**Long-lost son**
The emotive story of a mother's quest to find her adopted son

**Give us this day**
Economic pressures must not be allowed to crush human rights protection

**IBA comes to town**
The IBA visits Dublin in advance of its annual conference next year

LAW SOCIETY
# GAZETTE

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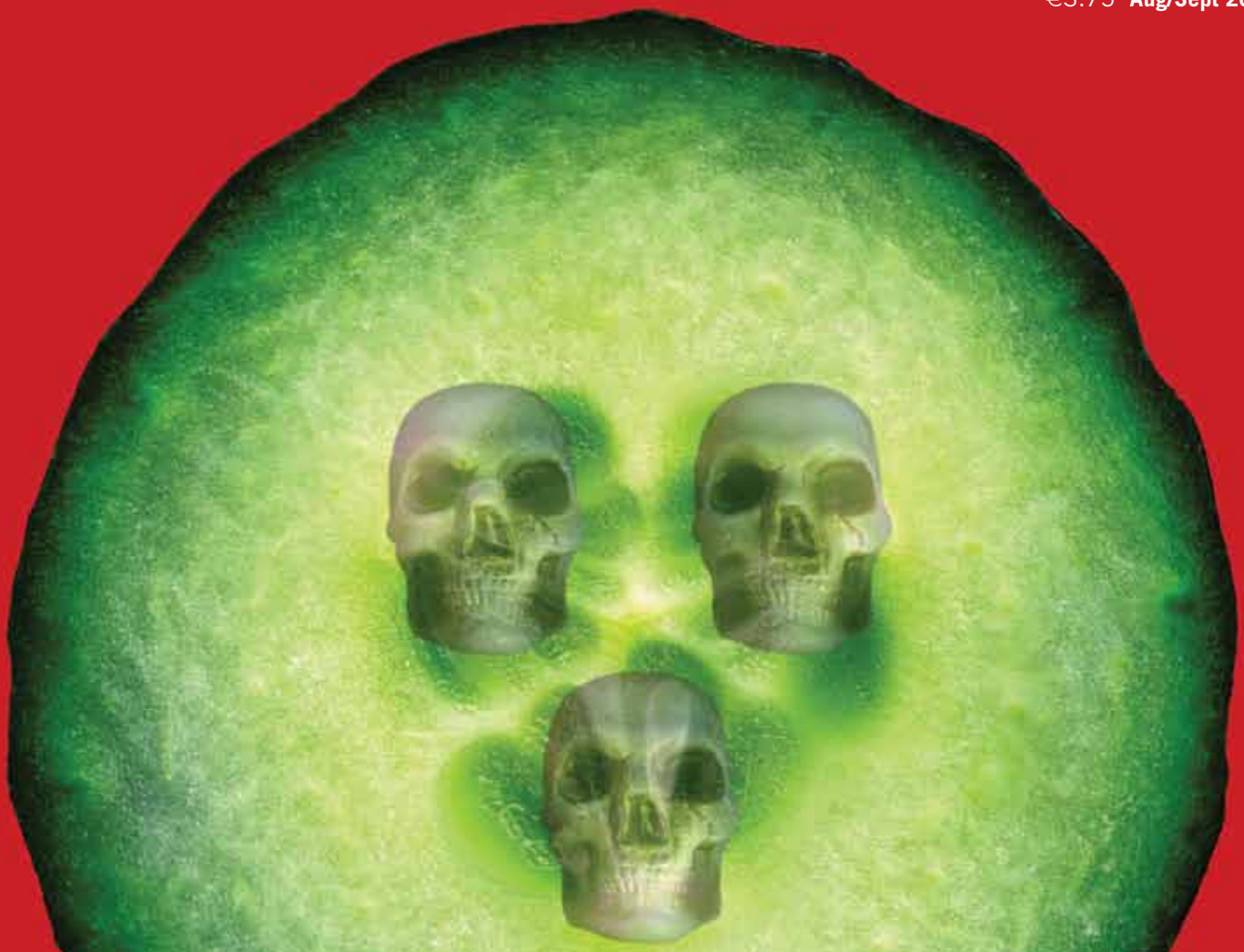

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# PEOPLE'S WELFARE IS PARAMOUNT LAW

***"Salus populi suprema lex esto"* – "Let the welfare of the people be the paramount law"**

On this theme of Cicero's, I warmly welcome the appointment of our new Chief Justice, Susan Denham. She will preside over our Supreme Court, which is the ultimate guardian of the legal rights of our citizens. She is extremely well qualified in every way for the role and, on behalf of the solicitors' profession, I wish her every success in her new office. I also welcome and support her call for a Judicial Council and a Court of Appeal.

On her appointment, the Chief Justice said that the judiciary had never opposed the holding of a referendum on judges' pay. She also mentioned that "Judges are very aware of the current crisis as the effects of the financial storm come before our courts every day."

Minister for Justice Alan Shatter has published proposals aimed at helping people to emerge from bankruptcy with a *Personal Insolvency Bill* promised for next year. Hopefully this can be fast-tracked when published. The Courts Service *Annual Report 2010* reported a 71% increase in bankruptcies, and an 11% increase in orders for possession in the High Court.

### Special general meeting

In relation to Law Society matters, I would like to thank all colleagues who attended and contributed at a packed special general meeting on 30 June. The meeting began by discussing the giving of undertakings by solicitors to financial institutions in residential conveyancing. This was followed by a debate on the issues arising from solicitors acting on more than one side in a conveyancing transaction. There were many contributors on both topics expressing a variety of views, which will be forwarded to the two task forces deliberating on these issues at present.

On 11 June, accompanied by director general Ken Murphy and senior vice-president Donald Binchy, I met Minister Alan Shatter and three of his officials for over an hour to discuss the proposed *Legal Services Bill* to be published at the end of September. We reiterated the position of the Society in relation to costs and regulation, as set out in the responses of the Law Society to the Competition Authority report, the Legal Costs Working Group and the Legal Costs Implementation Advisory Group a number of years ago. The meeting was very useful and constructive and conducted in an open and friendly atmosphere throughout. The Society was asked to make further submissions and the director general has, since then, met with officials to inform them, in detail, of the Society's views on these matters. Further submissions are planned for early September.

### New regulations approved

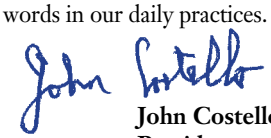
On 15 July, the Law Society Council approved new regulations for the next professional indemnity insurance (PII) renewal on 1 December 2011. The improvements include a common proposal form and a 'special purpose fund' to pay for run-off cover for firms that meet certain criteria. Insurers would recover the costs of providing this run-off cover through the general premia collected from firms in practice. It is also intended that proposal forms would issue by the end of August/early September, and quotations would remain open for a period of at least five working days. A prohibition would also be placed on qualified insurers asking firms for the premium level paid the previous year. With these and other changes in the PII renewal process, it is hoped that the next renewal will be less painful, in every way, than last year.

***"With these and other changes in the PII renewal process, it is hoped that the next renewal will be less painful, in every way, than last year"***

In relation to seminars, I initiated and helped to organise two separate fora for sole practitioners. In total, nearly 300 attended. I would, in particular, like to thank Attracta O'Regan of the Law School for her assistance in helping to make these events so successful.

Finally, I am reminded of the words of Benjamin Sells in his book *Order of the Court*, where he says: "Around all the lawyer-bashing directed at the legal profession, perhaps the most hurtful is the charge that lawyers don't stand for anything anymore, but are only amoral tools, rudderless ships of advocacy… I want to say it is one thing to know about the law and another thing to become a lawyer, which I take to be a state of being and not only doing. I want being a lawyer to mean something."

We should remember these words in our daily practices.



**John Costello**
**President**

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LAW SOCIETY GAZETTE

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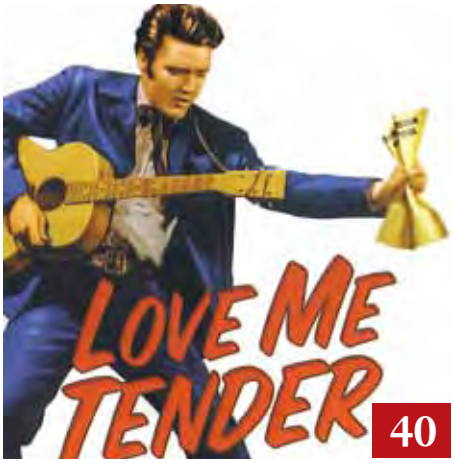



## COVER STORY

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Legal services of at least €500 million are tendered annually. It's becoming increasingly difficult to secure this business, however, due to the amount of competition out there. Sheena Lowey returns to sender


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**HAVE YOU MOVED?** Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie

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*Gazette* readers can access back issues of the magazine as far back as Jan/Feb 1997, right up to the current issue at lawsociety.ie.
You can also check out:

- Current news
- Forthcoming events, including an **arbitration award writing and costs seminar at Blackhall Place on 26 September**
- Employment opportunities
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... as well as lots of other useful information

# Nationwide

Compiled by Kevin O'Higgins

*Kevin O'Higgins is junior vice-president of the Law Society and has been a Council member since 1998*

## State-of-the-profession survey

DUBLIN

**As in recent years, this year has been challenging for the majority of our members.**

**As practising solicitors, the council of the Dublin Solicitors' Bar Association (DSBA) is fully aware of the difficulties facing colleagues but is conscious that the reports it receives may not be fully representative of the difficulties being faced by its members.**

**It wants to obtain a more precise picture of where the profession is in 2011, to identify and understand the problems facing it, and enable the DSBA to help address the problems and provide the best service it can to members.**

**To this end, the association has commissioned a survey, which has been sent out to many members. The response rate has been excellent and the results are currently being calibrated and will be disseminated later.**

**The tennis event held in beautiful sunshine in late July was a resounding success, with over 40 participants of all ages and varied ability. Great credit is due, as always, to John O'Malley for organising the event.**

**Another PII forum will take place shortly in readiness for the renewal process – members will be notified of this in due course.**

**The traditional lunch held to honour our senior colleagues who qualified over 50 years ago will take place in early October. We look forward to it!**

## Recession-busting October seminar

MONAGHAN

The Monaghan Bar Association is organising a CPD day on Friday 14 October 2011, to take place at the Glencarn Hotel, Castleblayney, Co Monaghan. Seven CPD points – the maximum allowable in one day – will be available. An impressive line-up of speakers has been organised, with the cost of the day being €70. Certificates of attendance will be provided at the end of the day. The schedule is as follows:

- 9am – 9.45am: Constance Cassidy SC on the impact of the *Intoxicating Liquor Act 2008* upon practitioners in the licensing trade.
- 9.45am – 10.30am: Linda Kirwan (solicitor and member of the Law Society's Complaints and Client Relations Committee), on updated *Solicitors Regulations* on complaints, and how to deal with complaints.
- 10.45am – 11.30am: Seamus McGrath (chief investigating officer, Law Society), on Law Society perspective on the Solicitors' Accounts Regulations, the risk and critical areas, interaction between the Law Society and the reporting accountant.
- 11.30am – 12.15pm: Sheena Lowey (consultant in marketing and public and private-sector procurement), on tendering for public and private legal services contracts.
- 12.15pm – 1pm: Eileen Creedon (chief prosecution solicitor, Office of the Director of Public Prosecutions), on the workings and role of the Office of the Director of Public Prosecutions.
- 1.45pm – 2.30pm: Evan O'Dwyer (solicitor, Crean O'Cleirigh & O'Dwyer Solicitors), on District Court litigation and advocacy – recent developments in drink-driving law.
- 2.30pm – 3.30pm: Mairead Ahern (county registrar for Co Louth) and Joe Smyth (county registrar for Co Cavan), on practical advice on taxing legal costs, probate applications and case progression.
- 3.45pm – 4.30pm: Michael Staines (solicitor, Dublin), on advising clients in custody and recent developments in criminal litigation.
- 4.30 – 5.15pm: Stuart Gilhooly (HJ Ward & Co Solicitors and president of the DSBA), on the state of the legal profession.
- 5.15pm – 6pm: Mr Justice John O'Hagan on family law – what practitioners need to know when advocating in the Circuit Court.

The bar association is organising a dinner afterwards as part of a social evening, with complimentary entrance included into the country-and-western night in the Glencarn Hotel. The price is a recession-busting €40.

Golf has been organised for Saturday morning in the renowned Concra Wood Golf Club in Castleblayney, where the contact is Seamus Mallon of Mallon Solicitors. Seamus can be contacted at 042 974 0293.

## Waterford Law Society in shipshape condition

WATERFORD

PIC: GARRETT FITZGERALD PHOTOGRAPHY

At the Waterford Law Society 'Tall Ships' reception on board the *Wylde Swan* on 30 June 2011 were *(l to r)*: Mairead O'Herlihy, Mary (Wyley) O'Herlihy, Gerard O'Herlihy (president of the Waterford Law Society), Myles O'Connor and Pearl O'Connor

**Waterford Law Society held an evening reception aboard the *Wylde Swan* tall ship in Waterford on 30 June 2011. Members and guests mingled on board and later moved quayside to the Granville Hotel for food, beverages and music. Waterford solicitors helped sponsor the Tall Ships event, which attracted 500,000 people to the city.**

**Guests included Judges Olive Buttimer and Alice Doyle of the Circuit Court. Retired District Judge Bill Harnett also attended, and Waterford's solicitors made a presentation to him marking his long association with the city.**

# Diary date

**The ninth Annual Human Rights Conference, organised by the Irish Human Rights Commission and Law Society of Ireland, will be held from 10am – 2.30pm on Saturday, 22 October 2011 in the Presidents' Hall, Law Society, Blackhall Place, Dublin 7. To register your interest in attending, contact Anthea Moore, tel: 01 672 4961; or email: a.moore@lawsociety.ie.**

## In News this month...


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7 Conveyancing Conflicts Task Force
9 Major hike in courts fees
9 Outlaws: Life outside legal practice
12 The IBA visits Dublin in advance of its annual conference next year


# Sligo officers

At a recent AGM of Sligo Bar Association, the following were appointed to office: Maurice Galvin (president), Deirdre Munnelly (secretary) and Laura Spellman (public relations officer).

# John Costello is on Parole

Law Society President John Costello has received the very considerable honour of being appointed chairperson of the Parole Board.

Announcing the appointment on 26 July 2011, the Minister for Justice Alan Shatter said that Mr Costello would "bring a wealth of experience and understanding to what is a challenging role".

"The board currently operates as a non-statutory agency. It is my intention to enact legislation to place the board on a statutory footing," the minister continued.

The minister also took the opportunity to pay tribute to the solicitor who had previously chaired the board, the late Gordon Holmes.

# New Chief Justice appointed

**The new Chief Justice of Ireland, Mrs Justice Susan Denham, was officially appointed by President Mary McAleese at a special ceremony on 25 July 2011.**

**Mrs Justice Susan Denham was educated at Alexandra College, Dublin; Trinity College Dublin; King's Inns; and Columbia University, New York. She was called to the Bar in 1971 and became a senior counsel in 1987. As a barrister, she practised on the Midland Circuit and in Dublin, specialising in judicial review cases.**

**She was appointed a judge of the High Court in 1991. In December 1992, she was the first woman appointed a judge of the Supreme Court.**

**In a statement issued the same day, Mrs Justice Denham said that the time had now come to develop a Judicial Council in Ireland – to support the judiciary in their difficult task, while providing assurance to the public that all judges maintain their traditional high judicial standards.**

**The Law Society Director General, Ken Murphy, has had an opportunity to observe Judge Denham's vision, judgement and consensus-building skills over the years, having served on two major working groups which she chaired.**

**In a media comment on the day of the Government's announcement, he said: "She is an ideal appointment with all of the personal and professional qualities that will be required of the Chief Justice in the difficult times ahead, both for the judiciary and for the country."**

# Wheatfield correspondence

Wheatfield Prison authorities have advised the Society that they believe there is a degree of duplication in the correspondence being received at the prison, due to solicitors first faxing a letter/enquiry and then following up by sending the same letter/enquiry by post.

In order to secure greater efficiencies in operating procedures, the prison authorities have said that, from now on, they will only respond to faxed correspondence if the issue requires an immediate (that is, same day) response.

# Expressions of interest

**The Minister for Justice and Equality, Alan Shatter, is seeking expressions of interest from suitably qualified members of the public to apply to be considered for appointment as Ireland's representatives on two Council of Europe bodies.**

**The organisations in question are the European Commission against Racism and Intolerance (ECRI) and the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).**

**Further details on eligibility criteria and how to apply are available at www.justice.ie/en/JELR/Pages/CPTVacancy (for the CPT vacancy); and www.justice.ie/en/JELR/Pages/ECRIVacancy (for the ECRI vacancy), or at www.publicjobs.ie.**

# New partner at Beauchamps

Beauchamps Solicitors has appointed John White to the role of managing partner. John succeeds Shaun O'Shea, who returns to the position of a full-time partner in the corporate and commercial department.

John joined the firm in 1997 as a trainee and has been the head of Beauchamps corporate and commercial department since 2007. His practice areas include mergers and acquisitions, corporate finance, insolvency and corporate recovery.

# YOUR IDEAL COMPANION

## CRIMINAL PROCEDURE IN THE DISTRICT COURT

REUTERS/ Enrique de la Osa

By Genevieve Coonan and Kate O'Toole

### YOUR IDEAL COMPANION FOR THE DISTRICT COURT

This title is an essential brief-case companion for all anyone practising criminal law in the District Court. It provides detailed analysis in an accessible, user-friendly style and layout. It offers a complete explanation of the workings of the District Court, alongside an in-depth analysis of the related rules, case-law and legislation.

As well as answering many of the procedural questions that arise in the District Court, it also provides useful defences in respect of the most commonly prosecuted criminal offences, e.g. Public Order offences.

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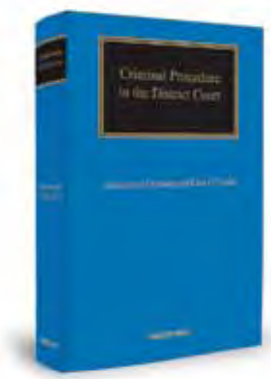
- **Enforcement of Decisions,** including Distress of warrants, Defective warrants and return of unexecuted warrants.

### ABOUT THE AUTHORS

**Genevieve Coonan** is a criminal barrister and co-author of the extremely successful title *The Judge's Charge in Criminal Trials* (Round Hall, 2008).
**Kate O'Toole** is a criminal barrister and lectures in criminal law.



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## Practice advice

**A practice advisory service was launched in 2009 by the Law Society to assist practices in coping with the recession. Open to all firms in Ireland, the service provides a different focus for start-up firms compared with existing practices.**

**Start-up firms are automatically notified of the availability of the service on registration. The service is provided on a single-firm basis, the objective being to make sessions as relevant as possible to individual practices in a confidential environment.**

**The practice advisory service for existing firms takes the format of a four-hour confidential meeting, covering regulatory and compliance issues; financial performance and financial benchmarking; a review for potential improvement; cash-flow management; and strategic direction and the options available to the practice.**

**The service costs €250 all in to existing practices (no VAT or outlays are payable) and €150 to firms established within the last six months.**

**This low-cost service is delivered in strictest confidence between Outsource and the practitioner and is financially supported by the Law Society.**

**The emphasis for start-up practices focuses on regulatory and compliance, cash-flow management and banking arrangements, the challenges in starting a new firm, and how tax and other obligations change on becoming self-employed.**

**For further information, contact David Rowe, Outsource, at 01 678 8490 or email dr@outsource-finance.com; or Louise Campbell (Law Society support services executive) at 01 881 5712; or email: l.campbell@lawsociety.ie.**

# Dip into European Union law

After an absence of a number of years, the study of European Union law sees a welcome return to the Law Society's diploma programme. This diploma has been totally reworked, and areas as diverse as employment law, family law, environment, planning, criminal law, immigration and asylum, competition, consumer protection, intellectual property, social security and taxation are all covered in this revamped version.

The diploma will assist practitioners to identify, understand and interpret EU law issues arising in the course of their practice – both in the public and the private sector. EU law is a dynamic, fast-evolving and continuously expanding area of law. In addition to substantive rules, the procedural obligations on national courts, state bodies and administrative authorities to ensure the effective implementation of EU law will also be dealt with.

This course is offered in collaboration with the Irish Centre for European Law (ICEL). A 10% discount (€2,400 full fee) applies to applications received from ICEL members. Non-ICEL members attending the course will be provided with membership of ICEL for the duration of the course and can avail of the full range of benefits that apply (see www.icel.ie). The diploma starts on 22 October at Blackhall Place, but will be webcast weekly to accommodate those living and working outside Dublin.

For full details, visit www.lawsociety.ie/diplomas or contact a member of the diploma team on diplomateam@lawsociety.ie.

# Conveyancing conflicts – consultation

**The Law Society has set up the Conveyancing Conflicts Task Force, under an independent chairperson, Catherine Treacy, to review the existing guidelines and regulations relating to solicitors acting for both vendor and purchaser in conveyancing transactions, including voluntary transactions.**

**On behalf of the Law Society, the task force welcomes any observations, comments or submissions relevant to this issue that practitioners would like to make in order to assist it in its deliberations.**

**To check the existing guidelines and regulations, see the news item on this topic in the members' area at www.lawsociety.ie, where links are provided to the following:**

- **Paragraphs 3.1 to 3.3 of the current *Guide to Professional Conduct of Solicitors in Ireland* regarding conflicts in property transactions,**
- **SI no 85/1997 – the statutory ban on acting for developer and purchaser of a new dwelling,**
- **SI no 366/2010 – the statutory ban on acting for a borrower and a lender in the same commercial property transaction.**

**Responses should be sent to: ConveyancingConflictsTF@lawsociety.ie and should reach the task force on or before 30 September 2011.**

**For practitioners who have already sent submissions or observations in response to the earlier Law Society e-bulletin in June on this topic, please note that no further action is required, as these earlier submissions will be included in the task force's discussion of the issue.**

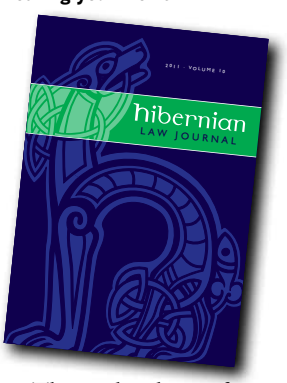
**The task force looks forward to hearing your views.**

# HLJ celebrates 10th volume

In 1999, long before anyone had come face-to-face with Facebook, or linked-up with LinkedIn, the *Hibernian Law Journal* (HLJ) published its debut edition. Coordinated by trainee and newly qualified solicitors, with the assistance of the Law Society, the HLJ's fresh tone and contemporary focus had an immediate impact on the Irish legal literary landscape.

Fast forward to 2011, and this progressive legal publication is celebrating the publication of its tenth volume with another anthology of outstanding legal writing. The foreword to the current edition has been written by Law Society President John Costello.

This year's edition discusses the legal issues surrounding the Magdalene Laundries, the new *Consumer Credit Regulations* and broadcasting regulation in Ireland. Reviews of recent publications on the National Asset Management Agency and the taxation of companies also feature in this year's edition.




The tenth volume of the journal is available now. For more details, join the *Hibernian Law Journal* LinkedIn group or email editor@hibernianlawjournal.com.

# Courts Service announces major hike in courts fees

The Courts Service has provided the Law Society with a summary of increases in certain courts fees that came into effect on 22 August 2011. The document details the scale of the increases and is bound to raise eyebrows among members of the profession. Increases are across the board and range from anything between plus 8.3% to plus 455.5%. (No, that's not a misprint!)

In a letter from the Courts Service, head of the Resource Management Directorate Sean Quigley stated that the last fees review came into effect in August 2008. "The Courts Service has recently completed a further comprehensive review of courts fees, the focus of which has been the harmonisation of fee amounts across jurisdictions, and general fee increases." The increases are summarised below.

**Supreme Court:**

- Notice of motion – increased from €40 to €62 (plus 55%).

**High Court:**

- Notice of motion – increased from €40 to €60 (plus 50%),
- Notice of appeal from the Master – increased from €40 to €60 (plus 50%),
- Notice of appeal for Circuit Court to High Court – increased from €55 to €68 (plus 23.6%),
- Setting down an action for trial – increased from €120 to €130 (plus 8.3%),
- On entering a judgment – increased from €30 to €60 (plus 100%),
- All memorandums – increased from €11 to €23 (plus 109%),
- Power of attorney search – increased from €6 to €23 (plus 283%),
- Certificate under admiralty (order 64, rule 46(9)) – increased from €40 to €52 (plus 30%),
- Filing an intention to show cause re bankruptcy – increased from €40 to €52 (plus 30%),
- On lodging a notice of motion or notice of appeal under the *Solicitors Acts* – increased from €100 to €130 (plus 30%),
- On the issue of certification of taxation – increased from €55 to €68 (plus 23.6%).

**Circuit Court:**

- Copy of any document – flat rate increase from €5 to €15 (plus 200%),
- *Ex parte* applications, unless specifically provided for – increased from €60 to €68 (plus 13%),
- Summons to tax – increased from €50 to €68 (plus 36%),
- Every judgment by default entered – increased from €85 to €120 (plus 41%).

**District Court:**

- Copy of an information, order, signed entry or any other document – flat rate increase from €10 to €15 (plus 50%),
- Removal of disqualification order – increased from €20 to €52 (plus 160%),
- Application for order under section 10 of the *Intoxicating Liquor Act 1962* – increased from €135 to €750 (plus 455.5%),
- Small claims application – increased from €15 to €18 (plus 20%).



# Life outside legal practice

**SARAH KEANE**
**Swim Ireland**

Former international swimmer, water polo player and solicitor, Sarah Keane, is now Chief Executive Officer of Swim Ireland.

Sarah first swam competitively at the age of 11. She enjoyed great success during her teens and got more and more involved in the sport. While in UCD, she spent one year on a swimming scholarship in the USA.

After college, while training in Matheson Ormsby Prentice, she moved out of competitive swimming and took up water polo and sea swimming.

In 2004, she was appointed the first ever Chief Executive Officer of Swim Ireland, which is the governing body for swimming, water polo, diving and associated aquatic disciplines. The organisation is led by a voluntary board, supported by a staff of 18, and has over 12,000 members.

Sarah's favourite work is on projects that have a long-term and sustainable impact, benefiting the sport and the Irish swimming community.

**SUSAN AHERN**
**International Rugby Board**

Having studied law in Trinity College and obtaining an LLM from Queen's University, Susan's first workforce venture was as a corporate banker.

Simultaneously, she was playing volleyball at an international level and subsequently took up the position of president of the Volleyball Association of Ireland. The draw of the law remained strong, however, and when Susan qualified at the Bar she pursued the in-house counsel route.

Little did she realise that, a decade later, she would be heading to the Rugby World Cup in New Zealand as general counsel for the tournament and the International Rugby Board.

"I never knew it was possible to be a sports lawyer until I actually became one," she says. "In those ten years, I have been reminded regularly of how fortunate I am to be doing a job that I love, and which is never, ever dull."

Susan is also a member of the executive committee of the Olympic Council of Ireland and a board member of the Irish Sports Council.

**MARGARET BYRNE**
**Sunderland AFC**

Irish solicitor Margaret Byrne was appointed CEO of Sunderland AFC in July of this year. She was also shortlisted for Britain's prestigious 'Solicitor of the Year' award late last year.

Margaret has been instrumental in the acquisition and sale of players and in contract negotiations since her appointment as Sunderland's legal director and club secretary in January 2007. She also sits on the Premier League's expert Legal Advisory Group.

Sunderland chairman Niall Quinn says: "Margaret has been a true driving force at the club since her appointment here more than four years ago, and the fact that the club has gone from strength to strength, on and off the pitch in that period, is no coincidence.

"She has enormous passion for our football club and, as its CEO, she will continue with the fantastic work that has gone before, and will play a key role as the club continues to grow."

NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

# New SIs on civil partnership and cohabitation

FAMILY LAW COMMITTEE

The Family Law Committee wishes to draw the attention of practitioners to recent statutory instruments relating to civil partnership and cohabitation and certain international conventions.

The *Circuit Court Rules* and *Superior Court Rules* have been amended to deal with the implementation of the recent civil partnership and cohabitation legislation. The *Circuit Court Rules (Civil Partnership and Cohabitation) 2011* (SI no 385 of 2011) came into operation on 13 August 2011.

The new rules insert an additional order 59A into the *Circuit Court Rules* to deal with proceedings relating to civil partnerships and cohabitation. The rules also contain a schedule of forms to be used in connection with any such proceedings, including precedent *Civil Partnership and Cohabitation Civil Bills*, affidavit of means and statement as to earnings.

Similar additions to the *Superior Court Rules* have also been introduced by the *Rules of the Superior Courts (Civil Partnership and Cohabitation) 2011* (SI no 348 of 2011). These came into operation on 31 July 2011. The existing *Superior Court Rules* are amended by the insertion of a new order 70A and by certain amendments to orders 79 and 80.

In addition, the new rules insert an additional appendix, following appendix HH, to the existing rules as per schedule 2 of the 2011 rules, which includes precedent forms to be used in civil partnership or cohabitation proceedings.

The *District Court Rules (Hague Convention 1996) 2011* (SI no 301 of 2011) relate to the *Hague* and other conventions in relation to the jurisdiction and enforcement of judgments in civil and commercial matters, various conventions in relation to the recovery of maintenance payments, and the *Hague Convention* in relation to the jurisdiction, applicable law, enforcement and cooperation in respect of parental responsibility and the protection of children.

The relevant District Court forms are scheduled to be rules, which came into operation on 18 July 2011. New *Circuit Court Rules* in relation to the *Hague Convention* also came into operation on 18 April 2011, and these are cited as *Circuit Court Rules (Hague Convention 1996) 2011* (SI no 121 of 2011).

# In-house solicitors' panel discussion set for September

IN-HOUSE AND PUBLIC SECTOR COMMITTEE

A panel discussion for in-house solicitors and solicitors considering an in-house role will take place on 8 September 2011 from 4pm – 6pm at Blackhall Place, Dublin 7, *writes Louise Campbell (support services executive)*.

Entitled 'Three lawyers in Irish sport', the discussion aims to provide an insight into three very interesting legal career paths in the world of Irish sport. It will outline the skills, experience and knowledge required in these roles, and provide an insight into some of the challenges presented by the transition from a traditional legal career to the sports sector, focusing on:

- An outline of the 'business of sport', key facts relating to the sector, and the increased interaction between law and sport,
- The day-to-day practicalities and challenges of an in-house lawyer in sport, including an outline of the various legal issues encountered,
- Making the transfer from law to business in a sport setting, the application of legal skills to a commercial situation, and the challenges of working with a voluntary body.

Speakers will include Sarah O'Connor (chief executive at the Federation of Irish Sports), Sarah O'Shea (director of legal and disciplinary affairs at the Football Association of Ireland), and Sarah Keane (chief executive at Swim Ireland).

Round-table discussions will provide an excellent opportunity for in-house solicitors to share their views and make contacts among colleagues.

Full details of the panel discussion, including the booking form, are available on the In-house and Public Sector Committee's section of the website, www.lawsociety.ie.

# Taoiseach and minister welcome IBA leaders to Dublin

Both Taoiseach Enda Kenny and Justice Minister Alan Shatter gave very generously of their time in separate meetings recently to welcome the President of the International Bar Association, Akira Kawamura, to Dublin.

In October 2012, the IBA is bringing to Dublin the biggest annual legal conference in the world. Some 5,000 delegates from all over the globe, with a further 2,500 or so accompanying people, will be participating for a week in a conference whose value to the Irish economy has been estimated at up to €20 million.

Irish lawyers will be welcome to participate in the conference. In doing so, they can meet their counterparts – in general practice and in a great many different specialisms – from all over the world. The IBA has been described as the 'global voice of the legal profession'. It was established in 1947 and represents, directly or indirectly, many millions of lawyers in 197 jurisdictions around the world. The only previous year in which it held its annual conference in Ireland was 1968.

Akira Kawamura, who is Japanese, is in the first year of his two-year presidential term. He was accompanied to Dublin by the IBA vice-president, Michael Reynolds, who is English and a partner in the global law firm, Allen & Overy. The meeting was coordinated by Irish solicitor, Michael Greene, who is vice-chair of the IBA's Legal Practice Division. Michael is a consultant with, and former chairman of, A&L Goodbody.

Minister for Justice Alan Shatter welcomes IBA Vice-President Michael Reynolds and other visitors to his office in Leinster House for a briefing on the 5,000 delegate 2012 IBA Annual Conference

Taoiseach Enda Kenny greets IBA President Akira Kawamura

Front *(l to r)*: Geraldine Clarke, Minister for Justice Alan Shatter, IBA President Akira Kawamura, IBA Vice-President Michael Reynolds and Tim Hughes. Back *(l to r)*: Host committee members Ken Murphy, Michael Greene and John F Buckley

### Intense rivalry

Competition is keen when it comes to hosting the IBA's annual meeting. Indeed, many have compared it to the rivalry that surrounds the hosting of the Olympic Games. Four years ago, in Singapore, a campaign by the Law Society and the Bar Council beat off opposition from many other major cities to secure the 2012 Annual Conference for Dublin.

Although 26 July was an exceptionally busy day for the Taoiseach – it was the day of the final Cabinet meeting before the summer break – Enda Kenny responded very supportively to the Law Society's direct request to him to meet these important international visitors. What was initially promised as a courtesy call and photo opportunity turned into the honour of a meeting in the Taoiseach's office for the better part of half an hour. Enda Kenny showed great interest in, among many other things, the extremely positive view that the IBA leaders had of the facilities in Dublin's new Convention Centre.

The Taoiseach is briefed about the 2012 IBA Annual Conference, which will be worth an estimated €20 million to the Irish economy

The Taoiseach was particularly impressed that President Kawamura was travelling from his home in Tokyo to Dublin and back, in the space of 24 hours, simply to undertake this visit to the site of the 2012 IBA conference. For his part, the Taoiseach readily agreed to deliver an opening address at the conference next year.

Michael Greene is introduced to Taoiseach Enda Kenny by Law Society director general Ken Murphy

### Unexpected encounter

As the delegation departed the Taoiseach's office, they met the Taoiseach's next visitor, the Reverend Ian Paisley, who was introduced by the Taoiseach to a rather bemused President Kawamura.

A handshake of welcome for Tim Hughes (IBA's deputy executive director)

The entourage then headed round to the Leinster House office of the Minister for Justice and Equality, Alan Shatter, who met them, together with some of the other Irish lawyers on the IBA host committee. Minister Shatter was also very interested in, and warmly supportive of, the conference. Indeed, when he heard of its potential value to the Irish economy, he invited the IBA to have their annual conference in Ireland every year.

The minister also gave particularly generously of his time and insisted on personally conducting President Kawamura on a tour of Leinster House before he had to leave to take a stage of the *Civil Law (Miscellaneous Provisions) Bill* through the Seanad.

Following their visits to Government Buildings and Leinster House, the IBA leaders were guests at a reception hosted by the Bar Council in the King's Inns.

Later the same evening, Law Society President John Costello hosted a dinner for the group in Blackhall Place. It was, in so far as anyone could recall, the first time that a president of the International Bar Association had been a visitor to Blackhall Place.

# DESPERATELY SEEKING ANDRÉ

**Conall Ó Fátharta won a Justice Media Award this year for his investigation into how, in 1961, a 21-year-old mother gave up her son for adoption – only later to discover that his birth had been falsely registered, there were question marks over his adoption, and that tracing him might well prove impossible. Lorcan Roche brings us up to date**

*Lorcan Roche is a writer and award-winning freelance journalist*

They say there are two sides to every story. In the eyes of the law, in particular as it pertains to the case of Treasa Reeves (née Donnelly), whose son she gave up to the Dublin-based, religious-run adoption agency of St Patrick's Guild in 1961, there are three: her story – of lifelong struggle to overcome what the *Irish Examiner* termed decades of "religious secrecy and denial"; the adoptive parents' story – one of adamant refusal to inform their adopted son of his true origins; and his – a story with no beginning (and possibly no end) because, quite simply, the man has no idea his biological mother has been searching for him for more than half a century.

Legally, all three stories hold equal validity. All three parties are seen as having equal rights under the Constitution in terms of rights to privacy and rights to information. But sit with 71-year old Treasa Reeves for an afternoon and legal imperatives give way to harsh reality – to the plaintive, almost primitive needs of a mother: "I want my son to know I exist … surely I have that right?"

Treasa grew up in England. When she became pregnant by an older man (a jazz musician), her parents made their antipathy clear: "My father was Irish, my mother English. Both Catholic. Having the baby, bringing him or her up with them was not an option – this was a small village ... they were both teachers."

She continues: "We lived opposite a convent where there was a teaching order, and my mum was friends with the nuns. They had a contact in St Patrick's Guild and so I was shipped off."

Treasa is a widow. She lives in Cornwall with one of her three remaining children (her middle daughter died of cancer) and several of her ten grandchildren (one of whom is named after the son she gave up). She is unerringly polite in that very English way. Her voice is measured. But the longer the interview continues, the less contained she becomes.

Feelings are resurrected. In particular, she explains that when she returns to Ireland, and begins the journey from the airport to the city centre, she cannot help but feel overwhelmed: "My mind automatically goes back to 1961. I start to remember all the bus stops, the sights, and I always get teary."

Has she ever given up the search?

"No. The only time I even considered giving up was after my husband died. No matter what the circumstances, however, feelings like mine don't go away."

Is her search for André a constant feature?

"Yes. But it really started to move into the foreground when I had my own children. I wanted to know that he was all right. If I was feeding one of my children, I would wonder – is he being fed properly? On their birthdays, I would wonder – is he happy, is he being loved? Same at Christmas, the beginning of school term."

And the long-term effect? "The 'emotional cost'? Well it is pretty shabby, is it not? There has been despair, and more."

Does it make her angry? "Yes."

### First meeting

Recently, she undertook the journey from Dublin Airport to the city for her first meeting with the Adoption Board. She had been seeking such a meeting for years. It was not an unqualified success – either from her perspective or from that of the adoption-loss Natural Parents' Network of Ireland representative who accompanied her. But neither was it bereft of hope.

It is possible that a new legal opinion, imminent in early September, will have implications for her case. But,

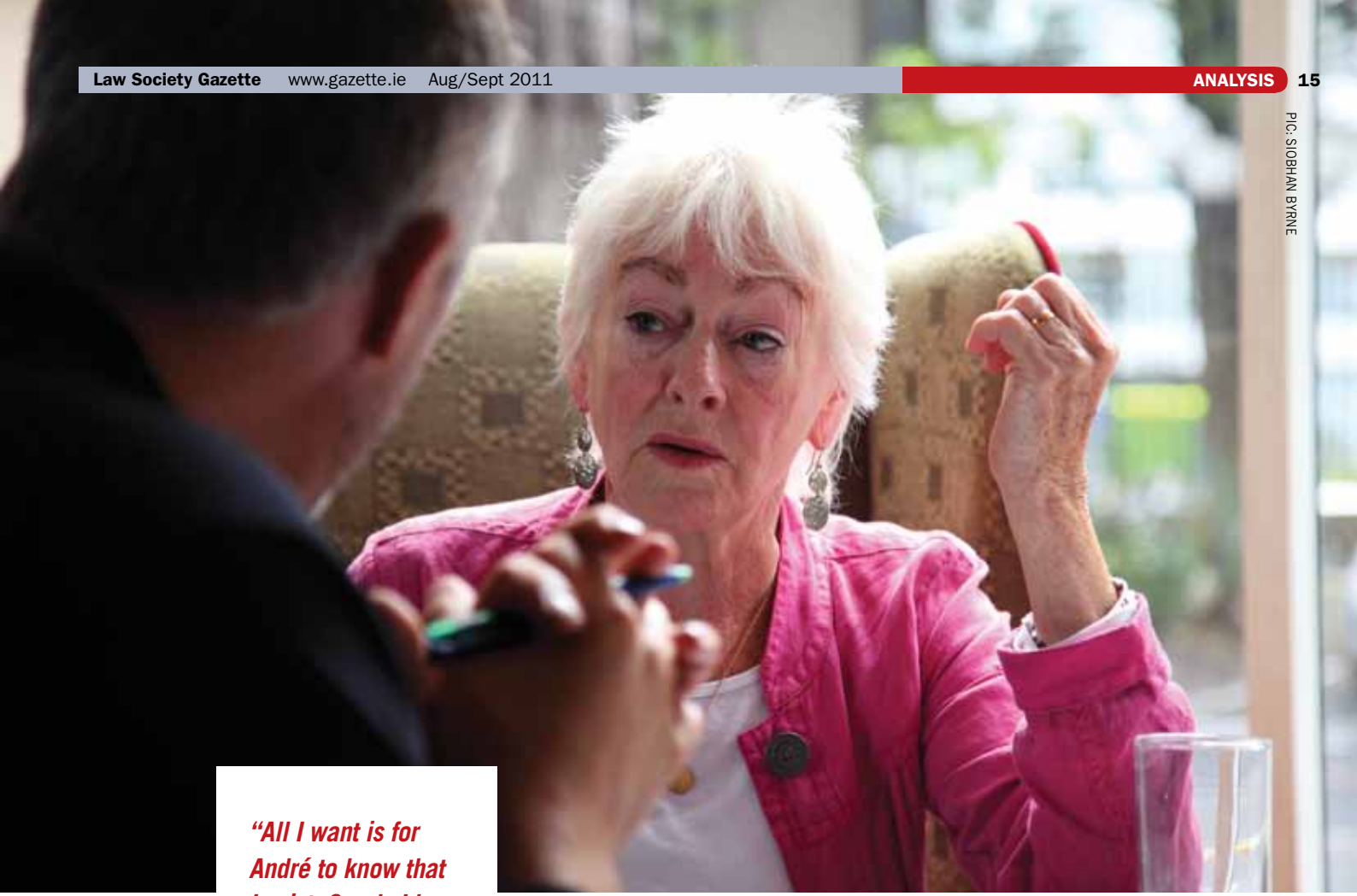
### RELEVANT CASES FOR REEVES

**Several legal cases pertain. In *G v an Bord Uchtála*, Justice CJ O'Higgins pointed out that an unmarried mother did enjoy rights under article 41 of the Constitution, but that these rights were neither "inalienable nor imprescriptible – they can be lost if her conduct towards her child amounts to an abandonment or an abdication of her rights and duties."**

**The rights of an unmarried mother and child in the context of tracing first came to consideration before the Supreme Court in the case of *IOT v B*. Hamilton CJ (with whom the majority of the court agreed) reached the following conclusion: "The right to know the identity of one's natural mother is a basic right flowing from the natural and special relationship which exists between a mother and child … the existence of such right is not dependant on the obligation to protect the child's right to bodily integrity … it is not, however, an unqualified right … its exercise may be restricted by the constitutional rights of others and by requirements of the common good."**

**In *O'C v Sacred Heart Adoption Society*, the Supreme Court, *per* O'Flaherty J, held that a natural mother's constitutional rights were placed in temporary abeyance at the time of a placement for adoption, but were only finally extinguished by the making of an adoption order. However, in *N v HSE and Others*, the Supreme Court held that the placement for adoption did not constitute an abandonment of the child by its natural parents.**

**Even cursory examination of these cases suggests that only a judge is qualified to make the final call on what the rights of André Donnelly might be.**



PIC: SIOBHAN BYRNE

*"All I want is for André to know that I exist. Surely I have that right?"*

as of the time of writing, the information she seeks (which, she insists, she will continue to seek until her dying day, at which point her eldest daughter will take up the cudgel) remains 'off limits'. She questions the constitutionality of this – both for her and for her son André. She felt that, by giving him an unusual name, it would make it easier to trace him later on – it didn't, because his name had been changed to 'Paddy' (see panel).

In 2004, Treasa Reeves began proceedings against the Adoption Society; the Registrar General of Births, Marriages and Deaths; Ireland and the AG. The proceedings seek declaratory relief to the effect that she is entitled to all information pertaining to the registration and placement of her child, and also an order directing the defendants to furnish such information to her. She further sought an order directing the Registrar to re-register the birth, as well as damages for breach of duty and breach of her constitutional rights. The barrister she hired has since relinquished the case, but it is important to understand her motivation: "I don't care about the money – why would I? – but I do care about him."

On 14 October 2009, the State recognised the birth of André Donnelly and the fact that Treasa was his natural mother. That provided her enormous relief, and a degree of (short-lived) hope: she was denied any further knowledge or information.

However, it has been established, despite intimations to the contrary (there were suggestions that information on André was lost), that all files from St Patrick's Guild were photocopied and that the information is now held by the Adoption Society.

The cases that pertain to Treasa Reeves and what she's trying to achieve raise all manner of constitutional and legal issues. But even if a court were to argue that she relinquished her constitutional rights as a mother (which, in the opinion of the barrister initially charged with the case, it might well do, simply because she failed to seek to formally contact her son while he was still a 'child'), then what about her son's rights?

And, equally importantly, who makes the final decision as to whether he is informed? The CEO of the Adoption Society? The case social worker? The Minister for Children?

Surely, as is the case in Britain, such a decision, with its sensitive constitutional implications, needs to be made by one person only – a judge?

Treasa Reeves wants her son to be informed, in the presence of an independent witness, that his birth cert was falsely registered and that, although she signed consent forms and gave him up freely, she always presumed (as was her right) that she would one day be permitted to contact him, even just to see if he was doing okay.

"All I want is for André to know that I exist. Surely I have that right?"

Surely he does, too?

**WHAT IS KNOWN ABOUT ANDRÉ/'PADDY'**

**The known facts about André/'Paddy' are as follows. In 1961, the couple who adopted him were managing a 'rural' sub-post-office, though the term 'rural' may well mean a post-office on the outskirts of Dublin.**

**'Paddy' had a brother – also adopted. The adoptive father was a builder. It has been established that 'Paddy' followed his adoptive father into the trade, though he may, post-recession, no longer be thus employed.**

**'Paddy' has been married since in or around 1997 and has three children.**

# CHILD PROTECTION REPORT PULLS NO PUNCHES

**The *Fourth Report to the Oireachtas on Child Protection* was formally presented to the Cabinet in May of this year. So, what's happening? The *Gazette* catches up**

The most recent report prepared by the Special Rapporteur to the Oireachtas on Child Protection, Geoffrey Shannon, has prompted a very necessary level of both debate and action on child protection issues affecting children and young people in Ireland.

Sadly, many of the problematic issues and concerns raised in the report have been overlooked and neglected in the past. Current Government plans, however, now seem positively focused on translating child protection guidelines onto a statutory footing. The Government's intentions in this regard were recently announced by the Minister for Children, Frances Fitzgerald, who has formally publicised the Government's intention to put the 1999 *Children First* guidelines onto the statute books.

The scope of the fourth report deals with particular issues of youth homelessness, the right of children with mental difficulties to be heard, and children and the law. It also contains a review of child trafficking and prostitution. The minister has described the document as "stark reading"– the report is indeed an uncomfortable read, detailing the gaps and failures of a child-protection system that exposes children to risk, abuse and deprivation of rights.

***"One of the most troubling aspects is that of child trafficking and its association with sexual exploitation. The report proposes that consideration be given to the position in Sweden and Norway, in which the purchase of sexual services has been penalised, with a view to introducing a similar system in Ireland"***

### Gaps identified

The report identifies a number of potential areas for reform, most notably the current, long-standing deficiencies of a social-work system that does not provide a 24-hour service to cater for the urgent needs of vulnerable homeless children. There have been calls for reform on this issue in the past – hopefully the time has now come, not just for review, but for active reform of this particular aspect of the system.

The report further advocates the introduction of adequate aftercare support systems to be put in place to assist and support children who leave State care to make the transition to becoming independent members of society.

It calls for inter-agency cooperation when dealing with child victims of sexual abuse. The current system means that these victims are often interviewed separately by the HSE and gardaí. Geoffrey Shannon says: "Repetitive interviewing of this kind is unnecessary and traumatic for victims and could be avoided by the introduction of a more streamlined system of State agency collaboration. In addition, separate and repeated victim interviews can lead to situations where prosecutions become compromised because of variances in interviewee accounts."

Further difficulties arise in the context of child sexual abuse cases, as a result of poor regulation concerning the disclosure of victims' medical and counselling records. Current rules – which allow for the disclosure to the defence of these otherwise confidential records in the course of criminal proceedings – may lead to fewer prosecutions in such cases.

Special Rapporteur to the Oireachtas on Child Protection, Geoffrey Shannon

> *"The report is an uncomfortable read, detailing the gaps and failures of a child-protection system that exposes children to risk, abuse and deprivation of rights"*

For many victims of child sexual abuse, the prospect of such disclosure to the accused is simply too traumatic to contemplate. Criminal proceedings that might otherwise have been brought to trial may simply not be pursued for this reason.

The report recommends that reform in relation to court orders for disclosure, in cases such as these, be based on a more comprehensive test of relevance.

### Pressing issues

The report raises pressing issues in relation to the welfare needs of young offenders. Research shows that such offenders are, in the overwhelming majority of cases, from very deprived socioeconomic backgrounds. "Such vulnerability means that these children should not be excluded from the protections offered by the proposed children's rights amendments to the Constitution – rather, these are the very children that must be protected under the Constitution, when the other arms of the State have failed to adequately protect and support their welfare," says Shannon.

The report also recommends the Scottish juvenile system as a possible model for improvement in this jurisdiction. The Scottish system, it says, has managed to pragmatically address young offenders' welfare issues in tandem with issues of anti-social, criminal behaviour. It also recommends the introduction of bail support schemes as a means of tackling the number of offences committed by young offenders while on bail.

### Troubling aspects

The scope of the recent report includes a number of recommendations in relation to children with mental-health difficulties and, in particular, the right of such children to be heard.

Perhaps one of the most troubling aspects dealt with in the report is that of child trafficking and its association with sexual exploitation. The report proposes that consideration be given to the position in Sweden and Norway, in which the purchase of sexual services has been penalised, with a view to introducing a similar system in Ireland.

The report argues that legislation needs to be enacted to criminalise the grooming of children for the purposes of sexual exploitation. In addition, it highlights the fact that, while Ireland has signed the optional protocol to the *Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, that protocol now needs to be ratified. G

# IRELAND'S HUMAN RIGHTS RECORD REVEALED

**The Government published Ireland's first *National Report* on its domestic human rights record during the summer. Joyce Mortimer considers its findings**

*Joyce Mortimer is the Law Society's human rights executive*

On 4 July 2011, the Government announced the publication of Ireland's *National Report* on its domestic human rights record as part of the process of the United Nations Human Rights Council Universal Periodic Review (UPR).

This report was drawn up after a lengthy consultation process that involved seven public meetings and 120 submissions from a wide range of organisations and members of the public.

The UPR is a unique, state-driven process that is administered by the Human Rights Council. The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council itself. Under this process, all 192 UN member states are to be reviewed every four years.

This is the first time that Ireland has had to submit a report as part of the UPR process. This method of continuous review ensures that states remain aware of their human rights responsibilities and ensure effective implementation. The aim of the review is to ensure that human rights are protected and to address violations where they are not.

To draw up the report on Ireland, the Government set up an interdepartmental working group, supported by the Department of Justice and Equality. A website (www.upr.ie) was launched to inform the public of the process and to facilitate those interested in making submissions, where the report can be viewed in full.

The report highlights that the current Government, established on 6 March 2011, "intends to convene a constitutional convention to consider the need for comprehensive constitutional reform", including consideration of the following specific issues:

- Provision for same-sex marriage,
- Amendment of the clauses on women in the home and insertion of a clause to encourage greater participation of women in public life, and
- Removal of the offence of blasphemy from the Constitution.

### Gender-based violence

The report states that a national strategy on domestic, sexual and gender-based violence is in place – the aim of which is to provide a "strong framework for sustainable intervention to prevent and effectively respond to domestic, sexual and gender-based violence".

It says that the Government is committed to reviewing the current law on domestic violence, in particular examining the removal of the qualifying period for an application for a safety order, protecting victim anonymity, and pursuing criminal prosecution for violent or coercive acts, harassment and stalking.

Ireland "hopes to launch its national plan on the implementation of Resolution 1325 (women, peace and security) by 2011". Ireland embarked on an innovative consultation process, bringing together "participants from Ireland, Northern Ireland, Liberia and Timor-Leste to draw upon the experiences of those directly affected by conflict on how best to promote women's leadership and protect their interests in conflict resolution and peace-building".

### Human trafficking

The report confirms that Ireland has ratified the Council of Europe *Convention on Action against Trafficking in Human Beings*. To ensure realisation, dedicated units to combat human trafficking have been set up in the Department of Justice and Equality, the HSE, the Legal Aid Board and the gardaí. Moreover, "dedicated personnel have also been assigned in the Office of the Director of Public Prosecutions and in the Asylum Seekers and New Communities Unit of the Department of Social Protection, to strengthen the response to trafficking".

The report states that a bill is currently before the Oireachtas that will specifically prohibit female genital mutilation, and will also provide for related offences, including extra-territorial jurisdiction.

### Abortion

The Government is committed to ensuring that the judgment in the case of *A, B and C v Ireland* is implemented expeditiously. The report states: "In response to the court judgment, the Government will establish an expert group, drawing on appropriate medical and legal expertise, with a view to making recommendations to Government on how this matter should be properly addressed."

### Institutional care

Regarding the position on young girls and women who were resident in the Magdalene laundries, the issue has been referred to the UN Committee Against Torture. A Government decision was made on 14 June 2011 to establish an interdepartmental committee, with an independent chair, to clarify any State interaction with the laundries and "to produce a narrative detailing such interaction".

### Criminal justice

Regarding the prison system, the Government accepts the problems


The current Government "intends to convene a constitutional convention to consider the need for comprehensive constitutional reform", including consideration of the provision for same-sex marriage

***"This is the first time that Ireland has had to submit a report as part of the UPR process"***

in relation to accommodation, in particular in relation to in-cell sanitation. The report states that a programme is in place to deal with this issue.

It says: "By mid-2012, 80% of the prison's estate [Mountjoy Prison] will have in-cell sanitation."

The report also confirms: "In 2011, the UN Committee Against Torture made concluding observations regarding a proposal to construct a major prison on a greenfield site. The Government has already appointed an expert group to examine the proposal and will consider the matter when that group reports."

### Civil partnership

The report highlights the importance of the passing of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, which provides for the registration of civil partners and for the consequences of that registration. The report states that "same-sex couples now have additional protections and new rights to succeed to the property of each other." It adds: "The tax code is being amended to bring it into line with the new provisions."

### Autism

The report states: "A national review of autism services is currently underway and will identify the core principles of service delivery and standards of practice that will guide national autism services."

### Transgender issues

It is stated that, in 2010, an advisory group was established to advise on further legal recognition for transgender persons.

### Mental health

A review of the *Mental Health Act 2001* is currently underway that will include an examination of the concluding observations of the UN Committee Against Torture in relation to the definition of a 'voluntary patient'.

### Children and youth

In June 2011, a dedicated Government Department of Children and Youth Affairs was established. "The department will lead the development of harmonised policy and quality integrated service delivery for children and young people, and will carry out specific functions in the social-care field, driving coordinated actions across a range of sectors, including health, education, youth justice, sport, arts and culture."

### Children's rights referendum

The report states that the Minister for Children and Youth Affairs has begun discussions with the Attorney General in order to prepare draft wording for a referendum on children's rights.

### Right to education

The report confirms that, on 8 July 2011, the Minister for Education and Skills is scheduled to launch the national strategy to improve the literacy and numeracy of children and young people.

### Pluralism and patronage

In April 2011, the Government launched the Forum on Patronage and Pluralism in the Primary Sector. This forum will examine the role of religious education in primary schools. "The advisory group to the forum will analyse submissions received from over 200 stakeholders, [and] consult and examine relevant data to assist them in preparing their report to the Minister for Education and Skills by the end of 2011."

### Older people

A minister of state has been assigned responsibility for older people's issues.

### People with disabilities

The report comments that the Government is committed to ratification of the *Convention on the Rights of Persons with Disabilities* as quickly as possible. This will be done as soon as the required bill to reform mental capacity legislation is enacted. The Government intends to introduce this bill in the Oireachtas before the end of 2011.

### Concluding comments

The report concludes: "Work on the Government's overall goal to achieve full respect for human rights in practice, building on the legal framework in our Constitution and domestic legislation, as well as the international treaties and conventions to which we are party, and our achievements to date, will continue. We strongly believe in the need for a shared effort to advance the values at the heart of the charter of the United Nations and welcome the opportunity to present this, our first UPR report."


## Nomination for 'Most Courteous Colleague'

*From: Sonya Morrissy Murphy, Connolly Sellors Geraghty, Solicitors, 6 & 7 Glentworth Street, Limerick*

**Goodwill, kindness, professionalism, skill, decency and the incredible courtesy of a colleague compel me to write to you.**

**Having commenced a conveyancing transaction for the purchase of a small cottage in Co Kerry in September 2010, it seemed as if contracts would never be signed, never mind the sale closing.**

**I, however, had the good fortune to encounter Mr Liam Crowley, solicitor, of Killorglin, who was instructed by the vendors. In our first conversation, he indicated to me that "conveyancing is cooperative and not confrontational." Clearly, Mr Crowley's word is his bond.**

**Having encountered all sorts of intricacies and difficulties, Mr Crowley drew on local knowledge and expertise to make the impossible possible. Contracts were signed on 8 July 2011 and the sale closed on 28 July 2011.**

**Mr Crowley's *modus operandi* is to telephone you to acknowledge receipt of your letter and to let you know that he will write to you. He then writes to you and rings you to see if you got the letter, and to discuss it, and so on.**

**In my naivety, I mistakenly assumed that these lengthy, interesting and friendly conversations were mere bluster. I could not have been more wrong. Mr Crowley is as able as he is courteous. His level of courtesy and assistance is something I have never encountered before and something that has largely been lost from the profession.**

**One day, when out of the office and with both of us under pressure to move things along, I was unable to facilitate him by sending a draft deed and requisitions immediately, and he very kindly offered to draft the somewhat complex closing documentation for me and send them to me for my perusal, which he duly did.**

**It is my pleasure to nominate Mr Crowley for the award of the 'Most courteous solicitor in Ireland'.**



## CPD seminar could offset cost of 'SMDF hurdle'

*From: Robert E Connolly, 46 Raheny Park, Raheny, Dublin 5*

It appears that, as a result of the postal ballot, all solicitors will be required to contribute €200 annually to the SMDF. While I am sure that there are any number of solicitors for whom €200 is pocket change, for many of us the assessment is yet another hurdle in our attempts to keep the doors open.

Might I suggest that the Law Society, or the SMDF, present a two or three-hour seminar, for which CPD hours will be available, in exchange for the €200 assessment. Since we are all required to participate in professional development, much to the monetary delight of companies who specialise in presenting seminars, a Society-sponsored event would provide value for money to those who might choose to avail of the opportunity.

## End to expert witness immunity in Britain

*From: Catherine O'Flaherty, secretary to the Conveyancing Committee, Law Society of Ireland, Blackhall Place, Dublin 7*

**At its last meeting in June, the Conveyancing Committee noted the news item in the May 2011 *Gazette* in relation to the above topic. One of the members reminded the committee that there had been an Irish Supreme Court case (*EO'K v DO'K* [2001] 3IR 568), which held that a court-appointed expert witness was not liable in negligence to a disappointed litigant.**

**The committee thought *Gazette* readers might wish to be informed.**

# September launch for Medical Injuries Alliance

*From: Joice Carthy (secretary), Michael Boylan (chairperson), and Bruce Antoniotti SC (vice-chairperson), c/o Medical Injuries Alliance, Suite 102, Ormond Building, Ormond Quay Upper, Dublin 7*

Over the past few months, a number of lawyers (solicitors and barristers) – all of whom have extensive experience in representing patients who have been injured as a consequence of a medical accident and preventable error – have been meeting and discussing the formation of an association, the primary purpose of which would be to protect and vindicate the rights of those patients. Those meetings and discussions have now culminated in the formation of the Medical Injuries Alliance (MIA). A committee of ten, including a chairman, vice-chairman and secretary have been appointed, and it is hoped to formally launch MIA in the last week of September 2011.

MIA will not replace the groups and associations already in being who are, and have been, working for the rights of patients, but hopes and intends to work closely with them in the future, with the following objectives:

- To establish in Ireland (hopefully on a statutory basis) a 'duty of candour'; that is, a duty on the part of hospitals and doctors to reveal, at the earliest possible time, the fact and the cause of a medical injury. Patients who have suffered an adverse outcome are entitled to know that they have been injured, and the cause of that injury. There must be transparency and accountability. In essence, patients who suffer preventable or untoward injury in the medical or hospital system ought to be entitled to know and be candidly told precisely what went wrong and what caused their injury.
- To promote patient safety through the study of medical accidents and errors and improvement in the understanding of their causes. To accomplish this objective, MIA intends to hold an annual conference, as well as regular seminars, at which experts in the medical and legal profession will present papers and discuss important topics, with a view to ensuring that all those who take on the responsibility of protecting the interest of injured patients have an understanding of the causes of medical accidents, as well as the legal principles and precedents applicable to medical injury litigation.
- To streamline and make less costly the litigation process, insofar as medical injury claims are concerned. To accomplish this objective, MIA advocates that the Irish medical profession should be encouraged to provide honest objective opinions for injured patients. Unlike their British counterparts (as well as their counterparts in virtually all other common law jurisdictions), most Irish doctors, consultants, and so on, are unwilling to provide such opinions, and it is therefore necessary to seek the assistance of experts from Britain, the USA, Canada and so on, so as to investigate the issues of negligence and causation. The process of obtaining expert reports from foreign-based experts and preparing for trial has become time-consuming and expensive. Meaningful consultation often involves assembling a number of experts from different countries, which ultimately increases the cost of litigation as well as the length of time it takes to finalise that litigation. There would be significant savings in costs if Irish medical professionals would be prepared to provide opinions for injured patients. Secondly, MIA advocates that there be a special set of rules established by the courts to deal specifically with medical negligence claims, and that the overriding objectives of these rules would be to promote the earliest possible exchange of information and settlement of meritorious claims.
- To promote and enhance the education and expertise of lawyers representing patients and families injured by medical accidents, so as to ensure that their access to justice and legal rights are adequately preserved and vindicated. Thus, the patients could have 'equality of arms' and the 'weaker', injured patient of modest means could be permitted to more effectively pursue their legal rights against the 'stronger', well-resourced defendant.
- To liaise with the Minister for Justice with a view to advocating the expansion of the system of civil legal aid to medical negligence litigation and inquests in certain circumstances.
- To work for the establishment of a protocol, whereby an independent audit should be performed of hospital care and treatment outcomes in the aftermath of litigation, so that lessons can be learned, and to avoid or minimise the risk of future reoccurrence of similar medical error – creating a safer environment for patients.

The aforesaid objectives are open to discussion and change, and the officers and committee of MIA welcome suggestions and input from all persons and groups/associations who have patient safety as their primary objective.

MIA is now in its infancy and hopes to grow in size and importance. Its membership is now relatively small and, in order to achieve its goals, it is imperative that MIA grows and expands. MIA invites all those who are interested and serious about patient safety to apply for membership. Applications are available by writing to: Medical Injuries Alliance, Suite 102, Ormond Building, Ormond Quay Upper, Dublin 7, or by emailing: joice@medicalinjuriesalliance.ie.

MIA intends to publicise its formal launch date in the media, which date, as stated above, will be in the last week in September, and invites all to attend.

# A titter at Twitter


*From: Keenan Johnson, Johnson & Johnson, Solicitors, Ballymote, Co Sligo*

**I recently had an 82-year-old widowed farmer call to my office to make his will. In line with my usual practice, after the will had been completed, I offered him a copy. In vigorously refusing to take a copy, he said: "If I brought it home, it would be the same as putting it on Twitter."**

**Who said the age of electronic communication is not alive and well and living in rural Ireland?**

# GIVE US THIS DAY OUR DAILY BREAD

**In times of restricted resources and economic uncertainty, the Government should remember that the rule of law and respect for the individual does not vanish, argues Noeline Blackwell**

*Noeline Blackwell is director general of FLAC*

For a government under severe financial pressure, it is tempting to say that it 'cannot afford' human rights. But we would all agree that even – indeed especially – in times of restricted resources and economic uncertainty, the rule of law and the need for respect for the individual does not vanish. Likewise, human rights – the freedoms and responsibilities that accord to us all as human beings and which form part of the rule of law – do not disappear in tougher economic times.

In straitened circumstances, states still have an internationally recognised legal duty to respect, protect and realise human rights, even if they have to find alternatives to money and resource-intensive ways of doing so. Before signing an international human rights treaty, Ireland as a state will have understood the solemn and legally binding commitments this entails – and its accountability in protecting the formal legal commitments involved.

Ireland is not the first country ever to be severely constrained by financial pressure, and nor will it be the last. Human rights law has developed some basic rules, principles and guidance to assist in respecting, protecting and promoting human rights law in tougher times. These cover broad categories: for example, states must take every possible step to ensure that everyone in the jurisdiction has a basic level of subsistence to live in dignity; states must take account of the impact of cuts on the most vulnerable in society; and cuts must be effected in a non-discriminatory and transparent way in consultation with affected groups.

*"Where a state seeks to excuse poor performance on meeting human rights obligations, citing lack of resources, it must show that every effort has been made to use all resources at its disposal in trying to satisfy, as a matter of priority, those minimum obligations"*

**Not optional**

States are legally bound to implement these basic rules; they are not optional. The absence of individual recourse to the courts because a treaty is not incorporated into domestic law does not detract from that treaty's validity or the obligations on the state and its bodies arising from it.

Inherent throughout international human rights law is a state's obligation to respect, protect and fulfil the rights recognised in treaties, as are provisions obliging states to fully realise these rights, either immediately or progressively. For example, rights recognised as economic, social and cultural rights, such as the rights to housing, health, food and water, social security or education, will all have to be realised progressively over time. And, in its 2011 programme, the Irish Government has emphasised that it will "require all public bodies to take due note of equality and human rights in carrying out their functions".

But what does this mean? The UN's Committee on Economic, Social and Cultural Rights has clarified that to respect a right requires states not to interfere with existing access to, or enjoyment of, a right and to take positive steps to maintain existing access. The duty to fulfil a right requires a state to provide a way for people to exercise a right where they cannot do this independently.

At a minimum, Ireland has a duty to provide to every person in the land the basic level of subsistence necessary to live in dignity, known as a minimum core obligation, while taking into consideration our resource constraints. Where a state seeks to excuse poor performance on meeting human rights obligations, citing lack of resources, it must show that every effort has been made to use all resources at its disposal in trying to satisfy, as a matter of priority, those minimum obligations.

The precise minimum core obligation will vary from state to state, but typical examples within the right to education would be the right to primary education and the right to access public educational institutions. Similarly, access to basic shelter and sanitation, an adequate supply of water, and essential drugs have all been identified as minimum core obligations within the right to health.

*"The duty to fulfil a right requires a state to provide a way for people to exercise a right where they cannot do this independently"*

**'Progressive realisation'**

The concept of 'progressive realisation' acknowledges that a state may be unable to ensure full realisation of all economic, social and cultural rights in one go. However, the state still has an immediate duty to move towards that goal as quickly as possible, even using resources available from the international community through cooperation and assistance.

Obligations to monitor the extent of the realisation, or more especially of the non-realisation, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way reduced or removed in recessionary times. The UN committee has devised a host of criteria to examine this process under each state obligation.

Further, the way government formulates and implements its policies must fully respect the principles of accountability, transparency and the participation of interested groups. The right of individuals and groups to participate in decision-making must be part of all policies, programmes and strategies intended to implement state obligations under international human rights instruments. Finally, and importantly, there is an onus on the state to have consistency and fairness in the application of the law, and in providing public services that focus on individuals' needs.

FLAC has produced a document setting out the human rights law and principles relevant to reinforcing the need to maintain and progress rights in a recession. It also examines in more detail two particular economic and social rights, identifying core state obligations – the right to social security and the right to housing. You can download it from the FLAC website at www.flac.ie.

# CUCUMBER WARS

**The German STEC 104 outbreak has shown that the possibility of a small, well-managed food-producing unit single-handedly triggering a deadly pan-European public health incident is not confined to the imaginations of Hollywood scriptwriters. John McCarthy tickles his tastebuds**

*John McCarthy is a partner with McCarthy & Co Solicitors, Clonakilty, with a particular interest in the area of food law*

The recent German-based food-poisoning incident should draw attention to the laws pertaining to tortious liability for unsafe food products. Although Spanish cucumbers were initially and incorrectly blamed for the outbreak, the source of the contamination was traced ultimately to a German organic beansprout crop.

In any consideration of the law of tortious liability for unsafe food products, it would be remiss not to make deferential reference to May Donoghue who, on a Sunday evening in August of 1928, suffered from a bout of gastroenteritis and severe shock after having consumed a quantity of ginger beer poured from an opaque bottle, which later transpired to contain the remnants of a semi-decomposed snail.

> **"Spanish cucumbers were initially and incorrectly blamed for the outbreak"**

While even the most dilettante student of the law of torts will be aware that the ensuing case of *Donoghue v Stevenson* turned out to become the bedrock upon which the modern jurisprudence of negligence has been developed, there has also been considerable enhancement of consumers' rights by way of legislation in the meantime. One of the several consumer protection codes introduced as a consequence of our membership of the European Union is the *Liability for Defective Products Act 1991* (LDPA), which implements the *Product Liability Directive* (PLD) (Council Directive 85/374/EEC) and which applies to all food products, including primary agricultural products that have not undergone initial processing. When first introduced, section 1 of the LDPA specifically excluded such unprocessed agricultural products. However, the definition was subsequently amended to include them by the *European Communities (Liability for Defective Products) Regulations 2000* (SI no 401 of 2000) in compliance with Council Directive 99/34/EEC.

Section 4 of the LDPA provides that, to discharge the onus of proof, one must show "the damage, the defect and the causal relationship between the defect and damage". Of course, attaching liability for foodborne illness will often be extremely difficult for an injured consumer, by virtue of the fact that they will have ingested many different food items from a wide range of sources in any given day, each of which could potentially have been the cause of the illness complained of. But if the injured party can satisfy this causal test, section 2 assigns responsibility without fault to the producer of the defective product. This imposition of strict liability is highly significant, as it deviates from the general law of negligence under which a defendant can escape liability on the basis that they have not been guilty of any wrongful conduct, notwithstanding the plaintiff's

**FAST FACTS**

- The law of tortious liability for unsafe food products has been considerably enhanced by European Union legislation
- To discharge the onus of proof, one must show "the damage, the defect and the causal relationship between the defect and damage"
- If the injured party can satisfy this causal test, section 2 of the *Liability for Defective Products Act 1991* (LDPA) assigns responsibility without fault to the producer of the defective product
- Showing a causative link can be very difficult in many cases of foodborne illness
- Despite such an unyielding regime of liability – where an absence of fault will not free a food producer from blame – there are measures that can be taken to limit one's exposure
- Section 6 of the LDPA does provide some solace for a food producer, however, by allowing for a number of defences
- As for the potential criminal sanctions, there is a raft of regulations under which the Food Safety Authority of Ireland can seek to prosecute producers who supply contaminated foodstuffs

Beans means tortious liability

crossing of the causation hurdle.

Section 6 does provide some solace for a food producer, however, by allowing for a number of defences, two of the most significant of which are (i) that if the producer can show that they did not put the product into circulation; or (ii) that the defect did not exist at the time when the product was put into circulation or that it came into being afterwards, they will avoid liability.

### A STEC too far

The recent eruption of the particularly aggressive strain of Shiga toxin-producing E coli O104:H4 (STEC O104) in Germany has brought the cumulative number of probable and confirmed STEC cases in the EU to 3,867 at the time of writing. In 762 of these cases, the infection gave rise to the onset of haemolytic uraemic syndrome (HUS), a rare and severe kidney complication that destroys red blood cells and can affect the central nervous system.

According to media reports, the organic farm in the village of Bienenbüttel in Lower Saxony that was ultimately identified as the source was well run and had very high hygiene standards. While this will mean that it will probably avoid criminal prosecution (due to the regime of strict liability imposed by Germany's implementation of the PLD), it will not be in a position to insulate itself from claims for compensation on the basis that it was not negligent in the manner in which it generated its produce.

Showing a causative link can be very difficult in many cases of foodborne illness. For example, a report on campylobacter infection that was recently issued by the Food Safety Authority of Ireland (FSAI) revealed that some 83% of Irish poultry flocks presented for slaughter, and 98% of whole birds at the end of the slaughter process, are contaminated with campylobacter. With these pandemic rates of infection, even if a plaintiff could prove that they had suffered personal injury as a consequence of being exposed to campylobacter infection, they could well find themselves running into serious evidentiary difficulties if it could be shown that they had ingested poultry foodstuffs from more than one source in the period during which consumption of the suspected product was believed to have occurred, as the incubation period before symptoms are observed can be anywhere between one and ten days from infection.

In the case of the STEC O104 outbreak, however, it would appear that this version of the pathogen is so rare that the causative link is without controversy, notwithstanding the fact that a compensation package of eye-watering proportions is currently being hammered out between the European Commission and Spanish vegetable producers by reason of a series of unverifiable attributions along the way. (The impugned cucumbers did contain serious VTEC pathogens, but the DNA profiles of these pathogens turned out to be different from the outbreak strain.)

If the American experience is anything to go by, it is probably only a matter of time before this country experiences a significant outbreak of verocytotoxigenic E coli O157:H7 (VTEC

O157), or other serotypes such as O26, O111 and O145. In a surveillance project involving raw milk suppliers throughout Ireland, carried out by the FSAI in 2005, numerous E coli O157 isolates were detected, some of which contained the VTEC toxin. As with the STEC strain observed in the German outbreak, VTEC strains produce a powerful toxin and can cause severe illness, with HUS having been observed to cause fatality or permanent kidney damage in up to 30% of those contaminated in some outbreaks.

With such an unyielding regime of liability – where an absence of fault will not free a food producer from blame – what measures can then be taken with a view to limiting one's exposure?

Section 2 of the LDPA provides that a producer to which liability may attach can be any of:

- The manufacturer or producer of the finished product, or
- The manufacturer or producer of any raw material of the product, or
- Any person who carried out initial processing on the product, or
- Any person who, by putting his name or mark on the product, has held himself out to be the producer of the product, or
- Any person who has imported the product from outside of the EU, or
- Where the producer cannot be identified, the supplier of the product.

Section 8 goes on to provide that, where two or more persons are liable for the same damage, they will be treated as being liable jointly and severally as concurrent wrongdoers within the meaning of part III of the *Civil Liability Act 1961*. Therefore, if, for example, a producer is relying on ingredients from a variety of sources to prepare their products, they should ensure that they have secured legally solid warranties and indemnities (buttressed by appropriate policies of insurance) from the suppliers of these ingredients, so that they do not find themselves becoming an unwitting mark in circumstances where they were a mere conduit for the spread of infection, rather than the actual source of it.

As long as the producer is adequately insured, they may well be in a position to withstand the barrage of litigation that will inevitably ensue if their produce is shown to be responsible for a bout of foodborne illness. But if they are perceived to have been in any way lax or cavalier in their attitude towards the health and safety of their consumers, the reputational damage and destruction of the brand name will almost certainly be commercially fatal and could well result in criminal prosecution.

At the very least, food producers should be in a position to demonstrate due diligence in the context of hygiene practices, particularly in relation to all applicable HACCP systems. For their part, the regulatory authorities overseeing the food industry in question should be in a position to provide evidence of the proper application of Regulation (EC) no 882/2004 on official controls to verify compliance with feed and food law, animal health and animal welfare rules.

> **"Food producers should be in a position to demonstrate due diligence in the context of hygiene practices"**

For a food producer's quality management systems to be truly effective, they should have the capacity to identify and trace the distribution route of every single unit of produce that has been identified as unsafe, virtually instantaneously. If a producer were to detect a risk sufficiently early on, and they had robust procedures in place, it is conceivable that they could stop the rot by issuing a wholesale-level recall, rather than a retail-level or user-level one, thereby minimising the reputational damage done to the product. How achievable this is in reality in the case of some methods of food production is, of course, highly questionable.

### Criminal sanctions

As for the potential criminal sanctions, there is a raft of regulations under which the FSAI can seek to prosecute producers who supply contaminated foodstuffs. The *European Communities (General Food Law) Regulations 2007 and 2010* are the most significant from the perspective of the potential penalties that may be imposed. Regulation 5 provides that a food business operator is guilty of an offence if they place unsafe food on the market. Regulation 9 further provides that a food business operator is guilty of an offence if they fail to initiate procedures to withdraw a food where they have reason to believe that it is not in compliance with all relevant food-safety requirements. Regulation 25 stipulates that a person who is guilty of an offence under the said regulations is liable:

a) On summary conviction, to a fine not exceeding €5,000, or imprisonment for a term not exceeding three months, or both, or,
b) On conviction on indictment, to a fine not exceeding €500,000, or imprisonment for a term not exceeding three years, or both.

The 2010 regulations go on to provide that, where a person is convicted of such an offence, the trial court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the convicted party to pay to the FSAI the costs and expenses in relation to the investigation, detection and prosecution of the offence.

The German STEC 104 outbreak has shown us that the possibility of a small, well-run and well-managed food-producing unit single-handedly triggering a deadly pan-European public health incident is not confined to the imaginations of Hollywood scriptwriters. While the risk of being implicated in an outbreak of this scale may be relatively remote, the potential consequences are so stark that they behove the prudent food producer to ensure that all relevant preventative mechanisms and contingency plans have been properly considered and implemented. G

## LOOK IT UP

**Cases:**

- *Donoghue v Stevenson* [1932] AC 562

**Legislation:**

- Council Directive 85/374/EEC (OJ L 210, 7.8.1985, p29)
- *Liability for Defective Products Act 1991* (1991, No 28)
- Council Directive 99/34/EC (OJ L 141, 4.6.1999, p20)
- *European Communities (Liability for Defective Products) Regulations 2000* (SI no 401 of 2000)
- Regulation (EC) No 882/2004 (OJ L 191, 28.5.2004, p1)
- *European Communities (General Food Law) Regulations 2007* (SI no 747 of 2007)
- *European Communities (General Food Law) (Amendment) Regulations 2010* (SI no 498 of 2010)

**Literature:**

- *Surveillance of Dairy Production Holdings Supplying Raw Milk to Farmhouse Cheese Makers for Verocytotoxin Producing E coli O157 and Other VTEC* (FSAI, November 2005)
- *Recommendations for a Practical Control Programme for Campylobacter in the Poultry Production and Slaughter Chain* (FSAI, July 2011)

# NINE TENTHS OF THE LAW?

**A recent judgment has highlighted a legal lacuna that means that lenders will not be able to apply for an order of repossession for the majority of their mortgages that are in default until new legislation is introduced. Gregory McLucas explains**

*Gregory McLucas is a solicitor in Blake & Kenny Solicitors, Galway, specialising in local government law, commercial arbitrations and litigation*

Repossessions of properties are now at a legal standstill as a result of Ms Justice Dunne's High Court judgment on 25 July 2011. In this judgment, Judge Dunne identified that the implementation of section 8 of the *Land and Conveyancing Law Reform Act 2009*, which came into operation on 1 December 2009, has had the effect of repealing section 62(7) of the *Registration of Title Act 1964*, without introducing any saving provision for cases in which this provision applied.

Section 62(7) was the legal provision relied upon by lenders in order to apply to court for an order of possession once a borrower had defaulted on its mortgage. Although chapter 3 of the 2009 act introduces similar provisions for lenders to rely on in this event, these provisions only apply to mortgages after 1 December 2009 (the commencement date for the 2009 act, save section 132).

Accordingly, it was held by Judge Dunne that section 62(7) only continues to apply in a limited number of cases and there is now a lacuna in the law as it now stands.

At present, the implications of this judgment are that there is no right to apply for an order of possession for lenders whose borrowers have entered into a mortgage prior to 1 December 2009 but have fallen into arrears after that date.

These cases (see panel, right) were heard by Judge Dunne at the same time because the issue arising for consideration in each case related to the effect of the repeal of section 62(7) on the various lenders' right to apply for an order of possession as a result of a default by the borrowers.

**THE CASES**

**Judgment of Ms Justice Dunne on 25 July 2011 ([2011] IEHC 275) in:**

- ***Start Mortgages Limited v Robert Gunn and Maura Gunn***
- ***Secured Property Loans Limited v Tom Clair and Mary Clair***
- ***GE Capital Woodchester Homeloans Limited v Colm Mulkerrins***
- ***GE Capital Woodchester Homeloans Limited v Michael & Sinead Grogan***

**FAST FACTS**

- Repossessions of properties are now at a legal standstill as a result of a High Court judgment on 25 July 2011
- The implementation of section 8 of the *Land and Conveyancing Law Reform Act 2009*, which came into operation on 1 December 2009, has had the effect of repealing section 62(7) of the *Registration of Title Act 1964*, without introducing any saving provision for cases in which this provision applied
- The implications are that there is no right to apply for an order of possession for lenders whose borrowers have entered into a mortgage prior to 1 December 2009 but have fallen into arrears after that date

The facts of the cases were similar, in that they all related to mortgages drawn down and registered before 1 December 2009. There were distinguishing aspects to each case. In *Gunn*, the proceedings were issued prior to the repeal of section 62(7) on 1 December 2009. In *Clair*, although the entire loan became due and owing prior to 1 December 2009, the letter of demand for vacant possession and payment of the amount due (hereafter referred to as the 'letter of demand') and the proceedings were issued after that date. In *Mulkerrins*, two letters of demand were sent prior to 1 December 2009, but the proceedings were issued on 18 August 2010. In *Grogan*, although default occurred in November 2008, the actual demand for payment was only made by letter dated 19 January 2010.

In *Gunn*, the bank argued that, because the proceedings were initiated prior to 1 December 2009, the bank was entitled to relief pursuant to section 62(7) on the basis that the section had survived the repeal in this case as a result of section 27(1)(e) and section 2 of the *Interpretation Act 2005*, which provide that a repeal does not prejudice or affect

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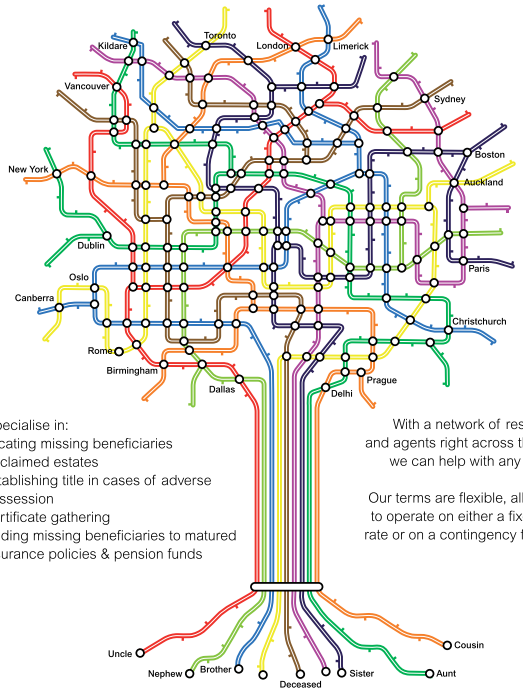


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any legal proceedings pending or any rights acquired or accrued at the time of the repeal. It was also argued that the right to possession of the premises pursuant to section 62(7) was not only acquired by the bank prior to 1 December 2009, but also accrued.

It was submitted on behalf of the defendants in *Gunn* and *Clair* that, as section 62(7) has now been repealed, it could no longer be relied upon by the bank. Moreover, in *Gunn* it was argued that section 62(7) was discretionary in nature because it states that "the court may, if it so thinks proper, order possession". Consequently, it was argued that the bank had no more than a hope or expectation to an order of possession and that this was neither an acquired nor accrued right of possession.

Section 62(6) of the *Registration of Title Act 1964* (before its amendment by virtue of the 2009 act) was relied upon in *Gunn* by the bank to argue that the discretion of the court was severely limited because the wording of section 62(6) indicated that the bank had a right accrued once the mortgage was registered. Accordingly, once the plaintiff had issued the demand for possession, it had a right to issue proceedings and come to court and obtain the order of possession. The right was acquired prior to the repeal and, therefore, the plaintiff had the right to take the proceedings. In *Mulkerrins* and *Clair*, the banks went a step further and said that the right under the mortgage, including the right to possession or the right to sell the property, was 'acquired' upon the registration of the mortgage.

In *Mulkerrins*, counsel for the bank also submitted that, in cases where the new remedies under the 2009 act did not apply, it was necessarily the intention of the Oireachtas to rely on the provisions of the 2005 act, and, therefore, on that basis, the repeal of section 62(7) did not create a lacuna. It was submitted that section 27(1)(c) provides for the preservation of rights, even though proceedings had not issued.

### Judgment

Ms Justice Dunne, having considered the submissions and authorities relied upon by the parties, held that section 62(7) conferred on a registered owner of a charge the right to obtain an order for possession for the purposes of sale prior to its repeal.

Once all the proofs of the lender are in order in relation to its application for an order of possession under section 62(7), the discretion of the court to refuse such an application is severely limited. The right to apply for an order of possession of lands pursuant to section 62(7) is a right saved in limited circumstances pursuant to the provisions of section 27(1) and (2) of the 2005 act, notwithstanding its repeal. However, the right to apply for an order of possession is not accrued by merely the registration of the charge. The lender does not acquire a right to apply for an order under section 62(7) unless and until the principal monies have become due, and that only occurs after the letter of demand has been made.

Accordingly, if the principal monies had become due by 1 December 2009 following a letter of demand issued before that date, then there was no bar to the lender bringing proceedings or continuing proceedings already initiated to recover possession of the secured lands because, in that instance, section 62(7) is saved by section 27 of the 2005 act.

> ***"This development provides borrowers with extra time to try and negotiate with their lender to determine if any compromise can be made"***

However, where the letter of demand is made after 1 December 2009, then the lender has neither acquired nor accrued a right to apply for an order of possession pursuant to section 62(7), and consequently the provisions of section 27 of the 2005 act cannot assist such a lender. Moreover, the similar reliefs for lenders provided for in the 2009 act only apply to mortgages created after 1 December 2009. Therefore, there is a lacuna created by the repeal of section 62(7), in that any lender who did not have an entitlement to apply for an order of possession pursuant to section 62(7) by 1 December 2009 can no longer rely on section 62(7) and are not in a position to rely on the provisions of the 2009 act.

Regarding the cases before the court, Justice Dunne held:

- The facts of *Gunn* came within section 27(1)(e) and (2) of the 2005 act, in that the legal proceedings had been initiated prior to 1 December 2009 and, therefore, could continue as if section 62(7) had not been repealed,
- In *Clair* and *Grogan*, as the letters of demand were made after 1 December 2009, the right to apply for an order of possession had neither been acquired or accrued prior to the repeal and, therefore, the proceedings were struck out,
- In *Mulkerrins*, as the necessary events had occurred prior to 1 December 2009 (the borrower had defaulted and the demand had been made), the proceedings could continue.

### Implications

The implications of this judgment for mortgages entered into prior to 1 December 2009, but which go into default after that date, or mortgages that went into default prior to 1 December 2009 but no letter of demand issued before then, is that the lender has no right as the law currently stands to apply for an order of possession.

As mortgage lending has come to a virtual standstill since the property crash in 2007, it would seem that the vast majority of mortgages on the various lenders' loan books predate the repeal of section 62(7) on 1 December 2009.

Consequently, lenders will not be able to apply for an order of repossession for the majority of their mortgages that are in default until new legislation remedying this lacuna is introduced.

The further implication of this for the banks is that this restriction will be a factor to be considered for any prospective investors in determining as to whether they will provide private investment into the banks.

The implications for the borrowers would appear to be twofold. This development provides borrowers with extra time to try and negotiate with their lender to determine if any compromise can be made in order for them to begin repaying their loans.

It will also give borrowers breathing space to try and sell the property in the open market. If they can, the bank may see any prospective purchaser as 'a bird in the hand being better than two in the bush' and accept the purchase price obtained in full and final settlement of the borrower's liability to the bank. G

## LOOK IT UP

**Cases:**

- *Anglo Irish Bank v Fanning* [2009] IEHC 141
- *Bank of Ireland v Smyth* [1993] 2 IR 102.
- *Birmingham Citizens Permanent Building Society v Caunt* [1962] CH 883
- *Chief Adjudication Officer v Maguire* [1999] 1 WLR 1778
- *Director of Public Works v Ho Po Sang* [1961] AC 901
- *Northern Banking Company Limited v Devlin* [1924] 1 IR 90
- *O'Sullivan v Superintendent in Charge of Togher Garda Station* [2008] 4 IR 212

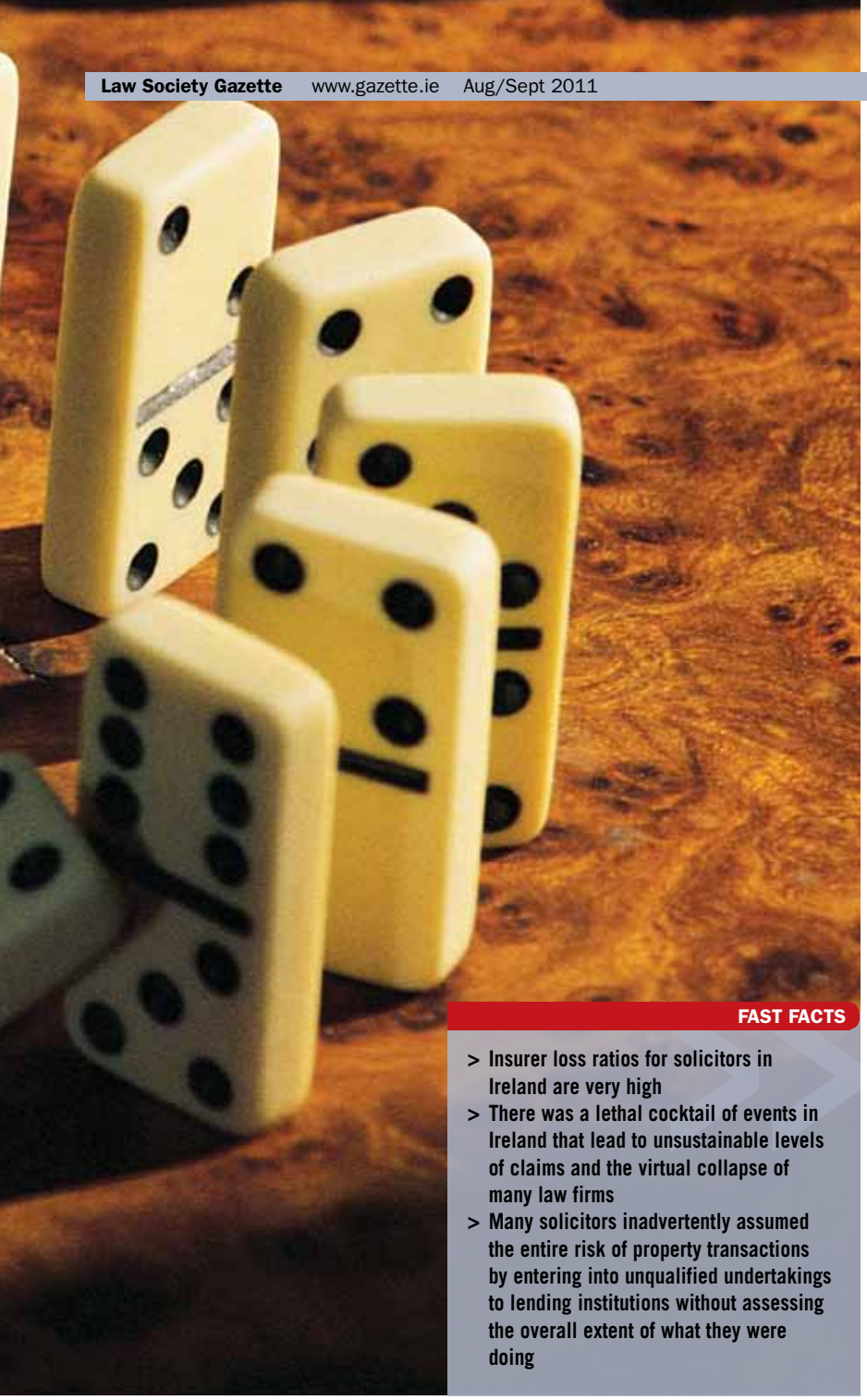
**Legislation:**

- *Interpretation Act 2005*, section 27
- *Land and Conveyancing Law Reform Act 2009*, section 8 and chapter 3
- *Registration of Title Act 1964*, section 62

*Anne Neary is a solicitor and a risk and management consultant to the legal profession*

**It is easy to place the blame for the PII crisis solely on the solicitors' profession. However, there are many complex factors that created an environment that fostered these claims, says Anne Neary**

# CAUSE AND EFFE



**FAST FACTS**

- Insurer loss ratios for solicitors in Ireland are very high
- There was a lethal cocktail of events in Ireland that lead to unsustainable levels of claims and the virtual collapse of many law firms
- Many solicitors inadvertently assumed the entire risk of property transactions by entering into unqualified undertakings to lending institutions without assessing the overall extent of what they were doing

# CT

We are all very familiar with the extent of the crisis with regard to professional indemnity. Insurer loss ratios for solicitors in Ireland are very high – for some insurers, the losses are up to 11 times income (for every €100 received in premium income, some insurers are paying out €1,100 in claims). Last year, four leading insurers left the solicitors' PI market, and this year the Solicitors Mutual Defence Fund became insolvent, directly as a result of the number and value of claims made against solicitors.

It is important to understand the context of the times that gave rise to these claims. There was a lethal cocktail of events in Ireland that lead to unsustainable levels of claims and the virtual collapse of many law firms. It is the combination of these events – some of which are not immediately obvious – together with the property downturn that had unprecedented adverse consequences on the Irish legal profession. These events included the adoption of the certificate of title system, the role of the banks, the nature of solicitors' undertakings, the volume of commercial property transactions, the departure of lenders from traditional lending criteria, the effect of NAMA, the under pricing of conveyancing, the pressure from clients, the economic downturn and poor practice management and business skills.

Some of these factors are unique to Ireland, and others are symptomatic of problems being experienced by lawyers all over the world. But no other legal profession has experienced the same extraordinary number and value of claims, 70% of which relate to property transactions.

It is easy to place the blame solely on the solicitors' profession. However, there are many complex factors that created an environment that fostered these claims. It is important to look at each of these factors to understand what happened.

### Certificate of title

The certificate of title system was introduced in the 1980s. This system replaced the traditional three-solicitor closing with a two-solicitor closing for residential property transactions.

Prior to the introduction of this system, one solicitor acted for a vendor, a second solicitor acted for a purchaser and the third solicitor acted for the financial institution.

The vendor's solicitor sold the property, the purchaser's solicitor ensured that the client's interests were protected by obtaining good title, and the financial institution's solicitor ensured that the lender received good title and that its security was registered. The purchaser was responsible for his own solicitor's fee and also that of the financial institution.

Over time, a strong feeling developed that clients were paying two sets of costs unnecessarily. The solution reached was to permit one solicitor to act for both the lending institution and the purchaser. Under the certificate of title system, the lending institution accepted an undertaking from the purchaser's solicitor to register its security and certify that the title to the property was good. The financial institution then released the loan cheque to the purchaser's solicitor, and relied on his undertaking to complete the transaction.

The net effect was that, in the main, lending institutions did not pay the purchaser's solicitor to safeguard their interests – the purchaser was expected to pay those costs directly.

### The banks

Once the lending institutions had a signed undertaking from a solicitor, they relied on that undertaking to safeguard their interests. There was little due diligence of their loan portfolios, poor follow-up on the undertakings they received from solicitors, no spot checks to ensure that their mortgages were registered – and often their records were poorly kept and out of date.

The certificate of title system was made possible by the nature of solicitors' undertakings, which were universally accepted by lending institutions and which contributed to the lethal cocktail. The undertaking required of a solicitor in a property transaction is particularly onerous and, in some instances, required a complex set of actions to secure the lender's interests.

Solicitors were, and still are, required to carry high levels of professional indemnity insurance. Consequently, financial institutions felt secure in relying on undertakings and, to some extent, absolved themselves from responsibility to ensure that their interests were protected, because they had recourse to this insurance in the event of a breach of the undertaking.

> *"Any defect in the lender's security compromised its chances of recovering the loan, and, in these cases, the lenders looked to solicitors for compensation"*

### Commercial property

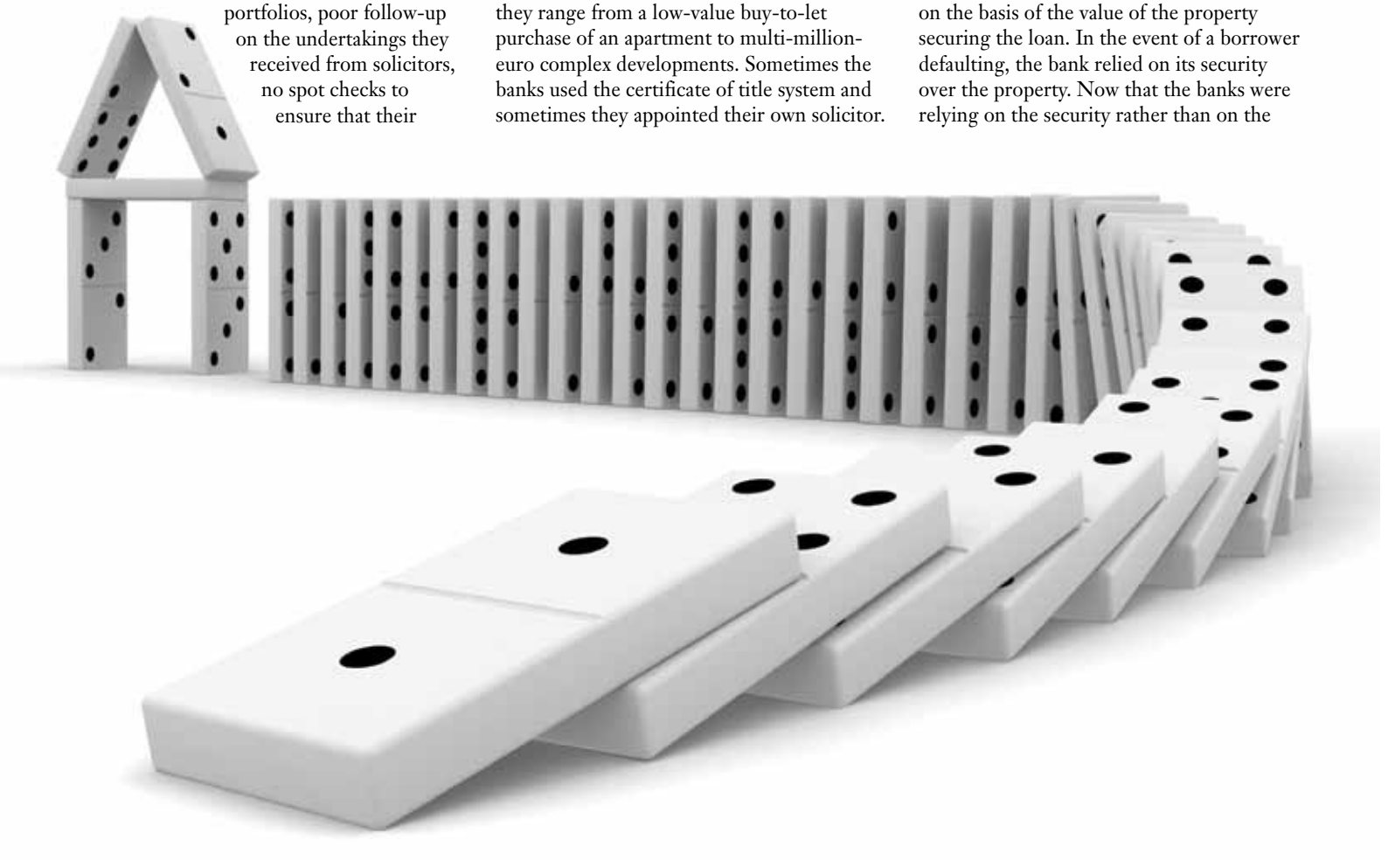
As the major banks started lending at ever-increasing rates, the certificate of title system was extended for use in many commercial property transactions. The problem with commercial property transactions is that they range from a low-value buy-to-let purchase of an apartment to multi-million-euro complex developments. Sometimes the banks used the certificate of title system and sometimes they appointed their own solicitor.

Acting on behalf of lending institutions in commercial transactions is even more complex than acting in residential transactions and requires specialist knowledge of both commercial and property law. However, where lenders used the certificate of title system for commercial transactions, they accepted undertakings from any solicitor, regardless of their expertise or experience, once they carried professional indemnity insurance. This permitted some solicitors to engage in work for which they were not adequately qualified.

### Lending criteria

The gradual departure of the lending institutions from their traditional lending criteria over a number of years had significant, but unanticipated, consequences for solicitors. In the past, the financial institutions lent funds according to the ability of the borrower to repay the loan. They carried out due diligence in relation to their borrowers and ensured, in so far as was possible, that they extended loans to people who could afford to repay them.

Over time, the banks changed their criteria and began lending not on the basis of borrowers' ability to repay the loan, but on the basis of the value of the property securing the loan. In the event of a borrower defaulting, the bank relied on its security over the property. Now that the banks were relying on the security rather than on the



creditworthiness of the borrower to protect their interests, the whole emphasis shifted and the securitisation of loans became paramount.

However, this shift in emphasis had serious repercussions for the legal profession – but there was very little awareness of what those repercussions might be. In the past, security documentation was a secondary issue, as there were very few defaults, and was considered to be more of a back-up than a primary part of the transaction. Where lenders now relied primarily on the property, any defect in the lender's security compromised its chances of recovering the loan, and, in these cases, the lenders looked to solicitors for compensation.

### The NAMA effect

When NAMA was set up to take loans off the books of financial institutions, the effect was to crystallise losses, and financial institutions were forced to face up to the problems in their property portfolios. Financial institutions on the brink of collapse, desperate to find scapegoats, have started the process of pursuing solicitors, who in effect have become the 'last man standing'.

The lending institutions have now commenced a due diligence examination of their non-NAMA loan portfolios to ascertain whether their loans are adequately secured. There is evidence that some of the security documentation is defective but, as the due diligence process of assessing the title and security work is still ongoing, it is not possible to quantify the number of claims that may arise when this process is completed.

### Cut-price conveyancing

Solicitors now find themselves in the difficult situation where they are being sued for work for which they were not paid under the certificate of title system. However, because they gave undertakings to carry out security work, they are responsible for the banks' losses where the security is defective.

At the same time that solicitors were not paid by the banks or their clients for the security work, they were subjected to intense pressure from clients to keep conveyancing fees low. They also competed with each other to such a degree that a €999 conveyancing fee became standard throughout the country. These low fees meant that solicitors were not in a position to apply sufficient resources to finalising conveyances.

Additional pressure came from clients, who were afraid of losing deals, to close transactions at all costs and to ignore title defects or other problems that could delay closing.

### Economic downturn

The suddenness and severity of the economic downturn, with the consequent fall in property values, exposed both systemic and operational weaknesses in conveyancing procedures, practice management and risk-management systems.

During the boom, many solicitors had to deal with increasing volumes of transactions, pressures from clients, the demands for ever-lower fees, and the onerous obligations imposed on them by the certificate of title system. At the same time, transactions generally became more complex due to additional statutory and regulatory obligations.

The practice of law became a business and imposed new demands on solicitors. Many didn't have the business systems or the business skills to cope.

Up to 2006, there was very little understanding of practice or risk management in firms throughout the country. Many in the profession were unprepared for the scale of the property collapse and were unaware of the direct consequences for them. Few firms had registers of undertakings to record outstanding undertakings and, with the best will in the world, without these systems, undertakings were difficult to track and discharge. The boom caused delays and difficulties for the Property Registration Authority (formerly the Land Registry), where registrations were taking up to four years to complete in certain parts of the country.

*"Financial institutions on the brink of collapse, desperate to find scapegoats, have started the process of pursuing solicitors, who in effect have become the 'last man standing'.*

The effect of this delay was to postpone the resolution of any security or title issues, exacerbating any problems in the meantime.

In conclusion, many solicitors inadvertently assumed the entire risk of property transactions by entering into unqualified undertakings to lending institutions without assessing the overall extent of what they were doing. In effect, they underpinned the property market and have become the last resort for lenders unable to recover from their borrowers.

There is a profound shift in understanding and in culture in the solicitors' profession. There is a general acceptance that we need to adopt business systems and risk-management procedures and a determination to move forward and learn from the lessons of the past.

# RESTORATION drama

*Brian Moloney is a solicitor and trademark attorney. He would like to thank Ray Ryan BL for his assistance with this article*

**Close to 5,000 companies are being struck off the Register of Companies each year. Depending on the nature of the strike-off, it is possible for companies to reapply to be restored to the Register. Brian Moloney assesses their chances – and shows that restoration is no comedy**

Being struck off the Register of Companies is an all too frequent occurrence, having serious and potentially costly consequences for a company, of which the directors, shareholders and their professional advisers should be made aware. The Revenue Commissioners estimate that approximately 5,000 companies are being struck off each year.

There are two types of strike-off – voluntary and involuntary. Where the company ceases to trade and has no outstanding creditors, it can request to be struck off the register, referred to as a voluntary strike-off. Section 311 of the *Companies Act 1963*, as amended, deals with this scenario.

An involuntary strike-off can happen in a variety of scenarios. For example, the Registrar of Companies is empowered under section 311 to strike off a company for a variety of reasons, including a company not carrying on business or, for instance, where the liquidator of a company being wound up has failed to file returns within six months. Section 12 of the *Companies (Amendment) Act 1982* empowers the registrar to strike off a company where it has failed to file an annual return; or where the company has received a notice in writing from the Revenue Commissioners that it has failed to deliver a statement that is required of it under section 882 of the *Taxes Consolidation Act 1997* – otherwise referred to as a Revenue strike-off.

Once a company is dissolved, it ceases to exist as a 'legal person'. The consequences are very serious for a company that continues to trade, as, on its dissolution, the company's assets become the property of the State. The company ceases to exist at the date of the dissolution and strike-off, and the owners lose the protection of limited liability status if they continue to trade. Such directors would face personal liability, and it is open to the Director of Corporate Enforcement to make an application to the High Court to seek a disqualification order.

Where a company has been struck off for a period not exceeding 12 months, it can make an application for an administrative restoration directly to the Registrar of Companies. This is a relatively straightforward process. The main focus of this article, however, is on a situation where a company has been struck off involuntarily for a period exceeding 12 months. Restoration to the Register of Companies is governed by the *Companies (Amendment) Act 1982* and section 311A of the *Companies Act 1963*.

> ***"Assuming that one is successful in their application, one must take up the order within three months of it being made – otherwise a fresh restoration application will be necessary"***

## Back on track

Where the company has been struck-off involuntarily for a period exceeding 12 months – but not exceeding 20 years – section 12B(3) of the *Companies (Amendment) Act 1982* allows the company, a member or, indeed, a creditor (including the Revenue Commissioners) to apply to the High Court for restoration.

Order 75 rule 4(o) of the *Rules of the Superior Courts* provides that such an application must be made to the High Court by way of petition. The company restoration

application is made by way of motion and petition, and is grounded on affidavit. Company restoration applications are currently listed in the Chancery List in the High Court on Monday mornings.

The legislation requires that the following State authorities be on notice of the application: the Registrar of Companies, the Minister for Finance, the Chief State Solicitor's Office, the Revenue Commissioners, and the Revenue solicitors.

The first thing to attend to, however, is that the company or its accountant file all outstanding returns and accounts, and pay the late filing fee – currently €100. A further €3 accrues for every day that the returns and accounts are not filed, although this is capped at a maximum of €1,200 per return. Late filing fees can, therefore, be quite high. On receipt of same, and assuming the outstanding accounts and filings are in order, a director of the company, or either its solicitor or accountant, should write to the Companies Registration Office and request that it provide

**FAST FACTS**

- Being struck off the Register of Companies has serious and potentially costly consequences for a company
- Approximately 5,000 companies are struck off each year
- There are two types of strike-off – voluntary and involuntary
- Once a company is dissolved, it ceases to exist as a 'legal person'. The consequences are very serious for a company that continues to trade, as, on its dissolution, the company's assets become the property of the State
- Applying for restoration to the Register of Companies following involuntary strike-off
- The importance of taking up the order without delay

"I say, Hugh! The cards say we can get back on the Register"

a 'letter of no objection' – the first step in any successful restoration application.

In *Re New Ad Advertising Company Limited*, Laffoy J expressed the view that the court had a very limited discretion to dispense with the requirement that outstanding returns be delivered to the Registrar of Companies in accordance with an order made pursuant to section 12B(5). Laffoy J stated that the legislative intent in enacting that requirement was to ensure that the striking-off mechanism, as a deterrent against a breach of company law, is not devalued. Laffoy J stated that it *would* be devalued if a company could be restored to the register without the breach that gave rise to its striking-off being required to be remedied.

### Success

In the event that the statutory proofs are in order, the judge will exercise his or her discretion as to whether the order should be granted. On hearing the application, the court may, if satisfied that it is just, restore the company to the register.

Assuming that one is successful in their application, one must take up the order without delay. An office copy must be served on the Companies Registration Office within three months of the making of the order, together with the €15 filing fee. If the order is not delivered within this timeframe, a fresh restoration application will be necessary. Practitioners should also be aware, when advising a company, of the high costs and outlays that will be incurred in making a company restoration application in the High Court"

## FILING DOCUMENTS WITH THE HIGH COURT

Once the 'letter of no objection' from the Companies Registration Office is at hand, the next step is to draft the grounding affidavit, notice of motion and the petition. These documents then have to be stamped and filed in the Central Office of the High Court, and a date for the hearing will be assigned. (Practitioners should ask for a date of hearing of at least one month to six weeks from the time of application, for reasons outlined below.) Documents to be filed in the Central Office of the High Court must, of course, be filed in person, which may entail the use of town agents for practitioners based outside Dublin.

Stamp duty totalling €182 will be incurred on these three documents, together with commissioner for oaths costs associated with the grounding affidavit and its exhibits, and also town agent fees for those practitioners based outside Dublin.

The grounding affidavit should contain, among other things, paragraphs averring to:

1) The date of incorporation of the company,
2) The objects of the company,
3) The share capital of the company,
4) A list of the directors,
5) The reasons for the strike-off,
6) The reasons why the company wishes to be restored to the Companies Register,
7) Whether or not the company has continued to trade,
8) An averment that neither the Minister for Finance nor the State has, either directly or indirectly, intermeddled in any of the assets of the company, and that the company makes no claim against the minister arising from the provisions of the *State Property Act 1954*, and
9) An undertaking both on the petitioner's behalf, and on behalf of the company, to pay any and all outstanding taxes within one month of any order to restore the company being made by the court.

The grounding affidavit will also generally exhibit the following:

1) Copy certificate of incorporation,
2) Copy memorandum and articles of association,
3) Print-off from the CRO website, showing the company as being struck-off,
4) Copy up-to-date filed annual returns, and
5) Copy 'letter of no objection' from the Companies Registration Office.

Once the filed copies have been received back, a certified copy of the petition, notice of motion and the grounding affidavit must be served, together with the exhibits, on the Revenue Commissioners, the Revenue solicitors, the Minister for Finance, the Chief State Solicitor's Office and the Companies Registration Office.

Assuming the documents are in order, the Revenue solicitors will communicate with the Revenue Commissioners, who will then ordinarily issue a 'letter of no objection'. Practitioners should note that, in practice, this can take a number of weeks. The office of the Minister for Finance, if satisfied with the paperwork, will instruct the Chief State Solicitor's Office to issue a 'letter of no objection' on its behalf. Again, this can take a number of weeks. Practitioners should note that the Revenue solicitors currently charge €530 to cover their legal expenses, while the Chief State Solicitor's Office charges €350 to cover its expenses in providing the 'letter of no objection'.

A second affidavit exhibiting these two additional 'letters of no objection' must be sworn, stamped and filed prior to the hearing of the application. This is why it is prudent to allow at least a month, if not slightly longer, so that these two letters can be obtained. Otherwise, you could be faced with seeking an adjournment while you wait for this paperwork to arrive, which will obviously add to costs.

should be aware of this requirement. All outstanding returns, if not already filed, should be submitted to the registrar within one month of the making of the order. An office copy of the order should also be sent to the Revenue solicitors and the Chief State Solicitor's Office, so that they can close their respective files. This is a procedural, and not statutory, requirement.

The effect of restoration to the Companies Register is that the company shall be deemed to have continued in existence as if its name had not been struck off.

Practitioners should also be aware, when advising a company, of the high costs and outlays that will be incurred in making a company restoration application in the High Court, as outlined in the panel.

The company will likely have good reason for wishing to be restored. For instance, the company may own property that the directors and shareholders may wish to sell. Therefore, a company restoration application can make sound financial sense.

**"A company restoration application can make sound financial sense"**

A good example of this can be seen in *Re Eden Quay Investments Limited*, where the directors of a company struck off some 18 years previously successfully applied to have the company restored. The company held some 514,256 shares in Hibernian Transport Companies Limited, which were not worthless, as had originally been thought. The Supreme Court held that the shareholders were entitled to share in a surplus of some IR£2.5 million arising from the liquidation of Hibernian Transport Companies Limited.

*This article should be read in conjunction with 'The art of restoration' by Elaine Grier BL that appeared in the Aug/Sept 2006 issue (p22).*

## LOOK IT UP

**Cases:**

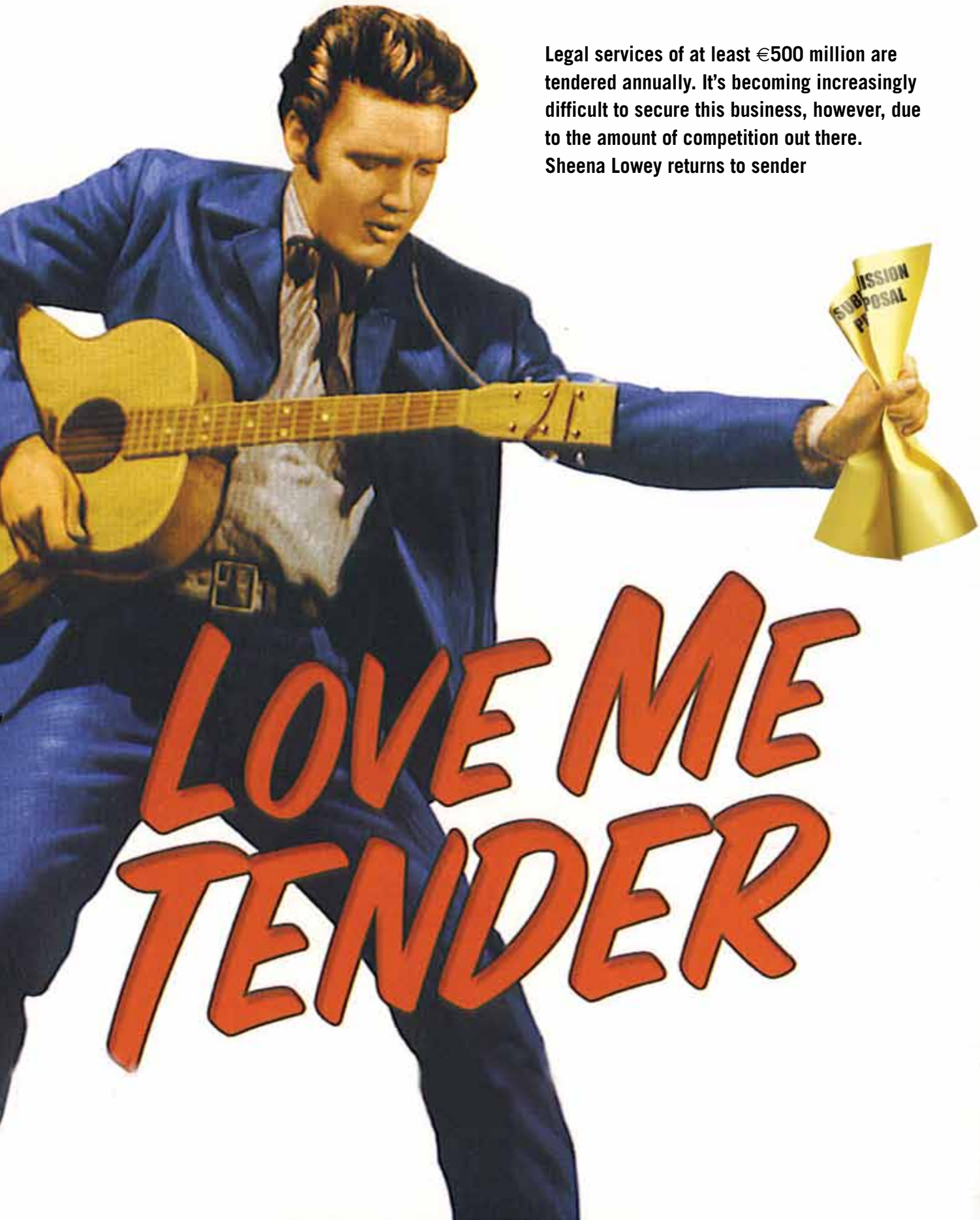
- *Hibernian Transport Companies Ltd* (1994) 1 ILRM 48
- *Re Eden Quay Investments Limited, The Irish Times,* 12 April 1994
- *Re New Ad Advertising Company Limited* [2006] IEHC 19

**Legislation:**

- *Companies Act 1963,* as amended, section 311
- *Companies Act 1963,* section 311(8)
- *Companies (Amendment) Act 1982,* section 12B(3)
- *State Property Act 1954*
- *Taxes Consolidation Act 1997, section 882*

**Literature:**

- Companies Registration Office, 'Court order restoration', at www.cro.ie/ena/court_order_restoration.aspx
- Grier, Elaine, 'The art of restoration', *Law Society Gazette,* vol 100, no 7, August/September 2006




**Legal services of at least €500 million are tendered annually. It's becoming increasingly difficult to secure this business, however, due to the amount of competition out there. Sheena Lowey returns to sender**

*Sheena Lowey is a bid and marketing specialist. She is an accredited member of the Association of Proposal Management Professionals*

Tendering is fast becoming a very important part of business development, where firms of all sizes are vying for market share in what has become an increasingly competitive market place. Tendering is a competitive process where services are required by one party (the buyer) and are sought from another (the supplier). Public authorities are trained to select the best supplier, who will not only meet, but exceed, their needs – and at a reasonable cost. Legal services to a value of at least €500 million are tendered annually – many contracts fall below the €25,000 threshold that requires the tender to be advertised on the e-tenders website. As those of you who tender know only too well, it is becoming more and more difficult to secure this business.

When considering tendering, think about it as part of your sales and marketing strategy, and not merely filling in a questionnaire or writing a document. People too often focus on 'answering the questions' before (i) building knowledge and relationships, (ii) identifying what the buyer wants, (iii) understanding the subtle nuances behind the process, or (iv) considering ways to stand out from your competitors.

Each section a tenderer submits creates an impression of how the bidder might perform as a supplier. Researching the precise needs of a public-sector buyer before embarking on the tender process can only be done through meeting a prospective client in advance of a tender being submitted.

Law firms should organise – either individually or as a consortium – and agree a list of potential public-sector prospects to whom they would like to supply legal services. Who buys legal services in Munster, for example? What types of legal services are commonly required?

The next step is to learn everything there is to know about the prospect, the current supplier, the challenges they face, where your services might add value, and how they like to conduct business, including everything from frequency of communication to billing. Having gathered this information, it is easier to respond to 'requests for tenders' (RFTs), being in a better position to target your responses based on a greater knowledge of your client. This will increase your chances of success.

**FAST FACTS**

- **Think about tendering as part of your sales and marketing strategy**
- **Build knowledge and relationships, identify what the buyer wants, understand the subtle nuances behind the process, and consider ways to stand out from your competitors**
- **Your submission must comply with every protocol in the 'request for tenders' document**
- **It is important to be selective about the tenders to which you respond**

Having a clear understanding of your prospect, establishing a rapport and getting on their radar is far more important than rushing headlong into the process and prematurely answering a tender for the purpose of 'going through the motions'.

It is essential not to underestimate the work involved in tendering. Whether responding to an RFT or making a strategic approach, three key elements should be assessed:

- Potential financial reward – measure against the estimated time/cost to prepare the bid,
- Synergy of your business objectives and culture with theirs – this can be the make-or-break of a successful working partnership,
- Why the bid is being tendered – tenders can be used to gather your ideas for free, so research at this stage is time prudently invested.

Each tender comprises a unique blend of ingredients to be deciphered. To reach the presentation stage, which provides an opportunity to establish a natural rapport between you and the awarding authority, and vice versa, your tender document must comply with every protocol in the RFT document. Remember that buyers want business partners, not just lawyers.

***"At the risk of generalisation, the language solicitors use tends to assume the reader is a legal practitioner with equal familiarity with the associated jargon"***

### Write in a compelling manner

It is important to use clear and vivid English and to answer the questions fully.

Poorly written, incomplete and badly formatted bids will create the wrong impression, in particular if your competitors put their documents together with far more attention to detail.

A punchy executive summary of the bid at the beginning of the tender document is key to gaining a competitive edge. It sets the scene before the evaluators launch into the turgid task of reviewing many submissions. The executive summary should include:

- A brief outline of your firm's understanding of the client's requirements and your proposed solution, having regard to the RFT,
- Citations of work of a similar nature to that required by the awarding authority (to demonstrate your track record),
- A brief synopsis of your key team players, their roles and their relevant experience,
- Your fee proposal, and, finally,
- Your unique selling propositions – why are you better than your competitors?

However good the writers are within your firm, you will need a lead writer to pull together all the efforts, including standard requirements and the specially written sections. This person should make the document read as though it was the product of one writer.

At the risk of generalisation, the language solicitors use tends to assume the reader is a legal practitioner with equal familiarity with the associated jargon. When it comes to other professions, an engineer is technical and esoteric, while accountants prefer the comfort of numbers. Bid writers have none of these hang-ups and have been trained in the art of persuasive writing.

Vital components for tendering success are your firm's ability to communicate your passion for the target client and their work, an empathy with the client and, finally, writing in a compelling way about your firm's business proposition.

### A methodical response

Prepare a bid plan template and documentation production schedule and implement it ruthlessly for all tender competitions. Appoint your best writer to be trained as a bid manager. Responding to an invitation to tender (ITT) or a RFT at the last minute is a recipe for disaster and often a waste of scarce resources. Use external bid management consultants where appropriate. These people bring a new skill-set and discipline to the process.

There are many approaches that work, but those with the greatest success rate tend to follow a pattern:

- RFT documentation is sent to the in-house or external bid specialists immediately on receipt.
- An assessment of the opportunity is made by the partner(s) responsible for the area(s) of expertise sought.
- A bid or no-bid decision is recommended for consideration by the managing partner.
- If a decision is taken to bid, a team is formed, made up of those with the greatest knowledge of the client/sector and experience of the work-type specified in the RFT.
- Contact is made with the supplier for more information and to clarify any points. With gentle probing, you can unearth any number of issues not in the tender – but be careful not to expose too much about your firm.
- Writing tasks are assigned and coordinated by the appointed bid manager.
- Reproduction of standard items (project understanding, project execution, quality systems, project team, and so on) is assembled.
- Production of a draft for distribution and comment.
- Final edit and sign-off at partner level.
- Design and customisation of bid documentation agreed.
- Despatch and delivery before deadline.

*"Vital components for tendering success are your firm's ability to communicate your passion for the target client and their work, an empathy with the client and, finally, writing in a compelling way about your firm's business proposition"*

While every tender response should be tailored to the specific prospect, there are some parts that do not need to be written from scratch. It is wise, therefore, to invest in the creation of a bid library that will contain 'boilerplate' sections, often requested in tenders, that can be used time and time again. Templates such as an executive summary, CVs, policy documents – for example, quality, environmental, health and safety – do not change that often, but simply require tailoring for each tender submission. However, you should be vigilant when lifting sections from previous tenders.

### A winning team

The team's composition should be flexible. What is important is that everyone in the bid has a defined role and that responsibility for doing the work is allocated to the most appropriate level. Therefore, there's no need to include three partners when you really only need one.

Cascade the work to senior associates and solicitors, not just because this is the best cost solution for the buyer, but it reflects what will often happen in practice. The bottom line is that your bid team should not be carrying any passengers.

### Looking good

We live in a visual age. So, no matter how good and persuasive the written word, your document will lose impact without colour and design input.

When planning your tender, make sure that there is sufficient time for the bid submission document to be designed in an eye-catching and attractive way, making graphics and photos relevant to the buyer and your offering. Many firms have this design facility in-house, but if you do not, allow additional time for this work to be outsourced.

Good design makes it easy for the evaluators to read and navigate their way through your bid (and to award those all-important marks), so enhancing the presentation of the bid document creates a positive impression that you care about how the awarding authority perceives you and that you have gone the extra mile in terms of professional presentation.

As well as being visual, we are also tactile beings. Make sure that the covers of your document are a thick board and the pages are of high-quality vellum, so that your document feels right and looks weighty.

### Get feedback and use it

Always know why you won and find out why you lost. Feedback is vital for refining your bid strategy, so make time for the debrief, to which you are entitled. In a changing and ever-more competitive market, it is the committed, innovative and unequivocally

### BID OR NO BID?

**It is important to be selective about the tenders to which you respond. Therefore, thought should be given to how much the tender will cost you in terms of the cost of submitting a bid, whether you have the necessary resources available, and whether the work is right for your firm. Many firms are reluctant to turn down invitations to tender, although an invitation can be turned down positively, allowing you to gain credibility, while leaving the door open for possible future relationships.**

**For example, if a tender is valued at €40,000 and it costs you €10,000 to compile the bid document, is it a commercially viable proposition to bid?**

**So, just because you have been 'invited' to bid or had a 'request', or simply because you feel you ought to appear interested, does not mean that you are compelled to respond.**

**Challenge yourself as to whether to bid or not by asking the following questions:**

- **Have we ever had any previous relationship with this organisation?**
- **Have we expressed an interest in working with them through meeting them recently?**
- **Do we know how much business is there to explore?**
- **Can we get to talk to the key people in the prospect's organisation?**
- **Would they put us in conflict with existing clients of the firm?**
- **Can we provide the services they need?**
- **Do we need to secure the services via a joint venture with another firm?**
- **What is an acceptable profit margin for this business?**
- **Who, if any, are the incumbents?**
- **What are the service delivery gaps where you could add value?**

**ANALYSE THIS**

**Before tendering, consider the following:**

- **What percentage of your business has been won via public tendering?**
- **Has your firm registered on all online tender websites relevant to your services/sector?**
- **Is there someone in the firm responsible for identifying (proactively) and monitoring (daily) tenders and other new business opportunities?**
- **What percentage of tenders does your firm currently win? It should be at least one out of every three tendered. Is it in line with competitors or the sector?**
- **Is the cost of preparing tenders proportionate to the value of the tender?**
- **Is your firm fully familiar with national and EU procurement rules and guidance, and with the new RFT template documents and contracts for service?**
- **Do you have a comprehensive understanding of the elements of a typical tender process and the 'role' of each stage, for example, expression of interest (EOI), pre-qualification questionnaire (PQQ), invitation to tender (ITT), presentation/interview?**
- **Equally, do you have a complete grasp of the selection and evaluation award criteria used and their importance?**
- **Does your firm have tried-and-tested processes in place for each step of the tender process?**
- **Are there personnel resources within your firm who are skilled in, and responsible for, tendering?**
- **Does your firm always ask for a debrief? Is it led by someone independent of the tender team? What facts and feedback have emerged from any debriefs?**

determined law firms that will reap the rewards, because they have acted on the feedback they receive. It is also important to share the feedback with your colleagues. One area of importance is pricing. If a succession of debriefings suggests that your fee structure continues to be uncompetitive, do something about it before you submit your next bid.

The Government has signalled that it intends to introduce what is called a 'framework agreement' for legal services from 2012. So, instead of public buyers issuing separate tenders for discrete elements of legal services, all buyers will be required to use only those solicitors and barristers who have pre-qualified to be a part of the framework agreement. Your challenge is to ensure that your practice – perhaps in a consortium – is in the framework. If you are not, you will be debarred from getting any public sector work for at least five years. G


# LAW SOCIETY
## PROFESSIONAL Training

| DATE | EVENT | DISCOUNTED FEE* | FULL FEE | CPD HOURS |
|---|---|---|---|---|
| **13 Sept** | **Law Society Skillnet:** Impressive Presenting for Solicitors | €202 | €270 | 4.5 Management & Professional Development Skills (by Group Study) |
| **21 Sept** | **Law Society Skillnet:** Growing and Marketing a Solicitor's practice | €180 | €240 | 4 Management & Professional Development Skills (by Group Study) |
| **23 Sept** | **Law Society Professional Training** in partnership with the **Employment and Equality Law Committee** present: **Employment Law Update 2011 – Essential Know-How for all Practitioners** | €158 | €210 | 3.5 General (by Group Study) |
| **29 Sept** | **Law Society Skillnet** in partnership with the **Society of Trust and Estate Practitioners (STEP)** present: **Legislation and Practice Update 2011** | €180 | €240 | 4 General (by Group Study) |
| **13 Oct** | **Law Society Professional Training** in partnership with the **Conveyancing Committee** present the **Annual Property Law Conference 2011** | €180 | €240 | 3 General (by Group Study) **plus** 1 Regulatory matters (by Group study) |
| **3 Nov** | **Law Society Professional Training** in partnership with the **Business Law Committee** present: **Annual Contract Law Update 2011** | €112 | €150 | 2.5 General (by Group Study) |
| **24 Nov** | **Law Society Finuas Network** in partnership with the **Irish Tax Institute** present **International Financial Services – Ireland's Role, the challenges and the future** | €112 | €150 | 2.5 General (by Group Study) |
| **25 Nov** | **Law Society Professional Training** in partnership with the **In-house and Public Sector Solicitors Committee** present their **Annual Conference 2011** | €135 | €180 | 2 Management and Professional Development Skills **plus** 1 Regulatory matters (by Group study) |
| **29 Nov** | **Law Society Professional Training** in partnership with **Solicitors for the Elderly Ireland** present the **A to Z of Enduring Powers of Attorney** | €135 | €180 | 3 General (by Group Study) |
| **2 Dec** | **Law Society Professional Training**: Governance Risk and Compliance Seminar | €180 | €240 | 3 Management and Professional Development Skills **plus** 1 Regulatory matters (by group study) |
| **Ongoing** | **Law Society Skillnet** in partnership with **CIMA** present an online **Certificate in Business Accounting** | €670 | €895 | Full Management & Professional Development Skills requirement for 2011 (by eLearning) |
| **Ongoing** | Suite of eLearning courses<br>• **How to create an eNewsletter - €90 (reduced from €150)**<br>• Touch typing - €40<br>• PowerPoint – all levels – €80<br>• Microsoft Word – all levels - €80<br>• Excel for beginners - €80 | To register or for further information email: Lspt@lawsociety.ie | | Full Management & Professional Development Skills requirement for 2011 (by eLearning) |

**For full details on all of these events visit webpage www.lawsociety.ie/Lspt or contact a member of the Law Society Professional Training team on:**

**P:** 01 881 5727 **E:** Lspt@lawsociety.ie **F:** 01 672 4890

*Applicable to Skillnet members/Public sector subscribers

At the recent Irish Women Lawyers' Association gala dinner were *(l to r)*: Tracey Donnery (programme manager, Skillnets Ltd), Anne Harnett O'Connor BL, Ms Justice Maureen Clark (president), Attracta O'Regan (head of Law Society Skillnet), Máire Whelan SC (attorney general), Michelle Ní Longáin (solicitor and chair of the Law Society Skillnet Steering Committee) and Maura Butler (vice-chairperson, IWLA). This collaboration marked a historical first for Law Society Skillnet and the Bar Council

The Barrister Transfer Process concluded its Essentials of Legal Practice Course 2011 at Blackhall Place from 4–2 July, with 12 barristers taking part. The course was coordinated by the CPD Scheme Unit, comprising Anthea Coll (scheme executive), Sharon Boggans (scheme administrator) and Seana Kevany (assistant administrator)

# Waterford solicitors welcome Tall Ships

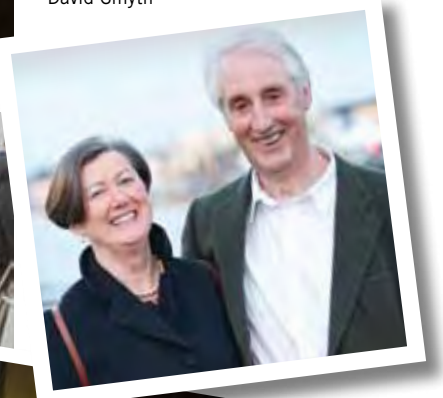
ALL PICS: GARRETT FITZGERALD PHOTOGRAPHY

At a presentation to Judge Bill Harnett (retired) by Waterford's solicitors were *(l to r)*: Tom Treanor (retired District Court clerk), Donal O'Connell, Derry O'Carroll, Gerard O'Herlihy (president, Waterford Law Society), Judge William Harnett (retired), John Purcell and Jack Purcell (District Court clerk)

On board the *Wylde Swan* were Leona McDonald *(left)* and Rosa Eivers

Enjoying the arrival of the tall ships to Waterford on 30 June 2011 were Morette Kinsella and David Smyth


Gerard O'Herlihy (president, Waterford Law Society) and Kieran Moran (vice-president, Southern Law Association) prepare to board the *Wylde Swan* at the Tall Ships reception in Waterford



Sarah Power, Bernadette Cahill and Niall King

David Burke, Geraldine Kelly (vice-president, Dublin Solicitors' Bar Association), and Emmet Halley, at the Waterford Law Society 'Tall Ships' reception

Tom Murran (Waterford), Judge Alice Doyle and Michael Lanigan (Kilkenny) attended the Waterford Law Society 'Tall Ships' reception

# Society hosts dinner for IBA leaders in Blackhall Place

Front *(l to r)*: Law Society President John Costello, IBA President Akira Kawamura, IBA Vice-President Michael Reynolds and Law Society Senior Vice-President Donald Binchy. Back *(l to r)*: IBA Legal Practice Vice-Chair Michael Greene, IBA Deputy Executive Director Tim Hughes, DSBA Vice-President Geraldine Kelly, Council member James McCourt, Geraldine Clarke, David O'Donnell, Deputy Director General Mary Keane, John F Buckley and Director General Ken Murphy

# Augustus Cullen Law expands into Dublin's legal quarter

Augustus Cullen Law continues the expansion of its practice, with the opening of the firm's new Dublin office. Located in the Ormond Building, 31-36 Ormond Quay, Dublin 7, the modern premises are just 50 steps from the Four Courts.

Augustus Cullen Law now employs 17 solicitors and almost 40 staff. The firm's head offices are located in Wicklow town, with sub-offices in Rathdrum and Carnew. The firm was established in 1887 in Church Street, Wicklow, by the late Frank Kennedy. The late Augustus Cullen acquired that practice in 1924, practising as Augustus Cullen & Son from 1958. In 1981, the firm acquired the practice of EJH Hopkins, which had served Wicklow town and the Carnew and Tinahely areas.

Managing partner David Lavelle says: "This is a vote of confidence in the future of the firm in these difficult economic times. The new premises will enable us to continue our expansion and continue to provide the best possible legal service to our clients, particularly our expanding Dublin client base."

Staff of Augustus Cullen Law celebrate the expansion of the Wicklow firm into new offices on Ormond Quay, Dublin

*(Lto r)*: Geraldine Keehan, Michael Boylan, Gus Cullen, David Lavelle and Joice Carthy

Attending the official opening of Augustus Cullen Law's new Dublin office were *(l to r)*: Andrea Liston, Laurence Cullen (past-president of the Law Society) and Rachael Liston

# McNulty Boylan & Partners celebrate move

PIC: MIKE MCSWEENEY/PROVISION

At the opening of the McNulty Boylan and Partners offices in Hanover Street, Cork, were *(l to r)*: John Boylan, David Browne, Niall Daly and Brendan Cunningham (partners), with Deputy Lord Mayor Terry Shannon and Ger O'Mahony (President Cork Chamber of Commerce)

Cork firm McNulty Boylan & Partners celebrated their move to new premises on 1 July 2011. The firm's new offices are located in Hanover Street – just a gavel's throw from the courthouse on Washington Street (if we had gavels in Irish courts). Over 300 high-profile legal and business figures gathered to help them celebrate.

The firm comprises four partners, Niall Daly, John Boylan, Brendan Cunningham and David Browne, who are supported by a dedicated staff of 12.

Says David Browne: "With morale within the profession at an all-time low for a number of reasons, we have been proactive in changing to meet the needs of modern society, and the challenges of being in a recession for three years now. The partners here have planned for the challenges ahead and, in particular, have embraced technology. In a short number of years, all clients will have remote access to their files on line – this is the future of the legal profession."

## ON THE MOVE

**Judith Riordan** has been appointed as a partner in Mason Hayes & Curran's insolvency department. She joined the firm in 2004 from another Dublin practice. In addition, she is licensed as an attorney in New York.

Mason Hayes & Curran has appointed **Michael Hanley** as a partner in its financial services group. He has over ten years' experience and joined the firm in 2008 following the merger with Arthur O'Hagan.

**Jane Pilkington** has been appointed as a partner at Mason Hayes & Curran. She is an experienced litigator, focusing on professional liability claims and business disputes. She is an expert in the area of corporate immigration and joined the firm in 2008.

Mason Hayes & Curran has appointed **Rachel Kavanagh** as a partner in its insurance defence litigation team. She has worked for over 15 years in insurance defence litigation and has advised leading international and Irish-based insurance companies.

William Fry has appointed **Gráinne Ní Dhubhghaill** to the position of associate in its banking and financial services department. She joined the firm in May 2011, having previously worked in London with Allen & Overy and SNR Denton.

**Brian McElligott** has been appointed to the position of associate in William Fry's technology department. He joined the firm in June 2011 and holds a degree in Theoretical Physics from Trinity College Dublin.

# Josepha's *Negligent Behaviour*

**Irish family law practitioner, Josepha Madigan, has just published her first novel *Negligent Behaviour*, which is now available to purchase on www.amazon.co.uk.**

**The story revolves around sassy solicitor Helene, who has spent the last few years getting what she wants. Rising through the ranks of a high-profile Dublin law firm (Irish solicitors should have some fun with this!), she goes on a voyage of self-discovery of both her own motivations, and those of the members of her profession.**

**Madigan maintains that this is a "no-holds-barred, insider and explosive view of the Dublin legal scene".**

**She adds: "On this voyage of discovery with Helene, we learn not only a bit more about the choices we all make, but also how life can compound or confront these mistakes."**

Josepha Madigan: It's not autobiographical, despite what anyone might think!'

**At time of going to press, Amazon was quoting a price of Stg£14.63 (plus £2.80 delivery) for *Negligent Behaviour*, with one customer review giving it five stars.**

# JAMES J IVERS 1927-2011

## An appreciation

Jim Ivers' passing on 28 June 2011 serves as occasion to reflect on the extent to which his period in office as director general of the Law Society, from 1973 to 1990, transformed the solicitors' profession and laid the foundations for the way in which it has been administered in the intervening years.

In the decade before his appointment, the profession – in parallel with the economy – had grown at a very fast pace and faced many challenges in the way it responded to its new circumstances.

It had outgrown its accommodation in the Four Courts and, while it had acquired Blackhall Place (inspired by Peter Prentice), there was a reluctance to take on the task of reconstruction and removal. Jim was largely responsible for overcoming that reluctance and for the implementation of the decision once it was committed to by the Council.

The other great challenge was to modernise our system of education. The Council had been grappling with this for many years but were stymied by the perceived requirement for amending legislation. Jim, with his wide experience of government gained in his previous incarnations, came to the conclusion that virtually all of our aims could be achieved by using existing powers to make statutory instruments, and the task was completed without having to await legislation.

Jim was born in Cork, the eldest of eight and the only boy. Educated at the North Monastery CBS, he won a scholarship to UCC , which family financial circumstances prevented him from taking up. However, he later completed his third-level education by night acquiring a B Comm, M Econ and MBA successively.

PIC: LENSMEN

He began his working career with Great Southern Railways, moving to the Department of Post and Telegraphs as a clerical officer, then to the Department of Health in 1950, from there to the Irish Dental Association as general secretary from 1958-70, followed by a brief stint with Waterford Co-Op, and thence to Donegal as CEO of the North Western Health Board from 1970-73.

This varied experience gave him a deep insight into every aspect of Irish life, and knowledge of how government worked at all levels – which was invaluable to those who worked with him in the Society. His pro-active approach was a welcome antidote to a profession that was naturally conservative and suspicious of change. He was also skilled in implanting ideas in the minds of others, which they later came to believe were their own and, as a diplomat, he allowed them to go on thinking so.

Jim was a good-humoured sociable person, widely read and informed, who enjoyed lively company and exploring new horizons.

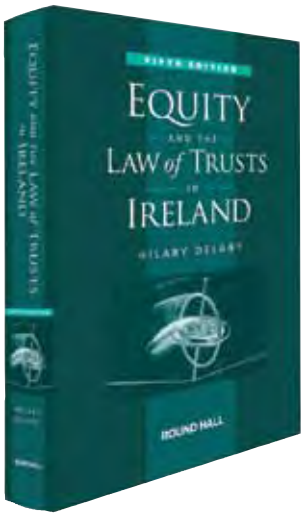
His wife Nanette, who gave him 14 children and also found time to act as his chauffeur, since he did not drive, was the love of his life and she, her children, grandchildren, great grandchildren, his sisters and extended family filled more than half of the pews in the little church at Tullaghan, Co Leitrim, for his requiem Mass. His daughter Mary, who spoke for his family with touching humour, described a man for whom family bonds were of utmost importance and for whom love and mutual respect were the key to happiness.

To Nanette and their children Noel, Mary, Jim, Gerard, Ann, Bernadette, Clare, Fionnuala, Carmel, Angela, Gilbert, Muireann, Maeve and Clodagh, grandchildren, great-grandchildren, sisters, extended family and his many friends, we extend our deepest sympathy.

May his gentle soul rest in peace. G

*JD*

# Equity and the Law of Trusts in Ireland (5th edition)




**Hilary Delany.** Round Hall (2011), www.roundhall.ie. ISBN: 978-1-8580-062-15. Price: €125 (incl VAT).

Equity – the 'court of conscience' – was traditionally regarded as 'lawyers' law', which rarely changed. However, it has evolved from being a law for 'families' to being part-and-parcel of modern, commercial legal practice. The development of interlocutory injunctions and the explosion of case law on injunctions concerning whether damages are an alternative adequate remedy is just an example.

This book deals with all the traditional areas of trust law, but also takes into account the recent *Land and Conveyancing Law Reform Act 2009* and the *Charities Act 2009*. The latter act introduces a new regulatory framework under the Charities Regulation Authority and provides a legislative definition of 'charitable purpose'.

Chapter 7 on resulting trusts is particularly useful concerning joint deposit accounts, family property trusts and the presumption of (or lack of) advancement. Rebutting the presumption of resulting trusts where illegality exists and settlements by bankrupts is certainly topical. Chapter 12 on the administration of trusts is invaluable, not least because it is rare now for non-professionals to take on the onerous obligation of trustees. There are also interesting chapters concerning proprietary and promissory estoppel.

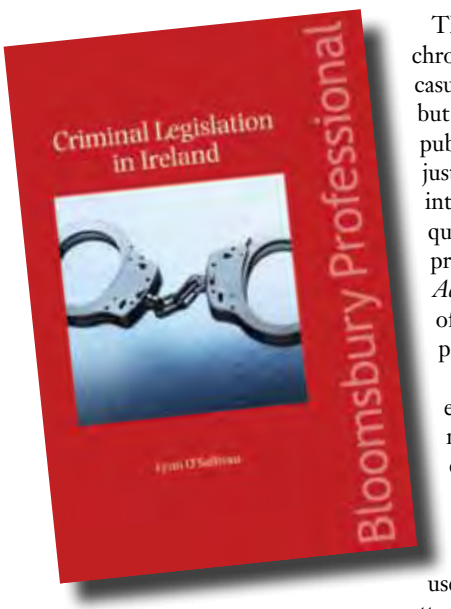
The contrasting case law between Ireland and Britain and other common law jurisdictions is one of the many gems of this book.

It would be a mistake to think that this book is solely designed for students and academics. It is an essential textbook that every legal practitioner should have in their office.

*John O'Connor is a consultant to the Law Society's Probate, Administration and Trusts Committee.*

# Criminal Legislation in Ireland

**Lynn O'Sullivan.** Bloomsbury Professional (2011), www.bloomsbury professional.com. ISBN: 978-1-84766-7182. Price: €140.



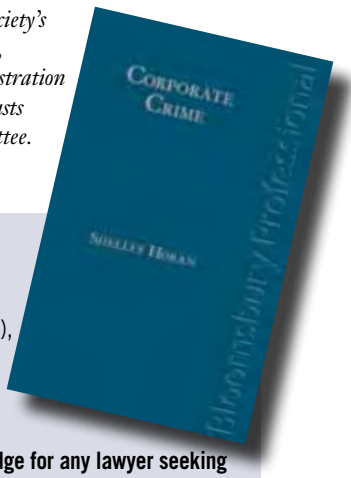

*Criminal Legislation in Ireland* collects primary and secondary criminal legislation and consolidates their later amendments from the *Petty Sessions (Ireland) Act 1851* to the *Criminal Procedure Act 2010* – and it runs to some 1,500 pages, even at the expense of the omission of the most obscure of the extant legislation.

The statutes are presented chronologically and, on even a casual perusal, one can't help but be struck by the relentless publication of criminal justice legislation since the introduction of detention for questioning in 'ordinary crime' provided by the *Criminal Justice Act 1984*, with fully two-thirds of the collected legislation post-dating that act.

The result of this legislative enthusiasm is that Ireland now has a great many more criminal offences than it did even in the recent past. Many of these new incriminations are both complex and little used, and so the solicitor who attends to garda station calls would be well advised to have a copy of this work to hand, not only in the office, but also on visits for those occasions when the gardaí may seek to invoke some of the less familiar provisions of the growing corpus of criminal statute law.

*Andrew Sheridan is a practising criminal defence solicitor.*

# Corporate Crime




**Shelley Horan.** Bloomsbury Professional (2011), www.bloomsburyprofessional.com. ISBN: 978-1-8476-655-22. Price: €180 (incl VAT).

**In dealing with the subject of crimes committable by corporations and people involved in corporate life, it comes as no surprise that the very ambitious *Corporate Crime* spans well over 1,700 pages.**

**Shelley Horan's work will greatly help to fill the deficits in knowledge and understanding on the part of both corporate lawyers and criminal lawyers in relation to those areas of the law and procedure that, traditionally, have been the exclusive domain of the other.**

**As a corporate and business lawyer, I found Part 1 of this book particularly informative. It deals extensively with the principles of criminal liability – including direct, absolute, strict and vicarious liability of companies, their officers and employees – and also with criminal procedures as they affect businesses and business people and the evidential use of business records. There is, in this part alone, a wealth of essential knowledge for any lawyer seeking to advise a business or business person who is caught up, usually for the first time, in the alien world of criminal law – either as a potential witness, victim or alleged wrongdoer.**

**Part 2 addresses specific offences, ranging from corporate fraud, bribery and the like, right through to revenue offences, breaches of competition law and of health and safety regulations. Part 3 deals in a most comprehensive way with offences under the *Companies Acts* and the appropriate enforcement regime, including disqualification and restriction orders. Part 4 tackles the somewhat more exotic areas of money laundering and the powers of the Criminal Assets Bureau.**

**Commendably, the entire work is well written in a clear and straightforward style.**

***Alvin Price is a partner in William Fry.***

# E-resource packs

**The library is launching a series of e-resource packs on popular legal topics over the coming months to assist solicitors in their research, writes Mary Gaynor**


*Mary Gaynor is head of library and information services at the Law Society of Ireland*

Researching a legal topic from scratch is both daunting and time consuming, particularly if it relates to an area of law that is unfamiliar. The library staff receive regular requests to provide up-to-date information on specific topics by way of 'a good article on' or 'a recently published textbook on.'

Often what members want is something that will bring them to key materials as a starting point in their research. Such requests require consideration of a host of different published formats: textbooks, articles, legislation, case law and so on. With this in mind, the library has decided to launch a series of e-resource packs on specific topics that will be published on the library page in the members' area of the website over the coming months.

Each e-resource pack will contain a list of selected recent materials, with links to full text electronic material where available. Due to copyright restrictions, it is not always possible to provide links to electronic full-text documents, but material not available electronically can be requested from the library. The resource packs will be updated on a regular basis as new material on the particular topic becomes available.

The first e-resource pack on media law was published in the July 2011 e-zine and includes materials relating to defamation, libel, privacy and broadcasting. Recent e-zines can be located in the members' area under 'e-zine and e-bulletins', with back issues located in the archive. The next pack will focus on liquor licensing and will be available in early September. Packs on other popular topics will follow in the months to come.

**Electronic *Irish Statute Book***

The Office of the Attorney General advises that the electronic *Irish Statute Book* (eISB), available at www.irishstatutebook.ie, is now optimised for web browser access from all mobile electronic devices: notebooks, smartphones, iPads, Kindles and other electronic readers. Android and iPhone/iPad apps are now available, free of charge, from the Android Market and the iTunes store, respectively. Search the relevant store for 'eISB'.

**Book renewals**

It is possible to renew books on the online catalogue or via *BookMyne*, the library app for iPhone and iPad. Members can borrow up to five books at a time and renew online (restricted to one renewal per item). Further renewals may be permitted if other members have not reserved the books. Library PINs are required to access these functions and are available on request from library@lawsociety.ie

**WIFI IN THE LIBRARY**

**Wifi is now available in the library. Ask at the desk for log-in details.**

JUST PUBLISHED

## New books available to borrow

- Ashton, David and Paul Reid, *Clubs and Associations* (2nd ed) (Bristol: Jordans, 2011)
- Astleford, Peter, *Hedge Funds and the Law* (London: Thomson Reuters Sweet & Maxwell, 2010)
- Beale, Simon, *Insolvency and Restructuring Manual* (Haywards Heath: Bloomsbury Professional, 2009)
- Carew, Sarah and Sonya Donnelly, *The Devil's Handbook* (Dublin: Round Hall, 2011)
- Collins, Matthew, *The Law of Defamation and the Internet* (3rd ed) (Oxford: OUP, 2010)
- Cousins, Mel, *Social Security Law in Ireland* (London: Kluwer, 2010)
- Dashwood, Alan, *Wyatt and Dashwood's European Union Law* (6th ed) (Oxford: Hart, 2011)
- Davis, Glen et al, *Butterworths Insolvency Law Handbook* (13th ed) (London: LexisNexis, 2011)
- Denny, Neil, *The Collaborative Law Companion* (Bristol: Jordans, 2011)
- Goode, Roy, *Principles of Corporate Insolvency Law* (London: Sweet & Maxwell, 2011)
- Gore-Grimes, John, *Planning and Environmental Law* (Haywards Heath: Bloomsbury Professional, 2011)
- Heffernan, Liz, *Legal Professional Privilege* (Haywards Heath: Bloomsbury Professional, 2011)
- Houston, Eugenie, *Transfers of Undertakings in Ireland: Employment Rights* (Haywards Heath, Bloomsbury Professional, 2011)
- Kenna, Kevin, *The Lives and Times of the Presidents of Ireland* (Dublin: Liffey Press, 2010)
- Kotsonouris, Mary, *''Tis All Lies, Your Worship': Tales from the District Court* (Dublin: Liffey Press, 2011)
- McLoughlin, Patrick, *Commercial Leases and Insolvency* (Haywards Heath: Bloomsbury Professional, 2011)
- Mills, Simon et al, *Disciplinary Procedures in the Statutory Professions* (Haywards Heath: Bloomsbury Professional, 2011)
- Moffatt, Jane (ed), *Employment Law* (3rd ed) (Law Society of Ireland manual) (Oxford: OUP, 2011)
- Philips, Fred, *The Modern Judiciary: Challenges, Stresses and Strains* (London: Wildy Simmonds & Hill, 2011)
- Piris, Jean-Claude, *The Lisbon Treaty* (Cambridge: Cambridge University Press, 2010)
- Purdy, Alastair, *Termination of Employment: A Practical Guide for Employers* (2nd ed) (Haywards Heath: Bloomsbury Professional, 2011)
- Shannon, Geoffrey (ed), *Family Law* (4th ed) (Law Society of Ireland manual) (Oxford: OUP, 2011)
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BRIEFING

## Practice notes

# Beware undertakings to lodge 'net proceeds of sale'

CONVEYANCING COMMITTEE

The use of a nebulous phrase such as 'net proceeds of sale' is inherently dangerous, and the Conveyancing Committee is of the view that undertakings to discharge net proceeds of sale should rarely be given. Solicitors should always first consider whether or not there is some alternative way of dealing with the issue besides the solicitor giving the undertaking. For example, can a charge, or perhaps a second charge, over the property be put in place, even if on a temporary basis?

If, however, a solicitor decides to give such an undertaking, the following, while not comprising an exhaustive list, are some of the issues that require to be addressed:

- Has the full (and irrevocable) written authority of the client been obtained?
- In a probate/administration case, what is to happen if the instructing executor/administrator dies?
- Is the undertaking worded so as to apply only 'if and when the property is sold'?
- Is the undertaking stated to be subject to the solicitor having carriage of sale?
- Is the undertaking stated to be subject to the sale proceeds coming through the solicitor's office?
- If the undertaking relates to the sale of property, does the solicitor have possession of the deeds **and** does the solicitor have actual and unfettered control of the deeds? Check the wording of any ATR under which the deeds have been taken up from a lending institution – if the ATR requires 'net proceeds of sale' to be lodged, this should be negotiated with the lending institution to specify the exact agreed figure that the lender requires in order to release the deeds and to give a discharge/release of any charge/mortgage on the property.
- 'Net proceeds' should be clearly defined and quantified, that is, a specific figure should be agreed in advance.
- Any undertaking should be to pay the exact agreed figure rather than the 'net proceeds of sale'.
- Do not give the undertaking where a sale has not already been agreed.
- Carry out searches against the client and the property before giving the undertaking.

The committee would strongly suggest that, if giving an undertaking to a lending institution to lodge monies out of the proceeds of sale, a solicitor should establish exactly what and how much monies are to be retained by the vendor from the gross sale proceeds, and that these amounts should be agreed with both the client and the lender at the pre-contract stage, before the undertaking is given.

# Revised VAT Special Condition 3 and Pre-Contract VAT Enquiries

CONVEYANCING COMMITTEE, TAXATION COMMITTEE

The current VAT on property system came into operation on 1 July 2008 (see 'VAT on property guide' on the Revenue website, www.revenue.ie). Since the introduction of this system, the Law Society has issued two revisions of the VAT Special Condition 3 to be used in contracts dealing with property. In addition, the Law Society has issued Pre-Contract VAT Enquiries. The Society's Conveyancing and Taxation Committees continuously monitor the effect of the VAT system on conveyancing practice and, on foot of this, have now issued a revised version (August 2011 edition) of the VAT Special Condition 3, together with a revised version (August 2011 edition) of the Pre-Contract VAT Enquiries.

These new documents can be downloaded from the Law Society's website, www.lawsociety.ie, by logging into the members' area and following links to either the precedents section or to the two committees' pages.

In addition to making amendments necessitated by the *VAT Consolidation Act 2010*, the following major amendments have been made to the documents. Previous versions of the VAT Special Condition 3 and the Pre-Contract VAT Enquiries should no longer be used.

Both the revised VAT Special Condition 3 and the new Pre-Contract VAT Enquiries have been reviewed by the Revenue Commissioners on a 'without prejudice' basis, and the Revenue Commissioners did not have any comments in respect of the documents.

### Pre-Contract VAT Enquiries (PCVE) (August 2011 edition)

- The first page of the PCVE lists circumstances in which it is not necessary to raise the PCVE, either because VAT does not arise on the transaction, or because the Vendor is not charging VAT, notwithstanding the fact that the transaction is otherwise subject to VAT. In these circumstances, it is not appropriate for the Purchaser to raise the PCVE.
- The first and second pages of the PCVE set out instructions and guidelines as to the completion of the PCVE. A new process to be followed in the case of a sale at auction has now been introduced.
- The enquiries raised in the PCVE are now divided into seven sections, at the end of which a 'Guide to Completing VAT Special Condition 3 (August 2011 edition)' has been added. This guide is intended to assist practitioners in correctly selecting the sub-clauses of VAT Special Condition 3 that are appropriate in each transaction. The guide also contains a helpful note in respect of the joint option to tax, and illustrates the operation of the joint option to tax with two examples.

### VAT Special Condition 3 (August 2011 edition)

Practitioners are reminded that, unlike the version of VAT Special Condition 3 that existed prior to the introduction of the current VAT on property system, the VAT Special Condition 3 that has been drafted to address the various permutations arising out the of the current VAT on property system contains sub-clauses that are, in some cases, mutually exclusive. Great care must therefore be taken to select the appropriate sub-clauses and to delete those that do not apply. The latest version of the VAT Special Condition 3 has been further subdivided in order to give greater clarity to the application of each sub-clause.

Practitioners should bear in mind that it is possible that further alterations may require to be made to the VAT Special Condition 3 and the PCVE. While the VAT Special Condition 3 and PCVE are intended to cover most VAT situations, they do not necessarily cover all situations. In particular, as a result of the lack of activity in the commercial property market, there has been limited opportunity to test the effectiveness of the documents in that context. It is therefore recommended that the documents be used with caution in commercial transactions, particularly those involving a combination of varying VAT situations.

# Undertakings to discharge Land Registry queries: compulsory registration

CONVEYANCING COMMITTEE

The Conveyancing Committee has recently received several enquiries as to whether vendors' solicitors are obliged to give undertakings to discharge Land Registry queries in the context of compulsory registration, and the view of the committee is that they are **not**.

Any undertaking should be given by the vendor pursuant to the provisions of general conditions 28 and 29 of the Law Society's standard contract for sale.

# Legislation update 10 June – 22 July 2011

**Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – www.lawsociety.ie (members' and students' area) – with updated information on the current stage a bill has reached and the commencement date(s) of each act. All recent bills and acts (full text in PDF) are on www.oireachtas.ie and recent statutory instruments are on a link to electronic statutory instruments from www.irishstatutebook.ie**

## ACTS PASSED

***Biological Weapons Act 2011***
**Number:** 13/2011
**Content:** Gives further effect to the *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare*, done at Geneva on 17 June 1925; to give further effect to the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, done at Washington, London and Moscow on 10 April 1972; and to provide for related matters.
**Enacted:** 10/7/2011
**Commencement:** 10/7/2011

***Finance (No 2) Act 2011***
**Number:** 8/2011
**Content:** Provides for the imposition, repeal, remission, alteration and regulation of taxation, of stamp duties and of duties relating to excise and otherwise to make further provision in connection with finance. Amends the research and development tax credit provisions in section 766B of the *Taxes Consolidation Act 1997*, repeals section 55 (air travel tax) of the *Finance (No 2) Act 2008* (to be brought into force on such date as the minister may appoint by order), amends the *Value Added Tax Consolidation Act 2010* to provide for a second reduced VAT rate of 9% for goods and services relating to tourism for the period 1/7/2011 to 21/12/2013, after which it will revert to 13.5%, and provides for the levy on private pension schemes for a period of four years (2011 to 2014) to fund the jobs initiative.
**Enacted:** 22/6/2011
**Commencement:** Commencement order(s) required for various sections of the act

***Foreshore (Amendment) Act 2011***
**Number:** 11/2011
**Content:** Transfers the functions under the *Foreshore Acts 1933 to 2009* to the Minister for the Environment, Community and Local Government, other than foreshore functions in relation to designated fishery harbour centres, foreshore functions in respect of activities that are wholly or primarily for the use, development or support of aquaculture, and foreshore functions that are wholly or primarily for the use, development or support of sea fishing, including the processing and sale of sea fish, and manufacture of products derived from sea fish.
**Enacted:** 7/7/2011
**Commencement:** 7/7/2011

***Medical Practitioners (Amendment) Act 2011***
**Number:** 12/2011
**Content:** Amends and extends the *Medical Practitioners Act 2007* to assist in addressing the current difficulty relating to non-consultant hospital doctor vacancies. It provides for the establishment of a new division of the register, which will be known as the Supervised Division. Those applying to be registered in the division will undergo a two-part assessment specific to their medical speciality and to this division. If successful, an applicant will be registered in the Supervised Division for a period totalling not more than two years in an identified post approved by the Medical Council, and subject to supervision by the employer in line with criteria set down by the Medical Council. As per the *Medical Practitioners Act 2007*, all medical practitioners registered in the Supervised Division will be subject to the Medical Council's disciplinary procedures.
**Enacted:** 8/7/2011
**Commencement:** 8/7/2011 for sections 1, 2, 5, and 20, commencement order(s) to be made for the remaining sections (per s20(2) of the act)

***Ministers and Secretaries (Amendment) Act 2011***
**Number:** 10/2011
**Content**: Provides for the establishment of the Department of Public Expenditure and Reform and for the transfer of certain functions from the Minister of Finance to the Minister for Public Expenditure and Reform. These functions comprise: (a) the entirety of functions relating to the public service; (b) public service reform functions that will, for the first time, be placed on a statutory footing; (c) responsibility for managing public expenditure within the overall plan set by the Government, while the Minister for Finance will retain responsibility for overall budgetary parameters.
**Enacted:** 4/7/2011
**Commencement:** 4/7/2011 for sections 1-6, 10-15(2), 15(4) and 99-100 (part 5). Commencement order to be made for section 7, 8, 9, 15(3), 16-23 (part 3) and 24-98 (part 4)

***Social Welfare and Pensions Act 2011***
**Number:** 9/2011
**Content:** Gives legislative effect to miscellaneous amendments to the *Social Welfare Consolidation Act 2005*, to the *National Minimum Wage Act 2000* (restoration of the national minimum wage to its previous level), the *Combairle Act 2000*, and the *Pensions Act 1990*.
**Enacted:** 29/6/2011
**Commencement:** Commencement order(s) required for ss10 (supplementary welfare allowance amendment) and 16(6) (national internship scheme) as per s1(3) of the act

## SELECTED STATUTORY INSTRUMENTS

***District Court (Hague Convention 1996) Rules 2011***
**Number:** SI 301/2011
**Content:** Amends order 62 to prescribe the procedure in respect of proceedings under the *Protection of Children (Hague Convention) Act 2000*.
**Commencement date:** 18/7/2011

***European Communities (Maintenance) Regulations 2011***
**Number:** SI 274/2011
**Content:** Sets out the effect on domestic legislation of Council Reg 4/2009 (EC) on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations and makes the necessary provisions for the good administration of the regulation.
**Commencement:** 18/6/2011

***European Communities (Mergers and Divisions of Companies) (Amendment) Regulations 2011***
**Number:** SI 306/2011
**Content:** Gives effect to Dir 2009/109 and Dir 2005/56 as regards reporting and documentation requirements in the case of mergers and divisions.
**Commencement:** 20/6/2011

***High Court Circuits (Amendment) Order 2011***
**Number:** SI 236/2011
**Content:** Transfers the county of Donegal from the Northern Circuit to the Western Circuit of the High Court, with effect from the 1/1/2012.
**Commencement:** 1/1/2012

***Irish Nationality and Citizenship (Amendment) Regulations 2011***
**Number:** SI 284/2011
**Content:** Amends *Irish Nationality and Citizenship Regulations 2002* (SI 567/2002) in relation to declarations of fidelity to the nation and applications for certificates of naturalisation. Provides precedent forms under the act.

**Commencement:** 24/6/2011

***National Minimum Wage Act 2000 (Section 11) (No. 2) Order 2011***
**Number:** SI 331/2011
**Content:** Sets the national minimum hourly rate of pay at €8.65.
**Commencement:** 1/7/2011

***Presidential Elections (Forms) Regulations 2011***
**Number:** SI 258/2011
**Content:** Prescribes certain forms for use at a presidential election, including the requirements for the provision of photographs to the presidential returning officer by candidates at the presidential election.
**Commencement:** 16/5/2011

***Road Traffic Act 2010 (Certain Provisions) (Commencement) Order 2011***
**Number:** SI 255/2011
**Content:** Appoints 1/6/2011 as the commencement date for ss55-59, 62, 67, 71-74, 76, 77,79-81, 83, 84, 85(a) and (b), 88-92 of the act.

***Road Traffic Act 2011 (Commencement) Order 2011***
**Number:** SI 253/2011
**Content:** Appoints 1/6/2011 as the commencement date for the act.

***Rules of the Superior Courts (Civil Partnership and Cohabitation) 2011***
**Number:** SI 348/2011
**Content:** Inserts a new order 70B to prescribe the procedure in respect of civil partnership law proceedings, as defined in the *Civil Partnership and Certain Rights and Obligations Act 2010* s139 and proceedings under part 15 of that act ('cohabitation proceedings') and makes amendments to the rules concerning priorities of entitlement to a grant of letters of administration intestate in consequence of amendments to the *Succession Act 1965* effected by the 2010 act. G

*Prepared by the Law Society Library*

ONE TO WATCH

# One to watch: new legislation

***District Court (Civil Partnership and Cohabitation) Rules 2011* (SI no 414 of 2011)**

These rules came into operation on 31 August 2011 and are to be construed together with the *District Court Rules 1997* (SI no 93 of 1997) and all other *District Court Rules*.

For the purposes of these rules, 'the act' means the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (no 24 of 2010).

Proceedings under the act may be heard at any sitting of the court for the court area in which either party to the proceedings is ordinarily resident or carries on any profession, business or occupation.

Proceedings held under the act shall be heard otherwise than in public. Only officers of the court, the parties and their legal representatives, witnesses (subject to the provisions of order 8, rule 2) and any other persons as the judge allows shall be permitted to be present.

An application by (a) a civil partner for a maintenance order under section 45(1) of the act, or (b) a qualified cohabitant for an order under section 175 of the act shall be preceded by the issue and service upon the respondent of a summons (see form 54.1, schedule C).

Where a maintenance debtor makes an application for the discharge of a maintenance order after one year from when it is made under section 46(1) of the act, the issue and service upon the maintenance creditor of a summons shall precede it (see form 54.9, schedule C).

Where the court makes a maintenance, variation or interim order under the act, the clerk shall give to or send by registered prepaid post to the maintenance debtor a copy of the order so made.

A copy of such an order shall, where maintenance payments continue to be due by the maintenance debtor, contain the following statement: "The within order is made by the District Court. If you, the maintenance debtor, fail to make a payment due under this order, a further summons may be issued against you to attend before the District Court, or a warrant issued for you to be arrested and brought before the District Court, which may lead to your being imprisoned for a period of up to three months. The District Court can vary the terms of this order. If you are concerned that you may not be able to comply with the terms of this order and would like to apply for a variation, you should consult a solicitor or contact the District Court clerk at..."

Any applications by maintenance creditors for a direction that payments under a maintenance order, a variation order or interim order be made to the clerk shall be *ex parte*.

Where the court makes a maintenance order, variation order or interim order pursuant to the act and directs that payments under such order shall be made to the clerk, such clerk shall send a notice (form 54.18, schedule C) by prepaid ordinary post to the maintenance debtor, stating the place at which, and the days and hours during which, payments under the order should be made.

Where payments to the clerk under a maintenance, variation or interim order are in arrears, and such clerk receives a request in writing (form 54.21, schedule C) from the maintenance creditor to take such steps as he or she considers reasonable to recover such arrears, such clerk may make an application for an attachment of earnings order.

An application to the court to order a statement of earnings, pursuant to the act, may be made without notice on any occasion on which the proceedings are before the court.

Where the court makes an order providing for periodic payments by way of support or maintenance by a maintenance debtor to a maintenance creditor, an application may be made to the court on any date subsequent to the date the order was made, by any person having an interest in the proceedings, to secure the payments to the maintenance creditor. G

# Solicitors Disciplinary Tribunal

**Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994***

**In the matter of James O'Mahony, a solicitor previously practising under the style and title of James O'Mahony, Solicitor, at 16 Stoneybatter, Dublin 7, and in the matter of the *Solicitors Acts 1954-2008* [4831/DT47/10 and High Court no 105SA]**
***Law Society of Ireland (applicant) James O'Mahony (respondent solicitor)***
On 21 October 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to comply with an undertaking given to Allied Irish Bank on 8 November 2000 in a timely manner or at all,
b) Failed to correspond with AIB Bank to explain the problems encountered in dealing with the undertaking,
c) Failed to respond to the Society's letter of 30 November 2009 within ten days as requested.

The tribunal ordered that the matter be brought before the President of the High Court and, on 7 February 2011, the President of the High Court ordered that:
a) The respondent solicitor should not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Society,
b) The Society recover the costs of the proceedings in the High Court and the costs of the proceedings before the disciplinary tribunal when taxed and ascertained.

**In the matter of Gerard Corcoran, a solicitor formerly practising as JH Powell & Sons, Solicitors, East Green, Dunmanway, Co Cork, and in the matter of the *Solicitors Acts 1954-2008* [DT5559/DT23/10]**
***Law Society of Ireland (applicant) Gerard Corcoran (respondent solicitor)***
On 17 February 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to ensure there was furnished to the Society an accountant's report for the year ended 31 December 2008 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001),
b) Failed to ensure there was furnished to the Society a closing accountant's report in respect of the accounting period ending on the accounting date on which the solicitor ceased to receive, hold, control or pay client monies, in breach of regulation 26(2) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001) in a timely manner or at all.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €500 to the compensation fund,
c) Pay the whole of the costs of the Society as taxed by a taxing master of the High Court, in default of agreement.

**In the matter of Eamon P Comiskey, a solicitor previously practising at Ballycarnan, Portlaoise, Co Laois, and in the matter of the *Solicitors Acts 1954-2008* [7337/DT23/09 and High Court 2009 no 102SA]**
***Law Society of Ireland (applicant) Eamon P Comiskey (respondent solicitor)***
On 17 September 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply with an undertaking furnished to IIB Homeloans (now KBC Homeloans) on 28 April 2000 in respect of a named client and a named property in Co Tipperary in a timely manner or at all.

The tribunal ordered that the matter be brought before the High Court and, on 1 March 2010, the President of the High Court ordered that the name of the respondent solicitor be struck from the Roll of Solicitors and that the Society recover the costs of the proceedings in the High Court and the costs of the proceedings before the disciplinary tribunal as against the respondent solicitor when taxed and ascertained.

**In the matter of Eamon P Comiskey, a solicitor previously practising at Ballycarnan, Portlaoise, Co Laois, and in the matter of the *Solicitors Acts 1954-2008* [7337/DT24/09 and High Court 2009 no 102SA]**
***Law Society of Ireland (applicant) Eamon P Comiskey (respondent solicitor)***
On 17 September 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply with an undertaking given to IIB Homeloans (now KBC Homeloans) on 8 February 2001 in respect of a named client and two properties in Co Offaly in a timely manner or at all.

The tribunal ordered that the matter be brought before the High Court and, on 1 March 2010, the President of the High Court ordered that the name of the respondent solicitor be struck from the Roll of Solicitors and that the Society recover the costs of the proceedings in the High Court and the costs of the proceedings before the disciplinary tribunal as against the respondent solicitor when taxed and ascertained.

**In the matter of Eamon P Comiskey, a solicitor previously practising at Ballycarnan, Portlaoise, Co Laois, and in the matter of the *Solicitors Acts 1954-2008* [7337/DT85/09 and High Court 2010 no 13SA]**
***Law Society of Ireland (applicant) Eamon P Comiskey (respondent solicitor)***

NOTICES: THE HIGH COURT

# The High Court

**High Court 2011 no 5SA**
**In the matter of Ambrose Steen, a locum solicitor, and in the matter of the *Solicitors Acts 1954-2008***
***Law Society of Ireland (applicant) Ambrose Steen (respondent)***
Take notice that, by order of the High Court made on 28 March 2011, it was ordered that Ambrose Steen be suspended from practising as a solicitor until such time as all orders of the Solicitors Disciplinary Tribunal and the High Court made against him and arising from disciplinary proceedings have been complied with in full.
*John Elliot,*
*Registrar of Solicitors,*
*26 July 2011*

**High Court 2011 no 58SA**
**In the matter of Michael Small, a solicitor previously practising as Michael Small, Solicitor, Carrick House, 10 Newenham Street, Limerick, and in the matter of the *Solicitors Acts 1954-2008***
Take notice that, by order of the High Court made on Monday 11 July 2011, it was ordered that the name of Michael Small, solicitor, formerly practising as Michael Small, solicitor, Carrick House, Newenham Street, Limerick, be struck off the Roll of Solicitors.
*John Elliot,*
*Registrar of Solicitors,*
*2 August 2011*

On 24 November 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to comply with an undertaking dated 22 February 2007 to discharge an Investec mortgage on a premises and to furnish partial discharge in a timely manner or at all,
b) Failed to reply to the Society's correspondence and, in particular, the Society's letters of 12 February 2009, 18 March 2009 and 31 March 2009 in a timely manner or at all,
c) Failed to attend at the meetings of the Complaints and Client Relations Committee on 13 May 2009 and 24 June 2009, despite being required to do so,
d) Failed to attend at the meeting of the Complaints and Client Relations Committee on 30 July 2009, despite being directed to so attend by order of the High Court made on 13 July 2009.

The tribunal ordered that the matter be brought before the High Court and, on 1 March 2010, the President of the High Court ordered that the name of the respondent solicitor be struck from the Roll of Solicitors and that the Society recover the costs of the proceedings in the High Court and the costs of the proceedings before the disciplinary tribunal as against the respondent solicitor when taxed and ascertained.

**In the matter of John JA Rynne, solicitor, and Oliver JA Hanrahan, solicitor, practising as Rynne Hanrahan & Associates, Solicitors, at Abingdon House, 4 Limerick Road, Ennis, Co Clare, and in the matter of the *Solicitors Acts 1954-2008* [7318/9381/DT100/10]**

***Law Society of Ireland (applicant)***
***John JA Rynne and Oliver JA Hanrahan (respondent solicitors)***

On 8 March 2011, the Solicitors Disciplinary Tribunal found the respondent solicitors guilty of misconduct in their practice as solicitors in that they failed to ensure there was furnished to the Society an accountant's report for the year ended 31 May 2009 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001).

The tribunal ordered that the respondent solicitors:

a) Do stand admonished and advised,
b) Pay the whole of the costs of the Society to be taxed by a taxing master of the High Court in default of agreement.

**In the matter of Jeremy Paul O'Reilly, a solicitor previously practising as JP O'Reilly & Company, Solicitors, at Church Street, Ballyconnell, Co Cavan, and in the matter of the *Solicitors Acts 1954-2008* [10298/DT22/10, 10298/DT125/10 and the High Court 2011 no 36 SA]**

***Law Society of Ireland (applicant)***
***Jeremy Paul O'Reilly (respondent solicitor)***

On 8 February 2011, in record no 10298/DT22/10, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 March 2009 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001),
b) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

On 8 February 2011, in record no 10298/DT98/125/10, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Allowed a deficit of €35,423 to arise in the client account as of 31 December 2009, in breach of regulation 7(1) and 7(2) of the *Solicitors' Accounts Regulations 2001*,
b) Between November 2008 and November 2009, transferred funds totalling €25,380 in various tranches to his office account without raising invoices or bills of costs to support these transfers, in breach of the *Solicitors' Accounts Regulations 2001*,
c) Issued a cheque for €10,000 in favour of a builder in circumstances where there was only €4,000 in the client ledger account, thereby causing a debit balance of €6,000, in breach of the *Solicitors' Accounts Regulations*.

The tribunal ordered the matter be brought before the High Court and, on 11 March 2011, the President of the High Court ordered:

1) That the respondent solicitor should not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Society,
2) That the Society do recover the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witnesses' expenses when taxed and ascertained.

**In the matter of Cathal O'Sullivan, solicitor, of O'Sullivan & Associates, 10 Herbert Street, Dublin 2, and in the matter of the *Solicitors Acts 1954-2008* [5346/DT56/10]**

***Lay applicant***
***Cathal O'Sullivan (respondent solicitor)***

On 11 April 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in respect of the following complaint:

1) The applicant says that, on 26 September 2000, he was furnished with an undertaking from O'Sullivan and Associates, Solicitors, for the sum of £300,000;
2) The applicant says that, in consideration of his receipt of the undertaking, he loaned the sum of £300,000 to two named clients of O'Sullivan and Associates, Solicitors,
3) The applicant says that the only condition precedent to the return of monies lent was that apartments, as referred to in the undertaking, be sold,
4) The applicant says that the apartments have now been sold, as evidenced in the Land Registry instrument D2005DN053258K,
5) The applicant says that none of the said monies have since been returned to him,
6) The applicant says that he is of the belief that O'Sullivan and Associates, Solicitors, are in breach of their undertaking to him.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €2,000 to the compensation fund,
c) Pay the whole of the costs of the applicant, to be taxed by a taxing master of the High Court in default of agreement.

**In the matter of Desmond P Flynn, a solicitor practising as Desmond P Flynn & Co, Solicitors, 111 Tritonville Road, Sandymount, Dublin 4, and in the matter of the *Solicitors Acts 1954-2008* [3413/DT/151/10]**

***Law Society of Ireland (applicant)***
***Desmond P Flynn (respondent solicitor)***

On 5 May 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2009 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001).

Law Society of Ireland

# ARBITRATION & MEDIATION COMMITTEE

in conjunction with the Chartered Institute Of Arbitrators – Irish Branch

# ARBITRATION AWARD WRITING AND COSTS SEMINAR

**Venue:** President's Hall, Blackhall Place, Dublin 7
**Date:** Monday 26th September, 2011, 10.00am to 5.00pm **Fee:** €200
**CPD Hours:** 5.5

This one day seminar is aimed at practising arbitrators and will focus on the changes brought about by the Arbitration Act, 2010, and in particular, how these will effect arbitrators in the conduct of arbitrations.

## PROGRAMME

**9.30am** **Registration**

**10.00am** **Chairman's Introduction** *Eamon Harrington, Comyn Kelleher Tobin*
**Introduction to the Arbitration Act, 2010**

**10.30am** **Issues arising in the course of the reference** *Ciaran Fahy, Consulting Engineer, Dublin*
arbitration clause | arbitrator's jurisdiction | arbitrator's appointment | remuneration of arbitrator

**11.15am** **Coffee**

**11.30am** **Powers and obligations of arbitrators** *Bernard Gogarty, Smyth & Son, Solicitors, Drogheda*
procedure | preliminary issues | security for costs | discovery | preservation measures | attendances of witnesses assistance of the Court | seeking expert advice

**12.15am** **Ancillary issues** *Michael W. Carrigan, Eugene F. Collins Solicitors, Dublin*
issues of law | privacy and confidentiality | staying Court proceedings | expedition and how to achieve it

**1.00pm** **Lunch**

**2.00pm** **Chairman** *Pat Brady*
**The award** *Brian Hutchinson, Senior Lecturer, School of Law, UCD, Dublin*
requirements for enforceable award | content | format/layout/style | reasons | determinations challenge and enforcement | attitude of the Courts

**2.45pm** **Workshops on drafting awards**

**4.00pm** **Coffee**

**4.15pm** **Costs** *Anthony Hussey, Hussey Fraser, Solicitors, Dublin*
arbitrators obligations | submissions | taxation

**4.45pm** **General discussion**

**5.00pm** **Finish**

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**Arbitration & Mediation Committee**
in conjunction with the Chartered Institute Of Arbitrators – Irish Branch
**Arbitration Award Writing And Costs Seminar**

**Venue:** President's Hall, Blackhall Place, Dublin 7 **Time:** 10.00am to 5.00pm
**Date:** Monday 26th September, 2011 **Fee:** €200

**Name:** _____ **Firm:** _____

**Address:** _____

_____ **DX:** _____

**Please reserve** _____ **place(s) for me on the above course. I enclose cheque for €** _____

**Signature:** _____

***Please return to Colleen Farrell, Law Society of Ireland, Blackhall Place, Dublin 7. Email: arbitration@lawsociety.ie***

The tribunal ordered that the respondent solicitor:
a) Do stand admonished,
b) Pay the whole of the costs of the Society, to be taxed by a taxing master of the High Court in default of agreement.

**In the matter of Patrick M Keane, a solicitor practising as Keane Solicitors, Hardiman House, Eyre Square, Galway, and in the matter of the *Solicitors Acts 1954-2008* [4096/DT156/10]**
***Law Society of Ireland (applicant) Patrick M Keane (respondent solicitor)***
On 5 May 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:
a) Allowed a deficit of in or about €386,000 in client funds as at 30 November 2009,
b) Allowed debit balances to occur on the client ledger amounting to €298,994 as of 30 November 2009, including a net debit balance of €62,417 on his own ledger accounts,
c) Failed to maintain proper books of account since at least 1 November 2008,
d) Failed to conduct monthly client bank reconciliations,
e) Allowed round sum transfers totalling €451,000 to be made from the client account to the office account when the office overdraft was approaching or above the overdraft limit, and some of the transfers were not recorded in the books of account,
f) Allowed funds paid from the client account to be incorrectly debited to the client ledger accounts of other clients,
g) Allowed incorrect entries to be made in the books of account, thereby concealing the existence of debit balances, as highlighted in the Society's investigation report of 20 January 2010,
h) Allowed wages to be paid from the client account,
i) Failed to exercise any or adequate supervision over the practice bookkeeper.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €2,000 to the compensation fund in respect of the finding at (i) above,
c) Pay the whole of the costs of the Society, as taxed by a taxing master of the High Court in default of agreement.

The reasons for the tribunal's opinion that it was appropriate to make such an order are by reason of the submissions made by the parties and the tribunal recognising that, while the respondent solicitor has the privilege of taking care and custody of clients' funds, which consequently carries a heavy onus, liability and responsibility to care and mind such funds, he was, to a certain extent, an innocent victim of the fraudulent conduct of a third party. The tribunal also noted that the respondent solicitor had promptly cleared the deficit on his client account when it came to his attention.

**In the matter of Daniel Downes, a solicitor practising as O'Dea & Company, Solicitors, at 1st Floor, Hardiman House, Eyre Square, Galway, and in the matter of the *Solicitors Acts 1954-2008* [4298/DT04/11]**
***Law Society of Ireland (applicant) Daniel Downes (respondent solicitor)***
On 21 June 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Allowed liabilities of in or about €606,000 to arise in respect of client monies due for stamp duty and to banks as of 31 January 2010,
b) Paid the balance of sale proceeds of a named Galway property, in the sum of €214,000, to his clients without clearing a liability to Allied Irish Bank of €160,000 and notwithstanding the fact that an undertaking had been given to Allied Irish Bank on 20 June 2008 to discharge this liability out of the proceeds of sale, as set out in the investigation report of 22 March 2010,
c) Failed to comply with an undertaking, dated 28 July 2008, to furnish a vacate in respect of the loan and charge of AIB on the above-named Galway property to a named firm of solicitors in a timely manner or at all, as set out in the report,
d) Gave an undertaking to Ulster Bank to ensure that he was in funds to discharge all stamp duty and registration fees prior to the release of loan proceeds, when the solicitor was not in fact in funds to stamp and register the deeds prior to or after the release of loan proceeds, as set out in the investigation report of 22 March 2010,
e) In the course of acting for vendor and purchaser, did not discharge his undertaking given to Permanent TSB in 2007 in relation to stamping and registering the documentation for the purchase of a named property and paid the vendor the full proceeds, and did not discharge or ascertain the status of the mortgage held by Bank of Scotland on the property, as set out in the investigation report,
f) Was in breach of an undertaking of 18 December 2007 to use a loan solely for the purpose of acquiring good marketable title and paying any necessary legal costs and outlays in connection with the purchase of a property and, having failed to stamp the deed, instead paid the money to an auctioneer, apparently on the client's instructions, as set out in the investigation report of 22 March 2010,
g) Was in breach of an unqualified undertaking, dated 28 July 2006, to stamp and register a deed with a stamp duty liability of €35,100 and failed to stamp the deed, as set out in the investigation report.
h) Provided an undertaking dated 9 July 2008 to AIB, who had provided mortgage loan finance for the purchase of a new house for €560,000, as set out in the investigation report, but failed to comply with the undertaking or to ensure that he was in funds to stamp and register the deed prior to negotiating the loan,
i) Was in breach of his undertaking of 11 October 2006 to Bank of Ireland in respect of an investment property purchased for €230,000 in 2006, where the solicitor failed to comply with an undertaking to ensure that he was in funds to stamp and register the deed prior to negotiating the loan cheque, as detailed in the investigation report,
j) Contrary to his undertaking to Bank of Ireland in May 2008, the solicitor failed to hold a transfer deed in trust for the bank and paid the loan proceeds out before he was in funds to complete the stamping and registration of the documentation, as set out in the report,
k) Failed to stamp a deed for €445,000 in 2005, in breach of the undertaking of 9 June 2005 given to Permanent TSB, as set out in the investigation report.

The tribunal ordered that the respondent solicitor:
1) Pay a sum of €15,000 to the compensation fund,
2) Pay the whole of the costs of the Society, as taxed by a taxing master of the High Court in default of agreement.

The reasons for the tribunal's opinion that it was appropriate to make such an order are by reason of the cooperation of the respondent solicitor in stepping up to the mark immediately, correcting all the issues that required to be addressed, and his previous good record. G

BRIEFING

# Justis update

**News of Irish case law information and legislation is available from FirstLaw's current awareness service on www.justis.com**
Compiled by Bart Daly

## COMPANY

### Petition to wind up

*Liabilities – creditor – contingent or prospective creditor – standing – whether company would be wound up* – Companies Acts 1963-2003.

The proceedings were initiated by a petition presented by a shareholder of a company, Mr Fraher, for an order that the company be wound up pursuant to the provisions of the *Companies Acts 1963-2003*. The petition was resisted by the other 50% shareholder. The basis invoked for the winding up was that the company was insolvent and unable to meet its liabilities. It was contended that the petitioner did not have standing to seek the compulsory winding up as a contingent or prospective creditor or as a contributory of the company and that, in any event, the company was not insolvent. A loan to AIB was due for an amount in excess of €2,117,413. The three retail subsidiaries of the company were trading.

Laffoy J held that there would be an order dismissing the petition. It would be unjust to allow Mr Fraher to 'pull the plug' on the basis of an alleged insolvency of the company, which he had contrived contrary to an agreement. There was an alternative remedy that he could pursue that gave the court a lot more options than making a compulsory winding-up order. Mr Fraher did not have sufficient interest to maintain the petition as a contingent creditor. The court had residual doubts as to whether Mr Fraher had standing as the owner of full paid-up shares to maintain a petition solely on the grounds that the company was unable to pay its debts.

***In the matter of La Plagne Limited*, High Court, 17/1/2011** [2011] 1 JIC 1704

## FINANCE

### Banking

*European law* – National Asset Management Agency Act 2009 – *whether the decision made by the interim team of NAMA prior to the establishment of NAMA could be deemed a valid decision of NAMA – Whether the European Commission decision satisfied the requirements for direct effect.*

The appellants appealed against an order of the High Court refusing their application for certain reliefs by way of judicial review against the respondents. That application concerned a purported decision of the first-named respondent to acquire from particular banks certain 'eligible bank assets' within the meaning of section 69 of the *National Asset Management Agency Act 2009*. Those assets consisted of substantial loans made by the banks to the appellants. The appellants raised five grounds of appeal concerning breach of fair procedures, invalidity, unconstitutionality of the act and whether the decision of the European Commission dated 26 February 2010, on the respondent's scheme as state aid, required that the respondent be precluded from acquiring loans from borrowers that were not impaired loans. However, those first three grounds were contingent on the fifth ground, namely, whether the decision of the respondent to acquire the loans of the appellants was a nullity because the actual decision was made prior to the establishment of the respondent and was one that could not have been, or alternatively, was not ratified or adopted by the respondent after it was established pursuant to statute. In respect of that final ground, it was claimed that the decision to acquire the appellants' loans was made on 11 and 14 December 2009, but that the respondent was not established until 21 December 2009 and the 2009 act was brought into force on that same day. It was common case that an 'interim NAMA team' was set up prior to the coming into force of the 2009 act in order to carry out preparatory work. That interim team met on 11 and 14 December 2009 and, at those meetings, it made a decision to exercise the discretion of the respondent to acquire the loans of the respondent. The respondents submitted that this decision was duly ratified by the respondent at board meetings. However, the minutes of those meetings did not record any decision. It was later submitted by counsel on behalf of the respondents that the decision of the interim team was adopted, albeit not expressly, by a series of actions of the respondent subsequent to its establishment.

Murray CJ allowed the appeal, holding that it was considered proper to first decide on the issue of whether the respondent, as a matter of law, made any decision to acquire the appellants' assets. That particular issue was not a question of form, but was fundamental to the exercise of the respondent's statutory powers in respect of the eligible assets in question. There were several stages in the acquisition process, culminating in the service of an acquisition schedule (which had not occurred in this case), and an essential precondition was that the respondent form an intention to acquire. Thus, the respondent must exercise its discretion pursuant to section 84 of the 2009 act and must form an opinion that it is necessary or desirable to acquire a particular asset. The respondent had no power to make a decision before it came into existence. As a matter of fundamental principle, the respondent, as a statutory body, could only perform its functions as authorised by its founding statute. Consequently, the decision of the interim team was, in law, at the time when it was made, a nullity and had no legal effect. The respondent could have made a valid decision following its establishment, but it was accepted by the respondents that no explicit decision was made, but rather it was argued there was an implied decision. It was clear from the evidence that the decision made by the interim team was not given legal effect by any subsequent act or series of acts by the respondent. Consequently, the respondent made no decision to acquire the appellant's loans and the appellants were entitled to a declaration to that effect.

*Per* Fennelly J in respect of the European law issue: the appellants' case in respect of this issue was fundamentally based on the commission decision having direct effect. The European Commission made a decision not to raise objections, which meant that the aid provided for under the scheme could be implemented. It followed that the commission had no power to impose conditions on the State as part of its decision and it did not purport to do so. Consequently, there was no condition attached to the commission decision whose direct effect could be invoked by the appellants. In conclusion, there was no term of the commission decision invoked by the appellants that met the requirements for the decision to have direct effect by conferring rights on the appellants capable of being relied upon before the court. The decision did not purport to lay down any requirement and certainly not one that was unconditional, clear and precise.

***Dellway Investments & Others (applicants/appellants) v NAMA and Others (respondents)*, Supreme Court, 3/2/2011** [2011] 2 JIC 0301

### Constitutional

*Bank asset – powers – discretion – National Asset Management Agency – whether definition of eligible bank asset overboard and unconstitutional.*

The Supreme Court delivered judgment separately on the constitutional challenge to the compatibility of section 69 of the *National Management Asset Agency Act 2009*, by a property developer who disputed the acquisitions of his assets by the respondent, with

the provision of the Constitution having regard to the impact of the section on the property rights of the appellants.

The Supreme Court was asked to consider the question of mootness in light of its earlier decisions in the same proceedings. The appellants contended that the meaning given to an 'eligible bank asset' provided for in section 69 was so broad and the discretion of NAMA so untrammelled as to constitute an unjust attack on the property rights of the appellants. The minister had enacted the *National Asset Management Agency (Designation of Eligible Bank Assets) Regulations 2009* (SI 568 of 2009) pursuant to section 69, which prescribed seven main classes of bank assets.

The Supreme Court held (per Murray CJ; Denham, Hardiman, Fennelly, Macken, Finnegan, McKechnie JJ concurring) that no question of mootness arose. The appellants currently faced a real and immediate risk of being adversely affected by the operation of the act. The court held that the Oireachtas was entitled as a matter of policy to include in the act a very broad definition of 'eligible bank asset', including a delegation to the relevant minister of the power to make regulations prescribing classes of eligible bank assets. The relevant bank had to decide to opt to participate in the statutory scheme, and an eligible back asset was not acquired by NAMA by reason of the fact alone of its eligibility, but only if NAMA concluded that its acquisition was necessary, and the provisions of section 69 could not be considered to be an unjust attack on the property rights of the appellants. The issue of the principle of proportionality did not arise. There was nothing unusual in the manner in which the purposes and policies, in accordance with which NAMA had to act, were defined.

***Dellway Investments & Others (applicants/appellants) v NAMA and Others (respondents)*, Supreme Court, 3/2/2011** [2011] 2 JIC 0301

## IMMIGRATION AND ASYLUM

### False information

*Judicial review – whether the decision of the respondent ought to be quashed, notwithstanding the provision of false and misleading information by the applicants.*

The applicants, who were husband and wife, sought leave to challenge, by way of judicial review, the decisions of the respondent that recommended that they should not be granted declarations of refugee status. In both cases, the respondent made findings pursuant to section 13(6) of the *Refugee Act 1996*, which meant that any appeal pursued by the applicants would be a documentary appeal. The applicants argued that they would be severely prejudiced by the absence of an oral hearing and further argued that the respondent based his decisions uniquely on credibility grounds and failed to assess the kernel of their claim, which was, essentially, that the husband was the brother of a former opposition MP who was forced to flee persecution in Zimbabwe and was granted refugee status in Britain. Essentially, the applicants claimed that they fled Zimbabwe in 2007, and they submitted numerous documents in support of their claim. However, the respondent obtained information from the British authorities that revealed that persons with the same biographical details as the applicants had been in Britain on valid visas during the entire period they claimed to be suffering persecution in Zimbabwe. This information was put to the applicants during the course of their separate interviews and, while the husband, who was interviewed first, denied that he had given false information, the wife admitted that she had been in Britain since 2002 and married the second-named applicant there in 2006. It was now submitted on behalf of the applicants that the respondent breached fair procedures by failing to put to the husband the wife's admissions that she had told lies. It was further submitted that, notwithstanding the blatant untruth of the narrative given by the applicants regarding past persecution, if the respondent accepted from personal documents submitted that the applicants were indeed members of the opposition family, the respondent ought to have accepted that they demonstrated a well-founded fear of persecution for a convention reason.

Clark J refused to grant leave. The submission that a breach of fair procedures affected the findings relating to the husband was rejected. The husband was given every opportunity to explain why he had lied and, as his interview was conducted before that of his wife, it was not possible to put to him the admissions she made. The applicants failed to establish any inadequacy in the form of the appeal available to them, and no averments were made outlining any injustice or prejudice occasioned to them by the absence of an oral hearing on appeal. Furthermore, the applicants ignored the fact that they had a duty when engaging in the asylum system to cooperate by presenting their account in a truthful manner. Their gross misconduct in abusing the integrity of the asylum process would entitle the court to refuse *certiorari*. Furthermore, there was also no merit to the application for leave.

***C(R) & Anor (applicants) v Refugee Applications Commissioner & Anor (respondents)*, High Court, 15/7/2010** [2010] 7 JIC 1501 G

## Eurlegal

Edited by TP Kennedy, Director of Education

# Europe pulls off great save for TV football

Earlier this year, the European General Court (formerly the European Court of First Instance) rejected appeals brought by both FIFA and UEFA against decisions of the European Commission approving the inclusion of the two major international football tournaments on national lists of events that must be broadcast on 'free-to-air' television. As the governing body for world football, FIFA organises the World Cup finals every four years.

Similarly, the European Championship finals are held by UEFA every leap year. Both organisations earn a significant portion of their revenue from the sale of the TV broadcasting rights of the relevant tournament. In its judgments, the court considered certain issues arising from the EU's *'Television without Frontiers' Directive* as well as addressing key freedom to provide services and competition law issues.

### Major importance

EU Directive 89/52 (OJ 1989 L 298), as amended by EU Directive 97/36 (OJ 1997 L 202) is commonly referred to as the *'Television without Frontiers' Directive*. Article 3(a) of this directive allows EU member states to designate events of major importance for society that must be shown on 'free-to-air' or terrestrial television. This provision also stipulates that a member state must compile its list of such events in a clear and transparent manner before submitting it for approval to the European Commission.

Britain (in 1998) and Belgium (in 2003) notified their respective lists of events of major national importance to the commission. Britain sought to ensure that both the World Cup and the European Championship are shown on 'free-to-air' TV, whereas Belgium sought to ensure that the former is shown on terrestrial television. Indeed, the preamble to the *'Television without Frontiers' Directive* specifically mentions both the World Cup and the European Championships as being events of major importance for society. Britain's original application was delayed because, in 2005, the General Court overturned the commission's initial 'green light' due to a procedural defect.

### Commission decisions

In two separate 2007 decisions, the commission found that Britain's and Belgium's measures had each been taken in a clear and transparent manner. The commission also held that the World Cup/European Championship met two criteria considered to be reliable indicators of the importance of events for society. First, the relevant tournament has a special general resonance to British/Belgian society (not just to football fans). Secondly, the relevant event, considered as a whole rather than as a series of individual matches, has traditionally been shown on terrestrial television and has attracted a large TV audience. Therefore, the commission concluded that both the British and the Belgian lists should be granted derogations from the fundamental EU law principle of the freedom to provide services, on the basis of overriding public interest reasons, namely the protection of the right to information and ensuring wide public access to TV broadcasts of key sporting events. The commission also found that both measures allow competition for the acquisition of the TV rights to these tournaments while not distorting competition in the downstream pay-TV or terrestrial television markets. On the basis of the above, the commission approved both the British and Belgian applications.

### Grounds of appeal

Both FIFA and UEFA sought the annulment of the relevant commission decisions on various grounds. Firstly, both governing bodies claimed that the commission had incorrectly found that the procedure that led to the adoption of both measures was clear and transparent within the meaning of article 3(a) of the *'Television without Frontiers' Directive*. Secondly, they also argued that the commission should not have supported the British and Belgian findings that the relevant

tournament in its entirety is an event of major importance. Thirdly, the applicants claimed that the commission's conclusions breached the *Treaty on the Functioning of the EU* (TFEU) provisions regarding the freedom to provide services. Finally, FIFA and UEFA argued that the commission's findings infringed the TFEU competition rules applicable to state measures.

### Clear and transparent process

FIFA and UEFA both challenged the validity of how the British and Belgian authorities compiled their respective lists of designated events. The General Court found that article 3(a) gives member states a margin of discretion in terms of the adoption of procedures for drawing up these lists, while emphasising that the process must be clear and transparent as a whole. Therefore, the relevant procedure must be based on objective criteria set out in advance by the relevant national implementing measures. The court found that an EU member state should also indicate both the body responsible for compiling the list of 'protected events' and how interested parties may submit their comments. However, article 3(a) does not oblige a member state to take such submissions into account and/or to explain why it chose to ignore any recommendations of third parties. The court held that both Britain and Belgium had followed these procedural rules and thus rejected the FIFA/UEFA view that the process lacked clarity and/or was not transparent.

### Unitary nature

FIFA and UEFA argued that the totality of matches in the World Cup/European Championships was not an event of major importance for society. More particularly, they did not accept that certain matches not involving England, Scotland, Wales or Northern Ireland or Belgium have a special resonance for British or Belgian societies, respectively. In addition, neither governing body accepted that all matches at both tournaments have traditionally been broadcast on 'free-to-air' television, attracting large television audiences.

The General Court held that member states have considerable discretion in deciding which events are of major importance for their public. The specific reference to the World Cup and European Championship in the *'Television without Frontiers' Directive* means that a member state is not obliged to give specific reasons for including matches from these tournaments in its list of 'protected events'. However, the inclusion of the event as a whole must be examined.

The court found that, in both the World Cup and European Championship, the participation of a particular team in the knockout stages of the tournament may depend on the results of matches in which the relevant side is not playing. (These fixtures are sometimes referred to as 'non-prime' matches.) Moreover, such matches often decide the opposition that a relevant national side will face in the last 16 or quarter-finals. Accordingly, both tournaments may reasonably be regarded as a single event rather than a series of individual matches divided up into 'prime' and 'non-prime' fixtures. The court specified that not all 'non-prime' matches need be of major importance for the tournament as a whole to be 'protected'. Of course, when the broadcast rights are being sold, the identities of the teams that will be participating in the relevant tournament are unlikely to be known. The General Court found that it is sufficient that some of these 'non-prime' matches are of sufficient interest in a particular member state for the tournament as a whole to be designated as an event of major importance to society.

### Freedom to provide services

FIFA and UEFA claimed that the British/Belgian lists restricted the freedom to provide services since they limit the number of broadcasters interested in acquiring the rights to broadcast World Cup/European Championship matches in their respective countries. The court noted that limits to that freedom may be justified by overriding reasons in the public interest, such as the protection of the right to information or ensuring public access to major sporting events, provided that the national measures taken to achieve these goals are proportionate. The applicants argued that, since each match of a World Cup/European Championship is not an event of major importance for society, the national rules designating the entire event were disproportionate. The court found that this challenge was based on an incorrect assumption. It thus upheld the commission's view that the inclusion of all World Cup/European Championship matches on a list of events to be shown on 'free-to-air' television was proportionate.

### State measures

Both governing bodies criticised the lack of analysis of the restriction of competition caused by Britain's decision that the World Cup and European Championships must be shown on 'free-to-air' television. Specifically, FIFA and UEFA claimed that the British list facilitated BBC and ITV's abuse of a dominant position. EU competition rules on state measures are contained in article 106 of the TFEU (formerly article 86 of the *EC Treaty*). This provision prohibits an EU member state from putting undertakings, to which they grant special or exclusive rights, in a position that these undertakings could not themselves attain without infringing various TFEU rules, including those prohibiting the abuse of a dominant position.

The court, however, found that the British legislation in question does not grant special or exclusive rights to relevant British terrestrial broadcasters at the expense of pay-TV providers. The national measure merely prevents the broadcast of the World Cup/European Championship on an exclusive basis. Both terrestrial and non-terrestrial providers may seek to acquire the relevant TV rights on a non-exclusive basis. If the latter do not wish to broadcast either tournament on a non-exclusive basis, this does not mean that BBC and ITV have been granted special or exclusive rights. Rejecting the claims of FIFA and UEFA, the General Court found that the British measure does not prevent pay-TV companies from competing for the right to broadcast the World Cup or European Championships.

### Implications

From an Irish perspective, the General Court views provide useful guidance for the Minister for Communications when he compiles the list of events of major importance for Irish society. (Interestingly, Minister Rabbitte chose to ignore the wishes of his predecessor when he decided, last May, not to add events such as the Heineken Cup to the State's list of designated events.)

The court's judgments represent good news for those in both Britain and Belgium who wish to follow the major international football tournaments on terrestrial television. These decisions are, however, bad news for FIFA and UEFA, who wish to maximise revenue from their respective showpiece events by selling broadcasting rights for certain matches to the highest bidder. The issue of whether the entirety of a World Cup or European Championship may be protected will ultimately be decided by the European Court of Justice, as both FIFA and UEFA have appealed.

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*Cormac Little is a partner in the Competition and Regulation Unit of William Fry, Solicitors. He wishes to thank Diego Hernando for his help with this article.*

# Recent developments in European law

## CONSUMER

**Joined cases C-65/09 and C-87/09, *Gebr Weber GmbH v Jürgen Wittmer, Ingrid Putz v Medianess Electronics GmbH*, 16 June 2011**

Directive 1999/44 on the sale of consumer goods provides that the seller is to be liable to the consumer for any lack of conformity of the goods at the time when they are delivered. If the goods are not in conformity, the consumer is entitled to have them brought into conformity, free of charge, by repair or replacement, unless this is impossible or disproportionate. Any repair or replacement must be done without significant inconvenience to the consumer. If he is unable to have the goods brought into conformity, he can claim a reduction of the price or rescission of the contract of sale. In the first case, Mr Wittmer concluded a contract for the sale of polished tiles at a price of €1,382.27. After having approximately two-thirds of the tiles laid, he noticed shading on them. In the proceedings he brought, the court-appointed expert concluded that the shadings were fine micro-brush marks that could not be removed and that the only possible remedy was complete replacement of the tiles. He estimated the cost of this at €5,830.57. In the second case, Ms Putz had concluded over the internet a contract of sale for a new dishwasher for €367. The parties agreed that the goods would be delivered to the door of her house in return for a delivery charge. The delivery and payment took place as agreed. After the machine was installed, Ms Putz discovered that it was faulty and could not be repaired. They both agreed on the replacement of the dishwasher. However, Ms Putz demanded that Medianess not only deliver a new machine but also remove the defective machine and install the new one, or bear the costs of this being done. The German courts asked the CJ whether EU law requires the seller to bear the cost of removing the defective goods and installing the new ones. German law does not require this. The CJ noted that EU law intended to make the 'free-of-charge' aspect of the seller's obligation to bring goods into conformity an essential element of the protection afforded to consumers. The 'free-of-charge' requirement aims to protect consumers against the risk of financial burdens that might dissuade them from asserting their rights in the absence of such protection. If the consumer could not require the seller to remove the goods and reinstall the replacement, he would have an additional financial burden that would not have been there had the contract been performed correctly. Requiring the seller to bear the cost of removal and replacement does not lead to an inequitable outcome. By not delivering goods in conformity with the contract, he fails to perform the obligation that he accepted under the contract and must bear the consequences of defective performance. On the other hand, the consumer has paid the selling price and thus correctly performed his contractual obligation. The rights conferred on consumers by the directive seek merely to re-establish the situation that would have prevailed in the seller had delivered goods in conformity at the outset.

## CRIMINAL

**Joined cases C-483/09 and C-1/10, *Magatte Gueye & Valentin Salmeró Sánchez*, opinion of Advocate General Kokott, 12 May 2011**

In Spain, the courts are obliged to issue, as one of a number of criminal sanctions, an injunction restraining the perpetrator of acts of violence from approaching his victim. The injunction is mandatory and must be issued in all cases of domestic violence, even the least serious cases, such as verbal threats. The order to stay away is for a minimum of six months, and failure to comply is itself a criminal offence. The applicants were convicted of mistreating their partners. They were then subject to injunctions restraining them from approaching their partners for 16 and 17 months. Some days after their convictions, they resumed cohabitation with their partners. Due to their failure to comply with the injunction, they were both arrested and convicted. They appealed against their convictions. In the appeals, the partners of the two accused considered themselves indirect victims of the Spanish legislation. They argued that they had voluntarily pursued their relationship with their partner, without compulsion, in the absence of any economic necessity, and that they had initiated the resumption of cohabitation. The Spanish court asked the CJ whether Framework Decision 2001/220 on the standing of victims in criminal proceedings precluded legislation imposing a mandatory injunction in such circumstances. Advocate General Kokott recognised that a mandatory injunction of this nature is at the crossroads of the requirement of effective public action against domestic violence and the victim's right to respect for her private and family life. Nonetheless, the difficult question of balancing the various interests does not fall within the scope of decision 2001/220. It does not govern in a general manner all the aspects of the protection of victims, but those relating to procedural guarantees in criminal proceedings. The form and duration of the penalties that the member states may provide for in domestic violence cases is not covered by procedural guarantees or, therefore, the framework decision. Thus, the appropriateness of a penalty such as the automatic injunction cannot be examined in the light of the framework decision. The framework decision also recognises the victim's right to be heard. The advocate general stated that this requires the member state to give her the opportunity to express her opinion as to the imposition of an order to stay away where the victim maintains a close personal relationship with the perpetrator and where such an order produces indirect effects on her private and family life. It must be possible for the court to take account of the victim's statement in order to determine the sanction, while respecting the minimum and maximum thresholds for the penalty laid down by national law. That requirement does not mean that the determination of the penalty should be subject to the victim's discretion or that the court with jurisdiction should be bound by the latter's assessment.

## INTELLECTUAL PROPERTY

**Case C-263/09P, *Edwin Co Ltd v OHIM*, 5 July 2011**

Regulation 40/94 on the community trademark provides that a trademark may be declared invalid where its use may be prohibited by an earlier right. Fiorucci SpA is an Italian company that was set up by fashion designer Elio Fiorucci in the 1970s. In 1990, it sold all its 'creative assets', including all the trademarks it owned, to the Japanese company Edwin Co Ltd. In 1999, Edwin registered the word mark 'Elio Fiorucci' for a series of goods. Mr Fiorucci challenged that registration, relying on the regulation in conjunction with Italian law. He argued that, in Italy, his name enjoyed special protection, under which a well-known personal name can be registered as a trademark only by, or with the consent of, that

BRIEFING

person, and that he had given no such consent. OHIM decided that Italian law did not apply in this case, as the name 'Elio Fiorucci' has acquired renown in the context of his commercial activity. It allowed the application for registration. The General Court annulled that decision in 2009, as it contained an error of law. OHIM had incorrectly ruled out the application of national law in the case of Mr Fiorucci. Edwin appealed to the CJ. It claimed that the regulation refers to the 'right to a name' solely as an attribute of personality. On that ground, it argued that the General Court had not applied the regulation correctly. The Court of Justice held that the wording and structure of the regulation does not permit the concept of the 'right to a name' to be restricted to an aspect of an attribute of personality. The concept may also cover the commercial exploitation of the name. The regulation provides for a community trademark to be declared invalid where an interested party claims another earlier right. It gives a non-exhaustive list of four examples – in addition to the right to a name, it cites the right of personal portrayal, copyright, and industrial property rights. The economic aspects of some of those rights are protected both under national laws and under EU law. There is no reason, therefore, not to afford the same protection to the 'right to a name'. The General Court was fully entitled not to restrict the protection provided by the regulation merely to situations where the registration of a community trademark conflicts with a right intended to protect a name exclusively as an attribute of the personality of the person concerned. The right to a name may be relied on not only in order to protect a name as an attribute of personality, but also to protect its economic aspects. The CJ also confirmed the jurisdiction of the General Court to review the legality of OHIM's assessment of the national law relied on. The General Court was fully entitled to infer from national law that, even where the name of the well-known person has already been registered or used as a trademark, the proprietor of a well-known name is entitled to prevent the use of that name as a trademark where he has not given his consent to its registration as a trademark.

## LITIGATION

On 25 February, Iceland ratified the 2007 *Lugano Convention on Jurisdiction and Enforcement of Judgments*. The convention entered into force for Iceland on 1 May 2011. It now takes effect between the EU, Norway, Switzerland and Iceland and extends the EU regime on jurisdiction and judgments to those states. G

# NOTICES

## WILLS

**Brennan, Teresa (deceased),** late of 10 McDonagh Court, Cashel, Co Tipperary, and formerly of Kilcruise, Wolfhill, Athy, Co Laois (orse Kildare). Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 9 July 2010, please contact Ross Phillips, solicitor, HG Donnelly & Son, Solicitors, 5 Duke Street, Athy, Co Kildare; reference: RP/BRE033-01

**Burke, Marion (deceased),** late of Roemore, Breaffy, Castlebar, Co Mayo, who died on 23 March 2011. Would any person having knowledge of any will executed by the above-named deceased please contact James Cahill, solicitor, Cahill & Cahill, Solicitors, Ellison Street, Castlebar, Co Mayo; tel: 094 902 5500, fax: 094 902 5511, email: info@jamescahill.com

**Carroll, Christine (deceased),** late of St Oliver Plunkett Hospital, Dundalk, Co Louth, and formerly of Coopers Cross, Castlebellingham, Co Louth. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 17 February 2011, please contact McKeever Taylor, Solicitors, 31 Laurence Street, Drogheda, Co Louth; tel: 041 983 8639, fax: 041 983 9762, email: info@mckeevertaylor.ie

**Cashin, John (deceased),** late of 32 North Road (formerly 4 Somers Villas), Finglas, Dublin 11. Would any person having knowledge of a will executed by the above named, who died on 26 July 2011, or the title deeds relating to 32 North Road aforesaid, please contact Sheehan & Company, Solicitors, 1 Clare Street, Dublin 2, tel: 01 661 6922, fax: 01 661 0013, email: fergusonm@sheehanandco.ie

**Dwane, Judith (deceased),** late of Renvyle, Iona Drive, North Circular Road, Limerick. Would any person having knowledge of a will executed by the above-named deceased, who died on 20 March 2011, please contact Adrian Greaney & Co, Solicitors, Lisadell House, 8 Catherine Place, Limerick; tel: 061 314 468, fax: 061 314469.

**Enright, James (deceased),** late of Dromrahnee, Ardagh, Co Limerick, who died on 23 February 2000. Would any person having any knowledge of the whereabouts of the original will of the deceased, executed on 10 November 1999, please contact Lees Solicitors, 45 Church Street, Listowel, Co Kerry; tel: 068 21279, fax: 068 22261, email: enquiries@lees.ie

**Ferguson, Brian (deceased),** late of 8 St John's Court, Malahide Road, Dublin 3 (formerly of 44 Clancarthy Road, Donnycarney, Dublin 5), who died on 11 September 2010. Would any person having knowledge of a will made by the above-named deceased please contact Gartlan Winters, Solicitors, 56 Lower Dorset Street, Dublin 1; tel: 01 855 7434, fax: 01 855 1075, email: info@gartlanwinters.ie

**Hudson, Patrick Joseph Richard (deceased),** late of 27 Malachi Road, Dublin 7, who died on 24 June 2011. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Aidan T Stapleton & Co, Solicitors, Parliament Buildings, 38 Parliament St, Dublin 2; tel: 01 679 7939, fax: 01 679 2494, email: info@astapleton.com

**Kearns, Patrick (deceased),** late of 20 Abbey Park, Baldoyle, Dublin 13. Would any person having knowledge of a will executed by the above-named deceased, who died on 31 May 2011, please contact Doyle Fox & Associates, Solicitors, The Farmhouse, Main Street, Blessington, Co Wicklow; tel: 045 851 980, fax: 045 851 982, email: reception@doylefoxsolrs.ie

**Kelly, Ann (deceased),** late of Killick, Kilcock, Co Kildare, who died on 18 January 2011. Would any person having knowledge of any will executed by the above-named deceased please contact Edward Timmins, solicitor, LC O'Reilly Timmins & Co, Solicitors, The Harbour, Kilcock, Co Kildare; tel: 01 628 7697/01 628 7703; fax: 01 628 7045, email: oreillytimmins@gmail.com

**McCabe, Patrick (deceased),** late of 14 Charleville, Lower Churchtown Road, Dublin 14, and formerly of 18 Manor Close, Rathfarnham, Dublin 16, who died on 19 January 2011. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, after 31 January 1978, please contact Vincent & Beatty, Solicitors, 67/68 Fitzwilliam Square, Dublin 2; tel: 01 634 0000, email: postmaster@vblaw.ie.

**Phillips, William (deceased),** late of 25 St Laurence's Park, Wicklow, in the county of Wicklow, who died on 8 May 1994. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Haughton McCarroll, Solicitors, 2 Church Street, Wicklow, Co Wicklow; tel: 0404 68344, fax: 0404 68131

**Reynolds, Patrick, orse Paddy (deceased),** late of Stonepark, Roscommon, Co Roscommon. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased, who died on 25 May 2011, please contact George Lynch & Son, Solicitors, Bridge Street, Carrick-on-Shannon, Co Leitrim; tel: 071 962 0017 or 962 1127, fax: 071 962 0600, email: georgelynchsolicitors@eircom.net







## RATES

# Professional notice rates

**RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:**

- **Wills** – €144 (incl VAT at 21%)
- **Title deeds** – €288 per deed (incl VAT at 21%)
- **Employment/miscellaneous** – €144 (incl VAT at 21%)

**HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €33 EXTRA**

**ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND.** Deadline for October *Gazette*: 21 September 2011. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

# NOTICES

**Ryan, Daniel (deceased),** late of 11 Sonas, Drombana, Co Limerick, formerly of 21 Ivy Court, Killucan, Co Westmeath; 5 Mantua Park, Swords, Co Dublin; and 17 Oldtown Road, Santry, Dublin 9, who died on 3 June 2011. Would any person having knowledge of any will executed by the above-named deceased please contact Lees Solicitors, Lord Edward Street, Kilmallock, Co Limerick; DX 84001; tel: 063 98003, email: info@lees.ie

**Ryan, Seamus (deceased),** late of Glynnside, Portlaoise, in the county of Laois. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 1 February 2011, please contact Rollestons, Solicitors, Church Street, Portlaoise, Co Laois; tel: 057 8621329, fax: 057 8620737, email: dholland@rollestons.ie

**Shanahan, Ella (Eleanor) (deceased),** late of 'Hilltop', Killoteran, Butlerstown, Waterford. Would any person having knowledge of a will executed by the above-named deceased, who died on 28 July 2011, please contact Michael Quirk, Micheal J O'N Quirk & Company, Solicitors, Main Street, Carrick-on-Suir, Co Tipperary; tel: 051 640 019, fax: 051 641 376

**Stephens, Patrick (deceased),** late of 2 Ballygall Place, Finglas East, Dublin 11. Would any person having knowledge of the whereabouts of any will, and in particular the original will dated 13 September 1995, executed by the above-named deceased, who died 23 August 1996, please contact Joyce & Martin, Solicitors, 14 Sydney Parade Avenue, Sandymount, Dublin 4, tel: 01 260 7061, email: bolandmar@hotmail.com

**Wolfe, Joyce (deceased),** late of Kinvara Nursing Home, Strand Road, Bray, Co Wicklow, and formerly of Cherrybrook, Old Connaught Avenue, Bray, Co Wicklow, who died on 9 March 2011. Would any person having knowledge of any will executed by the above-named deceased please contact Harrison, Solicitors, 3 Terenure Road West, Terenure, Dublin 6W; tel: 01 492 7062, fax: 01 492 7063, email: agh@agh.ie

## MISCELLANEOUS

**Practice for sale – South Donegal area.** Sole practitioner interested in sale or amalgamation of practice. Established a long number of years. General practice. Contact **box no 08/11/01**

**Solicitor's office, Dublin 2, with excess office space, to let.** Will suit sole practitioner. Excellent secretarial, computer and bookkeeping services available if required. Please contact tel: 01 662 8505 or 087 765 3543

**Seven-day ordinary publican's licence sought.** Contact Shane O'Neill of Sweeney McGann, Solicitors, 67 O'Connell Street, Limerick; tel: 061 317 533, fax: 061 319 496, email: soneill@sweeneymcgann.com

## TITLE DEEDS

**In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Glanbia Cooperative Society Limited and Glanbia Foods Ireland Limited**

Any person having a freehold estate or any intermediate interest in "all that and those the dwellinghouse and premises situate in the town of Mountmellick, in the barony of Fenchurch and in the Queen's County, lately used as a constabulary barracks with the garden attached thereto, all of which are now in the possession of the said Humphrey Smith, containing 38 perches Irish plantation measure be the same more or less", the subject of a fee farm grant dated 4 December 1867 between Samuel Higgins Borrowes of the one part and Humphrey Smith of the other part, at a fee farm rent of £35 sterling per annum.

Take notice that Glanbia Cooperative Society Limited and Glanbia Foods Ireland Limited intend to apply to the county registrar of the county of Laois to vest in it the fee simple and any intermediate interests in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Glanbia Cooperative Society Limited and Glanbia Foods Ireland Limited intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

*Date : 2 September 2011*

*Signed: Kearney Roche and McGuinn (solicitors for the applicant), 9 The Parade, Kilkenny*

**In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Glanbia Cooperative Society Limited and Glanbia Foods Ireland Limited**

Any person having a freehold estate or any intermediate interest in "all that and those that plot of ground with the dwellinghouse and offices thereon in Market Street in the town of Mountmellick, with the appurtenance thereonto belonging in the occupation of Edward Scully, bounded on the northwest by John Hanley's holding, on the southeast by Humphrey Smith's holding, on the northeast by Thomas and Samuel Pimms holding, and on the southwest by the Main Street, containing 15 perches Irish plantation measure or thereabouts, situate in the parish of Rosenallis, barony of Tinnehinch and Queen's county, more particularly delineated and described by the map on the margin thereof", the subject of an indenture of lease dated 26 November 1873 between Robert W Kenny and others of the one part and Humphrey Smith of the other part for a term of 200 years from 29 September 1873 at a rent of £11, 1s and 6d sterling, subsequently adjusted to £10.15s.

Take notice that Glanbia Cooperative Society Limited and Glanbia Foods Ireland Limited intend to apply to the county registrar of the county of Laois to vest in it the fee simple and any intermediate interests in the said property, and any party asserting that they hold superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Glanbia Cooperative Society Limited and Glanbia Foods Ireland Limited intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for such directions as may be appro-

# NOTICES

priate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.
*Date: 2 September 2011*
*Signed: Kearney Roche and McGuinn (solicitors for the applicant), 9 The Parade, Kilkenny*

**In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Mary O'Rourke, Eugene O'Rourke and Brendan Maguire**
Any person having a freehold estate or any intermediate interest in all that and those the Metro Bar, being the premises once known as number 155 Great Britain Street, but now known as number 155 Parnell Street, in the city of Dublin, being the subject of an indenture of lease dated 10 November 1858 between Edward Kidby of the one part and John Purcell of the other part, and therein described as "all that and those the house number one hundred and fifty five Great Britain Street in the city of Dublin as lately held in the possession and occupation of Mr James Mc Manus, Grocer and Spirit Dealer and meared and bounded on the south by Great Britain Street aforesaid on the north by the stable or at present a coach factory in the rear of said house on the east by the house or premises now in the occupation of Mr Kinsella and on the west by the house and premises now in the occupation of Mrs Russell, Provision Dealer and situate lying and being in the parish of Saint George, county of the city of Dublin aforesaid together with the shop fixtures and fittings and the furniture and other chattels therein as it now stands".

Take notice that Mary O'Rourke, Eugene O'Rourke and Brendan Maguire, being the persons currently entitled to the lessees' interests in the said premises under the lease, intend to apply to the county registrar for the county of Dublin for the acquisition of the lessor's and all superior interests in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid properties (or any of them) is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, Mary O'Rourke, Eugene O'Rourke and Brendan Maguire intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid premises are unknown or unascertained.
*Date: 2 September 2011*
*Signed: KMB Solicitors (solicitors for the applicants), 127 Lower Baggot Street, Dublin 2*

**In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Brendan Foley (hereinafter called the 'applicant') of 119 and 119a Emmet Road, Inchicore, Dublin 8**
Take notice that any person having any interest in the freehold or leasehold estate of the following property: all that and those the premises demised by an indenture of assignment dated 25 July 1976 and made between Ernest Joseph Foley of the one part and the applicant and the said Ernest Joseph Foley of the other part, and therein described and known as 119 and 119a Emmet Road, Inchicore, in the city of Dublin, comprising:

"All that and those that plot or piece of ground situate on the north side of the road leading from Inchicore to Kilmainham, containing in front the said road 30 feet from front to rere, on the east side thereof 53 feet 6 inches and from front to rere on the west side the like number of feet be the said several admeasurements or any of them; more or less bounded on the north by premises of John Cuddihy Esq on the south by the said road leading from Inchicore to Kilmainham, on the east by a lane or passage and on the West by other premises in the possession of the said Thomas Murray which said plot of ground is situate, lying and being at Golden Bridge in the parish of Saint Jude barony of Upper Cross county of Dublin together with a right of passage at the eastern side of the premises hereby demised in common with the other tenants of the said premises from the rere of said demised premises to the public road in front which said lands were demised by indenture of lease dated 28 January 1885 from 25 March 1885 for 300 years at the yearly rent of 3 pounds, together with buildings erected thereon.

"All that plot or piece of ground situate on the north side of the road leading from Inchicore to Kilmainham containing in front to said road 5 feet in the rere the like number of feet and from front to rere 53 feet 6 inches the said several admeasurements or any of them; more or less bounded on the north by premises of John Cuddihy Esq, on the south by the said road leading from Inchicore to Kilmainham, on the east by other premises demised to the said John O'Neill and on the west by premises in possession of the said Thomas Murray which said plot of ground is situate lying and being at Golden Bridge in the parish of St Jude barony of upper cross county of Dublin which said lands were demised by indenture of lease dated 4 March 1885 from 25 March 1885 for 300 years at the yearly rent of 10 shillings together with the buildings erected thereon.

"All that and those the plot or strip of ground lying at the rere of houses and premises numbers 119, 121 and 123 Emmet Road, Inchicore in the parish of Saint Jude county of city of Dublin measuring in length from east to west 77 feet and in breadth from north to south 16 feet six inches be the said admeasurement more or less bounded on the north by a field or building ground the property of the representatives of the late Michael O'Meara, on the south by the said houses and premises numbers 119, 121 and 123 Emmet Road on the east by a line or passage between 117 and 119 Emmet Road and on the west by 125 Emmet Road which said plot of ground is more particularly described on the map annexed to these presents and thereon edged red together with stables and buildings now standing thereon; which said lands were demised by Agnes Julia Kelly, Belinda Jane Muldoon, Anna Maria Craughwell, Elisabeth Woodley and Henry Clifton to Joseph Quinn by indenture of lease dated 25 November 1921 for the term of 264 years at the yearly rent of 2 pounds and 10 shillings, together with the buildings erected thereon"; the entirety of which lands, known as 119 and 119a Emmet Road, Inchicore, now in the city of Dublin held by the applicant as surviving joint tenant under and by virtue of the hereinbefore three recited leases, dated 28 January 1885, 4 March 1885, and 25 November 1921."

Take notice that the applicant intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to give notice of such superior interest and furnish evidence of the title to the solicitor named below within 21 days of the date of this notice.

In default of any such notice being received, the applicant, Brendan Foley, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply at the end of 21 days from the date of this notice to the county registrar for the county of the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.
*Date: 2 September 2011*
*Signed: Declan Foley (solicitor for the applicant), Glenroyal Centre, Maynooth, Co Kildare*

# NOTICES

**In the matter of the *Landlord and Tenants Acts 1967 to 2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Kieran O'Beirne**

Take notice that any person having an interest in the fee simple or any superior interest in the part of the property known as 'Kieran's Pharmacy', Main Street, town, parish and barony of Mohill in the county of Leitrim, being the property comprised in a lease dated 6 October 1921 and made between Maxmillian Townley & Ors of the one part and John Dunleavy of the other part for the term of 99 years from 29 September 1920, subject to a yearly rent of £17.10s.

Take notice that the applicant, Kieran O'Beirne, intends to submit an application to the county registrar for Co Leitrim for the acquisition of the fee simple and any immediate superior interest or interest in the aforesaid property, and that any party asserting that they hold the said fee simple or any superior interest in the aforesaid property is called upon to furnish evidence of title to the under mentioned within 21 days from the date of this notice.

In default of any such notice being received, the said applicant intends to proceed with the application before the said county registrar at the end of the 21 days from the date of this notice and will apply to the registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all the superior interest up to and including the fee simple in the said property are unknown and unascertained.

*Date: 2 September 2011*

*Signed: Kevin P Kilrane & Co (solicitors for the applicant), Mohill, Co Leitrim*

**In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: in the matter of an application by Mercury Investments Limited**

Take notice that any person having an interest in the freehold estate or any intermediate interest in the following property: Richmond Industrial Estate, North Richmond Street in the city of Dublin, held under an indenture of sub-lease ('the sub-lease') dated 19 November 1931 made between Robert Cecil Booth of the one part and Thomas Pearson Company Limited of the other part for a term of 870 years from 1 September 1931, subject to the adjusted yearly rents of £100, £25, £35, £10, therein referred but since indemnified against the payment of the entirety thereof by the remainder of the premises demised by the sub-lease, which is a sub-lease derived from the demise effected by the following leases:

1) Indenture of lease dated 2 July 1811 and made between the Right Honourable Charles John Viscount Mountjoy of the one part and Samuel Scott of the other part for a term of 997 years and six months from 1 May 1811, subject to the yearly rent of £150 and £300 as set out therein, and
2) Indenture of lease dated 20 March 1860 and made between Benjamin Lee Guinness of the one part and Arthur Irwin Mahon of the other part for a term of 949 years from 1 November 1859, subject to the yearly rent of £46.8.8.

Take notice that Mercury Investments Limited, being the person entitled to the lessee's interest in the said lease, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the fee simple interest and all intermediate interests (if any) in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant, Mercury Investments Limited, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the freehold reversion in the aforesaid property are unknown and/or unascertained.

*Date: 2 September 2011*

*Signed: Reddy Charlton McKnight (solicitors for the applicant), 12 Fitzwilliam Place, Dublin 2*

**In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Páirc an Chrócaigh Teoranta**

Take notice that any person having an interest in the freehold estate or any intermediate interest in the following property: all that and those the hereditaments and premises known as Unit 6A, Richmond Industrial Estate, North Richmond Street in the city of Dublin, held under an indenture of sub-lease ('the sub-lease') dated 19 November 1931, made between Robert Cecil Booth of the one part and Thomas Pearson Company Limited of the other part for a term of 870 years from 1 September 1931, subject to the adjusted yearly rent of £112 reserved by the sub-lease and indemnified against the payment of £87 portion of the said rent of £112 in the sub-lease reserved and contained, and by the remainder of the premises demised

# NOTICES

by the sub-lease, which is a sub-lease derived of the demise effected by an indenture of lease dated 2 July 1811 and made between the Right Honourable Charles John Viscount Mountjoy of the one part and Samuel Scott of the other part for a term of 997 years and six months from 1 May 1811, subject to the yearly rent as reserved under the sub-lease.

Take notice that Páirc an Chrócaigh Teoranta intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest and all intermediate interests (if any) in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant, Páirc an Chrócaigh Teoranta, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold interest in the aforesaid property are unknown and/or unascertained.

*Date: 2 September 2011*

*Signed: Reddy Charlton McKnight (solicitors for the applicant),12 Fitzwilliam Place, Dublin 2*

**In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Páirc an Chrócaigh Teoranta**

Take notice that any person having an interest in the freehold estate or any intermediate interest in the following property: all that and those the hereditaments and premises situate off St Joseph's Avenue, Drumcondra, Dublin 3, held under an indenture of lease dated 10 December 1829 and made between John Torrens and Henry Brownrigg of the one part to John Bradley of the other part for the term of 500 years from 29 September 1829, subject to an annual rent of £75 per annum and under an indenture of lease dated 16 April 1864 made between Robert Fowler of the one part and Maurice Butterly of the other part for a term of 500 years from 1 May 1863, subject to an annual rent of £175 per annum.

Take notice that the applicant, Páirc an Chrócaigh Teoranta, intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest and all intermediate interests (if any) in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant, Páirc an Chrócaigh Teoranta, intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold interest in the aforesaid property are unknown and/or unascertained.

*Date: 2 September 2011*

*Signed: Reddy Charlton McKnight (solicitors for the applicant),12 Fitzwilliam Place, Dublin 2*

**In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) 1978* and in the matter of an application by Ann Marie (otherwise Sheila) O'Brien**

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises known as no 62 North Strand Road in the county of the city of Dublin, being the premises demised in the indenture of assignment dated 27 March 1979 between Mary Stavely of the one part and Elizabeth Farrell and Ann Marie O'Brien of the other part, being a portion of premises comprised and described in an indenture of lease made on 17 November 1891 between Richard Woolcombe, Robert Loveband Fulfort and Franny Emily Walker of the one part and Mark Quinn of the other part for a period of 150 years.

Take notice that Ann Marie (otherwise Sheila) O'Brien, being the person entitled to the lessee's interest in the said lease, intends to apply to the Dublin county registrar at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the fee simple interest and all intermediate interest (if any) in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Ann Marie (otherwise Sheila) O'Brien intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said registrar of such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple on the said property unknown and unascertained.

*Date: 2 September 2011*

*Signed: Fagan Bergin (solicitors for the applicant), 57 Parnell Square West, Dublin 1*


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WILD, WEIRD AND WACKY STORIES FROM LEGAL 'BLAWGS' AND MEDIA AROUND THE WORLD

# Bearly-credible ways the Tudors died

**Oxford University historian Dr Steven Gunn has scoured 16th century coroners' reports on accidental deaths in Tudor England, *the BBC reports*. Performing bears, archery accidents – and guns – feature among some of the stranger deaths recorded.**

**Bears played a significant role in the Tudor entertainment scene, and sometimes escaped. One victim, Agnes Owen from Herefordshire, was killed in her bed by a runaway bear. When a bear bit a man to death in Oxford in 1565, the bear wasn't punished but was taken into royal custody – perhaps because it was worth 26 shillings and 8 pence, the equivalent of six months' wages for a labourer.**

**Coroners' reports reveal 56 accidental deaths due to archery – from people standing too close to the targets or those who decided on just the wrong time to go and collect the fired arrows. Coroners even noted the depth of wounds. The unwanted record is held by a Nicholas Wyborne, who was lying down near a target when he was hit by a falling arrow, which pierced him to a depth of six inches.**

**The first time a coroner's court came up against the new-fangled problem of a fatal shooting accident was in 1519, when a woman in Welton, near Hull, was accidentally killed by a handgun. The perpetrator was a bookbinder from France, with the unlikely name of 'Peter Frenchman'. The victim, not understanding this noisy gadget, had walked in front of the gun as it had been fired. By the 1560s, guns were causing more accidental deaths than longbows.**

# Bam! Pow! Shazam!

Southern District Judge Colleen McMahon ruled on 28 July that Marvel Worldwide Inc owns the copyrights to more than a dozen superheroes, including Spider-Man, X-Men and Iron Man, over the claims of the estate of a legendary artist, *according to The Associated Press*.

Marvel Worldwide had sought to invalidate 45 notices sent by the heirs of artist Jack Kirby to try to terminate its copyrights, effective on dates ranging from 2014 through 2019. The famous artist died in 1994. The comics were first published between 1958 and 1963.

In her ruling on *Marvel Worldwide Inc v Kirby* (10 Civ 141), Judge McMahon found that, in 1972, Marvel had Mr Kirby "execute an assignment" to the comic-book giant "of any and all right, title and interest … that Kirby 'may have or control' in any of the works Kirby created for Marvel". She added that the assignment "contained an acknowledgement that Kirby had created the works 'as an employee for hire'." As such, the heirs' claims were ruled invalid.

# Taco blade gets guard jail time

Jail guard Alfred Casas (31) was convicted on 26 July of smuggling a saw blade to a double murder suspect in the Bexar County Jail, Texas, by hiding it in a folded soft taco shell, *says Reuters*. Casas admitted to sneaking a taco into the jail in December 2009, but denied that a hacksaw blade was inside its shell. A jury convicted Casas of bribery and providing an inmate with 'escape implements' after ten hours of deliberation.

The hacksaw blade, along with a length of rope and an inmate jumpsuit dyed to resemble street clothes, was found in the inmate's cell during a surprise inspection.

James Ishimoto (assistant Bexar County district attorney) said that Casas was convicted of two felony counts of bribery, each punishable by two to 20 years in prison. The third count was for providing an inmate with 'escape implements', punishable by two to ten years.

# Tobacco firms to sue over health warnings

**Four tobacco companies are suing the US Food and Drug Administration over a new law that would force them to place graphic health warnings on their cigarette packets.**

**The lawsuit said the warnings would force cigarette makers to "engage in anti-smoking advocacy" on the government's behalf.**

**They claim that this violates their free speech rights under the First Amendment, according to a complaint filed with the US District Court in Washington, DC.**

**The new warnings will be required on cigarette packs from September 2012. Dead bodies, diseased lungs and rotting teeth are among the images expected to appear, in the first change to US cigarette warnings in 25 years.**

**The lawsuit is being taken by Reynolds American Inc's RJ Reynolds unit, Lorillard Inc, Liggett Group LLC and Commonwealth Brands Inc, owned by Britain's Imperial Tobacco Group Plc.**

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# Brightest High Flyers

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This top flight corporate practice advises on a broad range of public and private deals across all industry sectors with transaction values ranging from tens of millions to multi billion Euro deals. With 3 years corporate experience, you would be leading a €300M deal with the partner in the background supporting you as required. You will deal directly with clients, have substantial lead lawyer exposure, participate in business development and work in a collegiate, friendly and future focussed team. 2-5 years relevant experience in a Top 10 firm.

### In-House Corporate Advisor — Financial Institution

Reporting directly to the group head of legal, you will advise the business on corporate and restructuring issues across all bank divisions. You will have a high degree of visibility within the bank and as such you must be confident in your approach, possess the ability to work collaboratively, be an effective decision maker and be capable of working autonomously. As this is a newly created position, you will have a unique opportunity to put your own stamp on the role. 4-7 years relevant experience in a Top 10 firm.

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Consistently ranked as a tier one adviser to the asset management industry, the team advises on UCITS, ETFs, money market funds, structured funds and alternative funds invested in royalties, insurance products, currencies, real estate, private equity, commodities and bank loans. The Firm's strong servicing ability and multiple partner per client approach has seen it grow consistently over the last 5 years with a number of major new client wins. Personable, client focused and ambitious will be the hallmarks of the appointee. 2-5 years relevant experience in a Top 10 firm.

## LONDON

### Financing Associate — Magic Circle

In joining this outstanding international finance practice you will advise corporates, banks and financial institutions on cutting edge legal matters. A true lockstep partnership, the Firm is renowned for its multi-disciplinary approach. As an associate you are not expected to master all types of financing work but gain familiarity with four to five areas of the practice and if you feel you are ready to run a negotiation or meeting alone, the Partners will be keen to encourage you. 2-4 years relevant experience with a Top 5 or international corporate firm.

### Corporate Associate — Magic Circle

This Firm has a cutting edge international corporate practice advising a broad range of industries on a wide range of transactions. The Firm promotes a culture of inclusivity, transparency and responsibility; with 4 years corporate experience you would take the lead on a large cross-border merger. With a 7 year track from NQ to Equity, this Firm has the shortest track of any Magic Circle firm and equally, the Firm has lost less partners to its rivals than other City firms. 2-5 years relevant experience with a Top 5 or international corporate firm.

### Competition Associate — Magic Circle

As one of the leading "go to" competition law practices in Europe, associates in the group soon find themselves involved in decision making for some of the biggest household names and largest commercial organisations in the world on matters of strategic importance to those businesses. Dealing with a broad range of advisory and litigious matters, with 4 years relevant experience you could take the lead on defending a statement of objections alleging cartel activity. 1-5 years relevant experience with a Top 5 or international corporate firm.

### Dispute Resolution Associate — Magic Circle

This dispute resolution practice deals with complex litigation, domestic and international arbitrations (40-60% of the work), formal inquiries and inter-jurisdictional disputes. As an associate you will gain experience across a range of commercial and financial disputes including defamation, insurance litigation, banking litigation, professional negligence, administrative law and JR. Due to the international nature of the work and clients, there are also many opportunities for travel or secondment overseas. 2-4 years relevant experience with a Top 5 or international corporate firm.

For a confidential discussion on any of these opportunities, or other non-advertised positions in Dublin and London please contact:

Bryan Durkan | t: +353 1 632 1852 | e: bryan.durkan@hrm.ie | w: www.hrm.ie/legal

# New Openings

**Asset Finance – Associate to Senior Associate:** Our client is a leading law firm with a strong asset finance department specialising in in leasing, structured and cross-border financing and securitisations. Candidates will be working in private practice with prior experience in the banking and financial services. You will be advising leading domestic and international financial institutions, lessors, airlines, financial and investments advisers.

**Asset Management and Investment Funds – Associate to Senior Associate:** Our client is a top tier firm with an excellent Funds practice. The successful candidate will be advising investment managers, custodians, administrators and other service providers of investment funds on establishing operations in Ireland. You will have experience of advising clients on the legal and regulatory issues involved in the structuring, establishment and listing of investment funds.

**Banking – Associate to Senior Associate:** Our client acts for all the major banks operating in the Irish market. The group has grown significantly in recent years and is now one of the largest banking practices in Ireland. The successful candidate will be experienced in structured finance, project finance and securitisation transactions and be comfortable in providing regulatory advice to banks and other financial services institutions.

**Insurance – Associate to Senior Associate:** Working within a dedicated team in a first class law firm you will have previous experience of corporate insurance work either in private practice or in-house. You will be dealing with global insurance and reinsurance companies advising on M&A, regulation and corporate governance in the insurance sector.

**Employment, Pensions and Benefits – Associate:** Working with one of the leading teams in this field, the successful candidate will have experience of pensions regulatory compliance, pensions trusteeship issues and the drafting of trust documentation. You will be working with a range of domestic and international employer companies, state bodies and trustees of pension schemes.

**IT/Technology – Senior Associate – Contract:** A top Dublin practice is searching for an experienced IT practitioner with strong exposure to commercial contracts to include agency, franchise and distribution agreements. Anticipated duration of the contract will be 12 months.

**IT – Associate to Senior Associate:** Our client advises on commercial contracts including agency, distribution, franchise and procurement agreements as well as the IT aspects of M&A and other corporate transactions. Clients include major technology and R&D businesses and software companies. We are searching for experienced IT/Outsourcing practitioners seeking a fresh challenge.

**Regulatory and Compliance – Associate to Senior Associate:** Working with one of Ireland's top flight practices, you will have prior experience in regulatory/compliance matters working either in a law firm or in-house. You will have advised directors, senior management, in-house counsel and compliance officers on their obligations under new and existing regulation and assisted in implementing risk management and compliance systems.

**Tax – Senior Associate:** Our client is a high calibre law firm with an enviable domestic and international client base covering all major business sectors. Applicants will have the appropriate professional qualifications. We are particularly interested in candidates with significant exposure to the Financial Services sector.

**For more information on these or other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.**
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