

Closing Argument

SMOKE AND MIRRORS

It's unlikely that Ken Murphy has ever been compared to Don Draper before. But here at *Closing Argument*, we like to extend the boundaries of your usual thought processes. And so it came to pass that Ken has been transported back to the smoke-filled rooms of the mid-60s where his omnipresent moustache would have fitted in quite snugly. You see, when himself and John P Shaw appeared before the Oireachtas Health Committee last month and were accused of siding with the smoking lobby as they defended the Law Society's Intellectual Property Committee, they didn't know that they were following in the footsteps of the advertising executives in the TV series *Mad Men* by siding with the devil.

Back in the 1960s, the complete evils of the weed had not been fully ventilated (pun intended) but the first signs of the virulent opposition that tobacco companies would face for selling their harmless stick of nicotine-filled fun were starting to manifest themselves. A bit like the Law Society, advertising gurus were just doing their job back then but they soon discovered that you can't win when you're selling death.

The way that some people reacted (yes, Senator Van Turnhout, we're looking at you) you would think that Ken Murphy and John P Shaw had actually taken cowboy outfits, mounted horses and galloped into Leinster House smoking Marlboros when in fact they had merely pointed out that plain packaging on cigarettes might well mean a successful legal challenge by tobacco companies who stand to lose even more unsuspecting teenagers from their new customer list.

Telling the truth about the law doesn't make you a bad person in this column's book but it created a good deal of angst,

not just among the smokerati but also with a large rump of solicitors who felt the Law Society should have kept schtum on the subject and really would be better off saying nothing at all. They argue that issues such as these are none of the business of the society and presumably, by extension, the same argument applies to the DSBA.

It seems that there is general agreement that representative associations should be able to comment on issues such as the Legal Services Bill or other legislation that may affect the profession and how it operates. Presumably this also includes the likes of PIAB, conveyancing legislation, new Company Acts, etc.

The problem with imposing restrictions though, is that it can be hard to determine where the imaginary line falls. For instance, the argument made by the IP committee centred around the larger issue of plain packaging for cigarettes possibly opening the floodgates for all sorts of other products. Now, it's important to note that what this column knows about IP law could be written on the back of a plain cigarette packet with room for several "SMOKING KILLS" reminders, so we are not taking sides here, merely wondering why our representatives should be hindered representing.

One of the big problems with the tobacco issue is that *The Irish Times* misquoted Ken Murphy as saying that all 10,000 solicitors agreed with the IP committee submission. Considering that it's unlikely that we could get every solicitor in Ireland to agree that the Pope goes to mass every Sunday, quite how *Times* reporter Harry McGee thought we would all agree on something as controversial and complicated as this is probably the bigger story here.

Nonetheless, it raises an interesting question – should our elected representatives, including the DSBA and Law Society, sit on their hands when contentious legislation is proposed, on the basis that not every solicitor's view has been canvassed, or worse, has been and there is no unanimity?

It is a constant criticism of our representative bodies that we are not represented strongly enough but should we not hold a mirror up to ourselves and ask if it should go beyond mere trade union self-interest?

Of course, protecting our interests is important, and probably paramount, but there has to be a place for standing up for what's right for our clients and the public in circumstances where we can apply our specialist expertise.

There are harder questions coming. The vexed issues of same-sex adoption and marriage are coming down the tracks over the next 18 months and surely, we must trust our elected representatives who should be a microcosm of the profession (and this column's experience is that they are) to do what they think is right. It doesn't mean that everyone has to agree, merely that it is a majority opinion of a democratically elected body which seeks to act in the best interests of the profession and the general public.

If we can all agree on that much then perhaps polemic disputes such as where a bear chooses to defecate might be left to those who we entrust to govern our profession and represent us to the best of their ability.

Now, put that in your pipe and smoke it.

Stuart Gilhooly