THE BAR
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THE BAR OF IRELAND
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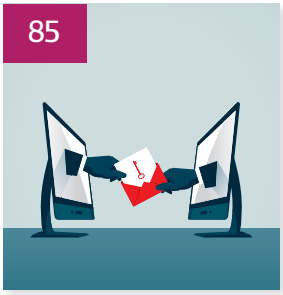

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Cybersecurity at the Bar

The recent cyberattack upon the HSE and the Department of Health has thrown into sharp focus the importance of cybersecurity in all organisations. The Bar of Ireland is no different in that regard.

Members of the Law Library should be assured that cybersecurity as a risk forms part of our overall strategic management of organisational risk. In September 2020, the Chief Executive briefed the Council on the various mitigating controls and actions undertaken by the organisation to manage such cybersecurity risk. The Council is aware that:

1. Cybersecurity is a key priority for the IT Team.
2. Two cybersecurity systems have been deployed.
3. A Council-approved password policy is in place requiring members to change their passwords on a regular basis.
4. Multi-factor authentication (MFA) is in place, which is an enhanced mechanism to ensure the security of members' many devices.

The IT Department, led by John Kane, actively monitors such cybersecurity issues on a daily basis.
Premised upon IT advice, The Bar of Ireland has implemented multiple systems to protect against compromise, and uses monitoring programmes, where necessary, to raise the alarm regarding any unusual data movements. These systems use leading-edge machine learning and artificial intelligence to fight cyber criminals. However, it should also be borne in mind that no IT system is 100% secure. While an increasing amount of the time and effort of IT staff is spent responding to cybersecurity issues, it is important to remember that the greatest risk of all to cybersecurity is each individual member. Each member must be cognisant of the risks posed by each device in their "use and control", and consider how they manage each such device (phones, tablets, iPads, laptops, desktops, etc.). Therefore, enterprise-grade threat protection systems are absolutely essential for all member devices, and the IT Department communicates on a regular basis with members in relation to the importance of individual digital identity, as this is where compromise usually begins.
The IT Department is available to provide advice to all members in this regard and I urge each member to take the opportunity to review their own IT set-up to ensure that they have the most up-to-date protection systems in place.

LSRA levy

Part 7 of the Legal Services Regulation Act 2015 provides for the imposition of a levy on professional bodies and certain barristers to cover expenses of the Legal Services Regulatory Authority (LSRA) and Disciplinary Tribunal. Under the Act, the Council is required to collect this levy on behalf of the LSRA from members.
In July 2019, the Council made a decision to pay the LSRA levy on behalf of members for 2018 and 2019, to be funded from its reserves, which had been built up over a number of years to provide a cushion for members in respect of the costs that would arise from the establishment of the LSRA. Thereafter, it was intended that the LSRA levy would be collected from individual members on an annual basis.
The LSRA has advised that the levy for 2020 will be approximately €313k, equating to €150 per member of the Law Library.
Given the extraordinarily challenging financial circumstances faced by members this year, the Council has taken a decision to pay this levy on behalf of members for 2020 as a further measure to support members during the Covid-19 crisis.

The Bar of Ireland submissions

Over the past few months, the Council has made several submissions in response to a range of consultations, including:

- Public Consultation on the Transposition of Directive (EU) 2020/1828 of the European Parliament and of the Council of November 25, 2020, on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC;
- Public Consultation on Enhancing and Reforming the Personal Injuries Assessment Board (PIAB);
- Submission to the European Commission on the Annual Rule of Law Report 2021;
- Submission to the Joint Committee on Justice Victim's Testimony in Cases of Rape and Sexual Assault;
- Submission to the Legal Services Regulatory Authority on the Admission Policies of the Legal Professions; and,
- Submissions to the Department of Justice and the Oireachtas Justice Committee on the General Scheme of the Judicial Appointments Commission Bill 2020.

All of these submissions are available to view on our website.
I would like to take the opportunity to thank all those who have willingly given their time and expertise in assisting the Council in compiling these submissions.

Maura McNally S.C.

Maura McNally SC
Senior Counsel, Barrister
– Member of the Inner Bar
Chair of the Council of
The Bar of Ireland

Law in changing times

This edition features a number of articles addressing the role of the law in society and the role and responsibilities of barristers in interpreting and upholding that law.

Each Attorney General has a key role at the heart of Government. Paul Gallagher SC has served in this position during two of the most extraordinary periods in recent Irish history – the financial crisis and the pandemic. In our exclusive interview, he shares his unique insight on the legal challenges that arise, particularly in relation to emergency legislation. He also discusses the importance of public law in underpinning and reflecting social change, and the role of lawyers in ensuring that the law serves the needs of society and Government.

The independent referral bar is now larger and more diverse than ever, and for the first time is subject to statutory regulation. As the profession faces unprecedented change, we chart the evolution of the ethical values that underpin the profession and highlight the need to preserve the core values of independence and integrity.

The decision of the Supreme Court *In the matter of J.J.* examines the balancing of constitutional rights of parents and children, specifically in relation to decision-making surrounding a child's medical treatment. This key judgment considers the application of Article 42A of the Constitution as well as the use of the wardship jurisdiction for minors, and whether the course of treatment proposed by a hospital amounted to the impermissible hastening of death and therefore euthanasia. Elsewhere, we look at confidential information from an employment law perspective. New rules for barristers in relation to continuing professional development are the focus of our closing argument. We hope it assists each practitioner to become familiar with the new rules.

Eilis Brennan SC
Editor
ebrennan@lawlibrary.ie

Bar appearance before Oireachtas Joint Committee

Dara Hayes BL, Chair of the Criminal and State Bar Committee, and Fiona Murphy SC, recently appeared before the Joint Committee on Justice on behalf of the Council of The Bar of Ireland to discuss the manner in which victims' testimony in cases of rape and sexual assault is currently conducted within the criminal justice system in Ireland, and the effect the current process has on victims, the accused, and practitioners.

According to the latest CSO Crime Detection Statistics (2019), the detection rate for reported sexual offences is 12%, the lowest detection rate of any crime. A crime is considered detected when An Garda Síochána have identified and sanctioned a suspected offender for the crime. In terms of criminal justice reform efforts, there is doubtless a strong social and moral impetus to focus reform efforts on this area of the law, to evaluate recent reforms and to improve the experiences of victims of sexual offences should they choose to engage with the criminal justice system.

An important question to pose is: what does justice look like for victims of sexual assault and rape? When developing reform proposals in this area it is important to seek advice from victims of rape and sexual assault who have already been through the experience of giving testimony in court.

It is also important to seek advice from key stakeholders who work with victims in this area.

Council representatives reiterated to the Committee the need for greater judicial and court resources to minimise the impact of delays and adjournments.

There is a psychological impact on victims and witnesses as they ready themselves for trial. The longer the process, the longer this burden has to be carried.

A number of key recommendations of the 'Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences' (the 'O'Malley Report'), including the introduction of preliminary hearings, were highlighted in that regard.

The Council's full submission is available at www.lawlibrary.ie or click here.

Work continues for IRLI in Tanzania

Over the last number of months, Irish Rule of Law International's (IRLI) new programme on 'Addressing Child Sexual Abuse through Institutional Capacity Building in the Tanzanian Criminal Justice System', supported by The Bar of Ireland, has gone from strength to strength. The targets and plans we outlined in *The Bar Review* in December last have been substantially met, but not without significant challenges due to the ongoing pandemic.

The elements of the programme are being implemented by IRLI's local partners. The Children's Dignity Forum (CDF) in the rural Mpwapwa region in central Tanzania is focused on engaging all the actors across the criminal justice chain, along with communities in co-operation with these same actors.

Capacity enhancement training has been undertaken collectively with magistrates, investigators, prosecutors, laboratory technicians, medical officers in charge of health facilities, and social welfare officers on evidence collection, forensic evidence, and case management. This cross-disciplinary approach is hugely important to allow all parties to consider how they can better improve their working practices for the benefit of survivors.

These sessions have also highlighted gaps in the system that we hope to assist our Tanzanian colleagues in addressing via expertise from Irish criminal justice chain actors. For instance, there is significant guidance on handling cases of gender-based violence in Tanzania but a lack of guidelines specifically addressing survivors of child sexual abuse.

This spring has also seen the launch of the Second 5 Year Child Justice Strategy by the Tanzanian Ministry of Constitutional and Legal Affairs.

This document looks to address many issues in the realm of child sexual abuse cases and the broader area of child justice. Work undertaken by the project has fed into the report and it provides an excellent road map for future improvements in practices and procedures.

Engagement with communities has been affected by pandemic restrictions; however, the project has still managed to visit several villages in the region. CDF team members along with criminal justice chain actors have discussed the concerns of local communities with regard to child sexual abuse cases and made people aware of their rights.

Aonghus Kelly
Executive Director, IRLI

IRLI is working with the Children's Dignity Forum in central Tanzania.

Training sessions assist IRLI in implementing its programme in Mpwapwa.

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HOME & ABROAD

HUMAN RIGHTS: UNIVERSAL RIGHTS?

2021 CHAIR'S CONFERENCE

Online Conference | 16th, 17th & 18th June

#BarConf21

Conference hosted by:

Maura McNally SC,
Chair of the Council of The Bar of Ireland

Wednesday 16th June | 4.30pm start

PROMOTING HUMAN RIGHTS & THE RULE OF LAW IN IRELAND

The Hon. Mr. Justice Donal O'Donnell
Judge of the Supreme Court

Paul Gallagher SC
Attorney General of Ireland

Micheal P. O'Higgins SC
Former Chair of Council of The Bar of Ireland from 2018-2020

Professor Claire Hamilton
Professor of Criminology at Maynooth University Department of Law

Thursday 17th June | 4.30pm start

INTERNATIONAL TIDES: RULE OF LAW OVERSEAS

The Hon. Mr. Justice Frank Clarke
Chief Justice of Ireland

The Rt. Hon. Sir Declan Morgan
Lord Chief Justice, Northern Ireland

Michael McDowell SC
Senator & Former Attorney General

Baroness Helena Kennedy QC
Member of the UK House of Lords

Friday 18th June | 4.30pm start

COMMEMORATING THE CENTENARY OF THE FIRST FEMALE MEMBERS OF THE BAR OF IRELAND

The Rt. Hon. the Baroness Hale of Richmond DBE
Former President of the UK Supreme Court

Ms. Justice Mary Finlay Geoghegan
Former Judge of the Irish Supreme Court

The Honourable Rosalie Abella
Justice of the Supreme Court of Canada

Panel discussion moderated by **Orla O'Donnell**, RTÉ Legal Affairs Correspondent.

CONFERENCE DETAILS

The Bar of Ireland Chair's Conference is open to all. Register once to get access to all three panels. Day 1 and 2 will finish with a Q&A discussion.

Attendees are invited to make a donation to our two chosen charities in place of a fee.

- **Capuchin Day Centre**
- **Irish Rule of Law International (IRLI)**

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Register at:
ti.to/barofireland/barconf21

Administration of justice post pandemic

The four professional bodies of barristers and advocates across the four jurisdictions (Ireland, Northern Ireland, England and Wales, and Scotland) recently published a joint statement highlighting the various factors that need to be taken into account before any decision is taken to employ remote hearings more widely once Covid-19 is behind us.

In order to deliver justice in lockdown, it quickly became vital to move to remote hearings. From that experience, the four Bars recognise that the justice system has undergone changes that are, and should be, here to stay. In particular, the use of remote hearings to deal with short or uncontroversial procedural business is unobjectionable, and indeed to be welcomed in many cases, even after the current crisis has passed.

However, careful consideration is needed before any decision is taken to employ remote hearings more widely. There are multiple and multi-faceted disadvantages to such hearings, when compared to the usual, in-person hearings that have delivered justice for centuries. The following were highlighted by the four Bars:

- experience shows that judicial interaction is different and less satisfactory in remote hearings from that experienced in 'real life', with the result that hearings can be less effective at isolating issues and allowing argument to be developed;
- the management of witnesses, especially in cross-examination, is far less satisfactory when conducted remotely and there are concerns among the four Bars that it may have an adverse impact on the quality of the evidence given;
- the four Bars are concerned that remote hearings present very considerable challenges to effective advocacy in cases involving evidence or complex narrative submissions – the very real, but often intangible, benefits of the human interaction inherent in in-person hearings cannot be ignored, and the universal sentiment across the four Bars is that remote hearings deliver a markedly inferior experience;
- the diverse and complex needs of our clients must be protected and their participation must be safeguarded – by its nature, a remote and automated system will only degrade the valuable human interaction that should be at the heart of meaningful and open access to justice; and,
- there are also wider concerns arising from remote working; we have all found that the training experience has been markedly affected by the predominance of remote working, and the accompanying isolation – in marked contrast to the usual collegiality of our respective Bars – is also having a negative impact on well-being.

The four Bars remain supportive of both the continuing use of technology in courts and the use of remote hearings becoming the default position for short or uncontroversial procedural business; however, they are unanimous in their stance that for any hearing that is potentially dispositive of all or part of a case, the default position should be in-person hearings. Remote hearings should be available as an option in such cases where all parties (including the court) agree that proceeding in that way would be appropriate.

Bar of Ireland supports International Fair Trial Day

The Bar of Ireland joins international bar associations and human rights groups to support International Fair Trial Day and the Ebru Timtik Award.

The first International Fair Trial Day will be held on June 14, 2021, to honour the memory of Ebru Timtik. The day will become an annual event and will also include the Ebru Timtik Award in her honour. Ebru Timtik, a Turkish lawyer of Kurdish origin, died on hunger strike on August 27, 2020. She was protesting her innocence of the charges against her and the lack of fair procedures in the trial in which she was convicted. She was among 18 Turkish lawyers sentenced to prison terms for alleged terrorist-related offences.

The new annual Ebru Timtik Award will recognise an individual or organisation that has made an exceptional contribution towards securing fair trial rights in the country on which the International Fair Trial Day is focusing for the year in question. The right to a fair trial is a basic human right, recognised in the Universal Declaration of Human Rights adopted by the world's governments in 1948, and reaffirmed since 1948 by numerous international treaties. Article 6 of The European Convention on Human Rights guarantees the internationally recognised principles of a fair trial.

The steering group organising the International Fair Trial Day for 2021 consists of the Council of Bars and Law Societies of Europe (CCBE), the European Association of Lawyers for Democracy and World Human Rights (ELDH), the European Bars Federation (FBE), European Democratic Lawyers (EDL-AED), the French National Bar Council (CNB), the International Association of Democratic Lawyers (IADL), the International Association of Lawyers (UIA), the International Bar Association's Human Rights Institute (IBAHRI), the Italian National Bar Council (CNF), the Law Society of England and Wales, Lawyers for Lawyers (L4L), Ayşe Bingöl Demir, and Serife Ceren Uysal.

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Seán Costello 087 2248278 sean.costello@costellosolicitors.ie

Specialist Bar Association news

The **Sports Law Bar Association (SLBA)** held an inspiring and motivating webinar on April 1 chaired by Susan Ahern BL. Alison Walker BL and Roderick Maguire BL spoke on 'Equality in Dispute Resolution in Sports', touching on gender inequality and challenges to the Paralympics.

Tony McGillicuddy BL presented on the searches in regulatory investigations – the unanswered questions on privacy and privilege from the CRH case, at a **Professional, Regulatory and Disciplinary Bar Association (PRDBA)** webinar on April 20.

The **Immigration, Asylum and Citizenship Bar Association (IACBA)** organised a noteworthy webinar on April 20 in conjunction with the Young Bar Association.

It was chaired by Ms Justice Tara Burns, who shared her lessons and learnings from her time at the Bar. William Quill BL and Tríona Jacob BL presented on navigating the asylum list.

The **Construction Bar Association (CBA)** hosted two CBA Tech Talks. On April 21, Siobhan Kenny, Associate in the Property & Construction Group at Eugene F. Collins, spoke about the contractual response due to Covid-19. James Geoghegan BL gave an update on recent procurement cases on May 5.

The CBA also announced the introduction of the inaugural Sanfey Essay Prize 2021, in honour of one of the founders of the Association, Mr Justice Mark Sanfey, and the competition closed on June 4.

The **Probate Bar Association** invited Brian Broderick, Chartered Tax Adviser and Trust and Estate Practitioner at O'Hanlon Tax, to speak on the subject of 'Tax Aspects of Disclaimers and Family Arrangements' at a breakfast briefing on April 27.

Also on April 27, the **Planning, Environmental and Local Government Bar Association (PELGBA)** ran a fascinating webinar on 'Access to Information on the Environment: Recent Trends and Developments', where Claire Hogan BL discussed recent cases and the contribution they have made to the following key concepts under the AIE Regulations:

- 'The Aim of the Regulations – Disclosure is the General Rule';
- 'The Definition of "Environmental Information"';
- 'The Definition of "Public Authority"';
- 'The Application of the Exceptions and the Public Interest Test'; and,
- 'OCEI Investigations and Fair Procedures Arguments'.

The PELGBA Annual Conference took place on May 27, chaired by Ms Justice Nuala Butler. Speakers included Dermot Flanagan SC, Eamon Galligan SC, Tom Flynn BL, and Suzanne Murray BL, with topics discussed including: planning law enforcement; Section 50 procedures; Strategic Housing Developments; climate change and environmental law; and, recent developments in CPO law.

Stephen O'Sullivan BL examined the interesting topic of 'Inspection, Deletion and Transfer of Data on Termination of Employment' at a recent **Employment Bar Association (EBA)** Breakfast Briefing on April 28. The second part of the EBA Spring Series took place on April 29, focusing on the recent Supreme Court judgment 'The judgment in *Zalewski*: employment disputes and the administration of justice', with a thought-provoking roundtable discussion between Alex White SC, Roderick Maguire BL, Dr Tom Hickey, Dublin City University, Anne Lyne, Hayes Solicitors, Lorna Lynch BL, and Rosemary Mallon BL. With over 450 in attendance, the series discussions proved to be both encouraging and timely. Both webinars can now be watched back on www.employmentbar.ie. The final webinar in the series takes place on June 9 at 4.00pm.

The **EU Bar Association (EUBA)** presented a hot topic, 'Back to the Future – Post-Brexit Enforcement of Judgments' on April 29. Chaired by Hannah Godfrey BL, Adrian O'Higgins BL and Noel Travers SC spoke on the Withdrawal Agreement, the Trade and Cooperation Agreement, the Hague Choice of Court Convention and the Lugano Convention. The *Irish Independent* picked up on the topic and reached out to Adrian to discuss the issues further, and the article can be read here.

Return of the Green Street Lectures

The Bar of Ireland was delighted to announce the return of the Green Street Lectures series.

This series follows on from the 2016 Green Street Lectures and portrays the intersection between law, politics and literature, detailing some of the notable characters, culture, and controversies that defined the Irish State through the years. The 2021 series is an important contribution in seeking to build an understanding of how national figures have both been shaped by, and have themselves shaped, the law in Ireland. Revisiting landmark cases and their lasting impact, the lectures were presented by pre-eminent barristers and delivered from the Honourable Society of King's Inns. The first instalment included:

- Frank Callanan SC on 'The tables of the law, graven in the language of the outlaw; John Francis Taylor's speech at the King's Inns in 1901, and Ulysses' (available here);
- Marguerite Bolger SC on 'The Evolution of Employment Equality Law in Ireland – From Rogues to Role Models' (available here); and,
- John O'Donnell SC on ''Yous have no merit, no merit at all' – Trial and Error of Patrick Kavanagh' (available here)

Keep an eye out for more Green Street Lecture announcements coming soon!

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The Heather Blazing: in conversation with Colm Tóibín

The Bar of Ireland's Young Bar Committee, in conjunction with the Young Solicitors Committee of the Law Society of Ireland, recently hosted a conversation between award-winning writer Colm Tóibín and Ms Justice Mary Rose Gearty examining Tóibín's 1992 novel *The Heather Blazing*.

The chat delved into the novel, which tells the story of High Court judge Eamon Redmond, and the intertwining connections and struggles of his personal and professional personas in late 20th Century Ireland. Ms Justice Gearty asked Colm about his childhood, growing up in 1980s Ireland, his inspiration for characters, and his thoughts on barristers and judges after his research!

The conversation created both an interesting and engaging discussion, with amazing feedback from attendees.

Watch the event here.

Statement of the four Bars on PRC Government sanctions

The four Bars of the United Kingdom and Ireland are united in their condemnation of the sanctions announced by the Government of the People's Republic of China (PRC) against barrister members of the legal profession and their "immediate families".

Four barristers gave a legal opinion for lay clients, who then published that opinion publicly. The opinion related to legal issues arising from alleged human rights violations by the PRC authorities against the Uyghur population in the Xinjiang Province of the PRC. The imposition of sanctions on lawyers for providing a legal opinion clearly contravenes the UN Basic Principles on the Role of Lawyers, which state (at para. 18) that "lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions".

The naming in the sanctions of a barristers' chambers, which comprises some 95 other barristers who practise from the same premises but as independent legal practitioners, is a further indiscriminate attack on legal professionals. It is inconsistent with respect for the rule of law.

The Chinese state, as well as Chinese citizens and their businesses, benefit as much as anyone from a functioning international legal order. The four Bars have called on the PRC Government to review these sanctions, which call into question its commitment to the rule of law, as well as its status and reputation as a reliable partner in international trade and commerce.

Measures that target lawyers who are complying with their professional obligations, simply because their work attracts the disapproval of the Chinese Government, are also a threat to the global legal community.

The four Bars have furthermore called upon national and international Bar associations to condemn the imposition of these sanctions as an unjustifiable interference with the professional role of lawyers, and an attack upon the rule of law internationally.

Cybersecurity is everybody's business

The recent cyberattacks on the Irish health service have prompted many organisations to review their IT systems and security.

John Kane
ICT Director, The Bar of Ireland

Many members will have noted with concern the recent cyberattacks that have impacted the HSE and the consequent unavailability of many of their IT systems. It is important to remember that cyberattacks happen every day – and this organisation is regularly targeted. Cybersecurity is not just about the criminals who try to take advantage of our online presence. There are several aspects to be considered when discussing cybersecurity, and this article will look briefly at the challenges posed in protecting all of the lawlibrary.ie systems we provide for members' use, the devices that are used to access these systems, and the digital identities of all system users. While many of you will go about your business with no impact from these orchestrated attacks, we have found it necessary to advise several members individually of targeted attacks on their accounts. Practised criminals will not advertise their activity to their targets, so just because you don't see it does not mean that it is not happening. It is an accepted fact that no IT system is 100% secure and the security of any IT system is only as strong as its weakest link – so cybersecurity is everybody's business.

Protecting systems

Our cybersecurity systems to date have proven robust and fit for purpose, and the technology we use to protect our systems is kept under constant review. The cybersecurity risks across the organisation are actively monitored by the IT Department on a daily basis. The organisation has implemented multiple systems to protect against compromise, and a monitoring system to alert us to unusual data movements. These systems are centrally managed and use leading-edge machine learning and artificial intelligence to resist intrusion attacks. We have a comprehensive password policy in place, and Council actively encourages members to use multifactor authentication (MFA) for systems access. Cybersecurity is a key priority for the IT Team, which we find is taking up increasing amounts of our time.

Devices

The easiest device for hackers to compromise is that of an individual, and so it is absolutely essential that subscription-based "enterprise-grade" threat protection software is installed on all member devices. It is no longer appropriate to use free products as the basis of your cybersecurity system. Any weakness can be exploited, resulting in different types of loss and expense. Even a lost or stolen device can trigger a major cybersecurity incident as the impact of the loss becomes clear. As an example, a member recently realised that their computer was missing. Here are some of their thoughts as the situation progressed: "When my laptop went missing, I wasn't sure that it was mislaid or stolen, so I tagged it to alert me via an email if the device went online. On Sunday morning an alert duly arrived. I erased the hard drive remotely but it still left 36 hours when the content was unaccounted for. It is difficult to describe how miserable I felt. My imagination worked overtime. It was like parking your car on the crest of a hill, stepping out, seeing a large crowd at the bottom and then watching the car roll forward, gaining momentum, as you realise the handbrake is not on. Truly awful. The following morning I reported the device stolen. I turned my attention to compiling a report for the Data Protection Commissioner (DPC). I had also contacted the Bar Council IT Help Desk for advice. I was reminded that once a device has been encrypted there is no requirement to report to the DPC, a very simple process which the Help Desk can talk you through and then register on their system as evidence that you have complied with that level of encryption. How simple is that? But how many people have done that?"

Happily, this device was found, still within a secure building, and as it was encrypted no report would have been required to the Data Protection Commissioner. But the question stands….

Digital identity

Every member has an account and a password. This digital identity is your authentication to access all lawlibrary.ie services. Protecting this combination is essential to the continued security of each account. Criminals will attempt to compromise these credentials by way of phishing emails or by intercepting identity information on open Wi-Fi networks. MFA prevents criminals using compromised credentials to access your data as it limits what devices can access your account, and therefore is highly recommended to all users.

Best practice

An International Bar Association Conference provided an excellent checklist for members' use of IT and technology. In summary, it suggests:

- implement threat protection software on all devices;
- separate personal and practice data;
- complete regular back-ups;
- be aware of cybersecurity dangers;
- use MFA;
- encrypt data and devices; and,
- use a secure cloud computing service, e.g., Office 365.

If the above sounds like a lot, or you just cannot seem to get to grips with the technology involved, please reach out to the IT Team for support. This year we are promoting 1:1 support for members who need assistance, and these sessions will be scheduled during court vacation.

In the matter of J.J.

A recent Supreme Court judgment has given guidance on wardship, children's rights and end-of-life matters.

Karen O'Brien BL

The judgment of the Supreme Court[1] delivered in January of this year, *In the matter of J.J.*,[2] is an important decision, which looks at the constitutional rights of parents and children, specifically in relation to decision-making surrounding a child's medical treatment. The case involved the first application to the Supreme Court under Article 42A of the Constitution dealing with the rights of the child, and has been described by Prof. Conor O'Mahony, Special Rapporteur on Child Protection, as the most significant children's rights decision of the Irish courts in the last 15 years. The judgment considers how to interpret and apply Article 42A, and looks at a number of significant related issues, including the use of the wardship jurisdiction for minors,[3] and whether the course of treatment proposed by the hospital amounted to an impermissible acceleration of death, and therefore euthanasia.

Background

The facts of the case are tragic. It concerned an 11-year-old boy (referred to as John throughout the judgment), who in 2020 was involved in a road traffic accident arising from which he suffered severe injuries, including

brain injuries, leaving him in a semi-vegetative state. Expert medical opinion, which included the opinion of his treating doctors and independent experts, was unanimous in finding that his neurological injuries were severe, permanent and irreversible. As a result of his injuries, John developed a condition called dystonia, a movement disorder triggering painful, prolonged, and involuntary contractions of the muscles. Although he could not indicate the extent of his pain, the medical evidence was in agreement that the dystonia was very severe, and through objective clinical assessment, confirmed that he was experiencing high levels of pain.

High Court application

The case first came before the High Court in circumstances where the treating hospital and John's parents could not agree on how best to treat his condition. An application was brought by the hospital just months after his accident, and on the first day of the hearing, John was admitted to wardship by the President. The hospital also sought orders to treat John's dystonia with all necessary painkilling medication, a probable effect of which was that John's respiratory functions would be reduced or supressed. Were that to occur, his medical team considered that it would be in his best interests not to administer any intensive intervention or admit him to ICU, even though this could result in his death. The unanimous opinion of the medical experts was that, although John's life would be prolonged by intensive intervention, it would result in increased pain and suffering, and even if successful in the short term, would return him to a weakened state of health, with the likelihood of a further crisis in the relatively near future.

For their part, John's parents were of the view that he recognised their voices and that his eyes latched on to them. They thought he had a reasonable level of awareness, and because he responded to pain, this contention was supported by the clinicians. In the circumstances John's parents were opposed to the application to withhold intensive care treatment. They believed that if John was given more time to recover, his condition would improve, although they did not have any medical evidence to support their position.

Prior to the delivery of the High Court judgment, there was new evidence of a significant improvement in John's dystonia in response to treatment. The President therefore reopened the inquiry, during which medical opinion agreed that the risk of a severe dystonic attack was now less immediate. Despite this, the medical experts did not alter their prognosis that John remained very unlikely to regain a meaningful level of function.

In her judgment,[4] Irvine P. found that the constitutional requirement to vindicate the rights of the child, which the parents normally enjoyed, was not affected by John being a ward of court.

The Court found that rights of the child under the Constitution must be presumed to be vindicated by the actions or inactions of their parents unless that presumption can be rebutted. In assessing whether State intervention is necessary, the fundamental principle is that the welfare of the child is paramount. Although John's parents contended that they had not failed in their duties as required by Article 42A.2.1, Irvine P. held that their failure to acknowledge the severity of John's condition and his likely prognosis:

- amounted to a failure of their duty to vindicate his rights;
- was sufficient to rebut the presumption that his rights were best vindicated within the family unit; and,
- justified the intervention of the State.

Concluding that it was in John's best interests, the President granted the hospital the declarations it had sought in relation to his medical treatment.

It was precisely this relationship between the administration of pain-relieving medication and the withholding of life-sustaining treatments, which was central to John's parents' objection to the course of action proposed by the hospital.

Appeal to the Supreme Court

Leave was granted to John's parents to appeal directly to the Supreme Court by way of a leapfrog application. The Court directed that the Attorney General and the Irish Human Rights and Equality Commission be given notice of the proceedings, and both parties attended the hearing and made submissions. The guardian *ad litem*, who had been appointed by the High Court, was retained in the proceedings. All aspects of the case – procedural, evidential, and substantive – were challenged on appeal.

Wardship

The Supreme Court, in considering whether the wardship jurisdiction was an appropriate mechanism to bring this case before the courts, found that the procedure was preferable to others since it ensured that the detailed case being made was notified in advance of the hearing. The Court confirmed that wardship procedure is not a *lis inter partes*, but is rather an inquiry. It is not a question of an onus or standard of proof, but rather of the court being satisfied.

One of the arguments advanced by John's parents on appeal related to the timing of his admission to wardship.

Although the Supreme Court held that it would have been preferable to have deferred the decision on wardship until the close of proceedings, it found that the timing of admission to wardship did not invalidate the treatment orders made, since the President had used the same test for overriding of parental refusal as would have applied in plenary proceedings or in proceedings seeking declarations pursuant to the inherent jurisdiction of the court.

Previously, the law in relation to wardship had provided that once a person was made a ward of court, the court was vested with jurisdiction over all matters relating to the person and estate of the ward.[5] In this case, however, the Supreme Court took the view that:

"Where it is contended that wardship was necessary not because of a general failure of care, but because of the manner in which parents have addressed a single – albeit extremely serious – decision, it is neither desirable nor justifiable that the parents should be disabled as decision-makers in all other respects".[6]

This view was expanded on by Baker J. in her supplemental judgment dealing with wardship, where she indicates that rather than removing all parental autonomy, conditions may be imposed on the exercise of parental authority.[7]

Where wardship jurisdiction is exercised, the test, as set out by Lynch J. in *In the matter of a ward of court*,[8] (*Re a ward of court*) is to determine what is in the ward's best interests. In terms of the manner in which the test should be applied in respect of a minor ward, the Supreme Court differed from the President, holding that the test is to consider what a loving and considerate parent would do once apprised of all the facts and evidence, and aware of the character, personality, and history of the child, rather than determining what the child might consider to be in his own best interests.

Although the judgment states that while an assessment of the benefits and burdens of a treatment are relevant to the decision as to the best interests of the child, that does not involve the Court making judgments as to the quality of the life being lived by the patient,[9] the writer's impression is that the evidence, and ultimately the decisions judges have to make, necessarily involve an assessment of the quality of life that the person at the centre of the case is likely to have in the future, since without this, his or her best interests cannot be ascertained.

Rights of the child and Article 42A

In addition to the test under the wardship jurisdiction, the Court was required to have regard to the constitutional rights of the ward. Article 42A.2.1 provides for the circumstances in which the State may supply the place of the parents:

"In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child".

Prior to the 31st Amendment[10] to the Constitution, 'blameworthiness' had been an essential feature in a finding of failure of parental duty under Article 42.5. As a consequence of the amendment, the Supreme Court found that the existing case law on parental failure, decided by reference to Article 42.5, could not be directly applied to the position under Article 42A.[11] The Supreme Court considered whether the test for intervention under Article 42A.2.1 requires a showing of both 'exceptionality' and 'parental failure' but held that it did not, finding instead: "Exceptional is better understood in descriptive terms – that is, describing the test of parental failure rather than adding a separate test".[12]

While the Supreme Court noted the exemplary care and love shown by John's parents, it held that their decision in this single regard, which ran counter to the entirety of the medical consensus before the Court, could be properly described as constituting a failure of duty:

"We have, however, reluctantly come to the clear conclusion that John's parents' decision to refuse their assent to any care plan that contemplates, in the event of a dystonic or other medical crisis, the administration of whatever level of medication is required to alleviate suffering, unless invasive therapies and treatments are also made available for the purpose of resuscitation, was a decision which could not be said to be in John's best interests. We must further conclude, therefore, that it is a decision which was prejudicial to his welfare since it was a decision that, if implemented, would be likely on the evidence to cause him extreme and avoidable pain and suffering".[13]

Medical treatment versus withholding of treatment

The Supreme Court judgment distinguishes between the administration of positive medical treatment, which normally requires consent, and the withholding of life-sustaining treatment, which does not: "…as a matter of law, consent of the patient…is not a legal pre-requisite of…a decision not to institute aggressive life-sustaining measures".[14] Despite this discretion, which a doctor has in relation to the withholding of aggressive life-sustaining measures in an end-of-life situation, the Court found that it is severely constrained once the possibility is raised that such a course of treatment might be a breach of the criminal law. It is likely that this finding was in response to affidavit evidence that set out the view of John's mother "that if there was a heartbeat and a pulse, then he was alive and to take him away now was just murder".[15] The Court found that in the circumstances it was not unreasonable, and was perhaps unavoidable, that the hospital and doctors would seek to have the legality of any proposed course conclusively determined.

It was precisely this relationship between the administration of pain-relieving medication and the withholding of life-sustaining treatments, however, which was central to John's parents' objection to the course of action proposed by the hospital. Their position was that they would not permit medication to be administered to a level that caused a risk to John's life, if resuscitation interventions would not then be carried out. In this regard McKechnie J. in his concurring judgment states:

"I am not entirely easy in having the parents' response to what the hospital and doctors propose as constituting a "refusal" of consent to their son obtaining medical treatment…What they object to is what they would consider a failure by the hospital to engage in life saving treatment, which will become necessary to sustain his existence if his condition should deteriorate as predicted".[16]

In *Re a ward of court*, Hamilton C.J. had stated: "the right to life…does not include the right to have life terminated or death accelerated".[17] Using this terminology, counsel for John's mother submitted that the course of action approved by the High Court amounted to an impermissible acceleration of death, arguing that it amounted to euthanasia. Referring to the definition of euthanasia as set out by O'Flaherty J. in *Re a ward of court*, namely: "… the termination of life by a positive act,"[18] the Supreme Court rejected the claim that the treatment proposed by the hospital amounted to euthanasia or the impermissible hastening of death, any more than does palliative care as practised in hospitals on a daily basis. Despite this, it does seem to the writer that the course of treatment outlined in the judgment was likely to result in the death of the ward at an earlier stage than would otherwise have occurred. The Court, referring to *Fleming v Ireland*,[19] acknowledged the distinction set out therein between palliative care delivered to terminally ill patients on the one hand, and assisted suicide on the other, as one based on intention. Somewhat surprisingly the Court did concede:

"It is possible to argue that the distinction is no longer feasible, or should no longer be maintained, but so long as the law retains an absolute prohibition on euthanasia, it remains a critical and valid distinction both for medicine and the law".[20]

Conclusion

The Supreme Court concluded that the order of the High Court was, in principle, correct, and that the improvement in John's dystonia could be addressed by a variation of the order. It substituted an order consenting on behalf of the ward to the administration of medication, sedation or anaesthesia for the primary goal of treating the breakthrough of terminal neurological symptoms, even though the doses required might have a secondary or terminating effect on his respiratory function. It is significant that the decision of the Supreme Court in this regard was contingent on the occurrence of another serious dystonic episode. Considering that it was appropriate to maintain the possibility and primacy of parental decision-making, the Court did not make any orders in relation to the other treatments because there was no reason to believe that the parents would not themselves consent to such treatments. If, however, they were unwilling to consent to any procedures medically indicated to be in the interests of the ward, an application could be made to the President of the High Court. Finally, the Court made a declaration that the hospital would not be acting unlawfully if it withheld life-prolonging treatments or supports not considered to be in the best interests of the ward. The Court emphasised that the consent and declarations made were permissive and not mandatory, and limited them in time, making them subject to review three months from the date of the judgment.

This case differed from other similar applications in that:

- it was brought by the hospital and opposed by the family;
- it was brought at a much earlier stage in the post-accident life of the ward than other similar cases;
- it involved consent to a course of treatment that ultimately was likely to end in the death of the ward; and,
- in terms of the decision not to admit the ward to ICU, it involved the non-delivery of treatment rather than the withdrawal of treatment simpliciter.

In terms of the orders made, the Court kept these to a minimum, consenting only to the one treatment refused by the parents, allowing the parents the opportunity to consent to all other treatments, and making a declaration that in withholding life-prolonging treatments in accordance with medical ethics the hospital would not be acting unlawfully.

The judgment is significant for many reasons. There is now Supreme Court jurisprudence in relation to Article 42A. The Supreme Court has held that the State may intervene in respect of a single parental decision that prejudicially affects the safety or welfare of their child. It is also clear that the Supreme Court sees the wardship jurisdiction as a useful mechanism to resolve disputes regarding future medical treatment where there is an issue of capacity.

References

1. Primary judgment delivered by O'Donnell, Dunne, O'Malley and Baker J.J., with concurring judgments delivered by McKechnie J. and Baker J.
2. *In the matter of J.J.* [2021] IESC 1.
3. *In the matter of J.J.* [2021] IESC 3.
4. *In the matter of J.J.*, Judgment of Irvine P. delivered November 18, 2020.
5. *In the matter of a ward of court (withholding of medical treatment) (No.2)* 2 I.R. 79 at 106.
6. *In the matter of J.J.* [2021] IESC 1, p.34.
7. *In the matter of J.J.* [2021] IESC 3, p.13.
8. *In the matter of a ward of court (withholding of medical treatment) No.2)* 2 I.R. 79.
9. *In the matter of J.J.* [2021] IESC 1, p.99.
10. Thirty-First Amendment of the Constitution (Children) Act 2012, signed into law April 28, 2015.
11. *In the matter of J.J.* [2021] IESC 1, p.73.
12. Ibid., p.76.
13. *In the matter of J.J.* [2021] IESC 1, p.85.
14. Ibid., p.87.
15. Ibid., p.10.
16. Judgment of McKechnie J., delivered January 22, 2021, p.108.
17. *In the matter of a ward of court (withholding of medical treatment) (No.2)* 2 I.R. 79 at 124.
18. *In the matter of J.J.* [2021] IESC 1, p.38.
19. [2013] 2 I.R. 417.
20. *In the matter of J.J.* [2021] IESC 1, p.39.

Law in a time of crisis

Attorney General Paul Gallagher SC speaks to *The Bar Review* about holding office during two major international crises, and the evolution of the law.

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Paul Gallagher has been here before. Attorney General from 2007-2011, he was appointed to the role for the second time in June 2020. It would not be an exaggeration to say that both terms of office coincided with two of the most extraordinary periods in modern Irish history – the financial crisis, and now the Covid-19 pandemic. During these periods the State has faced unprecedented challenges, which required novel legal and legislative solutions: "During the financial crisis, the challenges facing the State were exacerbated by Ireland's particular, and in some respects unique, circumstances. These challenges were more difficult to resolve because of the necessity of operating within the constraints of European law, which at that time did not have adequate legal structures for addressing the financial crisis. Ireland also faced these challenges without the European support and cohesion that have been available during the present crisis. The lack of support at an EU level was due partly to the legal constraints which then existed, partly because Ireland's problems were viewed as fundamentally an Irish problem, and partly because the extent of the legal constraints on European Union action was misunderstood in some important respects.

"The European Central Bank and the European institutions subsequently recognised that, in fact, there were additional significant and necessary measures which they could adopt to help alleviate the crisis. Towards the latter part of the financial crisis, particularly in 2010 and 2011, that approach was reflected by the adoption by the EU of the European Stability Mechanism and the European Financial Stabilisation Mechanism, which provided access to financial assistance programmes for Ireland, and for other member states of the Eurozone in financial difficulty. In 2010, the ECB reintroduced some non-standard measures which had been withdrawn earlier and launched the Securities Markets Programme. Ultimately these programmes and measures assisted Ireland's recovery and a more general recovery in Europe".

Particularly in the period 2008 to 2010, Ireland was obliged to introduce novel legal structures and rules to address the crisis: "The NAMA Act 2009 was quite a unique and novel piece of legislation, which raised many difficult legal issues. It had to be introduced under considerable time pressure because of the necessity of urgently addressing the solvency issues faced by the banks and the threat to the financial stability of the State more generally. The NAMA Act introduced legal and financial solutions that had not been attempted elsewhere. There was other important legislation, including the Financial Emergency Measures in the Public Interest Act, 2009, which imposed significant cuts in public expenditure (including remuneration of public servants). In 2009 it was necessary to nationalise Anglo Irish Bank. In 2010 the Credit Institutions (Stabilisation) Act provided bespoke legal structures, which provided a basis for addressing the financial difficulties of credit institutions in distress, and which enabled State support to be given to those institutions in order to provide the sound banking system required to enable economic recovery. It was necessary to ensure that devising and introducing all of this legislation did not trigger a default in bank obligations, which could have led to claims against the State in respect of guaranteed debts. Such claims if they had occurred would have created further serious financial difficulties for the State. That was a constant and very

pressing concern, which required that extraordinary care be taken with any policy or legal measures".

The 2008 Bank Guarantee Act was the first and perhaps the most significant of these measures: "Again that was entirely unique legislation, introduced under the threat of an imminent collapse of the financial system".

All of this was occurring in the context of a constantly shifting international financial landscape. This uncertainty and exposure of the State's financial system to exogenous threats through the international financial system made the protective and corrective measures taken by Government all the more difficult to devise and implement. The Attorney General speaks of the "tremendous support" he received from his Office, and from the Chief State Solicitor's Office (CSSO), in closely navigating those difficulties as well as others within and outside the public sector.

Covid-19 is somewhat different he says, because Ireland is not isolated in dealing with it: "We are ploughing a less lonely furrow because Covid is something faced by most countries throughout the world. Covid has been very challenging because it has brought enormous change and presented unprecedented difficulties. Societal activities have been brought to a halt and many sections of the economy are shut down. That creates significant challenges for the Government and has necessitated many legislative measures, in order to provide the legal basis for the constraints imposed on society and to address the consequences for the economy of these measures caused by the Covid 'shutdown'".

All in a day's work

While the pressures on the Attorney General's Office during these extraordinary times cannot be underestimated, they can also be viewed as an example, albeit an extreme one, of the very important work carried out on a daily basis by the Office on behalf of the State. This includes what the Attorney General sees as the Office's most important function, i.e., giving independent legal advice to Government to assist its decision-making: "The independence of that advice is very important. The Government must have confidence in the independence, the quality and the integrity of that advice, because so many Government decisions involve legal issues. There are legal constraints on much of what Government can do. The Government must also know that such advice will be available to it urgently, as required. It is also very important that legal issues relevant to Government decisions and actions are identified in time in order to facilitate the Government's decision-making processes".

The Office's role in relation to both European and domestic legislation is a crucial element of its work. The Attorney General points out that while some EU legislation has direct effect and therefore it is not always necessary to incorporate EU measures into Irish law, directives, which constitute an important part of EU legislation, must be implemented into Irish law through domestic legislation. It is necessary to ensure that directives are transposed in a way which fully complies with EU legal requirements: "That is an important aspect of the legislative role discharged by the Office and can present significant difficulties at times, particularly with directives involving technical matters, but its importance is perhaps less obvious to the public and even to many lawyers".

All Acts of the Oireachtas, on the other hand, are reviewed by the Attorney General's Office. This is a process in which the current Attorney General is particularly interested because of its wider implications for Government and society as a whole: "It is very important for the Government that its legislative programme is implemented because if it is not, that impacts on the Government's ability to not only fulfil its promises in the Programme for Government, but also on its ability to discharge generally the obligations of Government. One of the Office's priorities is to ensure that the legislation is produced urgently, and efficiently. Delays in introducing legislation are very unhelpful, to put it mildly. The delay in the implementation of important legislative initiatives or proposals can have significant adverse implications for the people affected by the legislation, as well as having an adverse effect on the perception of the Government's ability to discharge its commitments".

Acting on behalf of the State in litigation (the State is the biggest consumer of court services) is another vital element of the Office's work: "It is a testament to our legal system's compliance with the Rule of Law that persons have ready access to the courts to obtain effective remedies. However that, of course, imposes its own burdens not only on the Office, but also on Government and Government bodies, to ensure litigation is properly dealt with in the interests of the State and the taxpayer. Obviously, in some cases, legal challenges are merited. In other cases they are not merited and it is important to ensure that such unmeritorious challenges do not succeed. This is vital not just for the taxpayer, but also for the integrity and effectiveness of actions and decisions by Government and State bodies. Defending litigation therefore is a very important part of the Attorney General's role, and requires great commitment and input from the Chief State Solicitor's Office and Advisory Counsel in the Attorney General's Office".

Then and now

While the Attorney General believes he has settled quite quickly into this second tenure in office, in many ways, changes in society and the law have made this experience very different from the last: "The volume of law and legislative measures which now have to be considered in a governmental context has greatly increased even in the last 10 years. Over 400 legislative instruments emanate annually from Europe and this creates significant strains for the system because they have to be assimilated, and complied with and also implemented into Irish law, in the case of directives. These measures can potentially have a major effect on how Government Departments operate and frequently impact on policy choices available to Government".

He acknowledges the enormous challenges created by the vast expansion of the scope of law, for Government, and therefore for his Office: "In terms of public law, there have been major advances in the last 10 years. Immigration, asylum, the European Arrest Warrant, co-operation with judicial and prosecutorial authorities of other jurisdictions and public law generally, are all areas of law in which there have been important legal developments. Because climate change is such a major issue, the law in relation to the environment and planning is ever more important and there has been a very significant expansion in the regulatory reach of these laws. Societal changes create other challenges for Government with issues of concern always arising. It is difficult for Government to plan for the challenges to society and to our legal, administrative and political systems which are likely to emerge in the next five or ten years but it must do so. Government is attempting to transform significant aspects of society and the economy to meet these challenges. That effort ultimately generates an extra burden for this Office because of its role in providing the legal structures, and the legal advice required as a consequence".

He is also aware that there can be a lack of understanding among the general public with regard to the importance of the legal structures that facilitate these societal and system changes, and of the role of legal professionals in that process: "I think very often members of the public view lawyers as people who do not really make

Doing the State some service

The Attorney General's real love will always be practising as an advocate at the Bar. While his current role represents an interruption of his advocacy practice, he very much appreciates the wider perspective it gives him: "On the last occasion, I enjoyed the work immensely and was very fortunate to have the opportunity of working with so many great people, both at a governmental level and within the Civil Service. I found that very rewarding. I have the same experience on this occasion. While I miss doing cases in court, the legal challenges are very interesting in a different way. You also get a perspective on legal issues right across so many areas of law, which I would not have had any real involvement in over the last 25 years of practice".

He does not intend to stay entirely away from court, and plans to appear personally in more cases on behalf of the State: "I am very interested in continuing to do court work for the State to maintain my skills, and also because I very much enjoy it. I hope to be able to do this more often than has been the practice of Attorneys General in the past. For the last 25 years, the volume of work which an Attorney General has to deal with makes it very difficult to appear in court. However, it is something that I would very much like to do as much as possible and I hope to be able to make the time to do this and to have the opportunity".

A sense of public service is also important: "The opportunity to work with people to try and find solutions to important issues is very interesting. It provides an opportunity to contribute something to society. Having been very fortunate in my career at the Bar, which has given me so much enjoyment, it is a privilege to be able to do this, to get an opportunity to work with the lawyers in the Attorney General's Office and the CSSO. These lawyers are very dedicated and provide a great service to the State".

any worthwhile contribution but in the main just identify problems, or create legal impediments to actions and decisions. That is a wholly incorrect view of the role of lawyers in society. Whether we like it or not the law impinges on all areas of society including on many economic and financial activities. For the most part, in democratic countries like Ireland, these laws contribute to a better society. It is therefore very important that there is a proper understanding of what law contributes and of the role which can be played by skilled and experienced lawyers in ensuring that these laws are properly understood, and that decisions and actions both in the private and the public sector are taken in compliance with the laws. There is a significant cost for Government and private undertakings if their decisions and actions are not compatible with legal requirements. Lawyers make an enormous contribution to avoiding these costs and if properly engaged and focused, their advice and the legal solutions they propose result in significant savings, in the case of Government for the taxpayers and in the private sector for their clients".

Learning curve

This massive expansion and rapid evolution of the law impacts not just on the Attorney General's Office, but on the entire legal community, and on the professionals who work within that community: "Each year there is a vast increase in legal materials which lawyers must be aware of and understand, in order to provide the best advice, whether the material takes the form of legislation, decisions from Irish and foreign courts (which are relevant in an Irish legal context), academic articles or textbooks. It is increasingly difficult to devote the time and commitment, not just to be aware of but to understand the significance of these rapid legal developments. Accordingly, it is very difficult to continue to be a general practitioner. There is greater specialisation in the Bar but even among those who specialise, the challenge is to keep developing one's knowledge and one's legal education. One of the great advantages that the Bar enjoys is that it has the ability and expertise to provide clients with specialist and up-to-date advice across the entire legal spectrum. Maintaining high standards involves a major effort to develop and maintain legal skills in this rapidly changing legal landscape. That presents a very important challenge for the future. Lawyers must keep educating themselves and must regard the practise of law as requiring a commitment to lifelong legal education".

He acknowledges also the challenging regulatory landscape in which barristers now operate, but views the commitment to a lifelong legal education and development as fundamental to the future of the profession: "The Bar has transformed in the 42 years in which I have been in practice. The scope of law has increased enormously and there are many areas of law which did not exist when I began to practise. One of the most impressive things about the Bar is the wide range of legal skills and expertise it now offers to clients. The standard of service has reached a level which has not always existed in the past. There were, of course, always very brilliant barristers, but the standard of education, specialisation and expertise now displayed by the Irish Bar is extremely impressive. It is very important that barristers get an opportunity to use to best effect these qualities and skills, and continue to have the opportunity to forge very successful careers".

He speaks very highly of the contribution made by so many members of the Bar to his Office: "We have very skilled people in the Office and in the CSSO, but we could not hope to function without the support of the independent Bar. During my last period in Office and on this occasion I have been very fortunate to benefit from the immense support of really highly skilled professional and specialist lawyers who provide a very high-quality, prompt service on a wide range of legal issues. The service provided by the Bar is essential for handling litigation and means that the Office has available to it specialist litigators in all legal areas. It, and more particularly, the Government benefits greatly from that service. This is one of the enormous benefits of having an independent Bar. It means there is available to this Office and indeed to the public generally, skilled litigators and advisors capable of providing legal services, on a case-by-case basis, of the highest standard".

He is very much in favour of the move to make the Bar a more diverse profession, citing his Office's commitment to this in its briefing of barristers: "It is vitally important that we have a Bar that reflects the diversity of society and accordingly that diversity is promoted and encouraged. Diversity will enhance the service which the Bar can offer in terms of decision-making, perspective and skills. The great increase in the number of female barristers in the last 20 years has contributed enormously to the Bar, making a vital contribution to its development and in particular its sophistication, expertise and also to its modern and inclusive ethos. The Bar is very conscious of the need to promote better opportunities for women to develop careers at the Bar. The Bar Council is committed to this. A very significant number of the barristers briefed by this Office are female and this number will continue to increase".

LEGAL UPDATE

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A directory of legislation, articles and acquisitions received in the Law Library from March 12, 2021, to May 6, 2021.
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ADMINISTRATIVE LAW

Library acquisitions

Holmes, M. *Administrative Law (2nd ed.)*. Dublin: Round Hall, 2021 – M300.C5

Lewis, C. *Judicial Remedies in Public Law (6th ed.)*. London: Thomson Sweet & Maxwell, 2020 – M300

AGENCY

Library acquisitions

Watts, P., Reynolds, F.M.B. *Bowstead and Reynolds on Agency (22nd ed.)*. London: Sweet & Maxwell, 2020 – N25

ANIMALS

Statutory instruments

Pet travel (cats, dogs and ferrets) (amendment) regulations 2021 – SI 151/2021

Avian influenza (precautionary confinement of birds) regulations 2020 (revocation) regulations 2021 – SI 164/2021

BANKING

Liabilities – Guarantee – Findings of fact – Appellant appealing against findings of the High Court – Whether there was evidence to support the findings of fact – [2021] IECA 76 – 16/03/2021

Downes v National Asset Loan Management Ltd and Promontoria (GEM) Ltd

Summary judgment – Admissibility of evidence – Arguable defence – Appellant seeking to introduce new arguments and evidence – Whether the new material afforded an arguable defence – [2021] IESC 12 – 15/03/2021

Ennis v Allied Irish Banks Plc

Summary summons – Leave to amend – Pleadings – Plaintiff seeking leave to amend the special indorsement of claim in summary summons proceedings – Whether the proposed amendments were necessary – [2021] IEHC 134 – 15/03/2021

Governor and Company of the Bank of Ireland v Wales

Library acquisitions

Dixon, V., Goode, R. *Goode on Payment Obligations in Commercial and Financial Transactions (4th ed.)*. London: Sweet & Maxwell, 2020 – N305

Statutory instruments

Central Bank (Supervision and Enforcement) Act 2013 (section 48(1)) (recovery plan requirements for insurers) regulations 2021 – SI 184/2021

BUILDING LAW

Library acquisitions

Ramsey, V., Furst, S., Keating, D. *Keating on Construction Contracts (11th ed.)*. London: Sweet & Maxwell, 2020 – N83.8

Statutory instruments

Building control (commencement notices) (residential and childcare services construction) regulations 2021 – SI 156/2021

CHILDREN

Summary return of child – Article 11 of Council Regulation (EC) No. 2201/2003 – Jurisdiction – Respondent seeking a ruling that the High Court did not have jurisdiction to hear an application under Article 11 of Council Regulation (EC) No. 2201/2003 due to an earlier custody hearing in the District Court – Whether the applicant had acted in a way that was unambiguously inconsistent with his seeking a summary return of the child – [2021] IEHC 266 – 12/04/2021

R.H. v A.R.

Library acquisitions

Parker, C. *Adolescent Mental Health Care and the Law*. United Kingdom: Legal Action Group, 2020 – N155.3

Statutory instruments

Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (section 29 (Child and Family Agency) (designation) order 2020 – SI 118/2021

Children (Amendment) Act 2021 (commencement) order 2021 – SI 199/2021

CIVIL LAW

Statutory instruments

Credit Union Act 1997 (section 3A) order 2021 – SI 197/2021

COMPANY LAW

Contracts – Repudiation – Companies Act 2014 s.537 – Companies seeking approval of the repudiation of contracts – Whether the quantum of the loss or damage suffered by the counterparties to such repudiations should be determined at a hearing pursuant to s.537 (3) of the Companies Act 2014 – [2021] IEHC 268 – 21/04/2021

Arctic Aviation Assets Designated Activity Company, In re

Scheme of arrangement – Proposals – Companies Act 2014 s.541 – Examiner seeking an order confirming his proposals for a scheme of arrangement between each of the companies and their respective members and creditors – Whether the proposals were unfairly prejudicial to the interests of any interested party – [2021] IEHC 272 – 2/04/2021

Arctic Aviation Assets Designated Activity Company, In re

Remuneration – Provisional liquidator – Companies Act 2014 s.645 – Applicant seeking an order fixing his remuneration for the work he carried out as provisional liquidator – Whether the applicant had discharged the onus of establishing a claim to the level of remuneration that he sought – [2021] IEHC 204 – 24/03/2021

Fitzpatrick v Murphy (as Official Liquidator)

Company – Winding up – Petition – Petitioner seeking the winding up of the company – Whether a credible case was made out for dismissing the petition – [2021] IEHC 169 – 10/03/2021

M.U.T. 103 Ltd, In re

Security for costs – Public interest – Companies Act 2014 s.52 – Respondent seeking security for costs – Whether the Court of Appeal erred in principle in ordering security for costs – [2021] IESC 15 – 22/03/2021

Quinn Insurance Ltd (Under Administration) v PricewaterhouseCoopers (a firm)

Settlement – Liberty to re-enter proceedings – Companies Act 2014 – Respondent seeking liberty to re-enter proceedings – Whether the court had jurisdiction to determine the application of the respondent – *[2021] IECA 20 - 01/02/2021*

Solicitors Mutual Defence Fund Ltd v Peter Costigan and others practising under the style and title of Bloxham

Library acquisitions

French, D. *Applications to Wind up Companies (4th ed.)*. Oxford: Oxford University Press, 2021 – N262

French, D. *Mayson, French & Ryan on Company Law (37th ed.) 2020-2021*. Oxford: Oxford University Press, 2021 – N261

COMPETITION LAW

Library acquisitions

O'Donoghue, R. Padilla, J. *The Law and Economics of Article 102 TFEU (3rd ed.)*. Oxford: Hart Publishing, 2020 – W110

CONSTITUTIONAL LAW

Modular trial – Discrimination – Constitutional challenge – State respondents seeking a modular trial – Whether directing a split trial would result in a net benefit – [2021] IEHC 205 – 19/03/2021

B v Wexford County Council

Palliative care – Intervention – Article 42A of the Constitution – Parents appealing from High Court orders permitting the treating hospital to move to palliative care should their son's respiratory functions fail on the application of painkilling medication in the event of a future dystonic crisis – Whether the test for intervention under Article 42A of the Constitution was satisfied – [*2021] IESC 1 – 22/01/2021*

J (J), In re

Palliative care – Intervention – Article 42A of the Constitution – Parents appealing from High Court orders permitting the treating hospital to move to palliative care should their son's respiratory functions fail on the application of painkilling medication in the event of a future dystonic crisis – Whether the test for intervention under Article 42A of the Constitution was satisfied – [*2021] IESC 11 – 09/03/2021*

J.J. (a minor) (represented by his guardian ad litem*)*

Access to information – Environmental information – Public authority – Appellant seeking production to it of documentation concerning environmental information – Whether the notice party was excluded from the definition of a public authority – [2021] IEHC 273 – 22/04/2021

Right to Know CLG v Commissioner for Environmental Information and ors

Unlawful detention – Medical treatment – Article 40 of the Constitution – Applicant seeking an order pursuant to Article 40 of the Constitution – Whether this was an appropriate case for the invocation of Article 40 – [2021] IECA 102 – 01/04/2021

S.M. v The Governor of Cloverhill Prison

Articles

Eustace, A. The virus and the hare: *Irish Coursing Club v Minister for Health* [2021] IEHC 47. *Irish Law Times* 2021; (39) (6): 86

Smyth, C.-M. "Derived rights" and a new era for social and economic rights jurisprudence. *Irish Law Times* 2021; (39) (5): 71

CONTRACT

Library acquisitions

Lewison, K. *The Interpretation of Contracts (7th ed.).* London: Sweet & Maxwell, 2020 – N10

COPYRIGHT

Library acquisitions

Davies, G., Harbottle, G., Caddick, N., Suthersanen, U. *Copinger and Skone James on Copyright (18th ed.).* London: Sweet & Maxwell, 2020 – N112

COSTS

Costs – Normal rule – Constitutionality – Parties seeking costs – Whether costs should follow the event – [2021] IESC 14 – 15/03/2021

A v The Minister for Justice and Equality

Stay – Costs – Possession – Plaintiff seeking costs – Whether a stay should be placed upon the orders pending an appeal – [2021] IEHC 231 – 26/03/2021

Allied Irish Banks Plc v Fitzgerald

Costs – Stay – Companies Act 2014 – Respondents seeking costs – Whether costs should follow the event – [*2021] IEHC 16 - 12/03/2021*

Anthony J. Fitzpatrick as liquidator of Elvertex Ltd (in liquidation) v O'Sullivan & Lyons

Costs – Trial of a preliminary issue – Stay – Appellants seeking costs – Whether it was appropriate to stay the order for costs – [2021] IESC 13 – 12/03/2021

Cantrell and ors v AIB and ors

Costs – Discretion – Order 99, RSC 1986 – Appellants appealing against an order directing them to pay 6/7ths of the respondents' costs – Whether costs should follow the event – [2021] IECA 108 – 13/04/2021

E. and F. v G. and H.

Costs – Liability – Measurement – Defendant seeking costs – Whether costs should be measured on the Circuit Court scale – [2021] IEHC 175 – 26/03/2021

Everyday Finance Dac v Burns

Costs – Negligence – Liability – Parties seeking costs – Whether costs should follow the event – [2021] IEHC 274 – 16/04/2021

Hanrahan v Waterstone and ors

Costs – Injunction application – Costs in the cause – Respondents seeking costs – Whether costs should be treated as costs in the cause – [*2021] IEHC 157 –* 05/03/2021

The Irish Coursing Club v The Minister for Health and The Minister for Housing, Local Government and Heritage

Costs – Fall-back discretion – Dublin III regulation – Parties seeking costs – Whether costs should follow the event – [2021] IEHC 264 – 26/04/2021

M.A. (Bangladesh), S.A. and A.Z. (a minor suing by his father and next friend M.A.) v The International Protection Appeals Tribunal, The Minister for Justice and Equality, The Attorney General and Ireland

Costs – Stay – Judgment mortgages – First respondent seeking costs – Whether the order for costs ought to be stayed – [2021] IECA 65 – 10/03/2021

McGuinness v The Property Registration Authority of Ireland and Ulster Bank Ireland Designated Activity Company

Costs – Trial of action – Stay – Appellants seeking to set aside High Court order for costs in favour of the respondents – Whether the costs should be reserved to the trial of the action – [2021] IESC 10 – 09/03/2021

Permanent TSB PLC and ors v Skoczylas and ors

Security for costs – Special circumstances – Jurisprudence – Respondent seeking security for costs – Whether the appellants had demonstrated that special circumstances existed such as ought to lead the Court to decline to order security – [2021] IESC 16 – 22/03/2021

Protégé International Group (Cyprus) Ltd and Avalon International Management Inc. v Irish Distillers Ltd

Costs – Legitimate expectation – Public interest – Applicant seeking costs – Whether the issues raised involved points of exceptional public importance – [2021] IEHC 224 – 26/03/2021

Sherry v The Minister for Education and Skills, The Minister for Further Education and Higher Education, Research, Innovation and Science, Ireland, and The Attorney General

Articles

Holmes, M. The wages of sin. *Law Society Gazette* 2021; (April): 23

COURTS

Library acquisitions

Blackhall Publishing. *Blackhall's Circuit Court Rules: updated to 1 January 2021 (13th ed.).* Dublin: Lonsdale Law Publishing, 2021 – N363.1.C5

Blackhall Publishing. *Blackhall's District Court Rules: updated to 1 January 2020 (13th ed.).* Dublin: Lonsdale Law Publishing, 2020 – N363.2.C5

Blackhall Publishing. *Blackhall's District Court Rules: updated to 1 January 2021 14th ed.).* Dublin: Lonsdale Law Publishing, 2021 – N363.2.C5

Blackhall Publishing. *Blackhall's Superior Court Rules: updated to 1 January 2020 (13th ed.).* Dublin: Lonsdale Law Publishing, 2020 – N361.C5

Statutory instruments

Rules of the Superior Courts (affidavits) 2021 – SI 127/2021

District Court (affidavits) rules 2021 – SI 147/2021

Rules of the Superior Courts (regulation of legal services) 2021 – SI 196/2021

District Court (maintenance) rules 2021 – SI 202/2021

CREDIT UNION

Statutory instruments

Credit Union Act 1997 (section 3A) order 2021 – SI 197/2021

CRIMINAL LAW

Declaratory relief – Transposition – Framework Decision – Plaintiff seeking a declaration that the defendants had failed to transpose into national law the obligations imposed upon Ireland under Council Framework Decision 2008/909/JHA – Whether the State's breach of its obligation under article 29(1) of the Framework Decision to implement its provisions by December 5, 2011, was in the circumstances justiciable at the suit of the plaintiff as a private individual before the national courts of the State – [2021] IEHC 162 – 22/02/2021

Campbell v Ireland and anor

Sentencing – Sexual assault – Severity of sentence – Appellant seeking to appeal against sentence – Whether sentence was unduly severe – [2021] IECA 74 – 18/03/2021

DPP v A.B.

Conviction – Sexual assault – Delay – Appellant seeking to appeal against conviction – Whether the appellant was denied access to identifiable islands of fact so that his trial was unfair – [2021] IECA 100 – 01/04/2021

DPP v A.C.

Conviction – Sexual assault – Perverse verdict – Appellant seeking to appeal against conviction – Whether the verdict of the jury was in all the circumstances perverse – [2021] IECA 66 – 11/03/2021

DPP v A.D.

Sentencing – Murder – Severity of sentence – Appellant seeking to appeal against sentence – Whether sentence was unduly severe – [2021] IECA 129 – 28/04/2021

DPP v B.H.

Conviction – Sentencing – Sexual assault – Appellant seeking to appeal against conviction and sentence – Whether the trial judge erred in law and in fact in failing to sever the indictment prior to the commencement of the trial – [2021] IECA 89 – 26/03/2021

DPP v C.B.

Conviction – Possession of a firearm in suspicious circumstances – Chain of evidence – Appellant seeking to appeal against conviction – Whether there was an absence of a direct evidential link from the taking of a DNA sample to the exhibit before the court – [2021] IECA 87 – 25/03/2021

DPP v Corbally

Conviction – Sexual offences – Admission of new evidence – Appellant seeking to appeal against conviction – Whether the fresh evidence presented with a view to undermining the complainant's testimony at trial was credible – [2021] IESC 17 – 18/03/2021

DPP v D.C.

Sentencing – Burglary – Proportionality – Appellants seeking to appeal against sentence – Whether the net sentence was proportionate in the circumstances – [2021] IECA 125 – 26/04/2021
DPP v Devine and Kelly
Sentencing – Robbery – Undue leniency – Applicant seeking review of sentence – Whether sentence was unduly lenient – [2021] IECA 124 – 05/03/2021
DPP v Joyce
Conviction – Rape – Corroboration – Appellant seeking to appeal against conviction – Where there are two or more alleged victims in an alleged sexual violence case, can the account of one support the evidence of any other? – *[2021] IESC 8 – 18/02/2021*
DPP v Limen
Conviction – Violent disorder – Application to discharge jury – Appellant seeking to appeal against conviction – Whether the trial judge erred in law and fact by refusing applications made by counsel for the appellant during the course of the trial to discharge the jury – [2021] IECA 126 – 27/04/2021
DPP v McNamara
Crime and sentencing – Robbery – Appeal against severity – Efforts at rehabilitation – *[2021] IECA 73* – 16/03/2021
DPP v O'Donoghue
Conviction – Murder – Intent – Appellant seeking to appeal against conviction – Whether evidence of an essential element of the offence of murder was absent so as to render the conviction for murder unsafe – [2021] IECA 107 – 23/03/2021
DPP v O'Loughlin
Conviction – Sexual offences – Delay – Appellant seeking to appeal against conviction – Whether the trial judge erred in law and in fact in failing to withdraw the case from the jury at the close of the prosecution case on foot of an application by the defence concerning delay in bringing the prosecution and the effects of that delay – [2021] IECA 90 – 26/03/2021
DPP v S.K.

Library acquisitions

Ambos, K. *Core Concepts in Criminal Law and Criminal Justice. Volume 1: Anglo-German Dialogues*. United Kingdom: Cambridge University Press, 2020 – M500

Articles

Keith, E. "Prevent" in the Muslim community: a counterproductive terrorism strategy? *Irish Law Times* 2021; (39) (6): 91

Statutory instruments

Misuse of drugs (amendment) regulations 2021 – SI 121/2021
Misuse of drugs (controlled drugs) (designation) order 2021 – SI 122/2021
Criminal Justice (Theft and Fraud Offences) (Amendment) Act 2021 (commencement) order 2021 – SI 167/2021
Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 (commencement) order 2021 – SI 188/2021

DAMAGES

Damages – Assault – Psychiatric injury – Applicant seeking compensation for physical and psychiatric injuries – Whether there were clinical symptoms sufficient to diagnose anxiety disorder – [2021] IEHC 257 – 31/03/2021
Foley v The Minister for Public Expenditure and Reform
Damages – Unlawful imprisonment – Frivolous and vexatious proceedings – Appellant seeking damages for breach of constitutional or natural rights – Whether the proceedings were frivolous and vexatious – [2021] IECA 72 – 12/03/2021
Fulham v Chadwicks Ltd and ors
Psychiatric injury – Liability – Nervous shock – Appellant appealing against the judgment determining that the appellant was liable for an injury suffered by the respondent – Whether there was a horrifying event that led to the respondent's injury – [2021] IECA 112 – 16/12/2021
Harford v Electricity Supply Board
Damages – Personal injuries – Quantum – Plaintiff seeking damages – Whether the plaintiff had knowingly given evidence or had dishonestly caused evidence to be given which was false or misleading – *[2021] IEHC 154* – 04/03/2021
Murphy v Palmer
Damages – Quantum – Negligence – Plaintiff seeking damages – Whether the proceedings ought to be dismissed – [2021] IEHC 239 – 05/03/2021
Ward v McDonagh

Library acquisitions

McGregor, H., Edelman, J., Varuhas, J.N.E., Colton, S. *McGregor on Damages (21st ed.)*. London: Sweet & Maxwell, 2020 – N37.1

DEFAMATION

Security for costs – Defamation – Damages – Respondent seeking security for the costs of the appeal – Whether there were special circumstances within the meaning of Order 86 Rule 9 of the Rules of the Superior Courts – [2021] IECA 128 – 27/04/2021
Gordon v The Irish Racehorse Trainers Association

DISCOVERY

Discovery – Relevance – Privilege – Plaintiff seeking discovery – Whether the claim to journalistic privilege should be ruled on – [2021] IEHC 229 – 26/03/2021
Carey v Independent News & Media Plc, Independent Newspapers (Ireland) Ltd, The Commissioner of An Garda Síochána, Ireland and The Attorney General
Discovery – Declaratory relief – Liability – Defendant seeking discovery – Whether categories should be reformulated – [2021] IEHC 211 – 26/03/2021
Foot Locker Retail Ireland Ltd v Percy Nominees Ltd
Discovery – Relevance – Third-party claims – Third parties seeking order for discovery by defendant – Whether the categories of documents sought were relevant and necessary for the fair disposal of the third-party claims – [2021] IEHC 228 – 26/03/2021
Michael O'Doherty (Fermoy) Ltd v James McMahon Ltd
Discovery – Judicial review – Permanent residence card – Applicants seeking discovery of documents – Whether discovery of the material was necessary and relevant – [2021] IEHC 161 – 09/03/2021
N.K. and A.R. v Minister for Justice
Discovery – Fraud – Disability Act 2005 s.11(2) – Plaintiff seeking pre-trial discovery against the defendants – Whether pre-trial discovery should be confined to documents concerning the plaintiff's dealings with Glenridge Capital as facilitated by the first defendant – [2021] IEHC 243 – 19/03/2021
Powers v Greymountain Management Ltd (in liquidation)
Discovery – Relevance – Necessity – Parties seeking discovery – Whether the material sought satisfied the tests of relevance and necessity – [2021] IEHC 242 – 19/03/2021
Oval Topco Ltd v Health Service Executive
Discovery – Leave to appeal – Breach of law – Applicant seeking discovery – Whether the applicant had demonstrated that very exceptional circumstances existed – [2021] IESC 22 – 29/03/2021
Student Transport Scheme Ltd v The Minister for Education and Skills

EDUCATION

Statutory instruments

Industrial training (process analytics industry) (amendment) order 2021 – SI 129/2021
Student grant scheme 2021 – SI 131/2021
Student support regulations 2021 – SI 132/2021

EMPLOYMENT LAW

Library acquisitions

Arthur Cox. *Arthur Cox Employment Law Yearbook 2020*. Dublin: Bloomsbury Professional, 2021 – N192.C5
McMullen, J. *Redundancy: The Law and Practice (4th ed.)*. Oxford: Oxford University Press, 2021 – N192.26

Articles

Davey, E. Just another whistle stop: the EU whistleblowing directive 2019/1937. *Irish Employment Law Journal* 2020; (18) (1): 10
McVeigh, K., Kirwan, B., Quinn, O. "No jab, no job?" – mandatory vaccinations for employees. *Irish Employment Law Journal* 2020; (18) (1): 4

Statutory instruments

Redundancy Payments Act 1967 (section 12A(2)) (Covid-19) order 2021 – SI 103/2021
Workplace Relations Act 2015 (Workplace Relations Commission code of practice on the right to disconnect) order 2021 – SI 159/2021

EUROPEAN UNION

Library acquisitions

Broberg, M., Fenger, N. *Preliminary References to the European Court of Justice (3rd ed.)*. Oxford: Oxford University Press, 2021 – W93
Chalmers, D., Davies, G., Monti, G. *European Union Law: Text and Material (4th ed.)*. Cambridge: Cambridge University Press, 2019 – W86
Panasar, R., Boeckman, P. *European Securities Law (3rd ed.)*. Oxford: Oxford University Press, 2021 – W107

Articles

Little, C. Parallel bars. *Law Society Gazette* 2021; (April): 50

Statutory instruments

European Union (restriction of certain hazardous substances in electrical and electronic equipment) (amendment) regulations 2021 – SI 106/2021
European Union (central securities depositories) (CSD nominee) regulations 2021 – SI 110/2021
Migration of Participating Securities Act 2019 – SI 111/2021
European Union (central securities depositories) (CSD nominee) (amendment) regulations 2021 – SI 119/2021
European Union (COVID-19 vaccines export authorisation) (no. 2) regulations 2021 – SI 123/2021
European Union (ship inspection and survey organisations) (amendment)

regulations 2021 – SI 138/2021
European Union (restrictive measures concerning Ukraine) regulations 2021 – SI 139/2021
European Union (restrictive measures concerning Egypt) (revocation) regulations 2021 – SI 140/2021
European Union (Foreshore Act 1933) (environmental impact assessment) (amendment) regulations 2021 – SI 145/2021
European Union (sustainability-related disclosures in the financial services sector) regulations 2021 – SI 146/2021
European Union (European Arrest Warrant Act 2003) (amendment) regulations 2021 – SI 150/2021
European Communities (common rules for the operation of air services in the community) (amendment) regulations 2021 – SI 165/2021
European Union (Gas Act 1976) (environmental impact assessment) regulations 2021 – SI 174/2021
European Union (interoperability of the rail system) (designated bodies) (fees) regulations 2021 – SI 176/2021
European Union (transport of dangerous goods by rail) (amendment) regulations 2021 – SI 177/2021
European Communities (reception conditions) (amendment) (no. 2) regulations 2021– SI 178/2021
European Union (bank recovery and resolution) resolution fund levy regulations 2020 – SI 186/2021
European Union (COVID-19 vaccines export authorisation) (no. 2) (temporary amendment) regulations 2021 – SI 190/2021
European Union (restrictive measures against serious human rights violations and abuses) (no. 2) regulations 2021 – SI 191/2021
European Union (restrictive measures concerning Zimbabwe) regulations 2021 – SI 192/2021
European Union (anti-money laundering: beneficial ownership of trusts) regulations 2021 – SI 194/2021
European Union (consumer protection) (Commission for Aviation Regulation) regulations 2021 – SI 195/2021
European Union (unfair trading practices in the agricultural and food supply chain) regulations 2021 – SI 198/2021
European Union (control of trade in goods that may be used for torture) regulations 2021 – SI 201/2021
European Union (markets in financial instruments) (amendment) regulations 2021 – SI 203/2021

EXTRADITION LAW

Judicial review – Surrender – European arrest warrant – Notice party seeking surrender of the applicant to the United Kingdom pursuant to a European arrest warrant – Whether the applicant's surrender on foot of the European arrest warrant was precluded – [2021] IEHC 240 – 26/03/2021
Gallagher v Minister for Foreign Affairs
European arrest warrant – Surrender – Minimum gravity – Applicant seeking an order for the surrender of the respondent to the Republic of Lithuania pursuant to a European arrest warrant – Whether minimum gravity could be established in respect of the first offence referred to in the European arrest warrant – [2021] IEHC 270 – 16/04/2021
Minister for Justice and Equality v Jarokovas
European arrest warrant – Surrender – Inhuman and degrading treatment – Applicant seeking an order for the surrender of the respondent to the Czech Republic pursuant to a European arrest warrant – Whether there was a real risk that, if surrendered, the respondent would be subjected to inhuman and degrading treatment contrary to article 3 of the European Convention on Human Rights – [2021] IEHC 206 – 18/03/2021
Minister for Justice and Equality v Kaleja
European arrest warrant – Surrender – Correspondence – Applicant seeking the surrender of the respondent to Northern Ireland on foot of a European arrest warrant – Whether the surrender of the respondent was prohibited – [2019] IEHC 952 – 18/10/2019
Minister for Justice and Equality v Lagan
European arrest warrant – Surrender – Correspondence – Applicant seeking an order for the surrender of the respondent to the United Kingdom pursuant to a European arrest warrant – Whether surrender was prohibited due to a lack of correspondence as regards the offences set out in the European arrest warrant and offences in the State – [2021] IEHC 236 – 22/03/2021
Minister for Justice and Equality v McGrath
European arrest warrant – Surrender – Inhuman and degrading treatment – Applicant seeking an order for the surrender of the respondent to Romania pursuant to a European arrest warrant – Whether there was a real risk that the respondent would be subjected to inhuman and degrading treatment due to conditions in Romanian prisons – [2021] IEHC 271 – 16/04/2021
Minister for Justice and Equality v Ragabeja
European arrest warrant – Surrender – Abuse of process – Appellant appealing against the decision of the High Court ordering the surrender of the appellant on foot of a European arrest warrant – Whether the potential impact on the appellant's rights caused by a lapse of time between the issuing and execution of the warrant was a matter that required judicial oversight – [2021] IESC 27 – 15/04/2021
Minister for Justice and Equality v Smits
European arrest warrant – Surrender – Correspondence – Applicant seeking an order for the surrender of the respondent to Poland pursuant to a European arrest warrant – Whether the respondent's trial in absentia was in accordance with the requirements of the European Arrest Warrant Act 2003 – [2021] IEHC 241 – 26/03/2021
Minister for Justice and Equality v Witkowski

FAMILY LAW

Hague Convention – Return – Grave risk – Applicant seeking an order for the return of children to France – Whether the respondent had established the defence of grave risk – [2021] IEHC 168 – 12/03/2021
C.T. v P.S.

Library acquisitions
Kennedy, D., Maguire, E. *Irish Family Law Handbook (6th ed.).* Dublin: Bloomsbury Professional, 2020 – N170.C5

Acts
Family Leave and Miscellaneous Provisions Act 2021 – Act No. 4 of 2021 – Signed on March 27, 2021

Statutory instruments
Family Leave and Miscellaneous Provisions Act 2021 (commencement) order 2021 – SI 148/2021
Family Leave and Miscellaneous Provisions Act 2021 (part 4) (commencement) Order 2021 – SI 154/2021
Family Leave and Miscellaneous Provisions Act 2021 part 9) (commencement) order 2021 – SI 180/2021

FINANCE

Statutory instruments
Finance Act 2020 (section 62) (commencement) order 2021 – SI 108/2021
Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] financial services industry levy regulations 2021 – SI 117/2021
Finance Act 2020 (section 49(1)) (commencement) order 2021 – SI 136/2021
Financial transfers (Egypt) (prohibition) (revocation) order 2021 – SI 141/2021

FISHERIES

Statutory instruments
Control of fishing for salmon order 2021 – SI 102/2021

FOOD

Statutory instruments
Food Safety Authority of Ireland Act 1998 (amendment of first schedule) order 2021 – SI 152/2021

GOVERNMENT

Statutory Instruments
National Archives (Amendment) Act 2018 (commencement) order 2021 – SI 153/2021
Heritage fund (transfer of departmental administration and ministerial functions) order 2021 – SI 185/2021

HEALTH

Case stated – Service statement – Disability Act 2005 s11(2) – Circuit Court judge posing a question to the Court of Appeal – Where an assessment report prepared under the Disability Act 2005 concludes that an applicant has no disability, but nonetheless identifies that the applicant has health needs and requires health services, is that applicant entitled under *inter alia* s.11 of the 2005 Act to a service statement? – [2021] IECA 101 – 01/04/2021
G (a minor suing by her father and next friend S.G.) v Health Service Executive

Acts
Health (Amendment) Act 2021 – Act 1 of 2021 – Signed on March 7, 2021

Statutory Instruments
Health (Amendment) Act 2021 (commencement) order 2021 – SI 113/2021
Health (Amendment) Act 2021 (commencement) (no. 2) order 2021 – SI 124/2021
Health Act 1947 (Section 38G) (payment of chargeable costs) (Covid-19) regulations 2021 – SI 125/2021
Health Act 1947 (personal data) regulations 2021 – SI 126/2021
Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020 (continuation of part 2) order 2021 – SI 133/2021
Health Act 1947 (exempted traveller) (Covid-19) regulations 2021 – SI 134/2021
Health Act 1947 (Section 31A – temporary restrictions) (Covid-19) (restrictions upon travel to the state from certain states) (no. 5) (amendment)

regulations 2021 – SI 135/2021
Health (Amendment) Act 2021 (commencement) (no. 3) order 2021 – SI 142/2021
Health Act 1947 (Section 38G – rules and procedures for review of quarantine) (Covid-19) regulations 2021 – SI 143/2021
Health Act 1947 (Section 38G – conduct of RT-PCR tests – prescribed persons) (Covid-19) regulations 2021 – SI 144/2021
Health Act 1947 (Section 31A – temporary restrictions) (Covid-19) (no. 10) (amendment) (no. 4) regulations 2021 – SI 157/2021
Health Act 1947 (fixed payment notice and dwelling event provisions) (Covid-19) (amendment) (no. 3) regulations 2021 – SI 158/2021
Health Act 1947 (Section 31A – temporary restrictions) (Covid-19) regulations 2021 – SI 168/2021
Health Act 1947 (Section 31A (6A)) (Covid-19) regulations 2021 – SI 169/2021
Health Act 1947 (fixed payment notice and dwelling event provisions) (Covid-19) regulations 2021 – SI 170/2021
Health Act 1947 (Section 31A – temporary restrictions) (Covid-19) (amendment) regulations 2021 – SI 171/2021
Health Act 1947 (fixed payment notice and dwelling event provisions) (Covid-19) regulations 2021 (amendment) regulations 2021 – SI 172/2021
Health Act 1947 (exempted traveller) (Covid-19) (amendment) regulations 2021 – SI 173/2021
Health Act 1947 (Section 38G) (Covid-19) regulations 2021 – SI 175/2021
Health Act 1947 (exempted traveller) (Covid-19) (amendment) (no. 2) regulations 2021 – SI 181/2021
Health Act 1947 (exempted traveller) (Covid-19) (amendment) (no. 3) regulations 2021 – SI 183/2021
Health Act 1947 (Section 31A – temporary restrictions) (Covid-19) (amendment) (no. 2) regulations 2021 – SI 193/2021

HUMAN RIGHTS

Library acquisitions

Rainey, B., White, R.C.A., Ovey, C., Wicks, E., McCormic, P. *Jacobs, White and Ovey: The European Convention on Human Rights (8th ed.).* Oxford: Oxford University Press, 2020 – C200

Articles

McLoughlin, C. Balancing privacy and freedom of expression of the media: an Irish and ECHR perspective. *Irish Law Times* 2021; (39) (7): 101 [part 1]

IMMIGRATION

Judicial review – Permission to remain – International Protection Act 2015 s.49 – Applicant seeking an order of certiorari quashing a decision refusing permission to remain pursuant to s.49 of the International Protection Act 2015 – Whether the manner in which the International Protection Act 2015 is operated by the respondent has incorrectly blurred the distinction between international protection and permission to remain decisions – [2021] IEHC 276 – 16/04/2021
A.S.A. v The Minister for Justice
Judicial review – Permission to land – Immigration Act 2004 s.14 – Applicant seeking orders of certiorari of the decision to refuse the applicant permission to land and a notice pursuant to s.14 of the Immigration Act 2004 – Whether the purported s.4(4) notice failed to comply with the requirements of the Immigration Act 2004 as it failed to record the factual reasons for the refusal – [2021] IEHC 227 – 23/03/2021
Chain Wen Wei v The Minister for Justice
Judicial review – Permission to land – Immigration Act 2004 s.14 – Applicant seeking orders of certiorari of the decision to refuse the applicant permission to land and a notice pursuant to s.14 of the Immigration Act 2004 – Whether the respondents failed to comply with s.4(4) of the Immigration Act 2004 by failing to give the applicant a written notice – [2021] IEHC 226 – 23/03/2021
Tang Ting Tang v Minister for Justice and The Commissioner of An Garda Síochána

INJUNCTIONS

Interlocutory injunction – Fair question to be tried – Balance of justice – Plaintiffs seeking interlocutory injunction – Whether the plaintiffs had raised a fair question to be tried – [2021] IEHC 167 – 12/03/2021
Casey v Everyday Finance Dac and O'Connor
Interlocutory injunction – Sale of lands – Fair issue to be tried – Plaintiff seeking an interlocutory injunction – Whether the plaintiff had established a fair issue to be tried – *[2021] IEHC 165 – 12/03/2021*
Ward v Tower Trade Finance (Ireland) Ltd and Burns

INSURANCE

Insurance – Business interruption – Cover – Plaintiff making a claim under a policy of insurance issued by the defendant – Whether the plaintiff was entitled to be indemnified by the defendant – [2021] IEHC 263 – 19/04/2021
Brushfield Ltd (T/A The Clarence Hotel) v Arachas Corporate Brokers Ltd and AXA Insurance Designated Activity Company
Insurance – Losses – Liability – Plaintiffs seeking pandemic coverage – Whether the defendant was obliged to cover any of the losses suffered by the plaintiffs – [2021] IEHC 279 – 23/04/2021
Hyper Trust Ltd Trading as the Leopardstown Inn v FBD Insurance Plc

Library acquisitions

Edelman, C., Burns, A. *The Law of Reinsurance (3rd ed.).* Oxford: Oxford University Press, 2021 – N295

INTELLECTUAL PROPERTY

Articles

Hyland, M., When two worlds collide. *Law Society Gazette* 2021; (April): 46

INTERNATIONAL LAW

Library acquisitions

Girsberger, D. *Choice of Law in International Commercial Contracts.* Oxford: Oxford University Press, 2021 – C233

JUDICIAL REVIEW

Judicial review – Casual trading – Bye-laws – Applicant seeking judicial review of an order of Bantry Circuit Court – Whether the Bye-laws made by the respondent pursuant to the Casual Trading Act 1995 were unlawful and unenforceable – [2021] IECA 84 – 23/03/2021
Alary v Cork County Council
Judicial review – Declaratory relief – Extension of time – Applicant seeking judicial review – Whether it was appropriate in the circumstances to grant an extension of time to permit the application to be brought – [2021] IEHC 215 – 24/03/2021
H v DPP, The Minister for Justice and Equality, Ireland and The Attorney General
Judicial review – Amenability – Preliminary objection – Applicant seeking judicial review – Whether the case made by the applicant was amenable to judicial review – [2020] IEHC 711 – 18/12/2020
Kelly v Gargan
Judicial review – Extension of time – Delay – Applicant seeking judicial review – Whether the first respondent unlawfully refused to extend time for an appeal= *[2021] IEHC 155 - 05/03/2021*
O'Connor v Chief Appeals Officer

LAND LAW

Summary possession – Statutory provision – Registration of Title Act 1964 s.62(7) – Appellant appealing against the order of the High Court setting aside an order for possession of certain registered lands – Whether the trial judge was correct that the appellant had not established its claim – [2021] IESC 26 – 14/04/2021
Bank of Ireland Mortgage Bank v Cody
Adverse possession – Interest – Valuation – Appellant seeking an order for payment out of the entire sum lodged – Whether the deceased should be treated as the freeholder based on adverse possession – [2021] IECA 98 – 29/03/2021
Minogue v Clare County Council

LANDLORD AND TENANT

Acts

Residential Tenancies Act 2021 – Act No. 5 of 2021 – Signed on March 30, 2021

LEGAL PROFESSION

Library acquisitions

Lavy, M., Hervey, M. *The Law of Artificial Intelligence.* United Kingdom: Sweet & Maxwell, 2020 – K103

Articles

Barry, B. Judge duty. *Law Society Gazette* 2021; (April): 16
Hallissey, M. Stony grey soil. *Law Society Gazette* 2021; (April): 28
Nazer, A. Lonely are the brave. *Law Society Gazette* 2021; (April): 42
Roch-Perks, C. The jury of matrons: female participation and the institution's decline in the late-nineteenth century. *Irish Law Times* 2021; (39) (5): 77

Statutory instruments

Judicial Council Act 2019 (commencement) order 2021 – SI 182/2021

MEDICAL LAW

Statutory instruments

Medicinal products (prescription and control of supply) (amendment) (no.5) regulations 2021 – SI 130/2021
Medicinal products (prescription and control of supply) (amendment) (no. 6) regulations 2021 – SI 155/2021

NEGLIGENCE

Negligence – Contributory negligence – Civil Liability Act 1961 s.35(1)(i) – Respondent seeking to reinstate a finding of the High Court – Whether the appellant was guilty of contributory negligence – [2021] IESC 21 – 25/03/2021
University College Cork (National

University of Ireland) v The Electricity Supply Board (ESB)

PERSONAL INJURIES

Personal injuries – Inordinate and inexcusable delay – Balance of justice – Plaintiff appealing an order of the Circuit Court dismissing the proceedings on the grounds of inordinate and inexcusable delay – Whether the balance of justice lay in favour of allowing the proceedings to go to full trial – [2021] IEHC 176 – 26/03/2021

Doyle v The Governor of Mountjoy Prison

Personal injuries – Negligence – Third-party notice – Third party seeking to set aside third-party notice – Whether third-party notice was served as soon as reasonably possible – [2021] IEHC 225 – 19/03/2021

Evans v Beacon Hospital Sandyford Ltd and Maher Shuhaibar

Personal injuries – Negligence – Contributory negligence – Respondent seeking damages for personal injuries – Whether the trial judge was entitled to find that the appellants had been negligent – [2021] IECA 123 – 21/04/2021

McGeoghan v Kelly and ors

Articles

Gilhooly, S. There may be trouble ahead. *Law Society Gazette* 2021; (April): 14

Hallissey, B. Careful now! *Law Society Gazette* 2021; (April): 38

PLANNING AND ENVIRONMENTAL LAW

Planning and development – Environmental impact – Judicial review – Applicant seeking certiorari of the respondent's decision to grant permission to construct a cheese manufacturing plant and associated works and infrastructure – Whether the respondent's decision was invalid due to the respondent's failure to conduct an assessment of the upstream impacts of milk production – 2021] IEHC 254 – 20/04/2021

An Taisce v An Bord Pleanála and ors

Leave to appeal – Judicial review – Planning and Development Act 2000 s.50A(7) – Applicant seeking leave to appeal to the Court of Appeal – In a judicial review of a decision of an appeal or review body, can a court refuse certiorari on the basis that if such an order was made it would result in the resurrection of the original order under review or appeal? – [2021] IEHC 258 – 14/04/2021

Liscannor Stone Ltd v Clare County Council, An Bord Pleanála, Ireland and The Attorney General

Judicial review – Access to information – Directive 2003/4/EC on Public Access to Environmental Information – Applicant seeking judicial review – Whether the respondent's procedural objections were well founded – [2021] IEHC 233 – 23/04/2021

Right to Know Clg v An Taoiseach

Planning and development – Injunction – Joinder – Respondent seeking to have certain findings in the principal judgment revisited – Whether the respondent had demonstrated strong reasons for revisiting the principal judgment – [2021] IEHC 174 – 26/03/2021

Waterford City and County Council v Centz Retail Holdings Ltd

Statutory instruments

Planning and Development Act 2000 (exempted development) regulations 2021 – SI 114/2021

Planning and Development Act 2000 (exempted development) (no. 2) regulations 2021 – SI 115/2021

PRACTICE AND PROCEDURE

Extension of time – Jurisdiction – Courts of Justice Act 1936 s.39 – Appellant seeking an extension of time to appeal the order of the Circuit Court – Whether the Court of Appeal had jurisdiction to entertain the appeal of the refusal of the High Court to extend time to appeal the decision of the Circuit Court – [2021] IESC 20 – 24/03/2021

ACC Loan Management Ltd v Pepper Finance Corporation (Ireland) Designated Activity Company

Plenary summons – Renewal – Special circumstances – First defendant seeking an order setting aside an order renewing the plenary summons – Whether special circumstances existed which justified renewal – [2021] IEHC 218 – 16/03/2021

Altan Management (Galway) Ltd v Taylor Architects Ltd

Stay – Case management – Liability – Defendants seeking an order staying the proceedings and/or suspending any further directions in respect of them – Whether both proceedings should be case managed together – [2021] IEHC 163 – 11/03/2021

Avoncore Ltd and Canmont Ltd T/A Douglas Village Shopping Centre v Leeson Motors Ltd, Adam Opel GmbH, Opel Automobile GmbH and Vauxhall Motors Ltd

Want of prosecution – Inordinate and inexcusable delay – Balance of justice – Defendant seeking to strike out proceedings for want of prosecution – Whether the balance of justice favoured allowing the plaintiff to continue with his litigation – [2021] IEHC 260 – 14/04/2021

Carroll v New Ireland Assurance Company Plc T/A Bank of Ireland Life

Delay – Damages – Balance of justice – Appellants seeking to strike out the proceedings brought by the respondent on grounds of inordinate and inexcusable delay – Whether the appellants would suffer a general prejudice in their defence of the proceedings such as to justify their dismissal on the balance of justice – [2021] IECA 111 – 15/04/2021

Fitzpatrick v The Minister for Justice Equality and Law Reform, The Commissioner of An Garda Síochána, Ireland and The Attorney General

Summary judgment – Arguable defence – Costs – Appellant appealing against summary judgment – Whether the appellant had established an arguable defence to the respondent's claim – [2021] IECA 127 – 27/04/2021

The Governor and Company of the Bank of Ireland v Osborne

Order of certiorari – Objective bias – Costs – Appellant seeking order of certiorari – Whether Supreme Court could refrain from making order of certiorari – [2021] IESC 28 – 15/04/2021

Kelly v Minister for Agriculture, Fisheries and Food and ors

Prohibition – Prosecution – Right to fair trial with due expedition – Applicant seeking an order prohibiting his further prosecution – Whether the applicant's prosecution was in breach of his right to a fair trial with due expedition – *[2021] IEHC 156 – 05/03/2021*

Kiely v DPP

Case management – Representation – Submissions – Appellant seeking to be represented by a German lawyer for the purposes of dealing with outstanding matters in respect of the appeal – Whether the German lawyer should be permitted to represent the appellant without the need to be accompanied by an Irish qualified lawyer – [2021] IESC 30 – 23/04/2021

Klohn v An Bord Pleanála

Personal injuries – Third-party notice – Delay – Appellant seeking to set aside a judgment of the High Court – Whether the respondent acted as soon as was reasonably possible when it came to issuing its motion to set aside the third-party notice – *[2021] IECA 68 – 11/03/2021*

O'Connor v Coras Pipeline Services Ltd

Cross-examination – Order 38, rule 8 RSC – Trade mark – Notice party seeking an order directing the presence of the second applicant at the trial of the action for cross-examination on his affidavit – Whether the applicants had discharged the onus of proof of showing that cross-examination ought not to be permitted – [2021] IEHC 278 – 23/04/2021

O Riain and O Baoill, In re

Summary judgment – Grounds of appeal – Amendment – Appellant seeking to amend his grounds of appeal – Whether any injustice would arise in the absence of the new grounds being permitted – [2021] IECA 130 – 20/04/2021

Promontoria (Arrow) Ltd v Mallon

Defamation – Estoppel – Costs – Appellant appealing from the judgment and order of the High Court whereby it was ordered that the appellant was to produce to the respondent's solicitors a report – Whether the trial judge erred in law and in fact in finding that the appellant was estopped from arguing that the report was not relevant or necessary – [2021] IECA 110 – 15/04/2021

Ryanair Ltd v Erick Besancon

Library acquisitions

Zuckerman, A. *Zuckerman on Civil Procedure: Principles of Practice (4th ed.)*. London: Sweet & Maxwell, 2021 – N350

Articles

Keating, A., Dr. Interrogatories. *Irish law Times* 2021; (39) (7): 106

Ruigrok, C. Getting your house in order. *Law Society Gazette* 2021; (April): 34

PROBATE

Library acquisitions

Martyn, J.R., Ford, C., Learmonth, A., Fletcher, T., Clark, J., Shuman, K. *Theobald on Wills (19th ed.)*. London: Sweet & Maxwell, 2021 – N125

Spierin, B.E. *Wills – Irish Precedents and Drafting (3rd ed.)*. Dublin: Bloomsbury Professional, 2020 – N125.C5

PROFESSIONS

Statutory instruments

Regulated Professions (Health and Social Care) (Amendment) Act 2020 (commencement) (no. 2) order 2021 – SI 120/2021

PROPERTY

Registration of a charge – Statutory interpretation – Registration of Title Act 1964 – Appellant seeking the registration of a charge – Whether the High Court erred in its interpretation of the Registration of Title Act 1964 – [2021] IECA 109 – 15/04/2021

Launceston Property Finance Dac v The Property Registration Authority

ROAD TRAFFIC

Statutory instruments

Road Traffic Act 1994 (detention of vehicles) (amendment) regulations 2021 – SI 179/2021

SOCIAL WELFARE

Statutory instruments

Social welfare (consolidated claims, payments and control) (amendment) (no. 10) (income disregard) regulations 2021 – SI 109/2021

Social welfare (consolidated claims, payments and control) (amendment) (no. 9) (Covid-19 pandemic unemployment payment – entitlement to increase for qualified adult) regulations 2021 – SI 160/2021

Social welfare (consolidated claims, payments and control) (amendment) (no. 11) (emergency measures in the public interest – jobseeker's benefit) regulations 2021 – SI 161/2021

Social welfare (consolidated claims, payments and control) (amendment) (no. 12) (emergency measures in the public interest – jobseeker's allowance) regulations 2021 – SI 162/2021

SPORTS LAW

Library acquisitions

Lewis, A., Taylor, J. *Sport Law and Practice (4th ed.)*. Haywards Heath: Bloomsbury Professional, 2021 – N186.6

STATISTICS

Statutory instruments

Statistics (job vacancy survey) order 2021 – SI 107/2021

Statistics (roundwood removals survey) order 2021 – SI 112/2021

Statistics (national survey of transport of goods by road) order 2021 – SI 163/2021

Statistics (global value chains) order 2021 – SI 166/2021

TAXATION

Summary judgment – Capital gains tax – Value-added tax – Appellant appealing from the *ex tempore* decision and consequent order of the High Court granting summary judgment against the appellant – Whether there had been non-compliance by the respondent with High Court Practice Direction HC54 – [2021] IECA 115 – 23/04/2021

Gladney v Coloe

Library acquisitions

Buckley, M. *Capital Tax Acts 2021*. Dublin: Bloomsbury Professional, 2021 – M335.C5.Z14

Maguire, T. *The Taxation of Companies 2021*. Dublin: Bloomsbury Professional, 2021 – M337.2.C5

Statutory instruments

Taxes Consolidation Act 1997 (Covid restrictions support scheme) (percentage adjustment) order 2021 – SI 104/2021

TELECOMMUNICATIONS

Statutory instruments

Wireless telegraphy (further temporary electronic communications services licences) (no. 2) regulations 2021 – SI 137/2021

Postal money order (no. 4) regulations 2021 – SI 187/2021

TRANSPORT

Declaratory relief – Validity – Air Navigation and Transport Act 1988 s.32B – Plaintiffs seeking a declaration that s.32B of the Air Navigation and Transport Act 1988 is invalid – Whether s32B of the Air Navigation and Transport Act 1988 is constitutional – [2020] IEHC 716 – 25/06/2020

Clarke v Ireland

Statutory instruments

Transport (Tour Operators and Travel Agents) Act 1982 (disbursements from fund) regulations 2021 – SI 105/2021

Merchant shipping (carriage of nautical charts and publications) regulations 2021 – SI 149/2021

Bills initiated in Dáil Éireann during the period March 12, 2021, to May 6, 2021

[pmb]: Private Members' Bills are proposals for legislation in Ireland initiated by members of the Dáil or Seanad. Other Bills are initiated by the Government.

1916 culture quarter bill 2021 – Bill 36/2021 [pmb] – Deputy Aengus Ó Snodaigh, Deputy Denise Mitchell, Deputy Mary Lou McDonald, Deputy Chris Andrews, Deputy Dessie Ellis, and Deputy Seán Crowe

Adoption (information) bill 2021 – Bill 35/2021 [pmb] – Deputy Thomas Pringle and Deputy Catherine Connolly

Civil liability and courts (amendment) bill 2021 – Bill 34/2021 [pmb] – Deputy Denis Naughten, Deputy Peadar Tóibín, Deputy Matt Shanahan, Deputy Verona Murphy, Deputy Michael Lowry, Deputy Noel Grealish, Deputy Peter Fitzpatrick, Deputy Seán Canney, and Deputy Cathal Berry

Climate action and low carbon development (amendment) bill 2021 – Bill 39/2021

Electricity regulation (amendment) (prohibition of winter disconnections) bill 2021 – Bill 44/2021 [pmb] – Deputy Darren O'Rourke, Deputy Claire Kerrane, and Deputy Réada Cronin

Employment permits (miscellaneous provisions) bill 2021 – Bill 46/2021 [pmb] – Deputy Bríd Smith, Deputy Mick Barry, Deputy Richard Boyd Barrett, Deputy Gino Kenny, and Deputy Paul Murphy

Firearms and offensive weapons (amendment) bill 2021 – Bill 41/2021 [pmb] – Deputy Jim O'Callaghan

Labour exploitation and trafficking (audit of supply chains) bill 2021 – Bill 45/2021 [pmb] – Deputy Aodhán Ó Ríordáin, Deputy Ged Nash, and Deputy Seán Sherlock

National Standards Authority of Ireland (carbon footprint labelling) bill 2021 – Bill 42/2021 [pmb] – Deputy Duncan Smith

Planning and development, heritage and broadcasting (amendment) bill 2021 – Bill 47/2021

Private security services (amendment) bill 2021 – Bill 49/2021

Residential tenancies bill 2021 – Bill 37/2021

Road traffic (amendment) (electric scooter trials) bill 2021 – Bill 40/2021 [pmb] – Deputy John Lahart

Sale of tickets (cultural, entertainment, recreational and sporting events) bill 2021 – Bill 55/2021

Bills initiated in Seanad Éireann during the period March 12, 2021, to May 6, 2021

Clean air (smoky coal ban) bill 2021 – Bill 61/2021 [pmb] – Senator Timmy Dooley, Senator Fiona O'Loughlin, and Senator Mary Fitzpatrick

Education (leaving certificate 2021) (accredited grades) bill 2021 – Bill 54/2021

Electoral (amendment) (voting at 16) bill 2021 – Bill 43/2021 [pmb] – Senator Malcolm Byrne, Senator Erin McGreehan, and Senator Mary Fitzpatrick

Family leave bill 2021 – Bill 33/2021

Gambling (prohibition of advertising) bill 2021 – Bill 48/2021 [pmb] – Senator Mark Wall, Senator Marie Sherlock, Senator Rebecca Moynihan, Senator Annie Hoey, and Senator Ivana Bacik

Garda Síochána (compensation) bill 2021 – Bill 50/2021

National lottery (amendment) bill 2021 – Bill 8/2021 [pmb] Senator Barry Ward, Senator Micheál Carrigy, and Senator Emer Currie

Organisation of working time (reproductive health related leave) bill 2021 – Bill 38/2021 [pmb] – Senator Ivana Bacik, Senator Mark Wall, Senator Marie Sherlock, Senator Rebecca Moynihan, and Senator Annie Hoey

Progress of Bill and Bills amended in Dáil Éireann during the period March 12, 2021, to May 6, 2021

Children (amendment) bill 2020 – Bill 51/2020 – Committee Stage – Passed by Dáil Éireann

Criminal procedure bill 2021 – Bill 8/2021 – Report Stage

Progress of Bill and Bills amended in Seanad Éireann during the period March 12, 2021, to May 6, 2021

Criminal procedure bill 2021 – Bill 8/2021 – Committee Stage

Family leave bill 2021 – Bill 33/2021 – Committee Stage

Official languages (amendment) bill 2019 – Bill 104/2019 – Committee Stage

Personal insolvency (amendment) bill 2020 – Bill 76/2020 – Committee Stage – Report Stage

Residential tenancies bill 2021 – Bill 37/2021 – Committee Stage

For up-to-date information, please check the following websites: Bills and legislation

http://www.oireachtas.ie/parliament/

http://www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Government_Legislation_Programme/

Supreme Court determinations - leave to appeal granted

Published on Courts.ie – March 21, 2021, to May 6, 2021

DPP v Molloy [2021] IESCDET 1 – Leave to appeal from the Court of Appeal granted on the 08/01/2021 – (O'Donnell, J., Macmenamin, J., Charleton, J.)

DPP v McGrath [2021] IESCDET 17 – Leave to appeal from the Court of Appeal granted on the 09/02/2021 – (O'Donnell, J., Charleton, J., Woulfe, J.)

DPP v Sheehan [2021] IESCDET 18 – Leave to appeal from the Court of Appeal granted on the 10/02/2021 – (O'Donnell, J., Charleton, J., Woulfe, J.)

For up-to-date information, please check the courts website:

http://www.courts.ie/Judgments.nsf/FrmDeterminations?OpenForm&l=en

Looking back to look forward

What are the issues around ethical standards for members of the independent referral bar in 2021 and beyond?[1]


Sara Phelan SC
and Dr Peter Stafford BL

The purpose of this paper is to briefly chart the evolutionary journey of the ethical and professional values of the independent referral bar in Ireland, to summarise where the profession now stands with regard to its ethical framework, and to look at some of the opportunities and challenges in the years ahead.

It cannot be gainsaid that the independent referral bar is at one of the most significant crossroads it has encountered in its 450-year plus history. For the first time in this history, the barristers' profession is now statutorily regulated,[2] and other initiatives[3] promulgated by the Legal Services Regulatory Act 2015 (the Act) may see the profession as we know it change utterly in the years to come.

Allied with this is the growth and diversification of the profession, with the Law Library having a membership of 253 barristers some 50 years ago,[4] and 985 barristers 25 years ago,[5] while the membership was 2,148 as of October 2020. It would be foolhardy to think that this growth and diversification would not have an impact on the collegiality and camaraderie of the Bar, even in non-Covid times, where the chance of mingling with practitioners of many different interests on the floor of the Law Library is significantly reduced when compared with yesteryear.

As against this, there are some 450 barristers on the Legal Services Regulatory Authority (LSRA) Roll of Practising Barristers who are neither members of the Law Library nor barristers in the full-time service of the State, but it is not possible to discern those among that number who are actually in practice (as opposed to being in employment) outside membership of the Law Library.

And then, of course, on March 6, 2021, the Judicial Council adopted the Personal Injuries Guidelines, another historical first that may have more significant ramifications than are obvious at first glance. Lastly, there are the challenges and opportunities brought about by, *inter alia*, the response to Covid-19, remote hearings, artificial intelligence and online dispute resolution.

All these changes, and more, serve to place the profession under the spotlight in ways that could not have been comprehended 50 years ago. New relationships have formed, and old relationships have altered. But prior to looking at the more recent changes, it is important to refresh our minds as to our core values and how these have stood, and will continue, to stand the test of time.

Duties that are unique to the profession

In previous analyses,[6] the nature of the relationship between barristers and the environment in which they work (and their professional relationship with solicitors, clients, the courts and the general public) has been assessed in the context of how these relationships frame the ethics and values of the independent referral bar. These analyses are very clear that as self-employed professionals, barristers must apply similar professional ethical standards as other professionals, but that the nature of the work of barristers – advocacy and client representation in court – imposes additional duties, which are unique to the profession. As the Honourable Justice Martin Daubney of the Supreme Court of Queensland commented to The Bar of Ireland (TBoI) in 2017,[7] "a legal practitioner is more than the client's confidante, adviser and advocate, and must therefore possess more than honesty, learning and forensic ability". In his article 'Can Ethics be Competitive?',[8] Paul Gallagher SC focused, *inter alia*, on the ethical obligations placed upon barristers over and above the obligations placed upon, firstly, other professionals, and secondly, those involved in business and trade. He noted that the role of the barrister in administering justice and upholding the integrity of the justice system placed additional burdens on barristers, which may not be placed on other professions or occupations since "failure by a barrister to adhere to these ethics has consequences not just for the barrister, but more fundamentally for the integrity of the system of administration of justice and all those exposed to that system".[9] In Gallagher's view, compliance, in terms of adherence to ethical standards, "is not something which can be left to the market to enforce",[10] but needs leadership from the barristers' professional and regulatory body. This issue is looked at in greater detail later in this article.

Gallagher noted the individuality of the barrister's position, in terms of responsibility for the presentation of a client's case to the court, and that the shouldering of the individual responsibility not only helps to ensure that ethical duties to the court are discharged, but also means that a barrister can "fearlessly protect his or her lay clients' interest without having to have regard to what other partners may think or want.

There is no pressure on the individual barrister to account to other partners for

his or her time, or income generation, or for upsetting a particular client through ethical disclosure to the court".[11]

In 2014, the International Council for Advocates and Barristers commissioned a body of research with a view to restating and underpinning the principles of the independent referral bar. Claire Hogan BL contributed to this review,[12] which described a profession "undergoing change" in a similar manner to other professions, industries and trade. The authors noted that while the profession must remain astute to societal change and adapt as appropriate, it is crucial that the fact that the legal justice system (of which the profession is an integral part) exists not only for the benefit of consumers of the legal justice system but for the benefit of society as a whole, is not forgotten in circumstances where the societal emphasis may be on consumerism and consumer-led services.[13]

In accommodating modern drivers of change, Hogan *et al.* note that it is important that barristers do not forget the values of an independent referral bar, or the functions best performed by barristers, and they conclude that:

"…many of the values and functions of the modern specialist advocate are not new but rather they reflect practices developed and lessons learned over many years by the specialist advocates who came before us. Their legacy serves as a nice reminder not only of the living nature of our legal justice system, but also of our need to ensure that we are vigilant to look backwards as well as forwards as we mould the values, the functions and indeed the expectations we place upon the shoulders of modern specialist advocates, to ensure that those advocates reflect and can meet the needs of our ever-changing society".[14]

The values of a modern advocate are summarised by the report under the headings of justice, independence, trust and personal integrity, confidentiality, courage, competence or excellence, civility, and camaraderie, and these values are one and the same as those encompassed and provided for in the Code of Conduct for The Bar of Ireland (TBoI Code).[15] These eight values, according to Hogan *et al.*, are not unique to Ireland, but exist in all legal systems that have a split legal profession. Despite changes to the regulatory environment, these values must remain at the core of our profession if we are to continue our fundamental and crucial role in the administration of justice.[16]

In his review of TBoI Code in 2017 for a Bar of Ireland ethics CPD seminar,[17] Micheál P. O'Higgins SC (then Chair of the Professional Practices Committee) identified five key relationships that underpin the role of the barrister. In each of these relationships, O'Higgins highlighted the barrister's three principal obligations, being the obligation, firstly to the court, secondly to one's client, and thirdly to act fearlessly and without regard to one's personal interests. The five key relationships identified by O'Higgins in TBoI Code are:

1. Barrister/client relationship.[18]
2. Barrister/solicitor relationship.[19]
3. Barrister/court relationship.[20]
4. Barrister/public relationship.[21]
5. Barrister/barrister relationship.[22]

O'Higgins also identified a further, sixth relationship: the relationship between members of the Law Library and a barrister who is not a Law Library member. While this relationship has always existed, it will undoubtedly be brought into sharper focus once the LSRA Code of Practice for Practising Barristers (the LSRA Code) is commenced and as, perhaps, there is an increase in the numbers of barristers who choose to practise without being members of the Law Library.

The Legal Services Regulatory Authority

Since the commencement of the relevant sections of the Act,[23] the LSRA has placed additional obligations on barristers as self-employed professionals and, in addition to the foregoing relationships, it is now possible to identify two further relationships: firstly, the relationship between barristers and their regulatory body; and, secondly, an altered relationship between the barrister and the general public. One absolutely fundamental change brought about by the Act is that, as mentioned at the outset, members of the Law Library are now statutorily regulated, and while TBoI Code is presently the primary rule book for members of the Law Library, members will in due course have another rule book by which to abide, that being the LSRA Code. The LSRA Code remains, as of the date of this article, in draft format and may be viewed on the LSRA website.[24]

Rules of the independent referral bar

There are at least two crucial differences between the LSRA Code and TBoI Code: firstly, the LSRA Code applies to all practising barristers, whether members of the Law Library or not; and, secondly and more importantly, the obligations under the LSRA Code are not as extensive as the obligations under TBoI Code, since the LSRA Code does not concern itself with the independent referral bar. The additional obligations provided for in TBoI Code (colloquially referred to as "the rules of the independent referral bar") are what set members of the Law Library apart from barristers who choose not to become members, and these obligations may be said to be our unique selling point (USP) and, it is suggested, will be of significant importance in placing ourselves at the forefront of the provision of legal services in the years ahead.

Colm Scott-Byrne BL has undertaken a very comprehensive analysis of the differences between both Codes and his report is available for reference on the Professional Practices and Regulation Hub on the members' section of www.lawlibrary.ie. Most of these differences are rooted in the independent nature of the independent referral bar[25] and are, we suggest, differences that we should promote and guard very carefully as we traverse this new regulatory landscape.

Another singular difference is the fact that the LSRA Code makes no provision for devilling or pupillage, and while the King's Inns experience guarantees that all barristers are competent to practise following call to the Bar, the advantages of devilling cannot be gainsaid. Indeed the new Master Guidelines,[26] developed for, and by, members of the Law Library, place specific emphasis on a master ensuring that a pupil is aware of the required professional standards, the customs and traditions of the Bar, the ethical approach to practise as a barrister,[27] and the values of dignity at work. Again, this emphasis is unique to the independent referral bar.

In guarding and promoting the independence of the members of the Law Library, TBoI has retained a disciplinary jurisdiction independent of the LSRA, to ensure that the unique obligations of the independent referral bar are adhered to and fully upheld. Members were advised in the Chair's Update of March 12, 2021, of the changes underway and that governance is being drafted (to be put before the membership at the 2021 AGM) to formalise this disciplinary framework. As noted by Gallagher earlier, this leadership in terms of ensuring and upholding standards is crucial as the provision of legal services develops in the years to come.

Statutory regulation

Leaving aside the unique obligations of the rules of the club that will continue to be monitored and upheld by TBoI, the LSRA has, to a large extent, taken over the regulation of the profession both in terms of client service complaints and complaints of misconduct. Complaints in respect of the former (relating to service and fees) may only be brought by a client,[28] but complaints in relation to the latter (complaints of misconduct) may be brought by any person.[29]

This then brings into focus yet another relationship, that between barristers and the general public, which perhaps has not been the subject of much debate to date. Heretofore, members of the Law Library have owed a professional duty to their client through their instructing solicitor and thus, to some extent, have been shielded from complaints from members of the public, but the consumer protection remit of the LSRA removes that shield and imposes further professional responsibilities on a barrister to avoid actions that may give rise to a complaint from a member of the public. Another area of direct regulation is s.150 of the Act, and by now all members of the Law Library should be familiar with their statutory obligations in this regard. The obligation to provide s.150 letters to clients sees the LSRA having a very real impact as barristers go about their day-to-day business. Part 6 of the Act, Complaints and Disciplinary Hearings in respect of Legal Practitioners, has been generally operative since October 7, 2019, and to date there have been three reports from the LSRA[30] setting out the detail of this independent complaints handling. They make for instructive reading, not least because out of a total of 2,046 queries/files that were categorised as complaints since commencement, 2,003 (97.9%) were against solicitors and 43 (2.1%) were against barristers. And in relation to these complaints, of those seen through to completion in the first 18 months (a total of 647), 31.6% were deemed inadmissible,[31] with only 14 misconduct complaints thus far proceeding to consideration by either the Complaints Committee or the Legal Practitioners Disciplinary Tribunal (LPDT). In respect of barristers, the reports do not as of now specify a breakdown between members of the Law Library and barristers who are not members, and perhaps time will tell as to any pattern emerging in this regard. Can one, for example, dare to hope that the ethics of the independent referral bar and TBoI's continuing emphasis on ethics and professional practice will future-proof members against complaints being made or upheld? And, if so, will this in turn serve to support an argument that our LSRA levy should be decreased in due course? From a member's perspective, the two main themes emerging from the complaints process relate to the importance of communication with clients and the importance of courtesy and civility (or that rudeness and abuse towards court users and members of the public is unacceptable), while other themes are more solicitor focused, such as issues relating to the administration of estates (of which there would appear to be a significant number), advertising and, interestingly, the non-payment of barrister's fees.

The latest LSRA report also notes that the LSRA assumed responsibility for regulating advertising by legal practitioners on December 18, 2020, and that while advertising by solicitors was previously regulated by the Law Society of Ireland,[32] this is the first time that statutory rules for advertising have been set out for barristers. That being so, members of the Law Library were bound by the rules relating to advertising as set out in the Guidance on Advertising of May 1, 2008, yet another means by which TBoI provided timely guidance to ensure adherence to high standards by its members for the benefit of the justice system and society as a whole.

CPD has also been the subject of scrutiny by the LSRA, and in its latest report[33] it has suggested, *inter alia*, a review of the provision of CPD to legal practitioners, accreditation of CPD providers and the alignment of CPD provision to a competency framework.[34] By reason of this LSRA review, TBoI has been engaged in a very detailed process of revising and updating the CPD requirements of membership of the Law Library,[35] including members' awareness of "ethics CPD", providing a position statement articulating TBoI's understanding of "ethics" and delving into the detail of "ethics competencies". However, TBoI did not need the introduction of the LSRA to emphasise the importance of professional development, with mandatory CPD being introduced for TBoI members on October 1, 2005.

Another example of the crossroads at which the independent referral bar now finds itself is that 2020 was the first year in the history of the Bar in which any third party was provided with global information regarding the fact of members having professional indemnity insurance. In recognition of its consumer protection focus,[36] Part 5 of the Act[37] requires a legal practitioner to have professional indemnity insurance[38] and regulation 5(7) of the Legal Service Regulation Act 2015 (Professional Indemnity Insurance) Regulations 2019[39] provides that "[a] practising barrister who is subject to clause (1) of this Regulation 5 shall provide, to the Authority, or have provided on his or her behalf, evidence that he or she has effected and is maintaining a qualifying insurance policy in accordance with these regulations within 14 days of the commencement date, and within 14 days of each renewal date, of that policy". It is pursuant to this Regulation that TBoI Regulation Service provided evidence of all members being insured to the LSRA on July 21, 2020.[40] This exercise will be repeated this year, and year on year, in accordance with the statutory obligation.

Yet again, however, TBoI did not wait for statutory regulation to oblige members to hold professional indemnity insurance and as far back as 1985, the then Code of Conduct obliged practising barristers to have such insurance.[41]

As the focus, *inter alia*, on advertising guidance, mandatory CPD and professional indemnity insurance suggests, it is abundantly clear that TBoI has ensured in the past, and will continue to ensure, that members of the independent referral bar are well ahead of the posse in providing expert legal services to the consumer, thereby ensuring the proper and effective administration of justice.

These examples serve to confirm that our relationship with the LSRA is multi-faceted, ongoing and expanding.

Future opportunities and challenges

Looking into the future, the situation as regards, for example, the unification of the solicitors' profession and the barristers' profession, and multidisciplinary practices (MDPs), is anything but certain.

There is certainly a reprieve as regards the unification of the professions and in its report in September 2020[42] the LSRA (having undergone a statutory consultation process,[43] invited submissions from interested parties[44] and reviewed the arrangements in operation in other jurisdictions) concluded that "the solicitors' profession and barristers' profession in the State should not be unified at this time",[45] while undertaking "to return to the matter no less than five years from the date of submission of this report to the Minister".[46]

As regards MDPs, the jury would appear to be out, in that in its latest report on the matter,[47] the LSRA made no firm recommendations other than to state that its resources were focused on the introduction of legal partnerships, limited liability

partnerships and the commencement of the complaints function of the Authority, and that the subject of MDPs would be further considered after the introduction of these new business models and the commencement of the other important functions of the Authority under the Act.

Remote hearings also present many challenges, and while technology has permitted a limited form of access to justice during the Covid-19 pandemic,[48] caution must be exercised in the continuation of remote hearings in the future. The difficulties associated with remote hearings have been aired recently in a joint statement by The Bar of Ireland, the Bar Council of England and Wales, the Bar Council of Northern Ireland and the Faculty of Advocates of Scotland,[49] and while unanimously supporting the use of technology in the legal system, the statement highlights issues with:

a. judicial interaction;
b. witness management;
c. effective advocacy;
d. protection of the diverse and complex needs of clients; and,
e. maintaining collegiality in the face of isolation.

Indeed, the foregoing does not even begin to take into account the use of artificial intelligence and online dispute resolution, the ramifications of which are beyond the scope of this article.

Conclusion

What remains very clear is that the core values of the independent referral bar and the guarantees that they provide in the administration of justice cannot be ignored, and these core values may well be undermined in the event of the professions being unified and/or MDPs being permitted. The USP of the independent referral bar is that it guarantees, *inter alia*, independence and integrity, client confidentiality, client privilege, and equal access to justice for all, and it ensures that conflicts of interest are avoided. Members of the independent referral bar can promote and protect fearlessly, and by all proper and lawful means, their client's best interests,[50] solely by reason of that independence. That they do so without regard to their own interest or to any consequences for themselves or to any other person, including fellow members of the legal profession, is by reason of the fact that they are not answerable to any third parties such as partners or shareholders. Let us carefully guard and fearlessly promote that independence for the next 450 years and more, and turn the perceived challenges into opportunities to promote equal access to justice for all.

References

1. This paper loosely formed the basis for a recorded Bar of Ireland ethics webinar presented by Sara Phelan SC on April 26, 2021.
2. Since the establishment of the Legal Services Regulatory Authority and the commencement of much of Part 6 of the Legal Services Regulatory Act on October 7, 2019.
3. Such as multidisciplinary practices, the proposed unification of the solicitors' profession and the barristers' profession, and direct access to barristers in contentious matters.
4. As of October 1970.
5. As of October 1995.
6. For example: Cooke, J.D. 'Competition in the cab-rank and the challenge to the independent bar', *Bar Review* 2003; 8: 148 and 197; Gallagher, P. 'Can ethics be competitive?', *Bar Review*, 2005; 10: 144; Hogan, C., Nesterchuk, T., Smith, M. 'The values and functions of a referral advocate', report commissioned by the International Council of Advocates and Barristers in 2014: March 2016; and, O'Higgins, M.P. 'Some thoughts on ethics at the Bar', March 31, 2017.
7. May 22, 2017. Bar of Ireland Ethics CPD: 'Barristers behaving badly – unethical advocacy in litigation and ADR', adopting the words of Sir Frank Kitto in *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279 at 298.
8. Op. cit., published in the context of the then recent decision of the European Court of Justice (ECJ) in *JCJ Wouters and ors v Algemene Raad van de Nederlandse Orde van Advocaten* and the then recently published Preliminary Report on the legal professions by the Competition Authority, Study of Competition in Legal Services, February 24, 2005.
9. Op. cit. at 144.
10. Op. cit. at 145.
11. Op. cit. at 145.
12. Op. cit.
13. Para 14.
14. Para 82.
15. Code of Conduct for the Bar of Ireland, July 20, 2020.
16. Similar values, referred to as the Bangalore Principles of Judicial Conduct, underpin the independence of the judiciary in a democratic society and have been recognised by the Supreme Court in *O'Driscoll v Hurley* [2016] IESC 32 as encapsulating norms of universal application and thus, by implication, applying to judges in Ireland.
17. April 24, 2017.
18. See generally Rule 3.
19. See generally Rule 4.
20. See generally Rules 2 and 5.
21. See generally Rule 6.
22. See generally Rule 7.
23. From 2018 onwards – the first time the Act of 2015 had any practical effect on barristers was with the commencement of s.13(2)(f) on June 29, 2018, regarding the Roll of Practising Barristers.
24. See: https://www.lsra.ie/wp-content/uploads/2019/09/Draft-Code-of-PB-28-Sept.pdf.
25. For example: the prohibitions on barristers carrying on concurrent occupations that conflict with the duties contained in the Code (Rule 2.9); from giving financial advice or assistance to a client or their solicitor on the investment of funds or assets (Rule 2.16); from accepting instructions in any matter with which they have previously been concerned in the course of another profession or occupation or from any firm or company in which they have been a partner or director or engaged in part-time occupation (Rule 3.15); from having a room in a solicitor's office, having a retainer for a solicitor, or working as an employee in a solicitor's office (Rules 4.3-4.5); from not habitually practising in any court of which a parent, spouse or near blood relative is a presiding judge (Rule 5.3); from withdrawing from a criminal case and leaving the accused unrepresented because of the conduct of or anything said by the trial judge unless the barristers consider that by so doing, they are acting in the best interests of their client (Rule 10.16).
26. March 2021.
27. In accordance with the Code of Conduct and any LSRA Code of Practice that may be in effect.
28. See s.51(1) of the Act.
29. See s.51(2) of the Act.
30. Report 1 of 2020 from October 7, 2019, to March 6, 2020; Report 2 of 2020 from March 7, 2020, to September 6, 2020; Report 1 of 2021 from September 7, 2020, to March 31, 2021.
31. For example, "out of time" complaints, previously determined complaints, complaints without substance or foundation, and frivolous or vexatious complaints.
32. Under the Solicitors Advertising Regulations 2019.
33. "Setting Standards" legal practitioner education and training, September 2020.
34. See paras 4.55-4.57.
35. See the Chair's Update of March 12, 2021, and various notifications through *InBrief*.
36. The six statutory objectives of the LSRA as set out at s.13(4) of the Act are: protecting and promoting the public interest; supporting the proper and effective administration of justice; protecting and promoting the interests of consumers relating to the provision of legal services; promoting competition in the provision of legal services in the State; encouraging an independent, strong and effective legal profession; and, promoting and maintaining adherence to the specified professional principles.
37. Also commenced on October 7, 2019, insofar as it relates to barristers.
38. See s.46.
39. SI No 572/2019.
40. Following an extensive exercise during which the insurance certificates of PII renewal (to end April 2021) provided by all members were digitised into a secure and searchable format, cross-referenced with the statutory roll of barristers and indexed.
41. Code of Conduct for the Bar of Ireland, adopted July 30, 1985, Rule 2.14.
42. "Greater than the sum of its parts?" Consideration of Unification of the Solicitors' Profession and the Barristers' Profession – LSRA, September 30, 2020.
43. See s.34 of the Act.
44. For example, see The Bar of Ireland's Submission of May 25, 2020.
45. Para 6.23.
46. Para 6.25.
47. LSRA Report on Multi-Disciplinary Practices, September 29, 2017.
48. See, for example, Phelan, S. 'In the Interests of Justice', The Bar Review 2020; 25: 83.
49. May 4, 2021. Available from: https://www.lawlibrary.ie/News/Statement-on-the-Administration-of-Justice-Post-Pa.aspx.
50. TBoI Code, Rule 2.6.

Confidential information and holders of public office

The 'information age' may have transformed communication of official information, but the use of that information is still bound by the Official Secrets Act 1963, in particular from an employment law perspective.

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When the then Minister for Justice, Charles Haughey, moved that the Official Secrets Bill be read a second time on March 27, 1962, the world was a different place. *Dr No*, the first James Bond film, was still filming. JFK had that month resumed nuclear testing, and the USSR would, two months later, pledge its support to Cuba. In the first debate, Minister Haughey outlined that there was a distinction in the Act between unauthorised disclosure of secret or confidential information, in Part II of the Bill, and disclosure of information to the prejudice of the safety or preservation of the State in Part III. He stated that:

"The former category includes both confidential information of the type normally circulating in Government departments and the confidential information entrusted to Government contractors, such as printers of official reports and other such documents. Part III, on the other hand, is concerned with spying and therefore necessarily contains somewhat elaborate provisions, which recognise not only the serious consequences of these activities, but also the difficulty of bringing spies to justice".[1]

The Official Secrets Act, 1963 (the 1963 Act) has not changed very much since. While we may have declared long ago that we have transitioned to the "information age" through adoption of new technology throughout Government,[2] the legalities of what can be done with that information remain stubbornly similar to what they were in many areas, in particular as relates to the employees of the State or State bodies.

Generally, confidential information issues arise after the end of employment when the employee or office holder uses something or may use something that they have gained from their previous employer.[3] However, it is not always

the case that confidential information issues arise only after the end of the employment relationship. While much has been written about the General Data Protection Regulation (GDPR)[4] and the impact on the employment relationship, there has not been as much concern for the misuse of information under provisions of the law that have been with us much longer. The starting point for consideration of the issues arising around confidential information is the UK Case of *Faccenda Chickens Ltd v Fowler* [1987] Ch.117. This case concerned a Northamptonshire fresh chicken producer, and the former sales manager who left and set up a rival firm, taking the knowledge of 50 delivery routes with him. The court in that case had no problem, in the absence of any clause protecting confidential information, with implying such a clause into the contract of employment. However, Goulding J. in the High Court (the judgment being approved in the Court of Appeal) set down a test as to what exactly the information being protected was.[5]

It stated that there are three types of confidential information. First, trivial or easily accessible information. This can be used at any time by the servant. Second, information that a servant is told is confidential or, because of its character, is obviously so. This can be used after employment unless there is an effective restraint of trade. Thirdly, specific trade secrets so confidential that, even if learnt by heart, they cannot be used even after service.

This analysis was approved by Clarke J., as he then was, in the High Court in *AIB Plc and ors v Diamond and ors* [2011] IEHC 505 in relation to a springboard injunction protecting prior employers against the actions of a former employee until the information had ceased to be confidential. In the absence of a provision of the contract, Clarke J. found that the only enduring obligation on the part of the employee after employment has ceased is not to disclose a trade secret, referring to his own previous judgment in *The Pulse Group v O'Reilly* [2006] IEHC 50. It follows that while someone is an employee, the first category outlined in *Faccenda Chickens* cannot be protected, but the second and third categories will be protected. So the first lesson for employers is to explicitly protect in your contract of employment whatever it is that you want protected, and make it clear that there may be an account of profits, if the information is used to the benefit of the employee or holder of office. However, aside from any private law obligation, there is an obligation on all persons not to disclose official information, which is imposed by the 1963 Act.

Official Secrets Act provisions

Section 4.1 is the crucial section in this Act:

"4.—(1) A person shall not communicate **any official information to any other person unless he is duly authorised to do so** or does so in the course of and in accordance with his duties as the holder of a public office or when it is his duty in the interest of the State to communicate it". (emphasis added)

"Official information" is defined in s.2(1) as:

"any secret official code word or password, and any sketch, plan, model, article, note, document or information, which **is secret or confidential or is expressed to be either and which is or has been in the possession, custody or control of a holder of a public office,** or to which he has or had access, by virtue of his office, and includes information recorded by film or magnetic tape or by any other recording medium". (emphasis added)

S.2(3) also states that:

"A certificate given by a Minister under his seal that any official code word or password or any sketch, plan, model, article, note, document or information specified or indicated in the certificate is secret or confidential shall be conclusive evidence of the fact so certified".

"Public office" means:

"**an office or employment which is wholly remunerated out of the Central Fund or out of moneys provided by the Oireachtas,** or an appointment to, or employment under, any commission, committee or tribunal set up by the Government or a Minister for the purposes of any inquiry, but does not include membership of either House of the Oireachtas". (emphasis added)

Under section 4(4), "duly authorised" means "authorised by a Minister or State authority or by some person authorised in that behalf by a Minister or State authority", which is the reason that Ministers do not appear to be covered by that section. Therefore, the Act is very broad and protects information that is or has been in the possession of a holder of public office, or to which they have or had access, by virtue of their office, and is:

- objectively either secret or confidential;
- expressed to be secret or confidential; or,
- certified by a Minister under seal to be secret or confidential.

Offences under s.4 are triable summarily, with a possible fine of up to €127 and six months' imprisonment on conviction. The offences in relation to national security issues are triable on indictment.

There are limited explicit exceptions to these provisions in relation to information given to Committees of the Oireachtas, as well as the provisions of the Freedom of Information Act, and certain publications by the Revenue Commissioners of defaulters. In addition, it is made clear that the provisions of the Garda Síochána Act are in addition to the provisions of the Official Secrets Act and not in substitution for them.

Where will these apply?

The provisions of the 1963 Act still have wide application in Ireland. Lawyers should note that the obligations appear to fall on the holders of appointments under, for instance, the Workplace Relations Commission (WRC) legislation, the Mental Health Commission, the International Protection Appeals Tribunal, and similar appointments.

The Civil Service Code of Standards and Behaviour makes clear at 7.3 that: "It remains a requirement under the Official Secrets Act 1963 that all civil servants, including those who are retired or on a career break, avoid improper disclosure of information gained in the course of their official work".[6]

Certain employment, such as for the Director of Public Prosecutions (DPP), requires employees to sign a declaration that they are bound by the terms of the Act, although the terms of the Act make it clear that this is not necessary for its provisions to apply. In addition, Circular 7/98 (which superseded Circular 15/79) indicated, post Freedom of Information amendments to the Official Secrets Act, that there were still extensive secrecy obligations on all civil

servants.[7] That circular was criticised at the time, as it seemed not to promote the spirit of the Freedom of Information regime, which calls to conform with the fundamentals of the Act with presumptions in favour of the requester.[8] The provisions of the Act, it has been commented, resulted in a chill on the general investigative environment for journalists in particular, in tandem with the provisions of defamation law, until changed in the 2009 Act, and s.31 of the Broadcasting Act.[9]

It was expected when the Protected Disclosures Bill was initiated in 2012 that there would be an amendment to the Official Secrets Act but that did not occur.[10] The impact of this can be readily seen. Newspaper reports discussed in the Dáil on April 1, 2021, indicated that a senior civil servant attempted to "gag" RTÉ's *Prime Time* programme in relation to information from a Department of Health employee concerning Department dossiers on children with special needs.[11]

It was reported that the Director General of RTÉ was told that the material supplied was in breach of the Official Secrets Act.[12] The fact that the programme was broadcast as scheduled perhaps indicates that the necessity for an explicit protection for whistle blowers, and those who communicate the information that they are given, is tempered by the reticence of Governmental powers to use the legislation. The necessity for the press to check Governmental power and the impact of legislation protecting Governmental secrets continues to be a matter of legal discourse on both sides of the Atlantic.[13]

Prosecutions under the Official Secrets Act

There have been very few prosecutions under the Official Secrets Act. Journalist Liz Allen was found guilty in 2011 in the District Court for divulging information in relation to a Garda memo indicating that there was intelligence about the Brinks-Allied robbery before the event in 1995. The *Irish Independent* was convicted and fined when it published identikit photos of suspects in the Shergar abduction in the 1980s.[14]

However, a recent case highlights that the State still very much takes this legislation seriously. Jonathan Lennon, a DPP employee, was given an 11-month sentence in relation to a number of charges of disclosing information. He had pleaded not guilty, and said he was only "having a nosey" in relation to an arrest of a suspect in an IRA dissident murder case.[15] On appeal to the Circuit Court, the conviction was upheld in relation to three charges, and Mr Lennon was sentenced to six months on April 27, 2021.

One of the provisions is that in order for the Act to be used beyond the charging and remand of a person, the Attorney General must give consent under s.14 of the Act and s.3(5) of the Prosecution of Offences Act 1974. In that regard, perhaps unsurprisingly given the origins of the legislation, in contrast to the general move towards independence of prosecutorial power, the Act has remained very political. It should be remembered that those not covered by the 1963 Act may be covered by other provisions.

Cabinet confidentiality

Article 28.4.3 of Bunreacht na hÉireann requires strict confidentiality of meetings of the Government, subject to limited exceptions including by a court in relation to the administration of justice and overriding public interest. Two high-profile elements of this were in the headlines recently, and though they are very specific, they are important to indicate the culture in this area.

The first is the publication by former minister Shane Ross of his book about his time in Government. This was heavily criticised by former cabinet colleagues. Mr Ross did not deny breaking cabinet confidentiality, stating in the *Irish Examiner* that "this wasn't the first time cabinet meetings had been written about". "There is Fine Gael precedence," he said, as former Taoiseach Garret FitzGerald and others had also written about cabinet meetings. Mr Ross said he did not think he would be prosecuted for any of the revelations in his book, but he acknowledged that there was a real problem with cabinet confidentiality as "everything was leaked". He said that his book told "in an orderly way what happened".

"It's in the public interest to know what happens," he said.

"You might as well have an RTÉ camera in the room the way information was being live tweeted to journalists".[16]

In the UK, a robust line was taken against Gavin Williamson when he was sacked as Defence Minister by Theresa May for leaking. This hasn't stopped him returning to cabinet, which shows how lightly this is taken even when it involves national security, as it did with the infrastructure of the 5G network and the use of Huawei.[17]

More recently, the passing of a document by then Taoiseach Leo Varadkar to Dr Maitiú Ó Tuathail, President of the National Association of General Practitioners (NAGP), in relation to the discussions about the new contract for general practitioners between the Irish Medical Organisation and the Government,[18] has been a matter of debate. The language of the 1963 Act allows Ministers to essentially authorise themselves to share information, as discussed above, and excludes membership of the Oireachtas from being a public office. It does not exclude the members themselves when they hold additional offices, such as junior ministerial offices, or chairpersons of Oireachtas Committees or other public offices or appointments (e.g., a TD when she sits as an adjudicator of the WRC).

The document shared by the then Taoiseach Leo Varadkar with Dr Ó Tuathail was explicitly expressed to be confidential. He only obtained it by virtue of being the Taoiseach, and it would have been official information, but was not covered by the Official Secrets Act, because the Taoiseach, as a Minister, was essentially authorising himself to disclose it. However, even if a Minister or member of the Oireachtas is not covered by the provisions of the Official Secrets Act, they should be advised, if they are your client, that they may fall foul of the Criminal Justice (Corruption Offences Act) 2018. Aside from the more direct offences relating to active and passive corruption and trading in influence in ss.5 and 6, Section 7(2) of that Act states:

"An Irish official who uses confidential information obtained in the course of his or her office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage for himself or herself or for any other person shall be guilty of an offence".

Section 2(1) defines "corruptly" as:

"includes acting with an improper purpose personally or by influencing another person, whether –

(a) by means of making a false or misleading statement,

(b) by means of withholding, concealing, altering or destroying a document or other information, or
(c) by other means".

The question in relation to ministers or members of the Oireachtas becomes: was there an advantage offered or sought in return for the information given? The 2018 Act makes leaking confidential information to a friend in order to give that person a professional advantage a crime – it was denied that this was done by the Tánaiste when he was accused of "giving a dig out to a friend,"[19] in circumstances where the NAGP was in financial difficulties, but this underlines the fact that when advising office holders, it should be made clear that everything is above board.

Conclusion

When advising on this area, lawyers should look at any circulars, and any legislative provisions, as well as internal guidance within the public body or organisation.[20] The blurring of the lines between leaked and official release of information by Government, evident through widespread reporting of parliamentary party meetings during the Covid-19 pandemic,[21] may have resulted in a casualness towards legal obligations in this area. There is now a spotlight being cast on the extent of cabinet confidentiality under European law, which may result in a renewed examination on its limitations.[22] However, employers, employees and all office holders should be very aware of the extensive obligations in this area, and the scope for very real and far-reaching consequences for their breach.

References

1. Available from: https://debatesarchive.oireachtas.ie/Debates%20Authoring/debateswebpack.nsf/takes/dail1962032700091?opendocument.
2. See the 2004 adoption of the e-Cabinet system discussed at: https://www.irishtimes.com/news/cabinet-moves-into-information-age-1.984920.
3. See the discussion about restraint of trade in *Kerry Co-Operative Creameries Ltd v An Bord Bainne* [1995] I.L.R.M. 851, and *Murgitroyd & Co. Ltd v Purdy* [2005] IEHC 159, [2005] 3 I.R. 12.
4. Regulation (EU) 2016/679.
5. At 133 of the Court of Appeal judgment.
6. As currently available from: https://hr.per.gov.ie/wp-content/uploads/2020/03/Civil-Service-Code-of-Standards-and-Behaviour.pdf.
7. See: https://circulars.gov.ie/pdf/circular/finance/1998/07.pdf.
8. See the contemporaneous coverage at: https://www.irishtimes.com/news/civil-service-is-warned-that-secrets-must-still-be-protected-1.158678.
9. See the discussion in Foley, M., 'Keeping the State's secrets: Ireland's road from 'official' secrets to freedom of information' (2015). Books/Book chapters. 30. See: https://arrow.tudublin.ie/aaschmedbk/30.
10. See the discussion at: https://www.irishtimes.com/news/official-secrets-act-to-protect-sensitive-data-1.516511.
11. Available from: https://www.oireachtas.ie/en/debates/debate/dail/2021-04-01/10/.
12. Phelan, M. 'Revealed: Department of Health's top official called head of RTÉ ahead of TV exposé on dossier'. *Irish Independent*, March 27, 2021. Available from: https://www.independent.ie/irish-news/politics/revealed-department-ofhealths-top-official-called-head-of-rteahead-of-tv-expose-on-dossier-40245321.html.
13. Feuer, K. Protecting Government Secrets: A Comparison of the Espionage Act and the Official Secrets Act. Boston College International and Comparative Law Review 2015; 38 (1): 4. Available from: https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1737&context=iclr.
14. See Foley, above, n. 9.
15. Tuite, T. 'DPP employee who had 'a nosey' in murder file gets 11 month sentence'. *The Irish Times*, June 7, 2019. Available from: https://www.irishtimes.com/news/crime-and-law/courts/district-court/dpp-employee-who-had-a-nosey-in-murder-file-gets-11-month-sentence-1.3918275.
16. McConnell, D. 'Shane Ross' tell-all book dismissed as 'naked attention seeking' by former cabinet colleagues'. *Irish Examiner*, October 29, 2020. Available from: https://www.irishexaminer.com/opinion/commentanalysis/arid-40072445.html.
17. See the discussion by Coughlan, S. 'Gavin Williamson: How has he survived?' *BBC News*, January 13, 2021. Available from: https://www.bbc.com/news/education-55640335.
18. See the statement and debate in the Dáil on November 3, 2020. Available from: https://www.oireachtas.ie/en/debates/debate/dail/2020-11-03/16/.
19. See: https://www.irishtimes.com/news/health/varadkar-apologises-over-leak-of-confidential-gp-contract-to-rival-group-1.4398960.
20. If, for instance, the person potentially breaching confidentiality is a member of the Garda Síochána, s.62 of the Garda Síochána Act 2005 applies.
21. See for instance Cullen P., O'Halloran M., McGee H. 'Restrictions on hairdressing, retail and religious services set to be eased next month'. *The Irish Times*, April 21, 2021. Available from: https://www.irishtimes.com/news/politics/oireachtas/restrictions-on-hairdressing-retail-and-religious-services-set-to-be-eased-next-month-1.4543490.
22. See the recent case of *Right to Know v An Taoiseach (Cabinet Confidentiality)* [2021] IEHC 233, Simons J. (case referred to the CJEU for a preliminary ruling on cabinet confidentiality in light of the EU right of access to environmental information).

A new era for CPD at the Bar

On April 21, 2021, the Council of The Bar of Ireland unanimously approved the introduction of a new CPD scheme for members of the Law Library. This scheme will take effect from October 1, 2021, and replaces in full the existing CPD scheme.

Denise Brett SC
Chair, Education and Training Committee

Why introduce a new CPD scheme?

The existing continuing professional development (CPD) scheme was introduced in 2005 and, despite minor modifications, has remained relatively unchanged. During this time, the landscape of practice has seen significant shifts. Society's understanding of how professionals learn, maintain and build on their skills and expertise throughout their career has also evolved. The introduction and ongoing implementation of State regulation of the legal profession presented a unique opportunity to take a *de novo* review of the scheme, align CPD with the needs of modern practice and afford members preparation for CPD under State regulation.

The new CPD scheme adopts a competency-based approach that aims not only to respond to and improve on the areas highlighted in successive Legal Services Regulatory Authority (LSRA) reports,[1,2] but also to more fully guide and support members on their individual journey of career-long learning. This new CPD scheme is therefore both necessary and timely.

Competencies and competency-based CPD

Competencies are the knowledge, skills, abilities, behaviours and attributes that contribute towards effective performance in a particular role or context. Adopting a competency-based approach to CPD was highlighted as a key requirement in the LSRA's report on education and training. It was reaffirmed as a future component of the Authority's approach to CPD in their Setting Standards[2] report, published in November 2020. Competency frameworks have been used successfully in the legal professions in other jurisdictions, and across multiple other professions, as a guiding tool that supports practitioners in planning their CPD. The Bar of Ireland Competency Framework for CPD[3] (the framework) is organised into four domains:

- Legal Knowledge, Procedure and Skills;
- Advocacy, Dispute Resolution and Negotiation;
- Ethics and Professional Standards; and,
- Personal Professional Development and Practice Management.

Focus on competencies facilitates members in self-assessing the areas that are relevant to their professional development. Most importantly, the introduction of the new framework recognises that professional development encompasses more than purely expertise as advocates or depth of legal knowledge in a given area of practice. The new scheme highlights keen communication and inter-personal and problem-solving skills, and includes recognition for the development of self-care practices and the resilience essential to sustain and develop a successful career at the Bar. The existing mandatory ethics component is maintained.

Revisions to CPD points requirement

In broadening the scope of professional development activity, it was necessary to also review the minimum level of engagement in professional development that a member might be expected to complete on an annual basis and the categorisation of different learning activities within the scheme. To simplify the recording process, the limits on the number of points claimable on different activities have been removed and activities are now classified more simply as belonging to one of two categories: (i) formal/structured; and, (ii) informal/unstructured.

The new scheme requires members to complete a minimum of 20 CPD points per annum, of which 12 must be obtained in the formal/structured category. This increase is well in line with best practice for professional CPD requirements. While it may initially appear significant to members who are familiar with the current need for 12 points in total, 20 points is an easily attainable minimum standard in practice, given the professional development opportunities arising from informal and unstructured learning in practice, the removal of the previous limitations on points claimable for different types of learning activity (e.g., webcasts), and the broader range of activities that may now contribute to CPD under the new scheme (e.g., points claimable for mentoring). Over 180 hours formal/structured CPD activity is already available on the members' section of the Law Library website.

Conclusion: what does that mean for me as a member?

From October 1, 2021, members will be required to complete 20 CPD points per legal year. Of these, 12 must be obtained from participation in formal/structured activities. The activities must be linked back to the competencies within the framework and an activity relevant to each of the four framework domains must be completed on an annual basis. Within the Ethics domain, at least one CPD point must be obtained through participation in a CPD activity that has been approved by The Bar of Ireland. The full details of the scheme are available at: https://pd.lawlibrary.ie/CPD2021.

Further information and guidance will be made available via the Law Library website and communications channels. The Bar of Ireland CPD Team is also available to discuss the scheme with members at any time at cpd@lawlibrary.ie. The Education and Training Committee wishes you well with the new programme.

References

1. Hook Tangaza. Review of Legal Practitioner Education and Training. August 2018. Available from: https://www.lsra.ie/wp-content/uploads/2019/09/Review-of-Legal-Practitioner-Education-and-Training-Final-version.pdf.
2. Legal Services Regulatory Authority. Setting Standards: Legal Practitioner Education and Training. November 2020. Available from: https://www.lsra.ie/wp-content/uploads/2020/11/Section-34-ET-Final-Report-to-Minister.pdf.
3. The Bar of Ireland. Competency Framework for CPD. 2020. Available from: https://pd.lawlibrary.ie/framework.

1 hour of activity equates to 1 CPD Point

The new CPD Scheme is intended to allow members to meet their points requirements in a flexible manner while also responding to the needs of modern practice.

The below example demonstrates how a member might meet the requirements through a range of CPD activities during the legal year.

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	
MAINTAIN A RECORD	●	●	★	●	●	●	●	●	●	●	●		**SUBMIT END OF YEAR DECLARATION**
COMPETENCY DOMAINS	**At least one activity must be completed from each domain annually**												
Legal Knowledge, Procedure and Skills		● [+1.5] Tort update					● [+2] Read a Journal Article on new developments in PI				● [+4] Insolvency Conference		✓
Advocacy, Dispute Resolution and Negotiation				● [+1.5] Advocacy webinar		● [+2] Asked a Peer to Observe My Advocacy and Discussed Feedback							✓
Ethics and Professional Standards			★ [+1] Bar of Ireland **Approved** Ethics Seminar						● [+2] Discussion with Colleague about Challenging Case				✓
Personal Professional Development and Practice Management	● [+3] Completed a Learning Plan				● [+1.5] Seminar on Costs			● [+2] Prepared Practice Management Seminar		● [+1.5] Delivered Practice Management Seminar			✓

● Formal/Structured CPD activities	● Informal/Unstructured CPD activities	Total From All Activities
✓ 14	8	✓ 22
Must be ≥ 12	**No Minimum Requirement**	**Must be ≥ 20**

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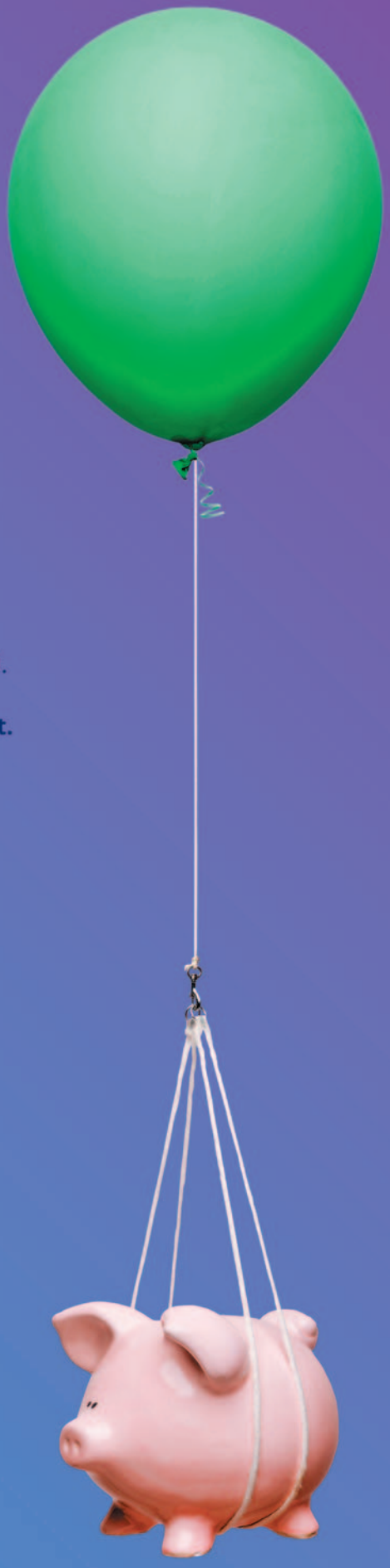

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The Bar of Ireland Retirement Trust Scheme

Open to all members of the Law Library under 75 years of age.

Age	Maximum tax relief on pension contribution (as a percentage of earnings)
Up to 29	15%
30-39	20%
40-49	25%
50-54	30%
55-59	35%
60 and over	40%

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