Law Society Gazette

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NATIONWIDE
News from around the country

CARLOW

The deadline approaches

The Carlow Bar Association is arranging special seminars to facilitate colleagues who still have ground to make up in reaching the required CPD points before the end of the year. "We have had a very good success rate with our seminars and they have been very helpful to us in practice," according to association president Peter Cody. They have also provided a social and fun element to practice, he said.

They are able to organise good seminars for €45 per attendee, with such speakers as local criminal law solicitor Breda Fleming, Peter Cody himself on commercial and residential conveyancing, and counsel Elaine Morgan and Eithne Hegarty. The focus is on areas of law that are helpful to the practitioners.

Word to the wise

But there is another serious reason to complete the full CPD requirements, according to Peter Cody. The annual application for practising certificates will contain a question on whether we have completed the required regimen. It is a self-certification system. So far, so good.

But – and it's quite a but – if we certify that we have attended courses and we have not, and cannot produce the certificates, then if a claim arises in the future for work done during the period of cover, the insurer might argue that all material facts had not been disclosed. "This is a potential danger that I think we should all be alert to at this early stage," he argued.

LOUTH

The beautiful game

To the north-east, the focus right now is on earthier matters, with Dundalk and Drogheda solicitors squaring off for their now annual soccer tussle. "An annual soccer match between the solicitors of both towns had been held for some years, but had lapsed. We restored it last year and will be holding this year's match in a few weeks," said Dundalk solicitor Niall Lavery. Niall, who is secretary of the Louth Bar Association, said that Drogheda are threatening to field Martin Mulligan and Paul Moore. But he will be taking the field along with colleagues such as Frank McDonnell, which would redress the balance.

"We also hope in future years to introduce a charitable dimension to the match and that it will be a fund-raiser for local charities," he added. The event has potential for development and they will be considering this in the new year.

PIC: JOHN SHEEHAN PHOTOGRAPHY

'SLAs' get down to brass tacks

Among those attending the AGM of the Southern Law Association in November were *(front row, l to r)*: Seán Durcan (Hon Treasurer SLA), Sinéad Behan (Vice-President SLA), Jerome O'Sullivan (President SLA), outgoing Law Society President Owen Binchy, Director General Ken Murphy and Joan Byrne (Hon Secretary SLA)

DUBLIN

CPD online

Arrangements are fast progressing in relation to the launch of CPD online. "This will be a unique offering from the Dublin Solicitors' Bar Association, not provided by any other service provider," according to Honorary Secretary Kevin O'Higgins.

Essentially, solicitors will be able to buy a disk that will carry a series of seminars that will enable them fulfill, either in whole or in part, their CPD requirements at a time and a venue of their choosing. "We know from talking to colleagues both in large offices and in smaller offices that this new service will fulfill a particular need and, for some, avoid the trouble and hassle of getting to and from seminars," he added.

However, insofar as is possible, the DSBA would always encourage colleagues to meet and congregate together in a seminar environment, as we very much value the interaction between colleagues.

New line out

The new team assisting the DSBA's new president seems to contain a judicious mix of experience and energy. Fresh faces include Aaron McKenna, who will chair the DSBA's Litigation Committee, Aine Burke, who will head the Probate and Taxation Committee, and John Hogan, who will chair the Younger Members Committee.

The other newly appointed committee chairs announced by incoming president Brian Gallagher are: conveyancing, Geraldine Kelly; family law, Keith Walsh; business and commercial law, Pauline O'Donovan; seminars, John O'Malley; website and technology, John Glynn; and social, Helene Coffey. Stuart Gilhooly will continue his lively editorship of the very professionally produced *Parchment*.

Adios and many thanks

A dinner recently marked the DSBA presidency of Orla Coyne. The black-tie event was attended by all her council colleagues and several former presidents of the association, and included High Court judges Mr Justice Michael Moriarty, Mr Justice Peter Kelly and Mr Justice Michael Peart. Judge Groarke was also in attendance.

Brian Gallagher spoke warmly of Orla's contribution to the association, which, among many things, included spearheading the launch of the residential tenancy agreement publication, the emergence of CPD online and the successful conference in Buenos Aires.

LAOIS

New year, new job

Well-known Mountmellick practitioner John Fetherstonhaugh, who qualified in 1977, has been appointed county registrar for Laois and is expected to take up the post in January. He replaces James Cahill, who was a well-respected holder of the post. The Laois Solicitors' Association will be marking the new appointment in the new year. G

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

New officer team takes helm

The Law Society has elected a new council and new officer team. The new president is Michael G Irvine, who serves for the next year. Michael was deemed elected to the post after serving as senior vice-president last year. Philip M Joyce was elected senior vice-president for 2005/06, while Gerard J Doherty becomes junior vice-president. The number of valid voting papers was 2,816, with only one spoiled vote being recorded, though 47 papers failed to comply with various sub-sections of bye-law 6(16). The following members were elected to the Law Society Council following the recent ballot (the number of votes appears after each name):

1)	John D Shaw	1,588
2)	John O'Connor	1,551
3)	Kevin D O'Higgins	1,545
4)	Stuart Gilhooly	1,508
5)	Michele O'Boyle	1,351
6)	John Costello	1,289
7)	James O'Sullivan	1,276
8)	James Cahill	1,254
9)	Moya Quinlan	1,240
10)	Paul E Connellan	1,177
11)	Marie Quirke	1,162
12)	Thomas Murran	1,126
13)	Niall Farrell	1,076
14)	Jarlath McInerney	1,022
15)	Joseph B Mannix	905

The new officer team at the Law Society *(l to r):* Gerard J Doherty, president Michael G Irvine and Philip M Joyce

The following candidates were not elected:

16)	Edward C Hughes	882
17)	Patrick Crowley	624
18)	TC Gerard O'Mahony	366

As there was only one candidate nominated for each of the two relevant provinces (Connaught and Munster), there was no election. The candidate nominated in each instance was returned unopposed, as follows: Connaught – Rosemarie J Loftus; Munster – Eamon O'Brien.

Council members are elected for a two-year term. The sitting council members who were elected last year are: Michael G Irvine, Donald Binchy, James B McCourt, Gerard F Griffin, Fiona Twomey, Anne Colley, Gerard J Doherty, John P Shaw, Simon J Murphy, Orla Coyne, Michael Quinlan, James MacGuill, Michelle Ní Longáin, Philip M Joyce, Daniel E O'Connor, Colin Daly, Andrew J Cody (Leinster) and Margaret M Mulrine (Ulster).

Significant gender pay gap for Scots

New research by the Law Society of Scotland and the Equal Opportunities Commission (EOC) shows a steadily increasing difference in pay according to gender. It reaches its highest level at between 21 and 25 years after qualifying – a 42% gap in favour of men.

But Linda Urquhart, chief executive of Edinburgh-based law firm, Morton Fraser, who is the first female managing partner of a law firm in Scotland, says she's "disappointed" with the study's revelations. She disputes that the pay gap at the top level is as high as 42%, but says it's disappointing that there should be any difference at all. "The profession needs to look closely at that."

The Law Society of Scotland and EOC claim their study is the biggest survey of its kind. There was a response from one-quarter of Scotland's 10,000 solicitors. (The poll was restricted to women practitioners.) It examines work-life balance, the nature of work and pay.

SECTIONS 15 AND 16 OF THE *CIVIL LIABILITY & COURTS ACT 2004*

In an article titled 'The Cost of Saying No', which appeared in the November 2005 issue of the *Gazette* (p28), it was incorrectly stated that sections 15 and 16 of the *Civil Liability & Courts Act 2004* passed into English law on 31 March 2005. This should, of course, have stated that the *Civil Liability & Courts Act 2004* is an Irish act, and came into effect on 31 March 2005.

PRIZE BOND WINNERS 2005

The winners of the Law Society's prize-bond draw were: Michael G Cody & Patrick J Cody, Co Carlow; Finbarr O'Reilly (decd) Dublin 2; BV Hoey, Co Louth; Niall Quirk, Co Tipperary; Patrick J Kevans, Dublin 6; Patricia Heffernan, Dublin 2; Michael & Patrick Moran, Co Mayo; Joseph T Deane, Dublin 2; Sean T Kennedy, Co Monaghan; H Nathniel Healy, Co Wicklow; Leo J Loftus, Co Mayo.

NEW LAW SOCIETY LIBRARY OPENING HOURS

The Law Society Library has announced new opening hours: 8.30am-10pm (Monday to Friday) during the months of December 2005 to May 2006 (inclusive). Contact the library at: tel: 01 672 4843/4; fax: 01 672 4845; email: library@lawsociety.ie. The online catalogue can be accessed at: www.lawsociety.ie (members' area).

EELA AWARD

The European Employment Lawyers Association (EELA) is an unincorporated association, established under German law. It has established an annual prize of €5,000 as a means of providing support for law students or practising lawyers who have been qualified for less than five years, aspiring to a career in labour and employment law.

More information can be found at: www.eela.org

RETIREMENT TRUST SCHEME

Unit prices: 1 November 2005
Managed fund: €5.15494
All-Equity fund: €1.17927
Cash fund: €2.62082
Long bond fund: €1.35238

GAZETTE CHRISTMAS PUBLICATION

As usual, the *Gazette* will be taking a break over the Christmas period, so there will be no issue in January. Normal publication will resume with a joint January/February issue, due out in early February.

Support Services Task Force d

The Support Services Task Force has delivered its report to the Law Society Council. The task force was originally established in December 2003 by then President of the Law Society Gerard Griffin in order to review support services for Law Society members. Olive Braiden was appointed as the independent chairperson.

The main focus of the report was to carry out a survey of solicitors in order to clearly identify the needs of the average solicitor.

More Law Society support services for members

First step

It was decided that an essential first step before the Law Society could undertake a review of existing services, or establish a programme of new services, would be to speak to solicitors directly and ask them for their views. The decision was taken to survey the members. The main aims of the survey were:

- To identify the problems that the average solicitor has in his/her practice situation,
- To review the effectiveness of the existing support services provided by the Law Society and others,
- To identify any new services that would assist solicitors.

A professional researcher, Hilary Clarke BSc MPhil, was commissioned to devise a questionnaire based on the task force's recommendations and to analyse the findings. This was the first time a survey of this nature and on this scale was carried out by the Law Society.

The task force membership comprised: Olive Braiden, Therese Clarke, Geraldine Clarke, Tom Murran, John O'Connor, Michael Irvine, Moya Quinlan, Marie Watters, Ken Murphy and Sean Sexton.

There was a 19% response rate – considerably higher than the average 10% response for this type of survey. In addition, a large number of solicitors took the opportunity provided by the questionnaire to add their own comments in relation to each of the services. They also made suggestions for new services.

Recommendations

Based on the findings of the survey, the task force has made the following three recommendations:

1) A directory of all the services provided by the Law Society and other agencies should be compiled. Contact details should be included. An updated version of the directory should be issued to every solicitor on an annual basis.
2) An information executive should be appointed within the Law Society. This person will be available to members who contact the Law Society seeking assistance – but who are unaware of the appropriate service or person to contact. The executive should have a designated phone line and email.

   However, the task force recognises that, prior to any such appointment being made, it will be necessary to undertake a study of communication models in comparable organisations.
3) The Law Society should make more CPD seminars available on the topics of management and professional development. The needs of managing partners, sole practitioners and assistant solicitors in relation to these topics should all be distinguished and specific seminars geared to the different groups should be provided.

ONE TO WATCH: NEW LEGISLATION

Disability Act 2005

This act was signed into law on 8 July 2005 and much of it was commenced by SI 474 of 2005. Readers will be familiar with the controversy over judicial enforcement of rights under the act, which shadowed its publication by the government and passage through the Oireachtas. The government prevailed, and if a person does not agree with the assessment or service received, he or she is provided with a non-judicial course of remedies and an appeal to the High Court on a point of law only. Another controversial aspect of the act is the restrictive definition of disability.

Much of the act came into effect on 29 July 2005, and another tranche is due to come into effect by 1 January 2006. For the sake of simplicity, this summary makes no distinction.

Allocation of resources

Part 1 contains section 5, which guards against a minister, the executive or a service-providing body being forced to allocate funds to a service, which are in addition to an allocation already decided. Any initial allocation must have regard to other obligations and requirements for money. Section 6 provides for a review of the act's operation after five years.

Assessment of need

Part 2 concerns assessment of need, service statements and redress, and no date has yet been set for its implementation. There will have to be considerable consultation with the Health Service Executive before procedures are put in place. In relation to individual cases and potential clients, it is the core of the act. The limitation on access to the courts to seek to enforce the provision of services is not yet in place.

Much of part 3 is already in force, or about to be. It concerns access to buildings and services, and sectoral plans. Public bodies are required to ensure by degrees, and before 2015, that public buildings (including heritage sites where possible) and services are accessible to people with disabilities. They are required to integrate disability services with mainstream services where possible and appropriate, and are required to have staff with expertise and skills to ensure this. Public bodies are required, as far as practicable, to accommodate hearing-impaired, visually-impaired

elivers report

The survey demonstrated that awareness of the services provided by the Law Society varied widely. Solicitors were fully aware of some services, but most had never heard of others. Members had lots of new ideas for projects and services. These will be extremely useful for future planning of services.

Interestingly, many solicitors made suggestions for services that are already in place. They were unaware of the service either because no information, or insufficient information, had been made available by the Law Society about the service. The task force said: "It is clear that this information deficit must be addressed as a matter of priority."

In other instances, it was disappointing to note that, although particular services were well publicised, some solicitors were unaware of them.

TERMS OF REFERENCE

- To review the support services currently provided by the Law Society and others for solicitors and trainee solicitors,
- To assess best practice in other relevant organisations and to identify further support services that might be provided to solicitors and trainee solicitors,
- To make recommendations regarding the most effective means of delivering support services to solicitors and trainee solicitors.

Representational role

There was no serious questioning of the necessity for regulation, but many solicitors wished to see equal emphasis placed on the society's representational role, with every effort being made to ensure that it is as effective as the regulatory role.

Chairperson of the Task Force, Olive Braiden, thanked all respondents for their input. "A particular feature of the response was the number of solicitors who illustrated their responses with additional statements," she said. "I am very grateful to each of these solicitors, because their views have brought the data to life for us and have given us invaluable insights."

and intellectually disabled people to facilitate access to information. Compliance with an approved code will be deemed to be compliance with the requirements of the act.

Ministers of six key sectors (health and children; social and family affairs; transport; communications, marine and natural resources; environment, heritage and local government; and enterprise, trade and employment) are required to prepare plans on service provision for people with disabilities. Detailed requirements for the plans are set out, and include information that solicitors may wish to establish for clients, such as the criteria governing the eligibility of disabled persons for services under the *Health Acts* and the *Social Welfare Acts*. Public bodies are to have inquiry officers to deal with complaints. Procedures for this are to be set down, and the inquiry officers are to be independent. They are required to investigate complaints and make reports that may include remedial steps to be taken. The inquiry officers are subject to review by the ombudsman.

Part 4 limits the use of genetic data in general and prohibits genetic testing in relation to employment (subject to prior checking with the Data Protection Commissioner), insurance and life assurance policies, pensions and mortgages. Processing of genetic data is subject to safeguards, including the subject's informed consent, and incurs criminal liability if the safeguards are breached. Forensic genetic testing for criminal investigations is exempted.

Public service

Part 5 provides for employment of persons with disabilities in the public service and provides for targets of 3% unless otherwise specified. The Defence Forces, gardaí and prison officers are exempt from this requirement. Compliance is to be secured by annual reports made by public bodies to a government monitoring committee, which will report to the NDA and the government. Codes of practice may be prepared by the NDA (after consultation) and approved by the relevant minister to assist in achieving the employment of people with disabilities. G

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

Law Society refers 11 solicitors firms to Disciplinary Tribunal in RIRB cases

Eleven firms of solicitors have been referred by the Law Society to the Solicitors Disciplinary Tribunal for inquiry in relation to their conduct in Redress Board cases. Investigations into the actions of these firms relate to 20 individual complaints made by members of the public to the Law Society.

In an analysis published on 18 November, 145 complaints had been received on the Law Society helpline. Helpline numbers were established on 14 October in Ireland and Britain to assist applicants to the Residential Institutions Redress Board (RIRB) who wished to complain about solicitors charging legal fees above and beyond the costs and expenses paid directly to the solicitor by the Board.

As of 18 November, 66% of all complaints received (that is, 96 complaints) had already been dealt with before special sittings of the Society's Complaints Committee. The remainder will be dealt with by mid-December. The Complaints Committee has reached decisions on 69 complaints. The hearings of 27 complaints have been adjourned for various good reasons, usually the necessity to make further enquiries.

The helplines continue to remain open at 1800-242631 (for calls from the Republic of Ireland), and 0800-0390079 (for calls from Britain and Northern Ireland).

As soon as the Law Society receives a complaint, it writes to the solicitor against whom the complaint has been made, requiring him or her to attend a specific scheduled meeting of the Society's Complaints and Client Relations Committee. The solicitor is then required to bring to the meeting their file, including all documentation relevant to the case.

President of the High Court, Mr Justice Joseph Finnegan

The Complaints Committee comprises both solicitors and non-lawyer members. The non-lawyer members are nominated by IBEC, by the Irish Congress of Trade Unions, and by the Director of Consumer Affairs. All Committee decisions in the cases heard to date have been unanimous.

The Complaints Committee has the statutory power to require solicitors to make refunds of any excessive fees to their clients. It also has the power to refer cases to the Solicitors Disciplinary Tribunal, where an inquiry into the conduct of a solicitor can be carried out.

The Solicitors' Disciplinary Tribunal is appointed by, and reports to, the President of the High Court. One-third of its members are nominated by the Minister for Justice, Equality and Law Reform.

It is not the Law Society but the Solicitors Disciplinary Tribunal (in less serious cases) and the President of the High Court (in the most serious cases) who have the power to apply a range of disciplinary sanctions, as appropriate on a case-by-case basis, where misconduct has been found by the Solicitors Disciplinary Tribunal. The range of disciplinary sanctions includes fines, suspension of the right to practise and striking off the Roll of Solicitors.

It has been the Law Society's policy for many years that, wherever there is a finding of misconduct by the Solicitors Disciplinary Tribunal, full details of the finding are published, including the name and address of the solicitor. Publication is made in the *Law Society Gazette*, which is sent to the media and available to the public in Easons.

In relation to 20 complaints, the committee's decision has been to uphold the complaint and refer the case to the Solicitors Disciplinary Tribunal. In each of these cases, the committee has required the solicitor to make a refund of fees to their client with interest and without delay. In many of the cases, such refunds had already been made by the solicitor between the solicitor's receipt of the initial letter from the Law Society and the date of the hearing by the Complaints Committee. The society is checking with the client in each case to obtain confirmation of receipt and the amount of the repayment.

In relation to 49 complaints, the committee's decision has been that no referral to the Solicitors Disciplinary Tribunal has been warranted. In relation to 24 complaints, the committee found on the basis of its review of the evidence that, in fact, no deduction or additional charge had been made by the solicitor. The complaining client is being informed of this by the society and is being asked for confirmation that the matter may now be considered closed.

In 15 cases, the committee found that the complaint should not be upheld because the deduction was justified. Usually, this related to the fees paid to medical practitioners for psychiatric or other medical reports necessary for the case – the cost of which was not recovered from the Redress Board.

The Redress Board has a policy of generally paying only €400 in respect of such reports, other than in exceptional circumstances, which it has not defined. Many medical practitioners in Ireland and Britain require amounts greater than €400 to be paid in advance for these reports. Another reason for which deductions from a Redress Board award would be justified is because, at the request of the client and for their benefit, the solicitor had given a letter of undertaking to a financial institution to repay out of the award a loan which the client had previously taken out from the financial institution.

In a separate and complementary line of investigation, the Law Society is sending detailed questions in writing to every firm of solicitors who has ever acted for a claimant in a Redress Board case in which the board has made an award to date.

JUDGE CARROLL RETIRES

The first woman to be appointed to the High Court has retired after serving 25 years on the bench. The Hon. Miss Justice Mella Carroll was the longest-serving judge of the High Court. On her final day, she joked that, "following a career of 48 years – 25 spent as a High Court Judge – at 71, I am taking early retirement"!

Adverse possession and property rights: *JA Pye (Oxford) Ltd v UK*

Alma Clissmann reports on developments in relation to the practical application of the *European Convention on Human Rights*

An unusual application of human rights law has arisen in a case involving the acquisition of title to land by adverse possession. The *Pye* decision means that we will have to rethink the law of adverse possession in two respects:

- The procedures involved in someone acquiring such title, to enable the registered owner to be notified of the risk of losing his title in sufficient time for him to protect it, and
- The question of compensation for land acquired through squatters' rights.

Prior to the 15 November judgment in the *Pye* case, the Chancery Division of the English High Court had come to a similar conclusion in *Beaulane v Palmer* ([2005] 4 All ER 461) last March. In that case, which arose after the *Human Rights Act 1998* (HRA) came into effect in October 2002, the judge held that the law had to be interpreted to give effect to the ECHR. He held that the arguments justifying the acquisition of title by adverse possession did not apply to registered land, where title is based on registration rather than possession. In these circumstances, it was necessary to reinterpret the law. He interpreted s75 of the *Land Registration Act 1925* as being only applicable to cases in which the trespasser established 'possession' in accordance with the case law as it stood in 1925. This involved behaviour by the squatter that was inconsistent with the use of the land by the registered owner. As Palmer's use in this case was not inconsistent with Beaulane's use, his possession was not adverse and his claim to title failed.

In *Pye*, which was initiated prior to the coming into effect of the HRA, the European Court of Human Rights held by four votes to three that there had been a violation of article 1 of protocol 1 of the ECHR (see panel).

Pye was the registered owner of 23 hectares of agricultural land and had let the land to the Grahams for grazing until 1983. Pye wished to develop the land and refused to renew the grazing agreement, but the Grahams continued to use it. In 1997, Graham claimed adverse possession on the basis of the *Limitation Act 1980*, which excludes actions for recovery of land after 12 years of adverse possession, and the *Land Registration Act 1925*, which provided that the registered owner held the land in trust for the squatter after the 12-year period.

In 2002, the *Land Registration Act* was passed, which now enables the squatter to apply to be registered as owner after ten years' adverse possession and requires the owner to be notified. The owner then has two years in which to evict the squatter or regularise the situation, failing which the squatter is entitled to be registered. This implicit recognition that the previous law was unjust was taken into account by the Strasbourg court.

The ECtHR noted that it was the legislative provisions in Britain that deprived Pye of its land, as, in their absence, it would not have lost its ownership. It took the view that the operation of the two statutes constituted interference with the applicant's rights under protocol 1, article 1.

Granting a squatter title to land on the basis of adverse possession could be justified where there was no system of land registration, in order to avoid protracted uncertainty about ownership. This did not apply where there was a system of land registration. The court found it difficult to see the justification for this legal rule where the result was so unjust. The court noted that many common law jurisdictions had either abolished adverse possession or had substantially restricted its effects. The fact that the law was continued by the 2002 act, however, meant that it could not be dismissed as having no public interest.

Proportionality

The court considered whether the 12-year period, the known state of the law, the relatively simple course open to Pye to defend its title, the lack of care shown by Pye and its advisers and the loss of title to the land could be fairly balanced against any legitimate public interest. The loss was exceptionally severe, as Pye received no compensation, and this could only be justified in exceptional circumstances. The court noted the lack of procedural protection, and that no notification was required to be given to Pye during the 12-year period to alert it to the risk.

The British Government argued that it had no duty to protect a person against his own negligence. The court considered that such negligence would not have mattered but for the statutory provisions. And further, parliament itself had recognised the unsatisfactory procedural protections by enacting the 2002 act. While a change in the law in itself did not necessarily mean that the previous system was inconsistent with the ECHR, in judging the proportionality of the law in relation to the applicant, it was something to which the court would attach particular weight. The court concluded that the 1925 and 1980 acts imposed on Pye an individual and excessive burden and upset the fair balance between the public interest on the one hand, and the applicant's right to the peaceful enjoyment of its property on the other. G

ARTICLE 1 OF PROTOCOL 1 OF THE ECHR

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

"The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

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

Time to treat the dry rot in the

The justice minister will need to think beyond the new report on the auctioneering industry if the issues of 'guide prices', gazumping, and other problems in the Irish property market are to be addressed, argues Pat Igoe

The eagerly awaited report on the auctioneering industry has been presented to the Minister for Justice, Equality and Law Reform, Michael McDowell. Any dust that the report may have generated has now well and truly settled again. Hopefully, just for now.

So will it make any real difference to the way that the property market in Ireland operates? There is a lot of frustration and unnecessary disappointment among buyers and sellers out there. Enter Mr McDowell and the promised draft legislation. Buying and selling a house in Ireland can be difficult and dangerous for clients. It is easy enough to make an expensive mistake without the help offered by some auctioneers and estate agents. But now all of this is about to change. Or is it?

At least there will be an independent regulatory authority to oversee auctioneers. But any serious reform of the auctioneering industry and the buying and selling of property in Ireland will turn, firstly, on the terms of reference of this new body. Will it be given real, as opposed to illusory, authority? Who will fund it and who will be appointed to it?

Bricks and mortar

The report is honest. It is well intentioned. It makes 42 recommendations. And it has been welcomed by the two main bodies of auctioneers. The chief executives of the two main auctioneering bodies were members of the working group that produced the report.

Buying or selling a house is essentially a matter of contract. It is at an intersection of law and economics, where the market is not as open, free and transparent as it ideally should be. With new properties, it is not an equal meeting between buyer and seller. Buying and selling property is not a stress-free zone. But the law could surely make it less so. Clearly, it is because it is fraught with difficulty, with high stakes for most people, that it's all the more important that the market be assisted by the law in operating efficiently, transparently and fairly.

A 'home information pack' could have saved the buyer of this house a lot of trouble

The recommendations of the working group, which was chaired by long-standing public servant Alan McCarthy, can be divided into two categories – recommendations that seek at least some degree of supervision and control over auctioneers on the one hand, and a complaints and disciplinary procedure for when things go wrong. The effectiveness of the recommendations will critically depend on the drafting of the legislation and whether it provides for meaningful supervision and real sanctions for what are often perceived as sharp practices against would-be buyers.

Just some of the complaints include:

- Guide prices that are a nonsense,
- People paying for surveys and arranging for mortgages when they get nowhere close to buying the property,
- Gazumping,
- Lack of clarity, and
- Lack of accountability.

Not all of these can be blamed on greedy vendors.

Recommendations suggest that the regulatory body would be responsible for increasing consumer awareness about the sector and that it should require all auctioneers to issue "an appropriate letter of engagement to clients". Statutory section-68-type letters, perhaps?

Shaky foundations

The weakness of the report is threefold. Firstly, the initial terms of reference for the working group were arguably too narrow and did not encourage a fundamental examination of contract law, which might make a difference to how the buying and selling of property is operated in Ireland. Secondly, it is a report from a working group to the minister for justice, equality and law reform. Thirdly, it is aspirational. It is not a lengthy report and does not consider the fundamentals of the contractual nature of the Irish property market, as would probably have been the case, for example, in a report on land contract law from the Law Reform Commission.

One major frustration in the Irish property market is the large number of title checks by solicitors, and surveys by architects and surveyors – week after week – for buyers who are unsuccessful in buying the properties. It is clearly wasteful, time-consuming and expensive. This is set to continue.

Significantly, the report does suggest to Minister McDowell that "the buyer is entitled to assume that particulars provided to them are, by and large, accurate". But the report does not go on to recommend that material in estate agents' literature should be legally binding on the vendor. It can be argued, however, that the report is showing the way. It is up to the minister to give recommendations on legal effectiveness.

Woodworm

Usually, both for existing and new properties, an estate agent's literature contains a disclaimer that claims about a property have no legal effect. Also, contracts drafted by solicitors for builders usually provide that the estate agent's literature – promises and so forth – have no legal effect whatsoever. But if statements by auctioneers cannot be stood over, should they be said or written in the first place?

The report suggests a 'wait-and-see' approach to how what a so-called 'home information pack' (which house-sellers in

Irish property market

England will be obliged to furnish to prospective buyers from 2007) works out. It will provide basic details of the house being sold. It may be legally binding. Such a pack, with basic information on title, the planning history of the house, and advising of problems such as perhaps dry rot or woodworm, can at least help to redress what is sometimes a very uneven match between vendor and auctioneer on the one hand, and buyer on the other. The alternative at the moment is to hope that the buyer's survey will see the problems before it is too late.

The aspirational aspects of the report are clear. Replacing a 'guide price' with an 'advised minimum value' can only be effective if there is meaningful sanction for a sale price being significantly above the 'advised minimum value'. This is where the legislation will be relevant or irrelevant.

Raising the roof

Will the legislation examine the relationship between the 'advised minimum price' and the 'reserve price'? Perhaps the 'reserve price' might be re-named the 'real minimum price'.

SURVEYORS' REPORT

The recommendations of the *McCarthy Report* include:

- The establishment of a regulatory authority for auctioneers and estate agents;
- The regulatory authority, rather than the District Court, should issue licences to auctioneers;
- There should be a 'fitness and probity' test for applicants and applicants should be required to disclose any criminal record;
- All auctioneers should be obliged to contribute to a 'fidelity fund' to compensate injured parties;
- An auctioneers' code of ethics should be drawn-up;
- The regulatory authority should 'review' the case for 'seller packs' for would-be buyers;
- Auctioneers should issue 'letters of engagement' to their clients;
- The regulatory authority should require auctioneers to give an indication of their absolute fee, and not just quote a percentage.

Significantly, the report does acknowledge that "it is not always so simple for many people to find accurate, objective, easily understandable information that will help them to educate themselves as fully as they should". Often, "they will have to rely on incomplete advice from interested parties". The parliamentary draftsman's office could have a role in this, too. Consideration might even be given in private treaty sales to the continental civil law provision of including a seven-day 'cooling off' period.

One recommendation is missing – a fundamental review of the law relating to the selling of property in Ireland. The current legislation dates back to the *Auctioneers and House Agents Act 1947*. It was amended in minor matters in 1967 and 1973, when the licence bond required for all auctioneers was set at Stg£10,000 or some €12,700 – which it still stands at today.

The auctioneering business is, and will remain, open to anyone who has not got a criminal record and is regarded by the local District Court as "a fit and proper person" to be an auctioneer.

Snag list

The property market in Ireland has changed radically since 1947. Massive sums are involved and pass through the hands of solicitors and auctioneers. But the law has not kept pace.

The minister for justice and his advisors will need to think beyond this report if the issues of guide prices, advised minimum values, gazumping, unnecessary surveys, auctioneers' fees, and the frustrating lack of clarity and openness in the Irish property market are to be addressed.

The report, which was produced by a 14-person working group including four civil servants and representatives of the two main auctioneering bodies, acknowledged that the law is "outdated, inappropriate and inadequate for the present-day market in Ireland". The report is on the minister's desk. It is a helpful first step. The rest is up to the minister and his parliamentary draftsmen. We await developments. G

Pat Igoe is principal of the Dublin law firm Patrick Igoe & Co.

Letters

'Arrogant and oppressive force'

From: Sean O'Ceallaigh & Co, Dublin 7

We would all agree that this has not been a very good year for the profession. Yes, some of our own have let us down – as happens in all walks of life – in the government, the church, other professions.

There are those in the media, however, who are blowing matters out of all proportion and who continue to hound and harry us with ghoulish glee.

It is rather strange that when our ancient and honourable profession is being bled before our eyes, only 1% of us troubled to attend this year's AGM.

Yes, we do need to get our house in order – to discipline our errant members. But we also need to confront and challenge those in the media who are fast becoming the new 'arrogant and oppressive force' of our land.

May I suggest to our Council that, when sending the licence-renewal papers to us in January, they invite us to complete a separate form with our suggestions and a statement pledging our support for them in their efforts to stem the tide of unjust criticism and to continue to serve us and our profession well.

Ní neart go cur le céile.

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Voiceless on the periphery!

I read the article in the October 2005 issue of the *Law Society Gazette* from the Law Society's Guidance and Ethics committee in relation to 'Emergency Exits'.

As ever, I am in awe of the parochial vision taken by the Law Society in relation to the contribution of staff who are not solicitors to the effective running of practices up and down the length and breadth of this country. Nowhere in the article is it mentioned about the steps to be taken in protecting employees in relation to 'emergency exits', and the difficulties faced by them when they lose not only a co-worker but also their job.

While the stand of the Law Society is that the practice is under the control and supervision of the holder of a current practising certificate, the stark reality is that many, many practices are effectively run by staff who are not solicitors, especially and more particularly where the practice is a 'one-man band'.

The Law Society has never publicly acknowledged, for obvious reasons, the immense contribution of staff who are not solicitors. This would be contrary to the belief that the knowledge only belongs to those who possess a practising certificate. Moreover, in recent times when members were polled in relation to the payment of maternity benefits for solicitors while out on maternity leave, it excluded other staff without practising certificates.

In anyone's language this is not celebrating the contribution of other staff, whom I may add, often bring in many times their annual income in fees and who also may be the breadwinners of the family unit. It would be quite intolerable for me if I were to have a child and obtain benefits from social welfare, but a solicitor would be able to obtain her full pay. Would this be fair and equitable in your view?

If the Law Society is truly committed to the implementation of best practice, it needs to embrace and acknowledge the enormous contribution of support staff, including secretaries, apprentices, law clerks and legal executives etc.

The Law Society, as a national organisation, needs to acknowledge the contribution of all staff in legal practices and that practices are not only comprised of 'the certificate-bearing solicitor'. There are a number of progressive practices that do treat staff with respect and do not have any difficulty with parity of treatment and contribution acknowledgement. Naturally, these are the practices with high rates of staff satisfaction and retention and who tend to have a unique cohesion between public and staff.

This letter may seem like a tirade, and that really is not my intention, but it is a measure of the growing sense of isolation and frustration felt by key personnel in legal practices who go unacknowledged by a national organisation charged with best practice in the legal profession.

Of necessity, I feel compelled to exclude my personal details from this communication, for I have no doubt that it would be detrimental to me personally and to the practice in which I work for being so bold as to highlight a deficiency in the system. I would, however, challenge you to include this in your next *Gazette*, as I have no doubt whatsoever that you will get a response in relation to it and, indeed, it may cause solicitors to re-examine their methods of practise and to identify the needs of all staff who contribute to the practice.

(Challenge duly accepted! All views on this letter are most welcome – The Editor)

'Staggering condition' of non-jury list

From: Angela McCarthy, Michael Powell & Co, Cork

It may be that not many solicitors' firms are concerned with this problem, or sufficiently concerned to put pen to paper, but I have not seen or read of any real effort or pressure being brought to bear in relation to the staggering condition of the 'non-jury list'. There must, however, be a considerable number who should be concerned with it.

There are, as I write, 286 cases awaiting trial, which have been certified as ready for trial. (Call-over of non-jury certified list, 8 November 2005. I am obviously not addressing any of those in which notice of trial has been served, but not yet certified.) This issue, therefore, should concern an average of approximately 400 firms of solicitors, allowing for duplication.

The position is that, on the call-over of the non-jury certified list on 27 July 2005 to fix dates, the master list scheduled 232 cases. On the 8 November call-over, there were 293 cases certified ready, an increase of 61 cases. Only six of those certified cases were disposed of in October.

One of the many reasons for this is that the non-jury judge's time is taken up mostly with motions, which last for one or two days on average. There were 108 motions listed in July and 128 motions in November. Only 20 of those motions listed in July were disposed of in October.

Not wishing to bore you with figures, the pattern over the last six months is that the motion list is clearing only about 20 a month and the trial list only about six a month. The trial list, however, is increasing by about 50 a month and the motion list is increasing by 25 to 30 a month.

What can be done about this escalating delay? (Where a case was certified for trial last July, the current projection on this clearance rate would be that it would not go for trial until the Michaelmas term of 2009.) There was a time, not so very long ago, that when one certified a non-jury case for trial, one had a trial within a few weeks. It would now seem that one can only be assured of having a trial within a few years.

I understand that, in the last few weeks, a case listed for hearing, which was to take eight days, was compromised. The result was that a judge sat idle in the midst of this chaos. Is there anything that we as a profession (apart from lobbying for extra judges) can, or are prepared to do, to ensure that this can be avoided or minimised in a situation of escalating delays?

I understand from the High Court Office, which acknowledges this to be a very worrying trend, that it is in talks with the Bar Council on the matter. Are we contributing to these discussions, and what proposals are being put forward? G

With the recent negative publicity about the MRSA 'superbug', Siún Leonowicz considers the legal basis for making a claim and suggests practical guidance on how to avoid claims arising in the first place. Additional reporting by Mark McDermott

In SICKNESS

With media reports linking the MRSA superbug to seven deaths in Ireland during a ten-day period in mid November, it appears that the bug could be the next major litigation bombshell to hit the state.

Founder of the MRSA and Families support group, Margaret Dawson, told the media that she had been contacted by seven families informing her of the deaths of relatives. The victims, aged from 50 to 75, included men and women from all parts of the country.

Galway-based solicitor, Ian Simon, is representing a significant number of clients seeking to sue the state on the grounds that either they or a family member acquired MRSA in hospitals. He says that the number of people reporting deaths from the MRSA bacteria infection appears to be on the increase.

"At this stage," he told the *Gazette*, "people are seeking legal advice because they or their relatives are going into hospitals and coming out maimed. Patients who contract the MRSA blood stream infection become maimed or sadly die as a result of the contributory factor of MRSA. I've yet to see a death certificate with MRSA septicaemia being the primary cause of death. Usually, there will be other underlying causes."

As a result, he says that people who suffer from serious medical conditions brought about by MRSA cannot return to work for lengthy periods of time and are suffering a serious loss of income. "Recent media coverage concerning the MRSA bacteria has encouraged more and more patients to contemplate negligence claims against the state. It is inevitable that people maimed by MRSA, or bereaved families will pursue redress against the state," he says.

Mr Simon is hoping to have his first case – that of a gravely-ill Kilkenny woman – before the courts early next year. "We will be basing these cases on breaches of the *Health Act 1947* and the failure by health boards to implement the Department of Health's own MRSA guidelines, which were issued in August of 1995," he said.

If successful, the case could spark a raft of claims and expose the government to a substantial claim for compensation.

It is timely, then, to consider the law as it relates to claims in respect of death or personal injury arising out of MRSA. It should be noted, however, that the law in this area is somewhat uncertain. Claims at common law are complicated by difficulties in proving causation and, in respect of a potential claim founded upon breach of statutory duty, the scope and applicability of potentially relevant statutory regimes are uncertain.

MAIN POINTS

- **Hospital superbug**
- **Personal injuries**
- **Breach of statutory duty**

Common-law claims

A patient who contracts MRSA in hospital may bring personal injury proceedings founded in negligence for any breach of the healthcare provider's duty of care at common law to take reasonable steps not to injure patients in their care, or expose them to harm.

It is up to the plaintiff to show that the standard of care observed was at an inappropriate level. However, assessing whether a hospital has breached its duty will involve weighing up the hospital's policies and practices against relevant regulations, guidelines and recommendations on health and safety and infection (and, particularly, MRSA) control. These will have developed over the years and must be assessed in the light of the test set down by the Supreme Court in *Dunne v National Maternity Hospital* ([1989] IR 91), where Finlay CJ enunciated the following principles:

1) "The true test for establishing negligence in diagnosis or treatment on the part of a medical practitioner is whether he has been proven to be guilty of such failure as no medical practitioner of

and in HEALTH

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equal specialist or general status and skill would be guilty of, if acting with ordinary care.

2) If the allegation of negligence against a medical practitioner is based on proof that he deviated from a general and approved practice, that will not establish negligence unless it is also proved that the course he did take was one which no medical practitioner of like specialisation and skill would have followed had he been taking the ordinary care required from a person of his qualifications.
3) If a medical practitioner charged with negligence defends his conduct by establishing that he followed a practice which was general, and which was approved of by his colleagues of similar specialisation and skill, he cannot escape liability if, in reply, the plaintiff establishes that such practice has inherent defects which ought to be obvious to any person giving the matter due consideration.
4) An honest difference of opinion between doctors as to which is the better of two ways of treating a patient does not provide any ground for leaving a question to the jury as to whether a person who has followed one course rather than the other has been negligent.
5) It is not for a jury (or for a judge) to decide which of the two alternative courses of treatment is in their (or his) opinion preferable, but their (or his) function is merely to decide whether the course of treatment followed, on the evidence, complied with the careful conduct of a medical practitioner of like specialisation and skill to that professed by the defendant.
6) If there is an issue of fact, the determination of which is necessary for the decision as to whether a particular medical practice is or is not general and approved within the meaning of these principles, that issue must, in a trial held with a jury, be left to the determination of the jury."

Finlay CJ went on to state three further legal principles that had not been expressly mentioned in earlier decisions, the third of which is particularly important in the context of MRSA claims:

1) 'General and approved practice' need not be universal, but must be approved of and adhered to by a substantial number of reputable practitioners holding the relevant specialist or general qualifications;
2) Though treatment only is referred to in some of these statements of principle, they must apply in identical fashion to questions of diagnosis;
3) *In an action against a hospital where allegations are made of negligence against the medical administrators on the basis of a claim that practices and procedures laid down by them for the carrying out of treatment or diagnosis by medical or nursing staff were defective, their conduct is to be tested in accordance with the legal principles which would apply if they had personally carried out such treatment or diagnosis in accordance with such practice or procedure* (emphasis added).

There seems little doubt that the Irish courts would recognise that a healthcare provider owes a duty of care to its patients so as not to negligently expose them to risk of infection by MRSA. However, causation is likely to cause potential plaintiffs difficulty in pursuing a negligence claim. Although each case will depend on its facts, it is recognised that MRSA infection can occur as a result of exposure to a single bacterium. Consequently, since MRSA may be present in hospitals that may be deemed to have taken all reasonable steps, the difficulty a patient faces is in showing that the infection arose from a 'negligent' as opposed to an 'innocent' bacterium. Equally, since MRSA may also be present in other institutions or environments where large numbers of people are gathered, it will be for the plaintiff to show that the hospital MRSA was the cause of the infection. In many cases, that aspect of causation will not be a significant issue, but in certain cases it may be.

Nasty little critters: MRSA bacteria

Breach of statutory duty

An alternative, albeit remote, basis for a cause of action in respect of MRSA may exist by virtue of the provisions of the *Safety, Health and Welfare at Work (Chemical Agents) Regulations 2001*. Although ostensibly designed to address and control the use of chemicals (as distinct from bacteria) in the workplace, regulation 2 defines a 'chemical agent' as follows: "any chemical element or compound, on its own or admixed, as it occurs in the natural state or as produced, used or released, including release as waste, by any work activity, whether or not produced intentionally and whether or not placed on the market".

Moreover, 'hazardous chemical agent' is described, among other things, as an agent which "may, because of its physicochemical, chemical or toxicological properties and the way it is used or is present in the workplace, present a risk to the safety and health of employees". Accordingly, even if it is not entirely clear, it seems arguable that MRSA falls within the definition of 'chemical agent' and 'hazardous chemical agent' under the regulations.

Although the regulations are essentially premised upon the protection of employees (in the context under review, hospital staff), regulation 3(6) further

THE NATURE OF THE BEAST

MRSA, or to give it its proper Latin name, *Methicillin Resistant Staphylococcus Aureus*, is a bacterium that has developed a resistance to most antibiotics commonly used for *staphylococcus* infections. Interestingly, it is often found on the skin and/or in the noses of healthy people, where it is usually harmless. However, it can get inside the body and cause infection. Although the bacterium may be found in any high-density establishment, such as schools or prisons, it most frequently causes problems in hospitals, where the combination of the lowered immune systems and the prevalence of wounds, cuts and surgical incisions makes the risk of MRSA infection all the more likely. It is unsurprising, therefore, that doctors classify MRSA in two categories: hospital-acquired infections and community-acquired infections.

AVOIDING THE ISSUE

The best way to prevent claims, whether at common law and/or in respect of breach of statutory duty, is obviously to prevent exposure to MRSA. There is ample guidance on effective ways of avoiding exposure to MRSA, and the following gathers together guidance from a number of sources. As an overall observation, the focus of any healthcare provider's assessment of how to avoid exposing people to infection should be on establishing a proper procedure and, once it is in place, educating staff about that procedure and ensuring that it is put into practice.

Practical suggestions include the following:

- A suitable and sufficient risk assessment should be carried out, to include the basic principle that cuts and wounds should be cleaned as soon as possible and kept covered with a bandage and that contact with wounds or used bandages is kept to a minimum and proper procedures and processes followed (for example, gloves should be changed after each patient, and hands washed). Protective clothing should be used, but where it is not reasonably practicable, exposure should be controlled by other means;
- Adequate and appropriate hand-washing is well recognised as the single most important measure in infection control. All appropriate staff, to be identified as part of the risk assessment, should wash their hands thoroughly with soap and water or an alcohol-based hand sanitiser in order to reduce the risk of exposing others to MRSA;
- An infection-control policy should be actively promoted and put into practice;
- Every acute hospital should have an infection-control team, which should have a key role in training and education, such as induction training for new hospital staff (both medical and domestic staff), as well as update or top-up training and education for existing staff;
- Policies need to be put in place to ensure that agency staff are trained in infection control and local procedures;
- An isolation procedure should be used as necessary;
- The levels of bacteria should be monitored in accordance with a suitable procedure; and
- More rigorous screening for MRSA for patients entering higher-risk units will also reduce the risk of injury, although this is both difficult and expensive.

provides: "Where duties, however expressed, are placed by these regulations on an employer in respect of any of his or her employees at a workplace, he or she shall be under a like duty in respect of every other person at work at that workplace who is or may be exposed at that place to a chemical agent or hazardous chemical agent."

As a consequence, it appears that, in the hospital context, patients "may be exposed at that place to a chemical agent or hazardous chemical agent". The duties imposed by the regulations, and which may apply to patients under regulation 3(6), include the determination and assessment of the risk of hazardous chemical agents (regulation 4), the prevention and control of exposure to hazardous chemical agents (regulation 5), as well as specific protection and prevention measures (regulation 6).

The advantage to a plaintiff of a claim based upon the regulations is that the duties are strict (although qualified by a defence of reasonable practicability), the burden of demonstrating compliance with the requirements of the regulations is upon the defendant, and the causation test is a 'material increase in risk' test.

However, in pursuing a claim on this basis, a plaintiff is likely to face a number of difficulties, not least that it is difficult to construe regulation 2 to include bacteria that exist in the workplace. It is arguable that a chemical that "occurs in the natural state or as produced, used or released, including release as waste, by any work activity" could include a situation where there is a failure to take proper steps to reduce the risk that causes bacteria to proliferate. In this way, the proliferation of the bacteria could be seen as a result of bad working practice, and therefore arise as a consequence of a work activity.

"It is up to the plaintiff to show that the standard of care observed was at an inappropriate level"

However, the regulations focus primarily on substances that are used or produced by an employer in his work and, accordingly, the principle that they could encompass bacteria that naturally occur seems novel, and it is unclear whether the courts will choose to read the regulations to include MRSA. It is also not clear that patients in a hospital can properly be said to fall within the contemplation of the protection afforded by the regulations.

Notwithstanding that, until there is a clear indication that the regulations are not properly applicable to MRSA, it can still be used as an additional basis for a claim and pleaded in the alternative, although the likelihood of success, on this basis, is questionable.

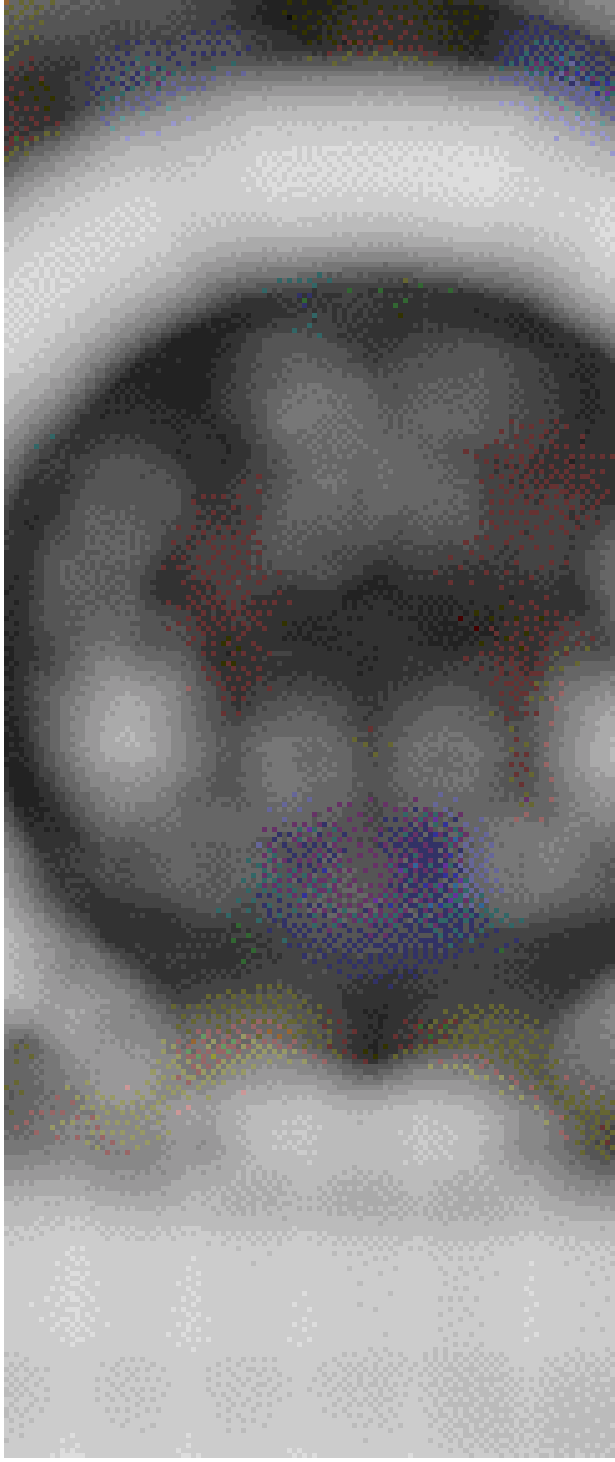
Next to Godliness

Although claims have been instituted in this jurisdiction in respect of cases relating to MRSA infection, it seems they have not yet come before the courts, so no clear guidance has yet been obtained on how they are treated and what specific difficulties actually arise. Although the Irish Government has been silent on the issue, in Britain, Lord Warner in a House of Lords debate on 7 September 2004 stated: "We have no plans to award compensation to patients with MRSA in National Health Service Trusts."

The Health Service Executive has commissioned a hygiene audit of hospitals by consultants, but, according to reports, it still remains the case that smaller Irish hospitals have no one specifically trained in infection control. It has also been reported that, in bigger hospitals, there is only one trained part-time infection control nurse and no doctor, and only one in five hospitals has a clinical microbiologist on their staff, some of them serving several hospitals in a region.

Given that specially trained staff and effective infection control are identified as steps to be used to avoid claims, it seems remiss that the basic infrastructural elements do not appear to be in place across our hospitals as a whole. It remains to be seen precisely how the cases develop and what the approach of the Irish courts will be when faced with them. It also remains to be seen whether the Department of Health will seek to pre-empt claims by taking all preventative steps, or whether claims arising from MRSA infection prove to be the catalyst for significant change. G

Siún Leonowicz is a Dublin-based barrister.



The Law Society's new president is Michael Irvine. He's a man with a keen sense of duty to his profession and to society in general – and a believer in change by degrees. He speaks to Mark McDermott about his plans for his year in office

VELVET R

Had Michael Irvine's mother, Jean, not been discouraged in becoming a solicitor, it's quite possible that the new President of the Law Society might not have considered the profession as his career of choice.

Michael's legal pedigree stems from his mother's side of the family. Jean was the daughter of Wexford solicitor, John Brennan. "My grandfather, John, was the principal of the firm Huggard and Brennan in Wexford," says Michael. "He held the post of Junior Vice-President of the Law Society in 1942, but tragically he and my grandmother were killed in a fire in their home in Wexford in that year. Consequently, I never met my maternal grandparents." Michael's uncle, John Brennan, who lives in Wexford, took over the practice and remained as principal until his retirement.

"I believe I obtained my initial interest in law from hearing my mother talk about her father's recognised courtroom ability," says Michael. However, he is adamant that when it came to his deciding on a career, he was allowed make his own decision, in his own time. "I am very pleased that I became a solicitor – it has been, for me, a very fulfilling career. I have enjoyed what I have done and the people I have met."

Land of the Rising Sun

And Michael has done a lot. He was articled to David Prentice, cousin of Peter Prentice, in Matheson Ormsby Prentice in 1971. After qualification, he worked extensively with Peter, a past president of the society. Michael believes that he owes much to the Prentices, who had a major influence on his thinking and attitude to life. It was Peter who gave him his first interest in the Law Society.

"There were approximately 15 solicitors in the office when I started as a commercial lawyer. At that time, there was little commercial work and you would often act for small family enterprises as well as bigger companies."

In 1979, Michael was chosen to act for the interim postal board, which was to become An Post. It was in this role that Michael was able to obtain first-hand experience of government policy being enacted into legislation – an experience that was to prove very useful later in his career.

"I then commenced to practise in direct foreign

EVOLUTION

investment work, which John Ross of the firm had started." This work took Michael to the Far East, particularly Japan, which at the time was a huge investor country in Europe. "I really enjoyed the experience, the different cultural aspect added an extra dimension and challenge to the work," he says.

In the early 1990s, after the Berlin Wall came down and the Soviet Union disintegrated, Michael was asked by his partners to see what could be achieved in the newly emergent states of Eastern Europe and beyond. "I then started undertaking consultancy assignments overseas, mainly for organisations like the World Bank, the European Bank for Reconstruction and Development, and the EU."

The lessons learned while enacting the legislation for the telecommunications and postal sector from 1977-1982 were put to great use when it came to

proposing legislation overseas. "I was lucky, in that I teamed up with a great colleague, Joe McArdle, who was multi-lingual and multi-talented," he says. "We evolved a great working relationship and were lucky enough to work in different countries, which threw up similar challenges in different situations." Michael subsequently went on to work in many countries, from Eastern Europe and the CIS, to Africa and Asia.

"That was a very demanding but rewarding and interesting part of my career. It was different from private practice, because we were directly interfacing with government officials who had very different backgrounds and priorities."

Michael's foreign duties demanded a certain sense of adventure, a certain fear of the unknown, which have taught him the need to listen and assess any situation prior to advising or suggesting a strategy.

SLICE of LIFE

Sporting life: Michael played rugby at Trinity and played for Old Wesley in the No 8 jersey. His favourite player is Willie John McBride. He enjoys playing "bad golf" and jogging two or three times a week.
Favourite scribbler: The journalist, John Simpson. "I have read most of his books."
Hit parade: Irish traditional music.
Swish diner: My wife's kitchen!
Hot dish: Beefsteak and kidney pie.
Life philosophy: "Never give up — never say never."

Responsive

His new role as president will involve many of the types of challenges that he has dealt with in a different context overseas. The fall-out from the recent Redress Board controversy will have to be faced.

"I think what has happened is extremely unfortunate," says Michael. "I think it has been put on the record very effectively by the Law Society that it condemns any overcharging. If solicitors have overcharged, or if they have done something wrong, they will be dealt with by the Disciplinary Tribunal. The profession generally should realise that, if things like this do occur, they will be handled properly. There is a remedy where wrong has been done by a solicitor to a client, and the Law Society will proceed to see that the remedy is effected."

Despite the difficulties he's facing as he takes over the mantle of president, Michael says that he is very proud to have been elected to the top position in the Law Society. "I hope very much to represent the interests of the profession and to further those interests in every way that I possibly can. What has happened recently has had a major impact on the profession, but we must not forget that many people would not have received any compensation at all without the assistance, the perseverance and the faith of many solicitors who acted for them."

Wider conscience

"Many in our profession have given freely of their time to clients who cannot afford to pay," he says. "Many have undertaken voluntary work in their community. Many of our young solicitors have given up their voluntary time to make enormous sums for charities, both nationally and internationally. These are things that solicitors have done for their clients, and for other people, that have gone completely unheralded.

"In addition, the Law Society has undertaken projects over the past five years in Africa. I myself have been very involved in the education of lawyers from historically disadvantaged backgrounds in South Africa. I do believe that these kinds of efforts are actually important, not only in South Africa or Africa, but generally. They do emphasise that the Law Society is a caring body and that the profession is not merely focused upon its own promotion. I would like to think that all these kinds of initiatives can be broadened, widened and enhanced. While I do not believe that those involved are seeking to get special attention or special thanks, the profession and the public at large should be proud of what they have done."

The new president believes that the solicitors' profession has to be caring and transparent. It has to have responsibilities wider than just the profession itself. Such responsibilities have to be manifest in

the community in which its members serve, he believes, and says that the Law Society must assist and lead the profession in discharging this role.

"It has to be seen to be a caring profession," he says. "No amount of public relations can change the current image or perception within the general public's mind. This will depend on the actual work done by the Law Society and the profession, and how solicitors go about making themselves available and relevant to people from the less advantaged areas of society."

He believes that the profession is under great challenge. "Society is changing and, therefore, the profession has to change to respond to the needs of society. The Law Society also has to change. I don't mean in a very big or very radical way, but I think it has to be seen not only to serve the profession, not only to be its representative body, not only to be its regulator in the public interest, but it must also be seen to have a wider conscience – in other words, to ensure that the profession is perceived as being a caring and a trustworthy one. I think how it does that will be very important to it.

"For a start, we have to look at how the Law Society can help people with free legal aid, migrant workers, the disadvantaged in society. We have to look at them and see if there is anything we can do, particularly from the legal side, to help them become more integrated in society. During my term in office, I will be attempting to make the Law Society a little bit more acceptable in the wider community in this country."

Injustice to the professions

"On the other hand, I do think that the profession must not be shy about seeking to obtain things for itself. For example, I don't believe it is fair that only five professions (solicitors, barristers, doctors, dentists and accountants) in this country are not allowed to have limited liability. I think that is an injustice, if you like, done to the affected professions."

"The Law Society will be seeking legislation to provide for limited liability partnerships, which are common both in England and in Northern Ireland, structures that can then be utilised by solicitors in this country. This would ensure that the profession remained competitive vis-à-vis our neighbours in Britain and Northern Ireland.

"In addition, I am hoping that the Professional Indemnity Insurance Task Force, which has been set up under my predecessor, Owen Binchy, will report shortly. I am hoping that this will enable a wider framework for professional indemnity insurance to be undertaken, something that will facilitate both consumers of legal services and solicitors in this country. The profession must play a full role in the community. To do this, the Law Society must utilise the profession's unique and distinct talents for the benefit of society as a whole." G

PLAYING

The *Safety, Health and Welfare at Work Act 2005* was enacted in September 2005. It will have serious implications for employers and employees. It includes a provision for testing employees for intoxicants and new liabilities for directors, employers and senior managers. Geoffrey Shannon details some of the key changes

MAIN POINTS

- ***Safety, Health and Welfare at Work Act 2005***
- **General duties of employers and employees**
- **New liabilities for directors**

The *Safety, Health and Welfare at Work Act 2005* repeals and replaces the *Safety, Health and Welfare at Work Act 1989* as the statutory framework for securing the safety, health and welfare of people at work. It came into force on 1 September 2005.[1] The 2005 act re-enacts an expanded version of many of the provisions contained in the 1989 act, with some significant additions. It is organised in eight parts and seven schedules. In introducing the bill at second stage in the Oireachtas, the Minister of State at the Department of Enterprise, Trade and Employment, Tony Killeen, stated that it represented: "a modernisation of our occupational health and safety laws. It is significant social legislation which affirms the government's interest in ensuring that labour law is kept up to date and relevant".

The 2005 act is a framework in nature and focuses on broad general duties and the organisational arrangements necessary to achieve better safety and health. It sets out the duties of employers, employees and other parties, such as the designers of workplaces and work equipment and the suppliers of goods for use in the workplace. As with its predecessor, the general ethos of the act is that of prevention of accidents and illnesses. There is increased emphasis on deterrence by the strengthening of the enforcement provisions.

The 2005 act reflects and accommodates many of the radical changes that have occurred since the 1989 act was introduced. In particular, these changes have taken place in the nature of the work occurring in Ireland and how and where that work is carried out. The 2005 act has also taken account of the increasing ethnic and cultural diversity of the Irish workforce.

While the 2005 act could not be described as a radical departure from its predecessor, some of the more striking features in the act include:

- A definition of 'competent person' and 'reasonably practicable';
- An increase in the explicit duties and responsibilities of both employees and employers;

safe

The act will require employees to submit to appropriate drug testing

- Provision for testing employees for intoxicants;
- Specific provision regarding the responsibilities of designers, manufacturers and importers;
- New duties for persons who commission, procure, design or construct places of work;
- A reduction in the onus on small business and the farming sector regarding safety statements;
- Joint safety and health agreements;
- A new dispute resolution mechanism for dealing with disputes between employers and employees concerning health and safety matters;
- Expanded provisions concerning responsibilities of directors and managers;
- Evidentiary changes for the prosecution of

SAFETY STATEMENT

Section 20 is probably the most important provision in the 2005 act in terms of the implementation and application of health and safety measures. Under section 20, every employer must prepare or cause to be prepared a statement in writing, which is known as a safety statement. This statement is to be based on the hazards identified and the risk assessment carried out under section 19 of the 2005 act. It must set out how the safety, health and welfare of employees are to be secured and managed in the workplace.

Section 20(3) of the 2005 act provides that the employer must bring the terms of the safety statement to the attention of employees annually or following any amendment of it. Employers must also bring the safety statement to the attention of new employees when they start work, as well as other employees who may be exposed to any specific risk to which the safety statement refers. This must be done in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees. This requirement should prompt employers to examine the profile of their workforce in order to decide whether the safety statement should be made available in one or more languages. A similar requirement applies in respect of a safety plan.

directors and people significantly influencing the management of a company; and
- A strengthening of the enforcement powers for non-compliance (increased penalties and also on-the-spot fines).

Although the 2005 act largely retains the same structure as the 1989 act, it clarifies certain matters with an expanded list of definitions in part 1 of the act, which deals with preliminary and general matters.

Improper conduct

Chapter 1 of part 2 of the 2005 act sets out a range of general duties of employers. Some of the new duties identified in section 8(2) of the 2005 act include:

a) Managing and conducting work activities in such a way as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees; and
b) Managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health or welfare at work of his or her employees at risk.

The foregoing provisions require employers to manage and conduct work activities:
- In such a way as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees; and
- In such a way as to prevent, so far as is reasonably practicable, any improper conduct likely to put the safety, health or welfare at work of his or her employees at risk.

These new provisions underline the importance of an employer having an integrated safety management system and are particularly relevant when addressing the identification of bullying, harassment and stress in the workplace. The enforcement mechanisms available under the 2005 act could be invoked, for example, where the Health and Safety Authority considered that an employer was exposing his or her employees to unacceptable levels of stress. In such circumstances, the authority could issue directions for an improvement plan.

"It is likely that an employer must be satisfied that the employee is under the influence of intoxicants before requiring that the employee submit to tests"

Milk and alcohol

Chapter 2 of part 2 imposes a number of general duties on employees and persons in control of places of work, such as landlords. One of the most significant additions to the duties of employees is to submit to any appropriate testing for intoxicants. Regulations will be introduced detailing the circumstances and sectors to which this provision will apply. An 'intoxicant' is defined in section 2(1) of the 2005 act as "alcohol and drugs and any combination of drugs or of drugs and alcohol". This definition does not discriminate between prescription and non-prescription drugs and provides no guidance on what is an acceptable quantity of drugs or alcohol. The testing must be carried out by a registered medical practitioner. It would appear that the requirement to submit to tests for intoxicants in section 13(1)(c) of the 2005 act is not limited to health and safety requirements, as it is not made subject to section 13(1)(b).

The provision for testing employees for intoxicants is short on detail, although it will not come into force in the absence of regulations, which are expected to be introduced in mid-2006. Section 13(1)(c) of the 2005 act prescribes three preconditions that must be satisfied before such testing may be carried out. The test must be:
- Appropriate,
- Reasonable, and
- Proportionate.

In light of the possible violation of an employee's constitutional right to liberty, the above preconditions must be strictly construed. Whether a test for intoxicants is reasonably required will depend on the individual circumstances and the nature of the work activity. Regard should be had, for example, as to whether the employee, if intoxicated, would be likely to cause harm to himself, herself or others. The work activities of an employee will be relevant: an office worker might not pose the same risk to himself, herself or indeed others as a bus driver or a person operating machinery.

It is likely that an employer must be satisfied that the employee is under the influence of intoxicants before requiring that the employee submit to tests. To satisfy the test of proportionality, it is likely that the employer will have to show that the test was necessary to prevent the employee endangering his or her own safety, or the safety of others, and was the least restrictive means to achieving that objective. (For a more detailed exploration of the principle of proportionality, see *Heaney v Ireland* ([1994] 3 IR 593), *R v The Intervention Board, ex parte ED & Man (Sugar) Ltd* ([1985] ECR 2889) and *Haur v Land Rheinland-Pfalz*.)

An issue likely to arise is the entitlement of an

employer to dismiss an employee for refusing to submit to tests. Would such a dismissal be presumed unfair under the *Unfair Dismissal Acts*? As there is no specific guidance on this issue in the 2005 act, it is likely that the presumption of unfairness will prevail. In any event, it would appear that a request to an employee to submit to such a test will have to be done in accordance with the three conditions prescribed. It is clear from section 13(1)(c) that these three conditions will have to be strictly adhered to.

Dukes of Hazard

Section 19 of the 2005 act incorporates many of the provisions in the 1993 regulations, including the requirement in article 10 that risk assessments must be in writing and periodically reviewed.

It provides that every employer and every person controlling a workplace must identify the hazards at the place of work, assess the risks presented by those hazards and have a written assessment of the risks as they apply to his or her employees, including any single employee and group (or groups) of employees who may be exposed. The words 'hazards' and 'risks' are not defined in the 2005 act. That said, the authority has produced useful guidance on these terms.

The 2005 act introduces a significant change to the requirement that every employer have a safety statement in companies with three or fewer employees. In particular, section 20(8) of the 2005 act adopts a more streamlined approach to complying with the requirement to prepare a safety statement. It removes the requirement on an employer with three or fewer employees to have an up-to-date safety statement. It provides that such an employer can satisfy the safety statement requirement by observing the terms of a special code of practice, if any, to be developed by the authority for a number of industries and sectors.

The farming sector and small businesses in the maintenance and service sectors are the likely beneficiaries of the relief available under this provision. In fact, the authority is currently working on the drafting of three codes of practice, one of which is in relation to agriculture.

If there is no code of practice covering the type of work activity carried on by the employer, what duty arises for such an employer in respect of the preparation of a safety statement? The act is silent on this point, though prudence would dictate that such an employer should prepare a safety statement. Regulations on this issue are expected in the early part of 2006.

Under surveillance

Section 22 of the 2005 act mirrors article 15 of the 1993 regulations. It imposes specific duties in respect of health surveillance on every employer. Health surveillance is defined in section 2(1) of the 2005 act as follows: "...the periodic review, for the purpose of protecting health and preventing occupationally related disease, of the health of employees, so that any adverse variations in their health that may be related to working conditions are identified as early as possible".

Section 22(1) provides that "every employer shall ensure that health surveillance appropriate to the risks to safety, health and welfare that may be incurred at the place of work identified by the risk assessment … is made available to his or her employees". This duty could be construed as requiring an employer to make available a counselling service or an employee assistance programme. It should be noted that, in *Hatton v Sutherland*, the Court of Appeal held that an employer who offers a confidential advice service, "with referral to appropriate counselling or treatment services", was unlikely to be found in breach of his or her duty to employees.

Innovative

Section 24 of the 2005 act includes an innovative new provision that has its origins in a number of the northern member states of the European Union. In summary, it enables the social partners (trade unions and bodies representing employers) to enter into agreements setting out practical guidance on safety, health and welfare, and the requirements of health and safety laws. Such an agreement is known as a 'joint safety and health agreement'. The parties can apply to the authority for approval of a joint safety and health agreement or to amend it.

Section 27 of the 2005 act includes an important new provision that employees should not be penalised for acting in good faith in the interests of health and safety. This section prohibits an employer from penalising an employee for:

- Being a safety representative;
- Complying with health and safety legislation;
- Making a complaint or a representation about health and safety to the safety representative, or to the employer, or to an inspector;
- Giving evidence in enforcement proceedings; and
- Leaving, or while the danger persisted, refusing to return to his or her work in the face of serious or imminent danger.

The dismissal of an employee following such penalisation will be deemed to be unfair under the *Unfair Dismissal Acts 1977 to 2001*.

The 2005 act creates three categories of offences. They are:

1) Summary offences for which only a fine (not exceeding €3,000) can be imposed;
2) Summary offences for which a fine (not exceeding €3,000) and/or imprisonment (not exceeding six months) can be imposed;
3) Indictable offences punishable by the imposition of a fine (not exceeding €3 million) and/or imprisonment (not exceeding two years).

In summary, the first category applies to less serious matters and the second and third categories cover the more serious offences. In addition, the person

convicted can be ordered to pay the authority's costs and expenses. The main changes under the 2005 act include a significant increase in the level of fines and also the fact that certain summary offences can attract a prison sentence of up to six months.

Significantly, section 60(1)(a) of the 1989 act has been omitted from the 2005 act in what is a fundamental departure from the approach adopted under the 1989 act. This section provided that a failure to comply with the general duties of employers and self-employed persons did not give rise to a cause of action in civil proceedings. Contravention of these general duties merely attracted criminal sanctions.

The removal of the civil liability exemption in respect of a failure by an employer to comply with his or her general duties will necessitate increased vigilance on the part of employers to ensure compliance with the expanded list of general duties imposed on employers under the 2005 act.

Directors in the dock

Section 80 of the 2005 act introduces new liabilities for directors, employers and senior managers who, for the first time, could be personally liable for breaches of health and safety legislation, and could face either two years' imprisonment or a maximum fine of up to €3 million, or both, on conviction on indictment. In summary, section 80 of the 2005 act adopts an evidence-based approach.

Section 80(2) of the 2005 act is a significant provision. It is likely to be very useful to the authority and the DPP in initiating prosecutions under the act. It is presumed, until the contrary is proven, that at the material time, the acts resulting in the offence were authorised, consented to, or were attributable to connivance or neglect on the part of a director or a person significantly influencing the management of a company.

This provision was imported from corporate enforcement law and introduces a presumption that a director consented or was neglectful in his or her duties under the 2005 act unless he or she can disprove this. The existence of such a rebuttable presumption makes the task of prosecution somewhat easier. It also underlines the importance of senior management taking ownership of health and safety.

The presumption may, however, be rebutted. Where this is the case, the prosecutor must then prove the matters beyond all reasonable doubt. For the presumption to be rebutted, it is not entirely clear what standard of evidence the defendant must adduce.

A question may be raised about the constitutionality of section 80(2) of the 2005 act, which is in essence a 'guilty until proven innocent' provision. It may be argued that it reverses the normal burden on the prosecution to prove all the elements of the offence beyond all reasonable doubt. However, this argument is unlikely to be successful, especially in the light of the Supreme Court judgments in *Hardy v Ireland* and, in particular, *O'Leary v Attorney General*.

In *O'Leary v Attorney General*, where the statute provided that possession of an incriminating document was "evidence until the contrary is proved", the Supreme Court upheld the constitutionality of the section and stated that the provision merely shifted the evidential burden and not the legal burden.[2]

Naming and shaming

Section 85 of the 2005 act provides that the authority can compile a list of people who have been fined or penalised, who have been served a prohibition notice, or who have an interim or interlocutory order made against them by a court. The concept of naming and shaming is not new to the Irish legal system. It already exists in company and revenue law.

There has been a powerful movement towards greater protection of the safety, health and welfare of employees at work. The general provisions of the 2005 act – which include on-the-spot fines, increased sentences and fines, the naming and shaming by the authority, testing for intoxicants, employers' duties, safety statements, safety representatives, codes of practice and joint safety and health agreements – will improve the safety and health standards that employees enjoy in the workplace. However, the success of the 2005 act will depend not only on ensuring compliance with the new statutory provisions, but also on changing existing mindsets.

In the future, it is likely that individual members of management will face criminal charges arising out of deaths and injuries at work where it is possible to connect the individual failures of senior executives with the corporate body. A safety management system must be in place for directors to avoid conviction. There is now a strong case for express statutory provision for the offence of corporate manslaughter.[3] Where someone loses his or her life through employer negligence, the offence of corporate manslaughter is likely to apply if such an offence is introduced in this jurisdiction.

Footnotes

1 See SI no 328 of 2005, which brought into force many of the provisions of the 2005 act except, for example, the provision that repeals the *Safety, Health and Welfare at Work (General Application) Regulations, 1993 and 2003*. The 1993 regulations therefore remain in place, save for articles 5 to 15 (see SI no 392 of 2005) which are now incorporated into sections 8 to 12 of the 2005 act.

2 The presumption introduced by section 80(2) of the 2005 act also applies to members responsible for the management of an undertaking. See section 80(3) of the 2005 act.

3 See *Corporate Killing*, Law Reform Commission, October 2005. G

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MAKING A *killing*

The debate on corporate killing is back in the news, with the recent publication of a Law Reform Commission report. Michael O'Neill takes his life in his hands

MAIN POINTS

- **Corporate manslaughter**
- **Law Reform Commission report**
- **Draft British bill**

The Law Reform Commission's October report provides a detailed and rigorous analysis of the issues relevant to the debate on corporate killing. It makes two principal recommendations:

1) The introduction of a new statutory offence of corporate manslaughter, which would make an undertaking (including a company, partnership or public body) responsible for a death, where its gross negligence has created a significant risk of death or serious personal harm and has, in fact, caused death;
2) The enactment of a new offence for senior managers of 'grossly negligent management causing death'. Where an undertaking was convicted of corporate manslaughter and it could be proven that a senior manager, director or any other person who acts in a similar capacity (even if he is not employed by the undertaking) acted with gross negligence, thereby contributing to the corporate offence, he could be prosecuted. On conviction, he would be liable to a maximum of 12 years' imprisonment and/or an unlimited fine and possible disqualification from acting as a manager in any undertaking for up to 15 years.

Traditionally, corporate manslaughter has been considered almost exclusively in the context of workplace accidents. However, as the LRC points out, this debate is equally relevant to any corporate activity that results in an unlawful death. Examples outside the strict confines of health and safety law could include, for example:

- The supply of unsafe products;
- The administering of infected bio-materials – for example, organ donation – where inadequate safety checks were undertaken;
- The sale of unsafe drugs.

The current law

As the law stands, a company can only be convicted of corporate manslaughter if:

- A person can be identified as the guiding mind of the company – in effect, a top manager or executive; and
- That person can personally be shown to be guilty of manslaughter – to do this, the prosecution must show that this person caused the death by gross negligence.

This is known as the 'identification theory' and is notoriously difficult to prove. There are no recorded corporate manslaughter convictions in Ireland and, under the existing law, the charge has been unsuccessful in a number of high-profile cases in the UK, including:

- The 1987 *Herald of Free Enterprise* disaster in Zeebrugge, when 187 people drowned;
- The 1997 Southall rail crash that claimed seven lives;
- The Hatfield rail disaster in 2000, when four people died. Earlier this month, when handing down a record Stg£10 million fine for health and safety offences against engineering firm Balfour Beatty, Mr Justice Mackay described the company as one of the worst examples of sustained industrial negligence in a high-risk industry that he had seen. Nevertheless, midway through the trial, he had ordered all charges of manslaughter against Balfour Beatty and five

executives from two companies to be dropped;
- Days after the Hatfield conviction, Britain's Crown Prosecution Service announced that it would not be laying manslaughter charges in the case relating to the Potter's Bar rail crash, which killed seven people in 2002, saying that there was not a "realistic prospect of conviction" of any individual or company for an offence of manslaughter by gross negligence.

In fact, only six British organisations – all of them small – have been convicted of corporate manslaughter since 1992. This is because, in the case of larger companies, there are layers of middle management with responsibility for many day-to-day operational issues and, therefore, it is impossible to identify one senior executive with the necessary intent to commit the action leading to the death. Britain's Health and Safety Executive has pointed out that an analysis of major disasters reveals that any death or serious injury is rarely due to the actions of a single individual, but rather is a failure of management systems.

Do we need a new offence?

Corporate manslaughter is a contentious issue. The question of whether the law needs to be changed to include a new offence of corporate manslaughter

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tends to provoke strong views (see panel, this page).

The LRC argues strongly in favour of the need for a new offence that would, of its nature, be more serious than offences for breaches of regulatory codes. It says that other means of liability, such as tort and health and safety offences, are not sufficient to express society's opprobrium for corporate manslaughter. The commission argues that, while it should not be considered in isolation from criminal breaches of regulatory codes (like health and safety law), corporate manslaughter is intended to deal with scenarios of gross negligence and, therefore, the penalties proposed are graded in line with the existing criminal law of manslaughter.

Gross negligence manslaughter

The report recommends that both offences would require proof of gross negligence. This would be shown where:

- The undertaking owed a duty of care to the deceased person;
- It breached this duty by failing to meet the required standard of care;
- This failure constitutes 'gross' negligence because it was of a very high degree and involved a significant risk of death or personal harm.

The LRC proposes the abandonment of the identification theory in favour of a much wider range of factors to be taken into account in deciding if there was gross negligence. These would include:

- An examination of the management systems put in place by senior managers;
- Corporate decision-making rules, or the corporate culture;
- The adequacy of corporate communication systems;
- The regulatory environment (for example, the law relating to occupational safety and health or the safety of pharmaceutical products); and
- Whether the undertaking was operating under a licence.

The report also seeks to deal with what is known as the 'phoenix company syndrome', whereby companies go into liquidation and re-form in order to avoid paying a fine. The commission recommends that, in such a situation, statutory provision should be made to allow the court to disregard the separate legal personality.

As the law stands, in the event of the dissolution of a corporation (for whatever reason) in advance of its trial, the prosecution has the power to apply to the court to have the company reinstated – this provision goes one step further and allows the court to lift the corporate veil and identify the common origin of the two companies.

Sentencing options

The proposed suite of sentencing options available to a court upon conviction has its advantages:

- First, it would facilitate the court, having regard to the pre-sanction report, in determining the most effective way of imposing a sanction with regard to the undertaking involved;
- The fact that fines are not the only penalty would address one of the concerns of the opponents of corporate manslaughter, who argue that, in the case of a high-profile conviction, a court might feel that there was a certain imperative to impose a very high level of fine that could, in effect, sink the business, and this would punish the workforce as much as the senior managers or shareholders;
- On the other side of the argument, it addresses one of the complaints of the supporters of this offence, who argue that fines are not a sufficient penalty since wealthy companies can, in effect, buy their way out of a conviction;
- Furthermore, the alternatives to a fine allow for effective penalties in relation to not-for-profit or non-cash-rich undertakings;
- Adverse publicity orders would provide the court with the facility to highlight the wrongdoing at the expense of the undertaking rather than the state; and
- There is an element of restorative justice in the use of remedial and community service orders.

"The LRC argues strongly in favour of the need for a new offence that would, of its nature, be more serious than offences for breaches of regulatory codes"

In the meantime

While we wait to see how the corporate manslaughter debate develops in the wake of the commission's report, it is important to mention recent developments in a related area – the new *Safety, Health and Welfare at Work Act 2005*, in force since 1 September.

PROS AND CONS

Among the arguments put forward by proponents of a new offence of corporate manslaughter are:

- The existing law on manslaughter is ineffectual when dealing with companies;
- While criminal offences for breaches of regulatory codes are possible in cases of a serious disregard for the lives of others, these offences cannot, by their nature, reflect the level of culpability involved;
- There is little correlation between the seriousness with which workplace deaths and those outside the workplace (for example, homicide or drunk driving causing death) are dealt with;
- There should be a way of making senior managers of corporations liable in the event that they tolerate an unsafe safety culture within their organisation.

On the other hand, opponents say that:

- The existing health and safety laws, including the new 2005 *Health and Safety Act*, can deal effectively with companies and individuals whose unsafe actions or practices result in the death of others;
- Further laws in this area will result in more, unnecessary regulation;
- Any new law on corporate killing will only provide for heavy fines if a company is found guilty and, therefore, by its nature, the law must distinguish between individuals and companies involved in actions that lead to people dying; and
- Such a law will have no real deterrent effect unless it focuses on the actions of specific individuals – and any such development will be a disincentive to business.

THE BRITISH DRAFT BILL ON CORPORATE MANSLAUGHTER

Earlier this year, the British Government published its draft bill on corporate manslaughter.

The bill shares some common ground with the LRC's recommendations. It no longer requires the need for a 'directing mind'; rather, it looks more widely at the failings of senior managers within a corporation.

Key elements of the existing law would remain in place, in particular the need to owe a duty of care to the victim and the requirement that the conduct must have been grossly negligent.

Only senior managers' actions and inactions would determine if the offence is to be considered appropriate for prosecution. The definition of 'senior managers' identifies two strands to management responsibility:

1) Only those who play a role in making management decisions about, or actually managing, the activities of an organisation as a whole, or a substantial part of it, are senior managers; and
2) Even then it must be shown that these managers play a 'significant' role in the relevant management activity.

It is likely that the determination of who constitutes a senior manager will be a crucial factor in the conduct of any trial for corporate manslaughter.

Again, in common with the LRC report, the British bill provides a framework for assessing an organisation's conduct. However, here there is a much stronger focus on health and safety law, rather than the application of this offence to a wider context, as recommended by the commission. It would appear from the Dáil debates during the passage of the new *Safety, Health and Welfare at Work Act 2005* that the government shares the commission's view that it is more appropriate to consider this issue beyond the confines of health and safety law alone.

Unlike the LRC's position, the British Government has decided that unincorporated bodies like partnerships and registered friendly societies would not be liable to prosecution, though individual members would remain liable under the existing law of manslaughter.

Perhaps the greatest area of deviation between the bill and the report is the British Government's decision that there will be no secondary liability for individuals under the new offence, although the individual managers could still be prosecuted for gross negligence, manslaughter or for health and safety offences.

While the bill also provides for the imposition of remedial orders in addition to an unlimited fine, it does not include the same range of sanctions proposed in the LRC's report.

Conviction for summary offences following a breach of health and safety legislation can now result in fines of up to €3,000 per charge and, for the first time in the District Court, up to six months' imprisonment, or both a fine and a prison sentence. On indictment, and there have been over 50 such trials in the last five years, the penalties are a fine of up to €3 million per charge and/or two years in jail.

This act also highlights the responsibility of an undertaking's senior management to take ownership of health and safety. It creates a rebuttable presumption that, where an undertaking is prosecuted for health and safety offences, the doing of the acts that constituted the offence was authorised, consented to, or attributable to connivance or neglect on the part of the undertaking's director, manager or other similar office or, indeed, a person who purports to act in such a capacity. This creates an imperative for senior managers to make sure that the necessary safety management systems are in place and operational.

Beginning of the end

The LRC's report is not an end in itself, but is likely to herald the start of a new and important chapter in this long-running debate.

Whatever the outcome of that debate, a number of things are clear:

- Any corporate manslaughter charge to be introduced would, given the requirement of gross negligence, be likely to be used very rarely and only for the most serious and systemic breaches of a duty of care by companies;
- This makes sense given the nature of the charge and the fact that, in cases of lesser culpability, criminal charges can be laid under regulatory codes (for example, pharmaceutical regulation, health and safety law);
- It is possible to introduce an offence of corporate manslaughter without increasing the regulatory burden. Both the LRC and the British Government propose the reliance on existing regulatory laws to inform a decision of whether there was gross negligence, rather than imposing extra regulatory standards. This should have the advantage of reassuring those companies and senior managers who act in compliance with existing regulatory rules that they have nothing to fear from any eventual introduction of such a law. G

Michael O'Neill is legal adviser with the Health and Safety Authority. All views expressed are purely personal and do not represent the position of the HSA.

Broken R

Records management is not an area the legal profession can afford to be lax about: it's now against the law to hoard files indefinitely. Martin Bradley opens the archive door

MAIN POINTS

- Records management
- *Data Protection (Amendment) Act 2003*
- Implications for law firms

Records management in Ireland has traditionally been a matter of filing everything, regardless of currency, just in case it might be needed for some future, unspecified, purpose. However, with the advent of the *Data Protection (Amendment) Act 2003*, this long-established culture of hoarding has reached a legal end – not only are organisations breaking the law by keeping everything indefinitely, but individuals are personally liable for penalties up to €100,000 under section 25 of the act.

Though applicable to all sectors of Irish business, the legislation is particularly relevant to the legal profession. For example, conjure up an image of an old-style solicitor's office and you'll surely think of parchment and tomes gathering dust. Thankfully, those days are a thing of the past, but records management is not an area the legal profession can afford to be lax about. The confidentiality of the information retained and the volume of files

ECORDS

generated are key issues, but now with this legislation comes the additional pressure of being the last profession that should be found to be in breach of Irish law.

As Tom Maguire, Deputy Data Protection Commissioner, recently said: "As long as you have a records management policy, you won't get into trouble with us; if you don't have one, then this is an issue of concern."

Key aspects of the act

There were a number of key changes under the 2003 extension to data protection legislation. Firstly, it was extended to apply to manual records held in an organised filing system (and before you ask, pleading that your files are disorganised can't be used as a defence – if it's on a file, then it's part of a filing system).

Secondly, the extension states that appropriate security measures must be taken against unauthorised access, unauthorised alteration, disclosure or destruction of data – again this relates to manually kept records. Thirdly, and arguably most importantly, it states that *data shall not be kept for longer than is necessary* for the original purpose it was collected.

In relation to the third point, the Office of the Data Protection Commissioner's website (www.dataprotection.ie) offers some practical advice: "You should pay particular attention to old information about former customers or clients, which might have been necessary to hold in the past for a particular purpose, but which you do not need to hold any longer. If you would like to retain information about customers to help you provide a better service to them in the future, you must obtain the customers' consent in advance. The same applies to paper records. Good housekeeping would also dictate that you regularly review the need to retain records."

This clearly has serious implications for many law firms. The commissioner further asks three simple questions:

- Is there a defined policy on retention periods for all items of personal data kept?
- Are there clerical and computer procedures in place to implement such a policy?
- Is information about old clients routinely purged from your systems?

In practical terms, what this means is that every organisation needs to have a records management policy. It is no longer acceptable to have a basement containing files on all your clients, past and present, to have *ad hoc* arrangements for retrieving and tracking files, or to keep everything indefinitely.

Where's that paperless office?

Fortunately, good records management brings with it a number of benefits beyond legislative compliance. It certainly shouldn't be viewed as a burdensome exercise that has to be implemented solely for that purpose. A recent study by the University of California at Berkeley came up with some very interesting statistics:

- Offices worldwide used 43% more paper in 2002 than they did in 1999;
- The average organisation makes 19 copies of each document, loses one out of every 20 documents, and office workers can each spend 400 hours a year looking for lost files;
- Between 1% and 5% of all documents are misfiled;
- When email is introduced into an office, the percentage of printed documents increases by 40%.

The 1980s promise of a paperless office has never come to fruition. In fact, and as these statistics show, paper-record generation increases hand-in-hand with technological advancement. This would not be such a problem if record management skills were developing at a similar pace. The confident predictions of the technology industry that paper was a thing of the past, combined with an array of software products sold on the understanding that they did the filing for you, meant office administrators were lulled into a false sense of security. That is, of course, until the problems started.

High-profile instances of government departments being unable to lay their hands on files have led to costly reactive measures, including hiring teams of unfortunates to back-catalogue warehouses full of files that, with proper file maintenance, should have been easily accessible. Recently, the departments of education and health have invested well in cataloguing work, both current and historical, on foot of enquiries, but also to enable that efficient processes are in place to enable the straightforward retrieval of files in the future.

Of course, when we talk about today's record management, we are discussing a vastly altered landscape. There are classes of records that are nowadays created and stored in exclusively electronic

SIX ELEMENTS OF A RECORDS MANAGEMENT POLICY

An effective policy:

1) Assigns responsibility to staff to ensure that records are properly kept;
2) Applies to all paper records, electronic and manual;
3) Follows a record's life-cycle from creation to ultimate archiving or destruction;
4) Sets out retention periods dictating the length of time that a record is kept in the office, how long it is maintained as a non-current record in offsite storage, and then whether it is destroyed or maintained permanently after a set period of time;
5) Ensures security and business continuity. Security is a key element of the *Data Protection (Amendment) Act 2003* and it is important to ensure that information in both electronic and manual filing systems is only seen by those who have a need to see it, and, perhaps more importantly, that it cannot be modified without an audit trail;
6) Enables legal destruction of listed records. Quite simply, it is not safe to shred anything unless you have a stated policy that classifies records and allows for their destruction after a certain amount of years in line with legal and administrative requirements.

media. A major sticking point is that employees view these forms of communication, particularly email, as personal correspondance, when in fact they are business transactions that can be easily traced to the issuing organisation. For this reason, law firms and their clients need to be very aware that emails, SMS and 'Messenger' have all been the subject of legal discovery.

Loose lips

Take, for example, the recent legal wrangle between Microsoft and Netscape. Microsoft learnt the pain of saving too much archived mail when discovery uncovered a delicate internal mail from AOL, reportedly recounting a meeting with Microsoft boss Bill Gates, which described him as saying, "How much do we need to pay you to screw Netscape?" This led to ancient emails being uncovered and quoted in court. So what should you do? The standard legal suggestion, which Microsoft, Netscape and others have adopted, is to delete all mail, other than those that they are legally bound to preserve.

There must also be a clear policy in place to ensure that no libellous or sensitive business information about your company or its clients is unwittingly passed on.

The most valuable way of increasing efficiency, saving storage space and ensuring legal compliance is to recognise the difference between a record and a document. ISO 15489, the international records management standard, defines a record as "information created, received and maintained as evidence and information by an organisation or person, in pursuance of legal obligations or in the transaction of business".

The trick to successfully organising your records, both electronic and manual, is being able to identify these key pieces of information and ensure they are properly looked after, while extraneous material (normally around 40% of what is kept by an average business) is disposed of. Once this concept is clearly understood, the next step is producing a records management policy.

To recap on the deputy data commissioner's words, you won't get in trouble if you have a records management policy, but there is an issue if you don't. When beginning this process, it is important to remember that about three weeks' work can bring you very close to implementing an effective records management policy. From cost and time savings to clearing up valuable office space, the benefits of having a clear document retention and destruction policy clearly outweigh the initial work that needs to be done. Every legal firm should make it a priority to implement a solid records management policy and relegate images of dusty old solicitors' offices strictly to the past. G

PUTTING A POLICY IN PLACE

1) Survey and list all your files, electronic and manual. Until you know what you have, it is impossible to make any decisions about what to keep.
2) Create a file taxonomy. This is essentially a family tree of your records, normally broken down by department or business function, to enable you to group your records together.
3) Decide on retention periods. Once you have a taxonomy in place, it is possible to assign retention periods to the various series of files your business creates to ensure that they are only held for the correct length of time according to legal and administrative requirements.
4) Index and reference records. It is essential that you are able to find your records when you need to, so many businesses take the opportunity of retroactively assigning reference numbers to all their files and linking these to a database in order to find files. This is also the time to put systems in place that ensure when a new record is created, it is automatically assigned a reference number to track it throughout its life cycle.
5) Seek ISO 15489 certification, the international records management standard, and certification that ensures your records management meets that standard. This is useful, both from the point of view of internal audit and in assuring your customers, and the regulatory authorities, that you take records management seriously and have attained a high standard.

Martin Bradley is a professional archivist and the executive director of Archives Consulting Services Ltd.

Law Society of Ireland

CONFLICT RESOLUTION: PEACE & RECONCILIATION

Annual Conference 2006 • 19th to 23rd April

Dubrovnik

Message From The President

Dear Colleague,

I have pleasure in inviting you to join me at the Society's Annual Conference in Dubrovnik from 19th to 23rd April, 2006.

This year the theme of the Conference will be Conflict Resolution: Peace & Reconciliation. This theme is very appropriate to the Balkans, where conflict has recently taken place and reconciliation is of paramount importance.

We are most grateful to our sponsors - Bank of Ireland, Jardine Lloyd Thompson Ireland Limited and Solicitors' Mutual Defence Fund - for their continued generous support of the Law Society's Conference.

I thank all of you who have made advance bookings and I hope those who have not yet booked will now do so. We look forward to a memorable conference which we hope will be enjoyed by all.

Michael Irvine
President

Package A based on Charter Flight - €1190.00 Per Person

The cost includes return flights, taxes, transfers, four nights' bed and breakfast at the Grand Villa Argentina (5 Star), Welcome Reception, Conference Seminar and Gala Banquet. Surcharges could apply in respect of changes in air fares or increases in insurance premiums or VAT/tax rates in respect of the hotel.

CHARTER FLIGHTS

19th April, 2006 departure from Dublin – morning flight – times to be confirmed.
23rd April, 2006 departure from Dubrovnik – afternoon flight – times to be confirmed.
(Times are subject to Air Traffic Control restrictions. However, we are endeavouring to secure morning departure and afternoon return flight times so that we may facilitate those wishing to travel from Cork, Shannon, etc. Exact times will be detailed in your booking confirmations. The charter flight will be allocated strictly in order of bookings received).
Those delegates not allocated to the charter flight will be accommodated on scheduled flights which will incur a supplemental charge and transfer charges. Note: Connecting flights from Cork, Shannon etc. can be arranged by Ovation Group. Please complete relevant section on the reservation form.

Package B based on Scheduled Flights

Delegates travelling on scheduled flights will travel via various European cities and will have the option to pre or post extend their stay subject to airline and hotel availability. Price will be direct from Dublin or based on the charter package but will not include airport transfers and may incur airline and hotel surcharges. Delegates intending to travel on scheduled flights should return a completed reservation form as soon as possible with details of their preferred travel arrangements.

Registration Fee €100

Payable by delegates only and not accompanying persons. Please complete the reservation form and return with full payment to Ovation Group (see contact details overleaf).**Closing date for receipt of bookings is 20th February 2006.**

Online Booking available at www.lawsociety.ie Online Booking available at www.lawsociety.ie

Accommodation

All delegates will be accommodated in the Grand Villa Argentina (5 Star). The property offers a picturesque setting with stunning views of Dubrovnik's medieval town and the crystal waters of the Adriatic - all of which can be savoured while enjoying the facility of the hotel's private beach. The location is within easy walking distance of the historic centre and provides comfortable accommodation in its spacious rooms. The hotel's Energy Clinic will offer guests the opportunity to indulge themselves in a variety of beauty and therapy treatments which can also be complimented by an invigorating session in the gym.

Social Programme

The conference will open on **Wednesday** evening with a Welcome Reception for all participants at the Grand Villa Argentina.

On **Thursday**, there will be two optional tours:

Option 1: Full-day tour to Mostar, Bosnia-Herzegovina:

The historic town and unofficial capital of Bosnia-Herzegovina straddles the emerald banks of the Neretva River. The city has a long and complex history dating back to the Austro-Hungarian period. It has long been known for its old Turkish houses and Old Bridge; Stari Most which suffered badly during the 1990 conflict. The Old Bridge area, with its pre-Ottoman, eastern Ottoman, Mediterranean and western European architectural features is an outstanding example of a multicultural urban settlement. The reconstructed Old Bridge and Old City act as a symbol of reconciliation, international cooperation and of the coexistence of diverse cultural, ethnic and religious communities. **Passport Required.** (NB The driving time by coach to Mostar will be approx 3 hours)

Option 2: City walking tour, Dubrovnik

Listed as a World Cultural Heritage site by UNESCO, Dubrovnik is best explored on foot to capture fully its intimate walled setting. Explore the whitewashed walls of this medieval city and discover the treasures that lie hidden amongst its narrow streets and alleyways. Things to see include a Franciscan monastery, cathedral, the Onofrio fountain and Europe's oldest functioning pharmacy, established in 1391. All the while you will be absorbing the daily social activity of the city and witnessing the locals as they gather at their favourite meeting place, Orlando Column.

On **Friday**, there will be an second opportunity to do the City walking tour of Dubrovnik.

Friday evening will include a Drinks Reception and Gala Dinner at the Revelin Fort. Originally built to provide protection during the fall of Bosnia under Turkish rule, it was more recently used as the administrative centre of the Republic. The setting will serve as the perfect backdrop to this Gala event.

On **Saturday** there will be an optional full-day tour of Montenegro. A turbulent history has shaped this land of historic treasures and monuments. Less than an hour's drive from Dubrovnik, you will experience a landscape of incomparable natural beauty. Our trip will include a spectacular drive along the Bay of Kotor, winding through the towns of Risan and Perast. Our descent will then take us to Cetinje, the one-time seat of Montenegran rulers, now a city museum, where we will explore the sights of the city. Lunch will be enjoyed at Budva before taking our return trip to Dubrovnik by ferry across the bay. **Passport Required.** (NB The driving time by coach to Kotor will be approx 2.5 hours)

Programme at a Glance

WEDNESDAY, 19th April 2006

Afternoon: Arrive Dubrovnik Airport. Transfer to hotel for check-in.
Evening: Welcome Reception for all participants
Venue: Grand Villa Argentina Hotel

THURSDAY, 20th April 2006

Morning & Afternoon: Optional full-day tour to Mostar including lunch or optional City walking tour of Dubrovnik
Evening: At leisure

FRIDAY, 21st April 2006

Morning: Conference Business Session – Conflict Resolution: Peace & Reconciliation
Venue: Grand Villa Argentina Hotel
Afternoon: Optional City walking tour of Dubrovnik
Evening: Drinks Reception & Gala Dinner
Venue: Revelin Fort (Dress: smart informal)

SATURDAY, 22nd April 2006

Morning: Optional full-day tour to Montenegro including lunch
Evening: At leisure

SUNDAY, 23rd April 2006

Afternoon: Departure

CONTACT DETAILS

If you would like any further information please contact any member of the Organising Team:

Evelyn O'Sullivan or Niamh Mc Crystal (Ovation Group)	Tel: (01) 280 2641	Email: lawsociety@ovation.ie
James McCourt (Chairman)	Tel: (01) 660 6543	Email j.mccourt@omgm.securemail.ie
Geraldine Clarke	Tel: (01) 474 4300	
Gerry Griffin	Tel: (01) 490 1185	
Simon Murphy	Tel: (021) 427 3305	
Mary Keane	Tel: (01) 672 4900	

For information on extending your stay please contact Ovation Group:
Law Society Annual Conference 2006, Ovation Group, 1 Clarinda Park North, Dun Laoghaire, Co. Dublin, Ireland.

BOOKING / CANCELLATION

Online Booking available at www.lawsociety.ie
Terms & Conditions

1. The Conference Secretariat must receive notification of all cancellations in writing (by e-mail or fax) to Evelyn O'Sullivan / Niamh Mc Crystal, Ovation Group, 1 Clarinda Park North, Dun Laoghaire, Co. Dublin.

2. Cancellations received up to and including 31st December 2005 will be subject to a 10% cancellation fee.

3. Cancellations received from 1st January 2006 to 19th February 2006 will be subject to a 50% cancellation fee.

4. No refunds will be given after 20th February 2006.

5. Cancellation should be communicated in writing or by e-mail. Transfer of registration fee to another delegate will be accepted. Please inform the Conference Secretariat of any changes as soon as possible.

6. Travel insurance will be automatically invoiced unless delegates indicate otherwise.

7. No contract shall arise until full payment has been received and a Booking Form (which will be sent with written confirmation of acceptance of the reservation) has been signed and returned.

8. Travel agent reserves the right to allocate all bookings on flights.

The organisers reserve the right to alter any of the arrangements for this conference, including cancellation of the event should unforeseen circumstances require such action. The organisers accept no responsibility for resulting costs and inconvenience to delegates who are advised to have their own travel insurance in place. The currency exchange rate to be applied in the case of payments and refunds will be based on the available exchange rate at the time of the transaction. Ovation Group is not responsible for any changes in exchange rates which may cause any differences or any other additional fees levied by your bank or card processor. By registering for the Law Society of Ireland Annual Conference, delegates give permission for their contact details to be used for official purposes and to be included in the list of participants.

Practice notes

ACTING FOR BOTH VENDOR AND PURCHASER IN SALE AND PURCHASE OF NEW HOUSES AND APARTMENTS: NOTICE TO ALL PRACTISING SOLICITORS

The attention of practising solicitors is drawn to the *Solicitors (Professional Practice, Conduct and Discipline) Regulations 1997* (SI 85/1997).

Under these regulations, a solicitor is prohibited from acting for both vendor and purchaser in the sale and purchase for value of a newly constructed residential unit or a residential unit in course of construction, where the vendor is the builder of that residential unit or is associated with the builder of that residential unit.

This prohibition does not apply in the following situations, unless there is a conflict of interest between the vendor and the purchaser:

1) Where the vendor and the purchaser are associated companies or the purchaser is a member, director or employee of the vendor or an associated company of the vendor;
2) Where the vendor or, where the vendor is a corporate entity, any member or director of the vendor, is related to the purchaser by blood, adoption or marriage.

In the regulations, 'residential unit' means a house or apartment intended for use as a residence.

Any breach of the regulations may, on due enquiry by the Solicitors Disciplinary Tribunal, be found to be misconduct.

Practitioners from all areas of the country have brought to the attention of the Law Society the fact that some solicitors acting for builders/vendors in the sale of new estate houses or apartments are also routinely acting for purchasers of those new residential units, in apparent breach of the provisions of the above statutory instrument. This activity has been reported both in cases where the solicitor acting for the builder/vendor acts for the occasional purchaser in the development and in cases where the solicitor acting for the builder/vendor systematically acts for all purchasers in the development. It is a source of great concern to the society that some practitioners continue to act in breach of the provisions of SI 85/1997 in this manner, notwithstanding the fact that the society has previously successfully prosecuted such a breach of the law before the Disciplinary Tribunal, as reported in the November 2004 issue of the *Law Society Gazette*.

Breaches of SI 85/1997 will be referred to the Complaints and Client Relations Committee and may result in referral to the Disciplinary Tribunal.

Any solicitor who may already be in the course of acting for both parties in the sale and purchase of a new residential unit or a residential unit in the course of construction, in breach of SI 85/1997, should immediately make arrangements to cease to so act in cases where the sale has not yet taken place and where a lending institution or other third party has not already acted in reliance upon an undertaking given by the solicitor acting in the transaction.

Registrar of Solicitors, Conveyancing Committee

LAND ACT 2005 – REPEAL OF SECTIONS 12 AND 45 OF THE *LAND ACT 1965*

The *Land Act 2005* has now been enacted and all sections of the act have been commenced by statutory instrument, operational from 4 November 2005 for all sections of the act, with the exception of section 5. The operational date for section 5 was 2 December 2005.

Repeal of sections 12 and 45 of the *Land Act 1965*

Sections 12 and 45 of the *Land Act 1965* and section 6 of the *Land Act 1946* are fully repealed with effect from 4 November 2005. Section 12 of the *Land Act 2005* contains the specific repeal provisions.

In the circumstances, consents will no longer be necessary from the Land Commission/minister for agriculture and food for:

1) The subdivision of holdings, or
2) The purchase of land by non-qualified persons.

The administrative practise of issuing retrospective consents also ceased from 4 November 2005.

In this regard, the following arrangements have been agreed by the Department of Agriculture with the Land Registry office. Where a deed of transfer has been executed prior to the date of commencement of the *Land Act 2005*, without the necessary consents being sought and issued, contact should be made by the relevant solicitor with the department's office at Farnham Street, Cavan, to request a letter of confirmation (for lodgement with the Land Registry dealing) that if the consents had been applied for at the appropriate time (prior to the operation of the act), the relevant consents would have been issued at that time.

Land purchase annuities

The act provides that any land purchase annuity with an outstanding balance of under €200 is written off as and from 4 November 2005. This leaves approximately 2,300 remaining land purchase annuities that may be bought out at a 25% discount during a period of six months from 1 January 2006; alternatively, people may wish to continue to discharge the annuity in the usual way until the full loan is paid off.

Practitioners should note that the letter of confirmation referred to in relation to sections 12 and 45 above does not remove the requirement to obtain a specific certificate from the Department of Agriculture in respect of the clearance of any current land purchase annuity arrears, as set out in section 5 of the act. This would arise where an annuitant decided, for whatever reason, not to avail of the proposed discounted buy-out and continued with their annuity repayments until the full loan was paid off.

Section 5 of the *Land Act 2005* provides for a certificate of clearance being furnished to the Land Registry in respect of annuity arrears where a transfer of land subject to an annuity is presented for registration in the registry. It is possible that there may be transfers in existence that, while executed prior to the commencement of the *Land Act 2005*, will only be presented to the Land Registry after the *Land Act 2005* commenced. In order to provide for this eventuality, the department indicated that section 5 would be commenced on 2 December 2005, approximately one month after the date for commencement of the other provisions of the *Land Act 2005*.

Any dealing involving land, the subject of a trust scheme set up under sections 4 and 20 of the *Land Act 1903*, as extended, continues to require the appropriate specific consent from the minister for agriculture and food under section 30 of the *Land Act 1950*.

Conveyancing Committee

PRACTISING CERTIFICATES 2006: NOTICE TO ALL PRACTISING SOLICITORS

It is misconduct and a criminal offence for a solicitor (other than a solicitor in the full-time service of the state) to practise without a practising certificate. Any solicitor found to be practising without a practising certificate is liable to be referred to the Solicitors Disciplinary Tribunal.

When you must apply

A practising certificate must be applied for on or before 1 February in each year in order to be dated 1 January of that year and thereby operate as a qualification to practise from the commencement of the year. It is a legal requirement for a practising solicitor to deliver or cause to be delivered to the registrar of solicitors at the society's premises at Blackhall Place, Dublin 7, on or before 1 February 2006, an application in the prescribed form duly completed and signed by the applicant solicitor personally. The onus is on each solicitor to ensure that his or her application form is delivered by Wednesday 1 February 2006, with the appropriate fee.

What happens if you apply late

Any applications for practising certificates that are received after 1 February 2006 will result in the practising certificates being dated the date of actual receipt by the registrar of solicitors, rather than 1 January 2006. There is no legal power to allow any period of grace under any circumstances whatsoever. Please note that, again during 2005, a number of solicitors went to the trouble and expense of making an application to the High Court for their practising certificate to be backdated to 1 January because their practising certificate application was received after 1 February.

The Regulation of Practice Committee (formerly the Compensation Fund Committee) is the committee of the Law Society that has responsibility for supervising compliance with practising certificate requirements. There will be a special meeting of this committee on 9 February 2006 to consider any late or unresolved applications for practising certificates. At this meeting, any practising solicitors who have not applied by then for a practising certificate will be considered for referral forthwith to the Solicitors Disciplinary Tribunal and will be informed that the society reserves the right to take proceedings for an order under section 18 of the *Solicitors (Amendment) Act 2002* to prohibit them from practising illegally.

What you need to do about professional indemnity insurance

If confirmation of mandatory professional indemnity insurance cover is not received, the registrar of solicitors is precluded by law from issuing a practising certificate. All solicitors who are required to have professional indemnity insurance cover are asked to ensure that either they or their broker furnishes the society with confirmation of cover as soon as cover is renewed.

If mandatory professional indemnity insurance is not in place on 1 January 2006 and cover commences from a date after 1 January, the practising certificate will issue with effect from the date of the commencement of cover. It is not possible in such circumstances, even by application to the High Court, to have a practising certificate made effective from 1 January.

Compliance partner

This year, for the first time, the application form (section B, part I) includes a requirement for partners to state the name of their firm's compliance partner. The *Solicitors' Accounts (Amendment) Regulations 2005* require a solicitor who is a partner in a solicitors' practice, on making application to the society for a practising certificate in respect of the practice year 2006 and subsequent years, to furnish the name of the partner who has been nominated as the compliance partner.

Continuing professional development (CPD)

This year, for the first time, the application form includes a section regarding completion of, or exemption from, the 20-hour CPD requirement (section E). You must complete this section, but please do not send in your CPD record card with the application form.

If you are an employed solicitor

Solicitors who are employed should note that it is the statutory obligation of every solicitor who requires a practising certificate to ensure that he or she has a practising certificate in force from the commencement of the year. Employed solicitors cannot absolve themselves from this responsibility by relying on their employers to procure their practising certificates. However, it is the society's recommendation that all employers should pay for the practising certificates of solicitors employed by them.

Some of your details are already on the application form

The practising certificate application form will be issued with certain information relating to each solicitor's practice already completed.

What you can access on the website (www.lawsociety.ie)

The application form for a practising certificate will be available on the society's website. You can print out a blank form or, alternatively, complete the form on-screen and print out the form for signing and returning. The form can be accessed in the members' area of the website using the solicitor's surname and reference number (which will be stated on page 1 of the application form).

If you are ceasing practice

If you are intending to cease practice in the coming year, please notify the society accordingly.

John Elliot, Registrar of Solicitors and Director of Regulation

STAMP DUTY CERTIFICATES WHERE CONSIDERATION EXCEEDS THE TOP STAMP DUTY THRESHOLD

Recent reports from practitioners that they have been requested by the stamp duty office to insert certificates in deeds that the aggregate amount or value of the consideration exceeds €___ (the top threshold amount) have been raised by the committee with the Revenue. It has now been confirmed by the Revenue that where the consideration exceeds the top stamp duty threshold, currently €635,000 for residential property and €150,000 for non-residential property, it is **not** necessary to insert a certificate in the instrument certifying that the aggregate amount or value of the consideration exceeds the top threshold amount. In such cases, stamp duty is chargeable at the top rate of 9% on the consideration.

It has also been confirmed by the Revenue that where the instrument relates to both residential and non-residential property and the consideration for either the residential property or the non-residential property is less than the appropriate top stamp duty threshold, it is only necessary to include a certificate relating to the consideration for the property for which a lower stamp duty rate is being sought.

The Revenue has advised that if Law Society members are encountering any difficulties in relation to the above certification requirements, they should in the first instance raise the matter with the management in the relevant stamp duty office and, if necessary, revert to the committee who will take the matter up on their behalf with Revenue if there continues to be a difficulty.

Conveyancing Committee

SOLICITORS' ACCOUNTS (AMENDMENT) REGULATIONS 2005: NEW REQUIREMENTS

The attention of solicitors is drawn to the new requirements imposed on solicitors by the *Solicitors' Accounts (Amendment) Regulations 2005* (SI no 719 of 2005). These regulations came into force on 1 December 2005.

These requirements have been introduced to bring into focus the fact that it is the responsibility of a solicitors' firm to secure and confirm compliance with the accounts regulations and that this responsibility cannot be passed on to the firm's accountants.

In addition to a firm's reporting accountant's report being submitted to the Law Society, a Form of Acknowledgement must also be submitted. This is a statement by an authorised person in the solicitors' firm itself that confirms compliance with the accounts regulations. The Form of Acknowledgement will form part of the annual reporting accountant's report submitted to the society pursuant to the *Solicitors' Accounts Regulations 2001 to 2005*.

This form is required in respect of accounting periods ending on or after 1 January 2006.

Contents of the Form of Acknowledgement

In the Form of Acknowledgment, the authorised solicitor confirms:

a) That he/she recognises the solicitor's/partnership's obligations under the *Solicitors' Accounts Regulations 2001 to 2005* to secure compliance with the regulations; and
b) That he/she is aware of the format and contents of the reporting accountant's report, which he/she has discussed with the reporting accountant to the extent necessary to understand its effect upon the solicitor's/partnership's discharge of obligations under the *Solicitors' Accounts Regulations 2001 to 2005*.

Sole practitioner/compliance partner

In the case of a sole practitioner, or sole principal, the principal of the practice must sign the Form of Acknowledgment. In the case of a partnership, the members of the partnership are required to nominate a 'compliance partner' for completing and signing the Form of Acknowledgment on behalf of all the partners of the partnership.

The identity of the compliance partner must be notified to the society in writing by each partner of the practice when making their application to the society for a practising certificate. Any change in the identity of the compliance partner should be notified to the society within 14 days.

In the event of a new partnership being formed during a practice year, a solicitor who becomes a partner in the partnership must ensure the society is notified of the name of the partner who has been nominated as the compliance partner within 14 days.

In the event of a change in the compliance partner in the course of the practice year, the Form of Acknowledgment must be signed by both the outgoing compliance partner and the incoming compliance partner, specifying the period during the practice year that each was the compliance partner.

John Elliot, Registrar of Solicitors and Director of Regulation

PROFESSIONAL INDEMNITY INSURANCE MATTERS

You have either recently renewed your professional indemnity insurance cover with effect from 1 November 2005 or, alternatively, are arranging to renew your cover with effect from 1 January 2006. You should note that if you are changing from an insurer who provided cover to 31 October to an insurer who provides cover for the calendar year, you should ensure that you have cover for a 14-month period – that is, 1 November 2005 through to 31 December 2006 – in order to have no break in your cover. This is a matter of the utmost importance.

As professional indemnity insurance operates on a claims-made basis rather than an occurrence basis, the relevant cover is the cover in place when you first become aware of a potential claim and notify your insurer accordingly and not the cover in place when you provided the legal services.

The society must receive confirmation of cover on behalf of each solicitor/practice in order to issue a practising certificate. Therefore, it is essential that the society is in receipt of confirmation that you have professional indemnity insurance in place prior to issuing you with a practising certificate in January 2006. In that regard, you should ensure that either you, your insurer or your broker has furnished the society with confirmation that you have professional indemnity cover in place with effect from either 1 November 2005 or 1 January 2006 (precedent forms of confirmation of cover are available from the society).

If your professional indemnity insurance is not in place on 1 January 2006 and cover commences from a date after 1 January, your practising certificate will issue with effect from the date of the commencement of your professional indemnity insurance cover. For example, if your professional indemnity insurance cover commences on 7 January 2006, your practising certificate will issue with effect from 7 January 2006 (not 1 January 2006). The consequent gap in the period for which you have held a practising certificate may give rise to problems. In this regard, you should note that it is not possible in such circumstances, even by application to the president of the High Court, to have your practising certificate made effective from 1 January, as such an order is not provided for within the *Professional Indemnity Insurance Regulations* (SI no 312 of 1995).

You should contact the society if you wish to seek clarification on any issues raised.

Jerome O'Sullivan, chairman, Professional Indemnity Insurance Committee

INSTALLATION AID SCHEME FOR YOUNG FARMERS

It was previously a requirement for eligibility for the above scheme that applicants would have to show evidence that some of the set-up costs of the scheme were outstanding for payment at the time of making the application. This had resulted in many solicitors for applicants being asked for a letter saying that their legal fees were still outstanding at the date of application.

Having considered representations by the Conveyancing Committee, the minister for agriculture and food indicated in a recent letter that she agrees that the conditions of the current scheme may be excessive, in that they require some or all of the set-up costs to be outstanding at the time of applications. The minister has therefore agreed to amend the terms of the scheme so that applicants will be required merely to provide proof that set-up costs have been incurred and to produce evidence of such costs by way of an original or certified copy of an appropriate invoice or receipt. The minister has indicated that this amendment will be included in the scheme as soon as possible, but administrative arrangements will be made to have the amendment applied to pending applications.

Conveyancing Committee

STAMP DUTY WHERE CONSIDERATION FOR A SALE OR LEASE INCLUDES VAT

The Conveyancing Committee was recently asked by practitioners to ascertain the Revenue Commissioners' requirements in relation to the stamping of deeds where the consideration for a sale or lease includes VAT. Some practitioners had reported to the committee their experience of being asked by Revenue to produce VAT invoices or VAT receipts in circumstances where they had lodged transfers, conveyances or leases for assessment for stamp duty purposes accompanied by PD form and contract for sale and/or building agreement.

The committee has received confirmation from the Revenue as follows:

"Sections 48 and 56 of the Stamp Duties Consolidation Act 1999 *provide that the chargeable consideration for stamp duty purposes is to exclude any VAT chargeable under section 2 of the* VAT Act 1972 *on the sale or lease.*

"While it is not normal practice to seek VAT invoices or receipts where the above provisions apply, evidence, in the form of invoices or receipts, has been sought where the VAT position has not been clear from the documentation furnished. Where the VAT position is clearly set out in the contract for sale and/or building contract, there should be no necessity for production of any further evidence in support of the exclusion of VAT from the chargeable consideration. If the VAT position is not reflected in the contracts and the exclusion of VAT is being claimed, the solicitor should clearly outline the VAT position in a covering letter, showing how the net of VAT consideration has been calculated. The production of VAT invoices or receipts should only arise where there is some element of doubt regarding the VAT treatment of the transaction."

It is very important that the correct VAT position is outlined at the date of stamping to ensure that your client does not pay stamp duty on the VAT element of the price. If members are encountering any difficulties in relation to the VAT treatment of a particular transaction, the matter in the first instance should be raised with the management of the relevant stamp duty office and, if necessary, they can revert to the committee, which may be able to take the matter up with Revenue on their behalf if there continues to be a difficulty in this area.

Conveyancing Committee

CRO FEE CHANGES

With effect from 1 December, the Companies Registration Office fees changed for a range of activities such as filing annual returns, change of company name and change in company/secretary details. Full details are contained in SI no 517 of 2005 and are also available on the CRO website.

Business Law Committee

ELECTRONIC FILING AGENTS

Most solicitors will already be aware that companies can file documents electronically in the Companies Registration Office (CRO). An important new change is introduced by sections 57 and 58 of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005* that allow for the appointment of an electronic filing agent. A company may authorise a person (known as an electronic filing agent) to sign and deliver electronically documents that are required to be filed in the CRO. Electronic signature and delivery of documents by an electronic filing agent is as valid in law as if it had been done by the company itself.

In order to become an electronic filing agent, the agent must apply to the CRO to act as such on the new form J1(a). This form also acts as an application to the CRO for a digital certificate and nominates a named individual within the agent's firm who will verify the signing of documents with a single ID and PIN. The signatory must then apply to the CRO for an ID and PIN on form J2, both of which will then be returned to the agent's residential address.

A company wishing to authorise an electronic filing agent to act on its behalf must file a form B77, which notifies the CRO of this authorisation.

It is imperative that solicitors acting as electronic filing agents take special care to ensure that the contents of forms and returns signed and delivered by them are accurate in all material respects. Section 242 of the *Companies Act 1990* makes it an offence for any person to file a return in the CRO that is false in a material particular and that the person knows to be false. An electronic filing agent clearly comes within the ambit of section 242. However, section 71 of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005* amends section 242 of the 1990 act by inserting the following new subsection: *"(1A) A person who knowingly or recklessly furnishes false information to an electronic filing agent that is subsequently transmitted in a return made, on the person's behalf, to the registrar of companies shall be guilty of an offence."*

In summary, therefore, an electronic filing agency is guilty of an offence if he or she knowingly completes, signs or delivers a document that is false in a material particular. If a director or officer of a company upon whom the electronic filing agent relies for the accuracy of the information knowingly or recklessly furnishes false information to the electronic filing agent, that director or officer is guilty of an offence.

It is recommended that a solicitor acting as an electronic filing agent sends out a return in draft form – and where practicable in a protected format – to the company, prior to signing and delivering it to the CRO, and requests the company to confirm that the information in the return is complete and accurate.

Business Law Committee

PROPOSED CHANGES TO LAW ON ADVERSE POSSESSION

In the draft *Land and Conveyancing Bill 2005,* published in the Law Reform Commission's latest *Report on the Reform and Modernisation of Land Law and Conveyancing Law,* it is proposed at section 129 that applicants for registration based on adverse possession will, in future, have to make such an **application in court** instead of by way of section 49 application to the Registrar of Titles, as is currently the case.

It is also proposed that legal title will not vest in the applicant who obtains a court order until it is registered in the Land Registry and, until so registered, it will vest only an equitable interest in the applicant. This applies in respect of both registered and unregistered title.

Section 130 of the draft bill provides that the vesting order shall be made only if the court is satisfied that certain criteria are met and subject, if the court thinks fit, to payment by the applicant of a sum of money to the owner by way of **compensation** for loss, defrayment of costs and expenses or otherwise.

Practitioners with any pending S49 applications (or any adverse possession claims in relation to unregistered land) may wish to take steps to expedite same in advance of the introduction of any new law or procedures in this area.

The proposed new requirement for a court application and the possibility of being required to pay compensation will radically change the nature of adverse possession claims, and the Conveyancing Committee would be greatly interested in hearing from practitioners with their views on these new proposals. Practitioners may also wish to make submissions to the minister for justice, equality and law reform and/or to the Law Reform Commission.

Conveyancing Committee

BREACH OF UNFAIR TERMS ORDER MAY BE DEEMED TO BE MISCONDUCT

HIGH COURT ORDER

On 20 December 2001, the High Court found that certain terms that had been used in building agreements were unfair within the meaning of the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995* (the *Unfair Terms Regulations*). This order was based on an application by the Director of Consumer Affairs pursuant to the *Unfair Terms Regulations,* which application was prompted by numerous complaints by purchasers' solicitors to the Conveyancing Committee. The order directed that no person should use such terms or terms having a like effect in a building contract.

Despite the making of the said order, a number of solicitors for builders are still using the prohibited terms and terms having the like effect as those found to be unfair. The Complaints and Client Relations Committee (formerly known as the Registrar's Committee), following discussions with the Conveyancing Committee, has indicated that it will consider complaints against solicitors alleging breaches of the High Court order. Any complaints arising from any such alleged breach that are upheld may be deemed to be misconduct and, if so found, will be dealt with accordingly.

Registrar of Solicitors
Conveyancing Committee

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*

THE HIGH COURT 2005
No 49 SA

In the matter of Keith Finnan, a solicitor practising under the style and title of Keith Finnan & Co, Humbert Mall, Main Street, Castlebar, Co Mayo, and in the matter of the *Solicitors Acts 1954-2002*
The Law Society of Ireland (applicant)
Keith Finnan (respondent solicitor)

On 10 October 2005, the president of the High Court heard an appeal against the finding of the Disciplinary Tribunal following hearings on 16 September 2004, 9 November 2004, 2 February 2005 and 3 May 2005 that there has been no misconduct on the part of the respondent solicitor in respect of the complaints set out in the society's affidavit sworn on 2 April 2004 in relation to the solicitor's failure to file his accountant's report for the year ended 31 January 2003, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (regulation 21, statutory instrument no 421 of 2001) in a timely manner or at all. The president:

1) Set aside the finding of the Disciplinary Tribunal in relation to the finding that the solicitor was not guilty of misconduct,
2) Did not impose a penalty or sanction, and
3) Ordered that there be no order as to the costs of the proceedings.

In the matter of Ian Quentin Crivon, practising under the style and title of O'Hagan, Ward & Company Solicitors, 31/33 The Triangle, Ranelagh, Dublin 6, and in the matter of the *Solicitors Acts 1954 to 2002* [2196/DT15/05]
Law Society of Ireland (applicant)
Ian Quentin Crivon (respondent solicitor)

On 22 September 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 October 2003 in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001) in a timely manner, having only filed same with the society on 7 February 2005. The tribunal ordered that the respondent solicitor:

a) Do stand advised and admonished,
b) Pay a contribution of €500 to the Law Society of Ireland as part of the society's costs.

THE HIGH COURT 2005
No 58 SA

In the matter of Michael T Petty, a solicitor practising under the style and title of Michael Petty & Company of Parliament Street, Ennistymon, Co Clare, and in the matter of the *Solicitors Acts 1954-2002*

On 24 October 2005, Mr Justice Finnegan, the President of the High Court, ordered that the said Michael T Petty, solicitor, do attend before this court (the president) on Friday 28 October 2005 at 10.30am and do produce in court on that occasion any or all files in his and his office's possession in relation to the estate of a deceased named person for the purposes of handing same over to the Law Society representative in court. G

LEGISLATION UPDATE: 22 OCTOBER – 14 NOVEMBER 2005

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue, www.lawsociety.ie.

ACTS PASSED

Adoptive Leave Act 2005
Number: 25/2005
Contents note: Amends the *Adoptive Leave Act 1995* and provides for the revocation of the *Adoptive Leave Act 1995 (Extension of Periods of Leave) Order 2001* (SI 30/2001).
Date enacted: 17/10/2005
Commencement date: Commencement order(s) to be made (per s22(3) of the act)

Interpretation Act 2005
Number: 23/2005
Contents note: Provides for the interpretation and application of acts and of statutory instruments made under acts; repeals and replaces all of the former *Interpretation Acts* (1889, 1923, 1937, 1993) except the *Interpretation (Amendment) Act 1997*.
Date enacted: 17/10/2005
Commencement date: 1/1/2006 (per s1(2) of the act)

Land Act 2005
Number: 24/2005
Contents: Amends and extends the *Land Purchase Acts*. Repeals, with effect from 4/11/2005, sections 12 and 45 of the *Land Act 1965*, the result of which is that neither certificates nor specific consents are required for the subdivision of holdings or the purchase of land by non-qualified persons. Provides that all land purchase annuities of less than €200 shall stand discharged from 4/11/2005. Section 5 of the act (which came into operation on 2/12/2005) provides that where land is subject to a land purchase annuity, that is, an annuity over €200, a certificate of clearance must be furnished to the Land Registry in respect of annuity arrears where a transfer of land is presented for registration in the Land Registry.
Date enacted: 26/10/2005
Commencement date: 4/11/2005 for all sections except section 5, which came into operation on 2/12/2005 (per SI 689/2005)

SELECTED STATUTORY INSTRUMENTS

Companies Act 1990 (Uncertificated Securities) (Amendment) Regulations 2005
Number: SI 693/2005
Contents note: Amend the *Companies Act 1990 (Uncertified Securities) Regulations 1996* (SI 68/1996) in order to facilitate the introduction of a central counterparty (CCP) system for the Irish securities market.
Commencement date: 10/11/2005

District Court (Estreatment of Recognisances) Rules 2005
Number: SI 704/2005
Contents note: Amend schedule B of the *District Court Rules 1997* (SI 93/1997) by the substitution for the existing form of a new form 27.7, 'Notice of Application for Warrant of Execution' (to enforce by committal an order to estreat), under order 27, rule 6(2).
Commencement date: 7/12/2005

District Court (Refugee Act 1996) Rules 2005
Number: SI 687/2005
Contents note: Amend the *District Court Rules 1997* (SI 93/1997) by the addition of new rules 10-15, 'Procedure under *Refugee Act 1996*', to order 38.
Commencement date: 1/12/2005

District Court (Taxes Consolidation Act 1997) (Amendment) Rules 2005
Number: SI 703/2005
Contents note: Amend the *District Court Rules 1997* (SI 93/1997) by the substitution in sub-rule 7 of rule 2 of order 38 of the words "has been or is about to be committed" for the words "has been or is or was about to be committed", and substitutes new forms 38.12 and 38.13.
Commencement date: 7/12/2005

Rules of the Superior Courts (Commission to Inquire into Child Abuse Act 2000) 2005
Number: SI 674/2005
Contents note: Correct a numbering error in the *Rules of the Superior Courts (Commission to Inquire into Child Abuse Act 2000) Rules 2004* (SI 884/2004). Substitute 'order 134' for 'order 133' in each place where that reference appears. The amended numbering means that SI 884/2004 inserts a new order 134, 'Commission to Inquire into Child Abuse', into the *Rules of the Superior Courts 1986* (SI 15/1986).
Commencement date: 26/11/2005

Rules of the Superior Courts (Takeover Schemes) 2005
Number: SI 688/2005
Contents note: Amend order 75 of the *Rules of the Superior Courts 1986* (SI 15/1986) and insert a new rule 24 in order 75 providing for the procedure on applications under the *Companies Acts* in relation to takeover scheme proceedings.
Commencement date: 5/12/2005

Sheriffs' Fees and Expenses Order 2005
Number: SI 644/2005
Contents note: Increases the fees charged by sheriffs and county registrars in the execution of court orders.
Commencement date: 1/11/2005

Companies (Auditing and Accounting) Act 2003 (Commencement) Order 2005
Number: SI 686/2005
Contents note: Appoints 1/12/2005 as the commencement date for section 47 of the *Companies (Auditing and Accounting) Act 2003* insofar as that section is not already in operation (see article 5 of SI 132/2004).

Companies (Forms) (No 2) Order 2004
Number: SI 694/2005
Contents note: Prescribes a new form B77 to be used for the notification by a company to the Registrar of Companies of the authorisation of an electronic filing agent, under section 57(4)(a) of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*, and for the notification by a company to the registrar of the revocation of authorisation of its electronic filing agent, under section 58(2) of the 2005 act.
Commencement date: 1/12/2005

Investment Funds, Companies and Miscellaneous Provisions Act 2005 (Commencement) (No 2) Order 2005
Number: SI 695/2005
Contents note: Appoints 1/12/2005 as the commencement date for sections 57, 58, 61 and 71 of the act.

Private Security Services Act 2004 (Commencement) Order 2005
Number: SI 637/2005
Contents note: Appoints 3/10/2005 as the commencement date for sections 13 to 16, 21 to 28, 34, 36 and 38, part 4 (s39), part 5 (ss40 and 41), part 7 (ss48 to 52) and schedule 2 of the *Private Security Services Act 2004*.

Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 2005
Number: SI 682/2005
Contents note: Prescribe revised forms and certificates to be used in relation to claims under section 6 and section 7 of the *Protection of Employees (Employers' Insolvency) Act 1984*.
Commencement date: 2/11/2005

Road Transport Act 1999 (Repeals) (Commencement) Order 2005
Number: SI 683/2005
Contents note: Appoints 31/10/2005 as the commencement date for the repeal of sections of the *Road Transport Acts* set out in the schedule to the SI, being provisions repealed by section 23 of the *Road Transport Act 1999*. G

Prepared by the Law Society Library

Legislation focus

Investment Funds, Companies and Miscellaneous Provisions Act 2005

The *Investment Funds, Companies and Miscellaneous Provisions Act 2005* became law on 30 June 2005. The dates on which specified provisions of the act have come into operation are set out in commencement orders SI no 323 of 2005 and SI no 695 of 2005.

The act was primarily enacted to facilitate a number of changes to investment funds law, which were required by that industry. However, the opportunity was taken to make a number of other changes to company law that were either timely or long outstanding. This article highlights the main changes brought about by the act but does not constitute an in-depth analysis. For example, the act in parts 4 and 5 facilitates the implementation of the *Market Abuse Directive* and *Prospectus Directive* and the passing of the relevant regulations respectively. A review of those regulations will be important to understand the changes to company and securities law brought about by those directives.

CCF fund

Part 1 of the act contains procedural provisions. Part 2 of the act introduces new legislation for the establishment of a non-UCITS common contractual fund (CCF). A CCF is a fund created to achieve a look-through and tax transparency for investors, initially for pension funds. A CCF was first created as a UCITS ('undertakings for collective investment in transferable securities' – a form of retail investment fund created pursuant to EU directives). The intention is that the CCF will be extended to non-pension assets. By way of background, at the end of 2003, legislation was passed in Ireland as part of the then new *UCITS Regulations*, which enable the establishment in Ireland of an internationally recognised pooling pension structure as a UCITS. This pension pooling structure is now commonly called a common contractual fund or CCF.

A CCF is regulated by the Irish Financial Services Regulatory Authority (Financial Regulator). The act introduces new legislation for the establishment of a non-UCITS CCF, whereby institutional investors would be able to invest in alternative asset classes that will be subject to much less restrictive investment and borrowing restrictions. The Financial Regulator will exercise regulatory control over the fund industry for the new non-UCITS CCF and will have the power to impose such conditions as it considers appropriate and prudent for the orderly and proper regulation of the business of a non-UCITS CCF. One of the primary motivations for the creation of such a vehicle was to give certainty to the tax treatment of investments in, and investments by, an investment fund. Historically, there was a question mark as to whether many jurisdictions would accept a traditional Irish unit trust as a tax transparent vehicle rendering the tax treaty between the jurisdiction of the investor and the jurisdiction into which the fund is investing as the relevant tax treaty, as opposed to the Irish *Double Tax Treaty*. The creation of the CCF and approval of that structure by the revenue authorities in the primary jurisdictions has removed that uncertainty.

Investment funds

Part 3 provides for amendments to part XIII of the 1990 *Companies Act* (the '1990 act') and again is relevant to the investment funds industry. The purpose of part 3 is to provide for the introduction of cross-investment and segregated liability for investment funds. Many investment funds are established as so-called umbrella funds, which have the capacity to facilitate a number of different investment funds within the one corporate structure. Two significant issues with such structures were the inability of one sub-fund within the umbrella to invest in another sub-fund of the same umbrella and the potential cross-liability between sub-funds within the one umbrella. Part 3 of the act has corrected these two problems. Section 25 amends the 1990 act by the insertion of five sections into part XIII of that act to provide for segregated liability for investment funds. To provide the mechanism by which any existing umbrella fund wishes to avail of the benefits of segregated liability, it must obtain approval by way of special resolution of the members. Where segregated liability applies, any liabilities of a sub-fund will be discharged solely from the assets of that sub-fund. Segregated liability will not apply to umbrella funds that had commenced trading before the commencement of the act, unless the members of the umbrella resolve that it should (by special resolution). The provisions for segregated liability clarify the position under Irish law but do not with certainty confirm the position as might apply under the law of other jurisdictions to which the investment fund may be subject.

Competent authority

The provisions of part 4 and the *Market Abuse Regulations 2005* transpose into Irish law the *Market Abuse Directive* (2003/6/EC) and supplementary directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

The regulations apply to any financial instrument admitted to trading on a regulated market (or where a request for admission to trading has been made) irrespective of whether the transaction takes place on that market.

As regards part 4 itself, it enabled the introduction of the regulations. It also repeals part V of the 1990 act and the entire of the *Companies (Amendment) Act 1999*, and it also deals with conviction on indictment of offences under Irish market abuse law. It provides for a maximum fine of €10 million and/or ten years in prison on conviction. It also provides for civil liability for certain breaches of Irish market abuse law.

Finally, part 4 creates the concept of 'competent authority', which will have the authority to make rules and impose requirements on persons on whom an obligation or obligations are imposed by Irish market abuse law. Under the regulations, the Financial Regulator will be the competent authority.

Securities law

Directive 2003/71/EC (the *Prospectus Directive*) was implemented through the enactment of part 5 of the act and the *Prospectus (Directive 203/71/EC) Regulations 2005*, which came into force on 1 July 2005.

Part 5 also amends securities law to correct a number of anomalies that have plagued Irish company and securities law for a number of years.

One important effect of the provisions of the act is that, in circumstances where an offer of securities to the public is outside

the scope of the directive or where an offer is made in such a way as to avail of an exemption under article 3.2 of the directive, there will be no requirement under national law to prepare a prospectus, as had been the case up to now.

One consequence of the act and the *Prospectus Regulations* is that the definition of public offer is extremely wide and could potentially catch offers that were possibly not anticipated. Arguably every offer, no matter how informal or limited in scope or number of offerees, falls into the definition. While the *Prospectus Regulations* provide for exemptions from some of the rigours of the directive, the directive would in fact apply to such offers. This consequence was probably not intended either by Europe or the authorities in Ireland. It is likely that some remedial action will be necessary in regard to this, but that is for another day.

The *Prospectus Regulations* require that no offer of securities to the public shall be made in the state without the publication of a prospectus in respect of the offer that has been approved by the Financial Regulator or the competent authority of the home member state (EU or EEA) of the issuer of the securities.

The regulations contain a number of exemptions from the requirement to issue a prospectus, which include offers to the public that are:

1) Addressed solely to 'qualified investors';
2) Addressed to fewer than 100 persons other than 'qualified investors';
3) Offers where the minimum consideration payable is at least €50,000 per investor;
4) Offers whose denomination of securities per unit is at least €50,000; and
5) Offers that expressly limit the total consideration for the offer to less than €50,000.

Part 5 provides for criminal and civil sanctions in the event that a prospectus is issued and includes any untrue statement, or does not contain any information required by EU prospectus law. In the case of civil liability, certain persons involved in the preparation and issue of the prospectus shall be liable to pay compensation to all persons who acquire securities on the faith of the prospectus that contained such untrue statements or failed to provide such information as prescribed under EU prospectus law.

Amendments

Part 6 of the act contains a number of miscellaneous amendments to the *Companies Acts 1963 to 2003*. Some of the amendments are clarificatory in nature and correct errors and omissions in the *Companies Acts*. Other amendments have been made on the recommendation of the Company Law Review Group (CLRG).

From a practitioner's perspective, the following provisions of part 6 should be noted:

1) Section 56 amends section 60 of the *Companies Act 1963* by replacing the existing subsections 12 and 13 of section 60 with two new subsections 12 and 13. The new subsection 12 now lists a total of 14 exceptions to the general prohibition on the giving by a company of financial assistance, as defined. A number of these amendments implement recommendation of the CLRG. Many of these exceptions will have the effect of now permitting transactions over which, in the past, there was a doubt as to whether or not they constituted financial assistance. While it is not proposed to list all of the exceptions here, the following exceptions should be noted:
   a) The 'payment' by a company of a dividend or the making by it of any 'distribution' out of profits, available for distribution, no longer constitutes financial assistance. The 'properly declared' requirement no longer applies.
   b) The provision of finance or delivery of security to refinance an existing loan or other liability (which had been previously given or provided on foot of a special resolution, passed in accordance with section 60), no longer constitutes financial assistance. It should be noted that no specific reference is made in the amending provision to 'guarantee'. It is an open question as to whether this was intentional or was just loose drafting.
   c) The making or giving by a company of representations, warranties or indemnities to a party in connection with a purchase or subscription for shares in the company or in its holding company no longer constitutes financial assistance.
   d) The payment by a company of fees and expenses of the advisors of any subscriber for shares in the company or in its holding company and which are incurred in connection with that subscription no longer constitutes financial assistance.
2) Section 57 allows a company to appoint electronic filing agents to sign (electronically) and file, in electronic form, documents with the Companies Registration Office. This was recommended by the CLRG.
3) Section 67 amends 19(2) of the *Companies Act 1990*. Section 19 gives power to the Office of the Director of Corporate Enforcement (ODCE) to require production of documents. The amendment to section 19(2) allows the ODCE to issue directions to a body requiring the production of documents in circumstances suggesting that the affairs of the body in question are being or have been conducted in a manner that is unfairly prejudicial to some or all of its creditors.
4) Section 68 repeals section 20(3) of the 1990 act. Subsection 3 provided that any material information or documentation seized by the ODCE on foot of search warrants could only be retained for six months or such longer period as permitted by a judge of the District Court or until the conclusion of proceedings if commenced within the said six months. Now the ODCE can retain information seized until the conclusion of any relevant proceedings.
5) Section 70 amends section 166 of the 1990 act by substituting a new subsection 1 for the existing subsection 1. Effectively this means that a court now has discretion regarding whether or not directors should file certain notices (relating to directorships and disqualifications) in civil and criminal proceedings. At present, such filings are mandatory. The amendment was made as it was felt that the old subsection 1 undermined an accused person's privilege against self-incrimination.
6) Section 71 amends section 242 of the 1990 act. Section 242 makes it an offence to "produce, lodge or deliver" a document containing fake information to the CRO. The amendment extends the offence to a person who "completes or signs" such a document. This amendment was recommended by the CLRG. In addition, it creates a new offence where a person knowingly or recklessly furnishes false information to an electronic filing agent that is subsequently transmitted in a return made, on that person's behalf, to the CRO.

Anomaly

Part 7 deals with a number of miscellaneous amendments to take-over, competition, consumer, industrial and provident societies legislation. For example, section 76 rectifies an anomaly in relation to the authority of the Competition Authority to retain books and records in respect of proceedings. Consumer legislation is amended to increase maximum penalties on conviction under those provisions.

Business Law Committee

First Law Update

www.firstlaw.ie

News from Ireland's online legal awareness service
Compiled by Flore Bouhey for FirstLaw

ARBITRATION

Damages

Whether arbitrators are immune from suit at common law – Arbitration Act 1954.

The plaintiff was the successful applicant for the position of assistant principal. The unsuccessful candidates for that position appealed the decision to appoint the plaintiff. Those appeals were adjudicated upon and allowed by the 13th-named defendant, who had been appointed to act as arbitrator pursuant to an agreement contained in a circular letter generated by the first-named defendant. Consequently, the plaintiff's provisional appointment was terminated and he instituted proceedings seeking, as against the 13th-named defendant, certain declarations, an order remitting the appeal to arbitration, and damages for negligence and/or breach of duty. Thereafter, the 13th-named defendant sought an order discharging him from those proceedings.

Gilligan J discharged the 13th-named defendant from the proceedings, holding that:

1) Having regard to the provisions of order 56, rule 4 of the *Rules of the Superior Courts*, it was not necessary for the 13th-named defendant to be a party to these proceedings for the purposes of obtaining the declaratory relief and order remitting the appeals to arbitration as sought by the plaintiff;
2) The arbitration agreement contained in the circular letter fell within the terms of section 2 of the *Arbitration Act 1980* and was governed by the provisions of the *Arbitration Act 1954*, as amended. Accordingly, the 13th-named defendant was acting as an arbitrator in an arbitration governed by the 1954 act, as amended, and consequently he was acting in a quasi-judicial capacity sufficient to attract immunity from suit at common law in the absence of having acted in bad faith, which was conceded not to have been the case.

***Redahan v The Minister for Education and Science*, High Court, Mr Justice Gilligan, 29/7/2005** [FL11359]

CRIMINAL

Assault

Serious harm – whether the evidence adduced established that the injured party had suffered serious harm – whether the term 'serious harm' required proof of a permanent injury – Non-Fatal Offences Against the Person Act 1997.

The applicant sought to appeal his conviction of assault causing serious harm on the basis that the evidence tendered by the prosecution did not comply with the detailed requirements for establishing that the injured party suffered 'serious harm' as defined by section 1 of the 1997 act and, further, that the trial judge failed to properly or adequately direct the jury as to the meaning of 'serious harm' under section 1 of the act. The injured party had given evidence of the injuries he had sustained and a consultant ophthalmologist provided details of the injured party's 'serious injury'.

The Court of Criminal Appeal (Kearns, Lavan, O'Sullivan JJ) dismissed the appeal, holding that there was ample evidence from which the jury could have formed the view that the injured party suffered a substantial impairment of the function of his left eye, amounting to serious harm as defined by section 1 of the 1997 act. The term 'serious harm' did not *per se* require proof of an injury with protracted consequences, and the consequences of the treatment administered to repair/improve the injury ought not to be excluded as part of the harm suffered by the injured party. The trial judge adequately and appropriately directed the jury in the circumstances of the case.

***People (DPP) v Keith Kirwan*, Court of Criminal Appeal, 28/10/2005** [FL11413]

European law

Evidence – European Convention on Mutual Assistance in Criminal Matters – Police (Property) Act 1897 – Criminal Justice Act 1994 – *whether the appellant was entitled to receive notice of an evidence-gathering procedure conducted by the first-named respondent.*

The appellant challenged the lawfulness of a decision of the first-named respondent to furnish certain items of evidence to the third-named respondent (the minister) for the purposes of transmitting those to the British Crown Prosecution Service (CPS), pursuant to section 51 of the 1994 act, in connection with a criminal investigation into an unlawful killing in England. The appellant was granted, by way of an application for judicial review, an order of *certiorari* quashing the aforementioned order of the first-named respondent. However, his application for a declaration that section 51 was repugnant to the constitution and an order restraining the transmission to the minister of the items of evidence was refused. The appellant submitted that his natural and constitutional rights were breached by the failure to provide him with notice of the procedure before the first-named respondent and, further, that the procedure adopted under s51 operated to frustrate his application under the 1897 act for the return of his property and, in the circumstances, amounted to an abuse of process.

The Supreme Court (Murray CJ, Denham, McGuinness, Hardiman, Geoghegan JJ) allowed the appeal only insofar as to grant a declaration that the minister was not entitled to transmit to the English authorities the mobile phone, and quashed the order of the first-named respondent only insofar as it purported to be an order of the District Court, holding that:

1) So far as the mobile phone was concerned, the request was confined to information concerning the usage of any mobile phone of the appellant. Consequently, it was not within the powers being exercised by the first-named respondent to receive the mobile phone as evidence or furnish it to the minister.
2) The first-named respondent was not exercising a judicial function in the administration of justice; his task under s51 was purely administrative.
3) The items of evidence were transmitted for the purposes of an investigation only and, consequently, the appellant was not entitled as a right to be present or represented at

the procedure or to receive notice of the procedure before the first-named respondent (McGuinness and Hardiman JJ dissenting on this point only).

4) There was no evidence from which one could conclude that the s51 procedure was initiated so as to interfere with the procedure under the 1897 act. Accordingly, there was no abuse of process or unconstitutional interference with the appellant's property rights.

***Brady v District Court Judge Gerard Haughton*, Supreme Court, 29/7/2005** [FL11378]

DAMAGES

Practice and procedure

Settlement – proceedings adjourned generally with liberty to re-enter – whether respondents breached terms of settlement – whether plaintiff had compromised his claim for damages – whether any purpose could be served in re-entering proceedings.

The plaintiff was diagnosed as suffering from autism. Proceedings were instituted against the respondents for breach of his constitutional rights. In July 1999, McGuinness J made an order approving a settlement and adjourning the proceedings generally with liberty to re-enter. The applicant contended that the respondents breached the terms of the settlement and sought to re-enter the proceedings. The respondents contended that the matters advanced by the applicant as terms of contract were not that. They further contended that, under the settlement, they had paid a sum of £20,000 to the applicant and that this sum was a compromise of the compensation claimed in the proceedings.

O'Neill J refused to re-enter the proceedings, holding that he was satisfied as a matter of probability that the respondents did not enter into the kind of contractual obligations claimed by the applicant. Their commitments were merely statements of intent. The payment of £20,000 could not be understood otherwise than as a payment that compromised the claim for damages and no purpose could be served in re-entering the proceedings to enable the applicant to pursue his claim for damages.

***O'Mahony v Minister for Education and Science*, High Court, Mr Justice O'Neill, 6/4/2005** [FL11398]

FAMILY LAW

Judicial separation

Financial provision – lump sum – periodic payments – 'ample resources' cases – proper provision – statutory test and considerations – property adjustment order – conduct of parties – whether so obvious and gross as to preclude court from disregarding it – Judicial Separation and Family Law Reform Act 1989, *section 20(2)(i).*

Section 20 of the *Judicial Separation and Family Law Reform Act 1989* provides, among other things, that, in deciding what is proper provision for the parties consequent upon a decree of judicial separation, regard should be had to, among other things, the contributions that each of the spouses made to the welfare of the family, the conduct of the parties, if it would be unjust to disregard it, and the standard of living enjoyed by the family. The applicant entered into a relationship with another woman and applied for a decree of judicial separation, and the respondent counter-claimed for ancillary financial relief. She alleged that the conduct of the applicant in, effectively, abandoning the family should be taken into account by the court when making financial orders. The parties had significant assets and income.

O'Higgins J ordered that the applicant provide to the respondent the sum of €3.3 million for the purchase of a home in keeping with the standard of living to which she had been accustomed in her married life, €240,000 net per year maintenance for herself and €20,000 for each of the dependant children, and that the respondent transfer her shareholding in the company to the applicant. The court held that, in arriving at a decision in relation to proper provision, it was required to take into account a number of specific factors as set out in the 1989 act, these factors enjoying no hierarchy vis-à-vis each other, and that the importance of each factor could vary substantially from case to case. In the present case, the nature of the applicant's business enabled him to be around the home more than in similar cases and was a factor to be taken into account in assessing the extent to which the presence of the respondent as the principal homemaker enabled the applicant to generate the income. In those circumstances, the applicant's presence in the home was not a factor to which any great significance could be attached, the applicant's ability to earn an income not being dependant in any significant way on the respondent assuming the role she did. O'Higgins J also held that section 20(2)(i) of the 1989 act obliged the court, when deciding what financial orders to make as would lead to proper provision for both parties, to take account of the conduct of the parties where it would be unjust not to do so, which was a different concept than that of reparation of damage done by such conduct. The court should not increase the financial provision that it would otherwise make to one of the parties, except in cases where misconduct on the part of the other had been obvious and gross.

***C v C*, High Court, Mr Justice O'Higgins, 25/7/2005** [FL11353]

JUDICIAL REVIEW

Discrimination

Education – whether the plaintiff's special educational needs, as a sufferer of ADHD, were fulfilled by the defendants.

The plaintiff, who suffered from Attention Deficit Hyperactivity Disorder (ADHD) sought a declaration that the defendants discriminated against him in respect of appropriate education facilities, compared to other children, in failing to provide education for him appropriate to his needs as a person suffering from ADHD and deprived him of his constitutional rights pursuant to articles 40 and 42. The plaintiff also claimed damages for negligence, breach of duty and breach of his constitutional rights. The plaintiff completed primary-level education and was not diagnosed as suffering from ADHD until he was due to commence his second year in secondary school. The plaintiff received a number of detentions and was eventually expelled from secondary school. However, he received private tuition, which was provided and paid for by his secondary school. Thereafter, the plaintiff attended a vocational school and his condition improved.

Smyth J dismissed the plaintiff's case, holding that:

1) The staff at the plaintiff's primary school were not negligent in failing to diagnose or to have diagnosed on reference ADHD. Furthermore, the officers of the defendants did all they reasonably could at the time to try to ensure that the plaintiff received education appropriate to his needs.
2) The provision of private tuition and a place in a vocational school amounted to positive discrimination by the defendants and, as such, ought not to be considered as discrimination. Furthermore, the secondary school did not discriminate unfairly, unreasonably or at all in expelling the plaintiff.
3) The plaintiff's human, constitutional, statutory and common law rights were fairly and properly observed by both the defendants and the schools

the plaintiff attended.

***Clare v The Minister for Education and Science*, High Court, Mr Justice Smyth, 30/7/2005** [FL11437]

PLANNING AND DEVELOPMENT

Judicial review

Legitimate expectation – Planning and Development Act 2000 – Planning and Development (Amendment) Act 2002 – *whether the applicant established substantial grounds for contending that the respondent's decision to amend a scheme for the development of the Monaghan Town bypass was invalid.*

The applicants sought leave to apply by way of judicial review for orders of *certiorari* and *mandamus* in relation to the respondent's decision regarding certain amendments to the Monaghan Town bypass scheme. The applicant also sought damages. The second-named applicant (the applicant) was the owner of lands located in the vicinity of a proposed roundabout included as part of the scheme. The applicant alleged that, as a result of representations made by the respondent at a meeting between it and the applicant to the effect that it would construct a fifth spur off the roundabout allowing access to the plaintiff's lands, he withdrew his objections to the making of a compulsory purchase order affecting part of his lands. The applicant claimed that he subsequently received notice that no fifth spur was to be constructed as part of the scheme. The applicant alleged that the respondent erred in law by deciding to amend the scheme and by failing to honour the specific representation given at the aforementioned meeting. It was further submitted that the respondent breached the principles of natural justice by failing to afford the applicants the opportunity to contest the proposed alteration.

Macken J granted leave to apply for judicial review, holding that it was not necessary to decide whether the alleged representations were made at the meeting between the parties. However, the plaintiff's claim for legitimate expectation fell within the established criteria. Furthermore, the issues and legal arguments adduced by both sides were of a serious nature and amounted to substantial grounds.

***Aughey Enterprise Ltd & Barry Aughey v The County Council of the County of Monaghan*, High Court, Ms Justice Macken, 15/6/2005** [FL11447]

TORT

Personal injuries

Assessment of damages – whether the injuries sustained by the plaintiff in a road traffic accident adversely affected his capacity to continue working.

The plaintiff sustained injuries to his back and knees as a result of a road traffic accident in November 2000. The defendants conceded liability and the case proceeded as an assessment of damages only. However, the defendants took issue with the effects the injuries had on the plaintiff's ability to work and, accordingly, his claim for loss of income. The defendants contended that a football injury sustained by the plaintiff in August 2001 caused the long-term problems in his lower back. Furthermore, the defendants objected to the manner of the presentation of the plaintiff's claim for loss of earnings from November 2000 to date and also the failure of the plaintiff to provide documents supportive of his claim as to his previous earnings.

Budd J awarded total compensation amounting to €252,000 and costs to the plaintiff, holding that:

1) The impact in the road traffic accident was the cause of the plaintiff's back injury and his disc rupture and the injuries to his knees.
2) The plaintiff failed to establish any loss of earnings in respect of the period covering 2004. However, he was entitled to the agreed sum of €23,000 compensation for loss of earnings between November 2000 and December 2003.
3) The very fact that the plaintiff had an operation on his lumbar spine and an arthroscopy of his left knee would have a dire effect on his employability, and it was likely he would have to give up strenuous heavy work in the not-too-distant future. Accordingly, the plaintiff was entitled to compensation in the amount of €125,400, representing general damages in the future, including loss of employability.

***Smyth v Gilbert and Davies*, High Court, Mr Justice Budd, 22/7/2005** [FL11365] G

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Eurlegal

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

Commercial agents: landmark decision of the High Court in *Kenny v Ireland Roc Limited*

Clarke J has delivered judgment in *Michael Kenny v Ireland ROC Limited* on the preliminary issue of whether or not the plaintiff constituted a commercial agent of the defendant for the purposes of article 1(2) of the council directive of 18 December 1986 on the co-ordination of the laws of the member states relating to self-employed commercial agents (OJ 1986 L382/17) and the *European Communities (Commercial Agents) Regulations 1994 and 1997*. The plaintiff ran the Martello Service Station of the defendant, which was a wholly owned subsidiary of Esso Ireland Limited, which in turn was a wholly owned subsidiary of Exxon Mobil Corporation of New York, USA. The plaintiff sold products on behalf of the defendant that were broadly categorised into two groups, namely petrol products and non-petrol.

The preliminary issue was whether the plaintiff constituted the commercial agent of the defendant for the purposes of the directive and regulations. Article 1(2) of the directive stipulates that the commercial agent "shall mean a self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another person, hereinafter called 'the principal', or to negotiate and conclude such transactions on behalf of and in the name of that principal".

Three tests to establish commercial agency

The High Court held that three tests must be satisfied in order to qualify as a commercial agent for the purpose of the directive. Firstly, the agent must be self-employed. Secondly, the agent must have continuing authority on behalf of the principal. Thirdly, the person must "negotiate the sale or the purchase" of goods. The High Court pointed out that the contentious issue in this case was whether or not the plaintiff negotiated the sale and purchase of goods on behalf of the defendant.

Put a tiger in your tank: landmark decision

The High Court confirmed the following in relation to negotiation:

1) *Haggling not required*. 'Active bargaining' or 'haggling' is not required to qualify as negotiation. The High Court held that the definition does not require a process of bargaining in the sense of invitation to treat, offer, counter-offer and acceptance.
2) *The test*. The High Court stated that the proper approach to the question of negotiation was to consider whether the person who may be said to be negotiating has to "deal with, manage or conduct" the sale or purchase concerned as per the *Oxford Dictionary* definition and, in doing so, the person must use "some skill or consideration". The High Court ruled that the skill or consideration must, in some manner, be brought to bear on the sale or purchase.
3) *Different ways of doing business and satisfying the test*. The High Court pointed out that the business of purchase or sale of goods is conducted in very many different ways, emphasising that in some types of business it would be commonplace for there to be significant bargaining prior to any sale being concluded, and in other cases the price will be relatively fixed and the manner in which persons may secure additional sales will be by virtue of other aspects of the way in which the goods are presented to the public, such as through marketing and promotion or by the attractiveness of the presentation of the product. The High Court stated that the precise way in which a particular type of good is typically sold should not necessarily be a significant factor in determining whether a person engaged in the sale of that good on behalf of a principal is to be regarded as a commercial agent. The test is whether, having regard to the manner in which the sale of the good or goods concerned is carried out (or, where relevant, the purchase of such goods), it is necessary for the agent to bring a material level of skill to the activity, that is, dealing with, managing or conducting the sale or purchase concerned. The skill that may be brought to the activity may vary depending on the way in which the goods concerned are typically sold. The court held that in some cases it may involve the skill in bargaining and in other cases it may be the skill in marketing and promotion. The High Court pointed out that, in other cases, it may be a skill in the presentation of the product in such a way as to make it attractive to members of the public so that they will purchase more of it, thereby encouraging sales. The High Court held that, in substance, there was no material difference between an agent who uses a skill in judgement to individually promote a product to one or more identified individual potential purchasers and an agent who (having regard to the nature of the product of the principal that he is involved in seeking to sell) uses more general methods, but applying equal skill, to making the products attractive to the public generally and thus increase sales.

The High Court found, as a preliminary issue on the facts, that the plaintiff did bring about a material level of skill or consideration to conducting, managing or otherwise dealing with the sale or purchase of products on behalf of the defendant and held that he was acting as a commercial agent of the defendant for the purposes of the regulations at all material times.

Other authorities

Clarke J referred to the only other decision of the Irish courts in which the meaning of the term 'commercial agent' was considered, namely *Cooney & Company and another v Murphy Brewery Sales Limited* (unreported, High Court, Costello P, 30 July 1997). Clarke J cited with approval the passage where Costello P makes it absolutely clear that negotiation does not in some way require bargain or haggle so as to endeavour to reach some sort of arrangement between the agent and the proposed customer. In *Cooney*, Costello P decided, on an interlocutory application, that the plaintiff constituted the commercial agent of the defendant for the purposes of the directive. The plaintiffs were appointed exclusive sales agents of Murphy's draft Heineken lager and Murphy's stout in a specified area.

Clarke J also referred to the decision of the English Court of Appeal in *Parks v Esso Petroleum Company Limited* ([2000] Eu LR 25). *Parks* was similar to *Kenny* in that the plaintiff occupied a service station owned by Esso pursuant to an agency agreement that appeared in some respects to be similar to that of Mr Kenny. Clarke J pointed out that one significant difference between *Parks* and the case before him was that the agreement between Parks and Esso related solely to the sale by the plaintiff of motor fuels and Mr Parks, like Mr Kenny, also operated a shop and a car wash, but in the case of Mr Parks (unlike Mr Kenny) these were operated for his own account and not as agent for Esso.

The High Court in *Kenny* reviewed the decision of the Court of Appeal in *Parks* and noted a distinction between the implementation of the directive in Ireland and England. The High Court referred to the provisions of article 2(2) of the directive, which stipulates that "each of the member states shall have the right to provide that the directive shall not apply to those persons whose activities as commercial agents are considered secondary by the law of that member state".

The High Court noted that England had chosen to exercise its discretion to exclude persons whose activities as commercial agents are considered secondary and referred to the relevant English regulations. The High Court held that Ireland did not exercise this discretion and that therefore no similar exclusion applied under Irish law. The High Court held that there could be no doubt that the Court of Appeal placed at least some reliance on the fact that the regulations in England made it clear that cases where goods were selected by customers who merely ordered through the agent give rise to the activity of the agent concerned being regarded as secondary and thus permissibly excluded from the operation of the directive as implemented into English law. The High Court then referred to the decision of Costello P in *Cooney* and pointed out that it is difficult to see how the role of the distributors in *Cooney* was in practice any greater than that of Mr Parks. The court referred to Costello P's decision in *Cooney* that the distributors constituted commercial agents of the defendant for the purposes of the directive. Clarke J in *Kenny* held that, if the decision of the Court of Appeal in *Parks* is to be taken as implying that it is not possible for a person to be a commercial agent while that person exercises skill in attracting customers but where the ultimate transaction is by self-service and payment, he pointed out: "I do not regard the judgment as persuasive and I would not propose to follow it." G

Marco Hickey heads the EU and competition law unit of LK Shields Solicitors.

Recent developments in European law

CRIMINAL PROCEDURE

Case C-105/03, *Maria Pupino*, 16 June 2005. Criminal procedure in Italy is comprised of two distinct stages. The first of these is the carrying out of preliminary enquiries for gathering evidence as to whether or not the matter should proceed to trial. The trial itself, at which the evidence is formally established, is the second stage. Evidence may be established early, at the preliminary enquiries stage, in respect of sexual offences where the victims are aged less than 16 years. In such cases, the testimony given at that stage does not need to be repeated at the trial in order to acquire full evidential value. These derogations are aimed at protecting victims who are minors.

A nursery school teacher was charged with abusing disciplinary procedures against a number of her students, who were aged less than five years. She was accused of hitting them regularly, threatening to give them tranquillisers, putting sticking plasters over their mouths and preventing them from going to the toilet. These criminal proceedings had reached the preliminary enquiries stage. The Public Prosecutor's Office asked the judge in charge of the preliminary enquiries to take the testimony of eight children before the trial, in accordance with a special procedure. The prosecution argued that the testimony could not be delayed until the trial by reason of the extreme youth of the victims, inevitable changes in their psychological state, and the possibility of psychological repression. The defendant argued that the application does not fall under any of the scenarios envisaged by the *Code of Criminal Procedure*. The Italian court referred the matter to the ECJ. It asked whether, in view of the council framework decision on the standing of victims in criminal proceedings, a national court must have the ability to authorise young children claiming to be the victims of maltreatment to give their testimony under appropriate protective arrangements, outside the trial and before it is held.

The ECJ noted that this decision had been adopted on the basis of the *EU Treaty* provisions on police and judicial cooperation in criminal matters. The court's jurisdiction to give a preliminary ruling on those provisions is subject to a declaration by each member state that it accepts that jurisdiction. Italy has made such a declaration. In applying national law, the Italian court is required to interpret it as far as possible in a way that conforms to the wording and purpose of the framework decision, in order to attain the result which that decision envisages. In accordance with the decision, member states are required to guarantee to victims the opportunity to be heard during criminal procedure and to take appropriate measures to ensure that their authorities do not question victims more than the procedure requires. Victims are to be guaranteed respectful treatment for their personal dignity during the procedure, and particularly vul-

nerable victims are to benefit from specific treatment best suited to their circumstances. Member states must also ensure, when it is necessary to protect victims against the consequences of their testimony at a public trial, that they are able to benefit from conditions for giving testimony that allow that objective to be attained. The decision does not define the concept of vulnerability, but young children claiming to have been maltreated may be regarded as vulnerable so as to give them the benefit of specific protection. The conditions for giving testimony must be compatible with the fundamental principles of the law of the member state concerned. The EU also respects fundamental rights as guaranteed by the *European Convention on Human Rights,* and arising from the constitutional traditions common to the member states, as general principles of law. The framework decision must therefore be interpreted in such a way that those fundamental rights, including the right to a fair trial, are respected. The national court must be able to authorise young children who claim to have suffered maltreatment to give their testimony in accordance with arrangements allowing them to be guaranteed an appropriate level of protections – such as outside the trial and before it is held.

EMPLOYMENT

Case C-543/03, *Christine Dodl, Petra Oberhollenzer v Tiroler Gebietskrankenkasse*, 7 June 2005. Regulation 1408/71 applies to social security benefits. The general rule is that the state in which the worker is employed is responsible for paying family benefits to the worker, even if that worker is resident with his family in another member state. The applicants are Austrian nationals who work in Austria, but live in Germany with their husband and partner, both of whom have German nationality and work full time in Germany. Following the births of their children, they took unpaid parental leave during which their employment was suspended. They received the German child allowance that corresponds to the Austrian family allowance but did not receive the German national child-raising allowance as they were in full-time employment. They were refused the corresponding allowance in both states on the ground that the other state was responsible for payment. They brought proceedings before the Austrian courts and questions of interpretation were referred to the ECJ. The Austrian court asked whether the applicants had lost the status of 'employed persons' within the meaning of regulation 1408/71 as a result of the suspension of their employment relationship, during which they were not required to pay social security contributions, and which member state is primarily responsible for paying the family benefit in issue.

The ECJ held that a person has the status of an employed person within the meaning of the regulation where he is covered on a compulsory or an optional basis by a general or special social security scheme, irrespective on the existence of an employment relationship. It is for the national court to determine the facts. In Austria, the mother is entitled to childcare allowance in her capacity as an employed person in that state. If the applicants are 'employed persons', they acquire entitlement under EC law to family allowances in the state of employment, Austria. The applicants are also entitled to family benefits in Germany, where they are resident. In a situation of overlapping rights to family benefits in respect of the same member of that person's family and for the same period, the member state of employment (Austria) is, in principle, primarily responsible for payment. Where a person having the care of children, in particular the spouse or partner of the employed person concerned, carries out a professional or trade activity in the member state in which the family resides, the family benefits must be paid by that state. It is not a requirement that the professional or trade activity be carried out by the person who is personally entitled to those benefits. In that situation, the payment of family benefits by the state of employment is to be suspended up to the sum of family benefits provided for by the legislation of the state of residence.

LITIGATION

Case C-53/03, *Synetairismos Farmkapoion Aitolias & Akarnanias (Syfait) and Others v GlaxoSmithKline plc and Others*, 31 May 2005. GlaxoSmithKline (GSK) is a pharmaceutical company that distributes its products via a Greek subsidiary to the complainants. The complainants are Greek associations of pharmacists and wholesalers of pharmaceuticals. Until November 2000, GSK met in full orders from the complainants. A large proportion of the products ordered were exported to other member states where prices were much higher. GSK stopped supplying the complainants and stated that, from then on, it would directly supply hospitals and pharmacies, as the exports of the products in question were resulting in significant shortages on the Greek market. GSK later resumed supplies to the complainants but only in small quantities. The complainants brought proceedings before the Greek Competition Commission. It ordered interim measures. GSK's Greek subsidiary met the complainants' orders to the extent that it was supplied by its parent company. That supply exceeded the consumption needs of the national market but was insufficient to meet the complainants' orders. The Greek Competition Commission asked the ECJ whether and in what circumstances a dominant pharmaceutical company can, in order to restrict parallel trade in its products, refuse to meet in full orders placed with it by wholesalers.

The ECJ held that it had no jurisdiction to answer the questions referred. The Greek Competition Commission is not a court or tribunal within the meaning of article 234. It does not have certain of the characteristics necessary for it be classified as such – namely, independence and the fact of being called upon to give judgment in proceedings intended to lead to a decision of a judicial nature. The commission is subject to the supervision of the minister for development. This implies that the minister is empowered, within certain limits, to review the lawfulness of the decisions adopted by the commission. Although the members of the commission are independent in the exercise of their duties, their dismissal or the termination of their appointment are not subject to any particular safeguards. There is no separation of functions between the commission, a decision-making body, and its secretariat, a fact-finding body on the basis of whose proposals it adopts decisions. This is because the president of the commission is responsible for the co-ordination and general policy of the secretariat and is the immediate superior of the personnel of the secretariat. Finally, national competition authorities are required to work in close co-operation with the European Commission.

As a matter of EC competition law, the national authority can be relieved of its competence by a decision of the commission initiating its own proceedings. It is therefore possible that the proceedings initiated before the Greek commission will not lead to a decision of a judicial nature. A body may refer a question of the ECJ only if there is a case pending before it and it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature. G

Advocate that!

This year's tutors and successful participants in the Annual Advanced Advocacy for Solicitors course were: Michael Condon, Augustus Cullen, Hugh Cunniam, Eithne Deane, Peter Dempsey, Olive Doyle, Brendan Flanagan, Charles Flanagan, Alan Gannon, Stuart Gilhooly, Veronica Kelly, Pauline Kennedy, Liam Lysaght, Grainne Malone, Peter Mullen, Deirdre Mulligan, Avril Mullins, Cian O'Carroll, Eugene O'Kelly, Breda O'Malley-Collins, John Savage, Laura Swift and Barry Walsh

PIC: DERMOT DONOHUE AIPPA

Ars gratia artis

Tommy Morrow has retired as president of the Donegal Bar Association. On behalf of the association, secretary Margaret Mulrine presented Tommy with a painting by local artist, Johnny Boyle. *(L to R):* Margaret Mulrine, Tommy Morrow and his wife Peggy. Tommy is principal of David Wilson and Co in Raphoe and has been practising as a solicitor for 60 years

Fionnbar launches *A Sporting Eye*

Casting a critical eye at photographer Fionnbar Callanan's new book, *A Sporting Eye*, are *(l to r)*: Irish Olympic gold medallist Ronnie Delany, Fionnbar Callanan, RTÉ's Jimmy Magee and Irish Sports Council CEO John Treacy. McCann FitzGerald sponsored the book. The *Gazette* has two free copies to give away to the two people who come up with the best title for Fionnbar's next book!

NITA-ppearance

Tutors from the US-based National Institute for Trial Advocacy (NITA) were joined by a number of local tutors for the week-long advocacy component of the Annual Advanced Advocacy for Solicitors course. The expert witnesses for this year's case file featured firefighters from around the country. *(From l to r):* E John Wherry (NITA), Conal Boyce, Niall Dolan, Brid Mimnagh, Judge Nancy Vaidik (NITA), Adrian Greville (Dublin Fire Brigade), Steven Clayton (PSNI), Fiona Donnelly, Patsy Casserly (Galway Fire Brigade), Paul Carolan (Dublin Fire Brigade HQ), Patti Bobb (NITA), Gerry Stanley (Dublin Fire Brigade), Kevin Masterson (Cork County Fire and Rescue), Lindsay Bond O'Neill (Law Society), Tony Caher, and Bob Stein (NITA)

Law Society Committees' end-of-year dinner

At the Law Society Committees' end-of-year dinner were Michael Moran, Patricia Rickard-Clarke, Michael Irvine and Michael O'Connor

Pictured at the Law Society Committees' end-of-year dinner were Catherine Pierse, Moya Quinlan, Bernadette Greene and Marie Keane

Enjoying the convivial atmosphere at the Law Society Committees' end-of-year dinner were John Glynn, Kevin O'Higgins and Joe Mannix

Colin Sainsbury and Marie Quirke attended the Law Society Committees' end-of-year dinner

Celebrating at the Law Society Committees' end-of-year dinner were Jarlath McInerney, Gillian Keating and Jerome O'Sullivan

Are those Galway or Westmeath shirts?

Trainee solicitors from the autumn 2005 PPC1 made a little bit of GAA footballing history by becoming the first ever Law Society team to take part in both intervarsity league and championship competitions. Thanks are due to Conor O'Sullivan from the 2004 PPC1 course for establishing the team. This year, it will participate in league games (before Christmas) and the championship competition in early spring. *(Back, l to r)* Daniel Kiely, Ross Phillips (PRO), Conor Minogue, Kevin McElhinney, John Crean, Stiofáin Fitzpatrick, John Lunney, Eamon Ó Cuiv, Raymond Lambe, Eoin McManus, John Williams, Brendan McDonald, Aaron Flynn, Thomas P McNamara and David Fitzgerald. *(Front, l to r)* Barry Murphy, Deaglan O'Siothchain, Conrad Murphy, John Flynn, Patrick Delaney, Marcus O Buachalla (captain), Pádraig Mawe (manager), Karol Corcoran and Robert Ryan

Return of the Planet of the Babes

Mr Justice Michael Peart and then Law Society President Owen M Binchy were on hand to congratulate prize-winners at the 20 October parchment ceremony at Blackhall Place. The prize-winners were Emma Byrnes, Antonia Cosgrove, Alice Cowman, Rebecca Dunne, Bridin Farren, Deirdre Finn, Colm McGovern, Caoilfhionn Ní Chuanachain, Caren Shanley and Rea Walshe

Practice what you preach

Attending the recent CPD seminar on Circuit Court practice and procedure were *(l to r):* Susan Ryan (County Registrar, Dublin Circuit), Judge Raymond Groarke, the Law Society's Barbara Joyce and John Campbell of JA Campbell & Co

Three is a magic number

Law Society immediate past-president Owen M Binchy, President of the High Court Joseph Finnegan and Chief Justice John Murray pictured at the 28 July parchment ceremony

Conveying the message

The newly-established Diploma in Commercial Conveyancing was launched on 5 November in the Law Society's Vanilla Café. Present were *(l to r):* Chair of the Education Committee Stuart Gilhooly, diplomas executive Niamh Walsh, Michelle Nolan (member of the diploma team), Senior Vice-President Philip Joyce, course participants, and Kevin O'Higgins, member of the conveyancing committee

Pipe bomb

At the launch of a new report by the Centre for Public Inquiry on the Corrib gas onshore pipeline in Co Mayo were President of Accufacts, Richard Kuprewicz, and Chairman of the CPI, Justice Feargus Flood

Newly-qualified solicitors at the presentation of their parchments on 10 February 2005

Mr Justice Joseph Finnegan, President of the High Court, then President of the Law Society Owen M Binchy, and Director General Ken Murphy were guests of honour at the Parchment Ceremony on 10 February for newly-qualified solicitors: Stephen Barry, Edward Bradbury, Julie Breen, Geraldine Broderick, Lorna Brooks, Marie Carey, Wendy Clarke, Martin Coen, Noel Conway, Barbara Daly, Laura Downey, Brenda Dunne, Deirdre Flynn, Olive Fogarty, Breda Forde, Richard Hammond, Emma Heron, Joseph Kane, Eamonn Keane, Adrian Kelly, John Kieran, Anita Kilgallon, Dominic Lyons, Cian MacGinley, Margaret Malone, Elizabeth McGrath, Joseph McVeigh, Sharon Monaghan, Lorna Morgan, Aoife Moynihan, Kieran Mulcahy, Conor Murray, Grainne Ni Ghuidhir, Rory O'Boyle, Tracey O'Brien, Martin O'Donoghue, Deirdre O'Halloran, Geraldine O'Regan, Cathy Power, Sarah Power, Barry Rafferty, Sadhb Reddy, Mairead E Sheehan, Tracy Stuart, Verena Tarpey, Maria Toal, Alan Wallace and Cathal B Young

Newly-qualified solicitors at the presentation of their parchments on 11 March 2005

Mr Justice Joseph Finnegan, President of the High Court, President of the Law Society of England and Wales Edward Nally, then President of the Law Society Owen M Binchy, and Director General Ken Murphy were guests of honour at the Parchment Ceremony on 11 March for newly-qualified solicitors: Ivan Bennett, Marie Brody, Donal Brosnan, Seán Brown, Carol Browne, Clair Cassidy, Patricia Cronin, Jacinta Cusack, Michael Cussen, Irene M Daly, Ciara Doyle, Bill Fleury, Diego Gallagher, Carol Gately, Jessica Goldrick, Andrew Greenlee, Breda Hayes, Lesley-Anne Hogan, Mary V King, Shane King, Eadaoin Lawlor, Adrian Lennon, Bebhinn Lucey, Juliet Lynch, Cian MacMahon, Joe Mallon, Mary McCarthy, Rory McDonald, Caroline McDonnell, Trea McGuinness, Joanne McInerney, Siobhán McMahon, Oonagh Moylan, Dervla Mulcahy, Edward Nally, Claire Neale, Alexander Nichol, Caitríona O'Connor, Kate O'Mahony, Geraldine O'Malley, Robert O'Reilly, Luis Peña, Ciara Quinlan, Bridget Reidy, Jane Roberts, Regina Savage, Carol Sinnott, Amelia Stubbs, Verena Tarpey, Eileen Walsh, Patrick Whelehan, Mairead White and Sarah Williams

Newly-qualified solicitors at the presentation of their parchments on 28 April 2005

Mr Justice Joseph Finnegan, President of the High Court, then President of the Law Society Owen M Binchy, and Director General Ken Murphy were guests of honour at the Parchment Ceremony on 28 April for newly-qualified solicitors: Eileen Ahearne, Jenny Ahern, Narita Ahern, Andrea Boyd, Jennifer Boylan, Louise Carpendale, Barbara Clancy, Sharyn Coghlan, Alan Collins, Bernadette Connolly, Paula Cullinane, Kieran Cummins, Dearbhla De Barra, Joanne Finn, Alan Finnerty, Niall Gaffney, Roberta Grealish, Aideen Hennessy, David Hickey, Aisling Hourigan, Claire Irwin, Eamonn Keane, Jacqueline Kelly, Paul Kelly, Sinead Kelly, Barry Kenny, Philip Lovegrove, Sarah Lyons, Ben Mackenzie, Deirdre Manninger, Derval Markey, Robert McDonagh, Michelle McGrath, Gabrielle McGrattan, Cora McGuinness, Antoinette McMahon, Marilyn McNicholas, Eanna Mellett, Dr Maria Moloney, Mairead Moriarty, Doirin Mulligan, Aoife O'Brien, Susan O'Farrell, Mairead O'Meara, Tracey O'Reilly, Daragh O'Shea, William Peake, Cliona Pierse, Norris Power, Orla Rooney, Angela Ruttledge, Amy Shine, Aoife Smithwick, Lindsay Stevens, Amanda Walshe, Janice Walshe and Rosaleen Walshe

Newly-qualified solicitors at the presentation of their parchments on 14 July 2005

Mr Justice Joseph Finnegan, President of the High Court, then President of the Law Society Owen M Binchy and Director General Ken Murphy were guests of honour at the Parchment Ceremony on 14 July for newly-qualified solicitors: Conor Brady, Aisling Burke, Paul Cosgrave, Arthur Cunningham, Zelda Deasy, Siobhan Durkan, Sinead Edwards, Frank Egan, Michael Fitzsimons, Mary Forde, Corinne Gallagher, Grace Guy, Charlotte Henry, Karl Henson, Megan Hooper, Ailbhe Keegan, Maura Kiely, Karen Killoran, Andrew Lawless, Denise Lynch, Marcus Lynch, Mary Lyons, Sonya Mallon, Louise McAuliffe, Catherine McGuigan, Deirdre McKnight, Orla McKnight, Barry McLoughlin, Michelle McPhillips, Keavy Moran, Arthur Mullan, Gareth Murphy, Terence O'Connor, Cairbre O'Domhnaill, Kathy O'Donnell, Eimear O'Mahony, Paul O'Mahony, Thoma Queally, Maeve Regan, Rachel Rodgers, Colin Rooney, Kate Roseingrave, Leslie Roycroft, Grainne Ryan, Douglas Sadleir, John Salley, Eamonn Shannon, Brenda Slack, David Sullivan, Eugene Tangney, Grahame Toomey, Darragh Tuohy, David Webb, Karen Wilson and Ann Wright

Newly-qualified solicitors at the presentation of their parchments on 28 July 2005

Then President of The Law Society Owen M Binchy, President of the High Court Mr Justice Joseph Finnegan, and Chief Justice John Murray were guests of honour at the Parchment Ceremony on 28 July for newly-qualified solicitors: Ruth Adams, Cillian Balfe, Georgina Barrett, James Cahillane, Lorraine Cannon, John Carlin, Elaine Casey, Emer Casey, Victoria Conway, Ciara Cullen, Madeleine Delaney, Mary Dineen, Gillian Duffy, Thomas Finn, Jenny Fisher, Damien Flaherty, Catherine Geraghty, Joanne Gleeson, Trevor Gormley, Orrazio Grosso, Roisaine Hamill, Kenneth Harvey, Aisling Hayden, Pauline Horkan, Elaine Keane, Deirdre Kennedy, David Kitterick, Olivia Long, Carmel Lyons, Siobhan McCabe, Brian McDermott, Darragh McElligott, Roman McGoldrick, Lorraine Murphy, Marie O'Brien, Hilary O'Connor, Michelle O'Donnell, Laura O'Donovan, John O'Driscoll, Marian O'Riordan, Gillian O'Rourke, Jennifer Ring, Ian Rowell, Andrew Rowland, Keavy Ryan, Jean Scanlan, Margaret Scullin, John Sheehan, Jack Sheehy, Oonagh Toner and Andrew Walsh

Newly-qualified solicitors at the presentation of their parchments on 2 September 2005

Ms Justice Elizabeth Dunne, then President of the Law Society Owen M Binchy and Director General Ken Murphy were guests of honour at the Parchment Ceremony on 2 September for newly-qualified solicitors: Patricia Beston, Anne Brennan, Peter Burbridge, Shane Burke, Clare Campbell, Alan Casey, Jeanette Codd, Lisa Collins, Serena Connolly, John Cronin, Adam Donoghue, Pauline Doohan, Jennifer Doyle, James Ensor, Aisling Fitzgerald, Simon Hannigan, Corrina Harlow, Mary Harvey, Elaine Hickey, Joshua Hogan, Mark Homan, Karen Jackson, Claire Kelly, Cliona Kiely, Katherine Kiely, David Lane, Sinead Lavelle, Ciara Lennon, Deirdre Lynch, Deirdre MacCarthy, Jacqueline MacCurtin, Aimee Madden, Darren Maher, Stephanie McConnell, Catriona McCrohan, Aoibhe McHugh, Ruairi McMullin, Siobhán McNamee, Dara McNulty, Carol Monahan, Nessa Moran, James Morris, Miriam Nagle, Catherine Noone, John O'Connell, Lorna O'Dwyer, Edel O'Herlihy, Tonya O'Mahony, Rory O'Malley, Sean Ormonde, Ciara Prendergast, Donal Quigley, Coleman Ryan, Deirdre Ryan, Evelyn Savage, Avril Shorten, Lisa Smyth, Shane Sweeney, Edward Traynor and Helen Whittaker

Newly-qualified solicitors at the presentation of their parchments on 20 October 2005

Mr Justice Michael Peart, and then President of the Law Society Owen M Binchy were guests of honour at the 20 October Parchment Ceremony for newly-qualified solicitors: Daniel Boland, Niamh Bolger, Colin Carroll, Gareth Davidson, Natasha Dunne, Thomas Griffin, Martin Hayes, Niamh Kimber, Christopher Kitson, Noeleen McHenry, Peter McKenna, Ailbhe Murphy, Bavani Naidu, Mary O'Connor, Ciara O'Sullivan, John Powell, Stephen Ranalow, Mary Smith, Patrick Smyth, Richard Steen, Andrea Wallace and Nicholas Walsh

SADSI
Solicitors Apprentices Debating Society of Ireland

Niagara Falls, but SADSI rises

This year has been great in terms of the revival of SADSI. We've had entertaining in-house debates at the Law School, a debate against King's Inns, a well-supported intervarsity in Queen's University Belfast, and we have teams in both *The Irish Times* and the World's Universities debating competitions. However, perhaps the pinnacle to date, in terms of promoting SADSI and in terms of pure logistics, was our recent trip to Canada to partake in the Hart House BP Invitational at the University of Toronto. SADSI auditor Liam Fitzgerald and I competed in the actual competition and Paul Ryan participated as a well-seasoned adjudicator.

More than 50 teams from universities all over Canada and the US took part in what was ultimately a highly competitive event. The first round consisted of five separate debates over two days in the 'British parliamentary' format, with teams debating motions ranging in scope from the abolition of palliative care to the link between international diplomacy and emergency disaster relief. After the first rounds had taken place, the top eight teams progressed to the semi-finals.

Unfortunately, despite acquitting ourselves well, we failed to make it to the final stages and a team from the University of Montreal Debating Society eventually won the competition.

Jamie Fitzmaurice, Paul Ryan, Justice David G Stinson and Liam Fitzgerald

Jamie Fitzmaurice, Liam Fitzgerald, Joanna Narin, Sarah Ingimundson and Paul Ryan

Many of those who participated will be travelling to Dublin early next year for the World's Universities Debating Competition, which is being held in UCD, and we hope to meet as many as possible with a view to socialising and fostering links for future trips across the Atlantic.

Aside from the debate, we also had the opportunity to meet some trainee (or 'articling', as they are known in Canada) solicitors to compare notes on our respective training processes (some of which took place within the inspiring confines of the Fiddler's Elbow Irish bar). Some of the articling Canadians will also be travelling to Dublin in April, and we hope to have arrangements in place to reciprocate the very generous hospitality we received.

During our stay, we also managed to have a very interesting tour of Osgoode Hall, which houses the Court of Appeal for Ontario, the Superior Court of Justice and the Law Society of Upper Canada.

Further, we met with Justice David G Stinson in his chambers and discussed his job and what, in his view, makes a good courtroom litigator. He was most interested to hear about PIAB and, in particular, the book of *quantum*.

Although our time was limited and our schedule packed, we also managed to find time to partake in a wine-tasting tour in Niagara-on-the-Lake, just a short distance from Niagara Falls, but that, as they say, is a story for another day.

Jamie Fitzmaurice

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 9 December 2005)

Regd owner: Sean Walsh, c/o EA Brennan, Solicitors, Oldcastle, Co Meath; folio: 19433; lands: Raheever; area: 0.4047 hectares; **Co Cavan**

Regd owner: Ronald Gordon, Killann, Shercock, Co Cavan; folio: 2396; lands: Gartnaneane; area: 5.8780 hectares; **Co Cavan**

Regd owner: Austin Adams, Market Street, Cootehill, Co Cavan; folio: 6735; lands: Drumbarkey and Dung; area: 14.0628 hectares and 0.1012 hectares; **Co Cavan**

Regd owner: Patrick Boland; folio: 24052; lands: townland of (1) Finnor Beg, (2) Lissy Neillan, (3) Kilclehaun and barony of Ibricken; area: (1) 5.5189 hectares, (2) 0.2023 hectares, (3) 2.8960 hectares; **Co Clare**

Regd owner: Anne Jones; folio: 22825F; lands: townland of Carrownamaddra and barony of Inchiquin; area: 1.051 hectares; **Co Clare**

Regd owner: Ann Rochford; folio: Tooreen, Spancill Hill, Co Clare; lands: townland of Knockanean and barony of Bunratty Upper; area: 1 rood, 29 perches; **Co Clare**

Regd owner: John O'Dwyer; folio: 5608F; lands: townland of Leagard North and barony of Ibrickan; area: 0.2300 hectares; **Co Clare**

Regd owner: Joseph Patrick Fitzgibbon; folio: 2910; lands: plots of ground being part of the townland of Castletown in the barony of Imokilly and county of Cork; **Co Cork**

Regd owner: Richard Foley; folio: 18166F; lands: plots of ground being part of the townland of Trantstown in the barony of Barrymore and county of Cork; **Co Cork**

Regd owner: John O'Neill; folio: 24863F; lands: plots of ground being part of the townland of Carrigane in the barony of Muskerry East and county of Cork; **Co Cork**

Regd owner: Peter and Josephine O'Riordan; folio: 8035F; lands: plots of ground being part of the townland of Baurnahulla in the barony of Carbery West (east division) and county of Cork; **Co Cork**

Regd owner: William O'Shea; folio: 43880; lands: plots of ground being part of the townland of Corbally South in the barony of Barrymore and county of Cork; **Co Cork**

Regd owner: Patrick Sheehy; folio: 18057F; lands: plots of ground being part of the townland of Ballylinchy in the barony of Carbery West (east division) and county of Cork; **Co Cork**

Regd owner: William Noel Treacy and Kathleen Treacy; folio: 54110; lands: plots of ground being part of the townland of Ballintoesig in the barony of Imokilly and county of Cork; **Co Cork**

Regd owner: Elizabeth Christina Love; folio: 42525; lands: plots of ground being part of the townland of Enaghoughter East in the barony of Carbery West (west division) and county of Cork; **Co Cork**

Regd owner: Eileen Doherty, c/o Colquhoun and Dickson, Solicitors, Buncrana, Co Donegal; folio: 23237; lands: Lisfannan; area: 0.0328 hectares; **Co Donegal**

Regd owner: Patrick Kevin Campbell, Drumacrin, Bundoran, Co Donegal; folio: 5070; lands: Drumacrin; area: 8.0937 hectares; **Co Donegal**

Regd owner: Joseph Bernard Byrne and Bernadette Theresa Byrne; folio: DN12432; lands: property situate in the townland of Kilnamanagh and barony of Uppercross; **Co Dublin**

Regd owner: Jeanette Chaney; folio: DN68688L; lands: property known as no 69 Rathvilly Drive, situate in the parish of Finglas and district of Finglas North; **Co Dublin**

Regd owner: William Cox; folio: DN10642F; lands: property situate in the townland of Robinhood and barony of Uppercross; **Co Dublin**

Regd owner: Oliver Duggan; folio: DN18378L; lands: property situate in the townland of Clonmel and barony of Coolock (now known as 77 Pinewood Crescent, Glasnevin, Dublin); **Co Dublin**

Regd owner: Thomas Fealy; folio: DN1373F; lands: property situate in the townland of Grange and barony of Coolock; **Co Dublin**

Regd owner: John Flynn and Patricia Burke; folio: DN55492L; lands: property known as 6 Carrigallen Drive, situate in the parish of Finglas and district of Finglas; **Co Dublin**

Regd owner: Brendan Glennon and Olive Glennon; folio: DN 100538F; lands: property known as site no 3 Ardeen, situate in the parish and town of Lucan; **Co Dublin**

Regd owner: Hugh Hayes; folio: DN 99705F; lands: property situate in the townland of Grallagh and barony of Balrothery West; **Co Dublin**

Regd owner: Sean Kelly (1/2 share); folio: DN149787F; lands: a plot of ground situate on the north side of old Haystown, in the parish of Lusk and in the town of Rush; **Co Dublin**

Regd owner: Patrick Kelly (1/2 share); folio: DN149787F; lands: a plot of ground situate on the north side of Old Haystown, in the parish of Lusk and in the town of Rush; **Co Dublin**

Regd owner: Marie Kennedy and Elizabeth Kennedy; folio: DN60754F; lands: property situate in the townland of Santry and barony of Coolock; **Co Dublin**

Regd owner: Marie McKeon; folio: DN147642F; lands: a plot of ground known as no 8 Willsbrook Grove, Lucan, and situate in the townland of Ballydowd and barony of Newcastle; **Co Dublin**

Regd owner: John Moorehouse and Ellen Moorehouse; folio: DN 72876L; lands: property known as flat no 61 on the second floor of Crescent House, situate on the north of Marino Crescent in the parish and district of Clontarf; **Co Dublin**

Regd owner: Brian O'Loughlin and Elizabeth O'Loughlin; folio: DN16695; lands: a plot of ground situate in the townland of Ballinascorney Lower and barony of Uppercross; **Co Dublin**

Regd owner: John Lynch and Anne Lynch; folio: DN84230F; lands: property situate in the townland of Corballis and barony of Nethercross; **Co Dublin**

Regd owner: Stephen Treston and Geraldine Treston; folio: DN6040F; lands: property situate in the townland of Grange and barony of Coolock; **Co Dublin**

Regd owner: Denis Murphy and Philip Hannigan; folio: DN60843L; lands: property known as 67 Captain Road in the parish of Crumlin and district of Terenure; **Co Dublin**

Regd owner: Margaret McGuirk (1/2 share); folio: DN586L; lands: property known as 4 Rathlin Road situate on the east side of the said road in the parish of Glasnevin and district of Drumcondra; **Co Dublin**

Regd owner: Michael Costello (deceased); folio: 29240; lands: townland of Gortroe and barony of Athenry; area: 21 acres, 1 rood, 28 perches; **Co Galway**

Regd owner: John Dolphin; folio: 17515; lands: townland of (1) Graigueagowan, (2) Lickmolassy and barony of (1) and (2) Longford; area: (1) 19 acres, 5 perches, (2) 11 acres, 3 roods, 14 perches; **Co Galway**

Regd owner: Martin Finnerty; folio: 28868F; lands: townland of Turlough and barony of Moycullen; area: 8.504 acres; **Co Galway**

Regd owner: Mary Nestor; folio: 35235; lands: townland of Dunmore and barony of Dunmore; area: 0.0771 hectares; **Co Galway**

Regd owner: May Burke; folio: 1110F; lands: townland of Kilcloghans and barony of Dummore; area: 0.1719 hectares; **Co Galway**

Regd owner: Liam Dennehy; folio: 109F; lands: townland of Duagh and barony of Clanmaurice in the county of Kerry; **Co Kerry**

Regd owner: Daniel P O'Shea; folio: 762; lands: townland of Greenane and barony of Dunkerron South, **Co Kerry**

Regd owner: Patrick Dunlea; folio: 17327; lands: townland of Kilcullenbridge and barony of Kilcullen in the county of Kildare; **Co Kildare**

Regd owner: Kathleen Dwyer (deceased); folio: 15929; lands: Moneenroe and barony of Fassadinin; **Co Kilkenny**

Regd owner: Kathleen Dwyer (deceased); folio: 1448F; lands: Moneenroe and barony of Fassadinin; **Co Kilkenny**

Regd owner: John Gallagher; folio: 21836; lands: townland of Coolscart and barony of Smallcounty; **Co Limerick**

Regd owner: Michael Hughes; folio: 7827F; lands: townland of Elm Park Demesne and barony of Pubblebrien; **Co Limerick**

Regd owner: John Hogan; folio: 2116; lands: townland of Gannavane and barony of Coonagh; **Co Limerick**

Regd owner: Michael O'Donoghue and Ann O'Donoghue; folio: 14009F; lands: parish of St Michael's and county borough of Limerick; **Co Limerick**

Regd owner: Patrick Dolan, Gallstown, Dunleer, Co Louth; folio: 9307; lands: Gallstown; area: 0.2200 hectares; **Co Louth**

Regd owner: Bridget Keaskin, Strand Road, Annagasson, Co Louth; folio: 2359; lands: Ballynagassan; area: 2.4559 hectares; **Co Louth**

Regd owner: Patrick Rooney, Derrycammagh, Castlebellingham, Co Louth; folio: 7021; lands: Farrandreg; area: 3.0930 hectares; **Co Louth**

Regd owner: Vera McGrath, 36 Blackrush Avenue, Bryanstown, Drogheda, Co Louth; folio: 16833F; lands: Bryanstown; **Co Louth**

Regd owner: Kevin Maloney; folio: 47699; lands: townland of Foxford and barony of Gallen; **Co Mayo**

Regd owner: Belmont Hotels Limited; folio: 8507F; lands: townland of Churchfield and barony of Costello; area: 1.785 acres; **Co Mayo**

Regd owner: Michael Kiernan and Agnes Kiernan, Castle Street, Ashbourne, Co Meath; folio: 2779L; lands: Cookstown; **Co Meath**

Regd owner: Catherine Moroney, 3 Castle Close, Ashbourne, Co Meath; folio: 739L; lands: Killegland; area: 0.0252 hectares; **Co Meath**

Regd owner: Mary Rafferty, Legg, Carrickmacross, Co Monaghan; folio: 10895F; lands: Drumgeeny; area: 0.594 hectares; **Co Monaghan**

Regd owner: James O'Grady and Mary O'Grady; folio: 9260F; lands: Edenderry and barony of Coolestown, **Co Offaly**

Regd owner: Very Reverend Peter Caslin (deceased); folio: 1019F; lands: townland of Farnbeg and barony of Roscommon; area: 2 roods, 9 perches; **Co Roscommon**

Regd owner: Bridget Waldron; folio: 18908; lands: townland of Ballinlough and barony of Castlereagh; area: 3 acres, 3 roods, 5 perches; **Co Roscommon**

Regd owner: John Burns; folio: 1003F; lands: townland of Aghamore Near and barony of Carbury; area: 0.1770 hectares; **Co Sligo**

Regd owner: Ellen Delaney; folio: 25751; lands: townland of Glengoole South and barony of Slievardagh; **Co Tipperary**

Regd owner: Sean O'Meara; folio: 10113; lands: townland of Stonepark and barony of Lower Ormond; **Co Tipperary**

Regd owner: Brother Michael Columba Normoyle and others; folio: 39546; lands: townland of Thurles and barony of Eliogarty; **Co Tipperary**

Regd owner: James O'Mahony; folio: 22568; lands: townland of Peake and barony of Middlethird; **Co Tipperary**

Regd owner: Thomas Carroll and Eileen Carroll; folio: 10105; lands: plots of ground being part of the townland of Affane in the barony of Decies without Drum and county of Waterford; **Co Waterford**

Regd owner: Patricia Foley; folio: 2564L; lands: plots of ground known as no 8 Griffith Place in the parish of Trinity Without and in the county borough of Waterford; **Co Waterford**

Regd owner: Bridie McHugh and Thomas McHugh; folio: 9091; lands: plots of ground being part of the townland of Skehanard in the barony of Decies without Drum and county of Waterford; **Co Waterford**

Regd owner: James (orse James J) McCormack, 2 Northgate Street, Athlone; folio: 4636; lands: Hillquarter; area: 10.2688 hectares; **Co Westmeath**

Regd owner: Thomas J Dolan, Ardnagrath, Walderstown, Athlone, Co Westmeath; folio: 4109; lands: Cauran and Ardnagragh; area: 0.3364 hectares and 74.7754 hectares; **Co Westmeath**

Regd owner: Bridget Whitty (deceased); folio: 6265; lands: Curralane and barony of Scarawalsh; **Co Wexford**

Regd owner: John Doyle; folio: 3398; lands: Shelbaggan and barony of Shelburne; **Co Wexford**

Regd owner: Gavin Corbett and Jennifer Taaffe; folio: 21127F; lands: townland of Bray Commons and barony of Rathdown; **Co Wicklow**

Regd owner: Coin Keenaghan; folio: 19472F; lands: townland of Lugduff and barony of Ballinacor South; **Co Wicklow**

Regd owner: Kathleen Moynihan; folio: 9769; lands: townland of Ballinahinch and barony of Newcastle; **Co Wicklow**

WILLS

Blackall, Eileen (deceased), late of 6 Idrone Terrace, Blackrock, Co Dublin. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased, who died on 3 August 2005, please contact O'Connor & Bergin, Solicitors, Ocean House, 26/31 Arran Quay, Dublin 7; tel: 01 873 2411, fax: 01 873 2517, email: info@oconnor-bergin.ie

Coffey, Marie (deceased), late of 24 Terenure Road West, Terenure, Dublin 6W. Would any person having knowledge of a will executed by the above-named deceased, who died on 1 October 2005, please contact Egan O'Reilly, Solicitors, 19 Upper Mount Street, Dublin 2; tel: 01 613 0100, fax: 613 0101, email: eganoreilly@eir-com.net

Donovan, John C (deceased), late of Ballylahive, Abbeydorney, Co Kerry, and formerly of Carrigeen, Kilbehenny, Mitchelstown, Co Cork, who died on 6 May 2005 in New Jersey, USA. Any solicitor holding/having knowledge of a will made by the above-named deceased please contact: William Fitzgibbon, solicitor, Messrs Shinnick Fitzgibbon & Co, Solicitors, Baldwin Street, Mitchelstown, Co Cork; tel: 025 84081, email: billyfitzgibbon@eir-com.net

Farrell, Desmond Michael (deceased), late of 32 Aylesbury Park, Newbridge, in the county of Kildare. Would any person with any knowledge of a will executed by the above-named deceased, who died on 19 September 2005 at Naas General Hospital, please contact Sonya Mallon of Coughlan White & Partners, Main Street, Newbridge, in the county of Kildare; tel: 045 433 4332, fax: 045 433 096, email: sonya@coughlansolicitors.ie

Guerin, Kathleen (deceased), late of Irish Cottage, Muckross Road, Killarney, Co Kerry. Would any person having knowledge of a will made by the above-named deceased, who died on 21 October 2005, please contact Liam F Coughlan & Co, Solicitors, 'Woodhaven', Ballycasheen Upper, Killarney, Co Kerry; tel: 064 35913, fax: 064 37343

Horgan, Mary (deceased), late of 25 St Anne's Road, Gurranabraher, Cork. Would any person having knowledge of the original will dated 8 December 1975 made by the above-named deceased, who died on 6 December 1994, please contact Colm

S O'Riain & Co, Solicitors, 4 Washington Street West, Cork; tel: 021 427 2032

Keegan, Paddy (otherwise known as Patrick) (deceased), late of Fairview, Dowra, Co Cavan. Would any person having any knowledge of the whereabouts of any will made by the above-named deceased, who died on 25 October 2005, please contact McGovern and Associates, Solicitors, Equity House, Dublin Road, Carrick-on-Shannon, Co Leitrim; tel: 071 962 1988/962 1881, fax: 071 962 1989, email: nmcgovernandassociates@eircom.net

Moynes, Mary (deceased), late of 106 St Attracta Road, Cabra, Dublin 7. Would any person having knowledge of a will made by the above-named deceased, who died on 15 March 2001, please contact Cornelius Sheehan & Co, Solicitors, 2 Alma Place, Monkstown, Co Dublin

Murphy, Attracta (deceased), late of Cloonlaheen, Gurteen, Co Sligo. Would any person with any knowledge of a will executed by the above-named deceased, who died on 13 May 2005, please contact Donal Taaffe & Co, Solicitors, Malthouse Square, Smithfield Village, Dublin 7

O'Neill, James Kevin (deceased), late of 26 Assumpta Park, Shankill, in the county of Dublin. Would any person with any knowledge of the whereabouts of the original will executed by the above-named deceased on 16 September 2000, who died on 6 February 2005, please contact Cullen & O'Beirne Solicitors, 1 Castle Street, Christchurch Place; tel: 01 478 9031, email: info@cullenobeirne.ie

Prout, Edward (otherwise Ned) (deceased), late of 66 Lacey Avenue, Templemore, Co Tipperary, and of Church Avenue, Templemore, Co Tipperary. Would any person having knowledge of a will executed by the above-named deceased, who died on 2 February 2005, please contact Paul A Cunningham, Cunningham Solicitors, 8 Emily Square, Athy; tel: 059 863 4444

Sweeney, Thomas (deceased) (otherwise known as Thomas McSweeney), late of 37 White Oaks, Wilton, Cork, and the Abbeville Veterinary Clinic, Tougher Road, Cork, who died on 15 September 2005. Would any person having knowledge of a will made by the above-named deceased please contact Mary Dorgan, Solicitor, 15 South Terrace, Cork; tel 021 497 5651, fax: 021 497 5669; email: marydorgan@securemail.ie

Synott, Breda (deceased), late of 81 Wainsfort Road, Terenure, Dublin 6W, who died on 14 November 2005. Would any person having knowledge of a will made by the above-named deceased please contact Bowler Geraghty & Co, Solicitors, 2 Lower Ormond Quay, Dublin 1; tel: 01 872 8233 or fax: 01 872 8115

MISCELLANEOUS

Westmoreland Street, D2 – 1st, 2nd, 3rd and 4th floors, 611 sqm of refurbished offices in this much sought-after central location close to the Four Courts, city centre and all transport routes. New lease terms available. Contact David Bennett at DTZ Sherry FitzGerald; tel: 01 639 9310

TITLE DEEDS

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 Peter Molloy Ltd

Take notice that any person having any interest in the freehold estate or any superior interest in the property known as: all that and those number 47 Main Street, Donnybrook, containing in front along the main street on the north-east side of the said premises 34 feet; on the south-east side, 52 feet, 6 inches; and on the south side, 18 feet from the west side, an aggregate measurement; which said premises are situate in Donnybrook in the parish of St Mary, Donnybrook, and city of Dublin, and which said premises are held under an indenture of lease dated 8 May 1933 and made between the Right Honourable Lord Mayor, Aldermen and Burgesses of Dublin of the one part and Michael Cullen of the other part for the term of 150 years beginning on 25 March 1933 at the yearly rent of £12, 10 shillings and the covenants therein contained.

Take notice that the applicant, Peter Molloy Ltd, intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the above said property is called upon to furnish evidence on title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant, Peter Molloy Ltd, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice date of this notice and will apply to the county registrar for the county of the city of Dublin for directions as maybe appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion to the property are unknown or ascertained.

Date: 9 December 2005
Signed: Anderson Gallagher (solicitors for the applicant), 29 Westmoreland Street, Dublin 2

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 Maurice Flinter and Brigid Flinter of premises at William Street, Athy, in the county of Kildare

Take notice that any person having an interest in the freehold estate of the premises described in the schedule hereto and which are held under indenture of lease dated 10 May 1937 made between Owen Meredith Tweedy of the one part and Jacob Purcell of the other part for a term of 100 years from 29 September 1936 and head fee farm grant dated 30 October 1857 made between the duke of Leinster of the one part and Willoughby Bond and Alicia Bond of the other part, should give notice of their interest to the undersigned solicitors.

Take notice that Maurice Flinter and Brigid Flinter intend to submit an application to the county registrar for the county of Kildare for the acquisition of the freehold interest and all intermediate interest 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 within 21 days of the date of publication of this notice.

In default of any such notice being received, the said Maurice Flinter and the said Brigid Flinter intend to proceed with the application before the county registrar at the earliest opportunity and will apply to the county registrar for the county of Kildare 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 property are unknown and or unascertained.

Schedule: all that and those the premises demised by an indenture of lease dated 10 May 1937 and therein described as all that the house and premises situate at William Street in the town of Athy and county of Kildare, containing in breadth to the front to William Street aforesaid 58 feet and in breadth to the rear 15 feet, 6 inches, and in depth from front to rear 75 feet.

Date: 9 December 2005

Signed: HG Donnelly & Son (solicitors for the applicants), Athy, Co Kildare

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 Eircom Limited of 114 St Stephen's Green, Dublin 2

Take notice that any person having an interest in the freehold or intermediate interest of the following property: part of the lands of Monkstown Castle, parish of Monkstown, barony of Rathdown and county of Dublin, and held under lease dated 7 November 1953 and made between the Right Honourable Edward Arthur Henry, Earl of Longford, of the first part, and the countess of Longford and others of the second part, and the Pakenham Estate Company of the third part, and John Eustace Vesey of the fourth part, William Peter Roper Esquire and John Eustace Vessey of the fifth part, and the Representative Church Body of the sixth part, and Christopher G Cooney Limited of the seventh part, for a term of 150 years subject to an annual rent of £350.

Take notice that Eircom Limited intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party or parties asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title in the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, Eircom Limited intends to proceed with the application before 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 are unknown or unascertained.

Date: 9 December 2005

Signed: EG Hall (solicitor for the applicant), Eircom Limited, Solicitors Office, Leitrim House, Upper Stephen's Street, Dublin 8

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 Dublin City Council

Take notice that any person having an interest in the freehold estate or any superior interest in the property known as: all that and those the lands comprising the Dublin City Council depot situate at Grangegorman Lower/Fountain Place/Stanley Street, Dublin 7, which are held under:

1) Lease for lives, dated 26 December 1795, John Gibson of the first part, William Hendy and John Donnellan of the second part, and Richard Stuart of the third part,

subject to the yearly rent of £26.12s.0d;
2) Fee farm grant dated 7 February 1877, John George Henry William Dunbar of the one part and Thomas Picton Reede of the other part, subject to the perpetual yearly rent of £73.16s.11d;
3) Fee farm grant dated 27 March 1888, Thomas Picton Reede of the one part and the Right Honourable Lord Mayor, aldermen and burgesses of Dublin of the other part, subject to the perpetual yearly rent of £28.15s.2d;
4) Fee farm grant dated 14 May 1885 and made between Thomas Picton Reede of the one part and Elizabeth Kennedy of the other part, subject to the perpetual rent of £24.4s.8d

should give notice of their interest to the undersigned solicitors.

And take notice that the applicant, Dublin City Council (as statutory successor to the Right Honourable Lord Mayor, Aldermen and Burgesses of Dublin), intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is 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 such notice being received, the applicant, Dublin City Council, intends to proceed with the application before the county registrar at the end of 21 days from 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 interest including the freehold reversion are unknown or unascertained.

Date: 9 December 2005
Signed: Terence O'Keeffe (solicitor for the applicant), Civic Offices, Wood Quay, Dublin 8

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 Bank of Ireland premises at Laurence Street, Drogheda, Co Louth: an application by the Governor and Company of the Bank of Ireland

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 building standing thereon known as Bank of Ireland, Laurence Street, Drogheda, Co Louth, held under an indenture of lease dated 1 January 1852 made between John Browne of the one part and John Rowland of the other part for a term of 500 years from 1 November 1851, subject to the yearly rent of £25 sterling.

Take notice that the applicants, the Governor and Company of the Bank of Ireland, 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 of Louth 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, the Governor and Company of the Bank of Ireland intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Louth for such 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: 9 December 2005
Signed: Loraine Hayes (solicitor for the applicant), Group Property Department, Head Office, Bank of Ireland, Lower Baggot Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Dublin City Council

Take notice that any person having an interest in the freehold estate or any superior interest in the property known as: all that and those the lands comprising St Michael's Estate, Goldenbridge, in the city of Dublin, which are held under lease for lives dated 24 September 1812, William Smith Esq of the first part and Major General Quin John Freeman of the second part, subject to a peppercorn yearly rent and fine for renewal, should give notice of their interest to the undersigned solicitors.

And take notice that the applicant, Dublin City Council (as statutory successor to the Right Honourable Lord Mayor, Aldermen and Burgesses of Dublin), intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is 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 such notice being received, the applicant, Dublin City Council, intends to proceed with the application before the county registrar at the end of 21 days from 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 interest including the freehold reversion are unknown or unascertained.

Date: 9 December 2005
Signed: Terence O'Keeffe (solicitor for the applicant), Civic Offices, Wood Quay, Dublin 8

RECRUITMENT

Assistant solicitor required for a busy Cork suburban practice. Candidate will be required to work in the area of residential conveyancing and litigation, with a view to expanding the family law practice. A good salary and excellent prospects for the right person. May suit newly qualified solicitor. Please reply to **box no 100/05**

Experienced solicitor available for part-time position, with eight years' PQE in general practice (to include five years self-employed as a sole practitioner). Areas considered: north Kildare, Co Meath and Dublin 15. Available from January 2006. Contact 087 231 4145

Legal bookkeeper available: Italax, BCL, BOL, AIB, Land Registry, Expd8 and Sage Quickpay. Accountancy background, very experienced. Please reply to **box no 101/05**

Locum solicitor required to cover maternity leave from January 2006 to May 2006, mainly conveyancing, family law and litigation. Contact John Sherlock & Co, 9/10 Main Street, Clondalkin, Dublin 22, tel: 01 457 0846

Mullingar, Co Westmeath – solicitor with post-qualification experience required for litigation and conveyancing work. Permanent position. Opportunity to work in busy general legal practice. Good conditions and salary. Apply sending CV to **box no 102/05**

Solicitor required, Westmeath/Roscommon/Longford area. Full or part-time, flexible hours. Excellent package, one year's PQE minimum. Conveyancing. Contact Julie, Anthony Barry & Co; mobile: 087 812 7230, email: wglennon@eircom.net

Solicitor required for suburban general practice. Minimum two years' PQE. Apply in writing to DC Shaw & Co, Solicitors, 200 Kimmage Road West, Dublin 12; tel: 01 456 1344

Solicitor with six years' PQE seeks part-time position either private practice or in-house. Extensive experience in commercial law (telecoms and entertainment), conveyancing litigation and probate. Long and short-term contract considered. Proficient in all computer packages, 70 wpm typewriting speed and own practising certificate. Dublin area. Please reply to **box no 103/05**

Solicitor seeks locum position in Cork city or county. Three years' PQE in conveyancing and probate. Will consider full-time or part-time position; tel: 087 222 1289

Apprenticeship required to enter PPC1 course in 2006; MA, MA (Lib), MCLIP. All eight FE1 exams and first Irish exam passed, studying for AITI. Willing to pay own fees. Contact Margaret at 085 713 1897 or email ML125@ireland.com

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Benson & Associates is a niche consultancy, specialising in the recruitment of high calibre lawyers for private practice, commerce and industry.

A selection of opportunities for December 2005

PRIVATE PRACTICE

Our clients are currently searching for high calibre lawyers in the following areas:

- **Banking: All levels**
- **Commercial Property: 1-4 yrs pqe**
- **Commercial Property: Senior Associate/Partner**
- **Conveyancing: NQ-1 yr pqe**
- **Corporate/Commercial: NQ-2 yrs pqe**
- **Employment - Contentious: 2-4 yrs pqe**
- **EU/Competition: 2-4 yrs pqe**
- **Funds: 2-4 yrs pqe**
- **In-house - Procurement: 1-4 yrs pqe**
- **Litigation/Insolvency: 2 yrs+ pqe**
- **Paralegals: 2-4 yrs experience**
- **Private Client: 2 yrs+ pqe**
- **Structured Finance & Securitisation: 2 yrs+ pqe**
- **Tax: 2-5 yrs pqe**

IN-HOUSE

Conveyancing: 2-4 yrs pqe
This position may suit an experienced solicitor who wishes to work part time. For a promising candidate, our client will actively consider providing a full time role.

Commercial Property Specialist: 5 yrs+ pqe
Our client is a successful Irish development company with more than €1.2bn of property under development both in the domestic and international market. They require an ambitious, commercially minded lawyer to join their team.

Intellectual Property: 5 yrs+ pqe
Our client is a successful multinational who is searching for an experienced IP practitioner to take the lead in negotiating patents personally. This role will require strong business acumen.

POSITIONS IN LONDON AND REGIONAL UK

In association with our colleagues Chadwick 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.

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 (ex solr) for a discussion in the strictest confidence. Benson & Associates, Carmichael House, 60 Lower Baggot Street, Dublin 2. T +353 (0) 1 670 3997 E mbenson@benasso.com

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NURSING BOARD

An Bord Altranais, the statutory regulatory body for the Nursing/Midwifery profession in Ireland, has the following opportunity:

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Reporting to the Deputy Chief Executive Officer, you will be responsible for the preparation and presentation of Fitness to Practice cases/findings under Part V of Nurses Act, 1985.

You will be responsible for the following:

- Drafting notices of inquiry, letters of advice, correspondence
- Preparation of briefs, subpoenas, production orders and affidavits
- Presenting cases on behalf of the CEO
- Interviewing witnesses and drafting statements
- Liaising with various different parties
- Development and implementation of policies
- Advising the CEO on Fitness to Practice and other matters

Requirements:

- Have been admitted as a solicitor and entered on the roll of solicitors
- Possess satisfactory post-qualification experience in litigation, strong court experience and accurate drafting skills
- Have strong communications skills especially oral and written, with the ability to work on your own initiative
- Possess strong analytical skills in order to review, analyse and summarise cases

Further information can be obtained by visiting our website www.nursingboard.ie

To Apply:

To apply, please forward an up-to-date Curriculum Vitae and covering letter by email to personnel@nursingboard.ie or by post marked for the attention of the Director of Operations, An Bord Altranais, 31/32 Fitzwilliam Square, Dublin 2.

The Closing date for receipt of applications is Wednesday 14th December 2005.

An Bord Altranais is an equal opportunities employer.

www.nursingboard.ie

PRC

BANKING LAWYER - 2-5 YEARS' PQE **TO €90K**
One of Dublin's leading commercial law firms requires a Banking Solicitor to join its growing team. The successful candidate will have a number of years' experience working in the banking and financial services sector, either in-house or in practice.

COMMERCIAL CONVEYANCING - 5+ YEARS' PQE **€90K+**
A leading Commercial Law firm in Dublin are now seeking a Commercial Conveyancing Solicitor with 5+ years experience in commercial conveyancing. The successful candidate will have experience in large deal commercial transactions advising investors, developers and financial institutions. Excellent opportunity to progress to partnership in the short term.

RESIDENTIAL CONVEYANCING - 2-3 YEARS' PQE **TO €60K**
Our client a respected Dublin law firm are now looking for a Residential Conveyancing solicitor with at least 2 years experience. You will have experience in all aspects of conveyancing and be comfortable with the responsibility of running files from start up to closing. You will have good client facing skills and be able to work under tight deadlines.

CORPORATE LAWYER - 2-5 YEARS' PQE **€60-90K**
Top 5 law firm requires a corporate lawyer for its Dublin office. You will have experience in some of the following areas: Mergers and Acquisitions both public and private, securities, private equity, PLC and capital markets experience. This firm offers great opportunities for career development.

FUNDS LAWYER - 1+ YEARS' PQE **TO €65K**
Opportunity exists to join this Dublin firm's Investment Funds team. Applications from candidates from both in-house and private practice are invited. You will be experienced in advising institutional clients and in Irish Investment Fund law as well as ideally having multi-jurisdictional experience. You will get unrivalled opportunities to progress your career and attractive remuneration package.

LEGAL EXECUTIVE - CONVEYANCING 2+ YEARS' PQE **TO €60K**
Our client, a leading Dublin law firm recognised as a strong conveyancing practice have a vacancy for an experienced legal executive. You will have experience in organising residential and commercial developments, Deeds of Assurance, Contract/Building Agreements, replying to pre-contract enquiries, preparing completion documentation and distributing closing monies for sales.

For information on these vacancies or to discuss other career opportunities, please contact John Cronin Solicitor.

PRC Recruitment Limited, 11 Hume Street, Dublin 2. Tel: 01-6381020 or e-mail johncronin@prc.ie

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MHC
Coimisiún Meabhrán-Sláinte
Mental Health Commission

The Mental Health Commission is committed to fostering and promoting high standards in the delivery of mental health services, to promoting and enhancing the well-being of all people with a mental illness and ensuring that the interests of those involuntarily admitted under the provisions of the Mental Health Act 2001 are protected.

The Mental Health Act 2001 provides for the independent review of people admitted involuntarily to approved centres (psychiatric hospitals and units), thereby bringing Irish legislation into conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Prior to commencement of this provision the Mental Health Commission is now seeking applications for membership of the following panel:

Mental Health Legal Representatives Panel

Ref LR1

The role will involve representing patients before mental health tribunals and, where appropriate, representation in appeals before the Circuit or the High Court. Mental health tribunals will be held in local approved centres, (psychiatric hospitals and units).

Appointments will be made on a contract for service basis and those successful will be required to be flexible in regard to their availability to attend at approved centres at relatively short notice. Training is mandatory and will be organised by the Mental Health Commission for successful candidates.

Applicants must be practising solicitors, who have had not less than three years experience as a practising solicitor; ending immediately before application. Experience will be determined based on practising certificates from the Law Society of Ireland. Solicitors in private practice or individual solicitors within firms may apply.

Candidates will be required to comply with the necessary procedures for the Mental Health Commission to obtain Garda clearance.

To Apply:

Information, criteria for membership of panel and remuneration are available in the following pack:

- Mental Health Legal Representatives Panel Ref. Number LR1

Information pack, including application forms and FAQ's is available on our web site **www.mhcirl.ie**

All applications must be submitted in the manner specified by the Mental Health Commission in the information pack.

Four copies of your application should be submitted to:

Mr. Noel Kirwan, Mental Health Commission, St. Martin's House, Waterloo Road, Dublin 4.

Closing date for receipt of applications is: **5.00 p.m. Wednesday 11th January 2006.**

(Those who have already applied for membership need not re-apply)

Short listing will apply on the basis of initial applications and short listed candidates will be required to attend for interview at the candidate's own expense.

www.mhcirl.ie

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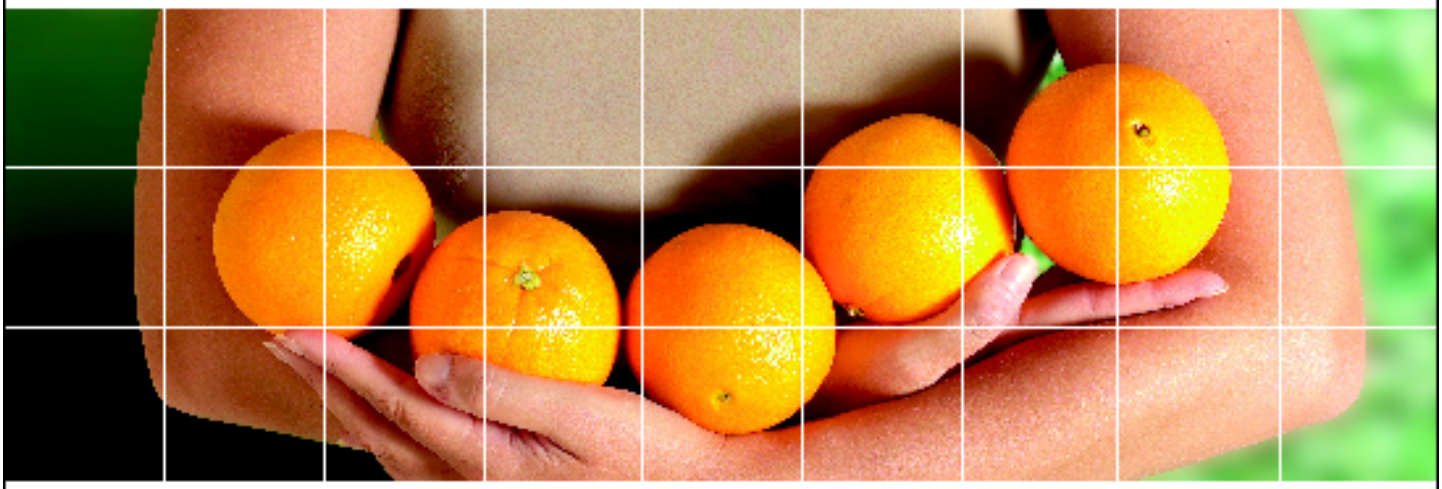

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Private Practice

Construction Law Partner — To €120k + bonus
A highly regarded Dublin firm seeks to appoint a Construction Lawyer with experience in drafting and negotiating construction contracts and sub-contracts as well as dispute resolution. Ideally you will be a Senior Construction Lawyer with circa 6-8 years' PQE and be looking to develop your career in partnership with a progressive Dublin law firm. Ref: J0117091

Investment Funds Partner — To €135k + bonus
This leading Dublin firm, with a reputation for excellence and professionalism seeks to appoint a senior associate or junior partner into their highly regarded funds unit. The ideal candidate will have exceptional expertise in advising institutional clients and establishing alternative investment funds. You also should be ambitious and commercially focused. In return, you will enjoy an unrivalled remuneration package and excellent opportunities. Ref: J0116734

Tax Lawyer — To €65k + bonus
A medium sized Dublin law firm seeks a qualified accountant (ACA or equivalent) with 2 years' experience, or a qualified tax lawyer to provide innovative tax advice to the firm's corporate and individual clients. This will include tax aspects of corporate structuring, transactions and commercial matters, including contract issues. Ref: J0116727

Commercial Solicitor — To €65k
A medium sized Dublin law firm with a strong intellectual property practice seeks to appoint a Commercial Solicitor to join their team. You will have 1-5 years' experience in a medium or large Dublin or international law firm. You will also be well-presented, ambitious and seeking to develop your career in an expanding Dublin firm. Ref: J0129428

Commercial/Banking Solicitor — To €65k + bonus
This three partner firm based in Dublin 18 seeks to appoint a solicitor with 0-2 years' PQE to join their commercial department. The role will involve drafting shareholder, share purchase, license and employment contracts and agreements for SMEs. It will also involve the provision of advice to banks on secured lending and compliance. An exceptional opportunity for a junior lawyer to increase their client exposure and fast-track their career. Ref: J0244220

Commercial Conveyancing Solicitor — To €65k
A progressive mid-tier Dublin law firm seeks to appoint a solicitor to join their property department. You will have between 1-3 years' PQE and possess excellent drafting and communication skills. Experience of working on commercial developments is essential. Ref: J0127020

In-House

HQ Banking Lawyer — To €75k
A leading bank based in Dublin's city centre requires a solicitor to join their legal services department. You will be a solicitor or barrister with a sound knowledge of banking and commercial law and the ability to deal with competing priorities. You will be comfortable in a target driven environment, have good interpersonal skills and the ability to work effectively as a team member. Ref: J0124539

Funds Lawyer — To €65k + bonus and benefits
An internationally respected fund house seeks to appoint a qualified solicitor to join their in-house team. This is a fantastic opportunity for a newly qualified or 1-2 years' PQE solicitor to join this exciting organisation. You will have excellent communication skills and commercial acumen. Funds experience is an advantage, but candidates with good commercial or banking experience will also be considered. Ref: J0116115

In-House Telecoms Lawyer — To €65k + bonus and benefits
Our client, a leading telecommunications company, seeks to appoint a highly accomplished lawyer to provide legal advice on commercial/IT issues. The role also plays an important role in ensuring the delivery of high quality legal contracts and advice. The successful candidate will be top tier trained with between 3-7 years' experience in the commercial/IT department of a leading Dublin or international law firm. Ref: J0202098

Legal Counsel — To €75k
A prominent financial services organisation seeks to appoint a qualified lawyer with 2-4 years' PQE. Ideally, you will come from a legal practice or an investment bank, with experience in the funds industry. The role will include general due diligence, offering legal advice to fund clients and some regulatory and corporate governance issues. Ref: J0116883

If you are interested in these or any other legal opportunities please send your Curriculum Vitae to Gemma Allen, gemma.allen@robertwalters.com or John Cleary, john.cleary@robertwalters.com or Tel: (01) 635 4111 and ask to speak to a consultant in the legal division.

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Legal Adviser - Banking

Our client is a division of a major International Banking Group. Operating globally, the Group engages in a wide range of financial services activities. Due to the continued success of the business, a position has arisen for a Legal Adviser to our client which has a particular focus on the provision of corporate debt finance and related facilities both in Ireland and internationally. Reporting to the divisional Head of Legal, this is truly an exceptional and challenging opportunity.

The Role

- Provide specialist legal and regulatory advice on transactions and issues of strategic importance for the division
- Draft and launch legal documentation, including standard terms and conditions for applicable banking products
- Participate and, where required, co-ordinate internal Group projects
- Assist in management of external law firm relationships and act as a bridge between external law firms and internal client as required
- Provide training to the division's banking professionals on legal and regulatory issues
- Develop strong relationships with internal and external constituents, including regulators
- Advise generally on operational banking and regulatory issues as they arise

The Person

- Qualified Solicitor with 2-5 years PQE in banking law
- Strong academic background
- Proven ability to provide applied legal advice in a commercial context
- Strong drafting and technical skills
- Thorough understanding of banking and company law
- Proven team player; capable of communicating effectively at all levels
- Excellent organisational ability combined with attention to detail

An attractive performance related remuneration package will be offered to the right candidate.

This is an ideal opportunity for a top class lawyer seeking a move from a leading international or Irish law firm, or an in-house financial services environment to a cutting edge position.

Interested applicants should contact Yvonne Keane in strict confidence on 01 8415614 or 087 6824591. Alternatively email your CV to ykeane@keanemcdonald.com.

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