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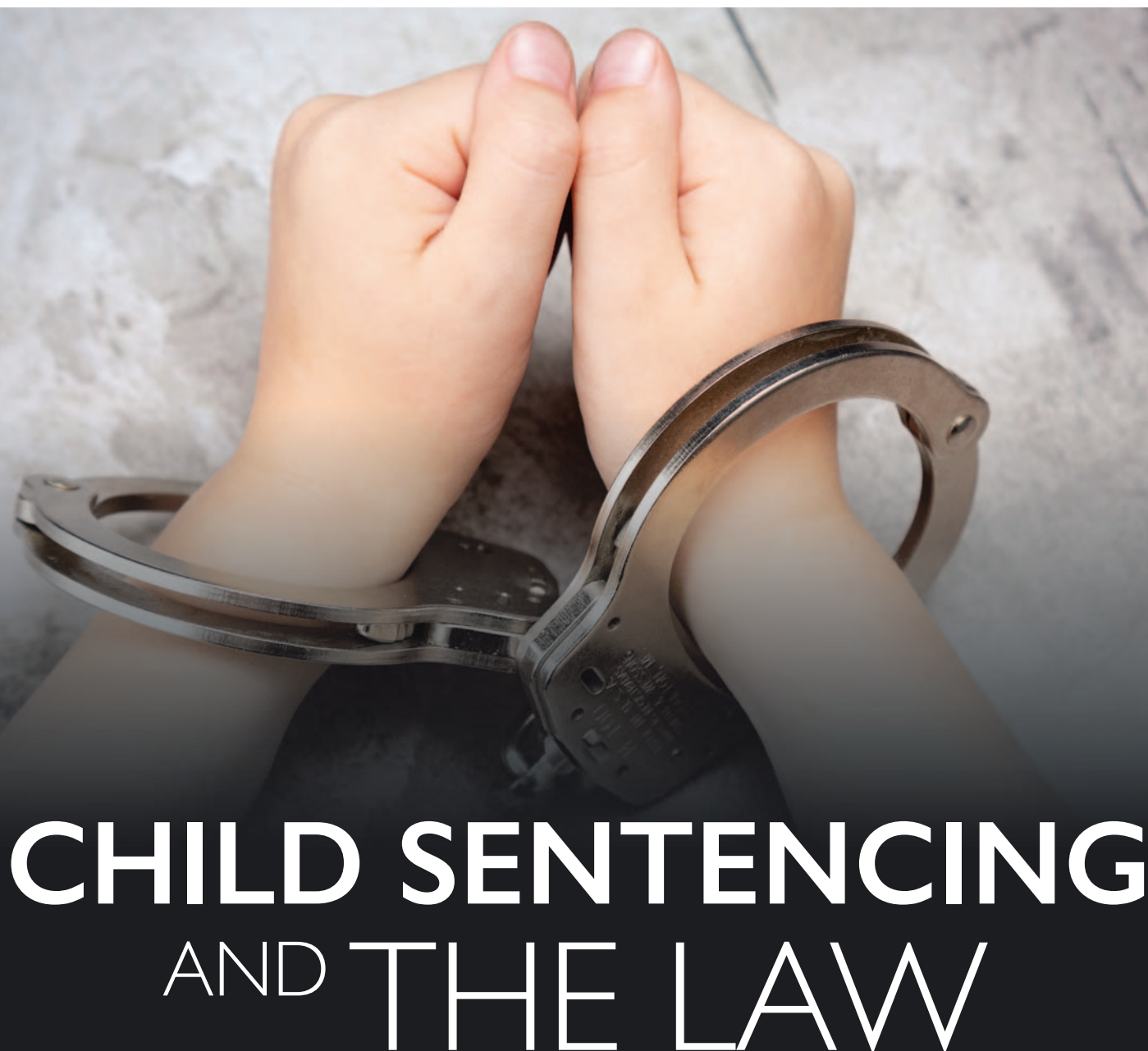
Attorney General of Ireland
Rossa Fanning SC

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for judicial office

THE BAR REVIEW

VOLUME 30 / NUMBER 4 / OCTOBER 2025

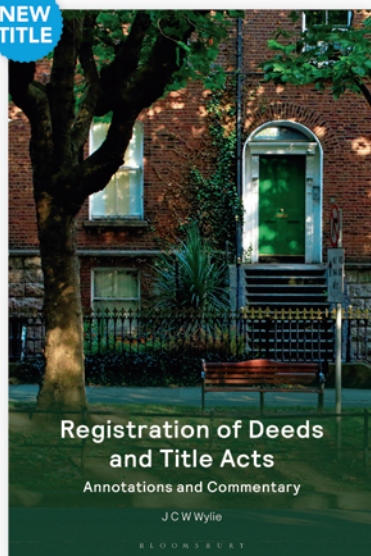


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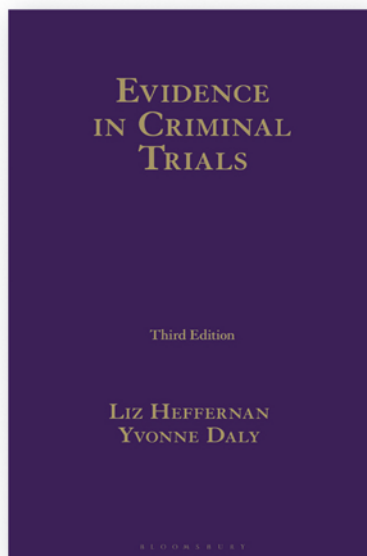
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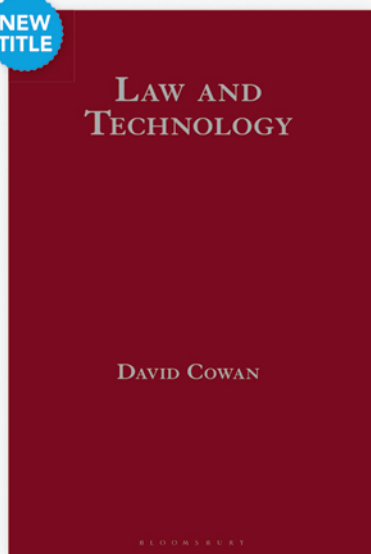
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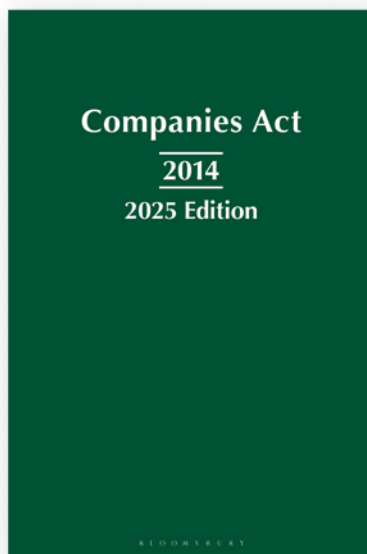


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ADVOCATING FOR THE PROFESSION AND THE PUBLIC

At the beginning of this new legal year, I want to extend a warm welcome to our new members, 96 of whom commenced their devilling year on October 6.



Seán Guerin SC

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

I had the opportunity to meet with our new colleagues during their induction day in late September, and I encourage everyone to take time to welcome them to our collegiate profession. Our newly refurbished Barrister's Tea Rooms is once again open for business, and I hope members will support the operation and use the opportunity to reconnect with colleagues, old and new. There are some significant policy issues on the Government's agenda that will impact our profession and where the Council will be prioritising its efforts and engagements over the months ahead.

Budget 2026 – criminal legal aid

I welcome the progress made in Budget 2026 towards the long-overdue restoration of professional fees for criminal barristers, marking a significant step in fulfilling the commitment contained in the Programme for Government. I want to express our

appreciation to the Minister for Justice, Jim O'Callaghan SC TD, and his officials for their continued engagement and recognition of the vital role played by criminal practitioners in ensuring the effective operation of the justice system. Council representatives will meet with Department officials shortly to continue discussions in relation to possible further reforms, and to ensure the implementation of the restored fee rates at the earliest opportunity.

Civil legal aid review

In July 2025, the Government published the first comprehensive review of the Civil Legal Aid Scheme in nearly half a century. Chaired by retired Chief Justice Frank Clarke SC, the Review Group was established in June 2022 to conduct a full appraisal of the Scheme, engaging in extensive consultation, comparative analysis, and financial evaluation across 40 meetings. The Group presented a principle-based

and strategic framework to modernise civil legal aid in Ireland – framed as a “clear roadmap” to ensure that the system better supports access to justice. The Civil Legal Aid Review Report provides a blueprint for modernising Ireland's system of civil legal aid. The reports, including both a majority and minority report, converge on the need to:

- broaden access across all legal domains;
- ensure fair remuneration and practitioner participation;
- harness existing service infrastructure;
- embed preventive and rights-based principles; and,
- secure dedicated funding and political will.

The Civil Legal Aid Scheme has fallen short of what is required to meet the needs of ordinary people. The path charted in the recommendations set out

in the Report offers a real opportunity to fulfil the core promise of meaningful and timely access to justice for citizens of limited means – restoring dignity, fairness, and equality before the law.

Council of The Bar of Ireland will contribute positively to the discussion about implementation that now needs to take place and, at the same time, will be pressing for early and substantial progress on establishing the revised pay structures and pay rates that are necessary to ensure a supply of highly qualified and competent barristers in this essential area of the legal market.

Judicial review

The issue of judicial review as a cause of delay in infrastructure development has been the subject of various Government reports and media comment. While the stated intention of Government is to reform the judicial review process as it applies to infrastructure and planning for the purpose of expediting project delivery and improving efficiency, any reforms under consideration must be balanced against the fundamental rights of citizens and safeguarding access to justice.

Judicial review in Ireland is a cornerstone of constitutional democracy, ensuring that the exercise of public power is subject to the rule of law, upholding the constitutional principle that all organs of the State remain accountable to the law. It is not the purpose or the practice of judicial review courts to take the place of expert decision-makers; instead, judicial review is designed to ensure that administrative decision-makers observe the minimum standards of lawfulness and rationality, each an essential requirement for the promotion of the public interest as much as for the protection of individual rights.

The Council will be engaging with Government on these important areas of public policy development. The opportunity for members to get involved and share their views will be facilitated through the organisation of a series of events that will focus on these important public interest areas, which will undoubtedly impact citizens and our profession.

THORNY ISSUES

This edition covers AI hallucinations, child sentencing, and the judicial oath.



Helen Murray BL

Editor

The Bar Review

The *Bar Review* would like to extend a warm welcome to all our new members and to wish you well at the beginning of your career at The Bar of Ireland. We hope this is the beginning of a rewarding and exciting chapter in your working lives.

In this month's edition, the Attorney General, Rossa Fanning SC, recalls his journey into the legal profession and the experiences and travels that have shaped his career. Hallowe'en is almost upon us and if you are short on tales that will make the hairs on the back of your neck stand up, read the law in practice article written by Tomás Keys BL. He examines the impact of the increased use of generative AI within the legal profession and the repercussions when the research results in what are known as AI hallucinations.

Kevin Roche BL has written a comprehensive article on child sentencing, focusing on two recent Supreme Court cases – *DPP v PB* and *DPP v CC*. This is essential reading for all members, particularly those working in the area of criminal law. The thorny issue of faith and the Constitution is tackled head on by Elizabeth O'Connell SC when she considers the Private Members' Bill proposing a constitutional amendment to remove "religion and gendered language" from the oath for judicial office.

Jeremy Maher SC has written a thoughtful appreciation of our late colleague Frank Quirke BL who passed away last year. He, along with all our colleagues who have passed away in recent times, continue to be missed.

Specialist Bar Association news

Key strategies in finance law

On June 25, the Financial Services Bar Association (FSBA) hosted its annual conference in the Gaffney Room, focusing on key legal strategies in financial services disputes. Chair John Breslin SC opened the event, followed by a keynote address from John MacMenamin, former Supreme Court Judge and Chairperson of the Irish Financial Services Appeals Tribunal. The first panel, 'Advocacy in Regulatory Processes', was chaired by John Breslin SC and featured Mr Justice Seamus Woulfe, Ailbhe O'Neill SC, and Mark Harty SC. The second session, 'Strategy for Directors and Senior Managers under Investigation', was chaired by Úna Tighe SC, with panellists Lisa Carty (Pinsent Masons), Penny Miller (Simmons + Simmons, London), and Robert Cain (Arthur Cox). The final panel, 'Amendment to Order 11 – Service Outside the Jurisdiction', was chaired by Patrick O'Reilly SC and included Ms Justice Nuala Butler, David Sweetman BL, and Darragh K. Connell (Maitland Chambers, London).



From left: David Sweetman BL; Darragh K. Connell, Maitland Chambers, London; Patrick O'Reilly SC; and, Ms Justice Nuala Butler.

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Constructing clarity

The Construction Bar Association (CBA) held its 11th major open conference on June 20 in the Dining Hall of The Honourable Society of King's Inns, beginning with an opening address by James Burke BL. The afternoon featured three expert-led sessions. 'Adjudication: Law, Strategy & Practice' was chaired by Madam Justice Denise McBride with panellists Jarlath Fitzsimons SC and Rory Kirrane SC. 'Housing and Building Regulation' was chaired by Mr Justice Mark Sanfey and featured Deirdre Ní Fhloinn BL, Minister for Housing, Local Government and Heritage James Browne TD, and Michael O'Flynn. The last panel discussed 'Professional Negligence', chaired by Mr Justice Maurice Collins with contributions from Sara Moorhead SC, Peggy O'Rourke SC, and Lydia Bunni BL.

Ten years of the Workplace Relations Act 2015

On June 25, the Employment Bar Association (EBA) and the Employment Law Association of Ireland (ELAI) hosted a joint event at the Museum of Literature Ireland (MoLI) to mark a decade since the introduction of the Workplace Relations Act 2015. Co-chaired by Julie Galbraith (Chair, ELAI) and Brendan Kirwan SC (Chair, EBA), the evening featured reflections on the Act's impact on employment law and practice. Speakers included Mr Justice Oisín Quinn, Melanie Crowley (Mason Hayes & Curran), and Peter Ward SC, who shared insights on legal developments and practical implications over the past 10 years.

Updates in criminal law



The Irish Criminal Bar Association (ICBA) held its annual conference in the Kilkenny Ormonde Hotel. The conference was chaired by Judge Ronan Munro. Speakers included Maurice Coffey SC, Garnet Orange SC, Diarmuid Collins BL, Gemma McLoughlin Burke BL, David Perry, and David Staunton. The session discussed various updates in criminal law from the past year. The conference concluded with the AGM and a networking dinner for participants.



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Planning and environmental update

The Planning, Environmental and Local Government Bar Association (PELGBA) held its annual conference in the Dublin Dispute Resolution Centre on July 4. Chair Tom Flynn SC welcomed the attendees before introductory remarks from Eamon Galligan SC, who chaired the morning session. Fintan Valentine SC gave a presentation that discussed updated legislation in planning enforcement. This was followed by a presentation by David Browne SC on 'Standing and Public Participation'. 'Offshore



Eamon Galligan SC, who chaired the morning session.

Energy' was the topic discussed by Gregory Jones KC. This was followed by Grainne Gilmore BL, who took the audience through 'Renewable Energy and Nuisance'.

After lunch, in a session chaired by Mr Justice Richard Humphreys, attendees heard from Emily Egan McGrath SC on 'The Courts' Discretion to Grant Certiorari'. The final presentation was given by Ger Deering, the Commissioner for Environmental Information, who discussed 'Access to Environmental Information'.



Emily Egan McGrath SC.



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Michelle Farrell
Fee Recovery Manager
Ext: 5053
feerecovery@lawlibrary.ie



Waad Alias
Fee Recovery Administrator
Ext: 5409
feerecovery@lawlibrary.ie

Media and technology law

The Media, Internet and Data Protection Bar Association (MIDBA) held its annual conference on June 27 in the Gaffney Room. Michael O'Doherty BL welcomed the audience, followed by an opening address by Mr Justice David Barniville, President of the High Court. President Barniville spoke on 'Ireland as a Hub for Technology Law'.

There were three insightful panels throughout the afternoon. The first panel spoke to 'Data Subject Access Requests'. This was expertly moderated by Emily Gibson BL with contributions from Mark Finan BL, Declan Harmon BL, and Laura Fannin from Hayes Solicitors. The second panel discussed the topic of 'Social Media and Under 16 Year Olds'. This panel was moderated by Conor Power SC, with



From left: Alex Cooney, CyberSafeKids; Johnny Ryan, Irish Council for Civil Liberties; Conor Power SC; and, (standing) Michael O'Doherty BL.

Michael O'Doherty BL, Alex Cooney of CyberSafeKids, and Johnny Ryan of the Irish Council for Civil Liberties discussing whether Ireland should follow Australia and ban social media for children under 16.

Concluding the conference, a panel moderated by Ronan Lupton SC, with contributions from Paul Tweed (WP Tweed & Co), Paula Mullooly (A&L Goodbody), and Ted Harding SC, focused on 'Media Law in the Digital Age'.

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Rights in a digital world



The legal year ended with a fantastic seminar hosted by The Family Lawyers Association (FLA). Chaired by Paul McCarthy SC, Chair of the FLA, speaker Noeline Blackwell of the Irish Human Rights and Equality Commission (IHREC) addressed the subject of 'Children's Family Rights in a Digital World'. This was an insightful seminar with many questions from the floor.

The Art of Advocacy

The Tort and Insurance Bar Association (TIBA) held its annual conference on May 24 in the Gaffney Room. The conference opened with welcoming remarks from Jeremy Maher SC, Chair of the TIBA, setting the tone for a dynamic programme. The first session, 'The Art of Advocacy', featured a distinguished panel including Mr Justice David Barniville, President of the High Court, Seán Guerin SC, Chair of the Council of The Bar of Ireland, and Helen Callanan SC. Following a short break, the second session explored 'The Regulation of

Professional Ethics', with contributions from Mr Justice Paul Coffey, Rossa Fanning SC, Attorney General of Ireland, and Paul McGarry SC. The third session focused on 'Developments in Tort and Privacy Law', chaired by Ms Justice Mary Faherty, joined by Eoin McCullough SC and William Binchy BL. The final session of the day addressed 'Recent Developments in Tort Law', chaired by Judge John Martin, with a panel comprising Sarah Reid BL, Gerard Groarke BL, Aoife Nolan BL, and Sinéad Murphy BL.

Celebrating Daniel O'Connell

In honour of the life and legacy of Daniel O'Connell, former President of Ireland Dr Mary McAleese announced Maria Watson BL as the winner of The Bar of Ireland Liberator Scholarship on July 22. The scholarship was established to mark the 250th anniversary of the birth of Daniel O'Connell, one of Ireland's most important legal and political figures.

The scholarship offers a fully funded place for Maria to attend the Harvard Programme on Negotiation later this autumn, a unique and prestigious programme on mediation, negotiation, and conflict resolution.

The event forms part of The Bar of Ireland's wider commemorative activities, including participation in the O'Connell 250 Symposium: Liberty, Democracy, and the Struggle for Human Rights, in association with Trinity College Dublin, The Daniel O'Connell Summer School, and Glasnevin Cemetery.



From left: Dr Martin McAleese; Sir Maurice O'Connell, a direct descendant of Daniel O'Connell; scholarship recipient Maria Watson BL; former President of Ireland, Dr Mary McAleese; retired Mr Justice John MacMenamin; and, Seán Guerin SC, Chair, Council of The Bar of Ireland.

Daniel O'Connell Trinity Symposium

On July 29, The Bar of Ireland was proud to partner with Trinity Long Room Hub for the Daniel O'Connell Trinity Symposium, which marked 250 years since the birth of the Liberator, and brought together historians, human rights experts and public figures to explore O'Connell's life and legacy.

In his address on the 'Daniel O'Connell and the Path to Justice' panel, Seán Guerin SC quoted Daniel O'Connell in a speech made to the court arguing the importance of an independent Bar: "It is the first interest of the public that the Bar shall be left free ... the public are deeply interested in our independence; their properties, their lives, their honours are entrusted to us. And if we, in whom such a guardianship is confided, be degraded, how can we afford protection to others?"



Pictured at the Daniel O'Connell Trinity Symposium were (from left): Seán Guerin SC, Chair, Council of The Bar of Ireland; Chief Justice of Ireland Donal O'Donnell; Ms Justice Nessa Cahill; Dr Niamh Howlin; and, John Berry SC.

Adrian Hardiman Moot

The Adrian Hardiman Moot Competition made a much-anticipated return in July, reaffirming its place as a cornerstone event for junior members of The Bar of Ireland. Open to barristers in Years 1 to 5 of practice, the competition spans four rounds and continues to foster excellence in legal advocacy and debate. It is kindly supported by the family of the late Mr Justice Adrian Hardiman, whose legacy continues to inspire excellence in legal debate and advocacy skills among young barristers. Congratulations to this year's winners – Gemma McLoughlin-Burke BL and Seán Beatty BL – who claimed a narrow victory over the team of Laurenz Boss BL and Thea Kennedy BL.



Winners of the 2025 Adrian Hardiman Moot Competition Seán Beatty BL and Gemma McLoughlin-Burke BL stand with Supreme Court judges Ms Justice Dunne, Ms Justice O'Malley, and Mr Justice Collins, who presided as judges during the final competition. Photo: Conor McCabe.

The Bar of Ireland inaugural Internship Programme

The Bar held its inaugural Internship Programme from Monday, June 23, to Friday, July 4. The two-week initiative welcomed four outstanding interns from Leitrim, Donegal, Clare and Dublin.

A strong sense of mentorship and collegiality marked the conclusion of the Programme. Seán Guerin SC, Chair, Council of The Bar of Ireland, commended the four participating students for their professionalism, curiosity, and engagement. Representing institutions across Ireland, the interns were praised for being driven, enthusiastic, and motivated throughout the internship, and for forging meaningful connections with members of the Bar.



The Bar congratulates this year's interns. From left: Lee Mac Cuinneagáin; Greta Baronaite; Aoife Carroll SC, Chair of the Bar's University Outreach Committee; Michael White; and, Alvena Sharma. Photo: Robbie Reynolds Photography.

The Bar Review caption competition



The Bar Review is delighted to announce the winner of our caption competition.

We asked members to come up with a caption for this fantastic image by artist and former member of the Law Library Hugh Madden. The winning caption was submitted by Stephen Dempsey BL, and his winning entry is:

Judge, I object – counsel is leading the witness!

Stephen will receive a framed print of the image complete with his caption. Our thanks to everyone who entered the competition, and many congratulations to Stephen.

Pension and tax advice

The simplest way to save tax is to put money into your pension. Advisers from The Bar of Ireland Retirement Trust Scheme, operated by Mercer, will be in the Law Library giving a series of clinics during October and November. Here are the details of the dates and locations:

Date	Location	Room
October 31, 2025 deadline		
Friday, October 31 – 10.00am–2.30pm	Distillery Building, 145/151 Church St	AON Room, ground floor
November 19, 2025 deadline (ROS)		
Tuesday, November 18 – 10.00am–2.30pm	Church St Building, 158/159 Church St	Room C
Wednesday, November 19 – 10.00am–2.30pm	Distillery Building, 145/151 Church St	AON room, ground floor
Wednesday, November 19 – 12.00pm–2.30pm	Law Library, Four Courts, Dublin 7	Remote meeting room 1, ground floor



AI AT THE BAR

Recent trials by Law Library members of legal AI platforms have been very helpful in guiding the Bar's approach to this technology.



Gary LaCumber

Director of Library and Information Services

Over the past year, Law Library members have participated in trials of a number of legal AI platforms. The objective was practical: to assess how these tools can assist barristers in their professional practice, and to identify any limitations and guardrails needed for safe, ethical use. The response was engaged and measured, reflecting a profession alert to both the opportunities and the risks. What follows distils the main findings and outlines the evolving approach the Bar will take. The trials operated in line with The Bar of Ireland's Professional Practice Committee (PPC) Ethical Guidance on the use of AI, which all members are encouraged to read.

What worked best

Across the AI platforms, the most significant benefit was seen in document-heavy work. Large briefs, files, reports, and sprawling correspondence were digested at speed, giving barristers an accurate 'gist' and a map of the issues. Members reported gains

in rapid summarisation, extracting legal tests, comparing documents, and building chronologies. Many found that these outputs helped to triage what to read first, and to identify contradictions or gaps, making case preparation more efficient.

First-draft support also featured prominently. Members used AI tools to produce outlines and first passes at submissions, replies, and witness statements, before rewriting based on a barrister's professional experience and expertise. In practice, the primary value was acceleration and structure, rather than final text. Users consistently stressed that outputs are starting points, requiring human review and refinement.

For courtroom preparation, a significant cohort used AI to prepare cross-examination by extracting themes and inconsistencies from their brief. The time savings were concrete, with practitioners reporting improved efficiency in managing complex issues.

Notable product features

Members valued features such as iterative prompting, the ability to interrogate uploaded materials in threads, and workflows that emphasise working from documents provided and verified by legal practitioners. Tools for comparison, chronology building, and in-document drafting, editing, and proofing – particularly for affidavits and structured templates – were consistently praised. Where AI platforms surfaced sources with hyperlinks to Irish judgments, confidence improved, and the risk of hallucination felt lower. The ability to interrogate the same brief repeatedly to refine issues was also highlighted as a practical benefit.

Limitations to note

■ **Uploads and processing:** Members reported frustrations with file size limits, slowness with long PDFs, and unpredictable failures – especially with scanned or handwritten materials. There was a desire for multi-file workflows, bulk processing, and broader file-type support.

- **Legal research accuracy and coverage:** Many members expressed concern about research accuracy and citation reliability when AI tools were used as ‘researchers’, noting that at the time of trialling, most platforms were not yet connected to comprehensive Irish legal databases, an issue that is evolving, with publicly available legal content being integrated and partnerships with publishers being explored by AI providers. The recurring request was to pair any document assistant with a research-centric tool that can deliver accurate and authoritative case law and citations.
- **Usability and onboarding:** Members sought clearer guidance, Irish-specific workflows (end-to-end processes for case preparation), and better formatting controls.

Risks identified

- **Accuracy and verification:** Members consistently stressed the need for mandatory human verification of all outputs, with clear standards for citation checking and authority tracing.
- **Data protection and confidentiality:** Many members reported moderate to high concern about General Data Protection Regulation (GDPR) compliance, privacy, and client confidentiality. There is a strong desire for formal data protection review, a clear policy on what may be uploaded and when, and contractual assurances before any procurement. *It is important to note that The Bar of Ireland trials were operated within closed systems and with full GDPR compliance.*
- **Training and the junior Bar:** Members cautioned against over-reliance on AI. Speed and convenience must not erode training pathways and opportunities for the junior Bar to learn the skills of an advocate. In the context of AI, structured support is needed to preserve skills development for junior practitioners.
- **Cost and equity:** Concerns were raised about the potential for increased costs, particularly for junior members. Many favour opt-in, tiered, or subsidised access while the market evolves, to avoid inequity where only better-resourced and established barristers can benefit.
- **Environmental impact:** Some members flagged the higher compute load of AI systems and urged proportionate use.

Adoption versus inaction

Members are clear that the greatest risk that presents with AI is inaction. Large legal firms are already deploying AI at scale, and many fear competitive disadvantage and loss of work if the independent Bar does not keep pace. Equally, incautious adoption carries its own hazards: reputational harm from inaccuracies; data protection exposure; erosion of training; vendor lock-in; and, the possibility of supplier failure.

What members asked for

- **Governance before scale:** Members called for: a Bar-approved, safe tool; a formal GDPR/privacy audit and upload policy; and, verification standards – to complement the PPC’s Ethical Guidance toolkit.
- **Training and support:** Structured onboarding; prompt-craft for end-to-end workflows suited to the Irish legal context; Microsoft Word-based templates; and, targeted support for less tech-confident members.
- **The right mix of tools:** Members suggested that AI should be used primarily as a documents assistant and first-draft accelerator, and that it should be evaluated alongside research-connected tools for authoritative case law retrieval.
- **Fair access and measured procurement:** There was support for procurement of AI tools managed by the Bar, consideration of subsidies for early-career counsel, and short, comparative testing of available tools before any long-term commitment.

What happens next

The Council is in the process of establishing an AI Oversight Committee. The Committee will provide a forum for open dialogue and exchange of ideas in relation to AI and the Bar. It will horizon-scan for new AI technologies and applications, liaise with partner AI providers to ensure that product development aligns with practitioner requirements and organisational values, and make recommendations to the Council regarding pilots, licensing, resourcing, partnerships, research projects, and submissions. The Committee will also advise the Council on issues in AI that are of particular priority in the current and future AI landscape, provide insights into trends, opportunities, and challenges as they may impact the legal sector, and advise members on ethical issues that may arise in relation to AI, referring such matters as appropriate to the PPC.

Conclusion

The trials confirm that legal-grade AI can already help barristers to do what they have always done: master large briefs swiftly; organise the evidence; and, draft with structure and purpose. They also confirm that research reliability, verification discipline, confidentiality, and fairness of access are non-negotiable. With careful governance and measured adoption, the Bar can embrace AI without compromising standards, training, or independence and, in doing so, maintain the profession’s competitiveness and service to the administration of justice.

Members will be kept informed as the AI Oversight Committee advances this work. In the meantime, the message from the trials is pragmatic and encouraging: used well, with human oversight and judgement firmly in the loop, AI is a documents assistant – not a substitute for an independent referral barrister.

THE GOVERNMENT'S LAWYER

Attorney General of Ireland Rossa Fanning SC speaks to *The Bar Review* about his career at the Bar, and the role of Attorney General.



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

For Attorney General of Ireland Rossa Fanning SC, a law career was a natural progression: “I always enjoyed public speaking. I developed an interest in debating when I was in secondary school. I was also fairly interested in politics and current affairs. And of course, periodically, there are always court cases that receive extensive media coverage, so I would have followed the business of the courts from reading the newspapers and watching the news, even as a child. Law seemed like a natural fit for me, even though I didn’t know an awful lot about it”.

Fanning graduated with a BCL degree from UCD and went straight to the King’s Inns, while simultaneously studying for an LLM degree by dissertation at UCD. His intention was to commence a career at the Bar, and he was due to begin devilling

for Mr Justice Brian Murray, now a judge of the Supreme Court, but on the advice of Prof. Paul O’Connor, then Dean of Law at UCD, he decided to pursue further education in the US. He deferred entry to the Bar to take up a Fulbright Scholarship at Michigan Law School. He says that the year in Michigan had a significant impact on him personally: “It was a wonderful year. Having grown up in Dublin, gone to school in Dublin, and attended UCD and the King’s Inns, there was always a high degree of familiarity about the environment, whereas I think I learned new things about myself going into an environment where I didn’t know anybody and had to start from zero. There is an enormous benefit in immersing yourself in a different jurisdiction, meeting different people, understanding a different culture and different values”.

The Attorney General notes that he made friends while studying abroad that he still keeps in touch with today. His time in America also led to some serious reflection on the direction his career might take, as he was offered the opportunity to work for leading US law firms, roles that carried a salary far in excess of what a young barrister in Ireland might expect to earn: “It was difficult not to attach some weight to the remuneration package that was on offer, but I look back and I’m pleased that I never made a decision on the basis of money. I made the decision to return here to devil on the basis that in my heart, that was what I wanted to do”.

He also felt that the Bar offered attractions that even the largest law firms couldn’t match: “I was attracted to the oral advocacy dimension of becoming a barrister. I think I was always quite a driven and determined person, and I was also attracted to the independence of being self-employed. When I was offered a job in Sullivan Cromwell in New York, I met a partner who was co-head of the litigation department, and he explained

that his team was defending Microsoft in antitrust litigation being brought by the federal government. In economic terms, it was the largest lawsuit in the world at the time. But what occurred to me was that I would be joining a team of 20 or 30 lawyers, and I would be at the very bottom rung of the ladder, whereas the option to come back to Dublin and become a barrister meant that even if I was going to appear in smaller cases in the District Court, I would at least be running the case myself".

Therefore, after a summer in Brussels working for another American firm, he returned to Dublin and began his career devilling for the now President of the High Court, Mr Justice David Barniville, and says he's never regretted his decision.

Career at the Bar

While profiles of the Attorney General tend to focus on his career in commercial law, he points out that he acted for a wide variety of clients, especially in the earlier part of his career: "In my formative years as a junior counsel, I did personal injury work, particularly on the defence side. I appeared in a couple of tribunals of inquiry. I did quite a lot of professional negligence work. I also had a faculty position in the law school in UCD, teaching constitutional law and company law. When the economic crash occurred in 2008, there was a significant expansion in corporate insolvency work. I got a couple of breaks in the larger corporate insolvency cases at the outset of the recession. That certainly led to a critical mass of work in the insolvency and banking field in the years that followed".

Like many barristers, the decision to take silk in 2016 led to a further evolution in his practice: "There was less insolvency. The economy had significantly picked up. There were more commercial disputes, and I also began to do more media work for newspapers, but also for technology companies, including Google and Meta, addressing legal questions that didn't exist

at the time I came to the Bar. I think the common experience of all practitioners with a long career is that their career will evolve in different ways. I also appeared in significant disputes representing Government Ministers and semi-state bodies, so although I was better known for private law work, I was also frequently appearing in judicial review proceedings by the time I was asked to serve as Attorney General".

A constitutional role

The Attorney General took up his current role in December 2022. He is very cognisant of the common law lineage of the role, and of both its international context, and the specific conditions under which the role exists in Ireland: "The office is a historic one, and it's a feature of common law jurisdictions. You will find an attorney general in Australia, you'll find one in London, you'll find one in Washington DC, but you won't find one in France or Germany. Article 30 of the Constitution stipulates that I am the adviser to the Government in matters of law and legal opinion. At a practical level, I am the apex lawyer for Government as a whole".

While there are several elements to the role, he feels that in many ways the most important is in the sphere of legislation: "Because our political system is a parliamentary system in which the Government, by definition, must have a majority, in practical terms, very few Private Members' Bills are enacted. Almost all the legislation that is enacted is Government legislation, and almost all of that legislation is drafted in this office".

Another significant element, and one more readily associated with the barrister profession, is in the litigation sphere (see panel). The role also encompasses an important advisory function, including attending weekly Cabinet meetings and engaging regularly with Government Ministers and Department officials. The Attorney General is also an *ex officio* member of the Judicial Appointments Commission, and a member of the

Advisory Committee on the Grant of Patents of Precedence.

Finally, there is the public-facing element to the role, which involves representing the Office of the Attorney General at conferences, conferring ceremonies, and legal events.

Representing Ireland

While the Attorney General's tenure has not (thankfully) been marked by the turbulence of economic crash or pandemic, the legal elements of the business of Government are many. He points out that about 100 Acts of the Oireachtas have been enacted since his appointment, 48 of those in 2024 alone, including significant multi-year projects that culminated in 2024, such as the Gambling Regulation Act 2024, the Planning and Development Act 2024, and the Health (Assisted Human Reproduction) Act 2024.

One case that stands out to the Attorney arose from President Higgins' decision to refer the Judicial Appointments Commission Bill to the Supreme Court in October 2023, the first Article 26 reference in almost two decades. The Attorney General made the decision to lead the State's defence of the constitutionality of that Bill: "Historically, Article 26 references are infrequent, but in a sense, they are regarded as the Blue Riband event of constitutional law, as it is a sparingly exercised power of the President to refer a Bill, and the written submissions, oral hearing, and indeed the Supreme Court's determination must all be conducted within a very compressed period of 60 days, placing pressure on all the participants in that process. Appearing at a Council of State meeting to advise the President on the constitutionality of a Bill and subsequently appearing in the Supreme Court to lead the defence of that Bill is, in constitutional terms, perhaps the high point of the function and role of any attorney general. And our position was ultimately vindicated in the Supreme Court's judgment".

Another significant event was his appearance on behalf of the State at the International Court of Justice (ICJ) in The Hague in February 2024 in the case regarding Israel's actions in the Occupied Palestinian Territory, including East Jerusalem. On one level, this was simply part of his responsibility for the conduct of the State's litigation before international courts and tribunals. For example, in September, he travelled to Luxembourg to present Ireland's submissions before the Grand Chamber of the Court of Justice of the European Union in proceedings brought by the Commission against Hungary, which the State elected to intervene in.

It's fair to say that the proceedings in The Hague were of a different order, however, not least because of the enormous public interest, and the fact that the proceedings were broadcast globally. He points out that his submission was very much a team effort: "The collaboration with the legal division in the Department of Foreign Affairs and Trade, headed by Declan Smyth, who has

enormous expertise in international law, was a very important part of the advocacy role that I ultimately fulfilled. Advisory counsel in my own office were also of enormous assistance to me in refining drafts of what ultimately became the oral submission that I delivered".

The global broadcast of the submission had both a personal and a wider impact: "The submissions that I made struck a chord over and above any other litigation that I've been involved in, perhaps because of, obviously, the significant public concern in this jurisdiction and beyond about issues concerning Israel and Palestine. And of course, it was a relatively rare occasion as a barrister in which my oral submissions were widely broadcast. It raises an interesting point about the general merit of broadcasting certain types of legal proceedings so that the administration of justice is more visible and capable of being better understood, which I know is something that's on the Chief Justice's agenda. What's much more important is the fact that it was hopefully a clear



Litigation in principle

The Attorney General is responsible for all litigation involving the State. While over time, elements of that responsibility have devolved to the Director of Public Prosecutions and the State Claims Agency, his office manages all constitutional litigation, and many other cases in areas such as property and employment rights. Given the sheer number of cases to be managed, prioritisation is essential: "We have an internal protocol by which about 150 cases are on the sensitive file list. In respect of those cases, my level of personal oversight is higher than the balance, and I would personally approve any significant procedural step that is taken in relation to those cases".

The issue of how the State's litigation is conducted is something the Attorney General has taken a particular interest in, and in 2023 he published the State Litigation Principles.

While the development of these principles was an existing strategic objective of his office, like many other issues it was delayed by the pandemic, and it was a project the Attorney General was personally keen to advance: "I felt that arising out of occasional controversy about how the State had conducted itself in the context of litigation, it was important that there was a set of principles that were publicly available, and that both Government in the broader sense, and external parties, including those engaged in litigation against the State, would all have an understanding of the central principles that the State had regard to when litigating".

He points out that the ability to take a case against the State is a fundamental part of our democratic structures: "It is an intended design feature of our system of Government that we

have independent courts, that where people are dissatisfied with decisions made by Government or by other public bodies, they can challenge those decisions".

"The State Litigation Principles are about trying to ensure that we have high standards of behaviour at an ethical level within Government, and also that other participants in litigation understand the role of litigation from the perspective of State actors. The Principles themselves are not particularly radical – they are more in the nature of a codification of existing best practices. But they do, in one place, set down a simple, pithy set of guidelines that Government ought to have regard to."

He says he has been heartened by the response to the Principles since their publication, both within Government and externally.

articulation of Ireland's moral position on issues that are of enormous concern to Irish society as a whole".

Role of law in society

The wider issue of public understanding of the law, of justice systems, and indeed democracy itself seems all the more pertinent as this interview takes place the morning after the murder of US activist Charlie Kirk. While Ireland thankfully has not faced a similar situation in recent history, threats against politicians and public figures are increasing, and online mis- and disinformation regarding the law and justice systems are all too common. The Attorney General says this is something he reflects on constantly, and feels it's very important to highlight where the Irish Government stands on the rule of law: "As the legal adviser to the Government, one thing that has been an incredible positive is that the Governments I have served over the last three years have been entirely adherent to the rule of law. In Ireland, no Irish Government would contemplate defying a court order, for instance. When the Supreme Court decides that legislation is unconstitutional, or where the Supreme Court

decides that a constitutional right has been breached, that is accepted by Government, and where appropriate, remedial legislation is introduced to address that finding. In any modern democracy, that is an essential starting point".

Discussions of public perceptions are trickier: "I do believe that Irish people in general are respectful of the law and are law abiding. However, there are challenges in the modern era with social media, which facilitates a rush to judgement. I'm often troubled by criticisms on social media of individual judicial decisions, but that is the nature of the world we live in. Unfortunately, there will always be people that are willing to criticise a decision or a process without taking the time to engage with or understand its true nature".

Role of the Bar

The Attorney General is of course very cognisant of the role played by barristers in the work of his office: "I'm fortunate to work with some brilliant advisory counsel here in the Office of the Attorney General and some superb solicitors in the Chief State Solicitor's Office. But the reality of the situation is that the State is represented by

barristers in every significant court case. I do think there has been, at times, a failure in some quarters to properly value the service provided by barristers to the State. But in the context of my role, I have often taken the opportunity to emphasise it within Government".

He also values his continuing strong links to The Bar of Ireland: "I've really appreciated my relationship with the current Chair, Seán Guerin SC, and his predecessor, now Ms Justice Sara Phelan. I've had a really good insight through my engagement with them over the last three years as to how hard they work on behalf of the profession".

In a broader sense, however, the links with the Bar are more personal: "The Bar, if you're doing it right, is much more than a career. It is a vocation, and it does consume an awful lot of your life. If you are committed to the career, it does unavoidably involve long hours, and you develop a bond with many of the barristers you work alongside over a long period of years. It is important to me that I retain those links and I fully intend to return to the Bar to resume private practice at some point in the future when I cease to hold my current role".

— "I fully intend to return to the Bar to resume private practice at some point in the future when I cease to hold my current role."



UPDATE

VOLUME 30 / NUMBER 4 / OCTOBER 2025

A directory of legislation, articles and acquisitions received in the Law Library from May 22, 2025, to September 18, 2025

Judgment information supplied by Vlex Justis Ltd.

Edited by Vanessa Curley, Susan Downes and Clare O'Dwyer, Law Library, Four Courts.

ADMINISTRATIVE LAW

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Craig, P. *Administrative Law* (10th ed.). London: Sweet & Maxwell, 2025 – M300
Whyte, G. *Social Inclusion and the Legal System: Public Interest Law in Ireland* (3rd ed.). Dublin: Institute of Public Administration, 2025 – M31.C5

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Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2025 – SI 342/2025

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BANKING

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Central Bank Act 1942 (Section 32D) (Certain Financial Vehicles Dedicated Levy) (Amendment) Regulations 2025 – SI 292/2025

Central Bank Act 1942 (Service of Notices and Other Documents) (Amendment) Regulations 2025 – SI 302/2025

Central Bank Act 1942 (Section 32D) Regulations 2025 – SI 358/2025

BROADCASTING

Media regulation – Judicial review – Vires of the Commission – Online Safety and Media Regulation Act 2022 – Audiovisual Media Services Directive (AVMSD) – Digital Services Act (DSA) – Broadcasting Act 2009 – Applicant seeks to challenge the Commission's decision to adopt provisions of an Online Safety Code – Whether the Commission's adoption of the Code was *ultra vires* and conflicted with the DSA – 29/07/2025 – [2025] IEHC 442

X Internet Unlimited Company v Coimisiún Na Meán

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Construction law – Enforcement order – Adjudicator's jurisdiction – Construction Contracts Act 2013, s.6 – Employer seeks enforcement of adjudicator's decision – Whether the dispute relates to a payment provided for under the construction contract – 01/09/2025 – [2025] IEHC 469

Connaughton v Timber Frame Projects Limited trading as Timber Frame Ireland

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Hoy, K. Charities selling real estate: navigating the choppy waters of powers of sale, with some respite provided by the Charities (Amendment) Act 2024. *Conveyancing and Property Law Journal* 2025; 2: 28-36

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COMMERCIAL LAW

Commercial law – Declaration order – Expert determination process – Legal Services Regulation Act 2015 – Plaintiff seeks a declaration limiting the expert's discretion in determining the Earn-Out Statement – Whether the court should interfere in the expert determination process agreed by the parties – 23/05/2025 – [2025] IEHC 296

Sunward Holdings Limited v Teqnion AB
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Caraglass Limited [Trading as Zeeko] v Minister for Education

Company law – Declaration of restriction – Restriction of directors – Companies Act 2014, s.819 – Applicant seeks an order under s.819(1) of the Companies Act

2014 declaring that the respondents shall not be appointed or act as directors or secretaries of a company for five years – Whether the respondents acted responsibly in relation to the conduct of the affairs of Downtul Limited within the meaning of s.819(2) of the Companies Act 2014 – 24/06/2025 – [2025] IEHC 358

Downtul Limited [in liquidation] v Companies Act

Property law – Dismissal order – Fraud and misappropriation – Companies Act 2014 – Plaintiffs seek to recover losses from defendants for alleged fraud and misappropriation of company assets – Whether the defendants acted illegally, oppressively, or contrary to the best interests of the company – 30/07/2025 – [2025] IEHC 435

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Galvin v DPP

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Administrative law – Costs order – Duty of care – Plaintiffs seek costs of appeal and recognition of duty of care – Whether the plaintiffs were entitled to the costs of the appeal despite not succeeding on every issue – 25/06/2025 – [2025] IESC 28

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Corcoran v Eassda Group Limited and ors, Fennell v Corcoran and anor, Cororan and anor v Promontoria and anor

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Donnan v Parole Board

Civil procedure – Costs order – Costs – Legal Services Regulation Act 2015, s.169 – Respondent seeks costs of Circuit Court proceedings and appeal – Whether to award costs to the second named respondent against the appellants – 31/07/2025 – [2025] IEHC 445

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Everyday Finance DAC v Bradley and ors (PUST Malcomson Law Solicitors) and anor

Civil procedure – Costs – Legal Services Regulation Act 2015, s.169 – Petty Sessions (Ireland) Act 1851, s.10 – Applicant seeks costs against the respondent for the appeal and High Court proceedings – Whether the DPP is entitled to costs against Mr G – 18/07/2025 – [2025] IECA 146

G.(A.) v A Judge of the District Court

Judicial review – Order for costs – Costs of proceedings – Legal Services Regulation Act 2015, ss.168,169 – 0.99 RSC – Applicant seeks a small order for costs in his favour – Whether the applicant should be fixed with costs for the application where the respondent and notice party contested the application – 03/06/2025 – [2025] IEHC 314

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Civil procedure – Award of costs – Legal Services Regulation Act 2015, ss.168,169 – Rules of the Superior Courts 1986, 0.99, rr.2,3 – Appellant seeks to contest the provisional view on costs – 06/06/2025 – [2025] IECA 94

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Propiteer Ireland Limited v Castlehaven Property Finance Designated Activity Company and ors

Construction law – Costs order – Costs recovery – Construction Contracts Act 2013, s.6 – Legal Services Regulation Act 2015, s.169 – Applicant seeks to recover its costs up to the date the respondent disclosed its intended defence – Whether the respondent is entitled to recover its costs as against the applicant – 18/05/2025 – [2025] IEHC 339

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Civil procedure – Costs order – Summary judgment – Legal Services Regulation Act 2015, ss.168,169 – Rules of the Superior Courts, 0.99 – Defendant seeks costs of proceedings due to alleged unreasonable application for summary judgment – Whether the defendant has a bona fide defence to the proceedings – 31/07/2025 – [2025] IEHC 439

Xerotech Limited v Ayro Incorporated

Civil procedure – Costs order – Discovery application – Legal Services Regulation Act 2015, ss.168,169 – Rules of the Superior Courts 1986, 0.99, rr.2,3 – Plaintiff seeks to postpone determination of discovery costs until jurisdiction motions are heard – Whether CCC Essen should be granted its costs of successfully opposing the discovery motions – 30/10/2024 – [2024] IEHC 759

Yasar v CCC Essen Digital GMBH and anor, Talibov v CCC Essen Digital GMBH and anor, Senen v CCC Barcelona Digital Serices SLU and anor

Civil procedure – Costs order – Jurisdiction motions – Legal Services Regulation Act 2015, ss.168,169 – Rules of the Superior Courts 1986, 0.99, rr.2,3 – Defendants seek costs against plaintiffs for jurisdiction motions – Whether the High Court has jurisdiction to hear and determine the claims against the first-named defendants

– 12/05/2025 – [2025] IEHC 288

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District Court (Guardianship) Rules 2025 – SI 220/2025

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District Court Districts and Areas (Amendment) and Variation of Days and Hours (Nenagh, Thurles) No. 3. Order 2025 – SI 231/2025

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Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2025 – SI 410/2025

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Criminal law – Receivership order – Appointment of receiver – Proceeds of Crime Acts 1996 and 2016, ss.3(1),7 – Applicant seeks appointment of receiver over property – Whether the High Court satisfied the standard of proof – 15/09/2025 – [2025] IECA 188

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Criminal law – Review of sentence – Unduly lenient sentence – Criminal Justice Act 1993, s.2 – Misuse of Drugs Act 1977, ss.15A,26 – Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, s.7 – Director of Public Prosecutions seeks a review of the respondent's sentence – Whether the sentence for money laundering and drug offences was unduly lenient given the mitigating factors and respondent's rehabilitation – 29/07/2025 – [2025] IECA 180

DPP v Adeagbo

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DPP v B.(N.)

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DPP v C.(O.)

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DPP v Dowling

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Criminal law – Retrial order – Exclusion of evidence – Criminal Procedure Act 2010, s.23 – Misuse of Drugs Act 1977, s.15 – Respondent seeks a retrial after acquittal – Whether the trial judge erroneously excluded compelling evidence – 11/07/2025 – [2025] IESC 32

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DPP v K.(B.)

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DPP v Lynn

Criminal law – Review order – Undue leniency – Criminal Justice Act 1993, s.2 – Road Traffic Act 1961, s.112 – Applicant seeks a review of sentences imposed on respondents for undue leniency – Whether the sentence imposed was unduly lenient so that the divergence between the sentence imposed and that which ought to have been imposed amounts to an error of principle before this Court may justifiably intervene – 17/07/2025 – [2025] IECA 172

DPP v Lyons and ors

Criminal law – Custodial sentence order – Severity of sentence – Criminal Law (Rape) (Amendment) Act 1990, s.2 – Appellant seeks to appeal the severity of the sentence imposed by the Circuit Criminal Court for charges of sexual assault – Whether the sentence imposed by the lower court on the appellant for sexual assault offences, committed when the appellant was a child, was appropriate given the mitigating circumstances, including the appellant's age at the time of the offences and rehabilitation – 15/07/2025 – [2025] IECA 185

DPP v M.(B.)

Criminal law – Re-sentence order – Undue leniency – Criminal Justice Act 1993, s.2 – Criminal Justice (Theft and Fraud Offences) Act 2001, s.14 – Applicant seeks a review of the sentence on grounds of undue leniency – Whether the sentence was unduly lenient and should be quashed and re-sentenced – 16/05/2025 – [2025] IECA 165

DPP v McGovern

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DPP v McLoughlin

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DPP v Murphy

Criminal law – Sentence reduction order – Severity of sentence – Criminal Justice Act 1999, s.29 – Appellant seeks reduction of sentence severity – Whether the trial judge erred in principle in the assessment of the sentence imposed – 07/04/2025 – [2025] IECA 119

DPP v N.(S.)

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DPP v Noonan

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Criminal law – Sentence appeal – Severity of sentence – Criminal Justice (Theft and Fraud Offences) Act 2001, ss.4,14 – Appellant seeks reduction of sentence due to mitigating circumstances – Whether the appeal should be refused due to lack of error in principle with the headline sentence and mitigatory factors – 15/07/2025 – [2025] IECA 176

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Contract law – Substitution order – Substitution of plaintiff – 0.15, r.14 RSC – 0.17, r.4 RSC – Appellant seeks to overturn the High Court decision allowing substitution of Everyday Finance DAC as plaintiff – Whether the settlement agreement extinguished the 2017 judgment – 28/05/2025 – [2025] IECA 124

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Judicial review – Strike out proceedings – Abuse of process – Rules of the Superior Courts, 0.19, r.28 – Defendants seek to strike out plaintiff’s claim due to procedural impropriety – Whether the plaintiff’s proceedings should be struck out for abuse of process – 09/09/2025 – [2025] IEHC 486

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and Criminal Law (Miscellaneous Provisions) Act 2020, s.15 – Supreme Court of Judicature (Ireland) Act 1877, s.28 – Plaintiff seeks summary judgment against the defendant for the outstanding loan amount – Whether the plaintiff is the ultimate successor in title to the Bank of Scotland Ireland Ltd – 29/05/2025 – [2025] IEHC 315

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Civil liability – Set aside order – Third-party notice delay – Civil Liability Act 1961, s.27 – Rules of the Superior Courts, O.16, r.1 – Defendant seeks to set aside the third-party notice against the first-named third party – Whether the statutory obligation to serve the third-party notice as soon as is reasonably possible was met – 30/07/2025 – [2025] IEHC 438

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Judicial review – Certiorari order – *Ultra vires* – Courts Act 1981, s.17 – Legal Services Regulation Act 2015, s.141 – Appellant seeks to quash the adjudication order of the County Registrar – Whether the County Registrar applied s.141 of the Legal Services Regulation Act 2015 – 20/05/2025 – [2025] IECA 110

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Property law – Possession order – Family Home Protection Act 1976 – Plaintiff seeks possession of the property due to unpaid loans – Whether the loans secured on the property are valid under the Family Home Protection Act 1976 – 03/06/2025 – [2025] IEHC 326

Everyday Finance Limited v Marsh

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Residential tenancies – Strike out order – 21-day appeal period – Residential Tenancies Act 2004, s.123 – Interpretation Act 2005, s.25 – Respondent seeks to strike out the appellant's appeal as out of time – Whether the appeal period commenced on the date the determination order was posted or when received – 11/08/2025 – [2025] IEHC 477

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remedy – 20/05/2025 – [2025] IEHC 286
Kehoe v Promontoria [Aran] Limited and anor

Property law – Attachment and committal order – Contempt of court – Courts and Courts Officers Act 1995, s.34 – Rules of the Superior Courts, O. 41, r.8 – Plaintiff seeks attachment and committal of first-named defendant for breach of High Court order – Whether the first-named defendant should be committed to prison for contempt of court – 16/05/2025 – [2025] IEHC 307

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Tax law – Dismissal order – Group relief entitlement – Taxes Consolidation Act 1997, s.411 – Double Taxation Treaty between Ireland and the United States of America – Appellants seek entitlement to group relief under s.411 of the Taxes Consolidation Act 1997 – Whether the taxpayers' parent company was liable to tax in the US and entitled to group relief under s.411 of the Taxes Consolidation Act – 27/05/2025 – [2025] IECA 123

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TORT

Civil liability – Stay order – Sequencing of pleadings – Liability for Defective Products Act 1991, s.5 – Civil Liability and Courts Act 2004, s.13 – Defendant seeks a stay pending appeal on the High Court order requiring delivery of defence – Whether the defendant should deliver a defence before the plaintiff identifies a defect in the breast implants – 16/05/2025 – [2025] IECA 111
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HSE v DD

WARDS OF COURT

Mental health law – Discharge from wardship – Capacity to make decisions – Assisted Decision-Making (Capacity) Act 2015 – Respondent seeks discharge from wardship and appointment of a decision-making representative – Whether the respondent lacks capacity to make decisions regarding his personal welfare and property and affairs – 08/05/2025 – [2025] IEHC 293
Re: N. [a ward of court]

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[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.

Animal Health and Welfare (Ban on Fox Hunting) Bill 2025 – Bill 30/2025 [pmb] – Deputy Ruth Coppinger and Deputy Paul Murphy
Animal Health and Welfare (Welfare of Pigs) Bill 2025 – Bill 41/2025 [pmb] – Deputy Paul Murphy, Deputy Ruth Coppinger and Deputy Richard Boyd Barrett
Broadcasting (All Ireland Service) (Amendment) Bill 2025 – Bill 37/2025 [pmb] – Deputy Aengus Ó Snodaigh and Deputy Joanna Byrne
Compulsory Purchase Order Bill 2025 – Bill 48/2025 [pmb] – Deputy James Geoghegan
Copyright and Related Rights (Amendment) Bill 2025 – Bill 33/2025
Coroners (Amendment) Bill 2025 – Bill 45/2025 [pmb] – Deputy Mark Ward and Deputy Pádraig Mac Lochlainn
Criminal Justice (Terrorist Offences) (Amendment) Bill 2025 – Bill 34/2025
Disregard of Historic Offences for Consensual Sexual Activity Between Men Bill 2025 – Bill 40/2025 [pmb] – Deputy Aengus Ó Snodaigh, Deputy Catherine Connolly, Deputy Ged Nash, Deputy Pádraig Rice, Deputy Paul Murphy and Deputy Roderic O'Gorman
Environment (Miscellaneous Provisions) Bill 2025 – Bill 53/2025
Finance (Local Property Tax and Other Provisions) (Amendment) Bill 2025 – Bill 32/2025
Forty-first Amendment of the Constitution (Voting Rights in Presidential Elections) Bill 2025 – Bill

36/2025 [pmb] – Deputy Peadar Tóibín, Deputy Paul Lawless and Deputy Michael Collins
Health (Amendment) Bill 2025 – Bill 46/2025
Health (Availability of General Practitioner Services) Bill 2025 – Bill 43/2025 [pmb] – Deputy Marie Sherlock
Industrial Relations (Boycott of Joint Labour Committees) Bill 2025 – Bill 25/2025 [pmb] – Deputy George Lawlor
Occupying Power (Securities and Handling of Settlement Goods) Bill 2025 – Bill 50/2025 [pmb] – Deputy Duncan Smith
Organisation of Working Time (Leave for Health Screening Purposes) Bill 2025 – Bill 42/2025 [pmb] – Deputy Duncan Smith
Planning and Development (Amendment) Bill 2025 – Bill 39/2025
Planning And Development (Exempted Development – External Wall Insulation) Bill 2025 – Bill 26/2025 [pmb] – Deputy Paul Murphy, Deputy Richard Boyd Barrett and Deputy Ruth Coppinger
Proceeds of Crime and Related Matters Bill 2025 – Bill 44/2025
Protection of Employees (Employers' Insolvency) (Amendment) Bill 2025 – Bill 28/2025
Residential Tenancies (Amendment) Bill 2025 – Bill 35/2025
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Planning and Development (Amendment) Bill 2025 – Bill 39/2025 – Committee Stage
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Statute Law Revision Bill 2024 – Bill 78/2024 – Committee Stage
Supports for Survivors of Residential Institutional Abuse Bill 2024 – Bill 28/2024 – Committee Stage – Report Stage – Passed by Dáil Éireann

Progress of Bill and Bills amended in Seanad Éireann during the period May 22, 2025 to September 18, 2025

Domestic Violence (Amendment) Bill 2024 – Bill 2/2024 – Committee Stage
Planning and Development (Amendment) Bill 2025 – Bill 39/2025 – Committee Stage
Residential Tenancies (Amendment) Bill 2025 – Bill 35/2025 – Committee Stage
Social Welfare (Bereaved Partner's Pension and Miscellaneous Provisions) Bill 2025 – Bill 7/2025 – Committee Stage
Supports for Survivors of Residential Institutional Abuse Bill 2024 – Bill 28/2024 – Committee Stage – Report Stage

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ARTIFICIAL INTELLIGENCE: WHAT HAPPENS WHEN AI GOES ROGUE?

“Every lawyer knows that citing fake cases in a court filing is a terrible decision.”¹



Tomás Keys BL

Since OpenAI released ChatGPT in November 2022, the global use of artificial intelligence (AI) has grown exponentially. As of July 2025, OpenAI reported over 500 million weekly active users, generating 2.5 billion prompts daily.² In May 2025, the Professional Practices Committee (PPC) of The Bar of Ireland published guidance for members on the ethical use of AI in legal practice.³ The guidance outlined the difference between discriminative AI and generative AI:

“Discriminative AI performs computations based on input data and is entirely dependent on learned patterns to provide results.

As such, discriminative AI is not capable of producing ‘new’ data. Instead, discriminative AI is only capable of classifying data rather than generating new content.

[...]

Generative AI is trained by uploading millions of documents into the system, thereby allowing the AI to ‘learn’ from these documents and produce text in response to prompts from the user. In the case of litigation, generative AI is capable of producing text-based documents such as written submissions and case summaries in a very short timeframe”.

While the guidance recognised the potential to fundamentally change the legal professions, it also identified a wide variety of risks. One such risk arises from the phenomenon known as ‘AI hallucination’, which can arise from the use of generative AI. Microsoft Copilot⁴ describes AI hallucinations as follows:

“AI hallucinations refer to instances where artificial intelligence systems, particularly those using large language models (LLMs), generate responses that contain false or misleading information presented as fact”.

In order to assess the accuracy of generative AI in a legal context, law researchers in Stanford University conducted a study across four LLMs where they submitted over 200,000 legal queries in each LLM and measured the accuracy of the responses against

authentic legal databases.⁵ The study found hallucination rates among the four LLMs ranged from 58% to 88%.

This article will focus on the risks to the administration of justice of the improper use of generative AI tools. It will also explore some of the principles that have been identified by the courts in dealing with false materials generated by AI, and suggest ways that practitioners can avoid AI hallucinations being submitted to the court.

Mata v Avianca

One of the earliest instances of lawyers being criticised for using generative AI tools in legal submissions was the judgment of Federal Judge Castel J. in the Southern District of New York in *Mata v Avianca*.⁶ The plaintiff claimed that he had suffered personal injury when a metal cart on the defendant's airline had struck his knee. The defendant brought an application to dismiss the proceedings as being statute barred. The plaintiff's lawyers filed written legal submissions, which contained numerous citations that the defendant's lawyers were unable to locate. Of the cases that they were able to locate, the defendant's lawyers informed the judge that those cases "do not stand for the propositions for which they are cited".⁷

It transpired that the lawyer who had prepared the written legal submission had used ChatGPT, which generated the false citations and cases. The lawyer's evidence to the court was that he was: "...operating under the false perception that this website [i.e., ChatGPT] could not possibly be fabricating cases on its own".⁸

Castel J. identified some of the harms that flow from the submission of fake judgments:

"The opposing party wastes time and money in exposing the deception. The Court's time is taken from other important endeavours. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the [...] judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity".

Ultimately, the court fined the plaintiff's lawyers \$5,000 and ordered them to write to each judge falsely identified as the author of the fabricated judgments, enclosing the relevant filings, hearing transcript, and the court's written judgment.

Growth of AI hallucinations in litigation

While Castel J. described what occurred in *Mata* as unprecedented, the

Since OpenAI released ChatGPT in November 2022, the global use of artificial intelligence (AI) has grown exponentially.

misuse of AI in litigation has continued. According to French academic Damien Charlotin, since the delivery of the *Mata* judgment, over 300 judicial decisions across 18 countries have criticised the use of false citations or evidence, many linked to AI hallucinations.⁹ Over 200 of those decisions were cases in the US.

For example, in the case of *Johnson v Jefferson*,¹⁰ Manasco J. of the US District Court of the Northern Division of Alabama made a sanctions order on July 23, 2025, against three named lawyers arising from AI hallucinations generated from ChatGPT. The judge was of the view that reprimands and modest financial sanctions imposed in other cases in the United States where false citation have been discovered are insufficient:

"As a practical matter, time is telling us – quickly and loudly – that those sanctions are insufficient deterrents. In principle, they do not account for the danger that fake citations pose for the fair administration of justice and the integrity of the judicial system.

[...]

If fines and public embarrassment were effective deterrents, there would not be so many cases to cite".

The judge ordered, *inter alia*, that the three named lawyers provide a copy of the judgment and order to every lawyer in their firm, to every client they have, and to every opposing counsel and presiding judge in every case where they are on record. Copies of the judgment were also delivered to the various state regulatory bodies.

False citations in other common law jurisdictions

On April 29, 2025, the Chief Justice of the Federal Court of Australia issued a notice to the profession inviting submissions from the legal professions and litigants in person on the use of AI in legal proceedings. Pending further guidance, the Chief Justice stated that:

"...it is also expected that parties and practitioners disclose such use if required to do so by a Judge or Registrar of the Court".¹¹

In England & Wales, the inclusion of false citations in written legal submissions, prepared by counsel in one case and by a solicitor in a second case, were the subject of a hearing before the President of the King's Bench Division of the High Court under the *Hamid*¹² jurisdiction (this jurisdiction relates to the Court's inherent power to regulate its own procedures and to enforce duties that lawyers owe to the Court, and was established in the case *R. (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070).

In the case of *Ayinde v Haringey LBC*,¹³ the claimant brought judicial review proceedings against the local authority alleging a breach of its housing duties owed to him. The respondent's solicitors identified five cases cited in the grounds for judicial review, which they were unable to find, and which in fact did not exist.

In response to the correspondence from the respondent's solicitors, the claimant's solicitors accepted that while there were some errors in the citations that could easily be explained, they then failed to explain them and described the errors as cosmetic. The Court deemed the assertion that the citations are merely cosmetic errors as "a grossly unprofessional categorisation". Further, the Court did not accept the explanations from counsel during the hearing that these were minor citation errors. Having reviewed the non-existent case law, Ritchie J. summarised the issue at paragraph 63:

"[Counsel] had moved on from fake High Court cases to fake Court of Appeal cases. I have no difficulty with the submission that the respondent local authority had to ensure fair treatment of applicants in the homelessness review process, but I do have a substantial difficulty with members of the Bar who put fake cases in statements of facts and grounds".

At paragraph 70:

"I consider that it is self-evident that both counsel and solicitors should never knowingly mislead the Court. Producing submissions based on fake cases is misleading the Court. The justice of the case requires me to make a wasted costs order and I shall do so".

In addition to making a wasted costs order against counsel and her solicitors, the judge gave a direction that the judgment be referred to the relevant regulatory authorities.

In the case of *Al Haroun v. Qatar National Bank*,¹⁴ Dias J. dismissed a motion by agreement between the parties. The court found that 18 of the 45 cases that had been cited by the plaintiff's solicitor in did not exist, and in the circumstances referred the papers on for further consideration. One of the fake authorities cited to Dias J. was a judgment that was attributed to Dias J.

In May 2025, the Professional Practices Committee (PPC) of The Bar of Ireland published guidance for members on the ethical use of AI in legal practice.

On foot of the *Hamid* referral, the President of the King's Bench Division, Sharp P., delivered a comprehensive judgment in *Ayinde v Haringey LBC*¹⁵ on June 6, 2025, on behalf of the divisional court.

In *Ayinde*, counsel admitted in her witness statements that she had acted negligently and apologised to the court; however, she denied that she had acted improperly and maintained that the underlying legal principles for which the cases were cited were sound. She admitted that there was a separate incident in the County Court where she had put false material before that Court in her grounds of appeal and written submission. At paragraph 68, Sharp P. stated:

"On the material before us, there seem to be two possible scenarios. One is that [Counsel] deliberately included fake citations in her written work. That would be a clear contempt of court. The other is that she did use generative artificial intelligence tools to produce her list of cases and/or to draft parts of the grounds of claim. In that event, her denial (in a witness statement supported by a statement of truth) is untruthful. Again, that would amount to a contempt. In all the circumstances, we consider that the threshold for initiating contempt proceedings is met".

Ultimately, the Court decided not to initiate contempt proceedings against counsel due to the specific circumstances of the case, but warned that the decision not to initiate contempt proceedings was not a precedent.

In *Al Haroun*, the solicitor admitted that he had relied on the research of his lay client, who had provided the false citations without independently verifying the authorities. In a witness statement, the client accepted full responsibility for what occurred. The Court noted that counsel had been provided with the materials and while he advised against the bringing of the motion, he does not appear to have advised on the accuracy of the authorities. Counsel did not participate further in the motion, which was run by the solicitor. At paragraph 81, Sharp P. stated:

"As to [the solicitor] ... there was a lamentable failure to comply with the basic requirement to check the accuracy of material that is put before the

court. A lawyer is not entitled to rely on their lay client for the accuracy of citations of authority or quotations that are contained in documents put before the court by the lawyer. It is the lawyer's professional responsibility to ensure the accuracy of such material. We are satisfied that [the solicitor] did not realise the true position. It is striking that one of the fake authorities that was cited to Dias J was a decision that was attributed to Dias J. If this had been a deliberate attempt to mislead the court, it was always going to fail. The threshold for the initiation of contempt proceedings is, accordingly, not met. [The solicitor] has referred himself to the Solicitors Regulation Authority. We will also make a referral".

In an appendix to the judgment, the Court listed a number of examples of where erroneous material that had been generated by AI had been put before the Court. The final judgment referred to therein was *Ko v Li*,¹⁶ where Myers J. summarised the duties that a lawyer has to the court at paragraphs 15-22:

"All lawyers have duties to the court, to their clients, and to the administration of justice.

It is the lawyer's duty to faithfully represent the law to the court.

It is the lawyer's duty not to fabricate case precedents and not to mis-cite cases for propositions that they do not support.

It is the lawyer's duty to use technology, conduct legal research, and prepare court documents competently.

It is the lawyer's duty to supervise staff and review material prepared for her signature.

It is the lawyer's duty to ensure human review of materials prepared by non-human technology such as generative artificial intelligence.

It should go without saying that it is the lawyer's duty to read cases before submitting them to a court as precedential authorities. At its barest minimum, it is the lawyer's duty not to submit case authorities that do not exist or that stand for the opposite of the lawyer's submission.

It is the litigation lawyer's most fundamental duty not to mislead the court".

Potential misuse of AI in this jurisdiction

Although there has been no written judgment in this jurisdiction to date concerning the misuse of AI by lawyers in the preparation of written submissions, the use or potential use by litigants in person of AI has been the subject of three judgments of the High Court.

In the case of *Coulston v Elliot*,¹⁷ a litigant in person informed the court that he was unable to explain one aspect of his submissions as "a friend" had helped him prepare them. Nolan J. formed the view that it was highly likely that either the litigant in person went to a person who purportedly held

themselves out as a lawyer and was not, or that he used an AI generative tool. At paragraph 87 of the judgment, Nolan J. stated:

"The general public should be warned against the use of generative AI devices and programs in matters of law".

In the case of *Reddan v An Bord Pleanála*,¹⁸ Nolan J. was highly critical of an unfounded allegation made by a litigant in person that an architect had committed perjury. When the litigant in person confirmed that he had discovered the terminology through online research, the Court stated that it sounded like something "that derived from an artificial intelligence source".

In the case of *Malone v Laois County Council*,¹⁹ an issue arose where the litigant in person provided written legal submissions on the day of the trial, which included quotation marks and italics to convey that the text was from a case of the Court of Justice of the European Union (CJEU). Given that the submissions had only been provided on the date of trial, nobody had an opportunity to check whether the quotation was accurate. The judge was unable to find the quotation in the reference case or any case. Upon further enquiries, the litigant in person confirmed by email that it was "not a direct quotation from a single source but a well-established concept reflected in multiple decisions of the...[CJEU]". Upon further enquiry, the litigant in person failed to confirm who had generated the text. At paragraph 42 of his judgment, Holland J. stated:

"It is necessary to be clear: it is not acceptable to depict text in written submissions as a verbatim quotation from an authority where it is not such. A similar action by a professional lawyer would be misconduct – see, for example, the recent and somewhat analogous case of *Ayinde*. The principle is essentially the same – though I hasten to say that I would not push the analogy too far as to a factual comparison of the present case with that case and the error in the present case is not of the order of the misconduct in that case. However, appreciable judicial time was wasted on the issue – not least trying to find the source of the quotation. And it does illustrate:

- The vital importance of precision and accuracy in written submissions. That duty lies on lay litigants as much as on lawyers.
- That text in submissions formatted so as to convey that it is a direct and verbatim quotation from an identified source must be exactly that. Of course, it is permissible to edit the text (for example to exclude irrelevant content or by underlining for emphasis) but, if so, that it has been done must be apparent on the face of the document.
- That opposing parties are entitled to written submissions in good time to check them".

Minimising the risk of AI hallucinations

In its guidance to barristers from May 2025, the PPC advised that:

“...the general position for barristers using AI is to do so in a responsible and competent manner. Barristers are obliged to avoid using AI in a way which could have a negative impact on their clients or the administration of justice as a whole. Overreliance on AI-generated content or simply lazy practice management may lead to false or misleading evidence/submissions placed before a court, which is clearly poor professional performance and is likely to have significant adverse consequences for the individual lawyers involved”.³

On July 1, 2025, the Law Society Library published practical guidance to its members on mitigating AI hallucinations,²⁰ wherein it advised solicitors to:

“Implement human oversight and strict verification processes to verify the accuracy of output.

Only rely on authoritative sources for verification purposes”.

Guidance provided to the judiciary in England & Wales on April 14, 2025,²¹ sets out some of the indications that work may have been produced by AI:

“■ references to cases that do not sound familiar, or have unfamiliar citations (sometimes from the US),

- parties citing different bodies of case law in relation to the same legal issues,
- submissions that do not accord with your general understanding of the law in the area,
- submissions that use American spelling or refer to overseas cases, and
- content that (superficially at least) appears to be highly persuasive and well written, but on closer inspection contains obvious substantive errors”.

While many of the lists in the Superior Courts in this jurisdiction require the parties to deliver written legal submissions weeks in advance of the hearing, on occasion submissions may be delivered on the day of trial. While there is an obligation on the party who has prepared the submissions to ensure their accuracy, the Courts will expect the opposing party to check the accuracy of same.

Both The Bar of Ireland and the Law Society provide access to legal research tools, which can be used to check the accuracy of citations and quotations of case law. In the event that parties receive submissions containing citations or quotations that cannot be verified, the recipient of such submissions should call upon the party delivering the unverified material to provide copies of the original source material and confirmation of where the material was obtained.

If the opposing party is unable or refuses to comply with said request, then there is an obligation to bring the issue to the court’s attention.

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PB AND CC: AN **UPDATE** ON CRIMINAL PROCEEDINGS **INVOLVING CHILDREN**



Kevin Roche BL

Recent Supreme Court judgments provide clarity on important issues in regard to the sentencing of children, while legislation currently passing though the Oireachtas will also have relevance to these issues.

On March 13, 2025, the Supreme Court delivered two judgments with important implications for criminal cases involving child defendants: *DPP v PB*;¹ and, *DPP v CC*.² These cases, both concerning murders committed by children, had been heard together with the consent of the parties involved. This article considers those judgments in detail and briefly outlines some proposed legislative amendments contained within the General Scheme of the Children (Amendment) Bill 2024.

The people (DPP) v PB [2025] IESC 12

PB was 17 years of age when he committed the offence of murder. He pleaded guilty and was sentenced to life detention with a court review scheduled for the year 2033. At the time of sentencing, the accused was protected by s.93 of the Children Act 2001, which prohibits the publication of information that may identify a child defendant in criminal proceedings. By the time his appeal against severity of sentence was heard, PB had reached the age of majority. An issue arose as to whether he was still therefore protected by s.93 of the Act.

The Court of Appeal ruled that since he was no longer a child, PB was not protected by s.93 of the Act and his anonymity could be lifted. He sought and was granted leave to appeal before the Supreme Court. The sole issue in the appeal was whether a

defendant who is charged and brought before the courts while still a child can remain entitled to that protection if they reach the age of majority before the criminal proceedings and any subsequent appeal have concluded.

It was accepted by all parties to the proceedings that had PB not exercised his right of appeal, he would have continued to enjoy the protections of s.93. The Director of Public Prosecutions, together with the Attorney General (joined as a Notice Party to the proceedings with the consent of the parties) submitted that the Court of Appeal was entirely correct. They submitted that the clear purpose of the provision is to protect children only, and that it is not available to someone who is no longer a child. It was accepted, however, that the protection is presumptively permanent if the proceedings conclude before the accused reaches the age of 18.

The Supreme Court granted a declaration that PB was entitled to the protections of s.93 of the Children Act 2001. The judgment of the Court was delivered by O'Malley J. At the outset, she considered the importance of the status of childhood, particularly in the criminal law sphere. In particular, she considered the competing interests of a child being prosecuted for a criminal offence and that of society in the prosecution and punishment of crime.

O'Malley J. held that as with any exercise in statutory interpretation, s.93 must be read in the context of the statute as a whole and having regard to the applicable constitutional principles. She could not accept the argument put forward by the State parties that the interpretation of s.93 is plain and obvious; the meaning of the phrase "proceedings concerning a child" is certainly open to debate, and the effect of subs.(5) must be considered. She then considered the temporal extent of the protections of s.93. She considered four possibilities in this regard. Each of these possibilities, and the Court's treatment of them, have been neatly and economically summarised by David Perry BL in his paper delivered to the Criminal Bar Association Conference on July 12, 2025:

"The first was that the protection lasts only until the age of 18, regardless of the status of the proceedings.

The second was that s.93 applies to any proceedings concerning a crime alleged to have been committed by a child. That would mean that a person prosecuted at any age in adulthood for their deeds when a child could avail of the statutory protection. O'Malley J. held that it was difficult to read the section as applying to a person brought before the court as an adult.

The third interpretation was that the section applies to a person who is a child when the proceedings commence and is capable of having indefinite effect, but expires if the person reaches 18 before the conclusion of the proceedings. O'Malley J. said that she had difficulty with this interpretation as it required the word "proceedings" to be given a dynamic interpretation. She could not see that the nature of the proceedings changes with the occurrence of a birthday, as the focus is still on the past event. For that reason, she was of the view that the "proceedings" are the same throughout and the word does not change meaning. The interpretation also failed to take due account of subs.(5). Further, the interpretation was capable of producing significant disparities between young

offenders in very similar situations in circumstances where the differing results may well come about by reasons entirely out of the control of an accused person, such as the availability of court dates, the length of time taken to deal with preliminary matters, and unanticipated events during the trial. The interpretation could also serve as a significant disincentive for a defendant to appeal, or even to contest a charge.

The fourth interpretation was that the section applies throughout the proceedings, including any appeal, but expires at the conclusion if the person has reached the age of 18. It would have the effect that the section protects the accused from the pressures of publicity during the court process but becomes inapplicable once the proceedings have concluded. O'Malley J. noted that this interpretation was, again, capable of creating significant disparities between young offenders".³

The Court rejected each of these interpretations, instead ruling that the proper construction of the legislation is that s.93 of the 2001 Act applies when proceedings are commenced against a child, and continues to apply throughout those proceedings. Its effects last beyond the conclusion of the proceedings in so far as any publication or report relates to the proceedings and is likely to identify the person who was "the child concerned in the proceedings".⁴ The rationale for such an approach was outlined as follows (at para. 115):

"This reading seems to me to reduce the possibility of unequal and unfair treatment as between young offenders, and attempts to ensure that they are not subjected to additional, unjustified, and unnecessary pressure and harm while involved in the criminal justice process. It has the further advantage of assisting the rehabilitation of the defendant when their involvement with the criminal process has concluded. That, it seems to me, means that it is also the interpretation that is most consistent with the principles and policies of a statute that lays such heavy emphasis on the rehabilitation of persons who commit crimes during childhood".

In the course of its decision, the Court considered *Gilchrist v Sunday Newspapers Ltd*.⁵ In *Gilchrist*, the Supreme Court held that there was a continuing common law power to direct that a case be heard *in camera*, or to impose lesser measures such as reporting restrictions. The Court in *PB* had asked the parties to make submissions in respect of *Gilchrist*; however, the judgment ultimately did not deal with the appropriateness of such an order.

It is worth noting that the Supreme Court has considered this issue further in *Doe v DPP*.⁶ That case concerned three sets of related judicial review proceedings seeking orders of prohibitions, or alternatively, *Gilchrist* orders. The accused had been minors at the time of the alleged offences but had not

been charged until such a time as they had attained the age of majority. It was argued that there had been blameworthy prosecutorial delay, as a consequence of which they had been deprived of the protection of s.93 of the 2001 Act.

While refusing the applicants' appeal, the Supreme Court held that where the delay has been found to be such as to amount to a breach of the constitutional right to a trial with due expedition, and the defendant has as a result lost the protection of the 2001 Act, the court should consider granting remedies falling short of prohibition to address the effects of the breach on the interests of the defendant. Since, in this context, the most significant of the protections afforded by the Act is that provided for in s.93, the court should consider making a *Gilchrist* order if failing to do so would expose the defendant to serious public odium. The Court held that the High Court, and therefore the Central Criminal Court, has the power to grant orders with permanent effect.⁷

The People (DPP) v CC [2025] IESC 11

The *CC* decision, the more far-reaching of the two decisions handed down, provides extremely useful guidance for practitioners advising child defendants. *CC*, a 14-year-old child, was convicted of murder by a jury on November 11, 2022. The trial judge imposed a sentence of life imprisonment with a review scheduled after 13 years.

Before the sentencing court, the various sentencing options were considered in some detail, including the possibility of a review procedure at some future point. Counsel for the DPP indicated that there were questions about the lawfulness of that procedure by reason of the judgment in *People (DPP) v Finn*,⁸ but a possible source of jurisdiction was identified by reference to the judgment of Walsh J. in *State (O.) v O'Brien*.⁹

The trial judge considered that his only option was to impose a life sentence; he indicated a number of reservations about adopting a review mechanism. Firstly, *O'Brien* related to the provisions and terminology of the Children Act 1908, which had been repealed in its entirety. Secondly, the judgment in *Finn* had cast considerable uncertainty over the lawfulness of the review procedure. Thirdly, he considered that the decision of the Court of Appeal in *People (DPP) v A.S.*¹⁰ had made it clear that on a review date a court that had imposed a sentence of detention would have no power to suspend the balance of the sentence. In the light of that decision, the only options available at a review (if a review was legally possible) would be unconditional release or continued detention. He agreed to defer a final decision pending further enquiries being made as to whether a legislative solution was under consideration. During the adjourned period, the Minister for Justice and Equality stated in the Dáil that the Children Act 2001 would be amended to ensure that there were "sufficient alternative sentencing options to fully and partially suspended sentences".

On the adjourned date, the trial judge imposed a sentence of life detention with a review after 13 years. In so doing, the trial judge indicated that he was reassured

by the statement of the Minister that by the review date, an appropriate statutory provision would be in place. It is noted in the judgment that in passing sentence, the trial judge indicated that the time was ripe for the Supreme Court to consider and advise in relation to the possibility of a review, and on what a reviewing judge could or could not do. Legislative intervention would be preferable but, failing that, an updated, definitive ruling was desirable.¹¹

CC appealed the sentence imposed to the Court of Appeal having unsuccessfully appealed against his conviction. He was then given leave to appeal to the Supreme Court. The Court considered the following questions:

- i. whether a life sentence can be imposed on a child;
- ii. whether a court-ordered review of a life sentence is lawful;
- iii. whether a part-suspended sentence is permissible for children; and,
- iv. whether anonymity protections under the Children Act 2001 continue after the child turns 18.¹²

In giving judgment, O'Malley J. noted the competing interests in terms of the obligation to protect the right to life, to investigate murders and to bring murderers to justice. In the case of a child murderer, however, there is also an obligation to take due account of the reasons why children are given particular protection within the legal system. She noted also that it was essential in this context that trial judges should have clarity as to the options available to them. The first issue considered by O'Malley J. was whether a sentencing court possessed a power to modify a sentence imposed at some point in the future, by way of a review procedure. The Court held that such a power did not exist. The basis for such a finding was that a review mechanism amounted to a judicial exercise of executive power, which is incompatible with Article 13.6 of the Constitution. This was not to say, however, that the Oireachtas could not confer a procedure to conduct such a process in accordance with the provisions of Article 13.6.¹³

Next the Court considered the issue of suspended sentences. O'Malley J. held that there was no doubt regarding the power to suspend a sentence pursuant to s.99 of the Criminal Justice Act 2006. The issue was whether there existed a power to suspend a period of detention. It was noted that in *DPP v AS*, the Court of Appeal concluded that the Children Act 2001 was a comprehensive code for sentencing children, and that therefore the common law power to suspend a sentence of detention had been extinguished other than as provided for in s.144 of the Children Act 2001, which permits a sentencing court to defer the making of a detention order in certain circumstances,¹⁴ and then ultimately suspend the whole or any portion of the order concerned.¹⁵ In that regard, O'Malley J. considered that the Court of Appeal was correct in *AS* to the extent that s.144 of the 2001 Act would not be of assistance in a case such as *CC*. She noted that the s.144 procedure is best utilised, therefore,

in cases where the court considers that a relatively short period of detention would be appropriate but is prepared, for good reason, to allow the child an opportunity to show that a non-custodial option (including, where appropriate, a suspended sentence) would be sufficient.

In contemplating the broader issue of suspended sentences, O'Malley J. considered more closely the distinction between detention and imprisonment, in particular, a number of situations where the distinction "blurs significantly",¹⁶ which renders it somewhat artificial. The Court then considered the question of whether a sentencing court might have, as part of its "general powers", a power to suspend part of a sentence imposed on a child where the age of the child and the length of the sentence mean that it will not expire until after they enter the prison system.

In answering that question, the Court had regard to the provisions of s.99 of the Criminal Justice Act 2006. Unlike s.98 of the Children Act 2001, s.99 does not contain the phrase "without prejudice to its general powers". In that respect O'Malley J. held that the purpose of the 2001 Act was to introduce a range of new procedures and potential orders but without prejudice to existing powers. The power to part-suspend a sentence arguably came within the term "general powers".¹⁷ Finally, O'Malley J. considered the amendments to s.3 of the Criminal Procedure Act 1993 effected by ss.61 and 62 of the Criminal Justice (Miscellaneous Provisions) Act 2023, which expressly conferred jurisdiction on the Court to deal with a person who has "aged out" during the court process. In effect, such a person is dealt with in the Court of Appeal as an adult (albeit one who committed the relevant offence when a child). If the Court quashes the original sentence, any new custodial sentence will be one of imprisonment. As a result of the foregoing analysis, O'Malley J. held (at para.183):

"[W]here a court contemplates imposing a sentence of detention, the length of which means that some part of it will inevitably be served in prison, it may if it thinks fit suspend part of that period which is composed of imprisonment in accordance with s.99 of the Criminal Justice Act 2006".

On the issue of children and life sentences for murder, O'Malley J. held that it was not possible for the Court to go so far as to say that a life sentence should never be imposed on a child.¹⁸ The Court did go so far as to provide a framework wherein a sentencing judge could consider whether a life sentence should be imposed (at para. 188):

"In my view, a life sentence should be imposed on a child only in exceptional cases where the evidence shows that the child's intentions and actions can fairly be equated with those of an adult. If there is evidence of premeditation such as the use of a weapon carried for the purpose of killing, or deliberate luring of the victim to the murder scene, or exploitation of the known physical

or psychological vulnerability of the victim, or evidence of planned efforts to conceal guilt, or of an intention to inflict sexual violence or particularly brutal physical violence, such evidence may demonstrate adult levels of planning and foresight of consequences. It can be contrasted with evidence demonstrating that the death was caused by an impulsive, angry lashing out by a child”.

Of assistance to sentencing courts grappling with this issue in the future, O’Malley J. held (at para.191):

“Other than in the exceptional cases meriting a life sentence, I would see the most appropriate form of sentence for a child convicted of murder as being a determinate sentence with a part-suspended element. The length of the custodial element should be tailored to reflect the age of the child at the time of the offence. As noted above, it may in principle be significantly shorter than the period which an adult might be expected to serve but that will, of course, depend on the facts of the case”.

Legislative reform: the Children (Amendment) Bill 2024

One can certainly glean some anxiety from all actors involved in the decisions of *PB* and *CC* that this is an area in which legislative reform is urgently needed. Indeed, the sentencing judge in *CC* saw fit to impose a review in that case on the basis that such legislative intervention was on the way.¹⁹ The decisions of *PB* and *CC* are neat judicial solutions to problems created by inadequate statutory provisions. The conclusion that sentencing regimes for child defendants are a matter for the Oireachtas is inescapable.

Currently passing through the Oireachtas is the Children (Amendment) Bill of 2024.²⁰ The Bill will heavily amend sections of the Children Act 2001. A

number of heads are relevant to the matters discussed here. Head 4 of the Bill proposes to insert a new section, s.70A, into the 2001 Act creating the term “relevant person”, which would mean “a person who at the time of the alleged offence was a child”. Head 10 of the Bill would amend s.93 of the 2001 Act to apply to “proceedings before any court concerning a child or a relevant person”. This appears to have the effect of providing anonymity to any person who is alleged to have committed an offence as a child, regardless of the point at which they are prosecuted. This is clearly further reaching than the decision in *PB*. This is certainly a neater approach to such prosecutions than that outlined in *Doe*, as it appears to alleviate the requirement on practitioners to apply for a Gilchrist order.

Head 19 of the 2024 Bill proposes to insert a new section, s.144A, into the 2001 Act. This section would allow for the making of a “deferred sentence supervision order”. The section is drafted in almost identical terms to s.144. Crucially the new s.144A(10) provides for a number of scenarios that may occur where the child has attained the age of 18 (referred to as the “relevant date”) before the matter has been finalised. In particular, s.144A(10)(4)(c) would allow the sentencing judge to impose a term of imprisonment, and suspend the whole or any portion of it, thus overcoming the temporal issues previously encountered with the operation of s.144 of the 2001 Act.

Conclusion

The decisions of *PB* and *CC* provide clarity to procedural issues that had long haunted practitioners dealing with child defendants, particularly those who will age out. Judges will also welcome the guidance provided. Such important procedural issues are matters largely for the Oireachtas to determine. It is reassuring in that respect to see the voyage of the Bill of 2024 through the Oireachtas.

References

- [2025] IESC 12.
- [2025] IESC 11.
- Perry, D. ‘Minor Issues for The Supreme Court, An Update on the Prosecution of Children’. Paper delivered at the Irish Criminal Bar Association Conference, July 12, 2025.
- Para. 114.
- [2017] 2 I.R. 284.
- [2025] IESC 17.
- It is worth noting that the judgment did not determine the full scope of the powers of the District Court and Circuit Court, and hence did not determine that they have power to make a permanent order; the Supreme Court did find that they have the power to make an order that covers, at least, the time during which they have seisin of a matter (see para. 154).
- [2001] 2 I.R. 25.
- [1973] I.R. 50.
- [2017] IECA 310.
- Noted at para. 13 of the Supreme Court decision.
- The last of these questions was disposed of in light of the judgment in *PB*, delivered on the same day.
- At para. 168 of the Supreme Court decision.
- Section 144(1) of the Children Act 2001.
- Section 144(9) of the Children Act 2001.
- See paras 174 and 175.
- At para. 181.
- At para. 187.
- Noted at para. 10 of the Supreme Court decision.
- General Scheme available at <https://assets.gov.ie/static/documents/children-amendment-bill-2024-general-scheme.pdf> [accessed August 2025].

APPRECIATION

Frank Quirke BL 1962-2024

An essential attribute of the advocate is courage – Frank Quirke displayed courage throughout his distinguished career at the Bar.

Frank was called to the Bar in 1988. A native of Co. Tipperary, he served his devilling year on the South Eastern Circuit with Tom Slattery, one of the Circuit's most senior and respected practitioners, known for the steadiness of his approach. Frank and he struck up an unlikely friendship. In those early days at the Bar, the ownership of a car was beyond the means of most starting counsel. This meant reliance upon transport to and from Circuit venues. Frank regularly travelled with Tom. The first time that Frank got into Tom's car he felt a rush of adrenaline as Tom pulled on his driving gloves; however, this rush quickly dissipated as Tom proceeded to drive his car as he practised – slowly and steadily. The following year Frank purchased his own second-hand motor vehicle (a Honda) through the generosity of his parents. No gloves for him – Frank loved the thrill of the speed of the car, driving at and often above the speed limit while clutching a two-litre bottle of water in his left hand.

It was no surprise when Frank quickly developed a significant practice on the South Eastern Circuit, enjoying particular support among the solicitors of Co. Tipperary (Clonmel was his hometown) and Co. Wexford. Frank shone as an advocate with a particular skill in getting to the heart of the issue in any case quickly. He hated pretentiousness and pomposity. One look from Frank was enough to tell any opposing advocate that they were headed in that direction. His skill in getting to the heart of a case was quickly recognised by all, including the judge then presiding on the South Eastern Circuit, Judge Diarmuid P. Sheridan.

Frank's only regret was that the pace of life in the Circuit Court at that time did not reflect his need for speed and efficiency. Speed and efficiency were to emerge, however, with the appointment of Judge Sean O'Leary as judge in charge of the South Eastern Circuit. Frank's practice blossomed under the stewardship of Judge O'Leary and his successor Judge Olive Buttimer.

While Frank could practise in any area of law, whether in the Circuit or High Court, he was, in particular, a doughty advocate of the accused. It was no doubt his skills defending on the criminal side that led him to be appointed prosecutor for the County of Tipperary in 2000, a post he held until his death in December 2024. Frank was a fair prosecutor who understood (as had been the tradition) that the task of the prosecutor was not to secure a conviction at all costs but to put forward the evidence firmly but fairly on behalf of the State.

Frank was also lead counsel on the civil side for the County Council of Tipperary – a time-consuming task given the propensity for litigants in Tipperary to suffer 'trips and falls'. At one stage Frank held what may well have been a world record

for briefs on a day in the Circuit Court. He had 10 cases listed in which he appeared for the local authority; Frank settled nine of them and fought one case – he won the case that he fought.

Frank was a constant in the courts of the South Eastern Circuit for over 30 years. He possessed a wry humour and wit, and was always a great source of practical advice for other counsel. He was also a protector of the newly qualified and a benign master to many pupils.

Frank's prowess at the Bar was not confined to the courtroom. He also excelled in sport and for many years was the opening bowler on the Bar cricket team. Frank's pace struck fear into the opposition batsmen with his languid style belying the speed and accuracy of his delivery. His cricketing skills were probably attributable to his early schooling in Bristol. Frank was also a keen golfer who did not approve of the introduction of the new equipment so beloved of the modern golfer. Frank preferred to stick with his old, brown pencil-thin bag in which he liked to carry a couple of battered clubs that he could then use to devastating effect, winning many competitive matches against colleagues.

When Judy Philpott was called to the Bar and started on the South Eastern Circuit it was love at first sight for Frank. Fortunately for Frank, it was also love at first sight for Judy. They married and set up a beautiful home in Moyglass, Co. Tipperary, where they pursued their interests of family, horses, and law (in that order). At Moyglass they successfully raised their eight children, each following their parents' footsteps in the love of horses. Frank continued to pursue his love of horseriding. He loved the thrill of the cross-country challenge and was a prominent member of the local hunting club.

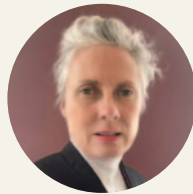
Frank suffered a lifechanging accident in December 2020 when hunting, which left him a wheelchair user for the rest of his life. Frank's courage shone through at this time. He never once complained despite the fact that much of his period of treatment and rehabilitation coincided with the worst limitations of the Covid-19 period. His courage and determination enabled him to return to the Bar, where he continued to practise with skill and distinction until his untimely death.

Frank had decided many years ago to remain at the Junior Bar. His decision was a loss to the Inner Bar but wholly understandable given his priorities in life. Frank would also have made an excellent judge and was indeed committed to public service. Despite the strong support of his colleagues at the Bar, the limitations of the judicial appointment process meant that Frank never fulfilled this ambition. Frank will be missed by all who knew him but will be remembered as an inspiration for all.

Jeremy Maher SC

UNDER OATH

The Private Members' Bill proposing constitutional amendment to remove "religion and gendered language" from the oath for judicial office raises deep and difficult questions.



Elizabeth O'Connell SC

A discussion of the Bill proposing the removal of "God" from the oath for the judicial office raises the awkward necessity of speaking about God publicly and, more awkwardly still, in a legal setting. But this Private Members' Bill, unopposed by Government, now proceeds to Second Stage in the Dáil, so we either brace ourselves or, as is more likely, have no in-depth public discussion of what would be a radical change, or at least, a reflection of a radical change.

The wording of the oath, which is set out in the text of Article 34.6, would be changed as follows:

~~"In the presence of Almighty God I do solemnly swear and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power, execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any person any man, and that I will uphold the Constitution and the laws. May God direct and sustain me".~~

Although the amendment is described as removing "man" from the wording as well as "God", the Irish language text of Article 34 refers to "*duine*", and it being authoritative,¹ one wonders whether an amendment, as opposed to simply a new translation, is necessary.

A sign of modernity?

It is said that the referendum to remove "God" is required because Ireland is a modern state and reference to God is "absolutely inconsistent" with this modernity, a view that may well be widely

enough accepted without question.² But the question then is whether the Constitution itself is inconsistent with such a notion of modernity? Under the proposed new wording, absent "God", the oath will still be to uphold the provisions of the Constitution.

The Irish Constitution was constructed by those who believed in God – who were steeped in a European education. This is reflected most simply in the Preamble, which begins: "In the Name of the Most Holy Trinity, from Whom all authority and to Whom, as our final end, all both of men and States must be referred".

The Catholic Church was not the only source of influence. The now Supreme Court Judge, Gerard Hogan, in *The Origins of the Irish Constitution, 1928-1941* says at page 215:

"That, however, the Constitution was influenced by Catholic social teaching is surely unremarkable given the historical context of 1937. What is more remarkable, however, is the extent to which that document also reflects secular – one might almost say "Protestant" – values of liberal democracy, respect for individual rights and the separation of Church and State and the extent to which it does not reflect Catholic teaching".

A central point to make, before secular panic sets in, is that something can be constructed by those with faith in God, indeed who are inspired in the process of construction by that faith, which is inherently good and useful to all persons, of all creeds or none.

The fundamental rights provisions drafted in 1937 met with widespread approval and have stood the test of time. The edifice of the Constitution and indeed the common law protecting the rights of the citizen, though of course, and thankfully, secular, were built with, or around, the concept of the individual that was shaped by a belief in God, with its deepest roots in medieval Christian culture. It would make sense to remove "God" from the oath, if it were the case that God was also excised from the constitutional frame of reference.

Disavowing a fundamental part of the philosophy underpinning the Constitution is a radical change. The stakes are high, as with all societal change but particularly now in these especially turbulent times. I humbly suggest that our view of what it means to be human animates the interpretation of rights and further, that only citing the words "modernity" or "pluralism" as a justification for change to long-developed concepts, without an alternative philosophy for the source of rights, is not rational.

References

1. Article 25.5.4.
2. The Bill was presented to the Dáil by our colleague Barry Ward SC TD. Available from: <https://data.oireachtas.ie/ie/oireachtas/bill/2025/8/mul/initiated/b0825d.pdf>.



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