

When did you last read the law reports?

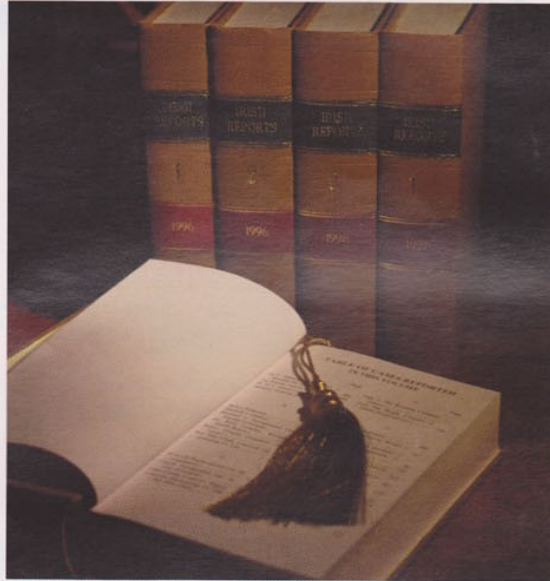
Failure to keep yourself up to date with the latest reported cases could seriously damage your professional health, warns Eamonn Hall

The decisions of the superior courts in Ireland, as reported in the pages of the various law reports (including *The Irish reports* and in recent decades the *Irish law reports monthly*) constitute, together with the statute book, the living law of this country. It is also appropriate to include here the electronic *Irish weekly law reports*. The decisions of the judges as reported in the law reports, vested with the authority attached to them as precedents, constitute formal elements of the common law and constitutional law of Ireland.

Many readers will know that the Incorporated Council of Law Reporting for Ireland, established in 1866 with the concurrence of the judges, law officers of the state, the bar and the Law Society, has published *The Irish reports* continuously since 1866 and these reports are regarded as the official or quasi-official law reports in Ireland. The council also publishes the *Digests of cases* which not only contain reports of cases in *The Irish reports* but also include the headnotes of the *Irish law reports monthly* and *The Northern Ireland reports*.

Before proceeding any further, I must declare an interest. I have the privilege of having been elected chairman of the Law Reporting Council of Ireland, but the council is a legal charity and neither the chairman nor any member of the council receive emoluments in their capacity as members. This note is also written in a personal capacity.

The issue arose recently as to the duty of a solicitor or



Are you ready if a judge throws the book at you?

barrister who holds himself out to be competent in a particular field of law as to whether he must keep himself up to date with recent authority as set out in the law reports.

The duty of advocates to keep up to date was considered by the Court of Appeal (England and Wales) in *Copeland v Smith* ([2000] All ER 457). The background to the case is as follows. Stephen Copeland was riding his motorcycle on the M3 motorway when he was involved in a serious traffic accident on 24 September 1993. He suffered serious injury but had little recollection of what occurred. There were several vehicles involved. He originally sued a Mr Smith, alleging that the vehicle Smith was driving had collided with his (Copeland's)

body when it was lying on the ground. Copeland instructed experienced solicitors to act on his behalf, and proceedings were initiated against Smith. Subsequently, it transpired, outside the statutory limitation period, that it might have been a Mr Goodwin who was the person responsible for knocking Copeland off his motorcycle. Goodwin was joined as a party to the proceedings and he appealed against that decision.

The issue arose as to whether, in construing the UK *Limitation Act 1980*, a claimant was fixed with the knowledge of the action or inaction of his solicitors. When the judge in the Circuit Court, Judge Kenny, heard the matter on 31 March 1999, he was apparently told that there was no authority covering the point at issue. The judge expressed surprise and

the court rose for a short time to give the advocates an opportunity of checking any authorities. Judge Kenny was then informed on resuming the hearing that the authorities 'faxed through' during the brief adjournment did not advance matters at all. Accordingly, the judge then construed the statutory provisions without the benefit of any authority and concluded that Copeland was not fixed with responsibility for what his solicitors had done or had not done.

The matter went to the Court of Appeal. The Court of Appeal stated that Judge Kenny was wrong in so concluding. He was wrong because the contrary had been decided by the Court of Appeal itself in the case of *Henderson v Temple Pier Company Limited* ([1998] 1WLR 1540). That case had been reported in part 36 of the *Weekly law reports* for 1998 some four-and-a-half months before the relevant hearing took place before Judge Kenny in the Circuit Court. Lord Justice Buxton in the Court of Appeal stated that he could not draw back from expressing his very great concern that Judge Kenny was permitted by professional advocates to approach the matter at issue as if it were free from authority when there was a recently reported case of the Court of Appeal directly on the point 'which was not reported in some obscure quarter but in the official law reports'. Lord Justice Buxton stated that it was not only extremely discourteous to Judge Kenny not to inform him properly

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about the law, but it had also been wasteful of time and money because the matter had ended up in the Court of Appeal.

Lord Justice Buxton considered that the advocates who appeared in the court below did not discharge their duty properly to the court and that they apparently failed to be aware of the existence of that authority. Lord Justice Buxton also said that in the case in question a Court of Appeal transcript was stated to be attached to the appellant's papers. In fact, it was not. Lord Justice Buxton stated that it was not satisfactory to refer to a reported case by means of a transcript. The purpose of cases being reported was, among other things, to help the court and the advocates by

listing the cases that had been referred to and also by means of the very helpful headnotes provided. He trusted that lapses of this sort would not occur again.

Lord Justice Brooke, in a concurring judgment in the same case, said that it was essential for advocates who hold themselves out as competent to practise in a particular field to keep themselves up to date with recent authority in that field. By 'recent authority', he stated he was not necessarily referring to authority which was only to be found in specialist reports, but authority which had been reported in the general law reports. If a solicitors' firm or barristers' chambers only took one set of the general reports, they should have systems in

place which enable them to keep themselves up to date with cases which had been considered worthy of being reported in another general series. He added that if this was not done, judges might be getting the answer wrong, through the default of the advocates appearing before them.

Lord Justice Brooke noted that the system of justice had always been dependent on the quality of assistance that advocates give to the bench. He noted that it was one of the reasons why, in contrast to systems of justice in other countries, English judges were almost invariably in a position to give judgment at the end of a straight-forward hearing without having to do their own research or without the state

having to incur the cost of legal assistance for judges. He noted, of course, that it was the duty of an advocate to draw the judge's attention to authorities which are in point, even if they are adverse to the advocate's case.

While there is no recent authority in Ireland on the issue, I believe that practising lawyers here should subscribe or have access to a comprehensive series of law reports. Failure on the part of a solicitor or barrister who holds himself out to be competent in a particular field of law to read the law reports and keep abreast of relevant authorities could have serious professional consequences. **G**

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"When did you last read the law reports?" was written by Dr Eamonn G Hall (Solicitor & Notary Public, (Web: www.eahll.ie; Email info@ehall.ie; tel 087 322 9480) and reprinted from the Gazette of the Law Society of Ireland, vol.94, (May 2000) pp. 8-9 by kind permission.