

GAZETTE

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The 1995 *Civil Legal Aid Act* was supposed to be the great leap forward for legal aid, but is the new service really any better than the old non-statutory scheme? Mary Johnson argues that, 18 years on, the song remains the same



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A simple computer problem may have the potential to put hundreds of Irish and UK companies out of business, but how many managers are fully aware of the problem? Jacqui Woodhouse reports



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The days are long gone when you could qualify as a solicitor and stay in one practice until you retired. Increasing competition is leading many solicitors to consider careers outside private practice. Catherine Dolan talks to some who have made the move

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Moving forward

Welcome to first issue of the new *Law Society Gazette*. Since it was first published in 1907, the *Gazette* has been the Law Society's principal means of communication with its members and, indeed, in latter times, to a much wider audience.

In recent years it has been lovingly put together by the Editorial Board, led by the present chairman Dr Eamonn Hall, John Buckley, John Costello, Michael O'Mahony, Junior Vice President Elma Lynch, and the Director General, Ken Murphy. Until recently, Mary Kinsella was the acting editor. Without their care and devotion – and, indeed, the many long and tedious hours spent assembling each issue – the *Gazette* would have slowly died.

A *Gazette* Review Group was established last year in tandem with the Editorial Board. It was unanimously felt that in order to go forward, we needed professional guidance and a professional editor. This, I am pleased to say, we found in the person of Conal O'Boyle, the present Editor and the man responsible for the relaunching of the *Gazette* in its new format.

Conal is an accomplished journalist who acquired his expertise in London and – where else? – but Cork. He was responsible for the award-winning *Certified Accountant* magazine which has an international circulation of 60,000. He has brought his editorial skills to the Law Society and the result is the new-look magazine that you see today.

The new format has been carefully thought-out by Conal, and it has the wholehearted approval of the new Editorial Board. The magazine will be more tightly structured than before and will aim to achieve a good bal-



ance between fact and opinion, news and features. The new *Briefing* section is designed to meet members' professional needs – and to keep them informed about the work that the Society is doing on their behalf. The mixture of general features and legal articles will hopefully keep you both informed and entertained. All in all, I am confident that the new *Gazette* will project an image of energy and imagination for the solicitor's profession as we head towards a new millennium.

The *Gazette* is *your* magazine and must reflect your views and opinions. Since the Editor cannot make these up, you must send them to him. I know he will welcome your views on the direction of the new *Gazette* and your suggestions for improving its format or content. Indeed, we would like more members of the profession to submit material to the *Gazette* – articles, obituaries, pictures, bar news, comment and, of course, letters.

Finally, thanks are due to everyone working on the *Gazette*, but particularly to Nuala Redmond who has worked so closely with Conal to come up with a striking design for the new magazine.

It gives me great pleasure to congratulate Conal O'Boyle and the new Editorial Board who have relaunched the *Gazette*, to thank them for their work in the past, to wish them well in the future, and to encourage them to make the *Gazette* essential and interesting reading for the profession in the years to come.

Frank Daly
President

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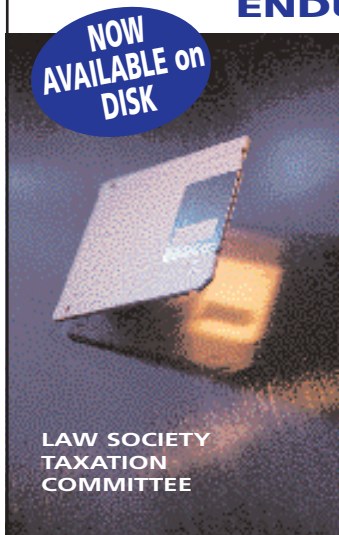
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Dr Eamonn Hall is the Chief Legal Officer of Telecom Eireann

Pravda and the new Gazette

appropriately named newspaper (meaning 'truth' in Russian), was founded by Lenin in 1912, five years after the first publication of the *Gazette*.

The Law Society coat of arms bears the motto *Veritas vincet* (let truth prevail). The *Gazette*, founded in 1907, was the *Pravda* of the Law Society. This was perfectly understandable: the *Gazette* reflected the official policy of the Society through rulings, practice directions and announcements. Now there is room for some dissent and criticism alongside the official pronouncements.

Whiff of advertising

The *Pravda* of the Law Society within memory of many solicitors makes fascinating reading. For example, over the years officialdom, through the pages of the *Gazette*, was preoccupied with the slightest whiff of advertising by solicitors. The arrival of television created great problems for the profession. The Council of the Society deliberated and issued its edict in the *Gazette* of October/November 1961. A solicitor was permitted to

participate in a radio programme on a non-legal subject using his own name 'but his professional occupation should not be disclosed'. In a radio broadcast on a legal subject, he (there were few women solicitors around) could be described as 'solicitor' but his anonymity must be preserved: his name could not be disclosed.

No solicitor was permitted to participate in a television programme on a legal subject without the permission of the Law Society. Such permission, 'if given', was conditional on 'complete anonymity' being preserved 'both as regards the name of the solicitor and his professional occupation'. A necessary pre-condition before any permission would be entertained allowing a solicitor to appear on television was the delivery of an 'undertaking by the solicitor not to accept any new client whom he knows or had reasonable ground for thinking [note 'thinking' as distinct from 'knowing'] may have come to him as a result of the TV broadcast'.

Seven years later, in December 1968, the *Gazette* ran a piece head-

lined 'Lectures, articles, radio and television broadcasting by solicitors'. In this article the Council, while promising an element of liberalisation, emphasised that 'the well-established prohibition against any activity on the part of a solicitor for the purposes of self-advertisement and the attraction of business is unaltered'.

The *Golden Pages* classified telephone directory arrived in Ireland in 1969. In the *Gazette* of February 1969, under the heading of 'Classified telephone directory', the Council of the Society advised members not to have 'their names listed in bold type in a classified directory'. To do so would 'in the opinion of the Council, amount to advertising and unfair attraction of business, unless adopted by the whole profession'. The needs of the profession and their clients would be adequately served, according to the Council, if members and firms used 'the ordinary small type'.

Golden age of humour?

There was some humour in the official *Gazette*. For example, the March 1967 issue ran a piece by an anonymous contributor giving eight reasons justifying the recruitment of an assistant solicitor. Pressure of business – that is, necessary attendance at race meetings – was one reason! Another justification cited the 'early bird catching the worm' rule, and the principal's inability to make the office before 10.30am. The opportunity to act as teacher to a 'disciple' appeared attractive; the fact that 'the disciple' was more familiar with 'the tablets of the law' showed that he had no practical experience'. A 'more youthful lackey', the display of a business acumen 'for slave labour' and the accumulation of files 'on a long finger' necessitated 'a fall guy'. Now, 32 years later, this piece would be censured for obvious reasons!

The history of the *Gazette* is the history of law, lawyers and the Law Society for the past 91 years. May the new magazine thrive and endeavour to inform and entertain its readers.

G

A new president, Frank Daly, a new editor, Conal O'Boyle, and a new *Gazette*; all three came to the fore in late 1996. This new-look *Gazette* marks the fruits of their labours and of other reformers in the Law Society. Coincidentally in 1996, *Pravda*, the once powerful mouthpiece of the Soviet Communist Party, was shut down – despite some bitter protests. (The title *Pravda* may, however, survive on a diet of crime and sex!)

Pravda, the world's most inap-

A note from the Editor

Welcome to the new-look *Law Society Gazette*. I hope you enjoy the changes we have made to the magazine: everything we have done – from the look of the pages to the tone and content of each article – has been designed to keep you entertained and informed. Doubtless such a radical overhaul will not be everyone's cup of tea, but magazines must move with the times. I believe the new *Gazette* projects the right image for an increasingly young and dynamic profession.

Although I will be commissioning most of the editorial material that appears in the *Gazette*, I am always happy to consider any article for possible publication. A good starting point for readers who feel they might like to write for the magazine would be to drop me a line at Blackhall Place, with a brief



Conal O'Boyle

summary of what they have in mind to write about.

In keeping with the cover story of this month's issue, all articles should be submitted on a 3.5 inch disk in Word, WordPerfect, Mac or ASCII formats. That will save us from having to retype the whole arti-

cle and very much improve your chances of publication!

As far as editorial policy is concerned, my main aim is to ensure that people read the magazine – and that when they do, they understand what they read. That means jargon is out and plain English is in. All articles will be edited for sense, style and length (1,500-1,750 words is an ideal length for an article: academic treatises, complete with footnotes, should be saved for text books).

We will try to make sure that we keep up the standard we have set ourselves in this first issue – but if we fail, we expect you to let us know. This is your magazine. If you have news, views or you're just plain contrary – we want to hear from you.

Enjoy your reading!

Conal O'Boyle, Editor



Jennifer Guinness is chairwoman of Victim Support

Time to make crime pay

Victim Support was set up to support and help the victims of crime. As its chairperson, I am only too aware of how inadequate the current system of State compensation is. Since 1986, the Criminal Injuries Compensation Tribunal has been barred from awarding compensation for pain or suffering or for property loss or damage to victims. At that time, the reasons given for changing the system were that the system was being abused, and that it was costing too much.

There was not, and is not to my knowledge, any evidence to support the contention that the system was abused. Furthermore, the excuses used to justify changing the scheme are an insult to the victims of crime who, it must be remembered, are one of the most vulnerable groups in our society.

Victim Support, along with the Law Society's sub-committee on victims of crime under the chairmanship of Keenan Johnson, has met the Minister for Justice and made detailed submissions to her Department, seeking the re-introduction of some form of compensation for pain and suffering. The

sub-committee has suggested that its proposals could be funded from court fines and any monies recovered from illegal activities. It has also argued that the monies recovered by the Criminal Assets Bureau reflect the spoils of crime and, as such, are both morally and legally the property of crime victims.

I accept that the level of compensation for pain and suffering payable to crime victims cannot match that available under civil law, but a modest payment for pain and suffering is important, particularly to the victim, as it constitutes a recognition of their plight by the State and the judicial system. It is my experience that, in many cases, the failure to award compensation to the victim is adding further to their suffering and trauma.

There are hundreds of cases which reflect the injustice perpetuated by the present system. I am reminded of a recent case where an elderly gentleman was set upon by three thieves when he returned from evening mass. His property was damaged to the value of £300 and he needed hospital treatment for multiple bruising and stitches

for a gash to his right eye. The amount of compensation paid by the Criminal Compensation Tribunal was £140. The perpetrators of this crime were never caught and this gentleman has to live with the traumatic consequences of his ordeal for the rest of his life. The shabby way in which the State has treated him has exacerbated his unfortunate plight.

European victims' week later this month is an appropriate time to press the Government to act on the submissions that have been made by the Law Society sub-committee, and I call on the Minister to do so. Moreover, the recent establishment of the Criminal Assets Bureau means that the scheme proposed by the sub-committee could be self-financing.

The plight of the victim needs to be recognised and acknowledged by our politicians and lawmakers as a matter of urgency. The members of Victim Support are deeply indebted to the Law Society and to its sub-committee members, Keenan Johnson, Finnoula Breen-Walsh and Michelle O'Boyle, for their efforts and their support. **G**

CROSS-EXAMINATION

Whatever possessed you to become a lawyer?

Never admit possession. Hypothetically, my late father always impressed upon me that in general practice you might never get rich but you would never be bored. I must say that I am glad to have followed his example.

Which living person do you most admire?

Nelson Mandela – only a litigator could be that patient.

What's the best piece of advice you ever got?

A lawyer who acts for himself has a fool for a client has been immeasurably more practical than *Trust X bank – your friend for life*.

How do you cope with stress?

Allocating myself a treat after a problem file usually works well. More generally, Dundalk RFC, Doheny and Nesbitt (or similar) and good company.

Which case do you wish you had been involved in?

Whitby v Mitchell (1890). This would represent the only realistic prospect of my understanding the rule against perpetuities.

What's your favourite piece of music?

Anything by Elvis Costello (as my neighbours can corroborate).

If you could make one change to the legal system, what would it be?

The court listing system – to introduce incentives for netting issues, to reduce court lists full of cases that could be resolved if minds were applied.



James MacGuill is the principal of MacGuill and Company in Dundalk. He qualified in 1986 and is chairman of the Law Society's Parliamentary & Law Reform and Professional Guidance committees. He obviously doesn't watch enough TV.

What would improve the quality of your life?

To bridge the *achievement gap* between midnight resolutions and unread diet sheets.

Do you think *Coronation Street* has got worse since Raquel left?

Why? Is it on more often?

If you weren't doing what you do, what would you like to work at?

I would like to spend three months as a judge – on the understanding that all serving judges were returned to practice with difficult clients or cases – I would then retire to do some teaching in a developing country, with satellite reception on the beach to watch the Five Nations. **G**

The media and the law

The laws that affect the media are a mess. They fail to protect adequately the rights of the citizen to his or her good name and privacy; they unduly restrict the media in reporting and commenting on public affairs; and the libel laws are confused and uncertain.

The most notable failure of the law to protect a person's reputation is the refusal to broaden the scope of civil legal aid to include defamation actions. This would seem to conflict with the constitutional requirement on the State 'by its laws [to] protect as best it may from unjust attack and, in the case of injustice done, vindicate ... the good name ... of every citizen' (Article 40.3.2). The exclusion of defamation actions from the district court where procedures are less cumbersome and costs considerably less than in the higher courts would also seem to be constitutionally questionable.

There must also be doubt that the present laws on defamation actually do 'protect as best (the State) may' and 'vindicate' the good name of every citizen. Apart from the 'chilling effect' of the defamation laws, the best they do is to compensate citizens for unjust attacks on their reputations and only to that questionable degree is there vindication.

Privacy is protected only obliquely in the Irish legal system, through Article 40.3.1 of the Constitution under one of the unspecified rights. There is no legislative basis for the protection of



Vincent Browne is a columnist with the *Irish Times* and the *Sunday Times*, and he presents a current affairs discussion programme on week nights on RTE Radio One. He is also a final year student at the Kings Inns

the right to privacy and that, arguably, could be the cause of an action against the State on the grounds that Article 40.3.1 requires the State to 'defend and vindicate the personal rights of the citizen', subject only to the qualification 'as far as practicable'.

As for the libel laws themselves, there are several problems. It is not exactly clear what constitutes defamation: for instance, is the test that one's reputation has been damaged in the eyes of 'right thinking people' (and, if so, who are 'right thinking people'?) or in the eyes of the public at large? There is even a lack of clarity over what constitutes defamation because even mild ridicule has been held to be defamatory.

The libel laws also unduly restrict the media from reporting and commenting on public issues, thereby keeping out of the public domain information that the public needs to make informed deci-

sions as self-governing participants in a republican democracy.

Under the Constitution (Article 15. 12-13), TDs and senators have absolute privilege for anything said by them in the Houses of the Oireachtas and anything published by these Houses. That parliamentary privilege, which had its foundation in common law, is designed to ensure the unfettered discussion of public issues. Recently, the Oireachtas has enacted legislation affording privilege to other participants in Oireachtas enquiries.

Given that background, it is not clear why the Oireachtas refuses to allow a lesser privilege – qualified privilege – to the general public for the free discussion of public affairs.

Indeed, arguably, in spite of the heavily qualified guarantees of press freedom, under Article 40.6.1.1 of the Constitution there is a constitutional entitlement to

qualified privilege. In his book *Irish law on defamation*, Marc McDonald writes: 'If the US Supreme Court could (in the case *New York Times v Sullivan*) consider that the importance of free speech and a free press, in a democracy, required the recognition of a constitutional privilege for the media against liability in defamation ... It can be suggested that our Constitution, too, recognises a privileged occasion when the media publishes on a matter of public concern involving politicians, public officials or public figures' (page 168). There is no realistic prospect of legislative change on defamation, notwithstanding the recommendations of the Law Reform Commission. Change can come about only through judicial intervention.

Already – and this appears to be largely unknown to some lawyers who advise the media – the High Court and the Supreme Court have effected hugely significant changes to the rules governing *sub judice* and contempt of court (notably in two cases: *Desmond v Glackin* [1993 3IR 1] and a 1994 Supreme Court case '*Z*' v the Director of Public Prosecutions).

Given an appropriate case, it is likely that the Supreme Court would intervene to clarify the law and, conceivably, admonish the Oireachtas for its failure to institute the legislative enactments to properly protect and vindicate the rights of the citizen. **G**

LETTERS

Hospital charges under the microscope

From: Pat O'Connor,
P O'Connor & Son, Mayo

With reference to Keenan Johnson's article on hospital charges (*Gazette*, November 1996, p333), I agree that some uncertainty does appear to exist in the minds of our colleagues and members of the Bar when dealing with the settlement of personal injury actions involving health board charges.

Is it not the case that three High Court decisions have been given which have clearly disallowed the formula used by health boards, at the suggestion of the Department of Health, in arriving at the charges to be made to victims of road traffic accidents? That being the case, I am of the view that the law is quite certain and until changed – whether by way of Supreme Court decision or legislative action – need not be of such concern to practi-

tioners and their clients as is sometimes suggested.

The law has been clearly established by the High Court. Any change that might come about whether on appeal to the Supreme Court or otherwise cannot have retrospective effect.

I have a letter from one health board which states, *inter alia*, that the health board 'has agreed to accept the current High Court rulings of £100 per day in respect of

accommodation and treatment for hospitalisation arising from road traffic accidents'.

Practitioners might also be interested to note that some health boards have sought to recover the 'Health Act' charges in addition to private and semi-private charges. This is clearly a duplication of charging and was so held in the District Court decision of *Southern Health Board v Duffy* (January 1996).

BRIEFLY

Recent Revenue publications

The Revenue has just issued a useful set of leaflets as a guide to those setting up and running small businesses.



They cover such areas as starting in business, VAT for small businesses, PAYE, PRSI for small employers, and Tax reliefs. For further information, contact the Revenue Forms & Leaflets Service on (tel) 01 8780100.

New CAT book

The Law Society has published a new book on capital acquisitions tax. The book, edited by solicitor Brian Bohan, tax director with Ernst & Young, is called *Capital acquisitions tax consolidation* and costs £32.50 plus £3 p&p (DX members £1). Copies are available from the Law Society, Blackhall Place, Dublin 7.

Lay watchdog for Bar Council

The UK Bar Council has appointed a Major General in the British army as its lay Complaints Commissioner. General Michael Scott will take up the stg£60,000 post in April, when the new system comes into force. As Complaints Commissioner, he will look into all complaints against barristers lodged with the Bar Council.

New working group may lead to more solicitor judges

Although no official announcement has been made about it, shortly before Christmas the Minister for Justice, Nora Owen, set up a working group with the following terms of reference: 'to consider and make recommendations to the Minister for Justice on the question of qualifications for appointment as judges of the High and Supreme Courts'.

The working group has already met twice and a third meeting is scheduled near the end of February.

In December 1995, the Minister gave an undertaking to the Dail Committee on Legislation and Security that she would establish such a working group. The move followed the Dail Committee's unanimous cross-party support for TD Alan Shatter's amendment to the *Courts and Court Officers Bill* which would have made solicitors eligible for direct appointment to the High Court and Supreme Court in addition to the Circuit Court. At the time, the Law Society's Director General Ken Murphy described it as 'part of a



Ken Murphy: 'Open access'

political compromise' and regretted the Government was only prepared to partly open access to the bench for solicitors.

The new working group is chaired by Dr Colm O hEocha, former President of UCG, and the other members are: (*Law Society nominees*) Ken Murphy, Director General, Geraldine Clarke, Ernest Cantillon; (*Bar Council nominees*) Garrett Cooney SC, Mary Finlay SC, Turlough O'Donnell BL; Tom O'Malley (Law Faculty UCG); William Fagan (Director of Consumer Affairs); Pat Massey (Competition Authority); Dr Valerie Richardson (Dept of Social Policy and Social Work, UCD); Tom Quigley (retired, Dept of Justice); Edith Wynne; and Kevin Condon (Dept of Justice), who will act as secretary.

New share-dealing service for members

Solicitors Financial Services has reached agreement with stockbrokers FEXCO to provide a new cut-price valuation and share-dealing service for solicitors. The valuation service includes *ad hoc* valuations or probate valuations, and FEXCO

promises a guaranteed turnaround time. The dealing service covers the sale and purchase of Irish and UK equities.

Further information on the new service is available on (tel) 01 6623758 or by contacting FEXCO at 12 Ely Place, Dublin 2.

Solicitors asked to waive fees for charity

WillAid 1997, the charity fund-raising initiative, kicks off with a launch party at the Law Society's Blackhall Place premises on Monday 10 February. During the campaign, now in its third year, solicitors are asked to waive their fees and to make wills for WillAid participants who, in turn, will make a recommended donation of £40 for a single will and £60 for matching wills.

WillAid 1997 runs from 10-24

February, and the initiative is endorsed by the Law Society. The four charities set to benefit from the scheme are Actionaid, Gorta, Oxfam and Rehab. Local launches will be held in Cork on Wednesday 12 February and in Galway on 14 February.



Encyclopaedia reader offer

Encyclopaedia Britannica is offering Law Society members a special 15% group discount rate on its new Britannica CD-ROM encyclopaedia and on its 32-volume print edition. Further information on the offer can be obtained from Neasa McCarthy on 01 474 4477.

Maternity rights handbook launched

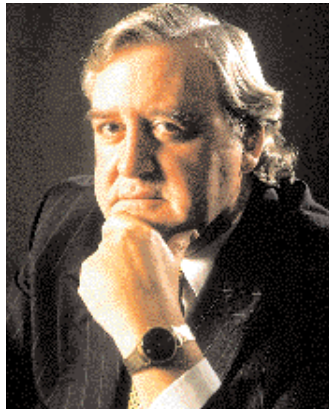
A new user's guide to the *Maternity Protection Act, 1994* has been launched by the Coolock Community Law Centre and the Free Legal Advice Centres. The *Maternity rights handbook* outlines the forms of leave available, gives sample letters of notifications that a woman is required to provide to her employer as well as basic details of social welfare entitlements and qualifications. Further information about the booklet can be obtained from Paul Joyce at FLAC (tel: 679 4239) or Dave Ellis at the CCLC (tel: 847 7804).

New rules bar solicitors from acting for builder and buyer

New regulations barring solicitors from acting for both the builder and purchaser of new houses were signed by the President on 29 January 1997. The new rules mean that, from 1 April 1997, any solicitor acting for both parties will be guilty of misconduct.

The Society's tough line is the result of growing concern that the practice of acting for both clients was becoming too widespread and might lead to a conflict of interest.

Commenting on the new regulations, Law Society President Frank Daly described the move as both necessary and desirable. 'The Society has always made it clear that acting for both builders and



Frank Daly: 'The risk of conflict of interest was just too great'

purchasers flew in the face of best practice, even if it might save the clients some money', he said. 'The risk of a conflict of interest was just too great'.

The *Solicitors (Practice, Conduct and Discipline) Regulations, 1997* come into force from 1 April 1997. Section 4 of the regulations states that: *A solicitor shall not act for both vendor and purchaser in the sale and purchase for value of a newly constructed residential unit or residential unit in course of construction, if the vendor is the builder of that unit, or is associated with the builder of that unit'.*

The full text of the Statutory Instrument will be published in the next issue of the *Gazette*. In the meantime, anyone seeking further information about the new regulations should contact Therese Clarke at the Law Society on 671 0711.

Garda visits to solicitors' offices

Over recent months a number of solicitors' offices have been visited by members of the Garda Síochána, who are conducting investigations pursuant to various powers conferred by the recent 'anti-crime' legislation.

The Law Society is anxious to determine the nature and extent of these visits, the exact legislative powers being invoked and the outcome of the visits. The Society will then be in a position to assess the full implications of the powers being invoked and the legal and professional obligations of members in the particular circumstances.

Any member of the profession who has been, or is, visited by a member of the Garda Síochána is asked to contact either Ken Murphy or Mary Keane at the Society on a confidential basis.

Deputy Directors General



Mary Keane



PJ Connolly

At its December meeting, the Law Society Council appointed PJ Connolly and Mary Keane as Deputy Directors General. The proposal stems from the *Report of the Review Working Group* which was approved by the membership in March 1996. In the absence of the Director General, PJ Connolly will deputise in relation to matters

arising in the regulatory/professional practice areas of the Society's activities, while Mary Keane will deputise in relation to matters arising in all other areas of the Society's activities.

PJ Connolly will continue to act as Registrar of Solicitors and Director of Professional Practice. Mary Keane has also been appointed Director of Policy.

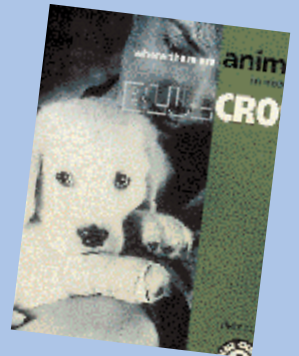
Compensation Fund payouts

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting in January 1997: Dermot Kavanagh, 2 Mary Street, New Ross, Co Wexford – £275; Francis G Costello, 51 Donnybrook Road, Donnybrook, Dublin 4 – £12,775.

BRIEFLY

Blue Cross issues legacy pack

The Blue Cross, the Dublin-based animal welfare society, has issued a new legacy information pack with the dual aims of getting people to make wills and to leave a bequest to the charity. The information pack can be obtained from the Blue Cross office at 8 Dartmouth Terrace, Ranelagh, Dublin 6 (01 497 1709).



Benevolent Association AGM

Notice is hereby given that the 133rd annual general meeting of the Solicitors' Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7, on Friday 18 April 1997 at 12 noon: to consider the annual report and accounts for the year ended 30 November 1996; to elect directors; and to deal with other matters appropriate to a general meeting.

Medical insurance discounts for members

BUPA, the British health insurer which recently entered the Irish health market, is offering solicitors and their staff a group discount of approximately 10%. VHI has been offering a 10% discount to members for a number of years. Further information about the schemes can be obtained from: BUPA Ireland, 12 Fitzwilliam Square, Dublin 2; and VHI, Group Scheme 467/2763, VHI House, Lower Abbey Street, Dublin 1.

Stamp duty and the Budget

The recent Budget increases in stamp duty are set out in the Revenue *Guidance note* included as an insert in this month's issue. Here, the Society's Taxation Committee looks at some of the implications of that change

The higher rates of duty (7%, 8% and 9%) apply to residential property and also to part residential property where the value of the residential element exceeds £150,000. 'Residential' does not necessarily mean 'luxury': conveyances on sale and gifts of property let in flats, bed and breakfasts, residential nursing homes etc are all capable of attracting the higher rates.

The 6% rate continues to apply to conveyances on sale of residential property where the contract was executed on or before 23 January 1997 and the conveyance has been executed by 31 March. In dealing with conveyances such as these, solicitors should consider

either retaining the contract with the title deeds or having the conveyance on sale adjudicated to confirm due stamping. This will avoid serious problems in the future.

Solicitors acting for clients with contracts such as these should take note of the disadvantageous position of their clients. Their clients may be literally exposed to blackmail because, if the vendors delay closing beyond 31 March, the client will have no option but to pay the higher rate. This has serious implications where there is an objection to the title or where some other issue relating to the contract is not in order.



Minister for Finance Ruairi Quinn:
Poorly thought-out provisions?

The provisions set out in the *Guidance note* for dealing with mixed property and other property

are poorly thought out and are bound to result in confusion. The rating test is crude, inaccurate and furthermore is not authorised by the Financial Resolution. There are many reasons why a building which has a legitimate use for non-residential purposes may not be recorded as such in the rate books for the previous year.

Solicitors acting for vendors of mixed property will now have to advise their clients on certificates of value which the vendors must supply to the Revenue under the Financial Resolution. This a new and unwelcome development, particularly as valuations of the kind required will in many cases be notoriously difficult to arrive at.

BUDGET 1997 CAT AND CGT CHANGES

Capital acquisitions tax (CAT)

Business relief. The relief in respect of business property transferred by gift or inheritance is being increased from 75% to 90% for all qualifying assets, provided these assets are retained in the business for a period of ten years or more after the transfer. This change will take effect from 23 January 1997.

Agricultural relief. The relief in respect of agricultural land, buildings, livestock and machinery transferred by gift or inheritance is also being increased from 75% to 90% for all qualifying assets, provided these assets are retained in the business for a period of ten years or more after the transfer. These changes will take effect from 23 January 1997.

Capital gains tax (CGT)

Reduced rate of CGT. The lower rate of CGT applying to gains realised by individuals on the disposal of ordinary shares in certain small and medium-sized trading companies or their holding companies is being reduced from 27% to 26% with effect from 6 April 1997. In order to qualify, shares must be unquoted at the date of acquisition, held for at least three years before disposal and they must be held in an Irish trading company with a market value not exceeding £25 million at the date of acquisition of the shares.

Capital gains tax/Corporation tax

Life assurance companies. The special tax rate for investment in life assurance companies, unit trusts and UCITS (Undertaking for

Collective Investment in Transferable Securities) is being reduced from 27% to 26% as a result of the reduction in the standard rate of income tax. The change will take effect from 6 April 1997.

Stamp duties

New rates. New houses or apartments with a floor area of 125 square metres or less are exempt from stamp duty. New houses or apartments with a floor area in excess of this are only subject to stamp duty on the greater of the site value and the construction costs. For a large new house or apartment to be liable to these new rates of stamp duty, the residential property would have to have a site value in excess of £150,000 or an aggregate value in excess of £600,000.

Mixed property. These new rates only apply to residential property. With regard to a mixed property, that is, a property which has both a residential and a non-residential element, only that part of the property which is residential will be liable to the new rates. For a mixed property to be liable to the new rates, the residential element of that property would have to be valued in excess of £150,000. The apportionment of the consideration between the residential and non-residential parts will be on a 'just and reasonable' basis.

These new rates will apply to the transfer of residential property on or after 23 January 1997, subject to certain transitional arrangements. For contracts signed on or before Budget day, the existing rate of duty will apply provided that the conveyance or transfer is executed before 1 April 1997.

The myth of the paperless office

Information technology has revolutionised the way we do business, and each new development is greeted as another step towards the mythical paperless office. But how realistic is this? And how far behind other professions are solicitors?

Kyran FitzGerald reports on how solicitors are getting to grips with IT



The day of the Luddite lawyer is drawing to a close. Every solicitor now recognises that, for better or worse, new technology is here to stay. But the acceptance rate varies considerably from firm to firm.

The smaller ones are often faced with severe financial and managerial constraints. Managing partners are fully stretched as it is. There is a strong temptation to put off any move to a networked office, with a terminal on every employee's desk.

For larger firms there are different problems in making the transition to the state-of-the-art office. The 'supertanker' organisations tend to take a long time to alter their course, and within these firms there tend to be many different departments and different computer systems. Changes are often introduced in a piecemeal fashion. Sheer size can lead to unwieldiness. But mistakes in selecting a system, when they occur, can be enormous.

Light years behind the United States

Firms in Britain and Ireland, at least until recently, have been light years behind the United States, where newly-qualified lawyers are expected to have a good working knowledge of computing. But now firms here are starting to invest heavily in sophisticated practice management systems designed to make financial, marketing and management information available to everybody working in the firm.

In Britain, over 100 firms have joined forces to negotiate discounts from software providers. And firms on both sides of the Irish sea have jumped on the Internet bandwagon, using the new service (at least initially) for advertising purposes. But some media-wise law firms have

gone further and are providing on-line 'hot news' pages for the general public over the Internet.

The key changes, however, are taking place within the office as firms install new networked desk-top systems allowing all fee-earners and support staff to access practice information on a common basis. Where a firm has more than one office, these offices or branches are also being linked.

In Manchester, one practice employing 200 people spent £500,000 on the installation of a pentium-based desk-top PC system for all its staff. In this case, fee-earners were given two and a half days' training while support staff were given four days. Plans to install an 'Intranet' internal electronic bulletin board are well underway.

Obviously, firms would be well advised to make full use of their investment in the available new technology. With this in mind, new assessment programmes have been developed to help firms measure how new systems perform or, rather, the performance of staff in getting the most out of those new systems.

The pace of change within law firms is being dictated in large part by the marketplace. The lawyer's ability to access vital facts at speed is becoming ever-more important as commercial clients, in particular, become more demanding and as cases become more complex. Great swathes of information on areas as diverse as European law and clinical practice are now available on disk or CD. During the Beef Tribunal, for example, the current Attorney General, Dermot Gleeson, then acting as counsel for the Goodman Group, stole a march on the competition by means of innovative information retrieval techniques, such as CD-ROM.

Frank Lanigan is a partner in a medium-sized firm based in Carlow, which employs six solicitors. The firm also has two solicitors in its Dublin office. Lanigan, a member of the Law Society's Technology Committee, says he first saw the potential of computers back in 1980. Having installed his first equipment, he began to act for legal IT specialists Star Computers. In 1988, he bought out his former client and now wears two hats, as lawyer and as a distributor of computer systems. Since 1989, there has been a screen on every desk in his law firm, and the system is now fully integrated. 'As yet, we are still one of the few firms in



of office

this position', he says. Lanigan believes that medium-sized firms often find it easier to adapt to new technology than their larger counterparts.

The new networked system has allowed accurate information to move freely through the organisation, increasing the scope for delegating legal work to non-qualified staff. 'People spend less time scurrying around looking for details', says Lanigan.

The firm is also now much leaner. Back in 1988, there were two members of support staff for every fee-earner. This ratio has now been reversed.

Danger of wasteful expenditure

Networking evens out the gaps in productivity between staff members, though many solicitors have been slow to adapt. According to Lanigan, 'Some solicitors still think that the computer is a glorified typewriter'.

Paul Errity works as systems manager with McCann FitzGerald, a large firm by any standards. Implementing change in such an organisation requires careful planning and co-ordination. In Errity's opinion, problems arise where a client suggests that a particular system should be installed to facilitate communication between the law firm and that client. This can lead to a particular department investing in a system without looking at the overall plan, increasing the danger of wasteful expenditure.

While no single client should be allowed to dictate a firm's investment strategy, clearly investments in technology are being made in response to client demand. McCanns has invested in the new pentium PCs which have been on the market for the past couple of years. This has meant huge improvements in productivity, with file information now accessible almost instantly. The pentium PC also allows access to a much wider range of applications than was possible previously.

The larger firms have also been investing heavily in sophisticated research tools in the form of CD-ROM disks. The financial demands can be considerable – for example, upgrading 220 personal computers will cost in excess of £200,000 – but the benefits are enormous.

Apart from the ability to respond much more rapidly to inquiries from clients, there are important internal benefits. New back-office accounting



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WHO IS BEHIND LAWLINK?

In late 1994 IFG Group plc acquired a majority shareholding in LawLink and, with the partnership of the Law Society Technology Committee, the original objective has now come to fruition with the launch of LawLink '96 last April by the Minister for Justice, Nora Owen.

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n COMPANY FORMATIONS INTERNATIONAL

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n THE LAND REGISTRY

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n THE LEGAL DIARY

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n THE IRISH TRADE PROTECTION ASSOCIATION

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WHY SECUREMAIL?

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n **SECURE** — Unlike ordinary e-mail, SecureMail cannot be accessed externally, so you can have total confidence that documents which are confidential remain exactly that. SecureMail also transparently attaches to X400 protocols, the ISO approved platform that is used by the Department of Social Welfare for the electronic payments system nationwide.

n **FAST** — SecureMail sends documents directly from computer to computer. In the legal profession, where documents are circulating constantly, this can assist greatly in meeting deadlines.

n **DETAILED ITEMISED BILLING** — SecureMail provides detailed itemised billing for each and every secure transaction. This means that SecureMail transaction executed on behalf of a client can be clearly identified and the costs passed back to the appropriate account.

n **SAVES TIME AND CUTS COSTS** — By eliminating the need for paper, printing, postage, faxing and couriers, SecureMail saves significant time and reduces both communication and administration costs.

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systems mean that much more management information is now available and the job of making Revenue returns for payments to third parties (such as barristers) is much easier.

Most managing partners are now willing to embrace new technology, but they do not have to be financially strangled in the process. Former Law Society President, Ray Monahan, runs a practice in Sligo town. There are four partners in the firm, with a total staff of 15. The firm has replaced its system in the past six months, buying in the latest Windows 95 software. Monahan estimates that the firm has spent between £30,000 and £40,000 in the process.

For him, investment is an on-going affair. 'We had to throw out our old Wang system', he says. 'Computers have a shelf-life of around five years'.

Even small to medium-sized firms find themselves under pressure from clients. 'The speed of service required has increased greatly. Lawyers are expected to have a databank of precedents and to churn out documents quickly'.

Using technology to control costs is also vital, with competition continually pushing down fees. But Tallaght-based litigation specialist, Brian O'Reilly, warns against a precipitate rush into new investments. 'We were one of the first firms to introduce a computerised accounts system, but three years ago we got rid of it and went back to a manual system'. The firm's new book-keeper did not like the system.

'We will buy in a new computerised accounts system when our book-keeper finds one with which he is completely satisfied. There are good systems out there, but they are very expensive. We ultimately plan to have a computer on every desk when voice recognition technology has been perfected', O'Reilly says.

What he is keen to avoid is a piecemeal approach to investment. 'Full computerisation brings many benefits, but we have decided that the benefits available are not yet such as to justify the disruption to the practice that would come in the transition period. It is something we are keeping under constant review. In business, if you see a bandwagon coming, it is already too late'.

Voice recognition software

O'Reilly estimates that the move to a fully networked system will cost somewhere between £20,000 and £25,000, with the cost in lost management time being even greater. Eventually, he believes, voice recognition will be a development of huge importance to solicitors. One already invaluable technology is the mobile phone which, he says, has transformed his business. It has allowed him and his colleagues to remain productive while stuck down in court or in traffic.

As chairman of the Law Society's Technology Committee, Mullingar-based solicitor John Shaw is facing into the same process of transition as his Tallaght colleague. Shaw works in a four-solicitor firm along with his father. 'We are looking to upgrade from our basic word-processing package to electronic mail. We are looking at a budget of between £30,000 and £40,000'.

Up to now, he says, the legal profession has been relatively slow to adapt to the computer age. 'Accountancy lends itself to computerisation, whereas words are our trade. While almost all firms now use word-

processors, computerised accounts systems are not yet widespread among smaller practices for reasons of cost'. But things are set to change quickly.

'Electronic mail, allied to the growth of the Internet, will be one area of big growth over the next 12 to 18 months', he says. Security fears have acted as a deterrent, but encrypted, secure and relatively hacker-free programs are now coming on the market.

Some years ago the Law Society linked up with the IFG Group to develop the LawLink service. Originally designed as a tool for accessing information in the Land Registry

and the Companies Office, it is now being used as an electronic mailing service. Currently, there are 60 to 70 users.

Developing a momentum

The fee system is being restructured with the aim of expanding the user-base. As this grows, electronic mail should develop a momentum of its own, but machines will have to be upgraded and possibly replaced to accommodate the e-mail package.

John Shaw predicts, however, that e-mail will take off among lawyers just as the fax machine did back in the early 1980s. 'A huge amount of work on documents, such as trial pleadings, will be done from screen to screen. Within 18 months, the vast majority of solicitors and barristers will have an e-mail connection'.

As the various markets grow, the product cost is coming down. You can now get a good pentium PC for under £1,000 while an e-mail package costs around £120. A link-up to an Internet provider can cost as little as £10 to £12 a month.

The field of research is also developing fast. The Law Society is investing heavily in computerisation in its library. The plan is to have the library service available on-line within two to three years, opening up new opportunities to solicitors in smaller practices who don't have the funds to invest in expensive CD-ROM libraries of their own.

But where is all of this leading the profession? The development of voice recognition systems, for example, have enormous implications for support staff. Traditional secretarial roles are being made redundant. Secretaries will increasingly act as support staff. And job shedding seems to be inevitable as cost pressures grow.

Lawyers as freelance consultants?

In the future, lawyers may increasingly operate out of remote work stations, acting as freelance consultants and developing their own business in a proactive way. This could involve alerting clients to potential legal pitfalls ahead rather than waiting for clients to approach them when problems have developed. And within traditional law firms, lawyers may tend to work more closely in hunting teams that transcend traditional legal departmental structures.

Overall, it may become more difficult to maintain traditional professional standards and etiquette in what is shaping up to be a freewheeling environment.



Kyran FitzGerald is a freelance journalist.



Watching the detectives

Private detectives must think they live in the wild west. Get them talking about their work and they'll start to tell you about all the 'cowboys' they know. So who are the black hats and who are the seventh cavalry? Conal O'Boyle reports

'The fastest growing industry in the world is information gathering', says Liam Brady. 'It's not as old as prostitution, but it's bigger'.

Brady has been a private detective for 23 years and has seen the investigations business become big business. 'It's an industry just like any other', he says. 'It has its cowboy element; it has gangsters in it; it has people ripping people off. It's like the building industry or any other industry'.

That may be just a little disingenuous: after all, builders don't usually bug your office or burst into your hotel room with a camera. But the bigger question is whether investigators can be regulated like any other industry, because people who use detective agencies – such as solicitors – need to be able to tell the good from the bad, and the downright ugly. Brady says the answer is a licensing system for investigators.

Several years ago he set up the European Federation of Professional Investigators. It has seven members, hand-picked by himself. 'We've been accused of being elitist', he says,

'and that's what we are, because it is the elite of the business'.

In the absence of government regulation, he regards the federation as a kind of private licensing authority. 'We have to license ourselves in the same way as they probably do in France and one or two other countries. If you are an accepted member – and it's extremely difficult to get in – you have to abide by the rules and be governed by the three or four members who deal with complaints'. The federation's code of conduct, says Brady, amounts to the simple rule that 'you don't rip people off'.

Years ago, as part of the now-defunct Association of Irish Detectives, he lobbied TDs and government ministers to introduce some form of licensing arrangement, but the proposal fell on deaf ears. He puts this down to 'the cost of changing legislation'. In an ideal world, he would like to see a three to five-year apprenticeship for private eyes and a system of proper qualifications, but he concedes: 'It will never happen – not in my lifetime'.

In the 1980s, Brady lectured on a three-year

diploma course called *Private investigation and the law*. One of the graduates of that course, Audrey Christie, now runs her own agency, Global Investigations. Global is one of the seven member firms of Brady's federation, and Christie also believes that licensing is the way forward for the industry.

Her advice to those choosing an investigator is to talk to them. 'There is no better way of finding out whether somebody is bright, intelligent, articulate and sympathetic to your case', she says. 'If you are not genuine, it comes across, and no-one is going to hand over money to someone to carry out an investigation without really trusting them'.

Much of Christie's work is in the matrimonial area, where she gets referrals from a number of solicitors. 'Family law solicitors will refer their clients to me quite regularly. A lot of these cases have to do with maintenance, where one spouse is claiming maintenance against the other, or with gaining information about the spouse's assets. That's a growing area of family law where clients are being referred to private investigators'.

She agrees that investigators have a poor image, but reckons this might be changing. 'I see myself as a highly professional person', she says, 'and I never break the law to get information. I don't enter apartments or private property; it's not necessary'.

She is not one of the old school who believed that breaking into a hotel bedroom to photograph a couple *in flagrante* was proper order. 'To me that is guttersnipe investigation and, more importantly, it's not necessary and it's

damaging to the profession as a whole. If I see two people in a hotel bar and they go up to a room, that's more than enough evidence for me'.

On the question of legality, Liam Brady takes a different view: 'If I'm chasing paedophiles, for example, I'll do anything. There is no law that will stop me. I'll tap phones, break and enter, anything'. And he accepts that attitudes like this would make government regulation impossible.

'The grey areas will always be there', he adds. 'Well, they have to be'.

Brady strongly advises anyone thinking of hiring a private detective to 'at least speak to a solicitor or go to the Garda Crime Prevention Bureau and try to get one recommended to you. Try to get a qualified investigator, someone with a proven track record'.

No official position

A Garda spokesman said that they had no official position on the use of private investigators and would not normally recommend them to anyone. And as far as regulating the industry was concerned, 'that's up to the legislators, not us'.

Like many private investigators, Derek Nally is an ex-garda who took early retirement. He set up his agency, International Investigations Ireland, ten years ago when he saw an opening at the upper end of the market. He, too, believes that the mark of a good agency is its association with a professional organisation, though in his case it is the Council of International Investigators, based in the United States. Members of the council must abide by its *Code*

of ethics which, among other things, tells them they must:

- Conduct all their investigations 'within the bounds of legality, morality and professional ethics'
- Co-operate with 'all recognised and responsible law enforcement and governmental agencies in matters within the realm of their jurisdiction', and
- Counsel their clients against 'any illegal or unethical course of action'.

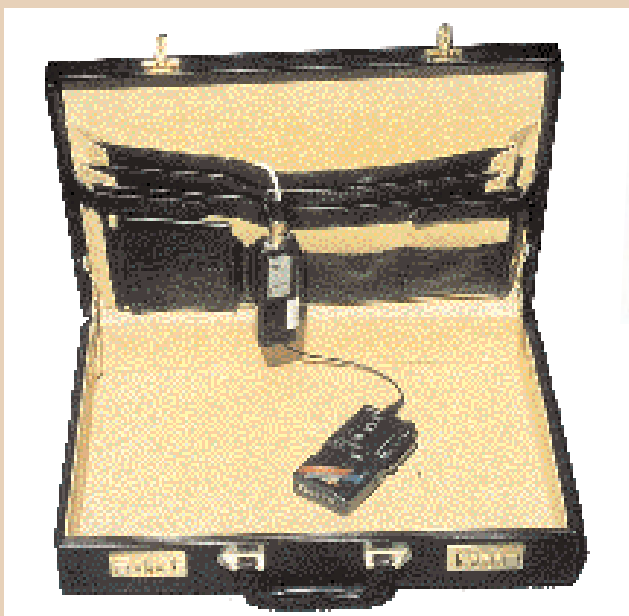
Like Brady and Christie, Nally is scathing about the rogue elements in the business. 'There is a lot of cowboyism associated with the industry. There are people out there who have criminal records and who are engaged in activities that are certainly less than legal or ethical'.

He suggests that anyone considering using a detective agency for the first time should look for the following things: track record in business; professional indemnity insurance; tax certificates; and fee structure.

Many of Nally's bigger clients, such as semi-state bodies, are starting to insist on professional indemnity insurance when they put work out to tender. 'As part of the tender, you have to send in a copy of your professional indemnity insurance and a copy of your employee liability insurance', he says. 'It's tightening up considerably at government and semi-state level, and that's now moving down the line to corporate level'.

And it's at the corporate level where the investigations business is really booming. 'Five years ago, 70-80% of our business would be devoted to insurance investigation', says Nally.

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'Now we do about 20% insurance work and 80% corporate work, such as counter-surveillance'.

Audrey Christie agrees. 'Corporate fraud would be the growing area at the minute'.

According to the staff in Pegasus Communications' spy-shop near Dublin Castle, 90% of the customers are businessmen. Pegasus specialises in video surveillance equipment and electronic recording devices – or 'bugs' if you want to get technical about it. Apart from selling you the hardware to bug your competitors, Tom Pollard and his colleagues will carry out a sweep of your premises to make sure that the opposition isn't doing the same to you. In the spy business, it seems, you can have your cake and eat it.

'The most important thing to companies these days is information', says Pollard. 'A lot of people are making money out of selling information elsewhere'.

The boom in corporate crime has meant good business for the spy-shop. 'There are millions going missing in the financial area. When customers come in here, they're fed up. They've tried everything else and this is the last resort. People are sick of being ripped off'.

One industry insider cites the takeover of a high profile institution. 'I know that in this particular case, the best equipment was used to listen to the boardroom meetings and tap the

phones. The group behind the takeover knew exactly what the bottom-line was going to be so they went in and offered a couple of grand above what the board would accept. They had all the information'. When there's big money at stake, he adds, solicitors should advise their clients to have an electronic sweep done before an important meeting.

If corporate crime and industrial espionage continue to grow as predicted, detective agencies may come to be regarded as just another business tool. In the meantime, the investiga-

tions industry is trying to shed its image of dark alleys and dirty raincoats.

'The hero for me is Veronica Guerin', says Audrey Christie. 'Her bravery, her honesty, her integrity – she is a role model for me. I think she may even have changed the public perception of private investigators'.

Veronica Guerin may be an admirable role model for the industry but, given the concerns about cowboy operators, you can't help thinking that Roy Rogers might be a bit more appropriate. At least, for the moment. **G**

DETECTIVES: DOs AND DON'Ts

Mary Shiels is a legal executive with McCann FitzGerald and has extensive experience in using detectives for debt collection. So how does she know which one to choose?

'You will hear about good ones from time to time, but because of the nature of the work they are here today and gone tomorrow. I'd be reluctant just to grab one out of the Golden Pages. It's usually through word of mouth'.

'When I am instructing an inquiry agent, I would always tell them not to go above a certain financial limit because many of them charge by the hour, and that can work out very expensive. I ask them to contact me if they feel it's going to exceed that limit'. As with all services, it is important to observe a few key points:

- **Try to instruct somebody you have heard good reports about**
- **Agree a delivery date for the report**
- **Always agree the fee in advance**
- **Give as much background information as you already have to avoid duplication.**

CRIMINAL LEGAL AID REVIEW COMMITTEE.

The Minister for Justice, Mrs. Nora Owen, T.D. has established a Committee, under the chairmanship of His Honour Judge John Gerard Buchanan, to review the operation of the Criminal Legal Aid Scheme under the Criminal Justice (Legal Aid) Act, 1962 and to make recommendations as to the manner in which the Scheme might be improved so that it operates effectively and provides value for money. The terms of reference of the Review Committee also include, inter alia:

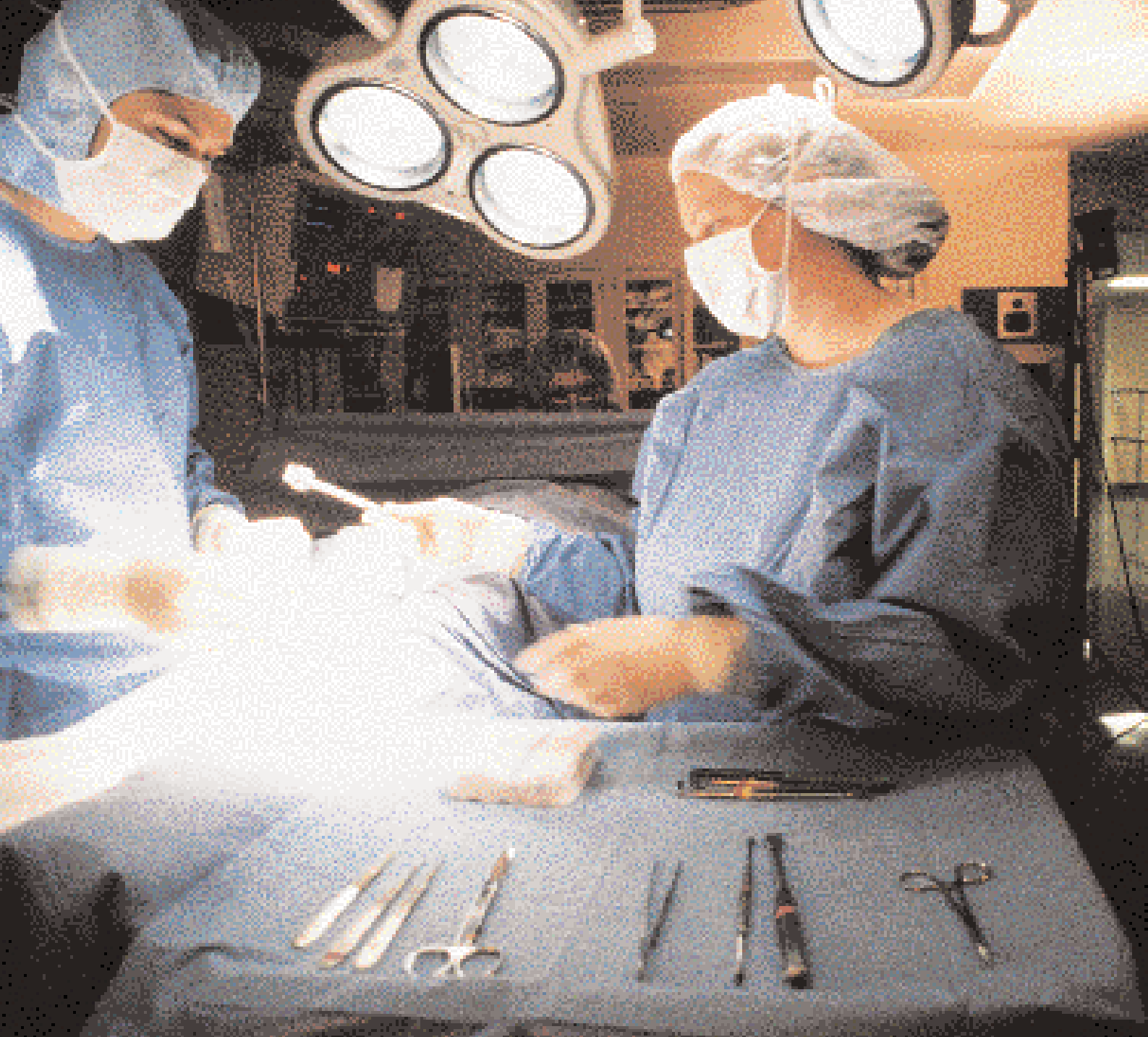
- (i) a review of the levels of fees paid to solicitors and barristers, including any claims for changes to the Scheme made by the Law Society and the Bar Council in relation to the fees payable under the Scheme.
- (ii) an examination of the possibility of introducing an alternative system for providing criminal legal aid, specifically the introduction of a Public Defender Scheme.
- (iii) an examination of the experience of the Legal Aid Board in relation to the delivery of the Civil Legal Aid Scheme.
- (iv) a review of the current practices within the Public Service for determining a person's means with particular reference to proposals being drawn up by the Department of Social Welfare Committee examining the development of an Integrated Social Service System.

The Review Committee invites submissions from interested groups and individuals on issues relevant to the above terms of reference. Submissions, in writing, should reach the Secretary to the Review Committee, at the address below, not later than 21 February, 1997.

**Secretary to the Criminal Legal Aid Review Committee
Room 429
Department of Justice
72 - 76 St. Stephen's Green
Dublin 2**

Any person who wishes to obtain further information or clarification regarding the above may contact the Secretary to the Committee at the following telephone number:

Phone number: (01) 6028331



No subject has disrupted relations between the medical and legal professions in America more than the issue of medical negligence or, as it is more usually called over there, medical malpractice – and Ireland seems to be heading the same way. Robert Harley reports on a recent US study that might throw a little light on this contentious issue

The debate between Brendan Healy and Ken Murphy in the August/September 1996 issue of the *Gazette* shows that the medical negligence debate has reached Ireland. One of the exacerbating factors in the controversy has been that both sides have employed evidence that can only be described as anecdotal. The two professions have been hurling 'facts' at each other that would be inadmissible in a court of law and unpublishable in any respectable medical journal. What

is needed (if not to improve the problem, at least to improve the quality of the debate) is empirical information. A dozen years ago, New York State set out to obtain such empirical information and the result is something that has become known as the Harvard Report.

In 1985 the Harvard University School of Public Health, together with the Harvard Law School and the Harvard Medical School, sought funding for a project that would design a model 'no-fault' compensation plan for med-



Doctors, lawyers and the Harvard Report

ical negligence. At that time, one of the traditional arguments against a no-fault scheme was an economic one. This argument was based on the assumption that, while unintended results were common in the health care system, negligence caused only a small proportion of those 'adverse events' that occurred. In the absence of a true national health scheme, it would be far too expensive to attempt to pay for all adverse events, particularly if consequential damages were to be included.

The second major argument was based on the problem of trying to define an 'adverse event'. A no-fault scheme for road accidents is simple to design: if you get into a car whole, are involved in an accident and come out less than whole, you are due compensation. But, by definition, you start medical treatment because you are not whole, or at least do not feel whole. How then can you devise a system that deter-

mines whether the condition of the patient after medical intervention results from the intervention and, therefore, is compensable, or merely a consequence of the original illness and therefore not compensable? Would not any such system be as complex and thereby as expensive as the present system since it would be called upon to resolve many of the same issues?

The proposers of the Harvard Report were convinced that an empirical study would find that malpractice and adverse events were far less pervasive than the anecdotal evidence suggested. Moreover, they were willing to try their hand at coming up with a scheme for determining what would be compensable and what would not. The 1986 New York State legislature, faced with mounting demands from the medical profession for 'tort reform', authorised funding for the study and the researchers went to work.

After four years of study, the report was released in January 1990. It comprised over 600 pages, including the report, the appendices containing the back-up data, and the executive summary.

The methodology

The Harvard team, based on advice from statisticians and other data specialists, sampled some 31,000 hospital records from 51 hospitals of different types scattered across the state. The potential value of this study went far beyond New York State.

New York is in many ways a microcosm of the nation as a whole. The state has a population of 18 million in an area of 50,000 square miles. It contains the city of New York with a population, exclusive of its suburbs, of eight million. It has the city of Buffalo with 360,000 people, as well as the city of Yonkers with

250,000. It contains another dozen or so cities as well as towns, villages and large areas of sparsely populated farm lands and forests. The hospitals in the studies included everything from small, private, rural hospitals through university-based teaching hospitals to large government-owned institutions.

Among other things, the study set out to identify the incidence of injuries resulting from medical intervention, which it called 'adverse events', and a determination of the percentage of such events that resulted from the fault or negligence of the physician or other health care provider.

'Intolerable' level of negligence

A total of 30,121 records were reviewed by a team of nurses and physicians. From these examinations, a total of 1,133 'adverse events' were identified; of that group, 280 were judged to result from negligent care. Extrapolating these figures, taking into account the approximately 2,800,000 annual hospital admissions in New York State, the incidence of 'adverse events' was judged to be 3.7% or a total of 98,609. Some 27.6% of those adverse events were judged to have been due to negligence. This 27.6% amounted to a finding that there was a negligently caused adverse event (that is to say, medical malpractice) in 1% of all hospital admissions in New York State.

Although the New York State Medical Society used this 1% to correctly claim that '99% of all patient/physician interactions did not involve physician negligence of any sort', the fact remains that this 1% amounts to nearly 28,000 cases of medical negligence each year. The Harvard Report also concluded that 14% of patients who suffered adverse events died, at least in part as a result of the adverse event, and that there were at least '2,500 cases of permanent, total disability resulting from medical injury in New York hospitals in 1984'. Further, the report 'found evidence that medical injury contributed at least in part to the deaths of more than 13,000 patients in that year'. More tellingly, it concluded that 'negligent adverse events resulted, overall, in greater disability than did non-negligent adverse events and (negligent events) were associated with 51% of all deaths from medical injury'.

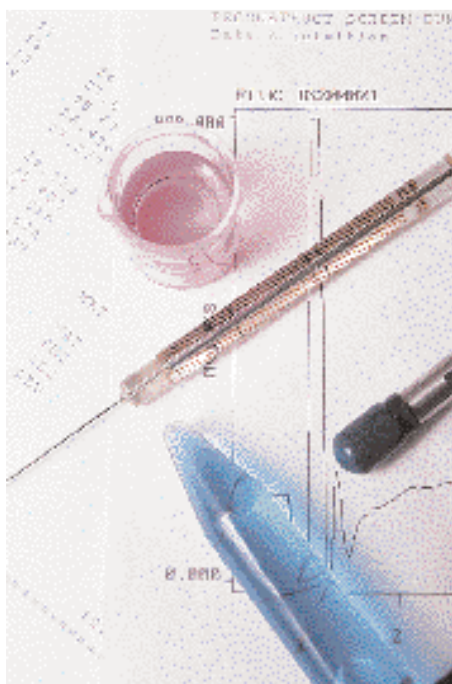
The authors of the report found the level of negligence to be 'intolerable'. The report found that the risk of sustaining an 'adverse event' increased with age, with persons over 65 having twice the chance of sustaining an adverse event than those in the 16-44 age group. Moreover, the percentage of adverse events resulting from negligence increased in elderly patients, and higher rates of adverse events were found in hospitals that served a higher proportion of minority (African-

American and Hispanic) patients.

The report did find that there were a large number of cases where the study's physicians/investigators found no negligence, but the patients had, in fact, brought suit. With regard to those, the report made no comment because, literally, the jury was not in yet.

The tort system as a deterrent

The authors of the report attempted to address the deterrent effect, if any, of medical negligence litigation on medical care. The researchers found this extremely difficult to measure. They concluded that there probably was a significant deterrent effect but that it could be neither proved nor disproved by their research and that it was within the realms of



possibility that there was none. But they did conclude that negligence litigation is likely to be much more of a deterrent to sub-standard medical care than any government regulation.

While attempting to measure the possible deterrent effect, the researchers discovered some interesting things about doctors' perceptions of malpractice litigation. Among New York doctors, the perceived risk of being sued was approximately three times the actual risk of being sued. The report also stated that 'physicians tended to equate a finding of "negligence" with a judgement of incompetence'. So while they might be willing to admit that all doctors made 'mistakes', physicians were often unwilling to label sub-standard care as 'negligent'.

Defensive medicine

Doctors' perceptions were also important in the area of so-called defensive medicine.

Organised medicine and its advocates have constantly argued that the prevalence of medical negligence litigation has created a practice of 'defensive medicine'. This is defined as the ordering of otherwise unnecessary diagnostic testing, not because medically indicated but so that any resultant lawsuit may be more successfully defended. Defensive medicine, they say, has considerably raised the already high cost of medical care.

To try to find some objective measure of defensive medicine, the Harvard Report studied the practises of doctors after they had been sued for malpractice to see whether this resulted in any alterations in their patterns of practice. Their conclusion was: not proved:

'Although physicians believed they practised medicine defensively, they did not report long-term changes in their practice patterns as the result of a specific suit. Thus, it was not clear whether defensive medicine resulted from the malpractice environment or from other factors such as advances in the science and technology of medicine, changes in societal expectations as to what constitutes an appropriate level of care, or changes in the peer review organisation, state and hospital requirements, or a combination of factors'.

So where does that leave us with regard to a no-fault alternative to the tort system? In the end, the Harvard group did propose a no-fault alternative, but in various meetings with consumer groups, medical societies and bar associations around the state, the directors of the study explicitly stated that, based on their findings, they declined to advocate a no-fault system. They merely presented a no-fault proposal as a suggestion since they had been asked to make such a proposal, but they said they had no confidence that it was a system that would provide fairer compensation, cover more of the victims, or indeed be cheaper.

The Harvard Report is the only serious attempt to study empirically the issue of medical negligence. It concludes that there is medical negligence, and that all too frequently it causes serious injury or death. When the New York State Legislature received this report that it had spent so much money on, it did not adopt any of the proposed legislation that had led to the commissioning of the study.

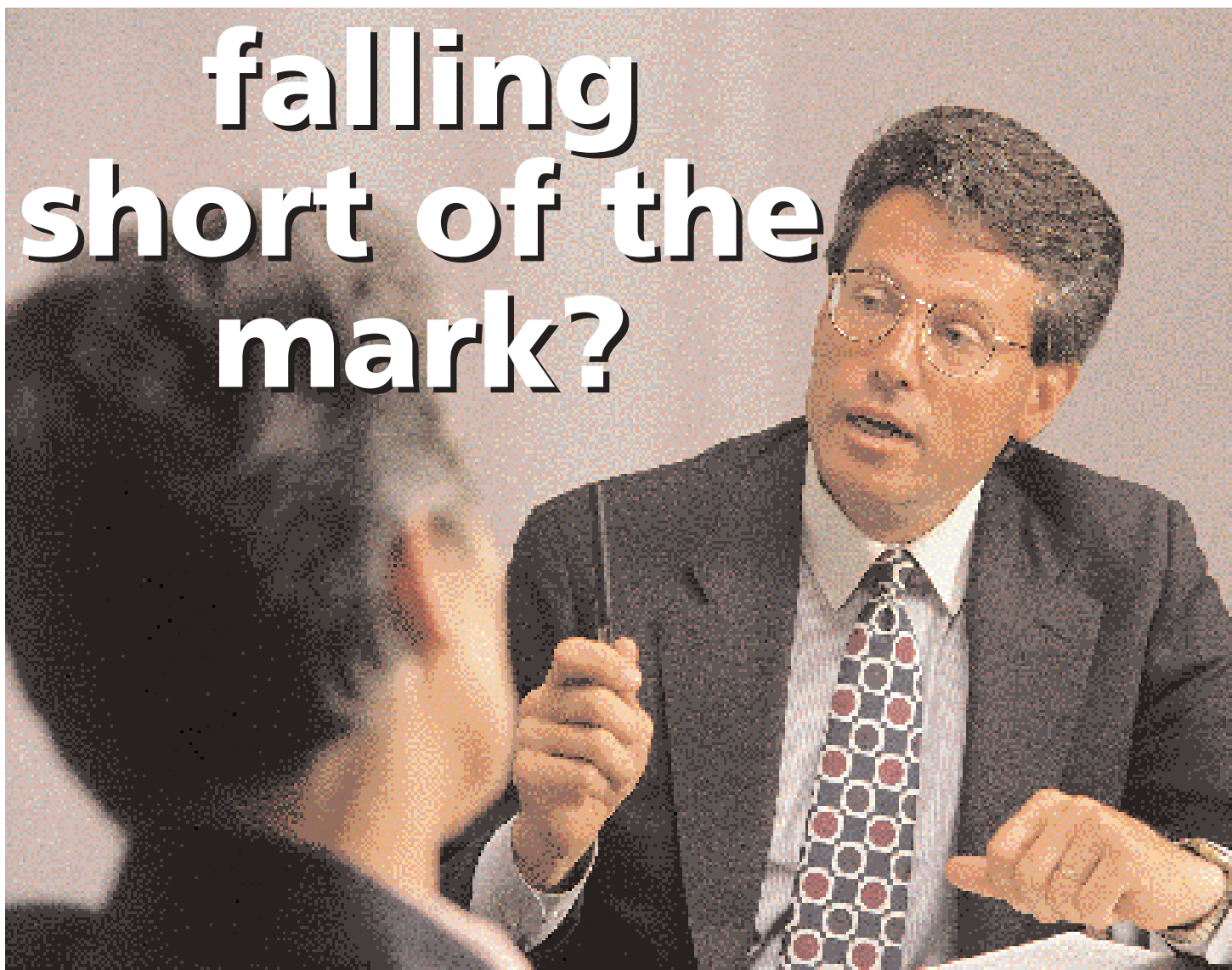
I suggest that the only impact that lawyer advertising may have is to inform ordinary citizens that they have a right of redress when they or their loved ones find themselves victims of that negligence. **G**

Robert Harley is a New York-based attorney.

ADVERTISEMENT

Civil Legal Aid Act:

falling short of the mark?



Legal aid is an essential lifeline for those who cannot afford to pay, and the 1995 Civil Legal Aid Act was supposed to be the great leap forward for the service. But is the new service really any better than the old non-statutory scheme? Mary Johnson argues that the lifeline is still as fragile as it was 18 years ago

'Our conclusion is that, in a comprehensive scheme, legal aid should be available for all types of civil proceedings. There seems to us to be no logical basis on which any particular case category should be excluded. The merits of any case and the question of granting legal aid should be assessed, not by reference to the category to which it belongs, but by reference to the particular circumstances of the case'.

The Pringle Report (1977)

The recent enactment of the *Civil Legal Aid Act, 1995* represents a definite advance on the previous position. It places the old Scheme of Civil Legal Aid and Advice on a statutory footing and in this way aims to address legal uncertainties in the

scheme, such as the procedure for applying for legal aid or appealing against a decision to refuse legal aid, the status of the board or the recovery of costs in certain cases.

In more general terms, it gives the provision of civil legal aid a degree of permanence which

was never meant to be a feature of the administrative scheme. However, apart from a small number of amendments, such as the removal of the exclusion in debt collection proceedings and test cases, the substance of the new Act is in effect the same as that of the non-statutory scheme which dates from 1979 and has its origins in the Airey judgment (2 EHRR 305). In other words, the 1995 Act makes no real effort to address criticisms of the service which are no less valid today than they were 18 years ago.

The 1995 Act and regulations (SI no 273 of 1996) continue to provide that legal aid is

available only in respect of proceedings in the district, circuit, high or supreme courts. The Act allows the Minister to extend by regulation legal aid to tribunal representation. But, as matters stand, legal aid remains unavailable for tribunals such as the Employment Appeals Tribunal and the Social Welfare Appeals Office. The Free Legal Advice Centres (FLAC) provide a limited representation service at both of these tribunals.

Clear departure from Pringle Report

An example of a case before the Social Welfare Appeals Office may illustrate the argument in favour of extending legal aid to tribunals in appropriate cases. The client in question, a deserted wife, had unsuccessfully appealed the decision to refuse her deserted wives' benefit on a previous occasion without the benefit of legal representation. On the second attempt, as a direct result of counsel's written and oral submissions, the appeals officer found for the appellant.

This shows the way in which the exclusion of legal aid for the tribunals can prejudice social welfare claimants or those on low pay in seeking to enforce income-generating rights. The Act's failure to provide a comprehensive legal aid service is a clear departure from the recommendations of the Pringle Report.

The Pringle Report also recommended that 'a comprehensive scheme of legal aid and advice should be concerned not only with the provision of legal advice and legal representation but also with the dissemination of information about the law and with research aimed at establishing the nature and extent of hidden legal needs'. The 1995 Act imposes no obligation on the Legal Aid Board to educate the general public about their legal rights, nor does it address the research role advocated by Pringle. As a result, the board is not encouraged to apply the considerable expertise developed by law centre lawyers and other employees in the formulating proposals on law reform.

Community law centres

The case for community involvement in law centres has long been advanced by FLAC and by the only existing prototype community law centre, the Coolock Community Law Centre. This model of legal aid envisages the development of law centres within communities, with each centre having a consultative committee consisting of representatives of the local community. This approach aims to provide a service which is more responsive to the particular legal needs of disadvantaged communities. It is interesting to note that, while section 6.3.2 of the old scheme tentatively provided for consultation between people representing local interests and the management of the law centre, this provision has been cut from the Act.

On a related theme, while the Minister has ensured gender balance on the Legal Aid Board, the Act fails to provide for the representation of client groups. As the vast majority of consumers of legal aid services are by definition living in poverty, and a sizeable majority are women, it would seem appropriate that organisations representing the interests of these groups, such as Women's Aid or the Combat Poverty Agency, should be represented on the board.

With the enactment of the 1995 Act, the Legal Aid Board purports to provide legal aid in all matters of civil law before an Irish court, subject to means and merits tests and to the specific exceptions listed at section 28(9) of the Act. The board's 1995 annual report confirms that 97% of casework and 90% of legal advice work is confined to the area of family law. These figures suggest that people may think legal aid is available only for family matters. As a result, it is fair to speculate that the general public may be unaware of the legal aid services on offer and that the Legal Aid Board's profile in non-matrimonial matters may need some attention.



Mary Johnson is a solicitor with FLAC.

ADVISORY GROUP ON CRIMINAL LAW AND PROCEDURE

The Minister for Justice, Mrs. Nora Owen T.D., has established this Advisory Group with terms of reference to review the existing criminal law and procedure as they currently operate and to advise the Minister on any changes that would enhance the operational efficiency of criminal law and procedure with emphasis on identified or emerging difficulties susceptible to early resolution through the mechanism of periodic Criminal Justice (Miscellaneous Provisions) Bills.

**The Advisory Group invites
submissions on issues relevant to
the above terms of reference.**

*Submissions in writing
should be made to the*

**Secretary to the Advisory
Group on Criminal Law
and Procedure**

**Room 420
Department of Justice
72 - 76 St. Stephen's Green
Dublin 2**

A simple computer problem is said to have the potential to put hundreds of Irish and UK organisations out of business, yet a recent survey of 535 organisations in Britain showed that only 15% of senior managers were fully aware of the problem. Jacqui Woodhouse spoke to leading computing experts to find out what is really going on

The millennium timebomb

The millennium problem is actually very easy to grasp. Some computing systems and applications, especially older mainframe systems and tailor-made software programs, have simply not been programmed to cope with dates after 1999. They can only determine the date in terms of two digits and when the year 2000 arrives, they may think it is 1900 and process data incorrectly – if they process it at all.

When many computer programs were written in the 1960s and 70s, programmers used two-digit date fields to save memory space which was costly at the time. Given the fast pace of change in the computing industry, they did not expect their programs to still be in use 20 years later. Unfortunately they are, and some programs are still being written using two-digit date fields.

Any system which uses dates to process data could be affected. This might include payroll and invoicing systems, stock control and ordering systems, hotel booking systems, even computerised systems which control production lines or access to a building. A recent article in the *Sunday Times* explained how retail giant Marks and Spencer noticed the problem when its computers rejected all tins of corned beef stamped with a use-by date in the next century, apparently calculating that the food must be decades old.

If the computers fail, orders may not be processed, invoices not sent out, payments miscalculated, and production lines may fail – a business which relies on technology may not be able to operate. A study by IBM UK found that if a company's computer system was down for two weeks, there was an 80% chance that the business would fail.

Forfas recently submitted a preliminary report to the Department of Enterprise and Employment, setting out the problems now facing Irish companies. According to Peter Baldwin, principal officer in the industries division, the report is being considered and the Department will make a response 'in due course'.

How big is the problem?

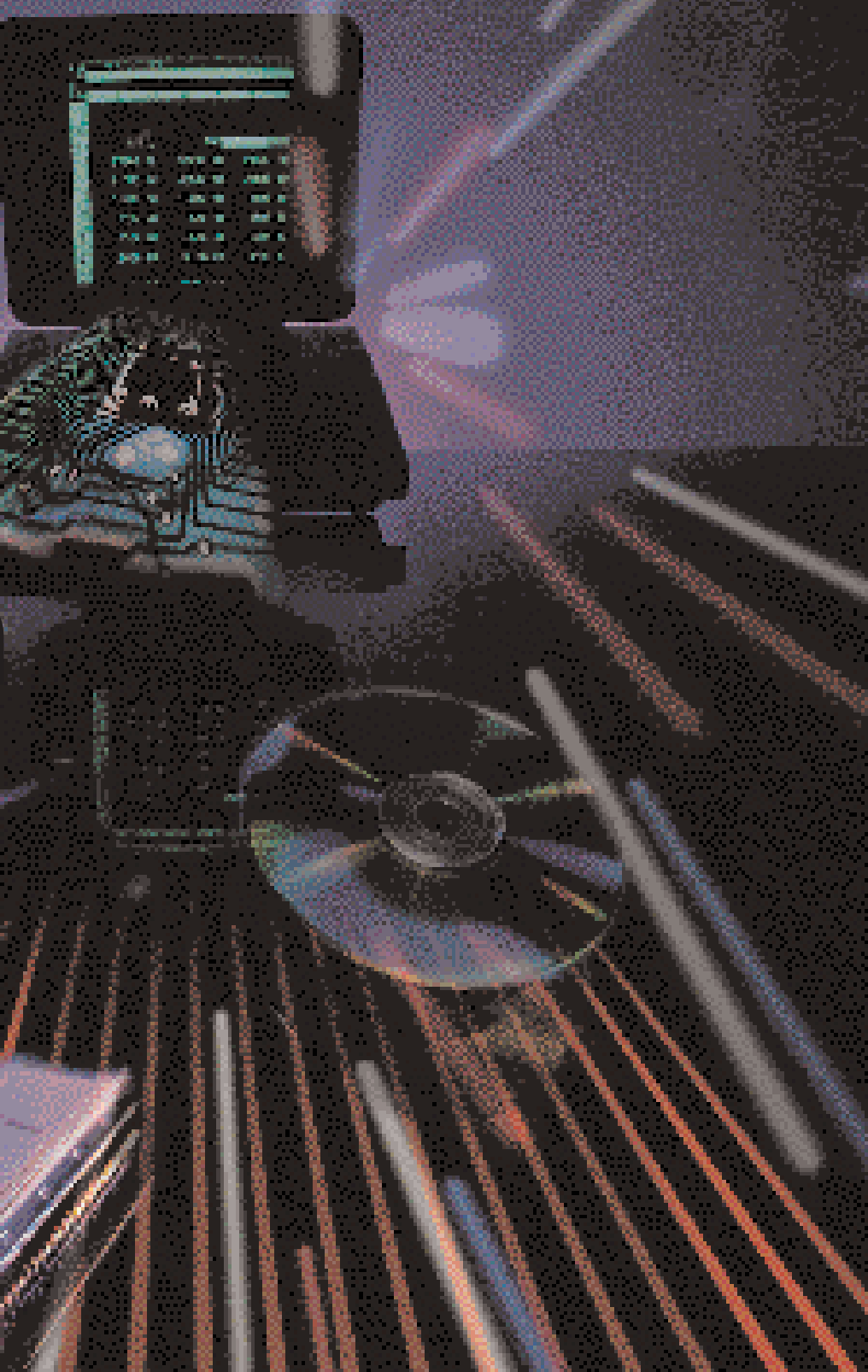
According to Microsoft, the problem is primarily a mainframe and application-level issue. Although PC operating systems such as DOS, Windows and OS/2 can handle dates well into the next century, some mainframe operating systems cannot. Custom-built application software is the other main area of concern. The problem is also found in data which can be passed between companies that have electronic data exchanges. Personal computers may also have problems.

It is unlikely that suppliers will provide solutions free of charge. Responsible suppliers of 'off-the-shelf' packages are likely to produce new versions before the end of the century but companies will still have to pay for them. Companies with ageing tailor-made programs may discover that they do not have accurate documentation for their programs and that finding the original suppliers could be difficult. Companies which have supplier maintenance contracts will need to make sure that the contractors agree to solve any year 2000 date problems, and this may involve additional costs, depending on the terms of the contract. The companies particularly at risk are those which use systems but do not have IT support – they may not be aware that they have a problem.

A number of companies have been set up to solve the millennium problem. Many of these have search tools to find date fields in large programs. A large company might have thousands of programs and each program can be made up

of millions of lines of code. Checking each line of code is a time-consuming and expensive job. According to Dr Massimo Spallo of Andersen Consulting, converting a system could take two to four man-years for each million lines of code; a rough estimate of costs would be one pound per line of code. There are lower cost alternatives to reprogramming every line but they carry higher risks of failure. Companies have to decide how important accurate dates are to their business and make risk-management decisions accordingly.

IBM is indicating that programs need to be repaired by 1998 to allow time for testing. Ian Baker, who leads the IBM Transformation 2000



team in Europe, points out that this is a competitive edge issue and that there is a big prize for being ahead of the game. Although there are solutions, it is anticipated that there will be a shortage of programmers and prices will go up as year 2000 approaches.

Personal computers could also have hardware and software problems. At the hardware level, there may be a problem with the in-built clock. Anyone with a PC can apply a simple test to see whether they will fail at the end of the century. After making sure files are backed up, set the date to 31 December 1999 and set the time to 23.58. Switch off the computer and, after a few minutes, switch it back on to check the date. It should say

1 January 2000. Many personal computers will fail the test. At this level, there is not a particularly high level of concern, since it can be assumed that many PCs will be retired by 2000.

Problems can also be found in PC programs.

USEFUL SOURCES OF INFORMATION

IBM Web Site: <http://www.software.ibm.com>.

CSSA web site: <http://www.cssa.co.uk/cssa/new/millen.htm> or telephone Nicki Blinkhorn 00 44 171 4052171

Year 2000 Web: <http://www.year2000.com> (US-based but still relevant)

Microsoft, for example, points out that while its products can support dates into the next century, the products can perform incorrectly if PC programmers and end-users have not used built-in date formats. Examples might include database or spreadsheet tools. Many users are unaware of the year 2000 issues and are creating unsafe applications today. The Gartner Group is predicting that only 10% of PC applications will be affected by date representation problems at the end of 1999, but the diversity and number of PC programming tools will make identification difficult and expensive. It also points out that the number of PC applications affected will reduce by at least half if organisations institute a program of education and training for PC users.

There are a number of information and support services to help companies get to grips with the problem. In the UK, the Computer Software and Services Association (CSSA) maintains a free list of members providing millennium services and runs a helpline to try to match companies with the most appropriate supplier. The CSSA has also produced a report in conjunction with the Department of Trade and Industry, *Defusing the millennium bomb*. This 28-page report provides a summary of the problem and of awareness levels and also provides management guidelines for action. There is no similar publication in this country, so Irish companies might be well-advised to get hold of the UK report.

IBM has also been active and provides a free guide, called *The year 2000 and two-digit dates: a guide for planning and implementation*, through the IBM Software Group Home Page on the Internet. There are other sites on the Internet which can make interesting reading (see **box** below).

Top management issue

What is clear from the advice available at present is the fact that companies cannot afford to wait. No-one will miraculously solve any problem for them. They also should not waste time trying to find someone to blame for the problem. Internet sites and computing magazines have been discussing the issue for some time. While a recent survey showed that while 70% of IT managers are aware of the problem, there is a concern that IT managers are not telling top management for fear of being blamed. The message is: this is a top management issue.

Companies need to find out as soon as possible whether they have a problem. They must find out what IT staff know and what they are doing about it. If necessary, they should appoint a project manager to find out what systems the company has, and to talk to suppliers and other companies in the industry to assess the scale of the problem for the company and the possible costs. This is just the starting point. In the meantime, the clock is ticking. **G**

Jacqui Woodhouse is a freelance writer.

The new bree

Gone are the days when you qualified as a solicitor, entered a practice and stayed there until the day you shelved your *Mongey on probate*. Increasing competition is leading many to consider careers outside private practice.

Catherine Dolan spoke to some solicitors who have made the move

Mobility is the name of the game these days. Increasing competition among solicitors and a marked rise in the numbers entering the profession has led to a lack of opportunities in traditional private practice. However, qualifying as a solicitor should not be seen as the end of a process but rather the beginning of a career which can include options in areas that may seem a far cry from working as a solicitor.

The Law Society has been actively promoting the recruitment of solicitors' jobs outside private practice. Geraldine Hynes was appointed as a careers adviser with the Society two years ago and this is one of her major aims. In conjunction with the Career Development Committee, chaired by John Costello, a lot has been achieved by increasing the awareness among the business community of the skills that a solicitor can offer as an employee.

The Society has worked to develop good relations with the business community.

Originally, this policy was adopted as a reaction to the shortage of jobs for newly-qualified solicitors, but it is a testament to the Society's efforts that there has been a growing demand for solicitors in other areas of business. An employment register was established by the Society and many jobs in non-traditional areas have been filled.

The non-legal content of the professional training courses at Blackhall Place has also been increased. The advanced course now contains management modules covering such areas as strategic and financial management, human resources, marketing, and organisational behaviour. There is also training in presentation and communication skills. According to Geraldine Hynes, 'more and more recently-qualified solicitors are showing an interest in jobs outside private legal practice'. Happily, this development is complemented by a realisation on the part of the business community that solicitors can make a valuable contribution to their businesses.

There are a number of solicitors working in

other capacities within the Society itself, including the Director General, the Director of Education, Geraldine Hynes herself and the Deputy Director of Education, Harriet Kinahan, who is leaving the Society on leave of absence to become the Strategic Planning and Development Manager with Co-operation North. The organisation is currently re-appraising its primary role and Kinahan will be helping to implement its strategic plan. As a solicitor who has worked in the Society's Law School for five years, she feels she will be able to draw on her administrative skills, her people skills and, last but not least her, legal skills.

The *Gazette* met three other solicitors who have successfully moved into other areas of business, bringing with them the skills they acquired as part of their solicitor training. **G**

Catherine Dolan is a legal editor for Round Hall Sweet & Maxwell and is a former editor of the Gazette.

The press and PR manager

Last year the Bar Council appointed a press and public relations manager for the first time. That person was Edel Gormally, a solicitor who trained with McCann FitzGerald. This is a particularly exciting role because she is establishing the function for the Bar Council for the first time. Since taking up her new position, she has been involved in a wide range of PR activities, including event management, monitoring issues covered in the media, issuing press releases and organising interviews. She is also editor of the *Bar review*, the journal of the Irish Bar, which was launched shortly after she took up her position last year.

Gormally feels that her solicitor's training is very compatible with her present role in communications. 'Some of the more administrative matters I find myself dealing with are very far removed from law, but generally I find that my knowledge of the law and the legal system is invaluable when talking to journalists on law-related issues and in helping to translate Bar Council policy when preparing press releases or interviews'.

After qualifying with McCanns in 1992, Gormally completed an LLM in Trinity



College, Cambridge, and then spent time lecturing in UCG and Dundalk RTC. She enjoyed lecturing but she was still searching for her niche. Her move into the public relations area came about when she saw an ad for Keating Public Relations, which was looking for a 'corporate communications specialist'. She took a chance and applied for the job, even

though it seemed to be outside her area, and was quite surprised to be offered the position on the basis of her legal background.

During her time at Keatings, Gormally was instrumental in securing the Bar Council account. Shortly afterwards, the Bar Council decided to appoint an in-house PR person, and she got the job. She sees it as the perfect combination of law and her communications expertise.

'It is interesting to leave a job and enter a totally different area. People's perceptions of you are different', she says. 'People often have a preconceived idea of a profession which is entirely at variance with reality. If you leave the solicitors' profession, you must adjust to a new environment. You no longer have the label of being a "solicitor". You must gain credibility and respect through showing what you can do'.

She does not think she will return to private practice but highly values her training as a solicitor. She would not have landed her current job if it were not for the skills she learnt through her legal training, but she is happier in a new role which seems to suit her better.

ed of solicitor

The public affairs consultant

Garrett Fennell has recently been appointed public affairs consultant in the ESB. The organisation will be facing major changes over the next three years and there will be a general rationalisation as it prepares for imminent competition. As public affairs consultant, Fennell will play a major role in this change.

He qualified as a solicitor in 1992 with McCann FitzGerald. Before starting his apprenticeship, he worked in RGDATA and in Park Communications, a public relations consultancy, where he gained experience in public affairs and in advising on impending legislation. He learnt about the public relations environment and how political lobbying works in this context.

While he was happy working at McCanns, he decided that if the right opportunity presented itself he would move on. Last year, at 31, he felt it was time to make some career decisions. When he was offered the job with

the ESB, he recognised it as the perfect move.

Fennell agrees that the Law Society should actively encourage apprentices to consider the idea of going into areas outside traditional private practice, something which was not encouraged when he attended the professional and advanced courses at Blackhall Place. While the professional training of apprentices is essentially to train them as solicitors, he says, apprentices should also be taught that they can do other things too and that being a solicitor should open many interesting doors for them. In his opinion, 'Knowledge of the law is increasingly becoming a vital part of running any business', he says.

Garrett Fennell is currently enjoying his new position with the ESB, but he knows that if he returns to private practice his experience as a public affairs consultant will only serve to enhance his status as a solicitor.



The multimedia producer

Dara McCluskey is a solicitor now working as a multimedia producer with Agtel Communications in Fitzwilliam Square (which, ironically, are the former offices of Binch solicitors). Among other things, the company makes corporate videos and TV programmes and he works in its multimedia division.

His work as a multimedia producer combines the use of graphics, video and audio. One recent project was for the Department of Foreign Affairs and involved producing a CD-ROM version of a 300-page book on Ireland. This CD-ROM encyclopaedia has now been despatched to Irish embassies all over the world and can be given to people who need information about this country. A knowledge of computer programming and good writing skills are important aspects of this job.

McCluskey believes there is enormous potential for the multimedia industry in Ireland and that it is only in its infancy here. CD-ROM has particular relevance to the legal area and could be a useful tool for the lawyer researching a particular area of law.

He qualified as a solicitor in 1993, having trained as an apprentice with Young & Co in Rathmines. During his apprenticeship, he was involved in publishing a magazine for apprentices called *Zeitgeist*. This stimulated his interest in journalism and, when he qualified, he applied to do an MA in journalism in Dublin City University. After spending some time on the *Sunday Business Post*, he joined

Agtel just as the company wanted to get into multimedia. McCluskey had all the different talents necessary for the job and was offered the position. 'To do multimedia, you have to be multimedia – you have to understand all aspects of it. You need to be technical, be able to understand design, be able to write, be able to understand the content in the first place, and also have an awareness of media in general', he says.

One aspect of his current job which he prefers is the fact that there is an end-prod-

uct. In private practice he was frustrated because 'mostly you are changing the state of affairs between two parties, and there is nothing tangible to show for it at the end of the day. In multimedia, at the end of each project you have something tangible'. While he feels that being a solicitor in private practice can be a rewarding career, McCluskey is happier using the skills he learnt during his legal training in a different way. 'To be a solicitor in private practice, you need to be suited to it', he says.



Council Report

Report on Council meeting held on 12 December 1996

1. Confidentiality

The President began the meeting by stating that it was appropriate early in the new Council year for him to remind the Council of the recommendation of the Review Working Group that Council and committee members should be constantly aware of the need for the strictest confidentiality in relation to matters coming to their knowledge, particularly in the areas of regulation and complaints.

2. Motion: Practice management course

That this Council approves the terms of the draft Statutory Instrument in relation to the Solicitors' Practice Management and Development Course and, subject to the concurrence of the Minister for Justice, resolves that it be enacted to be effective from 1 April 1997.

Proposer: Pat O'Connor

Seconder: Terence McCrann.

The Council approved the proposer's request that the motion be withdrawn, to be reintroduced at a future date.

3. Reciprocal arrangements with Pennsylvania Bar Association

The Council approved in principle the Education Committee's proposal that reciprocal arrangements be established with the Pennsylvania Bar Association. Under these arrangements, a lawyer from Pennsylvania who had practised in that state for five years could apply for admission to the Roll of Solicitors in Ireland, provided he or she sat and passed the Qualified Lawyers Transfer Test, which is a very rigorous examination in Irish law, together with an examination

in EU law. There would be no apprenticeship requirement. The Education Committee was of the view that such a reciprocal arrangement would be of benefit to Irish lawyers who might wish to seek opportunities in Pennsylvania and it was not envisaged that there would be a high level of applications from Pennsylvanian lawyers.

4. Adjudicator

The Council noted that the Minister for Justice had raised in correspondence the establishment of a 'separate and clearly independent appeals forum for complaints about the Law Society's handling of complaints'. Section 15 of the *Solicitors (Amendment) Act, 1994* had provided for such a person to be known as an Adjudicator. It was noted that, in 1993, when the concept of an Adjudicator was originally mooted, the Society had indicated it had no difficulty with the proposal as a matter of policy, but had objected to the requirement that it be funded by solicitors. The Society already had lay members who sat on its Registrar's Committee and whose reports showed they were well satisfied with the Society's handling of complaints. That system, with the benefit of suggestions from the lay members, the Society was constantly seeking to improve. The Society had nothing to hide in relation to its complaints handling and, indeed, as a number of Council members suggested, there could well be public relations benefits to having an Adjudicator. However, the Council strongly objected to the additional cost being borne by solicitors in this regard. It was agreed that the Society should seek a meeting with the Minister on the matter.

5. Education litigation

The chairman of the Education Committee reported on the issues which had arisen following the High Court judgment of Mr Justice McCracken of 15 July 1996, in the *Abrahamson* proceedings in relation to the application of that judgment to three 'mixed law' degrees, namely the BBLS from UCD, the LLB (law and French or German) from University of Dublin and the BCorpLaw from UCG. Counsel had now advised the Society in relation to the application of the findings of *legitimate expectation* and *exceptional circumstances* in Mr McCracken's judgment to these mixed law degree, as well as to the pure law degree, students. In accordance with this, the Education Committee's discretion should be exercised in favour of this additional group of students. The effect of doing so would be to bring the *Abrahamson* litigation to a conclusion. The Council indicated its support for the resolutions being considered by the Education Committee.

6. Section 68

Terence McCrann reported that the Section 68 Committee hoped to publish brochures in the near future which would provide additional guidance to practitioners on different areas of practice.

7. Technology

The Technology Committee was congratulated on its excellent brochure which had been circulated with a recent issue of the *Gazette*.

8. The Attorney General

Correspondence between the Society and the Attorney General, complaining about the advertisement of positions of legal assis-

stants in the Attorney General's office with eligibility confined to barristers, had been circulated to the Council. It was noted that a question had been raised in the Dail on the matter and that the Society had received supportive letters from many TDs. It was agreed that the broader issues which had been raised by the Attorney General should be placed on the agenda for consideration at the January Council meeting.

9. Education Policy Review Group

The President referred to the Education Policy Review Group which the Annual General Meeting had directed him to establish and reported that, with a view to experience, balance and independence, he had invited the following to be members of the group: Ray Monahan (Chairman), Donald Binchy (Jnr), Judge John F Buckley, John A Campbell, Barbara Cotter, Raphael King, Professor Bryan McMahon, Andrea Martin, Ken Murphy, Hugh O'Neill, Michael V O'Mahony, Albert Power, Bryan Sheridan and Bill Stokes.

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Committee reports

COMPANY LAW

Mergers Act notification fee

A fee of £4,000 is now payable on notifications of mergers or takeovers which are notifiable under the *Mergers and Takeovers (Control) Acts, 1978 to 1996*. This fee was introduced with effect from 1 January 1997 by Statutory Instrument 381 of 1996, dated 7 December 1996. Note that the drafting of the primary and secondary legislation suggests that this fee is payable per notification and not per transaction. Therefore, if each enterprise notifies separately as opposed to jointly, there appears to be nothing in the legislation which would exonerate a notifying party from the obligation to pay the fee.

Informal contacts between the committee and the Competition Policy Section of the Department of Enterprise and Employment indicate that the fee need not be tendered in 'grey area' cases – cases where the Department is likely to state that in its view the Act does not apply to the relevant transaction. Typically, this arises where the enterprises involved have worldwide gross assets or turnover exceeding the £10 million and £20 million thresholds respectively, but with gross assets and turnover within the State falling below the thresholds.

Increased Competition Act notification fee

The fee for notifications to the Competition Authority for licences and certificates under the *Competition Acts, 1991 and 1996* has increased from £100 to £250 with effect from 1 January 1997. This fee was increased by Statutory Instrument 379 of 1996, dated 9 December 1996.

CROLine access difficulties

Practitioners encountering difficulties in accessing CROLine via their usual mode of access should be

aware that CROLine can be accessed across the EIRPAC data network operated by Telecom Eireann. As operating systems vary, practitioners should contact their service providers to effect this.

Companies Office information manual

A new edition of the helpful Companies Office information manual is now available over the counter at the Companies Office, price £3. This is a must for every practice.

Investment Intermediaries Act, 1995

Practitioners should be aware of the wide application of the *Investment Intermediaries Act, 1995*. For example, a company established by accountants to manage BES investments must be authorised. A memorandum published by the Central Bank, the regulator of investment intermediaries, is available at no cost from the Central Bank of Ireland, Dame Street, Dublin 2.

Submissions on existing and pending legislation

The committee has made a number of submissions with respect to recent Bills before the Oireachtas and certain existing legislation. These relate to the *Irish Takeover Panel Bill, 1996*, the *Companies Act, 1990*, section 31, and the *Mergers and Takeovers (Control) Acts, 1978 to 1996* and the *Competition Acts, 1991 and 1996*. On the last of these, it is relevant that the profession is represented on the Mergers and Competition Law Review Group by committee chairman Gerald FitzGerald. Copies of the submissions are available on request from the committee secretary on 671 0711.

TAXATION

Capital acquisitions tax

The capital acquisitions tax indexation factor for 1997 is 1.237. This gives the following class thresholds

after indexation:
Class A: 185,550
Class B: 24,740
Class C: 12,370.

Probate tax

The probate tax indexation factor for 1997 is 1.082, giving an exemption threshold of 10,820.

The Revenue information service

One of the lesser-known services provided by the Revenue is the publication of *Tax briefing*, which publishes Revenue news and views on taxation issues. This is available from the Customer Service Unit, Office of the Chief Inspector of Taxes, Fourth Floor, Setanta Centre, Nassau St, Dublin 2.

Booklets and leaflets

There are a number of good guides and leaflets which can be obtained from the Revenue Forms & Leaflets Service. The following is a sample of what is currently available.

Income tax

- IT1: *Allowances, reliefs and tax rates*
- IT3: *Tax-free allowances*
- IT6: *Medical expenses relief*
- IT10: *Guide to self-assessment for the self-employed*
- IT11: *Employees' guide to PAYE*
- IT13: *Personal injury compensation payments*
- IT28: *Tax relief for designated Third World charities*

Capital gains tax

- CGT1: *Guide to capital gains tax*
- CGT2: *CGT – self-assessment*
- CGT3: *Roll-over relief for individuals on disposal of certain shares*

Capital acquisitions tax

- CAT1: *Gift tax*
- CAT2: *Inheritance tax*
- CAT3: *Probate tax*
- CAT4: *Capital acquisitions tax business relief*
- CAT5: *Agricultural Relief – 1995 Finance Act*
- CAT9: *Tax relief for business.*

PRACTICE MANAGEMENT

The Practice Management Committee has a number of interesting and worthwhile projects in hand at the moment. March sees the publication of an *Office manual* designed to help practices put systems in place in relation to personnel, general administration (such as postage and telephone usage), case management, financial management and so on. It will include useful precedents such as standard contracts for solicitors and support staff, staff appraisal forms, and new matter forms.

In regard to courses, it is hoped to re-run the successful IMI course in the Autumn with appropriate revision for one and two solicitor practices. Day-long seminars on financial management and marketing for solicitors are being run in conjunction with the University of Limerick during January and February. An office administrators course is being planned for later in the year.

An audio tape lasting 70 minutes, covering eight different practice management issues, such as cash flow management and marketing, is being produced. It will be designed so that it can be listened to in ten minute slots. Drive carefully!

With regard to marketing, there are a number of articles planned for the *Gazette* on this topic and an experimental workshop will be held in Blackhall Place in March. If this is successful, it will be brought to the regions.

As ever, Revenue audits are high on the agenda, and various means of giving members support in this area are being investigated.

A pamphlet is being prepared for all practices on ISO 9000/Q Mark. The objective is to lay out, in simple terms, the costs and benefits of pursuing this form of accreditation. The pamphlet should give practices a good flavour of what is involved and a list of consultants who can help progress the matter.

Legislation update: December 1996

No	Title of Act and date passed	No	Title of Act and date passed
34	<i>Telecommunications (Miscellaneous Provisions) Act, 1996</i> (10 December, 1996). Establishes the office of Director of Telecommunications Regulation and provides for the transfer to the Director of the functions of the Minister for Transport, Energy and Communications relating to the regulation of the telecommunications, radio-communications and cable television sectors. Amends the <i>Postal and Telecommunications Services Act, 1983</i> . Commencement date: See Commencement Orders SI no 385 and SI no 402 of 1996	38	<i>Sexual Offences (Jurisdiction) Act, 1996</i> (19 December 1996) Extends the criminal law of the State to sexual offences committed against children in any other jurisdiction by citizens of this State, or by persons ordinarily resident in this State, which if committed in this State would constitute criminal offences. Commencement date: 19 December 1996
35	<i>Merchant Shipping (Liability of Shipowners and Others) Act, 1996</i> (14 December 1996) Gives the force of law to the <i>London convention on the limitation of liability for maritime claims, 1976</i> , the <i>Athens convention on the carriage of passengers and their luggage by sea, 1974</i> , and <i>London protocol, 1976</i> , the <i>International convention relating to bills of lading, Brussels, 1924</i> , as amended by <i>Brussels protocols, 1968 and 1979</i> . Commencement date: Commencement Order/s to be made	39	<i>Oireachtas (Miscellaneous Provisions) and Ministerial and Parliamentary Offices (Amendment) Act, 1996</i> (20 December 1996) Amends and extends the <i>Oireachtas (Allowances to Members) Acts, 1938 to 1994</i> , and the <i>Ministerial and Parliamentary Offices Acts, 1938 to 1992</i> . Commencement date: 1 January 1996 (per section 7 of the Act)
36	<i>Registration of Births Act, 1996</i> Provides for a new form of birth certificate in order to remove gender inequalities in the particulars registered. Commencement date: Commencement Order to be made	40	<i>Appropriation Act, 1996</i> (20 December 1996) Appropriates to the proper purposes sums granted out of the Central Fund. Commencement date: 20 December 1996
37	<i>Control of Horses Act, 1996</i> (19 December 1996) Provides for the licensing of horses in urban and other areas where horses cause a danger to persons or property or nuisance. Provides for penalties on conviction for offences under the Act. Also increases fines under the <i>Pounds (Provision and Maintenance) Act, 1935</i> , section 5 of the <i>Animals Act, 1985</i> , and alters penalties under section 1(1) of the <i>Protection of Animals Act, 1911</i> . Commencement date: Commencement Order/s to be made	41	<i>Milk (Regulation of Supply) (Amendment) Act, 1996</i> (2 January 1997) Amends the <i>Milk (Regulation of Supply) Act, 1994</i> . Commencement date: 2 January 1997
		42	<i>Civil Liability (Amendment) Act, 1996</i> (2 January 1997) Increases the maximum amount of compensation payable for mental distress in fatal injuries actions brought under the <i>Civil Liability Act, 1961</i> from £7,500 to £20,000 and extends to cohabitants and to divorced persons the right to claim certain damages under the 1961 Act. Commencement date: 2 January 1997
		43	<i>Electoral (Amendment) Act, 1996</i> (2 January 1997) Revises the electoral law to facilitate voting by disabled voters and provides for other electoral matters. Commencement date: 2 January 1997

SELECTED STATUTORY INSTRUMENTS

- 341/96** *Criminal Justice Act, 1994 (Section 55(1)) Order, 1996*. Designates countries for the purpose of searches in relation to drug trafficking under section 55(1) of the *Criminal Justice Act, 1994*.
- 342/96** *Criminal Justice Act, 1994 (Section 47(1)) Order, 1996*. Designates countries where forfeiture co-operation orders may be made under section 47(1) of the *Criminal Justice Act, 1994*.
- 343/96** *Criminal Justice Act, 1994 (Section 46(6)) Regulations, 1996*. Regulations governing confiscation co-operation orders under section 46(6) of the *Criminal Justice Act, 1994*.
- 344/96** *Criminal Justice Act, 1994 (Section 46(1)) Order, 1996*. Designates countries where confiscation co-operation orders may be made under section 46(1) of the *Criminal Justice Act, 1994*.
- 351/96** *Solicitors (Advertising) Regulations, 1996*
- 369/96** *Consumer Credit Act, 1995 (Section 2) (No 2) Regulations, 1996*. Further supplements the definition of 'credit institution' in the *Consumer Credit Act, 1995*.
- 370/96** *Protection of Employment Order, 1996*. Implements Council Directive 92/56/EEC on collective redundancies. Amends the *Protection of Employment Act, 1977*.
- 371/96** *Protection of Young Persons (Employment) Act, 1996*. Appoints 2 January 1997 as the commencement date for the Act.
- 377/96** *Rules of the Superior Courts (No 2) of 1996*. Makes provision for applications to the High Court under the *Air Pollution Act, 1987*. Comes into operation on 1 January 1997.
- 379/96** *Competition (Notification Fee) Regulations, 1996*. Prescribes a fee of £250 to be sent with any agreement, decision or concerted practice notified to the Competition Authority under s7 of the *Competition Act, 1991*.
- 381/96** *Merger or Takeover (Notification Fee) Regulations, 1996*. Prescribes a fee of £4,000 to accompany a notification of a merger or takeover under s5(1A) of the *Mergers, Takeovers and Monopolies (Control) Act, 1978*.
- 386/96** *Dangerous Substances (Conveyance of Petroleum by Road) (Amendment) Regulations, 1996*
- 387/96** *Dangerous Substances Act, 1972 (Part IV Declaration) Order, 1996*. Lists dangerous substances specified in the ADR Agreement – the European Agreement concerning the international carriage of dangerous goods by road.
- 388/96** *Dangerous Substances (European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) Regulations, 1996*
- 389/96** *Dangerous Substances (Conveyance of Scheduled Substances by Road) (Trade or Business) (Amendment) Regulations, 1996*
- 397/96** *Child Care (Standards in Children's Residential Centres) Regulations, 1996*
- 398/96** *Child Care (Pre-School Services) Regulations, 1996*
- 399/96** *Child Care Act, 1991 (Commencement) Order, 1996*. Brings ss49 to 65 and 67 of the *Child Care Act, 1991*, into operation on 18 December 1996 (parts relating to supervision of pre-school services and children's residential services).
- 400/96** *Solicitors (Practising Certificate 1997 Fees) Regulations, 1996*.
- 401/96** *Solicitors (Practising Certificate 1997) Regulations, 1996*
- 408/96** *Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) (Amendment) Regulations, 1996*

The committee is also discussing various initiatives with quality consultants to make the achievement of accreditation easier for solicitors.

The committee has just completed a test market on a *Practice comparison exercise*. The objective of this exercise is to elicit certain information from practices, such as revenue per partner, support staff

ratios, overhead costs and so on. This information will then be analysed and a report will be prepared for the practice indicating how it performs on the various indicators and also how this performance compares with other practices of a similar profile. Practices will be categorised into small/medium/large and Dublin/urban/rural.

Other projects currently being developed are the establishment of a business plan framework to help practices focus on the future development of their practice and a project on career management to help resolve some of the thorny issues arising from limited career progression opportunities within practices. **G**

INDEX TO THE STATUTORY INSTRUMENTS 1987-95

The Office of the Attorney General has recently published an Index to the Statutory Instruments, 1987 – 95.

The Index is on sale through the Government Publications Sale Office, and costs £12.



Practice management

Planning for success

Every business is reactive; it is all a question of degree. Successful people always plan: they may have to change the plan, but they do plan. When a plan is changed, a judgement is made. Less successful people often claim that they cannot plan because their job is reactive; this a cop-out.

Accepting, then, that we can all plan, what is the best way? Well, to be successful, one needs to:

- Define one's goals
- Decide what tasks need to be done in order to achieve those goals
- Decide who else is involved
- Decide when is the best time to do those tasks.

In short: goals, what, who and when.

Goal setting

Goals should be written down and kept on hand when planning. Both

work and private life goals should meet two criteria: they should be realistic and challenging, and they should be qualified and given deadlines.

If you have not clearly defined your work goals, talk to your senior partner. The next stage is to identify which are the tasks that are directly related to achieving those goals.

What are the right tasks?

It is easy to be busy without achieving much. Surveys of how managers spend their time have shown that *Pareto's principle* lives. You may also know it as the 80/20 rule. It applies to many things: 80% of your fees usually come from 20% of your clients. It is the significant few accounting for the many. At work, 20% of what we do in the day produces 80% of the results, so it is a question of focusing on the right things.

The best approach is to make a list of all the tasks that you can do that are directly linked to you achieving your goals. Ideally, group them in key focus areas such as: *servicing existing clients, practice development, financial control, professional updating* etc. This makes it easier to get an overview and to set priorities.

When to do those tasks


Having chosen the 'right things' to do and built them into a decision-base that you can overview, you now need to link that to your daily planning. Here are some tips on using a diary:

- Be realistic. Before making a list of tasks for the day, decide on your available time. Take your booked time from your total time to arrive at your available time. If your job is particularly creative, add some insurance
- Look at your decision-base, as

described above, and pick out the most important things that you need to achieve in the available time

- Put the most important item in the most favourable time of the day and build the lesser tasks around it
- Don't slash your wrists if things change.

All this is theory that is easily forgotten under the day-to-day pressures.

In his book *What they don't teach you at Harvard Business School*, Mark McCormack, one of America's most famous lawyers, wrote: 'I have never known a successful person in business who didn't operate from some personal organisational system'. 

Peter Hancock of Peter Hancock & Company is a consultant and lecturer on time management.

PRACTICE MANAGEMENT VIDEOS



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News from the EU and International Affairs Committee

Compiled by Deborah Maguire, LL.M, solicitor with A&L Goodbody

Intellectual property and pharmaceutical products

Merck & Co Inc and Others v Primecrown & Others, C-267/95; Beecham Group plc and Others v Europharm, C-268/95; ECJ 5 December 1996

The European Court of Justice has recently ruled that the holders of intellectual property rights of pharmaceutical products cannot block the importation of those goods into European Union states when they have lawfully been marketed in another country of the union.

The case arose when pharmaceutical companies Merck and Beecham brought an action in the Patents Court in the UK against various companies that had imported pharmaceutical products from Spain and Portugal into the UK. Merck and Beecham held the patent rights to those products and wished to prevent parallel importation because the prices are higher in the UK than in Spain or Portugal.

Free movement of goods

The legal questions which arose centred on whether the provisions on free movement of goods in the EC Treaty could prohibit owners of intellectual property rights from exercising those rights to prevent parallel importation. The English Patents Court referred the questions to the European Court of Justice as a preliminary ruling under Article 177 of the Treaty. In

an earlier ruling in the *Stephar* case, the ECJ had held that ownership of patent rights did not allow the holder of those rights to prevent the importation of products into a country which did not permit registration of patents for those products.

The plaintiffs (Merck and Beecham) argued that the ECJ

should now overturn its ruling in the *Stephar* case. But the court rejected the arguments made by the plaintiffs and held that the exercise of intellectual property rights in this way would allow partitioning of the internal market and was therefore contrary to the free movement provisions of the EC Treaty.

Protecting traders' fundamental rights

Case C-68/95 T, Port GmbH & Co KG v Bundesanstalt für Landwirtschaft und Ernährung

The European Court of Justice's conclusions in a recent banana case have broad-ranging implications, particularly for traders who have been affected by a change to a common market organisation.

T Port is a German banana importer which had imported considerable amounts of bananas from Latin America prior to the setting-up of the common market organisation (CMO) in bananas under Regulation 404/93. It found that, under the CMO, it was entitled to a quota which represented only 1% of its annual imports over the previous six years. This was because of a

breach of contract by T Port's Colombian suppliers during the reference years which are used to determine the licence allocation under the regulation.

One of the questions referred to the ECJ by the German court was whether Article 30 of Regulation 404/93, which provides for specific measures to help the transition from the arrangements existing prior to the regulation, required the Commission to lay down rules to deal with cases of hardship such as that of T Port.

The court confirmed that the Commission has a broad discretion in assessing whether transitional measures are necessary, but it said that the Commission or the Council, as the case may be, are obliged to take action if the difficulties associated with the transi-

IN BRIEF

Co-operation with national competition authorities

The European Commission has recently published draft guidelines on co-operation with national authorities in competition cases (1996 OJ C262/5). The aim of the notice is similar to that previously published in 1992 – to clarify the respective roles of national competition authorities and the Commission in relation to competition law cases. The Commission wants to encourage national competition authorities to deal with cases which are of mainly national significance.

Investigations into airline agreements

The Commission has announced the start of three separate investigations under Article 89 of the Treaty into different co-operation agreements between airlines. The three agreements are between British Airways/American Airlines; Lufthansa/United Airlines/Scandinavian Airlines; and Delta/Sabena/Swissair/Austrian airlines. The Commission will investigate whether the proposed co-operation agreements are in accordance with the competition provisions of the EC Treaty.

tion from national arrangements require it. In particular, the Community institutions must act when the transition to the CMO infringes certain traders' funda-

mental rights protected by Community law, such as the right to property and the right to pursue a profession or trade activity.

The court added the proviso

that the difficulties associated with the transition from national arrangements must not have been caused by lack of care on the part of the trader concerned. The case

is noteworthy for two reasons:

- It imposes an obligation on the Commission and so goes beyond a mere discretion for it to provide for hardship cases
- It is most unusual because it obliges the Commission to consider specific individual cases. The Commission normally proceeds on the basis of providing, by way of delegation to the member states, the power to deal with hardship cases. This case now opens the route for any individual company or trader to challenge the Commission on the basis of its failure to act to deal with its hardship case.

The case may only have implications in the banana sector, but because of the enormous number of Commission regulations dealing with common market organisations, it could have ramifications in many other sectors. **G**

Philip Lee is a partner with Lee McEvoy.

OTHER CURRENT ISSUES IN EU LAW

Protection against third-country legislation

The Council has adopted a joint action and regulation which forbid the recognition or enforcement of any measure taken in compliance with certain US legislation enacted as part of the that country's trade embargoes on Cuba, Iran and Libya. Based on the provisions of 73(c) 113 and 235 of the Treaty, the regulation prohibits compliance with US legislation which could, for example, prevent the entry into the US of persons with dealings in property which was formerly owned by US persons but appropriated by the Cuban regime.

Article 5 of the regulation states that 'no person [to whom the regulation applies] shall comply ... with any requirement or prohibition, including requests of foreign courts based on or resulting, directly or indirectly, from the laws specified'. The regulation entered into force on the date of its publica-

tion in the Official Journal (29 November 1996) and is binding in its entirety (see OJ L309/1 of 29/11/96).

Givenchy and Yves St Laurant agreements

The Court of First Instance has confirmed that Givenchy and Yves Saint Laurant luxury perfumes may continue to be sold by specialised retailers. The court agreed to their criteria for selecting distributors except the condition which demands that the main business of a distributor should be in selling perfumes. The court indicated that this condition can no longer be included in the agreements (see cases T-19/92, T-8/92 and T-87/92). These rulings are significant at this time, because in May 1997 the Commission will have to decide on whether to renew its approval of the 1992 Yves Saint Laurant and Givenchy selective distribution agreements.



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ILT Digest

of legislation and superior court decisions

Compiled by David Boyle

ADMINISTRATIVE

Prompt Payments Bill, 1996

This private member's Bill, presented by Mary O'Rourke and Ned O'Keeffe, aims to ensure that small businesses get paid promptly by Government departments and State bodies. Under the proposed legislation, the average credit period for State bodies would be 45 days (although some bodies would get 60 days' credit). Penalties for late payment would be provided for, and supervision of the area would be entrusted to the ombudsman.

National Cultural Institutions Bill, 1996

This Bill has been amended in committee and passed by Seanad Éireann. (See also (1996) 14 ILT 266.)

Cabinet Confidentiality Bill, 1996

This private member's Bill, introduced by Michael McDowell, seeks to address perceived difficulties with the decision of the Supreme Court in *Attorney General v Hamilton (No 1)* ([1993] ILRM 81). The Bill seeks to state a general principle that cabinet business will remain confidential while setting out circumstances in which a court or tribunal of inquiry could receive evidence, the disclosure of which (apart from the proposed

provisions of the Bill) would otherwise be illegal. The Bill goes on to set out six circumstances in which cabinet business may be disclosed. If enacted, the provisions of the Bill would apply equally to cabinet business transacted before its passing.

Registration of Births Bill, 1996

This Bill, as presented by Senator Maurice Manning, seeks to provide for a new format of birth certificate. If introduced, the new format of certificate will record, *inter alia*, the occupation and address of the mother, as well as of the father, and the former name(s) of both parents, instead of the mother's maiden name. The child's surname may be registered as that of either the father or the mother or both. Another surname could also be registered under the proposed legislation where the Registrar General considers the circumstances to warrant it. If the Bill is passed, the new format will apply to births registered or re-registered after its commencement.

Michael A Hurley v Commissioner of An Garda Síochána (McCracken J), 23 July 1996

Garda Síochána—disciplinary procedures—regulations—alleged breach of discipline—investigation

and inquiry—whether proper procedures followed in conduct of investigation—investigating officer appointed to investigate and report on one alleged breach of discipline—tribunal finding of breach of discipline on two counts—whether procedures set out in regulations followed—fair procedures—whether strict compliance with procedures necessary in every case — *Garda Discipline Regulations, 1989*.

Held: The *Garda Discipline Regulations* had to be followed in every case and it was not for the appointing officer or the complainant in relation to any particular breach of discipline to decide whether it would be futile to follow the procedures as set out in the regulations.

ADOPTION

Adoption (No 2) Bill, 1996

This Bill has been passed by Dail Éireann. (See also (1996) 14 ILT 199.)

DG & MG v An Bord Uchtala; CG v Janet Paisley & Ors (Laffoy J), 23 May 1996

Order—consent of natural mother—application to court to dispense with consent to making of adoption order—whether valid agree-

ment to place infant for adoption—whether fully informed and free consent to placement—matters of which mother to be fully informed—whether mother had to be fully informed of the nature of the child's rights and her duties to the child—whether, in circumstances prevailing at time natural mother made decision, that decision reflected her will—family circumstances of mother—attitude of mother's parents to pregnancy—age and maturity of mother—whether mother understood that by giving initial consent she was creating the possibility that if she changed her mind the court could allow the making of an adoption order without needing a final consent from her and depriving her of custody of the infant forever—*Adoption Act, 1974—Guardianship of Infants Act, 1964—Constitution of Ireland 1937*, art 40.

Held: For a consent by a mother to the placement of her child for adoption to be fully informed, the mother had to be aware of: i) the nature of her rights in relation to the child; ii) the two-stage nature of the adoption process; iii) the effect of the making of the adoption order on her rights; and iv) the effect of s3 of the 1974 Act and, in particular, the possibility that if she gives her initial consent to the placement, the court

may override the requirement of a final consent. Only if the existence of a valid agreement to place the infant for adoption had been established did the issue arise whether it was in the best interests of the infant to make a custody order and to authorise the board to dispense with the mother's consent.

AGRICULTURE

Milk (Regulation of Supply) (Amendment) Bill, 1996

This Bill aims to make certain changes to s3 and para 5 of the schedule to the *Milk (Regulation of Supply) Act, 1994*.

European Communities (Pesticide Residues) (Products of Plant Origin, including Fruit and Vegetables) (Amendment) Regulations, 1996 (SI no 316 of 1996)

These regulations amend existing regulations by extending the list of pesticides for which residue maximum levels have been set. These regulations came into operation on 31 October 1996.

Milk (Regulation of Supply) (Amendment) Bill, 1996

This Bill has been passed by Dail Éireann. (See also (1996) 14 ILT XXX.)

European Communities (Pesticide Residues) (Cereals) (Amendment) (No 2) Regulations, 1996 (SI no 337 of 1996)

These regulations amend existing regulations by extending the list of pesticides for which residue maximum levels have been set.

Control of Bulls for Breeding (Permits) (Amendment) Regulations, 1996 (SI no 317 of 1996)

These regulations provide for the continuation of the system of granting permits to persons to keep unregistered bulls for breeding purposes and to extend permits

already issued under previous regulations until 31 October 1998.

CHILDREN

Children Bill, 1996

This Bill, as presented by the Minister for Justice, will, if enacted, replace the remaining provisions of the Children Act 1908. It aims to place the Garda diversion programme (previously known as the juvenile liaison office scheme) on a statutory basis which would operate much as the present scheme does but with the addition of a family conference feature to the operation of the programme. The *doli incapax* rule would be placed on a statutory basis and the age of criminal responsibility would be raised from seven to ten, with provision to increase it to 12 years of age. The Bill includes provisions relating to the treatment of children in Garda custody. A Children Court (the district court sitting to deal with matters relating to children) would be established and the Bill sets out proposed procedures for such a court as well as laying out powers of courts generally in relation to children, including the power to make restriction on movement orders. Reformatory and industrial schools would be replaced by children detention schools, for the detention of children under 16 referred by the courts, under the control of a single board of management. The Bill also aims to make provision for an additional range of powers for health boards to ensure that non-offending children who are out of control receive special care, education and treatment.

COMPANY LAW

John Carway v the Attorney General (Carroll J), 3 July 1996

Application for declaration that directors of company in liquidation should not be in any way concerned with promotion or formation of any company for period of five years—application grounded on liquidator's certificate, pursuant to s149 of Companies Act, that company unable to pay its debts—direction

that preliminary issue in relation to constitutionality of s149 be tried—whether s149 provided for irrebuttable presumption of insolvency—whether justiciable issue had been removed from jurisdiction of the court—whether provision was warranted—Companies Act, 1990, ss149(1)(b), 150(3).

Held: The purpose of the liquidator's certificate, pursuant to s149(1)(b) of the Companies Act, 1990, is to identify the companies and persons to whom chapter 1 of Part VII of that Act applies. There is no provision within the section that the certificate is to be conclusive; hence, there can be no assertion that the section is unconstitutional.

CONSTITUTIONAL

Sixteenth Amendment of the Constitution Bill, 1996

This Bill, presented by the Minister for Justice and passed by both Houses of the Oireachtas, aims to amend Article 40 of the Constitution by the addition of the following text after Article 40.4.6: '7. Provision may be made by law for the refusal of bail by a court to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person.' (See also (1995) 13 ILT 210 for a previous attempt to introduce a similar measure.)

Director of Public Prosecutions v Frederick Flannery (Barr J), 25 June 1996

Right to fair trial—defendant charged with murder—prosecution case relying on credibility of one witness—during course of trial emerges Gardaí had not made number of documents, affecting witness's credibility, available to prosecution or defence—whether Gardaí had deliberately and consciously attempted to subvert course of justice—whether it was no longer possible for defendant to have fair trial—whether jury should be discharged or indictment against defendant stayed permanently.

Held: Where a wrong which goes to the heart of the prosecution case is discovered and is so serious in nature as to stigmatise the entire prosecution, then a significant doubt must remain that the accused may never have the benefit of a fair trial.

DG & MG v An Bord Uchtala; CG v Janet Paisley & Ors (Laffoy J), 23 May 1996

Habeas corpus—adoption proceedings—infant in custody of persons wishing to adopt following placement for adoption—application under art 40.4.2 by natural mother—court finding that mother did not give valid agreement to place child for adoption—relief available to the court in art 40.4.2 proceedings—whether proceedings under Guardianship of Infants Act, 1964 more appropriate—whether court could determine application brought by mother—principles of law applicable—whether infant's welfare would not be protected by placing him in the custody of the mother—whether mother entitled to custody of the infant—*Adoption Act, 1974—Guardianship of Infants Act, 1964—Constitution of Ireland 1937, art 40*.

Held: As at Adoption above.

Director of Public Prosecutions v Joseph Dougan (Geoghegan J), 30 July 1996

Criminal offence—mode of trial—jurisdiction of the district court—constitutional prohibition on trial without jury where offence 'non-minor'—road traffic offences—summary trial only provided—judge of district court expressing doubt whether offence 'minor'—whether district court could state case for opinion of the high court—constitutional prohibition on district court stating case concerning constitutional validity of statutory provision—whether case stated in effect questioning constitutional validity of provision—effect of high court's answers to case stated—whether provision, if successfully challenged, simply rendered inoperative or unconstitutional—whether district court had jurisdiction to submit consultative case

stated—whether high court could provide specific answers to questions posed—obligation on district court where no alternative mode of trial provided—nature of summary jurisdiction—role of Oireachtas in determining whether offence minor or not—whether theory of inoperative provision valid—Constitution of Ireland 1937, arts 34.3.2, 38.5—Courts (*Supplemental Provisions*) Act, 1961, s52—*Road Traffic Acts 1961-1994*.

Held: In the case of a criminal offence where summary trial only was provided for, any challenge by a judge of the district court to the mode of trial must necessarily be an attack on the constitutionality of the enactment, and a judge of the district court was not entitled to state a case to the high court questioning the constitutional validity of a statutory provision.

Dr James Barry v Supt. Thomas Waldron (Carney J), 23 May 1996

Detention—habeas corpus—right of access to solicitor—applicant arrested and detained under s4, Criminal Justice Act, 1984—enquiry under art 40.4.2 of the Constitution—whether detention unlawful—whether detainee entitled to access to solicitor during entire detention period—costs of application — *Constitution of Ireland 1937, art 40.4.2—Criminal Justice Act, 1984, s4*.

Held: The right of a person under arrest to have reasonable access to a solicitor does not include a right to have a solicitor present throughout the entire period of the detention.

CONSUMER

Maximum Prices (Magazines) (Revocation) Order, 1996 (SI no 307 of 1996)

This order revokes the Maximum Prices (Magazines) Order, 1996 (See also (1996) 14 ILT 219) which had provided for controls on the prices of magazines priced in sterling.)

Consumer Credit Act, 1995 (Section 2) (No 2) Regulations 1996 (SI no 369 of 1996)

These regulations further supplement the definition of 'credit institution' contained in s2(1) of the *Consumer Credit Act, 1995*.

CRIMINAL

Criminal Assets Bureau Act, 1996 (no 31 of 1996)

This Act was signed by the President on 11 October 1996. (See also (1996) 14 ILT 220.)

Criminal Assets Bureau Act, 1996 (Establishment Day) Order 1996 (SI no 310 of 1996)

This order appointed 15 October 1996 as the establishment day of the Criminal Assets Bureau for the purposes of the *Criminal Assets Bureau Act, 1996*.

Sexual Offences (Jurisdiction) Bill, 1995

This Bill has been amended in the Select Committee on Legislation and Security. (See also (1995) 13 ILT 202.)

Criminal Justice (Miscellaneous Provisions) Bill, 1996

This Bill has been passed by Dail Éireann. (See also (1996) 14 ILT 220.)

People (DPP) v Jerry O'Shea (Court of Criminal Appeal), 1 July 1996

Appeal—importation of drugs—arrest by customs officer—technical breach of 1987 regulations—member in charge—detention not rendered invalid—*Customs Miscellaneous Provisions Act, 1988, s2—Customs Consolidation Act 1876, s186—Misuse of Drugs Act, 1977, ss15, 25—Criminal Justice Act, 1984, ss3, 4, 7—Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987, reg 4*.

Held: A technical breach of the 1987 regulations, which did not result in the applicant receiving

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any unfair treatment or being in any way prejudiced, did not render the detention of the applicant unlawful.

People (DPP) v Francis Shortt (Court of Criminal Appeal), 23 July 1996

Appeal—knowingly permitting the sale of drugs—issues of fact are issues for jury—charge to jury—reasonable doubt—not necessary to compare civil and criminal onus of proof—sworn evidence given to obtain search warrant—search warrant valid—issues not raised in trial not proper issues for appeal—leave to appeal refused—*Misuse of Drugs Act, 1977, ss3, 19, 29*.

Held: Issues of fact are issues for the jury and not for the Court of Appeal particularly when these issues were not raised by the defence during the trial.

People (DPP) v Eamonn Kelly (Court of Criminal Appeal), 11 July 1996

Appeal—point of law of exceptional public importance—point must have arisen before Court of Criminal Appeal—point formed no part of judgment—abstract point—certificate refused—*Courts of Justice Act, 1924, s29*

Held: Before the Court of Criminal Appeal can give a certificate under s29, it must be satisfied that the point arose before the Court of Criminal Appeal and was involved in its decision.

People (DPP) v Thomas Johnston (Court of Criminal Appeal), 1 July 1996

Criminal law—appeal—manslaughter—life sentence reduced to 12 years—judgment of court stated that co-accused not found guilty of manslaughter—factually incorrect—co-accused sentenced to four years for manslaughter—factual error constitutes a newly discovered fact—review of sentence—failure to show sentence excessive or inappropriate—co-accused's lenient sentence not a proper reason to vary applicant's sentence—review of sentence refused—*Criminal Procedure Act, 1993, s2*

Held: The fact that a co-accused

may have been dealt with too leniently is not a proper reason why a sentence should be varied.

Child Pornography Bill, 1996

This private member's Bill, as introduced by John O'Donoghue and Eoin Ryan, aims to make it an offence to make, distribute, possess or publish any indecent or pornographic images of a person under 16 years of age. Where the offence is committed by a body corporate and it is proven that it occurred with the consent, connivance or neglect of any director, manager, secretary, other officer or person purporting to act in such a capacity, the Bill would make such person liable to prosecution for the offence as well. The maximum penalty would be a term of imprisonment up to three years on conviction on indictment.

Decommissioning Bill, 1996

This Bill aims to give effect to the report of the International Body (of 22 January 1996) by enabling the Minister for Justice to make regulations providing for the decommissioning of arms using four methods identified in para 44 of the report: the transfer of arms to a commission established by the Irish and British governments; the provision of information to a commission leading to the discovery of arms; the depositing of arms for subsequent collection and destruction by a commission; and the destruction of arms by those in possession of them.

Criminal Justice Act, 1994 (Commencement) Order 1996 (SI no 333 of 1996)

This order fixes 15 November 1996 as the date on which Parts V and VII of the Criminal Justice Act, 1994 (together with the first and second schedules) came into operation. The parts of the Act in question relate respectively to drug trafficking offences at sea and international co-operation in the confiscation of the proceeds of drug trafficking respectively.

Criminal Justice Act, 1994 (Section 46(6)) Regulations, 1996 (SI no 343 of 1996)

These regulations modify the Criminal Justice Act, 1994 for the purpose of adapting to confiscation co-operation orders provisions of the Act relating to confiscation orders.

DAMAGES

Patricia Cranny v Robert Kelly and the Motor Insurers' Bureau of Ireland (Lavan J), 5 April 1996

Plaintiff issued proceedings claiming defendant's negligence caused her husband's death in road traffic accident—defendant uninsured—MIBI joined as co-defendant—whether deceased had in fact been driving car—whether deceased was aware that vehicle was uninsured—whether MIBI liable to satisfy judgment—*Civil Liability Act, 1961*.

Held: The test to be applied when determining whether a person was aware that the vehicle in which they were travelling was uninsured, was not whether a reasonable person would have known but whether the particular individual, having regard to all the circumstances would have known.

EMPLOYMENT

Employment Equality Bill, 1996

This Bill has been amended in the Select Committee on Social Affairs. (See also (1996) 14 ILT 200.)

Organisation of Working Time Bill, 1996

This Bill, as presented by the Minister for Enterprise and Employment, aims to transpose the provisions of Directive 93/104/EC (of 23 November 1993) into law. Among its proposed provisions are: the limitation of the working week to an average of 48 net hours (with no provision for workers to opt out

of this provision); the elimination of zero hours contracts; a phased increase in the minimum annual holiday entitlement for full-time workers to four weeks by April 1999; and the specifying of minimum rest periods (with special provisions for night workers) to which employees are entitled.

ENVIRONMENTAL

European Communities (Mechanically Propelled Vehicle Emission Control) Regulations, 1996 (SI no 318 of 1996)

These regulations prevent the issue of first licences for certain new vehicles with effect from 1 November 1996 unless the vehicles conform to the air pollutant emission control requirements of Council Directive 96/1/EC (of 17 February 1996).

Litter Pollution Bill, 1996

This Bill, as presented by the Minister for the Environment, aims to enable a more effective system for the prevention and control of litter. The provisions of the Bill include: imposing a duty on occupiers of property adjoining a road in a restricted speed limit area to keep adjoining footpaths free of litter; empowering local authorities to require owners and occupiers to remedy actual littering and to take specified action to prevent possible littering; requiring each local authority to prepare a litter management plan; prohibiting the placing of unsolicited advertising material on windcreens; requiring promoters and organisers of large events to prevent litter during the event and to clean up afterwards; obliging operators of mobile food outlets to provide litter bins and to keep the vicinity of their outlets clear of litter; and the creation of an offence of failing to clean up after a dog has fouled a public place. Under the proposed legislation, gardaí would be given the power to issue on-the-spot fines. Maximum fines would be increased to £1,500.

EUROPEAN
COMMUNITY**Patrick McNamara v An
Bord Pleanála & Ors (Barr
J), 31 July 1996**

Planning law—proposed reference to European Court for opinion pursuant to art 177 of treaty—reference sought after final judgment delivered by national court—whether applicant entitled to reference—whether time for seeking such a reference had expired—functions of European Court pursuant to art 177 reference—whether an application for a reference is maintainable under art 177(3) where the national court has delivered its final judgment on the issues raised in the proceedings before it—EEC Treaty, art 177(3).

Held: Rulings from the European Court of Justice pursuant to applications under art 177 were intended for the benefit of national courts in connection with the preparation of final judgments in cases before such courts. Hence, once a national court had delivered its final judgment, the question of a reference to the European Court thereafter could not arise.

FAMILY

**Brian Brady & Ors v An
Bord Uchtála, Ireland and
the Attorney General
(Flood J), 12 April 1996**

Foreign adoption—recognition of foreign adoption—application for recognition of adoptions effected under law of People's Republic of China—recognition refused by An Bord Uchtála—judicial review—whether adoption under law of People's Republic of China having essentially the same legal effect as adoption effected under law of the State—*Adoption Act, 1952, ss9, 24—Adoption Act, 1988—Adoption Act, 1991, ss1, 6*.

Held: An adoption effected in accordance with the law of the People's Republic of China has essentially the same legal effect as an adoption effected by an adoption order under s9 of the Adoption Act, 1952.

**BJM v CM (Flood J), 31
July 1996**

Marital breakdown—petition for nullity—parties had no sexual contact before marriage—respondent had been badly burned as small child—extensive scarring over whole front of torso—petitioner was not aware of disfigurement until honeymoon—whether petitioner's consent to marriage was apparent rather than real as it was not a full, free and informed consent—whether parties had capacity to enter into and sustain a normal marital relationship with each other by reason of their respective states of mind.

Held: When determining whether grounds exist to declare a marriage null and void, the Court must have regard to whether an emotional and psychological relationship has been created between the parties.

**Family Law (Divorce) Act,
1996**

This Act was signed by the President on 27 November 1996. (See also (1996) 14 ILT 201.)

**Bernadette Ennis v Colm
Butterly (Kelly J), 26 July
1996**

Striking out pleadings—court's inherent jurisdiction to stay proceedings—principles to be applied—assumption where conflict between matters averred by plaintiff and defendant on affidavit—plaintiff claiming damages—breach of contract, negligent misrepresentation, fraudulent misrepresentation—parties cohabiting—nature of contract the breach of which alleged—agreement to marry—agreement to cohabit pending marriage in consideration of which plaintiff to give up business and live as home-maker—legislative abolition of action for breach of promise to marry—whether fatal to plaintiff's claim—whether agreement to marry unenforceable as contrary to public policy—agreement to cohabit—consideration—whether claim for 'palimony'—whether concept recognised in this jurisdiction—special position of marriage under the Constitution—whether plaintiff's

claim for damages for breach of contract should be struck out—nature of claim for damages for misrepresentation—elements necessary for common-law action of deceit—whether criteria met by plaintiff's claim—claim that defendant represented that plaintiff would become director and shareholder—plaintiff relinquishing her business and living as home-maker—claim in tort—whether claim could be separated from alleged contractual arrangements—whether claim based on alleged tortious wrong should be allowed to go to trial—Rules of the Superior Courts 1986, O 19, rr 27, 28.

Held: The enactment of the Family Law Act, 1981, abolishing the action for breach of promise to marry, was fatal to any claim asserted by a plaintiff to derive from the breach by the defendant of an agreement to marry her. Even before the enactment of the 1981 Act, their agreement to marry would have been unenforceable as a matter of public policy.

FISHERIES

**Fisheries (Amendment)
Bill, 1996**

This Bill, as presented by Senator Maurice Manning, aims to introduce a new framework for the licensing and regulation of aquaculture. To this end, it would establish an Aquaculture Licences Appeals Board, provide for the regulation of appeals and prescribe penalties for offences.

HEALTH AND SAFETY

**European Communities
(Construction Plant and
Equipment) (Permissible
Noise Levels)
(Amendment)
Regulations, 1996 (SI no
359 of 1996)**

These regulations give legal effect to Directive 95/27/EC (amending Directive 86/662/EEC) on the limitation of noise emissions by hydraulic excavators, rope-operated excavators, dozers, loaders and

excavator loaders the installed power of which is below 500kW. These regulations came into operation on 3 December 1996.

HEALTH SERVICES

**Health (Amendment) Bill,
1996**

This Bill has been passed by both Houses of the Oireachtas. (See also (1996) 14 ILT 152.)

**Health (Amendment) (No
3) Act, 1996 (No 32 of
1996)**

This Act was signed by the President on 6 November 1996. (See also (1996) 14 ILT 152.)

**The Consultative Council
on Hepatitis C
(Establishment) Order,
1996 (SI no 339 of 1996)**

This order establishes a consultative council to advise the Minister for Health on all aspects of hepatitis C, either on its own initiative or at the request of the Minister.

INTELLECTUAL
PROPERTY**Allen & Hanbury Ltd &
Anor v the Controller of
Patents, Designs and
Trademarks & Anor
(Carroll J), 21 February
1996**

Copyright, designs and patents—patent—trial of point of law as preliminary issue—plaintiffs owning patents in respect of pharmaceutical licences—Controller of Patents granting defendant licence to exploit patent pursuant to s42 of the Patents Act, 1964—plaintiffs appealing to high court—whether Agreement on Trade Related Aspects of Intellectual Property Rights precluding grant of licence—Patents Act, 1964, ss42, 46(3), 77(2), 93—Patents Act, 1992, ss5, 31, 63(3), sch 1, para 13—Agreement on Trade Related Aspects of Intellectual Property, arts 27(1), 65(1), 65(6), 70(1), 70(6)—Interpretation Act, 1937, ss11, 22—Constitution of Ireland 1937, art 29.6.

Held: Art. 70(6) of the Agreement on Trade Related Aspects of Intellectual Property Rights obliges the Controller of Patents, Designs and Trademarks to refuse the grant of compulsory licences pursuant to s.42 of the Patents Act 1964 after the date on which Agreement became known to the State.

JUDICIAL REVIEW

David Brien v Judge Thelma King & Ors, (Barr J) 5 July 1996

Extradition order—certiorari sought—whether police officer's evidence gave rise to doubt as to whether decision had been taken to prosecute applicant when warrant had been applied for—whether decision to prosecute applicant was dependent on interrogation of applicant consequent upon proposed extradition—*Extradition Act, 1965*.

Held: When hearing an application for an extradition order, the duty of a district judge is not restricted to an enquiry as to whether the requirements laid down by statute have been complied with, but also includes a duty to protect the constitutional rights of the person against whom extradition had been sought.

Shane Dunne v Director of Public Prosecutions (Carney J), 6 June 1996

Order of prohibition sought—delay in executing warrant—whether in circumstances Gardaí had taken reasonable steps to execute warrant—whether delay had been unconscionable and constitutionally unfair.

Held: Members of the Gardaí to whom a warrant is issued for execution must be accountable to the court which issued the warrant for its prompt execution and, in default of a prisoner being expeditiously produced, have an explanation for his non-production and furnish an explanation of what steps were taken to bring about his apprehension.

PLANNING AND DEVELOPMENT

Blessington & District Community Council Ltd v Wicklow County Council & Ors (Kelly J), 19 July 1996

Judicial review—validity of grant of planning permission—locus standi—Constitution—‘substantial grounds’—planning permission granted on 22 March 1995—application for leave to seek judicial review started on 29 April 1996—whether newspaper notices adequate—whether time limit of two months repugnant to Constitution—whether applicant having locus standi—whether applicant having ‘substantial grounds’ for contending decision invalid—meaning of ‘substantial grounds’—*Local Government (Planning and Development) Act, 1963, s82 (3) (B)*—*Local Government (Planning and Development) Act, 1992, s19*.

Held: The primary purpose of a newspaper notice published in pursuance of art 14 of the Local Government (Planning and Development) Regulations, 1977 is to ensure that adequate notice is given to members of the public so that they may make such representations or objections as they consider proper. Accordingly, trivial inaccuracies or omissions which do not mislead the public will not invalidate such notices.

Dublin Docklands Development Authority Bill, 1996

This Bill, as presented by the

Minister for the Environment, aims to provide for the establishment of a body to be known as the Dublin Docklands Development Authority (in line with the body proposed in the Dublin Docklands Area Taskforce report of 29 May 1996). The body would be responsible: for economic and social regeneration in the Dublin Docklands area; for improvements in the area's environment; and for the continued development of the financial services sector in the Custom House Docks Area.

PRACTICE AND PROCEDURE

Criminal Justice (Legal Aid) (Amendment) Regulations, 1996 (SI no 311 of 1996)

These regulations provide for the payment of a fee of £350 to solicitors who are assigned to exceptional cases in the District Court and appeals to the Circuit Court, where the Department of Justice, following consultation with the Chief State Solicitor's Office, decides that a particular case is exceptional. These regulations take effect as if they had been brought into operation on 1 June 1993.

Rules of the Superior Courts (No 2) of 1996 (SI no 377 of 1996)

These rules make provision in regard to applications to the high court under the Air Pollution Act, 1987. They came into operation on 1 January 1997.

Allied Irish Coal Supplies Ltd v Powell Duffryn International Fuels Ltd (Laffoy J), 19 July 1996

Joinder of party as co-defendant to proceedings—principles to be applied—court's discretion—corporate veil—limitation of actions—plaintiff issuing proceedings in contract and tort in 1984 seeking damages against defendant—subsequently seeking joinder of company as co-defendant to the proceedings—defendant a wholly-owned subsidiary of company—nature of onus on plaintiff seeking to join party as co-defendant—whether defendant functioned as a separate legal and corporate entity to company or whether the two constituted a single economic entity—whether useful purpose served by joining a party where claim would be statute-barred—*Statute of Limitations 1957*—*Rules of the Superior Courts 1986, O 15, rr 13, 14*.

Held: Even if a plaintiff had a stateable case for the joinder of a party as a co-defendant, the court would not order such joinder where, the claim against the party being statute-barred, it would serve no useful purpose to do so.

PRISONS

Prison (Disciplinary Code for Officers) Rules, 1996 (SI no 289 of 1996)

These regulations, providing a disciplinary code for prison officers, came into operation on 1 October 1996.

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ROAD TRAFFIC

Road Traffic Act, 1961 (Section 103) (Offences) Regulations 1996 (SI no 319 of 1996)

These regulations (replacing previous regulations) declare the offences to which s103 of the Road Traffic Act, 1961 applies, including the offence of exceeding a speed limit (to which s103 had not previously applied). They also prescribe the form of notice which may be attached to a vehicle or given to a person by a member of the Garda Síochána or authorised person who alleges that an offence has been committed. They further prescribe the amounts which a person, who is liable to prosecution, may pay as an alternative to prosecution. These regulations came into operation on 1 December 1996.

Road Traffic (Licensing of Drivers) (Amendment) Regulations, 1996 (SI no 328 of 1996)

These regulations provide that a person who fails to comply with the requirement to undergo a driving test in order to obtain a third or subsequent provisional licence may be issued with an additional provisional licence which will be valid for only one year. If a driving test is not undertaken during that year, a further provisional licence will not be issued.

SOCIAL WELFARE

Social Welfare Act, 1996 (Section 7) (Commencement) Order 1996 (SI no 188 of 1996)

This order brings s7 of the Social Welfare Act, 1996 into operation with effect from 10 June 1996. The section provides for the continued payment of child dependant allowances, for up to 13 weeks, to persons in receipt of such increases at the full rate who have been unemployed for 12 months or more and who take up employment which is expected to last for at least four weeks.

Social Welfare (Code of Practice on the Recovery of Overpayments) Regulations, 1996 (SI no 227 of 1996)

These regulations bring into operation a code of practice (set out in the schedule to the regulations) which governs the repayment of all overpayments of social welfare payments. The code specifies the information to be made available to an individual assessed with an overpayment, the need to have regard to that individual's ability to repay and the various methods of recovery. The code also provides for the circumstances in which the deferral, suspension or reduction in repayment may be considered.

Social Welfare (Social Welfare Tribunal) Regulations, 1996 (SI no 262 of 1996)

These regulations provide for a technical amendment to the time limit for making an application for an adjudication to the Social Welfare Tribunal arising from the amendment made in the Social Welfare Act, 1996, under which a person involved in a trade dispute may appeal a disqualification for receipt of unemployment assistance or benefit without first having to appeal the deciding officer's decision to the Social Welfare Appeals Office.

Social Welfare Act, 1996 (Part IV) (Commencement) Order 1996 (SI no 296 of 1996)

This order brings Part IV of the Social Welfare Act, 1996 (which provides for the introduction of a new disability allowance replacing the previous disabled person's maintenance allowance scheme) into operation with effect from 2 October 1996.

Social Welfare (Consolidated Payments Provisions) (Amendment) (No 6) Regulations 1996 (SI no 297 of 1996)

These regulations provide for the introduction of a new scheme of disability allowance. These regulations came into operation on 2 October 1996.

Social Welfare (Consolidated Contributions and Insurability) Regulations 1996 (SI no 312 of 1996)

These regulations consolidate existing regulatory provisions relating to: the payment and collection of employment contributions; the payment of contributions by self-employed and voluntary contributors and optional contributions payable by share-fishermen; the crediting of employment contributions; the refund of contributions; modifications of insurance; and a number of miscellaneous provisions relating to insurability. These regulations came into operation on 1 November 1996.

TAXATION

Value Added Tax (Returns) Regulations, 1996 (SI no 294 of 1996)

These regulations require a taxable person to supply the details requested on the VAT return issued to him or her under s19(3) of the Value Added Tax Act, 1972. Recent changes in VAT primary law permit traders who account annually for VAT to align the period covered by their annual VAT return with their annual commercial accounting period. For these traders, this annual return covers both the tax payment and the associated trading details for the period. Traders who account for their VAT bi-monthly must also make an annual return of trading details and the regulations have the effect of extending the same flexibility as regards this annual return to these traders. These regulations came into operation on 1 September 1996 and revoke and replace the Value Added Tax (Returns) Regulations, 1993.

Finance Act, 1994 (Commencement of Chapter 1 of Part II) (Excise Duty on Tobacco Products other than Cigarettes)**Order, 1996 (SI no 302 of 1996)**

This order brings the main provisions of the Finance Act, 1994 relating to the use of tax stamps for excise purposes with regard to tobacco products, other than cigarettes, into operation with effect from 1 October 1996.

Finance (Excise Duty on Tobacco Products) Act, 1977 (Section 2A(5)) Order, 1996 (SI no 303 of 1996)

This order brings the main provisions of the Finance Act, 1994 relating to the use of tax stamps for excise purposes on roll-your-own tobacco packages into operation with effect from 1 October 1996. Certain provisions relating to the same system will come into operation on 1 April 1997.

Finance Act, 1993 (Section 60) Regulations 1996 (SI no 338 of 1996)

These regulations prescribe the persons who may have access to records established under s60 of the Finance Act, 1993. These are: the Motor Insurers' Bureau of Ireland; motor vehicle manufacturers and distributors; health boards; health and safety officers; the Office of the Director of Consumer Affairs; and local authorities.

Value Added Tax (Refund of Tax) (No 29) Order, 1996 (SI no 334 of 1996)

This order provides relief from VAT for certain goods and services purchased by accredited diplomatic personnel serving in Ireland.

TELECOMMUNICATIONS

Telecommunications (Miscellaneous Provisions) Bill, 1996

This Bill has been amended in the Select Committee on Enterprise and Economic Strategy and passed by Dail Éireann. (See also (1996) 14 ILT 247.)

TORT

Sean Hussey v Francis Joseph Plunkett Dillon & Ors practising under the name and style of Gerrard Scallan & O'Brien Solicitors (Supreme Court), 26 June 1996

Negligence—solicitor/client relationship—alleged professional negligence—bankruptcy proceedings—action for damages dismissed in High Court—appeal to Supreme Court—standard of duty expected of solicitor—whether solicitor breached that duty—whether plaintiff entitled to succeed in action for damages—whether action to be dismissed—*Irish Bankrupt and Insolvent Act 1857, s128—Bankruptcy Act, 1988.*

Held: If solicitors were required to conduct company office searches to try and detect changes of names of companies and the like in every bankruptcy proceeding in which the petitioner was a company, it would add greatly and, in the opinion of the

court, unnecessarily to the costs of such proceedings.

Civil Liability (Amendment) Bill, 1996

This Bill has been amended in the Select Committee on Legislation and Security. (See also (1996) 14 ILT 202.) The committee has raised the proposed new maximum level of compensation to £20,000.

VALUATION

PWA International Ltd v Commissioner of Valuation (Carroll J), 26 July 1996

Whether item rateable—test to be applied—case stated by Valuation Tribunal for opinion of high court—whether the fixture's connection with the premises was of a permanent or semi-permanent nature—*Rateable Property (Ireland) Amendment Act 1860—Valuation Act, 1986—Valuation Act, 1988, s5.*

Held: In deciding whether a certain item was rateable, whether fixed or not, the test was not whether it contributed to the value

of the premises but whether the fixture's connection with the premises was of a permanent or semi-permanent nature.

WILLS

Iris Blackall v Rose Blackall & Ors (McCracken J), 28 June 1996

Will—formalities—whether will validly executed—capacity—whether deceased knew and approved of will's contents and was of sound mind, memory and understanding—onus of proving formal validity—onus where challenge to will based on the state of knowledge or health of the testator—presumption of due execution and of testamentary capacity—elderly testatrix—will executed in 1966—will executed in 1976—specific revocation clause—whether 1976 will her last will and testament—whether earlier will revoked—*Succession Act, 1965, s78.*

Held: The onus of proving the formal validity of a will was on the person who propounded the

will, but if there was a challenge to a will based on the state of knowledge or health of the testator, the onus was on the person who challenged the will. There was a presumption of due execution and of testamentary capacity where a will was formally valid.

John O'Dwyer & Anor v Thomas Keegan & Ors (Kelly J), 12 July 1996

Testacy—surviving spouse—testator leaving no share in estate to surviving spouse—surviving spouse dying having made no claim to share in estate of testator—whether half share in estate vesting in surviving spouse on death of testator by virtue of the *Succession Act, 1965—Succession Act, 1965, s111(1)*

Held: Section 111(1) of the Succession Act, 1965 confers a personal right, exercisable at his discretion, on a surviving spouse to acquire one half of the estate of the testator. Where the surviving spouse dies without exercising this right, his estate does not benefit under s111(1). **G**

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Tax commentary

Compiled by the Taxation Committee

Domicile and tax planning

Mrs Y acquired an Irish domicile of choice in 1992 by becoming resident here and having an intention to reside here for the remainder of her lifetime. In 1996, Mr and Mrs Y entered into a deed of separation. Mrs Y has assets of approximately £500,000. Mr and Mrs Y have one child (a daughter) aged 20 years of age who is resident, ordinarily resident and domiciled in the UK.

Should Mrs Y retain her Irish domicile of choice, a liability to Irish inheritance tax will arise on her death, based on her worldwide assets and amounting to approximately £118,000.

In the event of Mrs Y relinquishing her Irish domicile of choice by ceasing to be resident here and ceasing to have any intention to reside here for the remainder of her lifetime, then her domicile of origin in England and Wales will revive and on her death a liability to UK inheritance tax will arise amounting to stg £120,000 approximately.

Clearly, as Mrs Y is 50 years of age, the prospect of her reverting to her domicile of origin in England and Wales at some time in the future cannot be ignored. Prudent tax legal advice will bear this possibility in mind, however remote it might appear at the present time.

Jersey resident discretionary trust

Mrs Y should be advised that it is possible to mitigate the inheritance tax charge in Ireland (domicile of choice) and/or eliminate

the potential inheritance tax charge in the UK (domicile of origin) by creating a Jersey discretionary trust.

The Jersey discretionary trust should be created by Mrs Y while she retains her Irish domicile of choice and would include a life interest in her favour with the objects of the trust being a class of individuals including her daughter. Mrs Y should be advised to execute a will which would contain a power of appointment in relation to the trust assets. A discretionary trust is outside the scope of discretionary trust tax as introduced by section 106, *Finance Act, 1984*, where an interest in possession is created by will or *inter vivos* disposition.

Position under UK law

Under UK law, such a trust is known as an 'excluded property' settlement for UK inheritance tax purposes. Section 48(3) *UK Capital Transfer Tax Act 1984* provides that settled property is excluded property if:

- 1) The settlor was not domiciled in the UK at the time she made the settlement
- 2) The property is not situated in the UK.

However, the effect of an excluded property settlement can be nullified if the settlor is regarded as having a *deemed* UK domicile.

In this regard, section 267 of *UK Capital Transfer Tax Act 1984* provides that a person not domiciled in the UK at any time shall be treated for the purposes of the

Act as domiciled in the UK at the time if:

- a) She was domiciled in the UK within three years immediately preceding the relevant time, or
- b) She was resident in the UK in not less than 17 of the 20 years of assessment, ending with the year of assessment in which the relevant time falls.

Mrs Y, on the facts, will not be regarded as having a 'deemed' UK domicile. However, she must retain her domicile of choice in Ireland. Even if she is not resident here, as long as she intends to reside permanently here her domicile of choice will prevail (*Doucet v Geoghegan*, Court of Appeal, 28 June 1878).

The trustees of the Jersey discretionary trust will consider investing in UK and Irish Stock Exchange securities which will be held by a Jersey resident company controlled by the Jersey resident trustees. For example, £180,000 might be invested in the Jersey company for onward investment in the aforementioned UK and Irish securities. The balance of £320,000 could be invested in, say, Irish Government Foreign Loan 7¾ DM public bond issue due October 2002 by the trustees and not treated as a Jersey company asset.

In this regard, the capital gains tax implications of realising any gains on the trust investments will have to be considered.

UK capital gains tax

Schedule 16, paragraph 2 of the

UK Finance Act 1991 charges a settlor to capital gains tax in respect of capital gains arising to a non-resident trust created on or after 19 March 1991. However, the charge does not apply in a particular year of assessment if the settlor is not domiciled in the UK at any time in that year of assessment. Accordingly, capital payments can be made free of capital gains tax to UK resident beneficiaries if the settlor of a non-resident trust was, when she made the settlement and continues to be in each year of assessment, domiciled outside the UK. Clearly, this will benefit Mrs Y's daughter, who is resident in the UK.

Jersey capital gains tax

The trustees of the Jersey discretionary trust who are resident in Jersey will not have any capital gains tax liability to discharge on disposal of any of the trust assets as capital gains tax does not exist under the laws of the States of Jersey.

Irish capital gains tax

Section 37 of the *Irish Capital Gains Tax Act, 1975*, which charges to Irish capital gains tax any gains arising in non-resident trusts where any beneficiary under the settlement is domiciled and either resident or ordinarily resident in the State, will not apply because the principal object of the Jersey discretionary trust is resident, ordinarily resident and domiciled in England and Wales, and as long as the settlor remains non-resident in the State.

However, a chargeable gain attributable to a foreign discretionary trust is proportionately attributed to the Irish resident beneficiaries by reference to the discretionary payments made to the beneficiaries in the preceding five years.

UK inheritance tax perspective.

Assuming that at some time in the future Mrs Y ceases to retain an intention to reside in Ireland for the remainder of her lifetime and ceases to be resident here, her domicile of origin will revive.

On her death she would have a domicile of origin in England and Wales and there would not be any liability to UK inheritance tax as all her assets are now situated in a Jersey discretionary trust which was created when Mrs Y had a domicile other than that of England and Wales.

However, the Labour Party in England may review the concept of domicile should it be returned to power in the next election.

The domicile of the Jersey discretionary trust is fixed at date of creation of the trust and the trust assets are excluded property for UK inheritance tax purposes. Had Mrs Y not set up the Jersey discretionary trust or was regarded as having had a 'deemed' domicile in England and Wales when she set up the Jersey discretionary trust, then (assuming the value of the assets had remained at £500,000) a liability to UK inheritance tax of stg£120,000 would arise on her death.

Jersey inheritance tax perspective. Jersey has not intro-

duced any inheritance tax legislation.

Irish inheritance tax perspective. Assuming as of the date of her death that Mrs Y was not domiciled in Ireland and did not have any Irish assets, a charge to Irish capital acquisitions tax arising on her death does not arise.

With regard to the £180,000 invested in the Jersey company (and indirectly in Irish and UK Stock Exchange investments), the value of the Jersey company shares would be liable to Irish CAT at its market value at the date of Mrs Y's death should she die domiciled in Ireland. However, the £182,000 CAT threshold (parent to child) as indexed would be deducted from the market value of the Jersey company shares, thereby reducing the value for inheritance tax purposes.

Furthermore, if she died domiciled in Ireland, the £320,000 invested in Irish Government Foreign Loans 7³/₄% DM public bond issue due October 2002 would pass to a non-resident, non-ordinarily resident and non-domiciled beneficiary and would be exempt from inheritance tax provided that the conditions contained in section 57 of the 1976 Act are adhered to.

It is evident from the above that inheritance tax and capital gains tax savings can be achieved by careful analysis of changes in domicile and its interaction with international tax law.

G

Eamonn O Connor AITI is a solicitor with Reeves.

Double taxation agreement between Ireland and the UK

When a person leaving an estate (the 'disponer') dies domiciled in Ireland, and the estate contains foreign assets, the general treatment is to allow any foreign tax paid as an expense of the estate rather than as a credit against the tax. The double taxation agreements provide for a system of credits against the tax paid. Ireland has double taxation agreements with both the UK and the United States but as both agreements operate quite differently, this article considers the effect of the UK agreement only.

The main impact of UK inheritance tax on the estate of an Irish-domiciled disponer is that a liability to UK tax may arise if the value of the UK assets exceeds £200,000 (£150,000 prior to 6 April 1996). When this limit is exceeded, the balance of UK assets are taxed at a flat rate of 40%.

The effect of the UK double taxation agreement is to provide for a credit where the same property is taxed on the same event in both countries. Article 8 of the agreement provides that where an Irish estate contains property sit-

uated in the UK, Ireland must give a credit for the tax paid in the UK. The credit is given at the lower of the effective rates of tax payable in both countries. This is best explained by way of an example.

Example 1

Total estate	£900,000
Irish assets	£550,000
UK assets	£350,000

The estate is to be divided equally between two children.

Irish tax. Each child has a tax-free threshold of £182,550, resulting in a total liability on each child to inheritance tax of £101,980 – an effective rate of 22.66%.

UK tax. The UK estate is taxed at 40% on the excess over £200,000, giving rise to UK tax as follows: £150,000 at 40%: £60,000 – an effective rate of 17.14%.

Under the double taxation agreement legislation, a credit is given in Ireland for tax paid in the UK at the lower of the effective rates. In this instance, the lower effective rate is 17.14% and therefore a full credit for the tax paid in the UK (£350,000 at 17.14%:

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Credits under the double taxation agreement between Ireland and the UK

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Beneficiary (whether or not chargeable to CAT)	Value of benefit IR£	Value of UK property in (b) IR£	Amount of UK tax on (c) IR£	Rate of UK tax $\frac{(d)}{(c)} \times 100$	Amount of CAT on (b) IR£	Rate of CAT $\frac{(f)}{(b)} \times 100$	Credit IR£	Beneficiary to whom credit is given	Net CAT payable IR£
Son 1	320,000	180,000	32,000	17.78%	49,980	15.618%	28,113	Son 1	21,867
Son 2	320,000	180,000	32,000	17.78%	49,980	15.618%	28,113	Son 2	21,867
Daughter 1	180,000	nil	nil	n/a	nil	nil	nil	n/a	nil
Daughter 2	180,000	nil	nil	n/a	nil	nil	nil	n/a	nil

£60,000) is available. The final tax payable is: Irish tax – £143,960; UK tax – £60,000.

But consider the following example.

Example 2

Total estate£900,000
Irish assets£450,000
UK assets.....£450,000
The estate is to be divided equally between three children.

Irish tax. Each child has a tax-free threshold of £182,550, resulting in a total liability on each child to inheritance tax of £41,980 – an effective rate of 13.99%.

UK tax. In this example £250,000 (the excess over £200,000) is taxable at 40%, giving rise to a liability of £100,000 – an effective rate of 22.22%. As the credit for the UK tax given against the Irish liability is at the lower of the effective rates, the credit available is therefore £62,955 (£450,000 at 13.99%).

The tax payable is therefore: Irish tax – £62,985; UK tax – £100,000.

Because of the operation of the effective rates, full relief for the tax paid in the UK will not always be available and this should be borne in mind when advising a client.

A further point to note is that under the double taxation agreement the credit is available only to the person who pays the tax. As the UK tax is a tax on the estate, it is usually the residuary

legatee who bears the liability. The one exception to this is where a specific bequest of foreign property is made. In this situation, that property which is the subject of the specific bequest will bear its proportionate share of the UK tax. A credit tax for that tax is then available to the beneficiary. Where a disponent proposes making a specific bequest of foreign property, it is very important to look at the effect of the double taxation agreement on that bequest. The importance of doing so is illustrated by the comparison in **Examples 3 and 4**.

Example 3

Total estate.....£1,000,000
Irish property £640,000
UK property £360,000
The Irish property is divided equally between two sons and the UK property is to be divided equally between two daughters.

Irish tax. Each son receives a benefit of £320,000 which, allowing for a threshold of £182,550, gives rise to a tax liability of £49,980 each. Each daughter receives a benefit of £180,000 which, allowing for a threshold of £182,550, does not give rise to a tax liability. The total Irish tax is therefore £99,960, or £49,980 from each son.

UK tax. As the UK assets exceed £200,000 by £160,000, UK tax of £64,000 (£160,000 at 40%) is payable. The credit is available to the recipients of the specific

bequests of the UK property (the two daughters) against their Irish inheritance tax liability at the lower of the effective rates. However, the lower effective rate is 0% as no Irish tax is payable by the daughters and, as such, the benefit of the credit is lost – that is, the full Irish liability and the full UK liability is payable.

The tax payable is therefore: Irish tax – £99,960; UK tax – £64,000; making a total of £163,960.

If it had been specified that the two sons should take the English assets as part of their inheritance, the final liability would be quite different. Consider the following example which has the same facts as **Example 3** except that it has been provided that the sons take the UK assets as part of their benefits.

Example 4

Irish tax. Each son takes a benefit of £320,000, which consists of £140,000 Irish assets and £180,000 UK assets, giving rise to inheritance tax liability of £49,980 each. This results in an effective rate of 15.618% and a total Irish liability of £99,960.

UK tax. The tax on the UK assets remains at £64,000 – an effective rate of 17.78%. But in this example the sons take the UK assets as part of their benefit and, as such, a credit for the UK tax is available to them at the lower of the effective rates. In this

instance a credit of £28,113 (£180,000 at 15.618%) is available to each son against his Irish liability, giving rise to a final tax position as follows: Irish tax – £43,734; UK tax – £64,000; making a total of £107,734.

A saving of £56,226 has been achieved by dividing the estate to take maximum advantage of the UK double taxation agreement.

A form has been specifically designed by the Revenue Commissioners to calculate the credits available, and **Example 4** above has been set out on the form for illustration purposes.

The following points should be noted:

- No credit is given for any interest or penalties paid in the UK
- UK tax is charged on the valuation as of the date of death, and these valuations should be used in calculating the UK tax
- The tax threshold available in the UK is to increase from 6 April 1997.

The UK Capital Taxes Office has advised that a series of publications on UK capital taxes has recently been published and is available from the Capital Taxes Office of the Inland Revenue, Ferrers House, PO Box 38, Castle Meadow Road, Nottingham NG2 1BB, England (tel: 0044 115 974 0000).

G

Orla Barry-Murphy is a solicitor with Mason Hayes Curran.



Diary dates

CONTINUING LEGAL EDUCATION

Contact: Barbara Joyce,
01 671 0711

Family Law Lecture Series

Topic: Lecture 1, *Judicial separation and ancillary orders*

Speakers: Mary Griffin,

David Bergin
Date: 5 February
Venue: Blackhall Place

Topic: Lecture 2, *Financial issues (capital-related issues)*
Speakers: Muriel Walls, Eugene Davy, Stephanie Coggans
Date: 12 February
Venue: Blackhall Place

Topic: Lecture 3, *Financial issues (income-related issues)*
Speakers: Brian Gallagher, Gerard Durcan, SC
Date: 19 February
Venue: Blackhall Place

Topic: Lecture 4, *District court applications*
Speakers: Joan O'Mahony, Rosemary Horgan
Date: 26 February
Venue: Blackhall Place

Topic: Lecture 5, *Preparation of a case*
Speakers: Mary Hayes, George Gill
Date: 5 March
Venue: Blackhall Place

Topic: Lecture 6, *Divorce legislation*

Speakers: Mary O'Toole, BL, Brian Gallagher
Date: 12 March
Venue: Blackhall Place

SEMINARS

Arbitration seminars organised by the Arbitration Committee in association with the Younger Members' Committee

Topic: *Arbitration*
Date: 25 March morning
Speakers include: Timothy Bouchier-Hayes, Gary Byrne, Michael Carrigan, Eamonn Gill, Bernard Gogarty, Kevin Kelly, Robert Connon.
Venue: Presidents' Hall, Blackhall Place
Contact: Mary Lynch, Law Society

Topic: *Arbitration*
Date: 10 April afternoon
Venue: Jurys Hotel, Western Road, Cork
Speakers: See Dublin seminar
Contact: Mary Lynch, Law Society

CONFERENCES

Law Society Annual Conference

Date: 3-6 April
Venue: Barcelona
Speakers: Matthew Moore, consultant; Ramon Mullerat, Past President, CCBE; Rocco Caira, Solicitor, Bilbao
Contact: Mary Kinsella on 01 671 0711

The 1997 Woman Lawyer Conference

Date: 12 April
Venue: New Connaught Rooms, Covent Garden, London
Speakers: Tony Girling, President, UK Law Society; Robert Owen QC, Chairman, UK Bar Council; Lord Woolf, Master of the Rolls
Contact: Blair Communications & Marketing (tel: 0044 171 722 9731, fax: 0044 171 586 0639)

Burren Law School

Topic: *The poet and the media in Irish law – a Brehon perspective*
Date: 18-20 April
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Pictured at the dinner in honour of out-going President, Andrew F Smyth, were (back row, l-r) His Honour Judge Frank O'Donnell, Michael V O'Mahony, Donal G Binchy, Bruce St John Blake, Adrian P Bourke, Laurence Cullen, Ernest Margetson, Thomas D Shaw, Joseph Dundon and Patrick A Glynn. Front row (l-r): Maurice Curran, Walter Beatty, Andrew F Smyth, Moya Quinlan, Peter Prentice and Gerald Hickey



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The firm of Pierse & Fitzgibbon, Listowel, has had a mural painted in its offices which has caused very considerable interest. Many notable figures in the town are shown in the mural, including John B Keane (third left) and Brian McMahon (right foreground), as well as the partners and staff of the firm. The inset shows the artist, Olive Stack, with Robert Pierse and the Tanaiste, Dick Spring, TD



Out-going President, Andrew F Smyth, pictured at a dinner in his honour with then Senior Vice-President, Frank Daly, and then Junior Vice-President, Ward McEllin



Law Society President Frank Daly pictured with His Honour Judge Pat McCartan, solicitor, who was recently sworn in as a judge of the Circuit Court



Council of the Law Society 1996/97

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Book reviews

Intellectual property in Europe

Guy Tritton

Sweet & Maxwell Ltd (1996), Cheriton House, North Way, Andover, Hants SP10 5BE, England
ISBN: 0 421 54230 6. Price: stg£95

In the 1960s, the EU (or the EEC as it was then) was concerned that national intellectual property rights would be used to restrict trade within the EU. Steps were taken to ensure that this did not happen, with the result that many conventions were drafted and, latterly, several directives in this area have emanated from Europe. This fact, together with the almost daily advances being made in information technology and its increasing influence on all our lives, both professional and personal, and the increased mobility of individuals throughout the developed world has resulted in an enormous explosion in the growth of intellectual property law.

National law on matters such as copyright, trade marks and patents is becoming less important, and any practitioner confronted with an intellectual property issue must consider a broader range of European directives and conventions which, in some cases, are above and beyond Irish law.

Against this background, Mr Tritton's book on intellectual property in Europe is particularly useful as it contains a comprehensive and well-indexed analysis of the relevant directives and conventions, as well as a detailed commentary and consideration of the legislation's effects and how it has been interpreted and applied at European level. It is an unusually well-rounded book because, as well as describing and outlining the scope of various species of intellectual property rights (including design protection and plant variety rights), it also deals with intellectual property issues in relation to enforcement, licensing, franchising and abuse of dominant posi-

tion under Article 86 of the Treaty of Rome.

While the title suggests that this book is concerned with intellectual property in Europe, the book does have a distinct English slant to it which is not surprising as Mr Tritton is a practitioner in London. For example, some of the tables at the beginning of the book deal with English statutes, statutory instruments and Rules of the Supreme Court. There are no equivalent tables for other European countries.

There are useful tables at the end of each chapter from which one can tell at a glance which countries have ratified the various conventions and if any special

measures have been adopted by a particular country in respect of a particular aspect of intellectual property. The position is stated to be as at 1 October 1995.

Specialist books of this kind unfortunately come at a premium price, which in this instance is stg£95. However, particularly in relatively 'new' areas such as that covered in this book, practitioners would find it useful to be armed with a book which will not only help identify whether a client has a problem, but may also be of assistance in finding the answer to that problem quickly. **G**

Rachel Hussey is a solicitor with McCann FitzGerald.

International personal injury compensation sourcebook and yearbook (two vols)

Edited by Dennis Campbell

Sweet & Maxwell Ltd (1996), Cheriton House, North Way, Andover, Hants SP10 5BE, England
ISBN: 0 421 54230 6 (sourcebook); 0 421 530 502 (yearbook). Price: stg£115 for both volumes

These two volumes will be of interest to lawyers who practise in the area of personal injury law. They succeed in their objective, which is to give a guideline to readers as to the system of compensation in place in many jurisdictions throughout the world and, in particular, the European Union.

The publishers are to be commended for the way in which they approached this subject. An individual lawyer was chosen from each jurisdiction to prepare a general commentary on this area of law under specified headings. This enables the reader to get an overall appreciation of the system of personal injury law in place in each of the jurisdictions covered and also to compare that system with those in place in the various other jurisdictions covered.

For instance, it is interesting to

note that some jurisdictions allow for tribunals and other forms of resolution through mediation and arbitration, as opposed to a court system, when dealing with personal injury claims. Some exclude the right to claim damage for what are classified as 'minor injuries'; some allow for 'no fault' compensation. The notion of strict liability varies from one jurisdiction to another. Some retain the services of juries to determine the amount of compensation; others allow the right to pursue claim for damages for breach to what is known as 'the moral code'. Some have specified scales determining the amount to be awarded.

Legal aid varies from jurisdiction to jurisdiction. Contingency fees/scale fees are prohibited in many jurisdictions, but not all. In

one particular jurisdiction, a maximum scale of damages provided for an amount calculated by periods of 'confinement to bed'. Some allow for modification of the amount of compensation awarded, depending on the financial status of both the responsible and the injured party. The statute of limitation provide for instalment payments in respect of certain aspects of compensation recovered. Punitive damages also appear to exist in certain jurisdictions (although this appears to be quite restrictive).

For all the above reasons, this sourcebook and yearbook are recommended as useful guides for lawyers practising in the area of personal injury law. **G**

Michael Crowe is a partner in Daly Lynch & Crowe.

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LOST LAND CERTIFICATES

Registration of Title Act, 1964

An application has been received from the registered owner/s mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the Registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

(Registrar of Titles) Central Office,
Land Registry, Chancery Street,
Dublin
(Published 7 February 1997)

Regd owner: Elizabeth Reilly;
Folio: 14661; Land: Culleen More;
Area: 1a 0r 19p; Co Westmeath

Regd owner: James Danaher; Folio:
7311; Land: Knocknabooly; Area:
60a 3r 31p; Co Limerick

Regd owner: Gerald Carrick
Armitage; Folio: 32476; Land:
Cloughjordan; Area: 0a 2r 37p; Co
Tipperary

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Surrey GU21 5AU.
Tel: 0044 - 1483 - 726272
Fax: 0044 - 1483 - 725807

7 Day Licence Urgently Required

Details to
**Raymond St. J. O'Neill
& Co.,
Solicitors & Notary
Public**

Courthouse Chambers,
27/29 Washington Street,
Cork (Ref. RON)
Tel. No. 021/273050
Fax. No. 021/276786

Regd owner: Allan Rogers; Folio:
9358R; Land: Corporation; Area:
4a 1r 19p; Co Donegal

Regd owner: Patrick Holden; Folio:
1080; Land: Killahy; Area: 9a 0r
39p; Co Kilkenny

Regd owner: Henry Smith; Folio:
11283 and 11304 closed to 3832F;
Land: Corlea; Area: Folio 11283 -
9.556 acres; Folio 11304 - 11.681
acres; Co Cavan

Regd owner: James Moroney,
Kilmore, Co Clare; Folio: 9694;
Townland: Kilmore; Area: 87a 3r
0p; Co Clare

Regd owner: Vincent Smith; Folio:
1135; Land: Rahard; Area: 106a 3r
9p; Co Limerick

Regd owner: Patrick J Beirne,
Corrigeenagappul, Mantua,
Castlereagh, Co Roscommon; Folio:
23701; Townland:
Carrigeenynaghtan, Tonaknick,
Carrigeenynaghtan,
Carrigeenynaghtan; Area: 1a 1r
10p, 18a 2r 31p, 2a 1r 0p, 0a 3r
21p; Co Roscommon

Regd owner: Patrick Beirne,
Corrigeen, Mantua, Castlereagh, Co
Roscommon; Folio: 23701; Land:
Carrigeenynaghtan,
Carrigeenagappul; Area: 1a 1r 4p,
19a 0r 14p; Co Roscommon

Regd owner: Patrick Kennedy, 685
Aylesbury, Old Bawn, Tallaght, Co
Dublin; Folio: 15993F; Lands: 1)
townland of Oldbawn in the
barony of Uppercross, 2) property
situate to the west of Old Bawn
Road in the town of Tallaght,
townland of Oldbawn and barony
of Uppercross; Co Dublin

Regd owner: James Michael and
Norah Sullivan,
Knocknacunny, Ballaghaderreen,
Co Roscommon; Folio: 24357;
Townland: Knockanacunny,
Aghalustia; Area: 8a 1r 8p, 1a 2r
0p; Co Roscommon

Regd owner: Thomas and Geraldine
Tighe; Folio: 18736F; Lands:
Laraganboy West; Area: .335
hectares; Co Galway

Regd owner: Mary Cullinane; Folio:
24255 closed to 20322F; Land:
Ballyorgan; Co Limerick

Regd owner: Sonia Buckley,
Glendale, Kilternan, Co Dublin,
Folio: 8613; Lands: townland of
Glenamuck South in the barony of
Rathdown; Co. Dublin

Regd owner: Brigid Murphy; Folio:
634 and 9936; Land: Rossroe; Area:
Folio 634 - 147a 0p 5r; Folio 9936 -
75a 0p 5r; Co Kilkenny

Regd owner: Matthew Dwyer; Folio:
3356; Land: Quarryland; Area: 28a
0r 30p; Co Meath

Regd owner: Timothy Hogan; Folio:
3669F; Land: Portnard; Area: Prop
1 - 22a 3r 6p; Prop 2 - 2, 51a 0r 24p
(1 tenth part); Prop 3 - 8a 1r 0p;
Prop 4 - 122a 2r 15p (1 eleventh
part); Co Limerick **Regd owner:**
Cornelius Doherty; Folio: 2870;
Land: Tullintowell; Area: 27a 2r
25p; Co Leitrim

Regd owner: Michael Malone,
Ballyvrislaun, Liscannor, Co Clare;
Folio: 29674; Townland: Bally-vris-
laun; Ballyvrislaun; Area: 18.743
acres; 13.240 acres; Co Limerick

Regd owner: John Patrick Cox; Folio:
12306; Townland: Graffoge,
Cloonshannagh, Graffoge; Area:
29a 0r 7p, 1a 2r 6p; 1a 3r 25p; Co
Roscommon

Regd owner: Patrick Hanlon; Folio:
18425; Lands: Cloncumber,
Pluckerstown, Punchersgrange and
Feighcullen in the Baronies of
Connell and Offaly East; Area: 0a
2r 37p; Co Kildare

Regd owner: Patrick McGovern and
Ann McGovern, The Boreen,
Crossmolina, Co Mayo; Folio:
280F; Co Mayo

Regd owner: Patrick and Bernadette
Whelan; Folio: 14337, 2336, 2337;
Land: Ballyroan; Area: Folio 14337
- 4a 2r 2p; Folio 2337 - 9a 1r 1p;
Folio 2336 - 9a 3r 15p; Co Queens

Regd owner: Michael Keeling,
Donabate, County Dublin; Folio:
5351; Lands: Townland of
Beaverstown in the barony of
Nethercross; Co Dublin

Regd owner: John Joseph McGinley;
Folio: 943F; Land: Abbeylands;
Area: 0a 1r 6p; Co Donegal

Regd owner: John Oliver O'Gorman;
Folio: 58L; Land: Tyone and barony
of Ormond Upper; Co Tipperary

Regd owner: Thomas Joseph Donlon;
Folio: 2218; Land: Ards; Area: 31a
3r 14p; Co Longford

Regd owner: Michael and Olwyn
Jordan, 40 Martello Court,
Portmarnock, Co Dublin; Folio:
23158F; Lands: Townland of Saint
Helens in the barony of Coolock;
Co Dublin

Regd owner: George and Concessa
Prendergast; Folio: 13203F; Land:
Knockbaragh; Area: 1.979
Hectares; Co Carlow

Regd owner: Angus Fine Chemicals
Limited (now Hickson
Pharmachem Limited); Folio:
12497L; Lands: Ringaskiddy in the
Barony of Kerrycurrihy; Co Cork

Regd owner: Patrick Twomey; Folio:
32188 and 43836; Lands: Kilnap
and barony of Cork; Co Cork

Regd owner: John McLean; Folio:
4414; Lands: Drumcliffe North in
the barony of Carbury; Area: 11a
12p; Co Sligo

Regd owner: William Dixon; Folio:
862; Land: Ballynabarney; Area:
12a 1r 21p; Co Wexford

Regd owner: Kathleen Connolly;
Folio: 2646F; Land:
Drumshingore; Area: 165.568
acres; Co Leitrim

Regd owner: Michael Purcell; Folio:
6062 and 6065; Lands:
Ballinvalley and Killeigh; Co
Kings

Regd owner: James Gerard Fallon;
Folio: 381; Land: Kilmore Lower
and Kilmore Upper; Co Longford

Regd owner: Patrick Joseph
McEnroe (deceased); Folio:
13210; Land: Eighter; Area: 183a
0r 23p; Co Cavan

Regd owner: Crampton Housing
Limited, 158 Shelbourne Road,
Dublin; Folio: 8836F; Lands:
Townland of Ballymount Great in
the barony of Uppercross; Co
Dublin

Regd owner: Michael T O'Sullivan;
Folio: 716 and 935;
Land: Kilfalling; Area: Folio 716 -
2a 2r 20p; Folio 935 - 10a 1r 0p;
Co Kerry

Regd owner: Anthony Garvey and
Maureen Garvey, 5 Hillcrest Way,
Hillcrest, Lucan, Co Dublin; Folio:
10827F; Lands: A plot of ground
situate to the South East of Tandy's
Lane in the town and parish of
Lucan and barony of Newcastle;

Area: 0a 2r 37p; Co Dublin

Regd owner: Philomena Walsh;
Folio: 389F; Lands: Crobally
Upper, barony of Middlethird; Co
Waterford

NOTE FOR ADVERTISERS

Advertising rates in the *Professional information* section are as follows:

Lost land certificates: £18 plus 21% VAT. **Wills:** £21 plus 21% VAT. **Lost title deeds:** £50 plus 21% VAT. **Employment/miscellaneous:** £3 per printed line (approx 4-5 words to a line) plus 21% VAT

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E-mail jhyland @ indigo.ie

WILLS

O'Leary, Mary of Curraheen, Carrigrohane, Co Cork and formerly of Whiddy Island, Bantry, Co Cork. Would any person having any knowledge of a will executed by the above named deceased who died on 30 December 1996, please contact Messrs O'Mahony Farrelly, Solicitors, Wolfe Tone Square, Bantry, Co Cork, tel: 027 50132; fax: 027 50603.

Ganly, Katherine Mary, deceased, late of 61 Bayside Boulevard North, Sutton, Dublin. Would any person having knowledge of a will made after 17 December 1975 by the above named deceased who died on 16 December 1996, please contact Beauchamps, Solicitors of Dollard House, Wellington Quay, Dublin 2 (ref JMB), tel: 6715522; fax: 6773783.

Quirke, William Joseph, deceased, late of 19 Lotabeg Terrace, Mayfield, Cork. Would any person having any knowledge of a will executed by the above named deceased who died on 30 December 1996, please contact P J O'Driscoll & Sons, Solicitors, 73 South Mall, Cork, tel: 021 271421; fax: 021 274709 (ref: KQ/DF/C156).

Stynes, Peter, deceased, late of 11 Colbert's Fort, Tallaght, Dublin 24. Would any person having knowledge of the drafting or execution of an original will by the above named deceased who died on 21 November 1996, please contact Harry Sexton of Sexton Keenan & Company, Solicitors, 138 Walkinstown Avenue, Dublin 12, tel: 4500833; fax: 4500226.

McGowan, Michael, deceased, late of Renmore Barracks, Renmore, Galway. Would any person having knowledge of a will executed by the above named deceased who died on 4 November 1996, please contact M J Horgan & Sons, Solicitors, 50 South Mall, Cork, tel: 021 273074; fax: 021 270846.

Hall, Michael, deceased, late of 18 Mount Dillon Court, Artane, Dublin 5, 1 St. Alphonsus Road, Drumcondra, Dublin 9 and Ballinasloe, Co Galway. Would any person having knowledge of the will of the above named deceased who died on 15 December 1996, please contact Quinn O'Donnell, Solicitors, 23a Village Green, Tallaght, Dublin 24, tel: 01 4521744; fax: 4521819.

Mahoney, Kathleen, deceased, late of 5 East Pier, Howth, Co Dublin and formerly of 28 Harbour Road, Howth. Would any person having any knowledge of a will executed by the above named deceased who died on 1 January 1997, please contact Maxwell Weldon & Darley, Solicitors, 19 Lower Baggot Street, Dublin 2, tel: 6765473; fax: 6607116.

Baker, Leslie, deceased, late of 42 Park Road, Muskerry Estate, Ballincollig, Co Cork. Would anyone having knowledge of the whereabouts of the will of the above named deceased who died on 11 December 1996, please contact: Eoin C. Daly & Company, Solicitors, 38 South Mall, Cork, tel: 021 275244.

Lane, Patrick (otherwise Pat), late of Cloonbanane, Shrule, Co Galway. Would anybody having knowledge of the whereabouts of a will of the above named deceased who died on 27 November 1996, please contact M G Ryan & Company, Solicitors, 34/36 Upper Abbeygate Street, Galway, tel: 091 564011; fax: 091 561527.

Ryan, Edward, deceased, late of Glenstal, Magazine Road, Cork. Would any person having any knowledge of a will executed by the above named deceased who died on 3 March 1983, please contact Michael Powell & Company, Solicitors, 48 Grand Parade, Cork, tel: 021 270451; fax: 021 270454.

Quinn, William, deceased late of Kinure, Belgooly, Co Cork. Would any person having knowledge of the whereabouts of the will of the above named deceased who died on 18 January 1996, please contact Charles Hennessy of J W O'Donovan & Company, Solicitors, 53 South Mall, Cork, tel: 021 275352; fax: 021 273704.

Condon, Michael, deceased, late of Kilminick, Callan, Co Kilkenny. Would any person having any knowledge of a will executed by the above named deceased who died on 21 April 1996, please contact John Lanigan & Nolan, Solicitors, Abbey Bridge, Dean Street, Kilkenny, as soon as possible, tel: 056 21040; fax: 056 65980.

Warren, Patrick, deceased late of 20 Raymond Street, South Circular Road, Dublin 8. Would any person having any knowledge of the title deeds in the name of the above deceased (who died on the 1st July 1995) in respect of the above property, please contact Malone & Potter, Solicitors, 7 Cope Street, Dublin 2. Tel: 6712644.

MISCELLANEOUS

Northern Ireland Agents for all contentious and non-contentious matters. Consultation in Dublin if required. Fee sharing envisaged. Offices in Belfast, Newry and Carrickfergus. Contact Norville Connolly, D & E Fisher, Solicitors, 8 Trevor Hill, Newry, Tel: 0801693 61616; Fax: 0801693 67712.

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Dublin 2, offices available to let. Convenient location. reasonable terms. One or two floors above existing practice. Contact: Murphy Troy & Co. Tel: 01 6715459.

LOST TITLE DEEDS

Walsh, Eileen property at 108 Donore Terrace, South Circular Road, Dublin 8. Would anyone knowing the whereabouts of the above title deed please contact Tom Collins & Company, Solicitors 6 Charlemont Street, Dublin 2. Tel: 01 478 2510. **G**

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