When did you last read the law reports?

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

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

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

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

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

The duty of advocates to keep up to date was considered by the Court of Appeal (England and Wales) in Copeland v Smith ([2000] All ER 457). The background to the case is as follows. Stephen Copeland was riding his motorcycle on the M3 motorway when he was involved in a serious traffic accident on 24 September 1993. He suffered serious injury but had little recollection of what occurred. There were several vehicles involved. He originally sued a Mr Smith, alleging that the vehicle Smith was driving had collided with his (Copeland's) body when it was lying on the ground. Copeland instructed experienced solicitors to act on his behalf, and proceedings were initiated against Smith. Subsequently, it transpired, outside the statutory limitation period, that it might have been a Mr Goodwin who was the person responsible for knocking Copeland off his motorcycle. Goodwin was joined as a party to the proceedings and he appealed against that decision.

The issue arose as to whether, in construing the UK Limitation Act 1980, a claimant was fixed with the knowledge of the action or inaction of his solicitors. When the judge in the Circuit Court, Judge Kenny, heard the matter on 31 March 1999, he was apparently told that there was no authority covering the point at issue. The judge expressed surprise and the court rose for a short time to give the advocates an opportunity of checking any authorities. Judge Kenny was then informed on resuming the hearing that the authorities ‘faked through’ during the brief adjournment did not advance matters at all. Accordingly, the judge then construed the statutory provisions without the benefit of any authority and concluded that Copeland was not fixed with responsibility for what his solicitors had done or had not done.

The matter went to the Court of Appeal. The Court of Appeal stated that Judge Kenny was wrong in so concluding. He was wrong because the contrary had been decided by the Court of Appeal itself in the case of Henderson v Temple Pierce Company Limited ([1998] IRLR 1540). That case had been reported in part 36 of the Weekly law reports for 1998 some four-and-a-half months before the relevant hearing took place before Judge Kenny in the Circuit Court. Lord Justice Buxton in the Court of Appeal stated that he could not draw back from expressing his very great concern that Judge Kenny was permitted by professional advocates to approach the matter at issue as if it were free from authority when there was a recently reported case of the Court of Appeal directly on the point ‘which was not reported in some obscure quarter but in the official law reports’. Lord Justice Buxton stated that it was not only extremely discourteous to Judge Kenny not to inform him properly.
"When did you last read the law reports?" was written by Dr Eamonn G Hall (Solicitor & Notary Public, (Web: www.eahll.ie; Email info@ehall.ie; tel 087 322 9480) and reprinted from the Gazette of the Law Society of Ireland, vol.94, (May 2000) pp. 8-9 by kind permission.