

## Regulares

News	2
Letters	10
Book review	35
Briefing	39
Council reports	39
Practice notes	40
Legislation update	43
Solicitors Disciplinary Tribunal	47
FirstLaw update	48
Eurlegal	51
People and places	55
Apprentices' page	56
Professional information	57
Recruitment advertising	64

COVER PIC: REX FEATURES



## ► Cover story

### 12 Wish you were here?

The bugbear of many a 1980s courtroom, extradition is back in the news and is likely to remain controversial. Michael Finucane provides a guided tour of the law

### 18 Truth, the whole truth

Section 26 of the *Civil Liability and Courts Act, 2004* is now part of the law that practitioners must deal with in personal injury litigation. Patrick Groarke explores a recent Supreme Court judgment

### 24 And justice for all

South African judge Albie Sachs was in Dublin recently to deliver the Law Society's inaugural human rights lecture, on the justiciability of socio-economic rights. Here's what he had to say



### 28 Evolution, not revolution

The Scottish legal profession has faced an unprecedented level of scrutiny in recent years, but its reputation for professionalism and integrity has remained strong throughout, writes Caroline Flanagan

### 31 All things being equal

Equality law now applies to pensions as it does to employment generally, with some important exceptions. Michelle Ní Longáin and Timmy Quinn highlight the relevant provisions of the *Social Welfare (Miscellaneous Provisions) Act, 2004*

### 36 What's new about the personal injury summons?

The Oireachtas has legislated and the Superior Court Rules Committee has made new rules, but is the new summons really much the same as the old statement of claim? The master of the High Court, Edmund Honohan, has the answers



**Deputy editor:** Garrett O'Boyle. **Designer:** Nuala Redmond. **Editorial secretaries:** Catherine Kearney, Valerie Farrell. For professional notice rates (lost land certificates, wills, lost land title deeds, employment, miscellaneous), see page 47. **Advertising:** Seán Ó hOisín, 10 Arran Road, Dublin 9, tel: 837 5018, fax: 884 4626, mobile: 086 811 7116, e-mail: seanos@iol.ie. **Printing:** Turners Printing Company Ltd, Longford. **Editorial board:** Keith Walsh (chairman), William Aylmer, Tom Courtney, Stuart Gilhooly, Eamonn Hall, Pat Igoo, Philip Joyce, Mary Keane, Ken Murphy, Michael V O'Mahony, Alma Sheehan

The Law Society of Ireland can accept no responsibility for the accuracy of contributed articles or statements appearing in this magazine, and any views or opinions expressed are not necessarily those of the Law Society's Council, save where otherwise indicated. No responsibility for loss or distress occasioned to any person acting or refraining from acting as a result of the material in this publication can be accepted by the authors, contributors, editor or publishers. The editor reserves the right to make publishing decisions on any advertisement or editorial article submitted to this magazine, and to refuse publication or to edit any editorial material as seems appropriate to him. Professional legal advice should always be sought in relation to any specific matter.

Published at Blackhall Place, Dublin 7, tel: 01 672 4800, fax: 01 672 4877.  
E-mail: gazetteII@lawsociety.ie Law Society website: [www.lawsociety.ie](http://www.lawsociety.ie)

Volume 99, number 7  
Subscriptions: €57.15



## NATIONWIDE

## News from around the country

## ■ DUBLIN

## ¡Hola, compañeros!

The Dublin Solicitors' Bar Association's forthcoming conference in Buenos Aires is literally a new departure. There have been trips to other European countries and to North America, and the DSBA's peregrinations extended as far east as St Petersburg. This year, they're heading south: president Orla Coyne will lead the Dublin lawyers to Buenos Aires. The trip is already over-subscribed, with about 160 solicitors booked. Watch this space for reports of Irish solicitors working their way across the Pampas.

## Forthcoming seminars

On return, the seminars continue. In the coming months, there are seminars on the residential letting agreement, tax issues, and practice management.

The seminars are becoming increasingly important as deadlines approach. The first cycle of continuing professional development will conclude on 31 December. By then, solicitors must have completed the required 20 hours. The DSBA suggests that the most difficult hours to obtain are those in management and professional development skills, which are to account for five hours of the total CPD cycle. The DSBA is organising two further seminars that will deal with these areas before Christmas.

## The importance of vigilance

An e-mail from the Revenue to DSBA president Orla Coyne in June highlights the importance of vigilance. The e-mail confirmed that a list of circumstances would now be furnished where the Revenue would treat a parent's or friend's contribution to a first-time

The Dillon Eustace soccer team, who won the Overend Cup for their victory in the final of the Solicitors Inter-Firm Soccer Competition, where they beat O'Donnell Sweeney 3-1

house purchaser's purchase funds as merely acting as guarantor.

The threat of stamp duty on first-time buyers was, of course, a major news story for almost a week until the situation was clarified. The DSBA had written strongly to the government and to the Revenue. Various solicitors had approached the DSBA on the difficulty for first-time buyers where their parents, or indeed friends, assisted in financing the purchase of the premises, which resulted in the stamp-duty exemption being taken away from the first-time buyers. As they probably don't say in Dublin 4, *'vigilantibus non dormientibus, jura subveniunt'*.

## ■ KILKENNY

## Respect for the law

It is encouraging that Kilkenny solicitors can look forward to a state-of-the-art courthouse for the District, Circuit and High Courts within two years, according to Martin Crotty, president of the Kilkenny Bar Association.

At present, particularly for sensitive cases, there are still very inadequate private consultation facilities in

Kilkenny. This can only heighten the stress that is already felt by clients in difficult situations. All of this is set to change.

'Our courts here are overcrowded and the facilities inadequate', Crotty noted. The plans of the new facilities were recently unveiled and widely welcomed by members of the legal profession. Because of the planning laws and the historical dimensions where an ancient city like Kilkenny is concerned, there will still be difficult issues to be resolved. But optimism is in the air that court facilities, long neglected, are at last set to receive the necessary funding. Credit is due to the Courts Service for their key role.

## Don't shoot the messenger

After 25 years on the job, Kilkenny's county sheriff's messenger, Michael Hanrahan, has retired. 'Michael was one of the key people in the legal community here and knew his way through sometimes complex legal requirements', noted Martin Crotty. 'He was both knowledgeable and helpful to practitioners and he sometimes doubled as a summons server – in difficult cases'.

## Are you going for a pint?

Another retirement of a Kilkenny luminary. The ending of District Court president Peter Smithwick's judicial career on reaching retirement age earlier this year will be marked this month by solicitors in his native city. 'We will be celebrating the contribution on the bench of an eminent Kilkenny colleague who served for many years with distinction', commented Crotty.

## ■ TIPPERARY

## Tea party

Solicitors in Tipperary will be travelling to Boston later this month for their annual conference. The Tipperary Bar Association will be the guest of the Boston Bar Association.

'It is important for us to extend our boundaries. We will be twinning with our Boston counterpart association, and we look forward to developing our relationship with them', said association president Brendan Looby, a Cahir practitioner.

The programme will include a session on the American experience and the benefits and disadvantages of arbitration and litigation.

This is clearly topical and of great relevance to Irish solicitors in these changing times.

## On home ground

The annual dinner of the Tipperary solicitors provided what is now an excellent opportunity for solicitors and barristers to meet others in their own branch of the profession and members of the other branch. 'Social gatherings like our annual summer dinner are very important at local level', Looby said. **G**

*Nationwide is compiled by Pat Igoe, principal of the Dublin law firm Patrick Igoe & Co.*

# Shannon is 'outstanding person of the year'

**G**eoffrey Shannon, the Law Society's deputy director of education, has been named 'Outstanding Person of the Year' for Galway.

Shannon was nominated in the category of *Contribution to children, world peace and/or human rights* by the Children's Rights Alliance.

Sarah Benson, CRA communications and education officer, said that Shannon was a tireless campaigner who consistently fights for children's rights both nationally and internationally. 'Until the 1990s, children had no voice in Ireland, but through Geoffrey Shannon, they have found a voice. Through his academic writing, including the first-ever Irish textbook on child law, to membership of any number of committees,

Shannon: tireless campaigner for children's rights

and being the public voice of children's issues, Geoffrey is the dominant and most vociferous champion of children's rights in Ireland today', said Benson. 'It is safe to say that without Geoffrey, the issue of children's rights in Ireland would not be as

prominent and relevant to politicians, lawyers and members of the public as it is'.

The *Outstanding person awards* are organised by Junior Chamber International, a worldwide federation of young professionals and entrepreneurs. The purpose of the awards is to formally recognise people who excel in their chosen fields and exemplify the best attributes of the world's young people. Shannon and two others were chosen to represent Galway and were officially nominated to go forward to the national heats of the competition. The national winners will represent Ireland at the Junior Chamber International world congress in Vienna in late October.

## Public interest law conference

**A** FLAC conference on the reality and potential use of public interest law in Ireland will take place at the Royal Hospital Kilmainham, Dublin 8, on Thursday 6 October. The conference aims to facilitate an informed discussion on what constitutes public interest law and its potential to change the lives of vulnerable and marginalised groups. Research commissioned by FLAC and undertaken by Mel Cousins BL on the meaning and use of public interest law will be launched.

Speakers include the ombudsman, Emily O'Reilly; Professor Monica McWilliams, the newly appointed chief commissioner of the Northern Ireland Human Rights Commission; South African High Court advocate Geoff Budlender; Roger Smith, director of JUSTICE in the

UK; Ellie Venhola, a community legal clinic practitioner from Canada; and Robert Garcia from the Center for Law in the Public Interest, Los Angeles.

The conference costs €30

and includes lunch and refreshments. Concessions and CPD hours are available.

For further information, contact Catherine Hickey on 01 874 5690 or e-mail: [catherine.hickey@flac.ie](mailto:catherine.hickey@flac.ie).

## LOVE ME TENDERS

The Law Society's Human Rights Committee and the Dublin Solicitors' Bar Association are inviting tenders for a study entitled *The ECHR Act, 2003 – first years: application, evaluation and review*.

The invitation to tender can be downloaded from the Law Society website ([www.lawsociety.ie](http://www.lawsociety.ie), under 'society committees', 'human rights', 'ECHR study') or from the DSBA website ([www.dsba.ie](http://www.dsba.ie)).

For more information, contact Alma Clissmann, Human Rights Committee, Law Society, Blackhall Place, Dublin 7; tel: 01 672 4831, e-mail: [a.clissmann@lawsociety.ie](mailto:a.clissmann@lawsociety.ie); or Maura Smyth, DSBA, 26 Hatch Street, Dublin 2; tel: 01 661 0067, e-mail: [maura@dsba.ie](mailto:maura@dsba.ie).

The closing date for receipt of tenders is 5pm on Thursday 8 September, and the tender will be awarded as soon as possible thereafter to enable a start at the beginning of the academic year in October.

### DIGITAL MAPPING

The Land Registry has launched its *Digital mapping project*. The project, which includes providing on-line searching and an extensive programme to convert the existing paper map base into electronic form over a five-year period, will cost over €25 million. For further details, see [www.landregistry.ie](http://www.landregistry.ie).

### SYS CONFERENCE

The Society of Young Solicitors autumn conference is scheduled for the weekend of **11-13 November** in the Hayfield Manor Hotel, Co Cork. The fee is €290 pps for two nights' accommodation, with breakfast, sparkling wine reception and black tie dinner. Further details are at [www.sys.ie](http://www.sys.ie) and the application form is on p56 of this *Gazette*.

### REVENUE GUIDES TO RELIEF

The Revenue has published two documents – *A guide to section 23 relief* and *A guide to owner occupier relief* – on its website, [www.revenue.ie](http://www.revenue.ie). The documents are available under 'publications/technical guidelines'.

### ETHICS AND LEADERSHIP

An international conference on ethics and leadership, being held at the Milltown Institute, Dublin, on **23-24 September**, will examine ethics in financial services, Irish corporate scandals and the need for Irish professionals to embrace business ethics as a fundamental part of doing business. The first of its kind to be held in Ireland, the one-and-a-half day conference, in association with the Institute of Chartered Accountants, will have speakers from Europe and America, Irish academia and industry. To reserve a place, visit [www.milltown-institute.ie](http://www.milltown-institute.ie) or tel: Dr Gabriel Flynn on 087 979 9040

### RETIREMENT TRUST SCHEME

Unit prices: **1 August 2005**  
Managed fund: €5.16483  
All-equity fund: €1.18888  
Cash fund: €2.61024  
Long-bond fund: €1.35095

If you've never been  
one to follow the herd,  
why start now?

Humans have the ability to reason,  
to exercise judgement – to think for  
ourselves. So why, when it comes to  
making the most important decisions,  
do we so often do precisely the  
opposite?

Take, for example, Practice Management Systems. Your current and future needs are unique to your firm. You should look for a system that delivers the benefits, the efficiency, the return on investment and the risk management framework that are right for you. Yet many people, without a second thought, go straight for the most familiar name.

LawSoft is a Practice Management System designed to increase your efficiency, improve your bottom line and to genuinely help you grow your business. Intuitive to use, it is based on our ability to understand your requirements, and the way they change over time. Our detailed understanding of the UK legal market is built on listening to people like you.

**LawSoft is developed by Pilgrim Systems, a leading supplier with proven (and provable) record of success. All we're asking you to do is think for yourself.**

**For further information about how Pilgrim could improve your practice, please contact Maxine Henderson on +44 131 555 9700.**

Edinburgh Office: Pilgrim Systems plc  
96 Commercial Quay Leith Edinburgh EH6 6LL  
Tel: +44 131 555 9700 Fax: +44 131 555 9702  
E-mail: [info@pilgrimsystems.com](mailto:info@pilgrimsystems.com)

London Office: Pilgrim Systems plc  
14 Buckingham Street London WC2N 6DF  
Tel: +44 20 7389 1720 Fax: +44 20 7389 1721

# ■ ONE TO WATCH: NEW LEGISLATION

## The *in camera* rule and section 40 of the *Civil Liability and Courts Act, 2004* – further developments

July's *One to watch* described section 40 and a number of statutory instruments that partly implemented it. Since the end of June, additional statutory instruments have further brought it into effect.

### SI 337/04

The minister has specified persons qualified to attend in court during family law proceedings under section 40(3) by SI 337/04. They are family mediators, persons engaged in family law research, and persons engaged by the Courts Service to prepare court reports of proceedings. The family mediators must be accredited to the Mediators Institute of Ireland, be nominated by the Family Support Agency, and approved by the minister. Researchers must be nominated by one of a number of listed educational and research institutions, and approved by the minister. Such nominated and approved persons are now qualified to attend family law proceedings in accordance with the regulations described in the July issue, along with barristers and solicitors, for the purposes of preparing and publishing reports.

### SI 338/05

Section 40(4) of the *Civil Liability and Courts Act* provides that a party may give copies of orders in the proceedings to any person and subject to such conditions as the minister may prescribe by order, and SI 338/05 is prescriptive under this power. A list of persons and bodies is set out in the schedule, and the permission to disclose copies of orders is limited in two respects: only so much of the order as is necessary for the person's performance of his or her function may be disclosed, and the person to whom an order is disclosed must not disclose it to anyone

else, except to the extent that the disclosure is necessary for performance of his or her functions.

### SI 339/05

This statutory instrument clarifies that complaints of misconduct against barristers and appeals against such complaints are included for the purposes of lifting the veil of the *in camera* rule, to enable investigation, hearing and adjudication.

### Accountability

These statutory instruments further fill out the scheme of section 40. As yet, no rules have been developed to regulate access to the Circuit Court to enable reports to be prepared, but the *District Court rules* and *Superior Courts rules* are in place since early June, and the *Circuit Court rules* can be expected to follow shortly. It is unclear to what degree researchers and court reporters engaged by the Courts Service will attend court and prepare reports of proceedings. Unless this is done in a systematic way, and not just in Dublin, the difference this access makes risks being very small.

Solicitors and barristers are automatically qualified under subsection 3, but are only permitted to attend the proceedings listed in section 40(2) if they are engaged in the preparation and publication of a report. Thus lawyers with time on their hands, waiting for their cases to come on, will not be permitted to listen in on cases and thereby provide the accountability sought after.

The issue as to how the Courts Service should proceed to establish a reporting system to record the outcome of family law cases was considered by the Courts Service Board in July. The board agreed that the matter should be referred to the Family Law Court Development Committee for further detailed examination. The committee is

due to hold a preliminary meeting in October to examine the issues involved and has been requested to report back to the board with its recommendations in due course.

### Consistency

The types of cases that traditionally are reported are those heard in the High and Supreme Courts. But most family law cases are heard in the Family, Circuit and District Court. With notable exceptions, judgments given in the Circuit Courts are usually *ex tempore*, unwritten, and decide no important issues of principle – and the same applies even more so to District Courts. They are, therefore, not the traditional material from which court reports are made.

Yet the main reason for seeking the information made possible by section 40 is to have wider knowledge of the practice and decisions of the courts and to prevent arbitrariness and lack of consistency from the bench. Decisions on important issues of principle are also, of course, most welcome, but it is the bread-and-butter information that is most lacking. If District and Circuit Court cases are not of great interest for law reporters, the best people to provide the information sought will be researchers who publish their findings. It may be possible to interpret subsection 3 ('for the purposes of preparing and publishing reports') as preparing and publishing information from a number of cases, compiled together, as would be typical for research findings.

Achieving greater transparency and accountability in family law adjudication will depend on regular court reporting from around the country, and how this is to be organised and financed is unclear. **G**

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

## JESUITICAL LAWYERS REVISITED

The Jesuits have arranged a second 'day of reflection' for practising lawyers at the Jesuit Centre of Spirituality in Dublin on **Saturday 24 September**. According to the order, the day 'is intended to respond to the constant demands of legal practice which make it extremely hard for a legal practitioner to create time and space for an inner life'. And they add: 'it is also hoped that by continuing to hold these days over the next number of years that a renewed vision of the value of legal practice will emerge which will be of benefit to legal practitioners and to the public at large'.

For further information, contact Manresa House, Jesuit Centre of Spirituality, 426 Clontarf Road, Dollymount, Dublin 3 (tel: 01 833 1352).

## CLIENT CARE LEAFLETS

The Law Society has launched two new client care leaflets. The society's Probate, Administration and Taxation Committee has recently updated the *Making a will* brochure, which is available for sale at €24.97 (including VAT) per pack of 50 (plus €7.70 post and packaging). Meanwhile, the information leaflet on *Administering an estate* is available at €15.89 (including VAT) per pack of 50, plus €5 post and packaging. To buy either of these leaflets, contact the Law Society's Accounts Department on 01 672 4905.

## TAKING THE FLAC

Solicitors Michael Farrell and Noeline Blackwell have both recently moved to work with FLAC, the Free Legal Advice Centres. FLAC is an independent human rights organisation that campaigns for equal access to justice for all. Noeline Blackwell takes up the job of director general, while Michael Farrell has been appointed the organisation's senior solicitor. Blackwell is chair of the Law Society's Human Rights Committee, while Farrell is vice-chair of that committee. Blackwell is also a member of the society's Family Law and Civil Legal Aid Committee.

# Human rights protection helps integration, says committee

The rights and entitlements of immigrants are an important part of a comprehensive immigration policy, the Law Society's Human Rights Committee has said.

Responding to the government's April discussion paper on immigration and residence, the committee said

that, in certain respects, immigrants may be more vulnerable and need extra protection and services.

In its July submission on the discussion paper, the committee also identified certain shortcomings in the document's proposals, including a preference for special schemes set up under secondary

decisions and published guidelines – and it emphasised the importance of human rights protections and safeguards in assisting with integration and avoiding the alienation and dysfunction of immigrant communities in the future.

The discussion paper is the latest step in the government's programme to overhaul immigration procedures and design a new system of immigration and residence. Much of the existing system is based on administrative practice rather than legislation and suffers from a lack of the clarity and predictability that is to be expected from good legislation, according to the committee.

legislation, wide ministerial discretion, a lack of safeguards such as legal advice and appeals, and an unproven case for the introduction of biometric-based technology.

But the committee welcomed elements of the proposals relating to fair procedures, transparency, reasons for

*The full submission can be found at [www.lawsociety.ie](http://www.lawsociety.ie), under 'society committees', 'human rights', 'submissions'.*

## MIGRANT WORKERS AND HUMAN RIGHTS CONFERENCE

Now that the consultation period is finished, the government is planning to publish draft legislation before the end of the year. The Human Rights Committee and the Human Rights Commission will be co-hosting a public conference on migrant workers and human rights on 15 October in Blackhall Place.

Details of the conference are available at [www.lawsociety.ie](http://www.lawsociety.ie), under 'forthcoming events'. Advance registration and payment (€25) will be necessary. Contact: Nicola Crampton at [n.crampton@lawsociety.ie](mailto:n.crampton@lawsociety.ie) or tel: 672 4921.

# RESPONSE TO COMPETITION

## Law Society director general Ken Murphy summarises the society's 90-page response to the Competition Authority's preliminary report

**O**n 21 July, the Law Society delivered a balanced and reasoned reply to a preliminary report published last February by the Competition Authority. Unfortunately, in the society's view, the authority's preliminary report was neither balanced nor reasoned.

According to the executive summary of the report, *'the Competition Authority's study finds that the legal profession is permeated with serious and disproportionate restrictions on competition. These restrictions emanate primarily from the regulatory rules of the Law Society, the Bar Council and King's Inns, but also from the relevant legislation'*.

The society strongly disputes these statements. Indeed, there is no evidence in the report to support such findings as far as solicitors are concerned.

### Assertions rather than evidence

The society is critical of the authority's inconsistent uses of evidence in two main respects.

First, on the subject of the competitiveness of the market for solicitors' services in Ireland, the authority seems very reluctant to draw the inevitable conclusion, based on the evidence in its own preliminary report, that the market is highly competitive.

Second, in relation to the system of regulation of the legal profession and on other matters, the authority disregards the need for real evidence rather than simple assertions. It proceeds to make recommendations based on preconceptions and ideology rather than on reality and a careful assessment of facts. It suggests textbook 'solutions' to textbook (and in fact non-existent) 'problems'. In this and in other respects, the

Competition Authority has failed to follow the principles of good regulatory practice set out in the government's *Regulating better* white paper of January 2004.

### Solicitors believe in competition

The solicitors' profession firmly believes that competition benefits consumers through lower prices and better standards of service. Competition also benefits the profession by promoting efficiency and innovation. Intense internal and external competition has long been a daily reality for solicitors.

### The market is competitive

The good news for consumers is that the inevitable conclusion – of the Competition Authority's own description of the market for solicitors' services – is that the market is competitive.

The evidence is overwhelming. There are over 7,000 practising solicitors and over 2,000 firms. Market concentration is exceptionally low. There are no significant entry barriers and the numbers training, now 640 a year, have increased by a remarkable 85% in the last three years alone. The Competition Authority's own economic consultants, Indecon, independently confirmed that the Law Society's education system is not used to restrict entry to the profession. There is no suggestion anywhere in the Competition Authority's report of collusion by solicitors in relation to fees. There are no scale fees or recommended fees that would inhibit free competition. Solicitors' fees are determined by market forces in a competitive market.

### Regulation of the profession

What is not good news for consumers, however, is that the

Ken Murphy: 'governments should act on evidence rather than on preconceptions and assertions'

Competition Authority has made a series of recommendations that, if implemented by the government, would lead to unnecessary expense and ultimately increase the cost of legal services for consumers.

The Competition Authority has proposed a Legal Services Commission to undertake the regulation of all legal services. But it fails to produce evidence that such a change would have the slightest effect on competition in the market for solicitors' services. What is involved, therefore, is a broader question of regulatory policy for the government. It is not a question of competition policy on which the views of the Competition Authority should carry weight.

However, as the Competition Authority has made the proposal, the society responds to it as follows:

- The present system of regulating solicitors has had no detrimental effects on competition or on the public interest
- The efficacy and fairness of the society's system for dealing with complaints against solicitors has been

independently confirmed by Indecon (the Competition Authority's own economic consultants) and by the independent adjudicator.

There have been none of the serious criticisms that have been made of complaints handling in England and Wales, where a recent report seems to have unduly influenced the Irish Competition Authority

- The society conducts its regulatory function at a remove from its representative functions. There is a major lay involvement, including nominees of IBEC, ICTU and the director of consumer affairs
- The society is by no means opposed to reform and improvement of its systems. The Competition Authority has failed to take account of the report of the society's Regulatory Review Task Force (independently chaired by Mr Joe Brosnan), at the launch of which in January 2005, justice minister Michael McDowell described the society's system of regulation as 'exemplary'. The minister expressed the view last year that 'the regulation by the Law Society of Ireland is the best regulation of any profession anywhere in these islands'.

### Independence

Most importantly, the Competition Authority's proposals carry a real risk to the independence of the legal profession from unwarranted political intervention. This independence is crucial in a free, democratic society. One of the most important roles for lawyers is protecting the rights of the relatively powerless individual

# AUTHORITY

against abuse by the overwhelming power of the state.

## The bar

The society believes that the public interest is served by the continued existence of an independent referral bar.

However, it would be incompatible with this position for it to be possible for a person to be both a barrister and a solicitor, entitled to use the titles of solicitor and barrister simultaneously, as the authority has recommended. This would be, in reality, to have a fused profession in which the independent existence of a referral bar would be obscured and, over time, eliminated.

In recommending direct access of the public to barristers, the authority's proposals relate to an internal bar rule over which the society has no jurisdiction. However, the society believes that solicitors are uniquely well-placed to decide how to best manage litigation, including identifying those cases where the involvement of a barrister is appropriate and, thereafter, deciding which particular individual might be engaged.

## Conveyancing

At present, conveyancing is an area of practice reserved to solicitors. The authority finds this restriction disproportionate and proposes that the market should be opened to licensed conveyancers and solicitors employed by financial institutions. Except for the proposed amendment to the Law Society's *Code of conduct* to allow employed solicitors to provide conveyancing services to persons other than their employer, the authority's proposals would require legislation.

The society does not agree that the public would be adequately safeguarded if alternative providers were

permitted to enter the market, and is particularly concerned at the prospect of such practices as conditional selling and cross-subsidisation by financial institutions if they were able to offer conveyancing services.

The society's own analysis shows that fee reductions if licensed conveyancers were to be allowed in Ireland are most likely to be trivial, as the conveyancing market in Ireland is already competitive and the number of practising solicitors continues to increase. On the other hand, the regulatory costs of the CA's proposals would be considerable.

## Miscellaneous

The society is not opposed to the authority's proposal that the preliminary examination should be abolished.

The society agrees with the authority that a better means of ensuring that Irish-speaking clients can be effectively represented in the Irish language could be found than the present Irish examination.

As to a solicitor's lien, the authority's proposal that the society's *Code of conduct* should be amended to require solicitors to waive their lien would put an unnecessary burden on clients, since they would inevitably be required to pay for legal services in advance.

## Conclusion

It is to be hoped that the government will give full consideration to the views of the Law Society, as well as those of the Competition Authority, before reaching a conclusion on where the public interest lies on the various matters being studied. Governments should act on evidence rather than on preconceptions and assertions. The public interest would not be served by the government spending time and money 'fixing' what has not been shown to be, and in reality is not, broken.

# MESSAGE FROM THE PRESIDENT

All members of the Law Society have received a letter from me enclosing a copy of the society's comprehensive response to the preliminary report of the Competition Authority.

I would urge you to read that document. I believe it is very important for solicitors to know what the Competition Authority has said about the profession and the society and to know also what the society has now said in response. The ultimate outcome of this process, in terms of the recommendations of the authority and whether or not the government decides to implement them, could be of major significance for both the solicitors' profession and the public.

I believe that the society's reply represents a balanced and reasoned response to the Competition Authority's preliminary report of 24 February 2005, a document which in itself represented simply the latest stage in a process that has now been underway for four years. The text of the response has been endorsed unanimously by the society's Council. This followed consultation with, and approval by, the presidents and secretaries of bar associations.

The document is the product of a great deal of work by many people, and I want to pay particular tribute to the members of the society's task force, ably assisted by the economic and competition law experts whose advice the society has obtained and relied on from the beginning of this process.

Neither the Law Society nor the solicitors' profession are opposed to reform – something that we constantly initiate and embrace ourselves – or to change generally. All proposals for change, however, must be evaluated carefully to ensure that they really do represent both the consumer interest and the public interest.

Owen Binchy,  
President



# Letters



## We don't publish anonymous letters, do we?

*From: A long-qualified/suffering solicitor*

**A** propos the article in the July *Gazette*, 'Lords and masters?', it is quite obvious to me how the presiding member of the bench should be addressed. Circumstances will dictate which particular phrase to use as follows:

- 'My lord' when you are absolutely sure that the judge is going to hold for your client
- 'Your lordship' (with the emphasis on 'ship') when you believe that the judge may be being blown this way and that and possibly not in

favour of your client

- 'Your honour' when you are getting somewhat impatient with the judge and feel that he is not really taking the facts on board. You are, in effect, calling him to live up to his oath of office
- 'Judge'. This is when you are absolutely sure that he is not going to make a decision in your favour, because he appears to be favouring the other party to the proceedings (not your client). This is, in effect, calling on him to do his job properly without fear or favour.

Any other nomenclature should be avoided, whether or not the judge is ten, 14 or 20 years your junior, whether or not you have briefed this particular member of the bench over the years, whether or not the particular judge as counsel lost a particularly straightforward case due to his incompetence or failure to read the brief or indeed even failing to turn up, whether or not this particular member of the judiciary made you look a fool in some particular case before another member of

the judiciary in those days when you were unwise enough to adduce evidence on your client's behalf, and whether or not the judge has completely misunderstood the evidence and/or confused the plaintiff with the defendant and vice versa.

In the foregoing situations, you should not address the judge at all and simply refer to 'the court'. This will be a clear indication to the presiding judge/lordship/your honour/my lord that an appeal will be lodged or judicial review proceedings instituted.

## Lest ye be judged in turn

*From: Philip O'Sullivan, the High Court, Dublin 7*

**I** fully agree with Brian Conroy's suggestion in his article in the July issue of the *Gazette* that judges of the Superior Courts should be addressed as 'judge'. I found being addressed as 'my lord' distinctly uncomfortable when

I started as a judge nearly a decade ago and I am now discomfited to realise I have got used to it. I support a change: I am a judge and don't mind being addressed as one.

One further observation: I have been around for 40 years (or so), but in no way consider myself 'gnarled'!

## On a point of information

*From: Richard English, barrister, Manchester*

**I** enjoyed Brian Conroy's article on modes of address in Irish courts (July 2005). One thing not mentioned is that, with a few exceptions (recorders – the presiding judge in some of the larger cities – and judges in the Central

Criminal Court), English Circuit Court judges are not accorded the appellation of their brothers and sisters in Ireland, but are called 'your honour'. How judges are addressed in England and Wales is dealt with not in statute but practice directions issued by the lord chief justice.

## Once more unto the breach, dear friends

*From: Chris Ryan, solicitor, Dublin 7*

**I** read with interest your letters from Richard E McDonnell and John McCarthy in relation to the CPD courses.

I agree with Richard E McDonnell that these CPD courses should be provided free of charge for solicitors.

Failure to comply with the required number of hours could have serious consequences for solicitors, and in fact a solicitor could be struck off for failing to

complete the required hours. There is no reason whatsoever why these courses could not be run free of charge or, alternatively, a small sum added to the costs of the practising certificate to encourage all solicitors to maintain their high standards.

However, in these difficult financial times, it is costly for small solicitors to continue to pay considerable sums for these courses.

I believe that solicitors who are interested in having these

courses run free of charge should now jump on the band wagon and write directly to the

Law Society, encouraging them to run the courses free of charge.

## Right behind you

*From: Aileen Walshe, Don O'Connor & Co, Solicitors, Kanturk, Co Cork*

**I** am writing to lend my support to the letter from John McCarthy, solicitor, in the July *Gazette*, concerning CPD courses and the costs thereof. I

agree totally with Mr McCarthy that we are paying enough for our practising certificates without having to pay for the CPD courses as well. Certainly the courses are beneficial to our education, but should not be an excess levy on us.

## Tarred with the same brush

*From: William Kane, chairman, Shared Home Investment Plan Ltd, Dublin*

**W**e take exception to the headline in the July *Gazette* criticising in general terms 'equity release' schemes (*News*, p3).

The primary condemnations in the article seem to apply to the Bank of Ireland *Life loan* scheme because of the bank's requirement that borrowers make a will, appoint executors and waive confidentiality in relation to the executors, who must agree to co-operate with the bank after the testator's death.

None of these features that are so vehemently condemned in the article apply to the equity release schemes offered by SHIP. However 'fundamental concerns' are expressed regarding all equity release schemes. Your article alludes to a number of cases where elderly persons' twilight years were blighted by arguments between members of their family who had become aware of the provisions of a will.

We have no evidence to suggest that this is untrue. However, we would earnestly make the case, based on empirical market evidence, that there are far more people whose twilight years have been blighted for years

due to the absence of equity release mechanisms to allow these individuals to release or encash a percentage of the considerable asset value built up in their homes.

Quite a number of solicitors have informed us that they were delighted to find a financial solution to the problems of certain elderly people, and indeed one member of the Conveyancing Committee informed us that he had in fact asked a number of banks to consider equity release schemes years ago because he felt that there was a latent demand there for such schemes.

The undeniable fact of the matter is that there are many people in Ireland who have made inadequate financial provision for their retirement years but find themselves owning a property asset of significant value. While some are prepared to 'trade down', our finding in the marketplace is that the vast majority of retired people

want to stay in their own homes, among their own neighbours. This is precisely what SHIP's products allow them to do.

I suggest that the reason some solicitors are sceptical about equity release schemes is that they do not fully understand the actuarial pricing mechanisms used and therefore may be making ill-informed commercial, as opposed to legal, judgement. We also recognise that it takes time for a truly new financial market to evolve and, in that regard, we at SHIP would be happy to play our part and to assist the Law Society in providing comprehensive information to your members by whatever means you may deem appropriate.

Finally, let me finish by saying that we have seen the positive lifestyle changes that our equity release plans have enabled our clients (and indeed their families) to enjoy.

## Cormac was here

*From: Cormac O Ceallaigh, Sean O Ceallaigh & Co, Dublin 7*

**I**refer you to page 46 of the July issue of the *Gazette* and the photo at the bottom right of that page, entitled 'Next generation?'.  
Standing next to the AG is, in fact, Cormac O Ceallaigh

of Sean O Ceallaigh & Co, Solicitors, who are proud to be the sponsors of this excellent competition and initiative. Frank Murphy is not in the photo – he is more distinguished-looking than me! Perhaps a case of mistaken identity.

## A timely reminder

*From: Eamon Murray, Eamon Murray & Co, Cork*

**T**here have been a considerable number of complaints by clients of solicitors who are represented by our colleagues before the Residential Institutions Redress Board. The complaints in question relate to the charging of solicitor-and-client fees, retention of monies pending receipt of costs from the board, and delays in paying out redress awards to clients.

These complaints, which have now come into the public domain and have been reported on in the media, are in my opinion fully justified, as the level of costs being paid by the redress board is adequate and payment of same is guaranteed.

I feel that our colleagues should be reminded that there is very little justification for charging solicitor-and-client costs in these cases and also that they are dealing with a particularly vulnerable group of people, and it does the professional little credit to be appearing to be taking advantage of these people.

In cases where there are no undertakings to third parties, it seems to me to be completely unjustified for a solicitor to lodge the client's award cheque to his client account.

I believe that some of our colleagues need to be reminded of the foregoing before further damage is done to the image of the profession.

## FOR SALE FREEHOLD

60 Capel Street, Dublin 1.

## BUSINESS OPPORTUNITY

Ideal for Solicitor/Barrister on the doorstep of the Four Courts and Green Street District Court.

**PropertyTeam Noel Kelly Auctioneer (01) 8462752**  
**[www.propertyteam.ie](http://www.propertyteam.ie)**

# Wish you

**The bugbear of many a 1980s courtroom, extradition is back in the news and is likely to remain controversial.**

**Michael Finucane provides a guided tour of the law**

**A** major obstacle to the apprehension and prosecution of offenders is the ease with which international travel can be undertaken in the modern world, as well as the absence of enforceable laws once a fugitive has managed to get beyond the borders of the state in which an offence has been committed.

While all states have certain obligations under international law to co-operate with efforts to prosecute certain types of fugitive offenders, notably war criminals and persons who have committed crimes against humanity, the international community lacks effective enforcement measures for non-compliance with these obligations. However, if a state is seeking an individual who has fled to another country, they may seek the extradition of the individual pursuant to an existing treaty. This is the most usual and well-established method of securing an individual for trial or, as is sometimes the case, for imposition of sentence. That said, the imposition of certain sentences, particularly the death penalty, can thwart an extradition request (see *Soering v UK*, 11 EHRR 439).

## Green, green grass of home

Until the passing of the *Extradition (EU Conventions) Act, 2001* and the *European Arrest Warrant Act, 2003*, the procedures involved in extradition from Ireland to a requesting state were principally governed by the *Extradition Act, 1965* and its various amendments (including the *Extradition (Amendment) Act, 1987*, the *Extradition (European Convention on the Suppression of Terrorism) Act, 1987* and the *Extradition (Amendment) Act, 1994*). Up to 1965, various pieces of legislation were in place, without update, since before independence. In respect of extradition between Ireland and England, these included the *Petty Sessions (Ireland) Act 1851* and the *Extradition Acts 1870-1906*. Before 1851, little precedent existed except under common law, an early example of which was the delivery of Garret More FitzGerald

from Ireland to Britain in 1495.

Prior to 1965, fugitives were often delivered up directly to the requesting authority in the UK, until this practice was declared unconstitutional in *State (Quinn) v Ryan* ([1965] IR 70).

The 1965 act contained procedures for extradition to the world in general in part II and Britain in particular in part III. The main difference between the two parts of the act was that, in respect of Britain, part III fulfilled a dual role, as it was both



## MAIN POINTS

- Extradition law
- Judicial scrutiny of European arrest warrant requests
- Grounds for refusal

# were here?



Armed guards at a maximum-security prison in Colombia

the extradition 'treaty' and the procedural basis. The reason for the devotion of an entire part of an act to the Irish/British arrangement seems to have been borne out of practicality – as her nearest neighbour and also arising from partition, more extradition requests were received by Ireland from Britain than anywhere else. If the extradition was to another part of the world outside Britain, part II of the act applied but was capable of being invoked only if a valid treaty was already in existence.

In either event, the first destination of any person arrested on foot of an extradition request was the District Court. This appearance was largely a formality, in that the jurisdiction and role of the district judge was limited. However, it was not wholly devoid of importance – the accused was required to be remanded in custody if the extradition request was granted, because the District Court had no jurisdiction to grant bail. The role of the District Court in extradition proceedings has now been

## REELING IN THE YEARS

The historical precedents for modern extradition procedures stretch back quite some distance, since evidence exists of some form of extradition arrangements in ancient Greece and between the Italian city states. During the 18<sup>th</sup> century, France had extradition arrangements with Spain and Portugal, probably as a result of their geographical proximity and interdependent trade arrangements. It is the increase in international trade in modern times that has led most directly to an increase in formal extradition arrangements by way of inter-state treaties, the first of which is generally accepted to have been ratified between Belgium and France in 1834.

removed entirely to the High Court, with the passing of the 2001 and 2003 acts, but the ensuing procedural steps remain largely the same. The only aspect of the procedure that now remains to differentiate one extradition request from another is whether the requesting state is a member of the EU.

### Leaving on a jet plane

The process of extradition to another EU member state now begins with the issuing of an arrest warrant by a judicial authority (defined as the ‘judge, magistrate or other person authorised under the law of the member state concerned to perform functions the same as or similar to those performed under s33 by an Irish court’) of the requesting state. This warrant is then taken before the High Court for endorsement and the court may, if satisfied that there has been compliance with the provisions of the 2003 act, endorse the warrant for execution. On the authority of this document, a person may be arrested and ultimately returned to the requesting state for trial or sentence. An arrest without warrant is permitted under s14 if the matter is urgent and there are reasonable grounds for believing that the person may leave the state before the warrant arrives.

The person who is the subject of the warrant has the right to consent to be returned and is required to be informed of this right upon arrest and again by the High Court. If consent is forthcoming and the High Court is satisfied that the request is valid, an order for the delivery of the person to the requesting

state may be made, to take effect ten days from the date of making the order. The person must be informed of their right to obtain legal advice prior to giving consent and the High Court must be satisfied before making a final order that the person has availed of their right to consult a lawyer, or at least had a proper opportunity to do so. Although no express provision requires the High Court to satisfy itself that a person who does not consent to be extradited has had the benefit of legal advice, a slightly longer window of opportunity is given (15 days instead of ten), during which the subject may bring an application under article 40.4.2 of the constitution to challenge the lawfulness of their detention. If a challenge is brought, then the delivery of the person must await the outcome of the hearing and any subsequent appeal.

This procedure has completely replaced the ‘backing of warrants system’ where, in respect of extradition requests between Britain and Ireland, s43 of the 1965 act required the garda commissioner to endorse a warrant for execution if the two criteria in the section were met. Thereafter, the person was arrested by the gardaí and brought before the District Court. The provisions of sections 10 and 11 of the *European Arrest Warrant Act, 2003* now apply in respect of all EU member states, including Britain.

### Over the hills and far away

If a request for extradition is made by a state that is not a member of the EU, then part II of the 1965 act allows for extradition subject to the existence of a valid treaty and the application of part II by order. The necessity for giving effect to part II of the act by separate order is a consequence of the provisions of article 29.5.1 of the constitution. In order for a valid request to be made under part II, the act requires an original (or properly authenticated) copy of ‘the conviction and sentence or detention order’ or the ‘warrant of arrest or other order’, a statement of each offence for which the extradition was requested, a copy of the relevant law of the requesting country, as accurate a description as possible of the person

## BLOWING IN THE WIND

### Judicial scrutiny of European arrest warrant requests

Whether a person consents to be extradited or not, the request itself must be judicially determined as being compliant with the requirements of the 2003 act – if consent is forthcoming, then section 15 of the act sets out the procedural requirements. If it is not forthcoming, section 16 applies, but there is little to choose between the two. In both cases, the High Court must first determine that the person before it is in fact the person to whom the arrest warrant relates. Since the primary component elements of the arrest warrant are name, address and a photograph, this can usually be disposed of quickly. The proper endorsement of the warrant is then confirmed,

followed by the provision of certain undertakings required by the act and confirmation that the surrender of the person is not prevented by the prohibitions contained in sections 22, 23 or 24. These sections represent a new element in extradition procedure in Ireland, since they give the speciality rule (not being prosecuted for an offence other than the basis of the extradition request) a high degree of force in the form of binding undertakings provided by the requesting state. This is a marked improvement on the previous statutory regime in terms of protections for the surrendered person as, before the 2003 act, only comparatively weak prohibitions existed on the adaptation or addition of charges.



© PIC: JOHN CARLOS

claimed (usually a photograph), and 'any other document required under the relevant provisions'. Once the High Court is satisfied that the requirements have been properly met, an order is made committing the person to prison pending final order of the minister for justice for extradition. The person must be informed that they are not to be surrendered for at least 15 days from the making of the order and that they have the right to bring a challenge to the order by way of *babeas corpus* and, in doing so, assert that their detention was unlawful. A different procedure applied in relation to requests under part III of the 1965 act, where a mode of challenge other than *babeas corpus* was specifically provided for in section 50.

#### Gimme shelter

The great bulk of Irish case law concerned with challenges to requests for extradition refers to requests from the authorities in Britain and, very often, by persons seeking to prevent a return to Northern Ireland. In this regard, the highly sensitive nature of extradition has been repeatedly exposed to scrutiny. While many persons who contest extradition can be put into a category of persons accused of 'ordinary' criminal offences, a distinct category of offences have been recognised as political in nature and thus exempt from consideration if an extradition request is presented. This exemption has

not been continued in such explicit form in the 2003 act, since extradition is only prohibited in circumstances where 'there are reasonable grounds for believing that the European arrest warrant was issued in respect of the person for the purposes of facilitating his or her prosecution or punishment in the issuing state for reasons connected with his or her sex, race, religion, ethnic origin, nationality, language, **political opinion** or sexual orientation' (emphasis added).

The political offence exception to extradition would probably receive less sympathy generally following the attacks on New York in 2001 and London in July, and it is likely that the successful reliance on such a claim to defeat an extradition request would largely turn on the facts of the particular case. In addition, many offences that might previously have been claimed to be political in nature have now been specifically designated as 'terrorist offences' (see the *Criminal Justice (Terrorist Offences) Act, 2005*) and would thus not benefit under Irish law from exemption from an extradition request (see *Quinn v Wren* [1985] IR 322 and *Russell v Fanning* [1988] IR 505). However, the increased formality of the extradition procedures would indicate that informal, non-statutory or even extra-judicial arrangements may be a thing of the past. It has been known for certain states to resort to various means, including kidnap, to obtain custody of certain

A plain-clothes garda fires shots during the attempt to re-arrest Evelyn Glenholmes following her successful extradition hearing in March 1986

# SOME PEOPLE REALLY LIKE THE SOUND OF THEIR OWN VOICE. THIS IS FOR PEOPLE WHO ABSOLUTELY LOVE IT.

Are you somebody who buys for a bunch of great dictators? Then this new Olympus Voice Recorder could be just the job.

Not only will it record the sound of their voices for 11 hours at a stretch without the nuisance of having to turn over or change tapes – heaven forbid we should interrupt their train of thought – but, thanks to digital technology, its sound quality is crystal clear:

So every word will be understood on playback.

What's more, it features file management to help organise their thoughts. And downloading to a computer or e-mail is so simple, even the most inept of your charges could do it.

Add to this intuitive controls, plus looks that are drop-dead gorgeous, and you have a business tool that will not only make your fellow workers more efficient – they will look it, too.

In fact, the new Olympus DS-4000 is so well built, we're confident it will go on and on. Just like them.

For further details visit [www.olympusproline.co.uk](http://www.olympusproline.co.uk)

The new Olympus DS-4000  
Voice Recorder.



## OLYMPUS

Your Vision, Our Future



12a Parkmore Industrial Estate, Longmile Road, Dublin 21 • Tel: 00 353 1450 9044 • e-mail: [sales@bee.ie](mailto:sales@bee.ie) • [www.bee.ie](http://www.bee.ie)

individuals deemed to have offended most egregiously but, certainly insofar as the EU is concerned, it is hoped that this is now a thing of the past.

The request must also be free from any allegation of possible violation of the constitutional rights of the person concerned, as the Supreme Court has refused to order the extradition of persons where a real or substantial risk of violation is demonstrated to exist (*Finucane v McMahon* [1990] 1 IR 165, *Clarke v McMahon* [1990] 1 IR 228).

#### Across the lines

Although the geopolitical landscape of today's world differs greatly from that in which the concept of extradition was born, one feature remains constant: extradition is as apt to provoke comment and controversy today as it did hundreds of years ago. In 1799, the German city port of Hamburg was requested by Britain to extradite four United Irishmen accused of rebellion. Hamburg complied with the request and was roundly condemned by France for doing so. In a letter from Napoleon Bonaparte, then first consul of France, Hamburg was accused of 'violating the rules of hospitality' and was further told: 'your fellow citizens will blame you forever for this'. Whether that proved to be true or not, the French did not easily forget and eventually secured the sum of four-and-a-half million francs in

compensation for the handover. One of the men, James Napper Tandy, had been a general in the French army and his return, along with his colleagues, was demanded by France on that basis. At the time, however, Hamburg had wilted under the weight of combined British and Russian pressure, the latter having cut all trade links with Hamburg until the extradition request was fulfilled.

In a much more recent episode, the reappearance of the so-called 'Colombia three' in Ireland has excited much protest and criticism of those suspected of involvement in helping the men escape from Colombia and a 17-year prison sentence received after being convicted of training FARC guerrillas. The government has also had to defend itself because the three men were not immediately sent back to Colombia to serve their sentences but, in the absence of a treaty with Colombia, it is difficult to see how this could be achieved legally. The highly charged atmosphere (with virtually no other news to deflect attention from the issue) made for interesting discussion, as the many applicable and also irrelevant aspects of the topic were debated once again. It does seem that, no matter how the world moves on, international pursuit of the fugitive will always attract attention and interest. **G**

*Michael Finucane is principal of the Dublin law firm Michael Finucane, Solicitor.*



**Gwen Malone**  
Stenography Services Ltd.

Ireland's Leading Stenography Agency

- specialising in live feed transcription
- same day transcripts
- arbitrations and depositions
- public inquiries
- litigation support

- exhibit handling and linking
- secure internet transcription
- video conferencing throughout Europe

Law Library, P.O. Box 5939,

145 -151 Church Street, Dublin 7.

tel. 01 878 2000 / 878 2033

fax 01 878 2058

mobile 087 249 1316 DX1071 Dublin

email- [gmalone@gmss.ie](mailto:gmalone@gmss.ie)



agents for



**RealLegal  
Binder**

[www.gmss.ie](http://www.gmss.ie)

# Truth, THE

**Section 26 of the *Civil Liability and Courts Act, 2004* is now part of the law that practitioners must deal with in personal injury litigation. Patrick Groarke explores a recent Supreme Court judgment relating to the section**

**O**n 15 April, the Supreme Court considered section 26 of the *Civil Liability and Courts Act, 2004* in determining the appeal in *Powers v Jordan*. Section 26(1) provides that a court **shall** dismiss a plaintiff's claim in a personal injuries action where the plaintiff gives or adduces, or dishonestly causes to be given or adduced, evidence that is false or misleading, in any material respect, and that he knows to be false or misleading, unless, for reasons that must be stated in its decision, the court considers that the dismissal of the action would result in injustice being done.

A similar provision is created by section 26(2), where the court is satisfied that a plaintiff has sworn an affidavit under section 14 of the act that is false or misleading in any material respect, and this is known to the plaintiff when swearing the affidavit.

## **Humpty dumpty**

On 7 October 2000, the plaintiff was a customer in the defendant's licensed premises when his servants or agents, while ejecting another person from the premises, hit against her forcibly, knocking her off her chair and causing her to fall to the ground. As a result, she suffered soft-tissue injuries to her back, right shoulder and left hip. The plaintiff had previously suffered a serious back injury in a road traffic accident in September 1995.

In the statement of claim delivered on 22 March 2002, the plaintiff included an unquantified figure for loss of earnings as an item of special damage. Later, in replies to particulars furnished on 7 April 2003, the plaintiff, while stating that she was unfit to work at that time, withdrew her claim for loss of earnings.

The defence denied liability. Subsequently, the issue of liability was withdrawn and the case proceeded to hearing as an assessment before Mr Justice Butler at Sligo High Court in November 2004.

All medical reports were agreed and were handed into court and admitted in evidence at the trial of

the action. It was clear from all the medical reports that the plaintiff had told her own doctors and the specialists who examined her on behalf of the defendant that she had not returned to work after the accident. That was not the case.

## **Dr Fell**

On the opening of the trial, the plaintiff's counsel told the court that the plaintiff had misled both her own doctors and those for the defendant when she told them that she had not worked since the accident. He said that the plaintiff had, in fact, returned to work shortly after the accident. In reply to cross-examination, the plaintiff agreed that she had been working, although not on a full-time basis, from shortly after the date of the accident.

The defendant had hired a private investigator who, when called to give evidence, produced photographs showing that the plaintiff had been working as a waitress at the times that she had informed the doctors that she had not been working.

At the end of the hearing, counsel for the defendant made an application to the trial judge to dismiss the plaintiff's claim, pursuant to the provisions of section 26 of the *Civil Liability and Courts Act, 2004*, by reason of the fact that she had given false or misleading evidence to the court or had caused such evidence to be adduced, having deliberately misrepresented her employment position to the doctors who examined her. Plaintiff's counsel argued that the case had been opened to the court on the basis that she had misled the doctors on that issue and the court should have regard to the totality of the evidence adduced by and on behalf of the plaintiff, being her sworn testimony in addition to the contents of the agreed medical reports.

Section 26 came into operation on 20 September 2004 and therefore applied to this action.

## **Sing a song of sixpence**

Butler J refused the defendant's application. He stated that the plaintiff, in her evidence, had accepted that she had misled the doctors and that

- Personal injury actions
- *Civil Liability and Courts Act, 2004*, s26
- *Powers v Jordan*

# WHOLE *truth*

the various medical reports accurately recorded what she had told them. In order for section 26 to apply, the plaintiff had to know at the time that she made those statements to the doctors that they were false or misleading. There was no evidence adduced before him that that was the case. But even if there had been, Butler J pointed out that the case had been opened to him on the basis that the plaintiff had worked from shortly after the date of the accident, notwithstanding what she had told the doctors. In her sworn testimony, the plaintiff had not misled the court at all. She had fully and frankly accepted practically everything that was put to her in cross-examination and he found that there was no intention to mislead in this case.

Butler J stated that he accepted that the medical reports were evidence, given that they had been agreed, but they were not the totality of the evidence. He had to have regard to the totality of the evidence. He further stated that, in any event, section 26 gave discretion to the court not to dismiss a claim where reasons (to be recited in the decision of the court) existed to avoid an injustice being done.

He said that, in this case, he would be correct in exercising his discretion in refusing to dismiss the plaintiff's claim because she had been the innocent victim who suffered injury as a result of the admitted negligence of the defendant. She had come to court and told the truth.

Butler J then reviewed the plaintiff's sworn testimony in relation to her injuries and the medical reports and he awarded her damages of €30,000 for pain and suffering to date and €10,000 for the future, with agreed special damages of €1,800, giving a total of €41,800. He refused a stay.

## **Solomon Grundy**

The defendant appealed to the Supreme Court against the entirety of Butler J's order. In written submissions, the defendant/appellant referred to the contents of the medical reports and the evidence of

the private investigator, which clearly established that the respondent was working at times when she told the doctors she was not working (see **panel**).

The Supreme Court (Murray CJ, McGuinness J and Hardiman J) heard the appeal on 15 April 2005. The court made the initial observation that, while section 26 was undoubtedly in force at the time of the hearing of the action and applied to it, it was not in force at the time of the preparation of the medical reports that contained the false and misleading information that the respondent had furnished to the doctors who examined her.

The Supreme Court, having considered the

# AON

## Legal

Local  
Expertise  
Global  
Knowledge

Aon is the leading broker of Solicitors' Professional Indemnity and Liability insurance worldwide. Our clients range from global law firms and transnational practices to mid-sized partnerships and sole practitioners.

Aon employs upwards of 450 professional insurance and risk/loss consultants throughout Ireland in offices located in Dublin, Cork, Limerick, Mullingar and Belfast. Our dedicated Professional Indemnity Insurance team already serves many practices in Ireland.

The combined strength of our Ireland Portfolio and Aon's presence globally gives us a first-rate knowledge of the domestic and international legal scene.

In addition to Professional Indemnity insurance we can also provide pragmatic and working solutions for solicitors in areas such as:

- Public Liability
- Employers Liability
- Life and Pensions
- Claims Management Services
- Motor
- Office
- Warranty Indemnity
- Personal Accident/Travel

For a quotation, please contact:

Robert Kennedy  
Development Executive  
Aon Legal

Tel: D1 7037436

Fax: D1 6630157

Email: [robert\\_kennedy@aon.ie](mailto:robert_kennedy@aon.ie)

***Practical Service Solutions  
Through Partnership and Expertise***

## APPELLANT'S SUBMISSIONS

The appellant submitted that:

- The statements made by the respondent to the doctors constituted evidence that was false or misleading in a material respect and the respondent had dishonestly caused that evidence to be given or adduced within the meaning of section 26 of the act
- The respondent must be taken to have intended the natural and probable consequences of her statements, which would have been to give the impression that she was unable to work because of the injuries she suffered in this incident
- The respondent intended to mislead the doctors and, by implication, the court, since the medical reports were commissioned to form part of her claim, and
- This was not a case in which the respondent had made a false statement on only one occasion 'such as might have permitted a court to give the benefit of a doubt in relation to the matter' — instead, she had made false statements to the doctors on three separate occasions to the effect that she was unable to work because of her injuries.

Somewhat unusually, the appellant made an additional submission in the following terms: *'It is conceivable that, before the trial commenced, the plaintiff somehow became aware (through, for instance, perusing the names of witnesses as to fact in the disclosure) that the defendant had engaged the services of a private investigator who may be in a position to give evidence that the plaintiff had been working. The defendant submits that the plaintiff's legal advisors engaged (albeit perfectly legitimately) in a damage-limitation exercise by leading evidence from the plaintiff to the effect that she had been working. The learned trial judge erred in law in the course of his judgment when he determined that there was no intention to mislead in circumstances where the case was opened on the basis that the plaintiff had worked and that she had in her sworn testimony not misled the court at all and fully and frankly accepted everything that was put to her in cross-examination. It was clearly in the plaintiff's interest to adopt such an approach'.*

Finally, the appellant also referred to the Supreme Court decision in *Shelly Morris v Bus Átha Cliath* ([2003] 1 IR 232), in which it was held that the telling of deliberate falsehoods in respect of one aspect of a claim might have implications for the plaintiff's credibility in general and might mean that the plaintiff failed to discharge the required burden of proof generally or with regard to a particular aspect of the claim. A claim might be dismissed in circumstances where the credibility of the plaintiff had been so undermined that the burden of proof had not been discharged. The appellant submitted that, because of the plaintiff's false and misleading statements to the doctors in this case, her evidence on the relationship between her physical symptoms after this accident and those that she suffered in the 1995 road traffic accident should have been treated 'with extreme caution' by the trial judge and should not reasonably have been accepted by him.

The appellant also submitted that, if all other grounds of appeal were to fail, the damages awarded were excessive.

## RESPONDENT'S SUBMISSIONS

In response, the respondent submitted that:

- In advancing the contention that the respondent had given or adduced false or misleading evidence to the court by agreeing to the medical reports being admitted in evidence, the appellant ignored or appeared to overlook the fact that the respondent's case was opened to the court, on her instructions, among other things, on the basis that she had been working as a waitress since the date of the accident and that was confirmed by her sworn testimony
- The trial judge was entirely correct in holding, as he did, that in considering the appellant's application for a dismissal under section 26, he should not consider the contents of the medical reports in isolation but as part of the totality of the evidence given or adduced on behalf of the respondent, including in particular her sworn testimony, and in holding that she had not misled the court because her sworn testimony had corrected any errors recorded in the medical reports
- In the alternative, if it is held that the contents of the medical reports could properly be considered without having any regard to the respondent's sworn testimony, the learned judge was correct in exercising his discretion to refuse to dismiss the respondent's claim under the terms of section 26, on the grounds that to do so would result in injustice being done in circumstances where the judge held that the respondent had given truthful evidence in her sworn testimony
- The respondent's evidence with regard to the relationship between her current symptoms and those she had following her earlier accident in 1995 could reasonably have been accepted by the trial judge because all relevant information in relation to the 1995 accident, including all medical reports, had been made available by the respondent to the appellant
- The judge was entirely correct in holding, as he did, that this accident caused an exacerbation of the symptoms the respondent had suffered in the earlier accident
- The general damages awarded were not in any way excessive or disproportionate having regard to the findings made by the trial judge.

provisions of section 26, stated that it raised a number of issues that the court did not feel it necessary to address in this case. However, it did anticipate that the court would, in future cases, be called upon to give rulings on the interpretation and application of the section.

The court noted that the trial judge had held that the respondent had suffered an injury as a result of the admitted negligence of the appellant, that she had not intended to mislead the court, that the court had not in fact been misled by her and that, in the light of those findings, the interests of justice required that her action should not be dismissed. Those findings were entirely consistent with the view of the evidence as taken by the trial judge. The Supreme Court found that the trial judge had properly taken all relevant matters into account and had properly exercised the discretion conferred on him by section 26 in refusing to dismiss the respondent's claim, on the basis that she had suffered injury as a result of the admitted negligence of the appellant. The Supreme Court expressed the view that the justice of the case required, having regard to those findings, that the court proceed with an assessment of the damages to be awarded to the respondent. The trial judge was entitled to exercise the discretion that the section conferred on him and that is what he did.

The Supreme Court held that, as the respondent had suffered injury for which the appellant was legally responsible, it would be unjust in those circumstances to deny her compensation in law.



However, the chief justice, giving the judgment of the court, did say that there may be other cases to which the provisions of the section would be appropriately applied.

The court held that the trial judge had made findings that were consistent with the medical evidence and the respondent's evidence. These were matters for him and, as the assessment was not wrong in principle or outside what would be the norm for such injuries, the Supreme Court refused to interfere with the award and dismissed the appeal with costs to the respondent.

#### Pop goes the weasel

It was interesting to see how the courts interpreted the draconian sanctions created by section 26 insofar as they applied to this case. The section applies only to plaintiffs in personal injuries actions. It does not, for example, apply to a defendant in a personal injuries action who has sworn a verifying affidavit under section 14 that is false or misleading in any material respect, which he knew to be false or misleading at the time of swearing. Such a defendant would be guilty of an offence under section 14(5) but, then, so would the plaintiff in similar circumstances.

There will undoubtedly be many other cases in which the courts will have to address, interpret and

consider section 26 and the manner in which it should be applied. How will the saving discretion be exercised? If a court finds that a plaintiff has suffered injury as a result of the negligence of a defendant, would it ever be appropriate to dismiss the plaintiff's claim if he has given false or misleading evidence in a material respect or caused such evidence to be given or adduced? What does 'material respect' mean in that context? While it remains to be seen how the section will be applied, I would be hopeful that, as in *Powers v Jordan*, the discretion given to the court by section 26 would be availed of in most of those cases to ensure that the plaintiff's action would not be dismissed. In such cases, how could the dismissal of the plaintiff's action not result in injustice?

Section 26 is now part of the ever-expanding body of legislation with which we have to deal in personal injury litigation. We must make our clients aware of the changes that have been introduced by that section and also by the other provisions of the *Civil Liability and Courts Act, 2004*.

Rest assured, we have not heard the last of section 26. It will undoubtedly cause many problems in the future for plaintiffs in personal injury actions. **G**

*Patrick Groarke is a partner in the Longford law firm Groarke & Partners.*



**Land Registry**  
**Clarlann na Talun**

## Scheme Map Approvals and Transfers from Schemes

The Land Registry has introduced a new method for processing Scheme Map applications. Plan reference numbers are now allocated to all parcels at the date of approval of the Scheme Map. The new plan numbers and Scheme Map Application Number are provided on a legend attached to the scheme map, a copy of which will be returned to the lodging party together with the approved map. It is important to note that, when an application for registration of an individual site is lodged, the schedule or operative part of the deed of transfer/lease must quote the approved Scheme Map reference number and the plan reference number in accordance with the legend on the Scheme Map. No further mapping of these cases will be required.

The new procedure, whereby the deeds of transfer/lease must contain the scheme reference and plan reference, applies only to those cases which have been pre-mapped and a legend and map have been returned in the scheme map application.

For further information please refer to [www.landregistry.ie](http://www.landregistry.ie)

## Justice Albie Sachs of South Africa's Constitutional Court recently visited Dublin to deliver the Law Society's inaugural human rights lecture. Here's what he had to say

### MAIN POINTS

- The justiciability of socio-economic rights
- Role of the judiciary
- Judgment of the South African Constitutional Court

**T**he very notion of entrenching rights is to provide a basic framework of constitutional regard for every human being. It is not the duty of courts to side with one section of society against another, however powerful or weak they might be and however sympathetic to their claims individual judges might feel. But there is every reason why it should be incumbent on the courts to see to it that basic respect for the dignity of every person is maintained at all times. That is why we have fundamental rights. The bill of rights is there, not simply to protect the vested interests of those that have, but to secure basic dignity for those that have not. The key question, then, is not whether unelected judges should ever take positions on

independence guaranteed to them by the constitution, ensure that justice is done to all without fear, favour or prejudice.

In my opinion, then, the greatest problem concerning judicial enforcement of social and economic rights is not one of institutional legitimacy. The constitution itself requires the courts to ensure respect for such rights. The real difficulty is that of institutional capacity. It is in this connection that the more radical objection to our suitability to enforce socio-economic rights comes into play. The objection from radical quarters to judges enforcing social and economic rights suggests that we are likely to get it all wrong. They point to the social class from which we judges traditionally have been drawn and the nature of our legal thinking, which tends to

# And JUSTICE

controversial political questions. It is to define in a principled way the limited and functionally manageable circumstances in which the judicial responsibility for being the ultimate protector of human dignity compels them to enter what might be politically contested terrain. It is precisely in situations where political leaders may have difficulty withstanding populist pressures, and where human dignity is most at risk, that it becomes an advantage that judges are not accountable. It is at these moments that the judicial function expresses itself in its purest form. The judges, able to rely on the

look at questions in abstract and formulaic ways that end up favouring the status quo. But even where our background and modes of thought might be thought to predispose us differently, there can be little doubt that it is inappropriate for judges who, in general, know very little about the practicalities of housing, land and other social realities, to pronounce on these issues. That is what parliament is there for. It has hearings and receives input from a variety of people with special expertise in particular areas. The very nature of the political process calls for compromise and a balancing out of interests, something to be applauded in an open and democratic society based on principles of give-and-take rather than of all-or-nothing.

## ASK NOT WHAT YOUR COUNTRY CAN DO FOR YOU

Justice Sachs had been in Ireland on a number of previous occasions, the last when he was recovering from losing his arm and eye in a bomb in 1988, placed under his car by the South African security service. Sitting at Kader Asmal's kitchen table in Foxrock, he started to draft what a few years later became the bill of rights in the new South African constitution.

On 23 June last, he was here to tell us how it was working out in practice, and in particular how the Constitutional Court was grappling with the challenge of giving effect to socio-economic rights.

The excerpts here describe the principles on which the Constitutional Court grounded its judgment on the right to housing of Mrs Grootboom, her children and almost 1,000 other homeless people.

### Dangerous compromise

Yet, though compromise on questions of practicality and use of resources is valuable, compromise on matters of deep principle is dangerous. Thus, the securing of maximum support, which is part and parcel of the political process, is intrinsically different from the principled balancing that, in matters involving fundamental rights, is central to the judicial function.

We are institutionally completely unsuited to take decisions on houses, hospitals, schools and electricity. We just do not have the know-how and the capacity to handle those questions. But we do know about human dignity, we do know about oppression, and we do know about things that reduce a human being to a status below that which a democratic society would regard as tolerable.

An implication of placing social and economic rights in a constitution is to say that decisions that, however well intended, might have the consequence of producing intolerable hardship cannot be left solely in the hands of overburdened administrators and legislators. Efficiency is one of the great principles of government. The utilitarian principle of producing the greatest good for the greatest number might well be the starting-off point for the use of public resources. But the qualitative element, based on respect for the dignity of each one of us, should never be left out.

This is where the vision of the judiciary, tunnelled in the unshakable direction of securing respect for human dignity, comes into its own.

I suspect that behind the technical and political science arguments advanced against the judicial enforcement of socio-economic rights lies a basic concern that somehow the involvement of the courts in this area will lead to a dilution of their respect for fundamental civil and political rights. Put another way, there is a fear that, in pursuit of the right to bread, the right to freedom will be submerged. Anxiety on this score has historical foundations. Certain states have contended that in order to achieve national development and to improve the conditions of the impoverished masses, they have had to suppress freedom of speech and do away with multi-party democracy and spurn an open society. Can it be, though, that people want freedom without bread, or bread without freedom? In South Africa, the struggle for the vote and for freedom of movement

# E for all

and speech was always inseparable from the right to housing, health and education. Bureaucratic authoritarianism was intrinsic to apartheid. People simply did not count as human beings. The restoration of dignity for all South Africans accordingly requires the simultaneous creation of material conditions for a dignified life and development of increased respect for the personality and rights of each one of us.

## **Bread and freedom**

Both freedom and bread are necessary for the all-round human being. Instead of undermining each other, they are interrelated and interdependent.

It heaps indignity upon indignity to say that the





Through the years, you've built your practice by building relationships of trust – identifying what each client needs and providing first class advice and expertise.

And that's how we like to do business too.

To find out how we can put our unique range of business services to work for you, call to any AIB branch or visit: [www.aib.ie/professionals](http://www.aib.ie/professionals).

**be with**



Terms and conditions apply. Allied Irish Banks, p.l.c. is regulated by the Financial Regulator.

poor are not interested in the franchise or the right to speak their mind or the right to be treated fairly, but only in a full stomach. The experience in South Africa was that, in general terms, the greatest sacrifices for freedom were made by those who were the poorest and most dispossessed. Yet the constitutional vision is deeply impoverished if it is limited to allowing a person dying of hunger simply to curse the government with his or her last breath. Where the struggle for survival is overwhelming, freedom to vote and the right to criticise the government become remote from the exigencies of daily existence. In a society in which people are not simply striving to survive but where they are educated, where they can read and study and learn about the world, they can make informed political decisions and exercise meaningful self-determination.

### When the rains come

The inter-relatedness of the different generations of rights helps resolve some of the libertarian versus communitarian tensions on the question of the enforcement of social and economic rights. An extreme libertarian approach to Mrs Grootboom's situation would have secured to her the right to be left alone, with unrestricted freedom to denounce the government as the rain pelted down. Yet she did not want the state to leave her alone when the rains came. She wanted to be able to call upon the state to ensure that she and her children had a roof over their heads. On the other hand, if a radical communitarian approach had been adopted, the invasion by herself and a thousand others of privately owned land would, without more, have been justified. The fact was, however, that apart from the rights of the landowner, there were other individuals in the queue for formal housing due to be built on that land whose rights were also being affected. In my opinion, the approach that our constitution required us to adopt was neither purely libertarian nor simply communitarian, but

Living conditions  
in Soweto

***'It should be incumbent on the courts to see to it that basic respect for the dignity of every person is maintained at all times. That is why we have fundamental rights'***

## ALBIE SACHS FACT FILE

**Born:** Johannesburg, 1935

**Education:** University of Cape Town (BA and LLB), University of Sussex (PhD)

**Career:** Advocate at the Cape Town bar from 1957, specialising in civil rights. Was twice detained without trial by the security police. Lecturer at the University of Southampton law school (1970-77); professor of law at Eduardo Mondlane University, Mozambique (1977-83); director of research in Mozambique's justice ministry (1983-88); professor at Columbia University, New York, and founding director of the South Africa Constitution Studies Centre at the University of London (1989); professor extraordinary, University of the Western Cape (1992); appointed to the newly established Constitutional Court in 1994.

dignitarian. It is respect for human dignity that unites the right to be autonomous with the need to recognise that we are all social beings. Thus, the fundamental right of all human beings to have their basic human dignity respected becomes the link between freedom and bread.

In a unanimous judgment prepared by Justice Zak Yacoob, it was held that the key concept in the provisions on access to adequate housing was the obligation on the state to take 'reasonable legislative and other measures' progressively to realise the right. We felt that the concept of reasonable measures was one capable of being adjudicated on by our court. If the measures failed to meet the standard of reasonableness, then the state would be in breach of its constitutional obligations. In deciding whether the measure met this standard, the court would acknowledge the special expertise of the government in this area and the fact that a wide range of policy choices would be consistent with reasonableness. Yet, however impressive the state housing programme was, it made no provision for persons such as Mrs Grootboom, who found themselves in situations of such crisis and desperation that their dignity was being seriously assailed. In other words, however reasonable the programme was in its broad reach, it had one serious gap that prevented it from satisfying the constitutional requirement of being reasonable. There was no comprehensive plan, or indeed, any national plan at all, to deal with homeless people in situations of extreme desperation, such as victims of disaster, or persons in Mrs Grootboom's situation.

We accordingly declared the housing programme of the state to be unreasonable and in conflict with the constitution to the extent that 'it failed to make reasonable provision within its available resources for people ... with no access to land, no roof over their heads, and who were living in intolerable conditions or crisis situations'. Having made that declaration, that is, having established the nature of the state's obligations in this area, we then left it to the state to decide how best in practice it could remedy its failure. **G**

*The full text of this lecture is at [www.lawsociety.ie](http://www.lawsociety.ie) under 'society committees', 'human rights', 'lectures'.*

# Evolution, *not*

**The Scottish legal profession has faced an unprecedented level of scrutiny in recent years, as have the other UK and Irish societies, but its reputation for professionalism and integrity has remained strong throughout, writes Caroline Flanagan**

## MAIN POINTS

- **Scottish legal profession**
- **Regulatory reform**
- **Clementi review**

**M**uch recent discussion has centred on issues surrounding the regulation of the legal profession. In fact, a wide-ranging Scottish Executive consultation – *Reforming complaints handling, building consumer confidence: regulation of the legal profession in Scotland* – has only just ended. The outcome of the consultation is awaited with considerable interest.

Solicitors in Scotland are proud of their widely admired legal system and their practice, which is 99.8% complaint-free. Yet they are also keen to learn any important lessons that may arise from a constructive debate about the best way forward.

Indeed, during this period of inquiry and discussion, the Law Society of Scotland has already introduced many improvements – many of those also relating to the regulation of solicitors and particularly the complaints handling process. A brief overview may be helpful.

### Watchdog role

The Law Society of Scotland's dual role, as a 'public interest watchdog' as well as a 'solicitors' professional association or trade union', attracted comment from the Royal Commission on Legal Services in Scotland back in 1980. The commission concluded: *'In our view they [the society] have in fact made creditable attempts to balance the demands of the two potentially conflicting interests which by statute they are constrained to promote ... Much of value would be lost if the Law Society were to become simply the professional association or trade union of solicitors'.*

Although there have been considerable developments since 1980, and the system has adapted to changing circumstances, the core values of fairness and efficiency identified by the commission remained valid in subsequent years.

In 2002, the Scottish Parliament's Justice 1 Committee completed its inquiry into the regulation of the Scottish legal profession, which had focused on complaints handling. The committee cited the Scottish Legal Services Ombudsman, the Scottish Consumer Council and academic opinion to support the view that the society should have a role in the regulation of complaints because that was the only way in which it could be aware of problems that existed within the profession. In its written evidence to the committee, the Scottish Executive itself stated

that the creation of an independent body 'would be expensive to the taxpayer ... [would] not of itself guarantee better performance on complaints and would still require input from the profession'. The committee endorsed the society's role in the regulation of solicitors in Scotland.

A number of recommendations were made by the committee, such as taking decision-making in complaints away from the society's council, ensuring 50% non-solicitor involvement in deciding complaints. New rules requiring all solicitors' firms to have a client relations partner and to issue letters of engagement to clients have been proactively introduced by the society. The speed and effectiveness of the complaints system has improved dramatically since many reforms were implemented in September 2003.

### Clementi review

Also in 2003, Sir David Clementi was asked to undertake the *Review of the regulatory framework for legal services in England and Wales*. His proposals, which were published in December last year, included separate regulation and representation and the creation of a Legal Services Board, as well as the Office for Legal Complaints. As made clear in his report, the proposals were designed exclusively for England and Wales, not least because there was no suggestion of similar structural problems north of the border. Shoehorning Scotland into the recommended answers for England and Wales would be a dangerous and ineffective thing to do, especially as the profession and the legal services markets are so different in the two jurisdictions.

At the same time as the *Clementi review*, the society's master policy was being investigated by the OFT. Their investigation concluded that the collective-bargaining arrangements carried out by the council, and which underpin the master policy, are of benefit to the Law Society of Scotland, its members and their clients in securing uniform and affordable professional indemnity insurance for Scottish solicitors. Also, following the report by then European competition commissioner Mario Monti into competition in the legal profession, the society instigated a complete review of its rules. Top of the list of concerns was the recommended table of fees, which the society has now withdrawn. The process of withdrawing the table has been conducted in

# revolution

conjunction with the OFT and the lord president, as it should be.

In addition to that, the justice minister has set up a research working group into legal services, which involves a number of organisations including the Consumer Council, OFT, Citizens' Advice Bureau and the society. That group is due to report soon and the society hopes that its work will be used to inform the consultation process.

## Underlining the advances

So the current Scottish Executive consultation into the regulation of the profession is simply the latest in a long list of reviews and inquiries. The society regarded the exercise as an opportunity not only to further reform and modernise the system, but also to underline the many advances made in complaints handling in recent years, illustrated not least by the continued heavy investment in the Client Relations Office.

However, the society has stated in its response to the consultation that there had been 'scant acknowledgement of these changes and their potential impact'. Instead, the consultation listed four options for 'changing the structure of complaints handling'. These ranged from enhancing the powers of the Scottish Legal Services Ombudsman, establishing a new 'gateway' with an element of independence to deal with complaints – with the potential for varying degrees of powers – to setting up a new independent body altogether.

Although the society sees the reasons for considering each option, it also has reservations about each and concerns about how each will work in practice, which will require more thought and detail. The concerns are that the executive should avoid overly bureaucratic or costly options that risk undermining the achievements already made by the society in simplifying and speeding up the process.

So the society presented Scottish ministers with a fifth option, which it describes as involving 'internal changes and enhanced independent oversight', or 'evolution not revolution'. Its objective is to build on the substantial changes already made and the improvements achieved to create an enhanced system of complaints handling that is effective, efficient and transparent, as well as an effective remedy for dissatisfied clients.

## Reforms that work

It is always easy to criticise, but harder to find the answers. What is important is that whatever change is made is made for the better. Douglas Mill, the chief executive, summed it up recently when he said: 'Just

Caroline Flanagan: 'It's easy to criticise, but harder to find the answers'

*as the system has been speeded up, we must not introduce change that will slow it down; just as it has been simplified, we should not make it more bureaucratic, and if the executive wants a community legal service, we should not undermine local practice. We must introduce reforms which work, rather than make change simply because of perception. We would encourage evolution rather than revolution'.*

It is now for the Scottish Executive to consider the council's response as one of around 400 responses to the consultation, but the society sees it as the quickest, most cost-effective solution, which is already working better for clients and their solicitors.

The Scottish legal profession understands that it is not alone: counterparts in Ireland and elsewhere in the UK are also under intense scrutiny. In fact, many of the criticisms of the Scottish system seem to originate from within its own borders, while its reputation elsewhere remains impressive, with other jurisdictions learning from us. Perhaps the different jurisdictions of the UK, Ireland and elsewhere have much to learn from each other to ensure all face the future in a healthy condition – for the benefit of the public and the profession alike. **G**

*Caroline Flanagan is the president of the Law Society of Scotland.*



## A CAR INSURANCE POLICY DESIGNED FOR THE LEGAL PROFESSION

AA Insurance has a new car insurance policy designed with the legal profession in mind. To find out more, call AA Car Insurance today and we'll show you just how much you could save. Call us direct on

- **Special low rate premiums**
- **Protected No Claims Discount**
- **Choice of Payment Options**
- **Accident / Claims Assist Helpline**

**01 617 9244**



**Car  
Insurance**



# All things being EQUAL

Equality law now applies to pensions as it does to employment generally, with some important exceptions. Michelle Ní Longáin and Timmy Quinn highlight the relevant provisions of the *Social Welfare (Miscellaneous Provisions) Act, 2004*

## MAIN POINTS

- *Pensions Act, 1990*
- *Social Welfare (Miscellaneous Provisions) Act, 2004*
- Anti-discrimination provisions

**T**he *Social Welfare (Miscellaneous Provisions) Act, 2004* came into effect on 5 April 2004 and inserted a new part VII into the *Pensions Act, 1990*. Part VII of the 1990 act previously provided for equal treatment of men and women in occupational pension schemes. The new part VII provided for the implementation of the *Race directive* and the *Framework directive* as they apply to occupational pension schemes. These directives relate to discrimination on the grounds of sexual orientation, religion, age, race and disability. Part VII now prohibits direct and indirect discrimination in pension schemes on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the traveller community, mirroring the provisions in respect of employment generally.

The *Pensions Act, 1990* only prohibited discrimination in pensions on the grounds of gender and marital status. Section 22 of the *Social Welfare (Miscellaneous Provisions) Act, 2004* amends the *Pensions Act, 1990*, substituting a new part VII in respect of equal pension treatment in occupational pension schemes.

Section 70 defines the principle of equal pension treatment, which is that of non-discrimination on any of the discriminatory grounds. This principle also applies in relation to the dependants of members of a pension scheme. Discrimination will be deemed to have occurred when a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the discriminatory grounds. The 2004 act also defines indirect discrimination as occurring where an apparently neutral rule puts persons who

## MISCELLANEOUS PROVISIONS

The new part VII of the *Pensions Act* consists of 27 sections, numbered 65 to 81J. Some of the miscellaneous provisions contained in the act are as follows:

- Section 74 makes it an offence for a person to procure, or attempt to procure, another person to do anything which constitutes a breach of the principle of equal pension treatment
- Section 75 provides an exemption for compliance with existing statutory requirements
- Section 76 provides for the burden of proof to be on the respondent where facts have been established, by or on behalf of the complainant, from which it may be inferred that a breach of the principle of equal pension treatment has occurred
- Section 77 provides for the exclusion of the Defence Forces from the application of the principle of equal pension treatment in relation to the age and disability grounds
- Section 78 reflects the existing section 70 of the *Pensions Act* which applies the principle of equal pension treatment to access to pension schemes, and extends the section to cover all discriminatory grounds
- Section 79 reflects the existing section 70(A) of the *Pensions Act*, providing that, where the granting of an occupational benefit under a scheme is at the discretion of any person, that person shall comply with the principle of equal pension treatment in exercising that discretion
- Section 81(A) reflects the existing section 72 of the *Pensions Act* and allows an occupational benefit scheme to make special provisions in relation to paid maternity leave
- Section 81(B) reflects section 73 of the *Pensions Act* and provides that benefits shall continue to accrue to members under an occupational benefit scheme during periods of paid family leave
- Section 81(C) extends the principle of equal pension treatment to collective agreements, employment regulation orders and registered employment agreements
- Section 81(D) extends the principle of equal pension treatment to contracts of employment
- Section 81(E) sets out the mechanism for determination of disputes. The Equality Tribunal will be the body to which disputes will be referred. In cases involving dismissal, the dispute will be referred directly to the Labour Court. Section 66 of the *Equality Act, 2004* provides that from 19 July 2004 dismissal cases are to be dealt with by the Equality Tribunal, not the Labour Court. The section contains transitional provisions in respect of the transfer of cases. In cases of breach of the principle of equal pension treatment on the gender ground, the case may be referred directly to the Circuit Court. The time limit for referring a dispute is six months from the date of termination of employment, extendable to 12 months in exceptional circumstances
- Section 81(F) sets out the mechanism for determination of disputes in relation to the Defence Forces. This section also states that any decision of the director or the Labour Court can be appealed within 42 days
- Section 81(G) reflects the existing section 75 of the *Pensions Act*, enabling the Pensions Board to determine whether a scheme is a defined contribution or defined benefit scheme
- Section 81(H) sets out the redress, which may be ordered by the director, the Labour Court or the Circuit Court, where a breach of the principle of equal pensions treatment has occurred. The maximum amount that may be ordered by the director or the Labour Court by way of compensation is an amount equal to 104 times the amount of remuneration, determined on a weekly basis. Where there has been a breach of the principle of equal pension treatment on the gender ground, the director or the Labour Court can also order the payment of interest
- Section 81(I) says that the director may request the Pensions Board to provide a report on any question arising on a reference relating to an occupational pension scheme.

differ at a disadvantage in respect of any of the discriminatory grounds compared with other persons (section 68). However, a sub-section provides a saving in that there will be no breach of the principle of equal pension treatment where the rule is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

The 2004 act reflects the positive gender discrimination provided for in article 6 of the *Pensions directives*. This test applies to indirect discrimination in employment since 18 July 2004, when the *Equality Act, 2004* was commenced.

Section 72 of the act provides for savings in relation to the age, sexual orientation, family status and marital status grounds. These are discussed briefly below.

**Age.** Section 72(1) provides that it shall not constitute a breach of the principle of equal pension treatment on the age ground for a scheme to do certain things where, in the context of the relevant employment, to do so is appropriate and necessary by reference to a legitimate objective of the employer including legitimate employment policy, labour market and vocational training objectives,

providing that this does not result in a breach of the principle of equal pension treatment on the gender ground. These include fixing an age or qualifying service or a combination for admission to a scheme, for entitlement to benefits under a scheme, for accrual of rights under a defined benefits scheme or in relation to the level of contributions to a defined benefits scheme.

**Marital and family status.** Section 72(2) says that it is not a breach of the principle of equal pension treatment on the marital or family status ground for a scheme to provide more favourable occupational benefits where those more favourable benefits are for any person in respect of whom a benefit is payable on the death of the member, provided that this does not result in a breach of the principle on the gender ground. Pension schemes are still permitted to pay higher benefits to members who have dependants, provided that this does not result in a breach of the principle of non-discrimination on the gender ground.

**Marital status and sexual orientation.** If a scheme provides more favourable occupational benefits to a deceased member's widow or widower, it will not constitute a breach of the principle of

equal treatment on the marital status or sexual orientation ground provided that it does not result in a breach of the principle of non-discrimination on the gender ground (section 72(3)).

Section 73 provides for special provisions in relation to the disability ground:

- It allows for differences of treatment on the grounds of disability, where the difference is based on a lesser output of work, provided that it does not result in discrimination on the gender ground, and
- It also allows for enhanced benefits due to early retirement on the disability ground.

The *Pensions Act* currently provides that, where a rule contravenes the gender ground, levelling up is retrospective to 17 May 1990 in the case of employed persons, or 1 January 1993 in the case of self-employed persons, up to the date the rule is amended. In the case of grounds other than gender, where the principle of equal pension treatment is breached, levelling up reflects the implementation dates of the two directives. In the case of the sexual orientation, age, disability, religion, traveller community, marital and family status grounds, compulsory levelling up is required back to 2 December 2003. In the case of the ground of race, the date is 19 July 2003.

In general, therefore, the rules about equality in pensions are broadly similar to rules under existing employment equality legislation. However, occupational pension schemes will continue to be able to set certain conditions, even though they may seem to violate the principle of non-discrimination.

For example, a maximum age may be set for entry to a scheme, a minimum age for entitlements to benefits from that scheme and the number of years' service that are required for benefit. Age may be used in actuarial calculations and different rates of contribution may be set for people of different ages. Similarly, employers may pay different contributions for people of different ages. The savers on the age ground apply only where they are appropriate and necessary by reference to a legitimate objective of the employer.

Occupational pension schemes can specify that the survivor's benefit is payable to the legal spouse only. However, if the scheme allows survivor's benefits to be paid to a partner who is not a spouse, then it must allow that payment to same sex partners. Occupational pension schemes can pay extra benefits to people who are retiring on grounds of disability. **G**

*Michelle Ní Longáin and Timmy Quinn are solicitors with the Dublin law firm BCM Hanby Wallace.*

## FRIARYLAW & ADR GROUP – MEDIATION AND DISPUTE RESOLUTION IN IRELAND

**OPEN EVENING: 7 September** The Law Library Distillery Building.  
**COURSE DATES: 28 September – 1 October** The Friary, Bow Street, Dublin 7.

ADR (Alternative Dispute Resolution) has brought about a remarkable change in the solving of civil and commercial disputes worldwide. The latest statistics available from the US reveal the extraordinary impact of ADR, where civil and commercial litigation in the public fora of the courts is at a forty year low; similar trends are emerging in the UK.

As a result of the lessons learned in other jurisdictions, Irish business is embracing new and innovative forms of dispute resolution as part of their business model. Recent legislative change at national (Civil Liability and Courts Act, 2004) and EU level (pending EU Mediation Directive) underpin the emergence of Mediation as an essential tool in the fast and efficient resolution of civil and commercial disputes. Sophisticated clients are increasingly aware of the benefits of mediation; namely, a speedier and more cost efficient method of dispute resolution.

Friaryl原因 & ADR Group provide the most comprehensive Mediation training and formal accreditation process available in this jurisdiction. We administer a structured pupillage programme for our accredited mediators. Friaryl原因 & ADR Group are committed to the development of the mediation practices of their panel members both here and in the UK.

Training as a mediator with Friaryl原因 & ADR Group will:

- Enhance your professional skill set
- Obtain Mediator Accreditation
- Develop a Mediation Practice

- On April 1st 2005 Friaryl原因 was appointed by the Minister and Department of Justice as a nominating body under section 15 of the Civil Liability and Courts Act, 2004.
- ADR Group was the first mediation trainer and service provider in the EU to receive ISO9002 accreditation
- The training course satisfies 35 hours of the Law Society of Ireland's CPD requirements.
- Areas of application include: General Commercial, Personal Injury and Clinical Negligence, Employment, Construction and Engineering, Banking and Financial Services, Insurance, Professional Accounting and Related Services Disputes, Environmental Disputes, Family and Matrimonial

The course will be presented by ADR Group, Oliver J Connolly and the Friaryl原因 team.

If you require any further information please call the Friary at tel 8728405, email at [admin@theFriary.ie](mailto:admin@theFriary.ie) or visit the website at [www.friaryl原因.ie](http://www.friaryl原因.ie)

Friary Chambers, The Friary, Bow Street, Dublin 7.  
 Tel: 01 872 8405. Fax: 01 872 8409  
 Email: [admin@theFriary.ie](mailto:admin@theFriary.ie). Web: [www.friaryl原因.ie](http://www.friaryl原因.ie)

# ADVISING WITH CONFIDENCE?

*...ensure your conveyancing  
transactions are fully compliant*

## Irish Conveyancing Law, Third Edition

Written by Una Woods Consultant Editor: Professor John Wylie

### NEW EDITION

Your essential guide to conveyancing law and practice

Stay fully up-to-date with the very latest legislation and legal developments with this brand-new third edition of Irish Conveyancing Law. User-friendly and highly practical, it contains the information, advice and guidance that will ensure your conveyancing transactions are legally compliant, error-free and adhere to accepted best practice guidelines.

Practical guidance that clearly demonstrates  
how this recent legislation affects your day-to-day  
conveyancing work:

- The Real Estate (Tenancies) Act 2004
- The Planning and Development Act 2000
- The Stamp Duty Consolidation Act 1999
- Five recent important conveyancing cases

Format: Hardback  
ISBN: 1 85205 205 0  
Price: £175  
Publication: Oct 05



## Irish Conveyancing Precedents

Consultant Editor: Professor John Wylie

### LOOSELEAF SERVICE

Your up-to-date conveyancing precedents service

This comprehensive and authoritative collection of conveyancing precedents should be on the desk of every solicitor and barrister who handles conveyancing transactions. Self-contained and fully annotated, it covers everything from the simplest transaction to the most complex commercial lease.

Only Irish Conveyancing Precedents can provide these key benefits:

- The brand new precedents that make your job easier – sent straight to your desk
- An invaluable reference source of over 120 self-contained, fully annotated precedents
- Practical coverage on the alternative dispute methods in regular use
- Written by leading property law experts in consultation with key practitioners

Subscribers automatically  
receive a comprehensive updating  
issue once a year.

Format: Looseleaf Service  
ISBN: 1 85473 002 2  
Price: £420 (Annual update  
included on publication)



ORDER YOUR BOOKS ON A 30-DAY NO RISK FREE TRIAL

To place your order simply:

Call Direct Sales on: 00 44 1235 465500 Fax: 00 44 1235 465556

Email: [directorders@marston.co.uk](mailto:directorders@marston.co.uk)

Post to: Marston Book Services Ltd, PO Box 269, Abingdon, Oxon, OX14 4YN

**Tottel**  
publishing



# Book review

## Wards of court in Ireland

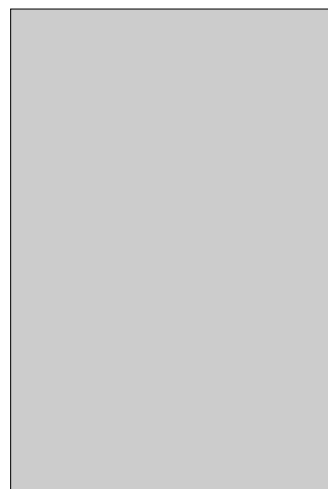
**Anne-Marie O'Neill.** FirstLaw (2004), Merchant's Court, Merchant's Quay, Dublin 8.  
ISBN: 1-904480-25-X. Price: €65.

**T**he wardship legislation is governed by the *Lunacy Regulation (Ireland) Act 1871*. The last textbook on this legislation was in 1930, by Harris; 75 years later, Anne-Marie O'Neill has produced a superb book on this act. It is an erudite, well-researched, practical and very readable book on a topic that is sadly becoming more relevant to practitioners as people live longer. Indeed, there are now approximately 2,800 wards with €420 million of wards' estates invested on their behalf.

The author gives an excellent legal commentary with relevant case law on all aspects of the act. In addition, she gives practitioners very helpful practical advice, with precedents where appropriate. For example, she points out, quite rightly, that there is no provision in the current

legislation or rules regarding who may apply to the court for a person to be taken into wardship and that people with a genuine concern for the welfare of the ward should have this power. She also quotes Finnegan P (*In re Catherine Keogh*, 24 October 2002) when he states: 'where a petition is presented *bona fide*, the cost of opposing the enquiry will not be fixed on the petitioner even though the opposition succeeds'. This is an important point for practitioners to note.

Every chapter includes a commentary on the topics covered, as well as very useful suggestions for law reform, with a discussion on recent Law Reform Commission proposals on the subject matter. Comparative laws in other jurisdictions are also examined.



The author has also written an excellent chapter on enduring powers of attorney (EPAs) and discusses improvements in the legislation. In particular, Dr O'Neill agrees with the Law Reform Commission that attorneys should have powers to make some healthcare

decisions and should have some proper statutory accountability. All the relevant statutory instruments regarding EPAs are included.

There is also a very useful section giving guidelines for lawyers and doctors when assessing a person's capacity or incapacity. There is very helpful advice as to specific issues to be covered in medical reports and those medical personnel who should prepare the reports in different circumstances.

This publication is essential reading for either specialists in the area or for practitioners with less experience, and Dr Anne-Marie O'Neill is to be congratulated and commended for writing this textbook. **G**

*John Costello is a solicitor with Dublin law firm Eugene F Collins, Solicitors.*

# WHAT'S NEW ABOUT THE PE

The Oireachtas has legislated and the Superior Court Rules Committee has made new rules, but is the endorsement of claim or the new summons really much the same as the old statement of claim? The master of the High Court, Edmund Honohan SC, gives practical pointers for practitioners

There's no better way of coming to terms with legislative change than to understand what's driving it. Somewhat unusually, the Oireachtas has legislated to change the procedures of the High Court, an area traditionally left to rules committees. Clearly, the Oireachtas feels that fair litigation means prompt litigation. The plaintiff has two years to formulate his claim – that should be enough.

The rules committee has produced a rule that reiterates the new statutory requirements for particularity and suggests a format for the endorsement that covers all 'allegations, assertions, pleas, acts, instances and circumstances'. It shouldn't be a story; it should be a list of the specific factual allegations, the truth of which the court may have to determine. It is exasperating for the trial judge to be presented with an essentially formless recital of the plaintiff's instructions.

The courts' annoyance is already well documented. In the case of one category of documents sought to be discovered by the plaintiffs in *Framus Ltd v CRH plc* ([2004] IESC25), the chief justice commented that 'so far as that particular allegation goes, in my view the learned High Court judge was entirely correct in holding that it was too broad and general a statement as to be properly susceptible to an order for discovery'. *Gazette* readers should carefully note the pincer movement: the Oireachtas and judiciary both now demand particularity in pleadings.

'Particulars' can never be introduced as other than itemised details or components of an alleged general or non-

## THE STATUTE: RELEVANT SECTIONS OF THE 2004 ACT

### Pleadings generally

#### S13

- 1) All pleadings in a personal injuries action shall:
  - a) In the case of a pleading served by a plaintiff, contain full and detailed particulars of the claim of which the action consists and of each allegation, assertion or plea comprising that claim, or
  - b) In the case of a pleading served by the defendant or a third party contain full and detailed particulars of each denial or traverse, and of each allegation, assertion or plea, comprising his or her defence
- 2) Subject to this act, pleadings in a personal injuries action shall be in such form as are prescribed by rules of court.

#### S10

- 2) A personal injuries summons shall specify:
  - a) The plaintiff's name, the address at which he or she ordinarily resides, and his or her

#### occupation

- b) The personal public service number allocated and issued to the plaintiff under section 223 (inserted by section 14 of the act of 1998) of the act of 1993
- c) The defendant's name, the address at which he or she ordinarily resides (if known to the plaintiff) and his or her occupation (if known to the plaintiff)
- d) The injuries to the plaintiff alleged to have been occasioned by the wrong of the defendant
- e) Full particulars of all items of special damage in respect of which the plaintiff is making a claim
- f) Full particulars of the acts of the defendant constituting the said wrong and the circumstances relating to the commission of the said wrong
- g) Full particulars of each instance of negligence by the defendant.



## THE RULES: SUGGESTED FORMAT FOR THE ENDORSEMENT

- 1) Description of the parties
- 2) The nature of the claim
- 3) The acts of the defendant alleged to constitute a wrong, each instance of negligence by the defendant, all other relevant circumstances in relation to the commission of the said wrong and any other assertion or plea concerning same
- 4) The injuries to the plaintiff alleged to have been occasioned by the wrong of the defendant
- 5) The reliefs sought
- 6) (Where appropriate) the particulars required by order 4, rule 3A.

### SCHEDULE

Particulars of items of special damage.

(Full particulars should be set out. Add additional sheets if necessary.)

(Particulars of a general allegation should be set out in the endorsement under the paragraph containing such allegation and headed 'Particulars of ...' and so on. Where same are lengthy, they may alternatively be scheduled to the endorsement or set out in additional sheets appended to the personal injuries summons at time of issue and service.)

specific fact, or of a pattern or combination of acts that are *ejusdem generis*, sharing the same legal characterisation. They are not the building bricks: they are the components of such bricks. The rules committee now

suggests that long lists of 'particulars' should be stripped out of the main text of the endorsement and appended thereto instead (with appropriate reference to their location). This format has the inestimable

advantage of leaving the endorsement as a clear 'road map' of the plaintiff's case, with the detail consigned to appendices. In an uncomplicated personal injury claim, it should be possible to

# PERSONAL INJURY SUMMONS?

## TEMPLATE

(Think: general endorsement of claim plus statement of claim)

### Paragraph 1

Description of the parties

### Paragraph 2

List: a) The cause or causes of action (statute: 'the nature of the claim'), and  
b) The relief or reliefs sought.

### Paragraph 3

Specify (in one or more paragraphs) the *factual circumstances of the relationship* entitling the plaintiff to the performance of the duty/contract/statute. If it is necessary to list individual obligations or terms of contract, these could be scheduled. It is never necessary to plead sections or sub-sections of a statute as such, just the facts pertinent to the applicability thereof. Nor is it necessary to 'spell out' the parameters of a common law duty.

### Paragraph 4

Specify the 'wrongs' alleged, that is to say, the acts and omissions alleged to constitute *breaches of the duties allegedly owed* to the plaintiff. Where a wrong consists of multiple instances of a single generic type, plead these generally and list the individual instances as particulars (in a schedule to be attached, if they are numerous).

### Paragraph 5

*Injuries complained of.* An obvious opportunity to state same succinctly and schedule or attach particulars.

### Paragraph 6

*Alleged special damage.* Again, particulars may be placed in a schedule or attachment.

### PLUS:

- A list of the 'particulars' set out in attachments to the summons, and
- The endorsement re the PIAB (where necessary).

## SAMPLE ENDORSEMENT

- 1) The plaintiff is \_\_\_\_; (PPSN)  
And the defendant is \_\_\_\_
- 2) The plaintiff's claim is for damages for personal injury caused by:  
(For example:) negligence in breach of the duty of care owed by the defendant to the plaintiff  
(Or:) breaches of his contract of employment with the defendant  
(Or:) the defendant's failure as occupier to comply with the *Occupier's Liability Act, 1995*.
- 3) (For example:) The plaintiff was driving on the public highway or near (locus) on (date)  
(Or:) The plaintiff attended a concert at the premises of the second named defendants on (date) and the first named defendant was at that time employed by the second named defendant  
(Or:) On or about (date) the plaintiff was employed by the defendant on terms including those listed in the scheduled particulars and the plaintiff had reported to the defendant the harassment and/or bullying particularised in the schedule.
- 4) (For example:) The defendant caused a collision with the plaintiff's car by driving at an excessive speed in breach of the duty of care for the plaintiff and in breach of bye-law 17 of the *Road Traffic General Bye-laws, 1964* and was otherwise also, or in the alternative, in breach of duty of care as particularised in the schedules  
(Or:) It was an implied term of contract that the defendant would treat the plaintiff's condition professionally but the defendant did not monitor the plaintiff's progress adequately or at all  
(Or:) the provisions of the *Safety in Industry Acts* were breached by the defendant by its failure to comply with:  
(i) Section ..., and  
(ii) Section ...  
and the breaches were as particularised in the schedules.
- 5) (For example:) The plaintiff was rendered unconscious briefly and sustained whiplash injuries, bruising and laceration, full particulars whereof are set out in a schedule hereto.
- 6) The plaintiff was caused the following losses and expenses:  
Medical expenses estimated and continuing on the basis particularised in the schedules:  
(Or:) Loss of earnings as particularised in the schedules:

### ENDORSEMENTS

The following schedules attached to the personal injury summons consist of \_ (no) pages and contain the following particulars:

- Attachment 1. Particulars of implied terms of contract
- Attachment 2. Particulars of instances of bullying/acts in breach of statutory duty/etc.
- Attachment 3. Particulars of personal injury and *sequelae*
- Attachment 4. And so on.

The consent of the Personal Injury Assessment Board was obtained on.....

Authorisation (ref no) under sX was given by the Personal Injuries Assessment Board on dd/mm/yy.

continue to use a pre-printed four-page form as the basic summons document.

Is it possible to revisit or update the endorsement?

The bottom line in any application to amend or

supplement must surely be prejudice to the respondent. But perhaps the act is unforgiving?

Statutory procedural rules, having all the rigidity of ordinary statutes, force courts to decide cases on procedural grounds

rather than the merits.

Judge Cardozo, writing about rule-making by the legislature in some US states, observed that 'the legislature, informed only casually and intermittently of the needs and problems of the

courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend'. **G**

# Forward planning for your future

*Bank of Ireland Private Banking Limited is Ireland's longest established private bank providing wealth management services for successful individuals.*

Private Banking is the selected advisor to the Law Society Annual Retirement Fund which allows Solicitors maintain control and ownership of pensions in retirement. Through this fund, Solicitors have access to the Private Banking team of specialists who can provide independent, bespoke advice on an extensive range of financial areas including retirement planning, investment, tax, property and gearing.


Advice offered will always pertain to your specific needs and your best interests.

*Our aim at Bank of Ireland Private Banking Limited is to help you to achieve your financial goals*

## *Services include:*

- Financial planning
- Pre-retirement and post-retirement planning
- Investment advice - including a choice of fund managers and direct equity options
- Suitable asset allocation
- Pensions and property strategy advice
- Property syndication in Ireland, UK, Europe and USA
- Advice on options available in retirement
- Law Society Pension fund and Law Society ARF fund
- Personal income in retirement requirements
- Provision of annual personal reviews



**Bank of Ireland**   
**Private Banking**

If you require further details on the Law Society ARF Scheme or advice on your financial planning please contact: Olive Donovan at [olive.donovan@pb.bol.ie](mailto:olive.donovan@pb.bol.ie), 01-6376660 or 087 2487419 or Carina Myles at [carina.myles@pb.bol.ie](mailto:carina.myles@pb.bol.ie), 01-6376766.

Bank of Ireland Private Banking Limited is authorised by the Irish Financial Services Regulatory Authority under the Investment Intermediaries Act 1995.

# Report of Law Society Council meeting held on 27 May 2005

## **Congratulations**

On behalf of the Council, the president congratulated the junior vice-president, Brian Sheridan, on his appointment as a district judge. He noted that Mr Sheridan had agreed to serve the remainder of his term on the Council, expiring in November 2005.

## **Competition Authority consultation paper**

The Council discussed various aspects of the consultation paper issued by the Competition Authority in relation to the legal profession.

## **Forward planning for professional practice courses**

Stuart Gilhooly made a presentation in relation to the 2005 and 2006 professional practice courses. Estimated numbers for the 2005 PPC1 course were in the region of 640. As a consequence, it was intended to provide two courses, one comprising 400 students commencing in October and one comprising 240 students commencing in December. The staggering of the courses would provide better access to the Law School facilities for all students and would obviate the need for any video-conferencing. Extra resources would also be required, both in terms of staff members and members of the practising

profession. At the same time, all other options for the future would be kept under review by the Education Committee.

The director general noted that the society was facing a unique phenomenon, as there had been a huge increase in the numbers of those wishing to qualify as solicitors. Between 2002 and 2004, the numbers had increased from 355 to 555 – this represented a 56% increase in two years.

## **Judicial review proceedings against PIAB**

The Council noted that the High Court order had been perfected and an appeal had been lodged by PIAB. The president reported that the society had received an invitation to meet PIAB at its head office in Tallaght as part of a series of meetings with 'representative bodies and interested parties'. The society had accepted the invitation and would take the opportunity to convey a number of concerns in relation to the processes and procedures operated by PIAB.

## **Appointments to the Solicitors Disciplinary Tribunal**

The Council noted that the president of the High Court had re-appointed Ian Scott, Carol Fawsitt, Ernest Cantillon, Maeve Hayes and Michael V O'Mahony

as members of the Solicitors Disciplinary Tribunal, and had appointed Mary Cantrell, Caroline Devlin, Anthony Ensor, Ward McEllin and Hugh O'Neill as new members of the tribunal.

## **Proposed amendments to the Solicitors Acts, 1954-2002**

The Council considered and approved proposed amendments to the *Solicitors Acts, 1954-2002*, designed to give effect to recommendations of the Regulatory Review Task Force. The amendments would be submitted to the Department of Justice, Equality and Law Reform for consideration.

## **Report of lay members on Complaints and Client Relations Committee**

Gerard Doherty outlined the contents of the annual report of the lay members on the Complaints and Client Relations Committee. He noted that the lay members stated that it was 'a source of surprise and disappointment ... that some solicitors still do not respect the procedures, even to the point of ignoring multiple communications from the Law Society regarding complaints'. However, as a consequence of the attitude taken by the committee, the report noted that 'the number of solicitors

requested to attend the committee for failure to respond to the society has fallen from 115 in 2002/2003 to 58 this year. Similarly, the number of solicitors who failed to attend the committee when requested has fallen from a high of 40 in 2001/2002 to 18 this year'.

The lay members had also welcomed the new powers introduced in the *Solicitors (Amendment) Act, 2002*, which entitled the society to take into account the existence of multiple complaints when considering the renewal of a solicitor's practising certificate. A previous recommendation of the lay members, that the society be empowered to award compensation for inadequate professional services, would be addressed in forthcoming legislation. It was noteworthy that all of the recommendations of the lay members in recent years had either been implemented or were awaiting enabling legislation.

## **Garda Síochána Bill**

James MacGuill reported that the Criminal Law Committee was working on a submission in relation to the *Garda Síochána Bill*, which was currently before the Houses of the Oireachtas. It was the strongly held view of the committee that the bill was unsatisfactory in a number of respects.

# Report of Law Society Council meeting held on 15 July 2005

## **Draft response to Competition Authority consultation paper**

Most of the meeting was dedicated to consideration and approval of the society's detailed draft response to the Competition Authority consultation paper.

## **Council election dates 2005**

Pursuant to bye-law 6(8) of the

society's bye-laws, the Council set Monday 19 September 2005 as the final date for receipt of nominations for the Council elections 2005 and Thursday 27 October 2005 as the close of poll date.

## **Appointment of society representatives to other bodies**

The Council re-appointed

Malachy J O'Kane as the society's representative on the Irish Legal Terms Advisory Committee. The Council also approved the re-appointment of Elma Lynch as the society's non-actuarial member of the Society of Actuaries Disciplinary Scheme Tribunal for a one-year term, together with the re-appoint-

ment of Patrick O'Connor and the appointment of Andrew Cody as appeal board members of the Society of Actuaries Disciplinary Scheme Tribunal for a three-year term.

The Council re-appointed Owen Binchy as the society's representative on the Registration of Title Rules Committee. **G**

# Practice direction

## PRACTICE DIRECTION OF THE PRESIDENT OF THE DISTRICT COURT

- 1) When fixing a case for hearing, the parties in the case must indicate to the court the estimated time that the hearing will take
- 2) Where the estimated running time of a case will take more than two hours, the case will be specially fixed for hearing. Cases that require more than two hours will be put in for mention four weeks before the hearing date, when the solicitors for each party to the action will certify that the case is ready to proceed
- 3) No adjournment or remand will be granted where a case has been fixed for hearing. In exceptional circumstances only, application for adjournment or remand may be made to the court at least **seven days** prior to the hearing date on **48 hours** notice to the other party.

This practice direction will come into effect from the start of the new District Court term commencing 1 September 2005.

# Practice notes

## NEW RULES OF COURT – CRIMINAL PROCEDURE – SI 295/2005

**P**ractitioners should note that the above statutory instrument, amending order 85 of the *Rules of the Superior Courts*, came into effect on 8 July 2005. The new rule provides for certain pre-trial motions on notice. Applications to be made by notice of motion (without any affidavit) include applications to dismiss one or more charges, applications to take evidence on deposition or by TV link, and applications concerning publication or broadcasting. The rule applies to any proceedings in being after the commencement of part III of the *Criminal Justice Act, 1999* (that is, 1 October 2001) other than those already returned for trial before that commencement date.

*Criminal Law Committee*

## PRIVATE RESIDENTIAL TENANCIES BOARD

**T**he enactment of the *Residential Tenancies Act, 2004* and the establishment of the Private Residential Tenancies Board have been previously mentioned in the *Gazette*. The PRTB has three main areas of activity: the operation of a national registration system for all private residential tenancies, the operation of a dispute resolution service, and the provision of information, carrying out of research and the provision of policy advice to the minister regarding the private rented sector. Members may wish to note that the PRTB may provide information about registrations and dispute resolution cases, but it is not in a position to provide advice to members on specific cases involving disputes or otherwise.

*Private Residential Tenancies Board*

## ATTORNEY GENERAL'S SCHEME

**C**oncerns have been expressed to the society's Criminal Law Committee regarding procedural inconsistencies that are occurring in the way in which the court deals with applications for grant of the scheme in bail cases.

The rules of the scheme provide that the application for grant of the scheme should be made and decided at the outset of the bail hearing. However, it appears that a practice has grown up whereby the court will consider the application for grant of the scheme only after it

has taken a view on the merits of the substantive application.

The committee would like to hear from practitioners who have been involved in such cases, particularly those where the application for grant of the scheme was subsequently refused.

Practitioners should send a brief outline of the circumstances of the case to Colette Carey, secretary, Criminal Law Committee, Law Society of Ireland, Blackhall Place, Dublin 7 (e-mail: c.carey@lawsociety.ie).

*Criminal Law Committee*

**[CPD]** CONTINUING PROFESSIONAL DEVELOPMENT

DISCOVER THE EASY WAY TO GET YOUR CPD HOURS – **CHOOSE THE LAW SOCIETY**

## APPLYING IS EASY

Apply on-line and receive a €20 discount ([www.lawsociety.ie](http://www.lawsociety.ie) and follow links for CPD) or simply return the application form at the back of the CPD brochure which is enclosed with each issue of the *Gazette*.

You can obtain more information on any CPD seminar by contacting the CPD team at:  
Tel: (01) 672 4802, fax: (01) 672 4803  
e-mail: [lawschool@lawsociety.ie](mailto:lawschool@lawsociety.ie)  
Website: [www.lawsociety.ie](http://www.lawsociety.ie)

## THE PROSPECTUS DIRECTIVE

The purpose of this note is to set out those provisions that are of most interest to practitioners of:

- The *Prospectus directive* (2003/71/EC4)
- The *Prospectus (directive 2003/71/EC) regulations 2005* (SI no 324 of 2005), and
- Part 5 of the *Investment Funds, Companies and Miscellaneous Provisions Act, 2005*, entitled 'Public offers of securities'.

The principal purposes of these three pieces of legislation, which came into force in Ireland on 1 July 2005, are:

- To repeal the existing legislation governing prospectuses, most of which had become obsolete and some of which was generally unworkable
- To require that in every case (with limited exceptions) where listing (technically 'admission of securities to trading') of securities is being sought within the EU or there is a public offer of securities within the EU, that a prospectus complying with common EU-wide rules is drawn up, and
- The introduction of a new requirement for companies that have securities listed on a stock exchange to file an annual information document.

### Listing/public offers

As stated above, the new legislation will usually require a prospectus to be drawn up whenever securities are admitted to listing or whenever there is an offer to the public. (Securities are widely defined, but will include shares and bonds.) The former is generally self-explanatory, although there are a number of exceptional situations (regulation 11) where a prospectus will not be required in connection with listing (and some of these exceptions also apply to public offers), most notably a document increasing the number of shares already listed by less than 10%, exceptions concerned with mergers or takeovers, and provisions

facilitating employee share schemes.

The more material exceptions relate to what constitutes an offer of securities to the public. This was a very difficult issue under the old 1963 act and related legislation. The new legislation is a lot clearer, but there are still some aspects that can give rise to doubt. The term 'offer of securities to the public' is defined in a way that includes almost every offer made to any persons. The definition then proceeds to exclude certain types of offer (while being offers to the public) from the obligations to publish a prospectus. In particular, there are excluded (regulation 9):

- An offer of securities addressed solely to qualified investors
- An offer of securities addressed to fewer than 100 persons, other than qualified investors, and
- An offer of high-denomination securities or high minimum consideration securities.

It is quite possible that very few offers in Ireland will in fact fall outside the principal exemptions, so the result of the directive may be that there are relatively few offers to the public that require a prospectus on that ground.

It remains to be seen whether the qualified investor exemption will be heavily used. Certain entities, such as credit institutions, corporate bodies whose purpose is solely to invest in securities, financial institutions and large corporates, are automatically 'qualified investors'. There is then provision (regulation 4) for a register to be maintained of small and medium-sized enterprises and natural persons who want to be 'qualified investors'.

The criteria for inclusion are complex for natural persons, as they must meet two of three criteria relating to frequency of transactions, value of portfolio and having worked in the financial sector. It remains to be seen whether many small and medium-sized enterprises and natural persons will opt to

be entered on this register.

The directive is also stated not to apply at all to certain offerings of securities. The most significant of these exemptions is an offering expressly limited to a maximum amount of less than €2,500,000.

### Content and approval of prospectus

If a prospectus is required, the key feature of the directive and of the Irish regulations is that it must comply with certain content requirements and it must be pre-approved by the regulator.

The content requirements include:

- Requirement for a summary (regulation 21)
- A new ability to cross-reference information (regulation 27)
- Detailed requirements in relation to responsibility statements (part 6 of the Irish regulations).

The detailed contents of the prospectus must comply with building blocks set out in an EU regulation of 2004 (809/2004). The regulator may sanction the omission of information, and it may also be possible to omit price and number of securities in certain circumstances.

The approval process will be carried out by the Central Bank and Financial Services Authority of Ireland, who will be the regulator, although in the initial years, the task of doing this will be delegated to the stock exchange.

To facilitate, in particular, non-equity securities, there are options to have the prospectus consisting of a number of documents with updates of variable information.

### Cross-border offers

Previous EU directives in relation to this subject failed to achieve a situation where there was uniformity of approach within the capital markets in the EU.

A key objective of the directive is to provide that once a document is properly approved in one jurisdiction, it is then valid for all pur-

poses in the other 24 European Union jurisdictions. There are detailed rules setting out which authority is to be the competent authority for approving a document (this is generally where the registered office is). For issuers outside the European Union, there are also detailed rules governing which state is their home member state, and a number of member states, including Ireland, are actively seeking overseas companies to adopt Ireland as their home jurisdiction. The directive recognises that Europe is a veritable 'Tower of Babel' and, accordingly, there are also detailed rules governing the language of a document, and these broadly allow member states outside the home state only to require a translation of the summary (and not the entire document).

### Sanction

The Irish regulations contain a significant number of provisions allowing the regulator to give directions, to appoint authorised officers and assessors, and to take administrative sanctions. The legislation also provides for fines of up to €1m or imprisonment for up to five years for serious offences, including an untrue statement or omitting required information from a prospectus. Making an offer of security to the public without an approved prospectus (where one is required) is also a serious offence, as is having securities admitted to trading without a prospectus when required (regulation 107(4)).

### Other issues

Other issues addressed by the Irish regulations include:

- A requirement that a listed company file an annual information statement that refers to all documents publicly made available by them over the preceding 12 months under certain legal obligations, and
- Certain rules about advertisements regarding public offers or listing.

*Business Law Committee*

# rochford brady group

*...information as you need it.*



- Company Registration Office
- Closing Searches
- Copy Folio/File Plans
- Folio Inspections
- Registry of Deeds
- Licensing
- Planning
- Probate
- Title Registration
- Birth, Marriage & Death Certificates
- Mapping Searches

rochford brady legal services  
64 francis street  
dublin 8  
tel 18 50 529 732  
fax 18 50 752 436  
[www.lawsearch.ie](http://www.lawsearch.ie)  
email: [rochford@lawsearch.ie](mailto:rochford@lawsearch.ie)



- Irish Company Information
- UK Company Information
- Land Registry
- CID Search
- Watch List
- Closing Searches
- Judgment Searches
- Global Company Information
- Legal Diary
- Legal search archive
- Bonded searches

LawLink Ltd.  
7/8 mount street crescent  
dublin 2  
tel +353 1 480 1800  
fax +353 1 480 1801  
[www.lawlink.ie](http://www.lawlink.ie)  
email: [support@lawlink.ie](mailto:support@lawlink.ie)

## LEGISLATION UPDATE: 18 JUNE – 15 AUGUST 2005

**Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – [www.lawsociety.ie](http://www.lawsociety.ie) (members' and students' area) – with updated information on the current stage a bill has reached and the commencement date(s) of each act.**

### ACTS PASSED

#### ***Air Navigation and Transport (Indemnities) Act, 2005***

**Number:** 13/2005

**Contents note:** Provides for the granting of indemnities to air navigation undertakings by the minister for transport and provides for related matters

**Date enacted:** 4/7/2005

**Commencement date:** 4/7/2005

#### ***Civil Registration (Amendment) Act, 2005***

**Number:** 19/2005

**Contents note:** Amends the *Civil Registration Act, 2004* by the addition of a new section 67A providing for the continued payment of specified fees and allowances to certain categories of registrars of births, deaths and marriages

**Date enacted:** 9/7/2005

**Commencement date:** 9/7/2005

#### ***Civil Service Regulation (Amendment) Act, 2005***

**Number:** 18/2005

**Contents note:** Amends the *Civil Service Regulation Act, 1956* to allow new human resources management practices contained in the *Public Service Management Act, 1997* to take effect. Brings certain civil servants within the scope of the *Unfair Dismissals Acts* and brings civil servants within the scope of the *Minimum Notice and Terms of Employment Acts*. Amends various other acts, including the *Prosecution of Offences Act, 1974* in relation to the Office of the Director of Public Prosecutions, the *Ministers and Secretaries Act, 1924*, the *Presidential Establishment Act, 1938* and the *Public Service Superannuation (Miscellaneous Provisions) Act, 2004*, and provides for related matters

**Date enacted:** 9/7/2005

**Commencement date:** Commencement order(s) to be made for all sections, except for part 10 (s33, 'Public service superannuation'), which is deemed to have come into operation on 1/4/2004 (per s2 of the act)

#### ***Commission to Inquire into Child Abuse (Amendment) Act, 2005***

**Number:** 17/2005

**Contents note:** Amends the *Commission to Inquire into Child Abuse Act, 2000* in relation to the workings of the commission; establishes the Education (Former Residents of Certain Institutions for Children) Finance Board for the operation of an education fund for former residents of institutions and their families; makes a number of technical amendments to the *Residential Institutions Redress Act, 2002*

**Date enacted:** 9/7/2005

**Commencement date:** 9/7/2005. Establishment-day order to be made not later than one year from the date of the passing of this act for the establishment of the Education (Former Residents of Certain Institutions for Children) Finance Board (per s23)

#### ***Disability Act, 2005***

**Number:** 14/2004

**Contents note:** Makes provision for the assessment, in respect of a person with a disability, of the health and education needs occasioned by the disability and the services required to meet those needs. Prescribes the procedures for bringing an appeal or review of a decision or determination under the act in relation to failure to provide such services. Sets out the basis for the provision of resources for the act. Deals with access to public buildings, services and information as well as sectoral plans for key public-sector services such as transport, employment and health. Deals with targets and positive action for the employment of people with disabilities in the public service. Provides for the establishment of a centre for excellence in universal design and provides for related matters

**Date enacted:** 8/7/2005

**Commencement date:** Commencement order(s) to be made, except for provisions whose commencement dates are otherwise provided for by the act (per s1(2) and 1(3)). These commencement dates are: 31/12/2005 for s25 (access to public buildings), s26 (access to services), s27 (accessibility of services supplied to a public body), s28 (access to information); 31/12/2007 for s29 (access to heritage sites); 29/7/2005 for part 1 (ss1-6), sections 24, 30, 31, 32, 33, 34, 35, 36, 37, and part 7 (ss53-58); 31/12/2005 for sections 38, 39, 40, part 4 (ss41-45) and part 5 (ss46-51); 1/1/2007 for part 6 (s52) (per SI 474/2005)

#### ***Electoral (Amendment) Act, 2005***

**Number:** 16/2005

**Contents note:** Provides for the number of members of Dáil Éireann and for the revision of the Dáil constituencies. Implements the recommendations contained in the Constituency Commission's 2004 report on Dáil constituencies (Prn 1554). Amends the *Electoral Act, 1997* in relation to the definition of election expenses

**Date enacted:** 9/7/2005

**Commencement date:** 9/7/2005, but provisions relating to the new constituencies and the repeal of the *Electoral (Amendment) (No 2) Act, 1998* will come into force on the dissolution of the Dáil that next occurs after the passing of this act (per ss2, 3(1) and 5(2))

#### ***Garda Síochána Act, 2005***

**Number:** 20/2005

**Contents note:** Consolidates with amendments enactments relating to the administration and management of the Garda Síochána. Provides for the establishment of the Garda Síochána Ombudsman Commission (which will replace the existing Garda Síochána Complaints Board) to investigate complaints against the Garda Síochána. The commission will also have power to investigate certain matters without a complaint having to be made, and it will also

be charged with examining practices, policies and procedures within the Garda Síochána that might give rise to complaint

**Date enacted:** 10/7/2005

**Commencement date:** Commencement order(s) to be made (per s2 of the act): 1/8/2005 for part 1 (ss1-5), other than s4, ss7, 39, 40, 41, 47, 48, 49, 60, 62, 121 (other than sub-sections (2)(b) and (2)(c)), 124, 130 and 131 (per SI 370/2005)

#### ***Grangegorman Development Agency Act, 2005***

**Number:** 21/2005

**Contents note:** Establishes the Grangegorman Development Agency to develop the Grangegorman site in Dublin as a campus for the Dublin Institute of Technology and to develop health service facilities on the site

**Date enacted:** 11/7/2005

**Commencement date:** 11/7/2005. Establishment-day order to be made appointing a date for the establishment of the Grangegorman Development Agency (per s5 of the act)

#### ***International Interests in Mobile Equipment (Cape Town convention) Act, 2005***

**Number:** 15/2005

**Contents note:** Gives effect to the *Cape Town convention on international interests in mobile equipment* and to the protocol to that convention on matters specific to aircraft equipment, which were opened for signature in Cape Town on 16/11/2001. The convention and protocol create an international legal framework to facilitate asset-based financing (leasing and loans where the principal asset securing the debt is the aircraft itself) of aircraft, aircraft engines and helicopters. Amends the *Air Navigation and Transport (International Conventions) Act, 2004*

**Date enacted:** 9/7/2005

**Commencement date:** 9/7/2005

#### ***Investment Funds, Companies and Miscellaneous Provisions Act, 2005***

**Number:** 12/2005

**Contents note:** Makes provision in relation to collective investment undertakings of the kind known as 'common contractual funds' (CCF). The provisions will govern non-UCITS CCFs. Amends part XIII of the *Companies Act, 1990* to provide for the introduction of cross investment and segregated liability for investment funds. Amends the *European Communities (undertakings for collective investment in transferable securities) regulations 2003* (SI 211/2003) to provide for cross investment and segregated liability for UCITS investment companies. Introduces enabling provisions to provide for the transposition of the EC market abuse directive (2003/6) and three other supplementary directives – 2003/124, 2003/125 and 2004/72. Amends part 5 of the *Companies Act, 1963* dealing with offers of securities to the public in anticipation of the transposition of the EC *Prospectus directive* (2003/71). Makes certain miscellaneous amendments to the *Companies Acts, 1963 to 2003*; increases the penalties for offences under the *Prices Act, 1958*, the *Restrictive Practices Act, 1972* and certain enactments that relate to consumer protection; and provides for related matters

**Date enacted:** 29/6/2005

**Commencement date:** 29/6/2005 for sections 85 and 86; commencement order(s) to be made for all other sections (per s2 of the act): 30/6/2005, 1/7/2005, 6/7/2005 and 1/9/2005 for specified sections of the act (per SI 323/2005)

#### **Maritime Safety Act, 2005**

**Number:** 11/2005

**Contents note:** Provides for the regulation and control of certain fast powered watercraft (for example, jet skis) and other recreational craft (of at least 2.5 metres and not more than 24 metres in length) in waters in the state or in seas around it, in the interests of public safety and to prevent nuisance in public recreational areas and to protect natural and other heritage areas; amends the *Fishery Harbour Centres Act, 1968*, the *Merchant Shipping Act,*

1992 and the *Harbours Act, 1996* in relation to penalties, and provides for related matters

**Date enacted:** 29/6/2005

**Commencement date:** 29/6/2005 for sections 53 and 56 and for part 6 (ss59 and 60); 29/7/2005 for all other sections (per s1(10) of the act)

#### **Safety, Health and Welfare at Work Act, 2005**

**Number:** 10/2005

**Contents note:** Makes further provision for securing the safety, health and welfare of persons at work and for the enforcement of the relevant statutory provisions. Gives further effect to directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work and directive 91/383 on measures to improve the safety and health at work of workers with a fixed-duration or temporary employment relationship. Provides for the continuance in being of, and confers additional functions on, the National Authority for Occupational Safety and Health and renames it as the Health and Safety Authority, by which it is commonly known. Repeals the *Safety, Health and Welfare at Work Act, 1989* and certain other enactments. Amends the *National Standards Authority of Ireland Act, 1996* and provides for related matters

**Leg-implemented:** Dir 89/391, dir 91/383

**Date enacted:** 22/6/2005

**Commencement date:** Commencement order(s) to be made (per s1(2) of the act): 1/9/2005 for all sections, except section 4(2) other than as that sub-section applies to the repeal of the *Safety, Health and Welfare at Work Act, 1989* (per SI 328/2005)

#### **Veterinary Practice Act, 2005**

**Number:** 22/2005

**Contents note:** Establishes the Veterinary Council of Ireland to regulate and manage the veterinary professions and to provide for its other functions; provides for the subsequent establishment of a register of veterinary practitioners and

for the Veterinary Nurses Board of Ireland. Dissolves the Veterinary Council established under the *Veterinary Surgeons Act, 1931*, repeals the *Veterinary Surgeons Acts, 1931 to 1960* and certain other enactments, and provides for related matters

**Date enacted:** 12/7/2005

**Commencement date:** 12/7/2005. Establishment-day order to be made appointing a date for the establishment of the Veterinary Council of Ireland (per s3 of the act)

#### **SELECTED STATUTORY INSTRUMENTS**

##### **Affordable homes partnership (establishment) order 2005**

**Number:** SI 383/2005

**Contents note:** Establishes, under the *Local Government Services (Corporate Bodies) Act, 1971*, a body to co-ordinate and promote the delivery of affordable housing in the greater Dublin area. Provides for procedures, staffing arrangements and other related matters

**Commencement date:** 1/8/2005

##### **Companies Act, 1990 (prescribed alternative accounting standards bodies) regulations 2005**

**Number:** SI 382/2005

**Contents note:** Prescribe the bodies in the United States, Canada and Japan that have the authority to lay down accounting standards with which investment companies may opt to comply in respect of their individual accounts. The regulations are made under section 260A of the *Companies Act, 1990* as inserted by section 28 of the *Investment Funds, Companies and Miscellaneous Provisions Act, 2005*

**Commencement date:** 19/7/2005

##### **Courts and Court Officers Act, 2002 (register of reserved judgments) (amendment) regulations 2005**

**Number:** SI 409/2005

**Contents note:** Amend the Courts and Court Officers Act, 2002 (*register of reserved judgments*) regulations 2005 (SI 171/2005) by the substitution of a new regulation 4 that prescribes certain circumstances under which the provisions

of section 46(3) of the *Courts and Court Officers Act, 2002*, as amended, do not apply

**Commencement date:** 27/7/2005

##### **Criminal Evidence Act, 1992 (section 13) (commencement) (no 2) order 2005**

**Number:** SI 296/2005

**Contents note:** Appoints 8/7/2005 as the commencement date for section 13 of the act for the District Court sitting in district no 19. This provision allows a witness to give evidence through a live television link in cases involving physical or sexual abuse

##### **Criminal justice (legal aid) (amendment) regulations 2005**

**Number:** SI 389/2005

**Contents note:** Provide for an increase in the fees payable under the criminal legal aid scheme to solicitors for attendance in the District Court and for appeals to the Circuit Court, and for an increase to solicitors and counsel in respect of essential visits to prisons and other custodial centres (other than garda stations) and for certain bail applications, as follows: 1.5% with effect from 1/6/2005; 1.5% with effect from 1/12/2005; 2.5% with effect from 1/6/2006

**Commencement date:** Deemed to have come into operation on 1/6/2005

##### **Disability Act, 2005 (commencement) order 2005**

**Number:** SI 474/2005

**Contents note:** Appoints 29/7/2005 as the commencement date for part 1 (ss1-6), sections 24, 30, 31, 32, 33, 34, 35, 36, 37, and part 7 (ss53-58); 31/12/2005 for sections 38, 39, 40, part 4 (ss41-45) and part 5 (ss46-51); 1/1/2007 for part 6 (s52) of the act

##### **European Communities (re-use of public sector information) regulations 2005**

**Number:** SI 279/2005

**Contents note:** Prescribe procedures for requests by an individual or a legal entity to a public sector body to release documents for re-use

**Leg-implemented:** Dir 2003/98  
**Commencement date:** 1/7/2005

**Finance Act, 2005 (commencement of certain provisions of chapter 2 of part 2) order 2005**

**Number:** SI 284/2005

**Contents note:** Appoints 1/7/2005 as the commencement date for sections 65, 66, 67(b) and 69 of the *Finance Act, 2005*, and so much of the amendment of schedule 2 to the *Finance Act, 1999* referred to in section 64(b) of the *Finance Act, 2005* as relates to rates of mineral oil tax on coal

**Finance Act, 2005 (commencement of section 87) order 2005**

**Number:** SI 291/2005

**Contents:** Appoints 1/7/2005 as the commencement date for section 87 of the *Finance Act, 2005*. Section 87 amends sections 2A and 3 of the *Finance (Excise Duty on Tobacco Products) Act, 1977*

**Garda Síochána Act, 2005 (commencement) order 2005**

**Number:** SI 370/2005

**Contents note:** Appoints 1/8/2005 as the commencement date for part 1 (ss1-5) of the act (other than s4), and for ss7, 39, 40, 41, 47, 48, 49, 60, 62, 121 (other than sub-sections (2)(b) and (2)(c)), 124, 130 and 131 of the act

**Health Insurance Act, 2001 (open enrolment) regulations 2005**

**Number:** SI 332/2005

**Contents note:** Provide for persons aged 65 and over, who do not already have cover, to avail of health insurance

**Commencement date:** 1/7/2005

**Health Insurance (Amendment) Act, 2001 (commencement order) 2005**

**Number:** SI 322/2005

**Contents note:** Appoints 29/6/2005 as the commencement date for section 3 (insofar as it is not already in operation) and section 8 of the *Health Insurance (Amendment) Act, 2001*

**Immigration Act, 2004 (visas) order 2005**

**Number:** SI 363/2005

**Circuit Court rules (Carer's Leave Act, 2001) 2005**

**Number:** SI 387/2005

**Contents note:** Add a new rule 8 to order 57 of the *Circuit Court rules 2001* (SI 510/2001) to prescribe procedures in respect of applications brought under the *Carer's Leave Act, 2001*

**Commencement date:** 4/8/2005

**Circuit Court rules (Residential Tenancies Act, 2004) 2005**

**Number:** SI 388/2005

**Contents note:** Amend the *Circuit Court rules 2001* (SI 510/2001) to prescribe procedures in respect of applications brought under the *Residential Tenancies Act, 2004*

**Commencement date:** 4/8/2005

**Civil Liability and Courts Act, 2004 (bodies prescribed under section 15) (no 2) order 2005**

**Number:** SI 336/2005

**Contents note:** Prescribes the International Centre for Dispute Resolution as a body that can nominate a chairperson of a mediation conference in personal injuries actions, in the event that the parties do not agree on the chairperson (per section 15(4)(b)(II) of the *Civil Liability and Courts Act, 2004*)

**Commencement date:** 31/3/2005

**Civil Liability and Courts Act, 2004 (matters prescribed under section 40) order 2005**

**Number:** SI 339/2005

**Contents note:** Prescribes two matters to which section 40(6)(b) and section 40(7)(b) of the act will apply. The two matters concerned are the hearing of a complaint of misconduct against a barrister or an appeal against such a complaint

**Commencement date:** 1/7/2005

**Civil Liability and Courts Act, 2004 (section 40(3)) regulations 2005**

**Number:** SI 337/2005

**Contents note:** Specify the class-

**Contents note:** Specifies the classes of non-nationals who are required to be in possession of an Irish transit visa when landing in the state and the classes of non-nationals who are exempt from Irish visa requirements

**Commencement date:** 1/8/2005

**Investment Funds, Companies and Miscellaneous Provisions**

es of persons, in addition to barristers and solicitors, who are entitled to apply to attend family law proceedings for the purpose of publishing reports of the cases. The regulations specify three classes of person – family mediators, persons engaged in family law research who are nominated by a body specified in the schedule to these regulations, and persons engaged by the Courts Service to produce court reports of proceedings under relevant enactments. The nomination of mediators and researchers must be approved by the minister for justice, equality and law reform

**Commencement date:** 1/7/2005

**Civil Liability and Courts Act, 2004 (section 40(4)) order 2005**

**Number:** SI 338/2005

**Contents note:** Specifies those persons to whom a court order or an extract from a court order, arising from family law proceedings held *in camera*, may be shown or supplied. Persons receiving such orders are required not to show or supply the court order or extract to any other person save in the exercise of their official capacity

**Commencement date:** 1/7/2005

**Act, 2005 (commencement) order 2005**

**Number:** SI 323/2005

**Contents note:** Appoints 30/6/2005, 1/7/2005, 6/7/2005 and 1/9/2005 as the commencement dates for specified sections of the act – see SI

**Market abuse (directive 2003/6/EC) regulations 2005**

**Number:** SI 342/2005

**Contents note:** Give effect to directive 2003/6 on insider dealing and market manipulation

**Leg-implemented:** Dir 2003/6

**Commencement date:** 6/7/2005, except for regulations 11 and 12 and part 3 (regulations 16-26), which come into force on 1/10/2005

**Mineral oil tax (amendment) regulations 2005**

**Number:** SI 285/2005

**Contents note:** Support the extension of mineral oil tax to coal as provided for by ss64(b), 65, 66, 67(b) and 69 of the *Finance Act, 2005*

**Commencement date:** 1/7/2005

**Planning and development regulations 2004**

**Number:** SI 364/2005

**Contents note:** Amend the *Planning and development regulations 2001* (SI 600/2001) to provide that a shop changing its use to an off-licence will require planning permission. Amend the provisions in relation to peat extraction in the *Planning and development regulations 2001* to facilitate consideration of the need for the environmental impact assessment (EIA) of projects that are likely to have significant effects on the environment. Amend parts I and II of schedule 5 of the *Planning and development regulations 2001* to the effect that any change to, or extension of, a project listed therein will in itself require EIA where such change or extension meets any relevant threshold set out in the schedule

**Commencement date:** 14/7/2005

**Prospectus (directive 2003/71/EC) regulations 2005**

**Number:** SI 324/2005

**Contents note:** Give effect to directive 2003/71 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and amend directive 2001/34

**Leg-implemented:** Dir 2003/71

**Commencement date:** 1/7/2005

**Rules of the Superior Courts (Criminal Justice Act, 1999) 2005**



**Number:** SI 295/2005

**Contents note:** Amend the *Rules of the Superior Courts* (SI 15/1986) as amended by SI 767/2004 by the insertion of a new rule 10 in order 85 in relation to applications to the Central Criminal Court under the *Criminal Procedure Act, 1967*, as amended by the *Criminal Justice Act, 1999*

**Commencement date:** 8/7/2005

***Rules of the Superior Courts (elections) 2005***

**Number:** SI 294/2005

**Contents note:** Amend the *Rules of the Superior Courts* (SI 15/1986) by the substitution of a new rule 23 in order 58 and the substitution of a new order 97 'election petitions'

**Commencement date:** 8/7/2005

***Rules of the Superior Courts (proceedings under the Employment Equality Acts, 1998 and 2004) 2005***

**Number:** SI 293/2005

**Contents note:** Substitute a new order 106, 'proceedings under the *Employment Equality Acts, 1998 and 2004*' in the *Rules of the Superior Courts* (SI 15/1986)

**Commencement date:** 8/7/2005

***Rules of the Superior Courts (proof of liquidator's appointment in creditors' voluntary winding up) 2004***

**Number:** SI 502/2005

**Contents note:** Insert a new rule 144 in order 74 of the *Rules of the Superior Courts* (SI 15/1986) to provide for the certification of a liquidator in a creditors' voluntary winding up

**Commencement date:** 1/4/2004

***Safety, Health and Welfare at Work Act, 2005 (commencement) order 2005***

**Number:** SI 328/2005

**Contents note:** Appoints 1/9/2005 as the commencement date for all sections of the act, except section 4(2) other than as that subsection applies to the repeal of the *Safety, Health and Welfare at Work Act, 1989*

***Safety, health and welfare at work (general application) (revocation) regulations 2005***

**Number:** SI 392/2005

**Contents note:** Provide for the revocation of provisions of the *Safety, health and welfare at work (general application) regulations 1993* (SI 44/1993) and revoke the *Safety,*

*health and welfare at work (general application) (amendment) (no 2) regulations 2003* (SI 53/2003)

**Commencement date:** 31/8/2005

***Taxes Consolidation Act, 1997 (sections 898H, 898I, 898J, 898L and 898M) (commencement) order 2005***

**Number:** SI 286/2005

**Contents note:** Appoints 1/7/2005 as the commencement date for the above sections of the *Taxes Consolidation Act, 1997*. These sections relate to the implementation of various aspects of directive 2003/48 on the taxation of savings income in the form of interest payments (EC *Savings tax directive*)

***Waste management (electrical and electronic equipment) regulations 2005***

**Number:** SI 290/2005

**Contents note:** Amend the *Waste Management Act, 1996* for the purpose of giving effect to two EC directives: directive 2002/95 on the restriction of hazardous substances in electrical and electronic equipment and directive 2002/96 on waste electrical and electronic equipment, as amended by directive 2003/108

**Leg-implemented:** Dir 2002/95, dir 2002/96 as amended by dir 2003/108

**Commencement date:** 1/7/2005

***Waste management (restriction of certain hazardous substances in electrical and electronic equipment) regulations 2005***

**Number:** SI 341/2005

**Contents note:** Implement directive 2002/95 on the restriction of the use of certain hazardous substances in electrical and electronic equipment

**Leg-implemented:** Dir 2002/95

**Commencement date:** 5/7/2005

***Waste management (waste electrical and electronic equipment) regulations 2005***

**Number:** SI 340/2005

**Contents note:** Provide for the recovery of waste electrical and electronic equipment in accordance with directive 2002/96 on waste electrical and electronic equipment, as amended by directive 2003/108

**Leg-implemented:** Dir 2002/96 as amended by dir 2003/108

**Commencement date:** 5/7/2005

*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 Cathal O'Donovan, a solicitor carrying on practice as O'Donovan Solicitors, 73 Capel Street, Dublin 1, and in the matter of an application by the Law Society of Ireland and in the matter of the *Solicitors Acts, 1954-2002* [3936/DT447/04]

*Law Society of Ireland*

*(applicant)*

*Cathal O'Donovan*

*(respondent solicitor)*

On 12 April 2005, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

a) Set off funds from an original

purchase transaction of a property and subsequent sales against the solicitor's own costs, without issuing bills or accounting properly to the client for those funds

b) Failed to account for interest on the sum of £250,000, which he had held for a period of at least four months, until recommended to do so by the Registrar's Committee and then only paid over €2,222 in interest, which was not acceptable as the total amount due to the clients

c) Delayed in the transfer of files.

The tribunal ordered that the

respondent solicitor:

- Do stand admonished
- Pay a sum of €5,000 to the compensation fund; that is, €3,000 in respect of charge (a), €1,000 in respect of charge (b) and €1,000 in respect of charge (c)
- Pay the whole of the costs of the Law Society of Ireland and the witnesses who appeared before the tribunal on 25 November 2004, 10 February 2005 and 12 April 2005 as taxed by a taxing master of the High Court in default of agreement.

In the matter of Aiden GM Barry, a solicitor carrying on

practice under the style and title of Aiden Barry, Roche House, 8 Bank Place, Limerick, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal and in the matter of the *Solicitors Acts, 1954-2002* [7243/DT477/04]

*Law Society of Ireland*  
*(applicant)*  
*Aiden GM Barry*  
*(respondent solicitor)*

On 26 April 2005, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to file

an accountant's report for the year ended 31 August 2003, in breach of regulation 21(1) of the *Solicitors' accounts regulations 2001* (statutory instrument number 421 of 2001), in a timely manner.

The tribunal ordered that the respondent solicitor:

- a) Do stand admonished
- b) Pay a sum of €500 to the compensation fund
- c) Pay the whole of the costs of the Law Society of Ireland as

taxed by a taxing master of the High Court in default of agreement.

**In the matter of Sean McGlynn, a solicitor of Sean McGlynn & Company, Solicitors, Church Street House, Letterkenny, Co Donegal, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal and in the matter of the *Solicitors Acts, 1954-2002***

**[5520/DT474/04]  
Law Society of Ireland  
(applicant)  
Sean McGlynn  
(respondent solicitor)**

On 24 May 2005, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to file his accountant's report for the year ended 31 August 2003, in breach of regulation 21(1)

of the *Solicitors' accounts regulations 2001* (statutory instrument no 421 of 2001), in a timely manner.

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 as taxed by a taxing master of the High Court in default of agreement. **G**



**News from Ireland's on-line legal awareness service**  
Compiled by Flore Bouhey for FirstLaw

## CRIMINAL

### Delay

*Right to expeditious trial – accused charged with child abuse – complainant and prosecutorial delay – whether delay in making complaint due to accused's behaviour – whether prosecutorial delay necessary to conduct appropriate enquiries – whether right to fair trial prejudiced as result of delay – whether presumed prejudice due to inordinate delay in prosecution of offences*

The applicant sought to restrain the further prosecution of charges of sexual assault against a minor allegedly committed 20 years prior to his being charged by the second respondent on the grounds that his constitutional right to a fair trial could not be guaranteed due to inordinate delay.

Ms Justice Macken refused the relief sought, holding that:

- 1) The jurisprudence in child sexual abuse cases was not rigidly fixed, given the nature of the cases and the evolving nature of the psychology in matters of child sexual abuse
- 2) The delay in making a complaint will be rendered explicable and therefore excusable if there was evidence that the alleged sexual abuse prevented the complainant from making

a complaint earlier because of trauma or other adverse consequences resulting from the abuse, which can be attributed to the accused's own behaviour

- 3) In relation to prosecutorial delay, if all appropriate enquiries that ought to be made were being made, and/or proper grounds upon which to charge a person with an offence did not yet exist, an accused did not have a right to prohibit a trial on the basis of a breach of a right to an expeditious trial, and

- 4) Length of time may, if it was of so long a duration that it was clear that a fair trial could not be assured, give rise to presumed prejudice but mere lapse of time, even if inordinate, did not automatically equate to presumed prejudice.

***W v Judge Brennan and DPP, High Court, Ms Justice Macken, 14/4/2005 [FL10921]***

### Habeas corpus

*European arrest warrant – time limits – European Arrest Warrant Act, 2003 – whether the applicant was entitled to be released from custody because the High Court had not made an order directing his surrender to the English authorities within the time limit specified in the 2003 act*  
The applicant sought his immedi-

ate release from the custody of the respondent on the ground that the order made directing his surrender to England pursuant to a European arrest warrant was not made within the time specified by the *European Arrest Warrant Act, 2003* and the EU council *Framework decision* of 13 June 2002. Specifically, the applicant sought to rely on the provisions of article 17 of the *Framework decision*, which required that a final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person. In this case, the order of the High Court was made more than 90 days after the date of arrest.

O'Sullivan J refused the application, holding that article 17, which dealt with time limits and procedures before the making of a final order, did not provide that the failure to comply with the time limits therein would result or should result in the release of the applicant. The position was different once a final decision had been made, and article 23 provided that an applicant was entitled to be released if he was held in custody beyond the time limit specified for his surrender after the making of a final decision. Therefore, the applicant's deten-

tion was lawful and he was not entitled to be released.

***Dundon v The Governor of Cloverhill Prison and the Minister for Justice, Equality and Law Reform, High Court, Mr Justice O'Sullivan, 3/5/2005 [FL10868]***

## EMPLOYMENT

### Injunction

*Practice and procedure – application for order prohibiting publication of report – whether serious issue to be tried – adequacy of damages – balance of convenience – whether behaviour of applicants disentitled them to equitable relief*

The minister directed the Labour Inspectorate to investigate allegations that had been made against the applicant construction companies relating to their treatment of employees. The two companies were given leave to apply for judicial review seeking prohibition against publication of the report. They sought interlocutory injunctions.

Kelly J granted a limited form of injunction, holding that no obstruction or obstacle should be placed in the way of five state authorities being apprised of the contents of the report. However, the publication of the report to the public at large should be

restrained until the trial of the action. Although there were disquieting elements concerning the behaviour of the applicants, they had not been guilty of such wrongdoing or non-disclosure as to disentitle them to relief.

**Gama Endustri Tesisleri Imalat Montaj AS v Minister for Enterprise, Trade and Employment, High Court, Mr Justice Kelly, 22/4/2005 [FL10745]**

## EUROPEAN

### Right of establishment

*Authorisation to exercise regulated profession – applicant with legal qualifications obtained in member state wishing to practice in another member state – whether applicant has automatic right of establishment – whether respondent entitled to impose adaptation requirements or aptitude test – European Communities (general system for the recognition of higher diplomas) regulations 1991 – EC directive 89/84 – EC treaty, article 43*

The applicant was called to the English bar but did not obtain a pupillage or practise as a self-employed barrister. She applied to be automatically admitted to the Irish bar under EC directive 89/84, and the respondent informed her, in July 2004, that her application was refused under the directive and would be considered when a procedure to deal with applications from EU applicants was in place, which would assess the knowledge and skills of such applicants and which was done in November 2004. The applicant appealed that decision to the High Court pursuant to the *European Communities (general system for the recognition of higher diplomas) regulations 1991*. She also obtained leave to seek an order of *mandamus* requiring the respondent to determine her application pursuant to her right of establishment in article 43 of the *EC treaty*.

Mr Justice Smyth refused the relief sought, holding that:

- 1) The *EC treaty* did not confer an automatic entitlement to be called to the Irish bar, but conferred an entitlement to have

the respondent assess the extent of the applicant's qualifications and the degree to which those qualifications should be supplemented in this jurisdiction

- 2) The applicant was out of time for appealing the decision of the respondent pursuant to the 1991 regulations
- 3) The applicant did not comply with the mutual recognition provisions of the 1989 directive or the 1991 regulations, not having the right to practice as an independent barrister in England and Wales
- 4) It was reasonable that an overall scheme, capable of ascertaining the degree and amount of information and expertise that EU applicants had for call to the Irish bar, be put in place rather than that *ad hoc* decisions based on individual cases should emerge, and that the respondent had acted reasonably in doing so.

**Leaby-Grimshaw v King's Inns, High Court, Mr Justice Smyth, 19/4/2005 [FL10912]**

## TORT

### Road traffic

*Negligence – conduct of defence – liability initially conceded by defendant then denied – whether aggravated damages awardable in negligence action – whether conduct of defence such as to entitle plaintiff to award of aggravated damages*

The plaintiff suffered injuries to her back and neck when the first defendant crashed into her from the rear. The first defendant, after receiving a letter from the plaintiff's solicitor, denied that the accident ever occurred and maintained that stance throughout the action. The plaintiff, in addition to seeking general damages, also sought aggravated damages for the manner in which the defence was conducted. Special damages were agreed between the parties at €1,808.29.

Mr Justice O'Sullivan awarded the plaintiff €46,808.29 as total damages, holding that:

- 1) Her symptoms indicated that

an appropriate award for general compensatory damages for pain and suffering to date and into the future was €35,000, and

- 2) Aggravated damages were recoverable in negligence claims, and the features of the case fitted into the third category previously identified by the Supreme Court where aggravated damages were recoverable by a plaintiff, namely due to the conduct of the wrongdoer in the defence of the claim up to and including the trial of the action.

Accordingly, in addition to general damages, the plaintiff was awarded €10,000 for aggravated damages.

**Daly v Mulhern, High Court, Mr Justice O'Sullivan, 22/4/2005 [FL10903]**

### Liability

*Practice and procedure – abuse of process – application to discontinue or stay proceedings – tender offer by defendant – liability denied by defendant – whether reasonable cause for maintenance of action after tender offer made by defendant – whether abuse of process for plaintiff to maintain action when defendant tenders money in satisfaction of claim which can be calculated with mathematical certainty – Civil Liability Act, 1961, section 48 – Rules of the Superior Courts 1986*

The plaintiff alleged that his son committed suicide as a result of depressive side effects caused by taking the acne treatment drug manufactured and marketed by the defendants. He sought damages, therefore, under the *Civil Liability Act, 1961*. The first to fifth defendants, without admitting liability, tendered a sum of money in satisfaction of the plaintiff's claim and applied to have the continued prosecution of the proceedings discontinued or, alternatively, stayed as being an abuse of process in light of that offer, given that, as the proceedings were taken under the *Civil Liability Act, 1961*, the amount that would satisfy the claim could be ascertained with

mathematical certainty.

Mr Justice Finnegan refused the defendants' application to discontinue or stay the proceedings, holding that as the determination of liability was one of the objects of the proceedings and there was no admission of liability, the plaintiff was not acting in abuse of process. The constitutional right of the plaintiff to litigate took precedence over the consequences for the defendants in terms of the costs of defending the action and the court had no jurisdiction to strike out or stay the proceedings.

*Obiter dictum:* the inherent power of the court to strike out proceedings that were an abuse of process should be exercised sparingly.

**Grant v Roche Products (Ireland) Ltd, High Court, Mr Justice Finnegan, 27/5/2005 [FL10876] G**

*The information contained here is taken from FirstLaw's Legal Current Awareness Service, published every day on the internet at [www.firstlaw.ie](http://www.firstlaw.ie). For more information, contact [bartdaly@firstlaw.ie](mailto:bartdaly@firstlaw.ie) or FirstLaw, Merchant's Court, Merchant's Quay, Dublin 8, tel: 01 679 0370, fax: 01 679 0057.*

## PRIVATE COMPUTER TUITION

WOULD YOU LIKE TO BE  
E-MAIL AND INTERNET  
CONFIDENT??

### LEARN HOW:

- From "Switching it on" to "Internet & Email"
- In the comfort of your own home or office
- At your own pace
- All ages catered for
- Detailed notes given
- Personal and Confidential - from one Professional to another
- Quality Service assured

Contact Una at the Institute  
of Private Computer Tuition  
at (01) 8471625 or  
E-Mail: [Una@IPCT.ie](mailto:Una@IPCT.ie)

# WHERE THERE'S A WILL THIS IS THE WAY...

When a client makes a will in favour of the Society, it would be appreciated if the bequest were stated in the following words:

*"I give, devise and bequeath the sum of X euros to the Irish Cancer Society Limited to be applied by it for any of its charitable objects, as it, at its absolute discretion, may decide."*

All monies received by the Society are expended within the Republic of Ireland.

"Conquer Cancer Campaign" is a Registered Business Name and is used by the Society for some fund-raising purposes. The "Cancer Research Advancement Board" allocates all Research Grants on behalf of the Society.

5 Northumberland Road, Dublin 4. Tel: (01) 231 0500  
15 Bridge Street, Cork. Tel: (021) 4509 918 Web: [www.cancer.ie](http://www.cancer.ie)

**DEFECTIVE TITLE...?  
CAN'T CLOSE THAT SALE...?  
TIME FOR THE SOLUTION...**

## TitleGuard!

*"Proven results for dealing with Title problems"*

- **Competitive residential premiums starting from €300**
- **Prompt decisions on commercial and residential risks**



Call us on

**01 275 2640**

Email: [titleguard@firstamerican.ie](mailto:titleguard@firstamerican.ie)

First American Title Underwriting Ireland  
DX 202002 Boonahaven 2

**WWW.TITLEGUARD.IE**

TM is the service mark of First American Title Guard, Inc. and is used by First American Title Guard, Inc. in the United States and in other countries. First American Title Guard, Inc. is a registered company. Underwriting and services provided by First American Title Guard, Inc. are subject to the terms and conditions of the policy. First American Title Guard, Inc. is not a member of FIC Group plc.



# Eurlegal

News from the EU and International Affairs Committee

Edited by TP Kennedy, director of education, Law Society of Ireland

## Right of appeal under the electronic communications regulatory framework

A fast pace of development is characteristic of the electronic communications sector. The application of law to this sector, in particular the new European regulatory framework, is no exception. This article will examine the recent High Court judgment of McKechnie J in *Eircom v ComReg* (29 July 2005), which underpins the integrity of the appeals process under the electronic communications regulatory framework. Interestingly, the judge applied the *Von Colson* (case 14/83 [1984] ECR 1891) precedent of the indirect effect of directives, whereby domestic implementing legislation is interpreted in light of the wording and purpose of a directive in order to ensure that a directive is given full effect.

### The legislative background

The electronic communications regulatory framework package includes, among other things, four directives: the *Framework directive*, the *Access directive*, the *Authorisation directive*, and the *Universal service directive*. The directives were transposed in Ireland by the *Framework regulations*, the *Access regulations*, the *Authorisation regulations* and the *Universal service regulations* (together, 'the regulations'). The regulations were all made under the umbrella provision of section 3 of the *European Communities Act, 1972*. Section 3 allows a minister to enact community legislation by way of statutory instrument rather than by way of an act of the Oireachtas.

The framework package was adopted to deal with the liberalisation of the electronic communications sector. Notwithstand-

ing that the sector is liberalised, there is still insufficient competition in certain markets. The markets that may require *ex ante* regulation are set out in the commission's *Recommendation on relevant product and services market*. The Commission for Communications Regulation (ComReg), having 'utmost regard' to the recommendation, together with the guidelines on market analysis and assessment of significant market power, defines relevant markets and analyses them in order to determine if they are competitive. ComReg intervenes to impose obligations on undertakings where markets are not considered to be effectively competitive as a result of an undertaking being in a position of significant market power (SMP) – the equivalent of dominance within the meaning of article 82 of the *EC treaty*.

### Electronic Communications Appeals Panel (ECAP)

ECAP is a new body set up by the minister for communications, marine and natural resources to oversee decisions of ComReg. Prior to the establishment of ECAP, the only recourse open to aggrieved operators dissatisfied with a decision of ComReg was judicial review. Now any party in the electronic communications sector who is the subject of a decision by ComReg has the right to appeal to ECAP. ECAP consists of three persons appointed by the minister, at least one of whom is a practising barrister or solicitor with at least seven years' experience, and the others are required to have such commercial, technical, economic, regulatory or

financial experience as the minister considers appropriate. Parties have 28 days from the date of ComReg's decision to notify the minister and ComReg of their intention to appeal and the grounds of appeal.

### Scope of review

The *Framework regulations* set out the broad scope of what may be appealed and includes a provision that a decision is vitiated by errors of fact, including inferences of fact and/or errors of law, including issues of jurisdiction and procedure. ECAP can confirm or annul, in whole or in part, ComReg decisions. Pending the outcome of an appeal, ComReg's decision stands; however, ECAP may, on an application to it, suspend ComReg's decision pending the determination of the appeal. Regulation 3 of the *Framework regulations*, which provides for the appeal mechanism, contains an important exclusion not found in article 4 of the *Framework directive*, the provision it seeks to transpose. Regulation 3 applies to any user or any undertaking that is affected by a decision **other than enforcement decisions**.

### Standard of review

ECAP's first decision (no 01/05 in respect of appeal no: ECAP 2004/01), in the *Hutchison 3G Ireland* appeal, was the result of a preliminary issue raised – namely, the standard of review that ECAP should apply when hearing and determining the *Hutchison 3G Ireland* appeal. ECAP decided for the *Hutchison 3G Ireland* case that the standard of review required by the regulations, when interpreted in light

of article 4 of the *Framework directive*, is a standard that lies between a hearing *de novo* and a judicial review. It is an examination of the decision of the regulator.

ECAP recognised its special position, in that it has the type of expertise to understand the technical matters that the regulator has regard to in making a decision. For this reason, while a degree of deference can be shown to ComReg decisions, it is not the same degree of deference that the court showed in *Orange Communications Limited v Director of Telecommunications Regulation* ([2000] 4 IR 136) or *M & J Gleeson v Competition Authority* ([1999] 1 ILRM 401). The standard is, therefore, broader than the standard set out in *Orange*, *Gleeson* and *Carrickdale Hotel v Controller of Patents* ([2004] 2 ILRM 401). In practical terms, however, the errors in a ComReg decision would need to be of significance before ECAP would annul the decision. It should not be a trivial error. Neither should the error need to go to the root of the decision; rather, the error should be material in the sense that is relevant to and has a bearing on the conclusion to which the regulator came. ECAP is not bound by previous decisions and therefore a different standard of review than the standard that applied in the *Hutchison 3G Ireland* case, such as a full hearing *de novo*, could be considered in future cases if appropriate.

### Eircom v ComReg

This case concerned local loop unbundling, which permits operators to gain access to and

control over copper pairs between the local exchange and a customer's premises so as to offer services independent of Eircom. ComReg defined a relevant market for wholesale unbundled access to metallic loops and sub-loops for the purpose of providing broadband and voice services. ComReg found that Eircom had SMP on this market and imposed certain remedies as a result, including an obligation on Eircom to meet reasonable requests for access to the local loop and an obligation to negotiate in good faith with undertakings requesting access. In order to co-ordinate the requirements of access seekers, ComReg produced a market requirements document (MRD). Eircom did not agree with the MRD. On 18 January 2005, ComReg issued Eircom with two directions pursuant to regulation 17 of the *Access regulations*, directing Eircom to (a) provide to ComReg and access seekers, by 14 February 2005, a response that would deal with the access seekers requirements, and (b) engage with ComReg and access seekers by 1 February regarding work being carried out to implement the requirements (decision D1/05). The time limits for compliance with each direction were, critically, less than the 28 days an undertaking has to notify the minister of its intention to appeal.

Eircom wrote to ComReg challenging the factual and legal basis of decision D1/05. In addition, it indicated its intention to appeal and to seek a suspension of the decision until the appeal had been determined unless ComReg withdrew the decision. ComReg did not, and proceeded to issue two enforcement decisions on 2 February and 15 February, pursuant to regulation 18 of the *Access regulations*. Eircom applied to appeal decision D1/05 to ECAP within the 28-day time frame. It applied to have ComReg's decision suspended until the appeal had been determined. As discussed above, under the *Framework regulations*, enforcement decisions are

expressly excluded from ECAP's jurisdiction. Eircom also, therefore, applied for judicial review and sought an order of *certiorari* in respect of the original decision D1/05 and the enforcement decisions to preserve its right of appeal.

#### ComReg's case

ComReg relied on the fact that there is no right of appeal of an enforcement decision under regulation 3 of the *Framework regulations* and that this regulation had not been constitutionally challenged. ComReg maintained

that there is no justification for building into the regime a 'period of grace' in which an undertaking can 'leisurely consider its appeal position'. ComReg also argued that the decision for the court was whether the actions of the regulator were unreasonable.

#### Eircom's case

Eircom insisted that ComReg could not use regulation 17 in conjunction with regulation 18 in a manner so as to render its right of appeal nugatory. It did not suggest that the directives were improperly transposed into Irish law; rather, it called on the court to interpret regulations 17 and 18 of the *Access regulations* in light of the *Framework directive* further to the *Von Colson* judgment. It also asked the court to ensure that a rule of national law does not impair the full effectiveness of a community law right further to *Factortame* (case 213/89 ECR I-2433).

#### The judgment

McKechnie J considered whether ComReg could use regulation 17 in conjunction with regulation 18 of the *Access regulations* to effectively render immune from appeal Eircom's right to challenge directions. McKechnie J, guided by *Mecklenberg* (case C-321/96 [1998] ECR I-3809), had regard to the legislative history of article 4 of the *Framework directive*, which provides for the right of appeal, and deduced that the appeal process was a very deliberate insertion into that directive. The judge sought to interpret the

gate to itself the power to determine who should or ... who should not be entitled to appeal'. The judge considered that this would 'obliterate' the effectiveness of the regulations and would take from the independence of ECAP. In addition, the judge stated that the requirements of fair procedure and constitutional justice would demand reasonable access to, and reasonable opportunity of exercising, a right of appeal.

In the judge's view, the issue in the case was not whether ComReg in the exercise of a discretion acted reasonably or unreasonably but, rather, upholding Eircom's statutory right of appeal.

It was not necessary for the court to consider what powers it would have had in the event of a finding that the regulations did not create an effective appeal mechanism as required by article 4 of the *Framework directive*, since the court was able to interpret the regulations in a way that complied with the directive. If, however, he had to, McKechnie J was cognisant of national courts' extensive powers to ensure that community law is applied and fully respected in member states. He referred to *Factortame* as a mechanism for rectifying the situation where a provision of national law could impair the effectiveness of a community law right. If a court seized of a dispute governed by community law would grant interim relief were it not for a rule of national law, it is obliged to set aside that national rule. McKechnie J finally referred to a letter from the minister, which set out that the minister would not establish an appeals panel to hear Eircom's appeal pending the determination of the present case. The judge found this position disappointing.

In conclusion, the court held that ComReg's decision D1/05 and the subsequent enforcement decisions cannot be operated in such a manner as would impair or curtail Eircom's right of appeal to ECAP in accordance with the *Framework regulations*.

## Conclusions

The case ensures that the right to appeal is enshrined in the regulatory process and strengthens ECAP's role in that process. ComReg will, after all, have to build into its directions and decisions 'a period of grace' to allow an undertaking to 'leisurely consider its appeal position'. The minister, too, got his share of criticism in not giving greater con-

sideration to the establishment of the panel. In addition, the minister will have to revisit the implementing regulations and consider whether they may need redrafting in order to properly transpose the *Framework directive*. The *Eircom* case is an important example of the application of EC law, and more particularly the indirect effect of directives, by the Irish courts. While directives may only

have vertical direct effect (that is, application against the state or an emanation of the state), indirect effect is not so limited and may also be applied horizontally, *vis à vis* private parties. The *Eircom* case was a classic case of vertical indirect effect, in that ComReg is an emanation of the state. It would be interesting to see if the courts would be equally willing to grapple with the concept of hori-

zontal indirect effect.

It is reassuring in the *Eircom* case to see the Irish courts confidently applying the *Von Colson* principle, asserting a readiness to apply *Factortame*, and comfortable in the esoteric realm that is regulatory law. **G**

*Niamh Connery is an associate in the EC, competition and regulatory group of Matheson Ormsby Prentice.*

# Recent developments in European law

## DIRECTIVES

Joined cases C-387/02, C-391/02 and C-403/02, *Berlusconi and Others*. Several individuals were being prosecuted in the Italian courts for offences relating to false accounting committed before 2002. In 2002, new criminal provisions covering those offences came into force in Italy. The new provisions prevent criminal prosecutions being brought against the accused. The provisions set out a significantly shorter limitation period (four-and-a-half years rather than seven-and-a-half), make the bringing of a prosecution subject to the requirement that a complaint be lodged by a member or creditor who considers that he has been adversely affected by the false accounts, and excludes any penalty in respect of false accounting that has no significant effect or is of minimal importance and does not exceed certain thresholds. The Italian court asked the ECJ whether the offence of false accounting is covered by the first *Companies directive* (directive 68/151). It also asked whether the new Italian provisions are compatible with the EC requirement that penalties provided for under national legislation for breaches of EC provisions must be appropriate (effective, proportionate and dissuasive). The court held that the penalties for false accounting are designed to

punish serious infringements of the fourth and seventh *Companies directives* (relating to accounts providing a true and fair view of a company's assets and liabilities, financial position and profit or loss). The system of penalties provided for by the first *Companies directive* applies not only to failure to publish accounts but also to publication of false accounts. Member states have discretion on the choice of penalties, but must ensure that they are appropriate in character. The court held that the principle of the retroactive application of the more lenient penalty forms part of the constitutional traditions common to the member states. It follows that this is a general principle of EC law that national courts must respect when applying national legislation adopted for the purpose of implementing EC law and, in the present cases, the directives on company law. The court took the view that it was unnecessary to resolve the question of whether the principle of the retroactive application of the more lenient penalty must be applied in the case in which that penalty is contrary to EC law. The court has consistently held that a directive cannot, in itself, impose obligations on an individual and cannot therefore be relied on as such against that individual. The court has also ruled that a directive cannot, of itself and independently of national legislation

adopted for the purpose of its application, have the effect of increasing the criminal liability of accused persons.

## EMPLOYMENT

Case C-341/02, *Commission of the European Communities v Federal Republic of Germany*, 14 April 2005. The commission brought proceedings against Germany for failure to fulfil its obligations in relation to foreign workers posted to work in Germany. The posting of workers is governed by directive 92/71. This provides that the legislation of member states must be coordinated to provide a core of mandatory rules on minimum protection with which employers who post employees to work in another state must comply. This covers the provisions relating to the minimum wage. The concept of a minimum wage is defined by the national legislation and practices of the member state to the territory of which the employee is posted. In this action, the commission challenged the method applied by Germany for the purpose of comparing the minimum wage fixed by national German provisions with the remuneration paid by an employer established in another member state. Germany did not recognise as constituent elements of the minimum wage all the allowances and supplements paid by employers established in other

states to their employees in the construction industry, who are posted to Germany. The failure to do this results in higher wage costs for employers established in other member states, who are precluded from offering their services in Germany. Germany argued that these payments are for work outside normal working hours and involving requirements of a high standard or for work involving particular constraints and dangers. The ECJ noted that both parties had agreed that, for the purposes of the directive, account need not be taken of payment for overtime, contributions to retirement schemes and reimbursement of expenses. It is the gross amount of wages that must be taken into account. During the proceedings, Germany agreed to amend its rules to take into account certain bonuses and supplements in its calculation of the minimum wage. However, these amendments came too late to be taken into consideration by the court. In this regard, the court held that Germany had failed to fulfil its obligations. On the other hand, the court held that it was entirely normal that payment for additional work or work under particular conditions would not be taken into account for the purpose of calculating the minimum wage. The directive does not require that such forms of compensation be treated as elements of the minimum wage. **G**



Phone: +353 1 6610707  
Email: info@tomsgaath.ie  
www.tomsgaath.ie

## Thinking of buying in Spain or Portugal?

Legal title assured.

Tom McGaath Overseas Properties offers you carefully selected developments with good title assured. With the inhouse facilities of Tom McGaath & Associates Solicitors we also offer you all the legal services and financial packages you need for your Spanish and Portuguese acquisitions.

- **Córcel May, Girona.**  
Apartments from €20,000
- **Aguafredda, Benidorm.**  
Apartments from €130,000
- **Aguafredda, Altea.**  
Apartments and penthouses from €200,000. Close to golf and beaches.
- **La Torreón, Huelva.**  
Houses and apartments from €140,000
- **Sotogrande, Cádiz.**  
La Reserva and El Duque del Marlin marina.



Tom McGaath

www.tomsgaath.ie

SPAGNA



# STANHOPE STREET LAW SCHOOL

For over 20 years Stanhope  
has prepared generations of  
students for the FE1 exams

*Enquire about our reputation –  
it speaks for itself!*

**NEXT ANNUAL COURSE**

28 October 2005 – 19 February 2006  
For Spring and Autumn FE1s

[www.stanhopelaw.com](http://www.stanhopelaw.com)  
[www.stanhopelaw.ie](http://www.stanhopelaw.ie)

# Law Society midsummer dinner, 15 July

## Longford leaders

Law Society president Owen Binchy with (*from left*) Bríd and Peter Mimmagh, Longford, and Eimear Binchy

## Circle of friends

Pictured are (*from left*) Eimear Binchy, Margaret and Pat McDermott from Templemore, Eamon O'Brien from Limerick, and president Owen Binchy

## Two's company

Dublin City Council's Terence O'Keeffe and president Owen Binchy

## High society

President Owen Binchy, Eimear Binchy, Council member James Cahill, director of regulation John Elliot and Mary Elliot

## Mayo your dreams come true

Mayo Solicitors' Bar Association president Fiona McAllister and Clodagh McAllister

## Back to the future

Pictured at the launch of the Law Reform Commission's *Report on the reform and modernisation of land law and conveyancing law* on 15 July are LRC president Mrs Justice Catherine McGuinness and justice minister Michael McDowell

# A good job of work

**T**uesday 14 June marked an important day in the calendar of the Solicitors Apprentices Debating Society of Ireland. This was the day the committee had spent many weeks working towards. Why? It was the day that SADSI came to the fore as the law students' society; it was careers day!

One major resource came from outside the band of committee members in the form of sponsorship, and therefore the society would like to thank Bank of Ireland for their contribution.

However, I have always maintained, and always will, that the greatest resource the society has is its members, the students. To the students who became part of the committee, I extend my most heartfelt gratitude for your hard work in organising the day. Of course, what good is gratitude without recognition? So, Paul Ryan, Audrey Huggard, Jamie Fitzmaurice and Deirdre Byrne – thank you. However, the real success of the society and the

Alison Watson and Sarah Randall from the Legal Panel recruitment agency at the SADSI careers day

Paul Fahy from the Meghen Group recruitment agency pictured with students from PPCII at the careers day

careers day itself lies with the students who attended. Roughly 100 PPCII students availed of the careers day and, in my book, this is a huge success. The people who attended were obviously students who were looking to take something away from the day and they did.

In attendance were Bank of Ireland and recruitment firms Meghen Group, The Legal Panel and Robert Walters, who were on hand to answer all the students' questions. The real pulling power of the day, I believe, lay with our guest speakers: Ruth Cannon on academia and publishing, Oliver J Connolly on the US bar and mediation, Clare Loftus from the office of the DPP, Randall Plunket, who spoke of his time north of the border and his current job with the Department of Agriculture, and Duncan Inverarity, who gave a detailed account of moving practice from Australia to Ireland.

*Liam Fitzgerald, auditor*

**SYS**

SOCIETY OF YOUNG SOLICITORS  
IRELAND

## AUTUMN CONFERENCE 2005

11, 12 AND 13 NOVEMBER 2005 AT HAYFIELD MANOR HOTEL, CORK

### APPLICATION FORM

PLEASE USE BLOCK CAPITALS. ONE FORM PER ROOM PER ENVELOPE

Name 1: \_\_\_\_\_ Name 2: \_\_\_\_\_

Firm 1: \_\_\_\_\_ Firm 2: \_\_\_\_\_

E-mail: \_\_\_\_\_ E-mail: \_\_\_\_\_

One contact address: \_\_\_\_\_

Phone (office): \_\_\_\_\_

### ITINERARY

#### Friday 11 November

**20.00 – 21.30:** Registration  
**21.00 – late:** Welcome drinks in the bar

#### Saturday 12 November

**9.30 – 12.00: Lectures\***  
FULL DETAILS OF THE SPEAKERS AND TOPICS TO BE COVERED WILL BE AVAILABLE ON THE SYS WEBSITE, [www.sys.ie](http://www.sys.ie)

\*Time spent attending the above lectures may be counted when assessing the completion of your CPD requirements

**14:00:** Health centre, swimming, beauty treatments

**19.30 – 20.00:** Pre-dinner drinks reception

**20.00 – late:** Gala dinner, band and DJ (black tie)

#### Sunday 13 February

**12.00:** Check out

Bank of Ireland

Brightwater  
SOLICITORS & ACCOUNTANTS

### NOTES

- Persons wishing to attend must apply through SYS.
- Accommodation is limited and will be allocated on first-come, first-served basis, in accordance with the procedure set out below.
- Conference fee is €295 pps for two nights accommodation (with breakfast), reception, gala dinner and conference materials.

One application must be submitted per room per envelope together with cheque(s) for the conference fee and a stamped self-addressed envelope. All applications must be sent by ordinary prepaid post and only applications exhibiting a postmark dated **FRIDAY 23 SEPTEMBER 2005** or after will be considered. Rejected applications will be returned. Successful

applications will be confirmed by e-mail.

- Names of delegates to whom the cheque(s) apply must be written on the back of the cheque(s).
- Cancellations must be notified to [louise.gallagher@arthurcox.com](mailto:louise.gallagher@arthurcox.com) on or before on Friday 21 October 2005. Cancellations after that date will not qualify for a refund.

- There are a limited number of twin rooms and/or double rooms. Please tick one of the following options for your preferred accommodation (the SYS cannot guarantee that delegates will be allocated their preferred choice). If nothing below is indicated, rooms will be allocated at the committee's discretion.

Twin room: ☐ Double room: ☐

**LOST LAND  
CERTIFICATES****Registration of Title Act, 1964**

An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin  
(Published 2 September 2005)

Regd owner: Michael Molloy; folio: 13460F; lands: Pollerton Big and barony of Carlow; **Co Carlow**

Regd owner: James Murphy, Egramush, Butlersbridge, Co Cavan; folio: 9472; lands: Egramush; area: 8.4250 hectares; **Co Cavan**

Regd owner: Cormac Neligan, Carrickrone, Cavan; folio: 13022F; lands: Kinnypottle; area: 0.0180 hectares; **Co Cavan**

Regd owner: John Joseph Cleary; folios: (1) 6821 and (2) 6638; lands: townland of (1) 6821 and (2) 6638 Cappanavarnoge and barony of Clonderalaw; area: (1) 8.5338 hectares and (2) 11.5841 hectares; **Co Clare**

Regd owner: Michael Conroy (deceased); folio: 1315; lands: townland of (1) Cappaghkennedy, (2) and (3) Knockans Lower and barony of (1), (2) and (3) Burren; area: (1) 4.5957 hectares, (2) 21.1221 hectares, (3) 0.2757 hectares; **Co Clare**

Regd owner: Brendan Keenan; folio: 28013F; lands: townland of Kilkee Upper and barony of Moyarta; **Co Clare**

Regd owner: Michael Neylon and Maureen Neylon; folio: 18937F; lands: townland of Roughan and barony of Inchiquin; area: 0.255 hectares; **Co Clare**

Regd owner: Edward O'Riordan and Sheila O'Riordan; folio: 11454F; lands: townland of Tullyvarraga and barony of Bunratty Lower; **Co Clare**

Regd owner: Patrick and Catherine McNamara; folio: 27910; lands: townland of (1) Cloonkett, (2) Craghera and barony of Clonderalaw; area: (1) 22.3082 hectares, (2) 6.0804 hectares; **Co Clare**

Regd owner: Josephine Forde; folio: 5743; lands: townland of Drumanneen and Bunratty Upper; area: 10.9620 hectares; **Co Clare**

Regd owner: Reverend Timothy O'Donovan and Ross Diocesan Trustees; folio: 40447; lands: plot of ground being part of the townland of Abbeystrowry in the barony of Carbery West (east division) and county of Cork; **Co Cork**

Regd owner: Shane O'Neill and Sandra O'Neill; folio: 37085F; lands: plots of ground being part of the townland of

Garrycloyne in the barony of Barretts and county of Waterford; **Co Cork**

Regd owner: Patrick Seymour; folio: 56923; lands: plots of ground being part of the townland of Boherash in the barony of Fermoy and county of Cork; **Co Cork**

Regd owner: Zwardsland Properties Limited; folio: 13171F; lands: plots of ground being part of the townland of Ardgroom in the barony of Bear and county of Cork; **Co Cork**

Regd owner: Michael Murphy; folio: 44431; lands: plots of ground being part of the townland of Toorard in the barony of Dunhallow and county of Cork; **Co Cork**

Regd owner: Patrick O'Mahony; folio: 5707; lands: plots of ground being part of the townland of Garryndruig in the barony of Carbery East (east division) and county of Cork; **Co Cork**

Regd owner: John Walsh; folio: 49595F; lands: plots of ground being part of the townland of Kilmona in the barony of Barretts and county of Cork; **Co Cork**

Regd owner: Andrew O'Sullivan; folio: 3593; lands: plots of ground being part of the townland of Garrynagaragh in the barony of Barretts and county of Cork; **Co Cork**

Regd owner: Denis Joseph O'Sullivan; folio: 16630; lands: plots of ground being part of the townland of Cove in the barony of Carbery West (west division) and county of Cork; **Co Cork**

Regd owner: James Kerrigan, Cully, Laghey, Co Donegal; folio: 4428; lands: Cuilly; area: 1.0117 hectares; **Co Donegal**

Regd owner: William John McElchar, Drumcannon, Killygordon, Co Donegal; folio: 25276F; lands: Drumcannon; area: 19.7944 hectares; **Co Donegal**

Regd owner: Michael McMenamin and Maria McMenamin, c/o O'Gorman Cunningham & Co, Solicitors, Main Street, Letterkenny, Co Donegal; folio: 22637; lands: Crocknamurleog; area: 0.0850 hectares; **Co Donegal**

Regd owner: John Whoriskey, Gortahork, Letterkenny, Co Donegal; folio: 40308; lands: Gortahork; area: 0.1040 hectares; **Co Donegal**

Regd owner: Paul Butler; folio: DN18869; lands: property situate in the townland of Kiltiernan, domain and barony of Rathdown, situate on the west side of the road leading from Enniskerry to Golden Ball; **Co Dublin**

Regd owner: Philip Butler; folio: DN18869; lands: property situate in the townland of Kiltiernan, domain and barony of Rathdown, situate on the west side of the road leading from Enniskerry to Golden Ball; **Co Dublin**

Regd owner: Imelda Butler; folio: DN18869; lands: property situate in the townland of Kiltiernan, domain and barony of Rathdown, situate on the west side of the road leading from Enniskerry to Golden Ball; **Co Dublin**

Regd owner: Teresa Agnes Clinton; folio: DN644; lands: a plot of ground situate in the townland of Ballydowd and barony of Newcastle; **Co Dublin**

Regd owner: Deirdre Fahy and Peter



## PROFESSIONAL NOTICE RATES

Notice rates in the *Professional information* section are as follows:

- **Lost land certificates** – €121 (incl VAT at 21%)
- **Wills** – €121 (incl VAT at 21%)
- **Lost title deeds** – €121 (incl VAT at 21%)
- **Employment/miscellaneous** – €121 (incl VAT at 21%)

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €30 EXTRA

All notices must be paid for prior to publication. Deadline for October Gazette: 16 September 2005. For further information, contact Catherine Kearney or Valerie Farrell on tel: 01 672 4828 (fax: 01 672 4877)

Dorrity; folio: DN153724F; lands: a plot of ground known as 87 Tayleur's Point, Quay Road, Rush, in the parish of Lusk and in the town of Rush, shown as plan A490B; **Co Dublin**

Regd owner: Ann Marie Forristal; folio: DN74031L; lands: being flat no 22 on the first floor of the block of flats known as Windermere, situate at Gilford Road, Sandymount, in the parish of Donnybrook, district of Pembroke and city of Dublin; **Co Dublin**

Regd owner: Jedd Developments Limited (limited company); folio: DN82081L; lands: property situate in the townland of Ballymount Little and barony of Uppercross; **Co Dublin**

Regd owner: Francis Kelly (one individual half share); folio: DN18453F; lands: (1) a plot of ground situate on the north side of Boithrin Mobhi in the parish and district of Glasnevin and city of Dublin, (2) property situate on the north side of Boithrin Mobhi in the parish and district of Glasnevin and city of Dublin; **Co Dublin**

Regd owner: Elizabeth Liddy; folio: DN44955F; lands: a plot of ground situate on the north side of Crumlin Road in the parish and district of Crumlin; **Co Dublin**

Regd owner: Thomas Madden and Mary Patricia Madden; folio: DN54585L; lands: property known as no 35 Grange Road in the townland of Baldoyle and barony of Coolock; **Co Dublin**

Regd owner: Sarah Meehan; folio: DN142432F; lands: a plot of ground known as no 156 Kennelsforth Road, Palmerstown, situate in the townland of Redcowfarm, barony of Uppercross, county of Dublin, shown as plan 12; **Co Dublin**

Regd owner: Elizabeth Morgan; folio: DN87588F; lands: property known as 63 Iveagh Gardens, situate in the parish and district of Crumlin; **Co Dublin**

Regd owner: Brendan Moynihan and Elizabeth Moynihan; folio: DN17540; lands: property situate in the townland of Newtown and barony of Coolock; **Co Dublin**

Regd owner: Elizabeth Margaret Mullarney; folio: DN71992L; lands: the leasehold interest in the property known as 12 Rathdown Terrace, being part of the townland of Balally and barony of Rathdown; **Co Dublin**

Regd owner: Thomas O'Brien, Patrick Rice, James Fleming, John Kirk; folio: DN8000; lands: property situate in the townland of Finglas East and barony of Castleknock; **Co Dublin**

Regd owner: Garrow Limited (limited liability company); folio: DN18950; lands: property situate in the townland of Malahide and barony of Coolock; **Co Dublin**

Regd owner: Stephen Bergin and Vicki Bergin; folio: DN162979F; lands: property known as 103 Ballygall Crescent, situate in the parish of Finglas and in the district of Finglas North and in the county of Dublin; **Co Dublin**

Regd owner: Catherine Dunne; folio: DN17126; lands: property situate in the townland of Tankardstown and barony of Balrothery; **Co Dublin**

Regd owner: Phyllis Tiernan; folio: DN6586L; lands: property situate in the townland of Balally and barony of Rathdown; **Co Dublin**

Regd owner: Waterview Limited; folio: D8987; lands: property situate in the townland of Ballykea and barony of Balrothery East; **Co Dublin**

Regd owner: Waterview Limited; folio: D15028; lands: property situate in the townland of Ballykea and barony of Balrothery East; **Co Dublin**

Regd owner: Brian Killeen; folio: 23163F; lands: townland of Clonsilla and barony of Castleknock; **Co Dublin**

Regd owner: Patrick Keaney; folio: 1653F; lands: townland of Gowla and barony of Ballynahinch; area: 0.3768 hectares; **Co Galway**

Regd owner: Mark Keaveney and Eugene Spellman; folio: 34567F; lands: townland of Killeroran and barony of Killian; area: 0.083 hectares; **Co Galway**

Regd owner: Cashel Connemara Credit Union Limited; folio: 31046F; lands: Lehanagh South and barony of Ballynahinch; area: 0.008 hectares; **Co Galway**

Regd owner: Ann Marie O'Toole; folio: 109F; lands: townland of Tooreen and barony of Ballynahinch; area: 0.9485 hectares; **Co Galway**

Regd owner: Patrick J Crosby (junior); folio: 36988; lands: townlands of Townparks and barony of Moycarn; area: 31 perches; **Co Galway**

Regd owner: Arve and Ursula

## forensic accountants

**Be Sure. Trust our experience.**

5 Union Quay, Cork Tel:021 431 9200 Fax:021 431 9300  
 60 Lower Baggot Street, Dublin 2 Tel:01 475 4640 Fax:01 475 4643  
 e-mail: info@jhyland.com Web: www.jhyland.com

- Osmundsvagg; folio: 48864F; lands: townland of Knockahaw and barony of Ballynahinch; area: 6.936 hectares; **Co Galway**  
 Regd owner: John Wall and Kathleen Wall; folio: 7866F; lands: townland of Lackagh and barony of Clare; **Co Galway**  
 Regd owner: Kathleen Kirby; folio: 3612; lands: townland of Lissodeige and barony of Trughanacmy; **Co Kerry**  
 Regd owner: Martin Carroll; folio: 2623 Co Kerry; lands: townland of Ballyronan and barony of Clannaurice; **Co Kerry**  
 Regd owner: Patrick and Noreen Foley; folio: 13110; lands: townland of Castleconway and barony of Trughanacmy; **Co Kerry**  
 Regd owner: Maurice P Kiely; folio: 3710; lands: townland of Knocknacroy and barony of Clannaurice; **Co Kerry**  
 Regd owner: John R and Thelma McAuliffe; folio: 30393F; lands: townland of Dromin Upper and barony of Iraghticonnor and county of Kerry; **Co Kerry**  
 Regd owner: Ann Callan; folio: 27935F; lands: townland of Feighcullen and barony of Offaly East; **Co Kildare**  
 Regd owner: Patrick Collins; folio: 2567; lands: townland of Waterstown and barony of Clane; **Co Kildare**  
 Regd owner: James Hayden; folio: 17692; lands: townlands of Blackcastle, Maganey Upper and Newtownpilsforth and barony of Kilkea and Moone; **Co Kildare**  
 Regd owner: Thomas Norris (deceased); folio: 3731; lands: Woolengrange and barony of Gowran; **Co Kilkenny**  
 Regd owner: Thomas Norris (deceased); folio: 3724; lands: Woolengrange and barony of Gowran; **Co Kilkenny**  
 Regd owner: Thomas Norris (deceased); folio: 3715; lands: Woolengrange and barony of Gowran; **Co Kilkenny**  
 Regd owner: Mary Kate Burns, Kilnagross, Kilnagaross PO, Carrick-on-Shannon, Co Leitrim; folio: 488; lands: Kilnagross; area: 4.3554; **Co Leitrim**  
 Regd owner: Seamus Kelly and Mary Kelly, Greaghnaafarna, Dromahaire, Co Leitrim; folio: 15024; lands: Greaghnaafarna; area: 4.7297, 1.0117 hectares; **Co Leitrim**  
 Regd owner: John William Nicholl; folio: 203; lands: Clooncolry; area: 20.0850 hectares; **Co Leitrim**  
 Regd owner: Patrick Cox; folio: 3086F; lands: townland of Fanningstown and barony of Smallcounty; **Co Limerick**  
 Regd owner: Terence O'Riordan; folio: 1393F; lands: townland of Boher and barony of Clanwilliam; **Co Limerick**  
 Regd owner: Irish Shell & BP Limited; folio: 24603; lands: townland of Park and barony of Clanwilliam; **Co Limerick**  
 Regd owner: John and Bridie McGrath; folio: 23289F; lands: townland of Darragh Beg and barony of Coshlea; **Co Limerick**  
 Regd owner: Henry Ellis and Mary R Ellis, Clonellan, Drumlish, Co Longford; folio: 3151F; lands: Clonellan; area: 0.2821 hectares; **Co Longford**  
 Regd owner: Annie McGetterick, 22 Knock, Lanesboro, Co Longford; folio: 12468; lands: Knock; **Co Longford**  
 Regd owner: Derek Gawley, 14 Bryanstown Manor, Dublin Road, Drogheda, Co Louth; folio: 22668F; lands: Bryanstown; **Co Louth**  
 Regd owner: Daniel Hughes and Maria Hughes, Main Street, Blackrock, Dundalk, Co Louth; folio: 6256F; lands: Haggardstown; area: 0.0481 and 0.0405 hectares; **Co Louth**  
 Regd owner: Martin Magee, Cangee, Dunleer, Co Louth; folio: 3261; lands: Cangy; area: 2.5039 hectares; **Co Louth**  
 Regd owner: Mary McGivern and Patrick McGivern, 1 Boyle O'Reilly Terrace, Dundalk, Co Louth; folio: 6460F; lands: townparks; **Co Louth**  
 Regd owner: Patrick Connolly (deceased); folio: 75F; lands: townland of (1) Cloonmung, (2) and (3) Aghaward and barony of (1), (2), and (3) Gallen; area: (1) 0.2020 hectares, (2) not stated, (3) 0.600 hectares; **Co Mayo**  
 Regd owner: Thomas McHale; folio: 52144; lands: townland of Cloonagleragh and barony of Carra; area: (1) 1 acre, 1 rood, 8 perches, (2) 7 acres, 12 perches, (3) 5.663 acres, (4) 1 acre; **Co Mayo**  
 Regd owner: Michael D Durkan; folio: 17367; lands: townland of (1) and (2) Derrynabunshy and barony of (1) and (2) Gallen; area: (1) 11.0023 hectares, (2) 40.7391 hectares; **Co Mayo**  
 Regd owner: Patrick and Eileen Folliard; folio: 27177F; lands: townland of Cartron and barony of Costello; area: 0.45 hectares; **Co Mayo**  
 Regd owner: Patrick Johnston; folio: 46411; lands: townland of (1) Knockaunacat, (2) and (3) Errif and barony of (1), (2), and (3) Costello; area: (1) 3.1742 hectares, (2) 5.8982 hectares, (3) 4.0165 hectares; **Co Mayo**  
 Regd owner: John Joyce; folio: 52300; lands: townland of Liscarney and barony of Murrisk; area: (1) 0.0733 hectares, (2) 0.6450 hectares; **Co Mayo**  
 Regd owner: Patrick Creighton and Maura Creighton; folio: 52569; lands: townland of Clare and barony of Clanmorris; area: 0.1037 hectares; **Co Mayo**  
 Regd owner: Western Health Board; folio: 6751; lands: Kiltimagh and barony of Gallen; area: 0.4578 hectares; **Co Mayo**  
 Regd owner: Michael Joseph Reilly; folio: 9846F; lands: townland of Drumminaguncan and barony of Carra; area: 9.4495 hectares; **Co Mayo**  
 Regd owner: Patrick J Gildea, Main Street, Kinnegad, Co Westmeath; folio: 14074; lands: Hardwood; area: 9.3204 hectares; **Co Meath**  
 Regd owner: Patrick Russell and Muriel Russell, Old Forge, Kilnagallagh, Hill of Down, Enfield, Co Meath; folio: 10767F; lands: Kilnagallagh; area: 0.6990 hectares; **Co Meath**  
 Regd owner: John Frederick Roberts, Raystown, Ashbourne, Co Meath; folio: 25162; lands: Raystown; area: 0.1897 hectares; **Co Meath**  
 Regd owner: Denis Bermingham, Clongall, Castlejordan, Edenderry, Co Offaly; folio: 18144; lands: Castlejordan; area: 9.6720, 2.2915 hectares; **Co Meath**  
 Regd owner: William McMahon, 8 The Pines, Beaufoord Place, Navan, Co Meath; folio: 24847F; lands: Abbeyland; **Co Meath**  
 Regd owner: Green Belt Limited; Main Street, Virginia, Co Cavan; folio: 17060; lands: Stramakilroy; area: 7.2464 hectares; **Co Monaghan**  
 Regd owner: Anthony Martin, Ballykelly, Louth, PO Dundalk, Co Louth; folio: 1236; lands: Ballykelly; area: 17.1430 hectares; **Co Monaghan**  
 Regd owner: James Ruddy, Corrateemore, Culloville, Dundalk, Co Louth; folio: 5001F; lands: Corrateemore, Kilnacranfy; area: 2.5799, 2.0740 hectares; **Co Monaghan**  
 Regd owner: Margaret Travers, 9 Mountain View, Paint Road, Dundalk, Co Louth; folio: 19769; lands: Dunaldron and Corness; area: 3.9963, 0.9232, 2.6507 and 0.3288 hectares; **Co Monaghan**  
 Regd owner: Vincent Boyle, Doora, Shantonagh, Castleblayney, Co Monaghan; folio: 14772, 14773, 14781; lands: Doora; area: 4.5274, 1.3658, 3.5410 hectares; **Co Monaghan**  
 Regd owner: Patrick Brennan, Drumnamalive, Inniskeen, Co Monaghan; folio: 14569; lands: Kednaminscha; area: 6.9479, 2.0740 hectares; **Co Monaghan**  
 Regd owner: John Flanagan; folio: 7377F; lands: Spollanstown and barony of Ballycowan; **Co Offaly**  
 Regd owner: Thomas James Fryday; folio: 180; lands: Gortnamuck and barony of Ballyboy; **Co Offaly**  
 Regd owner: Kieran Hanniffy; folio: 3057; lands: Gortnacranagh, Gortanisky, Cloghan Demesne and barony of Garrycastle; **Co Offaly**  
 Regd owner: Matthew Kelly; folio: 173; lands: Kilcummin and barony of Garrycastle; **Co Offaly**  
 Regd owner: Frank Kelly; folio: 3797F; lands: Leamanaghan and barony of Garrycastle; **Co Offaly**  
 Regd owner: John Scully; folio: 10671; lands: Clonlee and barony of Ballybritt; **Co Offaly**  
 Regd owner: Joseph Kenny; folio: 18490; lands: Fancroft and barony of Ballybritt; **Co Offaly**  
 Regd owner: Michael Creaton and Mary Creaton; folio: 12317F; lands: townland of Cloonard and barony of Frenchpark; area 6.153; **Co Roscommon**  
 Regd owner: Brendan Duignan; folio: 31544; lands: townland of Monksland and barony of Athlone South; area: 0.0581; **Co Roscommon**  
 Regd owner: John Martin (deceased); folio: 35311; lands: townland of (1) Bushfield, (2) Slieve and Corbally and barony of (1) and (2) Ballymoe; area: (1) 16.6369 hectares, (2) 0.8321 hectares; **Co Roscommon**  
 Regd owner: Annie Rafferty (deceased); folio: 20175; lands: townland of Ballyboughan and barony of Ballintober South; area: 2.4104 hectares; **Co Roscommon**  
 Regd owner: Thomas and Myrtle Swanwick; folio: 6178; lands: townland of Cloonfad East and barony of Castlereagh; area: 49 acres, 1 rood, 5 perches; **Co Roscommon**  
 Regd owner: Rita Smith; folio: 35749; lands: townland of (1) Cloonbracka, (2) Ballyphesan and barony of Ballintober South; area: (1) 0.0202 hectares, (2) 0.0607 hectares; **Co Roscommon**  
 Regd owner: John Thomas Carty; folio: 9539; lands: townland of Killoran South and barony of Leryny; area: 82 acres, 2 roods, 26 perches; **Co Sligo**  
 Regd owner: John Joseph McGowan (deceased); folio: 20837; lands: townland of (1) and (2) Killoran North and barony of (1) and (2) Leryny; area: (1) 14.5307 hectares, (2) 4.5774 hectares; **Co Sligo**  
 Regd owner: Austin McKeown; folio: 2065F and 2066F; lands: townland of Carrowbunnaun and barony of Carbury; area: 0.08.9 hectares and 0.631 acres; **Co Sligo**  
 Regd owner: John Brennan; folio: 34202; lands: townland of Derryvella and barony of Slievardagh; **Co Tipperary**  
 Regd owner: William Coffey; folio: 3829 and 17964F; lands: townland of Ballinlough and barony of Upper Ormond; **Co Tipperary**  
 Regd owner: Stella Leahy; folio: 5088F; lands: Mullinahone and barony of Slievardagh; **Co Tipperary**  
 Regd owner: Noreen O'Gorman; folio: 33653; lands: townland of Derryleigh and barony of Ownay and Arra; **Co Tipperary**  
 Regd owner: William Walsh; folio: 1288; lands: plots of ground being part of the townland of Ballynafina in the barony of Upperthird and county of Waterford; **Co Waterford**  
 Regd owner: Niall and Anne Collieran; folio: 22875F; lands: plots of ground being part of the townland of Windgap in the barony of Decies without Drum and

county of Waterford; **Co Waterford**  
Regd owner: John Curry; folio: 205; lands: plots of ground being part of the townland of Monadiha in the barony of Upperthird and county of Waterford; **Co Waterford**  
Regd owner: Gabriel Foley; folio: 9727; lands: plot of ground being part of the townland of Garryduff in the barony of Decies without Drum and county of Waterford; **Co Waterford**  
Regd owner: Patrick Halpin; folio: 8485; lands: plots of ground being part of the townland of Clogheen in the barony of Glenahiry and county of Waterford; **Co Waterford**  
Regd owner: James Maher; folio: 10064; lands: plots of ground being part of the townland of Ballynameelagh in the barony of Decies without Drum and county of Waterford; **Co Waterford**  
Regd owner: Declan Walsh; folio: 5462; lands: plots of ground being part of the townland of Scart in the barony of Decies without Drum and county of Waterford; **Co Waterford**  
Regd owner: Raymond Lenihan and Roisin Nic Tighernain, 11 Woodlands, Mullingar, Co Westmeath; folio: 624F; lands: Grange South; area: 0.0404 hectares; **Co Westmeath**  
Regd owner: Reverend Michael Lynn, Beuparc, Co Meath; folio: 3311; lands: Ballynaclyn; area: 2.2662 hectares; **Co Westmeath**  
Regd owner: Denis Kehoe, Laurence Kehoe and Joseph Kehoe; folio: 3728F; lands: Clonhenert and barony of Scarawalsh; **Co Wexford**  
Regd owner: Ellen Murphy (deceased); folio: 1103; lands: Clone East and West and barony of Ballaghkeen North; **Co Wexford**  
Regd owner: Aidan and Lucy O'Malley; folio: 25780F; lands: Ballycullane and barony of Shelburne; **Co Wexford**  
Regd owner: Gary Quinn; folio: 12175F; lands: Adamstown and barony of Bantry; **Co Wexford**  
Regd owner: John Leslie Armstrong and Henrietta Armstrong; folio: 12608F; lands: townland of Laragh East and barony of Ballinacor North; **Co Wicklow**  
Regd owner: Joseph Byrne; folio: 9164; lands: townland of Clogh Upper and barony of Talbotstown Upper; **Co Wicklow**

## WILLS

**Campbell, John Senior (deceased)**, late of 31 Hardiman Road, Drumcondra, Dublin 9. Would any person having knowledge of a will made by the above named deceased, who died on 8 April 1963, please contact the Office of the General Solicitor for Minors and Wards of Court, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin 7; reference: 1625; tel: 01 888 6231, fax: 01 872 2681

**Campbell, Thomas (deceased)**, late of 31 Hardiman Road, Drumcondra, Dublin 9. Would any person having knowledge of a will

made by the above named deceased, who died on 8 February 2002, please contact the Office of the General Solicitor for Minors and Wards of Court, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin 7; reference: 1625; tel: 01 888 6231, fax: 01 872 2681

**Conroy, Joseph (deceased)**, late of Reary Rails, Rosenallis, County Laois. Would any person having knowledge of a will made by the above named deceased since 17 August 2002 who died on 26 July 2005, please contact O'Sullivan & Hutchinson, Solicitors, Main Street, Portarlinton, Co Laois; tel: 0502 23182 or fax: 0502 23984

**Egan, Brendan (deceased)**, late of 6 Ashley Grove, Castleknock, Dublin 15, who died on 10 July 2005. Would any person having knowledge of a will made by the above named deceased please contact Nancy; tel: 087 130 2256, e-mail: GreekTraveller@hotmail.com

**Farrell, Kathleen (deceased)**, (otherwise Kathleen O'Farrell), late of 11 Greenville Terrace, South Circular Road, Dublin 8. Would any person having knowledge of a will made by the above named deceased, who died on 17 March 2004, please contact the Office of the General Solicitor for Minors and Wards of Court, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin 7; reference: DS/1699; tel: 01 888 6231, fax: 01 872 2681

**Hall, Jemima (deceased)**, late of Ballygriffin, Arklow, Co Wicklow. Would any person having knowledge of a will made by the above named deceased, who died on 29 August 2004, please contact the Office of the General Solicitor for Minors and Wards of Court, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin 7; reference: DS/1663; tel: 01 888 6231, fax: 01 872 2681

**Healy, Thomas (deceased)**, late of 46 Glasnevin Hill, otherwise 46 Beechmount Villas, Glasnevin, Dublin 9. Would any firm of solicitors holding a will or having knowledge of a will made by the above named deceased, who died on 14 September 1996, please contact Patrick F O'Reilly & Co, Solicitors, 9/10 South Great George's Street, Dublin 2; tel: 01 679 3565, fax: 01 679 3421, e-mail: fiona.duffy@pforeilly.ie

**Jones, Edward (deceased)**, late of 223 Ratoath Road, Cabra, Dublin 7. Would any person having knowledge of the whereabouts of a will made by the above named deceased, who died on 15 March 2005, please contact Richard Cooke & Co, Solicitors, Wexford Road, Arklow, Co Wicklow

**Kearney, John (deceased)**, late of Crehelp, Dunlavin, Co Wicklow. Would any person having knowledge of a will made by the above named deceased, who died on 20 January 2005, please contact Stephenson Solicitors, 55 Carysfort Avenue, Blackrock, Co Dublin; tel: 01 275 6759

**Kelly, John (deceased)**, late of Beechpark, Kildare, Co Kildare. Would any person having knowledge of a will made by the above named deceased, who died on 7 July 2005, please contact James A Boyle & Co, Solicitors, Claregate Street, Co Kildare

**Kelly, Maureen (deceased)**, late of 212 Corrib Park, Newcastle, Galway. Would any person having knowledge of a will executed by the above named deceased, who died on 19 April 2005, please contact O'Dea & Company, Solicitors, Hardiman House, Eyre Square, Galway; tel: 091 566 256

**Kepple, James (deceased)**, late of 4 Farranferris Avenue, Farranree, Cork, who died on 12 April 1995. Would any person having knowledge of the whereabouts of an original codicil executed by the deceased and dated 11 November 1993 please contact O'Donnell, Breen-Walsh, O'Donoghue, Solicitors, Trinity House, 8 George's Quay, Cork; tel: 021 431 3911

**Kierans, Ann (deceased)**, late of 196 Pearse Park, Drogheda in the county of Louth. Would any person having knowledge of a will made by the above named deceased, who died on 27 September 1989, please contact Paul A Moore & Co, Solicitors, 4 Dyer Street, Drogheda, Co Louth; tel: 041 983 9389/983 2451, fax: 041 983 2992

**Lehane, Donal (deceased)**, late of Railway View, Macroom, Co Cork. Would any person with any knowledge of a will executed by the above named deceased, who died on 11 May 2005, please contact Patrick Buckley & Co, Solicitors, 5/6 Washington Street West, Cork

**Mahony, Anthony (orse Danno) (deceased)**, late of 18 McNamara Park, Ennis, Co Clare and formerly of 80 Turnpike Road, Ennis, who died on 25 June 2005 at Ennis, Co Clare. Would any person having knowledge of a will or a grant of probate or letters of administration extracted or about to be extracted in relation to the goods of Thomas Anthony (orse Danno) Mahony, please contact John Sherlock & Company, 9-10 Main Street, Clondalkin, Dublin 22; ref: EC

**Mulkerrin, Edward (orse Eddie) Mulkerrin (deceased)**, late of Clonturk House, Ormond Road, Drumcondra, Dublin 9. Would any person with any knowledge of a will executed by the above named deceased, who died on 30 June 2005, please contact William F Semple & Company, Solicitors, Lough Corrib House, Waterside, Galway; tel: 091 567 371/2/3, fax: 091 567 374, e-mail: wfsemple@eircom.net

**Murphy, Patrick (deceased)**, late of Cahernabrock, Shrute, Co Galway. Would any person having knowledge of a will made by the above named deceased, who

died on 5 January 2002, please contact Elizabeth Cazabon & Co, Solicitors, 27 Woodquay, Galway; tel: 091 564 226, fax: 091 564 245

**O'Keeffe, John (deceased)**, late of 12 Peter O'Donovan Place, Ringmeen, Cobh in the county of Cork, date of death: 17 February 1999. Would any person having knowledge of the whereabouts of a will of the above named deceased please contact Francis C Kelleher & Co, Solicitors, 1 Pearse Square, Cobh, Co Cork; tel: 021 481 2300 or fax: 021 481 2087

**O'Shea, Patrick (deceased)**, late of Priest's Road, Suttonrath, Cahir, Co Tipperary. Would any person having knowledge of a will made by the above named deceased, who died on 7 February 2005, please contact O'Connor Tormey & Company, Solicitors, Slievenamon Road, Thurles, Co Tipperary; tel: 0504 22231

**Rourke, Heather (deceased)**, late of 'Hawk's Head', Killiney Road, Killiney, Co Dublin, who died on 13 June 2005. Would any person having knowledge of any will (apart from a will made in 1978) of the above named deceased please contact Patrick J Morrissey & Co, Solicitors, 1A Lower George's Street, Dun Laoghaire, Co Dublin; tel: 01 280 6655; fax: 01 280 6757 or e-mail: patrickjmorrissey@securemail.ie

**Scully, Lean M (deceased)**, late of 49 Leeson Park, Dublin 6. Would any person with any knowledge of a will executed by the above named deceased, who died on 26 January 2005, please contact Hamilton Turner Solicitors, 66 Dame Street, Dublin 2; tel: 01 671 0555, e-mail: law@hamilton-turner.com

## MISCELLANEOUS

**Northern Ireland agents** for all contentious and non-contentious matters. Consultation in Dublin if required. Fee sharing envisaged. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry; tel: 048 3026 1616, fax: 048 3026 7712, e-mail: norville@danefisher.com

**London solicitors** will be pleased to advise on UK matters and undertake agency work. We handle probate, litigation, property and company/commercial. Parfitt Cresswell, 567/569 Fulham Road, London SW6 1EU; DX 83800 Fulham Broadway; tel: 0044 2073 818311, fax: 0044 2073 816723, e-mail: arobbs@parfitts.co.uk

**Seven-day publican's licence for sale.** Contact Gallagher McCartney, Solicitors, New Row, Donegal Town; tel: 074 972 1753

**Long-established solicitor's practice for sale in Limerick area.** Good fee income. Reply to mobile 087 054 7238 or in confidence to **box no 74/05**

**Dublin firm seeks merger** – small firm comprising sole practitioner, secretary, part-time conveyancer and part-time bookkeeper seeks merger to reduce overheads etc. Good mixed practice, though principal has preference for litigation. Please respond to box no 75/05

**Seven-day publican's on-licence for sale** – Contact Murphy Long & Taaffe, Solicitors, Kilbrogan Hill, Bandon, Co Cork; tel: 023 44420, fax: 023 44635

## TITLE DEEDS

**In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Patrick Wall**

Take notice that any person having an interest in the freehold or intermediate estate of the following property: all that the premises known as 3 Clonsaugh Road in the townland of Willsborough and barony of Coolock, comprised in folios 31842L and 52997L of the register county Dublin and held under lease dated 6 April 1826, William Long and James Woodmason, for a term of 900 years from 1 November 1825, subject to an annual rent of £6.86 and under lease dated 10 March 1977 to James Doyle and Thomas Wall for a term of 150 years from 14 March 1977 at an annual rent of £0.05 respectively.

And take notice that Patrick Wall intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party or parties ascertaining that they hold a superior inter-

est in the aforesaid premises are called upon to furnish evidence of title in the aforementioned premises to the below named within 21 days from the date of this notice.

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

*Date: 2 September 2005*

*Signed: C Grogan & Co (solicitors for the applicant), 33 Lower Ormond Quay, 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* and in the matter of an application by Stanley and Pauline McFadden** Any person having a freehold estate or any intermediate interest in all that and those the premises (formerly garage premises) now erected on the piece or parcel of land at Station Street, Balbriggan in the county of Dublin.

Take notice that Stanley and Pauline McFadden intend to apply to the county registrar for the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises 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, Stanley and Pauline McFadden intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

*Date: 2 September 2005*

*Signed: Con O'Connor & Co (solicitors for the applicant), 7 Dublin Street, Balbriggan, Co Dublin*

**In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1978*: an application by Brona Darcy relating to Cox's Lane, Co Carlow** Notice to any person having any interest in the freehold estate of lands at the rear of 25 Dublin Street, Carlow in the county of Carlow, and being part of the lands comprised in an indenture of lease dated 8 December 1852 and made between the Reverend James Maher of the one part and Thomas O'Meara of the other part for a term of 300 years from 25 March 1872 at the yearly rent of £25.

Take notice that Brona Darcy, the owner, has submitted an application to the county

registrar for the county of Carlow for the acquisition of the freehold interest in the property, and any party asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the aforementioned property to the below named solicitor within 21 days from the date hereof.

In default of any such notice being received by the below named solicitors, the said Brona Darcy intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Carlow for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold interest in the aforesaid property are unknown or unascertained.

*Date: 2 September 2005*

*Signed: Samuel Roche & Co (solicitors for the applicant), Tullow, Carlow*

**In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by William Cullen**

Take notice that any person having any interest in the freehold estate of the following property: all that and those the property known as 127, 129, 131 and rear of 133 Rathmines Road in the city of Dublin, held under an indenture of lease dated 17 August 1925 and made between John Hemingway of the one part and Arthur Cherrick of the other part for a term of 490 years from 29 September 1925, subject to an annual yearly rent of £70.

Take notice that William Cullen intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any person 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 from the date of this notice.

In default of any notice being received, William Cullen intends to proceed with the application before the county registrar at the end of the 21 days of this notice and will apply to the county registrar for 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 aforementioned premises, are unknown or unascertained.

*Date: 2 September 2005*

*Signed: Eugene F Collins (solicitors for the applicant), Temple Chambers, 3 Burlington Road, Dublin 4*

**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 at 60 Quarry Road, Cabra, Dublin 7: an application by Valentine Murray, Imelda Murray, Damien Murray, Kenneth Murray and Amanda Murray** Take notice any person having any interest

in the freehold estate of or superior interest in the following premises: all that and those that piece or parcel of ground with the factory building standing thereon known as 60 Quarry Road, Cabra, Dublin 7, held under an indenture of lease dated 5 August 1954 made between The Royal Bank of Ireland Limited, Valentine Waterstone, Patrick A McNally and Hubert McNally of the one part and Frank Kenny & Company Limited of the other part for a term of 977 years, £62 (old currency), which is a sub-lease derived out of the demise effected by an indenture of lease dated 12 April 1946 made between Liam Kavanagh of the one part and Leonard Edward Ging, Patrick A McNally and Hubert McNally for the term of 1,000 years from 1 November 1930 (less the last day thereof), subject to the yearly rent of £215 (old currency), which in turn was a sub-lease derived out of the demise effected by an indenture of lease dated 28 January 1931 made between Olive St Clair Lee and Mabel Kirkwood of the one part and William Kavanagh of the other part for a term of 1,000 years from 1 November 1930, subject to the yearly rent of £15 (old currency).

Take notice that the applicants, Valentine Murray, Imelda Murray, Damien Murray, Kenneth Murray and Amanda Murray, being the persons entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, intend 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 within 21 days from the date of this notice.

In default of any such notice being received, Valentine Murray, Imelda Murray, Damien Murray, Kenneth Murray and Amanda Murray 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 aforesaid premises are unknown or unascertained.

*Date: 2 September 2005*

*Signed: Reddy Charlton McKnight (solicitors for the applicant), 12 Fitzwilliam Place, 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 John McEntagart**

Take notice that any person having any interest in the freehold estate of the following property: all that and those the lands, dwellinghouse and hereditaments at rear of 16 Upper Leeson Street, Dublin, and now called 16 Warner's Lane, Dublin (hereinafter called 'the property'), held under lease dated 2 March 1846 from Henry Read to Arthur Gardiner for a term of 200 years from 29 September 1845, reserving a yearly

rent of £11.15s.0d and subject to the covenants and conditions therein set out but indemnified against payment of the said yearly rent.

Take notice that John McEntagart intends to submit an application to the county registrar for the county and 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 premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the aforesaid John McEntagart 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 and 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: 2 September 2005*

*Signed: Cornelius Sheehan & Co (solicitors for the applicant), 2 Alma Place, Monkstown, Co Dublin*

**In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967* and the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, and in the matter of the premises situate at Moore Lane, Cashel in the county of Tipperary: an application by Jane P Ryan**  
Take notice that any person having any interest in the freehold estate of or any superior intermediate interest in the dwelling-house, yard, premises, including semi-disused shop, situate at Moore Lane, Cashel, Co Tipperary, held under yearly tenancy from Mrs Emily Briscoe at the yearly rent of £3.50s, together with all that messuage immediately adjoining said lastly described premises held under a yearly tenancy from Mrs Emily Briscoe at the yearly rent of £1, both of which said premises and hereditaments are situate in Moore Lane in the town of Cashel, barony of Middlethird and county of Tipperary, should give notice to the undersigned solicitors.

Take notice that the applicant, Jane P Ryan, being the person entitled under section 15 of the *Landlord and Tenant (Ground Rents) No 2 Act, 1978*, intends to submit an application to the county registrar for the county of Tipperary for the acquisition of the freehold interest and the intermediate interest in aforesaid property, and any party advertising 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 of the date of this notice.

In default of such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Tipperary for such direction as may be appropriate on the basis that the per-

son or persons beneficially entitled to such superior interest including the freehold reversion in the aforementioned property are unknown or unascertained.

*Date: 2 September 2005*

*Signed: Donal T Ryan (solicitors for the applicant), 89/90 Main St, Cashel, Co Tipperary*

**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 Mary O'Sullivan of 6 Leaf Dale, The Lough, Cork (the applicant)**

Take notice any person having an interest in the freehold estate of the property known as 6 Leafdale, The Lough, Cork ('the property') that the applicant intends to submit an application to the county registrar for the city of Cork for the acquisition of the freehold interest in the property, and any party asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the property to the below named within 21 days from the date of this notice.

In default of any such response being received, the applicant 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 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 are unknown or unascertained.

*Date: 2 September 2005*

*Signed: MacGeehin Toale Nagle (solicitors for the applicant), 10 Prospect Road, Glasnevin, Dublin 9*

**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 consisting part of the lands of Goldenbridge situate at Thomas Davis Street West, Inchicore, in the parish of St Jude and city of Dublin: an application by Logcraft Limited**

Take notice any person having any interest in the freehold estate of or superior interest in the lands of Goldenbridge situate at Thomas Davis Street West, Inchicore, in the parish of St Jude and city of Dublin, held under a fee-farm grant dated 21 June 1860 made between William Stewart of the one part and Henrietta O'Callaghan of the other part, subject to a perpetual yearly fee-farm rent of £114.18 old currency, being a grant pursuant to the provisions of the *Renewable Leasehold Conversion Act 1849*.

Take notice that the applicant, Logcraft Limited, being the person entitled under sections 9 and 10 of the *Landlord and Tenant (Grounds 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 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 maybe appropriate on the basis that the person or persons beneficially entitled to the superior interest including the fee simple absolute in the aforesaid premises are unknown or unascertained.

*Date: 2 September 2005*

*Signed: Gartlan Winters (solicitors for the applicant), 56 Lower Dorset Street, Dublin 1*

**In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1994* and in the matter of an application by Osprey Property Limited**

Take notice that any person having an interest in the freehold or any intermediate estate of the premises described in the schedule hereto (which are held under the respective leases referred to in the said schedule) should give notice of their interest to the undersigned solicitors.

And take notice that Osprey Property Limited intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest and all intermediate interests in the property described in the schedule hereto, and any party asserting that they hold a superior interest in the said premises is called upon to furnish evidence of title to the said premises to the undersigned prior to the expiry of 21 days from the date hereof.

In default of any such notice being received, the said Osprey Property Limited intends to proceed with the application before the county registrar after the expiry of 21 days from the date hereof and will apply to the county registrar for 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 to the said properties are unknown or unascertained.

*Schedule:* Eircom depot at Distillery Road, in the parish of St George in the city of Dublin, held under lease dated 4 December 1946 between William J Kavanagh of the one part and the minister for post and telegraphs of the other part for a term of 840 years from 1 January 1946, subject to the yearly rent of £65.

*Date: 2 September 2005*

*Signed: Sheehan & Company (solicitors for the applicant), 1 Clare Street, Dublin 2*

**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 an application by Christopher Singh**

Take notice that any person having an interest in the freehold estate of the following property: all that and those the land and premises now known as no 181 Parnell Street in the city of Dublin, being the premises demised by an indenture of lease dated 27 October 1893 between Hubert Burton, Albert Burton, John Kingston James, James Fullerton James, Edward Albert James, Edith Flood, Alice Anne Molyneux

Fitzgerald and Ernest Molyneux Flood of the one part and Michael Moran of the other part, and therein described as 'all that and those the dwellinghouse and messuage or tenement known as 181 Great Britain Street in the city of Dublin, with the appurtenances bounded as follows, that is to say, on the west by the house and premises known as 182 Great Britain Street, in the east partly by the house and premises known as 180 Great Britain Street and partly by the land on the north by a lane-way of Dominic Street and on the south by Great Britain Street, all of which said premises are situate in the parish of St Mary and city of Dublin'.

Take notice that Christopher Singh intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid 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, Christopher Singh 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 city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

*Date: 2 September 2005*

*Signed: FH O'Reilly & Co (solicitors for the applicant), The Red Church, North Circular Road, Philsborough, Dublin 7*

**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 Shaws Limited relating to no 11 Tullow Street, Carlow**

Any person having an interest in the freehold estate or any superior or intermediate interest in the property known as: no 11 Tullow Street, Carlow, which is held under lease dated 13 November 1851 and made between (1) John Whitton and (2) William Jackson for a term of 99 years from 25 March 1851 (now expired) at the yearly rent of £25; and the property described as 'the plot of ground and premises at Bridewell Lane', Carlow, which is held under lease dated 4 June 1901 and made between (1) Mary Wilhelmina Yelverton and (2) John Howe and Hannah Howe for a term of 30 years from 1 November 1901 (extended to 49 years by endorsement on the lease) (now expired) at the yearly rent of €9.

Take notice that the applicant, Shaws Limited, intends to apply to the county registrar for the county in the above property. Any party asserting that they hold an interest superior to the applicants in the said property is called upon to furnish evidence of title to same to the undermentioned solicitors within 21 days from the date hereof.

In default of any such notice being

received, the applicant intends to proceed with the application before the county registrar at the nearest opportunity after the end of 21 days from the date of this notice and will apply to the said county registrar for the said county for such direction as may be appropriate on the basis that the person or persons beneficially entitled to such freehold interest or intermediate interest in said property is unknown or unascertained.

Date: 2 September 2005

Signed: *William Fry (solicitors for the applicant), Fitzwilliam House, Wilton Place, Dublin 2 (Ref: 001832.0088.SOM)*

**In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) Act, 1967* and in the matter of lands situate at 31-51 Ravensdale Road, East Wall, Dublin 3: an application by Edward Loughlin, Edward Loughlin (Jnr), Gerard Fahy, Tom Hamilton and Ronan Mellett**

Take notice that any person having an interest in the freehold estate of or the superior interest in the hereditaments and premises known as 31-51 Ravensdale Road, East Wall, in the city of Dublin, which said premises are held under an indenture of lease dated 28 January 1903 and made between Mary Ann Meagher, Bridget Finlay, and Linda Ursuline Finley of the one part and Sir Daniel Dixon of the other part, for a term of 990 years from the first

day of January 1903 at a yearly rent of £100, being only that part of the land later demised by sub-lease dated 19 May 1921 and made between Thomas Dixon & Sons Limited of the one part and McMullan Brothers of the other part for a term of 950 years from the first of January 1921 at a yearly rent of £213.

Take notice that the applicants, Edward Loughlin, Edward Loughlin (Jnr), Gerard Fahy, Tom Hamilton and Ronan Mellett, being the persons entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) Act, 1978*, intend to submit an application to the county registrar for the county and city of Dublin for the acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforementioned premises are called upon to furnish evidence of title to the aforementioned premises to the below 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 and 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: 2 September 2005

Signed: *AT Diamond & Company (solicitors for the applicant), 217 Clontarf Road, Dublin 3*

**In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) Act, 1967* and in the matter of premises situate at 59 Glengarriff Parade, Dublin 7: an application by Donagh Tanham, Gavan Tanham and Darach Tanham**

Take notice that any person having an interest in the freehold estate of the property known as 59 Glengarriff Parade, in the parish of St George and city of Dublin, being part of the lands comprised in an indenture of sub-lease dated 15 January 1913 and made between John Reidy of the one part and Rev James Carmody of the other part for the term of 150 years from 15 January 1913 at the yearly rent of €7.50 thereby reserved but primarily liable only to the apportioned yearly rent of €2.50 and indemnified against payment of the balance of €5 of the said rent by the adjoining premises, formerly numbers 11 and 13 Glengarriff Parade and now known as numbers 58 and 60 Glengarriff Parade, should give notice of their interest to the undersigned.

Take notice that the applicants, being the persons entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) Act, 1978*, intend to submit an appli-

cation to the county registrar for the county and city of Dublin for the acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforementioned premises (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below 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 and 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: 2 September 2005

Signed: *Maxwells (solicitors for the applicant), 19 Herbert Place, Dublin 2*

## RECRUITMENT

**Carrick-on-Suir, Co Tipperary, solicitor required** for general practice. The successful candidate will have at least one year's PQE with experience in conveyancing, probate and litigation. Good conditions and salary. Applications will be treated in the strictest confidence – apply with CV to box no 60/05

## THE AMERICAN BAR PROGRAMME IN IRELAND

OPEN EVENING AND PRESENTATION ON FRIARY LAW'S NEW YORK & CALIFORNIA ATTORNEY-AT-LAW PROGRAMMES 2005/2006

**Venue – Law Library, Distillery Building, 145 – 151 Church St, Dublin 7**

**Date – 7:00pm, Tuesday 13<sup>th</sup> and Tuesday 20<sup>th</sup> September 2005**

If you are a **law graduate** or **qualified solicitor** or **qualified barrister**, you may wish to consider qualifying at the New York or California Bar and adding the title "*Attorney-at-Law*" to your credentials. By reason of the dominance of, *inter alia*, the English language, the Common Law, and US Fortune 1000 Corporations in the globalisation of the world economy, opportunities in international organisations, European law firms and in the increasing number of US firms who have a presence in Europe are more readily available to those with a US qualification. Candidates will undoubtedly make themselves more marketable in a competitive legal market place at home and abroad with this outstanding international qualification included in their Curriculum Vitae.

With the convenience of a common language, and a legal system based on Common Law, a US qualification is far more achievable than you might have first thought.

The programme is delivered by the *Friarylaw* team, lead by Oliver J. Connolly, an Irish Barrister, New York & US Supreme Court Attorney and American Arbitration Association World Fellow, in collaboration with Central Law Training, the largest organisation providing postgraduate training to lawyers in the UK and with BAR/BRI, America's premier Bar Review provider.

Success in the New York or California Bar examination will:

- ENHANCE YOUR MARKETABILITY
- RAISE YOUR PROFESSIONAL PROFILE
- EXTEND YOUR EXPERTISE
- OBTAIN INTERNATIONAL STANDING

## NEW YORK BAR AND CALIFORNIA BAR EXAM PREPARATION COURSES

**Weekend Lecture courses:** Intensive five month programme held biannually in Roebuck Castle, University College Dublin

- Winter 2005 Programme commences in October in preparation for the examinations in February 2006
- Fully Comprehensive Programme Materials
- Programme customised for Irish candidates
- American Bar Exam & International legal careers advice
- Individual consultations with the Directors of the Programme are recommended

**The Open Evening will be presented by Oliver J Connolly and the Friarylaw team.**

**If you require any further information please call the Friary at tel 8728405, email at admin@the.friary.ie or visit the website at www.friarylaw.ie**

Friary Chambers, The Friary, Bow Street, Dublin 7.  
Tel: 01 872 8405. Fax: 01 872 8409  
Email: admin@thefriary.ie. Web: www.friarylaw.ie

## UNITED STATES LAWYERS

**Kleeman, Abloeser & DiGiovanni, P.C.** is a prominent U.S. law firm that specializes in providing the following legal services in the United States:

- 1 Travel law: Representing foreign visitors seriously injured in the United States
- 2 Personal injury litigation in the United States

Contact **Michael Kleeman, Esq.**, at  
(toll free) 00-800-221-56970 or by  
e-mail at [mkleeman@kleemanlawfirm.com](mailto:mkleeman@kleemanlawfirm.com)

For more information about our law firm visit  
our website at [www.kleemanlawfirm.com](http://www.kleemanlawfirm.com)

**Sole practitioner in busy southern rural town** seeks dynamic competent person to come on board on profit-share basis. This is an opportunity for a success-driven pro-active individual. Reply to **box no 70/05**

**Apprenticeship required:** MA, MLib, information professional seeks legal apprenticeship. Superb interpersonal, IT and project-management skills. All FE1 and first Irish exam passed. I am someone who is highly motivated, organised and responsible. All locations considered. Available immediately. Contact Margaret at 085 713 1897 or e-mail: [ML125@ireland.com](mailto:ML125@ireland.com)

**Full-time/part-time experienced solicitor required** for general legal practice in Co Wexford. Apply in confidence with CV to MT O'Donoghue & Co, 11 Main Street, Gorey, Co Wexford

**Law firm in county Galway seeks solicitor** with minimum three years' experience in district court, conveyancing and probate. Fantastic opportunities for ambitious individual. Please reply to **box no 71/05**

**Solicitor:** opportunity for ambitious, hard-working solicitor to join a sole practitioner in established practice in Kerry. The successful applicant must have ability to work on own initiative, dealing principally with conveyancing, probate, taxation and some court work. Top salary and excellent prospects for the right person. Please reply to **box no 72/05**

**Solicitor - Kerry.** A Tralee practice, which is expanding, has a vacancy for an experienced solicitor specialising in conveyancing and probate. Please contact Michael Dowling & Co, Solicitors, Church Street, Tralee, Co Kerry; tel: 066 712 5755, fax: 066 712 5380, e-mail: [dowlingsolicitors@eircom.net](mailto:dowlingsolicitors@eircom.net)

**Solicitor, with interest in specialising in taxation, required** for capital tax department. You will primarily be engaged in CAT,

## NORTHERN IRELAND SOLICITORS

We will engage in, and advise on, all Northern Ireland-related matters, particularly personal injury litigation.

Consultations where convenient.

## OLIVER M LOUGHRAN & COMPANY

9 HOLMVIEW TERRACE,  
OMAGH,  
CO TYRONE  
**Phone (004428) 8224 1530**  
**Fax: (004428) 8224 9865**  
**e-mail:**  
[o.loughran@dial.pipex.com](mailto:o.loughran@dial.pipex.com)

CGT and stamp-duty work for both personal and corporate tax clients. Position commensurate with experience. Reply with CV to Sancha Mulcahy, Deloitte, Deloitte & Touche House, Earlsfort Terrace, Dublin 2; e-mail: [careers@deloitte.ie](mailto:careers@deloitte.ie)

**Cusack McTiernan solicitors** are seeking two solicitors - one in the area of conveyancing and probate with approximately three years' PQE, the other in the area of litigation with the same PQE experience. Interested parties should send a written CV to: Felix McTiernan, Cusack McTiernan, Solicitors, 6 Fitzwilliam Place, Dublin 2 or e-mail: [info@cusackmctiernan.com](mailto:info@cusackmctiernan.com)

**Experienced litigation solicitor** seeks part-time position or other flexible working arrangement in Dublin city or county areas. Please reply to **box no 73/05**

## SPANISH LAWYERS

## RAFAEL BERDAGUER

ABOGADOS

**TWENTY YEARS ADVISING CLIENTS  
IN REAL ESTATE TRANSACTIONS IN SPAIN**

### PROFILE:

**S**panish Lawyers Firm focused on serving the need of the foreign investors, whether in company or property transactions and all attendant legalities such as questions of inheritance, taxation, accounting and bookkeeping, planning, land use and litigation in all Courts.

### FIELD OF PRACTICES:

**G**eneral Practice, Administrative Law, Civil and Commercial Law, Company Law, Banking and Foreign Investments in Spain, Arbitration, Taxation, Family Law, International Law, Litigation in all Courts.

Avda. Ricardo Soriano, 29,  
Edificio Azahara Oficinas, 4 Planta, 29600 Marbella, Malaga, Spain

Tel: 00-34-952823085 Fax: 00-34-952824246  
e-mail: [rberdaguer@berdaguerabogados.com](mailto:rberdaguer@berdaguerabogados.com)  
Web site: [www.berdaguerabogados.com](http://www.berdaguerabogados.com)

Benson & Associates is a niche consultancy, specialising in the recruitment of high calibre lawyers for private practice, commerce and industry.

# The Irish Legal Recruitment SPECIALISTS

A selection of new opportunities for September 2005

## PRIVATE PRACTICE

Our clients are currently searching for high calibre lawyers in the following areas:

- **Buildings:** 1-3 yrs ppe
- **Commercial Property:** All Levels
- **Corporate Insurance:** 1-4 yrs ppe
- **Corporate/Commercial:** All Levels
- **Construction:** All Levels
- **Employment (Contentious):** 2-4 yrs ppe
- **EU/Competition:** 2-4 yrs ppe
- **Funds:** All Levels
- **Projects/PPP:** All Levels
- **Regulatory/Compliance:** 1-3 yrs ppe
- **Tax:** All Levels

## IN-HOUSE

### **Banking/Financial Services Lawyer:** 1-3 yrs ppe

IFSC based bank requires an ambitious solicitor to work in a challenging environment dealing with a varied and interesting portfolio involving transactional and regulatory/compliance matters. An excellent salary and benefits package will be on offer to the successful applicant.

### **Commercial Lawyer:** 1-3 yrs ppe

Estate agency requires a commercially astute lawyer to deal with a diverse and challenging workload in a progressive environment.

## POSITIONS IN LONDON AND REGIONAL UK

In association with our colleagues Checkwick Nott, Legal Recruitment Specialists, we are very keen to hear from solicitors who are seeking to relocate to London and other major cities in the United Kingdom. Please telephone Michael Benson to discuss current opportunities.

Regardless of your level of seniority, if you are a qualified solicitor in an Irish law firm or working in-house and seeking a fresh challenge, we would be very interested in hearing from you.

For more vacancies, please visit our website or contact Michael Benson below for a discussion in the strictest confidence.

**Michael Benson, Benson & Associates,**  
Carmichael House, 60 Lower Baggot Street, Dublin 2.  
T +353 (0) 1 670 3397 F +353 (0) 1 644 9745 E mbenson@benasso.com

**Benson  
& Associates**  
The Irish Legal Recruitment Specialists

[www.benasso.com](http://www.benasso.com)

# Commercial Lawyer (In House)

Our client, a successful multi-national company, has a vacancy for a talented senior professional to join the organisation's Legal Department.

The successful applicant will be involved in a diverse range of legal activities, including commercial, banking and property law, contract drafting and review. A sound knowledge of EU and international trading law would be a distinct advantage.

You will likely have 7-10 years PQE experience in a relevant background as a Solicitor or Barrister. At ease in combining legislative compliance with commercial imperatives, you will display the personal qualities needed to relate effectively with colleagues in a dynamic commercial environment. In a role where significant foreign travel will be a feature, the reward package is negotiable but will be set at a level to attract the appropriate candidate.

Closing date for receipt of applications, which will be treated in the strictest confidence, is Friday 16th September 2005.

**Deloitte.**

Deloitte & Touche, Deloitte & Touche House, Earlsfort Terrace, Dublin 2.

Phone: +353 1 417 2580 • Fax: +353 1 417 2502 • Email: [maodonnell@deloitte.ie](mailto:maodonnell@deloitte.ie)



**COURTS SERVICE**  
*An tSeirbhís Chúirteanna*

## Invitation to Tender For Legal Services

The Courts Service invites tenders from Solicitors/Legal Firms for the provision of legal services. The Service which is responsible for the management and administration of the courts is seeking to engage solicitors/legal firms who will provide the full range of legal services required by an independent State agency.

The Courts Service has a national remit and is responsible for the management and administration of the courts. It has a staff of just over 1,000 and an annual budget in excess of €100m. The Service also manages a total of €930m. court controlled funds on behalf of minors, wards of court and other beneficiaries. The Service is involved in a major change modernisation programme which includes the implementation of major information technology systems and a nationwide courts building programme. Tenderers must demonstrate that they have the resources and expertise to provide the full range of legal services required. The Courts Service reserves the right to engage other solicitors/legal firms if required.

The Request for Tender details are available on the Courts Service website [www.courts.ie](http://www.courts.ie). (News and Announcements) or from Ms. Marie Ryan, Secretary, Courts Service Board, Courts Service, Phoenix House, 15 - 24 Phoenix Street North, Smithfield, Dublin 7. The Request for Tender details may also be downloaded from the Public Sector Procurement Portal at [www.etenders.gov.ie](http://www.etenders.gov.ie)

# Legal Opportunities

## Practice

### Dublin Commercial Property Lawyer €100,000+

Senior Associate with 5+ years PQE and serious partnership ambitions required for reputable property division of medium sized firm. The role will include advising on all aspects of property law to include development, investment and landlord & tenant matters. Work will include large hotel complex and major office block developments. Excellent package on offer. Ref: 19247

### Dublin Senior Banking Lawyer €100,000 - €120,000

Senior Associate required for the banking division of this prestigious firm. There is a partnership path for the suitable candidate. You will need 4 - 7 years PQE in broad-based banking practice and in advising a wide range of lenders and borrowers. Work will include acquisition finance, working capital facilities and finance for real estate projects. The ideal candidate will be a self-starter who can work with little supervision, and who is keen to develop work and bring on junior fee-earners. Superb salary and prospects on offer. Ref: 17246

### Dublin Corporate Lawyer €55,000 - €90,000

Medium sized Dublin City Centre firm is seeking Corporate Lawyers with corporate experience of 2-5 years. The quality of clients and work is excellent. Even at a junior level, their lawyers get involved in all aspects of transactions and see all dealings from instruction through to completion. You will receive a wide range of work, excellent training and guidance, plus the responsibility of your own caseload and clients. Ref: 18760

### Dublin Capital Markets Lawyer €50,000 - €75,000

Prestigious capital markets group is seeking lawyers with varying degrees of capital markets experience to join their highly reputable team. Candidates that will be considered for this role shall have up to 3 years experience in capital markets gained from their apprenticeship. Ref: 19557

### Dublin Commercial Property Lawyer €50,000 - €70,000

Prestigious medium-large sized firm is urgently seeking a Property Solicitor with 2-3 years experience to join their growing property department. This opportunity will appeal to a solicitor looking for a clearly defined career path, and someone looking to work on major projects, from selling investor leases to developing large sites. Ref: 17486

Interested candidates should contact John Macklin on 01 662 1000 for a confidential discussion. Alternatively, email your CV in the strictest confidence to [j.macklin@brightwater.ie](mailto:j.macklin@brightwater.ie)

### Midlands Litigation Solicitor - Medium Sized Firm €50,000 - €55,000

You will be a Litigation Lawyer with at least 2 years PQE in civil litigation and have an excellent knowledge of all aspects of civil litigation and practice. This is a rare opportunity to join this expanding department of a prestigious Midlands law firm. For the successful candidate this role offers diversity of workload and autonomy together with excellent remuneration and benefits. Ref: 19128

### Cork Commercial Solicitor - Medium Sized Firm €45,000 - €55,000

This prestigious Cork practice is seeking a lawyer with at least 1 years experience in commercial law to join their prestigious commercial department. The successful candidate will have extensive experience in all aspects of commercial and corporate transactions. This is an excellent opportunity for somebody already working in a reputable law firm to relocate to Cork or move across from another law firm. This role offers excellent remuneration and excellent prospects. Ref: 16549

## In-House

### Dublin Corporate / Commercial Lawyer - In-House €55,000 - €65,000

This top tier consultancy firm is seeking a lawyer with at least 2 years experience in commercial / corporate law to join their prestigious legal department. The successful candidate will have some experience in a commercial environment and have a genuine interest in commercial and corporate work. This is an excellent opportunity for a lawyer looking for an in-house role with all the progression and career prospects that could be expected in private practice. The position offers remuneration commensurate with experience. Ref: 16844

### Dublin In-House Lawyer - Financial Services €55,000 - €65,000

Our client, an international financial services institution, is seeking to add a general legal counsel to their in-house team. Coming from a strong commercial background the ideal candidate will have 2-3 years PQE. Financial services experience is an advantage, as is previous in-house experience. Ref: 19949

### Dublin Property Lawyer - In House €45,000 - €65,000

This well established organisation has a current vacancy for a strong Property Lawyer to join its small legal team. You will be a Property Lawyer with experience in both residential and commercial property with at least 2 years PQE. This is a rare opportunity to join an extremely busy department with the possibility of working on a part time basis. Ref: 19494



take it to a  
higher level

At Ogier & Le Masurier, we realise the importance of creating the right working environment to assist staff in reaching their full potential. We are as committed to openness and friendliness as we are to the quality of work we produce. This unique and dynamic mix encourages the kind of achievement among our staff that only comes from people who enjoy what they do.

#### **Commercial Lawyers**

Lawyers of all levels are required for the Business Law Group in Jersey and Guernsey.

The Group covers the commercial and international finance practice of the Firm and has a leading reputation in those areas. We attract high quality work, servicing the needs of both local and international corporate clients. These positions represent a fantastic opportunity for ambitious lawyers looking to develop their careers in one of the market-leading global offshore law firms.

Our advising consultant, David Thomson will be in Dublin on Thursday 15th September 2005. To make an appointment for a confidential discussion about this position and life in the Channel Islands generally, please contact David Thomson or Erica Mackinnon at Taylor Root on +44 131 226 0640 or via email: [davidthomson@taylorroot.com](mailto:davidthomson@taylorroot.com) or [ericamackinnon@taylorroot.com](mailto:ericamackinnon@taylorroot.com).

**GRIFFINLEGAL is presently recruiting  
Solicitors & Support Staff for the following:**

**Taxation:** Top-tier firm seeks a Solicitor with 1-3 yrs experience in Tax City Centre location

**Financial Services:** Our client, one of Ireland's Top 5, is looking for solicitors to join their Financial Services Department. Ideal candidates will have 1-3+ PQE in any or all of the following: Banking, Investment Funds, Structured Finance and Securitisation

**Commercial Litigation:** A litigation solicitor is sought for City Centre mid-sized firm. Ideal candidates will have 2-4 years PQE

**Commercial Property:** Top-tier firm seeks solicitor with 1-3 or 3+ years experience dealing with domestic and international clients.

**Corporate:** Top 5 firm is looking for two or more solicitors with background in general corporate matters. Best candidates have 1-3 years general advisory experience

**In-house:** This leading financial institution is searching for a Corporate Advisor with 2-4 yrs PQE. General Corp. experience is required

**ALSO recruiting for positions in following practice areas: Funds, Products, Compliance, Insurance**

**Legal Executive:** Commercial €25-35k; Comm Litigation 3+ yrs €50k

**Support:** Commercial Secretary 3+ yrs, D2; Commercial Litigation Secretary 1+ yrs D2; Corporate Commercial Secretary, D2.

For more information or to view in his phone contact  
Eileen Kelly at 077 4537 or Emma Jackson at  
077 4533 or email to [info@griffinlegal.ie](mailto:info@griffinlegal.ie)

Griffin Legal,  
11 Ely Place, D2  
[www.griffinlegal.ie](http://www.griffinlegal.ie)



**COURTS AND COURTS OFFICERS ACTS 1995 - 2002  
JUDICIAL APPOINTMENTS ADVISORY BOARD**

**Appointment of Ordinary Judges of the  
High Court**

Notice is hereby given that applications are invited from practising barristers and solicitors who are eligible for appointment to the Office of Ordinary Judge of the High Court for two judicial vacancies that now exist.

Those eligible for appointment and who wish to be considered should apply in writing to the Secretary, Judicial Appointments Advisory Board, Phoenix House, 15/24 Phoenix Street North, Smithfield, Dublin 7, for a copy of the relevant application form.

Applicants whose applications are currently on file need not reapply for these current vacancies or future vacancies that may arise in the period to the 31st December 2005.

**The closing date for receipt of completed application forms, in relation to this advertisement, is 5pm on Thursday 15<sup>th</sup> September 2005.**

Applications received on foot of this advertisement will remain on file until the 31<sup>st</sup> of December 2005.

*It should be noted that The Standards in Public Office Act, 2001 prohibits the Board from recommending a person for judicial office unless the person has furnished to the Board a relevant tax clearance certificate (TC4) that was issued to the person not more than 18 months before the date of a recommendation.*

Applicants may, at the discretion of the Board, be required to attend for interview.

Canvassing is prohibited.

Dated the 21<sup>st</sup> July 2005

Brendan Ryan BL  
Secretary  
Judicial Appointments Advisory Board

**Corporate Lawyer – Bermuda \$ 120,000 - \$ 150,000**

Our client, one of Bermuda's leading law firms, has experienced continued growth in recent years. As a result of this success, the firm is looking to recruit a lawyer with at least 5 years ppe from a respected law firm.

Your work will range from M & A deals to listings and fund formations for private and public companies.

Not only will you enjoy an idyllic lifestyle, but you will be guaranteed exposure to high quality work with a prestigious client portfolio.

For further information contact Yvonne Keane on Tel: +353 876824591 or email your CV to [ykeane@keanemcdonald.com](mailto:ykeane@keanemcdonald.com). Discretion assured

**APPRENTICE WANTED**

**POST-PPC1 TRAINEE SOLICITOR REQUIRED**  
for busy Galway City law firm  
Litigation experience an advantage  
Might suit Trainee seeking secondment placement

Please Reply with full Curriculum Vitae to:  
Keane Solicitors  
Hardiman House  
Eyre Square  
Galway

**COMHAIRLE CATHRACH CHORCAI  
CORK CITY COUNCIL**

Applications are invited from suitably qualified persons for inclusion on a panel from which appointments may be made to the position of:

**EXECUTIVE SOLICITOR**

**ESSENTIAL REQUIREMENTS:**

*Candidates shall:*

- Have been admitted and enrolled as a Solicitor in the State
- Have on the latest date for receipt of completed application forms for the office, at least five years satisfactory experience as a solicitor, including adequate experience of court work, after admission and enrolment as a solicitor, and
- Possess a high standard of professional training and experience.

**SALARY:** €43,289 - €44,921 - €46,558 - €48,195 - €49,833 - €51,470 - €53,106 - €54,737 - €56,380 - €58,013 (max.) - €59,894 (following three years service on the maximum) - €61,779 (following six years service on the maximum).

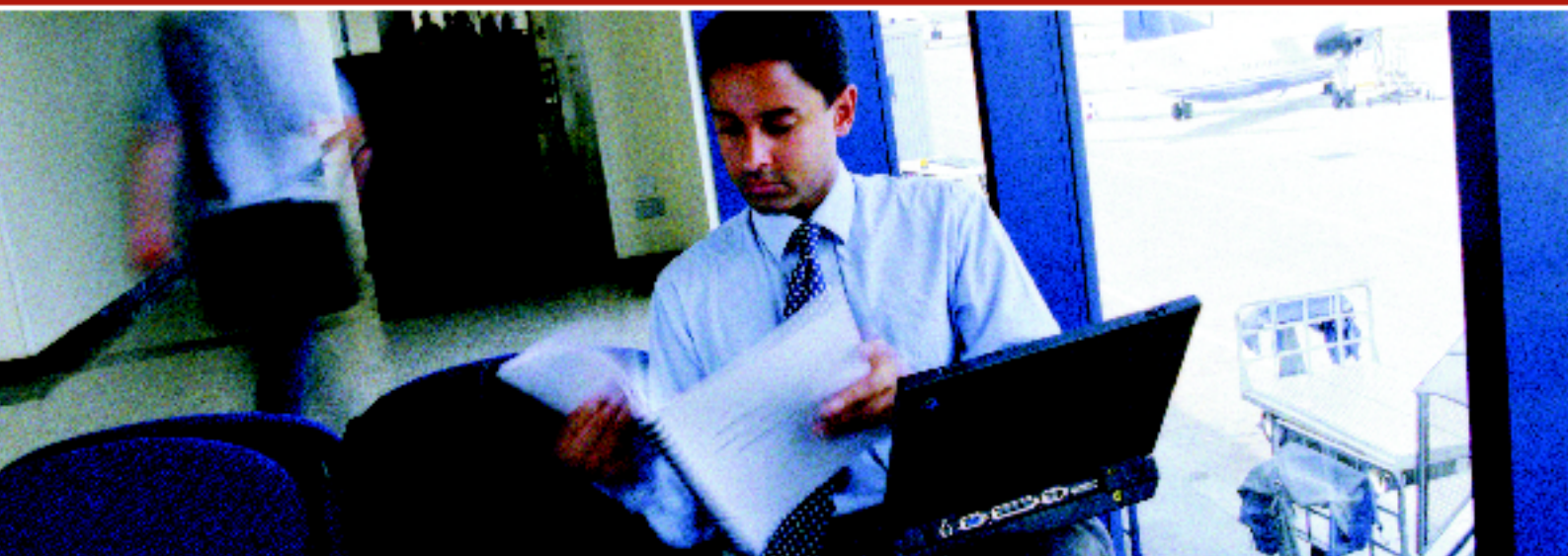
Applicants may be shortlisted on the basis of the information supplied on the application form. Application forms and full particulars may be obtained from the Reception Desk, Cork City Council, City Hall, Cork or alternatively, may be downloaded from Cork City Council's web site at: <http://www.corkcity.ie/recruitment>

Completed application forms must be returned to the Personnel Dept., Room 233, Cork City Council, City Hall, Cork, **not later than 5.00 p.m. on Friday, 16th September 2005.**

Candidates should note that interviews may be arranged within a very short time of the closing date.

**Cork City Council is an equal opportunities employer.**

# ALLEN & OVERY



## Launch your International Career

International Finance Lawyers – 2 to 6 Years  
London

Our award winning international finance practice spans twenty two countries across the globe. We can offer unrivalled opportunities and experience. These include secondments to client offices, first rate training and development, access to specialist know-how and the opportunity to work in a dynamic department, with a strong and supportive team ethos. We take investment in our people very seriously. Our core values reflect our commitment to our employees and clients alike.

Our finance teams, including derivatives, global loans, global securities, leveraged finance, structured and asset finance, restructuring and securitisation are currently looking to recruit finance lawyers with between two and six years of either broad based or specialist finance experience.

If you are a finance lawyer and are considering a career in London either now or in the next twelve months, we would like to hear from you.

Our partners will be in Dublin in October 2005 and look forward to meeting you.

If you would be interested in meeting us to learn more about our firm and opportunities, please contact Andrea Grossman at our exclusively retained consultants Garfield Robbins International on +44 (0) 20 417 1400 or email [andrea.grossman@garfieldrobbins.com](mailto:andrea.grossman@garfieldrobbins.com) for a confidential discussion. Please note that all direct or third party applications will be forwarded to Garfield Robbins International.

You can also visit our website: [www.allenoverly.com](http://www.allenoverly.com)

Allen & Overly means Allen & Overly LLP and/or its affiliated undertakings.

The term partner(s) used to refer to a member of Allen & Overly LLP or an employee or consultant of the equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overly LLP's affiliated undertakings.

**COMMERCIAL PROPERTY LAWYER x 5**

An excellent opportunity exists with a prestigious client. Experience in planning large property developments and devising appropriate legal structures for such developments, drafting and negotiating conditions of sale, advising on the terms and conditions and all planning and environmental issues including pre-contract and planning searches. At least 2 years PQE in large deal commercial property.

**CONVEYANCING SOLICITOR x 15**

A great opportunity for experienced conveyancers with 1-2 and 3-5 years PQE to join a number of reputable firms in Dublin city and greater Dublin areas. The right candidate will have strong client relationship skills and come from either an in-house or practice background.

**BANKING LAWYERS x 10**

This prestigious law firm is looking for Banking Lawyers with 1-2 or 3-5 years' PQE in banking, structured finance, asset finance, investment funds and corporate banking work. Working for one of the largest Banking and Financial Services Department in Ireland, advising domestic and international banks and financial institutions.

**EU REGULATORY & COMPETITION LAWYER**

Our client, a top Irish Law firm, is currently looking for EU Regulatory and Competition Lawyer. Working in a dynamic environment you will ideally have 3-5 years' PQE in EU, Regulatory and Competition Law. Advising on a range of public and private clients on EU, competition and regulatory law.

**INSURANCE LAWYER x 3**

An excellent opportunity exists for experienced insurance lawyers with a prestigious firm. You will ideally have at least 3 years PQE in insurance finance/alternative risk transfer. Must be able to work under pressure and to assist clients in structuring transactions, which are often complex and innovative.

**IN HOUSE OPPORTUNITIES DUBLIN**

We are seeking good in-house lawyers with at least 3yrs PQE in Litigation/Banking/Funds/Property. Excellent working environments and remuneration.

**LEGAL EXECUTIVES/PARALEGALS**

We are looking for experienced legal executives in conveyancing/litigation/banking/finance. At least 1 years experience.



For these and many other Legal Positions please contact Agnieszka Walbr walter@blueprintappointments.com or Shered Wallace swallace@blueprintappointments.com  
Tel: 00353 1 648 9900, Castle River House, 14 - 15 Parliament St., Dublin 2

[www.blueprintappointments.com](http://www.blueprintappointments.com)

## CORPORATE FINANCE LAWYER POSITION AVAILABLE

Corporate Finance lawyer required for high growth Investment Corporation based in Blackrock, Co. Dublin.

Candidate must have a minimum of four years solid corporate experience and a background in corporate finance law for multiple jurisdictions within the European Union.

Experience of the following is preferred: Mergers and Acquisitions, Venture Capital, Joint Ventures, MBO's, LBOs or MBI's, Fundraising, Deal structuring and Share and Asset Purchase Agreements.

Candidate must have strong communication skills, excellent drafting & negotiation skills, be able to hit the ground running and deliver within tight deadlines.

Salary commensurate with experience, offering excellent opportunities for career development & progression.

In this demanding role the successful candidate will work directly for the CEO and Shareholders on a range of National and International matters advising the shareholders on a range of projects and financial opportunities.

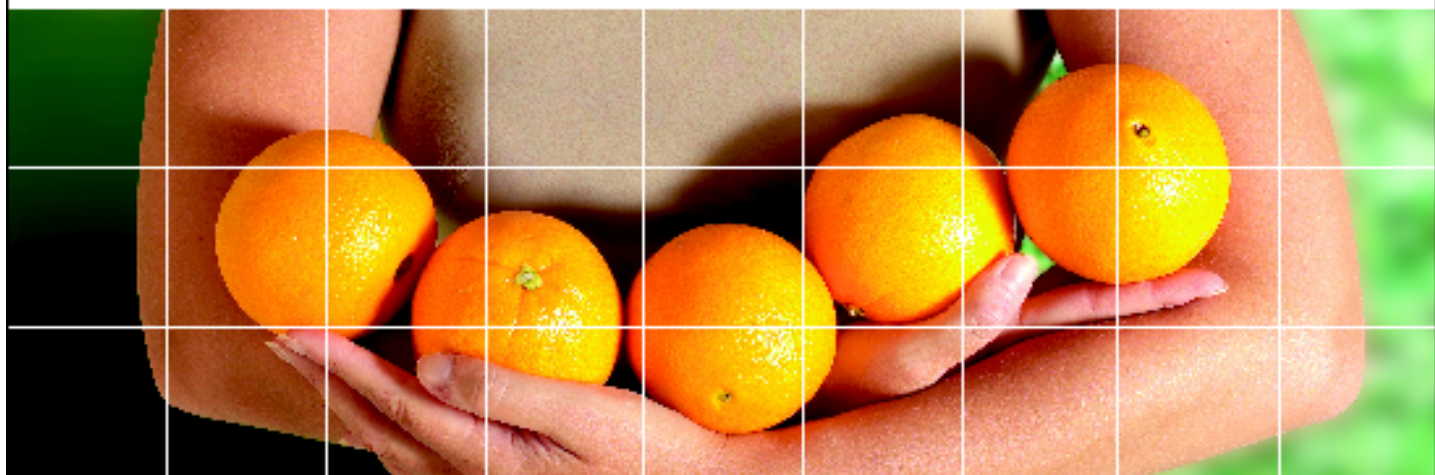
The candidate will be afforded the opportunity to be based in Dublin but travel to, Malta, Switzerland and Spain.

For a confidential discussion please contact our Director of Administration on 01 2121224 or via e-mail at [admin@investeurope.net](mailto:admin@investeurope.net).

[www.montaigneinvestments.com](http://www.montaigneinvestments.com) - "Investing in People"



# the pick of the crop



## offering you the best choice of legal careers

Robert Walters is a leading global legal recruitment specialist with 21 offices in 13 countries. Our Dublin legal and compliance division provides a high quality proactive and professional service in both the private practice and in-house markets.

### Private Practice

**Investment Funds 4-6 years' PQE Circa €110k + bonus**  
Major city law firm seeks a senior associate funds lawyer to join their high profile investment funds unit. Ideally you will have strong experience in setting up, listing and operating funds in Ireland and/or internationally. Experience in advising institutional clients and establishing alternative investment funds preferable. Exceptional opportunity to advance your career in one of Dublin's leading firms. Ref: JO117082

**Construction Lawyer 2-5 years' PQE Circa €100k**  
Highly regarded medium sized Dublin firm seek to appoint a construction lawyer with experience in drafting and negotiating construction contracts and sub-contracts as well as dispute resolution. Ideally you will have circa 2-5 years' PQE and be looking to develop your career in a progressive Dublin law firm. Ref: JO117091

**Banking Solicitor 2-4 years' PQE To €95k**  
Leading Dublin law firm with a reputation for excellence seek to appoint a well-presented solicitor to join their banking and financial services department. Ideally candidates will have relevant experience in either capital markets, corporate banking, aircraft and asset financing and/or banking regulatory work. Ref: JO125811

**Conveyancing Solicitor 2-3 years' PQE To €65k**  
Progressive mid-tier Dublin law firm seek to appoint a conveyancing solicitor to join their private client department. You will have circa 2-3 years' solid conveyancing experience with the desire to develop your career in a fast-moving and progressive Dublin firm. Some development experience is preferable but not essential. Ref: JO127029

**Pensions Solicitor 0-2 years' PQE To €60k**  
Leading Dublin law firm require a newly or recently qualified solicitor to join their pensions team. The successful candidate will be ambitious and hard working with excellent attention to detail, and will have trained with a large or medium sized Irish or UK firm. Experience in Irish pensions law is desirable but not essential; candidates with strong commercial and employment experience will be considered. Ref: JO127404

**Investment Funds HQ To €50k**  
Progressive law firm seek to appoint a newly or recently qualified solicitor to join their investment funds unit. The successful candidate will have trained in a large practice with a minimum of 6 months' funds experience. This is an excellent opportunity to advance your career in one of Ireland's leading firms. Ref: JO128229

**Tax Lawyer 1-2 years' PQE To €60k**  
Prominent Dublin firm seeks a qualified tax lawyer to provide innovative tax advice to the firm's individual clients and high net worth individuals. This will include tax and estate planning and wealth management strategy. Tax experience essential with a commitment to develop this interest further. Ref: JO119727

**Banking Lawyer 0-2 years' PQE To €60k**  
Major Dublin law firm require a newly or recently qualified solicitor to join their banking and financial services unit. Experience in syndicated lending, project finance, securitisation or corporate banking desirable. Ref: JO117398

### In-House

**Commercial Lawyer 3 years' PQE Circa €65k**  
Major IT company seek a commercial lawyer to join their growing legal services department in South Dublin. Ideally you will have 3 years' PQE with strong experience dealing with commercial issues, including drafting, reviewing and negotiating commercial contracts. Working knowledge of IT and eCommerce law an advantage. Ref: JO128644

**In-house Structured Finance Lawyer €Competitive**  
Leading corporate and trust service provider seeks a lawyer with European structured finance knowledge to work within their capital markets team. This exciting role will suit a lawyer with 2-5 years' PQE and European structured finance markets experience. European language would be an advantage. Ref: JO128644

If you are interested in these or any other legal opportunities, please send your curriculum vitae to Simon Allen: [simon.allen@robertwalters.com](mailto:simon.allen@robertwalters.com) or John Clarry: [john.clarry@robertwalters.com](mailto:john.clarry@robertwalters.com) or call (01) 8941111 and ask to speak to a consultant in the legal division.

[www.robertwalters.com](http://www.robertwalters.com)

ROBERT WALTERS

AUSTRALIA BELGIUM FRANCE HONG KONG IRELAND JAPAN LUXEMBOURG NETHERLANDS NEW ZEALAND SINGAPORE SOUTH AFRICA UK USA

Voted best legal recruitment firm 2005

At The Legal Panel we focus on recruiting experienced solicitors from newly qualified to partner level and pride ourselves on our confidential and personal approach. We listen carefully to your requirements and tailor our search to your skill set and career aspirations. All applications are strictly confidential. We are currently recruiting for a number of opportunities for experienced solicitors both in-house and in private practice.



*putting you in great company*

## IN-HOUSE

### European Counsel - Galway

Ref: SR14709 to €80,000

Reporting to the General Counsel in the US, you will draft and negotiate contracts, manage outside counsel, assist with corporate governance and regulatory issues and support business units. The ideal candidate will have 5-7 years' ppe and have a strong commercial background.

### Legal Advisor

Ref: AW14633 to €40,000

The role involves working on corporate compliance as well as contractual issues, liaison with international management and dealing with queries from European personnel. The successful candidate will be a business or legal graduate with 2-3 years' experience in a corporate environment.

### Listing Advisor

Ref: AW13681 to €50,000

A Listing Advisor is sought for one of the leading financial institutions to join their expanding team. The role includes the review and listing of prospectus and close liaison with international investment banks and advisors. The successful candidate will have 1-3 years' PQE, ideally in funds, investment or compliance.

### Company Lawyer

Ref: SR12507 to €75,000

You will be responsible for drafting letters, ISDA master agreements, reviewing fund documentation, liaising with IFSRA and other regulatory bodies for corporate governance and advising on security documentation. The ideal candidate will have 3-4 years' ppe from either private practice or financial services institution and have a strong academic background.

### Overseas

Ref: SR14655 €negotiable

We are currently recruiting for a number of positions both in-house and in private practice in locations like London, Bermuda, Dubai, Luxembourg and Australia. Please contact us directly to find out how you could boost your career by an overseas placement.

### Compliance Officer

Ref: AW14757 to €55,000

One of the leading insurance firms in Dublin is looking for a Compliance Officer. The role includes review of IFSRA legislation and the interpretation and implementation of these. You will deal closely with internal audit and monitor compliance policies and procedures. Ideally you will have legal or financial background, especially financial sales and experience in dealing with compliance issues.

## PRIVATE PRACTICE

### Company Secretary

Ref: AW14765 to €35,000

This leading practice is looking for someone to join their company secretarial department. Working closely in a team, you will ensure compliance of a portfolio of clients and provide application and registration documentation. The successful applicant will be part or fully ICSA qualified with excellent organisational and administrative skills.

### Banking

Ref: SR10515 to €80,000

Our client is a progressive top tier firm whose financial services department has a strong international reputation. Due to continued expansion they are seeking to appoint lawyers with 2-4 years' post qualification experience who have had exposure to securitisation, corporate banking, structured and asset finance and main stream banking.

### Commercial Property

Ref: SR12879 to €90,000

A top 5 practice firm is looking for senior solicitors with at least 5 years' experience in the areas of investment, taxation, commercial leases, lending, development, planning and environmental law. The successful candidate will ideally also have experience in construction law.

### Tax

Ref: SR14822 to €65,000

Working for a top tier legal firm you will advise on investment projects, finance transactions, M&A and litigation. Ideally you will be a qualified solicitor with 1-3 years' ppe with a strong academic background and good corporate/commercial experience.

### Corporate/Commercial

Ref: SR12073 to €75,000

A niche law firm are currently looking for a Solicitor with 2-4 years' relevant experience to join their commercial property/banking departments. The ideal candidate will work well on their own initiative as well as part of a successful team. This is an excellent opportunity to join a dynamic and growing Practice.

### Funds

Ref: SR10517 to €80,000

Our client is a top tier firm with a strong reputation for advising on the complete set up and operation on all types of funds both nationally and internationally. Their clients include international banks, fund administration organisations, global custodians, prime brokers and investment managers. Solicitors with 3-5 years' ppe will be considered.

For more information on these roles, please contact Sarah Randall or Allison Watson on (01) 637 7012 or email [sarah@thepanel.com](mailto:sarah@thepanel.com) or [allison@thepanel.com](mailto:allison@thepanel.com)

[www.thepanel.com](http://www.thepanel.com)