

COMPANY *bee*



Lorcan Roche is a freelance journalist and award-winning writer

Under chair Paul Keane, the Law Society's Business Law Committee has embarked on a programme of education and support for the profession on the mammoth new *Companies Act*. Lorcan Roche meets the boogie-woogie bugle boy

Bees, like business, follow certain general and scientific rules. A lot of it is 'feel' and reacting to developments. Bees are well organised – and companies have to be well organised too, in order to deal with unexpected developments.

It comes as no surprise, then, to learn that one of Ireland's foremost business lawyers is a bee-keeper who, in his work as a company lawyer, does his utmost to encourage clients to follow those "general and scientific rules" so important to the good functioning of companies.

In late 1979, while undertaking his Master's at the London School of Economics, Paul Keane heard a lecturer, one Lord Wedderburn of Charlton, argue passionately the distinctions between the concept of *ultra vires* and that of companies acting beyond the powers of their directors. Essentially, says Keane, Wedderburn took established principles and overturned them utterly; in doing so, the Labour peer fired the imagination of the young Dublin solicitor in training: "It was the only time where I had been at a law lecture where I felt a sense – and I can still remember it – of acute excitement. The brilliance of what was on display really affected me. I remember walking out of that lecture hall, saying 'This is fantastic, I want to know more'."

The fable of the bees

More than three decades later, as chair of the Business Law Committee and with his enthusiasm for business law seemingly undimmed, Keane was able to apply his experience of company and labour law and his still extant passion for the *ultra vires* distinctions to the drafting of the largest piece of legislation ever to come before the Oireachtas – the 2014 *Companies Act*. In fact, he was able to address indirectly many of Wedderburn's concerns,

something he regards as a "delightful irony".

Keane's a good interviewee. He has a relaxed presence, an affable manner, and easily gets away with the colourful dicky-bows that have become his trademarks. He is fastidious – it is worth noting that bee-keeping is not a hobby for the distracted or disengaged. He is also a classic car enthusiast (a 1960s Mercedes 'Pagoda', will, he says, become an "heirloom" over which his children can argue when he "snuffs it"). Keane uses humour effectively but is also a serious practitioner, highly respected among his peers. It is no accident that he has served as chair of the Business

Law Committee for three years at such a critical juncture – as the vital, long-overdue *Companies Act* was being drafted. Keane likes to talk, certainly. But he gets things done.

He grew up in Mulhuddart, then a "tiny village on the borderlands of Meath and Dublin", whose residents, he says with a wry smile, were "not trusted by the Dubliners because they were too close to the Meath men, and reviled by the latter because they were 'filthy Dubs'." He survived, attending first the local primary school (then a two-teacher establishment, and afterwards St Vincent's CBS in

Glasnevin, which he describes as a "wonderful experience". The principal, Brother Burke, was "an absolutely inspired teacher". Keane then studied law at TCD, where his tutor was "the great Kader Asmal".

It was Asmal's influence, in particular his impressive understanding of and real enthusiasm for labour law, that persuaded Keane to attend the LSE, despite having been offered places at Oxford and Cambridge. Upon earning his Master's, he joined the firm of Reddy Charlton, where he has remained. He did his first major acquisition at the age of 25, acting on behalf of Armando Diego Mota, a Portuguese stowaway who had made his fortune in America and who

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PICS: DAVID MURPHY

at a glance

- The bee all and end all
- Inspired by legal heroes
- First major acquisition at only 25
- The *Companies Act* and the work of the Business Law Committee

FOCAL POINT

the grumbling hive

What, quite simply, does the new *Companies Act* do?

"Quite simply, it introduces important consolidation and simplification of the law."

Does it then behove company law solicitors to familiarise themselves with, at the very least, the fundamentals of the act?

"It is not going to be possible for everyone to read it, clearly, but yes: it is important that solicitors be aware of the significant changes that arise and of the significant features."

What are the benefits of the act?

"It brings important benefits to private companies. There is now a simplified form of constitution. A number of unnecessary formalities have been done away with. And significant traps that were part of the law have now been overcome."

Is the world going to change as a result of it?

"No, it is not. But it *is* going to make business – particularly because it focuses on the smaller type of company – easier to run.

It is not revolutionary; it is not going to add 10% to our GNP. But it is evolutionary and it is vital. We now have a world-class, structured company law that offers that most important factor – clarity. Before, if you wanted to establish what the law was on a particular point, you would have to go back to the 1963 act and would then have to go through 30 – that's 30! – major pieces of legislation that have amended it since."

So, essentially, it was a mess.

"Our company law was previously based on the requirements of a PLC. So it asked itself 'What do we need to run a PLC?' and then drew up those laws, and then found it had arrived at a place where it had to admit 'Gosh, these are not really appropriate to a small private company – how will we change it?', and so on until what we had was not just messy, it was utterly disproportionate to reality, because PLCs make up 1% of the total number of companies in Ireland."

So this act is long overdue?

"Yes."

was persuaded by the IDA to invest in Ireland. "Mota, God rest him, bought the subsidiary of a UK multinational, and I acted for him... extraordinary really."

How so?

"Good Lord! Nowadays, a 25-year-old solicitor wouldn't be allowed sign a letter that pertained to such an undertaking. It was a different time, a different world."

Characteristically, Keane still has the pen (in his breast pocket) that Armando Mota's widow presented him. He keeps more than bees, this one.


Division of labour

The *Companies Act 2014* is 1,200 pages long. Keane is concerned that some solicitors may "recoil from the task of digesting such a mammoth". He says that the profession "must not concede this important area to others who will not hesitate to seize it" and that the act represents an "excellent opportunity" to demonstrate to clients "our interest and expertise in company law, and by inference, business law in general".

Under his stewardship, the Business Law Committee has embarked on a programme of education, advice, and support for the profession (the most recent conference was

in Cork on June 10, with proceeds going to Rule of Law International). "Essentially, this act is very important for anyone in business, or anyone running a business, or anyone dealing with either of the above" (see panel, above).

The role of solicitors in the preparation of the bill, and later the act, has been "absolutely vital". A large number of solicitors served on the Company Law Review Group (CLRG), which was chaired by Tom Courtney. "Tom obviously deserves a great deal of credit, as do so many others, including some solicitors who have been on the CLRG since back in 2000. That is 15 years of service. An enormous effort. Something our profession should be really proud of, in that we have been instrumental in bringing forward such an important and impressive piece of law reform and consolidation."

Keane, who also acts as honorary consul for the Swedish Embassy (and who has sipped coffee in the cafés that fictional TV detective Kurt Wallander sat in) is imbued with an old world sense of service to his profession. He is, of course, aware that some will serve on committees simply because it is, as he says, "good for the CV". There is, he says, no harm in that. It is the nature of the beast. "When you serve, you are mixing with the top-ranked business solicitors in the country on a monthly basis, so of course you gain expertise, you gain insights, and there is enormous personal benefit as well as benefit to one's firm. But the reality of the situation is that, if you were to do a balance sheet between the time you put into it and what you get out of it, you'd be more than likely to end up saying 'Mmm, I think I'd be better off playing golf! But as the old saying has it, 'doers do'. And people who get involved, get fully involved, very often achieve, as is the case with this piece of legislation, very impressive results." 

FOCAL POINT

the invisible hand

The Business Law Committee has five major areas of concern: business organisation and partnerships; regulation (for example, competition law, consumer law and regulatory environment); financial services and securities; commercial law; and insolvency law (both corporate and personal).

"Obviously," says Keane, "these represent an extraordinarily broad range of topics, so we have assembled experts in relation to each of the areas."

Keane is unstinting in his praise of the committee. "You do not continue on a committee like this unless you are very active, because there are others who will take your place – it is a fact that, if people are not pulling their weight, they

will be moved along."

He says that, on his committee, the greater part of the top firms nationwide are represented by senior practitioners – "men and women with real, tangible expertise".

Committee members are Philip Andrews, Joy Compton, Maire Cunningham, Eleanor Daly, Philip Daly, Mark Homan, Mark Kavanagh, Neil Keenan, Conor Lupton, Sean Nolan, Jack O'Farrell, John Olden, Daragh O'Shea, Deirdre O'Sullivan, Mark Pery-Knox-Gore, Alvin Price, Noeleen Redmond, Paul Robinson, Mark Ryan, Robert Ryan, Seán Ryan and Lorcan Tiernan.

Paul Keane is standing down as chairman next year. The current vice-chair is Robert Herron. Consultants are Paul Egan and Patricia McGovern, and the secretary is Joanne Cox.