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Judicial conduct: an issue that won't go away

The most recent aftershock to hit the judiciary, following the Sheedy case earthquake last April, arrived at the end of last month with the publication of the report entitled *The courts and the judiciary* by the All-Party Oireachtas Committee on the Constitution.

The Oireachtas committee, which has barrister Brian Lenihan TD as Chairman and solicitor Jim O'Keeffe TD as Vice-Chairman, has produced an impressive, well-researched, well-argued and balanced report concluding with a series of proposals to update the Constitution and laws relating to a range of matters touching on the courts and the judiciary.

Shadow of Sheedy

Although seldom expressly referred to, it is perfectly clear that the shadow of the Sheedy case looms over the report, both in the crisis which the affair created in relations between the judiciary and the Oireachtas, and in the exposure of certain inadequacies in the laws governing that relationship. The crisis at the time was averted only by two judicial resignations.

I had the honour of sitting as a nominee of the Law Society on the Working Group on a Courts Commission chaired by Mrs Justice Susan Denham. One of the many issues which successive Ministers for Justice asked us to report on was 'judicial accountability'. When considering this in the course of 1998, we frequently remarked on how fortunate it was that we could examine the complex and sensitive issues involved free of the pressures of any particular case or crisis dominating our thoughts.

Our report was sent to the Minister for Justice, Equality and Law Reform in November 1998. It was not published, however, until after the Sheedy case had exploded on the scene. In the post-Sheedy world, no review of this subject can fail to be deeply influenced by that whole sad and sorry affair.

The Oireachtas committee report begins its consideration of judicial conduct precisely where it should, with an analysis of the nature and importance of judicial independence.

It records the fundamental democratic principle that the independence of judges is essential to their impartiality. Impartiality is manifested in the objective manner in which a judge applies the law to the case before him or her. It is especially manifested in the balanced way in which he or she engages both sides in the case. The public must have confidence that impartiality is not only seen to exist but actually does exist.

Because judges exercise their power on behalf of the people, they must, in a democracy, be held accountable. As the Constitution Review Group commented:

'Judges, of course, are not immune from human frailties and from time to time there are complaints about matters such as disparaging or disrespectful comments, rudeness and failure to attend to judicial duties.'

One of the great dilemmas for the administration of justice is how one can preserve the independence of judges while holding them accountable. The Chief Justice of New Zealand has remarked:

'The imperative of judicial independence means that, although publicly funded, the judiciary cannot be directed by or held to account by a Minister in the same way as other public officials. Judicial independence does not mean, however, that the judiciary is free from the requirement to be accountable.'

In analysing the dilemma, it is necessary to distinguish between those instances where the judge's decision is in question and those where the judge's conduct is in question. If a party feels that a judge's decision is wrong, he or she may appeal the decision to a higher court. That is the proper and only recourse available. However, if a party feels that a judge's conduct is wrong, he or she has no formal means of having the conduct reviewed.

Ken Murphy: 'Solicitors and barristers must be members of the Judicial Council'

This is the essence of the problem in Ireland, although it is a problem which appears to have been successfully resolved in such comparable jurisdictions as Canada, New South Wales and New Zealand.

Judicial Council

The Oireachtas committee report concludes that the arrangement whereby all judges are subject to impeachment 'for stated misbehaviour or incapacity' – although only District Court judges are formally subject to review of conduct falling below that standard – is not adequate to the needs of the public. It recommends that a Judicial Council be established to review judicial conduct. The council should consist of judges and retired judges. In order to ensure that broad social concerns are represented, and seen to be represented, the council should also have a lay element.

In keeping with the principle of judicial independence, the council should have no power to impose legal sanctions on judges although it could impose moral sanctions such as expressions, public or otherwise, of disapproval. The Oireachtas committee believes that any such Council should have a foundation in the Constitution. Hence it recommends that article 35.2 should be amended by adding the following:

'Judicial conduct, as distinct from judicial decisions, may, however, be reviewed by a Judicial Council, the composition of which includes a lay element, and whose powers, duties and functions, including the drawing up of a code of ethics, may be determined by law.'

The Law Society's already publicly-expressed position on this matter would be in broad agreement with that of the Oireachtas committee, with two reservations. First, it might be questioned whether a constitutional amendment is required or desirable. If an attempt were made, initially at least, to deal with the issue by legislation, then a referendum campaign which could potentially damage the public's confidence in the judiciary might be avoided. Secondly, the lay element which is recommended for the Judicial Council should include representatives of the solicitors' and barristers' professions.

Problems with the conduct of judges in Ireland are, thankfully, very rare. Where they occur, however, they can be extremely serious for the persons concerned, and these persons more often than not will be solicitors and barristers. It is vital that the proposed Judicial Council enjoys the full confidence of the practising legal profession and this can only occur if some solicitors and barristers, as well as non-lawyers, are full members of the Judicial Council. G

Ken Murphy is Director General of the Law Society of Ireland.

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Solicitors at the Millennium

This is a time for sober reflection, and some rejoicing. Solicitors should be proud that they have played a significant part in Ireland's great success and stability on the eve of the new millennium.

Think of the end of June 1922 – in relative terms, only a few short years ago. The home of solicitors in the Four Courts was 'a mass of crumbling ruins' as a result of the civil war. For several days after its destruction, charred fragments of legal papers floated gently down the Liffey and were carried by the wind as far as Ringsend.

What a pathetic sight! We, as a people and a nation, were in a poor and desperate condition.

Today, we live subject to the rule of law. Yes, it is an uneasy rule of law. Yet as one writer put it, the concept of the rule of law – like the phrases 'love of God' and 'brotherhood of man' – is a short and simple expression of one of the most sublime concepts that the mind and spirit of man and woman has yet achieved on this earth. We are a fortunate race, a fortunate people and, as lawyers, members of a fortunate profession.

Our Constitution

Undoubtedly, one of our great successes over the past 2,000 years has been the enactment and application of the Irish Constitution of 1937. Yes, it is imperfect; life itself is imperfect. The late Mr Justice Brian Walsh's words on the Constitution are instructive.

In his foreword to *Cases and materials on the Irish Constitution*, published by the Law Society in 1980 and written by the barrister James O'Reilly and the solicitor Dr Mary Redmond, he noted:

Dr Eamonn Hall: 'One of our great successes over the past 2,000 years has been the Irish Consitution'

'In constitutional law, there is a general warrant for judicial law-making. The Constitution is its source of life, and development is permitted. Unlike statutes, the Constitution enunciates fundamental principles and leaves the interpretation and development of these to the judiciary. In interpreting the Constitution, the courts are performing the highest of their judicial functions and the most crucial role of the judiciary is that of the custodian of the Constitution.'

Few judges will admit to judicial law-making. Yet we know that judges make law, not only in the constitutional law sphere but in other ways – albeit in the context and within the confines of our constitutional law. Without the involvement of solicitors, there would have been no significant constitutional developments in Ireland. We owe so much to the solicitors who had the courage to institute cases, often without any advance prospect of success. Their dedication has guaranteed many of our existing constitutional protections and freedoms.

We have witnessed phenomenal developments in legal practice in our lifetime. Take the experience of one solicitor: Robert Pierse of Pierse & Fitzgibbon of Listowel, Co Kerry. He set up practice in 1962 in his mother's drawing room, closing off 'the office' from the rest of the house by strategically placing a large press in front of the joining door. He made £25 gross in his first year. Listowel was then a rural town with about 3,000 people relying largely on farming.

There has been a steady decline in farming over recent years and litigation of a non-farming nature is now the main source of legal work. Robert Pierse now has four partners and 18 other staff in Listowel. Twenty years ago, he opened another office in Tralee with two partners and six other staff. He has a son in both practices and considers it necessary to have a gross fee income of over £1 million a year to run the two offices. He notes in an essay in *Then and now* (Sweet & Maxwell, 1999; reviewed on page 53 of this issue) that in the early 1960s the admission of solicitors in Ireland was around 35 a year. Now, new entrants run at over 300 a year and new solicitors appear to have little difficulty finding a job.

Pierse comments on the growth and the sheer volume of law, including domestic statute law, statutory instruments, case-law and European regulations and decisions. Readers may be interested in the statistic that last year the European Commission issued over 450 new proposals for legislation on subjects as varied as the classification of European wines, the protection of the environment, the safety of motor vehicles, the development of research and technology programmes, and the content of chocolate. The CELEX database of the European Commission/European Union containing new and past proposals, together with law en-acted by the European Union's legislative procedures, with opinions and recommendations of consultative bodies and case-law of the European Court of Justice, amounts to approximately 224,000 Acts. Think about this statistic for half a moment: 224,000 instruments of European law alone exist in the 1999 edition of the CELEX database!

We are also living through a glorious period of Irish legal writing. The present availability of legal writing in the form of textbooks and journals must be welcomed. Our luminous writers are quoted regularly by the judges and sought after as commentators in the media; this is a relatively new phenomenon of our age.

Looking to the future

I am conscious of our rich record, our glories and our frustrations. Many solicitors are, and have been, leaders and doers. We are proud of the past, but look forward to the future with the hope of achieving even better times for all our citizens and those who genuinely seek shelter on our island.

Let us not be complacent. We all know that life, like law, like our own professional and personal existence, has epochs of ebb and flow. Subject to our professional responsibilities, however, all of us should ensure that law in the next millennium is true to the ideal of justice. G

Dr Eamonn Hall is the Company Solicitor of Eircom plc.

Letters

Statute of Limitations for abuse victims

From: Helen M Hoare, Co Cork

I act on behalf of 23 former inmates of varying industrial schools. During the period of time that my clients were resident in these institutions, they suffered physical abuse, gross neglect and starvation. Some suffered sexual abuse.

In law, if an injured person is to bring a civil claim, then, generally speaking (with certain exceptions), that claim must be brought within three years of the event causing the injury – this law is contained in the *Statute of Limitations 1957 and 1991*. The current law prevents all victims of physical abuse, neglect, starvation and sexual abuse from bringing a civil claim unless the injury occurred in the last three years.

It is recognised by psychologists and other experts in the field that childhood abuse can result in the victim 'blocking out' or suppressing the event in his or her mind. Because of this, in very many cases it has taken a number of years for the victims to overcome their psychological disability (if at all).

A new Bill is currently being debated before the Dáil with the intention of amending the *Statute of Limitations* to recognise 'psychological disability', but only in relation to sexual abuse. I have no argument with this Bill in so far as it deals with the needs of the future. My argument lies with its disregard for the needs of the past.

At the conclusion of the *States of Fear* programmes and investigation into institutional abuse, An Taoiseach Bertie Ahern acknowledged and apologised to the victims of this abuse. My clients experienced hope and were led to believe by this acknowledgement and apology that their plight would be recognised and addressed.

Like many more of the victims of physical and sexual abuse in the institutions and orphanages of Ireland over the past decades, my clients have only just begun to speak about and deal with their horrific experiences. It is with great regret that I have now learned that the Government has introduced a Bill for debate before the Dáil which may in fact make it impossible for some victims of the industrial schools and institutions to be justly compensated for the wrongs that were done to them. For many who were lucky enough to avoid being sexually abused, it would appear that they are to be punished by this proposed legislation because they were *not* sexually abused. Their years of serious physical abuse and starvation are being disregarded under the new *Statute of Limitations (Amendment) Bill, 1998* which goes little way to meet the promise that An Taoiseach made to the victims of past abuse earlier this year.

In addition, the new Bill is also attempting to exclude sexual abuse victims who might have recovered their memory of past abuse more than three years ago.

A special and separate 'once-off' legislative provision requires to be made to remedy the suffering experienced by victims of institutional abuse in all its forms. This separate provision should be extended to cover all forms of abuse in the institutions, including serious physical abuse, gross neglect and starvation, and to amend the proposed three-year limitation period by providing for a period of three years from the passing of the legislation proposed or three years from the cessation of the disability, whichever period is the later.

This is our last chance to go some way towards compensating these victims for a childhood of abuse and a lifetime of physical and psychological scars.

Now that's a cheap sandwich

From Richard Irwin, Co Cork

When the November issue of the *Gazette* arrived on my desk, I immediately threw it away because I thought it was another holiday brochure from the latest travel agent hoping to sell more high-profit, low-cost products to rich lawyers. How refreshing to discover my mistake while scrabbling through my bin looking for 50p so I could go out and buy a sandwich for lunch.

No doubt in the millennium we will see the first topless front-cover splash and within a few years we will have Page 3 stunners (male and female) for the delectation of the profession. Thank you for brightening my day.

A top magazine

From Marion Campbell, Miriam Walsh and Diarmuid Doorly, Law Centre, Dublin

The *Gazette* now appears to have been cobbled together by some media studies undergraduate. Tacky images of solicitors have now seeped out from the Golden Pages and now adorn the front page of our so-called professional journal or should we say 'magazine'. If this trend continues, then we fear for our shorter colleagues, who will only be able to find the 'magazine' on the top shelves of their local newsagent.

Your views

Your letters make your magazine and may influence your Society. Send your letters to the Editor, *Law Society Gazette*, Blackhall Place, Dublin 7, or e-mail us at c.oboyle@lawsociety.ie or you can fax us on 01 672 4801

Dumb and dumber

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

Send your examples of the wacky, weird and wonderful to the Editor, *ciety Gazette*, Blackhall Place, Dublin 7, or you can fax us on 01 672 4801, or e-mail us at .oboyle@lawsociety.ie

COURTS SERVICE
An tSeirbhís Chúirteanna

The Courts Service has recently been established.

With effect from the 9th November 1999, the Courts Service will take over responsibility for the funding, management and administration of all court services in the State.

During the coming weeks and months, the Courts Service will be developing a corporate strategy for the years ahead and its first three year business plan, which will be reviewed on an annual basis thereafter.

The Courts Service wishes to invite submissions from the public on the development of its corporate strategy and first business plan.

The strategy will cover areas including:

Policy Development

- Future development of Courts Services
- Modernisation of Courts Services
- Reducing waiting times for access to Courts
- Use of Buildings
- Development of Public Information and Customer Services generally
- Development of modern management structures and devolution of authority and responsibility to local regional managers

Infrastructure Project

- 5-7 year Court Building Programme
- 3-4 year Information Technology Programme

Further information about the Courts Service can be obtained from The Secretary, The Courts Service, Green Street Courthouse, Dublin 7, tel: (01) 8886432, or by visiting our Courts Service Website which can be accessed at the following address:
http//www.courts.ie

Members' area of Society's web site launched

The Members' Area of the Law Society web site was officially launched 27 October. Access is restricted to members of the Society through the use of the member's registration number and surname.

The new section contains an *A-Z of services and functions* of the Society and details the various individuals within the Society responsible for them. All *Practice notes* published in the *Gazette* since 1986 have been reproduced on the site and members can search for individual notes by committee, date or title. A number of precedent documents have also been published – these can be downloaded and printed in Word or pdf format.

The *Policy documents* section lists the most recent Society initiatives in this area, including the full text of the *Domestic violence report* and the *Mental health report*. *Frequently-asked questions* details the most common questions posed to specialist committees by practitioners and the response to these, while the *Professional information* section sets out checklists of fees, tax bands and allowances, along with general legal information.

Web spinners: Patrick O'Connor, then President of the Law Society, with Member Services Executive Claire O'Sullivan and Deputy Director General Mary Keane at the launch of the web site Members' Area

What's new comprises a number of different sub-sections, including news from the Society, committees and other jurisdictions, as well as the CLE programme, recent legal publications and the entire *Gazette* on-line. The most innovative section of the site is the *Bulletin board*, which is an interactive discussion forum allowing members to communicate with each other on-line.

The site can be accessed from the Members' Area icon on the Law Society public site at www.lawsociety.ie.

Law Society Council elections

The Law Society has a new Council and officer team, with Anthony H Ensor taking up the reins of office for the next year. Ensor was deemed to be elected to his post after serving as Senior Vice-President last year, while Ward McEllin was elected Senior Vice-President with Owen Binchy as Junior Vice-President.

The following members were elected to the Law Society Council in the recent ballot, with the number of votes each received appearing after their names:

Name	Votes
1. Geraldine M Clarke	1,372
2. Brian J Sheridan	1,345
3. Owen M Binchy	1,341
4. Ward McEllin	1,312
5. John D Shaw	1,312
6. Laurence K Shields	1,217
7. Moya Quinlan	1,135
8. Gerard J Doherty	1,119
9. Kevin D O'Higgins	1,083
10. John E Costello	1,080
11. Hugh O'Neill	1,040
12. Peter M Allen	974
13. Thomas Murran	951
14. Stuart J Gilhooly	904

The following candidates were not elected:

15. Angela E Condon	890
16. Edward C Hughes	839
17. David Martin	731
18. Sean F Durcan	695

As there was only one candidate nominated for the each of the two relevant provinces, there was no election and the two candidates for these seats were returned unopposed as follows:

Connaught: John Dillon Leetch

Munster: Eamon O'Brien.

Council members are elected for two-year terms. The sitting Council members who were elected last year are: Michael Peart, Gerard Griffin, Donald Binchy, Elma Lynch, John Shaw, John Fish, Anne Colley, Keenan Johnson, Philip Joyce, Michael Irvine, Niall Farrell, James McCourt, Walter Beatty, James MacGuill and Orla Coyne.

Still time for Children's Hour

If you missed the Children's Hour campaign's *Legal profession week*, which began on 18 October, it's not too late to become part of the drive to get everyone in the Irish workforce to donate the value of their final hour's earnings of this millennium to charity. Donations may be given by credit transfer from any bank branch in the country to the Children's Hour Account, AIB, 37 Upper O'Connell Street, Dublin 1. Alternatively, you can phone 1850 311299 to donate by credit card.

BRIEFLY

Prosecutors wanted for Fiji Islands

The government of the Fiji Islands has advertised for a Director of Public Prosecutions and also requires two experienced middle-level prosecutors. The law of the Fiji Islands is based on English common law and the forms and procedures adopted will be familiar to any prosecutor practising in a similar jurisdiction. Anyone interested should contact Nicholas Cowdery QC, President of the International Association of Prosecutors, by fax: 61 2 9285 8601 or e-mail: Ncowdery@odpp.nsw.gov.au.

Franco-Irish Lawyers' seminar

The Franco-Irish Lawyers' Association will be holding a seminar on French succession law, which will be presented by *clerc de notaire* Tania Vieillot on 22 January 2000.

For further information, contact Mary Casey on tel: 01 475 8701 or e-mail: mcasey@aohagan.ie.

Change at the top for Arthur Cox

Eugene McCague has been named managing partner at law firm Arthur Cox. McCague is a commercial lawyer and has been with the firm for more than ten years. He succeeds Ian Scott, who has completed his second term as managing partner and will now resume practice as a partner in the industrial and commercial property department.

CLASP Christmas party

Concerned Lawyers for the Alleviation of Social Problems (CLASP) will be hosting its holiday bash at the King's Inns from 7.30 to 10pm on Friday 10 December. Tickets are £15 (£12 for devils/apprentices). For tickets and information, contact Josepha Madigan on tel: 01 668 9143 or e-mail: madigans@iol.ie.

Expert witnesses could end up in the dock, conference told

Expert witnesses in court cases run the risk of ending up in the dock to face negligence claims, a leading barrister has warned. Speaking to the La Touche Bond Solon expert witness conference at Dublin's Royal Hospital, Kilmainham, former Bar Council chairman James Nugent SC said that experts were no different from anyone else who happens to be testifying at the same proceedings.

'The right to express an opinion puts experts in a special position in the administration of justice. They are not just giving evidence of fact; they are using their expertise to assist a judge to administer justice', said Nugent. In return for this special status, he added, experts were expected to be completely impartial.

But he warned that expert witnesses had to discharge the duty they owed to their clients or face a possible action for negligence. 'The cost of litigation is considerable', he said. 'The loser will be faced with a sizeable bill and invariably he will look around to see whether some or all of his losses can be laid off elsewhere. Given that most experts may be a mark for damages and probably carry professional indemnity insurance, their role in a case will inevitably be scrutinised, so it is important that an expert properly discharges the duty which he owes to his client in order that he does not run the risk of himself ending up as a defendant in a case'.

Considered opinion: at the recent expert witnesses conference were physiotherapist Eleanor McMahon, La Touche Bond Solon's Caroline Conroy, solicitor Margaret Carey, former Fraud Squad boss Frank Glacken and solicitor Patrick Groarke

Among other things, said Nugent, the expert must know the precise issues on which his opinion is being sought and have the necessary expertise to give an authoritative opinion. 'The mere fact that a solicitor writes and asks for an expert opinion does not make one an expert', he stressed.

Solicitor and Law Society Litigation Committee member Patrick Groarke echoed Nugent's warning when he told the conference he had encountered several recent cases where experts ran the risk of being sued for negligence. He also discussed the practical application of the *Rules of the superior courts* which require both sides in personal injury cases to exchange copies of expert witness reports which they intend using at the trial.

Groarke said that the exchange of documents had particular ramifications for expert witnesses themselves. 'Your opposite number will be given your reports and will have advised his legal team on any points on which you can effectively be cross-examined', he pointed out. 'You will see the reports which your opponent has written and you will be asked for views. It is essential that you can fully and comprehensively support the opinions you have expressed'.

And he stressed that an expert's principal duty was to the court and to the party which hired him. 'He cannot be selective in the information which he provides or the evidence he gives', he said. 'If he does, then he has undermined his position and his evidence as an expert will be discounted'.

Repeating a similar concern raised by former Law Society President, Laurence K Shields at last year's conference, several speakers suggested that there might be cases where expert witnesses' impartiality would be copper-fastened if they were paid from central funds rather than the pockets of individual litigants.

New courts management body is up and running

The new Courts Service which will take over the management of the State's courts system and court buildings was formally launched at a ceremony in the Four Courts last month. The service assumed the powers which had been exercised by the Department of Justice for nearly 80 years.

Speaking at the launch, the Minister for Justice, Equality and Law Reform, John O'Donoghue, described the changeover as 'the most comprehensive and radical reform of court administration since the foundation of the State'.

The service will be managed by a 17-strong Courts Service Board, chaired by the Chief Justice. The majority of board members are judges (two each from the Supreme, High, Circuit and District courts, along with the Chief Justice), with the balance made up of the President of the Law Society, the Chairman of the Bar Council and nominees from the trades unions congress, the employers' body IBEC, the Department of Justice, courts staff and court users, and the service's Chief Executive, PJ Fitzpatrick. The Society will be represented on the board by Immediate Past-President Patrick O'Connor, who has been nominated for a three-year term.

Welcoming the formal establishment of the service, Law Society Director General Ken Murphy said: 'This a very important step towards a courts system appropriate to the 21st century. The solicitors' profession is one of the most important users of the courts, and we look forward to working closely with the new board'.

Compensation Fund payouts

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Law Society Council at its meeting in November: Diarmuid Corrigan, 6 St Agnes Road, Crumlin, Dublin 12 – £785; Michael Owens, 5 Lr Main Street, Dundrum, Dublin 14 – £110,000.

Solicitor advertising: a reminder

Solicitors are reminded that the current advertising regulations prohibit any advertising which brings the profession into disrepute. The Registrar's Committee of the Law Society has taken the view in the past that advertising in a doctor's surgery, the vicinity of a hospital, clinics and so on could be regarded as bringing the profession into disrepute. Accordingly, members of the profession are asked to keep this in mind on receipt of any request to take advertising space which would be circulated in these locations.

News from Member Services

Personal loans from TSB

The Law Society has recently negotiated a tailored personal loan package exclusively for members from TSB Bank. Members of the Society in full-time employment and earning over £12,000 a year may now apply to borrow between £3,000 and £12,000 at one of the lowest interest rates currently available in the marketplace. For loan amounts exceeding £5,000, the rate is 7.95% (8.2% APR).

Free personal accident cover which provides a lump sum of £5,000 in the event of accidental death or serious injury is automatically available on application. All loans can be arranged by telephone and monthly repayments may be deducted directly from the borrower's salary.

Full details, including a brochure and application form, will be mailed to members shortly but to find out more in the meantime telephone 1850 241824.

The Society's *Member advantage programme*

The Law Society has recently received a number of queries about the *Member advantage programme* promoted to solicitors and about its appointed brokers, Marsh Financial Services Ltd.

The *Member advantage programme* has been developed by the Society as part of its on-going commitment to the provision of cost effective services to members, in co-operation with Marsh Financial Services. The programme identifies and delivers financial and insurance products and services for members. Marsh Financial Services then trawls through the myriad of financial and insurance products available in the marketplace and selects the best products available to offer to the Society's members. Each product then becomes part of the overall suite of products, or *Member advantage programme*, allowing solicitors to select, for example, car insurance, serious illness protection or a personal loan product from the portfolio. Each product or service has been sourced specifically for Law Society members, tailored to meet their needs and marketed as part of the *Member advantage programme*.

Marsh Financial Services may be better known to most solicitors as Irish Pensions Trust Limited. It is a subsidiary of Marsh Ireland Holdings, a sister company of Marsh Ireland, Mercer, Irish Pensions Trust and part of the Marsh & McClennan companies. In late 1998, the group in Ireland undertook a comprehensive review of how it might restructure itself and, as part of this process, a number of businesses and employees within Marsh, Mercer and Irish Pensions Trust have transferred to Marsh Financial Services Limited. Marsh has a number of offices throughout the country and operates in Dublin from their offices at 25/28 Adelaide Road.

For further information on the *Member advantage programme* or Marsh Financial Services, contact Liz O'Brien on 01 604 8461.

Pension scheme

A comprehensive new booklet outlining details of the scheme and incorporating many of the recent changes in legislation will be sent to all members immediately after the December Budget. Members should note that the deadline for making contributions to all approved pension schemes is 31 January 2000. Further details and application forms for the scheme are available from Brian King, Bank of Ireland Trust Services, on 01 604 3627.

Millennium malt whiskey

In Ireland, it is customary to set aside a fine whiskey for a special occasion. In reverence to this tradition, the Law Club of Ireland has made a rare investment in a cask of the finest of whiskies – *Bushmills Millennium Malt, Private Cask*, aged for 25 years. For those members with discerning tastes, a limited amount of this 'once-in-a-millennium' treat is being made available at £85 a bottle. Sales will be on a first-come, first-served basis, with a restriction of one bottle per person. This offer is available to Law Society members only. G

Claire O'Sullivan is the Law Society's Member Services Executive.

A safe pai of hands

Rugby star, successful solicitor, and now President of the Law Society. Just how lucky is Anthony Ensor anyway? Conal O'Boyle talks to the new president about his career, his plans for the future, his sporting past and why the Irish team is so bad these days

Irish rugby's loss was the Law Society's gain. In 1979, when Anthony Ensor decided to retire from a distinguished playing career which included 22 caps for his country, he was faced with a number of choices. He could continue his involvement with the sport he loves, possibly as a selector, or he could run for the Law Society Council. Flying in the face of apparent logic, he chose the latter.

'I felt that being a selector would take up a lot more of my time than the Law Society, and I had really severed my connections with rugby at a higher level, so I plumped for the Society', he recalls.

Now, 20 years later, Ensor is the man who will lead the Law Society into the 21st century.

He had been playing top flight rugby in Leinster as a schoolboy for Gonzaga College and then for the Leinster provincial team. By the time he arrived in UCD, he was unsure what he wanted to do. Some of his rugby friends were doing law so he opted for a BCL himself.

After qualifying from UCD in 1973, he began his apprenticeship with the now-defunct firm of Hardiman Winder and Stokes in Dublin's Harcourt Terrace. 'I'm not altogether sure how that happened', he says. 'Apprenticeships were hard to come by and I think that one of my barrister uncles managed to orchestrate this for me'.

Besides learning his trade, Ensor and his colleagues had the best seats for one of the longest running shows in town – very public arguments between the high queens of Irish theatre, Michael MacLiammoir and Hilton Edwards. 'We worked right across the road from them and some of the high jinks we witnessed were quite extraordinary', he recalls. 'It certainly distracted me from drafting the odd memorial, which was never really my forte'. His apprenticeship, he says, was 'interesting but not very intense'.

Balancing two careers

On qualification as a solicitor in 1974, he immediately joined the Bank of Ireland's legal department, and would be the first to admit that his status as a rugby international was a pretty big factor in this career move. 'In those days, the banks always had internationals in various sports working for them. They were very good to me in relation to time off, so the reality was that if I wasn't available for work then nobody asked any questions. It was a lovely situation, but it wasn't very productive for the bank balance'.

This latter fact assumed a particular priority a year later when Ensor and fellow solicitor Beatrice Carton decided to marry and taste the delights of country living. Once again, fortune smiled on them when they were both offered a job in Enniscorthy, Co Wexford, by the late Des McEvoy, a former Junior Vice-President of the Law Society.

'We were both anxious to try living outside Dublin', explains Ensor, 'but obviously you can't have a husband and wife working in different practices in a provincial town so we either worked in the same practice or one of us would have to practise in a different town. In reality,

that would have destroyed the whole purpose of our leaving Dublin'.

Getting established

Some years after Des McEvoy's death, Ensor set up his own firm in Enniscorthy with Sligo man Bill O'Connor. Ensor O'Connor quickly grew to be one of the largest firms in Co Wexford. Beatrice now works alongside her husband in the practice. The firm acts as the law agent for Wexford County Council and Enniscorthy UDC, and Ensor does considerable work in childcare matters for the South Eastern Health Board. 'It could be a harrowing part of the job if you didn't naturally enjoy it', he admits. 'I find childcare law interesting because it's a new area and there are always new decisions of the court which must be followed. It's also an area that this country swept under the carpet for too many years'.

As Anthony Ensor's professional career took off, he decided it was time to say goodbye to the sporting life. 'I had decided at the beginning of the 1978 season that I would retire from rugby, but I didn't actually tell anybody except those dear to me. I had spent two years commuting to Dublin, driving far too fast in much too small a car. I thought it was about time I knuckled down and did a bit of work'.

So at the age of 28, after a glittering career – certainly by recent standards – he kicked the rugby into touch.

Now, rugby football may not be everybody's cup of tea, but even a sporting agnostic would not deny the depth of support that the game generates in this country. Anthony Ensor caught the bug young, but then he did come from very solid sporting stock. His father, Brian, had been captain of Wanderers Rugby Club, while his mother, Mary, was an inter-provincial hockey and tennis player. His uncle, retired Supreme Court judge John Blaney, played rugby for Ireland once, and when he let his young nephew wear that famous green jersey, a life-long passion was born.

'I think when I put that jersey on my back, I felt "this is what I want to do". I'm sure most people have had similar dreams, but they don't come true all that often. I was one of the lucky ones. I was massively enthusiastic about rugby from the age of seven'.

Although Gonzaga wasn't renowned as a strong rugby school, there was enough enthusiasm to keep the youngster's interest up, and in his final year he was picked to play for Leinster in the schoolboy interprovincials. His position then was fly-half, though he admits to being 'a lot too slow over the first ten yards'. By the time he joined UCD, new rules had created the attacking full-back, a position which perfectly suited Ensor's flair.

Many readers will still remember Ensor's audacious break through the English defence before setting up Mike Gibson's winning try in the corner at Twickenham. He progressed quickly into the full Leinster team and then, at the age of 23, to the national side, then led by the legendary Willie John MacBride.

'I was kept waiting for a year by the great Tommy Kiernan who, of course, I felt was way past it! I think the selectors enjoyed watching me sitting on the bench, biting my nails'.

Those glory days

Ireland won the championship in 1974, a year in which Ensor's international full back opponents included JPR Williams, Andy Irvine and Bob Hiller, and then went on to have a very successful tour of New Zealand. Those were glory days for Irish rugby. Even the great Triple Crown-winning sides of 1982 and 1985 failed to match the 1974 team in winning the Five Nations championship outright. It's all a far cry from the present day. So what went wrong? Why is this year's model so poor?

'I'd love to be able to say they're not really', replies Ensor, 'but I can't. They lack imagination, and whether that's because the imagination and flair has been knocked out of them or whether they just didn't have it to begin with, I don't know. I think our backs are not strong at the moment; our forwards are, but rugby is a 15-man sport where every player has to be able to play. Everyone must be able to handle the ball, tackle and so on. Young O'Driscoll seems to have what it takes,

and there are a couple of useful wingers around, but the playmakers at numbers 9 and 10 just don't seem to be there. Ireland has always relied heavily on a good fly-half, perhaps too much. We need one badly now'.

He reckons it will take about ten years and some radical rethinking about the structure of the game to turn the situation around. 'They're going to have to take 16 or 17 year olds who are showing the athletic ability away to training camps, not necessarily to expose them to so much rugby football, but to expose them to fitness programmes which are enjoyable, exciting and effective. Teach them new skills, develop the ones they already have – and keep them together as a group. Of course, that will involve money, great commitment and great organisation.

'I think there are a lot of people in the administration of rugby football who have been there too long. The trouble is that when you have a root-and-branch clear-out of these organisations, the short term could be disastrous. But I think the Irish rugby-going public are a very resilient crowd and would be patient'.

The chairman of the board

Ensor knows what he's talking about because even though he severed his links with the game at the highest level he has stayed very involved with Enniscorthy Rugby Club since 1977. He's currently chairman of the club and was particularly pleased to see his team win promotion last year. But despite his obvious love for the sport, he's adamant that he would have no interest in playing the game the way it's played today. For him, as for many others, the death of the amateur game robbed rugby of many of its core values – without bringing success in its wake.

'For instance, take the final of the recent World Cup where Australia were clinically superb, very efficient, and their defence was immaculate. Talking to a friend of mine in Australia, I discovered that the entire Australian rugby union team had been sent to a rugby league coach to practice their defence. So, in fact, they're going to rugby league to get taught how to play rugby union.

'If I was 17, I think I'd love to play tennis and golf, which are my two other big loves. I would hate to be playing rugby now because it's so physical. And I wouldn't like to have to worry whether I was going to spend three or four years earning £70,000 playing rugby and then wondering what was I going to do when it was all finished'.

This year, though, Anthony Ensor will have more on his mind than the state of Irish rugby. As President of the Law Society, it will be his job to guide the profession into a new millennium fraught with difficult issues such as the maintenance of the profession's core values and ethical standards at a time of increasing pressure to view legal practice purely as a business, multi-disciplinary practices, the proposed designation of solicitors under money-laundering legislation and the creeping erosion of solicitor/client confidentiality. So how does he see his role?

'I consider myself to be the chairman of the board. My job will be to communicate what I hope will be well thought-out decisions by the Council of the Law Society and its committees to the members in an effective way so they will see the necessary and important work we are doing for them. If I can get that across to them, and if they feel that I'm representing them in the manner they would expect to be represented, then I'll be happy'.

One of the traditional bug-bears of the profession is its poor image in the eyes of the general public. Why, solicitors ask, can't the Law Society do something to change their public perception? Well, short of dressing up as nurses, there seems to be no quick fix to the image problem, as the new president explains.

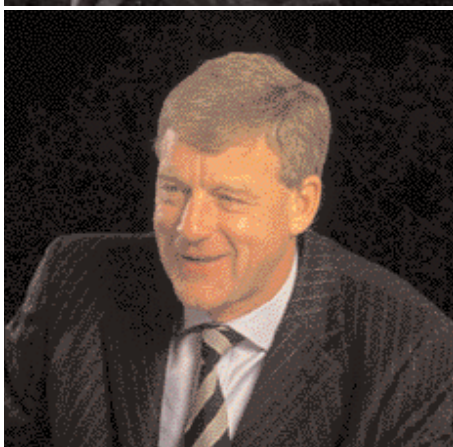
'For as long as lawyers have existed, they have had an image that is difficult to improve. I remember spending some time as chairman of the Public Relations Committee looking into this whole issue, and time after time we came to the same conclusion: if every solicitor looked after his own clients properly, and made sure he did a good job and charged a fair fee, we could improve our image. The problem is that one bad solicitor – the extremely rare solicitor who attracts a lot of publicity because he has stolen money from his client – puts us back on the hind foot time and time again. It's a perennial problem, and I'm not going to be able to solve it in one year'.

Courtesy and communication

So what advice would the new president give to someone entering the profession now?

'I think that if solicitors continue to remain polite and civil to their colleagues, regardless of the difficulty of the case or the friction that might exist between the clients, and if they continue to communicate effectively with their clients, then that's a good start. When I'm addressing the students this year, my priorities will be to tell them to remain at all stages courteous with their colleagues and to keep their clients fully up to date with what's going on. These are very basic bits of advice, but they take you a long way'.

It's certainly taken Anthony Ensor a long way. And, yes, just in case you're wondering, he does think that the new all-inclusive hands-across-the-border rugby anthem is 'appalling, disgraceful'. Not just a great player, then, but a man of good taste. Rugby's loss, indeed. G



Seen but not heard?

'Children at risk' in the legal process

Few things are more problematic and sensitive in family law cases than the custody of children and the issue of access. Recent years have seen a more child-centred approach in judicial decisions and in legislation but, as Geoffrey Shannon argues, this country still has a long way to go before it puts the rights of the child on an equal footing with the rights of the parents

The Irish childcare system is unique in that it has resisted the steady erosion of parental rights that has characterised the international childcare system. Interference with familial relations, whereby a child can be removed from the care, custody and authority of his parents, is made legally permissible in only the most exceptional of circumstances by article 42.5 of the Constitution and the *Child Care Act, 1991*. In theory, the application for any order under the Act requires the court to treat the child's welfare as the first and paramount consideration, while still having regard to the rights and duties of parents. In practice, this has not necessarily been the case. Consequently, few matters have proved more troublesome and sensitive in family law than custody and access issues in public law cases.

The 1989 *UN Convention on the rights of the child* provides that in court proceedings the child's welfare is to be a primary consideration. For example, article 3 of the convention says that: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.

While this demands only that the children's interests be *a* primary consideration, not *the* primary one, it must also be read alongside the series of

explicit rights which the convention protects. These include:

- The inherent right to life
- The right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents
- The right to preserve his or her identity, including nationality
- The right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests
- The right (of a child who has the capacity to form his or her own views) to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child
- The right to freedom of expression
- The right to freedom of thought, conscience and religion
- The right of the child to freedom of association and to freedom of peaceful assembly
- The right to the protection of the law against arbitrary or unlawful interference with the child's privacy, family home or correspondence and unlawful attacks on the child's honour and reputation
- The right of every child to a standard of living adequate for his or her physical, mental, spiritual, moral and social development
- The right to education, and
- The right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth.

It's obvious from this that the 1989 UN convention recognises children's rights in its widest sense and is soundly based on a defensible concept of the rights of the child. Childcare law in Ireland, however, falls short of such a concept.

The best interests rule, set down in article 3 of the 1989 UN convention, is familiar to Irish lawyers as section 3 of the *Guardianship of Infants Act, 1964*. The exact scope of the provision has received considerable comment. In private law cases, the test applies in its literal sense; in public law cases, it appears that the rule applies differently.

The Supreme Court in *KC & AC v An Bord Uchtála* ([1985] ILRM 302) decided that, in order to protect parental constitutional rights, the best interests test must be interpreted in a manner favourable to parents: in effect, the child's welfare is not the single determining factor in such cases as the rights of parents may prevail. In a unanimous five-judge verdict, the court ruled that 'the State cannot supplant the role of the parents in providing for the infant the right to be educated by article 42.1'.

Clear constitutional discrimination

The net effect of the *KC & AC* decision is that married parents can only be denied custody of their child in the exceptional circumstances provided for in article 42.5 of the Constitution or for 'compelling reasons'. While the 'compelling reasons' test accords some constitutional status to the welfare principle, it falls well short of the parental right to custody. Further, in propounding the 'compelling reasons' test and stating that it must be established, the Supreme Court in *KC & AC* did not elaborate on what may amount to a compelling reason. So at a time when the Oireachtas was attempting to remove the legal stigma of illegitimacy, we see exposed here a clear constitutional discrimination between the rights of marital and non-marital children. In effect, by enhancing the rights of married parents, the result of *KC & AC* would appear to be that the welfare of non-marital children is better protected than that of marital children.

The *KC & AC* judgment has been widely criticised for trying to redefine parental rights in terms of children's rights. What it attempts to say is that when two people get married and set up a family unit, an independent

republic is created beyond interference by anyone. This is a product of outdated philosophy and has far-reaching effects on the welfare of the child in Ireland. While the full rigor of this approach was lessened by later decisions of the Supreme Court[1], reverberations from *KC & AC* can still be felt in many provisions of the *Child Care Act, 1991*.

Right of access

Access is the right of the child rather than that of the parents. This has long been the case in England where Wrangham J in *M v M* ([1973] 2 All ER 81 [Fam D]) ruled that a child should not be denied access to a parent except where that is in the interests of the child. Up until the 1990s, in this jurisdiction the Supreme Court seemed to view access as a right of the parents as opposed to a basic right of the child.[2]

It was not until Carroll J's judgment in *MD v GD* (High Court, 30 July 1992) that the tenor of the language in access cases assumed a child focus. In that case, the judge held that the welfare of the child is paramount and the court is concerned with the right of the child, not the right of the adult. Similar sentiments have been expressed by the European Court in the case of *Hendriks v Netherlands* ([1983] 5 EHRR 223), *W v UK* ([1988] 10 EHRR 29), *R v UK* ([1988] 10 EHRR 74), *O v UK* ([1988] 10 EHRR 82), *H v UK* ([1988] 10 EHRR 95), *McMichael v UK* (Application No 16,424/90), and *Olsson v Sweden* ([1988] 11 EHRR 259).

In *Eriksson v Sweden* ([1989] 12 EHRR 200), the European Court held that, because the mutual enjoyment by a child and parent of each other's company constitutes a fundamental element of family life, the natural family relationship is not terminated when the child is taken into public care. The court ruled that the curtailment or denial of access was a violation of article 8 of the *European convention on human rights* unless it was shown to be in accordance with law, had a legitimate aim under article 8(2) and was 'necessary in a democratic society'. So the European Court has taken the position that the mutual enjoyment by a child and parent of each other's company constitutes a fundamental element of family life, that access is an automatic right of the child and should not be denied unless there is clear evidence that it is contrary to the welfare of the child, and that the need for protection in this area is even greater than any other area since decisions may prove irreversible.

This approach now forms part of article 9(3) of the 1989 *UN Convention on the rights of the child* which provides for 'the right of the child who is separated from one or both parents to maintain public relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests'.

Section 37 of the 1991 Act concerns access to children in care. This section specifically provides for parents and those acting *in loco parentis* to be allowed access. There is an obligation on health boards to facilitate access. My own primary research in this area found that residential centres were not conscious of the importance of this provision. This is unfortunate, as children have no express entitlement to initiate an application for access under section 37. Such an application is possible if a guardian *ad litem* (GAL) is appointed because he or she may apply under section 37 as someone with a *bona fide* interest in the child. But there is a serious deficit of detail in section 26 of the *Child Care Act, 1991* as to the role and function of a GAL or the manner in which they are to perform their duties. This is a serious shortcoming and one that may undermine the proper functioning of the GAL in public law access cases.

Supervised access is an important facility in situations involving allegations of child sexual abuse. The investigation and validation of such allegations can take considerable time. Facilities for supervised access by the parent 'under suspicion' are practically non-existent. The health boards do not appear to see the provision of a supervised access service as a duty under the 1991 Act. This is unfortunate since only a health board may apply for a supervision order under section 19 of the Act.

From a child welfare perspective, a supervision order helps continuity in that it allows a child to be monitored in his or her own home without having to be taken into care. In its report on domestic violence, the Law Society's Law Reform Committee supported the important role of court orders providing supervised access. The probation and welfare services should be given a dominant role in supervised access arrangements and should be allocated enough resources to fulfil this role.

Reports and children's evidence

Sections 20 and 27 of the *Child Care Act, 1991* concern social reports and give the District Court (and, on appeal, the Circuit Court) the power to obtain reports on custody and access issues in public law cases. There seems to be a view that such reports give a voice to the child and thereby satisfy the State's obligations under article 12 of the 1989 UN convention. But in reality these reports amount to information gathering by a court and primarily focus on the adults as they relate to children and not on the children's interests as such. Indeed, in the *Child Care Act, 1991* we see provision for the court to proceed in the absence of children.

The child's voice should be heard in court in public law cases. Regrettably, the absence of a clearly-defined guardian *ad litem* system in public law cases is depriving the most vulnerable children in society of such a voice. As a result, Ireland is clearly in breach of the obligations imposed upon it by article 12 of the 1989 UN convention.

Video-link evidence is an important tool in public law custody and access cases. In the recent *Donnelly v Ireland* case ([1998] 1 IR 321), the Supreme Court upheld the constitutionality of video-link evidence in criminal cases, affirming the approach of the High Court in the earlier case of *White v Ireland* ([1995] 2 IR 268). It permitted such evidence on the grounds that it was not a breach of fair procedures as there were sufficient other safeguards, including children giving evidence under oath.

In public law cases, younger children are allowed to give evidence otherwise than under oath where they do not understand the nature of an oath. Does this latest Supreme Court judgment preclude these children from giving evidence through a video link? There is also a serious resources issue with regard to televisual evidence indicated by the fact that until recently there was only one room in the Four Courts complex for children to give evidence. Since section 21 of the *Children Act, 1997* extends the use of video-link evidence to civil proceedings concerning the welfare of a child, this can only exacerbate the resources issue.

While the menu of issues and unresolved problems can seem overwhelming, there has nonetheless been a notable movement towards child-centred legislation in Ireland. The realisation of a vibrant and flourishing child-centred statutory system will mean that we have to discard the shackles of our adult-centred past. This can only be achieved by ensuring that children are heard in public law cases, either directly or through a representative. G

Geoffrey Shannon is a lecturer in law at the Dublin Institute of Technology.

Footnotes

1 See *In re Article 26 and the Adoption (No 2) Bill, 1987* ([1989] ILRM 266) and *Southern Health Board v CH* ([1996] 1 IR 219).

2 See *State (D & D) v G* ([1990] ILRM 10) and *State (F) v Superintendent (B) Garda Station* ([1990] ILRM 243).

21 years on: the changing face of CLE

For solicitors, as for most professionals, education is a life sentence, because you can only give your clients the service they deserve by keeping up to speed with the latest developments. That's why the Law Society's continuing legal education (CLE) programme has proved to be such an enduring success, as Sarah O'Reilly explains

In the Law Society's 1978 annual report, the Education Committee reported progress on the first training courses under the new system of professional and advanced courses. It wrote that:

'The consultants preparing the course material received training in teaching methods during the year and at present a series of one-day courses are being held for recently-qualified solicitors, which serve the additional purpose of being a "trial run" in the training methods to be adopted in the courses in the new Law School.'

These one-day courses were the forerunners of the present-day CLE seminars.

The 1979 annual report announced an extension of the Society's continuing legal education programme, under the guiding hand of the then Director of Training, Professor Laurence Sweeney. Patrick Quinn, the first training officer, was appointed in 1979 and it was proposed that courses already run in Dublin should be repeated outside the capital. By November 1980, CLE had in fact travelled outside Dublin with one-day seminars in Castlebar and Cork.

Difficulties of sole practitioners

The stated policy of the Education Committee in the 1979 annual report was 'to bring the seminars to the country as much as possible, (but) it should be appreciated that the Society is totally dependent on the goodwill of its lecturers to hold these seminars at all and it is not always easy to arrange to have them held outside the Dublin area'.

Geraldine Pearse, who succeeded Patrick Quinn, always said that her personal perception of CLE was (and is) that it should be primarily aimed at sole practitioners and small firms. She was always conscious of the difficulties experienced by sole practitioners outside Dublin who, if they wished to attend a seminar in Dublin, might need to spend up to two days out of their offices. Geraldine continued to develop the CLE programme until her resignation as CLE co-ordinator in 1991, following the birth of her twins. Anna McKeown, a solicitor in the Law School, stepped into the breach until the present co-ordinator, Barbara Joyce, was appointed in 1991.

Under Barbara's stewardship, the number of seminars held annually increased to 45 in 1998. The expansion of the CLE programme was a response to the demand from the profession for further education. This expansion and the sustained success of CLE is due to the commitment of the CLE co-ordinators and their support staff to provide the profession with high quality courses, well presented by experts in their specific fields, at a reasonable cost. The co-ordinators are greatly helped by members of the profession who readily give their time and expertise for the benefit of their colleagues. Without this co-operation, the CLE programme would be greatly diminished. In fact, this co-operation spans the whole area of education within the Law School, where practitioners give their time and expertise to lecture apprentices and their fellow practitioners in the course of CLE seminars and diploma courses.

The last decade has witnessed the greatest-ever increase in the number of practising solicitors in the country. Despite this, solicitors have never been busier and the Celtic Tiger has eaten into the time available to the profession to travel long distances to seminars.

Former Law Society President Laurence K Shields was instrumental in expanding CLE staffing levels in 1998 to cater for the increasing demand for seminars outside of the normal venues of Dublin, Cork and Galway. According to Mr Shields: 'When I was president, my vision was to expand and make CLE available throughout the country. Great progress has been made. My vision for CLE in the early years of the next millennium is that we continue our progress by using the available technology – including Internet seminars – to make it accessible to all our members'.

'My vision for CLE in the early years of the next millennium is that we continue our progress by using the available technology – including Internet seminars – to make it accessible to all our members'

Since 1998, the number of CLE seminars held each month has increased dramatically. The original CLE brochures advertising the seminars have been replaced by a slim-line glossy version.

The new style of brochure has been welcomed throughout the country as being more user-friendly: practitioners can see at a glance which seminars are being held, and where, within the next two to three months. As the main marketing vehicle for CLE, it is essential that the brochure is revised regularly and that its design is focused on its target audience – legal practitioners. In addition, for those with access to the Internet, the brochure is reproduced on the Law Society's web site at www.lawsociety.ie.

The second consequence of the increased

CLE staffing levels was that new venues could be tested as alternatives to the regular seminar centres of Dublin, Cork and Galway. Laurence Shields suggested Athlone as a possible alternative venue. The first seminar was held in Athlone in November last year and CLE returned three times this year, with further visits planned for 2000. Other venues visited this year were Limerick (four seminars) and Kilkenny and Sligo (one each).

According to immediate past-president Patrick O'Connor: 'CLE has been the foundation stone for the on-going post-qualification education of the profession for 21 years. It is now, and will be more so in the future, the bedrock upon which solicitors will continue to be trained, educated and updated in changes in the law and the legal system'.

Adding new venues

Accompanied by Director General Ken Murphy, Pat visited some 20 bar associations during his term of office. He was heartened by the enthusiasm for seminars held outside Dublin, but he reports that despite the further increase of seminars (67 in 1999 – 32 in Dublin; 35 outside), the bar associations are pressing for even more venues to be added to the CLE circuit. In an effort to meet these requests, it is intended to be as proactive as possible next year.

Next year, CLE will hold a seminar in Dublin on 19 January on the legal implications of the Budget provisions. This seminar will be repeated within weeks in several other venues throughout the country, including Waterford, Cork, Tralee, Limerick, Galway, Athlone and Sligo. Participants attending the Budget briefings will be provided with updated commentaries on the *Finance Act, 2000* when enacted in May 2000. Further details can be found in this month's CLE brochure. Needless to say, the response to this 'blanket coverage' will be analysed with a view to using these new venues for further seminars.

Technology is also improving the presentation of seminars: speakers are being encouraged to avail of Power Point slides for presentations rather than the old-style acetates. CLE now has its own dedicated LCD projector, which can easily be transported around the country. This has obviated the necessity of hiring equipment for each seminar, thereby reducing expenditure.

In fact, technology may well be the answer to the sustained demand for further education. When the new Law School is finished, it is planned to have facilities for video conferencing. Subject to availability of similar facilities in venues throughout the country, it is possible that a seminar held in any one venue will be capable of being transmitted simultaneously to three or four different centres.

The future development of CLE is currently under review by a Law Society task force. The law societies of England & Wales and Scotland have in recent years introduced mandatory CLE. While the suggestion of mandatory CLE in Ireland has previously been discounted, there are some signs of change of attitude among the profession.

At a recent meeting with members of the Law Society of Scotland, I was impressed to learn that in the last four years their members' professional indemnity insurance premiums have remained static, with only a 3% increase this year. Similarly, there has been a marked decrease in claims for negligence. In Scotland, they believe that the introduction of mandatory CPD (continuing professional development, their equivalent of our continuing legal education) six years ago has been a major contributory factor in these statistics.

CLE in Ireland, be it on a voluntary or mandatory basis, can only be sustained if the product – the seminars – fulfils the needs of the profession. The subject matter of seminars is chosen in response to new legislation and suggestions from specialist committees within the Law Society, bar associations and the profession at large. Over the past 21 years there has been an obvious change in the subjects covered by CLE. Admittedly the old reliable bread-and-butter topics of conveyancing, litigation and wills (drafting and administration of estates) are still in demand, and seminars dealing with these subjects are requested (and provided) on a regular basis.

But CLE topics mirror the changing face of Irish society. People are more affluent and have increased funds available for pensions, hence the seminar *New pension options for the self-employed*. They also have less time on their hands, necessitating workshops on time and stress management. With the changes in family law in Ireland, it is not surprising to see two family law seminars, one of which was repeated three times and the other twice this year. The number of commercial law seminars held in 1999 is additional evidence of our booming economy.

It is only by getting feedback (both positive and negative) from practitioners that we can continue to provide a continuing legal education system that fulfils the purpose for which CLE was established. Accordingly, I would be grateful if you could complete and return the attached questionnaire as soon as possible. All completed questionnaires will be entered in a free draw for £500 worth of CLE seminars in 2000.

As President Anthony Ensor has said: 'CLE is one of the services provided by the Law Society that has been most appreciated by the profession over the years. I know that there are plans to run more courses and to cover the entire country as soon as possible. This is good news and we all have to be grateful to those who put so much time and effort into CLE'. G

Sarah O'Reilly is the Law Society's CLE Executive.

CLE SEMINARS 1999

PLEASE TICK ALL SEMINARS ATTENDED DURING 1999

SEMINAR	DUBLIN	CORK	GALWAY	ATHLONE	LIMERICK	KILKENNY	SLIGO
SI No 391 of 98	☐	☐	☐	☐	☐	☐	☐
Essential conveyancing for practitioners	☐	☐	☐	☐	☐	☐	☐
Employment law	☐	☐	☐	☐	☐	☐	☐
Administration of estates	☐	☐	☐	☐	☐	☐	☐
Freedom of information	☐	☐	☐	☐	☐	☐	☐
Planning law	☐	☐	☐	☐	☐	☐	☐
Discovery	☐	☐	☐	☐	☐	☐	☐
Road traffic offences	☐	☐	☐	☐	☐	☐	☐
Time management	☐	☐	☐	☐	☐	☐	☐
Commercial lending	☐	☐	☐	☐	☐	☐	☐
Technology	☐	☐	☐	☐	☐	☐	☐
Post-traumatic stress	☐	☐	☐	☐	☐	☐	☐
Pensions and the *Family Law Acts*	☐	☐	☐	☐	☐	☐	☐
Injunctions	☐	☐	☐	☐	☐	☐	☐
CAT	☐	☐	☐	☐	☐	☐	☐
Stress management	☐	☐	☐	☐	☐	☐	☐
Shareholders' agreements	☐	☐	☐	☐	☐	☐	☐
Law Society and IMO joint seminar: new rules	☐	☐	☐	☐	☐	☐	☐
Year 2000	☐	☐	☐	☐	☐	☐	☐
Personnel management	☐	☐	☐	☐	☐	☐	☐
Litigation remedies for the conveyancing practitioner	☐	☐	☐	☐	☐	☐	☐
Acquisitions and mergers of solicitors' practices	☐	☐	☐	☐	☐	☐	☐
New pension options for the self-employed	☐	☐	☐	☐	☐	☐	☐
Medical negligence	☐	☐	☐	☐	☐	☐	☐
New houses	☐	☐	☐	☐	☐	☐	☐
Share purchase agreements	☐	☐	☐	☐	☐	☐	☐
Family litigation post-*Brussels II convention*	☐	☐	☐	☐	☐	☐	☐
Setting up in practice	☐	☐	☐	☐	☐	☐	☐
Trusts	☐	☐	☐	☐	☐	☐	☐
District Court practice and procedure	☐	☐	☐	☐	☐	☐	☐
The principles of practical drafting of deeds in conveyancing transactions	☐	☐	☐	☐	☐	☐	☐

If you did not attend any seminars in 1999, please state your reason(s): _____

Which of the above seminar venues is most convenient for you personally? _____

If none of the above, please suggest an alternative venue: _____

What subject(s) would you like to see covered in 2000? _____

Name/address: _____

Year of qualification: _____ Position in firm: _____ Number in firm: _____

Recent develo
Land R

In July of this year, the Land Registry implemented a major new IT project called the Integrated Title Registration Information System (ITRIS). Catherine Treacy explains the rationale behind its introduction and provides an update on the Land Registry's current operating position

The Integrated Title Registration Information System (ITRIS) is designed to improve the speed and quality of the service which the Land Registry provides to its customers and to act as the starting point for delivering some services electronically over the Internet. Its key functions are:

- Electronic storage and retrieval of all folios when captured onto the system
- Tracking of all applications submitted to the Land Registry. This is achieved by capturing all relevant information at the point of lodgment
- Processing of applications by the creation of the proposed registration for the register based on the information supplied on the application form
- Generation and electronic transmission of correspondence between the Land Registry and its customers
- Generation of copy folios electronically
- Searching, via the Internet, the Land Registry database of folios and pending applications using the new Electronic Access Service.

ITRIS will be introduced across the entire Land Registry in a number of phases, subject to on-going funding. Currently, all folios in the Dublin region and all new folios opened since 1988 in counties Galway, Clare, Roscommon, Mayo and Sligo are available electronically. All new applications in these counties are being processed on the ITRIS system. The Land Registry plans to extend the ITRIS system to all other counties as quickly as possible. The key to full implementation is the successful data-capture of all of the Land Registry folios onto the new system. Some 330,000 folios held on the original computer system have already been converted and are now available on the new system. A further 1.2 million paper-based folios must be captured onto this system. Given the number of folios and the format of the data, it is difficult at this point to estimate accurately how long the complete data capture programme will take, but the Land Registry is committed to completing it as quickly as possible in order to reap the full benefits from the ITRIS system. It is intended to start full-scale conversion of folios to electronic format during the year 2000.

Electronic Access Service

The most tangible benefit immediately accruing to the legal profession from ITRIS is the introduction of the new Land Registry Electronic Access Service, which allows practitioners to access information held by the Land Registry over the Internet. This service is a flagship project under the Government's *Implementing the information society: a framework for action* programme and the Land Registry is pleased to be the first government body to 'go live' with an electronic government project. The service enables practitioners to conduct business from their offices that would previously have needed a visit to the Land Registry offices. It is available via the World Wide Web at *www.landregistry.ie*. Authorised users can:

- Conduct on-line searches of the electronically available register of folios by reference to one or more criteria, including name of registered owner, property identifier and so on
- View and print computerised folios in their offices
- Discover the existence of any relevant transactions which may already be pending in the Land Registry against the particular property
- Order certified copies of particular documents

Registrar of Deeds Catherine Treacy

New

pments in the Registry

- Avail of these services outside of normal business hours.

The service is currently available in counties Dublin, Galway, Clare, Roscommon, Mayo and Sligo, but will be extended as the new ITRIS system and a programme of data-capture of paper folios is introduced on a county by county basis. The only fee payable is the usual fee for the service requested as set out in the *Land Registry Fees Order 1991* (SI No 363 of 1991). Full details of the Electronic Access Service, including subscription details, are available at *www.landregistry.ie*. Inquiries can be addressed to Carl Geran, Dublin Region, Land Registry, Setanta Centre, Nassau Street, Dublin 2, tel: 01 8048230, fax: 01 8048251, e-mail: carl.geran@landregistry.ie.

New application form incorporating Form 17

I would like at this point to record my appreciation of the input into the design of the new form of the Dublin and western region solicitors' bar associations and a number of individual practitioners consulted at the earlier research phase of ITRIS. Almost all of the suggestions have been incorporated. It is acknowledged, however, that some practitioners are concerned about the new form and feel that it is unnecessarily detailed. It is vital, therefore, for practitioners to understand the reason for the new form and recognise that it is an integral part of the ITRIS system.

This single form replaces five existing forms:

- Form 17 of the *Land Registration rules 1972*
- Form 66 of the *Land Registration rules 1972*
- The dealing lodgment form
- Application for copy folios/filed plans
- Application for a land certificate.

The need to consolidate multiple applications onto a single form was identified during the analysis of requirements for ITRIS and was suggested during consultations with a number of practitioners. It is essential that the new form be completed correctly as the details on the form are entered on the ITRIS system at the time of lodgment and are then used to support a number of activities as follows:

- Application pending details are immediately available for searching by Land Registry staff, by customers at our Setanta public offices and the local offices in the western region counties and by customers accessing the system via the Internet. A search of a folio will indicate if there is an application pending on the folio and will give details of the dealing number, the date of lodgment, type of application, applicant details and lodging party
- The details at paragraphs 5 and 6 of the form are used to create the proposed registration for the folio. The lodging party is specifying the actual registration required on foot of the documents lodged. This is designed to speed up the registration process, reduce the turnaround time of cases and ensure that the registration made

w application form incorporating Form 17

Sample 2 Land Registry Application for REGISTRATION (incorporating Form 17)

reflects what is actually required
- The details are used to generate case-related correspondence with applicant solicitors, including the production of notices
- The correct description of the type of application lodged in column 1 of paragraph 1, together with the completion of the consideration details in column 3 of that paragraph, allows the system to calculate the fee payable. This information can then be used to automatically generate either a refund in the case of overpayment or a request for the balance in the case of an underpayment.

The documents included in column 2 of paragraph 1 set out the most common types of documents required for a particular type of application. They are designed to act as a check-list to lodge these documents with the application, thereby reducing unnecessary queries and rejections which are still a major cause of delays in the registration process.

Two samples of completed application forms are included with this article. The first specimen is of an application for the registration of a transfer (sale), charge and discharge. The second specimen is an application for the registration of a lease and mortgage. Frequently-asked questions about the form are also included.

The form is available in electronic format on the Land Registry web site *www.landregistry.ie* and may be downloaded in AmiPro 3.1 and various formats of WordPerfect and Microsoft Word. We are happy also to make the form available on disk in these formats. If you have any inquiries on the form, please contact John Murphy, Land Registry, Chancery Street, Dublin 7, tel: 01 8048066, fax: 01 8048074, e-mail: john.murphy@landregistry.ie.

Customer user group

The Land Registry wishes to foster and strengthen its commitment to consult with its customers to ensure the delivery of a quality service that matches its customers' requirements. The help, advice and input provided by numerous practitioners and representatives of the legal profession are key ingredients in working towards quality customer service delivery.

In advance of designing the ITRIS system the Land Registry carried out detailed analysis of customer requirements through interviews with a number of individual practitioners. The Land Registry was in contact with the Dublin Solicitors' Bar Association and also ran seminars in Sligo and Gort through the auspices of the solicitors' bar associations in the five western region counties before the implementation of ITRIS. We have recently invited our customers/clients to participate in a customer/client user group with the objective of establishing a forum for regular feedback and a formal channel for communication. Initially, a representative from the Conveyancing Committee of the Law Society, the bar associations, law searching firms/town agents, financial institutions, the local authorities and the IAVI have been invited to meet us and discuss how we can continue to develop ITRIS to improve our service. The composition of this customer user group can be reviewed as necessary.

Plans are also well advanced to hold a number of seminars to disseminate information on all aspects of the ITRIS project, including the new application form. The seminars will initially be held in the Dublin area and then in other parts of the country as the ITRIS project is rolled out.

Future IT initiatives

A number of further initiatives are planned in the coming months. It is intend to pilot the use

New application form incorporating Form 17: frequentl

Q What is the purpose of the new application form?

A *The purpose of the new form (which incorporates Form 17) is to enable the Land Registry to capture significant information about applications as they enter the office. The information will be keyed onto a computer system and will be used at various stages of the registration process. The application form is being introduced in tandem with a new Integrated Title Registration Information System (ITRIS). ITRIS is a comprehensive computer system designed to improve the service which the Land Registry offers to its customers. As it is introduced throughout the organisation, it will support:*
- *Electronic storage and retrieval of folios*
- *Tracking and processing of cases and applications submitted to the Land Registry by its customers*
- *Generation and electronic transmission of case-related correspondence, and*
- *Provision of key caseload statistics.*

The new system is being introduced in Dublin and the western counties in the first instance and it is intended to implement it throughout the organisation on a phased basis.

Q Must the form be printed on both sides of the paper?

A *The Land Registry's preference is that the form would be printed on both sides of the paper. However, if you do not have a duplex printer it is acceptable to print the form on two pages.*

Q Under the heading 'all other documents *(please list)*', what do I do if there is insufficient space to list all documents?

A *Insert the words 'See attached schedule' on the form and include a separate sheet listing all additional documents lodged as a schedule.*

Q Should the form be lodged in duplicate?

A *Only if you require a copy of the application form as a receipt. If you wish, you may lodge a photocopy of page one of the form and this can issue as a receipt with the dealing number written thereon. If neither a duplicate nor photocopy of page one is lodged, a receipt will be issued on request showing folio number and county, date of lodgment and dealing reference.*

Q Do I need to submit a dealing lodgment form with the new application form?

A *No. The information on the dealing lodgment form has now been incorporated into the new application form.*

Q Is a stamp of the signature of the individual solicitor acceptable?

A *No. The solicitor must sign the application form. This is a statutory requirement under form 17 of the* Land Registration rules 1972-1986.

Q Do I need to lodge a separate application form if I want to apply for a copy folio/filed plan, a new land certificate or a certificate of charge under rules 156 or 157 of the *Land Registration rules*?

A *No. You can apply for these documents by ticking the appropriate box at the end of section 1, column 1, on the bottom right hand side of page 1 of the form. If you are applying for a new land certificate, you must also complete section 8(b) of the application form.*

Please note that the appropriate fee must be lodged in respect of the service requested. Under SI 363 of 1991 the fees are:
- *Copy folio – £4*
- *Copy folio/filed plan – £9*
- *Land certificate – £13*
- *Certificate of charge rule 156/157 – £3.*

You should note that where the maximum fee of £250 is payable for the registration applied for, these fees are in addition to that maximum fee.

Q Should section 5 be completed in all cases?

A *No. It is only necessary to complete section 5 when you are applying for a change of ownership on the existing folio or when you are applying for*

of electronic mail for exchanging certain types of case-related correspondence with the legal profession. It is hoped that this will speed up the resolution of queries. We also plan to provide an electronic fee calculation utility which practitioners can operate on-line or download from our web site for use within their own offices, thereby reducing queries or errors in calculating fees. Plans also include extending the range of widely-used Land Registry application forms that may be downloaded from our web sites and completed in customer organisations.

Arrears clearance

In the midst of all of this change, the Land Registry has experienced an unprecedented level of growth in intake due to the buoyant property market. The dealings intake has increased from 86,000 in 1991 to a projected 130,000 in 1999, with a resultant increase in demand for all other services (the overall output of the Land Registry in 1998 for *all* applications – that is, dealings, copy maps, land certificates and so on – was 330,197 as against 229,474 for 1991). Authorised core staffing levels have not been increased during this period. Proposals for extra staff have been made and the Minister for Justice, Equality and Law Reform has sought and obtained provision in the financial estimates for the year 2000 for additional staff for the registries.

With the diligence and commitment of staff, the adoption of a strategic management approach and the best use of information technology, the registries have been producing record outputs of work over the past number of years. For the past two years, however, the phenomenal growth of the property market, added to the major drain of experienced staff from the organisation as a result of decentralisation, has overtaken the excellent productivity gains of the registries. Due to the cumulative effect of increased intake of work and loss of experienced staff, we now find that despite the best efforts of the registries the arrears of dealings awaiting registration has reached 77,000 at the end of October as against an arrear of 37,000 in mid-1997 (including cases under query).

As a short term interim measure, therefore, it has been reluctantly decided that, for a three-month period starting on 4 January 2000, telephone enquiries will only be taken between 3pm and 4pm each day and standard inquiry letters which do not further the processing of an application will be filed without response. The objective behind this approach is to allow staff to focus on completing applications, which will benefit all of our customers. We are requesting your co-operation with this course of action to help deal with the unprecedented intake of work and queries into the registries.

Registries information and publications web site

We would also like to draw attention to another important facility which we have made available to our customers – the Land Registry and Registry of Deeds information and publications web site at *www.irlgov.ie/landreg/*. This site has been in existence for a number of years but has recently been redesigned and the content expanded. It now contains all of the registries' practice directions, which detail practice and procedures on a wide range of topics and should prove a valuable resource for the legal profession. It also includes a full list of contact points, mapping requirements, all relevant fees orders and information on the operation of the ground rents purchase scheme. G

Catherine Treacy is Chief Executive of the Land Registry and Registrar of Deeds and Titles.

y-asked questions and answers from the Land Registry

the opening of a new folio on the registration of a transfer of part, a sub-division, lease, sub-lease, transfer order or vesting order.

Q In section 6, what should be entered under 'stamped to cover'?

A *Enter the amount that the charge is stamped to cover – for example, if the charge is for £84,560, it will bear stamp duty of £85 (that is, it is stamped to cover £85,000). £85,000 is the amount that should be entered on the form. If, however, maximum stamp duty has been paid, please enter the words 'maximum duty paid'.*

Q If the dealing was rejected previously, should I lodge a new application form or the old-style Form 17?

A *It will be necessary to lodge both. We require the new application form for dealings lodged after the date of implementation of the ITRIS project. However, as the fees are validated on the Form 17 originally lodged, this must also be lodged.*

Q What is the difference between charge for present and future advances, charge for principal sums and charge for specified amounts?

A *The charge for **present and future advances**, as the name suggests, is security for both present borrowings and for future borrowings. It has the benefit of the priority prescribed by section 75 of the* Registration of Title Act, 1964*. These deeds of charge may be stamped up to cover additional advances. Most banks and building societies now use this type of charge.*

*The charge for **principal sums** is a charge for a specified amount, together with such additional amounts as may be charged on the property (for example, insurance premiums paid by the lender in default of payment by the borrower). Such additional sums may not always be readily identifiable in a long deed. In the past, most of these type of charges were lodged by the building societies but most building societies have now switched to using present and future charges. These charges cannot be stamped up to cover additional advances.*

*The charge for **specified amounts** is for the amount advanced only and does not cover any additional sums. These charges cannot be stamped up to cover additional advances. Some local authorities use these type of charges and they also arise in loans from a private individual.*

If in doubt as to the type of charge, consult the legal department of the financial institution which is giving the loan.

Q If maximum stamp duty has been paid, what amount should be entered in the consideration box in column 3 of page 1?

A *Enter the amount which has been advanced at the date of lodgment (for example, £650,000). The amount entered in the consideration box is used for the purpose of assessing Land Registry fees only and will not appear on the register. The entry on the register will state 'maximum duty paid'.*

Q Should unused sections of the form be struck out?

A *Unused sections such as section 5,6,7,8(a) and 8(b) can be left blank but can also be struck out if so wished.*

Q What details do I enter in section 1 in first registration cases?

A *In first registration cases, tick the 'Other' box in the dealing/application type column of section 1 and write underneath 'First registration'. In the column for documents lodged, tick 'All other documents' box and either list the documents lodged thereunder **or,** if there is not enough room, list separately in a schedule of documents and refer to same thereunder.*

Q Who should sign the form in a case where it is being lodged by a local authority on behalf of a tenant purchaser under the *Housing Acts*?

A *The form may be signed either by an in-house solicitor or law agent acting on behalf of the local authority or by the tenant purchaser. As the local authority is the lodging party, any correspondence will issue to the local authority.* G

No fault,

These days you can't turn on the radio or open a newspaper without being confronted by some Cassandra predicting that our 'compo culture' will be the ruination of us all. Some have even suggested abolishing the right to sue and introducing a no-fault compensation scheme for personal injury cases. Owen McIntyre looks at how such a system operates in New Zealand and finds that the arguments aren't over Down Under

A no-fault personal injury compensation scheme, according to its most vocal advocates, offers a panacea to the difficulties inherent in tort law. Such a system would deal with claims on a non-adversarial basis and the only question at issue would be how much the claimant should receive. But closer examination of the performance of existing no-fault schemes identifies a number of significant shortcomings.

New Zealand currently operates the world's most comprehensive no-fault compensation system. The legislation, which was first introduced in 1974 but is now contained in the *Accident Rehabilitation and Compensation Insurance Act 1992*, abolished all claims for damages for personal injuries by accident and instead provided a wide range of immediate entitlements to insurance payments. There is no requirement to prove fault on the part of a defendant or to rely on a defendant being insured, and it does not matter how or where a person has been injured (with certain exceptions for self-inflicted injuries or injuries received in the course of criminal conduct).

The entire scheme is funded by levies on employers and motorists, with the NZ government providing funds for the compensation of non-earners. Under the current scheme, an accident victim will receive:

- Weekly compensation payments of 80% of earnings for as long as the victim is off work
- An independence allowance of up to NZ$40 (approximately £16) a week for permanent disability and non-economic loss such as pain, suffering, and loss of amenities
- Full payment of all reasonable hospital and related expenses
- Payment for certain other expenses or losses related to the injury (such as childcare and home help) and rehabilitation assistance.

Insurance companies have no involvement at all in the scheme and the role of lawyers is greatly reduced. Most claimants file their own claims and, even if their claim is unsuccessful, many pursue an appeal up to the review stage.

The review hearing is heard before a review officer who is an Accident Compensation Corporation (ACC) official and is a relatively informal, non-adversarial proceeding. Prior to 1992, the next stage for a dissatisfied claimant was an appeal to an independent judicial authority, the Accident Compensation Appeal Authority (ACAA). Many claimants handled their own claims here, although legal representation was also common. Under the 1992 Act, the ACAA's functions have been taken over by the District Court and lawyers have reappeared in the system.

At the simplest level, five principal shortcomings can be identified in the New Zealand and all other no-fault compensation schemes:

- Inadequate compensation levels and coverage
- Spiralling costs
- No compensation for diseases
- Confusion over medical accidents and 'misadventure', and
- Removal of deterrent.

Inadequate compensation levels

By any standards, the compensation paid out under the New Zealand scheme appears low. The main compensation available is weekly earnings-related compensation at 80% of lost earnings. The scheme also fully covers medical expenses and rehabilitation and other assistance costs, including those incurred in modifying homes and cars for the seriously disabled. Under the original 1972 legislation, a lump sum of up to NZ$17,000 (approximately £6,700) could be paid for non-economic loss such as pain and suffering and loss of amenities. This ceiling was increased by the 1982 Act to NZ$27,000 (approximately £10,600). There is now an independence allowance of up to NZ$40 a week (approximately £16) depending on the severity of the disability.

The suitability of the scheme for non-earners has always been open to question, as they cannot get earnings-related compensation. In the past, such victims had relied on lump-sum payments, but rather than increase the lump-sum ceiling above NZ$27,000, the 1992 Act abolished lump-sum payments altogether and replaced them with the weekly independence allowance. This move reflected growing concern in the New Zealand government about the dramatic increase in claims for lump-sum compensation, particularly for sexual abuse, amounting to between NZ$30-50 million.

Furthermore, the 1992 Act introduced a 10%

no foul?

disability threshold which had to be met before any independence allowance would be payable. Those suffering the trauma of sexual abuse would probably be assessed below this level and so would fail to qualify. If they were non-earners, they would also fail to qualify for earnings-related compensation.

It would appear that the scheme has been cynically manipulated to exclude an entire category of claimant quite arbitrarily. This situation can be contrasted with the outcome of the recent and well-publicised McColgan sex abuse case in this country where the victim successfully claimed compensation from the State.

Spiralling costs

Since 1983, the NZ scheme has experienced major increases in expenditure. One main cause of this has been the maturing of the scheme and the carrying-forward of claims from earlier years (between 1975 and 1985 the total number of claims received grew from 105,018 to 159,106, while total expenditure spiralled from NZ$32.69 million to NZ$340.1 million).

It was also estimated that during the 1980s up to 30% of previous payments had not been properly chargeable to the scheme as they had simply involved people who had fallen sick rather than *bona fide* accident victims.

A patient is designated as an accident victim by the medical practitioner who first examines him or her, and in the late 1980s there was an enormous increase in medical and associated fees. This led some to suggest that doctors might have found it easier to categorise a visit as injury-related and to be paid by the ACC, rather than billing an impecunious patient. Since then, there has been a major drive by the ACC to reduce costs and to tighten up this area by introducing regulations.

In 1990, the newly elected national government announced proposals to reform the scheme. Its policy document was primarily concerned with reversing the steady 'cost creep' which had been responsible for a 'costs crisis' in the mid-1980s, as a result of which levy rates had been subjected to punitive increases. The document suggested three approaches:

- Setting out a rigid definition of compensatable personal injury in order to prevent incremental expansions in the scope of coverage which were thought to have resulted from reliance upon the largely undefined notion of 'personal injury by accident'
- Limiting the benefits payable under the scheme (notably by replacing lump-sum compensation with an independence allowance), and
- Introducing a greater measure of individual responsibility, both on accident victims (by an obligation to bear part-charges for medical treatment) and on those responsible for accidents.

These reforms were implemented by the *Accident Rehabilitation and Compensation Insurance Act 1992*.

The 1992 Act also placed significantly more restrictive controls and ceilings on the amounts awarded for counselling, home help, childcare, attendant care, and aids and appliances as the government believed that these costs were escalating uncontrollably.

No compensation for disease

Those proposing a reform of tort law in this country are advocating a shift in the way that Irish society views the entitlements of personal injury victims. Under the current tort system, these entitlements are viewed in terms of legal rights and duties, while under a no-fault compensation system they must be viewed in terms of social welfare. In terms of social welfare objectives, even the most comprehensive system, such as the New Zealand model, seem to fall short. For example, there seems little justification for limiting the scheme to 'injury by accident' and excluding the victims of disease, except that diseases are a much more common source of physical incapacity than accidents and so would cost a great deal more to cover. Under the New Zealand scheme, diseases would be treated as if they were personal injuries by accident only where they were deemed 'diseases arising out of employment' under the terms of section 28(1) of the *Accident Compensation Act 1982*.

According to section 28(1): *'If a person's total or partial incapacity or death results from any disease, and the disease is or was due to the nature of any employment in which the person was employed as an earner during a period that ended on or after 1 April 1974, cover shall exist as if the disease were a personal injury arising out of and in the course of his employment, and all the provisions of this Act shall apply accordingly, subject, however, to this section'*.

This has caused considerable problems of interpretation. Take, for example, the case of employees suffering asbestos-related disease as a result of exposure pre-dating April 1974. In *McKenzie v Attorney-General* ([1991] NZAR 501; [1992] 2 NZLR 14), the plaintiff, who was diagnosed as suffering from mesothelioma, was employed by the Electricity Department between 1950 and 1983 but was only exposed to asbestos between 1950 and 1963. The Court of Appeal found that the term 'employed' in section 28(1) referred only to the term of employment which actually gave rise to the disease. Therefore, he was not covered by the scheme but instead had to pursue his claim through the courts. Cooke P justified this decision on the grounds that 'some starting date for the scheme had to be taken … the present appellants are on the other side of the wall erected at midnight on 31 March 1974'. It is obvious, then, that such schemes can operate arbitrarily.

The *Accident Rehabilitation and Compensation Insurance Act 1992* modified the

position and expressly deems certain cases of disease to be personal injuries by accident, but the overall effect is to dramatically restrict the coverage provided by the scheme to victims of disease. The reasoning behind this 'accident preference' is unclear. The evidential difficulties faced by victims of latent disease in bringing proceedings in tort are well known, so one might have expected that these complex claims would have been more readily included within the scheme. Instead, the high level of proof demanded by the Act resembles that required under an adversarial process.

This is all the more remarkable when one considers section 17 of the 1992 Act, which says: *'No proceedings for damages arising directly or indirectly out of personal injury that is caused by gradual process, disease or infection from exposure of any person before 1 April 1974 arising out of and in the course of employment within the meaning of this Act that ceased before that date shall be commenced in any court in New Zealand independently of this Act on or after 1 April 1993, whether by that person or any other person, and whether under any rule of law or any enactment'*. So no plaintiff who suffered from a disease as a result of a negligent exposure at work before 1 April 1974 can now sue in tort.

Medical accidents and misadventures

The uncertainties surrounding the inclusion or exclusion of diseases from the scheme are exacerbated in the case of medical accidents or 'medical misadventure'. Patients undergo medical treatment as a result of disease, personal injury or some other condition such as pregnancy and it can be very difficult to establish on what basis an adverse outcome to treatment is to be attributed to a medical accident rather than to the pre-existing condition. While claimants under a tort system can rely upon the highly-developed notion of 'fault', claimants under a no-fault compensation scheme cannot draw upon any generally accepted standards.

The New Zealand authorities have struggled to define the scope of the scheme, fearing that it may be flooded with claims more properly categorised as flowing from disease. It is ironic, then, that most advocates of tort reform in the UK have proposed no-fault compensation schemes that deal exclusively with medical accidents.

The 1992 Act introduced a statutory definition of 'medical misadventure' for the first time but also sought to increase the extent to which medical practitioners might be held individually responsible for the injuries they cause. The New Zealand government had taken note of criticism that the implementation of the scheme, and the contemporaneous abolition of the right to sue, had deprived the public of all effective means of calling medical practitioners to account. Therefore, it sought to make medical practitioners take more responsibility for their actions by imposing on them a new medical misadventure premium which might be varied in the light of individual claims. Further, it placed an obligation on the new Accident Rehabilitation and Compensation Insurance Corporation to report possible instances of negligence or inappropriate action to the relevant disciplinary body.

The new statutory definition has understandably been described as confused and impractical. Once again, this situation can be contrasted with the outcome in the recent Blaise Gallagher medical negligence case *(Blaise Gallagher (a minor) v Stanley and the National Maternity Hospital* [1998] 2 IR 267).

Removal of deterrent

The comprehensive no-fault scheme introduced in New Zealand in 1974 and the no-fault road accident scheme introduced in Australia's Northern Territory in 1979 effectively abolished the right to sue for road accident losses under the common-law tort of negligence. Opponents of no-fault compensation systems argue that such a restriction reduces incentives to take care on the roads and that the costs associated with the resulting increase in accidents will exceed any savings in administrative costs. Reformers in favour of no-fault systems, on the other hand, argue that even if there is a deterrent effect from tort law, that effect is small. They make this point particularly in relation to road accidents because these are largely random events and financial incentives are comparatively minor compared to the fear of personal injury.

For this reason a number of academics have studied the quantitative effect of the introduction of no-fault systems on road accidents. For example, one such study has argued that by restricting liability (mainly for non-economic loss), the introduction of no-fault road accident laws leads to increased accident losses.[1] And the most comprehensive empirical investigation ever undertaken into this phenomenon arrived at similar conclusions.[2]

This latter study examined annual figures for all Australian states and territories and New Zealand for the years 1970-1981 and selected road accident fatalities per head of population as the dependent variable. Overall, the results strongly suggest that the abolition of the right to sue for personal injury loss is an important factor in promoting road safety. The evidence also suggests, though indirectly, that insurance market competition promotes greater road safety – perhaps because greater competition results in better merit rating.

In the case of medical malpractice, a huge empirical study of around 30,000 patient cases undertaken in a state-wide sample of New York hospitals in 1984 found that there was a strong correlation between changes in doctors' behaviour and the threat of litigation.[3] According to the authors of this study: 'Sophisticated economic analysis has shown that … tort law can contribute to achievement of the optimal level of care – defined as avoidance of the risk of injuries that are costlier than the precautions needed to prevent them'.

Though no-fault compensation systems may at first appear to offer an efficient and progressive solution to the difficulties inherent in the operation of tort law, these systems are proving to have very significant drawbacks. Any attempt to avoid inevitable 'cost-creep' involves limiting the scope of such schemes, which results in the arbitrary and unjust exclusion of entire categories of applicant. Also, no-fault systems completely fail to compensate accident victims for pain and suffering and for other forms of non-economic loss. Most significantly, such systems represent a move away from the culture of individual responsibility which tortious systems ultimately engender; they create an environment where there is little incentive to act reasonably and to treat others with care. G

Owen McIntyre is the Law Society's Law Reform Executive.

Footnotes

1 EM Landes, 'Insurance, liability, and accidents: a theoretical and empirical investigation of the effects of no-fault accidents', (1982) 25 *Journal of law and economics*, 49. See also S Peltzman, 'The effects of automobile safety regulation', (1975) 83 *The journal of political economy* 677.

2 Reported in RI McEwin, 'No-fault and road accidents: some Australasian evidence', (1989) 9 *International review of law and economics*, 13.

3 PC Weiler *et al, A measure of malpractice: medical injury, malpractice litigation and patient compensation*, Harvard University Press, (Cambridge, Mass, 1993). As the authors themselves point out, 'The Harvard study constitutes the first comprehensive investigation of the interplay between medical injuries and malpractice litigation – indeed, the first such study of any type of personal injury'.

Curriculum development: *land law*

Continuing its series of articles on the professional course syllabus for apprentices, the Law Society's Curriculum Development Unit sets out what's involved in its land law module and invitesmembers to air their views on how it could be improved

A review of the professional practice course *Applied land law* syllabus took place at the Curriculum Development Unit's meeting in November. The following is an outline of the key elements of the *Applied land law* module broken into its two constituent parts: conveyancing, and landlord and tenant law.

The CDU is seeking the views, comments and suggestions of the profession on:

- The content of the professional practice course *Applied land law* syllabus, and
- The ability of apprentices to complete the objectives in the office after their return from the professional practice course.

Members of the profession who have an interest in tutoring or lecturing on the *Applied land law* module are invited to submit details outlining their practice in this area and any lecturing or presentation experience.

Conveyancing

- Roots of title
- Investigation of title
- Contract for sale
- Family home
- *Land Act, 1965*
- Drafting
- Mortgages
- Searches
- Land Registry
- New houses
- Planning law
- Environmental law and practice
- Requisitions on title
- Steps in a conveyancing transaction.

Students should be able to process, from the initial taking of instructions to ultimate completion, a standard residential conveyancing transaction. The following is only a synopsis of the detailed objectives of the conveyancing element of the *Applied land law* module. Practitioners who would like a complete list of the objectives may request them from Gabriel Brennan in the Law School.

Students should be able to:

- Correctly identify good roots of title and understand the definition and nature of a good root of title
- Correctly trace the devolution of title from the root and make proper notes on title
- Understand the difference between title registered in the Land Registry and title registered in the Registry of Deeds, and the differences between the two systems of registration
- Understand the Law Society contract for sale and in particular the standard special and general conditions and their implications on a conveyancing transaction
- Draft a contract for sale
- Understand the important provisions of the *Family Home Protection Act, 1976* and the *Family Law Acts, 1981 and 1995*
- Understand the difficulties these Acts present to the conveyancer and be familiar with Law Society recommendations in this regard
- Understand the provisions of the *Land Act, 1965*, particularly sections 12 and 45
- Analyse deeds and memorials and be familiar with the parts of a deed and memorial and how deeds and memorials are drafted and executed
- Draft deeds and memorials
- Understand the system of furnishing an undertaking and certificate of title to a lending institution and be in a position to act for a mortgagor or mortgagee in a lending transaction
- Understand the different types of searches that can be carried out and when each type of search is relevant
- Be familiar with the Land Registry rules and how the Land Registry deals with transfers, charges, discharges, section 49 applications, judgment mortgages, cautions, inhibitions, conversion of title, first registrations, limited ownership and transmissions
- Identify the relevant forms to be lodged in the Land Registry for a particular transaction and the Land Registry fees payable in respect of same to enable registration to be effected
- Understand the difference between a conveyancing transaction involving a second-hand house and a conveyancing transaction where a new house is being purchased
- Be familiar with the building agreement and the relationship between the building agreement and the standard contract for sale
- Be familiar with the standard conveyance/transfer used in the purchase of a new house and in particular the schedules contained in it
- Be familiar with the HomeBond Scheme and the limited protection given to the purchaser by that scheme
- Understand the system of payment of booking deposits, deposits and stage payments and be familiar with the Law Society recommendations in respect of them
- Calculate the stamp duty payable on the purchase of a new house
- Understand whether a development is subject to or exempt from the *Planning Acts*

- Be familiar with the Law Society recommendations in relation to planning matters
- Be familiar with the planning legislation and planning applications and appeals
- Understand when building by-law approval is required and when it is necessary to comply with the building regulations
- Analyse planning documentation
- Understand how the environmental legislation ties into the planning legislation
- Understand the different types of licences which may be required and identify when such licences are required
- Advise a client on environmental law considerations in a given conveyancing transaction
- Be familiar with the standard Law Society requisitions on title and understand the significance of each requisition
- Understand how requisitions on title should be answered
- Identify the documents to be handed over on closing
- Examine a set of title documents and raise and reply to requisitions arising from them
- Identify the items to be included in a typical fee note for a residential conveyancing transaction
- Be familiar with the remedies available when a conveyancing transaction does not complete
- Understand issues of ethics and undertakings in conveyancing
- Understand the various tax issues that may arise in a conveyancing transaction
- Understand the series of steps in a typical conveyancing transaction.

Landlord and tenant law

- Introduction to leases
- Repairs
- Termination
- *Landlord and Tenant Acts, 1980 and 1994*
- Ground rents
- Commercial leases.

The following is only a synopsis of the detailed objectives of the landlord and tenant law element of the *Applied land law* module. Practitioners who would like a complete list of the objectives may request them from Gabriel Brennan.

Students should be able to:

- Identify the different categories of lease and the distinction between leases and licences
- Understand the process involved in taking a lease, from the initial taking of instructions from a landlord or tenant to registration of the lease
- Advise on the contents of a standard lease
- Advise either the landlord or tenant as to their liability to repair
- Advise on the different methods of termination of leases
- Advise a landlord or tenant on the equities providing for a renewal of a tenancy under the 1980 or 1994 Acts
- Advise a landlord and tenant on the law relating to covenants against alienation, sub-letting and change of use
- Advise a landlord or tenant on the compensation provisions for disturbance and improvements
- Advise on the type of lease which gives a right to purchase the freehold
- Advise on the procedures for the acquisition of the freehold
- Advise on the complications of buying out the freehold from the client's point of view, taking into account the financial, tax and title considerations
- Advise either party on the appropriate clauses to include or exclude in a standard commercial lease
- Advise a landlord or tenant on the issue of alienation, insurance and on the standard clauses in relation to rent review and service charges. G

Please send any comments or suggestions on the curriculum and applications to tutor to Gabriel Brennan, Law Society of Ireland, Blackhall Place, Dublin 7 (DX: 79 Dublin, tel: 01 672 4800, fax: 01 6724803, e-mail: g.brennan@lawsociety.ie).

Council report

Report on Council meeting held on 15 October 1999

Motion: stage payments

'That this Council is opposed to the practice by some builders/developers of including in building contracts for new houses that the purchase price be paid by way of stage payments and requests the Minister for the Environment and Local Government to make the necessary regulations to prohibit this.'

Proposed: John B Harte
Seconded: Sean Durcan

The Council agreed to adjourn the motion to the November meeting, so that the views received from practitioners could be collated and considered by the Council.

Director of Education

The Council unanimously approved the appointment of TP Kennedy as Director of Education and, on behalf of the Council, the President wished Mr Kennedy every success in his new position.

Revenue audits: access to client information

There was a lengthy discussion in relation to access to client information being sought by the Revenue in the course of audits of solicitors' practices. The Council expressed strong concerns in relation to any attempts to erode the fundamental principle of client confidentiality. It was agreed that the Taxation Committee should meet again with the Revenue and communicate the Council's concerns, with a view to identifying measures which would provide the Revenue with verification of transactions without breaching client confidentiality.

Proposed designation of solicitors pursuant to section 32 of the *Criminal Justice Act, 1994*

The Council considered draft regulations designating solicitors and draft regulations prescribing activities which had been received from the Department of Justice, Equality and Law Reform. Regulation 4(2) of the designation regulations provided that 'section 57 of the Act shall not apply to a person who practices as a solicitor whose suspicion under that section is based on or arises from information which that person believes, in good faith, to be subject to legal privilege'. The Council agreed that this was not a sufficient protection of client confidentiality. The constitutionality and the *vires* of the draft regulations were discussed and the Council concluded that an urgent meeting should be sought with the Minister on the matter.

Draft Bill on eligibility for appointment as judges of the High and Supreme courts

The Director General reported that he had met officials from the Department of Justice, Equality and Law Reform, together with Michael V O'Mahony, to discuss certain items of interpretation in relation to the draft Bill. In particular, it appeared that the issue of whether a solicitor was a 'litigation solicitor' within the terms of the Act would probably be left to be determined by the Judicial Appointments Advisory Board. The Minister had promised the Director General that the Bill would be published before Christmas.

E-commerce

The Chairman of the Business Law Committee, Donald Binchy, reported that there were forthcoming developments in relation to e-commerce that would affect the profession. The Companies Registration Office had indicated that it would accept Form 47 in electronic form on an experimental basis in the near future. In addition, changes would be effected by the *E-commerce directive* and also, apparently, by a Bill which was in draft form. The committee would keep the Council advised of developments.

Conveyancing

The Chairman of the Conveyancing Committee, John Harte, reported that the Revenue were introducing a new method of stamping deeds. The profession would be notified of the new arrangements via the *Gazette*. The President said that, in recent discussions with the Revenue Commissioners, he had expressed concern in relation to delays in the stamping office in Cork. There was also some indication that a new stamping office might be opened in Galway. He had also mentioned delays in the Land Registry and the need for additional staff resources in a recent meeting with An Taoiseach.

Employment law wallchart

The Chairman of the Employment Law Committee, Hugh O'Neill, reported that a wall chart on employment law, prepared by the committee, would be issued to every solicitors' firm in the near future for display or for provision to their clients.

CCBE

The Society's representative on the CCBE, Geraldine Clarke, reported that the CCBE Task Force on money-laundering, chaired by John Fish, had achieved significant changes in the proposed draft directive extending the existing *Money-laundering directive* to 'independent legal professionals', among others. In particular, article 6 of the draft directive included an option of designating law societies as the appropriate bodies for reporting of suspicions by their members. This was a significant development. She further reported that it appeared that Mr Fish would be unopposed in his candidacy as Second Vice-President of the CCBE on 11 November. G

PRACTICE NOTE

Prison visit fees

In January 1999, the Criminal Law Committee advised practitioners that the Department of Justice, Equality and Law Reform intended to introduce a new procedure for claiming prison visit fees, effective from 1 October 1999. The department has confirmed that the new system is now in place. Practitioners are reminded that claim forms for prison visits will be available in book format at the main gate of each prison. Each form is individually numbered and a carbon copy is attached. This allows the form to be completed by the solicitor and certified and stamped by a prison officer. A copy of each claim form will be retained in the prison for reference purposes. The solicitor should take his or her copy of the claim form, insert the bill number and the legal aid certificate number and forward the form to Finance Division, Department of Justice, Killarney, for payment. Claim forms are **not** available from Finance Division, Killarney.

Criminal Law 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 past year, the tribunal received 43 applications from the Law Society and members of the public alleging misconduct against solicitors. The majority of the complaints were brought under section 3(d) of the *Solicitors (Amendment) Act, 1960*, as amended by *Solicitors (Amendment) Act, 1994*, namely conduct tending to bring the solicitors' profession into disrepute.

An analysis of the applications shows that misappropriation of funds, causing deficits to arise and failing to comply with the *Solicitors' accounts regulations* are the most serious causes of complaint. The Law Society of Ireland is responsible for ensuring the profession complies with the *Solicitors' accounts regulations* through the receipt of accountant's reports filed with it on an annual basis and by the inspection of solicitors' practices carried out by the Society's investigating accountants. To be in breach of the regulations is a disciplinary matter and there is no reluctance on the part of the tribunal to make the appropriate finding.

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
Maria O'Brien
Jacqueline O'Dowd

Between 1 November 1998 and 31 October 1999, the Disciplinary Tribunal met on 30 occasions. The following applications were considered by the tribunal during this period:

New applications.....43
Law Society
Prima facie cases found.....20
Awaiting *prima facie* decision 9

At hearing
Misconduct 5
Awaiting inquiry 15

Private
Prima facie cases found..... 3
No *prima facie* cases found.....3
Awaiting *prima facie* decision 8

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

Applications from previous period 24
Law Society
At hearing
Misconduct 6
Adjourned 11

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

At hearing
No misconduct.....2
Adjourned 3

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*:
Advised, admonished and fine 2
Advised and admonished 1
Admonished and costs.....1
Censure, fine and costs.....1
Censure and costs 1
Fine 1
Fine and costs.....1
The tribunal made three 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 name of the respondent solicitor be struck off the Roll of Solicitors 3

Cases presented to the High Court..... 9
Suspended from practice for a period of ten years.....1
Remitted to the Disciplinary Tribunal.....1
Adjourned 4
Awaiting presentation to the High Court.....3

nnual Report 1998/1999

Another area of concern to the tribunal is complaints received in respect of undertakings. The profession has been given the recognition and trust of financial institutions, building societies and other bodies which enable solicitors, by issuing an undertaking, to obtain valuable concessions for clients, without which it would be impossible for solicitors to operate efficiently. To safeguard the standing of undertakings, the tribunal has found a solicitor guilty of misconduct for failing to discharge an undertaking in a timely manner.

Solicitors' conduct should inspire confidence in the legal profession. Integrity should be the 'by-word' of the profession. In discharging its function, the tribunal has found a number of solicitors guilty of misleading the Law Society. In one instance, a solicitor wrote to the Society advising that he was writing to a complainant but no letter was received by the complainant. In another case, a solicitor misrepresented that a file had been transmitted to the complainant's solicitor when this was not in fact the case. Further, a solicitor misled the Society in correspondence by stating that his accountant's report would be delivered on three separate occasions when this was clearly not the case.

The tribunal also notes with concern the inclusion in almost all of the Law Society's applications the perennial complaints of failing to reply to the Society's correspondence and to attend meetings of the Registrar's/Compensation Fund committees. While some solicitors might find it irritating to respond to the Society, others, it would appear, have adopted the ostrich approach. The tribunal would urge solicitors who are unable to deal with a particular file to seek the assistance of a partner or colleague. Nevertheless, it is recognised that, in order to ensure the Society can operate its regulatory function, the onus on solicitors to reply to the Society's correspondence and to attend meetings of Society's statutory committees must be enforced.

On 21 May 2000, my appointment as Chairman of the Disciplinary Tribunal and those of the other members will expire. I would like to extend my sincere thanks to all members who have been most unselfish in giving of their time to work for the tribunal and to thank them for their support to me during the last number of years.

The administrative work of the tribunal has been looked after in a most helpful and efficient way at all times during the past year by Mary Lynch, clerk to the tribunal. I and the other members of the tribunal extend our thanks to her for her help and commitment.

Walter Beatty, Chairman
17 November 1999

Principal grounds on which professional misconduct was found

a) Solicitors' accounts regulations breaches

- Falsifying books of account by engaging in teeming and lading
- Failing to file an accountant's report in breach of regulation 21(1), *Solicitors' accounts regulations* No 2 of 1984
- Failing to file an accountant's report in breach of regulation 21(1), *Solicitors' accounts regulations* No 2 of 1984 (regulation 21, Statutory Instrument No 304 of 1984) in a timely manner or at all
- Failing to maintain the minimum books of account as required by regulation 19, *Solicitors' accounts regulations* No 2 of 1984
- Breaching regulation 7 in that monies were deducted from the client account in circumstances where there was no authority to do so
- Breaching regulation 5(b) in failing to lodge a sum of money being a portion of the settlement monies of the complainant to the client account
- Breaching regulation 10(1), *Solicitors' accounts regulations* No 3 of 1984 in failing to keep proper books of account to show all dealings with the complainant's monies held or paid

b) Clients' money

- Misappropriating clients' funds and causing a deficit in clients' funds
- Failing to lodge clients' funds to the clients' accounts
- Lodging clients' funds directly to office accounts

c) Failures

- Failing to discharge undertakings in a timely manner
- Failing to clear a mortgage on the property of a client
- Failing to discharge a settlement on behalf of a client and failing to discharge counsel's and engineer's fees in this case
- Failing to register clients' title in a timely manner or at all
- Failing to discharge party and party costs
- Failing to communicate with complainant's solicitors
- Failing to reply to correspondence from the complainants
- Failing to attend at meetings of the Registrar's/Compensation Fund committees despite being requested to do so
- Failing to communicate or respond to correspondence from the Society
- Failing to comply with the notice issued under section 10 of the *Solicitors (Amendment) Act, 1994*
- Failing to hand over a file to a client in a timely manner or at all
- Failing to act on a commitment given to the Society
- Failing to advise complainant of the amount of a settlement

d) Other

- Abandoning clients' files and breaching clients' confidentiality by so abandoning the files
- Causing claims to be made on the Compensation Fund which were admitted and paid by the Society
- Deducting fees from a settlement cheque of complainant in breach of section 68(3), (4) and (5) of the *Solicitors (Amendment) Act, 1994*
- Lodging false letters on files to mask the fact that a sum was not furnished to a financial institution
- Settling and receiving payment for ten accident cases without reference to the clients concerned
- Discharging statute-barred cases from clients' funds and misleading clients in so doing and increasing the deficit on his client account
- Misleading the Society in correspondence
- Misrepresenting to the Society that a file had been transmitted to the complainant solicitors when this was not in fact the case
- Placing fictitious letters on files purporting to forward monies for and on behalf of clients
- Receiving stamp duty in respect of clients but failing to discharge that stamp duty.

LEGISLATION UPDATE: 19 OCTOBER – 15 NOVEMBER

ACTS PASSED

Broadcasting (Major Events Television Coverage) Act, 1999
Number: 28/1999
Explan-memo: Yes
Contents note: Incorporates into Irish law the provisions of art 3a of Council Directive 89/552 (the *Television without frontiers directive*), as inserted by Directive 97/36. Provides that the Minister for Arts, Heritage, Gaeltacht and the Islands, in consultation with the Minister for Tourism, Sport and Recreation and others, may designate certain events as events of major importance to society. Provides that broadcasters who provide near-universal coverage on free television services shall have a right to provide coverage of events so designated in the public interest. Prohibits broadcasters in this jurisdiction from exercising exclusive rights to events which have been designated by other Member States in accordance with the provisions of the directive in such a way as to deprive a substantial proportion of the population in those Members States of following such events on free television
Leg-implemented: Dir 89/552; Dir 97/36
Date enacted: 13/11/1999
Commencement date: 13/11/1999

Udaras na Gaeltachta (Amendment) (No 2) Act, 1999
Number: 27/1999
Explan-memo: Yes
Contents note: Amends and extends the *Udaras na Gaeltachta Acts, 1979 to 1999* in relation to the number of board members, the constituency structure and other matters connected with the administration of an tUdaras
Date enacted: 26/10/1999
Commencement date: Commencement order/s to be made for ss5, 6, 7, 8, 17(c) and 18 (insofar as it provides for the repeal of section 10(3) of the principal Act *(Udaras na Gaeltachta Act, 1979)*; 26/10/1999 for all other sections

SELECTED STATUTORY INSTRUMENTS

Adoption Rules 1999
Number: SI 315/1999
Contents note: Prescribe the forms to be used for the purposes of the *Adoption Act, 1998.* They are to be read in conjunction with the *Adoption Rules 1988* (SI 304/1988), the *Adoption Rules 1990* (SI 170/1990) and the *Adoption Rules 1996* (SI 223/1996)
Commencement date: 8/10/1999

Courts Service Act, 1998 *(Commencement) (Remaining Provisions) Order 1998*
Number: SI 336/1999
Contents note: Appoints 9/11/1999 as the commencement date for parts II, III, IV, V, VI and VII (other than section 36) of the *Courts Service Act, 1998*

Courts Service Act, 1998 *(Establishment Day) Order 1999*
Number: SI 349/1999
Contents note: Appoints 9/11/1999 as the establishment day for the purposes of the *Courts Service Act, 1998*

Employment Equality Act, 1998 *(Commencement) Order 1999*
Number: SI 320/1999
Contents note: Appoints 18/10/199 as the commencement date for the *Employment Equality Act, 1998*

Employment Equality Act, 1998 *(Section 76 – Right to Information) Regulations 1999*
Number: SI 321/1999
Contents note: Prescribe the forms to be used for the purposes of section 76(1) of the *Employment Equality Act, 1998* – (a) by a person (the complainant) who wishes to obtain material information in order to decide whether to refer a matter to the Circuit Court, the Labour Court or the Director of Equality Investigation; and (b) by a person (the respondent) when replying to a request by a complainant for material information
Commencement date: 18/10/1999

Freedom of Information Act, 1997 *(Prescribed Bodies) Regulations 1999*
Number: SI 329/1999
Contents note: Provide for the extension of the *Freedom of Information Act, 1997* to certain statutory agencies in the health sector and public-funded voluntary hospitals, and to voluntary organisations which provide substantial public mental health services or services to persons with an intellectual disability
Commencement date: 21/10/1999

Jurisdiction of Courts and Enforcement of Judgments Act, 1998 *(Commencement) Order 1999*
Number: SI 353/1999
Contents note: Appoints 1/12/1999 as the commencement date for the Act

Road Traffic (Licensing of Drivers) Regulations 1999
Number: SI 352/1999
Contents note: Revoke and consolidate with amendments all regulations made to date under part III of the *Road Traffic Act, 1961* in relation to the licensing of drivers (other than regulations incorporated in the *Mechanically Propelled Vehicles (International Circulation) Order 1992*. Amendments include some changes to the categorisation of vehicles for driver-licensing purposes to comply with Council Directive 91/439/EEC on driving licences; the revision in certain respects of the physical and mental fitness criteria for driver-licensing purposes; the setting-out in greater detail of the driving operations to be carried out during the practical driving test with effect from 3/04/2000; and the recognition in Ireland of driving licences issued by other member states of the European Union or the European Economic Area for as long as such licences remain valid
Commencement date: 15/11/1999

Registry of Deeds (Fees) Order 1999
Number: SI 346/1999
Contents note: Prescribes fees payable in the Registry of Deeds
Commencement date: 1/02/2000

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ILT digest

of legislation and superior court decisions

Compiled by David P Boyle

COMMERCIAL

Regulation of private security firms to be introduced?

A private member's Bill has been introduced which seeks to provide for the registration, control and supervision of persons engaged in the private security industry. If passed, the legislation will also establish a body to be known as the Irish Security Authority, the function of which will be to establish and maintain a register of licensed providers of private security services.

Private Security Services Bill, 1999

CRIMINAL

Judge not entitled to deem service of drink driving summons good

The applicant appeared before the District Court on a charge of drunken driving. His solicitor challenged the summons on grounds of service, and stated that his appearance before the court was solely to submit that the summons was not properly before the court. In judicial review proceedings, the applicant claimed that the judge of the District Court had failed to act judicially or to accord him a fair hearing or basic fairness of procedures when he deemed the service good and abridged time for entry of an appearance. The applicant argued that the judge should have invited and considered any argument offered by the applicant concerning those issues, and that the judge was wrong to hold that the appearance of the applicant's solicitor before the court was sufficient to cure any defect in service of the summons. The applicant sought to have the criminal proceedings against him halted by way of prohibition, and an order of *certiorari* quashing the order of the District Court concerning the summons. In refusing prohibition but granting an order of *certiorari*, it was held that:

- On a literal interpretation, the submissions made by the applicant's solicitor to the judge amounted to a challenge to the court's jurisdiction. However, while there was no doubt that the court had jurisdiction to deal with the matter, it was also clear that the thrust of the solicitor's submissions was that the court should not entertain the summons as the service did not comply with the rules of the District Court. It was clear from his ruling that the judge appreciated that the challenge was not to his jurisdiction but was to the service and entry of the summons, and the judge dealt with it on that basis. While it appeared that the solicitor misinterpreted the legal implications of the failure to comply with the rules on service and entry, the judge understood the true nature of the challenge being made
- It was clear from his ruling against the applicant's solicitor that in so doing he was not relying on his powers under the rules, but on his view that the presence of the solicitor before him cured any defect in service. The judge was in error, as the sole purpose of the solicitor's appearance was to challenge the validity of the summons
- The judge was in error when he decided that he was entitled to deem service good and to enlarge the time for entry of an appearance purely on the basis of the solicitor's appearance;
- When the validity of the summons was challenged, an issue was raised which fell to be determined by the judge and he was not entitled to determine that issue without an inquiry with regard to all the circumstances under which the applicant claimed that the summons issued should not be proceeded with. He did not do so and exceeded his jurisdiction in making the order in question.

Flaherty v Judge Crowley (O'Donovan J), 24 July 1998

Question of substitution or alteration of charge did not arise

- The function of the District Court was to try the accused of the offence with which he was charged. While the facts which emerged could give rise to a conviction for a different offence, it was not the function of the court to seek the consent of the Director of Public Prosecutions to alter the offence with which the accused was charged, so as to ensure that he was convicted of some offence.

The accused was charged with stealing property contrary to section 2 of the *Larceny Act 1916*, as amended. He was employed by a security firm used by a branch of Dunnes Stores. The charge concerned a bag of cash and vouchers found to be missing from the cash office. The bag was later found in a room to which only the security staff had access, and the accused was confronted when he entered the room and took possession of the bag. He claimed to be in the process of returning an extra bag which he realised he should not have. The District Court judge said that the accused realised he should not have the money, concealed it, intended to keep it, and that the court intended to convict him. The judge stated that he was unsure whether to convict him of the charge on the charge sheet, an alternative charge or an amended charge. The judge

sought the opinion of the High Court as to whether the accused was guilty of any offence under the *Larceny Act*, or an attempt to commit an offence, and whether an alternative charge was appropriate and whether the Director of Public Prosecutions' consent was required before adopting that course. Without expressing specific views on the questions posed, the High Court held that:

- The function of the District Court was to try the accused of the offence under section 2 of the *Larceny Act 1916*. While the facts which emerged could give rise to a conviction for a different offence, it was not the function of that court to seek the consent of the Director of Public Prosecutions to alter the offence with which the accused was charged so as to ensure that he was convicted of some offence. The initiative for the substitution of another offence would come from the Director of Public Prosecutions, and the Judge should rule on an application to this end, should the Director of Public Prosecutions so request
- As it was indicated that the Director of Public Prosecutions had no view on the matter, there was no request before the District Court, and the question of substitution or alteration did not arise
- The guilt or innocence of the accused of the offences with which he was charged was an issue to be determined by the judge alone. It would be inappropriate for the High Court to interfere with this function
- It appeared that the accused only became aware that he should not have the bag 'at an early stage', that is, the District Court found that the accused only acquired this knowledge after he had actually received the bag. The accused was not an employee or servant of the owner of the cash. It was a question of fact whether the accused did 'convert' the bag and contents to his own use on the date in question. The area to which the accused brought the bag was not one to which he had exclusive access. It was for the District Court to decide whether or not there was an act of conversion on the date of the charge.

Director of Public Prosecutions v Byrne (Morris P), 17 November 1998

ENVIRONMENTAL

Major legislation regarding wildlife proposed

A Bill has been presented which, if passed, will:

- Provide statutory protection for Natural Heritage Areas
- Approve a number of measures or introduce new ones to enhance the conservation of wildlife species and their habitats
- Enhance the number of existing controls in respect of hunting, which are designed to serve the interests of wildlife conservation, and introduce new powers to regulate commercial shoot operators
- Ensure or strengthen compliance with international agreements and, in particular, enable ratification of the *Convention on international trade in endangered species* (CITES) and the *Agreement on the conservation of African-Eurasian migratory waterbirds agreement*
- Introduce statutory protection for geological and geomorphological sites
- Substantially increase monetary fines for contravention of the legislation and introduce prison sentences in addition to those fines
- Enable the Minister for Arts, Heritage, Gaeltacht and the Islands to act independently of forestry legislation
- Strengthen the protective regime for Special Areas of Conservation by ensuring that protection will, in all cases, apply from the time of notification of proposed sites, and
- Give specific recognition to the Minister's responsibilities with regard to promoting conservation of biological diversity in the context of Ireland's commitment to the *UN convention on biological diversity*.

Wildlife (Amendment) Bill, 1999

FAMILY

Onus on defendant in child abduction case

- The onus rested on the defendant to establish evidence that there was a grave risk that the children would be exposed to psychological harm or would be placed in an intolerable situation, if they were returned to the USA.

The plaintiff and the defendant were married in the USA. There were two children of the marriage. Both parents held Irish citizenship, and the children were dual citizens of the USA and Ireland. The marriage ended in 1997. As part of the divorce agreement, the defendant was granted custody of the two children, and the plaintiff had been given liberal access. The defendant then brought the children back to Ireland. The plaintiff applied pursuant to the *Child Abduction and Enforcement of Foreign Custody Orders Act, 1991* to have the children returned to the USA. The divorce agreement was based on the recommendations of a court-appointed evaluator, who expressly stated that it was not in the best interests of the children to be removed from the USA to live in Ireland. Following the divorce, the plaintiff was convicted in the USA of a violation of a protection order. The plaintiff was sentenced to a probation regime. The defendant made no application to the US courts to remove the children to Ireland. On arrival in Ireland, the defendant informed the plaintiff that she would not be returning with the children to the USA. The defendant contended that pursuant to the *Hague convention*, article 13(b), there was a grave risk that the children's return to the USA would expose them to psychological harm, or would otherwise place them in an intolerable situation. In ordering the return of the children to the USA, it was held that:

- The defendant and the two children were habitually resident in the USA, pursuant to the terms of the *Hague convention* and section 6 of the *Child Abduction and Enforcement of Foreign Custody Orders Act, 1991*
- The defendant's removal of the children was wrongful within the meaning of the convention and the 1991 Act
- The onus rested on the defendant to establish by way of evidence that if the children were returned to the USA, there was a grave risk they would be exposed to psychological harm, or would be placed in an intolerable situation
- It was clear from the evidence that the return of the children to the USA, accompanied by their mother, would not be damaging to the children
- It was not appropriate for the court to enquire into any other aspect of the children's welfare if they were returned to the USA
- The defendant was not suffering from a psychiatric illness, and there was no evidence to suggest that her return to the USA would damage her mental health
- The American courts were in a better position to deal with all the matters relating to the custody of the children.

NO'D v PB (otherwise O'D) (Quirke J), 31 July 1998

HEALTH AND SAFETY

New regulations on marketing of lamps

A set of regulations came into force on 1 July 1999 prohibiting the placing on the market for sale, hire or reward of lamps unless accompanied by information relating to the consumption of electric energy, in addition to certain specified supplementary information.

- This information must be conveyed to the potential customer by means of a label and product information notice (fiche)
- The Regulations place the onus for the accuracy of the labels and product information notices on manufacturers, who are also required to establish technical documentation sufficient to enable the accuracy of the information contained in the labels and product information notices to be assessed
- Provision is also made for inspection and enforcement of the regulations, penalties for failure to comply with the same and the transitional period to facilitate compliance.

European Communities (Energy Labelling of Household Lamps) Regulations 1999 (SI No 170 of 1999)

LICENSING

Government measures published

A Bill has been presented which has the following aims:

- The abolition of Sunday closing
- The removal of the prohibition on special exemptions after midnight on Saturday, and
- The introduction of a once-off all-night opening of licensed premises on New Year's Eve 1999 for the celebration of the millennium.

Intoxicating Liquor Bill, 1999

Longer pub hours?

A private member's Bill has been introduced which, if passed, will:

- Extend licensing hours by one hour in summer and one-and-a-half hours in winter, thus giving a year-round closing time of 12.30am
- Abolish 'holy hour' which currently last from 2.00pm to 4.00pm on Sunday
- Permit regular closing hours on St Patrick's Day, and
- Retain Christmas Day and Good Friday closing.

Licensed Premises (Opening Hours) Bill, 1999

Playing of recorded music to indicate intervals not a performance

- The playing of recorded music merely to indicate intervals in an entertainment did not amount to a performance.

The defendant was the owner of a theatre in Dublin. The issue before the court was the use of the theatre ground floor for late night concerts when the seating was not in use. The defendant was the holder of a valid theatre licence. In 1994, the ground floor theatre was visited three times by the gardaí. On each occasion, late night concerts were taking place. The gardaí alleged that recorded music was being played, while the defendant contended that live music was being performed. The defendant was charged with breaching section 20 of the *Intoxicating Liquor Act, 1927*, as he had allowed people to enter after 9.30pm when there were no seats, that there was no performance of live music, and that those entering had not prepaid for their tickets. The charges were dismissed, and the applicant appealed by way of case stated to the Supreme Court. The questions to be determined in the case stated were:

- Whether a performance was taking place at the theatre
- Whether the playing of recorded music amounted to a performance
- If there was a performance, whether any alcohol was been sold during the permitted time
- Whether the word 'seat' included a place for standing
- Whether the purchasing of tickets from a kiosk satisfied the criteria that customers had to previously engage or pay for a seat.

In answering the questions posed in the case stated and in allowing the appeal, it was held that:

- There was uncertainty in the law and, before a criminal sanction could be imposed on the defendant, it was entitled to know by clear and unambiguous language that such sanction would be applied in specific circumstances
- There had been a doubt as to those circumstances, it followed that the defendant could not commit an offence merely because there were no seats in its premises
- The playing of recorded music merely to indicate intervals in an entertainment did not amount to a performance
- The playing of live music did amount to a performance
- The word 'seat' should be interpreted as including a place for standing;
- The purchasing of tickets from a kiosk was sufficient.

Director of Public Prosecutions v Tivoli Cinema Limited (Supreme Court), 7 December 1998

PRACTICE AND PROCEDURE

Small claims procedure revised

With effect from 1 July 1999, new rules govern the procedure of the Small Claims Court. The rules provide for any increase in the jurisdiction of the Small Claims Court from £600 to £1,000 as well as prescribing forms to be used by persons applying to the Small Claims Court.

District Court (Small Claims Procedure) Rules 1999 (SI No 191 of 1999)

New ejectment procedure put in place

With effect from 26 July 1999, new *District Court rules* are put in place amending order 47 by the addition of a rule allowing the renewal of a warrant of possession pursuant to section 86 of the *Landlord and Tenant Amendment Act 1860* if not issued within six months of the date of the order.

District Court (Ejectment) Rules 1999 (SI No 218 of 1999)

Housing rules changed

With effect from 26 July 1999, a new procedure has been prescribed to be followed in applications to the District Court for exclusion, site exclusion and other allied orders under the *Housing (Miscellaneous Provisions) Act, 1997* as amended by the *Housing (Traveller Accommodation) Act, 1998*.

District Court (Housing (Miscellaneous Provisions) Act, 1997*) Rules 1999* (SI No 217 of 1999)

New form of search warrant in child cases

With effect from 26 July 1999, new rules are made under order 34 of the *District Court rules* by the inclusion of a form of information and search warrant under the *Child Trafficking and Pornography Act, 1998.*

District Court (Child Trafficking and Pornography Act, 1998*) Rules 1999* (SI No 216 of 1999) G

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News from the EU and International Law Committee
Edited by TP Kennedy, Director of Education, Law Society of Ireland

Ireland takes presidency of the Council of Europe

Ireland began its six-month presidency of the Committee of Ministers of the Council of Europe last month. This is the sixth time that Ireland has held the presidency and comes at a pivotal moment in the history of the council. The Council recently marked the tenth anniversary of the fall of the Berlin Wall and in the coming year, it will celebrate the 50th anniversary of the *European convention on human rights*.

Ireland last held the presidency in 1986. Europe has changed almost beyond recognition since then, with the admission of many former communist regimes to the council bringing the present total of Member States to 41. Many non-European states have observer status, the newest of which will probably include Mexico.

The Irish presidency has already established a series of general priorities for its term of office. These priorities were broached informally at a seminar organised by the Institute of European Affairs (IEA) in Dublin in October and were set out formally by the Minister for Foreign Affairs, David Andrews, at a meeting of the Committee of Ministers in Strasbourg last month. Among other things, the IEA seminar heard presentations from the new Secretary General of the Council, Walter Schwimmer, and from Ireland's ambassador to the council, Justin Harman. If Ireland's success during its presidency of the EU some three years ago is anything to go by, then much can be expected over the coming months.

Background

Ireland was one of the original ten founding members of the council in 1949. The political aim of the council is 'to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage'. Since its foundation, it has focused its efforts on the promotion and protection of human rights, the rule of law and democratisation. Matters relating to national defence are explicitly excluded from the competence of the council.

As is well known, the council is a classic inter-governmental organisation. It works primarily through a vast web of inter-governmental activities according to a periodic work programme. Overall political guidance is given to its activities by a Committee of Ministers which is facilitated by a highly specialised Secretariat General. The committee is complemented by a Parliamentary Assembly whose members are nominated by and from their own national parliaments. Ireland currently has eight members. As befits an inter-governmental organisation, the chief instruments of the council are conventions, recommendations, resolutions, studies, and so on. The most famous of these instruments are the *European convention on human rights*, the *European social charter* (and *Revised social charter*), *European convention for the prevention of torture* and the *Framework convention for the protection of national minorities*.

It is important to bear in mind that some topics not envisaged under the work programme of the council may still be dealt with using the machinery of the council provided enough Member States wish to do so and provided they conclude a special agreement to the effect (called 'partial agreements'). The activities under these partial agreements can be extremely fruitful. Ireland has recently joined the activities of the partial agreement in the social and public health field. Among other things, this gives Ireland access to a web of activities, including advanced research into modern forms of discrimination.

One hidden but very real benefit of involvement in these inter-governmental activities lies in the fact that the Irish participants (senior civil servants) bring back comparative insights and perspectives which they would not ordinarily have access to. This, in turn, influences and enriches the way in which law and policy evolves in this jurisdiction.

A revitalised Council of Europe

Until the late 1980s, the council performed the important but unspectacular role of monitoring compliance with the web of conventions then in force. It was assumed (largely correctly) that the foundations of the liberal-democratic legal order were sound in Western Europe and that most attention should be paid to monitoring compliance with its various conventions. Thus, in a sense, the council focused on the outputs of the democratic process rather than on the process itself. This focus was altered dramatically in the aftermath of the fall of the Berlin Wall in 1989.

The fall of the wall led to the emergence of new democracies from the former communist bloc. With the rush – born of political imperative – to admit these new states, the council realised that its role must also change. It found itself increasingly called upon not merely to police standards but also to promote standards and to actively facilitate the democratisation of the new regimes. To achieve these aims, the Council acquired new tools and bodies such as the ADACS (Activities for the Development and Consolidation of Democratic Stability) Programme, the Venice Commission on Democracy through Law, the establishment of a new office of Commissioner for Human Rights, and the creation of a process within the secretariat for the forward monitoring of the human rights situation in the Member States.

The council has been largely successful in its new outreach mode – so much so that no one now calls for it to revert to an exclusive focus on the policing of compliance with conventions. However, this very success has brought problems of its own. Partly these problems concern the predictable ones of co-ordination

and finance. But the core problem has to do with the interface between the revitalised Council of Europe with bodies such as the EU that have always had a more activist demeanour and that are becoming increasingly involved with human rights issues. No less than three EU '*comité des sages*' reports have been issued in recent years on the role of the EU in the human rights field.[1] The *Treaty of Amsterdam* significantly enhanced the place of human rights in the overall mission of the union and a *Charter on human rights* in the EU is presently under negotiation. It is reasonable to expect more treaty developments at the next IGC. From one perspective, this interface between the two organisations is a problem; from another, it is an opportunity and a challenge.

It is problematic in that the substantial (and growing) overlap of membership of the EU with the Council of Europe might mean that Member States will begin to invest more heavily (in political as well as financial terms) in the EU's humanitarian efforts to the detriment of the council. Yet this is also an opportunity, since it is exactly this overlap that should enable the EU to work with even closer harmony with the council in promoting human rights and ensuring respect for regional standards.

The Irish agenda

The Irish presidency comes at a time when there is a pressing need to sustain and even deepen the council's involvement in helping to build the capacities of the newly-emerging democracies. It comes at a time when new kinds of human rights challenges are emerging. Nowadays, the human rights mission has as much to do with enhancing the power of people as it has in protecting people against power. These challenges take place against a backdrop of changing institutional architecture in Europe. What, then, are the priorities of the Irish presidency?

First of all, the Irish presidency is committed to stand firm on principles and not to compromise on basic human rights standards. This has implications for the enforcement of court judgments, some of which remain outstanding. It also has implications for the enlargement and admissions process and for country-specific analysis. The achievement of this goal will take courage and persistence.

Secondly, the Irish presidency is committed to continuing the process of technical assistance to facilitate the process of democratisation throughout Europe but especially in the former communist bloc. This is unspectacular work but important nonetheless.

Thirdly, it is committed to finding new ways of engineering greater 'complementarity' with the activities of the EU. As part of this effort, it plans to hold a major pan-European conference next March in Dublin on the variety of mechanisms (both legal and non-legal) for promoting respect for human rights.

Fourthly, for its own part, it proposes to demonstrate its commitment to the council by a variety of practical steps. These steps include signing up to conventions which have not yet been signed/ratified. The Government is considering ways of incorporating the European convention in some form into Irish law. It is also noteworthy that the Human Rights Commission envisaged by the *Good Friday agreement* will probably come into existence at some point during the Irish presidency. The Government is also using the occasion of its presidency to join the activities of a variety of council bodies to which it was not attached in the past. It will join GRECO (Group of States Against Corruption) which is a partial agreement relating to co-operation in the fight against corruption. Indeed, it has recently signed the *Council of Europe civil law convention on corruption*. It is joining the North/South Centre for Global Solidarity which has been in existence since 1990 and is headquartered in Lisbon. It plans to join the Council of Europe Development Bank and will support accession to it by the EU.

The presidency is also committed to popularising the council in Ireland and is actively planning how this might be achieved. It is planning to distribute a Council of Europe educational pack to all Irish schools and to produce a history of Ireland's involvement in the council. It will also host a session of the Parliamentary Assembly in Dublin in May 2000 which should go some way toward raising the profile of that body in Ireland.

Finally, the presidency is committed to the process of modernisation and renewal within the council and its secretariat. One interesting innovation is the creation of a troika between outgoing, incoming and future presidencies in order to enable more rational forward planning to take place.

Through its presidency, Ireland will play its part in helping to construct our common European home, based on human rights, democracy and rule of law. The key goals of the presidency are to stand firm on basic principles, to further and deepen the council's role in facilitating the democratisation process throughout Europe, and to marshal and harness the forces of the EU with those of the council. It seems well placed to achieve these goals and to assume a position of moral leadership. G

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Footnotes

1 The two most recent reports were *Leading by example: a human rights agenda for the European Union for the Year 2000 – agenda of the Comité Des Sages and Final Project Report* (October, 1998) and *Affirming fundamental rights in the European Union: report of the Expert Group on Fundamental Rights* (February 1999).

Jurisdiction agreements and the *Brussels convention*

Article 17 of the *Brussels convention* displaces its jurisdictional rules when the parties to a contract agree that a particular court is to be given exclusive jurisdiction. Generally, the jurisdiction clause is required to be in writing. However, the article provides for some limited exceptions to this requirement. The article provides that:

'Such an agreement conferring jurisdiction shall be either:

a) In writing or evidenced in writing, or

b) In a form which accords with practices which the parties have established between themselves, or

c) In international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned'.

The European Court of Justice (ECJ) has adopted a liberal interpretation of article 17 and looks to the intention of the parties. The ECJ has taken a liberal approach to the interpretation of article 17 but is anxious to ensure that such clauses show the intent of both parties and do not go unnoticed by one of them. This can be seen in Case 23/78 *Meeth v Glacetal* ([1978] ECR 2133). A contract between French and German parties included a clause specifying that an action must be brought in the defendant's state. The court interpreted article 17 to enable this clause to be effective.

This liberal approach of the ECJ can be seen in Case 312/85 *Fiat v Van Hool* ([1986] ECR 3337). A written contract contained a jurisdiction clause. The contract stipulated that it could only be renewed in writing. The contract expired and was orally renewed. The ECJ held that the contract remained valid provided that its governing law allowed such a renewal. The liberal line of interpretation continued with Case 214/89 *Duffryn v Petereit* ([1992] ECR 1745). An English company, which purchased shares in Germany, went into liquidation. Petereit had been appointed as the liquidator. At issue was whether the liquidator could recover paid dividends. The company argued that the shareholders were bound by a jurisdiction clause in the company's statutes. The ECJ held that a company's statutes could be considered as a contract between the shareholders and between them and the company that they established. The court held that it satisfied the formal requirements of article 17, provided that it was contained in the company's constitutional documents, which were validly adopted under national law and lodged in a public register or in a place accessible to the shareholders.

In writing

The requirement of writing is satisfied where there is an express jurisdiction clause contained in a written agreement. Where it forms part of a set of general conditions on the back of a contract, it is only regarded as having satisfied this condition, if the text of the contract contains an express reference to the general conditions. In Case 71/83 *Russ v Haven* ([1984] ECR 2417), the ECJ held that a jurisdiction clause would only meet the requirement of writing in cases where the written contract contained the jurisdiction clause in its text where the contract had been signed by one party, where the consent of the other party was also in writing either in the original document or a separate one.

In *Russ v Haven*, the question arose of whether a jurisdiction clause in a bill of lading met the requirements of article 17. The ECJ held that it did if the bill came within the framework of a continuing business relationship between the parties, governed by the carrier's general conditions containing the jurisdiction clause, provided that the bills are all issued in pre-printed forms systematically containing the jurisdiction clause.

In Case 25/76 *Galaries Segoura v Bonakdarian* ([1976] ECR 8151), the question of an oral contact subsequently confirmed in writing arose. The case concerned a contract for the sale of a batch of carpets. The court ruled that where a contract is concluded orally and then followed by the issue by one party to the other of a purported confirmation in writing, incorporating the former parties standard terms, including a jurisdiction clause, the formal requirements of article 17 are not satisfied unless the confirmation is accepted in writing by the other party. However, the court said that there would be an exception where the oral contract came within the framework of a continuing trading relationship between the parties, which was based on the standard terms of one of them. In such a case, it would be contrary to good faith for the recipient of the confirmation to deny the existence of the agreement on jurisdiction.

The *San Sebastian convention* resolved the issue by adding two new subsections to article 17. An agreement conferring jurisdiction can be:

'a)In a form which accords to the practices which the parties have established between themselves, or

b) In international trade or commerce, in a form which accords with the usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned'.

It is only recently that the ECJ had begun to rule on these new provisions. The first such case was Case C-106/95 *MSG v Les Garvières Rhénanes SARL* ([1997] ECR I-911). The case concerned a time charter for the hire of a ship that had been concluded orally between a French company and a German company based in Würzburg. One of the parties sent the other a commercial letter of confirmation containing a pre-printed jurisdiction clause. This party then used invoices containing a similar jurisdiction clause. The other party remained silent and paid the invoices containing the clause.

On the basis of the court's previous case-law, the jurisdiction clause should have been held invalid. The court in its decisions has required an acceptance by both parties of a jurisdiction agreement (Case 25/76 *Segoura v Bonakdarian* and Case 221/84 *Berghoefer v ASA*). However, these decisions had been reached before the addition of (b) and (c) to article 17. This case turned on the interpretation of (c). The court held that consent was still a necessary element of article 17. The court held that the silence amounted to consent, as the use of the clauses was consistent with a practice in the area of international trade in which the parties were operating and that the parties ought to have been aware of this practice. It is for the national court to determine whether there is a practice in international trade or commerce in question and whether the parties are or ought to have been aware of it.

The court went on to establish criteria for national courts. In determining the existence of such a practice, the court should look

to the practice in the area where the activities are being carried on. It is insufficient to look at the national law of one of the parties. A practice can be regarded as existing where businesspeople in that area generally and regularly behave in a certain way when concluding contracts of a certain type. Actual or presumed knowledge can be established where parties have previously entered into commercial relations with one another or with other parties in that same area of business or where in that area of business such behaviour is generally and regularly followed when concluding contracts of a particular type so that it may be regarded as an established practice.

It returned to the subject in Case C-159/97 *Trasporti Castelletti Spedizioni Internazionali SpA v Hugo Trumpy SpA* (judgment of 16 March 1999). The dispute arose from alleged damage caused during the unloading of goods carried under 22 bills of lading from Argentina to Italy. Castelletti brought an action in the Italian courts. Trumpy disputed the jurisdiction of the Italian courts and sought to rely on clause 37 of the bills of lading, which conferred jurisdiction on the English courts. The *Tribunale di Genoa* upheld the challenge, finding that the jurisdiction clause was valid, in light of usages of international trade. The Court of Appeal upheld that finding on the basis that the shipper's signature on the face of the bills implied Castelletti's acceptance of their terms, including the jurisdiction clause on the reverse. The Italian Supreme Court of Cassation referred 14 questions concerning the interpretation of article 17 to the ECJ.

The first question was whether article 17 required the consent of the parties to the jurisdiction clause to be established. In *MSG v Gravières Rhénanes*, the ECJ had established that consent could be presumed where commercial usages of which the parties are or should have been aware exist in the relevant branch of international trade or commerce. The court applied the same ruling in this case.

In the ninth, fourth, fifth and eighth questions, the Italian court sought to establish the states in which a usage must be found to exist, the process by which it comes into being, the forms in which it must be publicised, and the consequences to be drawn as to the existence of a usage in this area, from actions challenging the validity of jurisdiction clauses inserted in bills of lading. The ECJ again referred to *MSG*. The existence of a usage is determined not by reference to the law of one of the contracting states or in relation to international trade or commerce in general, but in relation to the branch of trade or commerce in which parties to the contract operate. A usage is established when operators in that branch of trade or commerce generally and regularly follow a certain course of conduct when concluding contracts of a particular type. It is unnecessary for such a course of conduct to be established in specific state or in all the contracting states. The general observance of a practice in states which play a prominent role in the branch of trade or commerce can be evidence that helps to prove that such a usage exists. However, the determining factor is whether operators in the branch of international trade in which the parties to the contract operate generally and regularly follow the course of conduct in question.

The court also went on to hold that article 17 does not refer to any form of publicity. Thus, publicity given in associations or specialised bodies to the standard forms on which a jurisdiction clause appears may help to prove that a practice is generally and regularly followed, but such publicity cannot be a requirement for establishing the existence of a usage.

In its second, tenth and 11th questions, the Italian court asked whether the clause should be contained in a written document bearing the signature of the party stipulating it, with the signature being accompanied by a reference to the clause. The court also asked whether the clause must stand out prominently from the other clauses and whether the language in which it is drawn up must be related to the nationality of the parties. The ECJ held the validity of a jurisdiction clause may be subject to compliance with a particular condition as to form only if that condition is linked to the requirements of article 17.

Physical appearance

It is for the national court in the particular branch of trade or commerce to determine whether the physical appearance of the jurisdiction clause, including the language it was drawn up in and its insertion in a form which has not been signed by the party not involved in drawing it up, are consistent with the forms according to those usages. However, contracting states cannot lay down any formal requirements other than those set out in article 17. Thus, national statutory provisions requiring compliance with additional conditions as to form cannot nullify international trade usages.

In its 12th, 13th and 14th questions, the Italian court sought guidance on the parties' awareness of the usage. The court asked which party must be aware of the usage and whether his nationality is relevant. It asked what degree of awareness that party must have of the usage and, finally, whether any publicity must be given to the standard forms containing jurisdiction clauses and, if so, in what form.

The ECJ held that the validity of the clause under article 17 must be assessed by reference to the relationship between the original parties. Therefore, the awareness of those parties of the usage must be assessed. For the purposes of that investigation, their nationality is irrelevant.

The convention does not provide any guidance on proving awareness of a usage. Actual or presumed awareness of a usage can be demonstrated in two ways. Firstly, it can be shown where the parties had previously had commercial or trade relations between themselves or with other parties operating in that sector. Secondly, it can be shown where a particular course of action is sufficiently well known because it is generally and regularly followed when a particular type of contract is concluded, so that it may be regarded as being an established usage.

The convention is silent on the means by which awareness of a usage may be proved. Therefore, publicity given in associations or specialised bodies to standard forms containing jurisdiction clauses makes it easier to prove awareness, but it is not essential.

In its third, seventh and sixth questions, the Italian court asked whether there are under article 17 any limitations as to the choice of court. It asked whether the chosen court must have some link to the case, whether the court may review the validity of the clause as well as the intention of the party which inserted it, and whether the fact that the substantive provisions applicable tend to reduce that party's liability may affect the validity of the jurisdiction clause.

In answering this question, the court looked back to its earlier decisions in Case 25/79 *Sanicentral v Collin* ([1979] ECR 3423) and Case C-269/95 *Benincasa v Dentalkit* ([1997] ECR I-3767). The choice of court in a jurisdiction clause may be assessed only in the light of considerations connected with the requirements laid down in article 17. In a situation such as the one at issue here, any further review of the validity of the clause and the party who inserted it is excluded. Substantive rules of liability applicable in the chosen court must not affect the validity of the jurisdiction clause. G

TP Kennedy is the Law Society's Director of Education.

RECENT DEVELOPMENTS IN EUROPEAN LAW

FREE MOVEMENT OF PERSONS

Case C-337/97 *CPM Meeusen v Hoofddirectie van de Informatie Beheer Group*, judgment of 8 June 1999. Ms Meeusen, a Belgian, was a registered student at the Provincial Higher Technical Institute for Chemistry, Antwerp. Her father is the director and sole shareholder of a company established in the Netherlands. Her mother is employed by that company for two days a week. She applied for a study grant. Her application was refused. One of the grounds for this was that her father was not a 'worker' in Belgium. The ECJ held that a director of a company of which he is the sole shareholder is not a 'worker' as he is not carrying out his activity in the context of a relationship of subordination. However, his spouse could be regarded as a worker. The court held that where national legislation does not impose any residence requirement on the children of national workers for the financing of their studies, such a requirement imposed on the children of workers who are nationals of other Member States is discriminatory. It contravenes the principle of equal treatment set out in article 7 of Regulation 1612/68. The court went on to hold that article 52 of the treaty prohibits any discrimination based on nationality which hinders persons exercising their rights of establishment. This equal treatment guarantee thus prohibits the imposition of a residence requirement in respect of a grant of a social advantage where this is discriminatory in nature.

FREE MOVEMENT OF SERVICES

Case C-302/97 *Konle v Austria*, judgment of 1 June 1999. Austrian law provides that non-Austrians who wish to acquire land in the Tyrol must obtain prior authorisation and show that the property they wish to purchase is not intended as a secondary residence. In 1994, Mr Konle, a German, purchased building land in the Tyrol. However, he was refused the necessary authorisation. The Austrian law was replaced by a 1996 Act requiring the same procedures of Austrian nationals and non-Austrians. The ECJ held that the ownership of property, though within the control of Member States, is not exempt from the application of fundamental principles of EU law. The requirement of a prior authorisation violated the treaty unless it met certain conditions. In this case the desire to ensure that the local economy did not depend on tourism was a valid concern. However, the need to provide evidence relating to future use of the property contained an inherent risk of discrimination. This requirement was applied in a manner discriminatory to non-Austrian nationals.

LITIGATION

References to the ECJ

Case T-126/97 *Eco Swiss China Time Ltd v Benetton International NV*, judgment of 1 June 1999. In 1986, Benetton granted a licence to Eco Swiss to manufacture watches and clocks. The licence was ended in 1991 and Eco Swiss sought compensation for loss. The licence contained an arbitration clause referring disputes to arbitration in the Netherlands. The arbitrator awarded Eco Swiss some $28 million compensation. Benetton applied to the Dutch court to have the award set aside on the basis that it was contrary to EC competition law. A number of questions were referred to the Court of First Instance for its consideration. It looked at the ability of arbitrators to make references to the court under article 234. The court held that private arbitrators did not constitute a 'court or tribunal'. The parties had not been obliged to refer their dispute to arbitration and state authorities had no control over the conduct of the proceedings. The CFI then looked at the ability of a court charged with reviewing the validity of an arbitration award to make a reference. The CFI held that article 234 was applicable to such a review. It is for the national court to consider whether there were issues of EC law arising out of the award justifying such a reference. The court then examined the enforceability of an arbitration award that fails to apply EC competition law. The CFI held that articles 81 and 82 are of fundamental importance to the operation of the single market. Thus, they should be regarded as rules of public policy and override the finality of an arbitration award. The CFI finally determined that a national limitation period of three months within which an article 234 reference must be made was not excessively short.

TAXATION

Company taxation

The Commission will present a report on company taxation in the Member States in 2000. Its aim is to show the diversity in levels of company taxation in the Member States and to identify any obstacles to cross-border economic operations. This study will complement the work of the 'Primarolo group' which is investigating harmful or unfair tax competition in the EU.

VAT

Cases C-338/97, C-344/97 and C-390/97 *Erna Pelzl and Others v Steiermärkische Landesregierung, Wiener Städtische Allgemeine Versicherungs AG and Others v Tiroler Landesregierung, STUAG Bau-Aktiengesellschaft v Kärtner Landesregierung*, judgment of 8 June 1999. The applicants contested certain charges to promote tourism introduced by Austrian regional authorities. Those charges were intended to promote tourism in the regions concerned. All traders with a direct or indirect economic interest in tourism and having their registered office or a place of business in the Tyrol, Carinthia, or in one of the communes of Styria, were required to pay these charges. The basis of assessment of the charge was the annual taxable turnover, as defined by the Austrian law on turnover tax. The applicants argued, that this charge was contrary to article 33(1) of the Sixth Directive. The court held that the Sixth Directive permits a Member State to maintain or introduce taxes, duties or charges on the supply of goods, the provision of services or imports only if they cannot be characterised as turnover taxes. To decide whether a tax, duty or charge can be characterised as a turnover tax within the meaning of article 33, it is necessary to determine whether it has the effect of jeopardising the functioning of the common system of VAT by being levied on the movement of goods and services and on commercial transactions in a way comparable to VAT. Taxes, duties and charges must be regarded as being imposed on the movement of goods and services in a way comparable to VAT if they exhibit the essential characteristics of VAT.

The court held that the essential features of VAT are that: it applies generally to transactions relating to goods or services; it is proportional to the price charged by the taxable person in return for the goods and services which he has supplied; it is charged at each stage of the production and distribution process, including that of retail sale, irrespective of the number of transactions which have previously taken place; the amounts paid during the preceding stages of the process are deducted from the tax payable by a taxable person with the result that the tax applies, at any given stage, only to the value added at that stage and the final burden of the tax rests ultimately on the consumer. A charge of the kind introduced by Austrian regions was not levied on the movement of goods and services or on commercial transactions in a way comparable to VAT. Firstly, there was no provision for deduction of amounts paid as input tax. The result of this is that the charges apply not only to the value added at a particular stage in the production and distribution process but also to the overall turnover achieved by the taxable undertakings. Secondly, the charges were not passed on to the final consumer in a manner characteristic of VAT. Even if an undertaking selling to final consumers took account, in fixing its price, of the amount of the charge included in its general expenses, not all undertakings would have the possibility of thus passing on, or passing on in full, the burden of the tax. Thirdly, since the charges to promote tourism are calculated, subject to certain exemptions, on the basis of an overall annual turnover, it would not have been possible to determine the precise amount of the charge passed on to the customer when each sale is effected or each service supplied, and the condition that this amount should be proportional to the price charged by the taxable person is thus not satisfied either. Therefore, the charges to promote tourism did not constitute a tax on consumption, the burden of which rests on the final consumer of the product, but were charges on the activities of undertakings involved in tourism. Even if the charges at issue in the main proceedings are generally or almost generally applicable in the regions in question, that would not suffice for them to be classified as turnover taxes within the meaning of article 33 of the Sixth Directive, inasmuch as they are not levied on commercial transactions in a manner comparable to VAT. G

Barnardos launches guardian *ad litem* service
The children's charity Barnardos has set up a guardian *ad litem* service, which aims to advise the courts on the best interests of children who are the subject of legal proceedings. The new service was launched last month by Mrs Justice Catherine McGuinness and at the event were *(l-r)* Barnardos' Director of Childcare Norah Gibbons, guardian *ad litem* Rose Forrest, solicitor Pol O Murchu, Barnardos' Chief Executive Owen Keenan and solicitor Barbara Hussey

Law Society President Anthony Ensor greets Minister for Finance Charlie McCreevy on his arrival at Blackhall Place to address the Society's Corporate and Public Service Group's conference on public-private partnership

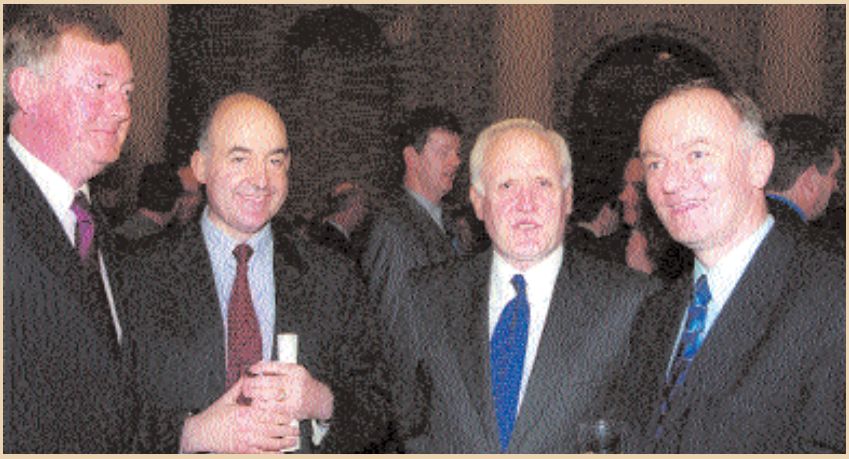
Ring out the old ... then President of the Law Society Patrick O'Connor, flanked by newly-appointed Director of Public Prosecutions James Hamilton *(left)* and his predecessor as DPP for 25 years, Eamonn Barnes

Bank of Ireland Trust to bankroll SYS
Announcing the Bank of Ireland Trust Service's decision to sponsor the Society of Young Solicitors were Enda Murphy and Kim Lloyd from Bank of Ireland Trust Services and SYS chairman Julian Yarr

There goes the judge, there goes the judge!
A group of solicitors join District Court clerk Ita Scalon in bidding farewell to District Judge Bernard Brennan before his recent retirement. Pictured are Joseph Caulfield, Padhraic Harris, Alan Gannon, Judge Brennan, Thomas Heneghan, Gerard Gannon, Mrs Scalon, Padraig Kelly, Declan O'Callaghan and Kieran Madigan

Launch of the new Courts Service

Law Society Director General Ken Murphy, who was a member of the Working Group on a Courts Commission (on whose reports the Courts Service is based), and Mrs Justice Susan Denham, Supreme Court, who chaired the working group



(L-r) Minister for Justice, Equality and Law Reform John O'Donoghue, two newly-appointed High Court judges, Mr Justice Aindrias O'Caoimh and Mr Justice Joseph Finnegan, and the Chief Executive of the Courts Service, PJ Fitzpatrick, at the reception marking the transfer of management responsibilities for the courts to the new Courts Service

Mr Justice John Murray, Supreme Court *(left)*, and Brendan Ryan, the Courts Service's Director of Operations for the Circuit and District courts

Recently-appointed judges of the District Court, Judge Patrick Brady and Judge Sean MacBride, with DPP James Hamilton and Law Society Director General Ken Murphy

Talking about equality
Mrs Justice Catherine McGuinness chats to ICCL Director Donncha O'Connell at the recent ICCL equality conference. The conference attracted more than 200 people interested in learning more about the new legal regime for equality under the *Employment Equality Act, 1998* and the *Equal Status Bill, 1999*

Southern Law Association' AGM
Pictured at the recent AGM of the Southern Law Association were: *(back row, l-r)* Justin Condon, Pat Bradley, Pat Casey, Eamon Harrington, Kieran McCarthy, Michael Mullane; *(middle row, l-r)* Finbarr Murphy, Tom O'Sullivan, Edward O'Leary, Pat Dorgan, Simon Murphy, Nuala Teahan, Jerry Cronin; *(front row, l-r)* Edna English, Fiona Twomey, SLA secretary Richard Neville, SLA President Sean Durcan, Patrick O'Connor, then President of the Law Society, and Law Society Director General Ken Murphy

OBITUARY

Brendan P McCormack (1910-1999)

For a generation of solicitors, Brendan P McCormack played a key role in their qualification. Indeed, for many, he was the principal factor in their success in the Law Society's examinations. From 1936 to 1962, his 'grinds' were an essential requirement, not only for those who might have considered themselves weak in particular subjects, but for those who would ultimately claim the highest places.

It must be virtually impossible for current Irish law students – surrounded, or perhaps drowned, by text books, case books and journals (to say nothing of electronic databases) on every conceivable aspect of Irish law – to conceive of the situation in the 1950s and 1960s. There were virtually no Irish law books, and none at all in the core subjects of property, tort and contract.

Brendan P McCormack was a great teacher, above all a great teacher of the law of property, which even contemporary students equipped with several excellent textbooks find the most opaque of topics. He had a gift for simplifying the law, paring it down to its bare bones so that it didn't seem quite so unapproachable. His *modus operandi* was to supplement his printed notes – priceless texts only recoverable from students at the end of the course in those pre-copier days – with additional dictation in his inimitable drawl while he smoked successive cigarettes. (One wonders what antidote there must have been in the crowded atmosphere of the upper floors of 54 Lr O'Connell Street which preserved Brendan into his 90th year.) Classes sometimes terminated a little early – the more cynical students linked these with certain race meetings where horses owned by him or his friend WJ Kavanagh might be running.

One of his regular phrases when dealing with a difficult point of law was to say that 'the better legal opinion is ...' It was, of course, his own opinion, but it was also the better legal opinion.

Some 30 years after being 'grinded' by Brendan, I got a phone call from him asking for my view on a point of property law. Needless to say, it turned out that my only function was to confirm the conclusion he had already reached.

To his son Paul, who carries on the practice, and to his other children and grandchildren, our sympathy on the loss of a unique figure in the profession.

John F Buckley

OBITUARY

Deirdre Casey (1950-1999)

'Two roads diverged in a wood, and I –
I took the one less travelled by,
And that has made all the difference.'

By the time Deirdre Casey died on 5 January, she had long walked Robert Frost's celebrated road. She believed firmly it was the only worthwhile road for responsible living. If we don't make the choices for ourselves, she told me once over coffee and a bun (for her) and a pint (for me), someone else makes them, or chance spins us like leaves in the air. And what kind of life would that be?

Deirdre was a solicitor, in practice with her father, Sean Casey, her four brothers and her sister-in-law, Ruth Carolan, in Ennis. She died at home, after a comparatively short illness, surrounded by those closest to her, loved and loving still. She was brought to the Cathedral of Saints Peter & Paul on the next day, the feast of the Epiphany, and was welcomed – as again at the mass on 8 January – by a thronged cathedral, full to the outside with people who came to pay her their last respects and to offer what consolation they could to all of us bereft by her death. The Clare Law Association saluted their first woman president with a guard of honour which, after escorting the cortege from the cathedral, stood formally to attention in its final farewell beside the family law offices on Bindon Street.

Deirdre was the eldest of the nine children of Sean and the late Maeve Casey. Her family were ever her prime concern and her loyalty and devotion to them all, including all her in-laws, and most especially her many nephews and nieces, was one of the great and abiding constants in her life and in theirs. Her loss is irreplaceable to them.

Her main practice areas were conveyancing and family law, where she was an acknowledged expert. She was truly interested in her clients and respected the trust they put in her. Clients left Deirdre knowing that at last their burden was shared. It is not just by her family and colleagues that she is missed.

Deirdre was, in the words of a friend of mine, a cultured lady with a fine mind, and a formidable, ever active intelligence. Outside the law, she was for many years a member of the Ennis Soroptimists and her main and abiding intellectual interest was in the classical literature, philosophy and history of Greece and Rome. She also loved (*inter alia*) holidays, opera, talking late into the night with a cheroot and a 'cup of the inevitable', reading poetry, serious novels and also detective stories with off-beat but romantic heroes, picnics, walking on the beach at Lahinch and McChicken sandwiches at McDonald's.

In her home there is a small painting and a quotation from Henry van Dyke with which she fully identified: 'Love Life! It gives you the opportunity to work and to play, to love and to look at the stars'.

God grant you always, Dee, the joy of His company, and to us, who miss you not less than always, the assurance in faith that the resurrection of His Son is the central reality, and the hope for us all.

James I Sexton

Apprentices' page

Compiled by Keith Walsh

Christmas comes early

The recommended rate of pay as set by the Law Society is, for the majority of apprentices, their actual wage. It has rarely been sufficient even for the most frugal of apprentices. The Society's recent decision to increase the recommended rate has been enthusiastically welcomed by both current and future apprentices.

The catalyst for change came from the staff/student liaison committee of the current professional course based at Griffith College. Two apprentice members of this committee, Ann Brennan and Keith Walsh, undertook a comprehensive survey of the 300 professional course apprentices (the response rate was 85%) and compiled a 25-page report based on the results. It concluded that a significant increase in the recommended rate was justified and appropriate, given the nature of the work performed by apprentices, the current economic climate and the rates of pay of other professional trainees.

Among the facts highlighted by the survey were:

1) Many students are faced with no income and full fees

- 36% of all students receive no support whatsoever from their master/firm while on the course
- 30% receive full support in the form of both fees and wages.

2) Wages tend to be low

- Just over half the sample earned no more than £120 a week after tax
- 5% said they earned between £0-£80 a week before starting the professional course.

3) A significant minority is burdened with loans

- Of those not receiving a salary on the course, one-third had taken out a bank loan (the average being £3,705)
- 27% of the class had loans outstanding from third level, and 26% of those had loans of £4,000 or more to repay.

The Education Committee was supportive of the report and recommended increases to £135 a week for pre-professional course apprentices, £155 for the first six months following completion of the professional course, and £235 for the remainder of the in-office apprenticeship. This recommended rate was duly voted in by the November sitting of the Law Society Council.

This new recommended rate will deliver a much-needed boost to the morale of apprentices and, indeed, to their quality of life. This treatment of apprentices as professional trainees is long overdue and it means that apprentices and the Law Society can move into the 21st Century on an optimistic note.

Pictured at the recent Law Society parchment ceremony: (above) the winners of the *John B Jermyn Prize*, Sarah Harte, Sinead McNamara, Veronica Kelleher and Deirdre McBennett, with John Jermyn (Below) Winners of the *Guinness & Mahon Tax Prize*, Jane Farren, Catherine Pierse, John McElory and Rowena Fitzsimons

The storming of King's Inns

Passions ran high when apprentices were invited to the King's Inns to debate the motion *A solicitor's place is in the District Court*. The inflammatory motion (and a strategically-timed free wine reception) guaranteed a full house. Beads of sweat trickled down the faces of some speakers, suggesting they anticipated a bumpy ride from hecklers.

Their fears proved entirely justified. At one point, an impassioned Patrick Martin rose to his feet to denounce the Bar as an outdated relic of imperialism. He then had to be physically restrained from leading a chorus of *La Marseillaise*. Later, a speaker for the King's Inns was taken to task for being inaudible. His jaw dropped when Ciara Farrell helpfully interjected that he should try to speak louder than his tie. SADSI was fortunate to have a number of experienced and talented debaters on its side, including Michael Finucane, Patrick Walshe, John Cahir and Gareth Bourke. The speakers for the King's Inns struggled valiantly, but to no avail, as the motion was overwhelmingly rejected.

Hopefully, the long tradition of apprentice debating will continue in a similar vein in the 21st Century.

Shane Kelleher

Farewell from SADSI auditor

As I pass the baton on to the new auditor, Keith Walsh, I'd like to look back over some of my personal highlights of the year. I was overwhelmed by the response to our Education and Careers Conference, which was attended by more than 120 apprentices. Another high point was the SADSI Ball, the biggest (and by many accounts, the best) ever held by SADSI. Close to 400 apprentices partied the night away at the Imperial Hotel in Cork. Other highlights of my year included the pub quiz in aid of Simon, the summer barbecue and the ten-kilometre run for Goal.

I would like to thank my committee, the Law Society and all of the apprentices who attended our events during the year.

Louise Gallagher

PROFESSIONAL PRACTICE COURSE CHRISTMAS PARTY

Date:
Monday 21 December, 2pm
Venue:
Chief O'Neills, Smithfield, Dublin 7
Refreshments courtesy of the Law Society and Chief O'Neills

Book review

Now and then: a celebration of Sweet & Maxwell's bicentenary

Anthony J Kinahan, general editor

Sweet & Maxwell (1999), 100 Avenue Road, London NW3 3PF, England. ISBN: 0-421-66060-0. Price: free.

Sweet & Maxwell have reached a venerable age. To celebrate their first 175 years, the company published its 1974 history, *Then and now*. Twenty-five years later, a new volume, *Now and then*, celebrates the bicentenary and contains a forward-looking collection of essays on law and legal practice.

The essay written by Robert Pierse, senior partner in Pierse & Fitzgibbon, is of particular interest in the Irish context. Entitled *Legal practice in Ireland 1999-2024*, it describes how he set up practice in his mother's drawing room in 1962 and made £25 gross in his first year of practice. He now presides over two offices in Listowel and Tralee and considers it necessary to have a gross fee income of over £1 million a year to run both practices.

Although he started with a second-hand typewriter which he slowly manipulated by two of his fingers, Pierse is proud to record that he had the first photocopier, dictaphone, electronic typewriter, word-processor, telex, scanner and e-mail of any lawyer that he knows in Kerry.

Adopting the phrase Oliver Cromwell used about the law of property, 'an ungodly jungle', Pierse refers to growth of EU law. Family law with all its emotional and social difficulties, commercial law, including corporate battles in the courtrooms, and planning law are other growth areas he cites.

Other contributors in this book of essays include Brian Hall, president and chief executive officer of the West Group, with *Fast forward: thinking about the global legal information industry in the next quarter-century*; Professor Richard Susskind, IT adviser to the British Lord Chief Justice, on *The future of information legal providers*; Alison Firth, barrister, senior lecturer at Queen Mary and Westfield College, University of London, with *Copyright in the digital world: a reversion to old forms*; Lord Justice Brooke on *The courts and judiciary in 2024*; Graham JH Smith, a partner in Digital Media Group, Bird & Bird, on *Time, space and the 2024 commercial lawyer*; and Professor George Gretton of the University of Edinburgh with *Scots law in a golden age*.

Now and then is a very useful survey from different perspectives on how writers see legal practice in the next quarter-century. The book is compact and highly readable. It makes an important and original contribution to the topic of legal practice in the early years of the next millennium. G

Dr Eamonn Hall is Company Solicitor of Eircom plc.

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 3 December 1999)

Regd owner: William and Caroline Harrahill; Folio: 16443F; Lands: Rathnapish and Barony of Carlow; **Co Carlow**

Regd owner: Anthony Callery, Aughawee, Kilnaleck, County Cavan; Folio: 5350; Lands: Kill; Area: 18.706 acres; **Co Cavan**

Regd owner: Terence McGovern (Junior), Leglass, Glangevlin, Co Cavan; Folio: 249®; Lands: Creea; Area: 44.350 acres; **Co Cavan**

Regd owner: JJ Hurley & Sons Ltd; Folio: 28820 and 23875; Lands: (1) Situate in the Townland of Knockaphonery and Barony of Ibane and Barryroe; (2) Situate in the part of the land of Tullyneasky West and Barony of Ibane and Barryroe, County of Cork; **Co Cork**

Regd owner: David McMyler and Lena McMyler; Folio: 16127F; Lands: Known as a plot of ground situate in the Townland of Kilmoney and Barony of Kerry-currihy, Co Cork; **Co Cork**

Regd owner: Catherine Freeman; Folio: 9472F; Known as a plot of ground situate in the Townland of Skahanagh and Barony of Carbery West (East Division), Co Cork; **Co Cork**

Regd owner: Thomas Keane; Folio: 16211; Lands: Known as a plot of ground situate in the Townland of Kilclogh and Barony of Condons and Clangibbon, Co Cork; **Co Cork**

Regd owner: Kevin and Mary Walsh; Folio: 397L; Lands: Known as No 46 Gould Street situate in the Parish of St Finbar and the City of Cork; **Co Cork**

Regd owner: Julia Coakley; Folio: 18488; Lands: Known as a plot of ground situate in the Townland of Monavaddra and the electoral division of Bealock, Barony of Muskerry West, Co Cork; **Co Cork**

Regd owner: Denis S MacNeice, Goladoo, Barnesmore, Co Donegal, and 2 Carisbrooke Terrace, Bangor, Co Down; Folio: 471(R); Lands: Goladoo, Tawnawully Mountain, Friarsbush, Ardinawark; **Co Donegal**

Regd owner: Joseph McShane, Meetinghouse Street, Raphoe, Co Donegal, and 21 Columban Terrace, Ballycoleman Estate, Strabane, County Tyrone; Folio: 30948; Lands: Cooladerry; Area: 41.10 acres; **Co Donegal**

Regd owner: Lilian Mary Scott and Robert John Scott, Tullaghcullion, Donegal, Co Donegal; Folio: 37771; Lands: Tullaghcullion; Area: 0.825 acres; **Co Donegal**

Regd owner: Michael G Curran, c/o Daniel J Gettigan, Solicitor, Milford, Co Donegal; Folio: 5383F; Lands: Croaghross; **Co Donegal**

Regd owner: Denis and Elizabeth Sheehan; Folio: 84369L; Lands: Property known as Flat no 45, Level 1, Block no P3 Custom House Harbour, situate in the Parish of St Thomas and District of North Central; **Co Dublin**

Regd owner: Patrick C Mahon and Anne Mahon; Folio: 34163F; Lands: Townland of Hynestown and Barony of Balrothery West; **Co Dublin**

Regd owner: Catherine Harold; Folio: 28058L; Lands: Property known as 34 Thornville Avenue, situate in the Parish and District of Kilbarrack; **Co Dublin**

Regd owner: Christine Monks; Folio: DN2282; Lands: Oldtown, Townland of Grange (Parts) and Barony of Balrothery West; **Co Dublin**

Regd owner: Patrick O'Connor; Folio: 11438; Lands: Townland of Ardagh (part) and Barony of Clanmaurice; **Co Kerry**

Regd owner: Denis Ryan and Patrick Ryan (as to an undivided moiety each); Folio: 1157; Lands: Goulyduff and Barony of Narragh and Reban West; **Co Kildare**

Regd owner: Yvonne, Noel and Evelyn Mooney; Folio: 18578; Lands: Donaghamore and Barony of Clandonagh; **Co Laois**

Regd owner: Patrick Donoher; Folio: 4544F; Lands: Inchacooly and Barony of Portnahinch; **Co Laois**

Regd owner: Patrick Kelly; Folio: 24094; Lands: Townland of Glennagowan and Barony of Glenquin; **Co Limerick**

Regd owner: Francis Bellew, Hamlinstown, Monasterboice, Drogheda, Co Louth; Folio: 2577F; Lands: Hamlinstown; Area: 3.063 acres; **Co Louth**

Regd owner: Michael Rooney, 58 Upper Drumcondra Road, Dublin 9, and 2 Fairyhouse Road, Ratoath, Co Meath; Folio: 19144; Lands: Ratoath; **Co Meath**

Regd owner: Oliver Connell, Cloughreagh, Drumconrath, County Meath; Folio: 12680; Lands: Cloghreagh; Area: 7.163 acres; **Co Meath**

Regd owner: Patrick Summerville, Rath Hill, Dunshaughlin, County Meath; Folio: 18215; Lands: Rath Hill, Area: 31.60 acres; **Co Meath**

Regd owner: Patrick J Brady, Greenacres, Drumconrath Road, Carrickmacross, and 5 The Firs, Rockdaniel, Carrickmacross, Co Monaghan; Folio: 20093; Lands: Tullynaskeagh West; Area: 0.506 acres; **Co Monaghan**

Regd owner: Arthur Wesley Armitage; Folio: 5447; Lands: Cangort Park and Derrinclare and Barony of Clonlisk; **Co Offaly**

Regd owner: Mark Sheeran; Folio: 33490; Lands: Ballymurreen and Barony of Eliogarty; **Co Tipperary**

Regd owner: Joseph Power; Folio: 6932; Lands: Townland of Fennor South and Barony of Middlethird; **Co Waterford**

Regd owner: Richard Martin Kennedy (deceased); Folio: 9769; Lands: Townland of Clondonnell and Barony of Upperthird; **Co Waterford**

Regd owner: Maureen Allridge; Folio: 3210L; Lands: Townland of Abbeyside and Barony of Decies without Drum; **Co Waterford**

Regd owner: Thomas Parker, Rath, Glasson, Athlone, Co Westmeath; Folio: 3727; Lands: Rath; Area: 46.949 acres; **Co Westmeath**

Regd owner: Laurence Leo Prendergast (deceased); Folio: 1203; Lands: Grayrobin and Barony of Bargy; **Co Wexford**

Regd owner: Catherine Harold; Folio: 11385; Lands: Highpark Lower and Barony of Talbotstown Upper; **Co Wicklow**

Regd owner: Mary McCrea; Folio: 1871; Lands: Carnew and Barony of Shillelagh; **Co Wicklow**

Regd owner: John S Young and Heather Young; Folio: 1748L; Lands: Ballynerrin Lower and Barony of Arklow; **Co Wicklow**

Regd owner: Elizabeth Cullen; Folio: 4055; Lands: Togher More and Barony of Ballinacor North; **Co Wicklow**

Regd owner: Patrick Clarke; Folio: 1722F; Lands: Rossana Lower and Milltown North and Barony of Newcastle; **Co Wicklow**

Regd owner: Robert Nicholson and Christine O'Reilly; Folio: 11003; Lands: Killiskey and Barony of Newcastle; **Co Wicklow**

WILLS

Barlow, James (otherwise Thomas Joseph Barlow) (deceased). Would any person with information as to the whereabouts of the original will of Thomas Joseph Barlow, deceased late of 24 Baxter's Rd, Shirley, Solihull, West Midlands, B90 2RU, England, please contact M/s Neilan & Co, Solicitors, Ballaghaderreen, Co Roscommon, tel: 0907 60007/60028

Brady, Nora (deceased), late of 7 The Steeples, Templehall, Navan in the County of Meath, school teacher. Would any person having knowledge of a will of the

above named deceased who died on 12 May 1998, please contact Seamus Maguire & Co, Solicitors, 10 Main Street, Blanchardstown, Dublin 15, tel: 01 8211288 (Ref 2/sc)

Byrne, Michael (deceased), late of Kilnamanagh, Frenchpark, Castlerea, County Roscommon. Would any person having knowledge of a will of the above named deceased who died on 17 September 1999 at St. Thomas's Hospital, Lambeth, London, please contact CE Callan & Co, Solicitors, Crescent House, Boyle, Co Roscommon, tel: 079 62019 (Reference JD)

Casey, John, late of Dublin Road, Clane in the County of Kildare. Would any person having knowledge of a will executed by the above named deceased who died on 14 October 1999, please contact Arthur E MacMahon, Solicitors, Poplar Square, Naas, County Kildare, tel: 045 897936 (Ref 20468/SC/BD)

Cullen, Patrick, late of 26 Eire Street, Gorey, Co Wexford, who died on 11 September 1999. Will any solicitor or any person having knowledge of the will of the above possibly drawn in the Dun Laoghaire, South Dublin area, please contact **Box No 100**

Cummins, David (deceased), late of Ballydwane East, Stradbally, Co Waterford. Would any person having knowledge of the whereabouts of the original will executed by the above named deceased on 25 March 1987, the said deceased having died on 2 January 1994, please contact M/s T Kiersey & Co, Solicitors, 17, Catherine Street, Waterford, tel: 051 874366, fax: 051 870390

Delany, Dolores, late of 5 Maxwell Road, Rathmines, Dublin 6, formerly of Sandymount Terrace, Dublin 4 and Greenmount Road, Terenure, Dublin 6. Would any person having knowledge of a will executed by the above named deceased who died on 17 April 1999, please contact Anne Colley & Company, Solicitors, 6 Main Street, Dundrum, Dublin 14, tel: 01 2960488

Dowd, John Christopher (otherwise O'Dowd) (deceased), late of Carricknaveagh, Killenkere, Virginia/Bailieborough, Co Cavan. Would any person having knowledge of a will executed by the above named deceased who died on 1 February 1986, please contact McNamara & Company, Solicitors, 60 Upper Grand Canal Street, Dublin 4, tel: 01 6680005, fax: 01 6680754

Doyle, Elizabeth (deceased). Would any person having knowledge as to the whereabouts of the will dated 4 December 1952 of Elizabeth Doyle, late of 82 Clontarf Road, Clontarf (formerly of 35 Middle Gardiner Street) Dublin who died on 13 September 1965, please communicate with Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2, tel: 01 6180000 (Ref WW)

Fox, Margaret Alice, late of 62 Shandon Gardens, Phibsborough, Dublin 7 and former employee of Irish Sweepstakes. Would any person having knowledge of a will executed by the above named deceased who died on 31 August 1999, please contact James M Sweeney, Solicitor, 14 New Cabra Road, Phibsborough, Dublin, tel: 01 8389756

Joyce, Joseph (deceased), late of Knockdoe, Lockgeorge, Claregalway, Galway. Would any person having knowledge of a will executed by the above named deceased, please contact Michelle Colgan, Patrick M Keane & Company, Solicitors, 2nd 71 Hardiman House, Eyre Square, Galway, tel: 091 566767

Morrissey, Edward (otherwise Ned) (deceased late of Moan), Oola, County Limerick. Would any person having knowledge of a will of the above named deceased who died on 23 October 1999 at Milford Hospice, Limerick, please contact English Leahy & Associates, Solicitors, 8 St Michael's Street, Tipperary, tel: 062 52577

Murray (nee Walker), Norah (otherwise Nora) (deceased), late of Saint Mary's Hospital, Phoenix Park, Dublin 20 (formerly of 20 Church Avenue, Drumcondra, Dublin 9). Would any person having any knowledge of any next of kin of the above named person, please contact Woodcock & Sons, Solicitors, 28 Molesworth Street, Dublin 2, tel: 01 6761948, fax: 01 6760272

Walker, Mary Elizabeth, born Tralee c1950, daughter of George Walker and Norah Walker. Would any person having knowledge of above named Mary Elizabeth Walker (whose mother died in Saint Ann's Home, Tralee, County Kerry on 18 April 1953), please contact, Woodcock & Sons, Solicitors, 28 Molesworth Street, Dublin 2, tel: 01 6761948, fax: 01 6760272

EMPLOYMENT

Experienced solicitor available for locum position from January 2000. Conveyancing, probate and litigation. **Reply to Box No 101**

Killarney practice requires solicitor, experience preferable, to include conveyancing and probate. **Please reply with CV to Box No 102**

Solicitor required for general practice in town in west Limerick with special reference to conveyancing and probate, with at least two years' PQE. Part-time may suit. Excellent working conditions. Salary negotiable. **Please reply with CV to Box No 103**

MISCELLANEOUS

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

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 McAllen 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 K J Neary

Solicitor of ten years-plus standing with own client base would like to hear from sole practitioner contemplating retirement/expansion with a view to buy out/partnership. Reply in strictest confidence to **Box No 104**

Seven-day ordinary clean licence required. Contact Binchys, Solicitors, 40 Lower Baggot Street, Dublin 2, tel: 01 6616144 (Reference HMcG)

Solicitor, Dublin 2, seeks amalgamation or other arrangement. Might suit young solicitor or firm wishing to expand**. Reply to Box No 105**

Ordinary clean seven-day publican's licence available. Please reply in writing stating price offered to **Box No 106**

For sale: six-day publican's licence. All enquiries to Kelly & Ryan, Solicitors, Manorhamilton, Co Leitrim, tel: 072 55034 (Ref 6354/CM)

***Landlord and Tenants (Ground Rents) Acts, 1967–1984*: notice of intention to acquire a fee simple (section 4)**
To: The person or persons for the time being entitled to the freehold estate as successors in title to the interest of Robert Shervinton in the premises hereinafter described, and Marie White c/o Poe, Keily Hogan, 21 Patrick Street, Kilkenny.

1) Description of land to which this notice refers: All that and those the piece or plot of ground situate in Guard Lane in the Parish of St Mary and municipal borough of Kilkenny. 2) Particulars of applicant's lease or tenancy: lease dated 11 April 1913 whereby the said premises were demised by Sydenham Amy St Leger Whitfield to Richard Duggan for the term of 99 years from 25 March 1913 at the yearly rent of £3 and subject to the covenants and conditions herein contained and on the lessee's part to be observed and performed.

Take notice that the applicant, Katesan Limited, having its registered office at Main Street, Loughrea in the County of Galway, being a person entitled under the provisions of sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, propose to purchase the fee simple interest in the land described in paragraph 1 above.
Signed: Patrick Sweeney, Director, Katesan Ltd, Main Street, Loughrea, Co Galway, and Florence G MacCarthy & Assoc, solicitors for the applicant, Main Street, Loughrea, Co Galway.
1 November 1999

***Landlord and Tenant (Ground Rents) Acts, 1967-1984*: notice of intention to acquire a fee simple (section 4 of the 1967 Act)**
To: The person or persons for the time being entitled to the interest of Michael Short in the premises hereinafter described.

1) Description of land to which this notice refers: all that and those the piece or plot of ground situate at Emmett Road, Kilmainham in the Parish of St James, Barony of Uppercross and County of the City of Dublin. 2) Particulars of applicant's lease or tenancy referred to above: lease dated 5 April 1867 and made between Michael Short of the one part and William Brophy of the other part whereby the said premises (*inter alia*) were demised by Michael Short to William Brophy for the term of 900 years from 25 March 1867 subject to the yearly rent of £24 sterling and subject to the covenants and conditions herein contained and on the lessee's part to be observed and performed.

Take notice that the applicant, South Midland Construction Company Limited, having its registered office at Turvey Avenue, Dublin 8, being a person or body entitled under the provisions of sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, proposes to purchase the fee simple interest in the lands described in paragraph 1 above.
Signed: Martin E Marren & Co, (Reference Mr PF Clyne), solicitors for the applicant, 10 Northumberland Road, Dublin 4.
9 November 1999

***Landlord and Tenants Acts, 1967-1984* and *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Ronan Leech, James McGrath, Michael Walsh, Brian Carton and Paul Moorehead**
Take notice that any person having an interest in the freehold estate of the following property: 1 Cian Park Drumcondra in the City of Dublin. Take notice that Ronan Leech, James McGrath, Micheal Walsh, Brian Carton and Paul Moorhead intend to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid properties and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received Ronan Leech, James McGrath, Michael Walsh, Brian Carton and Paul Moorhead intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior including the freehold reversion in each of the aforesaid premises are unknown or unascertained.
Signed: HC Browne & Company, Solicitors, Malahide Road/Kilmore Road, Corner, Artane, Dublin 5.
3 December 1999

***Landlord and Tenant Acts, 1967-1984* and *the Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Gerard Gannon and Margaret Gannon**
Take notice that any person having an interest in the freehold estate of the following property: all that the plot of ground comprising the housing estate known as Hazel Court, Strand Road, Portmarnock, County Dublin but excluding therefrom the dwellinghouses and premises Numbers 6 to 10 inclusive Hazel Court aforesaid, situate on the west side of Strand Road, Portmarnock in the County of Dublin. Take notice that Gerard Gannon and Margaret Gannon intend to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid properties and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received the said Gerard Gannon and Margaret Gannon intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.
Signed: Smith Foy & Partners, solicitors for the applicants, 59 Fitzwilliam Square, Dublin 2.
12 November 1999

***Landlord and Tenants Act, 1967/1984*: in the matter of notice of application unde the said Acts between Edward L Prendergast as legal personal representative of William Mahon (deceased) (applicant) and Eileen Comerford, Cora Hayes and Francis Conway (the trustees of the Nano T Murphy estate) (first respondent) and the legal personal representatives of John Murphy (second respondents): notice of intention to acquire a fee simple**
To: Eileen Comerford, Cora Hayes and Francis Conway, c/o the Convent of Mercy, Graiguenamanagh, Co Kilkenny; To: the legal personal representatives of John Murphy of Graigue in the County of Kilkenny.

Description of land to which this notice refers: all that and those the dwellinghouse and premises situate at Upper Main Street, Graiguenamanagh, Barony of Gowran and County of Kilkenny being the last residence of William Mahon deceased

Particulars of applicant's lease or tenancy: the applicant holds under a contract of yearly tenancy or under a yearly tenancy arising by operation of law or by inference on the expiration of a lease or under a statutory tenancy implied by holding over property on the expiration of a lease which reserves a yearly rent. The rent has been ascertained to be one pound (£1) per annum.

Take notice that I, Edward L Prendergast, as legal personal representative in the estate of William Mahon (deceased), being a person entitled under the above Acts propose to purchase the fee simple from the first respondent and any superior lessor's interest held by the second respondent in the property hereinbefore described.
Signed: John M Foley & Company, solicitors for the applicant, Bagenalstown, Co Carlow.
26 October 1999