

THE Brief

The Official Journal of the Irish Institute of Legal Executives
2011 Issue



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Justice, Equality and
Defence;

MR ALAN SHATTER TD

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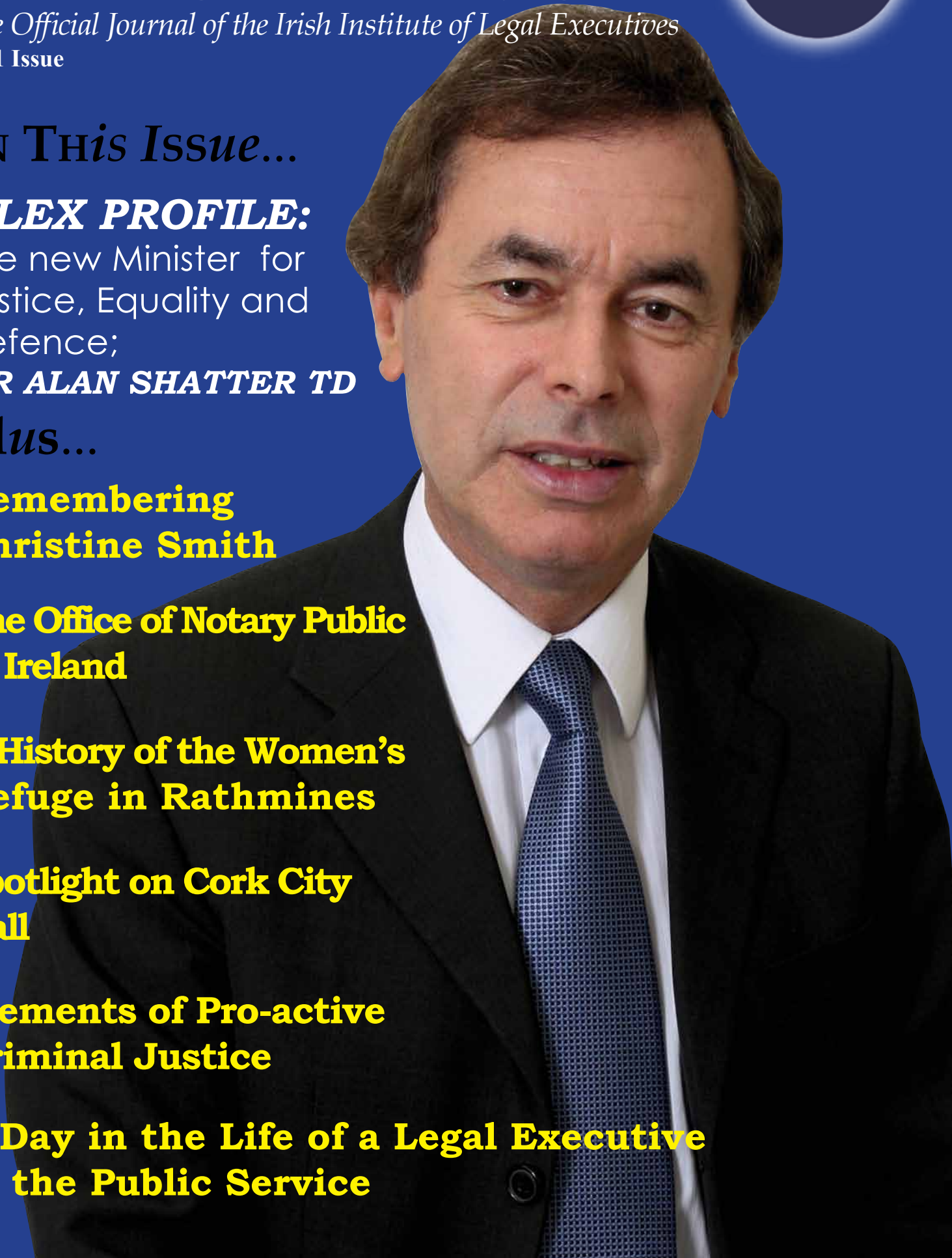
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The Brief

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Legal Disclaimer

The Brief adopts an independent and inquiring approach towards the law and the legal profession. It is published for the benefit of members of the Irish Institute of Legal Executives and therefore aims to keep them properly informed of developments in the law and legal practice.

As part of this objective, The Brief will act as an authoritative source of information on Institute activities and policies. From time to time The Brief may cover controversial issues. The editorial team shall have the final decision on matters of editorial policy or content but always strive to preserve and to enhance the good name of the Irish Institute of Legal Executives and its members.

The views expressed should be taken as those of the author only unless it is specifically indicated that the Irish Institute of Legal Executives has given its endorsement. Neither The Brief nor Irish Institute of Legal Executives accept liability to any party for any error, omission or mis-statement by any contributor in any material published herein.

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President's Address



Dear Member

Welcome to this edition of 'The Brief'.

We now have a new Government and a new Minister for Justice Equality and Defence and on behalf of the Institute I wish him every success in his very challenging role.

In the new Programme for Government there are many proposed changes to the delivery of legal professional services and IILEX is well equipped to play its part in this ever changing delivery of legal education and legal services to the consumer. With this new Minister and his reputation for equality and fairness I am very confident for the future role of the Legal Executive in Ireland.

In the UK, the first appointment to the Judiciary of a Legal Executive took place in August of last year and there are now over 100 Legal Executive Partners in legal firms. Times are changing and the role of the Legal Executive is as well.

The Institute is continuing to strive for Security Access Cards to the Four Courts for our members. A meeting took place between our Chairperson and myself with members of the Courts Service on the 11th March 2011 and this meeting was followed up with a letter to them outlining our membership criteria and they replied, but unfortunately the Courts Service had not changed their minds in relation to their stance. This is a very disappointing outcome but we will continue to fight on behalf of you for these cards.

The country has lost two true patriots recently Mr. Garrett Fitzgerald and Mr. Brian Lenihan. When the former President, Gillian Crowe and I met with the then Minister for Justice, Mr. Brian Lenihan, he was astonished and perplexed that Legal Executives could not apply for security access cards to the Four Courts. He knew legal executives frequented the Four Courts on a daily basis and he vowed to fight on this issue on our behalf, unfortunately his ministry was changed and there was no further outcome. The Institute's condolences are extended to the families of both these great statesmen.

Many congratulations to Maire Whelan on her appointment as the first female Attorney General. Maire Whelan is a very well respected Senior Counsel within the legal profession and on behalf of the Institute I wish her every success.

The Hon. Mrs. Justice Susan Denham has been appointed Chief Justice of the Supreme Court, on behalf of IILEX I extend our congratulations to her.

Our Diploma course in Griffith College has been given HETAC Level 7 status. We are delighted with this and great credit is due to everyone involved who helped make this happen.

The recession continues for our members with many experiencing pay cuts and changes to their working hours and conditions. We have no choice but to hang in there, however, if you think that an injustice has taken place, please seek legal advice early as the statute of limitations can be easily passed and your opportunity to get justice could be missed.

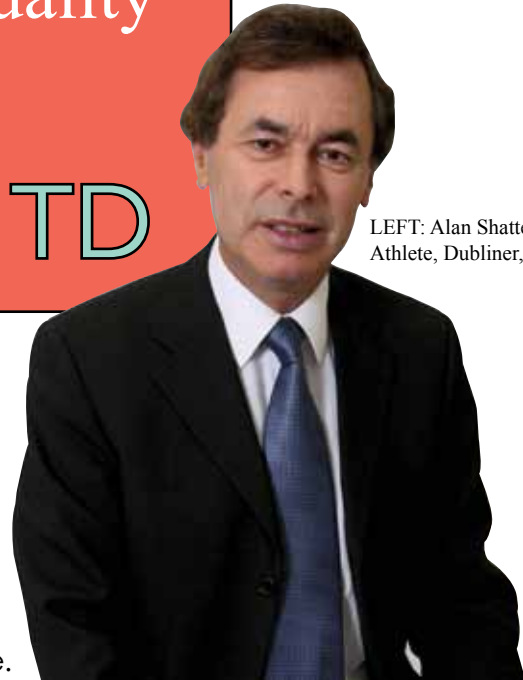
The Institute is always here to assist its members and to reflect the issues that affect you, so please let us hear from you.

Veronica Duffy, President, IILEX



Profiling Ireland's New Minister for Justice, Equality and Defence

ALAN SHATTER TD



LEFT: Alan Shatter TD:
Athlete, Dubliner, Politician

Alan Shatter was re-elected to Dail Eireann in February 2011 having represented Dublin South Constituency in the Dail since 2007 and previously from 1981 until 2002. He was appointed Minister for Justice, Equality and Defence by An Taoiseach Enda Kenny on 9th March 2011.

He was educated at High School, Rathgar, and Trinity College Dublin where he obtained a law degree.

He subsequently attended Europa Instituut of the University of Amsterdam where he studied European Law, Politics and Economics. As a student, he was Director of the Crumlin Free Legal Advice Centre (FLAC) and later became Chairman of FLAC. He subsequently became Chairman of CARE (Campaign for Deprived Children).

Alan Shatter practiced as a family lawyer in Dublin and is the author of "Family Law in the Republic of Ireland" now in its 4 edition and the best-selling novel "Laura" (1989).

As a TD representing Dublin South Constituency he has held various positions on the Fine Gael Front Bench including Spokesperson on Justice and Law Reform, Health, Labour, Defence and Children. He has served on the Joint Oireachtas Committee on Foreign Affairs and on the Joint Oireachtas Committee on the Constitutional Amendment on Children from 2007 until that Committee completed its work in February 2010.

Before his appointment in March 2011 as Minister for Justice, Equality and Defence, Alan Shatter, as a Fine Gael TD and an advocate of radical legal, social and environmental reform, published a wide range of Bills including;

- **29th Amendment of the Constitution Bill 2009 (published on 19th Nov 09) Ministers and Secretaries (Ministers of State) Bill 2009**
- **Victims Rights Bill 2002**
- **Victims Rights Bill 2008**
- **Tobacco (Health Promotion and Protection) Bill 1999**
- **Genetic Fingerprinting Bill 1988**
- **Community Service Orders Bill 1981**
- **Registration of Births Bill 2000**
- **Protection of Persons Reporting Child Abuse Act 1998**
- **Adoption Act 1991**
- **Judicial Separation & Family Law Act, 1989**
- **Adoption Bill 1987**
- **Environment Protection Agency Bill 1989**
- **Protection of Refugees Bill 1993**
- **Landlord & Tenant (Amendment) Act 1993**
- **Statute of Limitation (Amendment) Bill 1999**
- **Courts Bill 2000**
- **Tribunals of Inquiry (Amendment) Bill 2001**
- **Prohibition of Ticket Touts Bill 1999**

FACTS ABOUT ALAN

- Alan has always been a resident of South Dublin. Originally living in Rathgar, when Alan was 4 his parents moved to Crannagh Park, Rathfarnham where he lived for 35 years. For the last 17 years Alan and his wife Carol and their children Dylan and Kelly have resided in Delbrook Manor, Ballinteer.
- As a teenager, Alan played schoolboy league Soccer and was an athlete competing for both High School and for Crusaders Athletic Club. He was High School Athletics Captain for two years and obtained his university athletic colours running for Trinity College. More recently, Alan played League Table Tennis for some years with Dundrum Table Tennis Club.

IN February 2011, we surveyed 50 Legal Firms to ascertain if the IILEX Course, which we accredit in Griffith College was satisfactory for the needs of Solicitors employing Legal Executives.

LEGAL EXECUTIVE EMPLOYABILITY SURVEY RESULTS

We got full replies from 29 firms and this is the result of the survey. It appears clear that the course covers all the requirements of Legal Executives at present but unfortunately employment prospects continue to be adversely effected by the recession.

	E Essential	D Desirable	N Desireable not Essential	TOTAL
1. Practical interpersonal and communication skills e.g. effective interviewing/note-taking/negotiating skills and general ability to communicate orally or in writing with legal and/or other legal professionals.	25	4	0	29
2. Office skills e.g file management and basic client care, knowledge of legal costs accounting, numeracy, time management.	15	12	2	29
3. Good working knowledge of court hierarchy, personnel and offices, practice and procedure.	16	11	2	29
4. High level of IT literacy e.g. e-conveyancing, e-stamping or other on-line documentation preparation, accessing and using websites such as Court Services website.	14	14	1	29
5. Practised advocacy skills e.g. representing a client at tribunal/court hearings.	10	13	6	29
6. Practical experience of drafting legal documents, letter writing and preparing briefs.	24	4	1	29
7. Good working knowledge of issues surrounding professional ethics e.g client confidentiality/legal professional privilege, conflict of interest, Data Protection Act, Freedom of Information Act.	24	5	0	29

Comments relating to: "Please identify any additional skills....."

- Good Team Player
- A good ability to interact
- Common Sense
- General IT Literacy
- Spreadsheet Literacy
- Scanning Electronic



Would you give preference to employing someone with these proven skills ?

(A) Immediately or within the next year.	(B) At some other time in the future.	(C) There are/will be no employment opportunities in the near future.
0	11	18

Cork Conferring 2010

The Griffith College Cork 2010 Conferring ceremony took place on Friday November 5th in Cork City Hall with HETAC, NTU, ACCA, ICM, IILEX, Limperts Academy, and Griffith College Awards being conferred on 165 graduates.

The Students graduated from 14 different courses including Certificate in Professional Legal Studies (IILEX/Griffith College) and Diploma in Professional Legal Studies (IILEX/Griffith College) and Griffith College President Diarmuid Hegarty gave the conferring address.

The Ceremony was also attended by The Lord Mayor of Cork Councillor Michael O'Connell and Lady Mayoress Catherine O'Connell while Mr Frank Crummey Fellow IILEX Commissioner for Oaths represented the Institute. As is custom on these occasions IILEX representatives don the dignitaries robes. 16 students graduated with the Certificate and 13 students graduated with the Diploma.

The Institute is honoured to be associated with Griffith College Cork and the wonderful lecturers and staff of the college who work tirelessly and have made this a most popular and interesting course for students and those working in legal firms in Cork and surroundings.

Claire McCarthy is the Evening Course Coordinator at Griffith College Cork, Cove Street, Sullivan's Quay, Cork. Tel: **021 4507027**.

Below are photographs just some of the successful graduates of the IILEX Diploma in Professional Legal Studies and the Certificate in Professional Legal Studies which were taken on their happy day.



One of the most splendid buildings of Cork City, Cork City Hall was designed and built in the Classical style to harmonise with existing eighteenth and nineteenth century architecture that endows Cork City. It is an imposing and dignified structure with its long main front dominating the river, and it immediately attracts attention due to the excellence of its proportion.

Cork City Hall was rebuilt and reopened in 1936 and replaces the previous structure destroyed during 'The Burning of Cork' in 1920 on the Albert Quay. Both the City Hall and the Carnegie Library were completely destroyed at the time

SPOTLIGHT ON...



Cork City Hall At Night

CORK CITY HALL by Mary Foley FIILEX



Cork City Hall Clock Tower

resulting in the loss of many of the city's public records. The present City Hall was designed by Architects Jones and Kelly and built by Cork company Sisks and the six limestone tuscan pillars and copper domed clock tower are particularly impressive by night.

The facades are of silver limestone from the Little Island Quarries, with columns of the Doric order that grace the porticos of darker limestone from Galway and the building consists of three sections, two wings arranged around a fine hall. The hall's main entrance is through a marble paved vestibule leading to the main staircase boasting stairs built in polished marble finished with the fine balustrade of ornamental wrought iron. Meanwhile, the impressive concert hall in the building is the venue for concerts festivals and functions.

The inside of the hall receives beautiful and natural light from an ornamental dome atop the building. On either side of the Council Chamber are galleries provided for distinguished visitors and the general public. Other features include decorative plasterwork, a

balustrade and walls panelled in mahogany and the furniture of the chamber, which is also built in mahogany. Finally, a profile bust of the late U.S. President John F Kennedy to commemorate his visit in 1963 stands inside the hall.

The Institute are honoured to have been invited as dignitaries to this distinguished building on the occasion of the Griffith College Conferring Ceremonies in 2009 and 2010.



ABOVE:
Cork City Hall circa 1990

BELOW:
President John F. Kennedy
speaks at Cork City Hall in
June 1963



ABOVE:
Cork City Hall during
reconstruction in 1935

ELECTIONS

&

POSTERS

by Mary O'Shea;
Solicitor and Fine Gael Councillor
Cabra Glasnevin Ward of Dublin
City Council



Pursuant to an advice of the Taoiseach, Mr. Brian Cowen T.D, under Article 13.2 of the Constitution, the President dissolved Dáil Éireann on 1st February 2011 and summoned the incoming Dáil to meet on Wednesday, 9 March, 2011, at 12 noon.

Mr. Éamon Ó Cuív T.D, Minister for the Environment, Heritage and Local Government, made an Order appointing 25 February, 2011, as polling day.

After many false starts the race was finally on and a date for polling had been set. Postering teams throughout the country could finally begin to take up every available space on every lamp post and any other space which could accommodate a poster.

The erection of posters is an essential part of an Irish

election but if not handled carefully it can be an expensive business.

Section 19 of the Litter Pollution Act 1997 (the 1997 Act) prohibits the erection of articles or the defacement of structures which are visible from a public place by anybody other than the owner, occupier or person in charge of the space. This makes the erection of posters on public property an offence under the Litter Pollution Acts. However section 19 contains a number of exceptions these exceptions include posters erected for the purposes of an election, a General election, a Presidential election, a European election and a Local election. The erection of posters for such elections does not contravene section 19 provided that they are removed within 7 days of polling day. Section 19 contained no prohibition on the length of time that posters could be erected pre polling day.

This situation was changed prior to the local elections of 2009 Acts by the enactment of the Electoral Amendment (No 2) Act 2009. This Act contained a number of electoral reforms including an amendment to section 19 of the Litter Pollution Act 1997.

Section 9 of the Electoral (Amendment) (No 2) Act amended section 19 the 1997 Act by introducing a time limit prior to elections from which posters could be erected. Posters are now only permitted to be erected for a certain specified time pre polling day. This time limit is either 30 days prior to polling day or 30 days from the date the Ministerial Order setting the day for polling day, whichever is the shorter.

The summer elections of 2009, the Local and European Elections and the two bye elections held in June of that year were the first elections to be conducted under these new rules.

Polling day for these elections was June 5th 2009; the Ministerial Order designating the date was signed on 31st March 2009, which was 66 days prior to Polling Day. This meant that the shorter period of 30 day period prior to polling day applied in this case.

In the case of the recent general election the opposite was the case, the Ministerial Order was made on 1st February which was less than 30 days prior to Polling Day on 25th February so the date of the making of the

order was the relevant date. No election posters could be erected prior to 1st February 2011.

On 31st January 2011 Dublin City Council issued a notice to all political parties reminding them of the rules in place in relation to posterage. The notice contained the following reminders ;

Posters will only be permitted on suitable lamp standards following the formal dissolution of the Dail and the signing of the Ministerial Order declaring the Election Day (anticipated as the evening of 1st February) until 7 days after the election.

Any posters found to be in place at any time outside of these statutory timescales will result in the issuing of a fine of €150 per individual poster.

The responsibility for enforcing the legislation lies with the Local Authority. Any Election poster in place before or after the stipulated timeframe is deemed to be in breach of the legislation and is subject to an the spot litter fine of €150.

PRIVATE PROPERTY

It is important to remember that these rules apply only to posters erected on public property. Posters or other advertising on private property is subject to the normal rules attaching to commercial advertising under the planning acts.

The parking of vehicles with election slogans on the side is not an offence under the Litter Pollution Acts. However, section 19 of the 1997 Act makes it an offence to place adverts (flyers) on mechanically propelled vehicles unless they are secured by mechanical means. This prohibits the placement of flyers under wiper blades.

EXCLUDED AREAS

In April 2007, Dublin City Council adopted a Protocol for the erection of Temporary Posters/Notices on Dublin City Council property to advertise Public Meetings /Events. This Protocol prohibits the erection of posters on O'Connell Street, Grafton Street and Henry Street. In elections/referenda since that date, the political parties/candidates voluntarily agreed not to erect posters on these streets.

Residents in particular areas have also on occasion requested that their areas be poster free, such requests in so far as they relate to public property have no legal standing and adherence and enforcement is dependent on the good will of the parties/candidates.

SAFETY CONCERNS

There are no specific rules in place governing either the number or size of election posters. However there are a number of factors which are relevant in determining such matters;

The Local Authority will remove and dispose of posters which it considers to be a hazard to road users and to the general public these include,

- ***Posters that are obscuring the visibility of traffic/pedestrian signals and traffic signs. The Road Traffic Acts contain requirements in relation to maintaining clear line of sight for road users. Many problems are caused by posters that are erected on poles adjacent to signals or signs.***

- ***Posters that are below head height or resting on the ground. These posters can cause obstructions on footpaths and are particularly hazardous to the visually impaired.***

cont...

Photographs courtesy of Mochin Photoman www.sluggerotoole.com



- ***Protruding cable ties that are at a level that could cause injury to pedestrians, particularly children.***

The following guidelines were issued to candidates by Dublin City Council with a view to ensuring that posters were not a hazard to the public.

- ***Posters should be erected at a minimum height of 2.3 metres above footpaths, cycle tracks or any area to which pedestrians have access.***
- ***Posters should not be erected on lamp standards with overhead line electricity feed, traffic signal poles, bridge parapets, overpasses, pedestrian bridges, or roadside traffic barriers.***
- ***Posters should not obscure statutory road signs or traffic/pedestrian signals in any way.***
- ***Posters should be securely fixed to poles with cable ties or similar material to facilitate removal without damage to the poles.***

FINES

Breaches of the legislation during the most recent general election resulted in fines being imposed for unauthorised posterage. There were 202 fines issued by Dublin City Council alone for posters which were erected prior to the dissolution of the Dail and the making of the Ministerial Order setting February 25th as polling day. This included fines imposed for posters erected on 31st January or at any time prior to the evening of 1st February. Dublin City Council imposed 154 fines for posters being left in place more than 7 days after polling day. These fines would have been issued only after warnings were served on and ignored by those committing the offences. District Court proceedings under the Litter Acts have been initiated by Dublin City Council in relation to fines which remain unpaid.

Dublin City Council appointed an Appeals Officer who adjudicated on any appeals submitted in any individual case, it was only after the consideration of any mitigating factors that the fines were either confirmed or quashed. Dublin City Council is the largest of the 34 Local Authorities in Ireland so the scale of fines imposed can be said to provide a good indication of the level of fines imposed across the country.



MEMBERS NEWS

CRIMINAL COURTS OF JUSTICE - ACCESS CARDS

The Institute has been successful in their application to the Courts Service for the right for it's members to apply for security access cards to the Criminal Courts of Justice...

If you work in criminal law and require these cards please access the application form through the courts service website:

www.courts.ie.

Remembering Christine Smith



Christine Smith passed away suddenly on the 13th December 2010.

Christine was a member of the Irish Institute of Legal Executives for many years and was a wonderful supporter and friend of the Institute none more so than when the Institute celebrated its 21st Anniversary Dinner in the Honourable Society of the Kings Inns in December 2008.

Christine worked for many years for Messrs. Seamus Maguire & Company, Messrs. Judge and Company and the Law Departments in both Fingal County Council and South Dublin County Council. Christine's work was hugely important to her. She was a high achiever and very conscientious, excelling in everything she did.

She gave generously of her time to local charities and projects including Coolmine Musical Society where she performed on stage and worked making costumes and sets for their many musical projects.

A huge number of her friends, colleagues and family attended her removal and funeral Mass and the loss of Christine will stay with them for all of their lives. She benefited a huge number of people, being a person who, if she said she would do a job went to endless trouble to deliver what she promised.

She was great fun and entertained all her family and friends with her larger than life personality. She was a great beauty, not just on the outside, but a lovely human being.

She loved nothing more than having her family around her at Christmas and other family occasions. She loved her boat on the Shannon where she could leave all the stresses of the world behind.

Christine is survived by her husband Joe, her son Paul, her daughter Cathie, her brother Anthony and sisters Bernie, Pat, and Jacinta, daughter-in-law Suzanna, her grandchildren Lauren, Matthew, Hannah and Jack, and her extended family and friends.

A r òheis Dé go raibh a anam dílis

LETTER OF NOTIFICATION OF THE FIRST JUDICIAL
APPOINTMENT OF A LEGAL EXECUTIVE IN THE UK
FROM THE ILEX UK'S PRESIDENT DAVID McGRADY

**The President
Institute of Legal Executives**



Ms Veronica Duffy
President
The Irish Institute of Legal Executives
C/O 62 Knockaire
Dublin 2
Ireland

Our Ref DM/PC

25 August 2010

Dear Verin

I am delighted to let you know that the first Legal Executive Judge has been appointed by the Lord Chancellor as a Deputy District Judge on the South Eastern Circuit.

Ian Ashley-Smith is originally from Catford, but now lives and works in Hastings. The son of a railway clerk, he left school with just a small clutch of O Levels and began his legal career as an Outdoor Clerk in 1969, only a few small years after the establishment of the Institute. He qualified as a Fellow in 1981 and specialises in Family Law and has additionally qualified as a Family Mediator. We are very proud of him. The appointment reflects the professionalism at all levels of those associated with ILEX. We are indeed indebted to those members who as a consequence of years of dedication to the profession, created the environment for such an appointment.

The appointment is possible as a result of the changes brought by the Tribunals Courts and Enforcements Act 2007, which made Legal Executives eligible to apply for selective judicial roles from November 2008.

With best wishes

Yours sincerely

DAVID McGRADY
PRESIDENT OF ILEX

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Congratulations



The Institute would like to congratulate Rose P. Buggle and Mary F. Foley on being awarded Fellowships of the Institute at its annual A.G.M. on the 19th August 2010.

Both Rose and Mary are long standing Council Directors who have contributed greatly of their time and dedication in working tirelessly for the Institute over many years.

Congratulations!



Advertisement



EXCEL DRY CLEANERS

The Management of Excel Dry Cleaners has kindly agreed to further extend a 10% concession to any registered members of the Irish Institute of Legal Executives (IILEX) who may in the future avail of their professional dry cleaning services.

Excel Dry Cleaners are well renowned for their expertise and quality of service given which has been experienced by their many loyal customers over the years.

In order to avail of this offer, you are required to state at the point of business with Excel Dry Cleaners, that you are a registered member of the Irish Institute of Legal Executives (IILEX), and that you wish to obtain the 10% concession on your dry cleaning costs.

Situated in Moira House, Dame Lane, Trinity Street, Dublin 2 and with car parking available immediately above, Excel Dry Cleaners are specialists in bridal gowns, evening wear and silk and are open for business Mon-Wed 8am-6pm, Thursday 8am-7pm, Friday 8am-6pm and Saturday 9am-5pm.

**For any more information or a price list please call:
Excel Dry Cleaners on 01 677 6878.**

 **EXCEL** *Expertise, Quality & Service*
DRY CLEANERS



by Dr. Eamonn G. Hall

The Office of Notary Public in Ireland

The legal profession in Ireland is divided into barristers, solicitors, notaries and legal executives with the judge at the apex of the noble guild. Such is the fluidity among the practisers of the law that in England and Wales a legal executive with appropriate qualifications is now eligible for judicial appointment.

Of all the various legal professionals, the notary public is the oldest. In non-contentious legal business, the notary has a comparable standing to that of a solicitor or barrister and has a unique place in international business affairs. This article briefly traces the history of the notary, sets out the current functions and duties of the office and describes how a person can be admitted to the profession of notary in Ireland.

History of the Office of Notary Public

The profession of notary traces its origins to the scribes in ancient Egyptian civilisation and the tabelliones of Rome. The tabelliones, a class of professionals who transacted legal business, became prominent in Rome between the second and third century AD. The influences of the East, the importance of commerce in the Roman Empire and the necessity to have written legal documents governing transactions all fostered the development of the profession of notary. A significant evolution of the notary was when notarii became secretaries to the authorities – principally the Emperor and leading ecclesiastics.

The Emperor and the Pope appointed notaries and the status of the notary subsequently flourished on mainland Europe. In the days of Charlemagne (742-814), whose empire united most of Western Europe, instruments drafted by notaries on the continent of Europe acquired the same status and effect as a conclusive judgment. Such is the same today on mainland Europe with the notary's authentic instrument. Christopher Columbus took a notary with him on his epic voyage to America (c.1492) to certify the truth of what he saw and to take possession of the land.

The notary came to some prominence in Ireland after the Norman invasion and later English conquest. The writer has discovered a notarial instrument of 16 February 1395 in Lambeth Palace Library where Art MacMurrough and other leading Irish chiefs at Ballygory, near Carlow, in the presence of Thomas Earl of Nottingham, Marshal of England, took oaths of allegiance to King Richard 11 and certain other oaths to observe covenants in an indenture. There are statements in notarial instruments in Ireland around this time that King Richard 11 (who spent seven months in Ireland between October 1394 and May 1395) and the party to the instrument 'requested the notary to make the agreements public instruments' (Manuscripts in Lambeth Palace Library)

The reformation affected the appointment of notaries in Ireland as in England. Henry VIII (1509-1547) denied the Pope any authority in the appointment of notaries and the Archbishop of Canterbury became the 'civil' appointing authority in England. (Today, in England and Wales, the candidate notary receives his or her faculty from the Archbishop of Canterbury.) In Ireland the Archbishop of Armagh and the Court of Faculties, later to become the Court of Prerogative and Faculties, were constituted as the appointing authorities for the notary public. The Lord Chancellor exercised the power to appoint notaries from 1871 until 1924, when under the Courts of Justice Act of that year; the power was transferred to the Chief Justice of Ireland. Since 1924 (confirmed by the Courts (Supplemental Provisions) Act 1961) the Chief Justice has been and remains the appointing authority. (See generally O'Connor, *The Irish Notary* (1987) and Hall & O'Connor, *Supplement to The Irish Notary* (2007))

Notary Public



Regulation of Notaries

The principal statute regulating notaries public in Ireland is the Public Notaries (Ireland) Act 1821 ((1 & 2 Geo 4. c. 36) which though obsolete for the most part, remains part of applicable law. This statute does not set out the powers, functions and duties of a notary public but section 1 provides (with criminal sanctions) that 'no person' may act as a public notary, or use and exercise the the office of a notary public, or do a notarial act, unless such person shall have been duly sworn, admitted, and enrolled'.

Other provisions of the 1821 Act relate to apprenticeship and the appointing authority for notaries specified to be the Court of Faculties and 'the Lord Archbishop of Armagh' as referred to above. There is also provision for certain disciplinary sanction against the notary including provision for striking the notary 'off the roll of faculties'. The Chief Justice exercises regulatory control over the notary pursuant to directions issued under the Rules of the Superior Courts.

Functions and Powers of the Notary

The functions of the notary public in Ireland today are intertwined with the history of Ireland and its legal inheritance from the United Kingdom of Great Britain and Ireland. Article 73 of the Constitution of the Irish Free State (1922) provided that 'laws in force' at the coming into effect of the Constitution 'shall continue to be of full force and effect' to the extent that they are not inconsistent with the Constitution and until repealed or amended by enactment of the Oireachtas.

The laws of Ireland (as part of the United Kingdom of Britain and Ireland) prior to the foundation of the State in 1922 may be found principally in statute law and the various manifestations of the common law. There is no specific statute which sets out the functions of the notary public. This is not surprising, as there is no definitive statement of law as to the specific powers, functions and duties statute of a solicitor, barrister or medical doctor. The powers, functions and duties of the regulated professions evolved over time.

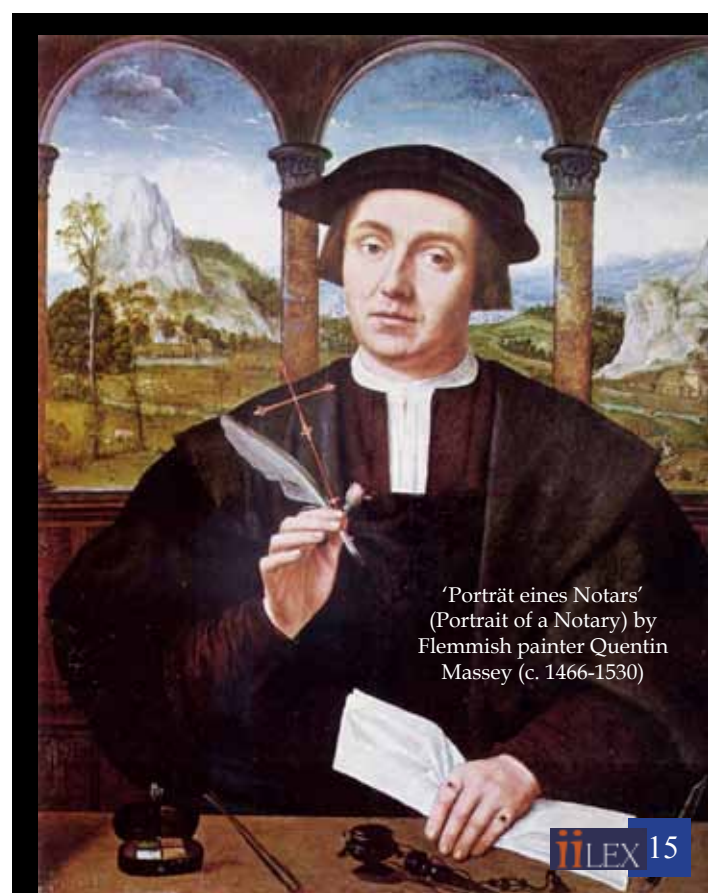
As in many other matters, where there is no specific statute setting out the law, we depend on a statement of the law set out in judicial decisions or in the textbooks of legal scholars. Apart from statutes and judicial case law, the most authoritative statement of the law in Ireland immediately prior to the dissolution of the political entity of the United Kingdom of Great Britain and Ireland in 1922 may be gleaned from the celebrated Laws of England with its subtitle 'A Complete Statement of the Whole Law of England' by the Earl of Halsbury, then a former Lord Chancellor of Great Britain, and other lawyers. The edition to which I refer is the first edition of 1907 with the title of 'Notaries' published in volume 21 in 1912. The aim of the work known as Halsbury was to supply a consolidation or complete statement of the law of England and to set out 'the whole living law' relating to the subject in question. (In 1922, the law of England was the same as the law in Ireland unless there was some particular Irish statute law or judicial case law to the contrary). I set out the background to Halsbury because it is partly being relied upon here for convenience as a statement on the functions and powers of notaries about which there appears to be some confusion expressed from time to time.

The opening words of the title on notaries in Halsbury (1912) comprise a succinct statement of the notary's functions. A notary public is stated to be a duly appointed officer whose public office it is, amongst other matters, to draw, attest or certify, usually under his official seal:

- **Deeds and other documents including conveyances of real and personal property.**
- **Powers of attorney relating to real and personal property situate (domestically) or in foreign countries.**
- **Note or certify transactions relating to negotiable instruments.**
- **Prepare wills or other testamentary documents.**
- **Draw up protests or other formal papers relating to occurrences on the voyages of ships and their navigation as well as the carriage of cargo in ships.**

The functions set out above are specifically repeated and expanded upon under the heading 'Functions' in the Halsbury title on notaries, prefaced by the words: 'A notary is entitled to prepare deeds, agreements and wills relating to real and personal property' and the list of functions above is effectively repeated. Among the functions expanded upon in this section of Halsbury is the well-known function of verifying, authenticating and attesting the execution of deeds or other documents, and powers of attorney. There is also a specific reference to the notary's function in protesting bills of exchange. There is also a reference to the noting and drawing up of ships' protests. Halsbury concluded the section on the functions of the notary by noting that 'from an early period' notaries have exercised the right of administering oaths and taking declarations.

I am fortified as to the correctness of my description of the functions of the notary set out above by provisions in the Solicitors Acts. Section 58 of the Solicitors Act 1954 as
cont...



'Porträt eines Notars'
(Portrait of a Notary) by
Flemish painter Quentin
Massey (c. 1466-1530)



inserted by section 77 (a) of the Solicitors (Amendment) Act 1994 prohibits unqualified persons from drawing or preparing a document relating to real or personal estate or any legal proceedings, land registration matters and probate and letters of administration. The penalties specified include fines on conviction on indictment and summarily. However, section 58 (3) of the Solicitors Act 1954 provides for an exemption from the strictures above in relation to acts done by a barrister practising in the State or by a notary public as such.

Admission to the Profession

The rules relating to admission to the profession are set out in the Notaries Public Examination Regulations 2007-2010. These regulations may be found on the website of the Faculty of Notaries Public in Ireland www.notarypublic.ie under 'Admission to the Profession'. At the time of writing, there is no specified course of education at a university that the aspiring notary must pursue. This is in contrast to England and Wales where a barrister, solicitor or other legally qualified person with training approved by the Master of the Faculties (Faculty Office of the Archbishop of Canterbury) must pursue and pass a two-year part-time postgraduate diploma in notarial law and practice from the University of Cambridge, the only institution in England and Wales authorised to provide

that course of study.

In Ireland, a person must pass the Faculty Examination set by the Faculty of Notaries Public in Ireland. To be eligible to sit the Faculty Examination (held in May of each year), 'an applicant must be a practising solicitor or barrister in good standing who on the date of his or her application to sit the Faculty Examination has not less than five years post-qualification experience in the general practice of law at least two consecutive years of which shall be in the period immediately preceding the application'. The syllabus is set out in the Examination Regulations above and comprises the following:

- **History of the Notary Public in Ireland**
- **Ethics for the Notary Public**
- **Private International Law**
- **Roman Law**
- **Aspects of Company Law and Practice**
- **Bills of Exchange including Noting and Protesting for Non-Acceptance/Non Payment**
- **Ships Protests**
- **The Hague Convention of 5 October 1961 and relevant EU Conventions**
- **Powers of Attorney including Enduring Powers**
- **Intercountry Adoption**
- **Money Laundering Legislation**
- **Notarial Practice including Oaths: Substance Form and Procedure; Attestation, Authentication and Certification of Documents, Deeds and Transactions.**

Candidate notaries are referred to specific sections of O'Connor and Hall & O'Connor mentioned above and papers published on the Faculty website for guidance. (A candidate may use any other relevant textbook.) The requirement for a candidate notary to show an immediate need for his or her appointment was dispensed with by the Chief Justice by Direction dated 25 January 2006. The candidate notary applies by way of petition to the Chief Justice in open court referring, inter alia, to his or certificate of the result of the Faculty Examination.

Conclusion

The office of notary public is an independent branch of the legal profession in Ireland with significant legal functions. The Celtic Tiger and the influx of immigrants to Ireland breathed life into the profession of notary in Ireland.

The Faculty of Notaries Public in Ireland and its governing council (which in part regulates the office of notary in Ireland) has been reinvigorated in recent times and plays its role in international affairs by being a full member of the United Kingdom and Ireland Notarial Forum which meets quarterly in the domestic capitals.

The Faculty also played a significant role in the inauguration in Dun Laoghaire, Dublin, of the World Organisation of Notaries (WON) in March 2010, intended to represent the interests of notaries public worldwide especially in common law jurisdictions. The Faculty has also taken a keen interest in the development of enotarisatation and the forthcoming extension of the e-apostille pursuant to the relevant Hague Convention.

Note on the author:

Dr. Eamonn G. Hall is a notary public, director of education with the Faculty of Notaries Public in Ireland, a member of its governing council and an associate member of the International Union of Latin Notaries (UINL). This article is written in a personal capacity.

Further Reading:

- O'Connor, The Irish Notary (1987)
- Hall & O'Connor, Supplement to The Irish Notary (2007)
- Website of Faculty of Notaries Public in Ireland www.notarypublic.ie
- Website of Supreme Court (Business of the Office) www.courts.ie (see under Appointment of Notaries Public/Practice Directions/Notary Public Petition Document/Certificates of Authentication)

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Find a **health insurance plan** that's a perfect fit

The management of the Voluntary Health Insurance (VHI) has agreed to continue to offer members of the Irish Institute of Legal Executives a 10% discount on their annual health insurance plans.

In order to avail of this discount there are two options open to participants which details are outlined in the following:-

- 1. The first option provides members with an opportunity to be affiliated to the Incorporated Law Society's current Group Scheme and thereby, obtain the 10% discount.**
- 2. The second option provides members with an alternative opportunity for inclusion in the Customer Care Scheme also arranged by the Voluntary Health Insurance.**

Finally, in order to avail of the 10% discount, suffice to state that all that is required is to make contact with the Voluntary Health Insurance stating that you are a registered Legal Executive. Arrangements will then be put in place for your inclusion in which ever of the two schemes you may wish to join.

The following are the relevant contact details of the Voluntary Health Insurance (VHI):

**Ms Karen Riall,
Business Relations Team
VHI Healthcare
VHI House,
Abbey St, Dublin 1**

Tel. No: 01 799 4080 Email: karen.riall@vhi.ie

The Irish Institute of Legal Executives was formed in 1987 and incorporated in 1992. It represents more than 500 legal executives in Ireland. The institute's aim is to regulate and represent the interests of legal executives and to further the highest standards of working practice among its members. The IILEX board of directors comprises 15 directors, who manage the affairs of the institute.

What are the main responsibilities of your job?

As president, I am responsible for promoting and developing the identity and recognition of the institute and the role of the legal executive in the legal services industry in Ireland.

What are your professional motivators?

I am greatly motivated by the status that is afforded the title of legal executive in Britain.

The first judicial appointment of a legal executive there took place in August, which is an achievement we are very much looking to emulate in Ireland.

How would you describe your working style?

I have a strong work ethic and believe honesty and integrity are essential to getting the job done.

What was the best decision you have made in business?

in profile

VERONICA DUFFY

Veronica Duffy is a founding member of the Irish Institute of Legal Executives (IILEX) and has been president of the organisation since 2008. She is a legal executive and a commissioner for oaths.



Veronica Duffy
President - IILEX

Establishing IILEX as a voice for legal executives in this country.

What is the most valuable lesson that you have learnt?

To deal with problems as they arise, so that they do not grow into something much bigger.

Who do you most admire in Irish industry?

The person I most admire in business is Peter Sutherland, non-executive chairman of Goldman Sachs International.

I have always admired him for his ability and the integrity he brings to bear in his professional role, but also through his work with the United Nations.

What are your expectations for Irish businesses in the months ahead?

I feel that, if the banking system stabilises and credit is freed up for small businesses, there is some hope for economic growth.

The will and spirit of Irish business is there, but credit must be made available to viable indigenous businesses.

What is your ultimate professional goal?

To achieve greater rights and powers for legal executives in Ireland, while striving to ensure the best professional service for the consumer.

REMINDER...

ASSOCIATE/STUDENT MEMBERS UPGRADE

A reminder that you may be eligible for an upgrade in your membership status, please contact the Institute on **01 8904278** for further information...



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- Our services are **FREE OF CHARGE** to Legal Executives and their clients
- Brief Counsel Ltd is run by solicitors and barristers who **understand your needs**

Dublin Graduations 2010

Rose P. Buggle, Maria Kielty and Frank Crummey represented the Institute at the Griffith College Dublin Graduation on 12th November 2010.

The President of Griffith College, Diarmuid Hegarty welcomed everyone to the conferring.

Thirty-eight students graduated with Diplomas in Professional Legal Studies and 27 students graduated with Certificates.

A Dublin student, Caroline Battlebury, was the overall Winner of the Institute's Perpetual Cup in Professional Legal Studies and photographs were taken of her which can be seen beneath this article.

Caroline is employed by William Fry's Solicitors and stated it was her intention to continue on in Griffith College and obtain a BA in Legal Studies and we wish her well in her endeavours.

Thirteen other students also graduated with a BA in Legal Studies (HETAC). We at IILEX wholeheartedly congratulate all students on their achievements and wish them every success in their careers, in postgraduate studies and in life generally and we invite all students to make application to become members of the Irish Institute of Legal Executives.

Griffith College Presentations 2010



Caroline Battlebury receives the Perpetual Cup in Professional Legal Studies from Frank Crummey IILEX and Diarmuid Hegarty



Frank Crummey IILEX, Caroline Battlebury, Rose P. Buggle IILEX and Maria Kielty IILEX

Notable Cases for Legal Executives

CASE 1

Elliot v Stamp (2006) {IEHC 336}. BAILII

The Plaintiffs were the sister and nephew of Nicholas Roche, deceased (the Deceased). The second named Plaintiff, the son of the first named Plaintiff, pursuant to a Power of Attorney granted on 6th April 2004, acts on her behalf.

The Court acceded to an Application amending the Pleadings to reflect the position of the second named Plaintiff.

The Judgement quoted from English Case Law requiring proof of coercion on the part of the person whom it is alleged has exercised undue influence.

Roderick Murphy J held that the Will was not procured by duress or undue influence of the Defendants and that the Deceased had the benefit of independent advice from a Legal Executive of some thirty seven years standing.

CASE 2

Barclays Bank Plc -v- Coleman and Others - (2001) {UK QB 1}

The bank granted the husband a loan in 1991 to purchase two commercial investment properties.

This loan was to be secured by a second legal mortgage over the jointly owned matrimonial home, whereby the matrimonial home was to be charged with the payment all moneys and liabilities covenanted to be paid by either spouse

Before the Charge was executed the wife received advice from a Legal Executive who was employed by a Solicitor, after which she signed an endorsement confirming that the full effect of the Charge had been wholly explained to her.

The Legal Executive then signed the endorsement with his name above a rubber stamp stating that he was in fact a Legal Executive.

The Claimant then argued for a Charge to be set aside for undue influence they must show some manifest and clear disadvantage arising from the said charge.

It was held on Appeal that independent legal advice received from the Legal Executive was sufficient to meet the requirement and, accordingly, the Bank could rely on a Certificate of Legal Advice granted by the Legal Executive.

Cases Sourced: Griffith College FE 1 Equity Manual 2009 & BAILII

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The Legal News

MATHESON ORMSBY PRENTICE 

Mandatory Electronic Filing of Taxes & Stamp Duty

With effect from 1 June 2011 the following categories of tax payers are obliged to file their returns electronically:

- All companies, trusts, partnerships, collective investment undertakings and European Economic Interest Groupings (EEIGs).

- Individuals subject to the high earners restriction for the tax year 2009 or any subsequent tax year.

- Self-assessed individuals benefitting from or acquiring foreign life policies, offshore funds, other offshore products or claiming any of the property or area based incentive reliefs for the tax year 2009 or any subsequent year.

- Self-assessed individuals filing return to payments to third parties.

With effect from 1 October 2011, employers with more than 10 employees are required to file the returns electronically. In all cases the payment of any tax liability which arises after the obligation to e-file returns commences, must be made electronically and in these circumstances this must continue for all subsequent returns and payments.

Tax Returns and Payments (Mandatory Electronic Filing and Payment of Tax) Regulations 2011 (SI 223/2011).

New provisions implementing a mandatory requirement to file stamp duty returns and pay online also come into effect on 1 June 2011.

In relation to the change the Revenue Commissioners have published Regulations under the Taxes Consolidation Act 1997 effective from 1 June 2011 providing for mandatory electronic filing of certain tax returns and payment of tax liabilities by certain categories of tax payers. The provisions are introduced in two stages.

The Regulations amend existing Regulations and provide for the removal of the optional ability to file paper forms in place of electronic returns from 1 June 2011 except in the specific circumstances outlined in the Regulations.

These relate to certain instruments executed prior to 1 January 2002 or presented to the

Revenue Commissioners prior to 30 December 2009 or an instrument required to be stamped where an exemption has been granted.

They also apply to situations involving certain clawback arrangements with the Revenue Commissioners. The Regulations also provide that the Revenue Commissioner may on application exempt a person from the obligation to pay a file electronically if they are satisfied that the person does not have the capacity to do so.

Stamp Duty (E-Stamping of Instruments) (Amendments) (No. 2) Regulations 2011 (SI 222/2011).

Criminal Justice Bill

The Minister for Justice Equality and Defence has published the Criminal Justice Bill 2011. The main purpose of the Bill is to facilitate the more effective investigation of white collar crime and to reduce associated delays.

The Bill is targeted at specific serious and complex offences with a penalty of at least 5 years imprisonment including offences in the area of banking and finance, company law, money laundering, fraud, corruption, competition, consumer protection and cyber crime. Amongst the proposals in the Bill are:

- Proposals for more effective use of detention periods including the suspension and resumption of detention periods under the legislation.

- Power to apply to the Court for an order to require any person with relevant information to produce documents answer questions and provide information for the purposes of investigation of relevant offences.

- Proposals for the proper production of documents to investigators so as to avoid the production of large volumes of poorly organised and uncategorised documents.

- Measures to prevent unnecessary delays in investigations arising from claims of legal professional privilege.

- Creation of a new offence relating to the failure to report information to the Gardaí.

Regulations on Use of Mediation

The Minister for Justice Equality and Defence has published Regulations transposing the

provisions of Directive 2008/52/EC on the Use of Mediation in Civil and Commercial Matters. The Regulations are effective from 18 May 2011.

The Regulations set out the basis and the procedures to be used where access is required to mediation in civil and commercial matters. They apply only to cross border disputes covered by the Directive. The Regulations apply to all court jurisdictions – Superior Courts, Circuit Court and District Court. They set out arrangements for confidentiality of mediation procedures and for the enforcement of agreements reached during mediation.

The Regulations also provide for non application of a period during which mediation is taking place from calculation of periods for the purposes of limitation and prescription under the Statute of Limitations 1957. *European Communities (Mediation) Regulations 2011 (SI 209/2011).*

Finance (No. 2) Bill 2011

The Finance (No. 2) Bill 2011 has been published.

The Bill will sets out measures related to the Government Jobs Initiative and includes provisions on:

- Proposals for enhancing the flexibility for accounting for R&D tax credits on an “above-the-line” basis.

- Proposals for changes to Air Travel Tax.

- Proposals for reduction of VAT in respect of certain tourism related goods and services.

- Proposals for a levy on pension schemes.

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Tel. 353 1 232 2000 Fax. 353 1 232 3333

MATHESON ORMSBY PRENTICE 

Rathmines Women's Refuge

25th Anniversary

Rathmines Women's Refuge had it's 25th anniversary in January 2011 and Frank Crummey as well as the hard working staff were there to help with the celebrations...

History of the Refuge

The first Women's Refuge opened in Harcourt Street, Dublin in 1974 when a group of women squatted into a vacant house. There was a huge demand for the service and the building was grossly overcrowded. It received no funding and was staffed by volunteers. When it accidentally burned down, they moved their squat to another large house in Harcourt Terrace, opposite the local Garda Station.

At that time it was not unusual for up to one hundred women and children to reside here at any one time and violence and break-ins were a common occurrence until the local Gardai became involved. It is widely believed that this involvement of the Gardai gave the refuge respectability, as up until that time, the refuge was seen by many as being run by 'men-hating women intent on breaking up good and happy marriages'. Violence against women was simply not recognised in these days and these refugees were consistently misunderstood because of this.

This second refuge also burned down and it was after this that the Eastern Health Board provided the women with premises on the Howth Road which was actually two separate houses that had been rebuilt into one large property and which was owned by the Health Board. The refuge was adequately staffed, granted monetary aid by the Health Board and could house six families at any one time.

The Board of Management of the time, which included current Manager, Ms Kathy Moore, decided to look for a site and funding in order to build the first purpose built Women's Refuge in Europe and this is how the Rathmines Women's Refuge came to be.

Rathmines Women's refuge was officially opened on the 10th January 1986 by Mr Barry Desmond, Minister for Health. Manager, Kathy Moore worked a shift on that day and is still, very much the heart and soul of the refuge today, 25 years later.

Services Offered

The services currently offered at Rathmines Women's Refuge include the following:

- Safe and secure temporary accommodation for women and children fleeing domestic violence.
- Advice, information and vital support.
- Advice visits by appointment (appointments made by calling 01 496 1002).
- A twenty-four hour helpline.
- Court Accompaniment service.
- Large playroom inside the refuge with a large security monitored back garden.
- A safe place for children to play and talk about their experiences.
- A fully equipped teenager's room.
- Close liaisons with all outside agencies and referrals when and where appropriate.
- A month long Summer Arts Project for women and children.
- Weekly art classes.
- Computer classes.
- Literacy classes.
- Parenting courses.

Life at the Refuge

Once a woman has been admitted to the refuge, she will be allocated a bedroom for her family. Most women arrive at the refuge with only the clothes that they are wearing and nothing more, so the refuge is able to look after the needs of the whole family. A clean bedroom with clean bedding and second hand clothing is provided as well as basic food needs and toiletries. Once the woman's financial situation has been assessed, a Social Welfare payment will be sourced for her and for her children.

Each woman is allocated a team of care workers who will advise her of all her options. They will also offer her practical and emotional support when required, in addition, there is always a key worker who is on duty for twenty-four hours a day. There is also a childcare team who are able to provide practical and emotional support for the children

and also provide age appropriate activities for them. This service is available to the families six days a week from 10.00am - 9.00pm.

Community Support

Rathmines Women's Refuge enjoys the highest level of support from the local community. Since their inception, they have been fortunate to have had the experience, and benefited from the expertise and legal advice from one of Dublin's most experienced and street wise Family Lawyers, Mr Frank Crummey. Mr Crummey has provided free legal services to all users of the refuge's services for many years and through his efforts, no woman has ever been deprived of legal representation in court.

The refuge is most privileged to receive every help and assistance from all manner of professionals in the area. Rathmines Gardai are particularly supportive and efficient in dealing with all of their calls for help. The Community Gardai perform a key role in breaking down the barriers that often exist between themselves and people in the community and they

The following is a list of quotes from children that have stayed in the refuge over the past year.

"The refuge to me is like a sheet that cannot be broken through. The staff are on the inside to make sure that no tears come into it."

"When I stay in the refuge I know I will be safe."

"In here it's like a break away from the madness."

"My Mam is always good to us but at home she is always stressed out. In here she's happier and we have more fun with her."

"When my Mam tells me we're going to the refuge I get really scared about how my Dad is going to cope and I feel really guilty for leaving him."

"I love being here because sometimes I don't want to talk to my Mam because she's got stuff on her mind and in here I get to talk to the staff."

"When I'm at home I get really scared about what's going to happen and I have to look after my Mam and Dad but when we're in here at least the staff look after her."

"This is my second home. I prefer being here than being at home."

often drop into the refuge unannounced and interact freely with both the women and the children. They also participate in the refuge's Summer Project by providing free transport as well as accompaniment on the weekly outings.

Quotes from Ex Residents

The following are quotes given to the refuge from just some of the many ex residents of the Rathmines Women's Refuge on the event of its 25th Anniversary in January 2011.

"Without this place I would be dead, you have saved my life so many times." – M

"May all your days be free and look up at the sky and stars in the evening and may God and Our Lady watch over you at night." – Sarah

"I just wanted to let you know just how much I appreciate all that you done for me in the refuge. To you I might just be another woman passing through but to me you are so much more than just another woman I met in Ireland." – M.O.



"Sometimes I feel like I'm going deaf at home because there is so much shouting and roaring, you don't even hear it when you get used to it."

"I love how my Mam is when we are here."

"I feel like I have to keep my brothers and sisters quiet when my Dad is in a bad mood, but when I'm in here I don't care what they do."

And perhaps, the most poignant of all of the quotes from these young mouths...

"This is my safe place."

See the next page for some photographs taken at the 25th Anniversary Celebration of Rathmines Women's Refuge. Additional presentations included a picture presentation to Frank Crummey for his support and assistance to the shelter over 25 years and a bouquet to Frank's wife Evelyn.

Rathmines Women's Refuge 25th Anniversary



Lorraine Donoghue - Assistant Manager, Philomena Treacy,
Frank Crummey & Kathy Moore



Kathy Moore - Manager, Eifion Williams H.S.E., Evelyn Crummey,
Fiona McEvoy (Frank Crummey's Granddaughter),
Frank Crummey & Lorraine Donoghue Assistant Manager



Rita Andrews, Wendy Edwards & Julie Hogan

Opportunities for Paralegals and Legal Secretaries

If you are currently working in a legal environment you may be eligible to become a Legal Executive and obtain membership of the Irish Institute of Legal Executives – (IILEX), a corporate body formed in 1987, incorporated in 1992 whose Board of Directors consists of legal executives. The primary aim of the Institute is to act as regulatory body, which in conjunction with Griffith College, Dublin, provides a system of legal training and examination for the purpose of achievement of a recognised professional qualification for those engaged in legal work.

Applications for enrolment for membership must be made on the prescribed application form which is obtainable from the Institute's registered office below and on the Institute's website at:

www.irishinstituteoflegalexecutives.com

All relevant information relating to the Irish Institute of Legal Executives and membership is also available on the above website.

The Irish Institute of Legal Executives would be delighted to hear from you in the near future.

Mary O' Dwyer
Secretary/ Director of PR/Communications
Irish Institute of Legal Executives

The Irish Institute of Legal Executives
22/24 Lower Mount Street
Dublin 2

“A Day in the Life of a Legal Executive in the Public Sector”

by Gillian Crowe, LLB (Hons), Dip LS
*Former President IILEX
Commissioner for Oaths*

Almost three years ago I applied for a Legal Executive role in the Public Sector. It is something I had thought about on and off for over a decade. I was always curious to know what working as a Legal Executive in the public sector would be like and the functionality of the role.

Then when I saw the downturn in the Irish economy coupled with changes in the Legal profession, I made my decision to move. I was lucky and made it through the interview process which wasn't easy!

“I was lucky and made it through the interview process which wasn't easy!”

Working for one of the largest Local Authorities in this country, my role has become rather innovative.

Having worked close to 20 years in the private sector, dealing on a day to day basis with a diverse range of clients (civil, criminal & family) together with members of the legal profession, I now assist in representing one client in a different manner entirely and on a larger scale.

Admittedly, this took a good year to get used to!

I am now on the other side of the fence representing a big client and the general public etc., are on the other.

A frequent question asked by members of the public (usually on the telephone) is; - Can I advise them? What do I think? Inevitably I have to encourage them to speak with their own Solicitor and explain that the Law Department represents the Local Authority as their Legal Agents. As a public service is being provided, I have to be

mindful of this but at the same time remember who the client is!

There are a lot of criticisms of Local Authorities particularly in these very difficult times. Unfortunately, what a lot of people fail to understand is that we rely on government funding. The level of service is very much dependent on budget constraints.

A Legal Executive's role in a Local Authority is very busy. Instructions are given to the Law Department from sections within the Local Authority such as Housing, Rates and so on, which are all under the control of the County Manager, the client.

On a given day, both my colleagues and I cannot expedite any work on a file without a Manager's Order (this stipulates the work to be commenced) just the same way in a Law firm, you would take instructions from a new client.

The process can be lengthy as there are more individuals and departments involved as opposed to a legal practice where there are Solicitors, Legal Executives, Legal Secretaries support staff and of course, the client.

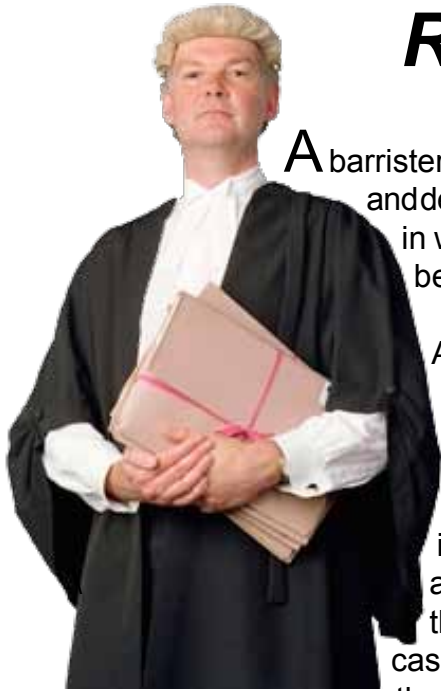
In the Local Authority, aside from legal ethics and work practices which everyone is bound by, we are governed by heavy legislation such as the Housing Act 1966 (as amended) and the Local Government Act 2001. Again, one needs to be familiar with the appropriate legislation.

Finally, I hear you ask, is it rewarding? Is it a career path worth pursuing? My answer would be 'Yes' to both. My very diverse background has equipped me well for my role within the Local Authority.

A Legal Executive is a legal professional and their education and practical experience equips them to be a pivotal figure in any legal firm and any legal department of a big commercial entity such as a Local Authority.



Finding the Right Barrister at the Right Time at the Right Price



A barrister is typically engaged by a solicitor on behalf of client to advice on the merits and demerits of the case, to draft the pleadings for court, prepare the legal submissions in writing and/or orally, ask the questions in court of the witnesses called on behalf of the client and cross-examine the witnesses of the other party.

A well-argued case by a specialist barrister knowledgeable and experienced in the particular area of law can be influential in persuading a judge and can make a big difference to the outcome of a case.

Armed with specialist skills in court and in negotiation, a barrister specialising in the area of law is in a position to advise his or her client on the strengths and weaknesses of their case and whether to fight the case or settle it through negotiations. Sometimes a client is better off to settle his or her case and a specialist barrister is best placed to advise a client as to the best form of settlement and conduct the negotiations on the client's behalf.

So how does one identify the right barrister when one is needed?

In most cases, from previous court experience, solicitors and legal executives will have some thoughts on which barristers would be best suited to each case. Many solicitors and legal executives have over a number of years developed close and successful working relationships with a number of barristers.

However, sometimes the area of law in question may be one where the law firm is unfamiliar with the relevant specialist barristers, or the preferred specialist barrister for the matter may often be conflicted or too busy to take on the case. In these instances, Brief Counsel specialises in assisting legal executives and solicitors find the best specialist barristers who are willing and available to take on the case and prepared to provide detailed fee quotes.

Brief Counsel is a legal services company helping solicitors and legal executives select and manage competent counsel for drafting, advocacy or advice services. It provides information to solicitors and legal executives on the experience and expertise of different counsel. It organises different counsel to provide law firms with binding fee quotes and timescales quotes to undertake their instructions. Its services are free to the solicitor/legal executive, the law firm and the client.

Managing legal costs

An increasing number of law firms are reportedly being asked by clients to reduce their costs. Recent reports suggest that clients are increasingly shopping around amongst different legal service providers, searching for value and wanting to know in advance what the likely legal cost would be to act on their behalf.

Many law firms are now looking at a number of different ways to reduce the total legal cost for their clients. To this end, more and more legal executives are contacting Brief Counsel to organise competitive fee quotes from different barristers to do particular pieces of work for them. Sometimes, suggestions of the names of the barristers that are wanted to quote for the work are provided and other times help is provided by Brief Counsel in the identification and selection of suitable and available

counsel specialising in the area of law in question.

Some solicitors and legal executives might feel uneasy about sourcing and instructing barristers unknown to them who specialise in the area of law relevant to their particular client's needs. Customs and practices may sometimes mean uncertainty about conducting negotiations with barristers on the barristers' fees or service standards in advance of engagement. Brief Counsel regularly encounters these concerns, and generally assuages solicitors and legal executives by talking them through the résumés of suggested barristers and organising their instructions.

How does it work?

Once a decision has been made by the law firm and the client to engage a barrister, the legal executive can contact Brief Counsel by phone, e-mail or through the "Brief Counsel Now" page on Brief Counsel's website. Brief Counsel will need a short and precise synopsis of the matter in order to identify suitable counsel.

Once a particular barrister has been identified and agreed as being appropriate for the legal matter at hand, he or she is contacted to provide a fee quote and determine availability to conduct the work. As far as the negotiation of fees is concerned, this can be done on the basis of an hourly retainer, a fixed, capped or tapered fee or, in the case of court hearings, an all-in "brief fee".

The client is entitled to transparency and is entitled to know how much time a particular piece of work will take and why. A legal executive is also entitled to put time limits for the completion of the work by counsel and also to put fee modifications or, in simple terms, to mark a fee on the brief for a particular request. If a legal executive does so, it is always open to counsel to indicate that he/she cannot meet the time limit or is not prepared to meet the consideration issue.

Ultimately, the process should be made easier by the fact that it is in no one's interests for the client to be represented by the wrong barrister. Barristers will be at pains to ensure that the right counsel for a given matter is found and, if the work is better directed to a different barrister, will say so. Barristers themselves are under a duty to say if they do not think they are the right individual for a particular case.



Brief Counsel's services help solicitors and legal executives throughout the country uphold their respective professional duties to their clients by enabling them to show their clients that they have sought fee quotes from a number of different specialist barristers in the area of law in question, before engaging any counsel on the client's behalf.

There are over 2,400 barristers currently practising in Ireland but finding the right specialist counsel at the right price with capacity to undertake the work at the right time is not as straightforward as it may appear.

Visit page 19 of this issue for a full page Brief Counsel advertisement.



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ELEMENTS OF PROACTIVE CRIMINAL JUSTICE

by Dr. Chris Nielson M.Med; D.Juris; MII.L.Ex.

Crime has a far-reaching impact on Ireland. It affects the quality of life of every citizen. Crime is also very expensive (in terms of lives and property) to combat.

These costs affect only direct victims. What about the cost to a victim's family and friend, such as the heartbreak, loss of income etc! This is called indirect victimisation.

Crime is on the increase – the rate of recidivism stands at more than 80%. Recidivism refers to the repetition of crime, ie. 80% of all offenders will commit crimes again after their release from prison.

The above 'price tag' represents a very limited window on the magnitude of the crime problem in Ireland and, in particular, its impact on resource deployment and developmental potential within the country. In determining cost, the following should also play a role:

- *Government expenditure on the criminal justice system*
- *Expenditure on private security*
- *Cost of stolen goods*
- *Value of stolen goods*
- *Victim compensation and aid*
- *Health cost of treating victims of violent crime*
- *Economic value of lives ruined (loss of years of life)*
- *Loss of productivity and revenue due to emigration of taxpayers*
- *Cost of white collar crime and other serious economic crimes*
- *Loss of international investment*



In more general terms, crime has an impact on:

- *People: A feeling of despondency and fear. They do not trust the criminal justice system (Garda, courts and corrections) to protect them adequately.*
- *Growth and development: The view that poverty plays a central role in the crime rate in Ireland has given rise to the important perspective that the solutions to the problem are increased investment, economic growth and the creation of jobs for the unemployed. However, there is a vicious circle in operation here. Development is seen as imperative to solving the problem of crime, yet development itself is reduced by crime in all its various forms.*
- *Democracy, stability and human rights: Crime is sometimes viewed as being a fundamental threat to state security. However, it is also important to recognise the danger that the crime problem, through the wide spread insecurity as well as the victimisation that it generates, may breed popular contempt for human rights and, therefore, for the constitutional dispensation. There is danger that many Irish citizens may come to perceive the Bill of Rights as providing greater protection for criminals than it does for the victims of crime. As a result, the crime problem may generate a reaction against the concept of human rights for all. The onus is therefore on the State to deliver a crime prevention approach that places the rights and needs of victims as the centre of any strategy.*

Origin of Proactionism (crime prevention)

No organised or systematic approach to Proactionism (crime prevention) has existed in Ireland. No single agency or level of government has been responsible for crime prevention in its broadest sense, and there is currently no special structure to plan, manage and co-ordinate crime prevention policy and activities. Previous crime prevention initiatives were developed without taking note of the root causes of high crime rates and were narrowly focused on only one or few aspects of the crime problem. The focus of existing crime prevention efforts has been on "stemming the tide" and relied on reactive strategies, primarily through the application of more policing capacity to problems.

The traditional responses to crime by the criminal justice system and the private sector (the community) were not co-ordinated. As a result, responses to crime from within the criminal justice system have failed to stop the rising crime rate.

Both the Irish Constitution and the An Garda Síochána describe the objectives of the Garda service (as part of the Criminal Justice System) as the main component in preventing crime as:

- *To prevent, combat and investigate crime*
- *To maintain public order*
- *To protect and secure the inhabitants of the Republic and their property*
- *To uphold and enforce the law*

It is clear from these objectives that the Garda have both proactive (preventative) and reactive (investigative) functions.

Our criminal justice system is normally divided into five components:

1. *The law enforcement component, which is concerned with preventing crime, tracing and arresting suspected offenders.*
2. *The prosecution component, which is concerned with charging (including) and prosecuting alleged offenders.*
3. *The court component, which determines the guilt or innocence of the accused and is responsible for sentencing after an offender has been found guilty.*
4. *The correctional component, which is responsible for executing the punishment imposed and, as a part thereof, for treating the offender with a view to positively changing his/her behaviour and for protecting the community.*
5. *The welfare and remedial component, which gives remedial service to the released offender within the community.*

All of these structures have a preventative (proactive) role to play.

But where and when did it all start? Proactive criminal justice predates and precedes all other functions in the system. As early as 1829, the first Commissioners (Rowan and Mayne) of the very first organised police service (London Metropolitan Police) said that the security of persons and property, the preservation of public tranquillity and all the other objectives of a criminal justice establishment will thus be better affected by prevention, rather than by the detection and punishment of the offender after s/he has succeeded in committing the crime.

Pro-action (crime prevention) is the fundamental purpose of criminal justice. All activities include some elements of pro-action (action taken before social order has actually been violated) rather than reaction (action taken after the crime has occurred). Proactionism is often made to give way to re-actionism because of a belief that law enforcement implies action after the deed, and that the law itself makes no provision for proactive work. However, pro-action is in fact part of the very nature of the law – laws are preventive in the sense that they prescribe the conduct to be expected of citizens. Compliance with these rules of behaviour (laws) eliminates the necessity to apply them.

Despite the fact that the criminal justice system (especially the police) is the most important of all the social institutions concerned with the prevention of crime, activities in this direction are very limited. This is due to the fact that the social conditions that stimulate crime are not created by the criminal justice system. The system also does not have any (co-share in the social changes that produce negative attitudes.

Since crime is a social phenomenon, crime prevention must be the responsibility of every section of society. Crime prevention is in fact the responsibility of every citizen. The belief that the Garda alone are responsible for the safety of society is incorrect. On their own, the Garda and the other components of the criminal justice system can never completely eliminate crime. The community and the individual must share that responsibility.

Crime is a complex problem that is unlikely to be solved by isolated endeavours. Crime prevention, similarly, requires an integrated programme (planning) of treatment or prevention, making use of all suitable measures, aids and institutions (co-ordinating) with the object of:

- *Preventing the repetition of crimes*
- *Preventing the development of criminal motivations*
- *Channelling negative motives into lawful directions*
- *Preventing the spread of criminal tendencies to other susceptible persons*
- *Protecting society from established criminality by detaining the criminal*
- *Eliminating conditions that might foster criminality*
- *Eradicating the belief that crimes can in fact be successfully committed*



These processes are based on the following:

- *Planning in order to have short-, medium- and long term plans and strategies in place. (this process is sometimes called problem-solving criminal justice)*
- *Co-ordinating (and) communicating) all plans/strategies and institutions/individual. (this is some-times called partnership criminal justice)*

Some purposes of proactive criminal justice are:

- *Respect for the criminal justice system and voluntary compliance with the law*
- *Short-term preventive techniques such as street patrols, visible and speedy application of the law and incapacitation (imprisonment) of offenders*
- *Medium-term preventive techniques e.g. obstruction and deterrence through environmental designs (security measures)*
- *Long-term preventive techniques such as partnership criminal justice and the education of young people and society in general about respect and appreciation for the problems relating to crime and the criminal justice system*
- *The rendering of services that will strengthen respect and confidence in the criminal justice system*
- *The elimination or lessening of opportunities (or chances) to commit crimes*
- *Any other measures designed to prevent the repetition of a crime*

Conclusion

We, in Ireland, pay a price for the high crime rate in our country. Crime affects the quality of life of every single person. This makes proactive criminal justice extremely important. The various components of the criminal justice system are not solely responsible for the prevention of crime. All citizens and communities should become involved in solving the problem of crime.

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