GAZETTE

REGULARS

COVER PIC: ROSLYN BYRNE

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Leadership with vision

PIC: ROSLYN BYRNE

In this, my first message as President of the Law Society, I take the opportunity of thanking my colleagues on the Council for electing me to the highest office in the solicitors' profession and also of expressing my gratitude to all of you who have supported me since I was first elected to the Council of the Society in November 1978. My thanks also to all of my friends and acquaintances in the profession who have advised and counselled me through the years. I am humbled by the great honour that has been bestowed upon me.

As we approach the new millennium, we need to be more conscious of the rapid changes that are occurring daily in the way our lives are directed and lived. In 1974, when I was admitted to the roll of solicitors, there were fewer than 1,500 members in the profession. In 1999, the numbers on the roll will increase to around 6,700. Some 7,000 will be on the roll by the year 2000.

The increase in the number of lawyers in this country is not untypical of other jurisdictions in the developed world. As society becomes more complex, a greater number of laws, rules and regulations are enacted.

Can we in Ireland – and particularly in the Law Society – cope with the changes that are occurring? The challenge facing all of us, and particularly for the Officers and Council of the Society, is to plan for the inevitable changes. Leadership with vision and understanding, preceded by consultation, is required.

The Council of the Law Society is determined to see that the profession is properly served, now and for the years to come. This cannot be done without properly structured planning and management with the assistance of modern technological tools.

It is awesome to think that 85% of all technology used today will be obsolete and redundant within ten years. In the past, the Society has not sufficiently addressed its own technological requirements to ensure that every member of the profession has access to the most modern and up-to-date facilities available. A significant leap forward will be taken by the Society this year. A web site will be launched within a few months, while a state-of-the-art communication system involving telephones, voicemail, computers and e-mail will be fully operational.

Long tradition of legal independence

Never before has there been such a need for a strong solicitors' profession, bonded together with a sense of purpose, idealism and vision to ensure its development. Despite the diverse nature of many of the firms of solicitors in Ireland, we all share a common bond and objective as independent lawyers serving the ever-changing needs of our increasingly sophisticated and highly-educated clients. In that togetherness, the profession will find strength.

We have a long constitutional, legal and noble tradition in this country which recognises the independence of lawyers. There are three aspects to this independence:

i) Independence from third parties such as government and interest groups
ii) Independence from clients, and
iii) Independence from other lawyers.

In order that we can carry out our duty to protect our clients and achieve justice, we must be independent of all improper influences from third parties, including the powers of government. Our profession is self-regulated and can therefore, boldly and without fear, when necessary in the public interest, oppose the powers of government. The solicitor's independence from his client is often misunderstood by government. A lawyer does not act merely as a mouthpiece for his client, but is charged with the professional responsibility of using his legal expertise and skill to act in his client's proper legal interests. A solicitor is bound by a duty to work, to a certain extent, independently of his client to protect his client's interest.

Confidentiality is the cornerstone of the relationship between a lawyer and his client. This guarantee of confidentiality and privilege to a client is based on the fact that it is essential for the lawyer to be able to provide his client with the guarantees that are indispensable in order to gain his confidence. Any attempt to breach professional confidentiality or interfere with the sacrosanct privilege will be resisted by the profession. Any interference with these cornerstones of the relationship of the lawyer and his client are signs of a breakdown in democracy and the Law Society cannot, and will not, ignore key principles underlying the administration of justice and the rule of law.

Use of the facilities at Blackhall Place

Many solicitors do not make use of the facilities available at the Law Society's headquarters at Blackhall Place. I do hope that during the next 12 months every solicitor will put a visit to Blackhall Place on their 'must do' list. To encourage those of you who might be shy of visiting your own headquarters, I hope that whenever you receive an invitation to visit it, whether social, educational or otherwise, you will accept it.

The establishment of a modern education centre with all of the facilities necessary for teaching and learning will be advanced during the next 12 months. The recommendations of the independent Education Policy Review Group were overwhelmingly endorsed by the solicitors' profession in a poll conducted last month. It is now the challenge of myself and the Council to ensure that what the profession voted for and approved of is put in place. The control and direction of pre and post-admission education for solicitors is a cornerstone of the Society, and it has been fought for at great cost and with very considerable effort over the past few years.

I pledge to work diligently for the Society and the profession to attempt to repay the great trust and honour bestowed upon me for the next 12 months as President.

Finally, may you all have a happy, peaceful and relaxed Christmas, with happiness and prosperity throughout 1999.

Patrick O'Connor
President

Law Society Gazette Reader Survey 1998

It's been two years since we relaunched the *Law Society Gazette* – now it's your turn to tell us what you think! You can help us make the magazine even better by participating in this short reader survey. In return for your help, we'll enter your name in our prize draw where you could win a weekend for two in London, including flights and accommodation at a top hotel. The five runners-up will each win a bottle of the finest Jameson whiskey!

The winner will be announced in the January/February issue. The results of the survey (and your personal details) will not be used for any other purpose than improving the magazine and will not be divulged to any third party.

If you wish to be entered for the prize draw, please ensure you give your name and address below.

Name: _____

Address: _____

_____

1) How long have you been practising?

- ☐ 1 to 5 years
- ☐ 5 to 10 years
- ☐ 10 to 15 years
- ☐ 15 to 20 years
- ☐ Over 20 years

2) How often do you read the *Gazette*?

- ☐ Each issue
- ☐ Every second issue
- ☐ Once every three months
- ☐ Less often
- ☐ Never

3) Does anyone else read your copy of the *Gazette*?

☐ Yes ☐ No

If yes, how many others?

☐ 1 other ☐ 2 others ☐ 3-5 others

4) Please indicate how often you read each of the sections listed below.

PLEASE TICK ONE BOX FOR EACH TOPIC

	ALMOST ALWAYS	OCCASIONALLY	RARELY	NEVER
President's message	☐	☐	☐	☐
Viewpoint	☐	☐	☐	☐
Letters	☐	☐	☐	☐
Dumb and dumber	☐	☐	☐	☐
News	☐	☐	☐	☐
Feature articles	☐	☐	☐	☐
Briefing	☐	☐	☐	☐
People and places	☐	☐	☐	☐
Book reviews	☐	☐	☐	☐
Professional information	☐	☐	☐	☐

5) Please indicate to what extent you agree or disagree with the following statements about the *Gazette*? PLEASE TICK ONE BOX PER STATEMENT

	STRONGLY AGREE	AGREE	NO OPINION	DISAGREE
Informative	☐	☐	☐	☐
Interesting and enjoyable read	☐	☐	☐	☐
Well presented and laid-out	☐	☐	☐	☐
Keeps me updated on legal developments and legislation	☐	☐	☐	☐
Good balance between technical and lighter material	☐	☐	☐	☐
Relevant to my work	☐	☐	☐	☐

6) How well does the *Gazette* cover the following topics?

	VERY WELL	GOOD	ADEQUATELY	POOR
Irish legal developments	☐	☐	☐	☐
European legal developments	☐	☐	☐	☐
Feature articles on the law	☐	☐	☐	☐
Information technology	☐	☐	☐	☐
Business and management issues	☐	☐	☐	☐

7) Overall, how would you rate the *Gazette?*

☐ Excellent ☐ Average
☐ Very good ☐ Fair
☐ Good ☐ Poor

8) Please indicate your opinion of the *Gazette* in a word or phrase

_____

9) What other publications (other than newspapers) do you read regularly?

Legal and management

☐ Bar Review
☐ Irish Law Times
☐ ICLR Irish Reports
☐ UK Law Society Gazette
☐ The Writ (NI Law Society)
☐ The Lawyer magazine (UK)
☐ Accountancy Ireland
☐ Institute of Taxation Magazine
☐ Other (Please specify) _____

General

☐ Magill
☐ Business and Finance
☐ The Phoenix
☐ Other (please specify) _____

10) Do you make purchasing decisions on any of the following?

☐ Legal publications
☐ Computers (hardware/software)
☐ Staff training and development

Thank you for completing this survey. Please return (a photocopy will do) by 31 December 1998 to: The Editor, *Law Society Gazette*, Blackhall Place, Dublin 7 (fax: 01 672 4801).

Whose human rights are they anyway?

It seems that hardly a day goes by now without some reference to human rights appearing in the newspapers. This ought to have the desirable result that the notion of human rights will be taken seriously by the public, politicians, lawyers and judges. At the very least, some sort of public debate does appear to be igniting.

Last month, the European Court of Human Rights underwent a radical overhaul. This involved the amalgamation of the functions previously undertaken by the European Commission on Human Rights and the European Court. Now, the *European convention for the protection of human rights and fundamental freedoms* (ECHR) applies throughout 40 signatory states under the auspices of the Council of Europe. The intention is that the reformed court will actively and efficiently ensure full respect for the convention.

Moreover, under the *Good Friday agreement*, human rights commissions are to be established to ensure the protection of rights for everybody north and south of the Border. It is reported that Mary Robinson, in her capacity as United Nations Human Rights Commissioner, is pressing for the commissions to be given wide-ranging powers to investigate violations and abuses of all forms of human rights. If successful, these commissions could serve as a model for other countries.

And, of course, we have the courts of the land which are there to ensure respect for our fundamental civil rights in accordance with the Constitution.

The difficulty is that no-one seems to be able to agree on what exactly is to be considered as a human right. This is a matter of acute public concern. In this regard, the important speech given by President Mary McAleese at Harvard University in mid-October deserves to be read very closely. 'Human rights are the oxygen of civilisation', declared the President. 'Nobody owns them. Nobody has authority to deny them to another'.

Right of assembly

'Farmers have no right to disrupt my city', thundered Bernie Malone MEP, barely a week later, prior to the march in late October of several thousands of farmers through Dublin who were protesting at falling prices. It is a little difficult to see how this fits in with article 11 of the ECHR, which states: 'Everyone has the right to freedom of peaceful assembly'.

Ms Malone had two arguments. First, she said, blocking the streets of Dublin could be justified only if the protesters had no democratic rights or were excluded from the decision-making processes. Now, admittedly, article 11 recognises that the right of

President Mary McAleese: 'Human rights are the oxygen of civilisation'

assembly is not unrestricted, although permissible restrictions are carefully circumscribed: 'No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety'.

Obstruction may, of course, be unlawful in certain circumstances. But the inevitable consequence of a large peaceful public demonstration is that there will be some obstruction and some inconvenience to others. This does not of itself warrant restrictions on the right of assembly unless these are necessary for the protection of democratic society. The mere fact that farmers have other means at their disposal to put their case does not invalidate their right to march.

Secondly, said Ms Malone, those inconvenienced by the farmers' 'antics' were likely to be PAYE workers paying, on average, four times more tax than the farmer. I am at a loss to understand how the amount of tax paid should be used as a yardstick for the level of protection to be afforded to the exercise of one's fundamental rights.

Rights and responsibilities

By contrast, President McAleese called for a balanced appraisal of rights and their exercise. One person's right was another's burden, she said, and gave as an example the conflict between the right of Orangemen to march and the right of the residents of the Garvaghy Road not to be subject to abuse. Her message was simple: rights entail responsibilities and should not be used in a way which harms others.

She also called for a balance to be observed between freedom of the press and the damage that the exercise of such freedom can cause. It might be thought that such sentiments would be widely shared. Not so with one Mary Ellen Synon who issued a vitriolic attack in the *Sunday Independent*. Now, why might that be? G

(See also Eurlegal, *page 40)*

Conor Quigley is a barrister specialising in European Union law and practising at Brick Court Chambers, London and Brussels.

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Director General

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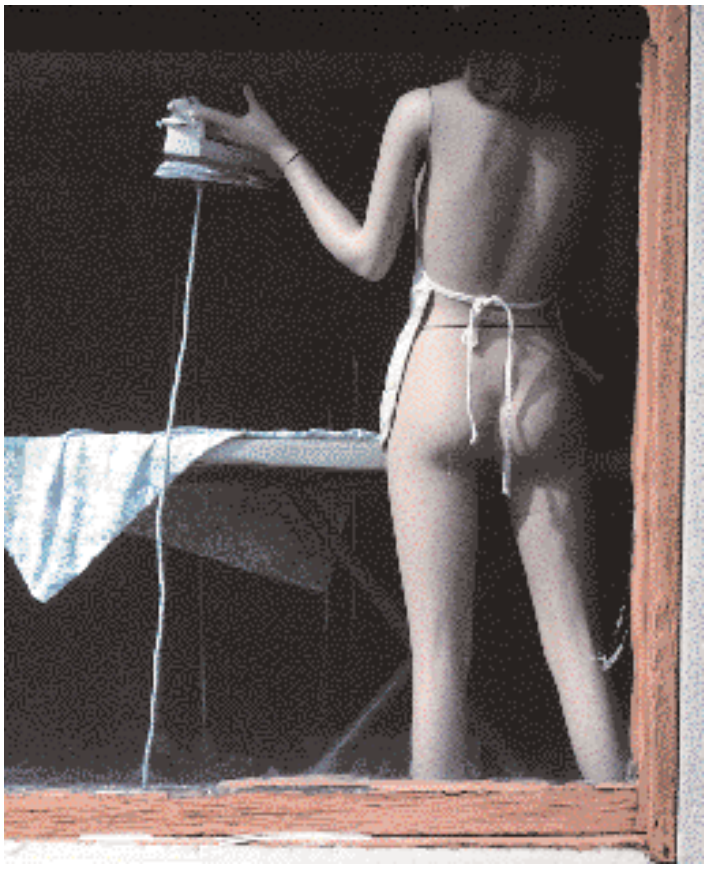
What constitutes indecency?

The Constitution is a fundamental charter of the Irish people. Article 40.6.1.i of the Constitution specifically provides that the publication or utterance of 'indecent matter' (among other things) is an offence which shall be punishable in accordance with law. It is noteworthy that the apparent criminalisation of the publication or utterance is of indecent matter rather than obscene matter. The issue of what constitutes indecency and whether the prohibition on indecency in the Constitution should be retained will be considered briefly here.

No definition of indecency

There is no definition of 'indecency' in the Constitution, although various statutes prohibit publication and utterance of indecent matter. The *Censorship Acts, 1929-67* and the *Video Recordings Act, 1989*, for example, prohibit indecency in various guises. The *Post Office (Amendment) Act, 1951*, as amended, makes it an offence for any person to send, *inter alia*, by means of the telecommunications system operated by Telecom Éireann, any message or other matter which is of an indecent character. Penalties range up to £50,000 on indictment, or five years' imprisonment, or both fine and imprisonment. The *Radio and Television Act, 1998* (section 9) prohibits radio stations from broadcasting anything which may reasonably be regarded as offending against 'good taste or decency'.

As stated, there is no definitive legal definition of indecency. Pollock CB stated in *R v Webb* (2 C & K 938) (1848) that the word 'indecently' had no definite legal meaning. He remembered that in the older Courts of Justice the judge retired to a corner for a necessary purpose, even in the presence of ladies, and concluded that that perhaps would, in 1848, be considered 'indecent'. In *R v Stanley* [1965] 2 QB 32, the



Time to iron out the constitutional problems with 'indecency'?

Court of Criminal Appeal (England and Wales) held that the words 'indecent or obscene' conveyed one idea – that of offending against the recognised standards of propriety – 'indecent' being at the lower end of the scale and 'obscene' at the upper end.

The dictionary definition of 'indecent' is very broad and includes such descriptions as unbecoming, in extremely bad taste, unseemly, offending against propriety or delicacy, immodest, suggesting or tending to obscenity. 'Obscene' is defined in the *Shorter Oxford English Dictionary* as offensive to modesty or decency, expressing or suggesting lewd thoughts, offensive to the senses, or mind, disgusting and filthy. The term 'indecent' is broader than the term 'obscene' and gives a prosecuting authority a greater latitude than would be the case if the constitutional prohibition related only to obscene matter. An indecent matter may not be obscene, but an obscene matter would also be indecent.

A celebrated judgment

Forty years ago, in what must be regarded as one of the finest judgments ever delivered in the District Court, Justice Cathal Ó Floinn considered the meaning of indecency in the context of a criminal prosecution, brought in the name of the Attorney General, against55 Alan Simpson. Simpson had been arrested and charged with showing for gain an indecent and profane performance – the play *The rose tattoo* – at the Pike Theatre, Herbert Lane, Dublin, contrary to the common law. Brian Walsh SC (later a judge of the Supreme Court), with Bob Humphries BL, appeared for the Attorney General. The judgment in *Attorney General v Simpson* is reported at 93 ILTR 33 (1959). Simpson was liable on conviction to an unlimited term of imprisonment. Short of capital offences, the possible punishment facing Simpson was the most severe that could be imposed for any crime.

Judge Ó Floinn referred to senior counsel for the prosecution stating that the play was obscene because of 'undue dwelling on matrimony and sex in matrimony' allied with arguments based on the legislation against contraceptives. A Garda witness had given evidence that the designs of some of the characters in the play were not 'honourable'.

The judge took judicial notice of the definition of the word 'indecent' in the *Censorship of Publications Act, 1929* as including 'suggestive of or inciting to sexual immorality or unnatural vice or likely in any other similar way to corrupt or deprave'. The judge noted that the overall effect of the play was one of sadness, that a humble woman, 'a woman of great sexual appetite who is widowed by sudden disaster to her husband, lapses once from the path of virtue'. Holding that there must be evidence that the accused intended to deprave and corrupt, the judge held that a *prima facie* case had not been made out and discharged Simpson.

Should they be banned?

Many books, periodicals and films available in Ireland today could probably be classified as indecent in the sense of offending against propriety. Should they be banned? The Constitution Review Group (1996) distinguished between indecent material and material that may be grossly obscene or which depicts acts of gross violence or cruelty. The review group argued that the prohibition on publication and utterance of indecent matter as a constitutional offence be deleted from the Constitution.

The test for indecency is overbroad, and should be replaced by a provision that strikes a sensible balance between the right of free speech on the one hand and the protection of the vulnerable on the other. G

Dr Eamonn Hall is Chief Legal Officer with Telecom Éireann plc.

Letters

Cooking the books

From: Paul R Beckett MA, Douglas, Isle of Man

Pat Igoe's article in the November edition of the *Gazette* (page 16) strikes a chord with those of us who are members of the Law Society outside Ireland.

The Isle of Man Government has introduced sweeping amendments to the *Criminal Justice Act 1990*, together with its *Anti-money laundering code 1998*, which now bring within the ambit of 'money laundering' any conduct which would be considered criminal if it had occurred in the Isle of Man, and not merely crimes relating to drug trafficking or terrorism as was previously the case.

The position may be illustrated by considering the evasion of taxes in a European jurisdiction (although all crimes are caught by the new legislation and not merely fiscal crimes). A Frenchman assisted through the Isle of Man to evade his French taxes will have committed no offence in the Isle of Man. However, he will be guilty within France of tax evasion: he will have committed a crime. If he had evaded Manx tax in the Isle of Man, it would, as a fraud on the Manx Revenue, have been regarded as a criminal offence. Fraud is fraud.

The new legislation clearly applies to crimes *generically*, whether committed in the Isle of Man or not. If the Isle of Man has been involved in some way, the committing of a crime in France will be treated as if a crime of that sort had been committed in the Isle of Man, and anyone involved – whether in the Isle of Man or not – will be open to prosecution before the Manx courts under the new legislation.

Knowledge or even suspicion of such a crime places on the individual concerned a duty to report the fact to the Isle of Man authorities.

The Isle of Man guards its reputation as jealously as does Ireland. Perhaps Celtic neighbours can learn much from each other in this area and gain strength from mutual support.

'Usual terms' under examination

From: Robert Pierse, Kerry

I write to remind colleagues that it is, or ought to be, their duty to insist that the 'usual terms' in medical examinations are adhered to. I find it disconcerting that the Litigation Committee seems to be slipshod in its approach to rule 2 in its practice note published in the November issue of the *Gazette* (page 35).

On two occasions that I can remember in the High Court in relatively recent times, senior counsel have said to me that it is negligent of a solicitor not to insist on these rules being adhered to. All of us are familiar with the defence doctor who is far from independent and goes way beyond his or her medical brief.

I trust the committee will rectify their acceptance of the 'convenience' trap of these doctors. The plaintiffs have these rights for a good purpose and they should be enforced and not slid around.

A NOTE FROM THE EDITOR

Gazette Reader Survey 1998

It's been two years since we relaunched the *Law Society Gazette*, and on page 4 of this issue we are carrying our first reader survey. This is your opportunity to tell us what we're doing right and where we're going wrong. Please take just a few minutes to complete the survey, and you could win a weekend for two in London.

Please note also that the next issue of the magazine will be the traditional joint January/February issue, published on 5 February 1999.

In the meantime, best wishes for Christmas and the New Year from all on the *Gazette* team.

Conal O'Boyle, Editor

Dumb an

From: Denis Murnaghan, Dublin

My late father had among his papers extracts from letters received in the old Pensions Department and you might like to share these with your readers:

1. I cannot get sick pay, I have children, can you tell me why?
2. This is my eighth child, what are you going to do about it?
3. Mrs X had no clothes for about a year and has been regularly visited by the clergy
4. I am forwarding my marriage certificate and two children, one of which is a mistake as you will see
5. Unless I get my husband's money I will be compelled to lead an immortal life
6. I am very annoyed that you have branded my eldest son as illiterate. Oh, it is a crying shame and a dirty lie because I was married to his father a week before he was born
7. I am writing these few lines for Mrs F who cannot write. She expects to be confined next week and can do with it
8. In answer to your letter, I have given birth to a boy weighing ten pounds. I hope this is satisfactory
9. You have changed my little boy into a girl; will it make a difference?
10. Please send my money at once, I need it badly. I have fallen into errors with my landlord. I have no children yet. My husband is a bus driver and works day and night
11. In accordance with your instructions, I have given birth to twins in the enclosed envelope
12. I want my money as quickly as you can send it. I have been in bed with the doctor for a week and he does not seem to be doing me any good and if things do not alter I shall have to get another doctor
13. *Dental enquiry:* The teeth on the top are alright but those in my bottom are hurting terribly
14. Please find out for certain if my husband is dead, as the man I am living with won't eat or do anything until he knows for certain.

From: McCann FitzGerald, Dublin

The following was obtained off the Internet.

The Safe Fax Guide

1. **Do I have to be married to have safe fax?**
   Not at all! Although married people fax quite often, there are

Brains and brawn

From: Mark McParland, Dublin

In the sports pages of the national press of late much ink has been allocated to the intellectual rights of one Keith Woods. This was the main obstacle to him accepting a contract offered by the IRFU, which was acceptable to every one of his 85 teammates.

I have myself been involved in defending an advertising agency against a claim brought by a gaelic football player who (although only one of a number of players) was clearly identifiable in a photograph taken at a football match and which was subsequently used in a nationwide advertising campaign.

I can understand the concept of intellectual property rights in patents, copyright, trademarks and, indeed, in the growing field of computer software, but try as I might I have great difficulty in understanding how a horse owner can claim intellectual property rights in a picture of his horse jumping the final fence in Leopardstown – even if that picture might subsequently be used for monetary gain by a third party.

Might I suggest that the publicity surrounding Keith Woods' intellectual property rights might be a useful entrée to a *Gazette* article on these 'new' intellectual property rights?

Keep up the good work.

d dumber

many single people who fax complete strangers every day.

2. **My parents say that they never had fax when they were young and had to write memos to each other until they were 21. How old do you think someone should be before they fax?**
   Faxing can be performed at any age, once you have learnt the correct technique.
3. **If I fax myself, will I go blind?**
   Certainly not, as far as I can see.
4. **There is a place on our street where you can go and pay for fax. Is this legal?**
   Yes! Many people have no other outlet for their fax drives and so must pay a professional when their need to fax becomes too great.
5. **Should a cover always be used when faxing?**
   Unless you are really sure of the person you are faxing, a cover should always be used to ensure safe fax.
6. **What if I fax prematurely?**
   Don't panic! Many people fax prematurely when they haven't faxed for a long time. Just start over (most people don't mind if you try again).
7. **I have a personal and a business fax. Can transmissions become mixed up?**
   Being bi-faxual can be confusing but, as long as you always use a cover, you won't transmit anything you're not supposed to.

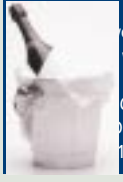
From: Brendan Walsh, Dublin

My firm is acting in a case where a lady client was standing minding her own business in an Irish airport when a wall fell on her. Thankfully she wasn't seriously injured, but did sustain some injury and considerable expense.

Proceedings were instituted and the defendants filed their defence which included paragraph 3: 'the plaintiff is guilty of contributory negligence in failing to avail of a safety belt'.

Denis Murnaghan wins the bottle of champagne this month.

A bottle of the finest champagne will go to the reader who sends in the funniest contribution to *Dumb and dumber* each month.



our examples of the wacky, weird and wonderful to the Editor, *Law Society Gazette*, Blackhall Place, ublin 7 or you can fax us on 1 671 0704.

Parking for members

From TC Gerard O'Mahony, Brendan Garvan and Anthony Murphy, Dublin

Car parking is absolutely essential for modern business. Parking is almost impossible in Dublin City, and the authorities plan to preclude such before 11am (for example, Carleton Shopping Centre, off O'Connell Street).

The extensive Law Society grounds at Blackhall Place appear to offer welcome parking relief to our members, which should, at least, be considered with equal priority to the expensive £5 million Law School to be provided at our members' expense for our students (£1,000 from each member).

The primary objective of the Society's originating charter is for 'the general benefit of their (the solicitors') profession … and more *conveniently* [emphasis added] discharging their professional duties'.

Whilst this subject caused incidental concern at the AGM on 4 November to the Council members and ex-members, it was only at informal discussion afterwards in the Members' Lounge that the magnitude was appreciated by many. We were amongst those who felt that same should be dealt with at an early preliminary meeting of concerned members, and if necessary to convene an urgent EGM of all members.

This should also give the Council an opportunity to appreciate that there has been a considerable change of circumstances seriously affecting the economic and reasonable convenient needs of the members since such a grave matter had previously been considered by them.

To overcome any inconvenience to the new Law School project in the meantime, the emergency provisions already in place could be invoked to meet the situation, especially with the first-year professional course. This would allow the parking problem for members being considered simultaneously with the proposed Law School building project, and without being prejudiced by such proceeding prematurely.

We would emphasise that we fully approve of our students enjoying the very best legal education with the appropriate facilities, but this should not be done, unwittingly, to the fundamental detriment of our members.

What happens to the deposit?

From: Owen Binchy, Co Cork

I refer to the practice note that appeared in the November issue of the *Gazette* (page 35).

The practice note states 'a vendor is entitled to know that the deposit has been validly tendered'. Why then are general conditions 31 and 32 ('failure to pay the deposit') included in the contract for sale?

The practice note states the deposit is not held by the vendor's solicitor as stakeholder until such time as the contract comes into effect. Condition 5(a) of the contract provides that 'where the sale is by private treaty, the purchaser shall on or before the date of the sale pay to the vendor's solicitor as stakeholder a deposit of the amount stated in the memorandum in part-payment of purchase price'.

Condition 5(a) applies to a deposit paid 'before the date of the sale'. Surely this condition would apply to a deposit paid on foot of a contract signed by a purchaser and awaiting the signature of the vendor.

In most cases, you have a willing vendor and a willing purchaser and what happens to the deposit does not matter. Where a sale falls down and a solicitor is instructed by the vendor not to communicate further with the purchaser or his solicitor, how is the deposit to be returned?

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''I find it of great benefit in keeping my head above water with all the material that is sent to me''

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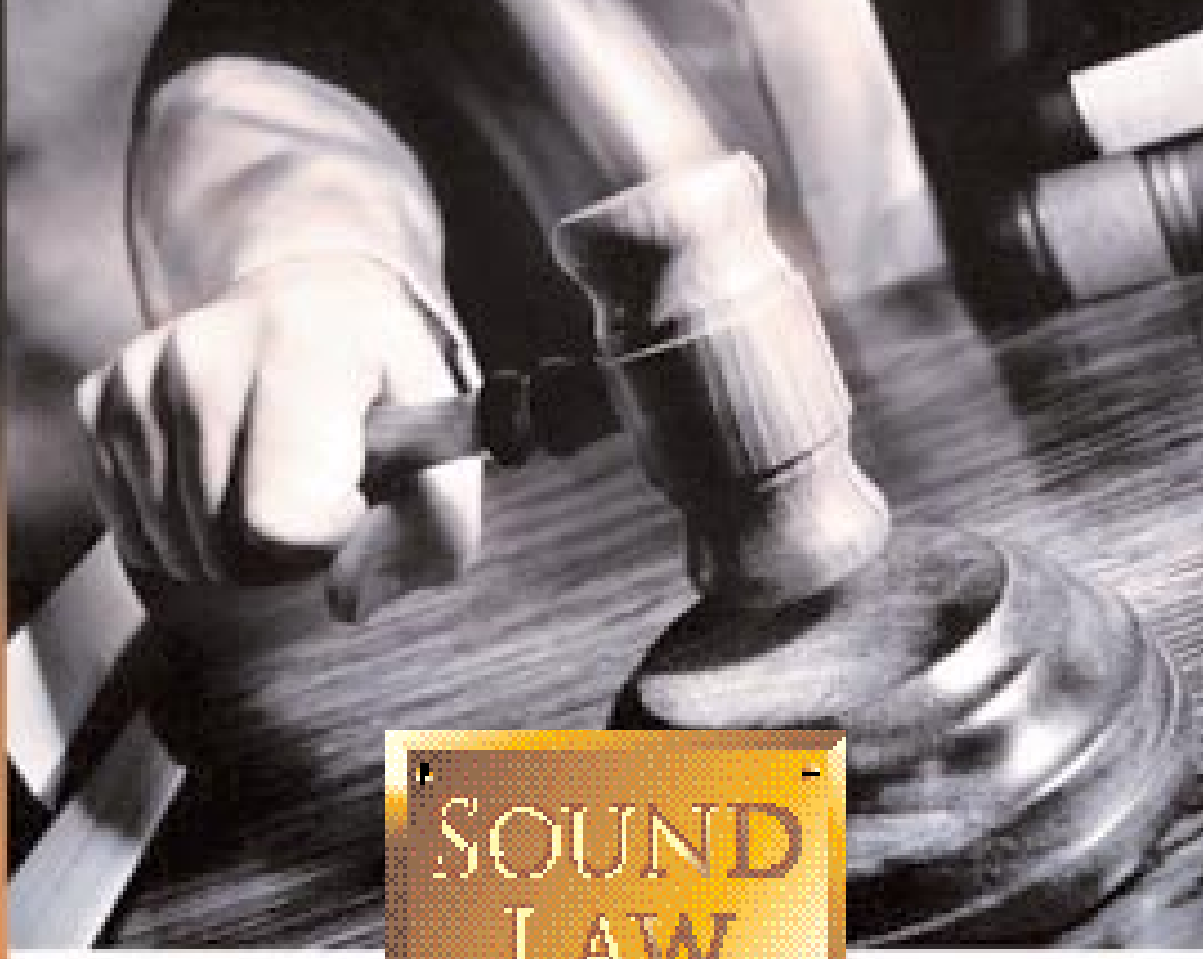

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Sound Law has completed its first series of eight issues.This new development in legal information has been enthusiastically received by the Solicitors profession.

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New Courts Service will be 'uniquely Irish', says Denham

The establishment of a new Courts Service next year will 'complete unfinished business from the 1920s', according to Mrs Justice Susan Denham. Speaking at the Law Society's technology seminar in Blackhall Place last month, the Supreme Court judge said that the new service would be 'an absolutely unique system for organising our courts'.

She added that a number of delegations from other countries had already come to see how the new courts system would operate, even though it is not yet up and running.

The legislation setting up the Courts Service is based on the report of a working group chaired by Mrs Justice Denham, and she told delegates at the seminar that the Council of Europe had asked if it could use the group's reports to help the authorities in Eastern Europe and Russia who were trying to set up new courts systems themselves. 'We're doing something historic, exciting and uniquely Irish', she said.

Mrs Justice Susan Denham: 'an absolutley unique system'

'The next five years will see more changes to the courts than we've seen over the last 200 years', she added, pointing to judges in the recent Bula court case taking down evidence on their computers. She also predicted that video conferencing would be introduced sooner rather than later, 'so we could see solicitors in Dingle applying by video conference to a judge in Dublin for an order'.

- The Chief Executive Designate of the new Courts Service has been named as PJ Fitzpatrick, the former CEO of the Eastern Health Board. Welcoming the appointment, Law Society President Patrick O'Connor said: 'The establishment of the new Courts Service should see the most radical and fundamental reform of the courts since the foundation of this State. The Law Society warmly welcomes Mr Fitzpatrick's appointment and looks forward to the great improvements in the administration of justice that should result. We wish him well in the months ahead and promise him our full help and co-operation in his endeavours'.

Year 2000 and computerised accounts

The Law Society's Technology Committee would like to bring to the attention of members of the profession the dangers for their practices regarding their computerised accounts and the Year 2000 problem.

Many solicitors will have accounts packages that are not Year 2000 compliant. It will be the responsibility of each office to ensure that their system operates correctly on 1 January 2000. They should **immediately** contact their supplier to confirm whether their package is Year 2000 compliant and, if not, what steps will be taken to remedy the situation and when these will be put in place. This confirmation should be obtained in writing and the promised date followed up. If proper steps are not taken, the packages involved will not be operable after 31 December 1999.

The Law Society does not have the resources to ensure that software suppliers take the necessary measures, and the Society has emphasised that the onus lies with each office to ensure that their system is in order. The following points should be borne in mind:

- It is the responsibility of each office to ensure their accounts system works properly
- The Law Society does not have the resources to take part in remedying the problem
- There will be little chance of remedying the problem unless you formulate a plan of action now
- It is not enough to accept your software supplier's assurance. Follow the matter up until you receive your new software and have it fully approved by your own accountant.

(See also page 25-27 and practice note on page 33.)

Volunteers needed for solicitors' helpline

The solicitors' helpline has received over 1,000 calls from members since it was set up four years ago. The Dublin Solicitors' Bar Association (DSBA), which set up the service, is now looking for more volunteers to join the committee which runs it.

According to one of the helpline founders, Hugh O'Neill, the helpline was set up four years ago to aid solicitors who find themselves in personal and professional difficulties and need advice.

The line is open 24 hours a day and is 'manned' by two consultants, one in Dublin and one outside the capital. Callers simply phone the helpline number, and are given the consultants' numbers. They can then ring the consultants in complete confidentiality and anonymity. The helpline number is 01 2848484.

BRIEFLY

Only proven specialists to act in UK clinical claims

Only solicitors with proven specialist knowledge will be allowed to act for legal aid clients in negligence claims brought against hospital doctors, general practitioners and dentists under a new quality assurance scheme launched by the British Lord Chancellor. Lord Irvine of Lairg confirmed recently that solicitors who wish to act in legal aid clinical negligence cases will have to get special franchises earned by proving specialist competence and membership of professional accreditation panels.

£20 million legal aid shake-up for UK

A comprehensive network of advice points across England and Wales will deliver advice and representation to disadvantaged people in a stg£20 million shake-up of Britain's legal aid service. The community legal service – based on the Legal Aid Board's existing regional legal services committee – will deliver services where they are most needed, the British Lord Chancellor pledged recently.

CLASP reception

Concerned Lawyers for the Alleviation of Social Problems (CLASP) will hold its annual cheese and wine reception on Friday 11 December at 7.30pm at King's Inns. Proceeds from the evening will go to a number of charities. For tickets and information, contact Josepha Madigan (tel: 01 6689143) or Murrough O'Rourke (tel: 01 8724379).

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 November: Conor McGahon, 19 Jocelyn Street, Dundalk, Co Louth – £163,151.04; John J O'Reilly, 7 Farnham Street, Cavan, Co Cavan – £200.

Ireland poised for big slice of billion-dollar e-commerce cake

Ireland could win a major share of the $300 billion e-commerce market, according to the Minister for Public Enterprise and Employment Mary O'Rourke. Speaking at a recent Law Society *New horizons* business breakfast on the future of the telecommunications industry, the Minister said that the Government's recently-unveiled blueprint for the future should ensure that this country would become 'a European hub for e-commerce'.

'We have a great deal of advantages going for us', O'Rourke told her audience. 'We have a very educated workforce, which has shown significant skills in computer software and IT. Equally as important is the fact that Ireland will be the only English-speaking country in the Eurozone'.

Law Society President Patrick O'Connor told guests at the business breakfast that the legal profession had a substantial role to play in the growth and imminent liberalisation of the telecoms industry. 'New forms of work and new methods of communication require an appropriate legal framework', he said. 'Statutory protection is essential to prevent fraudulent uses of new technologies. Data protection, rights of privacy and intellectual property rights are issues that must be looked at in their technological context'.

It's for you: Minister Mary O'Rourke and Law Society President Patrick O'Connor, with Donal O'Connor (left) of PriceWaterhouseCoopers, at the *New horizons* business breakfast

Society 'has will to police advertising'

'With the enactment of the Bill, the Law Society will have the teeth, and I can assure you, Marian, that we also have the will to enforce this legislation', Law Society Director General Ken Murphy recently told Marian Finucane on RTE Radio 1's *Liveline* programme.

Murphy was participating in a solicitor advertising 45-minute debate and phone-in which also involved Dublin solicitor Tom Baldwin.

Baldwin strongly defended what he described as his right as a plaintiff personal injury lawyer to advertise his services. He believed that such advertising was in the interest of the public and a ban would only serve the interests of the insurance lobby.

However, Murphy replied that a ban on personal injury advertising by solicitors was a public policy decision taken by the Government and unanimously supported by the Law Society Council. In his personal experience, having visited 27 county-based bar associations in the previous year, and discussing the subject with solicitors all over Ireland, he was perfectly satisfied that over 95% of solicitors supported the proposed ban. Advertising of this type had contributed to the decline in public esteem for the legal profession, and most solicitors regretted that it had ever been allowed.

Responding to telephone callers, complaining about fraudulent claims being brought by solicitors, the Director General said: 'the fact of the matter is that the people of Ireland are served by a legal profession which is extremely honest, conscientious and able'.

Younger Members Remuneration Survey

The responses to the Younger Members Remuneration Survey have been examined and a preliminary report has been presented to the Law Society Council. It was recognised that, as the survey was not carried out on a professional basis, total reliance could not be placed on its findings. The Council decided that the report should be referred to the Society's Co-ordination Committee for further consideration. The preliminary results raised some interesting issues. It suggested that, on average, female solicitors are paid considerably less than their male counterparts. This appears to be the case even at newly-qualified level and the gap increases with each extra year following qualification. There also appears to be a considerable disparity between salaries paid to Dublin solicitors and those working outside Dublin. The results are being submitted to further evaluation, perhaps with professional assistance, with a view to producing, in due course, a valid and reliable analysis of the data that has been collected.

BRIEFLY

President to chair licensing debate

Law Society President Patrick O'Connor will chair a conference on liquor licensing reform at the Red Cow Inn, Moran's Hotel, Naas Road, Dublin, on 26 January 1999. Speakers will include Justice Minister John O'Donoghue and Fine Gael TD Charlie Flanagan, chair of the Oireachtas liquor licensing reform sub-committee.

Taxman launches euro guide

The Revenue Commissioners have launched a booklet giving advice to businesses considering changing their tax from punts to euros. *Revenue and the euro: a business guide* was launched by Finance Minister Charlie McCreevy last month. Copies of the guide will be available from all tax offices or from the Revenue Commissioners' changeover unit (tel: 1890 200 255). It will also soon be available on the Commissioners' Internet site *www.revenue.ie*.

Male victims of domestic violence speak out

AMEN, the voluntary support group for male victims of domestic violence which was set up last year, is hosting what it claims is the first-ever European conference on male victims of domestic violence. The conference, called *The silence is over*, will be held on Thursday 10 December at the University Industry Conference Centre in University College Dublin. Further information can be obtained from Mary Cleary on 046 23718.

Newspaper 'free wills' promotion: a clarification

The Law Society is aware that a Sunday newspaper is running a 'free wills for readers' promotion. The Society points out to members that it in no way endorses this promotion. It is entirely up to the discretion of members if they wish to participate in this promotion.

All-party support for ban on compo adverts

The Dáil debated the second stage of the *Solicitors (Amendment) Bill, 1998* for some two hours on 18 November 1998. To give a flavour of the debate, here are the opening remarks of the Minister and of the two opposition Justice spokesmen.

John O'Donoghue TD (Minister for Equality and Law Reform): 'The main purpose of this Bill is to place more effective controls on the nature and extent of advertising by solicitors, particularly in the area of personal injuries. The Bill specifies what may and may not be contained in solicitors' advertising generally. It prohibits advertising which expressly or by implication refers to claims for damages for personal injury and treats contravention of the advertising provisions in the Bill as misconduct by a solicitor for the purposes of the *Solicitors Acts*. The Bill also removes difficulties and anomalies in certain procedures of the Disciplinary Tribunal for the solicitors' profession, and it strengthens the power of the Law Society to prohibit contravention of the *Solicitors Acts* in relation to advertising and other matters concerning the conduct of solicitors.

'The Law Society has indicated its support for the Bill and I welcome that support. It is important that the Society has made clear its position because it is the general regulatory body in relation to the solicitors' profession. The Society has indicated that while the present law provides for limited control of advertising, it is not adequate to deal with the excesses which have become prevalent among some of its members.

'Advertising by a small number of solicitors is blatantly litigious. It openly invites persons to make claims and it stirs up business involving claims against employers, occupiers, State organisations or any other mark for damages. This advertising is pushy, "in your face", and sometimes personalised. The advertising in question has brought the good name of the solicitors' profession into disrepute. Advertising by solicitors in relation to army hearing impairment cases is but one example of the kind of advertising which this Bill aims to deal with. The intention of the Bill is to ensure that the solicitors' profession as a whole will work within a reasonable standard advertising code. The reality, which cannot be ignored, is that the actions of a few, have tended to lower the public's respect for the profession. It is time now for this matter to be addressed.

Dáil Eireann, where the *Solicitors (Amendment) Bill* is entering its final stages

'The Law Society carried out admirable work on a code of conduct over a long period of time which culminated in 1988 in a code, *A guide to professional conduct for solicitors in Ireland*. It is the work of many eminent solicitors and it is a monument not only to them but to the wisdom of the Society in promulgating the work and bringing it to finality. The foreword to that code of conduct by the then President of the Society, Thomas D Shaw, is as relevant in the context of this Bill as it was in 1988. He stated that "sound ethical conduct is the foundation on which any profession should base the conduct of its business"'.

Jim Higgins TD (Fine Gael): 'While I welcome the Bill, it is too little too late. It is akin to closing the stable door when the horse has bolted. The compensation culture rampant in this country derives from two decisions in which the Minister's party played central roles. First was the Law Society decision of 1988 to relax the rules governing advertising by solicitors. It is worth recalling the Law Society made its decision in 1988 after much agonising and under threat from the Government of the day that, if it did not drop the prohibition on advertising, the Government would introduce legislation to ensure it did so. It was the era of open and free competition. Knife-edge, cut and thrust competition was the order of the day. It may have seemed a sensible decision at the time, but there was grave anxiety within the legal profession about it. There was a great deal of soul-searching and the decision, when made, was by way of postal ballot and was carried by the slimmest of margins.

'The second instrument responsible in part for encouraging the culture of compensation was the *Solicitors (Amendment) Act, 1994*. There is no doubt that this opened the door further. While it sets down a series of guidelines, rules, strictures and sanctions for any breaches, the reality is that not alone have these not been effective but the relaxation of the ban on advertising has been the single greatest stimulus for the spate of compensation claims which annually records a dramatic increase. That legislation lifted the lid, and it is impossible at this stage to put the genie back in the bottle'.

Pat Upton TD (Labour): 'I welcome the opportunity to address the House on this Bill. It is necessary to protect the consumer from being enticed into taking legal action arising from advertising, but it will also put a halt to the emergence of large-scale advertising by companies, not operated by solicitors, who offer legal services in respect of personal injuries.

'While the Bill is a measure to protect the consumer, it must be remembered that when the ban on advertising by solicitors was lifted, it was not done at the behest of the Law Society. Therefore, I advise against large-scale solicitor-bashing during this debate. However, I also acknowledge there are legal practices which take huge advantage from the lifting of the ban which have done nothing to abate the compensation culture that has emerged in recent years'. G

La Touche Bond Solon
Expert Witness Conference 1998

The first-ever Irish conference on the role of expert witnesses was held in Dublin last month and boasted an impressive line-up of speakers that included Supreme Court judges, practising lawyers and experienced experts. Barry O'Halloran was there to hear what they had to say

The new court rules (Statutory Instrument 391) governing the use of expert evidence will oblige experts to be much more objective in their testimonies, according to Mark Solon, managing director of Solon Bond. Solon, whose company trains expert witnesses in the UK, told the *Gazette* that the rules introduced in October mean that experts will have to be independent servants of the court and not advocates for one side or the other.

Mr Justice Hugh O'Flaherty: experts have a duty to be objective and to explain technical terms

'We have maintained the fiction that expert witnesses are objective servants of the court, but the fact is that they are being paid by one side and they give evidence to that side because they will want to be instructed again', he argued. 'But now they will have to assess cases on both their strengths and weaknesses and be transparent, because otherwise they will be caught out'.

Solon was speaking after last month's *Expert witness conference*, organised by his firm's Dublin-based sister company, La Touche Bond Solon, in Dublin's Royal Hospital in Kilmainham.

Justice Robert Barr echoed this sentiment in a talk which assessed the impact of the new court rules. He warned potential expert witnesses that their reports would become evidence and would be scrutinised by both opposing counsel and judges. 'It follows that such reports should be factually accurate and opinions should be carefully reasoned', he said.

'They should contain all relevant information known to the expert which he believes is necessary for a fair, objective assessment of the particular problem in question. If that necessarily includes information which is prejudicial to the plaintiff, so be it'.

Justice Barr added that, in those circumstances, it was up to the plaintiff and his legal advisors to decide whether they should pursue the claim. Alternatively, he said, they could consider the possibility that applying to the court to have the prejudicial information excluded from the report might be successful.

Former Law Society President Laurence K Shields, who opened the conference, argued that neither side should pay expert witnesses, thereby guaranteeing their objectivity. 'Because they are paid, they must have some leaning one way or the other', he said. 'The expert must always try to be honest and objective'.

He added that because each party pays experts, they often end up as advocates and not as balanced and fair witnesses. Shields pointed out that it was not in any litigating party's interest to have an expert witness whose evidence clearly supported one client's position unless their opinion actually coincided with that position.

Mr Justice Hugh O'Flaherty told the conference that one of his idols – Peter Falk's TV cop Columbo – set a lot of store by 'the boys down in the lab'. But he said the courts had to take a different approach before their evidence could be given its proper weight, or was found admissible.

'It is a general principle that the opinions of a skilled witness are admissible', he said. 'Those skills are based on specialised study and experience'. As well as qualifications, he added, experts had a duty to be objective, keep records, and to explain technical or scientific points in layman's terms.

(From left): Mark Solon, managing director of Solon Bond, former Law Society President Laurence K Shields, and solicitor Caroline Conroy, managing director of La Touche Bond Solon Training

McCann FitzGerald partner Roderick Bourke urged greater communication between experts and the solicitors instructing them. 'Good communication from the start about expectations, costs and other relevant matters will help avoid difficulties', he said. And he advised experts who had difficulties with any solicitor they were working with to withdraw from the case or to expressly limit their involvement if the situation was not cleared up.

Other speakers at the conference included Paul Behan, managing partner of Behan & Associates, who dealt with the taxation of experts' costs, Garret Cooney SC, who discussed cross-examination, and consultant hand-surgeon John Varian, who spoke about the relationship between solicitors and experts. G

New expert witness book published

A panel of experts: (from left) radiologist Professor Max Ryan, publisher Bart D Daly, Adrian Hardiman SC, and State Pathologist Professor John Harbison

Last month's expert witness conference was also the venue for the launch of a new book on the subject. *The role of the expert witness,* edited by Bart D Daly and published by Inn's Quay Ltd, was officially launched by the most experienced expert witness in the country – State Pathologist Professor John Harbison, who also contributed a chapter to the book.

The role of the expert witness (1998), edited by Bart D Daly, Inn's Quay Limited, Richmond Business Campus, North Brunswick St, Dublin 7. ISBN: 1-902354-01-X. Price: £24.

E-mail as evid

will it st

Advances in new technology mean that fewer and fewer documents are actually being produced on paper. The fax is increasingly preferred to the postal service, and e-mail is poised to overtake them both. Kieron Wood considers the evidential problems associated with computerisation and asks the important question: can you make it stand up in court?

There is a tale – apocryphal, I'm sure – of an eminent senior counsel in the Law Library who was observed standing for a quarter of an hour in front of a fax machine. A young librarian asked him if he needed any help. 'This machine's not working properly', he complained. 'Every time I put this fax into it, it comes back out the other side!'

Perhaps one should not judge the man too harshly. After all, it was only a very few years ago that a senior Bar Council official expressed consternation at the suggestion that every barrister should have his own telephone.

Traditionally, Irish lawyers have not been noted for being technophiles, but all that is changing. Increasingly, solicitors and barristers are turning to new technology to reduce costs and improve efficiency. A feature on *Irish firms on the Web* in the December 1998 edition of the *Internet newsletter for lawyers* (http://www.venables.co.uk/legal) describes Irish legal web sites as a 'growth industry'. Almost 40 firms of Irish solicitors now have their own sites on the Internet. Hundreds of solicitors have e-mail addresses.

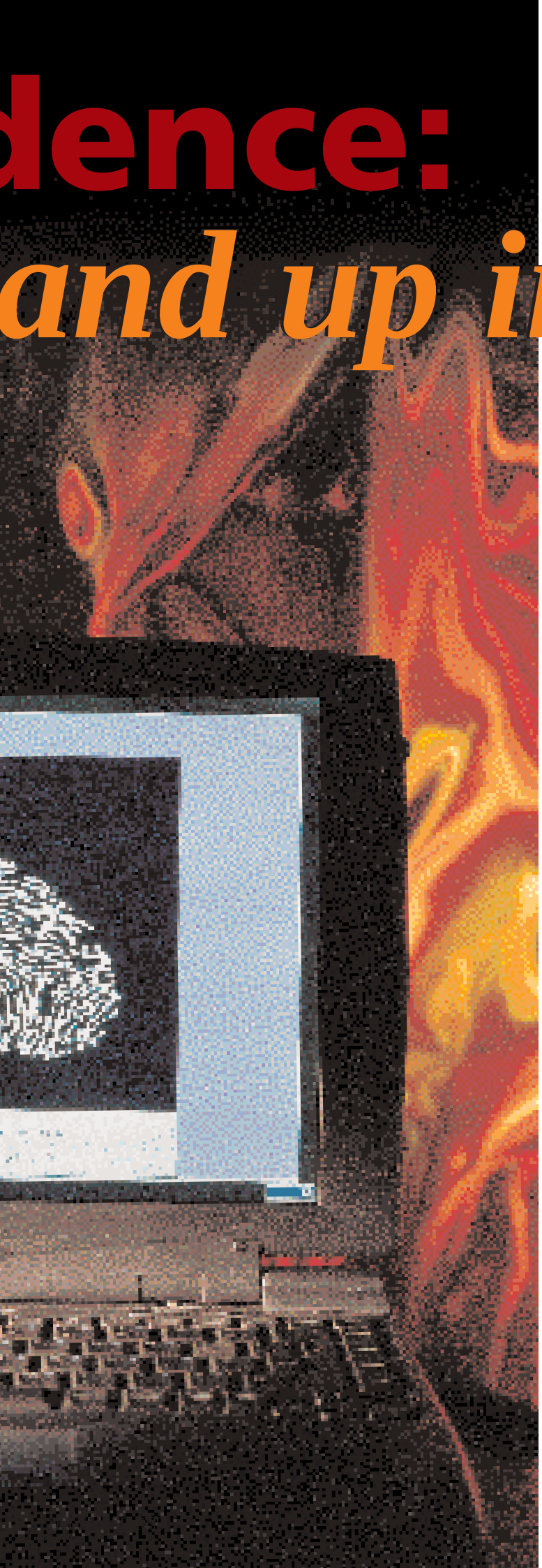
In Britain, solicitors' practices are even more heavily computerised. A survey by LawNet this summer showed that almost two thirds of UK solicitors' practices had e-mail, while one third had their own web site. Every practice surveyed used computerised accounting and reporting systems and all planned to adopt computerised case-management systems.

Computers are being used to communicate between lawyers and clients, as well as between solicitors and counsel. Electronic mail is replacing letter post. The fax machine – still an indispensable part of almost every solicitor's practice – is rapidly being replaced by the paperless fax, e-mail.

Similarly in industry, e-commerce is taking the place of ledgers, order books and written contracts. But the advent of new technology has brought with it new legal problems. Should the law and the rules of court be changed to account for the IT revolution and to facilitate the admission of computer evidence, such as faxes and e-mails?

The common law allows only evidence which complies with the rules

dence: and up in court?



PIC: ROSLYN BYRNE

governing admissibility. In general, admissible evidence must be relevant to the proof of a fact in issue, to the credibility of a witness or to the reliability of other evidence, and the evidence must not be inadmissible by reason of some particular rule of law. In relation to computer evidence, a distinction must be drawn between real evidence (such as evidence of a computerised calculation performed without human assistance) and evidence which may be hearsay, such as a printout of an e-mail.

Other jurisdictions have already begun to grapple with the evidential difficulties caused by computerisation. The seminal 1965 English case of *Myers v DPP* – in which computer records were disallowed as hearsay – led to a change in the law in England.

Section 4 of the UK's *Civil Evidence Act 1968* allows the admissibility in civil proceedings of a statement in a document 'as evidence of any fact stated therein of which direct oral evidence would be admissible, if the document is, or forms part of, a record compiled by a person … who had … personal knowledge of the matters dealt with'. Twenty years later, section 24 of the UK's *Criminal Justice Act 1988* similarly permitted the admission in criminal proceedings of a statement in a document 'as evidence of any fact stated therein of which direct oral evidence would be admissible', subject to certain conditions.

Ireland began to catch up in 1992 with the *Criminal Evidence Act*, which allows the admission of certain computer evidence in criminal trials. Section 5(1) says that 'information contained in a document shall be admissible in any criminal proceedings as evidence of any fact therein of which direct oral evidence would be admissible if the information:

a) Was compiled in the ordinary course of a business
b) Was supplied by a person (whether or not he so compiled it and is identifiable) who had, or may be reasonably supposed to have had, personal knowledge of the matters dealt with, and
c) In the case of information in non-legible form that has been reproduced in permanent legible form, was reproduced in the course of the normal operation of the reproduction system concerned'.

The definitions of 'document' in the Act include computerised reproductions in a permanent legible form of information stored in non-legible form, such as printouts of data on a hard drive, floppy disk, Zip or Jaz drive or the older forms of magnetic tape and punched card. The contents of a document could include anything from a fax or e-mail to information on drugs deals (as in the 1996 Scottish case of *Rollo v HM Advocate*, where the Court of Criminal Appeal decided that an electronic notepad qualified as a 'document'). Section 30 of our 1992 Act also allows admission of an authenticated copy or fax of a document.

Throughout the common-law world, the courts have come to appreciate that the advent of the paperless society is a reality which can no longer be ignored. Clearly, the courts cannot insist on production of the originals of letters, contracts, business records, invoices or other communications if such items were never committed to paper in the first place.

As long ago as 1966, in the English case of *R v Maqsud Ali* (where a jury

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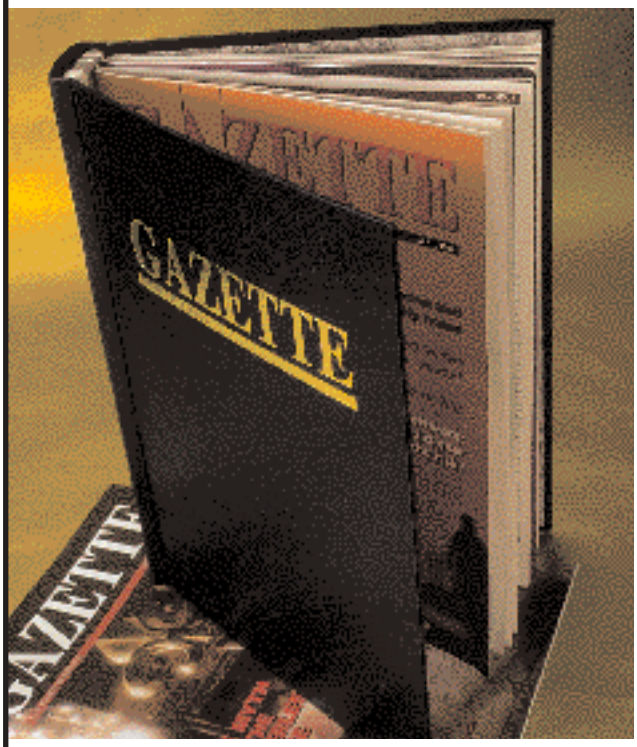

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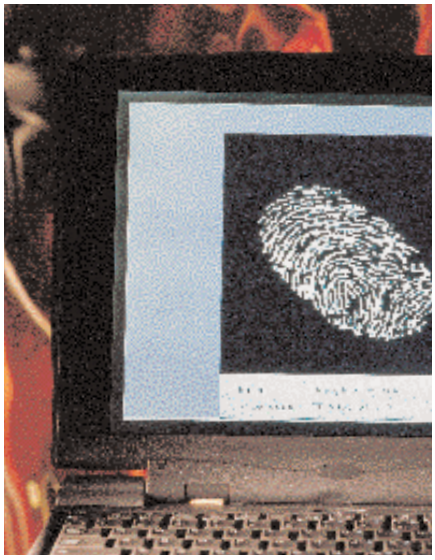
had to be supplied with a transcript of a tape recording of a conversation in Punjabi), the Court of Appeal said: 'It does appear to this court wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy … can be proved; provided also that the evidence is relevant and otherwise admissible'.

Ten years later, in the English case of *Senior v Holdsworth*, the court stressed: 'These new inventions are capable of providing the most valuable evidence and the court should have the means of making them available. We are the masters of our own procedure and have the authority to adopt it to meet the needs of the time'.



Other common-law jurisdictions have taken the same view. In the 1990 Australian case of *ANZ Banking Group Ltd v Griffiths*, Millhouse J said: 'Courts are accused of being old-fashioned in outlook, conservative in method, resistant to change and behind the times. We try not to be, and sometimes succeed. We can at least try to keep up with current business practices. Computers seem to rule in business today. Courts should accept that, and be prepared to facilitate proof of business transactions generated by computers'.

And in September of this year, the New South Wales District Court in Australia ruled that internal e-mails sent between staff at the NSW Environmental Protection Authority could be discovered as 'documents' under the *Freedom of Information Act*.

The next big challenge facing the law

Lord Justice Henry Brooke, president of the Society for Computers and Law, has predicted that electronic commerce is 'the next big challenge which the law must face' and has urged that documents in electronic form need to be treated by the courts as equivalent to traditional paper documents. Such a proposal requires changes in the rules and in the law – particularly in the area of statutory interpretation. In Britain, the Society for Computers and Law has recommended changes to the law to allow companies to convert existing hard-copy records to electronic form and to allow electronic messages to be treated as writing and to be signed electronically. The Society also proposes changes to the UK's *Interpretation Act 1978* to allow electronic documents to be treated as writing. 'Signature' would be newly defined as 'any process performed on a thing to be signed which alters or adds to its information or content and identifies the signatory and evinces his adoption of the writing or other things to be signed'.

Ireland there is still no legislation or rule which ould allow for the unchallenged admission of computer documents in civil cases. The Department of Justice says a *Civil Evidence Bill* is 'in preparation', but its completion is 'a matter f priorities'. Ireland's Law Reform Commission similarly not grasped the nettle.

ıe *Rules of the superior courts* remain mired in omputer age. 'Writing', for example, is defined 5 as 'printing, typewriting, lithography, photog- modes of representing or reproducing words in visible form'.

The old-fashioned tenor of the rules is further reflected in order 117, rule 5 (e), which says that 'a printed copy' of any document to be attested shall be left with the Superintendent of Typists', while order 117, rule 8(1) says every copy of a document furnished to another party shall be 'clearly and legibly written on paper of durable quality'. The computer age is similarly ignored by order 123, which concerns the appointment of 'a shorthand writer'.

The English courts, on the other hand, have begun to bring their rules up-to-date. Order 65, rule 5, for example, provides that any document which does not need to be served personally may be served by fax.

The usefulness of the rule became evident in the 1998 case of *Lady Elizabeth Anson v Ivana Trump* ([1998] 3 AER 331). Mrs Trump had asked Lady Anson to organise a party for her and paid her a £10,000 deposit, but she baulked at the final bill for a further £26,500. The defence was served out of time by fax at 9.42am on 22 November 1996. At 10am – without having seen the fax – the plaintiffs entered judgment in default.

The High Court dismissed an application to set aside the default judgment, but on appeal Lord Otton said that a faxed document should be deemed served as soon as it arrived in the recipient's fax machine, even if it was not printed out or seen until some time later. He remitted the claim to the County Court for determination of the outstanding sum.

The English experience has shown that the rules and legislation can be successfully updated. Now is the time for Irish legislative draughtsmen to consider wide-ranging provisions to permit the introduction in evidence of printed material derived from computers. They might do worse than contemplate section 25 of the UK's *Criminal Justice Act 1988*, which says that a court considering the admissibility of a statement shall look at:

a) The nature and source of the document containing the statement, and whether or not … it is likely that the document is authentic
b) The extent to which the statements appear to supply evidence which would otherwise not be readily available
c) The relevance of the evidence … to any issue … to be determined in the proceedings, and
d) Any risk … that its admission or exclusion will result in unfairness to the accused.

That broad range of considerations would seem to encapsulate the matters to which effect could be given in Irish law to permit the statutory admissibility of computer records as evidence in civil matters. G

Kieron Wood is a practising barrister. A member of the Bar Council's working party on web sites, he is currently the only Irish barrister with his own web site (at http://welcome.to/barrister). He is the author of The High Court: a user's guide *(Four Courts Press) and co-author – with solicitor Paul O'Shea – of* Divorce in Ireland *(O'Brien Press).*

Bibliography

Bradgate, R: *The evidential status of computer output*, (1990) 6 Computer Law and Practice 142

Brooke, Lord Justice: *IT and the English courts*, Computers and Law (June-July 1998, p11)

Kelleher D and Murray M: *Information technology law in Ireland* (Butterworths, 1997)

Law Commission: *Consultation paper no 138: Evidence in criminal proceedings: hearsay and related topics* (HMSO London, 1995)

Miller, CG: *Computer-generated evidence: implications for the corporate user* (1990) 6 Computer Law and Practice 178

Reed, C: *Computer records as evidence: back to the beginning?* (1993) Journal of Business Law 505

Tapper, Colin: *Reform of the law of evidence in relation to the output from computers*, 3 International Journal of Law and Information Technology 79

Tapper, Colin: *Evidence* (Encyclopedia of Information Technology Law, Sweet and Maxwell, 1997).

Irish lawyers and the

The First World War ravaged Europe for four years and every section of society, every profession, suffered its effects. The legal profession in Ireland was no exception, and here Daire Hogan looks at the contribution of Irish lawyers in the 'war to end all wars'

The carnage that took place in Europe between the declaration of war in August 1914 and the Armistice in November 1918 transformed political structures and social life and human sensibility generally across Europe. The fact that the War of Independence and the Civil War followed almost immediately in this country, and lasted almost as long, and that from 1916 onwards public opinion turned against the war and conscription, has tended to minimise public recognition of the effect which it had in this country and of the part played by Irish men and women.

Paddy Harte and Glen Barr speaking at the dedication of the Island of Ireland Peace Park in Messiness last month

The greater integration of women in economic activity outside the home during the war was a factor which contributed to the passing of the *Sex Disqualification (Removal) Act 1919*, which set aside the long-standing prohibition on the admission of women to the legal profession and other walks of life.

On 11 November this year, on the 80th Anniversary of the Armistice, a Peace Park in which stands a new round tower was opened at Messiness in Belgium by President Mary McAleese, in the presence of Queen Elizabeth of Britain and the King of the Belgians, as a commemoration of all people from the island of Ireland who lost their lives and suffered in the war.

The park is the work of many people on both sides of the Irish border, working through the Journey of Reconciliation Trust, under the leadership and joint chairmanship of Paddy Harte and Glen Barr. (I should declare an interest as a friend and admirer of Mr Harte and his untiring work for many years for peace and reconciliation and mutual respect for all traditions throughout Ireland.)

Members of the Irish legal profession and their families made a significant contribution to the war, and the sacrifices of life and health made by so many deserve to be recalled and honoured. Over 50 members of the profession died in the course of the war, 25 members of the Bar, 20 Irish solicitors and 18 apprentices. Over 125 members of the Bar joined the armed forces, and 155 solicitors and 83 apprentices. Many of those who survived (and there were clearly significant odds that a volunteer would not survive) were wounded in body or mind by their experiences. Memorials at the Bar Library and at Blackhall Place commemorate these brave people *(see picture opposite)*.

The best-known members of the legal profes-

The memorial at Blackhall Place commemorating solicitors and apprentices who died in the First World War

Great War

PIC: ROSLYN BYRNE

sion who died in the war were Major Willie Redmond, who died at Messines on 7 June 1917, and Tom Kettle who died at the Somme in September 1916. Major Redmond was the MP for East Clare and at the by-election following his death Eamon de Valera was elected for the first time to represent the people of Clare. Eugene Sheehy, who was called to the Bar in 1910 and afterwards served for over 20 years as a judge of the Circuit Court, gave a long account of his service on the Western Front in his pleasant memoirs *May it please the court* (1951).

Many people who did not join up played a part in the war effort. One example out of many direct and indirect contributions was the Four Courts Auxiliary Munitions Association. This was set up in 1916 to arrange lawyers and officials in the Four Courts to work in factories at weekends to manufacture ammunition with, as the *Irish Law Times* reported, 'due precautions having been taken to prevent friction with the ordinary workers who, with their employers, have welcomed the scheme most heartily'.

On 11 November 1919, as the *Irish Law Times* also reported, 'the judges were in attendance a few minutes before 11 o'clock and at the appointed time their Lordships, the barristers and all others in the several courts stood up for the appointed time. In the Court of Appeal the Lord Chancellor, addressing Mr Serjeant Sullivan, who, with a large number of King's Counsel, was seated in front, said that as this was the anniversary of Armistice Day they, in compliance with the expressed desire of His Majesty the King and in memory of the glorious dead, would suspend the business of the courts and remained standing in silence for two minutes'.

Thousands of Irish people, including judges and lawyers, have been killed in the course of war or terrorism during this century. The Peace Park and its new war memorial will be a testimony to the heroism and sacrifice of those who served in the Great War, and hopefully increase interest in the part that people in Ireland played in the war and in the lessons that can be learned from the healing effects of time and of statesmanship in the resolution of conflicts. G

Daire Hogan is a partner with the solicitors' firm McCann FitzGerald and a former president of the Irish Legal History Society.

Freedom of Information Act: who's usin

Official statistics show that so far over 1,000 people have made requests under the *Freedom of Information Act, 1997* to gain access to records held by the Irish government and public bodies. So who is using the new legislation and what are they looking for? David Meehan examines the figures for early trends and discusses how we compare with other FOI jurisdictions

ng it, and why?

The *Freedom of Information Act, 1997* has been in operation for central government and specified statutory bodies since 21 April 1998, and only recently entered into force in October 1998 for local authorities and health boards. Initial figures on the use of the Act for the period 21 April to 31 July have been collected centrally by the Department of Finance. It is too early to assume that the figures accurately represent what will be normal usage once the Act settles down. Nevertheless, they make for interesting reading and suggest that trends in Ireland are already beginning to reflect some particular characteristics of our FOI legislation.

Some international comparisons

The first observation to be made is that the overall level of use of FOI compares favourably with other systems operating abroad. In little over three months, 1,208 requests have been lodged with Irish central government departments and statutory bodies. Projected on an annual basis, this suggests that there could be up to 5,000 requests in the first full year of the Act's operation, exclusive of the additional requests which will have been made to local authorities and health boards.

Whether the first quarter figure reflects initial enthusiasm or a low platform from which there will be substantial growth in future years remains to be seen. However, to put the Irish figures in some sort of context, the Australian federal FOI Act produced approximately 5,000 requests in its first year of operation, taking three further years to reach what would now be considered a normal level of approximately 35,000 requests a year. The Canadian federal FOI Act, generally considered to be more restrictive than the disclosure regimes in Australia and the United States, was running consistently at just over 10,000 requests a year, with figures moving up towards 15,000 in the latter half of the 1990s.

The breakdown of FOI user-types produces some interesting results. In the United States and Canada, a high proportion of FOI requests are made by business and corporate interests. This segment accounts for 55% of all requests in Canada, while in the United States businesses operating in the highly-regulated food manufacturing and pharmaceutical sectors have submitted as much as 85% of requests to the Food and Drug Administration, either themselves or through agents. In contrast, the media – acknowledged high-profile supporters of FOI legislation – have turned out to be less prolific users in practice, coming in at 10% or less in Canada and the United States.

The early indications from Ireland suggest that user profiles conform to international patterns to the extent that most requests for access to officially-held records are for personal files. However, with regard to non-personal files, use by business interests at 10% is a fraction of the commercial exploitation of FOI in other countries. In contrast, the 20% share of requests currently attributed to Irish journalists is at least twice that of the media in other countries. Another significant category is members of the Oireachtas who have put in just over 7% of requests, a figure which mirrors the 8% share of Australian parliamentarians early in the life of their FOI Act.

Personal records

Of the 602 exclusively personal requests, the burden has fallen on six bodies, namely the Revenue Commissioners (112), the Civil Service Commission (54), the Defence Forces (45), and the departments of Social, Community and Family Affairs (109), Justice (65) and Agriculture (51). The identities of personal user-types and their purposes are not easy to discern. Nevertheless, it is possible to draw some tentative conclusions from available statistics.

For instance, at 259 requests, public service staff represent the largest single FOI user-group. At the very least, individual members of the public service were responsible for over 50 requests for personal records to the Revenue Commissioners, 30 to the Department of Social, Community and Family Affairs and 20 to the Defence Forces. The motivation for these requests is not stated, and indeed the FOI Act does not require requesters to give reasons for their queries. However, in other countries,

many requests for personal records are simply to inspect officially-held information, with other significant proportions relating to staff promotion disputes or to existing or potential litigation. The latter categories may account for some of the requests filed with the Defence Forces, and there may be similar reasons underlying requests made to the Blood Transfusion Service Board.

Business requests

The apparently poor business appetite for disclosure could be a simple consequence of a general lack of appreciation of FOI's potential for securing officially-held details on, for instance, public procurement, or on policy and decision-making in the regulated sectors. On the other hand, it could be the dividend for restrictions placed on access to commercial information by the framers of the Act who were concerned that FOI should not become an instrument of what some United States commentators have described as State-sponsored 'industrial espionage'.

More specifically, it is worth highlighting three restrictions on access to business and commercial information under the Irish Act. Section 27 obliges public authorities to withhold disclosure where trade secrets, competitively prejudicial information or information relating to contractual negotiations are concerned. There are limited instances, such as the 'public interest', which override the protection. However, the dominant character of the section 27 exemption from the Act's presumption in favour of access is to secure commercial information from disclosure to third parties.

A further restriction that can apply to disclosure of commercial information is the section 26 prohibition on the granting requests for information supplied to a public body 'in confidence'. This exemption is surprisingly extensive insofar as it includes within its terms information 'required' or which 'could have been required' by law to be submitted to a public body.

The third restriction on commercial information concerns the statutory authorities which are not expressly identified in the list of public bodies covered by the Act. The most notable absentees are trade and commercial State agencies such as Enterprise Ireland, Forfas and the Industrial Development Authority. Of course, the FOI Act does not prevent requests being made to the government departments that may be politically responsible for State agencies. In practice, the 118 requests attributed to business have been mainly targeted at the departments of Enterprise, Trade and Employment (40), Health and Children (16), Finance (10), Justice (9) and the Taoiseach (8).

Disclosure and the media

In a pattern which almost exactly mirrors the breakdown of business requests, three-quarters of the 234 requests made by journalists have concentrated on six departments: Enterprise, Trade and Employment (53); Health and Children (38), Justice (31), Finance (21); the Taoiseach (17) and Public Enterprise (16). Responses to FOI requests have yielded diverse material for articles on Dublin light rail and Donegal as a manufacturing location, as, indeed, have some contentious refusals of requests.

This early trend runs contrary to research in the United States and Australia which indicates that, as FOI procedures are almost always too slow to satisfy tight deadlines, journalists in the main prefer to rely on leaks. However, recent disclosures of sensitive official reports, memoranda and minutes of meetings suggest that the Irish media are happy to use FOI perhaps not solely in its own right but possibly also as a complement to leaks.

Prospects and emerging problems

It is, perhaps, too much to expect the *Freedom of Information Act* to have immediate and profound impacts on the attitude of all public bodies to disclosure. The United States, which in 1966 spawned the first FOI system among the common-law countries, had to wait until substantial amendments in 1974 to make FOI an effective legal instrument.

Australia, Canada and New Zealand all introduced laws in 1982 which were influenced by the US Act, but also adapted to local considerations. Australian FOI experienced a slow start followed by a lull at the turn of the 1990s before enjoying a surge in recent years. Progress has been slowest in Canada, where as late as April 1998 the Information Commissioner criticised the culture of secrecy that 'still flourishes in too many high places'. The greatest success has been enjoyed in the United States where a simple framework disclosure law interpreted liberally has encouraged an upward graph of request numbers and the development of particularly vigorous business, legal and voluntary FOI activities, assisted by an increasingly sophisticated public service.

The Irish system of FOI is a combination of liberal principles strongly tempered by detailed exemptions relating to State interests, commercial confidentiality and personal privacy. The wider picture would suggest that there will be a strong tendency for the government to be restrictive with respect to governmental decision-making, security and law enforcement issues. As already noted, the State has a broad capacity to restrain access to business information held by its institutions. Although this will act as a constraint on the development of information consultancy in Ireland, it should be noted that despite the restrictive commercial confidentiality provisions in Canada's legislation substantial information-mediating services have developed there, for instance, in relation to tax affairs.

Some existing arrangements will, however, be significantly affected. The general experience of common-law jurisdictions with reasonably long-standing FOI laws is that the bulk of overall requests is made by individuals for their own personal records. With the exception of medical records, access to personal information is largely uncontroversial and will probably be routinely facilitated.

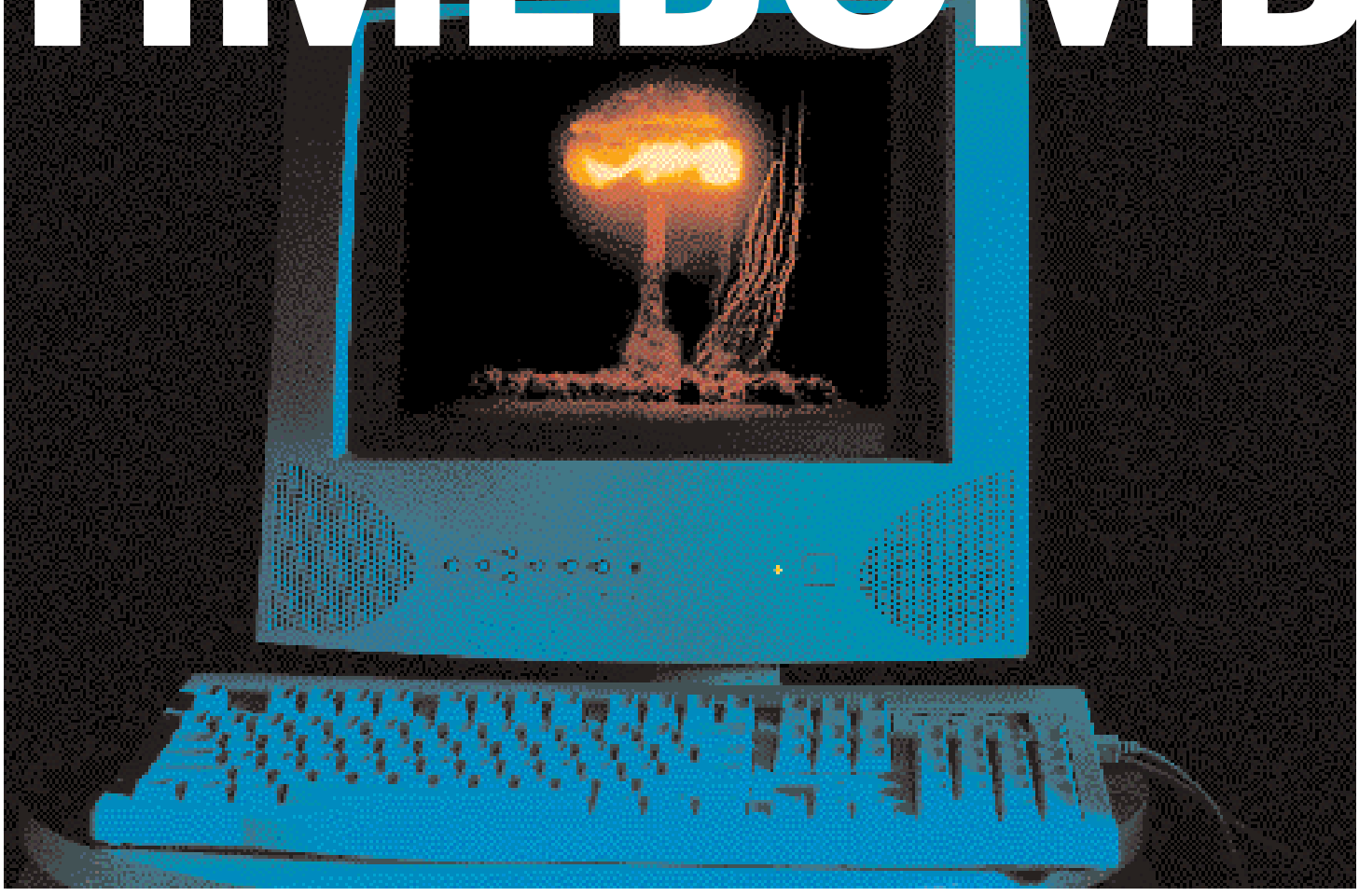
The specific case of medical records has given rise to criticisms levelled by, among others, medical practitioners on the issue of confidentiality in the doctor-patient relationship. Much has been written on the common law and the doctrine of medical confidentiality. However, by introducing a statutory right of access to information held by the State or State-supported institutions, the FOI Act has radically altered the legal landscape. Although the Act does indeed lay down specific conditions under which records can be withheld, general legal concerns lean towards enabling disclosure in an overall context of maintaining personal privacy. Accordingly, it may well be advisable for medical practitioners to be prepared for worst-case scenarios such as the use of FOI by patients to support potential claims.

As for the media, the twin barriers of traditional official secrecy and restrictive defamation laws make FOI procedures an attractive source of important documentation for investigative reporting. As long as formal requests yield direct results or encourage more open and informal access to significant official information, FOI could develop into an important journalistic tool. The surprising number of requests made by members of the Oireachtas suggests that they see in FOI a credible and relatively prompt source of relevant material.

More reliable trends on use will only be confirmed by longer-term statistics. Sounder judgements on the quality of Irish FOI, and the types of problems arising from procedures, will probably have to wait for the results of litigation on the Act and official data on appeals made by requesters to the Information Commissioner. The Department of Finance has already reported that, by 31 July, 34 public body decisions on FOI requests had been appealed to the commissioner. A press item in late September quoted a figure of 90 appeals, and that of the ten cases the commissioner had decided on, nine were in favour of the requesters. G

David Meehan is a Dublin solicitor and environmental consultant.

PII and the Millennium TIMEBOMB



What, another article on the Year 2000 problem? 'Fraid so, but this one could have a real and sustained impact on your practice. Before you dismiss all the hype surrounding the so-called Millennium Timebomb, bear in mind that the insurance industry may refuse you professional indemnity cover if you haven't taken adequate steps to ensure that your systems are Y2K-compliant, as Cefyn James explains

When informed of the Year 2000 problem, most people, including, ironically, many computer professionals, say: 'Well, I guess it *could* be a problem, but I'm sure *they* are working on it'. 'They' are the computer programmers who have been methodically scanning hundreds of millions of program instructions, replacing two digit representations of the year with four digit years in computer systems. This massive task probably won't be finished on time; there's simply too much to do and most companies have started far too late. In addition, there is the date recognition problem of 9.9.99 and

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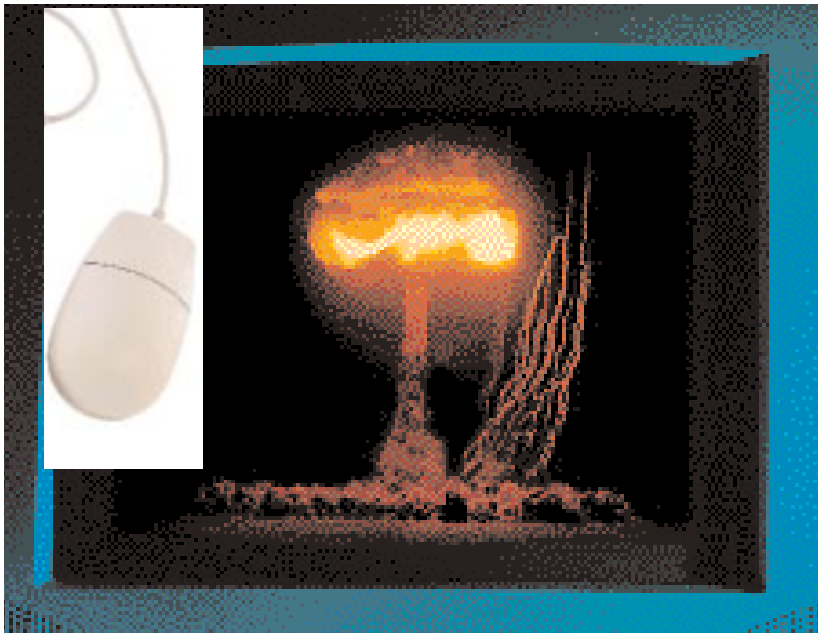
29.02.00, so many people shrug their shoulders and refer to a different category of 'they' – politicians, corporate managers and risk management agencies who will be expected to organise and plan an appropriate response to whatever goes wrong.



Anticpating the problem

If you are willing to put your fate in the hands of 'they', then read no further – but bear in mind that the Year 2000 problem is unlike normal forms of disaster. With Year 2000, we can anticipate when the problem will begin occurring, but we don't know the extent of the damage that could be caused. It's never happened before and there are no well-practiced contingency plans to draw upon. Even if your own practice is Year 2000 compliant, you could still be affected by suppliers and clients whose systems are not.

Depending upon the scope of their engagement, solicitors may find themselves implicated in Year 2000 problem claims when they, for example:

- Fail to fulfil a duty to advise a company to disclose Year 2000 problems or exposures to investors or potential investors
- Draft a sales or servicing contract that fails to account for Year 2000 exposures or inadvertently shift Year 2000 exposures to their clients
- Assist with the valuation of a closely-held company without addressing Year 2000 exposures, or
- Fail to identify or address Year 2000 claims or exposures in drafting a settlement agreement in litigation.

The problem appears grave and is an issue none of us can ignore. Yet the key to how well we can survive the event is the level to which the risk of failure can be minimised. This obviously requires finding the right balance between time, resource and budget – all of which are in short supply as the focus on the Millennium issue increases with the passage of time to 31 December 1999 and beyond.

In recent months, there has been much debate in the insurance market over the Year 2000 problem and its impact on insurance policies. Insurers have been taking legal advice and developing their own positions regarding specific policy terms and conditions they wish to apply – so much so, in fact, that there is no single position taken by the insurance profession. As there is no real indication of the extent of the likely disruption, it has been difficult for insurers to set an adequate premium rate for the risks that are to be underwritten.

Recently, the Law Society's Professional Indemnity Insurance Committee has met to address the implications of the Millennium Bug for practices of all sizes and the various stances taken by qualified insurers on the extent of cover available. Statutory Instrument 209 of 1998 saw the minimum limit of indemnity increased to £1,000,000 – an indemnity limit that provides cover for civil liability actions, including those arising out of date-recognition issues.

Year 2000 questionnaire

Qualified insurers have agreed to provide this 'across-the-board' limit, but any cover is subject to details of the individual practices' response to the potential Year 2000 problem. As a result, insurance brokers conducting professional indemnity renewals on behalf of their solicitor clients – with the exception of the Solicitors Mutual Defence Fund Ltd – have issued, in conjunction with the normal annual renewal proposal form, a Year 2000 questionnaire. The satisfactory completion of the questionnaire will result in full professional indemnity cover being provided to each solicitor and the issuance by the Law Society of a practising certificate. The SMDF alone does not require the completion of this questionnaire before providing full PII cover. *(See also practice note from the Professional Indemnity Insurance Committee on page 33.)*

The questionnaire is by its every nature technical as it seeks to explore the extent to which each practice has acknowledged the Year 2000 issue and the implications deriving from it. It is therefore recommended that, in the case of larger firms, their IT advisers assist in providing the information required to complete the form. For the single practising solicitor, it may be necessary to contact the retailer from whence the computer system was purchased. In any event, a complete questionnaire has to be returned for insurers' inspection.

Should the questionnaire not be fully completed to their satisfaction, insurers will request written confirmation that each practice's computer system will be Year 2000 compliant by June 1999, together with details of the advice, if any, given to clients on the Millennium issue and confirmation that all data stored on the computer system is backed-up with a hard copy file. With such guarantees, insurers will indemnify the solicitor for the statutory cover and the Law Society will issue the required practising certificate.

The onus is therefore on the solicitor to provide the relevant information to ensure full cover is awarded to each practice. 1 January 1999 looms large on the horizon, and the Law Society will be unable to issue practising certificates to those who fail to secure unrestricted insurance cover. It is therefore imperative that renewal negotiations in respect of professional indemnity cover be addressed immediately.

You should not sit back and do nothing in the hope that the consequences of failure of non-compliant computer systems and legal liabilities arising from system failures will be automatically covered under insurance policies. The purpose of insurance is to protect against the unpredictable rather than the inevitable, and the Year 2000 problem is a known and well-publicised event.

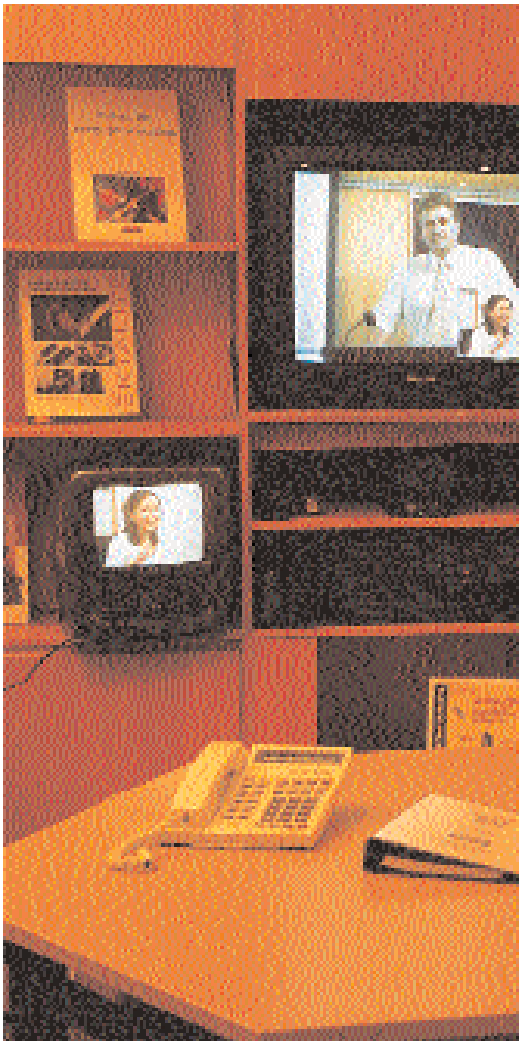
Appropriate steps

Those insurers deciding to offer protection will need to ensure that the policyholder has taken all appropriate steps to achieve Year 2000 compliance – hence the plethora of additional questionnaires that have been issued by brokers in the run-up to renewal of insurance policies. And as each insurer's stance on the issue looks to be unique, it is important that any concerns should be addressed to your broker as soon as possible. G

Cefyn James is an executive with insurance company Sedgwick Dineen.

Face to face w

Tune in, turn on and drop all that long-distance travelling associated with business meetings. Video conferencing allows you to link up with colleagues or clients anywhere in the world, whenever you need a one-to-one. Grainne Rothery reports



Video conferencing integrates the latest audio, visual and communications technology to allow people to conduct face-to-face meetings, regardless of their respective locations. The technology has developed rapidly over the past couple of years with the result that prices have fallen, functionality has increased and the actual systems have become considerably smaller in size. Because costs were originally high, large companies and academic institutions were the first to be able to exploit the advantages of video conferencing, but now, as systems become more affordable, use of the technology looks set to become more widespread.

Cutting down on the need to travel to meetings when visual interaction may still be needed is the most obvious and probably the biggest advantage of video conferencing. Time and money spent on travel can be dramatically cut, as can the disruption caused by having to leave the office for such meetings. Also, where video conferencing replaces an ordinary telephone call, it can help to improve the quality of information communicated between those taking part.

David Johnston, managing director of equipment supplier Sight & Sound Distributors, based in Clonskeagh, Dublin, believes that video conferencing can actually be a more personal and productive way of holding meetings than the traditional format of sitting around a conference table. 'If you're in front of a camera, you tend to be more attentive because you're not sure who is focusing in on you', he argues. 'At the moment, I think there's also a sense of shared adventure between those participating and this helps to establish better relationships'.

Denis Cregan of PVL Communications Group, Stillorgan, Dublin, which supplies Sony video conferencing equipment in Ireland, also believes that the overall quality of meetings can be enhanced by video conferencing. 'By using this technology you can actually include a greater number of relevant people at meetings, who may otherwise have been excluded if travel was involved', he claims.

First-hand information

Barbara Driver of Alcatel Business Systems, also located in Stillorgan, says that this can have benefits for training and staff meetings. 'People can hear about things first-hand rather than receiving information through other people who attended the meetings', she says.

Although video conferencing is already widely used in the United States, the market has been slower to develop in Europe. 'We're still probably a couple of years behind the UK, but seem to be following that market, with educational and medical applications being the first to catch on', says Cregan. A number of third-level colleges have already embraced this technology and use it to transmit lectures to remote locations.

Meanwhile, 'telemedecine' is the popular name given to the use of video technology to carry out remote diagnoses or consultations by medical specialists who are geographically distant from their patients. This is already in use at a number of hospitals in Ireland, including Beaumont Hospital in Dublin, which receives CT scans from other centres around the country via video for specialist diagnoses.

'Recruitment is another important area for video conferencing', says Barbara Driver, who points out that recruitment companies are

ith the *future*

PIC: ROSLYN BYRNE

increasingly using this technology to carry out initial interviews with overseas applicants for jobs.

'Video conferencing has positive applications wherever there is a geographic boundary to the sharing of information', says Kevin O'Boyle, video conferencing product manager at TEIS. According to him, approximately 500 video conferencing systems are currently in use in Ireland. 'Up to 95% of the large American companies based in this country use video conferencing extensively', he says. 'Irish companies are also becoming increasingly interested in its benefits'.

He points out that the technology has a number of benefits specific to the legal profession although, for the most part, these have not yet been applied in this country. 'In the US, video conferencing is used quite widely for witness presentations and arraignments, and such applications could be very useful in Ireland', he says. 'It could, for example, be used as an alternative to transporting remand prisoners to and from the courts. Likewise, witnesses who have left Ireland could give their testimony on camera rather than travelling back to the country. Where an expert's opinion is needed in a case, meanwhile, this could also be given via video. These examples show how considerable cost savings could be made'.

In America, at least 29 states and many federal courts are now using video conferencing for appeals, bail and parole hearings and arraignments. In some states, assistant district attorneys interview police officers by video, while video examination of out-of-court expert witnesses is commonly used in civil trials.

Many of the larger solicitors' firms in Ireland have already looked at the advantages of video conferencing, but few have invested in such systems. 'We don't have our own in-house system but we have considered video conferencing and have used it in certain cases', says Paul Errity of Dublin solicitors McCann FitzGerald. Although Errity believes that it will be a useful tool in the future, he's not completely convinced of the benefits at the moment. 'It's difficult to know if it's more useful than a telephone', he says. 'My own personal opinion is that the novelty value may distract from the communication of the message'.

John Furlong, IT manager at solicitors William Fry, says that his firm has not installed its own equipment. 'Firms will probably start investing in this kind of technology when their clients are using it', he says. 'Meanwhile, if we do need to use it, we are aware that it is possible to hire the facilities'.

The Law Society's Continuing Legal

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PIC: ROSLYN BYRNE

Education Committee, meanwhile, has been looking at various video conferencing systems over the past couple of months with a view to linking up with other centres around the country for seminars. A number of considerations have to be taken into account so it has not yet gone ahead, and the most suitable system has not been decided on.

What the hardware costs

The cost of video conferencing equipment has fallen quite significantly over the last couple of years. In the past, high-quality systems tended to cost between £30,000 and £50,000. According to Sight & Sound's David Johnston, equipment manufacturers have started to recognise the need for video conferencing facilities at middle-management level and systems have now been designed for this market. 'You can now buy a good quality system which can be wheeled from room to room for around £10,000', he says. 'These machines have their own dedicated video-conference engines, do not depend on a computer, and are very easy to use'.

David Johnston of Sight & Sound: 'a shared sense of adventure'

These systems normally consist of the engine, which carries out encoding and decoding functions, camera, TV unit and a mobile cabinet. It is also possible to add on various peripherals such as a document camera, video recorder, multimedia projector or a PC for sharing computer applications during the conference. This kind of system will generally range in price from £10,000 to £16,000.

Here comes the science bit

Because the band-width required for transmitting high-quality video images is a lot greater than that needed for making normal voice calls, up to three ISDN lines will be needed for use with this equipment. Each ISDN line provides two 64kbit/sec channels. To transmit full-motion video, with images moving at a rate of 30 frames a second, 384kbit/sec of bandwidth – or a total of three ISDN lines – is required. Video can also be sent over 128kbit/sec lines but this only provides up to 15 frames a second, which results in a poorer-quality picture.

The higher-quality systems are recommended for high-level meetings. Three-line systems are backward compatible so it's possible to use this equipment on a single line when picture quality is not a major issue. Dedicated single-line systems, meanwhile, now cost under £5,000.

At the moment, Telecom Éireann is the only company providing ISDN connections and each line installation costs £384 (excl VAT). Line rental is a further £29 each month. When making an ISDN call, each channel on each line being used is charged at the normal telephone call rate. So, when a 384kbit/sec system is being used to its full capacity, six channels are in operation: while a daytime call to the United States costs 36p a minute, the 384kbit/sec video conferencing rate will be £2.16 a minute. Likewise, a video call to Britain will cost £1.44 a minute and a call to Japan will work out at £5.82. In situations where one line is being used, these rates will go down to just a third of these prices.

'The initial investment may seem quite high', says David Johnston, 'but you simply have to calculate the amount of time and money spent on travel in order to work out how cost effective these systems can be. Within a short space of time, we believe that having this level of equipment is going to be very common'.

Normally, video conferencing calls are conducted between two locations. However, if it's necessary for more than two sites to participate in a conference, third-party bridging services can be used to control the technical side of the session. Sony video conferencing systems offer an alternative to this with their own built-in multi-conferencing units (MCUs) which allow connection to up to four sites simultaneously.

It is possible to buy significantly cheaper systems which operate on desktop computers and do not require ISDN lines for transmission. However, such systems are usually more suitable for staying in touch with overseas family or friends or for sharing computer-based information and software rather than carrying out formal business meetings. While computer-based equipment can be bought for a few hundred pounds, the picture quality is generally quite poor and video images are usually confined to a small corner of the PC screen. 'The principal function of these cheaper desktop-based systems is to share computer information', says PVL's Denis Cregan.

Many Irish video conferencing equipment suppliers provide facilities (known as bureau services) for companies and individuals to hire out a room and all the necessary equipment for setting up video-conference meetings. These services can be useful both for those who have limited requirements and for people who want to try out the hardware before investing in their own systems.

Sight & Sound provides a video conferencing facility which involves a charge of £70 for the first hour and £50 for each hour after that. The client is also charged for the cost of the actual call if phoning out. TEIS charges £100 an hour for its video conferencing suite. Both PVL and Alcatel also provide bureau services. G

Grainne Rothery is a freelance journalist specialising in technology issues.

Committee reports

TAXATION

New Revenue code of practice in relation to audits

Practitioners are advised that, as from 1 December 1998, the Revenue Commissioners will introduce a new code of practice in relation to the conduct of audits. The new code will have implications for taxpayers and their legal advisors, particularly in relation to voluntary disclosure issues. The Revenue will circulate a copy of the code to those solicitors who subscribe to the Revenue's *Tax briefing* publication. Copies may also be obtained from the Revenue's Forms and Leaflets Service (tel: 01 8780100) or from any tax office.

A full briefing note on the code will be published in a forthcoming edition of the *Gazette*.

Taxation Committee

CRIMINAL

Criminal Legal Aid Scheme: tax clearance certificates

The Criminal Law Committee has been advised by the Department of Justice that the date by which practitioners on the Criminal Legal Aid Scheme Panel will be required to submit a tax clearance certificate in order to be eligible for the assignment of new cases under the Criminal Legal Aid Scheme has been deferred to **1 March 1999.**

The Department of Justice expects to have application forms available from early January. This must then be submitted to the Collector General **on or before 15 January 1999***. When the certificate is issued by the Revenue, the practitioner should immediately forward same to the County Registrar for noting before the **1 March 1999** implementation date. Where a solicitor has applied to the Collector General on or before 15 January 1999* but where, due to delays in the clearance procedure or where a certificate has been refused and the matter remains unresolved on 1 March 1999, the solicitor's name will remain on the panel until such time as the certificate issues or the matter in dispute has been determined. However, where application to the Collector General has been made *after* 15 January 1999 and a certificate has not issued for whatever reason, the solicitor's name will be removed from the panel.

** The above dates are the anticipated dates at the time of going to press.*

Criminal Law Committee

LEGISLATION UPDATE: 20 OCTOBER – 13 NOVEMBER 1998

ACT PASSED

International War Crimes Tribunals Act, 1998
Number: 40/1998
Contents note: Enables Ireland to fulfil its obligations to co-operate with the international tribunals established by the United Nations for the prosecution and punishment of international war crimes committed in the former Yugoslavia and in Rwanda. Also provides for similar co-operation with any other tribunal or court which may be established by the United Nations with a similar remit.
Date enacted: 10/11/1998
Commencement date: 10/11/1998

SELECTED STATUTORY INSTRUMENTS

Children Act, 1997 *(Commencement) Order 1998*
Number: SI 433/1998
Contents note: Appoints 1/1/1999 as the date on which section 11 (insofar as it inserts sections 20, 21, 22 and 29 into the *Guardianship of Infants Act, 1964*) and part III of the *Children Act, 1997* shall come into operation.

European Communities (Award of Public Service Contracts) Regula-tions 1998
Number: SI 378/1998
Leg implemented: Dir 92/50; Dir 97/52
Commencement date: 13/10/1998

European Communities (Award of Public Supply Contracts) (Amend-ment) Regulations 1998
Number: SI 379/1998
Leg implemented: Dir 93/36; Dir 97/52
Commencement date: 13/10/1998

European Communities (Award of Public Works Contracts) (Amend-ment) Regulations 1998
Number: SI 380/1998
Commencement date: 13/10/1998
Leg implemented: Dir 93/37; Dir 97/52
Commencement date: 13/10/1998

Hepatitis C Compensation Trib-unal Act, 1997 *(Extension of Classes of Claimants Before Tribunal) Regulations 1998*
Number: SI 432/1998
Contents note: Extends the classes of claimants to include (a) a diagnosed relative of a person referred to in section 4(1)(a) or (b) of the Act and who has been diagnosed positive for Hepatitis C; (b) a person responsible for the care of a diagnosed relative and who has incurred financial loss or expenses as a direct result of providing such care; and (c) any dependant of a diagnosed relative where the diagnosed relative has died as a result of having contracted Hepatitis C or where Hepatitis C was a significant contributory factor to the cause of death.
Commencement date: 31/10/1998

Housing (Traveller Accommodation) Act, 1998 *(Commencement) (No 2) Order 1998*
Number: SI 428/1998
Contents note: Appoints 3/11/1998 as the commencement date for section 6 of the Act (assessment of accommodation needs).

Waste Management (Packaging) (Amendment) Regulations 1998
Number: SI 382/1998
Contents note: Amend the *Waste Management (Packaging) Regulations 1997* (SI 242/1997). The 1997 regulations, as amended, provide that a person may not supply packaging or packaged products to the Irish market unless the packaging concerned complies with essential requirements as to its nature and composition.
Commencement date: 1/12/1998
Leg implemented: Dir 94/62

Prepared by the Law Society Library

Practice notes

Solicitor/client fees

The correct usage of the term 'solicitor/client bill' is when it is used to indicate the total amount which is charged by a solicitor to a client in a contentious matter. This is so, whether the bill is presented as one bill for the total amount or as two bills, one being the party/party bill which is presented to the defendant's insurers and the second being a top-up bill. The latter is, incorrectly, sometimes termed the 'solicitor/client bill'.

These concepts are difficult for the solicitor to explain to the client. However, these concepts are of secondary importance for a client. The client's main concern will be to know the net amount which the client will receive following payment of the settlement monies.

The solicitor should explain matters fully to the client beforehand so that the client can make an informed decision in relation to any settlement. In particular, an explanation should be given of the legitimate deductions which must be made from the settlement figure before negotiations are concluded.

Many of the complaints received by the Law Society from dissatisfied clients arise because of the fact that matters are not explained fully to the client at the time of the settlement. There is less likelihood of complaint when the client is fully aware of all matters.

Keenan Johnson, Chairman, Guidance and Ethics Committee

Clients of unsound mind

As with any other contract, if a client is of unsound mind, he or she does not have the legal capacity to enter into a contractual relationship with a solicitor.

If the solicitor's instructions predate the mental illness, the retainer of the solicitor is determined by law when the client becomes mentally ill. The solicitor cannot proceed on the basis of instructions given before the mental illness.

The solicitor is a layman and not a medical practitioner and can only make a judgement of the client's mental health on that basis. Indications of illness would include incidents of forgetfulness, confusion or erratic or abnormal behaviour. Even if the client subsequently presents normally, the solicitor should treat the previous incidents as significant.

The mental illness may be irreversible. On the other hand, it may be merely an episode of mental illness from which the client will recover after treatment.

This is clearly a delicate matter for a solicitor when dealing with a client. Whether the matter is discussed with the client or not can only be decided on a case-by-case basis.

In marginal cases, the solicitor may consider discussing his or her concerns with the client and advising the client that, in order to avoid possible queries from family or third parties in relation to the validity of instructions at a later date, the client should obtain a medical certificate confirming mental health.

If an issue arises with regard to a client's mental health, the solicitor should ensure that detailed and accurate attendances of all meetings or conversations with the client are made.

The solicitor should take reasonable steps to ensure that the client's interests are protected. This may involve contact with relatives, medical practitioners or with the Wards of Court Office. In these circumstances, the professional duty of absolute confidentiality is lessened in the client's own interest, to the extent necessary. Having contacted the appropriate parties, the solicitor's professional obligations are at an end.

If the solicitor is on record in a litigation matter, the solicitor should, as a matter of courtesy, inform the court that he or she considers any instructions given to have been terminated.

Keenan Johnson, Chairman, Guidance and Ethics Committee

Professional indemnity insurance: Year 2000 compliance issues

It has been brought to the attention of the Professional Indemnity Insurance Committee of the Law Society that the qualified insurers, with the exception of the Solicitors Mutual Defence Fund Ltd, have forwarded a questionnaire with the proposal forms for the renewal of professional indemnity insurance cover for 1999 to every practice. If the questionnaire is not completed to the satisfaction of the insurer providing the cover, it will lead to restrictions on the cover offered. It is imperative, therefore, that the questionnaire is completed with care to avoid unnecessary restrictions.

The Professional Indemnity Insurance Committee has decided that restrictions of any type are not acceptable, as they would not conform with the regulations or agreements set out in Statutory Instrument No 312 of 1995. As confirmation of cover bearing restrictions will not be acceptable to the Society, it will therefore affect the issuing of solicitors' practising certificates for the practice year 1999. A practising certificate will not issue until documentary evidence is filed with the Society confirming that unrestricted cover has been effected.

The committee has been advised that the insurers are liaising with the profession to solve the problem to the best of their abilities, but they require the co-operation of solicitors who might have a problem that needs to be addressed in this regard.

Ward McEllin, Chairman, Professional Indemnity Insurance Committee

Disciplinary Tribunal An

The Disciplinary Tribunal is constituted under the provisions of the *Solicitors Acts, 1954 to 1994* and its powers are largely confined to receiving and hearing complaints of professional misconduct against solicitors. The tribunal consists of ten solicitor members and five lay members, who are appointed by the President of the High Court. Under section 16 of the *Solicitors (Amendment) Act, 1994*, the lay members are nominated by the Minister for Justice to represent the interests of the general public. For the purpose of hearing and determining any application, the tribunal sits in divisions comprising two solicitor members and one lay member.

Under section 3 of the *Solicitors (Amendment) Act, 1960*, as amended by the *Solicitors (Amendment) Act, 1994*, misconduct includes:

a) The commission of treason or a felony or a misdemeanour
b) The commission outside the State of a crime or an offence which would be a felony or a misdemeanour if committed in the State
c) The contravention of a provision of the *Solicitors Acts, 1954 to 1994* or any order or regulation made thereunder
d) Conduct tending to bring the profession into disrepute.

However, it should be noted that the *Solicitors (Amendment) Bill, 1998* has further extended the definition of misconduct to include the following:

In the course of practice as a solicitor

i) Having any direct or indirect connection, association or arrangement with any person whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of section 55 or 56 or section 58 (which prohibits an unqualified person from drawing or preparing certain documents), as amended by the Solicitors (Amendment) Act, 1994 *of the* Solicitors Act, 1954 *or section 2 of the* Solicitors (Amendment) Act, 1998, *or*

ii) Accepting instructions from any such person to provide legal services to any other person'.

The procedures before the tribunal are formal and, as the outcome of a hearing may affect the livelihood of a solicitor, the tribunal requires a high standard of proof. In this regard, the tribunal has available an information leaflet and other documentation to assist members of the public when making an application to the tribunal.

During the period under review, the tribunal amended its rules to allow an exchange of affidavits between the applicant

Disciplinary Tribunal

Solicitor members
Walter Beatty (Chairman)
Clare Connellan
Andrew O Donnelly
Terence Dixon
Michael Hogan
Donal Kelliher
Eugene McCague
Brian Price
Moya Quinlan
Grattan d'Esterre Roberts

Lay members
Pauline Coonan
Sean McCarthy
Mary Morris
Marie O'Brien
Jacqueline O'Dowd

Between 1 November 1997 and 31 October 1998, the Disciplinary Tribunal met on 27 occasions. The following applications were considered by the tribunal during this period:

New applications:.....42
Law Society
Prima facie cases found.....15
No *prima facie* case found.....1
Awaiting *prima facie* decision.....3

At hearing
Misconduct.....8
Adjourned.....1
Awaiting inquiry.....6

Private
Prima facie cases found.....4
No *prima facie* cases found.....17
Application withdrawn.....1
Awaiting *prima facie* decision.....1

At hearing
Misconduct.....1
No misconduct.....1
Awaiting hearing.....2

Applications from previous period:.....38
Law Society
At hearing
Misconduct.....11
No misconduct.....1
Withdrawn.....1
Adjourned.....7

Private
Prima facie cases found.....2
No *prima facie* cases found.....11

At hearing
No misconduct.....2
Leave granted to withdraw application.....2
Struck out for want of prosecution.....1
Adjourned.....2

Orders made by the Disciplinary Tribunal pursuant to section 7(9) of the *Solicitors Amendment Act, 1960* as substituted by section 17 of the *Solicitors (Amendment) Act, 1994*:
Censure, fine and costs.....2
Restitution, fine and costs.....1
Fine and costs.....5
Fine.....2
Censure and costs.....4
Costs.....1
No order.....1

The tribunal made two orders removing the names of solicitors from the Roll of Solicitors, at their own request.

Reports of the Disciplinary Tribunal under section 7(3)(b)(ii) of the *Solicitors (Amendment) Act, 1960* as substituted by section 17 of the *Solicitors (Amendment) Act, 1994*
Recommendation:
That the respondent solicitor be suspended from practice for such period and on such terms as the court thinks fit and that he pay the Law Society's costs.....2
Censure, fine and costs.....1
That the name of the respondent solicitor be struck off the Roll of Solicitors.....1

Cases presented to the High Court:.....9
Suspended the respondent solicitor from practice for ten years subject to two conditions and awarded the Society its costs.....1
Practising certificate be limited to the effect that the solicitor is limited to practice as an assistant to a solicitor of not less than ten years' standing.....3*
Adjourned.....5
**Two High Court orders made in respect of the same solicitor*
Awaiting presentation to the High Court:.....1

nnual Report 1997/1998

and respondent solicitor before deciding whether or not there is a *prima facie* case for inquiry.

The most frequent ground for complaint continues to fall under the general heading of delay/failure to communicate or reply to correspondence from clients, colleagues or the Law Society. It is of concern to the tribunal that this type of complaint is a constant allegation in the majority of applications before it. For example, in one case the respondent solicitor failed to correspond with his client or to respond to her 40 telephone calls. The tribunal would like to emphasise to solicitors that they have a duty to ensure that they act promptly and efficiently and that they keep their clients informed of all progress that has been made. A solicitor should always answer letters from their clients, colleagues and the Law Society as failure to do so may amount to unprofessional misconduct. The tribunal has indicated to respondent solicitors that to copy correspondence to clients is not an onerous task and could help to improve the relationship between solicitor and client.

Every solicitor has a duty to reply promptly and accurately to the Law Society in response to a complaint. However, during the period under review there has been an increase in the number of instances where solicitors have misled the Society and in particular the Registrar's Committee. The Society in its submissions to the tribunal has indicated that failure or delay in corresponding with the Society frustrates the investigation of complaints. Such conduct is particularly damaging to the reputation of the profession and the tribunal has consequently made the appropriate finding.

The tribunal has welcomed the assistance given by local practitioners who have come to the aid of solicitors who have experienced difficulties in practice. This support has enabled solicitors to redress their problems, which might otherwise have multiplied.

Mr Brian Price was appointed to the tribunal in December 1997 until the year 2000.

I would like to express my thanks to the members of the tribunal for all their hard work and assistance during the year.

Ms Mary Lynch, the Clerk to the Disciplinary Tribunal, has given us great assistance. Her understanding and dedication are very much appreciated.

Walter Beatty, Chairman
16 November 1998

Subject matter of complaints
Conveyancing
Litigation
Probate

Principle grounds on which professional misconduct was found

- Failing to comply with an undertaking given to the complainants in a timely manner or at all
- Failing to comply with an undertaking given to the complainants thereby causing the complainants to be unable to comply with an undertaking which they in turn had given to colleagues acting for a lending institution
- Failing to stamp and register title documents in a timely manner
- Failing to exercise any or adequate supervision over employees
- Failing to hand over documents of title to a bank following the closing of the sale in a timely manner or at all
- Losing clients' title documents and failing to take the necessary steps to register clients' title to property
- Failing to arrange for an assignment of premises which was purchased by the complainants to be executed in a timely manner or at all
- Failing to protect the interests of a client
- Failing to institute proceedings on behalf of a client in a timely manner or at all
- Failing to advise a client that an action was statute barred
- Issuing a letter of undertaking to a third party at a time when the complainant's action was statute barred
- Misleading a client about the existence of court dates, settlement meetings and settlement proposals
- Acting in conflict with the interests of a client and breaching a client's confidentiality
- Failing to keep financial records on behalf of clients in breach of the *Solicitors Accounts Regulations*
- Failing to comply with clients' instructions to take out a grant of probate in a timely manner or at all
- Failing to correspond with clients or to answer their telephone calls
- Failing to respond to colleagues' correspondence
- Failing to satisfactorily answer queries in relation to failure to comply with an undertaking in a timely manner or at all
- Failing to hand over a file to a client when instructed to do so in a timely manner or at all
- Failing/delaying in handing over a file to the complainant's new solicitors despite being requested to do so
- Failing/delaying in corresponding with the Society thereby frustrating the investigation of complaints
- Failing to comply with the direction of the Registrar's Committee by failing/delaying in handing over files to the complainant's new solicitors
- Failing to comply with a section 10 notice in a timely manner or at all
- Failing to produce a file when required to do so by the Society pursuant to section 14(1) of the *Solicitors (Amendment) Act, 1994*
- Failing to comply with a notice served under section 19 of the 1960 Act as amended by section 27 of the 1994 Act
- Failing to furnish to the Society a copy of the brief to counsel together with counsel's opinion as to whether or not he was entitled to exercise a lien over money
- Misleading the Society by indicating that certain steps would be taken and subsequently failing to take those steps
- Misleading the Society by stating at the Registrar's Committee meeting that files had been handed over to the complainant's new solicitors when this was not true
- Misleading the Society by indicating an undertaking as to costs was awaited and that this was the reason for the delay in forwarding files when the necessary undertaking had already been furnished
- Failing to furnish the information requested by the Registrar's Committee
- Failing to attend before the Registrar's Committee.

ILT digest

of legislation and superior court decisions

Compiled by David P Boyle

ADMINISTRATIVE

Bord Fáilte grant aid to be increased

A Bill has been presented which, if passed, will increase the aggregate amount of grant aid that may be paid to Bord Fáilte to support tourism capital development works from £22,000,000 to £50,000,000.

Tourist Traffic Bill, 1998

COMMERCIAL

Docklands area expanded

An order has been made which extends the area of the Custom House Docks area in an easterly direction to include the area bounded generally by the River Liffey, Guild Street, New Wapping Street and Lower Sheriff Street.

Dublin Docklands Development Authority Act, 1997 *(Extension of Custom House Docks Area) Order 1998* (SI No 344 of 1998)

COSTS

High Court decision to make no order as to costs upheld

- The approach adopted by the trial judge was a very careful and just resolution to the unfortunate conflict which had taken place, and this was not a case where the Supreme Court would interfere with the discretion of the trial judge.

The plaintiff claimed that the defendant had wrongfully asserted an interest to certain lands. The plaintiff wanted to sell the lands. The defendant had had an interest in the lands in the past and did not want to see them sold. The plaintiff sought to restrain the defendant from alleging that he had any rights to the lands. The defendant refused to comply. Once motion was issued, the defendant consented to order sought by the plaintiff. The only matter left in dispute was one of costs. The High Court made no order as to costs. The plaintiff appealed against that order to the Supreme Court. In dismissing the appeal, it was held that:

- There was no doubt that the discretion which the Supreme Court had was as wide as it could be, and the court was entitled to put itself in the actual position of the trial judge and substitute its discretion for his
- The approach adopted by the trial judge was a very careful and just resolution to the unfortunate conflict which had taken place and this was not a case where the Supreme Court would interfere with the discretion of the trial judge.

Royal College of Surgeons v Convery (Supreme Court), 25 November 1997

Amount of lodgment undisclosed

- In view of the defendants' refusal to disclose to the trial judge the amount of any lodgments made, in the particular circumstances of this case the trial judge was entitled to disregard the fact of such lodgment in the exercise of his discretion with regard to costs.

The plaintiffs had discovered three wrecks off the Irish coast which formed part of the Spanish Armada. A lengthy trial ensued, both in the High Court and on appeal to the Supreme Court. On appeal, the Supreme Court ordered that the question of costs be remitted to the High Court for determination. The trial judge awarded the plaintiffs their costs for the High Court action against the defendants on a party-and-party basis. The defendants appealed to the Supreme Court from that decision. The defendants sought to be awarded their costs from the High Court trial. The trial judge had ordered that the case was a matter of public importance which justified the awarding to the plaintiffs of their costs. The defendants contended that the trial judge's order was contrary to the weight of evidence. The defendants contended that they had made a lodgment which fairly met the plaintiffs' claim. By failing in their claim to have an award fixed in their favour, the plaintiffs had failed to 'beat the lodgment' and they should, therefore, be liable for the costs subsequent to the date of lodgment. The defendants also contended that the trial judge had erred in law in stating that the plaintiffs had been substantially successful in their claim. In dismissing the appeal, it was held that:

- The superior courts had a discretion to award costs to an unsuccessful party in appropriate circumstances and that discretion had to be exercised on the facts of each case
- The issues raised in the High Court were of public importance and that the decisions thereon were of value to the State and the defendants
- The trial judge was entitled to have regard to this factor in the exercise of his discretion with regard to the award of costs
- In view of the defendants' refusal to disclose to the trial judge the amount of any lodgments made, in the particular circumstances of this case the trial judge was entitled to disregard the fact of such lodgment in the exercise of his discretion with regard to costs

- It could not be suggested that the respondents had been substantially successful in their claim in the substantive action
- That fact was not sufficient to deprive them of their costs of their proceedings in the High Court or render them liable to pay the defendants' costs
- The trial judge was entitled to take those factors into account, which he did when awarding the plaintiffs their costs
- This case was an exceptional case and justice required that the plaintiffs should not be at any particular loss because of their efforts in discovering the Armada wrecks and that included the costs of proceedings in connection therewith, even when such proceedings were not successful, as they were *bona fide* and reasonably brought.

In re La Lavia (Supreme Court), 16 December 1997

CRIMINAL

Delay as defence in sexual case

- Where prohibition on the basis of delay was sought by an accused in cases of alleged sexual abuse of children or young people, special factors had to be considered. These included whether there was any special relationship of trust or dominion between the accused and the complainant, whether there was delay on the part of the State or the Director of Public Prosecutions, and whether witnesses who would have been available had the complaints been made earlier were not now available.

In 1997, the defendant was charged with the indecent assault and rape of two young sisters in the early 1980s, the offences relating to two alleged incidents in the girls' home. The defendant sought an order of prohibition of the trial on the basis that it would be unjust and unconstitutional for the trial to take place after the delay in the case. In granting the order sought, it was held that:

- The defendant was entitled to a fair trial with reasonable expedition and a prosecution could be dismissed where the delay was excessive. The onus on proving the probability that there was a real risk that the accused would not get a fair trial lay on the accused
- Special factors had to be considered in cases of sexual abuse of children and young people. There was no special relationship of trust between the defendant and the girls in this case. There was no evidence of dominion by the defendant. There was no delay on the part of the State or the Director of Public Prosecutions. The abuse was committed in the girls' home but was not perpetrated by a member of their family and consisted of two one-off incidents. Two witnesses, who would have been available had the complaints been made earlier, were not now available, one having died and the other proving untraceable. Having regard to the presumption of innocence, if the defendant was innocent, he was deprived of two witnesses who could contradict the prosecution evidence
- Without that evidence, the sole way the defendant could defend himself was by his own evidence and this was unsatisfactory as that evidence was not independent and the defendant had an inherent right not to give evidence. The defendant at all times maintained his innocence. Taking all the factors into account, there was a serious risk that the defendant would not obtain a fair trial due to the delay.

Fitzpatrick v Director of Public Prosecutions (McCracken J), 5 December 1997

Should other offences have been taken into account?

- The onus was on the accused to bring to the notice of the prosecution authorities any additional offences which he wanted to be taken into consideration by the court.

The applicant was charged with various offences and sought an order prohibiting the respondent from prosecuting him on foot of the later charges. The applicant had earlier been convicted on foot of similar charges and contended that the respondent could have included the new charges in the earlier proceedings. He submitted that the delay was both unexplained and unreasonable. He also contended that his memory of the events had faded to the extent that it was not possible for him to adduce alibi evidence. In reply, the respondent contended that the evidence with regard to the later charges only came to light after a year and a half, and that he was anxious to ensure that the evidence was proper before charging the applicant in relation to them. In dismissing the application, it was held that:

- The respondent was entitled to postpone the charging of the applicant with the later offences for a period of time so as to enable him to ascertain if in fact the evidence available was proper
- The attitude adopted by the respondent in delaying the charging of the applicant was justifiable and reasonable
- It was not in the interests of society that a charge should be laid based upon evidence which was tenuous and suspect
- The respondent was not a party to the applicant's earlier intentions when the applicant pleaded guilty to the earlier charges
- The pleading guilty by an accused to a number of charges did not confer an immunity from further prosecution
- The onus was on the applicant to bring to the notice of the respondent any other offences which he wanted to be taken into consideration by the court when he pleaded guilty in the earlier case
- There was nothing to indicate that the respondent was ever made aware of the applicant's earlier attitude or intention
- It could not be said that by simply missing the opportunity of having the later charges considered with the earlier offences that the applicant had missed an opportunity and had, therefore, been prejudiced. The correct sentence remained the correct sentence irrespective of when it was imposed.

Lynch v Director of Public Prosecutions (Morris J), 16 December 1997

Lesser sentence appropriate for foreign national

- When sentencing an individual to a term of imprisonment, some allowance has to be made if the individual is a foreign national for whom a prison term will be harsher.

The applicant, who was Jamaican, appealed the seven-year sentence of imprisonment which had been imposed on him following his conviction for being in possession of crack cocaine for the purposes of supply. In reducing the applicant's sentence to five years, it was held that:

- The court had taken the view in the past that some allowance should be made for the fact that applicants were foreign nationals and that accordingly a prison regime was more harsh for them
- The applicant had, because of the colour of his skin, been singled out for discrimination by other inmates of the prison in which he was placed and had been attacked and stabbed in the back
- Insufficient credit had been given by the trial judge to the fact that the applicant was a foreign national and was of previous good character and young.

Director of Public Prosecutions v Clarke (Court of Criminal Appeal), 17 November 1997

MEDICAL PROFESSION

Whether Medical Council enquiries to be held in private or public

- While the Medical Council by virtue of section 45(5) of the *Medical Practitioners Act, 1978* had a discretion to hold inquiries in private, the section did not require it. If all parties to the inquiry agreed that it be held in public, then the council had a discretion to hold the inquiry in public.

The applicant had sought to quash a decision of the second-named respondent in the High Court. The second-named respondent had decided to hold an inquiry under the terms of part VI of the *Medical Practitioners Act, 1978*. The inquiry was to be held in private. The applicant wanted the inquiry held in public. The trial judge refused to quash the second-named respondent's decision to hold the inquiry in private. The applicant appealed to the Supreme Court. Three questions were raised on the submission that the inquiry be held in private: whether the second-named respondent had a discretion to hold the inquiry in private; whether the holding of such an inquiry in private breached article 6.1 of the *European convention on human rights*; or whether it breached article 40.3 of the Constitution. In dismissing the appeal, it was held that:

- The purpose of section 45(5) of the 1978 Act was to protect the reputations of those practitioners into whose conduct inquiries had been held, who had not been found guilty of professional misconduct. Such a provision would have been pointless had the inquiry been held in public
- While the second-named respondent, by virtue of s45(5), had a discretion to hold inquiries in private, the section did not require it. If all parties to the inquiry agreed that it be held in public, then the second-named respondent had a discretion to do so
- When examining the rights conferred by article 40.3 of the Constitution and the convention, one had to look at the procedure as a whole, and it was not the function of the Supreme Court to rule in advance as to whether any future hearing should be in public or *in camera*
- As the *European convention on human rights* did not form part of the domestic law of Ireland, it was inappropriate for the Supreme Court to decide whether the holding of an inquiry in private violated it or not
- The second-named respondent did not violate article 40.3 of the Constitution when deciding to hold the inquiry in private
- It was not the function of the court in such proceedings to monitor procedure as it unfolded and only in the most exceptional of circumstances would the court interfere.

Barry v The Medical Council (Supreme Court), 16 December 1997

PRACTICE & PROCEDURE

Increase to sheriffs' fees

Fees are to increase in respect of orders lodged with the sheriff or county registrar for execution on or after 1 November 1998.

Sheriffs' Fees and Expenses Order 1998 (SI No 314 of 1998)

Sovereign immunity doctrine upheld

- When the doctrine of sovereign immunity is invoked, the court is not concerned to enquire into the desirability or undesirability of what a foreign officer might have done. Even if that foreign officer has acted *mala fide*, he is still entitled to invoke the doctrine.

The Attorney General for England and Wales and the British Official Solicitor applied to the court to set aside liberty to serve certain proceedings on them. In 1993, the plaintiff's teenage son had either been abducted by his father to the UK or his father had facilitated his leaving the jurisdiction. The plaintiff had instituted proceedings under the *Hague convention* in England where the courts had invoked an exception to the convention and, rather than returning the boy to the jurisdiction of the Irish courts, had consulted the boy and acceded to his wishes not to be returned. The current proceedings were issued on foot of that decision. In granting the relief sought, it was held that:

- It was the right of the English Court of Appeal under the *Hague convention* to decide not to return the child to Ireland
- The Attorney General for England and Wales, as a member of the British government, was entitled to invoke the doctrine of sovereign immunity and the court had to accept that under international law
- As far as the doctrine of sovereign immunity went, the court was not concerned to enquire into the desirability or undesirability of what a foreign officer might have done. Even if a foreign officer had acted *mala fide*, he would still be entitled to invoke the doctrine of sovereign immunity
- While the matter these proceedings concerned had been private litigation, the Official Solicitor had acted as an officer of the British courts. It was beyond doubt that he had acted throughout in his official capacity: hence, if he had done anything wrong, he was answerable to the English courts but not those in Ireland.

Herron v Ireland (Supreme Court), 5 December 1997

Broader discovery allowed in employment case

- Everything that was relevant to the matters in issue in a case up to the date of the swearing of the affidavit of discovery should be discovered.

Following a general unlimited order for discovery against the defendant, the plaintiff sought an order for further and better discovery in judicial review proceedings challenging his dismissal from employment. D's view was that only documents leading up to the date of suspension need be discovered, as documents which came into being after that date could have no bearing on the issues and were not relevant and need not be discovered. This view was upheld by the Master of the High Court and the High Court, and the plaintiff appealed. In allowing the appeal, it was held that:

- It was untrue to say that documents which came into existence after the dismissal could not be relevant to the issues in the proceedings. The ordinary rule applied, that is, the defendant should discover everything that was relevant up to the date of the swearing of the affidavit of discovery
- While the events may have occurred some time ago, what happened since could be relevant in order to interpret those events, and no exception was made for cases of dismissal from employment. Having regard to the nature of the judgment and order under appeal, a further affidavit should be sworn disclosing any documents relevant to the proceedings which came into existence after the date of dismissal.

Tobin v Cashell (Supreme Court), 12 December 1997 G

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News from the EU and International Affairs Committee

Edited by TP Kennedy, Legal Education Co-ordinator, Law Society of Ireland

Towards a new agenda for the future of EU human rights policy

The exact anniversary of the adoption by the General Assembly of the United Nations of the *Universal declaration of human rights* falls on 10 December. This short, clear and majestic document has become the *Magna Carta* of the international community. A wide variety of events, both official and unofficial, are planned to mark the event in nearly every country on the globe. Since Europe was one of the earliest and main beneficiaries of the human rights idea, it is particularly fitting that it should find its own distinctive way of marking the event.

In anticipation of the 50th anniversary, the European Commission decided last year to establish a *Comité des Sages* composed of four eminent persons known for their integrity and commitment to human rights. The essential task of the *Comité* was to reflect on the evolution of the EU's human rights policy (or policies) and to put forward practical proposals to advance that policy. The *Comité* has now reported with a strongly-worded and admirably clear text: *Leading by example: a human rights agenda for the European Union for the Year 2000*. The agenda was launched on Friday 9 October in Vienna under the auspices of the Austrian Presidency of the Union. One of its members was Mary Robinson. The other members include the former Secretary General and Deputy Secretary General of the Council of Europe and the Presiding Judge of the War Crimes Tribunal in former Yugoslavia.

The practical significance of the agenda cannot be overstated. It will be laid before the Council of Ministers by the Austrian Presidency in December, when the Council will be asked to respond with a landmark resolution of its own. Many will be surprised if the Council strays too far from the proposals put forward in the agenda.

To aid it in its task, the *Comité* appointed approximately 20 *rapporteurs* who wrote highly-detailed papers on various aspects of the EU's human rights policy in fields as diverse as conditionality and EU aid, racism and EU law, gender discrimination, social rights and the rights of persons with disabilities. The overall research effort was led by Professor Philip Alston of the European University Institute in Florence who is one of the world's leading authorities on human rights law.

Human rights in the EU

To some, it might seem surprising that the European Union, as such, has an interest in, or even a competence in, the field of human rights. After all, the vast majority of the competences of the Union are in the area of economic integration. Furthermore, and quite unlike a 'normal' constitution, the Union does not possess a bill of rights and presently lacks the competence even to accede to the *European convention on human rights*. The latter convention is sponsored by the Union's sister organisation – the Council of Europe – and administered separately in Strasbourg.

In reality, however, the Union has its roots in a certain ethical vision of a peaceful and stable Europe. It is important to recall that economics was only viewed as a *means* (albeit a crucially important means) toward integration and not the ultimate *end* of integration. Now and then, the ethical dimension of the Union has manifested itself in the case law of the European Court of Justice and has evolved incrementally in the text of the founding treaties, including the *Treaty of Amsterdam*. Indeed, the Union is perhaps the biggest direct provider of humanitarian assistance worldwide and has a long tradition of informing its collective foreign policy with human rights concerns.

It is therefore entirely natural that the Union would mark the 50th anniversary by returning to its roots and by undertaking a thoroughgoing evaluation of its human rights policies to date.

Key objectives of the new agenda

The agenda of the *Comité* fully acknowledges that the Union has acted in the past as a force for good both within the Union as well as beyond its frontiers. The *Comité* states, however, that the key factor limiting the capacity of the Union to act in the cause of humanity has been the absence of a coherent, balanced, substantive and professional human rights policy. This situation, reasons the *Comité*, cannot be allowed to remain for a variety of reasons, including the increasing incidence of racism, the tendency toward a 'fortress Europe' which is hostile to outsiders, the growth in co-operation in security matters which is not matched by adequate human rights safeguards, and the likelihood of new Member States joining the Union in the near future.

The agenda asserts that a new EU human rights agenda should have the following objectives. First, the Union should acknowledge the existing web of legal obligations under international law and, just as important, announce its willingness to explore opportunities to honour those obligations both within the Union and beyond its borders. Secondly, the Union should always uphold the principle that human rights are *universal* and must be respected by all states and apply to all individuals. Thirdly, the Union should respect the *indivisibility* of both sets of human rights, civil and political as well as economic, social and cultural

rights. Fourthly, and quite crucially, the Union should ensure consistency between its own *internal* human rights policy and the human rights policy it adopts toward *third countries*. Fifthly, the Union should expand and deepen the existing knowledge-base to ensure that its policy is rational, informed and consistent. Sixthly, the Union should ensure the effective *mainstreaming* of human rights perspectives into all its policies and law-making processes.

Pressing human rights concerns

The *Comité* did focus on certain pressing human rights issues. It was particularly mindful that racism and xenophobia are thriving and that EU efforts in this regard need to be broadened and reinforced. It was concerned that EU policy towards persons with disabilities should reflect a human-rights approach – one that aims to eliminate barriers to full participation and equal opportunities. It also focused on conditions of detention, the plight of refugees fleeing persecution, and the general treatment of third country nationals within the EU. Also of concern was the need to ensure that the 'information society' was developed along lines that promote and respect human rights and that regulation would be applied where appropriate and in a manner consistent with freedom of expression. Yet another matter of concern was the breakthroughs in biotechnology from a human rights perspective. Few can doubt the immediacy of these issues.

Practical steps forward

The *Comité* did not confine itself to high rhetoric about rights. It put forward a series of practical proposals to make a coherent EU policy a reality. Prominent among these recommendations are the following. First, the Commission should appoint a Commissioner for Human Rights to play a cen-

RECENT DEVELOPMENTS IN EUROPEAN LAW

DIRECTIVES

Time Limits

Edilizia Industriale Siderguica Srl (Edis) v Ministero delle Finanze (Case 231/96), judgment of 15 September 1998. An Italian charge on registration of companies, payable annually, had been held by the Court of Justice to be contrary to EC law. Edis had paid the charge between 1986 and 1992. The charge was reduced by Italian law in 1993 and ceased to be annual. Edis sought a refund. Italian law provided that any claim for a repayment of charges wrongly paid must be brought within a period of three years from the date of payment. The ECJ distinguished between national limitation rules which would deprive an applicant of a remedy and domestic procedural rules to deal with a situation of this nature. The court held that it is compatible with EC law to lay down reasonable limitation periods for bringing proceedings. The limitation period must be equivalent to similar limitation periods for domestic actions.

EMPLOYMENT

Gender discrimination

R v Seymour Smith and Laura Perez (Case 167/97). The case had been referred by the House of Lords seeking an interpretation of article 119 of the treaty and certain provisions of the *Equal treatment directive* (76/207/EEC). UK law requires a two-year period of employment before an applicant can seek compensation for unfair dismissal. Ms Smith and Ms Perez had been dismissed from their posts before they had completed two years' employment. They claim that this two-year qualifying period discriminates against women, as more women than men fail to meet the two-year requirement. The Advocate General opined that this two-year qualifying period made it very difficult to provide a legal remedy for those who had been wrongfully dismissed. Therefore, he was of the view that it was contrary to Directive 76/207, irrespective of the gender of the applicant. The final judgment of the court is expected later this year.

Belinda Jane Coote v Granada Hospitality Ltd (Case 185/97), judgment of 22 September 1998. Ms Coote had been employed by Granada from December 1992 to September 1993. In 1993, she brought a claim for sex discrimination against Granada, arguing that she had been dismissed because of pregnancy. The claim was settled and she left the employment of Granada in September 1993. In 1994, she had difficulty finding employment. She argued that her difficulties stemmed from Granada's failure to supply a reference. The UK Employment Appeals Tribunal sought guidance on whether in the light of the *Equal treatment directive* (76/207/EEC) UK legislation ought to be interpreted as prohibiting not only retaliatory measures during the employment relationship but those decided on after it has ceased or where harmful effects are produced after it has ceased. The ECJ pointed out that under article 6 of the directive all persons have the right to obtain an effective remedy in a competent court against measures which have interfered with the equal treatment of men and women. This provision would be deprived of an essential part of its effectiveness if its protection did not extend to measures taken by an employer after the employment relationship has ceased. Fear of such measures could deter workers from pursuing claims for sex discrimination and jeopardise the objectives of the directive. Thus, there is an obligation on Member States to introduce into national law measures necessary to ensure judicial protection for workers from employers who take retaliatory action (such as refusing a reference) after the employment relationship has ceased.

INTELLECTUAL PROPERTY

Foreningen af danske Videogramdistributører ('FDV') v Laserdisken (Case 61/97), judgment of 22 September 1998. The question before the court was whether it was contrary to EC law for the holder of an exclusive rental right in a film to prohibit copies of that film from being offered for rental in a Member State even where offering those copies for rental has been authorised in another Member State. The ECJ considered articles 30 and 36 of the treaty and Directive 92/100/EEC (on rental right and lending right and on certain rights related to copyright in the field of intellectual property). It considered the principle of exhaustion of distribution rights. Generally, exclusive rights guaranteed by national law on industrial and commercial property are exhausted when the product has been lawfully distributed on the market in another Member State by the proprietor of the right or with his consent. However, the release into circulation of a picture and sound recording cannot render lawful other acts of exploitation of protected work, such as rental, which are of a different nature from sale or any other lawful act of distribution. Rental right remains one of the prerogatives of the author and producer, notwithstanding sale of the physical recording. The same reasoning was applied to the effect of the offer for rental. The court pointed out that the specific right to authorise or prohibit rental would be rendered meaningless if it was held to be exhausted as soon as the object was first offered for rental. In addition, the directive expressly precludes the possibility that lending right, unlike distribution rights, can be exhausted by any act of distribution of the object in question. Thus, the ECJ held that the exclusive right to authorise or prohibit the rental of a film is not exhausted when it is first exercised in the EC Member States. G

tral co-ordinating role within the Commission. Secondly, the Council should establish a specialist Human Rights Office to assist in the work of the new High Representatives for the Common Foreign and Security Policy. Thirdly, a European Human Rights Monitoring Agency should be established with a general information-gathering function in relation to all human rights in the field of application of EU law. This could prove particularly useful to the two new Commissions on Human Rights to be set up on either side of the Irish border under the terms of the *Good Friday agreement*. Fourthly, the Union should accede to the *European convention on human rights*. Fifthly, the human rights aspect of the Commission's development co-operation programme should be expanded. Sixthly, more effective consultation with human rights non-governmental organisations (NGOs) should be developed by all EU institutions.

The agenda ends with a general appeal to the Council to adopt a solemn statement in December confirming the Union's commitments to a human rights policy based on the principles and objectives set out above. It asks specifically that a Commissioner be set aside for human rights responsibilities and that a feasibility study be undertaken as to the establishment of a European monitoring centre. It also asks that the details of the agenda be studied in detail with a view to bringing forward practical proposals in light of the recommendations contained therein.

Europe as a force for good

The publication of the agenda forces a realisation that Europe can be an even greater and more effective force for good both internally and on the wider world stage provided it adopts a coherent approach to human rights. Given sufficient political will, this should not be too difficult to achieve. There will always be practical reservations concerning legal competence. This is not surprising since the Union has always evolved through a haphazard process of incremental expansions in competence.

A frank recognition of the Union's human rights responsibilities and powers is long overdue. As a matter of law, it is inevitable, given the new human rights provisions in the *Treaty of Amsterdam*. More importantly, as a matter of morality it is inevitable since the Union has evolved to the point that the human dimension cannot be ignored.

On the internal side of the equation, the result will be to add a human face to the cold and impersonal dynamics of the internal market and the European institutions that regulate this market. In its relations with third countries, the result will be a harnessing of the undoubted power of the Union to the principles which gave rise to it and which should henceforth animate it.

No more fitting tribute can be found on the European stage to the visionaries who first penned the Universal Declaration 50 years ago. G

Dr Gerard Quinn is Director of Research at the Law Reform Commission. He acted (in his personal capacity) as rapporteur *to the* Comité des Sages *on the rights of people with disabilities.*

European law healthcheck

The EU and International Affairs Committee recently invited the profession to have the health of their European law knowledge checked. 94 solicitors, apprentices and other lawyers took up the challenge and attended a seminar where they became aware of a wide range of EU law developments in different practice areas. Many afterwards commented that they were almost frightened by how quickly European law changes and the direct implications of various proposals on day-to-day practice.

The one-day seminar was opened by the Law Society President Patrick O'Connor. He welcomed the concept of the conference and pointed out the very low level of knowledge of this subject. The Law Society is endeavouring to combat this through programmes such as the *Diploma in applied European law* and seminars such as this one. The seminar was run in a multiple-choice format with two sessions being conducted simultaneously, to allow attendees opt for the lecture of their preference. The following papers were given:

- *Money laundering and solicitors*, John Fish (Arthur Cox)
- *Milk quota regulations*, Owen Binchy (James Binchy & Son)
- *Competition law developments*, Denis Cagney (Matheson Ormsby Prentice)
- *The euro: legal aspects*, Mark Ryan (Whitney Moore & Keller)
- *Free movement of persons: recent developments*, John Handoll (William Fry)
- *Intellectual property update*, Wendy Hederman (Mason Hayes & Curran)
- *Developments in cross-border litigation*, Roderick Bourke (McCann FitzGerald)
- *Recent developments in EC consumer law*, Ken Casey (William Fry)
- *Recent developments in EC employment law*, Gary Byrne (BCM Hanby Wallace).

Copies of these papers can be purchased from TP Kennedy in the Law Society. This was the second annual 'healthcheck'. The third is being planned for September 1999. The committee would welcome any suggestions about future topics to be covered. Any suggestions should be given to TP Kennedy (tel: 01 6724802). G

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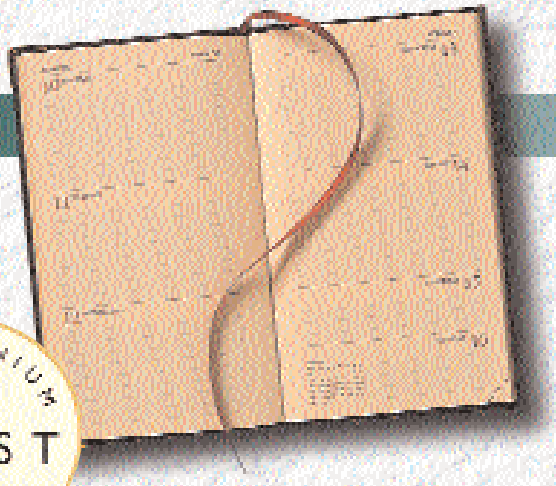

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Rights of pregnant workers affirmed

In *Margaret Boyle and Ors v Equal Opportunities Commission* (Case 411/96), judgment of 27 October 1998, the ECJ give its first interpretation of the *Directive on improvements in the safety and health at work of pregnant workers*.

Six employees of the Equal Opportunities Commission in the United Kingdom applied to an industrial tribunal in Manchester for a declaration that certain clauses of their employment contracts were void. They argued that the clauses in question discriminated against female workers and were contrary to EC law on equal pay and equal treatment for pregnant workers. The industrial tribunal stayed proceedings and referred a number of questions to the ECJ.

The ECJ considered the clauses concerned in turn. A clause which made the application of a more favourable maternity scheme than the statutory scheme conditional on the pregnant woman's returning to work after the birth of the child, failing which she was required to repay the difference between the contractual maternity pay and the statutory payments in respect of the leave, was held not to be discriminatory on grounds of sex.

The court then examined the period of maternity leave. It held that the right to the minimum period of 14 weeks provided for by the directive can be waived by workers (with the exception of two weeks' compulsory maternity leave). However, if a woman becomes ill during the period of statutory maternity leave and places herself under the more favourable sick leave arrangements and the sick leave ends before the expiry of the period of maternity leave, the period of sick leave does not affect the duration of the maternity leave, which continues until the end of the period of 14 weeks.

The court held that it is not contrary to EC law to limit the accrual of annual leave to the period of 14 weeks' maternity leave. However, it is contrary to EC law to limit, in the context of an occupational scheme wholly financed by the employer, the accrual of pension rights during the 14 weeks' leave to the period during which the woman receives pay.

The ECJ finally held that although an employment contract may provide for a period of supplementary unpaid maternity leave, it cannot, without infringing EC law, limit the period during which pension rights accrue to the period of paid leave. G

Conferences and seminars

Academy of European Law
Contact: (Tel: 0049 651 937370)

Topic: *Biotechnology in the Single Market*
Date: 22 January 1999
Venue: Edinburgh, Scotland

AIJA (International Association of Young Lawyers)
Contact: Gerard Coll (tel: 01 6761924)

Topic: *The position of employees with an insolvent employer*
Date: 28-30 January 1999
Venue: Amsterdam, Holland

Topic: *Annual congress 1999*
Date: 22-27 August 1999
Venue: Brussels, Belgium

British Institute of International and Comparative Law
Contact: Valerie Echard (tel: 0044 171 3232016)

Topic: *Current problems in international arbitration*
Date: 19 January 1999
Venue: London, England

Topic: *Legal problems in the regulation of vertical restraints*
Date: 12 February 1999
Venue: London, England

Law Society of Scotland
Contact: (Tel: 0044 141 5531930)

Topic: *50th anniversary conference*
Date: 8-10 July 1999

Solicitors' European Group
Contact: (Tel: 0044 1905 724734)

Topic: *Vertical restraints and other competition reform projects*
Date: 13 January 1999
Venue: London, England

Topic: *Future of takeover regulation in the UK and the European view*
Date: 8 February 1999
Venue: London, England

Topic: *Litigation in Luxembourg*
Date: 26 April 1999
Venue: London, England

Topic: *The new merger rules one year on and other developments*
Date: 18 May 1999
Venue: London, England

Topic: *Public procurement policy in the Community*
Date: 16 June 1999
Venue: London, England

Topic: *Broadcasting, pay-per-view and sports competition law*
Date: 6 July 1999
Venue: London, England

New officer team at Law Society

Anthony Ensor

Senior Vice-President, Anthony Ensor, practises in Ensor O'Connor on Court Street, Enniscorthy, Co Wexford, with his wife Beatrice. He qualified in Michaelmas 1974 and was first elected to the Law Society Council in 1982.

Ensor played international rugby and was capped 22 times for Ireland. He served as chairman of a number of key committees. His brother David is a partner in Eugene F Collins and his brother Rod is a partner in Matheson Ormsby Prentice. His youngest brother, Simon, is a partner in Sherry Fitzgerald auctioneers.

Gerard Griffin

Junior Vice-President Gerard Griffin of Kelly & Griffin in Terenure, Dublin, qualified in Michaelmas 1978 and was nominated to the Law Society Council four years later by the Dublin Solicitors' Bar Association.

He has served on all the Society's committees and chaired the Compensation Fund, Litigation, Registrar's, and Costs committees. As Chair of the Conference Committee, he helped organise annual conferences in Berlin, Barcelona, and Florence, and will lead the charge to Ashford Castle, Mayo, next May.

The president and his men: Law Society President Patrick O'Connor (centre) pictured with Senior Vice-President, Anthony Ensor (right), and Junior Vice-President, Gerard Griffin

At the recent Continuing Legal Education seminar on discovery and privilege were (left to right) Mr Justice Peter Kelly, CLE Co-ordinator Barbara Joyce, Petria McDonnell, partner at solicitors McCann FitzGerald, newly-appointed CLE Executive Sarah O'Reilly, and the then President of the Law Society Laurence K Shields

Gerard Coakley, Managing Director of law publishers Butterworths Ireland (third from left) presenting the Butterworths Perpetual Trophy to Donal Horgan, Cork Stamps Office, following his team's win over the Southern Law Association in their annual game at Cork Golf Club. Included in the picture are (from left) Jim Duggan, Cork Stamps Office, Simon Murphy, Southern Law Association, SLA President Fionnuala Breen-Walsh, and David Donegan of the SLA

Giving children a voice: independent representation of children

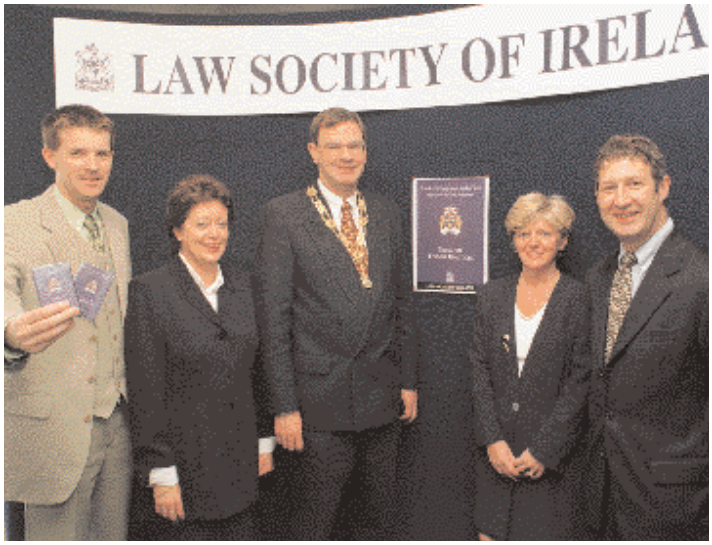
Pictured at the recent *Giving children a voice seminar* were (from left): solicitor Barbara Hussey, Dr James Gerard Byrne, Mrs Justice Catherine McGuinness, Eugene Davy, then Chairman of the Family Law and Civil Legal Aid Committee, and UK solicitor Margaret Bennett

A very lively, informative and worthwhile seminar was hosted by the Family Law and Civil Legal Aid Committee of the Law Society in Blackhall Place on 10 October, the aim of which was to bring together the various professionals who work for and with children in the legal system.

The breadth and quality of the participants in the seminar indicated the huge interest there is in the subject and the perceived need for all professionals to work together in the best interests of the children.

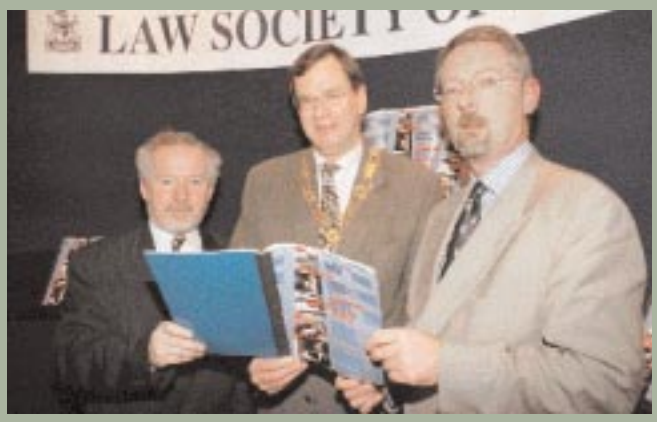
The speakers themselves gave voice to this need, with papers being given by Mrs Justice Catherine McGuinness (*Children and the law*); UK solicitor Margaret Bennett (*Children, parents and the State*); Dr James Gerard Byrne (*The role of the expert witness*); and solicitor Barbara Hussey (*The role of the solicitor both in the context of custody disputes and disputes involving children, parents and the State*). The attendance numbered social workers, probation workers, health care officials, doctors, mediators, solicitors and barristers and, coupled with the excellence of the papers, was the lively, stimulating and challenging question-and-answer sessions at the end of each session.

The committee hopes that this seminar is a first step in a forum for continued co-operation between the various professions.



The Law Society's Practice Management Committee has produced a series of practice management audio tapes which are due to be distributed to every firm in the country shortly. Pictured at the launch of the tapes were the then Law Society President Laurence K Shields (centre) and then chairman of the Practice Management Committee Risteard Pierse (far left), with Mary Considine, Carol Bolger and Paddy Delaney of Bank of Ireland, which sponsored the project

Launch of CPS booklet



At the launch of the CPS booklet at Blackhall Place were (from left): Michael Carroll, Group Solicitor with CIE and then Chairman of the Corporate and Public Services Committee, then Law Society President Laurence K Shields, and Edward J Hughes, Law Agent at Dun Laoghaire-Rathdown CC

An information booklet for solicitors starting employment in the corporate and public services sectors was recently launched by Laurence K Shields, then President of the Law Society.

The move from private practice, where most solicitors will have served their apprenticeships, to the corporate and public services world is a move to very different cultures. This is an important booklet containing practical information for solicitors and will be a continuing reference for them in the course of their work. Copies are available from the Law Society.

One STEP beyond

The Society of Trust and Estate Practitioners (STEP) was officially launched in Dublin in early October. STEP is a new international body covering lawyers, accountants, corporate trust professionals, bankers, insurers and anyone else involved in trusts, estates, executorship administration and related taxes. Pictured at the launch of STEP were (from left) solicitors John O'Connor, Edmund Fry, Cedric Christie, Rachel Curran, Gerry Sheedy and Richard Grogan

Speaking at the recent CLE seminar on the administration of estates were Patricia T Rickard-Clarke, partner at solicitors McCann FitzGerald, and Paula Fallon, partner at solicitors Maxwell Weldon & Darley

Out of Africa

A very distinguished group of visitors to Blackhall Place recently were judges taking part in the second *African workshop on constitutionalism* at Trinity College Law School.

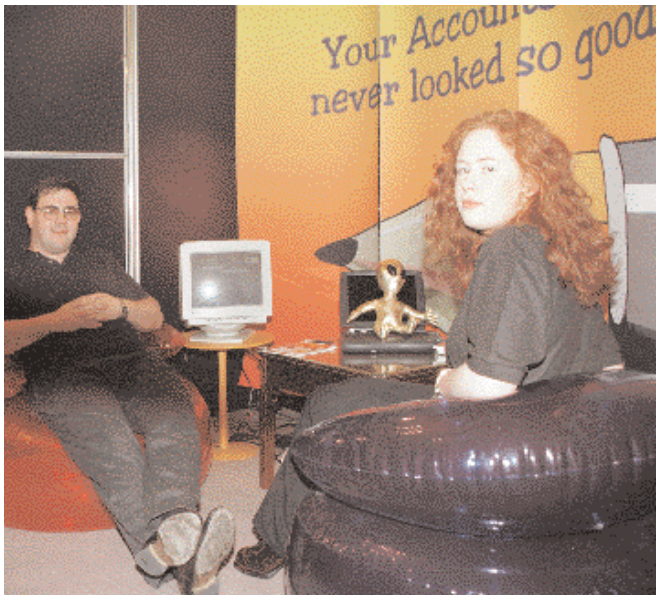
Back row (from left): Chief Justice Ngulube, Zambia; Chief Justice Sapire, Swaziland; Chief Justice Banda, Malawi; Ken Murphy, Director General, Law Society; Professor William Binchy, Trinity College; Laurence K Shields, then President of the Law Society; Judge Oliver, South Africa; Judge Ampiah, Ghana; Professor Robert Martin, University of Western Ontario; Judge Maqutu, Lesotho. Front row (from left): Judge Obayan, The Gambia; Chief Justice Wambuzi, Uganda; Chief Justice Uwais, Nigeria; Chief Justice Gubbay, Zimbabwe; Judge Chipota, Tanzania; Judge Tunoi, Kenya; Chief Justice Pillay, Mauritius; Judge Onu, Nigeria; Chief Justice Nganunu, Botswana; Chief Justice Mangaze, Mozambique.

LawTech exhibition 1998

Visitors and exhibitors get together at LawTech

Doing business at the LawTech exhibition

The Law Society's annual LawTech exhibition was held in Blackhall Place last month, providing a unique opportunity for the legal profession to view the very latest technology available for the legal practice. The exhibition was organised under the auspices of the Society's Technology Committee and featured even more exhibitors than last year. Practice management systems, accounts packages, voice recognition software, document storage and retrieval systems – you name it, they were all on display at the exhibition, offering solicitors a taste of new techniques and ideas that could help them increase efficiency in their offices and improve the services they provide to their clients.



Aidan O'Neill and Aveen Murphy of practice management software suppliers Ivutech get that sinking feeling

Kevin MacDonald of Avenue Legal Systems with solicitor Michael Hegarty of Dublin firm Smyth O'Brien & Hegarty and Tony Byrne of Star Computers

Legal and General's David McCorriston, Michael Gilmartin and Gerry Wogan man their stand

Doreen Levins and Donal Quinn of PC consultancy Milestones Systems

Conor Molloy of Corel demonstrates voice recognition software to Tipperary solicitors John Carroll and Mary Maher of Clonmel firm JG Skinner & Co

Dennis Farrell of Dennis Farrell and Associates with solicitor Eamonn Keenan of Dublin firm Sexton Keenan & Co

Galway solicitor Peter Crowley of CP Crowley & Co chats to John Clifford of Safeguard Business Systems

LawLink's Managing Director Stewart Thompson, with Kathy Lee (seated), Lisa Buckley and Sarah Dallaghan all of LawLink

Cathal O'Neill's Dublin: special offer for readers

Cathal O'Neill, former Head of UCD's School of Architecture, has produced a collection of watercolour paintings of his favourite Dublin buildings, contemporary and historic, private and public.

Each painting is accompanied by a personal commentary from the author. Unfortunately, our own Blackhall Place does not make it into the pages of O'Neill's beautifully produced book, but the Four Courts do adorn the front cover. Perhaps to make up for this omission, the publishers Marino Books are offering *Cathal O'Neill's Dublin* to readers of the *Gazette* at a 10% discount on the usual price of £25 (please quote *Gazette* offer when ordering). For more information on this special offer, contact Rosemary Dawson at Marino Books on 01 284 2036.

Cathal O'Neill's Dublin, Marino Books (1998), 16 Hume Street, Dublin 2. ISBN: 186023 064 4.

Books

JUST PUBLISHED

Mareva injunctions and related interlocutory orders
Thomas B Courtney
Butterworths (Ireland) Ltd (1998), 26 Upper Ormond Quay, Dublin 7
ISBN: 1 85475 1077.
Price: £75

Gangland
Paul Williams
O'Brien Press (1998), 20 Victoria Road, Dublin 6
ISBN: 0-86278-576-6.
Price: £7.99 p/b

Banking law in the Republic of Ireland
John Breslin
Gill & Macmillan (1998), Goldenbridge, Inchicore, Dublin 8
ISBN: 0-7171-2373-1.
Price: £150

A casebook on equity and trusts
Prof JCW Wylie
Butterworths (Ireland) Ltd (1998), 26 Upper Ormond Quay, Dublin 7
ISBN: 1 85475 8802.
Price: £50

Journal of international banking law
Ed by Barnabas Reynolds
Sweet & Maxwell (1998), Cheriton House, North Way, Andover, Hampshire SP10 5BE, England
ISBN: 0-421-65040-0.
Price: stg£110

Handbook on arbitration in Ireland
Michael Carrigan
Law Society of Ireland (1998), Blackhall Place, Dublin 7
Price: £12.50 plus 70p p&p

Irish social services (third ed)
John Curry
IPA (1998), Vergemount Hall, Clonskeagh, Dublin 6
ISBN: 1 902448 01 4.
Price: £9.50 p/b

The High Court: a user's guide
Kieron Wood
Four Courts Press (1998), Fumbally Lane, Dublin 8
ISBN: 1-85182-307-7.
Price: £25

Law Reform Commission consultation paper on aggravated, exemplary and restitutionary damages
Law Reform Commission (1998), Ardilaun Centre, 111 St Stephen's Green, Dublin 2
ISSN: 1393-3140.
Price £15

Law Reform Commission report on privacy
Law Reform Commission (1998), Ardilaun Centre, 111 St Stephen's Green, Dublin 2
ISSN: 1393-3132.
Price: £20

Enforcement of intellectual property in European and international law
Christopher Wadlow
Sweet & Maxwell (1998), Cheriton House, North Way, Andover, Hampshire SP10 5BE, England
ISBN: 0 421 50160 X.
Price: stg£120

Commercial secrecy: law and practice
John Hull
Sweet & Maxwell (1998), Cheriton House, North Way, Andover, Hampshire SP10 5BE, England
ISBN: 0 421 580402.
Price: stg£85

Emmins on sentencing (third ed)
Martin Wasik
Blackstone Press (1998), Aldine Place, London W12 8AA, England
ISBN: 1-85431-681-8.
Price: stg£29.95

Blackstone's indexes: case precedents 1900-1997 (CD-ROM)
Maxwell Barrett and Jonathan Rush
Blackstone Press (1998), Aldine Place, London W12 8AA, England
ISBN: 1-85431-836-5.
Price: stg£320 plus VAT

Blackstone's sentencing index: case precedents 1900-1997
Maxwell Barrett
Blackstone Press (1998), Aldine Place, London W12 8AA, England
ISBN: 1-85431-850-0.
Price: stg£49.95

Blackstone's law of evidence index: case precedents 1900-1997
Maxwell Barrett
Blackstone Press (1998), Aldine Place, London W12 8AA, England
ISBN: 1-85431-851-9.
Price: stg£49.95

Blackstone's criminal law index: case precedents 1900-1997
Maxwell Barrett
Blackstone Press (1998), Aldine Place, London W12 8AA, England
ISBN: 1-85431-737-7.
Price: stg£49.95

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Webwatch

The Net delivers

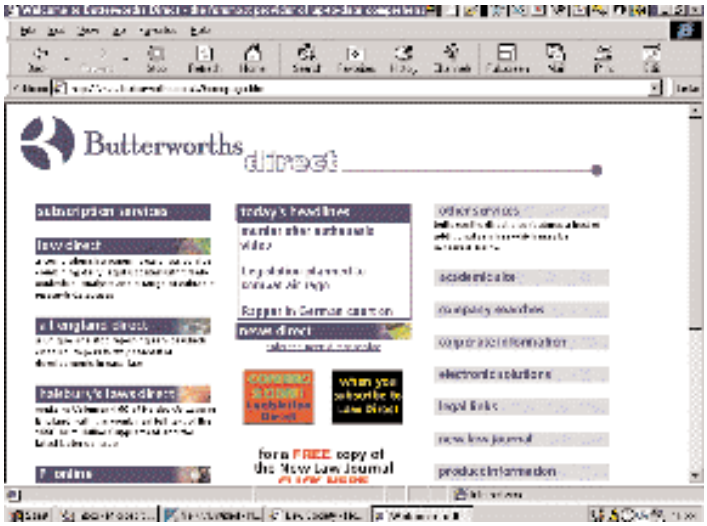
Recently the Net recovered its pride. A mass audience had felt let down in the Louise Woodward case after it had been promised a copy of Judge Hiller Zobel's judgment on the World Wide Web. In the event, the web site housing the judgment crashed under the weight of demand for copies.

The experience with the Starr Report (http//starreport.excite.com/toc.html) was more positive. Once published on the Web, the report was soon duplicated and made available on many mirror web sites. News organisations such as CNN were quick to include a copy of the report on their site, doubling the visitor 'hit rate' almost instantly. Within one hour of publication, thousands of people throughout the world knew what Kenneth Starr had to say about US President Bill Clinton's activities. The Net had proved that it could deliver to a world audience, almost immediately and at little cost.

Clinton's bad news

There was more bad news for President Clinton, however. US District Court Judge Susan Webber Wright recently released papers involving Paula Jones' dismissed harassment lawsuit. The documents are available at www.are.uscourts/gov/unsealed/jones_vs_clinton.htm.

But it seems a little unfair if, in the IT world at least, President Clinton is going to be remembered because he was the first international figure to have his dirty washing displayed for all to see on a web site. He made a more respectable contribution to IT history recently in Dublin when he signed a joint US-Irish *communiqué* on e-commerce without lifting a pen. This was the first time that an international agreement had been signed using digital signatures. Before the signing, both Clinton and the Taoiseach were issued with cards containing a unique code and a digital certificate. To sign the document, each leader inserted his smart card into a reader while entering a unique PIN code. This process generated a signature which was then attached to the *communiqué* document. The final result can be viewed at www.baltimoreinc.com/clintonvisit98.html.



Back in the world of publishing, Butterworths in London recently launched *Legislation direct* which includes the full (amended) text of Acts and statutory instruments of general application in England and Wales (around 17,000). Remarkably, all texts are cross-referenced to each other by hypertext.

Butterworths has also launched the *Personal injury service*. The service includes the All England Law Reports, the *quantum* cases and an expert witness database, a calculation facility for damages, and a weekly journal. Costs start from £295 plus VAT a year for a single user. A free week's trial may be obtained by e-mailing Butterworths at on.line@butterworths.co.uk.

While many view the Net as a great research tool, its potential for the admin department of law firms should not be underestimated. The more astute administrative officer will have realised by now that the Internet really is a great Swiss Army type gadget with lots of tools for a variety of tasks. For example, visitors to www.tpc.int will see that it is now possible to send a fax from the World Wide Web and at no cost (save for the cost of a local call to connect call to the Net). This facility is useful not only to those

requiring a back-up fax facility but also offices which regularly fax long distance and overseas. The cost saving in the latter case can be substantial. The TPC facility also provides an e-mail-to-fax service. This allows the user to send messages in e-mails which are converted on the Net and eventually delivered through a fax machine.

Meanwhile, bizarre happenings connected with the Web continue to surprise even the most imaginative of Net fanatics. In the United States recently, a court sentenced Larry Froistad Jr to life in prison after he confessed on the Internet to murder (www.nando-times.com). Net users alerted police officers who found at least one e-mail containing a confession to the murder of his daughter on Froistad's computer. It must only be a matter of time before a crime is detected thanks to one of the many webcams (camcorders linked to a web site) which are situated in a variety of places throughout the globe.

Dublin's Fair City

Ireland has a few views of its own to offer. One is of O'Connell Bridge. Another is situated on Lower Gardiner St in Dublin. Meanwhile, in the North, traffic flows can be checked at a number of locations in Belfast by going to the urban traffic control web site.

All the above webcams can be accessed through Ireland's legal directory at www.legal-island.demon.co.uk/. The directory includes links to numerous web sites likely to be of use to lawyers researching on the Web. It also contains links to law firms in Ireland (north and south) which now have a Web presence. Law firms may have their site listed free of charge by sending details including a brief description of the firm to habeas@legal-island.demon.co.uk.

Finally, the Net also delivered another first this summer which probably had nothing to do with Bill Clinton. On 16 June at an Orlando hospital, the first live birth took place on the Web (www.ahn.com/). It's not clear what prompted the mother to want her husband, the midwife and a good number of anonymous viewers to be at the birth, but Baby .com is said to be doing fine. G

Mark Reid is a freelance journalist with a particular interest in the Web. He can be contacted on mark-reid@altavista.net.

LOST LAND CERTIFICATES

Registration of Title Act, 1964

An application has been received from the registered owners 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.

(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin

(Published 4 December 1998)

Regd owner: William Considine (deceased), Danganella, Cooraclare, Co Clare; Folio: 17835; Lands: Townland of Danganella East, Barony of Moyarta; Area: 0a 2r 36p; **Co Clare**

Regd owner: Eugene O'Shea and Patricia O'Shea, Mount Catherine, Clonlara, Co Clare; Folio: 14041F; Lands: Townland of Mount Catherine; Area: 0.519 acres; **Co Clare**

Regd owner: Cork County Council; Folio: 13077; Lands: Property in the Kanturk Rural District, County of Cork (the *Labourers Order 1907*) **Co Cork**

Regd owner: Pat and Helen Buckley; Folio: 22729F; Lands: Property situate in the Townland of Coolroe, Barony of Muskerry East; **Co Cork**

Regd owner: Frank Devine, Milltown, Convoy, Co Donegal; Folio: 40607; Lands: Convoy Townparks; **Co Donegal**

Regd owner: James and Bridget McNeill, 47 Glenkeen, Church Road, Randalstown, Co Antrim; Folio: 34389F; Lands: Magherawarden; Area: 0.200 hectares; **Co Donegal**

Regd owner: Helena Marie Runciman; Folio: 8774F; Lands: Umrycan; Area: 0.500 acres; **Co Donegal**

Regd owner: Matthew F Lynch of 34 Errigal Road, Drimnagh, Dublin 12; Folio: 94265F; Lands: 34 Errigal Road situate in the parish and district of Crumlin; **Co Dublin**

Regd owner: Frank Dunne and Olive Dunne, both of site 7 Grove Court, Naas Road, Dublin 12; Folio: 94658F; Lands: Property known as 7 Grove Court situate in the parish and district of Drimnagh; **Co Dublin**

Regd owner: Carmel Duffy of 100 Kildonan Avenue, Finglas West, Dublin 11; Folio: 41520F; Lands: Property known as 12 O'Curry Road situate in the parish of St Catherine and District of South Central; **Co Dublin**

Regd owner: Patrick Waters (deceased), Ballina, Ballglunin, Co Galway; Folio: 29372; Lands: Townland: of Ballina; Area: (1) 19a 3r 32p, (2) 13a 2r 27p, (3) 9a 2r 32p, (4) 2a 1r 20p; Barony of Clare; **Co Galway**

Regd owner: Denis Kearney; Folio: 22267; Lands: Townland of Addergown, Dysert Marches, Barony of Clanmaurice; **Co Kerry**

Regd owner: Tom Blennerhassett, deceased; Folio: 663; Lands: Townland of Glanageenty, Barony of Trughanacmy; Area: 127 acres 1 rood and 14 perches; **Co Kerry**

Regd owner: Brendan Boland; Folio: 3038R; Lands: Rathbone, Barony of Salt South; **Co Kildare**

Regd owner: Martin Kiernan; Folio: 3132; Lands: Longfield, Barony of North Salt; **Co Kildare**

Regd owner: William Heffernan, Caherleske, Callan, Co Kilkenny and Caherleske, Dunnamaggin, Co Kilkenny; Folio: 37R and 2251; Lands: Loughbeg, Loughsollish, and Caherlesk; Area: 25a 3r 11p of lands no 1 of folio 37R of Loughbeg, 80a 0r 11p of lands no 2 of folio 37R of Loughsollish, 95a 1r 17p of lands of folio 2251 of Caherlesk; **Co Kilkenny**

Regd owner: Michael Hutchinson; Folio: 1035; Lands: Tawlerton, Barony of Slievemargy; **Co Laois**

Regd owner: Kathleen Rassmussen; Folio: 3603F; Lands: Townland of Kilcolman; Barony of Pubblebrien, **Co Limerick**

Regd owner: John J Keating; Folio: 12232; Lands: Townland of Faranefranklin, Barony of Owneybeg; Area: 15 acres, 30 perches; **Co Limerick**

Regd owner: John Guerin; Folio: 13387; Lands: Townland of Ballyomin, Barony of Connello Lower; Area: 38 acres, 2 rood, 2 perches; **Co Limerick**

Regd owner: Patrick O'Neill; Folio: 2136F; Lands: Townland of Jockey Hall, Barony of Pubblebrien; **Co Limerick**

Regd owner: Kevin and Pauline Bright, Knappogue, Clondra, Co Longford also Orchardstown, Washington Lane, Rathfarnham, Dublin 14; Folio: 2539F; Lands: Knappoge; Area: 0.506 acres; **Co Longford**

Regd owner: Garvey Holdings, Moneymore, Drogheda, Co Louth; Folio: 6700F; Lands: Marshes Lower, Dundalk, **Co Louth**

Regd owner: Alice Dorothy Wright, 'Beverley', Rathbrist, Dundalk; Folio: 11721; Lands: Rathbrist; Area: 0.425 acres; **Co Louth**

Regd owner: Alan and Alice Moore, 28 St Nicholas Village, Mornington, Co Meath also known as 28 St Nicholas Village, Golf Links Road, Bettystown, Co Meath; Folio: 3626F; Lands: Mornington; **Co Meath**

Regd owner: Sarah Jones, 19 Broadmeadow Green, Ashbourne, Co Meath; Folio: 1430L; Lands: Killegland; **Co Meath**

Regd owner: Denis Corish, 7 Dollymount Park, Clontarf, Dublin 3; Folio: 13440; Lands: Betaghstown; **Co Meath**

Regd owner: James Sharpe, Aghareagh, Drum, Co Monaghan; Folio: 12119; Lands: Aghareagh, Tonytallagh; Area: 12 acres 3 roods 28 perches of lands no 1 Aghareagh; 1 acre 1 roods 15 perches of lands no 2 Tonytallagh; **Co Monaghan**

Regd owner: Eamonn Donnelly, 28 Glenwood Park, Clonskeagh, Dublin 14; Folio: 13863; Lands: Monage; **Co Monaghan**

Regd owner: Bridget Lougman; Folio: 1461F; Townland: Oldglass, Barony of Clarmallagh; Area: 0a 3r 25p; **Co Queens**

Regd owner: Patrick McGinn, Hilltown, Castlepollard, Co Westmeath; Folio: 2053; Area: 45.169 acres; Lands: Hilltown; **Co Westmeath**

Regd owner: William Hughes, Bonaribba, Athlone, Co Roscommon; Folio: 2683; Area: (a) Toberclare 2 acres 2 roods, (b) One thirty-first part of Toberclare, 4 acres, 3 roods and 20 perches; (c) Cartronkeel, 25 acres, 1 rood and 15 perches; **Co Westmeath**

Regd owner: James Cullen, Ballyconnigar Lower, Blackwater; Folio: 10291; Lands: Ballynaglogh; Area: 7.063; **Co Wexford**

Regd owner: Clive RV Castle; Folio: 1974L; Lands: Kilcoole, Barony of Newcastle; **Co Wicklow**

WILLS

Bennett, Patrick J, deceased, late of 520 Newtown, Maynooth, Co Kildare. Would any person having knowledge of the original will/codicil of the above named deceased, who died on 23 August 1997, please contact Dixon Quinlan, Solicitors, 8

Parnell Square, Dublin 1, tel: 8788085, fax: 8787626

Moore, Mary, deceased, late of 153 Griffith Road, Finglas, Dublin 11 and The Croft Nursing Home, 2 Goldenbridge Walk, Inchicore, Dublin 8. Could any person having knowledge of a will executed by the above named deceased, who died on Monday 19 October 1998, please contact O'Reilly Doherty & Company, Solicitors, 6 Main Street, Finglas, Dublin 11, tel: 8344255, fax: 8344482

Pearce, Daphne, deceased, late of 26 Wainsfort Grove, Terenure, Dublin 6W. Would any person having knowledge of an original will of the above named deceased, who died on 13 April 1998, please contact Orpen Franks, Solicitors, 28/30 Burlington Road, Dublin 4, tel: 6689622, fax: 6761077

EMPLOYMENT

Solicitor required for practice in country town mid-Munster location, with at least one year's post-qualification experience in general practice, particularly conveyancing, probate and taxation work. Reply to **Box No 100**

Solicitor with four years' PQE in general practice seeks fresh challenge. Reply **Box No 101**

Locum solicitor required from 4 January 1999 for three to four months for busy practice in Wexford Town. Must have minimum two years' PQE in plaintiff's personal injury matters. Please reply in writing to Val W Stone & Company, Solicitors, 14 North Main Street, Wexford, our reference: VS. Reply **Box 102**

Urgent – solicitor/academic (with word-processing skills), previously in general practice and now lecturing on law, and very anxious to keep up-to-date with current general practice trends, seeks post as assistant to a top general practitioner with computer literacy during the two months of July and August 1999. Reply **Box No 103**

Assistant solicitor required for Midlands office from January 1999. Reply **Box No 104**

Solicitor required for long-established Galway City practice. Five years' post-qualification experience in general conveyancing desirable. Excellent terms and opportunities for suitable candidate. Modern office. **Reply to Box No 105**

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: 080 1693 61616, fax: 080 1693 67712

Personal injury claims, family law, criminal law and property law in England and Wales. We have specialist departments in each of these areas, and offices in London (Wood Green and Camden) and Birmingham. One of our staff is in Ireland for one week in every month. Legal aid available to clients that qualify. Contact David Levene & Company, Ashley House, 235-239 High Road, Wood Green, London N22 4HF, England, tel: 0044 181 881 7777, fax: 0044 181 889 6395, and The McLaren Building, 35 Dale End, Birmingham B4 7LN, tel: 0044 121 212 0000, fax: 0044 121 233 1878

London solicitors will advise on UK matters and undertake agency work. All areas. Corporate/private clients. Ellis & Fairbairn, 26 Old Brompton Road, South Kensington, London SW7 3DL, tel: 0044 171 589 0141, fax: 0044 171 225 3935

Agents – England and Wales. We are willing to act as agents for Irish solicitors in civil and criminal litigation. Contact: Olliers, Solicitors, Alderman Downward House, 2/3 The Birtles, Civic Centre, Wythenshawe, Manchester M22 5RF, tel: 0044 161 437 0527, fax: 0044 161 437 3225

Northern Ireland solicitors. Will advise and undertake NI-related matters. All areas corporate/private. Agency or full referral of cases as preferred. Consultations in Dublin or elsewhere if required. Fee sharing envisaged. Donnelly Neary & Donnelly, 1 Downshire Road, Newry, Co Down, tel: 080 1693 64611, fax: 080 1693 67000. Contact KJ Neary

Northern Ireland solicitors providing an efficient and comprehensive legal service in all contentious/non-contentious matters. Dublin-based consultations and elsewhere.

Fee apportionment. ML White, Solicitors, 43-45 Monaghan Street, Newry, County Down, tel: 080 1693 68144, fax: 080 1693 60966

For sale – two intoxicating liquor licences in rural areas. Replies to Sweeney McGann, Solicitors, 67 O'Connell Street, Limerick, tel: 061 317533, fax: 061 319496

Statutes and reports. We seek to purchase second-hand sets of Irish statutes and Irish reports. English statutes and reports will also be considered. Contact **Box No 106**

For sale – seven day ordinary publican's licence. Replies to CE Callan & Co, Solicitors, Boyle, Co Roscommon, tel: 079 62019, fax: 079 62869

Practice for sale – sole practitioner – South West area. Reply **Box No 107**

TITLE DEEDS

Ossory and Leighlin Diocesan Board of Education
Will any person holding or knowing the whereabouts of the following documents of title relating to the Kilkenny Model School, Newpark, Kilkenny, the property of the above, please contact: Frank Lanigan Malcomson & Law, Solicitors, Court Place, Carlow, (reference 1/L52517).

1. Original indenture of 4 June 1936 made between the Right Reverend John Godfrey Day and the Right Reverend John Percy Phair of the first part, the County of Kilkenny Vocational Educational Committee of the second part and the Minister of Education of Saorstat Eireann of the third part and the Ossory Diocesan Board of Education of the fourth part.
2. Original deed poll (incumbered estates court conveyance), dated 24 March 1855, grantee: James St John.