



#### A LONG WAY DOWN

There are opportunities for Irish solicitors in Western Australia



#### ACCESS ALL AREAS

The Society's Access Programme helps students shoot for the stars



#### JMA TURNS 21

Savita story sweeps the boards at this year's Justice Media Awards

LAW SOCIETY

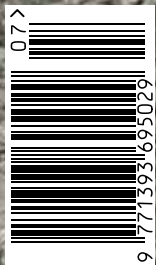
# GAZZETTE

€4.00 July 2013



## INVASION OF THE AUDITORS!

First-hand experiences of a  
Society audit – now in **3D**



# INSPIRE YOUR CLIENT TO LEAVE THEIR MARK

---

Speak to your clients about the benefits of philanthropy. Contact us.

Are you able to advise your client on the most impactful means of charitable giving?

The Community Foundation for Ireland has worked closely with professional advisors for over a decade to provide expert advice on how to plan more effective charitable giving.

We are also here to provide you with the most up to date and bespoke information depending on your clients' area of interest. We can work with you to help your client establish a fund in their own name or their family name. We take care of the administrative work involved in this process and can advise on tax implications.

We currently administer grants from over 50 privately held funds to support charities and community groups all around Ireland.

If you think we could work with you or one of your clients, please contact:

**The Community Foundation for Ireland**  
32 Lower O'Connell Street, Dublin 1.

**T:** 01 8747354  
**E:** [info@foundation.ie](mailto:info@foundation.ie)  
**CHY:** 13967

**[www.communityfoundation.ie](http://www.communityfoundation.ie)**

# MATTERS OF CONCERN

There is a mistaken view in some quarters that the work of the Law Society and its president revolves entirely around the meetings of the Council and its committees. While a huge amount of work is undertaken by the Council and committees in meetings, vastly more work is done between such meetings.

For example, in the past number of weeks, I have attended bar association meetings in Clare, Limerick and Galway. I was accompanied to each of those meetings by senior vice-president John P Shaw and director general Ken Murphy. At each venue, we both briefed and listened to colleagues on a very wide range of issues. We had the great pleasure of meeting with energetic and vocal colleagues, from whom we derived a considerable amount of information.

The concerns expressed in those venues were, in large part, identical to the concerns voiced in every other venue we have attended. They include genuine concerns about:

- The continuing viability of their practices,
- The commoditisation of legal services,
- Incessant downward pressure on fees,
- Delays in the courts,
- The *Legal Services Regulation Bill*,
- Professional indemnity insurance issues, and
- Retirement issues.

I have addressed many of these matters in previous messages. That the national media has taken note recently of our expressed concerns in relation to the *Courts Bill* encourages me to take the view that there will be, at least, further consideration of our arguments before any changes to jurisdictional limits are enacted. An obvious concern that is manifest, countrywide, is the issue of underemployment. However, at recent parchment ceremonies, it has been most encouraging to record that the vast majority of newly qualified solicitors reported being in gainful employment.

The colleagues we meet around the country remain in reasonably good spirits, despite the difficult economic times.

## Justice Media Awards

Relations between our profession and the media are not always smooth. For a remarkable 21 years, however, better relations have been built, year after year, by the Society's Justice Media Awards. This year, there was a record number of entries, and I was very happy to present the overall award to Kitty Holland

of *The Irish Times* for her great work on bringing the tragic case of Savita Halappanavar to the attention of the nation and the world (see p12 of this issue).

As well as attending bar association meetings, I have had a most interesting and informative meeting with the presidents, vice-presidents and chief executives of our sister law societies in Northern Ireland, Scotland, and England and Wales, hosted on this occasion by the Law Society of Scotland. I was also proud to represent the solicitors' profession at a unique event – the first meeting of its kind in over 80 years – between the Bar Council of Ireland and the Bar Council of Northern Ireland, co-hosted by the chairmen of both organisations and held at the King's Inns.

## Turkish unrest

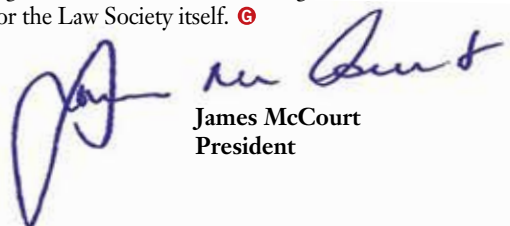
You will be aware of the general unrest on the streets of the Turkish capital, Istanbul, as reported in the international media (see p14 of this issue). Following the meeting of the Council on 17 May, I wrote to the Turkish Ambassador to Ireland expressing grave concerns at the oppressive treatment of our colleagues, whether acting as prosecutors or defenders.

Many of you will have followed the developing situation on the television news. The situation appears to be grave. Accordingly, I have sent further letters expressing our concerns to Turkish Prime Minister Erdogan and the Turkish Ambassador. I have also corresponded with An Tánaiste and the Minister for Justice in respect of these matters. It is important to express concern and show solidarity to colleagues in time of need. It is particularly appropriate in view of the fact that many of our overseas colleagues came to our aid in 2011 following the publication of the *Legal Services Regulation Bill*.

Mention of the latter bill reminds me that its committee stage has been awaited for some 16 months. However, it is now scheduled to come before the Dáil on 10 July. That progress has been so slow is unfortunate, because it perpetuates uncertainty among the ranks of our colleagues. We are anxious to see progress in regard to this bill – for our colleagues, for the Society's staff and for the Law Society itself. ©



***"The national media has taken note of our expressed concerns in relation to the Courts Bill"***



James McCourt  
President





**Law Society Gazette**  
Volume 107, number 6  
Subscriptions: €60/€90

**Editor:** Mark McDermott FIIC  
**Deputy editor:** Dr Garrett O'Boyle  
**Art director:** Nuala Redmond  
**Editorial secretaries:** Catherine Kearney,  
Valerie Farrell

**Commercial advertising:**  
Seán Ó hOisín, tel: 086 811 7116,  
email: sean@lawsociety.ie

**For professional notice rates (wills, title deeds,  
employment, miscellaneous), see page 62.**

**Published at Blackhall Place, Dublin 7,  
tel: 01 672 4828, fax: 01 672 4877.  
Email: [gazette@lawsociety.ie](mailto:gazette@lawsociety.ie)  
Website: [www.gazette.ie](http://www.gazette.ie)**

**Printing:** Turner's Printing Company Ltd,  
Longford

**Editorial board:** Michael Kealey (chairman),  
Mark McDermott (secretary), Mairéad Cashman,  
Paul Egan, Richard Hammond, Mary Keane,  
Aisling Kelly, Tracy Lyne, Patrick J McGonagle,  
Ken Murphy, Andrew Sheridan

The Law Society of Ireland can accept no responsibility for the accuracy of contributed articles or statements appearing in this magazine, and any views or opinions expressed are not necessarily those of the Law Society's Council, save where otherwise indicated. No responsibility for loss or distress occasioned to any person acting or refraining from acting as a result of the material in this publication can be accepted by the authors, contributors, editor or publishers. The editor reserves the right to make publishing decisions on any advertisement or editorial article submitted to this magazine, and to refuse publication or to edit any editorial material as seems appropriate to him. Professional legal advice should always be sought in relation to any specific matter.



FSC independently certified wood and paper products used by the *Law Society Gazette* come from ecologically managed forests. Visit: [www.fsc.org](http://www.fsc.org)



PEFC certifies that wood and paper products used by the *Law Society Gazette* are sourced by suppliers from sustainable, managed forests. Visit: [www.pefc.org](http://www.pefc.org)



The *Law Society Gazette* is a full participating member of the Press Council of Ireland and supports the Office of the Press Ombudsman. This scheme, in addition to defending the freedom of the press, offers readers a quick, fair and free method of dealing with complaints that they may have in relation to articles that appear on our pages. To contact the Office of the Press Ombudsman go to: [www.pressombudsman.ie](http://www.pressombudsman.ie) or [www.presscouncil.ie](http://www.presscouncil.ie).



# LAW SOCIETY GAZETTE

## REGULARS

### 4 News

### 12 Analysis

- 12 **News feature:** Mark McDermott reports on the Society's Justice Media Awards
- 14 **Human rights watch:** An Irish solicitor's experience of the Turkish protests

### 17 Comment

- 17 **Letters**
- 18 **Viewpoint:** Consequences of the NSA's data harvesting
- 20 **Viewpoint:** Would the abolition of the Seanad just give more power to a dysfunctional executive?

### 41 People and places

### 46 Student spotlight

### 47 Parchment ceremonies

### 50 Books

- 50 **Book reviews:** *The Commercial Court*; *Wills: Irish Precedents and Drafting*; and *Aircraft Operating Leasing: A Legal and Practical Analysis in the Context of Public and Private International Air Law*
- 51 **Reading room:** The library's free weekly judgment alert service

### 53 Briefing

- 53 **Practice notes**
- 56 **Regulation**
- 57 **Legislation update:** 14 May – 10 June 2013
- 58 **Eurlegal:** CJEU rules on TV broadcasters' IP rights; recent developments in European law

### 62 Professional notices

### 64 Captain's blawg



12



44



## COVER STORY

### 22 Invasion of the auditors

While opening the post on a routine day, Mary Frances Fahy got the letter that most solicitors dread: the notification of an impending Law Society audit. Prepare to hide behind the sofa



## FEATURES

### 26 Lest you be judged intern

The use of interns is quite common these days, but employers should be aware that these arrangements may turn into something with legal entitlements. Mary Kelleher cracks the whip

### 34 Lessor of two evils

A recent High Court judgment is significant, not only for commercial landlords, but also for any plaintiff who is suing on foot of a contract that provides for payments to be made by way of instalments. Catherine Hayden explains

### 30 Shoot for the stars

The Law Society Access Scholarship Programme gives assistance to students from socioeconomically disadvantaged backgrounds. Maggie Armstrong makes the jump to hyperspace

### 38 Home and away

Opportunities exist for Irish solicitors in Western Australia due to an increased demand for all legal services. Come and get it, says Leo Barry



**HOW TO REACH US:** *Law Society Gazette*, Blackhall Place, Dublin 7.  
Tel: 01 672 4828, fax: 01 672 4877, email: [gazette@lawsociety.ie](mailto:gazette@lawsociety.ie)

**PROFESSIONAL NOTICES:** send small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: [gazettestaff@lawsociety.ie](mailto:gazettestaff@lawsociety.ie).  
**All cheques should be made payable to: Law Society of Ireland.**

**COMMERCIAL ADVERTISING:** contact Seán Ó hOisín, 10 Arran Road, Dublin 9,  
tel: 01 837 5018, fax: 884 4626, mobile: 086 811 7116, email: [sean@lawsociety.ie](mailto:sean@lawsociety.ie)

**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](mailto:customerservice@lawsociety.ie)

### Get more at [lawsociety.ie](http://lawsociety.ie)

*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](http://lawsociety.ie).

You can also check out:

- Current news
  - Forthcoming events, including the **DSBA's annual golf tournament in Elm Park Golf and Sports Club, Donnybrook, on 18 July**
  - Employment opportunities
  - The latest CPD courses
- ... as well as lots of other useful information



## Nationwide

Compiled by Kevin O'Higgins



*Kevin O'Higgins  
has been a  
Council member  
of the Law  
Society since  
1998*

## CPD success story, and more to come

GALWAY

The Galway Bar Association continued its very successful CPD programme, with the Law Society presenting a free course on complying with the *Solicitors' Accounts Regulations* and on minimising the risk of complaints and associated consequences. In addition, Francis Treanor BL gave a presentation on summary summons procedure, specifically on the topic of the low threshold developments to remit to plenary hearing.

Details of another CPD course in July will be announced shortly, with the CPD programme resuming in early October. James Seymour thanks all members for their support to date. The association is endeavouring to provide over 25 hours of free CPD in 2013 and would urge everyone to pay their annual subscription of €50, which finances the CPD programme.

Members are also reminded about the annual day at the Galway Races, which will take place on Monday 29 July 2013.

## Current developments in the taxation of costs

WICKLOW

David Lavelle, president of the Wicklow Bar Association, was delighted with the tremendous recent CPD session held at the Glenview Hotel, where legal costs accountant Stephen Fitzpatrick

presented an extremely interesting seminar to colleagues on current developments in costs and the taxation of costs.

It is said that Stephen spoke for almost two hours, giving very

useful insights on the current trends in taxation and the changes that the arrival of the new taxing masters has brought. He also gave a very useful analysis of some critical recent decisions and provided frank and honest personal views on the potential issues and problems with the system as it stands.

The next seminar will be on 11 July at the Parkview Hotel in Newtownmountkennedy, when Keith O'Malley from the Law Society will give a talk on the professional support available to solicitors in these challenging times.

## Go on, let yourself Sligo!

SLIGO



There was a great turnout of members of the Sligo Bar Association for its social evening at the Sligo Races on 18 June; (l to r): Conor Newman, Laura Spellman (PRO), Deirdre Munnelly (secretary), Tom MacSharry, Caroline McLaughlin, Jennifer Murray, Maurice Galvin (president) and Barry Finnegan

## A long way from there to here

CLARE

Gearóid Howard (president of the Clare Bar Association) and his colleagues had both the current president of the Law Society and the president-in-waiting in convivial company

when they were visited recently by James McCourt, John P Shaw and director general Ken Murphy for a discussion in respect of developments and practice.

## Taking Orders in Carlow

KILKENNY

The Kilkenny Bar Association held two very successful CPD lectures lately with Keith O'Malley regarding business management, and Liz Pope and John Cahill on updates on Land Registry practice, which were well attended.

Laurence Grace, association president, wants on its behalf to send best wishes to a former colleague from neighbouring Carlow, Terence McGovern, who practised in his own firm for 12 years and who was ordained to the priesthood on Sunday 23 June. Laurence had the honour of attending the ordination and sends best wishes to Fr McGovern and his family.

## Midsummer night's dream

TIPPERARY

The Tipperary Solicitors' Bar Association recently enjoyed its annual midsummer event in the Dunraven Arms Hotel, in Adare. This year's event took place on 21 and 22 June. On Friday, Fred Binchy (Clonmel) spoke to members on the changing nature

of the profession in the age of computer technology. This was followed by the unveiling of the much-anticipated association website. On Saturday, association president John M Lynch chaired a discussion on the party-and-party taxation of costs.

## District Court forum

LOUTH

The County Louth Solicitors' Bar Association is hosting a District Court forum addressing recent developments in civil, criminal, family law and licensing applications, which will take place at the Ballymascanlon House Hotel, Dundalk, on 12

July. Speakers will include Adrian Lennon of Mason Hayes & Curran, Tony Donaher of Martin P Crilly, Dorothy Collins BL, Robert Purcell of ME Hanahoe, and Shalom Binchy. The fee is €75, email Nicola Kelly at nicolakelly@jckieran.com. @

## Law Society brings CPD nationwide

Law Society Professional Training has partnered with local bar associations around the country to run a number of full-day conferences. From as little as €102\* (\*discount for Law Society Skillnet 2013 members), delegates can claim six hours of CPD.

Topics will include personal insolvency legislation, buying and selling property in a distressed market, Property Registration Authority charges, PIAB, VHI undertakings, damages, awards and assessments, taxing masters' recent decisions, will drafting, probate and farmers, CAT and farmers, land and conveyancing issues, regulation and compliance, and legal aspects of wind-farm development.

Dates and venues as follows:

- 27 September, Tipperary – 'Advising the farmer' conference,
- 15 November, Cork – 'Essential solicitor update for 2013' conference,
- 22 November, Kilkenny – 'General practice update 2013' conference.



More dates to follow. For full programme details, visit [www.lawsociety.ie/lspt](http://www.lawsociety.ie/lspt). You can email a member of the professional training team at [lspt@lawsociety.ie](mailto:lspt@lawsociety.ie) or tel: 01 881 5727.

## In News this month...

- |   |                                |
|---|--------------------------------|
| 7 Media reports on Society's 'undercover agents'      | 8 Pirate Bay blockade          |
| 8 Delays for consumers in District and Circuit Courts | 9 Patent autonomy under threat |
|   | 9 Apps review                  |
|   | 10 Report on CJEU meeting      |

## The only way is 'Suas'!



At the launch of the new literacy partnership were (l to r): Martin Tomlinson (CEO of Suas), Minister for Children Frances Fitzgerald, student Kaitlin Byrne and Julian Yarr (managing partner, A&L Goodbody)

Suas Educational Development and A&L Goodbody have teamed up to tackle low levels of literacy among 3,000 disadvantaged young people.

Recent research indicates that one in ten children in Ireland leave school with serious literacy difficulties – a statistic that rises to one in three in disadvantaged communities. The Suas Literacy Support Programme recruits volunteers and trains them to be literacy mentors.

The law firm will invest €150,000 in the programme over the next three years and will provide significant *pro bono* legal counsel, as well as volunteers.

Volunteers are trained to provide learning and literacy support for eight to 14-year-olds who are identified as having low literacy levels. To date, 35 A&L employees have volunteered as mentors. Find out more about the programme at [www.suas.ie](http://www.suas.ie).

## Fundraising barbecue

A fundraising summer barbecue is being held in aid of Northside Community Law and Mediation Centre, Coolock, on 12 July from 5pm. The venue will be the Sheds Bar in the Distillery Building on Church Street. Tickets cost €40 for lawyers qualified less than seven years, and €70 for lawyers qualified over seven years.

Tickets can be purchased in



advance by contacting Jeanne McDonagh on 01 817 5014, the Sheds Bar, or Ros in the Law Centre at tel: 01 847 7804.

## New judges nominated



On 19 June, the Government decided to advise President Michael D Higgins to appoint Anthony Barr SC and David Keane SC as judges of the High Court. It has advised the President to appoint James Faughnan (solicitor) and Sinéad Ní Chúlacháin BL as judges of the District Court.

At its meeting on 11 June 2013, the Government advised President Higgins to appoint the following as specialist judges of the Circuit Court: Mary Enright (appointed county registrar for Kilkenny in 1985), Verona Lambe (county registrar for Offaly 2001 to date), William Lyster (county registrar for Roscommon 1997 to date), Patrick Meghen (county registrar for Limerick 2000 to date), Mary O'Malley (county registrar for Meath 2007 to date) and Susan Ryan (county registrar for Dublin 1999 to date).

Part 6 of the *Personal Insolvency Act 2012* provided for the amendment of the *Courts Acts* to create a cadre of specialist judges of the Circuit Court to facilitate the speedy consideration of insolvency applications by that court.

Eligibility for these new positions was initially confined under the provisions of the 2012 act to serving county registrars due to their "necessary legal qualifications and practice experience". The number of county registrar posts will now be reduced by six, from 23 to 17. Work will be redistributed following consultation with the serving county registrars.





## Exclusive Insurance Offers for Solicitors

Call us on **1890 812 221** or go to **[solicitors.glennons.ie](http://solicitors.glennons.ie)** for a quotation

### Don't let your renewal date go by without finding out what Glennons rates exclusive to Solicitors can do for you.

At Glennon, we're committed to giving you the right cover at the right price. Our exclusive Home and Motor Insurance Schemes from Allianz and our general market rates are available to Solicitors, their spouses, partners and permanent staff.

It's never been easier to get your Solicitors Scheme quotes. Simply call **1890 812221** or get a Quick Quote in less than 30 seconds and buy online at **[solicitors.glennons.ie](http://solicitors.glennons.ie)** or email **[solicitors@glennons.ie](mailto:solicitors@glennons.ie)**

Frank Glennon Ltd trading as "Glennon" and "Glennon Insurances" is regulated by the Central Bank of Ireland

### Are you maximising the potential of your executor sales?

Can you help reduce your client's indebtedness to their lender?



Professional house doctors who prepare, present and style properties for sale, let or just moving in.

Placelift Ltd can help your client's with every aspect of preparing and presenting their executor sale or investment property for the market to ensure they get the best price, and quickly. You as their Solicitor will benefit by increasing the value of your clients property, speeding up the sales process and ensuring you get a higher return. In other words inform your clients and you will benefit!

Placelift Ltd, Kilcrouney Lane,  
Bray, Co. Wicklow  
Contact: Clodagh Doyle  
**0868159431 / 012548070**  
Email: **[info@placelift.ie](mailto:info@placelift.ie)**



**[www.placelift.ie](http://www.placelift.ie)**

**FUNDRAISER**  
PLEASE SUPPORT NCLMC

**SUMMER BARBEQUE**

**12TH JULY 2013**  
TIME: FROM 5PM VENUE: THE SHEDS BAR

TICKETS CAN BE PURCHASED IN ADVANCE AT THE VENUE OR BY CONTACTING  
JEANNE McDONAGH ON 01 817 5014 OR ROS IN THE LAW CENTRE ON 01 847 7804

THE SHEDS

+ DJ LEX WOO

TICKETS: **€40/€70**  
Students qualified under 7 years  
Lawyers qualified over 7 years

Northside Community Law & Mediation Centre  
Local Service - National Resource



# Media fascinated by Law Society's 'undercover agents'

'Law Society to send out undercover court agents' was the headline in the *Irish Independent* on 12 June 2013. This was the sensationalist spin on the comparatively staid story in the June *Gazette* (p7), which appeared under the restrained sober headline 'Council approves review group's report on touting for business'. Who could have guessed that such a story was so secretly sexy?

By focusing on just a couple of paragraphs in the Regulation 13 Review Group's 48-page report, the *Independent* was able to break through to *Morning Ireland's* 'It says in the papers' slot with the opening paragraph: "The Law Society is to deploy undercover agents around the country's court venues in a bid to expose unscrupulous solicitors touting for business, as competition for criminal law work reaches 'unprecedented' levels."

The resulting media interest was so intense that, in the course of a few days, the Society's director general, Ken Murphy, was interviewed on radio's *News at One* by Sean O'Rourke, and the *Sunday Show* by Marian Finucane, as well as on television's *Morning Edition* with Keelin Shanley – and that was just RTÉ. In addition, he gave numerous local radio interviews around the country.

## Protecting vulnerable members

His message was consistent throughout: "This is all about protecting vulnerable members of the public from unscrupulous and unethical conduct by a very small minority of solicitors. We are responding to complaints that individuals, often vulnerable people, coming to courthouses without a solicitor are being approached in contravention of rules about direct, unsolicited approaches in the vicinity of courthouses, prisons and garda stations. The difficulty is obtaining the evidence for the Society to act on such approaches because, often, it would require the individual to come forward and make a complaint, and they are naturally disinclined to do that.



Sean O'Rourke: "Your Council unanimously decided that the problems are genuine, current and real and not infrequent, so there must be a fair few people at it?"

"It's a product of the oversupply of solicitors in this country and of the grim reality for the solicitors' profession over the last five years or so," he continued. "As with so many others in the country, there has been a collapse of work and a collapse of income resulting from that. One of the consequences is that more people are looking to forms of work they weren't engaged in previously – and even though there has been a reduction of nearly 40% in the amount of State payments for individual cases of criminal legal aid, solicitors are still looking for that work."



Ken Murphy: "This is all about protecting vulnerable members of the public from unscrupulous and unethical conduct by a very small minority of solicitors"

The director general emphasised that the Society had been working closely on this issue with the Courts Service, the gardaí and the judiciary. He also pointed out that, in the course of its research, the review group had been in touch with European criminal law practitioners right across Europe. "Rules like this exist everywhere," he said. "It's considered inappropriate for people to be pestered, as they approach courthouses, by lawyers looking for their instructions."

A total of no less than 22 specific and practical recommendations were made by the review group.

"By far the greatest emphasis in the report, which has been adopted by the Society's Council, was on education, information and putting barriers in the path of intending wrongdoers," he said.

Agreement had been reached with the relevant authorities to allow the Society place notices in courthouses, communicating to people appearing before the criminal courts precisely what their entitlements are.

In addition, the report suggested that a centralised national system should be introduced that would facilitate the maintenance of a comprehensive and up-to-date list of criminal legal aid practitioners, with this information being promulgated to the general public.

But what of the 'secret shopper' idea that had so caught the imagination of the media? Murphy joked on radio with Marian Finucane that he would be "going down to the Criminal Courts of Justice with a false beard and glasses to see who might approach me in contravention of the rules!"

Speaking more seriously on the matter, he would merely say that undercover court agents had been among the recommendations of the task force and that it "would be contrary to the effectiveness of this approach to announce in advance when the Society proposes to do this".



At the launch of the new *Irish Probate Practitioners' Handbook* on 6 June at the Merrion Hotel were (from l to r): Mr Justice Iarfhlaith O'Neill, Karl Dowling BL (author), Robert Grimes BL (author), Attorney General Máire Whelan and Catherine Dolan (Thomson Reuters)

## New measures will cause 'huge delays for consumers' in District and Circuit Courts

Law Society President James McCourt has warned that consumers in civil cases will face lengthy delays if the *Courts Bill 2013* is enacted in its current form. Expressing grave concerns about the Government's proposal to increase the limit of the jurisdictions of the District Court and Circuit Court, he said it was likely, also, that criminal and family matters would suffer when finite numbers of judges were diverted to look after the burgeoning civil caseload.

The jurisdictions of the District and Circuit Courts are increasing from €6,350 to €15,000 and from €38,000 to €75,000 (with a lower limit of €60,000 for personal injury cases), respectively.

In a press release issued by the Society on 21 June 2013, Mr McCourt said: "Since this proposal was first mooted, we have taken the stance that the suggested change in the jurisdiction limits is to be welcomed – but only if the inevitable extra workload that follows such an uplift is counterbalanced by a similar increase in resources.

"As things stand, while most District and Circuit courts proceed without substantial delay, they are, in general, working to full capacity and,



President McCourt – unless extra judges, courts staff and courtrooms are made available, delays in the hearing of cases will result

in some cases, are overworked. No delays, of any consequence, currently exist in the High Court. If these new measures proceed, a large number of cases that up to now had been brought in the High Court, will in future be commenced in the Circuit Court, with a consequent knock-on effect in the District Court."

The president added: "It therefore follows, as a certainty, that unless extra judges, courts staff and courtrooms are made available, delays in the hearing of cases will result. We have not

yet received assurances from the Minister for Justice that such resources will be provided."

As a result, the Law Society has called on Minister Shatter to reconsider enacting this legislation until funding is available to provide the appropriate resources.

The president said it seemed to the Society that, given the financial restraints within which the State was operating, it would be "highly unlikely" that any extra funding would be provided to the Courts Service at this juncture.

"We entirely understand why that would be the case, but fail to grasp why these measures are being brought in now when the current court system, at District and Circuit Courts level, operates relatively smoothly."

The Society points out that one of the fundamental cornerstones of any democracy is the swift administration of justice. "As this is currently being provided, any measures that would have the opposite effect seem entirely counterproductive," warned President McCourt. "Our concern with the introduction of this measure is that, without the necessary resources, it will create delays where little or none exist at present – and that makes no sense."

## High Court orders Pirate Bay blockade

Ireland's High Court has ordered six internet service providers (ISPs) to block access to the controversial torrent-sharing site The Pirate Bay. The ISPs include Vodafone, UPC, Imagine, Digiweb, Hutchison Whampoa (3 Ireland) and Telefónica (02 Ireland). They must block access to The Pirate Bay within 30 days of 12 June.

In 2011, Eircom came to an agreement to install filtering software and a 'three-strikes' system after a court battle with the operators. Cable broadband provider UPC successfully held off attempts to get it to implement filtering software and a three-strikes system due to an interpretation of the *Copyright Act 2000*.

As a result, a statutory instrument amending the *Copyright Act 2000* was signed into law last year by Enterprise Minister Sean Sherlock. The SI gave judges the power to grant injunctions against ISPs. A review of the copyright laws was instigated shortly after the statutory instrument was signed.

EMI, Sony and Warner Music instigated the case to block The Pirate Bay. The case moved to the Commercial Court earlier this year.

At the time, the labels and the ISPs were encouraged to mediate on the matter. However, the labels decided to take their case to the High Court in early June. Presiding judge Mr Justice Brian McGovern requested a week to study the affidavits.

Mr Justice McGovern ruled on 12 June that he was satisfied to proceed with the order to block The Pirate Bay, implementing the new copyright laws. According to *Silicon Republic*, the ISPs are unlikely to appeal the High Court's decision.

The decision comes just months after a British court ordered ISPs there to block access to file-sharing websites.

## Get ready for the autumn diploma schedule

The Society's Diploma Programme has just launched its autumn schedule, with courses covering a wide variety of legal areas. Long-running and popular courses such as finance law, corporate law and governance, and trademark law and practice make a welcome return.

The success of the Diploma in Aviation Leasing and Finance and the Diploma in Intellectual Property last year see both returning to the autumn schedule.

Four new courses are being introduced, two of which combine the law with technology, namely the Diploma in eCommerce and Digital Marketing and the Certificate in Data Protection Online. A Diploma in Mediation and a Certificate in Higher Court Civil Advocacy complete the line-up.

The introduction of several courses incorporating the iPad into the core of the education learning experience has been very well

received. The Diploma Programme will continue to introduce iPad courses where relevant. Webcasting is now standard across almost all course lectures. It should be borne in mind that courses will give you sufficient CPD hours, once the relevant sessions are attended.

Full details of the autumn programme are available on the Society's website at [www.lawsociety.ie/diplomas](http://www.lawsociety.ie/diplomas) and in the advert in this *Gazette*.



## Ireland's 'patent autonomy' under threat, warns Society

The Law Society has urged the Government to elect to host a local division of the Unified Patent Court (UPC) in Ireland, rather than joining a regional division with other countries, such as Britain. Taking the regional approach would result in a significant loss to Ireland's patent autonomy, the Society has warned.

Joining a regional division, rather than electing to host a local division of the UPC here, would result in important patent litigation concerning Ireland being determined by a court elsewhere, most likely in London.

The chairman of the Society's Intellectual Property Law Committee, Patricia McGovern, argues that it is imperative that Ireland does not remove the right of Irish SMEs and of multinational companies based here to litigate or defend patent disputes in Ireland.

"Obligating them to litigate in a foreign location, such as London, will only serve to increase the costs and management time involved in such litigation. Local expertise in this area will diminish and it will no longer be possible to present Ireland as a true 'smart economy' location with a full intellectual property legal service offering for the benefit of SMEs and multinational companies," she says.

She adds that this would disadvantage Irish SMEs by making litigation more costly. In addition, it would lead to a substantial reduction of local intellectual property legal expertise in Ireland – quite apart from it being completely at odds with Ireland's 'smart economy' agenda.

### Referendum required

In December 2012, the European Parliament approved a package relating to an EU-wide patent system, including



Patricia McGovern

the creation of a 'unitary patent' and the Unified Patent Court, under the enhanced cooperation procedure.

On 19 February 2013, Ireland (along with 24 other EU member states) signed the international agreement establishing the UPC, which will have exclusive competence to deal with all infringement and revocation disputes relating to European patents and the new unitary patent.

As this involves giving up a degree of sovereignty, Ireland will have to hold a referendum to amend the Constitution in order to ratify the international agreement.

Patricia McGovern cautions: "Ireland's economic future rests with its ability to remain attractive as a base from which both SMEs and multinational companies can operate. Irish SMEs and multinational companies based in Ireland should not be disadvantaged by the introduction of the unitary patent system."

"The Law Society of Ireland believes that the interests of such companies (as well as the Irish economy as a whole) would be best served by Ireland hosting a local division of the UPC."

### THERE'S AN APP FOR THAT



## One notebook to rule them all!

APP: **EVERNOTE** PRICE: **FREE**

*Evernote* is an easy-to-use free app, designed to help keep thoughts and events organised in the form of notebooks, writes *Dorothy Walsh*. Using the app, you create a notebook, into which you can type notes, take new or add old pictures, record dictation and create reminders. The notebooks can then be named, saved and accessed for re-reading, emailing, printing or editing later. Notebooks can also be synchronised, thanks to iCloud, between your devices.

Using the 'Siri' function, you can actually dictate your notes and the app will type them as you speak. The dictation function in *Evernote* is twofold. The first is the button on the top of each *Evernote* notebook, which allows you to record a voice note. The second is where you wish to type a note – by clicking the 'Siri' button, it types as you speak. It's really a case of 'the more you use, it the better it gets', which gives it the opportunity to get used to your voice.

I used *Evernote* recently when I attended a site visit with a client to view, ascertain values and agree the disposal of certain chattels – and also at the scene of a road traffic

accident. Upon arrival at my client's home, I created a notebook, took photos and made a list of the chattels in question, saving all of this information to the notebook.

I was also able to discreetly record, by way of a digital recording, my client's instructions, as well as my own attendance of the proceedings. This function was very handy for when my hands were not free to type.

I was able to email the notebook to my client and also to the office, to be saved to my client's file on the firm's case-management system.

If I hadn't had *Evernote* for these tasks, I would have taken pictures with the camera, recorded dictation in *Dictamus* and written a note in *Pages*, all the time flicking between the various apps. Later, I would have had to sit down, coordinate the text, pictures and voice recordings to consolidate them, hoping I hadn't missed anything, doubling up on the work involved. Instead, *Evernote* was a huge timesaver, allowing me to save all information on one subject, in one place, on my iPad.



## 'Honesty the best policy' for lawyers before EU courts



Delegates at the Dublin meeting of agents of the CJEU, including (in front row): Eleanor McPhillips (CSSO), Eileen Creedon (CSSO), Mr Justice Aindrias Ó Caoimh and Margaret Grey BL

Honesty is the best policy for counsel before the EU courts. That was the message of Attorney General Máire Whelan at a meeting in Dublin of the agents of the Court of Justice of the European Union (CJEU) on 10 May, writes *Tony Joyce* (head of the State and European Litigation Section in the Chief State Solicitor's Office). The meeting was hosted by the Chief State Solicitor's Office as part of Ireland's presidency of the EU.

In her opening remarks, the attorney general called for the adoption of common rules and standards for those who assist agents in the presentation of cases before the EU courts in Luxembourg on behalf of

the member states and the institutions. While noting the challenges in arriving at common ethical standards from the diverse legal traditions of the member states, the attorney general commented that such a "statement of principle on basic ethical values would send a strong message that only honest counsel need practise at the European Courts". She was of the view that such a statement should not be beyond the collective imagination.

She added that she was particularly interested in hearing what Judge Ó Caoimh had to say about the impact of the recent reforms of the statute and the rules of procedure of the CJEU,

and what more needed to be done.

Mr Justice Aindrias Ó Caoimh, judge of the Court of Justice of the European Union, explained that the reforms were principally aimed at speeding up the time a case takes to be dealt with before the CJEU and increasing the number of cases being brought to a conclusion. Some of the measures were controversial, such as the right of the court to dispense with an oral hearing altogether if it felt that it had sufficient information in the written pleadings to give a ruling.

As the new rules only came into force on 1 November 2012, Mr Justice Ó Caoimh commented that it was difficult to say if the new rules had resulted in increased productivity. He noted, however, that 208 cases had been dealt with in the first four months of 2013 compared with an average of 182 a year for the same period in the preceding three years.

Margaret Grey BL gave a talk entitled 'Failure to comply with EU law: financial sanctions'. This was a topical subject, as Ireland had been on the receiving end of multi-million euro sanctions, with judgments being given in two cases in the environmental sphere in December 2012. Issues

such as how payments were calculated, as well as aggravating and mitigating factors, were discussed.

Next up was Anthony M Collins SC, who is Ireland's nominee for appointment to the General Court of the European Court. He spoke on the rights and duties of agents in light of the decision in *PUKE v Commission*. That case held that in-house counsel were not entitled to plead the case, as they were not independent lawyers.

Finally, the former Tánaiste, Minister for Justice and Attorney General Michael McDowell led a discussion on the cases of C-617/10 *Akerberg Fransson* and C-399/11 *Melloni*. The impact of the *Charter of Fundamental Rights* of the EU in those cases was highlighted in the areas of tax, and European arrest warrants, respectively.

After an open discussion on the topics covered, and other matters of interest to those present, the chair of the meeting, Eileen Creedon (Chief State Solicitor) concluded the meeting and thanked the 43 delegates from 24 countries for their role in what proved to be an interesting and stimulating event.

**CONSULT A COLLEAGUE**  
**01 284 8484**

The **Consult a Colleague helpline** is available to assist every member of the profession with any problem, whether personal or professional

THE SERVICE IS COMPLETELY CONFIDENTIAL AND TOTALLY INDEPENDENT OF THE LAW SOCIETY



## NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

## Sale, purchase, and onward mortgaging of repossessed properties

## CONVEYANCING COMMITTEE

*The following letter, dated 4 June 2013, has been sent to the Irish Banking Federation and Irish Mortgage Council, Nassau House, Nassau Street, Dublin 2, by the Law Society's Conveyancing Committee. It raises issues of which practitioners should be aware when buying repossessed properties.*

Dear Sirs,  
I have been asked by the Conveyancing Committee of the Law Society to bring to your attention a number of matters arising from the manner in which your members dispose of repossessed properties that adversely impact on conveyancing practice and procedure.

For some time now, the committee has been in receipt of a steady stream of correspondence from solicitors in relation to the very restrictive contracts for sale being issued by solicitors acting on behalf of your member banks when selling as mortgagee in possession and when selling by their appointed receivers and liquidators. These complaints arise in relation to the sale of both residential and commercial property.

Some of the contracts that the committee has seen have been restrictive in the extreme, in that they:

- Purport to exclude the usual title warranties that a vendor provides to a purchaser,
- Purport to exclude the usual planning warranty in full,
- Refuse to furnish evidence of title to purchasers,
- Restrict the general conditions in relation to the identity of the property, information on notices served under various pieces of legislation, and so on,
- Refuse to reply to purchasers' precontract enquiries,
- Refuse to reply to purchasers' requisitions on title.

It seems to the committee that liquidators and receivers appointed by your members, and your members when selling as mortgagees in possession, are issuing blanket refusals to provide such information as is reasonably within their possession or procurement, and it is the view of the committee that it is not appropriate that they would do so, and the committee proposes issuing a practice note to the

profession advising solicitors accordingly. The committee is of the view that all the same principles apply to liquidators, receivers, and mortgagees in possession as apply to any other vendor. It is only on making due enquiry and finding that they do not have the relevant information that they should restrict the contract for sale.

Your members may not be aware that the above restrictive contracts being issued on their behalf result in some properties being rendered incapable of being mortgaged. In relation to residential properties, you might note that the definition of 'good marketable title' in the certificate of title documentation includes that the standard Law Society contract for sale was used (and this implies that it was used without significant amendments) and that the standard requisitions on title were raised and satisfactory replies were received. If those matters are precluded by contract, a borrower's solicitor must qualify any undertaking and certificate of title to a lending institution. In the experience of committee members and

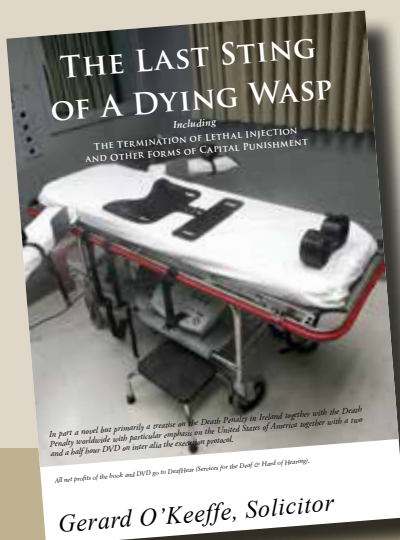


solicitors who have contacted the committee, lending institutions refuse to accept such qualifications, making the purchase/remortgage of the property impossible.

It appears to the committee that your members cannot have this matter both ways. It suggests that your members would arrange for some discussion of the matter between their debt-recovery sections and their mortgage/loan departments in order to see how the matter might be resolved.

The committee intends publishing this letter in the next available issue of the *Law Society Gazette* in order to highlight the issues to the profession. In the meantime, the committee may have no option but to advise solicitors not to proceed with the purchase of repossessed properties in cases where loans are required for the purchase, if your members persist with the restrictive measures outlined above.

If you feel that a meeting on the issue would be of assistance, please let me know. **G**



## THE LAST STING OF A DYING WASP

The launch of "The Last Sting of a Dying Wasp", an account of capital punishment, by Solicitor Gerard O'Keeffe, will take place in the Law Society at Blackhall Place, Dublin on Friday 26th July, 2013 between 4pm and 6pm. It is being launched by Professor Bryan McMahon, retired Judge of the High Court.

The book can be ordered personally from Gerard O'Keeffe, Park House, Kanturk, Co. Cork for €35 euros (including postage) and for €30 at the launch itself.

To cover overheads there will be a raffle for many valuable prizes and the first 100 people attending will get a free expanded DVD on capital punishment.

All of the profits from the book (and CD and DVD) will go to DeafHear (formerly the National Association for Deaf People) who provide a range of services annually to over 32,500 persons with hearing difficulties and their families.

# SIGNIFICANT SAVITA STORY TAKES JMA'S TOP AWARD

The overall winner of the Justice Media Awards 2013 had everything – from the initial tip-off, to the follow-up and the eventual publication of what turned out to be an explosive story. **Mark McDermott** reports



Mark McDermott  
is editor of the Law  
Society Gazette

The Justice Media Awards came of age this year, with the celebration of its 21<sup>st</sup> anniversary. This year's significant milestone for Ireland's longest-running media awards was marked, once again, by a vintage crop of entries. The number of applications was the highest ever recorded in the history of the competition.

Introducing the awards, Law Society President James McCourt said that the role of the media should not be underestimated in terms of their influence on how the public views the justice system.

"It is important, obviously, that the public should hold our system of justice in high regard – and, by and large, I think that it does," he said.

"On the other hand, several submissions in this year's awards tell another story. Many of these relate to public outrage over suspended or reduced sentences for the perpetrators of serious crime. We must never forget the words of Britain's Lord Chief Justice Hewart in 1924, when he said "it is not merely of some importance, but is of fundamental importance, that justice should not only be done, but should manifestly and undoubtedly be seen to be done".

Mr McCourt, recalling the comments of President Michael D Higgins during his speech in Zagreb in early June, reiterated

that the EU had been founded on values such as personal dignity, freedom and democracy – all yardsticks by which justice and the decisions affecting people's lives were measured.

As a result, Ireland's media organisations had been right to give vent to the public's outrage over several questionable sentences during the past 12 months. In an attempt to address this important issue, the publication of the Law Reform Commission's *Report on Mandatory Sentences* on 11 June 2013 was most welcome.

The president congratulated the assembled journalists on the quality of their work this year, which led to a higher number of awards than usual being issued by the adjudicating panel. The overall winner was Kitty Holland of *The Irish Times* for her series 'The Savita Halappanavar story'. Quoting the judges, the president said: "This series of outstanding articles showed what great journalism is all about. This was one of the most significant stories the Justice Media Awards has seen in its 21-year history."

## Strain on resources

Turning to lawyers, President McCourt emphasised: "We who work in the administration of justice must continuously strive to achieve the highest standards in legal practice – and those of you who report on the system of justice must do likewise in your journalistic coverage of legal matters. If we fail to achieve these standards, then public confidence in the justice system will be undermined."

On the subject of the reforms that had been proposed by the Government, Mr McCourt said that many of these had been broadly welcomed. He warned, however, that the reduction in the number of county registrars and the proposed changes in the jurisdictional limits in District and Circuit Courts would add further strain on resources that were already significantly stretched.

"A fundamental issue is one of ensuring that there are adequate resources to enable the justice system to function efficiently and speedily in the public interest." The president concluded: "The Law Society calls on the Government to provide these resources in order to make the changes in jurisdiction work."

***"It is important that the public should hold our system of justice in high regard – several submissions in this year's awards tell another story, however. Many of these relate to public outrage over suspended or reduced sentences for the perpetrators of serious crime"***

The overall winner of the Justice Media Awards 2013 was Kitty Holland of *The Irish Times*







Category and Merit winners at the Justice Media Awards 2013, with Law Society President James McCourt and director general Ken Murphy

## THE RESULTS 2013

### Overall winner

Kitty Holland of *The Irish Times* was the overall JMA winner for 'The Savita Halappanavar story'.

### Daily newspapers

Kitty Holland also won the category award for her Savita series. A Merit certificate was awarded to: Paul Drury (*Irish Daily Mail*) for his article 'We columnists live by the sword and die by the sword'.

### Sunday newspapers

Niall Brady (*The Sunday Times*) for his series 'Fuse lit on loan scandal time bomb'.

Merit certificates were awarded to: Mark Tighe (*The Sunday Times*) for his article 'Who's the mammy?'; Kieron Wood (*The Sunday Business Post*) for 'Food for Thought!'

### Regional newspapers

Mairead Wilmot (*The Nationalist*, Carlow) for her article, 'Victim speaks out on sex abuse that destroyed two lives'.

A Merit certificate was awarded to David Looby (*Wexford Echo*) for his article 'Outrage at rapist's early jail release'.

### Court reporting – print media

Mark Tighe (*The Sunday Times*) for his article 'Denis O'Brien v *Irish Daily Mail*'.

Merit certificates were awarded to Fiona Gartland (*The Irish Times*) for her article 'State closes argument in surrogacy case'; Conor Gallagher (freelance) for his article 'Now "garlic judge" faces DPP wrath for striking out cases'; Sandra Murphy (*Irish Daily Mail*) for her article 'Perrin'; Carol Byrne (*The Clare Champion*) for her article 'Child cruelty: a 21<sup>st</sup> century problem'.

### Court reporting – broadcast media

Vivienne Traynor (RTÉ, *Six One News*) for her report 'Marie Fleming assisted suicide case'.

A Merit certificate was awarded to Louise Byrne (98FM) for her report 'The patriarch prisoner'.

### National radio

Richard Dowling (RTÉ, *This Week*) for his report 'Missing chapter, missing answers'.

Merit certificates were awarded to Peter Ward and Fiona Kelly (RTÉ Radio 1) for their series 'The Law Makers'; Sarah Carey and Francis Fitzgibbon (Newstalk) for their programme 'Can we reform a rapist?'

### Local radio

John Cooke (Clare FM, *Morning Focus*) for the programme 'Free legal advice on Clare FM'.

A Merit certificate was awarded to Niall Delaney (Ocean FM's *North West Today*) for his series of reports entitled 'Incitement to hatred – the McEniff controversy'.

### Television news

Tara Peterman (executive producer), Miriam O'Callaghan (presenter) and Máire Kearney (producer) of RTÉ's *Prime Time* for their programme, 'Praveen Halappanavar interview'.

A Merit certificate was awarded to Dyane Connor (TV3) for her report 'A plea for justice'.

### Television features and documentaries

Conor Tiernan (producer) and Paul Byrne (presenter) of TV3 for their programme 'The search for Sophie's killer'.

Merit certificates were awarded to Mark Coughlan and Tanya Sillem (producers) and Barry Cummins (reporter) of RTÉ's *Prime Time* for their programme 'Section 29 warrants – illegal entry'; Patrick Kinsella (producer), Colette Fitzpatrick (presenter) and Ciara Doherty (reporter) of TV3's *Midweek* for 'Cameras in the courtroom: trial by media'; Mary Fanning (producer) and Mary Kennedy (presenter) of RTÉ's *Nationwide* for their 'Law programme'; Laura Hogan (TV3's *The Morning Show*) for the programme 'Rape and sexual assault sentencing'.

# IRISH SOLICITOR WITNESSES TURKISH STATE REPRESSION

**An Irish solicitor, who wishes to remain anonymous, recently returned from Turkey where she witnessed, first-hand, the state repression of popular protest**

At the time of writing, Turkish citizens are holding silent vigils in their tens of thousands in public squares across the country. They are leaving shoes in these squares to signify their solidarity with their fellow citizens who have been unlawfully detained without formal arrest or charge – and for those innocent protesters who have been killed by police and will never have a chance to exercise any rights or freedoms. The shoe stacks are growing, as is the determination of the Turkish people and our Turkish legal colleagues.

Can you believe what you read in the press? Is this really about the demolition of a green space called Gezi Park in Istanbul to industrialise it with a shopping centre and apartments? Are the protesters really peaceful, or are they terrorists influenced by outside influences, as has been implied in some media reportage and as Turkish Prime Minister Erdogan would have us believe?

## Lawyers on trial

On 29 May, I travelled to Istanbul; the backdrop was of a country where members of the board of the Istanbul Bar were on trial for exercising their professional duties. The trial has been rescheduled for October, leaving the outcome unclear. Law Society President James McCourt, on the resolution of the Council, had written to the Turkish Ambassador to Ireland, expressing the concern of the Society and calling upon the Turkish government to uphold the basic principles of the rule

of law, the release of all detained lawyers, the safety of lawyers, and to desist from the prosecution of lawyers. The Society awaits a response.

On 31 May, I stepped off a ferry in Kabatas, in the European district of Istanbul, having come from a meeting in the Asian district. The traffic was at a standstill – as it often is in Istanbul – and the air was stifling with what I thought was pollution in a city of almost 20 million people. My companion, who lives in Istanbul, said that this was unusual and, after a few minutes walking, both our eyes watered and swelled and we found it hard to breathe.

My companion – who is a more seasoned traveller than I and has much more worldly experience – informed me that what we were experiencing was the effects of teargas. There were protests in Taksim Square, which is not very far from Kabatas, and we were suffering the fallout from the police response. He suggested I walk back to my hotel, as sitting in an unmoving taxi would only make me sick. I took his advice and walked the hour to the hotel.

When I returned, I searched news channels to see what was happening, but could find nothing. I googled, with the

same outcome. Then I searched Facebook and Twitter, as I have many lawyer friends in Turkey, and the feedback was amazing. Many of my Turkish lawyer friends had uploaded video and commentary that showed the horrific scenes in Taksim Square with teargassing, police beatings and water cannon. My immediate thoughts were why is the international media missing

this and, on a more personal level, how does it feel to be teargassed? I had felt the indirect effects, which were painful, but could not imagine what it would be like to have a canister go off in my room.

## United as one

My hotel fronted a main road in a beautiful part of Istanbul called Ortakoy. This is a relatively non-tourist part of Istanbul, with primarily Turkish residents

and restaurants overlooking the very busy Bosphorus sea. From 9pm that night until 5am, Turkish people gathered, clapping their hands and banging cooking pans as if they were drums. Cars that passed honked their horns, and I felt like I was in Croke Park at an All-Ireland final – except there was no sign of alcohol or the competitive banter of opposing counties, as everyone was united as one. The dignity and determination of the protesters

was really touching, and these ranged from families with children to students and workers from all classes in society.

I sat in my hotel room, looking out my window until midnight, when I could no longer avoid the temptation to show solidarity and join the peaceful protesters. I met people from many nationalities, including an English film director and cinematographer, to European business people who, like me, could not avoid the infectious need to show support and unity. The only time I feared for my safety was when I heard a loud noise and knew that teargas would fill the air very soon. This led to a fast retreat to my hotel room, where even closed windows could not keep out the seep of teargas and its passive effects. But these were minor and inconsequential troubles when compared to the face-to-face brutality outside on the streets.

In my time in Istanbul, which lasted the first five days of the protests, I worked with lawyers from both Turkey and other countries who live in Istanbul. I saw the footage they had recorded on their phones, showing nightly teargassing of their areas and, in one case, the unlawful entry to one of my colleague's homes, where she was gassed for no reason. I also read the Reuters and CNN news reports of the killing of four protesters by police, and I have since seen the video footage of one of the murders, which showed the shooting in the head of an innocent protester by a member of the Turkish police.

***"Since I have returned, lawyers have been dragged from the courthouse in Ankara for protesting and have been forcibly and unlawfully detained without formal arrest or charge"***





***“My immediate thoughts were why is the international media missing this and, on a more personal level, how does it feel to be teargassed?”***

This police officer was arrested and charged and, at his trial on 24 June, his case was dismissed on the basis that he was defending himself. The video footage clearly shows that the officer deliberately shot the protester, who was unarmed save for his voice and his bodily presence.

#### **Unlawful detention**

I returned from Turkey a day early, as my colleagues were concerned that strikes by teachers, medical professionals and lawyers the day I had been due to return could lead to a

shut-down of the city, which would prevent me from getting to the airport. My heart was heavy, as I left so many friends and colleagues in turmoil.

Since I have returned, lawyers have been dragged from the courthouse in Ankara for protesting and have been forcibly and unlawfully detained without formal arrest or charge, though all have since been released. Medical professionals who set up makeshift clinics in hotels to treat protesters have been unlawfully detained – and some beaten – by the police, and have

been subsequently released without charge.

Is this only about the conservation of a green space? No. Having listened to our Turkish colleagues, this started on 31 May as a lawful assembly to express the opposition of citizens to the destruction of a green space, of which there are now few remaining in Istanbul. The brutal retaliation by the police and the subsequent authoritarian reaction of Prime Minister Erdogan has resulted in the current protest being a desperate fight for the democratic right to freedom of expression, freedom of assembly, freedom of the media, the restoration of the rule of law, the impartiality of the legal

profession and the judiciary.

I have kept a constant Twitter and Facebook vigil, hoping that things have changed but, as any of you reading credible media reports will see, this has not been the case. Prime Minister Erdogan has met dignity with brutality, and this has been met with silence by the inspirational Turkish people.

The saucepan drums, car horns, claps and chants of the Turkish people are now gone. They have been replaced with human bodies silently standing with dignity without their shoes. I have left my own shoes at the gates of the Turkish Embassy in Dublin to show my solidarity and as a plea for justice for our colleagues in Turkey. **G**



Law Society of Ireland

# Diploma Programme

*Legal Education for the Real World*



Irish Law Awards  
Law School of the Year  
award winner 2012 and finalist 2013



SUMMER COURSES	START DATE	FEES*
Certificate in Civil Litigation Updates ( <i>new</i> ) (Friday 5 July, Saturday 6 July, Thursday 11 July, Friday 12 July, assignment due date 26 July)	Friday 5 July	€1,200**
Certificate in Intellectual Property Rights Management ( <i>new</i> ) ( <i>intensive one week course</i> )	Monday 15 July to Friday 19 July	€1,200
AUTUMN COURSES	START DATE	FEES*
Diploma in Corporate Law and Governance	Wednesday 2 October	€2,200
Diploma in Aviation Leasing and Finance	Wednesday 2 October	€2,200
Diploma in Environmental and Planning Law	Thursday 3 October	€2,200
Diploma in eCommerce ( <i>iPad</i> ) ( <i>new</i> )	Saturday 5 October	€2,520
Diploma in Finance Law	Monday 7 October	€2,200
Diploma in Mediation ( <i>new</i> )	Thursday 10 October	€2,200
Diploma in Trust and Estate Planning (STEP)	Saturday 2 November	€2,200
Diploma in Intellectual Property Rights and Technology Law ( <i>iPad</i> )	Saturday 30 November	€2,520
Diploma in Legal French	Wednesday 16 October	€1,850
Certificate in Trust and Estate Planning (STEP)	Saturday 7 September	€1,200
Certificate in Data Protection Online ( <i>new</i> )	Thursday 3 October	€1,200
Certificate in Higher Court Civil Advocacy ( <i>iPad</i> ) ( <i>new</i> )	Saturday 5 October	€1,520
Certificate in Healthcare Law	Tuesday 8 October	€1,200
Certificate in Human Rights Law	Saturday 19 October	€1,200
Certificate in Trade Mark Law ( <i>iPad</i> )	Saturday 30 November	€1,520
Certificate in Legal German	Tuesday 17 September	€1,120

(\*) Fees quoted are for solicitors. Non-legal personnel are subject to an application process and supplemental fee.

(\*\*) Reduced fee of €900 for Skillnet members

Please note discounts are available for trainees, out-of-work solicitors and multiple applications.

For further information:

W: [www.lawsociety.ie/diplomas](http://www.lawsociety.ie/diplomas)

E: [diplomateam@lawsociety.ie](mailto:diplomateam@lawsociety.ie)

P: 01 672 4802



## Data protection catch-22 when dealing with KBC bank

From: Bernadette Glynn, solicitor,  
Bluebell Woods, Oranmore,  
Co Galway

I wish to bring the attention of all colleagues to the ridiculous situation that now exists when one makes telephone communication with KBC Bank on behalf of a client. Once you eventually get a human voice on the phone, you will then be asked for information to comply with the *Data Protection Act*, and if you cannot furnish the information sought, no one will speak with you. This is regardless of the fact that you have written to them already on your headed paper and informed them that you are acting for the clients on whose behalf you are ringing – or returning calls that you received from them!

In my case, I was requested for the date of birth of each client and details of transactions on their loan accounts. None of this information was in my possession. When I took issue with the person to whom I was speaking, pointing out that I was returning a call from them – in addition to pointing out that I had informed them already in writing that I was acting for the clients – I was informed that

they had to be sure that “I was who I said I was”!

To date, I have been corresponding with KBC Bank from March of this year but, as of yet, I have not managed to speak to the person dealing with my clients' loans or progress the files in any way. It is very frustrating, but – more importantly – extremely worrying for clients who may be in arrears and have instructed their solicitor to make contact with the bank on their behalf.



## Take a bow, Gene Murphy!


From: William Clarke, partner,  
Clarke Jeffers & Co, Solicitors, 30  
Dublin Street, Carlow

I am writing in relation to a colleague I encountered during a recent conveyancing transaction (there is such a thing!).

I had the pleasure of dealing with a Mr Gene Murphy of Neville Murphy & Co, Solicitors, Bray, Co Wicklow, in relation to the purchase of a property.

It gives great hope to me to

encounter such a knowledgeable and courteous colleague. Both solicitors and clients benefit from such work practices. In a time when negative publicity surrounds the profession, it is reassuring to deal with such a person.

I aspire to practise like Mr Murphy and would hope that all solicitors would see that knowledge, manners and integrity are what make a great solicitor – and a great legal profession. 



Nua Healthcare, the specialists in complex care arrangements for adults and children with Autism, Intellectual disabilities, Mental Health issues and brain injuries.

Providers of -

- High Support Residential care for adults
- Specialist Residential care programs for children and adolescents
- Therapeutic interventions for individuals with challenging behavior
- Forensic Psychiatric / Psychological Risk assessment and intervention
- Full clinical diagnostic / assessment services
- Community outreach services and independent living programs
- High quality, accredited community based care

For more information on our services and supports, please visit:

**www.nuahealthcare.ie**

or call our team on

**+353 (0)45 856 592**

# NSA DATA SCANDAL PUSHES CYBER-SECURITY TO THE FORE

Secret data harvesting by the US National Security Agency has brought issues of data trust and cyber-security into sharp focus. **Deirdre Kilroy** dusts off her deerstalker



*Deirdre Kilroy is head of intellectual property and technology at LK Shields*

It's a news story reminiscent of a Philip K Dick novel – a secret data-mining project by one of the world's superpowers, covertly gathering and storing huge volumes of data on citizens and businesses all over the world, bypassing the security systems of huge multinationals. And details of the US National Security Agency's Prism Programme continue to emerge. Daily, information is disclosed by whistleblower Edward Snowden about the scope and use of the data collected by the NSA from tech giants such as Google, Facebook and Apple.

## All the president's men

There has been no report to date that the data gathered by the NSA has been used for anything other than security purposes. However, the fact that data has found its way to the NSA without those holding it having any knowledge must give consumers and businesses worldwide pause for thought regarding data security. Some have called for organisations to boycott the companies targeted by the NSA. Others, including EU Justice Commissioner Viviane Reding, are calling on the NSA to explain this activity. While these actions might give some comfort, in many ways they do not address the larger issues of data trust and cyber-security.

Every day IT systems are hacked and data is compromised. On many occasions, the businesses affected

are not aware of the security breach. The motives for cyber-attacks are varied. Disclosure of the NSA Prism Programme demonstrates that the motives for accessing data without knowledge and consent can be political, but motives are more often identity fraud, financial theft, theft of intellectual property, and securing commercial secrets.

Businesses, consumers and public bodies should reconsider their approach to data security, processing and outsourcing.

Over recent years, the profile of the typical IT department has changed. Data is no longer stored on hardware controlled by the organisation on site. Businesses are leveraging efficiencies by outsourcing IT management to third-party service providers. Instead

of emails being held on a server in the building of a company, they may be stored in a third-party cloud and accessed through a service provider. Information is more fluid and flows in and out of organisations in many different ways and forms.

## The lives of others

What should businesses do to protect confidential business information and the information entrusted to them? Think carefully about what companies you entrust your data to. Review the terms and conditions that apply to their services. Be sure the entities to which data processing is outsourced are incentivised by robust

legal agreements to keep data secure and only used for the purposes you have mandated.

Consider how data might leak from your organisation. Put strong policies in place dealing with data security and enforce those policies. Train your staff appropriately. Data is an asset, whether it is consumer data, data relating to your new product, or intellectual property. Data security is a topic that should be considered at board level. Build data risk and management into your corporate governance model.

If the data that your business processes includes data about living individuals, remember that data protection laws will apply. These laws require you to implement appropriate technological and organisational measures to keep personal data secure. Failure to comply with these laws carries legal sanctions.

Consider the jurisdiction in which your data is held. Think carefully before sending your data to a jurisdiction that does not have adequate cyber-security arrangements, laws protecting confidential information, and data protection laws. The EU has rules that govern the disclosure and permitted uses of data about people. Once you transfer data outside of the European Economic Area, you are legally required to take steps that recognise that the laws protecting data in other jurisdictions may be weaker.

Carry out periodic audits of data security measures. Undertake regular IT reviews and keep your IT security policy up to date. Review decisions to outsource data processing and storage regularly. Use the most up-to-date antivirus and malware software.

***“Risk to data can be managed and greatly reduced by a combination of legal arrangements and good organisational practices”***





***“Data security is a topic that should be considered at board level. Build data risk and management into your corporate governance model”***

Maintain and implement a robust password and user privilege/access policy. Secure WiFi and other communications networks.

Have a good incident or breach policy that ensures that data security breaches are brought quickly to management’s attention and acted upon

immediately. In some cases, it will be necessary or advisable to notify the Irish Data Protection Commissioner in relation to the breach.

Unfortunately, the *Criminal Justice (Cybercrime and Attacks against Information Systems) Bill* implementing the ratification of the Council of

Europe *Convention on Cybercrime*, and the transposition of the EU framework decision on attacks against information systems, has languished in the legislative programme of successive governments for a number of years. However, if you do suffer a security breach, it is still a good idea to contact the gardaí. The gardaí have powers to investigate computer crimes under the *Criminal Damage Act 1991* and the *Criminal Justice*

*(Theft and Fraud Offences) Act 2001*, as well as under more general legislation.

While it is not possible to eliminate risk to data in this world, risk can be managed and greatly reduced by a combination of legal arrangements and good organisational practices. Remember, these are issues faced by everyone. Consult with professional advisors and others who can give you the benefit of their experience in helping you. **G**

# CAN WE FIX IT? YES, WE CAN!

The excesses of the 'Celtic Tiger' have surely taught us that Irish politics needs more scrutiny and oversight – not less. Abolition of the Seanad would concentrate more power in the hands of a dysfunctional executive, argues **Caroline Bergin-Cross**



Caroline Bergin-Cross is a Dublin-based barrister and treasurer of Lawyers for Seanad Reform

Seanad reform is a hot topic. Undeniably, it is in need of reform, and the *Seanad Reform Bill* published by Senators Quinn and Zappone on 12 May last clearly demonstrates that reform is easily attainable.

The democratic importance of having a second house is recognised globally, from the House of Lords in Britain to the United States Senate. When faced with a similar referendum, the Danes voted to keep their second house – despite this, their second chamber was abolished.

## Proactive debates

Throughout the years, the Seanad has been increasingly proactive in debating the rights of Irish citizens and closing off possible lacunae in prospective legislation. For example, when the *Personal Insolvency Bill 2012* went through the Seanad, it recommended 104 pages of amendments.

Regarding the new insolvency processes, the Seanad made three very important amendments with regards to pensions, excluded debts, and reasonable living expenses.

This debate and double checking is imperative to a functional, structured and democratic society.

## Unimplemented reports

The modern Seanad was established in 1937 and is mentioned 75 times throughout the Constitution. Redaction and abolition will not solve, but rather will cause, problems.

Since 1928, 12 official reports have

been published on reform of the Seanad. Of the earlier reports, those of 1928, 1936, 1947, and 1953 were in fact largely implemented, while those of 1937 and 1959 made almost no recommendations, because committee members disagreed over the proposed reforms.

The reference to the Seanad panel elections in the report of 1943 is a mere detail in its vast corporatist fancy. The 1967 and 1996 reports were reviews of the entire Constitution,

while the 1997 and 2002 reports were chapters of a review of the entire Constitution. The only report that is both specific to the Seanad and unimplemented is the 2004 *Report on Seanad Reform*, published by the Seanad Committee on Procedures and Privileges (specifically its sub-committee on Seanad reform).

So; how to proceed? Well, for the first time, we have a workable and

tenable draft *Seanad Reform Bill*, which only requires minor tweaks to radically reform the Seanad. If this bill was passed, the current Seanad – currently seen as exclusive, anachronistic and unrepresentative – would be no more and, in its place, we could have a dynamic, cost-effective, gender equal, functional and modern second house.

## Major gap

Irish citizens currently see a major gap between themselves and their upper house. The proposals of Lawyers for Seanad Reform are intended to bridge this gap. They are radical and far-reaching, involving

constitutional change, new legislation, and extensive revisions of the Seanad's standing orders. Fellow Seanad reform supporters debated and argued at length before agreeing a coherent and complete package of recommendations. We strongly believe that the recommendations should be implemented. We also believe that it is desirable that decisions on the recommendations be taken quickly and on an all-party basis.

In broad terms, our proposals involve new ways to choose senators that involve the public much more closely, providing greater legitimacy, along with a gender quota to ensure an equal number of men and women on each of the five vocational panels, combined with significant changes to the Seanad's functions. New legislation could impose a pay cut of nearly €20,000 for Seanad members – defining their pay as being half of that for a TD. This would mean the current wage of over €65,000 would fall to €46,336.

Seanad reform would enhance the prospects of people with particular valued expertise being able to make a contribution to the work of Seanad Éireann.

## Initiating legislation

A reformed Seanad would have great participative, representative and expert potential.

The Seanad normally meets on Wednesdays and Thursdays, and its main business is the revising of legislation sent to it by Dáil Éireann. However, in recent years, the Government has tended to make greater use of Seanad Éireann to initiate legislation. The Seanad can initiate and revise legislation but, under the Constitution, its legislative role is restricted, in that it cannot

**“Seanad Éireann is certainly in need of reform – not abolition. A reformed Seanad has great participative, representative and expert potential”**





Can we fix it? Ah, dunno bud; it'll cost ya, though...

initiate 'money bills' (that is, financial legislation) and can only make recommendations, but not amendments, to such bills.

The fact that a Dáil bill must be examined by the Seanad is also a safeguard against legislation being enacted too quickly.

In practice, the Government is not answerable to the Dáil, as it should be. Why is this? One answer might be because political parties in this country impose a whip system that does not allow for individual votes of conscience or for TDs to adequately represent the views of

their constituents. Abolition of the Seanad will only result in excessive centralisation of power.

#### More scrutiny – not less

If the so-called 'Celtic Tiger' taught us anything, it's that Irish politics needs more scrutiny and more oversight. Abolition of the Seanad would effectively butcher the Constitution, requiring 75 deletions, and would concentrate more power in the hands of a dysfunctional executive.

The Government's reform plan represents the biggest package of political change since the passing

of the Constitution in 1937. This includes not just a referendum on the abolition of the Seanad, but also significant reform of the Dáil and local government. The danger of giving more power to the Dáil will create a single-chamber parliamentary system – circumventing the rigorous checks and balances that the Seanad, even in its current form, ensures.

The Taoiseach should, at the very least, now commit himself to implementing appropriate reform if the people do not agree to abolish the Seanad in a referendum. The Seanad can be

changed substantially through legislation: the *Seanad Reform Bill* is illustrative of how easily it can be reformed.

Seanad reform might not be the sexiest topic, but abolition would be short-sighted. It is difficult to understand why advocates of Seanad abolition would not wish to strengthen it, reconfigure it, or reform it. Abolition would be a regressive step.

We should stop focusing on the past – mindlessly focusing on what the Seanad *has* been – and start considering what the Seanad *could* be. **G**

Law Society of Ireland  
NEWSLETTER



# Are you getting your e-zine?

The Law Society's e-zine is the legal newsletter of the solicitors' profession. The e-zine issues once every two months and brings news and information directly to your computer screen in a brief and easily-digestible manner. If you're not receiving the e-zine, or have opted out previously and would like to start receiving it again, you can sign up by visiting the members' section on the Law Society's website at [www.lawsociety.ie](http://www.lawsociety.ie). Click on the 'e-zine and e-bulletins' section in the left-hand menu bar and follow the instructions. You will need your solicitor's number, which is on your 2010 practising certificate and can also be obtained by emailing the records department at: [l.dolan@lawsociety.ie](mailto:l.dolan@lawsociety.ie).

# INVASION OF THE AUDITORS!



Mary Frances Fahy is principal of Roscommon firm Fahy Neilan & Co

While opening the post on a routine day, **Mary Frances Fahy** got the letter that most solicitors dread: the notification of an impending Law Society audit. Prepare to hide behind the sofa

**H**aving purchased a solicitors' practice four years previously, I had been expecting this day to come and, as each year passed, would heave a sigh of relief at having escaped a visit from the higher powers that regulate us. As this was my first audit, I made a few calls to colleagues. All agreed that it was an ordeal to be overcome with the greatest haste, and I could hear their relief that they had not been selected for this dreaded event. Even the most laid back of them appeared to shudder at the mere thought of an audit.

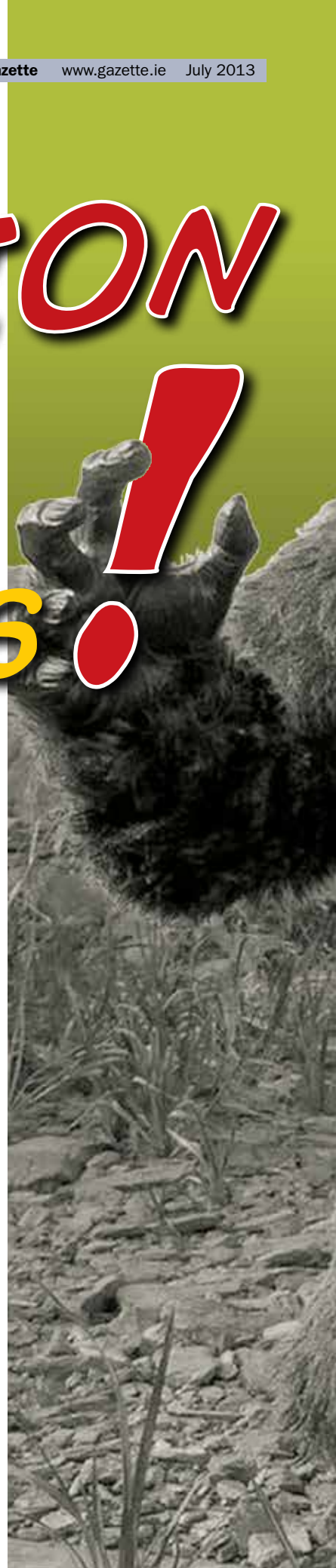
A number of them advised me that, although I knew I would have nothing to fear from such an audit, it was likely that I would not sleep for a week, imagining all sorts of dramas, problems on files, questions to be answered, bank accounts out a few cents, forgotten undertakings and so on. It would haunt me until I got it over with, one colleague advised.

With this in mind, I decided there was no point in putting off the day of reckoning, which was due to take place immediately before a planned holiday to Italy. It was all systems go in the office for a while, as we made sure all our paperwork was in order. Following a few frantic calls to the accountant and a big tidy up of the office, we were as ready as we were going to be.

#### The creature walks among us!

It proved to be a good idea to make a computer available to the auditor to allow him to access the book-keeping system. It also reduced any disruption to a minimum by allocating him an office space. I opted to put the information on a laptop for him and install him in a spare room in the building. In that way, we could continue on with business as usual.

During the initial meeting, when the auditor arrived and gave me an opportunity to make a voluntary disclosure, I was reminded of the Seamus Heaney poem *A Constable Calls* – a poem that details a routine visit by a local official who is checking







#### FAST FACTS

- > It is the Law Society's policy to investigate a solicitor's practice within three years after setting up, and thereafter at least once every five years
- > Solicitors should try and identify any problems within the office, for example, PI claims, stamp duty issues, and other general problems in advance of the audit
- > The auditor is entitled to access all files and all accounts



and recording the crops and assets of the family farm. It was done for tax purposes and resembled an audit that allowed the British administration in the North to charge an accurate tax on the Heaney family:

*'Any other root crops? Mangolds? Marrowstems? Anything like that?'*  
*'No'. But was there not a line of turnips where the seed ran out*  
*In the potato field? I assumed small guilts.*

#### FROM HELL IT CAME!

John O'Dwyer (Crean O'Cleirigh and O'Dwyer, Ballyhaunis, Co Mayo) qualified in 1968 and has survived his fair share of audits. His advice to colleagues is to be up front with the auditor and not to try and conceal issues from him.

"Solicitors should try and identify any problems within the office, for example, PI claims, stamp duty issues, and other general problems in advance of the audit. At the initial meeting, they should be honest and truthful. If there are problems, they should be disclosed. The experience of many colleagues is that you are much better declaring these things, as they will be discovered anyway. The auditor, from experience, will take a much better view of things if they are disclosed at the outset and not concealed from them."

O'Dwyer advises that the last accountant's report should be made available and easy access to information should be provided.

"The auditor is entitled to access all files and all accounts. The easiest thing to do is to make available a computer for the auditor's use during the period of the investigation. The auditor will ask for estimates of the principal fee sources and will check that all taxes are paid up to date. He will examine the profitability and viability of the practice generally, and he will be looking to see if fee income has dropped and if the overdraft is under pressure. One of the roles of the audit accountant is to risk-assess the firm and look at its capacity to meet its financial obligations and consider

if it may be a risk to the compensation fund.

"There will be a focus on money laundering, and the audit accountant will be checking files for up-to-date photo identification and vouched PPS numbers. It is useful to have these documents on a separate folder on the file."

Section 68 compliance is also examined, and O'Dwyer advises that solicitors should be compliant with both section 68(1) and section 68(6), one of which contains the requirement to set out the fees in writing, and the other where you provide details to the client of the costs recovered from third parties and payments made to third parties.

"Inactive balances should also be looked at prior to the audit. Many of these will be from undrawn fees. A large amount of aged balances may be interpreted by the audit accountant as giving an indication that the solicitor is not on top of their work. Unstamped deeds and excess costs are also areas of investigation."

Finally, the advice is to cooperate at all costs. "Make a full disclosure. No investigating accountant expects to find the perfect office. Solicitors are human, and the investigating accountant is human too. There can always be omissions that, however unintentional, are omissions."

When asked if there was anything I wanted to disclose, I thought, not of a line of turnips in a potato field, but about other things: the forgotten section 68 letter, the nasty letter from the bank about an undertaking, the probate file not yet distributed.

"Any minus balances on client accounts?" enquired the auditor in tones that made me imagine that there were some that he would, no doubt, identify immediately. "None," I replied.

#### The beast with a million eyes!

Colleagues had warned me that the auditor would be certain to identify the very files with complications on them: that difficult probate, the conveyance that took an age to close and, sure enough, I did find that to be the case. The files likely to bring you out in a rash from the moment you opened them were called for and scrutinised.

I did, however, find that the auditor was very polite and courteous and gave me an opportunity to give detailed explanations of complicated matters. The reality is never really as bad as what you anticipate it will be.

The auditor spent the first day carrying out a very detailed analysis of the books of account of the practice.

"What could he be doing up there all this time," I wondered to myself as I tried to concentrate on the day-to-day business at hand. How boring could it be for him going through endless lists of numbers? There was no word from the auditor for most of that

day, and he left having not yet presented the list of files that he wanted to review.

Waiting for him to select the files for review was probably the most nerve-racking event. Mid-morning on the second day of the audit, he presented his list. The auditor had a few questions on every file but was very courteous, and I felt that he adhered to the statement of practice where there is a presumption of honesty and compliance on behalf of the solicitor.

#### Curse of the faceless man!

I was also very grateful to the auditor for making every effort to complete the audit within a two-day period,

as I was heading to Italy on day three. He worked through lunch to ensure that he had everything done on time and facilitated me in every way.

I was surprised by the new focus on practice viability, and there were lots of

***"The auditor was very polite and courteous and gave me an opportunity to give detailed explanations of complicated matters. The reality is never really as bad as what you anticipate it will be"***



## THE GIANT CLAW!

It is the Law Society's policy to investigate a solicitor's practice within three years after setting up, and thereafter at least once every five years. However, the Society can and does carry out investigations on a more frequent basis. Complaints of a financial nature or a serious disqualification endorsed to the annual accountant's report may render a more immediate investigation. Where a firm has, in the past, been subject to an investigation that has disclosed breaches of the *Solicitors' Accounts Regulations* or other misconduct disclosed by the accounting records, that firm may be subject to an early reinvestigation. An increase in the frequency of complaints about a practice can also lead to more frequent inspections. The Society can carry out investigations at any time.

Normally, two to three weeks' notice is given of the Law Society audit and, if the date selected is not suitable, the solicitor will be given an opportunity to arrange a mutually convenient date. However, if serious financial complaints are received, the normal notification period may have to be minimised. The Society reserves the right to carry out

investigations without notification. In the normal course of events, if the accounting records are found to be properly maintained, the investigation will be conducted in a matter of days.

The Society's objective in carrying out audits is to protect clients' moneys in the interest of the public generally and to protect the profession, which must make up deficits through the Society's compensation fund. Following the passing of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*, the Society is required to investigate whether there has been due compliance with anti-money-laundering obligations.


The solicitor will be furnished with a copy of the investigation report. The report will be reviewed by the Regulation Department of the Society, and the Society may require the solicitor to respond to the investigation report. The report is confidential and will not be furnished to any third parties by the Law Society.

questions about my own personal finances and loans. Money laundering featured highly too, with a close scrutiny of all aspects of this.

Finally, he went through his report with me and explained all aspects of it.

There were a few humorous moments during it all. One staff member feared she might have poisoned the auditor (inadvertently, of course), as she noticed that the coffee had gone out of date. A barrister I had engaged over at Castlebar Court told me she felt it was the best excuse she ever had for being unattended for a day. The judge, who no doubt survived plenty of Law Society

audits in his days as a solicitor, needed no further explanations when he heard I was in the throes of an audit.

By lunchtime the next day, I was in Desenzano on Lake Garda, enjoying one of the best liquid lunches ever, with that feeling that I well deserved it, having survived this ordeal. Bliss! Although the auditor was very polite and courteous, I won't be complaining if I don't see him for another five years. 

***"One staff member feared she might have poisoned the auditor (inadvertently, of course)!"***

# Stress getting to you?

Stress can cause illnesses such as heart disease, addiction and depression.

Get help before it all gets too much.

For free confidential advice and support on any health issue call us.

1800 991801

www.lawcare.ie



# *Lest you be judged* **INTERN**



Mary Kelleher  
is a member of  
the Law Society's  
Employment and  
Equality Law  
Committee

**The use of interns on work-placement programmes is quite common these days, but employers should be aware that, in legal terms, these arrangements may turn into something with legal entitlements. Mary Kelleher cracks the whip**

**I**n the last number of years, the use of interns, students and/or volunteers, or work-placement programmes has become increasingly popular. These arrangements can seem to be a useful source of skilled labour for an organisation, as well as being an educational opportunity for interns or students to apply what they have learned to real work situations and to build on existing skills.

It is, however, important for employers to be aware that, depending on the circumstances, these arrangements may, in legal terms, turn into something that is more than a casual arrangement with no legal entitlements. It is possible that a work placement or internship could be deemed to be an employment relationship, resulting in the intern/student becoming entitled to employment rights such as minimum wage, minimum notice, and so on. Such an outcome also has implications from a tax, health and safety, and insurance point of view.

Specific exemptions from the application of certain employment laws arise in the case of industry specific apprenticeships, such as the FÁS work placements for graduates and the unemployed, and the Job Bridge Scheme, which are governed by law.

An organisation can minimise the risk of interns being considered to be employees in circumstances where they are acting in a purely observational role and on a voluntary basis (rather than carrying out any services for the employer) and where the period of the placement is short (such as a few weeks).

Issues will arise if the placement is extended or changed and the relationship develops. It is, therefore, vital to adhere strictly to the envisaged arrangements in terms of

scope of activity and duration to avoid such an outcome. If these parameters are exceeded, there is a risk that an intern may be deemed to be an employee of the organisation for the purpose of employment law, as well as tax and PRSI. Each situation must be assessed on a case-by-case basis but, in general, the following issues should be noted by organisations engaging interns.

## **Through a glass, darkly**

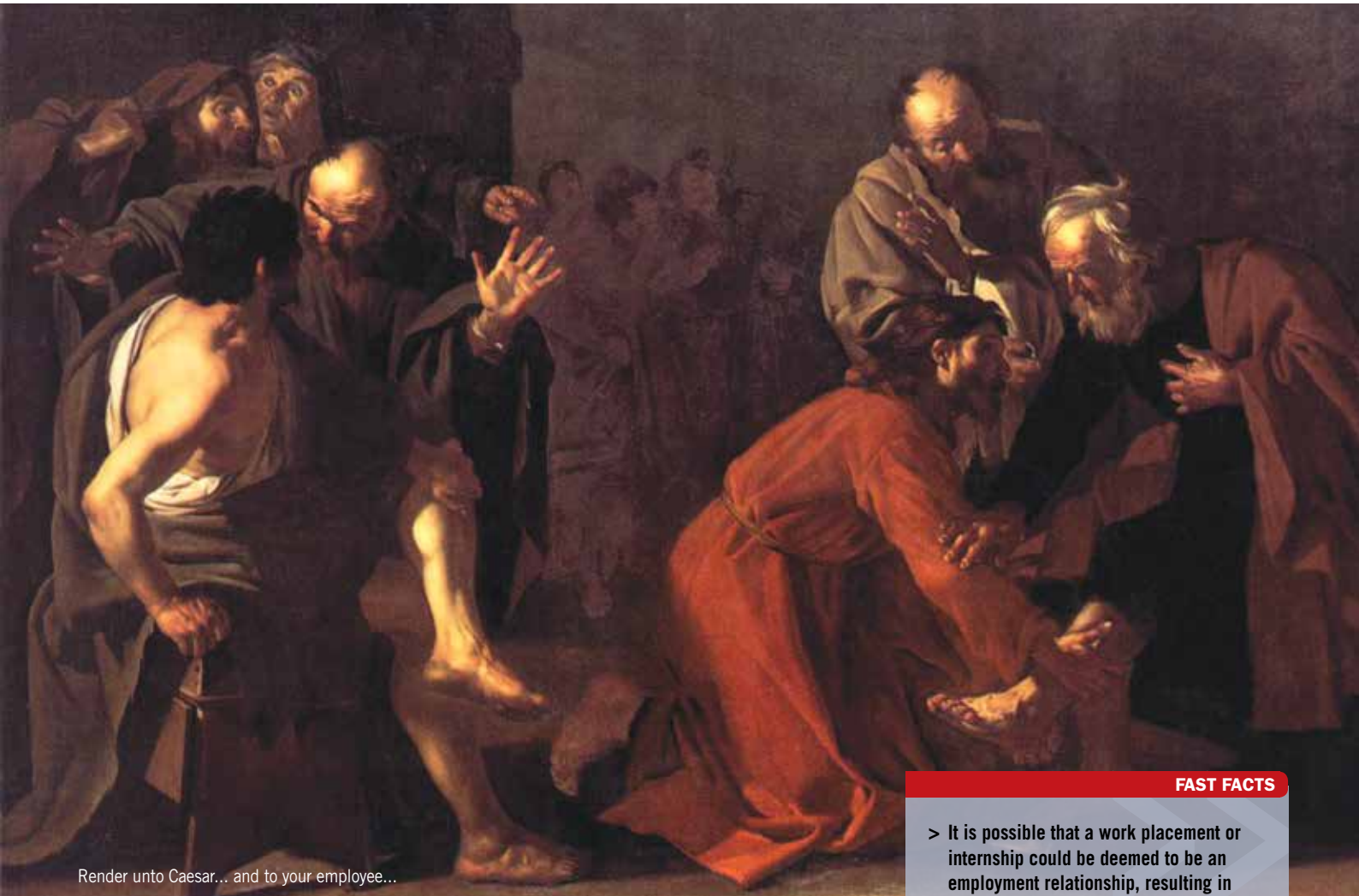
There is no express provision in Irish employment law that defines interns or other individuals on work placements as employees.

There are variations between the definitions of 'employee' under different statutes. However, in general, the definition of an 'employee' under Irish employment legislation is as follows: "An employee means an individual who has entered into or works under a contract with an employer, whether the contract be for manual labour, clerical work or otherwise, whether it be expressed or implied orally or in writing, and whether it be a contract of service or of apprenticeship or otherwise."

The definition of an 'employer' under Irish employment legislation is as follows (or similar to the following): "The person with whom the employee has entered into or for whom the employee works under a contract of employment, subject to the qualification that the person who under a contract of employment referred to in paragraph (b) of the definition of 'contract of employment' is liable to pay the wages of the individual concerned in respect of the work or service concerned, shall be deemed to be the individual's employer."

***"Specific exemptions from the application of certain employment laws arise in the case of FÁS work placements and the Job Bridge Scheme"***





Render unto Caesar... and to your employee...

The definition of 'contract of employment' under Irish employment legislation is as follows (or similar to the following): "A contract of service or apprenticeship, and any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the *Employment Agency Act 1971* and is acting within the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract), whether the contract is express or implied and, if express, whether it is oral or in writing."

The latter part of this definition covers an agency arrangement, where an organisation could be viewed as an employment agency based on the definition of 'employment agency' under the relevant legislation, that is, "the business of seeking, for reward or

otherwise, on behalf of others, persons who will give or accept employment". However, an organisation is unlikely to be deemed to be carrying on the business of an employment agency simply by arranging work placements for interns or students where this is ancillary to the function of the particular business.

#### Render unto Caesar

Under common law, a number of tests have been established by the relevant authorities/courts to examine whether a contract of employment exists.

Irish authorities (whether the courts, Rights Commissioner, Employment Appeals Tribunal, Revenue Commissioners or Department of Social Protection) will look at a number of factors (including those set out below) in determining whether a person is an employee or an independent contractor:

#### FAST FACTS

- > It is possible that a work placement or internship could be deemed to be an employment relationship, resulting in the intern/student becoming entitled to employment rights
- > Under common law, a number of tests have been established by the relevant authorities/courts to examine whether a contract of employment exists
- > The employer cannot control the determination by a relevant authority by having an intern sign an agreement that the relationship is not that of employer and employee

- *The agreement between the parties:* The parties may describe their relationship in a certain manner. However, the authorities look at the relationship as a whole rather than simply at the label ascribed by the parties.
- *Mutuality of obligation:* This must be present before a relationship can be considered to be one of employer and employee. There must be a mutual obligation on the employer to provide work for the employee and on the

# 2013 FALL MEETING

REGISTER TODAY



The 2013 Fall Meeting is a “Must-Attend” meeting for lawyers with a practice or interest in international legal issues.

## WHAT WILL ATTENDANCE AT THE 2013 FALL MEETING OFFER YOU?

- Over 60 substantive concurrent continuing legal education sessions with world-class speakers;
- Cutting edge programming on the latest international legal and ethics issues;
- Networking opportunities with counterparts, decision makers and potential clients from around the world who are active in international practice areas;
- An entire year's worth of CLE credits; and
- Special programming for young lawyers, law students, and legal educators.

## OUTSTANDING NETWORKING OPPORTUNITIES!

- Tuesday, Welcome Reception at the House of Lords;
- Wednesday, Opening Reception at the Honourable Society of the Middle Temple;
- Thursday, Reception at the Tate Britain; and
- Friday, Chair's Closing Reception at the London Hilton on Park Lane.

## LEARN, NETWORK, PARTICIPATE

- Learn the latest from top experts and receive information that is relevant to you in your international law practice area;
- Network with the best and brightest international lawyers throughout the meeting particularly at our twice daily networking breaks, evening events and ticketed luncheons;
- Participate in specialized meetings with colleagues who share your areas of interest by attending committee working business meetings, division breakfasts and committee dinners; and
- Visit exhibitors of dynamic products and services for the legal profession.

Join us at the crossroads of the world for a spectacular FALL Meeting!

For more information and to register,  
please visit [ambar.org/ilfall2013](http://ambar.org/ilfall2013)

**The London Hilton on Park Lane**  
**October 15-19**



ABA Section of  
International Law  
*Your Gateway to International Practice*



employee to perform work for the employer. Without this basic requirement, the relevant authority cannot go on to consider the other tests set out below.

- **Business on own account:** If an individual appears to be engaging in business on his own account, in that he/she is risking capital or exposing himself to losses while also in a position to make a profit from his labour in a manner comparable to that of the self-employed person in business, then these are decisive factors pointing to independent contractor status.
- **Control:** Does the individual control his/her own working day, decide what the work is to be, how it is to be carried out, and when and where it is to be done, or does the company make these decisions? If the individual makes these decisions, this is a decisive factor pointing to independent contractor status.
- **Integration:** Is the individual fully integrated into the employer's concern or does he/she remain apart and independent of it? If the individual is fully integrated, this is inconsistent with independent contractor status.
- **Economic reality:** The entitlement of the individual to holidays, the restriction of an individual from carrying out other work, the deduction of income tax, and the provision of equipment by the company or the worker can all point to either employment or independent contractor status.

### All things to all men

On the basis of the above statutory definitions, an employment arrangement will only exist where the individual has been engaged on a contract of service or apprenticeship. Such a contract can be express or implied. Therefore, the absence of a written contract between an intern and an organisation will not preclude the existence of an employment relationship.

A short work placement of no more than a few weeks, where the intern is not carrying out work or services for the organisation, but rather is present to observe and learn is unlikely to be deemed to be a contract of employment. However, it is more likely that, if the nature of the relationship is examined and if it amounts to an agreement to carry out services for the organisation, rather than simply being an opportunity for the intern to observe the work in the organisation, then it may be deemed to be a contract of employment.

On the basis of the common law tests for employment status, it is likely that, in a true work-placement scenario, it would be considered that there is no mutuality of

obligation, that is, there is no requirement on the organisation to provide work to the intern and no requirement on the intern to perform a service. Mutuality of obligation is a prerequisite to employment status and is considered before all the other tests to establish employment are considered.

### The wages of sin

The *National Minimum Wage Act 2000* does not make reference to the engagement of interns or students on work placement, and this issue has not been the subject of any analysis by Irish courts or tribunals to date. The 2000 act does not apply to an apprentice within the meaning of the *Industrial Training Act 1967* or the *Labour Services Act 1987*. This relates to statutory apprenticeships in certain industries only.

Under the 2000 act, if a person carries out work in accordance with a contract of employment, the person is deemed an employee and is entitled to pay from the employer. In the case of a work placement or internship, however, the position is not entirely clear. It is likely that a work-placement student engaged on a voluntary basis would not be entitled to be paid the minimum wage, on the basis that he or she is not an employee.

However, in a scenario where the intern works on the same basis – for example, hours and terms – as employees of the relevant organisation, and where the tasks performed by the intern are equivalent to those assigned to employees, then a court/tribunal may consider it to be an employment relationship and that minimum employment rights apply, including minimum wage. Therefore, it is important to bear in mind that the employer cannot control the determination by a relevant authority by having an intern sign an agreement that the relationship is not that of employer and employee. A significant factor in the relevant authorities' analysis will be the 'on the ground' relationship between the organisation and the intern.

### Thirty pieces of silver

A finding of employment status would also mean that an intern would be entitled to other minimum employment entitlements and treatment, including income tax/social insurance (an employer is obligated to deduct PAYE/PRSI at source) and rights under other employment legislation (such as the organisation of working time, minimum notice, and so on).

Vicarious liability is also an issue. Where a person commits a wrong in the course of his employment, not only is he himself directly

liable, but his employer may also be held accountable for the employee's act or omission. An employer will only be held liable for a wrong committed by an employee where the wrong was committed 'in the course of his employment'.

It is worth noting that a finding by one authority that an individual is an employee does not necessarily mean that another authority will make the same finding. For example, a finding by the Revenue Commissioners that an individual is an employee does not necessarily mean that the High Court or the Employment Appeals Tribunal will make a similar finding.

Obligations under the *Safety, Health and Welfare at Work Act 2005* will arise regardless of whether an intern or a student is deemed to be an employee or not, as this act applies to all people in places of work.

It would be important for organisations to ensure that, where appropriate, insurance cover exists to cover any accidents, injuries and, in certain cases, acts of bullying/harassment that an intern may suffer while on placement, and that interns are familiar with company policies in this regard.

### Weighed in the balances

Care should be taken when drafting agreements for work-placement programmes.

In order to reduce the risk of such arrangements being seen as an employment relationship, it would be important to specify in the body of the agreement the nature of the work placement as an observing role and that its duration is to be no more than a few weeks. It is advisable that the agreement states in very clear terms that it is not an employment relationship and that the organisation shall not do anything to convert the relationship into such an employment relationship.

As with all non-employment arrangements, such as consultancy agreements and otherwise, the nature of the relationship in practice is of utmost importance. Notwithstanding the provisions of an agreement, the practical relationship on the ground will take precedence in the context of any potential claims that an individual may bring. Accordingly, businesses should monitor how such relationships are managed in practice to avoid any such issues arising. Ⓢ

## LOOK IT UP

### Legislation:

- *Industrial Training Act 1967*
- *Employment Agency Act 1971*
- *Labour Services Act 1987*
- *National Minimum Wage Act 2000*
- *Safety, Health and Welfare at Work Act 2005*

# Shoot for the STARS



*Maggie Armstrong is a journalist. Her articles can be read at [www.farmstrong.ie](http://www.farmstrong.ie)*

**The Law Society Access Scholarship Programme gives financial and practical assistance to students from socioeconomically disadvantaged backgrounds.**

**Maggie Armstrong makes the jump to hyperspace**

Liam Fitzgerald grew up on the edge of Killorglin in Co Kerry with his parents and two sisters. His parents were both early school-leavers, and their family income was modest. When it came to sitting his Leaving Certificate, Fitzgerald didn't grasp its importance and was "led astray easily", he says.

"When I was applying for college places, I didn't realise what the fuss was. I don't think I even studied for the Leaving Cert. In fact, I had a motto that if I didn't know it now, I wouldn't know it at all, so I was actually out playing football when the Leaving Cert came around." In school, he was "class clown number one", but he also had to work, getting up at 7am to man a fruit-and-vegetable stall, especially on the days he was suspended from class.

Fitzgerald (36) is now a solicitor working in the area of debt recovery. He gives seminars on the debt-collection process to clients and institutions. He says he would not be where he is without an Access scholarship – but that getting there was interesting.

## Scenic route

After school, he took the scenic route. For five years he had jobs as a credit auditor, a fishmonger, a supermarket manager and managing a pub in London. In 1998, he realised this was "hard work".

He resurrected his 250 Leaving Cert points and got a local authority grant, then a scholarship to do a degree in legal studies and taxation at Letterkenny IT, where he hoped he could "live like a hermit". During those summers, he worked on building sites.

"I had developed this fear of failing," he says. Two days after his finals, he moved to Dublin to study for the FE1 exams. He sat the total (eight) exams and passed seven. "I remember saying to myself, 'Jeez, if I pass these FE1s, I will propose to my girlfriend. I will have a job. I will become a man.' So I bought her a little ring..."



**FAST FACTS**

- > The Law Society established the Access Programme in 2001
- > Criteria for eligibility include the type of housing a candidate grew up in, their parents' occupations, their education and employment history





***“The legal community is particularly committed to including students who have shown ability, courage and tenacity in the face of adversity”***

He started work immediately as a legal clerk, passed his eighth exam and did the Professional Practice Courses (PPCI and II) with assistance from an Access Scholarship Programme grant.

The Law Society Access Scholarship Programme gives financial and practical assistance to students from socioeconomically disadvantaged backgrounds. This means a wide spectrum of individuals who can bring rich and varied experiences to the legal profession, but whose opportunities have been curtailed by circumstances.

Criteria for eligibility include the type of housing a candidate grew up in, their parents' occupations, their education and employment history.

#### **Important for society**

TP Kennedy, director of education at the Law Society and one of the architects of the programme, says that the scholarship is vital for creating a socially and culturally diverse profession. “It’s important for society that the lawyers that serve society are drawn from a variety of different backgrounds. It’s important for the profession as well. It strengthens our profession if it’s more diverse and more representative of a range of different communities. It’s obviously important for those communities, because it makes people think that they can use law as a remedy, they can use law as a tool, that it’s not something foreign. There is an element of normalising law.”

Five Access students – all Irish, although the programme hosts many nationalities – spoke to the *Gazette*.

Finglas woman Rachel Lynch (22) grew up in a single-parent family, and her ambition has

always been to “break out of the stereotypical path laid out for working-class young people like me”. Rachel’s mother left school at 13, yet she always prioritised education and is hugely supportive of Rachel’s career choice. A scholarship allowed Rachel to study law in college and the Access Programme is now enabling her to progress to professional education. Rachel completed a period of internship with Keith Walsh Solicitors, arranged through the Law Society’s Internship Programme (see panel, right), which has offered her invaluable experience and a supportive environment within which she could prepare for and take FE1 exams. Rachel is proud of where she came from and is determined to show her friends and neighbours that “anyone can do this, no matter what your background”.

Rosemarie Hayden (34) always knew she wanted to be a solicitor because she liked solving problems. The eldest of six, she grew up on a small farm in Co Kildare and was the first in her family to go to university, doing history and politics at UCD and then a postgrad in legal studies in DIT. Her daughter was born during her Leaving Cert year, so Rosemarie’s path to professional education was by no means straightforward. Having worked hard to maintain her daughter and herself while studying part time, she has now, in her mid 30s, become a trainee solicitor and has continued to work during PPCI.

Hayden feels she has the unique perspective of a ‘translator’ between two worlds – legal and farming. “There can be a disparity when communicating between people in the law and people from a farming background.

For example, where you have land ‘taken’ in a farming context means that you have it rented. In contrast, a lawyer would describe the land as ‘leased’. With property, I can relate to an emotional attachment to the land, as opposed to looking at it as an asset on a form for probate purposes that can be sold to pay an inheritance tax bill.”

Hayden has raised her daughter and worked full time since she finished school. “The biggest challenge was trying to manage to attend the course at the same time as my daughter was doing her Leaving Certificate.”

The Access scholarship has been “enormously helpful” she says. “In order to support myself and my daughter, I had to work. For anyone who has commitments beyond themselves, it’s very difficult to continue with your education. But, in the long-term, you’re making a better career for yourself and better provision for your children. My daughter has been a major motivator for me.”

Is it viable to juggle all this and still qualify at pace? For this

determined trainee, it is. “I think that the very fact that I’ve been able to juggle has made me far more efficient than I would otherwise be, because the whole work of a lawyer is about juggling. It’s about being well organised. It’s about having more things to do than you could possibly have time to do, and trying to manage your time effectively.”

#### **Practical advice**

A trainee solicitor on the Access Programme who wished to remain anonymous, ‘D’ (35), was also the first in a large family to go to

#### **INTERNSHIP PROGRAMME**

**Access students with no legal experience and limited contacts often have difficulty securing a traineeship. The Internship Programme is a new initiative that allows Access students to spend up to 12 weeks in a legal office, gaining invaluable experience and building up contacts for their futures. Internships enable and equip students to compete more capably for traineeships and can lead to a student returning to that office as a trainee once they have successfully completed their FE1s.**

**If your firm would like to offer a period of paid or indeed unpaid internship to an Access student, please email [studentadvisor@lawsociety.ie](mailto:studentadvisor@lawsociety.ie) or phone 01 672 4802 to talk to Antoinette Moriarty or Emma Cooper of the Student Development Service.**



**WHAT THE ACCESS PROGRAMME OFFERS**

- Support for FE1 exam and PPC fees, as well as maintenance funding, where required,
- Regular seminars and networking events to assist students with procuring a training contract,
- Mentoring appointments with student development advisors to build confidence and communication skills.

university. Having sat a law degree, working part-time in supermarkets throughout, he worked in another sector for ten years before coming back to the law.

Securing a traineeship was “the hardest part”, he says. “I sent my CV to over 500 solicitors’ practices and applied to every position on the Law Society website. I was becoming increasingly frustrated and disheartened. Solicitors’ practices need to be encouraged to take on trainees even during these difficult times.”

He credits the Access Programme for giving him practical advice on navigating his way to an internship and then onwards to a traineeship. “I’d advise anyone seeking a training contract that networking helps a lot, so if you know someone who knows someone, don’t be afraid to ask, even if you just get to say hello. It might lead to something.”

Did he feel different, being an Access student? “I never discussed it with anyone else. I never asked anyone their business and no one ever asked mine. People respect each other’s privacy within the course. I found since I started working in the legal environment, and through my internship and coming here,

how nice everyone is and how much everyone’s willing to help each other.”

Two other Access students spoke to the *Gazette*, anonymously, ‘J’ (26) and ‘M’ (28). J was keen on politics and community activism in school and ventured to study law by means of a scholarship. Now in PPCI, he is a fully integrated law student who might some day to go into media or government research. “That’s the beauty of being a solicitor. I can do this for the next ten years and then decide to change; or I can do something else for ten years and then decide to change back.”

Would J have chosen this career if there was no support? “If you want to do something, there’s always going to be a way, but definitely the burden was lifted. Books were the biggest thing. Textbooks for the eight FE1 courses ranged from €50 to €200 each [a cost he avoided through use of the FE1 Access library system]. They also waived the exam fees.”

**Culture shift**

As for M (28), who comes from a rural background with “limited opportunities”, the Access Programme has taken her to the career she had wanted from a young age. “There wasn’t really much for me to miss out on, due to financial constraints.” Though she doesn’t want to go into the details, studying law came naturally to her. “My father died in tragic circumstances and this ignited my interest in the justice system. As I got older and looked into it more, I found it to be really interesting and engaging. It excited me.

“I’ve had jobs since I was 15 and I worked hard for the things I’ve got. I feel my job means more to me, as I had to work harder to get to where I am,” says M, who survived on €20 per week while saving up to do the two internships that would prime her for a traineeship. “It was worth the sacrifice – I got a traineeship out of my internship. I was treated like a trainee and I was expected to stay late like every other employee. My work would be checked, but I was given a lot of responsibility. I enjoyed that, I felt trusted.”

As a starting trainee who has worked in two practices before, M expresses some discomfort at the culture she is entering – a culture that no profession is immune to. However, she feels she is “on the same level as everyone else” – an attitude expressed by all five Access students who spoke to the *Gazette*.

The Access Programme, which was set up in 2001, has always been funded by the Law Society, explains student

development advisor Antoinette Moriarty. She has seen how the programme has evolved to benefit students, lawyers and, ultimately, society.

“The legal community is particularly committed to including students who have shown ability, courage and tenacity in the face of adversity. Background is not regarded as an obstacle, because the very skills and qualities that Access Scholarship students have developed to enable them to break through the limitations of their early lives are what make them excellent practitioners.” **G**

***“It’s important for society that the lawyers that serve society are drawn from a variety of different backgrounds. It’s important for the profession as well. It strengthens our profession”***



1800 882 231  
www.efax.ie/lawsoc

## THE VERDICT IS IN: Top Law Firms Choose eFax®

Why law firms are turning to eFax® as a cheaper alternative to fax machines



**Ease:** Send and receive faxes quickly and easily by email.

**Privacy:** Maintain client confidentiality with files delivered securely to your computer.

**Efficiency:** Solicitors, barristers and secretaries can share faxes instantaneously 24/7.

**Savings:** Eliminate hardware, software costs; as well as fax machine supplies.

**Productivity:** Easy document management and organization.

**Accessibility:** Access your faxes with your desktop, laptop, tablet or mobile.

Contact us at **1800 882 231** and mention **“LAWSOC”** for a **30-day trial**.

# Lessor

## OF TWO EVILS

A recent High Court judgment is significant, not only for commercial landlords, but also for any plaintiff who is suing on foot of a contract that provides for payments to be made by way of instalments. **Catherine Hayden** explains



*Catherine Hayden is an associate in the litigation department of A&L Goodbody. She wishes to express her thanks to Enda Hurley and Eileen Roberts for reviewing this article*

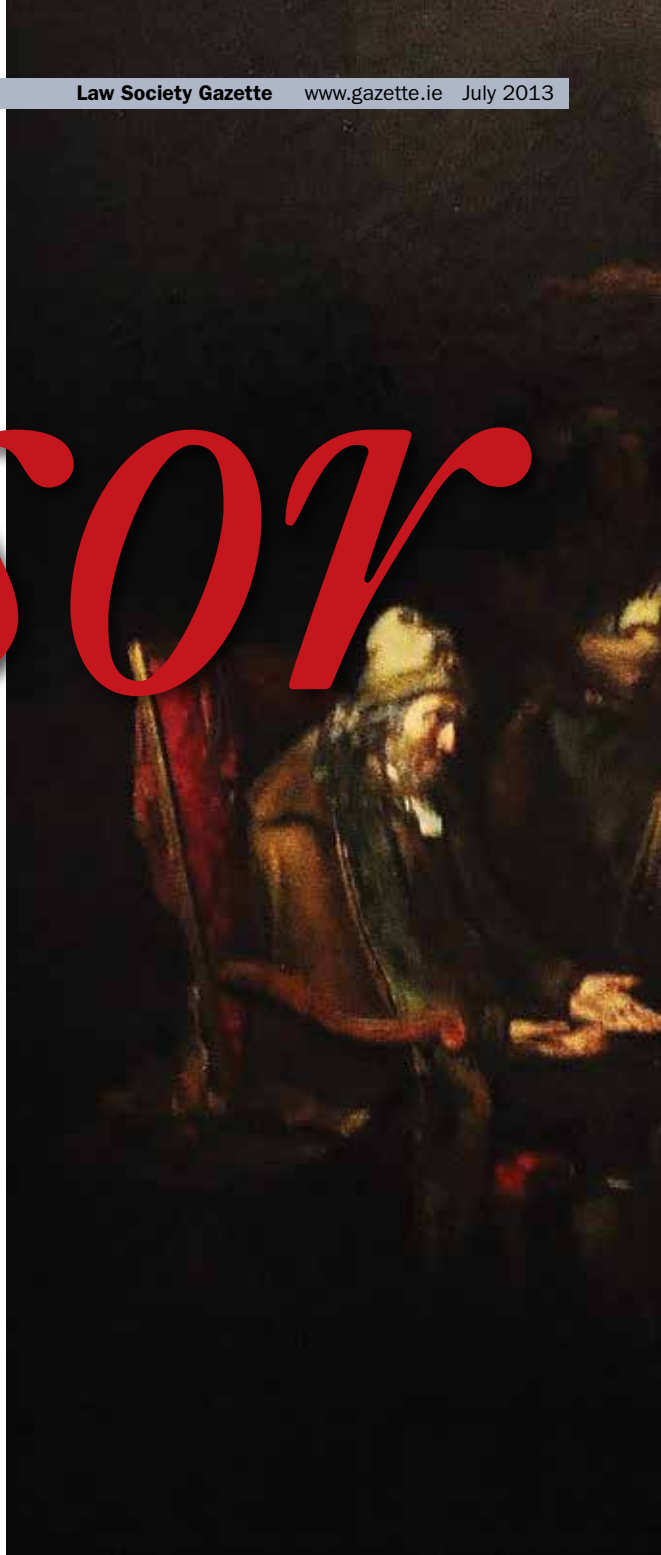
**T**he interpretation of order 37 of the *Rules of the Superior Courts* from a landlord and tenant point of view, where tenants pay rent on a quarterly basis, has been open to debate. The Master of the High Court has, for some time, insisted that, where a commercial landlord issues a summary summons for a liquidated sum, if further arrears of rent, service charge, insurance or other charges fall due prior to the determination of those proceedings, the landlord is not entitled to claim those arrears as part of the proceedings that have already been issued.

This has meant that commercial landlords have had to issue proceedings every time new arrears fell due after the issue of the original proceedings and before those proceedings were heard, thus incurring significant costs in situations where they had a tenant who repeatedly defaulted on payment.

Order 37, rule 1, provides that a motion for liberty to enter final judgment shall be “for the amount claimed, together with interest (if any)”.

The master’s interpretation of the rule was that, even if a plaintiff made a claim in the summary summons for additional arrears as they fell due, the rule only allowed a plaintiff to pursue a liquidated sum and, therefore, sums that had not fallen due at the time the summons was issued could not be regarded as liquidated and could not be claimed in those proceedings.

However, Mr Justice O’Neill, in a judgment last December, analysed order 37 in detail and held that the order does, in fact, give the court jurisdiction to grant judgment for additional sums that fall due after the summons has issued and prior to the determination of the proceedings – provided those sums are properly claimed







***"It should also be borne in mind that the decision may also apply in other situations where a contract provides for payments to be made by way of instalments"***

"Gerrou", quoth Jean-Michel

in the notice of motion and are closely associated with the original claims made.

This is a significant judgment, not only for commercial landlords, but also for any plaintiff who is suing on foot of a contract that provides for payments to be made by way of instalments.

#### **His master's voice**

In 2010, Mr Justice Clarke addressed the issue in *Dublin Docklands Development Authority v Jermyn Street Limited and Black Tie Limited*. At paragraph 26 of the

judgment, he stated: "I have come to the conclusion that the additional claims by the plaintiffs in their notice of motion for arrears of rent and service charges, and in respect of an insurance premium arising after the issuance of the original summary summons, can be claimed in these proceedings, and as the only ground upon which the defendants contested these additional claims was the jurisdictional ground which I have rejected, it follows that the plaintiffs are entitled to enter final judgment for the sum of €89,312.92."

#### **FAST FACTS**

- > The Master of the High Court's interpretation of order 37 of the *Rules of the Superior Courts* was that a plaintiff was only allowed to pursue a liquidated sum and, therefore, sums that had not fallen due at the time the summons was issued could not be regarded as liquidated and could not be claimed in those proceedings
- > Mr Justice O'Neill's December judgment has clarified the situation
- > He held that the order does, in fact, give the court jurisdiction to grant judgment for additional sums that fall due after the summons has issued and prior to the determination of the proceedings, provided those sums are properly claimed in the notice of motion and are closely associated with the original claims made



# LAW SOCIETY

## PROFESSIONAL Training

To view our full programme visit [www.lawsociety.ie/Lspt](http://www.lawsociety.ie/Lspt)

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
12, 15 & 16 July	Masterclass in Legal Writing and Drafting <i>Places are limited – early booking advised</i>	€447	€596	Full CPD requirement for 2013 (excluding 1 hour Regulatory Matters)
12 Sept	Efficient Reading Techniques Masterclass <i>Places are limited – early booking advised</i>	€165	€220	6 Management & Professional Development Skills (by Group Study)
12 Sept	Solicitors for the Elderly	Full details TBC		
18 Sept	Employment Law Annual Conference	€135	€180	3 General (by Group Study)
25 Sept	Acting for Executors, Trustees and Beneficiaries (STEP)	€170	€225	3.5 General (by Group Study)
27 Sept	Advising the Farmer Conference – Horse & Jockey Hotel, Tipperary	€102	€120	5 General plus 1 Regulatory Matters (by Group Study)
9 Oct	Litigation Update 2013	€135	€180	1 Management and Professional Development Skills Plus 2 General (by Group Study)
16 Oct	Property Law Annual Conference 2013	€180	€240	4 General (by Group Study)
18 Oct	Sole Practitioners Forum - Galway	Full details TBC		
30 Oct	Contract Law Update 2013	€135	€180	3 General (by Group Study)
15 Nov	Essential Solicitors' Update for 2013 – Clarion Hotel, Cork <i>Hot Lunch &amp; Evening Networking Reception included</i>	€102	€136	5 General plus 1 Regulatory Matters (by Group Study)
20 Nov	Annual In-house and Public Sector Conference	€135	€180	2 General plus 1 Regulatory Matters (by Group Study)
22 Nov	General Practice Update 2013 – Hotel Kilkenny, Kilkenny <i>Hot Lunch &amp; Evening Networking Reception included</i>	€102	€136	5 General plus 1 Regulatory Matters (by Group Study)
29 Nov	Annual Family & Child Law Conference 2013	€180	€240	4.5 General plus 1 Regulatory Matters (by Group Study)
05 Dec	Cross Border insolvency proceedings - Recent developments and case-law on the European Insolvency Regulation	€165	€220	6 General (by Group Study)
05 Dec	Tactical Negotiation Skills	€105	€140	3 Management & Professional Development Skills (by Group Study)
10 Dec	How to use Blogging, Facebook, LinkedIn and Twitter in the legal sector	€180	€240	7 Management & Professional Development Skills (by Group Study)
12 Dec	Tactical Negotiation Skills	€105	€140	3 Management & Professional Development Skills (by Group Study)

### ONLINE COURSES: To Register for any of our online programmes OR for further information email: [Lspt@Lawsociety.ie](mailto:Lspt@Lawsociety.ie)

Online	eRegulation: New Terms of Business –Contract Precedent	€45	One Hour Regulatory Matters (by eLearning)
Online	Facebook for Lawyers: The How to Guide	€55	5 hours M & PD Skills (by eLearning)
Online	How to create an eNewsletter	€90	5 hours M & PD Skills (by eLearning)
Online	Legal Costs Seminar: Recent Decisions and Pending Legislation	€55	1 Hour General (By eLearning)
Online	The LinkedIn Lawyer: The How To Guide	€55	5 hours M & PD Skills (by eLearning)
Online	Microsoft Word – all levels, Powerpoint – all levels Touch typing, Excel	From €40	Up to 5 Hours M & PD Skills (by eLearning)

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

P: 01 881 5727

E: [Lspt@lawsociety.ie](mailto:Lspt@lawsociety.ie)

F: 01 672 4890

\*Applicable to Law Society Skillnet members. Please note FIVE hours on-line learning is the maximum that can be claimed in the 2013 CPD Cycle



As the master has jurisdiction to hear claims for summary judgment, landlords could not, however, automatically avail of Mr Justice Clarke's interpretation of order 37 and, in practice, this judgment did not alter the master's approach to continuing arrears.

Now, though, Mr Justice O'Neill's judgment in the *Quarryvale* case has clarified the situation once and for all.

In that case, the plaintiffs issued a summary summons on 4 November 2011 claiming arrears of rent and service charge for the period 1 October 2011 to 31 December 2011, particulars of which were set out in the special endorsement of claim. Paragraph 3 of the summary summons contained a claim for "such further and other arrears of rent, insurance and service charge which may become due and owing prior to the determination of these proceedings".

The plaintiffs issued a notice of motion, which was returnable before the master on 31 January 2012. The sum claimed in the notice of motion was the amount claimed in the summary summons, together with additional interest. Paragraph 2 of the notice of motion repeated the claim as set out at paragraph 3 of the summary summons. A supplemental affidavit was filed by the plaintiffs on 17 January 2012, claiming additional rent and service charge for the period 1 January 2012 to 31 March 2012 and also claiming insurance for the period 11 October 2011 to 13 October 2012.

At the hearing of the motion, the plaintiffs relied on the 2010 judgment of Clarke J. They also sought to place reliance on a decision of McMenamin J in the 2011 case of *Quarryvale Two Limited and Quarryvale Three Limited v Master Burger Investments Limited and Abrakebabra Investments Limited* on appeal from the Master of the High Court, which followed the judgment of Clarke J in *DDDA v Jermyn Street Limited* and, in an *ex tempore* judgment, set aside the order of the master and gave the plaintiffs liberty to enter final judgment for sums claimed in excess of the amount that was due at the date of the issuing of the summary proceedings.

The master rejected the submissions made on behalf of the plaintiffs and granted the plaintiffs liberty to enter final judgment only for the sum originally claimed in the summary summons. The plaintiffs filed a motion seeking to set aside the order of the master and seeking liberty to enter final judgment in the full amount claimed in the supplemental affidavit, which had been filed on 17 January 2012.

#### Inflexible friend

After hearing submissions on behalf of the plaintiffs and the defendants and after giving much consideration to the interpretation of order 37, Justice O'Neill delivered judgment.

He stated that "the approach which appears to have been adopted by the Master of the High Court and which is to the effect that every additional claim, such as arose in this case, because it arose after the issuance of the summary summons, cannot be included by way of notice of motion in an application for liberty to enter final judgment and must be the subject matter of a fresh summary summons, imports into order 37 a degree of inflexibility which I am quite satisfied is not warranted in the express terms of order 37 itself, nor is it to be necessarily or reasonably implied from the terms of order 37.

"Where order 37, rule 1, refers to 'the amount claimed', it is, of course, axiomatic that what is involved here is a liquidated amount and it is well settled that a liquidated amount is a sum which has been ascertained or is capable of being ascertained simply by calculation. Thus, there could be no doubt that additional

sums claimed in these proceedings are liquidated sums capable of being claimed in summary summons proceedings."


Mr Justice O'Neill also examined the meaning of order 37, rules 4, 6 and 7. In particular, he examined the wording in rule 4 that gives the master, in all uncontested cases, liberty to enter judgment "for the relief to which the plaintiff may appear to be entitled". He noted that, pursuant to rule 4, the master was obliged to transfer all contested cases to the High Court (which he had not done in this case) and that rule 7

similarly provided that the High Court may give judgment "for the relief to which the plaintiff may appear to be entitled". Mr Justice O'Neill held that this wording, in his view, necessarily implies a jurisdiction that can extend beyond "the amount claimed" on the special endorsement of claim in the summary summons.

#### Procedural efficiency

O'Neill J went on to state that he was satisfied that the jurisdiction to grant liberty to enter final judgment, as described in order 37, rules 4 and 7, encompasses serial or sequential claims for liquidated sums arising in circumstances similar to and associated with the claim originally made in the endorsement of claim on the summary summons. He stated that if the additional claims sought to be made in the proceedings are so closely associated with the original claims made in the summary summons, then it makes complete sense, both in terms of procedural efficiency and the avoidance of unnecessary costs, to have the claims dealt with in the one set of proceedings.

He concluded by stating that, within the summary summons procedure, where serial or sequential claims arise out of circumstances similar to and closely associated with the causes of action raised in the endorsement of claim on the summary summons, additional claims can be the subject matter of the application for liberty to enter final judgment if such additional claims are appropriately set out and supported by affidavit evidence and such claims are for liquidated sums.

This clarification will be welcomed by the commercial landlord community. However, it should also be borne in mind that the decision may also apply in other situations where a contract provides for payments to be made by way of instalments. 

***"The approach which appears to have been adopted by the Master of the High Court ... imports into order 37 a degree of inflexibility which I am quite satisfied is not warranted in the express terms of order 37 itself, nor is it to be necessarily or reasonably implied from the terms of order 37"***

#### LOOK IT UP

##### Cases:

- *Dublin Docklands Development Authority v Jermyn Street Limited and Black Tie Limited* [2010] IEHC 217
- *Quarryvale Two Limited and Quarryvale Three Limited v Master Burger Investments Limited and Abrakebabra Investments Limited* (19 December 2011)
- *Quarryvale Two Limited and Quarryvale Three Limited v Stephen Beere and Graeme Beere* (14 December 2012, unreported)

# Home and AWAY

Opportunities exist for Irish solicitors in Western Australia: the economy is experiencing a consistent rise due to the booming mining industry, which has increased demand for all legal services. Come and get it, says **Leo Barry**



Leo Barry is an associate solicitor at Kavanagh Lawyers WA Pty Ltd, East Perth, Western Australia

When I attended the inaugural PPC course at the Law School in Cork in November 2006, little did I imagine that I would be leaving two years later, having met my future wife and acquired a qualification that would allow me to practise law in a jurisdiction on the other side of the world.

My wife Lindsay and I both qualified in 2008, and I believe we were the first couple from the Law School in Cork to be married – though maybe not the last.

We both received excellent training and post-qualification experience with our respective firms, Joseph P Gordon & Co (Waterford) and Dermot G O'Donovan & Partners (Limerick). However, when the opportunity arose for me to join Kavanagh Lawyers in Perth, Western Australia, we decided the opportunity was too good to turn down.

#### Who made who

I started employment with Kavanagh Lawyers in January 2012. I was lucky, in that my offer of employment included a 457 sponsorship visa, which essentially allows you to live and work in Australia with a particular employer for four years. Kavanagh Lawyers was set up in 2008 by Cork man Martin Kavanagh, who emigrated to Perth in 1992 and has vast experience as

a family law practitioner. Kavanagh Lawyers practise exclusively in all aspects of family law, including international relocations and *Hague Convention* matters.

The work provides a wide variety of challenging and interesting matters, and Western Australia is the only state in Australia to have its own dedicated Family Law Court (see 'From a land down under', June *Gazette*, p36). While the principles relating to the practice of family law are similar to the Irish jurisdiction, the division of property post-separation is much more forensic in Western Australia, with each party's contributions assessed in minute detail and attributed a certain percentage in the overall settlement.

Lindsay travelled on my visa and was not restricted in her employment prospects. She secured a position as an associate with commercial law firm Clifton Tham within two days of arrival and practises in commercial litigation. Clifton Tham specialises in business structure advice, taxation and commercial litigation. It also has a dedicated estate planning department.

***"Perth is a rapidly developing modern city with a great climate and offers a unique opportunity to Irish practitioners to use their hard-earned qualifications in a challenging and rewarding environment, together with a hugely enjoyable lifestyle"***

#### It's a long way to the top

The practice of law tends to be very specialised here, with a general practice office the exception rather than the rule. However, a general practice background can be advantageous to Irish applicants, as all-rounders





Perth: it's yummy

are appreciated by prospective employers looking for employees to quickly adapt to a new jurisdiction.

Since I started in January 2012, two of my Irish colleagues have secured full-time training contracts also, or articles, with other family law firms in Perth. Both had Irish law degrees, and after graduation they travelled to Australia on one-year working holiday

visas. They originally joined their current employers in administration roles for a six-month period, as permitted by their visas, but were quickly offered sponsorship and positions as articulated clerks.

The Legal Practice Board of WA does not offer a service similar to the Law Society, whereby vacant positions can be centrally advertised. However, there are numerous

#### FAST FACTS

- > The practice of law tends to be very specialised, with a general practice office the exception rather than the rule
- > If considering a move to Western Australia and a career in law, the first thing to do is to contact the Legal Practice Board in Western Australia to have your qualifications assessed
- > Irish qualifications are not automatically recognised in this jurisdiction, and solicitors with less than seven years' post-qualification experience will likely be required to undertake four to six college units



We send them solicitors, they send us Kylie: fair dinkum!

employment websites that may be of assistance to those considering a career in Western Australia.

### Shake your foundations

If considering a move to Western Australia and a career in law, the first thing to do is contact the Legal Practice Board in Western Australia to have your qualifications assessed.

Irish qualifications are not automatically recognised in this jurisdiction, and solicitors with less than seven years' post-qualification experience will likely be required to undertake four to six college units

At a minimum, Australian constitutional law, Australian administrative law, and legal and professional ethics units will have to be undertaken. From our experience, any additional units required are usually those that have not been completed in the Irish degree. For example, if your undergraduate Irish law degree did not contain an evidence module, it is likely that you will be required to complete an evidence unit here in order to obtain admission. These units can be completed online within 12 months with some universities, but be warned: these are full-time college units and quite an onerous undertaking when working full time.

Lindsay and I began our college units in March 2012 and were admitted to the roll of practitioners in Western Australia in March 2013. Until such time as all the requirements of the Legal Practice Board have been complied with, practice in the jurisdiction is obviously restricted and no right of appearance is granted until practitioners are admitted to the roll.

As there is a fused profession in Western Australia, once admitted to the roll of practitioners, you are entitled to practise as either a solicitor or barrister, although there is also an independent Bar Council.

### Have a drink on me

It's hard not to like the Perth lifestyle. Western Australians are friendly and welcoming and, while Perth is said to be less cultural than Melbourne and less cosmopolitan than Sydney, it has everything you would expect of a modern city and is undergoing constant redevelopment.

The consistently sunny climate lends itself to an active outdoor lifestyle. Rising after 8am on a Saturday morning is considered lazy.

A typical weekend might include an early morning training session, a swim at one of the local beaches, a

barbecue lunch, a movie at the outdoor cinema in the evening, finishing off with the famous Perth 'Sunday Session'.

Perth is also sometimes referred to as the 'Nanny State'. Outside of certain areas such as Northbridge, you won't find a hectic fast-paced night life. In fact, you'll find it hard to get a pint in your local past 9.30pm on a 'school night', and Sunday trading was only very recently introduced in 2012.

It's also expensive! But everything's relative. For those in employment in WA, the cost of living is quite manageable, as wages are comparable with the high prices. But it's a far cry from Irish recession prices: think 'Celtic Tiger' Dublin and then some!

It's standard to pay \$5 (€3.60) for a loaf of bread, \$3 (€2.15) for a litre of milk and no less than \$11 (€7.85) for a pint of Guinness (or any pint for that matter).


The rental market is also quite tight here. In all likelihood, you'll find it more difficult to find a place to live than find a job. Rent, depending on location, is \$350 to \$650 (€250 to €465) per week for a two-bedroom apartment.

### Fly on the wall

There are certain things to consider if contemplating making the move:

- Have your qualification assessed by the Legal Practice Board of WA before you travel.
- The cost of completing college units for admission in WA. Units cost on average about \$1,800 (€1,285) each. You could have to complete up to six units, so this can be costly. Employers may be willing to include this cost in salary negotiations.
- If you are really interested, consider a short-term visa to check things out and meet prospective employers. Most employers will consider sponsoring applicants for a 457 visa in an overall employment package if they are interested.
- Use your connections to get a foot in the door. Given the extent of the ex-pat community in Perth, most Irish people will know someone living here and Perth business people love to network.

Each state has a separate and distinct professional board with varying requirements. The above information applies to applicants to WA only. Admission to the Federal Court is a straightforward paper application once admitted in any of the states.

If you like an active outdoor lifestyle, Perth is perfect and the 12 months or so that it may take to get your qualifications recognised is well worth it. Perth is a rapidly developing modern city with a great climate and offers a unique opportunity to Irish practitioners to use their hard-earned qualifications in a challenging and rewarding environment, together with a hugely enjoyable lifestyle. From someone who has taken a leap into the unknown, I can say it was definitely worth it. 

*Leo has provided his contact details to the Gazette, should anyone wish to contact him for further information.*

### LOOK IT UP

- Legal Practice Board of Western Australia: [www.lpbwa.com.au](http://www.lpbwa.com.au)
- Irish Western Australia Business Forum: <http://irelandwaforum.org>
- Law Council: [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)





Prime Time's Tara Peterman (executive producer), Miriam O'Callaghan (presenter), Frank Shouldice and Máire Kearney (producers)

Right: Dyane Connor (TV3), Paul Caffrey (Irish Daily Mail) and Sarah O'Connor (UTV)



Richard Dowling and Barry Cummins (RTÉ)



Ciara Doherty, former Minister for Justice Nora Owen, Laura Hogan and Colette Fitzpatrick (all TV3)

## Justice Media Awards 2013



Director general Ken Murphy and Mary Kennedy (RTÉ's *Nationwide*)



Conal O'Boyle (editor, *The Nationalist*, Carlow), Stuart Gilhooly (Law Society junior vice-president) and Kieron Wood (*Sunday Business Post*)



Michael Kealey (Public Relations Committee), Mark Tighe (*The Sunday Times*) and James McCourt (Law Society president)

## Lunchtime meeting for Limerick Solicitors' Bar Association



The Limerick Solicitors' Bar Association held a lunchtime meeting on 5 June at the Clarion Hotel, Limerick. Items discussed included the *Legal Services Regulation Bill*, professional indemnity insurance and proposed changes in court jurisdictions. Pictured above are John P Shaw (Law Society senior vice-president), James McCourt (Law Society president), St John Dundon (Limerick Solicitors' Bar Association president), Ken Murphy (director general) and Paddy Geraghty



At the Limerick meeting were Kate Cussen, Cathal Minihaue and Elisa McMahon

ALL PICS: PRESS 22



Michael O'Malley (DJ O'Malley, Solicitors) and Bernedette Conway (Dorothy Tynan Solicitors)

## Galway gathering in Eyre Square



President of the Law Society James McCourt and director general Ken Murphy were guests of the Galway Solicitors' Bar Association on 5 June at the Meyrick Hotel, Eyre Square. They are seen here with (from l to r): Cairbre O'Donnell (treasurer, GSBA), David Higgins (vice-president, GSBA and Council member), John P Shaw (senior vice-president, Law Society), James McCourt (president, Law Society), James Seymour (president, GSBA), Ken Murphy (director general) and Ian Foley (PRO, GSBA)



Donal Creaton, St John Dundon and Patrick J D'Alton



## WICKLOW BAR ASSOCIATION



Law Society President James McCourt and director general Ken Murphy visited the Wicklow Bar Association recently. At the meeting, held in the Glenview Hotel in Delgany, Co Wicklow, were (front, l to r): David Lavelle (outgoing president), James McCourt, Paddy McNeice (new president), Ken Murphy, Barry J Kenny (secretary) and Bernie Goff. (Back, l to r): Caroline Murphy, Rachel Kealy, Jonathan White, Ian Munally, Damien Conroy, Donal O'Sullivan, Maria Nolan, David Tarrant, Andrew Tarrant, June Greene, Padraic Hyland, Catriona Murray, Rory McGarry, Karl Carney, Simon Boylan, Patrick Jones, Tom Honan, Dermot Hickey, Paul McKnight, Josephine Sullivan, Conor McGuire, Brian Robinson, Sinead Counihan and Rachel Liston

## John Goff gears up for gardening bliss



Waterford Law Society held a retirement event on 24 May 2013 for long-time colleague, John Goff. John practised in Waterford City where, for many years, he was the principal in Nolan Farrell & Goff. There was a large turnout of colleagues and friends to wish him well. Waterford Law Society President Jim Hally made the presentation on behalf of his fellow solicitors and wished him many seasons of happy gardening. John regaled his audience with a colourful history of Waterford Law Society while solicitor, Pat Gordon, added some tales of his own

PIC: GARRETT FITZGERALD PHOTOGRAPHY



A North/South CPD forum on legal issues of mutual interest, organised by Law Society Professional Training (LSPT), took place in the Nuremore Hotel, Carrickmacross, Co Monaghan. At the event were (from l to r): Brian Morgan (Morgan MacManus, Clones, Co Monaghan), Katherine Kane (LSPT), Kevin Neary (Donnelly Neary & Donnelly, Newry), Liam Fitzgerald (AB Wolfe & Co, Dublin), Ms Justice Iseult O'Malley, Fergus Minogue (Patrick C Sharkey & Son, Drogheda) and Conor MacGuill (MacGuill & Co, Dundalk)



At the recent opening night of the Diploma in Technology Law were (from l to r): Mr Justice Peter Charleton, Julie Shackleton (Diploma Programme), Peter O'Neill (Facebook) and Rossa McMahon (Patrick G McMahon, Solicitors)



## Legal eagles run for L'Arche



Three teams of legal eagles from South Mall-based Ernest J Cantillon Solicitors in Cork city took part in the Cork City Marathon on 3 June. The 13-strong group of women runners decided to pool their resources to raise vital funds for the L'Arche 'Le Chéile' centre in Togher.

The 13 runners made up three relay teams to complete the distance. One team leader, Susie

Elliott, said: "It's been so much fun for all of us to get together in the evenings. Being able to do something that we love, as a team, while raising vital funds for L'Arche, has been great and something we will continue with in the future."

The group is still taking donations. You can reach them at 021 427 2031 or visit [www.cantillon.com](http://www.cantillon.com).

## Lady golfers at Glasston

The September outing of the Lady Solicitors' Golf Society takes place at Glasston Country House Hotel and Golf Club, Glasston, Co Westmeath, on Friday 6 September 2013.

The event is open to all lady solicitors, trainee solicitors and their guests and will comprise an 18-hole competition with a separate guest's prize. Lady Captain Mary O'Connor, is encouraging younger colleagues to join the society and to take part.

A very attractive package is on offer from Glasston Country House Hotel and Golf Club, including: golf and dinner for €65 (per person) or golf, dinner, bed and breakfast for €135 (per person sharing).

To reserve a room, contact Glasston at tel 090 648 5120 or email: [info@glassongolf.ie](mailto:info@glassongolf.ie). A limited number of rooms are reserved and early booking is advisable.



In addition to accommodation at Glasston, there are several local B&Bs to choose from: Stone Lodge, tel 090 648 5004 / 087 227 7100; St Mark's B&B, tel 090 648 5125; and Benown House, tel: 090 648 5406.

The lady captain asks those attending to inform her in order to keep track of numbers, by emailing [mary.oconnor@carrollkellyoconnor.com](mailto:mary.oconnor@carrollkellyoconnor.com).



Celebrating the creation of merged firm Blasco Quinn Solicitors are Donal Quinn (left) and Alvaro Blasco. "We are the only niche Irish/Spanish law firm of its kind," says Donal. "This defines us as a law firm and helps us stand out from the crowd." Alvaro Blasco, a qualified solicitor (*abogado*) in Spain, and a solicitor and notary public in Ireland, will focus on Spanish-related matters for the practice and will assist clients with property transactions, tax, wills and probate matters



Mary Bissett – as infamous as 'Memory Man' Jimmy Magee due to her gift for remembering names – retired from the Law Society's Four Courts offices on 2 May 2013. Mary joined the organisation in September 1991. She gave 21-and-a-half years of service, working alongside colleague Paddy Caulfield and, more recently, Dolores Maguire, at the Society's Four Courts offices. Mary and her husband Pat are looking forward to spending more time in the Calahonda region in Spain. Here's to lots of the 'red lemonade', Mary! Buena salud! (From l to r): Dolores Maguire, Law Society President James McCourt, Mary Bissett and Paddy Caulfield



The Law Society's IT manager, Tom Blennerhassett, is a member of a group of runners that has an objective of running at least one mile every day for 365 consecutive days or more. Tom completed day 365 on 18 June 2013. Keep on stretching for that rainbow, Tom!



# Irish lawyers share the knowledge in South Africa

This April, I travelled to Pretoria with Irish Rule of Law International (IRLI) for its annual commercial law training programme, *writes Anna Hickey*. The delegation comprised solicitors, barristers and an accountant and included Michael Irvine (IRLI director), David Barniville SC, Jarlath Ryan BL, Cillian MacDomhnaill (director of finance, Law Society), Eithne Lynch (a lawyer with IRLI's Access to Justice programme in Malawi). Though from different backgrounds, we all shared an interest in legal education, commercial law and Africa.

IRLI has run the programme jointly with the Law Society of South Africa (LSSA) since 2002, with the support of Irish Aid. Despite apartheid ending over 20 years ago, there is still an economic imbalance in the practice of commercial law in South Africa. Commercial law training for Black lawyers is seen as a way to erode this imbalance and contribute to economic growth.

This year's 20 participants included sole practitioners, in-house lawyers, prosecutors and legal-aid lawyers, who all sought to gain expertise in commercial law and access to commercial work. The course included formal education and skills training. Participants completed a distance-learning certificate at the University of South Africa and two-week-long training courses in April and August. Eight were then selected for placements with enterprises in Ireland or South Africa, with the remaining 12 receiving mentoring. Lastly, participants delivered an introductory business law seminar to small businesses in their community.

## Overhauled Companies Act

The April course took place over five days, finishing with a final exam on the final day. Teaching is a mixture of lectures, tutorials and interactive sessions, with guest lecturers invited from



Jarlath Ryan BL (*back, right*) with some of the course participants

South African law firms to add insight from daily practice. We focused initially on company law and company structures, and looked at the basic share-purchase transaction as a tool to examine drafting and contracts. A past course participant, Mmoledi Malokane, spoke on the overhauled South African *Companies Act*. This reform is particularly interesting for Irish lawyers, as many of the changes mirror those in our *Companies Consolidation and Reform Bill*.

Further sessions examined companies' accounts, due diligence and warranties, and corporate governance. Throughout the week, the level of questioning and challenging was impressive. The participants joined wholeheartedly in our role-plays, with the mock AGM turning into a shareholder uprising against our director, Michael Irvine! Between sessions, there was time to relax

with the class in the sunny LSSA courtyard, which often led to lively discussions on politics and the 2014 elections.

## Black empowerment

The final day involved an attorney/client role-play, and lectures on alternative dispute resolution. We welcomed Saffiya Patel from commercial law firm, Webber Wentzel, who presented on South Africa's Black Economic Empowerment (BEE) legislation and its impact on commercial practice. This includes, for example, BEE requirements regarding company directorships and shareholdings, which can significantly affect the structuring of transactions.

A highlight of the week was the programme's open evening, hosted by the LSSA and sponsored by Shell. Irish ambassador Brendan McMahon gave the keynote address, in which he called for the private sector to play its part by offering

mentoring and placements.

A number of commercial law firms in Ireland and South Africa have offered placements already this year, as has global mining company Glencore Xstrata. Throughout the week, we held interviews with the participants to assess their interest and suitability for placements. At the parchment ceremony on the final day, a former participant, Tshepo Mothoa, gave an inspiring talk on his placement with Eversheds' mining team and how it had enabled him to build a thriving practice in mining law.

We hope that the programme will continue to go from strength to strength. This could not be achieved without the LSSA, Irish Aid, our volunteers and other supporters.

*Anna Hickey is a solicitor in the corporate department of Matheson, currently on secondment to Lloyds Banking Group in Edinburgh. See more at [www.irishruleoflaw.ie](http://www.irishruleoflaw.ie)*

# Society reaches international moot court finals in Tampa

Although flying halfway round the world to compete in an international environmental law competition might not seem like a sensible idea, teams from all over the world travelled to Stetson Law School in Tampa, Florida, last March to compete in the 17th Annual International Environmental Moot Court Competition.

Preparation for the competition began months in advance. The Society ran an internal competition in October 2012 and, in November, the team submitted its 6,500-word memorial to Stetson Law School. This year's moot challenge concerned trans-boundary haze pollution between two developing island nations, the protection of wetlands, the extermination of an endangered species and sustainable development.

The team began preparations for the oral rounds last December. Members wrote and re-wrote speeches and practised their submissions each week in Blackhall Place and in law firms across Dublin. In this regard, thanks are extended to all of the previous Stetson moot participants and other volunteers who generously gave of their time



Katherine Quirke (Arthur Cox), TP Kennedy (director of education), Siobhan McNamara (William Fry) and Clodagh Power (Arthur Cox)

to adjudicate in practice rounds and bestow invaluable advice ahead of the competition.

Shortly after arrival in Florida, the preliminary rounds kicked off. Over two days, the Society's team faced rivals from Brazil and South Korea and two teams from India. Arguments were made for both the applicant and respondent, in equal measure. In line with the rules of the competition,

Katherine Quirke (Arthur Cox) argued for both teams, while Siobhan McNamara (William Fry) and Clodagh Power (Arthur Cox) argued for the applicant and respondent, respectively. Winning three out of four of the preliminary round moots during these two days meant that the Irish team secured a place in the quarter-finals by the end of day two.

## Final placing

The final rounds of the competition took place on 23 March. In the quarter-final, Ireland argued against the winners of the North American Regional Qualifying Round – the Trinidad and Tobago team – and won. The semi-final was against Dr Ram Manohar Lohiya National Law University, Lucknow, India, with the Society team advancing to the final.

The final opponents were students from the Pepperdine University School of Law from California – the second team to emerge from the North American regionals. The Law Society team argued on behalf of the respondent before a panel of prestigious judges – and in front of a packed court room.

The event was broadcast live on the university's website, and the tough judges tested speakers with unrelenting interruptions that involved very specific and probing questions. When the submissions closed, the judges agreed that the marking would be close. Pepperdine University claimed the title in the end.

After months of preparation and three days of intense mooting, it was tremendously rewarding to reach the final. In the prize-giving ceremony, Katherine Quirke was awarded 'Best oralist' in the preliminary rounds (leading up to the final) – well-deserved recognition for her excellent advocacy skills. The team was pleased to discover that its memorial was ranked fourth of all written submissions.

The Law Society team extends its thanks to TP Kennedy (director of education) for his generous help and patience throughout all stages of the competition. We would encourage anyone with an interest in international law, environmental law or public speaking to take part in this well-organised and challenging competition.



Blackhall PPC1 students took part in the Carlsberg national five-a-side tournament in Galway from 1-2 June. (Front, l to r): Ciaran White, Dan O'Connell and Aidan Kirrane. (Back, l to r): Finin O'Brien, Gavin Bluett, Ian Bracken, Cillian Thornton, Daragh Ryan and Cian Mannion



## Newly qualified solicitors at the presentation of their parchments on 28 February 2013



Mr Justice Frank Clarke of the High Court, Garda Commissioner Martin Callinan (guest speaker), James McCourt (president of the Law Society) and Ken Murphy (director general) were guests of honour at the parchment ceremony for newly qualified solicitors on 28 February 2013: Morgan Beirne, Sarah Breen, Tanya Bröchl, Kieran Browne, Edel Butler, Sarah Byrne, Elizabeth Byrne, Nevan Cahill, Paul Carroll, Anne-Laure Chasse McDermott, Orla Coffey, Catriona Cole, Claire Jayne Collins, Lucy Conlon, Áine Connor, Pauline Cronogue, Declan Cunningham, Emer Cunningham, Hannah Daly, Caroline Davin-Power, Dunja Dietze, Deirdre Duffy, James Duggan, Jeremy Erwin, Aileen Feely, Cian Fenton, John William Fitzgerald, Sean Fitzgerald, Tanya Fitzpatrick, Sinead Fitzpatrick, Elsa Gabrielle, Eileen Grady, Melissa Guy, Elizabeth Halpenny, Nichola Harkin, Deirdre Haugh, Patrick Higgins, Kate Higgs, Donal Keane, Patricia Kellehan, Barbara Liston, Darren Lynch, David Mackey, Colm Maguire, Lisa McCarthy, Lucy McCurry, Louisa McKeon, Nicholas McStay, Yvonne McWeeney, Susan Mollen, Elaine Morrow, Laura Mullen, Neal Murphy, Bryan O'Donnell, Patrick O'Donoghue, Fiona O'Donovan, Jill Pilkington, Victoria Ryan, Miriam Rynn, Marcin Szulc, Neil Shee, Colleen Sparling O'Riordan, Pío Stack, Kathryn Stapleton, Stephanie Tao, Robert Timmons, Yvonne Veale, Jenny Wakely and Zara West

## Newly qualified solicitors at the presentation of their parchments on 17 April 2013



President of the High Court Mr Justice Nicholas Kearns (guest speaker), James McCourt (president of the Law Society) and Ken Murphy (director general) were guests of honour at the parchment ceremony for newly qualified solicitors on 17 April 2013. Brenda Beirne, Eibhlín Bracken, Jennifer Breathnach, Emma Brennan, Conor Breslin, Sarah Caprani, Monika Chaberska Blaszczyk, Roberta Cloherty, Clare Cotter, Grainne Crimmins, Caragh Deasy, Avril Delaney, Nicola Dowling, Clare Downes, Jennifer Dutton, Kate Ferguson, Jennifer Foley, Conall Geraghty, Aoife Hally, Catriona Heffernon, Wesley Hudson, Anne Marie Igoe, Brian Keenan, Sarah Lawn, Daniel Leahy, Richard Lee, Alan Madden, Niamh Maher, Anne McCarthy, Rachel McCauley, Cillian McKenna, Elaine McNally, Aileen Mollahan, Ciara Molloy, James Morrin, Ciara Murphy, Grace Murphy, Conor O'Leary, Rachel Scanlon, Timothy Smyth, John Somers, Conor Swaine, Oisín Tobin, Elaine Traynor, Harry Wall, Lorcán Ward and Tadhg Whelan



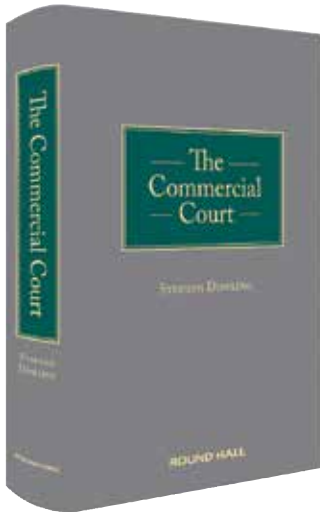
## Newly qualified solicitors at the presentation of their parchments on 16 May 2013



President of the High Court Mr Justice Nicholas Kearns, chairman of the Joint Oireachtas Committee on Justice, Defence and Equality David Stanton (guest speaker), James McCourt (president of the Law Society) and Ken Murphy (director general) were guests of honour at the parchment ceremony for newly qualified solicitors on 16 May 2013: Olga Ashe, Frances Buckley, Diarmuid Byrne, Aine Cashin, Frances Colclough, Shane Collins, Charlene Connolly, Karina Cotter, Stuart Creavin, Morgan Crowe, Kate Crowley, Chloe Culleton, Clodagh Daly, Denise Daly, Michelle Daly, Fionnuala Dillon, Louise Dobbey, Aifric Dolomanov, Steven Duggan, Ciara Dunne, Eliza Farrelly, Jaime Flattery, Julie Galbriath, Stephen Gardiner, Karen Gayer, Deirdre Geraghty, Seana Glennon, Muireann Granville, Laura Greene, Donal Hamilton, Sarah-Jayne Hanna, Catherine Hayes, Clair Hayes, Aoife Hearne, Michelle Hughes, Isabel Hyde, Laura Kennedy, Lidia Levingstone, Hilary Loughnane, Aoife Malone, Caroline Matson, Laura McCormack, Ciara McDermott, Aoife McDonnell, Rebecca McEvoy, Darragh McEvoy, Patrick McEvoy, Conor McEvoy, Sarah McGrath, Anna McGrath, Joseph Mitchell, Brendan Moran, Martin Murphy, Anna Murphy, Jennifer Murphy, Alison O'Keefe, Vanessa O'Mahony, Rebecca O'Rourke, Sharon Pennick, Maria Pittcock, Robert Potter-Cogan, Deirdre Roddy, Evan Ryan, Kevin Ryan, Emma Timmons and Karen Walsh

## The Commercial Court

Stephen Dowling. Round Hall (2nd ed, 2012), www.roundhall.ie. ISBN: 987-1-8580-068-26. Price: €295 (incl VAT).



In six months' time, on 12 January 2014, the Commercial Court will celebrate its tenth anniversary. It is, therefore, timely that a second edition of this authoritative text has been published. The overall structure (14 chapters) remains much the same as the original, but has been expanded by some 170 pages to incorporate key developments since the publication of the first edition in 2007.

The 'sample case summary' (appendix II in the first edition) has been replaced by a copy of

the *Practitioners' Handbook for the Commercial Court*, a useful best-practice guide produced by the Commercial Litigation Association of Ireland in October 2011. The relevant parts of the handbook are considered where appropriate throughout the text, ensuring a suitable balance between practitioner and academic approaches.

The new edition emphasises the growth in importance of case management as an effective and efficient catalyst in litigation resolution, not just in the context of proceedings in the commercial list, but also in parallel civil proceedings (chapter 4, part 5) and judicial review (chapter 13).

This is an auriferous and excellent text, but perhaps misses one item that would complete the edition – namely a bibliography consolidating the many articles and CPD lectures that have been written and delivered on the Commercial Court and its case law in the last ten years, some of which are referenced in the text itself.

*Emma Fee is a Dublin-based barrister.*

## Wills: Irish Precedents and Drafting

Brian E Spierin. Bloomsbury Professional (2013), www.bloomsburyprofessional.com. ISBN: 978-1-8476-699-33. Price: €180 (ex VAT).



The second edition of this book is timely and will be of great assistance to practitioners. In many instances, the precedent will clauses will have a familiar feel to aficionados of the first edition. Even so, the second edition is peppered with updated clauses and new clauses to assist the practitioner. Yet it is through the various commentaries and appendices that the second edition becomes indispensable.

From the outset, the book provides a fresh and user-friendly impression. The contents have been adjusted to provide page references rather than paragraph references for ease of navigation. The second edition also comes with e-book access included in the purchase price, rendering the precedents much more amenable to utilisation in a busy office.

The materials and the various commentaries have been updated

to take account of statutory and non-statutory developments. Many of the commentaries are also significantly larger than in the previous edition. For example, the commentary on taking instructions for a will has more than doubled in size and provides the practitioner with significant insight into the impact of recent developments in the practice of will-drafting. Equally, the section discussing principles for will-drafting and the construction of wills is notably enhanced.

Whether the practitioner is seasoned in the intricacies of succession law or is a novice drafter of wills, this book, particularly with its electronic access, will be of great of assistance.

*Richard Hammond is partner in Hammond Good, Mallow.*

## Aircraft Operating Leasing: A Legal and Practical Analysis in the Context of Public and Private International Air Law

Donal Patrick Hanley. Kluwer Law International (2012), www.kluwerlaw.com. ISBN: 978-9-0411-404-56. Price: €113.


High concentrations of aviation leasing companies are located in Ireland, whose products comprise commercial and executive aircraft, aircraft engines and helicopters. A number of lessors have in-house legal functions employing Irish and internationally qualified counsel who provide legal services to the sector. For this community, Donal Hanley's book serves as an extremely useful and practical guide to the laws of leasing. He delivers his instruction and commentary in a reader-friendly way, piloting the reader through a typical aircraft lease agreement to more detailed

legal analysis of public and private international air law.

The book recognises and acknowledges the tension that legal counsel may encounter in lease negotiations (either from colleagues or the other side), advocating practical or commercial solutions in the face of customer resistance to the terms and provisions of aircraft leasing. Throughout the book, the author's aim is to equip the practitioner with a legal arsenal to alleviate or avoid conflicts.

A number of annexes contain useful diagrams of typical operating lease structures,

typical new aircraft operating lease financing and useful lists of typical jurisdictional questionnaire provisions, lessee legal opinion provisions, lessee representations and warranties, conditions precedent, operational covenants, and events of default. A very useful supplement contains a full text of a sample aircraft operating lease – though, as the author points out, each agreement tends to be original and unique to each specific commercial transaction.

For practitioners and enthusiasts of aircraft leasing, this is an invaluable text. 



*Christine O'Donovan is a partner of the aviation unit of Mason Hayes & Curran, Dublin.*



# Judgment alert service: are you subscribed yet?

The library's free weekly judgment alert service is now over a year old, and more than 600 people are subscribed

The weekly judgment alert service delivers up-to-date information on reserved written judgments circulated by the Courts Service in the previous seven-day period, with links to the PDF of the judgment on the library catalogue (in the members' area on the Society's website).

In an effort to improve the content of the service, extra keywords are now being added to each record to assist members in

identifying the main issues dealt with in each judgment.

If members are interested in subscribing, they should email [m.gaynor@lawsociety.ie](mailto:m.gaynor@lawsociety.ie).

## Precedent watch

New precedent guarantees and indemnities are published in release 45 of Laffoy's *Irish Conveyancing Precedents*, including:

- Joint and several personal guarantee on taking of a lease,
- Guarantee on assignment of a lease,
- Guarantee on conveyance of equity of redemption,
- Declaration as to missing title documents,
- Declaration as to title documentation missing on previous purchase,
- Indemnity by vendor for missing title deed.

Holohan *et al*, *Buying and Selling Insolvent Companies and Businesses in Ireland* (Bloomsbury, 2013) contains 17 precedents, including asset purchase agreement, asset transfer agreement, share sale and purchase agreement, novation of contract, guarantee and indemnity, and many more. ©



THOMSON REUTERS

ROUND HALL™



REUTERS/Bobby Yip

## COMMENTARY ON WESTLAW IE COMPLETING THE PICTURE

Books Available Now  
on Westlaw IE:

### CIVIL PROCEDURE IN THE SUPERIOR COURT

3rd Edition – Delany and McGrath

**THE LAW OF CREDIT AND SECURITY**  
Mary Donnelly

**THE LAW OF PERSONAL INJURY**  
Jennings, Scannell and Sheehan

...and many more!

**SEE IT. BELIEVE IT.**

CALL: 1800 50 90 34

EMAIL: [customer.service@westlaw.ie](mailto:customer.service@westlaw.ie)

VISIT: [westlaw.ie](http://westlaw.ie)



THOMSON REUTERS

## JUST PUBLISHED

## New books available to borrow

- Bowers, John, *Whistleblowing Law and Practice* (3rd ed; OUP, 2013)
- Grant, David and Stephen Mason, *Holiday Law* (5th ed; Sweet & Maxwell, 2012)
- Hickey, Marco, *Merger Control* (Round Hall, 2013)
- Holohan, Bill *et al*, *Buying and Selling Insolvent Companies and Businesses in Ireland* (Bloomsbury Professional, 2013)
- Marshall, David *et al*, *Litigating Psychiatric Injury Claims* (Bloomsbury Professional, 2012)
- (Cambridge University Press, 2010)
- Poitras, Jean and Susan Raines, *Expert Mediators: Overcoming Mediation Challenges in Workplace, Family and Community Conflicts* (Jason Aronson, 2012)
- Richbell, David, *Mediation of Construction Disputes* (Wiley-Blackwell, 2009)
- Roberts, Marian, *Mediation in Family Disputes: Principles of Practice* (3rd ed; Ashgate, 2008)
- Waring, Michael, *Commercial Dispute Resolution* (College of Law, 2012)
- Whatling, Tony, *Mediation Skills and Strategies: a Practical Guide* (Jessica Kingsley Publishers, 2013)
- Winslade, John, *Practising Narrative Mediation: Loosening the Grip of Conflict* (Jossey Bass Ltd, 2008)

### NEW E-BOOKS AVAILABLE TO BORROW

- Liebmann, Marian, *Mediation in Context* (Jessica Kingsley Publishers, 2011)
- Lodder, Arno R, *Enhanced Dispute Resolution Through the Use of Information Technology*

# MAKE A DIFFERENCE IN A CHILD'S LIFE

## Leave a legacy

Make-A-Wish® Ireland has a vision – to ensure that every child living with a life threatening medical condition receives their one true wish. You could make a difference by simply thinking of Make-A-Wish when making or amending your will and thus leave a lasting memory.



"Make-A-Wish Ireland is a fantastic organisation and does wonderful work to enrich the lives of children living with a life-threatening medical condition. The impact of a wish is immense – it can empower a child and increase the emotional strength to enable the child to fight their illness. It creates a very special moment for both the child and the family, which is cherished by all."

*Dr. Basil Elnazir, Consultant Respiratory Paediatrician & Medical Advisor to Make-A-Wish*

"I cannot thank Make-A-Wish enough for coming into our lives. Having to cope with a medical condition every hour of everyday is a grind. But Make-A-Wish was amazing for all of us. To see your children that happy cannot be surpassed and we think of/talk about that time regularly bringing back those feelings of joy happiness and support."

*Wish Mother*

**If you would like more information on how to leave a legacy to Make-A-Wish, please contact Susan O'Dwyer on 01 2052012 or visit [www.makeawish.ie](http://www.makeawish.ie)**

Leave a gift  
in your will  
and give a  
**Legacy of Hope**  
for the Children  
of Chernobyl!



The Chernobyl disaster has left a legacy of hardship and hopelessness for the Children of Chernobyl. This is a legacy that will continue for generations to come. Please remember these children with your precious gift. You will make an incredible difference to the lives of children and their families who need our help.

Chernobyl Children International,  
Ballycurreen Industrial Estate,  
Kinsale Road, Cork.  
**T:** +353 21 431 2999  
**F:** +353 21 431 3170  
**E:** [info@chernobyl-ireland.com](mailto:info@chernobyl-ireland.com)  
**W:** [www.chernobyl-international.com](http://www.chernobyl-international.com)



### Free Training from LawCare

The Law Society of Ireland is funding a second round of LawCare seminars. Available to all Bar Associations. Speaker: Mary B Jackson

Choose from:

- Stress Recognition and Management
- Vicarious Trauma
- Time Management and Effective Email
- The Lawyer Lifestyle

Please contact LawCare on  
**admin@lawcare.ie**  
or call 00 44 1268 771333  
9.00 a.m.—2.00 p.m Mon-Fri

LawCare Ltd. is registered as a charity in England and Wales no. 1061685 and in Scotland no. SCO39335



## Practice notes

## Financial rating of qualified insurers

## PROFESSIONAL INDEMNITY INSURANCE COMMITTEE

Financial ratings are obtained by insurers following assessment of their financial stability through an independent process conducted by a rating agency. While a financial rating may provide some level of comfort regarding the financial position of an insurer, rating agencies are unregulated and therefore a rating cannot necessarily be relied on as a guarantee of solvency or longevity.

**How do I find out the rating of my insurer?**

Qualified insurers are required to disclose their financial rating, or absence thereof, to firms when issuing quotations. This requirement was introduced in the 2011/2012 indemnity period and remains in place for the 2012/2013 and 2013/2014 indemnity periods in order to:

- Allow firms to make a more fully informed decision on their choice of insurer,
- Ensure full transparency for the profession in relation to qualified insurers meeting, or not meeting, generally accepted standards of financial strength, and
- Do so in a way that will not restrict firms' choice of insurer.

**What is a qualified insurer and who regulates them?**

A qualified insurer is an insurer that:

- Holds authorisation from either the Central Bank of Ireland or the competent regulatory authority in the insurer's home member state in the European Economic Area (EEA) to write non-life insurance, and
- Has entered into a qualified insurer's agreement with the Society for the relevant indemnity period in a timely manner.

The Society does not have the authority to refuse to enter into a qualified insurer's agreement with an insurer who holds the relevant authorisation set out above to write non-life insurance. Therefore, the

Society is obliged to permit any insurer who meets the requirements set out above to be a qualified insurer. Insurers are not required to have a minimum financial rating or any financial rating at all in order to enter into a qualified insurer's agreement.

The Society is not responsible for policing the financial stability of any insurer. The Society does not and is not in a position to vet, approve or regulate insurers.

Responsibility for the regulation and financial supervision of Irish authorised insurers and other EEA insurers rests with the Central Bank of Ireland and the competent regulatory authority in the EEA insurer's home member state respectively, in accordance with the *European Non-Life Insurance Directives*.

**What happens if a qualified insurer becomes insolvent?**

In the event that a qualified insurer becomes insolvent, in accordance with regulation 14 of the *Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011* (SI 409 of 2011), any firm insured by the insolvent insurer will be required, within 30 working days of the insolvency, to obtain and pay for insurance with another qualified insurer in the market or with the Assigned Risks Pool (ARP) if the firm is an ARP-eligible firm. If a firm fails to obtain alternative cover within 30 working days, it will be required to cease practice.

The Insurance Compensation Fund was established under the *Insurance Act 1964* (as amended) for the purpose of facilitating payments to policyholders in relation to risks in the State where an Irish or EEA-authorised non-life insurer goes into liquidation and the approval of the High Court has been obtained for such payments. Should a qualified insurer become insolvent, Irish policyholders should be able to benefit from the Insurance Compensation Fund should the need arise, subject to certain limitations.

There are various restrictions placed on the payments that can be made out of the fund, and it is important to bear these in mind when considering the protections that may be afforded to your firm and its clients in the event of an insolvency of a qualified insurer. Such restrictions include a cap on the amount due to a person under a policy, which must not exceed 65% of the amount due under the policy or €825,000, whichever is the lesser. A sum due to a commercial policyholder may not be paid out of the fund unless the sum is due in respect of a liability to an individual.

**Why should I care about the financial stability of my insurer?**

The financial stability of your qualified insurer may ultimately determine whether claims made against your firm will be paid. In the event of your insurer becoming unable to pay claims against your firm, the ultimate responsibility and liability to meet those claims rests with the principals of the firm. The financial stability of your insurer is therefore one of the most critical considerations in deciding where to place your insurance.

While the price of insurance is an important factor, firms are strongly advised to fully consider financial stability when choosing an insurer due to the extremely costly consequences for a firm should its insurer become insolvent. While financial ratings are not a guarantee of solvency, they do give an indication and objective measure of the financial stability of an insurer.

It is also important to note that an insurer authorised by a competent regulatory authority in an EEA member state must maintain technical reserves and a solvency in accordance with the minimum requirements set down in the directives. The Central Bank of Ireland typically requires Irish authorised insurers to maintain a solvency margin in the region of 150% to 200% of the minimum requirements set down in the directives.

It is a matter for each principal and partner in private practice to take responsibility for their own business decisions and to accept the consequences of those decisions for their firm. The choice of insurer is a vitally important decision for the firm as, in the event that the firm's insurer becomes insolvent:

- 1) The firm will be required either to obtain alternative cover and pay a second premium within 30 working days of the insolvency event or alternatively to cease practice.
- 2) There is no guarantee that another qualified insurer will offer the firm replacement cover.
- 3) Firms that cannot obtain replacement cover in the market may apply to the ARP and, if accepted, will be required to pay the ARP premium in full. The ARP premium will be calculated according to the ARP premium schedule, which can be found in the PII policy documentation on the Society's website at [www.lawsociety.ie/Pages/PII/#policy](http://www.lawsociety.ie/Pages/PII/#policy). The ARP premium will usually significantly exceed normal market rates, reflecting the high level of risk attached to a firm unable to obtain cover in the market.
- 4) Any firm accepted by the ARP that does not pay the ARP premium in full will be deemed to be a defaulting firm under the regulations and will be required to close. If the firm does not close, the Society will apply to the High Court for an order compelling the firm to close.
- 5) Such firms will, therefore, require access to substantial funds at short notice to continue in practice, and
- 6) Claims made against the firm may not be fully covered by the Insurance Compensation Fund, with potentially significant financial consequences for the principal or partners of the firm who may be directly liable for any uncovered claims.

## AIB no longer requesting declarations post-registration

### CONVEYANCING COMMITTEE

The attention of the Conveyancing Committee has been drawn to the fact that, in residential certificate of title cases, AIB had been refusing to release solicitors from their undertakings following lodgement of certificates of title and accompanying title documentation in cases of registered/Land Registry title until either:

- A family law declaration, or
- Evidence that the appropriate family law declaration(s) had been executed by the borrower(s) was lodged with

the bank. The committee took the matter up with the bank and is now happy to report that the bank has indicated that it has ceased the above practice and will now release solicitors from their undertakings without requiring such declaration or evidence.

The committee takes this opportunity to remind solicitors acting for purchasers and borrowers that it is their responsibility to ensure that all family law legislation has been complied with

insofar as it affects any conveyancing transaction, including a mortgage lending transaction. Despite the fact that the Land Registry does not require family law declarations in order to register ownership of Land Registry title or a charge on same, solicitors acting for purchasers and borrowers should still:

- Ensure that the appropriate family law declarations are obtained from a vendor and a borrower, and
- Ensure that these declarations are lodged in the Land

Registry along with the other documentation comprising the Land Registry dealing.

It is again confirmed by the committee that the Land Registry has agreed to accept lodgement of these family law declarations along with dealings and, although they will not check the declarations, the Land Registry will retain them with the other documents contained in the dealings.

Solicitors might find it helpful to keep a copy of Land Registry dealings on their files.

## Section 68: Notice of appointment under law to take charge of designated centre

The Chief Inspector of Social Services has asked the Law Society to draw the attention of members to the following in relation to the *Health Act 2007*, specifically relating to 'Section 68: Notice of appointment under law to take charge of designated centre'.

The letter from the Office of the Chief Inspector's deputy director of regulation, Niall Byrne, dated

24 May 2013, states, as follows:

*"Under the provisions of the Health Act 2007, as amended, the Chief Inspector of Social Services, an official of HIQA, is responsible for the registration and general regulation of all residential services falling within the definition of 'designated centre'. The main provisions relevant to this function are set out in section 2 of the act and in parts 7 and 8.*

*In certain circumstances, persons may be appointed under other legal provisions to take charge of designated centres in place of the person or body who was previously the registered provider of that centre. In this circumstance, section 68 of the act requires the person appointed by or under the law to give notice of their appointment to the chief inspector.*

*The purpose of this letter is to detail*

*to you and to your members their legal obligations should this circumstance arise and to provide information and guidance in relation to the procedures to be followed.*

*The Chief Inspector would appreciate if you could arrange to bring this letter and the attached appendix to the notice of your members."*

The appendix to the letter is in the panel on the following page.

## JOB-SEEKERS' register

For Law Society members seeking a solicitor position, full-time, part-time or as a locum

Log in to the members' register of the Law Society website, [www.lawsociety.ie](http://www.lawsociety.ie), to upload your CV to the self-maintained job seekers register within the employment section or contact career support by email on [careers@lawsociety.ie](mailto:careers@lawsociety.ie) or tel: 01 881 5772.



Law Society of Ireland

## LEGAL vacancies

For Law Society members to advertise for all their legal staff requirements, not just qualified solicitors

Visit the employment section on the Law Society website, [www.lawsociety.ie](http://www.lawsociety.ie), to place an ad or contact employer support by email on [employersupport@lawsociety.ie](mailto:employersupport@lawsociety.ie) or tel: 01 672 4891. You can also log in to the members' area to view the job seekers register.



Law Society of Ireland



## APPENDIX TO LETTER FROM CHIEF INSPECTOR OF SOCIAL SERVICES

## LEGISLATION

Section 68 of the *Health Act 2007*, as amended, states:

- 1) A person who is appointed by or under the law to take charge of a designated centre in place of its registered provider shall give notice of the appointment to the chief inspector, as soon as practicable, but not later than 48 hours after the appointment.
- 2) The chief inspector may accept a later notification where the chief inspector is of the opinion that it would be right and proper to do so.
- 3) Where the chief inspector receives information in accordance with subsection 91 and has reasons to believe that it is in the interests of the health and welfare of the residents:
  - a) He or she may notify the executive, and
  - b) The executive may make alternative arrangements for the residents of the centre.

## PROCEDURE

When a receiver/manager is appointed to a company in Ireland, it is common for that receiver/manager to act as agent for the company itself. The main issue for the Chief Inspector in the case of a provider in receivership is that it may become unclear as to who precisely is the registered provider in circumstances where the person who has control over the designated centre and who is therefore carrying on the business (the receiver/manager) is not the named registered provider.

A receiver/manager over a company that is a registered provider under section 68 of the *Health Act 2007* is required to give notice to the Chief Inspector of the said change as soon as practicable, but not later than 48 hours after the appointment, as per section 68(1) of the *Health Act 2007*.

In order for the Chief Inspector to then determine who is currently the registered provider, the Registration Office will issue two letters – one to the company and one to the receiver – to ascertain the following:

- 1) Who has been appointed as receiver and manager over the company?
- 2) Has this person been appointed as receiver over all the assets of the company, that is, while the company still technically owns the assets, this person controls them and has the right to sell them?
- 3) Has the person been appointed as manager of all of the business of the company, that is, the company still technically owns its business, but the person has total control over the business and the board of directors no longer control the business?
- 4) What precisely are the legal responsibilities of the receiver?
- 5) Who will be the nominee of the registered provider who liaises with the authority regarding the operation of the designated centre?

If the answers to questions 2 or 3 above are 'yes', then it follows that the legal entity that is currently carrying on the business of the designated centre is in receivership.

On receipt of responses from both parties, and if matters remain unclear, it may be necessary to seek further information at this point based on the provider and receiver responses.

If the receiver appoints someone different to whom is currently agreed as the nominated person to liaise with the authority on behalf of the registered provider, then the Registration Office will send the receiver an NF38 notification of 'Change of person on behalf of the registered provider form' (available on the HIQA website) for the new person to complete. Only when this is complete can the authority deal with the newly appointed person on behalf of the registered provider.

If the receiver wants to sell on or close the business, he/she must send the Chief Inspector an NF35 notification of intention to cease to carry on the business of the designated centre and close the centre form (available on the HIQA web-

site). This is required under regulations to be submitted at least six months in advance of the centre closing. Any new provider wishing to take over the business must apply to the Chief Inspector to become the new registered provider.

## PERSONS REQUIRED TO NOTIFY

The following are the types of receivers under section 68 of the *Health Act 2007* who are under obligation to notify the Chief Inspector of their appointment:

- A receiver appointed by the High Court pursuant to section 28 of the *Judicature Act* (depending on the terms of the High Court order),
- An asset receiver, whether appointed pursuant to statutory provisions or pursuant to the terms of a mortgage/charge, appointed by a mortgagee/chargeholder on foot of a fixed mortgage/charge over the interest of the mortgagor/charger,
- A receiver and manager appointed pursuant to a security package, which includes a floating charge.

Other than receivers under section 68, the following would be under obligation to notify the chief inspector of their appointment:

- Committees of a ward of court,
- Certain attorneys under particular powers of attorney,
- Examiners where they successfully make application to the High Court under section 9 of the *Companies (Amendment) Act 1990* for an order that all or any functions or powers of the directors be exercisable by them, or under section 20 of that act for an order approving of the repudiation or affirmation of any relevant contract (depending on the terms of the order),
- Liquidators in a:
  - i) Creditors' voluntary winding up, or
  - ii) Compulsory winding up.

Under the scheme of the *Health Act 2007* and the regulations made thereunder, the Chief Inspector should also be made aware by no-

tice when there is a change to those who have overall charge of the designated centre, or who carry on the business of, or manage, or participate in the management of, the centre. In addition:

- Section 46 of the act states that "a person shall not carry on the business of a designated centre unless the centre is registered under the act and the person is its registered provider". This means that the Chief Inspector will require to have notice when the registered provider of a centre is proposed to change owing to an intended sale of the business and assets of a designated centre. The proposed new registered provider will be required to apply for registration before carrying on the business, as otherwise a breach of section 46 may occur.
- Section 66 of the act prohibits the cessation of carrying on of business and the closure of centres without providing the prescribed amount of notice to the Chief Inspector. The prescribed amount of notice is currently a minimum of six months.

## PERSONS PARTICIPATING IN MANAGEMENT

In the case of the appointment of a receiver/manager over a company that is a registered provider, it is likely that the company will remain as the registered provider, albeit that the company is managed by the receiver/manager. A decision will be taken in each case as to whether the receiver/manager is deemed to be "a person who will participate in the management" of the designated centre and, accordingly, a person whose fitness requires to be assessed under the provisions of the act.

## FURTHER INFORMATION

Should you require further information regarding this matter, contact Mr Fergal Collins, Registration Manager, at tel: 021 240 9300, by email: fcollins@hiqa.ie, or by letter to: Health Information and Quality Authority, Unit 1301, City Gate, Mahon, Cork.

## 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 Patrick Aidan Crowley, a solicitor previously practising as a partner in the firm of Egan Daughter & Company, Solicitors, Church Street, Castlebar, Co Mayo, and in the matter of the *Solicitors Acts 1954-2008* [6598/DT03/12 and High Court record no 2013 no 45 SA] *Law Society of Ireland* (applicant)  
*Patrick Aidan Crowley* (respondent solicitor)

On 14 February 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- Allowed a shortfall of €521,924 in the client account as of 31 May 2010, as set out in the investigation report of 1 September 2010, in breach of the *Solicitors' Accounts Regulations*,

- Allowed a shortfall in respect of the estate of a named person as detailed in paragraph 2.4 of the report of 26 July 2010 in at least the sum of €3,038.00,
- Made deductions from a settlement cheque of a named client without her written authority and without providing a section 68(6) bill,
- Made a payment to a client in advance of €46,024 when no funds were available in the office account in respect of that client, thereby causing a debit balance,
- Withdrew €518,380 from a named estate over a period of about seven years, in breach of the regulations, without issuing bills of costs to the clients,
- Misappropriated €35,000 from another named estate on 22 July 2010 by withdrawing this amount from

the executor's account and purchasing a bank draft payable to another client whose personal injuries claim had become statute barred,

- As detailed in paragraph 4.8 of the investigation report of 11 April 2011, made lodgements of approximately €454,000 to his personal bank account over a period of years, and the lodgements included a substantial amount of unrecorded fees, including legal aid cheques and other unidentified amounts, and he paid a personal injury settlement from this account,
- Dealt with some of the assets of a named estate without disclosing the assets to the Revenue or to the Probate Office of the High Court,
- Failed to inform a named person of his possible entitlement in a named estate,
- Incorrectly dealt with the moveable assets of a named estate without the authority of the appropriate court,
- By his acts/omissions, the

solicitor contributed to a named person becoming the sole beneficiary to the proceeds of a named estate and to depriving two named individuals of their possible entitlements,

- Made misleading statements to the Revenue and produced misleading documents to the Probate Office,
- Maintained an executor's account for a named estate but failed to record transactions on the executor's account in the books of account of the practice.

The tribunal referred the matter to the President of the High Court and, on 15 April 2013, the High Court made an order:

- Striking the name of the respondent solicitor from the Roll of Solicitors,
- The costs of the proceedings before the tribunal and the costs of the High Court proceedings to be taxed by a taxing master of the High Court in default of agreement. ©



**DELAP & WALLER**  
CONSULTING ENGINEERS

### DELAP & WALLER LIMITED

MECHANICAL & ELECTRICAL CONSULTING ENGINEERS

**Mechanical, Electrical and Lift Accidents,  
Heating & Ventilation, Air Conditioning, Insurance Claims,  
Loss Assessment, BER Certificates, Engineering Reports  
and Expert Witness Services, Project Management, Cost Reports**  
**For all classifications of buildings**

Michael O'Doherty, CEng, BEng (Hons), MCIBSE, MIMechE,  
Engineering Consultant and Expert Witness

1st Floor, Bloomfield House, Bloomfield Avenue, Dublin 8  
Tel: (01) 535 5900 Mobile: 087286 1820  
Email: Michael@delapandwaller.com

Offices at: Derry, Antrim, Cork, London, Abu Dhabi, Bucharest & Warsaw

**solicitorlink**

**FREE, ONLINE SOLICITOR LINK FORUM FOR SOLICITORS TO:**

- Advertise anonymously their interest in buying, selling, merging practice or sharing overheads.
- Browse the entries of registered members.
- Contact colleagues by email who have listed something of interest.

Visit [www.lawsociety.ie/solicitorlink](http://www.lawsociety.ie/solicitorlink)



## Legislation update 14 May – 10 June 2013

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – [www.lawsociety.ie](http://www.lawsociety.ie) (members' and students' areas) – 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](http://www.oireachtas.ie) and recent statutory instruments are on a link to electronic statutory instruments from [www.irishstatutebook.ie](http://www.irishstatutebook.ie)

### ACTS PASSED

#### *Animal Health and Welfare Act 2013*

**Number:** 15/2013

Revises the law relating to the health and welfare of animals and their protection and identification; provides for the regulation of certain activities relating to animals; prevents cruelty to animals; makes provision for the licensing of animal marts and for levies for the purposes of animal health and the control of animal diseases; repeals various enactments relating to animals including the 1911 and 1965 *Protection of Animals Acts* and the 1966 and 2001 *Diseases of Animals Acts*; amends the *Animal Remedies Act 1993* and provides for related matters.

**Commencement:** Commencement order(s) required as per s1(2) of the act

#### *Defence Forces (Second World War Amnesty and Immunity) Act 2013*

**Number:** 12/2013

Provides for the granting of an amnesty and, as appropriate, an immunity from prosecution to those members of the Defence Forces who served with forces (including the armed forces of a country) fighting on the Allied side during the Second World War and were subsequently found guilty by a military tribunal of, or who were or who still are liable to be prosecuted for, desertion or being absent without leave or who were dismissed from the Defence Forces pursuant to the provisions of the *Emergency Powers (No 362) Order 1945* (SR&O 1945 no 198), and provides for related matters.

**Commencement:** 14/5/2013

#### *Education and Training Boards Act 2013*

**Number:** 11/2013

Provides for the better coordination and delivery of education and training and for that purpose provides for the establishment of bodies to be known as education and training boards; provides for the dissolution of vocational education committees; provides for the transfer of assets, liabilities and staff of vocational education committees to education and training boards; provides for the repeal of the *Vocational Education Acts 1930-2006*, the amendment of the *Unfair Dismissals Act 1977* and the *Education Act 1998*, the revocation of certain statutory instruments and the consequential amendment of certain other enactments; and provides for related matters.

**Commencement:** Commencement order(s) required as per s1(2) of the act

#### *Financial Emergency Measures in the Public Interest Act 2013*

**Number:** 18/2013

Reduces the remuneration of certain public servants on higher rates of pay in excess of €65,000; reduces the amount of the payment of pension or other benefits (other than lump sums) payable to or in respect of certain persons who are or were in the public service under an occupational pension scheme or pension arrangement; and provides for a suspension of incremental progression for three years for all public servants unless they are covered by a collective agreement that modifies the

terms of the incremental suspension and that has been registered with the Labour Relations Commission.

**Commencement:** 5/6/2013

#### *Health (Pricing and Supply of Medical Goods) Act 2013*

**Number:** 14/2013

Establishes a list of groups of interchangeable medicinal products that may be substituted for each other in order to enable savings to be made for patients or the Health Service Executive, or both, where the lower priced medicinal products are supplied; establishes a list of drugs, medicines and medical and surgical appliances that may be supplied under section 59 of the *Health Act 1970*; establishes mechanisms to set the prices of such drugs, medicines and medical and surgical appliances where they are so supplied; renames the Irish Medicines Board; provides for the consequential amendment of other enactments and provides for related matters.

**Commencement:** Commencement order(s) to be made as per s1(3) of the act

#### *National Lottery Act 2013*

**Number:** 13/2013

The current National Lottery licence, which is held by An Post National Lottery Company, is due to expire in 2013. The new legislation provides for the holding of a national lottery on behalf of the Minister for Public Expenditure and Reform; establishes the Office of the Regulator of the National Lottery and defines the functions of the regulator; provides for the sale of National Lottery tickets via interactive channels as well as through retail outlets; repeals the *National Lottery Act 1986*; amends sections 27 and 28 of the *Gaming and Lotteries Act 1956*; and provides for connected matters.

**Commencement:** Commencement order(s) to be made as per s1(3) of the act

#### *Non-use of Motor Vehicles Act 2013*

**Number:** 16/2013

Provides for declarations of non-use of motor vehicles; contains provision to make the Minister for Transport, Tourism and Sport a licensing authority, and provides for related matters. Amends the *Finance (Excise Duties) (Vehicles) Act 1952*, the *Finance (No 2) Act 1992*, and the *Local Government Act 1998*.

**Commencement:** Commencement order(s) to be made as per s1(2) of the act

#### *Public Health (Tobacco) (Amendment) Act 2013*

**Number:** 17/2013

Provides for the repeal of certain provisions contained in section 2 of the *Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act 1978* and the amendment of section 38 of the *Public Health (Tobacco) Act 2002* in respect of activities that are intended or are likely to promote the sale of tobacco products.

**Commencement:** Commencement order(s) to be made as per s3(3) of the act

### SELECTED STATUTORY INSTRUMENTS

#### *Control of Dogs (Amendment) Regulations 2013*

**Number:** SI 156/2013


Prescribes form no 3 notice in relation to an alleged offence.

**Commencement:** 1/6/2013

#### *European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2013*

**Number:** SI 160/2013

Gives further effect to Directive 93/13/EC on unfair terms in consumer contracts. Extends the civil remedies available under the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995* (SI 27/1995).

**Commencement:** 15/5/2013 

Prepared by the Law Society Library

## BRIEFING

## Eurlegal

Edited by TP Kennedy, Director of Education

# TV broadcasters' IP rights bolstered by recent CJEU preliminary ruling

On 7 March 2013, the Court of Justice of the European Union (CJEU) delivered an important preliminary ruling in the field of broadcasting and copyright law – case C-607/11, *ITV Broadcasting and others v TVCatchup Ltd*. The ruling is important because it potentially strengthens the hand of commercial TV broadcasters against third parties that capture free-to-air television broadcasts and then stream them live to the public without the authorisation of the copyright holder (that is, the original broadcaster).

The ruling concerned an interpretation of the notion of communication to the public under article 3(1) of the *Information Society Directive* (Directive 2001/29/EC). The aim of this directive is to harmonise certain aspects of copyright and related rights in the information society. Article 3(1) provides that “member states shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them”.

The communication to the public right is one of the important exclusive economic rights vested in all copyright holders under the EU copyright regime.

In short, the Luxembourg court held that a third party's retransmission of copyrighted works (included in a terrestrial television broadcast) by way of an internet stream, without the original broadcaster's permission, breached the broadcaster's copyright, in particular, its communication to the public right. The CJEU deemed it irrelevant that the subscribers were within the area of reception of the

terrestrial television broadcast and that they could lawfully receive the broadcast on a television receiver.

## Background to the case

The CJEU ruling derives from principal proceedings in the English High Court. The claimants instituted proceedings against TVCatchup Ltd (TVC) in the Chancery Division of the High Court, alleging breach of their copyright in broadcasts and films under section 20 of Britain's *Copyright, Designs and Patents Act 1988*. However, the High Court stated that it was not clear from the judgments in case C-306/05 *Sociedad General de Autores y Editores de España (SGAE)* and joined cases C-431/09 and C-432/09 *Airfield NV and Canal Digitaal* whether there is a ‘communication to the public’ within the meaning of article 3(1) of the *Information Society Directive*, where TVC, in order to attract an audience to its own transmissions and advertisements, streams broadcasts over the internet to members of the public who would have been entitled to access the original broadcast signal using their own television sets or laptops in their own homes. In those circumstances, the English High Court stayed proceedings and referred a number of questions to the CJEU for a preliminary ruling.

## Key points in the ruling

**Analogy with the satellite and cable directive:** The court drew an analogy between the *Information Society Directive* and the *Satellite Broadcasting and Cable Retransmission Directive* (Directive 93/83/EEC). The latter also contains an exclusive communication to the public right (in article 2), while article 8 makes it clear that cable retransmissions of programmes from one EU member state to another must be subject to contractual agreements

between copyright holders and cable operators. In other words, the retransmissions must be lawful and pre-authorised by the copyright holder.

**High level of protection of authors:** The CJEU stated that the principal aim of directive 2001/29 is to establish a high level of protection of authors, allowing them to obtain an appropriate reward for the use of their works, including on the occasion of communication to the public. Therefore, the term ‘communication to the public’ must be interpreted broadly (as recital 23 in the *Information Society Directive* expressly states).

**Fresh authorisations:** Where a copyrighted work is put to multiple use, the EU legislature intended that each transmission/retransmission of the work be individually authorised by the copyright holder. This finding is supported by articles 2 and 8 of Directive 93/83/EEC, which require fresh authorisation for a simultaneous, unaltered and unabridged retransmission by satellite or cable of an initial transmission of television or radio programmes containing copyright protected works, even though those programmes may already be received in their catchment area by other technical means, such as by wireless means or terrestrial means. Given that the making available of copyrighted works through retransmission of a terrestrial television broadcast over the internet uses a specific technical means different from that of the original communication, that retransmission must be considered to be a ‘communication’ within the meaning of article 3(1) of Directive 2001/29. As a consequence, such a retransmission cannot be exempt from the need for authorisation by the authors (that is, copyright holders) when it is communicated to the public.

**Was TVC's retransmission merely a technical means to ensure or improve reception of the terrestrial television broadcast?** TVC had argued that its retransmission of the copyrighted works was merely a technical means to ensure or improve reception of the terrestrial television broadcast in its catchment area. If TVC's argument had been accepted by the CJEU, it would have brought its retransmission outside the meaning of a ‘communication’ in article 3(1) of the *Information Society Directive*. However, the CJEU held that TVC's intervention was ‘in no way intended to maintain or improve the quality of the transmission by that other broadcasting organisation’ (paragraph 30 of the ruling). Consequently, TVC's intervention could not be considered to be a mere technical means to ensure or improve reception of the broadcast, and its retransmission was therefore still capable of being deemed an infringement of the original broadcaster's communication to the public right.

**The meaning of the term ‘public’:** The CJEU examined the term ‘public’ in the context of ‘communication to the public’ (article 3(1) of the *Information Society Directive*). Citing *SGAE*, the court stated that the term ‘public’ refers to an “indeterminate number of potential recipients and implies, moreover, a fairly large number of persons” (paragraph 32 of the ruling). In addition, the cumulative effect of making the works available to potential recipients should be taken into account. In that regard, it is relevant to ascertain the number of persons who have access to the same work at the same time and successively (paragraph 33 of the ruling). Accessing the communicated works through a one-to-one connection was deemed irrelevant by the CJEU, as that technique did not prevent a large number of





We said 'Catchup' – not ketchup!

persons having access to the same work at the same time. The court noted that the retransmission of the works over the internet was aimed at all persons resident in Britain who have an internet connection and who claim to hold a television licence in that state. Such persons could access the protected works at the same time, in the context of the live streaming of television programmes on the internet. Consequently, the CJEU held that TVC's retransmission was aimed at an indeterminate number of potential recipients and that it was indeed communicated to a 'public' within the meaning of article 3(1) of the *Information Society Directive*.

**A new public:** TVC contended that the retransmission that it effected did not satisfy the requirement that there be a new public, a factor laid down in the *SGAE* (paragraph 40), *Football Association Premier League and Others* (paragraph 197) (joined cases C-403/08 and C-429/08) and *Airfield and Ca-*

*nal Digitaal* (paragraph 72) rulings. TVC submitted that the recipients of its transmission were entitled to follow the televised broadcast, identical in content, using their own television sets.

However, the CJEU distinguished the present case from those referred to by TVC. In the three rulings invoked by TVC, an operator had made accessible, by its deliberate intervention, a broadcast containing protected works to a new public that was not considered by the authors concerned when they authorised the broadcast in question. In contrast, in the present case, there was a retransmission of a terrestrial broadcast and the making available of those works over the internet. Each of the two transmissions must be authorised individually and separately by the authors (copyright holders) concerned, given that each is made under specific technical conditions, using a different means of transmission

for the protected works and each is intended for a public. In those circumstances, the CJEU felt it unnecessary to examine the requirement that there be a new public.


#### Implications of the ruling

This preliminary ruling re-enforces the breadth of the basic rights of copyright owners, whether they be broadcasters or content owners, to control the distribution or redistribution of their content. Following this ruling, control of transmission of copyrighted works is placed firmly in the hands of original broadcasters, and the fact that a retransmission is of a profit-making nature or effected by an organisation that is acting in direct competition with the original broadcaster will be irrelevant (that is, these factors will not take an unauthorised third party retransmission (by streaming) outside the meaning of a communication to the public).

This ruling will be welcomed by originating media organisations in

their fight against illegal streaming and other unlicensed services. It should also strengthen the hands of broadcasters and content owners in their economic negotiations with other distribution platforms.

Further guidance on the exclusive right of 'communication to the public' is provided by this ruling, which also seems to constitute another step in the direction of ensuring greater protection for authors of copyright works through this particular right.

The ruling indicates that third party streaming of broadcasts will require the permission of the original broadcaster (copyright owner). It appears that live streaming services (involving retransmissions of free-to-air broadcasts) will be prohibited unless the operators of same pay licence fees to the original broadcasters. 

*Mark Hyland lectures in the field of intellectual property law at Bangor University Law School.*

# Summer BBQ

## TEAM BUILDING EVENTS @ BLACKHALL PLACE



### Summer BBQ Classic Package for only €22.50pp

**Package pricing includes:**

- Catering** - Arrival Summer Punch • 3 Choice Menu option  
• Selection of chefs summer salads • Dessert of the season

**Exclusive Venue Hire** - Outdoor space at The Law Society • The Blue Room or The Presidents Area (numbers dependent)  
• Minimum Number - 60 people.

### Full inclusive Event & Catering Package for only €62pp

Experience the exhilaration of beating your colleagues at the Celtic Challenge, or the Eliminator Challenge in the historic grounds of The Law Society of Ireland.

**Package pricing includes:**

**Catering** - 2 Choice Menu option

- Selection of chefs summer salads • Dessert of the season

**Fun & Games** - Choice of two team building events - The Celtic Challenge or The Eliminator • Full event management on the day • Scoring of each teams

**Exclusive Venue Hire** - Outdoor space at The Law Society • The Blue Room or The Presidents Area (numbers dependent) • Minimum Number - 60 people.

Price incl VAT    Upgrades possible on menu choices    Prizes are extra and optional

o

For further details contact **Christina Schoeman**, Sales Executive, Blackhall Place  
telephone: **(01) 672 4918** or email: **events@lawsociety.ie**



**Law Society of Ireland**



**Blackhall Place**  
Headquarters of the Law Society of Ireland



# Recent developments in European law

## DISCRIMINATION

**Case C-81/12, *Asociatia Accept v Consiliul National pentru Combaterea Discriminarii*, 25 April 2013**

Mr Becali is the 'patron' of a Romanian football club, FC Seteaua. In an interview concerning the possible transfer of a player, he stated that he would never hire a homosexual player. The football club did not distance itself from his comments. Accept, a non-governmental organisation that promotes homosexual and transsexual rights in Romania, lodged a complaint before the National Council for Combating Discrimination. The council held that, as Mr Becali's statements weren't made by an employer or a person responsible for recruitment, this matter did not fall within the sphere of employment. However, it took the view that the statements did constitute discrimination in the form of harassment and gave Mr Becali a warning. Accept referred the matter to an appeal court, which referred questions for a preliminary ruling to the Court of Justice on the interpretation of the *Directive on Equal Treatment in Employment and Occupation* (2000/78).

The court held that the directive applies to situations such as this. It is no defence to argue that the person who made the homophobic statements is not legally capable of binding the club in recruitment matters where this person claims to play an important role in the management of the employer and appears to do so. The fact that the club might not have clearly distanced itself from those statements may be taken into account in the appraisal of its recruitment policy.

## FREE MOVEMENT OF PERSONS

**Joined cases C-197/1 and C-203/11, *Eric Libert, Christian Van Eycken, Max Bleecx, Syndicate national des propriétaires ASBL, Olivier de Clippele v Gouvernement Flamand*, 8 May 2013**

In Belgium, a 2009 Flemish decree on land and real-estate policy links the transfer of immovable property

in certain communes to the condition that there exist a sufficient connection between the prospective buyer or tenant and the relevant commune. Several applications to annul the decree were brought to the Belgian Constitutional Court. It raised the question of whether the decree was compatible with EU law, specifically the rules on free movement, state aid and public contracts.

The Court of Justice found that the Flemish decree amounted to prohibiting certain persons from purchasing, or leasing for more than nine years, land or the building on it. These provisions are restrictions on fundamental freedoms that must be justified. The Flemish government argued that its objective was to respond to the housing needs of the less affluent local population in the target communes. The court accepted that such an objective could be an overriding reason in the public interest capable of justifying such restrictions. However, none of the conditions in the decree directly reflected the socioeconomic aspect relating to the objective of protecting exclusively the less affluent local population on the property market. The condition could be met only by the less affluent, but also by those with sufficient resources who have no need for social protection on the property market. Other methods such as subsidies could be used to assist less affluent persons. The Flemish measure goes beyond what is necessary to attain the objective pursued. Economic operators, on whom a social obligation is imposed when a building or land subdivision authorisation is granted, cannot freely use the land acquired. Such a measure may discourage residents of one member state from making investments in immovable property in other member states and thus constitutes a restriction on the free movement of capital. Such a restriction, insofar as its purpose is to guarantee sufficient housing for the low income or otherwise disadvantaged sections of the local population, may be justified by re-

quirements relating to social housing policy in a member state as an overriding reason in the public interest. It is for the referring court to assess whether such an obligation satisfies the principle of proportionality, that is to say, whether it is necessary and appropriate to attain the objective pursued.

**Case C-202/11, *Anton Las v PSA Antwerp NV*, 16 April 2013**

In Flanders in Belgium, a decree requires that employment contracts be written in Dutch where the employer's established place of business is in Flanders. Non-compliance with the linguistic obligation results in the nullity of the employment contract without prejudice to the employee or to the rights of third parties. Mr Las, a Dutch national, was hired in 2004 as a chief executive by PSA Antwerp, a company established in Antwerp but belonging to a multinational group whose registered office is in Singapore. The employment contract, drafted in English, stipulated that he was to carry out his work in Belgium. In 2009, he was dismissed in a letter in English. He was paid a severance allowance calculated on the basis of his employment contract. He brought an action before the Belgian Labour Court, arguing that the provisions of the employment contract were null and void as they were contrary to the Flemish law. He sought a higher severance allowance in accordance with Belgian employment law. The Belgian court asked the CJEU whether the Flemish decree on use of languages infringes freedom of movement for workers within the EU.

The CJEU pointed out the employment contract at issue fell within the scope of freedom of movement for workers. It was concluded between a Dutch national resident in the Netherlands and a company established in Belgium. The principle of free movement may be relied on not only by workers but also by employers. The free movement of workers provisions are designed to facilitate the pursuit of occupational activities of all

kinds throughout the EU and preclude measure that might place EU nationals at a disadvantage when they wish to pursue an economic activity in the territory of another member state. The Flemish law provides that only the Dutch text is authentic for cross-border employment contracts concluded by employers whose established place of business is located in the Dutch speaking region of Belgium. Such legislation is likely to have a dissuasive effect on non-Dutch speaking employers and employees from other member states. Thus, it constitutes a restriction on the freedom of movement for workers. Such a restriction is justified only if it pursues an objective in the public interest, is appropriate to ensuring the attainment of that objective, and is strictly proportionate. EU law does not preclude the adoption of a policy for the protection and promotion of one or more official languages of a member state. From the contested decree, it is apparent that the penalty for breach of the obligation to draft in Dutch an employment contract between a worker and an employer whose established place of business is located in the Dutch speaking region of Belgium is the nullity of the contract. Parties to a cross-border employment contract do not necessarily speak Dutch. In such a situation, the establishment of free and informed consent between the parties requires them to be able to draft their contract in a language other than the official language of that member state. Legislation that would permit the drafting of an authentic version in a language known to all the parties concerned would be less prejudicial to freedom of movement for workers while being appropriate for securing the objectives pursued by that legislation. Therefore, the contested decree goes beyond what is strictly necessary to attain the objectives invoked and cannot be regarded as proportionate. In those circumstances, the court held that the decree was in breach of EU law. ©

## NOTICES

## WILLS

**Chambers, James Gabriel (deceased)**, late of Dunogue, Carrickmacross, in the county of Monaghan, who died on 14 March 2013. Would any person having knowledge of any will executed by the above-named deceased please contact Brendan Larney & Company, Solicitors, Farney Street, Carrickmacross, Co Monaghan; tel: 042 966 3444, fax: 042 966 3445, email: imelda@larney.solicitors.ie

**Fitzsimons, Eileen (deceased)**, late of 58 Glenview Park, Kilpedder, in the county of Wicklow, and also of San Remo Nursing Home, Sidmonton Road, Bray, Co Wicklow, who died on 23 April 2011. Would any person having knowledge of a will made by the above-named deceased, and in particular one believed to have been made in or about November 1997, please contact CBW Boyle & Co, Solicitors, 70 Middle Abbey Street, Dublin 1; tel: 01 873 1588, fax: 01 873 0706, email: office@boyle.solicitors.ie

**Foy, Paul (deceased)**, late of 37 Hazelbury Green, Clonee, Dublin 15. Would any person having knowledge of a will made by the above-named deceased please contact McDonnell & Company, Solicitors, Suite 1, Parkside House, Main Street, Castleknock, Dublin 15; tel: 01 822 0868, fax: 01 821 7006, email: info@mcdonnell-solicitors.ie

**Jenkins, Niall (deceased)**, late of 10 Demesne, Longford, Co Longford; who died on 15 February 2011. Would any person having knowledge of a will made by the above-named deceased please contact Dillon Eustace Solicitors, 33 Sir John Rogerson's Quay, Dublin 2; tel: 01 667 0022, email: paul.eustace@dilloneustace.ie

**Kidd, Bridget (deceased)**, late of 136 Edenmore Avenue, Raheny, Dublin 5, who died on 19 April 2013. Would any person having knowledge of a will made by the

above-named deceased please contact Fiachra Baynes at Baynes & Company, Solicitors, 77 Benburb Street, Dublin 7; tel: 01 671 2384 or 086 869 2787, email: baynesco@eircom.net

**McDonagh Martin V (deceased)**, late of 26 Old County Road, Crumlin, Dublin 12. Would any person having knowledge of any will made by the above-named deceased, who died on 23 January 2013, please contact Cormac McCarthy, Solicitors, Swangate, Athenry, Co Galway; tel: 091 875 111, email: admin@mccarthsolicitors.ie

**McGoff, Colm (deceased)**, bachelor farmer, formerly of Tubbermore, Crossmolina, Co Mayo, Ireland. Would any person having knowledge of a will executed by the above-named deceased, who died on 11 April 2002, please contact John F Walsh of Brady McGreevy Walsh, Solicitors, 86/88 Lower Leeson Street, Dublin 2; tel: 01 661 8001/2, fax: 01 676 1730, email: info@bmcgw.ie

**McGoff, Brendan (deceased)**, bachelor farmer, formerly of Tubbermore, Crossmolina, Co Mayo, Ireland. Would any person having knowledge of a will executed by the above-named deceased, who died on 10 April 2013, please contact John F Walsh of Brady McGreevy Walsh, Solicitors, 86/88 Lower Leeson Street, Dublin 2; tel: 01 661 8001/2, fax: 01 676 1730, email: info@bmcgw.ie

**Mullins, Esther (Betty) (deceased)**, late of 1 Clonsilla Park, Blanchardstown, Dublin 15. Would any person having any knowledge of a will made by the above-named deceased please contact McDonnell & Company, Solicitors, Suite 1, Parkside House, Main Street, Castleknock, Dublin 15; tel: 01 822 0868, fax: 01 821 7006, email: info@mcdonnell-solicitors.ie

**O'Reilly, John Gerard (deceased)**, late of Verard, 2 Adare Villas, Highfield Avenue, College Road, Cork. Would any person having knowledge of a will made by the above-named deceased, who died in Cork University Hospital, please contact Niall Colgan & Co, Solicitors, First Floor, 20 South Mall, Cork; tel: 021 422 2022, email: niall@colgansolicitors.com

**Varden, Patrick Joseph (otherwise Patrick Joseph Varden Senior) (deceased)**, late of The Square, Newmarket-on-Fergus, Co Clare. Would any person having knowledge of a will made by the above-named deceased, who died on 25 January 2012, please contact Crimmins Howard Solicitors, Dolmen House, Shannon, Co Clare; DX174001 Shannon; tel: 061 361 088, fax: 061 361 001, email: rccrimmins@crimminshoward.ie

**Wren, John, also known as Sean Wren (deceased)**, late of Milford Care Centre, Limerick, 28 Fairgreen, Limerick, 27 Clifton Road, Wokingham, Berkshire, RG41 1NL, England, and 113 Fairbridge

Road, London N19, who died 30 May 2013. Would any person having knowledge of a will made by the above-mentioned deceased, or documents in relation to the late John Wren, please contact **box no: 01/07/13**

## TITLE DEEDS

**In the matter of the *Landlord and Tenant Acts 1967-2005* and in particular the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by OCS Properties Limited, having its registered office at Fitzwilton House, Wilton Place, Dublin 2, relating to the premises known or formerly known as no 23 Lower O'Connell Street (which now forms part of Clerys Department Store) in the parish of Saint Thomas and city of Dublin**

Any person having any interest in the fee simple estate or any intermediate interest or interests in all and singular the hereditaments and premises known or formerly known as no 23 Lower O'Connell Street (which now forms part of Clerys Department Store), in the parish of Saint Thomas and city of Dublin, previously held under a lease dated 25 February 1806 from Luke Duff to Mathew Griffith for a term of 29 years from 25 March 1806, renewable every 31 years for 200 years from 25 March 1806, subject to the subsequently adjusted yearly rent of £88.4s.6d (now €112.02), the last renewal of which was a lease dated 14 July 1934 for 31 years from 25 March

## RATES

## Professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €147 (incl VAT at 23%)
- **Title deeds** – €294 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €147 (incl VAT at 23%)

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 Aug/Sept *Gazette*: 21 August 2013. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)



## NOTICES

1928 made between Charles Ryan, Alice Stephenson, John Phillips Purcell McDonnell, Randal Vivian McDonnell, Patrick McDonnell, Arthur Edward Cronin, Mary H Cronin and Christina M Burke to Clery and Company Limited, subject to the said since adjusted yearly rent of £88.4s.6d.

Take notice that OCS Properties Limited, being the company now holding the said property as a yearly tenant since the expiration of the said renewal lease dated 14 July 1934, intends to apply to the county registrar for the city of Dublin for the acquisition of the fee simple estate and any intermediate interests or interests in the said property, and any party claiming that they hold the fee simple or any such 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 OCS Properties Limited 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 for 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 in the said property are unknown and unascertained.

*Date: 5 July 2013*

*Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2*

In the matter of the *Landlord and Tenant Acts 1967-2005* and in particular the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by OCS Properties Limited, whose registered office is at Fitzwilton House, Wilton Place, Dublin 2, relating to the premises known or formerly known as no 24 Lower O'Connell Street (now forming part of Clerys Department Store), in the parish of Saint Thomas and city of Dublin

Any person having any interest in the fee simple estate or any intermediate interest or interests in all and singular the hereditaments and premises known or formerly known as no 24 Lower O'Connell Street (now forming part of Clerys Department Store), in the parish of Saint Thomas and city of Dublin, previously held under a lease dated 25 February 1806 from Luke Duff to Thomas Glover for a term of 29 years from 25 March 1806, renewable every 31 years for 200 years from 25 March 1806, subject to the subsequently adjusted yearly rent of £88.4s.6d (now €112.02), the last renewal of which was a lease dated 14 July 1934 for 31 years from 25 March 1928 made between Charles Ryan, Alice Stephenson, John Phillips Purcell McDonnell, Randal Vivian McDonnell, Patrick McDonnell, Arthur Edward Cronin, Mary H Cronin and Christina M Burke to Clery and Company Limited, subject to the said subsequently adjusted yearly rent of £88.4s.6d.

Take notice that OCS Properties Limited, being the company now holding the said property as a

yearly tenant since the expiration of the said renewal lease dated 14 July 1934, intends to apply to the county registrar for the city of Dublin for the acquisition of the fee simple estate and any intermediate interest or interests in the said property, and any party claiming that they hold the fee simple or any such 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 OCS Properties Limited 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 for 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 in the said property are unknown and unascertained.

*Date: 5 July 2013*

*Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2*

**Is your client interested in selling or buying a 7-day liquor licence?**

**If so, contact Liquor Licence Transfers**

**Contact  
0404 42832**

**SOLICITOR REQUIRED TO TAKE ON PRO BONO CASE AGAINST THE HSE**

We are elderly parents of a disabled man who is not receiving the necessary services and care as detailed in his care plan. His is a complex case and the HSE has only a skeleton service now with poor management and coordination and no clinical expertise in his complex needs.

**Contact Mary at 087 222 0386 or email [mt\\_farrell@hotmail.com](mailto:mt_farrell@hotmail.com)**



- Specialist Surveillance
- Tracing Subjects for Clients
- Supporting Litigation with Profiling & Lifestyle Information

Celebrating

**20**  
Years in 2014

**Address:**

TMG Corporate Services, P.O. Box 12117, Fonthill, Dublin 22, Republic of Ireland.

**Website & Email:**

[www.themediatorgroup.org](http://www.themediatorgroup.org)  
[sales@themediatorgroup.org](mailto:sales@themediatorgroup.org)

**Phone number:**

+353-(0)1-7759508  
+353-(0)1-7759507

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

## Advice to mothers-in-law when making a will

## Dear Solicitor

I have appointed my son as executor of my will as he is devoted to me. However, I am concerned that he has fallen under the influence of my daughter-in-law who has asked me if I had any objection to a 'cardboard coffin'.

Is there any legal obligation on the executor not to be too cheap with the funeral arrangements?

Worried Mother

## Dear Worried Mother

You are right to be concerned; I understand that Edith Piaf's mother was put out with the trash.

You could express a wish in your will for either cremation or burial but usually that does not bind the executor.

Whereas your will makes specific directions for the disposal of your money and other assets, your body is not really property as such, and therefore it is up to your executor as to how it should be disposed of, within reason. Health



departments and courts can, in certain circumstances, deter some of the more enthusiastic means of disposal favoured by daughters-in-law, such as 'sky burial'.\*

However, careful wording of the will can alleviate some of your concerns. A clause such as "I leave \$5,000 to a donkey sanctuary unless I am buried in a solid oak coffin" should suffice. It does not need to be oak and can be any other material, although I would caution against any precious metals, for example, gold or silver,

as even a clause specifying "and remains there" can be ignored.

I find that once this method is explained to clients, even the most conservative life can be celebrated with professional mourners, a horse-drawn hearse, or apologies read out by certain relatives at the graveside.

Finally, a court would find that, as executor, this is your son's decision alone and your daughter-in-law should make that quite clear to him.

JF

\*A funerary practice in Tibet wherein a human corpse is incised in certain locations and placed on a mountaintop, exposing it to the elements and animals – especially predatory birds.

(Extract from John Fytit's International Legal Problem Page. With thanks to Paul Brennan – author of The Law is an Ass ... Make Sure it Doesn't Bite Yours! – for his permission to reproduce this extract).

## Flight of fancy

An airliner was experiencing engine trouble, so the pilot instructed the cabin crew to have the passengers take their seats and get prepared for an emergency landing.

A few minutes later, the pilot asked the flight attendants if everyone was buckled in and ready.

"All set back here, captain," came the reply, "except the lawyers are still going around passing out business cards."

(Thanks to Richard Hammond of Hammond Good, Mallow, for this one!)

## 'Landlords from hell' get four years – rent-free

A California couple described by prosecutors as "landlords from hell" conducted a campaign of terror to evict existing tenants from a six-flat San Francisco investment property so that they could repossess it. They have accepted a felony plea bargain.

Kip Macy (38), a former software developer, and his wife, Nicole (37) are each expected to be sentenced to 52 months in August. They pleaded guilty to residential burglary, stalking and attempted grand theft in the felony case, after being extradited last month from Italy, according to ABC News 7 and the San Francisco Examiner.

In order to try to force their tenants to move out, prosecutors say the illegal techniques they used



included sawing out portions of the floor in occupied units and pouring ammonia over personal belongings.

Reminiscent of a scene from a Tom & Jerry cartoon, tenant Scott Morrow actually witnessed the blade of a saw cutting a hole in the

floor from beneath his living room. Prosecutor Kelly Burke said: "At that point his friend took a hammer and hammered the blade of the saw flush with the floor so it would stop sawing!"

Prosecutors say Nicole Macy set up an email account in Morrow's name and sent a message attempting to fire the lawyer representing him in a civil eviction case. She is also accused by prosecutors of sending the email in Morrow's name to the couple's own counsel, making threats against the attorney's children. That resulted in a restraining order being issued against Morrow, the San Francisco Chronicle noted in 2008.

The couple were charged that year and fled the US. ©



## LK Shields has an exciting opportunity for an experienced commercial litigator to join our expanding team of 22 litigation solicitors.

We have a highly regarded and market leading practice and are looking for a passionate solicitor with a proven record of team skills, excellence and success.

We invite applications from suitably experienced senior associates.

For more information, please contact:

Edmund Butler | E: [ebutler@lkshields.ie](mailto:ebutler@lkshields.ie)

To apply, please email: [recruitment@lkshields.ie](mailto:recruitment@lkshields.ie)

**"A force in the corporate sphere."**  
— *Chambers Europe*

40 Upper Mount Street  
Dublin 2

T: +353 1 661 0866  
F: +353 1 661 0883

[info@lkshields.ie](mailto:info@lkshields.ie)  
[www.lkshields.ie](http://www.lkshields.ie)

## POSITION AVAILABLE

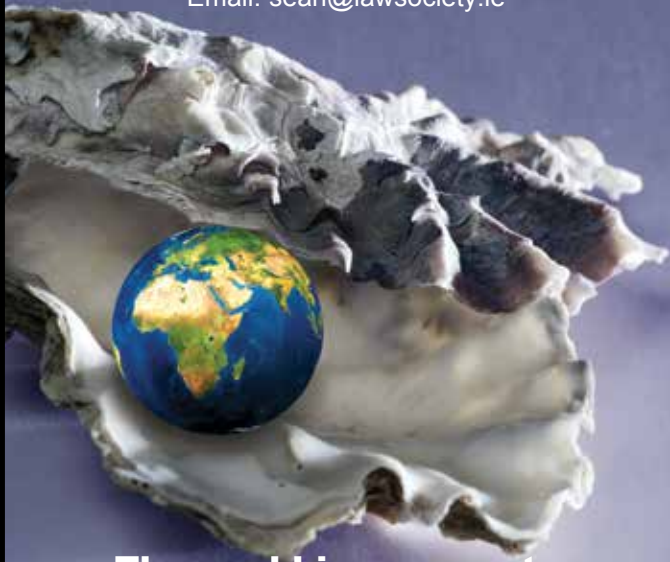
**Want to place your recruitment advertisement here?**

Contact **Seán Ó hÓisín**

Tel: 01 8375018

Mobile: 086 8117116

Email: [sean@lawsociety.ie](mailto:sean@lawsociety.ie)



**The world is your oyster**



THOMSON REUTERS

**ROUND HALL**

Round Hall has a vacancy for a Legal Editor in their Dublin office. Round Hall is part of Thomson Reuters which is the world's leading source of intelligent information for businesses and professionals.

The successful candidate will have editorial responsibility for a wide range of legal journals, case reports, books, looseleaves, and online publications reporting to The Head of Editorial and Online Content Operations (Ireland).

**Closing Date is 5pm on  
Friday the 12th of July 2013**

Email your CV to  
[aideen.oregan@thomsonreuters.com](mailto:aideen.oregan@thomsonreuters.com)

# *New Openings*



## *Commercial Litigation – Associate*

Our client, a highly respected legal practice is searching for a very strong Commercial Litigation solicitor. You will have excellent academic qualifications and have trained and worked with a leading law firm with experience of difficult and complex commercial litigation. The client base ranges from individuals and domestic financial institutions to international plcs.

This represents an exceptional career opportunity for the successful candidate who will be working with one of the strongest teams in private practice. Please note that this is not a debt recovery, professional indemnity or personal injury position.

## *Commercial Property – Associate*

Our client is a leading law firm with an excellent Commercial Property practice. They require a first rate practitioner who has trained and worked with a top legal practice and specialised in this field since qualification. Please contact Michael Benson for more details.

**Please visit our website for opportunities from Assistant to Partner level in the following practice areas:**

- Asset Finance
- Asset Management & Investment Funds
- Banking
- Corporate Insurance
- Financial Services Regulation & Compliance
- Tax

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.  
T +353 (0) 1 670 3997 E [mbenson@benasso.com](mailto:mbenson@benasso.com)