

The Brief

The Official Journal of the Irish Institute of Legal Executives

2015



In this Issue . . .

**Diane Burleigh becomes a Patron
Frances Fitzgerald Profile**

Plus . . .

**The Innocence Project
Brighwater Salary Scales
The Companies Act
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:-

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Congratulations and well done all.

Mary O'Dwyer, IILEX
Editor

Front cover picture: Frances Fitzgerald, Minister for Justice and Equality

IILEX PRESIDENT'S ADDRESS

Dear Members,

Having just completed the year 2014 / 2015 as President I am pleased to advise that myself and my colleague directors have had a very productive year promoting and representing the Irish Institute of Legal Executives and making ourselves known as the organisation which represents Legal Executives within this Legal Jurisdiction.

This year I have had the great pleasure in welcoming Mrs Diane Burleigh O.B.E. as our Patron. Mrs Burleigh the retired Chief Executive of CILEX. U.K. brings with her a wealth of knowledge to IILEX and how we can progress as a Legal Representative body. Mrs Burleigh was presented with her Patrons Medal at a C.P.D. presentation at Dublin City Hall.



In March of this year myself and a delegation from IILEX had a very cordial meeting with the Minister for Justice & Equality Frances Fitzgerald at the Department of Justice & Equality St. Stephens Green and have now opened communications with the Minister regarding the Legal Services Regulation Bill 2011 and the possibility of having Legal Executives included in the legislation.

I am very pleased that Griffith College Dublin and Cork continue to provide Legal Executive graduates. I congratulate all of those students who graduated this year and look forward to having them as full members of the institute in the future.

Recently at The Irish Law Awards Jacqui Fox of Holmes O'Malley Sexton was chosen as Legal Executive of the year, I would like to take this opportunity both on my own behalf and on behalf of my fellow directors of IILEX to congratulate Jacqui on receiving this prestigious award.

In the last twelve months membership has increased, I welcome all new members and would encourage all members to actively promote the Institute to their colleagues.

May I remind you that the institute is here to assist you should you have any difficulties please do not hesitate to contact us directly. I acknowledge all the tireless work that my colleagues on the board of IILEX do for the institute and you the members and for this work I say a very big THANK YOU.

Patrick J. Courtney
President

Close Encounters Down Under

Whilst visiting family in Australia I decided to try to visit my friends in ILEX Victoria. Typical of Legal Executives everywhere once I made contact with Roz Curnow, C.E.O., the usual 'can do' attitude came into play.

Unbelievably after a couple of emails we had 'brunch' near Melbourne and cemented our relationship which commenced many years ago by post, then email and now we were having a face to face meeting.

It was a wonderful exchange of thoughts, challenges and ideas. We had much in common, the main one being the almost total voluntary nature of our Institutes being an obstacle towards real growth which we both found frustrating. They experience a very close relationship with the Law Society in Victoria who sponsors their website and various other ventures.

I am so grateful for their long friendship and their hospitality to me last September.

Veronica Duffy,
Vice-President of IILEX



L-R Roz Curnow, CEO ILEX Victoria, Veronica Duffy Vice-President IILEX and Vicki Askew, Secretary & Treasurer ILEX Victoria

Frances Fitzgerald, Minister for Justice and Equality - a profile

Frances Fitzgerald was appointed as Minister for Justice and Equality on the 8th May 2014.

Since taking office, the Minister has been actively involved in delivering the Government's comprehensive programme of justice reform which includes the planned establishment of a new Independent Garda Authority; the appointments of the Garda Commissioner by open competition and the introduction of new legislation to reform, strengthen and clarify the remit and operation of the Garda Síochána Ombudsman Commission. In addition, Frances has overseen the recommencement of training for new Garda recruits.

Frances is committed to bringing forward a referendum on marriage equality in 2015 and is working on a new system for Legal Services regulation.

Frances is also overseeing major reviews in areas including judicial appointments, firearms licensing, penal policy, legislation pertaining to domestic violence; and the implementation of the EU Directive on victims of crime. A key Government commitment was met when the Court of Appeal was established in October 2014.

Between March 2011 and May 2014, Frances served as Ireland's first-ever senior Minister for Children and Youth Affairs. In this role Frances led a programme of comprehensive reform of child protection and welfare in Ireland including: the establishment of Ireland's first-ever dedicated Child & Family Agency, the holding of a referendum to amend the Irish Constitution to strengthen child protection and children's rights; the introduction of new legislation to put the Children First guidelines on a statutory footing; the introduction for the first time of the National Standards for Child Protection and independent inspections of child protection services by HIQA; the commencement of development of a €50 million National Child Detention Facility project at Oberstown, Co. Dublin; the introduction of the ABC (Area-Based Childhood Programme) and major improvement on the promotion, regulation and enforcement of standards in early years and childcare settings. Frances represented Ireland at the EU Council of Youth Ministers and in 2013, during Ireland's EU Presidency, she chaired the Council hosting two Presidency events in Dublin: an EU Youth Conference and an Expert Roundtable event on youth employability. As Minister for Children & Youth Affairs, Frances published the 2011 Report of the Commission of Investigation into the Catholic Diocese of Cloyne; and the 2012 Report of the Independent Child Death Review Group. Frances has been a keynote speaker at a number of major national and international conferences including: the WHO Global Conference in Helsinki in 2013, the ISPCAN 13th European Conference on Child Abuse & Neglect in Dublin in 2014 and the EU Equity Action Health Conference in Brussels in 2014.

Frances is TD for Dublin Mid West, having secured over 9,000 final votes in the 2011 General Election. Between 2007 and 2011 Frances served as Leader of the Opposition in the Irish Senate; having previously served as TD for Dublin South East for ten years before that.

As an opposition Parliamentarian, Frances served in six different portfolios under three different Fine Gael leaders - John Bruton, Michael Noonan and Enda Kenny. On her first day in the Dáil Frances was appointed as Fine Gael Spokesperson on Arts, Culture and the Gaeltacht and went on to serve as Spokesperson on Defence, Social Community & Family Affairs, Equality & Family Affairs, and Social Welfare. She served as Spokesperson on Health and Children while in the Senate. Frances has served on various Dáil and Seanad committees including Justice, the Committee on the Constitution, the National and Economic Social Forum, the Forum for Peace and Reconciliation, Social Affairs and Health. Frances was a member of the Joint Committee on the Constitutional Amendment on Children and co-authored several Oireachtas Committee reports. She co-founded the first ever Cross Party Group on Mental Health and worked closely with Amnesty International to help break down the stigmas associated with mental health issues.

Frances has campaigned strongly on mental health, special needs, social policy and equality issues and worked professionally in these areas.

Frances has previously served as a member of Dublin City Council.



Frances has held numerous senior positions in the Fine Gael party, including as a member of the party's Executive Council; and Director of Elections for the 2013 Meath East by-election.

Prior to her election to the Dáil, Frances served as Chair of the National Women's Council of Ireland (1988-1992) and Vice President of the European Women's Lobby. As Chair of the National Women's Council she initiated and served on the second Commission on Women, chairing the Employment Sub-Committee. She held the first conference in Ireland on Women and Decision Making and championed the cause of introducing equality proofing mechanisms. Frances also led a number of high profile health campaigns. She has served on the boards of the Employment Equality Agency, Arthritis Ireland, The O'Reilly Theatre and the Breast Research Unit in St. Vincent's Hospital. Frances was also Vice Chair of Europa Donna, the European breast cancer campaign.

Frances trained as a social worker and family therapist. She worked in the Mater Hospital, St James' Hospital and Ballymun Child and Family Centre for ten years. She also worked in inner city communities in London and Dublin. She specialised in family-work including adoption and fostering. Frances gained a B.Soc. Science in U.C.D. and an M.Sc. in Social Administration and Social Work in the London School of Economics. She also lectured in social work in Adult Education Courses and in Trinity College, Dublin.

Frances is married and has three sons, an actor, an accountant and a student.

Profile and Cover photograph by kind permission of Frances Fitzgerald, Minister for Justice and Equality

My Experience at Studying Law in Griffith College Dublin



My apprehension of studying existed long before I entered the gates of Griffith College. At the age of 45 and having a visual impairment I had never been to college and had only ever completed my Leaving Certificate. The thought of going to college had never even entered my head until my boss encouraged me to apply, believing that I was well capable for it and that it would help me in my future career.

My fear and apprehension were unfounded. The course was challenging (as it should be) but it was made very manageable by all the lecturers who were extremely helpful, supportive, and most of all encouraging. This could also be said of my classmates.

I could only have imagined that going to college was going to be tough but the fact that I was going to be studying law made the whole idea more terrifying to me. I really had very little knowledge of the law and what was involved in grasping it. I found the more that I studied and researched law and how it worked, the more intrigued and inquisitive I became. The Diploma in Legal Studies and Practice at Griffith College gives a person a wide but in-depth knowledge of the law in Ireland today. It gave me

an appetite and the inclination to want to know more. So much so that I am now contemplating going further with my studies and entering the second year of the law degree at Griffith College.

For anybody who is considering studying the Diploma in Legal Studies and Practice in Griffith College, I would highly recommend doing so and not to worry about age, or prior knowledge of law. The course caters for people who have no previous third level experience. All materials for the course are provided and you will have full access to the college library and campus.

I am living proof that a previously apprehensive and nervous student can not only succeed in securing the Diploma in Legal Studies and Practice but also develop a passion for a subject previously unknown to him or her. I would like to take this opportunity to thank Griffith College for giving me such a great learning experience and for helping me graduate with this Diploma, qualifying me as a Legal Executive.

Lysander Preston
Legal Executive. A.I.L.Ex.
Diploma in Legal Studies and Practice

The AIB Private Banking Irish Law Awards 2015

The AIB Private Banking Irish Law Awards 2015 was held in the DoubleTree by Hilton, Burlington Road, Dublin 4 on Thursday 30th April 2015.

The opening address was made by the Minister for Justice and Equality Frances Fitzgerald in which she mentioned the role of Legal Executives within the legal services industry.

The 'Best Legal Executive' was won by Jacci Fox, a member of IILEX, who works with Holmes, O'Malley Sexton Solicitors in Limerick.

The Institute congratulates her on this achievement. It also extends its congratulations to the candidates that were shortlisted Natalie Boyce, Sharon Lennon, Deirdre O'Donovan and Sheila Rennick.



L-R- Miriam O'Callaghan, Presenter and David Langwallner, Dean of Law Faculty, Griffith College recipient of the 'Best Pro Bono & Public Interest Team/Lawyer of the Year'

Another wonderful award 'Best Pro Bono & Public Interest Team/Lawyer of the Year' went to David Langwallner for the Innocence Project at Griffith College, Dublin. David is Dean of the Law Faculty in Griffith College Dublin and was successful in obtaining a posthumous pardon for Harry Gleeson who was hanged 74 years ago for a murder he did not commit.

Congratulations David and Griffith College,

Veronica Duffy, Vice-President of IILEX

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L-R--Miriam O' Callaghan, Presenter, Jacci Fox, Recipient of Best Legal Executive Award 2015 and Thomas Creaton, Solicitor and Founding Partner, Holmes O' Malley Sexton, Solicitors



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Marie McSweeney Legal Executive of the Year 2014 Irish Law Awards 2014

Congratulations to Marie McSweeney who has been voted Legal Executive of the Year at the Irish Law Awards 2014. All at ILEX are very proud and very happy that Marie's hard work and achievements to date in her career have been acknowledged.

Marie McSweeney has worked in Ronan Daly Jermyn, Solicitor's Office - (Cork branch) for over 35 years. She works in the Litigation Department within the Corporate Recovery Unit. Marie has responsibility in dealing with large and small commercial clients and financial institutions and pursues the recovery of outstanding debts on their behalf through all levels of the Courts, from District Court through to High Court. Marie meets with clients, deals with any queries that may arise and runs the various files from initial instructions through to final Judgment as well as enforcement of Judgments together with ensuring the smooth running of the team.

Marie also has a Human Resources role within the office, dealing with staffing matters, interviewing candidates for job vacancies, keeping personnel records, Staff Committee liaison and monitoring work loads throughout the office.

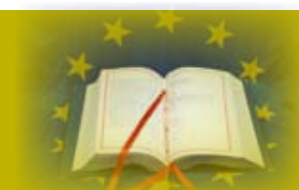
Marie has also lectured to College students in debt collection procedures through the District, Circuit and High Courts.

Marie has maintained and progressed her career through her qualities as an efficient, clear thinking, hard working, trustworthy and highly experienced Legal Executive.



Marie being presented with her award at the Irish Law Awards 2014

EU TREATY RIGHTS - (FREE MOVEMENT RIGHTS)



The human race always migrates from one place to another place and its origin goes back to the time when Adam arrived in this planet. People migrated from one place to another for a variety of reasons in different times, but contemporary migration trend shows people from less Developed regions of the world to the developed regions e.g. Europe and America, in quest for better job opportunities, facilities and a secure future. Developed countries of the world have formulated indigenous immigration policies keeping an account of the need of human resources and work force requirement of an educated and skilled pool of workers from less developed countries of the world to meet the need of the time and better sustainability of their economy.

In this respect, formation of the European Union brought a change in the immigration regulations for the citizens of the members of the EU and liberated their free movement and work rights by issuing different

Directives and Regulations. One of the most important Directives is EU Directive 2004/38 EC as transposed into Irish law by way of Statutory Instrument No. 656 of 2006 European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (as amended). The said Directive empowers the Union citizens to choose to live and work wherever they wish to without any entry visas and work freely within the Member States of the European Union. These rights are commonly known as Free Movement Rights.

The Directive is applicable to the citizens of the Union in the event of migrating from home country to another Member State for the purpose of work, business or studies. Any citizen of the Union or their families can benefit from visa free entry to any Member State and reside for 3 months without any legal hurdle. Residence rights can be extended for more than three months subject to entering to employment, business activity or pursuance of education in the Member State.

While exercising EU Treaty Rights, a Union citizen can invite and apply for the residence rights for their Non-EEA family members. EU Directive divides family members in two categories 'Qualified Family Members' and 'Permitted Family Members'. Spouse, parents/grandparents of EU National and/or his/her spouse, children/grandchildren of EU National and/or his/her spouse are classified as 'Qualified Family Members', and, other family members including partner of the EU National are classified as 'Permitted Family Members'.

However, it is important to note that Member States are given a power to restrict such Free Movement Rights in certain circumstances where it feels that the said rights are being abused. Furthermore, Member States may also restrict these rights pursuant to public policy, security, health or abuse of rights.

Imran Khurshid
Barrister-at-Law (np), M.Com, LLB
IK Immigration Consultants

COMMISSIONER FOR OATHS

A Commissioner for Oaths is a person who is authorised to verify affidavits, which are statements in writing and on oath, and other legal documents.

A Commissioner for Oaths is appointed by the Chief Justice, by commission given under his/her hand. The appointees are solicitors or "other fit and proper persons" and the commission is held during the pleasure of the Chief Justice. The commission of a solicitor or a non-solicitor may be revoked or suspended by the Chief Justice. A non-solicitor must not practise outside the area for which they are appointed.

swearing of persons who come before him or her to the truth of evidence which has been reduced to writing in a draft affidavit;

- The Commissioner must ascertain that the person has read the draft affidavit and fully understands its contents;
- The Commissioner will require the person to swear that the Affidavit is true by raising the appropriate Testament or holy book in either hand and repeating the words of the oath being administered, (whichever is appropriate of that particular religion);
- To verify that the Affidavit was properly sworn by completing a "Jurat" on the Affidavit;

to Commissioner for Oaths particularly so if having an Affidavit verified.

The Oath to be taken by persons before the Commissioner for Oaths is as follows:-

"I swear by Almighty God (or whichever is appropriate of that particular religion) that this is my name and handwriting and that the contents of this my Affidavit are true".

Every deponent who is sworn must be sworn with the Testament or holy book (or whichever is appropriate to that religion) in his/her raised hand.

A person who objects to be sworn on the Ground that the taking of an oath is contrary to his/her religious belief, or that he/she has no religious belief, is permitted to make a solemn affirmation. The affirmation commences:-

I, A.B. of do, solemnly sincerely and truly declare and affirm that

These words replace "swear by" etc in the oath, and the Jurat reads "Affirmed by before me etc."

There is a duty on the Commissioner to ensure that a person who wishes to be affirmed states the ground on which he/she objects to be sworn, even though the ground is not shown on the face of written affirmation.

Deborah Walsh MILEX
(Secretary/Director of IILEX)
COMMISSIONER FOR OATHS

Powers of a Commissioner for Oaths:

A Commissioner for Oaths may take any affidavit, affirmation, statutory or other declaration, acknowledgment, examination and attestation for the purpose of any Court in this jurisdiction, for matters relating to applications for notarial faculties, or for the registration of any instrument.

Functions of a Commissioner for Oaths:

- The essential function of a Commissioner for Oaths is the

- To charge a fee for his/her services (which can be found in the Rules of the Superior Courts).

Oaths and Affirmations:

A person making an Oath will be required to swear the oath by raising the appropriate Testament or holy book, (whichever is appropriate of that particular religion). It's important to remember that he/she must produce identity (e.g. Driving Licence/Passport)

HOW TO BECOME A COMMISSIONER FOR OATHS

This is open to **Legal Executives** by Application to the Supreme Court. If you as a Legal Executive want to be appointed as a Commissioner for Oaths, you must apply by Petition to the Chief Justice. You must verify the Petition by an Affidavit, accompanied by Certificate of Fitness signed by six members of the legal profession and by six local businesses. You must have the Documents stamped and filed in the Office of the Supreme Court. You must also obtain a Barrister to move your Application on the date of Hearing.

This process takes persistence and determination but it is so worthwhile. It does not involve the sitting of exams. It is a wonderful honour to have and of value, in terms of respect and status is enormous.

Information can be obtained from the Supreme Court Office at 01-8886568 or email supremecourt@courts.ie or if you require help you can also contact the Institute at info@iilex.ie

RECENT COMMISSIONER FOR OATHS APPOINTMENTS:

CONGRATULATIONS TO

Joseph Whelan Member of IILEX;
Mary Shiels Member of IILEX;
Deborah Walsh Member of IILEX,
Director/Secretary of IILEX

Mary-Celeste Hetherington Member of IILEX

on being appointed as
Commissioner for Oaths,
by the Supreme Court.

Griffith College Dublin

Graduation and Conferring Ceremony 2014

Diploma in Legal Studies and Practice - (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 2014. 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, Veronica Duffy (Vice-President), Gabriel Canning (Chairman), Mary O'Dwyer (Director of Communications) and Frank Crummey (Fellow and Hon. Life Member).

A total of 20 students graduated with a Diploma in Legal Studies and Practice - (QQI) as well as a total of 9 students who graduated with Certificates in Legal Studies (QQ1). Students were formally presented with their respective parchments by the President of Griffith College, Professor Diarmuid Hegarty who congratulated each on their great achievement as well as wishing them every success and happiness in their new lives ahead.

In addition, best student achievement of the year 2014 awards were presented by Griffith College to Teresa Duigan - Diploma in Professional Studies and Practice (QQI) and to Laura Doyle - Certificate in Legal Studies (QQI).

Students who were not in attendance on the day were conferred in absentia.

The Irish Institute of Legal Executives - (IILEX) were again delighted to learn of the high number of students graduating and thus signifying a sustained interest in the pursuance of both the Diploma

in Legal Studies and Practice (QQ1) as well as the Certificate in Legal Studies (QQ1). For many graduates of such legal studies this has been recognised as a pathway to undergoing further legal studies such as the LLB (Hons) in Irish Law and others.

It was marvellous to evidence Ms. Sylvia Meehan a well known and renowned pioneer of womens' rights being conferred with a Professional Excellence 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 long distinguished and outstanding career. She thanked Professor Hegarty and Griffith College for bestowing on her with such an honour of which she was truly grateful to receive.

Ms. Meehan was instrumental in establishing the Employment Equality Agency where she was Chairperson and served with this agency for a long number of years. In later years, Sylvia has been involved, inter alia, as President of the Irish Senior Citizens Parliament and has fostered and espoused the rights and concerns of senior citizens.

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, Siobhán Leonard, Head of Law Faculty, Ronan Fenelon, Director of the Law School and Karen Sutton, Lecturer in the Law Faculty, Anne Driscoll, US Fulbright Scholar and Manager at the Irish Innocence Project, at Griffith College



Veronica Duffy Vice-President of IILEX, Professor Diarmuid Hegarty, President Griffith College and Student, Teresa Duigan

By kind permission of Lafayette Photography

Dublin as well as Director Tomás MacEochagáin and other Directors' of Griffith College.

Once again, the entire Conferring Ceremony was a very professional and memorable event and to be present at such was a tremendous honour and was very deeply appreciated. Compliments are extended to all who worked tirelessly 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 Brief

Professor Diarmuid Hegarty, President of Griffith College, Sylvia Meehan, accompanied by Academic staff, Students and Directors of the Irish Institute of Legal Executives - (IILEX). *By kind permission of Lafayette Photography*



THE COMPANIES ACT 2014

The President of Ireland on 23 December 2014 signed into law the Companies Act 2014 (the "Act"), formerly known as Bill No. 116 of 2012. The Act was published on 28 January 2015 on the Oireachtas (Irish Parliament) website. The Act is the biggest central Statute to-date in our State's history. The purpose of the Act is to consolidate, with amendments, certain enactments relating to companies and to provide for related matters. The Act replaces the existing 16 Companies Acts from 1963 to 2013 and various related Statutory Instruments. The Act is therefore riven into two volumes. The Act is divided into 25 parts with 17 schedules and contains 1,448 sections.

While the Act is complex and extensive legislation it is drafted to simplify company law for the approximate 90% of companies registered in Ireland – the private company limited by shares. Parts 1 to 15 of the Act provide legislative requirements for all aspects of the private company limited by shares from inception until termination. There is no need to be concerned with the rest of the Act if a company category falls into Parts 1 to 15. Parts 16 to 25 of the Act concern legislative requirements for all other company types provided for under the legislation, namely the new Designated Activity Company (DAC) (Part 16), the Public Limited Company (Part 17), the Guarantee Company (Part 18), the Unlimited Company (Part 19), External Companies (Part 21) the Unregistered Company (Part 22) and the Investment Company (Part 24).

The Act is scheduled to commence on 1 June 2015 by way of Statutory Instrument with a further 18 month transition period. The transition period begins on the commencement date but may be extended to 30 months by Ministerial Order. The transition period cannot be extended to longer than 30 months. The transition period is important given the new categories of company created by the Act and the conversion procedures to new company types and how the Companies Registration Office, and with some categories of company how the Central Bank Authority and the Charities Regulatory Authority, will recognise, regulate and deal with same.

New Categories of Private Company Limited by Shares

The Act creates two categories of private company limited by shares. The first type is a simpler model of an existing private company limited by shares (CLS). The second type

created by the Act is a Designated Activity Company (DAC).

The Act dispenses with the current two separate Constitution documents (Memorandum of Association and the Articles of Association) for the new simpler type CLS and instead permits utilisation of a single Constitution document, which obviates the need for an Objects Clause. The new CLS will therefore have complete unlimited capacity to conduct legal business, subject to any restrictions in other legislation. The ultra vires doctrine becomes redundant for the new type CLS. The CLS has limited liability and has share capital. It may have between 1 and 149 members and does not need to hold an Annual General Meeting. The CLS may have a single Company Director but must have a separate Company Secretary if there is a single Company Director. The CLS may claim eligibility for audit exemption (and dormant company audit exemption) thereby avoiding Registered Auditor professional audit fees. The CLS company name must end with Limited or Teoranta.

Part 16 of the Act sets out the requirements for a Designated Activity Company (DAC). A DAC is defined as a private company limited by shares or a private company limited by guarantee. A DAC private company limited by shares or a DAC company limited by guarantee will each have capacity, including powers, to conduct their activities as laid out in their Constitution documents (Memorandum of Association and Articles of Association). A DAC private limited company by shares or a DAC private company limited by guarantee have powers to only conduct their activities to acts or things set out in their Constitution documents, so there is limited capacity to conduct legal business. Part 16 of the Act deems private guarantee companies to be DACs on the commencement date - 1 June 2015. The regulatory features of a DAC are: -

1. There are a minimum of two Company Directors.
2. Constitution documents are a Memorandum of Association and Articles of Association.
3. Capacity is limited by an Objects Clause.
4. It must hold a physical Annual General Meeting where there are 2 or more members.
5. It may list debentures on a debt market.
6. The company title must end with "Designated Activity Company" or "Cuideachta Ghníomhaíochta Ainmhithe", unless it is exempted.

A DAC private company limited by shares is the nearest form of company to live private companies limited by shares regulated under the Companies Acts 1963–2013. It may be that some live private companies limited by shares regulated under the Companies Acts 1963–2013 may require an Objects Clause or may wish to have their Debentures listed on a regulated market or that minority shareholders, investors and venture capitalists demand that the company in which they hold their investment continues to only carry on its legal business activities as set out in its Objects Clause rather than have unlimited capacity to conduct other business as will be the position with the new type CLS. The DAC type company is designed to cater for these situations and is the appropriate type of company for Boards and Company Directors of private companies limited by shares to elect to operate under the Companies Act 2014.

Companies incorporating after 1 June 2015

Companies incorporating after the commencement date (1 June 2015) can register with the Companies Registration Office as a CLS Company (LTD) or a Designated Activity Company (DAC) or the other type of companies.



Transition Arrangements, Conversion and Default Position for Existing Private Companies Limited by Shares

The Act requires all existing private limited companies to alter their legal forms. Once the Act comes into operation existing private limited companies cannot continue in their current forms.

There are a number of ways an existing private company limited by shares, which was incorporated before the Act may convert to the new simpler CLS Company (LTD). During the transition period if an existing private company limited by shares fails to voluntarily change its existing status to the simpler LTD it will be deemed to be a DAC company for the duration of the transition period only.

Section 59 of the Act

An existing private company limited by shares incorporated before the Act may convert during the transition period to the new simpler CLS Company (LTD) pursuant to section 59 of the Act. It must submit to the Registrar of Companies a special resolution together with its new model Constitution as well as Form N1. The new model Constitution must be in a format as set out in section 19 of the Act. The new model Constitution must state: -

- The Name of the Company.
- That it is a private company limited by shares registered under Part 2.
- Details of its share capital.
- The number of shares taken by each subscriber to the Constitution.
- And the Supplement Regulations, if any, adopted by the Company.

Section 60 of the Act

An existing private company limited by shares incorporated before the Act may convert during the transition period to the new simpler CLS Company (LTD) and pursuant to section 60 of the Act. Directors may submit to the Registrar Form N1 together with the new model Constitution drafted by them. Directors should have before sending the new model Constitution to the Registrar have forwarded a copy of same to each member of the Company. Directors should ensure that the new model Constitution does not alter the rights and obligations of existing company members' rights and obligations and their rights and obligations as set out in its Memorandum of Association and Articles of Association.

The Registrar of Companies will forward a new Certificate of Incorporation when processing of registration documents is completed. The Company becomes a new company type only when the new certificate of incorporation is issued.

Section 61 of the Act

If at the end of the transition period, 30 November 2016, an existing private company limited by shares fails to convert to a new type company, the Registrar of companies will apply the deeming provisions. The existing private company limited by shares becomes a CLS company (LTD) when the Registrar will issue a new certificate of incorporation. The existing Memorandum and Articles of the company will then exist as its single Constitution. The Constitution will contain the existing Memorandum other than the provisions that comprise its objects or provide for, or prevent, the modification of all or any of the provisions of its Memorandum or Articles and the provisions of its existing Articles.

Possible consequences for Directors who fail to make arrangements to change company type during the transition period

Directors of existing private companies limited by shares who fail during the transition period, to voluntarily convert to either a CLS company (LTD) or designated activity company

(DAC) will find, as previously stated, pursuant to section 16 of the Act that their company has by default become a new private company limited by shares (LTD) to which parts 1 to 15 of the Act apply. Such a situation may not be appropriate to company's business or circumstances and pursuant to section 58 of the Act, members holding not less than 15% of the share capital or any class of shareholder or creditor holding not less than 15% of the company's debentures, which entitled them to object to an alteration of the company's Objects, may apply to Court for an Order to re-register as a Designated Activity Company.

Pursuant to section 63 of the Act, any member of an existing company who believes that he or she has suffered prejudice by anything the Company or its directors have done or failed to do to convert during the transition period may apply to Court for relief. If directors fail to comply with their obligations to re-register as a new company type by shares during the transition period pursuant to section 61 of the Act there is a presumption, which may be rebutted, that the directors exercised their powers in a way that is oppressive to that member and in disregard for their rights.

Codification of Directors' Duties

The Act consolidates the existing statutory directors' duties into a single Statute and for the first time codifies the main fiduciary duties, which apply to company directors. The Act also requires directors of newly incorporated companies and directors newly appointed to existing companies following the commencement of the Act to acknowledge in writing their duties as set out in the Act. Every company director and company secretary must be 18 years of age or over. Any appointment where the company officer is a minor is void. Directors duties are: -

- To act in good faith in the company's best interests.
- To act honestly and responsibly in the conduct of the company's affairs.
- To act in accordance with the company's constitution.
- Not to misuse company's property, information or opportunities.
- Not to fetter discretion.
- To avoid conflicts of interest unless agreed.
- To exercise care, skill and diligence.
- To have regard to the interests of the members as well as employees.

These duties apply to all directors and includes de facto directors and shadow directors. Directors of newly incorporated companies and company directors newly appointed to existing companies must sign a statement when filing notification of their appointment to the Registrar of Companies in terminology below:

"I acknowledge that, as a Director, I have legal duties and obligations imposed by the Companies Act, other enactments and at common law."

Directors' offences categorised

The Act streamlines criminal offences arising from non-compliance in categories as follows:

- | | |
|-------------|--|
| Category 1) | Conviction on indictment / term of imprisonment of up to 10 years / or a fine of up to the sum of €50,000 or both. |
| Category 2) | Conviction on indictment /imprisonment up to 5 years / or a fine up to the sum of €50,000 or both. |
| Category 3) | Summary Offence /Imprisonment up to 6 months / a Class A fine or both |
| Category 4) | Summary Offence Class A fine only. |

A Class A fine may impose a fine not exceeding the sum of €5,000.00

Examples of Category non-compliance offences are: -

- Not displaying a company's name 'in a conspicuous position' is a category 4 offence (S.49 CA 2014).
- Failure to notify the Registrar of Companies of any increase/decrease in share capital is a Category 3 offence (S92/93 CA 2014).
- Mutilation or falsification of a book or document relating to a company's affairs is a Category 2 offence (S. 877 CA 2014).
- When a restricted or disqualified person acts in relation to a company (S855 CA 2014) and enters into any arrangement which breaches the rules on loans to directors or connected persons (S239 CA 2014).
- Intent to defraud creditors is a Category 1 offence (S722 CA 2014).

Directors Compliance Statements

This obligation was first introduced during 2003 but never commenced as it was considered to be too onerous. It is now revised and re-introduced and applies to:

- All Public Companies (except investment companies).
- Applies to the new form Private Company Limited by Shares LTD's / DAC's / CLG's, which have a turnover €25 million plus and a Balance Sheet Net Asset total of €12.5 million plus.
- It does not apply to ULC/PUC/PULC.
- Directors must declare compliance with relevant obligations (i.e. where failure to comply would be a Category 1 / Category 2 or tax law offence).

Additionally, a Directors' annual report must contain a statement which acknowledges that they are responsible for securing the Company's compliance with its relevant obligations and must also include in the annual report a statement which confirms that the following points have been carried out:

- A compliance policy statement exists and it sets out the company's policies in relation to compliance. 'In the directors' opinion', these policies must be appropriate to the subject company.
- Arrangements have been put in place which are 'in the directors' opinion' designed to secure substantial compliance with the company's relevant obligations.
- A review has been conducted of the arrangements noted above. This review must have taken place during the financial year to which the report relates.

Failure to comply is a Category 3 offence (i.e. maximum fine of €5,000 and /or maximum prison sentence of 6 months (summary conviction only)).

Other notable features of the Companies Act 2014:

- An audit committee is required for 'large' private companies (i.e. Balance Sheet €25 million plus and turnover of €50 million plus).
- Loans to Directors or to connected persons must be in writing with terms set out, otherwise they will be presumed to be repayable on demand and attract interest.
- Loans from Directors must also be in writing with terms set out otherwise may be considered as a 'gift' and may not rank with creditors.
- An audit exemption exists for Group companies where combined turnover is less than €8.8 million or Balance Sheet net asset position is €4.4 million, or 50 employees or less.
- There is an audit exemption for 'dormant' companies in a Group.
- There is an audit exemption for Companies Limited by Guarantee.
- There is an increase in penalties when failure to keep proper books of account lead to insolvency.
- Voluntary Strike Off will be a statutory basis. All directors must sign the application.
- No Annual Returns or Accounts required where Voluntary Strike Off / Members Voluntary Liquidation is commenced.
- A Company Secretary must have the relevant Qualifications and / or Expertise
- The Companies Registration Office penalty fees waiver arrangement is to cease. An application to the District Court must be made. An audit exemption will be restored if application is successful.
- Any director of a company who is subject to a foreign disqualification subsequent to their appointment, must file a form with the Companies Registration Office. This does not apply to directors who filed a Form B74 with their notice of appointment. It only applies to disqualifications not notified to the Companies Registration Office previously.
- Liquidators must be formally qualified.

Please visit the Companies Registration Office website at www.cro.ie or e-mail the office at info@cro.ie if you have any queries or require further information.

Martin Tierney MILEX
Director of Education, Central Council - IILEX
and
Deirdre Butler MILEX
Director of the Munster Council – IILEX

Appointment of Patron of IILEX - Mrs. Diane Burleigh O.B.E.

The Institute was humbled and delighted when Mrs Diane Burleigh O.B.E. agreed to become our first patron on the 25th October 2014 at a most professional talk on Probate given by Mary McKeever, Associate Solicitor, Private Client Group at Eugene F. Collins Solicitors held in City Hall, Dublin 2.



Patrick J. Courtney, President of IILEX presenting Mrs Diane Burleigh O.B.E. with the Patron's Medal

Diane is the former CEO of the Chartered Institute of Legal Executives (England & Wales) and she was recognised with a Lifetime Achievement Award at the Modern Law Awards in October 2014 prior to her retirement as CEO this in December 2014.

During her tenure as CEO of CILEX she was instrumental in advancing the recognition of the work of Legal Executives in the United Kingdom. Legal Executive Lawyers in the U.K. are acknowledged and respected as they can become Judges, Coroners, Partners in Law Firms and the Institute in the U.K. has been granted chartered status.

In the New Year's Honours List 2013 Diane received an OBE from Queen Elizabeth for services to the legal profession in England and Wales.

We know that we will grow and develop under her patronage and we thank her most sincerely for becoming our patron and friend.

Veronica Duffy, Vice-President of IILEX

LEGAL

There has been a steady increase in recruitment activity over the course of 2014 with positive signs including the smaller practices recruiting again. This growth whilst steady has not seen a rapid increase which still suggests signs of positivity but also some caution as to the market. We have also noted a marked increase of activity in areas such as corporate, commercial property and niche areas such as energy. We had expected these increases as these particular areas improve and companies start to acquire and expand again. The main bulk of the roles and recruitment do remain in the larger corporate/commercial firms.

We have also seen an increase in not just the amount of trainees being kept on but also in companies looking for NQ solicitors which is a really positive indicator for the legal sector.

The larger multinational firms continue to grow and hire with continued success and there has been some notable new entrants to the local market in 2014. These firms attract candidates from all levels from partner level down to legal graduates and so offer the local market a broader range of career opportunities.

We have also seen some of the local firms increasing their salaries across the board which is an indication of the market improving. Employers have realised that they need to pay their employees as there is now more competition and opportunity.

IN-HOUSE

There has been a continued increase in the amount of in-house opportunities with companies streamlining and bringing the legal function in-house. Whilst there are more opportunities, the competition for these roles remains very high as lawyers with a strong business acumen compete for these roles.

Practice

Job Title	£
Salaried Partner	65,000 +
6-9+ years' PQE	45,000 - 65,000
3-6 years' PQE	30,000 - 55,000
1-3 years' PQE	22,000 - 30,000
Newly Qualified Solicitor	20,000 - 26,000
Legal Executive / Paralegal	16,000 - 20,000

In-house

Job Title	£
Head of Legal	70,000 - 90,000
Senior Lawyer	50,000 - 70,000
Legal Counsel	35,000 - 55,000
Company Secretary	25,000 - 35,000
Legal Executive / Paralegal	16,000 - 20,000

Salary Survey carried out by Brightwater Recruitment Agents. Below are pages extracted from their survey which relate to the legal profession in both the Republic (page 25) and North of Ireland (page 8).

By kind permission of Brightwater Recruitment Specialists

"THE LARGER MULTINATIONAL FIRMS ARE TO GROW"

LEGAL

PRACTICE

2014 has seen continued growth in the legal sector. This is predicted to continue into 2015 and is a strong indicator of the confidence that now exists within the legal market.

Solicitors in key growth areas with commercially relevant experience can expect to see a 2%-5% increase in their base salary. This is particularly relevant in the areas of funds, commercial conveyancing, financial services, corporate and commercial law.

Due to increased workloads, recruitment activity has risen across small to medium sized firms but the majority of roles in practice still come from the 'Top 10' firms.

An extremely welcome development is the substantial demand for residential and commercial conveyancing solicitors with a significant number of these roles are arising within the Dublin area. Solicitors with strong conveyancing experience are in demand on both a permanent and contract basis.

Firms have always experienced staff losses due to movement into in-house roles for the perceived improvement in 'work life balance'. This is particularly true in the aviation finance and funds sector. This is an issue that firms are addressing and are beginning to rethink their non-monetary packages in order to attract and retain existing staff.

IN-HOUSE

In-house roles have continued to grow at a steady rate throughout 2014 with a need for staff at different levels. Demand for these roles is always high from professionals looking to make a move from practice and we expect this to continue throughout 2015.

The financial services sector is the market leader in recruiting experienced legal professionals with insurance, funds and asset management companies all expanding their teams throughout the year. Companies in the technology sector are also continually seeking candidates for both specific contract/IP roles and on a more general legal counsel basis. A second European language is increasingly becoming a benefit for the in-house market.

Practice

Job Title	Dublin €	Regional €
Equity Partner	150,000 - 250,000	150,000 - 250,000
Salaried Partner	90,000 - 250,000	65,000 - 145,000
6 - 9 years' PQE	65,000 - 150,000	48,000 - 90,000
5 years' PQE	57,000 - 110,000	45,000 - 70,000
4 years' PQE	50,000 - 90,000	40,000 - 65,000
3 years' PQE	45,000 - 85,000	38,000 - 45,000
2 years' PQE	45,000 - 75,000	30,000 - 40,000
1 year's PQE	35,000 - 65,000	30,000 - 35,000
Newly Qualified Solicitor	30,000 - 60,000	25,000 - 30,000
Company Secretary (5+ years' exp.)	40,000 - 95,000	35,000 - 70,000
Company Secretary	30,000 - 55,000	35,000 - 50,000
Company Secretary (0-3 years' exp.)	25,000 - 45,000	25,000 - 38,000
Legal Executive / Paralegal	25,000 - 45,000	22,000 - 30,000
Professional Support Lawyer	65,000 - 90,000	N/A

Niche Areas

Job Title	Litigation (Dublin €)	Commercial Property (Dublin €)	Funds (Dublin €)
Salaried Partner	100,000 - 250,000	100,000 - 250,000	160,000 - 250,000
6-9 years' PQE	65,000 - 150,000	80,000 - 140,000	100,000 - 165,000
5 years' PQE	60,000 - 105,000	70,000 - 105,000	90,000 - 105,000
4 years' PQE	60,000 - 85,000	65,000 - 95,000	85,000 - 90,000
3 years' PQE	50,000 - 80,000	60,000 - 75,000	75,000 - 85,000
2 years' PQE	45,000 - 70,000	50,000 - 75,000	60,000 - 75,000
1 year's PQE	40,000 - 65,000	45,000 - 65,000	50,000 - 65,000
Newly Qualified Solicitor	30,000 - 60,000	30,000 - 60,000	30,000 - 60,000

In-House

Job Title	Dublin €	Regional €
Head of Legal	100,000 - 350,000	95,000 - 140,000
Senior Legal Counsel	80,000 - 160,000	65,000 - 115,000
Junior Legal Counsel	45,000 - 75,000	40,000 - 60,000
Funds Lawyer	50,000 - 155,000	N/A
Legal & Compliance Officer	70,000 - 110,000	55,000 - 90,000
Company Secretary	50,000 - 120,000	50,000 - 90,000
Legal Administrator / Assistant	25,000 - 45,000	25,000 - 30,000

Legal Executives: Why not qualify as a Mediator?

Here at IILEX we are always on the lookout for new opportunities for our members. One growth area in the legal industry which should be of interest to Legal Executives seeking to add another string to their bow is Mediation.

What is Mediation?

Mediation is a confidential and voluntary process where a mediator sits down with disputing parties and helps facilitate a discussion where the parties agree on their own way forward. People are present at mediation of their own free will and can leave whenever they wish. The mediator does not impose any solutions, but rather is present to facilitate effective communication.

The Mediation process can be applied to almost any situation where there is conflict, or just the potential of conflict. It is particularly effective where people with close relationships are clashing, such as workplace relationships or married couples.

The Mediation Process provides a safe place for difficult, emotionally charged conversations to take place where people with close relationships and shared interests can explore options. You can find out more about the process of mediation on the website of the Mediators Institute of Ireland (www.themii.ie).

Legal Executives as Mediators

We spoke with Griffith College Law Lecturer Paul Pierse, who has met with many Legal Executives over the last number of years, both as a solicitor and as a lecturer on the Diploma in Legal Studies and Practice (DLSP). Mr. Pierse is a mediator in Succession Disputes with Succession Ireland.

When asked about the suitability of mediation to Legal Executives, Mr. Pierse had the following to say:

"It would appear to me to make a world of sense for a solicitor's office to train up a Legal Executive in the skills of mediation rather than a solicitor. Being a solicitor is not

a pre-requisite to being a mediator. In a way it is a hindrance, as one needs to unlearn the requirement to be partisan for your client. As a mediator, your job is not to take sides. Generally, as a solicitor, your job is to fight your client's side. It can be difficult to switch seamlessly between the two professional modes.

It is likely to be more cost efficient for a legal practice to offer the services of a Legal Executive as a mediator over those of a solicitor. The cost of a solicitor's practicing certificate and insurance are much higher than those of mediators. Certainly many of the Legal Executives I have met on the DLSP would strike me as highly suited to the job of a mediator."

Becoming a Mediator:-

Head lecturer in the Law department in Griffith College's Cork Campus is Sian Langle. "It is very exciting that Griffith College has chosen their fine new campus on Wellington Road to launch the Certificate in Mediation this Autumn. This is the first course that I know of outside the greater Dublin area that has gone through the rigorous process of obtaining HETAC level 8 accreditation as well as certified mediator status for its graduates from the Mediators Institute of Ireland." The course begins this October and runs for 4 months, where a student would attend usually on Fridays and Saturdays once every few weeks. It is intended that the course will run in both the Dublin and Cork campuses of Griffith College, subject to demand.

You can find out more about the course on www.griffith.ie

**Mary O'Dwyer FIILEX
Director of Communications –IILEX
In conversation with
Paul Pierse, Law Lecturer, Griffith College, Cork**

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



Irish Institute of Legal Executives

CONFERRING CEREMONY 2014 at GRIFFITH COLLEGE CORK DIPLOMA IN LEGAL STUDIES AND PRACTICE (QQI)

The Conferring Ceremony of Graduates of Griffith College Cork took place on Thursday 20th November 2014 in the Honan Chapel at Griffith College Cork Wellington Road Campus. The Ceremony was attended by family and friends of Graduates as well as representatives of the validation bodies and local elected representatives.

Awards being conferred were Diploma in Legal Studies & Practice (QQI). LLB (Hons) in Irish Law (NTU/QQI). BA in Journalism (QQI). Certificate in Computing Science (QQI). Higher Diploma in Science in Computing (QQI). BA in Business Studies (QQI). BA in Marketing (QQI). BA (Hons) in Accounting & Finance (QQI). Certificate in Advanced Taxation Planning and Advice (QQI). Diploma in Digital Communications for Business (QQI). Diploma in Business Management (ICM). Diploma in Human Resource Management (ICM). Diploma in Marketing, Advertising, PR & Sales (ICM).

Directors who were in attendance, representing Irish Institute of Legal Executives (IILEX), were Frank Crummey Fellow Hon. Life Member IILEX, Gabriel Canning Chairperson IILEX, Mary Foley Membership/Director Central Co. IILEX, Fintan Hudson International Ambassador for

the Irish Institute of Legal Executives IILEX and Deirdre Butler Director of Regional Council/Education IILEX.

Other dignitaries included Cllr. Tony Fitzgerald on behalf of the Lord Mayor of Cork, Professor Diarmuid Hegarty President of Griffith College, Paul Pierce Solicitor and Law Lecturer Griffith College Cork, Clíodhna Dineen Programme Director for LLB Online & Senior Lecturer in Law Griffith College Cork & Dublin along with other members of Griffith College Staff.

Professor Diarmuid Hegarty gave the conferring address congratulating students on their achievements and wishing them every success going forward for the future. Cllr Tony Fitzgerald also in his address congratulated both graduates, supporting families and GCC staff on a job well done.

Alan Cashman, Tracy McSweeney and Roseanne Murphy successfully completed the Diploma in Legal Studies & Practice (QQI). Roseanne Murphy was the recipient of the Frank Crummey Perpetual Cup.

LLB (Hons) in Irish Law (NTU/QQI) was presented to the following graduates: Reeda Bokhari, Kevin Ferris, Danielle Ho, Kevin Holland, Edward Long, Killian McCarthy, James Mooring, Jennifer O'Sullivan, Shannon O'Sullivan, Fjolla Sahiti,



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

By kind permission of Lafayette Photography

Anna Tuianova, Philip Wade and finally Eoghan Weldon who received the Best Academic Achievement.

Following the Conferring Ceremony, all were invited by GCC to a reception which was held in the Ambassador Hotel allowing everyone to socialise. The entire ceremony was well structured and a huge success with the organisers to be commended, and, of course this day would not have been possible without the hard work of Griffith College Cork and their students.

Personally, it was a great honour to be a part of this special occasion. Many thanks to Professor Diarmuid Hegarty, President and the Griffith College staff and students for the warm welcome given to Irish Institute of Legal Executives. It was a wonderful end to an equally wonderful day

Deirdre Butler MILEX
Director for Regional Council/ Education
Munster Council - IILEX Cork

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

By kind permission of Lafayette Photography





CRIMINALISING CONTAGION



In most jurisdictions there is an offence which may be prosecuted in relation to transmitting a serious sexually transmitted infection (SSTI) during sexual intercourse, or

exposing someone to risk of transmission. Such a prosecution has not yet taken place in Ireland, and in this article we will examine how such a prosecution might take place, and whether such prosecutions are in the public interest.

In Ireland it is possible that a wide range of existing offences could be prosecuted in these circumstances, including; assault, assault causing harm, causing serious harm, poisoning, endangerment, rape, "rape" under section 4, murder, the common law offence of manslaughter, and attempted murder.

Homicide based offences have not been a significant feature of prosecutions in other jurisdictions, but it remains theoretically possible to make out these offences. Both manslaughter and murder are result offences, and as such causation must be proved, issues may arise such as the problems in proving factual causation even in the presence of phylogenetic analysis, and the necessity to inquire into the sexual history of the complainant, these problems also dog the assault and harm offences which follow. Further the result, i.e. death, may well be problematic as the person who transmitted the infection may predecease the person they infected. Further the temporal lag between the act and death might pose evidential difficulties for a prosecution in terms of discounting a *novus actus interveniens* and indeed causation in relation to the ultimate cause of death. Obviously were murder charged the accused must have intended to kill or cause serious injury, this it is argued represents a significant evidential hurdle. On the offence of attempted murder, this may only be established where there was intent to kill, intent to cause serious injury would not be sufficient. Prosecutions for manslaughter would require proof of an unlawful and dangerous act causing death, dangerousness being judged objectively, or a grossly negligent act, which need not be unlawful, but must involve negligence above ordinary carelessness, and a high degree of risk of substantial personal injury. It would seem that the evidential difficulties associated with these offences make them impractical to prosecute, further bearing in mind that we are dealing with risks associated with sexual relations, and given that infection, even with HIV, no longer represents a death sentence and may in fact not affect life span at all, it seems that such offences are ill suited to dealing with the transmission of a SSTI save when same is used as a weapon, and causes death.

Rape, and rape under Section 4, would be a viable route of prosecution, depending on the approach of an Irish court to frauds capable of vitiating consent. The availability of both offences reduces the gender specific argument against the use of the offence of rape, however it is hoped that in

the first instance a prosecution would not be mounted under this heading, and if it were that the Irish courts would prefer the position of the English courts who do not recognise a failure to disclose that one is infected with a SSTI as a fraud sufficient to vitiate consent to intercourse, as to do otherwise, it is argued, mistakes the true wrong of rape, which is a wrong related to a deception as to the physical act, specifically penetration which carries with it a significant social meaning, and non-consent to that act as properly understood, thus objectifying the complainant, whereas in HIV or SSTI cases, the act itself does not change, although results flowing from it may.

Further if the Canadian model is preferred, which is a model which recognises that failure to disclose, ones HIV status for instance, amounts to a fraud sufficient to vitiate consent to the sexual act, it seems odd that this would be confined to the transmission of a disease, for if we truly wish to protect a complainant from any and all invasions to their autonomy and integrity, one cannot logically or reasonably single out the transmission of a disease for this purpose. Thus we would move towards what Herring refers to as the mistaken sex scenario, where all consent is vitiated if the complainant later learns something, which if they had known it at the time of intercourse, would have prevented them from giving the consent they actually did give, again mistaking the real wrong of rape.

Assault, assault causing harm, and causing serious harm are likely the most obvious choice of offences to be prosecuted if transmission occurs, and the criminal law sees it as appropriate to become involved at all. The basic offence of assault requires the absence of consent; the approach in Canadian law, just mentioned, to vitiating consent would have implications in relation to sexual offences and thus should be rejected.

In considering how such prosecutions might be mounted in Ireland, and reflecting on the English experience where reckless transmission of an infection during intercourse is recognised as grievous bodily harm, firstly consent is not an element of the s.4 offence, thus the courts would first have to consider whether they would permit a defence of consent. In the context of s.3 it has been found that assault does not form an element of the offence, however this determination remains highly questionable based on the statutory construction of the offences within the 1997 Act. To deny consent outright, firstly would preclude sexual expression on the part of a person infected with a SSTI, and would akin to the position rejected in *R v Dica* in England preclude all risk taking in the context of sexual intercourse, with the potential of causing harm, which the court rightly discerned should be a role for legislators and not the courts.

There remain significant problems in relation to causation, recklessness in prosecuting such offences. Regarding causation there is an inability to prove factual causation, and the necessary inquiry into the sexual history of both the complainant and accused. The determination of recklessness should

require evidence that the accused was aware of his status, or that he was wilfully blind, if it is the latter standard then this could criminalise the conduct of any person who engaged in high risk conduct, further he should possess knowledge of the modes of transmission, which should not be taken as a given. The objective assessment of the unjustifiability of the risk also requires consideration both at the prosecutorial level, and by the judge directing the jury, and it has been argued that the construction of harm and risk in this context may militate against a correct consideration of these factors. It remains a significant concern that the objective test element of the overall subjective recklessness test, allied to the great fear and prejudice which surround infection with a SSTI, is apt to create a situation where an accused will rarely if ever be able to deny being reckless, this may in many respects contradict prevailing public health messages in terms of risk reduction behaviour as an effective method of curbing the spread of infection.

If a defence of consent were found to exist, then disclosure and the state of knowledge of the complainant become paramount. It is argued that consent to intercourse should amount to consent to risk of transmission where the complainant had general knowledge of such risks. This accords to the public health effort in this area which prizes shared responsibility, it is recognised though that circumstances such as a fear of violence, the type of relationship concerned, or an active deceit on the part of the accused, may skew responsibility back toward an accused. It is recognised that these are challenging suggestions; nevertheless it is felt they are justified when considering the correct allocation of responsibility between consenting parties to sexual intercourse, and the broader societal implications of eroding a public health message of shared responsibility.

Further the question arises as to the type of harm required; the s.3 definition poses no difficulty if the harm is conceived as a biomedical effect of the body. The s.4 offence is more specific than the s.20 GBH offence in England and Wales, and thus requires further consideration. Whether infection with a SSTI would amount to the type of harm comprehended in s.4 as defined in s.1, is at least debateable, firstly it would depend on the STI concerned, secondly there is no longer a substantial risk of death arising from infection with a SSTI which is treated, and it is argued that an assessment of harm should include an assessment of the treatment options and prognosis available. The question in Irish law will likely turn on whether there has been substantial impairment of bodily functioning, on this point permanence of dysfunction is not required, thus any substantial impairment would suffice, however in light of the time lag between infection and impairment, say for instance in HIV infection, it is at least questionable whether the definition of the offence could be made out.

Whether it would be possible to make out the offence of poisoning contrary to section 12 of the 1997 Act, in this context, would depend on the definition of administers which would be adopted by a court. If administers were taken to include the emission of bodily fluids during intercourse it seems that the message given is that the fluid of a person is a poisonous substance, and harmful in and of itself, which contradicts what we argue to be the real nature of infection with a SSTI, that is the lived experience, context, and meaning, not the factual moment of infection. Otherwise it would appear that a SSTI, depending on its type, would be capable of interfering substantially with bodily functions, the issues surrounding the mens rea elements, and consent, which have just been addressed would apply equally here.

The final offence is that of endangerment which is similar in some respects to the Canadian offence, and in many respects to a number of the specific statutes in the USA. The distinction with Canada arises because in our offence no assault need be established. The Irish Supreme Court in its consideration of this offence pointed to many challenging aspects of a such a general and unspecific offence, correctly it is argued they identified the importance of specificity and certainty in the criminal law which are notably absent in this offence. Further they referred to the possibility of the offence being used to comprehend activities which were not intended by the legislature when enacting the offence; it is argued that this was a prescient observation in this context, for it is unlikely its extension to the transmission of infection generally or in the context of sexual intercourse was foreseen. A further difficulty is whether consent represents a defence, which would be key in this context, if all sexual conduct involving a risk of transmission of a SSTI were not to be criminalised, and indeed all sexual conduct carrying a risk of harm, such as procreation in some circumstances. This is a general offence; its application would encounter significant difficulties. Akin to Canada, significant, and it is asserted torturous, analysis of risk and harm would be required. This could also, as it has in Canada and the USA, lead to over criminalisation and operate in distinct contrast to public health messages of shared responsibility and risk reduction as the primary vehicles for curbing the spread of SSTIs.

Should the law intervene?

The final piece of the puzzle is whether the criminal law should involve itself at all in this area, absent circumstances where a SSTI is used as a weapon, and whether it would be better all round to leave this area to realm of public health as is the case with all other communicable diseases. To argue both descriptively and proscriptively that transmission of a SSTI represents either a risk of harm, or harm, comparable to all others is it is argued fallacious. If so where offences relating to SSTIs are successfully prosecuted why are sentencing patterns harsher than those offences involving comparable risk or harm? Further if infection with a SSTI represents, in the eyes of the community, a harm the same as all others why then are prosecutions so low compared to the rates of infection? Some arguments might be that

shame prevents complainants from coming forward; another more cogent argument is that many people see the risk of infection as a shared responsibility and have no wish to seek a prosecution.

One is left to irresistibly conclude that the issue here is really sexual intercourse, the intimacy and privacy of the act, and the possibility of harm arising out of that act, a sense of betrayal, and who bears the responsibility for consequences. To single out sexual transmission should immediately raise one's suspicions, why is criminalisation appropriate in this context but not in relation to all other communicable diseases, each of which are dealt with by public health initiatives? The debate on this alone could fuel an entire paper.

What we shall say is that the intervention of the criminal law overall is seen to be justified as an effective and necessary adjunct to the operation of public health efforts, in an overall effort to curb the transmission of SSTIs. The criminal law is seen to achieve these goals through its incapacitation, rehabilitation, deterrence, and retributive functions. Critics of the involvement of the criminal law point to the potential detriments associated with criminalisation; disincentives to testing, treatment, care and support, spreading misinformation regarding HIV and its transmission, creating a false sense of security which promotes a lack of concern for personal sexual health and an increase in high risk behaviours, the stigmatisation of all persons infected with a SSTI as potential weapons, degradation of relationships between health professionals and patients, discriminatory and selective prosecutions, the risk of miscarriages of justice in light of causation difficulties, invasions of privacy, and finally the general ineffectiveness of the law in contributing to managing the spread of infection. Proponents and critics of each goal are evident throughout the literature, and the lack of empirical evidence supporting the positions on both sides of the debate is notable. What does emerge is that the only functions of the criminal law which cannot be achieved by public health initiatives are deterrence and retribution.

The effectiveness of deterrence is hotly contested, however it is argued that the preferable view is that the type of behaviours involved are sexual in nature, do not lend themselves to easy explanation never mind deterrence, and overall there is little to suggest that the law, particularly in light of the low level of policing and prosecution, will have any real deterrent effect in this area. Indeed we might note that attempts to control homosexual behaviour in the past had little effect and did more harm than good, similar things might be said regarding attempted prohibitions of alcohol use, and drug use. Retributive initiatives are sufficient in and of themselves as a justification for criminal liability; they mark morally blameworthy behaviour, and as such have the potential to generate normative standards. The key then is whether on balance this retributive function, employed in a tiny minority of cases, which attract lurid and salacious media coverage, have the effect desired, or in fact contribute to the stigmatisation of persons infected with SSTIs, predominantly HIV, and as such detract from the public

health message that infections are not an 'us and them' matter, simply an 'us' issue for joint management.

In the absence of an effective and consistent enforcement mechanism, which raises the spectre of a government invasion in the sexual lives of so many, it is argued that any prosecutions in this arena would simply be symbolic and serve no positive purpose in achieving the overall goal of infection reduction or eradication. Further the general principles of the criminal law were never designed to deal with these scenarios, and this very generalist approach is what makes the laws involvement so challenging and open to critique. The conceptions of harm, risk, recklessness, and consent are dissected in a manner which in no way recognises the incredible complexity of the negotiation and occurrence of consensual sexual acts. An immediate response is that we should legislate for such eventualities, unfortunately the experience of the USA tells us a different story, there has been no reduction in transmission rates or any appreciable impact on high risk behaviour, but there has been demonising media coverage of a small number of HIV positive people who engaged in high risk behaviour, resulting in greater stigmatisation of those infected with HIV.

Ireland has in many respects a unique opportunity, we do not have a specific law in this area, nor should we develop one, and we have no case law recognising infection with a SSTI as a harm before the law. What will now be suggested requires a leap of imagination as one author described it; however it is suggested that the intervention of the criminal law is not necessary in this area, nor is it appropriate. The law developed in other jurisdictions when HIV was an inevitably fatal disease, this is no longer the case. Further people in general want to practice safer sex, we are only ever dealing with a tiny minority of persons who are resistant to public health advice, and there are public health ways of dealing with such persons such as involuntary civil detention with appropriate judicial safeguards. It is accepted that an infection of any sort is concerning, and one which impairs our immunity even more so, this is a health issue, and as such the emphasis in Ireland should be on genuinely curbing the spread of same through intensive public health efforts, not by prosecuting selected cases for the purposes of populist retributivism, which in turn distorts the very public health message that could do so much good. A lesson from history shows that a public health approach to syphilis effectively reduced that phenomenon, without recourse to the criminal law; a similar approach should be adopted here.

**Edward Mathews BL,
RNID, LLB, LLM PhD Candidate -
Trinity College Dublin
Law Lecturer GCD
Director of Regulation and Social Policy,
Irish Nurses and Midwives Organisation**

Irish Convict Garret Cotter

The River Cotter rises in the Brindabella Ranges in the South West of the Australian Capital Territory and flows northwards joined by six minor tributaries (including Paddy's River) until reaching a confluence with the Murrumbidgee River in the Murray-Darling Basin. The River Cotter, the Cotter Dam, the Cotter Valley and the Cotter Gap are namesakes in honour of a man named Garret Cotter, an Irish convict from Cork and a man who undoubtedly left his mark on Australian history.



My research of this convict contributed to an article in The Canberra Times published on the 11th October, 2013 entitled 'Finding Garret Cotter' written by Richard Begbie and which research dispelled the historic belief that the crime that Cotter was convicted of was for firing on His Majesty's Troops. My research into the trial reports of the time and, in particular, my finding of a report in the Freemans Journal of Monday 25th February, 1822 turned Cotter's history on its head. The story long recounted in Australia was that 'firing on His Majesty's Troops' was the crime that Cotter was convicted of and his resultant sentencing of transportation to Australia. This history is entirely at odds with the trial report discovered and this has ultimately altered forever the legend behind the name.

Garret Cotter was born in 1802 and believed to reside to the north of Millstreet, Cork, according to the details given in evidence at his trial as written in the aforementioned trial report. According to the state records for New South Wales and the passenger manifest of the convict ship 'The Mangles', on which Cotter sailed from Ireland, Cotter's occupation is listed as being a Ploughman. The

occupation of Ploughman was often given by convict transportees. It is essentially a farm labourer. At the date of his trial on the 21st February, 1822, Cotter was 20 years of age. The prison records held for Cotter in the National Archives in Dublin record the reason for his internment as the offence of 'Whiteboyism' and he was admitted to Cork Prison on the 17th January, 1822.

'Whiteboyism' was the general term which was given to rural violence in connection with secret societies. A Whiteboy (as Gaeilge, Buachaillí Bána) was a member of a secret Irish agrarian society who used violent attacks to defend tenant farmer rights. The name 'whiteboy' is derived from the white smocks the members wore on their nightly raids so that they would recognise each other as members when they met in the darkness. These whiteboys were of the poor rural society, waged labourers, those who worked in small scale industries or were cottiers. Each town often had an independent group which formed a network with those in other towns and often across several counties. There was ritualistic use of initiation oaths amongst members, costumes or uniforms, pseudonyms and special insignia. The Whiteboy Act made it an offence, amongst others, to send a threatening letter, to compel another man to leave his farm, habitation or lawful employment or maliciously causing any door to be opened by threats or menaces.

Cotter, as reported in The Freemans Journal, was indicted on a charge under the Whiteboy Act which made it a capital felony without the benefit of clergy to make any person quit his house or employment or to attempt to compel any person to leave his abode or employment. Cotter was indicted with another by the name of John Leary for compelling a man named Richard Reardon to quit his employment. Quite obviously this is not the offence

which he was believed to have been sentenced and transported for.

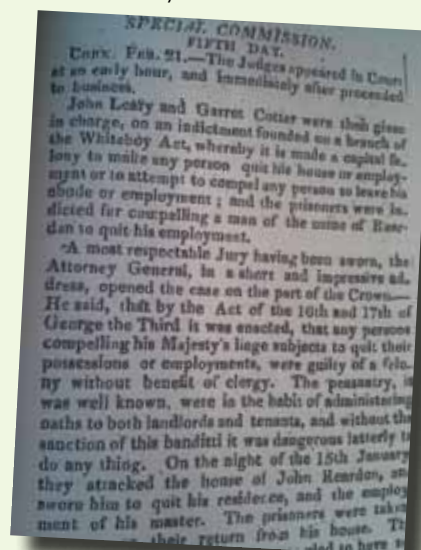
According to the trial report, on the night of the 15th January, 1822 at about one o' clock in the morning it was alleged that Cotter and Leary attacked the house of Reardon at Drominny and swore him to quit his residence and employment of his master, Mr. McCarthy. It was alleged that the prisoners on entering the premises of Reardon bade him bless himself and take oath to leave the property on Friday morning, as well as swearing the women on the property. It was on returning from his house that they were captured about four miles from Drishane, to the north of Millstreet. Both men were on horseback. Cotter had in his possession a pistol and Leary a musket. The prisoners offered no defence to the charge in court. Judge Moore charged the Jury with returning a verdict based on that part of the Whiteboy Act under which the men were charged. After a short consultation, the Jury returned with a verdict of guilty for both men. Both men were sentenced to be hanged. The sentence, however, was later commuted to transportation for life.

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 Cotter's sentencing he was returned to Cork City Gaol until preparations were made for his transportation. In Cotter's case this was a wait of 5 months. Those convicts tried 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. It was commonplace that some convicts would have to wait for as long as two years before being transported. During their detention gaols were often overcrowded and disease infested. Cotter would have been detained in one of the prisons at either North Gate Bridge or South Gate Bridge. There were two gaols, one for debtors and the other for criminals. These were the predecessors to the structure built to replace them shortly after. The new Cork City Gaol was opened in 1824 and the existing structure now functions today as a tourist attraction.

The error in the recording of Cotter's offence was made on the convict ship's indent, as 'Insurrection and Firing on the King's Troops'. It would appear that the cause of this erroneous notation was made because one of the men sentenced at the same Special Commission as Cotter had been convicted of this crime. Consequentially, all those convicts on board the Mangles who had been sentenced at the same Court sitting were recorded as having committed the same crime.



The Mangles sailed from Cove, Cork on the 21st June, 1822 via Rio de Janeiro (departing there on the 1st September, 1822) to Port Jackson New South Wales, arriving on the 8th November, 1822. The ship was captained by John Coghill, who was also part owner of the ship. The Superintendent on board was Matthew Anderson. The journey took 140 days from departure to destination and transported only male convicts. 191 men embarked on the journey and there was one death of epilepsy according to the Surgeon, Matthew Anderson's journal.

The C.S.O.R.P. records (Chief Secretary's Office Registered Papers) held in the National Archives in Dublin hold correspondence dated the 13th June, 1822 from Dr. Edward Trevor of Cove, Cork to William H. Gregory, Under Secretary of Ireland, Dublin Castle. Dr. Trevor examined the

convicts on board the Mangles prior to their departure from Cove. There also is held there a letter from Dr. Matthew Anderson to Dr. Trevor acknowledging receipt of various articles for the convicts' use during the voyage, including two gallons of ink, 190 combs and 12 spelling books. The letter also expresses that Dr. Anderson required 2 copies of an arithmetic books which "many of our convicts are desirous of making themselves acquainted with".

The conditions on board the Mangles and other convict transportation vessels of the time were significantly better than their predecessors. Many of the convicts who were shipped to New South Wales in the early years of convict transportation were already disease ridden prior to setting sail. Many would perish during the voyage from such illness as typhoid and cholera and health was worsened by the dreadful conditions of the ship which often also caused scurvy, dysentery and fever amongst the convicts. The ship's surgeons did their jobs well enough. There were often many cases recorded of sea sickness, stomach upsets and measles. Towards the mid nineteenth century conditions on board convict transportation vessels vastly improved and records indicate that the mortality rate thus decreased. Improved conditions on board the ships were only as a result of the complaints made by colonists when the convicts arrived in such a poor state that they were unable to undertake the work they had been sent to do. In the later years a bonus was paid to the ship's charterers for the safe arrival of prisoners.

Cotter would have been taken aboard The Mangles in Cove in chains and shackles. Once aboard prisoners were unlocked and were sent through a hatch below to the prison deck and the hatch locked. Sometimes the prisoners were kept in the chains behind bars. In the early days of transportation convicts were kept below most of the time and were only allowed on deck for fresh air and exercise. In the early form of discipline on board was brutal with regular use of the lash. This lessened during the nineteenth century when misbehaviour resulted in a prisoner being 'boxed'. This meant they were put in a small confined space in which they could neither lie down nor stand.

Cotter's history in New South Wales has left its mark. On landing he was assigned to work as labourer, along with another Cork man named Buckley, to a Mr. Warby of Airds. Two years later he was re-assigned to Francis Kenny of Appin. Little is known of Cotter during the intervening period. Convict labourers of the time would have

been used to clear the land, tend to livestock and construct roads and buildings. On the re-assignment the Rev. Thomas Redall wrote a glowing reference of Cotter and he was described by his employers as being a good stockman. During the drought of 1827 to 1828 Cotter took Kenny's cattle across the Murrumbidgee River to find grazing land. He was guided there by an Aboriginal leader named Onyong, whom he had befriended. There Cotter established basic huts and Kenny's stock fattened under his regime.

In 1832, Cotter was accused of stealing a horse from a neighbouring property and managed to evade arrest for two months. The case was thrown out of Court for want of evidence but because Cotter had resisted arrest Magistrate McAlister banished him to 'live beyond the limits of location' for four years. He thus had to stay west of the Murrumbidgee River, an area he was already luckily very familiar with. Kenny had attempted to exonerate Cotter, without success, but gave Cotter some of his own cattle and own brand (a brand which the present generation of Cotters still hold). For six years thereafter Cotter lived beyond the river which would come to bear his name. In 1838 he was granted his Ticket of Leave which thus allowed him to work in the Queanbeyan District. A Ticket of Leave was a parole document issued to convicts who had shown that they could be trusted with some freedoms. One of these freedoms was permission to marry. Cotter married in 1841.

In 1847 he was granted a Conditional Pardon making him a free man on the condition that he never returned to the United Kingdom and to his homeland of Ireland.

Aileen Jennings BA, MILEx

Further Reading:

Charles White, 'Early Australian History, Convict Life in New South Wales and Van Diemen's Land', (1889), Bathurst C. & G.S. White.

Charles Bateson, 'The Convict Ships 1787-1868', (1985), Brown Son & Ferguson.

Posthumous pardon for man wrongly hanged of murder – landmark action in the history of the Irish State

Irish Innocence Project and Justice for Harry Gleeson Group Prove his Innocence

Finally, 74 years after Harry Gleeson was hanged for the murder of his neighbour, the Irish Innocence Project and the Justice for Harry Gleeson welcomed the announcement by Minister of Justice Frances Fitzgerald of the Government's decision to grant a posthumous presidential pardon that will, at last, clear his name.

It will be the first time in Irish history that anyone has received such a pardon.

Mr. Gleeson lived on his Uncle John Caesar's farm in New Inn, Co. Tipperary and on the morning of Thursday the 21st of November 1940 when walking his dogs, Mr. Gleeson discovered what later turned out to be his neighbour Mary "Moll" McCarthy's body. Mr. Gleeson immediately returned to his uncle's house informing him of the discovery before leaving to report the incident to the Gardaí. Subsequently, within five months of the murder, Mr. Gleeson was charged, tried, convicted, hanged and was buried at Mountjoy Prison. He always claimed his innocence and his final words to his junior counsel Sean McBride haunted McBride and, in later years, inspired him to advocate for the abolition of the death penalty in Ireland and Internationally and to be instrumental in the beginnings of Amnesty International.

The State's original charge against Mr. Gleeson was that he murdered Mary "Moll" McCarthy on the 20th of November 1940 between 5:30pm and 6pm. Although the prosecution, in the Central Criminal Court, requested that the charge be amended to 'on or about the 20th or 21st of November 1940' they nevertheless prosecuted Mr. Gleeson based upon shots that were fired on the 20th of November 1940 between 5:30pm and 6pm.

Among the new or newly discovered evidence submitted was:

- Copy of Firearms Register
- Dr. Peter Cummings's pathologist report that supported
- Statements by various witnesses that supported Gleeson's innocence

In the Central Criminal Court the State relied entirely on ballistic evidence, and most importantly on evidence given by Mr. Leamy, a shop assistant at Feehan's hardware store in Cashel. The State sought to prove that Mr. Caesar, Harry's uncle, bought shotgun cartridges from Feehan's hardware store and



that those cartridges were available to Mr. Gleeson, in order for him to commit the crime. At trial, Mr. Leamy was called as a prosecution witness and asked whether, on the 3rd of October 1940, he sold any cartridges to Mr. Caesar, to which he replied yes. When asked whether he knows what kind of cartridges he sold to Mr. Caesar, he replied 'Ely, Grand Prix' however; he could not remember the number – meaning the shot size of the cartridge. The victim in this case was shot with size No. 5 cartridges and the prosecution claimed this was the type of ammunition bought by Mr. Caesar on the 3rd of October, 1940. When the Judge asks Mr. Leamy whether he has the Register, which is a log of all the ammunition sold by establishment, including the date, quantity, ammunition type, name and address of the buyer, as well as the buyer's firearm certificate number. Mr. Leamy said, in reply, "We have a Firearms Register, but I have not it here." The Judge then asks that the Register be produced in court the next morning.

However, Mr. McCarthy, State Prosecutor, told the judge that, 'the register won't show it. It has been examined.' Mr. Leamy told the court he couldn't be sure what size cartridge was bought and produced a receipt dated 3/10/40, that didn't show the type or size of cartridge, only the price of the purchase. The Register was never produced in Court.

Among the new evidence submitted for consideration by the Irish Innocence Project and the Justice for Harry Gleeson group, which is an informal organisation made up of relatives and supporters of Harry Gleeson, was the Firearms Register, a piece of evidence that was never introduced at trial, despite the Judge's interest in examining it.

The Firearms Register clearly shows that there is no record, contrary to the receipt produced by Mr. Leamy, that Mr. Caesar bought ammunition/cartridges on the 3rd of October 1940. Thus, had the Firearms Register been produced in Court when requested/ordered, along with the receipt, it would have likely caused significant doubt as to the authenticity of the receipt. It also would have called into question the statement made by Mr. McCarthy for the prosecution namely 'the register won't show it. It has been examined' and suggests that the prosecution

knowingly withheld the Register, aware that there was no 10 October 1940 corresponding entry.

There is an unusual entry in the Register however, which shows that John Caesar had bought 25 shotgun cartridges on the 10th of July 1940. The size of which was No.4. (Copy enclosed) This fact is vital as it seems that the prosecution attempted, and indeed succeeded, to withhold the firearms register so as to avoid explaining the discrepancy between the date on the receipt and the actual entry in the firearms register. If the Firearms Register had been available to the defence, serious doubt would have been raised in respect of the State's claim that Mr. Caesar had bought No.5 cartridges on the 3rd of October 1940, a date in proximity to the murder.

Aside from introducing new evidence related to the gun register, the Irish Innocence Project and the Justice for Harry Gleeson group also submitted new evidence with regards to the time of death.

The original charge against Mr. Gleeson was that he committed the murder between 5:30pm and 6pm on the 20th of November 1940. This charge was subsequently amended in the CCC. The 'new' charge against Mr. Gleeson was that he murdered Ms. McCarthy 'on or about the 20th or 21st of November 1940.'

In relation to the original charge, evidence places Mr. Gleeson on Mr. Caesar's farm around 5:30pm and 6pm on the 20th of November 1940. Mr. Gleeson was busy feeding his hounds at about 5:30pm and usually 'delayed about a quarter or 20 minutes brushing them and rubbing them' before supper, according to Thomas Reid, another farmhand who lived with the Caesars. After supper Mr. Gleeson started reading the newspaper and he said that that would have been 'in or about 6 o'clock pm' according to Harry Gleeson's statement.

The victim's son Michael McCarthy stated in his deposition that 'I saw mammy last time alive on Wednesday about six or seven o'clock', which suggests that Mr. Gleeson can be accounted for at the time the State originally alleged the murder was committed.

Also, Dr. O'Connor testified that the body temperature of the victim that he recorded shortly after 1pm, roughly 4 hours after Mr. Gleeson

reported his findings to the Gardaí, was 96 Degrees Fahrenheit or 35.5 Degrees Celsius. Dr. O'Connor testified that the body was not as cold as it should be if it had been "laying there all night," suggesting he wasn't convinced the murder had occurred the previous night between 5:30 and 6:00pm. The testimony of Dr. Flood suggested that the death had occurred "within a few hours of his examination."

To explore the time of death further, the Irish Innocence Project consulted Dr. Peter Cummings, a renowned Boston forensic pathologist who went to medical school at the Royal College of Surgeons.

Dr. Cummings, who is Director of Forensic Neuropathology at the Boston Office of the Chief Medical Examiner in Massachusetts, confirms that in his professional opinion, and, based on the vaginal temperature taken by Dr. O'Connor at about 1:15pm on Thursday 21st November 1940, that Ms. McCarthy had been dead 3 – 8 hours from the time she was examined by Dr. O'Connor. Dr. Cummings's report supports Dr. Flood and Dr. O'Connor's opinions and evidence that death occurred the morning shortly before the body was found.

In essence, the above medical evidence casts serious doubt as to whether Ms. McCarthy was murdered when the State claimed she was and also raises serious questions in respect of the charges against Mr. Gleeson. If Ms. McCarthy had been dead for 3-8 hours from the time Dr. O'Connor recorded the body temperature it means that death occurred any time between 5:15am and 1:15pm on the 21st of November 1940, the Thursday Mr. Gleeson found the body. Since it is known that the body was found by Mr. Gleeson at about 9:30am that morning, it is safe to say that death occurred between 5:15am and 9:30am on Thursday morning 21st November 1940.

It is well documented that Mr. Gleeson was a 'creature of habit' and it is clear from his statement that he generally woke up at around 7am every morning and went to bed at around 9pm every night. On one occasion, according to his statement, Mr. Gleeson went to sleep later than 9pm. It is also well documented and accepted that Mr. Gleeson and Mr. Reid, who shared a house, would have breakfast

together each morning before they went together to feed the horses and milk the cows. They would then generally part ways sometime around 9am. On Thursday morning 21st November 1940, Mr. Gleeson and Mr. Reid parted ways at about 9am or 9:15am.

Speaking about the news, David Langwallner, Dean of Law at Griffith College, Director and Founder of the Irish Innocence Project said:

"Nothing can adequately comfort those who have fought to exonerate Harry Gleeson but this posthumous pardon and the clearing of the good name of Mr Gleeson is a proud moment for everyone involved."

David Langwallner worked on the case in conjunction with Griffith College student Tertius Van Eeden. Having reviewed the trial transcripts and exhibits, which they obtained from the National Archives, as well as information, provided by the Justice for Harry Gleeson Group, the Irish Innocence Project sought the pardon under the Criminal Procedure Act 1993 Section 9 and under a created posthumous pardon procedure.

Prof. Diarmuid Hegarty, President of Griffith College, said:

"This case was a tragic miscarriage of justice and the hanging of Mr. Gleeson for a murder he never committed is a dark stain on the memory of the State. However his posthumous pardon shows that justice is not blind to injustice and on behalf of everyone at Griffith College I wish to thank David Langwallner and everyone involved in the Irish Innocence Project team who worked on this case I want to express our thanks to The Justice for Harry Gleeson group who brought this to the projects attention."

Anne Driscoll
US Fulbright Scholar
Manager at the Irish Innocence
Project 2015, Griffith College Dublin

Irish Innocence Project

Tionscadal Neamhchiontachta na hÉireann

INTERNATIONAL CONFERENCE

on Wrongful Convictions,
 Human Rights and the Student
 Learning Experience
 - 26th of June 2015

This conference will be a first of its kind. Never before have law, journalism and innocence work professionals, exonerees and higher education students from Ireland and around the globe been invited to come together to share their clinical experience pursuing innocence and human rights work.

The conference features a keynote address by Gareth Peirce, who successfully overturned the wrongful convictions of the Guildford Four and the Birmingham Six, as well as a talk by Innocence Project co-founders Barry Scheck and Peter Neufeld, and presentation by "48 Hours" American television journalist and lawyer Erin Moriarty.

We would be delighted to welcome our friends and colleagues from around the globe. We are also encouraging students with a passion for justice and human rights to come and are offering discounted prices for them.

The Irish Innocence Project currently has 21 student caseworkers drawn from Trinity College, Dublin City University and Griffith College investigating about 26 presumed wrongful conviction cases under the supervision of about eight overseeing lawyers. For more information about the Irish Innocence Project or the upcoming Irish Innocence Project International Innocence Conference and Wrongful Conviction Film Festival visit innocenceproject.ie.

Conviction Film Festival 27th of June 2015



International Wrongful Conviction Film Festival will be the first ever wrongful conviction film festival and will feature nine international films, Q&As with directors and exonerees, and a closing capstone event: a special screening of ***In the Name of the Father*** with director Jim Sheridan and Gerry Conlon's family.

The Gerry Conlon Memorial Law and Journalism Justice Student Scholarship will be awarded that evening to a law or media student who is interested in pursuing innocence or human rights work.

Both events will be held on the Griffith College Dublin campus.

Both conference and film festival programs are expected to be high impact, high profile events attended by international VIPs, celebrities and dignitaries. The aim of these two robust days are to:

- Increase understanding and awareness of wrongful convictions as a human rights issue
- Promote the role that both law and the media has in addressing miscarriages of justice
- Inspire a new generation of young people to pursue innocence and human rights work

Brief Profile of Frank Crummey, FILEX

Pictured and featured in the article hereunder is our esteemed colleague, Frank Crummey, Director, Fellow (FILEX and Honorary Life Member) of the Irish Institute of Legal Executives as well as holding the position of Commissioner-for-Oaths. In 1987, Frank was one of the founding members of the Irish Institute of Legal Executives – (IILEX).

Over the years, Frank has made an enormous contribution to the Irish Institute of Legal Executives – (IILEX) where his knowledge and expertise is an invaluable feature and always deeply appreciated.

Most importantly, over 25 years ago, Frank was involved in the setting up of the Women's Refuge in Rathmines and since then has worked relentlessly as a volunteer assisting in the pivotal services given to vulnerable women and children seeking refuge from domestic violence and other difficult life situations. His in-depth knowledge of Family Law has played a major role in his involvement with the Women's Refuge in Rathmines.

Mary O'Dwyer FILEX

US students volunteer to fix up Dublin women's refuge

The students worked with staff from the US Embassy in Dublin to give Rathmines Women's Refuge a makeover



Frank Crummey, a founder of Rathmines Women's Refuge, with Notre Dame University volunteers Rebecca Mayus and Lauren Josephson.

OVER FORTY AMERICAN students and volunteers provided by the US Embassy in Dublin spent last weekend transforming and refurbishing one of the country's largest women's refuges.

Rathmines Women's Refuge, in Dublin, which houses up to 10 families at any one time, has been helping victims of domestic violence since 1986.

The centre and its gardens received the weekend makeover in a blitz organised by Localise, the youth and community development organisation, in tandem with the US embassy.

Both the embassy and Localise drew on support from students from Notre Dame University currently on exchange in Ireland, embassy staff and members of the Ireland US Alumni Association.

In addition to refurbishing the garden and playground in Rathmines, the volunteers undertook some internal paintwork and improvements. US Embassy Charges D'affaires Stuart Dwyer visited the Refuge to oversee the work.

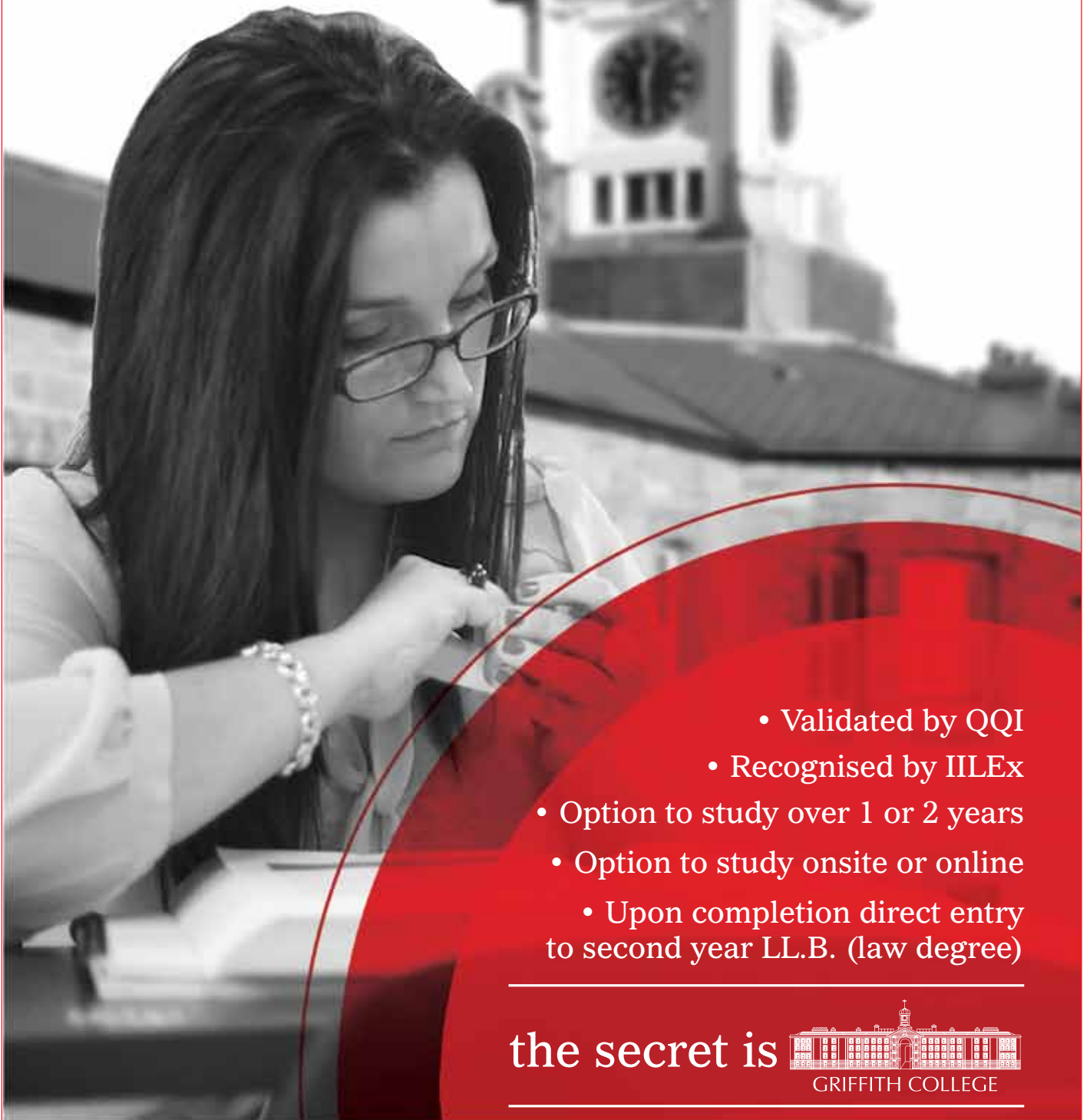
Localise director Derek Cleary said that the work showed what can be achieved through volunteerism.



"The makeover illustrated just what can be achieved when young people decide to volunteer their time and give something back to the community. The benefits to the centre can be seen physically in the work undertaken".

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