

PARCHMENT SPEECH – AUGUST 2008

James MacGuill, President, Law Society of Ireland

Today marks the successful completion of years of dedicated study and training following which you have earned the right to have your name inscribed on the Roll of Solicitors.

As a solicitor you have a right of audience in every court in the land and the right to carry out many forms of transactional work reserved exclusively to solicitors. With that power comes responsibility. This is something I wish to talk to you about today. An independent legal profession is an essential component of democracy. Lawyers, who are independent of government, commercial interests and the media, provide an indispensable safeguard of fundamental freedoms. It is for this very reason that the legal profession or its independence are the first targets of totalitarianism. If there could be any doubting that proposition, we only need to look at the events in Pakistan, Poland and Zimbabwe recently.

Independence of thought and action is frequently unpopular.

Guest Speaker

That might be a good point to introduce our guest speaker this evening, Dr. Maurice Manning, President of the Irish Human Rights Commission.

It is also an opportunity for me on behalf of the Law Society of Ireland, and particularly on behalf of those new members joining us today, to place on record the admiration of the Society for the excellent work of the Human Rights Commission since its establishment. The establishment of an Irish Human Rights Commission was part of the package of provisions included in the Belfast Agreement, which was so overwhelmingly supported in the referendum in 1998. The Commission itself was established in 2001 and, over the last seven years, has undertaken immense work across a range of subjects including citizenship, de facto couples, combating racism, family reunification, criminal law,

discrimination against women, children's rights and of course, extraordinary rendition.

There have been some significant achievements particularly in the field of disabilities and in respect of the Garda Ombudsman Commission. Many other fields might best be described as a "work in progress". From the very beginning, Dr. Manning was open and receptive to working with the Law Society towards our shared objective of promoting and protecting human rights. We took a common position on the manner in which Ireland should incorporate the provisions of the European Convention of Human Rights. Unfortunately, that fell on deaf ears. It is a continuing disappointment that Ireland, which was one of the first countries to sign the Convention, was one of the last to ratify it, and then only in a minimalist fashion.

We have continued to cooperate and have jointly hosted major meetings on human rights themes including human rights in committed relationships, migrant workers, rights-based child law and criminal justice.

The Society is pleased to be associated with this aspect of the Human Rights Commission's work, because we believe it is absolutely essential that information in relation to human rights and their protection is made freely available as broadly as possible and you as solicitors and the Human Rights Commission have our parts to play in that.

I am sure you all recall from your constitutional law classes, the dictum of the then Chief Justice, Mr. Justice O'Higgins in the 1976 case of Healy & Donoghue:-

"If a person charged does not know of his right, he cannot exercise it.
If he cannot exercise it, his right is violated."

Anything that interferes with access to knowledge is to be decried.

As the Society, in common with other Law Societies around the world, prepares to celebrate the 60th Anniversary of the Universal Declaration of Human Rights on 10th December next, it is somewhat ironic that the protection of our existing rights and our Human Rights Commission itself is a matter for debate.

While no detailed proposals have yet been forthcoming, the Law Society nonetheless expresses its grave concern that the progress made to date by the Irish Human Rights Commission should in any way be compromised. When the proposals are made public, we will of course, consider them in detail and make such comments as are appropriate. It is fair to say however, that our views must reflect the practical experience we have had of working for over seven years with an exceptionally professional and conscientious team led by our guest speaker today.

Independence of the Legal Profession

Some commentators present the independence of the legal profession as a privilege for lawyers. That is unfortunately to completely miss the point. An independent legal profession is the right of citizens.

It is your duty to represent your individual clients ethically, to the best of your ability and without fear or favour. It is a singular honour to be called upon to represent a fellow citizen at any time but particularly when the client is under great personal stress. This could be on the occasion of buying a house, perhaps the single biggest investment of a life-time, preparing for the distribution of their Estate after death, being guided through the process of family break-up or when bringing or defending proceedings before the courts, whether civil or criminal.

A client is entitled to the effective assistance of a solicitor, and in certain cases where their means do not permit, to have that assistance provided at public expense.

What are they entitled to expect?

The 3 core principles are that we act:

1. Independently
2. Confidentially
3. With integrity avoiding conflict of interest.

Truly independent advice is objective advice based on the known facts and your understanding of the law. It should not be, and rarely is, simply what the client wants to hear. It must never be subject to improper outside influence.

Confidentiality

A bedrock of the lawyer/client relationship is the knowledge that a lawyer will keep the instructions received confidential to himself and never disclose them to third parties, even close friends and family. Every one of you at some stage in your professional life will become privy to secrets that would be considered sensational in the public domain but you must never disclose them. This confidentiality, or “privilege”, is the right of the client, not that of the lawyer, and can only be waived with the client’s express authority.

Because of our duty of confidentiality, we are constrained from claiming credit for the thousands of successful transactions handled by solicitors on a daily basis, even to rebut unjust attacks against us.

Integrity speaks for itself and requires not only the highest ethical conduct on your part, but also a very visible demonstration that this is so.

Conflict of Interest

If in the course of representing a client, a conflict of interest emerges, you must cease to act forthwith.

What constitutes a “conflict of interest”?

My strong advice to you is to operate on the basis that if you feel there may be a conflict of interest, there almost certainly is. Guarding against conflicts of interest is an ever-changing challenge and is under constant review by the Law Society, which, where appropriate, gives guidance and prescribes rules to guard against injury to any client. The same issues arise worldwide and I would commend for your reading, a report on the subject produced this month by the Canadian Bar Association and available on their website. There, they succinctly summarise the various conflicts.

At the heart of the conflicts discussion are immutable principles. Lawyers must never permit their own interests or their duties to others to compromise their work for a client. They must provide zealous representation and protect client confidences. Clients are entitled to expect that their lawyers will act with integrity and provide them with sound legal advice. Simply put, the central public policy purpose of conflicts law and rules is to protect client representation.

A “conflict of duty and interest” prevents a lawyer from acting for a client when the lawyer’s self-interest conflicts with the client’s interests.

A “conflict of duty and duty” prevents a lawyer from acting when the duty of performance owed to one client conflicts with the duty of performance owed to another client.

A “conflict of duty with relationship” prevents a lawyer from acting when the duty owed by the lawyer to a client impairs the lawyer’s representation of another client in another matter by impairing the lawyer-client relationship in that matter. The focus of this conflict is the lawyer-client relationship, which is essential to effective client representation.

We abide by these principles in order that we may effectively protect the public interest. In turn, it is vital that the public have confidence in the independence and integrity of the legal profession. To secure confidence, there must be openness and transparency. Justice must not only be done, but must be seen to be done. In that regard, I would like to discuss with you a new and exciting development.

We don't, and won't, promote self-regulation. As we have pointed out repeatedly, it is fundamentally misleading to describe the current system of regulation of solicitors in Ireland as "self-regulation".

In fact the system of regulation operates under Statute and is characterised by all-pervasive external supervision and control by independent people including the President of the High Court, the Minister for Justice, the Independent Adjudicator and the non-lawyer nominees of IBEC, ICTU and the Director of Consumer Affairs. These people of integrity and standing would not tolerate a system that worked other than in the public interest.

The system can be improved however, and we welcome the draft legislation which will introduce a Legal Services Ombudsman, and that which creates a non-lawyer majority on the Society's Complaints and Client Relations Committee, to further increase in the public interest the independence, transparency and accountability of the system.

We believe in having appropriate regulation of the profession by others, and we will play our part in that. I believe that it is now timely that we have this review by the Oireachtas. The profession and the public must be satisfied that our systems and standards have the most appropriate and best public protection measures.

There can be no gainsaying but that the independent Ombudsman is a measure that is clearly in the public interest. While the Ombudsman will come at a significant cost to us, as the practising professions will share the cost, we nonetheless embrace it enthusiastically as being in the best interests of the future regulation of the legal profession.

The single greatest threat to the independent legal profession is not the form of regulation that applies. It's the perception that regulation is ineffective. That it's self-serving. That it protects the lawyer, not the client. That it's geared to the profession, not the consumer.

That is what any future regulation must be about.

At the centre of any solicitor/client relationship is human nature and respect for human dignity, and black letter law can never replace that. Before I qualified I trained with my late father. In an incident, which I am sure you, and certainly your parents, will recognise, we were at court together and he was defending a visual identification case. I tortured him as to why he was not quoting leading High Court and Supreme Court authorities to the Judge. Eventually, even for this most patient of men, the rebuke arrived. He told me that when he was at my stage he knew a lot about law but not so much about people, but now he knew a lot about people and somewhat less about law. He won the case of course but I learned a series of valuable lessons on that day which I commend to you.

When he qualified in 1953, it might reasonably have been said that that was the end of his formal legal education. As you know, times have changed and the Society is committed to promoting a policy of life-long learning, which encourages colleagues to continue to hone and refine their skills. CPD not only helps make us better lawyers but of course, adds to job satisfaction.

With each generation new challenges face the profession. In the 1950s, it would have been unthinkable that a substantial number of colleagues would work essentially full-time in the field of family law. Perhaps because present trends were not foreseen, family law cases fell by default to be dealt with in the traditional court adversarial system.

It is an understatement that such an approach is far from ideal.

I would urge you all to read the Family Law Report and Pilot Project published by Dr. Carol Coulter last October. In that report, Dr. Coulter identified many serious shortcomings in the Family Law system and made sensible and practical recommendations to improve matters. The Society takes her recommendations very seriously and, we will do all we can to support reform in this area. In

particular, the Society is committed to making collaborative justice a real option for families in crisis.

Again it would have been unforeseen, even when I qualified in 1986, that such a substantial number of our clients would be from countries of origin other than Ireland. We must rise to the challenge of ensuring equal access to justice for all, especially the migrant community. As Irish people we above all should understand the hardships that both cause emigration and are caused by it.

Above all countries, we therefore owe it to those seeking a new life in our country, that they are treated fairly. The Oireachtas will shortly be debating the Immigration, Residence and Protection Bill and, the Society has made a submission. We have grave reservations about aspects of the Bill, which we believe fall far short of what is best practice, either nationally or internationally. In particular, we must ensure that, in replacing the Refugee Appeals Tribunal, a superior rather than inferior model is adopted. We have already made it plain that we oppose absolutely, provisions that would seek to deter lawyers from doing their job on behalf of refugee clients and, you can take it that the Society will resolutely oppose the intimidation of our colleagues.

Ach ag an am gcéanna ná déanaigí dearmad ar an chultúir agus ar an teanga Gaelach. Tá se I gceist ag an Chuman Dlí tacaíocht praicticiuil a chur ar fáil do dhlíodóirí gur mhian leo gnó a dheanamh trí Ghaeilge.

Cuireann Cumann Dlí na hÉireann fáilte croíúil roimh Acht um Dlí Cleachtoirí An Ghaeilge 2007. Creideann an Cumann go bhfuil sé thar a bheith tráthúil mar go bhfuil borradh ann faoi láthair faoi úsáid na Gaeilge i measc Aturnaetha agus an pobal i gcoitinne.

Tá na structúir sa Bhille ar aon dul leis an dea-thoil i dtaobh na teanga i measc dlíodóirí. Feictear go bhfuil ról tábhachtach againn i gcuir chun cinn na Gaeilge.

Beidh cursaí nua le fáil go luath, ní amháin dos na daltaí sa scoile dlí ach dúinnse uilig. Tá se ar cinn again an usáid a dheanamh le teicneolaíocht nach raibh le fáil riamh, go h-airithe “Moodle”. Bainigí usáid as.

Mar a deirtear "Tús maith, leath na hoibre".

It is now time to go back to where we started, namely to congratulate you on your wonderful achievement in qualifying as Irish solicitors. No doubt there are many in the room that hope that this will be your last day on the family payroll. We know that you are all here with friends, family and supporters who have helped you over the long years to your qualification here today. Nobody makes it without support and we can only guess about the many, often unspoken sacrifices that have been made by your supporters to help you.

I would therefore now like to ask you the newly qualified solicitors to stand up, turn round and give a round of applause to your supporters.

I see TP that you were right that they would pass their first test as solicitors by taking instructions efficiently, and acting on them.

At the end of today's ceremony there will be reception in your members' lounge to which your family and friends are all invited. I emphasize your members' lounge because as of today you are the Law Society. I would urge you to be as involved as time permits both with the Law Society and its committees and also with your local Bar Associations.

Nil neart go teacht le cheile.

To conclude, you are very welcome to the profession and we all wish you every success for your careers.