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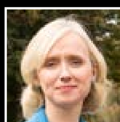
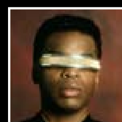
STATE OF SHOCK

The law on 'secondary victims'



THE GOOD FIGHT
The CEO of Community Law and Mediation, Rose Wall, talks to the *Gazette*

ENDURING ISSUES
Enduring powers of attorney should be seen to be as important as making a will



HIDDEN TALENTS?
There are benefits to disability inclusion, such as resilience and adaptability

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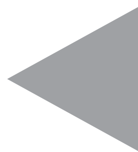

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The pursuit of happiness

As we start 2023, we have all wished each other a 'Happy New Year!' Let us pause for a moment and consider what that happiness means to us. Is it success or advancement in our professional lives, or perhaps a change of direction in our chosen path? Is it working on ensuring the survival of a practice, or ensuring correct life/work balance? Or does the pursuit of happiness lie elsewhere?

Advancement or survival?

At the beginning of the year, it is customary to stop and consider where we are going – be it advancement or survival. For younger solicitors, who may have started their career on a particular path, it can be a time for them to stand back and assess where they are, their prospects, and whether the path they are on is, in fact, their 'chosen path'. It may also be a time for them to seize opportunities and embrace change – '*carpe diem*', as they say!

When addressing newly qualified solicitors at each parchment ceremony, we say to them that they may have already decided on a career path. Some may decide to work in academia, some for corporations or semi-state bodies, others may specialise and work in large firms, while some may feel the attraction of working in a small firm or in general practice. Either way, the whole world awaits them – and it is *their* world. They can make and shape it, and they can achieve anything they want.

Focus on the future

As you all consider your future, the Law Society is there to assist. This year, as you are aware, the Society is holding its annual conference in Mount Juliet, Kilkenny, on 12 May 2023 *(see p14)*. The focus will be on your future, your career and your path for the next ten years.

The conference will deal with the concerns, fears, and issues relevant to all solicitors. The profession is fortunate to have a wealth of expertise within the Law Society, and these experts will attend the conference and will assist, advise and educate all of us in our quest in safeguarding our careers and our futures and, hopefully, acquiring the happiness we deserve.

That is not to say that we will not be facing challenges in the next few years and beyond. Ten years ago, who would have thought that we would be watching and observing a European land war? Who would have predicted the effect of this war, globalisation, and the changes brought about by the pandemic on us now and into the future?

A better future

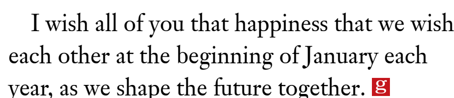
The marvellous thing about humans is that we can adapt, change, and advance. This ensures our survival and growth. Together, we can plan a better future for legal practices, legal careers and, indeed, the legal profession. That is where our focus lies.

We can start by showing professional courtesy to each other, engaging in a renewal of professional standards, and acquiring an appetite to advance and succeed. We must always remember that we shape the future from the present.

In looking to the future, we also look to the past and the present. This year, we are celebrating the centenary of the qualification of the first woman in Ireland as a solicitor, as well as the first female solicitor to obtain a practising certificate in the State. We are also paying tribute to the first 100 women solicitors and the women leaders of our profession over the past century. The Law Society will host an exhibition at Blackhall Place, while a centenary garden is being created that will be dedicated in order to celebrate this event.

I wish all of you that happiness that we wish each other at the beginning of January each year, as we shape the future together.

WE MUST ALWAYS REMEMBER THAT WE SHAPE THE FUTURE FROM THE PRESENT



MAURA DERIVAN,
PRESIDENT

THE BIG PICTURE

PIC: CHEE KEE TEO, COMEDY WILDLIFE, 2021

DO UNTO OTTERS

A smooth-coated female otter carries her baby while giving it a swimming lesson in a Singaporean river. The image, *Time for school*, won the Creatures Under the Sea Award in the Comedy Wildlife Photographer of the Year competition

Beautiful South for Munster practitioners' meet-up

Over 110 solicitors from across Cork and Munster attended the 'Practitioner Update Cork' event at The Kingsley Hotel, Cork, on 24 November 2022. The speakers included Katherine Kane, Anne Stephenson, David Soden, Colette Reid, Emma Meagher Neville (president, Southern Law Association), Dorothy Collins and Shane Dwyer

The Cork event, organised by Law Society Skillnet, was the ninth in the series of specialised training events for solicitors in 2022. Pictured are Paul Lynch and Kieran Moran

Catherine Barry and Paul Durham

Virginia Harrington and Emma O'Brien

Dorothy Collins, speaker

Colette Reid spoke at the event

Catherine Barry, David Williams and Michelle Nolan

Speaking at the event was solicitor Anne Stephenson

Law Society Council member Áine Hynes SC

Margaret Noelle O'Sullivan and PJ O'Leary

Mansion House practice symposium

ALL PICS: CIAN REDMOND

The Law Society Skillnet 'Practice and Regulation Symposium', in conjunction with the Dublin Solicitors' Bar Association, was held in the Mansion House, Dublin, on 30 November 2022. Speakers included *(l to r)*: Dr Niall Connors (Registrar of Solicitors and director of regulation at the Law Society), Attracta O'Regan (head, Law Society Professional Training), Susan Martin (Law Society Council member), Christina Blacklaws (past-president, Law Society of England and Wales), Dr David Cowan (assistant professor, School of Law and Criminology, Maynooth University), Katherine Kane (acting head, Law Society Professional Training) and Tim Bolger, Regulation Department, Law Society)

Registrar of Solicitors, Dr Niall Connors

Dr David Cowan speaks to participants at the Dublin practice and regulation event

Fireside chat with Sarah Grace

ALL PICS: CIAN REDMOND

The Law Society's Younger Members Committee and the Young Bar Committee held a fireside chat on 7 December at Blackhall Place with Noeline Blackwell and solicitor Sarah Grace. Noeline is a human-rights lawyer and CEO of the Dublin Rape Crisis Centre. She spoke with Sarah, a survivor of sexual assault, about her campaign for legal reform in sexual-assault cases. Sarah has used her harrowing experience to break the silence surrounding sexual assault in order to help others. Her story about survival and healing also focuses on empowerment, inspiration, and the need to remind ourselves of the inner strength we all possess. Sarah encouraged her audience to use that strength to help others – both in their personal and working lives. Sarah's book *Ash + Salt* is available from O'Brien Press. Pictured *(left)* are: Sarah Grace and Noeline Blackwell; (*back, l to r*): Siobhan Masterson (YMC committee secretary), James P O'Brien BL, Michelle Nolan (Law Society), Alison Walker BL, Aisling Woods (Younger Members Committee), Lewis Mooney BL (chair, Young Bar), Catherine Needham BL, Morgane Conaty BL and Marguerite Kehoe BL

Clare's cloistered meeting at the Monks' Society

ALL PICS: EAMON WARD

Clare Law Association held its annual Christmas dinner at The Monks' Society, Ennis, on 25 November. The event was organised by committee members Pamela Clancy (president), Mairéad Doyle (vice-president), Sinéad Glynn (secretary), and Angela Woulfe (treasurer), with distinguished guests Judge Mary Emer Larkin, Patrick Wallace (county registrar), and Josephine Tone (manager, Courts Service, Ennis Courthouse). Those present included *(front, l to r)*: Sheila Lynch, Josephine Tone, Patrick Wallace (county registrar), Judge Mary Emer Larkin, Pamela Clancy (president, Clare Law Association), and Neil McNeilis; *(back, l to r)*: Stephen Keogh, Patrick Moylan, Helen Rackard, John Casey, Sharon Cahir, Brian Murphy, Sarah Jane Whyte, Kate McInerney, Sinéad Glynn, Avril Collentine, Mairéad Doyle, Angela Woulfe, Tara Godfrey, and Shíofra Hassett

Sarah Jane Whyte, Avril Collentine, Pamela Clancy, and Shíofra Hassett

Shíofra Hassett, Patrick Moylan, Judge Mary Emer Larkin, and Pamela Clancy

Death of solicitor Vicky McCarthy Keane

The *Gazette* is sad to report the death of solicitor Vicky McCarthy Keane, who had been battling motor neurone disease. Vicky passed away on 28 December, and her funeral Mass took place in St Joseph's Church, Rathwire, Co Westmeath, on 2 January.

Originally from Limerick, she studied law at UL. She was apprenticed at David Brophy Solicitors in Limerick and was enrolled as a solicitor in Easter 1999.

Vicky was diagnosed with motor neurone disease in 2017, and spoke to the *Gazette* early last year about how she had coped with her illness.

In November 2021, she published a book of poetry, *Through My Eyes*, which she described as a way of leaving a "tangible legacy" for her husband, Michael, and their four children. All proceeds go to the Irish Motor Neurone Disease Association.

Ar dheis Dé go raibh a h-anam dílis.

Mayo skills event success

PIC: MICHAEL DONNELLY

Mark Garrett (director general), Maura Derivan (president, Law Society), and Mark Loftus (president, Mayo Solicitors' Bar Association); *(back, l to r)*: Shane Dwyer, Susan Bourke, James Cahill, Attracta O'Regan, Eamonn Maguire, and Katherine Kane

Almost 100 solicitors from across Mayo and the West attended the Connaught Solicitors' Symposium 2022 at Breaffy House Hotel in Castlebar on 17 November.

The conference was organised by Law Society Skillnet, in association with the Mayo Solicitors' Bar Association (MSBA). It was the eighth in the series of specialised training events designed to support local solicitors to upskill on topics related to legal practice.

Solicitor Marc Loftus (president, MSBA) said he had been encouraged to see such a positive response to the in-person event: "Solicitors are continuously striving to provide the best possible legal services for our clients and communities in all areas of life and business. We are grateful to the Mayo Solicitors' Bar Association and Law Society Skillnet for their help to facilitate this," he said.

In addition to improving their skills, Mayo solicitors had an opportunity to check their personal wellbeing: "Like many working professionals across the country, solicitors can find themselves in challenging work situations – including dealing with often sensitive matters," said Loftus. "Emphasising the importance of wellbeing and dignity at work, the Connaught Solicitors' Symposium 2022 focused on developing practical skills, so we are better equipped to look after our personal wellbeing. In turn, this will help solicitors to better meet the needs of our clients and local communities," he said.

London Irish lawyers' dinner first

The London Irish Lawyers' Association (LILA) will host its first-ever St Patrick's Day Dinner on 16 March this year.

Tickets are now on sale for the black-tie event at the Churchill Hotel in central London, with a donation from the sale of each ticket to be made to the London Irish Centre.

Judge Angela Rafferty KC will deliver a short address at the event, which includes a drinks reception and a three-course meal, followed by a live band.

Dublin law firm Philip Lee and Belfast-based Tughans are among the dinner's sponsors, as are KLD Discovery and barristers' chambers QEB Hollis Whiteman.

More information is available from Eventbrite or by emailing contact@londonirishlawyers.co.uk.

Meeting of minds in Brussels

At the Brussels round-table meeting were *(front, l to r)*: Evanna Fruithof, Duncan Grehan, Cormac Little, and Henry Hely Hutchinson; *(second row, l to r)*: Margaux Chanove, Helène Biais, Anne Jonlet, Pierre Le Maître, Sarah Pratcher, and Megan Byrne; *(third row, l to r)*: Celia Freudenberger, Louiza Tanem, Alexandre Lang, Laurent Pettiti, Sophie Patras, Britta Kynast, Dorothée Wildt, Alžběta Recová, and Hannah Adzakpa; *(back, l to r)*: Nico Moons, Julen Fernández Conte, Moritz Moelle, Ross McMahon, Richard Kelly, Astrid Gamisch, and Miguel Olmedo Castaño

● A delegation from the Law Society's EU and International Affairs Committee represented the Society in Brussels from 18-19 November at the annual CCBE round-table meeting with the permanent representatives of other bars from across Europe.

The event provides a forum for the respective bars to report back to their colleagues on matters of concern, including professional developments in their countries, from both EU and domestic perspectives. Common themes included professional privilege, regulation and compliance matters, and well as education and training.

The event was inaugurated by the Society in Dublin during the last Irish presidency of the Council of Europe. It is significant, given that the Law Society does not have its own permanent representative in Brussels, so the annual meeting provides it with the opportunity to collaborate with colleagues there on matters of specific interest to the Society and its members. Next year, Ireland will host the meeting at Blackhall Place.

Equitable briefing enhances client choice

● The Bar of Ireland's 'Equitable Briefing Policy', launching on 2 March 2023, aims to drive cultural change and foster equality, diversity, and inclusion with respect to gender in the legal professions.

Those who have briefing authority in solicitor firms, corporate in-house settings, and employed by the State are being encouraged to make all reasonable efforts to consider gender diversity when selecting a briefing panel, which will provide clients with a more representative range of choices as they progress their litigation.

The initiative is beneficial in three ways: it maximises choice for solicitors and clients by increasing exposure to a greater range of expertise and voices; it supports the prioritisation of a culture of opportunity in organisations, as well as exposing solicitors to a diverse range of counsel; and it is a practical response to the need to optimise opportunities for the practice development of female counsel and to support the progression and retention of women at the bar.

Eagar retires from High Court

● Mr Justice Bobby Eagar has retired from the High Court. At tributes paid on his last day sitting on the bench on 17 January, speakers remarked on his kindness, courtesy, helpfulness, compassion, and gentle good nature. Law Society President Maura Derivan and Attorney General Rossa Fanning were among those that paid tribute.

Mr Justice Eagar served with distinction as a judge of the High Court from October 2014 – just the sixth solicitor in the history of the State to hold such an office. President Derivan said his appointment to the High Court had been a cause of great pride to the solicitors' profession. "We thank you for your commitment, time, energy, and hard work," President Derivan said.

Mr Justice Eagar thanked his wife Monica and daughters Katie and Sarah for their wonderful support throughout his working life. "I came from a very competitive legal world as a defence solicitor – cut-throat might be a description!" More solicitors should be considered for judicial jobs, he suggested. His judicial colleagues had always aimed to support each other, and he thanked them for their friendship and collegiality, as well as the warm messages of support.

ENDANGERED LAWYERS

SALAH HAMMOURI, ISRAEL

● Salah Hammouri (37) is a Palestinian human-rights lawyer and a native of Jerusalem with dual Palestinian and French citizenship. He works for Addameer, a Palestinian legal-aid and prisoners' rights group that was designated a 'terrorist organisation' in October 2021.

Hammouri was deported to France at the end of November, having been stripped of his residency rights on the basis of being a 'member of a terrorist organisation'. He had residency rights in Jerusalem, which can be revoked by authorities under a system applied to Palestinians in Israeli-annexed East Jerusalem. Previously, in 2016, despite having a valid visa, his French wife was prevented from entering Israel for ten years on the grounds that she constituted a security threat. This denied their expected child the possibility of being born in Jerusalem and thereby a right of residence there. He has been politically active since his teens and was first detained in 2001 for five months, for handing out leaflets protesting Israeli colonisation. At 20, he was accused of conspiracy to murder a prominent right-wing politician, Ovadia Yosef. He was held without charge for three years in very tough conditions and always protested his innocence. Eventually, on the advice of his lawyer and while maintaining his innocence, he accepted a plea bargain and was sentenced to seven years' imprisonment by a military tribunal – as opposed to the 14 years he had been threatened with. In December 2011, he was released in exchange for an Israeli POW. Since then, he has repeatedly been placed under administrative detention, described by Amnesty International as "a major human-rights violation".

His law studies on release were greatly hampered by bans on his entering the West Bank and attending his university for 18 months, for unstated reasons. He was admitted to the Palestinian Bar on 20 August 2017 and was arrested on 23 August and detained, initially for five days but, after various hearings and decisions, an order for administrative detention for six months was imposed and confirmed.

He was moved to the high-security Megiddo prison for engaging in 'incitement' – he had given an interview to a French journalist. His detention was extended until he was eventually released 13 months later, subject to conditions. Since 2018, he has suffered further harassment and detentions, culminating in his deportation.

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

Murphy elected to top BIC role

● Former Law Society DG Ken Murphy has begun a two-year term as chair of the International Bar Association's Bar Issues Commission (BIC). The BIC is the representative section of the IBA's 190 bars and law societies world-wide. Murphy's term in one of the most senior roles in the IBA began on 1 January 2023.

He was elected at the IBA Council meeting in Miami in November 2022, and is the first Irish lawyer to hold the distinguished position. He has served on numerous IBA committees and task forces, including as chair of the Policy Committee in 2022.

As BIC chair, Murphy will continue as a member of the IBA's management board (on which he has served for the past two years. Before work with the IBA, Murphy was active for many years with the worldwide International Institute of Law Association Chief Executives and the Chief Executives of European Bar Associations. In both of these associations, he served terms as the elected president.

Three new justice bills

● Ministers are aiming to publish or draft 38 bills in the forthcoming Oireachtas session, according to the legislative programme for spring, published on 18 January.

This includes the *Criminal Justice (Engagement of Children in Criminal Activity) Bill* (which will criminalise adults who induce or groom children into committing offences), the *Criminal Justice (Sexual Offences and Human Trafficking) Bill* (which provides for amendments to sexual-offences legislation arising from recommendations made by the O'Malley review and the Law Reform Commission), and the *Court Proceedings (Delays) Bill*, which will provide for statutory compensation for breach of article 6 of the *European Convention on Human Rights* (the right to a fair trial within a reasonable time.)

Public lecture series

A talk by Dr Barry Whelan (Diploma Centre) will form part of the Law Society public lecture series in February. 'Advancing Irish freedom: the law and the War of Independence, 1919-21' will take place in the Education Centre at Blackhall Place on 15 February.

John Biggins (Maynooth University) will also speak on 'Finding and losing the Brehon Laws through time'.

The event will run from 6-8pm, with refreshments afterwards in the Atrium.

Admission is free and open to all. To secure your place, see the 'Law Society of Ireland: Public Lecture Series' page on Eventbrite.ie (parking available on-site.)

High Court assignments

The Courts Service has published details of the judges in charge for different matters during Hilary Term. The President of the High Court has assigned the following judges of the High Court to be the judge in charge of the following lists for Hilary Term 2023:

- Mr Justice McDermott – Central Criminal Court, Special Criminal Court, extradition, Criminal Assets Bureau, and bail,
- Mr Justice Coffey – Personal Injuries List,
- Mr Justice Meenan – Non-jury/Judicial Review List and asylum,
- Mr Justice McDonald – Commercial List and the designated judge for admiralty matters,
- Mr Justice Jordan – Family List,
- Mr Justice Owens – Jury List, and
- Mr Justice O'Moore – Chancery List.

The president has also nominated the following judges for other matters:

- President of the High Court – arbitration matters,
- Mr Justice Barrett – competition matters,
- Mr Justice Humphreys – Commercial Planning and Strategic Infrastructural Development List, and
- Ms Justice Gearty – *Hague/Luxembourg Convention* List.

Any application pertaining to those lists shall be made to the relevant judge in charge. The official notice is available on the Courts Service website.

IRLI IN AFRICA

TANZANIAN JUDGES VISIT IRELAND

PIC: CIAN REDMOND

Law Society President Maura Derivan with the judges, members of the Irish judiciary, members of the Law Society's Council, and IRLI representatives

In November 2022, Irish Rule of Law International's project 'Institutional Partnership Building between the Irish, Northern Irish, and Tanzanian Criminal Justice Systems' reached a milestone, with the visit to Ireland and Northern Ireland of four Tanzanian judges: Ms Justice Joaquine De-Mello, Mr Justice Amour Said Khamis, Mr Justice Augustine Rwizile, and Ms Valentina Katema.

Funded by the Irish Embassy in Tanzania, the project works to foster and strengthen partnerships between the judiciaries and police in Tanzania, Ireland, and Northern Ireland, with a view to mutual learning and the improved handling of child sexual abuse (CSA).

The aim of the visit was to exchange knowledge and expertise on the challenges and procedures involved in the handling of CSA cases in both jurisdictions on this island, and in Tanzania. Topics had been identified through pre-visit discussions and included witness/victim care and measures to support evidence-giving, forensics and judicial knowledge of evidence handling, proactive case management, and judicial wellness with respect to the handling of CSA cases.

The itinerary included trial observations, meetings with criminal justice bodies, a visit to Forensic Science Ireland, and many productive discussions of practices and procedures.

A highlight was a dinner at the Law Society of Ireland, generously hosted by President Maura Derivan, which allowed the Tanzanian judges to socialise with their Irish counterparts and members of Council in the beautiful surroundings of Blackhall Place.

In the North, there were visits to the specialist Rowan Sexual Assault Referral Centre, discussions with the PSNI, and meetings with partners from the Law Society of Northern Ireland and the Bar Council of Northern Ireland.

Future stages of the project will involve ongoing police and judicial exchanges between Tanzania, Ireland, and Northern Ireland. Due to the generosity of the judiciary and our project partners in Ireland and Northern Ireland during this recent trip, there is plenty to build on during 2023 and beyond.

Anne-Marie Blaney is programme lawyer (Northern Ireland) at IRLI.

BOOK NOW!

LAW SOCIETY CONFERENCE 2023

Friday 12 May 2023
MOUNT JULIET, KILKENNY

'Building and maintaining a successful legal career, legal practice and legal profession over the next decade.'

Join colleagues from across the solicitors' profession and have your say in shaping policy, the future of the legal profession, and the sustainability of practices and legal careers.

Full-day conference with 5 CPD hours, lunch and a gala dinner, with additional optional extras available.

Tickets, including conference, gala and accommodation, from €450 per person sharing.

To book your place and for additional information, visit **www.lawsociety.ie/conference**

PROFESSIONAL LIVES

Sharing personal and professional stories has long been a powerful way to produce a sense of connection and belonging. It creates a space for vulnerability that can provide the listener with inspiration and hope, or newfound insight to a challenge or difficulty they might be facing. We welcome you to get in touch with ps@lawsociety.ie to share a story for this 'Professional Lives' column.

What makes lawyers happy?

In their 2015 study of over 6,200 lawyers and judges in the US, *What Makes Lawyers Happy?*, Krieger and Sheldon found that common perceptions of professional success – such as position, higher earnings, and extrinsic benefits – were not significant predictors of lawyers' happiness or wellbeing. Instead, it was personal and interpersonal factors.

'Authenticity' was the highest predictor of wellbeing, while 'relatedness to others' and 'internal motivation' followed closely as other high-core sources. The study shed light on the need for human-centric approaches to wellbeing in the legal profession that put connection to self, community, and belonging ahead of competitive success.

Fitting the mould

We may fear revealing our true selves if we feel it doesn't align with clients' or employers' expectations. It may lead us to mimic others who we view as being successful in a similar role. This can result in stifling our abilities and talents, and limiting creative thinking.

In Francesca Gino's 'Research: it pays to be yourself' (2020), it was found that masking who we really are at work and catering to others' expectations is cognitively and emotionally draining, which can undermine performance and deny us opportunities to form meaningful connections.

Growing empirical evidence tells us that authenticity is a necessary component in feeling a true sense of connection and belonging, as it creates meaningful, real, and honest relationships.

Our whole self

Authenticity occurs when we feel safe and comfortable to bring our whole self to work. It doesn't mean being unfiltered, disclosing our every thought, or sharing our life story with everyone, but rather responding in a way that is in line with our own values and beliefs. In Mike Robbin's *Bring Your Whole Self to Work*, he describes how this is done by "showing up authentically, leading with humility, and remembering that we're all vulnerable, imperfect human beings doing the best we can".

Robbins says that, in order for organisations to create safe environments for individuals to thrive, they must balance setting a high, healthy bar of expectation and providing high nurturance and compassion, where people feel heard, valued, seen, and appreciated.

When people feel safe and encouraged to be themselves, it allows for stronger connections with clients and colleagues and more trusting relationships, and it deepens rapport in interactions. Encouraging feedback and honest conversations, regular one-to-one meetings, and affirmation of effort help create a healthy space for self-awareness and professional growth.

How to be

Get to know yourself. Take some time to increase self-awareness by reflecting on your values, beliefs, and passions. In times of high stress or workload, it can be easy to lose track of what is really important to us. Conscious reflection and writing it down can help to bring things into focus.

Set boundaries and communicate them clearly. It's important to make sure you are taking time for yourself. This may involve learning to say 'no' to certain requests and making time for self-care. Setting boundaries and clearly communicating them can help to prioritise your wellbeing and prevent feeling overwhelmed or burnt out.

Practice self-acceptance. It's important to be kind, compassionate, and accepting of yourself. This can be challenging, especially in a profession like law, where high pressure and demands can create a push to be perfect. Remember that it's okay to make mistakes and to look for support – we are all human and are constantly growing, learning, and evolving.

Mary Duffy is the Law Society's professional wellbeing executive. Confidential, independent, and subsidised support is available through LegalMind for legal professionals. A team of qualified professionals can offer advice and support to help you grow personally and professionally and reach optimal potential. Freephone 24/7 on tel: 1800 81 41 77; see lawsociety.ie/legalmind.

IMAGE COURTESY THE BAR OF IRELAND, THE LAW LIBRARY

HERON**100**

This year marks the centenary of the first woman in Ireland to qualify as a solicitor (Mary Dorothea Heron) and the first female solicitor to obtain a practising certificate in the State (Helena Mary Early).

The Law Society will be paying tribute to these remarkable women, as well as the first 100 women solicitors and other women leaders of our profession through a series of events planned for the year. Among them, the Society will host a special exhibition at Blackhall Place, while a centenary garden will be created and dedicated in order to commemorate this milestone year.

The *Gazette* is also marking this centenary with a series of articles that will spotlight the lives of pioneering women in the legal profession.

100 years of women in law

Mary Dorothea Heron was the first woman to be admitted to the Roll of Solicitors, on 17 April 1923. From Downpatrick in Co Down, she started her apprenticeship on 7 February 1920 in the office of her uncle, Thomas Heron, at TM Heron, Solicitors, Belfast.

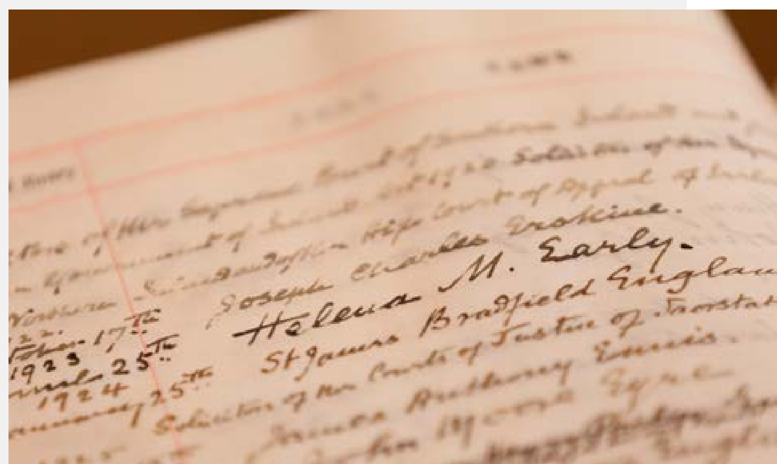
She excelled as a student and her achievement as the 'first lady solicitor' in Ireland received recognition in Belfast, where three newspapers carried a report of her success. After qualifying, she continued working in the office of TM Heron until 1946, mainly doing probate work. She died on 9 October 1960.

Attempts to enter

The history of attempts by women to enter the legal profession in England is well documented. It culminated in 1913, when Gwyneth Marjorie Bebb, Maud Ingram, Karin Costelloe, and Lucy Nettlefold took a case against the Law Society of England and Wales, claiming that they should be allowed to sit its preliminary examination. The case was unsuccessful, both in the Chancery Division and the Court of Appeal.

Lord Justice Phillmore stated: "I do not say that this may not be an office suitable to women; what I say is, it has never been, in the view of the courts, suitable to women, and in all the discussions in those cases, in all the quotations with respect to hereditary offices that a woman may hold or her husband may hold in her right, there has never been a suggestion that the office of attorney was one which is open to a woman."

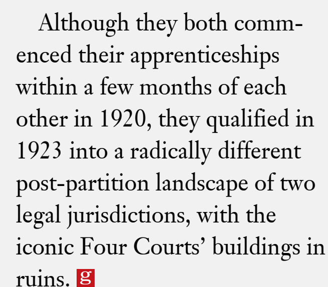
The court determined that the appeal should fail and that, if there was to be a change in practice, it would have to be brought about by parliament. No doubt, the outcome of the *Bebb* case was watched eagerly by a small group of Irish women, some of whom were already working in family law firms, and other younger women students with aspirations to become lawyers.



Slow progress

In particular, Helena Mary Early, a Dublin woman (then in her mid-20s and already working in her brother's firm), must have felt a degree of impatience with the slow progress of change. In Belfast, Mary Heron was embarking on a classics degree at Queen's, and no doubt had formed an intention to qualify as a solicitor and join her uncle's firm.

In 1919, after the act allowing women solicitors became law, both women went on to become firsts – Mary Dorothea Heron the first woman to be admitted to the Roll of Solicitors, and Helena Mary Early the first woman to apply for a practising certificate in the then newly formed Saorstát Éireann.



Although they both commenced their apprenticeships within a few months of each other in 1920, they qualified in 1923 into a radically different post-partition landscape of two legal jurisdictions, with the iconic Four Courts' buildings in ruins.

Equality of arms

A High Court judge has taken aim at plaintiffs' solicitors referring to medical consultants for the purpose of providing expert evidence. Stuart Gilhooly SC asks why the same 'rule' appears not to apply to defendants' solicitors

THE UNSPOKEN ISSUE AT THE HEART OF THE JUDICIAL CRITICISM IS CREDIBILITY – BOTH OF THE PLAINTIFF AND THE CONSULTANT. SURELY, IF BOTH ARE DEEMED TO BE CREDIBLE, THE MANNER OF THE REFERRAL IS IRRELEVANT

The media, and clearly the general public who consume media, love a personal-injury story. Whether it is a large award or a dismissal, it regularly appears in the most-read sections of the mainstream websites. The latest viral article occurred just before Christmas, when Mr Justice Michael Twomey took aim at plaintiff solicitors referring to medical consultants for the purpose of providing expert evidence.

In *Cahill v Forristal and O'Riordan v Forristal*, Mr Justice Twomey referred to what he described as similar criticism of the practice by Mr Justice Barr in *Dardis v Poplovka* and *Harty v Nestor*, his own decision in *O'Connell v Martin*, *Ali v Martin*, and Ms Justice Irvine in *Fogarty v Cox*.

While he is indeed correct that Barr J and Irvine J made adverse comments on the practice, they arose in the context of *obiter* statements that had no bearing on the outcomes of the cases. Indeed, in two of the three cases, the evidence of the solicitor-referred consultant was accepted. While Twomey J dismissed the cases in which he made his criticism, the other evidence of plaintiff credibility was clearly the most persuasive factor; and his disapproval, sharp and lengthy as it was, was also not decisive in his final decision.

Are judges' views merited?

It must also be noted that there have been probably hundreds of cases heard before the courts in which a similar situation arose, on which the trial judge either made no comment or, indeed, found the evidence helpful.

It would, however, be wrong to ignore the opinions of three highly respected judges without considering whether these views are merited or if there is another way of looking at this complex situation.

One of the most pressing concerns of Justices Barr and Twomey is that a general practitioner should be involved in the referral to consultants, as otherwise the consultant might not have access to their history or be involved in subsequent treatment.

The Medical Council's *Guide to Professional Conduct and Ethics* deals with this issue. While the guidelines agree that a general practitioner should be involved, it also recognises that this is not always the case, and clearly allows for other forms of referral or, indeed, direct access by the patient.

Article 60.3 of the guide states: "Normally, consultants will see patients following referral from their general practitioner or other treating doctor. In some cases, there might be no such referral. In either instance, the patient's general practitioner should be kept informed of the patient's progress, unless the patient specifically objects."

It is certainly my experience that consultants will seek as much background as possible in all such instances, and will usually keep the general practitioner informed of their opinion and any subsequent treatment.

Ideal world

In an ideal world, a general practitioner would always make these referrals, but the world we live in is far from ideal. There are a number of reasons why occasions will arise where a solicitor is correct to make such a referral themselves.

Firstly, general practitioners are extremely busy. Many are unable to take on new patients, and appointments – where obtainable at all, certainly during the winter months – can take weeks. As a consequence, the doctor either may not see the patient or not regard the treatment in question as a priority, given all the other matters a busy GP's practice has to deal with.

Secondly, some patients do not attend a general practitioner regularly or at all, and may have simply visited an emergency department following the accident.

Thirdly, a general practitioner may feel that a referral is not necessary, but the patient may feel differently.

PIC: ALAMY

Credibility issue

The unspoken issue at the heart of the judicial criticism is credibility – both of the plaintiff and the consultant. Surely, if both are deemed to be credible, the manner of the referral is irrelevant. It is inherent in basic training and the code of ethics of all doctors that they would approach the role of giving evidence in an impartial and truthful manner. This has to start as the basic premise for any court, unless given a reason to believe otherwise.

Indeed, it seems strange that no reference has, at any stage, been made to defendants' use of consultants. Clearly, they are in a different position to the plaintiff, in that they are responding to evidence already provided – but the basic position is the same. If a defendant is allowed to choose any doctor from their own panel – some of whom are retired consultants with practices that accept only referrals from insurance companies or PIAB, and others who accept multiple referrals on a regular basis from the same sources, without any judicial comment – then it seems strange that plaintiffs are not allowed to do the same.

Basic concept

This leads us to one of the basic concepts in litigation – equality of arms. As outlined at the outset, the position of the victim has already been undermined to a huge extent by legislation and media bias, so it seems that any judicial direction that limits the evidence a plaintiff can adduce, while placing no such constraints on defendants, is yet another fetter on the rights of an injury victim to proper compensation by the wrongdoer.

The trial judge is tasked with determining the evidence in any given case and reaching a fair conclusion. Having all of the available evidence before them is essential, and it is the duty of the solicitor to ensure that they are provided with this.

If an injured client tells their solicitor that there are injuries they regard as attributable to the accident, and this has not been investigated by a general practitioner or hospital, then in my opinion, a solicitor is obliged to investigate such complaints with an appropriately qualified expert, who in turn is obliged to provide an honest and unbiased opinion.

Where does it end?

If plaintiff solicitors cannot do this, then where does it end? Can engineers not be engaged? What about vocational consultants in serious cases? A solicitor is an officer of the court and is obliged to act in the best interests of the court. It is a matter, then, for the trial judge to determine whether they accept such evidence or not, in the same manner that they approach any other evidence in the case.

It comes down, as it always does, to credibility. If the plaintiff is not believable, then a court may not trust what they tell the doctor in any event. Doctors also rely on a truthful history, and the genesis of the referral will have no bearing on that.

Hopefully, in future, judges will approach this issue on a sensible basis that allows for fairness to both parties in the litigation – and the appropriate evidence upon which to evaluate their judgment. g

Stuart Gilhooly SC is a partner in HJ Ward LLP and is a past-president of the Law Society of Ireland.

LOOK IT UP

CASES:

- *Cahill v Forristal and O'Riordan v Forristal* [2022] IEHC 705
- *Dardis v Poplovka* [2017] IEHC 149
- *Fogarty v Cox* [2017] IECA 309
- *Harty v Nestor* [2022] IEHC 108
- *O'Connell v Martin, Ali v Martin* [2019] IEHC 571

PIC: ALAMY

SHOCK THERAPY

There is divergence between Ireland and Britain on the 'proximity test' in claims for 'nervous shock' for primary and secondary victims. Thomas McInerney and Padraic Brennan argue that the difference is difficult to reconcile – but will it last?

In 2022, the Court of Appeal in *Sheehan v Bus Éireann* delivered a helpful judgment restating the criteria for plaintiffs bringing claims for nervous shock. The court affirmed a High Court judgment awarding damages to a woman who had come across the body of a driver at the scene of an accident between a car and a bus. The car she was driving was struck by debris from the crash.

Mr Justice Noonan noted that Irish law, "at least to date", gives no consideration to any criteria that differentiate between victims of a primary or secondary nature. He added that, even if the distinction were recognised in this jurisdiction, this plaintiff would have recovered compensation as a primary victim due to her collision with debris, which put her at risk of physical injury.

In England and Wales, primary victims are those individuals who are involved in, and directly affected by, the incident in question. Secondary victims are those who come upon the scene after the incident has occurred.

The leading British decision arose out of the Hillsborough disaster, holding that a claimant who is a secondary victim must perceive the event with her/his own unaided senses or view the 'immediate aftermath' in order to recover compensation. The House of Lords therein established a requirement of close physical proximity to the shocking event for nervous-shock plaintiffs to succeed, and British courts continue to interpret the law in this manner (see *Alcock v Chief Constable of South Yorkshire Police*).

Ireland's eye

The proximity test in this jurisdiction goes back some 20 years, and was developed in the oft-cited and studied judgments of *Glencar* and *Fletcher*. Crucially, the courts here have maintained the position that no distinction will be drawn between primary and secondary victims who suffer a recognised psychiatric illness by reason of actual or apprehended physical injury.

The foundations of 'nervous shock' claims in this jurisdiction remain the principles laid out by the Supreme Court in *Kelly v Hennessy*:

- A recognised psychiatric illness was suffered,
- The injury was shock induced,
- The injury was caused by the defendant's negligence,

- There was an actual or apprehended physical injury to the plaintiff or another person,
- There was a duty of care not to cause a reasonably foreseeable psychiatric injury.

Regarding the question of proximity, the Supreme Court set out several features that may be relevant to this consideration, although not stating that this list was to be considered finite:

- Proximity of relationships,
- Spatial proximity,
- Temporal proximity.

As stated, the law concerning a victim's relationship to the injured (or the person to whom injury is apprehended) has been considered and developed somewhat since *Kelly* in cases such as *Glencar* and *Fletcher*.

Different reasoning in Britain, however, has led to very different and more onerous criteria for plaintiffs in these cases.

Court of Appeal decision

In 2022, a three-judge Court of Appeal in England and Wales tentatively followed the precedents going back to *Alcock*, by which it deemed it was bound. In the primary written judgment, Sir Geoffrey Vos expressed unease at the hurdles faced by secondary victims seeking to make a claim for nervous shock. He stated: "Looking at the matter without regard to the authorities, it is hard to see why the gap in time (short or long) between the negligence (whether misdiagnosis or door design) and the horrific event caused by it should affect the defendant's liability to a close relative witnessing the primary victim's death or injury that caused it."

This was a decision in respect of three appeals, each involving an alleged failure to diagnose the primary victim's life-threatening condition. In each case, the close relatives suffered psychiatric injury as a result of the shocking incident. *Paul* and

PIC: ALAMY

Polmear were appeals by the defendants, whereas *Purchase* was an appeal by the claimant. In both *Paul* and *Polmear*, the close relatives witnessed the death, and these appeals were allowed. In *Purchase*, the close relative happened upon the primary victim immediately following death, and this appeal was dismissed.

The Court of Appeal felt obliged to follow the legal reasoning in another Court of Appeal decision, *Taylor v A Novo*. In that case, the plaintiff's mother injured her foot in a work accident and her employer admitted negligence. She died in front of her daughter three weeks later due to a pulmonary embolus. Lord Dyson summarised the facts as amounting to a single event (the falling of racking boards on the plaintiff's mother) that had two consequences – the initial injuries and the subsequent death. He held that, had the plaintiff suffered psychiatric injuries as a result of seeing the accident and the injuries sustained by her mother, she would have qualified as a secondary victim, but that she did not qualify on the facts.

Sir Geoffrey Vos, in *Paul*, seeking to extract the *ratio* of the *Novo* decision, believed that there could be no liability for psychiatric injury to the claimant caused by witnessing her husband's death long after the negligence that caused it (in *Novo*, three weeks had passed). He stated that he had reservations about the *Novo* judgment and expressed a desire to move away from such a restrictive test for these plaintiffs. However, he believed he was bound by *Novo*, as it had been decided after full argument of the preceding cases, stemming from the House of Lords' decision in *Alcock*, and he could identify no misinterpretation in its reasoning.

Lord Justice Underhill, agreeing with the leading judgment in *Paul*, stated: "If the point were free from authority, I would be minded to hold that, on the pleaded facts, the claimants in all three cases should be entitled to recover."

> IT IS DIFFICULT TO RECONCILE THE CONTRASTING APPROACHES IN IRELAND AND THE UK IN INTERPRETING THE CONCEPT OF PROXIMITY IN CLAIMS FOR 'NERVOUS SHOCK'

Supreme Court precedents

It is only in very exceptional cases, and with compelling reasons for doing so, that the Supreme Courts of Ireland or the UK will consider departing from their own decisions; it is a power reserved only for the highest court. Previously, the position had been that the highest court was bound by its own decisions, however erroneous or unjust (see *London Street Tramways v London County Council* [1998]).

In 1966, the House of Lords delivered a practice statement to the effect that it would depart from its own precedents in order to achieve justice. This remains the established jurisprudence of the UK Supreme Court, although rarely occurring in practice.

Four years before that practice statement, and ten years before his appointment to the Irish Supreme Court, the late Mr Justice Séamus Henchy wrote that there had not, at that time, been a decision of the Irish Supreme Court indicating the extent to which it would consider reviewing its own decisions. Henchy opined in a 1962 article ('Precedent in the Irish Supreme Court') that a rigid doctrine of *stare decisis* does not guarantee predictability of judicial decision-making.

He added: "Examples are not wanting to show that, if a court disapproves of an earlier decision, it may narrow its application or, in certain cases, distinguish itself out of existence."

Henchy called for flexibility to keep up with a fast-changing society. Shortly after the House of Lords' practice statement, the once permanent nature of Supreme Court decisions was replaced by an element of flexibility.

We saw an example of such flexibility in 2015 in *DPP v JC*, in which the Supreme

CRUCIALLY, THE COURTS HERE HAVE MAINTAINED THE POSITION THAT NO DISTINCTION WILL BE DRAWN BETWEEN PRIMARY AND SECONDARY VICTIMS WHO SUFFER A RECOGNISED PSYCHIATRIC ILLNESS BY REASON OF ACTUAL OR APPREHENDED PHYSICAL INJURY

Court made a significant revision to the 'exclusionary rule' in relation to unconstitutionally obtained evidence, which had been developed by the Supreme Court 15 years earlier in *DPP v Kenny*. O'Donnell J was satisfied that the decision in *Kenny* was wrong in principle.

He stated: "I do not doubt the possibility of judicial error from a misguided approach to the law, an occasional lapse of judgment, or a lack of sufficient robustness, but I do not think that such frailty is limited to trial courts … The remedy for judicial error is the same in this field as elsewhere: a requirement that judges give reasoned rulings on issues, with the possibility of review and appeal."

It is difficult to reconcile the contrasting approaches in Ireland and Britain in interpreting the concept of proximity in claims for 'nervous shock'.

The *Paul* decision shows a willingness at the level of the UK Court of Appeal to move away from the restrictive approach for plaintiffs in these cases. However, none of the three judges was willing to diverge from an earlier Court of Appeal decision with which they could find no legal fault – instead expressing unease with the approach and stating that the issues merited Supreme Court consideration.

Not set in stone

In *Sheehan*, Mr Justice Noonan's comment that our position still holds "at least to date" might suggest that the formal approach in this jurisdiction is not set in stone. In a world where shocking events can be broadcast live to a global audience, court decisions on the entitlement to damages of certain victims can potentially be of major importance, and are of increasingly frequent relevance. Mr Justice Noonan noted in his judgment the significant challenges that advances in technology pose in this area of law.

For now, *Kelly v Hennessy* is the settled Irish authority, and there will be no distinction made between primary and secondary victims. That will remain so unless the Supreme Court revises the test it has set itself – a power that is seldom exercised.

If called upon to do so, the UK Supreme Court will face similar considerations in light of the judgment in *Alcock*, along with the line of subsequent Court of Appeal authorities interpreting the House of Lords.

Paul shows a desire, from some of the UK judiciary at least, to align with the Irish authorities and to move away from a restrictive test for plaintiffs. Such a test appears increasingly difficult to justify the more judicial scrutiny it faces. g

Thomas McInerney is a newly qualified solicitor and Padraic Brennan is a partner with RDJ Galway.

LOOK IT UP

CASES:

- *Alcock v Chief Constable of South Yorkshire Police* [1991] 1 AC 310
- *DPP v JC* [2015] IESC 31
- *DPP v Kenny* [1990] 2 IR 110
- *Fletcher v Commissioners of Public Works* [2003] IESC 13
- *Glencar Exploration plc v Mayo County Council (No 2)* [2002] IR 84
- *Kelly v Hennessy* [1995] IESC 8
- *Lisa Sheehan v Bus Éireann/Irish Bus and Vincent Dower* [2022] IECA 28
- *London Street Tramways v London County Council* [1898] AC 375
- *Paul (a child by her mother and litigation friend) v The Royal Wolverhampton NHS Trust* [2019] EWHC 2893 (QB)
- *Polmear v Royal Cornwall Hospital NHS Trust* [2021] EWHC 196 (QB)
- *Purchase v Ahmed* [2022] EWCA Civ 12
- *Taylor v A Novo (UK) Limited* [2013] EWCA Civ 194

LEGISLATION:

- 'Judicial precedent' (practice statement, 26 July 1966) [3 All ER 77]

LITERATURE:

- Séamus Henchy, 'Precedent in the Irish Supreme Court' (*Modern Law Review*, vol 25, no 5, September 1962)

THE CHANGE AGENT

Rose Wall aims to use the law as a tool for climate justice, and sees a strong link to her work in the field of social justice and human-rights law. She talks to Gordon Smith for the *Gazette*

ALL PICS: CIAN REDMOND

This year, Rose Wall will mark a decade as CEO of Community Law and Mediation (CLM), and 15 years of practice since qualifying as a solicitor in 2008.

With offices in Dublin and Limerick, CLM is an independent source of free legal advice, advocacy, mediation, and education services. In 2021, it launched the Centre for Environmental Justice, which aims to give a voice to the most vulnerable as society grapples with the climate crisis. For Rose Wall, this is not some mid-career turn in the road: she sees a clear path that connects to her work until this point.

From the very start of her career, she has focused strongly on human rights and social justice, representing vulnerable and disadvantaged communities. She has advocated for victims of injustice, so it's natural that she sees the climate crisis in similar terms. She argues that those who contributed least to the growing environmental issues, like flooding and pollution, will unfairly shoulder most of the burden.

Making connections

"I've always been aware of environmental issues, but I only started to make and understand the connections between the climate crisis and the work I've been involved in more recently, such as how the risks won't be borne equally, and how they'll affect

women, those with disabilities, Travellers and others," she says.

"When we set up the centre, we were coming at it from a social-justice and human-rights background. We were seeing how climate change was having an impact on people's housing – such as if there's flooding – or their health, if they're breathing polluted air," she says.

Rose believes it's critical that disadvantaged communities are represented in any discussion about the climate crisis. "There's a real risk that climate-action measures will make their situations worse. We need to make sure the climate agenda protects the rights of those most at risk," she says.

Multiplier effect

The law can help to ensure this happens, by having a 'multiplier effect'. Legislation requiring public access to energy-efficient homes with improved security of tenure, free public transport, or 'green' space would help to tackle wider issues of inequality, she says.

The centre also aims to focus on engaging the community through collaboration with the Irish Local Development Network, An Taisce, and other groups.

"We want to bring organisations like us and communities on the journey that we've been on," adds Rose. "One of the objectives of the centre is to work with other organisations to bring that 'climate lens' to the work they're already doing, for example, in housing, working with people on low incomes, with people with disabilities or with the Traveller community, who wouldn't traditionally work in the climate space."

Rose believes that the crisis is now so pressing that only a collective effort across society can hope to make a difference – and she says that the legal profession has a vital role to play (*see panel, p30*). By way of a rallying cry, she quotes the writer and activist Naomi Klein: "To change everything, you need everyone."

Change and law

Change, and the law's power to affect it, has been a constant theme of Rose Wall's working life. Over the past ten years, CLM has expanded to help more than 4,000 people every year with free legal services, specifically groups that are marginalised or under-represented in the legal system.

"That's 4,000 individual stories, and that's really important. We have also identified specific areas of law that need looking at, so we've expanded our work in areas of children's rights, for example," says Rose.

One memorable case she recalls was a recent action by her CLM colleague, Ruth Barry, who won an important legal challenge on behalf of a visually impaired student. The student, Cormac Flynn, had only 10% sight and

> IT'S CRITICAL THAT DISADVANTAGED COMMUNITIES ARE REPRESENTED IN ANY DISCUSSION ABOUT THE CLIMATE CRISIS. THERE'S A REAL RISK THAT CLIMATE-ACTION MEASURES WILL MAKE THEIR SITUATIONS WORSE. WE NEED TO MAKE SURE THE CLIMATE AGENDA PROTECTS THE RIGHTS OF THOSE MOST AT RISK

FOCAL POINT
FORCING POSITIVE CHANGE

Rose Wall makes a compelling argument that the legal profession can play a critical role in addressing the climate crisis. She points to how Climate Case Ireland took the Irish Government to court in 2020 for failing to take sufficient action as part of its national climate policy. The unanimous decision by the Supreme Court required the Government to revise its plan in line with its legal obligations. She says that similar cases through international complaints mechanisms are holding governments in other countries to account.

"The climate crisis requires us to change how we live, how we eat, how we heat our homes, and the legal community has a role to play in that. Failure to meet the target of keeping the increasing global temperature under the 1.5-degree Celsius limit will have a catastrophic impact, disproportionately impacting women, disabled groups, and poorer communities," she says.

Rose believes that failing to meet the environmental goals, or pursuing actions that will worsen the problem, are inherently against people's human rights. "Governments and businesses continue to pursue actions they know to be against the targets … The legal sector holds a unique position to force a positive change," she says.

So what can legal professionals do? She calls for an approach like the Law Society of England and Wales' climate-conscious approach to legal practice, including:

- The entire legal community must educate itself on the extreme environmental risks of breaching the 1.5-degree limit,
- In-house lawyers should advise clients where they are pursuing goals that are contrary to the aims of climate-action plans,
- For those who feel, 'I'm just a solicitor, what can I do?', ask your company: what is it doing around climate? Think of the wider impact of operations – including what businesses they work with – and advise appropriately,
- Join or volunteer with environmental organisations or take on *pro bono* work in this area.

Working for climate change can feel bleak, because the problem is all around us, and getting worse. Once more, Rose reaches for a line to inspire hope: "There's a great quote: 'action is the great antidote to despair'. As lawyers, we have privileges with our skills that we can use for climate action. From the questions we ask our employers and the work we do, all of that can drive action."

was facing the prospect of having to sit his Leaving Cert with physical exam papers after being refused access to the iPad he uses to help with his learning. After a successful challenge, Ruth won the right for him to have digital Leaving Cert papers. Now Cormac, having experienced first-hand how powerful the law can be, has said he wants to become a lawyer.

The case also led to the State Examinations Commission changing its rules so that every Leaving Cert exam student with a visual impairment can have digital versions of their exam papers.

"That's not me, it's my team, but I'm proud of that case," says Rose. "It shows how we can use the law as a tool in pushing forward one person's case that can also result in meaningful changes for others."

Meaningless

Another successful case that subsequently led to change in the law was *McCann v Monaghan District Court & Ors*. Caroline McCann was an unemployed mother of two and, in 2005, a District Court ordered her to be jailed for failing to repay an €18,000 judgment against her by Monaghan Credit Union. In 2009, the High Court ruled that this was unconstitutional. Rose describes the legislation on which the original decision was based as "a real Dickensian piece of law, where someone could go to

prison over their inability to pay a debt".

Cases like this are the reason why another part of CLM's work involves campaigning for law reform. "Under the law, we have certain rights and, if people don't know about the law, or don't know how to use it, or can't access the services of a solicitor, then the laws are meaningless," says Rose.

"What we sometimes see is that the law is there, and it might be good, but sometimes, there are gaps in the law, or decision-makers don't know what their obligations are. Most people don't know how to use the law or don't have access to a solicitor to help them do that."

Filling a gap

As one of eight centres in the country that fill a gap in providing civil legal aid, CLM also welcomes the anticipated review of the free legal-aid system. It's the first such review in 40 years. Rose contends that the current system is poorly resourced and many people who need to access it often can't do so.

"It's important there is a follow-through in terms of a comprehensive free legal-aid system. We'd really hope that whatever form is brought in is ambitious, comprehensive and adequate," she says.

For example, CLM's Limerick office is the only such community law centre outside of Dublin. Rose points out that it started shortly before she became CEO, driven by residents in the local communities, and has grown by 300% in the last ten years: "We help about 1,000 people every year with a tiny team," she says.

What's more, she points out that the current legal-aid system only provides assistance in limited areas, such as family law. "A whole swathe of law is not covered," she says, such as social-welfare matters, assistance before tribunals, and housing.

Connecting line

For the Dublin-based lawyer, there's a clear connecting line between her current role tackling environmental justice and her formative years with the law: "It goes back, in a way, to my student days. I was drawn to public-interest and human-rights law," she recalls.

This explains why, after a traineeship in private practice, she worked as a plaintiff litigation solicitor representing people before a variety of forums, including the Hepatitis C and HIV Compensation Tribunal (for victims who had received contaminated blood products) and the Residential Institutions Redress Board. At the same time, she also volunteered with FLAC and the Ballymun Community Law Centre.

In 2010, she joined the Mercy Law Resource Centre as managing solicitor, where she advised and represented clients who were homeless or at risk of homelessness in the areas of housing and social-welfare law.

Her passion and enthusiasm for her work comes across in her rapid-fire speaking style. Not for one second does she see her work as sacrificing a lucrative career in private practice: "I feel incredibly privileged to be paid to do the job I do," she says.

"The law affects us all in everything we do and, despite that, it's not accessible to many. And the power of the law to protect people's rights and hold power to account – I always wanted to work in a way that draws those two together. When an opportunity came up for a job where I could do this work for a living, I jumped at it." g

Gordon Smith is a freelance journalist.

GREAT POWER GREAT RESPONSIBILITY

PIC: ALAMY

Putting in place an enduring power of attorney should be considered as necessary and important as making a will, write Niamh Doyle, Aoife Sheehy, and Neva Watchorne

Recent research by Safeguarding Ireland found that only 6% of Irish adults have made an enduring power of attorney (EPA). This means that 94% of the adult population are not adequately protected should they find themselves in the unfortunate and unplanned position of being medically unfit or unable to make decisions affecting their personal and financial wellbeing. What should be considered a necessity and as important as making a will should not be limited to the old and vulnerable. It is a step we must all take to protect ourselves in uncertain times and from possible exploitation in the future.

Assisted decision-making

How can the *Assisted Decision-Making (Capacity) Act 2015* deliver in providing protections that are so desperately needed?

The act, as amended by the *Assisted Decision-Making (Capacity) (Amendment) Act 2022*, introduces significant reforms in the area of assisted decision-making but, critically, recognises that different levels of assistance can be required when making decisions and that, although a person may lack decision-making capacity in one matter, this does not necessarily mean that they also lack capacity in another matter.

One area that will be significantly reformed is EPAs. These are legal documents by which one appoints a person (an attorney) to make decisions regarding one's financial and personal affairs in the event that one no longer has mental capacity. Once the act is commenced, no new EPAs

can be created pursuant to the current governing legislation, the *Powers of Attorney Act 1996*.

Enduring power of attorney

EPAs are governed by part 7 of the act and can cover decisions relating to property and affairs and/or personal welfare. Decisions relating to future health (such as consent and refusal of medical treatment) are expressly excluded under the act. This is a critical distinction between the new form of EPA under the act and the existing form of EPA. Another document, known as an 'advance healthcare directive' (AHD) can be executed, which sets out one's instructions in relation to healthcare treatments in the future. AHDs are provided for in part 8 of the act. As both EPAs and AHDs involve a total loss of capacity, it would be more than prudent for one creating an EPA to also execute an AHD simultaneously.

The first step when considering an EPA is to select a person who will be appointed as attorney and who is completely trusted to make decisions about property, finance, and personal welfare. This is not a decision that should be made with haste, but must be carefully considered with the proposed attorney as, indeed, many a person may not want the responsibility of taking on such decisions and obligations.

The act provides that, at a minimum, this person must be over the age of 18, should not be a restricted person as set out in the act, and should be able to perform the functions of an attorney. More than one attorney can be appointed at any time and, where two or more persons are empowered to act jointly as attorneys, in the event of the death, lack of capacity, or disqualification of any one or more of them, the remaining attorney may continue to act unless the instrument expressly provides to the contrary.

> AS BOTH EPAs AND AHDs INVOLVE A TOTAL LOSS OF CAPACITY, IT WOULD BE MORE THAN PRUDENT FOR ONE CREATING AN EPA TO ALSO EXECUTE AN AHD SIMULTANEOUSLY

Formalities required

In order to ensure that EPA is validly made, specific statements (which are considered supporting documents) must be included in the instrument. These statements are made by various individuals, including the donor, the attorney, a medical practitioner, and a legal practitioner, and they primarily demonstrate and confirm the donor's capacity and understanding of creating the EPA.

The EPA must be in writing and must comply with part 7 of the act. Once the EPA is executed, notice must be given to various individuals set out in the act as soon as is practicable thereafter, and an application to register the instrument must be made to the director of the Decision Support Service (DSS) in the form required by the act by the donor, or by the attorney with the donor's written consent, no later than three months after the date of execution or the date of receipt of all supporting documentation, whichever is the later.

Once the application is received by the DSS, the director is responsible for reviewing the EPA, any objections received on the registration of the EPA by persons who the director is satisfied have sufficient interest or expertise in the welfare of the donor, and for ensuring that the instrument complies with the formalities of the act.

Once the EPA is registered, it cannot be revoked by the donor, unless the court confirms the revocation. This applies for so long as the EPA is registered, and whether or not the donor has capacity.

A significant introduction by the act is that a register of instruments creating EPAs shall be established and maintained by the director.

Restrictions and ineligibility

It is important to note that, although a power may be given in relation to personal welfare, the act specifically precludes the attorney from acting in any way that is intended to restrain the donor, unless there are exceptional emergency circumstances (which are set out in the act). In relation to a power to make decisions in relation to property and affairs, an attorney may not dispose of property by way of gift, unless specific provision for this is made within the instrument.

The act also sets out which persons are ineligible to act as attorneys, in addition to providing 12 situations in which disqualification of attorneys can occur.

Activation

The EPA shall not come into force until such time as the donor lacks capacity in relation to one or more of the relevant decisions, the instrument has been registered with the Decision Support Service, and the director has been notified and accepts the notification.

Once an attorney has reason to believe that a donor lacks capacity in relation to one or more relevant decisions, the attorney is required to notify the director in the specified form, and also to provide copies of the instrument to specified persons. Any notified person with sufficient interest or expertise in the welfare of the donor may object within five weeks of the notice date, following which the director is required to consider same, consult the relevant persons, and decide whether or not the objection is well founded. Thereafter, the director can either accept or reject the notification, and this decision can be appealed to the Circuit Court within 21 days of the issue of the notification.

Once the notification is accepted, changes to the EPA cannot easily be made. For example, the donor cannot revoke the EPA except in specific circumstances, and the attorney cannot resign unless the court consents, while the scope of the authority conferred in the EPA may not be extended

DECISIONS RELATING TO FUTURE HEALTH (SUCH AS CONSENT AND REFUSAL OF MEDICAL TREATMENT) ARE EXPRESSLY EXCLUDED UNDER THE ACT. THIS IS A CRITICAL DISTINCTION BETWEEN THE NEW FORM OF EPA UNDER THE ACT AND THE EXISTING FORM OF EPA

or restricted. The act does contain some safeguards, in that it sets out procedures by which the EPA can be varied or revoked, and there is also a provision that deals with the scenario where a donor regains capacity after the acceptance of a notification.

Other issues

The act places certain obligations on attorneys, including the requirement to keep proper accounts and financial records regarding income and expenditure, to submit accounts and records, and to prepare and submit a report to the director regarding the performance of his/her functions every 12 months.

The act also provides a mechanism whereby a complaint can be made:

- If someone is concerned that an attorney is acting or proposing to act outside the scope or in breach of their functions,
- Where they are not a suitable person within the meaning of section 59(6)of the act,
- Where fraud, coercion, or undue influence was used on a donor to appoint an attorney, or
- Where the donor did not have, at the time the EPA was executed or the time the EPA was registered, capacity.

Complaints in relation to attorneys empowered pursuant to the 1996 act can also be made to the director, and the process by which the director investigates and deals with such complaints is set out in the act.

It is important for donors and attorneys to be aware that the act sets out a number of criminal offences regarding the use of fraud, coercion, and undue influence in relation to EPAs, and also sets out sanctions for such offences.

Valuable tool

Used properly, EPAs can provide peace of mind for both the person granting the power and for the wider family. They are valuable tools for ensuring that one's wishes regarding property, affairs, and personal welfare are carried out, while also being flexible enough to be tailored to allow the scope of the powers to be as broad or as narrow as the donor wishes.

Recent calls by various professional bodies (such as the Irish Farmers' Association) have helped in highlighting the underutilisation of EPAs in the Irish context when compared with our European counterparts. EPAs and AHDs are important legal instruments that practitioners must consider offering to clients as part of a suite of services when advising on matters relating to estate planning, will drafting, and property.

While the transition from the existing High Court-based regime to the new Decision Support Service-based one may take time for practitioners to become accustomed to, it is hoped that more clients of all ages will choose to execute EPAs and AHDs in the future. g

Niamh Doyle is a property partner, Aoife Sheehy is an associate solicitor, and Neva Watchorne is a solicitor with Clark Hill Solicitors LLP, Dublin 4.

LOOK IT UP

LEGISLATION:

- *Assisted Decision-Making (Capacity) Act 2015*
- *Assisted Decision-Making (Capacity) (Amendment) Act 2022*
- *Powers of Attorney Act 1996*

LITERATURE:

- *Irish Farmers Journal* (12 September 2022), 'Farmers urged to make an enduring power of attorney'
- Safeguarding Ireland (September 2022), 'Call for more people to make an enduring power of attorney'

PIC: NASA/JPL-CALTECH/K SU (UNIVERSITY OF ARIZONA)

IF YOU CAN'T SEE IT, YOU CAN'T BE IT

There are rich benefits to be gained from disability inclusion within organisations, such as critical leadership qualities that feature resilience, adaptability, and innovation. Martina Larkin flies the flag for 'DI'

The term 'diversity, equality and inclusion' (DEI) has become a popular phrase on the HR agendas of many organisations across the world. There are numerous pieces of research outlining the social and economic value of having a diverse and inclusive workplace. For example, research that charts how jurors assess evidence has shown that people who work as part of a group that is diverse work more intentionally, increase their focus and, as a result, perform better.

However, a very interesting report from a US-based consultancy, Heidrick and Struggles, shows that studies like this focus mostly on particular aspects of diversity, such as on ethnicity, gender, or LGBTQ+. The research on disability in this context is not as prevalent. However, the report points to the rich benefits to be gained from disability inclusion within organisations at a number of levels.

The case for disability inclusion

The Heidrick and Struggles report bases its research on a number of large multinational companies located in the USA and notes that, while there are increasing numbers of targeted programmes to attract disabled employees at entry level, the representation of disabled people in leadership positions and boardrooms is remarkably low.

The report engaged with disabled high-level executives and noted that many of the leaders reported having to put disproportionate effort and energy into hiding their disability, or in consistently having to prove their ability. In fact, while the research showed that approximately 30% of employees had a disability, only 10% disclosed it. Therefore, 20% of the workforce are using valuable resources and energy in trying to hide their disability.

The primary reason for the reluctance to reveal their disability was reported to be due to the fear of being perceived as being less able. However, the report goes on to say that, with increasing numbers of people having disabilities or who will acquire a disability, it is a market benefit to incorporate and embrace the perspectives of disabled people in the workplace. Their input may ensure that a product or service will be more suitable to the ultimate consumer who is likely to have or experience disability at some point of their lives.

Not designed for them

Allied to the increased engagement and productivity that an employee could bring if they didn't feel the need to hide their disability and, given better customer relatability, as identified above, the case for disability inclusion gets even stronger when you look at the common gifts, strengths, and assets a large number of disabled people have by virtue of living in a world not designed for them.

Heidrick and Struggles outline a number of 'critical leadership qualities', which include resilience, adaptability, and innovation. Given that people with disabilities often embrace these qualities inherently by virtue of their lived experiences more generally, they may be better equipped to lead organisations. This is increasingly relevant now, when many other employee skills are becoming increasingly automated and robotised. It prioritises the need for experienced people who bring skills that automation cannot supply, such as imagination, innovation, and the ability to navigate complex social systems.

Accenture (USA) takes this further: it completed research with 140 respondent organisations that identified as 'disability-inclusive'. It analysed those organisations across four years, and identified 45 of those as 'disability-inclusion champions'. Their research showed that those top 45 companies were twice as likely to have increased shareholder returns as their peers. The report also noted additional 'beyond-revenue' benefits, including increased innovation, increased shareholder value, improved productivity, improved market share, and enhanced reputation.

The Irish context

Ireland, compared with other OECD countries, has one of the worst recorded rates of employment of disabled persons.

> THE REPRESENTATION OF DISABLED PEOPLE IN LEADERSHIP POSITIONS AND BOARDROOMS IS REMARKABLY LOW

A 2021 OECD report confirms that we are generally 'not very inclusive'. Of the almost 13.5% of our society that identifies as disabled (based on the 2016 census), only between 30-36% are employed. This is particularly concerning, as employment equality is one of the key routes to tackle marginalisation and social exclusion.

Furthermore, Ireland is lawfully obliged – by virtue of its ratification of the *UN Convention on the Rights of Persons with Disabilities* in 2018 – to meaningfully and purposefully fulfil its obligations thereunder. A core responsibility under article 27 of the convention relates specifically to work and the employment of disabled people. It prohibits discrimination on the grounds of disability, but also obliges the State to promote and protect the employment rights of people with disabilities.

Reasonable accommodation

Irish equal-status and employment-equality legislation prohibits discrimination on nine grounds, one of which is disability. Case law, particularly in the area of employment equality, has interpreted disability very broadly – including long-term accessibility issues, addiction, and short-term medical ailments (such as back injuries and other such issues).

In the area of employment, where a person has a disability, an employer must provide 'reasonable accommodation' to the disabled employee to meet their workplace-related needs. In other words, the employer is lawfully obliged to put in place appropriate measures to enable the disabled person(s) to have equal opportunities in the workplace.

The term 'reasonable accommodation' is often construed as complex or challenging for employers – but it doesn't need to be. The Heidrick and Struggles report goes so far as to say that, where appropriate measures are put in place (such as a hearing loop or captions to videos for people with hearing disabilities, or using videos with audio descriptions for blind or visually impaired people), the disability 'goes away'.

Social construct

This proposition is strongly tied to disability being a social construct. In other words, it is not a disabled person's attributes that prevent them participating fully at work, but rather the practices, facilities, and processes that favour the abled. If viewed from this perspective, reasonable accommodation amounts to no more than adjusting practices, facilities, or processes to enable access.

The pandemic has accelerated many routes to facilitate this in terms of working from home, hybrid arrangements, virtual meetings, and other information-technology accessibility tools. Irish research, on behalf of Employers for Change and the Open Doors Initiative, has nudged this accelerant even further by exploring *The Future of Work and Disability – A Remote Opportunity* (Joan O'Donnell, November 2021). The report examines what could have the most positive impacts in this area, including connection, accommodation, and learning.

Chronic staff shortages

Almost every industry in Ireland has been featured in the media recently as being in crisis due to staff shortages and challenges in the recruitment and retention of staff. Without a doubt, this is having a negative impact on society at a number of levels.

In Ireland, the potential to attract new disabled candidates to the market is huge. Caoimhe Grogan, vice-chair of the DisAbility Legal Network, referred to the disability 'talent pool' that is waiting to be tapped.

THE RESEARCH SHOWED THAT APPROXIMATELY 30% OF EMPLOYEES HAD A DISABILITY, BUT ONLY 10% DISCLOSED IT. THEREFORE, 20% OF THE WORKFORCE USE VALUABLE RESOURCES AND ENERGY TRYING TO HIDE THEIR DISABILITY

Based on the total population in Ireland today, and the OECD figures of between only 30-36% employment of disabled persons, it means that there is a potential additional workforce of over 400,000 people in Ireland.

Given the valuable gifts, talents, and strengths often possessed by disabled people, if disability inclusion were prioritised and meaningfully promoted, it could significantly boost the economy at a number of levels in addressing unemployment of disabled people, in enhancing corporate performance, in meeting skills deficits, and in releasing more disposable income into the economy. This, of course, is secondary to the primary benefit of addressing social exclusion.

'Ableism'

Numerous studies have documented disabled people's experiences of 'ableism'. Ableism is the conscious or subconscious belief that socio-typical abilities are superior. For centuries, ableism has been promoted through public order, criminal justice, and other routes to enforce normative conformity. Society has historically tried to 'help' and 'cure' disabled people through segregation and expert intervention. This promotes the perceived distance from what is seen as the societal 'norm'.

The benefit of the promotion of a human-rights based approach shows how absurd the ableist perspective actually is.

If not challenged, society could continue to portray disabled people as victims of circumstance rather than, as the sociologist Bill Hughes puts it, the "historic high achievers" and "agents against the odds" that they are.

Legal-sector market leader?

The legal sector has often led the charge in tackling issues of social injustice; in fact, it is the bedrock of the justice system itself.

PIC: ALAMY

Disabled people are often natural and skilled advocates, given that they have had to navigate a world that is not designed for them. Disabled people often report having to assert their rights on a day-to-day basis.

In order to address and tackle ableism, it takes skills that align very closely with those required in the legal profession, such as legal knowledge, empathy, negotiation, influencing, and communication.

The Law Society continues to encourage people with diverse lived experiences to join the profession. It ran a campaign in early September 2022 focusing on just that. It has also added human-rights law and disability law to its new 'fused' PPC course. The future does offer great opportunities to see the increased participation of disabled people in the sector and a continued challenge of the status quo.

However, one key element in meaning-fully promoting disability inclusion in the sector is for those in leadership to 'model' inclusion. For many of us, if you can't see it, you can't be it. We need to see disabled people in leadership roles, as this will combat inherent ableist practices. We need to promote psychological safety in teams that will enable people to move away from hiding their disability. g

Martina Larkin is the CEO of the Meath Foundation and is a non-practising solicitor. She is a passionate advocate for social justice and social inclusion, and has worked in the area of disability for the last nine years.

LOOK IT UP

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PIC: SHUTTERSTOCK/GAZETTE STUDIO

THE PARTY LINE

THE PENALTY IN COSTS ON FAILING TO BEAT A LODGEMENT OR TENDER IN PARTY-AND-PARTY ADJUDICATION CAN BE SIGNIFICANT AND, SOMETIMES, UNJUST. DENIS O'SULLIVAN BLOWS OUT THE CANDLES

The provisions in relation to lodgement or tender in satisfaction of costs are found in order 99, rules 57-61 of the *Rules of the Superior Courts* (RSC), as amended, with the relevant forms being found in part V of appendix W. The lodgement must be made within 21 days of receipt of the bill by the person against whom the costs order is directed, although this can be extended by a legal costs adjudicator (rule 57). A tender in satisfaction of costs may likewise be made and has the same effect, and is subject to the same rules as a lodgement made in satisfaction of costs (rule 61).

The concept of lodgement or tender in the adjudication-of-costs process was introduced by section 3 of the *Courts Act 2019*, which amended section 154(10) of the *Legal Services Regulation Act 2015* to empower the making of rules of court providing for lodgement or tender in the adjudication of costs process.

Order 99, rule 60 provides that if the claimant fails to beat the lodgement or tender made, then the claimant is "entitled to the costs of the adjudication up to the time when such payment into court was made", while the opponent is "entitled to the costs of the adjudication from the time such payment into court was made."

Unlike order 22, rule 6 (which deals with lodgement or tender in an action), where a discretion is recognised on the part of the trial judge as to the allocation of costs of the action on failure to beat the lodgement, "then, unless the judge at the trial shall for special cause shown and mentioned in the order otherwise directs" [order 99, rule 60] clearly allows no such discretion to the legal costs adjudicator.

The extent to which rule 60 penalises a party who fails to beat a lodgement in respect of costs depends upon what constitutes 'the costs of the adjudication'.

The main item of work involved in the adjudication process is often the preparation of the detailed bill ('drawing the bill of costs'), which will typically take several days at least in any complex case and, also, the statutory required discussions between the parties with a view to agreeing the bill. Nevertheless, one can visualise how such costs (being costs incurred in relation to the adjudication process before acceptance of lodgement) may be substantially exceeded by the costs involved in the post-lodgement part of the adjudication process.

It is true that the party opposing the bill of costs cannot recover a solicitor's or legal costs accountant's charges, either for preparation or attendance at the hearing to oppose the costs at the adjudication of costs. Nevertheless, if the "costs of the adjudication" are deemed to include the stamp duty – payable at 8% – on the amount allowed by the legal costs adjudicator, this may readily exceed the costs of the adjudication incurred pre-lodgement by the solicitor for the costs, and leave his client burdened with a substantial sum in respect of the 'costs of adjudication'.

Indiscriminate penalty

This levy – no matter by whom payable – is nothing less than an indiscriminate and arbitrary penalty for engaging in the adjudication process. This is because its amount bears no relation to any actual expense assessed as having been incurred in the adjudication process – it applies even in respect of witness expenses – and its amount is related exclusively to the sum certified by the legal costs adjudicator. As such, it is a penal tax on the administration of justice, with defendants sometimes heretofore being compelled to pay more in settlement than they feel they ought because of the comparatively ruinous expense of discharging the stamp duty involved if they should allow the matter to proceed to final adjudication.

If the incidence of this levy is shifted to the party pursuing the adjudication when

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she fails to beat a lodgement in satisfaction of costs, the result would be that an indiscriminate and arbitrary penalty would be imposed instead on that party, who is merely pursuing her right to have an adjudication of the costs to which she is entitled on foot of an order of the court directing such adjudication.

Fortunately, in party-and-party costs adjudication, the penalty imposed by rule 60 on the person who has been vindicated before the court seems to end there, because order 99, rule 29(1) provides, as previously noted, that the legal costs adjudicator has no jurisdiction to award the preparation and attendance charges for opposing the costs on the adjudication of party-and-party costs.

'Split' lodgements/tenders

The lodgement process itself is not straightforward because order 99, rule 57(2) requires the party lodging to allocate the lodgement between solicitor, senior counsel, junior counsel, and other disbursements. Thus, appendix W, form 5 ('notice of lodgement in satisfaction of costs') provides for the identification of the payments made under these four categories. Under rule 57(3), the individuals in respect of whose fees an allocation has been made in the notice of lodgement in satisfaction of costs must be informed of same by service on him or her of a copy of the notice of lodgement: "A party obliged to pay costs or, as the case may be, a legal practitioner, upon whom a notice of lodgement in satisfaction of costs is served, shall serve a copy of the notice of lodgement in satisfaction of costs on each legal practitioner for whose firm or for whom an amount of costs is specified in the notice of lodgement in satisfaction of costs."

The implication is that, once a specific amount has been identified as being allocated to an individual lawyer, it would seem to be impressed with a trust for her use, to the exclusion of others, if the lodgement is accepted. Likewise, individuals to whom sums have been allocated under the notice of lodgement have the right to accept or refuse the individual allocation made to such individuals.

Form 6, appendix W is in terms consistent with this. It provides: "Take notice that the [plaintiff, defendant, legal practitioner, or as the case may be] accepts the sum of €__ paid by you into court in satisfaction of the claim to costs in respect of which it is paid in."

The words 'in satisfaction of the claim to costs in respect of which it is paid in' clearly contemplate that there may be an acceptance of the lodgement made in respect of one lawyer's fees, and a rejection of the lodgement made in respect of another's fees.

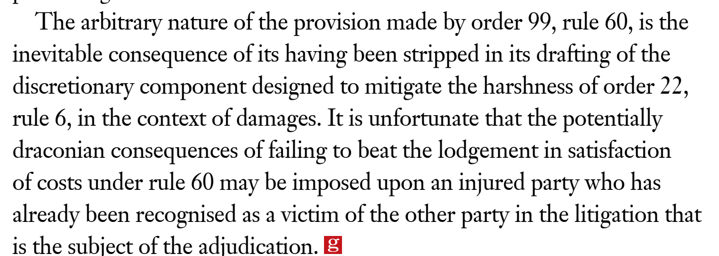
> THE REQUIREMENT TO LODGE IN SATISFACTION OF THE FEES OF THE LAWYERS WHO REPRESENTED THE SUCCESSFUL PARTY IN THE LITIGATION IS, INDEED, A RADICAL CHANGE THAT AFFECTS SUBSTANTIVE LAW. YET, IT SEEMS THAT THIS IS THE ONLY INTERPRETATION THAT CAN BE ADOPTED IN THIS CONTEXT

Underlying this procedure of lodgement against individual fees marked by the lawyers involved in the litigation is a complete conflict with the basic principle of civil litigation in this jurisdiction – namely, that the litigation is that of the client and that its costs are her responsibility, with a claim on the part of her lawyers against her for their agreed fees and not directly against the defendant.

The requirement to lodge in satisfaction of the fees of the lawyers who represented the successful party in the litigation is, indeed, a radical change that affects substantive law. Yet it seems that this is the only interpretation that can be adopted in this context that is consistent with order 99, rule 57(2) and the specified forms relating to notice of lodgement and notice of acceptance of lodgement.

Yet a further issue relates to the situation where the party presenting the bill fails to beat the lodgement in respect of one or more of the heads in respect of which the resisting party is required to lodge, but succeeds in relation to another, or others. For example, suppose that the party presenting the bill beats the amounts allocated in the lodgement under three heads, and fails in relation to one head only (say, the solicitor's instruction fee) and, in consequence, fails to be awarded less than the total amount lodged? In the context of the allocations required to be made under several heads, it would be highly illogical to insist that that party's success under three heads should be ignored because of the failure to succeed under the final head, leading to a failure to beat the total sum lodged.

This situation raises in acute form the problem that results from the failure to provide a discretion to the legal costs adjudicator to mitigate what may, depending on the circumstances, amount to a wholly disproportionate and unjust penalty in costs being imposed on the party presenting the bill.



The arbitrary nature of the provision made by order 99, rule 60, is the inevitable consequence of its having been stripped in its drafting of the discretionary component designed to mitigate the harshness of order 22, rule 6, in the context of damages. It is unfortunate that the potentially draconian consequences of failing to beat the lodgement in satisfaction of costs under rule 60 may be imposed upon an injured party who has already been recognised as a victim of the other party in the litigation that is the subject of the adjudication.

Denis O'Sullivan is principal of Denis O'Sullivan & Co, Solicitors, 6 Lapp's Quay, Cork.

In-house lawyers drive climate action

The recent Law Society In-house and Public Sector conference focused on the theme of environmental, social, and governance and its impact on businesses across the public and private sectors. Mary Hallissey reports

IN-HOUSE LAWYERS CAN DRIVE ACTION WITH CLIMATE CONTRACT CLAUSES AND BY BEING PROFESSIONALLY CURIOUS ABOUT THE STRATEGIES THAT ARE IN PLACE IN THEIR OWN BUSINESSES

Environmental, social and governance (ESG) and its impact for businesses across the public and private sectors was the theme of the recent In-house and Public Sector Conference, organised by the Law Society's committee of the same name. Committee chair Caroline Dee Brown said that it had been decided to further develop the theme of last year's conference.

Adam Woodhall, chief executive of Lawyers for Net Zero, told the conference that big organisations make big promises, but those pledges need to be delivered. The organisation he founded now has over 100 in-house lawyers committed to 'net zero'.

In-house lawyers can drive action with climate contract clauses and by being professionally curious about the strategies that are in place in their own businesses, he said. He pointed to the Russian invasion of Crimea in 2014, which was met with general indifference.

"Nobody particularly did much, especially businesses," he stated, and Russia hosted the World Cup in 2018, although it was occupying another sovereign state at that time. However, the impact of sanctions following the invasion of Ukraine earlier this year saw matters change very quickly. "Things can change quickly," he said.

Energy revolution

Fossil fuels may go the way of fax machines, which worked well for a long time as the ubiquitous business communication tool, Woodhall noted. "New technology suddenly takes over and that's actually happening with the energy revolution," he continued.

The working-from-home-revolution offered another example of sudden successful change, he added. What seemed

PIC: SHUTTERSTOCK

impossible suddenly became possible, he said. The challenge is to prioritise and make things happen, he said.

In-house lawyers must examine the risks to their business, because reputation is extremely important in ESG, as is allaying accusations of 'greenwashing'.

Lawyers need to "back themselves" and work out what is the right thing to do in each territory, and where to spend time and energy. The right thing for the organisation must also be the right thing for society and the world at large, he said. "This isn't going to be an easy thing. We've got a big problem if they are treated as a second- or third-level priority."

Leadership issue

"This is a leadership issue," Woodhall added, and Lawyers for Net Zero offers peer-to-peer accountability, motivation, and learning through their impact programme. This process guides in-house lawyers to create an action plan and supports them to take meaningful action. "What's clear is that Ireland is now really working to lead on this," he said, with ambitious climate actions proposed.

While there may be fears that renewables will be more expensive, in fact, they are now generally much cheaper than fossil fuels, he said.

In-house lawyers are at the centre of the Venn diagram of climate transition, business, government and law, he added. The lawyer's persona offers a position of influence and opportunity, particularly on greenwashing, where organisations might overstate or misrepresent environmental claims.

In-house counsel can ask the questions that will influence the senior leaders in their organisation. Lawyers must be careful not to allow business leaders to tell greenwashing 'porkies', he added. "This is a legal challenge and opportunity. You can be part of the legal future," Woodhall added.

Abby Semple (senior associate, Greenville Procurement Partners) told the conference that in-house lawyers can be crucial to climate action.

Public procurement accounts for approximately 14% of GDP across European countries, she explained, and it's also responsible for a large percentage of greenhouse-gas emissions.

Green public procurement (GPP) is not a new concept. From the mid to late '90s, the local authority sector sought the delivery of environmental or social outcomes, for example in Nordic countries. "Local governments often see both the environmental and social impacts of their spending more directly in their local communities," Semple noted.

EU law had to catch up with practice on the ground, and it was only in 2014 that the major reforms were undertaken to introduce provisions around sustainable procurement and lifecycle costing, which evaluates the total cost of ownership of an asset, such as a building or a road.

Legal challenges rare

Despite an extensive history of sustainable procurement across Europe, legal challenges are relatively rare at European level. Only a handful have made it to the European Court of Justice, of which only two were partially successful.

"It's not an area that is particularly fraught with legal risks," she said, "but purchasers are sometimes concerned that if they set high environmental standards, there won't be any products or services to meet them."

An increasing suite of legislation effectively mandates public bodies towards green vehicles or buildings, in line with the European Commission's flagship 'Green Deal' policy.

In 2021, the EPA published updated guidance for the public sector, which Semple worked on. The EPA and local-authority sector have also sponsored large-scale training programmes on GPP. "We're really seeing an attempt to use public procurement as a lever to push the market in a particular direction," said Semple.

Social risks

The public sector, as a major purchaser, must also take note of social risks, such as low pay or

human-rights abuses in supply chains – for example for ICT equipment, textiles or medical supplies.

Ireland does not have any concrete policy or guidance on socially responsible procurement, but the public sector has an equality and human-rights duty under the *Irish Human Rights and Equality Commission Act 2014*, Semple explained, which also extends to procurement.

Public bodies must focus on environmental or social impacts that are directly linked to what they are purchasing, she added, rather than looking for general corporate ESG policies. An example would be to source reused or upcycled furniture from a social enterprise.

Investment funds

Patrick Daly (legal director of the product legal team at Fidelity International) spoke about recent major changes in the investment funds sector, with a move to sustainable investing and an increased demand for financial products with an ESG focus.

Though clean and socially responsible investment is long established, it was previously a relatively niche area, but is now all-encompassing, with much more focus on ESG issues, he said.

Policy and regulatory changes have spurred this on, in particular the European Commission's *Action Plan: Financing Sustainable Growth*, published in March 2018, and a package of sustainable finance measures adopted following this in May 2018. The primary measures have been the EU's *Sustainability-related Disclosures in the Financial Services Sector Regulation* (SFDR) and the *Taxonomy (for Sustainable Activities) Regulation*.

This has forced asset managers to pay attention to ESG issues, with disclosure obligations on how sustainability risks are integrated into investment decisions and on the principal adverse impacts of investment decisions on sustainability factors.

Additional obligations

Additional disclosure obligations apply under the SFDR with respect to funds with an ESG focus, namely funds that promote environmental and/or social characteristics, and those with sustainable investment as their objective. These disclosure obligations are being implemented on a phased basis since March 2021. The industry has been grappling with how to apply the complex regulations, together with a large volume of supplementary implementing rules and guidance.

As an in-house lawyer within a large, global asset manager, Daly has been closely involved in the project for implementing these regulations across various fund ranges, and says that it has been a highly complex process. For example, given managers must determine for themselves whether their funds are within the correct classifications and decide how to apply the rather broad definition of 'sustainable investment' under the SFDR, they have needed to put in place a robust framework around this.

Staff turnover rates

Dr Sinead Brennan (chief people officer, NTMA) said that recruitment and retention challenges were leading to high staff turnover rates.

'The great resignation' is a reality in a very buoyant job market, she added, as employees reflect on their priorities, post-virus, and reimagine their futures. There is now a greater interest in freelance, part-time and contract work, and self-employment.

Employees have also experienced greater autonomy over their working lives and do not wish to relinquish that freedom.

Professional services saw a 13.4% turnover of staff in the past year (based on LinkedIn global data) – but figures approaching 20% would be deemed more problematic.

Staff retention

Empathetic and inspiring leadership will help an organisation to retain staff, Brennan noted, and employees want their work to mean something. They also desire flexibility, which is a real factor in talent retention.

"Micromanagement does not make people feel autonomous," she warned, and experienced staff don't require the same supervision as juniors.

Surveys show that remote workers do not feel any less aligned to company culture, she said. Leaders may also have to address skills gaps in managing remote-working environments, with clear communication lines. When staff come into the office,

Gender breakdown of Legal Counsels according to industry sectors in Ireland

According to the latest Law Society figures, 53 percent of practising solicitors in Ireland are women

Industry Sector	Talent sample	Male %	Female %
All sectors	**731**	**35%**	**65%**
Legal[1]	83	53%	48%
Technology[2]	111	35%	65%
Financial Services[3]	219	33%	67%
Life Sciences[4]	67	23%	77%

it must be clear what they are coming in for, she suggested. This could be social connection, mentoring, or networking. Managers also needed to be aware of 'proximity bias', where staff on-site get interesting projects and promotions, she said.

Candidate-driven market

Solicitor John Cronin (legal recruitment manager, Morgan McKinley) echoed the point that Ireland is currently in a candidate-driven market, which is particularly strong at mid-career level.

Lawyers who had moved in-house, in search of better work/life balance, are now being tempted back into the private sector because of hybrid work policies, he said.

Hybrid and remote set-ups are now the first item on the candidate agenda, ahead of salary, he noted. "Previously, it would always have been salary," Cronin said, and compensation has now plateaued after 10% increases.

Younger lawyers also want to know about the ESG policies of the firms where they work, he added.

"Now is a good time to move if you are a lawyer with in-demand skills," he said, with no sign of a market slowdown.

Remote work has also opened up opportunities for lawyers based around the country, he said. "Niche skills in investment funds and data protection/privacy are in huge demand. ESG experience is also sought after," he said.

Broadening diversity

Michelle Noone (head of senior executive recruitment, Public Appointments Service) described the extensive efforts to broaden diversity on State boards.

In 2021, there were 187 vacancies across 71 competitions with 152 appointments, with 55% female appointees and 45% male appointees.

The Public Appointments Service has developed and implemented its strategic approach to equality, diversity and inclusion, building their understanding of the public-service workforce and workplaces and how they reflect and embrace the diversity of Irish society.

There is high transparency in the process for State boards, with the general goal of driving up corporate-governance standards, Noone explained. There are over 230 State boards covering commercial, non-commercial, voluntary, regulatory, and other public bodies. The sectors are wide ranging and include areas as diverse as arts and heritage, health, environment, transport, and education.

There are several key skills required that are common across many boards – corporate governance, financial expertise, legal skills, strategic ability, sustainability, innovation, and commercial/business nous.

The webinar was well-received, with very positive feedback from delegates, who said that the training was beneficial to them. g

Mary Hallissey is a journalist with the Law Society Gazette.

LAWYERS WHO HAD MOVED IN-HOUSE, IN SEARCH OF BETTER WORK/LIFE BALANCE, ARE NOW BEING TEMPTED BACK INTO THE PRIVATE SECTOR BECAUSE OF HYBRID WORK POLICIES

LOOK IT UP

LEGISLATION:

- *Irish Human Rights and Equality Commission Act 2014*
- Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector
- Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

LITERATURE:

- *Action Plan: Financing Sustainable Growth* (European Commission, 8 March 2018; COM(2018) 97 final)
- Diane Balding, 'The European Green Deal' (*Law Society Gazette*, March 2020, pp62-65)

Bitten by the **bug**

In *DPP v Hutch and Others*, the permitting of evidence to be admitted into the trial – found by the court to have been unlawfully obtained *ab initio* – is a matter of great concern to practising criminal lawyers, says Dara Robinson SC

PART OF JUDGE HARDIMAN'S THINKING WAS THAT EXCLUDING UNLAWFULLY OBTAINED EVIDENCE TENDED TO ACT AS A BRAKE ON ANY TEMPTATION BY AN GARDA SÍOCHÁNA TO BREAK THE RULES

Criminal trials, especially in serious cases, tend to attract publicity to a greater extent than most litigation. The more sensational the case, the more attention it gets. It is generally the subject matter of the trial, rather than the evidential content, that draws the crowds, and few cases garner more casual onlookers than the one currently in progress at the non-jury Special Criminal Court, which has a number of exceptional strands.

The main accused, Gerard Hutch, is alleged to be a senior gangland figure: the charge is one of murder; the crime took place in broad daylight, in front of multiple eye-witnesses at a boxing weigh-in; certain of the assailants were dressed in fake garda uniforms; and so on. As crimes go, it was an offence wholly out of the 'ordinary'. The trial itself, taking place several years later, has been given added spice by the decision of an erstwhile accused, Jonathan Dowdall, a former Sinn Féin councillor, to admit his role in the organisation of the shooting and to turn State witness and go into witness protection. So far, so much tabloid fodder.

Far-reaching decision?

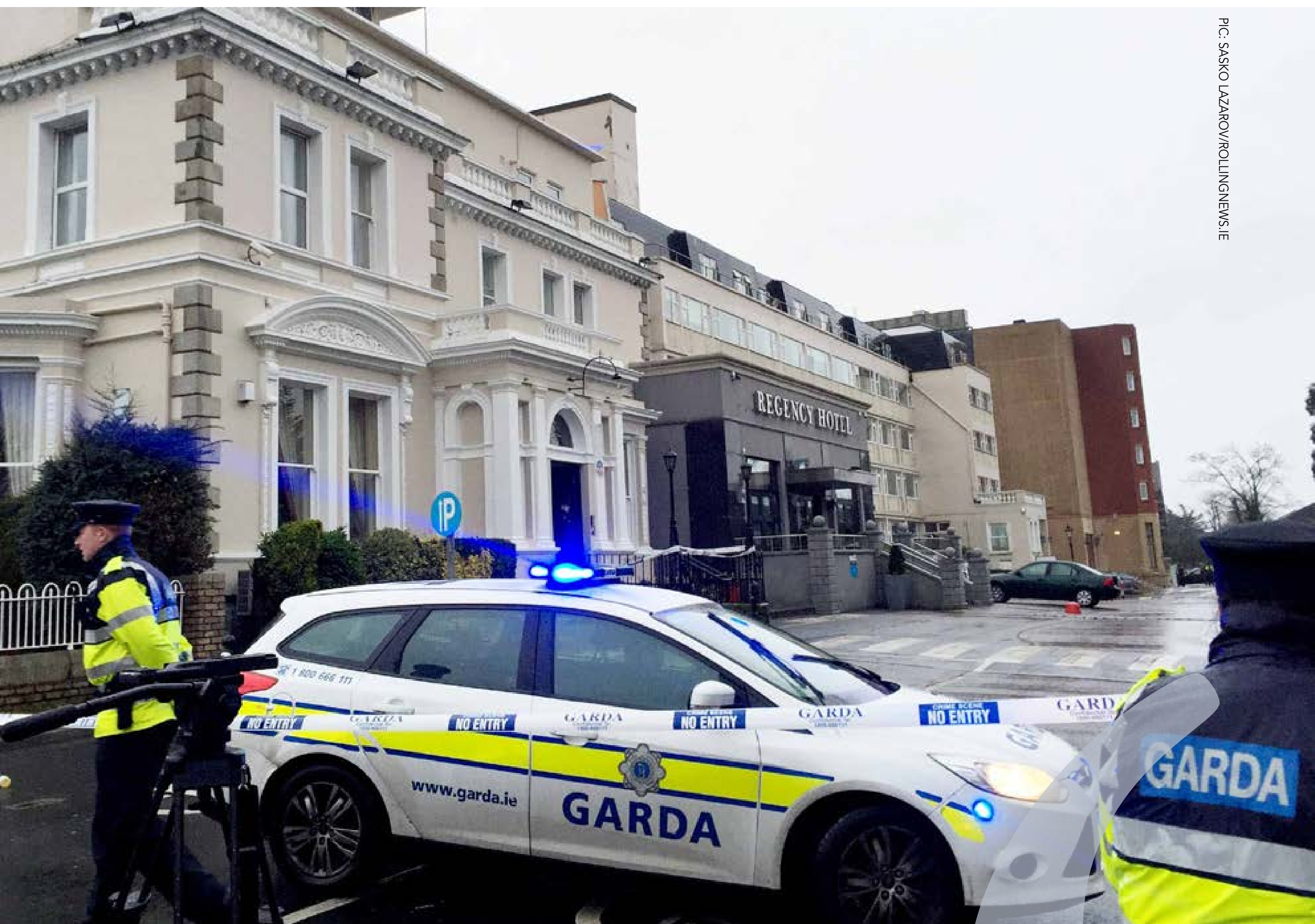
But what piqued the interest of criminal lawyers, who tend not to pay much attention to trials in which they are not involved, is a decision of the three-person court – a District Court judge, one from the Circuit Court, and presided over (as required) by a High Court judge, in this case Judge Tara Burns. The decision is potentially far-reaching, although it should be noted that the 'Special' is in fact only a first-instance tribunal. It concerns the admissibility of illegally obtained evidence.

As part of the investigation, gardaí obtained a warrant (an 'authorisation') from the District Court, pursuant to the *Criminal Justice (Surveillance) Act 2009*. This entitled them to plant a listening device in a particular car. They had anticipated that Messrs Hutch and Dowdall would be in the car together, and they hoped to eavesdrop on any conversations. The device was duly planted, the conversations monitored, and the gardaí struck evidential gold. The only problem was that much of the recorded talk took place on the Northern side of the border and, as such, was out of the jurisdiction. Needless to say, this led to a defence application at the trial to exclude the evidence on the basis that the gardaí are only permitted to carry out their functions within the republic.

Excluding evidence

Applications to exclude evidence – for all sorts of reasons – are part and parcel of criminal trials. Over the decades, a distinction has emerged between 'illegally' and 'unconstitutionally' obtained evidence – breaches in the latter category of cases generally leading to a ruling of inadmissibility; the former being much more problematic. However, in a controversial 2015 Supreme Court case, *DPP v JC*, a major dent was put in the so-called 'exclusionary rule', whereby unconstitutionally obtained evidence had almost always been automatically ruled out. It was notable that *JC* was by no means a unanimous judgment of the Supreme Court and, further, that the majority observed – unhelpfully in my view – that new principles would have to be developed on a 'case-by-case' basis.

Back to the Special Criminal Court: the defence made an application to exclude the evidence obtained using the listening device. They argued that the application for the device made to the District Court was not in accordance with the *Criminal Justice (Surveillance) Act 2009* and that anything derived from the use of the device should not be permitted in evidence. This argument was dismissed peremptorily – and correctly – by the court. However, the defence went on to pitch for the content of the conversations to be ruled inadmissible, noting that the act suggested, at various points, that it was intended only for use within the State. The prosecution predictably contended for the opposite interpretation, suggesting (among other



The crime scene at the Regency Hotel, Dublin, on 5 February 2016, where David Byrne was shot dead

propositions) that the act referred to lawful collection of evidence in any 'place', which was defined as including sea-going vessels and aircraft.

Unlawfully obtained

After lengthy argument and due judicial consideration, the court ruled that the evidence collected via the impugned procedure had, as a matter of law, been unlawfully obtained, insofar as much of the conversational exchange had taken place outside of the jurisdiction. The court emphasised, among other things, that a legal procedure – 'mutual legal assistance' – exists for the collection of evidence in foreign jurisdictions; that the gardaí cannot exercise their powers outside the State; and that, quoting the Supreme Court in earlier cases, had the legislature intended the writ of the District Court authorisation to extend outside the State, it should, and would, have done so "with irresistible clarity". One would have thought that was game, set, and match for the defence. But one would have been very wrong.

In its ruling, the court went on to consider the 'saving' provisions of section 14 of the act. This section is a sort of mopping-up exercise, and provides for evidence to be admitted in certain circumstances, notwithstanding "any error or omission on the face of the record" of the authorisation. The section provides a number of matters to be taken into consideration when applying the saver, such as whether the error was "serious or merely technical in nature", circumstances of urgency, the nature of any rights infringed, and so on.

'Operational' failures

The section also provides for 'operational' failures – An Garda Síochána failing to comply with any requirement attached to

> UNFORTUNATELY, ALLOWING MANIFESTLY UNLAWFULLY OBTAINED EVIDENCE TO BE ADMITTED IN A CRIMINAL TRIAL IS A FURTHER STEP IN THE WRONG DIRECTION

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the authorisation; again, the same matters – technical issues, circumstances of urgency and others – are to be taken into account by the court when assessing the consequences for admissibility on foot of any purported breaches. While not expressly so articulating, section 14 appears to contemplate relatively minor failures on the part of the court issuing the authorisation or on the part of the gardaí in acting on foot of it.

But what section 14 does not do, and it is submitted, could not do, is seek to address the situation that has arisen in this case, being that the authorisation issued by the District Court could never have allowed the gardaí to operate outside the State, a scenario found by the trial court to be unlawful. The section relied on in the court's ruling sets out to tidy up minor failures by State actors – gardaí or the District Court – but does not appear in any way to address the fundamental jurisdictional issue that has arisen in the trial and, in reality, nor could it. As such, the consideration of factors such as urgency or the nature of the infringed rights, dealt with at some length in the ruling, simply never should have been in the mix.

Worrying possibility

As is the way with criminal trials, when the ruling went against the defence, they had to shrug their shoulders and get on with it. If Mr Hutch is convicted – and the trial is ongoing – this point will no doubt form part of any appeal. But as with the *JC* case, the ruling raises a worrying possibility – that State actors operate to a lower legal standard than citizens.

This proposition was articulated clearly by the sadly now deceased Judge Adrian Hardiman in *JC*. In a blistering and heartfelt dissenting opinion, he described the idea that the State could rely on ignorance or inadvertence as "profoundly alarming and regrettable", given that such indulgence – exemplified in the dictum *ignorantia legis neminem excusat* – did not extend to ordinary citizens. No citizen can offer a defence in a criminal trial (no matter how minor) by suggesting that they were unaware of the relevant legal provision or how it affected their behaviour.

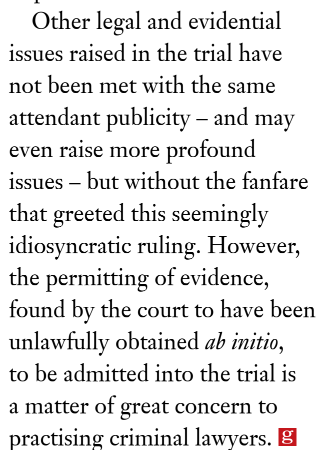
Part of Judge Hardiman's thinking was that excluding unlawfully obtained evidence tended to act as a brake on any temptation by An Garda Síochána to break the rules.

Unfortunately, allowing manifestly unlawfully obtained evidence to be admitted in a criminal trial is a further step in the wrong direction. Not alone does the practice allow a different legal burden on different actors, it provides further uncertainty for any accused person and for their advisers.

Of course, it should be noted that, as aforementioned, the Special Criminal Court is merely a court of trial, although the rulings of any High Court judge will inevitably carry significant weight. That being so, it seems obvious that any appeal process will flesh out this issue, possibly as far as the Supreme Court.

Other legal and evidential issues raised in the trial have not been met with the same attendant publicity – and may even raise more profound issues – but without the fanfare that greeted this seemingly idiosyncratic ruling. However, the permitting of evidence, found by the court to have been unlawfully obtained *ab initio*, to be admitted into the trial is a matter of great concern to practising criminal lawyers. g

Dara Robinson SC is a consultant at Sheehan & Partners, Dublin 8.



THE COURT EMPHASISED THAT 'MUTUAL LEGAL ASSISTANCE' EXISTS FOR THE COLLECTION OF EVIDENCE IN FOREIGN JURISDICTIONS AND THAT THE GARDAÍ CANNOT EXERCISE THEIR POWERS OUTSIDE THE STATE

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Can leisure make us better?

In a world of billable hours and never-ending to-do lists, where does leisure fit in? Dr Michelle Hammond sends us a postcard

THE COGNITIVE OR PHYSICAL ENERGY REQUIRED TO ENGAGE IN SERIOUS LEISURE OFTEN DEMANDS FULL FOCUS, THEREBY ELIMINATING THE ABILITY TO THINK ABOUT WORK

A surprising number of business leaders are quite serious about their leisure. Dan Schulman (PayPal), Adena Friedman (Nasdaq), and Joris Merks-Benjaminsen (ex-Google) all build confidence and strength through martial arts. George Barrett (former CEO of Cardinal Health and a singer-songwriter) credits his daily play for making him "happy and whole" as a leader.

But 'serious' leisure pursuits are not only for the business elite. An article on *Legal Cheek* highlights lawyers with interesting, serious, leisure passions. Olivia Potts describes herself as a "barrister by day, baker by night". Marcus Rutherford (partner at Enyo Law) is serious about mycology – the study of mushrooms. Simon Allen (head of personal injury at Russell Jones & Walker) is a passionate photographer.

Why do these leaders do it? In my research collaborations with Dr Emilia Bunea (former CEO and marathon runner) and Prof Ronit Kark, we examine how serious leisure affects leadership.

Top leaders take their hobbies and volunteering seriously as ways to strive for being their best selves, connect with followers, and build 'authenticity'. Leisure may provide opportunities to bring more fun and passion to life – but also better performance, creativity, stress relief, and connection.

Performance

Leadership occurs beyond the office. Leisure activities themselves may be opportunities to hold leadership positions as captain, coach, or conductor, which may serve to reaffirm the strength of leader identities and allow leaders to try out new behaviours. Serious leisure promotes values that are often associated with leadership, such as discipline, self-improvement, self-awareness, goal setting, working as a team, and perseverance through adversity – skills that directly translate into work.

In an interview with the BBC, black-belt Adena Friedman says: "Taekwondo is a great discipline for my body and mind. It has impressed upon me the idea that success is in my control. I know that I can get hit, and it's not the worst thing in the world. I just need to decide to get back up and keep fighting."

In an interview with the *New York Times*, Dan Schulman went as far as to say: "I've learned more about leadership from martial arts than I have from my formal education."

Serious leisure activities that promote physical fitness may also provide energy and stamina to face long days or high-pressure situations. While I was a lecturer at the University of Limerick, I had the honour to partner with Munster Rugby as they launched their High-Performance Leadership Programme. At the world-class Munster training facility, business leaders began to take a 'whole-person' look at their leadership – being their best physically and emotionally to have the energy to lead.

Although much less physically demanding, Warren Buffet agrees about the lessons he has learned in bridge, telling CBS News: "You have to look at all the facts. You have to draw inferences from what you've seen, what you've heard. You have to discard improper theories about what the hand had as more evidence comes in sometimes. You have to be open to a possible change of course if you get new information. You have to work with a partner, particularly on defence." These lessons are rich in most serious leisure pursuits.

Clifford Main, managing partner of Davis & Main, Santa Fe (Ed Begley Jr in ***Better Call Saul***)

Creativity

Some serious leisure activities directly involve creativity – such as crafting, music, and the arts. Even activities outside of the arts can prompt creativity at work. Creativity is based on divergent thinking, in which generating a variety of ideas and alternative solutions to problems is the goal rather than a single correct solution.

This type of thinking thrives when we have access to different types of experiences, ideas, and approaches. Getting out of the office and doing something completely different can encourage divergent thinking. Furthermore, many people suggest that their greatest ideas occur when they are not actively thinking about them. Engaging in healthy serious leisure can provide both needed time away from problems and a new way of approaching them. Arguably, creativity at work is growing increasingly important as we face new levels of change and uncertainty.

Wellbeing and recovery

Athletics and creative pursuits are great stress relievers. Serious leisure can afford a different type of detachment and recovery than relaxing at the spa or on the couch.

Most of us have dedicated relaxation time that we end up spending preoccupied with work issues. The result can leave us feeling unproductive, not rested, and guilty for wasting our time.

The cognitive or physical energy required to engage in serious leisure often demands full focus, thereby eliminating the ability to think about work. Former US Secretary of State Condoleezza Rice told *Meet the Press*: "It's not exactly relaxing when you're struggling to play Brahms. But when you're playing, there is only room for Brahms or Shostakovich. It's the time I'm most away from myself, and I treasure it."

As leadership roles can be described as all-encompassing, having this truly off-work time is indeed a treasure. The fulfilment that serious leisure activities bring can at times compensate for bad days or moments when a leader's own needs are not met. As the expression goes, 'it's lonely at the top'. Engaging in a fulfilling hobby or hitting the gym can help replenish the proverbial cup.

Managing stress is vital for leaders. When leaders are feeling stressed and their needs are not met, they are more likely to make rash decisions, fail to manage their emotions, and negatively affect culture. As leaders' worst behaviours are often associated with experiencing stress and

> WE TEND TO FIND PEOPLE WHO ENGAGE IN LEISURE ACTIVITIES MORE INTERESTING THAN THOSE WITH FEWER DIMENSIONS. LEADERS TEND TO BE MORE EFFECTIVE WHEN OTHERS ADMIRE AND WANT TO IDENTIFY WITH THEM

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10 May	**Assertiveness & Dealing with Difficult Work Situations** Law Society of Ireland	3 Management & Professional Development Skills
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burnout, the detachment and recovery afforded by serious leisure are good for workplace relationships and good for business.

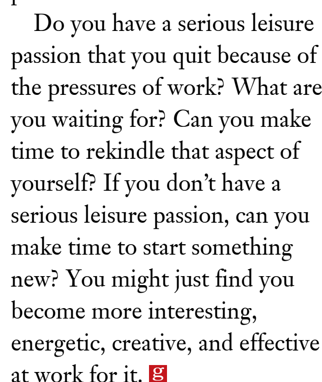
Identity and authenticity

For many who pursue a serious leisure activity, their involvement began long before their careers. These leaders might have stated "I'm an athlete" long before stating "I'm a business leader". It is a strong part of how they see themselves. Engaging in sport or the arts can ground a leader in who they are as a person – not just a leader.

As CEO of American Electric Power Nick Akins said about playing drums at a charity event: "As a CEO, you're constantly in the public eye and, in that event, we were just sort of the hired help!" – before also saying, "I'm still a rock drummer at heart." Making time for leisure provides freedom for self-expression that may be considered taboo at work.

Unlike other parts of ourselves, leisure identities can remain hidden if so chosen. Those who chose to reveal their leisure pursuits may find it combines with their professional identity to form a new uniqueness. Lauren Cohen of Harvard Business School is known as the 'Powerlifting Professor'. Similarly, CEO of Signet Jewelers Gina Drosos (volunteer basketball coach and a former star college basketball player) is known to use basketball metaphors in her leadership and approach to gender equity.

The additional strong identities associated with serious leisure provide a buffer to negative events. Greater self-complexity – having more aspects to yourself that are not related to each other – is associated with being able to bounce back from setbacks and failures. For example, consider how two people may be affected after a loss to the whims of the court: someone who sees herself as a successful lawyer, mother, wife, and beekeeper, compared with someone whose identity is grounded in work alone. When we make work our whole life, a hit at work can take a toll.



Connection and passion

We tend to find people who engage in leisure activities more interesting than those with fewer dimensions. Leaders tend to be more effective when others admire and want to identify with them. Admiration for qualities associated with leisure activities, and personal interest in someone who has a full personal life, can lead to more engaged followers.

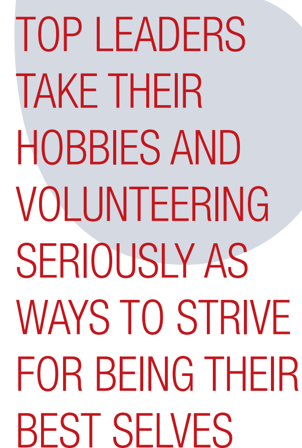
Alternatively, when a leader reveals non-work aspects of themselves, it may help to humanise the leader, bringing them down from their pedestal and increasing approachability. David Solomon, the CEO of Goldman Sachs, who DJs under the stage name 'DJ-Sol', believes this to be true: "As a business professional, it's also connected me to a lot of the younger people that I work with. I think it makes me more accessible to them."

One of the defining features of serious leisure is passion. Passion for a leisure activity prompts investment in it. However, passion isn't always advantageous. The benefits of serious leisure depend on the type of passion experienced. Harmonious passion is based on free choice and stems from one's own desires.

Obsessive passion, on the other hand, can not only reduce the likelihood of the benefits of leisure, but even bring about negative outcomes more directly, such as feelings of guilt, shame, and anxiety or inability to say 'no'. Leisure activities should stem from personal choice and interest, rather than guilt or anxiety, and one in which the individual feels free to stop. Obsessive passion represents an unhealthy relationship with leisure and can have negative consequences for leaders, their teams, and their companies. For example, the companies of CEOs who play the most rounds of golf annually reported lower firm performance.

Do you have a serious leisure passion that you quit because of the pressures of work? What are you waiting for? Can you make time to rekindle that aspect of yourself? If you don't have a serious leisure passion, can you make time to start something new? You might just find you become more interesting, energetic, creative, and effective at work for it. g

Michelle Hammond is associate professor of management at Oakland University, Rochester, Michigan.



TOP LEADERS TAKE THEIR HOBBIES AND VOLUNTEERING SERIOUSLY AS WAYS TO STRIVE FOR BEING THEIR BEST SELVES

LOOK IT UP

LITERATURE

- 'Bringing back bridge' (John Blackstone, *Sunday Morning*, www.cbsnews.com, 16 February 2008)
- 'CEO insights: Nick Akins' (interview with 10TV's Kristyn Hartman and Columbus Chamber of Commerce members, 7 October 2015)
- 'Childhood basketball and 2021 gender equity lessons' (Gina Drosos, CEO of Signet Jewelers LinkedIn, 8 March 2021)
- 'Condoleezza Rice on piano' (Anthony Tommasini, *The New York Times*, 9 April 2006)
- 'Dan Schulman of PayPal on guns, cash and getting punched' (David Gelles, *The New York Times*, 27 July 2018)
- 'Goldman Sachs CEO David Solomon shares the story of how he became a DJ' (Shana Lebowitz and Dakin Campbell, *Business Insider India*, 20 January 2019)
- '"Leisureship": impact of pursuing serious leisure on leaders' performance' (Emilia Bunea, Ronit Kark and Michelle Hammond. *Human Resource Management Review*, 15 Dec 2022)
- '10 lawyers with weird and wonderful hobbies' (Katie King, *Legal Cheek*, 22 June 2016)
- 'The Powerlifting Professor' (*Harvard Business School Newsroom*, 2 December 202)
- 'The Taekwondo black belt who runs the Nasdaq' (Kieron Johnson, BBC.com, 13 May 2019)

Competition law enforcement: a new era

The *Competition (Amendment) Act* was signed into law in June 2022 and is expected to be commenced in the coming months. Laura McGovern and Jessica Egan give the team talk

WHILE THE NEW ERA OF ADMINISTRATIVE COMPETITION ENFORCEMENT USHERED IN BY THE ACT IS TO BE WELCOMED, WE ARE LIKELY TO SEE FURTHER DEVELOPMENTS AND REFINEMENTS IN THE COMING YEARS

News from the EU and International Affairs Committee. Edited by TP Kennedy, Director of Education

The long-awaited *Competition (Amendment) Act 2022* transposes Directive 2019/1 (the *ECN+ Directive*), the aim of which is to empower national competition authorities of EU member states to become more effective enforcers of EU competition law. In Ireland, the Competition and Consumer Protection Commission (CCPC) is the primary enforcer of competition law, while the Commission for Communications Regulation (ComReg) has concurrent powers in the electronic communications sector.

The act is hugely significant, as it introduces an administrative enforcement regime for competition law. Under this new regime, the CCPC has the power to make a finding that an undertaking has breached competition law and to impose fines of up to €10 million or 10% of that undertaking's worldwide turnover in its own proceedings, subject to confirmation by the High Court.

Under the existing legislation, the *Competition Act 2002*, the CCPC would investigate a suspected breach and decide whether to initiate either civil or criminal proceedings in the courts. Only the Irish courts could make a finding that a breach of competition law had occurred. No fines could be imposed by the courts in civil proceedings or by the CCPC. Fines could only be imposed by a court following a criminal conviction.

The purpose of this article is to provide practitioners with a high-level overview of the new administrative enforcement regime that will apply to breaches of both Irish and EU competition law once the act is commenced, and to note some key takeaways. This article focuses on the CCPC's powers, but most of the act's provisions apply equally to ComReg. The act also makes other amendments to the existing legislation for the purpose of transposing the *ECN+ Directive* and for bolstering the CCPC's existing powers beyond the scope of that directive, but these changes are not discussed in this article.

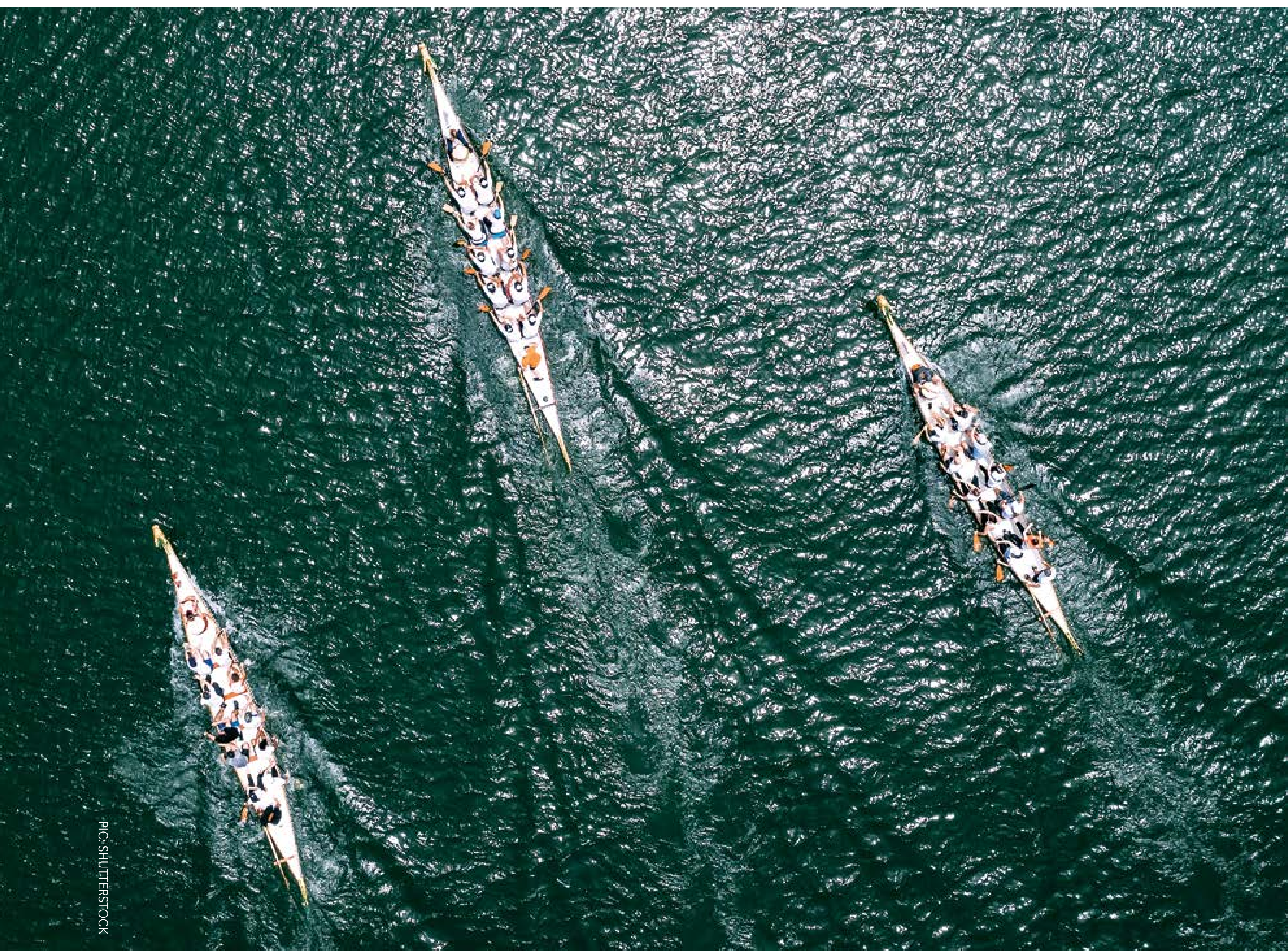
Zalewski judgment

The changes introduced by the 2022 act will be of most interest to in-house counsel and competition law practitioners. However, the act has a much wider significance, as it is – to our knowledge – the first piece of legislation in Ireland providing for an administrative decision-making procedure published after the Supreme Court decision in *Zalewski v Adjudication Officer and WRC, Ireland and the Attorney General* ([2021] IESC 24).

In *Zalewski*, the Supreme Court considered a constitutional challenge to the Workplace Relations Commission (WRC), which adjudicates on disputes under employment legislation. A majority of the Supreme Court considered that the WRC was involved in the limited administration of justice pursuant to article 37 of the Irish Constitution.

Certain aspects of WRC procedure, however, were declared unconstitutional. These included the requirement that all hearings be held in private, and the absence of a provision requiring certain evidence to be given on oath, or any possibility of punishment for giving false evidence.

The administrative procedure provided for in the act has been carefully designed to give effect to the provisions of the *ECN+ Directive*, while at the same time seeking to achieve compatibility with the Irish Constitution, as interpreted in *Zalewski*.


PIC: SHUTTERSTOCK

Administrative sanctions

The act provides that the CCPC can initiate its administrative sanctions procedure at any stage during a competition investigation, where it forms the preliminary view that an infringement of competition law may have occurred and that the matter is not to be treated as a criminal matter. To do this, the CCPC issues the undertaking concerned with a 'statement of objections', which sets out the CCPC's reasons for its preliminary view.

As soon as practicable thereafter, the CCPC must provide that undertaking with access to any material relied on by the CCPC for the purpose of issuing the statement of objections (although certain material may be redacted).

The undertaking concerned then has a right to make written submissions in response to the statement of objections, following which the CCPC must prepare what is called its 'full investigation report'. Where the CCPC forms a provisional opinion that an infringement has occurred and decides to proceed with enforcement, the CCPC is required to refer the matter for decision by an independent 'adjudication officer' and provide a copy of the full investigation report to the adjudication officer and the undertaking concerned.

Separation of functions

A fundamental requirement of the act is that there must be adequate separation between the CCPC's investigative and adjudicative functions: that is, between the individuals investigating a suspected infringement and the individuals deciding whether an infringement has, in fact, occurred and imposing a fine or other sanction.

The act creates the new role of adjudication officers, who are nominated by the CCPC and appointed by the Minister for Enterprise, Trade and Employment. The act contains stringent requirements to ensure that adjudication officers shall be independent in the performance of their functions, including a requirement that

THE ACT PROVIDES THAT THE CCPC CAN INITIATE ITS ADMINISTRATIVE SANCTIONS PROCEDURE AT ANY STAGE DURING A COMPETITION INVESTIGATION WHERE IT FORMS THE PRELIMINARY VIEW THAT AN INFRINGEMENT OF COMPETITION LAW MAY HAVE OCCURRED AND THAT THE MATTER IS NOT TO BE TREATED AS A CRIMINAL MATTER

they shall not be accountable or answerable to any person when performing these functions. The act also requires the minister to make regulations providing that adjudication officers shall not be involved in any investigations into suspected competition-law infringements. Further requirements to ensure the independence of adjudication officers will be prescribed in secondary legislation, which (at the time of writing) has yet to be published.

Procedures

The act gives adjudication officers extensive powers to obtain additional information during the adjudication process if this is deemed necessary for deciding whether there has been an infringement. Specifically, an adjudication officer may request further information from the undertaking concerned or from any other person, and may summon witnesses to appear before him/her at an oral hearing. At such oral hearings, an adjudication officer has the same powers, rights, and privileges as a judge of the High Court hearing civil proceedings.

The Supreme Court's criticisms of the WRC procedures in *Zalewski* are addressed in the act, which provides that an adjudication officer may require a witness to give evidence on oath, and it is a criminal offence for such witness to knowingly provide evidence that is false or misleading in a material respect.

Further, the act provides that an oral hearing before an adjudication officer must be held in public, unless there are 'special circumstances', which include whether information likely to be given in evidence is commercially sensitive.

Where an adjudication officer finds that an infringement has occurred, he/she can impose a fine and/or structural or behavioural remedies (for example, requiring a company to divest a business or cease certain conduct). The decision of the adjudication officer does not take effect until it is confirmed by the High Court.

The undertaking can appeal the decision of the adjudication officer to the High Court within 28 working days. However, the grounds of appeal are expressly limited by the act itself. Where an undertaking does not appeal, the CCPC must apply to the High Court for confirmation of the adjudication officer's decision before the decision may take effect.

Key points

The introduction of administrative fines for breaches of competition law fills a significant gap in the existing enforcement regime. Although criminal sanctions may be appropriate and effective for deterring cartel activity, other types of anti-competitive practices (for example, abuse of dominance or anti-competitive vertical agreements) are rarely suitable for criminal prosecution, which requires the prosecution's case to be proven to the very high evidential standard of 'beyond reasonable doubt'. Although the CCPC has challenged such practices in the past, it has been unable to impose effective sanctions on the undertakings concerned. The absence of civil or administrative fines has resulted in underenforcement of such practices, and little deterrent effect for undertakings engaging in them.

It seems highly likely that, following commencement of the act, public enforcement of competition law in Ireland will significantly increase, especially with respect to non-cartel practices, which will now be punishable with fines on satisfaction of a lower, civil, evidential standard of 'on the balance of probabilities'.

Undertakings should ensure that they have in place comprehensive compliance programmes and regular training that cover the full spectrum of competition infringements – not only the most serious cartel breaches – and obtain specialist legal a dvice on business strategies that may give risk to competition-law risks (for example, undertakings with potentially dominant market positions or that operate distribution or resale networks).

This will be particularly important given that the act allows the CCPC to put in place leniency programmes for infringements other than cartels, which offer incentives for undertakings to bring such infringements to the CCPC's attention. Indeed, in June, the CCPC consulted on a draft addendum to its administrative leniency policy that extends the scope of that policy to practices that constitute resale price maintenance.

Decision-making procedures

The provisions of the act that require a strict separation of the CCPC's investigative and adjudicative functions create an enforcement regime that is not comparable to any other competition agency in the EU. In addition, other Irish regulators with administrative fining powers do not currently have comparable decision-making structures, or such detailed and stringent independence requirements, set out in their primary legislation.

There is, therefore, a degree of novelty in the new regime that inhibits the ability of practitioners and undertakings to 'read-across' the structures and procedures applied by other competition agencies or other relevant Irish

regulators. The early years of the new regime will provide important lessons for both the CCPC and practitioners advising undertakings under investigation, and the policies, procedures, and guidelines that will be adopted by the CCPC upon commencement may be subject to change as the regime beds in. Additionally, the act provides for a raft of secondary legislation to be made, which may introduce further, more detailed requirements for ensuring the independence of adjudication officers or decision-making procedures.

Devil in the detail

The act is very prescriptive as to the procedures to be followed by the CCPC and the adjudication officers, several of which depart significantly from those adopted in many other jurisdictions. For example, the 'full investigation report' (described above) is novel in this context, and the oral-hearing procedure envisaged in the act is more akin to a court hearing than the equivalent procedure under the European Commission's competition enforcement regime. In addition, all decisions by adjudication officers must be confirmed by the High Court, either on appeal or by way of the 'court-confirmation' procedure set out in the act.

The requirements and procedures specified in the act seem unlikely to reduce the length of CCPC competition investigations, which in recent times have ranged between two and six years. In fact, the new adjudication process may extend the duration of competition investigations. In this regard, it is noteworthy that the act explicitly provides that no limitation period will apply to the referral of a matter to an adjudication officer for a decision.

The new administrative decision-making procedure under the act may also be more costly and resource-intensive than the present regime, both for those under investigation and the CCPC. Oral hearings that involve examination and cross-examination of witnesses under oath are expected to be highly adversarial and require significant legal resources and input. There is also likely to be disruption to the client's business, given that adjudication officers may summon witnesses and require the provision of information and evidence additional to that which has already been provided by the undertaking to the investigators prior to any referral to an adjudication officer.

Final thoughts

The act is an extremely ambitious, complex, and ground-breaking piece of legislation. The new administrative enforcement regime introduced by the act will greatly enhance the ability of the CCPC to enforce competition law effectively.

The existence of administrative fines for breaches of competition law is a significant deterrent, which should increase the incentives for undertakings to cooperate with competition investigations and, ultimately, promote a better compliance culture among Irish businesses.

However, the adjudication structures and procedures prescribed by the act are novel, very detailed, and require careful navigation. While the new era of administrative competition enforcement ushered in by the act is to be welcomed, it is still in its infancy, and we are likely to see further developments and refinements in the coming years, as experience of the new regime grows. g

Laura McGovern is a former deputy director of legal services in the CCPC and a member of the Law Society's In-House and Public Sector Committee. Jessica Egan is a senior legal advisor in the CCPC and a member of the EU and International Affairs Committee. The views and opinions expressed in this article are those of the authors only.

> THE PROVISIONS OF THE ACT THAT REQUIRE A STRICT SEPARATION OF THE CCPC'S INVESTIGATIVE AND ADJUDICATIVE FUNCTIONS CREATE AN ENFORCEMENT REGIME THAT IS NOT COMPARABLE TO ANY OTHER COMPETITION AGENCY IN THE EU

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CONVEYANCING COMMITTEE

MULTIPLE COVENANTS IN NEW BUILDS

The attention of the committee has been drawn to the practice of including a multiplicity of covenants in deeds for new builds that appear to be generic, but are not necessarily appropriate in every development. It seems that some of these are perhaps being indiscriminately cut and pasted from the documentation for other developments.

Most covenants are bespoke for a particular development, and they are there for the amenity and protection of the estate for the benefit of all. The committee recommends to solicitors acting for developers drafting scheme documentation that they carefully consider what the requirements are for a particular development, and not use superfluous covenants or unwittingly carry them over from other precedents or schedules.

GUIDANCE NOTE

CONVEYANCING COMMITTEE

REMINDER: APPROVED FORM OF ACCOUNTABLE TRUST RECEIPT

Practitioners are reminded of the Law Society's approved form of accountable trust receipt (ATR), as it has been brought to the attention of the committee that certain lenders' solicitors are requesting ATRs from borrowers' solicitors that contain additional obligations. Colleagues should be mindful that, like all solicitors' undertakings, ATRs should be sought on terms that the same practitioner should be willing to give.

Practitioners should note:

- Caution should be exercised in dealing with other forms of ATRs, and firms acting for lenders are reminded that this form has been recommended to avoid unnecessary negotiation of them.
- An undertaking to pay the full amount of any claim against the documents in event of breach of the ATR is not recommended, as the amount of that claim may well be in excess of the value of the relevant property or security.
- An indemnity from a solicitor in respect of a breach of an ATR confuses solicitors' undertakings with simple contractual obligations, and is not recommended. A breach of an ATR is a matter of professional misconduct on the part of the solicitor, and a lender's remedy in this regard is a matter for the court to determine in the usual way.
- ATRs should only be released by the solicitor receiving the documents when the documents have been received and checked, and the practice of requiring ATRs to be given and released in advance of doing so obviously creates risks. Practitioners are also reminded that the sender of the documents to which the ATR relates bears the risk of the documents until such time as they have been actually received by the solicitor providing the ATR and, as such, the ATR does not come into effect until the documents are so received.
- Practitioners should promptly check the documents received and acknowledge them, along with noting and communicating to the sender any necessary revisions to the ATR schedule.

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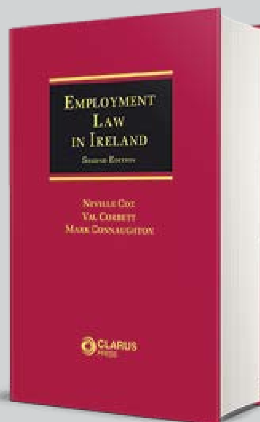

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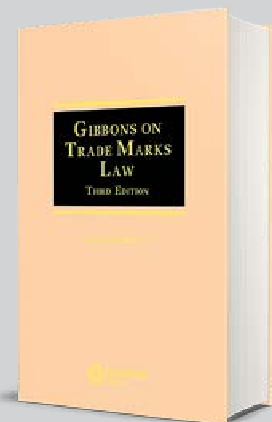

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WILLS

Brady, Patrick (deceased), late of 102 Gaybrook Lawns, Malahide, Co Dublin. Date of death: 21 March 2020. Would any person holding or having the knowledge of a will made by the above-named deceased please contact Michael J Kennedy and Co, Solicitors, Parochial House, Baldoyle, Dublin 13; tel: 01 832 0230, email: reception@mjksolicitors.com

Cazalet, Peter Christopher David (deceased), late of 59 St Andrews Drive, Newtownards, Co Down, BT22 2TW. Formerly of 238 Main Road, Cloughey, Co Down, BT22 1JD; Ashton Lodge, Corbally, Limerick; and River Run, Massinass, Creeslough, Donegal, who died on 11 April 2022. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding his will, please contact Joseph F McCollum & Co, Solicitors, 52 Regent Street, Newtownards, Co Down, Northern Ireland, BT23 4LP; tel: 028 9181 3142, email: uisneach@josephmccollum.co.uk

Clohessy (née Hickey), Ann (deceased), late of Lisgoold East, Cork. Would any person having knowledge of any will executed by the above-named deceased, who died on 29 July 2022, please contact Brian Long, Solicitors, Unit 2B Emmet House, Barrack Square, Ballincollig, Cork; tel: 021 487 4883, email: enquiries@bls.ie

Connor, Stephen (deceased) (30 October 2022), late of Scurlogstown, Trim, Co Meath, and also late of Beaufort House Nursing Home, Athboy Road, Navan, Co Meath. Would any person with knowledge of any will made by the above-named deceased please contact Brian Callaghan of Regan McEntee & Partners, Solicitors, High Street, Trim, Co Meath; DX92002 Trim; tel: 046 943 120

Donohoe, William (Liam) (deceased), late of Castleoye, Sligo Road, Tubbercurry, Co Sligo, who died on 4 November 2021. Would any person have any knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding his will, please contact O'Connor Johnson, Solicitors, O'Connell Street, Ballymote, Co Sligo; DX241001; tel: 071 918 3304, email: ocj@oconnorjohnson.ie

Dowling, Dolores (née Wyse) (deceased), late of Naas, Co Kildare; and 10 Monksfield Avenue, Clondalkin, Dublin 22; and Clifden, Co Galway, who died on 30 November 2022 Would any person having knowledge of any will executed by the deceased please contact Paula Fallon, solicitor, 'Welbeck', Barnhill Road, Dalkey, Co Dublin; tel: 01 236 9678, email: paula.fallon@paulafallon.ie

Farrell, Bridget (otherwise Beatrice) (deceased), late of Essex Lawn, Roscommon Town, Co Roscommon, who died on 11 October 2019. Would any person with knowledge of any will made by the above-named deceased please contact Niamh Mahon, solicitor, Mahon Sweeney LLP Solicitors, Market Square, Roscommon, Co Roscommon; DX 90001 Roscommon; tel: 090 662 7350, email: mail@mahonsweeney.ie

Faughan, Mary Ann (Annie) (deceased), late of 16 Tymon North Court, Tallaght, Dublin 24, who died on 6 December 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Grainne Bennett of Thomas Barry & Company, Solicitors, 11 St Stephen's Green, Dublin 2; tel: 01 677 3434, email: grainne@thomasbarry.ie

Hanley, Kenneth (deceased), late of 24 Bellevue (otherwise Belleview) Court, Old Youghal Road, Cork, who died on 25 March 2022. Would any person having knowledge of the whereabouts of any will made by the said deceased please contact O'Brien Solicitors, Deerpark Business Centre, Claregalway Road, Oranmore, Co Galway: tel: 091 795 941, email: law@obriensolicitors.ie

Herridge, Mary (deceased), late of 30 Balfe Avenue, Walkinstown, Dublin 12, who died in or about 29 July 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Keith Walsh, Solicitors LLP, 8 St Agnes Road, Crumlin Village, Dublin 12; tel: 01 455 4723, email: alice@kwsols.ie or solicitor@wsols.ie

Jameson, Dora (deceased), late of 41 The Bank, Ballybeg, Rathnew, Co Wicklow, and 41 Ballybeg, Rathnew, Co Wicklow. Would any person having

RATES

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

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knowledge of a will executed by the above-named deceased, who died on 3 January 1976, please contact Cooke & Kinsella, Solicitors, Wexford Road, Arklow, Co Wicklow; tel: 0402 32928/40012, fax: 0402 32272, email: fergus@cookekinsella.ie

Lyons, Thomas (deceased), late of Foxfort, Bansha, Co Tipperary, E34 XN22, who died on 3 September 2022. Would any person having knowledge of any will made by the above-named deceased please contact John G O'Donnell, Solicitors, 6 St Michael's Street, Tipperary Town, E34 H978; tel: 062 51096, email: jodonnelllegal@eircom.net

Mac Pharthalain, Gearoid (otherwise Gerald Bartley), late of 10 Cappanaveagh Road, Salthill, Galway (now known as 10 Rockbarton Road, Salthill, Galway), barrister-at-law and former government minister, who died on 18 April 1975. Would any person having knowledge of the whereabouts of the will made by the above-named deceased please contact John B O'Connor & Company, Solicitors, 37 Upper Mount Street, Dublin 2; tel: 01 676 0011, email: ohalloranj@jboconnor.ie

O'Connor, Rory (deceased 1 October 2022), late of 2 George's Street, Gort, Co Galway. Would any person with any knowledge of a will executed by the above-named deceased please contact Colman Sherry, Solicitors, The Square, Gort, Co Galway; tel: 091 631 383, email: info@colmansherry.ie

Wallace, Kenneth (deceased), late of 93 Belgard Downs, Rochestown Road, Cork, and 161 Levrington Avenue, Apartment 302, Philadelphia, 19127, USA, who died on 6 May 2019. Would any person with any knowledge of any will made by the above-named please contact Ciarán Cummins of BDM Boylan Solicitors LLP, Clarkes Bridge House, Hanover Street, Cork; DX2105 Cork; tel: 021 431 3333; email: ccummins@bdmboylan.ie

TITLE DEEDS

Clarke, James (date of death: 19 July 1989) and Clarke, Lorcan (deceased) (date of death: 15 March 2021). Would anyone who has information with respect to missing title deeds of the aforementioned deceased, both of 51 Broughton Street, Dundalk, Co Louth, please contact the undersigned. The subject property is the dwellinghouse known as 51 Broughton Street, Dundalk, Co Louth. Please contact Leonie Hogge, McGovern Walsh & Co LLP, Solicitors, Pearse Plaza, Pearse Road, Sligo; tel: 071 914 4363, email: reception@mcgovernwalsh.securemail.ie

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*

Take notice any person having any superior interest (whether by way of freehold estate or otherwise) in all that and those the house and premises known as no 74 Upper Dorset Street in the city of Dublin, bounded as set out therein and now known as no 74 Upper Dorset Street, Dublin 1, being the entirety of premises the subject of an indenture of lease dated 4 June 1891 between Patrick Martin of the one part and Michael Cleary of the other part for a term of 200 years from 1 June 1891 at a yearly rent of £5.

Take notice that Michael Brady, being the person currently entitled to the leasehold interest under the lease, intends to submit an application to the county registrar for the county of Dublin seeking an order that he is entitled to acquire the fee simple and any intermediate interests in the said premises, and all consequent orders under section 8(2) of the 1967 act necessary to give effect to same, including, without prejudice to the foregoing, an order appointing an officer of the court to execute a conveyance for and in the name of the owners of the fee simple and all other outstanding superior interests, and any party asserting that they hold a superior interest in the said premises (or any of them) are called upon to furnish evidence of their title to the said premises to the below named within 21 days from the date of this notice.

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

Date: 3 February 2023
Signed: MP Moloney Solicitors (solicitors for the applicant), Grattan House,1 Wellington Quay, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of certain premises situate at 8A Strandside, Abbeyside, Dungarvan, in the county of Waterford: an application by Garreth Tierney

Take notice any person having a freehold interest or any intermediate interest in all that and those the property known as 8A Strandside, Abbeyside, Dungarvan, in the county of Waterford, held by the applicant under a lease dated 30 June 1891 by Augustine Dower in favour of the Abbeyside, Dungarvan Commissioners for a term of 999 years.

Take notice that Garreth Tierney intends to submit an application to the county registrar for the county of Waterford for acquisition of the freehold interest and any intermediate interest in the property, and any party asserting that they hold a superior interest in the property are called upon to furnish evidence of the title to the property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Waterford for directions as may be appropriate on the basis that persons beneficially entitled to the superior interest including the freehold reversion in the property are unknown and unascertained.

Date: 3 February 2023
Signed: Binchy Law LLP (solicitors for the applicant), Quay House, Clonmel, Co Tipperary

In the matter of the *Landlord and Tenant (Ground Rents) (No 2) Acts 1967-2019* and in the matter of an application by CPF Struan Hill Vision Limited

Take notice that any person having an interest in the freehold estate or any lesser, superior, or intermediate interest in that piece or parcel of ground at Struan Hill, Delgany, Co Wicklow, with the house and premises thereon formally known as Struan Hill but now known as Colmcille, being the land demised by a lease dated 21 October 1946 between Eileen O'Donnell of the one part and James S Edge of the other part for a term of 890 years from 25 March 1946 at a yearly rent of £39, 4 shillings, and 3 pence, and the conditions and covenants therein contained, should give

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notice of their interest to the undersigned solicitors.

Further take notice that the applicant, CPF Struan Hill Vision Limited, being the entity entitled to the lessee's interest under the said lease, intends to apply to the Circuit Court for the county of Wicklow for the acquisition of the fee simple and all intermediate interest in the said property, and any party asserting that they hold any interest in the said property superior to that of the said applicant are called upon to furnish evidence of their title to the undersigned solicitors within 21 days from the date of this notice.

In default of any such notice of interest being received, the applicant, CPF Struan Hill Vision Limited, intends to proceed with the application before the Circuit Court at the end of 21 days from the date of this notice and will apply to the Circuit Court for the county of Wicklow for such directions as may be appropriate on the grounds that the person or persons beneficially entitled to all or any of the superior interests in the said property, up to and including the fee simple estate if appropriate, are unknown or unascertained.

Date: 3 February 2023
Signed: Eversheds Sutherland LLP (solicitors for the applicant), One Earlsfort Centre, Earlsfort Terrace, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by St Finian's Diocesan Trust in relation to the Parochial House and Glebe, Killina, Rahan, Co Offaly

Take notice any person having any interest in the freehold estate of the following property: all that and those the property consisting of the Parochial House and Glebe at Killina, Rahan, Co Offaly, comprised in the indenture of lease dated 16 May 1860 (hereinafter 'the lease'), and made between Edward Harold (as trustee for Anna Maria Elizabeth O'Brien and John O'Brien) of the one part and Bishop John Cantwell and Peter Cantwell of the other part, and being the lease more particularly described as part of Lot 3, Killina Townland, in the *Rental Particulars for the Landed Estates Court Sale* of 25 June 1875, and being lands situate in the townland of Killina, barony of Ballycowan and county of Offaly, and more particularly described in an indenture of 19 December 1919 between Rev Peter Cantwell of the first part and the Most Rev Laurence Gaughran, Rev William Bracken, Rev James Flynn, Very Rev Thomas O'Farrell and Rev Hugh Carpenter on the other part.

Take notice that St Finian's Diocesan Trust, a company limited by guarantee, and bearing Companies Registration Office number 14484, having its registered office at Bishop's House, Mullingar, Co Westmeath, N91 DW32, intends to submit an application to the county registrar for the county of Offaly for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 3 February 2023
Signed: Moynihan & Co, Solicitors (solicitors for the applicant), Blackhall Court, Mullingar, Co Westmeath; AM/UL/619.1

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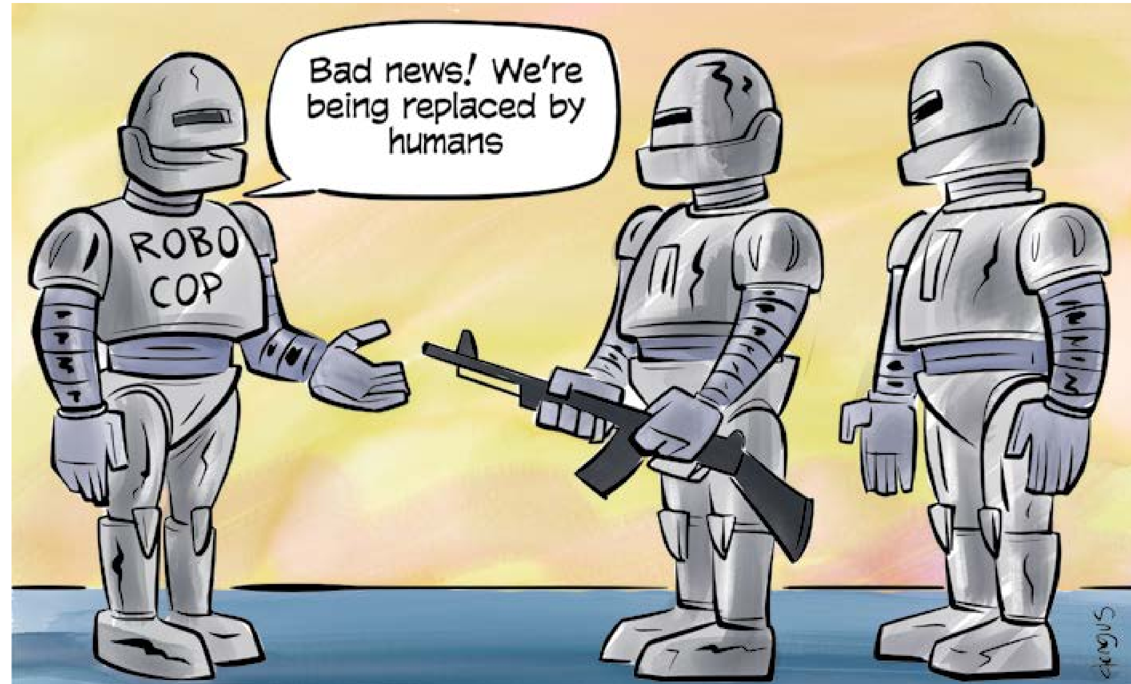
PRO BONOBO

SF terminates robocop killers

● San Francisco city bosses have voted to prohibit police from using an army of robots to kill people, according to TheRegister.com.

Officials had previously approved the policy, whereby robots under human control could have used explosives to kill suspects. The 17 droids would not have been allowed to use guns, and only high-ranking officers would have been allowed to authorise deadly force.

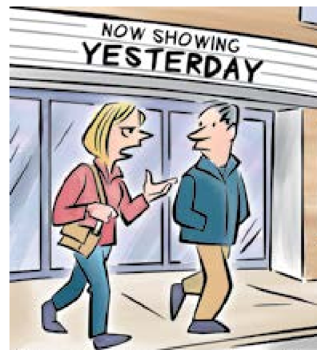
The now-reversed policy had sparked outrage, but it may not be the end of the matter: the board has sent the issue back to a committee for further review, which might later allow for the use of lethal force in some guise.



Fans sue over misleading trailer

● Fans disappointed that their favourite actor was cut from a film, after she appeared in the trailer, can sue the studio for false advertising, Variety.com reports.

Two plaintiffs in San Diego and in Maryland claimed that Universal Pictures had tricked them into renting the 2019 film *Yesterday*, since the trailer had featured actor Ana de Armas. Both claimants paid US$3.99 each to watch the comedy on Amazon Prime, only to discover that de Armas had not made the final cut.



"It wasn't as good as the court case."

A US District judge said that it was plausible that viewers would expect de Armas to have a significant role in the film.

The plaintiffs are seeking at least $5 million as representatives of a class of movie customers. The case now proceeds to the next phase.

Hate your boss? You're not alone

● Managers in the legal industry are in the top ten of the most hated bosses in the UK, new research has shown, with over a third admitting to disliking their superiors.

In a survey of over 3,000 people working in nearly 30 sectors, the legal industry ranks in joint tenth place, alongside the hospitality and recruitment industries, with 34% of respondents saying they hate their higher-ups.

Legalcheek.com reports that retail employees 'hate' their bosses the most (51%), followed by 48% in healthcare and 47% in sales.

The least hated managers were in the creative arts and design (11%), followed by the charity (11%) and IT (12%) sectors.

Time called on 'time thief'

● A Canadian accountant has been ordered to compensate her former employer for 'time theft' after she was caught misrepresenting hours worked by controversial tracking software.

NPR.org reports that Karlee Besse, who worked remotely, initially claimed she was fired last year from her job for no reason. She had sought compensation for unpaid wages and severance. The company told the Civil Resolution Tribunal that Besse had logged more than 50 hours that "did not appear to have been spent on work-related tasks", having installed tracking software on her work laptop after it found her assigned files to be over budget and behind schedule. g

EU & INTERNATIONAL AFFAIRS COMMITTEE

STAGE INTERNATIONAL A PARIS 2023

OCTOBER – NOVEMBER 2023

Every year the Paris Bar organises an International Stage in Paris and invites a limited number of lawyers from each jurisdiction to participate. The stage is a fantastic opportunity for lawyers to discover and practise French law in the heart of Paris.

The stage takes place during the months of October and November and entails: one month attending classes at the *l'Ecole de Formation du Barreau*; and one month of work experience in a law firm in Paris. The programme also includes a visit to Brussels to the European institutions.

The Irish participant will be selected by the EU & International Affairs Committee of the Law Society of Ireland.

Candidates must:

- Be qualified in Ireland and registered in the Law Society,
- Have a good knowledge of French,
- Be under 40 years of age,
- Have insurance cover (for accidents and damages).

Tuition is fully covered by the Paris Bar; candidates must be willing to cover other expenses (travel, accommodation, meals).[1]

Interested?

To apply, please send your CV and a letter explaining your interest in the *Stage* (in both English and French) to: Megan Murphy Byrne (M.MurphyByrne@LawSociety.ie).

Application deadline: Friday, 28 April 2023

[1] The EU & IA Committee will sponsor the participant with €3,500.

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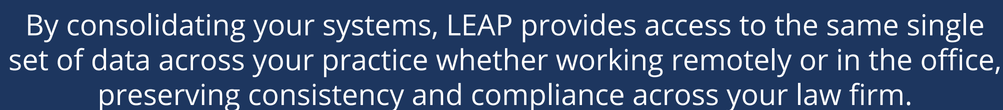

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