THE BAR OF IRELAND
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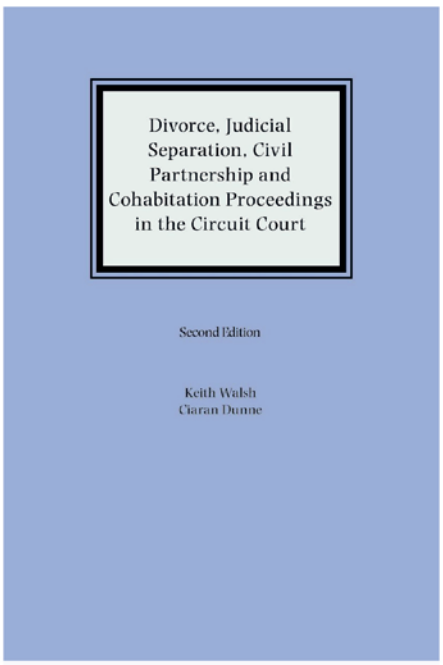
# THE BAR REVIEW

VOLUME 30 / NUMBER 3 / JUNE 2025

# CATFISHING: HOOK, LINE AND VICTIM

# COMING SOON FROM BLOOMSBURY PROFESSIONAL IRELAND




## Divorce, Judicial Separation, Civil Partnership and Cohabitation Proceedings in the Circuit Court, 2nd edition

By Keith Walsh and Ciaran Dunne

This is a user-friendly guide to Orders 59 and 59A for solicitors and barristers in general practice and those specialising in family law. The second edition has been updated to include:

- New rules relating to domestic violence
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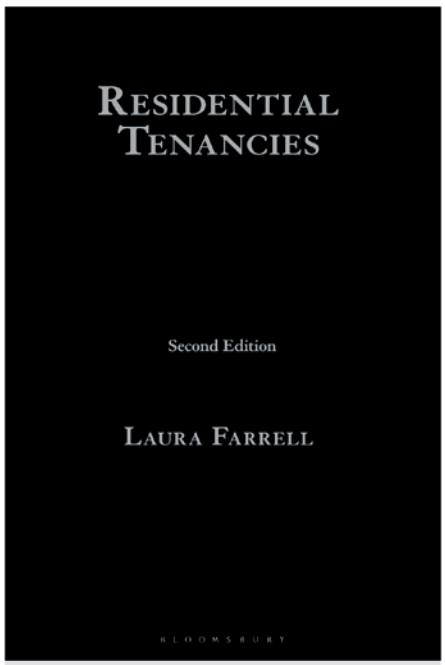
**Pub Date:** Jul 2025 | **ISBN:** 9781526531032
**Paperback Price:** €185 | **eBook Price:** €163.33

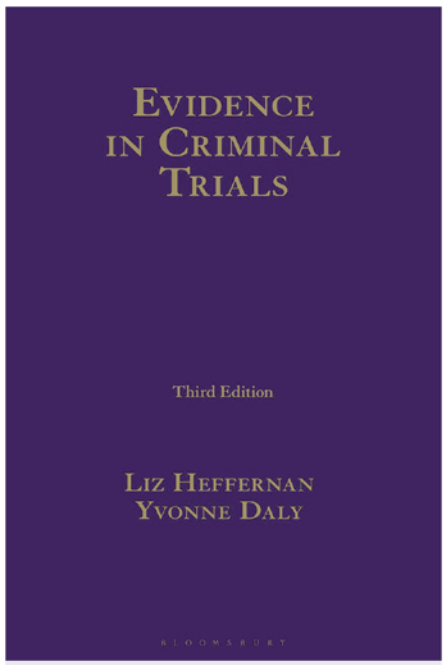



## Residential Tenancies, 2nd edition

By Laura Farrell

This title provides practical guidance on the obligations of landlords and tenants, changes in notice periods for termination and rent reviews, and dispute resolution. The book contains appendices which include a sample residential letting agreement, a range of sample notices of termination (to deal with all permitted reasons for termination), and a sample rent review notice.

**Pub Date:** Aug 2025 | **ISBN:** 9781526528582
**Hardback Price:** €225 | **eBook Price:** €198.65




## Evidence in Criminal Trials, 3rd edition

By Liz Heffernan and Yvonne Daly

Evidence in Criminal Trials is the only Irish textbook devoted exclusively to the subject of criminal evidence. It provides extensive coverage of law and practice on the admissibility of evidence, the presentation of evidence in court and the pre-trial gathering and disclosure of evidence.

**Pub Date:** Aug 2025 | **ISBN:** 9781526529978
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JUNE 2025

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# CELEBRATING AN ICON

This year is the 250th anniversary of Daniel O'Connell's birth, and the Bar is marking the occasion and keeping his legacy alive.

**Seán Guerin SC**
*Senior Counsel, Barrister – Member of the Inner Bar*
*Chair of the Council of The Bar of Ireland*

On April 28 last, the Bar Council was honoured to welcome to Dublin Philippe Sands KC to deliver the Daniel O'Connell Memorial Lecture. Prof. Sands, whose trilogy *East-West Street, Ratline* and *38 Londres Street* together tell a compelling story of the growing assertion of a universal principal of right in international humanitarian law, and the development of means for its protection, was a more than fitting speaker on that occasion. His lecture, which drew from the well of family history and personal inspiration, and his own educational and professional experience, shared that fascinating story with a full house in the Round Hall of the Four Courts.

## Anniversary events

This year is the 250th anniversary of the birth of Daniel O'Connell and Prof. Sands' lecture is only one of a number of events taking place to celebrate that anniversary. On the same night, we announced the launch of the Liberator Scholarship, which provides an opportunity for a junior member of The Bar of Ireland to attend the Harvard Programme on Negotiation, a world class programme on mediation, negotiation and conflict resolution. The Scholarship, made possible only by the generous sponsorship of a number of individual colleagues and with the support of the Bar Council's ADR Committee, will be awarded following a competitive process. The Bar Council is also providing support for the O'Connell 250 Symposium: Liberty, Democracy, and the Struggle for Human Rights, a two-day symposium organised by the Trinity Long Room Hub, in association with The Daniel O'Connell Summer School and Glasnevin Cemetery, and taking place from July 29-30. The Taoiseach, Micheal Martin TD, will deliver a keynote address and the symposium will hear from leading Irish, European and international experts on civil rights and human rights challenges today. Co-funded by Trinity College and the Government of Ireland, the conference will be accompanied by a national media campaign to ensure broad public engagement in June and July. The Bar Council is delighted to have the opportunity to join in supporting that event and, by doing so, to highlight O'Connell's legacy as a barrister and the example he provides of the importance of the independent referral Bar in securing the rule of law. Although remembered as the Liberator, O'Connell was, at the height of his practice at the Bar, known as the Counsellor. He was the epitome of what a barrister is expected to be: highly skilled, forceful, and a fearless defender of his client's interests. In a legal system that was not indifferent to the identity of litigants, those qualities were of immense value and his reputation testified to that. He was not only a defender of his clients but also a

defender of the profession itself. O'Faolain tells of an incident early in his career when Lord Norbury and Judge Johnson had refused to properly hear a colleague and O'Connell intervened before that infamous court to support his colleague. Asked by Johnson whether he was engaged in the case that he presumed to interfere, he said: "I merely rise to defend the privileges of the Bar, and I will not permit them to be violated either in my own person or the person of any other member of my profession". That strong sense of justice animated both his legal and political careers. Justly famous, of course, for his achievement in securing Catholic emancipation and his tireless and peaceful efforts to secure legislative independence for Ireland, it is important to recall that in his politics he was not sectarian or merely selfish.

## Anti-slavery

O'Connell never shirked from criticism of American slavery, even though he was roundly and frequently criticised for thereby doing damage to American support for the repeal cause. When Frederick Douglass visited Ireland he was inspired by hearing O'Connell speak as an advocate of civil and religious liberty all over the globe. "I am," said O'Connell, "the friend of liberty in every clime, class and colour and my sympathy with distress is not confined within the narrow bounds of my own green island". In 1830, he supported a Jewish emancipation bill in parliament only a year after securing Catholic emancipation. The terms of the debate revealed much criticism of that support, as undermining the rationale for the earlier legislative success, being based on a shared Christianity.

But O'Connell was undeterred. According to Hansard, he said: "He should support the Bill on the universal principle of toleration, if that were not an improper word to be used on such an occasion – perhaps he ought to have said the principle of right. That right was not to be infringed either by an inquisition which inflicted torture, as in Spain, or by laws which, as in England, imposed privation. Man had a right to inflict neither the one nor the other."

O'Connell's recognition of the fundamental principle of universal right, supported by the rule of law, remains a powerful inspiration to all who practice law or politics.

# COSTS, CONTEMPT AND CATFISHING

Our usual thought-provoking content is augmented in this issue by a caption competition.

**Helen Murray BL**
Editor
*The Bar Review*

In addition to providing considered and stimulating reading, this edition of *The Bar Review* promises to get the creative juices flowing with a caption competition!

The artist, Hugh Madden, not only a bright young talent but also a former member of the Bar, has come up with a wonderful drawing and all it needs is the right caption.

In between crafting pithy prose, members can read John L. O'Donnell SC's comprehensive guide to the law in the area of differential costs orders. Tom Flynn SC examines the recent judgment in *B (a minor) suing by his mother and next friend Y v The Child and Family Agency*, in which the Supreme Court examines the issue of public bodies and contempt of court.

This is a thought-provoking and informative article.

Michael O'Doherty BL has written a detailed analysis of the current legal position in relation to what has become known as 'catfishing', and the far-reaching impact of online anonymity.

*The Bar Review* also features an interview with Catherine Pierse, Director of Public Prosecutions, which provides a fascinating insight into criminal law.

Finally, Turlough O'Donnell SC has written an obituary to our colleague Paul Callan SC, who passed away on February 8, 2025.

# Specialist Bar Association news

## Navigating new challenges in insolvency

The Corporate and Insolvency Bar Association (CIBA) Annual Conference took place on April 4. The event featured three expert panels, following an opening address by Kelley Smith SC, Chair of the CIBA. The first panel, chaired by Imogen McGrath SC, explored 'The Evolving Landscape of Directors' Duties', with insights from Cian McGoldrick BL, Marsha Coghlan (A&L Goodbody), John Healy (Kirby Healy Chartered Accountants), and Grace Armstrong (McCann Fitzgerald). The second panel, 'Personal Insolvency', was chaired by Mr Justice Mark Sanfey and featured contributions from Keith Farry BL, Eithne Corry BL, Denis Ryan, and Clíodhna Walsh (Beauchamps LLP). The third and final panel, chaired by Brian Kennedy SC, focused on 'The Evolution of Cross-Border Insolvency and Restructuring', with perspectives from David Whelan SC, Declan Murphy BL, and Kathlene Burke (Maples). The event concluded with a compelling interview, where Mr Justice Michael Quinn sat down with Mr Justice Peter Kelly for a thought-provoking discussion.

*From left: Declan Murphy BL; Kathlene Burke, Maples; David Whelan SC; and, Brian Kennedy SC.*

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| Certificate in Immigration Law and Practice | 23 October 2025 | €1,950 |
| Diploma in Education Law | 31 October 2025 | €3,050 |
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| Diploma in Legal Skills for Legal Executives | 4 November 2025 | €2,500 |
| Certificate in Trademark Law | 6 November 2025 | €1,950 |

*All lectures are webcast and available to view on playback, allowing participants to catch up on coursework at a time suitable to their own needs.*
*Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change.*

## Taxation issues for athletes and sporting bodies

The Sports Law Bar Association (SLBA) hosted an event on 'Taxation Issues for Athletes and Sporting Bodies' on April 29. The discussion explored the rapidly evolving sports business landscape, highlighting the increasingly complex financial challenges and opportunities faced by athletes and sporting organisations. Designed to assist legal practitioners, tax advisors, and athletes in navigating these intricacies, the event covered key taxation aspects, including: distinctions between on-pitch and off-pitch earnings; athlete imaging rights; taxation of sports bodies at local, regional, and national levels; and, the essential considerations in preparing for a sports body audit. The event was chaired by Mark Curran BL, Vice Chair of the SLBA, with presentations from speakers such as James Burke BL and former Dublin GAA player, now Tax Partner at BDO, Cian O'Sullivan.

*From left: Cian O'Sullivan, former Dublin GAA player and Tax Partner at BDO; James Burke BL; and, Mark Curran BL.*

## Catfishing, phishing, smishing etc…

This joint event on April 2, hosted by the Media, Internet and Data Protection Bar Association (MIDBA) and the Irish Criminal Bar Association (ICBA), asked 'What can be done about the plague of online scams?' The discussion focused on the mechanics of online scams, the measures in place to combat them, and the available remedies for victims. The distinguished speakers at this event included Detective Superintendent Michael Cryan, Róisín Costello BL, Michael O'Doherty BL, and Paul O'Grady BL.


*From left: Róisín Costello BL; Michael O'Doherty BL, Chair, MIDBA; Superintendent Michael Cryan; and, Paul O'Grady BL.*

## The EU Pact, Ireland and beyond

The Immigration, Asylum and Citizenship Bar Association (IACBA) and EU Bar Association (EUBA) hosted an event on May 16 in the Ó Tnúthail Theatre at the University of Galway, focusing on the EU Pact in Ireland and beyond. The session opened with an introductory speech by Ms Justice Mary Rose Gearty and featured insights from distinguished speakers, including Prof. Cathryn Costello (UCD), David Conlan Smyth SC, Michael O'Neill (IHREC), Anthony Lowry BL, Siobhán Clabby BL, and Andrew Munro (Department of Justice).

## EBA in Cork

The Employment Bar Association (EBA) held a conference in Cork on May 14. This event, now in its third year, was opened by EBA Chair Brendan Kirwan SC and chaired by Judge Helen Boyle of the Circuit Court. The esteemed line-up of speakers included Morgane Conaty BL and Clíona Kimber SC. This was followed by a panel discussion on 'Employment Injunctions' with contributors Sarah Daly BL, Cian Cotter BL, and Denis Collins BL.

*From left: Morgane Conaty BL; Clíona Kimber SC; Judge Helen Boyle; and, Brendan Kirwan SC (at podium).*

## Mediation conference

The Bar of Ireland held its sold-out conference, 'Mediation: Making Commercial Sense', on May 16 in the Dublin Dispute Resolution Centre.

The conference addressed themes around alternative dispute resolution (ADR) from the perspective of State bodies, the judiciary and counsel.

The conference coincided with the publication of an inaugural survey launched by the Arbitration and Alternative Dispute Resolution (ADR) Committee, which gained insight into recent developments, trends and opinions on ADR among practitioners.

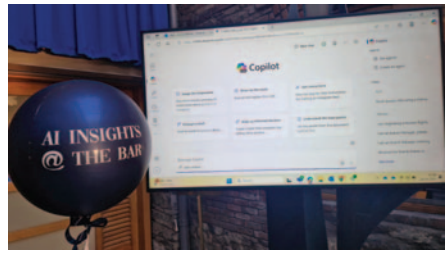
*Cathy Smith SC, Chair of The Bar of Ireland ADR Committee, opening the Mediation Conference.*

## Daniel O'Connell Memorial Lecture

To mark the 250th anniversary of the birth of Daniel O'Connell, The Bar of Ireland hosted its Daniel O'Connell Memorial Lecture on April 28 in the Round Hall of the Four Courts. The event featured internationally acclaimed barrister, author, and academic Philippe Sands KC as this year's keynote speaker. Professor of Law at University College London, Visiting Professor at Harvard, and a leading authority in international law, Sands has represented various high-profile cases before the International Court of Justice and other international tribunals. His award-winning publications have explored the legal and personal dimensions of justice, genocide, and colonial legacy.


*Philippe Sands KC was the keynote speaker at this year's Daniel O'Connell Memorial Lecture.*

## AI Insights @ The Bar




At AI Insights at The Bar during the week of May 6, Law Library members stopped by to explore how AI is transforming the legal profession. Discussions focused on ethical AI use, regulatory compliance, and real-world applications in legal practice. The event highlighted AI's growing role in driving efficiency, innovation, and trust in legal practice.

## Human Rights Award

The Bar of Ireland was honoured to announce the Dublin Rape Crisis Centre (DRCC) as the recipient of the 2025 Bar of Ireland Human Rights Award. The award recognises the extraordinary work of the DRCC in supporting survivors of sexual violence, and its advocacy for a victim-centred, human rights-based approach.

Accepting the award, CEO Rachel Morrogh said: "This award recognises the transformative impact that our volunteers and staff have on the lives of survivors … and how our work is central to the restoration of human rights breached by acts of sexual violence".

The Award was presented at The Bar of Ireland human rights conference, 'At the Margins: Three Priority Areas through a Human Rights Lens', on May 10. This event brought together leading legal minds, academics, and advocates to explore critical human rights issues in housing, prison law, and gender-based violence.


*From left: Anne Marie James, Chairperson of the Dubin Rape Crisis Centre; Seán Guerin SC, Chair, Council of The Bar of Ireland; Rachel Morrogh, CEO of the DRCC; and, Colm O'Dwyer SC, Chair of The Bar of Ireland Human Rights Committee.*

## Alumni networking evening – Beyond the Bar

On Thursday, April 3, The Bar of Ireland welcomed home Bar members past and present for an alumni networking evening in the Distillery Building.

When reflecting on the unique benefits that time at the Bar has offered alumni navigating new chapters of their careers, Alison Hardiman BL said: "The strength that comes from the independent referral Bar, and the value of independence of thought you gain as a barrister, cannot be undermined and is extremely important in one's career".

*From left: Imogen McGrath SC, Chair of The Public Affairs Committee; Michael Dillion, Director of Legal, Corporate Enforcement Authority; Harriet Meagher, Partner, Meagher Solicitors; Seán Guerin SC, Chair, Council of The Bar of Ireland; Sarah Freeman BL, Managing Editor, Business & Finance Media Group; Mr Justice David Barniville, President of the High Court; Alison Hardiman BL, Consultant, Environment and Planning Group, Philip Lee LLP; and, Marion Berry BL, Deputy Director of Public Prosecutions.*


# PRACTICE SUPPORT AND FEE RECOVERY

The Bar of Ireland's Practice Support and Fee Recovery service aims to assist members with the recovery of outstanding fees, and to provide greater guidance and support in matters of financial and practice management.

**Michelle Farrell**
*Fee Recovery Manager, The Bar of Ireland*

The Practice Support and Fee Recovery and service has now been in place for almost five years and during this time, we have seen continued growth in the number of members engaging with the fee recovery service. In addition, a significant number of new practice management supports have been developed, which are available to members via the online Practice Administration hub.

## Fee recovery process

Members may avail of the fee recovery service in respect of up to three overdue fee notes at a time, provided they have made reasonable attempts to secure payment, and the fee notes are overdue for a period of six months or longer (**Figure 1**).

### Testimonial

"I have had several longstanding issues with fee recovery from solicitors, some dating back many years. The Law Library Fee Recovery Service has proven exceptionally effective, maintaining a 100% success rate in recovering these outstanding fees. I would highly recommend this service to any colleague who has faced similar challenges in obtaining payments from solicitors."

*Full junior*

**Our terms of service are that members can avail of the service for up to three overdue fee notes at a time, provided they meet the following criteria:**

1. Reasonable attempts have been made
2. Overdue by six months or more
3. Additional fee notes may be accepted if they are with the same solicitor, at management's discretion

*FIGURE 1: Fee recovery terms of service.*

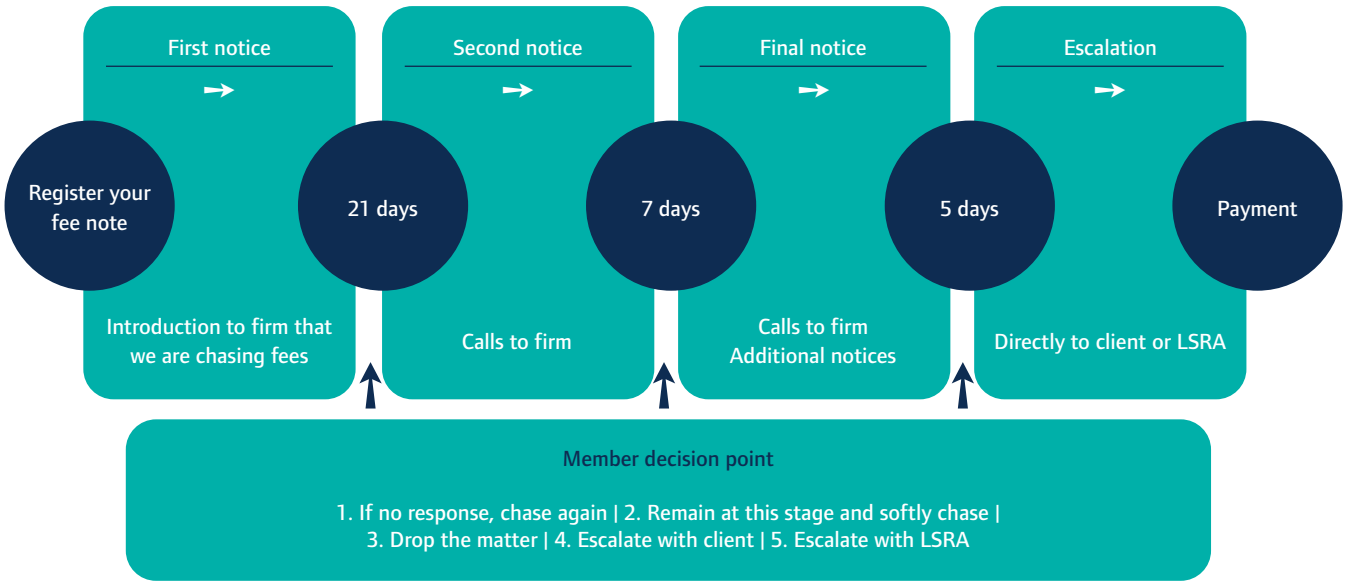



*FIGURE 2: Fee recovery service – collection process overview.*

Table 1: Breakdown of members using the service.

| Member breakdown | Active users | Total members | % total members | % of users |
|---|---|---|---|---|
| 1st year | - | 86 | 0% | 0% |
| 2nd year | - | 76 | 0% | 0% |
| 3rd year | 4 | 90 | 0% | 1% |
| 4th year | 6 | 96 | 0% | 2% |
| 5th year | 6 | 62 | 0% | 2% |
| 6th year | 5 | 68 | 0% | 2% |
| 7th year | 9 | 63 | 0% | 3% |
| 8th year | 16 | 64 | 1% | 6% |
| 9th year | 13 | 62 | 1% | 5% |
| 10th year | 9 | 62 | 0% | 3% |
| 11th year | 19 | 59 | 1% | 7% |
| Full junior | 141 | 933 | 7% | 49% |
| Senior counsel | 56 | 381 | 3% | 20% |
| **Total** | **284** | **2,102** | **14%** | **100%** |

Once a member completes registration for the service, and an account has been set up, the recovery team will begin the structured collection process. **Figure 2** provides a high-level overview of the steps followed in the collection process. The fee recovery team keep each member updated on all aspects of their cases at each critical decision point.

Table 2: Reasons for non-payment of barristers' fees.

| Reason | Explanation | % of number of fee notes |
|---|---|---|
| 1. Solicitor not responding | No engagement from solicitor after repeated attempts made by member, prior to coming to Fee Recovery | 49% |
| 2. Client issue | Difficult client/client refusing to pay/ cannot contact client | 16% |
| 3. Fee dispute | Solicitor/client is disputing the amount charged | 16% |
| 4. Solicitor firm dissolved | Firm closure before fees resolved | 6% |
| 5. Administration delay | Delays can occur either with the solicitor's office investigating the claim, or a State agency processing the claim | 6% |
| 6. Probate delay | Costs cannot be finalised until probate has been completed | 3% |
| 7. Proceedings issued against client | The client refuses to discharge fees, resulting in the solicitor issuing proceedings | 2% |
| 8. Solicitor left firm | This occurs when a solicitor's firm has shut down and a new solicitor takes over the case | 2% |
| 9. Case not settled | Case is ongoing and costs have not been fully calculated | 1% |

## Who is using the service?

At present, 284 members of the Law Library are using the service, 14% of the total membership. The majority of users are full juniors (years 12 and upwards) making up 49% of users; 30% are juniors in years 4 to 11, and the remaining 21% are senior counsel (**Table 1**).

## Current fees outstanding

There are currently 257 outstanding fee notes being handled by the Fee Recovery Unit. The value of these fee notes is just over €3.2m. These unpaid fee notes can be categorised under eight primary reasons for non-payment, as shown in **Table 2**.

Table 3: Complaints lodged with the LSRA on behalf of members.

| | Active complaints | | Closed complaints | |
|---|---|---|---|---|
| | No. of complaints | Fee notes | No. of complaints | Fee notes |
| May 25 | 42 | 143 | 71 | 125 |
| Total sent to LSRA to date | 113 | 268 | - | - |

Table 4: Stage of open complaints lodged with the LSRA.

| Stages of current complaints | | | |
|---|---|---|---|
| **LSRA stage** | **No. of complaints** | **No. of fee notes** | **Amount outstanding** |
| Preliminary review | 13 | 92 | €221,987 |
| Referred to LPDT | 10 | 18 | €351,871 |
| Awaiting re-hearing | 1 | 1 | €16,478 |
| Paused by member | 1 | 2 | €12,000 |
| Adjourned by LSRA in Dec. 2024 for 90 days, recommenced comms with firm | 1 | 1 | €17,528 |
| Hearing 08.05.2025 | 6 | 13 | €85,933 |
| Adjourned by LSRA for three months | 2 | 2 | €133,332 |
| Declared admissable, awaiting hearing | 8 | 8 | €379,841 |
| Complaint submitted | 2 | 6 | €1,476 |
| **Grand total** | **44** | **143** | **€1,220,445** |

Table 5: Reasons for closure.

| Reason for closure | No. of complaints | No. of invoices | % |
|---|---|---|---|
| Paid in full | 29 | 41 | 33% |
| Deemed inadmissible as no misconduct found | 9 | 35 | 28% |
| Settlement discount agreed | 11 | 14 | 11% |
| Member withdrew complaint | 6 | 13 | 10% |
| Ex-member | 3 | 9 | 7% |
| Admissible but no sanction | 7 | 7 | 6% |
| Instalment arrangement | 3 | 3 | 2% |
| Solicitor deceased | 2 | 2 | 2% |
| Agreement in place for additional briefs | 1 | 1 | 1% |
| **Total** | **71** | **125** | **100%** |

## Testimonial

"I want to thank you sincerely for your assistance in recovering my fee. I really appreciate your kind attention to this matter, which resulted in me recovering a historic fee that I had all but given up on. You made the process very easy for me by taking on the paperwork and guiding me through the process while at all times keeping me informed in relation to progress. I am very grateful to you and your colleagues at the fee recovery unit who were an absolute pleasure to deal with. The service is an invaluable one for counsel who find themselves in the position where fees are not being discharged."

*Full junior*

## Fees recovered to date

To date, the service has recovered payment for 500 fee notes with a combined value of €2.3m. This represents a recovery rate of over 67% in terms of the number of fee notes referred to the Unit, which is significant given that the fee notes referred to the service are those that are most problematic.

Of the fee notes recovered, the median average number of months to obtain payment once registered with the service is eight months.

## LSRA complaints

The final escalation point in the fee recovery process for unrecoverable fee notes is to make a complaint to the Legal Services Regulatory Authority (LSRA). To date, the service has filed 113 complaints on behalf of members

### Top tips

1. Issue your dated fee note as soon as possible after the completion of services.
2. Issue your section 150 notice as soon as practicable – this has been a requirement of the LSRA since October 2019, no matter if requested by the solicitor or not.
3. Include as much detail as possible in your section 150 notice.
4. Issue notices to the specific solicitor who instructed you and not the firm.
5. Vary follow-up with the firm by phone/email/post so you can stay informed of changes or difficulties faced by the firm.
6. If referring a fee note to the Fee Recovery Unit, do not wait too long before referring it – the more time that passes, the harder it is to recover.

to the LSRA, representing 268 fee notes (**Table 3**). **Table 4** shows the stage of each open complaint. Thirteen complaints were only recently submitted – they are under preliminary review with the Complaint Resolution Officer. **Table 5** illustrates closed complaints and the reason for closure. One-third of all resolved complaints were paid in full.

### Testimonial

"I would like to express my thanks for your excellent work in recovering fees on my behalf. In a situation where fees were outstanding for over 10 years, they were recovered in a matter of months due to your attention to the matter. It is an excellent service and I thank you for your kind attention to the matter."

*Senior counsel*

### Get in touch

If you have any additional queries, please contact the team at feerecovery@lawlibrary.ie, or via the contact numbers below:

Michelle Farrell, Fee Recovery Manager, Ext: 5053

Waad Alias, Fee Recovery Administrator, Ext: 5409

# EQUALITY BEFORE THE LAW

As her office celebrates a significant milestone, Director of Public Prosecutions Catherine Pierse talks about the challenges facing a modern prosecution service, and plans for the future.

*[Photo credit: Cian Redmond].*

**Ann-Marie Hardiman,**
*Managing Editor, Think Media*

Prior to a career in the public sector that has included working for the Garda Síochána Ombudsman Commission (GSOC), the Central Bank, and the Policing Authority, Director of Public Prosecutions (DPP) Catherine Pierse spent five years as a criminal defence solicitor. She feels that this has been very helpful in her current role, and shows the mobility possible within the legal professions in Ireland: "A lot of the solicitors that we recruit have had exposure to defence before they come into prosecution. And of course, it's a huge strength of our system that we have an independent Bar that is doing both defence and prosecution work. That inevitably inculcates an element of balance into the system, that you have people who have experience of talking to accused people, taking instructions at garda stations, and then also people who have deep experience of working in the prosecution and of engaging with victims. It gives that whole of system perspective".

## Anniversary

The Office of the DPP (ODPP) is celebrating a milestone this year, marking 50 years since its foundation. A new book by Dr Niamh Howlin, *A History of the Office of the DPP: 1975-2025*, was launched at an event in Dublin attended by An Taoiseach Micheál Martin TD and Minister for Justice Jim O'Callaghan TD, and the Office has planned a range of events, both externally and internally, to mark the occasion. Catherine says the occasion has provided an opportunity to communicate to the public: "As an Office it is important for us to communicate when we can about why we have an independent prosecution service, why it's so important, why it's so fundamental to the rule of law".

Much has changed since the Government of the day made the decision to set up an independent prosecution service, not least in terms of the numbers. The original office was staffed by four lawyers, in comparison to today's staff of almost 300, supported by 200 barristers serving on panels and as county prosecutors, and 30 State solicitors around the country. The expansion is reflective of increases in the volume of cases – the ODPP now deals with 17,000 files every year – and in the complexity of those cases, thanks to developments in technology, investigative and forensic science techniques, EU and international law, and the transnational nature of many crimes, to name just a few of the drivers. Significant social change has also had an impact, in particular as regards the types of crimes now prosecuted and also in terms of attitudes towards supporting victims and vulnerable witnesses.

## Challenges

All of these factors feed into the main challenges the ODPP faces, starting with the task of maintaining the highest possible standards in prosecutorial decision-making while managing increased activity levels. In a courts system that is still, in many ways, recovering from the

pandemic, Catherine says that professionals right across the system are stretched: "There's been a huge increase in the level of activity in some court jurisdictions. For example, in the Central Criminal Court, we've gone from five judges to 12. As a result, we are servicing central trials around the country in places we never would have been before. Many circuit courts in Dublin and around the country are also seeing a marked increase in activity. Meanwhile the Office has had to rapidly recruit and induct a large number of new staff. I think you have to be especially conscious of maintaining standards in that environment, to ensure that you're keeping service up, that you're keeping fairness to the accused absolutely at the centre of things, as well as the service to victims and the public".

Prosecution counsel are of course an essential part of that system, and subject to the same pressures: "You have an environment where there is a lack of predictability around whether a trial will proceed on any given day and briefs are moving from counsel to counsel. As a result different people are dealing with a trial than were first briefed on it, and now are trying to read themselves into a case, sometimes at quite short notice. This all creates risks for quality of service, inevitably. It also means that there can be a lot of duplication of effort as you can have multiple barristers reading themselves into the same case. So it's about managing all that. There is generally a good relationship between this office and the prosecution counsel on our panel and the work of the Office could not be carried out without them. I have huge regard for specialist expert work that the criminal Bar does. It is important to ensure that we can and do retain suitable counsel and that barristers are motivated to work for the prosecution. Of course if there is poor performance or service, we also need to call that out. A rule of thumb I had when I was in criminal defence was, I wouldn't retain somebody who I wouldn't have retained to represent a family member. The work is too important".

Managing the enormous volume and nature of digital data is another significant challenge, and Catherine says that inevitably Ireland will need to emulate other jurisdictions by moving to a cloud-based system: "Then access to certain investigation material will be given to the prosecution, and to the defence, so we're all using the same storage, but with different access rights. There is work already going on in relation to the Digital Evidence Management System (DEMS) by the gardaí, but that is still at an early phase. I think it is incumbent on all of us in the system to have joined-up thinking around interoperability of our systems. Quite apart from the logistics of storing and interrogating that amount of data for both State agencies and private practitioners, the security of the data is an issue as well. So that's a really big strategic issue that has to be tackled".

### Early engagement

These issues of maintaining standards and managing digital data feed into a more broad discussion of pre-trial management, and case management generally. Catherine is keen to acknowledge the enormous commitment across the system to try to clear backlogs over the past four years: "I think most people working in the Irish criminal justice system have a strong awareness of the damage that delay does to the administration of justice and the experience of all involved including victims and many accused persons. People are doing their best and recent Government decisions to appoint more judges are very welcome but this needs to be accompanied by a commitment to resource all of the other parts of the system that support a criminal trial. While additional resourcing is clearly needed, there is also a need for all of us in the system to collaborate better to tackle inefficiencies so as to ensure that all this activity is productive and is leading to timely outcomes for victims, accused persons and witnesses".

Catherine points out that a key lesson from other jurisdictions that have also been dealing with backlogs is the importance of finding ways to motivate everyone to engage early in the case. This means the prosecution getting preliminary disclosure out quickly, defence lawyers having early conversations with clients about whether they wish to plead, and early identification of any main issues in dispute, so that they can be dealt with by way of pre-trial hearings. It is also important that there be as much clarity as possible for an accused person about what sentence they can expect if they plead guilty at different stages in the process. Catherine makes the point that in her

## A nationwide service

The ODPP is currently engaged in a number of projects that emphasise the national scope of the prosecution service. Significant among these are the plans to open an office in Cork City, which are at an advanced stage. The ODPP is working with the Office of Public Works to identify suitable premises and is also working closely with the State solicitors in Cork to ensure a seamless transition to the new office, which they hope will be up and running by late 2026: "I think it's positive for Cork and positive for this Office. It's important to also say that the State solicitor model has really served the prosecution service well. This is about adapting to change in terms of what's happening in the courts. It's also a chance to develop and recruit people outside Dublin".

Another major project is the work currently being done to provide better support for and quality assurance of District Court prosecutions. The project, supported primarily by the Department of An Taoiseach, involves the ODPP, the Department of Justice, the Gardaí, and the Courts Service. Catherine points out that the vast majority of prosecutions brought in the State are taken by An Garda Síochána – approximately 200,000 summonses and charges a year: "These cases are brought in the name of the DPP and what we are working towards is a process whereby the ODPP has a greater role in supporting An Garda Síochána in bringing those prosecutions and in monitoring that work. In time (and subject to resources) it is also intended that some further categories of cases would be prosecuted by the ODPP".

## Proud Kerrywoman

Originally from Listowel in Co. Kerry, Catherine studied law in UCC, followed by a Master's in Human Rights in Queen's University Belfast, after which she worked for human rights organisations in London and India before coming home to serve her apprenticeship with first Pierse McCarthy Lucey in Tralee, and then Garrett Sheehan Solicitors in Dublin. After qualifying, she worked as a criminal defence solicitor for five years in Kelleher O'Doherty Solicitors. In 2007 she went to work as in-house legal advisor with GSOC, before moving in 2011 to a role as Senior Enforcement Lawyer in the Central Bank. When the then Policing Authority was established in 2016, she took on the role of Head of Legal and Governance there. She joined the ODPP in 2018 as head of the newly established Prosecution Support Services Division, taking over the reins as DPP from Claire Loftus in November 2021.

Whenever she can, Catherine returns to her native Kerry.

*[Photo credit: Cian Redmond].*

view sentencing guidelines about the impact of a plea on sentence would be very useful in this regard. The aim must be to achieve greater predictability and certainty around when a trial is going ahead. This would improve the experience for victims, accused persons and witnesses, but would also ensure improvements in the efficient use of resources across the system for the courts, the judiciary, gardaí, and defence and prosecution practitioners.

### Disclosure

The dramatic increase in the volume of digital data has had a huge bearing on the issue of disclosure and makes it even more important than ever for there to be rigour in ensuring that any disclosure disputes are identified early on in the process. Catherine points out that current disclosure practices date from a time when there was far less information to be considered for relevance. She gives an example of a night time assault: "15 years ago there would have been just the statement of the victim, maybe a witness statement from a friend or two and then a memo of interview with the suspect. Now you have CCTV footage from multiple angles, and phone footage from multiple witnesses, as well as possibly potentially relevant text messages". Recent Supreme Court judgments, and a report from the Law Reform Commission, have highlighted the lack of legislation underpinning disclosure. The Supreme Court decisions in *WC v DPP* and *AM v DPP* emphasise the important role of the judiciary in determining matters of relevance in disclosure applications, particularly where the material is private or sensitive: "When it comes to the disclosure of counselling records, my office is currently engaging with the Legal Aid Board and An Garda Síochána and others to review our current processes. One step being taken is that in sexual offence cases we are discontinuing the practice of An Garda Síochána asking, at an early stage of the process, if a victim wishes to waive their statutory right to a court hearing in relation to the disclosure of counselling records. In future we will only be seeking counselling records if this is necessary and proportionate and we will be seeking more judicial involvement in the assessment as to whether disclosure is required".

### Support for criminal law

Ensuring support for criminal law is something Catherine sees as a significant challenge for everyone in leadership positions across the criminal justice system: "It is fundamental to the rule of law and the administration of justice that there's enough new blood coming into criminal law across the country – whether as solicitors or barristers, defence or prosecution. A grounding in criminal law is a great way for any lawyer to sharpen their understanding of the law of evidence and it can be an attractive launching point for lots of careers in a range of public law and regulatory areas".

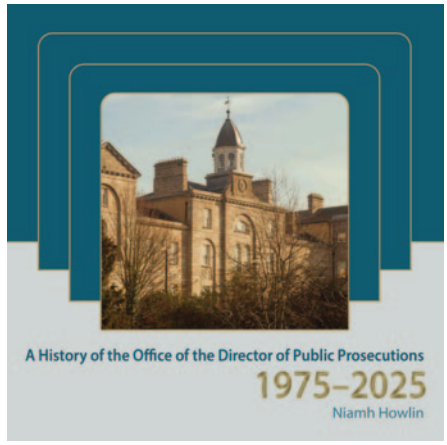
Catherine says her office has made representations to the Legal Services Regulatory Authority (LSRA) about the importance of ensuring that all practising lawyers have some fundamental understanding of criminal law practice, and she expresses concern at the Law Society's decision to discontinue criminal law as a mandatory module in its Professional Practice Course (PPC) trainee syllabus: "I think it's regrettable. It really is something that's important to the administration of justice, and also to legal education. I hope that steps can be taken to reverse this position".

More fundamentally, Catherine notes there is a risk that the rates of pay in relation to the practice of criminal law fall so far behind the rates of pay for other areas of legal practice that it becomes difficult to attract the necessary talent no matter how much purpose the work has.

### Transnational crime

With organised crime gangs increasingly operating on an international footing, and cases relating to, for example, dissemination of child sexual abuse material often crossing borders, transnational crime is playing an increasing role for the ODPP. Catherine points out that even more 'straightforward' cases can involve a transnational element, where video evidence from abroad might need to be arranged, for example. The ODPP has an International Unit, which supports this work, including working with international criminal justice partners both within and beyond the EU: "We have nominated two experienced prosecutors from the Office to perform the roles of Eurojust National Member (Eurojust is the EU agency for criminal justice co-operation) and Deputy in The Hague. These

*At the DPP's 50th anniversary reception on March 27 last were (from left): Dr Niamh Howlin (author of* The History of the Office of the DPP: 1975-2025*); An Taoiseach Micheál Martin (who gave the keynote address); Catherine Pierse, Director of Public Prosecutions; and, Marion Berry, Deputy Director of Public Prosecutions. [Photo credit: Cian Redmond].*




Copies of *A History of the Office of the DPP: 1975-2025* by Dr Niamh Howlin are available free of charge by contacting the Governance & Public Affairs Unit at the ODPP.

prosecutors are working on facilitating international judicial co-operation in complex cases where we must co-operate with our European colleagues".

## Fees for counsel

Catherine is of course aware of the ongoing issues around fees for counsel under the Criminal Legal Aid Scheme. Her office has long supported the restoration of fees to pre-FEMPI levels: "The issue here is not only one of fairness to counsel, but also the administration of justice. It is important to ensure that it is sufficiently attractive for people to come and work in criminal law – whether as a solicitor or as a barrister".

She points out that the overall level of fees paid to counsel by her office increased by 63% between 2019 and 2024, reflective of the significantly increased levels of activity across the criminal justice system, and feels that there are other issues that are also important in relation to the administration of payments to counsel. Catherine points out that ultimately this is public money and there are strict controls on how the prosecution service pays counsel, including a requirement to go to the Department of Public Expenditure, NDP Delivery and Reform (DPENDR) for any fees over certain rates: "Needless to say it is important that we strive to ensure that the fees paid fairly reflect the work done. It is also important that there is an equivalence between how prosecution fees are paid and how legal aid fees are paid to defence barristers. Otherwise, there is a risk that it could become more lucrative to work for defence rather than the prosecution, and this would run contrary to the whole principle of equality of arms".

## Equality before the law

Ultimately for Catherine, it all comes back to the people who might have cause to interact with the justice system, as accused persons, victims and witnesses: "It is a feature of criminal justice systems the world over that there is an over-representation in our prisons of people from socially deprived areas, minority ethnic backgrounds, and those with mental health and substance abuse problems. Ensuring 'equality before the law' requires all of us who work in the criminal justice system to ensure that the quality of justice is the same regardless of the income of the people involved in a case. It is why widespread access to quality criminal defence practitioners is so important. It also means that it is important that as a system we resource and prioritise the investigation and prosecution of types of crime that might commonly be committed by persons with resources – such as financial crime, certain types of regulatory offences and money laundering".

A particular concern she mentions is the level of scrutiny, or lack thereof, of pre-prepared statements, in terms of how their admissibility and evidential value is assessed: "The truth of it is, that pre-prepared statements more often arise in certain types of cases involving middle-class clients. I think these statements need to be treated with much more care than is currently the case".

## Keeping the show on the road

Given the many demands on her office, it's perhaps not surprising that Catherine is most proud of the way the prosecution service has navigated the challenges it faces on a day-to-day basis over the four years since she took on the role: "I know it has been a difficult time not just for the prosecution service but across the system. All of us who work in the criminal justice system will be conscious of the many challenges but there is also a resilience inbuilt into the system and a strong commitment to the values of fairness and public service. I think as an overall system we can feel proud of keeping the show on the road in a very challenging court environment as the justice system has been recovering from Covid backlogs and keeping pace with increased court activity. I would like to pay tribute to the efforts put in by all involved in managing to meet these demands".

# LEGAL UPDATE

VOLUME 30 / NUMBER 3 / JUNE 2025

**A directory of legislation, articles and acquisitions received in the Law Library from March 21, 2025, to May 22, 2025**
**Judgment information generated by Law Library AI**
**Edited by Vanessa Curley, Susan Downes and Clare O'Dwyer, Law Library, Four Courts.**

## ADMINISTRATIVE LAW

### Library acquisitions

Sorabji, J. *English Civil Justice after the Woolf and Jackson Reforms: A Critical Analysis*. Cambridge: Cambridge University Press, 1991 – L201

## AGRICULTURE

### Statutory instruments

European Communities (Minimum Conditions for Examining Agriculture Plant Species) (Amendment) Regulations 2025 – SI 137/2025

European Communities (Minimum Conditions for Examining of Vegetable Species) (Amendment) Regulations 2025 – SI 138/2025

European Communities (Marketing of Vegetable Propagating and Planting Material, other than Seed) (Amendment) Regulations 2025 – SI 139/2025

European Communities (Seed of Oil Plants and Fibre Plants) (Amendment) Regulations 2025 – SI 140/2025

European Communities (Vegetable Seeds) (Amendment) Regulations 2025 – SI 141/2025

European Communities (Marketing of Fruit Plant Propagating Material) (Amendment) Regulations 2025 – SI 142/2025

Avian Influenza (Precautionary Confinement of Birds and Restriction on Assembly of Live Birds) Regulations 2025 (Revocation) Regulations 2025 – SI 156/2025

Noxious Weeds Order 2025 – SI 191/2025

## ARBITRATION

### Articles

Dowling-Hussey, A., Galvez, J. The Arbitration Act 2025: a technical analysis of key reforms and implications. *Construction, Engineering and Energy Law Journal* 2025; 1: 19-23

Shaw, D. Compulsory ADR in construction litigation: an update. *Construction, Engineering and Energy Law Journal* 2025; 1: 16-17

## ARTIFICIAL INTELLIGENCE

### Articles

Cowan, D. Let me put it to you. *Law Society Gazette* 2025; May: 36-41

Morrissey, E. Two can keep a secret... *Law Society Gazette* 2025; Apr: 21-23

## BANKING

Contract law – Refusal order – Penalty clause – Plaintiff seeks an order directing the defendant to pay surcharge interest – Whether the surcharge interest charged to the defendant was a penalty and therefore unenforceable – 02/04/2025 – [2025] IEHC 219

*Governor and Company of the Bank of Ireland v O'Boyle and anor*

## BANKRUPTCY

Bankruptcy law – Interim extension order – Extension of bankruptcy – Bankruptcy Act 1988, ss.44, 85A – Applicant seeks an order extending the respondent's bankruptcy for eight years – Whether the respondent was concealing assets that should have formed part of her estate in bankruptcy and/or that she was not sufficiently co-operating with the Official Assignee – 16/04/2025 – [2025] IEHC 236

*Re: Halah Schlesiger [a bankrupt]*

## BUILDING LAW

### Articles

Sawtell, D. Paying the price: remediation contribution orders and *Grey GR Limited v Edgewater (Stevenage) Limited and others*. *Construction, Engineering and Energy Law Journal* 2025; 1: 25-36

## CHILD LAW

Childcare law – Placement order – Child Care Act 1991, s.47 – Applicant seeks placement of child with relative/kinship carer – Whether it is in the child's best interests to move placement to be with her relative/kinship family – 27/03/2025 – [2025] IEDC 2

*In the matter of AB, a child*

Judicial review – Declaration order – Duty to give reasons – Child Care Act 1991, s.3 – Applicant seeks declarations that the Agency's procedures are *ultra vires* s.3 of the 1991 Act – Whether the first respondent is obliged to give reasons for the impugned decision – 08/04/2025 – [2025] IEHC 263

*G.H. v Tusla Child and Family Agency and ors*

Family law – Return order – Child abduction – Child Abduction and Enforcement of Custody Orders Act 1991 – Applicant seeks the return of the child to Poland, alleging wrongful removal and retention by the respondent – Whether the protections afforded by the Polish domestic laws are sufficient to address the risks presented by the applicant's action – 18/02/2025 – [2025] IEHC 179

*T v L (grave risk, objections of the child)*

Family law – Summary return order – Child abduction – Child Abduction and Enforcement of Custody Orders Act 1991 – Applicant seeks summary return of children to Sweden – 07/03/2025 – [2025] IEHC 136

*Z v S*

### Articles

Bracken, Dr L. The child's right to identity in DAHR: analysing amendments introduced by the Health (Assisted Human Reproduction) Act 2024. *Irish Journal of Family Law* 2025; 28 (1): 1-8

Caulfield, A. Child-inclusive mediation and the rights of the child under Article 12 of the UNCRC. *Irish Journal of Family Law* 2025; 28 (1): 11-17

## CITIZENSHIP

Citizenship and nationality – Declaratory relief – Recognition of legal parentage – Irish Nationality and Citizenship Act 1956, s.7 – Children and Family Relationships Act 2015 – Applicant seeks recognition of legal parentage for children born abroad through donor-assisted human reproduction – Whether the Minister erred in law by not recognising the legal parentage of children born abroad through donor-assisted human reproduction – 11/04/2025 – [2025] IEHC 214

*X. v Minister for Foreign Affairs and ors, Z. [suing by his Mother and next friend Y.] v Minister for Foreign Affairs and ors*

## COMMERCIAL LAW

Commercial law – Strike out order – Settlement agreement – Companies Act 2014, s.438 – Properties Act 2014 – Appellant seeks to overturn the High Court orders striking out his motions – Whether the settlement agreement was binding on the appellant – 30/04/2025 – [2025] IECA 90

*Allied Irish Banks Plc v Morrissey and anor*

Commercial law – Security for costs – Companies Act 2014, s.52 – Plaintiffs seek declaratory reliefs and damages from the defendant – Whether the trial judge was wrong in not finding that Limerick Private's impecuniosity was not caused by VHI – 31/01/2025 – [2025] IECA 15

*Sweeney and anor v The Voluntary Health Insurance Board*

### Articles

Gaffney, J. Outbound investments in technology areas and EU economic security. *Commercial Law Practitioner* 2024; 31 (11): 147-150

## COMPETITION LAW

### Library acquisitions

Swan, E.J., Virgo, J. *Market Abuse Regulation (3rd ed.)*. Oxford: Oxford University Press, 2019 – W11

## CONSTITUTIONAL LAW

Constitutional law – Habeas corpus – Constitution of Ireland, art.40.4.2 – Whether the applicant can bring an Article 40.4.2 application on behalf of others – 25/04/2025 – [2025] IEHC 247

*Granahan v Governor of Mountjoy Prison and anor*

Constitutional law – Exemption order – Exemption from court fees – Statutory Instrument 492/2014, s.5(a) – Plaintiff seeks exemption from court fees for issuing a plenary summons and notice of motion – Whether the plaintiff's case falls under Article 40.4 of the Constitution – 06/02/2025 – [2025] IEHC 171

*Murphy v Gloster and ors*

### Articles

Bergin, C. From Belfast to Bougainville: The constitutional embedding of self-determination provisions in post-Cold War intrastate peace agreements. *Hibernian Law Journal* 2024; 23: 1-25

Kelly, K. Remote hearings in Medical Council Fitness to Practise Committee Proceedings in the absence of a legitimate aim: An unconstitutional infringement on fair procedures? *Hibernian Law Journal* 2024; 23: 76-90

## CONTRACT

### Articles

McMahon, B. Contractual interpretation: Practical lessons from Covid cases. *Commercial Law Practitioner* 2025; 32 (2): 15-17

## COPYRIGHT

### Library acquisitions

Waugh, A., Campbell, D., Austen, T., Hinchliffe, T., Mitcheson, T. *Terrell on the Law of Patents (20th ed.)*. London: Sweet & Maxwell, 2025 – N114.1

### Articles

Carty, S. Sunset Superman. *Law Society Gazette* 2025; May: 20-23

## COSTS

Costs and litigation – Costs ruling – Costs liability – Partnership Act 1890 – Appellant seeks to overturn the costs ruling against him personally – Whether the appellant should be personally liable for costs after the 2018 principal judgment – 13/03/2024 – [2024] IECA 58

*Best and anor v Ghose and ors*

Judicial review – Costs order – Legal Services Regulation Act 2015, s.161 – Appellant seeks to overturn the costs order made against him in the original judicial review proceedings – Whether the provisional costs order indicated in the principal judgment is appropriate – 07/05/2025 – [2025] IECA 95

*Cooper v An Bord Pleanála*

Civil procedure – Costs order – Trustee Act 1893, ss.25, 26 – Legal Services Regulation Act 2015, ss.168, 169 – Appellant seeks an alternative order that no costs be awarded pending resolution of a perjury complaint – Whether the appellant has raised a basis for the court to deviate from its provisional view on costs – 02/05/2025 – [2025] IECA 92

*In the Matter of Joe Miley and Partners (Dublin) Limited (in liquidation)*

Civil procedure – Costs in public interest proceedings – Legal Services Regulation Act 2015, s.169 – Appellant seeks costs against UCD and *amici curiae* – Whether the appellant should be awarded costs despite being unsuccessful – 01/05/2025 – [2025] IESC 15

*Kelly v University College Dublin and ors*

Environmental law – Costs order – Costs order under Aarhus Convention – Order 19, rule 28 RSC – Appellant seeks 80% of costs for defending motion and bringing appeal – Whether the appellant should receive 50% or 80% of his costs – 07/04/2025 – [2025] IECA 81

*McHugh v The Minister for Environment, Heritage and Local Government and ors*

Civil procedure – Costs order – Legal Services Regulation Act 2015, ss.168, 169 – Whether the defendants should be liable for costs arising from the adjournment of the trial – 13/03/2025 – [2025] IEHC 123

*PP v Commissioner of An Garda Síochána and ors*

Personal injury law – Differential costs order – Courts Act 1981, s.17 – Plaintiff seeks Circuit Court costs and a certificate for senior counsel – Whether to make a differential costs order due to the award being within the jurisdiction of the Circuit Court – 12/03/2025 – [2025] IEHC 170

*Quinlan v Quinlan*

## COURTS

### Statutory instruments

Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024 (Part 3) (Commencement) Order 2025 – SI 121/2025

District Court Districts and Areas (Amendment) and Variation of Days and Hours (Nenagh, Thurles) No. 1. Order 2025 – SI 130/2025

District Court Districts and Areas (Amendment) and Variation of Days and Hours (Nenagh, Thurles) No. 2. Order 2025 – SI 131/2025

Rules of the Superior Courts (Appendix I) 2025 – SI 149/2025

Rules of the Superior Courts (Companies Act 2014 Section 459) 2025 – SI 150/2025

## CRIMINAL LAW

Criminal law – Disclosure of counselling records – Criminal Law (Rape) (Amendment) Act 1990, s.2 – Criminal Procedure Act 1993, s.3 – Defendant seeks to overturn conviction based on new evidence – Whether the 17 September record might have had a material and important influence on the result of the case – 02/05/2025 – [2025] IESC 16

*DPP v A.M.*

Criminal law – Custodial sentence – Severity of sentence – Criminal Justice (Theft and Fraud Offences) Act 2001, ss.4,6 – Appellant seeks to reduce the severity of the sentence imposed for conspiracy to defraud – Whether the sentence imposed was proportionate to the gravity of the offending conduct and the circumstances of the appellant – 07/04/2025 – [2025] IECA 98

*DPP v Cassidy*

Criminal law – Review of sentence – Undue leniency – Criminal Justice Act 1993, s.2 – Criminal Law (Sexual Offences) Act 2017, ss.7,8 – Applicant seeks a review of the sentence imposed on the respondent on grounds of undue leniency – Whether the sentence imposed was unduly lenient within the meaning of s.2 of the 1993 Act – 06/03/2025 – [2025] IECA 87

*DPP v L(D)*

Criminal law – Declaration order – Anonymity of child defendants – Children Act 2001, s.93 – Appellant seeks to maintain anonymity under s.93 of the Children Act 2001 despite reaching adulthood during proceedings – Whether the terms of s.93 of the Children Act 2001 apply to the appellant in this case in respect of the proceedings before the Central Criminal Court, the Court of Appeal and this Court notwithstanding the fact that he reached the age of majority during the currency of those proceeding – 13/03/2025 – [2025] IESC 12

*DPP v P.B.*

Criminal law – Discharge of jury – Admissibility of witness statement – Criminal Justice Act 2006, s.16 – Criminal Justice Act 1984, s.21 – Appellant seeks to overturn the conviction for murder – Whether the statement was reliable and admissible under s.16 of the Criminal Justice Act 2006 – 21/02/2025 – [2025] IECA 88

*DPP v Jackson*

Criminal law – Sentencing – Firearms Act 1964, s.27B – Appellant seeks to reduce the sentence imposed by the lower court – Whether the judge failed to afford the appellant an appropriate discount from the headline sentence for his entry of a signed plea of guilty – 10/03/2025 – [2025] IECA 86

*DPP v McLoughlin*

Criminal law – Gilchrist order – Prohibition due to delay – Children Act 2001, s.75 – Criminal Law (Rape) Act 1990, s.2 – Applicants seek prohibition of further prosecution due to prejudicial delay – Whether the further prosecution of the applicants should be prohibited due to the acknowledged breach of constitutional right – 09/05/2025 – [2025] IESC 17

*Doe (No.1) v DPP; Doe (No.2) v DPP; Doe (No.3) v DPP*

Constitutional law – Declaration order – Judicial review – Non-Fatal Offences Against the Person Act 1997, s.2 – Criminal Justice (Administration) Act 1924, s.9 – Applicant seeks to prevent prosecution for alleged minor assault – Whether the applicant's constitutional rights were infringed by the prosecution – 19/03/2025 – [2025] IEHC 159

*Lynch v DPP*

Criminal law – Discovery order – Malicious prosecution – Criminal Justice (Miscellaneous Provisions) Act 1997, s.10 – Non-Fatal Offences against the Person Act 1997, s.10 – Plaintiff seeks damages for false imprisonment and malicious prosecution – Whether the arrest and prosecution were lawful – 08/05/2025 – 2025] IEHC 251

*Rochford v Kelly and ors*

### Library acquisitions

Holmes, M. *Habeas Corpus: Practice and Procedure*. Dublin: Clarus Press, 2025 – M203.C5

### Articles

Boland, Dr M.J. Developments in the law governing online activity: the criminalisation of catfishing and civil relief in cases of image-based sexual abuse. *Irish Criminal Law Journal* 2025; 35 (1): 7-14

Holmes, M. Article 40 applications: a beginner's guide. *Irish Law Times* 2025; 43 (2): 22-24

O'Sullivan, D. "Invitation to touch" in sexual assault trials. *Irish Criminal Law Journal* 2025; 35 (1): 3-6

## DATA PROTECTION

Data protection law – Order of certiorari – Data controller definition – Data Protection Act 2018, s.109 – General Data Protection Regulation (EU) 2016/679, art.4.7 – Applicant seeks an order of certiorari quashing the dismissal of his complaint against the Health Service Executive – Whether the Health Service Executive was a data controller under the General Data Protection Regulation – 03/04/2025 – [2025] IEHC 191

*McShane v Data Protection Commission*

Data protection law – Costs order – Legal Service Regulation Act 2015, s.169 – Rules of the Superior Courts, Order 99, rule 2 – Respondent seeks costs for defending interlocutory motions – Whether the Data Protection Commission was entirely successful in defending the interlocutory applications – 12/05/2025 – [2025] IECA 97

*Meta Platforms Ireland Limited v Data Protection Commission*

### Articles

Anderson, C., Blake, R. The EU Data Act. *Construction, Engineering and Energy Law Journal* 2025; 1: 6-8

## DEBT

### Articles

O'Keeffe, D. High noon. *Law Society Gazette* 2025; May: 16-17

## DISCOVERY

Judicial review – Discovery order – Medical Practitioners Act 2007, s.47 – Applicant seeks discovery of documents and delivery of further and better particulars – Whether the applicant's self-guided specialist training is equivalent to the SAT Programme – 09/04/2025 – [2025] IEHC 200

*Abdelaatti v College of Anaesthesiologists or Ireland and ors*

Civil procedure – Stay of proceedings – Discovery application – Regulation (EU) 2016/679 – Plaintiff seeks discovery of

documents and a stay on Circuit Court proceedings – Whether the plaintiff's application for discovery and stay of proceedings should be granted – 17/04/2025 – [2025] IEHC 249
*Connaughton v Start Mortgages Designated Activity Company*

## EDUCATION

Education law – Interim injunction – Education Act 1998, ss.9,14 – Respondent seeks to restrain the appellant from attending the school premises and interacting with students – Whether the interim injunctions obtained ex parte by the Board were validly granted – 07/03/2025 – [2023] IECA 52
*The Board of Management of Wilson's Hospital School v Burke*

### Articles

Mulcaire, R. Saved by the bell: the constitutional rights of religious minorities, denominational monopolies, and the persisting need for integrated legal reform within Irish primary education. *Hibernian Law Journal* 2024; 23: 92-114

## EMPLOYMENT LAW

Employment law – Interlocutory injunction – Breach of contract – Medical Practitioners Act 2007, s.60 – Health Act 2004 – Appellant seeks to place respondent on administrative leave pending investigation – Whether the appellant acted in breach of contract by consulting with a biased individual – 28/02/2025 – [2025] IECA 48
*B(A) v The Health Service Executive*
Employment law – Preliminary issue order – Victimisation – Employment Equality Act 1998, s.74 – Plaintiff seeks a declaration that her suspension from flying duties was void and amounted to gender discrimination and victimisation – Whether the plaintiff's claim can be pursued in the High Court or must be brought before the Workplace Relations Commission – 28/03/2025 – [2025] IEHC 177
*McKeown v Minister for Defence and ors*

### Articles

Colgan, S. Work-life balance and remote work: legal entitlements and trends in WRC decisions. *Commercial Law Practitioner* 2025; 32 (1): 3-8
Heron, J. Cutting mutuality of obligation down to size: *Revenue Commissioners v Karshan (Midlands) Ltd T/A Domino's Pizza* [2023] IESC 24. *Hibernian Law Journal* 2024; 23: 166-177
Jones, R. Cracking the whip. *Law Society Gazette* 2025; May: 32-35
Kerr, A. Working time developments. *Irish Employment Law Journal* 2025; 22 (1): 4-8
Kimber, C., O'Doherty, M. The law concerning social media posts as grounds for dismissal. *Commercial Law Practitioner* 2025; 32 (3): 34-39
McGreal, C. Mandatory retirement and age discrimination. *Irish Employment Law Journal* 2024; 21 (4): 72-88
Moore, N. The right to request v the right to work remotely: a critical look at Ireland's 2023 Work-Life Balance Act and 2024 Code of Practice. *Irish Employment Law Journal* 2025; 22 (1): 9-16

## ENERGY

Energy regulation – Certiorari order – Failure to exercise discretion – Electricity Regulation Act 1999, s.8 – Applicants seek orders of certiorari quashing the decisions rejecting their applications for qualification for the capacity auction – Whether the respondents failed to exercise their residual discretion under section E.7.2.1 of the Capacity Market Code – 25/03/2025 – [2025] IEHC 174
*Kilshane Energy Limited v Eirgrid PLC and anor; Coolpowra Flex Gen Limited and anor v Eirgrid PLC and anor*

## EQUALITY

### Articles

Bhreathnach, Á. Regulars only. *Law Society Gazette* 2025; Apr: 32-35

## ESTOPPEL

### Library acquisitions

Barnes, M. *The Law of Estoppel*. Oxford: Hart Publishing, 2020 – N384.4

## EUROPEAN UNION

European Union law – Set aside proceedings – Jurisdiction – Rules of the Superior Courts 1986, Order 12 – Defendants seek orders to set aside notices of proceedings on grounds that the High Court does not have jurisdiction under Article 8(1) of Regulation (EU) No. 1215/2012 –– Whether the claims against the defendants are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings – 11/04/2025 – [2025] IEHC 248
*Yasar v CCC Essen Digital GMBH and anor; Talibov v CCC Essen Digital GMBH and anor; Senen v CCC Barcelona Digital Services SLU and anor*

### Articles

Becker, H. Under the spotlight. *Law Society Gazette* 2025; May: 48-51
Hickey, M. Ticket to ride. *Law Society Gazette* 2025; Apr: 46-51

### Statutory instruments

European Union (Restrictive Measures concerning Türkiye) Regulations 2025 – SI 79/2025
European Union (Restrictive Measures concerning Zimbabwe) Regulations 2025 – SI 82/2025
European Union (Restrictive Measures Against Serious Human Rights Violations and Abuses) Regulations 2025 – SI 83/2025
European Union (Restrictive Measures concerning Syria) Regulations 2025 – SI 84/2025
European Union (Restrictive Measures concerning Sudan) Regulations 2025 – SI 85/2025
European Union (Restrictive Measures concerning ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them) Regulations 2025 – SI 90/2025
European Union (Restrictive Measures concerning Ukraine) (No.2) Regulations 2025 – SI 94/2025
European Union (Renewable Energy) (Amendment) Regulations 2025 – SI 97/2025
European Union (Restrictive Measures concerning Belarus) (No.2) Regulations 2025 – SI 100/2025
European Union (Temporary Increase of Official Controls and Emergency Measures on Imports of Food and Feed of Non-Animal Origin) (Amendment) Regulations 2025 – SI 101/2025
European Union (Protocol to the Interbus Agreement) Regulations 2025 – SI 102/2025
European Union (Transport of Passengers by Road) Regulations 2025 – SI 103/2025
European Union (de minimis aid in the agriculture sector) Regulations 2025 – SI 120/2025
European Union (Restrictive Measures Concerning Ukraine) (No.3) Regulations 2025 – SI 126/2025
European Union (Food Intended for Infants and Young Children, Food for Special Medical Purposes, and Total Diet Replacement for Weight Control) (Amendment) Regulations 2025 – SI 128/2025
Designation Under Regulation 3 of The European Communities (General Food Law) Regulations 2007 (S.I. No. 747 Of 2007) and Regulation 23 of The European Union (Food Additives) Regulations 2015 (S.I. No. 330 Of 2015) – SI 129/2025
European Union (Specifications for Petrol, Diesel Fuels and Gas Oils intended for use by non-road mobile machinery including inland waterway vessels, agricultural and forestry Tractors, and recreational craft Regulations 2025 – SI 136/2025
European Union (Restrictive Measures concerning Haiti) Regulations 2025 – SI 145/2025
European Union (Restrictive Measures concerning Central African Republic) Regulations 2025 – SI 146/2025
European Union (Restrictive Measures concerning the Democratic Republic of the Congo) Regulations 2025 – SI 147/2025
European Union (Restrictive Measures concerning Iran) (Human Rights) Regulations 2025 – SI 148/2025
European Union (Restrictive Measures concerning Moldova) Regulations 2025 – SI 153/2025
European Union (Restrictive Measures in respect of Myanmar/Burma) Regulations 2025 – SI 154/2025
European Union (Restrictive Measures concerning Libya) (No.2) Regulations 2025 – SI 161/2025
European Union (Road Transport) (Working Conditions and Road Safety) (Amendment) Regulations 2025 – SI 163/2025
European Union (Waste Directive) Amendment Regulations 2025 – SI 166/2025
European Union (Packaging) (Amendment) Regulations 2025 – SI 167/2025
European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2025 – SI 168/2025
European Union (Payment Services) (Amendment) Regulations 2025 – SI 169/2025
European Union (Settlement Finality) (Amendment) Regulations 2025 – SI 170/2025
European Union (Recognition of Professional Qualifications) (Amendment) Regulations 2025 – SI 178/2025
European Union (Restrictive Measures concerning Ukraine) (No.4) Regulations 2025 – SI 194/2025

## EXTRADITION LAW

Extradition law – Surrender order – Surrender to Northern Ireland – European Arrest Warrant Act 2003, s.16 – Offences Against the Person Act 1861, s.18 – Applicant seeks the surrender of the respondent to the United Kingdom for prosecution – Whether the respondent should be surrendered to Northern Ireland under the European Arrest Warrant Act 2003 – 13/03/2025 - [2025] IEHC 168
*Minister for Justice v Fawl*
Extradition law – Surrender order – Abuse of process – European Arrest Warrant Act 2003, ss.10, 11A – Applicant seeks surrender of respondent to Northern Ireland – Whether surrender of respondent would be an abuse of process – 20/03/2025 – [2025] IEHC 166
*Minister for Justice v McNicholl*
Extradition law – Surrender order – Extradition request – European Arrest Warrant Act 2003, ss.5, 38 – Firearms Act 1964, ss.27A, 27B – Applicant seeks the surrender of the respondent to Northern Ireland for prosecution – Whether the surrender of the respondent would be an abuse of process –– 20/03/2025 – [2025] IEHC 167
*Minister for Justice v O'Kane*
European Arrest Warrant – Surrender order – Non-Fatal Offences Against the Person Act 1997, ss.2, 3 – European Arrest Warrant Act 2003, s.16 – Applicant seeks an order for the surrender of the respondent to Croatia under a European Arrest Warrant – 14/03/2025 – [2025] IEHC 169
*Minister for Justice v Orsolic*

Surrender order – Minimum gravity – European Arrest Warrant Act 2003, s.16 – Criminal Law (Rape)(Amendment) Act 1990 – Applicant seeks an order for the surrender of the respondent to Northern Ireland – Whether the requirements of minimum gravity under the 2003 Act are met – 11/05/2025 – [2025] IEHC 273
*Minister for Justice v Warner*

## FAMILY LAW

Family law – Stay order – Judicial review – Child Care Act 1991, ss.20, 27 – Courts (Supplemental Provisions) Act 1961, s.45 – Applicant seeks leave to judicially review decisions made by a District Court judge regarding access to a child – Whether the applicant is entitled to judicial review of the District Court's decisions regarding access to a child – 23/01/2025 – [2025] IEHC 238
*P(G) v S(N), a judge of the District Court and ors*

### Library acquisitions

Joyce, M. *Family Law Nutshell (2nd ed.)*. Dublin: Thomson Round Hall, 2024 – N170.C5

### Articles

Hand, D. "Birdnesting Co-Parenting" in Irish family law. *Irish Journal of Family Law* 2025; 28 (1): 9-10

## FINANCE

### Library acquisitions

Walker, G. *Financial Technology and Digital Commercial Law*. Oxford: Oxford University Press, 2025 – N300

### Acts

Financial Services and Pensions Ombudsman (Amendment) Act 2025 – Act 3/2025 – signed on April 15, 2025

## GOVERNMENT

### Statutory instruments

Appointment of Special Adviser (Minister for Social Protection) Order 2025 – SI 86/2025
Further and Higher Education, Research, Innovation and Science (Transfer of Departmental Administration and Ministerial Functions) Order 2025 – SI 105/2025
Foreign Affairs (Alteration of Name of Department and Title of Minister) Order 2025 – SI 106/2025
Appointment of Special Advisers (Minister for Finance) Order 2025 – SI 143/2025
Transport (Delegation of Ministerial Functions) Order 2025 – SI 144/2025
Integration and Reception (Transfer of Departmental Administration and Ministerial Functions) Order 2025 – SI 159/2025
Enterprise, Trade and Employment (Alteration of Name of Department and Title of Minister) Order 2025 – SI 172/2025
Rural and Community Development (Alteration of Name of Department and Title of Minister) Order 2025 – SI 173/2025
Rural and Community Development (Alteration of Name of Department and Title of Minister) Order 2025 – SI 174/2025
Irish Language and the Gaeltacht (Transfer of Departmental Administration and Ministerial Functions) Order 2025 – SI 175/2025
Education (Alteration of Name of Department and Title of Minister) Order 2025 – SI 179/2025
Children, Equality, Disability, Integration and Youth (Alteration of Name of Department and Title of Minister) Order 2025 – SI 180/2025
Youth (Transfer of Departmental Administration and Ministerial Functions) Order 2025 – SI 181/2025
Appointment of Special Advisers (Minister for Health) Order 2025 – SI 182/2025
Youth Work (Transfer of Departmental Administration and Ministerial Functions) Order 2025 – SI 185/2025

## HEALTH

Health and social care – Suspension order – Sanction for professional misconduct – Health and Social Care Professionals Act 2005, s.69 – Applicant seeks to overturn the decision to cancel his registration as a social worker – Whether the applicant's ASD diagnosis and psychological difficulties were relevant to the sanction – 20/02/2025 – [2025] IEHC 267
*S(R) v Health and Social Care Professional Council*

## HUMAN RIGHTS

### Articles

Brennan, R. Breaking the spell: examining the European Court of Human Rights ruling on same-sex representation in Children's fairy tales in *Macaté v Lithuania*. *Hibernian Law Journal* 2024; 23: 152-165

## IMMIGRATION

Immigration law – Certiorari order – Credibility of applicant's claim – Illegal Immigrants (Trafficking) Act 2000, s.5 – International Protection Act 2015, ss.46, 49 – Applicant seeks orders quashing the decision of the International Protection Appeals Tribunal – Whether the applicant is entitled to leave to challenge the decision based on the rejection of the credibility of her claim – 01/05/2025 – [2025] IEHC 260
*A(PF) v International Protection Appeals Tribunal and anor*
Immigration law – Judicial review order – Judicial review – International Protection Act 2015, ss.49, 50 – Immigration Act 1999, s.3 – Applicants seek to challenge the Minister's decision to deport them to Nigeria – Whether the Minister failed to consider the risk of FGM in the s.50 refoulement decision – 28/03/2025 – [2025] IEHC 183
*E(JC) and ors v Minister for Justice and Equality and ors*
Immigration law – Injunction to restrain deportation – International Protection Act 2015, s.22 – Applicant seeks an injunction to restrain deportation pending judicial review – Whether the applicant has established an arguable case for an injunction in accordance with the principles developed by the Supreme Court in *Okunade* – 28/03/2025 – [2025] IEHC 220
*G(T) v International Protection Appeals Tribunal and ors*
Immigration law – Certiorari order – Visa application refusal – European Communities (Free Movement of Persons) Regulations 2015, reg.2(1) – European Union (Withdrawal Agreement) (Citizens' Rights) Regulations 2020 – Applicant seeks orders quashing decisions of the Minister for Justice to refuse visa appeals for his children – Whether the applicant demonstrated that the procedures adopted by the Minister were unfair – 21/03/2025 – [2025] IEHC 165
*K(S) v Minister for Justice*
Immigration law – Quashing order – Judicial review – International Protection Act 2015, s.46 – Illegal Immigrants (Trafficking) Act 2000, s.5 – Applicant seeks to quash the decision of the Tribunal under s.46 of the 2015 Act – Whether the applicant meets the substantial grounds threshold for judicial review – 28/03/2025 – [2025] IEHC 185
*L(G) v The International Protection Appeals Tribunal and anor*
Immigration law – Certiorari order – Judicial review – European Communities (Free Movement of Persons) Regulations 2015 – Applicant seeks to set aside the decision to revoke his residence card – Whether the applicant submitted false and misleading documentation – 29/04/2025 – [2025] IEHC 246
*Ogidan v Minister for Justice and Equality*
Immigration law – Judicial review order – Judicial review – European Communities (Free Movement of Persons) Regulations 2006 and 2008 – Appellant seeks judicial review of decisions refusing permission under the Special Student Scheme to remain in the State – Whether the Minister operated a fixed policy and thus fettered her discretion in determining that a previous finding of use of fraudulent documents disentitled an applicant for consideration under the Scheme – 03/10/2023 – [2023] IECA 227
*R(S) and A(L) v The Minister for Justice and Equality*
Immigration law – Quashing order – Judicial review – International Protection Act 2015, s.46 – Illegal Immigrants (Trafficking) Act 2000, s.5 – Applicant seeks an order quashing the decision of the International Protection Appeals Tribunal – Whether substantial grounds for judicial review were demonstrated – 28/03/2025 – [2025] IEHC 184
*S(A) v The International Protection Appeals Tribunal and ors*
Immigration law – Quashing order – Judicial review – Illegal Immigrants (Trafficking) Act 2000, s.5 – International Protection Act 2015, ss.39, 46 – Applicant seeks an order quashing the decision of the International Protection Appeals Tribunal – Whether the applicant has demonstrated substantial grounds for seeking judicial review – 28/03/2025 – [2025] IEHC 187
*S(G) v The International Protection Appeals Tribunal and anor*
Immigration law – Quashing order – Judicial review – Illegal Immigrants (Trafficking) Act 2000, s.5 – International Protection Act 2015, ss.13,39 – Applicant seeks an order quashing the decision of the International Protection Appeals Tribunal – Whether the applicant has demonstrated substantial grounds for seeking relief by way of judicial review – 28/03/2025 – [2025] IEHC 186
*X(Y) v The International Protection Appeals Tribunal and anor*
Immigration law – Judicial review – Marriage of convenience – Directive 38/2004/EC, art.35 – Applicant seeks to challenge the decision that the marriage was one of convenience – 06/05/2025 – [2025] IEHC 259
*Y v Minister for Justice*

## INFORMATION TECHNOLOGY

### Articles

Hallissey, M. To boldly go. *Law Society Gazette* 2025; May: 42-43

## INJUNCTIONS

Judicial review – Interlocutory injunction – Interlocutory relief – Council Regulation (EEC) No. 95/93 of January 18, 1993 – Applicant seeks interlocutory orders staying the decision of the Irish Aviation Authority – 02/04/2025 – [2025] IEHC 190
*Aer Lingus Limited and ors v Irish Aviation Authority*
Judicial review – Interlocutory injunction – Whether the applicant is entitled to an interlocutory injunction restraining the respondent from implementing the decision pending the trial of the judicial review proceedings – 26/03/2025 – [2025] IEHC 181
*Cosgrove [practising under the style and title of Aidan T Stapleton Solicitors] v Minister for Justice and anor*
Civil procedure – Injunction order – Costs of interlocutory injunction – Rules of the Superior Courts 1986, O.99. r.2(3) – Legal Services Regulation Act 2015, s.169(1) – Plaintiffs seek costs for interim and interlocutory injunctions – Whether the defendants acted reasonably in defending the interlocutory application – 09/05/2025 – [2025] IEHC 274
*Philpott and anor v Pepper Finance*

*Corporation [Ireland] Designated Activity Company and anor [No. 2]*

**Library acquisitions**

Bean, D., Headley, F., Burns, A. *Bean on Injunctions (15th ed.)*. London: Sweet & Maxwell, 2024 – N232

**Articles**

Biehler, H. Categories of cases where a departure from American Cyanamid/Campus Oil principles is justified. *Irish Law Times* 2025; 43 (2): 15-21 [part II]

Biehler, H. Factors relevant to the grant of interlocutory injunctions. *Irish Law Times* 2025; 43 (1): 3-9

## INSURANCE

Insurance law – Declaration order – Causation of restriction orders – Health Act 1947, s.31A – Defendant seeks guidance on liability to insureds in other circumstances – Whether there is a cut-off date for COVID-19 infections causing the Third Restriction Order – 23/04/2025 – [2025] IEHC 226

*Marlin Apartments Limited trading as Marlin Hotel Dublin v Allianz PLC*

**Library acquisitions**

Reed, P. *Construction All Risks Insurance (4th ed.)*. London: Sweet & Maxwell, 2025 – N295.C3

## INTELLECTUAL PROPERTY

**Articles**

Bleahane, M. One of these things is not like the other. *Law Society Gazette* 2025; May: 28-31

Doolan, A. Patents versus patients: an analysis of the restrictive effect of patent law under trips on access to medicines in low-income countries and proposals for effective reform. *Hibernian Law Journal* 2024; 23: 26-56

## INTERNATIONAL LAW

**Library acquisitions**

Haase, F., Kofler, G. *The Oxford Handbook of International Tax Law*. Oxford: Oxford University Press, 2023 – C224

## INTERNATIONAL PROTECTION

**Library acquisitions**

Storey, H. *The Refugee Definition in International Law*. Oxford: Oxford University Press, 2024 – C205

**Articles**

NicRáillaigh, C. International protection defences: arguments to material reception conditions? *Irish Law Times* 2024; 42 (19): 219-223

## JUDICIAL REVIEW

Judicial review – Set aside order – Material non-disclosure – Criminal Justice Act 2006, s.99 – Criminal Justice (Suspended Sentences of Imprisonment) Act 2017 – Respondent seeks to set aside the order granting leave for judicial review due to material non-disclosure – 21/03/2025 – [2025] IEHC 164

*Grimes v Cork Circuit Court judge and anor*

Judicial review – Order of certiorari – Taxi Regulation Act 2013, ss.6,10 – Applicant seeks to quash the decision to refuse his application for a taxi licence – Whether the Licensing Authority was entitled to rely on the fact that an allegation had been made when the applicant had been acquitted – 28/04/2025 – [2025] IEHC 244

*P(K) v V(S) and anor*

Judicial review – Quash order – Termination of legal aid – Civil Legal Aid Act 1995, ss.24, 28 – Applicant seeks to quash the finding on appeal and remit the question of legal aid to the respondent Board for reconsideration – Whether the applicant's case had a much stronger prospect of success than a risk of failure, making it unreasonable for the Board to terminate legal aid – 20/04/2025 – [2025] IEHC 257

*Prendergast v Legal Aid Board*

Judicial review – Firearms Act 1925, ss.2, 3 – Applicant seeks leave to seek certiorari to quash the decision refusing firearm licences – Whether the applicant was entitled to reasonable accommodation for his dyslexia in seeking an extension of time – 25/03/2025 – [2025] IEHC 234

*Tracey v Commissioner of An Garda Síochána*

## JURISPRUDENCE

**Articles**

Mohit, B. A discourse on Hart's *Concept of Law*. *Irish Law Times* 2024; 42 (19): 224-228

## LAND LAW

Contract law – Strike out order – Specific performance – Land and Conveyancing Law Act 2009, s.51 – Plaintiff seeks specific performance of an alleged oral agreement to sell property – Whether the proceedings should be dismissed as disclosing no reasonable cause of action – 26/03/2025 – [2025] IEHC 126

*Phoenix Rock Enterprises [trading as Frank Pratt & Sons] v Hughes*

## LANDLORD AND TENANT

Landlord and tenant law – Stay order – Stay on proceedings – Landlord and Tenant (Amendment) Act 1980 – Appellants seek a stay on the Circuit Court proceedings – Whether the balance of justice supports granting a stay – 14/03/2025 – [2025] IEHC 151

*Verbenagrove Limited v Evans and anor*

**Articles**

Murphy, G.N. Termination of tenancy under The Residential Tenancies Act 2004 for landlord's own use or family member. *Irish Law Times* 2024; 42 (18): 214-216

Woods, Dr. U. The regulation of residential tenancies: a potential minefield for the unwary small landlord. *Conveyancing and Property Law Journal* 2025; 1: 2-8

Wright, L. Impact of a non-reliant side letter when seeking relief against forfeiture. *Conveyancing and Property Law Journal* 2025; 1: 9-15

## LEGAL HISTORY

**Library acquisitions**

Howlin, Dr. N. *A History of the Office of the Director of Public Prosecutions*. Dublin: Office of the Director of Public Prosecutions, 2025 – L403.C5

## LEGAL PROFESSION

**Articles**

Beatty, S. Fanatical advocacy: Hans Litten. *Irish Law Times* 2024; 42 (18): 208-213

## MENTAL HEALTH LAW

Mental health law – Transfer order – Mental Health Act 2001, s.3 – Transfer out of jurisdiction – Applicant seeks authority to transfer respondent to a specialist placement in the UK – Whether the transfer is necessary and proportionate to protect the respondent's rights – 03/04/2025 – [2025] IEHC 217

*In the matter of "A" AND In the matter of the inherent jurisdiction of the Court AND In the matter of an application for transfer out of the jurisdiction AND In the matter of an objection by family*

## PENSIONS

Pension law – Determination order – Interpretation of pension deed – Pensions Act 1990, s.48 – Applicant seeks determination of whether the respondent is obliged to provide reasonable notice prior to terminating its liability to pay contributions – Whether the respondent is obliged to provide reasonable notice to the applicant prior to terminating its liability to pay contributions to the Fund pursuant to Clause 5(4) of the 2008 Deed – 28/03/2025 – [2025] IEHC 176

*Amcor Pension Trust [Ireland] Company Limited by Guarantee v Amcor Holding No. 1 Limited*

Pension law – Determination order – Construction of pension scheme rules – Postal and Telecommunications Services Act 1983, s.46 – Rules of the Superior Courts 1986, Order 3, rule 6 – Plaintiff seeks direction and determination of the High Court regarding the proper interpretation of the pension plan – Whether Rule 10, 2005 Deed provided Scheme C members with a guaranteed entitlement to pension increases on a pay parity basis – 28/03/2025 – [2025] IECA 76

*Vodafone Ireland Limited v Farrell and ors*

**Articles**

Donnelly, Prof. M. Curial deference and the Financial Services and Pensions Ombudsman. *Commercial Law Practitioner* 2025; 32 (2): 18-24

## PERSONAL INJURIES ASSESSMENT BOARD

Personal injury – Damages award – Causation of shoulder condition – Book of Quantum 2016 – Plaintiff seeks damages for personal injury arising from a workplace accident – Whether the accident was a crucial and necessary link in the chain of causation of the plaintiff's shoulder condition – 01/04/2025 – [2025] IEHC 216

*Keane v Johnson & Johnson Vision Care [Ireland]*

**Library acquisitions**

Cane, P. *Atiyah's Accidents, Compensation and the Law (9th ed.)*. Cambridge: Cambridge University Press, 2018 – N38.1

## PLANNING AND ENVIRONMENTAL LAW

Planning and development law – Order of certiorari – Judicial review – Planning and Development Act 2000, s.50 – Road Traffic Act 1994, s.38 – Road Traffic Act 1961, s.95 – Applicant seeks to quash the Council's decision to pedestrianise New Street – Whether the Council's decision was lawful despite the absence of a local area plan – 11/04/2025 – [2025] IEHC 204

*Byrne v Fingal County Council and ors*

Environmental law – Order of certiorari – Environmental impact assessment – Planning and Development Act 2000, s.50A – Respondent seeks to uphold the High Court's decision quashing the City Council's decision to proceed with the Scheme – Whether the City Council was required to carry out a full EIA and AA for the proposed Scheme – 11/04/2025 – [2025] IECA 84

*Carvill and anor v Dublin City Council and ors*

Planning and development law – Order of certiorari – Material contravention of development plan – Planning and Development Act 2000, ss.50, 50A, 50B – Planning and Development (Housing) and Residential Tenancies Act 2016 – Applicant seeks an order of certiorari to quash the decision granting planning permission – Whether the Board contravened the development plan without addressing the statutory procedure –02/05/2025 – [2025] IEHC 255

*Condon v An Bord Pleanála*

Environmental law – Certiorari order – Environmental impact assessment – Planning and Development Act 2000, s.50 – Climate Action and Low Carbon Development Act 2015, s.15 – Applicants seek an order of certiorari quashing the decisions granting planning permission for data centre and substation developments – Whether the inspector's error regarding bat roosts was harmless and did not materially affect the planning permission decision – 21/03/2025 – [2025] IEHC 158

*Doyle and ors v An Bord Pleanála and ors*
Planning and environmental law – No order as to costs – Costs adjudication – Planning and Development Act 2000, s.50 – Climate Action and Low Carbon Development Act 2015, s.15 – Applicants seek costs to be reserved despite losing on merits – Whether the applicants should receive costs for losing point – 11/04/2025 – [2025] IEHC 205

*Doyle and ors v An Bord Pleanála and ors [No.2]*
Planning and environment law – Certiorari order – Judicial review – Planning and Development Act 2000, ss.50, 50A, 50B – Applicants seek judicial review of planning permission granted by the Board – Whether the Board correctly interpreted the public open space policy – 15/04/2025 – [2025] IEHC 209

*Eglington Residents Association and anor v An Bord Pleanála and ors*
Planning and environment – Certiorari order – Judicial review – Planning and Development Act 2000, s.50 – Applicant seeks certiorari of the Galway Transport Strategy – Whether the challenge to the GTS is out of time – 25/03/2025 – [2025] IEHC 175

*Foran v An Bord Pleanála and ors*
Judicial review – Leave to appeal – Validity of Board's determination – Roads Act 1993, s.50 – Applicant seeks leave to appeal from a decision of the High Court – Whether the applicant should be granted leave to appeal from a decision of the High Court – 25/03/2025 – [2025] IESC 13

*Friends of Ardee Bog v An Bord Pleanála and ors*
Environmental law – Order of certiorari – Appropriate assessment – European Communities (Birds and Natural Habitats) Regulations 2011, s.42 – Appellant seeks an order of certiorari for the Strategy if an appropriate assessment was legally required – Whether a high-level strategic policy such as FV2030 is capable of constituting a plan or project within the meaning of Article 6(3) of the Habitats Directive – 25/03/2025 – [2025] IECA 71

*Friends of the Irish Environment CLG v The Government of Ireland and ors*
Planning and development law – Retention permission – Judicial review – Planning and Development Regulations 2001, art.17 – Planning and Development Act 2000, s.34 – Applicants seek to quash the decision of the County Council to grant retention permission and planning permission for development at Rathleg, Castlerea – Whether the applicants have established exceptional circumstances to justify a direct challenge by way of judicial review to the first instance decision of the County Council – 25/04/2025 – [2025] IEHC 250

*Larkin and anor v Roscommon County Council*
Planning and environment law – Certiorari order – Material contravention – Planning and Development Act 2000, s.50A – Notice Party seeks a certificate for leave to appeal to the Court of Appeal – Whether a point of law of exceptional public importance arises from the judgment – 24/03/2025 – [2025] IEHC 157

*Leech and anor v An Bord Pleanála and ors*
Planning and environmental law – Order of certiorari – Appropriate assessment screening – Planning and Development Act 2000, ss.50, 50A, 50B – Applicant seeks to quash the decision granting planning permission for a wind farm development – Whether the lack of conservation objectives and measures precludes screening for appropriate assessment – 11/04/2025 – [2025] IEHC 206

*Massey v An Bord Pleanála and ors [No. 2]*
Planning and environmental law – Declaratory relief order – Declaratory relief – Planning and Development Act 2000, ss.50, 50A, 50B – Applicant seeks declaratory relief regarding conservation objectives – Whether the absence of conservation objectives affects the competent authority's ability to carry out screening – 11/04/2025 – [2025] IEHC 218

*Massey v An Bord Pleanála and ors [No. 3]*
Planning and environment law – Refusal of relief – Judicial review – Planning and Development Act 2000, ss.10, 20 – Planning and Development (Exempted Development) (No. 4) Regulations 2023, SI No. 376/2023 – Applicant seeks to set aside previous court order – Whether the applicant is in the wrong court and should appeal to the Court of Appeal – 17/02/2025 – [2025] IEHC 162

*McGreal v Minister for Housing, Local Government and Heritage of Ireland [No. 3]*
Planning and development law – Injunction order – Abstract challenge – Planning and Development Act 2000, ss.10,20 – Applicant seeks to set aside previous court order – Whether the applicant's motion to set aside the previous order meets the threshold for reconsideration – 10/03/2025 – [2025] IEHC 163

*McGreal v Minister for Housing, Local Government and Heritage of Ireland [No. 4]*
Environmental law – Appeal to High Court – Access to environmental information – European Communities (Access to Information on the Environment) Regulations 2007, art.13 – Appellant seeks access to environmental information from the respondent – Whether RTÉ is a public authority under the regulations – 21/03/2025 – [2025] IEHC 160

*Raidió Teilifís Éireann v The Commissioner for Environmental Information (No. 2)*
Planning and development law – Judicial review order – Planning and Development Act 2000, ss.50, 50A, 50B – Applicant seeks judicial review of planning permission granted to the golf club – Whether the applicant has raised any substantial issue warranting judicial review – 13/02/2025 – [2025] IEHC 172

*Reddan v An Bord Pleanála*
Judicial review – Certificate of appeal – Planning and Development Act 2000, s.50A – Respondent seeks leave to appeal the judgment to the Court of Appeal – Whether the Board failed to consider seeking further information regarding public transport adequacy – 01/04/2025 – [2025] IEHC 178

*Stapleton v An Bord Pleanála and ors*
Planning and environmental law – Quashing order – Judicial review – Planning and Development Act 2000, ss.50,50A – Applicants seek to quash development consent granted by An Bord Pleanála – Whether the time for challenge should run from the date of decision or notification – 21/03/2025 – [2025] IEHC 161

*Thompson and anor v An Bord Pleanála and ors [No.4]*

### Articles

Monaghan, G., Burns, C. The Irish Government's Programme for Government and what it means for the infrastructure sector in Ireland. *Construction, Engineering and Energy Law Journal* 2025; 1: 10-14

Ryall, Á. The Aarhus Convention and environmental law enforcement: reflections on recent developments. *Irish Planning and Environmental Law Journal* 2024; 2: 55-59

Suárez, J. What specific content could substantial and procedural environmental rights have if incorporated by referendum in the Irish Constitution? *Hibernian Law Journal* 2024; 23: 115-150

## POLICING

Judicial review – Order of prohibition – Extension of probationary period – Garda Síochána (Admissions and Appointments) Regulations 2013 – Applicant seeks judicial review to challenge the extension of probationary period and disciplinary proceedings – Whether the disciplinary process is tainted – 26/03/2025 – [2025] IEHC 173

*Busher v Commissioner of An Garda Síochána and ors*

## PRACTICE AND PROCEDURE

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*Ballymore Residential Limited and anor v Roadstone Limited and ors*
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*Board of Management of Wilson's Hospital School v Burke [No.4]*
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*Cabot Financial [Ireland] Limited v Hanney*
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*Casey and anor v Governor & Company of Bank of Ireland and anor*
Insurance law – Costs order – Discontinuance of proceedings – Legal Services Regulation Act 2015, s.169 – Rules of the Superior Courts (Costs) Order 2019, Order 99 – Plaintiffs seek no order as to costs or a capped costs order – Whether the court should depart from the default rule on costs for discontinued proceedings – 28/04/2025 – [2025] IEHC 243

*CDB Aviation Lease Finance Designated Activity Company and ors v Lloyds Insurance Company SA and ors*
Civil procedure – Extension of time – Rules of the Superior Courts, Order 31 – Plaintiff seeks to extend time to appeal the order striking out her action – Whether the plaintiff formed an intention to appeal within the required time after the making of the impugned order – 22/04/2025 – [2025] IEHC 240

*Deegan v Campbell*
Practice and procedure – Affirmative order – Application for summons – Courts (No 3) Act 1986, s.1 – Civil Liability and Courts Act 2004, s.49 – Appellant seeks affirmation that a firm of solicitors can apply for a summons on behalf of a prosecutor – 13/05/2025 – [2025] IESC 19

*Donegal County Council v Quinn and anor*

Civil procedure – Execution of costs order – Data Protection Act 2018, s.92 – Rules of the Superior Courts, Order 42, rule 24 RSC – Appellant seeks to contest the High Court's decision granting leave to issue execution on the costs order – Whether the High Court judge erred in concluding that the delay in executing the costs order was sufficiently explained and that the appellant was not prejudiced – 06/05/2025 – [2025] IECA 93

*Gaultier v The Registrar of Companies*

Civil procedure – Strike out order – Fraudulent misrepresentation – Rules of the Superior Courts, Order 99 – Defendant seeks to overturn the High Court's rejection of fraud allegations – Whether the allegation of fraud against Revenue was logically credible – 28/03/2025 – [2025] IECA 77

*Howley v McClean and anor*

Civil procedure – Exclusion order – Admissibility of expert evidence – Rules of the Superior Courts, Order39 – Plaintiffs seek to exclude expert report from evidence – Whether the expert report should be excluded or portions excised in advance of trial – 24/02/2025 – [2025] IEHC 198

*Little and anor v Irish Bank Resolution Corporation Limited (in Special Liquidation) and ors*

Summary judgment – Non est factum – Plaintiff seeks summary judgment against the defendant for obligations under a personal guarantee – Whether the defendant has a real or bona fide defence to the plaintiff's claim – 09/05/2025 – [2025] IEHC 269

*M. Kelliher 1998 Limited v Ashe*

Civil procedure – Substitution order – Substitution of plaintiff – Plaintiff seeks substitution in lieu of original plaintiff – Whether the substitution of Mars for Start prejudices defendants – 03/03/2025 – [2025] IEHC 127

*Mars Capital Finance Ireland Designated Activity Company v Doyle and anor*

Trust law – Strike out order – Inducement of breach of trust – Rules of the Superior Courts, Order 19 rule 28 RSC – Appellants seek to overturn the High Court's decision to strike out proceedings against the respondent – Whether the proceedings against the respondent should be struck out – 21/02/2024 – [2024] IECA 40

*McCann and anor v McManus and ors*

Civil procedure – Inspection order – Legal professional privilege – Rules of the Superior Courts, O.31, r.20(2) – Defendant seeks to overturn High Court order for inspection of privileged documents – Whether the crime/fraud exception applies to the privileged documents – 21/03/2025 – [2025] IECA 69

*McNulty v The Governor and Company of the Bank Of Ireland t/a Bank of Ireland Group*

Civil procedure – Extension of time order – Rules of the Superior Courts, Order 27 – Plaintiff seeks judgment in default of defence – Whether it is necessary in the interests of justice to extend the time for delivery of the defence – 01/04/2025 – 2025] IEHC 202

*Nowak v Courts Service of Ireland*

Civil procedure – Costs following the event – Legal Services Regulation Act 2015, ss.168, 169 – Rules of the Superior Courts 1986, O.99, rr.2, 3 – Appellant seeks to contest the provisional view on costs – Whether the respondent is entitled to costs after being entirely successful in opposing the appeal – 06/05/2025 – [2025] IECA 94

*O'Connor v Legal Aid Board and ors*

Contract law – Specific performance order – Contempt of court – Plaintiff seeks a declaration that the defendant is in contempt of court for failing to comply with court orders – 10/04/2025 – [2025] IEHC 212

*Point Village Development Limited v Dunnes Stores Unlimited Company*

Civil procedure – Dismissal order – Abuse of process – Registration of Deeds Rules 2008 – Appellant seeks to challenge the registration of the mortgage deed and conveyance – Whether the proceedings were an abuse of process and should be dismissed – 04/04/2025 – [2025] IECA 80

*Tucker v Tailte Eireann*

### Library acquisitions

Coulson, P. *Civil Procedure 2025 (2025 ed.)*. London: Sweet & Maxwell, 2025 – N361

### Articles

Gormley, E. A Slapp in the face for legal intimidation? Daphne's Law, The Defamation Bill, and the future of Irish legislation to tackle strategic lawsuits against public participation. *Hibernian Law Journal* 2024; 23: 57-74

## PRISONS

Criminal law – Stay of proceedings – Eligibility for temporary release – Misuse of Drugs Act 1977–1984, ss.15A, 27 – Criminal Justice Act 1960, s.2 – Applicant seeks continuation of proceedings for benefit of other prisoners – Whether the case should proceed despite its mootness – 09/05/2025 – [2025] IEHC 253

*Kelleher v Irish Prison Service and ors*

## PROBATE

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*In the matter of the Estate of Francis Fallon (deceased)*

Probate law – Strike out order – Standing to challenge the will – Succession Act 1965 – Order 19, rule 28 RSC – Plaintiffs seek to have the will declared invalid and the grant of probate revoked – Whether the plaintiffs have standing to maintain these proceedings at all – 04/04/2025 – [2025] IEHC 193

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*Doyle v Leahy*

Property law – Rescission order – Derelict Sites Act 1990 – Repudiatory breach of Settlement Agreement – Plaintiff seeks confirmation of rescission of the Settlement Agreement and retention of legal title to the property – Whether the plaintiff was entitled to treat the Settlement Agreement as rescinded due to the defendant's failure to execute a deed of transfer – 29/04/2025 – [2025] IEHC 241

*Dublin City Council v Lynskey and anor*

Property law – Possession order – Constitutional challenge – Conveyancing Act 1881, ss.19, 21 – Plaintiff seeks various orders challenging the constitutionality of sections 19(1) and 19(21) of the Conveyancing Act 1881 – Whether the power of sale provided for by section 19 was validly exercised before the Constitutional challenge can be assessed – 08/04/2025 – [2025] IEHC 201

*Halpin and ors v Everyday Finance DAC and ors; Stairway Property Company Limited v Halpin and ors*

Property law – Allocation of liability for costs – Conveyancing Act 1881, ss.19(1),19(21) – Legal Services Regulation Act 2015, ss.168, 169 – Plaintiff seeks no order as to costs – Whether the defendants should recover the entirety of the costs – 02/05/2025 – [2025] IEHC 256

*Halpin and ors v Everyday Finance DAC & Ors; Stairway Property Company Limited v Halpin and ors*

Property law – Possession order – Statute barred claim – Registration of Title Act 1964, s.62 – Plaintiffs seek an order for possession of a residential investment property – Whether the defendants have an arguable defence that the plaintiffs' claim is statute barred – 10/04/2025 – [2025] IEHC 210

*Mars Capital Finance Ireland DAC and anor v Gallagher and anor*

Property law – Interlocutory injunction – Forgery of signature – Land and Conveyancing Law Reform Act 2009, ss.97, 100 – Plaintiff seeks interlocutory injunctions to restrain defendants from taking possession or selling the Main Street property – Whether the defendants were entitled to enforce the loan and security – 01/04/2025 – [2025] IEHC 180

*McGuinness v Allied Irish Banks PLC and ors*

Property law – Possession order – Land and Conveyancing Law Reform Act 2013, s.3 – Central Bank Act 1971 – Plaintiff seeks an order for possession of the defendant's premises – Whether the plaintiff has established its entitlement to possession of the property – 01/05/2025 – [2025] IECC 4

*Pepper Finance Corporation (Ireland) Dac T/A Pepper Asset Servicing v Brian Sherlock*

Property law – Interlocutory injunction – Statute-barred loan – Statute of Limitations 1957, ss.32, 33 – Plaintiffs seek to restrain the sale of their farm by the defendants – Whether the loan was repaid before a certain time and the power to appoint a receiver is not exercisable – 03/04/2025 – [2025] IEHC 199

*Philpott and anor v Pepper Finance Corporation (Ireland) Designated Activity Company and anor*

Property law – Possession order – Extension of time to appeal – Defendant seeks to extend the time to appeal a possession order – Whether the defendant has established a strong defence and formed an intention to appeal within the requisite time period – 22/04/2025 – [2025] IEHC 239

*Start Mortgages DAC v Eustace*

Property law – Interlocutory injunction – Trespass and injunction – Land and Conveyancing Law Reform Act 2009, s.33 – Defendant seeks to overturn the interlocutory order restraining trespass – Whether the restraining order made by the High Court should be set aside – 20/03/2025 – [2025] IECA 65

*Strategic Land Investments Limited v Kenny Galway Limited*

Property law – Interlocutory injunction – Interlocutory injunction – Derelict Sites Act 1990 – Defendant seeks to overturn the interlocutory order granting possession of the property to the receiver – Whether it is appropriate to continue the interlocutory order granted by the High Court – 13/05/2025 – [2025] IESC 18

*Tweedswood Ltd and anor v Power*

Property law – Interlocutory injunction – Sale at undervalue – Supreme Court of Judicature Act 1877, s.28 – Plaintiffs seek to restrain the sale of properties pending determination of proceedings – Whether the plaintiffs have identified a serious issue to be tried regarding breach of duty by the defendants in selling the properties at an undervalue – 30/04/2025 – [2025] IEHC 245

*Walsh and anor v Everyday Finance trading as Link Financial and anor*

**Articles**

O'Neill, L. Battelle royale. *Law Society Gazette* 2025; Apr: 29-31

## REDRESS

**Library acquisitions**

O'Donnell, K., Smith, J., O'Rourke, M. *Redress: Ireland's Institutions and Transitional Justice*. Dublin: University College Dublin Press, 2022 – M594.9.C5

## REGULATION

**Articles**

McCarthy, A. Proportionality, transparency, and fair procedures: balancing regulatory enforcement and private rights in the Irish courts. *Commercial Law Practitioner* 2025; 32 (3): 31-33

## ROAD TRAFFIC

Road traffic law – Conviction order – Validity of fixed-charge notice – Road Traffic Act 1961, s.47 – Courts (Supplemental Provisions) Act 1961, s.52 – Defendant seeks to challenge the validity of the fixed-charge notice due to alleged defects – Whether the fixed-charge notice was misleading due to the absence of the word 'average' – 23/04/2025 – [2025] IEHC 237

*DPP v O'Brien*

## SHIPPING

**Acts**

Merchant Shipping (Investigation of Marine Accidents) Act 2025 – Act 2/2025 – signed on April 14, 2025

## TAXATION

Tax law – Appeal order – Transfer of business – Taxes Consolidation Act 1997, s.949AQ – Appellant seeks to overturn the decision of the Tax Appeals Commission – Whether the quarry business was transferred from the appellant to the company in 2007 – 12/03/2025 – [2025] IEHC 182

*Clarke v Revenue*

Tax law – Deductibility order – VAT deductibility – Value Added Tax Consolidation Act 2010 – Appellant seeks full deductibility of input VAT incurred – Whether the appellant was entitled to deduct the entirety of the input VAT it had paid – 31/03/2025 [2025] IECA 75

*Covidien Limited v The Revenue Commissioners*

Tax law – Entrepreneurial relief denial – Capital Gains Tax disposal – Taxes Consolidation Act 1997, ss.542, 949AQ – Appellant seeks entitlement to entrepreneurial relief for CGT liability – Whether the Memorandum of Agreement was conditional under s.542(1)(b) TCA 1997 – 21/3/2025 – [2025] IECA 67

*Flaherty v The Revenue Commissioners*

Tax law – Amendment order – Case stated amendment – Taxes Consolidation Act 1997, ss.949AQ, 949AP – Appellant seeks to amend the case stated to include additional questions regarding findings of fact – Whether the Commissioner erred in law in making findings of fact without any evidential basis – 09/05/2025 – [2025] IEHC 268

*Revenue Commissioners v Getty Images International ULC*

Tax law – Judicial review order – Burden of proof – Taxes Consolidation Act 1997, s.949AK – Appellants seek judicial review of the Tax Appeal Commission's decision regarding tax residency burden of proof – Whether the appellants bear the burden of proof in establishing their non-residence for tax purpose – 09/05/2025 – [2025] IECA 96

*S(S) and ors v A Tax Appeal Commissioner*

## TELECOMMUNICATIONS

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Wireless Telegraphy (Transfer and Lease of Individual Rights of Use for Radio Spectrum for the Provision of Electronic Communications Networks and Services) Regulations, 2025 – SI 99/2025

## TORT

Defamation law – Simultaneous hearing order – Simultaneous trials – Courts Act 1998, s.1(1) – Defendants seek simultaneous trials before the same judge and jury – Whether the four cases should be heard simultaneously by the same judge and jury – 01/04/2025 – [2025] IEHC 221

*Tracey v Irish Times Limited and ors; Tracey v Independent Star Limited and anor; Tracey v Independent Newspapers [Ireland]*

**Library acquisitions**

Cane, P. *Tort Law and Economic Interests (2011 Reprint)*. Oxford: Clarendon Press, 1991 – N30

## WHISTLEBLOWERS

Protected disclosures – Isaac Wunder order – Protected disclosures – Protected Disclosures Act 2014, s.13 – Rules of the Superior Courts, Order 19, rule 28 RSC – Plaintiff seeks damages for alleged detriment suffered due to making protected disclosures – Whether the plaintiff's claims are bound to fail due to lack of standing and credible evidence – 04/04/2025 – [2025] IEHC 203

*Von Geitz v Kelly and ors; Von Geitz v Robertson and ors*

**Bills initiated in Dáil Éireann during the period March 21, 2025, to May 22, 2025**

[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.

Building Energy Rating (BER) Standards for Private Rented Accommodation Bill 2025 – Bill 13/2025 [pmb] – Deputy Paul Murphy and Deputy Ruth Coppinger

Children's Health (Ospidéal Náisiúnta Kathleen Lynn do Leanaí) (Amendment) Bill 2025 – Bill 16/2025 [pmb] – Deputy Aengus Ó Snodaigh, Deputy Máire Devine, Deputy Rose Conway-Walsh and Deputy David Cullinane

Criminal Law (Prohibition of the Disclosure of Counselling Records) Bill 2025 – Bill 15/2025 [pmb] – Deputy Ruth Coppinger, Deputy Richard Boyd Barrett and Deputy Paul Murphy

Employment (Contractual Retirement Ages) Bill 2025 – Bill 10/2025

Forty-first Amendment of the Constitution (Reduction of Voting Age to Sixteen Years) Bill 2025 – Bill 22/2025 [pmb] – Deputy Aidan Farrelly

Guardianship of Infants (Amendment) Bill 2025 – Bill 14/2025 [pmb] – Deputy Gary Gannon

Protection of Voice and Image Bill 2025 – Bill 11/2025 [pmb] – Deputy Malcolm Byrne

Sale of Nitrous Oxide and Related Products Bill 2025 – Bill 18/2025 [pmb] – Deputy Mark Ward and Deputy Seán Crowe

Thirty-ninth Amendment of the Constitution (Judicial Oath of Office) Bill 2025 – Bill 8/2025 [pmb] – Deputy Barry Ward

Water Services (Amendment) Bill 2025 – Bill 21/2025 [pmb] – Deputy Darren O'Rourke, Deputy Eoin Ó Broin, Deputy Johnny Guirke and Deputy Thomas Gould

Water Services (Repeal of Water Charges) Bill 2025 – Bill 9/2025 [pmb] – Deputy Mary Lou McDonald and Deputy Eoin Ó Broin

**Bills initiated in Seanad Éireann during the period March 21, 2025, to May 22, 2024**

Dereliction and Building Regeneration Bill 2025 – Bill 24/2025 [pmb] – Senator Malcolm Noonan, Senator Nessa Cosgrove, Senator Laura Harmon and Senator Patricia Stephenson

Equality (Miscellaneous Provisions) Bill 2025 – Bill 20/2025 [pmb] – Senator Chris Andrews, Senator Nicole Ryan, Senator Conor Murphy, Senator Joanne Collins, Senator Pauline Tully and Senator Maria McCormack

Pregnancy Loss (Miscellaneous Provisions) Bill 2025 – Bill 23/2025 [pmb] – Senator Nicole Ryan, Senator Maria McCormack, Senator Conor Murphy, Senator Joanne Collins, Senator Pauline Tully and Senator Chris Andrews

Prohibition of Advertising or Importuning Sex for Rent Bill 2025 – Bill 12/2025 [pmb] – Senator Laura Harmon and Senator Nessa Cosgrove

Protection of Retail Workers Bill 2025 – Bill 17/2025 [pmb] – Deputy Mary Fitzpatrick, Deputy Joe Flaherty, Deputy Anne Rabbitte and Deputy Teresa Costello

Public Health (Restriction on Sale of Stimulant Drinks to Children) Bill 2025 – Bill 19/2025 [pmb] – Senator Sharon Keogan, Senator Diarmuid Wilson, Senator Rónán Mullen and Senator Sarah O'Reilly

**Progress of Bill and Bills amended in Dáil Éireann during the period March 21, 2025, to May 22, 2025**

Finance (Provision of Access to Cash Infrastructure) Bill 2024 – Bill 65/2024 – Committee Stage – Report Stage

Údarás na Gaeltachta (Amendment) Bill 2024 – Bill 56/2024 – Committee Stage

**Progress of Bill and Bills amended in Seanad Éireann during the period March 21, 2025, to May 22, 2025**

Financial Services and Pensions Ombudsman (Amendment) Bill 2023 – Bill 97/2023 – Committee Stage

Merchant Shipping (Investigation of Marine Accidents) Bill 2024 – Bill 64/2024 – Committee Stage – Report Stage

**For up-to-date information, please check the following websites:**

Bills and legislation

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

https://www.gov.ie/en/department-of-the-taoiseach/publications/spring-2025-government-legislation-programme/

**Supreme Court determinations – leave to appeal granted**

**Published on Courts.ie – March 21, 2025, to May 22, 2025**

*Coolglass Wind Farm Limited v An Board Pleanala and ors* [2025] IESCDET 65 – Leave to appeal from the High Court granted on the 16/05/2025 – (O'Malley J., Hogan J. and Donnelly J.)

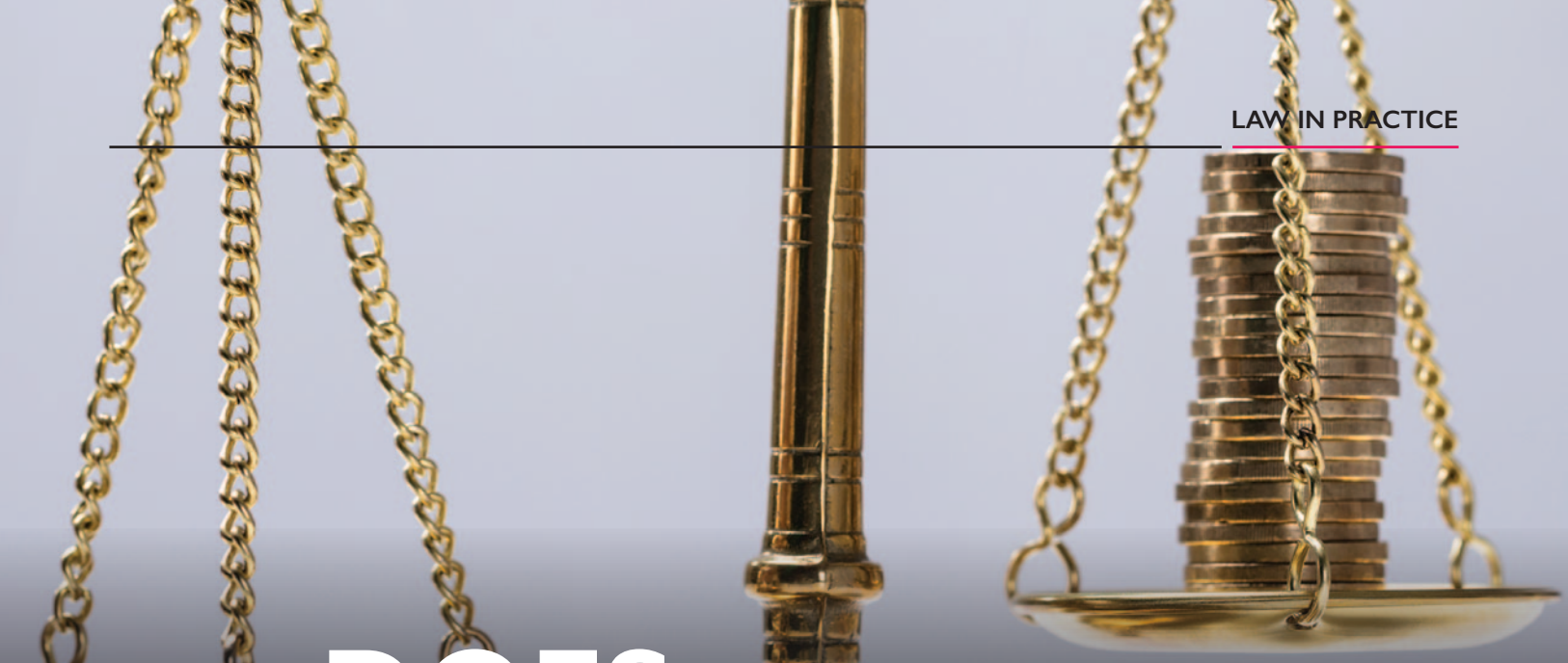
*Crowley v Sheehan and ors* [2025] IESCDET 51 – Leave to appeal from the High Court granted on the 12/05/2024 – (Dunne J., Murray J. and Collins J.)

*The People (at the suit of the Director of Public Prosecutions) v Mountassir* [2025] IESCDET 51 – Leave to appeal from the Court of Appeal granted on the 07/04/2025 – (Murray J., Collins J., Donnelly J.)

*Sweeney v The Limerick Private Ltd and ors* [2025] IESCDET 66 – Leave to appeal from the Court of Appeal granted on the 16/05/2025 – (O'Malley J., Hogan J. and Donnelly J.)

*Yavor Poptoshev v The Director of Public Prosecutions and ors* [2025] IESCDET 57 – Leave to appeal from the Court of Appeal granted on the 06/05/2025 – (Charleton , Murray , Collins JJ)

**For up-to-date information, please check the Courts website – https://www.courts.ie/determinations**



# DOES THE WINNER TAKE IT ALL?

There are a number of examples in the case law that may offer guidance to plaintiffs and defendants on the issue of differential costs orders under s.17(5) of the Courts Act 1981.

John L. O'Donnell SC

The year 1981 saw the marriage of Charles and Diana, the Maze hunger strikes, and the first of the Indiana Jones blockbuster movies. The movie franchise features archaeologist Dr Indiana Jones (played by Harrison Ford), whose various adventurous quests for hidden treasure are fraught with danger. The stunning opening sequence of the first film, *Raiders of the Lost Ark*, shows Jones beset by difficulties: in removing a small gold icon from a cave, he inadvertently triggers all manner of murderous devices – including poison arrows, hidden pits, and a terrifying rolling boulder – as the 'owner' attempts to exact revenge. The analogy may be imperfect, but a plaintiff who receives a very modest award of damages may now likewise face a host of problems as a consequence of another (albeit less-celebrated) creation of 1981: s.17 of the Courts Act of that year.

Initially the section made no reference to what we now call a 'differential costs order'. Instead, it simply directed that where an award in favour of the plaintiff could have been made in a lower court, the plaintiff could only recover the costs he would have been entitled to in that lower court, unless the judge granted a 'special certificate' setting out in her/his opinion that it was 'reasonable in the interests of justice' generally to commence the proceedings in the higher court.[1]

Insofar as the section only limited the costs recoverable by a plaintiff it (perhaps unsurprisingly) initially attracted little attention. However, a significant amendment by substitution in 1991 meant that s.17(5) as amended left the plaintiff exposed to the possibility of an award being made against him/her in favour of a defendant for the additional costs incurred by the defendant in defending proceedings commenced in a higher jurisdiction than was necessary:

"(5)(a) Where an order is made by a court in favour of the plaintiff or applicant in any proceedings (not being an appeal) and the court is not the lowest court having jurisdiction to make an order granting the relief the subject of the order, the judge concerned may, if in all the circumstances he thinks it appropriate to do so, make an order for the payment

to the defendant or respondent in the proceedings by the plaintiff or applicant of an amount not exceeding whichever of the following the judge considers appropriate:

(i) the amount, measured by the judge, of the additional costs as between party and party incurred in the proceedings by the defendant or respondent by reason of the fact that the proceedings were not commenced and determined in the said lowest court, or

(ii) an amount equal to the difference between:

(I) the amount of the costs as between party and party incurred in the proceedings by the defendant or respondent as taxed by a Taxing Master of the High Court or, if the proceedings were heard and determined in the Circuit Court, the appropriate county registrar, and

(II) the amount of the costs as between party and party incurred in the proceedings by the defendant or respondent as taxed by a Taxing Master of the High Court or, if the proceedings were heard and determined in the Circuit Court, the appropriate county registrar on a scale that he considers would have been appropriate if the proceedings had been heard and determined in the said lowest court.

(b) A person who has been awarded costs under paragraph (a) of this subsection may, without prejudice to his right to recover the costs from the person against whom they were awarded, set off the whole or part thereof against any costs in the proceedings concerned awarded to the latter person against the first-mentioned person". (Emphasis added)

The most important word in the subsection is probably the word 'may,' which grants the court a discretion not to make a differential costs order. Yet there is no doubt that the subsection has potentially lethal consequences for any plaintiff (or counterclaimant) who comes within its ambit. Curiously, the section lay apparently undiscovered for a number of years until considered by the Supreme Court in *Mangan v Independent Newspapers (Ireland) Limited*.[2]

## *Mangan* – 'no obligation to measure additional costs'

In *Mangan* an award of €25,000 by a jury in the High Court in a defamation action[3] led to a differential costs order application that was refused (although the Court did make an order on the Circuit Court scale, with a certificate for senior counsel). On appeal by the defendant on the issue of costs, McCracken J. said the trial judge was correct to refuse to 'measure' the number of days the case would notionally have taken in the Circuit Court (three) as opposed to the six days it took in the High Court: there was an entitlement[4] – though no obligation – on the Court to engage in such an exercise. 'Measuring' costs is superficially attractive, since it avoids the time and expense of adjudication.

> A plaintiff who receives a very modest award of damages may now likewise face a host of problems as a consequence of another (albeit less-celebrated) creation of 1981: s.17 of the Courts Act of that year.

However, a court must have some evidential or other objectively defensible basis for measuring such costs, so it is likely to occur only in simple and straightforward cases where a judge has personal knowledge of the sums likely to be allowed.[5]

### Ability to estimate damages 'within reasonable parameters'

McCracken J. also noted that while a claim for general damages in a negligence action meant that a plaintiff's solicitor "should be able to estimate within reasonable parameters the probable level of damages", the situation in a libel action is very different, where the views of juries "can differ enormously on the question of damages". He observed that in the circumstances the plaintiff had not been "in any way unreasonable or irresponsible" in bringing the proceedings in the High Court.

## *O'Connor v Bus Átha Cliath* – factors in exercising discretion

The quantum of general damages is not the only factor to be taken into account. In *O'Connor v Bus Átha Cliath*,[6] the plaintiff had made a very substantial claim for loss of earnings, which had been abandoned only in the course of his direct evidence. As a result, his claim for loss of earnings was rejected, and the award he received as a consequence (€20,431) was well below the upper jurisdiction of the Circuit Court. On appeal, the Supreme Court (Murray J.) took the view that the trial judge had erred in the exercise of his discretion by not making a "differential costs" order in favour of the defendant under s.17(5). Hardiman J. set out the rationale for the section. He also suggested two possible factors that might be taken into account in exercising the discretion in favour of the plaintiff:

"What is relevant is this: the plaintiff's claim was never one appropriate to the High Court jurisdiction; the claim for future loss of earnings was one which

should never have been made and once made, should have been withdrawn years before the full hearing at which it was in fact withdrawn; and the case could have been more quickly and more cheaply resolved in the Circuit Court. The fact that this did not happen was due either to total inattention on the part of the plaintiff to the value of his claim or alternatively to the pursuit by him of some perceived tactical advantage in taking his case in the High Court. In either event the mischief of litigation which is more elaborate and more expensive than it should be is precisely the mischief at which s.17(5) is aimed. Unless the Court, by the exercise of its discretion, imposes a price on those who thoughtlessly, or in pursuit of tactical advantage, embark on litigation which is elaborate and expensive when it could have been simpler and cheaper, the intention of the legislature will in my view be frustrated. Litigation which is unduly elaborate and expensive imposes a cost on others: most directly on the defendant but on wider groups and on society as a whole in the form of a social cost. The legislative intent in s.17(5) is, in an appropriate case, to impose the cost of overblown litigation, or part of it at least, on those who make it so".

**(Almost) hitting the target**

One such factor suggested by Hardiman J. was "where the award is very close to the limit of the jurisdiction of the lower court". In this regard it is worth noting that the Personal Injury Guidelines fix ranges of awards rather than exact sums; arguably, a plaintiff should not be penalised if his lawyer does not 'hit the bullseye' provided the figure is within the range, or not too far off (Murray J. also commented on the "margin of appreciation" that should be allowed in relation to the damages to be awarded in each case). The quantification of awards is further complicated by the interaction between the 'dominant' injury and other injuries suffered,[7] and the discount for overlapping injuries to be applied.

**'Unknown unknowns'**

Hardiman J. also suggested that a plaintiff should not be penalised by a differential costs order "where there has been some unpredictable development during the trial which has an effect in reduction of the ostensible value of the claim". It is unclear what these might be, and no example was offered by the Court, but one could see how, for example, a properly maintained claim for loss of earnings might become otiose as a result of some intervening factor, e.g., a fire in the factory, liquidation of the employer, or a pandemic.

## *Hollybrook* – defendant's (mis)conduct

It is not simply the conduct of the plaintiff that will be borne in mind by the Court. In *Hollybrook (Brighton Road) Management Company Limited v All First Property Management Company Limited*,[8] Laffoy J. granted the plaintiff costs on the Circuit Court scale on an award for breach of contract of €22,518[9]

> It simply directed that where an award in favour of the plaintiff could have been made in a lower court, the plaintiff could only recover the costs he would have been entitled to in that lower court, unless the judge granted a 'special certificate' setting out in her/his opinion that it was 'reasonable in the interests of justice' generally to commence the proceedings in the higher court.

against the second defendant (including a certificate for senior counsel) and held that it would not be appropriate for her to exercise her discretion to make a differential costs order against the plaintiff in favour of the second defendant. While Laffoy J. was of the view that some elements of the claim should not have been pursued against the second defendant, and was also conscious of the "mischief of litigation which is more elaborate and expensive than it should be," she could not, in her view, overlook her finding of dishonesty on the part of the second defendant both prior to joinder to the proceedings and in the conduct of those proceedings. Laffoy J.'s view was that a differential costs order under s.17(5) would in reality condone such conduct, and she did not consider it appropriate to make such an order in the circumstances. She did however measure the allowable costs at three days instead of the 17 days for which the case ran in the High Court.[10]

## *Moin v Sicika* – onus on plaintiff

Where the award is significantly within the jurisdiction of a lower court, it is incumbent on a court to make a differential costs order unless there are "good reasons for not doing so". In *Moin v Sicika*[11] the Court of Appeal emphasised

that the clear legislative purpose of s.17(5) is to ensure that proceedings are brought in the appropriate jurisdiction, and that the onus in this regard is on the plaintiff.[12]

## Sections 168 and 169 Legal Services Regulation Act 2015 – an offer to settle?

In *McKeown v Crosby*[13] (where an assessment was reduced by €76,000 to €41,000 on appeal), the Court of Appeal noted that an offer to settle had been made – for more than was ultimately awarded on appeal – which had been rejected. There had been both a 'Calderbank letter' from the defendant and a 'reverse Calderbank' from the plaintiff. Section 169(1)(f) of the 2015 Act requires the court to have regard to the "date, terms and circumstances" of such an offer(s) in considering the issue of costs. This was particularly significant in "assessment only" cases – effectively since there were fewer "variables" in such cases.

### Remittal of proceedings

In *McKeown* the Court of Appeal also rejected the argument that the defendant was obliged to seek to remit the matter to the Circuit Court in order to justify a differential costs order. To so conclude, the Court reasoned, would be to reverse the onus that lay properly on the plaintiff to ensure that the action was brought and continued in the appropriate jurisdiction.

However, while there may not be an onus on a defendant to make such an application in order to justify a differential costs order, the presence (or absence) of such an application (or a request that the plaintiff so apply to remit) may be weighed in the balance.

So, in *Condron v Galway Holding Company*,[14] the Court of Appeal suggested that the fact that a defendant did not apply to remit proceedings was a "neutral" factor to be taken into consideration. The decision is probably distinguishable on its complexity: there was a real debate as to whether the Circuit Court had jurisdiction to hear a case involving land of the relevant rateable valuation at the time the proceedings were instituted, which was only subsequently resolved by a Supreme Court judgment. While the case was an appeal from the High Court's refusal under s.17 to certify that High Court costs should be awarded in the "special circumstances" of the case, and did not directly concern s.17(5), the judgment of Whelan J. contains some interesting observations germane to s.17(5).

In such circumstances, the plaintiff's response to any invitation to remit needs to be carefully drafted so as to provide a rationale for not agreeing to remit. Examples might include uncertainty in relation to the nature and extent of the injury (and/or the prognosis in respect of same), or a similar uncertainty as to whether the plaintiff is maintaining a claim for past or future loss of earnings. However, if such a reason is offered by way of justification not to remit, a court will probably expect a plaintiff's solicitor to keep the issue under review, and to revert to the defendant agreeing to remittal of the action if a more serious injury or loss of earnings claim does not materialise.

> The most important word in the subsection is probably the word 'may,' which grants the court a discretion not to make a differential costs order. Yet there is no doubt that the subsection has potentially lethal consequences for any plaintiff (or counterclaimant) who comes within its ambit.

## Why not remit?

It may be noted that remittal of proceedings to the Circuit Court is not necessarily fatal to the plaintiff's chances of obtaining an award in excess of the Circuit Court jurisdiction. As noted by Peart J. in *Moin*, s.20 of the Courts of Justice Act 1936 (as substituted by s.16 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013), provides that where a case is remitted to the Circuit Court from the High Court, the Circuit Court has jurisdiction to award damages in excess of its monetary jurisdiction. A defendant may try to insist that the plaintiff limits the Circuit Court to which the case is remitted to its jurisdiction of €60,000, but there is no statutory basis compelling a plaintiff to so agree.

Logically, a defendant should not object to a remittal on an 'unlimited jurisdiction' basis: apart from the fact that this is what the statute provides, the objective that s.17(5) seeks to achieve is to ensure that a defendant is not put to inappropriate (i.e., higher) costs than are necessary in defending proceedings. This is achieved by remitting the proceedings; if a Circuit Court judge nonetheless values the injury at greater than €60,000, why should the plaintiff be denied such an award?

### *Kazmierczak* – 'Other good reasons': contributory negligence and Calderbank letters

In *Kazmierczak v MIBI*,[15] the High Court again considered the effect of s.17(5). The plaintiff's claim had been dismissed in the Circuit Court. On appeal, his claim succeeded, and he was awarded €16,305 by way of damages with an apportionment of one-third against him, leaving him with a net decree in the amount of €10,870. The defendant MIBI then sought a differential costs order. In refusing the MIBI's application, the Court gave some further guidance as to what might be regarded as 'good reasons' not to make a differential costs order. First, the plaintiff/appellant's injuries were such that it was appropriate for the appellant to issue proceedings in the Circuit Court.

Had it not been for the deduction for contributory negligence, the damages awarded would not have given rise to an application for a differential costs order, since the gross award was within the Circuit Court's jurisdiction. Unlike *Moin*, the instant case was not an assessment.

A judgement call was required, and the apportionment of liability at the commencement of the proceedings would have been far from clear cut. Insofar as the addition of the issue of contributory negligence made predicting the precise quantum of a net award even more difficult, the Court seemed sympathetic to the dilemma of a plaintiff's legal advisor when issuing proceedings. The Court therefore held that it was reasonable in the circumstances for the plaintiff's solicitor to issue proceedings in the Circuit Court.

Second, while the defendant/respondent's solicitor had not issued a warning letter calling on the appellant to remit the proceedings to the lower court, a Calderbank letter had been sent after the Circuit Court hearing by the plaintiff's solicitors to the defendant. The letter acknowledged that on appeal there would likely be a finding of contributory negligence against the plaintiff. It also asserted that a finding would be made against the defendant. The plaintiff therefore offered to accept in settlement a sum by way of compensation within the District Court jurisdiction with District Court costs in respect of the proceedings. This letter, which was described in the High Court as being "a well worded and reasonable letter", was ignored by the defendant. The fact that the plaintiff obtained a higher award in the appeal than had been sought in the without prejudice correspondence did not escape the Court's attention. The Court thus refused to grant the differential costs order sought by the defendant. The Court held that to do so would undermine and effectively set at nought the "valid purpose and utility" of the plaintiff's unanswered Calderbank letter.

### Conclusion

The following observations are hopefully of some assistance to plaintiffs seeking to avoid the pitfalls of s.17(5) – and to defendants wishing to avail of its provisions:

> It may be noted that remittal of proceedings to the Circuit Court is not necessarily fatal to the plaintiff's chances of obtaining an award in excess of the Circuit Court jurisdiction.

(a) Section 17(5) is here to stay. It is part of the tactical armoury that can be deployed by a defendant and it would be extremely unwise for a plaintiff, in considering where to issue proceedings, to ignore its effect.

(b) Insofar as a defendant wishes tactically to improve its position in respect of a future application for a differential costs order, it can do so by writing to the plaintiff in advance of the hearing of the action suggesting that the proceedings should be remitted from the High Court to the Circuit Court either by way of open letter or by "without prejudice save as to costs" correspondence.

(c) If the defendant, in the course of the hearing, significantly damages the plaintiff's credibility in even one significant aspect of the case (e.g., a claim for loss of earnings or a claim in respect of the non-dominant injury), these and other matters relating to the plaintiff's credibility and conduct may be taken into account by a court when considering whether or not to make a differential costs order. The defendant's conduct may likewise be taken into account.

(d) A differential costs order is more likely to be made when the gross award (before any deduction of contributory negligence) falls well short of the lower jurisdiction.

(e) A plaintiff facing the prospect of a differential costs order can tactically improve their position by writing a reasoned and coherent response to any letter from the defendant suggesting that the proceedings be remitted to the lower court. Even if the award still does not reach the upper level of the lower court's jurisdiction, the reasonableness of the approach taken by the plaintiff in its correspondence is likely to be a factor to be taken into consideration.

(f) A plaintiff with concerns about whether or not it will 'beat the jurisdiction' of the higher court (and thus be faced with the risk of a differential costs

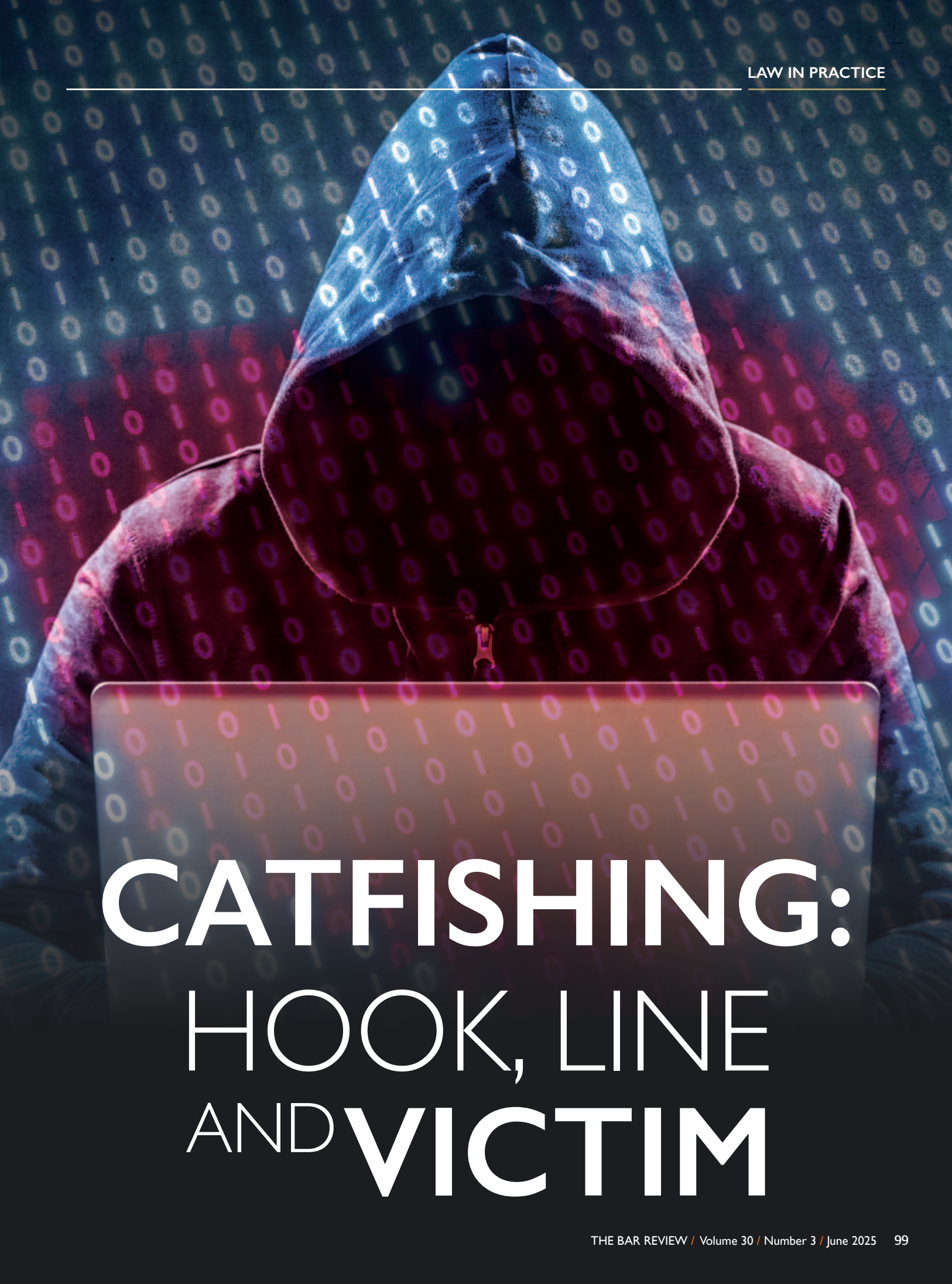
order) could write a Calderbank letter to the defendant in advance of the hearing offering to compromise same on the basis that costs would be taxed on the lower court's scale. A defendant who refuses to answer or engage in relation to such a settlement proposal may well find himself stymied when applying for a differential costs order if the letter written by way of settlement proposal on behalf of the plaintiff is reasonable.

(g) Likewise, it is open to the plaintiff to write a Calderbank letter to resolve the case on appeal, as happened in *Kazmierczek*. However, such a tactic after the case has been heard is only likely to be successful if there is a significant uplift in damages in favour of the plaintiff on appeal, and/or a significant variation of the issue of liability and/or contributory negligence in favour of the plaintiff on appeal.

(h) A court may also consider a party's refusal to agree to a request to mediate[16] (as occurred in *Hollybrook*), although the timing of such a request may be relevant.

## References


1. Section 17(5).
2. [2003] 1 IR 442.
3. While the section is considered most frequently in the context of personal injury claims, the effect of s.17(5) was also considered in another defamation action: *Savickis v Governor Castlerea Prison and ors* [2016] 3 IR 292.
4. Section 17(5) (a) (i).
5. *Landers v Dixon* [2015] IECA 155 (Hogan J.) (specific performance action followed by well-charging order – costs bill was €47,000 but Barrett J. decided to measure costs at €20,000, which decision was appealed): …the judge must have some evidential or other objectively defensible basis for the manner in which costs are measured. The power to measure costs must, of course, be exercised judicially. It would, after all, be unjudicial for a judge to clutch "a figure out of the air without having any indication as to the estimated costs": *Leary v Leary* [1987] 1 All ER 261, 265 per Purchas L.J. This is not to suggest that the judge must hear evidence regarding costs or even invite detailed submissions on this issue before electing to measure costs in any given case. It may be that a judge will have personal knowledge of the sums likely to be allowed in straightforward cases of the type presently before him or her. See also *Moin v Sicika*.
6. [2003] 4 IR 459.
7. In *Collins v Parm* [2024] IECA 189, the Court of Appeal reduced damages for personal injuries from €84,277 to €50,287.70 but refused to make a differential costs order because the full value before discount for contributory negligence was so close to the limit of the Circuit Court jurisdiction as to render it reasonable in the view of the Court to commence proceedings in the High Court.
8. [2011] IEHC 423.
9. The defendant had been retained to provide cleaning services to the plaintiff's apartments but failed in part to do so, as a result of which the plaintiff was awarded damages. However, the second defendant had altered concierge logs to suggest that extra cleaners had been present, when this was untrue.
10. At para. 16 and 17 of the judgment.
11. [2018] IECA 240.
12. The award in *Moin*, including special damages, was €41,305; in the companion case of *O'Malley v McEvoy* the award was €34,808.
13. [2021] IECA 139.
14. [2022] IECA 50. The action concerned an alleged act of trespass by the appellant/defendants on the road-facing boundary of the plaintiff, damaging his grass verge, resulting in an order directing restoration of same, and €10,000 in damages for trespass.
15. High Court (unreported) July 11, 2024, *ex tempore* (O'Higgins J.).
16. At para.6: "Counsel for the plaintiff referred the Court to an amendment to the Rules by the Rules of the Superior Courts (Mediation and Conciliation) 2010 (SI No. 502/2010), which came into operation on 16th November 2010 and which inserted Order 56A into the Rules. Order 56A provides that a court, on the application of any of the parties or on its own motion, may, when it considers it appropriate and having regard to all the circumstances of the case, order proceedings or any issue therein to be adjourned for such time as the Court considers just and convenient and invite the parties to use an ADR process to settle or determine the proceedings or issue. However, rule 4 of Order 56A provides that, save where the Court for special reason to be recited in the Court's order allows, an application for an order under Order 56A shall not be made later than twenty-eight days before the date on which the proceedings are first listed for hearing. By virtue of SI No. 502/2010, Order 99 of the Rules is amended by the insertion of a provision that –'…the High Court, in considering the awarding of the costs of … any action, may, where it considers it just, have regard to the refusal or failure without good reason of any party to participate in any ADR process referred to in Order 56A, rule 1, where an order has been made under rule 2 of that Order in the proceedings'.
    As I recorded in my judgment (para. 1.11), on the first day of the hearing of these proceedings the Court invited the parties to mediate, but that did not happen, primarily due to the second defendant's unwillingness to mediate at that stage. The Court made no order under rule 2 of Order 56A. It made a practical suggestion, which was not taken up. If the Court had been asked to make an order under rule 2 of Order 56A, the probability is that, having regard to rule 4, it would have been refused. In the circumstances, I consider that SI No. 502/2010 has no bearing on the issue of liability for the costs of these proceedings, as counsel for the plaintiff properly conceded. I am of the view that no weight should be attached to the failure of the second defendant to take up the Court's invitation to mediate in determining the costs issue".



# CATFISHING: HOOK, LINE AND VICTIM

Michael O'Doherty BL

Online scams are big business, with the cost to Irish victims in the tens of millions and rising.

The internet era has thrown up many new terms for legal professionals to come to terms with. And to the unsavoury annals of online-based behaviour, which includes 'sextortion', 'fraping' and 'revenge porn', we can now add 'catfishing'.

Despite its feline/aquatic origins, this modern practice features neither cats nor fish. Its etymology can be traced back to a practice in the early 1900s of placing a catfish in a tank full of cod that were packed for shipping. The catfish, allegedly, prevented the cod from becoming pale and lethargic, thereby improving the quality of the substantive produce. This has developed to become a label for the practice of someone attempting to improve their own identity by masquerading online as a more attractive, desirable version of themselves, through the simple process of using the photographs and identity of someone else when corresponding online.[1]

## Why is catfishing in the news?

The practice has recently gained prominence because of certain high-profile examples being reported in the media, with three particularly headline-worthy stories coming to light this year. There was the much-published 'GAA catfish' story, involving the podcasters and RTÉ broadcasters The 2 Johnnies, one of whom was the victim in this particular enterprise. Elsewhere, two women – one Irish, one French – were lured into a trap by catfishers pretending to be well-known celebrities – leading to devastating financial repercussions.

### The 2 Johnnies

Over three podcast episodes – two in 2022 and one in January 2025 – the two eponymous presenters told the story of a person who had created fake online accounts. Variously calling themselves Cora O'Donovan and Aoife Kennedy, they first contacted Johnny O'Brien ('Johnny B') in 2022 via Instagram, and they began an online relationship. Several arrangements to meet in person were made, but each time 'Cora' would fail to turn up, offering a variety of excuses. At one stage, a woman did turn up at a meeting, but she claimed to be Cora's flatmate, who apologised for her friend having become indisposed at the last minute.

When the 2 Johnnies became suspicious of this behaviour and conducted some online research, they discovered that several other men, mainly GAA players, had been targeted by the same fake social media accounts. The story subsequently took further unexpected turns. In January 2025, it was revealed that the images being used by the catfisher were in fact those of a UK-based social media influencer, who had no knowledge of her identity being used to lure men into online relationships.

Then, in March 2025, a secondary school teacher in Northern Ireland obtained a High Court injunction to halt an internal investigation into allegations that she was the person behind the catfishing scam.[2]

Perhaps the most unusual aspect of the 'GAA catfish' saga is that, notwithstanding the inconvenience and embarrassment caused to the victims, there does not appear to have been any attempt made to extort money. For that reason, it is difficult to see what offence may have been committed against Johnny O'Brien, and there is no garda investigation into her behaviour.

### The Coldplay catfish

Just a few weeks after the GAA catfish made headlines came the 'Coldplay catfish', a story

that illustrates the sophistication of many such scams, and the more commonplace outcome of the victim being defrauded of large sums of money. In February 2025 it was revealed that a Dublin woman had been defrauded of over €25,000 by a man she believed to be Chris Martin, lead singer of the world-famous band Coldplay. In early 2021, after she had posted a comment on the band's Twitter page, the lady received a direct message from someone purporting to be Chris Martin, who asked for her phone number. She was subsequently sent hundreds of messages via WhatsApp and Facebook by 'Chris Martin' over a four-month period, most of which were of an amorous nature, thus making her believe that she was involved in an online romance with the musician.

'Chris Martin' asked her to send him money. Initially, the requests were for small amounts in the region of hundreds of euro, but soon escalated into thousands. When he asked her for €22,000 for a film project, she agreed but insisted it was only a loan, and got a solicitor to draw up an agreement, which he apparently signed. When the woman became suspicious of these requests, 'Chris Martin' sent her images of a fake passport and driver's licence, and even agreed to talk to her via a Skype video call, which used AI technology to make it appear as though the singer, his manager and a fellow band member were all on the call and talking to her.

It was only when a subsequent request for €20,000 was made that the woman began to have serious doubts about the identity of her would-be online partner. She succeeded in recovering a small amount of money that she had transferred from a UK bank account she operated.[3]

### The Brad Pitt catfish

In catfishing terms, the two previous stories are but minnows compared to the 'great white shark' of catfishing, involving 'Brad Pitt'. It was revealed in February 2025 that a French woman had been duped out of €830,000 when she fell for a catfishing scam that began in February 2023, and continued for the next 16 months.[4]

Having just set up an Instagram account, she received a message from someone claiming to be Brad Pitt's mother, who told her that her son "needed a woman just like her". The fraudster showered her with affectionate messages, and claimed that he wanted to send her luxury gifts but that he was unable to pay customs on them as his bank accounts were frozen due to ongoing divorce proceedings with Angelina Jolie. These proceedings were then used as an excuse to request money from the woman.

Every time the woman started to doubt that this online romance was real, she would receive correspondence that assuaged her fears. When 'Brad Pitt' claimed he needed money for a kidney transplant, she received AI-generated photographs of him in a hospital bed. Even when images appeared in magazines showing the real Brad Pitt with his new girlfriend, the scammers used AI to create a fake television news broadcast, which purportedly reported the news that Brad Pitt was in reality in a secret relationship with a French woman. It was nearly 18 months after the scam first began, when the real Brad Pitt went public about his relationship with businesswoman Ines de Ramon, that the victim of the catfishing realised her mistake.

The most straightforward explanation as to why this practice can exist is because the main social media platforms allow people to hide their own identity when operating online.

### Why does catfishing occur?

The most straightforward explanation as to why this practice can exist is because the main social media platforms allow people to hide their own identity when operating online. While anonymity is not provided for either by statute, or as a fundamental right, neither is there any law that states that you must identify yourself when using the internet, uploading content or postings comments. Essentially, anonymous online use exists because platforms such as Facebook, TikTok and X allow it to exist. It is this facility to operate on the internet without revealing your true identity, and without breaking the law while doing so, which is at the root of catfishing.

This leads to the perhaps surprising realisation that, for all the media coverage about the practice, catfishing *per se* – the simple passing off of yourself as someone else, without using that false identity for any further purpose – is not a criminal offence, at least not in this jurisdiction. However, this is set to change; the Non-Fatal Offences Against the Person (Amendment) Bill 2024 is currently before Seanad Éireann.

Catfishing could perhaps amount to harassment under s.10 of the Non-Fatal Offences Against the Person Act 1997. The difficulty with attempting to prosecute the behaviour under this Act is that, very often, the correspondence between the parties is consensual and lacks the requisite element of alarming or distressing the victim "at the time when the acts occurred or when the person (victim) becomes aware of them". It is very often only long after the "acts occurred" – when the latter discovers that they have been duped by a fake identity – that the distress or harm occurs.

There is an upside to this behaviour not amounting to the commission of a

crime, because in some cases catfishing is performed by law enforcement authorities themselves. It is becoming increasingly common for law enforcement officers to masquerade online as children in an attempt to catch sexual predators, with fake social media accounts being set up purporting to belong to children, who then coax predators into meeting with them, at which stage they are apprehended by the very person they had been communicating with.[5]

## Identity theft as an offence

There are, of course, two distinct victims in cases involving the use of a fake identity, as occurs in catfishing and the various practices described below. There is the person who is the target of the practice – the person who is often sought to be defrauded – but there is also the person whose identity is being used by the perpetrator. This is of particular relevance in cases involving the misappropriation of a well-known person's identity for the purposes of fraudulent advertising. In recent years, there have been well-publicised occurrences of advertisements appearing on social media channels that purport to show people such as, *inter alia*, Miriam O'Callaghan, Michael O'Leary and Denis O'Brien, promoting cryptocurrency investment schemes.

A remedy for this person – who is not the target of the fraud, but instead its unwitting facilitator – is not straightforward, for the simple reason that using someone's identity is not, of itself, a crime. In Ireland, there is no such thing as the "right to your identity"; while other jurisdictions protect personality rights, no such right exists *per se* in this jurisdiction.

In the US, for example, privacy torts include specific torts of "publicity that casts a person in a false light in the public eye", and "appropriation of name or likeness". In the latter case, the plaintiff must establish that the defendant used the plaintiff's name without their consent, that the defendant gained a commercial (or some other) benefit, and that the plaintiff suffered harm on account of the defendant's behaviour. In Canada, likewise, in the case of *Krouse v Chrysler Canada Ltd* (1973) 40 DLR (3d) 15, the Superior Court of Ontario confirmed the existence of the tort of "appropriation of personality". In this jurisdiction, however, no such specific tort exists.

## Possible remedies

While in this jurisdiction, a claim in respect of the appropriation of someone's image may be framed as a breach of a person's constitutional right to privacy, what is sought to be defended is perhaps more in the nature of a proprietary interest, and the law of copyright may be the more appropriate avenue.[6] The most obvious remedy for someone whose identity has been used by a third party perhaps rests in data protection law, as the use of their image under such circumstances would clearly constitute the processing of their data without their consent.

The difficulty, of course, lies in establishing the necessary damage – either pecuniary or non-pecuniary – for the purposes of grounding a claim. And in this jurisdiction, if the damage amounted only to non-pecuniary stress and anxiety, the uncertainty remains as to whether such a claim requires a Personal Injuries Assessment Board (PIAB) authorisation pursuant to the decision in *Dillon v Irish Life* [2024] IEHC 203, the very issue that is currently being considered on appeal to the Supreme Court.

Other potential remedies for the person whose identity has been misappropriated would also, of course, lie in defamation and, perhaps in specific circumstances, the tort of passing off.

## The close relatives of catfishing

As discussed above, the act of catfishing is very often simply a constituent element in a more sinister course of action, as purporting to be someone other than yourself is the gateway to various types of online conduct.

### Romance scam

A close relative of catfishing, this involves the victim being lured into an online relationship, usually via a dating app, with the perpetrator, after a period of time, asking for money from the victim, often using an emotionally manipulative 'backstory'. While all romance scams involve some form of catfishing, not all catfishing constitutes a romance scam. The only reason why the catfishing episodes involving Chris Martin and Brad Pitt, described above, are not clearly classified as romance scams is that they were not instigated via dating apps. The victims were not looking for romance; instead they were defrauded on account of being starstruck by the apparently amorous attention of a famous celebrity.

### Sextortion

This is another relative of catfishing, in that the perpetrator usually disguises their identity and seeks to gain the confidence of the victim. The main difference is that this is done so as to obtain intimate images of them, with the perpetrator then blackmailing the victim by threatening to publish the material. This is similar to the practice known as 'revenge porn', although it lacks the close relationship aspect that is normally present between the parties in revenge porn, and the material may have been obtained by psychological manipulation of a vulnerable party.

It is a particularly sinister practice, which has led to several instances of tragic outcomes, whereby a young victim who has shared intimate images with someone, only to be then blackmailed and threatened with public humiliation, has taken their own life. It is an offence contrary to s.17(1) of the pre-internet era Criminal Justice (Public Order) Act 1994 – "Blackmail, extortion and demanding money with menaces". More recently, it has also become an offence under s.2 of the Harassment, Harmful Communications and Related Offences Act 2020, which covers the distribution and publication (or threat to do so) of intimate images without the person's permission and with intent to cause them harm.

### Fraping

In this form of online identity theft, a person's existing social media account is hacked by someone, who then posts content purporting to come from its rightful owner, usually in an effort to embarrass or humiliate them. It differs from catfishing, therefore, because the harm is caused by using the victim's own identity, rather than the identity of a third party.

### Revenge porn

This practice has elements in common with many of the activities described above. It consists of the publication online of material designed to distress or harm the victim, as with the general offence of harassment. It involves the use of material that may be the property of another person without their consent, as with catfishing and sextortion offences. What distinguishes revenge porn, however, is two particular features. The perpetrator is usually known, often intimately, by the victim, and the material that is the subject of the activity – photographs, video or audio clips – has often been previously shared between the parties with their consent. The motivation for revenge porn is often anger or spite on the part of the perpetrator, who wishes to retaliate against the other party, often because that party ended an intimate relationship between them.

### 'Smishing/phishing'

This is the practice of attempting to defraud a victim by impersonating not an individual, but more commonly an organisation – a bank, mobile phone service provider, delivery firm or the Revenue Commissioners – via text message or phone call, using what is known as authorised push payment (APP) or account takeover (ATO) scams. The victim is tricked into either transferring their money in the belief that they are paying a small fine, or allowing them access to their bank account in the belief that they are claiming a refund/preventing a contract from being terminated.

The simplest advice to give to potential victim of catfishing is perhaps the oldest – if the offer appears too good to be true, that's probably because it is.

## And finally...

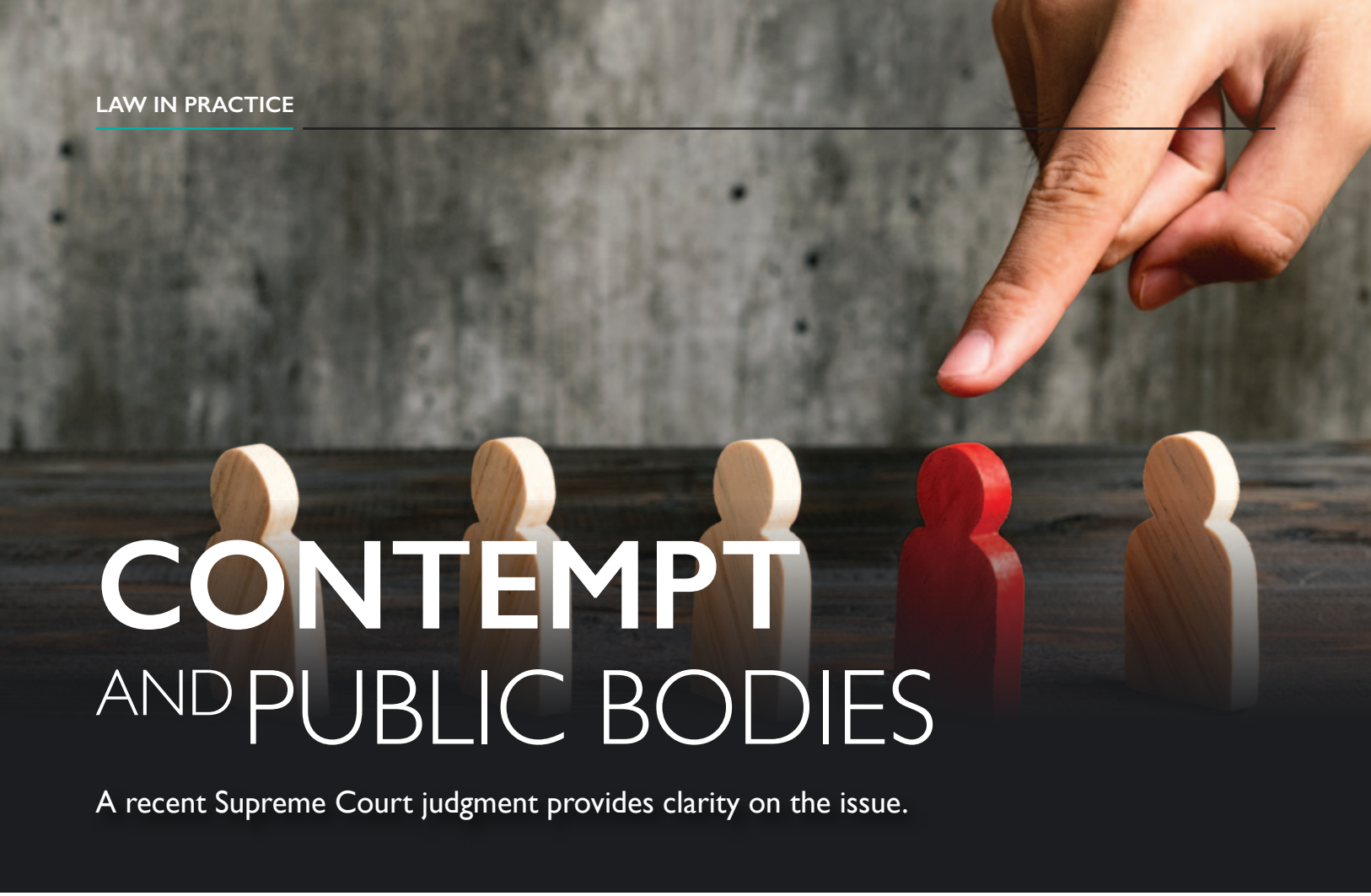
Online scams are big business. All involve a form of catfishing because they revolve around convincing the victims that they are dealing with someone other than the perpetrator of the scam. In terms of reported figures, the total amount defrauded from Irish victims has risen from €47m in 2020 to €81m in 2024. The single biggest rise has been in 'account take-over fraud', whereby the victim unwittingly gives the fraudster their bank details, which rose from under €4m in 2020 to over €13m in 2024.[7]

While the gardaí are reporting significant successes in identifying and prosecuting participants in these scams their main successes so far have been against 'money mules', the intermediaries who allow their accounts to receive the money from the victim, rather than the criminal gangs who are the ultimate benefactors, who find it easier to cover their tracks due to the entirely online nature of this activity. And it is worth noting that, whatever official figures are given, many such crimes are not reported due to shame and embarrassment on the part of the victims, who perhaps believe that they are to blame for having allowed themselves to be duped.

The simplest advice to give to potential victim of catfishing is perhaps the oldest – if the offer appears too good to be true, that's probably because it is.

## References


1. The application of the term to online scamming first came into common usage in 2010 when it was used as the name of a documentary film by an American man who had been the victim of a romance scam – *Catfish* (2010) directed by Henry Joost and Ariel Schulman.
2. Gallagher F. Teacher who denies she is 'GAA catfish' gets interim injunction to restrain disciplinary process. *The Irish Times*, March 19, 2025. Available from: https://www.irishtimes.com/crime-law/courts/2025/03/20/teacher-who-denies-she-is-gaa-catfish-gets-interim-injunction-to-restrain-disciplinary-process/.
3. Pope C. Catfishing: How one Irish woman lost €20,000 to a person she thought was Coldplay's Chris Martin. *The Irish Times*, February 10, 2025. Available from: https://www.irishtimes.com/ireland/2025/02/09/chris-martin-catfishing-scam-he-was-being-really-romantic-and-sweet-he-was-grooming-me/.
4. Gozzi L. AI Brad Pitt dupes French woman out of €830,000. BBC News, January 15, 2025. Available from: https://www.bbc.com/news/articles/ckgnz8rw1xgo.
5. See the Australian case of *Rodriguez v DPP* [2013] VSCA 216 for this technique in action.
6. Delaney, H., Carolan, E. *The Right to Privacy: A Doctrinal and Comparative Analysis*. Thomson Round Hall, 2008.
7. Source: Garda National Economic Crime Bureau, presentation to The Bar of Ireland, April 2, 2025.



# CONTEMPT AND PUBLIC BODIES

A recent Supreme Court judgment provides clarity on the issue.

Tom Flynn SC

The law and procedures governing contempt is notoriously complex and has spawned an increasing number of decisions of the superior courts in recent years.[1] This has resulted in calls for clarification and codification of the law.[2] The Supreme Court in its recent judgement in *B (a minor) suing by his mother and next friend Y v The Child and Family Agency*,[3] re-examined some fundamental aspects of the law relating to contempt. More specifically the Court addressed the question of whether the High Court has jurisdiction to make a finding of contempt of court against a State agency in proceedings that have been commenced by means of plenary summons and in respect of which no penalty has been sought.

The issue arose in the procedurally unusual circumstances where the moving parties in the appeal did not invoke the conventional contempt of court route prescribed by Order 44 of the Rules of the Superior Courts 1986 (the RSC). Instead, they elected to proceed by way of plenary summons in which a declaration was sought that the defendant, the Child and Family Agency (CFA) has been guilty of contempt of a previous order of the High Court.

## Factual background

The appeal by B and his mother (the plaintiffs) arose from a judgment of the High Court[4] (Jordan J.), which held that the High Court had jurisdiction to deal with contempt only through the procedures prescribed by Ord. 44 RSC, and that it did not have jurisdiction to make a finding of contempt of court simpliciter in plenary proceedings.

The underlying proceedings concerned the duty of the CFA to give effect to a special care order, which had been made by the High Court under the provisions of s.23H of the Child Care Act 1991 (as amended) (the 1991 Act) in respect of B, who had previously been in the care of the CFA pursuant to previous interim special care orders (the SCO) made and extended in 2021, 2022 and 2023. In the underlying proceedings, Jordan J. found that the CFA had not given effect to the terms of the SCO on the grounds that it was unable to employ or retain sufficient staff in the special care system, with the result that B was unable to secure a placement in that system.

The plaintiffs rested their case on the existence of the SCO and the failure to secure a special care placement, despite the existence of a court order. For its part the CFA's case was in essence that this failure to comply with the terms of the SCO was not its fault and it pleaded in substance that compliance with this order was to all intents and purposes impossible. As Hogan J. noted, the CFA's defence was that compliance with the SCO was impossible, and implicit in that defence was that the appropriate funds or pay rates for staff employed in these special care units had not been sanctioned by the Minister for

> The law and procedures governing contempt is notoriously complex and has spawned an increasing number of decisions of the superior courts in recent years.

Public Expenditure and Reform (the Minister). The Minister was not, however, a party to the contempt application (it was a notice party to the appeal) and Hogan J. noted that the CFA's position was not accepted by the Minister and had been disputed by him/her in a separate High Court matter.[5]

## Judgment of the High Court

In the substantive judgment, Jordan J. dismissed the contempt application on procedural grounds. He held that it ought to have been brought by way of motion for attachment and committal under Ord. 44 RSC and not by way of plenary proceedings. In this respect, Jordan J. applied the principles enunciated by the Supreme Court in respect of contempt in its decision in *Pepper Finance Corporation (Ireland) DAC v Persons unknown*.[6] He noted that there had not been any compliance with the service or penal endorsement requirements contained in Ord. 41, r.8 RSC. He further noted that the plaintiffs had simply sought a declaration that the CFA was in contempt of court in failing to comply with the SCO. Jordan J. ultimately held that the plaintiff could not invoke the declaratory jurisdiction of the High Court for this purpose and thereby by-pass the provisions of Ord. 41 RSC.

Subsequent to the judgment of the High Court, two important developments occurred of which the Court was made aware at the hearing of the appeal. First, a special care place was found for B and he went into care at the end of July 2024. Second, in quite separate proceedings (*CFA v DA*),[7] Jordan J. conducted a review under s.23(1) of the 1991 Act of a particular special care placement in which he heard evidence from various parties (including evidence from the Secretary General of the Department of Public Expenditure and Reform [DEPR]) regarding the question of access to special care places. In his judgment in *CFA v DA*, Jordan J. found that while the payment of special allowances was not the only factor, he concluded nonetheless that pay was the core reason for the recruitment and retention of staff.

## Judgment of the Supreme Court

### Jurisdictional issue

Hogan J. first considered it necessary to address the jurisdictional issue of whether a party can seek a simple declaration of contempt of court without any accompanying penalty in plenary proceedings. He noted that the invariable practice of the High Court has been that applications for contempt are commenced by means of motions for attachment and committal pursuant to the provisions of Ord. 44 RSC. He further noted that there did not appear to be any previous reported example of where such proceedings have been commenced by means of plenary summons, nor could counsel in the case point to any other case where this procedure had been adopted, and nor was any member of the Court personally aware from practice of a case where this has been done. Given that this matter was thus *res integra*, it fell to the Court to consider the matter as a question of principle.

In addressing the jurisdictional issue, Hogan J. considered that the starting point is that contempt of court is part of the inherent jurisdiction of the High Court and the fact that Article 34.1 of the Constitution commits the administration of justice to the judiciary. In his view it is plain that judges could not faithfully fulfil that mandate unless steps could be taken by them as part of that inherent jurisdiction to enforce their own orders. It was, in the view of Hogan J., never intended that the courts would be simply powerless to take steps to ensure that a judicial order giving effect to legislation such as the 2019 Act would be allowed to lie fallow and unimplemented.

Hogan J. considered the judgment of the Supreme Court in *Re Earle*[8] to be of some assistance in the context of the issues before the court. In *Re Earle* the grandmother of an infant girl disobeyed a High Court order to produce the body of the young girl. On the return date the High Court found her to be in contempt and directed that she be imprisoned for six months or until she purged her contempt. Ms Earle appealed to the Supreme Court, contending that such an order could only have been made following the service of a notice of motion "setting out the grounds of the application, together with copies of any affidavits intended to be used" in the manner provided by the then applicable rules of court.[9] The Supreme Court upheld the order of the High Court. Hogan J. noted the comments of Meredith J. in *Re Earle* "that for the purpose of upholding and protecting the authority of the Court there has always been an inherent jurisdiction in the Court to intervene of its own motion by committal for a contempt that then and there openly defies the authority of the Court",[10] and that the rules of court were not intended to limit or regulate the exercise of this jurisdiction. He considered these comments as further authority for the proposition that the power to attach for contempt is part of the inherent jurisdiction of the High Court, and while Ord. 44 regulates the contempt jurisdiction, it cannot be said to limit its exercise.

Hogan J. noted that the contempt jurisdiction is one which is both "vested" in the High Court and is also "exercisable" by that Court within the meaning of s.14(2) of the Courts (Supplemental Provisions) Act 1961 (the 1961 Act).[11] It is vested in that Court in that it was a jurisdiction which, as Gavan Duffy P. observed in *Attorney General v. Connolly*,[12] had previously been vested in the former High Court of Justice for Southern Ireland between 1921 and 1924, which jurisdiction s.8(2)(a) of the 1961 Act then vests in the present High Court.

It is also exercisable by that Court since this constitutionally derived inherent jurisdiction is part of the "original and other jurisdiction as is prescribed by the Constitution", which is exercisable by that Court by virtue of s.8(1) of the 1961 Act: see again the comments of Gavan Duffy P. in *Connolly*, [1947] IR 213 at 221-222.

In answer to the objection that Ord. 44 of the RSC had not been complied with, and that the contempt procedure could only be invoked in compliance with the RSC, Hogan J. stated as follows:

"The short answer to this objection is that even where the plaintiffs proceed by way of plenary summons, this is a procedure which they are in principle entitled to exercise. Ord. 1, r.1 RSC permits and, indeed, requires that this procedure be adopted in all cases "save as otherwise provided by these Rules". Unless, therefore, Ord. 44 RSC mandated that applications for contempt could only be brought under the provisions of that Order – and, in my view, it does not – then the plaintiffs were permitted by the RSC to proceed in this fashion".[13]

**Should the declaration sought be granted?**

Having addressed the question of jurisdiction, Hogan J. considered the question as to whether the plaintiffs were entitled to seek a declaration simpliciter that the CFA is in contempt of court. He reviewed the origins of the declaratory remedy and considered recent English and Irish authority on the circumstances in which declaratory relief may be granted, highlighting in particular the decision of the Court in *Transport Salaried Staffs' Association v Córas Iompair Éireann*.[14] In this matter, the Court clarified that the scope of the declaratory jurisdiction is exercisable "if there is good reason for so doing" and where there is a "substantial question which one person has a real interest to raise and the other to oppose".

Hogan J. noted that it appeared that the plaintiffs had no real desire to see that any form of punishment such as a fine was imposed on the CFA. Their objective was to secure a special care placement for B, and the proceedings appeared motivated by a desire to increase the pressure incrementally and in the hope of avoiding a more severe order being made against an agency that was plainly attempting to fulfil its statutory duty.

**The Court addressed the question of whether the High Court has jurisdiction to make a finding of contempt of court against a State agency in proceedings that have been commenced by means of plenary summons and in respect of which no penalty has been sought.**

Hogan J. referred to the English authorities of *R. (JM) v Croydon LBC*[15] and *Re M*[16] as clear English authority for the proposition that one may seek a simple declaration that a public body has been guilty of contempt. He noted that this is far from a pointless exercise, since a finding that a public body has been guilty of contempt of court would itself represent a very serious finding, with significant implications for the administration of justice and the rule of law. He noted that the Irish case of *Gore-Booth v Gore-Booth*[17] provides clear authority involving a decision of the Supreme Court that a finding of contempt of court simpliciter is possible even in cases that do not involve public bodies, and that such a finding may serve the purpose of persuading the contemnor to change their ways and to comply with the order.

Hogan J. acknowledged that in his judgement in *Pepper Finance* he had stated that the penal endorsement requirements of Ord. 41, r. 8 RSC were "fundamental" to contempt applications. He noted that these comments were, however, made in a context where it was sought to enforce a court order against purely private individuals, with a financial penalty or imprisonment as the ultimate sanctions. Significantly, he clarified that this remains the position where it is sought to imprison or fine the alleged contemnor by means of a contempt application. However, he noted that the present case was different in that it was made in circumstances where no penal enforcement was sought and thus no penal endorsement was required where a mere declaration of contempt is sought. He went on to state:

"To sum up, therefore, one may say that the High Court has an inherent jurisdiction to enforce its judgments via the contempt process. While that

jurisdiction is regulated by Ord. 44 RSC, the Rules do not prescribe an exclusive procedure in that regard. It follows that the plaintiffs were accordingly in principle entitled to seek a simple declaration to the effect that the CFA was guilty of contempt.

In summary, therefore, I would allow the appeal on the ground that Jordan J. was in error in holding that the plaintiffs could not seek a simple declaration that the CFA was in contempt of court. Indeed, in cases involving public bodies this procedure would, generally speaking at least, represent the best way of proceeding, at least in the first instance. A finding of contempt of court would in itself be a serious matter for the public body concerned".[18]

### Appropriate order

Hogan J. noted that the CFA's defence was essentially one of impossibility, and thus the matter should be determined by way of an oral hearing in the High Court, as the matter was too serious to be determined by reference to the pleadings or by formal concessions or notices to admit facts. He further noted that in circumstances where, as in this case, the defence effectively implicates a third party such as the Minister, that party must be formally joined to the proceedings and given an opportunity to defend the case. He considered that given that the case involved the (admitted) non-compliance with a court order, the CFA ought to have fully explained the basis on which it said that compliance was impossible and the steps it had taken to secure that compliance. In all circumstances where a place has now been found for B, Hogan J. considered that the fairest outcome was that the appeal should simply be allowed with no further order, with the issue of costs to be addressed separately.

In concluding comments, Hogan J. referred to "the deeply troubling fact that a High Court order designed for the benefit of a disturbed and vulnerable young man was not complied with by State authorities for the best part of eight months … In that regard it must be said clearly that the persistent non-compliance with High Court orders of this kind such as we have seen in this case undermines that constitutional commitment to democracy and respect for the rule of law".[19]

## Comment

This judgment is significant and has clarified numerous issues within the law of contempt and, in particular, the steps to be followed when seeking to hold public bodies accountable for a failure to comply with a court order. First, the Supreme Court has expressly stated that the High Court has an inherent jurisdiction to enforce its judgments via the contempt process, and while that jurisdiction is regulated by Ord. 44 RSC, the RSC do not prescribe an exclusive procedure in that regard. Second, the Court has said that in principle there is an entitlement to seek a simple declaration to the effect that a public body is guilty of contempt, but only where no penal enforcement is sought. Third, Hogan J. articulated the view that in matters involving public bodies, the plenary procedure seeking a simple declaration that a public body is in contempt of a court order would generally represent the best way of proceeding, at least in the first instance.

## References


1. See for example *Pepper Finance Corporation (Ireland) DAC v Persons Unknown* [2023] IESC 21, *Meath County Council v Hendy* 2023 IECA 55, *Brownfield Restoration Ltd v Wicklow County Council* [2024] IEHC 260, *Point Village Development v Dunnes Stores* 2025 IEHC 212, *Board of Management of Wilson's Hospital School v Burke (No. 3)* [2025] IEHC 104, and *Board of Management of Wilson's Hospital School v Burke (No. 4)* [2025] IEHC 208.
2. See: Charlton P., O'Connor, V. Try something else: contempt and confusion. *Irish Judicial Studies Journal.* 2024; 1: 44; O'Donnell J. Some reflections on the law of contempt. 2 *Judicial Studies Institute Journal* 2002; 87; and, the Law Reform Commission Consultation Paper on Contempt of Court (L.R.C. CP 4 - 1991).
3. 2025 IESC 2.
4. See *B v Child and Family Agency* (No.2) [2024] IEHC 236 delivered on April 3, 2024.
5. *CFA v DA* [2024] IEHC 614.
6. [2023] IESC 21.
7. [2024] IEHC 614.
8. [1938] IR 485.
9. Ord. LXXXIV of the Rules of Supreme Court (Ireland) 1905: see [1938] IR 485 at 486.
10. ([1938] IR 485 at 507.
11. Section 14(2) provides: "The jurisdiction which is by virtue of this Act vested in or exercisable by the Supreme Court [and] the High Court … shall be exercised so far as regards pleading, practice and procedure generally, including liability to costs, in the manner provided by rules of court, and, where no provision is contained in such rules and so long as there is no rule with reference thereto, it shall be exercised as nearly as possible in the same manner as it might have been exercised by the respective existing courts or judges by which or by whom such jurisdiction was, immediately before the operative date, respectively exercisable".
12. [1947] IR 213 at 218-219.
13. At paragraph 35 of the judgment.
14. [1965] IR 180.
15. [2009] EWHC 2474 (Admin), [2010] PTSR 866 at 869.
16. [1993] UKHL 5, [1994] 1 AC 377.
17. (1962) 96 ILTR 32 at 38.
18. At paragraph 67 of the judgment.
19. At paragraph 70 of the judgment.

# WHICH MOUNTAIN?

## Remembering Paul Callan SC.

Paul's father, Denis Callan, emigrated to the United States where, in Ash Creek South Dakota, he dealt in cattle and horses. He returned home with enough to buy a farm in Carrickmacross. Paul's mother, Annie, was a schoolteacher. There were five children and Paul, born on February 10, 1931, was the eldest boy. Paul was only nine years old when his father died, leaving his mother alone with a family to raise. Within a year of her husband's death the farm had been "picked clean" of all machinery. At Annie's 100th birthday party she recited a poem by heart. It was by Patrick Kavanagh, a former pupil of hers and of whom she was very proud.

At the age of 12 Paul took on to go to Carrick to do battle successfully with a local solicitor who was attempting to close a right of way on the farm.

Paul was quite influenced by his maternal grandmother, Mrs Duffy, who ran a public house in Ballytrain, Co. Monaghan. She may have been a Parnellite and was very kind to neighbours who had been evicted.

Paul absorbed the patterns and values of life in rural Ireland and brought those to the practice of law. The *meitheal* system involves helping your neighbour in whatever way you can. Where groups of neighbours gather around a task, everyone has a part to play. It is not hierarchical and money is not involved.

Paul attended St Macartan's in Monaghan and was brilliant. At UCD he won a first in economics and a bursary. At King's Inns he won the Victoria and the Brooke prizes.

An early case involved a husband who was regularly assaulting his wife. Paul brought an injunction application to have him expelled from the family home. He lost in the High Court and on that same day walked into the Supreme Court to appeal and to win.

Paul acted in many reported cases and here a few.

### Mrs Mullen's case

In 1986 a 74-year-old woman, Mrs Mullen, slipped and fell in a supermarket in Dundalk. In the High Court she lost. She won in the Supreme Court. Mr Justice MacCarthy, no doubt assisted by Paul's argument, tentatively raised the question of imposing a principle of absolute liability for supermarket accidents. MacCarthy J. analysed the supermarket compared to the family grocer now being supplanted, and questioned whether a balancing of rights of people and rights of property required new law.

To help turn an ordinary slip and fall into a socio-economic analysis – this is more alchemy than advocacy!

The case duly went back to the High Court in Dundalk when Mrs Mullen lost again. It was appealed again to the Supreme Court and she won there again. Somewhere in that last journey to Dundalk on the issue of damages only, the defendants had a Damascene moment, perhaps prompted by the fear that with Paul at the helm the small case could go on forever, because the case settled.

### Mr Crotty's case

Raymond Crotty considered that the Government could not ratify the Single European Treaty without obtaining the permission of the people in a referendum. Paul and others were for him. The initial stages of the case took place urgently in the days before Christmas 1986 before Mr Justice Barrington. When the two-day hearing came to an end on Christmas Eve there was no stenographer available to record the judgment.

Seamus Ó Tuathaill BL was dispatched on his bike up to Capel Street to buy a tape recorder. Mr Justice Barrington came out to give judgment having taken only an hour to prepare it.[1] They won the injunction and the Government was stopped in its tracks.

Mr Crotty was amazed at how quickly Barrington J. had absorbed the details of the case. He wrote:

"It was one of the most impressive intellectual performances I have witnessed. It induced in me a new and higher regard for the legal profession, and especially for those at the apex of it in this country's judiciary".[2]

The tapes were transcribed over Christmas. On St Stephen's Day Paul called to the house of Mr Justice Barrington to ask him to sign the judgment. Mrs Barrington told him that the judge was walking in the Dublin Mountains. On our Circuit, Paul's response is said to have been: "Which mountain?"[3]
The case ended in the Supreme Court where it was decided that the Government had acted outside the Constitution; the Treaty had to be put to the people.

### Ms McKenna's case

Here Paul[4] was dealing with the Maastricht Treaty, which ran to over 250 pages. The Government proposed to use public funds to promote the treaty to the people and not to explain opposing arguments. Patricia McKenna thought the Government could not do this and ultimately the Supreme Court agreed.

### Thomas Pringle's case

Thomas Pringle TD considered that the European Stability Mechanism (ESM) was unlawful and took a case against the Government of Ireland and others. Paul was for him. The case got to the Supreme Court, which sent a preliminary reference to the European Court of Justice. Mr Pringle was to lose but not before the ESM had been thoroughly challenged before a full court of 27 judges from all over the Union.

As in the *meitheal*, everyone was equally and respectfully included and every voice was heard when working with Paul. The dialogue was almost endless because Paul was the determined enemy of the short consultation! And as in the *meitheal*, money was not the issue. Paul had no regard for fees at all. It was the cause, and only the cause, which interested him and consumed all his considerable intellect, all of his incredible physical and mental energy, and all of his great warm heart.

Paul was a man of great kindness, generosity and decency. He was wonderful to his nieces and nephews and kind to young barristers. Paul himself was forever young. His interests outside the law were extensive and included broad reading, travel, Monaghan GAA and horses. He loved horses and when the last foal left for sale in November 2024 there was a tear in his eye.
Travel took Paul to Prague in 1968 when the Soviet tanks brutally rolled in, and there on a captured tank he spoke against the invasion and, as always, on behalf of the people.
Paul in dreaming up his arguments, whether on the mountain top,[5] in the coffee shop, in various small offices, or in the kitchens of friends and colleagues, made a singular contribution the rule of law and therefore to the people.

*Tá sé imithe anois ar shlí na fírinne.*

But no need to worry, our brother knows this path: didn't he walk it all his life?

**TO'D**

### References


1. The judgment is to be found at pp725-735 at 1987 IR.
2. Raymond Crotty, *A Radical's Response*, p.118, as cited in *The Supreme Court* by Ruadhán Mac Cormac.
3. Ruadhán Mac Cormac tells it slightly differently: he notes the response as "where exactly"?
4. With Seamus Ó Tuathail instructed by Colm MacGeehin and later by MacGeehin and Toale.
5. The Sellafield case, which I have not included here for reasons of space, was partly thought through on Slieve Foy in Cooley and near Carlingford.

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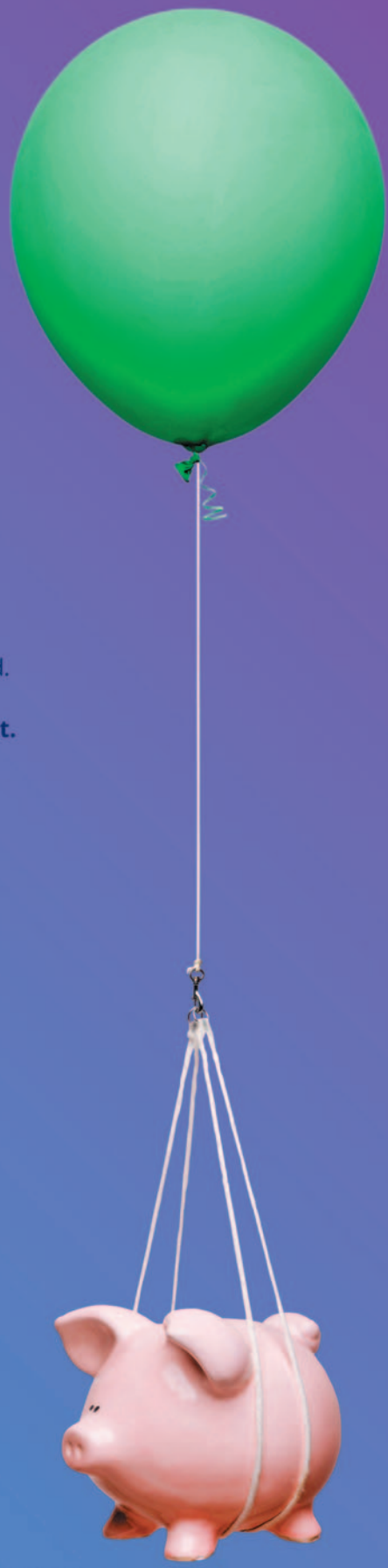

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