwilliam. He was educated at the Kinsale Classical School under the Rev John Stewart.

Richard’s father died in 1816 and, the following year, Richard (then aged 16) was

admitted to the King’s Inns and became apprenticed to Josias Dunn. Five years later, he married Catherine Stephens, who was a niece of Josias Dunn’s wife, Elizabeth. The marriage took place in St Anne’s Church, Dublin (marriage notice, *Saunders’s Newsletter*, 26 December 1822).

Richard and Catherine went on to have six children. One of their sons, Josias Dunn Meade, also became a lawyer, starting his legal education in 1841. Another son, John Meade, is recorded as having died at the home of his uncle Josias Dunn in Ashtown Lodge, Castleknock, in 1837, aged 14. Their second son, William Meade, died in 1859 (*Freeman’s Journal*, 15 February, 1859), and their youngest son, George Meade, died aged ten years in 1856 (*Southern Reporter and Cork Commercial Courier*, 9 April 1856). Three sons predeceased their father. A daughter, Eliza Meade, went on to marry her cousin John Meade in 1851.

Richard Meade became a member of the Law Club of Ireland and was involved, with Josias Dunn, in the formation of the Law Society in 1830. A decade later, both men were at the forefront of the group of solicitors who established the Society of Attorneys and Solicitors in 1841. Meade’s name is listed in eighth place in the ballot for the Society’s first committee of 31, and his name consistently appeared towards the top of the ballot for many years.

1848-1860

William Goddard succeeded to the office of president on the death of Josias Dunn in 1847. Richard Meade and Richard JT Orpen became vice-presidents. During this period, the Society of Attorneys and Solicitors busied itself with the careful examination of parliamentary bills, lobbying for the appointment of two extra taxing masters

FOCAL POINT

MEADE MEMORIAL FUND

After the death of Richard Meade, his colleagues met in the Mansion House on 13 April 1860. The meeting was chaired by the Lord Mayor, Redmond Carroll, and it was resolved to appoint a committee to carry out the objects of the meeting, that is, to inaugurate a testimonial fund in the memory of Richard Meade.

“Mr Meade had been for many years a practising solicitor; he commenced his profession in partnership with the late Josias Dunn and from the decease of that gentleman up to the period of his own death, he possessed to the greatest extent the confidence and friendship of many of the leading families in this country; but while enjoying this well-deserved and honourable station in society, his position among his own profession was most remarkable. He was universally respected and looked up to by them, and whether in the ordinary intercourse of practice, the mutual satisfaction resulting to his profession from his decisions on differences constantly submitted to him, or in the generous encouragement afforded to his juniors, we feel that the attorneys and solicitors of Ireland have, in the death of Mr Meade, sustained a serious loss” (*The Dublin Evening Post*, 14 April 1860).

Subscribers to the Meade Memorial Fund raised £996.5s.7d. and, by the end of 1864, the first annual report states that there were 32 life subscribers who contributed £10.10s and 109 annual subscribers donating £1.1s. This report highlights the donation of the “late John Orpin”, who had donated a cheque for £50 to support the prosperity of the association.

It was decided to apply the funds of the Meade Memorial to establish a charity for the relief of distressed attorneys and solicitors, their widows and children – to be called ‘The Solicitors’ Benevolent Association’ – and rules and regulations were drawn up. The association was established in 1863. In the annual report of the directors for January 1865, the preamble states that, at a general meeting of subscribers, “it was resolved that it [the fund] should be applied in a manner consistent with his [Richard Meade’s] known benevolence and philanthropy”.

Richard Meade’s life was the inspiration for the formation of the Solicitors’ Benevolent Association. The good work continues 154 years later. (Annual reports of the Solicitors’ Benevolent Association 1863-1945 are available in the Law Society Library).



for the Court of Chancery (*Annual Report*, 1848), petitioning in conjunction with the Law Society of London for the abolition of the annual certificate duty payable by attorneys and proctors, and many more endeavours, including the encouragement of members to join the Society and to improve the Solicitors' Hall in the Four Courts. Halfway through Richard Meade's vice-presidency in 1852, the Society was incorporated by royal charter. (It was not until the supplemental charter in 1888 that the Society of the Attorneys and Solicitors of Ireland was renamed the Incorporated Law Society of Ireland.)

Richard Meade remained a vice-president until his death in 1860, ten days after the death of William Goddard. The annual report of the Council for year ending 1860 describes the "void which death has made

amongst them and in the Society, by the removal of two most valued and respected members, your late president and vice-president, Mr William Goddard and Mr Richard Meade – who were cut down within ten days of each other – the former in the fullness of years, the latter in the full vigour of manhood. They had, for many years, gone hand in hand together in the discharge of the duties of their high offices in your Society, giving their best attention to every matter calculated to raise the social position of our profession, and to advance the best interests of your Society. They have gone to their rest, respected and regarded by all, leaving for those who follow them bright examples of the course they should run who hope to win for themselves the like esteem of their fellow men."

Members subscribed to a fund to procure

portraits of the departed, which were painted from photographs by the eminent painter Catterson Smith, and placed in the Solicitors' Hall in the Four Courts.

A handwritten note appears in the annual report for 1860, signed 'WGW' (William George Wakely, secretary): "The Solicitors' Hall and these two portraits contained therein were destroyed through civil commotion in June 1922."

August marked the 170th anniversary of Josias Dunn's death. During that time, the profession has continued to develop and flourish, with a growth in membership from 281 in 1841 to 11,122 in June 2017. Dunn and Meade have left legacies of legal and philanthropic endeavours, and their contributions to the Society and the betterment of the profession will never be forgotten. [g](#)

Non executive director (voluntary) LEGAL EXPERTISE



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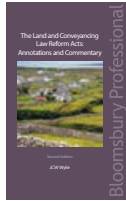
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BOOKS



JUDICIAL REVIEW (3RD EDITION)

Mark De Blacam. Bloomsbury Professional (2017), www.bloomsburyprofessional.com. ISBN: 978-1-78043-702-6. Price: €265.

It speaks volumes about the content of this book that the obligation to write a review quickly became secondary to my desire to extract all the information this book could provide.

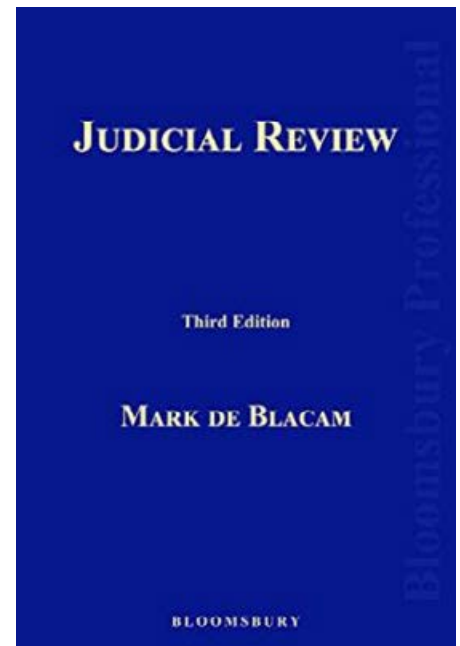
The book is laid out in ten parts – Part 1 deals with the review framework, including the principles and effect of review, and a detailed discussion on *locus standi* and how the substantial interest test has become a sufficient interest test in planning cases by reason of the *Environmental (Miscellaneous Provisions) Act 2011*.

Parts 2-5 deal with grounds for review – review for error, unfairness, breach of fundamental rights, and unreasonableness/abuse of power. Within each of those parts are specific chapters devoted to aspects of that ground, such as bias, requirement for fair hearing, and legitimate expectation under the unfairness heading.

Considerable time is devoted to proportionality, with *Meadows v Minister for Justice* featuring again and again. The author is willing to express his views throughout, including in this chapter, where he notes that the conflation of reasonableness and proportionality review (in *Meadows*) is open to the criticism that it lacks coherence.

There is a comprehensive discussion on unreasonableness in Part 5 and, given the conflation just discussed, it is not surprising to see *Meadows* feature prominently again here.

Part 6 addresses defences, including delay, futility, failure to exhaust alternative remedies, and discretion, with a particularly interesting commentary on the Supreme Court's approach to the latter.



Part 7, focusing on remedies, is quite concise, yet still provides sufficient detail, particularly in the discussion of the *Okunade* case, which the writer notes is a decision of “unquestionable importance”.

Part 8 deals with procedure, from initiation right through to appeal and costs, covering all aspects – for example, even setting out exactly what is to appear in the appeal booklet. Parts 9 and 10 address special cases under statute and other forms of review.

This is an excellent book, which is well laid out and pays particular attention throughout to the application of various principles by the courts. In short, this book is a ‘must have’ for lawyers who practise in this area.

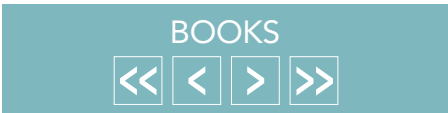
Patrick Healy is a senior executive solicitor in the litigation section of Dublin City Council's Law Department.

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FUNDAMENTALS OF THE IRISH LEGAL SYSTEM: LAW, POLICY AND POLITICS

Tanya Ní Mhuirthile, Catherine O’Sullivan, Liam Thornton. Round Hall (2016), www.roundhall.ie. ISBN: 978-1-85800-712-0. Price: €80.

Foundational textbooks on Irish law or the Irish legal system by their very nature cast a long shadow on the reading landscape of solicitors. Two generations of Irish solicitors have likely had recourse to Byrne and McCutcheon’s *The Irish Legal System* as their entrée to Irish legal process. Doubtless many dog-eared copies adorn shelves in solicitors’ offices. For practitioners of a more seasoned vintage, Glanville Williams’s *Learning the Law* fulfilled a similar role.

A foundational law text has to tick a number of boxes: it has the job of introducing the law student to the essential building blocks of legal knowledge, describing the legal system from the perspective of its constituent parts, and at the same time equipping the student with a knowledge of certain key legal constructs on the conceptual side, such as the rule of law and canons of interpretation.

It, also, is typically a book that is mindful of a wider audience, from the concerned citizen to the person who may never pick up another legal text again. To that end, such a book needs to be written in a clear and accessible manner. This ticks all of these boxes and adds some more. It is elegantly written, and it breaks new ground by placing the topic of the Irish legal process in both a societal and political context.

The book is divided into three distinct parts. First, the authors seek to introduce the concepts of the rule of law and the sources of Irish law. Second, the Irish legal system is broken down into its component parts and



is thoroughly analysed. Third – and what is perhaps so novel about this book – the authors devote three chapters to the area of legal skills, in which they seek to inform the reader on legal research, legal reading, and legal writing skills.

This is an impressive addition to its genre. It has much to commend itself to the student, the layperson, and the practitioner.

Gerry O’Connell is an associate solicitor in the firm of Doberty Ryan & Associates.

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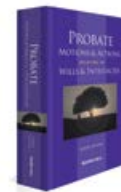


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LAW SOCIETY OF IRELAND



REPORT OF THE LAW SOCIETY COUNCIL MEETING ON 9 JUNE 2017

Setanta case

The Council discussed the outcome of the Supreme Court hearing in the Setanta case and noted that, regrettably, the Society had not been successful in the Supreme Court, although there were strong dissenting judgments in the Society's favour. A *Presidential eBulletin* had issued shortly thereafter and contained detailed guidance on what should happen next in relation to cases before the courts.

The Council noted that payments out of the Insurance Compensation Fund were currently limited to 65%, up to a limit of €830,000. While the Government had announced that, in future, all third party claims arising from insolvent insurers would be paid 100%, it appeared that Setanta claimants might be the only class of road traffic injury victims who would not be paid the full compensation to which they were legally entitled. It was agreed that the Society would make very strong representations to Government to make up the 35% difference for Setanta claimants.

In relation to the issue of legal costs, the Society would also make very strong representations that the Society should be paid its costs, particularly as the Society had been asked by the President of

the High Court to bring the case, although similar requests for costs in the High Court and the Court of Appeal had not been successful.

Brexit

The president and director general reported on business meetings they had attended in London, Brussels, Paris, and Belfast to discuss the opportunities and challenges arising for the legal profession as a consequence of Brexit. In terms of numbers, the latest statistics on solicitors admitted to the Roll from England and Wales were 1,100, with 220 having taken out practising certificates. The London visit had commenced with meetings with Pinsent Masons and DLA Piper. Both had confirmed they were planning to establish offices in Ireland, with up to 50 solicitors to be recruited from the Irish solicitors' profession. A meeting with English and Irish solicitors in the Law Society of England and Wales had followed, with approximately 75 solicitors in attendance, and 35/40 solicitors had attended a subsequent meeting in Brussels.

While in Brussels, they had also met with the secretary general of the CCBE and with lawyers in the Irish Permanent Representation. In Paris, they had attended a seminar jointly hosted by the Law

Society of England and Wales and the French Bar. The IBA Bar Leaders' meeting in Belfast on 25 May had dedicated an entire session to the topic of Brexit. The Council discussed the challenges and opportunities for the profession arising as a consequence of Brexit, and also the regulatory issues arising in respect of Irish-qualified solicitors working in England and Wales.

Legal Services Regulation Act

The Council noted the Society's submission to the LSRA on the study being conducted under section 120 of the act in relation to barristers' issues. A further submission to the LSRA on their study into MDPs under section 119 of the act was being finalised and would be submitted before the deadline of Friday 16 June 2017. Paul Keane noted that the Society faced a succession of extremely tight deadlines, which were statute-driven and placed the Society under constant pressure to produce submissions. Mr Keane noted that the task force had received useful feedback on the draft section 150 documentation, which was being revised as a consequence.

Policy submissions

The president noted that the Society was engaged in the produc-

tion of a significant number of submissions on a wide range of policy areas, including six policy submissions that had been circulated to the Council. The Society's committees and its Policy and Public Affairs Department deserved huge credit for their policy development work, which had been one of the recommendations of the Future of the Law Society Task Force.

Insurance costs working group

The president reported on a meeting he had attended of the Cost of Insurance Working Group, whose remit had expanded to cover public liability and employers' liability insurance.

Personal Injuries Commission

The president reported on the work being undertaken by the Personal Injuries Commission, which had been established following the previous report of the Cost of Insurance Working Group and comprised representatives from various Government departments, the State Claims Agency, PIAB, the insurance industry, barristers, solicitors, the Competition and Consumer Protection Commission, the Irish Hospital Consultants' Association, and others. It was chaired by former President of the High Court Mr Justice Nicholas Kearns.

REPORT OF THE LAW SOCIETY COUNCIL MEETING ON 14 JULY 2017

Motion: PII

"That this Council approves the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2017."

Proposed: Richard Hammond

Seconded: Barry MacCarthy

Richard Hammond explained that the proposed regulations made no change in relation to insurance coverage, but allowed existing coverage for deficits on client accounts (other than

those caused by fraud or dishonesty) to be triggered earlier in the process. The definition of legal services had also been amended to include acting as an expert witness and providing opinions as a professional expert. The Council approved the draft regulations.

Motion: CPD

"That this Council approves the Solicitors Acts 1954 to 2011

(Continuing Professional Development) Regulations 2017."

Proposed: Brendan Twomey

Seconded: Keith Walsh

Brendan Twomey explained that the proposed regulations specifically provided that the minimum annual CPD requirement would be 20 hours per year and would remain at this level, unless otherwise provided for by the Council. They amended the definition of 'management and professional

development skills' to include regulatory matters and, accordingly, CPD training in regulatory matters could now be claimed as either a standalone category or a surplus under the category of management and professional skills. Also, newly admitted solicitors would be exempt for a period of 12 months following their admission to the Roll of Solicitors. The Council approved the draft regulations.



eConveyancing Project

The Council received a full presentation on progress with the eConveyancing Project and approved a number of proposed 'next steps', including meetings with Government and key stakeholders.

Sheehan v Corr

The Council noted the successful outcome of the Supreme Court case in which the Society had been joined as *amicus curiae*. The judgment had brought important legal clarity on a range of issues to do with legal costs.

Council election dates 2017

The Council approved Monday 18 September 2017 as the final date for receipt of nominations for the Council election and Thursday 26 October 2017 as the close of poll date.

Administration of civil justice

The Council noted that the aim of the Group to Review the Administration of Civil Justice was "to examine the current administration of civil justice in the State with a view to improving access to justice, reducing the cost of litigation, improving


procedures and practices, removing obsolete unnecessary or over-complex rules of procedure, reviewing the law of discovery, encouraging alternative methods of dispute resolution, reviewing the use of electronic methods of communication, examining the extent to which pleadings and submissions and other court documents should be available on the internet, and identifying steps to achieve more effective outcomes for court users."

The Council approved the nomination of President Stuart

Gilhooly as the Society's nominee on the group.

Elite Insurance

The Council were briefed on recent developments regarding Elite Insurance, who had agreed with the Gibraltar Financial Services Commission to cease writing new business, but would continue to honour existing policies and claims.

It was agreed that the Society should reiterate its advice to members to be very careful about purchasing insurance from un-rated insurers. 

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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 J Walsh, a solicitor practising as Thomas J Walsh, 1 Mill Lane, Main St, Castlebar, Co Mayo, and in the matter of the Solicitors Acts 1954-2011 [3988/DT15/16]

Named client (applicant)

Thomas J Walsh (respondent solicitor)

On 22 February 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in respect of the complaint (set out in the affidavit of the applicant) that he did not discuss his fees with the applicant. He told the applicant to trust him every time she questioned him.

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

In the matter of Michael Lovett, a solicitor practising as Lovett O'Donnell Solicitors, 127 Ranelagh, Dublin 6, and in the matter of the Solicitors Acts 1954-2011 [10940/DT98/15]

Law Society of Ireland

(applicant)

Michael Lovett (respondent solicitor)

On 21 March 2017, the tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Failed to ensure that there was furnished to the Society a reporting accountant's report for his financial year ended 31 December 2014 within six months of the financial year end, in contravention of regulation 21(1) of the *Solicitors Accounts Regulations* (SI 41 of 2001), in a

timely manner or at all,

- 2) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors Accounts Regulations* for the protection of clients and the public.

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

In the matter of Sonia McEntee, solicitor, of Sonia McEntee Solicitors, Harmony Court, Harmony Row, Dublin 2, and in the matter of the Solicitors Acts 1954-2011 [8464/DT139/15]

Named client (applicant)

Sonia McEntee (respondent solicitor)

On 27 April 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in respect of the following complaints, as set out in the applicant's affidavit:

- 1) Failed to reply to the applicant's correspondence,
- 2) Failed to supply regular updates,
- 3) Failed to respond to a registered letter of complaint that informed her that the applicant was not happy with her services.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay a sum of €2,500 to the compensation fund.

NOTICE: THE HIGH COURT

In the matter of Michael O'Neill, a solicitor previously practising as Michael O'Neill at Kingscourt, 33 South Main Street, Naas, Co Kildare, and in the matter of the Solicitors Acts 1954-2011 [2017 no 61 SA]

Take notice that, by order of the High Court made on 17 July 2017, it was ordered that the name of Michael O'Neill be struck from the Roll of Solicitors.

John Elliot, Registrar of Solicitors, Law Society of Ireland, 8 August 2017

In the matter of Paul Cunningham, a solicitor formerly practising as Cunningham Solicitors, 8 Emily Square, Athy, Co Kildare, and in the matter of the Solicitors Acts 1954-2011 [7986/DT52/16]

Named clients (applicants)

Paul Cunningham (respondent solicitor)

On 16 May 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in respect of the following complaint set out in the affidavit of the applicant:

- 1) The first-named applicant wrote a letter to the respondent solicitor on 25 June 2013. The respondent solicitor did not reply to the first-named applicant's letter.
- 2) On 1 April 2014, the first-named applicant emailed a letter requiring a bill of costs. The respondent solicitor did not reply.
- 3) On 7 May 2014, the first-named applicant again wrote and emailed the respondent solicitor for the bill of costs. Again no reply.
- 4) The first-named applicant texted the respondent solicitor on this matter, wrote a letter on 16 June 2015, and emailed and delivered same. No reply to this letter either.
- 5) On 21 September 2015, the first-named applicant again sent a letter. The respondent solicitor did not reply.

6) The first-named applicant texted the respondent solicitor again and, by text, he replied, "Next week I will deliver the file". This did not take place.

7) The respondent solicitor has failed to proceed and bring the applicants' proceedings to a conclusion.

8) The respondent solicitor did not reply or correspond with the applicants.

9) Since September 2013, he has failed to forward the applicants' file to them, despite numerous texts, phone calls, office visits, and through a mutual friend.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €5,000 to the compensation fund.

In the matter of Andrew G Morrow, solicitor, formerly practising as David Wilson & Co, Solicitors, Raphoe, Lifford, Co Donegal, 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 1954-2011 [4674/DT04/15 and High Court record 2017/45 SA]

Law Society of Ireland

(applicant)

Andrew Morrow (respondent solicitor)

On 7 February 2017, the Solicitors Disciplinary Tribunal found



the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Caused or permitted a minimum deficit of around €177,657 on the client account as at 28 February 2014,
- 2) Caused or allowed around €291,000 of non-client account payments, of a personal nature, to be expended from the client account, including instances where the respondent solicitor used clients' moneys to pay for his own personal pension contribution, family health insurance, his mother's care costs and home bills, plus health insurance and his own personal credit card bills, contrary to regulation 7(2)(b),
- 3) Caused or permitted a concealment of the client account deficit by recording around three amounts totalling €155,132 as loans to the respondent solicitor, when these were in fact client moneys,
- 4) Failed to credit client moneys promised during the administration of an estate in the sum of €99,063, contrary to regulation 12, when same was recorded to the client ledger named 'MK Morrow' and described as 'loan to Andrew' and purported as a loan to the respondent solicitor,
- 5) Failed to credit client moneys promised to the estate of a deceased person of €44,029, contrary to regulation 12, when same was recorded on the client ledger named 'MK Morrow' and described as 'loan from MK Morrow' and purported as a loan from the respondent solicitor,
- 6) Failed to maintain proper books of account so as to show at any given time the financial state of practice and clients' moneys, contrary to regulation 12.

The tribunal directed the Law

Society to bring to the High Court its report and recommendation on sanction of a limited practising certificate, that the solicitor not be permitted to practise as a sole practitioner or in partnership, but only as an assistant solicitor in the employment and direct control and supervision of another solicitor of not less than ten years' standing, to be approved in advance by the Law Society of Ireland, and to pay a measured costs contribution of €5,000 to the Law Society of Ireland.

On 24 May 2017, the High Court affirmed the findings of misconduct made against the respondent solicitor by the Solicitors Disciplinary Tribunal and ordered that:

- 1) In lieu of the recommendation of the Solicitors Disciplinary Tribunal, the court accepted the formal undertaking made by the respondent solicitor through counsel never to practise as a solicitor and not to hold himself out as a person entitled to practise as a solicitor, in perpetuity,
- 2) The respondent solicitor pay the agreed measured costs of €5,000, inclusive of VAT, as a contribution to the applicant's costs for the proceedings before the Solicitors Disciplinary Tribunal,
- 3) The respondent solicitor pay the agreed measured costs to the applicant for the within application in the sum of €7,500, inclusive of VAT.

The court noted that the applicant be at liberty to publish the making of this order in *Iris Oifigiúil* and such other publications/press at its discretion.

In the matter of Paul Lambert, a former solicitor, previously practising as Merrion Legal, Butlers Court, 77 Sir John

Rogerson's Quay, Dublin 2, 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 1954-2011 [8876/DT100/15 and High Court record 2017/43 SA]

Law Society of Ireland

(applicant)

Paul Lambert (respondent former solicitor)

On 20 October 2016, the Solicitors Disciplinary Tribunal found the respondent former solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 30 September 2014 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations* (SI 421 of 2001),
- 2) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors Accounts Regulations* for the protection of clients and the public.

The tribunal sent the matter forward to the High Court and, on Monday 29 May 2017, the High Court ordered that:

- 1) The respondent former solicitor is not a fit person to be a member of the solicitors' profession, as recommended by the disciplinary tribunal, having noted that the solicitor was struck off the Roll of Solicitors by order of the High Court on 17 July 2015 in proceedings 2015 no 5 SA,
- 2) The respondent former solicitor pay the whole of the costs of the Law Society, to be taxed by a taxing master of the High Court in default of agreement.

In the matter of John F Condon, a solicitor practising as McMahon & Tweedy Solicitors, Merchant's House, 27-30 Merchant's Quay, Dublin 8, and in the matter of the Solicitors Acts 1954-2011 [3127/DT77/16]

Law Society of Ireland

(applicant)

John F Condon (respondent solicitor)

On 30 May 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 July 2015 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations* (SI 421 of 2001).

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay a sum of €1,000 to the compensation fund,
- 3) Pay a sum of €1,000 towards the whole of the costs of the Law Society of Ireland.

In the matter of Mathew OC Ezeani, a solicitor practising at 9 Parnell Square East, Dublin 1, and in the matter of the Solicitors Acts 1954-2011 [9718/DT65/16]

Law Society of Ireland

(applicant)

Mathew OC Ezeani (respondent solicitor)

On 14 June 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in respect of the following complaints:

- 1) On one or more occasions between 13 February 2014 and 20 September 2014 inclusive, acted as a solicitor when not a solicitor qualified to practise under section 24 of the *Solicitors*



Act 1954 and substituted by section 62 of the *Solicitors (Amendment) Act 1994*, by reason of a practising certificate in respect of him not being in force,

- 2) On 13 February 2014, when there was no practising certificate in force in respect of him, practised as a solicitor, in contravention of section 56 of the *Solicitors (Amendment) Act 1994*.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay a sum of €3,500 to the compensation fund,
- 3) Pay a sum of €1,631.50 as a contribution towards the whole of the costs of the applicant.

In the matter of Conleth Harlow, a solicitor practising as Conleth Harlow & Company, Solicitors, at St Alban Place, The Square, Roscommon, 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 1954-2011* [6222/DT95/16]

Law Society of Ireland

(applicant)

Conleth Harlow (respondent solicitor)

On 15 June 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2015 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay the sum of €400 to the compensation fund,

- 3) Pay a sum of €500 as a contribution towards the whole of the costs of the applicant.

In the matter of Sheila McConnell, a solicitor formerly practising as Sheila McConnell & Co, Solicitors, 10 Meadowcourt, Kildare, Co Kildare, and in the matter of the *Solicitors Acts 1954-2011* [7498/DT14/15 and High Court record 2016 no 221 SA]

Law Society of Ireland

(applicant)

Sheila McConnell (respondent solicitor)

On 11 October 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- 1) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by her on behalf of her named client over identified property in Co Dublin to EBS Ltd, by undertaking dated 8 April 2003,
- 2) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by her in respect of her named client over identified property in Co Kildare to EBS Ltd, by undertaking dated 18 May 2004,
- 3) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by her on behalf of her named client over identified property in Co Kildare to EBS Ltd, by undertaking dated 19 June 2007,
- 4) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by her on behalf of her named clients over identified property in Dublin 11 to EBS Ltd, by undertaking dated 8 July 2010.

The tribunal ordered that the

matter should go forward to the High Court and, on 19 June 2017, the High Court ordered that:

- 1) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership; that she be permitted to practise only as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
- 2) In light of the respondent solicitor's financial position, there be no order for costs in both the Solicitors Disciplinary Tribunal proceedings or the High Court application.

In the matter of Kevin O'Gorman, a solicitor practising as Kevin O'Gorman and Company, Solicitors, 5 Main Street, Lucan, Co Dublin, and in the matter of the *Solicitors Acts 1954-2011* [6863/DT121/15]

Law Society of Ireland

(applicant)

Kevin O'Gorman (respondent solicitor)

On 13 June 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to comply with an undertaking dated 30 January 2008, furnished to a named credit union, to register a second legal charge in favour of the credit union on a property in Co Kildare in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

- 1) Stand admonished,
- 2) Pay a sum of €5,000 to the compensation fund,
- 3) Pay a sum of €3,000 as a contribution towards the whole of the costs of the Law Society.

In the matter of Cormac Lohan, solicitor, practising

under the style and title of Lohan & Co, 7 Garden Vale, Athlone, Co Westmeath, and in the matter of an application to the Solicitors Disciplinary Tribunal, and in the matter of the *Solicitors Acts 1954-2011* [8247/DT147/13 and High Court record 2016 no 223 SA]

Law Society of Ireland

(applicant)

Cormac Lohan (respondent solicitor)

On 29 September 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he:

- 1) Caused or allowed a deficit to arise in the sum of €10,431 on the client account as at 31 December 2011,
- 2) Allowed debit balances, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
- 3) Permitted the creation of a deficit by transfer of fees, in breach of regulation 8(4) of the *Solicitors Accounts Regulations*,
- 4) Failed to maintain proper books of account, in breach of regulation 12 of the *Solicitors Accounts Regulations*, to show a true financial position in relation to the clients moneys received and dispersed to the clients accounts,
- 5) Transferred moneys between the client ledger accounts, which were unrelated and contrary to regulation 9 of the *Solicitors Accounts Regulations*,
- 6) Breached regulation 12(6) of the *Solicitors Accounts Regulations* in not maintaining any office client ledgers,
- 7) Breached regulation 8(3) of the *Solicitors Accounts Regulations* in not providing details of the payee of cheques issued in the client ledgers or cheque payments book,
- 8) Breached regulation 12(8) of the *Solicitors Accounts*



- Regulations* in failure to prepare office banking statements,
- 9) Failed to take fees due to office account, in breach of regulation 8(2) of the *Solicitors Accounts Regulations*, and used fees to clear debit balances,
 - 10) Failed to operate separate ledger cards for each client matter, in breach of regulation 12(3) of the *Solicitors Accounts Regulations*,
 - 11) Failed to file such relevant documentation to vouch transactions, in breach of regulation 12(3)(b) of the *Solicitors Accounts Regulations*,
 - 12) Failed to have available in numerical order clients returned paid cheques, in breach of regulation 20 of the *Solicitors Accounts Regulations*,
 - 13) Lent moneys to a friend and withdrew from a client's account, contrary to regulation 7(2)(b) of the *Solicitors Accounts Regulations*, causing a deficit on the client account,
 - 14) Failed to maintain proper office records and ledger accounts, in breach of regulation 10 of the *Solicitors Accounts Regulations*,
 - 15) Failed to maintain a journal in respect of amounts transferred from one client account to that of another client, including the narrative explaining the transaction, in breach of regulation 20(d) of the *Solicitors Accounts Regulations*.

The tribunal ordered that the matter should go forward to the High Court with its recommendation that:

- 1) The respondent solicitor be suspended from practice until such time as the Law Society is satisfied that the respondent solicitor is compliant with the *Solicitors Accounts Regulations* to an acceptable standard,

- 2) Pay the sum of €5,000 to the compensation fund,
- 3) Pay the whole of the costs of the Law Society of Ireland, to be taxed by a taxing master of the High Court in default of agreement.

The respondent solicitor lodged an appeal against both findings and sanction of the Solicitors Disciplinary Tribunal under High Court proceedings record no 2016/209 SA. On 2 May 2017, the respondent solicitor subsequently withdrew his appeal and the High Court ordered that:

- 1) The respondent solicitor stands censured,
- 2) The respondent solicitor pay the sum of €5,000 to the Compensation Fund of the Law Society of Ireland,
- 3) The respondent solicitor pay the Law Society of Ireland the whole of the costs of the Solicitors Disciplinary Tribunal proceedings, to include witness expenses, and that the respondent solicitor pay the Law Society the costs of the within application. The assessment by the court of the amount of costs to be adjourned to Monday 26 June 2017, with a calculation of costs to be provided by the applicant to the respondent solicitor in advance of that date.

This matter was adjourned to 24 July 2017, when it was ordered that the respondent pay the Law Society of Ireland its measured costs in respect of the Solicitors Disciplinary Tribunal proceedings in the sum of €12,131.50 (VAT included) and a further amount of €4,525.50 in respect of the High Court proceedings.

In the matter of Barry Murphy, a solicitor formerly practising as Eugene Carey & Company, Solicitors, Courthouse Cham-

bers, Mallow, Co Cork, and in the matter of the Solicitors Acts 1954-2011 [12724/DT90/16 and High Court record 2017 no 60 SA]

Law Society of Ireland (applicant)

Barry Murphy (respondent solicitor)


On 18 May 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Caused or allowed a minimum deficit arise on the client account in the sum of €432,442.89, as at 30 June 2016,
- 2) Made unauthorised withdrawals from the client account to a personal account of €384,210, in breach of regulation 7(1),
- 3) Paid office expenses of €10,697.39 from the client account, in breach of regulation 7(2)(b),
- 4) Failed to ensure that paid cheques were being returned to the practice, in breach of regulation 20(1)(f),
- 5) Caused or allowed debit balances to arise on the client account in the sum of €2,582.62, in breach of regulation 7(2)(a),
- 6) Failed to keep proper books of account, in breach of regu-

lation 12(1) of the *Solicitors Accounts Regulations 2001*, to show the true position in relation to client liabilities,

- 7) Failed to prepare a balancing statement on the client account for 31 December 2015 within two months of this date, in breach of regulation 12(7).

The tribunal ordered that the matter should go forward to the High Court and, on 24 July 2017, on consent, the High Court ordered that:

- 1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) The respondent solicitor pay to the applicant the costs of the proceedings before the Solicitors Disciplinary Tribunal inclusive of outlay, as measured in the sum of €1,714.50, but that the execution and registration of these costs be stayed for a period of 12 months from the date of the making of this order,
- 3) The respondent solicitor pay to the applicant the costs of the within proceedings inclusive of outlay, as measured in the sum of €1,816, but that the execution and registration of these costs be stayed for a period of 12 months from the date of the making of this order. 

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NEWS FROM THE EU AND INTERNATIONAL AFFAIRS COMMITTEE
 EDITED BY TP KENNEDY, DIRECTOR OF EDUCATION, LAW SOCIETY OF IRELAND

CJEU – USEFUL GUIDANCE FOR FUTURE BREXIT NEGOTIATIONS

Even the most ardent of ‘Brexiters’ would probably wish for the maintenance of close economic links with the rest of Europe post-withdrawal from the EU. Such relations would likely be governed by a free trade agreement. However, reaching such a pact with the EU is not without its challenges. Indeed, the 16 May 2017 ruling of the Court of Justice of the EU (CJEU) regarding the EU’s proposed free trade agreement with Singapore (FTA) contains some useful pointers on the timing and scope of any future Brexit negotiations.

EU/Singapore negotiations

Bilateral talks between the European Commission and Singapore began in early 2010 and concluded in the autumn of 2014. The FTA includes commitments on matters such as the reduction of tariffs, plus a range of other trade liberalisation measures. The FTA has been described as innovative in the sense that, not only does it address traditional matters like tariffs, it also encompasses other trade-relevant areas, such as intellectual property protection, public procurement, and competition.

The final text of the FTA was settled in June 2015. At the same time, the commission asked the CJEU whether the EU has exclusive competence to sign up to the entire pact. If not, the CJEU was requested to stipulate which FTA provisions fall under the shared competence of the EU and its member states.

CJEU opinion

Although the procedure is seldom used, various EU institutions and each of the member states may request the CJEU to opine on whether a proposed agreement between the EU and a third party – for example, a non-EU country or institution/organisation – complies with EU law. If the court’s opinion is negative, the relevant agreement may not be adopted by the EU unless it (or the relevant provision of EU law) is amended. (This procedure is not unlike article 26 of *Bunreacht na hÉireann*, whereby the President may, after consulting the Council of State, refer a bill to the Supreme Court in order to test its constitutionality.)

Exclusive or shared?

If a relevant agreement falls within the exclusive competence of the EU, it may be concluded by the EU alone. However, if the agreement comes under a competence that is shared by the EU and its member states, it must be ratified by the EU and – crucially – by each member state in accordance with its own constitutional requirements. From a timing perspective, this distinction is significant, since getting approval in each member state is likely to be a lengthy process. For example, depending on the substance of the relevant agreement, a referendum may be necessary in this jurisdiction.

The EU has exclusive competence in various sectors specified in article 3(1) of the *Treaty on the*

Functioning of the EU (TFEU).

This includes the common commercial policy. Article 3(2) also provides that the EU has exclusive competence for the conclusion of international agreements, including where this may affect common EU policies or change their scope.

The breadth of the EU’s common commercial policy is defined in article 207(1) TFEU. This policy encompasses the traditional sectors of tariff rates, but also areas such as the commercial aspects of intellectual property and foreign direct investment. A trade agreement between the EU and a third country falls under the common commercial policy if it has a specific link to trade, as outlined in article 201(1).

While the conclusion of international agreements in the field of transport is excluded from the common commercial policy, transport by sea, rail, road and inland waterways (such as rivers, lakes and canals) is instead subject to the EU’s common transport policy under articles 90-100 TFEU. Since it has the power to legislate for these areas of transport, any international agreement affecting such rules falls within the EU’s exclusive competence.

Court’s findings

As mentioned above, the commission requested the CJEU to stipulate which provisions of the FTA fall within the EU’s exclusive competence and also which provisions fall under the shared

competence of the EU and its member states.

In its opinion, the CJEU found that the response to these questions depends on whether the relevant provision of the FTA has a specific link with the trade areas of exclusive EU competence as defined in its common commercial policy under article 207(1) TFEU or its exclusive competence regarding measures governing cross-border transport services under article 3(2) TFEU. In simple terms, the CJEU analysed each of the relevant provisions of the FTA before deciding whether it should go in the ‘exclusive competence bucket’ or the ‘shared competence bucket’.

Indeed, the court held that the FTA’s provisions relating to market access for goods and services, public procurement, foreign direct investment of Singapore-based natural or legal persons in the EU or vice versa, protection of intellectual property rights, competition, and sustainable development (that is, social protection of workers/environmental protection) all fall within article 207(1). In addition, the CJEU considered that provisions regarding sea, inland waterway, rail and road transport each fall under article 3(2). This means that each of these areas fall within the exclusive competence of the EU.

However, the court considered that the FTA’s protection provisions regarding non-direct foreign investment between the EU and Singapore fall outside the common commercial policy. (An



PIC: SHUTTERSTOCK



Singapore Sling – nice

BILATERAL TALKS BETWEEN THE EUROPEAN COMMISSION AND SINGAPORE BEGAN IN EARLY 2010 AND CONCLUDED IN THE AUTUMN OF 2014

investment is seen as ‘non-direct’ where it does not allow the investor to participate in the management of the relevant target). The CJEU also found that an FTA clause permitting a Singapore-based investor to submit a claim to arbitration, thus denying jurisdiction to a national court in the EU, requires the consent of all member states. Therefore, these areas are subject to shared competence.

This distinction between exclusive competence and shared competence has a major impact on the timing of any EU/third country agreements. Anything in the former bucket requires EU consent only, whereas anything in the latter bucket is a so-called mixed agreement that requires the approval of the EU plus each of its current 28 member states. As is clearly evidenced by last year’s initial decision of the parliament of Wallonia in Belgium to reject the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, seeking the approval of

under the constitutional requirements of each member state is both unpredictable and prone to delays.

Brexit talks

Article 50(1) of the *Treaty on the European Union* (TEU) states that any member state has the right to withdraw from the EU in accordance with its own constitutional requirements. On 23 June 2016, Britain voted to leave the EU. The result of this referendum led to the submission of formal notice to withdraw, under article 50(2) TEU, earlier this year.

In accordance with article 50(3) TEU, Britain is scheduled to leave the EU on 29 March 2019, exactly two years after the submission of the article 50(2) notice, regardless of whether withdrawal arrangements are settled. However, this period may be extended provided Britain and the remaining 27 member states all agree. Ireland has no unilateral right of veto on any withdrawal deal. Therefore, if the Government is unhappy with any element of the

proposed agreement, it will need the support of some other member states.

Formal negotiations regarding British withdrawal from the EU finally began on 19 June 2017. These talks are likely to last for around 12 months in order to give sufficient time to secure the required EU and British consents for any resulting agreement prior to 29 March 2019. The EU has pinpointed three priorities to be addressed in the current talks: citizens’ rights, the withdrawal bill or so-called financial settlement, and the future of Northern Ireland.

The proposed withdrawal from the EU has been a cause of uncertainty for many individuals. Therefore, the EU’s primary focus is to allay these concerns. The EU intends that the rights of both EU citizens in Britain and British citizens in the EU, as well as their families, should be recognised. Citizens such as workers, students, and family members who have made life-choices on the basis of EU

law should be safeguarded. The EU intends that the withdrawal agreement should protect the rights that citizens enjoy on the day of withdrawal. Britain is likely to push for similar guarantees for its citizens.

Of equal importance to the EU is the withdrawal bill. This issue is based on the principle that Britain must honour, in full, its financial obligations undertaken over the course of its EU membership. These include the commitment to the EU’s budget, allied to its participation in certain funds and projects such as the European Investment Bank or the European Central Bank. This matter is, for obvious reasons, likely to be extremely controversial.

Both the EU and Britain have underlined their individual wish of continuing to support peace, stability, and reconciliation on this island. Needless to say, the land border between north and south brings with it challenges that require flexible and innovative solutions. Indeed, both par-



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IT WILL BE VERY DIFFICULT TO REACH AN EU/BITAIN TRADE DEAL BY MARCH 2019. IN THIS REGARD, IT IS HIGHLY SIGNIFICANT THAT THE TALKS BETWEEN THE EU AND SINGAPORE LASTED FOR FIVE YEARS

ties intend that nothing in any withdrawal agreement should undermine the objectives and commitments set out in the 1998 *Good Friday Agreement*.

Broader impact

Given the EU's exclusive competence under article 50 of the TEU, the CJEU's ruling on the FTA is not relevant to any withdrawal agreement with Britain. While Britain would like to discuss both its withdrawal from and future relationship with the

EU in parallel, the commission wishes to resolve the disentanglement first. In any event, given the time normally taken to agree such deals, it will be very difficult to reach an EU/Britain trade deal by March 2019. In this regard, it is highly significant that the talks between the EU and Singapore lasted for five years before the FTA was initialled.

However, the court's findings regarding the FTA are likely to have a major impact on any transitional arrangements that should

come into force if and when Britain leaves the EU. In addition, the 16 May opinion is highly significant in the context of any future trade agreement between the EU and Britain.

Britain will need to balance its desire for a comprehensive trade agreement with its wish to avoid potential delays. If any transitional arrangements or future free trade agreement stick to the areas of exclusive EU competence as outlined in the FTA opinion, getting the necessary approvals

on the EU side is likely to be less difficult. However, this means that Ireland will not have its individual say, whether by Oireachtas vote or by referendum. On the other hand, if Britain wants a deal on any matter of shared competence, its negotiators need to be prepared for delays allied to the distinct likelihood of firm opposition at member state level.

Cormac Little is partner and head of the Competition and Regulation Department at William Fry.

RECENT DEVELOPMENTS IN EUROPEAN LAW

DATA PROTECTION

Case C-536/15, *Tele2 (Netherlands) BV, Ziggo BV and Vodafone Libertel BV v Autoriteit Consument en Markt (ACM)*, 13 October 2016

European Directory Assistance offers directory enquiry services and directories accessible from Belgium. It requested the undertakings that assign telephone numbers in the Netherlands to make available to it data relating to their subscribers. It relied on Dutch law implementing the *Universal Service Directive (Directive 2002/22)*. These undertakings did not consider that they were required to provide the data in question to an undertaking established in another member state, and thus refused to do so. The Administrative Court of Appeal for Trade and Industry

referred a number of questions to the CJEU. It wished to know whether undertakings were required to make such data available to providers of directory enquiry services in another member state. If they are, do they have a choice whether to do so depending on the country in which the requesting undertaking is based. The Dutch court also asked how to balance respect for the principle of non-discrimination and privacy.

The CJEU held that the *Universal Services Directive* applies to all requests made by an undertaking established in a member state other than that in which the undertakings that assign telephone numbers to subscribers are established. Article 25(2) of the directive

covers all reasonable requests to make available data for the purpose of publicly available directory enquiry services and directories. It requires that this information be made available in a non-discriminatory manner. There is no distinction made between a request from an undertaking established in the same member state or another. The refusal to make data relating to subscribers available on the sole ground that the undertaking is based in another member state is incompatible with the principle of non-discrimination. The second question was whether subscribers had the choice whether or not to give their consent depending on the state in which the undertaking requesting the data provides its services. The CJEU held that if

a subscriber has consented to personal data being published in a public directory, renewed consent is not needed for the passing of the same data to another undertaking in a different member state that intends using the data for the same purpose. There is no infringement of the right to protection of personal data recognised in the *Charter of Fundamental Rights of the EU*. Regardless of where they are established in the EU, undertakings providing publicly available telephone directory enquiry services and directories operate within a highly harmonised regulatory framework, making it possible to ensure the same respect of requirements relating to the protection of subscriber's personal data throughout the EU.



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

WILLS

Bennett, Gertrude (deceased), late of 65 St Agnes Park, Crumlin, Dublin 12, who died on 27 May 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Joe Clancy, Joe Clancy Solicitors, 41 Main Street, Rathfarnham, Dublin 14; tel: 01 492 0464, email: info@joecclancy.com

Cullen, Gerald (deceased), late of the Lamb Manor, Kilbride, Blessington, Co Wicklow. Would any person having knowledge of any will made by the above-named deceased, who died on 10 July 2014, please contact Patrick J Neilan & Sons,

Solicitors, Roscommon; tel: 090 662 6245, email: brandon@patrickjneilan.ie

Davern, James (deceased), late of Old Youghal Road, Cork, who died on 4 June 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Vincent Toher & Co, Solicitors, Legal Chambers, 2 Washington Street West, Cork City; tel: 021 427 7811, email: reception@vincenttoher.com

Farrell, Anne (deceased), who died on 21 February 2017, late of Kilmainhamwood Nursing Home, Kells, Co Meath, formerly

of 2 Willie Black Crescent, Kells, in the county of Meath. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Nathaniel Lacy & Partners, Solicitors, Kenlis Place, Kells, Co Meath; tel: 046 928 0718, email: law@nlacy.ie

Farrell, Mary (deceased), late of Clongiffen, Enfield, Co Meath, who died on 5 January 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 Cora Higgins, Regan McEntee and Partners,

Solicitors, High Street, Trim, Co Meath; DX 92 002 Trim; tel: 046 943 1202, email: chiggins@reganmcentee.ie

Gillane, Liam (deceased), late of The Square, Gort, Co Galway. Would any person having knowledge of any will made by the above-named deceased (Liam Gillane, otherwise William Gerard Gillane) please contact Colman Sherry, solicitor, The Square, Gort, Co Galway; tel: 091 631383

Greaney, Kevin (deceased), late of Ballygreaney, Ballymacward, Ballinasloe, Co Galway. Would any person having any knowledge of a will executed by the above-named deceased, who died on 1 February 2017, please contact FG MacCarthy Solicitors, Loughrea, Co Galway; tel: 091 841 529, fax: 091 842 180, email: law@fgmacCarthy.com

Greaney, Philomena (née Joyce) (deceased), late of Glenaneenagh, Cumber, Tuam, Co Galway, and Mystical Rose Nursing Home, Knockdoe, Claregalway, Co Galway. Would any person having knowledge of any will made by the above-named deceased, who died on 10 August 2016, please contact Eric Gleeson & Co, Solicitors, Shop Street, Tuam, Co Galway; tel: 093 52396/52398, email: eric@ericgleeson.ie

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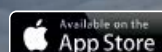
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Hannon, Margaret (deceased), late of 4 Farrelly Cottages, Old Finglas Road, Glasnevin, city of Dublin, who died on 26 March 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Thorpe & Taaffe, Solicitors, 1 Main Street, Finglas, Dublin 11; tel: 01 834 4959, email: info@thorpetaaffe.ie

Horgan, Joan (deceased), late of 11 Balmoral Terrace, Old Youghal Road, Cork, who died on 7 June 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 Healy Crowley & Co, Solicitors, West Street, Tallow, Co Waterford; tel: 058 56457, email: info@healycrowleysolsr.com

Hughes, William Stanley (deceased), late of Annyart, Castleblayney, Co Monaghan, who died on 28 April 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Lynda Smyth, Coyle Kennedy Smyth, Thomas Street, Castleblayney, Co Monaghan; tel: 042 974 0010, email: lsmyth@cksrlaw.ie

Kilfeather, Edward Joseph (J) (deceased), late of Flat 7, 87 South Circular Road, Dublin, who died on 23 May 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact MM Mulrine & Co, Solicitors, 3 Port Road, Letterkenny, Co Donegal; tel: 074 912 5477, email: margaretmulrine@eircom.net

Lovatt, Andrew (deceased), late of 7 College Farm Park, Newbridge, Co Kildare, who died in or around 23 February 2016. Would any person having knowledge of a will made by the above-named deceased please contact Gemma Stack, P&G Stack, Solicitors, Main Street, Maynooth, Co Kildare; DX 98009; tel: 01 629 0900, email: gstack@stack.ie

McDonagh, Noel (orse Nollaig MacDonnchadha) (deceased), late of 108 Santry Close, Dublin 9, and formerly of Knockferry, Rosscahill, Co Galway. Would any solicitor holding or having knowledge of any will made by the above-named deceased, who died on 31 December 2016, please contact Padhraic Harris & Company, Solicitors, Merchants Gate, Merchants Road, Galway; tel: 091 562 066, email: cirwin@harrissolicitors.ie

Marmion, Michael (deceased), late of 7 Ludlow Street, Navan, Co Meath. Would any person having knowledge of any will made by the above-named de-

ceased, who died on 9 May 2017, please contact Barry McAlister, solicitor, John P Prior & Co, Cogan Street, Oldcastle, Co Meath; tel: 049 854 1971, fax: 049 854 1973, email: barry@priorlegal.ie

Moiselle, Kathleen (deceased), late of 2 Maple Glen, Carpenterstown, Dublin 15, who died on 20 April 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 Cora Higgins, Regan McEntee and Partners, Solicitors, High Street, Trim, Co Meath; DX 92 002 Trim; tel: 046 943 1202, email: chiggins@reganmcentee.ie

Sheridan, James (deceased), who died on 24 November 2016, late of 36 Hastings Street, Ringsend, Dublin 4. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Carmody Moran Solicitors, 8 The Avenue, Tyrellstown Town Centre, Dublin 15; tel: 01 827 2888, email: solicitor@carmodymoran.ie

Slyne, John Gerard (deceased), late of Reagrove, Minane Bridge, Co Cork, who died on 3 July 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Eugene Murphy, Murphy English & Co, Solicitors, 'Sunville', Cork Road, Carrigaline, Co Cork; tel: 021 437 2425, email: emurphy@murphyenglish.ie

Sweeney, Peter Paul (deceased), formerly of Co Mayo and late of Paul Sweeney & Co, Corner Park, Peamount Road, Newcastle, Co Dublin, who died on 29 December 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same,

please contact Noel Gargan, Christie & Gargan Solicitors, Unit 2, Stewart House, Parnell Street, Rotunda, Dublin 1; tel: 01 872 6974, email: cgargan@christiegargansolsr.ie

MISCELLANEOUS

Seven-day publican's on-licence for sale – contact Dara Callaghan, O'Dowd Solicitors, Bridge Street, Boyle, Co Roscommon; tel: 071 966 2861

Solicitors' practice for sale – Maguire & Brennan, Solicitors – Co Mayo based general practice established in 1916 with an enviable reputation for legal expertise. The practice comes with retiring owner consultancy if required. Contact the principal, Michael G Brennan BCL, in confidence on 087 257 0251 or at michael.brennan@maguirebrennan.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*

Take notice any person having any superior interest (whether by way of freehold estate or otherwise) in the following properties: all that and those numbers 34 and 34a Morehampton Road, Donnybrook, Dublin 4, held under indenture of lease dated 23 July 1881 and made between Elizabeth Mary Hippiisley and Charlotte Antonia Sullivan of the one part and John Gibbs of the other part for a term of 150 years from 1 May 1881, subject to the yearly rent of £16.17s.6d.

Take notice that Celia Grant, the person currently entitled to the leasehold interest in the said properties under the lease, intends to apply to the county registrar for the county and city of Dublin to acquire the fee simple and any intermediate interest therein, and any party asserting that they hold a superior inter-

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est in the said properties are called upon to furnish evidence of their title to this superior interest to the below-named within 21 days from the date of this notice.

In the absence of any such notice being received, the said Celia Grant 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 as part of this application for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest or interests including the freehold reversion in the aforesaid premises is/are unknown and unascertained.

Date: 8 September 2017

Signed: Mangan O'Beirne (solicitors for the applicant), 31 Morehampton Road, Donnybrook, Dublin 4

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 12 Harbour Court, Dublin 1 – applicant: Clifton Celtic Properties Limited

Take notice any person having any interest in the freehold estate (or any intermediate interest) of the property known as all that and those the premises known as 12 Harbour Court in the city of Dublin, held under an indenture of lease dated 27 September 1939 between the Mission to Seamen Trust Corporation Limited (the lessor) of the one part, and Alice Kay, Ethel Winifred Moore, Catherine Ferguson Davie, William Kay, Edmund Kay, Ronald Ira Kay, Vida Poole and Alexander Kay of the other part (the lessees).

Take notice that the applicant, being the person currently entitled to the lessees' interest under the said lease, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice

being received, 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 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: 8 September 2017

Signed: Hughes Liddy (solicitors for the applicant), 29 Fitzwilliam Place, Dublin 2

RECRUITMENT

Sole practitioner, very experienced, based in Dublin 4, currently has capacity for additional work on a consultancy basis. Experienced in all of general practice (apart from criminal), including plaintiff personal injuries litigation, plaintiff medical negligence actions, commercial and residential conveyancing, probate and administration, and corporate immigration. Reply to **box no 02/07/17** indicating your area of interest and preferred means of contact

Experienced solicitor seeks part-time/locum position. Highly experienced Dublin-based solicitor (recently retired from a top-ten law firm) seeks part-time or locum position practising conveyancing and property law in the Dublin area. Reply to **box no 01/07/17**

Consultancy/advisory/contract role. Bernie Coleman is a vastly experienced property solicitor. She is available for short-term consultancy, advisory, or contract work to assist in conveyancing transactions, title investigation, landlord/tenant matters, projects, or other work that requires support or experience in excess of your current capability. Her terms are flexible and can be tailored to the specific requirements of the client. Please contact Bernie on 087 982 5613 or 01 608 7726 or email: bbgraham@circom.net



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FINAL VERDICT



SEMPER UBI SUB UBI

BUT THEY ONLY RING TWICE

A top English barrister sparked outrage among solicitors after he appeared to compare them to postmen, *Legal Cheek* reports.

Simon Spence QC made the controversial comparison while outlining his views on the funding framework that pays advocates to defend clients in the crown court. According to Spence, funds should be 'reallocated' towards barristers and away from solicitors.

He wrote: "[Solicitors] are often paid more than the advocate for little more than instructing counsel ... It is quite wrong that the postman gets paid more than the person to whom he delivers the post and who has to read and digest it."

Criminal Law Solicitors' Association chair Zoe Gascoyne said she was "incensed" by



Spence's remarks, replying in an open letter: "As 'postmen' we

represent our clients at the police station and at the magistrates'

court. Representation at the latter being paid for by the litigators' fee that you believe ought to be cut. As 'postmen' we see our clients on countless occasions before your brief is even delivered by us."

IF LIFE GIVES YOU LEMONS

An English father was fined £150 over his five-year-old daughter's 'illegal' lemonade stall, *The Irish Times* reports.

Business professor André Spicer let the child set up the stall near their home to cater to people heading to a music festival. She made a sign and started selling homemade lemonade at £1 for a large glass and 50p for a small one. But after half an hour, four

council officials demanded that the two stop and issued the fine. The council has since cancelled the fine and delivered an apology note to Prof Spicer's home.

However, just because the fine has been dropped, that does not mean the children can set up lemonade stands at will. A council spokesman said: "Strictly speaking, it could be seen as illegal trading."



I, ROBOT, DESPAIR

The autonomous guard robot that was attacked by a man in California in April (reported in the June *Gazette*, p72) has apparently 'drowned' itself.

The robot is able to understand its own environment and judge whether something is wrong, using a combination of microphones, video cameras, and other sensors.

The company markets the security robot as better than real guards, in part because it never gets bored of what it does. But it appears to have looked to put an end to that work and drove itself into a pond, *The Verge* reports.

PARROT IS A REAL STOOL-PIGEON

A woman has been convicted of murdering her husband after his last words were apparently repeated by the pet parrot who witnessed the attack, *The Independent* reports.

Glenna Duram shot Martin Duram five times and was found guilty of first-degree murder

by Newaygo County jury in Michigan.

As reported in the July 2016 *Gazette* (p53), her husband's parrot may have repeated the pair's final conversation to Mr Duram's ex-wife, Christina Keller. Keller took the parrot in after the attack in May 2015, and has said: "I believe

with all my heart that those are the last words of Marty.

"I recognise two different voices screaming and yelling and it always ends with 'don't f*****g shoot'."

The parrot was not actually used in court proceedings, though this possibility was initially considered by the prosecutor.



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Commercial Litigation ♦ Equity Partner/Consultant

This firm is growing all its practice areas and is now seeking a determined individual with an excellent track record in commercial litigation matters. The firm has extensive experience in all areas of litigation and dispute resolution. You will have experience in dealing with a full spectrum of commercial litigation matters. The ability to manage complex Commercial Court disputes for domestic and global clients is key. Ref 2082

Insolvency ♦ Associate

Our client is recognised as one of Ireland's leading insolvency practices. The firm provides advice to banks and other creditors, directors and shareholders and is also instructed by leading insolvency practitioners in Dublin, as well as foreign lawyers, accountants and creditors. An opportunity exists for a dynamic solicitor to join the team. You will be at mid-level and will have gained experience in a leading firm. On offer are excellent terms, including benefits with a generous bonus. Ref 2080

Privacy ♦ Senior Associate to Equity Partner

Our client boasts a market-leading international practice supporting some of the world's most successful tech companies. An opportunity exists for an exceptional lawyer to join and lead the firm's privacy offering. You will have experience in solving complex global problems for major technology multinationals as well as devising GDPR compliance projects for international and domestic clients. Ref 2081

Renewable Energy ♦ Partner

A very impressive full-service firm has an opening for an additional partner to join its award-winning renewable energy team. The firm advises a number of private and public organisations, including energy production and distribution companies, and organisations that embrace the employment of clean technology as well as drivers of innovation. Ref 2048

General Litigation ♦ NQ – Assistant Solicitor

Our client has a leading litigation practice and is currently looking to recruit a junior lawyer to join their dispute resolution team. You will manage a wide variety of litigation matters, advising both public and private-sector clients across a wide range of practice areas. The firm is very supportive and has a particular interest in growing its litigation offering. There are great promotional prospects for the appointed candidates. Ref 2043

DP/FOI Litigation ♦ Junior/Mid-level Associate

Our client, a leading firm, is now looking to recruit a candidate with experience in freedom-of-information law, data protection and regulatory law. Candidates would additionally need knowledge of EU law. Solicitors or barristers with a strong litigation background, featuring a good level of judicial review, will also be considered. This role offers an excellent opportunity to work with an exceptional litigator who has acted in many of the leading cases to come before the Commercial Courts since its inception. Ref 2030

Commercial Property ♦ Partner (four-day week)

Are you an experienced commercial property lawyer seeking a busy and varied caseload, covering the full remit of property matters? Our client is seeking an experienced commercial property lawyer to join its well-established team. You will have extensive real-estate expertise advising property companies, investors, developers, local authorities, retailers and private individuals. Excellent terms on offer. Senior Associates will also be considered. Ref 2047

M&A Specialist ♦ Partner

This market-leading corporate practice is currently seeking to recruit a corporate M&A specialist to join its team. The appointment will be at salaried or equity partner level. Ideally you will have worked with a top-ten Irish firm or a highly regarded international law firm. You will be joining a team renowned for its enviable client base. Ref 2084

Contact Sharon Swan for a confidential discussion on 01 685 4017
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Featured Jobs

PROPERTY FINANCE SOLICITOR Top Tier / Dublin €90,000 - €120,000

This role will involve supporting the finance team on the property element of finance transactions. The successful candidate will work closely with property and finance Partners. The role will involve providing strategic advice on the provision of security for members of the finance team completing such work, providing conveyancing support to finance teams and advising on large commercial property aspects of lending. The ideal candidate will be a senior commercial property lawyer coming from a Top 10 commercial property firm and have experience on large commercial property transactions.

Ref: 913668

IN HOUSE COMMERCIAL CONTRACTS SOLICITOR Engineering & Construction / Tipperary / €80,000 - €90,000

This is a permanent role, reporting directly to the CEO. The ideal candidate will have 10+ years' PQE and will have worked in-house with a focus on commercial contracts. Experience in the engineering or construction industry would be advantageous. Demonstrable experience is required in contract negotiation including EPC, NEC, and FIDIC contracts, project management, arbitration, claims, liaising with stakeholders across multiple jurisdictions. The role will involve international travel but will also offer a work / life balance and autonomy in your work.

Ref: 914013

IN HOUSE SOLICITOR Motorway Operator / North Dublin - Meath / €60,000 - €70,000

This is a fixed term contract with a bonus payable upon completion of the contract. The role will involve advising on acts and decisions in order to comply with legal or contractual requirements, advising on corporate governance and company law matters, advising in relation to contractual documentation entered into, preparing, drafting and negotiating contracts, dealing with and managing the litigation claims against the company and preparing any claim for damages suffered by the company. The ideal candidate will have min 3 years' PQE with in-house experience.

Ref: 913633

Should you require further information about any of these roles or any other legal recruitment requirements, please contact **Michael Minogue, Assistant Manager** (m.minogue@brightwater.ie) or **Sorcha Corcoran** (s.corcoran@brightwater.ie) in strictest confidence.

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We provide clear advice leading to informed decision making.

We have significant new opportunities for practitioners across many practice areas from Recently Qualified to Partner level. The following are examples of the roles our clients are seeking to fill. Please make sure to visit our website for other positions.

Litigation Assistant – Recently Qualified/Assistant Level – MB0044

Our client is a well established commercial practice based in Dublin 4. The successful candidate will join a growing litigation team and will be expected to deal with commercial disputes to include debt recovery and insolvency. A strong opportunity for a junior solicitor to develop a career in this field.

Banking Solicitor – Associate to Senior Associate – J00480

The Role: This Top 6 Dublin law firm requires an experienced solicitor to join its Banking and Finance Group dealing with Irish and international banks and also financial institutions and corporations.

The Requirements: The role in question is for an experienced solicitor who can assist with a wide range of issues including: Portfolio sales; Secured facilities; Acquisition and infrastructure finance; Regulation & Compliance; Enforcement.

Corporate – Commercial Lawyer – Assistant to Associate – J00307

The Role: A leading corporate and commercial law firm are seeking to recruit a Corporate Solicitor to join their long established and expanding Corporate Team.

The Requirements: The successful candidate will be an ambitious Solicitor based in Dublin or be a solicitor relocating from another common law jurisdiction with the following experience and attributes; Experience in corporate transactions; First-rate technical skills; Proven ability to work as part of a team.

Corporate Solicitor – 5 yrs+ pqe – J00445

The Role: Our Client, a fast growing commercial law firm based in Dublin's City Centre, are seeking to hire an experienced Solicitor to join it's Corporate Team.

The Requirements: The successful Candidate will be a 5-year+ qualified Corporate Solicitor with experience in general commercial contract work including advising Clients on; Joint Ventures; Mergers and Acquisitions; Corporate Finance; Corporate Governance.

Privacy/IT Lawyer – Associate to Senior Associate – MB0018

The Role: Our Client, a full service business law firm, is seeking to recruit an experienced lawyer to join it's Privacy and Data Security Team dealing with all issues pertaining to data protection and privacy law compliance. This is a complex and rapidly evolving area of law advising Clients on a global scale.

The Requirements: You will be a qualified solicitor or barrister with expertise in both private and data security law gained either in private practice or as in-house counsel.

Associate – J00469

The Role: An opportunity has arisen in a Top 6 Dublin law firm for a Solicitor to join its Competition & Regulated Markets Group dealing with European and Irish law including compliance & regulation. There is a wide variety of work on offer in a broad range of industrial sectors.

The Requirements: You will have experience of mid to top tier practice coupled with a strong academic background and excellent technical skills.

Commercial Property/Real Estate Solicitor – Associate to Senior Associate – MB0012

The Role: Our Client, a progressive Dublin based law firm, are seeking to recruit an experienced Commercial Property/Real Estate Solicitor to join its Commercial Property Department to assist both public and private sector Clients.

The Requirements: You will be a qualified Solicitor with commercial property experience dealing with acquisitions, disposals, due diligence, landlord and tenant and asset management.

Tax Lawyer/Tax Consultant – 2 yrs+ pqe – J00359

The Role: This Top 6 Dublin law firm is seeking to recruit a Tax Lawyer/Consultant to join its expanding Tax Department to assist in managing and advising their tax clients dealing with a range of both domestic and international tax matters. You will have a genuine interest in building a career specialising in tax.

The Requirements: You will be a professional with a qualification in law, accountancy or tax looking to work in a top tier firm bringing with you initiative and enthusiasm with an excellent academic record and either hold a tax qualification or be working towards one.

EU Competition Solicitor – Assistant to Associate – MB0024

The Role: An opportunity has arisen in a Top 6 Dublin law firm for a Solicitor to join it's EU Competition and Regulatory Group. There is a wide range of work on offer including EU, litigation and investigations competition and regulation, market dominance, public procurement law and state aid rules.

The Requirements: You will have 2+ years pqe coupled with a strong academic background and excellent technical skills.

For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.

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