



The doctrine of the Separation of Powers constitutes the basic framework of the Irish Constitution.

In this article, Jennifer Jackson, BBLs, briefly discusses this area and refers to some relevant material previously published by the Institute.

Doctrine Separation of Powers

The Constitution regulates the structures and functions of the principal organs of government and also regulates the relationship between these institutions by setting out the balance of power between them. The Constitution does this by means of the separation of powers between the three branches of government – the legislature, the executive and the judiciary. The Constitution also regulates the relationship between these organs of government and the citizens of Ireland.

In addition to setting out the balance of power between the organs of government, the Constitution also contains Articles guaranteeing fundamental rights of citizens such as equality before the law, property rights, personal liberty and freedom of religion. The Courts are responsible for interpreting the provisions of the Constitution. This function is a very important one.

Below is an extract from an article on *Anti-Avoidance – Restrictions in Tax Planning* previously published in Accountancy Plus in **March 2006** by Conor Kennedy, Barrister-at-Law and Daragh O'Shaughnessy, Manager, Tax & Legal Services with KSi Faulkner Orr

“The Irish Constitution advocates a tripartite separation of powers involving:

- The legislature,
- The executive, and
- The judiciary.

This doctrine instills a certain degree of independence between the parties whereby a system of checks and balances can operate.

The Oireachtas or legislature makes the laws. Article 15. 2. 1° of the Constitution provides that the sole and exclusive power of making laws for the State is vested in the Oireachtas and no other legislative authority has power to make laws for the State

Article 28.2 provides that the Executive power of the State “*shall be exercised by or on the authority of the Government*”. Therefore the Government is the executive organ of the State and collectively responsible for all the Departments of the State which are administered by individual members of the Government.

The function of the courts is to interpret the law. Article 34.1 requires that justice shall be administered in courts established by law by judges appointed in the manner provided by the Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.

To this extent, in *Maheer v Attorney General* [1973] IR 412, the Supreme Court refused to remove words from a piece of legislation in order to render the legislation constitutional. The Court held that such intrusion would involve “law making”, and therefore this responsibility could only be performed by Parliament.

In *Deaton v Attorney General* [1963] IR 170, it was held that a law allowing the Revenue Commissioners choose what type of penalty tax offenders would face was declared unconstitutional on the grounds that only judges may make such a decision.”

Thus it is important to note that the doctrine of the Separation of Powers constitutes the basic framework of the Irish Constitution, and an incursion by one arm of government into another’s area of competence and authority is not tolerated. The Courts tend to be most protective of their own function and will not countenance interference with same.