Ref: Pre-admissibility

Kieran Fitzpatrick
Anbally,
Cummer,
Co.Galway,
Republic of Ireland

17th December 2014

To:
Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
ACCC
Geneva

Communication to the Aarhus Convention Compliance Committee concerning compliance by Ireland in connection with the cost of access to justice

---*At its forty-sixth meeting (Geneva, 22-25 September 2014), the Aarhus Convention Compliance Committee considered the preliminary admissibility of the above communication as re-submitted by you on 24 September 2014. The communication alleged non-compliance with article 3, paragraphs 1, 2 and 8 and article 9, paragraph 4 of the Convention in connection with court costs. The Committee agreed to defer its preliminary determination of admissibility to its forty-seventh meeting in order to ask you to further substantiate your allegations.*

Please find attached a set of questions prepared by the Committee for your attention. We would be very grateful to receive your response to the attached questions before Thursday, 18 December 2014, in order that they may be considered by the Committee at its forty-seventh meeting (Geneva, 16-19 December 2014). ---

Dear Ms Marshall,

Thank you for your letter of 21st November 2014 and for the information therein. In response to the 8 questions raised in your letter below in relation to my earlier communication, I will try to provide as detailed a reply as possible within the confines of time available. I will answer each question in turn, and at the end I may elaborate on some of the issues raised.

(Note- the abbreviation **'SCP'** is used regularly and means **S**pecial **C**osts **P**rocedure and refers to a Costs Protection Order made available under Sections (3) to (7) of the *Environment (Miscellaneous Provisions) Act, 2011* (or the "2011 Act") or under Section (33) of the *Planning and Development (Amendment) Act 2010*)

Questions to the communicant --- {All your questions are italicised in *orange*}

Questions regarding Part 1 of the communication

1. *Please provide a concise explanation, including references to all applicable legislation and relevant case law, as to how costs for court proceedings within the scope of the Aarhus Convention are determined in Ireland. In this regard, section 3 of the Environment (Miscellaneous Provisions) Act 2011 states that the costs of proceedings are to be borne by each party in "proceedings to which this section applies". Which types of proceedings does this section apply to (please also provide the relevant legislative or case law references where its scope of application is described)?*

How costs are determined—
The normal rule on legal costs is directed by Order 99 of the Rules of the Superior Courts. This directs that costs follow the event (meaning that the person deemed to have lost a legal action must pay the legal costs of his opponent).[1] The court usually issues an order that the costs be paid by the loser of a legal action, and that in the event that agreement is not reached between the parties, that the bill of costs be sent for adjudication by a Taxing Master (or legal costs adjudicator).

The Taxation Hearing (or legal costs adjudication) may then be set down as a separate satellite hearing that is disconnected from the original trial, in terms of time and space. Appeals of outcomes can be made to the High Court (or Circuit Court).

It appears from the Board of the Courts reports[2] that about 300 to 400 odd cases are heard at the High Court Taxing Masters office per year, on average, if the certificates issued represents those cases adjudicated; suggesting a possible average of about €38,000.[3] (However, of these cases, the outcomes published (as of 22/11/2014),

[1] At para 8.of *McCoy v Shillelagh Quarries*[2014] IEHC 511 the court said- " *The statutory provisions are lengthy but in essence what the Irish legislation does is to displace the normal costs rule in litigation. As explained by Kearns P. in Indaver NV t/a Indaver Ireland v. An Bord Pleanála [2013] IEHC 11 at para 17:"Generally the costs of proceedings are at the discretion of the Court and usually costs are said to "follow the event" - the losing side is liable to pay the costs of the other side. However, judicial discretion in judicial review cases concerned with specific environmental matters has been limited by the s. 33 of the Planning and Development (Amendment) Act, 2010 Act (the "2012 Act") and further amended by s. 21 of the Environment (Miscellaneous Provisions) Act, 2011 (the "2011 Act")."*

[2] <http://www.courts.ie/Courts.ie/library3.nsf/%28WebFiles%29/BA7D7195FC5AAD7280257D1F0030ECD4/$FILE/Courts%20Service%20Annual%20Report%202013.pdf .> see page 49 of report.

[3] [Section25]. Taxation of costs as per 2013 Board of the Court Report, for the 2 years, 2013 and 2012:

High Court	2013(year)	2012(year)
Summonses issued	1,350	1,221
Certificates issued	345	367
Outcomes		
Costs claimed	€16,329,082	€19,845,528
Costs allowed	€13,289,689	€13,870,202

number just 6 for the year 2014, and 10 cases for the year 2013.[i] Hence, only about 3% of outcomes of taxation hearings appear to be published on the Courts Service website. These cases largely relate to High Court and Supreme Court cases.

Of those cases, reported in relation to 2014, it appears that only one is related, at least in some fashion, to an environmental matter. However, in that case, the report only refers to 4 scheduled hearings, and the amount of costs claimed in relation to those 4 hearings. The outcomes of those cases, if they occurred, do not appear to be published.[4]

It is therefore very difficult to establish, how much the legal costs are in any Aarhus related case, not to mention attempting to engage in a detailed analysis.
It is not possible to prove that Aarhus related litigation is prohibitive, as this information is just not generally accessible.

I would point out that the Irish government is unlikely to claim that costs that might be levied on a losing litigant are not prohibitive. It did not appear to make that argument as a defence to its prosecution by the European Commission in 2009[5]. It just argued that the discretion purportedly exercisable by judges afforded Aarhus litigants sufficient protection against prohibitive legal costs. So, I submit, it is generally accepted that legal costs are prohibitive in Ireland for cases that require High Court hearings, and which also may involve appeals to either the Supreme Court, or the newly established Civil Appeals Court.

I would also point out that different rules apply to legal costs adjudications for disputes relating to Party v Party [Loser v Winner] costs hearings, and Solicitor/Own client costs disputes.[6] However, I don't plan to detail this at this point, as it may not be immediately germane to the issue at hand. Sometimes, though it is unclear how often, courts in awarding the costs against a party are known to "measure" the costs. This means that court adjudicates the costs itself, at the end of a court action, rather than delegating that process to the Taxing Masters, in default of any agreement.

One piece of indirect evidence pointing to prohibitive legal costs in Ireland is the very low number of judges per capita – Ireland has the lowest per capita and about one sixth of the average (per capita) prevailing of the 47 members of the Council of Europe, according to its 2014 report.[ii]

Total fees collected €1,111,627 €1,115,596
Duty on summonses
(included in total fees) €350,995 €310,025

[4] I enclose a "screenshot", of the published outcomes, for 2014 and 2013, as of 22nd November 2014. All that I can confidently assert is that, the webpage appears to be the location that one would expect such results to be published, and that on looking at that webpage, the volume of reports are as stated.
[5] Case C-427/07 *Commission v Ireland* [2009] ECR I-6277
[6] I described the problems with lawyer/own client adjudications in my 5th August 2014 communication.

In the case of *Commission v Ireland* [2009][7], the CJEU found that the Commission had established that Ireland had not taken sufficient measures to assure litigants, in Aarhus related cases, that costs are not prohibitive. In that case, it was submitted by the Commission that costs, taking account those of an adverse nature alone, could easily be in the hundreds of thousands of euro. It appears from the judgment, that Ireland did not contest this allegation and that, in any event, the CJEU was not persuaded by Ireland to the contrary.

I submit that this finding, clearly establishes, in the absence of compelling evidence to the contrary that legal costs are of a prohibitive nature in Ireland, in general.

I should point out that if an applicant wins a case at High Court level, and then loses at the Supreme Court, "Order 99" also directs that the applicant should pay the costs of both hearings. Another feature of the costs system; is that even if an applicant wins at High Court level and evaluates that she does not have the resources to fight a Supreme Court appeal (which might also include a reference to the CJEU, generating further costs), the applicant cannot simply bow out.- If the losing party appeals to the Supreme Court, and the applicant bows out, she is deemed to have lost, and may then be burdened with the costs of the High Court case and the application to the Supreme Court. So, any litigant contemplating Judicial Review must be prepared to pay the costs of the High Court, and the Supreme Court and the costs associated with any reference to the CJEU, if a costs protection order is not available, or voided.

As every case is unique, it is difficult for applicants to anticipate how issues might unfold, such that while a case might initially appear to be not so complex, events can unfold that can increase the complexity of litigation and the costs that might arise.

So, the question arises, as to whether, subsequent to 2009, or more particularly subsequent to Ireland's accession to the Aarhus Convention (20 September 2013) this situation has changed, or rather has changed sufficiently to have altered the litigation landscape to have quieted the claim that prohibitive legal costs are still a significant threat?

I suggest that this question has to be viewed in light of two factors:

1. Are adverse costs potentially prohibitive?

2. How likely is it that an adverse costs award will be imposed on an applicant?

[7] Para- 95.-- "*The Commission founds its objection that there is insufficient protection against prohibitive costs in particular on the basis that the costs of successful parties can be very high in Ireland, stating that costs of hundreds of thousands of euro are possible*", *Case C-427/27 Commission v Ireland* [2009], opinion of AG Kokott, 15th January 2009.

The legislative changes[8] {relating to legislation creating the Special Costs Procedure (SCP)} do not in any way affect the level of adverse costs, if awarded, where an SCP is not granted. As will become evident in answers to later question herein, it is not clear that the adverse costs that can attach to a Section 7 hearing are significantly less than that which might apply to a Judicial Review hearing, and therefore the threat of prohibitive costs, regardless of the exact level of that threat remains a live issue.

****

Ireland's panacea for the problem of prohibitive legal costs was to purportedly remove the threat of an adverse legal costs award by creating a Special Costs Procedure (SCP) for certain Aarhus related litigation. (See footnote n.1.- above)

The SCP was intended to dis-apply Rule 99 of the Superior Rules Committee (a rule I refer to as the *English* rule), and to instead apply the *American* rule (or each side pays their own costs rule).

Which types of proceedings does this section apply to?---

The key change made, was in the Planning and Development (Amendment) Act 2010 (Section-33/50B), which created a Special Costs Procedure (**SCP** from here on). The Environment (Miscellaneous Provisions) Act 2011 (under Sections 3,4,5,6,7,8,20 and 21), brought further improvements, broadening the scope of application of the SCP and clarifying in Section 7, that an application can be made to seek an order that the SCP applies.

The scope of the SCP is an important issue in relation to Ireland's compliance with the Aarhus Convention. Several commentators have questioned the gaps that exist between the "coverage" provided by the SCP, in contrast to all those forms of litigation that might be encompassed by the term "environmental matters", as detailed in the Convention. It appears clear that the constellation of actions that can engage an SCP do not eclipse the constellation of actions that might be encompassed by the term "environmental matters".

In fact, the detailed list of actions outlined as covered in the relevant legislation, I suggest, evidences a deliberate intention of the Irish Government to remove certain actions that fall within the term "environmental matters" from the ambit of the SCP. This approach is directly in contravention of the *Vienna Convention of the Law of Treaties* [1969], which requires member countries of a convention to adhere to a convention in good faith.[9]

[8] Environment (Miscellaneous Provisions) Act, 2011

[9] Article 26, *Pacta sunt servanda*- "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." Ireland is a signatory to this treaty (to which it acceded on 7th Aug 2006) as well as the Aarhus convention, which it ratified on 20thJune 2012.

I would point out that in one recent case the scope of the "coverage" seems to have been called into question. In *Waterville Fisheries v Aquaculture Licenses Appeals Board* [2014] IEHC 522[10], the court held that an SCP could not be obtained for judicial review of the granting of a fish farming licence, a matter that would appear to be encompassed under the Aarhus Convention. The recent UK decision in *The Secretary of State for Communities and Local Government v Venn* [2014] EWCA Civ 1539, may also point to a further potential gap in Ireland's coverage, should Ireland have or create statutory routes of appeal.

However, in order to keep my communication more focused, I am reluctant to engage in defining the exact shortcomings of "coverage", and I don't intend to analyse this issue comprehensively, recognising the complexity of what is involved, and also understanding that other persons may be far better positioned to develop this issue more exactingly, in a possible future communication.

I would prefer to focus on the issue of legal costs, which involves the SCP currently established, the difficulties in engaging the operation of the SCP, the SCP's shortcomings as a result of the conditions attached, and the judicial interpretation of those conditions.

****

2. *Please provide evidence from case law decided since Ireland's ratification of the Aarhus Convention to demonstrate that "prohibitively expensive" legal costs remain a systemic issue.*

In a number of Aarhus related cases, the courts have referred to the threat posed to litigants, should the SCP not apply to the case. In *Hunter v Nurendale Limited,*[11] at para 14 - the court said --*"In the circumstances of this case though, it being common case and a matter of general knowledge that the costs will be of an extremely high nature, I think I may take it that the costs will be of a very high level and therefore something that the applicant is unlikely to be capable of meeting without very serious and prejudicial financial consequences."*

I have made the case above (Question 1-answer) that adverse costs have not been decreased by any legislation since Ireland's ratification of the Aarhus Convention, and I suggest that there remains a high probability of such costs far exceeding a prohibitive level, in the majority of cases.

[10] [2014]IEHC 522 at Para 14 - "*However, it is equally plain that the licensing regime which obtains under the Fisheries (Amendment) Act 1997 – and which was the subject of the present judicial review application - simply does not come within the scope of the special costs rules contained in ss. 3, 4 and 6 of the 2011 Act*."
[11] [2013] IEHC 430

I note the findings of the ACCC[12] in one communication in relation to a development at a Northern Ireland airport; "*that the quantum of costs awarded in that case,£39,454,* [about €50,000] *rendered the proceedings prohibitively expensive and that the manner of allocating the costs was unfair, within the meaning of article 9, paragraph 4, and thus, amounted to non-compliance.*"[13] . In a more recent communication (para 75 -ACCC/C/2012/77), the ACCC has made provisional findings that costs of £8000 (about €10,000) were prohibitive for an applicant (an apparently well funded NGO) in the particular circumstances.

In ACCC/C/2012/77 the ACCC said-"...the Committee recalls from its findings on ACCC/C/2008/33 that the Sullivan Report estimated the cost of seeking a PCO (the UK equivalent of an SCP) to be in the order of £2,500-£7,500 plus VAT". I suggest that legal costs are at a similarly high level in Ireland and the U.K.. Given the apparent complexity of the Section 7 hearings in Ireland to date, it seems more than likely that the costs of such hearings would likely lie towards the upper end rather than the lower end of the band outlined in the Sullivan Report, if not higher. It should also be observed that any applicant contemplating Judicial Review must not only concern herself with the threat of an adverse cost award, if she fails to obtain an SCP at a Section 7 hearing, she must also contemplate funding her own legal costs in relation to up to 5 separate court hearings – the Section 7 hearing, the "leave" hearing for Judicial Review, the Judicial Review itself, any reference to the CJEU, and either an Appeal Court hearing or a Supreme Court hearing.

I suggest, it is not hard to imagine that costs in relation to a quite basic Section 7 hearing at High Court level, could easily exceed €10,000, and if appealed to the Supreme Court (or Appeal Court) could easily exceed €40,000, given that average costs appear to be about €38,000 (see footnote n.3 above), not including an 8% stamp duty that is applicable to taxed costs.

In a decision[14] of the 14th February 2014, a Taxing master ruled that 4 cost orders did not fall within the ambit of Aarhus "not prohibitively expensive " protection, and said that the adjudication of those 4 cost claims would proceed. However, if these cases proceeded to adjudication, it appears that as of 22nd November 2014, no outcomes have been published on the courts website.

The four claimed amounts of legal costs were:
1. Total Claim: €187,688.51,
2. Total Claim: €615,748.22.
3. Total Claim: €42,196.60 and
4. Total Claim: €203,625.32

[12] ACCC/C/2008/27
[13] ECE/MP.PP/C.1/2011/2/Add.9 (at para 7)
[14] *Arklow Holiday V An Board Pleanala* [2014] IELCA 2

I have therefore been unable to access the outcome of the costs of any Aarhus encompassed case, nor the cost of any of Section 7 application. However, in *McCoy v Shillelagh Quarries* [2014] IEHC 512 which was a Section 7 hearing, the court said in relation to costs which were awarded to the applicant in that case -- at para. 2- "*My particular concern was to reflect the spirit of the legislation that costs in environmental matters not be prohibitively expensive, and I was concerned that the costs of the motion for the section 7 declaration might be significant in that context.*"

The CJEU has held that in determining whether costs are prohibitive or not, account must be taken of both the subjective nature of costs to a particular applicant, as well as an objective test as to whether costs are prohibitive even for a person who is well off. The CJEU Advocate General's said in a 2013 opinion—

"... the correct position is that litigation costs may not exceed the personal financial resources of the person concerned and that, in objective terms, that is to say, regardless of the person's own financial capacity, they must not be unreasonable. In other words, even applicants with the capacity to pay may not be exposed to the risk of excessive or prohibitive costs and, in the case of applicants with limited financial means, objectively reasonable risks in terms of costs must in certain circumstances be reduced further." [15]

The second question is:
How likely is it that an adverse costs award will be imposed on an applicant?

While I do not deny that the legislative changes introduced have reduced the risk of a prohibitively expensive adverse costs award, the risk has not been reduced sufficiently. The legislation does not reach, by a huge margin, the clarity required as outlined by the CJEU, where it said that litigants need to be assured "*with the requisite clarity and precision*".[16]

****

3. *Please provide examples of case law decided since Ireland's ratification of the Aarhus Convention demonstrating how sections 3 (2), (3) and (4) of the Environment (Miscellaneous Provisions) Act are being applied in practice, and in particular, any case law that demonstrates that these provisions are being applied in a manner that you consider to be inconsistent with the Aarhus Convention. Please explain with reference to the provisions of the Convention, in which way these sections of the*

[15] *Commission of the European Union v United Kingdom* (Case C-530/11), 12 September 2013; at para 55: (of AG Opinion)
[16] Further- in *Commission of the European Union v United Kingdom* (Case C-530/11), 13 February 2014, at para 57.- the court said "*These various factors lead to the conclusion that in practice the rules of case-law applied do not satisfy the requirement that proceedings not be prohibitively expensive within its meaning as defined in Edwards and Pallikaropoulos.*"

Environment (Miscellaneous Provisions) Act are being applied in a manner inconsistent to the Convention.

I'm not aware of a case in which Section 3(2)[17] has been applied to date. An identical provision under Section 50B of the Planning and Development Act (2000), as amended (2010), under subsection (2)(a.), did allow costs to be awarded to an applicant in the case of - *Tesco Ireland v Cork Co. Co*. [2013] IEHC 580.

However, I contend that the awarding of costs in favour of an applicant is of lesser importance, than the threat of an adverse costs award, in determining if costs are prohibitive. It appears from this section that any assessment as to its applicability is one that will likely be made at the end of proceedings. It therefore provides little comfort to an applicant in consideration of proceedings in being assured of not being burdened with excessive legal costs, for example in relation to their own lawyer costs, at the outset; it does not provide the "requisite clarity and precision" that costs will not be prohibitive.

In relation to 3(4), it transpired in *Margaret McCallig V An Bord Pleanála,*[18] that a high threshold seems to apply, as to what connotes a matter of exceptional public importance[19]; this case appears to have being evaluated under Section 21, which is similar to Section 3(4) *of the Environment (Miscellaneous Provisions) Act [2011].*

It is in relation to Section 3(3)[20], that the greatest problems arise. As I pointed out in my submission of 5/8/2014, the issue of "conduct of proceedings" poses the greatest uncertainty as to whether an applicant may lose the "shield" (or benefit of an SCP).

In a recent case, *McCoy v Shillellagh Quarries*[21], it was suggested that if an applicant was joined by another party to the case, that the "shield" [the benefit of the SCP] might be lost if the applicant failed to co-operate with the second party to insure that expert witnesses that might be called by each party, did not present near similar evidence : see para 39 - *"... It is also possible that should the two applicants fail between themselves to agree on the form of the expert evidence and should their two experts give identical or almost identical evidence that the court might regard the conduct of the case as justifying an award of costs against Mr. McCoy notwithstanding the making of a declaration..."*

---

[17] 3(2) The costs of the proceedings, or a portion of such costs, as are appropriate, may be awarded to the applicant, or as the case may be, the plaintiff, to the extent that he or she succeeds in obtaining relief and any of those costs shall be borne by the respondent, or as the case may be, defendant or any notice party, to the extent that the acts or omissions of the respondent, or as the case may be, defendant or any notice party, contributed to the applicant, or as the case may be, plaintiff obtaining relief.

[18] *Margaret McCallig V An Bord Pleanála* [2014] IEHC 353

[19] *Ibid,* at para 45- "*In my judgment it was the intention of the legislature in employing the phrase "exceptional public importance" to signify that the matter at issue had to be of special importance to the general public and not just to the parties to the proceedings."*

[20] Environment (Miscellaneous Provisions) Act, 2011

[21] *McCoy v Shillellagh Quarries* [2014] IEHC 511

Thus, I suggest that this supports the view that the term "conduct of proceedings" is so expansive and vague that it could encompass a multitude of behaviours, which might be disapproved of by a court. The term does not meet the constitutional requirement for clarity of legislation[22] and is also likely to fail to meet the *Rule of Law* principle of comprehendible law.[23]

Also, in *McCoy*[24] , the court appears to illuminate two separate distinct thresholds of the degree of "probability of success" of an application that might merit the awarding of an SCP. Firstly, the legislation requires that the application is not frivolous (or vexatious). However, the court has further suggested a second threshold- that of requiring a reasonable prospect of success- see para. 27-- "*I must, however, be satisfied that there is a reasonable prospect of success."* Though, largely *orbiter* to each of the cases where "a reasonable prospect of success" requirement was raised, this requirement, if applied, appears to be not compliant with the requirement in Article 9(2) of Aarhus, which requires only that one has "*sufficient interest*", or alternatively, where applicants (other than NGOs) must show a "*an impairment of a right*". This adds further uncertainty for an applicant in seeking an SCP.

There is also a suggestion that an assessment of frivolous litigation could be made at the end of the main proceedings of an action, adding further to an applicant's anxiety—see para. 17- *"These retained discretions are exercisable by a court which has heard the evidence and would appear to lie at the conclusion of the case.".* While admittedly the CJEU in *Edwards/ Pallikaropoulos v Environmental Agency(U.K.)* at para. 45 - states that the court could take account of "*the potentially frivolous nature of the claim at its various stages" ,* I have to respectfully submit that this approach is not consistent with the CJEU's later commentary in *Commission v UK* [2014], that litigants need to be assured *" with the requisite clarity and precision".* An alternative mechanism needs to be established such that, if during the course of proceedings that are commenced in good faith, but which transpire to be not well grounded, or events unfold to make the proceedings moot, the applicant should be allowed the opportunity to withdraw the case, with no order as to costs. An applicant needs to be assured that an SCP is operable to the end of any proceedings.

---

[22] Justice Sutherland said in *Connally v General Construction Co.*, 269 U.S. 385, 391 (1926): *"... and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."*

[23] In *N.K.M. v Hungary* (Application no. 66529/11) on 4th November 2013, the court said at para- 48.--*"It follows that, in addition to being in accordance with the domestic law of the Contracting State, including its Constitution, the legal norms upon which the deprivation of property is based should be sufficiently accessible, precise and foreseeable in their application (see Guiso-Gallisay v. Italy, no. 58858/00, §§ 82-83, 8 Dec. 2005)."*

[24] *Supra n.21*

In *McCoy*[25] the court discusses *Holly Hunter v Nurendale*[26] and a reference therein to the applicability of the CJEU decision in *Edwards/ Pallikaropoulos v Environmental Agency* (U.K.)[27], and a suggestion that the CJEU had directed that applicants for protective costs orders *"must show that he or she has a reasonable prospect of success."* (see- para (20) of *McCoy*[28], and also para (12*)of Holly Hunter).*

My reading of *Edwards*[29] is that any evaluation of the probability of success was more of an advisory nature than a prescriptive requirement. In *Edwards*, the court at paragraph 45, says— "*It **may** also take into account the situation of the parties concerned, whether the claimant has a reasonable prospect of success…" .*

Further, the *Edwards* case differs from *McCoy* in a number of respects: In *Edwards*, the issues before the CJEU, under a preliminary reference, were mainly focused on whether a subjective or an objective approach or a combined approach should be applied in assessing whether costs are prohibitive and what other factors should be taken into consideration. It should also be observed that the issues in contest in *Edwards* pre-dated the introduction (1st April 2013) of the subsequent Special Costs Rules (see para. 26 of ACCC/C/2012/77) relating to Aarhus cases in the UK. The *Edwards* criteria outlined the minimum advantage[30] that should be afforded litigants in order to comply with the relevant EU directive (*within the meaning of Directives 85/337 and 96/61*- see para 21 of *Edwards*).

A negative "conduct of proceedings" finding, even if such was not ambiguous, is inimical to the principle of proportionality as outlined in *Edwards,* in that it sets at nought the right of access to courts *vis a vis* the property rights (to their legal costs), of winning respondents, regardless of the seriousness of any breach.

The case of *McCallig* [31] raises further uncertainties: In this case, it unfolded that, where an action composes of a number of claims; that some of the claims may be entitled to an SCP, but other claims may not.[iii]

This ruling highlights the lack of clarity that applies to the accessibility of the SCP under Section 7 of the 2011 Act: What will happen where an applicant applies under Section 7 for an SCP, and it transpires during the hearing that 1 of 2 claims as may be

[25] *Supra n.21*
[26] [2013]IEHC 430, 17th September 2013
[27] In Case C-260/11 CJEU [2013] , decision of (4th Chamber) on 11th April 2013
[28] *Supra n.21*
[29] *Supra n.27*
[30] By the term "advantage", I mean in a broad sense- the existence of a costs protection system, and the terms of such a system, that might assist an applicant in being burdened with a significantly lower threat of prohibitive legal costs. Such advantage could also simply encompass the diminution of a disadvantage. It should also be noted that a costs protection system might also benefit a respondent where a cap on costs applies to both parties.
[31] *Margaret McCallig V An Bord Pleanála* [2014] IEHC 353

outlined in an application, for example, are deemed to fall under the ambit of Section 3, and that the second claim falls outside?

This could lead to an anomalous outcome, where the applicant might be awarded costs in relation one claim, with the respondent being awarded costs in relation to the other claim. If the applicant is represented by one lawyer (or no lawyer), while the respondent is represented by 3 or 4 lawyers [which might not be unusual], then the applicant could be significantly out of pocket[32], if "proceedings" can be subdivided.

These conditions add to the uncertainty facing applicants for an SCP (under Section 7[33]), which undermines the objective as outlined by the CJEU (In Commission v UK [2014]) of assuring litigants "*with the requisite clarity and precision*", that costs will not be prohibitive. Each condition that might apply adds cumulatively to the fear of an applicant that an SCP order will not be made under Section 7 (or set aside), resulting in an adverse costs order against her, if not granted.[iv] The number of conditions that can be evaluated, according to the case-law, inevitably adds to the the time and complexity of such hearings, making the costs more prohibitive.

****

4. *Please provide a more detailed description of the "catch 22" of the special costs procedure. Does the applicant have to bring a declaration that its proceedings are within the scope of section 3 (1) of the Environment (Miscellaneous Provisions) Act? Which way does the burden of proof fall, i.e. does the applicant have to prove that its application is within section 3(1), or does the respondent have to prove it does not? Which costs rules apply to these ancillary proceedings?*

Section 7 of the Environment (Miscellaneous Provisions) Act [2011] allows an applicant to make an application for an SCP. The Dymphna Maher case referenced in my earlier submission (of 5th August 2014) illustrated the operation of the "catch 22". The decision in *Coffey v EPA* [34], which includes an appeal of the earlier decision against Dymphna Maher, illustrates the continued problem with the "catch 22".

The case of *McCoy* suggests that the burden of proof lies with the applicant, to establish both that the applicant has a good chance of success and that the proceedings are encompassed by Section 3(1). The case of *Coffey v EPA* (2013) indicates that costs will likely be awarded against an applicant where, if she does not establish that the case is encompassed by Section 3(1)(of 2011 Act). In that case, the

[32] In Ireland, no costs are awarded to a lay-litigant, for income lost from absence from normal work. *In Mooreview /First Active*[47] the Master said para 39—" *Will the fair and reasonable test operate to limit a party to one, perhaps two counsel, attended by an associate solicitor, or would it be unfair to the defendants to reduce the team below the industry standard of two Senior Counsel, one junior and a senior partner in attendance?* "

[33] Environment (Miscellaneous Provisions) Act, 2011

[34] Coffey & ors -v- Environmental Protection Agency [2013] IESC 31

Supreme Court refused to issue a limited costs protection order, (to 13 separate applicants, including Dymphna Maher) , to the effect that the costs of an application for an SCP would be "not prohibitive".

The Supreme Court decision suggests that even where the respondent is a state emanation, the court has no authority to bind that state emanation to a recoverable costs cap, without conducting a hearing to assess the operability of an SCP; a hearing which might result in an adverse cost award being made against the applicant, which could easily be prohibitive. This case illuminates the "catch 22" that is in operation, and the government has refused to remedy this defect, thereby failing to ensure some semblance of compliance with the Aarhus convention (Article 9(4) thereof).[35]

In relation to the specific question as to whom bears the burden of proof. I can only suggest that, since there is no specific reference to this in Section 7, the normal rule requiring an applicant to establish her case beyond the balance of probabilities applies. However, exactly what criteria has to be established, (beyond probability), seems unclear.

****

Questions regarding Part 2 of the communication

5. *Please provide any applicable regulations or professional guidelines setting out the criteria upon which the Law Society adjudicates what constitutes an unreasonable legal fee.*

Under Section 9(7) of the Solicitors (Amendment) Act, 1994 – "*The Society, with the concurrence of the President of the High Court, may make rules of procedure in relation to complaints received by the Society under this section*."
I do not have access to any further information on its guidelines. Having checked the Law Society website (www.lawsociety.ie), I did not find any guidelines. I enclose web-link to report of the Law Society in relation to its regulatory functions at end of this submission. The Law Society is not a nominated public body under the Freedom of Information Act (2014).

6. *Please provide any applicable legislation/regulations that regulate the taxation process.* -- (please see attached files).
The following acts/regulations are listed on the Taxing Masters website—

[35] Environment (Miscellaneous Provisions) Act 2011, Section 7, subsection (5) states – "An application under *subsection (1)* shall be by motion on notice to the parties concerned". -This allows attendance of the respondent at such a hearing, resulting in a potential adverse costs award against the applicant, which could be of a prohibitive nature. "Order 99" (of RSC 1986), directs the loser to pay the costs of the Section 7 hearing.

Rules and Legislation*

» Attornies and Solicitors (Ireland) Act, 1849
» Attornies and Solicitors Act, 1870
» Solicitors Remuneration General Order, 1884
» The Legal Practitioners (Ireland), Act 1876
» Solicitors' Remuneration Act, 1881
» Sureme Court and High Court (Fees) Order, 2003 (S.I. No. 89 of 2003)
» Rules of the Superior Courts 1986 (S. I. No.15 of 1986)
» The Solicitors (Amendment) Act,
» The Courts and Court Officers Act, 1995 *from taxing masters website

Other legislation that is or might be relevant includes—
Planning and Development (Amendment) Act, 2010 Act
Environment (Miscellaneous Provisions) Act, 2011
The Judicature Act 1877

7. *Please provide relevant examples dating since Ireland ratified the Aarhus Convention of*
a. any complaints to the Law Society; b. applications to the taxing master; regarding legal fees for court proceedings within the scope of the Aarhus Convention, that you consider did not satisfactorily result in non-prohibitive costs.

(a). I do not have access to complaints (relating to legal fees) lodged with the Law Society. As far as I am aware, no complaints regarding excessive fees are published:

I refer to Solicitors (Amendment) Act, 1994, and Section 22 thereof, which directs only that outcomes of Disciplinary tribunal hearings be published, plus summaries of the numbers of other complaints.
(http://www.irishstatutebook.ie/1994/en/act/pub/0027/print.html#sec22)

I do note that, the Law Society does publish the outcomes of Disciplinary Tribunal Hearings, but as far as I'm aware, the Tribunal does not assess overcharging.

It is very hard to prove that there is no publication. - This is much easier for a party who is in charge of the relevant information to show the contrary. In *Wickow Co.Co. v Fortune*[36] , Justice Hogan held that the burden of proof should be reversed, where the information needed to establish proof resides much more easily within the control of one party, as opposed to another: "*by reason of the peculiar knowledge doctrine, the onus in this regard rests in any event with the landowner" (para 43).*

[36] Wicklow Co Co v Fortune (No.3) [2013] IEHC 397

I would also point out that if the Legal Services Regulation Bill [2011] is ever passed into law, under the current draft, the question as to whether the current complaint process run by the Law Society meets any requisite transparency standard, will become moot. The complaint procedure under the Act appears (from the general tenor of its provisions) to operate otherwise than in public, and under Section 60 – It states: "(1) *The Authority shall publish, in such manner as the Authority considers appropriate, a report on the performance of its functions under this Part. .... (iv) where the Authority considers it appropriate, the name of the legal practitioner concerned."* Clearly, therefore, publication will be entirely optional.

(b) I could not identify any, having checked those published. Only 3% are published on website- I refer to endnote (i). I refer also to answer to Question 1, above- re potential cases.

Question regarding Part 3 of the communication –

8. *In your revised communication you refer to both the "Legal Services Regulation Bill" and the "Legal Services Regulation Act". Has the Bill now been adopted by Parliament, and if so, on what date was it adopted and on what date did it enter into effect? Please provide the Committee with the relevant provisions of the Act as adopted that you consider do not meet the standards of the Convention, together with an accompanying explanation of why you consider each of those provisions does not.*

The Legal Services Regulation Bill [2011] was first introduced in October 2011, and passed 3 (of 5) stages of passage through the Oireachtas. It was then more or less parked until June 2014, when major changes, which had been made at Committee stage were published. The "revised" Bill, (also titled Legal Services Regulation Bill [2011]) states (in its introduction) that the Bill can be referenced as the Legal Services Regulation Act [2014, (LSRA 2014).[37]- It has not passed into law. Some measures in the proposed Bill relating to legal costs are just a partial-consolidation of current rules, some of which I contend are unfair and not Aarhus convention compliant; however, most of the unfair rules exist in currently enacted legislation.

As regards non-compliance with Aarhus, I identified some specific sections of the proposed legislation that are flawed, from an Aarhus compliance perspective:

Section 129 of LSRA 2014, states--- "*Proceedings and documents created or furnished to the parties to a legal costs adjudication are absolutely privileged except..."* This provision flies in the face of open justice. It arguably violates Article 34

[37] < http://www.oireachtas.ie/documents/bills28/bills/2011/5811/b58a11d.pdf >

of the Irish Constitution. The High Court has already ruled [June 2013] that court documents should be accessible, and this decision may be currently under appeal to the Supreme Court. At the High Court, in *AIB v Treacy* [38] Judge Mr Justice Gerard Hogan said at para 22/23. –

"*The open administration of justice is, of course, a vital safeguard in any free and democratic society. It ensures that the judicial branch is subjected to scrutiny and examination and helps to promote confidence in the fair and even handed administration of justice. Any system of secret court hearings could pave the way for judicial arrogance, overbearing judicial conduct and abuse. [23.] In these circumstances the public are entitled to have access to documents which were accordingly opened without restriction in open court*" .

The government and the Courts Service appear to have not responded to this judgement by making court documents accessible to the public. According to one newspaper report, the case may currently be on appeal.

Regarding Rules Applying to evaluation of costs:

The Irish Competition Authority, in its 2006 report on the Barrister Profession, recommended that costs should be assessed on the basis of the work done. This appears to be the approach of the Registrar of the CJEU-- "*in the context of the judgment in PAGINE GIALLE, the flat-rate assessment of the fees, without specifying the working time in respect of each item referred to and the hourly rate applied, does not make it possible to assess the amount of work actually carried out.*" [39] However, this proposal was rejected in favour of keeping inflationary factors, such as the value of the matter in dispute and the importance of the matter to the litigants.[v]

Reviewing CJEU cases it appears to be far more common that one or two lawyers[40] or agents represent parties rather than the often 3 or 4 lawyers deployed as teams[41] of lawyers in Ireland.

---

[38] *AIB v Treacy* (No.2)[2013] IEHC 242

[39] In Case T-589/11 DEP,[Phonebook of the World]

[40] I refer to comments of Dr. Michael Arnheim, writing in the (UK) Barrister magazine in 2010 (Costs – a missed opportunity?) ---*"Duplication: The high degree of unnecessary expense resulting from the two-lawyer model that is still prevalent here but is absent from most other jurisdictions."* < http://www.barristermagazine.com/archive-articles/issue-45/costs-%E2%80%93-a-missed-opportunity.html>. [The UK and Irish systems are very similar, having a shared history]

[41] In 2010, Western Australia's Chief Justice Wayne Martin speaking in Perth, Australia was reported as saying-- *"... the model promoted quantity over quality and encouraged "time-sheet padding" among lawyers desperate to meet targets. "Clients may be charged for the lawyer thinking about their case while driving to work or showering or shaving," he said. The model also encouraged "over-service" where four lawyers may attend a meeting when only one was really required.*

Ireland needs to re-assess the practice of allowing the recovery of costs for up to 3 or 4 lawyers at High Court level as standard.[42] This practice is founded in the common law tradition of former centuries, where precedents were hard to find and their search required a lot of consultation and research to locate. In today's internet world, where case-law is easily searchable, the continuation of such a practice appears disproportionate, particularly at a time when it has now been clearly established that legal costs have become such a barrier to access to justice.[43] Ireland needs to follow the practice of most European countries, and alter the rules of taxation so as to curtail the recovery of costs for more than one/two lawyers to the most exceptional of cases.

Open Justice- an essential element of fair procedures:

One of the main claims which I have made relating to legal costs is that there is a pattern of non-observance of open justice principles at various levels:

1. Barristers are not allowed to advertise fees, or to advertise at all, except by publication of their details on the Bar Councils' website.
2. This has anti-competitive effects: It makes is very difficult for new entrants to establish themselves, and up to or over half of newly qualified Barristers drop out of the profession, within 4 years, as many cannot afford to pay the fees payable to the Bar Council and also support themselves. This inevitably pushes up legal costs for everyone who hires a Barrister, including those engaging in Aarhus related cases.
3. The courts usually do not publish "cost orders" in the judgements posted on the courts website. It is very difficult to find out if costs are awarded in a case or how much costs are awarded in any particular case. This contrasts with the CJEU which always details costs appropriation (though not the amount, usually) at the end of published judgements; see for example the *Edwards* case which I cited earlier, in contrast to *McCoy* (16/07/2014) which does not detail whether the applicant was awarded the costs of the hearing in the published judgement. (As it happens, in the *McCoy* hearing of 16th July 2014, the matter of costs was apparaantly adjourned until the later related published judgement of 10th October 2014, however no mention of the adjournment is reported in the earlier judgement. I submit that it would be preferable that all

---

"Teams of lawyers go to court, some just sitting and watching," Chief Justice Martin said." <http://www.theaustralian.com.au/business/legal-affairs/leading-jurist-attacks-legal-fees/story-e6frg97x-1225867930583 > accessed 30th November 2014

[42] *Supra n.33* -- "...*the industry standard of two Senior Counsel, one junior and a senior partner in attendance?"*

[43] In *Bourbon v Ward* [2012] IEHC 30 - The President of the High Court Mr. Justice Nicholas Kearns said that the constitutional right to access to the courts was threatened -"*when the cost of going to court …becomes or remains prohibitive".*

costs issues are linked to the original case in a clear fashion; all costs matters need to be brought centre-stage and the reporting of costs issues needs to be given the weight that most litigants attach to the issue, which for many persons is the fulcrum issue upon which justice hinges.

4. In some cases, judgements of court hearings are not published at all. This became apparent in the 2014 report on Aarhus Convention Implementation.[44] This is a clear violation of Article 9(4), if such a case related to an environmental matter.[45]
5. The Taxation hearings are open to public hearing. However, the Bill of Costs is not made available online, or at the Taxation hearings for the public to read, rendering effective public scrutiny of Taxation hearings near impossible.[46]
6. The prevention of advertisement of Barristers fees makes it very difficult to challenge the fees claimed by Solicitors on behalf of barristers at Taxation hearings. This hampers the ability of any challenger in establishing whether the rate sought by a particular barrister, reflects the market rate that might be obtainable by that barrister in an open competitive market. This risks creating a situation where barristers' fees claimed might vary within quite narrow bands, based on so called "going-rates" rather than reflecting the broader bell-curve distribution pattern that one would expect in a normal competitive market. In this regard it is interesting to review the comments of The Master of the High Court, in one case involving the assessment of security of legal costs: In *Mooreview /First Active* [47] the Master said at para 26-

[44] ECE/MP.PP/2011/2/Add.1 : (see page 37 of report) "*Publicly accessible decisions: "The High Court and the Supreme Court deliver a considered, written judgement in many cases. Where a considered, written judgement is given it is published on the Courts Service website. In cases in which the court does not deliver a considered, written judgement the decision of the court is recorded in a court order which is available only to the parties to the case."* <http://www.environ.ie/en/Publications/Environment/Miscellaneous/FileDownLoad,34986,en.pdf>

[45] In fact, it is a violation, regardless as to whether a case is an environmental case: This is because, if cases are not published, then, it becomes impossible to independently verify that such a case is not an "environmental matters" related case.

[46] Only about 3% of outcomes appear to be published on the Courts Service website. In *Pretto and Others v Italy* [ECHR] *(Appl.no.* 7984/77*) 8th Dec. 1983,* The court at para. 26 said- "*The Court therefore does not feel bound to adopt a literal interpretation. It considers that in each case the form of publicity to be given to the "judgment" under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1 (art. 6-1)."* Legal costs assessments involve quantitative analysis rather than qualitative analysis, therefore access to all documents and outcomes is of critical importance, before, during and after hearings to allow public scrutiny.

[47] Decision of The Master of The High Court -17th January, 2013*;* it is hard to determine the correct citation of this case, as about 7 parties appear to be involved. There is also a detailed analysis of the proposed legal services regulation bill within the judgement; which clearly lays out many of the deficiencies of the Legal Services Regulation Bill, and explains much of the operation of the legal costs system.

"In any marketplace devoid of clear competitive pricing data, such as the legal services market, non-competitive pricing, sometimes exploiting unequal bargaining power, sometimes showing signs of cartel-like behaviour, should be regulated in the interest of the consumer. The measure of party and party costs for which an unsuccessful litigant is liable to the successful is just such a price norm."

And at para 41-

"*In regard, in particular, to party and party costs, the liability of the losing party cannot be said to be "fair" if the services availed of by the winning party could have been purchased at more modest rates. But this is not an exact science. As one Judge puts it: "It's not about finding the correct figure, it's about finding a correct figure". The industry norm -the "going rate" for the service - should, of course, be objectively determinable from price data, but in the case of this service industry it is not: it is the say-so of the prudent and reasonable solicitor, with due regard for comparators. The service provider nominates the price. It may be closer to a cartel price than a perfectly competitive marketplace price at the intersection of the supply and demand curves. Injustice, the party and party figure, (whatever about the solicitor and client figure) should be the latter if it is to be "fair" to the losing party."*

7. Public scrutiny of barristers' and Solicitors' fees at Taxation hearings is totally hampered by the prevention of access to documents relating to the Bill of Costs, and to the Bill of Costs itself. Even, for those who might attend such hearings- the process is near incomprehensible, where the Bill of costs is not viewable by public observers. The new Bill [Section 129, LSRA-2014], attempts to copper-fasten the secrecy of such documents.

Section 107(8)(of LSRA 2014) only allows for register of outcomes of legal costs to be assessed during office hours – hence not on-line.
Section 107(2)(e)(of LSRA 2014) does not clarify what the publication of determinations encompasses: Does it just mean the outcome of the adjudication, or does it include the costs of the determination as well as the determination? Will it detail whether VAT is included? Will it detail the amount of stamp duty that attaches to the determination? Will it publish the names of the lawyers whose fees are in dispute (including the barristers|) as well as the names of the agents (or legal costs accountants) acting for both sides of an adjudication. None of this is clarified.
Section 105(5)(c)(of LSRA 2014) – precludes the publication of a client's name in lawyer-own –client disputes. [I refer to earlier submission in relation to this issue].

The effects of transparency barriers:

The combined effect of all of these elements that hamper transparency create a near perfect storm of confusion, making the task of challenging the costs claimed by solicitors and barristers in particular, at taxation hearings very arduous.

One of the principles of a fair trial (under Article 6(1) of the ECHR, for example), is to be in a position to challenge the evidence presented. The evidence used by lawyers at taxation hearings is often in the form of "comparators" of costs allowed by adjudicators or judges (in the case of appeals). This "evidence" is presented by lawyers or legal costs accountants on behalf of lawyers or clients, who through their experience, have some knowledge of some of the "comparators". However, the one-off-litigant in an environmental law case will have very limited access to such "comparators". As the Master of the High Court said above—

The rate *"should, of course, be objectively determinable from price data".*

The prohibition of advertising of fees by barristers[48] has price-inflationary effects on the fees that barristers can impose on their own clients, due to the reduction in price competition, and the prohibition of direct access to the public, which hampers a clients ability to negotiate lower fees.

Also, the absence of any published hourly rates, for example, also hamper a litigant in challenging any barrister's fees at Taxation hearings. If a barrister claims fees of €2500.00 per day, when she might have been perfectly happy to work for €500.00 per day; the client is left powerless in challenging the higher rate, if claimed, if the "comparator" reflects the higher rate. [see para 41 referenced in (6) above—"*it is the say-so of the prudent and reasonable solicitor, with due regard for comparators".]* Comparators appear to play an important role in the assessment of "fair and reasonable" costs. In *Landers v Judge Patwell*[49] the court said: -

"While I accept the use of comparable cases cannot be determinative in the instant or any case, they are indicators of more or less accuracy dependent upon the extent to which they can be said to be truly comparable. It is axiomatic that a comparable is not identical - differences of substance as opposed to accidents cannot be ignored, but the value of a comparable is enhanced to the extent that it is broadly and substantially similar. I agree with the Taxing Master when he says:"The use of comparators are a guide to a broad assessment, not a method of calculation." "

[48] "*Since price is an important element of competition, even in the case of liberal professions, any rule which limits price advertising is a restriction of competition."*- Hungarian Competition Authority [2007]--<http://www.gvh.hu/data/cms989318/Vj180-2004_a.pdf?query=legal%20profession > accessed 30 November 2014 >

[49] *Landers v Jdg.Patwell* [2006] IEHC 248

The inaccessibility of market rates that might apply to any particular lawyer, appears to lend itself to a practice of evaluating "comparable" fees that may have been awarded to other lawyers in other cases, if they be they of a similar type. A challenger is thus hampered in challenging the fees of the lawyer whose Bill is in question, as that process appears to be influenced by decisions in earlier cases, in which a challenger has had no opportunity to contribute.

However, if advertising was allowed, and fee publication was the norm, then such published rates could be used to appropriately challenge the fees claimed. The process is rendered objectively unfair, notwithstanding the best efforts of adjudicators/judges to fairly adjudicate as best they can- It would appear to be an impossible task for anyone to evaluate what particular rate every barrister might command in a theoretically open market, not to mention doing so in a market where there is a scarcity of such price information.

The "comparative" evidence submitted at taxation hearings, which can also apparently include comparators adduced from the settlements negotiated by legal costs accountants[50], is not furnished under oath, as would be the norm in most criminal or civil trials. However, such evidence can input into legal costs outcomes which may burden people with bills, sometimes in the Millions of euro, which may pose a greater burden to a challenger than a one year prison sentence, for example.

In a number of Article 6(1) violation cases, declared by the ECHR, the court emphasised the importance of the right of persons to challenge all evidence adduced, regardless of the source of the evidence:

In *Lobo Machado v Portugal* [51], the court at para (31), said—

"*31. Regard being had, therefore, to what was at stake for the applicant in the proceedings in the Supreme Court and to the nature of the Deputy Attorney-General' s opinion, in which it was advocated that the appeal should be dismissed (see paragraph 14 above), the fact that it was impossible for Mr Lobo Machado to obtain a copy of it and reply to it before judgment was given infringed his right to adversarial proceedings. That right means in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal*

[50] *Ibid* –The court said—*"... the Taxing Master's assertion that comparisons put forward on the basis of agreement reached between the parties ranked less than decisions of the Taxing Master was wrong in principle commenting: and (*in citing another case) said-*'One must assume that in the absence of any indications to the contrary that settlements of this nature relate to the application by cost accountants of the relevant consideration in those cases.' "*
Comparators adduced from settlements would appear to be largely inaccessible to the public.
[51] *Lobo Machado v Portugal (Application no. 15764/89)* [ECHR} - 20 February 1996

service, with a view to influencing the court' s decision (see, among other authorities and mutatis mutandis, the following judgments: Ruiz-Mateos, previously cited, p. 25, para. 63; McMichael v. the United Kingdom, 24 February 1995, Series A no. 307-B, pp. 53-54, para. 80; and Kerojärvi v. Finland, 19 July 1995, Series A no. 322, p. 16, para. 42).

The Court finds that this fact in itself amounts to a breach of Article 6 para. 1 (art. 6-1). "

In another case-- *James and Others v The United Kingdom* (Application no. 8793/79) [ECHR] 21 February 1986, the court said at para184--

" 184. The Court reiterates that according to the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (see, for example, Jespers v. Belgium, no.8403/78, Commission decision of 15 October 1980, Decisions and Reports (DR) 27, p. 61; Foucher v. France, judgment of 18 March 1997, Reports 1997-II, § 34; and Bulut v. Austria, judgment of 22 February 1996, Reports 1996-II, p. 380-81, § 47)."

I have to submit the rules and procedures that apply to the adjudication of legal costs do not afford challengers to legal costs bills appropriate scope to challenge the evidence presented:

Any agreements that might exist between the lawyer and a client, where that winning client's costs (in party v party cases) are being challenged, are out of bounds for evidence purposes. As no advertising of (Barristers') fees is allowed, it is not possible to produce evidence to the effect that the lawyer would normally have been prepared to work for a much lower fee.

The failure to publish the outcomes of all legal costs adjudications also makes the ability of challengers to independently select their own (potentially more favourable) "comparators" near impossible.[52]. I suggest that it is no defence, to suggest that a challenger should employ a Legal Costs Accountant to assist them in generating

[52] There are a string of cases from the ECHR supporting the right of litigants to have full access to all evidence, both that might be used against them, and that which might assist them. In the Case Of *Vermeulen v Belgium (Application no. 19075/91) ECHR* 20 February 1996 -- at para (33): the court said-- *"That right means in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision (see, among other authorities and mutatis mutandis, the following judgments: Ruiz-Mateos, previously cited, p. 25, para. 63; McMichael v. the United Kingdom, 24 February 1995, Series A no. 307-B, pp. 53-54, para. 80; and Kerojärvi v. Finland, 19 July 1995, Series A no. 322, p. 16, para. "42)."*

"comparators". It is unclear how much access those accountants have to the relevant data either. Further, a challenger should nevertheless be in a position to evaluate the evidence themselves. For public scrutiny to be possible, the public also need to have access to such "comparators". It should also be noted that while solicitors can have their costs of representation paid by their own client (in solicitor-own-client contests), the client cannot recover such costs, even if she shows that she has been overcharged by one sixth. Equality of arms is undermined.

The Irish Government continues to fail to remedy this situation. Even, under its proposed reforms, the publication of outcomes is not required to be on-line, nor is there any requirement to publish outcomes within a specified period after a hearing; meaning delays of up to a year could ensue. The proposed redaction of clients' names in solicitor/client adjudications (Section 105(5)(c)(of LSRA 2014)) should be seen for its true intention—to deflect attention from solicitors that may overcharge, rather than protecting the privacy of clients; this is evidenced by the fact that no option is made available to the client to waive her anonymity. The press will have little interest in reporting cases of overcharging solicitors, where the client's name involved (particularly, if the client is well known) is not publishable; public scrutiny can be scuppered by the disconnection of the human-interest angle, and by the delay caused by the non-contemporaneous reporting of the hearings.

As a unique holder of data in relation to legal costs adjudications, the government arguably has a duty to disclose[53] all such data to litigants so as to mitigate any injustice that might occur from the hampered ability of litigants to challenge excessive fees often sought by lawyers at adjudication hearings.

It has scripted specific provisions providing for documentation relating to legal costs adjudication hearings to be privileged[54]; violating constitutional and human rights norms in the process, and the fair procedures requirement of Aarhus 9(4).[55]

---

[53] To review duty of discovery of third parties, I refer to the case of-- *Norwich Pharmacal Co v Customs and Excise Comrs* [1974] AC 133, [1973] 2 All ER 943 . I also refer to *Solvay v Commission* [1994] Case T-30/91 where the CJEU said at para.-98-"*If during the administrative procedure the applicant had been able to rely on documents which might exculpate it, it might have been able to influence the assessment of the college of Commissioners, at least with regard to the conclusiveness of the evidence of its alleged passive and parallel conduct as regards the beginning and therefore the duration of the infringement. The Court cannot therefore rule out the possibility that the Commission would have found the infringement to be shorter and less serious and would, consequently, have fixed the fine at a lower amount."* *Solvay* also establishes that even where trade secrets may be at issue, any withholding of documents is still not justified where a redaction of parts of such documents can achieve sufficient protection of those secrets – blanket privilege is not allowed. See n.54:

[54] Section 129, Legal Services Regulation Act [2014] (LSRA2014), states--- "*Proceedings and documents created or furnished to the parties to a legal costs adjudication are absolutely privileged* except... (a) to the extent required for an appeal from the determination of a Legal Costs Adjudicator, and..."* This provision flies in the face of open justice. It arguably violates Article 34 of the Irish Constitution, Article 14.1 ICCPR, and Article 47 of the Charter of Fundamental Rights of the EU (as Aarhus litigation generally involves the "application of EU law"). The High Court has already ruled [June 2013] that court documents should be accessible, and this decision may be under appeal to the Supreme Court. "High Court Judge Mr Justice Gerard Hogan said the open administration of justice is "a vital safeguard" in any democratic society which ensures the judicial branch is

Article 9(4) of Aarhus convention states:- *the **procedures** referred to...**shall** provide adequate and effective remedies...and **be fair**, equitable, timely and not prohibitively expensive.*

While the Aarhus convention may not be a human rights treaty *per se*[56], a requirement that procedures be fair and equitable is clearly outlined in Article 9(4). In assessing the fairness of proceedings, due cognisance must be taken of the entirety of any proceedings, from beginning to end-(see-*Torri v Italy* [1996] ECHR[57]).

The issue of access to justice is accepted as the weakest pillar of Aarhus, and legal costs, and the prohibitive nature of same is the weakest link of this pillar, most particularly relating to Ireland. Creating an effective SCP is an important solution in addressing this problem. However, it is not a panacea. The public, for reasons outlined in my earlier submission, will need to hire lawyers to represent them. If Aarhus is only made available to the legally educated, it shall not be a public-participation convention. Reform is urgently needed of the unfair rules relating to legal costs assessments.

A robust costs protection system that ensures public confidence that a system can truly shield applicants from prohibitive adverse costs is important, but so is the need to have fair procedures, to insure public participation. Providing legal aid to some applicants, which may also be necessary, should be a complementary solution rather than an alternative solution; that cohort of persons who will not qualify for such aid (but who will have to pay for it via their taxes), will continue to be excluded from participation – This is why fair rules/procedures[58] must be established in relation to lawyer-own-client disputes as well as adverse costs assessments. The imposition of an 8% stamp duty on litigants who have to pay adverse costs, regardless as to how much a lawyer seeks to overcharge them, is particularly unfair – It encourages and

---

subjected to scrutiny. - See more at:< http://www.independent.ie/irish-news/courts/public-entitled-to-see-legal-papers-high-court-rules-29329278.html#sthash.HFc5EKqa.dpuf >" . (* Though the term "privileged" is an ambiguous term, in that it can mean immunity from a defamation suit, or it can mean the confidentiality of documents; in this context- it clearly implies that confidentiality applies.)

[55] Also, allowing the number of documents in a file to be a factor to be considered in assessing legal fees (see endnote (v) below) is unfair as it allows evidence to be admitted that cannot be challenged due to the legal-privilege that exists between a solicitor and her client. Any "file-padding" or exaggeration that might be represented is not examinable by the public.

[56] The UNECE website states that the Aarhus Convention -"Links environmental rights and human rights" --< http://www.unece.org/env/pp/introduction.html>

[57] *Torri v Italy* ECHR (Application No: 26433/95)-- *Para 19: "The Court reiterates in the first place that if the national law of a State makes provision for proceedings consisting of **two stages** - the first where the court rules on, inter alia, the existence of an entitlement to damages and **the second when it fixes the amount** - it is reasonable to consider that, **for the purposes of Article 6** para. 1 of the Convention (art. 6-1), a **civil right is not "determined" until the amount has been decided.**"*

[58] "*If there is one axiom that emerges clearly from the history of constitutionalism and from the study of any bill of rights or any charter of freedom, it is that procedural safeguards are the very substance of the liberties we cherish.*"- Charles Edward Wyzanski, Jr, (US federal court judge) writing in 1946.

facilitates lawyers to overcharge by up to 8%[59], and then punishes the victims of overcharging, thus violating constitutional law, human rights and the Rule of Law.[60]

Further clarification of violations alleged in my Communication:

Firstly: To clarify alleged breaches of Aarhus: In my submission, I had followed the format outlined in the template. However, in hindsight, I realise that this approach may not have provided the requisite clarity as to exactly which articles of Aarhus are being violated, and the specific grounds of those violations. I do hope that a reading of both the submission and the summary of same would have made matters clear. However, to remove any doubt: I' ll clarify this issue here:

I alleged a violation of 4 articles of Aarhus.—these being 3.1, 3.2, 3.8 and 9.4.

Article 3.1 is being breached in conjunction with other articles --- failure to enact legislative measures to insure that costs are not prohibitive, that clients are not penalised, and that court judgements including costs outcomes are published.

Article 3.1 is also breached by the failure to operate best practice "open justice" principles falling under the heading of consideration of "other measures" to insure that legal costs are not prohibitive. I also suggest that due to the very low level of Aarhus related legal actions that it is necessary to publish the costs of all judicial review cases, in order to obtain a meaningful overall view of the cost of litigation in Ireland.

Article 3.2 is breached due to the failure to insure that officials assist the public.

---

[59] See - Subsection 3 of Part 5, of S.I. No. 110/2012 - Supreme Court and High Court (Fees) Order 2012.- < http://www.irishstatutebook.ie/2012/en/si/0110.html> Accessed 16th December 2014. Also, I have to submit that, the setting of a stamp duty (which is a tax on legal costs), by a ministerial order, is constitutionally questionable(particularly where that tax exceeds the cost of a hearing), as Articles 21/22 of the Irish Constitution clearly states that only the Dail (Irish Parliament) can impose, amend or regulate a tax: (see Article 22- " *namely, the imposition, repeal, remission, alteration or regulation of taxation*")- < http://www.constitution.org/cons/ireland/constitution_ireland-en.pdf >
I also refer to the provision under Part 5 (of above S.I.) whereby- "*A Taxing Master may in any case require the bill of costs to be stamped before taxation with the amount of fees which would be payable if the bill were allowed by him at the full amount thereof,..* " - This provision allows a taxing master of either the Circuit Court or High Court to require advance payment of an 8% duty, based upon fees claimed by a solicitor, even where the fees sought could be 5 or more times higher than is subsequently allowed.
One clarification: Stamp duty is payable by the challenger, in party v party (or adverse costs) hearings, regardless as to the outcome of the hearing. But in Solicitor-own-client taxation hearings, the challenger escapes the payment of the duty, if (and only if) she is overcharged by one sixth or more. Also, in party v party hearings, each side pays their legal costs accountant representation fees (if they employ one). In Solicitor-own-client hearings, the client must pay the solicitor's costs for hiring a legal costs accountant, unless she has been overcharged by one sixth or more, but the client is not awarded legal costs accountants fees, even if she has been overcharged by one sixth or more (or at least not automatically). The proposed legislation is silent on these inequities (and only varies the one sixth rule to a 15% rule).

[60] This exceeds the permission in Article 3(8) of Aarhus to "award reasonable costs"- It violates Article 3(8).

Article 3.8 is being breached, due to the rule[61] that imposes costs (including an 8% tax [stamp duty]) on litigants that are overcharged by their own lawyers by between 0.1% and 18.66% [and by the proposed alternative 15% rule (Section 125(2) of LSRA-2014)]. It is also breached by the imposition of 8% on challengers to adverse costs, regardless as to how excessive the costs sought are.

Article 9.4 is breached on 3 grounds:

(1) The failure to deal with prohibitive legal costs; particularly the failure to address the "requisite clarity and precision" or "uncertainty" issues that arise due to the conditions that apply to the SCR, namely: the "catch 22" problem, the "conduct of proceedings", "contempt of court" and "vexatious" potential findings. The system described herein and in my earlier communication in relation to lawyer/own client costs, also fails to meet the requirement that costs are not prohibitive.

(2) I outlined in this communication above, why the system of adjudication of adverse legal costs, from an objective perspective, is inherently unfair; in the absence of an effective system that insulates an applicant from the threat of an adverse cost award in all Aarhus encompassed actions, I submit the current system is a violation of Article 9(4),it being neither objectively fair/equitable.

(3) The failure to adhere to open justice principles: The general non-publication of outcomes of legal costs adjudications, the proposal to redact the names of litigants, the proposal to not make the outcomes accessible on-line, and the failure to maintain a transparent linkage between all legal actions that involve environmental matters and the related legal costs adjudications and outcomes. I also refer to the failure to publish the court orders related to the legal costs of legal actions and the failure to make the documentation that is involved in legal costs adjudications available to the public. I contend that the failure to publish outcomes of some environmental legal actions and the costs associated with those actions is a direct violation of Article 9(4).

[61] < http://www.irishstatutebook.ie/1849/en/act/pub/0053/print.html > "...the officer to whom such reference shall be made may proceed to tax and settle such bill and demand ex parte; and in case any such reference as aforesaid shall be made upon the application of the party chargeable with such bill, or upon the application of such solicitor, or the executor, administrator, or assignee of such solicitor, and the party chargeable with such bill shall attend upon such taxation, the costs of such reference shall, except as hereinafter provided for, be paid according to the event of such taxation; that is to say, **if such bill when taxed be less by a sixth part than the bill delivered**, sent, or left, **then such solicitor**, or executor, administrator, or assignee of such solicitor**, shall pay such costs;** and **if such bill when taxed shall not be less by a sixth part than the bill delivered**, sent, or left, **then the party chargeable with such bill**, making such application or so attending, **shall pay such costs**; and every order to be made for such reference as aforesaid shall direct the officer to whom such reference as aforesaid shall direct the officer to whom such reference shall be made to tax such costs of such reference to be so paid as aforesaid, and to certify what upon such reference shall be found to be due to or from such solicitor, or executor, administrator, or assignee of such solicitor, in respect of such bill and demand, and of the costs of such reference, if payable: ..."

Yours sincerely,

Kieran Fitzpatrick
Galway, Ireland 17th December 2014

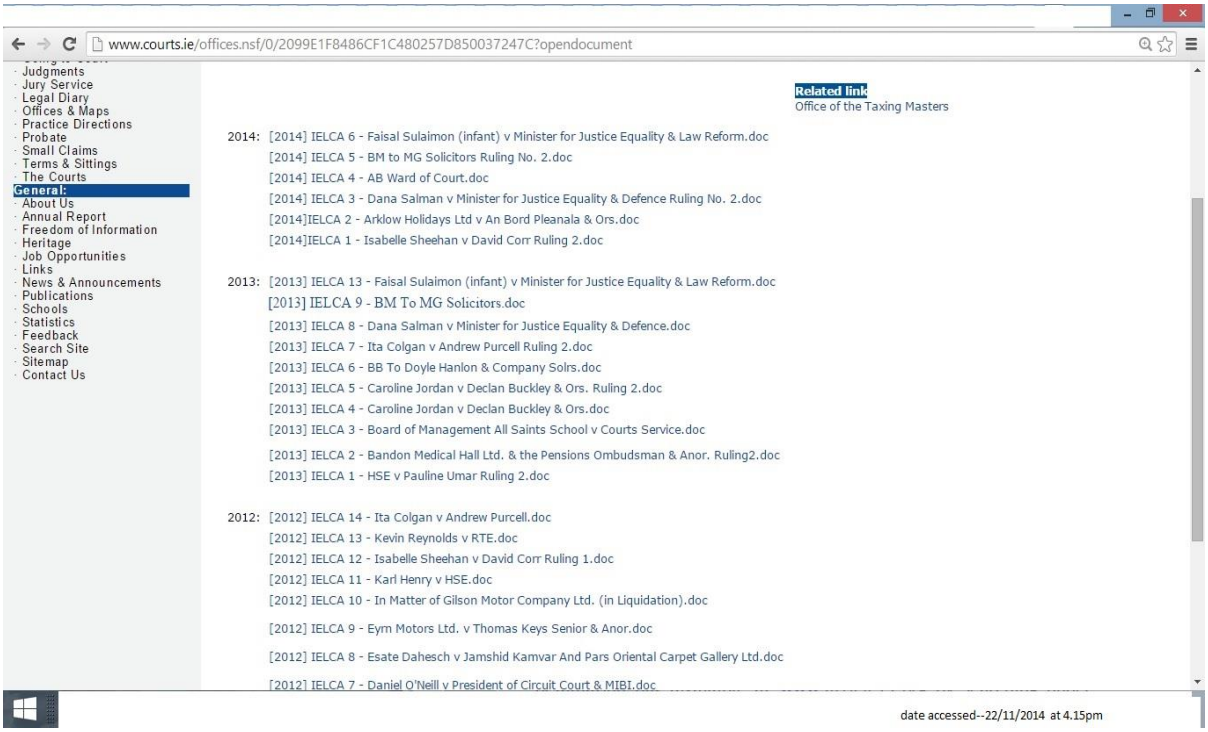
Some abbreviations used above:

LSRA 2014 = Legal Services Regulation Act 2014= Legal Services Regulation Bill 2011 {refers to same thing}- This is proposed legislation that has been under consideration by the Oireachtas for 3 years, but never passed into law.
Para = paragraph
SCP = Special Costs Procedure order, which is operational under Section 3 of the Environment (Miscellaneous Provisions) Act, 2011, and which can be applied for under Section 7 of the same Act.
Section 7 = Section 7 of the Environment (Miscellaneous Provisions) Act, 2011
ECHR = European Court of Human Rights (or sometimes European Convention of Human Rights)
CJEU= Court of Justice of the European Union (including the General Court)

****

i

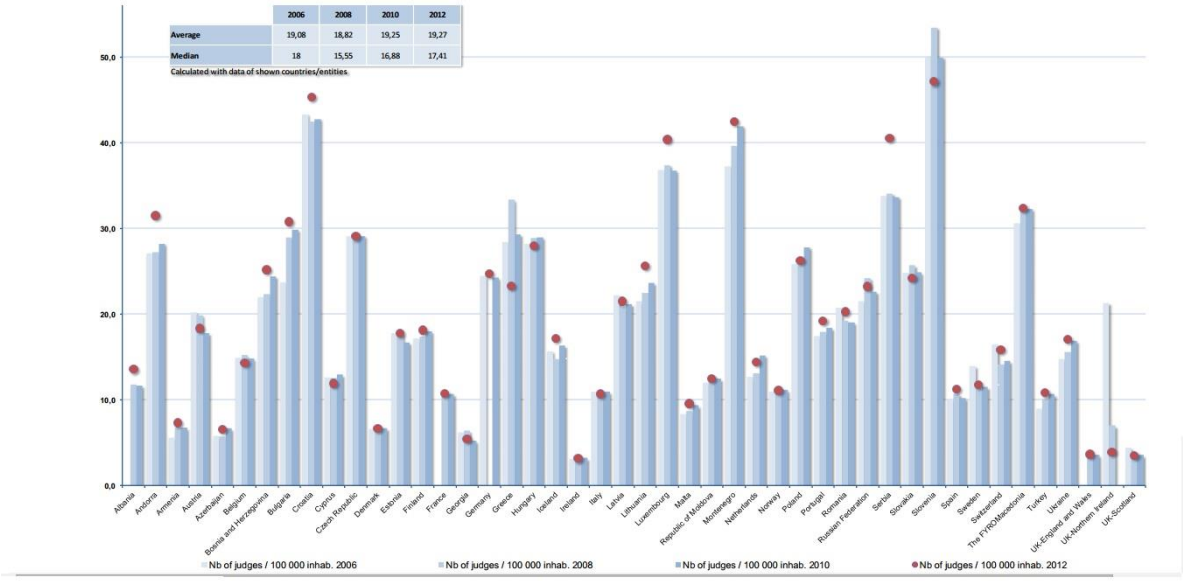
Screenshot of courts service website, of Office of Taxing Masters—These cases appear to relate to cases before the High Court and Supreme Court; the reporting level for taxation hearings related to Circuit Court hearings would appear to be even lower.



[ii] Ireland has lowest number of judges per capita; 3.1 per 100,000, which is about one sixth of the average of 47 states of Council of Europe. The UK has the second lowest, but also has magistrates, unlike Ireland. Chart below from COE Efficiency of Justice Report 2014—see page 160 of report –

<http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf>

The simplest explanation for the unusually low number of judges is that Irish people are afraid of going to court, due the threat of prohibitive costs being imposed upon them, should they lose a case, plus a general fear that they may also be overcharged by their own lawyers. Equal protection of the law, which is a tenet of the Rule of Law, is therefore undermined.



[iii] It appears the Special Costs Protection Procedure may apply to some claims but not to others, within a given case, as the term "proceedings" is not defined, causing further uncertainty.---

---In *Margaret McCallig V An Bord Pleanála* [2014] IEHC 353 , at paragraph 44, the court said-
44." In my judgment "proceedings" as used in s. 50B(1) only refers to that part of judicial review proceedings which challenge a decision made or action taken or a failure to take action pursuant to one or more of the three categories therein specified. "Proceedings" is not defined in the Act of 2010, in the Planning and Development Act 2000, or in the Interpretation Act 2005. It is not a term of legal art and where undefined its meaning falls to be established by reference to the context in which it is used, (see Minister for Justice v. Information Commissioner [2001] 3 I.R. 43 at 45:Littaur v. Steggles Palmer [1986] 1 W.L.R. 287 at 293 A-E). In my judgment it cannot be considered that the legislature intended so radical an alteration to the law and practice as to costs as to provide that costs in every judicial review application in any planning and development matter, regardless of how many or how significant the other issues raised in the proceedings may be, must be determined by reference only to the fact that an environmental issue falling within any of the three defined legal categories is raised in the proceedings. Such a fundamental change in the law and practice as to awarding costs is not necessary in order to comply with the provisions of the Directive. It would encourage a proliferation of judicial review applications. Litigants would undoubtedly resort to joining or non-joining purely planning issues and environmental issues in the same proceedings so as to avoid or to take advantage of the provisions of s. 50B(2). This is scarcely something which the legislature would have intended to encourage."

[iv] Re.-Uncertainty and the CJEU—I refer to the case of C-236/95 *Commission v Greece* of 19 September 1996:
At para (13)- " However, the Court has consistently held that it is particularly important, in order to satisfy the requirement for legal certainty, that individuals should have the benefit of a clear and precise legal situation enabling them to ascertain the full extent of their rights and, where appropriate, to rely on them before the national courts (see to this effect Case 29/84 Commission v Germany [1985] ECR 1661, paragraph 23, Case 363/85 Commission v Italy [1987] ECR 1733, paragraph 7, and C-59/89 Commission v Germany [1991] ECR I-2607, paragraph 18). (14) Having regard, however, to the wording of Article 52 of the presidential decree, which seems to confine the capacity to bring proceedings to legal persons governed by public law, case-law such as that of the Council of State cannot, in any event, satisfy those requirements of legal certainty."

[v] Factors to be considered in determining legal costs—Order 99--Section 37, Subsection (22), of S.I. No. 15/1986 - The Rules of the Superior Courts < http://www.irishstatutebook.ie/1986/en/si/0015.html>

(22) (i) Where in Appendix W there is entered either a minimum and a maximum sum, or the word "discretionary", the amount of costs to be allowed in respect of that item shall, subject to any order of the Court, be in the discretion of the Taxing Master, within the limits of the sums so entered (if any).

(ii) In exercising his discretion in relation to any item, the Taxing Master shall have regard to all relevant circumstances, and in particular to—

(*a*) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;

(*b*) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;

(*c*) the number and importance of the documents (however brief) prepared or perused;

(*d*) the place and circumstances in which the business involved is transacted;

(*e*) the importance of the cause or matter to the client;

(*f*) where money or property is involved, its amount or value;

(*g*) any other fees and allowances payable to the solicitor in respect of other items in the same cause or matter but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

Web-links to most cases, legislation, and articles referenced in December 16th 2014 submission (In Alphabetical order):

1. *AIB v Treacy* (No.2)[2013] IEHC 242 http://www.courts.ie/Judgments.nsf/0/1C9D9254D8B3D10C80257B8200305 8B8
2. *Arklow Holiday V An Board Pleanala* [2014] IELCA 2 http://www.courts.ie/offices.nsf/(WebFiles)/C870CFA2BB8D172680257D8500362E85/$FILE/%5B2014%5D%20IELCA%202%20-%20Arklow%20Holidays%20Ltd%20v%20An%20Bord%20Pleanala.doc
3. Attornies and Solicitors Act, 1870 http://www.irishstatutebook.ie/1870/en/act/pub/0028/print.html
4. Australian Chief Justice <http://www.theaustralian.com.au/business/legal-affairs/leading-jurist-attacks-legal-fees/story-e6frg97x-1225867930583 > accessed 30th November 2014
5. *Bourbon v Ward* [2012] IEHC 30 http://www.courts.ie/Judgments.nsf/0/A14357D912A9DA7E802579C70055D798
6. Case C-427/07 *Commission v Ireland* [2009] ECR I-6277 -16th July 2009 - http://curia.europa.eu/juris/document/document.jsf?text=&docid=72488&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=238100
7. *Case C-427/27 Commission v Ireland* [2009], opinion of AG Kokott, 15th January 2009. http://curia.europa.eu/juris/document/document.jsf?text=&docid=73602&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=238100
8. Case of C-236/95 *Commission v Greece* of 19 September 1996- http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61995CJ0236
9. Case Of *Vermeulen v Belgium (Application no. 19075/91) ECHR* 20 February 1996
10. Case T-589/11 DEP,[Phonebook of the World] 23rd October 2013- http://curia.europa.eu/juris/document/document.jsf?text=&docid=144101&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=242985
11. COE Efficiency of Justice Report 2014 <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf>
12. Coffey & ors -v- Environmental Protection Agency [2013] IESC 31 http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/547641c1cecc1adb80257b95004d3979?OpenDocument
13. *Commission of the European Union v United Kingdom* (Case C-530/11), 12 September 2013; at para 55: (of AG Opinion) http://curia.europa.eu/juris/document/document.jsf?text=&docid=140962&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=239902

14. *Commission of the European Union v United Kingdom* (Case C-530/11), 13 February 2014 http://curia.europa.eu/juris/document/document.jsf?text=&docid=147843&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=239902
15. Dr Michael Arnheim, writing in the (UK) Barrister magazine in 2010 - http://www.barristermagazine.com/archive-articles/issue-45/costs-%E2%80%93-a-missed-opportunity.html>.
16. ECE/MP.PP/2011/2/Add.1 : (see page 37 of report) <http://www.environ.ie/en/Publications/Environment/Miscellaneous/FileDownLoad,34986,en.pdf>
17. *Edwards/ Pallikaropoulos v Environmental Agency* (U.K.) Case C-260/11 CJEU [2013] , decision of (4th Chamber) on 11th April 2013 http://curia.europa.eu/juris/document/document.jsf?text=&docid=136149&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=240490
18. *Environment (Miscellaneous Provisions) Act, 2011* *http://www.irishstatutebook.ie/pdf/2011/en.act.2011.0020.PDF*
19. Freedom of Information Act (2014). http://www.irishstatutebook.ie/2014/en/act/pub/0030/index.html http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61995CJ0236
20. (2013 courts report) http://www.courts.ie/Courts.ie/library3.nsf/%28WebFiles%29/BA7D7195FC5AAD7280257D1F0030ECD4/$FILE/Courts%20Service%20Annual%20Report%202013.pdf
21. http://www.irishstatutebook.ie/1849/en/act/pub/0053/print.html -One Sixth Rule.
22. Hungarian Competition Authority [2007]-- <http://www.gvh.hu/data/cms989318/Vj180-2004_a.pdf?query=legal%20profession> accessed 30 November
23. *Hunter v Nurendale Limited* [2013] IEHC 430 *http://www.courts.ie/Judgments.nsf/0/0021F3D3E3C5416380257BF0005454A4*
24. Irish Competition Authority 2006 report on legal profession- http://www.tca.ie/images/uploaded/documents/Solicitors%20and%20barristers%20full%20report.pdf
25. Irish Constitution (1937) - http://www.constitution.org/cons/ireland/constitution_ireland-en.pdf
26. *Landers v Jdg.Patwell* [2006] IEHC 248 http://www.bailii.org/cgi-bin/markup.cgi?doc=/ie/cases/IEHC/2006/248.html&query=landers&method=boolean
27. Legal Services Regulation Bill [2011] http://www.oireachtas.ie/documents/bills28/bills/2011/5811/b58a11d.pdf
28. *Lobo Machado v Portugal (Application no. 15764/89)* [ECHR} - 20 February 1996

29. *Margaret McCallig V An Bord Pleanála* [2014] IEHC 353 http://www.courts.ie/Judgments.nsf/0/516F90A9190AB01580257D1C005179E5
30. *McCoy v Shillelagh Quarries* [2014] IEHC 512 (costs hearing) http://www.courts.ie/Judgments.nsf/0/C158EAB329DD7A5580257D95004DEBF9
31. *McCoy v Shillelagh Quarries*[2014] IEHC 511 (section 7 hearing) http://www.courts.ie/Judgments.nsf/0/662CD27D6BEBDE5B80257D95004E4F2B
32. *Mooreview /First Active*- Decision of The Master of The High Court -17th January, 2013 http://www.courts.ie/offices.nsf/0/426233EC282DE0AA80257B05003F2407
33. *Norwich Pharmacal Co v Customs and Excise Comrs* [1974] AC 133, [1973] 2 All ER 943 http://www.bailii.org/uk/cases/UKHL/1973/6.html
34. Office of Taxing Masters website— Rulings: http://www.courts.ie/offices.nsf/0/2099E1F8486CF1C480257D850037247C?opendocument
35. *Planning and Development (Amendment) Act 2010* *http://www.irishstatutebook.ie/pdf/2010/en.act.2010.0030.pdf*
36. PLANNING AND DEVELOPMENT ACT, 2000 http://www.irishstatutebook.ie/pdf/2000/en.act.2000.0030.pdf
37. Rules of the Superior Courts 1986 (S. I. No.15 of 1986) http://www.irishstatutebook.ie/1986/en/si/0015.html
38. S.I. No. 110/2012 - Supreme Court and High Court (Fees) Order 2012.- < http://www.irishstatutebook.ie/2012/en/si/0110.html>
39. Solicitors (Amendment) Act, 1994 http://www.irishstatutebook.ie/1994/en/act/pub/0027/print.html#sec22
40. Solicitors (Ireland) Act, 1849 (same as No.21 of list) http://www.irishstatutebook.ie/1849/en/act/pub/0053/print.html
41. Solicitors' Remuneration Act, 1881 http://www.irishstatutebook.ie/1881/en/act/pub/0044/print.html
42. Solicitors Remuneration General Order, 1884 http://www.irishstatutebook.ie/1960/en/si/0165.html
43. *Solvay v Commission* [1994] Case T-30/91 (re Equality of Arms and Access to Documents) -29th June 1995- http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61991TJ0030
44. Supreme Court and High Court (Fees) Order, 2003 (S.I. No. 89 of 2003) http://www.irishstatutebook.ie/2003/en/si/0089.html
45. *Tesco Ireland v Cork Co. Co*. [2013] IEHC 580 http://www.courts.ie/Judgments.nsf/0/D8094722BAAA749380257C5A00406358
46. The Courts and Court Officers Act, 1995 http://www.irishstatutebook.ie/1995/en/act/pub/0031/print.html
47. The Judicature Act 1877 http://www.irishstatutebook.ie/1877/en/act/pub/0057/print.html

48. The Legal Practitioners (Ireland), Act 1876 http://www.irishstatutebook.ie/1876/en/act/pub/0044/print.html
49. *The Secretary of State for Communities and Local Government v Venn* [2014] EWCA Civ 1539
50. *Torri v Italy* ECHR (Application No: 26433/95)— (31st May 1997) <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58053#{"itemid":["001-58053"]} >
51. *Vienna Convention of the Law of Treaties* [1969 https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf
52. *Waterville Fisheries v Aquaculture Licenses Appeals Board* [2014] IEHC 522 http://www.courts.ie/Judgments.nsf/0/B23057A9C7FDBC1A80257D8C0052240E
53. Wicklow Co Co v Fortune (No.3) [2013] IEHC 397 http://www.courts.ie/Judgments.nsf/0/D8AE0C2894FD841A80257BEF005446E0
54. Y- Order 99-rules on costs; This file is just a subset of the file numbered No.37 above.
55. Z- Report of Law Society regulatory functions- LAW SOCIETY OF IRELAND Complaints and Client Relations Committee Annual Report of Lay Members Year 2013 – 2014 https://www.lawsociety.ie/Documents/committees/complaints/Lay%20members%20report.pdf

-End of December 2014 reply to ACCC-