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**An Bille um an Dlí Sibhialta  
(Costais i Nithe a bhaineann le Probháid), 2017  
Civil Law (Costs in Probate Matters) Bill 2017**

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*Meabhrán Mínitheach  
Explanatory Memorandum*

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**AN BILLE UM AN DLÍ SIBHIALTA  
(COSTAIS I NITHE A BHAINÉANN LE PROBháID), 2017  
CIVIL LAW (COSTS IN PROBATE MATTERS) BILL 2017**

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**EXPLANATORY MEMORANDUM**

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**General purpose of the Bill**

The Bill seeks to ensure that the legal costs in unsuccessful legal proceedings including probate and administration actions challenging the validity of a will or the administration of an estate or the entitlement of a claimant against the estate will in future be governed by the ordinary rule relating to costs in litigation – namely that, as a rule and subject to limited exceptions, the “costs follow the event” and that the person making the unsuccessful claim should not be entitled to have his or her claim paid out of the estate of the deceased person.

At present, these matters are governed by non-statutory case law. In the case of *Vella v Morelli* [1968] IR 11, the High Court approved a longstanding practice in the Irish courts dating back to the early 1800s which allowed an unsuccessful party his or her costs out of the estate if the unsuccessful challenge was “reasonable” and “bona fide”.

This means that estates mostly bear the costs of unsuccessful challenges to wills unless it appears to the court that the challenges are unreasonable and/or made in bad faith.

The consequence of this practice, which is unique to the Irish courts, is that estates are vulnerable to unsuccessful challenges – especially smaller estates - and that such challenges, as a matter of practicality, are often “bought off” even in the knowledge that they are unlikely to succeed. This situation tends to compromise and prejudice the general right to bequeath and inherit property, a right expressly recognised and protected under Article 43 of the Constitution.

Although the High Court has refused to extend the practice under *Vella v Morelli* to all other administration suits and other claims made against estates, the Bill seeks to clarify the situation in respect of all such claims and to apply the ordinary rule that costs “follow the event” to such cases as it generally applies in most other cases.

**Provisions**

*Section 1* provides for the Bill’s short title.

*Section 2* sets out the actions or proceedings to which the Bill applies.

*Section 3* dis-applies the rule in *Vella v Morelli* to all such cases.

*Section 4* applies the ordinary rules concerning costs to such cases,

*Section 5* preserves the existing position for executors, administrators and other parties to such actions.

*Senator Michael McDowell,*

*Deireadh Fómhair 2017.*