

THE BRIEF

The Official Journal of the Irish Institute of Legal Executives
2014

iiLEX



In this Issue . . .
***Changing our Constitution - The
Role of the Courts***

Plus . . .
Our Shackled Diaspora
Development or Exempted Development
Smart Goals
Griffith College Conferring - Dublin & Cork

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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.

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EDITORIAL TEAM

We the Editorial team hereby extend many thanks to all of those who contributed articles as well as photographs for this Edition of the Official Journal of IILEX – “The Brief”.

Your contribution and interest in being involved is much appreciated and makes all of the difference towards the production of a quality publication. All of our members and others should really enjoy reading the many interesting features and viewing the various exciting photographs kindly supplied by you,

If you have any social or current events coming up in the near future that you would like to see advertised or written about on the IILEX Website, or further more, maybe for inclusion in the next Edition of “The Brief”, then please feel free to send information, photographs and other images to the following address:-

The Irish Institute of Legal Executives.
22/24 Lower Mount Street, Dublin 2 DX No, 15,
Telephone:- (01) 892 4278 Email - info@iilex.ie

Congratulations and well done all.

Editorial Team
IILEX

Front cover picture: Government Buildings

IILEX PRESIDENT'S ADDRESS

Dear Member,

It is a great honour to accept the role of President of the Irish Institute of Legal Executives for 2013/2014. I would hope to see an increase in membership this year and more recognition for Legal Executives in this jurisdiction.

On January 15th, I visited Leinster House along with two other Directors during the hearing of the Legal Services Regulation Bill 2011. While Minister for Justice, Equality and Defence, Deputy Alan Shatter, acknowledged 'the far-reaching proposals' made on our behalf, 'at this time lie beyond the scope of the Legal Services Regulation Bill' and that 'such matters will, therefore, need to be considered separately in due course by the new Legal Services Regulatory Authority'. With this in mind, I would encourage all Legal Executives to contact their Local Elected Representatives with a view to encouraging Minister Shatter to include Legal Executives in the 2011 Bill. We have also received print media coverage in the Irish Times and on a local Dublin Radio Station outlining our proposals for Legal Executives to be included in the 2011 Bill.

Legal Executives are now through the efforts of the Institute eligible for Court Services Security Access Cards. We have also formally been recognised at the Irish Law Awards.

This year has seen a number of lapsed members returning to membership and this is a great boost to the Institute. I would also call upon current members to encourage their Legal Executive colleagues to become and remain members of the Institute.

Remember that the Institute is here to assist you should you have any difficulties please do not hesitate to contact us directly.

I would like to thank you as members for your continuous support and to pay a special word of thanks to our Past-President Ms Veronica Duffy who has done sterling work for the Institute in the past and continues to represent Legal Executives both at Leinster Council and at Central Council.

Patrick J. Courtney
President



PASSING THE PRESIDENTIAL MANTLE

In June 2013, I stepped down from the Presidency of IILEX after five very enjoyable years handing over the mantle to Patrick J Courtney.

- The Irish Law Awards – I was so proud and honoured to be the first 'Best Legal Executive 2012'.

During my time as President I am very proud of changes and achievements for the members of IILEX during that time, such as:-

- Obtaining security access cards to both the Four Courts and Criminal Courts of Justice for Legal Executives in their own right;
- Celebrating both our 21st and 25th anniversaries in the Kings Inns and the Stephen's Green Club respectively – a wonderful showcase with many members of the Judiciary, Competition Authority, President of Griffith College and invited guests from all areas of the legal and commercial arena in Ireland in attendance;
- Visiting CILEX in the UK as President of IILEX and seeing the first Legal Executive Judge in England and Wales being appointed in 2010;
- Overseeing a substantial growth in membership of IILEX even despite a horrific economic crisis;
- Becoming a Trustee of the Mary McAleese Scholarship for Legal Executives in conjunction with Griffith College;
- Our Diploma in Legal Studies and Practice obtaining HETAC Level 7 status on the National Framework

The role of the Legal Executive is not recognised within the Legal Services Regulation Bill 2011.

The purpose of the Bill is to reform the legal profession and legal executives should have a recognised role.

We have been around as long as all the other legal professionals, and our background is exactly the same as Legal Executives in England and Wales, coming from the articulated and managing clerks, and the Legal Executive in England and Wales can now become Partners in firms, Judges and Coroners. Please members, continue to lobby your local representatives and legal correspondents to achieve the recognition we so deserve.

Finally, I want to thank you the members, the directors I have worked with over the years who gave of their time and efforts for the benefit of all and who were so supportive of me during my Presidency.

I want to wish Patrick every good wish in his Presidency. I hope he enjoys his time as President as much as I did.

I remain on as a Director and Chairman of the Leinster Branch. IILEX is in my DNA and I look forward to the future in a more background role.

All the very best for 2014.

Veronica Duffy FIILEX

A Students view of the Diploma in Legal Studies in Griffith College



My journey through the ILEX Diploma in Legal Studies and Practice at Griffith College Dublin began in 2011. The course was a great experience for me and has helped me immensely through my education thus far.

Clearly being one of the youngest to get through the course that year, I can honestly say that the lecturers' friendliness and welcoming nature proved extremely useful in getting me through the year and heavy workload of the course, likewise the course administrators who diligently guided me through any problems I came across.

I gained insight into the legal sector in a safe and very practical environment which has nurtured me through my journey during the LLB (Hons.) in Irish Law program at Griffith College. Now, I am in

my final year and I am looking forward to gaining admission to study either International Law, Human Rights Law or International Relations. Although those were not modules offered in the Diploma, I am however confident that the time spent during the course did not only allow me gain great connections but has enabled me to decide what area I would like to specialise in.

If asked whether I would recommend the course, I honestly would - because it stood as a strong foundation for my legal education and most probably for my future career; and might be of such great significance to others.

Beulah Allotey
Final Year Student of GCD



LEINSTER COUNCIL

Career Options for Legal Executives – Talk 10th October 2013

On the 10th of October 2013 Griffith College and the Irish Institute of Legal Executives held a talk on the career options for Legal Executives. Catriona O'Dwyer, Senior Legal Recruitment Consultant at Brightwater Recruitment Specialists, together with her colleague Emma Anglim, came to Griffith College to discuss what advantages and career options are available to students of the Legal Studies Diploma and members of ILEX.

After setting out the primary skills required for a Legal Executive, Catriona set out in detail the various career options ranging from Legal Secretary to Legal Executive and even Solicitor and Barrister options that graduates of the Legal Diploma Studies can consider. She strongly encouraged aspiring legal executives not to turn away

opportunities to gain experience as legal secretaries, which can provide both the necessary practical experience to strengthen one's CV and also to provide exposure to different areas of law through temp work or float secretary jobs. Areas with a large volume of secretarial work such as debt recovery can lead to legal executive opportunities. She also discussed the emergence of a "hybrid" legal secretary, a secretarial role that encompassed aspects of legal executive work.

Finally, Catriona also touched on the possibilities of pursuing further study through the Law Society to qualify as a Solicitor or the Bar Council of Ireland as Barrister and on specialised qualifications that can be pursued such as Company Secretary through the ICSA (Institute of Chartered Secretaries and Administrators).

While the economic climate continues to be difficult in Ireland, Catriona had some hopeful news about recent recruitment trends in the legal sector, particularly in certain specialised branches such as debt. Recent hiring trends indicate that opportunities are opening up in debt recovery, financial services, corporate, and litigation. Catriona stressed the importance of marketing oneself properly via events, seminars, and various social media as well as up-skilling where possible and benefiting from practical experience.

For all legal jobs, go to
www.brightwater.ie

Shy Eager MILEX
Leinster Council - ILEX

CONTINUING PROFESSIONAL DEVELOPMENT (CPD) SEMINARS & COURSES IILEX 2013

The Institute held the following range of diverse talks on present day topics of interest throughout 2013 for our members:

- **Career Options within the Legal Profession** - Speaker Catriona O'Dwyer Solicitor, Brightwater Group (Brightwater Recruitment Specialists). CPD IILEX/GCD 2013 Griffith College Dublin Conference Centre 10 October.
- **Personal Insolvency Act 2012** - Speaker Eamonn Carney Solicitor, Carney Mc Carthy Solicitors. CPD IILEX 2013 City Hall 27th June.
- **Prison Visiting Committees** - the Prison Visiting Board Act 1925 - Prisons in Ireland & South Africa - A Comparison. Speaker Fintan Hudson FIIEx. International Liaison Officer of the Irish South African Association. CPD IILEX 2013 Meyrick Hotel Galway 22nd June.
- **Lay Litigants' and Pro Bono representation and advocacy in the huge social and economic crisis caused by our over indebtedness** - Speaker Finbar Markey Gerontologist. CPD IILEX 2013 Meyrick Hotel Galway 22nd June

Acknowledgements

The Irish Institute of Legal Executives would like to thank the speakers, Finbar Markey, Fintan Hudson, Eamonn Carney and Catriona O'Dwyer.

Additional thanks to Griffith College Dublin, Dublin City Council and The Meyrick Hotel, Galway.

PARLIAMENTARY QUESTIONS

Legal Services Regulation Bill 2011

QUESTION NOS: 520 & 527

DÁIL QUESTIONS addressed to the Minister for Justice and Equality (Mr. Shatter)

by Deputies

for WRITTEN on Tuesday, 21st January, 2014.

* 520. To ask the Minister for Justice and Equality if he will consider the proposals by the Irish Institute of Legal Executives for formal recognition of the role and functions carried out by legal executives; if this will be provided for in the Legal Services Regulation Bill; if not, if he will consider exploring the issue further in future legislative proposals; and if he will make a statement on the matter.

Jerry Buttimer

* 527. To ask the Minister for Justice and Equality his views on granting formal recognition to the Irish Institute of Legal Executives as part of the Legal Services Bill 2011; and if he will make a statement on the matter.

Michael McGrath

REPLY

I have clearly set out the situation in relation to this matter in previous Replies to the House and in the course of its discussion on 15th January 2014 during Committee Stage of the Legal Services Regulation Bill which is now coming close to completion. I will, therefore, reiterate my views on this occasion.

As the Deputy will be aware, the Legal Services Regulation Bill 2011 does not make any provision in relation to the role

or status of "legal executives" nor is any such provision envisaged. Any extension of the scope of the Bill beyond that of "legal practitioners" as so defined in terms of practising solicitors or barristers would have to be considered separately at some future time if it were ever to become an agreed policy or legislative objective. Moreover, it must be acknowledged that while legal executives have a range of recognised functions they are not a homogenous group and tend to provide support in discrete areas of legal practise such as those of conveyancing, probate, commercial or family proceedings and to have a range of personal qualifications appropriate to performing the respective legal tasks concerned. As set out on the web-site of the Irish Institute of Legal Executives Ltd. in regard to such legal executives, "he/she is often entrusted with the practicalities of progressing a given legal transaction initiated by the practitioner". In very many instances, therefore, it is those Solicitors or other legal practitioners who are the principals of the legal practices or firms concerned who ultimately carry responsibility for the actions of their employee legal executives, including under the relevant legislative provisions and professional codes.

It is clear from the correspondence I have received from the Irish Institute of Legal Executives Ltd. that the scope of their proposals to confer legal status and a whole range of functions on such a category of persons is extensive and goes way beyond their current functions and those measures to be introduced under the Legal Services Regulation Bill. They relate inter alia to "a right of audience in the District and Circuit Courts, before tribunals and, subject to review, subsequently in all courts", and to the eligibility of

members for quasi-judicial and judicial appointments (e.g as District Court judges or members of Tribunals). These proposals also draw heavily from the regulatory and practise models of England and Wales which have separate and very distinct histories and do not always correspond to those of our jurisdiction nor to those set out under current Government policy in the Legal Services Regulation Bill 2011. As such, they are premature in a number of key respects and give rise to a range of substantive issues that cannot be addressed, in legislative terms, by merely adding a handful of provisions to this Bill.

While recognising that there may be additional benefits and efficiencies to be found for consumers and for the legal services sector in a more developed role for "legal executives" in the future, the very far-reaching proposals being made on their behalf at this time lie beyond the scope of the Legal Services Regulation Bill impinging, as they do, on aspects of the courts and the judiciary. Such proposals, including their constitutional and other substantive aspects, will need to be considered carefully and separately on their own merits at some future time if they are ever to become matters of determined Government policy for implementation. Others, including that of the profession of conveyancer, will come to be considered in due course by the new Legal Services Regulatory Authority. As recognised by the Irish Institute of Legal Executives Ltd, based on the experience of its own members, it nonetheless remains open to legal executives, who are so minded, to pursue other careers such as those of Commissioner for Oaths or solicitor or barrister by way of capitalising on their acquired legal knowledge, qualifications and experience.



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These are just SOME of what we do!

Campaign Launch



The Irish Institute of Legal Executives is delighted to learn of the announcement – (see Press Release below) – that one of our members, Deirdre Kelly, MILEX, Director of the Munster Council will contest the local elections for the Fianna Fáil Party in the West Cork constituency in 2014.

Best wishes and every success are extended to Deirdre.

Fianna Fáil Press Release

Deirdre Kelly added to FF ticket for 2014 local elections in West Cork

Dunmanway-based Local Area Representative Deirdre Kelly has been added to the list of candidates for Fianna Fáil to contest next year's local elections in the West Cork constituency.

The National Constituencies Committee for Fianna Fáil added Ms Kelly to the ticket as there was no candidate selected for the Dunmanway and surrounding areas following the recent selection convention.

"I was delighted to be added by the National Constituencies Committee to reflect the fact there was no Fianna Fáil candidate for Dunmanway and its surrounding areas," said Ms Kelly.

Deirdre worked abroad for a number of years before returning to Cork and now works as a Legal Executive in a law firm in Cork city, and is a Director on the Board of the Irish Institute Legal Executives. Deirdre also volunteers as a tutor with the VEC in Dunmanway and acts as a facilitator with Aware.

"Preservation of our local communities and facilities is hugely important to me and we need to fight to protect it," said Deirdre.

"Undermining local democracy and moving communities further away from the political process is not the answer but it seems that Minister Phil Hogan is unwilling to listen to the people on the ground, I find it more incredible considering the 'wallop' received by the Government in the Seanad Referendum.

"Fianna Fáil recently published a reform document with extensive proposals on empowering communities by

introducing radical reform of local government. The policy enhances supports for local businesses, including a new competitive funding pot for enterprise initiatives and new local credit facilities for SMEs. These proposals in effect focus on the need to strengthen local government as a core part of the wider transformation of the political system.

"I believe I have the determination, dedication and ability to represent the people of West Cork fairly and effectively and I look forward to meeting the people of the constituency over the coming months."

Left to right: - Arthur Griffin, Vice-President of Fianna Fáil, Senator Denis O' Donovan and Deirdre Kelly



Court Services Changes – February 2014

Jurisdiction of the Civil Courts to change on 3 February 07.02.2014 Litigation

The changes to the monetary jurisdictions of the Civil Courts provided for in section 2(1) and part 3 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 took effect on 3 February 2014.

From that date, the new limits of the civil jurisdictions will be:

- District Court – €15,000,
- Circuit Court in civil proceedings other than personal injury actions – €75,000,
- Circuit Court for personal injury actions as defined in section 2 of the Civil Liability and Courts Act 2004 – €60,000.

The commencement date of 3 February 2014 has been established by the Courts and Civil Law (Miscellaneous Provisions) Act 2013 (Jurisdiction of District and Circuit Court) (Commencement) Order 2013 (SI 566 of 2013).

These jurisdictional changes are accompanied by new

court rules, including the Superior Court Rules (Rules of the Superior Courts (Courts and Civil Law (Miscellaneous Provisions) Act 2013) 2014 (SI 16 of 2014)) and fees orders for all courts.

The District Court (Civil Procedure) Rules 2014 (SI 17 of 2014) make significant changes to District Court civil procedure, including the manner of commencement of such proceedings and the application of a new scale of costs. From 3 February 2014, a District Court civil proceeding must be commenced by the filing for issue and service of a 'claim notice' or PI summons (as appropriate), and this will remain valid for service for one year after the day it is filed.

The following new fees orders also operate from 3 February:

- District Court (Fees) Order 2014 (SI 22 of 2014)
- Circuit Court (Fees) Order 2014 (SI 23 of 2014)
- Supreme Court and High Court (Fees) Order 2014 (SI 24 of 2014)

50th Anniversary of the Chartered Institute of Legal Executives – (CILEx) UK

I attended the President's lunch in honour of the 50th Anniversary of the Chartered Institute of Legal Executives-(CILEx) UK on Thursday 6th June 2013 in Haberdashers' Hall, Smithfield, London (near The Old Bailey - Central Criminal Court). The guest of honour was the current Lord Chief Justice of England and Wales, (Lord Igor Judge).



Nick Hanning President of
CILEX (UK)

Nick Hanning, the current President of CILEx spoke first at the lunch. Nick is a CILEx Lawyer and Advocate and Partner in RWPS Law. Nick also chairs the CILEx Pro-Bono Trust. Nick talked about the Liberté, égalité, fraternité - the freedom, equality and brotherhood of the Legal Executive Profession which gave him the freedom to train as a lawyer when no other profession would.

The Lord Chief Justice, (Lord Igor Judge)

was the guest of honour and spoke next. By way of background he was born in Malta in 1941 and educated at Cambridge. He started working as a Barrister in 1963 and held previous positions as the Head of the Queens Bench Division of the High Court and Head of the Criminal Court. Now he is the current serving head of the English judiciary and it was very interesting to hear his perspective on the role of Legal Executives.

When he first began practising as a Barrister 50 years ago times were very different. There were very few females in the legal profession back then. Lord Chief

Justice Igor Judge spoke about the high esteem he holds Legal Executives and that he has always respected them from early on in his career, when Legal Executives were then the equivalent of Managing Clerks, and who he found had so much invaluable knowledge of legal practice and procedure.

He spoke about the current public criticism directed towards the legal profession and that little is said of the pro- bono work done by Legal Executives, Solicitors and Barristers purely for the public good.

It was a very interesting and enjoyable event and what struck me overall was how approachable everyone was. Despite being some of the most influential people in the legal services sector in the UK, there was no sense of elitism and a great spirit of collaboration between members.



The Lord Chief Justice Lord
Igor Judge

Yvonne Kennedy- MILEX
Director Munster Branch- IILEX

Munster Regional Branch- IILEX

We would like to take this opportunity to thank everyone who has helped and supported us in becoming established as the Munster Regional Branch. Having a Regional Branch is of the utmost importance. We are endeavouring to improve the status of Legal Executives and offer assistance to the members within Munster. We are also hoping to promote the role of Legal Executives. We cannot do this without everyone's input and ideas as this will

help us to move forward so please do not hesitate to contact us by emailing munsterregionalbranchiilex@gmail.com or munster@iilex.ie.

Rose Fitzell MILEX
Munster Branch IILEX

rfitzell@kmccarthsolicitors.ie

CONFERRING CEREMONY 2013 AT GRIFFITH COLLEGE DUBLIN

Diploma in Legal Studies and Practice - HETAC Level 7 - (QQI)

The Conferring Ceremony of graduates of the Diploma in Legal Studies and Practice - (QQI) took place at the Conference Centre in Griffith College Dublin on 13 November 2013. This Course is delivered by Griffith College Professional Law School and run in conjunction with the Irish Institute of Legal Executives (IILEX).

Representing the Irish Institute of Legal Executives on this occasion were, Patrick Courtney (President), Gabriel Canning (Chairman), Mary O'Dwyer (Director of Communications) and Frank Crummey (Fellow and Hon. Life Member).

A total of 26 students graduated with Diplomas in Legal Studies and Practice - (QQI) and were formally presented with their parchments by the President of Griffith College, Professor Diarmuid Hegarty who congratulated each on their great achievement and wished them every success and happiness in their new lives ahead. Students who were not in attendance on the day were conferred in absentia.



Chief Justice Denham with
Professor Diarmuid Hegarty
President of Griffith College

The Irish Institute of Legal Executives – (IILEX) were delighted to learn of the high number of students graduating and thus signifying a great interest in the pursuance of the Diploma in Legal Studies and Practice (QQI) which for many graduates is a pathway to other legal courses and ultimately maybe careers as Solicitors and Barristers.

A very special moment was witnessed by all during the Conferring Ceremony when Chief Justice, Mrs Susan Denham of the Supreme Court was conferred with a Distinguished Fellowship Award by Griffith College. This award was presented by Professor Diarmuid Hegarty, President of Griffith College who congratulated her and made reference to her very distinguished and outstanding career in the legal profession. Chief Justice Denham thanked Professor Hegarty and Griffith College for bestowing on her with such an honour of which she was deeply grateful to receive.

Among the other distinguished guests present were, The Hon. Mr. Justice Roderick Murphy - (retired Judge of the High Court), Professor Nigel Healey, Pro-Vice Chancellor of Nottingham Trent University, members of Diplomatic staff from various Embassies as well as various Directors' of Griffith College

Following the Graduation Ceremony, Directors' of IILEX were delighted to have the opportunity to meet and speak with, Professor Diarmuid Hegarty, President of Griffith College as well as academic staff who included, David Langwallner, Dean of the Law Faculty, Siobhán Leonard, Head of Law Faculty, Ronan Fenelon, Director of the Law School and Karen Sutton, Lecturer in the Law Faculty.



Frank Crummey, Chief Justice,
Mrs. Susan Denham and Niamh
Brunton

Additionally, it was marvellous to meet with and congratulate the graduates on their very special day as well as speaking with their proud families and friends alike some of whom had travelled long distances to be present on the day.

The entire Conferring Ceremony was a very professional and memorable event and to be present at such was a tremendous honour and very deeply appreciated. Compliments are extended to all who worked so hard on the logistics required towards organising this entire event. Well done all.

Many thanks to Professor Diarmuid Hegarty, President of Griffith College for the very kind invitation and hospitality extended on this occasion to Directors' of the Irish Institute of Legal Executives. - (IILEX).

Mary O'Dwyer IILEX
Director of Communications-IILEX
Editor of the Official Journal

Group photograph



CHANGING OUR CONSTITUTION

– THE ROLE OF THE COURTS

The theory and practice of law are often seen to represent polar opposites of a spectrum and the gap between them can be a difficult one to bridge. That said those who have participated in the Diploma in Legal Studies and Practice (DLSP), a programme specifically designed for Legal Executives and which is colloquially known as “The ILEX Programme”, are in a better position than most to marry the day to day realities of legal practice with the ever changing nature of Irish jurisprudence. This HETAC accredited programme is delivered by Griffith College onsite in Dublin three nights per week, and is also available online for distance learners. Attendance for exams and workshops is also facilitated at Griffith College Cork. As a lecturer on four of the twelve modules on this programme I want to take the opportunity to share with you some of the valuable material we will be considering this year.

One of the key challenges faced by any legal practitioner is to remain up to date with changes in the law, and this is no less so in the area of Constitutional Law. In this context the Constitution, as our fundamental law, deserves special attention and all the more so in this time of intense change in the text of the Constitution itself. Never in living memory has there been so much talk of Constitutional change, and with the advent of the Constitutional Convention this is likely to remain the case for the foreseeable future. As such it seems appropriate to consider the role of the Courts in managing the Referendum process.

The question of the Courts intervening in the process of holding a Referendum is a vexed one, and for the most part they have regarded this as a solemn exercise of the sovereign power of the people with which they should not interfere. In a number of cases litigants have attempted to have the Courts interfere with the Referendum process in a variety of scenarios. In *Roche v Ireland*, the applicant petitioned the High Court to restrain

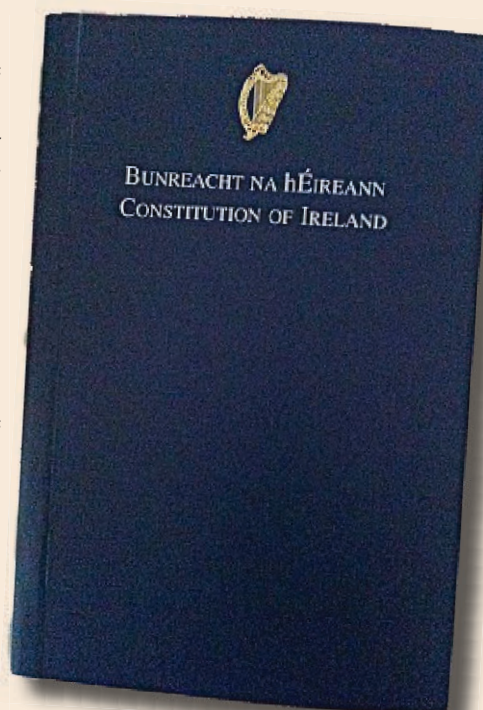
the holding of a Referendum on the basis that it was so vaguely worded that it rendered him unable to vote, thus removing from him his right to vote. The High Court refused the relief sought and commented at the time on the “solemn legislative process” engaged by a Referendum, one in which the Courts had no jurisdiction to interfere. In *Slattery v An Taoiseach*, the applicant was seeking to restrain the holding of a Referendum on the Maastricht Treaty, the Supreme Court per Hederman J, in rejecting the reliefs sought, noted that when the constitutional and legislative process to change the Constitution have commenced then the Court has no jurisdiction to interfere, once the requirements of the Constitution itself have been complied with.

These cases show the reluctance of the Courts to intervene, however, the comments of Hederman J above presciently point to when the Courts may intervene, and specifically they have only been willing to do so thus far when the Constitutional requirements in the conduct of the Referendum itself have been breached. This arose first in *McKenna v An Taoiseach* (No. 2), where there was a challenge to the behaviour of the Government in relation to a Referendum to remove the ban on

divorce. The Supreme Court, per Hamilton CJ, observed that where the Oireachtas behaves in clear disregard of their constitutional obligations then the Court can and must intervene. In this case the Government had expended public money on a one sided campaign in support of the Referendum. Considering this the Chief Justice noted that the people have the right to decide on the issue before them in a Referendum without unauthorised interference in a free and democratic manner. He continued that the interference of the Government was at variance to the principle of equality which is at the heart of our democratic society. Importantly the Court was not pronouncing on the validity of the proposed Referendum, only on the behaviour of the Government in relation to it. While the Government will support a Referendum, and indeed their various political parties may mount campaigns in support of it, they must not go so far as expending public money in support of that campaign.

The Court did not restrain the holding of the Referendum in *McKenna*; however, the eventual outcome was challenged in the case of *Hannafin v Minister for the Environment*. The Court refused to overturn the eventual outcome on the basis that there was no evidence, which would be needed; that the poll had been affected, that the People did not vote of their own free will, and moreover the People would potentially have been aware of the Government's misconduct at the time of voting. While this judgment does not rule out the possibility of overturning the outcome of a Referendum as a result of errant Government spending, it does place a high bar in front of any litigant seeking to do so, which in many respects is related to the view of the Court as to the solemn legislative process engaged in by the Sovereign People.

Similar issues arose last year in the case of *McCrystal v Minister for Children and Youth Affairs*,



which concerned a Government campaign and website at the time of the so called "Children's Referendum". Denham CJ for the Court noted that the effect of McKenna was to require that all Government publications surrounding a Referendum must be fair, equal, impartial and neutral. In this case the booklet, website and advertisements published by the Minister with the use of public funds were not fair, equal, impartial and neutral, and this amounted to a clear disregard of the McKenna principles. Again the Court was pronouncing on Government behaviour, and it remains to be seen if any challenge to the outcome of the referendum itself would be successful in light of the Hannafin judgment.

Two further issues arise in relation to the Courts approach, first the position of the Referendum Commission, and second the requirement for equitable broadcasting of the "for and against" arguments. The Referendum Commission, a statutory body, is charged with the provision of fair and impartial information on a proposed Referendum, a function which can clearly be traced back to the McKenna judgment. Last year in *Doherty v Referendum Commission*, the High Court was asked, on the eve of the Fiscal Treaty Referendum, to rule on a challenge to statements made by the Chairperson of the Referendum Commission and on the Commission's website. The

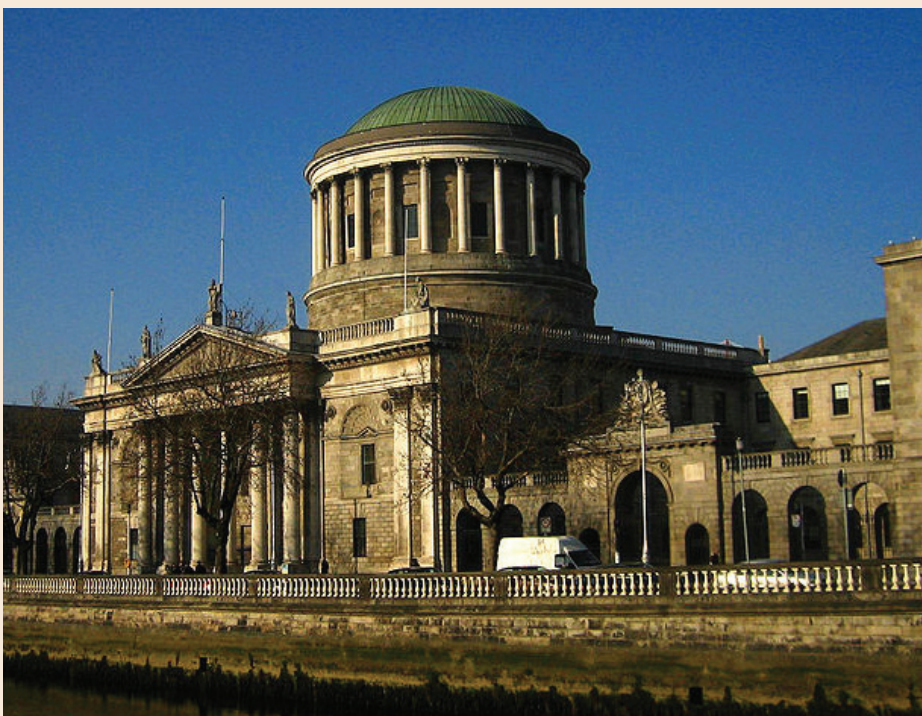
Court held it did have the power to review statements made by the Commission in accordance with the McKenna principles which require fairness and impartiality. In refusing the challenge the Court observed that the Commission's function was to prepare general explanations to assist the public and its statements should not be analysed for the absolute precision and accuracy that would be expected of a constitutional law textbook. Furthermore they would only review a statement of the Commission where the statement was manifestly inaccurate or misleading and where such statement was likely to materially affect the outcome and the Courts must otherwise refrain from involvement in the Referendum process.

Finally in terms of broadcasting, *Coughlan v BCC* (Broadcasting Complaints Commission), concerned the role of the Commission in ensuring fairness in the broadcast of current affairs. A complaint, pursuant to coverage of the Divorce Referendum, that the Yes side was given much more coverage than the No side, was rejected by the Commission. The Court overruled that decision and in doing so noted that time must be allocated fairly to each side, and it had not been in this case. This case has widely been interpreted as requiring broadcasters to record the time allocated to each side of the argument, and

as a result ensure an equitable broadcast of both points of view. Notably in both the "Children's Referendum" and the "Court of Appeal Referendum" there has been a degree of variance on this point in light of the absence of a coordinated and significant 'No' campaign. Indeed the Broadcasting Authority of Ireland in its guidelines note that equity of air time is not the only measure of fairness, and as a result one would be justified in saying fairness and impartiality are required, but equity of airtime is not.

In conclusion when it comes to a Referendum the Courts are jealous guardians of the role of the Sovereign People. This manifests itself in two ways, firstly they will not allow litigants to use the Courts to prevent the People from considering a Referendum proposal, and secondly once that proposal emerges they will not permit the Government or Broadcasters to interfere with the right of the People to fair and impartial information to inform their solemn democratic duty.

Issues such as these, and many others, are considered in the DLSP programme, and I would like to extend my gratitude to the many students I have met on this programme for their genuine interest in the law, and their generosity of time and effort in working with me to explore so many vital issues in Constitutional Law.



Unreported, High Court, 17 June 1983 (Carroll J)
 [1993] IR 286
 [1995] 2 IR 10
 [1996] 3 IR 321
 [2012] IESC 53
 [2012] IEHC 211
 [2000] 3 IR 1

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'I have a dream'

a speech with lessons for today

The 50th anniversary of Dr Martin Luther King Junior's "I have a dream" speech is an opportunity to reflect on a message which is just as relevant now as it was when it was first delivered on the steps of the Lincoln Memorial on 28th August 1963.

Dr King made history that day when he deviated from his script and outlined his dreams of freedom and equality arising from a land of slavery and hatred.

Five decades on and parts of his dreams have not been realised, not just in the United States but also here in Ireland.

Dr King envisioned a time when 'little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers'. However when we look at the rapid changes in our own country over the past 15-20 years can we honestly say that they have been matched with proper integration.

In the past 12 months the Immigrant Council of Ireland has responded to 120 incidents of racism and provided support, advice and assistance to victims.

While the incidents cover a broad spectrum, it is worth noting that more than 1-in-10 (11%) involved actual physical violence while a further 7% involved the threat of violence. Such acts were unacceptable when Dr King spoke and they are unacceptable now.

Often our reports on racism are dismissed with some people arguing 'harmless' or 'innocent' remarks said in the heat of the moment are blown out of proportion. However, instead of looking at these from the point of view of the perpetrator we would ask that they are examined from the view of the victim.

Words spoken in anger or even in jest delivered over a sustained period can create an air of intimidation, heighten division and have a psychological impact.

No-one is arguing that Ireland is a racist country. On the contrary we have escaped the right wing extremism which has re-emerged in large parts of Europe. However, there are warning signs which do require closer examination, changes in policy and a more robust response.

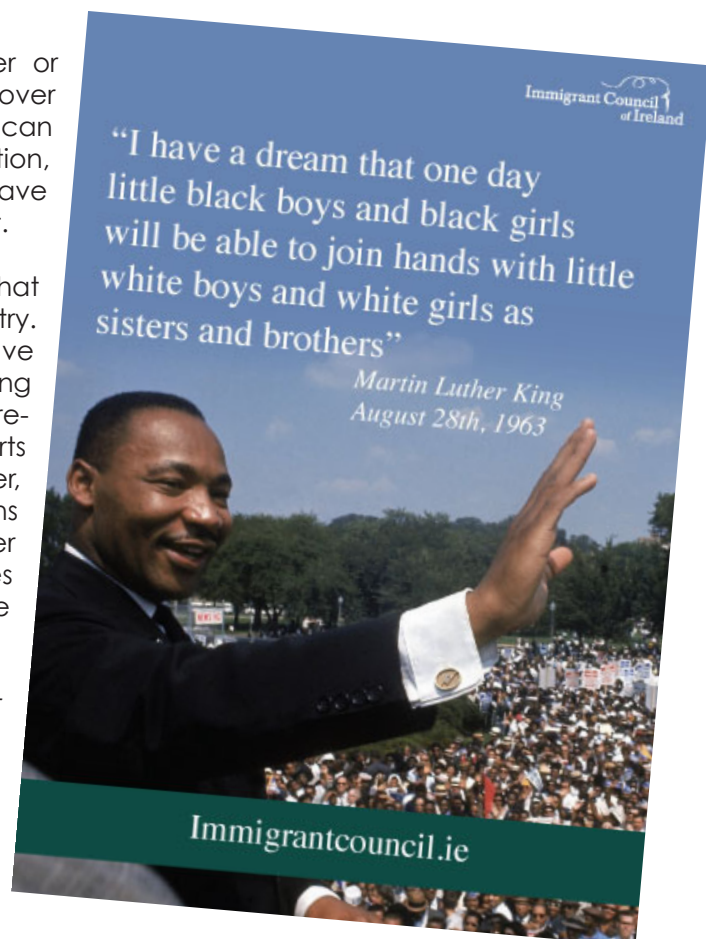
Earlier this year in order to overcome barriers which were preventing people from coming forward to report racism we, together with public transport partners, mounted an extensive awareness campaign.

The impact was immediate, we saw the number of reported incidents rise from an average of one a week to eight a week at the start of this summer. The figures speak for themselves and show that there is something amiss.

We have made a number of recommendations on the back of the figures, including the establishment of a national database which will quickly highlight policy areas which require action.

We are also calling on agencies of the State to introduce procedures to ensure that a message goes out loud and clear that there is no acceptable level of racism.

At the Immigrant Council we are also working with politicians, the Gardaí, Dublin City Council and many others to ensure that each has a robust response to the problem, and ultimately to ensure



the realisation of Dr King's dream.

Denise Charlton



Denise Charlton,
Chief Executive,
Immigrant Council of Ireland
2013

Magnificent performance by young musicians in a Capetown Township, South Africa

I will always remember the Irish South African Association - (ISSA) St Patrick's Day dinner of 2011. As always, St Patrick's Day in Capetown is a buzz with all things Irish, from radio and TV broadcasts to greening of any or everything possible. I have the privilege of being on the Council of the ISAA and needless to say I am expected to be in the thick of things on St. Patrick's Day.

In 2011, we had lunch as usual at the Irish Ambassador's residence, which was followed later that evening (for the first time) with the "Greening of Table Mountain". This first and unique illumination of the great Table Mountain was performed by none other than our ex-president, Mary Robinson, and no better lady to represent the "Green Isle". We in the Irish South African Association were holding our annual dinner at the prestigious "Pigalle Restaurant" in the heart of Capetown, and some 350 people of Irish and South African origin were there to celebrate in style.

main table, accompanied by a piper. Just as we reached the table and before taking our seats, we were to be entertained by a drumming band, known as Limited Edition Drum Corp.

To the accompaniment of Irish music these young boys commenced their performance, and within minutes the whole assembled party people were on their feet and clapping and cheering to the music. Brendan McMahon turned to me and asked as to where these wonderfully skilled young people come from, and commented that he could listen to them all night. I had never seen or heard anything quite like this band myself, their performance was electric. The skill of their drumming combined with routine of the performance, and their beautiful costumes just made the whole act so magical. It reminded me of the first time I had seen the "Riverdance" routine on TV during the Eurovision finals in Dublin sometime ago. It was a half hour of absolute entertainment and the more

Alas, all good things have to end, and as these wonderful young boys exited the building, the louder the chants and roars for "More" by the audience, which went on for quite sometime. They were the talk of the night. The members of this band are all school-going boys living in Manenberg (a township in Capetown) and are trained by Yaggie with the assistance of Abdul Sampson and Smiley Williams, whom I have befriended. When the show is over and the drums and costumes are put away and locked up in their small trailer, the boys and their mentors return to their humble abodes in the township. I have had the pleasure of being invited to two more of their performances and again they had the audiences in awe of their skill.

However it takes money and sponsorship to maintain such bands, and in the times we live, this has become quite a struggle to survive. In the work I do in South Africa, I have been fortunate to know some enterprising people who are willing to put their hands in their pockets to support worthy causes, and I have twisted a few hands along the way.

I am personally delighted and so grateful that the Irish Institute of Legal Executives – (IILEX) has kindly decided to make a financial donation to Limited Edition Drum Corp. via the Irish South African Association.

Thanks to IILEX and others this band will have a future, and indeed, at our next St Patrick's Day celebration Yaggie and the boys will give an extra drum roll for IILEX.



Our ISAA president, Maureen Sharpe, and I were at the door to greet our Irish Ambassador, Brendan McMahon, and his charming wife, Irene, and their party and escort them to the

skilful the drumming and the more adventurous their routine became, the more excited and demanding was the reaction of their captivated audience.

**Fintan Hudson, FILEX
BA Law**

**Director of IILEX
International Ambassador of the Irish
Institute of Legal Executives**

THE HONOURABLE MR JUSTICE KEVIN FEENEY

The legal family in Ireland lost one of its most able and popular High Court Judges in August 2013.

Judge Kevin Feeney died unexpectedly in Cork at just 61 years, leaving his wife Geraldine and their children Kevin, Andrew, Peter and Barbara totally lost at his passing.

He was called to the Bar in 1973 and appointed Judge of the High Court in 2006. He also chaired the Referendum Commission last year and also managed the Criminal Assets Bureau case list.

Tributes were paid by many of his legal colleagues including Chief Justice Mrs. Susan Denham who said his death was a great loss to the state. She acknowledged his many great qualities including a profound intellect, unique skills and courteousness in relating to people.

To his wife Geraldine and his children the Institute extends its sincere condolences on their loss.

May he rest in peace

Our Shackled Diaspora: Irish Slaves & Convicts



As a nation we lament the loss of Irish from our shores. Emigration is as prevalent present day as it has been historically, being a not uncommon solution in times of economic pressure. We are well known for our melancholy ballads and prose and fireside sean nós of the loss of loved ones who might never return to the shores of Ireland. Lest we forget, however, those loved ones forced from their homeland throughout the centuries in Ireland. Those who found themselves shackled and shipped to far off lands, their descendants now researching their Irish ancestry in the hopes of establishing links and of digging up the deeply buried genealogical roots to their family trees.

Many historians indicate that slavery originated in Ireland with the Proclamation of James II in 1625 permitting the sale of 30,000 Irish prisoners as slaves to the New World and, thereafter, intensified during the Cromwellian era continuing until its eventual abolition in 1833. Irish slavery is a largely forgotten period in Irish history. Arguably, because it has been overshadowed by African slavery or perhaps simply forgotten because it is considered to be shameful or, maybe neglected because of its marginal importance in Irish history. According to Richard S. Dunn in 'Sugar and Slaves The Rise of the Planter Class in The English West Indies, 1624-1713' a census of Montserrat in the Caribbean in 1636 showed that 69% of the total population were Irish. This figure is indicative of the sheer volume of Irish that were being transported as slaves. Very little original and primary material is available to research in Ireland on the matter of slavery as any records that did exist were destroyed in the fire of the Public Records Office in Dublin in 1922.

Prior to the 1625 Proclamation, slavery within the British Empire was not a new concept as the notorious Vagrancy Act of 1547 demonstrates. This Act stated that any able bodied person who was out of work for more than 3 days should be branded with the letter 'V' and sold into slavery for two years or, for life for a multiple repeat vagrancy offender and, in severe cases, punishable by way of death. However, little of this Act is ever mentioned by Historians due to its short life span. The legislation

was repealed shortly thereafter in 1550 by Parliament due to its recognisable severity. There is no evidence as to the policy ever being enforced. It is, however, acknowledged as an Act imposing slavery as a legal penalty. It must be noted that this Act was not solely directed at the Irish but, also applicable to the English vagrants as a means of social and economic control in a time of mass unemployment.

Author Sean O'Callaghan in 'To Hell or Barbados: An Ethnic Cleansing of Ireland', wrote of the historical Irish rebellion of 1641, and of the Cromwellian invasion of Ireland in 1649 as being the precursor of the birth of the Irish slave market in the 17th Century. The latter, having the dual objectives of revenging the massacres in 1641, bringing Ireland under Commonwealth control and thereby sating Cromwell's paranoia that the Irish would affiliate with the Scots and rise up against them in rebellion again. One chapter of O' Callaghan's book is aptly entitled 'The Effusion of Blood', a term used by Oliver Cromwell in his demands for surrender. Cromwell during this period in Irish history sent some of those Irish who managed to escape the widespread massacres with their lives to the 'Tabacco Island' (Barbados), a fate the very same man admitted was little inferior to death, 'The question of the destruction of life; or of that which is little inferior to it, to wit, of banishment...' Cromwell's campaign in Ireland lasted nine months and during that time he reduced the Irish to submission. This did not end Cromwell's work of sending the Irish from their homeland. The decade that followed saw 50,000 innocent people sent to Barbados as slave labour.

The Act of Good Affection of 1652 allowed for the complete ethnic cleansing of Ireland. The richest provinces of Munster, Leinster and Ulster were to be planted by English settlers while the Irish were forced to transplant to the most infertile and poorest province, Connaught. Those who failed to transplant themselves into Connaught within six months were to be attained of high treason and sent to America or some other parts beyond the seas. Those thus banished who returned were to suffer the pains of death without the benefit of clergy. On the 24th August, 1652 there begun a thorough and ruthless transfer of Irish

people to overseas colonies vesting ultimate power to the Commissioners of Ireland to seize and transport anybody deemed dangerous to the Commonwealth. Encompassed in this category of persons were women and children left destitute or orphaned. There was a particular demand for young women still of birthing age. From 1641 to 1652, over 500,000 Irish were killed by the English and another 300,000 were sold as slaves. Ireland's population fell from about 1,500,000 to 600,000 in one single decade.

During the 1650s, over 100,000 Irish children between the ages of 10 and 14 were taken from their parents and sold as slaves in the West Indies, Virginia and New England. In this decade, 52,000 Irish (mostly women and children) were sold to Barbados and Virginia. Another 30,000 Irish men and women were also transported and sold to the highest bidder. In 1656, Cromwell ordered that 2000 Irish children be taken to Jamaica and sold as slaves to English settlers.

The Irish women were especially prized by the sugar planters as sex slaves 'having had only Negresses and Maroon women to solace them'. Irish slaves were sold at a lesser value than African slaves. African slaves sold for 50 Sterling compared to their Irish counterparts who sold for no more than 5 Sterling. The white skin of the Irish fared badly under the Caribbean sun and many died as a result of the heat. Planters began to breed the Irish women (in some cases girls as young as 12 years of age) with African slaves in order to increase the value of their slave holdings with darker skin offspring born into a life of slavery. Those offspring of indentured servants were deemed to be slaves for life and the women were less inclined to leave their children once their period of servitude was complete.

Indentured servitude is a term often used to describe Irish slavery and is often debated amongst Historians. The authors Don Jordan and Michael Walsh in 'White Cargo The Forgotten History of Britain's White Slaves in America' examine of concept of indentured servitude as merely an exploitation by the British Empire of their 'surplus' population. In addition to those who were forcibly exiled or sold, others were duped into servitude by the promise of free passage to the Americas in

exchange for the rights to their labour for a number of years. Indentured servitude could have been anywhere from three years to life but, amounted to nothing more than enslavement. The authors in this book dispel the notion that indentured servitude was anything but enslavement. They acknowledge that black slavery had atrocious aspects that white slavery did not but, argue that they suffered many similar horrors, of which, many were first experienced by the whites.

Other unwilling participants in the Irish slave trade were those kidnapped and abducted. Aside from the gangs of kidnappers roaming the streets and countryside, those living on the coast feared abduction by pirates also wishing to cash in on the slave economy. 'The Stolen Village, Baltimore and the Barbary Pirates' by Des Eskin tells of the village of Baltimore in West Cork being sacked by pirates in 1631, capturing almost all of the villagers condemning them to a life of slavery far beyond their homeland. Controversially, in this instance, the pirates were on a slaving mission from Africa for white slaves. Though notably, however, the village was made up of almost entirely English settlers and conspiracy theorists argue that the invasion and abduction may have been a pre-planned act of ethnic cleansing of the English settlers with a view to restoring the village to its original Irish owners.

Ironically, opportunistic Irish merchants, seamen and financiers were also amongst the most enthusiastic slave traders of the eighteenth century and had a complicitous involvement in the slave market, distinguishing themselves as competitive players in human trafficking. Many Haitians and West Indians can trace their ancestry to slaves transported on Irish owned ships. Proof, maybe, that the Irish have not always been the victims of history.

In 1833, the British House of Commons passed the Slavery Abolition Act which set in motion the eventual abolition of slavery within the British Empire. The slave trade had been abolished in 1807 but it had taken 26 years to actually effect the emancipation of slaves. Of those 46,000 applicants who applied for compensation for loss of slave trade to the British government arising from this abolition, 100 had addresses in Ireland.

The exact origin of the use of transportation of convicts as a penal measure is considered to be obscure. Rena Lohan, Archivist of the National Archives recognises that it appears to have developed in the sixteenth and seventeenth centuries during the

Cromwellian times for the purpose of ejecting the Irish from Ireland as well as by means of solution to the severity of the death penalty as punishment for capital offences. The relevant legislation is the Habeas Corpus Act of 1679 which legalised the already common practice of pardoning criminals on condition that they accepted transportation to the colonies. As a result of this, transportation became the government's response to many crimes - 'A man is vanished from Scotland for a great crimes, from England for a small one and from Ireland for hardly any crime at all'. Anon. Observer.

Following a sentence of transportation, the convict was returned to the local or county Gaol until preparations were made for transportation. Those convicts situated in the southern counties were detained in Cork City Gaol. Those brought to Dublin were detained in Newgate and Kilmainham Gaols, Newgate being notorious at the time for its deplorable conditions. From 1836 a depot was provided in Dublin for female convicts and temporary depots at Smithfield in Dublin and Spike Island in Cork were opened to take males. With the War of Independence and Britain's loss of colonies in 1775 transportation to the American colonies was discontinued and a new destination for convict transportees became necessary. Prison hulks became the temporary solution to prison and Gaol overcrowding in the interim and the first convicts were shipped to Australia in 1787. Between 1719 and 1772 about 30,000 convicts were transported from Britain to the American colonies, of those between 7,000 and 8,000 were Irish.

Between 1787 and the termination of the system in 1853, Australia received over 160,000 convicts, 26,500 of whom sailed from Ireland. Often the female convicts were permitted to bring their children, as could some fathers in certain cases. Though most records were destroyed in the fire of 1922, the National Archives of Ireland does hold an abundance of administrative primary source material for research purposes. These include the following:

Chief Secretary's Office Registered Papers
Official Papers
Government Prisons Office Papers
Convict Letter Books
Transportation Registers
Prison Registers
Convict Reference Files
Prisoners Petitions and Cases
Free Settlers Papers
Transportation Database

With the Penal Servitude Act of July, 1857 the sentence of transportation was abolished. It was argued that the sentence did not deter crime and that the British Empire would be best served by using convicts as gang labour on public works. Transportation had become expensive and the government sought cheaper solutions to dealing with crime. Many colonies began refusing to accept convicts as they were attracting emigrants who could carry out the labouring work instead. The last transportations took place in 1868.

So, many of those tanned and dark skinned faces that we meet on our travels have ancestral links back to Ireland as a result of centuries of forced slavery and convict transportation. These are Irish ancestors who left in chains and not by choice and our Irish diaspora often historically forgotten about. Many of us are the surviving lineage of the Irish who survived the atrocities of Cromwell and the virtual ethnic cleansing of Ireland. For many attempting to trace their family genealogies back to Ireland it is a long and arduous hunt through the documentation that does exist in archives but, for those who strike gold it means reclaiming their Irish identity and family roots at long last.

Aileen Jennings BA, MILEx

Further Reading:

Richard S. Dunne, Dunn, Sugar and Slaves The Rise of the Planter Class in The English West Indies, 1624-1713, (1972), UNC Press, North Carolina.
Seán O' Callaghan, To Hell or Barbados: The Ethnic Cleansing of Ireland, (2000), Brandon an imprint of Mount Eagle Publications, Dingle, Co. Kerry.
Des Eskin, The Stolen Village, Baltimore and the Barbary Pirates, (2006), The O'Brien Press Ltd., Dublin.
Joe O' Shea, An Account of Murder, Mutiny & Mayhem, Concerning the Affairs of the Blackest-Hearted Villains from Irish History, (2012), The O'Brien Press Ltd., Dublin.
Don Jordan and Michael Walsh, White Cargo The Forgotten History of Britain's White Slaves in America, (2007), Mainstream Publishing Company (Edinburgh) Ltd., Edinburgh.

Websites:

The National Archives of Ireland - www.nationalarchives.ie
Claim a Convict - www.claimaconvict.net
Legacies of British Slave-Ownership - www.ucl.ac.uk/lbs/

Would you like to tip the scales in your favour?



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 a regulatory body, which in conjunction with Griffith College based in Dublin and Cork provide a system of legal training and examination for the purpose of achievement of recognised professional qualification such as the current Diploma in Legal Studies and Practice (QQ1) for those engaged in legal work.

Applications for enrolment for membership must be made on the prescribed application form which available from the Institute's registered office address:

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

as well as Institutes Website at:
www.info@iilex.ie

All relevant information relating to the Irish Institute of Legal Executives – IILEX as well as membership is also available on the Website The Irish Institute of Legal Executives would be delighted to hear from you in the near future.

You need us for direction
We need you for strength and resources



Irish Institute of Legal Executives

For an application form visit www.iilex.ie
or contact 01-890 4278 or info@iilex.ie

GRIFFITH COLLEGE CORK

CONFERRING CEREMONY 2013

DIPLOMA IN LEGAL STUDIES AND PRACTICE (HETAC) Level 7

The Griffith College Cork Conferring Ceremony took place in the Chapel of Griffith College Cork on Friday 15th November 2013 at the College's new campus on Wellington Road, Cork.

Directors representing IILEX in attendance were-, Patrick J Courtney - President IILEX, Gabriel Canning – Chairperson IILEX, Frank Crummey Fellow, Hon. Life Member IILEX, and Deirdre M. Butler – Secretary Munster Council IILEX.

Other dignitaries included Deputy Lord Mayor of Cork Councillor Lorraine Kingston; David Fitzgerald CPA Training Manager; Professor Diarmuid Hegarty, President of Griffith College, Paul Pierse - Programme Coordinator, Professional Law School Griffith College Cork along with Directors and staff of Griffith College.

Professor Diarmuid Hegarty, President of Griffith College welcomed everyone to the special occasion – congratulating graduates on their achievements in their respective courses and wishing them every success and happiness in their new life ahead. Deputy

Lord Mayor, Councillor Lorraine Kingston also addressed attendees congratulating graduates and their guests alike.

Diploma in Legal Studies & Practice (QQI) was presented to the following: -Tara Barron, Satires Barry, Gillian Dwane, Keeley Hegarty, Emma Jayne Horrigan, Michelle Keohane, Chole McCarthy and Kacek Sulej..

Tara Barron was presented with the Frank Crummey Perpetual Cup by Frank Crummey for her achievement in Legal Studies & Practice.

LLB (Hons) in Irish Law (NTU/QQI) was presented to the following: -Nathan Bennett, John Cassidy, Caroline Clancy, Greg Power, Katie Stevens, and Joanna Wells.

LLM in International Commercial Law (NTU/QQI) was presented to the following: - Stephen Costello, Sinead O'Dwyer and Rosentale Ilze.

Law Student of the Year went to Joanna Wells – LLB (Hons) in Irish Law.

A reception was held for graduates and their guests in the



Professor Diarmuid Hegarty , President of Griffith College, Frank Crummey (Hon. Life Member IILEX) and Tara Barron recipient of the Frank Crummey Perpetual Cup

Imperial Hotel, South Mall Cork after the conferring ceremony. Both conferring ceremony and reception were a huge success

**Deirdre M. Butler IILEX
Secretary
Munster IILEX**

Professor Diarmuid Hegarty, President of Griffith College, and Academic staff of Griffith College Cork, some Students and IILEX Directors



DEVELOPMENT OR EXEMPTED DEVELOPMENT



Necessity for planning permission

Planning Permission is required in respect of any development of land, other than exempted development & development commenced before October 1, 1964. (s 24 of the Act of 1963).

The Local Government (Planning and Development) Act and subsequent Planning & Development Regulations declare certain forms of development to be "exempted development", i.e. development for which no permission is required.

There are two kinds of development, "Works" are defined in the Act as including: "any act or operation of construction, excavation, demolition, extension, alteration, repair, or renewal" - and "Material change of use" is the material change in the use of any structure or other land.

Gunnera Tinctoria Amongst other things

Mayo County Council has implemented a project to investigate the most effective means of controlling the growth and spread of *Gunnera tinctoria*, commonly known as Chilean or giant rhubarb (but not related), in the county. Sometimes called "poor man's parasols" because the large leaves can be used as umbrellas. *Gunnera* has thrived on Achill Island for up to one hundred years and is now naturalised in the Achill blanket bogs. *Gunnera* an invasive alien plant is spreading and damaging the countryside.

Mayo County Council are trying to help control the invader! Introduced from southern Chile for its handsome architectural leaves, this megaphyte

is easily cultivated, adds a dramatic element to gardens with its 4 to 8 foot wide leaves and unusual, spiny flower stalks. A tropical species originally from the forests of Central and South America, thrives in climate zones if planted in a sheltered spot away from drying winds and salt spray. Often found in historic house gardens in Ireland. Charles Darwin described *Gunnera* as having "a very noble appearance". Amongst the species are those from the Lost Gardens of Heligan.



Amongst other things in the landscape of Achill Island in County Mayo in the midst of the *Gunnera* a new structure arose, "on Friday, November 23, 2011

when over 30 articulated trucks arrived on Achill Island", according to Edwin McGreal of The Mayo News, "carrying a collective load of concrete to build what has become known as the island's own version of England's famous Stonehenge". "The imposing structure was completed, towering nearly 15 feet from its base, 30 metres in diameter and a circumference of close to 100 metres, high on a hillside above the village of Pollagh on Achill Island and was built without any planning permission". "The owner an Achill native, describing it as 'an ornamental garden' but Mayo County Council rejected this.

The High Court and An Bord Pleanála agreed with the council and after lengthy court and planning hearings the owner was informed he must take it down. It still stands strong on Achill Island."

Some feel "it should not be taken down as it could generate tourism for the island".

Others believe "it is a work of genius, from an engineering point of view, and if left standing it will still be standing strong in 5,000 years, continue to pose questions and generate debate, and the authorities should accept any retention planning permission application. The purpose of the project is still uncertain, but a friend of the owner has described it as a 'tomb for the Celtic Tiger'".

Development or exempted development

The question is... ?

Inter alia

"Whether a scheme comprised of certain works and uses is or is not development or is or is not exempted development at Slievemore, Dooagh, Keel East, Achill Co. Mayo, Ireland.

When notice to cease works was served by the local authority on Saturday following a High Court injunction, twenty piers had been erected. By Monday, when works were ceased, officials noted six more. The concrete lintels and piers were delivered precast and trabeated on a ground beam cast thirty six metres in diameter over a November weekend in 2011 on commonage at Slievemore, Dooagh, Keel East, Achill Co. Mayo, without the benefit of planning permission. The stoney service road of the unauthorized development offers a tidy serpentine procession, with a raised bank forming the circumference in cut and fill. At the centre remains a rough island of virgin bog, displaced quartz glistening in the peat spoil. Drawings show an unbuilt central column 5.5 metres high in a semi-circular colonnade offset 6.73 metres within the peristyle, indicated 4.2 metres high and 1 metre deep, surrounded by an earth bank planted in hazel with, curiously, a heat pump. The works are described as a garden ornament. The owner/occupier, a native of the island, defended the works as a 'place of reflection' and an exempted development within the meaning of the Planning and Development Regulations 2001. He spent three days in jail for contempt of court.

On 6 December 2011, the feast day of St. Nicholas of Myra, patron saint of owners of property and others, the local authority received an application from the owner/occupier for a declaration as to whether the works were exempt from the requirement of planning permission. The authority requested drawings and a description of its use. The planning authority determined that the subject was development and was not exempted development. The owner/occupier then referred the declaration to the Board of Appeals. His referral advanced arguments that the works were exempted by planning law with reference to certain types of development, *inter alia* the laying out and use of land as a park, a private open space, an ornamental garden, a roadside shrine, a lighthouse, beacon, buoy or other aid to navigation on water or in the air, or incidental to the use of a burial ground, churchyard or monument, or indeed roofless cubicle, open loose yard, self-feed silo, feeding apron, assembly yard, milking parlour or structure for the making or storage of silage or that of a similar character or description, having an aggregate gross floor space not exceeding 200 square metres. He concluded that the structure in question does not have a floor area, is not enclosed and is roofless and circular so it does not have a length. He claimed it unimportant what purpose it serves.

The Board of Appeals inspector visited the works on 18 April 2012. According to Meteorological Office records there was six millimetres of precipitation over the day, with a temperature range from six to eleven °C with relative humidity of 86%. There were seven hours of daylight. He describes his findings in his report reference number 16. RL2965: 'The works in question are on Achill island. They occupy an elevated position in the peatland to the north of the settlements at Dooagh [sic] and Keel along the coast. Access to the site from the public road can be achieved along an unsurfaced track.

'Under the 2008 Mayo County Development Plan the R318 Regional Road is designated as a scenic route and views from it towards the site are protected.'

He debates the picturesque position, acknowledging that the works are not visible in the protected views. He determines that the works would not aid navigation by air or water. He dismisses the other uses mentioned, reporting that the board 'should consider in the first place whether or not to dismiss the referral under section 138 of the planning acts as vexatious and without substance'. He returns to the stated use as an ornamental garden:

'It is entirely plausible that the development would be used as a park, private open space or ornamental garden. It is accessible by foot and by vehicle along a track from the public road. It occupies a position with extensive scenic views. The geometric layout of the colonnades and the other built elements of the development could reasonably be regarded ornamental and aesthetically pleasing.

'However the works involved in the development comprise the erection of tall and massive structures which required very substantial earthworks and the excavation of a large area of blanket bog which was probably in a relatively intact, natural state, to judge by the character of the bog immediately adjoining the site. The scale of the structures and the volume of the earthworks mean that the works involved in the development are much greater in scale and intensity than those which could be contemplated by the term "laying out ... of land" ...'

He notes that the building of a monument differs in its planning character than the laying out of land because of its much greater physical impact on the previously existing condition of the land. He continues:

'The statement of the intention to use the land as an ornamental garden is qualified by the phrase "*inter alia*". The referral then states that the land will remain in agricultural use. It then states that the purpose of the scheme is unimportant.' He sums up that

'The request and the referral have therefore failed to specify a particular use for the development. This failure is deliberate and repeated. The definitions of exempted development... are expressed in functional terms. The claim in the referral that the use of the development is unimportant to its exempted status is therefore absurd.'

The inspector concludes that the subject of the case was development and was not exempted development. On foot of this report, the board upheld the decision by the local authority and the folly was condemned in July 2012. The place of reflection is illegal and must be removed and the land returned to viginity".

A beautiful film piece *These Islands* is the outcomes of conversation between Tom de Paor and Peter Maybury. It can be seen on www.gall-editions.com. The text *Inter alia* relates to the video and considers the contested ground of the unauthorised development at Slievemore, Dooagh, Keel East, Co. Mayo.

Tom de Paor & Peter Maybury recently exhibited at IMMA as part of a group show of national and international architects, designers, artists, filmmakers and writers during the Eileen Gray exhibition for the Irish Architecture Foundation.



Pic Michael Mc Laughlin MichaelMcLaughlinStudios.com

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MARY FOLEY FILEx.

CENTURY IRELAND - BRINGING THE EVENTS OF A CENTURY AGO TO LIFE THE DECADE OF CENTENARIES

The decade between 1912 and 1922 was one of the most momentous of modern Irish history. Important centenaries to be commemorated include the 1913 Lockout, the 1916 Rising, anniversaries relating to World War 1 and the right to vote for Irish women. A snippet below spotted on century ireland from The Irish Citizen in 1913 reports on the need for women law makers, and women lawyers! Women lawyers figure prominently in Ireland now 2014, as in all the professions, they enjoy equal opportunities with all citizens and are making history today.

Century Ireland

The Century Ireland project is an online historical newspaper that tells the story of the events of Irish life a century ago. Century Ireland is published on a fortnightly basis, beginning in May 2013, and is the main online portal for the Irish decade of commemorations, 1912-23.

News reporting on life in Ireland 100 years ago is supported by a wealth of visual, archival and contextual material to facilitate an understanding of the complexities of Irish life in the year between 1912 and 1923.

Century Ireland is produced by a team of researchers at Boston College Ireland and the project is funded by the Department of the Arts, Heritage and the Gaeltacht.

Century Ireland is hosted by RTÉ and the site is complimented by their broadcast schedule and material from the RTÉ archives.

At the core of Century Ireland is a collaborative partnership between the major cultural and educational institutions in Ireland. By working so fruitfully together, the various partners are making a range of rarely (or never) seen material available that will bring the events of a century ago to life. www.rte.ie/centuryireland

Mary Foley FILEx..

Women began to work in more industrial roles, as seen here in a carpet factory in Killybegs, Co. Donegal in 1905
Photo: National Library of Ireland



REPORT FROM THE IRISH CITIZEN Published 24th August 1913

'Writing in The Irish Citizen and informed by recent disputes involving female workers at Messrs Somerset embroidery factory and female chocolate makers at the Savoy Café on Grafton Street, Miss Browning has stressed the importance of women filling important roles of oversight across the economy and society. Miss Browning declared that what was needed in Ireland were 'women factory inspectors, women law makers, women police, women on the jury, women lawyers, women everywhere.' She concluded by calling on women to 'Rise! You must free all others to be free.'

SMART Goals

*the key to an efficient
and successful Organisation*

SMART criteria is commonly attributed to Peter Drucker's "Management by objectives concept". The first known use of the term occurs in the November 1981 issue of Management Review by George T. Doran.

A key theory of Organisation and Management techniques in any organisation is the adoption of **Smart Goals**. This is employed mainly for project management, performance management and can be used by HR and Management for the personal development of staff members. A tool to assist in these areas would be use of the acronym **SMART** as explained in the following narrative.

Once you have planned your project, turn your attention to developing several goals that will enable you to be successful. Goals should be **SMART** - specific, measurable, agreed upon, realistic and time-based. A goal might be to hold monthly meetings with the Directors' of a Company Board, meetings with your team of Office employees to review a project and business progress. A most important goal would be to organise and run a continuous test programme on a new Computer Information Technology System an essential and pivotal Company project.

The **SMART** model should be regularly reviewed in order to ascertain if there are physical indicators that it is functioning well and identification of any difficulties that are evident in respect of any of its component parts. Effectively, the project may require evaluating or revaluating.

It is vital that the responsibility of the **SMART GOAL** project should be vested in a Project Manager whose remit is to regularly evaluate the running of the project and report the findings to the Company Board or top Management. The acronym **SMART** has a number of slightly different variations, which can be used to provide a more comprehensive definition for goal setting: and project management.

The component parts of this model are outlined as follows:-

- S** Specific, significant, stretching
- M** Measurable, meaningful, motivational
- A** Attainable, agreed upon, achievable, acceptable, action-oriented
- R** Relevant, realistic, reasonable, rewarding, results-oriented
- T** Time-bound, time-based, timely, tangible, traceable



This provides a broader definition that will help you to be successful in both your business and personal life.

When you next run a project take a moment to consider whether your goals are **SMART GOALS**. You will be surprised to learn how the organizational and management tool **SMART** when adopted should stream-line your organisation thus resulting in significant output and efficiencies and economies of scale.

Alternatively, you may also wish to use the longer more inclusive acronym **SMARTER** that provides that the project has an inbuilt element of **evaluation and re-evaluation** which greatly assists as a preventative measure of the project being set aside and targets been forgotten to the ultimate detriment of the organisation.

It is understood and widely recognised, that all leading commercial enterprises and public service organisations adopt the **SMART GOALS** model of Organisation and Management as a tool to success, particularly now as vital in an era of national economic down-turn and of limited resources both financial and staffing. To quote renowned American philanthropist Elbert Hubbard:-

"Many people fail in life, not for lack of ability or brains or even courage, but simply because they have never organised their energies"

In summary, in my opinion, adoption and familiarity with the **SMART GOALS** concept is one of the keys to success in your enterprise. I have had experience of this and found it a marvellous tool in monitoring the progress and development of the work on hand and staff members alike. This model could also be construed as a form of checks and balances and well worthwhile pursuing.

Mary O'Dwyer FILEX
Director of Communications IILEX
Editor of the Official Journal

Caught on Camera!

Pictures from the previous months



Personal Insolvency Act 2012- – IILEX Talk

On 27 June 2013 Eamonn Carney of Carney McCarthy Solicitors delivered a talk to IILEX members on the new Personal Insolvency Act 2012. This was the first event to be organised by the Leinster Council of IILEX and held in the Council Chamber of Dublin City Hall.

It is no easy task to break down the dense piece of legislation and the dry topic of personal insolvency into an engaging discussion. However Mr. Carney managed this quite deftly, starting with outlining the main provisions of the legislation and the differences between Debt Relief Notices, Debt Settlement Arrangements, and Personal Insolvency Arrangements – the various routes by which individuals can attempt to manage personal debt. He also discussed the creation of the Personal Insolvency Service and the Personal Insolvency Practitioner role. With all of the options under the new legislation being very process-driven and reliant on a detailed level of checks and monitoring, Mr. Carney pointed out that this expanded branch of law could create a significant gap in the

employment market for Legal Executives to act as assistants to Personal Insolvency Practitioners.

The most thought-provoking aspect of the talk, however, was Mr. Carney's analysis of the potential risks and pitfalls of the process as is currently envisioned in the legislation. He discussed the vital importance for the Insolvency Service to develop appropriate registers and systems to avoid potential misuse of the system in bad faith, and the potential implications for the Irish legal and banking system as a whole if various weaknesses in new system were to be exploited.

The Leinster Council and the Irish Institute for Legal Executives would like to thank Mr. Eamonn Carney for his lecture and would also like to acknowledge and thank the Dublin City Council for allowing the Institute to use the Council Chamber to hold this event.

Shy Eager MIILEX
On behalf of the Leinster Council of IILEX



1. Left to Right: Paul Brennan, Deborah Walsh, Imran Khurshid and Mary O'Dwyer



2. Left to Right: Mr Eamonn Carney of Carney McCarthy Solicitors, Veronica Duffy, then President of IILEX and Patrick J. Courtney, President of IILEX.



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