Law Society Gazette

Regulars

Cover Story

Editor: Conal O'Boyle MA. **Assistant Editor:** Maria Behan. **Designer:** Nuala Redmond. **Editorial Secretaries:** Catherine Kearney, Louise Rose. **Advertising:** Seán Ó hOisín, 10 Arran Road, Dublin 9, tel/fax: 837 5018, mobile: 086 8117116, e-mail: seanos@iol.ie. **Printing:** Turners Printing Company Ltd, Longford. **Editorial Board:** Pat Igoe (Chairman), Conal O'Boyle (Secretary), Eamonn Hall, Mary Keane, Ken Murphy, Michael V O'Mahony, Vincent Power

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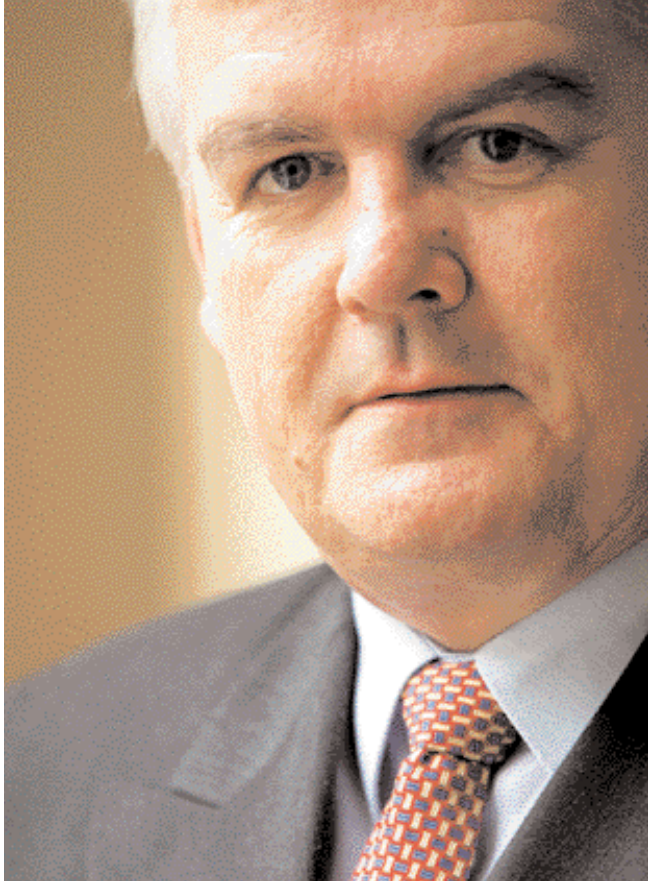
You can't always get what you want



It would be nice to start the year with a positive message. It would be nice to be able to say that commonsense and justice always prevail. But we all know that's not the case. And so, as a profession, we find ourselves on the wrong end of three adverse decisions.

Let's start with the Committee on Judicial Conduct and Ethics, which was established in the wake of the Sheedy affair. It has finally published its long-awaited report on regulating the judiciary in this country. As expected, it recommends the creation of a Judicial Council to deal with complaints about the judiciary (it will also consider other issues such as judges' pay, working conditions and training). We can have no problem with that. The Law Society has been calling for just such a mechanism for a very long time – after all, as the largest single branch of the legal profession, many of whose members work in the courts on a daily basis, it is in our interest (as well as the interest of wider society generally) that there be some formal means of reviewing the conduct of judges. It might be opportune here to stress once again that the Law Society believes that this country has been very well-served by its judiciary over the years.

So far, so good. But we are all aware of instances where those sitting on the bench have overstepped the mark by engaging in bullying, condescending or just plain rude behaviour, to solicitor, barrister and client alike.

Not so transparent

So we welcome the creation of this new forum in which issues of judicial misconduct can be aired. But that's where the problem starts.

The report recommends that a three-person 'Panel of Inquiry' be charged with investigating complaints made about judges, and that panel should consist of two judges and a lay person (appointed by the attorney general).

The Law Society has strongly argued that any body investigating judicial conduct should include representatives of the solicitors' and barristers' professions. The proposal to exclude those of us who are most directly affected by the sometimes erratic behaviour of judges seems inexplicable. The committee defends its decision on the basis that it would make the process 'no more transparent'. This seems a rare case of those on a committee damning themselves with faint praise. If that's the case, then in my opinion they should go back to the drawing-board and devise a scheme that is 'more transparent'. After the seismic shocks that rocked the judiciary two years ago, nothing less than maximum transparency will do.

Fighting for core principles

The second setback we suffered was the rejection of our submission on the *Miley* case. We had accepted an invitation from Mr Justice Frederick Morris to join ourselves as a notice party to the judicial review initiated by solicitor Stephen Miley of certain orders made against him by the Flood Tribunal. The tribunal wanted Mr Miley to furnish information and documentation about his clients. The Law Society Council was keen to join as a notice party to defend the principle of solicitor/client privilege from any possible future erosion. That was our only interest in the case. We were not supporting either party but acted in an *amicus curiae* capacity. Unfortunately, the court found that the scope of what is protected by legal professional privilege in Ireland is even narrower than we thought. I have no doubt that, on behalf of our clients, we will be revisiting this issue many times in the months and years ahead.

And so finally to the unjust. The government's proposal to abolish the ceiling on employers' PRSI, announced in the budget in December, will have a direct and adverse impact on the profitability of our practices. Finance minister Charlie McCreevy justifies the abolition on the grounds that he is substantially reducing corporation tax as a balancing measure. A fat lot of good that is to solicitors, who are prohibited from incorporating their practices. We have protested in the strongest terms to the minister, but don't hold your breath waiting for a u-turn.

You win some, you lose some. But we'll keep on fighting anyway – on your behalf and on behalf of our clients.

Ward McEllin,
President

'The proposal to exclude those of us who are most directly affected by the sometimes erratic behaviour of judges seems inexplicable'

RTÉ's Mary Wilson wins society's media award

RTÉ's legal affairs correspondent Mary Wilson has been named **Overall Winner** of the Law Society's *Justice Media Awards* competition. This competition aims to reward outstanding journalism in the printed or electronic media which contributes to the public's understanding of the law, the legal system or any specific legal issue.

Wilson won the top prize for her exclusive interview with former nun Nora Wall, who was sentenced to life imprisonment for rape in 1999, only to be freed five days later on the instructions of the Director of Public Prosecutions. At a ceremony in the Law Society's Blackhall Place headquarters, Immediate Past-President Anthony Ensor presented the prize to Wilson, whose report was broadcast on RTÉ's *Would you believe?* programme. As Overall Winner, she received a Dublin Crystal vase and a cheque for £1,000.

Explaining the judges' decision, Law Society Director General Ken Murphy said: 'This was a powerful story that yet again held a mirror up to our society and its shortcomings. In this compelling interview with the painfully shy woman who was vilified in the press as "Sister Anti-Christ", Mary Wilson gently and expertly encouraged her to tell her story and filled in the background to what could have been another tragic miscarriage of justice'.

Overall Winner of the *Justice Media Awards* Mary Wilson with her husband, RTÉ sports correspondent Tony O'Donoghue, and Law Society Deputy Director General Mary Keane

The winners in each of the five other categories in the competition won a *Justice Award*, comprising a Dublin Crystal Joyce plate (and a £500 cheque), with the runners-up receiving a Certificate of Merit (and a cheque for £100).

The winner of the *Justice Award* in the **Daily Newspapers** category was Nuala Haughey of the *Irish Times* for her series of articles on the experience of refugees and asylum-seekers in Ireland.

Certificates of Merit went to:

- Mary Dundon of the *Irish Examiner* for her article entitled *Who judges the judges?*
- Michael Foley of the *Irish Times* for his article *Replacing the ritual on libel reform with imagination*, examining the 'ritual debate' about our defamation legislation that arises every couple of years.

The winner of the *Justice Award* in the **Non-Daily Newspapers** category was Mark O'Connell of the *Sunday Business Post* for an article on the state's failure to accommodate children with special behavioural problems.

A Certificate of Merit was awarded to Jimmy Woulfe of the *Limerick Leader* for his article outlining the procedures that married couples have to go through under canon law in order to obtain a church annulment.

In the **Magazine** category, the *Justice Award* went to Mairead Carey of *Magill* for her article on people who have been involuntarily detained in mental institutions and the state's tendency to use medical intervention as a form of criminal detention.

A Certificate of Merit was awarded to Stephen Brady of *Consumer Choice* for his articles on 'children's rights' and 'the status of people with disabilities'.

In the **Books** category, the *Justice Award* went to Liz Walsh and Rita O'Reilly for their book on the case that electrified this country for months, *The People versus Catherine Nevin*, published by Gill & Macmillan.

Paul Cullen of the *Irish Times* won a Certificate of Merit for his monograph entitled *Refugees and Asylum seekers in Ireland*, published by Cork University Press in its *Undercurrents* imprint.

In the **Radio** category, the *Justice Award* went to Barry Cummins of Today FM for a series of interviews called *Giving victims a voice*, featuring the reactions of people to court cases in which they have had a personal involvement.

The *Justice Award* for **Television** was presented to Diarmuid Peavoy for a report on RTE's *Nationwide* programme examining the legal issues facing fathers seeking access to and guardianship of their children. The judges described this entry as 'a powerful, passionate and intelligent piece that gave a voice to a group which is rarely heard'.

Annette O'Donnell of RTÉ News won the Certificate of Merit for her coverage of the Moriarty Tribunal in Dublin Castle.

Help for those setting up in practice

The Law Society's Guidance and Ethics Committee has recently published a free information booklet for solicitors setting up in private practice. While the necessary information has always been readily available within the society, a solicitor had to speak to several different people. With the assistance of the staff at Blackhall Place, all the necessary information has been brought together in one booklet.

Commenting on the publication, Law Society President Ward McEllin said: 'I believe this booklet will be useful not only to solicitors who are setting up for the first time but also to new partners in existing firms and all solicitors who are principals or partners in private practice'.

Copies of the booklet are available, free of charge, from Anne Collins at the Law Society, tel: 01 8681220 or e-mail: a.collins@lawsociety.ie.

Law Society slams 'unfair' PRSI hike

The Law Society has added its voice to the chorus of disapproval over the government's proposal to abolish the ceiling on employers' PRSI, announced in the budget in December.

In a strongly-worded letter to Minister for Finance Charlie McCreevy, Law Society Director General Ken Murphy says that the proposed measure 'will add greatly, unfairly and unnecessarily to the tax burden of solicitors who are proprietors of the 1,850 solicitors' firms in the state'.

And he continues: 'One of the arguments which you have offered as a justification for the abolition of the ceiling on employers' PRSI is that it is counterbalanced in the same budget by your proposed substantial reduction in the rate of corporation tax.

McCreevy: unnecessary and unfair tax burden on solicitors

However, solicitors are prohibited from incorporating their practices and, accordingly, reductions in corporation tax are irrelevant to them.

'The very substantial level of employment growth in solicitors' firms will inevitably be hit by this proposed measure. The society hereby calls on you to reconsider this proposal and delete it from your plans for the *Finance Bill, 2001*, either in total or at least insofar as it applies to partnerships or individuals who are obliged to conduct their practices/businesses without the benefit of incorporation'.

Refugees lawyers' AGM

The Refugee Lawyers' Association is holding its AGM on 28 February at 6.30pm in the Blue Room of the Law Society's Blackhall Palace headquarters. For further information, contact Gráinne Malone on tel: 01 451 0123.

Courts Service keys up for new project

Since the start of the Hilary law term, the Courts Service has been piloting the use of new methods of recording criminal trials with a view to reducing waiting times for transcripts for appeals.

The project will run in tandem with existing arrangements for taking shorthand notes and will operate in Court 2 in the Four Courts in respect of the Central Criminal Court and in two criminal circuit courts also. According to the Courts Service, the pilot project will not in any way impede trials.

Portobello graduates' case struck out

Shortly before Christmas, Mr Justice Iarfhlaith O'Neill in the High Court heard an action by the University of Wales, Portobello College and others against the Law Society, in which certain holders of degrees in law obtained in 1995 from the University of Wales by graduates of Portobello College, Dublin, sought to be dealt with in the same manner as law graduates of other universities, who had previously obtained exemptions from the Society's FE-1 examination for those seeking entry to the society's law school.

Following a lengthy cross-examination of a witness for the plaintiffs by one of the society's counsel, Dermot Gleeson SC, an application was made by consent and granted that the plaintiffs' claims be struck out on the basis that the society should not seek any costs against them.

It remains the case that the eight subject FE-1 examination must be sat and passed by all candidates seeking entry to the society's law school, other than certain law graduates who benefited from High Court decisions in 1995 and 1996.

End in sight for solicitor shortage

The current drought of apprentice solicitors is due to come to end, with over 1,000 new solicitors set to qualify over the next two years. The apprentices will graduate in three tranches between August this year and July 2003. The scheduled qualification dates should be of interest to overworked solicitors everywhere:

- 1999 professional practice course: 300 due to qualify between August and December 2001
- Spring 2000 PPC: 300 due to qualify between September 2002 and January 2003
- Autumn 2000 PPC: 360 to qualify between March and July 2003.

WOMEN OF THE WORLD

Former US Secretary of State Madeline Albright, CNN journalist Christiane Amanpour and the first woman president of the International Bar Association Dianna Kempe QC will be among the speakers at the first-ever World Women Lawyers' conference, which will take place on 1-2 March in London. Organised by the International Bar Association, the conference will give women lawyers an opportunity to meet, learn and network. For further information, tel: 0044 (0) 20 7629 1206.

CONSULTATION ROOM CHARGES: A CLARIFICATION

There appears to have been some element of confusion over the new charges for the Law Society's Four Courts consultation rooms, announced in December. The charges are as follows:

- **£25 for one hour or part thereof (subject to immediate payment by cash / cheque / credit card)**
- **£35 for one to two hours or part thereof**
- **£110 for a full day.**

LAW SOCIETY ECHR CONFERENCE

The Law Society is hosting a conference in its Education Centre on Saturday 10 February 2001, entitled 'The implementation of the *European Convention on Human Rights* into Irish law: effective remedies under the *ECHR*'. There will be no charge, but advance registration will be necessary. Contact Barbara Joyce at the society on tel: 01 672 4802 or e-mail: b.joyce@lawsociety.ie.

LAW SOCIETY RETIREMENT TRUST SCHEME

Unit prices: 1 January 2001
Managed fund: 377.648p
All-equity fund: 112.342p
Cash fund: 182.613p
Pension protector fund: –

Two cheers for proposed Judicial Conduct Body

The Law Society Council has issued a general welcome – with one major reservation – for the report of the Committee on Judicial Conduct and Ethics, chaired by Chief Justice Ronan Keane, *writes Ken Murphy*.

The Council considered the report in some depth at its meeting on 26 January 2001, the day after the report's publication. It was generally accepted that the establishment of the proposed Judicial Council would represent progress in view of the absence of any formal means of having the conduct of a judge reviewed at present.

However, the Council deeply regretted that the chief justice and his colleagues had rejected the society's arguments that solicitors and barristers should be represented, in addition to other lay members, on the proposed new Committee on Judicial Conduct and Ethics. This was viewed by the Council as an important element to ensure that solicitors would have confidence in the proposed new body dealing with complaints of judicial misconduct.

It was pointed out that the very successful Judicial Commission of New South Wales in Australia, a body whose model was generally approved and adopted in the report's recommendations, provided for representation by the practising profession. The Law Society Council did not understand why the report recommended against this in Ireland and the society's president, Ward McEllin, was asked to write to the chief justice to enquire where opposition to this had come from, and on what arguments it had been based.

Chief Justice Ronan Keane: chaired committee on judicial conduct

The Council noted that members of the Law Society and the Bar Council, in addition to three non-lawyer lay members, sit with the judicial majority as members of both the Courts Service Board and the Judicial Appointments Advisory Board. No justification whatever could be seen for the proposed new body not following the same design.

The society will make its view on this matter known to legislators, who will create the statutory basis for the proposed new Judicial Council and its Committee on Judicial Conduct and Ethics.

The report was produced by the Committee on Judicial Conduct and Ethics, whose members were:

- Mr Justice Ronan Keane, chief justice
- Mr Justice Frederick Morris, president of the High Court
- Mrs Justice Susan Denham, chairwoman of the Working Group on Courts Commission 1995-1998
- Mr Justice Declan Budd, president of the Law Reform Commission
- Mr Justice Esmond Smyth, president of the Circuit Court
- Judge Peter Smithwick, president of the District Court
- Michael McDowell SC, attorney general

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE ON JUDICIAL CONDUCT AND ETHICS

1. The existing structures for dealing with concerns as to judicial conduct are inadequate
2. There should be established in Ireland a body to be called 'The Judicial Council'. This body would be somewhat similar to the Judicial Commission of New South Wales. All judges would be members of the Judicial Council and the board of the council would consist of:
   i) The chief justice, the president of the High Court, the president of the Circuit Court and the president of the District Court
   ii) Four ordinary judges from each of the jurisdictions elected by the members of the relevant court
   iii) A judge to be co-opted to the board for a term of four years
3. Established under the board of the council would be a Judicial Conduct and Ethics Committee. Any member of the public would be entitled to make a complaint to this committee concerning the conduct of any member of the judiciary. A serious compliant made to this committee should be referred to a panel of inquiry consisting of three members, two of them judges, and the third a lay person. There should be an established pool of three lay persons who should be people of standing in the community appointed by the attorney general after consultation with the minister for justice, equality and law reform. Where any allegation of misconduct is found to have been established, the panel of inquiry should recommend that action be taken in any of the following forms:
   i) A private reprimand to the judge
   ii) A public reprimand to the judge
   iii) A recommendation that both houses of the Oireachtas consider the removal of the judge from office.
4. Sanctions should be moral rather than legal in nature
5. There should be a recording device in every court
6. A general code of judicial ethics should be drafted and approved
7. A Judicial Studies Committee should be set up to, among other things, establish a sentencing information system, similar to that in existence in New South Wales
8. A general committee should be set up to keep under constant review questions of remuneration and the working conditions of judges
9. The Judicial Council should have a full-time executive officer
10. An annual report should be produced
11. The Judicial Council should be on a statutory basis
12. All judges should be subject to the proposed judicial council system of conduct and ethics

Under the influence

The fourth lecture in the series of Hugh M Fitzpatrick lectures in legal bibliography will be held in Trinity College, Dublin, on 14 March. Morris Cohen, emeritus professor of law, Yale Law School, will discuss Irish influences in American law books. Those interested in attending can request a place by contacting Hugh Fitzpatrick on tel: 01 269 2202.

Letters

Fighting our corner with the attorney general

From: Manus Sweeney, Dublin

I refer to the correspondence between the Attorney General Mr McDowell and the Director General Mr Murphy recently published in the *Gazette* (November, pages 6-7; December, page 7).

It is heartening to know that our director general is prepared to fight our corner in respect of an inequity that directly affects few, but indirectly affects all of the solicitors' profession. In my opinion (shared by solicitors and barristers with whom I discussed the issue), the attorney general is mistaken for the following reasons:

1) He is effectively stating that a highly-experienced solicitor in practice for, say, 30 years, would be less capable of giving an opinion than a relatively inexperienced barrister in practice for four years

2) Experienced solicitors have already been appointed to the Circuit Court and are about to be appointed to the High Court, where they will be giving detailed judgments – not just 'opinions'

3) One of the main planks (hardly relevant to whether or not a solicitor is qualified for a position in the attorney general's office) in Mr McDowell's argument is that solicitors already have enough jobs open to them in the public service. The counter-argument has been more than efficiently made by the director general.

While the majority of the legal profession are solicitors and while there are many positions in the public service open to them, the 'plum jobs' in the attorney general's office are not. And it is well known that staff in the attorney general's office are well placed to move on to exciting jobs in Europe, for instance.

Experienced solicitors are deemed eligible to be judges of the District, Circuit and High courts, as well as county registrars, taxing masters, coroners, state solicitors and sheriffs. But they are not deemed capable of giving advice and drafting opinions in like manner to a barrister practising four years.

I cannot think of one counsel who would be willing or asked to draft opinions on complex matters concerning international law and constitutional issues after four years at the bar – including possibly two years 'devilling'. A valuation on *quantum* in a 'running down' might be the height of it.

Many young counsel learn from solicitors as well as their masters.

The perpetuation of this inequity casts a shadow on all the advances that have been made by the solicitors' profession in relation to rights of audience, appointments to the bench and so on.

To paraphrase another 'Mac' (John McEnroe): Mr McDowell, you cannot be serious!

Getting more solicitors to cross the Threshold

From Russell Chapman, Dublin services co-ordinator, Threshold

Threshold works for justice on housing and homelessness throughout Ireland. We currently advise between 800 and 900 clients a month. Many of these enquiries are based on legal precepts and we advise accordingly. There are, however, circumstances when we need the advice of a solicitor. The first is when there are ancillary legal matters of which we have no experience, or when there is a great deal of complexity. In these circumstances, an advice worker from Threshold would need to talk to a solicitor to get a more informed opinion. The second situation is where a client needs to take action against a landlord who is acting illegally. This may be concerning distress, illegal eviction, harassment or compensation. Many of our clients would be in a position to pay for the services of a solicitor, especially if compensation negotiations are required or their income was sufficient.

Our concern would be that many of our clients are on low incomes or social welfare and are often not in a position to pay for legal advice or assistance. It is these people who are most vulnerable to unscrupulous landlords.

We currently refer to and get advice from three or four different firms of solicitors and they have proved invaluable, especially in helping us take on cases where there is inequity in the two parties' options and ability to enforce rights.

These firms have been willing to advise and very often take action (such as injunctions, or a phone call/letter) without being paid in advance. Often this is in expectation of the other party having to pay or in foregoing payment, if the time cost is not too great. This arrangement Threshold gratefully acknowledges, but we are also aware of impinging too much on the time of firms whose priority has to be paying clients.

It is for this reason that I would like to appeal to any solicitors or firms of solicitors who would be willing to provide a point of contact for us to address the above needs. The more solicitors we can call on in times of need, the less time each firm has to devote and the less likely we are to become an unacceptable drain on their resources.

DUMB AND DUMBER

From: Macarten O'Gorman, Anthony F O'Gorman Solicitors, Co Wexford

I quote from a hospital record obtained on behalf of a patient: 'inform the patient of all procedures whether conscious or not, giving explanations'.

From: Tony Diamond, Dublin 3

Reading an extract from old Illinois wills, I came across the following:

'To my wife, I leave her lover, and the knowledge that she was not the fool she thought me; to my son I leave the pleasure of earning a living. For 20 years he thought the pleasure mine; he was mistaken'.

How would that stand up to the rigours of the *Succession Act*?

Macarten O'Gorman wins the bottle of champagne this month

COURTS SERVICE
An tSeirbhís Chúirteanna

Have you accessed the Courts Service website yet?

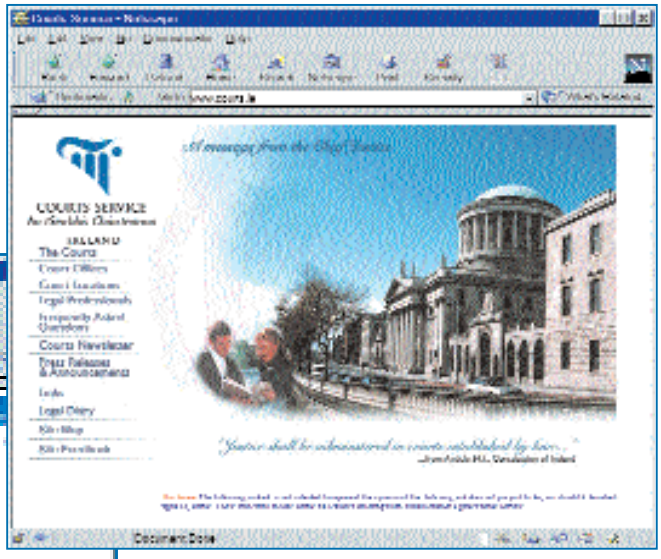
http://www.courts.ie

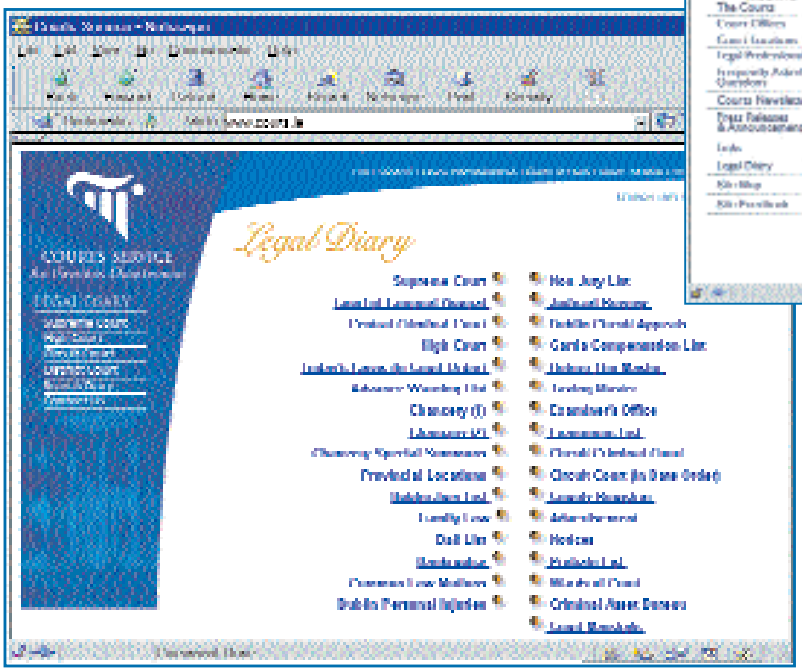
The Content of the Website includes:

- Home Page incorporating our new Corporate Identity
- A message from the Chief Justice
- Courts Service News Magazine
- Legal Diary
- Description of jurisdiction of each Court
- Narrative on various Administrative Offices
- Geographic 'drill down' map showing Courts nationwide
- Interactive Map of Four Courts
- Staff Directory
- Links to other related Sites
- User Feedback Section
- Search Facility
- Help Guides

Other sections planned or under construction:

- School/Education Section
- Historical Section
- Further information on provincial Court offices
- Judgments - Court judgments commencing with Supreme Court judgments Pilot Project.





Nice work if you can get it

The *Treaty of Nice* isn't the most attention-grabbing of the EU treaties adopted so far, but it has serious implications for the architecture of the European courts – and the relative judicial clout of member states, writes Conor Quigley

From the lawyer's point of view, the *Treaty of Nice* is probably the least interesting of all the EC/EU treaties adopted to date. The meaty issues concerned extending the reach of the European Union in defence matters and the re-weighting of votes of the council in anticipation of enlargement of the European Union during the next decade. One issue which ought to be of interest, but which received scant attention in the press, is the reform of the judicial architecture of the European courts.

During 2000, much debate was carried at the court and in interested groups concerning the future of the European Court of Justice (ECJ) and the Court of First Instance (CFI). It was generally agreed that the burden of the ECJ's case load was excessive and had led to considerable delays, in particular in the case of references from national courts for preliminary rulings. Various ideas had been mooted, including regional or roving European courts and the appointment of a European law specialist judge, possibly having a role similar to an advocate general, who would assist national courts to reach a conclusion on issues of European law without the need for a reference. These possibilities were rejected, primarily on the ground that the uniformity of EU law required that the European courts be sited in the same place so that the judges could better interact with one another.

Nevertheless, several matters have been resolved in the *Nice treaty*. The combined result of these reforms is intended to lead to a faster administration of justice by expanding the role of the CFI, while leaving the ECJ to deal with the more important matters. In addition, new judicial panels will be created to hear the less important matters currently heard by the CFI, such as employment disputes between the EU institutions and their staff and, possibly, intellectual property disputes concerning, for example, the EU trademark.

Conor Quigley: faster administration of justice

One state, one judge

In both the ECJ and the CFI, the number of judges has always reflected the principle of one judge per member state. One of the most important issues debated last year was whether this should continue. The fear was that, with enlargement, an ECJ with 27 members would have the character of an assembly rather than a college of judges. It had been mooted that the ECJ should be limited, possibly to as few as nine justices, as in the United States, and that it would adopt the character of a constitutional court. For various reasons, this option was rejected. In particular, it was accepted that the need to reflect all the national legal traditions in the deliberations of the ECJ was paramount. Nevertheless, it was agreed that the workings of the ECJ needed to be reviewed. Two main planks of reform were adopted. First, references for preliminary rulings, which until now have been the sole preserve of the ECJ, will henceforth also be heard by the CFI. Second, the ECJ itself will now generally sit in chambers, as is already the case, but a new concept of the Grand Chamber has been introduced for important matters, while the ECJ will continue to sit in plenary session for particularly important matters. Each of these reforms entails some problems.

The CFI is to have jurisdiction to give preliminary rulings in specific areas to be laid down in the Statute of the Court of Justice. Where the CFI considers that the case requires a decision of principle likely to affect the unity or consistency of EU law, it may refer the case to the ECJ for a ruling. Otherwise, decisions given by the CFI on questions referred for a preliminary ruling may exceptionally be subject to review by the ECJ where there is a serious risk of the unity or consistency of EU law being affected. It has still to be decided what effect such a review procedure would have on the decision of the CFI in the dispute between the parties.

Chamber of horrors

The notion of the Grand Chamber also causes problems. It is intended that the Grand Chamber will consist of 11 judges, with a quorum of nine. However, it is unclear who will sit in the Grand Chamber. One possibility is that it will consist of the presidents of the chambers of five judges and that other judges will take it in turn to sit. Given that presidents of chambers may be in that position for up to six years, the fear is that some judges will have a preferential position in the ECJ, entitling them to take part in all important decisions, while other judges are relegated to a secondary position.

There is a real fear that the bigger member states might seek to ensure that their judge was always on the Grand Chamber while leaving judges from the small member states to rotate. Indeed, this has been the practice over the years in the appointments of advocates general. Such a move should be considered unacceptable. G

Conor Quigley is a barrister practising in Brussels and London.

In the Internet era, cybersquatting has become a hazard for high-profile personalities such as Madonna, but there are alternative solutions to this form of superhighway robbery besides going to court. Niall O'Hanlon discusses a recent Virtual Victory for the Material Girl

MAIN POINTS

- **ICANN is the closest thing to a global regulator on the Net**
- **Many high-profile individuals have used its procedures to win back the right to their names on the web**
- **The ICANN procedures explained**

CYBERSQUATTING: What's in a name?

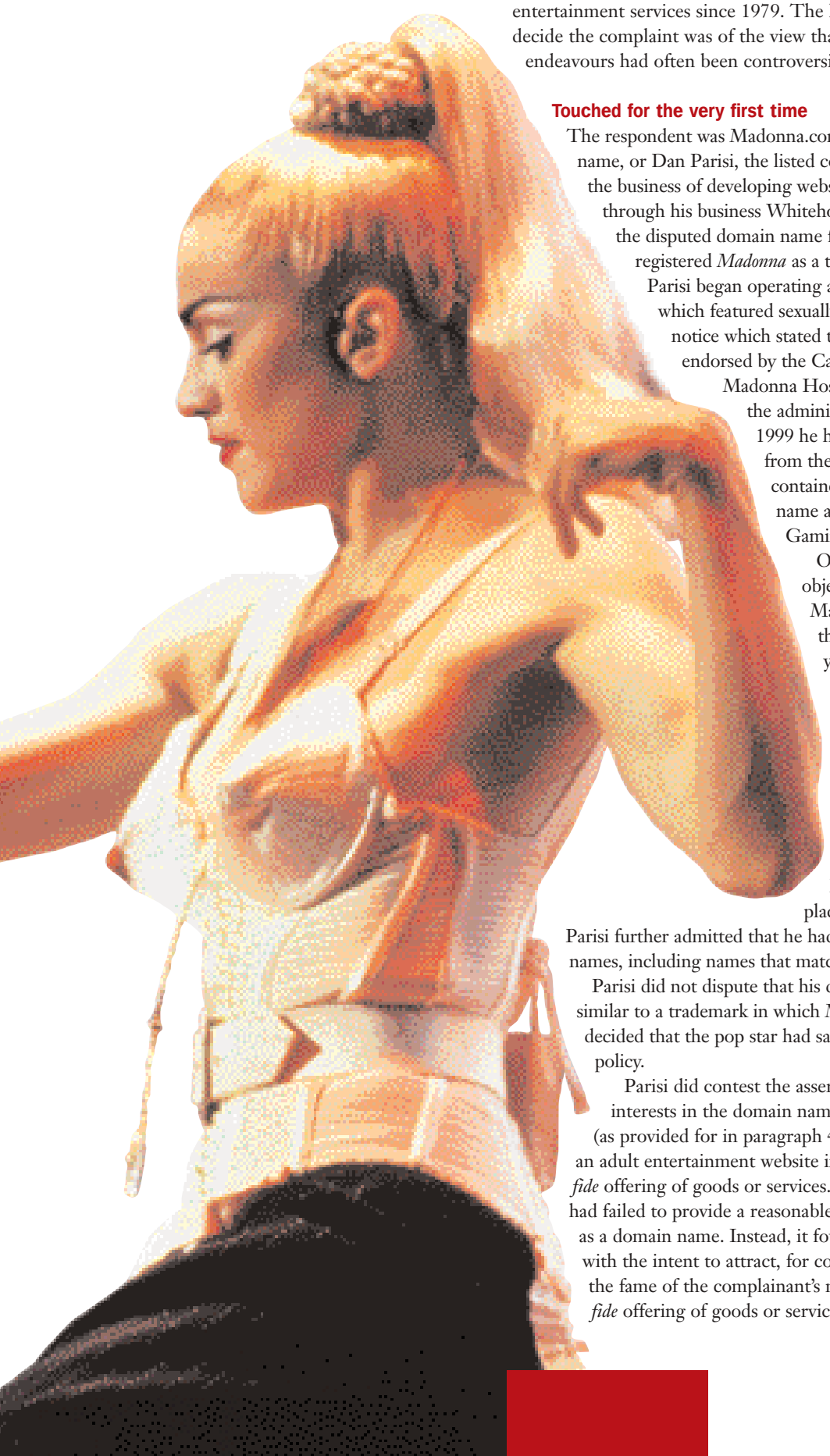
Imitation may be the sincerest form of flattery but, as a large number of well-known companies and individuals can testify, when it comes to imitation on the worldwide web, in the form of cybersquatting, it is an unwanted compliment.

Cybersquatting arises where one party registers a domain name which is identical or confusingly similar to a name in which another party has rights, the motivation being to extract a payment from the latter party in return for the transfer of the disputed domain name. One recent high-profile target of this activity was pop star Madonna.

Celebrities and others plagued by the recent spate of cybersquatting can, of course, take their cases to a court of competent jurisdiction in an attempt to win back the right to their names. But there is an alternative way to deal with this unwelcome manifestation of entrepreneurial initiative in the case of generic top-level domains such as .com. The Internet Corporation for Assigned Names and Numbers (ICANN), generally regarded as the closest thing the Internet has to a global regulator, has recently adopted and approved a *Uniform domain name dispute resolution policy* and *Rules for the uniform domain name dispute resolution policy* **(see panel page 14)**. Many high-profile celebrities and organisations have used its procedures to resolve cybersquatting disputes.

A recent example of proceedings under the new ICANN policy and rules is the decision in *Madonna Ciccone p/k/a/ Madonna v Dan Parisi and 'Madonna.com'*, Case No D2000-0847 (the ruling in this case is available at *arbiter.wipo.int/domains/ decisions/html/d2000-0847.html*).

The self-styled Material Girl made a complaint, in accordance with the ICANN policy and rules to the World Intellectual Property Organisation's arbitration and mediation centre last July. She was the owner of US trademark registrations for the mark *Madonna* for entertainment services



and related goods and had used her name and mark professionally for entertainment services since 1979. The ICANN administrative panel appointed to decide the complaint was of the view that her music and other entertainment endeavours had often been controversial for featuring explicit sexual content.

Touched for the very first time

The respondent was Madonna.com, the registrant for the disputed domain name, or Dan Parisi, the listed contact for the domain name. Parisi was in the business of developing websites. On or about 29 May 1998, Parisi through his business Whitehouse.com Inc, purchased the registration for the disputed domain name for $20,000 from a third party and on 4 June registered *Madonna* as a trademark in Tunisia. On or about 8 June, Parisi began operating an 'adult entertainment portal website' which featured sexually-explicit material. The website contained a notice which stated that 'Madonna.com is not affiliated or endorsed by the Catholic Church, Madonna College, Madonna Hospital or Madonna the singer'. According to the administrative panel, it appeared that by 4 March 1999 he had removed the sexually-explicit material from the website and that by 31 May the site merely contained the above notice, the disputed domain name and the statement 'Coming soon: Madonna Gaming and Sportsbook'.

On 9 June, Madonna, through her lawyers, objected to the respondent's use of the Madonna.com domain name and on 14 June the respondent's counsel stated: 'As I assume you also know, Mr Parisi's website was effectively shut down before you sent your letter, and is now shut down altogether. He is in the process of donating his registration for the domain name'.

After receiving Madonna's objection, it appeared that Parisi had spoken to the Madonna Rehabilitation Hospital about transferring the domain name to the hospital, but the transfer had not taken place at the time these proceedings began. Parisi further admitted that he had registered a large number of other domain names, including names that matched the trademarks of others.

Parisi did not dispute that his domain name was identical or confusingly similar to a trademark in which Madonna had rights and so the panel decided that the pop star had satisfied paragraph 4(a)(i) of the ICANN policy.

Parisi did contest the assertion that he had no rights or legitimate interests in the domain name on a number of grounds. First, he argued (as provided for in paragraph 4(c)(i)) that his use of the domain name for an adult entertainment website involved prior use in connection with a *bona fide* offering of goods or services. But the panel believed that the respondent had failed to provide a reasonable explanation for the selection of *Madonna* as a domain name. Instead, it found that the name was selected and used with the intent to attract, for commercial gain, Internet users by trading on the fame of the complainant's mark. Such a use could not constitute a *bona fide* offering of goods or services; to hold otherwise would mean that the

WHAT IS ICANN?

Set up in 1998 on foot of a US government initiative, the Internet Corporation for Assigned Names and Numbers is, according to its website, a non-profit, private sector corporation. Although ICANN specifically disclaims any mandate to 'run the Internet', it is regarded by many as the closest thing there is to a global regulator of the Net.

ICANN is managed by a board of 19 directors, five of whom were selected by a vote of Internet users worldwide. It has assumed responsibility to co-ordinate the stable operation of the Internet in key areas, including the domain name system.

As part of its responsibilities, ICANN recently approved the *Uniform domain name dispute resolution policy*.

respondent could rely on intentional infringement to demonstrate a legitimate interest.

Second, Parisi contended that he had rights in the domain name because he registered *Madonna* as a trademark in Tunisia before notice of this dispute had been served. The panel held that mere registration of a trademark did not create a legitimate interest under the ICANN policy. To establish recognisable rights, the overall circumstances had to demonstrate that the registration was obtained in good faith for the purpose of making *bona fide* use of the mark in the jurisdiction where the mark was registered, and not obtained merely to circumvent the application of the policy. In these circumstances, the trademark registration was not evidence of a legitimate interest in the disputed domain name.

Third, Parisi claimed that his offer to transfer the name to the Madonna Hospital was a legitimate non-commercial use under paragraph 4(c)(iii) of the ICANN policy. This submission was rejected; Parisi had failed to disclose specific details of his proposed arrangement with the hospital or that negotiations had only begun after Ms Ciccone's objection to the registration and use of the domain name. The panel further held that the circumstances of the case did not satisfy the requirements of paragraph 4(c)(iii) which applied where non-commercial or fair use was being made of the domain name. It also held that the fact that others could demonstrate a legitimate right or interest in the domain name did nothing to demonstrate that the respondent had such right or interest. Accordingly, it decided that Madonna had satisfied paragraph 4(a)(ii) of the policy.

Papa don't preach

Under paragraph 4(b)(iv) of the ICANN policy, evidence of bad faith registration and use of a domain name includes a situation where, by using the domain name, the respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the complainant's mark as to source, sponsorship, affiliation or endorsement. The panel held that the pleadings in the case were consistent with the respondent having adopted Madonna.com for the specific purpose of trading on the pop star's name and reputation, which was a violation of US trademark law as well as the ICANN policy.

Citing *Brookfield Communications Inc v West Coast Entertainment Corp* (174 F3d 1036, 9th Cir 1999), the panel held that the use of a disclaimer on the website was insufficient to avoid a finding of bad faith. First, the disclaimer might be ignored or misunderstood by Internet users and, second, a disclaimer did nothing to dispel the initial confusion that was inevitable from the respondent's actions.

The policy required a showing of bad faith registration and use. Although Parisi was not the original registrant, the record showed that he had acquired the registration in bad faith. The result was the equivalent of registration and was enough to fall within the policy.

The facts of the *Madonna* decision were distinguished from those of *Gordon Sumner p/k/a Sting v Michael Urvan*, Case No 2000-0596 (WIPO, 24 July 1999), where there had been evidence that the respondent had made *bona fide* use of the name *Sting* before getting the domain name registration and there was no indication that he was seeking to trade on the goodwill of the singer. The panel noted that where no plausible explanation had been provided for adopting a domain name corresponding to the name

THE NEW ICANN REGIME

The ICANN policy was drafted to deal with the related problems of cybersquatting, 'blocking' (which involves the registration of a domain name to prevent the owner of a trademark or service mark from reflecting the mark in a corresponding domain name), unfair competition, passing off and trademark infringement. It is designed for incorporation into registration agreements between domain name registrars and their customers (the domain name holders or registrants). The policy provides for an administrative panel to be appointed by an ICANN-approved dispute-resolution service provider in applicable cases.

Paragraph 4(a) of the policy provides that a domain name holder (the respondent) is required to submit to a 'mandatory administrative proceeding' in the event that a third party complains to ICANN that:

i) The respondent's domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights, and
ii) The respondent has no rights or legitimate interests in respect of the domain name, and
iii) The respondent's domain name has been registered and is being used in bad faith.

If the complainant succeeds in proving that each of these three elements is present, he is entitled to have the respondent's domain name transferred to him or, alternatively, the cancellation of the name.

The ICANN rules try to provide for a relatively quick decision, although, of course, the requirements for mandatory administrative proceedings do not prevent either the complainant or the respondent from going to court to resolve the issue, either before the administrative proceedings begin or after they are finished.

The ICANN *Uniform domain name dispute resolution policy* is available at *www.icann.org/udrp-policy-24oct99.htm*, while the *Rules for the uniform domain name dispute resolution policy* can be accessed at *www.icann.org/udrp/udrp-rules-24oct99.htm.*

of a famous entertainer, other panels had found a violation of the policy – as had occurred in *Julia Fiona Roberts v Russell Boyd*, Case No D2000-0210 (WIPO, 29 May 2000) and *Helen Folsade Adu p/k/a Sade v Quantum Computer Services Inc*, Case No D2000-0794 (WIPO, 26 September 2000).

There was evidence on the record that tended to support Madonna's assertion that Parisi's registration of the domain name prevented her from reflecting her mark in the corresponding dotcom domain name and that he had engaged in a pattern of such conduct. However, the record was inconclusive on that basis for finding bad faith and the panel did not rely on that evidence for its conclusion.

Parisi further asserted that the panel should reject the singer's case because she had been disingenuous in claiming that her reputation could be tarnished by his actions. While stating that it did not rely on tarnishment as a basis for its decision, the panel did observe that even though Madonna had produced sexually-explicit content of her own, Parisi's actions could nevertheless tarnish her reputation because they resulted in association with sexually-explicit content which she did not control and which might be contrary to her creative intent and standards of quality. Accordingly, it decided that the Madonna had satisfied paragraph 4(a)(iii) of the ICANN policy.

It found in Madonna's favour and decided that the disputed domain name should be transferred to her.

Get into the groove

The ICANN policy and rules have proved popular with victims of cybersquatting; indeed, there are a number of decisions of particular domestic interest, including *R&A Bailey & Co v WYSIWYG*, Case No D2000-0375 (WIPO, 4 July 2000), *Esat Digifone Ltd v John Butler*, Case No D2000-0601 (WIPO, 13 September 2000), *Esat Digifone Ltd v Michael Fitzgerald t/a TELCO-Resources*, Case No D2000-0602 (WIPO, 2 August 2000) and *Jefferson Smurfit Group plc v Stephen Davidson Inc*, Case No D2000-1117 (WIPO, 15 December 2000). However, the courts have also proved willing to provide relief in appropriate cases.

In the leading British case on cybersquatting, *British Telecommunications plc v One in a Million Ltd* ([1999] 1 WLR 903; [1998] 4 All ER 476), the UK Court of Appeal found that the defendant's activity constituted passing off and consequently granted a permanent injunction to the plaintiffs. In Ireland, High Court proceedings between Dublin solicitors LK Shields and EMC-Englefield Management Consulting Ltd were settled and made a rule of court on 29 May 2000. The terms of the settlement provided that EMC would undertake, first, to make no further use of the name *LK Shields* or any imitation thereof and, second, to transfer the domain name lkshields.com to the solicitors' firm.

In *Local Ireland Ltd and Nua Ltd v Local Ireland-Online Ltd and Con Daly t/a Daly Financial* (High Court, 2 October 2000), Mr Justice Herbert granted an interlocutory injunction to the plaintiffs. But while this case is of interest, its usefulness for present purposes is limited by the fact that the decision concerned a domain name dispute rather than cybersquatting *per se*. Further, despite the fact that it was agreed by both sides that the outcome of the application for interlocutory relief was likely to determine the dispute, there was no agreement to treat the hearing of the motion as the trial of the action. Consequently, in accordance with *Campus Oil*, the court was not entitled to inquire into the merits of the case or to consider the probabilities of success of any party at the trial of the action.

'Possible difficulties in enforcing an Irish judgment against a foreign defendant may argue in favour of the mandatory administrative procedure under the ICANN policy and rules'

Which route to take?

When confronted by the problem of cybersquatting, determining which route to take will obviously depend on the specific facts of the case. Relevant factors will include the perceived likelihood of success, the length of time likely to pass before effective relief is obtained and the associated costs. Possible difficulties in enforcing an Irish judgment against a foreign defendant may argue in favour of the mandatory administrative procedure under the ICANN policy and rules. But against that, a putative complainant will need to ensure that his action will come within the terms of the ICANN policy.

The Internet has been heralded as the 'information superhighway', but deterring highway robbery will remain a challenge for regulators. In the domain of names at least, courts and panels seem to be ensuring that rewards come from innovation, not imitation. G

Niall O'Hanlon is a practising barrister, a chartered accountant and an associate of the Institute of Taxation. He is editor of Irish business law *and of JILL, the Law Library's judgments database.*

When it's finally adopted here, the *European convention on human rights* will have far-reaching ramifications, particularly in the area of family law. Muriel Walls looks at some of the articles in the convention that are likely to have the biggest impact

FAMILY LAW and the

At the time of writing this article, the *European convention on human rights* has still not been incorporated into Irish law. Indeed, the bill pledged by justice minister John O'Donoghue has not even been published yet. It is regrettable that Ireland, as one of the first signatories to the convention in 1953, should be the last of the 41 countries to incorporate it.

At a Law Society conference last October, Attorney General Michael McDowell discussed the options open to the government. The first was simply to enact a law that purported to incorporate the convention as law and in doing so to repeal all inconsistent prior law. The other was to provide that 'subject to the constitution and to the constitutional prerogatives of the legislature and the judiciary, statute law and rules of common law should be interpreted in a manner consistent with the state's obligations under the ECHR and that statutory powers and the exercise of public law functions by state agencies should be carried out in a manner conformable with the ECHR'. The government has chosen the latter approach.

Whatever the method of incorporation, there will be an impact on family law and children. The convention has wide-ranging rights which will affect almost every area, but the particular emphasis here is on family law and children.

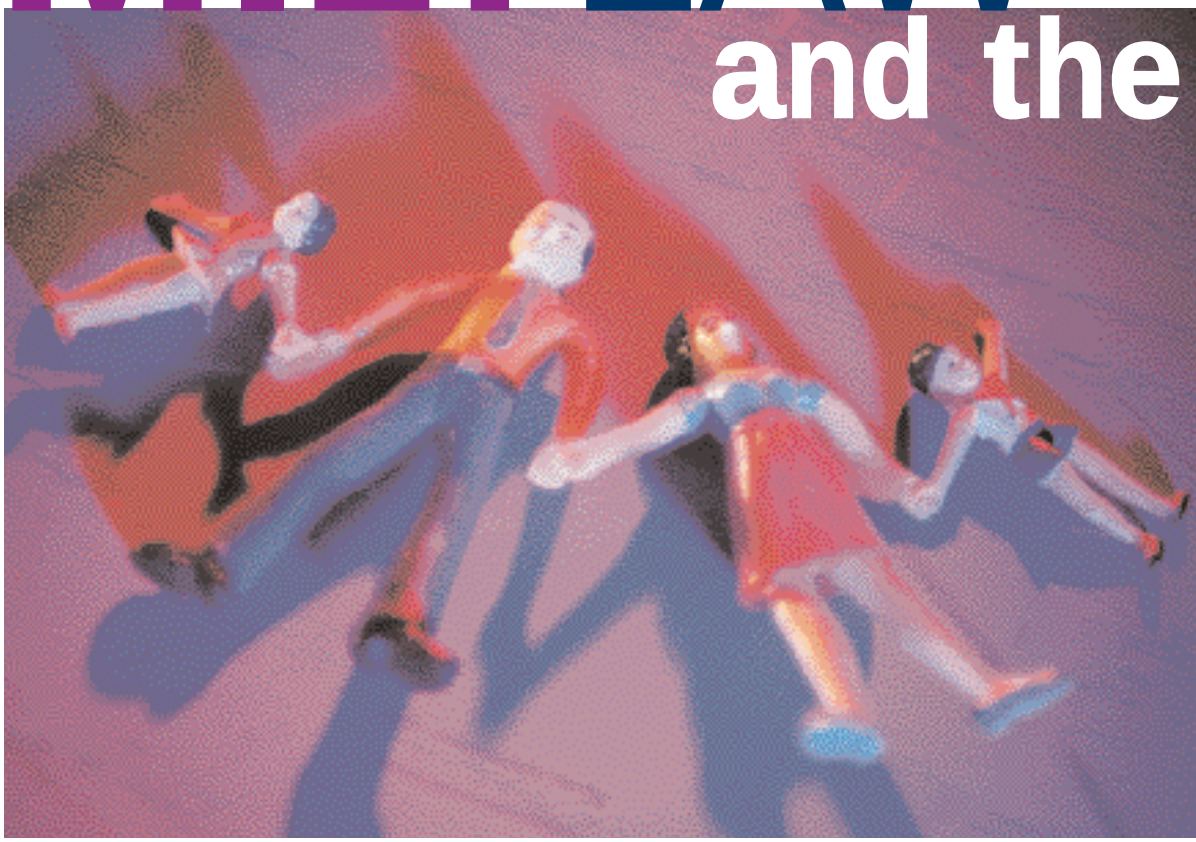
The following articles are likely to have an impact on the family law area.

Article 2: The right to life

Article 2 guarantees the most basic human right, the right to life. The protection of the right to life is more than merely refraining from taking life

MAIN POINTS

- The convention has wide-ranging rights that will affect family law
- The articles most likely to have an impact examined
- Possible conflicts between the articles



intentionally. The state is enjoined to take appropriate steps to safeguard life. For example, issues in the area of medical care might arise in the future involving those suffering from a permanent vegetative state or anorexia nervosa where they reject treatment. Or there could be cases where a mother rejects treatment when there is an immediate risk to the life of her baby or, alternatively, proposes to take drugs that may have a harmful effect on her baby.

In addition, article 2 has evoked questions over abortion and the right to life of the unborn. Issues also arise as to whether the natural father has rights to determine the right to life of his unborn child. Other right-to-life issues concerning the unborn relate to reproductive techniques. Forms of birth control and sterilisation are also likely to arise as issues under this heading.

Article 3: Freedom from inhuman treatment

Article 3 has been invoked in cases concerning corporal punishment in the school and in the home. A significant case in the European Court of Human Rights (ECHR), *A v UK*, held that the treatment inflicted by a stepfather on a nine-year-old boy reached a level of severity prohibited by article 3 and concluded that the state should be held responsible for the boy's beating. The court held that a state *'is required to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals. Children and other vulnerable individuals in particular are entitled to state protection in the form of effective deterrents against such serious breaches of personal integrity'*.

There is likely to be a conflict between articles 2 and 3. In some cases, compulsory medical treatment will be necessary, and this could be construed as inhuman or degrading simply by reason of the lack of consent. Provided the treatment is in accordance with established principles of medical practice and necessary to prevent death or serious injury, it is unlikely to be held in contravention of article 2. But other, more controversial, decisions in relation to compulsory sterilisation are likely to be in breach of article 3.

Article 5: The right to liberty and security of the person

The right to liberty is not an absolute right, and the primary exception is the *'lawful arrest or detention of a person for non-compliance with the lawful order of a court'*.

An exception is also made for the detention of minors by lawful order for the purposes of educational supervision or their lawful detention for the purposes of bringing them before the competent legal authority. These provisions are likely to be of significant interest to cases involving unruly and disturbed children for whom there are at present very few secure places which are safe for them and where, in many cases, they are held in inappropriate surroundings, such as cells in garda stations.

The article is also likely to be of interest in family law matters as it covers cases of civil contempt. The ECHR has, in one case, upheld the detention of a person for failure to make a declaration of assets in compliance with a court order.

Article 6: The right to a fair trial

In the determination of civil rights and obligations, or of any criminal charge, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The 'civil rights and obligations' refer to rights and obligations in private law and have been interpreted widely. They include:

- Family private law cases
- Public law decisions such as placing children in care and adoption
- Child abduction
- Domestic violence cases, and
- Ancillary relief applications.

Article 6 also guarantees the following rights:

- The right of access to a court
- The right to a fair hearing
- The right to a hearing within a reasonable time
- The right to an independent and impartial tribunal established by law, and
- The right to a public hearing and the public pronouncement of judgment.

Within this category, particular attention should be paid to the right to a hearing within a reasonable time. While the delays in our courts now are not as bad as they were some time ago, it is clear to anyone who works within the system that the volume of work now being processed and likely to be processed in the future will add a further strain on the system. The reasonableness of the length of time will involve the complexity of the case, the conduct of the parties,

European convention

'There thus exists between the child and parents a bond amounting to family life, even if at the time of his or her birth the parents are no longer cohabiting or their relationship has ended'

the manner in which the matter was dealt with by administrative and judicial authorities and the importance of what is at stake for the applicant. Particular emphasis must be placed on those cases involving children, be they childcare cases or cases under the *Hague convention*.

The right to a fair hearing also includes:

- The principle of equality of arms
- Freedom from self-incrimination
- Access to justice
- Presence in court
- Adversarial argument, and
- Reasons for the judgment.

In this regard, the most interesting point may be the reasons for the judgment. A fair hearing requires the court to give reasons for its judgment. It should *'indicate with sufficient clarity the grounds on which it based the decision so as to make it possible for a party to exercise usefully the right of appeal available to him'*.

A potential area of family law where the right of access to the courts under article 6 may have an impact includes providing for the wider representation of children so as to give them a greater voice in private law proceedings.

Article 8: The right to respect for private and family life

This article directly concerns family law and will have an important influence on its future development. Article 8(1) provides that everyone has the right to respect for his private and family life, his home and his correspondence. Article 8(2) sets out the conditions in which the state may interfere with the enjoyment of these rights. Private life has been defined as the right to establish and develop relationships with other human beings. There are also various categories of private life which have been interpreted widely to include the following.

Gender. The ECHR has held in previous cases that there was no obligation on the state to change the birth certificate of transsexuals to reflect their new identities.

Sexual life. In *Norris v Ireland* and *Dudgeon v the UK*, the court described sexual life as the most intimate aspect of private life. In the cases in question, the applicants had complained that under the law in force at the time they were liable to criminal prosecution on account of homosexual conduct, whether it took place in public or in private and irrespective of age or consent. The court stated that the legislation constituted a continuing interference with the applicants' right to respect for their private lives.

Physical and moral integrity of the person. In the case of *X and Y v the Netherlands*, the court found that the absence of a practical and effective criminal remedy in circumstances where a 16-year-old mentally-handicapped girl was sexually assaulted, but had no legal capacity to appeal against the prosecution's decision not to pursue criminal charges, amounted to a failure on the part of the state to secure respect for her private life. Private life is also likely to encompass protection against compulsory medical intervention such as compulsory blood tests in paternity actions. In *X v Austria*, the applicant complained that the obligation upon him to submit to a blood test in affiliation proceedings was in violation of article 8. The commission held that the medical intervention, although of minor significance, must be considered as an interference with this right.

Personal information. Access to and protection of personal information also falls within the ambit of private life. This is particularly relevant to personal information gathered by way of medical data and medical reports.

Paternity. Private life has also been held to include issues such as whether a putative parent is the parent of a child.

Name. Names have been held to constitute a means of personal identification, a link to a family and to involve the right to establish and develop relationships with others within that family, and so fall within the concept of private life. In various cases, the court has afforded a wide margin of appreciation as to the restrictions on permissible changes of name.

Article 8 also guarantees the right to respect for 'family life'. Although there has been no definition of family life in the convention, family has been interpreted widely by the ECHR. In *Keegan v Ireland*, the court held that 'the notion of the family' is not confined solely to marriage-based relationships and may encompass other *de facto* families where the parties are living together outside of marriage. A child born out of such a relationship is part of that family unit from the moment of birth and by the very fact of it. There thus exists between the child and parents a bond amounting to family life, even if at the time of his or her birth the parents are no longer cohabiting or their relationship has ended. In the case of *X, Y and Z v the UK*, various criteria were laid down for determining whether a relationship can amount to family life, taking into account a number of relevant factors such as whether the couple live together, the length of their relationship and whether they have demonstrated their commitment to each other by having a child together or by any other means. The existence therefore of family life is a question of fact.

The traditional family relationship of husband and wife are central to family life, but family life does not cease on separation or divorce of the parents. A parent includes a natural parent where there has been a cohabitation or other factors which show a relationship sufficient to come within the definition of family life. However, a natural parent who donates a sperm or an egg for the purposes of artificial insemination does not have a right to respect for family life solely by that fact.

Unmarried fathers are not in the same position as married fathers or unmarried mothers. In a number of other cases involving grandparents, the commission has examined each of the cases on its facts to determine whether there are sufficient links to amount to family life. There have been other cases covering relationships between siblings and uncles and nephews. Adoption has been held to create a family life between the adopted child and adoptive parents.

Family life has also been held to include the relationship between foster parent and foster child, although the court noted that the content of family life may depend on the nature of the fostering arrangements. Homosexual unions do not currently fall within the scope of the right to respect for family life. The court has interpreted the words 'respect for family life' widely. In addition, the article guarantees the right to respect for the home and correspondence. Correspondence has been interpreted to include written and telephone communications. In the case of *Klass v FRG*, telephone tapping was held to constitute a violation of article 8. This provision may in future be relevant in those cases where taped telephone conversations are sought to be adduced in evidence, for example, in private law cases and ancillary relief applications.

Article 12: The right to marry and found a family

Article 12 lays down the general principle, subject to such factors as the formalities of marriage, questions of capacity and minimum age. The court has refused a transsexual applicant the right to alter his birth certificate and it was held that the right to marry guaranteed by article 12 refers to traditional marriage between people of the opposite biological sex. Article 12 does not give the right to marry to a transsexual under his or her new gender or to homosexuals to marry one another. It does give a right to found a family, which is an absolute right in the sense that the state has no right to interfere with it. The state, however, does not have to provide opportunities for a couple to found a family.

This is intended as an overview of the likely impact of the *European convention on human rights* when it is finally implemented. In the meantime, we await the government's bill with interest. Many other articles in the convention and the protocols may impact on family law cases, and undoubtedly the convention is likely to have a significant impact on the management of childcare cases. G

Muriel Walls is a solicitor with the Dublin law firm McCann FitzGerald and is vice-chair of the Law Society's Family Law and Civil Legal Aid Committee.

OUTSOURCING: what do lawyer

Why do organisations that already have an in-house legal team turn to hired guns – and what are they looking for? A new survey from the Law Society's Corporate and Public Sector Committee looks at the factors behind the decision to outsource legal work to solicitors' firms

You have a speciality in a particular field but you are also a good all-rounder. Your clients have been satisfied with previous work you have done for them. You respond quickly and ensure that your clients have prompt access to a partner. If you and your law firm meet these criteria, then in-house lawyers who have more on their plates than they can handle will want to do business with you. These are just some of the findings of a recent survey of corporate and public service solicitors undertaken by the Law Society's Corporate and Public Sector Committee, the first of its kind ever undertaken in Ireland.

Organisations hire in-house lawyers for a variety of reasons. Expertise in a specialist area, immediate access to advice and the lawyer's ability to understand fully the organisation's business needs are the main ones. It is generally accepted, however, that while in-house lawyers have a core competence, there are situations where work needs to be outsourced to an external law firm. Almost all of the respondents to the survey reported that they outsourced at least some of their legal work. The vast majority outsourced in the region of 25% to 50% of legal work and an average of six law firms were instructed by each organisation. The main reasons given for outsourcing were (unsurprisingly):

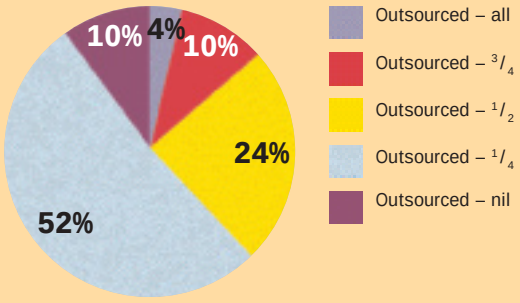
- Insufficient staff or internal resources, and
- The need for specialised advice/lack of expert knowledge.

The committee's survey set out to find answers to three key outsourcing questions:

- Who makes the decisions on outsourcing?
- What legal work tends to be outsourced?
- What are the criteria used for selecting a law firm?

RESULTS OF QUESTIONNAIRE

1. Is any legal work outsourced by your organisation?



2. What would be the most important reason why your organisation's legal work is outsourced?

rs look for?

Defining the decision-makers

In all the key areas (for example, the decision as to which law firms to instruct), at least 50% of the decision-makers on outsourcing are the in-house lawyer or law department. The company secretary handled the decision in 9% of responding companies; the same amount said decision-making authority rested with the financial controller or finance officer. A manager or head of function made the call at 15% of the enterprises surveyed, and the balance came from other management categories.

A similar pattern emerged with the other outsourcing questions:

- Who instructs the law firm? (In-house lawyer/law department: 52%)
- Who decides in the organisation when to outsource? (In-house lawyer/law department: 51%)
- Who supervises the law firm's work? (In-house lawyer/law department: 62%)

Interestingly, on the last question, 9% of respondents said that no-one supervised the law firm!

What work is outsourced?

The main areas of legal practice were identified in the survey and respondents were asked whether they were outsourced: a) rarely, if ever; b) sometimes; or c) frequently. In many areas, there was a reasonably balanced spread of answers so that, for example, there was no major divergence between the number of those who outsourced commercial litigation, employment law and mergers and acquisition work frequently and those who outsourced rarely, if ever. There was, however, a slight bias in favour of outsourcing personal injuries litigation and commercial conveyancing. On the other hand, there was a slight trend against outsourcing residential conveyancing, company formations, tax and intellectual property work.

'As would be expected of a core in-house activity, outsourcing of company law and corporate compliance work was found to be infrequent'

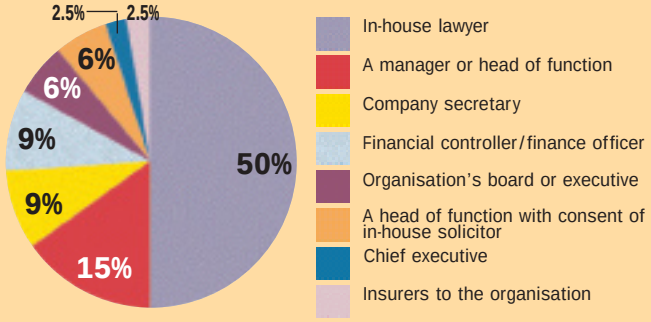
As would be expected of a core in-house activity, outsourcing of company law and corporate compliance work was found to be infrequent.

The criteria for selecting a law firm

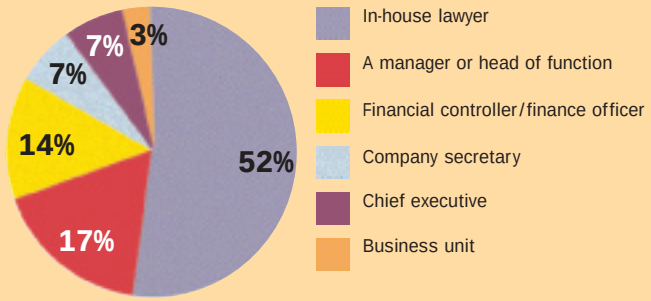
The survey identified 21 criteria for selecting a law firm and respondents were asked whether each criterion:

- Does not apply to the organisation's selection procedure for a law firm
- Applies to some extent

3. Who in your organisation decides what firms to use?



4. Who in your organisation instructs the law firm?



5. Do you use more than one law firm for your external legal work? If so, how many?

Average of 6.3 law firms

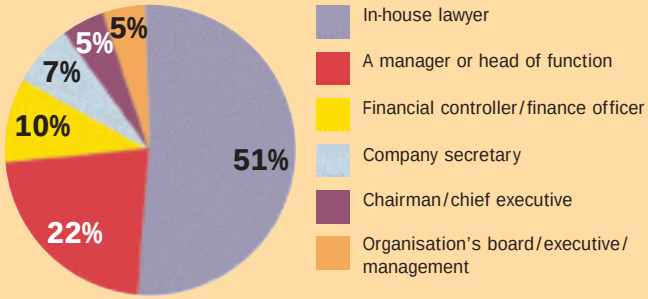
6. Are you in attendance at all meetings between your organisation and the law firm?

Yes: 20% No: 80%

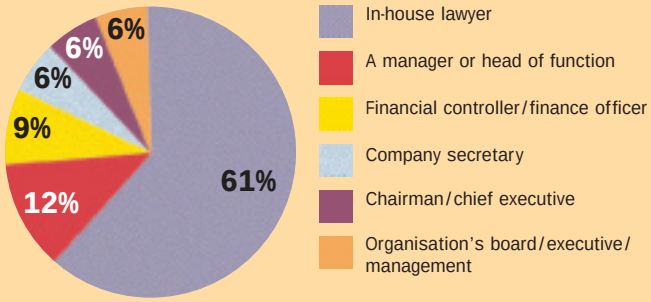
7. Do you brief junior or senior counsel directly (by-passing a law firm?)

Yes: 68% No: 32%

8. Who in your organisation decides when to outsource?



9. Who supervises the law firm's work?



10. What legal work do you outsource?

Legal Work	RARELY IF EVER	SOMETIMES	FREQUENTLY	NO RESPONSE
Personal injury litigation	26%	15%	40%	19%
Commercial litigation	30%	26%	40%	4%
Residential conveyancing	51%	15%	19%	15%
Commercial conveyancing	22%	30%	44%	4%
Contracts	30%	36%	19%	15%
Employment law	19%	48%	22%	11%
Pensions	33%	26%	22%	19%
Mergers & acquisitions	33%	7%	41%	19%
Company formations	29%	26%	19%	26%
Tax	30%	30%	15%	25%
Corporate compliance	62%	19%	0%	19%
Company law	30%	51%	0%	19%
Intellectual property	32%	30%	19%	19%

Notes on the survey

1. 28 survey responses were obtained from in-house solicitors from both the corporate sector (ranging from private companies to publicly-quoted enterprises) and the public service which, while not comprehensive, is an adequate representational group.
2. Questions 2, 3, 4, 8 and 9 were open-ended questions. Accordingly, the answers in some cases identified more than one person involved in the particular decision/activity. Where a combination was given, each person or function in the combination was counted in the result.
3. Reference to 'in-house lawyer' in the results may be to the lawyer in charge of a legal department, the legal department or the lawyer handling the case.
4. All questionnaire responses have been handled in strict confidence. Any identifying references that may have been inserted by respondents were removed prior to the information being collated.

11. What are the criteria your organisation adopts for selecting a law firm?

Criterion	DOES NOT APPLY TO OUR SELECTION PROCEDURE	APPLIES TO SOME EXTENT	DEFINITELY APPLIES TO OUR SELECTION PROCEDURE	IS A KEY CRITERION IN SELECTION	NO RESPONSE
Price	26%	44%	15%	4%	4%
Commitment to fixed-fee work	41%	33%	11%	4%	11%
Speciality in a particular field	4%	4%	30%	62%	0%
Expertise in all main areas of legal practice	19%	26%	19%	26%	10%
Speed of response	11%	7%	26%	52%	4%
Prompt access to a partner	7%	26%	7%	53%	7%
Size of firm	33%	30%	19%	7%	11%
Ranking of firm by independent assessment	70%	11%	0%	4%	15%
The other clients the firm services	66%	15%	4%	0%	15%
Recommendation	44%	38%	4%	7%	7%
Inertia ('we've always dealt with them')	48%	33%	4%	0%	15%
Satisfaction with previous job undertaken	4%	18%	37%	37%	4%
Location of firm (near to my organisation)	59%	19%	7%	4%	11%
Firm has offices in other jurisdictions	59%	26%	0%	0%	15%
Firm is part of international network	63%	15%	0%	7%	15%
Regular client information bulletins	63%	22%	0%	4%	11%
The firm is a client of ours	70%	11%	4%	0%	15%
ISO 9002 or other quality standard	70%	15%	0%	0%	15%
Our relationship with a particular solicitor in the firm	19%	44%	11%	11%	15%
Firm doesn't act for our competitors	44%	30%	4%	7%	15%
Access to free advice initially	70%	19%	0%	0%	11%

- Definitely applies to the selection procedure
- Is a key criterion in selection.

There was very little middle ground in the responses. As stated at the outset, in-house lawyers are looking for a speciality in a particular field, speed of response and prompt access to a partner. Also, it should come as no surprise that satisfaction with previous jobs was identified by the vast majority as either a definite factor or a key criterion.

What is much more intriguing is the analysis of the factors that tended not to apply. For example, ranking by an independent assessment body such as ISO 9002 or other quality-standard programmes had no relevance to the vast majority of respondents. Nor was location of the firm or the fact that it might have an international network or offices in another jurisdiction. Of course, this is a survey of Irish in-house lawyers. Clearly, lawyers instructing Irish firms from other jurisdictions might take a different view.

The question of fees was also canvassed in the survey, and it seems that law firm selection is not price sensitive. Price was a key criterion, or definitely applied, for a mere 26% of respondents, and this dropped to 15% with regard to a law firm's commitment to fixed-fee work. In-house lawyers are not looking for free advice either. Some 70% of respondents stated that free initial advice was not a factor at all in the selection process.

Finally, those glossy client information bulletins apparently have little impact. Of those who responded to the survey, 63% said that client bulletins did not apply to their selection process, while 22% stated that they applied to some extent. Only 4% indicated that bulletins were a key criterion or definitely applied. G

Kevin Finucane is a solicitor and director of Coyle Hamilton Limited, employee benefits consultants. He is chairman of the Law Society's Corporate and Public Sector Committee.

Ireland's First Home Equity Release Scheme Launched

A new Home Equity Release Scheme – the first pure home equity release product on the Irish market,– received a very positive welcome from the public and the media when it was launched by Residential Reversions Ltd., in December.

The new scheme called the Homeowner's Extra Income Plan allows home owners to raise a cash lump sum or a guaranteed monthly income for life, by transferring part of the value of their property to Residential Reversions. The equity transferred is based on the present open market value, agreed with the Company after both parties have carried out their own independent valuations. The home owner chooses which percentage of the value of the property they wish to apportion to Residential Reversions. This will be a minimum of 25% of the open market value, to a value of at least IR£75,000, and there is no maximum limit.

The percentage transferred to the Company will be secured for the benefit of Residential Reversions by a legal deed. This share can then be used to provide the home owner with a capital lump sum and/or generate extra income payable for the remainder of the applicant's life. If there are two partners applying, it will apply to the lifetime of the partner who lives the longer. All life income payments will be routed through corporate trustees, a very secure arrangement.

The home owners continue to occupy their home rent free for as long as they continue to live in their home and security of tenure is guaranteed. Because the scheme is based on equity release, there is no tax to pay on the extra cash raised. The home owner may opt to sell a further share in the property to the Company at a further date.

Once the property is vacated or sold, the proceeds of the share purchase by Residential Reversions passes to the Company, and the owner and/or their Estate receives the balance.

Pictured at the launch announcement of Ireland's first home equity release scheme were Ciaran Deeney, Managing Director, Residential Reversions Ltd., Dr. Tom Moffatt T.D., Minister for Older People and Joe Wyse, Director and Secretary, Residential Reversions Ltd.

Residential Reversions is an Irish Company supported by private and institutional investors. Managing Director, Ciaran Deeney, A.I.A., said

"A number of companies provide a similar service in the UK but this is the first time a genuine Home Equity Release Scheme has been offered in Ireland. It is not a loan or a mortgage and there are no repayments to make. The portion of the property not released is, effectively, ring-fenced, so the home owner is totally secured by the arrangement. Our market research over the past two years indicates that there is a huge pent-up demand for such a product and we would expect to handle about 300 transactions in the first year, with a value of between IR£20 million and IR£30 million".

Initially, to qualify, an applicant needs to be age 70 years or older, or a couple both aged over 70 years, owning a property worth at least £150,000.

For further information or explanatory brochures please contact:

Residential Reversions Limited

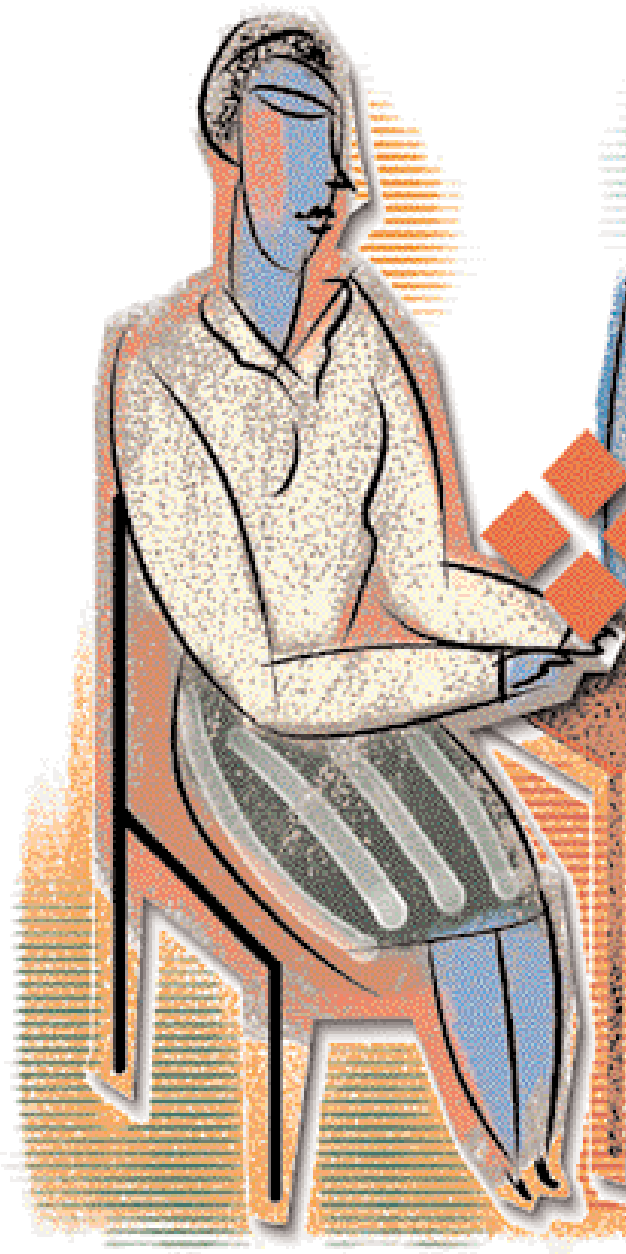
13 Gandon House, Lower Mayor Street, IFSC, Dublin 1.
Telephone: 01 672 1850 Fax: 01 672 1849
www.residentialreversions.ie
e-mail: info@residentialreversions.ie

Talk is C

After five years operating in this country, the Centre for Dispute Resolution has successfully sold the mediation message to a number of sectors, including the government. But, as Barry O'Halloran reports, the business community has been slower to catch on

During last month's British Airways' action for malicious falsehood against Irish airline Ryanair in the English High Court, the judge declared that he found it 'immature' that two companies should be litigating in the first place. Whether or not the issue could have been settled any other way is debatable, but Justice Jacob's remark indicates that UK judges increasingly expect companies to use the courts as a last resort after other methods of settling their differences have failed.

Alternative dispute resolution (ADR) has been used regularly in Britain for the last decade to settle commercial, public sector and even civil issues. The courts there are so anxious to promote ADR that a recent judicial practice statement demands that where litigants could have availed of it and did not, judges must take that failure into account when considering the question of costs. Indeed, under the new *Civil Procedure Rules* introduced in Britain in 1999, courts are increasingly ordering that parties use mediation, even if they are not willing to do so in the first place. Judges can also decide in the course of a hearing that a particular point, or points, can be dealt with more effectively by a mediator, and adjourn the case pending the outcome of that process. Obviously, that puts pressure on the parties to ensure that the issue in question is cleared up before they return to court.



MAIN POINTS

- **Alternative dispute resolution is now part of the legal system in Britain**
- **The Dublin-based Centre for Dispute Resolution introduced mediation for commercial and public sector cases five years ago**
- **It has won converts in government and the workplace, but it is still meeting resistance**

heap

In a nutshell, ADR involves employing a mediator to help parties settle disputes. In most situations, the mediator operates by first hearing everybody involved individually, and then bringing them together in a bid to find common ground. The process is faster than going to court and – importantly from the point of view of many potential litigants – it's confidential. Nothing that is agreed by any of the parties needs be made public, unless they decide to do so. It's also cheaper than going to court, and costs are borne by everybody involved, so there's no risk of being left with a large bill for court costs at the end of the process. In most cases, ADR does not cut lawyers out of the loop. In Britain, for instance, parties who agree to go through ADR almost always have their lawyers present, and in many cases it is the lawyers who do the talking.

In the UK, those involved in commercial or public sector disputes are put in touch with mediators through the Centre for Dispute Resolution (CEDR) in London. This is a non-profit organisation, funded by membership fees, which was set up a decade ago to promote ADR. It is five years since its Irish sister organisation, the Centre for Dispute Resolution (CDR), opened for business on Dublin's Merrion Square. It is run by a board of five members, and employs between five and ten mediators.

Mediators already play a big role in family law. But the CDR's executive director, John Hyland, wants to promote the use of ADR in other areas, particularly commercial and employment law. According to Hyland, ADR can be used in almost any dispute that could potentially lead to a court case. However, it cannot be used as a substitute for injunctions, nor can a constitutional issue be settled through ADR.

The concept has caught on here to a certain extent. Section 78 of the *Employment Equality Act, 1998* allows for some cases to be referred to an equality mediation officer. Since the act came into force last year, a number of Department of

SOCIETY OF YOUNG SOLICITORS IRELAND

(sponsored by Bank of Ireland Trust Services and Osborne Recruitment)

SPRING CONFERENCE 2001

9–11 March 2001 at Faithlegg House Hotel, Co Waterford

See *www.sys.ie* for further details

Friday 9 March

20.00–21.30 Registration

21.00 till late Delegates meet in residents' bar; musical entertainment

Saturday 10 March

10.30 ***SEMINAR SESSIONS***

Employment law: advising clients on e-mail and Internet misuse in the workplace. Kevin Langford, Mason Hayes & Curran

11.00 Coffee

11.15 *Short presentation by Bank of Ireland Trust Services and Osborne Recruitment*

11.30 *Tax and property transactions*. Paraic Madigan, Matheson Ormsby Prentice

12.00 *Discovery.* Eoin Dee, Nolan, Farrell & Goff

13.00 Subsidised lunch

14.00 Activities

Impressive leisure centre, swimming pool, aromatherapy treatment and massage, golf and horse riding (details from hotel reception). A golf competition will be organised (details available from the website).

19.30–20.00 Drinks reception

20.00 till late Banquet (black tie); DJ

Sunday 11 March

Until 11.00 Breakfast

12.00 Check out

Notes:

1. Solicitors wishing to attend this conference must apply through the SYS. Demand will be high. The application procedure will be applied strictly.
2. Accommodation is limited and will be allocated on a strictly first-come, first-served basis and in accordance with the procedure set out below.
3. The conference fee is £170pps and includes Friday and Saturday night accommodation, two breakfasts, reception, subsidised events, banquet and conference materials. A non-accommodation rate of £60 per person is available, to include banquet and conference materials.
4. One application form must be submitted per room per envelope together with cheque(s) for the appropriate conference fee and a self-addressed envelope. All applications must be sent by ordinary pre-paid post. Only applications exhibiting a post mark of 12 February 2001 or after will be processed. Rejected applications will be returned in due course.
5. Applications cannot be accepted without appropriate payment. Cheques payable to SYS, please. Names of delegates to whom the cheque(s) apply must be written on the back of the cheque(s).
6. Cancellations must be notified to treasurer@sys.ie on or before 26 February 2001. Cancellations after that date will not qualify for a refund.
7. Confirmation of booking by e-mail only. You must therefore provide your current e-mail address.

APPLICATION FORM

Please use block capitals. One form per room per envelope.

Name 1: _____ Name 2: _____

Firm 1: _____ Firm 2: _____

E-mail: _____ E-mail: _____

One contact address: _____ Phone: (H) _____ (O) _____

_____

ACCOMMODATION IN FAITHLEGG HOUSE HOTEL: £170pps Please tick ☐ Double ☐ Twin

NON-ACCOMMODATION: £60pps

I enclose cheque(s) in the sum of £170/£340 or £60/£120 and I enclose self-addressed envelope.

Application to The Treasurer, SYS, PO Box 7255, Dublin 4.

Enterprise, Trade and Employment staff have been appointed to these positions. The CDR was contracted to train them.

The CDR has been involved in multi-party disputes and negotiations. For instance, the centre's mediators played a key role in the negotiations that finally developed the *Bantry Bay charter*. This is a coastal zone-management strategy aimed at developing Bantry Bay in West Cork. The charter, now formally adopted by Cork County Council, was drawn up by the local authority, business interests, the public sector and local groups. The CDR, led by its founder, the late Jim Coleshill, mediated between these groups. Hyland is now beginning a similar process involving residents and groups from Dublin's northside and Dublin Port, which is planning to reclaim and develop around 22 hectares from the Irish Sea. The first phase of mediation in that case has been completed, he says.

While it cannot be used in constitutional cases, alternative dispute resolution (and the CDR itself) may have some part to play in cutting down the general level of civil litigation against the state. 'The government is looking at ways of cutting down the cost of claims against the state', Hyland says. 'Hopefully, within that there would be a role for mediation'. But he stresses that it will not affect any party's right to go to court if they wish.

Insurance claims

Another area where ADR might come into play is bullying in the workplace. This problem was highlighted recently when it emerged that departed RTÉ executive Andrew Burns was brought before a disciplinary committee to answer allegations of bullying a staff member. The case was not proved, but at a more general level the issue is now beginning to concern insurance companies, which have noticed a growing number of claims arising from allegations of bullying. A government task force established last year to look at this issue is due to report soon, and Hyland is confident that mediation will form at least part of the solution to this problem.

While ADR has won fans in some sectors, Hyland says that businesses have been slower to recognise its virtues. 'Business is not as responsive as other sectors, despite the fact that there is increased awareness of the centre and its mediators', he says. 'There is not the same commitment to it as there is in other areas. What it actually needs is further encouragement from business leaders and the legal profession. ADR is cost-effective; it saves time and money; it's confidential; and it ensures that business relations between the parties are maintained after the dispute is settled, which they often are not after litigation or arbitration'.

Hyland argues that the experience in other jurisdictions clearly underscores ADR's advantages. In the US, for example, many insurance disputes are now settled in this way. 'They have a 90% success rate, that is, nine out of every ten cases that go to dispute resolution are settled to both parties' satisfaction, and it has resulted in a 50% overall reduction in costs', he claims. He does not say if this saving is passed on in premium reductions.

'While it cannot be used in constitutional cases, alternative dispute resolution may have some part to play in cutting down the general level of civil litigation against the state'

He also suggests that ADR could result in increased business for lawyers, as it could encourage individuals and businesses who are in dispute – but who do not want to go to court for fear of losing the case – to come forward. 'Some cases do not surface because the parties are afraid that if they go to court, they run the risk of losing and will end up worse off than before', he says.

While ADR is an established part of the English system, it still has its detractors. Wags in London commercial firms maintain the initials stand for 'alarming drop in revenue'. And critics of the process say that it can add to the cost of resolving a dispute. They point out that if the parties have gone into court, and are then ordered to go into mediation, it creates another layer of expense. They also warn that showing your hand during mediation could weaken your case if you are eventually forced into court when ADR fails, which, they maintain, it will in many cases.

English resistance

There are no figures available for the volume of cases handled by the CDR in Dublin, but there is no question that the system is meeting a lot of resistance across the water. The CEDR in London has made only a small dent in the volume of litigation in the UK. According to a recent *Financial Times* report, the centre mediated 462 commercial cases in the year to last March. Figures from the Lord Chancellor's Department for 1999 show that 110,000 claims were started in the Chancery and Queen's Bench divisions of the English High Court. On that basis, not even 0.05% of these disputes ends up being handled by the CEDR, though it does claim an 80% success rate.

One high-profile case that was managed and settled at the centre in early 1999 saved the parties more than a year in court. It arose from British & Commonwealth Holdings' acquisition of Atlantic Computers in 1988. Atlantic later went into liquidation with multiple claims against it. It was set down for hearing this year, which could have taken up to 20 months. Instead, the parties opted for mediation, which took one month.

The time-saving element is one of the key advantages, according to one ADR advocate, Martin Hayman, general counsel with Standard Chartered Bank in the City of London. In the British press recently, he warned that in-house lawyers should be pushing for alternatives to litigation. He pointed out that it is in the parties' interests to avoid going to court, and argued that managers should be getting on with managing their businesses and not wasting time on litigation if it can be avoided. That's a sentiment that John Hyland would definitely echo. G

Barry O'Halloran is a staff reporter with Business & Finance *magazine.*

Good news for inveterate slackers: a recent ruling from the European Court of Justice has redefined just what constitutes 'working time'. Ciaran O'Mara explains the court's decision in the *SIMAP* case and how it could affect Irish employees

Busy doing no

On 3 October 2000, the European Court of Justice (ECJ) finally issued its long-awaited judgment in the working time case brought against the Spanish Health Administration by SIMAP, the union representing public health workers in the Valencia region of Spain. The judgment accepted in full the advocate general's opinion on the proceedings before the court, which had been issued late last year, and in its key decision held that time spent by doctors on call in a hospital was to be regarded as working time within the meaning of the *Working time directive*.

Time on call away from the hospital is not to be counted as working time because, according to the court, 'in that situation doctors may manage their time with fewer constraints and pursue their own interests'. The court also said that the 'exceptions to the scope of the basic directive … must be interpreted restrictively' and ruled that even where a collective agreement provided for flexibility in the application of the directive, the express permission of the individual employee must be given.

The relevance of the 'working time' definition is, of course, that article 6 of the *Working time directive* (section 15 of the Irish act of 1977) limits weekly 'working time', including overtime, over a four-month average to 48 hours a week. The on-call decision may benefit thousands of workers in the hospital and healthcare sectors who are expected to stay over at their place of work without being compensated for such time.

While initial reaction to the judgment has focused on its application in the hospital services – understandably so, as the reference to the court resulted from a case brought by a group of public sector doctors – the concept of working time outlined in the decision has implications for all industrial and services sectors.

In a nutshell, the decision appears to mean that any time spent at an employee's place of employment, with the exception of clearly-defined rest periods, is to be regarded as working time, irrespective of whether or not the employee is 'carrying out his activities or duties'. Both the Irish and UK legislation define working time as any time an employees is 'at his or her place of work or at his or her employer's disposal *and* carrying on or performing the activities or duties of his or her work'. This definition has regarded working time as *cumulative*, not *disjunctive*.

The *SIMAP* decision is disjunctive, and overrules the Irish and UK definitions. Agreements which have used the ambiguity in the Irish definition to allow employees to work consistently in excess of the maximum 48 hours a week may now need to be re-examined.

In its judgment, the court clearly juxtaposed working time and rest periods and said that 'the two are mutually exclusive'. In a key paragraph (48), it said: 'In the main proceedings, the characteristic features of working time are present in the case of time spent on call by doctors in primary care teams where their presence at the health centre is required. It is not disputed that during periods of duty on call under those rules, the first two conditions are fulfilled. Moreover, even if the activity actually performed varies according to the circumstances, the fact that such doctors are obliged to be present and available at the workplace with a view to providing their professional services means that they are carrying out their duties in that instance'.

MAIN POINTS

- **The ECJ has signalled that it will 'dynamically interpret' working time legislation**
- **The *SIMAP* decision could benefit thousands of workers in the healthcare sector**
- **Any time spent at your place of work could be defined as 'working time'**

What is 'working time'?

The court went on to say that the purpose of the directive was to safeguard the health and safety of workers by ensuring them minimum periods of rest and adequate breaks and said that 'to exclude on-call from working time if physical presence is required would seriously undermine that objective'.

As already noted, this approach on the part of the court would appear to raise questions about what exactly is to be regarded as working time. Clearly, any time spent at the place of employment, other than on defined rest breaks, is to be regarded as working time. Clearly, also, time spent on call away from the workplace is not to be regarded as work. However, given that the court ruled that on-call work away from the place of employment was not to be defined as work because the employees in question 'could manage their own time with fewer

constraints and pursue their own interests', time spent travelling on company business, at home or abroad, must now be regarded as working time because, in such circumstances, the employee is not free to pursue his or her own interests.

Of course, most of the transport sector itself is excluded from the *Organisation of Working Time Act, 1997*, although this will gradually change with the impact of the new 2000 directive.

Another factor is that most of the employees who undertake business travel may be defined, under the Irish legislation (section 3(2)(c)) as 'a person the duration of whose working time (saving any minimum period of such time that is stipulated by the employer) is determined by himself or herself, whether or not provision for the making of such determination by that person is made by his or her contract of employment'. Employees who fall under this definition do not have to comply with the legislation's provisions on the maximum working week or the timing and extent of rest breaks.

The Irish definition, however, is an extremely liberal interpretation of the directive's language, which refers in article 17 to workers in circumstances where 'the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, and particularly in the case

thing?

of … managing executives or other persons with autonomous decision-making powers'.

There is a significant difference between having some flexibility with regard to the hours you work – as many employees do, even at relatively junior levels in organisations – and being regarded as 'managing executives or other persons with autonomous decision-making powers'. In view of the court's insistence in its judgment that the main purpose of the directive is to safeguard the health and safety of workers (not surprising in light of its earlier decision in *UK v Council of the European Union* (1996), when it rejected a UK claim that the *Working time directive* was an employment, not a health and safety, measure), and its further insistence that the scope for derogation is to be interpreted restrictively, it is extremely likely that, if asked, it will construe the definition of 'managing executives or other persons with autonomous decision-making powers' narrowly.

With other health and safety and employment legislation, the court has thrown the net wide and sought to ensure that the original intent of various laws was not undermined by national legislatures adopting restrictive definitions. In the *SIMAP* case, it has clearly signalled that it will 'dynamically interpret' the working time legislation as well.

On the facts before it in the *SIMAP* case, the court held that time spent on call away from the place of employment was not to be seen as work for the purposes of the directive. This, however, should not be taken as the end of the matter. As in other cases of 'on call away from the workplace', employees may not have such freedom and may be restricted in what they can do while on call. For example, they may have to stay within a certain radius of their place of employment and may not be free to engage in certain social activities, such as having a drink. Presented with a different set of facts, the court may hold that on-call work in such circumstances should be classified as working time. Further references to the court on this issue can be anticipated.

Collective agreement

In its judgment, the court also examined the issue of whether the consent given by trade union representatives in the context of a collective or other agreement is equivalent to that given by a worker himself, as provided for in article 18 of the *Working time directive*. Article 18 allows the member states not to apply article 6 of the directive, relating to the maximum 48-hour weekly working time, and so allow individual workers to work more than 48 hours a week, provided they give their individual consent. The UK is the only member state to have taken advantage of this opt-out.

According to the court, it is clear from the wording of article 18 that it requires the consent of the individual worker if he or she is to work more than the 48 hours. The court goes on to say that, as had been pointed out by the UK government during the hearings on the case, if the intention of the EU legislature had been to allow the worker's consent to be replaced by that of a trade union in the context of a collective or other agreement, article 6 of that directive would have been included in the list in article 17(3) of the directive of those from which derogation may be made by a collective agreement or agreement between the two sides of industry.

The court held that the consent given by trade union representatives in the context of a collective or other agreement is not equivalent to that given by the worker himself, as provided for in the first indent of article 18. What this appears to mean is that only an individual worker can give consent to work more than 48 hours and cannot be compelled to do so because of a collective agreement. However, as only the UK has adopted this provision, the ruling is only relevant to the UK. No other country permits workers to work beyond the 48 hours. The ruling does not appear to have any significance for the derogations on the timing of rest breaks or the period over which the 48 hours can be averaged, as provided for in article 16. G

Ciaran O'Mara is a member of the Law Society's Employment and Equality Law Committee.

Tech trends

By Maria Behan

Paper-a-go-go

Yeah, yeah, we've all heard about the paperless office. So why is it most of us are still drowning in paper? Meanwhile, the cost of storage and retrieval continues to grow, as does the amount of time and effort it takes to find documents. Tempting as it may be, no responsible solicitor can afford to solve the problem with a big bonfire in the garden, but you *can* boil all that mess down to a few sleek CD-ROMs. The Disc O Tech system lets you store an exact image of original documents on disk, so you can search for and access them from your PC. A service bureau comes to your firm to implement a system that suits your needs and your IT set-up; they even do the dirty work of digitally scanning and indexing your documents and files. The folks at Disc O Tech claim they can save you up to 90% of the costs of document storage and retrieval and point out that you're also likely to save a lot of time. In one study, a team of paralegals searching 10,000 documents for a specific topic, author and date range took 67 hours and found 15 documents; using a digital document management system, the search took 4.5 seconds and found 20 documents. *Set-up costs vary according to installation; documents can be scanned for between 7p and 10p per image and electronic data transfer will cost about 3p per page. Contact Disc O Tech in Wicklow on 0404 61444 or Sandyford Office Solutions in Dublin on 01 294 3370.*

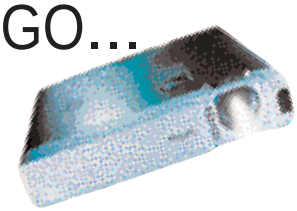
The whole world in your hands?

Mitsubishi (the company behind Trium phones) and Microsoft (the company behind pretty much everything else) have teamed up to produce a device they call Mondo, which is a lot catchier than their description: 'the latest GSM/GPRS phone-enabled Pocket PC'. What that means is that you can use this mobile phone-PC hybrid to make calls around the world, send and receive e-mail and even video-mails, browse the Internet and exchange digital business cards with fellow geeks armed with similar devices. The fancy phone part of the Mondo allows for hands-free and speaker-phone calls, while its computer side packs a 166 MHz processor and can run the wide range of Pocket PC programs. *Available in the next month or so, priced around £400.*

Looking beyond the label

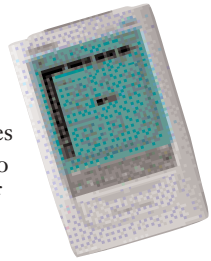
To protect client confidentiality, lawyers favour address labels instead of windowed envelopes. Like so many other thoughtful notions, this idea can be a pain to execute, as those charged with printing out those labels will attest. For instance, labels have a nasty tendency to peel off inside office printers, jamming the machine. Seiko Instruments' Smart Label printers are handy wee yokes dedicated to the dirty job of printing out labels, freeing your regular office printer to do what it's supposed to do: produce reams of useless paper. Each of the three printers in the Smart Label range come with software that links to programs such as your PC word-processor or the contact manager on your Palm Pilot, so you can create a label just by highlighting an address and clicking on an icon. The built-in database saves names, addresses and the most commonly-used labels, while direct thermal printing technology means there's no need for inks, ribbons and toner. *The Smart Label printers vary in price from £200 to £300 and are available by contacting AZAK on 01 660 5659 or info@azak.ie.*

Wherever UGO...



Don't worry. The UGO X-lite does not rely on cutting-edge Serbo-Croat technology – after all, it's produced by Philips – but if you need to give a presentation, you may want to pack this portable projector. It's smaller than a notebook and, at 1.3 kilos, it won't weigh you down. And thanks to a lot of technological wizardry that none of us understands, the images produced by this baby are amazingly sharp and high contrast. *Available for between £3,000-£4,600 from audio visual outlets such as Data Show AV, tel: 01 460 2299.*

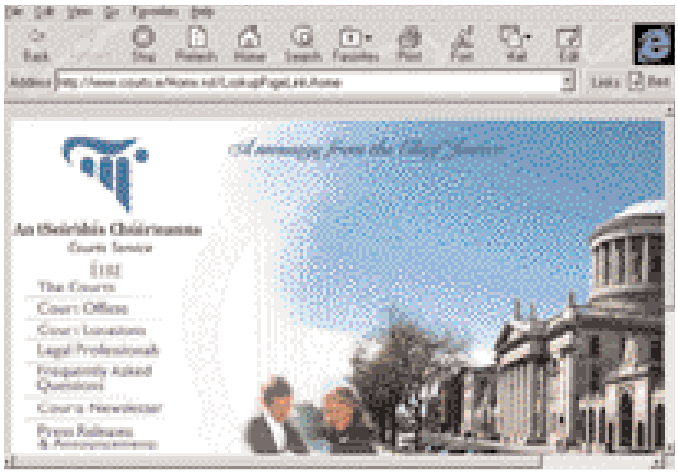
A rocket in your pocket?



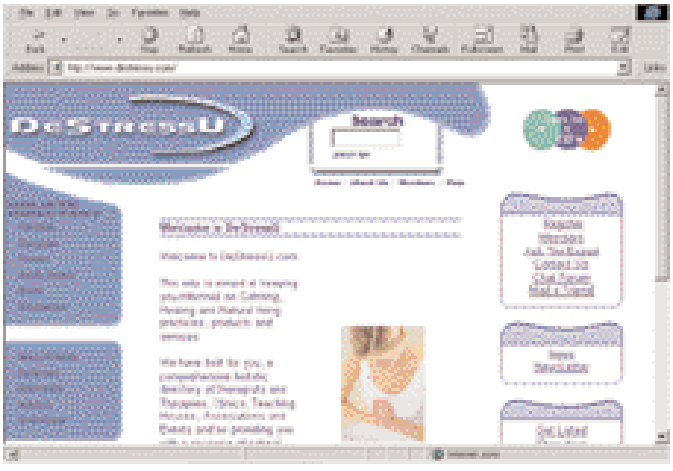
With fewer bells and whistles – and a smaller price tag – the Casio PV-S250 Pocket Viewer daily organiser will appeal to those who like to keep it simple. (Those who like to keep things really simple can stick to the ballpoint-and-diary method – but where's the fun in that?) Compatible with Microsoft Outlook (so you can share data with your PC) and operated via a stylus-controlled touch-screen, this mighty mite is a pretty comprehensive personal information manager, featuring a place to store contacts and record your schedule, not to mention the ability to create memos and expense reports. It also boasts a tantalisingly-named 'Secret Function' which protects confidential data. And you'll be ready for the future with a decent-sized memory (2MB plus 1 MB available for software you may want to add in later). Two AAA batteries provide up to 180 hours of continuous operation.

Available for about £130 from Barry Carroll at Cellular World on 01 206 1097 or 086 836 1622 or e-mail: barryc@cellularworld.ie

Sites to see



Courts Service Site (*http://www.courts.ie*). This site offers misty photographs of legal types and the buildings they work in – as well as some hard information such as a legal diary (which includes a roster of the day's cases and the Dublin jury list) and a map of the Four Courts.



DeStressU (*http://www.destressu.com*). If life's getting to be too much to handle, chill out at this site, which offers digitised tranquillity in the form of information on holistic medicines, relaxation techniques, aromatherapy and a range of other alternative approaches to healing body and spirit. The on-line shop offers a selection of products which the DeStressU people claim will be good for the outer environment as well as your inner calm. Ohm...

Kieron Wood's Pages (*http://welcome.to/barrister*). This barrister's slice of cyberspace offers the layperson background on topics such as family law, wills and legal terminology, while solicitors may be interested in the on-line contact list of Irish barristers and the round-up of international legal links.

Eat@Home (*http://www.eatathome.ie*). Feeling a bit peckish? Surf over to this site, which lets you click on the cuisine you crave, asks how much you're willing to shell out, and comes up with a list of take-away or dine-in options in your locality.

E-bookers (*http://www.ebookers.ie*). This Irish site doesn't just offer discounted flights and package holidays, it also boasts a nifty feature called FlightWatch, which lets you specify a flight number to get SMS messages sent to your mobile phone tracking the plane's progress so you won't head out to the airport prematurely. Cool or what?

Report of Law Society Council meeting held on 8 December 2000

Sympathy

The Council observed a minute's silence in memory of the former chief justice, Liam Hamilton.

Law Society of Northern Ireland

The Council approved the appointment of John Neill, John Meehan, Alan Hewitt, Catherine Dixon and Alastair Rankin as nominees of the Law Society of Northern Ireland to the Council for 2000/2001.

Mandatory CLE discussion document

Michael Peart referred to a discussion document on mandatory CLE, which represented the result of a year's deliberations by a special task force. The task force had sought the views of each local bar association, the vast majority of which were in favour of the concept, although there were varying suggestions as to the manner of its implementation. They had also consulted with the Law Society of Scotland, which had found the introduction of mandatory CLE to be a positive experience, particularly for local, defunct bar associations, which had been revitalised and were now thriving.

Mr Peart said that, because of the pace of change in modern society and the daily introduction of new laws, it was imperative that solicitors kept up-to-date with legal developments. He felt that this was best achieved if the society fostered a culture of life-long learning within the profession. While many solicitors attended continuing education courses on a voluntary basis, others did not. The society could not legislate for the whole of the profession on the basis of the good few. In addition, the interaction arising from participation in mandatory CLE could yield the added benefit of removing the sense of isolation experienced by many colleagues.

Mr Peart accepted that the introduction of mandatory CLE would require sanctions for non-compliance, otherwise it would be meaningless. The Law Society of Scotland had introduced a form of self-assessment, supported by documentation, which might prove worthwhile. He noted that it had also been suggested that some form of incentives might be introduced, which could be considered further. In real terms, the proposal envisaged 12 hours' compulsory CLE over a two-year period, with four hours being completed in the first year and three hours being fulfilled by private study, which could not be regarded as onerous.

Other issues requiring consideration included accreditation of in-house courses, accreditation of third-party providers, and whether mandatory CLE should be introduced for the entire profession at the outset.

John P Shaw said that he fully supported the concept of mandatory CLE, but favoured enforcement by the society, with sanctions for non-compliance rather than self-assessment. James MacGuill said that he did not support a mandatory system. He believed that the best habits were developed by willing participation rather than compulsion. David Martin said that the DSBA disagreed with the proposal and saw little point in requiring practitioners to attend lectures in which they had no real interest. Michael Irvine said that any profession that did not introduce mandatory CLE would fall behind in its knowledge gain and would lose out to those professions that required on-going training by their members. Moya Quinlan expressed concerns regarding the constitutional position of a mandatory scheme of CLE. She was unsure whether the society could impose such a mandatory requirement, particularly for those solicitors already in practice. Philip Joyce noted that the *Solicitors Acts* empowered the society to refuse to issue a practising certificate where required courses of education had not been fulfilled. Kevin O'Higgins expressed interest in the concept of incentivisation and suggested that more consideration might be given to this idea.

Stuart Gilhooly favoured the introduction of mandatory CLE for all practising solicitors, with meaningful sanctions for non-compliance. He believed that the proposed 12 hours' compulsory CLE over two years was not at all onerous and that Ireland had fallen behind most other jurisdictions in introducing a compulsory system. Orla Coyne said that the bureaucracy attached to running compulsory systems in other jurisdictions was undesirable. While she supported the concept of incentivisation, she did not support the introduction of mandatory CLE.

John Fish said that the legal revolution facing the profes-

In briefing this month...

sion meant that lawyers needed to constantly acquire and improve their knowledge and skills. In his view, unless there were clear sanctions, fully enforced, any compulsory scheme would lack credibility. John Costello favoured a 'halfway house', with mandatory CLE being introduced gradually, perhaps commencing with solicitors setting up practice on their own account.

Geraldine Clarke said that the society had to lead the profession on the issue. The legal professions throughout Europe were moving in this direction, as were competing professions, including accountants and tax consultants. She felt that many solicitors would welcome the introduction of mandatory CLE, as it would provide the necessary incentive to attend useful seminars.

Patrick O'Connor said that the Council had an obligation to the profession to introduce a requirement to keep up-to-date with legal developments. This would require the allocation of adequate resources to the society's CLE function. During his year of presidency, every bar association that he had visited had indicated a willingness to support mandatory CLE in some form.

John D Shaw said that, with the proper use of video-conferencing and webcasts, he did not believe that a compulsory scheme would greatly inconvenience rural members. Anne Colley said that, in order to keep properly up-to-date with legal developments, formal education was required and could not be obtained without attending required seminars or courses.

The director general suggested that the Council should view the proposal positively in terms of 'CLE for all'. He believed that many solicitors felt that they should attend CLE courses, but did not get around to doing so. It was clear that something had to be done to break that cycle and to give solicitors a reason to transform their good intentions into good actions. The Scottish experience was greatly encouraging. The introduction of CLE for all had increased solicitors' knowledge of law and practice, had breathed life into the local bar associations and had also reduced the sense of isolation felt by many sole practitioners. He was quite satisfied that the introduction of a mandatory system was the best way forward for the society and its members.

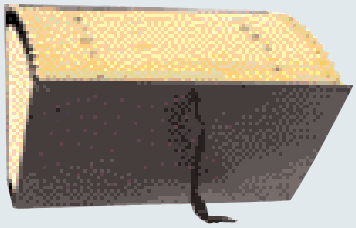
The Council agreed that the task force should consider the views expressed, re-examine its preliminary recommendations, engage in further dialogue with the members and report to the Council again within a number of months.

Practising certificate fee for 2001

The Council approved a full-rate practising certificate fee of £1,395 for 2001, including membership, with an equivalent fee of £1,162 for a solicitor qualified less than three years.

Industrial relations disputes

The Council noted, with concern, the industrial relations disputes taking place in the Land Registry and threatened in the Chief State Solicitor's Office. The detrimental effect on solicitors and their clients was discussed and the contents of correspondence from the IMPACT trade union were also considered. G



Committee reports

CRIMINAL

Garda station visits

Under a new scheme of payments to solicitors for visits to garda stations which is expected to come into operation shortly, solicitors attending at a garda station for the purpose of consultation with a client who is detained under specified legislative provisions will be entitled to a fee in respect of such consultation. This scheme will operate outside the criminal legal aid scheme regulations and therefore *any* solicitor attending will be entitled to a fee: that is, *it is not necessary for the solicitor to be on the criminal legal aid panel*.

The Law Society's Criminal Law Committee is currently compiling a list of solicitors who are prepared to attend at garda stations. This list will be provided to persons detained in garda stations. If you wish to place your name on the list, please advise Colette Carey, secretary, Criminal Law Committee, Law Society of Ireland, Blackhall Place, Dublin 7.

CORPORATE AND PUBLIC SECTOR

I have recently been appointed as chairman of the Corporate and Public Sector Committee, the committee of the Law Society which is charged with ensuring that the needs of solicitors outside private practice are met.

The committee had its first meeting in December. We look forward to working on your behalf. If there is a particular matter of interest or concern to you, please contact us through Geraldine Hynes, secretary to the committee, at the Law Society.

You will be pleased to note that transcripts of the lectures from the series of four seminars on corporate management and administration which were held in October are now available from the CLE office of the Law Society. The seminars had a direct relevance to in-house solicitors and were very well received. Topics covered included:

- The fundamentals of corporate governance
- Update on company law legislation
- Share registration – Crest settlement
- Interpretation of accounts
- Advising on legal and commercial risks
- Corporate decision-making
- Human resource techniques.

Kevin Finucane, Corporate and Public Sector Committee

GUIDANCE AND ETHICS

As recently-appointed chairman of the Guidance and Ethics Committee, I invite your suggestions with regard to projects which might be undertaken by the committee relating to any matter of practice or conduct which would be of practical assistance to solicitors. You should contact Therese Clarke, secretary to the committee, at the Law Society with your suggestions.

The committee has recently launched a quality service statement for display in solicitors' offices. Your firm will be receiving a copy later this month. We believe that clients will welcome this positive statement by their solicitors.

The committee's work on the second edition of the *Guide to conduct* has been completed for some time. However, publication has been delayed awaiting a court decision and legislation which may be relevant to the area of solicitor/client confidentiality. We are anxious to ensure that the guide reflects the current position on this important topic.

As part of its helping role, over the past number of years the committee has invited solicitors setting up in practice with their first practising certificate to a meeting with two committee members and one of the Law Society's investigating accountants. This is an opportunity for the newly-qualified solicitors to discuss their proposals for practice with experienced practitioners and to raise any queries they may have with regard to the accounts regulations. These meetings have been well received. I am now extending the invitation to include any solicitors setting up in practice irrespective of how long they are qualified. If you wish to come to a meeting, please contact us at the Law Society.

By way of further support to solicitors setting up in practice, the committee has published an information booklet. Solicitors in this situation need information under many different headings. While the information has always been readily available within the Law Society, it necessitated the solicitor having to speak to several different people. With the assistance of the staff involved, we have brought together all the necessary information in one booklet. Copies are available from Therese Clarke at the Law Society.

The *Law directory 2001* will be arriving in your offices shortly. The committee has updated and expanded the reference material at the back of the directory. Solicitors have been letting us know that they find this material very useful.

I look forward to hearing from you.

John P Shaw, Chairman, Guidance and Ethics Committee

PROBATE, ADMINISTRATION AND TAXATION

TAX BRIEFING

The following extract from *Tax briefing*, issue 42, is reproduced by kind permission of the Revenue Commissioners.

Budget 2001

Probate tax

Probate tax is being abolished in respect of deaths occurring on or after 6 December 2000.

CGT/stamp duty

Parent-to-child site transfer (on or after 6 December 2000) for purpose of construction of child's principal private residence is exempt from CGT/stamp duty (limited to one site with a maximum value of £200,000 per child).

The committee advises practitioners to read the article on the town renewal scheme published in issue 42 of Tax briefing, *which can be accessed in the publications section of the Revenue's website, www.revenue.ie.* Tax briefing *is also available on subscription from the Revenue Commissioners.* G

Practice notes

New farm retirement scheme

Under the rules of the last farm retirement scheme, it was possible for a solicitor to advise a client as to whether or not the client was eligible to obtain the retirement pension. This is not the case under the new scheme. Among other things, the criteria for qualification are different and require computations of income to be done both in respect of the transferor and transferee. Information also has to be given in relation to livestock numbers, age of livestock and the like. The information which the parties give in relation to livestock will have to be fully correct. It will have to correspond with the information already given by the transferor and transferee to the department in respect of such matters as area aid, livestock premiums and so on.

It is the considered opinion of the Conveyancing Committee that solicitors should not involve themselves in advising as to a client's eligibility for the scheme or in the completion or filing of the application forms but should deal solely with the transfers or leases involved. The solicitor should furnish the transfer or lease to the client's agricultural advisor who should look after the completion and lodgment of the forms.

A more detailed practice note is being prepared by the Conveyancing Committee and will be made available shortly on the Law Society website.

Conveyancing Committee

PRACTICE DIRECTION

Family law matters in the District Court

In any family law proceedings in the District Court in which the matters in issue are already the subject of an order of, or proceedings in, the District Court or the High Court or the Circuit Court, the parties (or, if legally represented ,their solicitor or counsel) shall inform the court at the commencement of proceedings and produce copies of all relevant documents

Peter Smithwick, President of the District Court 15 January 2001

Pension adjustment orders: notice to trustees

Family Law proceedings for a judicial separation/divorce are initiated by way of family law civil bill in the Circuit Court (save where there are substantial assets involved, in which case High Court proceedings may be undertaken).

If a party to the proceedings wishes to seek a pension adjustment order and pension preservation order under the *Family Law Act, 1995* or the *Family Law (Divorce) Act, 1996*, notice must be served giving notice to the trustees of the pension scheme in question. In deciding whether to make such an order, and in determining the provisions of the order, the court must have regard to any representations made by the trustees (under section 12(18) of the 1995 act or section 17(18) of the 1996 act and paragraph 78 of the guidance notes issued by the Pensions Board, 1997). The scheme administrators may be asked if they wish to make representations to the court. Failure to notify the trustees may mean that the court cannot make the required pension adjustment order and would, at the very least, involve an adjournment application.

Family Law Committee

New High Court practice direction: judicial review

The president of the High Court has advised that, commencing on the second Monday in February (12 February), the following procedures will apply in respect of judicial review business:

- Where the court grants leave to apply for judicial review by notice of motion, it will at the time of granting such order fix the date for which the notice of motion seeking substantive relief is to be made returnable
- Such notices of motion will henceforth be made returnable for every day of the week and not exclusively for a Monday as has been the case to date
- Upon the first listing of such notice of motion, a short *inter partes* hearing will be conducted. At that hearing, directions will be given for the exchange of pre-trial documents
- At this first hearing, the parties should be in a position to apprise the judge of the main issues in the case and suggest *realistic* time limits for the exchange of pre-trial documents. On foot of this, appropriate directions will be given. The motion will then be adjourned to a date subsequent to the final date for the exchange of such documents. It is expected that the court order as to directions will be complied with within the permitted time and only in exceptional circumstances will further extensions of time be granted
- Once the court is satisfied that all pre-trial matters have been disposed of, the motion will then be adjourned to the next available list to fix dates with a view to having a trial date assigned.

Litigation Committee

Practising certificates 2001

A practising certificate must be applied for before 1 February 2001 in order to be dated 1 January 2001 and thereby to operate as a qualification to practise from the commencement of the practice year 2001.

It is misconduct for a solicitor to practise without a practising certificate. Any solicitor found to be practising without a practising certificate will be referred to a special meeting of the Compensation Fund Committee to be held in mid-February 2001. A decision will then be made to take any or all of the following steps against any such solicitor:

- Referral to the Disciplinary Tribunal of the High Court
- Application to the attorney general to commence relator injunctive proceedings
- Commencement of criminal proceedings pursuant to the *Solicitors Acts*.

PJ Connolly, Registrar of Solicitors

LEGISLATION UPDATE: 14 NOVEMBER 2000 – 11 JANUARY 2001

ACTS PASSED

Appropriation Act, 2000
Number: 36/2000
Contents note: Appropriates to the proper supply services and purposes sums granted by the *Central Fund (Permanent Provisions) Act, 1965*, and makes certain provision in relation to the finance resolutions passed by Dáil Éireann on 6/12/2000
Date enacted: 15/12/2000
Commencement date: 15/12/2000

Fisheries (Amendment) Act, 2000
Number: 34/2000
Contents note: Makes provision in relation to the determination by the Aquaculture Licences Appeals Board of appeals against ministerial decisions to grant or to refuse to grant an aquaculture licence under the *Fisheries (Amendment) Act, 1997*, as amended and extended by the *Fisheries and Foreshore (Amendment) Act, 1998*; clarifies the power of the board or any consultant or adviser engaged by it to inspect any land, foreshore or area or water to which the relevant appeal relates, whether or not that appeal is the subject of an oral hearing; amends and extends the *Fisheries (Amendment) Act, 1997*
Date enacted: 15/12/2000
Commencement date: 15/12/2000

ICC Bank Act, 2000
Number: 32/2000
Contents note: Increases the authorised share capital of ICC Bank plc; provides for the disposal by the minister for finance of shares in the bank; makes provisions in relation to certain guarantees of the borrowing of ICC Bank; repeals *ICC Bank Acts, 1933 to 1997*
Date enacted: 6/12/2000
Commencement date: Commencement order/s to be made (per s8(2) of the act): 7/12/2000 for all sections other than ss3, 5 and 7 (per SI 396/2000)

Insurance Act, 2000
Number: 42/2000
Contents note: Provides for the authorisation and supervision of insurance intermediaries by the Central Bank of Ireland; amends the *Investment Intermediaries Act, 1995* to provide for the application of the act to insurance intermediaries; gives further effect to Council Directive 92/96; amends the *Insurance Act, 1989,* and provides for related matters
Date enacted: 20/12/2000
Commencement date: Commencement order/s to be made (per s1(4)(a) and (b) of the act): 1/1/2001 for part 1; part 2, other than s8; s16 for the purposes of s3; scheds 1 and 2. 1/4/2001 for s 8, except in so far as it provides for the repeal of s47 of part IV of the *Insurance Act, 1989*; part 3, in so far as it did not come into operation on 1/1/2001; part 4 (per SI 472/2000)

Irish Film Board (Amendment) Act, 2000
Number: 35/2000
Contents note: Increases the aggregate amount of any investments, loans, grants or moneys provided by the Irish Film Board under sections 6 and 8 of the *Irish Film Board Act, 1980*, or repayments on foot of any guarantee under section 7 of the act.
Date enacted: 15/12/2000
Commencement date: 15/12/2000

National Pensions Reserve Fund Act, 2000
Number: 33/2000
Contents note: Provides for the establishment, financing, investment and management of the National Pensions Reserve Fund to provide towards the exchequer cost of social welfare and public service pensions; provides for the establishment of an independent National Pensions Reserve Fund Commission to control and manage the fund and implement an investment strategy for the fund; provides for the dissolution of the Temporary Holding Fund for Superannuation Liabilities and on the dissolution of the Temporary Fund (under s28(2)) the *Temporary Holding Fund for Superannuation Liabilities Act, 1999* shall be repealed; amends the *Taxes Consolidation Act, 1997*
Date enacted: 10/12/2000
Commencement date: 10/12/2000; establishment day order to be made (per s3 of the act).

National Stud (Amendment) Act, 2000
Number: 40/2000
Contents note: Provides for a further increase in the share capital and borrowing limits of the National Stud Company; empowers the minister to vest all or any part of the National Stud lands, currently held in licence from the minister, in the National Stud Company; empowers the company to establish subsidiaries, to acquire shares in other companies and to enter into joint ventures; amends and extends the *National Stud Acts, 1945 to 1993*
Date enacted: 20/12/2000
Commencement date: 20/12/2000

National Training Fund Act, 2000
Number: 41/2000
Contents note: Provides for the establishment of a National Training Fund and associated levy on employers in respect of certain employees, which will finance schemes aimed at raising the skills of those in employment and providing training to those who wish to acquire skills for the purposes of taking up employment; repeals the *Industrial Training (Apprenticeship Levy) Act, 1994,* and certain sections of the *Industrial Training Act, 1967,* and provides for related matters
Date enacted: 20/12/2000
Commencement date: Commencement order to be made (per s11(2) of the act)

National Treasury Management Agency (Amendment) Act, 2000
Number: 39/2000
Contents note: Provides for the delegation to, and the conferral on, the National Treasury Management Agency of functions in relation to the management of certain claims against the state and certain other related functions, functions in relation to fund investment services, consultancy services and other services, the conferral on the minister for finance of functions in relation to central treasury services and the delegation of those functions to the National Treasury Management Agency. Amends the *National Treasury Management Agency Act, 1990* and the *Vocational Education Act, 1930,* and provides for related matters
Date enacted: 20/12/2000
Commencement date: Commencement order/s to be made for part 2 of the act (per s1(2) of the act); 20/12/2000 for all other sections

Protection of Children* (Hague Convention) *Act, 2000
Number: 37/2000
Contents note: Ratifies the 1996 *Hague convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children.* Amends ss14 and 30 of the *Child Abduction and Enforcement of Custody Orders Act, 1991*. Text of the convention is published as a schedule to the act
Date enacted: 16/12/2000
Commencement date: Commencement order/s to be made per s 19(2) of the act

Wildlife (Amendment) Act, 2000
Number: 38/2000
Contents note: Amends and extends the *Wildlife Act, 1976*. Provides statutory protection for natural heritage areas (NHAs); improves a number of measures, or introduces new ones, to enhance the conservation of wildlife species and their habitats; ensures or strengthens compliance with international agreements and enables ratification of the *Convention on international trade in endangered species* (CITES) and the *Agreement on the conservation of African-Eurasian migratory waterbirds* (AEWA); amends the *Forestry Act, 1946*, the *Registration of Title Act, 1964*, the *State Property Act, 1954*, and the *European Communities (Natural Habitats) Regulations 1997* (SI 94/1997), and provides for related matters
Date enacted: 18/12/2000
Commencement date: Commencement order/s to be made (per s2 of the act)

PRIVATE ACT PASSED

The Trinity College, Dublin (Charters and Letters Patent Amendment) Act, 2000
Number: 1P/2000
Date enacted: 6/11/2000
Commencement date: 6/11/2000

SELECTED STATUTORY INSTRUMENTS

Building Regulations (Amendment) (No 3) Regulations 2000
Number: SI 441/2000
Contents note: Amend the *Building Regulations 1997* (SI 497/1997) so as to extend the class 9 building exemption from the Electricity Supply Board to other licensed electricity supply utilities
Commencement date: 1/1/2001

Cement (Repeal of Enactments) Act, 2000 ***(Commencement) Order 2000***
Number: SI 361/2000
Contents note: Appoints 28/11/2000 as the commencement date for the act
Commencement date: 1/3/2001

Consumer Information (Advertisements for Airfares) Order 2000
Number: SI 468/2000
Contents: Provides that advertisements for airfares will give the total price payable by the purchaser for the airfare, and the availability of the airfare advertised

Copyright and Related Rights Act, 2000 ***(Commencement) Order 2000***
Number: SI 404/2000
Contents note: Appoints 1/1/2001 as the commencement date for the following sections of the act: part 1 – all sections except s10(2) in so far as it applies to s56 of the *Copyright Act, 1963*; part II – all sections except ss98, 198 and 199; part III – all sections except s247; part IV; part V; part VI; part VII

Copyright and Related Rights (Educational establishments) Order 2000
Number: SI 410/2000
Contents note: Describes the educational establishments that are prescribed for the purposes of the *Copyright and Related Rights Act, 2000*
Commencement date: 1/1/2001

Copyright and Related Rights (Educational Establishments and Establishments to which Members of the Public have Access) Order 2000
Number: SI 409/2000
Contents note: Specifies the descriptions of educational establishments and of establishments to which members of the public have access that are prescribed for the purposes of ss58 and 226 of the *Copyright and Related Rights Act, 2000*
Commencement date: 1/1/2001

Copyright and Related Rights (Librarians and Archivists) (Copying of Protected Material) Regulations 2000
Number: SI 427/2000
Contents note: Prescribe libraries and archives for the purposes of certain exceptions relating to the copying of protected materials, as required by the relevant sections of the *Copyright and Related Rights Act, 2000,* and prescribe the conditions that must be met where certain exceptions of this nature are availed of
Commencement date: 1/1/2001 for all provisions except regulations 4(a) and 6(a) relating to the implementation of the forms of declaration set out in schedule 2 (in relation to copying of protected material by librarians and archivists for the purpose of research and private study, and copying by librarians and archivists of certain materials which have not been lawfully made available to the public) which will come into force on 1/4/2001

Copyright and Related Rights (Material Open to Public Inspection) (International Organisations) Order 2000
Number: SI 411/2000
Contents note: Provides that ss74(1), 74(5), 240 and 334 of the *Copyright and Related Rights, 2000* will apply to material made open to public inspection by the European Patent Office, the World Intellectual Property Organisation and the Office for Harmonisation of the Internal Market (Trade Marks and Designs)
Commencement date: 1/1/2001

Copyright and Related Rights ***(Provision of Modified Works) (Designated Bodies) Order 2000***
Number: SI 406/2000
Contents note: Specifies the description of bodies that are designated for the purposes of ss104 and 252 of the *Copyright and Related Rights Act, 2000*
Commencement date: 1/1/2001

Copyright and Related Rights ***(Recording for Purposes of Time-Shifting) Order 2000***
Number: SI 407/2000
Contents note: Specifies the types of establishments that are prescribed for the purposes of ss101 and 250 of the *Copyright and Related Rights Act, 2000*
Commencement date: 1/1/2001

Copyright and Related Rights ***(Recording of Broadcasts and Cable Programmes for Archival Purposes) (Designated Bodies and Classes) Order 2000***
Number: SI 405/2000
Contents note: Specifies bodies and classes of broadcasts and cable programmes that are designated for the purposes of ss105 and 253 of the *Copyright and Related Rights Act, 2000*
Commencement date: 1/1/2001

Copyright and Related Rights (Works of Folklore) (Designated Bodies) Order 2000
Number: SI 408/2000
Contents note: Specifies the bodies that are designated for the purposes of s92 of the *Copyright and Related Rights Act, 2000*
Commencement date: 1/1/2001

Coroners Act, 1962 ***(Fees and Expenses) Regulations 2000***
Number: SI 429/2000
Contents note: Prescribe various fees and expenses for the purposes of the *Coroners Act, 1962.* Replace the *Coroners Act, 1962 (Fees and Expenses) Regulations 1996* (SI 151/1996)
Commencement date: Deemed to have come into operation on 1/1/1999

Derelict Sites Regulations 2000
Number: SI 455/2000
Contents note: Prescribe procedural matters for the purposes of the *Derelict Sites Act, 1990*, and revoke the *Derelict Sites Regulations 1990* (SI 192/1990) to take account of the transfer to An Bord Pleanála of ministerial powers in relation to the compulsory acquisition of derelict sites
Commencement date: 20/12/2000

Double Taxation Relief (Taxes on Income) (People's Republic of China) Order 2000
Number: SI 373/200
Commencement date: See article 28 of the agreement for provisions for entry into force

Double Taxation Relief (Taxes on Income and Capital Gains) (The Republic of Bulgaria) Order 2000
Number: SI 372/2000
Commencement date: See article 28 of the agreement for provisions for entry into force

European Communities (Environmental Impact Assessment) (Amendment) Regulations 2000
Number: SI 450/2000
Contents note: Transfer the function of certifying environmental impact assessment of local authority own development from the minister for the environment and local government to An Bord Pleanála on 1/1/2001. The transfer of the certification function coincides with the transfer of the minister's function in relation to the approval of compulsory purchases of land by local authorities in accordance with ss214 and 215 of the *Planning and Development Act, 2000*
Commencement date: 1/1/2001

European Communities (Liability for Defective Products) Regulations 2000
Number: SI 401/2000
Contents note: Give effect to Council Directive 1999/34/EC on liability for defective products which amended Council Directive 85/374/EEC on liability for defective products. Amend the *Liability for Defective Products Act, 1991*
Commencement date: 4/12/2000

European Communities (Protection of Employment) Regulations 2000
Number: SI 488/2000

Contents note: Amend the *Protection of Employment Act, 1977* to provide for representation of, and consultation with, employees in the absence of a trade union, staff association or excepted body; provide for a right of complaint to a rights commissioner where an employer contravenes sections 9 or 10 of the act (information and consultation of employees); provide for increases in the levels of fines for offences. Give further effect to Council Directive 75/129/EEC relating to collective redundancies as amended by Council Directive 92/56/EEC
Commencement date: 21/12/2000

European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) (Amendment) Regulations 2000
Number: SI 487/2000
Contents note: Amend the *European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations 1980* (SI 306/1980) to provide for representation of, and consultation with, employees in the absence of a trade union, staff association or excepted body; provide for a right of complaint to a rights commissioner where an employer contravenes regulation 7 (information and consultation of employees) of the 1980 regulations and provide for increases in the levels of fines for offences. Give further effect to Council Directive 77/187/EEC
Commencement date: 21/12/2000

Housing Act, 1966 *(Acquisition of Land) Regulations 2000*
Number: SI 454/2000
Contents note: Prescribe the forms to be used by local authorities in connection with the compulsory purchase of land by means of a compulsory purchase order under s76 and the third schedule of the *Housing Act, 1966*. Replace the *Housing Act (Acquisition of Land) Regulations 1966, 1993 and 1998*
Commencement date: 1/1/2001

Immigration Act, 1999 *(Section 11(1)(p)) (Commencement) Order 2000*
Number: SI 364/2000
Contents note: Appoints 20/11/2000 as the commencement date for section 11(1)(p) of the *Immigration Act, 1999*, which amends section 22 *(Dublin convention)* of the *Refugee Act, 1996*, by providing the transfer of responsibility for determining matters under the *Dublin convention* from the appointed officer and appeals officer under the *Refugee Act* to the Refugee Application's Commissioner and the Refugee Appeals Tribunal respectively in the *Refugee Act* as amended

Insurance Act, 1989 *(Reinsurance) (Form of Notice) Regulations 2000*
Number: SI 473/2000
Contents note: Prescribe the form of notice to be given to the minister by companies wishing to carry on the business of reinsurance in the state. In accordance with s5 of the *Insurance Act, 2000*, the notice must be given by existing reinsurance companies within 60 days of the commencement of that section (commencement date for s5: 1/1/2001). Reinsurance companies established after that date must give notice not less than 30 days before commencing business
Commencement date: 1/1/2001

Local Government (Planning and Development) (No 2) Regulations 2000
Number: SI 458/2000
Contents note: Transfer the function of certifying environmental impact assessment of local authority own development from the minister for the environment and local government to An Bord Pleanála. The regulations contain amendments to part IX of the *Local Government (Planning and Development) Regulations 1994* (SI 86/1994), as amended. The transfer of the certification function coincides with the transfer of the minister's function in relation to the approval of compulsory purchases of land by local authorities in accordance with ss214 and 215 of the *Planning and Development Act, 2000*
Commencement date: 1/1/2001

National Beef Assurance Scheme Act, 2000 *(Commencement) Order (No 2) 2000*
Number: SI 414/2000
Contents note: Appoints 22/12/2000 as the commencement date for sections 20 to 22 of part II of the act

Planning and Development Act, 2000 *(Commencement) (No 2) Order 2000*
Number: SI 449/2000
Contents note: Appoints 1/1/2001 as the commencement date for the following sections: section 2 (in so far as it relates to the sections commenced on that date), 50 (in so far as it relates to decisions under subsection (2)(b)(iii) of that section), 71–78 incl, 182, 210–223 incl, 263, 264 (in so far as it relates to the repeal of s55A of the *Roads Act, 1993*, as inserted by s6 of the *Roads (Amendment) Act, 1998)*, 265(3), 267, 268(1) (other than paragraphs (a), (b), (c) and (d) of that subsection), 271–277 inclusive

Planning and Development (No 2) Regulations 2000
Number: SI 457/2000
Contents note: Prescribe certain documents which must be submitted with an application for the consent of An Bord Pleanála to the compulsory acquisition of a protected structure under the *Planning and Development Act, 2000,* and set out the form of a vesting order for the acquisition of a protected structure
Commencement date: 1/1/2001

Refugee Act, 1996 *(Commencement) Order 2000*
Number: SI 365/2000
Contents note: appoints 20/11/2000 as the commencement date for all remaining sections of the act not already in operation

Roads Regulations 2000
Number: SI 453/2000
Contents note: Prescribe the forms to be used by local authorities in connection with the preparation and submission to An Bord Pleanála of schemes for the provision of motorways, busways and protected roads, and to notify the public and persons affected by such schemes, and the forms to be used in relation to the environmental impact assessment of roads projects; revoke part 9 and schedule D of the *Roads Regulations 1994* (SI 119/1994). The forms are prescribed to take account of the transfer of the minister for the environment and local government's functions under ss49, 50 and 51 of the *Roads Act, 1993*, to An Bord Pleanála in accordance with s215 of the *Planning and Development Act, 2000*
Commencement date: 1/1/2001

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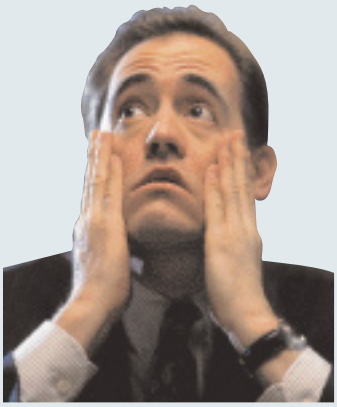

In a corner

How to restore a struck-off company to the register

Continuing our series on coping with crisis situations, Kevin O'Higgins explains how to go about getting clients restored to the companies register after they have been struck off

Section 311 of the *Companies Act, 1963* empowers the registrar of companies to strike off a company where he believes that it is not carrying on business or where the liquidator of a company being wound up has failed to file returns within six months. First, the registrar sends a registered letter to the company enquiring whether it is carrying on business. If an answer is not received within one month, a notice is published in *Iris Oifigúil*. The registrar will then send a further registered letter stating that at the expiration of one month from that date the name of the company will be struck off.

Section 311(8) of the 1963 act allows a company or any member or creditor to apply to the court for restoration to the register within 20 years. The *Companies (Amendment) Act, 1982* (section 12) had empowered the registrar of companies to strike off a company where it had failed to file its annual returns for two consecutive years. Section 246 of 1990 act

WHAT YOU SHOULD DO

The steps necessary to restore a company to the register are as follows:

1. The application (for the moment) is made on petition to the High Court under section 311(8) of the 1963 act (see order 75 and form no 1 of appendix N)
2. The company itself, a shareholder, or creditor (which under the 1999 act will include the Revenue) can make the petition. The position of the Revenue is itself interesting in that it has shown a propensity in recent months to become proactive because it is concerned that some companies, in default of their taxation obligations, were steering the company into a strike-off situation. The Revenue has a close working protocol with the CRO and is on record as indicating its intention to attend every creditors' meeting of a company whose tax arrears exceed £25,000
3. The application must be made within 20 years of strike-off
4. All outstanding annual returns must be filed and a letter obtained from the registrar that these are in order and that he has no objection to the restoration of the company. A late filing fee of £250 (form H1) is payable
5. The chief state solicitor must be notified and a letter obtained from him to the effect that the minister for finance and minister for enterprise and employment have no objection to the restoration of the company. Note that under the 1999 act it will also become necessary to notify the Revenue Commissioners
6. The application to the court is on motion and petition. It is the practice to swear a verifying affidavit. When briefing counsel, it is necessary to provide details as to the date of the incorporation, the period for which the company failed to make the annual returns, the date on which the companies name was struck off the register, the reason for the failure to make returns and the particular reason for the company wishing to have its name re-admitted to the register. It would also be necessary to indicate whether the company had traded since incorporation and, if it was trading when it was struck off, whether the state had intermeddled with its assets
7. The verifying affidavit should exhibit the memorandum and articles
8. Where an application is being made on foot of the failure to make annual returns, the letters from the registrar should refer to section 12(6) of the 1982 act. It remains to be seen what procedural changes will result from granting jurisdiction in such applications to the Circuit Court. However, in the meantime, applications are listed in the Chancery List on a Monday morning and the hearing of a motion will be treated as the hearing of the petition. The court will need to be informed as to why the annual returns have not been made and whether the company has continued trading since being struck off
9. The draft petition should cite the registrar of companies and chief state solicitor as notice parties
10. The affidavit, petition and motion are stamped and then filed, where a date for hearing will be allocated
11. The notice of motion together with a certified copy of the grounding affidavit (including exhibits) and a certified copy of the petition are then all served on the registrar of companies and chief state solicitor
12. If all the statutory proofs are in order, the judge will exercise his discretion as to whether he should make the restoration. Bear in mind that recent judicial pronouncements suggest that a successful outcome to such applications may no longer be the foregone conclusion they once were. Mr Justice Peter Kelly in a case of *TJ's Fast Food Restaurant (Ireland) Ltd* (15 February 1999) commented that it was 'fantastic' that the company could still have applied for and secured its intoxicating liquor licence every year and criticised it for its failure to meet its statutory obligations. He stressed that being a company director involved more than simply having a title to put on a business card. Under the 1999 act (when its sections are invoked), the court will only make the restoration order on condition that all outstanding returns are delivered. G

amended the restoration sub-section by enabling a party aggrieved by the strike-off to apply directly to the registrar within 12 months to file all outstanding returns.

Additional grounds for strike-off have been introduced by the *Companies (Amendment) (No 2) Act, 1999*. Section 42 of that act precludes the incorporation of a company in Ireland 'unless it appears to the registrar that it will carry on an activity in the state'. Section 43(15) of the 1999 act amends section 311 of the 1963 act by providing that where the registrar believes that a company does not have at least one director resident in Ireland and does not provide a bond as required, he may request it to provide evidence that the relevant requirements are being complied with. If his request is not complied with within one month, he may publish a notice in *Iris Oifigúil* and send the company a notice that at the expiration of one month the name of the company will, unless cause is shown, be struck off. Section 46 substitutes section 12 of the 1982 act with a new section 12. The principal effects of the change are that a failure to file annual returns for a one-year period can result in the company being struck off, whereas previously this was two years.

Section 48 of the 1999 act provides that where a director notifies the registrar of his resignation and where there are no others recorded as being directors, the registrar will have grounds for believing that the company is not carrying on business and may proceed to strike off.

New sub-section 8A

Section 49 of the 1999 act further amends section 311 of the 1963 act by empowering the court, upon an application for the restoration of a company, to make an order which 'seems just'. A new sub-section 8A in section 311 now empowers the court to make an order that 'as respects a debt or liability incurred by, or on behalf of the company during the period when it stood struck off the register, the officers of the company or such one or more of them as is or are specified in the order shall be liable for the whole or part (as the court thinks just) for the debt or liability'.

For the first time, the application to restore a company will be made in the Circuit Court (previously only in the High Court) within the Circuit Court area in which the registered office of the company is situated or, if the company has no registered office at that time, then within the Dublin Circuit.

It should be borne in mind, however, that none of these provisions are effective as yet because no commencement order has been made.

The effect of the granting of a restoration order has been considered in the High Court by O'Neill J in *Amantiss Enterprises Ltd* (21 December 1999). This concerned the interpretation of section 12(6) of the 1982 act which provides 'and upon an office copy of the order being delivered to the registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck out; and the court may by order give such directions and make such provision as seem just for placing the company and all other persons in the same position as nearly may be as if the name of the company had not been struck off'.

O'Neill J held that this meant 'automatic retrospective validation' and held that it was proper to order that the petitioner be restored.

Explosion in numbers

As a consequence of its strike-off campaign, the CRO has acknowledged that there has been an explosion in the numbers of applications being made to it for restoration in the 12-month period. In an effort to streamline the process, it has introduced a new fast-track restoration process which will apply only in circumstances where the strike-off was made within the previous 12 months. This will involve either a director or the secretary of the dissolved company presenting themselves to the CRO and remaining there until such time as the restoration process is completed. The CRO advises that potential applicants should be aware that this can take up to two-and-a-half hours. The director or secretary must attend in the Companies Office between 11am and 3pm, together with all outstanding documents and filing fees. On completion of an application for the fast-track process, the officer will be requested to wait in the public office while the reinstatement is carried out. This will enable any amendments to documents to be carried out and initialled without a delay in the process.

The only instance in which it is expected that the fast-track process cannot be commenced will be where a return of allotments (form B5) needs to be filed. This document will first have to be lodged in the capital taxes branch of the Revenue Commissioners and will then be passed on to the CRO. G

Kevin O'Higgins is a member of the Law Society's Business Law Committee.

Personal injury judgments

Negligence – breach of statutory duty – employer's liability – latent defect in tool supplied by a third party – common law and statutory duties of employer – issue of credibility of plaintiff

CASE

***Denis Everitt v Thorsman Ireland Limited, Jumbo Bins and Sludge Disposal Limited and Numac Steel Limited,* High Court on circuit, before Mr Justice Kearns, judgment of 23 June 1999.**

THE FACTS

Denis Everitt from Drogheda, Co Louth, born on 3 October 1947, was employed as a general assistant by Thorsman Ireland Limited, which makes plastic fittings for the building industry. He had been with that company for 17 years.

On the morning of 24 June 1993, Mr Everitt was endeavouring to open the lid of a bin with a lever when the lever snapped and broke, causing him to fall backwards onto the ground, sustaining an injury in respect of which he instituted proceedings.

It was established that the bin and lever with which he was working on the day of his accident had been supplied to his employer some months previously by the second defendant. A subsequent party was joined on the basis that they in turn supplied the jumbo bin and lever to the party concerned.

A case was commenced by civil bill in the Eastern Circuit but was subsequently transferred to the High Court.

THE JUDGMENT

Kearns J held that that the lever used by Mr Everitt snapped or broke and that the break was caused by inadequate strength in the material. The relevant defect was not apparent or discoverable on reasonable examination. Thorsman obtained the lever in question from the second defendant. The judge stated the question fell for determination as to the responsibility, if any, of an employer for an injury sustained by an employee in circumstances where tools supplied by a third party contain a latent defect.

The judge referred to *McMahon and Binchy* (1990 ed, page 327), where the authors state: 'The employer has the duty to take "reasonable care" to provide proper appliances and to maintain them in a proper condition and so to carry on his operations as not to subject those employed by him to unnecessary risk.' [*Burke and John Paul & Co Ltd* (1967) IR 227]

The judge also quoted page 328 from the same volume: 'It should, however, be pointed out that an employer is not an insurer of the safety of the equipment supplied to his employees ... Thus, where an employer buys from a supplier a standard tool whose latent defect he has no means of discovering, he may be relieved of liability in negligence in the event of injury to an employee.'

The judge raised the issue of what further steps could the employer, Thorsman, have taken in the circumstances. Short of having the lever assessed by an expert in metallurgy or breaking the lever with a view to determining its maximum stress resistance, the judge considered that it was difficult to see what could have been done. It was a newly-purchased tool which appeared strong enough for the job and had been purchased from a reputable supplier and there was no suggestion to the contrary. Accordingly, the judge held that the claim in common law against the employer Thorsman failed.

Then the judge turned to the issue of statutory duty and referred to regulation 19 of the *Safety Health and Welfare at Work (General Application)*

THE AWARD

Noting that Mr Everitt had a significant pre-accident history of depression and back symptoms, either or both of which could have returned at any time during his working life and forced him out of employment, the judge held that these factors had to be taken into account. Special damages were agreed at £4,000. Loss of earnings to the date of trial (as calculated by the judge) were awarded at £21,000 and, in the circumstances, the judge considered a generous sum for future loss of earnings would be £25,000.

On the issue of general damages, the judge considered that Mr Everitt was evasive and less than frank about his medical history and he considered that he exaggerated his difficulties to a certain degree. However, he awarded him a sum of £20,000 for pain and suffering to the date of the trial and a further sum of £10,000 for pain and suffering in the future. This came to a total of £80,000 and he gave judgment for that amount against the first and second defendants. The judge held that the employer Thorsman was entitled to an indemnity from the second defendant to the extent of 100%.

Regulations 1993 (SI no 44), which imposed virtually an absolute duty on employers in respect of the safety of equipment provided for use by their employees.

The judge noted that while there was no blameworthiness in any meaningful sense of the word on the part of Thorsman, the statutory regulations existed for sound policy reasons to ensure that an employee who suffers an injury at work through no fault of his own by using defective equipment should not be left without a remedy. The judge found that there had been a breach of statutory duty on the part of Thorsman. However, there remained to be considered the position of the supplier of the tool. The judge held in the circumstances that the second defendant was clearly negligent as either producer or supplier of the tool.

The judge then considered Mr Everitt's injuries. He stated that he found Mr Everitt to be 'extremely unreliable as a historian and a somewhat less-than-credible witness'. Mr Everitt saw his general practitioner on the day of the accident and spent a number of days in hospital. Since that time, he complained of constant pain and psychiatric problems and had not returned to work. The painful symptoms affected in part his neck, but mainly his back and right leg. He also complained of depression which became apparent some 18 months or so following the accident.

Mr Everitt informed the court that he used to miss the odd few days prior to the accident with his back, but the records of his employer indicated that he had significant periods out of work with back injury. More significantly, according to the judge, the close perusal of Mr Everitt's medical records indicate that in 1982 he had an episode of pain and loss of power in his right leg. Mr Everitt's orthopaedic surgeon in court was visibly taken aback when this information was produced to him. This cast a very severe question mark over the origin of Mr Everitt's on-going complaints.

The judge considered that Mr Everitt was less than frank with his doctors about his prior history of depression. In fact, the judge noted that Mr Everitt went so far as to describe himself as a happy-go-lucky person prior to the accident and told them nothing of his prior history. The judge noted that he had something resembling a nervous breakdown in England in 1972 'brought on by alcohol abuse which forced him to return to Ireland and he had further absences from work due to depression in 1983'. These matters raised considerable doubts about the veracity of Mr Everitt's evidence.

Nevertheless, the judge accepted that Mr Everitt did sustain an injury at work and he considered that it was the kind of injury which was 'the straw that broke the camel's back'.

Counsel for Mr Everitt: Hugh McGahan SC, Eoghan Fitzsimons SC and Roderick O'Hanlon BL, instructed by Dick Branningan, Berkery & Co.
Counsel for Thorsman: Ian Brennan SC and Vincent Foley BL, instructed by B Vincent Hoey & Co.
Counsel for second defendant: Turlough O'Donnell SC and Jonathan Kilfeather BL, instructed by Patrick Tallon & Co.
Counsel for third defendant: Bernard Barton SC and Bernard McDonagh BL, instructed by Mason Hayes & Curran. G

This case is now reported in 1 [2000] IR 256 and was summarised here by Dr Eamonn Hall, solicitor.

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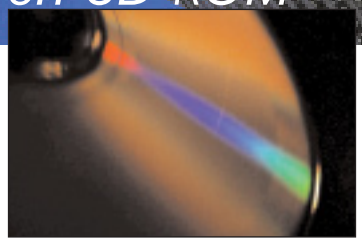

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ADMINISTRATIVE

Bias, judiciary

Independence and impartiality of judges – whether reasonable apprehension of bias – Diseases of Animals Act, 1966 – Bovine Tuberculosis (Attestation of the State and General Provisions) Order 1978 – Bunreacht na hÉireann 1937, *article 34.5.1*

The plaintiff was a farmer who had initiated proceedings relating to compensation provisions under the *Diseases of Animals Act, 1966*. The proceedings were ultimately dismissed. In this application, the plaintiff sought to have the original orders set aside. The plaintiff argued that there had been an appearance of bias, as one of the judges in the case, Mr Justice O'Flaherty, had acted in the past for one of the defendants. The Supreme Court dismissed the application. It was held that it was a fundamental principle of law that judges should be independent from and impartial to other organs of the state and also from any fact, event or person extraneous to evidence properly admitted and submissions as to law made. However, in the circumstances a reasonable bystander would not perceive a cogent and rational link between the judge in question and the defendant. The plaintiff's application fell far short of establishing a case of bias and the application would be dismissed.

***Rooney v Minister for Agriculture*, Supreme Court, 23/10/2000** [FL3287]

Control of animals

Control of horses – property – detinue – *trespass – judicial review – whether detention of horses seized by local authority lawful – whether horse seized may be detained outside controlled area* – Control of Horses Act, 1996 – *South Dublin County Council bye-law no 6*

The applicant was a member of the travelling community and reared and traded in horses. The respondent had seized a number of the applicant's horses pursuant to the provisions of the *Control of Horses Act, 1996*. The applicant then issued proceedings seeking a declaration that the continuing detention of the applicant's horses by the respondent was unlawful and sought an injunction directing the respondent to release his horses. The applicant also claimed that that the actions of the respondent were tortious as they involved a trespass to his chattels and goods. Ó Caoimh J held that the detention of horses by the respondent within its functional area and detained outside it, as had occurred in this instance, was permissible under the provisions of the *Control of Horses Act, 1996*. Some of the charges levied by the respondent to house the horses could be said to be in excess of those permissible. The relief sought by the applicant would be refused.

***Mongan v South Dublin County Council*, High Court, Mr Justice Ó Caoimh, 13/10/2000** [FL3237]

Local government, planning

Construction and interpretation of planning permission – doctrine of severance – compliance procedure – whether decision of planning authority amenable to judicial review – whether alterations proposed within parameters of original planning permission – whether decision of planning authority correct in law – Local Government (Planning and Development) Act, 1963, *sections 4(1), 26 82* – Local Government (Planning and Development) Act, 1976, *section 14(4), 14(9)* – Local Government (Planning and Development) Act, 1992, *section 19(3)*

The notice party planned to complete a development on foot of planning permission already granted. The notice party sought to have certain alterations to the proposed development approved by the respondent. The respondent signified that the alterations proposed were within the parameters of the original planning permission. The applicant brought proceedings claiming that the alterations were *ultra vires* and outside the scope of the original planning permission. O'Neill J held that the correct test to be applied was whether the approach of the planning authority in approving the alterations was correct in law and was not that of the reasonable test. Some of the changes advocated by the notice party were not permissible under the permission granted. The alterations that were permissible would be severed from impugned alterations. The applicant had the requisite *locus standi* to take proceedings and a declaration would be granted to the effect that the agreement of the respondent to certain alterations proposed by the notice was *ultra vires* the powers of the respondent.

***O'Connor v Dublin Corporation*, High Court, Judge O'Neill, 03/10/2000** [FL3245]

Contracts, sporting bodies

Agency – contract – sporting bodies – signing of documents – transfer of player – whether agent entitled to sign on behalf of player – whether signature valid – whether registration document valid

The plaintiff initiated proceedings arising out of a match played between Kilkenny City Football Club and Limerick. Kilkenny City, the notice party to these proceedings, had originally beaten Limerick in a soccer match and as a result had finished above the plaintiff in the relevant table, entitling it to a place in a play-off. The plaintiff contended that Kilkenny City had included a player in the said match whom it was claimed had not been properly registered with Kilkenny City. As a result, after investigation, a decision was taken by the FAI to deduct three points from Kilkenny City. This in turn resulted in proceedings being undertaken by Kilkenny City. These proceedings were compromised in arbitration and the arbitrator decreed that the match in question be replayed. Kilkenny City won the match in question and the plaintiff then issued the instant proceedings claiming that the registration form had not been properly signed by the player at the centre of the dispute. It was not in dispute that the player had not signed the registration form but that the manager had signed it. Finnegan J held that under common law a person can authorise somebody to sign a document on his behalf and that, in effect, is that person's signature. In addition, as a rule of law, a party to a document can witness his own signature. Accordingly, the player had been properly registered and the plaintiff's claim would be dismissed.

***Dundalk v FAI*, High Court, Mr Justice Finnegan, 02/05/2000** [FL3238]

COMMERCIAL

Anton Piller order, intellectual property, Technology law

Copyright – Anton Piller order – role of the courts – administration of justice in public – practice and proce-

donkey

dure – abuse of process – damages – remedies – whether proceedings constituted abuse of process – whether proceedings should be held in camera *– whether appropriate to disclose terms of Anton Piller order* – Copyright Act, 1963 – Intellectual Property (Miscellaneous Provisions) Act, 1998 – Rules of the Superior Courts 1986, *order 44, rule 3* – Bunreacht na hÉireann 1937, *article 34.5.1°*

In an earlier judgment of 2 June 2000, Quirke J had granted the plaintiffs injunctive relief on an *ex-parte* basis against the defendant in the form of an Anton Piller order. In this application, the plaintiffs sought further interlocutory relief and the defendant sought to dismiss the proceedings as an abuse of process. The plaintiffs alleged that the defendant was infringing both its copyright and intellectual property rights in its computer software. Some of the information obtained by the plaintiffs in support of their application emanated from a former employee of the defendant. Smyth J held that there was a constitutional obligation to hear cases in public. The Anton Piller order was properly made and had been correctly served. The defendant had liberty to apply regarding the original *ex-parte* order and could have done so before the return date instead of seeking an *ex-parte* order. There was to be no further publication by either party of the issues at stake either in websites or other forms of media. The interlocutory relief sought by the plaintiff would be granted.

***Microsoft v Brightpoint*, High Court, Mr Justice Smyth, 12/07/2000** [FL3250]

Equity and trusts, insolvency

Liquidation – insolvency – restitution – ownership of monies held in client account – option premia – whether monies held in constructive trust – whether monies were client monies within meaning of Investor Compensation Act, 1998 – Stock Exchange Act, 1995, *section 52* – Investor Compensation Act, 1998, *section 64*

A stockbroking firm (MMI) had gone into liquidation. As a result, various issues arose relating to the ownership of funds held in the client account of MMI. The applicants in these proceeding sought the repayment of monies on the basis that the monies were the subject of a trust *simpliciter* or a constructive trust. The applicants claimed that entries in the client accounts in respect of the monies crystallised their interest in the monies. Ms Justice Carroll held that a debit entry in an individual client account could not be construed as a declaration of trust. As the monies in question had not been paid out, it had not ceased to be client monies. Therefore it was not possible to impose a constructive trust on the grounds of unjust enrichment or any other equitable ground. The application would therefore be refused.

***Money Markets International*, High Court, Ms Justice Carroll, 20/10/2000** [FL3244]

CONSTITUTIONAL

Children and young persons, medicine

Role of the courts – vaccination – religion – PKU test – responsibilities of health boards – application for injunction – whether health board entitled to injunction in order to carry out procedure – whether failure by parents to vindicate personal rights of child – whether administration of test in best interests of child – Courts (Supplemental Provisions) Act, 1961 – Child Care Act, 1991, *section 3* – Bunreacht na hÉireann 1937, *articles 40.3.2º, 41.1, 42.5*

The plaintiff instituted proceedings in order to carry out a medical test on a child. The parents (the defendants) of the child objected to the procedure, which in this instance involved a blood test, on the basis of religious belief. The parents indicated that they would not object to other types of samples being obtained. The plaintiff sought a number of injunctions in order to carry out the procedure in question. The plaintiff relied on provisions contained in the *Child Care Act, 1991* and in the constitution. Mr Justice McCracken was satisfied that the present case was not an exceptional case which would justify overriding the rights of family against those of the individual child. The present case did not justify the intervention sought and accordingly the relief sought by the plaintiff would be refused. If the state believed that the refusal of parents in such instances was unlawful, then appropriate legislation should be introduced.

***North Western Health Board v HW and CW*, High Court, Mr Justice McCracken, 27/10/2000** [FL3243]

Property rights

Separation of powers – state liability for legislative acts – European law – misfeasance in public office – Blasket Islands – equality – compulsory purchase of lands – discriminatory legislation – whether damages recoverable – whether state could be held liable – whether state enjoyed immunity from suit – An Blascoad Mór National Historic Park Act, 1989, *section 4* – Human Rights (UK) Act, 1988 – Merchant Shipping (UK) Act, 1988 – Bunreacht na hÉireann 1937, *articles 15, 34, 40*

The plaintiffs were a group of persons who owned lands on the Blasket Islands. The government passed legislation dealing with ownership of the Blasket Islands. The plaintiffs challenged the legislation on the basis that it was unconstitutional in the manner that it dealt with their property rights. Both the High Court and Supreme Court held that the legislation in question was discriminatory in the way in which it distinguished between persons who held land on the Blasket Islands before 1953 and those who acquired landholdings after that date. The legislation was found to be unconstitutional. The case now proceeded in the High Court on the issue of damages. The plaintiffs contended that their property rights should be vindicated by an award of damages. Budd J held that a claim for misfeasance in public office or a claim in negligence was not maintainable. Although the state could, in certain situations, be held liable for its actions, the plaintiffs had largely been vindicated by the declaration of invalidity accorded to the *An Blascoad Mór National Historic Park Act, 1989*. The plaintiffs had not been dispossessed of their property at any stage. An award of damages should only be made where a clear link can be established between damage suffered and the improper acts. However, costs would be awarded to the plaintiffs.

***An Blascoad v Commissioner of Public Works*, High Court, Mr Justice Budd, 28/06/2000** [FL3257]

CONTRACT

Arbitration

Construction of terms – application to stay proceedings – whether contract in question contract of service or contract for services – whether plaintiff employee or self-employed – whether stay on proceedings should be granted – Arbitration Act, 1980

The plaintiff had worked with the defendant, commonly known as Today FM, as a disc jockey. The defendant purported to terminate the working arrangement. The plaintiff issued plenary proceedings claiming that he was still employed by the defendant. The defendant sought a stay on proceedings and claimed that the dispute was subject to arbitration. Ms Justice Carroll found that the plaintiff was employed under a contract for services and was therefore an independent contractor. The arbitration clause found in the original contract applied on a

roll-over basis to the present position some years later. The matter was accordingly governed by arbitration and the stay on the present proceedings sought by the defendant would be granted.

***Dower v Radio Ireland*, High Court, Ms Justice Carroll, 14/09/2000** [FL3239]

CONVEYANCING

Professional negligence, solicitors

Land law – professional negligence – solicitors – duty of care – purchase of shop premises – conflicts of evidence – whether plaintiffs correctly advised by their solicitor – whether solicitor had discharged duty owed to clients – whether planning search ought to have been carried out prior to signing of contracts

The plaintiffs had initiated proceedings concerning the purchase by them of a shop premises. They were suing their solicitor on the grounds that he had not advised them that the said premises did not include the forecourt outside the premises. The defendant accepted that he had a duty of care to correctly appraise the plaintiffs of the extent of the said premises, but that this duty had been discharged. Kelly J held that the defendant had informed the plaintiffs in non-technical language of the extent of the premises purchased. The case would be dismissed.

***Murphy (& Others) v Proctor*, High Court, Mr Justice Kelly, 11/10/2000** [FL3253]

Order for possession

Practice and procedure – mortgage – rights and powers of mortgagee – charge on land – power to sell – contradictions between terms contained in deed of charge and commitment letter – offer of loan – loan agreement – whether repayment of principal money secured by deed of charge due – whether court should make order for possession – Registration of Title Act, 1964, *section 62(7)*

The plaintiff sought an order for possession over lands owned by the defendant on the basis of monies advanced secured by a charge. McCracken J, delivering judgment, held that the charge document on the basis of which an order for possession could issue provided for the repayment of the monies by instalments. However, no such provision was provided in the loan agreement (which also operated as the commitment letter). In view of the contradictions in existence between the deed of charge and the commitment letter, it could not be said that the principal monies were due. Accordingly, the relief sought would be refused.

***Wise Finance v Lanagan*, High Court, Mr Justice McCracken, 06/11/2000** [FL3262]

CRIMINAL

Fair procedures

Suspension of sentences – failure to adhere to conditions of release – sentences re-imposed – meaning of phrase 'keep the peace and be of good behaviour' – order of certiorari *sought* – Larceny Act, 1990 – Criminal Damage Act, 1990

The applicant had been convicted of certain offences under the *Larceny Act, 1990* and the *Criminal Damage Act, 1990* and was sentenced to a total of four years' imprisonment. The sentences were suspended some time later at a review hearing on the basis that the applicant keep the peace and be of good behaviour. The applicant was then released into the custody of the welfare and probation services. Subsequently, the second-named respondent applied *ex parte* to have the matter re-entered for hearing. At this hearing, members of An Garda Síochána gave evidence that the applicant had allegedly committed certain offences and had failed to comply with the conditions of his release. The presiding judge then re-imposed the balance of the original sentences. The applicant sought an order of *certiorari* in respect of this order. McCracken J held that, although the judge in question had the jurisdiction to hear such a matter, he was, however, obliged to conduct an appropriate inquiry into the evidence tendered against the applicant. As the principles of natural justice had not been complied with, an order of *certiorari* would issue to quash the order in question.

***Dignam v Judge Groarke and DPP*, High Court, Mr Justice McCracken, 17/11/2000** [FL3264]

Money laundering

Money laundering – sentencing – whether sentences imposed excessive – Criminal Justice Act, 1994

The applicants had been involved in a money-laundering operation and as a result had been convicted of charges under the *Criminal Justice Act, 1994*. The sentences imposed ranged from 18 months to eight months. The applicants raised a number of matters to be considered in their favour. These matters included the tendering of guilty pleas, the fact of having no previous convictions and the making of comprehensive statements of admission to An Garda Síochána. Murphy J, delivering judgment, held that although the case was a tragic situation for all, no error of principle could be found and the sentences would be affirmed.

***DPP v Warren*, Court of Criminal Appeal, 05/07/99** [FL3223]

Right to fair trial

Fair procedures – trial by jury – selection of jury – whether appropriate to issue jurors with questionnaires to ensure fair trial – whether trial judge possessed necessary jurisdiction to issue such an order – Tribunals of Inquiry (Evidence) Act 1921 – Juries Act, 1976 – Bunreacht na hÉireann 1937, *article 38.5*.

The application concerned the prosecution of Mr Haughey on charges of obstructing a tribunal of inquiry. As part of the process of ensuring a fair trial, the trial judge proposed sending a questionnaire to each member of the jury panel. The applicant brought the present proceedings seeking an order of *certiorari* in respect of the decision to issue the questionnaire. In a divisional court of the High Court, all three judges delivered separate judgments. Laffoy J held that the *Juries Act, 1976* did not authorise the steps proposed by the trial judge. The order of *certiorari* sought would be granted. Both Mr Justice O'Donovan and Mr Justice Carney delivered similar judgments.

***DPP v Judge Haugh and Haughey*, High Court, Mr Justice Carney, Ms Justice Laffoy, Mr Justice O'Donovan, 12/05/2000** [FL2662]

DAMAGES

Personal injuries

Road traffic accident – negligence – duty of care – rules of the road – exiting from roundabout – damages – whether accident caused by negligence of defendants

Both the plaintiff and the first-named defendant had driven separately into a roundabout. The plaintiff was on the inside or right lane and was preparing to take the first turn on the left. The first defendant, who was on the outside lane, continued past the first exit and a collision occurred. Herbert J was satisfied, notwithstanding the fact that the plaintiff ought to have been in the outside lane, the first-named defendant was negligent in failing to have kept a proper look-out. Although the first-named defendant's vehicle was not in an incorrect position according to the rules of the road, the first-named defendant should have allowed the plaintiff to pass safely in front of his vehicle. Accordingly, damages in total were assessed at £34,850 and judgment was given for that amount.

***Pierce v Mitchell and Farm Fed*, High Court, Mr Justice Herbert, 11/10/2000** [FL3242]

Personal injuries, tort

Accident in swimming pool – causation – damages – whether damages recoverable – Courts Act, 1991, *section 14*

The plaintiff had suffered injuries while taking swimming lessons and as a result had issued proceedings. Herbert J held that the plaintiff had suffered a mild soft-tissue injury. There seemed to be a large subjective element involved in the plaintiff's complaints. General damages would be assessed at £10,000 and a sum of £1,394 awarded as special damages. Although proceedings had been brought in the High Court, an order under section 14, sub-section 5 of the *Courts Act, 1991* would, however, not be made.

***Whelan v Mowlds*, High Court, Mr Justice Herbert, 12/10/2000** [FL3235]

EMPLOYMENT

Fair procedures, Garda Síochána

Disciplinary inquiry – judicial review – whether fair procedures followed – whether probationer garda unfairly dismissed – whether applicant afforded opportunity to respond to allegations against him – Garda Síochána (Complaints) Act, 1986 – Garda Síochána (Admissions and Appointments) Regulations 1988, *regulation 16 – Garda Síochána (Complaints) Act, 1988*

The applicant was a probationer garda against whom a number of complaints had been made. A disciplinary inquiry had been instituted on foot of a complaint into allegedly inappropriate behaviour on the part of the applicant. Ultimately as a result of the allegations the applicant was dismissed. The applicant initiated judicial review proceedings seeking to have the decision to dismiss him quashed. Herbert J, delivering judgment, held that the applicant had not been afforded fair procedures. In particular, the applicant had not been afforded an adequate opportunity to respond to the allegations being made against him. An order of *certiorari* would issue, quashing the decision of the Commissioner of An Garda Síochána. Accordingly, a new inquiry must be established to reconsider the matter.

***Healy v Garda Commissioner*, High Court, Mr Justice Herbert, 07/11/2000** [FL3290]

FAIR PROCEDURES

Sporting bodies

Administrative law – Irish Rugby Football Union – decision of Competitions Committee – application for mandatory injunction – whether proper procedures followed by committee in reaching decision

The plaintiff initiated proceedings arising out of a decision by the Leinster branch of the Irish Rugby Football Union to relegate Tullamore Rugby Football Club from division one of the Leinster League. The decision arose in part from complaints made by Ashbourne Rugby Football Club regarding their purported relegation from the same division ahead of Tullamore. Ashbourne had objected to the fact that Tullamore had failed to complete all their fixtures. In addition, an objection regarding the same issue was lodged by Railway Union Football Club. The relevant committee of the Leinster branch met and held that Tullamore had breached competition regulations, would be deducted points and consequently would be relegated from division one in place of Ashbourne. The plaintiffs, as representatives of Tullamore, sought to challenge the decision. Herbert J held that although there was a *bona fide* issue between the parties, the plaintiffs had failed to establish a case which would warrant the granting of the relief sought at this interlocutory hearing.

***Moloney v Bolger*, High Court, Mr Justice Herbert, 06/09/2000** [FL3294]

LITIGATION

Delay, dismissal of proceedings

Practice and procedure – application to dismiss plaintiff's proceedings on grounds of delay – plaintiff not being personally blameworthy – whether prejudice to first defendant arising out of liquidation of third defendant – first defendant failing to bring application until after expiry of limitation period – whether balance of justice favoured allowing action to proceed

The plaintiff's claim was for breach of contract regarding an agreement with the defendants for the sale in Ireland of travel packages to the 1994 World Cup in the USA. The central issue in the action concerned the authority of the second and third defendants to conclude the alleged agreement. In this application, the first defendant sought an order pursuant to the inherent jurisdiction of the court dismissing the proceedings on grounds that the plaintiff had been guilty of inordinate and inexcusable delay in prosecuting the proceedings. Mr Justice Finnegan held that the plaintiff had a duty to ensure that its claim was prosecuted with reasonable expedition. In considering whether the balance of justice lay in favour of the plaintiff's action proceeding, the defendant must show that prejudice arose out of the plaintiff's delay. Mr Justice Finnegan said that he was satisfied that the balance of justice was in favour of allowing the action to proceed.

***Silverdale v Italiatour*, High Court, Mr Justice Finnegan, 07/11/2000** [FL3271]

PERSONAL INJURIES

Professional negligence

Tort – personal injuries – professional negligence – dentistry – conflict of expert evidence – whether dentist negligent

The plaintiff had undergone a dental procedure and had a tooth extraction. The plaintiff issued proceedings and claimed that there had been a failure to remove the entire root. The plaintiff's proceedings in the Circuit Court had been successful and the defendant appealed. O'Higgins J averted to the fact that there was a conflict of expert evidence as to whether a portion of the root of the tooth had been left behind. On the balance of evidence, O'Higgins J was not satisfied that some of the root was left in the jaw. The defendant had not fallen below the standard of care required. The appeal of the defendant would be allowed and the plaintiff's claim would be dismissed.

***Hamilton v Cahill*, High Court, Mr Justice O'Higgins, 15/02/2000** [FL3236]

Professional negligence

Dentistry – duty of care – allegation of misrepresentation – obligation to give warnings – correct test to be applied – whether special category of patient existed in Irish law – whether resultant pain foreseeable consequence of operation

Kearns J delivered a summary judgment in this instance and made a number of rulings regarding the applicable law. The case concerned proceedings undertaken by a plaintiff against his dentist arising from complications occurring as a result of surgery. Kearns J held that medical practitioners are obliged to warn of any material risks known to be foreseeable complications of surgery. Chronic neuropathic pain was a known complication of the operation in question. The correct test to be applied in disclosing risks is based upon the 'reasonable patient test' which requires full disclosure of all material risks so the patient can make the choice as to whether to proceed with a particular operation. The category of 'inquisitive patient' did not exist in Irish law. In any event, the plaintiff had not asked specific questions which would have demanded a warning about the possibility of chronic neuropathic pain.

***Geoghegan v Harris*, High Court, Mr Justice Kearns, 21/06/2000** [FL3246] G

Eurlegal

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

To B2B or not to be?: EU and US approaches

B2B marketplaces, in which businesses can trade or procure goods and services on-line, have been an important factor in the growth of business conducted over the Internet. According to a recent survey, they account for approximately 80% of all electronic commerce transactions. This is not surprising given their potential to contribute to improved efficiencies, resulting in lower prices, improved quality and greater innovation. Nonetheless, B2B exchanges present competitive concerns for competition authorities, such as the European Commission in Brussels and the Federal Trade Commission (FTC) in Washington. The European Commission has set up a task force to deal with this specific issue. Meanwhile, the FTC has issued a staff report discussing the information gathered, and antitrust issues raised, at a widely-attended public workshop on competition policy in the world of B2B electronic marketplaces held last June.

Competitive concerns

The FTC report notes that collaboration among competitors could raise competitive concerns in two types of broadly defined markets:

- The market for goods and services traded on B2Bs at both the buyer and seller levels, and
- The market for marketplaces themselves.

With regard to the first type of market identified in the FTC report, an area of particular concern to the European Commission is the potential for participating companies to share price and other commercially-sensitive information, or engage in price-fixing. Such practices clearly have the effect of restricting competition between actual and potential competitors.

The potential for such anti-competitive behaviour through B2Bs, however, does not mean that such marketplaces will necessarily be prohibited under competition law. The FTC report notes the views of panellists that when antitrust concerns arise, familiar safeguards may be sufficient to address them and, indeed, such concerns may be eliminated through well-crafted B2B operating rules. Accordingly, provided that proper structures are put in place to avoid the exchange of commercially-sensitive and confidential information, B2B exchanges should pass muster with competition authorities – assuming, of course, they do not lead to any other anti-competitive behaviour, such as price-fixing.

EU practice

Last year the European Commission authorised the creation of a joint venture, MyAircraft.com, a B2B e-commerce marketplace, which is intended to provide 'one-stop shopping' for aerospace products and supply management functions for aerospace participants. The commission has also recently decided to approve under EU competition law a joint venture called Volbroker.com, an electronic brokerage service between the subsidiaries of six major banks, including JP Morgan and Goldman Sachs. Both decisions provide useful guidelines on the commission's views on how B2B exchanges should be structured to avoid the participants engaging in anti-competitive behaviour and the circumstances where B2B marketplaces will be viewed by the commission as pro-competitive.

The key factor in terms of structuring the B2B is the legal, geographic and operational separation between the parent companies and the B2B's staff and management, as well as their respective information technology and communications systems. Thus, in the case of Volbroker.com, the staff and management will have no contractual or other legal obligation towards the parent companies or vice versa and will be in a different location from that of the parent companies. Moreover, the parent companies will not have access to the information technology and communications systems of Volbroker.com, nor will their representatives on the board of directors have access to commercially-sensitive information relating to each other or to third parties.

According to a recent survey, B2B accounts for approximately 80% of all electronic commerce transactions

In granting regulatory clearance to Volbrker.com, the commission also underlined the importance of ensuring that the staff and management of all the parties to Volbroker.com understood and appreciated the importance of maintaining the confidentiality of commercially-sensitive information, breaches of which would be subject to sanctions.

Another important factor for the commission is the level of competition faced by the B2B from other similar websites. In the case of MyAircraft.com, the Commission took into consideration the relatively high number of other B2B marketplaces in the same sector that were already operating or which had been announced. Moreover, it was satisfied from its own investigations that B2Bs were considered by businesses to be one among many modalities by which companies transact their business.

FTC practice

Last year, the FTC conducted its first review of a B2B marketplace, Covisint.com, a proposed joint venture among five leading automotive manufacturers and two information technology firms to operate an Internet-based business-to-business exchange providing services for firms in the automotive industry supply chain. The FTC closed its investigation under the *Hart-Scott-Rodino Antitrust Improvements Act*, notifying the parties in September 2000 that because Covisint was in the early stages of its development it could not say that implementation of the venture would not

cause competitive concerns and reserved the right to take further action. As such, the case does not throw much light on FTC practice in this area.

However, the FTC's report does provide some guidance on likely US practice. While noting that any inquiry will be 'highly fact-intensive', it states that all else being equal (including the ability to achieve efficiencies and innovations), certain competitive concerns are more likely to be magnified by virtue of:

- The greater the market share of the B2B participant-owners
- The greater the restraints on participation outside the B2B, and
- The less the interoperability with other B2Bs.

The report notes that this does not mean that industry consortia B2Bs are presumptively unlawful under US antitrust law or that minimum volume commitments cannot be imposed in many circumstances. However, high levels of industry ownership or substantial minimum purchase requirements will likely draw a closer look by the FTC. According to the FTC chairman, any antitrust analysis of an individual B2B will be specific to its mission, structure, particular market circumstances, procedures and rules for organisation and operation, actual operation and market performance.

Although these decisions and guidelines are helpful, they are just the first of many decisions expected in this developing area and so should not be regarded as definitive. For instance, they do not address in any substantive manner the issue of using B2B exchanges for aggregate or group purchasing, which involves more complex competition law issues. However, at this early stage, they generally demonstrate a similarity of approach which businesses should find encouraging: B2Bs that achieve efficiencies and innovation should not face competition law problems, provided they are organised and implemented in ways that maintain competition. G

John Gaffney is an associate solicitor with the Dublin law firm William Fry.

Recent developments in European law

COMPETITION

Last July, the commission proposed a draft regulation on public services in passenger transport. This aims to improve the performance of passenger transport through controlled competition. It provides that public service contracts will be limited to five years when a member state government grants exclusive rights of financial compensation for public service operations.

EMPLOYMENT

Agency

Case C-456/98 *Centrosteel v Adipol GmbH*, judgment of 13 July 2000. Between 1989 and 1991, Centrosteel acted as a commercial agent for Adipol. After the agency contract was terminated, Centrosteel claimed payment of commission. Adipol refused to pay, arguing that the agency contract was void, as Centrosteel was not entered in the Italian register of commercial agents, as required by Italian law. The ECJ has held that Directive 86/653 on commercial agents precludes a national rule which makes the validity of an agency contract conditional on the commercial agent being entered in the appropriate register. Article 13(2) of the directive mentions writing as the sole requirement for the validity of a contract. Member states cannot therefore impose any condition other than requiring that a written document be drawn up. The Italian court here took the view that as decisions of the ECJ do not have horizontal direct effect, the Italian law in question should not be disapplied. The ECJ held that the directive is intended to harmonise the laws of the member states concerning commercial agency agreements. The previous decisions given by the court were identical to the case now before it. While a non-implemented directive cannot impose obligations on individuals, there is a duty on a national court to interpret national law in the light of the wording and purpose of the directive to achieve the result it has in view.

Mutual recognition of diplomas

Cases C-238/98 and C-16/99 *Hugo Fernando Hocsman v Ministre de l'Emploi et de la Solidarité*, *Jeff Erpelding v Ministre de la Santé*, judgment of 14 September 2000. Dr Hocsman was the holder of a diploma in medicine awarded in Argentina and a specialist diploma in urology awarded by a Spanish university. He was an Argentinean national who became a Spanish national in 1986 and a French citizen in 1998. His Argentinean diploma was recognised in 1980 as equivalent to a Spanish degree in medicine and surgery. He practised medicine in Spain and qualified as a specialist there. Since 1990, he worked as an assistant specialising in urology in France. In 1997, the French minister for employment and solidarity refused to allow him to register with the national medical association, as under French regulations his Argentinean diploma did not entitle him to practise medicine in France. Dr Erpelding, a Luxembourg national, had an Austrian diploma in medicine. The Luxembourg Minister of Education had approved it. In 1991, the minister for health authorised him to practise as a specialist in internal medicine after receiving a diploma of specialist in internal medicine, cardiology sector, in Austria. In 1997, the minister for health refused to allow him to use the title of specialist in cardiology, as that was not a specialisation recognised by the Austrian authorities. The Luxembourg authorities said that they could only recognise diplomas as originally worded. The ECJ held that the aim of the mutual recognition of diplomas directive was to establish a system under which states were obliged to recognise certain diplomas as equivalent and could not require the persons concerned to comply with requirements other than those laid down by the directive. This mutual recognition means that people who satisfy the conditions laid down in the directive do not have to look to the case law of the court for situations where there is no such automatic recognition. That case law sets out that national authorities to which applications are made for the recognition of medical diplomas awarded in other member states must take into account all the diplomas and other formal qualifications of the person concerned and his relevant experience. The national authority should also carry out a comparison between the specialised knowledge and abilities attested by those qualifications and the experience, knowledge and qualifications required by the national rules. The ECJ held that the national court should assess whether Hocsman's diploma was equivalent to the corresponding French qualification. In particular, the national court should consider whether the Spanish recognition of the Argentinean diploma had been made on the basis of criteria comparable to those laid down by EU law to ensure that member states may rely on the diplomas in medicine awarded by other member states. The ECJ held that the right to use the title *doctor* or *specialist* in the host member state is the corollary of the mutual recognition of diplomas. The court held that the right to use a title only applies if the diploma in question appears in the list of diplomas in the directive. That was not the case with Erpelding, as the specialisation in cardiology did not exist in Austria. In those circumstances, the court held that the directive must be interpreted as giving doctors the right to use their academic titles and, if appropriate, their abbreviations, in the language of the member state of

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Mr. Jean-Jacques Zander
EEIG EUROLAW
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LITIGATION
Sarah Butler
Tel: +44 (0)1483 776539

PROPERTY
John Phillips
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origin, with the host state retaining the right to authorise the use of the title in another language.

Working time directive

Case C-303/98 *Sindicato de Médicos de Asistencia Pública (SIMAP) v Conselleria de Sanidad y consumo de la Generalidad Valenciana*, judgment of 3 October 2000. SIMAP is a union representing public health workers in Valencia. It brought proceedings against the regional health administration arguing that the *Working time directive* should be implemented for staff assigned to primary healthcare teams at health centres. It argued that the doctors concerned were required to work without the benefit of any time limit and without any limit to the duration of their work. The ECJ held that the directive does apply to the activities of doctors in primary healthcare teams. They do not fall into any of the professional categories that are given an exemption from its provisions. The court then considered whether time spent by doctors on call could be considered as working time. It held that the characteristic features of working time were present for time on call when a doctor is present at a health centre. Where they are simply contactable at any time, they can manage their time with fewer constraints and this is not working time. (See also *Busy doing nothing*, page 28.)

ESTABLISHMENT

Case C-168/98 *Grand Duchy of Luxembourg v European Parliament and Council of the European Union*, judgment of 7 November 2000. Luxembourg had challenged the legal validity of the *Establishment directive for lawyers*. This measure will enable lawyers from any one member state of the EU to establish in any other member state. Luxembourg had argued that the directive did not guarantee adequate consumer protection or the proper administration of justice. It also argued that it provided for a difference in treatment between national and immigrant lawyers. It also argued that the directive should have been adopted unanimously rather than by a qualified majority. The ECJ held that immigrant lawyers practising in other states using their home country title were in a different situation from national lawyers. They are forbidden to carry out certain activities and are subject to certain obligations with regard to the representation and defence of clients in legal proceedings. The directive itself aims to protect consumers and to ensure the proper administration of justice. The migrant lawyer's home title informs consumers about his initial training. The directive also provides that the immigrant lawyer is subject to national rules of professional conduct and must be covered by professional insurance. The directive does not require immigrant lawyers to prove in advance knowledge of national law. It allows such knowledge to be gradually assimilated through practice.

FREE MOVEMENT OF GOODS

Case C-473/98 *Kemikalieinspektionen and Toolex Alpha AB*, judgment of 11 July 2000. Toolex manufactures machine parts which are used in the production of compact discs. It uses trichloroethylene to remove residues of grease produced during the manufacturing process. It applied to the Swedish authorities for permission to use this substance. It is a carcinogen and classified as harmful to health and dangerous to the environment by EU law. The Chemicals Inspectorate rejected the application, as no plan had been submitted for eventually discontinuing use of the chemical. A Swedish court annulled the decision, holding that the Swedish legislation was inconsistent with EU law. The ECJ held that as the commission had not proposed any measures relating to trichloroethylene, EU law does not prevent a member state from regulating its use. The national legislation is likely to bring about a reduction in the volume of imports in trichloroethylene into Sweden and is a measure having an effect equivalent to a quantitative restriction on imports. However, such a restriction can be justified if it seeks to protect the health and safety of humans. There was no evidence in this case, which would enable the court to hold that the national legislation goes beyond what is necessary to provide effective protection of the health and life of humans.

Case C-388/95 *Belgium v Spain*, judgment of 16 May 2000. Spanish rules govern the bottling of wines bearing the *Rioja* designation of origin. It requires this wine to be bottled in authorised cellars in the region. It is therefore a measure having an effect equivalent to a quantitative restriction contrary to article 29 of the treaty unless it can be objectively justified. While EU legislation provides for the protection of designations of origin, it does not authorise the imposition of conditions contrary to treaty rules on free movement of goods. The requirement in this case will be regarded as compatible with EU law if it can be shown that it is necessary and proportionate and capable of upholding the reputation enjoyed by the *Rioja* label.

LITIGATION

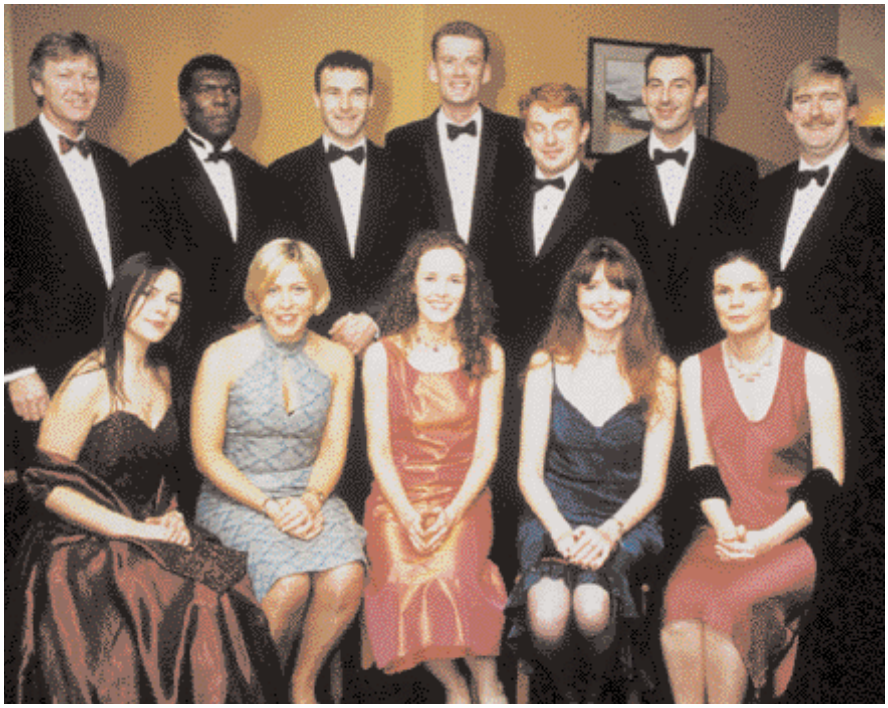
Brussels convention

In Case C-412/98 *Group Josi Reinsurance Company SA v Universal General Insurance Company*, judgment of 13 July 2000, the ECJ reaffirmed earlier decisions to hold that the provisions of the convention on insurance do not cover re-insurance. The purpose of these special rules is to protect an economically weaker party. This consideration does not arise in the case of re-insurance.

STATE LIABILITY

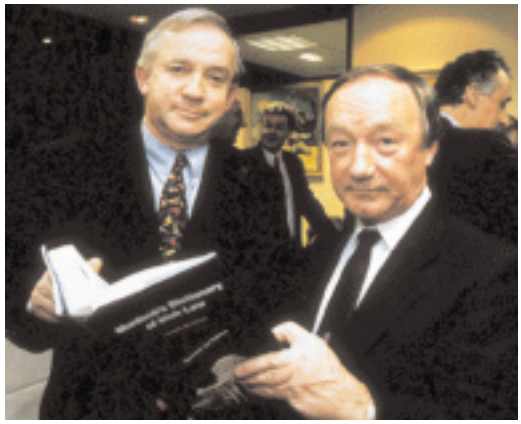
Case C-424/97 *Salomone Haim v Kassenzahnärztliche Vereinigung Nordhein*, judgment of 4 July 2000. The applicant is a dentist and the respondent is the Association of Dentists of Social Security Schemes in Nordhein (KVN). Haim, an Italian, was the holder of a diploma in dentistry awarded in 1946 by the University of Istanbul, Turkey. He practised as a dentist in Istanbul until 1980. In 1981, he was permitted to practise as a dentist in Germany in a self-employed capacity. In 1982, the Belgian authorities recognised his Turkish qualification as equivalent to a Belgian dental qualification. In 1998, the KVN refused to register Haim, as he had not completed the two-year training period required by it. It reached this conclusion as he did not hold a diploma from an EU member state. Haim challenged this decision. The ECJ in *Haim I* held that one member state could not refuse an applicant such as Haim, whose professional qualification was recognised by a regulatory authority in another member state. Haim then brought a further action for loss of earnings due to the fact that he would have earned more between 1998 and 1994 if he had practised as a dentist under a German social security scheme. The ECJ first considered whether a public law body could be required to make reparation for a breach of the treaty rather than the state. It concluded that reparation for loss and damage caused to individuals by national measures taken in breach of EU law by a public law body might be made by that body. The ECJ then considered whether there can be a serious breach of EU law where its misapplication is carried out by a national official with no discretion in reaching his decision. The court referred to its conditions for reparation – that a breach of EU law must have been intended to confer rights on individuals, that the breach was sufficiently serious and that there is a direct causal link between the breach and the loss or damage sustained. The ECJ held that the obligation to make reparation for loss requires a sufficiently serious breach of EU law and there is no requirement of fault going beyond this. In deciding whether a breach is sufficiently serious, the national court hearing the reparation claim must take account of all the factors characterising the situation before it. These factors include the clarity and precision of the rule infringed, whether the infringement and damage caused was intentional or involuntary, whether any error of law was excusable or inexcusable, and the fact that the position taken by an EU institution may have contributed towards the adoption or maintenance of national measures or practices contrary to EU law. G

Those awesome 80s
As this photo shows, the UCC 1980 BCL class reunion at Cork's Maryborough House Hotel on 11 November 2000 drew a good turn-out for a lively night



Young and litigious
The committee members of the Society of Young Solicitors Ireland with some of the guests who attended their autumn conference in Westport (*front row, left to right*) Cait O'Donnell, Vanessa Byrne, SYS Chair Fidelma McManus, Jill Greenfield and Nora Lillis; (*second row, left to right*) the DSBA's James McCourt, Chairman of the London Young Solicitors' Group Trevor Goode, Walter Beatty, William Aylmer, Richard Willis, Paul Murray and Law Society Director General Ken Murphy

With his young Ward
Paddy McEllin holds the hand of his son, future Law Society President Ward McEllin, who looks suitably serious about his future. Joining them at the circa 1960 Claremorris sports meet were the late Tuam solicitor Jimmy Glynn (*far left*) and John MacHale



The last word on law
Mr Justice Michael Moriarty (*left*) and author Henry Murdoch celebrate the launch of the third edition of *Murdoch's dictionary of Irish law*

Authorities on authorities
Pictured at the 20 October 2000 Blackhall Place seminar on current issues in local authority law are (*left to right*) barrister Dermot Flangan; Helen O'Neill, vice-chair of the Local Authorities Solicitors' Association, which organised the event; Tom O'Donoghue, law agent with Galway County Council; and Sean McDermott, a retired property arbitrator who spoke at the event

The more the merrier

Seasonal exuberance is evident in the faces of those gathered for the Mayo Solicitors' Bar Association annual dress dance last December. The illustrious attendees included Law Society President Ward McEllin (*front row, fourth from left*), guest speaker Paddy McEntee SC, Mayo Solicitors' Bar Association President James Cahill (*front row, third from right*), Dublin Solicitors' Bar Association President David Martin (*front row, far right*), and Law Society Director General Ken Murphy (*back row, far left*)

Outgoing president's dinner

Passing the baton

Law Society President Ward McEllin chats with his predecessor and host, immediate Past President Anthony Ensor

Man in the middle

Former Law Society President Patrick Glynn raises a glass with Council members Geraldine Clarke (*left*) and Anne Colley

Quality people

The Law Society's Company Formation services section has recently been awarded the coveted ISO 9002 certification from the NSAI. Commenting on the year of hard work to earn the quality hallmark, Company Formations' Susan Murray explained: 'We did this for our clients, to ensure that all procedures are monitored and we're delivering an efficient service'. Pictured with the certificate are Carmel Molloy, Susan Murray, Rita Hogan and Mary Jane Thompson with Law Society Director of Finance Cillian MacDomhnaill and Martin McCoy of the management training firm Advanced Quality Solutions. The society's Company Formations services incorporates approximately 1,300 companies each year

Squaring accounts
(*From left to right*) Robert McCann, the IT partner at legal costs accountants Connolly Lowe, and Managing Partner Arnold Lowe join e-Practice's Declan Brannigan outside the accountancy firm's Dublin headquarters, where the e-Practice software was recently installed

JUSTICE MEDIA AWARDS 2000

Nuala Haughey

Liz Walsh and Rita O'Reilly

Mark O'Connell

Mary Wilson

Barry Cummins

Diarmuid Peavoy

Pictured at the *Justice Media Awards* ceremony in Blackhall Place in December were: Nuala Haughey of the *Irish Times* who won the *Justice Award* in the daily newspapers category; Liz Walsh and Rita O'Reilly who won the book category with *The People versus Catherine Nevin*; Mark O'Connell of the *Sunday Business Post* who won the non-daily newspaper category; RTÉ legal affairs correspondent Mary Wilson who was named Overall Winner of the competition; Barry Cummins of Today FM who took top honours in the radio category; and Diarmuid Peavoy who took the *Justice Award* in the television category. Unable to attend the ceremony was magazine award winner Mairead Carey of *Magill,* but her award was picked up by her editor, Harry McGee (see also *News*, page 4)

MOVING UP

Prestigious honour garnered
McCann FitzGerald's Jane Marshall has been elected president of the insolvency practitioners' organisation INSOL Europe, the first time an Irish person has been at the helm of the influential group, which has a membership of more than 800 insolvency practitioners in 36 countries

Legal eagle
Melanie Holmes has joined Osborne Recruitment as a legal recruitment consultant. A qualified solicitor, she worked in Matheson Ormsby Prentice's commercial litigation department, and will be scouting for solicitors, paralegals, law clerks and legal secretaries in her new position

The best of Limerick
Caroline Brennan, a first-year LLB student at the University of Limerick, was the most recent recipient of the Stryker Howmedica Osteonics scholarship, which goes to the UL entrant with the best leaving certificate performance across all faculties. She's flanked by Professor J Paul McCutcheon of the School of Law (*left*) and Mr Joe Dorr, human resources manager at the company behind the £8,000 scholarship

Debating champ
Gary Cronin (*centre*), who took top honours in the recent debate at the Waterford Institute of Technology, is congratulated here by Cyril Cawley of the school's law department (*left*) and Danny Morrissey, president of the Waterford Law Society, which sponsored the debate

OBITUARY

Mr Justice Liam Hamilton

Liam Hamilton, one-time civil servant, barrister, judge, president of the High Court and subsequently president of the Supreme Court as chief justice, died after a relatively short illness on 29 November 2000.

Born in 1928, the son of a garda and a music teacher, the eldest of five children, he attended the local Christian Brothers' School in Mitchelstown, Co Cork. From there he joined the civil service as a clerical officer. Assigned to the Department of Justice, fortuitously for an ambitious young man, he was employed in the intellectually-stimulating environment of the Central Office of the High Court.

From there, he studied law at King's Inns, was called to the bar and outshone many university men by winning the prestigious Brooke scholarship. As a member of the Labour party, he stood unsuccessfully in Rathmines, Dublin, in the local elections in 1967. After Tom O'Higgins was appointed chief justice in 1974, the coalition government of Fine Gael and Labour appointed him a judge of the High Court, at the then young age of 46.

In 1976, Liam Hamilton succeeded Mr Justice Denis Pringle as presiding judge of the Special Criminal Court. Hamilton was different in character from Pringle and soon came to national prominence by presiding over several sensational trials, including the Lord Mountbatten murder trial and the trial of Nicky Kelly, who was later pardoned by the state.

Several cases in constitutional law will remain as a legal testament to the Hamilton legacy. In *Murphy v Attorney General* (1979), with the most powerful advocates on both sides (Rory O'Hanlon SC and Mary Robinson for the Murphys, TJ Connolly SC, Donal Barrington SC and John D Cooke for the state), Hamilton J held that the relevant provisions of the *Income Tax Act, 1967*, as amended, were invalid, having regard to the provisions of the constitution because they created an invidious discrimination against married couples contrary to article 40.1 and because they failed to guard the institution of marriage with special care and to protect it against attack.

In the telephone-tapping case, *Kennedy and Arnold v Ireland* (1987), he held that the right to privacy (subject to qualification) was one of the fundamental personal rights of the citizen which flowed from the Christian and democratic nature of the state, and the constitutional right to privacy included the right to hold private telephone conversations without deliberate, conscious and unjustified intrusion by servants of the state.

Aggravated damages were awarded to compensate Ms Kennedy and Mr Arnold, not only for the breach of their constitutional rights of privacy but also for the fact that the breach was carried out consciously and without justification by the executive organ of the state.

Appointed in 1985 to the second most powerful position on the Irish bench, the presidency of the High Court, Liam Hamilton was described at the time in the media as 'a dapper 57-year-old with a spring in his step and a twinkle in his eye and, as judges go, he could be said to be extremely well-liked'. Incidentally, in his capacity as president of the High Court, he regularly attended meetings of the Law Reporting Council in the Benchers' Room in the Four Courts, and his sense of humour and one-liners often lightened somewhat solemn occasions.

In 1991, Liam Hamilton accepted a government invitation to inquire into allegations of malpractice in the beef industry. The report, which was published in 1994, set out the evidence at some length but was criticised for the lack of definitive conclusions and allocation of blame that some considered appropriate.

Succeeding Mr Justice Thomas Finlay as chief justice in 1994, Liam Hamilton was instrumental in playing a role in the reorganisation of the judicial branch of government.

Months before he retired as chief justice, he had the difficult task of inquiring into the circumstances leading to the early release from prison of Philip Sheedy and the conduct of two judges. Legal and political historians will probe this sensitive period in Irish political and legal life and may offer different verdicts.

A gregarious extrovert with many gifts, Liam Hamilton enjoyed golf and was captain of Milltown Golf Club in 1979. He was also an avid soccer fan.

He could deservedly have uttered the following words at the end of his life in an exchange between a lawyer and judge, penned by a hopeful jurist:

'**The lawyer:** This is our life, O Judge, and if it is given to us to grow old, this in the end will be our fate. And yet I know I would, at no cost, alter my destiny.

The judge (Liam Hamilton): Nor I, for it seems to me that among the professions that mankind can serve, no other is better suited to maintain peace among men than that of the judge, the dispenser of a balm for every wound, called justice. For this, I know that the knowledge of having spent the better part of myself bringing about the just happiness of others will give me peace and hope at the end.

In this hope, O Lawyer, our destinies meet at their terrestrial conclusion. We are brothers in this common purpose and therefore can shake hands.'

I will fondly remember the varied occasions we shook hands.

Eamonn G Hall

OBITUARY

Mrs O

Mrs O and Willie

We mark with sadness laced with nostalgia the passing (on 28 December 2000) of the inimitable Dymphna O'Reilly – Mrs O to all who knew her. Dymphna was an integral part of the Law Society for almost 50 years, up to her retirement in 1995. Most of that long period of service was shared with her husband, Willie, who died in 1993.

For those of us who entered the profession between 1946 and 1978, our recollections of our student days and of the Solicitors' Buildings in the Four Courts are inextricably linked with the O'Reillys. Willie was the resident warden of what was up to 1978 the society's headquarters and Dymphna was the 'mother' to all who attended there for meetings of the Solicitors' Apprentices' Debating Society (SADSI). Their large sitting room in the basement – now consultation rooms – will be remembered by many as a Speaker's Corner-cum-Bewley's and, by a nefarious minority of us, as the location of many a late-night poker game.

Willie was undoubtedly the more silent of the partners – and more deadly for that at the card table. However, Willie's relative quietness was more than balanced by Dymphna's ability to hear everything and forget nothing about the well-being of every solicitor who, as an apprentice, had enjoyed their hospitality and friendship.

It is ironic that this great communicator should lose her capacity to speak in her retirement years due to illness, although, to the end, this affliction was offset by her ability to write down her thoughts in her ever-present notepad with cryptic fluency and pass them to her visitor, quickly creating the wavelength on which communication was truly a two-way experience.

On the move to the society's newly-renovated Blackhall Place premises in 1978, Dymphna took on the role of 'minder' of the many overnight guests who stayed there, a role she continued even after Willie's death.

In 1994, as a tribute to both Dymphna and Willie, there was a plaque erected in their honour on the SADSI ex-auditors' board, giving permanent recognition both to their status as the only two honorary auditors of SADSI and to their significance in the lives and memories of so many of us.

We offer our sincere sympathy to Dymphna's solicitor son Brian (certainly the only member of the legal profession who ever actually lived in the Four Courts), her daughter-in-law Jacinta, her grandchildren, her surviving brother, Kevin O'Leary (retired secretary of the Department of Energy), and her many other relatives.

Michael V O'Mahony

OBITUARY

Fiona Ruttle: an appreciation from her colleagues

Fiona passed away peacefully at her parents' home on 8 January, but the illness which took her has scarcely met a more courageous or tenacious opponent. Fiona was only 39, but packed more into those years than many do in twice that time. She had a rare and compelling capacity to value all of life's rich variety.

Having spent her early life in Canada, Fiona was schooled in Dublin and Thurles, where much of her attention was kept for the hockey pitch, the tennis court and making mischief, at all of which she excelled. She studied psychology at Trinity College and her insights into the human psyche were among her most valuable and valued professional and personal assets. Science's loss was the law's gain: Fiona embarked on her apprenticeship with Bowler Geraghty (she was admitted in 1987), where she thrived in the collegial atmosphere of a busy litigation practice.

Fiona moved to London for some years, where she took on a daunting litigation practice at Lawfords, Solicitors, specialising in trade union and employment work, and was admitted in England and Wales in 1991. Although offered a partnership, Fiona chose instead to return to Howth, where she was truly at home. She had her first encounter with illness in early 1994, but, fiercely independent and self-reliant, Fiona fought back to fitness and to work. She joined McCann FitzGerald in April 1997 and adapted to litigation from the defendant's perspective. Fiona was a talented, efficient and highly organised lawyer and a knowledgeable and generous colleague. She was also a sportswoman in every sense of the word. She was an enthusiastic and proficient golfer and an athlete, and we can still see her lithe figure bounding ever-more distantly ahead up Infirmary Road during the first Calcutta Run. She delighted in the renovation of her cottage in Howth and, ever the traveller, continued to seek out new destinations: in the last couple of years she visited the US, Canada, Africa and Cuba.

Fiona had the rare virtue of taking her work, but not herself, seriously. She was marvellously down to earth. She had a quirky sense of humour and a contagious sense of fun. Her love of the offbeat and the ironic was matched by her own inimitable style. A look or roll of the eyes from Fiona spoke volumes. She loved her music as she loved people – authentic and sincere – and was often found in the less-than-exalted venues where gifted eccentrics plied their magic.

The recurrence of her illness last June was met with the same courage and determination previously shown by her – but, unfortunately, another recovery was not at hand. The sense of loss to her friends and colleagues is enormous, but is as nothing beside the loss to Fiona's beloved parents, Paddy and Patsy, her sister Helen, nephew Simon and niece Sarah. May God grant them strength and comfort.

All manner of life thronged St Fintan's Church in Sutton for her removal and funeral because she touched all manner of life. Endowing her friends with her wisdom, good sense, compassion and understanding, she refreshed us like a sea breeze. She was deeply reflective, in tune with and reliant on her own mind and her own heart. She was also, as she would say herself, mad as a snake, living to her own unique melody. Fiona was deeply loved and we, her friends and colleagues, will miss her terribly. Ar dheis Dé go raibh a h-Anam.

A special mass for Fiona will be held on Thursday 15 February at 5.15pm at the Blessed Sacrament Chapel, Bachelor's Walk (contact 607 1368 or 607 1219 for details). All are welcome.

SADSI
Solicitors Apprentices Debating Society of Ireland

Apprentices get their day in court

For the first time in the history of the Solicitors' Apprentices' Debating Society of Ireland, a quantifiable right of audience is now being established. SADSI, with the co-operation of the Law School and Michael Peart of the Law Society's Education Committee, has contacted the various arms of the legal profession over the past year with a view to attaining an apprentice's right to be heard in open court.

It is important for every apprentice to stand up and speak in court at least once during his or her apprenticeship. In the past, this was not possible since there was no established right of audience for apprentices. There was also a severe lack of information given at that time to masters to inform them that their apprentice could indeed speak in the District Court.

But there are a number of places where apprentices are now free to speak in the knowledge that they will have a right of audience. These are:

- **The County Registrars' Court.** It has been agreed by the Association of County Registrars at its AGM this year that it welcomes apprentices attending before its court for consent matters and those more particularly outlined in the second schedule to the *Courts and Court Officers Act, 1995*. Apprentices should be fully briefed and should introduce themselves to the court. This applies to all county registrars' courts throughout Ireland
- **Master's Court of the High Court.** A recent letter to Michael Peart from the master of the High Court, Harry Hill, stated that he had no objections to apprentice solicitors appearing in the Master's Court. In the past, this has been known as a training ground for aspiring barristers; the same may now be said for apprentice solicitors
- **Arbitration hearings.** While it is accepted that under the *Arbitration Acts* anybody may appear on behalf of a claimant or respondent in an arbitration, SADSI has spoken to the Chartered Institute of Arbitrators, which has formally recognised the right of the apprentice solicitor to represent parties in any arbitration hearing
- **Asylum appeals.** An apprentice may present an asylum appeal, subject to the consent of his or her master and the client. As a matter of courtesy, apprentices should identify themselves to the appeals authority prior to the hearing
- **Employment Appeals Tribunal, Rights Commissioners, Labour Court and Labour Relations Commission and Equality Officers.** It is hoped that apprentices may make applications to these bodies for witness summonses, adjournments and various non-contentious matters, but this has not been fully confirmed and is currently under consideration by the Law Society's Employment Law Committee
- **District Court.** Representations have been made to the president of the District Court and the Rules Committee for the addition of a new rule to the *District Court Rules* which will give a right of audience to various non-contentious applications.

Singing for his supper? SADSI liaison officer Michael Gilroy speaks at the recent SADSI advocacy evening, which was sponsored by LaTouche Bond Solon

EXERCISING YOUR RIGHT OF AUDIENCE

The opportunity to appear in your local court while still an apprentice should be taken immediately by those interested in developing one of the more interesting aspects of the solicitors' profession: advocacy. Consent applications, adjournments and applying to fix dates may not, at first sight, be the most challenging briefs, but they do require an apprentice to stand up before his or her peers (and betters, no doubt), address the judge and request the required orders.

Difficulties arise when the judge wonders why the matter must be adjourned or needs sight of proof of consent in writing or a declaration of service which should have been filed a few days ago. These difficulties assume you are in the correct court at the correct time and in possession of your file. Often court practices differ slightly from area to area and a measure of advance planning – whether it be a critical examination of the file and pleadings a week or two in advance or checking with the court office if the call-over is 10am or 10.30am – can save more than time. All these points and a great many others are discussed in the SADSI guide for apprentices appearing in court, entitled *The solicitor and apprentice as advocate,* which can be viewed on the SADSI pages of the Law Society website.

The introduction of an advocacy module on the current professional practice course ensures that apprentices will emerge from their courses with an equal, if not greater, amount of training in advocacy than their King's Inns equivalents. Finally, while not all solicitors are advocates, neither are all advocates barristers.

Keith Walsh

Practice in advocacy will stand apprentices well when they go into full-time practice, making them more confident in arguing cases before judges and tribunals. The benefits to masters are also considerable, sparing them from completing what in their eyes are routine but time-consuming applications.

Anyone wishing to receive more information about the status of the apprentices' right of audience should contact Michael Gilroy or Keith Walsh.

Michael Gilroy

New SADSI auditor named

Following a marathon election campaign which began last November and which, as most apprentices are now aware, ended in the invalidation of the election before the votes were counted, apprentices were re-invited to nominate their choice of candidate for auditor. The new deadline for nomination of candidates was 22 January, and, at the close of the day, only one nomination was received: that of Claire O'Regan. She will choose her committee over the coming weeks and deserves the support of all apprentices in her role as auditor. Full details will appear in the next issue of the *Gazette*.

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 2 February 2001)

Regd owner: James Fenelon; Folio: 6142F; Lands: Knockdramagh and Barony of Forth; **Co Carlow**

Regd owner: Arthur Alan Skuce; Folio: 9834F; Lands: Property situate to the North Side of Centaur Street in the Parish and Urban District of Carlow; **Co Carlow**

Regd owner: Brendan O'Brien; Folio: 5247F; Lands: Johnduffswood and Barony of Idrone West; **Co Carlow**

Regd owner: Shannon Free Airport Development Company Limited, Shannon Airport, Clare; Folio: 1105 F; Lands: Townland of (1) Dulick and Barony of Bunratty Upper; Area: 1.4660 hectares; **Co Clare**

Regd owner: George R Morrison, Roshin North, Burtonport, Co Donegal & 2 Ambleside Crescent, Bangor, Co Down; Folio: 43054; Lands: Roshin North; **Co Donegal**

Regd owner: Maureen and Patrick Quinn, Main Street, Ballybofey, Co Donegal; Folio: 36020; Lands: Ballybofey; Area: 0.181 acres; **Co Donegal**

Regd owner: Coillte Teoranta, Leeson Lane, Dublin 2; Folio: 18103; Lands: Tullynavinn; Area: 17.463 acres; **Co Donegal**

Regd owner: Margaret Vivash; Folio: DN9754; Lands: Property situate in the Townland of Saggart and Barony of Newcastle; **Co Dublin**

Regd owner: Cyril Joyce and Kitty Joyce, 20 Hazel Park, Newcastle, Galway; Folio: 33943F; Lands: Townland of (1) Newcastle and Barony of Galway; **Co Galway**

Regd owner: Ralph M Keane, Bridge Street, Gort, Galway; Folio: 52767; Lands: Townland of (1) Cloonnahaha, and (2) Cloonnahaha and Barony of Kiltartan; Area: (1) 2.9112 hectares, and (2) 7.3576 hectares; **Co Galway**

Regd owner: Galway Board of Health; Folio: 5032; Lands: Townland of (1) Caherwalter, (2) Cosmona, (3) Cuscarrick, (4) Pollroebuck, (5) Caherwalter, (6) Caherwalter, (7) Loughrea, (8) Loughrea, (9) Cosmona, (10) Caherroyn and Barony of Loughrea; **Co Galway**

Regd owner: Gerald and Vicki Monaghan, Caraun, Claregalway, Galway; Folio: 42358F; Lands: Townland of (1) Tawnaghamore and Barony of Clare; **Co Galway**

Regd owner: John Clarke and Helena Mee, Kilsallagh, Kilkerrin, Ballinasloe, Galway; Folio: 51682F; Lands: Townland of (1) Cuilsallagh and Barony of Tiaquin Area; Area: 0.356 hectares; **Co Galway**

Regd owner: Anne Wilkinson (tenant in common with Anne McDonagh); Folio: 7952; Lands: Townland of Rath and Barony of Glanarought; **Co Kerry**

Regd owner: Bridget O'Carroll; Folio: 9410F; Lands: Lands at Ardoughter, situate in the Barony of Clanmaurice and County of Kerry; Area: $^1/_2$ Acre; **Co Kerry**

Regd owner: Jim Clancy and Claire Hannon; Folio: 35059F; Lands: Townland of Dromin and Barony of Iraghticonnor; **Co Kerry**

Regd owner: Belinda Ryan (deceased); Folio: 8275F & 7396; Lands: Warrenstown and Barony of Galmoy; **Co Kilkenny**

Regd owner: Patrick McKelvey; Folio: 13973; Lands: Barny and Bealady and Barony of Clandonagh; **Co Laois**

Regd owner: James Slattery (deceased); Folio: 10892; Lands: Townland of Ballyhurst and Barony of Coonagh; **Co Limerick**

Regd owner: Anthony Crosse; Folio: 28108; Lands: Townland of Kilcullen and Barony of Clanwilliam; **Co Limerick**

Regd owner: William Mullins; Folio: 18224; Lands: Townland of Cush and Barony of Coshlea; **Co Limerick**

Regd owner: Patrick Flood Jr, Edgeworthstown; Folio: 5164; Lands: Aghafin; Area: 9.588 acres; **Co Longford**

Regd owner: John Murphy, Balfaddock, Queensboro, Drogheda, Co Louth; Folio: 9340; Lands: Beltichburne; Area: 10.284 hectares; **Co Louth**

Regd owner: Peter John Burns, Carrickcarnan, Ravensdale, Dundalk, Co Louth; Folio: 5317; Lands: Carrickcarnan; Area: 13.288 acres; **Co Louth**

Regd owner: Thomas Fee, Castletown Road, Dundalk, Co Louth and Southend, Blackrock, Haggardstown, Dundalk, Co Louth; Folio: 12029; Lands: Haggardstown; Area: 0.375 acres; **Co Louth**

Regd owner: Anthony Joyce, Drumgarve, Carraholly, Westport, Co Mayo; Folio: 671; Lands: Townland of (1) Drumgarve and Barony of Burrishoola; Area: 14.7989 hectares; **Co Mayo**

Regd owner: Nora Murray, Drumdrishaghaun, Belcarra, Castlebar, Co Mayo; Folio: 15976F; Lands: Townland of (1) Ballynagharha, (2) Cloonconragh East, (3) Drumdrishaghaun, (4) Lissaniska, (5) Drumdrishaghaun and Barony of Carra; Area: ; (1) 0.2302 hectares, (2) 0.0303 hectares, (3) 5.9270 hectares, (4) 1.1740 hectares, (5) 0.3245 hectares; **Co Mayo**

Regd owner: Bridget Ruane and Father Gerard Needham as tenants in common of one undivided moiety respectively, 14 Thomas Street, Castlebar, Mayo, and The Presbytery, Castlebar, Mayo; Folio: 8691F; Lands: Townland of (1) Springfield and Barony of Carra; **Co Mayo**

Regd owner: James Moran and Mary Ann Moran, Sheeroe, Westport, Mayo; Folio: 14732; Lands: Townland of (1) Derrygorman, (2) Sheeroe and Barony of Murrisk; Area: (1) 2.3726 hectares, (2) 1.3481 hectares; **Co Mayo**

Regd owner: Joseph Prendergast and Mary Prendergast (deceased), Gowlaun, Kilkelly, Co Mayo; Folio: 8955F; Lands: Townland of Gowlaun and Barony of Costello; Area: 0.907 acres; **Co Mayo**

Regd owner: William Heaney and Kate Heaney, Pollbaun, Hollymount, Mayo; Folio: 27902; Lands: Townland of (1) Pollbaun, (2) Roos, (3) Pollbaun and Barony of Kilmaine; Area: (1) 12.373 hectares, (2) 4.251 hectares, (3) 2.400 hectares; **Co Mayo**

Regd owner: Henry Murray, Seeaghanbaun, Kincon, Killala, Ballina, Mayo; Folio: 15116; Lands: Townland of (1) Seeaghanbaun, (2) Seeaghandoo and Barony of Tirawley; Area: (1) 12.0697 hectares, (2) 0.0101 hectares; **Co Mayo**

Regd owner: Michael Joseph Cottingham, Mountenry, Ower PO Mayo; Folio: 19773F; Lands: Townland of (1) Brownisland, (2) Mountenry, (3) Gortbrack, (4) Mountenry, (5) Ballycurrin Demesne, (6) Mountenry, (7) Mountenry and Barony of Kilmaine; Area: (1) 0.195 hectares, (2) 2.122 hectares, (3) 2.3600 hectares, (4) 5.709 hectares, (5) 5.026 hectares, (6) 1.7500 hectares, (7) 3.677 hectares; **Co Mayo**

Regd owner: Michael Hanely, Hagfield, Charlestown, Mayo; Folio: 22715 F; Lands: Townland of (1) Hagfield and Barony of Costello; Area: 0.183 hectares; **Co Mayo**

Regd owner: Mary Marron, Freffans, Trim, Co Meath; Folio: 10274 & 18089; Lands: Collierstown; Area: 60.93125 acres (Folio 10274), 1.00 acres (Folio 18089); **Co Meath**

Regd owner: Philomena Byrne; Folio: 12519; Lands: Ballard and Barony of Ballycowan; Area: 12519; **Co Offaly**

Regd owner: Seamus Daly; Folio: 14789; Lands: Ballyduff and Barony of Garrycastle; **Co Offaly**

Regd owner: Donal and Lucy Geoghegan; Folio: 254L; Lands: Kilbride and District of Tullamore; **Co Offaly**

Regd owner: Coillte Teoranta, Leeson Lane, Dublin 2; Folio: 33917; Lands: Townland of (1) Aghacarra, (2) Aghacarra and Barony of Boyle; Area: (1) 16.8550 hectares, (2) 2.5191 hectares; **Co Roscommon**

Regd owner: John Banahan, Clontuskert, Lanesboro, Co Roscommon; Folio: 31116; Lands: Townland of (1) Cloontuskert, (2) Cloontuskert and Barony of Ballintober South; Area: (1) 6.2979

hectares, (2) 1.3152 hectares; **Co Roscommon**

Regd owner: Margaret Nerney, Doughill, Curraghroe, Co Roscommon; Folio: 656 R; Lands: Townland of (1) Doughill (2) Doughill (1 undivided 27th part); Area: (1) 7.0137 hectares (2) 70.7441 hectares; **Co Roscommon**

Regd owner: Thomas Coyne, Ballyhubert, Scramogue, Longford; Folio: 26351; Lands: Townland of (1) Ballyhubert (2) Mongagh and Barony of Roscommon; Area: (1) 2.5242 hectares (2) 0.7992 hectares; **Co Roscommon**

Regd owner: Eugene L Tansey, Ballysundrivan, Elphin, Roscommon; Folio: 14016; Lands: Townland of (1) Ballysundrivan and Barony of Frenchpark; Area: 10.0941 hectares; **Co Roscommon**

Regd owner: William (otherwise Brendan) Finnegan, Ballyweelin, Co Sligo; Folio: 17041; Lands: Townland of (1) Creggyconnell and Barony of Carbury; Area: 3.7003 hectares; **Co Sligo**

Regd owner: Margaret Mary Clossick, Ballinvally East, Bunninadden, Ballymote, Co Sligo; Folio: 16840; Lands: Townland of (1) Ballinvally East, (2) Brackloonagh and Barony of Corran; Area: (1) 5.7920 hectares, (2) 0.5660 hectares; **Co Sligo**

Regd owner: Nicholas Bergin; Folio: 29822 & 29680; Lands: Rathmoley and Barony of Slieveardagh; **Co Tipperary**

Regd owner: Noel O'Dwyer; Folio: 5911F; Lands: Clonoulty Church-quarter and Barony of Kilnamanagh Lower; **Co Tipperary**

Regd owner: Nigel Riordan and Eileen Long; Folio: 17411F; Lands: Townland of Coxtown East and Barony of Gaultiere; **Co Waterford**

Regd owner: Patrick Singleton; Folio: 592F; Lands: Townland of Boola and Barony of Coshmore and Coshbride; **Co Waterford**

Regd owner: Maurice Kiely; Folio: 7701; Lands: Townland of Lagnagoushee and Barony of Decies-within Drum; **Co Waterford**

Regd owner: Joseph Gavin, Rochfort Demesne, Mullingar, Co Westmeath; Folio: 19983; Lands: Rochfort Demesne; Area: .375 acres; **Co Westmeath**

Regd owner: Rosemarie O'Leary; Folio: 13443; Lands: St Iberius and Barony of Forth; **Co Wexford**

Regd owner: George Stafford Distribution Limited; Folio: 8869F; Lands: Sinnottstown; Area: 20.099 acres; **Co Wexford**

WILLS

Coghill, Peter (deceased), late of Springfield, Carlow, Co Carlow. Would any person having knowledge of the whereabouts of a will for the above named deceased who died on 19 June 1999, please contact Durcans, Solicitors, Castlebar, Co Mayo, tel: 094 21042/21655, fax: 094 23780

Delaney, Ciaran (deceased), late of 41 North Leinster Street, Dublin 7, or 10 College Grove, Castleknock, Dublin 15. Would any person having knowledge of a will made by the above named deceased who died on 14 December 2000, please contact Bowler Geraghty & Co, Solicitors, 2 Lower Ormond Quay, Dublin 1, Ref: JRM, tel: 8728233, fax: 8728115

Egan, Catherine (deceased), late of 64, Knockroe, Castlerea, Co Roscommon. Would any person having knowledge of a will made by the above named deceased who died on 8 September 2000, please contact Michael F Butler & Company, Solicitors, 34 Main Street, Longford, Co Longford, tel: 043 41118, fax: 043 47022

Hartnett, John, late of 34 Finglas Road, Dublin (last known address) would at other times have resided at Iona Road, Dublin and Jamesbrook, East Ferry, Midleton, Co Cork. The late Mr Hartnett died on 28 November 2000. Would any person having knowledge of a will made by the above named, please contact Joseph S Cuddigan & Co, Solicitors, 30/31 Washington Street, Cork, tel: 021 4270903, fax: 021 4270561

Hoey, James, late of 86 Huntstown Wood, Clonsilla, Dublin 15. Would any person having knowledge of a will made by the above named deceased who died on 15 November 2000, please contact McAlister O'Connor, Solicitors, 79 Flower Hill, Navan, Co Meath, tel: 046 22223, fax: 046 22544

Howick, Mary (deceased), late of 6 Belfield Close, Clonskeagh, Dublin 14. Would any person having knowledge of a will made by the above named deceased who died on 11 June 2000, please contact Lennon Heather & Company, Solicitors, City Quay House, City Quay, Dublin 2, tel: 01 6703232, fax: 01 6703434

Keogh, William Anthony (or Liam) (deceased), late of 74 Seacrest, Vevay Road, Bray, Co Wicklow. Would any person having knowledge of a will made by the above named deceased who died on 13 November 2000, please contact Helen Boland, Solicitor, 9 Palmerston Road, Rathmines, Dublin 6, tel/fax: 4963349

Ledwith, Julia Catherine (ors Sheila Ledwith), Ballardin, Dunderry, County Meath. Would any person having knowledge of a will made by the above named deceased who died on 23 November 2000, please contact MA Regan, McEntee & Partners, Solicitors, High Street, Trim, County Meath, tel: 046 31202, fax: 046 31932

Newman, Thomas (deceased), late of Kilcoursey, Clara, County Offaly. Would any person having knowledge of a will made by the above named deceased who died on 12 November 2000, please contact JD Scanlon & Co, Solicitors, The Bridge Centre, Tullamore, Co Offaly, tel: 0506 51755, fax: 0506 51759 or e-mail scanlons@midnet.ie

O'Doherty, Grainne (deceased), late of Claggan, Portsalon, Co Donegal. Would any person having knowledge of a will made by the above named deceased who died on 13 October 1997, please contact McArdle & Co, Solicitors, 12 Upper Mount Street, Dublin 2, tel: 01 6622422, fax: 01 6622436

O'Driscoll, Stephanie (deceased), late of 408 Howth Road, Raheny, Dublin 5. Would any person having knowledge of a will made by the above named deceased who died on 14 October 2000, please contact Corrigan & Corrigan, Solicitors, 3 St Andrew Street, Dublin 2, tel: 6776108, fax: 6794392

O'Hara, Peter, late of 9 Garville Road, Dublin 6. Would any person having knowledge of a will made by the above named deceased who died on 5 November 2000, please contact Doyle Geraghty & Company, Solicitors, 27 Bridge Street Lower, City Gate, Dublin 8, tel: 6790166, fax: 6790168, e-mail dla@indigo.ie

O'Toole, John Joseph (otherwise Jack), late of Newtown, Donard, Co Wicklow and Ballintruermore, Stratford-on-Slaney, Co Wicklow. Would any person having knowledge of a will made by the above named deceased who died on 30 March 1999, please contact Doyle Murphy & Co, Solicitors, Weaver Square, Baltinglass, Co Wicklow, tel: 0508 81888, fax: 0508 81889

Ryan, Helen, deceased, late of 7 Church Place, Rathmore, Kerry. Would any firm of solicitors holding a will or having knowledge of a will made by the above named deceased who died on 29 January 1999, please contact Gerard O'Keeffe & Co, Solicitors, Kanturk, Co Cork, tel: 029 50154, fax: 029 50725

Simpson, Ellen (deceased), late of 126 Heather Walk, Portmarnock, Co Dublin who died on 25 November 2000. Would any solicitor holding a will for the deceased please contact Maguire & Brennan, Solicitors, DX 95004, Claremorris, Co Mayo, tel: 094 71321, fax: 094 62034, or e-mail law@maguire-brennan.ie, ref: SIMP1/1/MGB/PR

EMPLOYMENT

Experienced solicitor, retired from general practice, willing to undertake conveyancing and probate work from own home, might suit firm unable or unwilling to engage additional staff, modern office facilities. **Reply to Box No 10**

Solicitor with three years' post-qualification experience sought for general practice located in country town close to Dublin. Prospects excellent for suitable candidate. Please send details to **Box No 11**

Locum solicitor required for Donegal Town office from February to June, 2001. Experience in conveyancing and probate desirable. Excellent salary for the right applicant. Contact Gallagher McCartney, Solicitors, Main Street, Donegal Town, Co Donegal, tel: 073 21753

Experienced litigation solicitor required for in-house position in Dublin 2. Fax CV to G O'Connor at 6766844. All replies will be considered in strictest confidence.

Young solicitor with many years' PQE in litigation, conveyancing, administration of estates and general practice work, seeks new challenging position, preferably in the South Eastern or Midlands Circuit, but other locations considered. **Apply Box No 12**. Strictest confidence assured.

Locum litigation solicitor available from mid-February 2001. Dublin area. Reply to **Box No 13**

Apprentice required for Tullamore practice. Immediate start. Apply in writing to **Box No 14**

Small solicitors' practice for sale in north county Dublin. Sole practitioner retiring. Ideal opportunity for one or two young solicitors to acquire a well-established practice in a thriving area. Fully computerised. Excellent modern offices. Replies to **Box No 15**

AT MARY B CREMIN LEGAL DIVISION

Medium-sized D2 firm are offering an excellent opportunity for progression for a recently-qualified solicitor with experience in commercial conveyancing and probate. £30K neg

Newly-established commercial firm seek additional solicitor with a knowledge of commercial litigation. This rapidly-growing firm can offer real experience and development. £35K+ neg

Contact Roisin @ 6623000
roisin.moriarty@marybcremin.ie

Solicitor – North Kildare, three years' general practice PQE, seeks position in region, tel: 045 871456

Post-professional course apprentice with conveyancing experience required by Cork city firm. Reply to **Box No 19**

Life is about living – solicitor available for locum work **– tel: Belfast 90641595**

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

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

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

Personal injury claims, employment, family, criminal and property law specialists in England and Wales. Offices in London (Wood Green, Camden Town and Stratford), Birmingham and Cardiff. 'No win, no fee' available for accident and employment claims, legal aid for family and criminal cases. Contact **Levenes Solicitors** at Ashley House, 235-239 High Road, Wood Green, London N22 8HF, tel: 0044 20 8881 7777. Alternatively e-mail us on info@levenes.co.uk or visit our website at *www.levenes.co.uk*

Publican's ordinary seven-day licence for sale. Please contact Messrs John Casey & Company, Solicitors, Bindon House, Bindon Street, Ennis, Co Clare, tel: 065 6828763, Reference OA/MK

Seven-day licence for sale: particulars from Branigan Cosgrove Solicitors, 31 Pembroke Road, Dublin 4, tel: 01 6682477, fax: 01 6670119, e-mail brancosg@securemail.ie

Ordinary seven-day publican's licence for sale. Contact Murphy & Long, Solicitors, Lower Kilbrogan Hill, Bandon, County Cork, tel: 023 44420, fax: 023 44635

For sale: seven-day ordinary intoxicating liquor licence. Enquiries and details from Mannix & Company, Solicitors, 12 Upper Castle Street, Tralee, tel: 066 7125011

For sale: publican's licence. Contact Louis O'Connell of Gerald Baily & Co, Solicitors, Church Place, Church Street, Tralee, County Kerry, tel: 066 7121015 / 066 7122152 / 066 7120460, fax: 066 7123014, e-mail, gbaily@securemail.ie

Would any person having knowledge of the Saunderson estate relating to property at Mullagh, County Cavan, please contact O'Leary & Company, Solicitors, Muckross Road, Killarney, County Kerry, tel: 064 37222/31090, fax: 064 37244

Established legal practice for sale: South West of Ireland – **Box No 16**

Carlow/Kilkenny area. Busy sole practitioner's practice for sale. Inquiries in confidence to **Box No 18**

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts, 1967–1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of premises near Parade Quay, Waterford (behind 109 Parade Quay): an application by An Post

Take notice that any person having any interest in the freehold estate of the following premises all that and those the yard and premises situate near Parade Quay in the parish of Trinity within and city of Waterford and more particularly delineated and described on a map endorsed on an indenture of conveyance and assignment made 12 October 1937 between Francis Graham of the one part and Austin Orlando Hill of the other part and therein coloured brown originally held in yearly tenancy at a rent of £5 per annum and therein described as 'all that and those the premises adjoining the premises hereinbefore described situate in the parish of Trinity within and city of Waterford and more particularly delineated and described in the map thereof endorsed on these presents and therein coloured brown'.

Take notice that the applicant, An Post, intends to submit an application to the county registrar for the county of Waterford 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, An Post intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Waterford for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Dated: 15 January 2001
Signed: Hugh O'Reilly, solicitor for applicant, GPO, O'Connell Street, Dublin 1

In the matter of the *Landlord and Tenant Acts, 1967–1984* and *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Patrick J O'Sullivan

Take notice that any person having an interest in the freehold estate of the following property: all that and those portion of the premises at 5 Bridge Street in the Town of Swords, Barony of Nethercross and County of Dublin.

Particulars of applicant's interest referred to above: deed of conveyance and assignment dated 8 September 1998, John Taylor to applicant and deed of assignment dated 30 March 2000 and made between Barry Savage of the one part and the applicant of the other part, which said premises forms part of the property comprised in and demised by an indenture of lease dated 10 September 1850 and made between Philip O'Dwyer Greene of the first part, William Greene of the second part and George Watters of the third part for the term of 200 years from 25 March 1850 subject to the yearly rent of £5 thereby reserved and to the covenants on the part of the lessee and the conditions therein contained.

Take notice that the applicant, Patrick J O'Sullivan of 51 Portmarnock Crescent, Portmarnock, Co Dublin, being the person entitled under the provisions of sections 9 and 10 of the *Landlord and Tenant (Ground Rent) (No 2) Act, 1978* proposes to purchase the fee simple in the lands described in above by application to the Dublin county registrar and any person having an interest in the said premises are called upon to furnish evidence to the below-named within 21 days of this notice.

In default of such notice being received, the application will proceed on the basis that the person or persons beneficially entitled to the lessor's interest or to any superior interest including the freehold reversion are unknown or unascertained.

Dated:19 January 2001
Signed: Brian D O'Brien & Co (solicitors for the applicants), 23 Main Street, Swords, C. Dublin

Johanna Ging, 72 Brewery Road, Stillorgan, County Dublin. Would any person having knowledge of the whereabouts of the title documents of the above mentioned property, please contact, Woodcock & Sons, Solicitors, 28 Molesworth Street, Dublin 2, tel 01 6761948, fax: 01 6760272, e-mail Woodcock@iol.ie