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Data Protection Commissioner

An Coimisinéir Cosanta Sonraí

NOTICE TO LEGAL PROFESSIONALS

Registration under the Data Protection Act, 1988

The Data Protection Commissioner wishes to remind solicitors, barristers and other legal professionals of the requirement to register under section 16 of the Data Protection Act, 1988, in cases where you are processing sensitive information about identifiable individuals on your computer systems. "Processing" in this context includes the retention on computer, or on computer media such as floppy disks, of documents created in word-processing applications. "Sensitive information" in this context means any details relating to an individual's -

- racial origin;
- political opinions;
- religious, philosophical or other beliefs;
- physical or mental health;
- sexual life; or
- criminal convictions.

Registration under the Data Protection Act is a simple and inexpensive exercise, that in no way compromises your professional privileges or client confidentiality. Its purpose is to describe, in a publicly transparent manner, the general nature of the processing carried out by a data controller. The Commissioner has prepared detailed guidelines to assist legal professionals in assessing and complying with your registration obligations - see our website at **http://www.dataprivacy.ie/5r1.htm** .

Failure to register, if you are required to do so, is an **offence** under section 19 of the Data Protection Act, and legal professionals in this position are liable to summary prosecution by the Commissioner under section 30 of the Act. The Commissioner is now undertaking a proactive assessment, initially of selected firms of legal professionals, with a view to ensuring compliance with section 16 of the Data Protection Act. In this regard, the Commissioner has statutory powers of investigation, inspection and enforcement. The Data Protection Commissioner is also prepared to take a forward-looking approach in respect of those who take prompt action to comply with their registration obligations in good faith before **31 December 2002.**

Office of the Data Protection Commissioner
Block 4, Irish Life Centre, Talbot Street, Dublin 1
Telephone: (01) 874 8544
E-mail: info@dataprivacy.ie
Web: www.dataprivacy.ie

Looking to the future

This year, as I am sure you are all aware by now, is the 150th anniversary of the granting of the Law Society's charter. It has been a year of celebration for the solicitors' profession and, I would hope, a reminder of our proud record of service to the public in this country.

It has been a historic year for other reasons, too. The *Court and Court Officers Act, 2002* was passed by the Oireachtas and we saw the appointment for the first time of a practising solicitor as a judge of the High Court. The Honourable Mr Justice Michael Peart was appointed in June.

Last month, in the presence of the taoiseach, we launched the second edition of *A guide to the professional conduct of solicitors in Ireland*, setting out the accepted principles of good conduct and practice for solicitors. The *Guide* has been comprehensively revised and updated since its first publication in 1988. It now includes references to all the relevant legislation and case law, and it has been made very user friendly, so that you can now find any topic without difficulty.

As a profession, we set standards for our members in the conduct of their practices. As a self-regulating profession, we enforce those standards ourselves. I believe that this guide will provide practical guidance to solicitors in their practices when they find themselves in situations where their professional duty is not immediately clear.

Personal Injuries Assessment Board

One change that perhaps is not so welcome is the government's decision to proceed with the establishment of the Personal Injuries Assessment Board. The announcement was made just as this issue of the *Gazette* was going to press, but you can find more information about it on page 5. There is, however, some cause for optimism in that the government appears to have taken heed of warnings from us (and from other interested parties) that the PIAB is no panacea for all society's ills. The government has stated that it notes our recommendations for reform of the personal injuries litigation process (see page 4) and will look favourably at these proposals.

While some may consider that the PIAB may have a very negative effect the solicitors' profession, I do not necessarily agree. If this anniversary year proves anything, it is that we have come a long way as a profession. I have every confidence in our ability to adapt to change, as we have always done, and for that reason I believe we can look forward to the future with confidence.

Sincere thanks

As this is my final *President's message*, I would very much like to thank a number of people who were so very generous in their help to me over the last year, but, in doing so, I am conscious that I may leave some people out. If I do, I can only apologise in advance. However, to my senior vice-president, Geraldine Clarke, and my junior vice-president, Philip Joyce, I say thank you from the bottom of my heart for your helpful support and good advice. To my colleagues on the Council, I also say a very warm thank you.

I must also extend my sincere thanks to our director general, Ken Murphy, and to the deputy directors general, Mary Keane and PJ Connolly, for their help and support during the year. They were unstinting and unselfish in their help and support to me. I would also like to thank the partners and staff in my own firm for the extra workload they had to carry due to my absence from the office.

I was deeply honoured to be your president. Thank you.

Elma Lynch,
President

'We have come a long way as a profession. I have every confidence in our ability to adapt to change, as we have always done'

Society unveils 'cost-free reforms'

The Law Society has called for a 'change in culture' as part of its wide-ranging proposals to reform the personal injuries litigation process. The society's recommendations were unveiled at a press conference in Blackhall Place last month (see **panel below**).

According to Ward McEllin, chairman of the Law Society task force that produced the report, the reform proposals have three main objectives:

- To encourage the settlement of cases as quickly as possible
- To encourage quick and efficient trials where trials take place, and
- To discourage fraudulent and exaggerated claims.

The other main benefit, he pointed out, was that the reforms suggested were virtually cost free, compared to the expense of setting up the Personal Injuries Assessment Board, estimated to be in the region of €38 million and requiring over 305 staff.

'Nobody knows more about the personal injuries litigation system in Ireland than the solicitors' profession', explained McEllin. 'We know where the blockages, inefficiencies and occasional absurdities in the system are to be found and we know – and have now proposed – how these can be eliminated'.

Chairman of the Litigation Committee, Roddy Bourke, outlines the reforms

He added that the Law Society's task force had been 'seriously in the business of reform. We have been prepared to explore and ultimately recommend any change which would streamline and make the system more efficient, provided that change would be fair to both sides and would make economic sense'.

In addition to the procedural reforms suggested by the task force, said McEllin, there must come a cultural reform. 'It has for far too long been a feature of personal injuries litigation in Ireland that information about the case, on both the plaintiff and defence sides, is seldom exchanged until late – often very late – in the process. This must change. The days of "trial by ambush" and "always keeping your cards close to your chest" must end. Similarly, the culture in insurance companies – whereby they simply won't take a claim seriously until proceedings have been issued and then more often than not will fail to make a serious settlement offer until the very last minute, when all costs have been incurred – must also end'.

LAW SOCIETY PROPOSALS TO REFORM PI LITIGATION

To settle cases more quickly:

- Ensure exchange of information by both sides to the fullest possible extent at the earliest possible time
- Pre-action disclosure by letter of all then known information relevant to the case by both sides
- Pleadings should also be comprehensive and fully informative
- Time limits to be strictly applied
- Orders for discovery should be granted sparingly
- Much greater use of notices to admit facts to reduce issues of controversy
- Greater consistency in form and quality of medical reports, which must be exchanged in advance
- Greater use of lodgements
- Judicial case management
- Interim awards and periodic (rather than lump sum) payments of damages.

To encourage quick, efficient trials:

- No party should be entitled to call an expert witness unless leave granted by a judge in an earlier court application
- IT should be developed to allow expert witnesses to give evidence by video-link

To discourage fraudulent and exaggerated claims:

- Creation of a new offence of bringing or assisting in bringing a fraudulent claim with severe penalties on conviction, including imprisonment
- Evidence given by both sides should be made on affidavit and, if the evidence sworn is found to be false, penalties should be applied.

The full text of the Law Society's reform proposals is available on the home page of the Law Society's website at *www.lawsociety.ie*.

ONE TO WATCH: NEW LEGISLATION

Pensions (Amendment) Act, 2002

The *Pensions (Amendment) Act, 2002* has three main objectives: to establish personal retirement savings accounts (PRSAs), to establish a pensions ombudsman, and to amend and improve existing pensions legislation. This article proposes to look briefly at PRSAs, and the implications for solicitors as employers.

PRSAs are investment vehicles to be used for long-term retirement provision by employees, the self-employed, home-makers, the unemployed and anyone else. They are contracts between an individual and an authorised PRSA provider in the form of an investment account. Money paid in remains the property of the individual contributors. Standard PRSAs will have regulated charges, capped at 5% of contributions and 1% of capital, and investment can only be in pooled funds, that is, unit-linked funds or unit trusts. Each account must have a default investment strategy, which is to be implemented unless the contributor elects otherwise.

In addition to the basic 'standard PRSA' used for mandatory arrangements for employees not covered by occupational schemes, there will be a range of other types of arrangement all under the PRSA label which may be a source of some confusion. In addition to standard PRSAs, there are likely to be: 'non-standard PRSAs' with higher charges/risks/different investment strategies; 'buy-out PRSAs', which will replace the current 'buy-out bonds' which receive transfers from pension schemes usually when they are wound up; and PRSAs used for additional voluntary contributions (AVCs) only. Other variants all under the one generic label are likely to emerge, and care will be required to ensure that the PRSA is the correct type

PIAB is finally launched, but details remain vague

The establishment of the long-anticipated Personal Injuries Assessment Board has been announced by tánaiste Mary Harney, who described the move as part of a 'comprehensive programme for the fundamental reform of the Irish insurance market'. The board will be chaired by Dorothea Dowling, claims manager with CIE and author of the recent report of the Motor Insurance Advisory Board.

According to Harney: 'The most crucial aspect of this programme will be the response of the insurance industry itself. I have said before and I will repeat now that the acid test will be the impact that this package of measures will have on insurance premiums and on the availability of insurance'.

This view was echoed by Law Society Director General Ken Murphy, who said: 'What was surprising was the fact that the tánaiste proceeded without obtaining any guarantee from the insurance industry that premiums will reduce, or even that insurers will pass on to consumers any cost savings that might result from the PIAB'.

And he quipped: 'The tánaiste must also believe in Santa Claus and the tooth fairy if she believes that insurance companies will reduce their premiums voluntarily. It has never happened previously following other so-called reforms'.

Chair of the interim board Dorothea Dowling with tánaiste Mary Harney

Murphy added that he was pleased to note that Ms Dowling had said she recognised that there were natural justice issues that would have to be addressed in relation to victims' rights to fair procedures and to the recovery of legal fees. He also noted with interest that one of the tasks of the interim board would be the 'formulation of options and reasoned recommendations in relation to legal representation payment and recovery of professional fees incurred by claimants and an appropriate level of professional fees'.

The tánaiste's press conference in Government Buildings was attended by the society's senior vice-president Geraldine Clarke and director general Ken Murphy. Both were pleasantly surprised at how open many key issues remain. For example, the tánaiste acknowledged that a proper cost/benefit analysis of PIAB, as the society has urged, had yet to be undertaken.

However, Murphy noted that 'we have little further insight into precisely how the PIAB will work than we had before the tánaiste's announcements. It seems that much has yet to be decided'.

LAW SOCIETY BUDGET SUBMISSION

The Law Society's Probate, Administration and Taxation Committee has made a detailed submission to the minister for finance in relation to the forthcoming budget. Members can view the submission on the members' area of the Law Society's website at *www.lawsociety.ie* or, alternatively, a hard copy can be obtained from Colette Carey, the Secretary of the Probate, Administration and Taxation Committee, Law Society of Ireland, Blackhall Place, Dublin 7, tel: 01 672 4800, fax: 01 672 4801, or e-mail: *c.carey@lawsociety.ie*.

***LEGAL DIARY* IN TROUBLE**

Mount Salus Press, the company that has published and distributed the *Legal diary* since 1976, has gone into liquidation. In response, the Courts Service has pledged that the legal diary section of its website at *www.courts.ie* will be kept up to date and that, at least on an interim basis, a printable version of material on the site will be provided via e-mail to anyone who requests it.

COMPENSATION FUND PAYOUT

The following claim amount was admitted by the Compensation Fund Committee and approved for payment by the Law Society Council at its meeting in October 2002: Joseph Quirke, Church Mews, Church Lane, Midleton, Co Cork – €50,789.52.

for the employee or client concerned.

The intention behind this concept is to give greater access to pensions by people who otherwise do not have ready access. Thus, the act provides (section 121) that an employer who is not operating an occupational pension scheme or whose scheme limits membership eligibility or imposes a waiting period of longer than six months will be obliged to provide access to at least one standard PRSA for his employees, and undertake contributions by way of salary deduction. Employers must allow PRSA providers and agents access to employees at the workplace. Any solicitor's firm which employs people will be affected by this provision. Employers may make contributions to employees' PRSAs, but these are treated as benefits in kind for tax purposes and will be aggregated to the employees' contributions in assessing tax relief.

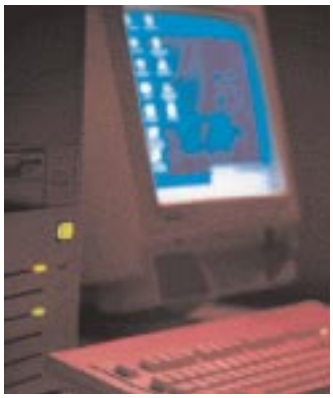
The act allows for transfers between PRSAs without extra charges, and there are other provisions allowing for transfers from occupational schemes under certain conditions, including change of employment or on winding up of a scheme, provided the employee has less than 15 years' membership of the occupational scheme. Individual additional voluntary contribution schemes (AVCs) will be replaced by PRSAs, and PRSAs may be used as an AVC vehicle, that is, additional voluntary contributions may be made to a PRSA, though at a 5% lower rate of tax relief between the ages of 30 and 49.

Tax relief for PRSAs is available as follows (on salary or net relevant earnings for self-employed):

- Up to 30 years of age: 15% of earnings
- 30 to 40 years of age: 25% of earnings

CLE casts its net wide

As part of a new initiative, the CLE department will shortly introduce 'webcasting' to enable practitioners who are unable to attend a seminar to benefit from the content of it. A webcast is an audio and visual representation of a seminar which has been recorded and made available on a PC via the Internet. It will include the entire audio content of the seminar, together with the materials and the *PowerPoint* slides. This means that because you can hear the speaker and view the *PowerPoint* slides, as well as read the supporting



documentation, you do not have to miss out if you are unable to attend the seminar on the day it is scheduled. The first seminar to be webcast will be *Data protection: implications of the new legislation for your practice*, which takes place on 11 November.

To register for the webcast, complete the application form in this month's CLE brochure and tick the relevant box indicating your preference for the webcast. Upon registration, full instructions will be sent to you, along with details on how to use the webcast. You will also be able to access a demo on the Law Society's website to ensure that your PC is compatible.

For further information, contact Lindsay Bond in the CLE department.

Applications for Innocence Project

Applications will be taken for secondment placements with the Innocence Project in New York in the coming months. The Innocence Project is a voluntary organisation set up by the attorney Barry Scheck to address cases of injustice throughout America using modern forensic science. The placement is entirely voluntary and lasts approximately ten weeks during the summer months.

Applications should consist of a one-page CV along with a typed A4 page outlining:

- Why you feel you would be of value to the Innocence Project
- How you intend to fund yourself in New York during the placement
- How you will organise accommodation in New York
- What you think you will get out of such a placement.

The closing date is 20 December 2002 and applications can either be handed in to the training executive in the Law School or e-mailed to *Keithfarnan @hotmail.com*. Additinal information on the Innocence Project placement can be found in the August/September 2000 issue of the *Law Society Gazette*.

New weekly radio slot for lawyers

Newstalk 106FM is to introduce a new weekly law slot in Damien Kiberd's lunchtime show on Tuesdays from 1.40pm to 2pm. The radio station says that the new slot will be 'taking a closer look at the issues that matter to people who work in the legal profession'. Newstalk wants to hear from solicitors who would be interested in contributing to the show or who have ideas about the issues that should be covered. For further information, or to share your ideas, e-mail *damien@newstalk106.ie* or tel: 01 644 5100.

EUROPEAN LAW HEALTHCHECK

The EU and International Affairs Committee, together with the CLE department, has organised the European law healthcheck on Saturday 30 November with the objective of providing an update of recent developments in European law and their impact on core areas of practice. The conference involves two plenary sessions on constitutional issues in Europe and free movement, followed by two concurrent streams of lectures, one on business/competition law, the other on social policy and legislation. Full details are contained in the CLE brochure with this *Gazette*.

WOMEN LAWYERS HOLD EQUALITY SEMINAR

The recently-established Irish Women Lawyers' Association is holding a seminar on recent equality law developments across all nine grounds of unlawful discrimination. The seminar is at Distillery Buildings, Church St, Dublin 7 on Saturday 23 November from 9.30am to 1pm. Ms Justice Mella Carroll will preside, and speakers include the director of equality investigations and Gerry Durcan SC. Full details are available on the IWLA's website at *www.iwla.ie*. The meeting is open to non-members.

- 40 years and older: 30% of earnings.

The earnings limit is capped at €254,000 a year, but the cap does not apply to AVC PRSA contributions. Benefits are payable between ages 60 to 75, and employees and self-employed can retire early from age 50, subject to the existing rules. Up to 25% of an individual's fund can be taken out as tax-free cash. The balance can be used to buy an annuity or invested in an approved retirement fund (ARF) subject to a minimum investment in an approved minimum retirement fund (AMRF), withdraw the balance subject to a minimum investment in an AMRF or invest the balance in an annuity. The option to avail of an ARF is likely to prove an important attraction of PRSAs, as people will not be obliged to invest in annuities on the pension reaching maturity.

The act sets out detailed disclosure requirements in relation to benefit projections, valuations and investment reports. More useful information, including information on taxation aspects, is available from the Pensions Board website at *www.pensionsboard.ie*. The act was passed in April 2002, but different sections must be brought into effect by ministerial order, and the sections dealing with PRSAs are not yet implemented. The first PRSAs are currently being developed, and it is anticipated that the first products will be available in early 2003. Draft regulations are in preparation. G

Alma Clissmann is the Law Society's parliamentary and law reform executive.

Letters

All things being equal

From: Madeleine Reid, legal adviser to the director, ODEI/ the equality tribunal, Dublin 2.

I am writing on behalf of the director of equality investigations to clarify a point of information raised by an article about the *Equal Status Act* in the September issue of the *Gazette* (page 18).

The article objected to a number of features of the *Equal Status Act* and contested certain points in specific decisions issued under it. It would be inconsistent with the director's quasi-judicial functions to respond to these comments. However, the author also raises a query about the exercise by equality officers on the director's staff of their functions under the act. The director has asked me to reply to this particular point, to resolve any confusion which might arise.

Dr Redmond suggests in her article that equality officers are in one respect acting as 'advocate and judge' and that they should confine themselves to 'adjudicating on the evidence before [them]'. This conflates, perhaps confusingly, two very different issues. It would certainly be unacceptable for equality officers to act as advocate and judge, because they are obliged in the interests of natural justice to be impartial in deciding cases before them. However, it would also be contrary to their statutory functions for equality officers to confine themselves to adjudicating on the evidence before them.

Both acts provide (at section 79 of the 1998 act and section 25 of the 2000 act) that the director of equality investigations, or an equality officer to whom she has delegated her functions in a particular case, '*shall investigate the case* [italics added] and hear all persons appearing … to be interested and desiring to be heard'. Judges do not 'investigate' cases under the Irish legal system: they decide based on the evidence presented before them. The words '*shall investigate*' thus appear to make it clear that the role is more proactive than that of a judge. Similarly, both acts confer wide-ranging powers on equality officers which depart from the traditional judicial role: for example, powers to enter premises and conduct searches. This strong investigative function for equality officers under both acts is not new. It merely reflects the existing practice under previous employment equality legislation and seems to have been generally uncontroversial. In fact, the investigative role of equality officers has been praised as one of the distinctive features of the former Irish equality legislation which contributed to its effectiveness (see Deirdre Curtin, *Irish employment equality law*, 1989, p299).

The most important point, however, is that the investigative approach is applied by equality officers to the case brought by *both* parties, and not merely to that brought by the complainant. This is required by their obligations under natural justice. The object of the investigative function is not an *advocacy* one (to find evidence to prove the complainant's case), but an *impartial* one (to try to establish what really happened, in the face of conflicting evidence). Equality law is not a simple subject, and it would be optimistic to expect unrepresented complainants or respondents, in particular, to be generally *au fait* with the interlocking requirements of Irish and EU law, with the niceties of hypothetical and actual comparators, or the new requirements of reasonable accommodation.

To give practical examples of the investigative function, an equality officer may require an employer to provide copies of interview notes in order to help establish whether discrimination in job recruitment has occurred contrary to the *Employment Equality Act*. Conversely, an equality officer may also ask for evidence in order to check whether a respondent is entitled to the benefit of a defence under the *Equal Status Act* which has not been specifically pleaded on its behalf (this has been the case in a number of equal status decisions concerning refusals in pubs, for example; in some, it is clear that it substantially contributed to an eventual finding of no discrimination). Similarly, in a complex area where no clear precedents are available, the equality officer may himself raise a relevant judgment which could be persuasive, and afford the parties an opportunity to comment on it (see, for example, *Donovan v Garda Donnellan* [DEC-S2001-011], an important decision on the scope of 'services' under the *Equal Status Act*).

Dr Redmond mentions, as the main context of her point, equality officers' occasional use of hypothetical comparators in deciding cases, where none has been argued by a complainant. She argues that it is advocacy for an equality officer to introduce a hypothetical comparator. However, both acts specifically provide that discrimination in non-pay cases occurs, *inter alia*, where the complainant is treated less favourably than a comparator '*would be* treated'. (It is necessary to distinguish between equal pay cases and other discrimination cases. The European Court of Justice has specifically held that hypothetical comparators may not be used in (gender) equal pay cases, and the Irish equality acts define pay and non-pay discrimination differently.) And the UK Court of Appeal recently held that similar wording in the UK discrimination acts placed employment tribunals there under a *duty* to consider introducing a hypothetical comparator of their own motion, where none had been adduced by the complainant (*Balamoody v UK Central Council for Nursing*, Court of Appeal, [2002 ICR 646], approving previous statements to the same effect *per* Lindsay J in *Chief Constable of West Yorkshire Police v Vento* [2001 IRLR 124, EAT]).

It is always welcome to stimulate discussion on equality law. However, it is also important that all parties should feel confident in the integrity and impartiality with which equality officers apply the law. It is worth mentioning that in the ODEI's recent users' survey of all parties in employment equality cases referred in 2000, 85% of responses (from complainants and respondents) rated our impartiality as good to excellent. G

WHEN DOCTOR

Is Ireland really facing an epidemic of medical negligence cases, as hospital consultants and their insurers constantly complain? The available evidence seems to suggest that doctors are getting off lightly, as Michael Boylan explains

MAIN POINTS

- The extent of medical negligence in Ireland
- Why patients sue their doctors
- Has litigation improved the standard of care?

Contrary to what one would believe from media reports or spokesmen for the medical profession, the number of medical negligence claims actually made in Ireland appears to be very modest. While there is a lack of absolutely reliable statistics on the number of claims taken, the best available information from the Department of Health and Children is that the total number of medical malpractice claims (covering all specialities) between the years 1990 and 2000 increased from 949 claims in 1990 to 1,307 in the year 2000. However, it should be borne in mind that there may be an element of duplication in these numbers insofar as a large number of cases taken name several defendants in the proceedings, which would result in claims files being opened by a number of insurers/defence organisations for the same incident. So it is probable that the actual number of claims is significantly lower, perhaps no more than 1,000 claims a year.

According to the Department of Health, each year nearly 2.5 million people are treated in the public health system as acute hospital in-patients, day care cases, out-patients and A&E patients. A further 350,000 patients are treated at private hospitals. Unfortunately, there are absolutely no figures or research that I know of in this country estimating the actual number of patients who may have been the victim of clinical error or negligent treatment.

A number of years ago, the Harvard Medical School carried out detailed research on 30,000 patients treated at various teaching hospitals on the east coast of the United States (see *Gazette*, Jan/Feb 1997, p36). This showed that at least 1% of all patients treated had been injured as a result of sub-standard clinical care. More limited studies in the UK have disclosed sub-standard care causing injury in up to 8% of patients treated. If one makes the reasonable assumption that the Irish hospital care system is no better or worse than the hospitals surveyed in the famous Harvard study, this would suggest that 1% of all of the patients treated in our hospitals suffer injury through negligence, giving rise to a total number of 28,000 potentially avoidable

S ARE BAD FOR YOUR HEALTH

medical accidents resulting in injuries. This is truly frightening.

Interestingly, the Harvard study (conducted in the so-called 'litigation capital of the world') disclosed that for every eight potentially meritorious legal claims, only one claim was actually filed. In Ireland, given that there are no more than 1,000 claims a year currently being pursued, it would seem likely that the litigation rate is very low indeed, perhaps as low as one claim pursued out of every 28 potentially valid claims. In other words, perhaps less than 4% of

THE PARAMETERS OF MEDICAL NEGLIGENCE LAW

It is essential in any fair society to have a legal system that strikes a fair balance between the rights and interests of the medical profession and the patients who have been injured in a medical accident. As stated by Finlay CJ in *Dunne*, the two broad parameters underlying the principles of the law are:

'The development of medical science and the supreme importance of that development to humanity makes it particularly undesirable and inconsistent with the common good that doctors should be obliged to carry out their professional duties under frequent threat of unsustainable legal claims. The complete dependence of patients on the skill and care of their medical attendants and the gravity from their point of view of a failure in such care makes it undesirable and unjustifiable to accept, as a matter of law, a lax or permissive standard of care for the purpose of assessing what is and is not medical negligence'.

the patients in this country who may have a valid meritorious claim actually choose to pursue it legally.

One could argue endlessly about these statistics, about definitions, international comparisons and so on, but the message seems clear: the problem is not that there is an epidemic of unmeritorious claims being brought against the medical profession but rather that the number of victims of avoidable medical error has been grossly underestimated.

Reaction of the medical profession

Much of the comment that we read in the medical press or the national newspapers approaches the problem from the point of view of how much money doctors have to spend on increased premiums, on the issue of 'defensive medicine' and the difficulties in recruiting doctors into certain specialities because of the risk of being sued. Rarely is there any reference made to the problems for patients (and their families) who have been negligently treated and end up severely injured or even dead as a result of avoidable medical error. Often one gets the impression that spokesmen for the medical profession appear to be obsessed with the issue of money. After all, the main reason that the whole question of medical negligence has come on to the medical and political agenda has been the dramatic increase in insurance premiums rather than a desire to eradicate avoidable injuries. Rarely does the debate demonstrate any clear understanding of the victims' real problems.

Why patients sue

In medical negligence cases, the question of accountability is often the principal reason that patients sue their doctor. They will often have been through an unsatisfactory complaints procedure within the hospital or health board, may possibly have complained to the Medical Council and have got nowhere, and as a last resort take the litigation route.

Such patients often feel a sense of betrayal by the medical profession, shattered by the enormity of what has happened to them and their inability to do anything about it. Primarily, they want to know what happened and why. They want someone to own up, and, if it was not a pure accident, they want to make sure that somebody somewhere will take some kind of action against the doctor responsible. More than anything, in my experience, they want to know that it will never happen again to anyone else.

Of course, there is also no doubt that another of the reasons prompting patients into litigation with their doctor or hospital is a desire to get adequate compensation for the wrongful injury they have suffered. In my view, the issue of accountability and compensation are inextricably linked. If the former was dealt with satisfactorily, then the latter would be solved much more quickly and probably at less expense to the medical profession.

It does not take much imagination to understand that if a doctor or health authority acts unreasonably in response to a legitimate complaint from an injured and angry patient by denying all responsibility or offering evasive or misleading information, then the patient is likely to get even more angry and upset and consequently will be more difficult to placate. An early admission of responsibility (when appropriate), on the other hand, while not making the complaint go away entirely, will make the possibility of satisfying the patient's demands that much easier. It will take much of the heat and emotion out of the situation.

'The main reason that the whole question of medical negligence has come on to the political agenda has been the dramatic increase in insurance premiums rather than a desire to eradicate avoidable injuries'

On the information available – and based on my own experiences – I don't think there is any evidence that Irish doctors are carrying out their professional duties 'under frequent threat of unsustainable legal claims'. Rather, my own belief is that problems are frequently caused by a failure on the part of doctors to admit liability and/or apologise and the failures of their Medical Defence Union to offer adequate compensation quickly when the merits of the case clearly demand such an approach. The most common themes that seem to give rise to medical negligence claims include:

- Delay in giving appropriate treatment
- Under-qualified and/or poorly-trained staff rendering care beyond their qualifications and experience
- Poor communication between members of the medical team or between different specialities within the one hospital
- Drug errors, whether it be misuse, inappropriate use, over-dosage or failure to monitor the effects
- Failure to act appropriately on the information/results of tests or investigations actually performed
- Multiple minor errors leading to a catastrophe
- Failure to warn of risks of elective surgery (informed consent issues)
- Problems arising from private patients being treated in public hospitals.

Can litigation improve medical care?

As was stated above, the law should not condone 'a permissive or lax standard of care' on the part of the medical profession – or indeed any profession. Many doctors will claim that they are being forced to practice defensive medicine as a result of the threat of litigation. If, by defensive medicine, they mean careful medicine, surely this is no bad thing?

One striking instance where litigation brought about an improvement in medical care was in the 1960s in the United States, when the insurance premiums for anaesthetists were at that time as high as currently exists for obstetricians because of the frequency of catastrophic anaesthetic accidents. In those years, surgery was routinely performed under anaesthesia without the patient's heart being continuously monitored. As a result, subtle fluctuations in heart rate/blood pressure were not observed and hypoxic brain injury occurred. Because of the frequency of claims, the professional indemnity insurers refused pointblank to insure

anaesthetists unless they used electronic heart monitoring machines in all general anaesthesia cases. The result was fewer anaesthetic accidents.

In my own practice, I have come across a number of cases where litigation has forced hospitals to change their practices. For example, some years ago I acted for a family whose mother had literally choked to death on a large haematoma which had formed in her neck following thyroid surgery. Such a post-operative risk was a rare but known complication of this type of surgery. The problem was that the tell-tale sign of swelling in the patient's neck went unnoticed until it was too late. Two different nurses examining the patient on two different occasions one hour apart failed to notice that her neck circumference had increased significantly. Eventually she choked, suffered respiratory and cardiac arrest and could not be resuscitated. After the tragedy – and after litigation had been commenced against the hospital – it changed its practice for the post-operative care of such patients by having, at the bedside locker, a simple measuring tape so that any changes in neck circumference could be accurately and objectively measured in a timely manner by the nurses, thereby significantly reducing the post-operative risks inherent in such surgery.

Clinical risk management

Over the past decade or so, the concept of clinical risk management has gained widespread support among hospital administrators and healthcare professionals. This is a most welcome development in that it is attempting to systematically identify, quantify and eliminate the risk of preventable injury in the course of clinical treatment. But it is undoubtedly a fact that the development and widespread acceptance of the philosophy of clinical risk management has coincided and followed the dramatic increases in insurance premiums being levied on doctors and hospitals. And this, of course, has come about because of the financial cost of meeting successful litigation claims.

But the main trouble with the litigation route, apart from its expense, is that it is primarily designed to award compensation where fault can be established. It is not specifically designed to hold individuals personally accountable for their actions and is not a tribunal of inquiry. So, in the worst medical negligence cases, individual doctors or hospitals are never obliged to provide an explanation or held to account for what has happened to the patient; the Medical Defence Union simply pays up.

There is no doubt that, among the vast majority of doctors in this country, the victims of medical accidents are perceived as antagonists, if not enemies, and their lawyers as far worse than that!

Is it simply unrealistic to expect clinicians to be honest, brave and candid enough to admit responsibility for avoidable injuries when it is clearly appropriate to do so? I believe if they were to adopt such an approach, it would lead to no more

litigation than currently exists; they might even be pleasantly surprised at the attitude of many of their patients, particularly those with less serious injuries, who would be satisfied with the admission and an apology and would not pursue litigation. Those who did pursue litigation would probably do so without vengeance in their hearts, which could well result in earlier settlement of claims. And earlier settlement of claims would certainly lead to lower awards of damages and considerable saving in legal costs, as any medical defence organisation or insurance company will tell you.

This would demand a fundamental change in ethos in the medical profession. But if it was to take place, I firmly believe that it would be far less traumatic for doctors than going through a contentious adversarial High Court action where they might have to face hostile cross-examination of their professional reputation in the witness box. G

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Going to court is a stressful business, and there are plenty of people out there who are happy to exploit this as a weapon against their perceived enemies. So what should solicitors do when faced with plaintiffs bent on abusing the litigation process? Dessie Shiels examines the issues

Fighting di

In recent times, it has become increasingly obvious that many plaintiffs wish to conduct litigation on the basis of what buttons they can push by taking a case. They have become more aware of the oppressive and harassing effect that such proceedings can have on their 'adversaries'. And with this awareness has come a temptation to consult a solicitor in the hope of engaging in 'exploitative' litigation, whose sole purpose is to create a state of anxiety and uncertainty for the defendant. They may also hope that their litigation will result in adverse publicity which will help them to force a settlement on their terms.

In such an environment, solicitors need to be wary of plaintiffs whose desire to engage in 'exploitative' litigation may result in an abuse of process. As a minimum, a solicitor should at all times consider carefully whether the plaintiff sees litigation merely as a weapon of redress that can inflict unjustifiable collateral damage on a defendant.

This article looks at some of the tell-tale signs of the most common types of 'exploitative' litigation which a solicitor should be familiar with.

Using proceedings to make unrelated allegations

When first consulted by a prospective client, a solicitor should attempt to ascertain whether there is a history between that person and his intended defendant. Personal animosity is not a valid reason on its own to bring proceedings. Solicitors should advise at the outset that a court of law is not a venue for a plaintiff to vent allegations, whether legitimate or unfounded, against another person if they are unrelated or immaterial to a cause of action. A court cannot permit itself to become a vehicle for a plaintiff who wishes to relive past disputes in a formal setting. A plaintiff's right of access to the courts must instead be carefully weighed against the rights of defendants.

According to Murphy J in *Looney v Bank of Ireland and Morey* ([1996] 1 IR 157), 'a balance must be struck between a person's right of access to the courts and the right of other persons to be protected against an abuse of their rights'. The courts do not exist to offer a kind of quasi-vindication service for plaintiffs but to deliberate upon properly-constituted legal disputes and achieve justice by their rulings.

Where a dispute seems either somewhat frivolous or mischievous, solicitors should concentrate on getting to the crux of the matter at an early stage. Plaintiffs should be made aware that if they do not have a cause of action, or if that cause of action cannot succeed, the courts will not allow them to overstep the mark with unrelated and immaterial revelations even at the hearing of a strike-out motion.

O'Sullivan J in *Ewing v Kelly* (unreported, High Court, 16 May 2000) said that such motions should be dealt with at a technical level only and that reference was to be made to established principles of pleading and the processing of the claim rather than to the merits of any matters in contention which might be raised or alluded to in the application or the pleadings before the court. Accordingly, he was not concerned with suggestions that the plaintiff was irrational, violent, obsessive or unintelligent, or indeed with allegations by the plaintiff of institutionalised racism or that the activities of some of the defendants were connected with the death of the plaintiff's father.

Delay in proceedings

Where a solicitor finds that his client seems to be particularly slow in instructing him, he should consider whether his client does not actually want

MAIN POINTS

- **Case law on abuse of process**
- **Professional duties of solicitors**
- **Tell-tale signs of exploitative litigation**

EXPLOITATIVE LITIGATION: THE WARNING SIGNS

Particular situations obviously call for particular care, but some warning signs might include cases where a plaintiff:

- Seems to have a particular problem with a defendant, perhaps on a personal level, which accompanies a supposed cause of action
- Wishes to delay inordinately
- Is obtaining financial assistance
- Is bringing a professional negligence claim
- Does not seem to want to settle on reasonable terms and is impecunious.

These examples probably only scratch the surface as regards plaintiff conduct or intentions which can result in proceedings being an abuse of process and which a solicitor should try to avoid.

his proceedings to ever go to trial at all, but merely wishes to maintain them for as long as possible for the indirect benefits that this can offer. These benefits are obvious. Proceedings can create a suspended state of anxiety and uncertainty or can sufficiently frustrate a defendant into abandoning a legitimate unrelated grievance. The use of litigation to achieve this goal is unacceptable.

A good example of this type of misuse of proceedings was highlighted by the case of *Wallersteiner v Moir* ([1974] 3 AER 217). In that case, the plaintiff, Dr Wallersteiner, had been accused by the defendant, Mr Moir, of fraud, misfeasance and breach of trust in his dealings with a company of which he had overall control to the amount of 80%. The defendant, a minority shareholder, was then sued by the plaintiff in libel as being actuated by express malice and as someone who made a business of harassing those in control of companies as a minor shareholder. Once the plaintiff had issued proceedings, he then put them to use to deny all investigations into his past actions at company meetings by claiming that they were '*sub judice*' and that for the plaintiff or the defendant to discuss them out of court while proceedings were on-going would be a contempt of court. To further this strategy, he then proceeded to avoid, at every opportunity, complying with the defendant's attempts to have the proceedings heard.

Lord Denning, in a masterful elucidation of the problem faced by the defendant (as created by the plaintiff), and how the courts would deal with it, said the following:

'It is not the solicitor who has been at fault. It is the plaintiff himself, Dr Wallersteiner. He has made default time after time. He failed to give proper discovery. He failed to give a proper defence. He failed to set the action down for trial. It is obvious that he was not at all keen that the action should come to trial. It would suit him well if it dragged on forever. So long as he could prolong the proceedings, he could always say – as he so often did – "these matters are *sub judice*, so they cannot be discussed". All things considered, it must have been plain to Dr Wallersteiner that his best strategy was to conduct this action as if it were a war of attrition. If he fought it long enough, he might be able to break Mr Moir's nerve, exhaust his limited resources, make him give up trying, so that the case would never come to trial. By this means, the public would

never get to know the truth. His misdeeds would never come up to receive their just penalty. Such was, I believe, the state of mind of Dr Wallersteiner. He would not, of course, confess it. But his whole conduct throughout these proceedings warrants the inference. To my mind, his action was an abuse of the process of the court. His defaults in the course of the proceedings were all of a pattern. They were "intentional and contumelious" to use Diplock LJ's words in *Allen v McAlpine* ([1968] 1 AER 543). Dr Wallersteiner was using the process of the court not to get justice but to thwart it. When the court meets with such an abuse, it has means to cope with it. It will strike out the action which he has brought'.

Although Lord Diplock in the *Wallersteiner* case placed the blame for the plaintiff's conduct solely on his shoulders, it should in an appropriate case be asked what the plaintiff's solicitor did or did not do to avoid such abuse of process. It is imperative that solicitors, as officers of the court, be proactive in such situations and actively query a plaintiff's intentions to pursue a matter rather than postpone or delay it indefinitely. A case should never be allowed to dwindle for a number of years so that the first person to question a plaintiff's intentions is a trial judge. That function properly belongs to the plaintiff's solicitor.

Improper financial assistance

The law on champerty is premised on the basic concern that a situation should not be created in litigation which results in the financial interests of third parties taking priority over basic issues of justice. In the case of *Re Trepcas Mines* ([1963] Ch 199), Lord Denning said: 'the reason the common law condemns champerty is because of the abuses to which it may give rise. The common law fears that the champertous maintainer might be tempted for his own personal gain to inflame the damages, to suppress evidence or even to suborn witnesses'.

Thus, the law of champerty recognises the court's need to be wary of financial interests becoming the fundamental concern in litigation. It properly recognises that while financial interests will inevitably always be a matter for consideration, they should not be the sole or predominant concern to the exclusion of justice. Solicitors should perhaps attempt to establish the financial concerns of plaintiffs at an early stage and ascertain whether these are improperly influencing the client's instructions. If they are, the solicitor should consider whether such concerns are overriding what ought to be the predominant aim of the proceedings – to achieve justice.

The law of champerty is, however, clear in that solicitors should concern themselves primarily with whether a valid cause of action exists and not with the motive of the maintainer. This is illustrated by the case of *Broxton v McClelland* (EWCA, 14 November 1996), where Lord Justice Judge said: 'Maintenance is not unlawful. It enabled the plaintiff to bring her claim to the court for decision. The motive of the maintainer may have been wholly altruistic or blind self-interest or even a profound desire that successful proceedings by the plaintiff would achieve the financial ruin of the defendant. The validity or otherwise of the plaintiff's claim remained completely unaffected by the maintainer's motive, so her claim could not have amounted to an abuse of process'.

Professional negligence claims

Professionals in every walk of life fear losing their reputations when proceedings are brought against them for professional negligence. Plaintiffs are all too aware of this. Solicitors should ensure that their clients do not attempt to play on such fears. Although it is inevitable that professional reputations may be affected by litigation, plaintiffs should not be allowed to conduct their proceedings so as to maximise the potential damage. More than this, it should be clear from the outset that a cause of action actually exists. Thus, in *Reidy v The National Maternity Hospital* (unreported, High Court, 31 July 1997), Barr J stated: 'It is irresponsible and an abuse of the process of the court to launch a professional negligence action against institutions such as hospitals and professional personnel without first ascertaining that there are reasonable grounds for so doing'.

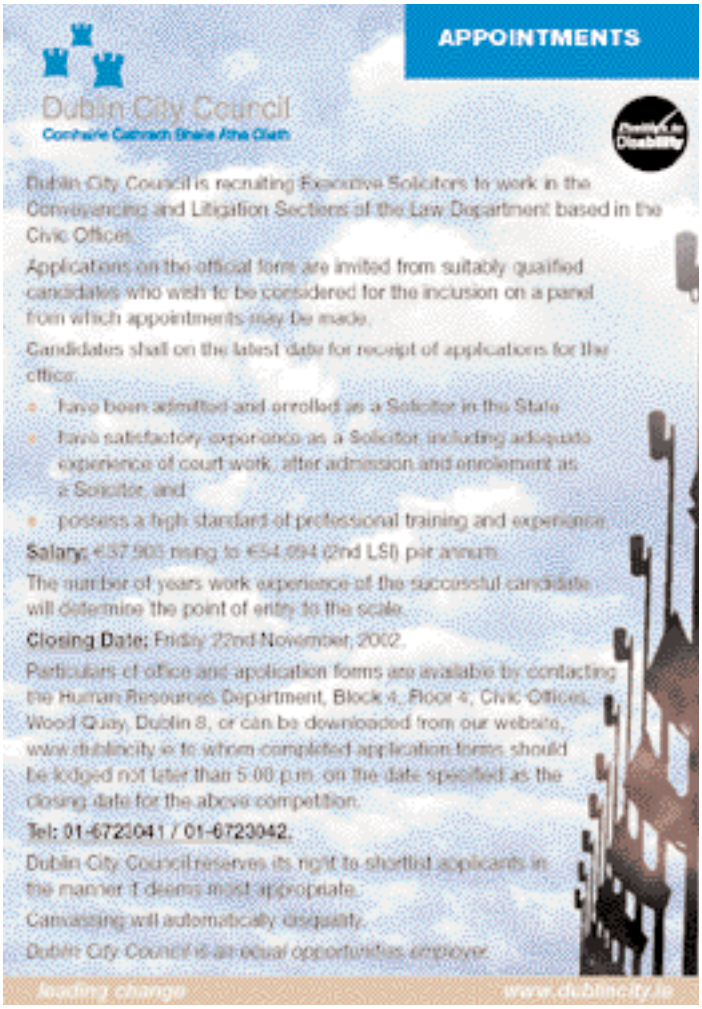
In the subsequent case of *Cooke v Cronin and Neary* (unreported, Supreme Court, 14 July 1999), which involved a claim for damages for personal injuries allegedly caused by the professional negligence of two medical practitioners in a hospital, Denham J (having referred to the *Reidy* decision) said: 'While bearing in mind the important right of access to the courts, I am satisfied that these statements of law are correct. To issue proceedings alleging professional negligence puts an individual in a situation where for professional reasons to have the case proceed in open court may be perceived and feared by that professional as being detrimental to his professional reputation and practice. This fear should not be utilised by unprofessional conduct'.

It should be said also that solicitors, as professionals themselves, should be particularly conscious of the potential for 'exploitative' conduct of such proceedings.

Pursuing exorbitant settlements

Probably the most blatant type of 'exploitative' litigation that can occur involves impecunious plaintiffs who seek to settle claims for an exorbitant amount. Solicitors need to be particularly wary of any plaintiff clients who appear to want to reject all reasonable offers of settlement. It is important to recognise that the modern plaintiff is only too well aware of the costs involved in defending litigation and aware, too, of the fact that many defendants will be particularly keen to settle proceedings, even if they think they have a defence, where it seems likely that a plaintiff will not be a mark for costs. Such plaintiffs may wish to use this commercial/economic

'Solicitors should not fall into the trap of blindly following client instructions'



reality to secure exorbitant settlements from defendants. Solicitors should advise their clients that such conduct is an abuse of process and that the solicitor, as an officer of the court, cannot assist them if they wish to act in such a way.

The comments of Millett LJ in *Abraham v Thompson* ([1997] 4 AER 362) are instructive in this regard. He said: 'It is an abuse of the process of the court to bring a claim with no genuine belief in its merits but in bad faith for an ulterior purpose … A party who makes an exorbitant claim with no genuine belief in its merits, rejecting all reasonable offers of settlement, and exploiting his own inability to satisfy an order for costs in order to bring pressure on the other party to settle for an excessive sum, is abusing the process of the court'.

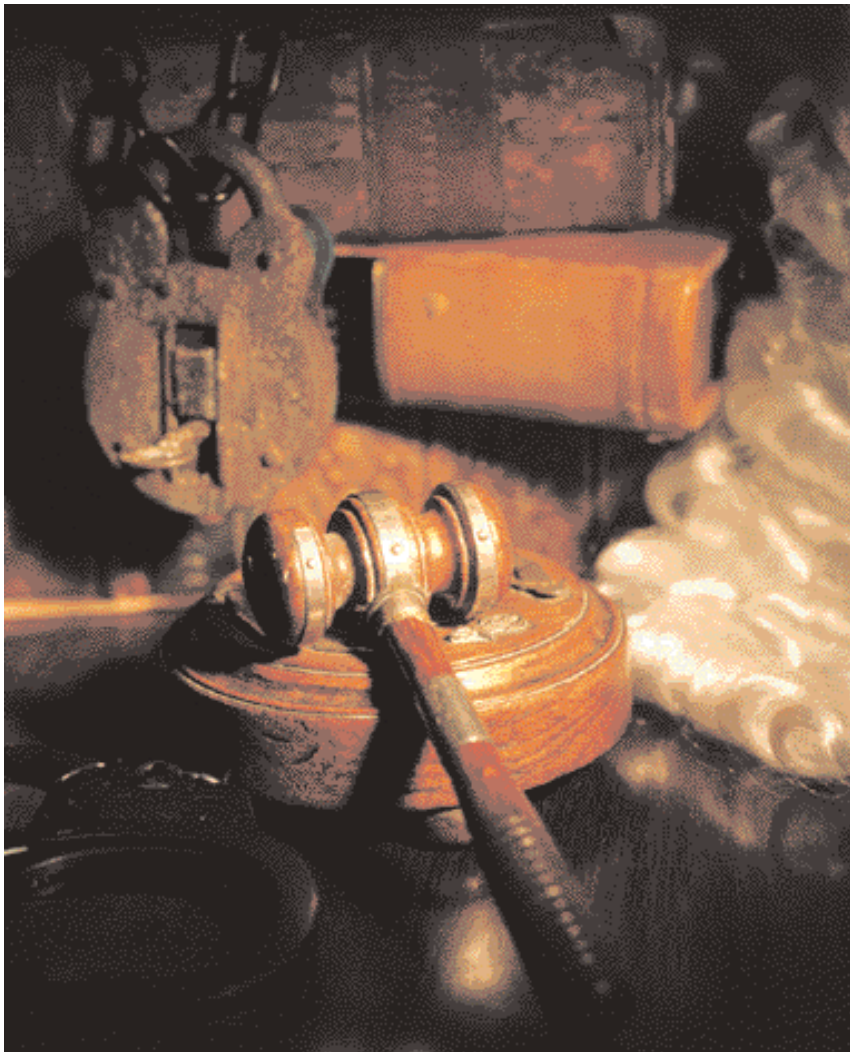
Wasted costs or damages?

There are two obvious reasons why solicitors should try to avoid getting involved in 'exploitative' proceedings: the possibility of a wasted costs order and the chance of an award of damages being made against the solicitor.

The jurisdiction of the courts to make a wasted costs order against a solicitor was described by Bingham MR in *Ridehalgh v Horsefield* ([1994] Ch 205) as being 'founded on breach of the duty owed by the solicitor to the court to perform his duty as an officer of the court in promoting within his own sphere the cause of justice'. So a solicitor who misleads a court or pursues improper proceedings or generally can be said to have allowed costs to be improperly incurred may render himself liable to the wasted costs jurisdiction. Although a court, when deciding whether to make an order, will take into account the demands and stresses of litigation and the difficulties of dealing with unreasonable clients, this will probably not be sufficient excuse to avoid an order being made. This alone should be reason enough for solicitors to be cautious when considering how a client wishes to conduct proceedings. Client satisfaction will be little compensation to a solicitor if he is forced to pay costs that should not have been incurred.

It could be argued that where a solicitor is actually aware that his client's proceedings are an abuse of process, that he (as well as his client) should be liable for damage caused to a defendant as a result of an abuse of process. Solicitors are officers of the court and therefore owe the courts a duty not to abuse their processes. This is a free-standing duty which is not dependent on any assumption of responsibility to third parties and is exercisable as part of the summary jurisdiction of the courts over solicitors. Arguably, if the duty is to have any substantive effect, a solicitor should be liable in damages to a defendant who suffers loss as a result of abusive proceedings knowingly brought against him.

Solicitors should be cautious and prepare for a situation where allegations might be made that they were aware that a plaintiff's proceedings were an abuse of process. To this end, they should take a



proactive role in asking the hard questions that may need to be asked where a client's instructions or behaviour suggest that the solicitor is not getting the full story. This will help them avoid the undesirable prospect of being subjected to a claim of the type made in *Moffit v Bank of Ireland* (unreported, Supreme Court, 19 February 1999). That case involved a claim for damages against Bank of Ireland's solicitor on the basis that he had arranged for an allegedly false affidavit to be sworn and filed on behalf of the bank. Fortunately for the solicitor in question, the court took the view that where a solicitor 'merely acts on his instructions' no cause of action will arise against him as he is 'merely discharging his professional duties to the client he is acting for'. The proceedings against the solicitor were struck out as disclosing no cause of action.

However, solicitors should, however, not fall into the trap of blindly following client instructions. Although awkward and uncomfortable questions may need to be asked, it may be less painful to ask them of a client as a solicitor in the safety of one's own office rather than to be asked them later as a client's solicitor in open court by a disapproving judge. G

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Pie in the

The government slid in with a late tackle on Sky television to stop it acquiring the broadcast rights to Irish international football matches, but will it get a red card or go on to score a last-minute winner? Deirdre Ní Fhloinn consults the third official

The recent decision by the Football Association of Ireland to sell the broadcasting rights to home international soccer matches prompted the Irish government to exercise its power to prepare a list of events of social importance to be provided on 'free-to-air' television services. The publication of the draft list has caused disquiet among sporting organisations, understandably concerned at a threat to their future revenues and ability to fund their activities. The FAI/Sky deal, and the preparation of the minister's draft list of events, raise complex questions. The key issues lie in reconciling the concerns of the viewing public, of the sporting associations that rely on revenues from key fixtures to fund their other activities, and of broadcasters anxious to benefit from the popularity of significant social and sporting events.

'Television without frontiers' directive

The right of member states to designate events of social importance derives from article 3A of directive 89/552, as inserted by directive 97/36 (the so-called 'television without frontiers' directive). Article 3A(1) provides as follows: 'Each member state **may** take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that member state as being of major importance to society, in such a way as to deprive a substantial proportion of the public in that member state of the possibility of following those events via live or deferred television coverage on free television'.

MAIN POINTS

- ***Broadcasting (Major Events Television Coverage) Act, 1999***
- **The *TV Danmark* case**
- **Bring back Roy Keane**

Article 3A(1) goes on to provide that if a member state exercises this right, it must draw up a list of designated events, national or non-national, that it considers to be of major importance to society. It must do so in a clear and transparent manner, in due and effective time. The member state must also determine whether the events should be available via whole or partial live or deferred coverage. Member states must notify the commission of measures taken, and the commission must verify that these measures are compatible with Community law.

In addition, article 3A(3) of the directive imposes an obligation on member states to protect the article 3A(1) rights of other member states, once exercised.

Sky

Article 3A(3) obliges member states to ensure that broadcasters under their jurisdiction 'do not exercise the exclusive rights purchased by those broadcasters following the date of publication of this directive in a such a way that a substantial proportion of the public in another member state is deprived of the possibility of following events which are designated by that other member state ...'.

Broadcasting (Major Events Television Coverage) Act, 1999

The *Broadcasting (Major Events Television Coverage) Act, 1999* was introduced in order to give effect to article 3A.

Section 2 of the act allows the minister for arts, heritage, gaeltacht and the islands to designate certain events as 'events of major importance to society'. The effect of the designation is that certain 'qualifying broadcasters' should be able to provide coverage of these events on television services for which no charge or fee is payable. A qualifying broadcaster is one who provides near universal coverage, consisting of free television services to at least 95% of the population of the state, of a designated event (section 1(2) of the 1999 act). The minister must also determine whether the coverage of the events should be on a live, deferred, or partially live or deferred basis.

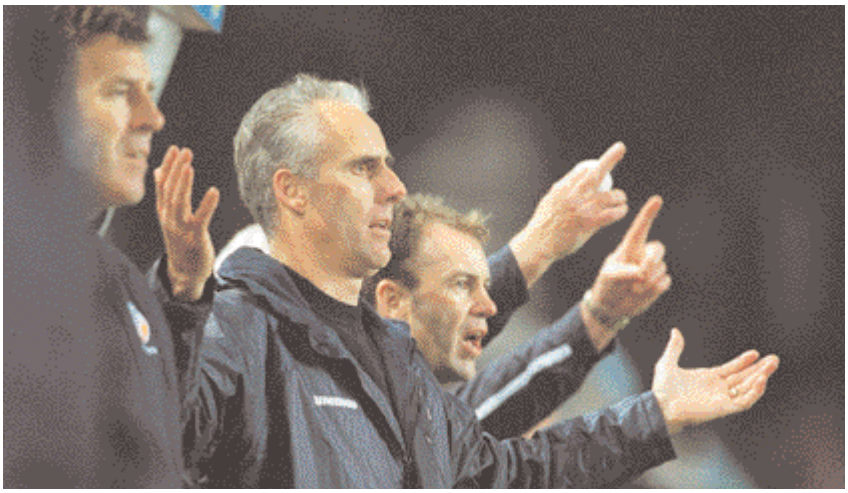
In making such a designation, the minister must consider, in particular, the extent to which the event has a special general resonance and distinct cultural importance for the people of Ireland.

In determining whether the event should be provided on a live, deferred, or partially live or deferred basis, the minister must take into account the nature of the event, the time within the state at which the event takes place, and practical broadcasting considerations.

A key provision of the act is section 4, which deals with the situation where a broadcaster under the jurisdiction of the state, but which is not a qualifying broadcaster, acquires exclusive rights to broadcast a designated event. Such a broadcaster may not broadcast the event unless the event has first been made available to a qualifying broadcaster, on request and on the payment of reasonable market rates.

Sporting associations and broadcasters

Domestic broadcasting rights for football games in Europe are generally sold directly by the football associations in the member states concerned to interested broadcasters. In the case of the Sky/FAI deal, the fee in excess of €7 million negotiated by the FAI greatly exceeded the price at which RTÉ had bid for the rights. The FAI pointed out that the revenues generated would go towards investment in grounds, domestic leagues and coaching. So the question then arises of how to determine the 'reasonable market rates' at which qualifying broadcasters are to be offered rights to designated events.



The House of Lords' decision in the *TV Danmark* case (**see panel**) suggests that such rates cannot be equated with the price the rights would fetch on an open market, as this mechanism would defeat the purpose of regulating the acquisition and exercise of exclusive rights that undoubtedly have a commercial value.

The minister for communications and natural resources announced in July 2002 that a draft list of events had been prepared under the 1999 act. The list includes the Republic of Ireland soccer team's qualifying games for the European Championships and the World Cup, as well as the All-Ireland football and hurling finals and rugby's Six Nations Championship. The FAI announced that its contract with Sky remained, despite the designation of the World Cup and European Championship games, although the minister seemed to take the view that the list would apply to those games.

A key question is whether the draft list, once confirmed by the EU Commission, can apply to the pre-existing contract between Sky and the FAI. Member states are obliged by the directive to draw up their lists 'in a clear and transparent manner and in due and effective time'. It may be argued that the designations in the list should not apply to contracts entered into before the preparation of the list.

In addition, the question arises of whether the measure is necessitated by membership of the European Communities. Article 3A(1) is clearly drafted to confer a right, but not an obligation, on a member state to take measures preventing broadcasters with exclusive rights from exercising exclusive rights so as to deprive a substantial proportion of the public in that member state from following those events on free television. However, article 3A(3) imposes an *obligation* on member states to vindicate the position of other member states that have exercised their article 3A(1) right and prepared lists of designated events.

The consequence of this distinction is that a member state may be obliged afford greater

THE *TV DANMARK* CASE

The House of Lords' decision in the *TV Danmark* case (*Independent Television Commission, ex parte TV Danmark 1 Ltd*, [2001] UKHL 42, 25 July 2001) raises similar issues to those of the current debate. The case concerned the UK *Broadcasting Act 1996*, which gave the secretary of state for culture, media and sport the power to draw up a list of events of national interest. The list prepared included events such as the Grand National, the Wimbledon Finals, and the Olympic Games.

The case arose from the grant by UFA Sports Gmbh to TV Danmark 1, a broadcaster based in the UK, of exclusive rights to broadcast World Cup 2002 away games featuring the Danish football team. UFA distributed television rights for World Cup matches, and had received a substantially higher offer from TV Danmark than from the Danish broadcasters that would have qualified as free television services under Danish law.

The games were designated events under the Danish equivalent of the Irish 1999 act. Although TV Danmark 1 was based in the UK, it transmitted programming by cable and satellite to Denmark. TV Danmark's subscription was apparently sufficiently low for it to constitute a free-to-air broadcaster. However, its service was available to only 60% of the Danish population, which was insufficient for the purposes of the Danish legislation.

Accordingly, as a matter of UK law, the consent of the Independent Television Commission (ITC) in the UK was required for TV Danmark to broadcast the games. The ITC refused to grant consent, on the basis that the other Danish broadcasters had not been given the opportunity to acquire the rights to broadcast the games on a non-exclusive basis. Accordingly, it was not satisfied that the grant of rights to TV Danmark would not prevent a substantial proportion of the Danish public from watching the matches.

The Court of Appeal granted judicial review of the ITC's decision, citing as one of the factors in its determination the uncertainty that would be caused to broadcasters holding exclusive rights if public or free-to-air broadcasters were entitled to be offered rights on a second or third occasion before the broadcast.

The House of Lords reversed the decision of the Court of Appeal. In its view, domestic systems could accommodate safeguards to ensure that public or free-to-air broadcasters would be afforded the option of securing rights to matches, even where exclusive rights had already been granted to other broadcasters. It cited as an example the Danish system, which enables a pay-TV broadcaster that has acquired exclusive rights to obtain, within 14 days, confirmation that no public broadcaster wishes to acquire the exclusive rights.

Accordingly, in the view of Lord Hoffman: 'It may be, as the Court of Appeal suggested, that a regulatory system in which a pay-TV broadcaster has to offer to share the rights with a public broadcaster means that any event which the latter wishes to broadcast will be unattractive to the pay-TV broadcaster and that the value of the rights will be depressed. But that is a consequence which inevitably follows from the protection which the directive was intended to confer upon the public right of access to such events'.

The House of Lords concluded by finding that any broadcaster considering the purchase of exclusive rights to an event designated by Danish law must take into account the Danish system of regulation.

It should be borne in mind that UK law does not have an equivalent constitutional provision to the property right set out at article 40.3.2°, which would undoubtedly be deployed were a similar case to arise in this jurisdiction.

protection to the viewing public in other member states than to its own viewing public. This means, in effect, that a member state must ensure that the presence of a broadcaster in its jurisdiction does not prejudice the designation of an event in another jurisdiction, for which that broadcaster may enjoy exclusive rights.

So if it can be argued that the Irish draft list does not prejudice the FAI/Sky deal, it may be that the UK (assuming that Sky is considered a broadcaster under the jurisdiction of the UK) would be obliged to vindicate the rights of Irish viewers, based on the Irish list designating the relevant games.

Live or deferred coverage?

An argument that may also be raised is whether the games must be shown live, since the basis of the deal is that TV3 will broadcast the games on a deferred basis, for which it will not charge viewers. The FAI has made the point that watching matches immediately after the match finishes is not unusual, and cites the English Premiership soccer games, broadcast on RTÉ and ITV on a deferred basis, as an example.

Article 3A leaves the determination as to whether designated events should be broadcast on a live or deferred basis with the member states concerned, as part of the measures that they may adopt to give effect to article 3A: 'the member state concerned shall also determine whether these events should be available via whole or partial live coverage, or, where necessary or appropriate for objective reasons in the public interest, whole or partially deferred coverage'.

As noted above, the 1999 act sets out in detail the matters to be considered by the minister in determining whether the event should receive live or deferred coverage. This would support an argument that article 3a is drafted on the basis that member states are best placed to determine this issue in respect of their own list of designated events. For example, World Cup qualifying matches may have distinct resonance in Ireland as compared to other countries, given our relatively recent entry into the competition.

However, the right set out at article 3A(1) is an entitlement rather than an obligation. The argument may therefore be made that, to the extent that Ireland had a discretion in relation to the manner of exercise of this right, and in particular in relation to the decision as to whether the event should be provided via live or deferred coverage, it was obliged to do so in a manner consistent with the constitution.

Article 29.7° of the constitution makes clear that acts or measures necessitated by membership of the European Communities may not be invalidated by reason of the constitution (**see panel**). The exercise of the article 3A right is arguably subject to article 40.3.2° of the constitution, which obliges the state to protect and vindicate the property rights of citizens. Accordingly, it could be argued that the exercise of the government's right to designate an event to be provided free, where exclusive broadcasting rights to that event are purchased, is unconstitutional.

There are compelling arguments on both sides of the exclusive rights issue. What is clear is that in light of the various concerns and obligations set out above, the Irish government will need to steer a careful course in how it proceeds following the outcome of its consultation on its draft list of events.

Since this article was written, the minister for communications, marine and natural resources has finalised the draft list and is presenting the list to the Dáil and Seanad for their approval before submission to the European Commission. The minister also announced that he would be proposing changes to the 1999 act specifically to provide that qualifying broadcasters may secure rights directly from event organisers where exclusive rights had already been sold to a non-qualifying broadcaster at the time of the initial designation. G

Deirdre Ní Fhloinn is a solicitor with the Dublin law firm Reddy Charlton McKnight. The views expressed in this piece are her own.

CONSTITUTION MAY SCORE AN OWN GOAL

Article 27 °5 says that: 'No provision of this constitution invalidates laws enacted, acts done or measures adopted by the state which are necessitated by the obligations of membership of the European Union or of the Communities, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by institutions thereof, or by bodies competent under the treaties establishing the Communities, from having the force of law in the state'.

GET UP,

Not every lawyer needs to argue a case in court, but all of them need the skills to do it. That's why the Law Society recently organised an advanced advocacy course for solicitors. Barry O'Halloran talks to some of the participants about the experience

Whether or not you spend a lot of your time on your feet in a court of law, advocacy is still a key weapon in any solicitor's armoury. Law Society Litigation Committee chairman Roddy Bourke believes it's integral to the job.

'It's very much part of what we do', he says. 'A lot of it is about presentation skills, and they are vital whether you are in court or making a presentation to a board of directors, which is something that a lot of commercial practitioners have to do'.

Bourke, a partner in Dublin law firm McCann FitzGerald, was one of 25 solicitors from around the country who last month took part in a week-long advocacy course run by the Law Society and the US-based National Institute for Trial Advocacy (NITA). Like his colleagues, he came away satisfied that he had learned some valuable new lessons about the law and broadened his own professional skills.

The course was organised by the society's continuing legal education (CLE) executive Lindsay Bond. To qualify, members had to have at least seven years' post-qualification experience. But because of the huge demand, the lucky ones all had at least 15 years' under their belts.

The course used the same basic template as one that has operated for three years in Northern Ireland. NITA provided the materials and the tutors (**see panel** for full list), including a US High Court judge, the Hon Carol Corrigan, and two experienced trial lawyers. A number of Irish tutors, including Judge Michael White of the Circuit Court and Law Society Council member James MacGuill, were also involved.

Evidence of enthusiasm

Before taking the advocacy course itself, Paul Anthony McDermott (co-author of a leading text on criminal law) gave the selected participants seven weekly two-hour seminars in evidence law. Participants agree that these were extremely useful in themselves. Niall Dolan, a partner in O'Reilly Dolan in Cavan, says that it brought them up to date with many of the changes in this area.

'A lot of important cases have been decided over the last two years in particular', he says. 'You also have changes such as the erosion of the hearsay rule. These have been driven by the tribunals and by developments in modern technology, and they affect both criminal and civil practitioners. This was a good "bone up" on evidence law'.

MAIN POINTS

- **Involvement of US-based National Institute for Trial Advocacy**
- **Positive feedback from participants**
- **More advocacy courses in the future**

stand up

Class action: *(above and opposite)* tutors and participants on the advanced advocacy course

After the evidence course, the 25 students took part in the five-day intensive advocacy course organised by NITA at Blackhall Place. The course was based on the practicalities of running a case in court, and the areas covered included the examination-in-chief, cross-examination, opening and closing statements, and examining expert witnesses. It ended with a moot in the Four Courts.

'The Americans were very enthusiastic and they worked us very hard, but it was very, very worthwhile', says Dolan. 'The exercises were good; you had to do everything. Everybody wants to do cross-examination, but you had to lead the witness in examination-in-chief as well. You also had to think about your own case's weak points. That's something that many people never think about, but your bad points are the other side's strengths'.

Laetitia Baker, who travelled from Skibbereen in West Cork to attend the course (and the weekly evidence seminars), says it was a 'very productive week'. Baker runs her own practice, and is frequently on her feet in the District Court, often in criminal defence cases. Because of this, she believes that what she learned will be of practical benefit to her. 'I thought it was fantastic from that point of

TUTORS ON THE LAW SOCIETY ADVOCACY COURSE

National Institute for Trial Advocacy (NITA):
Laurence (Lonny) Rose
The Hon Carol Corrigan of the US High Court
Patrick Hosey
Robert Stein

Irish tutors
Max Abrahamson, McCann FitzGerald
Michael Farrell, Michael E Hanahoe
Patrick Groarke, Groarke & Partners
Dermot Lavery, Dermot Lavery & Co
Claire Loftus, Chief Prosecution Solicitor
James MacGuill, MacGuill & Co
Yvonne McNamara, McCann FitzGerald
Judge Michael White, Circuit Court

Advocacy working party, Northern Ireland Law Society
Tony Caher
Fiona Donnelly

NATIONAL INSTITUTE FOR TRIAL ADVOCACY

NITA was founded in 1970 with the express intention of improving the level of advocacy available in America's courtrooms. It is a non-profit organisation and its mission statement points out that it is committed to making its training and its educational materials available to all lawyers, regardless of their ability to pay.

Its courses are practical and the organisation has a 'learning by doing' approach to training. Its tutors are a mix of experienced trial lawyers, judges and academics.

According to executive director Lonny Rose, NITA has grown to the point where it trains over 5,000 lawyers a year in the United States. It also runs courses in Northern Ireland, South America, Africa, Europe and Britain.

'The organisation is 32 years old, and it was originally started as a means of developing a methodology for training and improving the skills of lawyers in the US', says Rose. 'At that time, there was very little actual training available for trial lawyers. Now we do a sequence of courses here in the US for lawyers at different stages of their careers'.

NITA's headquarters are at Notre Dame University, Indiana. It has a full-time professional staff of around 60 people.

view', she says. 'Training like this is very important'.

Even though she was worried about spending a full week away from the office, Jennifer O'Riada of Dublin firm O'Riada & Company also agreed that it was time well spent. 'It's the kind of course that should have been available to us when we were apprentices', she says. 'It was very hard work, very challenging and very rewarding. I have a better insight into the whole process now'.

Law Society Council member James MacGuill acted as a tutor on the course this year, but intends taking it himself when it becomes available again in 2003. 'It makes you stop and think about the way you do things and look at them from different points of view', he says. 'If you do that, you are going to improve the way you work'.

MacGuill took the course in Northern Ireland 12 months ago, and, along with Tony Caher and Fiona Donnelly of the Law Society of Northern Ireland's advocacy working party, was instrumental in getting the Dublin course up and running.

NITA originally opened contact with the Northern Ireland Law Society four years ago. 'That was our first introduction to solicitors anywhere in Ireland', recalls NITA executive director Laurence (Lonny) Rose. 'We've been running the programme in Belfast for the last three years, and James MacGuill attended last year. It was through him that we opened discussions with the Law Society in Dublin to produce a programme for them. We feel it was very well received. Those who took part were very adventurous and were keen to try out new ideas'.

Tony Caher, chair of the Northern Irish advocacy working party, met NITA four years ago and worked with the organisation on developing a course suitable for Northern Ireland. This was ultimately transferred to Dublin, with a number of key refinements to ensure its suitability for this jurisdiction.

'In Ireland, we had to recognise that there are not going to be as many jury trials as in the US'

He explains that solicitors in Northern Ireland have to get training if they want formal rights of audience before their superior courts. At the same time, many of Caher's colleagues were also regularly appearing in their equivalent of the District Court. 'We felt we had better take steps to ensure that our members got the opportunity to enhance their advocacy skills and abilities', he says.

The work done by Caher and his colleague Fiona Donnelly has paid off handsomely in Northern Ireland. And not only have they been instrumental in helping to get the course up and running here, they are helping to establish a similar programme for solicitors in Scotland, where they are working with the Solicitor Advocates' Higher Court Association (SAHCA).

Caher now hopes it will be possible to organise residential courses that will be open both to Northern Irish solicitors and their southern counterparts. Apart from the obvious legal differences between jurisdictions, James MacGuill points out that the business of advocacy is broadly the same everywhere. 'The disciplines and skills are international', he says.

NITA's Lonny Rose argues that advocacy is just an extension of what solicitors are doing already. 'The solicitor is the person who is handling the case from the very first meeting with the client. They have to evaluate the evidence and they are the best people to evaluate the credibility and value of that evidence. It's just the next step to be able to present that case in court', he explains.

My cousin Vinnie

All that being said, however, a number of things had to be taken in to account when the actual course was being prepared. One of the main differences the Americans found was that there are fewer jury trials in this jurisdiction. 'In Ireland, we had to recognise that there are not going to be as many jury trials as in the US', says Rose. 'A lot of our training in the US focuses on persuading a jury, so instead we had to focus on how to motivate and persuade a judge to deliver a particular verdict'.

Broadly speaking, this meant the course focused on how the facts of a case should be presented. 'Obviously, judges are much more knowledgeable [than juries] about the law, but you still have to present the facts and the evidence, and that's where you can be persuasive', he adds.

In the US, lawyers pass through NITA's hands several times. The organisation provides training for lawyers at different stages of their careers. As well as basic training, it also operates advanced courses for lawyers with 15 or more years' post-qualification experience. Rose indicates that it may offer a similar course in this country. 'We're looking forward to the opportunity of providing an advanced course', he says.

One way or the other, the good news is that NITA will be back, as the Law Society plans to run regular advocacy courses for its members.

TUTORS AND PARTICIPANTS
ON THE LAW SOCIETY ADVOCACY COURSE

Front row (left to right): Director General Ken Murphy, Carol Corrigan (NITA), Law Society President Elma Lynch, Lonny Rose (NITA), Bob Stein (NITA), Patrick Hosey (NITA).
Second row (left to right): Max Abrahamson (McCann FitzGerald), Patrick Rowan (McKeever Rowan), Marian Petty (Marian Petty & Co), Michael Fox (Michael Fox & Co), Laetitia Baker (McCarthy Baker & Co), Laurence Ennis (Ennis & Associates), Conal Boyce (Boyce Burns & Co), Jennifer O'Riada (O'Riada & Co), Niall Dolan (AB O'Reilly Dolan & Co), Stephen Ahern (Ahern O'Shea & Co), Chris Ryan (Chris Ryan Solicitors), John Lynch (Lynch & Partners), Lindsay Bond (CLE executive)
Back row (left to right): Eoin O'Connor (Eoin O'Connor & Co), Roderick Bourke (McCann FitzGerald), Michael Hegarty (Smyth O'Brien Hegarty), Peter Collins (Collins Solicitors), Peter Murphy (IBEC), Aidan McNulty (Aidan J McNulty & Co), Dermot Lavery (Dermot Lavery & Co), Michael Crowe (Daly Lynch Crowe & Morris), Mairead Ní Choigligh (Moynihan Quigley), James MacGuill (MacGuill & Co), Barry Donoghue (Office of Director of Public Prosecutions), Thomas McLoughlin (Thomas D McLoughlin Solicitors), Kevin O'Doherty (O'Doherty Warren & Associates), Bryan Armstrong (Hegarty & Armstrong), Michael Farrell (Michael E Hanahoe), Marian Higgins (Higgins Chambers & Flanagan), Yvonne McNamara (McCann FitzGerald)

The members who took part believe that future courses could benefit from some level of fine-tuning. 'There seems to be a certain level of histrionics that's acceptable in the US but which you would not get away with here', notes Niall Dolan. 'It could do with some "editing", but that's only a very small criticism'.

The High Court also co-operated in the setting up and running of the advocacy course. According to Lonny Rose, past experience has shown that superior court judges are keen to encourage training of this nature. 'Even though they are members of the bar and are not used to having solicitors appearing before them, our experience is that they are pleased with the standard of advocacy shown by those solicitors that do appear before them', he says.

But the solicitors who took part in the recent course are keen to stress that they do not see themselves as full-time advocates. 'I will still use barristers, as they are the specialists in this area', says Roddy Bourke.

For his part, James MacGuill points out that taking the course gives practitioners greater choice in how they serve their clients. 'It's not about doing the work that barristers do', he says. 'It's a question of looking at the options and deciding what's in the best interest of the client'. G

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

THE IMPLICATIONS FOR STATUTE LAW OF THE *TOWARDS BETTER REGULATION* AGENDA
THE IMPLICATIONS FOR STATUTE LAW

Tuesday 3 December, 2–5pm in the Law Society, Blackhall Place

The *Statute Law (Restatement) Bill, 2000* is on course to be enacted before the end of the year. It will allow legislation to be consolidated administratively. Restated legislation will be certified by the attorney general and may then be used in court as *prima facie* evidence of the restated statutes. This development is part of a policy of 'better regulation' initiated by the government as part of the strategic management initiative.

The Law Reform Committee of the Law Society is hosting a seminar on the opportunities presented by the *Towards better regulation* agenda to improve the legal system. Two leading international practitioners at the forefront of legislative drafting and practice will address the seminar.

The seminar will be of interest not only to solicitors, barristers and others needing to consult statute law, but also to those involved with the preparation and enactment of legislation, regulatory bodies and law enforcement agencies.

Attendance is free but space is limited, and places must be reserved in advance. Enquiries to Nicola Crampton, Law Society of Ireland, Blackhall Place, Dublin 7, tel: 01 672 4802, fax: 01 672 4803, e-mail: *n.crampton@lawsociety.ie*.

THE SPEAKERS

Robert Bergeron QC is Senior General Counsel in the Legislation Section of the Department of Justice in Ottawa, Canada.

He will talk about the philosophy and experiences of the legislative drafting programme in Canada, the work of the Statute Revision Commission, especially why it was decided to almost completely redraft the French version of most statutes, the use of computers in revising and publishing statutes, the problems that parliamentary counsel are faced with, their new project called LIMS (legislative information management system) currently being created in co-operation with the House of Commons and the Senate, electronic access to law and how it changes not only the way it is written, to a certain extent, what is written.

Winston Roddick QC LLM, London, barrister and recorder, is the Counsel General of the Welsh National Assembly.

He will discuss the challenge of providing access to law from different sources, drafting laws concurrently in two languages, and the challenges and opportunities of working in a green field site.

Edward Donelan BL is the Director of the Statute Law Revision Unit in the office of the Attorney General.

He will speak on the development of a Better regulation agenda at a European and national level and how it will improve access to and coherence of legislation.

Do your files need a *clean sweep?*

You may not realise it, but every document you send out by e-mail or on disk carries the electronic equivalent of handwritten notes in the margin. And just like handwritten notes, they could get you in serious trouble with your clients. Sean MacCann outlines the problem

Remember the apocryphal story about the overnight rail traveller pestered by fleas in his bunk? His furious letter of complaint elicited a profuse and grovelling letter of apology from the railway company's MD. Unfortunately, that letter's mollifying effect was somewhat undone by the inadvertent inclusion of some old-fashioned 'metadata'. The MD's secretary had accidentally (one presumes) included some metadata in the form of the MD's scrawled instruction memorandum to her. It read: 'Julie, send this guy the bug letter'.

So what is metadata and why should you care? The short answer to both questions is that, for lawyers' purposes, metadata is concealed and incriminating data that can get you sued. Alarmingly, some lawyers are still unaware of it, and few Irish law firms have yet bothered to introduce a metadata-cleaning policy.

The word 'data' connotes strings of binary gibberish. Most definitions of metadata are almost tautological, for example, 'structured data about data'. The US Federal Geographic Data Committee defines metadata as 'data about data that describes the content, quality, condition, and other characteristics of data'. On hearing that, most normal people lose interest.

However, as the opening anecdote illustrates, metadata need not be technical. Every document you compose on your computer is swathed in concealed metadata. For instance, all Microsoft *Word* documents carry information detailing the author's identity, the date of composition, how long was spent preparing it, and so on.

Of the following three instances of metadata negligence by lawyers, only scenario 3 is illustrative – scenarios 1 and 2 describe recent real-life cases.

Could these happen in your firm?

Scenario 1: 'Properties'. A blue-chip client – the kind that prefers partners to associates – insists that a particular partner drafts a document. The partner can't see the sense in this. He is busy, and his under-worked associate assistant is familiar with this client's commercial priorities. The partner delegates this task to the associate. On receiving the document by e-mail, the client clicks *File* on his top menu bar. This opens up a drop-down menu. The client clicks on *Properties*. This opens up a 'metadata properties' box. The *Summary* tab therein reveals the author's name as that of the associate. Meanwhile, the partner, unaware of this piece of metadata, bills the client as if he himself had been the author, charging partner-level rates. The client, having seen the piece of metadata, refuses to pay the partner rate, and a furious row ensues.

Scenario 2: 'Track changes'. Most lawyers are familiar with how to keep track of on-going amendments to a *Word* document by selecting the *Track changes* tool from the *Tools* menu. Once activated, *Track changes* automatically records your

MAIN POINTS

- **What is metadata?**
- **Potential problems with your files**
- **How to make sure your files are clean**

amendments with metadata that appear in the form of strike-throughs and underlines. However, these strike-throughs and underlines are invisible unless the *Highlight changes on screen* option from the *Track changes* tool has also been selected. Ordinarily, the lawyer will do this. However, where this has not been done – for example, where the lawyer has inherited a first draft from someone else (perhaps a colleague or secretary) who has failed to do it – then he may not always realise that *Track changes* has been activated. Even though the lawyer's strike-throughs and underlines will not appear on the screen, they will nonetheless travel with the document if he e-mails it.

In a reported case in the United States, a lawyer drafted a will for one client, and – with the *Track changes* tool activated – duplicated and tailored the will for a separate client. The lawyer e-mailed the modified will to the second client. The second client selected the *Reject all changes* option from the *Track changes* tool. This undid the modifications and revealed the first client's confidential information.

Scenario 3: 'Insert comment'. A litigator reviews a potentially contentious document for a banking colleague. He wishes to remind himself of the key points as he goes along. He'll brief his colleague orally later. So as not to clutter the document with lengthy on-screen comments, the litigator inserts his comments as hidden text by clicking on the *Insert* option in his menu bar and selecting *Comment*. The litigator, after briefing his colleague, forwards the soft-copy document with a brief covering mail, stating simply 'As discussed'. The banking colleague, who has a deadline to meet that night, is happy to see that the litigator appears only to have made some trivial typographical amendments – and forwards the document, complete with damaging admissions – to the other side.

Other forms of metadata that travel with the document via e-mail include *AutoSummarize* information (in the *Tools* menu), global and normal *Templates* (in the *Tools* menu), *Undo typing* information, and hypertext.

'Sending out unchecked and uncleaned documents can amount to sending out privileged or confidential information'

What should you do?

You should work with your IT department or manager. Make all staff aware that sending out unchecked and uncleaned documents can amount to sending out privileged or confidential information. Select one or more of the following solutions, and have your IT department or manager implement your preferred solution centrally. Do not leave it up to individual lawyers.

Suggested solutions include:

- Following Microsoft's extensive (and free) instructions on how manually to delete metadata in its on-line 'Knowledge Base Articles'. There are instruction versions for each of Word 97, 2000 and 2002 at *http://support.microsoft.com/default.aspx?scid=kb;en-us;Q290945*
- Converting the final version of any document into 'portable document format' (PDF), using Adobe's products. This removes all metadata automatically – even non-confidential and useful metadata
- Payne Consulting Group's *Metadata assistant*. This is a less drastic alternative. It allows you to choose which pieces of metadata you wish to delete. The *Metadata assistant* displays each piece of metadata for you and allows you to delete or retain it as you see fit.

Lawyers are rightly punctilious about managing and screening their paper documents. However, if you fail to censor your firm's metadata, you are being as negligent as if you sent out documents emblazoned with revealing manuscript annotations and festooned with yellow stickies. That would be unthinkable – and so is ignoring your metadata. G

Seán MacCann is a commercial lawyer. He maintains a free tech-legal weblog at http://www.maccann.com.

Tech trends

Thunderbirds are go!

Did you ever feel that TV has cheated you? I mean, where are the jet-boots and flying cars that we were promised? Someone somewhere sold us a pup. But if you're in the market for pup, then there's some good news coming from the other side of the Atlantic. Finally, it looks like the flying car and personal jet-pack are just around the corner.

For the last 20 years, Dr Paul Moller has been developing a vertical take-off and landing vehicle that would not look out of place in *Thunderbirds*. The M400 Skycar, as its name suggests, is a personal flying car that can take off from any street or garden and aims to be as easy to drive as a car. (Moller funded his research from the fortune he made in the 1970s from developing 'a revolutionary motorcycle muffler', thank you for asking.)

The M400 Skycar is powered by eight Wankel engines. That is not a joke. These engines allow the Skycar to fly at 350mph and get 15 miles to the gallon over a range of 900 miles. Initial tests have been made by licensed pilots, but Moller dreams of automated motorways where navigational computers do all the work. He believes the eight engines and three onboard computers (plus a parachute) will keep the vehicle from plunging to its doom. He also believes in Santa Claus.

The Skycar will retail at around $500,000, but the price may eventually fall to around $60,000 to $80,000 if it goes into mass production. Just imagine the gridlock above the Naas dual carriageway if this ever comes to pass.

And imagine the PI claim if you happen to run over someone using a jetpack as you cruise along in your Skycar. This is a real possibility, because Millennium Jet Inc has announced that tests on its prototype SoloTrek XFV aircraft have proved successful. The company is being bankrolled by the US Department of Defence and hopes to produce vertical take-off and landing vehicles that will transport you in an upright position for up to two hours at speeds of 70 miles an hour.

Maybe television's coming true after all. In which case, monkeys are set to take over the world. Bummer.

For further information, see www.moller.com *and* www.solotrek.com.

Pointy bird, oh pointy pointy

'The reason the sun never sets on the British Empire', the Duke of Wellington once drunkenly slurred, 'is because no-one trusts us in the dark'. If he'd cut back on the port, and invested in a Tote-Remote from Atek Electronics to improve his visual presentations, the duke might someday have amounted to something. All you have to do is plug a tiny receiver into the USB port in your laptop and use the controller to change slides or to scroll through your presentation in *PowerPoint* or a similar programs. The controller transmits radio signals to the receiver up to a distance of 30 feet and, because it doesn't use infrared, you don't need a line-of-sight between you and your laptop. You can also use the Tote-Remote as an electronic pointer to highlight points in your presentation.

Available from Carraig Systems (tel: 01 473 7822, www.carraigsystems.ie*) for around €95.*

A word in your shell-like

And staying on a sci-fi theme, Nokia has introduced a jazzy new wireless headset to give you complete hands-free control over your mobile phone without cables or wires. The headset weighs just 25 grams and can be used up to ten metres away from your handset. The answer/end button lets you take and make calls, redial, and switch the audio back and forth between the handset and headset. A separate volume control lets you raise and lower the call volume. One advantage is that the headset is not restricted to Nokia phones: it can be used with any model that supports 'bluetooth' technology. If you ever find yourself in situation where you have to fend off knife-wielding killer apes, you might find this money well spent.

Available from mobile phone outlets.

What's bugging you?

You don't have to work in Binchy's to worry about whether your phone is tapped or your office bugged. Industrial espionage is a booming business, and it's great fun as well. But now you can take all the good out of it by investing in a bug detector. This hand-held device sweeps for and locates wireless transmitters, bugs and phone taps transmitting on a range between 50Mhz to 3Ghz. The mini bug detector also comes with a sensitivity setting that can be altered to take account of household products that may emit small radio waves. This sort of interference can be phased out by turning down the sensitivity scale on the scanner. Somewhat bizarrely, the company claims that the mini-bug detector 'weighs approximately 0.25 of a coconut'. Makes you wonder whether the monkeys haven't taken over already. *Available from* www.gizmos-uk.com *for stg£99.99.*

Sites to see

Start your own business (*www.startingabusinessinIreland.com*). A very useful website for any of your clients who are thinking of going into business for themselves. Brian O'Kane, the man behind business publishers Oak Tree Press, offers a range of information, advice and resources likely to be of great assistance to budding entrepreneurs.

AA Roadwatch (*www.aaroadwatch.ie*). The indispensable site for commuters who are fed up hearing about delays at the Red Cow roundabout but not a word about the actual red cows that have been blocking traffic for the last three miles. Find out the real reason why you were late this morning and check out conditions before you set off for home.

Worst Man U fan site (*www.kokwee.net*). Possibly the worst football fan site in the world, this is so bad it's great. Mr Kok, the man responsible for the site, hails from Thailand and lists his ambitions as meeting Ryan Giggs and Liz Hurley. The words 'two chances' spring to mind. If your firm is thinking of setting up its own site, visit this one first and then do the complete opposite.

Future technology (*www.21stcentury.co.uk*). 'Your portal to the future', this site claims. If you want to learn more about flying cars or computers you can wear, this is the place for you. It's basically an on-line magazine covering popular science and picking out the cool, interesting and often downright stupid technology that might be coming our way.

The Perfect Companion

The Law of Private Companies

Second Edition

By **Thomas B. Courtney**, BA, LLB, Solicitor, Chairman of the Company Law Review Group. With contribution from **G. Brian Hutchinson**, BCL, LLM, DPA, Barrister, Senior Counsel, Dublin

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- Companies (Amendment) Act, 1999
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- Section 1001 of the Taxes Consolidation Act, 1997
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Book reviews

King's Inns and the battle of the books, 1972

Colum Kenny. Four Courts Press in association with the Irish Legal History Society (2002), 7 Malpas Street, Dublin 8, Ireland. ISBN: 1-85182-686-6. Price: €39.95.

When the benchers of the King's Inns, in 1972, decided to fund the refurbishment of the Inns' kitchens by selling off high value non-legal books from the glorious Henrietta street library, they provoked the fiercest controversy that the benchers have ever been exposed to. A great battle developed to try to prevent the sale: a battle between academics, lawyers, librarians, institutions, scholars and historians. This marvellous hand grenade of a book tells the full blow-by-blow story of that great battle, which reflected so poorly on the King's Inns and which led to the loss of over 7,000 volumes from the library's shelves.

The book was launched, appropriately enough, in the library of the King's Inns. Present for the launch were many of the main players who had fought against the sale of the library's books. They included Nick Robinson, described in the book by Mary Pollard, Keeper of Rare Books at Trinity College, as the primary 'organiser of the attack' and whose work undoubtedly saved several important volumes from the auctioneer's block. Also present was Nick's wife, Mary, who at the time had been a mere jobbing barrister/senator but who nevertheless played a significant role in agitating in the Bar Council to ensure that the sale was opposed and who felt Dr Kenny's book important enough to interrupt her work as UN commissioner for human rights to see it launched.

Many others who fought in the battle were present. The most notable absentee was in fact the 7,000 volumes that had been removed from the shelves of the library by the men from Sotheby's and loaded into their waiting van in Henrietta Street. Astonishingly, no list of what was taken was made, let alone a comprehensive catalogue. Many of the tooled and embossed volumes would be taken on the ferry in the Sotheby's van without the necessary export licences having being obtained to authorise their removal from Ireland. Little wonder, then, that jaws dropped in disbelief and that battle was joined.

Many great legal names were active in that period, and writing about the sale – only 30 or so years later – must have faced Dr Kenny with some difficulties about what still remains a raw period of the Inns' history. He has produced an honest, even thrilling, academic account of the battle. Overly-offensive value judgements as to what the great names did is largely avoided, and he lets the story of the books speak for itself, leaving the reader, and history, to make what judgements they will. He is clear, too, that whatever those historical judgements may be, the then Irish government (which had full knowledge of the sales, and abundant opportunity to intervene) must share in the blame for the loss of such a valuable collection.

But it is the books themselves that are at the centre of this story. And seeing exactly what books were involved is what truly shocks. Dr Kenny sets out the contending arguments deployed during battle to justify selling the books. Those categorised as being 'of Irish interest' or of 'interest to Ireland' became the primary battleground. Others that fell under Sotheby's hammer included St Augustine's *Confessions*, a first edition published in Strasbourg in 1470, and Schedel, Harmann, *Liber chronicarum cum figures et imaginibus ab inito mundi*, another first edition, this time published in Nuremberg in 1493 and containing 1,809 woodcuts. The list would make a librarian weep, and while some were recovered by An Taisce bidding and buying at auction, many more were lost to Ireland forever, including many extremely rare and beautiful collections of prints and maps.

The benchers still retain a statutory power under the *Copyright and Related Rights Act, 2000* to sell the library's books and any decision to exercise that power would inevitably ignite a further controversy. It is clear that the current benchers co-operated extensively in the production of this important work, and it is a tribute to their openness in so doing. It confirms that the library is in much safer hands and that a repetition of sales of such important books on such a massive scale is quite unthinkable.

Dr Kenny's book, in setting out the story and the lessons to be learnt from 1972, will copperfasten that view. Books like this one may be recommended for being useful or being interesting and well written. This book is all of those, but the truth is that if you have any affection at all for books, or any affection at all for the profession of law, then it is quite simply your bounden duty to own and read this book. G

John McGuiggan is a Dublin-based barrister.

BOOKS PUBLISHED

Key issues in planning and environmental law
John Gore-Grimes
Butterworths Ireland (2002), 24-26 Upper Ormond Quay, Dublin 7.
ISBN: 185475-2545.
Price: €100

Do you require planning permission? (2nd edition)
John Crean
Round Hall Sweet & Maxwell (2002), 43 Fitzwilliam Place, Dublin 2.
ISBN: 1-85800-299-0.
Price: €35

International trade and economic law and the European Union
Sara Dillon
Hart Publishing (2002), Salter's Boatyard, Folly Bridge, Abingdon Rd, Oxford, England.
ISBN: 1-884113-113-X.
Price: stg£25

The Law Society of Ireland 1852-2002: portrait of a profession
Edited by Dr Eamonn Hall and Daire Hogan
Four Courts Press (2002), 7 Malpas Street, Dublin 8, Ireland.
ISBN: 1-85182-695-5.
Price: €45

Abuse of process: unjust and improper conduct of civil litigation in Ireland

Desmond Shiels. FirstLaw (2002), Merchant's Court, Merchant's Quay, Dublin 8. ISBN: 1 902354-07-9. Price: €50.

Abuse of process is a unique book. It was written by a young, recently-qualified solicitor, who was admitted in 2001.

Few lawyers leave a literary legacy for family, friends, colleagues and for future generations. It will be said of very few lawyers that an eminent chief justice referred to the writer as demonstrating 'such erudition', using phrases such as 'admirable clarity' and 'excellent work' and stating that the writer's book would be of 'great assistance to both branches of the legal profession'. Chief Justice Ronan Keane wrote those words in the preface to Desmond Shiels's book.

Let me declare an interest. I was flattered when the author asked me to read the text in typescript before publication. I would like to think that my judgement here is not in any way thereby impaired in recommending this book to those interested in litigation.

Abuse of process is a term that some lawyers may associate with pure administrative law. But Desmond Shiels's book is a book primarily written for litigation practitioners. He considers primarily the law relating to what are termed 'strike-out motions' on the grounds that a plaintiff's proceedings disclose no cause of action or cannot succeed.

The author also writes on the delicate issue of factors that might be considered by the courts in deciding if a champertous agreement is an abuse of process. Champerty is a form of improper stirring up of litigation by the giving of aid to one party to bring or defend a claim without just cause or excuse and, essentially, where the party maintaining the litigation is to be rewarded out of its proceeds.

On a personal note (and I only met the author when asked to read the text before publication), it is heartening to read that the author states that his writing of the book was due, first and foremost, to his family, his parents, Dessie and Deirdre, and (to quote the author) 'each of my six beautiful sisters and two special brothers. My family mean everything to me'. Readers: from my vantage point of age, it is most heartening to read such words from a lawyer of a younger generation.

Desmond Shiels has written a timely and comprehensive analysis of an area of litigation that will grow in importance. *Abuse of process* is not just a valuable addition to the library of lawyers interested in litigation; it is also an accessible read. The author has written an impressive, lucid and practical book that lawyers should use as a resource. The book deserves the attention of all litigators. G

Dr Eamonn Hall is the company solicitor of Eircom Plc.

Dividends back in vogue

Many corporations are beginning to realise that shareholder loyalty depends on paying out dividends, writes David Killen

Despite being taken for granted for most of the last decade, cash dividends are finally being recognised and given the respect they deserve. During the bull market of the 1990s, it was easy to disregard the importance of dividends since capital gains were usually more than enough to please investors. However, with risk tolerance sharply lower in the current bear market, many corporations are beginning to realise that shareholder loyalty depends on tangible returns. Unsurprisingly, the dividend is now back in fashion.

Investors are increasingly searching for investments that offer a total return and, for most, the best way to ensure this is through the dividend. With the market now sharply lower, the yield on shares has risen. Yield is the relationship between the price of an asset and the income it pays. When the price drops and the dividend remains unchanged, the yield rises. Effectively, investors buying into the market today are getting more income for their cash investment.

Good measure of profitability

In the low-growth environment we are currently experiencing, investors can, to a certain extent, rely on dividends to make up a significant part of overall return. Another compelling reason for the increase in dividend popularity is that they are seen as a good measure of a company's profitability and strength. In the latter half of the nineties, investors paid little attention to profit, which resulted in many companies being highly valued despite never earning a penny. Many investors have learned a lesson on this front and want to see that a company has sound earnings, and dividends are excellent evidence of that.

Currently, the dividend yield on the S&P500 stands at a meagre 1.83%. The bright spot for dividend conscious investors, however, is that the dividend on the index is up 2.6% for the first seven months of this year compared with the first seven months of 2001. While a yield of 1.83% may sound insignificant compared with the 6% that was achieved in the early 1980s, the rise in dividends is indeed significant considering the back-to-back years of decline which totalled nearly 6% and included the largest two-year drop in yields since the 1930s. The FTSE compares very favourably with an average yield of 3.45%, in many cases higher for individual stocks.

However, to truly appreciate the importance of the dividend it is useful to look at individual stocks. Take Philip Morris as an example. The company has a strong track record in continually increasing its dividend,m and earnings. As can be seen from the graph, a $1,000 investment in 1986 would now be generating a dividend income of nearly $700 in 2002, that's before even thinking about capital appreciation.

Although cash dividends have regained popularity, the percentage of publicly-traded non-financial, non-utility companies paying dividends has fallen sharply from a peak of 66.5% in 1978 to 20.8% in 1999. On the S&P 500, 70% of companies currently pay a dividend compared with 94% in 1980.

Deteriorating equity environment

However, the number of companies dropping the dividend appears to be levelling off due to the deteriorating equity environment. In fact, during the last half of the 1990s, there was a case being made in some camps that paying a dividend was counterproductive and investors could do far better by focusing on stock appreciation. This is undoubtedly no longer the case.

Under the magnifying glass

Given the high level of corporate accounting scandals, which have put earnings reports under the magnifying glass, the attraction is that, while earnings have often been manipulated, a dividend is hard cash and is beyond disrepute. A company with no real earnings cannot continue to pay a dividend for long.

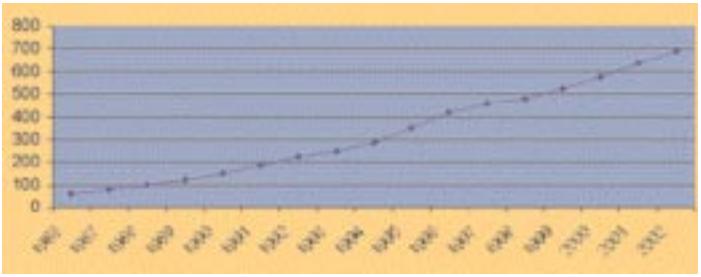
On the downside, dividends do suffer from a double tax burden. Tax is levied on a corporation when it reports income earned and on an individual when a company distributes the income in the form of a dividend. However, it should be noted that, from a historical perspective, the dividend has provided half of the total return that investors received in the stock market. G

David Killen is with the private client research unit at Davy Stockbrokers.

Davy STOCKBROKERS

David Killen: companies with consistent dividend-paying policies have historically been beacons of strength in the market

INCOME ON $1,000 OF PHILLIP MORRIS STOCK PURCHASED IN 1986



Source: Davy Stockbrokers

WHAT TO LOOK FOR IN DIVIDEND-PAYING STOCKS

What attributes should investors focus on when searching for good quality dividend-paying stocks?

- First, there is the dividend itself. In the current environment, yields of 6–7% are not uncommon, especially in areas such as financial stocks, mainly the banks and insurers
- Investors should also pay attention to companies holding a proven track record of earnings and dividend growth, and
- Finally, the dividend cover or pay-out ratio is another very useful metric. The ratio provides an idea of how well earnings support the dividend payments and is calculated by dividing the dividend per share by the earnings per share. Typically, investors would be comfortable with a dividend cover of between 1.5x and 2x.

Committee reports

PROBATE, ADMINISTRATION AND TAXATION

Administration of estates checklist

The committee has drafted a checklist for use by practitioners at the initial stages of the administration of an estate.

The checklist highlights the various legal, taxation and practical issues which should be discussed with the personal representative(s). It is also a valuable *aide memoir* for the purposes of making the proper enquiries and gathering the necessary information to allow the administration process to commence. The checklist can be accessed on the members' area of the society's website at *www.lawsociety.ie*.

Submission on forthcoming budget

The committee has made a detailed submission to the minister for finance in relation to the forthcoming budget. Members can view the submission on the members' area of the society's website at *www.lawsociety.ie* or, alternatively, a hard copy can be obtained from Colette Carey, Secretary, Probate, Administration and Taxation Committee, Law Society of Ireland, Blackhall Place, Dublin 7, tel: 01 672 4800, fax: 01 672 4801, e-mail: *c.carey@lawsociety.ie*.

Probate, Administration and Taxation Committee

CRIMINAL LAW

Attorney general's scheme

The Criminal Law Committee is involved in on-going negotiations with the Office of the Attorney General and the Chief State Solicitor's Office (which administers the payments system) regarding delays in payments due for work carried out under the scheme.

The committee would like to hear from members who are awaiting payment for claims in respect of High Court bail applications, where the claim was lodged more than three months ago and no query has been raised by the Chief State Solicitor's Office in relation to the claim.

It has been brought to the attention of the committee that some claim forms submitted are incomplete or are incorrectly completed, which leads to queries and delays. Members are advised to ensure that all forms are properly completed.

Replies should be forwarded to Colette Carey, Secretary, Criminal Law Committee, Law Society of Ireland, Blackhall Place, Dublin 7, fax: 01 672 4801, e-mail: *c.carey@lawsociety.ie*.

Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations 1999

The Department of Justice, Equality and Law Reform has advised that a solicitor who wishes to have his or her name retained on a legal aid panel is required to furnish a tax-clearance certificate to the relevant county registrar(s).

Current tax-clearance certificate expires on or before 30 November 2002

Solicitors who are on a panel and whose tax-clearance certificate expires on or before 30 November 2002 will be required to furnish a tax-clearance certificate, which has an expiry date after 30 November 2002, to the relevant county registrar by **30 November 2002** in order to retain their name on the panel.

Applications for a tax-clearance certificate should be made to the Collector-General's Office in good time. It is important to note, in this regard, that the regulations provide that an application submitted to the Collector-General by 15 October 2002 guarantees an existing member's retention on the panel where:

- Revenue has not made a decision on the application by 30 November 2002, or
- The application has been refused and an appeal has been made as provided for in the regulations, which has not been determined or withdrawn on 30 November 2002.

Current tax-clearance certificate expires after 30 November 2002

Solicitors who wish to maintain their name on more than one panel should request the Collector-General's Office to issue the certificate and as many official copies thereof as they require.

Solicitors must then furnish the certificate or official copy to each county registrar to remain on that county registrar's panel.

Multiple panels

Solicitors who wish to maintain their name on more than one panel should request the Collector-General's Office to issue the certificate and as many official copies thereof as they require. Solicitors must then furnish the certificate or official copy to each county registrar to remain on that county registrar's panel.

Issue of application form for tax-clearance certificate

Those practitioners who are currently on the legal aid panels will be issued with an application form directly from the Department of Justice, Equality and Law Reform before 1 October 2002.

Panel members who do not receive a form at that time should make enquiries to the Courts Policy Division of the department. G

Criminal Law Committee

Practice notes

PROFESSIONAL INDEMNITY INSURANCE (part 2)

The first part of this practice note appeared in the last issue (page 36)

Break in insurance cover

Apart from the obvious consequences of a break in insurance cover, there are less obvious consequences. Failure to maintain insurance cover in place will almost certainly result in a gap between the expiry of one practising certificate and the commencement date of the next practising certificate. This may render a person ineligible for a judicial appointment or other appointments which require a minimum number of years in practice prior to the date on which an application for such appointment is made.

Solicitors employed in the public and corporate sectors

These solicitors are exempted from having to have professional indemnity insurance as they provide legal advice exclusively to their employer, who is not a solicitor. The exemption does not extend to exempt such solicitors from the necessity of having run-off cover in respect of previous private practice.

Should solicitors engage in the provision of legal services outside their employment, they will come within the scope of the regulations and therefore will require professional indemnity insurance. The provision of legal services may be as simple as providing advice for family or friends. If such services are provided negligently, such solicitors might leave themselves personally liable and, accordingly, it is clear that it is necessary that they have professional indemnity insurance cover in place prior to providing legal advice to any person other than their employer.

Worldwide cover

Solicitors giving advice on legal matters outside this jurisdiction should check their professional indemnity insurance policies to ensure that they have cover when providing such advice, as the content of policies on offer vary. In particular, solicitors appearing before the European Court of Justice, Luxemburg, should check with their insurer/broker in this regard. The same would apply to a solicitor taking an action on behalf of a client to the European Rights Commission in Strasbourg. Solicitors acting as arbitrators abroad should also ensure that their current professional indemnity insurance policy provides cover in such instances.

Minimum level of cover/ top-up cover

The Professional Indemnity Insurance Committee is aware that the sum of €1.3 million for each and every claim may not provide adequate cover for all solicitors in private practice and advises each solicitor to evaluate for themselves what they consider to be the relevant level of cover for their particular practice. Thought should be given to situations where higher cover is obtained for a particular case, as it is then necessary to continue to have the higher cover in place as claims are (as stated in the first part of this practice note, last issue) on a claims-made basis.

General points

- Shop around prior to renewing cover, a listing of the qualified insurers providing cover is available on the society's website
- Consider risk to firm prior to taking on a new client
- Get contractual arrangements right
- Seeing incoming post is important, because if a client has a complaint, you should be the first to know
- The principal or a partner in the practice should attend to all matters relating to a potential claim
- Always check letters and enclosures carefully prior to dispatching same
- Ensure that cheques are for the correct amount in favour of the right person and forwarded to the correct address
- Potential claims arise mainly from the following areas: time limits, delays, undertakings, lack of communication, supervision, delegation and organisation.

Professional indemnity insurance regulations

Section 26 of the *Solicitors (Amendment) Act, 1994* permitted the society to make regulations relating to professional indemnity insurance cover for the profession.

Statutory instrument no 312 of 1995 sets out the regulations in general. Statutory instrument no 209 of 1998 provides for the increase in the minimum level of cover from £350,000 each and every claim to £1 million each and every claim. Statutory instrument no 362 of 1999 amends the definition of legal services to take account of the *Investor Compensation Act, 1998* and to amend the minimum period of run-off cover to a period of two years. Statutory instrument no 504 of 2001 converts the monies in the various regulations from punts to euro.

The Professional Indemnity Insurance Committee in this practice note has attempted to highlight some of the problems that have come to light since the regulations came into force. Practitioners will understand that in a practice note of this type it is impossible to cover the whole range of problems that may arise, or to give authoritative advice on issues involving individual queries. Expert advice should be sought from your insurer or broker.

The simplest answer to all of the problems, however, is for practitioners to ensure that at all times they have cover not only for themselves but their employees as appropriate.

The Professional Indemnity Insurance Committee welcomes any queries or suggestions, particularly those which may be of general interest to the profession.

Professional Indemnity Insurance Committee

UPDATE: VHI UNDERTAKINGS

In May of this year, the Litigation Committee advised practitioners that the protocol which had existed for many years between the Society and VHI Healthcare in respect of solicitors' undertakings to the VHI had come to an end. This occurred because, in the course of negotiations regarding an increase in the fee paid to solicitors in respect of such undertakings, VHI sought to impose conditions which were not only unworkable in the society's view but which, in very many cases, would be contrary to clients' interests. In particular, VHI stated that it would henceforward seek an undertaking that, subject to any court order to the contrary, the solicitor will repay to VHI, out of the proceeds which come into his/her hands, the full amount of the monies paid out by VHI on behalf of the subscriber/client. Thus, in a case where only part of the full value of the claim has been recovered, the client might have to pay not only any amount that he had recovered specifically in respect of VHI benefits, but could also have to pay, **out of the other damages recovered**, any balance due to VHI.

Practitioners should note that the wording of the undertaking which VHI is now presenting to solicitors has been unilaterally changed to incorporate this new condition.

As previously advised, practitioners will in future have to conclude their own agreement with VHI on a case-by-case basis. Practitioners should note the following:

1. A solicitor has no obligation to give an undertaking to VHI
2. If a client requests that the solicitor gives such undertaking, the solicitor should explain to the client the full effect of the undertaking
3. If a practitioner decides, after due consideration and discussion with the client, that he/she will provide an undertaking, he/she should be aware of the extent of the personal responsibility which this may entail
4. The fee to be paid is a matter of negotiation between the solicitor and the VHI in each case. In the recent negotiations with VHI, the society's representatives took the view that a fee of approximately €400 would be justified in respect of undertakings **in the form which had been agreed heretofore**
5. In the case of the 'old' form of undertaking the solicitor's obligation is to repay to the VHI, out of the proceeds that come into his/her hands, the net amount recovered in respect of the payments made by the VHI. Under the terms of the earlier agreement with VHI governing that form of undertaking, the solicitor is the ultimate arbiter of the sums recovered, subject to a clear explanation being provided to VHI where the full monies are not recovered. The committee considers that where a solicitor has given an undertaking to VHI in the 'old form' and where a case is settled for a percentage of full value, the payment to VHI of that percentage of the amount due to VHI satisfies the terms of the undertaking.

Litigation Committee

LEGISLATION UPDATE: 20 AUGUST – 14 OCTOBER 2002

SELECTED STATUTORY INSTRUMENTS

Copyright and Related Rights (Register of Copyright Licensing Bodies) Regulations 2002

Number: SI 463/2002

Contents note: Prescribe the form and manner of the register of copyright licensing bodies to be established by the controller of patents, designs and trademarks and the procedure for registration by a copyright licensing body, for the purposes of chapter 17 of the *Copyright and Related Rights Act, 2000*

Commencement date: 20/9/2002

Courts and Court Officers Act, 2002 *(Section 22) (Commencement) Order 2002*

Number: SI 451/2002

Contents note: Appoints 1/10/2002 as the commencement date for s22 of the *Courts and Court Officers Act, 2002*. Section 22 amends the second schedule to the *Courts and Court Officers Act, 1995* by extending the orders which can be made by county registrars

European Communities (Rules for the Application of Article 88 of the EC Treaty) (On-site Monitoring) Regulations 2002

Number: SI 444/2002

Contents note: Give effect to council regulation (EC) no 659/1999, and in particular article 22 thereof, to enable on-site monitoring visits to be carried out where the commission has serious doubts as to whether decisions in relation to state aid are being complied with. Create an offence of obstructing or impeding, or of failing to comply with a requirement of, or of giving false and misleading information to, a commission official in the exercise of a power under the council regulation or under regulation 3 or these regulations. Impose a sanction of a fine and/or imprisonment

Commencement date: 30/8/2002

Finance Act, 2001 *(Section 47) (Commencement) Order 2002*

Number: SI 396/2002

Contents note: Appoints 6/4/2001 as the date on which s47 of the *Finance Act, 2001* is deemed to have come into operation. Section 47 provides for an extension from 6/4/2001 until 31/12/2002 of the 25% scheme of stock relief for farmers

Finance Act, 2001 *(Section 48) (Commencement) Order 2002*

Number: SI 397/2002

Contents note: Appoints 6/4/2001 as the date on which s48 of the *Finance Act, 2001* is deemed to have come into operation. Section 48 provides for an extension from 6/4/2001 until 31/12/2002 of the 100% scheme of stock relief for certain young trained farmers

Road Traffic (Public Service Vehicles) (Amendment) Regulations 2002

Number: SI 411/2002

Contents: Provide for amendments to existing provisions in SI 367/2000 and SI 534/2001 in relation to the requirement that a taximeter fitted to a taxi or wheelchair taxi be fitted with a device capable of printing automatically a receipt showing the fare charged for a taxi hire. Apply to taxis and wheelchair accessible taxis where the licences are granted or renewed on or after 1/9/2002

Social Welfare (Miscellaneous Provisions) Act, 2002 *(Section 16) (Commencement) Order 2002*

Number: SI 412/2002

Contents note: Appoints 9/8/2002 as the commencement date for s16 of the *Social Welfare (Miscellaneous Provisions) Act, 2002* in so far as it relates to the *Combat Poverty Agency Act, 1986* and the *Family Law (Maintenance of Spouses and Children) Act, 1976*. The amendment to the *Combat Poverty Agency Act, 1986* provides for the payment of fees and certain expenses to members of the Combat Poverty Agency. The amendment to the *Family Law (Maintenance of Spouses and Children) Act, 1976* provides that a court can order that periodical maintenance payments awarded under the act commence at any time from the date of the original application for the maintenance order.

Taxes (Offset of Repayments) Regulations 2002

Number: SI 471/2001

Contents note: Revoke and replace the *Taxes (Offset of Repayments) Regulations 2001* (SI 399/2001) to include an additional category of liability against which a repayment may be set off, that is, amounts which the collector-general is to collect in accordance with the provisions of the *European Communities (Mutual Assistance for the Recovery of Claims Relating to Certain Levies, Duties, Taxes and Other Measures) Regulations 2002* (SI 462/2002)

Commencement date: 2/10/2002. G

Prepared by the Law Society Library

CRIMINAL LAW COMMITTEE

SEMINAR AND RECEPTION FOR JUDGES OF THE DISTRICT COURT

22 November 2002 . Law Society, Blackhall Place, Dublin 7

SPEAKERS:

The Children Act, 2001 – a judicial response
- Judge James Paul McDonnell (judge of the District Court)

Criminal Justice (Theft and Fraud Offences) Act, 2001
- Barry Donoghue (deputy director of public prosecutions)

Registration: 6pm
Seminar: 6.30pm
Reception: 7.30pm
Admission: Free

MEMBERS ARE INVITED TO ATTEND BOTH THE SEMINAR AND RECEPTION. MATERIALS WILL BE CIRCULATED ON THE NIGHT AND A LIGHT SUPPER WILL BE SERVED.

BOOKING FORM

Name: _____

Practice name and address: _____

_____

Please reserve _____ place (s) for me

Booking forms should be returned to Colette Carey, Solicitor, Criminal Law Committee, Law Society, Blackhall Place, Dublin 7, to be received no later than 20 November 2002.

Personal injury judgment

Road traffic accident – collision between motorcycle and vehicle – young lady in her early 20s – admission of liability – injuries not in dispute – whether award of High Court was sufficiently excessive to require intervention by the Supreme Court – guidelines as to damages for pain and suffering in the past and in the future – issue of so-called 'cap' or 'ceiling' – clarification of the concept of 'cap' or 'ceiling' in personal injury cases – relevance of that 'clarification' of the so-called 'cap' or 'ceiling' to the damages which should be awarded to a young lady in her 20s who made a relatively good recovery after her accident

CASE

***Sarah Jane Fitzgerald v Philomena Treacy*, High Court, judgment of Smyth J; Supreme Court, Keane CJ, Denham and Geoghegan JJ, *ex tempore* judgment of Keane CJ for the court of 8 December 2002.**

THE FACTS

Sarah Jane Fitzgerald, a young lady in her early 20s at the time, had been a pillion passenger on a motorcycle when it was in collision with another vehicle. She was thrown from the motorcycle and suffered a number of serious injuries which resulted in her being hospitalised. She was treated in Cork University Hospital and spent about four weeks there before being transferred to St Mary's Orthopaedic Hospital, where she spent two weeks.

She suffered what was described as a burst fracture of the second lumbar vertebrae, a fracture of the *medial malleolus* of the left ankle, together with abrasions on her forehead, nose and face and minor abrasions on both legs. She also developed a condition which resulted in a lot of pain when she was sitting down in an ordinary position. In hospital, she had to use a catheter for part of the time.

The accident led to psychological problems. Ms Fitzgerald was an active young woman, used to an active life prior to the accident. She saw a psychiatrist initially, but the psychiatrist was satisfied that Ms Fitzgerald was not in need of any treatment in a psychiatric sense and advised that she should see a psychologist. The psychologist confirmed that her life had indeed been so seriously disrupted by this entire episode that there were some psychological consequences. Proceedings were issued in the High Court against the party responsible for the other vehicle.

JUDGMENT OF THE HIGH COURT

The case came before Mr Justice TC Smyth of the High Court sitting in Cork in July 1999. Liability was admitted by the party who collided with Ms Fitzgerald. Accordingly, the action proceeded with an assessment of damages only. Having heard the evidence, Smyth J gave a detailed review of Ms Fitzgerald's injuries and the medical evidence in the case.

THE AWARD IN THE HIGH COURT

Special damages were agreed at £10,440.20 (€13,256)
Damages for pain and suffering in the past: £100,000 (€126,973)
Damages for pain and suffering in the future: £80,000 (€101,579)
Total: £190,440.20 (€241,808)
The defendant, Ms Treacy, appealed to the Supreme Court on the ground that the award was sufficiently excessive to require intervention by the Supreme Court.

JUDGMENT OF THE SUPREME COURT

The matter came before Keane CJ, Denham and Geoghegan JJ. Keane CJ delivered an *ex tempore* judgment of the court on 8 December 2000. The chief justice set out the facts and stated that Ms Fitzgerald had obviously endured a very difficult time for a year when she experienced considerable pain. She had been used to going to the gym; she had been a receptionist for a well-known orthopaedic surgeon in Cork. She had to give all that up after the accident, but the chief justice remarked and agreed with Smyth J of the High Court that Ms Fitzgerald was a very positive young woman. She had put this experience behind her to a considerable extent and deserved, according to the chief justice, great credit for having done so and getting on with her life. Ms Fitzgerald had subsequently gone to Australia.

The Supreme Court noted that medical evidence was only called on behalf of Ms Fitzgerald and that the defendants called no medical evidence. Therefore, it had to be assumed that Ms Fitzgerald's medical evidence was not in dispute. At the time of the High Court trial, Ms Fitzgerald was still suffering some consequences from the injuries, particularly in terms of back pain.

How was this going to affect her in the future?

In the High Court, a surgeon had stated that he would put Ms Fitzgerald in what he described as a fair-to-middle group of patients who suffered from the particular injury of the burst fracture of the vertebrae. On the balance of probability, according to the surgeon, she would continue to be able to work. Keane CJ stated that this evidence was of significance because Ms Fitzgerald was an educated young person and she was not going to be engaged in physical manual work. Manual work was not the type of work Ms Fitzgerald had been doing or intended to do in the future. She would have back problems for some time and it was bound to cause her problems in her life generally, but it was considered that it was not going to have a significant effect on her ability to work in the future.

General damages

The Supreme Court then reviewed the issue of general damages. The chief justice stated that counsel had drawn the court's attention to the series of decisions which were, according to the chief justice, 'perhaps somewhat misleadingly called the cap on general damages for personal injuries', first proposed by the Supreme Court in *Sinnott v Quinnsworth Limited* ([1984] ILRM 523). The significance of that case was that the 'cap' – and the chief justice queried whether one could use that term – indicated that general damages should not exceed £150,000 (€190,460). However, he said that it had been emphasised in argument before the Supreme Court that morning that the *Sinnott* case was what one might call a case of 'catastrophic injuries', where the plaintiff recovered very substantial special damages to allow for substantial loss of wages into the future, to allow for nursing care, adaptations to the house the person was living in and other related special damages. In that specific context, the 'cap' was £150,000 in terms of general damages. However, one had to bear in mind that such a plaintiff was receiving substantial other sums in addition to the general damages.

A decision of Morris P of the High Court in the case of *Paula Keely v Minister for Health* was referred to by the chief justice, who stated that, in any event, that 'cap' or 'ceiling' figure of £150,000 would have to be adjusted in the context of the then relevant year of 2000 (when the judgment was given) in the context of allowing for changes in the value of money, the effect of lower interest rates and a certain return of inflation to the economy. All those factors would have to be taken into account in considering whether the £150,000 was necessarily applicable.

The chief justice stated that clearly the figure of £150,000 (€190,460) was not a 'ceiling' or a 'cap' and it would have to be revised in the light of all those considerations. In fact, the chief justice stated that the general tendency would be to treat 'the cap', if one could correctly use that term, as more in the region of £250,000 (€317,434), perhaps going up to £300,000 (€380,921). Keane CJ stated that the Supreme Court had been referred to decisions of the High Court (approved of by the Supreme Court), where, in the case of very serious injuries indeed, far more serious than the present case, the court regarded the appropriate 'ceiling' for general damages in personal injury cases in the region of £200,000 (€253,947).

Noting that every case had to be judged and assessed according to its own particular facts and circumstances, and taking into consideration that a person may be receiving significant special damages (which was not so in the present case), this issue would be a factor in considering what general damages should be awarded to a plaintiff.

Bearing in mind all those factors in the context of the Fitzgerald case, the fact was that Ms Fitzgerald had been awarded a sum for general damages of £180,000 (€228,552) – close to the maximum sum for personal injuries which the Supreme Court would contemplate for general damages, at least in what was being described as 'catastrophic cases', where there would be significant elements of special damages in addition to general damages.

The Supreme Court considered that the award granted to Ms Fitzgerald was excessive. Counsel had referred to evidence as to Ms Fitzgerald's future working capacity and the court had to take into consideration that there had been evidence from a vocational consultant or rehabilitation expert that the accident would come against her. However, one had to remember, in that context again, the medical evidence of Ms Fitzgerald's surgeon who said his own view was that the accident was not going to interfere in a significant way with her working life. Accordingly, the chief justice considered that the figure for past and for future damages awarded in the High Court came very close to the top of the scale in personal injuries cases.

The Supreme Court determined, in the context of all the facts, that the damages were excessive to a degree which required interference by the Supreme Court. The Supreme Court substituted its award for that of the High Court. G

This judgment was by solicitor Dr Eamonn Hall.

THE AWARD OF THE SUPREME COURT

Damages for pain and suffering in the past: £75,000 (€95,230)
Damages for pain and suffering in the future: £50,000 (€63,486)
Accordingly, the Supreme Court substituted its own award of damages of £125,000 (€158,717) for pain and suffering in the past and future for that of £180,000 (€228,552), bringing the total figure, including special damages, to £135,440.20 (€171,973.58) instead of the £190,440.20 (€241,808) awarded by the High Court.

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CRIMINAL

Appeal against conviction

Whether evidence of distinct sexual assault inadmissible as prejudicial – whether dates set out in indictment too vague and imprecise – whether variations in majorities by which jury found applicant guilty so inconsistent as to be perverse – whether trial judge's corroboration warning to jury sufficient

The applicant was convicted by a jury in the Central Criminal Court of 14 counts of rape. The applicant applied for leave to appeal his convictions on the grounds that evidence which the trial judge had admitted of a distinct sexual assault that the applicant had not been charged with was inadmissible and prejudicial; that the dates the offences were alleged to have occurred as set out in the indictment were too vague and unspecific; that the variation in the majorities by which the jury found the applicant guilty on each count were so inconsistent as to be perverse; and that the trial judge had given an insufficient warning to the jury on the absence of corroboration of the complainant's allegations at the end of the trial. The application for leave was treated by the court as the hearing of the appeal.

In dismissing the application for leave to appeal, the court held that evidence of the commission of offences could not be considered entirely *in vacuo*. It was a matter of discretion for the trial judge to decide whether the prejudicial effect of evidence of distinct sexual assaults which the applicant had not been charged with outweighed its probative value, and the court would not readily interfere with the exercise of this discretion by a trial judge where no sufficient reasons had been advanced why the court should do so. In relation to the second ground advanced, the fairness of a lack of specificity of dates in the indictment had to be considered in the context of the specific case. In the circumstances, the defence had not been prejudiced in the sense of being unable to seek out contemporaneous facts to support his denial of the charges. In relation to the third ground advanced, the diversity of the majority did not mean that the verdicts were perverse, as the jury was entitled, indeed obliged, to reach a separate verdict on each count. In relation to the final ground advanced, the court was satisfied that the jury could not have been misled in any way as to their function by the warning given by the trial judge on the absence of corroboration of the complainant's statements. Accordingly, none of the grounds of appeal had been made out.

***People (DPP) v O'Connor*, Court of Criminal Appeal, 29/7/2002** [FL6138]

Appeal, injunction, jurisdiction

Injunction – discharge of order – appeal – practice and procedure – jurisdiction – criminal law – Revenue – proceeds of crime – whether High Court has jurisdiction to re-open earlier order of High Court

A receiver had been appointed over a property believed to have been acquired from the proceeds of crime. The president of the High Court had refused to review an application to have the order, created under section 3 of the *Proceeds of Crime Act, 1996*, varied or discharged. The applicant sought to have the original High Court order discharged on the basis that the court had inherent jurisdiction to set aside the order made by Mr Justice Moriarty in that it was made in a manner which was unjust to the defendants. The president made it clear that the only way it could be appealed was to the Supreme Court.

The Supreme Court held that the president of the High Court was perfectly correct in point of law in holding that he had no jurisdiction to re-open an earlier order of a High Court judge and dismissed the appeal. On a point of whether the court could extend the time for appeal, the court followed *Eire Continental Company Ltd v Clonmel Foods Ltd* ([1955] IR 170) and found the applicants had failed to reach the conditions set by this case.

***M v K and Another*, Supreme Court, 15/7/2002** [FL6045]

Director of public prosecutions, fair procedures

Judicial review – role of director of public prosecutions – administration of justice – legitimate expectation – road traffic accident – fair procedures – reversal of decision not to prosecute – whether decision of DPP capable of review – whether decision of DPP ultra vires – Road Traffic Act, 1961 – Prosecution of Offences Act, 1974

The applicant had been involved in a road traffic accident which resulted in the death of a driver of another vehicle. Following investigation, a decision was taken by the DPP not to prosecute the applicant. After representations from the family of the deceased, the decision not to prosecute was reversed. The applicant sought to quash the decision of the DPP to prosecute. In the High Court, Kearns J held that in the circumstances the decision by the DPP to reverse the original decision and re-instate a prosecution was arbitrary and perverse. The relief sought would be granted. The DPP appealed against the judgment, contending the case had been decided in the High Court on grounds in respect of which leave had not been granted. It was submitted that the DPP was in no way precluded from reviewing an earlier decision either to prosecute or not to prosecute.

The Supreme Court (by a majority verdict) dismissed the appeal. Keane CJ, with Denham J agreeing, held that the DPP was entitled to review an earlier decision not to prosecute and arrive at a different verdict. In the circumstances, there was no new evidence before the DPP, the applicant had not been informed that the decision would be reviewed and had not been afforded the fair procedures to which she was entitled. The appeal would be dismissed. Murphy J (dissenting) held that the DPP was entitled, as a matter of law, to change his mind and was not estopped from prosecuting the applicant. McGuinness J, with Geoghegan J agreeing, held that once the DPP had informed the applicant without any *caveat* that no prosecution would issue, it was a breach of fair procedures to reverse that decision.

***Eviston v Director of Public Prosecution*, Supreme Court, 31/7/2002** [FL6087]

Evidence, sentencing

Sexual offences – evidence – sentencing – fair procedures – plea of guilty – whether trial judge enti-

tled to rely on book of evidence – when sentence hearing flawed – Courts of Justice Act, 1924

The applicant, K, had pleaded guilty to a number of sexual offences. At the hearing for sentence, the officer in charge of the investigation gave evidence of the assaults in question. In addition, the court had before it victim impact reports in relation to the two victims and a report from the director of the Central Mental Hospital on the applicant. After an adjournment, the judge imposed nine years' imprisonment in respect of the rape offences and four years' imprisonment in respect of the sexual assaults. The applicant sought to apply for a certificate pursuant to section 29 of the *Courts of Justice Act, 1924* to enable him to take an appeal to the Supreme Court. On behalf of the applicant, it was contended that a reference by a trial judge to a 'book of evidence' after the evidence and argument had closed was a breach of fair procedures. It was contended that where a trial judge obtained information from a book of evidence, he was required to put that information before the parties to ensure that it was accepted by them or that there was evidence to support it. To base a decision on material which had not been admitted or given in evidence constituted an unfair procedure.

The Court of Criminal Appeal (Murphy J delivering judgment, Johnson J and Lavan J agreeing) refused to grant a certificate. Undoubtedly, some degree of informality arises in relation to information provided for the benefit of a court passing sentence where an accused has pleaded guilty to certain offences. In the case of sexual offences, it was particularly understandable that, in the interest of the victim, the investigating officer was permitted to give hearsay evidence rather than subject the victim to the burden of reliving the memories of sexual abuse. It was not suggested that any dispute existed before the trial judge in relation to the circumstances in which the offences were committed. The status of a book of evidence and the circumstances in which a trial judge might properly make reference to it might well benefit from judicial clarification, but that was work for another day. An appeal to the Supreme Court in the case could not benefit the applicant, as the court was satisfied that the sentences imposed were fully justified by the evidence properly before the trial judge.

***DPP v K*, Court of Criminal Appeal, 29/7/2002** [FL6130]

EMPLOYMENT

Equality

Equal pay – like work – grounds other than gender – whether company failed to give equal pay for like work – Employment Equality Act, 1998

The complainant alleged that her employer failed to pay her equally in comparison to a fellow employer, who was male. The complainant contended that she did like work with the male comparator and thus her employer was in breach of the *Employment Equality Act, 1998*. The employer contended that the comparator and the complainant were not performing like work within the meaning of the *Employment Equality Act, 1998* and contended that there were grounds other than gender for the difference in pay.

The equality officer dismissed the claim. Like work did not exist between the work of the complainant and the work of the male comparator. No breach of *Employment Equality Act, 1998* had occurred and the complainant was therefore not entitled to equal pay.

***Francis v Dunnes Stores*, Equality Tribunal, 16/9/2002** [FL6108]

EQUALITY

Burden of proof, Traveller issues

Direct discrimination – burden of proof – mistaken identity – membership of the Traveller community – action taken in good faith – whether complainant discriminated against – Equal Status Act, 2000

The complainant contended that he was discriminated against by the respondent on the Traveller community ground, contrary to the *Equal Status Act, 2000*, when he was refused service and asked to leave the respondent's premises. The respondent submitted that the complainant was not discriminated against on the grounds that he was a Traveller, but was refused service because the bar manager genuinely believed that the complainant had previously been involved in a violent incident in the bar.

The equality officer found that the complainant had established a *prima facie* case of discrimination which the respondent had failed to rebut. There was an inconsistency in the respondent's evidence and the respondent had failed to exercise due care and consideration before identifying the complainant as the person involved in the violent incident. The respondent had not acted in good faith and the refusal was motivated by a discriminatory reason connected to the complainant's membership of the Traveller community. The complainant had been discriminated against under the *Equal Status Act, 2000* and €750 would be awarded as compensation for the distress and embarrassment suffered.

***Delaney v Jamesons Hotel*, 13/9/2002** [FL6119]

FAMILY

Divorce, property

Disposition of assets – whether dispositions reviewable – application for declaration that transactions not reviewable dispositions – whether declaration may be made in relation to disposition not in contemplation of either party – Family Law (Divorce) Act, 1996, *section 37*

The applicant applied for a declaration that the sale or mortgage or a disposal by him of properties by him were not reviewable dispositions within the meaning of section 37 of the act of 1996. The properties concerned consisted of a development previously referred to in settlement agreements between the parties and shareholdings in a number of building companies owned by the applicant, which were in the process of developing and selling housing units.

Murphy J dismissed the application, holding that shares in companies constituted personal property, the disposition of which were encompassed by section 37 of the act of 1996. Insofar as the relief sought applied to personal assets, it was not appropriate to make a declaration as sought where no disposition in relation thereto was in contemplation. Moreover, the declaration sought was too general in nature.

***O'M(L) v O'M(N)*, High Court, Mr Justice Murphy, 30/7/2002** [FL6050]

Judicial separation

Property – division of assets – whether family home should be sold – lump-sum payment – valuation of family home – maintenance – principles to be applied in assessing periodic maintenance payments – Family Law Act, 1995, *section 16*

The legal title in the family home vested in the applicant, who claimed ownership of it and maintenance both for herself and the parties' daughter. It had been conveyed to her by her father after the parties moved into it, and the respondent had paid £100,000 for it to her father. Evidence was given by the respondent that he ran his practice from the family home. The respondent claimed that he was the beneficial owner in possession of the family home and sought a transfer order giving him legal title thereto. There was a conflict as to the proper valuation of the family home.

In the absence of an explicit agreement between the appli-

cant and respondent, O'Sullivan J held that the family home should be shared equally between them. The balance of fairness between the parties required that a property adjustment order vesting the legal and beneficial title of the family home in the respondent be made, subject to payment by him to the applicant of a lump sum representing her half-share in the home and maintenance payments. The task of reconciling two valuations of the home was something which the court had to undertake, and the fact that there was a wide variation should not deter it from undertaking it. In assessing a periodic sum for the maintenance of the applicant, the court had to consider the respondent's likely available income, the applicant's likely available income, the likely disbursements made by the respondent in favour of their child, and, finally, in light of all the circumstances and having regard to the specific guidelines set out in section 16 of the act of 1995, a fair amount in respect of such periodic payments. An order extinguishing the mutual claims of each party to each other's estates under the *Succession Act* was also made.

***CF v CF*, High Court, Mr Justice O'Sullivan, 11/6/2002** [FL6058]

JUDICIAL REVIEW

Garda Síochána, practice and procedure

Whether investigation of complaint properly carried out prior to matter being sent to tribunal – duty of prosecutor before a tribunal of the respondent – whether prosecutor before tribunal has discretion as to witnesses he may call – whether prosecutor obliged to call witness whose evidence is favourable to member concerned – Garda Síochána (Complaints) Act, 1986, *section 6*

The applicant was given leave to bring judicial review proceedings. He sought an order of *mandamus* requiring the respondent to carry out a full and proper investigation prior to a disciplinary enquiry and an order commanding the respondent to call certain witnesses at any future disciplinary enquiry. He alleged that no proper investigation of the complaint against him had been carried out prior to the matter being sent to the tribunal.

Finnegan J refused the relief sought, holding that an investigation in accordance with the requirements of section 6 of the act of 1986 had been carried out by the superintendent appointed to investigate the complaint. There was no onus on the prosecutor to call witnesses who may be favourable to the member concerned and to allow them to be cross-examined by the member.

***Culligan v Garda Síochána Complaints Board*, High Court, Mr Justice Finnegan, 8/4/2002** [FL6051]

LEGAL PROFESSION

Professional negligence, family law

Solicitors – family law – breach of contract – duty of care – property – banking law – damages – execution of charge – whether failure to properly advise client – whether presumption of undue influence raised – Family Home Protection Act, 1976

The plaintiff initiated proceedings over the advice allegedly given by a solicitor (the defendant). The plaintiff's husband had incurred debts which resulted in the plaintiff and her husband consenting to the execution of a charge over the family home. The plaintiff alleged that the defendant who advised both her and her husband was negligent in that she had never been advised to get independent legal advice and had not been advised of her options. In addition, the plaintiff alleged that she had not been advised that the agreement was unenforce-

able as being in contravention of the *Family Home Protection Act, 1976*. It was alleged that she had been told that she had no option but to sign and her interest had not been looked after. It was submitted that had the plaintiff failed to execute the charge on the family home, proceedings could have been taken by the creditors but these would have taken years to complete and the plaintiff's interest in the family home would have been protected. The defendant rejected the allegations of the plaintiff and contended that he had advised the plaintiff at the time to get independent legal advice. In addition, it was submitted that, at all times, the plaintiff's husband had indicated that the plaintiff fully supported her husband and was willing to charge assets jointly owned by them, including the family home.

O'Neill J dismissed the proceedings. The defendant had advised the plaintiff to get independent legal advice. The defendant should have advised the plaintiff of all her options and had not served the interests of the plaintiff and her husband as a couple. This had deprived the plaintiff and her husband of the opportunity to jointly make choices in the best interests of their family. The defendant had been negligent. However, it was unlikely that the plaintiff, even if properly advised, would have refused to consent to the execution of the charge and thus have exposed her husband to criminal proceedings. In the circumstances, the plaintiff had not suffered any loss and the action must fail.

***O'Carroll v Diamond*, High Court, Mr Justice O'Neill, 31/7/2002** [FL6072]

REFUGEE AND ASYLUM

Immigration, *locus standi*

Constitutional law – locus standi – whether court should embark on moot trial – prohibition on reporting or publication of matters likely to identify asylum applicants – whether constitutional – Refugee Act, 1996, *section 19* – Constitution of Ireland, *articles 40.3, 40.6.1 and 34.1*

The plaintiff's application for a declaration under the *Refugee Act, 1996* that she was a refugee was refused. She pleaded that section 19 of the act prohibited the reporting or publishing of judicial review proceedings which she had brought in respect of that refusal and that she wished to attract the maximum publicity for her case. She sought a declaration that section 19 was invalid as breaching her constitutional right to communicate and the constitutional imperative that the administration of justice be in public having regard to articles 40.3, 40.6.1 and 34.1 of the constitution.

Murphy J refused the relief sought, holding that the plaintiff had suffered no prejudice nor injury and it was not appropriate for a court to consider a claim for declarations in the absence of primary relief. Moreover, the plaintiff had no *locus standi* to challenge the validity of section 19 as it was addressed to and concerned the media and did not affect the plaintiff's right to freely express herself in her own name. It was the media which must obtain her consent and that of the minister before publishing any matter which was likely to lead members of the public to identify her as an applicant under the act. The court had to assume that acts of the Oireachtas were constitutional and that it did not need to determine constitutional issues when it was possible to dispose of a case otherwise.

***Jonathan v Ireland*, High Court, Mr Justice Murphy, 31/5/2002** [FL6066]

TAXATION

Revenue and financial law

Mining – corporation tax – definition of 'mining operation' – statutory interpretation – whether respondent entitled to export sales relief – whether processing of ore constituted mining – Income Tax Act, 1967, *section 428* – Corporation Tax Act, 1976, *section 58*

The respondent (Tara) carried out mining activities at its plant in County Meath. Tara contended that it was entitled to export sales relief in conjunction with its mining activities. Tara contended that the processing of the ore into concentrates was a separate and distinct process to the mining of ore. It also contended that the processing operation did not constitute mining and thus it was entitled to the relevant tax relief. The appeal commissioners had found in favour of Tara and the inspector of taxes appealed. In the High Court, Mr Justice Roderick Murphy held that the decision of the appeal commissioners did not appear to be supported by the facts and allowed the appeal. Tara appealed the judgment to the Supreme Court.

The Supreme Court (Murphy J delivering judgment, Denham J and Murray J agreeing) dismissed the appeal. The object and purpose of Tara was to produce, on the site of the mine, concentrates for which there was a market, albeit an overseas market. In those circumstances, a conclusion that the overground operations constituted 'mining operations' was inescapable and a decision to the contrary on the findings of fact made would be unsustainable.

***O'Connell (Inspector of Taxes) v Tara Mines Ltd*, Supreme Court, 10/10/2002** [FL6155] G

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Eurlegal

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

Recent EU legislative developments: May, June and July 2002

Recognition of family law rulings to tackle child abduction. On 3 May 2002, the European Commission adopted a proposed regulation to complete the legal framework for the mutual recognition of judgments on divorce and parental responsibility throughout the European Union. The proposal aims to discourage child abduction within the EU by establishing a mechanism for the return of abducted children by co-operation between the courts and member states' authorities. The Commissioner for Justice and Home Affairs, Antonio Vitorino, stated: 'This proposal would extend the current rules to cover all children. Our aim is to create a deterrent to the growing problem of child abduction within the EU. The free circulation of judgments is particularly important in the family law area that touches directly on people's lives. Only by action at an EU level can we tackle this problem. I hope these measures will prevent hundreds of children from suffering distress and disruption in custody cases between parents from different EU countries'.
European Commission press release IP/02/654

Adoption of *Postal services directive*. The *Postal services directive*, adopted by the Council of Ministers on 7 May 2002, will allow for the gradual and controlled implementation of the internal market for postal services which will combine more competition with maintaining a universal service and is expected to result in improved postal services and lower prices. The new directive requires member states to open up significant additional sections of the market to competition from 2003 and 2006 and defines further steps to be undertaken towards the completion of the internal market for postal services. According to market commissioner Frits Bolkestein: 'Implementing the internal market for postal services is one of the major structural reforms that Europe needs. The new *Postal services directive* sets out a clear path towards achieving this in a gradual and controlled manner, so that all market players can prepare properly for the changes ahead. I am delighted that the European Parliament and the council have, on the basis of the commission's proposal, agreed a way forward which will deliver a modern and dynamic postal sector, while making sure everyone in Europe can continue to benefit from a universal postal service'.
European Commission press releases IP/02/671, IP/02/406 and IP/01/1420

VAT on electronically delivered services. The Council of Ministers has adopted a directive and a regulation to modify the rules for applying VAT to certain services supplied by electronic means in addition to subscription-based and pay-per-view radio and television broadcasting. The new rules, based on commission proposals of 7 June 2000, will result in the taxation of digital e-commerce being in accordance with the principles agreed at a 1998 OECD conference. The rules will ensure that when these services are supplied for consumption within the EU, they will be subject to VAT, but they will be exempt from VAT when they are supplied for consumption outside the EU. The existing VAT rules are modernised to accommodate the emerging electronic business environment and to provide a clear and concise regulatory environment for all suppliers, located within or outside the EU. A number of facilitation and simplification measures are also contained in the rules to ease the compliance burden for business and member states must implement the new measure by 1 July 2003. According to European commissioner for taxation Frits Bolkestein, the rules 'will remove the serious competitive handicap which EU firms currently face in comparison with non-EU suppliers of digital services, both when exporting to world markets and when selling to European customers'.
European Commission press release IP/02/673

Council adopts international accounting standards regulation. The International accounting standards (IAS) regulation, proposed by the commission in February 2001, requires listed companies, including banks and insurance companies, to prepare their consolidated accounts in accordance with IAS from 2005 onwards. The aim of the legislation is to assist in eliminating barriers to cross-border trading in securities by ensuring that company accounts throughout the EU are more reliable and transparent and can be easily compared. In turn, this should increase market efficiency and reduce the cost for companies of raising capital, which will ultimately improve competitiveness. The IAS is a key measure in the financial services action plan. The IAS is one of a series of measures, which should help protect the EU from problems similar to the Enron affair. Internal market commissioner Frits Bolkestein believes that 'the IAS are the best standards that exist. Applying them throughout the EU will put an end to the current Tower of Babel in financial reporting. It will help protect us against malpractice. It will mean investors and other stakeholders will be able to compare like with like. It will help European firms to compete on equal terms when raising capital on world markets. What is more, during my recent visit to the US, I saw hopeful signs that the US will now work with us towards full convergence of our accounting standards'.
European Commission press release IP/01/200

Proposed electrical and electronic waste directives. The European Parliament adopted a number of amendments to the proposals for directives on electrical and electronic waste and the use of hazardous substances in electrical and electronic equipment during its second reading. These amendments are intended to strengthen the draft texts and include a compulsory

collection target of six kilograms per inhabitant per year by the end of 2005, backed by inspections and monitoring facilities. Recovery targets for specific large household appliances, such as fridges, have been raised to 90%. It was also reaffirmed by the parliament that individual manufacturers, rather than national collectively-financed schemes, should be responsible for recycling. Manufacturers are required to provide upfront guarantees for financing the future disposal of their products. Collectively, manufacturers are responsible for the recycling of 'orphan' and historical waste.
European Parliament daily notebook 10 April 2002

Subsidies and unfair pricing on third-country airlines. The proposed draft regulation provides for EU action against unfair competition from non-EU carriers on routes to and from the EU due to trade distorting third-country subsidies. The duties to be imposed on such non-EU airlines that benefit from subsidies are to be calculated on the basis of the value of the subsidy granted but would not be more that the duty necessary to eliminate any damage caused to EU airlines. If the non-EU airlines are state-controlled, duties could also be calculated to offset any unfair pricing practices resulting from other non-commercial advantages granted by governments. It is envisaged that cases will be examined on the basis of complaints that show that damage has been caused to EU airlines. The draft regulation will not replace airline agreements with third countries that can be effectively used to deal with distortion issues.

Amendments to the *Compound feed marketing directive.* The amendments to this directive, which was adopted on 28 January 2002 and whose implementation deadline is 6 March 2003, allow for the establishment, authorisation or registration number, together with the date of minimum durability, the net quantity and batch number, to be labelled outside the statutory box, provided that an indication is given as to where the information can be found. Member states must apply these measures from 6 November 2003.
Official journal of the European Communities L63/23

Geographical indications and designations of origin for agricultural products. A proposed amendment by the commission to regulation 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs will amend the list eligible for protection by removing mineral waters and adding wine vinegar, and by giving WTO members the right to object to the registration of geographical names, which will improve the recognition on international markets. The commission has published a list of inspection bodies for each registered geographical indication or designation. Rules are also added for deciding on registration in cases of names that are spelled or pronounced in the same way. It is also proposed to create a legal framework to phase out identical names that do not fall under the regulation in a period of 15 years. Welcoming the proposal, Franz Fischler, commissioner for agriculture, fisheries and rural development, said: 'The EU produces a wide range of high-quality and specified foodstuffs. Better protecting their geographical indication from pirating or unfair competition will not only help to better inform consumers worldwide, it will also encourage producers, who can be safe in the knowledge that their produce receives its legitimate worldwide recognition'. At present, the names of about 570 cheese, meat, fruit, vegetable and other products are registered as PDO (protected designation of origin), PGI (protected geographical indication) and TSG (traditional speciality guaranteed); examples include 'Roquefort' cheese, 'Bayrisches Bier' and 'Prosciutto di Parma'.
European Commission press release IP/02/422

Implementation of the .eu top-level domain. Regulation 733/2002, which was adopted on 22 April 2002, establishes the conditions for implementation of the .eu top-level domain (TLD) within the EU, provides for the designation of a registry and sets out the general policy framework within which the registry will function. The regulation requires the commission to designate a registry, which will be a non-profit organisation and will deal with the organisation, administration and management of the .eu TLD. This will include registration of domain names with accredited registers, a system of dealing with queries from the public, and a dispute resolution procedure. The commission and the registry will enter into a renewable fixed term contract with the commission supervising the work of the registry.

Holders of prior rights established by national and/or EU law and public bodies will have the benefit of a 'sunrise period' in which the registration of domain names will be exclusively reserved to them under the regulation, which will act as a safeguard against abusive registrations and cybersquatting. It is intended that the commission will complete the procedures quickly in co-operation with member states and the Internet community and that the .eu TLD will be available toward the end of 2002.
EC regulation 733/2002

Attacks against information systems. The proposed council framework decision on attacks against information systems addresses the core of computer-related crime, such as hacking, viruses and denial of service, by proposing to approximate national criminal law rules and facilitate judicial co-operation on illegal access to information systems and illegal interference with information systems. It also aims to encourage and promote information security. The proposed framework decision is technology-neutral and takes account of the broader information society context. The ultimate objective is to protect users and promote the improvements of the security of information infrastructures, while balancing different societal interests, such as network security, law enforcement powers, the extent of criminalisation, privacy protection, users' rights, development of new technologies and economic priorities. The current proposal is the result of an extensive and transparent public consultation, within the framework of the EU forum on cybercrime, and it also takes into account other international activities such as the work of the G8 and the Council of Europe convention on cybercrime. Erkki Liikanen, commissioner responsible for enterprise and the information society stressed: 'There is a vast amount of network traffic, of which only a very small percentage is problematic and can be disruptive. However small a part of the overall picture, cybercrime is still crime which needs to be dealt with. This proposal also contributes to improving the overall security of our information infrastructures, which is a key element in our efforts towards a knowledge-based economy as recently highlighted by the Barcelona European council'.
European Commission press release IP/02/601

Adoption of EU cross-border payments regulation. From Monday 1 July 2002, customers should no longer be paying more to withdraw euros from cash machines or make card payments in euros in other

member states than they pay for the same services in the member state where they live. The regulation aims to create a 'single payments area' so that citizens and businesses can take full advantage of the single currency across the EU and not only in their own member state. Commission president Romano Prodi said: 'People now have euro notes and coins in their pockets. This regulation will ensure that they have more of them to spend when they travel in Europe. The advantages of the single currency need to be passed on to each and every European. That is why the commission proposed the regulation in July 2001'. Before adoption of this regulation, withdrawing €100 from a cash machine outside their own member state cost bank customers on average €4, while withdrawals within their own member state/domestic withdrawals and payments are usually free of charge or cost a few cents. Also, from 1 July 2002, charges for the use of credit and payment cards (for payments in euros up to €12,500) must be the same whether payments are made in the country where the card is issued or in another member state. From 1 July 2003, the same principle of equality between charges for national and cross-border transactions in euros (up to €12,500) will apply to credit transfers between bank accounts and it also aims to make it easier for banks to deal with cross-border transactions.

European Commission press release IP/02/941

Undesirable substances in animal food. The adoption of directive 2002/32 on undesirable substances in animal food will strengthen the rules governing the presence of undesirable substances in animal feed and must be implemented by member states before 1 May 2003. The directive provides for the introduction the concept of 'action thresholds' for contaminants which (while not maximum legal limits) would trigger action by control authorities to investigate potential contamination problems.

Official journal of the European Communities L140/10

Insolvency proceedings. On 31 May 2002, regulation 1346/2000/EC on insolvency proceedings came into force and brings with it a welcome increase in co-operation between member states in relation to insolvency proceedings. However, it must be noted that it does not provide a harmonised universal set of insolvency rules within the EU and local insolvency law will continue to apply. The Uncitral model law on cross-border insolvency will assist insolvency proceedings outside the EU if it is incorporated into the national law of a sufficient number of countries and, unlike the regulation, the model law contains rules for recognising and co-operating with foreign insolvency proceedings and officeholders.

The regulation applies to 'collective insolvency proceedings, which entail the partial or total divestment of a debtor and the appointment of a liquidator'. It applies equally to all proceedings, whether the debtor is a natural person or a legal person, a trader or an individual. However, it does not apply to insolvency proceedings concerning: insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or collective investment undertakings. The courts with jurisdiction to open insolvency proceedings are those of the member state where the debtor has his centre of main interests. Secondary proceedings may be opened subsequently to liquidate assets located in another member state and in some instances such proceedings may be opened before the main proceedings if the local creditors request it or where main proceedings cannot be opened under the law of the member state where the debtor has his main centre of interests. The law of the member state in which proceedings are opened determines all the effects of those proceedings, such as the conditions for opening, their conduct, questions of substance and so on.

Council regulation (EC) 1346/2000. G

Jennifer McGuire is a solicitor with the Dublin law firm LK Shields.

Recent developments in European law

DIRECT EFFECT/ LIMITATION PERIODS

Case C-62/00 *Marks & Spencer plc v Commissioners of Customs & Excise*, 11 July 2002. The dispute concerned the repayment of VAT overcharged to Marks & Spencer. Marks & Spencer is a retailer based in the United Kingdom, specialising in the sale of food and clothing. It sold gift vouchers to corporate purchasers at a price which was less than their face value. These vouchers were then sold or given away to third parties who redeemed them for goods in Marks & Spencer stores. In 1991, the commissioners ruled that Marks & Spencer should account for VAT on the face value of the vouchers. It did so until the decision of the ECJ in case C-288/94 *Argos Distributors*. In that case, it was held that a taxation directive (council directive 77/388) was to be interpreted as meaning that the consideration represented by a voucher was the sum received by the supplier on its sale. This was inconsistent with the manner in which the UK had implemented this directive. The VAT regime that the commissioners had applied in this case was incorrect. In 1996, Marks & Spencer wrote to the commissioners seeking a repayment of the overpaid VAT. The Revenue Commissioners applied a three-year limitation to the amount they were willing to repay. Marks & Spencer challenged that decision and the matter went on appeal to the Court of Appeal. It referred a question to the ECJ, asking whether the three-year limitation period was consistent with EC law in a situation where a member state failed to properly implement a directive. The ECJ held that article 11A(1) of the directive was sufficiently precise and unconditional to be relied on before a national court. It referred to article 10 of the treaty, which obliges states and all their authorities to take all appropriate measures to achieve the result envisaged by a directive. A directive such as this can be relied on by individuals against the state where the state has filed to implement the directive correctly. The adoption of a national measure correctly implementing a directive does not exhaust the effects of the directive. Member states still remain bound to ensure full application of the directive even after adoption of those measures. Individuals can therefore rely on directives, which have not been properly or fully implemented in actions against the state in national courts. They can also rely on the directive where national measures correctly implementing the directive are not being applied in such a way as to achieve the result sought by it. The correct implementation of a directive does not deprive individuals of relying before national courts on the rights, which they derive from those provisions, and the right to recover amounts collected by a member state in breach of them.

The ECJ then turned to the question of the limitation period. National legislation can limit the period within which repayment of sums collected in breach of EC law may be sought. However, the limitation period must be reasonable and include transitional arrangements for a period after the enactment of the legislation for lodging the claims for repayment which persons were entitled to submit under before the new legislation. Such a transitional arrangement is necessary where the immediate application of a limitation period shorter than that which was previously in force would have the effect of retroactively depriving some individuals of their right to repayment, or of allowing them too short a period for asserting that right. The UK legislation which deprived individuals of any possibility of exercising a right which they previously enjoyed with regard to repayment of VAT collected in breach of the directive was held to be in breach of the EC principle of effectiveness. The ECJ also held that the legislation breached the EC principle of the protection of legitimate expectations.

ENVIRONMENTAL LAW

Case C-396/00 *Commission v Italy,* 25 April 2002. A 1991 directive on urban waste-water is designed to protect the environment from waste-water discharges. Member states were required by 31 December 1998 to provide collection systems for urban waste-water discharges into 'sensitive areas' so that they could be subjected to more stringent treatment. By a 1999 law, Italy had identified as sensitive the delta of the River Po and the north-west coast of the Adriatic Sea, from the mouth of the Adige to Pesaro, and the watercourses that flow into them over a distance of ten kilometres from the coast. Milan does not have a waste-water treatment plant. Its untreated waste is discharged into a river system that flows into the River Po, which in turn flows into an area of the Adriatic, which is very polluted. The Italian government had asked for a state of emergency to be declared, to allow for the adoption of simplified procedure to enable Milan to proceed rapidly with the construction of the three planned treatment plants. Italy had argued that Milan was not in any of the sensitive areas identified by its legislation. The ECJ held that it made no difference whether the waste-water discharges directly or indirectly into a sensitive area. The directive makes no such distinction. The *EC treaty* provides that EU policy on the environment is to aim at a high level of protection. The objective of the directive is the protection of the environment. That objective and indeed the rationale of the treaty would be undermined if only waste-water that discharges directly into a sensitive area had to be made subject to more stringent treatment.

FREE MOVEMENT OF PERSONS

Case C-232/99 *Commission v Kingdom of Spain*, 16 May 2002. A 1993 directive provides for the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications. In the case of qualifications that allow a doctor to practice in a specialist field that corresponds to some extent, to a specialisation in another state, the host state can require the migrant doctor to undergo a period of further training. However, the host state must take into account periods of specialised training completed by migrant doctors and attested by the award of a formal qualification. The commission argued that Spain had not correctly implemented this directive. Migrant doctors were required to take part in a national competition procedure for the position of resident medical intern. It argued that this was a state test for those wishing to undergo training in specialised medicine. The commission argued that though Spain could require additional training, it could not subject access to that training to success in an examination. Spain argued that there were a limited number of posts available and that the examination established an objective means, based on principles of merit and ability, of allocating them. It argued that to exempt foreign-trained doctors from the examination could lead to Spanish doctors seeking to evade the examination by undertaking a period of training in another member state. The ECJ held against Spain. It pointed out that Spain was requiring, in principle, the participation of all migrant doctors, without distinction, in the competition, in which general medical practitioners with no specialised training have to take part in.

LITIGATION

Access to ECJ and CFI

Case T-177/01 *Jégo-Quéré et Cie v Commission,* 3 May 2002. The applicant is a French company, which owns four fishing boats. These boats used a mesh of 80mm in the waters south of Ireland. The use of these nets in that part of the EU is banned by a regulation. The applicant wishes to challenge it. The commission argued that the applicant did not have standing to challenge the new regulation, as it did not concern him individually, as required by article 230(4) of the *EC treaty*. The new regulation applied equally to all other operators fishing in the same waters. The CFI accepted this argument. The applicant's action was dismissed without examining the legality of the regulation. The CFI stated that this position was unsatisfactory as it prevented many individuals and businesses from challenging measures of general application that directly affect their legal position. None of the other procedural routes available for challenging community measures is an adequate substitute for a direct action seeking annulment. Both the *European convention on human rights* and the *Charter of fundamental rights of the European Union* affirm the right of individuals to an effective remedy before a court of law. G

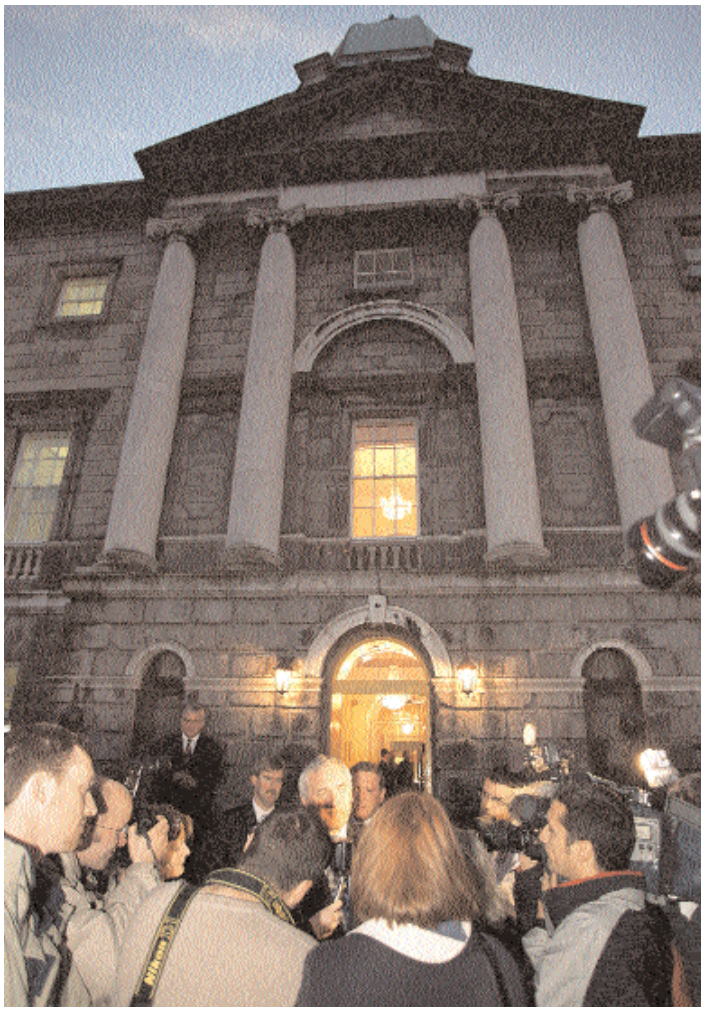
Law Society of Ireland: 150th anniversary celebrations

Last month saw the Law Society celebrate 150 years since it was granted its royal charter. The anniversary was formally marked by An Taoiseach Bertie Ahern, who officially launched a new book detailing the rich history of the solicitors' profession. Two days later, on Friday 4 October, President Elma Lynch hosted a dinner in Blackhall Place for Council members, bar association presidents and some distinguished guests. The highlight of the celebrations was a visit to Áras an Uachtaráin, on Tuesday 15 October, and a reception hosted by President McAleese

'Remember when we were TDs together?' Council member Anne Colley and the taoiseach reminisce

The leaders of two branches of government in Ireland: Chief Justice Ronan Keane and An Taoiseach Bertie Ahern

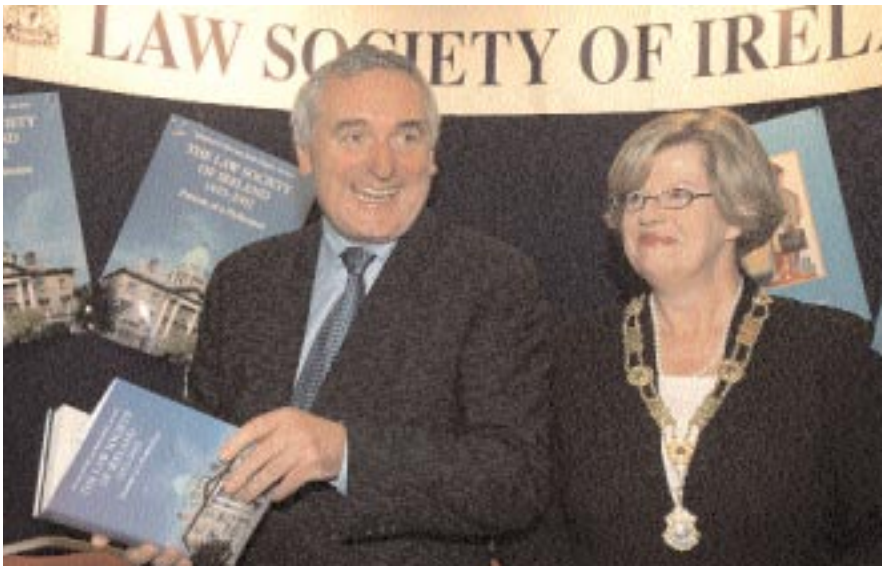
So this is what it's all about: the original Law Society charter of 1852 is examined by Law Society Director General Ken Murphy, Taoiseach Bertie Ahern and legendary two-time all-Ireland winning captain of the Dubs, solicitor Tony Hanahoe



The media pack surrounds the taoiseach as he holds a press conference on the steps of Blackhall Place

Bookmakers: at the launch of *The Law Society of Ireland, 1852-2002: portrait of a profession* were *(front, from left)* editors Daire Hogan and Eamonn Hall, taoiseach Bertie Ahern and Law Society president Elma Lynch; *(back, from left)* librarian Margaret Byrne, retired Circuit Court judge John F Buckley, senior vice-president Geraldine Clarke, director general Ken Murphy, Dr Mary Redmond, former president Michael V O'Mahony and junior vice-president Phillip Joyce

Reality TV: television cameras follow the taoiseach through the corridors of Blackhall Place



Are youse regulars? Immediate past president Ward McEllin *(left)* in bodyguard pose

The following is an edited version of the speech by An Taoiseach Bertie Ahern at the launch of *The Law Society of Ireland, 1852-2002: portrait of a profession* at Blackhall Place on Wednesday 2 October

It is my great honour to be here on the occasion of the launch of *Portrait of a profession* and on the 150th anniversary of the granting of the charter of the Law Society of Ireland. The history of the solicitors' branch of the legal profession in Ireland is an honourable one which is traced and commented upon with great clarity by Dr. Eamon Hall, Daire Hogan and other notable contributors.

The time and effort devoted to this publication is a tribute not only to its authors but to the wider solicitors' profession. The publication is a magnificent contribution to legal lore and will enhance the public understanding of the legal profession in Ireland, its traditions and the important role it performs in a society based on the rule of law.

I gather from Daire Hogan's contributions to the book that the conditions of employment of solicitors have improved somewhat over past decades. In 1936, the society's president could complain that the situations vacant advertisements showed that a plumber, at two shillings an hour, would earn more than a

Former president Anthony Collins and senior vice-president Geraldine Clarke

Distinguished guest from the bar: chairman of the Bar Council Conor Maguire SC *(centre)*, with director general Ken Murphy and Council member and former president Moya Quinlan

'How's it hangin', bud?'
The taoiseach cracks a joke with the society's head porter Tom Flanagan

The taoiseach autographs the book for junior vice-president Philip Joyce

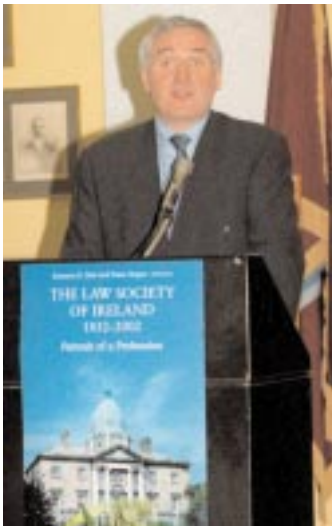
solicitor in the Land Commission at an annual salary of £175. I believe that the average solicitor these days can do a little better than that!

The respectability of the solicitor's profession seems also to have been enhanced over the years. The 1733 statute which for a time regulated the profession – albeit a century before the foundation of the Law Society – was conceived with a view to preventing 'obscure and ignorant persons' from practising as solicitors. My colleagues in government, Brian Cowen, Dermot Ahern and John O'Donoghue, all solicitors, would certainly encourage me to say that this objective has been achieved. Nowadays we recognise that solicitors make a tremendous contribution to Irish public life.

In a more serious vein, this valuable work gives just recognition to the great number of solicitors who made such contributions in many areas of our society. In particular, the role of women in the law has been recognised in Mary Redmond's chapter.

The first woman solicitor in Ireland, Helena Early, was admitted to the roll in 1923. Ms Early was building on the prior achievement of Georgie Frost of Sixmilebridge, whose appointment as a clerk of petty sessions in 1920 gave her the honour of being the first woman ever to attain public office in either Britain or Ireland.

I wish to publicly acknowledge the important role played by the Law Society in legal education. I am aware of the excellent educational services provided by the society to solicitors and trainee solicitors. High educational standards are the best guarantee that we have of public accessibility to the law. In addition, many one- and two-man firms of solicitors, located all over the state, constitute an essential network which disseminate this acquired knowledge and provide crucial legal services to the community which it serves.



I also want to pay tribute to those many solicitors who have acquired expertise in specialised areas of law and specifically in the laws of the European Union. It is striking to note that, in the recent past, solicitors have been the authors of texts on competition law, public procurement law and other stuff, as evidenced by the many worthy publications listed in this book. By pursuing postgraduate studies or obtaining practical experience in Brussels and other European capitals, there is now a great store of knowledge available to the solicitors' profession in Ireland. That can only be for the benefit of their clients and the wider community. It is a bank of legal knowledge that brings the law closer to those whose interests it is intended to serve.

Finally, on this occasion I think it is only proper that I should acknowledge a recent and significant development in the history of the Law Society. That is the appointment of the first solicitor as a judge of the High Court. I am proud that my colleague, minister John O'Donoghue, made this development possible by introducing the *Courts and Courts Officers Act, 2002*. I think you can be rightly proud of this development and I am certain that Mr Justice Peart will prove a great addition to the bench, given his unique experience as a solicitor of long standing.

150th anniversary dinner in Blackhall Place, Friday 7 October

Pictured *(from left)* are former Law Society director general Jim Ivers, Nanette Ivers, Leitrim Bar Association president Michael Keane and Dodo Keane

Edel Morrissey, president of the Waterford Law Society, Daniel Morrissey and Law Society President Elma Lynch

Pretty in pink
Deputy director general Mary Keane

Peter Donavan, president of the Dublin Solicitors' Bar Association Helen Sheedy, Robert Leeman and Council member Orla Coyne

It takes two
President Elma Lynch and Scottish Law Society president David Preston

Law Society Senior Vice-President Geraldine Clarke, former president Maurice Curran and retired Circuit Court judge John F Buckley

Mr Justice Michael Peart and Jacinta Proctor

Pauline Mannix and Joseph Mannix, president of the Kerry Law Society

President of the High Court Mr Justice Joseph Finnegan and Kay Finnegan

Helen Sheedy, president of the Dublin Solicitors' Bar Association, Circuit Court president Esmond Smyth, Law Society president Elma Lynch and senior vice-president Geraldine Clarke

Peter Flanagan, president of the Kildare Bar Association, Mary Flanagan, Pamela Rogers and Patrick Rogers, president of the Meath Bar Association

Council member Kevin O'Higgins *(centre)* has his tie adjusted with assistance from *(from left)* Fidelma McManus, Council member Stuart Gilhooly and Mayo Bar Association president James Cahill

Council member and former president Moya Quinlan, Chief Justice Ronan Keane and Irene Ganavan

Senior vice-president Geraldine Clarke, Minister for Justice, Equality and Law Reform Michael McDowell and director general Ken Murphy

Brendan Hyland, president of the Tipperary and Offaly (Birr Division) Bar Association, and Council member Owen Binchy

Visit to Áras an Uachtaráin on Tuesday 15 October

Co-editors Daire Hogan *(left)* and Dr Eamonn Hall *(right)* flank the two presidents as a copy of their book is presented to the President of Ireland, Mary McAleese, by the President of the Law Society, Elma Lynch

(Left to right) President Elma Lynch, President Mary McAleese, Director General Ken Murphy, Junior Vice-President Philip Joyce, and Council member Simon Murphy

President Mary McAleese welcomes her visitors

Group photo of President Mary McAleese in the state reception room with the Law Society Council members, those involved with the 150th anniversary book and representatives of the society's staff

President McAleese greets solicitor Dr Mary Redmond, who wrote a chapter in the book, watched by Council members Eamon O'Brien and John Costello

President McAleese greets Council member Pat Casey, watched by Council member Eamonn Fleming

President McAleese with Council members Edward Hughes and James MacGuill *(left)* and Angela Condon *(right)* with deputy director general Mary Keane *(centre)*

Council member Simon Murphy, director general Ken Murphy and President Mary McAleese are pictured in front of the painting of the first-ever meeting of the Council of State in 1940, chaired by President Douglas Hyde, which hangs in the Council of State room

President McAleese greets *(from left)* Council members Stuart Gilhooly, Michael Quinlan, Anne Colley and Orla Coyne

Law Society staff members Linda Dolan, Catherine O'Flaherty and deputy director general Mary Keane

Council member John Costello presented President McAleese with a copy of his own book

President McAleese greets Council member Patrick Dorgan

President McAleese greets Council member Donald Binchy

European chief executives meet in Dublin

The chief executives of national law societies and bar associations, collectively representing more than 250,000 lawyers in Europe, met in Dublin recently for the 43rd meeting of ESSEBA (English-speaking secretaries of European bar associations). The annual meeting of ESSEBA, which was founded in 1959 and predates many other international lawyers' organisations, takes place in a different European city every year. It was last held in Ireland in 1990.

At the annual meeting in Berlin last year, director general Ken Murphy was elected to a two-year term as chairman.

In addition to its annual meeting, the members of the ESSEBA network remain in contact on a regular basis to exchange information and ideas on the regulation, education and representation of the legal profession across Europe and seek to develop better responses to the challenges facing the legal profession. Although these challenges are largely the same in the different European countries, there are usually nuances of difference in the way in which the challenges present themselves and are responded to, from which valuable insights may be gained.

(Back row, from left) Dierk Mattik (Germany), Ketil Stene (Norway), John Bailie (Northern Ireland), Henrik Rothe (Denmark), Rene Rall (Switzerland) *(Front row, from left)* Jonathon Goldsmith (CCBE), Markku Ylonen (Finland), Anne Ramberg (Sweden), Ken Murphy (Ireland), Janet Paraskeva (England & Wales), Jan Suyver (The Netherlands), Douglas Mill (Scotland)

At the ESSEBA dinner in Dublin Castle were (*left to right*) Director General Ken Murphy, Niamh Brennan, Minister for Justice, Equality and Law Reform Michael McDowell, President Elma Lynch and Yvonne Chapman

At the meeting in Blackhall Place, for part of which the president of the CCBE, John Fish, was present, much discussion focused on the core values of the legal profession and how they may be protected. There was an assessment of the multi-disciplinary partnerships issue in the wake of the *NOVA* judgment of the European Court of Justice – for which judgment Jan Suyver, chief executive of the Nederlandse Orde van Advocaten (NOVA), was congratulated. A major discussion also took place on the Law Society of England and Wales' highly controversial proposals for 'Tesco legal services' as explained by that society's chief executive Janet Paraskeva.

In addition, a review of the actions of competition regulators in individual jurisdictions and at EU level took place to identify what studies were underway and what points they had reached.

The working session took place over two days and on the Friday evening a dinner for the ESSEBA members was held in Dublin Castle, at which the host and guest of honour was the Minister for Justice, Equality and Law Reform, Michael McDowell.

The plough and the stars

Ballacolla was the place to be from 24-26 September, as the National Ploughing Championships were in full swing. As has been the practice for a number of years, the Law Society had a stand at the event, which was a hub of activity over the three days.

The 12 local solicitors who helped out on the stand were kept busy by a constant stream of people looking for advice on all matters legal, most noticeably making wills and land law issues. Some farmers were so impressed with the advice being given that they returned three days in a row.

The Law Society could not have been present at the championships without the support of local solicitors, and I would like to sincerely thank all of those who gave generously of their time: Yvonne Bolger and Philip Meagher, Rollestons, Portlaoise; Linda Brophy, James E Cahill & Co, Main Street, Abbeyleix; Paul Cunningham, White and Company, Abbeyleix; Finola Dunne, Vincent P Garty & Co, O'Connell Square, Mountmellick; Michelle Fagan, JP Fitzpatrick & Co, Portlaoise, John Fetherstonhaugh, Mountmellick; Paul Fetherstonhaugh, Mountrath,

Bernadette Greene and Billy White, White & Breen, Portlaoise; John Holland, Holland & Condon, Castlecomer; and Michael Ryan, PP Ryan & Co, Rathdowney.

The National Ploughing Championships will take place in Meath next year, so be warned – I will be looking for volunteers !

Michelle Nolan is the Law School's information and professional development executive.

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SADSI
Solicitors Apprentices Debating Society of Ireland

SADSI elections 2002: we want you!

Yes, it's that time of year again for a new batch of enthusiastic, hard-working and selfless trainee solicitors to take over the reigns of SADSI. It's certainly hard to believe that we are now coming to the end of our time in office, but all good things must come to an end. From speaking to those on the new PPC1 course, I know that many of you are interested in becoming involved in SADSI as it is the only representative organisation for trainee solicitors in Ireland. Over the years, SADSI has worked most successfully when the committee is representative of all stages of the training process, so applications are welcomed from all at whatever stage you are at. However, to be eligible for the position of auditor, you must be bound by your indentures until at least 30 September 2003.

Further information in respect of this year's election will be sent to all trainee solicitors in early November, which will set out the date by which nominations must be received and also the date of the AGM, which will be held in December. Should you have any queries in relation to this year's election, please do not hesitate to contact any SADSI committee member or, alternatively, e-mail us at *2002@sadsi.ie*.

Áine Matthews, vice-auditor

Southern members uncorked

Friday September 27 saw the regional event for Cork in the *Exchange Bar* at Sullivan's Quay. Many thanks to Connor Smith for the venue and food supplied and also to Barry O'Neill from Guinness for the sponsorship. Also, thanks to Cormac O'Regan for helping to spread the word through the grapevine. Being our second biggest city, it was a great opportunity for people to get to know other trainees in different offices around the city and county.

Anyone interested in meeting up for lunch with other Cork trainees on a weekly basis should send a mail to *corklunchgroup@yahoogroups.co.uk*.

A further night is in the pipeline over the next few weeks. Thanks to all for coming and we hope to see you again soon for another night of booze and banter.

Ken Hegarty, southern representative

Trainees in the city of the tribes

This autumn's western event got off to a great start on Friday 20 September last in Tí na nÓg, Galway, with trainees from all parts of Ireland down to experience the infamous Galway night life. After a couple of cocktails and a bit of encouragement, the Cork contingent took centre stage with a resounding rendition of *My own lovely Lee*, sparking off a singalong to beat all others. Dancing was not far behind. Needless to say, a great night was had by all.

Dawn Carney, western representative

Garrett Searson and Dawn Carney at the Galway event

A word from the auditor

Our colleagues down in the King's Inns, the Law Students' Debating Society of Ireland, kindly invited SADSI members to attend a debate on the *Nice treaty* which was chaired by Mr Justice Fennelly on Thursday 10 October.

It was a most interesting and enjoyable evening. In fact, the evening went so well that it was decided that the two societies should co-ordinate more frequently. To this end, a joint fancy dress Halloween party was held in the Odeon on Thursday 31 October. Pictures of the more outlandish outfits will be posted to the SADSI website.

Ronan Feehily, the SADSI debating co-ordinator, is committed to ensuring that the considerable debating heritage of the society is maintained. Those interested in taking part in debating this year should drop Ronan a line at *2002@sadsi.ie*.

Martin Hayes, auditor

Countdown to SADSI ball 2002

SADSI ball tickets went on sale on Monday 21 October and sold out nearly as fast as tickets for a U2 concert. You were warned! The night is expected to be a great success, with plenty of little surprises to make it extra-special. At this stage, on behalf of SADSI, I would like to thank the many firms who generously supported the ball, which at the time of writing included: Bizquip, McCann FitzGerald, Arthur Cox, BCM Hanby Wallace, LK Shields, Solicitors, A&L Goodbody, Rochford Brady, Landwell Solicitors, McMahon O'Brien Downes, Connolly Sellors Geraghty Fitt, and Dermot G O'Donovan & Partners.

Julie Brennan, eastern representative

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 1 November 2002)

Regd owner: John Kelly; folio: 1111F; lands: townland of Ballinabranagh and barony of Idrone West; **Co Carlow**
Regd owner: Kathleen Smith and Sean Smith, 6 Jubilee Terrace, Cavan; folio: 82L; lands: 6 Jubilee Terrace; **Co Cavan**
Regd owner: Gerard McCarthy; folios: 347F and 18071; lands: townland of Tromracastle and barony of Ibrickan; **Co Clare**
Regd owner: Patrick Carr and Agnes Theresa Carr, Cashel, Gortahork, Letterkenny, Co Donegal; folio: 35263; lands: Cashel; area: 9.6812 acres; **Co Donegal**.
Regd owner: Joseph McMenamin, Stranolar, County Donegal; folio: 4698; lands: Ballybofey; area: 4.875; **Co Donegal**
Regd owner: Tadgh McGinley, Meenaneary, Carrick, County Donegal; folio: 16945; lands: Meenaneary; area: 8.6375 hectares and 104.3001 hectares; **Co Donegal**
Regd owner: Sandra Rabbitte (orse Hannigan); folio: DN66080F; lands: property situate in the townland of Knockmitten and barony of Uppercross; **Co Dublin**
Regd owner: Bridget and Sean Carr; folio: DN20194F; lands: property known as 248 Orwell Park Estate, situate in the townland of Templeogue and barony of Uppercross; **Co Dublin**
Regd owner: William Gerard O'Reilly; folio: DN70930L; lands: property being flat no 3 on the second floor of the block on the north side of Terenure Road East in the parish of Rathfarnham and district of Rathmines; **Co Dublin**
Regd owner: Mary Ellen O'Connor; Folio: 33907; lands: townland of Newcastle and barony of Tiaquin; area: 3.0856 hectares; **Co Galway**
Regd owner: John Griffin and Bernie Griffin; folio: 200 (revised); lands: Rosmuck, containing 8.513 hectares and an undivided moiety of lands containing 10.438 hectares; **Co Galway**
Regd owner: John Pat Long; folio: 31591F; lands: townland of Ballintlea and barony of Corkaguiny; **Co Kerry**
Regd owner: Patrick and Mary Healy: folio: 240R; lands: townland of Meenascarty and barony of Corkaguiny; **Co Kerry**
Regd owner: Anthony Mulhall; folio: 6760F; lands: Maryborough and barony south of Main Street in the town of Portlaoise; **Co Laois**
Regd owner: Michael Gallagher; folio: 2460F; lands: Wardhouse; area: 0.775 acres; **Co Leitrim**
Regd owner: Frank and Angela Hassett; folio: 33860F; lands: townland of Sluggary and barony of Pubblebrien; **Co Limerick**
Regd owner: Sean Walsh; folio: 2643; lands: townland of Cloncagh and barony of Connello Upper; **Co Limerick**
Regd owner: Patrick Brennan, Killencoole, Readypenny, Co Louth; folio: 2589; lands:

Killincoole; area: 29.2875 acres; **Co Louth**

Regd owner: Patrick McGuinness, The Glebe, Ardee, Co Louth; folio: 625; lands: Glebe; area: 2.3674 hectares; **Co Louth**

Regd owner: Bridie Hannon; folio: 4839; lands: townland of Devlis and barony of Costello; area: 5.5871 hectares; **Co Mayo**

Regd owner: Anthony Mullarkey; folio: 48756; lands: Glencullen Upper, Bangor Erris, Ballina, **Co Mayo**

Regd owner: Thomas Bruton, Cullendragh, Dunboyne, Co Meath; folio: 15566F; lands: Clonymeath; area: 131.169 hectares; **Co Meath**

Regd owner: Patrick Smith, Rathmore, Athboy; folio: 23681; lands: Rathmore; **Co Meath**

Regd owner: Celene Hopkins, Lurganmore, Castleblayney; folio: 3324F; lands: Lurganmore; area: 0.667 acres; **Co Monaghan**

Regd owner: Edward Creaton; folios: 13916, 13917, 13919, 21963; lands: townland of Loughlinn and barony of Frenchpark; **Co Roscommon**

Regd owner: Annie Ownes (deceased), Scramoge, Roscommon; folio: 29642; lands: townland of Kilmacananneny and barony of Roscommon; area: 0.2910 hectares; **Co Roscommon**

Regd owner: Martin Joseph Mulvihill; folio: 23690; lands: townland of Kilvoy/Edenan/Kinclare and barony of Roscommon; area: 9.0978; **Co Roscommon**

Regd owner: Mark Mullaney and Dympna McEneaney; folio: 4911F; lands: townland of Ballydoogan and barony of Carbury; **Co Sligo**

Regd owner: Johanna Coffey; folio: 20169; lands: townland of Oldtown and barony of Eliogarty; **Co Tipperary**

Regd owner: Edward O'Brien; folio: 3731F; lands: Killincooly and barony of Ballaghkeen North; **Co Wexford**

Regd owner: Eamonn Buttle; folio: 10061F; lands: Ballinastraw Lower and barony of Gorey; **Co Wexford**

WILLS

Cass, Walter (deceased), late of 21 Greenville Terrace, South Circular Road, Dublin 8. Would any person having knowledge of a will made by the above named deceased, please contact Paul McCutcheon, A&L Goodbody, Solicitors, IFSC, North Wall Quay, Dublin 1, tel: 01 649 2446 or e-mail: *pmccutcheon@algoodbody.ie*

Collins, James (deceased), late of French Lane, Stackallen, Navan, Co Meath. Would any person having knowledge of a will made by the above named deceased who died on 29 July 2001 at St Joseph's Hospital, Trim, Co Meath, please contact Oliver Shanley & Company, Solicitors, 11 Bridge Street, Navan, Co Meath, tel: 046 28333 or fax: 046 29937

Daly, John (deceased), late of 3 Belmont, Renmore, Galway and formerly of 37 Lurgan Park, Renmore, Galway. Would any person having knowledge of a will executed by the above named deceased who died on 16 September 2002, please contact Florence G MacCarthy & Associates, Solicitors, Loughrea, Co Galway, tel: 091 841 529 or fax: 091 842 180

Griffin Patrick (deceased), late of The Colony, Strand Street, Dingle, Co Kerry. Would any person having any knowledge of a will being made by the above named deceased who died on 10 May 2001, please contact Gallagher Shatter, Solicitors, 4 Upper Ely Place, Dublin 2, tel: 01 661 0317 or fax: 01 661 1685

Ryan, John (deceased), late of 18 Main Street, Chapelizod, Dublin. Would any person having knowledge of a will made by the above named deceased who died on 21 September 1999, please contact Sean O'Ceallaigh & Co, Solicitors, 363 North Circular Road, Dublin 7, tel: 01 830 0565, fax: 01 830 5841

Shallow, Edward (deceased), late of Doonane, Crettyard, Carlow, who died 14 June 2002. Would any person having knowledge of the whereabouts of any will of the above named deceased, please contact Rollestons, Solicitors, Church Street, Portlaoise, Co Laois, tel: 0502 21329, fax: 0502 20737, e-mail: *info@rollestons.ie*

EMPLOYMENT

Assistant solicitor required with competence in the areas of conveyancing, probate and civil litigation for expanding practice in Carrick-on-Shannon, Co Leitrim. Apply with CV to Hugh McGarry at George Lynch & Son, Solicitors, Bridge Street, Carrick-on-Shannon, Co Leitrim, tel: 078 20017/21127, fax: 078 20600

Part-time solicitor required for busy general practice in the south side of Dublin. Hours flexible. Experience required. Reply to **box no 200**

Solicitor required for busy well-established Cavan practice. Minimum of three years' general experience. Excellent terms and prospects for right candidate. Contact Thomas McDwyer, PJF McDwyer & Co Solicitors, Belturbet, Co Cavan, tel: 049 952 2178

Solicitor with minimum of three years' post-qualification experience required for Kilkenny practice. Experience in conveyancing and probate essential. Please reply to **box no 201**

Solicitor with two+ years' PQE. Qualified in England with London firm. Registered with Law Society of Ireland. Seeks to relocate to Ireland. Extensive advocacy and experience in civil litigation, personal injury, family, landlord and tenant. Excellent references. Reply to **box no 202**

Locum solicitor required; November 2002 to June 2003 with experience of general practice. Contact Conor Maguire & Co, 99B Rathgar Road, Dublin 6, tel: 01 492 6166, fax: 01 492 6170

Solicitor with over eight years' experience in general practice seeks position, part-time, initially in the Mayo/Sligo area. Five mornings or three days a week may suit. Reply to **box no 203**

We are looking for a lawyer with general experience to work with one of the fastest-growing companies. Must be able to deal with a myriad of legal issues including land, contract, corporate, employment and regulatory. Salary commensurate with experience. CV to Lavery Kirby Gilmartin, Main Street, Blackrock, Co Dublin, e-mail *info@laverykirby.ie*

Westport practice seeks dynamic, innovative, computer literate, qualified solicitor with a minimum of two years' PQE in all areas of general practice to include court work. Excellent career prospects for suitable applicant. CV, photograph and references to **box no 204**

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*

EYE INJURIES AND OPHTHALMOLOGICAL NEGLIGENCE

Mr Louis Clearkin ChM, FRCS, FRCOphth, DO, MAI, MEWI
Consultant Ophthalmic Surgeon

Experienced expert witness in ophthalmological personal injury, medical negligence and civil litigation

Renuntiabo, 8 Rose Mount, Oxton, Wirral, Merseyside, L43 5SW

secretary: +44 (0) 151 6047047
fax: +44 (0) 151 6047152

e-mail: L.Clearkin@Liv.ac.uk

Wanted: ordinary seven-day publican's licence. Please contact O'Carroll & Company, Solicitors, 19A Merchants Road, Galway, tel: 091 565516, fax: 091 562393, e-mail: ocarrollsolicitors@eircom.net

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*: an application by Diarmuid O'Ceallaigh

Notice to any person having any interest in the freehold estate of the following properties: no 80 North Circular Road, Dublin 7, formerly known as no 29 North Circular Rd and 5 Bessborough Terrace, held under lease dated 20 October 1947 and made between Linda Aylward and others and Thomas F Byrne and Alice Byrne for a term of 100 years from 29 September 1945 at the yearly rent of £10; and no 82 North Circular Rd, Dublin 7, formerly known as no 28 North Circular Rd and 6 Bessborough Terrace, held under lease dated 2 January 1948 and made between Linda Aylward and others and Alice Valentine Lynch for 100 years from 29 September 1945 at the yearly rent of £10.

Take notice that Diarmuid O'Ceallaigh, the owner, has submitted an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid properties and any party asserting that they hold a superior interest in the aforesaid properties (or any of them) are called upon to furnish evidence of title to the aforementioned properties to the below named solicitors within 21 days from the date of this notice.

In default of any such notice being received by the below named solicitors, the said Diarmuid O'Ceallaigh 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 the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid properties are unknown or unascertained.

Date: 15 October 2002
Signed: Sean O'Ceallaigh & Co (solicitors for applicant), 363 North Circular Rd, Dublin 7