Law Society Gazette

Regulars

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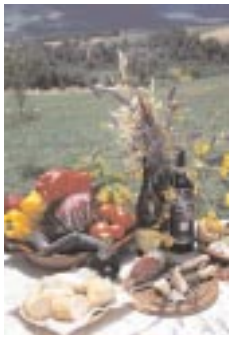

Cover Story

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Living in interesting times

The Chinese curse *May you live in interesting times* never seemed more apt. On the one hand, the profession's collective jaw dropped as we read comments made by the chairman of the Competition Authority, apparently suggesting that the Law Society's regulatory role should be removed from it and replaced with a single regulatory Law Council for both solicitors and barristers. As you will doubtless all know by now, Mr Fingleton has since recanted and said that he was misquoted in the press. For more on this story, please see page 5 of this issue of the *Gazette*. Suffice it to say that this whole episode has hardly filled us with confidence that the Competition Authority study will be carried out with an open mind and without personal bias.

We have always said that the solicitors' profession has nothing to fear from a Competition Authority study of the provision of professional services. Indeed, we have long believed that we have a good story to tell and were glad of the opportunity to tell it (and, incidentally, the European Commission seems to agree with us, as you will see from the report on page 6). However, recent events suggest that this might not be the case after all. If the Competition Authority has made up its mind in advance of the study, then we have a great deal to fear indeed.

The other 'interesting' development has been the recent publication of the *Civil Liability and Courts Bill* by the Minister for Justice, Equality and Law Reform, Michael McDowell. There are many aspects to this bill that we broadly welcome. Indeed, many parts of the bill are based on recommendations for reform of the personal injury litigation system that the Law Society published in October 2002. And we are happy to claim some credit for the more balanced approach to be found in the bill, a balance that was absent when the heads of bill were published last July. In this regard, for example, the minister seems to have been swayed by our arguments that the proposed new requirement on plaintiffs to swear a verifying affidavit in relation to the underlying truth of what is contained in the pleadings should apply equally to defendants.

But, of course, for all the positive things contained in the bill, there is one huge negative, in the shape of the reduction in the statute of limitations period for bringing a personal injury claim from three years to one year. As the director general points out elsewhere in this issue (page 7), this change is grossly unfair to accident victims, particularly victims of medical negligence, and is almost certain to lead to injustice.

'The proposal is unreasonable and will end up victimising the victims of accidents'

Victimising the victim

The proposal is unreasonable and will end up victimising the victims of accidents. It is unreasonable because those who have been involved in a serious accident, and their legal representatives, cannot possibly know the full extent of the injuries or their likely long-term effects. Anyone practising in this area knows that a year is far too short a timeframe to determine the outcome of an injury. Yet the minister, a practising lawyer himself, has persisted in pushing through this provision requiring the injured party to initiate a claim within 12 months.

I can see no moral or legal justification for this provision, although the economic justifications have been trotted out with mind-numbing regularity. Perhaps it's not too late to hope that some modicum of common sense will afflict the proponents of this bill. Or, failing that, some compassion for those whose lives have been shattered through the negligence of others.

We will see. The curse of interesting times, indeed.

Gerard F Griffin,
President

SEMINAR ON ARBITRATION AND MEDIATION

The Young Members Committee of the Dublin Solicitors' Bar Association will hold a seminar on *Arbitration and mediation in practice* on 11 March in the Shelbourne Hotel, Dublin 2, starting at 6pm. Laurence Fenelon from Reddy Charlton McKnight will speak on arbitration and Paulyn Marrinan Quinn SC on mediation.

NEW VAT CLAUSE IN STANDARD CONTRACT

The Conveyancing Committee has inserted a new VAT clause into the Law Society's standard contract for sale. The text has been circulated to solicitors and will be incorporated in the next print run of the contract document. The committee emphasises that this is an important amendment and practitioners should make themselves as familiar with it as possible.

BCM OPENS FIRST HEALTH SERVICES DEPARTMENT

The specialist health services department of Dublin law firm BCM Hanby Wallace was officially opened by High Court president Joseph Finnegan on 19 February at the firm's new offices at the former children's hospital at 88 Harcourt Street, Dublin 2. The new unit, the first in any Irish law firm, provides specialist legal advice across the health services.

New Disciplinary Tribunal chairman lays down the law

The new chairman of the Solicitors Disciplinary Tribunal has issued a stark warning to errant solicitors: 'You don't want to come before us', said Frank Daly.

Daly, president of the Law Society in 1996/97, took over as chairman of the tribunal three months ago, following the retirement of Tom Shaw, who was Law Society president in 1987/88.

The tribunal is appointed by the president of the High Court and is completely independent of the Law Society. The vast majority of complaints to the tribunal come from the Law Society, but individuals who are unhappy with the society's complaints-handling procedure can apply to the tribunal directly.

'The disciplinary hearing', says Daly, 'is almost like a Circuit Court trial'. It's in our new building in Bow Street, which is set up like a court room. The Law Society is represented by either the Law Society solicitor or sometimes counsel, and the respondent solicitor often comes in with senior and junior counsel. It's treated very seriously, and the whole thing is recorded'.

Frank Daly: 'Don't come before us. You're not going to like it'

The new chairman is aware of the disquiet in the profession over the reports of Disciplinary Tribunal hearings being published in the *Gazette*. The issue was even debated at last month's Law Society Council meeting (see *Council report* on page 37 of this issue), but Daly is unapologetic.

'It's a public forum', he says. 'Anyone can come in off the street and sit down and watch it – and that includes the press. It's probably inevitable that at some time or another the press are going to attend one of these hearings, particularly if it's a high-profile case.

'It is extremely important that the profession knows what happens and if there are complaints against individuals, and particularly a series of complaints, that people know who's been complained about and what the disciplinary procedure is. It would seem to me that it's a very effective weapon.

'The poor respondent doesn't particularly want his name to be read by his peers, but he shouldn't have gotten himself into the mess that he's in. An enormous number of cases that we have could have been resolved by the individuals involved'.

The Disciplinary Tribunal aims to deal with all complaints made to it within a year, he says: 'We want to be fair, we want to be firm and we want to be fast'.

And he concludes: 'You don't want to be before us. Do your business with the Law Society. Do it with the complainant. Don't come before us. You're not going to like it'.

ONE TO WATCH: NEW LEGISLATION

EU (Lawyers' Establishment) Regulations 2003

These regulations (SI 732/03) to implement the *Establishment directive for lawyers* (directive 98/5 of the European Parliament and council, 16 February 1998) were finally signed into law on 29 December 2003, over three years after the agreed implementation date in March 2000. The directive entitles a lawyer to move to any other EU member state and practice law under his home title. After a period of three years, the visiting lawyer may choose to take out the local qualification and cannot be required to pass any examination or test in order to do so.

Registration

Article 3 of the directive makes it obligatory for the immigrant lawyer to register with the competent authority in the state in which he is practising. The regulations provide for registration of immigrant lawyers by the Bar Council and the Law Society (competent authorities), who must liaise closely with corresponding authorities in other member states to facilitate implementation of the directive and prevent abuse. An application to register must be accompanied by:

- A certificate confirming the applicant's registration with the home authority
- Confirmation of an indemnity against any losses arising from claims against the applicant in respect of professional activities in the state, in accordance with the rules of the Law Society or Bar Council
- If the applicant wishes to pursue the activities of a solicitor, confirmation of payment of the annual contribution to the compensation fund payable by solicitors
- Confirmation of professional indemnity insurance cover or membership of a professional guarantee fund, in accordance with the rules of the home member state
- Confirmation that the cover is equivalent in terms of the conditions and extent as that required for solicitors and barristers, or, if not equivalent, that additional cover has been

Competition boss retracts comments, saying he was 'misquoted' in press

Competition Authority chairman John Fingleton has backed away from claims that he wants to remove the Law Society's regulatory role, saying that he was misquoted in the *Irish Times*. In a recent interview with the newspaper, he declared that 'it is time to remove the Law Society's regulatory role, and to bring all barristers and solicitors into a single profession of lawyers'.

As a result of the interview, the Law Society cancelled a meeting with the Competition Authority that was due to take place the day after Fingleton's comments were reported, and called on the chairman to step aside while the study of the professions was being carried out.

In a stinging letter to Fingleton, Law Society president Gerard Griffin said he was 'dismayed' to read his comments, particularly because they 'were made by the holder of a statutory office in a statutory body which is in the process of conducting a statutory study'.

And he continued: 'In the light of your remarks today, we believe that the Competition Authority's study of the solicitors' profession is a process that lacks integrity. It is difficult to believe in the integrity of a process whose conclusions are published in advance.

'I write this letter to seek an undertaking from you that the Competition Authority's study in relation to solicitors will be conducted in accordance with fair procedures and with an open mind. In addition, I am seeking an assurance that your personal bias in favour of certain conclusions, as set out in today's *Irish Times*, does not represent the pre-judged views of the authority.

'We are entitled to be assured that conclusions other than those already indicated by you may truly be reached by the authority at the end of this study. We believe that any such assurance should be underpinned by an agreement from you to step aside and to play no further role, directly or indirectly, in this study'.

Responding the next day, Fingleton said he was 'happy to confirm that the authority's study has always been and will continue to be conducted in accordance with fair procedures and with an open mind. I would also like to state categorically that my mind is not made up in respect of any issue … the report in the *Irish Times* does not accurately reflect what I said. In the interview with the *Irish Times*, I made it very clear that I was merely outlining the issues under examination, and not expressing any view on them'.

Fingleton: 'my mind is not made up'

He added: 'We very much welcome the input of the Law Society in the preparation of the consultation paper … Only in the preparation of the final conclusions and recommendations will the authority make up its mind. Even then, the final conclusions and recommendations of the authority have no decisive effect. The authority has no power to change how the profession is regulated, and merely gives advice to government'.

At the time of going to press, it was unclear as to whether the Law Society was prepared to reschedule its planned meeting with the Competition Authority. Acknowledging Fingleton's climbdown, president Gerard Griffin wrote to the authority chairman saying that he would have to consult with members of the Law Society Council before deciding on the appropriate course of action.

• Separately, the Southern Law Association has called on John Fingleton to resign immediately as a result of his media comments, saying: 'It seems that the chairman has already made his mind up. He is clearly more interested in the hydrogen of self-publicity than the oxygen of objective analysis … He must resign now to ensure the integrity of the important study that is underway, and which is welcomed by solicitors, who believe that they have nothing to fear from an independent and objective analysis'.

arranged
- Where required, translations of documents
- The fee specified by the competent authority.

This will result in a registration certificate and entry of the applicant's name on a public register established for this purpose. A registration certificate must be renewed annually. Registration may be subject to conditions. It is possible for an applicant to apply to the alternative registering body, but no lawyer may be registered with both. Regulation 4(3) provides for representation at least involving the right to vote in elections to the professional governing bodies (Bar Council or Law Society).

Scope of the immigrant lawyer's right to practice

Article 5 of the directive provides that the immigrant lawyer can carry on the same activities as he would be entitled to in his home state, under his home professional title. He can advise on the law of the host state as well as that of his home state and EU law, and has a right of audience before courts and tribunals in conjunction with a locally-qualified lawyer. Article 5(2) provides that, in states where conveyancing and probate work is reserved to a certain category of lawyer, lawyers coming from other states where such activities are carried on by non-lawyers can be excluded from practising such activities. This would seem to bar lawyers coming from most EU member states from conducting conveyancing and probate work, with the exception of English and Scots solicitors (and possibly some Scandinavian lawyers), and is implemented in regulation 10(4).

Rules of professional conduct

Article 6(1) of the directive provides that the immigrant lawyer is subject to the rules of professional conduct that apply to lawyers in the host state. Thus, immigrant lawyers in Ireland will be subject to the professional conduct and the solicitors' accounts rules if they register with the Law Society.

Article 7 provides that if the

CONTINUED OVERLEAF →

COMPENSATION FUND PAYOUT

The following claim amount was admitted by the Law Society's Compensation Fund Committee and approved for payment by the Law Society Council at its meeting in February: Michael P McMahon, 5/6 Upper O'Connell Street, Dublin 1 – €8,266.

SOLICITORS' BENEVOLENT ASSOCIATION AGM

The 114th AGM of the Solicitors' Benevolent Association will be held in Blackhall Place on Wednesday 21 April at 12.30pm. The agenda includes the annual report and accounts for the year ended 30 November 2003 and election of directors.

Competition kudos from EC

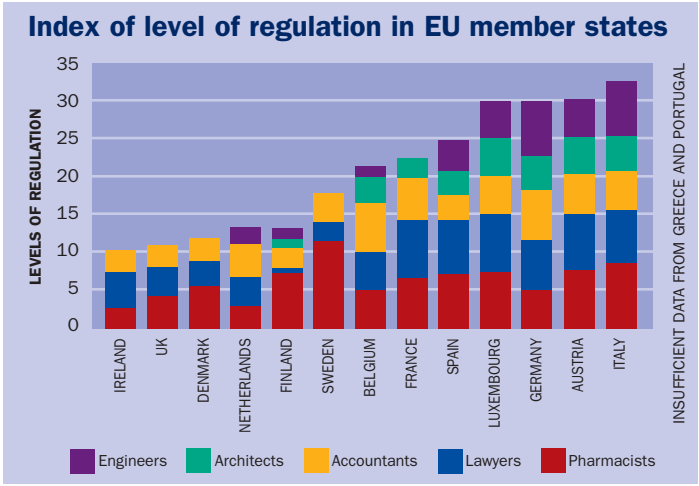
Which of the EU member states is officially the one with the least regulation of professions? In other words, which is the most liberal – that is to say, the least restrictive in competition law terms – in its regulation of the major professions? The answer is Ireland, *writes Ken Murphy*.

The European Commission published a report on competition in professional services on 9 February. That report refers to a study, commissioned by the European Commission itself, by a Vienna-based consultancy firm. Under review was the level of regulation, in accordance with certain defined indices, across five professions, namely, engineers, architects, accountants, pharmacists and, yes, lawyers.

The most restrictive in regulatory terms – what the European Commission would view as the most anti-competitive – was Italy. Next to Italy was Austria, followed by Germany, Luxembourg, Spain, France, Belgium, Sweden, Finland, the Netherlands, Denmark, the UK and, finally, as the shining light among EU member states on this index, Ireland.

Of course, the best can always get better. Still, one wonders, with the 'target-rich environment' for competition investigation in Ireland referred to recently by the chairman of the Competition Authority, John Fingleton, why are the limited resources of Ireland's Competition Authority now being devoted to reviewing competition in the professions?

Because it is a target-rich environment for newspaper headlines, perhaps?



Judicial review examined by LRC

The recommendations of the Law Reform Commission's *Report on judicial review procedure*, published last month, should improve the speed and efficiency of procedures used by the High Court to examine the decisions of lower courts or quasi-judicial bodies.

The commission recommends that the preliminary 'leave' stage of judicial review, which usually involves an *ex parte* application and has the effect of filtering out unarguable cases quickly, should be retained, but that in exceptional cases the judge should have the power to require that both sides are involved.

Where there are currently two different time limits for judicial review applications – six months and three months, depending on the nature of the case – the report recommends one general time limit of six months.

The report also says that, because a judicial review can involve multiple legal points, with some being successful and others failing, there should be a special provision for apportioning costs so that only a portion of costs are awarded where only part of the case is successful.

→ CONTINUED FROM PAGE 5

'obligations in force in the host member state' are not complied with, the rules of procedure, penalties and remedies provided for in the host member state shall apply. Therefore, immigrant lawyers practising as solicitors are subject to the full rigour of the *Solicitors Acts* and regulations. This is reflected in regulations 11 and 12 of the 2003 regulations.

Integration/admission

Under article 10(1), an immigrant lawyer is entitled to be exempted from taking the aptitude test if he can show that he has 'effectively and regularly' pursued 'an activity in the law of Ireland' for a period of three years. An activity of Irish law includes EU law, and under regulation 16(4), in certain circumstances, at the discretion of the competent authority, exemption may be granted if the period for which the applicant practised Irish law was less than three years, provided professional activities were pursued for at least that period in the state.

Regulation 16 implements the requirement that the immigrant lawyer is to furnish the host competent authority with proof of the practice of Irish law. He is to provide the competent authority with any relevant information and documents, notably on the number of cases dealt with and their nature. The competent authority may verify the nature of the activity pursued. If necessary, it can request the applicant to provide oral or written clarification or further details on the information and documents provided.

The article gives very limited grounds for refusal. Article 10(4) provides that a refusal can be made by a reasoned decision, subject to appeal, where this is in the public interest, notably because of disciplinary proceedings, complaints or incidents of any kind. This right of refusal appears to be premised on conduct of the applicant, rather than legal competence or knowledge. It is reflected in regulation 16(7). G

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

McDowell bill 'will lead to injustice'

The Law Society has broadly welcomed the recent publication of the *Civil Liability and Courts Bill* by justice minister Michael McDowell. Much of the bill is based on recommendations for reform of the personal injury litigation system, published by the Law Society in October 2002.

But according to Law Society director general Ken Murphy, some aspects of the bill, particularly the reduction of the statute of limitations period for bringing a claim from three years to one year, 'are grossly unfair to accident victims and will lead to injustice'.

He said that the society was particularly pleased that a number of its arguments had been accepted by the minister, with the result that the bill as published was different from, and more balanced than, the heads of bill published last July. For example, the society had argued that, in the interests of balance, the proposed new requirement on plaintiffs to swear a verifying affidavit in relation to the underlying truth of what is contained in the pleadings should apply equally to defendants.

'To provide otherwise would have implied that only plaintiffs had the potential to lie or exaggerate or have an interest in doing so', says Murphy. 'The same is equally true of

McDowell: his bill is 'good news for bad medicine'

defendants. The rules of court should not suggest that the evidence of one party is inherently more credible or incredible than that of another party. Despite initial reluctance to accept it when the point was put by us to the minister at a meeting last November, he has now accepted the validity of the Law Society's argument. As is clear from section 13 of the bill, defendants must also swear affidavits'.

But the society remains totally opposed to the proposal to reduce the statute of limitations period for personal injury actions from three years to one year. Murphy believes that the potential for resulting injustice in cases of every kind is particularly well illustrated by a consideration of medical negligence cases.

He points out that 'in RTÉ's *PrimeTime investigates* programme entitled *Bad medicine* last December, experts in the Harvard Medical School are quoted as saying that it was likely that 14,000 people are injured or killed in Irish hospitals every year as a result of preventable medical error. Of these, only a small proportion, less than 4%, ever sue'. *PrimeTime* described the situation in Ireland as 'anything but a compensation culture'.

According to Murphy, the society views it as 'almost incredible in the circumstances that the government's response is to reduce the period within which a negligence claim can be brought from three years to one year. What will be the result? Only a tiny proportion of justifiable medical negligence claims are currently being brought. With less time to investigate and initiate a claim, even fewer victims will receive the redress and vindication to which they are entitled'.

And he added: 'The only beneficiaries will be negligent medical practitioners. The culture of cover-up will continue to thrive. It will be good news for bad medicine. The proposed reduction in the limitation period is being introduced to satisfy the demands of the business and insurance lobbies. It is clearly contrary to the interests of accident victims and undoubtedly will lead to injustice'.

PIAB to open for business on 1 May, says Harney

When is the Personal Injuries Assessment Board going to open for business? The legislation is in place but the ministerial commencement orders have not yet been made, *writes Ken Murphy*.

The PIAB is currently putting in place its infrastructure, including premises, staff and an IT system. It is clearly running behind time, as it had been politically promised that it would be operational by 1 January 2004.

The best guess as to when it will open for business is 1 May 2004. Responding to a Dáil question from Brendan Howlin, the Tánaiste and Minister for Enterprise, Trade and Employment, Mary Harney, recently said: 'We expect a commencement date of some time in April or 1 May, perhaps the latter as it is the start of a calendar month, and we are working towards that date'.

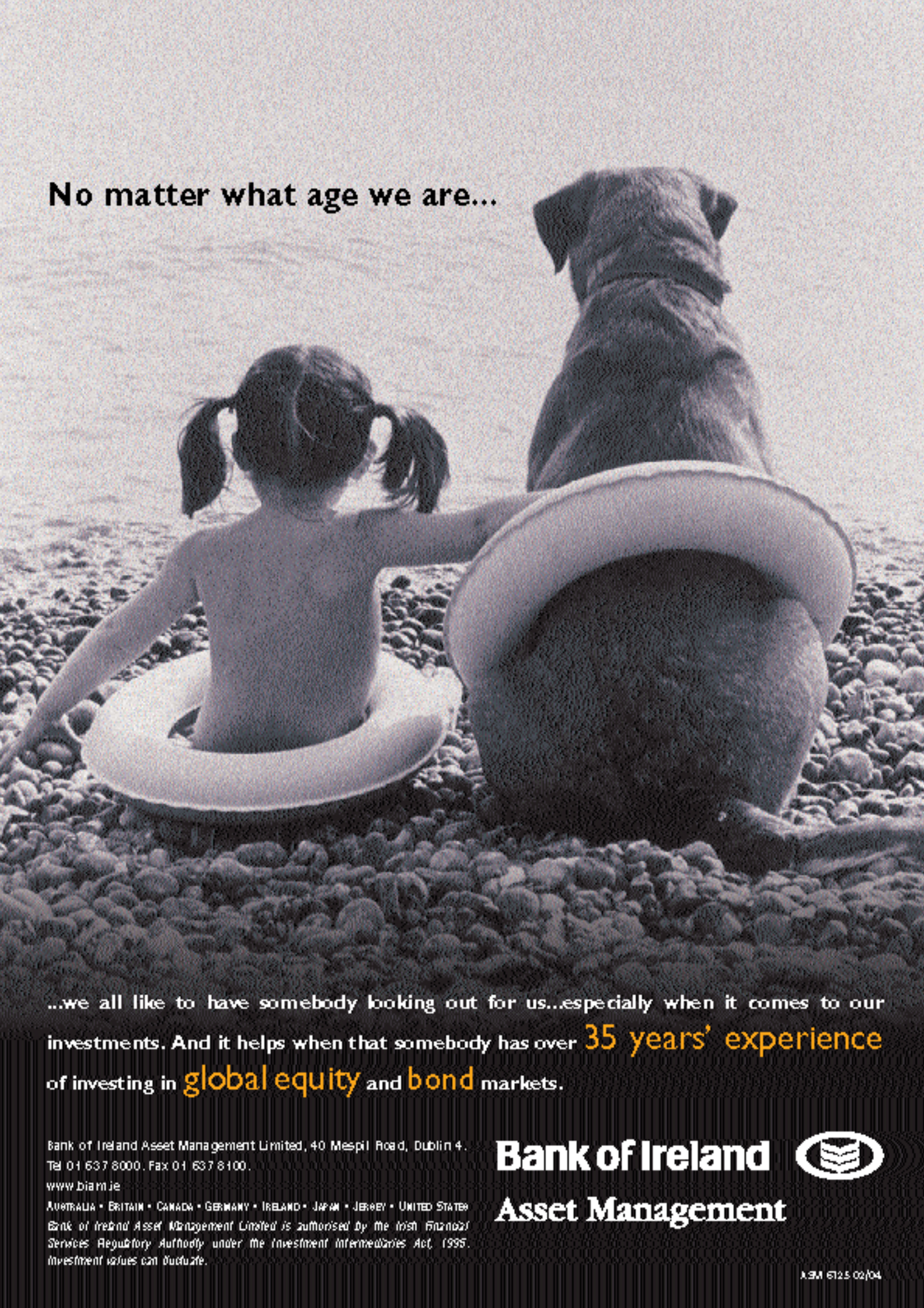
Marital breakdown with minimum heartache

A leading American expert on collaborative law, Pauline Tesler, will give a two-day training course on the subject at the offices of solicitors McCann FitzGerald on 16-17 April.

Collaborative law is a 'court-free' process for marital breakdown cases. Like mediation, it prioritises talking, dialogue and settlement. In contrast with mediation, lawyers are involved from the outset. It is a new method of practice, where lawyers bring reasoning and problem-solving skills to a dispute, but litigation is not an option. Among other things, the process involves a participation agreement, all-party settlement meetings and, when matters are finalised, a signed agreement that is implemented throughout the subsequent separation/divorce process. It excludes correspondence. Crucial to the process is that lawyers on both sides can work together towards an agreement that is satisfactory to both partners.

The man with the original idea, US family law practitioner Stuart Webb, felt that in bringing couples from marital breakdown to post-separation, the legal system failed families. Collaborative law should shift the solicitor's traditional role in marital breakdown cases from 'warrior' to 'facilitator', where the main issue is to help the spouses to reach an agreement.

Solicitors wishing to attend the training course should contact Muriel Walls at McCann FitzGerald, 2 Harbourmaster Place, IFSC, Dublin 1, tel: 01 829 0000.



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HUMAN RIGHTS WATCH

Human rights for disabled people

In the first of a new series, Alma Clissmann reports on developments in relation to the practical application of the *European convention on human rights*

The incorporation of the *European convention on human rights* into Irish law by the *ECHR Act, 2003* has a potentially huge significance for disabled people. In particular, article 8, the right to private and family life, is wide ranging in its scope, applying to such matters as the freedom to express one's sexuality, to consent to medical treatment, to have access to one's children, to form and to keep social relationships, and to protect one's reputation.

In a criminal case involving her husband, Z was identified in the Finnish courts as the spouse of a person who was HIV positive. The European Court of Human Rights (ECHR) held this to be in breach of her right to privacy. The Finnish court should have exercised its discretion and withheld publication of the names in the judgment. Disclosure could dramatically affect her personal, social and work life and expose her to opprobrium and the risk of ostracism (*Z v Finland* [1998] 25 EHRR 371). This judgment may have important ramifications for HIV/AIDS sufferers and arguably for others with disabilities or health conditions that are known to lead to discrimination.

Because the scope of article 8 is very wide, the real question in many cases is likely to be not whether article 8 applies but whether the public authority can justify its actions by reference to article 8(2). It must show that its interference was justified by a law, that it was not vague or uncertain, that it had a legitimate aim, and that it was necessary in a democratic society and for the reasons specified in article 8(2). Above all, it must show that the means employed were proportionate to the legitimate aims of the measure. It must also fulfil a 'pressing social need'. In applying article 8(2), a critical issue is the extent to which interference with rights can be justified on the ground of lack of resources or priorities in using resources.

It has long been established that the 'respect' for private and family life guaranteed by article 8 imposes on the state not merely the duty to abstain from inappropriate interference but also, in some cases, certain positive duties (*Marckx v Belgium* [1979] 2 EHRR 330; *X and Y v Netherlands* [1985] 8 EHRR 235). In particular, it places positive obligations on public authorities to provide protection for an individual against the activities of others.

In the 2002 case of *Kutzner v Germany*, the court, for the first time, recognised the obligations of a state to provide support to disabled parents in order to maintain their right to a 'family life' (46544/99, 26 February 2002).

The following are four recent cases from the ECHR and the UK courts under the *Human Rights Act 1998* that are imaginative and important decisions for people with disabilities:

- ***Botta v Italy* ([1998] 26 EHRR 371).** Mr Botta was a disabled man who could not get access to a private beach and the sea because it was not equipped with disabled facilities. The court disallowed his claim, but accepted the principle that a state does have obligations of this type where there is a direct and immediate link between the measures sought by an applicant and the latter's private and/or family life

- ***Price v UK* ([2001] 34 EHRR 1285).** Ms Price was a victim of thalidomide and had numerous health problems and four foreshortened limbs. She was imprisoned for three days and treated as a normal prisoner, which in her condition amounted to cruel and degrading treatment under article 3. The court held that in order to avoid unnecessary hardship – that is, hardship not implicit in the imprisonment of an able-bodied person – she had to be treated differently from other people because her situation was significantly different
- ***The Queen (A and B) v East Sussex County Council* ([2003] EWHC 167 [Admin]).** This case concerned two disabled sisters who requested frequent manual lifting, which was contrary to policies of the defendant that sought to protect the health and safety of its employees. The court ruled in favour of the applicants and against the local authority's blanket ban on lifting. It held that, when drawing up lifting guidelines, it is necessary to strike a balance between the rights of the disabled person and the carer
- ***Bernard v London Borough of Enfield* ([2002] EWHC 2282).** Mrs Bernard's severe stroke meant that the local authority house in which she, her husband and six children were living became totally unsuited to her needs and caused her severe discomfort, humiliation and dependency, as well as depriving her of her role as a mother in caring for her children for an unnecessarily long time (20 months). The defendants knew of these problems but dragged their feet about finding her different accommodation. The judge found that the case was finely balanced in relation to article 3, and a factor in this was that there was no deliberate intention to humiliate or debase. He found a clear breach of article 8.

The *ECHR Act, 2003* requires judicial notice to be taken of the case law of the ECHR. The scope for the application of this body of law to the circumstances of disabled people is for Irish lawyers to explore on behalf of clients to whom the need for human rights is sometimes painfully real and urgent.

I am indebted to Caroline Gooding of the UK Disability Rights Commission for the use of information in her paper The application of the ECHR in British courts in relation to disability issues, *available on the Law Society website under 'society committees', 'law reform', 'seminar papers' at* www.lawsociety.ie. G

Alma Clissmann is the Law Society's parliamentary and law reform executive. The society hopes to report regularly on developments in the application of the ECHR Act, 2003. *Please send any citations of the act in pleadings or judgments to a.clissmann@lawsociety.ie.*

Remember when you wanted

The Irish Traveller Movement has established a legal unit to represent the interests of travellers more effectively – and it's looking for volunteers, writes Kevin Brophy

Bernard is 16 years of age. He has suffered from Hurler's Syndrome since he was born. When he was one year old, he underwent a bone-marrow transplant. This saved his life, but the symptoms of the disease continued to affect him. Hurler's Syndrome is a degenerative disease of the nervous system: the liver, spleen, brain and heart are all affected, and the symptoms are irreversible and worsen progressively. The syndrome is characterized by severe cognitive degeneration, corneal clouding, stiff joints, claw hands, dwarfism and numerous heart problems. As the disorder progresses, the organs become enlarged and the skeletal deformities cause problems in walking and using the hands. Sufferers tend to die in their late teens.

On the margins: lawyers can help protect travellers' fundamental rights

Appalling conditions

Bernard has numerous other abnormalities, including severe curvature of the spine, hip abnormalities and severe in-turning of the knees, as a result of which he cannot stand. His eyesight is minimal and he is confined to a wheelchair. He suffers from moderate intellectual disability and has very poor hearing.

Bernard is a traveller. He lived in a 22-foot caravan on a serviced local authority halting site. He has two younger siblings who also suffer from Hurler's Syndrome. He shared the accommodation with his mother and father, five brothers and one sister. He used to sleep on a piece of sponge in the middle of the living area. There was no running water or central heating in the caravan, and no internal toilet or showering facility.

For eight years, Bernard's mother tried to persuade the local authority to provide them with a replacement caravan. The best they could do, up until very recently, was to obtain approval for a £2,000 loan. Eventually, in utter frustration, Bernard's mother sought legal advice and, following the issue of proceedings, the local authority provided her with a wheelchair-accessible caravan suitable for a person with Bernard's disabilities. She feels that she would not have succeeded in obtaining the replacement caravan without the pressure brought to bear on the local authority by her legal advisors.

There are currently 1,200 individual families (and many travellers have very large and young families) living on the side of the road around Ireland. They are evicted from location to location, often having to leave one county to find a place to stay on a regular basis, only to have the same thing happen in the next county. As a result, schooling suffers. If they can settle in one place, there are often well-publicised difficulties in allowing traveller children into a particular school. The vast majority of travellers are law-abiding citizens who want to be able to continue to travel but who want to be able to live in reasonable conditions. Many travellers want to retain their nomadic lifestyle.

Effective representation

The Irish Traveller Movement (ITM) has recently established a legal unit, one of the aims of which is to represent the legal interests of Irish travellers more effectively. Readers will appreciate that few solicitors in Ireland act on behalf of travellers in relation to accommodation difficulties or eviction problems or many other traveller-specific issues. One of the reasons for this is that many travellers are not in a position to discharge fees and are often very wary of approaching solicitors in the first place. In relation to accommodation cases, a further difficulty arises where travellers need assistance at very short notice.

The most common difficulty faced by travellers is where they are on the side of the road and they are approached by gardaí or representatives of the local authority and told to move on. They do not know what their legal rights are and they have no effective remedy to this type of short-term eviction.

The ITM legal unit hopes to be able to establish a panel of solicitors around the country who are prepared to act on behalf of travellers, if necessary on a *pro bono* basis. This would mainly be in relation to accommodation issues but

HOW YOU CAN HELP

One of the objectives of the ITM's legal unit is to establish a network of solicitors throughout Ireland who will indicate their willingness to act on behalf of travellers where the need arises. The legal unit will act as a source of expertise and advice in relation to travellers and the law, and will provide each interested solicitor with a legal pack covering the major areas of law that affect the traveller community.

The legal unit will also keep interested solicitors informed of any new developments in the law, and any training or seminars relevant to the area. The legal unit believes that this is an ideal opportunity to create a partnership for real change between the legal profession and one of the most marginalised groups in Irish society.

Participation in the network is purely on a voluntary basis and involves no commitment to take individual cases. Any solicitor or firm interested in participating in the network, or in finding out more about the work of the legal unit, should contact 01 679 6577 or e-mail: itmlu1@hotmail.com.

to make a difference?

would also cover other matters. The legal unit is preparing a legal pack that will be circulated to solicitors who are interested in joining the panel, and this would provide them with the information necessary to enable them to prepare cases and effectively represent travellers in their area. There are a number of solicitors around the country who are willing to help by providing information and assistance. It is hoped that solicitors will apply to be placed on this panel in order that each centre of population and each county and province in Ireland will be adequately represented.

The ITM believes that travellers represent a separate ethnic group within Ireland. The minister for justice, equality and law reform does not appear to accept this, and neither do many of those in the judiciary. There is a perception that if travellers wish to choose a lifestyle of 'deprivation and neglect', then on their own heads be it. The ITM believes that travellers – along with everyone else in this country – have basic, fundamental human rights, including the right to pursue their traditional way of life. One of these fundamental rights is the right to accommodation.

Working for change

In a very large number of cases, local authorities in Ireland do not believe that there is any legal onus on them to provide accommodation for travellers. A traveller may be entitled to a bay on a halting site and may be entitled to certain basic facilities there, but he is not entitled to a home on the site. If a disabled child is living on a halting site in a completely unsuitable caravan, the attitude of the local authority is that it has no obligation to provide any facilities other than electricity, running water and perhaps a vandal-proof unit in which to wash and cook. The ITM believes that this must change.

Many of us became lawyers because we believed that we could make a difference – that we could help bring about change. Travellers in Ireland have a very negative image: some of them deserve this, but most of them are law-abiding citizens who just want to live a reasonable life. They do not deserve to be marginalised or treated as third-class citizens. They should not be condemned to live in conditions that the rest of us would not tolerate. They should not have their weddings cancelled at the last minute because the local hotel learned that they were travellers. They should not be subjected to 'blanket bans' by publicans. They should not be refused accommodation because local residents believe their estate 'is not meant for travellers'.

As far as traveller children are concerned, Bernard is not alone, and his case is far from unique. His needs and the needs of other travellers with disabilities are fairly basic: hot water, a toilet, heat, the ability to have a shower – a little dignity. Lawyers can help change this. Remember how you used to feel when you first studied law. You can still make a difference. G

Kevin Brophy is principal of the Dublin law firm Brophy Solicitors and chairman of the Irish Traveller Movement's legal unit.

Letters

Hasta mañana, baby

From: Brendan Walsh, Faculty of Notaries Public in Ireland

You have previously run articles of assistance to those purchasing properties abroad – principally in Spain. In particular, your articles have advised that in certain circumstances it would be necessary for the Irish owner to execute a Spanish will.

The Notary, which is the magazine of the Notaries' Society in the UK, in its winter 2003/2004 issue, has an article by a London-based solicitor and notary public, Hans Hartwig, concerning Spanish powers of attorney, which contains an interesting point for practitioners. I quote: *'An ancillary point: we have seen a number of wills by Spanish lawyers which accidentally revoke the client's English will, and doubtless the reverse also happens. We warn clients of the danger'.*

Two points arise (obviously):

1) Clients purchasing properties abroad should be alerted to the danger as outlined above
2) Practitioners here may wish to insert in Irish wills after the usual 'I hereby revoke all former wills', the words 'excepting any testamentary disposition made by me in connection with any property of mine outside the Republic of Ireland' or words to that effect.

VOX POP

Do you agree with the Competition Authority chairman's recent 'suggestion' that there should be a single regulatory body for solicitors and barristers?

No, I suppose I take the conservative position. The system seems to have worked well so far, and if it's not broken, don't tinker with it.
Russell Houston, BL

No. The Solicitors Disciplinary Tribunal and the Barristers Collateral Conduct Tribunal work very effectively. There is lay representation in both, and I don't think that anybody who has ever made a complaint could seriously contend that it hadn't been properly dealt with by either body. I believe that each of us regulates our own profession very well.
Fergal Foley BL

Both have vast amounts of work. I think it would be virtually impossible.
Romaine Scally, Romaine Scally & Co, Solicitors

The nature of solicitors' work is different to barristers' in that they are engaged with the public on a daily basis, so their regulator has a different role. It should be in the interest of the public to have one regulator assigned to each arm of the legal profession.
Cormac O'Ceallaigh, Sean O'Ceallaigh & Co, Solicitors

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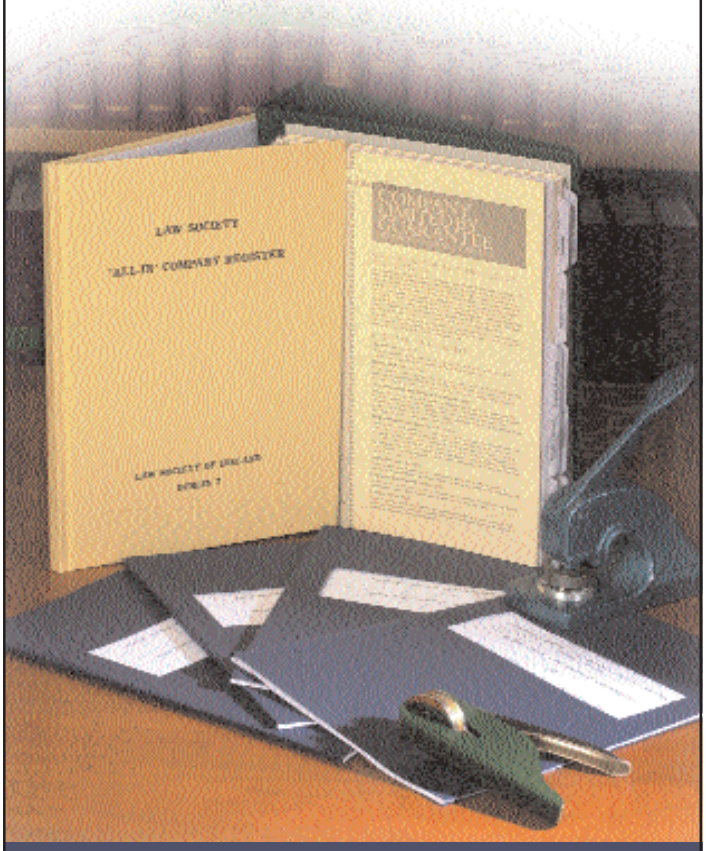
Private and single member companies limited by shares and unlimited companies:	5 day	€330
	10 day	€278
Guarantee/charitable status companies from		€215



For further information, application form and form A1 see our

website www.lawsociety.ie or contact us directly by e-mail: companyformation@lawsociety.ie or tel (01) 6724914/6 or fax (01) 6724915

Decline and fall of common sense in Italy

From: Henry Rodgers, Rome, Italy

In last November's issue of the *Gazette* (*Viewpoint*, page 8), I wrote about how Irish and other foreign lecturers in Italian universities have had to have recourse to all the remedies for redress available to European citizens in their 17-year battle to have their rights to parity of treatment enforced. The commission's article 228 enforcement proceedings against Italy, in which the foreign lecturers are complainants, were then at the reasoned opinion stage.

On 4 February of this year, the commission referred the enforcement proceedings to the Court of Justice. In its accompanying press release, it explained why a last-minute decree law, introduced by the Berlusconi government on 14 January, was unsatisfactory. The commission recommended what may yet be a historic fine of €309,750 a day. No member state has ever been fined for discrimination.

In the Italian legal order, decrees of the government must be ratified by both houses of parliament within 60 days of their publication in the *Gazzetta Ufficiale* to become law.


Italy's other dons make an offer you can't refuse

VOX POP

Following the commission's decision, sympathetic Italian senators proposed amendments which would have brought the decree more into line with EU law. These were rejected, but one amendment rendering the decree even more non-compliant was approved. It is probable that the parliament will follow the senate's line and thus pass into law a decree which the commission deems discriminatory.

The commission's recommendation on fines for Italy was widely reported in the international press. I note from the last issue of the *Gazette* that the Law Society gives annual awards for excellence in legal journalism. Certainly, over the years, the coverage by the Irish press of this long-running discrimination case has been comparatively outstanding. By contrast, prestigious international titles recently got the legal background to the commission's decision totally wrong, including the identity of the plaintiff on whose cases the enforcement proceedings are based.

That plaintiff is Spanish citizen, Pilar Allué, whose cases for parity of treatment before the Court of Justice are routinely included in contemporary textbooks on EU law. Pilar will shortly retire from her position at the University of Venice. Her first landmark case was referred to the Court of Justice in 1987 which decided in her favour in 1989. In the intervening years, she has never enjoyed the non-discriminatory working conditions to which her victories should have entitled her.

This speaks volumes for the difficulties encountered by foreign citizens in Italy in having their rights to parity of treatment enforced.

Change in Dublin City Council housing consents

From: Terence G O'Keeffe, Law Department, Dublin City Council

With effect from 1 January 2004, Dublin City Council is changing the form in which it gives consent under the *Housing Act, 1966*, section 89(c), and the *Housing Act, 1966*, section 90(6)(c), as substituted by the *Housing (Miscellaneous Provisions) Act, 1992*, section 26(1), to the transfer or mortgage of dwellings acquired under the local authority tenant purchase scheme.

Heretofore, following a successful application to the council's housing department, such consent was, on application to the law agent, endorsed under seal on the transfer or mortgage.

With effect from 1 January 2004, such consent will no longer be endorsed under seal on the transfer or mortgage, but instead a successful application will result in the issue of a letter of *Conditional consent to transfer* (or a letter of *Conditional consent to mortgage*, as the case may be) by the council's housing department and, following the compliance with the conditions in that letter, the council's housing department will issue a letter of *Final consent to transfer* (or a letter of *Final consent to mortgage*, as the case may be), which will permit the registration of the transfer or mortgage in the Land Registry without the necessity of having same formally sealed by Dublin City Council.

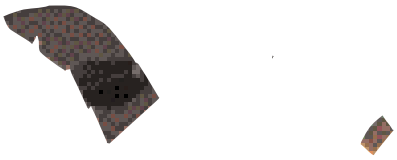
Please further note that once a letter of *Final consent to transfer* has issued, it will not be necessary to seek the council's consent to mortgages of, or further transfers of, the property.

Specimens of the consent letters may be inspected in the news section of the Dublin City Council website at *www.dublincity.ie*.

I shall be most grateful if you would bring this matter to the attention of members of the society in the *Gazette*.

Food for

Food producers in the EU can avail of special intellectual property protection on the basis of the regional 'natural' and 'human' factors that make their product unique. But Irish food companies have been slow to use these rights, which could have consequences for one of our major industries. Brendan O'Connor tucks in



Is there a difference between Imokilly Regato cheese and Regato made by the Irish Dairy Board and sold under the Kerrygold brand? Is there a difference between Clare Island Salmon and other Irish salmon? Epicureans might enjoy arguing the toss over dinner, but in law there is no argument: they are legally distinct.

Imokilly Regato and Clare Island Salmon are quality foods protected under EC council regulation 2081/92 on geographical indications and designations of origin for agricultural products and foodstuffs. The other products are not.

thought

Celebrity chef Darina Allen has been arguing that Ireland has many such quality foods but that Irish producers have not taken up their right to have their names protected under EC law. She cites barm brack, potato cakes, fudge, cheeses, rare breeds of Irish apples, potatoes, cabbage and vegetables such as the Tipperary turnip (which is, in fact, a swede). Some producers of good Irish foods choose to protect the names of their products through trademarks. However, trademarks and geographical indications are different types of intellectual property with different objectives. Trademarks do not ensure that products have specific traditional characteristics.

Food glorious food

In the EC, more than 600 traditional and quality products are protected as 'geographical indications' and 'designations of origin'. Of these, Ireland has just three: Clare Island Salmon, Imokilly Regato and Timoleague Brown Pudding. Only Finland and Sweden have less, with one and two respectively. The United Kingdom has 27. Irish whiskey and Irish cream liqueur are protected under parallel rules for the protection of wines and spirits. These products are protected in the same way as the most renowned geographical indications such as Roquefort, Parmigiano Reggiano, Parma ham, Champagne or Cognac.

According to article 22.1 of the World Trade Organisation's agreement on trade-related intellectual property rights, geographical indications (GIs) identify goods as originating in a place which gives the good a quality, reputation or other characteristic that is attributable to its geographical origin. The EC definition differs somewhat, but the basic concept is the same. EC law restricts protection to certain types of food products and does not allow for protection of traditional products such as Waterford Crystal.

The purpose of the community rules for the protection of geographical indications or designations of origin is to encourage diversification in agricultural production, to protect names from misuse and imitation and to guarantee to the consumer that products have certain traditional characteristics. This is achieved by means of a registration system that gives exclusivity to the use of a name in relation to a product if that product meets certain specifications.

MAIN POINTS

- **Protected designations of origin**
- **European Union versus the New World**
- **Opportunities for Irish producers**

The big cheese

Generic names cannot be protected. What is or what is not generic has proved problematic. To date, the most controversial registration has concerned a white cheese in brine known as Feta.

Feta was registered as a 'protected designation of origin' (PDO) (see **panel** overleaf) in 1996, but Danish, French and German producers protested before the EC courts because one of the consequences of registration is that producers of similar products in the same member state must cease to use the name immediately. Producers in other member states must do so within five years. The court ruled that the criteria used by the commission in determining whether or not the name 'Feta' was generic were too limited.

The commission then sought the advice of a scientific committee to determine how best to evaluate whether or not a name is generic. The commission consequently enquired into the use of the word in Greece and in all member states, using dictionaries and other written materials and, in particular, public opinion. Nearly 13,000 citizens were surveyed, and on the basis of this evidence it was determined that 'Feta' was not generic. One-in-five citizens of the EU had seen or heard the name Feta; in Greece and Denmark, the name was recognised by almost everyone. Feta was again registered in 2003, and, once again, producers in Denmark, France and Germany are challenging this registration in the EC courts.

The community rules for the protection of geographical indications are well suited to traditional Irish food production as there is no limit to the number of producers who can use a registered name so long as there is compliance with the geographical or technical specifications of the product. Control on compliance with the specifications is carried out nationally or locally. In effect, the producers police themselves within a national control framework. Once registered, there is limited community funding for promotion (although this is often eaten up by the more famous GIs).

Two pints of lager

The EC rules on designation of origin have led to an international dispute between EC member states and members of the World Trade Organisation, which is currently being tested within the WTO dispute resolution framework. The background to the WTO action is the conflict between 'Bud' and 'Budweiser' beer produced by the American brewer Anheuser-Busch and protected by trademarks, and 'Budejovicky Budvar' beer (translation: 'Budweiser'), which is produced by a Czech producer in the town of Budweis and protected under Czech law as a PDO. The US appears to be trying to undermine the EU rules prior to Czech accession and the consequent wider protection for the Czech GI (see also C-216/01, *Budéjovický Budvar, národní podnik v Rudolf Ammersin GmbH*, judgment of 18 November 2003).

EC rules for the protection of geographical indications have given rise to some notable litigation in the Luxembourg courts. We have already mentioned the Feta case, which is on-going because of the new registration. Last year, the Court of Justice, disagreeing with the opinion of the advocate general and much to the annoyance of UK supermarkets, held that the specifications for protected GIs could require that grating of cheese or slicing of ham must be carried out in the geographical area of production (C- 469/00, *Société Ravil v Société Bellon Import und Société SPA Biraghi*, judgment of 20 May 2003, and C-108/01, *Consorzio del Prosciutto di Parma and Salumificio S Rita SpA v Asda Stores Limited and Hygrade Foods Limited*, judgment of 20 May 2003).

Products that can be registered under the EU rules are limited to agriculture and foodstuffs. This is a key difference between the EU and WTO rules, which allow for the registration of industrial products such as Persian carpets, Murano glass, Český křišťál (Bohemia crystal) or Thai silk. Protection in the EU is limited to the names of most foods. Natural gums and resins, mustard paste, hay, wool, osier and essential oils can also be registered as PDOs or PGIs. However, pre-cooked meals, prepared condiment sauces, soups and broths, ice cream and sorbets, chocolate (and other food preparations containing cocoa) may not be registered as PGIs or PDOs.

GI BLUES

There are two classes of geographical indications (GIs) under EC law:

- Protected designations of origin (PDOs), and
- Protected geographical indications (PGIs).

The term PDO describes foodstuffs that are produced, processed and prepared in a fixed geographical area using recognised skills and techniques and where the quality is essentially or exclusively due to the particular geographic environment, with its inherent natural or human factors. PGIs, on the other hand, require that only part of the production, processing or preparation takes place in the defined geographical area and raw materials, so long as they comply with registered specifications, can come from areas other than the defined geographical area.

Once registered, the protection for both PDOs and PGIs is the same. Any direct or indirect commercial use of the protected name is prohibited, as well as any misuse, imitation or evocation of the name, even if the true origin of the product is indicated. The law gives exclusive right to the use of the name, including translations (as in the case of the Italian cheese *Parmigiano* – in English, Parmesan) and covers any other practice that is liable to mislead the public as to the true origin of the product or as to its qualities, packaging, advertising or materials and documentation.

To register a name, a group of producers (or, in certain circumstances, an individual) must define the product according to strict specifications and apply to the national competent authority. In Ireland, this is the Department of Agriculture and Food. The specifications must include a description of the product, its name, the definition of the geographical area, the elements linking the geographical area to the qualities of the product, and the control and inspection procedures that are either in place or proposed.

Once satisfied that the criteria for registration are met, the national competent authorities pass the dossier on to the commission in Brussels, which has a six-month period for review. If the commission is satisfied that the name should be registered, it publishes the proposed name and specifications in the *Official journal*. If no objection is received within a further six months, the name is registered on the commission's register of protected designations of origin and protected geographic indications. Additions to the register are published in the *Official journal*, while the full list can be found on the commission's website at *www.europa.eu.int*.

WICKLOW SHEEP AND DUBLIN BAY PRAWNS

Could Wicklow sheep or Dublin Bay prawns qualify for registration? The simple answer is yes. Take the example of the application by the *Association de l'agneau de Pauillac* to register *Agneau de Pauillac* as a PGI. Here are some of the things that they have to say about the specificity of their local lamb:

'Agneau de Pauillac is lamb aged no more than 75 days, unweaned, with a carcass weight of between 11 and 15 kg, fat cover class 2, light-coloured meat, firm white fat. The lamb is from the wine-growing and tree-growing areas of the department.

The pastoral tradition in the department of Gironde has contributed over the years to the development of a special type of lamb, a product of wintering constraints: at the same time as transhumance sheep moved from the Pyrenees to overwinter in the Entre-Deux-Mers area, the shepherds from the Médoc marshes left the flooded wetlands every autumn for the drained areas along the Gironde coast, which are now occupied by vineyards. As the areas planted with vines were extended and demand for manure increased, the herds from the Pyrenees and the Médoc marshes 'colonised' the wine-growing estates, where grazing rights were granted in return for only a gift of one or two lambs and the entire yield of manure: all these shepherds experienced the same constraints resulting from grazing in cultivated areas of a particularly fragile nature and subsequently adopted the same husbandry method, which therefore resulted in a standard product, namely a lamb raised in a sheepfold (or pen) and suckled by the dam. Gourmets came to appreciate their milk-gorged flesh.

Pauillac lamb is a product with a reputation of long standing, as evidenced by various documents (menu of the dinner arranged by President Loubet for the British King on 2 May 1903), Larousse Gastronomique of 1938 describing Agneau de Pauillac as "the most perfect" suckling lamb.

This lamb, which is served at the tables of the most renowned people, the product of a secular tradition perpetuated by the breeders' know-how, is nowadays recognised and appreciated as a type of lamb with a very different taste and flavour from traditional heavy lamb and milk-fed lamb from dairy farms.'

The special characteristics of the Wicklow hills and the farming methods used, or the specifics of Dublin Bay, would appear to be even more distinct than those of Pauillac. Maybe the hardest part will be forming the association to make the application!

EU quality policy not only includes the protection of geographical indications but also the protection of products that have a 'traditional speciality guaranteed' (TSG). To date, only a limited number of products have been registered as TSGs, and none of these are from Ireland.

There are many similarities with the rules for the protection of GIs. There is a register of names with product specifications. The specifications must set out the method of production, the nature and characteristics of the raw materials and/or the ingredients, the traditional composition or mode of production and a description of the main physical, chemical, microbiological or organoleptic characteristics. Finally, control and inspections procedures must be established. Products registered as TSGs include Mozzarella cheese from Italy, Jamon Serrano from Spain, traditional farm-fresh turkey from the UK, breads from Spain and Finland, and speciality beers from Belgium and Finland.

Hats off to CAP

The promotion of quality for agricultural and food products is at the heart of the reform of the common agricultural policy (CAP). The original CAP was designed to promote production and was so successful that the community moved from being a net food importer to a major food exporter. 'Quantity, not quality' was the objective. Product specifications provided for in law were designed to ensure that production purchased into intervention would be able to be resold. The key switch came with the MacSharry reforms of the CAP. It is no coincidence that the community GI and TSG rules date from MacSharry's time as EC agriculture commissioner.

It is also clear that the pressure for better protection of GIs in the community came about as a result of *Cassis de Dijon* (case 120/78, *Rewe Zentrale v Bundesmonopolverwaltung für Brantwein* [1979] ECR 649, [1979] 3 CMLR 494). Prior to this ruling, there was only limited free movement of foodstuffs and national rules – including rules for the protection of GIs – predominated. *Cassis* undermined the segmentation of the market and led to the development of community food law, including rules for the protection of traditional products.

Protection of GIs is also a major element in the community's negotiating strategy for the WTO's *Doha development agenda*. The community is prepared to decrease export subsidies and allow greater EU market access so long as the traditional names of EU food exports are properly protected by our trading partners. The US, Australia and the South Americans see this as an attempt to reconquer names such as Rioja or Budweiser or Parma, which were brought to the New World by European emigrants. A battle royal can be expected.

Darina Allen is right to promote Irish food. Intellectual property in the form of GI law is available to protect the names and the quality of Irish food products both at home and abroad. Irish lawyers need to get cooking. G

Bernard O'Connor is managing partner of the Brussels-based law firm O'Connor and Company.

LET YOUR *fing*

Keeping up-to-date is a challenge for every busy practitioner. The Law Society library's on-line catalogue can save you time and shoe leather by making sure that your legal research is quick and accurate. Here is a brief guide to getting the most out of this valuable resource

MAIN POINTS

- How to use the on-line catalogue
- Questions and answers
- Helpful hints

The library catalogue has been accessible to members and students on the Law Society website since June 2003. The catalogue contains over 15,000 entries for legislation (since 1997), Superior Court reserved written judgments (since 1990), books, journals, government reports and lectures, and it provides a useful resource for everyday legal research. The following tips will help you to get the maximum benefit from the catalogue.

How do I find the catalogue?

Log on to the Law Society website at *www.lawsociety.ie* – members' or students' area – with your solicitor or student number and follow the links to the library catalogue. If you don't know your number, contact the library staff.

How do I find everything written by a particular author?

Type in the author's surname and click on the AUTHOR search button. If you know both surname and first name, the order in which they are typed is immaterial.

I need to find everything on 'road traffic offences'. Where do I start my search?

Type your search term in the window and click on SEARCH EVERYTHING. You will find hits for all catalogue entries, which will include judgments, statutory instruments, books, lectures and so on. If you want to be more specific, you can limit your search by clicking on the LIMIT SEARCH button on the top toolbar and scrolling down the list at the bottom of the screen to select a particular item type, such as SI or BOOK.

HELPFUL HINTS FOR SEARCHING

Each catalogue record is made up of various fields, depending on the type of material. Books have author, title, subject, publication details and book number fields. Additionally, legislation and judgment records have fields specific to these types of material, for example, bill/act/SI number, date enacted, contents note, present position, commencement date (in the case of legislation) and record number, date judgment delivered, abstract, and cases cited (in the case of judgments).

To search for a word or phrase in fields other than author, title or subject, type in your search term and click on SEARCH EVERYTHING, which searches across the full text of records. For example, judicial review + TITLE will find books, lectures and so on (judgments and legislation being unlikely to have this phrase in their titles), but judicial review + SEARCH EVERYTHING will additionally find books where judicial review may be a subject, though not in the title, and cases where the phrase 'judicial review' occurs in the abstract or in the subject.

- si 3/2000 + SEARCH EVERYTHING will find every record in which there is a reference to SI no 3 of 2000
- dir 98/5 + SEARCH EVERYING will find statutory instruments since 1997 implementing this directive
- american cyanamid (or american cy$ if you're not sure of the spelling) + SEARCH EVERYTHING will find Irish judgments since 1990 in which this case was cited
- and = links search terms anywhere in a record
- $ = plurals or truncations. For example, sport$ will find sport, sports, sporting
- ? = wildcards. For example, wom?n will find woman or women
- near = finds terms adjacent to each other but not in any order
- adj = finds terms adjacent to each other in the order specified.

DPP is used as an abbreviation for director of public prosecutions throughout the catalogue, but attorney general is not abbreviated.

Dates in judgments follow the format d/mm/yyyy. If, for example, you are looking for a judgment delivered on a particular date, type in the date (1/02/2003), click on SEARCH EVERYTHING, and limit the search to judgments.

All searches initially search all types of material on the catalogue. If you want to confine your search to a particular item type, for example, books, CPD lectures, statutory instruments or judgments, do the initial search, then click on the LIMIT SEARCH button on the top toolbar, scroll down the template at the bottom of the screen and select an ITEM TYPE, or a CATEGORY TYPE if you want to search in LEGISLATION, which will search bills, acts and statutory instruments, or MONOGRAPHS, which will search all records other than legislation and judgments.

ers DO THE WALKING

How can I check what legislation was published last year?
Bills, acts and statutory instruments are numbered with a unique call number, and a list can be generated by selecting the CALL NO BROWSE tab and searching the number as follows:

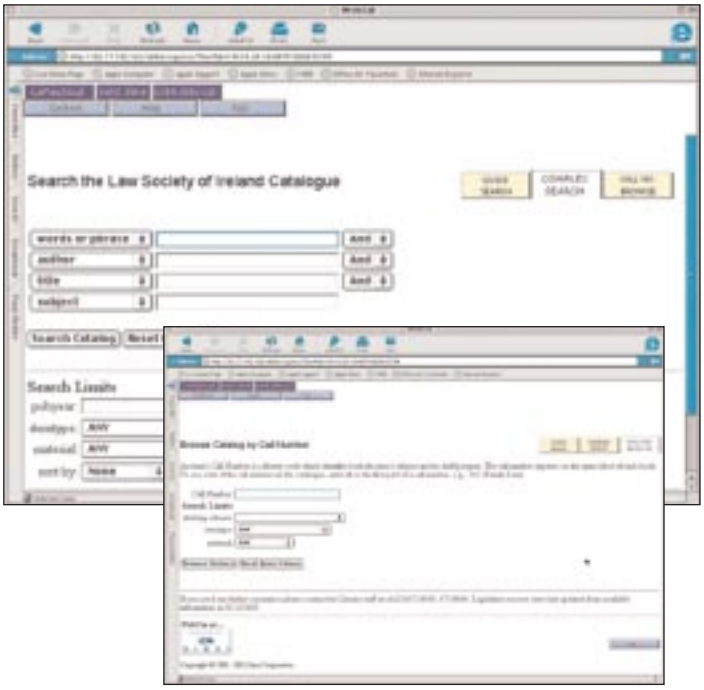
- SI2003 (statutory instruments from no 1 of 2003 to date)
- B2003 (bills)
- ACT2003 (acts).

If you want to see the entry for a statutory instrument whose number you know but whose title you are unsure of, you can compile the call number and use the browse call number tab to find it. For example, SI2003087 finds the entry for SI no 87 of 2003.

I am looking for a judgment in a medical negligence case delivered by Judge Kinlen in the High Court. I think one of the parties was O'Connor. What's the best way to find it?
You can link terms together by using 'and' and this will find catalogue entries which contain all of the terms in your search. For example, on the QUICK SEARCH screen, type in:
medical negligence and kinlen and o'connor.
Then click on the SEARCH EVERYTHING option. Alternatively, click on the COMPLEX SEARCH tab. You will then see options to link together search terms from different parts (fields) of records.

Does the catalogue contain the full text of judgments?
Catalogue entries for judgments from 2000 onwards display a link to the full text of the judgment on the BAILII (British and Irish Legal Information Institute) website.

I'm not sure what term would be used for a subject I am interested in researching. Is there a list I can view?
Click on BROWSE and type in the subject term you think might be used. A list will appear on screen which will direct you to the related terms. For example, 'drunk driving' will direct you to 'drink driving offences'.



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The best

The enforcement provisions of the *Planning and Development Act, 2000* significantly strengthen the power of the planning authority to tackle unauthorised development, but there may be considerable confusion in practice. Stephen Dodd cuts through the red tape

MAIN POINTS

- ***Planning and Development Act, 2000***
- **Enforcement of planning regulations**
- **Relevant case law**

Enforcement in planning law concerns the means of compelling wayward developers to adhere to their obligations to obtain or comply with planning permission. The trigger for any enforcement action is where unauthorised development is taking place. Development comprises both 'works' and 'use'. Development will be unauthorised unless permission was granted, the development is exempted development, it concerns a pre-1 October 1964 use, or is an immaterial change (*Westmeath County Council v Quirke*, unreported, 23 May 1996, per Budd J).

The *Planning and Development Act, 2000* introduced several changes, set out in part VIII. There are now four main avenues under the planning code to tackle defaulters:

- A warning letter under section 151
- An enforcement notice issued under section 153 or 155
- A planning injunction under section 160, and
- Criminal sanctions.

All four procedures are open to the planning authority, while any member of the public can bring a planning injunction under section 160, which is significantly widened in scope. Although the statute is silent, it appears that in each enforcement proceeding the general onus of proof is on the applicant. The period for taking any enforcement proceedings has been extended from five to seven years. In relation to any proceedings commenced by a planning authority, a manager's order is required under the *Local Government Act, 2001*. This should ideally be exhibited in the pleadings under section 160, though the court may allow the planning authority to prove it in court (*Kildare County Council v Goode*, unreported, 13 June 1997).

The issue of a warning letter is a new mechanism set out in section 152 and is quite distinct from the warning notice under the previous 1963 act. Where a representation in writing is received from a member of the public (which is not frivolous or without substance), or if it appears to the planning authority itself that an unauthorised development 'may have been, is being or may be carried out', the planning authority must issue a warning letter to the occupier, owner, developer or any other person concerned with the matter. The unauthorised development may be in the past, present or future. Where a representation in writing is received, the warning letter must be issued as soon as may be and not later than six weeks after receipt of the representation. As regards the content of the warning letter, it is mandatory that it:

laid plans

PIC: DENIS MINIHANE, IRISH EXAMINER

Even Michael Flatley's feet of flames couldn't dance him out of trouble with Cork County Council over refurbishment work on his Castlehyde mansion

- States that it has come to the attention of the authority that unauthorised development may have been, is being or may be carried out
- States that any person served with the letter may make submissions or observations in writing to the planning authority regarding the purported offence not later than four weeks from the date of the service of the warning letter
- States that when a planning authority considers that unauthorised development has been, is being or may be carried out, an enforcement notice may be issued
- States that officials of the planning authority may at all reasonable times enter onto the land for the purposes of inspection
- Explains the possible penalties involved where there is an offence, and
- Explains that any costs reasonably incurred by the planning authority in relation to enforcement proceedings may be recovered from a person on whom an enforcement notice is served or where court action is taken.

The issue of a warning letter amounts to a *prima facie* finding of unauthorised development by the planning authority. The letter invites submissions from the recipients before the planning authority makes any final determination (it thus differs from a warning notice under the 1963 act, where there was such a final determination). If the planning authority determines that an unauthorised development 'may have been, is being or may be carried out', it will issue an enforcement notice. Failure to comply with the warning letter will not by itself attract a sanction. However, while the warning letter is in the nature of a preliminary step before the issue of an enforcement notice, it has a distinct statutory character and is more than a mere formal letter warning of the institution of enforcement proceedings.

Enforcement procedure

Section 153 of the 2000 act introduces a single integrated enforcement procedure (there were separate enforcement provisions depending on the type of unauthorised development under the 1963 act). Following the issue of a warning letter, the planning authority must make such investigations as it considers necessary to decide whether to issue an enforcement notice. It must ensure that such a decision is taken 'as expeditiously as possible', and it must be 'the objective of the planning authority' to ensure that the decision is taken within 12 weeks of the issue of the warning letters. This curiously-worded last clause does not appear to amount to a mandatory cut-off point of 12 weeks, but simply puts an obligation on the authority to endeavour to achieve such a timeframe.

In determining whether to issue an enforcement notice, the planning authority must consider any submissions received. In the case of urgency, the planning authority can issue an enforcement notice

without a warning letter having been sent. In deciding whether such urgent action is required, the planning authority will consider the nature of the unauthorised development and any other material considerations (section 155). Section 153(5) also states that failure to issue a warning letter shall not prejudice the issue of an enforcement notice or any other proceedings that may be initiated by the planning authority.

It is not entirely clear whether this amounts to a general power of the planning authority to issue an enforcement notice, whether a warning letter has been issued or otherwise. Under one construction, it is simply to cater for a situation of urgency under section 155. However, section 155 is arguably designed to deal with circumstances where a warning letter has been issued, though the full procedure in relation to a warning letter has not been completed. But in my opinion, the better view is that, except in urgency cases, there is no such residual power to issue an enforcement notice without a warning letter having been issued, although this remains to be clarified.

Watchdog role

The provisions in relation to planning injunctions are set out in sections 160 to 163 (formerly section 27 of the 1976 act). The entitlement to take an injunction is afforded to the planning authority and members of the public, reflecting its community 'watchdog role' (see *Morris v Garvey* [1982] ILRM 177). There is no *locus standi* requirement.

The 2000 act considerably expands the scope of the planning injunction: it can now be granted in relation to unauthorised development which 'has been, is being or is likely to be carried out or continued' and so can cover *quia timet* relief not allowed under section 27 (*Mahon v Butler* [1997] 3 IR 369). Also, the power of the court to a make a mandatory order is now beyond doubt, with section 160(2) providing that 'the court may order the carrying out of any works, including the restoration, reconstruction, removal, demolition or alteration of any structure or other feature'. This was subject to some doubt under section 27. Under section 27, the courts refused to grant orders where the development was already complete (see *Loughnane v Hogan* [1987] IR 322; *Dublin Corporation v Bentham* [1993] 2 IR 58).

It appears that where the rateable valuation of the property is below £200/€254, proceedings should be commenced in the Circuit Court. The 2000 act states that the Circuit Court 'shall have jurisdiction to hear and determine an application' where the rateable valuation is below £200. This arguably means that it has exclusive jurisdiction and cannot be entered in the High Court, otherwise costs penalties will be incurred. Under the 1976 act, there was simply an option to take such proceeding in the Circuit or High Court.

Despite these expansions in scope, section 160 is still a summary procedure. It is commenced by notice of motion and affidavit and it is not appropriate to resolve complex issues of facts, which are more properly resolved under plenary summons (see *Dublin County Council v Kirby* [1985] ILRM 325, where it was described as a 'fire brigade section', and *Waterford County Council v John A Woods* [1999] 1 IR 556). The granting of a planning injunction is still a discretionary remedy, and so the case law under section 27 is equally applicable.

The courts have said that where a case of unauthorised development has been made out, 'it would require exceptional circumstances (such as genuine mistake, acquiescence over a long period, the triviality or mere technicality of the infraction, gross or disproportionate hardship or such like extenuating or excusing factors) before the court should refrain from making whatever order (including an order for attachment for contempt in default of compliance) as is *necessary to ensure that the development is carried out in conformity with the permission*' (*Morris v Garvey* [1982] ILRM 177, Henchy J). Among the matters to be considered in the exercise of discretion are:

- The purpose of the parties in carrying out the unauthorised development, such as for commercial benefit (*Dublin Corporation v Maiden Poster Sites* [1983] ILRM 48; *Dublin Corporation v O'Dwyer (Bros)*, unreported, 2 May 1997)
- Public convenience, such as loss of employment to

ENFORCEMENT NOTICES

Where the planning authority decides to issue an enforcement notice, it must serve it as soon as possible. The notice will take effect from the date of service and will have effect for ten years from that date. Whether or not the planning authority decides to issue the notice, it must inform anyone who made submissions. The notice itself must:

- (Where no permission has been granted) require the development to cease or not to begin, as appropriate, or (where permission has been granted) require the development to proceed in conformity with the permission
- Require such steps as may be specified in the notice to be taken within a specified period, including, where appropriate, the removal, demolition or alteration of any structure and the discontinuance of any use and, in so far as is practicable, the restoration of the land to its condition prior to the commencement of the development
- Warn the persons served with the notice that, if within the period specified or within such extended period, not being more than six months, the steps to be taken specified in the notice are not taken, the planning authority may enter onto the land and take such steps, including the removal, demolition or alteration of any structure, and may recover any expenses reasonably incurred by them in doing that
- Require the person or persons served with the notice to refund to the planning authority the costs and expenses reasonably incurred
- Warn the persons served with the enforcement notice that, if within the period specified by the notice or such extended period, not being more than six months, the steps specified in the notice to be taken are not taken, the persons may be guilty of an offence.

the community (*Stafford v Roadstone Ltd*, unreported, 17 January 1980)
- Even though an application is made within the statutory time period, delay may be a ground for refusing relief (*Dublin Corporation v Mulligan*, unreported, High Court, 6 May 1980), though it will depend on the particular facts of each case (*Dublin Corporation v Kevans*, unreported, High Court, 14 July 1980; *Fingal County Council v HE Services*, unreported, 25 January 2002)
- The court may refuse an order where the violation is merely technical or minor (*Avenue Properties v Farrell Homes* [1982] ILRM 21; *Marry v Connaughten*, unreported, High Court, 25 January 1984; *White v McInerney Construction Ltd*, unreported, 29 November 1994)
- Where an injunction would impose undue hardship on a respondent, this may be a factor against the granting of the injunction (*Curley v Galway Corporation*, 11 December 1998)
- The reasonableness of the conduct of both parties will be relevant to the exercise of discretion. A party must come to court with 'clean hands' (*O'Connor v Harrington Ltd*, unreported, High Court, 28 May 1987; *Leech v Reilly*, unreported, High Court, 26 April 1983; *Dublin Corporation v McGowan* [1993] 1 IR 405; *Westport UDC v Golden* [2002] 1 ILRM 439)
- A court may not grant the injunction where it is superfluous (*Dublin Corporation v O'Dwyer (Bros)*; *Eircell v Bernstoff*, unreported, 18 February 2000).

Criminal offences

The 2000 act increases the number of criminal offences to 28, while the fines are also increased. Among the other changes are:
- The planning authority can now bring a prosecution even where the offence was outside its functional area (section 157(1))
- It appears that the planning authority can only institute proceedings in respect of summary offences. Under the previous legislation in respect of indictable offences, the planning authority could prosecute such offences summarily up to the stage at which the District Court declined jurisdiction (see *TDI Metro Ltd v Delap (2)* [2000] 4 IR 520)
- While summary proceedings may be commenced at any time within six months from the date on which the offence was committed, which was the same under the 1976 act, proceedings may also be commenced at any time within six months (rather than three months under the 1976 act) from the date on which 'evidence sufficient, in the opinion of the person by whom the proceedings are initiated, to justify proceedings, comes to that person's knowledge, whichever is the later' (section 157(2))
- New presumptions operate in favour of the planning authority involving prosecutions for unauthorised development. In particular, the onus of proving the existence of any permission granted is on the defendant (section 162(1)), the planning authority need not prove that the subject matter is development and not exempted development (section 156(6)) nor that proceedings were commenced within the appropriate period (section 157(4)(c)).

PIC: PHOTOCALL IRELAND

If correct planning procedures had been followed, the Carrickmines Castle fiasco might have been avoided

Where a person is convicted of an offence, the court should normally order him to pay the costs of the proceedings (section 161(1)). As the offences concern criminal liability, the offence must be proved beyond all reasonable doubt rather than on the balance of probabilities. However, matters are made less difficult by the fact that there are a number of presumptions which operate in favour of the planning authority.

These presumptions may be rebutted and, where this is the case, the planning authority must prove the matters. The phrase *'it shall be presumed until the contrary is proved'* in a criminal context normally places a burden on the accused to prove on the balance of probabilities. To raise a reasonable doubt or 'sufficient evidence' would appear to be insufficient to amount to a rebuttal. Although the constitutionality of the presumption under section 162(1) may be raised, it is unlikely to be successful, especially in the light of *Hardy v Ireland* ([1994] 2 IR 550) and in particular *O'Leary v Attorney General* ([1995] 1 IR 254).

The planning authority has significantly increased powers to deal with unauthorised development, and it has complete discretion to choose which mechanism to use. Furthermore, having taken enforcement proceedings under one mechanism, it is free to take action under any other mechanism. G

Stephen Dodd is a barrister and co-author, with Conleth Bradley, of a forthcoming book on the Planning and Development Act, 2000, *to be published by Thomson Roundhall.*

Treasures IN YOUR attic

A wealth of historical documents, going back perhaps 300 years, may be waiting to be found in the old papers locked away in your firm's attic. Carol Quinn explains why these ancient records could help us understand the hidden history of this country – and why they need to be preserved

MAIN POINTS

- Value of solicitors' archives
- National Archives Advisory Council project
- Ownership issues

Solicitors' papers often contain a wealth of unique information about the society and times they operated in. Very often the only documentary evidence of a long-gone landed estate is found in the attics of family solicitors. Unfortunately, the value of these documents is often not recognised, and as a result of pressure on space they get consigned to the waste bin or skip as out-of-date, irrelevant material.

In the 18th and 19th centuries, solicitors often acted as bankers and land agents for the local gentry. It was not uncommon for a solicitor to take over the administration of an estate, controlling income and expenditure and providing an annual report to the owner. Such situations arose when the owners of estates were abroad, were under 21, or simply wanted the burden of administration to lie elsewhere. All the records, leases, tenancy agreements and rental ledgers that made up typical estate records would be held not in the house but in the solicitor's office. It is worth underlining the point that these documents do not just reflect the life of the land owners; preserved in such records may be the only written evidence of the existence of thousands of tenants and small farmers, whose poverty and illiteracy may have meant that their names would otherwise have gone largely unrecorded. In effect, and often unknowingly, through the preservation of these archives, solicitors became the guardians of a large part of our country's social history.

In the last 50 years, pressure on space and the amalgamation of practices have resulted in a large amount of what was seen only as outdated, useless documentation being thrown out or destroyed. In order to heighten awareness within the legal

profession of the uniqueness and importance of these historical archives, the National Archives Advisory Council, under the chairmanship of Judge Bryan McMahon, commissioned a test survey of one Cork practice, Philip Wm Bass and Co, to uncover the type of record commonly found in solicitors' archival collections and to assess the historical importance and uniqueness of these records.

Cork case study

Founded in 1828, the firm of Philip Wm Bass and Co is unique in Cork in that it has occupied the same building at 9 South Mall since the early 1840s. The oldest intact office in the city, this practice is distinguished by having recognised the worth of its records and – through the efforts of two of its members, Leachlain Ó Catháin and Jeremy B O'Connor – having preserved those records. But despite such diligence, even Philip Wm Bass and Co has suffered the loss of records so typical of other solicitors' practices. The firm had an additional off-site records store in Cork city, which, 15 years ago or thereabouts, had to be evacuated. At that time, despite the best efforts of the partners, records were destroyed simply because there was no repository to take them.

This is not an untypical scenario. One of Judge McMahon's aims in commissioning this survey was to highlight to the government the need to finance and support local authority repositories in order that solicitors might have a secure place of deposit for their records, thus freeing up vital office space.

A brief survey of the attics of 9 South Mall was carried out on 21 May and 5 June 2003 to establish the type of record extant. It was common in the past for the younger son of minor gentry to become a solicitor and to cater to the legal needs of family friends and relations. This seems to have been partly the case with Philip Bass, who, as the son of a colonel in the North Cork Militia, was familiar with the land-owning class of Co Cork.

Raw material of social history

One of the most important results of this survey was the discovery of the amount of material held that predated the foundation of the practice. Title deeds to properties have traditionally been held by solicitors for safekeeping and a significant amount of 17th century material was extant. The earliest deed located was dated 22 January 1673. The main categories of documents found are shown in the **panel** overleaf.

The range and variety of the records surveyed

MAIN CATEGORIES OF DOCUMENTS

The records found fell mainly into the following categories.

Estate administration

The formal records relating to the legal, financial and general administration of Irish country estates:

- Leases and assignments of leases from 1742 onwards
- Correspondence files
- Title records, including assignments of deed and mortgages
- Rental ledgers
- Writs for summonses and evictions
- Bankruptcy records, and
- Administration of estates after the owners had moved to Britain.

Personal finance/banking

- **Ledgers, 1752–1757.** These recorded money received for short-term insurance polices and monies paid out. For example, *'Paid William admitting a loss adjured on the Charming Nancy'*
- **Ledgers, 1840s.** For example, recorded in the expenditure for the year 1841 were: *'8 Sept Mr Mullen Sugar and Tea 2.7.9; 15 Oct Labourer from Carrigtohill 0.1.3'*. Apr 1845: '*Beef Steak 1/8 Grapes 1/0 Doctor Calanan £1.1.0; Ale for servants 0/6'*
- **General account ledgers.** These recorded expenditure by client. For example, an entry for March 1815 says: *'a/c with Mrs Rogers. By cash expended in repairs of Kings St House which should have been given up to me in tenantable order 38.0.0. By half a years' rent lost in consequence of the above 39.16.3'*
- **Account book, 1953.** This recorded expenditure on behalf of clients, such as postage stamps and so on.

Administration of wills, executors' sales

- Inventories of effects – for example, an inventory of the *'Household furniture & effects in the house of Robert Lane of the city of Cork Esq deceased at the time of his Death'*. This detailed the content of each room and in so doing provided an invaluable guide for the size and function of each room as well as its furnishing. It also detailed the subsequent sale of each item, the purchaser and the prices achieved
- Wills and codicils – several bundles of 19th century probates of wills
- Records generated during the day-to-day work of the firm
- General accounts of the firm's income and expenditure, mainly 20th century.

Others

Transcripts of modern court cases.

'Preserved in such records may be the only written evidence of the existence of thousands of tenants and small farmers, whose poverty and illiteracy may have meant that their names would otherwise have gone largely unrecorded'

were mesmerising. Several MAs and research PhDs could come out of this material alone. Again, it should be stressed that nowhere else are these records, or the information they contain, duplicated. They survive as the raw materials of our social history in one place only.

There is little doubt that the type of archive found in the attics of Philip Wm Bass and Co is indicative of the records of many solicitors' practices – vital historical documentation that is irreplaceable.

Holding on to history

But what now for the busy modern practice, where rents are high and space is at a premium? This survey highlighted the need for the development of a network of repositories where these collections can be deposited. Ideally, the material should remain in the county where it originated in order to maximise access for local historians and genealogists. Under the terms of the 1996 *Local Government Act*, each local authority is now responsible for outfitting and professionally staffing an archival repository to preserve its own records. These centres should also have the capacity to take in important archives relating to the history of the area. To date, not every local authority has complied with the legislation, and in some cases, although an archivist has been employed, the appropriate infrastructure has not been put in place.

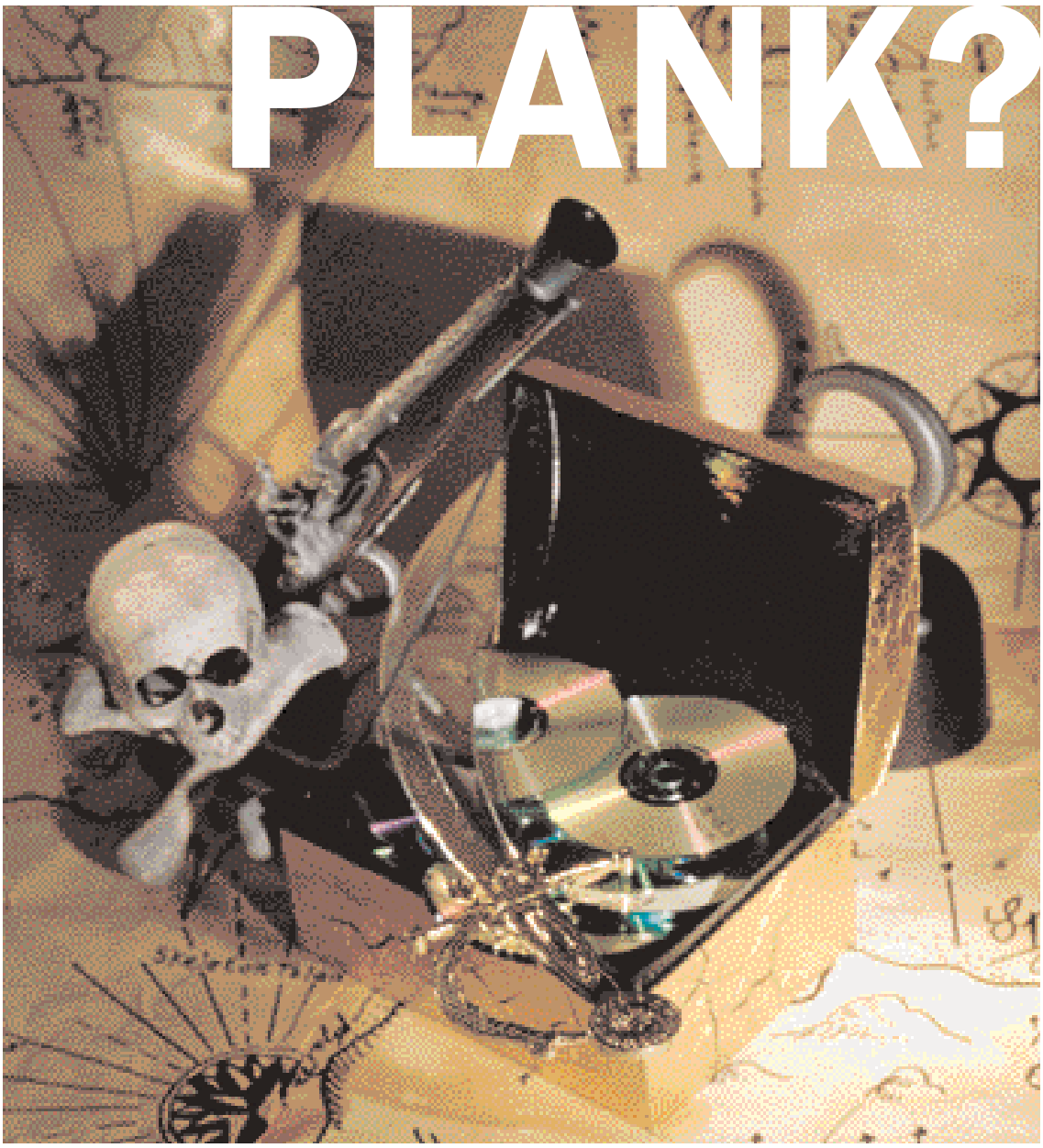
The survey also highlighted the issue of ownership of certain archives. Legally, a solicitor's office only has ownership of, and copyright over, documents it has generated. It does not have such rights over items deposited for safekeeping or reference, even when the estates involved are defunct and no heir is apparent. Work would need to be undertaken to provide an acceptable standard form deposit agreement under which solicitors would feel enabled to transfer their archives to a designated repository.

The National Archives Advisory Council will be seeking to raise the issue of both the importance and the fragility of these solicitors' collections, and we hope to work in partnership with both government and the legal community over the next few years to ensure the permanent preservation of these collections.

I would like to record my gratitude to Leachlain Ó Catháin of Philip Wm Bass and Co for facilitating the initial survey and for his care in ensuring the preservation of the firm's archive. G

Carol Quinn is an archivist at University College Cork's Boole Library and a member of the National Archives Advisory Council.

IS YOUR FIRM WALKING THE PLANK?



PIC: roslyn@indigo.ie

The use of illegal software is an increasingly big issue for Irish business, and that includes law firms. So how can you make sure that unlicensed software won't shiver your timbers? Dualta Moore fires a broadside at the software pirates

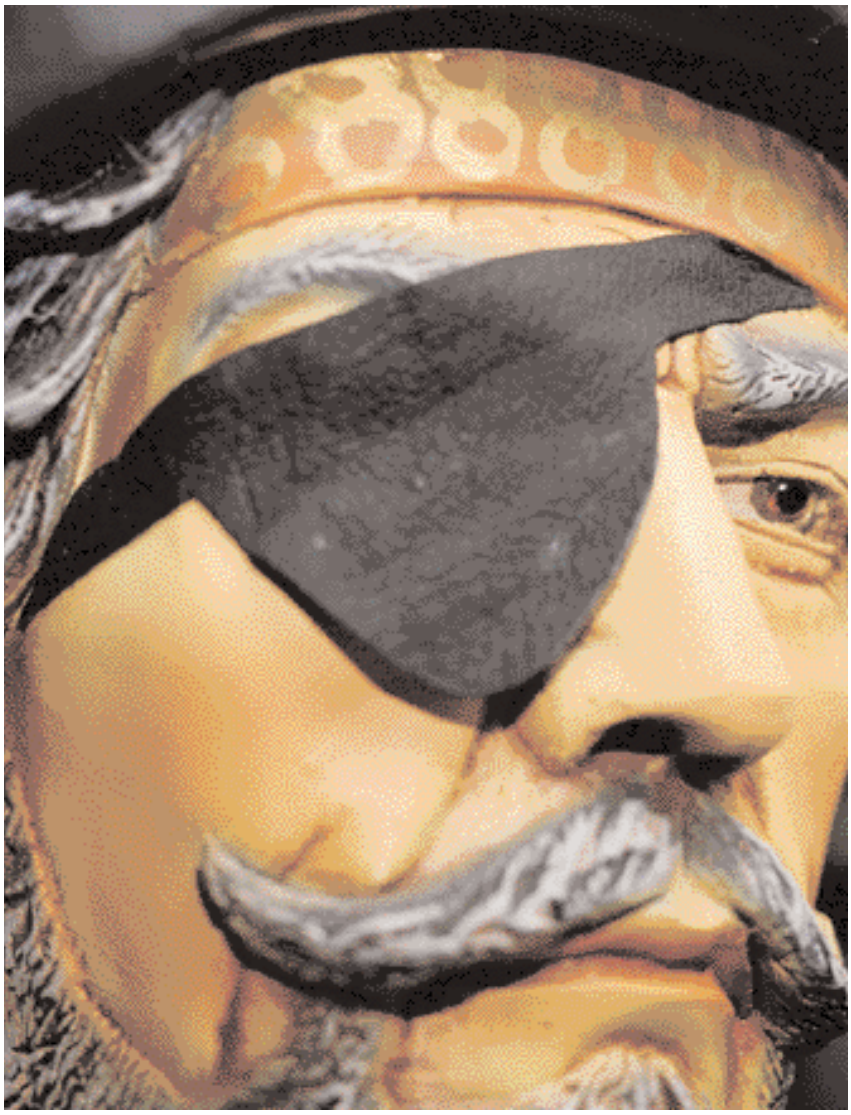
When a business buys software, what it is really doing is purchasing a licence to use it. Rather than owning the software, it acquires limited rights to use, reproduce, and distribute the program, according to the terms spelled out in the licence.

Where the business does not comply with the terms of the licence – for example, by installing the same copy of a single-user program on several computers – this is software piracy. As a result, the software publisher can take legal action against the business and its directors.

Other types of piracy include end-user copying, hard-disk loading, counterfeiting and mischannelling. The law also recognises the internet, and prohibits users from uploading, downloading, or transmitting unauthorised copies of software on-line. An individual who breaks these laws, or a company that looks the other way when an employee does, is liable to civil and criminal action.

MAIN POINTS

- ***Copyright and Related Rights Act, 2000***
- **Business Software Alliance**
- **Benefits of licensed software**



Did a salty sea dog steal your software?

The *Copyright and Related Rights Act, 2000* came into effect on 1 January 2002. The act:

- Makes the deliberate or negligent misuse of software by a business a criminal offence
- Extends that criminal offence to the officers of the business
- Provides for the making of surprise searches or 'raids' by software publishers against misusers of software, and
- In civil cases, provides for the making of substantial damage awards against misusers of software.

Companies caught using illegal software can incur penalties of up to €127,000 in fines, or five years in prison, or both for business directors.

According to a recent piracy survey, Ireland is ranked fifth-worst out of 17 European states, with a piracy rate of 42%. The practice is said to be costing the software industry €40 million a year in this country alone, and nearly €2.7 billion across Europe. Another survey has indicated that a ten-point reduction in Ireland's piracy rate would create an additional 2,400 jobs in the state, adding around €600 million to the economy.

Jolly Rogering

The Business Software Alliance (BSA) is a non-profit piracy watchdog. Every month, the BSA issues High Court proceedings in Ireland against companies believed to have inadequate software licensing. In its latest move to fight software piracy, the BSA has initiated legal action against eight firms, all of which, it says, were using illegal software.

A BSA spokesperson said that legal action was brought after it received information through its hotline about alleged piracy at the firms. Last year alone, the BSA received more than 112 leads on companies suspected of using software illegally. This number is expected to increase dramatically as a result of its recent national radio and press campaigns. The message is clear: businesses can no longer be complacent about non-compliance.

Pieces of Eight

Apart from the risk of legal action, there are other potential costs incurred when using unlicensed software:

- Lack of technical support from the software publishers, which can prevent vital work from being completed
- Inability to take advantage of product upgrades, which are usually much less expensive than buying a new version of the software
- Unauthorised software often contains viruses with the potential to damage individual computers or the entire network
- Potential incompatibility between software programs that would normally function together seamlessly.

BENEFITS OF LICENSED SOFTWARE

While unlicensed software has many associated risks and costs, the benefits of licensed software are wide ranging. Good software asset management can help companies to:

- Determine what software is needed and how to deploy this software in the most efficient way possible
- Take advantage of volume license discounts
- Manage technological change, identify software needs and avoid obsolescence
- Increase work efficiency. Where technology has proliferated without controls, many different software platforms and versions may exist, leading to communication problems
- Justify investments in IT. Software asset management makes it easier to understand the value received from software investment
- Invest in the economy and encourage growth and development. Legal software ensures that everyone benefits from the increase in local and national revenue and creation of more jobs.

The software industry is one of the strongest segments of our economy. Protection of the industry's intellectual property will help it grow and prosper, and thereby contribute even more to the economy.

Legal costs and fines, damaged reputation, computer viruses, ineligibility for technical support and software-compatibility issues all negatively affect a firm's efficiency and the efficiency of its employees. All of these issues result in lost time.

Who's a pretty boy, then?

Because many enterprises have inadequate software asset management programmes in place, they run a significant risk of failing to comply with their software licenses. It would be sensible, therefore, for every business to assess its risk of non-compliance and implement processes or tools to ensure that it is able to withstand an external software audit.

Those involved in corporate finance and the buying and selling of businesses must also ensure that the vendor's software is fully compliant in order to avoid the purchaser and its directors being liable for unlicensed software in the merged entity. For this reason alone, it is imperative that a software audit is undertaken as part of due diligence.

Not only are companies protecting themselves against non-compliance when they implement a software asset management programme, but small and medium-sized enterprises can also significantly reduce their IT spend by successfully managing IT costs.

As with most other disciplines, areas that are loosely monitored and controlled tend to have higher costs than others that are effectively managed. With the cost of software rapidly escalating compared to the cost of hardware, the biggest payback can be derived from getting a handle on software licence inventories, installations, usage, maintenance and their associated costs. In a recent study, the Gartner Group estimated that implementing a software asset management programme would save a business 17% a year on costs.

Controlling IT costs requires managing both supply and demand. Managing the supply of IT includes managing each unit cost, supplier relationships, and tracking the IT inventory. Every part of the company has a part to play in managing costs. Purchasing departments have to negotiate favourable pricing and contract terms. Those in charge of operations must ensure the smooth running of the day-to-day processes, while project managers and department heads must provide the overall vision, standards and integration of these processes.

Law firms that have traditionally seen the useful life of applications measured in decades must now adapt to continually-enhanced IT products in a much shorter time scale. Small and medium-sized firms should not simply adopt the same technologies, suppliers, products and services as those used by the large firms; otherwise, they run the risk of paying up to twice as much for IT products. Instead, they should ensure that they are dealing with IT suppliers who are focused on the needs of small to medium-sized enterprises.

Conducting regular software audits and implementing sound software asset management procedures eliminates exposure to the pitfalls of illegal software use, justifies investment in IT and ultimately decreases overall costs. A recent survey of 300 small businesses nationwide, conducted by the Small Firms Association, reported that 62% of companies do not conduct software audits.

Given the costs involved in ignoring the problem, and the penalties being levied against those using software illegally, law firms that have not embraced software asset management as a discipline need to take steps to do so as a matter of urgency. G

Dualta Moore is a regional director for Software Asset Management Ireland.

NO PAIN,

The EU's financial services action plan may have brought the idea of a single market that much closer, but it is also leading to a flood of new Irish legislation. David Dillon and Peter Stapleton discuss recent developments and look at the implications for the Irish financial services sector

The financial services action plan (FSAP) is one of the most ambitious projects proposed by the European Commission since the foundation of the single market. Launched in May 1999 and endorsed by the European heads of state and government at the Lisbon summit, it is part of an initiative aimed at making the European Union the most dynamic and competitive knowledge-based economy in the world by 2010.

The creation of a European single market in financial services began in the 1970s. However, progress had been hampered by the diversity of member state laws and the difficulty in agreeing a common consensus on the way forward. As a result, European businesses and consumers were deprived of a real pan-European financial market. Further, this fragmentation was resulting in significant under-performance of European markets when compared with those in the United States.

The FSAP was drawn up to tackle this problem. It is made up of a number of legislative and related measures with the aim of integrating European financial markets, enabling capital and financial services to flow freely throughout the EU, while at the same time providing proper prudential safeguards and investor protection. Key strategic objectives include:

- The creation of a single wholesale market in financial services
- Establishing an open and secure retail market for consumers, and
- Increasing co-ordination between supervisory authorities and implementing state-of-the-art prudential rules.

The initial scope of the action plan has also been expanded since its launch to address broader issues concerning the European financial market, including the elimination of tax obstacles and the creation of an efficient and transparent legal system for corporate governance.

The deadline for implementation of the remaining measures will occur during Ireland's presidency of the European Union. As such, it is an opportune time to examine the progress made to

MAIN POINTS

- **Financial services action plan**
- **Flood of legislation over next two years**
- **Impact on Irish business**

NO GAIN

date and to assess the impact that the FSAP will have on the Irish financial services industry in the coming months.

Benefits for consumers and business

Awareness of the potential benefits that a single financial market offers has meant that the FSAP has been accorded the highest political priority since its launch in 1999. It is anticipated that implementation of the action plan will increase confidence, generate more economic growth and jobs, and make the EU economy more competitive, efficient and innovative. There is also a huge economic prize, estimated at a direct gain of at least €130 billion for the financial services sector, not including the knock-on effect of cheaper capital for Europe's businesses.

In addition to the economic benefits, the FSAP will create a flexible legislative framework capable of responding to changes in the modern financial markets and will eliminate cross-border obstacles to the provision of financial services.

The measures adopted will benefit both European

Banking on success: the European Central Bank's Frankfurt headquarters

PIC: SIPA PRESS/REX FEATURES

businesses and consumers. For example, they will:

- Enable corporate issuers to raise finance on competitive terms throughout the EU (*Prospectus directive* (2003/71/EC) on the prospectus to be published when securities are offered to the public or admitted to trading)
- Allow the efficient and unhindered provision of investment services cross-border (proposed update of the *Investment services directive*)
- Create legal certainty for securities trades and settlement under the *Financial collateral directive* (2002/47/EC).

From the consumer's point of view, the FSAP promotes the provision of information, transparency and security for cross-border retail services, for instance, the *Distance selling of financial services directive*. Moves have also been adopted to expedite consumer disputes through extra-judicial procedures such as FIN-NET.

'A number of FSAP initiatives have recently been implemented into Irish law and this trickle of legislation will become a deluge in 2004 and 2005'

Driving the plan forward

One of the most impressive characteristics of the FSAP has been the speed and efficiency with which a large volume of legislative measures has been agreed and implemented. In part, this can be attributed to the success of the *Lamfalussy report* (the 2001 report of a committee on the regulation of securities markets, chaired by Alexandre Lamfalussy), which examined the regulation of the EU securities markets. The report proposed regulatory reform based on a four-level approach and the creation of two new securities committees to assist the commission: the European Securities Committee (ESC), made up of member state representatives, and the Committee of European Securities Regulators (CESR), composed of national supervisory authorities.

At the early stage of the Lamfalussy process, the principles and overall framework of directives or regulations are agreed. The details in relation to technical measures, implementation and monitoring of compliance are dealt with at a later stage.

By agreeing the principles rather than details at an earlier stage, many legislative proposals such as the *Market abuse directive* on insider dealing and market manipulation and the *Prospectus directive* have succeeded where previously they may have foundered for lack of consensus on the specifics. This success has resulted in the commission calling for the extension of the Lamfalussy process to banking, insurance, pensions and collective investment scheme legislation (see commission press release IP/03/1507 of 6 November 2003).

When the going gets tough

The diversity of laws and conflicting interests of member states has long been the bane of EU policymakers. Lawyers will be familiar with a multitude of 'ground-breaking' proposals that have emanated from Brussels with fanfare, only to become hopelessly bogged down during negotiations. But the FSAP, though not without its own delays and revisions, has delivered, with 36 of the original 42 measures finalised in just over four years.

Wide agreement from other EU institutions, member states and financial services industry participants has enabled the commission to push through radical reform, which some had believed long dead and buried. The European company has become a reality some 30 years after it was first proposed. (Companies that operate in more than one member state have the option of being established as a single company under EU law. A European company can operate throughout the EU with one set of rules and a single management and reporting system, rather than complying with all the different national laws of each member state where they have subsidiaries.) Recently, the *Product directive* and the *Management company directive* finally effected the long-awaited update of the original *UCITS directive*, which took over ten years of negotiation. These measures are just two examples of a glut of legislation that has been adopted, including the *Prospectus*, *Market abuse*, *Collateral* and *Taxation of savings income directives*.

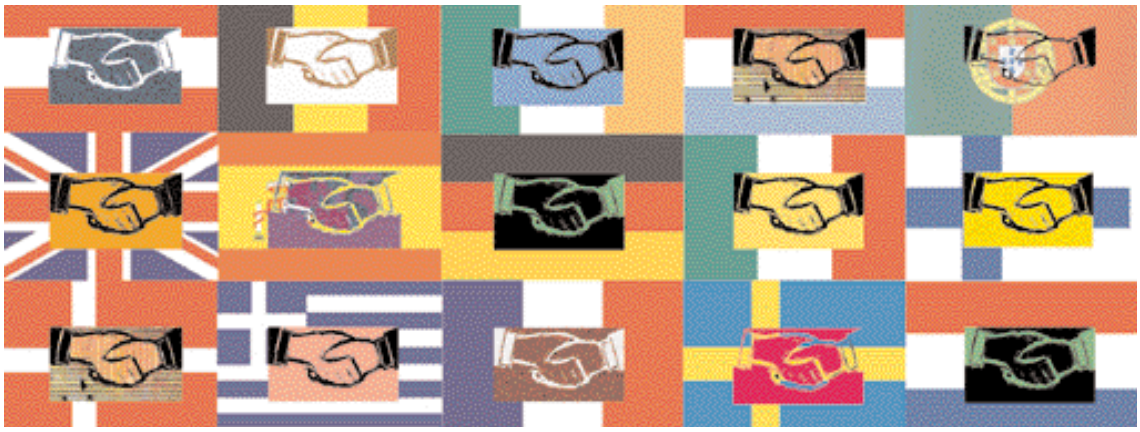
This is an unprecedented success. However, in its ninth report on the FSAP in November 2003, the commission concluded that, while the case for completion remains as strong as ever, emphasis must firmly remain on delivering and implementing all agreed measures by April 2004. (The term of the current European Parliament will end in April 2004, and this has become the effective cut-off point for implementation of the remaining measures under the FSAP.) In particular, the report noted a number of outstanding issues and strongly urged the council and parliament to progress the formal adoption of the revised *Investment services directive*, the *Transparency directive*, the *Takeover bids directive* and the proposed *Tenth company law directive on cross-border mergers*.

Impact in Ireland

Ireland has established itself as a vibrant and competitive centre for international financial services since the establishment of the IFSC. A potent mix of low corporation taxes, a skilled workforce and strong government support resulted in a rapid growth in the financial sector. Dublin now plays host to half of the world's top 50 banks and is one of the main European locations for insurance, mutual funds and corporate treasury activities.

As a result, the impact of the FSAP is of critical importance to the industry. A number of FSAP initiatives have recently been implemented into Irish law and this trickle of legislation will become a deluge in 2004 and 2005. A brief overview of FSAP measures adopted to date shows that there have been some significant developments:

- The *UCITS III regulations* affect the mutual funds industry and substantially amend the previous UCITS regime. They widen the scope of permitted investments for such funds and



establish a 'passport regime' for their management companies, allowing them to provide services on a cross-border basis
- The *European Communities (Taxation of Savings Income in the form of Interest Payments) Regulations 2003* establish a new regime ensuring that savings income in the form of interest payments made in one member state to individuals resident in another member state can be subject to effective taxation in accordance with the national laws of the latter member state
- The *Financial Collateral Arrangements Regulations 2003* implement the *Financial collateral directive* (2002/47/EC). The purpose of these regulations is to protect the validity of cross-border financial collateral arrangements. They are aimed at creating legal certainty for securities trades and settlement and follow up on measures introduced by the *European Communities (on Finality of Settlement in Payment and Securities Settlement Systems) Regulations 1998*.

These new regulatory frameworks are already testing the Irish financial services industry and the coming months will see further change. The *Market abuse directive* (to be implemented by 12 October 2004) will reinforce protection against insider dealing and market manipulation, creating common rules for all EU financial markets. The *Prospectus directive* (to be implemented by 1 July 2005) will radically alter the way in which Irish companies raise finance by establishing a new regime for the publication of prospectuses and creating an effective single passport system for issuers of securities in the EU.

Recent corporate scandals have also prompted changes in accounting standards and corporate governance. Irish listed companies will have to review and change their financial reporting standards as required by the *International accounting standards regulation* (EC 1606/2002). Under the regulation, listed companies must apply international reporting standards by 2005. Work on the transition process is already underway, and Irish companies should note the recommended phased change to this regulation proposed by the commission.

In addition, several proposals are in the final stages of negotiation, and the commission hopes that they will be adopted by April 2004. For example, the proposed *Takeover bids directive* will create a harmonised set of rules for takeovers and impose minimum requirements to be set by member states. Another eagerly-awaited, if contentious, development is the revised *Investment services directive*, which aims to overhaul existing legislation in response to significant structural changes in EU financial markets over the last decade. If adopted, the directive will increase harmonisation of national rules, provide for the granting of an effective 'single passport' to authorised investment firms and impose consistent investor protection measures.

It is too early to assess the precise impact of the FSAP on the Irish market, but it is clear that the removal of obstacles to cross-border financial services will open European financial markets to Irish businesses and consumers. The anticipated lower costs for finance and easier provision of services can only be seen as a positive development.

However, the FSAP brings mixed blessings and not all future developments will be positive. Ireland's position as a favoured financial centre will be tested. The levelling of the playing field may see some of our competitive advantages being eroded and the harmonisation of the European financial markets may be of greater benefit to the larger member states. For example, a key element of the FSAP has been the strengthening of consumer protection standards and the prudential rules governing financial services providers. In many cases, this has resulted in increased regulatory and compliance burdens. The cost of complying with these new rules may prove difficult for comparatively smaller Irish companies.

Irish financial market participants and their advisers would do well to take stock of the changes resulting from the FSAP, as well as keeping an eye on those on the horizon. The coming months will see an increasing number of EU legislative measures in banking, insurance, funds, investment services and other financial sectors. Those best advised on future opportunities and forewarned of the pitfalls of this legislative change will be best placed to prosper in an integrated European financial market. G

David Dillon and Peter Stapleton are partner and solicitor respectively at the Dublin law firm Dillon Eustace.

Book reviews

Governance and policy in Ireland: essays in honour of Miriam Hederman O'Brien

Donal de Buitleir and Frances Ruane (eds). Institute of Public Administration (2003), 57-61 Lansdowne Road, Dublin 4. ISBN: 1902-448-97-9. Price: €30.

My interest in governance is primarily in the area of corporate governance – and, as such, represents a micro-perspective on governance. The essays in this book relate to broader macro aspects of governance, many to do with public policy aspects of governance. As the editors explain in their introduction, the contents of this *festschrift* were determined by Miriam Hederman O'Brien's career. Although I know Miriam Hederman O'Brien socially, until this book I had not realised how considerable were her contributions to Irish public and commercial life. Much of her work has been for the state, and my guess is that much of it was on a *pro bono* basis. She has done our state some considerable service. For this reason, it is very appropriate that this volume in her honour has been published.

The editors have done an elegant job of marrying Miriam Hederman O'Brien's breadth of public service to the topics covered in this volume of essays. I summarise in the panel below the chapters in the book and how each relates to her contribution to Irish life.

In the course of a brief review, it is impossible to discuss any one of the 11 topics in this book. Suffice it to say that the variety of topics covered is such that readers will find much to interest them in this volume. G

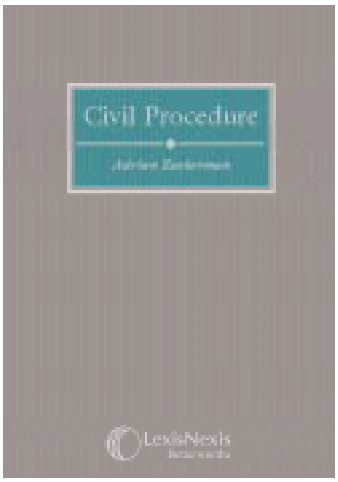
Professor Niamh Brennan is academic director of the Institute of Directors Centre for Corporate Governance at UCD.

CHAPTER TITLE (AUTHOR)	MIRIAM HEDERMAN O'BRIEN CONNECTION
1 *The governance of an enlarged Europe* (Pat Cox MEP)	Irish secretary, European Youth Campaign; PhD on European integration; her book, *The road to Europe*, published by the IPA, 1983; chairman, Irish Council for the European Movement; Killeen Fellowship to study education and training exchanges in Europe; member of Institute of European Affairs
2 *The future of social partnership* (Peter Cassells)	Member of National Economic and Social Council
3 *The Irish civil service in a changing world* (Paul Haren)	Sole external member of the civil service Top Level Appointments Committee; reviewer of public bodies such as Royal Irish Academy, Blood Transfusions Board
4 *Citizenship and the Irish freedom of information revolution* (Dermot Keogh)	Promoter of greater transparency in conduct of public business
5 *The media in Ireland: a distorted vehicle for political communication* (Peter Feeney)	Member and chairman of the Broadcasting Complaints Commission; member of the Advertising Standards Authority for Ireland
6 *Judicial review* (Sir Brian Kerr)	Lawyer by profession; member of board of Irish Centre for European Law
7 *Governance in the health services* (Ruth Barrington)	Chairman of the Commission on Health Funding; chaired enquiry into Our Lady of Lourdes Hospital, Drogheda; chaired expert group on hepatitis C Blood Transfusion Service Board issue; chaired Joint Standing Committee of the Dublin Maternity Hospitals
8 *Irish universities: a look ahead* (Thomas M Mitchell)	Chancellor of University of Limerick; member of Development Committee, NUI Maynooth; led inquiry into Letterkenny Regional Technical College; honorary doctorates awarded by NUI Maynooth and University of Ulster
9 *The social and political context of taxation: economic policy in an embedded market* (John Kay)	Chairman, Commission on Taxation; chairman, Foundation for Fiscal Studies
10 *Homelessness and exclusion* (Peter McVerry)	Board member, AIB; chairman of board's social affairs committee; chaired Forum on Youth Homelessness
11 *Whither the Arts Council?* (Patricia Quinn)	Chairman, Irish Committee of the European Cultural Foundation; chairman of Music Network.

Civil procedure

Adrian Zuckerman. LexisNexis UK (2003), Halsbury House, 35 Chancery Lane, London WC 2A 1EL, England.
ISBN: 0-406-94898-4. Price: €172.50.

Civil procedure is of some importance in our society. Let the mind of the reader go back to primitive society, with the tribe resolving disputes by the seniors sitting in a circle (court). Without a system of accepted procedure, all would want to communicate (shout) at the same time. Court procedure, in the sense of proper, efficient and workable practices enveloping the mechanics of legal argument, is associated with the very concept of civilised society.



The ideal is that law is fair, efficient and affordable. Lord Justice Brooke, in his foreword to the book, notes the emphasis on fairness but states that too little emphasis has been placed on efficiency and affordability. He quotes the unknown litigant: 'I, too, went to law. I won. I, too, am bankrupt'.

The author states that the book has two objectives. First, it aims to provide an accessible account of the rules now set out in the English *Civil procedure rules 1998* and of the way in which the courts exercise their powers under the rules. Second, the book draws attention to possible difficulties in relation to the law of court practice and procedure and offers solutions. It is not the intention of the book to supplant the time-honoured manuals of civil litigation such as the *White book* or the *Green book*.

There are 1,114 pages in this book. There are 26 chapters, with titles such as: interim remedies – injunctions, interim payment, security for costs; legal professional privilege; without prejudice communications; experts and assessors; and costs.

Ireland's civil procedure system shares so much in common with that of England and Wales; yet the law and practice in that jurisdiction have advanced considerably. We have much to learn.

This is a book of meticulous scholarship. A renowned legal scholar has tackled the many facets of civil procedure in what may be regarded as a *magnum opus*.

Dr Eamonn Hall is company solicitor of Eircom plc.

Report of Law Society Council meeting held on 16 January 2004

Motion: amendment to *Council regulations*

'That this Council revokes paragraphs 16(c)(vi) and 16(d)(iv) of the Council regulations 2003/2004 *passed at the meeting of the Council of the Law Society held on 7 November 2003'.*

Proposed: Tom Murran
Seconded: Michael Quinlan

The Council noted that the effect of passing the motion would vest the Council with the power to publish reports of Disciplinary Tribunal findings and High Court orders in the *Gazette*, rather than retain the power with the society's regulatory committees, as at present. Following a lengthy discussion, the motion was defeated by 28 votes against and six votes in favour, with two abstentions.

Personal Injuries Assessment Board

Ward McEllin briefed the Council on the contents of the *Personal Injuries Assessment Board Act*. He noted that, while the society had not succeeded in its efforts to secure changes to the legislation to provide for legal representation, the society had gained huge credence with the body politic, which was evidenced throughout the Dáil and Seanad debates.

The director general identified the five objectives that had been achieved, in whole or in part, as a result of the society's representations on the bill, as follows:

1) Time limits had been introduced in the bill
2) Legal representation would be facilitated, if not encouraged. As a result of the society's efforts, correspondence between the PIAB and the claimant would be copied to the claimant's solicitor
3) New pre-PIAB court procedures had been introduced that would involve solicitors seeking the protection of the court for clients before any case went to the PIAB
4) In political terms, there was recognition of the inherent institutional unfairness of the PIAB
5) There was widespread recognition of the positive role played by family solicitors and by the Law Society, as the representative body for the profession.

The director general noted that, while certain fundamental defects and imbalances in the PIAB had not been corrected, these would quickly become apparent once the process was commenced.

Commercial Court rules

Patrick O'Connor briefed the Council on the contents of the finalised *Commercial Court rules*, which had been signed into law during the previous week. Mr O'Connor noted that the rules had been dealt with by the Superior Courts Rules Committee, in consultation with the profession, which was a welcome development. The society's task force had included Geraldine Clarke, Roddy Bourke and the director general, and a significant amount of useful work had been done by the society, which was very well received by the Superior Courts Rules Committee and by Mr Justice Peter Kelly, who was to preside over the new court. Geraldine Clarke confirmed that a CPD course was scheduled for early February in relation to the new court, at which Mr Justice Peter Kelly had agreed to speak.

Co-option of Council member

The Council noted that Patrick O'Connor had indicated his intention to retire as an elected member of the Council, but to exercise his privilege as a past president to attend Council meetings for a period of three years. In consequence of his retirement, the president sought, and obtained, the Council's approval to co-opt Edward Hughes for the balance of the term of office for which Mr O'Connor had been elected.

Registrar's Committee

The Council noted that, in response to a request from the society for the nomination of a lay member to the Registrar's Committee, the director of consumer affairs, Carmel Foley, had indicated that she would like to serve herself in that capacity. The Council approved Ms Foley's appointment to the committee.

Criminal law

James MacGuill reported to the Council in relation to an item on the RTÉ *PrimeTime* programme, which related to a colleague, Gráinne Malone, who had been denigrated by the gardaí to her client and the matter had been recorded on videotape. The gardaí in question had been subjected to disciplinary proceedings. However, a finding of misconduct and a penalty in respect of the matter had subsequently been reversed on appeal. The Criminal Law Committee was of the view that the matter should be raised by the society at the highest level. The president informed the Council that he had written to the garda commissioner requesting an early meeting to discuss the matter.

Money-laundering legislation

James MacGuill referred the Council to the Criminal Justice Act, 1994 *(Section 32) (Prescribed Activities) Regulations 2004*, which had been circulated. The purpose of the regulations was to set out those activities which were subject to the provisions of section 32 of the *Criminal Justice Act, 1994*. The regulations did not effect any significant change in the existing situation. However, it was noteworthy that, once again, the minister had not taken on board the society's views on the matter. G

In briefing this month...

Practice notes

NEW VAT CLAUSE IN CONTRACT FOR SALE, 2001 (REVISED) EDITION: EXPLANATORY MEMORANDUM

The new special condition 3 in the standard contract for sale has been introduced, first, to recognise any practice issues arising from the introduction of the reverse charge provisions in certain surrenders and assignments of leaseholds and the 'economic value test' introduced by the *Value Added Tax Act, 1972* (as amended) and related VAT regulations (herein collectively called 'the *VAT Act*') and, second, to formalise the procedures in relation to sales where the 'VAT form 4A' procedure is to be used.

For the majority of transactions, clauses 3(a) and (b) are all that may be required if special condition 3 is not being deleted in its entirety, as will be the case in most residential sales.

Practitioners are warned that, where a substantive VAT issue arises, careful consideration should be given to the particular circumstances of the case, and if practitioners are in any doubt about the application of the relevant provisions of the *VAT Act*, they should proceed with great care and take specialist advice where appropriate.

It is recommended that the VAT treatment of any transaction should be determined and agreed pre-contract.

Notes:

- *A copy of the new special condition 3 has recently been circulated to every practitioner*
- *The new special condition 3 can also be downloaded from the society's website at* www.lawsociety.ie
- *The new VAT clause will be incorporated into the contract document at the next available print run and the revised contract will thereafter be called '2001 (revised) edition'*
- *Until then, it is suggested that the three new pages be photocopied or downloaded from the website and inserted in contract documents in substitution for the old pages three and four.*

Conveyancing Committee

INCREASE IN FEES PAYABLE UNDER *CRIMINAL JUSTICE (LEGAL AID) REGULATIONS*

Practitioners should note the introduction of SI 713/2003, which provides for the following increases in fees for attendance in the District Court, appeals to the Circuit Court, prison visits and for certain bail applications:

- 3% with effect from 1 January 2004
- 2% with effect from 1 July 2004
- 2% with effect from 1 December 2004.

The actual fees payable from 1 January 2004 are set out below. Details of the fees payable from July and December are available on the Criminal Law Committee pages of the website at *www.lawsociety.ie*.

SOLICITORS' FEES
District Court and appeals to Circuit Court

Defendant/appellant (1)	First day of hearing (2)		Subsequent days of hearing (3)
Fee in respect of defendant/appellant where only one defendant/appellant represented and in respect of first defendant/appellant where solicitor assigned in respect of more than one defendant/appellant	€223.59 in relation to first four cases	€134.14 in relation to each subsequent case	€55.91
Fee in respect of second defendant/appellant where solicitor assigned in respect of more than one defendant/appellant	€134.14 in relation to first four cases	€80.11 in relation to each subsequent case	€55.91
Fee in respect of each defendant/appellant (other than the first and second defendants/appellants) where solicitor assigned in respect of more than two defendants/appellants	€89.46 in relation to first four cases	€55.91 in relation to each subsequent case	€55.91

Bail applications: fee in respect of each contested bail application to Circuit Court or Special Criminal Court – €101.55
Essential visits: fee in respect of each essential visit to prison – €107.87

Criminal Law Committee

DELAYS IN AVAILABILITY OF TRANSCRIPTS: COURT OF CRIMINAL APPEAL

The Law Society's Criminal Law Committee has received complaints about delays experienced by practitioners in obtaining transcripts for appeals before the Court of Criminal Appeal.

The committee wishes to establish the extent of the problem, as it is intended to take up the matter with the appropriate authorities. Practitioners are invited to write to the committee with details of the number of occasions on which they have experienced these delays and the average period of delay involved.

Criminal Law Committee

CAT RETURNS: ELECTRONIC FILING THROUGH REVENUE ON-LINE SERVICE

Solicitors who wish to use the Revenue On-line Service to file CAT returns should note that Revenue's current arrangements for electronic payment conflict with certain provisions of the *Solicitors' accounts regulations 2001*.

Until further notice, solicitors may proceed with filing the CAT return through ROS, but must make **alternative payment arrangements**.

This matter is the subject of on-going discussions between the Law Society and the Revenue. A further practice note will issue when the difficulties have been resolved.

Probate, Administration and Taxation Committee

LEGISLATION UPDATE: ACTS PASSED IN 2003

Appropriation Act, 2003
Number: 42/2003
Date enacted: 19/12/2003
Commencement date: 19/12/2003

Arts Act, 2003
Number: 24/2003
Date enacted: 8/7/2003
Commencement date: Commencement order/s to be made (per s1(2) of the act): 14/8/2003 for all sections of the act (other than s26(3)) (per SI 364/2003)

Broadcasting (Funding) Act, 2003
Number: 43/2003
Date enacted: 23/12/2003
Commencement date: 23/12/2003

Broadcasting (Major Events Television Coverage) (Amendment) Act, 2003
Number: 13/2003
Date enacted: 22/4/2003
Commencement date: 22/4/2003

Capital Acquisitions Tax Consolidation Act, 2003
Number: 1/2003
Date enacted: 21/2/2003
Commencement date: 21/2/2003

Central Bank and Financial Services Authority of Ireland Act, 2003
Number: 12/2003
Date enacted: 22/4/2003
Commencement date: Commencement order/s to be made (per s 1(2) of the act): 1/5/2003 for the following provisions: ss1 to 11 and s12 (except insofar as it relates to s15(4) of the *Central Bank Act, 1942*), s13, s14 (except insofar as it relates to s19(2) to (5) of the *Central Bank Act, 1942*), ss15 to 24, 26, 27, 29 to 32, s34 (except para (a)), ss35 and 36, sched 1 (except insofar as it relates to item 4 of part 6, and item 2 of part 9 as respects s15(5), (6) and (8) of the *Central Bank Act, 1989*), sched 2 and sched 3 (per SI 160/2003); 4/6/2003 for s14 (insofar as it relates to s19(2) to (5) of the *Central Bank Act, 1942*) (per SI 218/2003)

Companies (Auditing and Accounting) Act, 2003
Number: 44/2003
Date enacted: 23/12/2003
Commencement date: Commencement order/s to be made (per s2 of the act)

Containment of Nuclear Weapons Act, 2003
Number: 35/2003
Date enacted: 17/11/2003
Commencement date: 3/12/2003 for all sections of the act (per SI 657/2003)

Courts and Court Officers (Amendment) Act, 2003
Number: 36/2003
Date enacted: 17/11/2003
Commencement date: 17/11/2003

Criminal Justice (Illicit Traffic by Sea) Act, 2003
Number: 18/2003
Date enacted: 23/6/2003
Commencement date: Commencement order/s to be made (per s29(2) of the act)

Criminal Justice (Public Order) Act, 2003
Number: 16/2003
Date enacted: 28/5/2003
Commencement date: 28/6/2003 (per s1(7) of the act)

Criminal Justice (Temporary Release of Prisoners) Act, 2003
Number: 34/2003
Date enacted: 29/10/2003
Commencement date: Commencement order to be made (per s2(2) of the act)

Data Protection (Amendment) Act, 2003
Number: 6/2003
Date enacted: 10/4/2003
Commencement date: Commencement order/s to be made (per s23(3) of the act and subject to ss23(4) and 23(5) of the act); 1/7/2003 for all sections of the act, other than: (a) s5(d) insofar as it inserts sub-section (13) of s4 of the *Data Protection Act, 1988*, (b) s16, and (c) s22 insofar as it repeals the third schedule to the *Data Protection Act, 1988* (per SI 207/2003); 24/10/2007 in respect of manual data held in relevant filing systems on the passing of this act insofar as the act: (a) amends s2 of the *Data Protection Act, 1988* and applies it to manual data; (b) inserts ss2A and 2B into the *Data Protection Act, 1988* (per s23(4) of the act and subject to s23(5) of the act)

Digital Hub Development Agency Act, 2003
Number: 23/2003
Date enacted: 8/7/2003
Commencement date: 8/7/2003. 21/7/2003 appointed as the establishment day for the purposes of the act (per SI 303/2003)

Employment Permits Act, 2003
Number: 7/2003
Date enacted: 10/4/2003
Commencement date: 10/4/2003

European Arrest Warrant Act, 2003
Number: 45/2003
Date enacted: 28/12/2003
Commencement date: 1/1/2004 (per s1(2) of the act)

European Communities (Amendment) Act, 2003
Number: 38/2003
Date enacted: 3/12/2003
Commencement date: Commencement order to be made (per s2(3) of the act)

European Convention on Human Rights Act, 2003
Number: 20/2003
Date enacted: 30/6/2003
Commencement date: 31/12/2003 (per SI 483/2003)

Finance Act, 2003
Number: 3/2003
Date enacted: 28/3/2003
Commencement date: Various – see act, and: 1/5/2003 for s104 (per SI 172/2003); 1/5/2003 for s111 (per SI 173/2003); 1/6/2003 for ss107, 108, 109, 110 (per SI 244/2003); 1/7/2003 for s101 (per SI 247/2003); 1/10/2003 for s146 (per SI 466/2003); various commencement dates for s17 (per SI 508/2003); 1/11/2003 for ss124, 125, 129 and 130(b) (per SI 512/2003); 31/10/2003 and 1/11/2003 for different provisions of s142(1) (per SI 514/2003); 1/11/2003 for paras (a) and (d) of s145(1) insofar as it relates to s57 (other than sub-sections 2 to 5) of the *Capital Acquisitions Tax Consolidation Act, 2003*, 1/1/2005 for paras (b) and (c) of s145(1), 31/10/2003 for s145(1)(d) insofar as it relates to sub-sections (2) to (5) of s57 of the *Capital Acquisitions Tax Consolidation Act, 2003* (per SI 515/2003)

Fisheries (Amendment) Act, 2003
Number: 21/2003
Date enacted: 1/7/2003
Commencement date: 1/7/2003

Freedom of Information (Amendment) Act, 2003
Number: 9/2003
Date enacted: 11/4/2003
Commencement date: 11/4/2003

Garda Síochána (Police Co-operation) Act, 2003
Number: 19/2003
Date enacted: 24/6/2003
Commencement date: Commencement order to be made (per s9(5) of the act)

Health Insurance (Amendment) Act, 2003
Number: 11/2003
Date enacted: 16/4/2003
Commencement date: 16/4/2003

Houses of the Oireachtas Commission Act, 2003
Number: 28/2003
Date enacted: 14/7/2003
Commencement date: 1/1/2004 for all sections except s4(8) (per ss1(2) and 3(1) of the act). Section 4(8) shall not come into operation until a resolution of Dáil and/or Seanad Éireann is passed specifying the commencement date for s4(8) (per s3(2) of the act)

Immigration Act, 2003
Number: 26/2003
Date enacted: 14/7/2003

Commencement date: 11/8/2003 for s8 (per SI 363/2003); 15/9/2003 for s7 (per SI 415/2003); 19/9/2003 for all other sections of the act (per SI 414/2003)

Independent Monitoring Commission Act, 2003
Number: 40/2003
Date enacted: 19/12/2003
Commencement date: 7/1/2004 (per SI 5/2004)

Industrial Development (Science Foundation Ireland) Act, 2003
Number: 30/2003
Date enacted: 14/7/2003
Commencement date: Commencement order/s to be made (per s1(4) of the act): 25/7/2003 for all sections, other than ss19, 20 and 21 (per SI 325/2003). 25/7/2003 appointed as the establishment day for the purposes of the act (per SI 326/2003)

Intoxicating Liquor Act, 2003
Number: 31/2003
Date enacted: 14/7/2003
Commencement date: 18/8/2003 for all sections of the act, except the following sections which came into operation on 29/9/2003: ss10, 14, 15, 16(b)(ii), 19, 23 (insofar as it relates to s19 of the act and to s34A of the *Intoxicating Liquor Act, 1988*), and 25 (insofar as it inserts s15(3) of the *Equal Status Act, 2000*) (per SI 362/2003)

Licensing of Indoor Events Act, 2003
Number: 15/2003
Date enacted: 26/5/2003
Commencement date: Commencement order/s to be made (per s1(3) of the act): 14/7/2003 for part 3 (ss24 to 34 inclusive) of the act (per SI 291/2003)

Local Government Act, 2003
Number: 8/2003
Date enacted: 10/4/2003
Commencement date: 10/4/2003

Local Government (No 2) Act, 2003
Number: 17/2003
Date enacted: 2/6/2003
Commencement date: 2/6/2003

Minister for Community, Rural and Gaeltacht Affairs (Powers and Functions) Act, 2003
Number: 39/2003
Date enacted: 16/12/2003
Commencement date: 16/12/2003

Motor Vehicle (Duties and Licences) Act, 2003
Number: 5/2003
Date enacted: 10/4/2003
Commencement date: 10/4/2003 for all sections except s8 for which a commencement order is required (per s8(2) of the act); 21/10/2003 for s8 (per SI 485/2003)

National Tourism Development Authority Act, 2003
Number: 10/2003
Date enacted: 13/4/2003
Commencement date: 13/4/2003. 28/5/2003 appointed as the establishment day for the purposes of the act) (per SI 204/2003); 28/5/2003 appointed as the day on which the repeals effected by s5 of the act and specified in schedule 1, columns (2) and (3), come into operation (per SI 205/2003)

Official Languages Act, 2003
Number: 32/2003
Date enacted: 14/7/2003
Commencement date: Commencement order/s to be made bringing the act into operation not later than three years after the passing of the act (per s1(2) of the act): 30/10/2003 for ss2, 3, 4 and part 5 (per SI 518/2003); 19/1/2004 for ss5, 6, part 3 (except ss9(3) and 10), 36 and the first and second schedule to the act, 1/5/2004 for s10 in the case of specified documents that relate to the year 2003 or any subsequent year (per SI 32/2004)

Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act, 2003
Number: 33/2003
Date enacted: 29/10/2003
Commencement date: 1/11/2003 (per s5(3) of the act)

Opticians (Amendment) Act, 2003
Number: 22/2003
Date enacted: 3/7/2003
Commencement date: 31/7/2003 for all sections of the act, other than s12 (per SI 350/2003); 11/11/2003 for s12 (per SI 538/2003)

Personal Injuries Assessment Board Act, 2003
Number: 46/2003
Date enacted: 28/12/2003
Commencement date: Commencement order/s to be made (per s2 of the act)

Protection of Employees (Fixed-Term Work) Act, 2003
Number: 29/2003
Date enacted: 14/7/2003
Commencement date: 14/7/2003

Protection of the Environment Act, 2003
Number: 27/2003
Date enacted: 14/7/2003
Commencement date: Commencement order/s to be made (per s2 of the act): 8/9/2003 for ss1(1), 1(3), 2, 4, 20(1)(c), 26(1), 26(2)(a), 26(2)(b), 26(2)(c), 27, 30, 32 and 52 (per SI 393/2003); 17/9/2003 for s17 (per SI 413/2003); 1/10/2003 for ss1(4), 56, 57, 58 and 59 (insofar as it relates to the *Litter Pollution Act, 1997*) (per SI 413/2003); 22/10/2003 for ss1(2), 10, 11, 12, 13, 14, 20(1)(a), 22, 23, 24, 25, 29, 34, 46, 47, 48, 49 and 50 (per SI 498/2003)

Redundancy Payments Act, 2003
Number: 14/2003
Date enacted: 15/5/2003
Commencement date: Commencement order/s to be made (per s17(2) of the act): 25/5/2003 for ss1 to 6, 8, 10, 13 to 17 (per SI 194/2003). SI 194/2003 also provides, for the avoidance of doubt, that (a) s10 of the act applies only to those employees who are declared redundant on or after 25/5/2003; and (b) s15 of the act applies only to those circumstances where the relevant date defined by s6(9) of the *Protection of Employees (Employers' Insolvency) Act, 1984* occurs on or after 25/5/2003

Road Traffic Act, 2003
Number: 37/2003
Date enacted: 27/11/2003
Commencement date: 1/12/2003 (per SI 647/2003)

Social Welfare Act, 2003
Number: 41/2003
Date enacted: 19/12/2003
Commencement date: Various – see act

Social Welfare (Miscellaneous Provisions) Act, 2003
Number: 4/2003
Date enacted: 28/3/2003
Commencement date: Various – see act, and: 3/4/2003 for s24 (per SI 129/2003); 27/5/2003 for ss13 and 15 (per SI 210/2003); 2/9/2003 for s23 (per SI 399/2003); 8/9/2003 for s11 (per SI 472/2003); 1/1/2004 for ss16, 17, 18, 20 and 21 (per SI 661/2003)

Taxi Regulation Act, 2003
Number: 25/2003
Date enacted: 8/7/2003
Commencement date: 8/7/2003 for parts 1 and 5; commencement order/s to be made for part 3 (ss33 to 52 inclusive) (small public-service vehicle regulation) (per s33 of the act). Establishment day order for the Commission for Taxi Regulation (part 2 of the act) to be made (per s5 of the act); 4/11/2003 for the appointed day for the purposes of part 4 of the act (establishment of the advisory council to the Commission for Taxi Regulation) (per SI 517/2003)

Unclaimed Life Assurance Policies Act, 2003
Number: 2/2003
Date enacted: 22/2/2003
Commencement date: 10/3/2003 (per SI 92/2003)

PRIVATE ACT

The Royal College of Surgeons in Ireland (Charters Amendment) Act, 2003
Number: P1/2003
Date enacted: 14/7/2003
Commencement date: 14/8/2003 (per s36 of the act) G

Prepared by the Law Society Library

SOLICITORS DISCIPLINARY TRIBUNAL

These reports of the outcome of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act, 2002*) of the *Solicitors (Amendment) Act, 1994*

In the matter of John A O'Connell, solicitor, who carries on practice in the firm of Nuala G Liston & Co at 8 Day Place, Tralee, Co Kerry, and in the matter of the *Solicitors Acts, 1954 to 2002* [6467/DT383]
Law Society of Ireland (applicant)
John A O'Connell (respondent solicitor)

On 25 November 2003, the Solicitors Disciplinary Tribunal found that the respondent solicitor was guilty of misconduct in his practice as a solicitor in that he had:

a) Failed to apply for a practising certificate for the year 2003 in a timely manner, having only applied for same on 10 March 2003
b) Practised as a solicitor without a practising certificate for the period 1 January 2003 to 10 March 2003 in breach of the provisions of the *Solicitors Acts, 1954 to 2002*.

The tribunal ordered that the respondent solicitor do stand censured.

In the matter of Michael A Dowling, solicitor, carrying on practice under the style and title of Michael A Dowling & Co at Church Street, Tralee, Co Kerry, and in the matter of the *Solicitors Acts, 1954 to 2002* [3995/DT392]
Law Society of Ireland (applicant)
Michael A Dowling (respondent solicitor)

On 18 November 2003, the Solicitors Disciplinary Tribunal found that the respondent solicitor was guilty of misconduct in his practice as a solicitor in that he had:

a) Failed to apply for a practising certificate for the year 2003 in a timely manner, having only applied for same on 11 March 2003
b) Practised as a solicitor without a practising certificate for the period 1 January 2003 to 11 March 2003 in breach of the provisions of the *Solicitors Acts, 1954 to 2002*.

The tribunal ordered that the respondent solicitor:

i) Do stand admonished
ii) Pay a sum of €500 to the compensation fund in relation to the finding set out at (a) above
iii) Pay a sum of €500 to the compensation fund in relation to the finding set out at (b) above
iv) Pay the whole of the costs of the Law Society of Ireland as taxed by the taxing master of the High Court in default of agreement.

In the matter of William Christopher Ross, solicitor, practising in the firm of Michael Dowling & Co, Church Street, Tralee, Co Kerry, and in the matter of the *Solicitors Acts, 1954 to 2002* [7927/DT390]
Law Society of Ireland (applicant)
William Christopher Ross (respondent solicitor)

On 18 November 2003, the Solicitors Disciplinary Tribunal found that the respondent solicitor was guilty of misconduct in his practice as a solicitor in that he had:

a) Failed to apply for a practising certificate for the year 2003 in a timely manner, having only applied for same on 11 March 2003
b) Practised as a solicitor without a practising certificate for the period 1 January 2003 to 11 March 2003 in breach of the provisions of the *Solicitors Acts, 1954 to 2002*.

The tribunal ordered that the respondent solicitor:

i) Do stand admonished as to his future conduct and as to his past conduct on this occasion and be advised that as a young solicitor, who qualified in 1997, he must be fully conscious in the future of his own obligation to ensure that his practising certificate application is filed on time
ii) Pay a sum of €250 to the compensation fund in relation to the finding set out at (a) above
iii) Pay a sum of €250 to the compensation fund in relation to the finding set out at (b) above
iv) Pay the whole of the costs of the Law Society of Ireland as taxed by the taxing master of the High Court in default of agreement.

In the matter of George C Copeland, solicitor, practising under the style and title of Copeland McCaffrey Solicitors at PO box 9, 29 Patrick Street, Strabane, Co Tyrone BT82 8DQ, Northern Ireland, and in the matter of the *Solicitors Acts, 1954 to 2002* [4279/DT361]
Law Society of Ireland (applicant)
George C Copeland (respondent solicitor)

The Solicitors Disciplinary Tribunal noted in its report to the president of the High Court that the respondent solicitor was admitted and enrolled in Northern Ireland in 1976 and in this jurisdiction on 30 November 1981 and now carries on practice as a solicitor and partner under the style and title of Dermot Walker & Company Solicitors, 6 Queen Street, Derry BT48 7FF, Northern Ireland.

On 4 September 2003, the tribunal found that the respondent solicitor was guilty of misconduct in his practice as a solicitor in that he had:

a) Breached section 68(1) of the *Solicitors (Amendment) Act, 1994* by failing to provide his (named) client with the particulars in writing prescribed by the section
b) Breached section 68(2) of the *Solicitors (Amendment) Act, 1994* by charging a solicitor-and-client fee over and above what was received on a party-and-party basis calculated as a percentage of the settlement amount plus VAT
c) Breached section 68(3) of the *Solicitors (Amendment) Act, 1994* by deducting or appropriating monies for fees from damages payable to his client
d) Breached section 68(5) of the *Solicitors (Amendment) Act, 1994* by deducting or appropriating monies for fees from the damages payable to his client, notwithstanding that there was no agreement in writing and in the form prescribed by section 68(5) of the *Solicitors (Amendment) Act, 1994*
e) Breached section 68(6) of the *Solicitors (Amendment) Act, 1994* by failing to furnish to his client a bill of costs and as soon as practicable after the settlement of his case and in

the form prescribed by the provisions of section 68(6)
f) Breached section 68(8) of the *Solicitors (Amendment) Act, 1994* by failing to take all appropriate steps to resolve the dispute between him and his client about the amount of legal costs charged by failing to inform his client in writing of his right of taxation and to make a complaint to the society under section 9 of the *Solicitors (Amendment) Act, 1994* about alleged excessive charging
g) Breached section 66(17) of the *Solicitors Act, 1954* as amended by substitution by section 76 of the *Solicitors (Amendment) Act, 1994* by lodging or causing to be lodged for collection an unendorsed cheque or other negotiable or non-negotiable instrument drawn in favour of his client
h) Breached regulation 7(a)(iv) of the *Solicitors' accounts regulations no 2* of 1984 by drawing money for costs from his client's account without having delivered to the client a bill of costs or other written intimation of the amount of the costs incurred.

The tribunal ordered that the respondent solicitor:
a) Do stand censured
b) Pay the sum of €5,000 to the compensation fund
c) Pay the whole of the costs of the Law Society as taxed by the taxing master of the High Court in default of agreement.

In the matter of Lorna J Burke, solicitor, carrying on practice under the style and title of Burke & Company, Prospect House, Prospect Hill, Galway, and in the matter of the *Solicitors Acts, 1954 to 2002* [3166/DT263]
Law Society of Ireland (applicant)
Lorna J Burke (respondent solicitor)

On 20 November 2003, the Solicitors Disciplinary Tribunal found that the respondent solicitor was guilty of misconduct in her practice as a solicitor in that she:
a) Failed to reply to multiple correspondence from the society arising from a complaint
b) Failed to attend a meeting of the Registrar's Committee when requested to do so
c) Through her conduct obstructed and frustrated the society in carrying out its statutory duty to investigate complaints
d) Through her conduct showed a flagrant disregard for the society's position as the statutory regulatory authority of the solicitors' profession
e) Through her failure to carry out her client's instructions seriously prejudiced her client's interests.

The tribunal ordered that the respondent solicitor:
a) Do stand censured
b) Pay a sum of €2,500 to the compensation fund
c) Pay a sum of €3,000 as restitution to the complainant without prejudice to any legal right of the complainant
d) Pay the whole of the costs of the Law Society of Ireland or any person appearing before them as taxed by the taxing master of the High Court in default of agreement.

In the matter of Lorna J Burke, solicitor, carrying on practice under the style and title of Burke & Company, Prospect House, Prospect Hill, Galway, and in the matter of the *Solicitors Acts, 1954 to 2002* [3166/DT259]
Law Society of Ireland (applicant)
Lorna J Burke (respondent solicitor)

On 20 November 2003, the Solicitors Disciplinary Tribunal found that the respondent solicitor was guilty of misconduct in her practice as a solicitor in that she:
a) Failed to reply to multiple correspondence from the society arising from a complaint
b) Failed to attend a meeting of the Registrar's Committee when requested to do so
c) Through her conduct obstructed and frustrated the society in carrying out its statutory duty to investigate complaints
d) Through her conduct showed a flagrant disregard for the society's position as the statutory regulatory authority of the solicitors' profession
e) Failed to comply with a notice served on her pursuant to section 10 of the *Solicitors (Amendment) Act, 1994* within the time prescribed by the act
f) Failed to comply with the direction of the Registrar's Committee that she refund to an estate her professional fee
g) Failed to reply to telephone calls and correspondence from the complainant seeking information about his registration of lands inherited by him under the will of a relative.

The tribunal ordered that the respondent solicitor:
a) Do stand censured
b) Pay a sum of €2,500 to the compensation fund
c) Pay the whole of the costs of the Law Society of Ireland and of any person appearing before them as taxed by a taxing master of the High Court in default of agreement.

In the matter of James M Sweeney, solicitor, carrying on practice under the style and title of James M Sweeney at 14 New Cabra Road, Phibsborough, Dublin 7, and in the matter of the *Solicitors Acts, 1954 to 2002* [3572/DT393]
Law Society of Ireland (applicant)
James M Sweeney (respondent solicitor)

On 4 November 2003, the Solicitors Disciplinary Tribunal found that the respondent solicitor was guilty of misconduct in his practice as a solicitor in that he:
a) Failed to reply to correspondence from the society
b) Failed to attend a meeting of the Registrar's Committee when requested to do so arising out of his failure to reply to the society's correspondence
c) Was in serious delay in administering the estates of a family
d) Failed to answer multiple correspondence from the solicitors for the complainant.

The tribunal ordered that the respondent solicitor:
i) Do stand censured in respect of the findings set out at (a) and (b) above
ii) Pay a sum of €1,000 to the compensation fund in relation to the finding set out at (c) above
iii) Pay a sum of €1,000 to the compensation fund in relation to the finding set out at (d) above
iv) Pay the whole of the costs of the Law Society of Ireland as taxed by the taxing master of the High Court in default of agreement. G

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ABUSE OF PROCESS

Disciplinary procedures, medical law

Practice and procedure – abuse of process – judicial review – medical disciplinary procedures – successive judicial review proceedings in same matter – whether defendant oppressed by successive suits where one would do

The applicant was acquitted of charges of sexual assault. He subsequently became the subject of a disciplinary inquiry by the Medical Council. He applied for judicial review to prevent the holding or continuance of the inquiry. He brought two sets of proceedings. The first set of proceedings related to the alleged double jeopardy and breach of natural justice in the form of multiple proceedings in the same matter. The second (present) proceedings concerned the alleged breach of natural justice by reason of the council's failure to provide legal aid for the applicant. The respondent contended that the applicant had been guilty of delay which put him outside the time limits.

The respondent further contended that the applicant had failed to explain why the relief sought in the second proceedings had not been sought in the first proceedings.

The Supreme Court (Keane CJ, Denham, Murray, McGuinness and Hardiman JJ) dismissed the appeal and affirmed the order of the High Court, holding that no reason had been advanced for the failure of the applicant to raise the grounds relating to legal aid or funded representation in the first proceedings. The issues in relation to legal aid were issues that properly belonged to the subject of litigation of the first proceedings. The second proceedings ran foul of the public policy that litigation should not drag on forever and that a defendant should not be oppressed

***Ahmed v The Medical Council*, Supreme Court, 19/12/2003** [FL8471]

COMPANY

Liquidation, shadow directors

Directorship – de facto *director – shadow director – whether a person not validly appointed a director of a company may be held to be a* de facto *director or a shadow director and thus amenable to section 150 of the* Companies Act, 1990 – *whether a person's complete neglect of his responsibilities as a managing director could be evidence of irresponsibility, justifying the restrictions under section 150 of 1990 act* – Companies Acts, 1963 to 1990

Two of the three respondents, Thomas Mealey and James A Mealey, were properly appointed as directors of Lynrowan Enterprises Limited in accordance with the provisions of the *Companies Acts, 1963*. The third respondent, James V Mealey, was not a *de jure* director of the company and was sued on the basis that he was either a shadow director pursuant to section 27(1) of the *Companies Act, 1990* or a *de facto* director coming within the meaning of 'director' as contained in section 2(1) of the *Companies Act, 1963*. A winding-up order relating to this company had issued on 30 November 1998. The liquidator of this company made an application pursuant to section 150 of the 1990 act seeking orders against the three respondents to the effect that they should not be appointed or act in anyway either directly or indirectly as directors or secretaries or be concerned or take part in the promotion or formation of any company, subject to the provisions of sub-section 3(3) of section 150 of the *Companies Act, 1963*. The applicant divided the grounds justifying this application into those which related to the affairs of the company prior to the winding-up order and those which related to matters arising subsequent to that time. These grounds effectively stated that the company continued to trade when unable to pay its debts and failed to file any returns or keep any proper books of accounts or other records. The applicant also alleged that James A Mealey signed two statements of affairs that were not in the prescribed form and were both different to each other and disclosed different liabilities.

In relation to James V Mealey, the applicant took issue with the fact that he had made irresponsible drawings, namely that £2,000 had been paid from the company funds to auctioneers as a deposit for a house purchased by James V Mealey and that this was done at a time when the company was in a perilous financial state.

O'Neill J allowed the application, holding that:

1) Although Thomas Mealey was a *de jure* director of the company, he had taken no part whatsoever in its affairs and did not appear to have been expected to do so. In those circumstances, in the absence of any evidence of specific irresponsible or dishonest behaviour on his part, it would be inappropriate to grant the relief sought against him
2) The first issue for consideration was whether or not James V Mealey could be considered a director to whom section 150 of the 1990 act could apply. He was not a duly-appointed director and therefore must be held to have been a shadow director or a *de facto* director
3) A person not validly appointed a director of a company may nonetheless be said to be a *de facto* director and thus deemed to be a director within the meaning of section 2(1) of the *Companies Act, 1993* and thus amenable to the restriction contained in section 150 of the *Companies Act, 1990* in the following circumstances: a) where there is clear evidence that that person has been either the sole person directing the affairs of the company, or b) is directing the affairs of the company with others equally lacking in valid appointment, or c) where there were other validly-appointed directors and he was acting on an equal or more influential footing with the true directors in directing the affairs of the company. In the absence of clear evidence of the foregoing, and when there was evidence that the role of the person in question was explicable by the exercise of a role other than director, the person in question should not be made amenable to the section 150 restriction. Where the object of the section was the protection of the public from dishonest or irresponsible persons, the absence of a valid appointment should not permit an escape from the

restrictions in section 150. In the light of all the foregoing, the *Companies Acts, 1963 to 1990* recognised and embraced in the provisions of section 2(1) of the 1963 act and section 150 of the 1990 act the concept of the *de facto* director

4) A shadow director was someone, not a validly appointed director, on whose instructions and directions the true directors of the company act. The invariable characteristic of a shadow director was that his role was hidden behind that of the validly appointed or indeed *de facto* directors, through whom, in a concealed way, the shadow director directed the affairs of the company
5) On the facts of the case, James V Mealey did not direct the affairs of the company by instructions or directions to the other director. His role was not hidden or concealed in any way and, accordingly, he was not a shadow director
6) Based on the fact that James V Mealey had virtual complete control over the affairs of the company, carried out all bank transactions for the company, and was the only authorised signatory for the purposes of the bank account, he was on the balance of probabilities a *de facto* director of the company
7) The involvement of James A Mealey in the affairs of the company was one of virtual total non-involvement in the year-and-a-half or so prior to April 1998. There was no dishonesty on his part in relation to the affairs of the company
8) James A Mealey's failures both in regard to the management of the company up to the time of the winding-up and in relation to the preparation of the two statements of affairs thereafter was attributed to him having effectively passed all control of the affairs of the company to his son, James V Mealey. In the context of a small family business, and having arrived at the age of retirement, he had effectively permitted his son to take over control of the business. Accordingly, he did not act irresponsibly in relation to the affairs of the company
9) The evidence did not disclose any dishonesty on the part of James V Mealey
10) James V Mealey acted irresponsibly in relation to the £2,000 cheque drawn on the company account to pay for the deposit on his house and also by putting forward a claim for £10,450 in the second statement of affairs without explanation, justification or even identification, and accordingly a declaration provided for in section 150 of the *Companies Act, 1990* should be made against him.

***In re Lynrowan Enterprises Ltd*, High Court, Judge O'Neill, 31/7/2002** [FL8565]

CONSTITUTIONAL

Deportation, family law

Judicial review – immigration – refugee status – deportation – family – Immigration Act, 1999 – *proportionality – constitution – substantial grounds – whether the concept of family as recognised in article 41 of the constitution includes grandparents*

The applicants, Romanian citizens, were husband and wife who came to Ireland on 22 January 2000 with their son and daughter-in-law. They applied for refugee status and were refused by letter dated 19 June 2000. A grandson was born to the applicants' son and his partner on 24 June 2000. The applicants' son and partner were granted permission to remain in the state and they had a second child on 4 February 2002. The applicants' daughter was also living in the state with her partner and two daughters, who were not Irish citizens. The applicants' solicitors wrote to the repatriation unit of the respondent's department and following this, on 16 August 2001, the applicants' received a letter indicating the respondent's intention to make a deportation order. Notwithstanding representations made by the applicants' solicitors on their behalf, deportation orders were made in respect of the applicants and they were notified of this decision by letter of 24 January 2003. The applicants alleged that the respondent failed to have regard to the family circumstances of each of them, relying on section 3(6)(c) of the *Immigration Act, 1999* in this regard. Specifically, the applicants alleged that they were part of a close-knit family unit and, accordingly, argued that this close-knit unit would be sundered if the deportation order was put into effect. The applicants also alleged that there was good reason not to follow the decision of the High Court in *Olenczuk v Minister for Justice, Equality and Law Reform* (unreported, 25 January 2002), which decided that the family comprised of the mother and father with or without children, that is, the family as recognised under article 41 of the constitution. Furthermore, the applicants argued that the principle enunciated by the decisions of the Supreme Court in *Lobe v Minister for Justice, Equality and Law Reform* and *Osayande v Minister for Justice, Equality and Law Reform* that, although there was no absolute right of an Irish citizen who was a child not to be deported from this state, this could only be done for grave and substantial reasons or for a reason that was proportionate to these important rights, should be extended to include grandparents.

O'Sullivan J refused the relief sought, holding that:

1) The cases of *Lobe* and *Osayande* did not warrant extending the concept of the family as recognised by article 41 of the constitution to include grandparents. The test of proportionality or the requirement that the respondent only deport an Irish citizen member of a family for grave and substantial reasons were not principles which applied to the respondent's duties when considering family and domestic circumstances as identified in section 3(6)(c) of the 1999 act
2) The applicants had failed to demonstrate good and sufficient reasons for departing from the decision of Smyth J in *Olenczuk v Minister for Justice, Equality and Law Reform*
3) The *European convention on human rights* was not part of the domestic law of this state and, accordingly, the fact that the word 'family' had been held to include grandparents in the jurisprudence of the European Court of Human Rights did not comprise a good and substantial reason for departing from the decision of Smyth J in *Olenczuk*
4) The fact that the word 'family' was not defined in the 1999 act did not mean that it should be extended to include grandparents as distinct from parents and children.

***Caldaras v Minister for Justice, Equality and Law Reform*, High Court, Mr Justice O'Sullivan, 9/12/2003** [FL8563]

CONTRACT

Conveyancing, land law

Land law – property – conveyancing – vendor and purchaser – contract – condition precedent – planning permission – practice and procedure – time limits – failure to obtain planning permission – service of completion notice – whether vendor entitled to rescind contract

The plaintiff had entered into a contract of sale with the defendant regarding the sale of lands. As part of the contract, it was stipulated that the purchaser was to obtain planning permission for the lands within a certain time limit. In addition, a deposit of £45,000 was paid. Difficulties arose with regard to the obtaining of planning permission and

the vendor returned the deposit and attempted to treat the contract as at an end. The purchaser, however, called on the vendor to complete the sale. A number of issues arose for the court, principally if the vendor was correct in treating the contract as having been rescinded.

Carroll J held that the condition to obtain planning permission was a condition subsequent and not a condition precedent. It was not disputed that the grant of planning permission was for the benefit of the purchaser and could have been waived by him. Time was not made of the essence in the contract and, in order to have brought finality to the contract, the vendor should have served a completion notice under the general conditions of sale. If the time fixed by the notice then elapsed, the vendor could treat the contract as at an end.

The plaintiff vendor had therefore invalidly rescinded the contract of sale.

***O'Connor v Coady*, High Court, Ms Justice Carroll, 12/11/2003** [FL8589]

CRIMINAL

Arrest, extradition

Extradition – arrest warrant – obtaining by false pretences – uttering a forged document – Theft Act (Northern Ireland) 1969 – Extradition Act, 1965 – Extradition (Amendment) Act, 1994 – *whether the offences which correspond with the offences in this state of obtaining by false pretences and uttering a forged document are revenue offences*

The applicant found a tax disc lying on the street in Monaghan in November 1995. This disc was valid until September 1996 and he brought it to the Vehicle Licensing Office in Coleraine, where he filled in a form seeking a rebate of monies due on early surrender. In January 1996, the applicant received a cheque for £2,325, which he duly cashed. The applicant was subsequently arrested on foot of two warrants issued by the resident magistrate and justice of the peace for Northern Ireland. Warrant A related to an offence contrary to section 19(2) of *Theft Act (Northern Ireland) 1969*. Warrant B recited an offence contrary to section 17(1)(b) of *Theft Act (Northern Ireland) Act 1969*. By order dated 16 November 1999, the District Court ordered that the applicant, pursuant to section 47(1) of the *Extradition Act, 1965*, as substituted by section 12 of the *Extradition (Amendment) Act, 1994*, be delivered into the custody of a member of the Royal Ulster Constabulary for conveyance to the authorities in Northern Ireland. The court indicated that, in relation to warrant A, the corresponding offence in this state was obtaining by false pretences contrary to section 32(1) of the *Larceny Act 1916*; as regards warrant B, the corresponding offence was uttering a forged document contrary to section 6 of the *Forgery Act 1913*. On the same day, the applicant issued a special summons wherein he sought his release pursuant to the provisions of section 50 of the 1965 act.

The applicant relied on two arguments in this regard. First, he contended that either the offence specified in warrant A or in warrant B was an offence in connection with taxes, duties or exchange control, that is to say, a revenue offence. Second, in relation to warrant B, he asserted that the indictable offence specified in the District Court order was not in fact a corresponding offence in this jurisdiction to that alleged in warrant B. He claimed that the offences were revenue offences because there was a loss to the exchequer in the sum of £2,325.

McKechnie J refused the applicant's release under section 50 of the 1965 act, holding that:

1) The applicant bore the onus of proving that the offence in respect of which his extradition was sought was a revenue offence. Whether such an offence was or was not a revenue offence was a matter of Irish law. In this regard, the provisions of the 1965 act material to this case had to be construed in a strict or literal manner. In so doing, words must be given their ordinary and natural meaning, no gloss may be placed on such words, and any reasonable doubt or ambiguity must be resolved in favour of the applicant. Furthermore, the court was entitled to look at the true nature of the offence and to scrutinise the substance of the claim made. *Byrne v Conroy* ([1998] 3 IR 1) followed
2) A lay person would describe the offence with which the applicant was charged as the theft of money. The Northern Ireland authorities had not accused him of any offence under the revenue legislation and if he was charged with one of the offences specified in the warrants he would not be facing any revenue offence known to Northern Ireland. The applicant quite simply had found the property of another and had attempted, successfully, by using what he found, to obtain for himself a monetary gain
3) Despite the fact that there was a connection between the revenue authority/exchequer and the applicant, the charges brought against him did not constitute revenue offences
4) In considering the issue of corresponding offences, the basic enquiry was to discover whether the several ingredients which constituted the offence specified in the warrant, or one of more of such ingredients, constituted an offence under the law of the state and, if they did, whether that offence (the correspondence) was an indictable offence or, if not, whether it was punishable on summary conviction by imprisonment for a maximum period of at least six months. *The State (Furlong) v Kelly and Anor* ([1971] IR 132) followed
5) The facts underlying the offence specified in warrant B were facts which were reasonably capable of corresponding in Irish law to an indictable offence or to an offence which was punishable on summary conviction for a maximum period of at least six months. This was so, despite the fact that a more appropriate corresponding offence than the one designated by the district judge existed.

***Newell v O'Toole*, High Court, Mr Justice McKechnie, 22/3/2002** [FL8583]

Judicial review

Certiorari – *preliminary examination – discretion to receive additional evidence* – Criminal Procedure Act, 1967

The applicant sought by way of judicial review an order of *certiorari* quashing his return for trial and other reliefs aimed at preventing his trial. The applicant's case almost wholly turned on an analysis of the now-abolished preliminary examination procedure as set out in the *Criminal Procedure Act, 1967* and in particular the discretion to allow additional evidence to be served.

The Supreme Court (Murray, McGuinness and Hardiman JJ) allowed the appeal and substituted for the order of the High Court an order of *certiorari*, setting aside the order of the District Court returning the applicant for trial and remitting the charge to the District Court judge to proceed with it in accordance with law, holding that the district judge exceeded his statutory authority in receiving the additional evidence.

***Hughes v Judge Garavan*, Supreme Court, 18/12/2003** [FL8507]

DISCOVERY

Banking, employment

Discovery – banking law – employment contract – whether documents relating to similar fact evidence should be discovered – whether doc-

uments containing the confidential business of a third party should be discovered

The plaintiff was at all material times the general manager or managing director of the first three defendants. The defendants were part of a German banking group, consisting of either Irish subsidiaries of the German parent or the Irish branch of a German banking subsidiary of the same parent. The defendants all carried on banking business, under licence, at the International Financial Services Centre in Dublin. The plaintiff effectively claimed that the defendants operated the Irish banking business by putting lending business artificially and irregularly through the Irish branch or subsidiaries, in order to benefit from lower Irish corporation taxation. He claimed that when he reported his concerns regarding these irregularities to higher management, he was ignored. The plaintiff alleged that the defendants in fact demanded that he withdraw the complaints under pain of disciplinary proceedings, potentially leading to his dismissal.

He maintained that his pay and other benefits were stopped and, as a result, he suffered personal injury consisting of headaches, depression and psychiatric illness.

The plaintiff had obtained interlocutory relief, requiring the defendants to continue to pay his salary and other benefits. Mr Justice Kelly in the High Court adopted case-management measures, which included setting dates for discovery applications and the completion of discovery. The present appeal arose from limited aspects of the subsequent decision of Mr Justice Smyth in the High Court ordering discovery of a large number of categories of documents. Specifically, this appeal related to five categories of documents. The first two categories of documents ordered to be discovered by Smyth J contained documents relating to the employment history of two other named former high-level executives with the defendants. The plaintiff alleged that these two former executives made similar complaints to those made by the plaintiff and were consequently dismissed. The plaintiff sought to establish that there was a pattern of premature termination of senior personnel who raised complaints similar to those made by him.

The defendants argued that this was an attempt to obtain discovery of evidence of similar facts and, accordingly, discovery should be refused. Both parties cited authorities in support of their respective arguments in this regard.

The third category of documents related to details of a particular loan. The plaintiff argued that discovery of documents relating to this particular transaction were necessary to prove in effect that the defendants' banking operations in Ireland were used fictitiously to conduct German lending business. The fourth category of documents referred to documents showing support for the defendants' assertion that the loss and injury allegedly sustained by the plaintiff was a result of his own fault in contract or was contributed to by his negligence and breach of contract. The fifth category contained documents showing the plaintiff's allegations were false and scandalous and that he was guilty of unconscionable conduct as pleaded in the defence.

The Supreme Court (McGuinness, Hardiman, Fennelly JJ) refused the appeal in respect of the discovery sought in categories one and two and allowed the appeal in respect of categories three, four and five, holding that:

1) It was not necessary in a discovery application to adjudicate on the admissibility of proposed evidence
2) If there was a clear rule excluding from evidence the type of material sought by the plaintiff, discovery would, no doubt, not be ordered. However, the question of admissibility of the documents sought in categories one and two seemed to involve the exercise of judicial discretion in balancing competing considerations of relevance, probative value and oppression and, accordingly, was a matter for the trial judge. Discovery should not be refused in circumstances where it would prejudice this issue
3) The issue of the sufficiency of the pleadings was a matter for the trial judge to decide
4) Discovery of documents of a particular lending transaction concerned the confidential business of a third party. When considering whether to order discovery of such documents, the court had to balance the interests of persons not party to the litigation. *Cooper-Flynn v RTÉ* ([2000] 3 IR 343) followed
5) The plaintiff's argument that lending to German nationals by the Irish branches or subsidiaries needed to comply with German law, which the defendants denied, was a legal issue and accordingly it was not necessary for the judge to have access to individual loans to decide that issue
6) Pleading contributory negligence did not amount to the raising of a new allegation of fault on the part of the plaintiff and it did not suggest that the defendants had any relevant documentation in their possession
7) Discovery should not be ordered merely in respect of a denial in a defence to a claim. The use of the words 'wholly false and malicious', 'scandalous' and 'unconscionable' in the present case did not amount to substantive pleas, but constituted emphatic denials, which were justified by the nature of the allegations. By virtue of the plaintiff's intimate knowledge of the defendants' banking business, he should be able to make his case without the additional discovery sought in categories four and five.

***Von Gordon v Helaba Dublin Landes Bank Hessen*, Supreme Court, 17/12/2003** [FL8407]

TORT

Damages, appeal

Negligence – appeal – liability – damages – apportionment of fault – whether plaintiff established that defendant bore responsibility for accident

The High Court found the plaintiff 50% responsible and the defendant 50% responsible for a road traffic accident and further found that the value of the plaintiff's claim, assuming full liability, was £710,145. The defendant appealed.

The Supreme Court (Keane CJ, Hardiman and Fennelly JJ) allowed the defendant's appeal and substituted for the order of the High Court an order dismissing the plaintiff's claim, holding that the plaintiff had failed to establish that the defendant bore any responsibility for the accident.

Per curiam: the judgment of the High Court should be in the form suggested in the judgment of McCarthy J in *Hay v O'Grady* ([1992] 1 IR 210), where McCarthy J emphasised 'the importance of a clear statement … by the trial judge of his findings of primary fact, the inferences to be drawn and the conclusion that follows'.

***Lennon v Reilly*, Supreme Court, 25/11/2003** [FL8490] 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

Competition Authority issues new notice and declaration for vertical restraints

On 5 December 2003, the Competition Authority published its *Notice in respect of vertical agreements and concerted practices* and its *Declaration in respect of vertical agreements and concerted practices*. The notice and declaration are designed to bring Irish competition law on vertical restraints into line with EU competition law. The notice and declaration are modelled on commission regulation EC no 2790/1999 of 22 December 1999 on the application of article 81(3) of the treaty to categories of vertical agreements and concerted practices (OJ 1999 L336/21 – the *Vertical restraints block exemption regulation*).

The notice and declaration repeal the Competition Authority *Notice in respect of agreements between suppliers and resellers*, dated 1 July 2002, and Competition Authority decision number 528, providing for a category licence in respect of agreements between suppliers and resellers, dated 4 December 1998, except for certain transitional arrangements that provide for the continued application of the old notice and category licence until 30 June 2004.

Section 4(1) – agreements, decisions and concerted practices

Section 4(1) of the *Competition Act, 2002* prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition in trade in goods or services in the state or in any part of the state. An agreement, decision or concerted practice that infringes this prohibition is void and unenforceable. A breach of section 4(1) of the 2002 act renders the parties and their directors and senior managers liable for fines and/or imprisonment, and exposes them to an action by third parties who may seek various remedies, including damages. Furthermore, the Competition Authority may investigate a breach of the competition rules. An agreement, decision or concerted practice that infringes section 4(1) of the 2002 act may be exempted if certain conditions set out in section 4(5) are found to exist. The Competition Authority is empowered to exempt a defined category of agreements, decisions and concerted practices by way of declaration.

The notice

Under the terms of the notice, the Competition Authority expresses the view that if an agreement falls within the terms of the notice, the agreement does not infringe section 4(1) of the 2002 act. The notice provides that non-exclusive distribution agreements and 'genuine agency agreements' are not contrary to section 4(1) of the 2002 act. A non-exclusive distribution agreement is defined as one where the supplier agrees to supply the contract goods or services to the buyer for a certain territory but without any restriction on supplying other buyers within that territory. It provides that where, *de facto*, the supplier enters into an agreement with only one single buyer within the territory, the agreement will not be considered to be non-exclusive. Significantly, the notice also deals with 'genuine agency agreements'. The Competition Authority held in a number of decisions taken under the *Competition Acts, 1991 and 1996* that certain provisions in an agency agreement may, in limited circumstances, amount to a breach of the equivalent provisions of section 4(1) of the 2002 act. The old notice and the category licence did not extend to agency agreements, as they were confined to agreements for the resale of goods and services. A genuine agency agreement is defined as an agreement whereby the agent is vested with the power to negotiate and/or conclude contracts on behalf of the principal either in the agent's own name or in the name of the principal in situations where the agent does not bear any or bears only insignificant risks in relation to the contracts concluded and/or negotiated on behalf of the principal and in relation to market-specific investments for that field of activity. It should be noted that an agency agreement that is not considered to be a genuine agency agreement under the notice may be exempted under the terms of the declaration.

The notice provides that the following types of agreement do not involve a breach of section 4(1) of the 2002 act, provided that the market share of the undertakings on the relevant market does not exceed 15%: exclusive distribution agreements, exclusive purchasing agreements, selective distribution systems and franchising agreements.

The declaration

The declaration applies to 'vertical agreements', which are defined as agreements or concerted practices entered into between two or more undertakings that operate, for the purpose of the agreement, at a different level of the production or distribution chain, and relate to the conditions under which the parties may purchase, sell or resell certain goods or services. The declaration also applies to vertical agreements containing provisions that relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers. The declaration applies only on condition that the market share held by the supplier does not exceed 30% of the relevant market for the contract goods or services. The declaration provides that if the vertical agreement contains an exclusive supply obligation, the declaration applies only on condition that the market share held by the buyer (as opposed to the seller) does not exceed 30% of the relevant market on which it purchases the contract goods or services. The above reflects the *Vertical restraints block exemption regulation*. Under the old notice and category licence, the market share limitation was that neither party to the agreement could have a market share in excess of 20% or 40% of the relevant market respectively.

Black-listed clauses

The notice and declaration specify that they do not apply to vertical agreements that, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- The restriction of the buyer's ability to determine its sale prices without prejudice to the ability of the supplier to impose a maximum sale price or recommend a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties
- The restriction of the territory into which, or the customers to whom, the buyer may sell the contract or services, except:
  1) The restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer
  2) The restriction of sales to end-users by a buyer operating at the wholesale level of trade
  3) The restriction of sales to unauthorised distributors by members of its selective distribution system, and
  4) The restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same types of goods as those produced by the supplier
- The restriction of active or passive sales to end-users by members of a selective distribution system operating at the retail level of trade (this is without prejudice to the possibility of prohibiting a member of the system from operating out of an unauthorised place of establishment)
- The restriction of cross supplies between distributors within a selective distribution system, including between distributors operating a different level of trade
- The restriction agreed between a supplier of components and a buyer who incorporates those components that limits the supplier to selling the components as spare parts to end-users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its goods.

Non-compete clauses

The notice and declaration clearly specify that they do not apply to vertical agreements that contain the following obligations:

- A direct or indirect non-compete obligation that is indefinite or exceeds five years. Both the notice and declaration make it clear that a non-compete obligation, which is tacitly renewable beyond a period of five years, is deemed to be concluded for an indefinite duration. The five-year time limit does not apply where the contract goods or services are sold by the buyer from premises and land owned by the supplier or leased by the supplier from third parties not connected with the buyer, provided that the duration of the non-compete does not exceed the period of occupancy of the premises and land by the buyer. The declaration defines a non-compete obligation as any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services that compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 80% of the buyer's total purchases of the contract goods or services and their substitutes on the relevant market, calculated on the basis of the value of its purchases in the preceding calendar year
- Any direct or indirect obligation that causes the buyer after termination of the agreement not to manufacture, purchase, sell or resell goods or services, unless the obligation relates to goods or services that compete with

the contract goods or services and is limited to the premises and land from which the buyer has operated during the contract period and is indispensable to protect know-how transferred by the supplier to the buyer, and provided that the duration of the non-compete is limited to a period of one year after termination of the agreement (the above is without prejudice to the possibility of imposing a restriction that is unlimited in time on the use and disclosure of know-how that has not entered into the public domain)
- Any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers.

Exceptions

The notice and declaration do not apply to exclusive purchasing agreements whereby the buyer is not free to buy and sell competing products in respect of motor fuels and liquefied petroleum gas.

The notice and declaration do not apply to vertical agreements entered into between 'competing undertakings', except that the declaration does apply where the competing undertakings enter into a non-reciprocal vertical agreement and:

- The supplier is a manufacturer and a distributor of goods, whereas the buyer is a distributor not manufacturing goods competing with the contract goods, or
- The supplier is a provider of services at several levels of trade, while the buyer does not provide competing services at the level of trade where it purchases the contract services.

The term 'competing undertakings' is defined effectively as actual or potential suppliers in the same product market.

Commission notice on vertical restraints

The EU Commission has issued a notice entitled *Guidelines on vertical restraints* (OJ 2000 C291/1), which provides detailed guidance on the application of the *Vertical restraints block exemption regulation* and on vertical restraints generally in the context of EU competition law (the *Commission vertical restraints notice*). The *Commission vertical restraints notice* should be consulted when examining an issue related to vertical restraints in the context of Irish competition law.

Transitional provisions

The notice and declaration contain transitional arrangements which provide that existing agreements and concerted practices that comply with the old notice or the category license that were entered into prior to 1 January 2004 are to continue to benefit from the notice and category licence until 30 June 2004. G

Marco Hickey is head of the EU and Competition Law Department of LK Shields Solicitors.

Recent developments in European law

ESTABLISHMENT AND SERVICES

Case C-243/01 *Criminal Proceedings against Piergiorgio Gambelli and 137 Others*, 6 November 2003. Gambelli and 137 others manage data-transmission centres in Italy that collect bets in Italy on behalf of an English bookmaker to which the internet links them. The English bookmaker is licensed under English law. Italian legislation reserves the collection of bets to the state or its licensees. Breaching this legislation can result in criminal penalties, including imprisonment for up to one year. Criminal proceedings were taken against Gambelli and others for taking bets. He argued that the Italian legislation breached EC rules on establishment and the provision of services. An Italian court made a reference to the ECJ. The court held that the Italian legislation was a restriction on the freedom of establishment, the freedom to provide services and the freedom to receive or benefit from a service offered by a supplier. Restrictions can be justified if they are necessary for consumer protection and for the preservation of the social order. The main aim of such restrictions should be to focus on an overriding reason of general interest – such as the reduction of gaming opportunities. The procurement of finances for public funds is not such a justification. Any restrictions must be proportionate and non-discriminatory. Italy is encouraging the expansion of betting and gaming in the state, but restricting the provisions of such services to state licensees. The ECJ held that if a state was encouraging such activity, it could not rely on the need to uphold public order in order to justify restrictive measures. The court held that it was for the national court to determine whether the conditions for running betting operations could be more easily satisfied by Italian than by foreign operators. If so, those conditions are discriminatory. The national court was then invited to consider whether the imposition of a criminal penalty on an intermediary who facilitates the provision of services by a bookmaker established in another member state is not disproportionate, given that the state encourages such activity. The national court was also asked whether these restrictions go beyond what is necessary in order to combat fraud.

FREE MOVEMENT OF WORKERS

Case C-311/01 *Commission of the European Communities v Kingdom of the Netherlands*, 6 November 2003. The community regulation on the application of social security schemes to workers moving within the EU has rules that apply specifically to those workers who cross a border when going to and from work ('frontier workers'). If they become unemployed, they are entitled to benefits in the state in which they reside as though they were employed in that state. Workers who become unemployed and go to another state to seek employment are entitled to receive unemployment benefits for a period of three months. The Dutch authorities refuse unemployment benefit to unemployed frontier workers who live in the Netherlands but who wish to go to another member state to seek employment. The commission applied to the ECJ for a declaration that this administrative practice is contrary to community law. The court pointed out that, in the case of unemployed frontier workers who are not residing in the member state where they were last employed, the regulation establishes a specific requirement of payment of unemployment benefits for the member state of residence. As the member state of residence has sole competence for payment of such benefits to the former worker, it is the only state able to ensure that payment of unemployment benefit to him may continue if he goes to another member state in order to seek employment. The Dutch refusal to pay benefits to frontier workers wishing to go to another state to seek employment puts those workers at a disadvantage compared with workers in general. Frontier workers will be deterred or even prevented from going to other member states to seek work. They would be penalised for exercising the right of free movement that is guaranteed to them by the treaty.

INTELLECTUAL PROPERTY

Case C-408/01 *Adidas-Salomon AG and Others v Finesseworld Trading Ltd*, 23 October 2003. Adidas has its trademark of three parallel vertical stripes registered in the Benelux. The respondent markets sport clothes with a similar motif, composed of two vertical stripes rather than three. Adidas brought an action in the Dutch courts arguing that there was a likelihood of confusion between the two motifs. The case was referred to the ECJ. It held that it is not necessary for there to be a likelihood of confusion between the sign and a mark with a reputation in order to claim infringement of that mark. It is sufficient if the relevant section of the public establishes a link between the sign and the mark, even if it does not confuse them. However, if the public view the sign purely as a decorative motif, it does not necessarily establish any link with the mark with a reputation. In those circumstances, the proprietor of the mark cannot prevent its use as an embellishment by a third party.

Case C-191.01P *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Company*, 23 October 2003. In 1996, Wrigley applied to register 'Doublemint' as a community trademark for chewing gum. This was refused on the grounds that the word was descriptive of certain characteristics of the goods concerned. Wrigley appealed against that decision to the CFI. The CFI held that the word was capable of registration as a trademark. 'Doublemint' had two possible meanings – twice the usual amount of mint or flavoured with two varieties of mint. The word 'mint' is generic and includes a number of different types of mint. As the word had numerous meanings, it was deprived of any descriptive function. OHIM appealed against this judgment to the ECJ. The court set aside the judgment of the CFI. It held that a sign must be refused registration if at least one of its possible meanings designates a characteristic of the goods or services concerned. The CFI had applied a test based on whether the trademark was 'exclusively descriptive'. This is not the test laid down by the regulation on the community trademark. G

Friends reunited

University College Cork's BCL class of 1978 recently held a reunion. Pictured with class member Colm Burke, now lord mayor of Cork, are Kathleen Dineen, Deirdre McMichael, Geraldine Keane, Han Fitzgerald, Marie Twomey, Pamela Treacy, Bridget Hynes, Ruth O'Meara, Paul Sreenan, John Garavan, Teresa Murphy, Eamon Murray, Justin McCarthy, Patrick Long, Diarmuid F Kelleher, Mary Sweeney, Ursula McSweeney, Colm Houlihan, Sean Cahill, Michael Prenderville, John Brooks, Raymond Hennessy, Justin Condon, Gerald AJ O'Flynn, Don O'Connor and Eamon Fleming

Sterling service

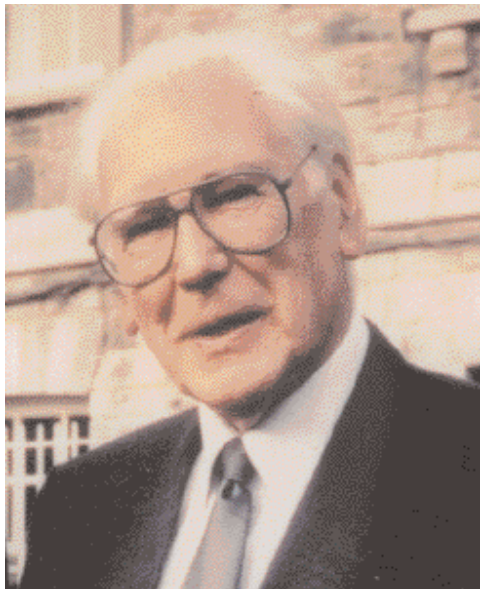
To mark his forthcoming retirement as registrar of solicitors after 29 years of service with the Law Society, PJ Connolly was the guest of honour at a dinner hosted by the former chairmen of the Compensation Fund Committee over the years. Pictured are *(back row, from left)* director general Ken Murphy, Gerard Doherty (chairman, 1998-2001), Simon Murphy (2001-04), Laurence K Shields (1988-90), Ward McEllin (1990-94), Tom Shaw (1977-80) and Francis D Daly (1985-88); *(front row, from left)* Geraldine Clarke (1994-96), PJ Connolly, Law Society president Gerard F Griffin, and deputy director general Mary Keane

CEDR trees

Pictured at the Centre for European Dispute Resolution (CEDR) training course at A&L Goodbody in January are *(back row, from left)* John Cheatle BL, Oliver J Connolly BL, CEDR director Tony Allen, John P Trainor SC, Ian Finlay SC, Austin Kenny and Kenny Cunningham; *(middle row, from left)* Patrick J Burke, Caroline Crowley of Hayes Solicitors, James Connolly SC, Lawrence Kershen QC, Helen Kilroy of McCann FitzGerald, CEDR director Terry Jones; *(front row, from left)* Gabriel Daly of Beauchamps, mediator and trainer Charles Dodson, Duncan Grehan of Duncan Grehan and Partners, Liam Kennedy and Joe Kelly of A&L Goodbody, Lorraine Compton of Matheson Ormsby Prentice, Dudley O'Donnell of the Chief State Solicitor's Office, CEDR course manager Tracey Commock, and ADR liaison Audrienne Spiteri Gonzu

OBITUARY

Peter Prentice 1915 – 2003



The death of Peter Prentice on 17 November 2003 has deprived the Irish legal community of one of its most illustrious members. The President of the Law Society, Gerard Griffin, referred to him as 'an iconic figure in the history of the Law Society'.

Peter played a major role in the Law Society of Ireland, where his charm, determination and vision served the profession in a unique way. In particular, it was his drive, ingenuity and foresight that were the primary factors in the acquisition of the society's Blackhall Place headquarters. At a special meeting of the Law Society Council on 3 July 1968, Peter proposed a motion that the society purchase the King's Hospital for the sum of £105,000. The motion was carried unanimously. However, few such matters run smoothly, and the Blackhall Place project was no exception. Peter Prentice headed the Special Premises Committee and undertook the enormous task of organising the funding both of the purchase and alterations necessary to complete the project. It was not until 14 June 1978 that the opening of Blackhall Place was performed by the then president, Joseph Dundon. During that opening, Peter Prentice was specifically praised as the one who had the foresight to identify the premises and the energy to drive the task forward.

As in all the tasks he undertook, he proved in this achievement that he was not afraid to take decisions and to live with their consequences. Peter always said that the project could never have been completed if an extraordinary general meeting of the members of the society had been called, and that, in order to achieve the objectives, the Council of the society had to undertake responsibility.

He was first elected a member of the Law Society Council in November 1960 and served as its president in 1973/74.

Peter Donald Maziere Prentice was born in Waterford on 5 August 1915, the son of Maziere Prentice and his wife Aphra (née Carden). His father, like his grandfather and great grandfather, was a bank manager in the Bank of Ireland. The early years of Peter's life were spent in Waterford, Cork and Clonmel, where his father worked as the local agent to the Bank of Ireland.

Peter was educated at Avoca School, Blackrock, before going on to become apprenticed as a solicitor in the firm of TW Hardman & Sons, qualifying as a solicitor in Easter 1938.

Peter's public spiritedness did not only relate to the Law Society. He was a member of the Charitable Commissioners of Donations and Bequests for many years and became the first ever solicitor chairman (a post normally reserved for High Court judges). He also served as a member of the Censorship Board. Peter was a director of several companies in Ireland and was appointed chairman of the Trustee Savings Bank in 1987.

He was always proud of his heritage and particularly relished his French Huguenot Maziere connection. He was a trustee of the Huguenot Society.

Peter Prentice was an active member of the Church of Ireland and served the church as a member of the Representative Church Body for over 30 years and assisted on the incorporated society dealing with education for 40 years. He was chancellor of two Church of Ireland dioceses, Limerick and Killaloe and Meath and Kildare.

In 1942, he was approached by Ernest Prentice, his uncle, to join the firm Matheson Ormsby & Prentice. The terms under which Peter joined the firm had not been discussed. Peter told the story that, having worked for about three months without pay, he plucked up the courage to confront his uncle and asked him if he was a partner. Ernest Prentice licked his pencil, jotted on the back of an envelope, made a quick calculation, and indicated to Peter his share. So Peter became a partner.

When Peter joined the firm, there was only Ernest Prentice and his son Cecil working in the practice, both Matheson and Ormsby having previously retired. Soon afterwards, Ernest Prentice was to die, which left only Peter and Cecil to run the practice. The practice then had offices in Unity Buildings near Clery's on O'Connell Street. In December/January 1950/51, John Ross joined the firm. In 1961, Peter, with encouragement from Cecil and John, moved the firm to 20 Upper Merrion Street. The partners were teased by their colleagues that MOP had moved to the country. Peter and John both had the foresight to see the economic development that was occurring in Ireland and effectively transformed the firm from a practice concerned only with private client work into one undertaking

corporate work for commercial clients.

Peter was an excellent lawyer. He always appeared able to find the law very quickly. He understood and liked the law, and he had the ingenuity to see how the law could be worked for the benefit of clients. He was a quick and excellent draftsman and an able advocate in commercial transactions. Above all, however, he was a solicitor who was not afraid to represent an unpopular position, and he had an ability to communicate with people in all his dealings with them.

His ability to communicate and to engender a feeling of warmth made the firm which he led into a family unit, where loyalty and integrity were cherished. He was a wonderful person to work for and with. He never panicked, had an even disposition, and was always ready to assist a young colleague. Peter was usually able to understand what people in the practice required and sought. His presence gave encouragement and strength to people in the firm, irrespective of the mistakes that had been made.

Perhaps this was best illustrated by the case of a recently qualified young solicitor who had joined the firm. The solicitor sent an apprentice to the District Court to make a plea for a parking offence committed by his sister. The district justice became outraged at having an apprentice appear in his court and promptly placed her under arrest for contempt of court. The front page of the *Evening Herald* reported extensively on the incident. Members of the firm were embarrassed.

The next day the young solicitor came to the office believing that his career with the firm was in irretrievable, if not instant, decline. To his horror, the solicitor met Peter Prentice on the stairs in the early morning. He tried unsuccessfully to merge with the wall but Peter stopped him and congratulated him on obtaining publicity for the firm, reminding him that 'no publicity was bad publicity'. That tale, more than any other, exemplifies Peter Prentice's ability to look at the human side of a situation and to react in a generous and sympathetic manner to alleviate the embarrassment of a young colleague.

Peter was essentially a modest man who enjoyed above all his home, reading and tinkering with boats in Mount Shannon, where the family had a house.

Peter married Sheila (née Moore), whom he met when he was 21 and she 17, on 16 June 1943. Peter and Sheila had five children. Sadly, Donnie, their first born, died just before his seventh birthday; this was the one permanent sadness in their otherwise happily-married life. Gair, Hilary, Susan and William were subsequently born to Peter and Sheila. That the law had a strong influence in all of their lives can be evidenced by the fact that both Gair and Susan married solicitors, while Hilary and William have both succeeded Peter in the practice of Matheson Ormsby Prentice. G

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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 5 March 2004)

Regd owner: Patrick McKiernan, Drumbrawn, Cloverhill, Co Cavan; folio: 12301; lands: Drumbrawn (parts); area: 11.2679 hectares; **Co Cavan**

Regd owner: G&N House Supplies Limited; folio: 29123F; lands: townland of Smithstown and barony of Bunratty Lower; area: 0.2088 hectares; **Co Clare**

Regd owner: Anthony Rynne; folio: 814L; lands: Knockballynameath and barony of Bunratty Lower; **Co Clare**

Regd owner: Maureen and Patrick Barry; folio: 51515; lands: a plot of ground being part of the townland of Ballyadack North in the barony of Condons and Clongibbon and county of Cork; **Co Cork**

Regd owner: Patrick and Bridget McCarthy; folio: 8202; lands: a plot of ground in the electoral division of Castleventry being part of the townland of Inchinattin in the barony of Carbery East (West division) and county of Cork; **Co Cork**

Regd owner: John Brendan Palmer (senior) (deceased); folio: 31477F; lands: a plot of ground being part of the townland of Caherduggan South in the barony of Fermoy and county of Cork; **Co Cork**

Regd owner: Christopher Crowley; folio: 59387; lands: a plot of ground being part of the townland of Huggarts Land in the barony of Cork and county of Cork; **Co Cork**

Regd owner: Daniel and Hannah Dilworth; folio: 33844; lands: a plot of ground being part of the townland of Curraghnalaght in the barony of Muskerry East and county of Cork; **Co Cork**

Regd owner: Gilberte Marie Therese O'Mahony; folio: 40576; lands: a plot of ground being part of the townland of Clonbouig in the barony of Carbery East (East Division) and county of Cork; **Co Cork**

Regd owner: Edmond Budds; folio: 32761; lands: plot of ground being part of the townland of Ballyre and barony of Imokilly; **Co Cork**

Regd owner: Michael McDaid, Altashane, Carndonagh, Co Donegal; folio: 13731F; lands: Altashane or Cabadooey; area: 1.450 acres; **Co Donegal**

Regd owner: Seán McGuinness, Hillhead, Ardara, Co Donegal; folio: 6995; lands: Ardara; area: 4.8415 hectares; **Co Donegal**

Regd owner: Rosaleen Boxwell; folio: DN23576F; lands: property situate in the townland of Burrow and barony of Nethercross; **Co Dublin**

Regd owner: Kathleen Byrne; folio: DN10781L; lands: the property known as 19 Clanhugh Road situate in the parishes of Artaine and Killester and districts of Artaine West and Clontarf; **Co Dublin**

Regd owner: Kieran Lawler; folio: DN24664F; lands: property situate in the townland of Oldbawn and barony of Uppercross; **Co Dublin**

Regd owner: Louisa M Kearney; folio: DN11653F; lands: the property known as no 4 Larkfield Avenue situate in the parish of St Peter's and District of Rathmines; **Co Dublin**

Regd owner: Thomas Wheelan; folio: DN19089; lands: a plot of ground situate on the north side of Sallynoggin Road, in the parish of Monkstown and borough of Dun Laoghaire; **Co Dublin**

Regd owner: William Walshe and Niamh Walshe; folio: DN87648F; lands: property situate in the townland of Mount Merrion or Callary and barony of Rathdown; **Co Dublin**

Regd owner: Michael Brennan and Mary Brennan; folio: DN23345L; lands: property situate in the townland of Newbrook and barony of Coolock; **Co Dublin**

Regd owner: Patrick Conway; Callowfinish, Carna, Co Galway; folio: 30434F; lands: Callowfinish; **Co Galway**

Regd owner: Bridget Lucid; folio: 20346F; lands: townland of Booleenshare and barony of Clanmaurice, Co Kerry; **Co Kerry**

Regd owner: Jeremiah O'Sullivan; folio: 23476; lands: townland of Caherbreagh and barony of Trughanacmy; **Co Kerry**

Regd owner: Anthony and Kate Cudmore; folio: 26729F; lands: townland of Walshestown and barony of Connell; **Co Kildare**

Regd owner: Michael and Isabella Doyle; folio: 3871; lands: townland of Allenwood South and barony of Connell; **Co Kildare**

Regd owner: Michael and Noreen Kennedy; folio: 11843F; lands: Gallowshill and barony of Shillelogher; **Co Kilkenny**

Regd owner: Mary Minogue; folio: 15296F; lands: Gardens and barony of Kilkenny Borough; **Co Kilkenny**

Regd owner: Patrick J Fitzgibbon; folio: 12260; lands: Sandylane and barony of Clanwilliam; **Co Limerick**

Regd owner: Esther Hammond; folio: 5357F; lands: townland of Foyle and barony of Clanwilliam; **Co Limerick**

Regd owner: Peadar Breen and Mary Elizabeth Breen, 350 Beechmont Drive, Dundalk, Co Louth; folio: 4237L; lands: Marshes Upper; **Co Louth**

Regd owner: Thomas J Keane; folio: Crossboyne, Claremorris, Co Mayo; lands: townland of (1) and (3) Drummin West, (2) Drummin South and barony of Clanmorris; area: (1) 8.725 acres, (2) 4.913 acres, (3) 6.406 acres; **Co Mayo**

Regd owner: Mary Patricia Camplisson and Seamus Camplisson, Corballis, Garlow

Cross, Navan, Co Meath; folio: 14189F; lands: Corballis; area: 58.519 acres, 0.366 acres and 0.025 acres; **Co Meath**

Regd owner: Seamus Walshe, Lisaquill, Bloomfield, Castleblayney, Co Monaghan; folio: 19467; lands: Lisaquill and Lisaquill; area: 0.4299 hectares and 1.8564 hectares; **Co Monaghan**

Regd owner: Rose Mary Lynch; folio: 772; lands: Killooly and barony of Ballyboy; **Co Offaly**

Regd owner: Mary Bennett; folio: 1133f; lands: Cortullagh or Grove and barony of Garrycastle; **Co Offaly**

Regd owner: Anthony Francis Hannon; folio: 1096F; lands: Lisbaun and barony of Athlone South; area: 0.2529 hectares; **Co Roscommon**

Regd owner: Michael Healy (deceased); folio: 23189; lands: townland of Kilmore (Ed Athleague East) and barony of Athlone North; area: 10.6735 hectares; **Co Roscommon**

Regd owner: Eileen Keville, late of Corry, Kilmore, Co Roscommon; folio: 8891F; lands: Corry, Dangan (Nugent) Cuiltyshinnoge, Corry; **Co Roscommon**

Regd owner: Martin Joseph Brennan; folio: 6996; lands: townland of Powellsborough and barony of Leyny; area: 6.5280 hectares; **Co Sligo**

Regd owner: John and Patricia Moore; folio: 9133F; lands: townland of Lehinch and barony of Ormond Lower; **Co Tipperary**

Regd owner: Nicholas Philip Martin Maher; folio: 3270; lands: townland of Freaghduff and barony of Middlethird; **Co Tipperary**

Regd owner: Ann Tierney; folio: 23046; lands: Ballymakeogh and barony of Owney and Arra; **Co Tipperary**

Regd owner: Thomas Drohan; folio: 1011F; lands: a plot of ground being part of the townland of Ardnahow in the barony of Middlethird and county of Waterford; **Co Waterford**

Regd owner: William Evans, Baronstown, Ballynacarrigy, Co Westmeath; folio: 1692F; lands: Baronstown Demesne; area: 10.2436 hectares, 0.2149 hectares and 0.3187 hectares; **Co Westmeath**

Regd owner: Mary Pettit, Spittalstown, Streamstown, Co Westmeath; folio: 8164; lands: Cloghanaskaw; area: 9.0953 hectares; **Co Westmeath**

Regd owner: Flannan P Collins; folio: 17237F; lands: Tarahill and barony of Ballaghkeen North; **Co Wexford**

Regd owner: Sean Scanlon and Maria Scanlon; folio: 9642f; lands: Churchtown and barony of Shelburne; **Co Wexford**

WILLS

Bourke, Joseph (deceased), late of Main Street, Charleville, Co Cork and Inchinclare, Banogue, Croom, Co Limerick. Would any person having any knowledge of a will made by the above named deceased who died on 18 January 2004 at the Regional Hospital, Limerick, please contact James Binchy & Son, Solicitors, Main Street, Charleville, Co Cork; tel: 063 81214

Brogan, Mary (deceased), late of Cappagh, Carron, Co Clare. Would any person having knowledge of a will made by the above named deceased who died on 28 January 2004, please contact Patrick A Burke & Co, Solicitors, The Middle Yard, Kinvara, Co Galway; tel: 091 637 733, fax: 091 637 814

Dunne, James (deceased), late of 28 Rosemount Estate, Dundrum, Dublin 14. Would any person having any knowledge of a will made by the above named deceased who died on 24 April 2003 at Tallaght Hospital, Dublin 24, please contact Vivian C Matthews, Solicitor, 7 Main Street, Dundrum, Co Dublin

Durkin, Mary (deceased), late of Louisburgh Road, Murrisk, Westport, Co Mayo. Would any person having knowledge of a will made by the above named deceased who died on 11 January 2004 at District Hospital, Swinford, Co Mayo, please contact Oliver P Morahan and Son, James St, Westport, Co Mayo; tel: 098 25075; e-mail: morahan solicitors@eircom.net

Garahy, Mary (Molly) (deceased), late of Furglan Cross, Lahinch, Co Clare. Would any person having knowledge of a will executed by the above named deceased who died on 3 January 2004, please contact Chambers & Company, Solicitors, Parliament Street, Ennistymon, Co Clare

Healy, Marjorie (otherwise Mary) (deceased), late of Old Court, Rochestown, Co Cork. Would any person having knowledge of a will of the above named deceased who died on 29 October 2002, please contact O'Flynn Exhams & Partners, Solicitors, 58 South Mall, Cork. €10 reward for return of the original will

McDonald, Godfrey J (deceased), late of 28 Dublin Street, Carlow. Would any person having knowledge of a will made by the above named deceased who died on 29 May 1963 at 28 Dublin Street, Carlow, please contact Corrigan & Corrigan, Solicitors, 3 St Andrew Street, Dublin 2; tel: 01 677 6108

McDonald, Mary (deceased), late of 28 Dublin Street, Carlow. Would any person having knowledge of a will made by the above named deceased who died on 3 June 1986 at St Brigid's Hospital, Carlow, please contact Corrigan & Corrigan, Solicitors, 3 St Andrew Street, Dublin 2; tel: 01 677 6108

McDonald, Godfrey F (deceased), late of 28 Dublin Street, Carlow. Would any person having any knowledge of a will made by the above named deceased who died on 4 January 2004 at District Hospital, Carlow, please contact Corrigan & Corrigan, Solicitors, 3 St Andrew Street, Dublin 2; tel: 01 677 6108

Mullarney, Elizabeth (deceased), late of 12 Rathdown Terrace, Sandyford, Dublin 16. Would any person having knowledge of a will made by the above named deceased who died on 3 February 1998, please contact Peter Gartlan & Company, Solicitors, 56 Lower Dorset Street, Dublin 1; tel: 01 855 7434, fax: 01 855 1075

O'Boyle, Brenda (deceased), late of 20 Greenlea Park, Terenure, Dublin 6W. Would any person having knowledge of a will being made by the above named who died on 18 December 2003, please contact Cahill and Company, Solicitors, Abbeyleix, Co Laois; tel: 0502 31220; fax: 0502 31480

Ryland, John (otherwise Jackie) (deceased), late of Main Street, Banagher, Co Offaly. Would any person having knowledge of a will made by the above named deceased who died on 22 August 2003, please contact DA Houlihan & Son, Solicitors, Birr, Co Offaly; tel: 0509 20026; fax: 0509 21086; e-mail: dahoulihan@eircom.net

Walsh, Margaret (Peg) (deceased), late of 8 Deerpark, Silversprings, Cork and formerly of 165 Willow Park, Clonmel, Co Tipperary. Would any person having knowledge of a will made by the above named deceased who died on 7 December 2003, please contact O'Donnell Breen-Walsh O'Donoghue, Solicitors, Trinity House, 8 George's Quay, Cork; tel: 021 431 3911; fax: 021 432 0316 (ref: McA/D1369)

The *Succession Act, 1965*: statutory notice to creditors

In the estate of Teresa Jane Quigley (deceased), late of 27 Sutton Grove, Sutton, in the county of Dublin.

Notice is hereby given pursuant to section 49 of the *Succession Act, 1965* that all claims against the estate of the above named deceased who died on 24 May 2002, probate of whose will was granted on 6 February 2003, should be furnished in writing to the undersigned solicitors for the executrix on or before 5 April 2004, after which date the assets will be distributed having regard only to the claims furnished, if any.

Any person having knowledge of Marianne McAviney, John McAviney, Peter McAviney, Thomas McAviney, Joseph McAviney, their spouses and/or issue, who resided at Whitehall Street, Clones, Co Monaghan in or about 1890, should furnish details to the undersigned solicitors for the executrix by the same date.

Date: 5 March 2004

Signed: Arthur O'Hagan (solicitors for the applicant), 9 Harcourt Street, Dublin 2

EMPLOYMENT

Co Cavan: solicitor required for general practice with 2/3 years' PQE. Immediate start. John V Kelly & Co, 27 Church Street, Cavan; DX21002. Contact: Paul V Kelly; tel: 049 433 1988; fax: 049 436 2653; e-mail: info@jvkelly.com

Solicitor available for part-time work in Co Kerry. Please contact **box no 20/04** for copy CV

Solicitor with excellent conveyancing experience (including commercial property) seeks position in the Dublin area. **Box no 21/04**

Apprentice solicitor available. A mature graduate (BA, H Dip in ed) seeks trainee position. Hardworking, enthusiastic and personable. Passed all FE1s and Irish exam. Computer literate. Any area considered. Please contact Brendan on 087 960 4739

Experienced enthusiastic solicitor seeks immediate position in midlands/mid-west areas. Has experience in all major areas of law, particularly conveyancing and family law. Reply to **box no 22/04**

MISCELLANEOUS

Seven-day ordinary publican's licence – enquiries to: Geoffrey Browne & Company, Solicitors, Augustine Court, St Augustine Street, Galway. Tel: 091 568 713, fax: 091 561 279

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, Co 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

England and Wales solicitors will provide comprehensive advice and undertake contentious matters. Offices in London, Birmingham, Cambridge and Cardiff. Contact Levenes Solicitors at Ashley House, 235-239 High Road, Wood Green, London 8H; tel: 0044 2088 17777, fax: 0044 2088 896395

Licence wanted – ordinary seven-day publican's licence required. Please contact James P Sweeney & Company, Solicitors, Falcarragh, Co Donegal; reference RX0049/BJT; tel: 074 913 5121; fax: 074 913 5704; e-mail: bjtsolr@eircom.net

Long-established varied practice, central Dublin. For particulars, contact Mr Charles Russell, 6 Hyde Park, Dalkey; tel: 01 285 0637

Tipperary practice for sale – great potential. Quick sale required – principal retiring. Applications to **box no 23/04**

Opportunity arises in legal costs accountancy – one-year course for sale in legal costs accountancy at €10,000, which also provides a share in long-established practice and €200 wage per week while learning, with special provision for recouping investment should course prove unsuccessful. Suitable only for energetic person situated in Dublin with permanent interest in legal work; available now. Replies to **box no 24/04**

Nerja – bright spacious apt/bungalow with sun all day, overlooking Burriana beach. Sleeps six. Two balconies with wonderful sea views, small garden, pool and three minutes walk to beach. All mod cons. Available from August 7. Tel: 01 834 4255 or 086 8112479

English property agent – Irish person with legal background available in London to manage rental properties or act as agent in letting same. Suit investors in residential property in central London or north London suburbs only. Highest integrity and confidentiality assured. Tel: 0044 208 4249311 – evenings 7.30 pm to 10 pm

TITLE DEEDS

14 Grove Lawn, Blackrock, Co Dublin – anybody with any information regarding the whereabouts of the title deeds of 14 Grove Lawn, Blackrock, Co Dublin, please contact AF Smyth & Company, Solicitors, 21 Clare Street, Dublin 2, tel: 01 662 7780, fax: 01 662 9059 – reference AFS/NF

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of premises constituting part of the lands of Goldenbridge situate at Thomas Davis Street, Inchicore, in the parish of St Jude and City of Dublin: an application by Logcraft Limited

Take notice that any person having any interest in the freehold estate of or superior interest in the following premises: all that and those that part of the lands of Goldenbridge situate at Thomas Davis Street, Inchicore, in the parish of Saint Jude and city of Dublin held under an indenture of lease dated 28 January 1938 and made between Mabel de Heriz Smith of the first part, Herbert Lewis Scott of the second part, Charles Monk Gibbon of the third part, Janet Marie Scott, Kathleen B Scott and Robert A Scott of the fourth part and May Simpson of the fifth part for a term of 60 years from 1 November 1936 subject, along with other premises, to the yearly rent of £12.

Take notice that the applicant, Logcraft Limited, being the person entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises or any of them are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Logcraft Limited 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/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 the aforesaid premises are unknown or unascertained.

Date: 5 March 2004

Signed: Peter Gartland & Company (solicitors for the applicant), 56 Lower Dorset Street, Dublin 1

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 Daniel Byrne and Claire Kelleher

Take notice that any person having any interest in the freehold estate of the following property: 133 Pearse Street, Dublin 2, more particularly described along with other property in an indenture of lease dated 26 August 1871 and made between Sir William Carroll of the one part and Mary McGarry, Letita McGarry,

Edward Fottrell, John O'Hagan and Reverend Walter Murphy of the other part for a term of 271 years from 3 July 1871, subject to a yearly rent of IR£34.10.

Take notice that Daniel Byrne and Claire Kelleher intend to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid property and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days of the date of this notice.

In default of any such notice being received, Daniel Byrne and Claire Kelliher intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the property aforesaid are unknown or unascertained.

Date: 5 March 2004

Signed: Partners at Law (solicitors for the applicant), 8 Adelaide Street, Dun Laoghaire, Co Dublin

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 Jeremiah O'Reilly, Bernard McNamara, Corehill Limited and Inch Beg Limited

Notice to any persons having an interest in the freehold estate in the following property described in an indenture of a lease dated 7 August 1941 between Amy Carter of the one part and the Dock Milling Company Limited of the second part: 'All that and those the piece or plot of ground or garden annexed to and adjoining the dwelling house and premises known as the Foreman's House being part of the premises belonging to the lessor wherein she carries on the business of a maltster under the style of William Carter & Son situate at Barrow Street in the city of Dublin containing in front to Barrow Street sixteen feet two inches and in the rear the like number of feet and inches and in depth from front to rere fifty-two feet six inches be the said several admeasurements more or less and which said piece of plot of ground is more particularly delineated on the map annexed and thereon marked with the letter "G" and edged round with a green verge line'.

Take notice that the applicants, Jeremiah O'Reilly, Bernard McNamara, Corehill Limited and Inch Beg Limited, intend to apply to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid property and any party asserting that they hold an interest superior to the applicants in the aforesaid property (or any of them) are called upon to furnish evidence of title to same to the below named solicitors within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county 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 the premises are unknown or unascertained.

Date: 5 March 2004

Signed: William Fry FPD (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2