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Professional stress can lead to problematic addictive behaviour

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A recent judgment recasts the test for applying for an interlocutory injunction

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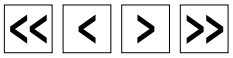

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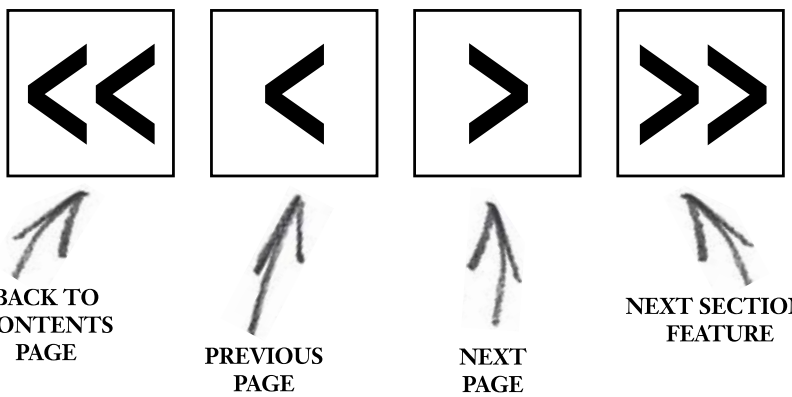

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PIC: CIAN REDMOND

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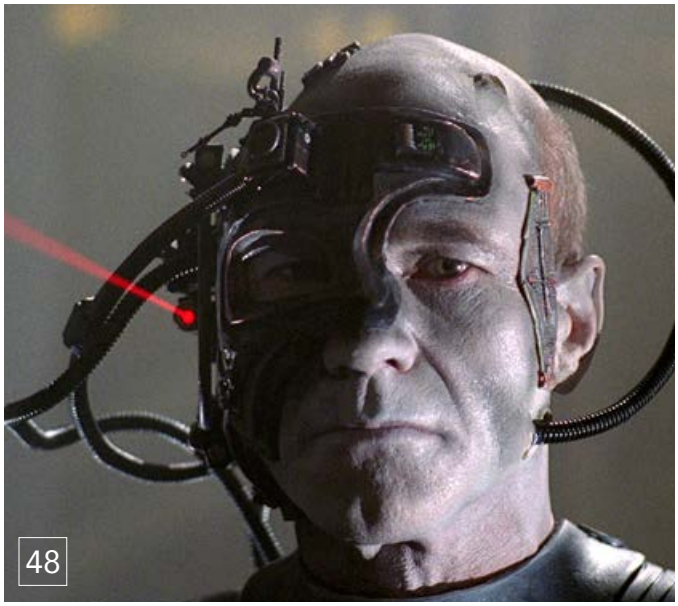

FEATURES

REGULARS

THE BIG PICTURE

THEY CALL THE WIND MARIA

Firefighters work at containing the Maria Fire spreading in the hills near Ventura, north-west of Los Angeles, California, on 1 November 2019. The wildfire – just one of four that broke out across California in recent weeks – consumed more than 9,900 acres of agricultural land, while more than 11,000 people were evacuated from the area. Media reports stated that the power company Southern California Edison had re-energised a 16,000-volt power line 13 minutes before the fire erupted. The company has said that it will "cooperate with the appropriate investigative agencies if asked to do so"

PIC: EPA-EFE/ETIENNE LAURENT

RECORD NUMBERS IN MAYO FOR CLUSTER EVENT

ALL PICS: MICHAEL DONNELLY MAYOPICS

At the Connaught Solicitors Symposium in Breaffy House Hotel, Castlebar, on 7 and 8 November 2019 were (from l to r): Rory O'Neill (Law Society), Katherine Kane (Law Society Finuas Skillnet), Teri Kelly (director of representation and member services, Law Society), James Ward (principal, Patrick J Durcan & Co, Co Mayo), Susan Bourke (Legal RSS), and Simon Treanor (Law Society)

Jacqueline Mulroe (Cavendish Lane Properties Ltd), Mark Fitzgerald (Edward Fitzgerald and Son), Cathy McDarby (McDarby and Co) and Gary Mulchrone (Gilvarry & Associates)

Nessa Cox (partner, Bourke Carrigg & Loftus Solicitors), Marc Loftus (vice-president, Mayo Solicitors' Bar Association and partner, Bourke Carrigg & Loftus Solicitors), Attracta O'Regan (head, Law Society Finuas Skillnet), Margaret Finlay and Katherine Kane (Law Society Finuas Skillnet)

THE FUTURE'S BRIGHT FOR CORK LAW STUDENTS

The Southern Law Association (SLA), in conjunction with University College Cork (UCC), held its annual student evening on 2 October. The event encourages UCC students to pursue their legal careers in Cork. Over 30 local practitioners from across the practice spectrum volunteered their wisdom and experience. In UCC's Aula Maxima were *(front, l to r)*: Brendan Cunningham, Aeibhin Cahalane, Sarah Connolly, Audrey Lynch, Emma Prenderville, Tom Coughlan, Michelle Beasley, Juli Rea, Richard Hammond, Kieran Moran, David Cowhie, Sinead McNamara, Don Ryan, Frank Buttimer, Deirdre Kelleher (UCC) and Elaine O'Driscoll; *(back, l to r)*: Joe Noonan, Alan McGee, Eamonn Carroll, Karen Bohane, Orla Howe, Don Murphy, Patricia Mallon, Noel Doherty, Colm O'Rourke, Jerry Canty, David Browne, PJ Kiely, Micheál O Mullain, John Fuller, Jody Cantillon, Eoghan Doolan and Niamh O'Connor

Colm O'Rourke (Ahern, Roberts, O'Rourke, Williams), Michelle Beasley (UCC law student), and Kieran Moran (JRAP O'Meara)

Juli Rea (JRAP O'Meara) and Richard Hammond (SLA president)

EXECUTIVE TEAM VISITS THE PREMIER COUNTY

The Tipperary Solicitors' Bar Association met at the Horse & Jockey Hotel, Thurles, Co Tipperary, on 30 October 2019, where the special guests were then Law Society President Patrick Dorgan and director general Ken Murphy. *(Front, l to r)*: Ken Murphy (director general), Maura Hennessy (outgoing president, TSBA) and Patrick Dorgan (then president, Law Society); *(middle, l to r)*: David Peters, Marcella Sheehy (honorary secretary), Kathleen Burke and Dermot O'Dwyer; *(back, l to r)*: Donal Symth, Mariea Flanagan and Conor Delaney

CORK CHAMBER CELEBRATES 200TH

Richard Hammond (President of the Southern Law Association) met Tánaiste and Minister for Foreign Affairs Simon Coveney at Cork Chamber's 200th anniversary celebration dinner at the Metropole Hotel, Cork, on 8 November

CORK KEEPS UP TO SPEED

PIC: BARRY'S PHOTOGRAPHIC SERVICES

At the Practitioner Update at the Kingsley Hotel in Cork on 15 November were *(l to r)*: Tristan Lynas (Poe Kiely Hogan Lanigan, Kilkenny), Katherine Kane (Law Society Finuas Skillnet), Teri Kelly (director of representation and member services, Law Society), Robert Baker (president, Southern Law Association), John Elliot (director of regulation, Law Society), Attracta O'Regan (head, Law Society Finuas Skillnet), Simon Carty (member of the Law Society's IP & Data Protection Law Committee), and Faye Docherty (Crowe)

INSURANCE INDUSTRY 'FUNDAMENTALLY DISHONEST' ABOUT COMPO CULTURE

"The insurance industry is being fundamentally dishonest by claiming that our compo culture is to blame for a rise in insurance premiums." These words of Mr Justice Kevin Cross, who oversees the personal-injury list in the High Court, were quoted recently in *The Sunday Business Post*. He added: "The word of a vested interest group has been trotted out without adequate scrutiny by some commentators."

The judge's remarks were subsequently debated on RTÉ Radio 1's *Today with Seán O'Rourke* on 29 October. O'Rourke refereed the exchanges between the Law Society's director general Ken Murphy and Insurance Ireland's Declan Jackson.

Murphy unreservedly endorsed Judge Cross's comments. He added that claiming that compo culture and fraudulent claims were responsible for the rise in insurance premiums was "just incredible".

He commented that others also held similar views: "We had Pearse Doherty from Sinn Féin in a very forensic cross-examination of insurance CEOs at the Oireachtas Finance Committee in July. I believe that the video of that has been viewed half a million times. He forensically destroyed the credibility of the argument that was being put forward in relation to fraudulent claims."

Murphy added that the Minister for Justice Charlie Flanagan had also been highly sceptical of the insurance industry's assertions. In addition, Minister Michael D'Arcy had talked about his low level of trust in insurance companies.

"There's a lot of criticism out there," Murphy pointed out, "and not just from politicians."

Sean O'Rourke – refereed exchanges between the Law Society and Insurance Ireland

Ken Murphy: 'There are three major inquiries into the insurance industry at present'

He referred to three major inquiries into the insurance industry in Ireland at present: the European Commission is investigating suspected breaches of EU competition law; the Competition and Consumer Protection Commission is investigating other suspected anti-competitive behaviour; and, most recently, the Central Bank has been investigating differential pricing.

"There are many questions that, frankly, most commentators who have investigated the matter, don't believe the insurance industry is answering – or capable of answering," Murphy said.

Insurance exaggeration

He pointed out that Pearse Doherty's cross-examination related to the insurers' own statistics on fraudulent claims. The insurers had initially told the Oireachtas that they believed 20% of claims were fraudulent. It turned out, based on the insurers' own figures, that only 1% were being reported as suspected fraud to the authorities.

"Now, any amount of fraudulent claims is too much, and fraudulent claimants, as far as we're concerned, should go to jail," Murphy asserted. "But really, you sometimes wonder who is making the exaggerated claims in this whole situation.

"If there is to be a reduction in the level of awards being paid to claimants, to the innocent victims of accidents, that reduction should not simply inflate the already enormous profits of the insurance industry. It should not go into the insurers' pockets. It should go to premium payers.

"We have to see all of this in the context of the insurance industry profits, based on the figures published last June," Murphy continued. "The 17 general insurers in the Irish market made operating profits of a whopping €227 million in 2017, the latest date for which overall data in the sector is available."

According to Central Statistics Office figures for the years 2013 to 2016, the level of increase in motor insurance premiums was an astonishing 70%. "All this at a time when awards and levels of damages are actually falling. It's incredible," the director general said.

Silent voice

"There's a voice which regrettably is never heard in this utterly one-sided debate," the director general told Sean O'Rourke towards the end of the interview. "The Law Society believes that it's perfectly legitimate to urge that the perspective of accident victims should be heard. The innocent victims of the negligence of others have no organised voice, unlike other powerful, vested interests.

"There are already massive profits being made in the insurance industry. Premiums are going through the roof," he said, "and now they want to reduce the level of awards to victims. There is no justification for that."

BLACK RESELECTED AS MH&C MANAGING PARTNER

Mason Hayes & Curran has announced the reselection of Declan Black as the firm's managing partner for a third term. Declan first became managing partner in 2013. Since then, the firm's annual turnover has doubled and staff numbers have risen to over 500.

The firm was named 'Irish Law Firm of the Year' at *The Lawyer* European Awards in 2019, and received the top award for 'Innovation in Legal Expertise' at the prestigious FT Innovative Lawyers Awards in 2018.

SOLICITORS RAISE €4.3M IN 21 YEARS FOR THE HOMELESS IN IRELAND AND INDIA

The Calcutta Run provides the perfect, ready-made platform for corporate social responsibility (CSR) initiatives by a medium-sized firm, despite intense competition for resources, Dermot Furey (Gartlan Furey) said at this year's cheque hand-over in Dublin, on 13 November.

And in her first official function, Law Society President Michele O'Boyle said that close to 1,400 people ran, walked or cycled in four separate locations this year, to raise much-needed funds for the Peter McVerry Trust and the Hope Foundation.

"The profession's engagement with these events puts the legal profession in the unique position of being able to proudly say that, in over 21 years, it has raised a staggering €4.3 million to help combat homelessness. This is something we can all be very proud of," she said.

Though it gets more difficult every year to reach the ambitious target of €300,000, legal firms continue to rise to the challenge by hosting and organising events, and encouraging staff to help raise the much-needed sponsorship.

ALL PICS: CIAN REDMOND

Contributions from firms

The president also acknowledged the firms' own financial contributions: "On behalf of the profession, I would like to thank you most sincerely for doing so," she said, expressing the hope that the Calcutta Run would remain in CSR budgets in the years ahead.

She thanked long-standing and loyal sponsors of the Calcutta Run, including: DX Ireland, PricewaterhouseCoopers, Kefron Filestores, Behan & Associates, Gwen Malone Stenography Services, Pearl Group, The Panel, Iconic Healthclubs, KL Discovery, and Nature Valley.

She also expressed her thanks to Cillian MacDomhnaill (Law Society director of finance) for his drive and inspiration in organising the event each year.

Beyond the call of duty

A&L Goodbody was thanked for going "way beyond the call of duty" in its efforts for the Calcutta Run, and for giving endlessly of its time and energy.

Partner Eoin MacNeill told the *Gazette* that it was good to see evidence of the work of the Calcutta Run funds in action.

Charlotte Nagle of the Hope Foundation described how the Calcutta Run funds had provided safe homes for 36 girls this year. The legal fundraiser completely funds the Bhoruka Girls Home in Kolkatta for the Hope Foundation. With annual running costs of €46,000, 26 girls are provided a safe home and education, with a view to providing them with a bright future.

These girls were removed from abject poverty, with many of them living under motorways in Calcutta. Four girls have already moved on this year to study at third level.

Front door

Pat Doyle of the Peter McVerry Trust said that the trust did not take the Calcutta Run funding for granted, and was delighted to be associated with the event.

"This is our longest external partnership," he said. "I wish I could say that our need [for funds] was coming to an end, but the need is as great as ever," he said.

Those who were homeless yearned for their own front door, he said, and the trust would open another 80 year-round beds for the homeless, before Christmas.

Over 1,600 people have benefited from the trust's services during the past year, chiefly in Dublin and Kildare, though units are set to open shortly in Youghal and Fermoy in Co Cork.

A new family hub is set to open soon in Prosperous, Co Kildare, while eight family units will open their doors in Rathgar, Dublin. Facilities are also being planned in Blackrock and Glenageary, Co Dublin.

Complex needs

One homeless person in every 100 has such complex needs that they will never be able to manage living on their own. Eight units in Ravenswood in Finglas were built for those with high-support needs, which the Calcutta Run funds.

The residents include a paraplegic homeless girl with chronic mental illness. "She now has a key to her door and is out of homelessness, along with a blind homeless lad," Pat Doyle said. "We are delighted with this support from the legal profession," he concluded.

The statistics from the Peter McVerry Trust show that 10,300 people in Ireland are homeless, of whom 3,000 are children.

MICHELE O'BOYLE IS FOURTH WOMAN TO SERVE AS PRESIDENT

Sligo solicitor Michele O'Boyle has started her term as President of the Law Society of Ireland for the year 2019/20. Her term of office runs from 8 November 2019 to 13 November 2020.

Michele is a partner in the firm O'Boyle Solicitors in Sligo. She becomes the Law Society's 149th president – and its fourth female president. She is also the first female president whose firm is located outside the capital.

She will continue the work of her predecessors and will focus on strengthening and supporting smaller practices and sole practitioners. In addition, Michele has highlighted Brexit opportunities and 'Women in Leadership' as her other leading priorities for the next 12 months.

Commenting on her appointment, Michele said: "It is an honour and a privilege to be appointed President of the Law Society. It's an exciting time in the profession, with a record number of solicitors on the Irish Roll."

PIC: LENSMEN

Privilege and responsibility

"Leadership is about privilege, and privilege brings great responsibility. I do not underestimate the responsibility of the position I now hold. I look forward to navigating the imminent changes and challenges that cross my path as skilfully and as practically as possible.

"My objective at the end of my term is that I will have made a meaningful, positive difference at the helm to the shape of our profession, both nationally and internationally."

Michele comes from a two-solicitor practice and she has promised to focus on strengthening and supporting smaller practices and sole practitioners during her tenure.

She also has Brexit firmly in her sights: "I am a member of the Legal Services Implementation Group. Through this group, the Government and the legal professions aim to position Ireland as a leading centre of international legal services," she said.

"While Brexit has proven increasingly complicated, there is an opportunity for Ireland, and for solicitors, to position our legal services at the fore. After Brexit, Ireland will be the only English-speaking common law jurisdiction in the EU," she said.

Centenary year

Michele described her appointment as president during the centenary year that celebrates women's entry to the legal profession as "particularly significant". Women currently comprise 51% of the profession.

"So much great work has been done over the past couple of years, within the Society and the profession, on the important issue of equality," she said. "A key priority for me over the coming year is promoting women in leadership throughout the profession."

Michele is a native of Sligo and is the daughter of the late Harry and Nano O'Boyle. The youngest of a family of three, she practises with her sister Dervilla and specialises in litigation, employment law and family law.

She was educated at the Ursuline College, Sligo, spent a post-secondary year at a school in France, and studied at the National University of Ireland Galway. She subsequently studied at Blackhall Place, Dublin, and qualified as a solicitor in 1992.

She started her legal career at the Sligo law firm Horan Monahan and set up her own legal practice with her sister Dervilla just one year after qualifying.

Michele became a member of the Council of the Law Society in 2003. She has served on all of the Society's most senior committees, including the Coordination Committee, Education Committee, Litigation Committee, Child and Family Law Committee, and Finance Committee.

COUNCIL ELECTION 2019 RESULTS

The scrutineers' report of the result of the Law Society's election to the Council showed the following candidates declared elected. The number of votes received by each candidate appears after their names.

- Sonia McEntee (1,494),
- Paul Egan (1,443),
- Keith Walsh (1,438),
- Morette Kinsella (1,426),
- Brendan Cunningham (1,412),
- Richard Hammond (1,384),
- Siún Hurley (1,376),
- James Cahill (1,374),
- Valerie Peart (1,368),
- Bill Holohan (1,356),
- Gary Lee (1,293),
- Helen Coughlan (1,253),
- Paul Keane (1,235),
- Liam Kennedy (1,208), and
- Justine Carty (1,184).

As there was only one Council candidate nominated for each of the two relevant provinces (Connaught and Munster), there was no election.

The candidate nominated in each instance was returned unopposed: David Higgins (Connaught), Shane F McCarthy (Munster).

DAC BEACHCROFT APPOINTS TWO NEW PARTNERS

From l to r: Niamh McKeever, Sharon McCaffrey, Lisa Broderick and Joanne Finn

DAC Beachcroft has bolstered its Dublin office through the hire of a two partner-led team. Corporate partner Sharon McCaffrey and EU and competition partner Joanne Finn have joined the firm, bringing with them a team of two senior associates, one associate, and a personal assistant. The appointments follow the promotion of Niamh McKeever to partner in May this year to head up the firm's healthcare group, which provides a full service in the area of medical malpractice in Ireland.

Sharon brings with her a wealth of corporate and commercial experience in acting for Irish and international businesses across a range of sectors, including renewables, telecoms, infrastructure, health and tourism/hospitality. Joanne has 20 years' experience advising in EU and Irish competition and regulatory law, with particular specialism in trade, healthcare, energy, telecoms, agri-food and aviation.

The wider team joining Sharon and Joanne further strengthens the DAC Beachcroft offering, encompassing the full range of corporate and commercial services, combined with the EU and competition expertise essential for clients requiring advice on the changing economic landscape.

Lisa Broderick, partner and location head, says: "These strategic hires are an important part of the firm's long-term commitment to the Irish market. The expansion of our offering to include corporate, EU and competition capabilities is based purely on client demand and need. Meanwhile, the next stage of DAC Beachcroft's strategy to strengthen its presence in Ireland will see the firm move into new Dublin premises in 2020. When our Dublin office opened ten years ago, there was just one lawyer. With now over 70 colleagues and ten partners, our growth in the region has been substantial."

COURT OF APPEAL LISTINGS

The recent appointments to the Court of Appeal have assisted in reducing waiting list for the resolution of appeals, *writes Liam Kennedy* (chair, Litigation Committee). Appeals currently entering into the list may be assigned hearing dates as early as April 2020.

The additional resources available to the Court of Appeal will mean that two courts can sit simultaneously. This should greatly expedite the processing of appeals in the future, and should significantly improve the speed with which litigation is resolved.

Solicitors should note that if you have already been assigned a hearing date in, say, 2021, prior to the new judges coming on stream, it is open to the parties to go back to the Court of Appeal (the Friday list) to apply for a new, earlier date. The court would welcome any such applications from litigants wishing to have their appeals resolved at an early stage.

BANKS COMMIT TO CARE FOR BEREAVED CUSTOMERS

The five main retail banks in Ireland have agreed to a 'common commitment of care' for bereaved customers. The announcement was made by the Irish Banking Culture Board (IBCB), which was established in April 2019.

This is the first collaborative announcement by the IBCB on behalf of the five retail banks in Ireland, which include: Allied Irish Banks, Bank of Ireland, KBC Bank Ireland, Permanent TSB, and Ulster Bank.

The board brought the banks together to establish a 'common commitment of care' for bereaved customers. Collectively, these five banks assist approximately 50,000 bereaved customers each year, making this an issue that affects thousands of spouses, partners and their families.

The commitment of care includes a dedicated phone line in each bank for bereaved customers. Most importantly, the banks will help bereaved customers access any available funds of the deceased to cover the funeral costs.

SOLICITOR MARK HESLIN NOMINATED TO HIGH COURT

Solicitor Mark Heslin was named for the bench by the Government on 12 November, along with four others – senior counsel Brian O'Moore, Mark Sanfey, Mary Rose Gearty and Niamh Hyland.

The vacancies in the High Court have arisen due to the elevation of Ms Justice Aileen Donnelly to the Court of Appeal last June, and the elevations of Mr Justice Seamus Noonan, Ms Justice Mary Faherty, Mr Justice Robert Haughton and Ms Justice Una Ní Raifeartaigh to the Court of Appeal on 4 November.

The nominations follow a formal process conducted by the Judicial Appointments Advisory Board. President Michael D Higgins has been advised of the nominations.

Mark Heslin was educated at University College Galway

and the Law Society of Ireland. He was admitted to the Roll of Solicitors in 1995, and is a former tutor at Blackhall Place.

Law Society director general Ken Murphy tweeted his reaction: "Warmest congratulations to Mark Heslin of @BeauchampsLaw on his well-merited appointment yesterday as a judge of the High Court. Twelve appointments to either Court of Appeal or High Court in recent weeks. Only one solicitor. Disappointing to say the very least."

FROM THE HORSE'S MOUTH

Ken Murphy, Maura Hennessy and Patrick Dorgan

The Tipperary Solicitors' Bar Association (TSBA) met at the Horse & Jockey Hotel, Thurles, on 30 October 2019, where the special guests were then Law Society president Patrick Dorgan and director general Ken Murphy. They were welcomed by then TSBA president Maura Hennessy.

A wide-ranging agenda discussed the potential impact of Brexit, the Society's supports for smaller firms, wellbeing in the profession, e-conveyancing, the Law Society's Working Group on Gender, Equality, Diversity and Inclusion, the IBA report on bullying and sexual harassment, the impact of cuts to criminal legal aid, and an update on personal injuries.

At the association's AGM on 14 November, Paddy Cadell (Templemore) was elected president for the coming year.

BREAFFY CLUSTER BREAKS NEW GROUND

It was a case of Breaffy breaking new ground during the two-day cluster event for Mayo practitioners, which took place from 7-8 November. A record number of 160 members attended.

The educational and networking event was presented by the Mayo Solicitors' Bar Association in partnership with Law Society Finuas Skillnet.

Management and regulatory CPD updates were the focus of day one, which included information on the new limited liability partnerships, e-marketing, cybersecurity, and the new small-practice business supports that are now available from the Law Society. The second day saw updates on conveyancing, family law, probate and e-licensing, as well as the opportunity to network with fellow practitioners.

A fully-booked Cork cluster event took place on 15 November in the Kingsley Hotel, with over 220 members attending. On 22 November, 120 practitioners were present for Kilkenny's cluster event. The final gathering of 2019 – the Practice and Regulation Symposium – takes place on 6 December at the Shelbourne Hotel, Dublin. At the time of going to press, a limited number of places were still available.

ENDANGERED LAWYERS

GAMAL EID, EGYPT

Gamal Eid is one of a number of lawyers who have been detained or harassed in the wake of unauthorised protests calling for the replacement of Egyptian president Abdel Fattah el-Sisi in September.

An estimated 4,000-plus people were detained after anti-government protests, and their lawyers have been at ever greater risk of being arrested themselves as they try to protect the rights of demonstrators. Some are not sleeping at home, are moving their families away, not attending court or interrogations, but doing what they can for their clients, while seeking to postpone their inevitable arrests. At least 16 defence lawyers have been detained in the past month.

Gamal Eid has been the target of threats, physical assaults and vandalism since 30 September that indicate government involvement, according to a statement from Human Rights Watch on 2 November. On 10 October, he was assaulted by two men calling him by name who stole his mobile phone, and tried to take his laptop and bag. He received injuries to his arm and leg and cracks to his ribs before bystanders intervened.

Ten days previously, his car was stolen, and he received repeated telephone and text messages ordering him to "stop and behave". A car he had borrowed was vandalised on 30 October. Other circumstances, including the forced erasure of a CCTV recording of the assault on 10 October, strongly indicate the involvement of security forces.

Eid founded the Arabic Network for Human Rights Information (ANHRI) in 2003 to promote freedom of expression and provide legal assistance to activists and journalists. ANHRI and Eid have received numerous international awards for their work on freedom of expression and press freedom in Egypt.

A court ordered a freeze on his personal assets and the funds of his organisation, along with other human-rights defenders and organisations, in the 2011 'foreign funding' case. In 2016, Egyptian authorities imposed a travel ban on him. Other prominent lawyers recently arrested include Mohamed El-Baqer, Mahienour El-Massry, and Mohamed Younes.

"To harass us in this manner is to cripple our movements, and deny thousands of prisoners the right to fair procedures," said a lawyer in Cairo recently, on his way to the office to follow up on the detainees' cases.

Alma Clissmann is a member of the Human Rights Committee.

NOWHERE TO RUN, NOWHERE TO HIDE

Machine-learning software from Irish company Brightflag can now read between the lines of every legal invoice. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH THE *LAW SOCIETY GAZETTE*

Brightflag founder Alex Kelly is uniquely poised to understand the shifting balance of power between law firms and the large corporates' general counsel who buy their services. He has seen, first-hand, the rising power of the legal operations' role in controlling and directing the legal budgets of large corporations.

Brightflag's founding principle is using technology to drive collaboration in the legal ecosystem between large corporations and law firms. It does this by using machine learning to rigorously interrogate legal billing. The company is on track to achieve €100 million in annual sales by 2025.

Narrative data

Kelly says that Brightflag's cloud-hosted software is driving efficiencies by giving both law firms and corporate legal departments greater visibility around costs and budget, as well as offering real-time status updates on in-train legal matters.

The software can read and understand all of the invoicing data that law firms submit to their corporate clients. It turns invoices into 'narrative data', which visualises for the user just how much is being spent on each strand of legal activity.

The software will review all invoices, in line with corporate client-billing protocols, before they are approved for payment – removing the need for manual reading.

The algorithm automatically classifies how much time is being spent on the underlying legal tasks and activities, and the expertise level at which any legal matter is being resourced. It will also identify the optimal resourcing mix for any legal spend.

Legal resourcing on steroids

Kelly says that Brightflag's particular innovation is that it enables the buyers of legal services to drive efficiencies and control costs. "Particularly in the US, this role of legal operations is driving a more objective and data-driven approach to legal resourcing," he says. Even relatively small one-billion-dollar corporates will have a legal-operations professional in place.

Kelly says the rise of the legal operations manager is central to the success of Brightflag. This person is generally a non-lawyer who is responsible for all of the systems and processes that a legal department uses to support the business in providing legal services more efficiently. "Fundamentally, their job is to drive transformation in the legal department of a large organisation. They implement new technologies and are responsible for the financial performance of the legal department."

The legal operations person will generally report to the general counsel, who will have a mandate to control costs. The legal operations person will execute the general counsel's cost-reduction strategy, and will often come from a management consultancy or financial background. "They see themselves as the change agent for driving better business outcomes," Kelly explains.

Industry body

Legal operations executives have now founded their own industry body, called CLOC – the Corporate Legal Operatives' Consortium.

There were 250 people at the first CLOC conference in early 2017, and it was largely attended by legal ops staff from corporations with revenues in excess of $10 billion. The most recent 2018 conference in Las Vegas in 2018, by contrast, had 2,500 legal ops executives in attendance.

Brightflag sponsored and spoke at that first-ever CLOC conference, in San Francisco. This was a pivotal moment for the growing business, and a huge gamble. It paid off. Many of the firm's current clients were at that conference.

Kelly has also observed the trend away from hourly billing for legal services and towards fixed-fee pricing. He is convinced that law firms will no

> THE SOFTWARE TURNS INVOICES INTO 'NARRATIVE DATA', WHICH VISUALISES FOR THE USER JUST HOW MUCH IS BEING SPENT ON EACH STRAND OF LEGAL ACTIVITY


PIC: CIAN REDMOND

Alex Kelly: 'The company is on track to achieve €100 million in annual sales by 2025'

longer be able to tuck costs, such as training and overheads, into hourly billables.

Entrepreneurial pedigree

At 29, the Dublin man made the leap from big firm Matheson to the new world of digital entrepreneurship, a move he admits was "scary", though also the most invigorating and exciting thing he has ever done.

His salary immediately dipped to a fraction of what he earned at the law firm.

The UCD law (2006) and Trinity LLM (2007) graduate has an entrepreneurial pedigree. His late mother Hilary's people were in manufacturing in Oughterard, Co Galway, where his grandmother co-founded the bespoke fine carpeting design company V'Soske Joyce, which was a major employer and exporter in the area. Alex's father Pat is also a solicitor, with McKeever Rowan in Dublin's IFSC. He credits his stepmother Catherine Duffy (a partner in A&L Goodbody) with prompting him to think about a possible future as an entrepreneur.

He gratefully acknowledges how helpful his Matheson network was to him as he and co-founder Ian Nolan expanded their business. People do business with people, and knowing the right ones will always count for something.

He described the move to set up his software business as "a shock, and a steep learning curve in terms of non-legal specific areas.

"I don't think I knew how difficult it was going to be," he admits, as he plunged into the demands of marketing, sales, HR, and building a company from scratch. The firm now has 70 employees in its Dublin office and ten in New York.

His co-founder Ian Nolan has a background in legal technology, and they share a passion in modernising legal operations for large organisations.

"The most important thing for any young company is the relationship between the founders and, while Ian and I come from extremely different backgrounds in terms of skillsets, we share the same values and we're extremely well-aligned in how we think about things," says Kelly.

Alex remains convinced that artificial intelligence won't do away with lawyers' jobs, but will elevate the value of the work they do.

NUMBER OF SOLICITORS SEEKING A 'BREXIT BACKSTOP' CONTINUES TO GROW

2019 marks another record year for Brexit admissions to the Roll of Solicitors from our neighbouring jurisdictions. **Ken Murphy** reports

KEN MURPHY IS THE DIRECTOR GENERAL OF THE LAW SOCIETY OF IRELAND

NO LESS THAN 1,817 NEW SOLICITORS FROM ENGLAND AND WALES HAD THEIR NAMES ENTERED ON THE ROLL OF SOLICITORS IN IRELAND – A MASSIVE INCREASE (+163%) ON THE 690 NEW ENTRANTS OF 2018

This is the fourth successive year in which the December *Gazette* has published lists of the law firms whose England-and-Wales qualified solicitors have taken out an additional qualification by entering their names on the Roll of Solicitors in Ireland.

In addition, this year as last year, this *Gazette* publishes a table with the number of those solicitors who have taken out an Irish practising certificate for the practice year 2019.

Since December 2018, two separate dates on which Brexit was due to be 'done' have come and gone. Perhaps these missed Brexit dates were additional drivers of numbers, but, for whatever reason, 2019 had already been a record year for admissions from our neighbouring jurisdictions.

Most notably, there was an all-time record number from England and Wales. No less than 1,817 new solicitors from that jurisdiction had their names entered on the Roll of Solicitors in Ireland, representing a massive increase (+163%) on the 690 new entrants of 2018.

Milestones

A number of milestones were reached in 2019 with, as of 12 November 2019, no fewer than 4,000 new admissions from our three neighbouring jurisdictions having occurred since 1 January 2016 (see table, below).

A current trend, however, is that the tide is abating somewhat. We are down to 100 pending admissions now, compared with the more than 200 consistently seen until the summer period. This may reflect the Brexit extensions, or the confirmation by the Solicitors Regulation Authority in England and Wales that reciprocal admissions with Ireland will continue, post-Brexit.

Another major milestone passed in the middle of 2019 was the entry of 20,000 names on the Roll of Solicitors in Ireland, the first time this figure has been reached. Approximately 20% of all the names on the Roll of Solicitors in this jurisdiction are now practitioners who originally qualified in England and Wales, and whose names have been entered on the Roll here since 1 January 2016.

Biggest increase

The firm that scores the largest increase in this year's table is Linklaters LLP, which has grown its number of solicitors on the Roll by 206 to 259. (This compares with 53 in 2018.)

Allen & Overy LLP, however, tops the table, with a total of 297 solicitors on the roll as we go to press – an increase of 187 practitioners compared with last year's figure of 110. Of these, 183 solicitors hold Irish practising certificates in 2019.

The firm that topped the table in December 2016 was Freshfields Bruckhaus Deringer LLP, whose number on the Roll has

ADMISSIONS (1 JANUARY 2016 TO 12 NOVEMBER 2019)

	2016	2017	2018	2019	Total (TO 12 NOV)	Applications being processed
English & Welsh solicitors	806	547	690	1,817	3,837	100
Northern Irish solicitors	27	29	43	56	155	0
Scottish solicitors	0	0	4	4	8	0
Total	**833**	**576**	**737**	**1,877**	**4,000**	**100**


PIC: CIAN REDMOND

increased to 162 (as of now) from 131 in 2018.

Eversheds Sutherland LLP – the only firm other than DLA Piper LLP and Pinsent Mason LLP to actually have an office in this jurisdiction – is now third in the table (165), having topped it last year.

What will happen in 2020? Perhaps this trend will settle down, or even cease. As with everything to do with Brexit, predictions are impossible to make with any certainty.

TOP 20 'BREXIT TRANSFER' FIRMS 2018			TOP 20 'BREXIT TRANSFER' FIRMS 2019		IRISH PC 2019
1	Eversheds Sutherland LLP	132	1 Allen & Overy LLP	297	183
2	Freshfields Bruckhaus Deringer LLP	131	2 Linklaters LLP	259	17
3	Allen & Overy LLP	110	3 Eversheds Sutherland LLP	165	62
4	Slaughter & May	109	4 Freshfields Bruckhaus Deringer LLP	162	64
5	Latham & Watkins LLP	92	5 Latham & Watkins LLP	161	18
6	Linklaters LLP	53	6 Slaughter & May	148	20
7	Herbert Smith Freehills LLP	44	7 White & Case LLP	87	13
8	Hogan Lovells LLP	43	8 DLA Piper LLP	85	21
9	Bristows LLP	35	9 Dentons LLP	71	11
10	Google UK Ltd	34	10 Herbert Smith Freehills LLP	62	11
11	Clifford Chance LLP	28	11 Clifford Chance LLP	55	5
12	DLA Piper LLP	26	12 Hogan Lovells LLP	52	25
13	Baker MacKenzie LLP	22	13 Norton Rose Fulbright LLP	45	3
14	Pinsent Mason LLP	19	14 Baker MacKenzie LLP	44	12
15	Gibson Dunne & Crutcher LLP	17	15 Pinsent Mason LLP	42	35
16	Fieldfisher LLP	15	16 Google UK Ltd	38	2
16	Ashursts LLP	15	17 Bristows LLP	37	5
16	Travers Smith LLP	15	18 Bird & Bird LLP	36	27
16	White & Case LLP	15	19 Skadden Arps Meagher & Flom LLP	34	0
20	Bird & Bird LLP	13	20 BNP Paribas	32	1
20	Shearman & Sterling LLP	13			
20	CMS Cameron McKenna LLP	13			
20	Norton Rose Fulbright LLP	13			

THE MIDDLE OF 2019 MARKED THE ENTRY OF 20,000 NAMES ON THE ROLL OF SOLICITORS IN IRELAND – THE FIRST TIME THIS FIGURE HAS BEEN REACHED

SLOW TRAIN COMING

Irish law firms can, at last, operate as limited liability partnerships (LLPs). Significantly, partners in LLPs will not be personally liable for all partnership debts, reports **Liam Kennedy**

LIAM KENNEDY IS THE CHAIR OF THE LAW SOCIETY'S LITIGATION COMMITTEE AND IS A PARTNER IN A&L GOODBODY

THE PROVISIONS ALLOW PARTNERSHIPS TO BECOME LLPs, EFFECTIVELY AMENDING THE 'JOINT-AND-SEVERAL' RULE OF PARTNERSHIP LAW. THIS ENSURES THAT LLP PARTNERS ARE NO LONGER PERSONALLY EXPOSED AS A RESULT OF CATASTROPHIC CLAIMS AGAINST THE FIRM

Various forms of LLPs have been available internationally for years. The provisions in the *Legal Services Regulation Act 2015*, likewise, will allow Irish law firms to reduce partners' personal exposure. LLP partners are not personally liable for the firm's liabilities just because they are a partner – but may they still may be held liable for fraud, misconduct or criminality.

Clients remain protected by mandatory professional indemnity (PI) insurance, and by the Law Society Compensation Fund. Law Society leaders have sought this reform for decades. Demand for change came from large and small firms – including the complaint that sole practitioners were reluctant to form partnerships because of the risk of personal liability for other partners' actions. Recent justice ministers accepted the need for reform.

A helpful booklet on the Legal Services Regulatory Authority (LSRA) website sets out how to become an LLP. The process is straightforward. Partnerships need not constitute themselves. You must first request and then submit an official application form, a fee (€175), with details of your partners and of PI cover, etc. The form should be completed by a partner and returned by post or email. A decision must be issued by the LSRA within 60 days of the submission of an application.

(You can request the application form by emailing lsra-limitedpartnerships@lsra.ie or by writing to Limited Liability Partnerships; Registration, Levy and Fees Unit; Legal Services Regulatory Authority; PO box 12906, Dublin 2.)

The LSRA will also give you a unique application reference number. This is essential to allow the LSRA to ensure that the form and payment have been received.

The LSRA will also issue an electronic funds transfer (EFT) form to allow it to confirm payment, which should be made by EFT, citing the reference number. Once the LSRA receives a duly completed application and payment, it will email an acknowledging receipt.

Obligations

The LLP must use either the expression 'limited liability partnership' or the abbreviation 'LLP' in the partnership name. This name must be used on all contracts, invoices, negotiable instruments, orders for goods and services, advertisements, websites, or other publications published in any format by or for the LLP.

The LLP must update the LSRA register as partners come and go, if the firm ceases being an LLP, or if registration details change.

In addition, the firm must notify creditors and clients that it has become an LLP, setting out prescribed information in accordance with the regulations. Creditors may include a firm's bank, landlord, pension-fund trustees, employees and trade creditors. Information to be provided includes:

- That the firm has been authorised to operate, and is operating, as an LLP and the date from which it has become an LLP,
- That, as of that date, as set out in section 123 of the 2015 act (and subject to the exceptions therein), a partner in the LLP has no personal liability for any debts, liabilities or obligations incurred for the purpose of carrying on the business of the LLP (whether these are liabilities of the LLP, of himself or herself, of another partner or partners in the LLP, or of any employee, agent or representative) and however such liability may arise,
- That this relates only to the personal liability of partners, and does not prevent or restrict the enforcement against the property of the LLP of any debt, liability or obligation, and
- That the *Partnership Act 1890* still applies to the LLP, to the extent that it is not inconsistent with the 2015 act.

PI insurance

The firm must have mandatory PI insurance in place – if it fails to maintain such insurance, its authorisation to operate as an LLP is deemed revoked.

Partnerships only?

Although successive ministers for justice acknowledged the need for reform, the provisions for LLPs


PIC: SHUTTERSTOCK

were only made available as the *Legal Services Regulation Act* was finally being enacted. The provisions allowed partnerships to become LLPs, effectively amending the 'joint-and-several' rule of partnership law. This ensures that LLP partners are no longer personally exposed as a result of catastrophic claims against the firm.

Sole practitioners?

The Law Society strongly advocates the position that sole practitioners should also be able to avail of such protections. The Society's Council has unanimously agreed that the Society should prioritise seeking protections for sole practitioners. It is exploring possible models, with a view to making representations to the LSRA and the Minister for Justice at the earliest opportunity.

While, by definition, sole practitioners do not face the hazard of claims caused by other partners, they remain personally exposed to any liabilities of their own practice. While the Society will be campaigning for further reforms, there are practical steps that sole practitioners can take to reduce their exposure in the meantime:

- They should ensure they have adequate PI insurance. They should take appropriate advice as to whether – given the nature of their practice, its size, the type of work it does, etc – they need to obtain cover above and beyond the mandatory minimum.
- They should ensure that every letter of engagement clearly sets out the scope of the work that the solicitor is to undertake, and also indicates work excluded from that scope – avoiding any misunderstanding as to whether, for example, the solicitor was required to advise on the tax implications of a proposed transaction.
- The sole practitioner can significantly improve his or her position by limiting liability in the letter of engagement, in accordance with section 44 of the *Civil Law (Miscellaneous Provisions) Act 2008* and section 48 of the 2015 act. Liability may not be limited to an amount less than the minimum PI requirement (currently €1,500,000).

Partnerships with barristers

Separate provisions for legal partnerships (LPs) – partnerships between solicitors and barristers, or between barristers themselves – have yet to be commenced. Once commenced, it will be possible for a firm to be both an LP and an LLP. g

> THE LAW SOCIETY STRONGLY ADVOCATES THE POSITION THAT SOLE PRACTITIONERS SHOULD ALSO BE ABLE TO AVAIL OF SUCH PROTECTIONS

GROWING PAINS

The Law Society has launched a growth strategy workbook to help small practices achieve greater growth. It is available on the Small Practice Business Hub. **Faye Docherty** reports

FAYE DOCHERTY IS A SENIOR CONSULTANT AT CROWE IRELAND

THE KEY INSIGHTS ARISING FROM THE STUDY LED TO 11 RECOMMENDATIONS, WITH AN ONUS ON BOTH THE LAW SOCIETY, AND ON THE INDIVIDUAL PRACTICES THEMSELVES, TO CONSIDER THE RECOMMENDATIONS, ENGAGE WITH EACH OTHER AND BE WILLING TO EMBRACE CHANGE

The 2018 Crowe study of smaller practices (commissioned by the Law Society) examined the environment in which smaller practices are operating, the opportunities and challenges involved, and made recommendations that could create a more sustainable future.

The study revealed that:

- Smaller practice owners are business owners as well as solicitors, and this requires different skillsets, including legal and business management skills,
- The business model of smaller practices needs to evolve in response to the more demanding and 'instant' current business environment,
- New organisational structures are worthy of consideration, yet will require a planned and cautious approach to increase access to additional resources (such as locums, etc) to widen/deepen specialisms, client base and sectors, and diversify service lines,
- Smaller practices face similar challenges and opportunities that are common to business owners and SMEs in other sectors.
- The study resulted in 11 recommendations, with an onus on both the Law Society and the individual practices themselves to consider the recommendations, engage with each other, and be willing to embrace change.

Recommendations 1 and 2 on the future-proofing and sustainability of smaller practices focused on the need for practices to move away from a reliance on referrals for generating business, and to introduce a more diverse set of business development activities.

Practices should prioritise a planned approach to future practice growth and sustainability. A key tool for SMEs in any sector is a 'growth strategy', which – if used correctly – should create a clear path for the future growth of the practice.

Small practice support

As a follow-on from the study, Crowe was engaged by the Law Society to provide support in implementing the recommendations. The work has included the development of a number of bespoke tools and templates for smaller practices, such as a marketing and client communications workbook, a networking guide for small practices and, importantly, a growth strategy workbook available on the Small Practice Business Hub.

Core support

A 'growth strategy' is a formalised document that describes the short to medium-term growth goals for a practice, and the actions needed to achieve them. It is the result of a systematic process that helps a practice understand its current business profile and identify its future ambition in terms of the level and pace of growth it wants to achieve, and the rationale for doing so.

The growth strategy workbook is one of the core supports that the Law Society has developed for smaller practices. It aims to outline the growth path for the practice and the actions, resources, and strategy required. It will assist practices in moving from operationally led thinking to future and vision-focused thinking.

It also aims to:

- Drive productivity through better work practices and systems,
- Identify current and emerging business trends in order to enable a practice to be dynamic and responsive,
- Identify competitive advantages that a practice can build on through the creation of competitor profiles,
- Help to identify, analyse and manage business risks, and
- Increase staff engagement and motivation by outlining actions to be completed.

As part of the development of the workbook, Crowe piloted it with five smaller practices. Consultation took place with each practice principal. The feedback highlighted that, for practices with a growth ambition, the workbook is a useful guide for what is a


PIC: SHUTTERSTOCK

challenging process. A key finding from the consultation was that practices would welcome support when working through the workbook. In response to this feedback, the Law Society will be offering a CPD workshop in early 2020 with a view to further workshops being available during the year.

Stages involved

The workbook requires practices to analyse a number of factors that will either directly or indirectly influence their future performance. Stages include:

- *Understanding practice performance*: how is your practice performing currently?
- *Client profiling*: what is the profile of existing clients?
- *Market analysis*: what are the important factors in the marketplace in which the practice operates?
- *Competitor analysis*: how do competitors behave and what can your practice learn from them, emulate and avoid?
- '*SWOT*': what are the strengths and weaknesses internal to the practice, and the opportunities and threats external to the practice that are key to identifying and pursuing growth opportunities?
- *Growth objectives*: having analysed internal and external data and research, what ambition does the practice have for growth in the next three years (or longer if preferred)? Consideration should be given to both organic/internal growth (expanding within current operations) and inorganic/external (via takeovers, mergers, etc) growth options.
- *Action planning*: what plan of action does the practice need to put into place in order to achieve its growth objectives? The action plan will need to be well thought out, and must aim to address any and all potential barriers that the practice may have to overcome to achieve its objectives. The practice must consider what practice-mechanism resources will be required, whether any structural changes would be worthwhile pursuing (for example, strategic partnerships) and what marketing activities are necessary. Following this, the practice must set clear, unambiguous actions under each of the headings (or as many as possible) in the action plan table at the end of the workbook for each growth objective.

Factors for success

In order for a practice's growth strategy to be as successful and as worthwhile as possible, there

are a number of dependencies and success factors. Each individual's approach to the growth strategy will differ, depending on a number of elements, such as level of available time and work styles. Practices will also be approaching the growth strategy at differing stages of their growth and development. While one practice may already have a well-compiled set of practice statistics (sources of revenue, expenses, sources of new business, etc), another may have a limited amount. This will obviously have an impact on how long the growth strategy takes to complete.

Successfully completing the growth strategy will depend on:

- Commitment from all those involved in its creation to meet any timelines set out,
- An open-minded approach – all involved should remain open-minded and adaptable to ideas, opportunities and risks presented by the growth strategy, and embrace any change resulting from its use,
- Team engagement – where applicable, structured briefings and participation from all staff should be encouraged,
- Time management – an achievable timeline should be identified for all phases,
- Robust and quality information – the growth strategy will only be as strong as the research and information that is gathered and analysed,
- Feedback and monitoring – a culture of gathering feedback should be embraced, along with a process to ensure that feedback informs future decisions.

The level of success a practice achieves through the completion of the workbook will mainly depend upon these factors. The more structured, robust and thorough an approach to its creation, the more benefit a practice will generate. Ultimately, the growth strategy workbook will support each practice in achieving growth and sustainability, as it focuses the practice's efforts and ensures that everyone is working towards a common goal.

This template/workbook is part of an overall programme of supports being provided to smaller legal practices by the Law Society.

Other supports should also be availed of to assist in the completion of the growth strategy, including, for example, the ready reckoner, materials on the Small Practice Business Hub (launched in July 2019), and relevant online and onsite training resources. g

THE GROWTH STRATEGY WORKBOOK AIMS TO OUTLINE THE GROWTH PATH FOR THE PRACTICE, AND THE ACTIONS, RESOURCES, AND STRATEGY REQUIRED

SHOW, DON'T TELL

Good tech yields data that will justify the legal spend, this year's In-house and Public Sector Conference heard. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE

STRESS LEVELS ARE HIGHEST FOR THOSE STARTING THEIR LEGAL CAREERS. IT'S IN THE NATURE OF LEGAL WORK TO BE STRESSFUL, AND IN THE NATURE OF LAWYERS TO BE SOMEWHAT IN DENIAL OF THAT STRESS

This year's In-house and Public Sector Conference at the Law Society on 11 October was reminded by outgoing committee chair Mark Cockerill that the British attorney general is an in-house counsel, and has to discharge those duties.

But that office-holder must always remember the responsibilities and rights of independence, which are fundamentally granted through practising certificates, legal qualifications, and training.

Cockerill told the room that general counsel are inherently best placed to guide clients and companies and navigate them through choppy waters, such as those thrown up by Brexit and the GDPR.

The concept of lawyerly independence fundamentally flows from regulatory bodies such as the Law Society, which advocates on behalf of maintaining solicitors' independence, he said.

Cockerill said that representation becomes even more important as the in-house sector edges towards 25% of the profession, yet has thus far yielded only two Law Society Council members.

Important constituency

Director general Ken Murphy told the room that general counsel are an "immensely important" constituency of the Law Society, and that their voice is not sufficiently heard.

The In-House and Public Sector committee is a very powerful and increasingly influential committee within the Society, Murphy said, but the voice of the sector needs to be heard more strongly.

He continued: "We are all lawyers, but first and foremost we are all human beings." He urged those present to take care of their mental health. Stress levels are highest for those starting their legal careers, Murphy said. "It's in the nature of legal work to be stressful, and in the nature of lawyers to be somewhat in denial of that stress."

Rise of the machines

Independent Newspapers' tech editor Adrian Weckler said he has found that some lawyers can be technophobes.

His talk ranged across innovations, such as food takeaway delivery by drone, translation services for voice technology, and tech-enabled doorbell concierge services.

Weckler suggested that fewer people will work on laptops as the move to business tablets accelerates, because the latter are less of a security risk and both easier to start up and to move around.

ALL PICS: CIAN REDMOND

Pictured are *(front)*: Anna-Marie Curry, Margaret Maguire, director general Ken Murphy, Patrick Dorgan (then Law Society president), Mark Cockerill, Louise Campbell, Rachael Hession; *(back)*: Eadaoin Rock, Alison Bradshaw, Lynne Martin, Amanda Zahringer, John O'Donovan, Jeanette Crowley, Adrian Weckler, Jonathan Maas, and Ronan Lennon

GENERAL COUNSEL ARE AN 'IMMENSELY IMPORTANT' CONSTITUENCY OF THE LAW SOCIETY AND THEIR VOICE IS NOT SUFFICIENTLY HEARD

Leman claims to be the only paperless legal firm in Dublin, Weckler said. When documents come into the Leman office, they are electronically dated, stamped, filed and then the hard copies are destroyed. The staff use scanning software and hardware, and store on both hard discs and in the cloud – and the firm limits everyone to a 20c-per-week budget for the printer.

Hard discs will become antiquated in the near future, Weckler prophesied, and we will run our lives in real time through the internet. But data security remains a big issue.

It's very hard to avoid paying a ransom without losing data, he said, if an office computer system is compromised. 'Internet pirates' even have call centres to talk the hacked person through the process of paying their ransom.

Soft sell

IT consultant Jonathan Maas told the conference that good communication is key to successfully rolling out any software innovations. He said it is very easy to under-sell new software projects, but they can never be over-sold.

It takes hard work to sell a new technology initiative and to get buy-in and demand for the innovation. But he cautioned that the first step is to identify the problem that technology needs to fix.

"Don't buy what you don't need. Start the process knowing what it is you are trying to fix," he advised.

Amanda Zahringer is partner (learning and development) in ByrneWallace. As a corporate lawyer who has worked across 12 jurisdictions, she echoed Jonathan Maas in her themes.

'Cognitive ergonomics' are key with any new software, because it has to be quickly learned and easy to use. Keep things simple at the start and leave the complex matters to the second phase, Zahringer advised. Test and test again, she said, and speak to external colleagues doing the same sorts of work.

Margaret Maguire, in-house solicitor with financial services firm Fexco, said that, when she joined the company, legal processes were largely manual. One of the motivations to embrace technology was lack of physical space and a surfeit of hard-copy files. "We were drowning in paper," she said, while a radical increase in the complexity and volume of files was also a factor that drove change.

However, the main motivation was that Fexco wanted to offer remote working and have the ability to manage and hand-off documents centrally to geographically dispersed locations. "All Fexco Group legal files are now electronic, and you will only establish a hard copy for a limited amount of reasons," Maguire explained.

If budget is a factor, look at the functionality you already have. Talk to your service providers about existing software functionality, which might not be used to its maximum capability. For instance, *MS Word* has a mail merge function that automates




documents and is very helpful for managing bulk documents, the Fexco lawyers found.

'Knowledge management' consultant John Furlong said that lawyers love precedents first, with know-how and know-who coming after that. "Legal research is a composite of the knowledge one brings to a client, but ways to compile that knowledge are improving all the time."

The NTMA's John O'Donovan said that lawyers should always be aware that data has value, and a price will be put on it on the dark web. "You are the most important part of your organisation's security infrastructure," he told the assembled in-house lawyers. "You have a responsibility to act and protect your organisation's network and data."

LK Shields partner Jeanne Kelly said that the instinct for convenience can trump the need for appropriate diligence into technology service providers. The in-house lawyer has an important role in recording diligence into any new technology, Kelly pointed out.

General counsel have their own obligations under the *Solicitors Acts*, as well as under GDPR. "Remember to keep a document trail, but be careful about what technology you use to do that," Kelly advised.

Agile technology

Lynne Martin is head of the employment law function at AIB, which has a team of over 100 lawyers across four cities.

Martin said that AIB has recently taken advantage of agile technology to log on without being physically present in the office, and this has offered a greater degree of flexibility. "But, as a litigator, I don't know how litigation forums would work without paper files," she observed.

Eadaoin Rock (general counsel at the Central Bank) said that, when she joined, it was felt that there was a great need for a proper electronic document-and records-management system in her now 39-strong legal team. The journey to introduce that system began as a legal-division-only project, but in time became a broader journey involving other divisions – once the benefits were communicated.

In-house legal work can often be hard to quantify, because the lawyers support every aspect of the business, and it can be hard to convey the work done. But new technology is very useful in justifying resources spent on in-house lawyers. "Tech makes it easier to show your value and provide the metrics," she concluded.

TALK TO YOUR SERVICE PROVIDERS ABOUT EXISTING SOFTWARE FUNCTIONALITY, WHICH MIGHT NOT BE USED TO ITS MAXIMUM CAPABILITY

CREATIVE JUICE

The importance of intellectual property to Ireland's economic, cultural and creative sectors cannot be overstated, say **Mark Hyland** and **Victor Finn**

MARK HYLAND IS IMRO ADJUNCT PROFESSOR OF INTELLECTUAL PROPERTY LAW AT THE LAW SOCIETY OF IRELAND.
VICTOR FINN IS CEO OF THE IRISH MUSIC RIGHTS ORGANISATION

THE NEXT BIG CHALLENGE FOR THE IRISH GOVERNMENT WILL BE THE TRANSPOSITION OF THE *DIRECTIVE ON COPYRIGHT IN THE DIGITAL SINGLE MARKET*, WHICH MUST BE DONE BY 7 JUNE 2021

The term 'intellectual property' (IP) is bandied about a lot, but what exactly is IP? According to the World Intellectual Property Organisation, 'intellectual property' refers to "creations of the mind, such as inventions, literary and artistic works, designs and symbols, names and images used in commerce". This is quite a broad definition, and likely reflects the fact that IP exists all around us. To describe IP as omnipresent is not an exaggeration.

IP is divided into two categories: industrial property and copyright. The former is further divided into patents, trademarks, and industrial designs. Patents protect inventions; trademarks are distinctive signs that identify (and protect) certain goods/services produced or provided by an individual or a company; while industrial designs protect the shape or ornamentation (aesthetic aspects) of a product.

Copyright, on the other hand, protects literary, dramatic, musical and artistic works. Importantly, software is protected as a literary work. Under Ireland's primary piece of copyright legislation, the *Copyright and Related Rights Act 2000* (CRRA), sound recordings, films, broadcasts or cable programmes, the typographical arrangement of published editions, and original databases also have copyright protection.

One of the key justifications for an IP system and intellectual property rights is to incentivise and reward creativity and innovation. Without the protection of copyright law, musicians, authors, painters, software writers and sculptors might be reluctant to engage in creative endeavour. The same argument applies to inventors. The existence of a patent system that grants a 20-year monopoly right to the patent holder is a clear incentive for inventive minds.

Cat's pyjamas

A reading of IDA Ireland's document *Why Invest in Ireland* is illuminating from an IP perspective. There, our inward investment promotion agency states that Ireland is in the top 15 most innovative countries in the world. The agency then goes on to say that Ireland is home to the top five global software companies, the top ten pharmaceutical companies in the world, and 14 out of the top 15 medical-tech companies globally.

Clearly, these types of companies are very IP-oriented/dependent, while Ireland's pro-innovation philosophy ties in with IP and the importance of protecting IP. Even more illuminating is the September 2019 report published jointly by the EU Intellectual Property Office and the European Patent Office. The report is titled *IPR-intensive Industries and Economic Performance in the European Union* and covers the period 2014-16. According to this report, IP-intensive industries contribute a very significant 65% to Ireland's GDP (the largest contribution among the 28 member states) and account for 27% of the employment in this country.

When one focuses on an IP-oriented sector such as Ireland's music industry, the statistics are equally impressive. Deloitte's 2017 report '*The Socio-economic Value of Music to Ireland*' (commissioned by the Irish Music Rights Organisation) highlights in clear terms, the important contribution of the music industry to the Irish economy, which in overall terms is €703 million.

The sector provides employment to 13,130 people in this country. By making important recommendations, such as the development of a national music strategy, the report points to our music industry as making an even bigger contribution to the national economy in the future.

Anne of Green Gables

The notion of copyright can be traced back to the 15th century and the invention of the moveable-type printing press by the German goldsmith and inventor Johannes Gutenberg. The year 1450 is the year normally associated with the appearance of


PIC: SHUTTERSTOCK

the printing press and, from that year onwards, a greater emphasis was placed on the notion of protecting literary works, as certain individuals were deploying the new invention for the illegal reproduction of such works.

The first fully fledged copyright statute in the world was adopted in England. The *Statute of Anne* came into force in 1710, and it proved to be a real milestone in the history of copyright law, becoming the foundation for further developments in this field of law, particularly in Britain and the USA. This act recognised that authors should be the primary beneficiaries of copyright law, and established the idea that copyright protection should be of a limited duration.

In 1886, another significant milestone was reached when the *Berne Convention* was adopted. Inspired by the French author Victor Hugo, this multilateral convention protects literary and artistic works and sets international minimum standards for copyright protection. Significantly, 177 countries have signed up to this convention, with Ireland becoming a signatory state as far back as 1927.

Digital display

Unsurprisingly, a significant body of copyright legislation has also been generated by the EU. Up to now, 12 directives and two regulations have been adopted by the EU in the field of copyright law. The objective of these legal instruments is to harmonise copyright law across the EU28. The most recent addition to the copyright corpus is the *Directive*

COPYRIGHT PROTECTS LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS. IMPORTANTLY, SOFTWARE IS PROTECTED AS A LITERARY WORK

on Copyright in the Digital Single Market (2019/790). It entered into force in June of this year, and member states must transpose it into domestic law by 7 June 2021. The directive is a key part of the European Commission's strategy to modernise copyright rules within the EU, thereby ensuring they are fit for purpose in the digital age.

I write the songs

This theme of modernisation is also prominent in the context of Ireland's newest piece of copyright legislation, the *Copyright and Other Intellectual Property Law Provisions Act 2019*. This act was signed into law on 26 June but is still awaiting a commencement order before it comes into effect. The act makes significant changes to the CRRA, with some of these changes actually implementing copyright exceptions permitted by the 2001 *Information Society Directive* (2001/29/EC).

Performers' rights are a distinct set of rights conferred on a performer over the exploitation of his or her performance. In the Irish copyright regime, this set of rights is protected by parts III and IV of the CRRA.

The term 'performance' is defined by section 202 of the CRRA as meaning "a live performance" given by one or more individuals, involving actors, singers, musicians, dancers or other persons who perform literary, dramatic, musical or artistic works or expressions of works of folklore. Section 203 of the same act confers certain exclusive rights on performers over 'qualifying performances'.

In Ireland, the performing right in copyright music is administered by IMRO on behalf of its 13,000 members (songwriters, composers and music publishers), and on behalf of members of international overseas societies that are affiliated to it.

IMRO is committed to creators' rights and, with global scope, represents creators along the chain of creation – from writer, to producer, to performer, to the listener. One of IMRO's functions is to collect and distribute royalties to its members, arising from the public performance of copyright works – that is, music used anywhere outside the domestic environment. This collection/distribution of royalties is done through its licensing arrangements with music users, and in line with the CRRA.

IP shall remain of central importance to Ireland's economy into the future. Individual creativity, the presence of a large number of IP-intensive industries in the country, and the strength of Ireland's creative industries (such as our music sector) will ensure the centrality of IP (and IP laws) well into the future. The next big challenge for the Irish Government will be the transposition of the *Directive on Copyright in the Digital Single Market*.

> THE EXISTENCE OF A PATENT SYSTEM THAT GRANTS A 20-YEAR MONOPOLY RIGHT TO THE PATENT HOLDER IS A CLEAR INCENTIVE FOR INVENTIVE MINDS

FAMILY TIES

The new *Family Law Act* changes more than just the minimum living-apart period. **Keith Walsh** reports

KEITH WALSH IS THE AUTHOR OF *DIVORCE AND JUDICIAL SEPARATION PROCEEDINGS IN THE CIRCUIT COURT: A GUIDE TO ORDER 59*

THERE ARE CHANGES TO THE GROUNDS FOR JUDICIAL SEPARATION. THERE HAS BEEN A HARMONISATION OF THE CONCEPT OF 'LIVING APART' FOR JUDICIAL SEPARATION, AS WELL AS DIVORCE

The *Family Law Act 2019* was enacted on 25 October 2019 and is expected to be commenced very shortly. The act follows on from the referendum held on 24 May, in which the people voted to amend the Constitution to remove the minimum living-apart period for spouses seeking a divorce and to replace the text of article 41.3.3 on foreign divorces.

The practical effect of the act (once commenced) is that the living-apart requirement has been reduced for divorce proceedings and has been clarified for those spouses living under the same roof, for both divorce and civil-partnership actions:

- The living-apart requirement for couples required before initiating divorce proceedings will be reduced by amending section 5 of the *Family Law (Divorce) Act 1996* to reduce the minimum living-apart period specified in that act to two years during the previous three years (reduced from four during the previous five years),
- The phrase 'living apart' is clarified in the context of spouses who still live under the same roof, and they will be considered as living apart from one another if the court is satisfied that, while living in the same dwelling, the spouses do not live together as a couple in an intimate and committed relationship. This change in the definition of living apart will make it easier for couples residing together, though living apart, to apply for divorce. Section 3(1)(b) of the 2019 act states that a relationship does not cease to be an intimate relationship merely because it is no longer sexual in nature. These amendments will apply to proceedings for the grant of a decree of divorce under the act of 1996 that are instituted on or after the date on which section 3 of the 2019 act comes into operation, or that have been instituted, and have not been concluded, prior to such date.

The phrase intimate and committed relationship was used in the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* when defining a cohabitant in section 172(1) as one of two adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship.

However, the 2010 act, unlike the 2019 act, contains a number of factors that the court must take into account, including all the circumstances of the relationship and, in particular (a) the duration of the relationship, (b) the basis on which the couple live together, (c) the degree of financial dependence of either adult on the other, and any agreements in respect of their finances, (d) the degree and nature of any financial arrangements between the adults, including any joint purchase of an estate, or interest in land, or joint acquisition of personal property, (e) whether there are one or more dependent children, (f) whether one of the adults cares for and supports the children of the other, and (g) the degree to which the adults present themselves to others as a couple.

In the case of the 2019 act, the Oireachtas decided not to specify any further factors to be taken into account. We must, therefore, look at the case law for further guidance (see the analysis in Baker J in *DC v DR* ([2015] IEHC 309), paragraph 83 and following). *McA v McA* ([2000] 1 IR 457), the leading case on living apart before the change to the 2019 act, may still be relevant, as McCracken J analysed the concept of living apart.

A similar provision clarifies the term 'living apart' in the same way as when dealing with dissolution of civil partnerships. This change will only apply to proceedings for the grant of a decree of dissolution of a civil partnership that are instituted on or after the date that section 4 of the 2019 act comes into operation, or have been instituted, and have not been concluded, prior to such date.

British divorces

It provides for the recognition of divorces, legal separations and marriage annulments granted


PIC: SHUTTERSTOCK

under the law of Northern Ireland, Scotland, England and Wales, and Gibraltar, in the event of a Brexit without an agreement that applies to this area of law.

A divorce, legal separation or marriage annulment granted under the law of Britain or Gibraltar that, prior to the coming into operation of this section, was recognised under *Brussels II*, will continue to be recognised.

Certain divorces, legal separations, and marriage annulments granted in Britain or Gibraltar after the coming into operation of section 7 will be recognised if, at the date of the institution of the proceedings relating to the divorce, legal separation or marriage annulment concerned, at least one of the following requirements is satisfied:

- The spouses were habitually resident in a relevant jurisdiction (Britain or Gibraltar),
- The spouses were last habitually resident in a relevant jurisdiction, insofar as one of them still resided there,
- The respondent was habitually resident in a relevant jurisdiction,
- The applicant was habitually resident in a relevant jurisdiction, and had resided there for at least a year immediately prior to that date,
- Either of the spouses was domiciled in a relevant jurisdiction.

A divorce, legal separation or marriage annulment from Britain and Gibraltar will not be recognised if:

- Such recognition is manifestly contrary to public policy,
- Where the judgment in the proceedings relating to the divorce, legal separation or marriage annulment concerned was given in default of appearance, if the respondent was not served with the document that instituted the proceedings, or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence, unless it was determined that the respondent had accepted the judgment unequivocally,
- The relevant judgment is irreconcilable with a judgment given in proceedings between the same parties in the State, or
- The relevant judgment is irreconcilable with an earlier judgment given in a state other than the State between

A SIMILAR PROVISION CLARIFIES THE TERM 'LIVING APART' IN THE SAME WAY AS WHEN DEALING WITH DISSOLUTION OF CIVIL PARTNERSHIPS

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the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the State.

Judicial separation changes

There are changes to the grounds for judicial separation. There has been a harmonisation of the concept of 'living apart' for judicial separation, as well as divorce. The phrase 'in an intimate and committed relationship' has been imported into section 2 of the 1989 act by section 2(1)(c) of the 2019 act.

The 2019 act reduces to one year the minimum living-apart period of three years that applies to judicial separation applications in cases where the respondent does not consent to the decree of judicial separation being granted (see section 2(1)(e) of the 1989 act). This change will apply to proceedings for the grant of a decree of judicial separation under the act of 1989 that (a) are instituted on or after the date that the section of the 2019 act comes into operation, or (b) to proceedings that have been instituted, and have not been concluded, prior to such date.

PIC: SHUTTERSTOCK

The reduced living-apart criterion for divorce is reflected by a change to the criteria permitting a person to be considered as a qualified cohabitant by amending section 172(6) of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*.

A person may still be a qualified cohabitant if either cohabitant is married to another person, provided they were living apart for two of the previous three years. This reduces the pre-existing requirement in line with the reduction in the living-apart requirement for divorce, from four of the previous five years to two of the previous three years. The relationship must not have ended before the coming into operation of section 4(2) of the *Family Law Act 2019*.

The 2019 act is to be welcomed for introducing these much-needed reforms to the practice of family law.

IT WAS ONLY RESTING IN MY ACCOUNT

What you should know about the Budget and the *Finance Bill* changes that will affect individuals and domestic businesses in 2020. **Bridget Doherty** reports

BRIDGET DOHERTY IS MANAGER OF TAX & LEGAL AT DELOITTE IRELAND LLP

BUDGET 2020 WAS DELIVERED IN THE SHADOW OF BREXIT, WITH A VIEW TO MAINTAINING THE CAPACITY TO DEAL WITH FUTURE DOMESTIC SLOWDOWNS, NO DOUBT FOREMOST IN THE MIND OF FINANCE MINISTER PASCHAL DONOHOE

Although Ireland can now document an economy that is more than 50% larger in gross national product (GNP) than it was five years ago, Budget 2020 has revealed itself to be what some might call an 'economist-approved' budget, demonstrating restraint at the peak of the current economic cycle.

Budget 2020 was delivered in the shadow of Brexit, with a view to maintaining the capacity to deal with future domestic slowdowns, no doubt foremost in the mind of Finance Minister Paschal Donohoe. Budget 2020 has shown itself to be one focused on striking the right balance between directing resources towards measures aimed at insulating the Irish economy from external threats, while maintaining the tax yield for the exchequer.

Tax toolbox

Budget 2020 saw the deployment of a number of measures to enhance the practical tax toolbox available to Irish businesses and employers in attracting key talent, investment and growing the Irish economy. This includes the KEEP (Key Employee Engagement Programme), a share-based remuneration incentive introduced in 2018 with the aim of enabling start-ups and SMEs to compete with larger organisations and multinationals in attracting and retaining key talent. It soon became apparent that the programme would fail to achieve the desired result due to its restrictive conditions, with figures suggesting that less than 60 employees nationwide have availed of KEEP since its introduction.

The major point of attraction for the incentive is that gains arising to employees on the exercise of KEEP share options are liable to capital gains tax on disposal of the shares, as opposed to a liability to income tax, USC and PRSI. Budget 2019 amended the scheme, as follows:

- Companies that operate through a group structure will now qualify for KEEP,
- The conditions for a qualifying employee have been amended to allow for part-time/flexible working and movement within group structures (as business needs dictate),
- The legislation has been amended to allow existing, as well as newly issued shares, to qualify for KEEP.

Changes have also been introduced to the EII Scheme, which provides individual investors with income-tax relief for investments in qualifying SMEs. The income-tax relief under the scheme will now be available for investors – in full – in the year of investment, compared with the previous position, which granted 75% of the relief in year one, with a wait until year four for the remaining 25% of the relief. Additionally, the maximum investment per year has been increased from €150,000 to €250,000 and to €500,000 in the case of those who invest for a minimum period of ten years. The strengthening of the scheme is designed to incentivise entrepreneurs and investors and will, from a cash-flow perspective, be well received by investors also.

That's a relief

The research and development (R&D) tax credit regime for SMEs was also targeted, with an increase in the rate of relief for qualifying expenditure to 30% (from the current 25% rate) for micro and small businesses, and increasing the 5% restriction to 15% on expenditure incurred in outsourcing R&D to universities to foster greater collaboration with industry. Further, a pre-trading R&D tax credit will allow relief in the form of offsets/repayments by reference to payroll and VAT liabilities for the same period. These reforms should serve to increase activity in the Irish indigenous sector.

The Special Assignee Relief Programme (SARP) is an income tax-relief measure that reduces the cost to employers of assigning skilled individuals in their companies from abroad to take up positions in their Irish-based operations, thereby facilitat-


PIC: SHUTTERSTOCK

McGregor relaxes after his last payday

ing the creation of jobs and the development/expansion of business.

The Foreign Earnings Deduction (FED) provides relief from income tax on up to €35,000 of salary for employees who travel out of State to certain qualifying countries for extended periods on behalf of their employer.

Existing SARP and FED legislation had sunset clauses of 31 December 2020. In a welcome move, both reliefs have now been extended, by a further three years, until 31 December 2022.

In a further nod to the Brexit dilemma, British residents who currently have a liability to Irish income tax, and qualify for a host of personal allowances, relief and deductions by virtue of EU membership, will be allowed to retain those reliefs in a post-Brexit landscape.

The current Farm Restructuring Relief scheme provides for capital-gains-tax relief where an individual disposes of and purchases land and/or exchanges land with another farmer in order to consolidate an existing farm. The scheme (which was due to expire on 31 December 2019) is now extended to 31 December 2022.

The home-carer credit and the earned income-tax credit were increased to €1,600 and €1,500, respectively. The increase in the earned-income credit for the self-employed brings entrepreneurs closer to equal treatment with PAYE workers.

Property rites

The State has raised stamp duty on commercial property purchases from 6% to 7.5%. The 6% rate will continue to apply for purchasers/lessees with binding contracts in place before 9 October 2019, and where the sale/lease is executed before 1 January 2020.

This stamp-duty hike represented an unexpected increase in transaction costs. This increase in stamp duty will likely have a

ON A POSITIVE NOTE, FIRST-TIME BUYERS' INCOME-TAX RELIEF, WHICH WAS DUE TO EXPIRE ON 31 DECEMBER 2019, HAS NOW BEEN EXTENDED TO 31 DECEMBER 2021

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bearing on investors' decision-making – in particular, the price they will bid and pay for commercial real-estate assets in the future.

Furthermore, Irish real-estate investment legislation saw the introduction of a number of measures designed to ensure that the appropriate level of tax is being collected, and to curtail the use of aggressive activities, such as the use of excessive interest charges to avoid the payment of tax in respect of profits from Irish property. These measures, viewed together with the impact of the stamp-duty increase for investors in commercial property, may raise a degree of uncertainty in investing in Ireland, at a time when investment will be critical.

On a positive note, first-time buyers' income-tax relief, which was due to expire on 31 December 2019, has now been extended to 31 December 2021. This is an effective tax rebate of up to €20,000, which can be claimed towards a deposit, for first-time buyers of newly built houses. This extension, together with the retention of the 2% rate of stamp duty on residential property, is the most promising aspects of Budget 2020 for the real-estate sector.

Capital acquisitions

In a welcome move, the 'Group A' gift/inheritance-tax threshold has increased by €15,000 (with the amount that a child can now receive, tax-free, from a parent standing at €335,000).

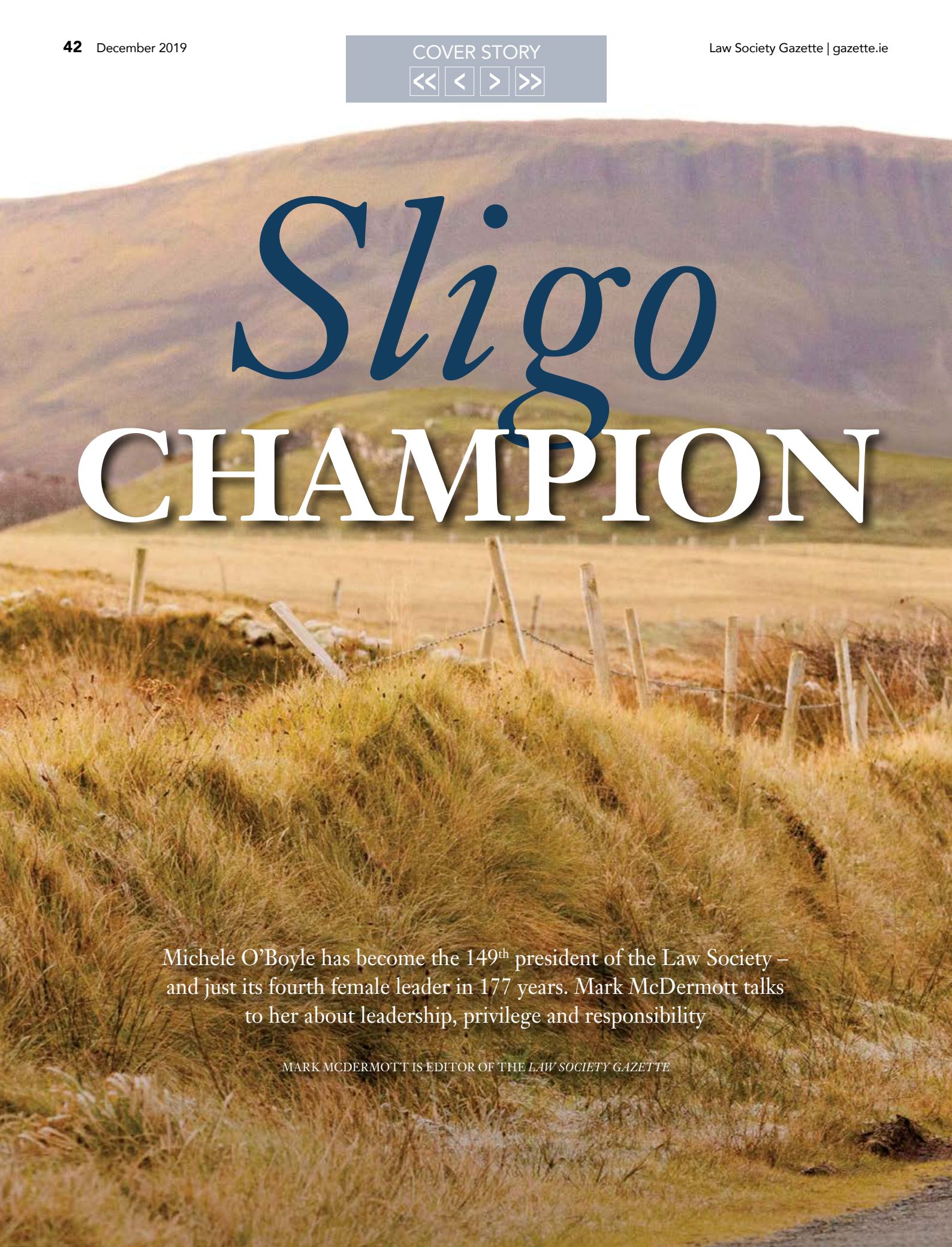
Budget 2020 saw the provisions of dwellinghouse relief further restricted to ensure that its parameters are confined to those receiving a property as their only place of residence. The amendment now ensures that not only will a dwellinghouse not qualify for the exemption where the beneficiary has an interest in any other dwellinghouse on the date of inheritance, but that this removal of the relief will extend to the situation where the beneficiary acquires an interest in another dwellinghouse, from the same deceased person, between the date of inheritance and up to the date the estate or its residue is available for distribution to beneficiaries.

Missed opportunities

While a reduction in the rate of CGT did not materialise, a number of pre-budget submissions had requested a reduction in the rate of CGT to 20% to give Ireland an edge comparable to that of our British neighbours in competing as an attractive investment location. Additionally, Budget 2020 failed to bridge the gap between entrepreneur relief in Ireland and Britain, with Britain having relief on gains of up to £10 million, being far in excess of the €1 million Irish limit.

Many in the tourism and hospitality sector believe that support is needed to lower the cost of doing business in Ireland, and it had been hoped that the Government would reverse the tourism VAT hike.

The hike (which came into effect following last year's budget) saw an increase in VAT from 9% to 13.5%. Many in the Irish hotel and restaurant trade have voiced concerns that this has seriously undermined Irish tourism's international competitiveness. g



Sligo CHAMPION

Michele O'Boyle has become the 149th president of the Law Society – and just its fourth female leader in 177 years. Mark McDermott talks to her about leadership, privilege and responsibility

MARK MCDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*

ALL PICS: CIAN REDMOND

Dame the Finns! The Law Society's newest president has a pep in her step – and it's not all down to the novelty of sporting a new chain of office. Sligo native Michele O'Boyle is something of an anomaly. Despite being the first female president of the Law Society in 17 years, running a highly successful two-person practice in her native Sligo, being a member of the Law Society's Council for 16 years, and having served on all of the Law Society's most senior committees, Michele 'goes and spoils it all by saying something stoopid like "I Kangoo!"'

What the heck is Kangoo? I ask. It turns out that it's a keep-fit trend that sees Michele ditching her Manolos or Jimmy Choos in favour of something resembling a snow boot with cantilevered springs bolted on. Kangoo Jumps look space-age and, apart from making the wearer look slightly silly – okay, really silly – they give the wearer the ability to totally roast Usain Bolt in a 100-metre dash.

Paradise city

Exercise is the object of Kangoo Jumps, and so it's back to Finland. It all started out with a 10k charity run in Helsinki some years ago, says Michele. "I wouldn't call myself a runner, but I have done some charity runs. The 10k in Helsinki was for the Bone Marrow for Leukaemia Trust. I caught the fitness bug and stumbled across Kangoo Jump boots, which have since become something of a passion."

She 'Kangoo dances' wearing the boots, each weighing in at 2.5kg. Not exactly *Strictly*, then, although Michele has participated in 'Strictly Sligo' to raise money for the Sligo Musical Society. "If I'm going on holidays, my Kangoo boots come with me.

"I find that physical fitness gives you a sharpness of mind, there's no question about that. It's also the feel-good factor with endorphin release. I'm lucky to be living in Sligo, where I'm close to Rosses Point, Strandhill and Mullaghmore. I love the outdoor life. I regularly take a run in the mornings, around 7am, when the weather's fine."

She acknowledges the stress that most practitioners suffer as a result of their legal careers. "Like many professions, it can be extremely stressful, but that's the nature of our work. Fortunately, the Law Society has already commissioned independent research on mental health and wellbeing in the profession. We launched our Professional Wellbeing Project on 7 October, to address the needs identified. This provides practical supports, education and guidance across three pillars: workplace culture, resilience and wellbeing, and emotional and psychological health. I would encourage all practitioners to visit the Professional Wellbeing Hub at www.lawsociety.ie."

Michele is an exponent of excellent work/life balance practices. "The fact that I'm in a two-solicitor practice allows me to achieve that, because we can decide what work to take on, or what work to refuse. Generally, I try not to bring work home – though, like all solicitors running a busy practice, that's not always possible. But you've got to aim for the ideal.

AT A GLANCE

- Fourth female president
- Fitness focused
- Falling into law
- Entrepreneurial spirit
- Leadership, privilege and responsibility

"Returning to the issue of physical fitness, I firmly believe that it's a great way of coping with stress. If you're physically agile, you're mentally agile, and I think that exercise is one of the best stress-busters out there."

Welcome to the jungle

As the Law Society's 149th president, Michele becomes just the fourth female president in the history of the solicitors' profession. Despite that, she says she "just fell into law. I never ever anticipated when I was a Leaving Cert student in the Ursuline College that I would become a lawyer, and certainly that I would ever lead the profession."

When she and her sister Dervilla finished secondary school, they spent a year in a school in Bordeaux, brushing up on their French and immersing themselves in French culture.

"When we returned, we headed for NUIG. Both of us studied French with law and economics." Out of a class of 150 students, the top 20 got to progress to second year. Michele and Dervilla were among them.

In Galway, Michele was selected to represent the college in an inter-university competition for French language skills. That resulted in a diploma from the French Embassy, and reaped the benefit of a tutor for a semester of law through French.

She went on to complete an LLB and remembers applying for the Bar, but a postal strike intervened. The Bar's loss was the Law Society's gain. She was encouraged to apply for a training contract with two Sligo law firms, both of which accepted her. She opted for Horan Monahan.

"I didn't know it at the time, but one of the firm's partners, Ray Monahan, was a Law Society Council member. The year I qualified, he was serving as president, and I was very honoured to receive my parchment from him. Knowing now the significance of his role on Council, and the impact he made as president, makes me feel privileged to follow in his footsteps."

Patience

A little over a year after qualifying as solicitors, Michele and Dervilla decided to set up their own practice in Sligo, which they continue to run to this day. "We were extremely lucky, because we set up around 1994/95, the start of the economic boom,"

> PHYSICAL FITNESS IS A GREAT WAY OF COPING WITH STRESS. IF YOU'RE PHYSICALLY AGILE, YOU'RE MENTALLY AGILE, AND I THINK THAT EXERCISE IS ONE OF THE BEST STRESS-BUSTERS OUT THERE

says Michele. "Because my parents were business people, we had lots of business contacts, so we started off with a distinct advantage. After the first 12 months, we realised that we could make a long-term living out of it. We didn't have the initial financial worry of expensive overheads because we owned the premises, so it just made the transition easy.

"There's no doubt that we could have grown to become a much larger practice. We didn't want the headaches of managing a large office, and our current practice suits our lifestyles very well. It was a conscious lifestyle choice.

"My area is litigation – anything contentious – so it's mostly personal injuries litigation, employment law and family law. Dervilla does all the probate work, conveyancing, landlord and tenant law, and everything in between."

Do they ever squabble?

"We're very fortunate, because we're very different people and we have different interests in terms of the practice. It works extremely well. I know we've been very fortunate. Becoming president, it's very important to have a partner who is supportive of that role, who will enable me to be the best president I can be, and who understands that my absence from the office is inevitable."

Rocket queen

Michele refers to an "entrepreneurial streak" in the family. "My father Harry was a very hard worker, with great business

acumen, but he had no interest in money. He had a great sense of social justice.

"I am the youngest of three children and, I suppose, because of that, I had a very special relationship with him. When he passed away on 11 April 2010, it was a defining moment in my life because, up to that point, I had never thought about mortality. I now identify with the importance of living life to its fullest, because life is fragile and short."

The entrepreneurial side is supplemented by the creativity of her mother Nano. "She worked in business with my father, and served as a company director in her own right. Aside from that, though, she has always been very creative."

November reign

Her feeling on become president is one of pride, mixed with trepidation. "I know that the role of president is about leadership, and leadership is about privilege – it's not about power. And privilege brings with it great responsibility. I don't underestimate the responsibility of the position I hold.

"I'm not going to promise that I'm going to be a transformative president or that I'm going to outshine other presidents. What I can and will promise is that I'll do the very best I can, because I do want to make my profession proud. I want to leave a very positive mark to the shape of our profession by the end of my 12-month term – both nationally and internationally."

Another woman who looms large in her experience is the profession's first female president – the late, great Moya Quinlan. "She never considered her gender to be a feature in her success – and neither do I," says Michele.

She draws attention to the significance of her appointment taking place during the centenary year of women being allowed to enter the solicitors' profession – and at a time when over 51% of solicitors are female.

"So much great work has been done over the past number of years within the Society

SLICE OF LIFE

Pet loves?
I love theatre and the arts. Wandering around the National Gallery is a fabulous way to spend a Saturday afternoon.

Pet hates?
Relentless correspondence. By email, phone and letter. Why people consider it necessary to send you three forms of communication for one matter – it defies logic!

Current book?
Wave by Sonali Deraniyagala. It's Sonali's memoir about losing her husband, her two young sons and her parents to a tsunami in Sri Lanka on 26 December 2004.

Best alternative career?
I have always had an interest in design. It's not too late yet! The National College of Art and Design is just down the road from Blackhall Place. I have always admired people who have changed career later in life.

Emmerdale or Coronation Street?
Neither. I watch current affairs and the news. I actually like *Nationwide*.

Spotify, CD or vinyl?
CD – that's showing my age!

In your CD player?
I like all genres of music. One of my favourite songs is *Galileo* by Declan O'Rourke.

Favourite personal treat to yourself
A night at the theatre.

Top business tool?
Dragon Dictate.

Mixed martial arts or lawn bowling?
I don't like watching it, but if I had to choose between the two, bowling wouldn't interest me – too much like golf – so mixed martial arts!

> I KNOW THAT THE ROLE OF PRESIDENT IS ABOUT LEADERSHIP, AND LEADERSHIP IS ABOUT PRIVILEGE – IT'S NOT ABOUT POWER. AND PRIVILEGE BRINGS WITH IT GREAT RESPONSIBILITY. I DON'T UNDERESTIMATE THE RESPONSIBILITY OF THE POSITION I HOLD

> PARTICULARLY OUTSIDE OF DUBLIN AND THE LARGER CITIES, THERE WILL ALWAYS BE A ROLE FOR SMALLER PRACTICES. I STILL BELIEVE THAT PEOPLE TRUST THEIR FAMILY'S LAWYER AND WE MUST BUILD ON THAT LEVEL OF TRUST TO STRENGTHEN OUR BUSINESSES

and the profession on the important issue of equality. One of my key priorities will be promoting women in leadership throughout the profession, through the Society's mentoring programme."

Get in the ring

With her practice background, she aims to focus on strengthening and supporting smaller practices and sole practitioners during her term of office. What does she have to say to those within the profession who say that there's no place for smaller practices or sole practitioners – that they simply don't have the necessary skillsets, the administrative backup, or technical ability to run a modern-day practice?

"Well, I say that the reality is that more than 30% of practitioners come within the cohort of smaller practices. I do believe that there is very much a role for smaller practices. I also know that it can be very difficult and very challenging for sole practitioners, and I can understand why they would be minded to merge where possible – though merging can bring its own challenges.

"While I'm very fortunate to work in a two-solicitor practice where things work very well, that isn't always the case for other firms. Earlier this year, the Law Society rolled out a roadmap for smaller practices to assist them in, not only staying in business, but growing their businesses. The Small Practice Support Project helps sole practitioners and smaller firms to grow and achieve greater success for their clients, their firms and their local communities. It offers tools and resources to efficiently manage and grow our practices. These are available at the Small Practice Business Hub on the Law Society's website.

"Particularly outside of Dublin and the larger cities, there will always be a role for smaller practices. I still believe that people trust their family's lawyer and we must build on that level of trust to strengthen our businesses.

"I believe, too, however, that sole practitioners can feel very isolated and very alone, but what's very important is that sole practitioners should realise that they have a network of colleagues in their local bar associations to whom they can reach out whenever necessary.

"I'm greatly enthused by the pilot project that the Law Society will soon roll out in Sligo for smaller practices and sole practitioners. My aim is to see this being extended across the country so that our smaller practices can thrive."

Michele is a member of the Government-led Legal Services Implementation Group. "Through this group, the Government and the legal professions aim to position Ireland as a leading centre of international legal services," she says.

"While Brexit has proven increasingly complicated, there is now an opportunity for Ireland, and for solicitors, to position our legal services at the forefront. After Brexit, Ireland will be the only English-speaking common law jurisdiction in the EU, and we plan to capitalise on such strengths."

And at the end of it all, having reached the pinnacle of her career, what will be at the top of her bucket list?

"I think a sky dive, wearing my Kangoo boots, perhaps!"

And what happens at the end of the drop?

"I'll bounce back up again!" g

Weapon of choice

A recent judgment represents one of the most substantial developments in the law of interlocutory injunctions in Ireland since *Campus Oil* over 35 years ago. **Theo Donnelly** explains

THEO DONNELLY IS A DUBLIN-BASED BARRISTER WITH A CIVIL PRACTICE

The July 2019 judgment of O'Donnell J in *Merck Sharpe and Dohme Corporation v Clonmel Healthcare Limited* was on foot of an appeal of a Court of Appeal ruling in which the court refused an interlocutory injunction application restraining the defendant from launching a generic alternative to compete with the plaintiff's product. The defendant justified their action by contending that the supplementary protection certificate (SPC) that granted the plaintiff a monopoly for the sale of its product in the state was invalid, and that they were therefore entitled to market their own generic alternative.

The defendant contested the injunction application by arguing that, even if they were wrong about the validity of the SPC, damages would be an adequate remedy and would compensate any loss suffered by the plaintiff.

In a unanimous decision, the court allowed the plaintiff's appeal. Although *Merck* is of particular interest to intellectual property practitioners, it has greater significance in the context of interlocutory injunction applications in general.

Chemical brothers

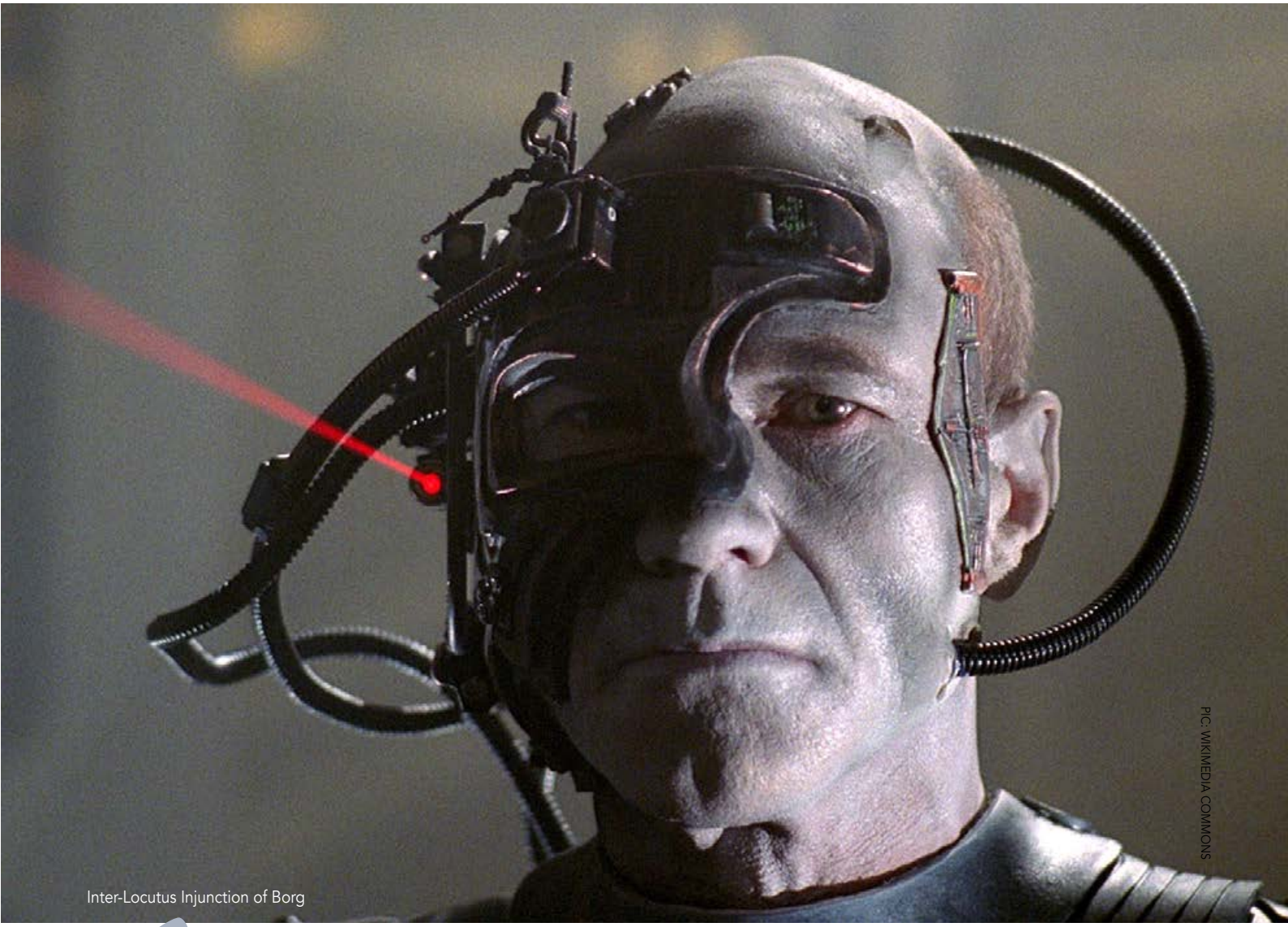
O'Donnell J made a number of findings that are of relevance for all legal practitioners. He summarised these findings in a new test, which is more nuanced than that in *Campus Oil* and which emphasises the essentially flexible nature of an injunction:

- First, the court should consider whether, if the plaintiff succeeded at the trial, a permanent injunction might be granted. If not, then it is extremely unlikely that an interlocutory injunction seeking the same relief upon ending the trial could be granted.
- The court should then consider if it has been established that there is a fair question to be tried, which may also involve a consideration of whether the case will probably go to trial. In many cases, the straightforward application of the *American Cyanimid* and *Campus Oil* approach will yield the correct outcome. However, the qualification

AT A GLANCE

- *Merck v Clonmel* recasts the test to be applied when considering an application for an interlocutory injunction
- The court rejected the argument that the consideration of damages as an adequate remedy precedes consideration of the balance of convenience
- The fundamental objective should be to minimise injustice where the rights of the parties are yet to be finally determined

The author wishes to thank Glen Gibbons BL, author of *Trade Marks Law*, for reviewing this article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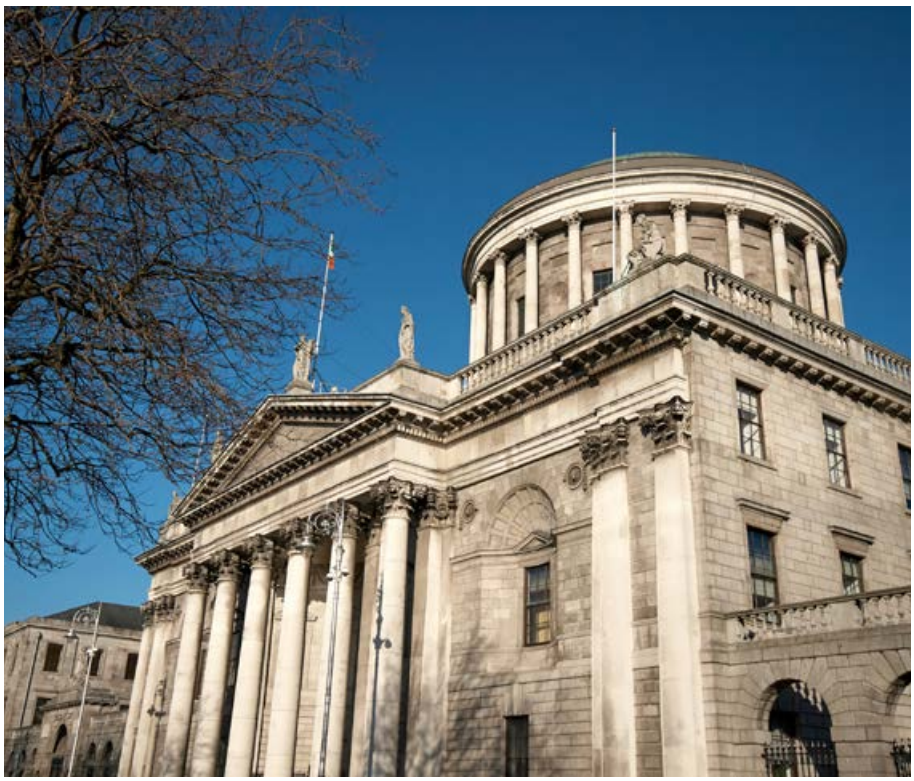
Inter-Locutus Injunction of Borg

> THERE HAS PREVIOUSLY BEEN UNCERTAINTY ON WHETHER OR NOT CONSIDERATION OF ADEQUACY OF DAMAGES IS ANTECEDENT TO AN ASSESSMENT OF THE BALANCE OF CONVENIENCE

of that approach should be kept in mind. Even then, if the claim is of a nature that could be tried, the court, in considering the balance of convenience or balance of justice, should do so with an awareness that cases may not go to trial and that the presence or absence of an injunction may be a significant tactical benefit.

- If there is a fair issue to be tried (and it probably will be tried), the court should consider how best the matter should be arranged pending the trial, which involves a consideration of the balance of convenience and the balance of justice.
- The most important element in that balance is, in most cases, the question of adequacy of damages.
- In commercial cases where breach of contract is claimed, courts should be robustly sceptical of a claim that damages are not an adequate remedy.
- Nevertheless, difficulty in assessing damages may be a factor that can be taken into account and lead to the grant of

> THE NEW ELEMENTS O'DONNELL J HAS ADDED IN HIS MODIFIED VERSION OF THE CLASSIC TEST ARE SENSIBLE, AND WILL BE OF USE IN FUTURE INJUNCTION APPLICATIONS



PIC: SHUTTERSTOCK

an interlocutory injunction, particularly where the difficulty in calculation and assessment makes it more likely that any damages awarded will not be a precise and perfect remedy. In such cases, it may be just and convenient to grant an interlocutory injunction, even though damages are an available remedy at trial.

- While the adequacy of damages is the most important component of any assessment of the balance of convenience or balance of justice, a number of other factors may come into play and may properly be considered and weighed in the balance in considering how matters are to be held most fairly pending a trial, and recognising the possibility that there may be no trial.
- While a structured approach facilitates analysis and (if necessary) review, any application should be approached with a recognition of the essential flexibility of the remedy and the fundamental objective in seeking to minimise injustice, in circumstances where the legal rights of the parties have yet to be determined.

In this test, and elsewhere in the *Merck* judgment, O'Donnell J clarifies the approach to be taken when considering the grant of an interlocutory injunction and develops the law significantly from the *Campus Oil* position.

Remedy

The judgment restates the fact that an injunction is an equitable remedy, and is critical of the approach sometimes taken by judges and practitioners alike in rigidly applying the *Campus Oil* test. The judge stated that there has been "a discernible tendency to reduce the approach taken in cases to rules which sometimes become calcified, so it becomes necessary periodically to reassert the essential flexibility of the remedy", and further found that "the underlying theme of the [*American Cyanamid* decision, adopted in *Campus Oil*] was to reassert the flexibility of the remedy and the essential function of an interlocutory injunction in finding a just solution pending the hearing of the action. Even though the judgment is lucidly and succinctly expressed, it should not … be approached as though it were the laying down of strict mechanical rules for the control of future cases."

O'Donnell J also clarified the manner in which the *Campus Oil* test ought to be interpreted. It is not, as courts have often held, a three-step test of:

1) Fair question to be tried,
2) Adequacy of damages, and
3) Balance of convenience.

Rather, it is a two-step test:

1) Fair question to be tried, and
2) Balance of convenience (of which adequacy of damages forms a part).

There has previously been uncertainty on whether or not consideration of adequacy of damages is antecedent to an assessment of the balance of convenience, with Blayney J finding in *Ferris v Ward* that the issue of balance of convenience only arises when there is doubt as to the adequacy of damages, and O'Flaherty J finding in *Curust Financial Services Ltd v Loewe-Lack-Werk* that the balance of convenience is found first by inquiring as to "whether damages would be an adequate remedy".

O'Donnell J, returning to his central point about the flexibility of equitable remedies, stated that "the preferable approach is to consider adequacy of damages as part of the balance of convenience, or the balance of justice, as it is sometimes called. That approach tends to reinforce the essential

flexibility of the remedy. It is not simply a question of asking whether damages are an adequate remedy."

He further stated that "the fact that it is possible to award damages does not preclude the grant of a permanent injunction, and should not be understood as an absolute bar to the grant of an interlocutory order."

He went on to consider the question of difficulty in quantifying damages, and the effect such difficulty has on the determination of the adequacy of damages. The existing rule had been set out by Finlay CJ in *Curust*: "Difficulty, as distinct from complete impossibility in the assessment of damages, should not, in my view, be a ground for characterising the awarding of damages as an inadequate remedy."

Technical ecstasy

O'Donnell J stated that: "Difficulty of calculation of damages may be relevant at the interlocutory stage, because the more complex the calculation and the greater the number of variables involved, the more likely it is that a court at trial would be forced to make an estimate or indeed to compound one hypothesis with another to arrive at its best assessment of damages to do justice in the case. But that necessarily increases the risk that the award of damages, although the best the court can do, may be something less than the doing of justice to either the plaintiff or indeed the defendant. In such a case, it may be more convenient not to leave one or other party to the possibility of an assessment of damages which is theoretically possible, but highly imprecise, speculative and therefore inconvenient … The fact that it is not completely impossible to assess damages should not preclude the grant of an injunction to the plaintiff in an appropriate case."

O'Donnell J doubted that Finlay CJ intended that his words be interpreted as meaning that anything short of complete impossibility of assessment should preclude the finding that damages are an inadequate remedy. However, that is certainly the way that those words have been interpreted, notably by Kelly J in *Cavankee Fishing Company Ltd v Minister for Communication*. As such, *Merck* represents a notable softening of the approach to be taken in assessing the question of the adequacy of damages. Again, this is consistent with the central thesis of the *Merck* judgment, that an injunction is an equitable remedy and that there ought to be no immutable rules against granting injunctions where it is otherwise convenient.

There is an inherent inconsistency in emphasising the fact that an injunction is an equitable remedy – and therefore resistant to a mechanistic application of rules of thumb – while at the same time establishing a new and detailed test for the grant of interlocutory injunctions. O'Donnell J notes this, prefacing his eight-point test with the acknowledgement that he risks "creating a further rule that will require subsequent qualification and correction".

However, the new elements O'Donnell J has added in his modified version of the classic test are sensible, and will be of use in future injunction applications, particularly where both parties are well-resourced commercial entities, and the balance of convenience appears finely balanced. Courts will find that they have more latitude to consider the balance of justice in the case and, even if damages may be an adequate remedy, are empowered to grant injunctions pending trial, should it be convenient. g

LOOK IT UP

CASES:

- *American Cyanamid Co v Ethicon Ltd (No 1)* [1975] AC 396; [1975] 2 WLR 316; [1975] 1 All ER 504
- *Campus Oil v Minister for Industry and Energy (No 2)* [1983] 2 IR 88; [1984] ILRM 45
- *Cavankee Fishing Company Ltd v Minister for Communication* [2004] IEHC 43
- *Curust Financial Services Ltd v Loewe-Lack-Werk* [1994] 1 IR 450
- *Ferris v Ward* [1998] 2 IR 194
- *Merck Sharpe and Dohme Corporation v Clonmel Healthcare Limited* [2019] IESC 65

Walk the line

Professional stress can lead to problematic and dangerous addictive behaviour. The only sure path to authentic workplace wellbeing is disruption to workplace culture at all levels, writes **Colin O'Gara**

PROF COLIN O'GARA IS A CONSULTANT PSYCHIATRIST AND HEAD OF ADDICTION SERVICES AT ST JOHN OF GOD HOSPITAL, STILLORGAN, DUBLIN

Within our addiction services, I frequently observe the pressure legal professionals are under. As with all competitive professions, the pressure can be relentless, coming from every angle – financial worries, increased administration, complaints, staff conflicts, and ever-increasing expectations from the public.

In addition, ambitious professionals tend to have a habit of heaping pressure upon themselves. Successful legal professionals will also be aware that success can bring with it even more increased demands, pressures and deadlines. Some young legal professionals struggle to meet the combination of high work demands and raising children. Much of the difficulty here can be attributed to the increased urbanisation and breakdown of traditional support structures, such as neighbours and local community groups. To compound matters, family are often located hundreds of miles away, unable to provide support, while childcare costs continue to soar. These problems are not exclusive to Ireland: an increase in population stress is reported in multiple studies from many locations worldwide.

According to research carried out by the Law Society in 2018, stress negatively affects solicitors' ability to do their jobs. For stressed professionals, sleep disturbance might be the first sign of difficulty. This disturbance can be time limited, but occasionally progresses to a sleep disorder where daytime fatigue and poor work performance sets in. An anxiety disorder may emerge in the form of persistent nervousness throughout the day and night, known as 'generalised anxiety disorder'. Anxiety may also emerge in the form of short, intense panic attacks. An unexpected period of insomnia, anxiety or low mood can be very distressing. Alcohol, addictive substances, and gambling can seem to provide a short-term reprieve from these distressing symptoms.

AT A GLANCE

- Addictive behaviour can often seem to stressed professionals to provide a short-term reprieve from distressing symptoms
- Being vigilant about our own stress levels and eliminating the destructive nature of stress within our working lives is sometimes all that is needed
- For others, however, making positive changes before the physical and mental effects of stress arise is critical – taking small, incremental steps to changing workaholic cultures can instil greater wellbeing in the profession

Too much alcohol

In Ireland, we have some of the highest rates of binge drinking in Europe. Professionals are consuming dangerous levels of alcohol on a regular basis.

A bottle of wine can be consumed in three large 250ml glasses. For a 13.5% bottle of wine, this equates to ten units of alcohol. If this happens three times a week, it is represents an intake off nearly three times the weekly recommended units for women (currently 11 units a

PIC: SHUTTERSTOCK

> UNDERSTANDING YOUR OWN LIMITS, AND KNOWING AND BELIEVING THAT WELLBEING IS AN INDISPENSABLE PART OF A LAWYER'S DUTY OF COMPETENCE, CAN HELP US GIVE IMPETUS TO THIS. SELF-AWARENESS CAN BE A REAL CATALYST FOR TANGIBLE CHANGE

> IN MANY SMALL BUSINESSES AND BIG ORGANISATIONS, OVERWORKING IS SEEN AS A NECESSARY RITE OF PASSAGE BEFORE GRADUATING ONTO HIGHER RANKS. SUPPORTING A CULTURE OF OVERWORKING, HOWEVER, MAY BE FACILITATING THE DEVELOPMENT OF MENTAL ILL-HEALTH AND ADDICTIVE BEHAVIOURS

week). If a man drinks in this same fashion, they will also be drinking well in excess of recommended levels (currently 17 units a week). When alcohol is consumed above recommended levels, it affects practically every system in the body. The liver is particularly vulnerable, and women appear to be more susceptible, perhaps due to their lower body mass index.

From a mental perspective, we know that alcohol does not aid in reducing stress and insomnia – it actually adds to stress, as it induces anxiety and depression. Addiction is another unwanted effect of using alcohol to alleviate stress. The progression from marginally excessive alcohol use, to problematic use, on to full-blown alcohol dependence can be swift. The person can also have very little insight into the fact that their intake has become compulsive.

I wanna be sedated

Sedative medications (known as benzodiazepines and z-drugs) are commonly prescribed by doctors in the treatment of anxiety and sleep difficulties. Common examples are Xanax, Valium and zopiclone. These drugs are valuable medications in the management of anxiety, stress, and sleep problems.

However, these medications are addictive and are recommended for short-term use only. When used for too long or at a higher-than-recommended dose, addiction can occur. Estimates from Britain suggest that up to one million people are addicted to benzodiazepines. There is no question that the availability of these drugs over the internet has increased rates of addiction to these substances. The internet has allowed individuals to purchase unlimited amounts of benzodiazepines from the comfort of their own home, without any interaction with street drug dealers. The addictive nature of these drugs can lead to a need to take more to obtain the same effect. Craving for more of these drugs can also emerge, leading to addiction. Protracted use can lead to memory difficulties, road-traffic accidents, falls, balance problems and confusion.

Sister morphine

Other medications offering temporary relief from the demands of modern professional life are opioids. Some opioids in Ireland (such as codeine) are available over the counter. Stronger forms of codeine and other opioids such as morphine are only available with a prescription. In the United States, there are an estimated 130 deaths a day as a result of opioid overdoses. Pharmaceutical companies initially reported that these medications were not addictive, but it quickly became apparent that this was not the case. The problem escalated to the extent that a state of emergency was declared in the US in 2017. Legal professionals will be aware of the current class actions in the US concerning opioids and the negative effects they are alleged to have on the individual.

Over-the-counter codeine is often taken to ease the symptoms of stress. Headache, lowered immunity leading to viral infections, migraine, and muscle tension are all potential routes to taking codeine. Many are unaware that codeine is in the same medication group as morphine and heroin, and they believe it to be harmless. The medication is often initially taken sporadically before escalation to everyday ingestion occurs. Daily doses can then increase in some cases up to 72 tablets in one day (three packets of 24 tablets).

The problem of codeine addiction was acknowledged in Ireland, with restrictions on the sale of codeine within pharmacies in 2012. The internet has undoubtedly aggravated the problem, where the drug is sold openly through online pharmacies. The internet has also opened up the possibility of progression from codeine to taking prescription-only drugs like morphine, oxycodone and fentanyl.

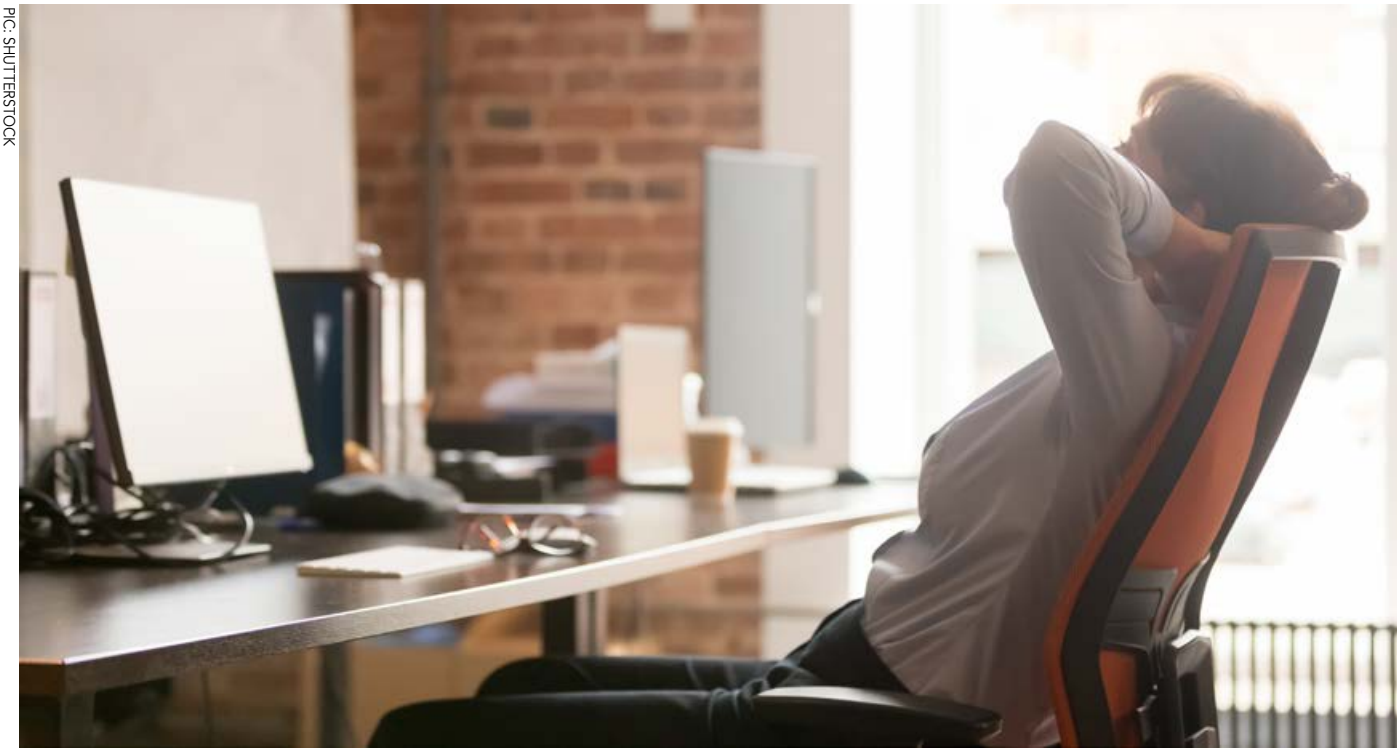
Cocaine

Levels of cocaine availability in Ireland are now thought to be in excess of boom-time highs, with reports that it is easier to order cocaine than a pizza. Users report being energised, with an intense focus after cocaine use that enabled them to keep going with a hectic lifestyle prior to losing control over the drug.

Some will pose the question as to how a legal professional could engage in illegal drug taking when it is so obviously detrimental to the individual and their career? Starting use is much easier nowadays due to the ready availability of the drug. Attitudes have also softened, with some considering the drug to be relatively benign. The reality is that, although cocaine may have very short-term benefits to a stressed professional, the effects on the physical and mental health for many is devastating.

Magic carpet ride

The legal profession should be concerned about the rise of 'designer drugs' in relation to future entrants to the profession. A study at Cambridge University indicated that 10% of students used drugs to enhance study performance. The data did not focus specifically on law students, but we can reasonably assume that they are represented in this data.


PIC: SHUTTERSTOCK

Up to 25% of US students have purchased concentration-enhancing drugs like modafinil (used in the treatment of depression) and/or methylphenidate (a stimulant used in the treatment of attention deficit hyperactivity disorder) to aid their study performance. Irish student bodies have raised their concerns about the prevalence of these drugs on Irish campuses.

All drugs have potential side effects, and these drugs are no different. In some cases, taking these concentration-enhancing drugs in healthy subjects has the opposite effect, leading to tiredness, lack of motivation, feelings of nausea, confusion, and even psychosis.

The ace of spades

Online gambling is increasingly used as a form of distraction and stress relief. The sophisticated suites of modern gambling products provide a highly accessible means of escape. Rapid developments in online gambling have made gambling products accessible on a 24-hour basis. Some professionals use online gambling as a means of regulating emotions and to avoid dealing with negative emotional states.

'Gambling disorder' is an addictive state where the person continues to gamble in the face of very obvious adverse effects. One of the most notable adverse outcomes in gambling disorder is the accruement of debt. Intense pressure to alleviate the situation can lead to theft.

Under pressure

Sometimes, being vigilant about our own stress levels and eliminating the destructive nature of stress within our working lives is all that is needed. For others, where multiple pressures and demands are present, making positive changes before the physical and mental effects of stress arise is critical. These changes include reducing excessively long hours, introducing healthy eating and exercise programmes, exploring the benefits of meditation and compassion, reigniting past passions (including hobbies), as well as developing new and novel interests. Understanding your own limits, and knowing and believing that wellbeing is an indispensable part of a lawyer's duty of competence, can help us give impetus to this. Self-awareness can be a real catalyst for tangible change.

Stress management and high-quality wellbeing education programmes are also great additions to any workplace. They are even better if they lead to legal practices identifying patterns of 'workaholism' within individuals and toxicity within teams. In many small businesses and big organisations, overworking is seen as a necessary rite of passage before graduating onto higher ranks. Supporting a culture of overworking, however, may be facilitating the development of mental ill-health and addictive behaviours. It can also reinforce stigma associated with help-seeking behaviour.

Taking small, incremental steps to changing workaholic cultures can instil greater wellbeing in the profession. For example, those with an interest in promoting positive mental health might champion stress-management initiatives within the workplace; sharing this article might be the first step you take today. Certainly, it would be a great way of sending a clear message to fellow professionals that protecting one's mental health is valued. If you are a leader within an organisation, that message would be made even clearer to fellow professionals. g

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If this article has brought up any personal issues or concerns for you, please visit the Law Society's Professional Wellbeing Hub to find a list of independent services you can connect with at www.lawsociety.ie/wellbeinghub.

One-hit Wunders

If an applicant is engaging in an abuse of process or vexatious litigation, the court may take the appropriate steps to protect the interests of both parties by granting an Isaac Wunder Order. **James Meighan** outlines the case law

JAMES MEIGHAN IS AN ASSOCIATE SOLICITOR WITH EUGENE F COLLINS

An 'Isaac Wunder Order' is an order that requires a litigant, who is found to have initiated proceedings that are an abuse of process against another party, to apply to the court for its prior consent before that litigant can issue further proceedings against that same party. While the jurisdiction of the court to grant such orders is relatively recent, this relief is regularly sought by parties in litigation.

The court's jurisdiction to grant Isaac Wunder Orders first arose in *Keaveney v Geraghty* in 1965. Walsh J, for the majority in the Supreme Court, found that the High Court had an inherent jurisdiction to dismiss or stay proceedings on any grounds stated if they are substantiated. The Supreme Court varied the High Court order by requiring the plaintiff (Keaveney) to first seek leave of the High Court to bring future proceedings and, if such leave was not sought and granted, the defendant was not required to appear or to take any steps in relation to the proceedings, and such proceedings should be treated as void and of no effect.

AT A GLANCE

- 'Isaac Wunder Orders' require litigants, found to have initiated proceedings that are an abuse of process against another party, to apply to the court for its prior consent before they can issue further proceedings against that same party
- While an Isaac Wunder Order does undoubtedly impede an applicant's constitutional right to access to the court and to litigate, such an applicant is not left without the possibility of securing relief at the leave stage of an intended action
- The courts have indicated that Isaac Wunder Orders should only be granted in very limited circumstances

The case that gave its name to the jurisdiction is *Wunder v Irish Hospitals Trust (1940) Limited* (1967). The defendant organised and ran a lottery, the proceeds of which were to finance hospitals. Mr Isaac Wunder claimed to have a winning ticket in the defendant's sweepstakes from a draw in 1948, but waited until 1962 to make a claim. At the trial of the action, the plaintiff claimed that he accidently destroyed the alleged winning ticket. Arising out of this dispute, the plaintiff commenced a number of actions against the trust. Wunder was unsuccessful before the High Court and, on appeal, the Supreme Court (Ó Dálaigh J) said that the proceedings were vexatious, and made an order requiring Wunder to seek leave of the court if he wished to commence further proceedings against the defendants.

In a more recent case (*SP v UG*), the


PIC: SHUTTERSTOCK

> THE COURT'S JURISDICTION TO GRANT ISAAC WUNDER ORDERS COMES FROM THE IMPLIED POWER THAT ARISES FROM THE DUTY OF ALL COURTS TO SUPERVISE AND CONTROL THEIR OWN PROCEDURES

High Court said that the court's jurisdiction to grant Isaac Wunder Orders comes from the implied power that arises from the duty of all courts to supervise and control their own procedures so as not to be oppressive or to allow parties to be endlessly subjected to vexatious applications and litigation being repeatedly brought before the courts.

English position

While the Isaac Wunder Order is a creature of Irish jurisprudence, the courts in England enjoy a similar jurisdiction with *Grepe v Loam* Orders (also known as Civil Restraint Orders). In *Grepe*, six separate actions were commenced by the plaintiff and all were dismissed. Lindley LJ said that all applications were wholly unfounded, and

the defendant was entitled to a level of assurance that the plaintiff would not bring further claims without first satisfying the court that such further claims were not frivolous or vexatious. As the jurisdiction has evolved, the English courts now have three subcategories of orders (provided for under Civil Practice Rule 3.11 – Practice Direction 3C) that the court may grant:

- A limited restraint order may be made by a judge of any court where a party has made two or more applications that are totally without merit,
- An extended restraint order may be made by specified courts where a party has persistently issued claims or made applications that are totally without merit, and such order not lasting more than two years, and
- A general civil restraint order for a maximum duration of two years, restricting a party from issuing any claim or making any applications in all county courts and the High Court.

Constitutional considerations

When a court is asked to exercise its jurisdiction and grant an Isaac Wunder Order, the court must have regard to two competing interests.

On the one hand, there is the right of the defendant to secure protection from the court against unstatable cases by the plaintiff. As Keane CJ in *Riordan v Ireland (No 4)* stated, the "court is bound to uphold the rights of other citizens, including their right to be protected from unnecessary harassment and expense".

On the other hand, however, the plaintiff has a constitutional right to access to the courts, as well as rights of access to the courts under article 6(1) of the *European Convention on Human Rights*. Considering the plaintiff's constitutional rights in this

PIC: SHUTTERSTOCK

Wunder Woman: 'Don't make me vexatious'

regard, in *O'Reilly McCabe v Minister for Justice* (2009), Denham J stated that "the constitutional right to access to the courts, while an important right, is not an absolute one. As a corollary of that right, a court must also protect the rights of opposing parties, the principal of finality of litigation, the resources of the courts; and the right to fair procedures which accrue to each party to litigation as well as the plaintiff."

While the imposition of an Isaac Wunder Order does undoubtedly impede the applicant's constitutional right to access to the court and to litigate, such an applicant is not left without the possibility of securing relief at the leave stage of an intended action. Considering the constitutional rights of the plaintiff, McDermott J in *Superwood Holdings plc v Sun Alliance & London Insurance plc* (2017) commented that the making of an Isaac Wunder Order is not a denial of the right of access to the courts, but rather it provides a filter to ensure that a litigant is prevented from initiating any further frivolous or vexatious proceedings and to protect the administration of justice from further abuse of process. In *Superwood*, the court said that the granting of an Isaac Wunder Order was a proportionate response to a party's proven abuse of process.

Application of jurisdiction

The court in *Riordan v Ireland (No 5)* set out the basis on which an applicant may seek the relief of an Isaac Wunder Order: "Where the court is satisfied that a person has habitually and persistently instituted vexatious or frivolous civil proceedings, it may make an order restraining the institution of further proceedings against parties to those earlier proceedings without prior leave of the court. The court has to determine whether the proceedings being brought are being brought without any reasonable grounds or have been brought habitually and persistently without reasonable grounds."

Considering the court's comments, it is vital to establish whether the proceedings brought by the plaintiffs can be considered frivolous or vexatious. Ó Caoimh J went on in *Riordan v Ireland (No 5)* to cite with approval a Canadian decision in *Re Lang Michener and Fabian* (1987), where the following issues were indicated as tending to show that a proceeding is vexatious:

- The bringing up of one or more actions to determine an issue that has already been determined by a court of competent jurisdiction,
- Where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief,
- Where the action is brought for an improper purpose, including the

> THE MAKING OF AN ISAAC WUNDER ORDER IS NOT A DENIAL OF THE RIGHT OF ACCESS TO THE COURTS, BUT RATHER IT PROVIDES A FILTER TO ENSURE THAT A LITIGANT IS PREVENTED FROM INITIATING ANY FURTHER FRIVOLOUS OR VEXATIOUS PROCEEDINGS

THE TEST ON WHETHER A PARTY THAT IS THE SUBJECT OF AN ISAAC WUNDER ORDER MAY COMMENCE AN INTENDED ACTION IS A SUBJECTIVE TEST

harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights,
- Where issues tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings,
- Where the person instituting the proceedings has failed to pay the costs of unsuccessful proceedings, and
- Where the respondent persistently takes unsuccessful appeals from judicial decisions.

While the courts have indicated that Isaac Wunder Orders should only be granted in very limited circumstances (*O'Malley v Irish Nationwide Building Society*, courts should nonetheless be prepared to grant such orders, if appropriate in the particular case. If the court is satisfied that the Isaac Wunder Order should be granted, the court should not attempt to circumvent the granting of the relief by, for example, seeking an undertaking from the applicant that he/she will not institute further proceedings.

In *Allied Irish Banks v McQuaid* (2018), the plaintiff bank commenced proceedings seeking the recovery of €3 million from the first-named defendant. Mr McQuaid was not legally represented during the course of the proceedings. However, he was accompanied by Mr Ben Gilroy, who acted as McQuaid's 'McKenzie Friend' (assists a litigant-in-person during the course of proceedings).

The bank sought orders restricting Gilroy from acting as a McKenzie Friend and an Isaac Wunder Order restricting his entitlement to commence proceedings against the plaintiff. In support of its application, the bank set out a non-exhaustive list of 12 cases involving Gilroy and the plaintiff. Haughton J granted an Isaac Wunder Order against Gilroy, requiring him to seek leave of the President of the High Court or the judge in charge of the Commercial Court list if he intended to commence proceedings against the bank in the future.

In *Houston v Barniville* (2019), Twomey J indicated that he was of the opinion the only way in which a defendant could stop an impecunious plaintiff pursuing unmeritorious claims is by the defendant seeking an Isaac Wunder Order preventing that plaintiff taking any further proceedings without first securing court approval.

Leave to commence

Once an Isaac Wunder Order has been made, the party to whom that order is directed may not institute proceedings against identified individuals or entities without first securing leave of the court by way of an application in an intended action.

The circumstances in which the court may grant an order allowing an applicant who is the subject of an Isaac Wunder Order in an intended action to commence proceedings was considered by the High Court in *Riordan v Ireland (No 5)*. The test applied by the court was whether it was obvious that the proceedings could not succeed and whether a reasonable person could reasonably expect to obtain the relief sought.

The test on whether a party that is the subject of an Isaac Wunder Order may commence an intended action is a subjective test. It is interesting to note that Mr Wunder brought numerous applications for leave with regard to intended actions against the Irish Hospitals Trust in the late 1960s and the early 1970s. Commenting on Wunder's applications, Kenny J stated in one of them that Mr Wunder's appetite for litigation had not abated in any way, despite the numerous orders of the courts.

While the Isaac Wunder Order is a relatively recent relief available to parties who find themselves the subject of repeated frivolous and vexatious claims, the Irish courts have opined on this area of law in a large number of cases. The jurisdiction in England (*Grepe v Loma* Orders) has evolved since 1887 to a more precise instrument than the standard relief available in this jurisdiction. The ability of one party to unilaterally (in the main) commence proceedings against parties will always require supervision and, while the effect of an Isaac Wunder Order may be considered draconian by some – as it negatively affects an individual's constitutional rights – the court must carefully consider the rights of both parties. g

LOOK IT UP

CASES:

- *Allied Irish Banks v McQuaid & Ors* [2018] IEHC 516
- *Grepe v Loam* (1887) 37 Ch D 168
- *Houston v Barniville & Ors* [2019] IEHC 601
- *Keaveney v Geraghty* [1965] IR 551
- *McKenzie v McKenzie* [1971] P 33; [1970] 3 WLR 472
- *O'Malley v Irish Nationwide Building Society* (High Court, 21 January 1994)
- *O'Reilly McCabe v Minister for Justice* [2009] IESC 52
- *Re Lang Michener and Fabian* (1987) 37 DLR
- *Riordan v Ireland (No 4)* [2001] 3 IR 365
- *Riordan v Ireland (No 5)* [2001] 4 IR 463
- *SP v UG* [2016] IEHC 693
- *Superwood Holdings plc v Sun Alliance & London Insurance plc* [2017] IECA 76
- *Wunder v Irish Hospitals Trust (1940) Limited* (Supreme Court, 24 January 1967)

Expressions of interest

A mortgage with a variable interest rate that is subject to alteration in accordance with certain conditions can only be altered in accordance with those conditions. A bank cannot simply pay lip service to a contractual requirement, says **Neal Flynn**

NEAL FLYNN IS A DUBLIN-BASED BARRISTER

The tracker mortgage scandal shook the country's already fragile faith in our banks. The banks were overcharging tens of thousands of customers for years. One of the reasons it was so shocking was how flagrantly the banks were acting in breach of the terms of the mortgages. If a borrower is entitled to a tracker rate, it is clear from the terms of the mortgage.

The scandal rightly raises concerns regarding possible overcharging in other areas. Overcharging customers on mortgages with easily discernible interest rates raises the not unreasonable fear that this has also occurred on mortgages with more complicated interest rates, which would be less noticeable.

Interest rates have fallen to historically low levels since 2008. Despite this, the interest rates on many variable rate mortgages have increased. For a bank to legitimately increase the interest rate on any mortgage, it must do so in accordance with the terms of the mortgage.

Variable interest rate clauses come in many different forms. Tracker rates, for example, are a type of variable interest rate. Many variable interest rates are only subject to alteration in accordance with certain conditions, while others provide banks with complete discretion in determining the rate of interest. A mortgage is a contract like any other, and the ordinary rules relating to contractual interpretation and compliance apply.

Two types of variable interest rate clauses will be considered in this article, one with an express limitation and another without any limitation. The first is a variable interest rate that may be altered in response to 'market conditions', and the second is a variable interest rate, which may be altered by the bank unilaterally without express restriction.

AT A GLANCE

- Many variable interest-rate clauses provide that the interest payable under the mortgage may or shall be altered in response to 'market conditions' or similar terminology
- In order to legitimately raise the variable interest rate, the bank can only do so in response to market conditions
- An Irish bank that is funded through the ECB may have difficulty justifying an increase in a market-condition-based variable interest rate – and there may be considerable scope to challenge increases in these rates

Market conditions

Many variable-interest-rate clauses provide that the interest payable under the mortgage may or shall be altered in response to 'market conditions' or similar terminology. In order to legitimately raise the variable interest rate, the bank can only do so in response to market conditions. The meaning of 'market conditions' was considered in 2015 in *Millar v Financial Services Ombudsman*.

The case began as a complaint by the Millars to the Financial Services Ombudsman that Danske Bank had wrongly increased the variable interest rate on their seven mortgages. The Millars argued that the bank was only entitled to alter the rate of interest "in

PIC: WIKIMEDIA COMMONS

> A BANK CAN ALSO NOT EXERCISE ITS DISCRETION IN A WAY THAT NO REASONABLE LENDER ACTING REASONABLY WOULD, BUT CAN SET RATES A BORROWER MAY CONSIDER UNREASONABLE

line with general market interest rates", and that an increase in the rate of interest when European Central Bank (ECB) rates declined amounted to a breach of contract.

Clause 3 of the special conditions of the loan agreements provided that: "Our rate of interest and APR are variable. Rates of interest are altered in response to market conditions and may change at any time without prior notice and with immediate effect."

The ombudsman determined that Danske Bank was entitled to alter the interest rate in response to 'market conditions' and was not restricted by reference to the ECB rate when determining the rate of variable interest. The ombudsman accepted the bank's submission that the 'cost of funding' was a market condition. The ombudsman further accepted that the bank was not funded through the ECB and that its cost of funding had, in fact, increased. Accordingly, the Millars' complaint was dismissed.

By way of statutory appeal, the Millars successfully appealed the decision to the High Court, but ultimately failed in the Court of Appeal. The Court of Appeal held that, as the construction of the relevant contractual term was a mixed question of law and fact, the ombudsman was entitled to deference in interpretation of the terms of the mortgage. The Millars failed to discharge the burden of proof necessary to

PIC: SHUTTERSTOCK

Could Shylock have altered the terms of his loan on market-conditions grounds?

> MANY VARIABLE-INTEREST-RATE CLAUSES PROVIDE THAT THE INTEREST PAYABLE UNDER THE MORTGAGE MAY OR SHALL BE ALTERED IN RESPONSE TO 'MARKET CONDITIONS' OR SIMILAR TERMINOLOGY

set the ombudsman's decision aside.

It is noteworthy that McKechnie J, in the 2018 Supreme Court decision in *Attorney General v Davis*, held that a conclusion based on an incorrect interpretation of documents may be regarded as a point of law in a statutory appeal on a point of law, and therefore is reviewable. The decision would suggest that it is now possible to appeal a decision of the ombudsman on the basis of an incorrect interpretation of a mortgage.

Cost of funding

Despite the fact that the Court of Appeal did not rule on the interpretation of the variable-interest-rate clause, Kelly J agreed with the ombudsman that 'in response to market conditions' was not an ambiguous term. The court further held that the Millars had not established that the ombudsman was in serious error in his determination that an increase in cost of funding was a market condition. Though not directly determined, it seems likely that a court would agree that a bank is entitled to raise its market-condition-based variable interest rate if its cost of funding increases.

It is also noteworthy that Kelly J did not agree with Hogan J in the High Court that 'market conditions' equated with 'market conditions generally'. This small difference in terminology caused the judges to come to radically different conclusions when interpreting the variable-interest-rate clause, and serves to highlight the importance of careful review of such clauses.

A bank that has been increasing a market-condition-based variable interest rate, that has not experienced an increase in its cost of funding, must use another market condition to justify the increase. It is interesting to note that, in response to queries raised by the ombudsman in *Millar*, Danske Bank stated that the cost of funding was the primary driver in deciding to increase its variable interest rate, and did not offer another market condition as justification.

In addition, a fund that purchases a mortgage from a bank may have different market conditions to contend with, and cost of funding may not be a consideration (see Baker J's observations in *Re: Hayes, a debtor*).

Better part of valour

A discretionary variable interest rate is an interest rate that is set unilaterally by a bank at its discretion. The lawfulness of

> OVERCHARGING CUSTOMERS ON MORTGAGES WITH EASILY DISCERNIBLE INTEREST RATES RAISES THE NOT UNREASONABLE FEAR THAT THIS HAS ALSO OCCURRED ON MORTGAGES WITH MORE COMPLICATED INTEREST RATES

discretionary variable interest-rate-clauses was considered in 1989 by the English Court of Appeal in *Lombard Tricity Finance v Paton*. The court held that the appellant could vary the interest rate at its absolute discretion, and that a loan agreement containing such a clause was lawful.

The prospect of banks having the power to increase discretionary variable interest rates seemingly without limit may justifiably give borrowers cause for concern.

In *Paragon Finance Plc v Nash and Staunton*, Dyson LJ held that the power of a lender to set a discretionary variable interest rate could not be completely unfettered, as it would allow a lender to set interest rates at "the most exorbitant level".

In *Paragon*, the defendants argued that the interest charged had become extortionate when Paragon failed to adjust rates in line with the Bank of England or prevailing market rates. The defendants submitted, among other things, that the discretion given to Paragon in the mortgage agreements to vary the interest rate was subject to an implied term that it was bound to exercise that discretion fairly "as between both parties to the contract, and not arbitrarily, capriciously or unreasonably".

The court did not go as far as the defendants requested, but held that it was necessary to imply a term in order to give effect to the reasonable expectations of the parties. The implied term imposed two limitations on the lender's discretion. The first was that rates of interest would not be set "dishonestly, for an improper purpose, capriciously or arbitrarily". The second was that Paragon would not set rates of interest unreasonably, in the *Wednesbury* sense (essentially irrationally), but not that it would not set unreasonable rates. The second limitation was to the effect that Paragon could not exercise its discretion in a way that no reasonable lender acting reasonably would.

Dyson LJ stated that an increase in the interest rate by the lender if "commercially necessary" would be reasonable, even if from the borrowers' perspective it seemed unreasonable. Dyson LJ was of the view that, if Paragon had increased the interest rate because it was in financial difficulty, brought about by other borrowers defaulting and consequently having to pay higher interest rates on the money market (cost of funding increases), that would not be in breach of the implied term. It was held that there was no evidence to suggest that the decision to widen the gap between the rate being charged and the prevailing market rate was motivated by anything other than commercial considerations. Consequently, the court found against the borrowers. Paragon was cited by McGovern J in *Cheldon Property Finance DAC v Hale*.

Financial difficulty

The extent to which a bank's financial difficulty can justify increasing a discretionary variable interest rate is not clear. In *Paragon*, it was stated that financial difficulty brought about by an increase in the cost of funding, due to other borrowers defaulting, would not breach the implied term. It is noteworthy that this type of financial difficulty is connected to the mortgage, and Paragon was not at fault. A court may take a different view if the financial difficulty being experienced by a bank was from an entirely separate enterprise, or if it was as a result of the negligence or wrongdoing of the bank. It is also clear that financial difficulty would not justify a completely exorbitant increase in the interest rate. In addition, the discretion of a bank may be curtailed by the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*.

A mortgage with a variable interest rate which is subject to alteration in accordance with certain conditions can only be altered in accordance with those conditions. A bank cannot simply pay lip service to a contractual requirement. An Irish bank that is funded through the ECB, for example, may have difficulty justifying an increase in a market-condition-based variable interest rate. There may be considerable scope to challenge increases in these rates.

Banks are in a better position in relation to discretionary variable interest rates. Increases in the cost of funding or financial difficulty as a result of the crash would almost certainly justify increases in the variable interest rate, but – as outlined above – banks do not have *carte blanche*.

A bank cannot set a discretionary variable interest rate dishonestly, for an improper purpose, capriciously or arbitrarily. A bank can also not exercise its discretion in a way that no reasonable lender acting reasonably would, but can set rates a borrower may consider unreasonable. g

LOOK IT UP

CASES:

- *Attorney General v Davis* [2018] IESC 27
- *Cheldon Property Finance DAC v Hale* [2017] IEHC 432
- *Lombard Tricity Finance v Paton* [1989] 1 AER 918
- *Millar v Financial Services Ombudsman* [2015] IECA 126; [2015] 2 IR 456
- *Paragon Finance Plc v Nash and Staunton* [2002] 2 All ER 248
- *Re: Hayes, a debtor* [2017] IEHC 657

LEGISLATION:

- *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995* (SI 27/1995)

REPORT OF LAW SOCIETY COUNCIL MEETING

3 NOVEMBER 2019

The president extended a warm welcome to all newly elected and newly nominated Council members: Helen Coughlan, Bill Holohan, Gary Lee and Susan Martin.

Taking office

Outgoing president Patrick Dorgan said that it has been a very busy and fulfilling year. He thanked all the staff in the Law Society, the director general, deputy director general, directors, catering, security and everyone who kept the building and its occupants warm, lit and secure. He was confident that Michele O'Boyle would be one of the great presidents. He had come to rely greatly on her intelligence, judgement and objectivity, which were as impressive as her great presence, style and dignity.

He thanked the Council members for their engagement in debates, which was often vigorous and always persuasive, and he encouraged all to "do as the lawyers do, strive mightily, but eat and drink as friends".

Michele O'Boyle was then formally appointed as president. She thanked the Council for the honour and privilege of appointing her to serve as the 149th president of the Law Society. She paid tribute to Patrick Dorgan for his outstanding representation of the profession in a manner that demonstrated that he was blind to prejudice, fair, objective and balanced – in line with his theme of equality, diversity and inclusion.

She promised to build on the work of those who had occupied the office before her to support and develop smaller law firms, to enhance the business structures and protections available to sole practitioners, and to build on the professional wellbeing initiatives launched by Michael Quinlan. She also intended to shine a light on women in leadership, in the year of the passing of the first woman president of the Society, Moya Quinlan, in the centenary of women being permitted to enter the professions, and in a year where over 52% of the solicitors' profession were female.

Senior vice-president James Cahill and junior vice-president Maura Derivan then took office and expressed their commitment to the Council and the president for the coming year.

Legal Services Initiative Implementation Group

The director general reported on the inaugural meeting of the Government's Legal Services Initiative Implementation Group, which had been established to explore and maximise opportunities for the provision of legal services in Ireland arising from Brexit. The initiative had been developed following a joint submission by the Law Society and the Bar Council to the Minister for Justice. The implementation group comprised representatives from both professional bodies, the relevant Government departments, the IDA and Enterprise Ireland, and would be chaired by former Taoiseach John Bruton.

Family law system

Keith Walsh outlined the principal recommendations in the *Report on Reform of the Family Law System* by the Joint Oireachtas Committee on Justice and Equality, under the headings: (1) courts structures and facilities, (2) transparency and the *in camera* rule, (3) alternative dispute resolution, (4) resourcing and delays, (5) voice of the child, and (6) imbalances in the court system. This report, together with the report on divorce in Ireland, prepared by Dr Geoffrey Shannon, provided an ideal plan for reform of the Irish family law system.

Legal Services Regulation Act

Paul Keane outlined the key provisions of the *Legal Services Regulation Act*, which had been commenced on 7 October 2019, in relation to complaints-handling, legal costs and LLPs. He noted that the panel of solicitors established to assist solicitors in regulatory difficulties with the Society would be strengthened, in order to provide the required support for solicitors in difficulty with the authority.

In relation to the legal costs provisions contained in section 150 of the act, an extensive set of precedents to assist solicitors in complying with their obligations was available on the Society's website, and further precedents would be developed. The provisions enabling solicitors to establish as limited liability partnerships had also been commenced, and provided a general, albeit qualified, form of protection for those solicitors in partnership. The extension of a similar form of protection for solicitors operating as sole practitioners was a continuing and important policy objective for the Society.

Report on the AGM

As required by the bye-laws, the Council adopted the two motions passed at the AGM on the previous evening relating to the information comprising the annual accounts of the Society, and the commitment of a further spend of up to €650,000 on the member management system, designed to replace, modernise and greatly enhance the Society's IT systems. g

PRACTICE NOTE

CONVEYANCING COMMITTEE

REGISTRATION OF DECEASED AS OWNER

If an applicant for registration dies before the application is lodged in the Land Registry, it is the Land Registry's view that a solicitor should not lodge the application. A grant of probate or administration should be obtained, and registration may then proceed in the name of the personal representative – by lodging the transfer to the deceased and the assent by the personal representative together.

If there is a mortgage, the solicitor should notify the bank that the applicant has died and that the bank should protect its interest. If the property is to be sold by the personal representative in the course of administration, the transfer by the personal representative can be lodged along with the transfer to the deceased and the grant of probate or administration.

If an applicant for registration dies during the course of registration, the application will proceed to completion unless the PRA is notified of the death. If so notified, the PRA may continue the registration in the name of any person entitled to apply for registration on lodgement of the evidence of said entitlement (under rule 166). g

SOLICITORS DISCIPLINARY TRIBUNAL

REPORTS OF THE OUTCOMES OF SOLICITORS DISCIPLINARY TRIBUNAL INQUIRIES ARE PUBLISHED BY THE LAW SOCIETY OF IRELAND AS PROVIDED FOR IN SECTION 23 (AS AMENDED BY SECTION 17 OF THE *SOLICITORS (AMENDMENT) ACT 2002*) OF THE *SOLICITORS (AMENDMENT) ACT 1994*

In the matter of Noel J Gargan, a solicitor practising as a partner in the firm of Christie & Gargan, Solicitors, Unit 2, Stewart Hall, Parnell Street, Dublin 1, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT92]
Law Society of Ireland (applicant)
Noel J Gargan (respondent solicitor)

On 30 September 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

1) Failed to comply with an undertaking dated 25 May 2007 furnished to the complainants in respect of his named clients and the borrowers and the property at Tallaght, Dublin 24, in a timely manner or at all,
2) Failed to respond to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 25 November 2015, 12 January 2016, 26 January 2016, 2 November 2016, 19 December 2016, 20 March 2017, 25 April 2017 and 3 November 2017.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay a sum a €750 to the compensation fund,
3) Pay the sum of €1,512 as a contribution towards the whole of the costs of the applicant.

In the matter of Paul Cagney, a solicitor previously practising as Paul Cagney & Co, Solicitors, at Main Street, Charleville, Co Cork, and in the matter of the *Solicitors Acts 1954-2015* [2019/DT28]
Law Society of Ireland (applicant)
Paul Cagney (respondent solicitor)

On 1 October 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to ensure there was furnished to the Society a closing accountant's report, as required by regulation 33(2) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014) in a timely manner or at all, having ceased practice on 30 November 2016.

The tribunal ordered that the respondent solicitor:

1) Stand advised and admonished,
2) Pay a sum a €812 as a contribution towards the whole of the costs of the applicant.

In the matter of Peter Downey, a solicitor practising as Eagleton Downey Solicitors at Triton Road, Bettystown, Co Meath, and in the matter of the *Solicitors Acts 1954-2015* [2019/DT20 and High Court reference 2019 no 59 SA]
Law Society of Ireland (applicant)
Peter Downey (respondent solicitor)

On 11 July 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to ensure there was furnished to the Society an accountant's report for the year ended 31 January 2018 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014*.

The tribunal sent the matter forward to the High Court and, on Monday 21 October 2019, the High Court (noting that the accountant's report had been filed) ordered that, within six months from that date, the respondent solicitor:

1) Pay a sum of €500 to the compensation fund,
2) Pay the costs of the Society in the disciplinary and High Court proceedings.

In the matter of David Doyle, a solicitor previously practising as a partner in Doyle Associates, 56 Main Street, Rathfarnham, Dublin 14, and in the matter of the *Solicitors Acts 1954-2015* [2019/DT09 and High Court reference 2019 no 57 SA]
Law Society of Ireland (applicant)
David Doyle (respondent solicitor)

On 27 June 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

1) Caused a minimum deficit of €258,969 in the client account as at 31 October 2017,
2) Failed to maintain proper books of accounts, in breach of regulation 13(1) of the *Solicitors Accounts Regulations 2014*,
3) Failed to maintain books of account that showed the true position in relation to his dealings with clients' moneys, in breach of regulation 13(2) of the *Solicitors Accounts Regulations 2014*,
4) Engaged in a practice of teeming and lading, thereby concealing the existence of a deficit in client funds,
5) Caused nine debit balances to arise on the client ledger in the sum of €258,969, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations 2014*,
6) Took client moneys of €113,356 due to the estate of KD (deceased) on 28 July 2017 and lodged them to his own personal account, in breach of regulation 14 of the *Solicitors Accounts Regulations 2014*,
7) Caused a shortfall of €13,324 in the estate of DA (deceased) by paying the inheritance tax of €13,324 of a named beneficiary from the unrelated client ledger account of S&ER, which shortfall was concealed by teeming and lading,
8) On 14 September 2015, wrongly paid the sum of €46,623 from the sale of proceeds of a property sold for clients S&ER to the Revenue Commissioners in respect of an inheritance tax liability for a named beneficiary in a completely unrelated matter,

NOTICE: THE HIGH COURT

In the matter of David Doyle, and in the matter of the *Solicitors Acts 1954-2015* [2019 no 57 SA]

Take notice that, by order of the President of the High Court made on 21 October 2019, it was ordered that the name of David Doyle be struck from the Roll of Solicitors.

John Elliot, Registrar of Solicitors, Law Society of Ireland, 5 November 2019

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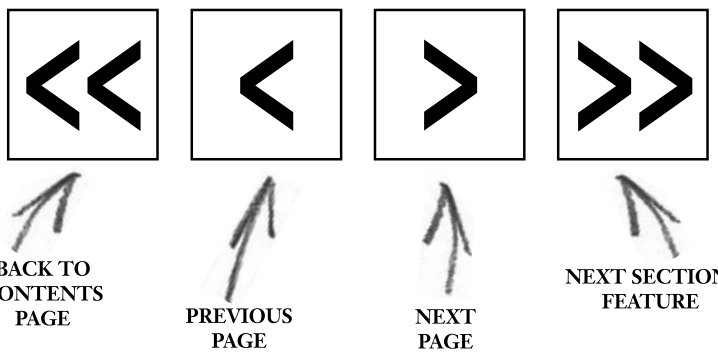
Because we have **issues** – and clickable things

gazette
LAW SOCIETY



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9) In or around 31 July 2017, paid a sum of €48,371.74 from his own bank account in part discharge of two mortgage accounts in the name of his clients S&ER, having misapplied the funds originally received on 26 September 2013,
10) In or around 3 August 2017, paid a sum of €7,003.50 to a bank to part discharge a mortgage account in the name of his clients S&ER, having wrongfully misapplied the funds originally received on 26 September 2013. This payment was taken from the unrelated client ledger account dealing with the estate of SO (deceased);
11) Caused a debit balance to arise of €59,185 on the client ledger account dealing with an estate by:
- Wrongfully paying an inheritance tax liability of MM in the sum of €46,623 on 14 September 2015 from the client ledger account of S&ER, a completely unrelated matter,
- Wrongfully paid the inheritance tax liability of named individuals on 11 August 2015 from the client ledger account dealing with the estate of AB (deceased). Those named individuals each had an inheritance tax liability of €6,281, and two of the aforementioned payments were posted to the client ledger account dealing with the estate of AB (deceased),
- Wrongfully paid €17,300 to NC for his personal injuries settlement from the sale of an unrelated property on 10 December 2008,
- Made a payment to his brother of €5,000 and a payment to a utility company of €6,000 and posted them to the client ledger account of NC, a completely unrelated matter,
- Caused a debit balance to arise on the client side of the client ledger account of NC in the sum of €11,300,
- Wrongfully took the proceeds of two cheques for €3,500 and €3,000 that were due to a client,
- Admitted causing a debit balance of €99,600 in the client ledger account relating to a sale file,
- Took a cheque made payable to a client for €2,500 from a sale file client ledger account on 6 February 2009 and cashed it for his own use,
- Admitted causing a shortfall of €894.75 on 30 January 2009 in a named file,

12) In an estate he:
- Took €65,125 on 5 November 2015 to cover an inheritance tax liability of KK in a completely unrelated matter,
- Took €4,500 on 12 November 2015 and paid same to JC in relation to the estate of NC (deceased) an unrelated matter,
- On 3 November 2016, he withdrew €22,102.50 by bank draft payable to a finance company in an unrelated matter,
- On 3 August 2017, he purchased a bank draft for €7,000 and used same to pay part of a mortgage redemption in an unrelated file,

13) In relation to an estate ledger he:
- Caused a debit balance of €9,633.50 on the client ledger account by paying (a beneficiary in this estate) KK's inheritance tax of €65,125 from another client ledger account,
- Took €55,491.50 from this client ledger account on 24 October 2014 and paid it to PO a beneficiary in an unrelated matter,
- In relation to the estate ledger of NC (deceased), he caused a debit balance of €4,500 by paying €4,500 to JC from the ledger account of SO (deceased) an unrelated file,
- In relation to a company file, he caused a debit balance on this client ledger account of €22,102 by taking €22,102 from the ledger account of SO (deceased), an unrelated file, to make a payment to a finance company,
- In relation to the estate of SB (deceased), he caused a deficit of €85,000 by wrongfully transferring €85,000 to JS, a beneficiary in an unrelated matter, on 15 May 2017,

14) In relation to the file of PO and the estate of BH (deceased) he:
- Wrongfully credited the balance of a settlement of €58,500 received on 6 March 2014 to an unrelated client ledger account in the name of OS (deceased),
- Wrongfully took €55,491.50 from an unrelated client ledger account (MC deceased) on 24 October 2014 to pay the client the balance of his settlement,

15) In relation to the estate of OS (deceased) he:
- Caused a debit balance of €50,287 on the client ledger account,
- Wrongfully lodged €58,500 belonging to another client matter to this client ledger account on 14 March 2014,
- Wrongfully made a payment from this client ledger account of €8,213.12 on 21 October 2014 to PO/JK in an unrelated estate matter,

16) In relation to the estate of AO (deceased), he caused a debit balance of €8,213.12 on this client ledger account by wrongfully paying this sum from another estate account on 21 October 2014 to conceal a deficit on this client ledger account,
17) He created a shortfall of €21,500 on the client ledger account of DD in July 2015 to part pay a settlement he (the solicitor) had entered into in respect of a Circuit Court proceedings against him,
18) In relation to an estate, he wrongfully took €16,500 from this estate and used same to pay a settlement he (the solicitor) had entered into in respect of Circuit Court proceedings against him.

The Solicitors Disciplinary Tribunal sent the matter forward to the High Court and, in proceedings 2019 no 57 SA, the High Court on 21 October 2019 ordered that:

1) The name of the solicitor be struck from the Roll of Solicitors,
2) He pay a sum of €3,012 towards the disciplinary costs,
3) He pay the taxed or agreed costs of the Society.

WILLS

Barry, John (deceased), late of 9 Lion Matthew House, Gortataggart, Thurles, Co Tipperary, and formerly of Knocknasna, Abbeyfeale, Co Limerick, who died on 31 October 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Peter Coyle, Coyle Kennedy Smyth, Thomas Street, Castleblayney, Co Monaghan; tel: 042 974 0010, email: pcoyle@ckslaw.ie

Burke Coghlan, Deirdre (deceased), late of 32 Foxrock Green, Foxrock, Dublin 18, who died on 12 April 2018. Would any person having knowledge of a will made by the above-named deceased please contact Sarah Flynn, Corrigan & Corrigan, Solicitors, 3 St Andrew Street, Dublin 2; D02 KP30; tel: 01 677 6108, email: sarah.flynn@corrigan.ie

Carroll, Henry Frank (deceased), late of 26 Cabinteely Close, Dublin 18, who died on 14 January 2019. Would any person having knowledge of a will made by the above-named deceased please contact Regan Solicitors, 24 Main Street, Blackrock, Co Dublin; tel: 01 214 3370, email: niamh@reganlaw.ie

Carroll, Mabel (deceased), late of 26 Cabinteely Close, Dublin 18, who died on 27 June 2019. Would any person having knowledge of a will made by the above-named deceased please contact Regan Solicitors, 24 Main Street, Blackrock, Co Dublin; tel: 01 214 3370, email: niamh@reganlaw.ie

Carter, Thomas (deceased), late of Craffield, Aughrim, Co Wicklow. Would any person having knowledge of a will made by the above-named deceased, who died on 9 October 1999, please contact Deirdre Fox & Associates, Solicitors, Market Square House, Aughrim, Co Wicklow; tel: 0402 36955, email: info@foxsolicitors.ie

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €155 (incl VAT at 23%)
- **Title deeds** – €310 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €155 (incl VAT at 23%)

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €30 EXTRA

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND.** Send your small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: catherine.kearney@lawsociety.ie. **Deadline for Jan/Feb 2020 *Gazette*: 13 January 2020.** For further information, contact the *Gazette* office on tel: 01 672 4828.

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*.

Condron, John (deceased), late of 80 College Rise, Drogheda, Co Louth, who died on 2 January 1998. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Feran & Co, Solicitors, Constitution Hill, Drogheda, Co Louth; tel: 041 983 1055, fax: 041 983 9104, email: info@feran.ie

Connolly, Ciaran (deceased), late of Rathlagan, Drumconrath, Co Meath, who died on 9 October 2019. Would any person having knowledge of a will made by the above-named deceased please contact Catherine Lynch, G Jones & Co, Solicitors, Main Street, Carrickmacross, Co Monaghan; tel: 042 966 1822, email: clynch@gjones.ie

Dobson, George (deceased), late of Tranquil, Mountrath Road, Portlaoise, Co Laois. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 21 November 2018, please contact Rollestons, Solicitors, 4 Wesley Terrace, Portlaoise, Co Laois; tel: 057 862 1329, email: info@rollestons.ie

Flynn, George (deceased), late of Clooneen, Manorhamilton, Co Leitrim, who died on 1 October 2019. Would any person having knowledge of a will made by the above-named deceased please contact Kieran Ryan, solicitor, Kelly & Ryan, Manorhamilton, Co Leitrim; tel: 071 985 5034, email: kieran.ryan@kellyryanmanor.com

Good, Richard (otherwise Richie) (deceased), late of 5 Beaver Row, Donnybrook, Dublin 4. Would any person having knowledge of a will made by the above-named deceased, who died on 9 October 2019, please contact Smith Foy & Partners, Solicitors, 59 Fitzwilliam Square, Dublin 2; tel: 01 676 0531, fax: 01 676 7065, email: anne.kelleher@smithfoy.ie

Healy, Martin (deceased), late of Boarsmanhill, Murroe, in the county of Limerick, and Millbrae Nursing Home, Newport, in the county of Tipperary, made his last will and testament on 12 June 2003 and he subsequently died on 25 June 2019. Would any person having knowledge of the whereabouts of the said original will of the above-named deceased, dated 12 June 2003, please contact Siobhán O'Neill, Connolly O'Neill, Solicitors, 13 Parnell Street, Ennis, Co Clare; tel: 065 682 3577, email: conneill@securemail.ie

Hussey, Daniel Kevin (deceased), formerly of Cloomahara, Williamstown, Galway, who died on 21 August 2009.

Would any person having knowledge of a will made by the above-named deceased please contact Hickey Coghill, Solicitors, Wine Street, Sligo; tel: 071 914 6042, email: info@hclaw.ie

Johnson, Martin (deceased), late of 'Melody's', Ballymacarbry, Co Waterford, and formerly of Clonmel, Co Tipperary, who died on 12 September 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Messrs John M Joy & Co, Solicitors, 38 O'Connell Street, Co Tipperary; DX 22004; tel: 052 612 3338, email: aidan@johnmjoy.com

Lysaght, Noel (deceased), late of St Rita's, Ballysimon Road, Co Limerick, who died on 27 April 2018. Would any solicitor or person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased please contact Kelly Law Solicitors, Ground Floor, Old Windmill Court, Lower Gerard Griffin Street, Limerick; tel: 061 221400, email: info@kellylaw.ie

O'Connor, John (deceased), late of 3 Woodlawn Park Grove, Firhouse, Dublin 24, who died on 4 June 2019. Would any solicitor or person having knowledge and details of a will made by the above-named deceased please contact Doyle Murphy & Co, Solicitors, Weaver Square, Baltinglass, Co Wicklow; tel: 059 648 1888, email: info@doylemurphysolicitors.ie

Ryan, Bridget (Bridie) (deceased), late of 6 York Road, Rathgar, Dublin 6. Would any person having knowledge of any will made by the above-named deceased, who died on 25 March 2016, please contact Cogan-Daly Solicitors, Brighton House, 50 Terenure Road East, Rathgar, Dublin 6; tel: 01 490 3394, email: contact@cogandalylaw.ie

Ward, Patrick Noel (orse Noel Ward), pharmacist, Market Street, Monaghan Town, Monaghan, and late of 'Shannagh House', Coolshannagh, Monaghan Town, Co Monaghan, and formerly of Latlurcan, Monaghan, Co Monaghan, who died on 3 December 2018. Would any person having knowledge of a will made or executed by the above-named deceased please contact McArdle & Company, Solicitors, 20 Seatown Place, Dundalk, Co Louth; tel: 042 933 1491, email: mcardleandcompany@eircom.net

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises known as no 4 Charlotte Street, Newbridge, Co Kildare: an application by Choice Furnishings Limited

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in the following property: all that and those the premises held under an indenture of lease dated 10 June 1936 between Mabel Moore and Christopher P Ryan for a term of 99 years from 25 March 1936 at a rent of £5 per annum, and therein described as all that and those that piece or plot of ground with the buildings thereon known as no 4 Charlotte Street, in the town of Newbridge, barony of Connell and county of Kildare.

Take notice that Choice Furnishings Limited, as tenant under the said lease, intends to submit an application to the county registrar for the county of Kildare for acquisition of the freehold interest in the aforesaid property, 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 Kildare 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: 29 November 2019
Signed: AC Forde & Co (solicitors for the applicants), 14 Lansdowne Road, Dublin 4

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in the following property: all that and those that portion of the Skylon Hotel, Upper Drumcondra Road, Dublin 9, formerly part of the house and premises known as Home Farm House, Drumcondra, Dublin 9, held under an indenture of lease dated 12 September 1919 between William John Shannon of the first part, Grace O'Dowd, Anges Harding, Eileen Joyce, Emily Lenehan, Norah Farley, Frances Butterly, and Finola Butterly of the second part, and Christopher Kenny of the third part, for a term of 170 years from 1 September 1919, at a rent of £20, and all that and those that portion of the Skylon Hotel, Upper Drumcondra Road, Dublin 9, on which the dwellinghouse and outhouses thereon known as Kilronan previously stood, held under an indenture of lease dated 4 December 1967 between Cherry Hound Estates Limited of the one part and Ashfield (Holdings) Limited of the other part, for a term of 120 years from 1 December 1967, at a yearly rent of £1,700 until 30 November 1987, and then the yearly rent of £2,650 thereafter.

Take notice that Babodana Limited, having their registered office at t/a The Skylon Hotel, Upper Drumcondra Road, Dublin 9, as tenant under the said leases, intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in either or both of the aforesaid premises is called upon to furnish evidence of their 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, Babodana Limited intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 29 November 2019
Signed: McCanny & Co Solicitors (solicitors for the applicant), Pollexfen House, Wine Street, Sligo

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*
Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in the following property: all that and those the premises known as 33 James Street, Dublin 8, containing 41 feet, ten inches in front; and in depth from front to rear on the west side 71 feet, six inches; and on the east side, 78 feet, six inches; and in breadth in the rear 27 feet, ten-and-a-half inches, held under lease dated 11 February 1897 between James H Kenny of the one part and William Dunne of the other part or a term of 200 years from 1 January 1897 at a yearly rent of £30, (hereinafter called 'the lease').

Take notice that Wealth Options Limited, as tenant under the lease, intends to submit an application to the county registrar for the county of Dublin for acquisition of the freehold interest and any intermediate leasehold interests (if any) in the aforesaid property demised by the lease, and any party asserting that they hold a superior interest, to include the freehold interest and any intermediate leasehold interests (if any) in the aforesaid premises (or any of them), are called upon to furnish evidence of their 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, Wealth Options Limited 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 and any intermediate leasehold interests (if any) in the aforesaid premises are unknown or unascertained.
Date: 29 November 2019
Signed: Patrick White & Company (solicitors for the applicants), 25 Fitzwilliam Square, 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 ET Burke Construction Limited in respect of premises known as 35 William Street (formerly known as 9 William Street) in the parish of St Nicholas in the barony and city of Galway
Any person having a freehold estate or any intermediate interest in all that and those 35 William Street (formerly known as 9 William Street) in the parish of St Nicholas and the barony and city of Galway, being currently held by ET Burke Construction Limited (the applicant) under an indenture of lease dated 19 March 1868, made between Anne Blake of the one part and Michael Dooly of the other part, take notice that the applicant, as lessee under the lease, intends to apply to the county registrar for the county of Galway for the acquisition of the freehold interest and all intermediate interest in the property, and any party asserting that they hold a superior interest in the property is called upon to furnish evidence of title to same 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 Galway for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the premises are unknown or unascertained.
Date: 29 November 2019
Signed: Mullery Solicitors (solicitors for the applicant), 33 Woodquay, Galway

RECRUITMENT

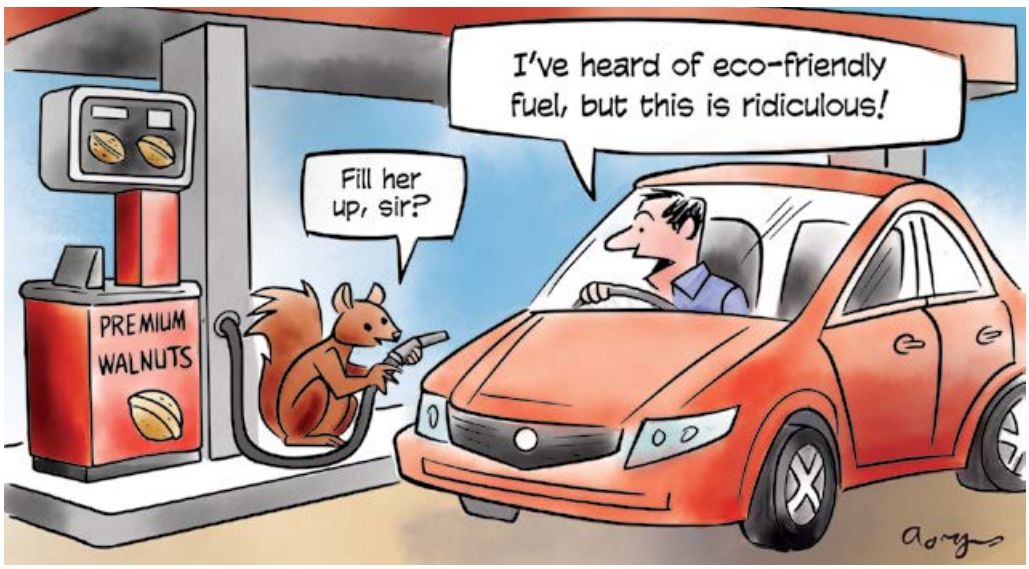
STAINES LAW IS RECRUITING

Are you looking for a flexible role in the property and probate area, and are you looking to come back into the workforce, to build up a following, for a fee sharing arrangement on work, for part-time flexible work, for remote working?

Staines Law is recruiting a solicitor for property and probate work, to include renewable leases, residential and farm transfers. If you are looking for a role to include part-time, ideally with a following or interested in a fee sharing arrangement, please contact James Staines, Staines Law, 126 Capel Building, Dublin 7, email: james.staines@staineslaw.ie; www.staineslaw.ie

DE MINIMIS NON CURAT LEX

FURRY FIENDS RESORT TO GUERRILLA TACTICS



There's a good reason why hackneyed American crime novels often describe suspects as 'squirrelly'. In 2017, the *Gazette* reported on concerted attacks by the self-styled Liberation Squirrel Revolutionary Army (or LSRA) on key US infrastructure.

This threat was averted following our exposé. However, it appears that the furry fiends are now resorting to more localised guerrilla tactics, according to the *Irish Examiner*.

A Pennsylvania driver found more than 200 walnuts stashed by squirrel activists under the bonnet of his car after noticing a burning smell coming from the vehicle.

Chris Persic explained that his wife had noticed sounds and a burning smell coming from the car. "I cleaned out over 200 (not an exaggeration) walnuts and grass from under the hood."

Mr Persic said that he got the car checked out by a mechanic, who found more walnuts underneath the engine.

"My wife uses the vehicle for work," he said, "so this happened pretty quickly.

"Fortunately it was raining out, so the grass was pretty damp … could have caught on fire and been a different story," Persic warned.

HITTING THE FAN

A US courtroom was thrown into chaos after a defendant threw his own poo at the judge, *Legal Cheek* reports.

Dorleans Philidor (33) was appearing before a court in Miami, Florida, when he reportedly defecated himself and threw his own faeces at the judge shortly before closing arguments were set to begin in his burglary trial.

Lawyers, understandably, fled the scene as police officers and court staff were left with the unenviable task of dealing with a presumably poo-covered Philidor, who reportedly yelled: "It's protein! It's good for you!" No jurors were in court at the time.

LET'S TRY THAT IN THE DISTRICT COURT

A man started producing beer in his own gut after a fungal growth produced high levels of yeast, *The Independent* reports.

The 46-year-old's rare condition was only discovered after he was pulled over by police on suspicion of drink-driving.

Hospital tests showed the man had a blood-alcohol level of 200mg/decilitre, equivalent to consuming around ten alcoholic drinks, although he denied consuming any alcohol.

The strange symptoms of 'auto-brewery syndrome' are recounted by researchers in a case study published in the *British Medical Journal*. The researchers say that the syndrome is 'underdiagnosed' and could be a possibility in any case where someone appears to be intoxicated, but denies drinking.

"What's more, the Revenue is after me for excise duty."

NAME CHANGE A MATTER OF DEGREE

A 30-year-old man has been slapped with a community order after he attempted to blag a free law degree from Durham University by pretending to be a former female law student who had undergone a sex change.

Nathan Hogg, from Blyth, Northumberland, posed as a woman who had been awarded a law degree by Durham and falsely claimed to be undergoing gender-reassignment surgery. As a result of this completely made-up life-altering event, Hogg requested that the college provide a new degree certificate to reflect her new, male name – Nathan Hogg.

The *Chronicle Live* reports that Hogg, who sourced the woman's details from LinkedIn, was suffering from depression and had attempted the scam in a bid to make himself "feel better".

The fraud only came to light when the victim happened to contact the university for a reference and confirmed she was not trying to change her name.

LEAP 2x

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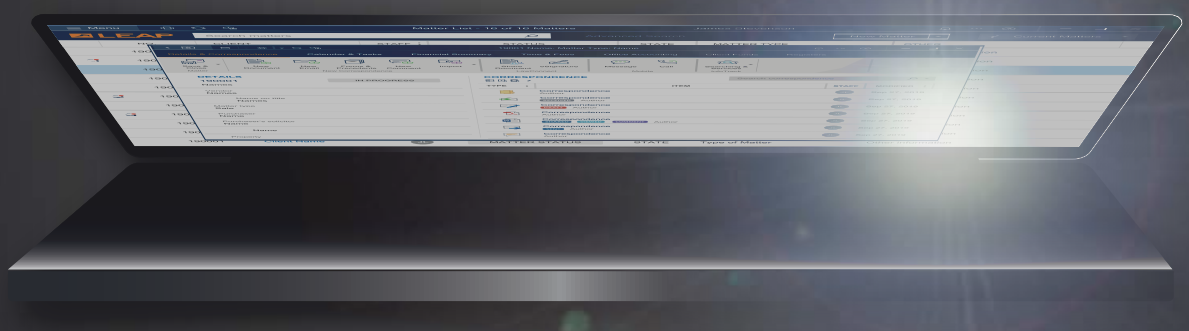
of everything we do

Coming soon



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