

Forensic Accounting in a Constitutional Parliamentary Democracy: The Case of Ireland

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This paper commences with a contextual overview of the economic geography of Ireland, followed in Section 2 by an overview of the Irish legal system. The paper concludes by examining the forensic accounting profession in Ireland. Sources used include Brennan et al. (1992) for the context material in Section 1 and some of the material on the accounting profession in Section 3; and Brennan and Hennessy (2001a) for the material on forensic accounting. The case law cited in the paper is entirely from the Irish courts. Many judgments of the United Kingdom courts and other common-law jurisdictions would have currency in the Irish courts.

Brennan and Hennessy (2001a) is the seminal (and only) text on this subject in Ireland. It deals in-depth with all aspects of forensic accounting practice with extensive citation from judgments of the Irish (and other common-law) courts. The text is inter-disciplinary with both a strong accounting and legal focus. A number of shorter more accessible articles have been written by the authors, such as Brennan (2005) and Brennan and Hennessy (2001b, 2001c, 2001d, 2001e, 2001f). More recent articles on the subject include Hyland and McGloin (2008), Brown (2011), Fitzgerald (2011) and Idowu (2011).

CONTEXT

This short introductory context section summarizes the geography and population of Ireland and its political institutions.

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Geography and Population

Ireland is a small island (84,400 square kilometers) lying to the extreme northwest of Europe. The island is divided into 32 counties, with 26, (70,000 square kilometers) of these making up the Republic of Ireland, and the six most north-eastern counties making up Northern Ireland which is part of the United Kingdom. The political division took place in 1922 and the Republic of Ireland is now a sovereign, independent State. According to the 2011 census of population (Central Statistics Office 2012), the population of the Republic was just over 4.5 million. The language used is English, although the first official language is Irish (*gaeilge*). The Irish language is used in some parts of the country, mainly in the west, known as *Gaeltacht* areas.

Political Institutions

The Republic of Ireland is a parliamentary democracy. The 1937 constitution provides that the parliament (*Oireachtas*) shall consist of a president and two houses: a house of representatives (*Dáil Éireann*) and a vocational senate (*Seanad Éireann*), which has lesser powers.

The President is the head of State and normally acts only on the advice and authority of the Government. The President appoints the prime minister (*Taoiseach*) and members of the Government on the nomination of the *Dáil*. Before a bill becomes law it receives the President's signature. The President may only refuse to sign a bill if the bill is referred to the Supreme Court to test its constitutionality. The President, acting on the advice and authority of the Government, may exercise executive powers or functions in connection with international affairs.

The *Dáil* has 166 members (*teachtai dála* or TDs) elected in 43 (soon to become 40) multi-seat constituencies. The *Seanad* has 60 members: 11 are nominated directly by the

Taoiseach, 43 are elected by five panels of individuals with knowledge and experience of the interests represented by the panel and six are elected by the universities. Every citizen who has reached 18 years of age and is registered to vote is entitled to vote. A system of proportional representation by means of a single transferable vote is used. There are three main political parties (*Fianna Fáil*, *Fine Gael* and *Labour*).

Under the 1937 constitution, the executive powers of the State are exercised by the Government, which acts as a body collectively responsible to the *Dáil*. The Government consists of not less than seven and not more than 15 members (ministers) who must be members of the *Dáil* except for two who may be members of the *Seanad*.

The *Taoiseach* is appointed by the President on the nomination of the *Dáil*. The *Taoiseach* nominates the other members of the Government (ministers) and assigns them to Government departments of State. Usually each member of the Government heads up a department of State in which central administration is organized. The *Dáil* is elected for five-year terms.

THE LEGAL SYSTEM IN IRELAND

This section provides a brief and inevitably incomplete description of the Irish legal system. Its purpose is to give an overview of the manner in which disputes find their way to resolution through the legal system. It therefore describes the context within which accounting experts find themselves contributing to the resolution of disputes.

Ireland is a common-law country. The English common-law system was first introduced into Ireland towards the end of the 12th century. The decisions of the superior courts provide an important source of law. The doctrine of precedent applies whereby the lower courts must follow the judgments of the higher courts on questions of law.

Unlike the United Kingdom, Ireland has a written constitution which provides a legal framework within which the State must operate. The constitution is a rather rigid document and can only be amended by a referendum of the people. Three constitutional features distinguish the Irish constitutional position from that of Britain. As parliament is subject to the constitution, the doctrine of absolute parliamentary sovereignty does not operate; sovereignty rests with the people. The constitution entrusts the judiciary with the function of ensuring that the legislation is compatible with the constitution; legislation which is not compatible can be struck down by the courts. Thirdly, the constitution guarantees the citizen real rights of personal liberty thus placing significant limits on the powers of the Government.

The main source of law in Ireland is Government legislation. Due to the volume of legislation, much is delegated to statutory instrument (sometimes referred to as ministerial regulations) made under the general authority of a particular statute. Such delegated legislation may not do more than give effect to principles and policies contained in parent statutes. Some European Commission directives are dealt with in this way.

Ireland became a member of the European Commission in 1973 and all legislation must now be consistent with the Treaty of Rome.

A Common Law System

Like the United Kingdom, the United States, Australia, Canada, New Zealand and other jurisdictions, Ireland is a common-law country. Long before statutes were derived, the customary and often unwritten law forbade certain activities. Murder, rape, arson and cheat (in the sense of depriving someone of property by deception) are all common-law crimes and also civil (*i.e.* non-criminal) wrongs or “torts” (“tort” is a Norman French word meaning a wrong).

When statutes – written laws passed by parliament and formally proclaimed by the sovereign head of state – became commonplace, they supplemented rather than replaced common law. Today, much criminal law, contract, tort and other areas are common-law based, while other areas such as road traffic law and company law are statute based. But there are no watertight compartments: a common-law subject will have important statutory provisions, *e.g.* the Defamation Act 1961, while the enforcement of road traffic law or company law will vitally involve the law of evidence with its deep common-law roots.

Common law is judge-made law, the product of judicial development of existing precedents. Common law jurisprudence may be contrasted with the civil law or code-based approach. This approach derives remotely from Ancient Rome, but more immediately from the Code Napoleon, devised by that Emperor and enforced on the lands he conquered in the early nineteenth century. The word “civil” in this context is a reference to the Roman “civilians” or secular lawyers, not to civil versus criminal.

Code-based systems have the virtue of certainty and precision but the drawback of inflexibility. Common law is almost infinitely flexible and can, within broad limits, be developed by the upper judiciary. Flexibility like this is purchased at the price of some uncertainty, but this is small in extent at any particular time. Because of their law-making role (limited though it is), the status of judges tends to be high in common-law systems.

Hierarchy of laws

As is the case with all common-law legal systems, Irish law does not comprise a single set of rules or principles that can be identified, written down and followed. Instead, our body of law has evolved over many centuries from a variety of sources resulting in a legal framework that is never entirely clear, is constantly changing and developing, and often gives rise to

conflicts within itself. Ultimately, such conflicts must be resolved either by the courts or by the legislature through the enactment of unequivocal legislation. Even then, decisions of the courts and legislation can be subject to challenge.

To allow a course to be plotted through the maze that is the legal system, it is useful to construct a hierarchy of laws to demonstrate the relative persuasiveness of rules and principles derived from the various possible sources. A broad hierarchy of sources of Irish law, from highest to lowest, is as follows: European Law → The Constitution → Statutes → Common Law.

Constitution

Common law systems trace their remote origin to England. Over the centuries, there have been divergences from the British model. The most momentous of these was the adoption by the American Colonies after the war of independence of a detailed written Constitution in 1789. They then developed an entirely new form of common-law system. Ireland's 1937 Constitution, like many others throughout the world, is influenced by the United States' example.

Common law respected customary rights and prohibitions, but held that, in the last resort, all power derived from the king, who could change any law at will. In the seventeenth century, this power became attributed to the King-in-Parliament and later, in practice, to parliament itself. British theorists only speak of the "Sovereignty of Parliament". Consistent with this theory, neither English nor United Kingdom law ever had a written constitution.

By contrast, since independence Ireland has been a constitutional country. All power is seen as deriving from the people, according to rules they have expressed in the Constitution. That document lays down rules distributing this derived power amongst the three branches of Government – legislative, executive and judicial – and establishes rules for its exercise by each branch. Very significantly, the Constitution also defines the rights of citizens individually and in

groups. This may be done in a very detailed way (*e.g.* concerning the protection of citizens' liberty by "habeas corpus") or by the use of general language, for example in providing instances, but not a comprehensive list, of citizens' personal rights. This has allowed the courts to proclaim additional rights, made relevant by new circumstances. The rights to travel, to matrimonial privacy, to tax equity, to bodily integrity and to privacy are in this category.

Constitutional rights have been identified, expounded and given practical application by the Irish courts very consistently in the years since about 1965. For the practical purposes of forensic accountants, this is particularly significant in relation to procedures. If information or admissions adverse to a person – which may lead to dismissal or imprisonment, for example – are to be obtained, they must meet the stringent criteria of the courts as to admissibility. When an investigation is well advanced and a definite suspect is in view, forensic accountants will normally take legal advice on this matter. But much earlier stages of an investigation may throw up issues affecting admissibility. Forensic accountants, accordingly, must possess a good sense of the requirement of common law and constitutional justice in relation to evidence gathering.

The Irish Constitution, *Bunreacht na hÉireann*, was adopted by the people of Ireland in 1937 and has been amended on several occasions since. It forms the bedrock of our laws, setting out, among many other things, the principles with which all laws must comply. In particular, Article 15 of the Constitution vests the sole and exclusive power of making laws for the State in the Houses of the Oireachtas (parliament). The Constitution also states that "[t]he Oireachtas shall not enact any law which is in any respect repugnant to this Constitution" and that laws repugnant to the Constitution are invalid. These provisions make it clear that, where the Constitution and statute law conflict, the Constitution prevails.

However, another provision of the Constitution has the effect of placing the Constitution itself to a limited extent second in the hierarchy of laws described above. This provision is contained in Article 29 of the Constitution and results from our membership of the European Community. The relevant provision reads as follows: “No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State.” Litigants who feel that a domestic law, or the finding of a domestic court, is in conflict with a European law operative in the State can find fertile ground in this provision, first in the Irish courts and, ultimately in the European Court of Justice.

Common law or judge-made law, as it is often known, represents the accumulated wisdom of the courts of the State, and of their predecessors. Irish courts will follow precedents established by an equal or higher court in matters where there is no statutory authority. For instance, where the High Court makes a decision on a point of law, this must be followed where the identical point arises, by all lower courts in subsequent cases and usually by the High Court itself in such circumstances. The Supreme Court on appeal, the legislature through a new statute, the people through a constitutional amendment and/or the European Court of Justice can overrule this precedent. The Supreme Court has reserved to itself the right to overrule its own previous decisions in particular circumstances. As a result, the importance of legal precedent cannot be overestimated.

Despite the explosion in legislation in recent years, many areas of the law remain unregulated by statute, leaving it to the judiciary to interpret the law in the context of the

particular facts presented in a case. Nevertheless, it should not be forgotten that Irish statutes that are not repugnant to the Constitution take precedence over common law.

The System – Generally Adversarial, not Inquisitorial

It is essential first to understand that Irish civil litigation and alternative dispute resolution proceedings are generally adversarial in nature. The practical effect of this is that parties in dispute must each present their case before a court or other decision-making body (*e.g.* an arbitrator). Criminal proceedings are accusatorial in nature and require the prosecuting authorities to prove their case to a high standard.

Presentation of cases is usually done by lawyers. Lawyers lead evidence, which may include oral testimony, documents and other items, and can include the evidence of experts engaged on their clients' behalf. They will also cross examine witnesses called by the other parties. Essentially, the role of the lawyers is to present to the court their client's version of the facts, together with the relevant legal principles and precedents on which the court's decision should be based. Having heard the evidence, including any expert testimony, and legal submissions of the parties, the court makes a determination on the issues in dispute. This will usually involve the court in making findings of fact in respect of disputed matters, and in applying to those facts the relevant law as interpreted by the court.

Although the majority of situations in which accounting experts find themselves involve adversarial dispute resolution, certain matters are resolved through inquisitorial fact-finding processes which fall outside the administration of justice. Best known of these is the tribunal of inquiry, the purpose of which is to ascertain facts rather than to apportion culpability or to punish. Accounting expertise can be very useful in assisting in the determination of matters of fact.

Accountants can also become involved in other non-adversarial processes such as mediation, which is designed to move the parties to agreement rather than to find in favor of one or the other.

Lawyers and Courts in Ireland

The Irish legal profession comprises two types of lawyers – solicitors and barristers (junior and senior counsel) – who work in a variety of courts.

The principal responsibilities of solicitors in relation to litigation are to obtain the facts initially and advise clients, to administer the progress of a case from the taking of initial instructions to the hearing of the action, and to brief and liaise with counsel. In essence, solicitors run cases from the beginning until they are heard or settled. This can involve very significant amounts of correspondence and meetings, including instructing and receiving reports from experts. It also involves the preparation of the case for hearing, including the organization of the witnesses and documents needed for trial. Solicitors have a right of audience in all courts and this is used most frequently in the District Court, where most proceedings are handled by solicitors. Barristers are normally briefed to conduct cases in the higher courts.

Barristers in Ireland operate as individual professionals and not in chambers as in the British system. They are instructed by solicitors to prepare a case for trial and to represent their client's interests at the hearing of the action. They generally draft the principal court documents necessary for the case and provide advice or opinions on legal matters relevant to the case. Barristers often represent clients in settlement negotiations. Traditionally, barristers were prohibited from accepting instructions from anyone other than a solicitor. More recently, this prohibition has been relaxed and barristers can now be instructed directly by members of certain other professions, including accountants, in non-court matters. This is known as direct

professional access. Senior Counsel are barristers of considerable experience and expertise who have been called to the inner bar by the Chief Justice. Barristers who are not Senior Counsel are referred to as junior counsel.

The Courts

Article 34 of the Constitution states: “Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.”

The District Court is a court of summary jurisdiction. This means that, under the Constitution, it is empowered to hear and determine minor (and certain other) criminal offences without a jury. There is no definition of “minor offences” in either the Constitution or statute, and the courts have therefore developed a framework within which such offences can be distinguished from more serious offences. Although no precise formula has been developed, the courts have indicated that one significant factor in deciding whether an offence is minor is the severity of the punishment specified by law. As a result, statutes creating offences triable summarily generally limit the penalties to levels likely to indicate that the offence is minor. Indictable offences are offences that are not minor and, subject to certain exceptions, cannot be tried summarily. This means that such offences must be tried on indictment, *i.e.* before a judge and jury. The District Court hears all criminal cases triable summarily and certain criminal cases triable on indictment and civil cases where the amount claimed does not exceed €15,000). The District Court is presided over by a District Judge, sitting alone. The jurisdiction of any District Court is limited by reference to the district and area in which the court is located.

The Circuit Court is the venue for criminal trials on indictment, except for trials of certain charges (including murder and rape) which are reserved for the Central Criminal Court, and

except for matters referred to the Special Criminal Court. A judge and jury hear criminal trials in the Circuit Criminal Court. Civil claims in excess of €15,000 but not more than €75,000 (€60,000 for personal injury actions) are heard by a judge sitting alone in the Circuit Court. Appeals arising from decisions of the District Court are heard *de novo* (*i.e.* the case is heard in full again as if for the first time) in the Circuit Court by a judge sitting alone.

The High Court hears civil cases where the amount claimed exceeds the upper limit of the Circuit Court Jurisdiction. Most civil cases are heard before a judge sitting alone, although certain matters (including defamation proceedings) are heard by a judge and jury. The High Court also sits as an appeal court in civil matters. Decisions of the Circuit Court in such matters can be appealed to the High Court where a full *de novo* rehearing takes place. When sitting as a criminal court, the High Court is known as the Central Criminal Court. In addition, the High Court will hear and determine points of law referred to it from the District Court. The process of referring a point of law to a higher court is referred to as a “case stated”. The Constitution accords to the High Court full original jurisdiction to hear all matters, “whether of law or fact, civil or criminal”, at first instance. Although much of this jurisdiction is conferred on lower courts, consideration of the constitutionality of a law cannot be undertaken by a lower court.

The Commercial Court is a division of the High Court established in 2004 to provide efficient and effective dispute resolution in commercial cases, generally where the value of the claim exceeds €1 million.

The Special Criminal Court is used to hear certain specified (“scheduled”) criminal offences and also other criminal offences where, in the particular case, the Director of Public Prosecutions has certified that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order. The Special Criminal

Court normally comprises three judges (one from each of the High, Circuit and District Courts), and has been used in recent years to hear, among other cases, certain terrorist-related and drug-related murder trials.

Decisions of the Circuit Criminal Court, the Central Criminal Court and the Special Criminal Court can be appealed to the Court of Criminal Appeal. This court is the final arbiter of criminal proceedings, subject only to the possibility of further appeal to the Supreme Court, for which leave must be obtained, in cases where a point of law of exceptional public importance is involved. The Court of Criminal Appeal can hear appeals against both conviction and sentence. The Court of Criminal Appeal sits as a three-judge court, usually with one Supreme Court judge and two High Court judges.

The highest court in the land is the Supreme Court, which is the court of final appeal and hears appeals on points of law from decisions of the High Court. The court also hears appeals by way of case stated from the Circuit Court on points of law. At present there are eight Supreme Court judges, including the Chief Justice, and the court normally sits as a five-judge court or a three-judge court – or, indeed, as both simultaneously. Except for decisions on the constitutionality of legislation, when a single judgment of the court is read, each judge on the court will normally express his or her view on the case. Where judges differ in their views, the majority prevails.

Criminal Cases and Civil Cases

The two principal branches of Irish law are the civil law and the criminal law. Although they overlap to the extent that many crimes can constitute civil wrongs and vice versa, two sets of characteristics distinguish civil and criminal cases from each other.

The parties

The first of these distinguishing characteristics is that the parties to the actions differ. Most criminal cases are prosecuted on behalf of the State, normally by the Director of Public Prosecutions (the “DPP”). The objective of such cases is to establish the person or persons who have committed a breach of a specific law with a view to having them convicted of the crime and sentenced accordingly. The party taking the case is described as the prosecution and the accused person is called the defendant or the accused. In essence, criminal proceedings are taken in order to prove a wrong against society and to punish it.

Civil cases, on the other hand, are fought between two or more parties with a view to resolving a private dispute between them in favor of one or more of the parties. The party instituting the proceedings is called the plaintiff and the party against whom the plaintiff is proceeding is the defendant. The two most common causes of action in civil proceedings are torts and breaches of contract. They each have different characteristics and the time limits within which proceedings must be initiated vary depending on the nature of the wrong. A tort is a private or civil wrong or injury, other than a breach of contract, inflicted by one person on another, compensable by damages. An action in contract will most often arise from a breach of an expressed or implied term in a contract. However, disputes over contracts can also arise due to mistake on the part of one or both parties entering into the contract, misrepresentation by one party to another or duress exerted by one party over another. Contracts can also fall foul of other rules rendering them illegal (*e.g.* contracts to commit a crime or otherwise contrary to public policy) or void (*e.g.* contracts in restraint of trade). The law of equity can also intervene in a contract (*e.g.* where there is undue influence by one party over another). It is clear that contracts represent fertile ground for those who specialize in the resolution of disputes.

Standard of proof in criminal and civil cases

The second distinguishing feature between civil and criminal matters is the standard of proof required. In criminal cases, the prosecution is required to prove its case “beyond a reasonable doubt”. This is a high standard reflecting the fact that all persons are regarded as innocent until proven guilty. Plaintiffs in civil cases are required to prove their case “on the balance of probabilities”, *i.e.* they must satisfy the court that it is more likely than not that their version of events is the true version.

Procedure in criminal cases

Criminal cases normally commence when the *Gardaí* (*i.e.*, police) believe that an individual has committed an offence, *i.e.* breached a provision of a statute that carries a penalty when breached. For lesser offences, individuals will be sent a summons requiring them to appear at a sitting of the District Court to answer the charge. The summons must set out the alleged offence in detail and specify the date, time and venue of the court hearing. For more serious offences, the suspected offender will usually be arrested and questioned by the *Gardaí*. In such cases the decision as to whether to prosecute is taken by the Director of Public Prosecutions based on the information gathered by the *Gardaí*. The Director of Public Prosecutions must prosecute all criminal offences except minor ones. Non-minor prosecutions are referred to as “indictable”.

Any person may *institute* a prosecution for most indictable offences in the District Court. District Judges decides whether the prosecution has shown sufficient evidence to put defendants on trial, and if so sends them forward to a higher court for trial. If this happens in a private prosecution, the private prosecutor can do no more. Only the DPP can conduct a prosecution on indictment. If the case is to continue, one or other of these officials must take it over. Private

prosecutions for indictable offences are rare, but fraud is one area in which they sometimes occur.

Many offences with which a forensic accountant is likely to be concerned are commenced on the complaint of an allegedly defrauded person or company. In practice, these will be serious offences, triable on indictment. Often the complaint will be made after the discovery of defalcation by the complainant's own accountant or by a forensic accountant consulted when suspicion arises.

It is essential to bear in mind, however, that unlike civil proceedings, criminal proceedings cannot be dropped or discontinued at the option of the complainant. Often, an individual or a company may be gravely embarrassed at the public revelation of exactly how they were defrauded, because it will reveal foolishness, greed or slipshod procedures on their part. But once a complaint of a criminal offence has been made, what happens afterwards is a matter entirely for the authorities. In all criminal prosecutions, the *onus* of proof is on the prosecution. The standard of proof is proof beyond reasonable doubt. This applies to the general issue of guilt, and to all subsidiary issues. In financial cases, there is unlikely to be significant eyewitness testimony.

The general context will be established by direct evidence, but the essential elements of fraud will often rely on a proper trail. Usually this will be circumstantial evidence from a legal viewpoint: that is, a body of evidence whose components are mutually re-enforcing and from which the guilt of the accused may be inferred. The requirements of proof beyond reasonable doubt demand that such circumstantial evidence must not merely be consistent with the guilt of the accused, but inconsistent with any other reasonable explanation.

Once a decision to prosecute in respect of an indictable offence has been made, the accused person will normally appear before a District Judge and be formally charged. Certain indictable offences can be tried summarily in the District Court provided:

- the District Judge concludes that the matter is minor;
- the accused person is advised of the right to a trial before judge and jury and waives that right; and
- in certain cases, the DPP consents to a summary trial.

Otherwise the District Judge sends the case forward for trial. The District Judge will also decide on:

- whether bail should be allowed; or
- whether the accused should be remanded to prison; and
- any application for legal aid.

When the accused person is brought before the trial court, the indictment is formally read. The indictment is a formal written description of the details of the offence or offences with which the accused person is charged. The hearing at which it is formally read is called the arraignment. Following the reading of the indictment, the accused person is asked to plead guilty or not guilty. If the plea is “guilty” at the arraignment or at the hearing of the criminal case, the judge will proceed to sentencing. If the plea is “not guilty”, the case proceeds. Following the empanelling of the jury, the prosecution’s case is heard first, followed by the defense, although the defendant is not obliged to give evidence. Where there is a jury, the jury decides all matters of fact. The judge directs the jury on matters of law and on the legal weight of the evidence. On a conviction, the judge passes sentence, which may involve a prison term, a fine, community service or a combination.

Procedure in civil cases

Civil cases normally begin when an individual or organization decides to seek redress through the courts for a wrong allegedly committed by another party or parties. Often, other attempts at resolving the issue will have been made before the decision is made to resort to litigation. Proceedings are commenced when the aggrieved party – the plaintiff – issues and serves on the other party – the defendant – a document setting out the relief claimed. The Statute of Limitations 1957 and the Statute of Limitations (Amendment) Act 1991, and certain other statutes, establish time-limits within which cases must be commenced before becoming “statute-barred”.

Usually, but not always, the plaintiff will be seeking monetary damages as compensation for the alleged wrong. As pointed out above, the amount of damages claimed will determine the court in which the proceedings are commenced, and this in turn determines the type of document used to initiate the case. Once the plaintiff’s claim has been formally communicated to the defendant by the service on him/her of the document containing the details of the claim, the defendant is afforded a period of time in which to respond formally to the claim. Depending on its content, this response may elicit further formal communication from the plaintiff. The documents passing to and fro in this manner are collectively referred to as the pleadings.

Once pleadings have been exchanged (and often before this), both sides will begin to assemble evidence to support their cases. The nature of the necessary evidence will depend on the facts of the case and the basis for the claim. Gathering of evidence will often include discovery and inspection of relevant documents by both sides. For instance, if the plaintiff’s claim includes loss of profits, the defendant may seek discovery of accounting and tax records relevant to the plaintiff’s calculation of the loss. This process of discovery usually involves both

sides swearing affidavits listing all relevant documents that are or have been in their custody, power or possession, and distinguishing between those documents which can be made available and those that cannot. The latter category includes documents no longer in the custody, power or possession of the party, and documents in respect of which a claim of privilege is being made.

The documents most commonly withheld from discovery on foot of a claim of privilege are those that are confidential communications between a party and that party's legal advisers. Experts will generally be involved in the inspection of discovered documents and will take account in their reports of what emerges from the discovery and inspection process.

Most civil cases settle before trial. Experts can play a significant role in moving a case towards settlement by providing an objective and independent view of important aspects of liability and/or quantum in the case and of the strengths and weaknesses of the case. Where a case does not settle, it is set down for trial. At the hearing, the plaintiff's evidence is heard first and the defendant's counsel can cross-examine the plaintiff's witnesses on this evidence.

Following the presentation of the plaintiff's case, the defendant's evidence is presented and the plaintiff's counsel can cross-examine. In both cases, counsel can re-examine their own witnesses on any new matter arising during cross examination.

Alternative dispute resolution

Recent years have seen an increasing number of disputes being referred by agreement for resolution in fora other than the courts. Alternative dispute resolution is regarded in some situations as being cheaper and quicker than litigation. In disputes involving highly technical areas, it can also be an advantage for the parties to be able to select or agree on individuals with the necessary specialist knowledge, experience and expertise to help them resolve the matters at

issue. The most commonly used methods of alternative dispute resolution are mediation and arbitration.

The manner in which justice is administered in Ireland can sometimes seem complicated and quite obscure. This is, at least in part, because practice and procedure in the courts have developed in a somewhat unstructured way over a lengthy period. Nevertheless, in general the courts are efficient, effective and fair and, importantly, transparent to those who care to look. Given that most courts are freely open to the public, it is perhaps surprising how few citizens take the time to visit and observe our legal system in action. Certainly, those hoping to participate in the system, including forensic accountants, would be well advised to spend some time in court. The best way to understand the system, and to be prepared for its idiosyncrasies, is to experience it firsthand.

The Office of the Director of Corporate Enforcement

Following poor compliance with company law in Ireland, under the Company Law Enforcement Act 2001, the Office of the Director of Corporate Enforcement was established. This unique body, with no equivalent elsewhere in the world, has as its objectives improvement of standards of compliance with company law in Ireland. This includes identifying misconduct and enforcing breaches under the company's acts. Given the nature of its work, the Office of the Director of Corporate Enforcement works closely with forensic accountants. Since its establishment, the Office has from time to time issued calls for expressions of interest for the provision of forensic accounting services.

FORENSIC ACCOUNTING IN IRELAND

This section reviews the accounting profession in Ireland, concluding with a particular focus on forensic accountants. Forensic accounting in Ireland is considerably less developed

compared with the United States. Its stage of development is probably comparable with all other common-law countries such as the United Kingdom, Canada and Australia.

The Accounting Profession in Ireland

There are nine professional accounting bodies recognized by statute in Ireland (Irish Auditing and Accounting Supervisory Authority 2012). Three are uniquely Irish. The Institute of Chartered Accountants in Ireland (ICAI) (now called 'Chartered Accountants Ireland' (CAI)) was established by Royal Charter on 14 May 1888. It is the largest professional accountancy body in Ireland. The Institute of Certified Public Accountants in Ireland (ICPAI) was established in 1943. Finally, the Institute of Incorporated Public Accountants is a much smaller body (just over 200 members) established in 1981 and obtaining statutory recognition in 1990.

The Association of Certified and Corporate Accountants (ACCA) first came to Ireland in 1913 as a branch of the United Kingdom body. A Royal Charter was granted in 1974, after which the Association was renamed the 'Chartered Association of Certified Accountants' and renamed again in 1996 as the Association of Chartered Certified Accountants (ACCA). The Irish branch is known as 'ACCA Ireland'. Accountants in industry and some practitioners came together in the United Kingdom in 1919 as the Institute of Cost Accountants Limited. Following a Royal Charter in 1978, it is now known the Chartered Institute of Management Accountants (CIMA). The Dublin and District Group was set up in 1944 and after various organizational changes the present status of Irish members of CIMA (known as CIMA Ireland) is that of members of a division of the worldwide body whose headquarters is in the United Kingdom. The global designation of management accountants is Chartered Global Management Accountant (CGMA). This designation can be used by CIMA members.

The number of accountants in Ireland has grown significantly, standing at about 31,000 at the end of 2012 (Irish Auditing and Accounting Supervisory Authority 2012). By 2012 there were almost 22,000 Irish chartered accountants of which over 14,000 were working in the Republic of Ireland, with over 4,000 of those in practice. Chartered Accountants Ireland is a 32-county body and therefore represents accountants in the two jurisdictions of the Republic of Ireland and Northern Ireland (part of the United Kingdom). The Institute of Certified Public Accountants in Ireland has just over 3,500 members, while ACCA Ireland has about 8,800 members and CIMA Ireland has just over 4,000 members.

The accounting profession in Ireland was self regulatory until 2003. Following systematic tax fraud involving banks and their customers, in which bank external auditors were implicated including big-four accounting practices, the Irish Auditing and Accounting Supervisory Authority (IAASA) was established in Ireland. This body provides independent oversight of the accounting profession. Thus, the system of oversight is now supervised self-regulation.

Education and Training of Professional Accountants

The professional accountancy bodies establish and monitor their own rules of professional conduct and ethics, with oversight from the Irish Auditing and Accounting Supervisory Authority. They each prescribe training and education requirements to reflect their own ethos and major functional areas. Chartered Accountants Ireland generally requires students to undergo a training period with a chartered accountant in practice, with whom the student must sign a training contract. The contract period is determined by the student's educational qualifications on entering the training contract. It is usually three years for graduates. A small number of students now serve their training contracts outside public practice under the supervision of a member of Chartered Accountants Ireland in an approved organization. Students

must pass examinations which are set and administered by Chartered Accountants Ireland, including a Final Admitting Examination which is predominantly case-study based. This approach is unique among the professional accountancy bodies in Ireland and the United Kingdom and is based on the Canadian model.

The other accountancy bodies have more flexible experience requirements. Unless a certified accountant (ACCA) wishes to operate in public practice there is no specified experience requirement. CIMA students are required to gain practical experience in industry or commerce which can be achieved in one or more employments. There is no training contract requirement. CIMA and ACCA set their own examinations, which are the same worldwide although local adaptations are made to reflect Irish legal and taxation differences.

Post qualification education is recommended by all bodies, and extensive programs of courses, conferences and short seminars are offered. There are no mandatory requirements for post-qualification education. One such non-mandatory programme is a Diploma in Forensic Accounting offered by Chartered Accountants Ireland. This programme comprises six modules, involves 12-day attendance at lectures, and completion of assignments and an end of programme examination. Chartered Accountants Ireland's Diploma in Forensic Accounting is the only qualification in Ireland in forensic accounting. Forensic accounting in Ireland is therefore completely unregulated and professional accountants can (and do) refer to themselves as forensic accountants on the basis of their original professional accounting qualifications. It is possible that some forensic accountants may voluntarily obtain forensic accounting qualifications from specialist forensic accounting organizations outside Ireland.

Forensic accountants

An expert witness is one whose opinion a court or other tribunal is prepared to admit as evidence for the purpose of assisting in the resolution of a dispute or in arriving at the truth, and whose opinion is based on the application of particular expertise and knowledge to the relevant facts. Accountants are engaged as expert witnesses in litigation to gather, analyze and interpret complex financial and other data and to express an opinion thereon in terms that juries and judges can understand. Finlay P. in *Minister for Agriculture v. Concannon* (Unreported, High Court, April 14, 1980) explained the basis on which the normal rule of evidence (that a witness's opinion is inadmissible) does not apply to an expert witness. He said: "The courts daily accept evidence given by expert witnesses of the holding of particular qualifications as the ground, and necessary ground, for the admission of their opinions in evidence according to the principles and rules of evidence applicable to expert testimony."

However, the courts have made it clear that expert evidence is never a substitute for the exercise by a court of its own judgment. Expert evidence is regarded as an ingredient (often a very important one) of the case to be used by the court to assist in arriving at a decision, but a court cannot abdicate its function in favor of an expert.

Courts are increasingly codifying rules to create express duties on experts to be impartial. While experts need to reconcile these rules with their duty to act in their instructing party's best interests, the court's intention is that the duty to the client is secondary to the higher duty to the court. The function of an expert witness is to assist the court in arriving at the truth by providing a skilled expert assessment of matters requiring a specialist appreciation of the particular problem at issue. The position has always been that the expert's duty is to the court and not to the side by which he/she has been instructed.

Expert evidence generally concerns matters of such a technical nature that the judge or jury could not be expected to reach a “correct” conclusion without assistance. In Ireland, the practice of the courts is to permit expert evidence where there is a material matter at issue between the parties, the understanding or explanation of which would fall outside the general level of knowledge and expertise normal in society. An example (in connection with actuarial evidence) can be seen from the Supreme Court (highest court in Ireland) judgment of Walsh J. in *Sexton v. O’Keefe* ([1966] *Irish Reports* 204, at 213), at a time when juries still heard personal injury actions (following the Courts Act 1988, fixing of personal injury damages is now done in the High Court by a judge):

“In particular I wish to emphasize the desirability of giving a jury the benefit of the evidence of an actuary in any case in which loss of future earnings forms a substantial portion of a plaintiff’s claim. It is very undesirable in such cases that a jury should be left at large to form their own impressions as to expectation of life and the computing of loss dependent upon it without the expert assistance of an actuary who can inform the jury of the precise mathematical calculations involved and to be applied according to the jury’s findings on the relevant facts.”

However, both the value of expert accounting evidence and the limits on the extent to which courts will defer to an expert accountant’s opinion were explained in the case of *Murnaghan Brothers Ltd. v. O’Maoldomhnaigh* ([1991] 1 *Irish Reports* 455, at 460–461), a case stated by the Circuit Court (hears civil claims in excess of €6,348 (due to be increased to €20,000) but not more than €38,092 (due to be increased to €100,000)) in relation to the definition of trading stock in a claim for tax relief which the Circuit Court judge proposed to disallow. In the High Court (hears civil cases where the amount claimed exceeds the upper limit of the Circuit Court Jurisdiction), Murphy J. said:

“Whilst the learned Circuit Court Judge is undoubtedly correct in saying that the court must not abdicate to experts the role of the court in determining matters of law or fact the value of expert evidence in

relation to accounting matters is well recognized. Indeed in *Fraser (Inspector of Taxes) v. London Sportscar Center* (1985) 59 T.C. 63 Nourse L.J. at p. 83 commented as follows:—

‘[Counsel for the crown] also made certain submissions as to the accountancy aspects of the matter. First of all he said that Nicholls J. deferred excessively to the view of the accountants as appearing from the way in which the matter was treated in the taxpayer’s accounts. We disagree. We think that what the learned Judge did was to regard the accountant’s view as being good evidence, perhaps the best evidence, of the commercial reality of the arrangement. He thought that the statute was more concerned with that than with the niceties of ownership. In all of this he was perfectly correct. He certainly did not allow the accountant’s view to pre-empt the construction of the statute’.

Only expert witnesses may provide expert opinions. In the legal environment, expert evidence is tendered by a person who is qualified to speak authoritatively by reason of special training, skill, study, experience, observation, practice or familiarity with the subject-matter under consideration.

The courts in Ireland and elsewhere have variously commented on the qualities required of expert evidence. The most important of these is that the evidence be unbiased and objective. In addition, relevance, reliability and cost-effectiveness of expert evidence are also important considerations. Expert evidence should be objective and fair: “... the holy grail to which professional witnesses should aspire may be summarized in two words: objectivity and fairness.” (Barr 1999) Some experts will be inclined to tailor their evidence to their client’s requirements and pay insufficient attention to the need to be balanced and objective. This lack of objectivity, if not exposed by the opposing expert’s challenge to what they are saying, will usually be perceived readily by the trial judge in any event. Nevertheless, experts are probably shortening their useful life significantly if they compromise their independence. On the subject of expert

evidence and the two characteristics – objectivity and fairness – that constitute the “holy grail to which professional witnesses should aspire”, Barr J. (1999) states:

“Any competent judge will readily recognize these virtues, or the lack of them, and where they are found the testimony of such a witness is like [*sic*] to be greatly enhanced in the mind of the judge. The converse is, of course, also true.”

He goes on to say:

“Surprisingly, experts whose testimony is found to be unreliable or unhelpful are often persons of undoubted ability in their particular fields. They are rarely dishonest or deliberately unfair, but they seem to lack a true understanding of their function, i.e., to assist the court in arriving at the truth by providing a skilled expert assessment, which is objective and fair, of matters requiring a specialized appreciation of the particular problem at issue.”

Civil Liability of Expert Witnesses

Expert witnesses have historically had significant protection from civil liability through a litigation privilege granted to witnesses. In *M.P. v. A.P.* ([1996] 1 *Irish Reports* 144, at 155–156) Laffoy J. dealt with this immunity and went on to consider whether witness immunity arising from evidence given in a civil case in court extended to providing protection to the witness from professional disciplinary proceedings:

“There is ample authority to support the proposition advanced by counsel for the applicant that a witness is protected from civil proceedings, not merely an action for defamation, in respect of his evidence in the witness box and statements made in preparing evidence (*Watson v. M'Ewan*, *Watson v. Jones* [1905] A.C. 480; *Marrinan v. Vibart* [1963] 1 Q.B. 528). While no authority has been cited which supports the proposition that an expert witness is immune from disciplinary proceedings or investigation by a voluntary professional organization to which he is affiliated in respect of evidence he has given or statements he has made with a view to their contents being adduced in evidence, having regard to the public policy considerations which underlie the immunity from civil proceedings – that witnesses should give their evidence fearlessly and that a multiplicity of actions in which the value or truth of their evidence would be tried over again should be avoided – in my view, such a witness

or potential witness must be immune from such disciplinary proceedings or investigation.”

It is acceptable for one expert to rely on the opinions of other experts when putting forward expert opinion. In *T. v. P.*, Lardner J. quoted from *Phipson on Evidence* (Buzzard, May and Howard, 1982, p. 561) as follows:

“An expert may give his opinion upon facts which are either admitted or proved by himself or other witnesses in his hearing at the trial or are matters of common knowledge as well as upon hypothesis [*sic*] based thereon.”

Professional Standards in a Litigation Environment

In providing expert assistance, experts are expected to observe professional standards in the conduct of their work. Some of these standards have been discussed already – experts should be fair, unbiased and objective, and should present evidence that is relevant, reliable and cost-effective. While a number of expert witness organizations have codes of practice governing the conduct of their members, there are no such organizations or codes in Ireland. Thus, forensic accountants in Ireland do not have to abide by any forensic accounting professional standards or codes of ethics, over and above the general professional standards or codes of ethics applying to them by the professional accounting body of which they are a member.

Duties and Responsibilities of Experts

As already explained, in court proceedings an expert’s opinion will, in general, be admissible unless the subject-matter does not require specialist knowledge (Kelleher, 1996). Expert evidence, however, is not conclusive. The Supreme Court held in *Aro Road and Land Vehicles Ltd v. Insurance Corporation of Ireland* ([1986] *Irish Reports* 403, at 412) that the judge was the “sole and final arbiter”. In relation to expert evidence on behalf of the defendant insurance company, the court stated that in matters of “professional competence, a profession is

not permitted to be the final arbiter of standards of competence ... the insurance profession is not to be permitted to dictate a binding definition of what is reasonable.” Nonetheless, as pointed out, judges pay careful heed to the opinions of professional witnesses.

There have been similar findings in relation to accounting evidence. In *Murnaghan Brothers Ltd. v. O'Maoldomhnaigh* ([1991] 1 *Irish Reports* 455, at 461) Murphy J. referred with approval to the following passage from the judgment in the case of *Odeon Associated Theatres Ltd v. Jones*: ([1971] 2 *All England Reports* 407, at 414):

“In order to ascertain what are the correct principles [of the prevailing system of commercial accountancy], [the court] has recourse to the evidence of accountants.

That evidence is conclusive on the practice of accountants in the sense of principles on which accountants act in practice. That is a question of pure fact, but the court itself has to make a final decision as to whether that practice corresponds to the correct principles of commercial accountancy.”

Conflict of Interest and Expert Accountants

Although many situations are quite clear as to whether the expert has a conflict of interest, defining exactly what is and is not a conflict of interest may not always be easy. Chartered Accountants Ireland has some useful literature on conflicts of interest, which apply to all members which would include those providing forensic accounting services. On the threat to objectivity caused by contingency fees, Chartered Accountants Ireland (Chartered Accountants Regulatory Board 2011, paragraph 290.225) states:

“A contingent fee charged directly or indirectly, for example through an intermediary, by a firm in respect of an audit engagement creates a self-interest threat that is so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, a firm shall not enter into any such fee arrangement.”

The general position of the Chartered Accountants Ireland is that, where the interests of two or more client's conflict, it may be possible to manage the situation rather than disengage from one of the clients. However, if this is not possible, a speedy disengagement should take place. The relevant extract from the ethical guide is (Institute of Chartered Accountants Regulatory Board 2011, paragraph 220.2-220.4):

Before accepting or continuing a client relationship or specific engagement, the professional accountant in public practice shall evaluate the significance of any threats created by business interests or relationships with the client or a third party.

A test is whether a reasonable and informed observer would perceive that the objectivity of professional accountants or their firms is likely to be impaired. The professional accountants or their firms shall be able to satisfy themselves and the client that any conflict can be managed with available safeguards.

Depending upon the circumstances giving rise to the conflict, application of one of the following safeguards is generally necessary:

- (a) Notifying the client of the firm's business interest or activities that may represent a conflict of interest and obtaining their consent to act in such circumstances; or
- (b) Notifying all known relevant parties that the professional accountant in public practice is acting for two or more parties in respect of a matter where their respective interests are in conflict and obtaining their consent to so act; or
- (c) Notifying the client that the professional accountant in public practice does not act exclusively for any one client in the provision of proposed services (for example, in a particular market sector or with respect to a specific service) and obtaining their consent to so act.

The professional accountant shall also determine whether to apply one or more of the following additional safeguards:

- (a) The use of separate engagement teams
- (b) Procedures to prevent access to information (e.g., strict physical separation of such teams, confidential and secure data filing);
- (c) Clear guidelines for members of the engagement team on issues of security and confidentiality
- (d) The use of confidentiality agreements signed by employees and partners of the firm
- (e) Regular review of the application of safeguards by a senior individual not involved with relevant client engagements.

It is safe to assume that the law will generally perceive a conflict of interest to arise where a financial interest of any kind in a party to a dispute or transaction in which the firm is engaged is held by any partner in the firm or any member of staff engaged on the assignment. This is because such an interest will give rise to at least a perception of, if not actual, impairment of independence in advising a party to the dispute or transaction. An example of the Irish judicial attitude to such a situation arising in the accountancy profession is the following extract from the High Court judgment of Barron J. in *Allied Pharmaceutical Distributors Ltd v. Walsh* ([1991] 2 *Irish Reports* 8, at 16):

“What had occurred was that Mr. Walsh had placed himself in a position where his interest and his duty were in conflict. His duty was to offer advice only so long as he was being remunerated as a partner in an accountancy firm. The interests of the client were paramount. He allowed himself to depart from this role by becoming a shareholder, a director and an executive. Having built up a position of trust within the company, he abused that trust. Not surprisingly the ethical code of his profession advised against members of that profession having share holdings and directorships with client companies. It advised also against making loans to or taking loans from clients. This advice was given to protect its members from the very conflict between interest and duty which enmeshed Mr. Walsh.”

Selecting Expert Accountants

Choosing an expert has always been a critical element in litigation case management. An expert witness guide for Ireland is published annually which contains a list of forensic accountants (Round Hall, Online). The professional accounting bodies may have lists of members specializing in forensic accounting and litigation services. The *Golden Pages* and newspaper advertisements are other means. A growing source of information is forensic accounting Internet sites, many of which contain testimonials from former clients who can be

contacted to gauge their level of satisfaction. In practice, person-to-person referrals are probably the most common means of selecting an expert accountant.

Forensic Accountants in Ireland

The Irish big-four accounting practices all have forensic accounting departments – ‘Forensic’ (KPMG), ‘Forensic Services’ (PwC), ‘Forensic Services’ (Deloitte) and ‘Fraud Investigation and Dispute Services’ (Ernst & Young). A number of smaller practices specialize in forensic accounting. Many other practices also claim forensic accounting expertise. Without any requirements for formal qualifications and without professional standards or codes of ethics applying specifically to forensic accounting, it is difficult to know the extent of the expertise available to clients from these practices.

The forensic services the big-four accounting practices provide include: fraud and financial misconduct investigations, regulatory investigations, fraud risk management, forensic technology solutions, e-discovery services, forensic data analytics, assistance in the recovery of stolen assets, anti-money laundering services, corporate/business intelligence, transaction monitoring, transaction and shareholder disputes and dispute advisory services. The smaller practices also offer services in marital separation and divorce cases, insurance cases, business interruption claims, special damage claims, personal injury claims and loss of earnings calculations.

CONCLUDING COMMENT

All the big-four accounting practices, and many smaller accounting practices, in Ireland have forensic accounting departments, or even fully specialize in that area. There are as yet no professional practice guides on forensic accounting. Only one programme of education and training is available and this is not mandatory for forensic accounting practitioners. It is likely

over coming years that the practice of forensic accounting will become more professional and formalized, bringing Ireland up to speed with countries where the profession is more advanced such as in the United States.

ABBREVIATIONS (WEBSITE ADDRESSES [accessed 9 October 2014])

ACCA Ireland	Association of Chartered Certified Accountants Ireland (www.acca-ireland.com)()
CAI	Chartered Accountants Ireland (www.charteredaccountants.ie)
CIMA	Chartered Institute of Management Accountants (http://www.cimaglobal.com/Our-locations/Ireland)
IAASA	Irish Auditing and Accounting Supervisory Authority (www.iaasa.ie)
ICAI	Institute of Chartered Accountants in Ireland (www.charteredaccountants.ie)
ICPAI	Institute of Certified Public Accountants in Ireland (www.cpaireland.ie)
J.	Judge
P.	President (of the High Court)

REFERENCES

- Barr, T. (1999) Expert evidence – A few personal observations and the implications of recent statutory developments, *Bar Review*, 4(4), 185-204.
- Brennan, N. (2005). Accounting expertise in litigation and dispute resolution, *Journal of Forensic Accounting*, VI(2), 13-35.
- Brennan, N. and Hennessy, J. (2001a). *Forensic Accounting*, Round Hall Sweet & Maxwell, Dublin.
- Brennan, N. and Hennessy, J. (2001b). Forensic accounting and intellectual property infringement, *Commercial Law Practitioner*, 8(5)(May), 103-109.
- Brennan, N. and Hennessy, J. (2001c). Forensic accounting and the calculation of personal injury damages, *Bar Review*, 6(9)(September), 533-539.
- Brennan, N. and Hennessy, J. (2001d). Accountants' liability for negligence, *Accountancy Ireland*, 33(5)(October), 21-23.
- Brennan, N. and Hennessy, J. (2001e). Forensic accounting and the calculation of commercial damages, *Bar Review*, 7(1)(October/November), 6-11.
- Brennan, N. and Hennessy, J. (2001f). Valuing businesses in a legal context, *Commercial Law Practitioner*, 8(5)(December), 270-274.
- Brennan, N., O'Brien, Francis J. and Pierce, A. (1992). *European Financial Reporting: Ireland*, Routledge, London.
- Brown, A. (2011). Investment losses and the role of the forensic accountant, *Accountancy Ireland*, 43(1), 10, 12.
- Buzzard, J.H., May, R. and Howard, M.N. (1982). *Phipson on Evidence* (13th ed.), Sweet & Maxwell, London.
- Central Statistics Office (2012). *Census 2011 Results*. Central Statistics Office, Dublin.
- Chartered Accountants Regulatory Board (2011). *Professional Standards. Code of Ethics for Members*, Chartered Accountants Regulatory Board, Dublin.
- Fitzgerald, K. (2011). Why forensic accounting is not for the faint hearted, *Accountancy Ireland*, 43(2), 12-13.
- Hyland, B. and McGloin, N. (2008). Divorce and the role of the accountant, *Accountancy Ireland*, 40(4), 23.
- Idowu, S. (2011). So you want to be a forensic accountant?, *Accountancy Ireland*, 43(3), 65-66.

Irish Auditing and Accounting Supervisory Authority (2012). *Profile of the Profession 2012*, Irish Auditing and Accounting Supervisory Authority, Dublin.

Kelleher, D. (1996). Expert evidence in Ireland, *Irish Law Times*, (February), 42-45.

Round Hall (Online). *Expert Witness Directory of Ireland*, Round Hall, Dublin, available at: www.expertwitnessireland.info [accessed 9 October 2014]

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