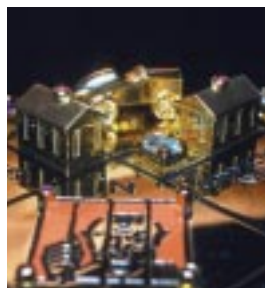


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# Ten days that sho

**Responding to allegations that solicitors have been guilty of 'double charging' Redress Board clients, the Law Society has been quick to condemn such behaviour by a minority, while stoutly defending the rest of the profession**

**"D**id you hear the Joe Duffy show?" I'm in my office in Charleville. It is the afternoon of Tuesday, 11 October, and I am preparing to drive to Tralee for an evening meeting with the members of the Kerry Law Society. It is three weeks to the end of my year as Law Society president.

The director general, Ken Murphy, is flying from Dublin to Farranfore to join me for the meeting. He is in the air when the Joe Duffy show is being broadcast. When he turns on his mobile phone in Kerry, there are nine new messages waiting.

Neither of us have heard RTE radio's *Liveline* programme that day but we quickly learn all about it. The phone calls start pouring in to us from solicitors all around the country.

"No, I didn't hear the Joe Duffy show. What was it about?"

By the time Ken and I have reached Tralee, we have been on the phone several times to each other and have been briefed by numerous practitioner colleagues and Law Society executives. We have discovered that Joe Duffy's phone-in radio programme this afternoon consisted almost entirely of callers complaining that they had been 'double charged' by their solicitors in Residential Institution Redress Board cases.

Caller after caller says that the Redress Board is supposed to pay all legal costs and expenses. But, regardless of this, the callers very passionately allege that their solicitors have deducted substantial amounts from the Redress Board cheques, with the explanation

that this is necessary to make up for 'shortfalls' in their legal fees.

The callers talk of a breach of trust and of an additional form of abuse – this time by their own solicitors – to add to the dreadful abuse they suffered in the past in residential institutions. Joe Duffy seems genuinely appalled and repeatedly refers to it as "a rip off".

## **Grand Hotel, Tralee**

There is a big turnout of solicitors for the meeting in the Grand Hotel, Tralee. Many of those present have heard the *Liveline* programme. It is the main topic of conversation.

A complete consensus on three things quickly emerges from the discussion:

- If it is true that solicitors have been deliberately overcharging, particularly such vulnerable clients as these, then it is utterly disgraceful and must be unreservedly condemned by the Society and by every decent solicitor.
- The Society must move very quickly to do whatever it can to put things right.
- The Society must face this issue openly and transparently in the media.

Already *Morning Ireland* wants a radio interview with Ken Murphy the next morning. This, and all other such interview requests from the media, should be accepted.

## **Morning Ireland**

Ken Murphy communicates the very clear messages he will repeat consistently in the media over the next ten days.

Referring to the meeting the previous evening with the solicitors in Kerry, he says:

"The rank and file members of the solicitors' profession react with anger, revulsion and utter condemnation of what was heard on the Joe Duffy programme yesterday, assuming that it is established as true, that a number of solicitors sought to overcharge extremely vulnerable people in Redress Board cases. Deliberate overcharging by any solicitor is wrong, but it is particularly reprehensible if what is alleged in these cases proves to be true."

The Law Society, he continues, is the statutory body with the power, responsibility and desire to investigate complaints from anyone who wishes to make them.

"But the Society has to receive complaints," he states. "It is simply impossible to investigate these matters unless the Society is told the name of the solicitor concerned, the name of the client and certain other essential details. The Society will give assistance to anyone who needs it to properly formulate their complaint."

He explains that the Society has the power to order a solicitor to repay any excessive amount charged and that excessive charging is likely to be viewed as misconduct and a very serious disciplinary matter.

## **Confidence**

In response to Cathal Mac Coille's question about confidence in solicitors investigating complaints against solicitors, Ken says:

"The Complaints Committee of the Law Society, to which these complaints will go, has among its members non-lawyers nominated by IBEC, the Irish Congress of Trade Unions, the Director of Consumer Affairs, including the Director of Consumer Affairs herself, Carmel Foley. These are people of ability and integrity who would not preside over an unfair, unbalanced or unjust system." By coincidence, Carmel Foley, is in the *Morning Ireland* studio to be interviewed later on a separate topic. Asked about this one, however, she makes it clear that she takes her responsibilities as a member of the Complaints Committee of the Law Society very seriously and will want to have these complaints thoroughly investigated.

## **A plan of action**

The director general flies back to Dublin that morning and consults widely, on the Law Society administration side, with: the deputy director general, Mary Keane, the director of regulation, John Elliot, and the senior solicitor in the complaints section, Linda Kirwan. He also confers at length by telephone with the chairman of the Complaints Committee, Gerry Doherty, with a Council member thoroughly familiar with Redress Board cases, James MacGuill, and with me. Within two hours, a plan of action has been agreed with the following elements:

- An emergency meeting of the Complaints Committee is

# ook the profession

called for tomorrow,

- The Law Society will advertise as soon as possible in national newspapers, inviting anyone who believes they have been 'double charged' in a Redress Board case to make a complaint to the Law Society, and explaining how this can be done,
- The advertisements will contain a free-phone helpline number through which the Society will accept, for the first time, complaints made other than in writing,
- The Society will write to every solicitor who acted in a Redress Board case which has been concluded, asking if they have charged additional legal fees and, if so, with what justification,
- Complaints in these cases will be placed on a 'fast track' with a view to the Complaints Committee deciding on them as quickly as possible,
- The Society will contact survivors' groups and urge them to use their networks to communicate the Society's desire to hear from anyone who believes they have grounds for a complaint.

The Society's response is communicated in Ken Murphy's interviews on the news programmes on RTE television and TV3, as well as in numerous radio and print media interviews. In the afternoon, Joe Duffy's *Liveline* programme is again devoted in its entirety to new callers with similar allegations to those heard yesterday.

## Media firestorm

In a barrage of media reporting and comment the next day, Thursday, much of the focus is on criticism of the Law Society



for not having acted long before now. This is despite the Society's pointing out that, until 9 July of this year, the Society was prohibited by law from investigating complaints arising from Residential Institutions Redress Board cases, due to the statutory requirement that these cases be shrouded in secrecy. The Society had campaigned to get the law changed so that it could investigate complaints in Redress Board cases.

Determined attempts are made to suggest that the Society's knowledge of a single case in 2003, quickly resolved to the complainant's satisfaction then – and another which the Society first heard about on 27 May 2005 – should have been seen by the Society as evidence of a widespread problem. Ah,

the wonders of hindsight!

The Society spends much of today making contact with survivors' groups. The day ends with the director general arguing the profession's position effectively in the face of deep hostility from some quarters on RTE television's *Prime Time* current affairs programme.

On Friday morning, Ken Murphy and I attend the formal opening, by Minister of State Brian Lenihan, of the Aislinn education and support centre in Dublin's Jervis Street. It is a moving experience. We cannot but admire what Christine Buckley and her colleagues have achieved.

RTE television news puts to the director general the question – which had already been raised elsewhere in the

***'There would never have been justice for people who were consigned to hell-holes by Irish society for decades ... but for the work of solicitors'***

clarus ad being  
emailed to turners  
before 11am tuesday

media – whether the actions complained of, if true, could be viewed as criminal conduct on the part of certain solicitors. If so, what attitude would the Law Society take to this?

### Fair procedures

This question was anticipated two days previously. I and others in the Society considered what the appropriate answer to it should be. It is clear on a full analysis that there is only one proper answer to it, and this is precisely what Ken Murphy gives in his response. He says that fair procedures will be applied and proper conclusions will be reached in relation to each complaint. At that stage, the Society will review whether or not there is evidence of criminal conduct, such as breaches of the *Theft and Fraud Offences Act 2001*. If so, the Society will put that evidence in the hands of the gardaí.

The *Liveline* programme this afternoon is again devoted exclusively to this story. In an attempt to obtain some balance, the director general phones in and is interviewed at length by Joe Duffy on the measures being taken by the Society, as highlighted in the publication of advertisements in seven national newspapers today.

The story once again tops RTE's *Six One* TV News and the director general is interviewed live in studio by Bryan Dobson, dealing comprehensively with every question. In particular, he rebuts the suggestion that self-regulation should be in question as a result of all this.

On its first day of operation, the telephone helpline receives 29 complaints. A number of these are from people who don't know whether or not their solicitors made deductions from their settlement cheques. In certain other cases, the amounts involved, only a few hundred euro, strongly suggest that any

deductions made were simply for unrecovered outlay in relation to medical report fees.

### Solid support

Although the barrage of at times hysterical coverage in the media continues throughout the weekend, the thing I find most encouraging is the overwhelming support for the Law Society's stance, which is communicated to me and others in Blackhall Place by members of the profession and, indeed, many members of the public. By telephone, e-mail, fax and letter, solicitors all over the country send an unambiguous message of approval for the resolute, speedy and innovative way in which the Society is handling an extremely difficult situation.

Council member James MacGuill is highly effective on Marian Finucane's Sunday radio programme. Ken Murphy gives a consummate performance on RTE television's *Questions & Answers* programme on Monday night. He quotes Tom Hayes of the Alliance Support Group, who pointed out that there would not have been a Commission or a Redress Board were it not for solicitors:

"There would never have been justice for people who were consigned to hell-holes by Irish society for decades and subjected to physical, sexual and psychological abuse but for the work of solicitors. It is tragic now that the actions of a small number of solicitors in failing in their obligations and ethical duties have distracted from the true achievement of the profession here."

In addition, Ken quotes Christine Buckley to the effect that, among the sources of the problem are the Redress Board's secrecy and the fact that it does not pay the full amounts for all medical reports. Council member Stuart Gilhooly, in the studio audience, gives reassurance about the Society's complaints

system and Minister John O'Donoghue firmly expresses his confidence in it saying: "The Law Society regulates its members far better than most other professions."

Still, day after day, the *Liveline* programme continues to invite complaints on this topic. Everyone, even the master of the High Court, seems to want to criticise the solicitors' profession – although former president, Geraldine Clarke, responds well to him in the media.

### The tide begins to turn

By the end of the week, ten days after the issue first breaks, the media begins to turn its attention to other news. A total of 96 complaints have, by now, been received.

On the Friday, greater balance has entered the news coverage, with both print and TV news carrying extracts from my 'parchment speech', where I again unreservedly condemn, on behalf of the overwhelming majority of solicitors, any overcharging that has taken place. I pledge that the Society will "root out and eradicate anything in the solicitors' profession which may have given rise to the despicable conduct which appears to have occurred in these cases".

But I again remark how sad it is that the actions of what, I am confident, will prove to be a small minority of solicitors, "has detracted from the work of the great majority. This includes those who, in the 1990s, were in the vanguard fighting against huge odds for justice for the citizens of Ireland who were sexually, physically and psychologically brutalised in residential institutions in a very dark period of modern Irish history.

"When Irish society was in denial, when the government was hostile, when the media did not want to know, solicitors stood with these oppressed and

exploited people and helped them to achieve such measure of justice as they have now received. It is unbalanced and sad that this has not been any part of the media story over the last ten days."

### Goodbye and thanks

By the time you read this, my year will have ended and the Law Society presidency will have passed to my excellent successor, Michael Irvine. I wish him well. I hope that he does not have to face similar issues during his term of office.

However, this will depend in part on how we learn from this experience. It will depend primarily, of course, on how the Society now performs its biggest task, which is that of ensuring that all these Redress Board complaints are dealt with effectively and fairly for all concerned. I know that the Society's Complaints Committee has arranged a series of special sittings to ensure that these complaints are dealt with without the least delay.

In the final words of my final 'President's Message', however, I want to pay a very special tribute to the Law Society staff who I saw deal remarkably well with the nightmare scenario described above.

At a time of unremitting pressure and stress, I could only admire the professionalism and effective crisis management, together with the enthusiasm and can-do attitude of dozens of members of the Law Society's staff, in particular all of those in the Complaints Section and the Regulation Department generally, who responded magnificently to an unprecedented challenge.

The profession and the public are fortunate that the Society has such able people on its staff.

**Owen Binchy**  
President



## NATIONWIDE

## News from around the country

## ■ CAVAN

**Closing down**

The last sitting of the District Court in Belturbet took place recently. "It's the end of an era," noted GV Maloney, of the eponymous company in Cavan town. Mr Maloney, the doyen of solicitors present at the closing ceremony, noted that practitioners and clients would now have to travel to Ballyconnell courthouse.

Because of poor transport in previous times, "the law had to be brought to the people," he noted. It was necessary to have courthouses in even the smallest of towns, including "a ramshackle building in Swanlinbar". One of his own earliest memories was travelling to Ballyconnell during the war years on a pony and trap.

The *Anglo Celt* newspaper noted that tributes were paid at the closing of the courthouse to "the judiciary, legal practitioners, An Garda Síochána, the Courts Service and members of the public who appeared as defendants over the years". There was no spokesman present to reply for the defendants.

## ■ DUBLIN

**Solicitors and the Law Society**

The incoming president of the Dublin Solicitors' Bar Association, Brian Gallagher of Gallagher Shatter, urged the Law Society in his opening address to define more clearly its regulatory and representational roles.

He was speaking at the DSBA's recent AGM, which was both well-attended and which heard strong views and debate from the floor about the role and perception of solicitors in today's Ireland.

A long-time prominent Dublin solicitor, Brian succeeds Orla Coyne, who had a successful and colourful year and led the association to further heights.



This year's winners of the DSBA 'Awards for Excellence' are Anne Lalor of Daniel Spring and Co and Michael Farrell of FLAC

The incoming presidency promises to be a year of continuing progress and innovation, both for the DSBA and the Dublin legal community, according to colleagues.

Vice-president David Bergin, secretary Kevin O'Higgins, treasurer Michael Quinlan and programmes' director John O'Malley, together with the members of the new council, complete the new team.

Brian furnished an outline of his programme for the coming year. "Brian is to many colleagues the epitome of what a good solicitor should be; where courtesy, collegiality and legal knowledge are his hallmark and all his colleagues wish him all the very best," noted Kevin O'Higgins.

**Credit where it's due**

FLAC's Michael Farrell received one of the DSBA's 'Awards for Excellence' during its AGM. Michael was until recently with the firm of Michael E Hanahoe and has considerable expertise in human rights and public interest law, and it was noted that he was practising outside the comfort zone of many solicitors, having left private practice to work with FLAC.

A committee chaired by Mr Justice Michael Peart, along with former DSBA presidents Ruadhan Killeen and Richard



Bennett, chose Michael Farrell and Ann Lalor of Daniel E Spring & Co in the categories of 'over five years qualified' and 'under five years qualified'. "It is a singular honour to be well thought of by one's colleagues," said DSBA secretary Kevin O'Higgins.

## ■ KERRY

**Restless natives**

There is some disenchantment with the Law Society of Ireland among Kerry solicitors, according to Matthew Breslin of Donal J O'Neill & Co in Tralee, the current two-term president of the Kerry Law Society.

Costs are rising while fees are being cut. It is a challenging time for solicitors. However, there is a feeling that not enough is being done to explain the case for solicitors.

But it is important to be fair and to acknowledge that great progress has been, and is being, made in Blackhall Place. Also, significant efforts are being made to meet with practitioners around the country.

In recent months, there have been two informative and enjoyable visits to Kerry from the registrar of solicitors, John Elliot, and they have also had president Owen Binchy and director general Ken Murphy. "We need to forge close links between the Law Society and

Kerry solicitors and we ourselves, too, need to play our part," Mr Breslin said.

Particularly in these difficult times for solicitors, the Law Society needs to be seen to be supportive. The Law Society does provide many services for solicitors and perhaps these need to be better explained, he suggested.

## ■ LASBA

**To our Commonwealth friends**

A recent conference of the Commonwealth Association of Public Sector Lawyers (CAPSL) in London was attended by three Irish solicitors. The huge gathering of lawyers from around the world took place at the Westminster Conference Centre.

"They attended the conference representing the Local Authority Solicitors' Bar Association," explained solicitor Bryan F Curtin of Dun Laoghaire Rathdown County Council.

He emphasised that they were indeed aware of the severing of the Irish connection with the Commonwealth in 1948. They attended merely as observers. And their presence had helped Irish local authority solicitors to foster better understanding and positive relations with public sector lawyers from around the world.

**Eat first**

The inaugural annual dinner of the LASBA will take place at the Law Society on 17 November. It will be followed on 18 November by a seminar at Dublin City Hall on planning law and the implications of various topical issues, including social and affordable housing and anti-social behaviour on local authority estates. **G**

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

# Conclusions of costs review body imminent

The working group reviewing the costs of civil litigation is likely to deliver its report to the justice minister in the very near future.

All indications are that the minister will bring the report to government and publish it within the next few weeks.

What the report will contain remains shrouded in secrecy. A request by the Law Society to meet the working group and discuss its draft conclusions before they are published has been politely rebuffed.

In January 2005, the society made a 52-page submission to the working group, which is chaired by Paul Haran, former secretary general of the Department of Enterprise. That submission was subsequently copied to every member of the solicitors' profession.

The submission contained an analysis of the issues, together with many recommendations for reform of the taxation and courts system. If the measures that the society recommends were implemented, it would undoubtedly lead to a reduction of the costs associated with civil litigation,



Michael McDowell: report could be published in the next few weeks

improved accessibility to justice and greater transparency – the three objectives set out in the working group's terms of reference.

In April, society representatives – immediate past-president Gerard Griffin, former Litigation Committee chairman Roddy Bourke and director general Ken Murphy – met the Haran working group. The society made clear its view that the taxation system should be fundamentally reformed to ensure that the system, both at Circuit and High Court level, becomes as modern, easy to

understand, predictable and inexpensive as possible.

But the society strongly warned against any attempts to introduce scale fees for civil litigation in the Circuit, High and Supreme Courts. This system has been deeply discredited by the experience of its application in the District Court, where the scales have not been increased since 1991.

Scales of costs would be inconsistent with the government's policy of encouraging competition. In addition, by limiting the amount that could be recovered by a successful litigant on a party-and-party basis, rigid scales would favour the party with the financially deeper pocket, at the expense of the party with a shallow pocket or no pocket at all.

The society reminded the working group of the High Court judgment of Mr Justice John MacMenamin earlier this year in *O'Brien v PLAB*, which spoke of the critical importance in litigation for "equality of arms" and "the maintenance of fairness between the strong and the weak".

## LAW REFORM ESSAY PRIZE

Students of law are invited to submit an essay identifying a particular area of Irish law that they believe to be in need of reform. They should briefly explain the current inadequacies in this area and outline their proposals for reform of the law. Entries of approximately 2,000-3,500 words in length should be typed and may be co-authored.

Three prizes will be awarded: a first prize of €1,500 and two runner-up prizes of €750 each. Prize-winning and short-listed essays may be published.

All undergraduate and postgraduate students of law, including trainee solicitors and students of King's Inns, are eligible. All competition entries must be received no later than Monday 30 January 2006, and should be sent by e-mail to [a.clissmann@lawsociety.ie](mailto:a.clissmann@lawsociety.ie) or addressed to: The Secretary, The Law Reform Committee, Law Society of Ireland, Blackhall Place, Dublin 7.

## BAR COUNCIL'S CPD SCHEME

The Bar Council of Ireland has introduced a continuing professional development (CPD) scheme. The first conference, 'Revenue Law and the Legal Profession', will take place on Saturday 12 November.

To book a place, contact: CPD manager, tel: 01 817 4614, or e-mail: [iryan@lawlibrary.ie](mailto:iryan@lawlibrary.ie)

## MASSEY REJECTS KEY AUTHORITY RECOMMENDATION

The former Chairman of the Competition Authority, Patrick Massey, has poured cold water on the key recommendation of the Competition Authority – that self-regulation of the legal profession should be replaced with a state regulatory agency.

At a major economic conference in Kenmare on 15 October, Mr Massey, now a director of Compecon Limited, and Frank Steven, Professor of Regulation at the University of

Manchester, delivered a joint paper. This concluded that the Competition Authority "provides fairly limited evidence in support of its claim" that the legal profession is permeated with serious and disproportionate restrictions on competition.

In particular, they say: "The authority's proposal to abolish self-regulation of the legal profession and replace it with a state regulatory agency appears somewhat questionable.

"This undoubtedly represents a major change in the way the legal profession in Ireland is regulated. The authority's proposal ignores the issue of 'regulatory failure'. Instead, it simply assumes that a state regulatory agency would prove superior to self-regulation and would involve no additional cost. More fundamentally, the authority argues that the existing regulatory regime means that professional bodies representing solicitors and barristers could, in

the future, introduce anti-competitive restrictions.

"As a general rule, competition law only interferes with the activities of business and representative bodies where there is clear evidence that the law has been broken." While the authors suspect that the existing regime of self-regulation could be improved, they conclude that this can be achieved far more effectively by a more limited range of reforms.

**NEW MURDOCH'S LAUNCHED**  
Barrister Henry Murdoch presented a copy of his recently published fourth edition of *Murdoch's Dictionary of Irish Law* to the Minister for Justice, Equality and Law Reform, Michael McDowell TD, at an informal meeting at the minister's office recently. Mr Murdoch has been researching and writing the dictionary for nearly 20 years.

Now firmly established as the definitive dictionary of Irish law, *Murdoch's* covers the principal words, concepts and phrases, their legal sources – whether statutory or judicial – and gives a brief introduction to the law.

This new edition includes references to all of the statutes enacted since the previous edition in 2000, the more important statutory instruments, and the hundreds of important subsequent judicial decisions. The *Gazette* will feature a review of this important work in a future edition.

# Arthur Cox Foundation fund

The Arthur Cox Foundation is a charitable trust whose funds are used for educational and charitable purposes in the Republic of Ireland.

Set up over 40 years ago as a memorial to the late Arthur Cox, solicitor, the foundation's funds have been used to assist authors with the writing and publication of Irish legal textbooks. In two cases, it has assisted with the development of electronic databases of Irish legal materials.

The Arthur Cox Foundation Board adjudicates on applications and administers the funds of the foundation. It does so on behalf of the Law Society, which is trustee of the foundation.

Funding is available to enable authors to carry out research and to meet other



initial costs of the preparation and publication of texts. The foundation has normally required recipients to refund grants out of royalties. Grants usually range from €2,000 to €5,000, though larger amounts

have been awarded, depending on the project.

The board welcomes applications from authors and others involved in Irish legal research who may be seeking funding for their projects. Letters of application should be accompanied by a detailed project description to include: content, costings and potential market. In the case of a textbook, a detailed table of contents and a sample chapter, other than the first, should also be provided.

Enquiries and applications should be sent to: Margaret Byrne, Secretary, Arthur Cox Foundation Board, Law Society of Ireland, Blackhall Place, Dublin 7; tel: 01 672 4800, fax: 01 672 4845, e-mail: m.byrne@lawsociety.ie.

## GOVERNMENT ACCELERATES EXTENSION OF TITLE

Effective law reform of title registration requires rapid progress on its extension. It has been a matter of public policy, and a legislative imperative since enactment of the *Registration of Title Act 1964*, that there should be a gradual extension of title registration, ultimately covering all land in the state.

It is timely to radically review the present approach to extension of title registration. It is widely accepted that the existing compulsory provisions of sections 24 and 25 of the 1964 act have not greatly assisted the extension process.

There are the ongoing difficulties arising from the simultaneous operation of two systems of registration for the registry, practitioners, and citizens. For the registry, it means the allocation of scarce staffing, information technology and accommodation resources to the maintenance of a separate deeds system.

### Recent advances

However, the recent advance in the

use of information and communication technologies by the Land Registry, and its future potential – as highlighted at the recent UCD conference, 'Modernising Irish Land Law and Conveyancing Practices' – are among the most coercive reasons to review present approaches. It is the stated intention of the government that the extension of title registration should now be accelerated to ensure that the state will, in due course, have a complete land register to take advantage of the general reforms proposed in the law of property – and the inevitable arrival of electronic conveyancing (e-conveyancing).

The *Registration of Deeds and Title Bill*, which has recently passed through the Seanad and is due to be introduced in the Dáil this autumn, contains amended provisions which provide that, in future, the extension of compulsory registration will not be determined solely and exclusively by geographic criteria.

### Compulsory registration

It is intended to retain the geographical dimension. This means that it will be possible to designate a specified area, such as a county, and to add two further criteria. Firstly, it will be possible, in future, to extend compulsory registration to specified types of land, for example, multi-unit apartment buildings either generally or in a specific area. Secondly, a new subsection has been introduced into section 24 of the 1964 act, which will allow the minister to extend, by order, the type of disposition to which compulsory registration will apply.

At present, when registration becomes compulsory, it applies in the case of freehold land to a conveyance on sale and, in the case of leasehold land, to a grant or assignment on sale of such an interest. The new subsection (2)(a) provides that an order under the section may extend compulsory registration to other types of disposition, for example, succession or gifts *inter vivos*.

### Tenfold increase required

At present, approximately 90% of the landmass of the state and over 85% of the titles are registered in the Land Registry. From our research, it is estimated by the registry that the titles of between 240,000 and 300,000 properties remain to be registered in Land Registry at this time. The registry currently processes approximately 4,000 applications requiring investigation of title annually, around 500 being by solicitor's certificate in form 3 of the *Land Registration Rules*, as amended – with the balance requiring a full investigation of title.

A significant portion of these latter cases could be classed as 'problematic', very often having either an element of adverse possession, or where original deeds are mislaid, lost or destroyed. It is generally accepted, however, that a significant number of unregistered titles are perfectly good and marketable. These would not present any significant

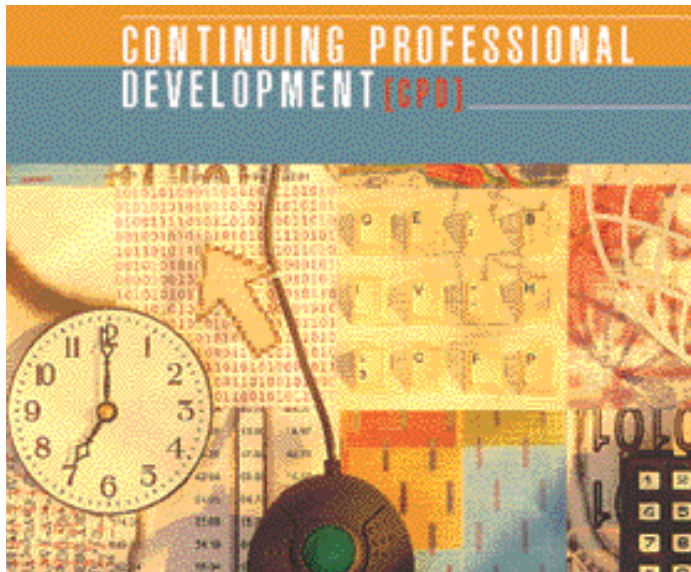


# Hold onto CPD record cards!

The current CPD cycle began on 1 July 2003 and ends on 31 December 2005. The section dealing with the CPD scheme has dealt with 1,800 enquires over the past two-and-a-half years. The most prevalent enquiry – what should solicitors do with their record cards?

Chairman of the Education Committee, Stuart Gilhooly, asks you *not* to send your record card back to the society unless specifically asked to do so. A new section on your practising certificate application form will require you to state that you have complied with the CPD scheme, pursuant to SI 37/2003.

From January 2006, further proof of compliance may be sought. At that time, you will



be asked to return your record card. Should you then require a replacement record card, or wish to complete it online, you should visit the CPD section of the Law Society of

Ireland website at: [www.lawsociety.ie](http://www.lawsociety.ie). You can also contact the CPD executive, Alison Egan, for further details about the scheme on 01 672 4802.

**REFORMS WATERED DOWN**  
The Law Society of England and Wales has rolled out the next stage in its controversial reforms programme for legal education. The original package has been watered down to regain the backing of the profession.

Under the latest proposals, issued on 21 October, only students with prior qualifications or hands-on experience will be able to gain exemption from completing the Legal Practice Course (LPC). The proposals have been agreed by the Training Framework Review Group and the society's standards board.

The standards board is expected to make a final decision after a vote in December.

**RETIREMENT TRUST SCHEME**  
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## REGISTRATION

difficulties if application for registration were made, particularly by way of certification. It is clear, therefore, that steps will be required to increase the rate of first registration, possibly as much as tenfold – if:

- Meaningful progress is to be made within a reasonable timeframe
- Government policy is to be achieved
- Solicitors, financial institutions and citizens are to benefit from the completion of the project to extend registration to all titles
- The full benefits of e-conveyancing are to be realised.

### 'Overwhelming success'

It is to be noted that significant operational progress has been made in the registry in recent years. Capacity has grown significantly – largely due to ongoing procedural improvements and to the development and exploitation of new technologies. Examples of this are:

- An electronic register is now in place and all registrations are made electronically
- Access to title information is available instantly
- Facilities for on-line searching and requests for all certified copy documents are provided and are widely availed of
- Practitioners can now file applications electronically and can access details of all applications from the convenience of their own offices
- The electronic services are available from 8am to 8pm.

These services have been an overwhelming success – over 2.5 million transactions have been undertaken since the launch of the Electronic Access Service (EAS). Currently, over 4,000 services are being availed of on-line. This progress will continue as a result of the introduction of digital mapping later this year. Of particular note is the increase in production levels over the past

five years. During this period, output of casework has more than doubled and, for the past two years, the arrears of cases on hand have been gradually reducing. This trend is expected to continue.

### Three counties extension

As a result of this progress, the minister for justice, equality and law reform, by order dated 23 September 2005, SI No 643 of 2005, has extended compulsory registration to three additional counties: Longford, Roscommon and Westmeath.

The minister said: "The making of this order is the first extension of compulsory registration since 1969. I believe that the promotion and extension of registration of ownership of land is a critical factor as we move towards a system of e-conveyancing of land." In order to comply with the provisions of section 24 of the *Registration of Title Act 1964*, the operational date for compulsory registration in the three counties

covered by the order is 1 April 2006.

In a further development, the Land Registry Rules Committee recommended to the minister an amendment of rules 19 and 35 and forms 3 and 15 of the *Land Registration Rules 1972-2000*, that is, the solicitors' certificate cases on first registration and conversion of title.

The new rules provide for an increase in the certification limit from €320,000 to €1,000,000, to take effect from 1 January 2006. The new rules also provide for additional paragraphs in form 3 relating to prior title. The relevant order has been signed by the minister and copies of the new rules will be available shortly. An explanatory note about the use of form 3 certification is available on the Land Registry website, [www.landregistry.ie](http://www.landregistry.ie), under 'First registrations'. **G**

*Catherine Treacy is the Registrar of Deeds and Titles in the Land Registry.*

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## HUMAN RIGHTS WATCH

# 'Immigrants should be accorded the same rights as Irish citizens'

**Alma Clissmann reports on the recent annual Human Rights Conference, which focused on the anticipated reform of immigration law**

**E**x-US Congressman, Bruce Morrison, says that it is in Ireland's self-interest that immigrants should be accorded the same rights and opportunities as natural citizens.

The former congressman was speaking at a conference on 'Migrant Workers and Human Rights' held in Blackhall Place on Saturday 15 October.

The ex-congressman argued passionately that the mistakes of other countries be avoided in Ireland in the matter of rights for immigrants. Over 200 attendees heard Mr Morrison call for an inclusive and egalitarian immigration regime to be instituted in this country.

In this respect, he said, Ireland was starting from a clean slate and must accept the reality that many immigrants who come here will stay.

## Anticipated reform

The conference was jointly sponsored by the Law Society's Human Rights Committee and the Human Rights Commission. It focused on the anticipated reform of immigration law.

Ambassador Prasad Kariyawasam of Sri Lanka, chairman of the UN committee that monitors the implementation of the *International*



At the human rights conference on 15 October were (from left) ex-US Congressman Bruce Morrison, Catherine Cosgrave of the Immigrant Council of Ireland, Maurice Manning, president of the Human Rights Commission, Aisling Ryan, solicitor, and Prasad Kariyawasam, chairman of the UN Committee on the International Convention on Migrant Workers and their Families

*Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, described the convention and the implications of its ratification in a world that has an estimated 200 million migrants.

Paul Burns and Brian Ingoldsby of the Department of Justice, Equality and Law Reform gave the background to the challenges facing the department in the new legislation and the evolving solutions.

Piaras Mac Éinrí's presentation focused on the choices that Ireland is making – consciously or by default – and how this will

impact on the future economy and society structures.

Sancha Magat described the bureaucratic nightmares faced by immigrants. Solicitors Noeline Blackwell and Aisling Ryan spoke of their experiences with clients – and the reforms urgently needed. The theme of family reunification arose repeatedly.

Aspect of the April 2005 government discussion paper on immigration and residence were convincingly critiqued by Catherine Cosgrave of the Immigrant Council of Ireland.

Mike Jennings of SIPTU decried the lack of political will

that results in fewer labour inspectors than there are smoking-ban health inspectors or dog wardens. There are only 33 inspectors for a working population of over 2 million. He suggested some interesting proposals to tackle the exploitation suffered by many migrant workers.

## Upbeat

Cathryn Costello gave a lucid account of EU policy and legislation on migrant workers, while UK solicitor, Louise Christian, was struck by the generous and upbeat atmosphere of the conference – very different, apparently, from the atmosphere in her native UK.

President of the Human Rights Commission, Dr Maurice Manning, Brian Gallagher, solicitor, and Nuala Kelly, Human Rights Commission, chaired the conference. Senior Vice-President of the Law Society, Michael Irvine, welcomed the delegates.

Papers from the conference are available on the society's website under: *Society Committees/ Human Rights/Conferences*. **G**

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



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# Legal eagles should learn to s

**Why does the legal profession obstinately cling to a form of language that is more likely to mystify and alienate the public than enlighten it? asks TP O'Mahony**

When a newly-struck print of Otto Preminger's 1959 film, *Anatomy of a Murder*, was screened recently in Britain, one newspaper critic hailed it as "the best courtroom drama ever filmed".

Starring James Stewart as a small-town lawyer, George C Scott as an ace prosecutor, and Lee Remick as a floozy femme fatale, the movie, dealing with rape and homicide in rural Michigan, tells a compelling and provocative story.

When it first surfaced in cinemas in Eisenhower's America, it shocked audiences with words like 'intercourse', 'spermatogenesis' and 'panties'. This is tame stuff by today's standards, though in terms of sheer dramatic appeal, *Anatomy of a Murder* wears well. Just like *Twelve Angry Men*, made two years previously by Sidney Lumet and starring Henry Fonda and Lee J Cobb.

You don't have to share in the general critical acclaim that these two 'legal' films have won over the years – deservedly so, in my view – in order to appreciate how they have helped to create an interface between the law and popular culture.



Julia Roberts as Erin Brockovich: risking all (well, nearly all) in the cause of justice

The same could be said of the 1962 movie *To Kill a Mockingbird* (starring Gregory Peck), the story of a lawyer in a small southern town who defends a black man accused of rape.

Given the racial tensions created by the civil rights movement under the leadership of Dr Martin Luther King at the time, this film harnessed the law to the new 'liberalism' of the era of JFK and the New Frontier, a theme that has since become commonplace in Hollywood.

Film and television, along with novels and the theatre, have become powerful influences in determining how the law interacts with popular culture, and thereby hugely influencing how the general public perceives the law and lawyers.

There are, of course, dangers in this, one of which was recently adverted to by the Law Society's director general, Ken Murphy. He said that, while new recruits to the law were undoubtedly swayed by TV drama series such as *Ally*

*McBeal*, *Law & Order* and *Boston Legal*, which portrayed lawyers as wealthy, powerful, glamorous and even sexy, "unfortunately the reality doesn't quite tally with all of these".

The headline in one newspaper's report of Murphy's remarks cleverly said: "The legal life is not *Ally* it's cracked up to be." Journalists like me, who have covered cases right through Ireland's hierarchy of courts, will readily testify to that.

Yet – and notwithstanding a certain degree of cynicism over lawyers' fees at the various tribunals of inquiry – the image of the lawyer in the mould of Atticus Finch, the defender of the oppressed, the champion of liberal values and causes, remains deeply embedded in popular culture.

## Paths of glory

Emblematic of this is the idealism of the recently graduated Rudy Baylor in John Grisham's novel *The Rainmaker*, who declares that his ambition is to "shine the light of justice into society's dark recesses".

And in yet another of his novels, one of Grisham's characters, in reply to a



## Letters

### Marathon man

From: Brian Gilmartin, *Gleeson & Kean, Solicitors, Tuam, Co Galway*

I am presently in the course of training for the 2005 New York Marathon, due to take place on 6 November.

Some of my colleagues in Mayo and Wexford, where I formerly practised, generously sponsored me, and I would be

obliged if you would please print an acknowledgement thanking my colleagues in Wexford and Mayo for their generous sponsorship of me for Croí.

You might also add that I am especially grateful that none of my colleagues deemed it necessary to post-date any of the cheques until after the marathon!

### 'Convenient shorthand' bl

From: Michael Williams, *Dublin*

Two articles in the August/September *Gazette* raise issues that I feel call for comment.

The language (not the content) of Michael Finucane's interesting article about extradition blurs what I consider an essential distinction. In rare cases, a state will seek to extradite someone

who has been tried and convicted but has succeeded in leaving the jurisdiction after conviction but, in most cases, the person whose extradition is sought is a suspect and prospective defendant in a criminal process, in which he is entitled to a fair trial based on the presumption of innocence. Mr Finucane says: "once a fugitive has managed to get



# hoot from the lip

question about why he wants to be a lawyer, replies “to serve the public, fight injustice, change society”.

So just as the cinematic world and the world of fiction have bred a romantic and romanticised image of the campaigning journalist, so too do we see the campaigning lawyer, risking all (well, nearly all) in the cause of fairness and the pursuit of justice.

Just think of Gray Grantham (Denzel Washington) and Darby Shaw (Julia Roberts) in *The Pelican Brief*, or David James Elliott as Harmon Rabb Jr in *JAG* or Jane Fonda as the intrepid television journalist in *The China Syndrome*, or Cher as the tenacious defence attorney in *Suspect*.

But then let us also remind ourselves that Julia Roberts played a real-life legal heroine in *Erin Brockovich* and, in *All the President's Men*, Robert Redford and Dustin Hoffman played Bob Woodward and Carl Bernstein, whose exposé of Watergate for *The Washington Post* led to the resignation of Richard Nixon.

And much nearer home, we are surely entitled to say that a legal profession that produces a Mary Robinson and a journalistic community that gave us a Veronica Guerin have

much to commend them.

What the above examples illustrate is that there isn't always an unbridgeable gap between the worlds of fact and fiction, though it remains true that the creatures of the latter world, when operating in law or journalism especially, invariably tend to be young, attractive, dynamic, sexy, idealistic and successful.

Would that it were so in real life, both in journalism and in law. Alas, all too frequently it is not. The life of lawyers, like the life of reporters, is far more mundane, dull, routine-ridden and immensely less glamorous than the life dramatically depicted in films, TV series, novels and plays.

## Glamour

That said, neither the idealism nor the glamour do any harm, and may even serve as an antidote to the cynicism that too readily attaches these days to both law and journalism.

In any case, because something is dull and unsexy doesn't mean it lacks importance. For the most part, the world inhabited by female students who graduate from our law schools now and in the future will be far removed from the world of *Ally McBeal*. And



Ally McBeal: wealthy, powerful, glamorous and sexy

which of the male graduates will ever get to take down a real-life Jack Nicholson character as Tom Cruise so memorably did in *A Few Good Men*?

## The verdict

The bigger and more rewarding consideration is whether and how law can learn from the world of film and literature (and here I include journalism as well). Law, film and literature all address an audience, and all involve text and narrative, and the interpretation and meaning of language and story.

In other words, storytelling, in one form or another, is as central to law as it is to film and literature. The 'story' is the

case, on the one hand, just as it is the plot on the other hand. That's why in a 1992 article entitled 'Law Students go to the Movies' in the *University of Connecticut Law Review*, Philip N Meyer said: "Many popular storytellers, particularly filmmakers, have much to teach law students."

When Shakespeare said a tale is best when simply told, he clearly did not have lawyers in mind. Surely it is permissible to ask the legal profession why it obstinately clings to a form of language and a form of 'storytelling' or legal narrative that, in the 21<sup>st</sup> century, is more designed to mystify and alienate the public than to enlighten it?

These days, the teaching of jurisprudence in law schools invariably includes a module entitled 'Law and literature'. If that is to produce one practical benefit, what better way to do it than by encouraging lawyers to look to film and literature to help them adopt a language closer to that of everyday life, and a more compelling form of narrative? Such a creative interaction could play a crucial role in how law is presented and represented and, therefore, how it is received and perceived. **G**

*TP O'Mahony is a columnist with the Irish Examiner.*

# urs the right of an accused to a fair trial

beyond the borders of the state in which an offence has been committed"; "efforts to prosecute certain types of fugitive offenders, notably war criminals and persons who have committed crimes against humanity"; and "the apprehension and prosecution of offenders". Such language is convenient shorthand, but I think is inconsistent with the

right of an accused to a fair trial based on the presumption of innocence. I might not object to similar wording in a newspaper, but on so fundamental an issue I do not think it is pedantry to question it in a periodical produced for lawyers by lawyers.

In his article on section 26 of the *Civil Liability and Courts Act 2004*, Patrick Groarke

expresses a hope that the courts will normally exercise discretion where a plaintiff has misrepresented the facts, and asks: "In such cases, how could the dismissal of the plaintiff's action not result in injustice?" That view is based on an interpretation of the section with which I differ. I think the section means: "You cannot simultaneously use the legal

process to obtain redress for injury you have suffered and at the same time abuse it by lying about the extent of your injury or the circumstances in which it was sustained." I see this as an extension into the common law of the equitable principle "he who seeks equity must do equity". The wording of subsection 3 seems to support this interpretation.

# ● YOUR OWN *image*

**In the current climate of celebrity endorsements for anything from shaving foam to credit cards, does the law protect your own image – or is it public property? Sinead Brady gets her camera out**

**A** number of recent high-profile cases have raised the question of whether people's images are their own private property, most recently the Douglas/Zeta-Jones action against *Hello* magazine for publishing unauthorised photographs of them on their wedding day (*Michael Douglas, Catherine Zeta-Jones & Others v Hello Ltd & Others* [2003] EWHC 786, AC 18 May 2005).

The celebrity couple had secured a deal with *OK* magazine for exclusive rights to their wedding photographs and had gone to great lengths to ensure that no unauthorised pictures were taken. Nevertheless, a paparazzo fraudulently infiltrated the wedding reception and surreptitiously took photos of the newlyweds. He subsequently sold the photographs to *Hello* magazine, which published them.

The Douglas's initially secured an injunction to prevent *Hello* from publishing the photographs, but this was subsequently lifted on the grounds of damages being an adequate remedy. The full hearing then came before Mr Justice Lindsay in the English High Court. After weighing up the conflicting rights of freedom of expression and confidentiality, he found in the Douglas's favour on the basis of breach of confidence and invasion of privacy.

## **Makes the world go round**

This decision was subsequently upheld by the House of Lords on appeal. The lords said that "recognition of the right of a celebrity to make money out of publicising private information about himself, including his photographs on a private occasion,

breaks new ground. It has echoes of the *droit à l'image* reflected in Article 9 of the French *Code Civil* and the German cause of action."

They concluded, however, that "confidential or private information which is capable of commercial exploitation, but which is only protected by the law of confidence, does not fall to be treated as property that can be owned and transferred." They found that photographs could constitute confidential information and that *Hello* had breached a duty of confidence owing to the Douglas's.

The significance of this judgment may be limited, however, in protecting personality rights, as the circumstances were such that an invasion of privacy occurred. Much emphasis was placed by both the trial judge and the lords on the fact that the wedding was a private affair and the Douglas's had gone to great lengths to keep intruders out.

Another recent case in point is *Campbell v MGN Limited* ([2004] UKHL 22). This involved an action by Naomi Campbell, an international supermodel, for damages for breach of confidence against the *Mirror* newspaper for publishing unauthorised photographs of her attending a Narcotics



AND

*likeness?*

Anonymous meeting in England and detailing the therapy she was receiving for drug abuse. As in the *Douglas* case, her claim ultimately succeeded in the House of Lords on the grounds of breach of confidence and invasion of privacy.

Another supermodel – Kate Moss – has been in the media spotlight in recent weeks due to the publication of unauthorised images of her allegedly engaging in illicit drug-taking. This again raises the question of whether one has an inherent right to prevent others from exploiting one's own image.

**Talking heads**

The treatment of personality rights, including one's image, has been the subject of much judicial creativity in many jurisdictions on both sides of the Atlantic over the last number of years. In certain instances, the law of 'passing off' has been dubiously extended to afford a plaintiff redress when their image has been exploited to another's commercial gain. In other instances, it seems that a new tort may be emerging, that is, the appropriation of personality, which does not fit neatly into the classic trinity required to establish passing off: misrepresentation, goodwill and damage.

An example is *Irvine v Talksport Limited* ([2002] EWHC 367). This case involved an action brought by Eddie Irvine, the racing-car driver, for damages for passing off arising out of the defendant's use of his image to promote advertising on a newly-established sports radio station. The image of Mr Irvine had been doctored so that it appeared he was holding a radio to his ear and listening intently to it,

## MAIN POINTS

- Rights to your own image
- High-profile cases
- Breach of confidence and invasion of privacy



Eddie Irvine

with the suggestion that he was listening to Talksport radio.

Laddie J concluded that there was no necessity for there to be a common field of activity between the claimant's and the defendant's businesses in order for a claim in passing off to succeed. There was obviously no danger of confusion on the part of the public that the defendant's radio business was that of the plaintiffs. The false misrepresentation in this instance was that Mr Irvine had endorsed the use of his image in connection with the plaintiff's business.

#### ABBA-esque

A narrower approach requiring a common field of activity had up to this been taken in the UK (*McCulloch v May* [1947] 5 RPC; see also *Lyngstad v Anabus Products Limited* [1977] FSR 62, which involved merchandising of clothing bearing the images of the pop group ABBA). Indeed, Simon Brown LJ had specifically warned against extending aspects of intellectual property law so as to provide remedies against all unauthorised exploitation of aspects of the character or personality attributes in *Re Elvis Presley Trade Marks* ([1999] RPC 567). It is, therefore, significant that the House of Lords upheld Laddie J's judgment in *Irvine* and praised his examination of previous case law in the area. However, while *Irvine* marks the extension of the law of passing off, it does not introduce a new personality right.

Interestingly, as passing off has usually concerned those carrying on trade or business, this did not deter Laddie J from finding in Irvine's favour. He considered the use and licensing by Irvine of his image as carrying on a business. The damage incurred by Mr Irvine as a result of this false endorsement was assessed as being the endorsement or licence fee he would have negotiated had he licensed the use of his image to Talksport.

#### Wombles of Wimbledon

It is now necessary to examine the backdrop to the court's decision in *Irvine* and the general movement towards some, if limited, protection of character or

image rights. The leading case in this area is *Mirage Studios v Counter-Feat Clothing* ([1991] FSR 145), which involved an application by the plaintiff to restrain the defendants from using sporty turtle characters obviously based on the Teenage Mutant Ninja Turtles, which had been created by the plaintiffs.

Browne Wilkinson VC was of the opinion that the critical element common to all passing-off cases is that the misrepresentation must be calculated to injure the business or goodwill of another trader – so long as the injury is a reasonably foreseeable consequence of the defendant's actions. Browne Wilkinson VC acknowledged that the injury caused could be the loss of royalties. Crucially, he concluded that “a substantial number of the buying public now expects and knows that where a cartoon or television character is reproduced on goods, that reproduction is the result of a licence granted by the owner of the copyright or owner of other rights in that character.”

His decision broke away from the absolute necessity for a common field of activity, which had previously thwarted a number of similar cases of character merchandising: *Wombles v Womble Skips Ltd* ([1975] FSR 488; see also *Lyngstad v Anabus Products Ltd* [1977] FSR 62 and *Halliwel v Panini SpA*, 6 June 1997, unreported). While not dealing with real personalities and having some foundation in copyright law, this case is still of note in that it is indicative of the judiciary's increasing willingness to protect endorsement rights.

#### Crocodile Dundee

Similarly, the courts down under have recognised such merchandising rights. *Hogan v Koala Dundee Pty Ltd* ([1988] 12 IPR 508) concerned an emblem used by the defendant in its shops, depicting a koala dressed in the same manner as Mr Hogan in the *Crocodile Dundee* movie. Pinkus J recognised an extended form of passing off that protects against the appropriation of images of characters, even in the absence of misrepresentation. He accepted that there was a likelihood of an association between Mr Hogan and the defendant's goods, which sufficed.

However, in a later case involving Mr Hogan (*Hogan v Pacific Dunlop* [1989] 14 IPR 398), the appellate court in Australia reaffirmed the need for misrepresentation and allowed the defendant to continue to use the offending advertisement depicting a likeness of Mr Hogan's character in the same film, provided they adopted a disclaimer making it clear that it was not endorsed by Mr Hogan was not endorsing it.

One of the most notable Australian judgments in this area is that of *Henderson v Radio Corporation Pty Ltd* ([1969] RPC). The plaintiffs were famous ballroom dancers whose image was used on the cover of a record of ballroom-dancing music manufactured by the defendant. The plaintiffs alleged that the use of their photograph on the cover would falsely lead buyers to believe that they had

***‘It seems that a new tort may be emerging, that is, the appropriation of personality’***



recommended the record and that this amounted to passing off.

The appellate court upheld the trial judge's finding that the photograph on the record cover would lead buyers to believe that the couple had recommended the record and, consequently, their claim in passing off succeeded. They acknowledged that the use of the photograph amounted to the wrongful appropriation of the plaintiff's professional reputation, which, in itself, was sufficient damage to found the action. The court in that instance also disregarded the requirement for there to be a common field of activity, as enunciated in *McCulloch v May* ([1947] 5 RPC). It was notable that the couple had never before endorsed a record and had no experience in performing for advertisements.

### Just can't help believin'

The tort of appropriation of personality has been recognised by the Canadian judiciary since the early 1970s. The case of *Corlett-Lockyer v Stephens* ([1996] BCJ no 857) is illustrative of this. The court in this instance held that the appropriation of the plaintiff's name or likeness for the defendant's advantage formed the basis of the tort.

Another case in point is that of *Krouse v Chrysler Canada* ([1971] 25 DLR, [1973] 40 DLR 3d 15, Ontario Court of Appeal). On the facts of the case, the Ontario Court of Appeal was not satisfied that the plaintiff had established that the photograph in question implied any endorsement of Chrysler cars by the plaintiff. They did, however, acknowledge "a concept in the law of torts, which may be broadly classified as an appropriation of one's personality". In

order to succeed, the plaintiff would have to show both injury and damages.

It seems that, in Canada, some implication of endorsement is necessary. This was emphasised by the court in the case of *Glen Gould Estate v Stoddart Publishing Co* ([1998] Can LII 5513 [on CA]). Mere appropriation of personality in the absence of some form of misrepresentation is not enough (*Horton v Tim Donut Ltd* [1997] OJ no 390). In weighing up the rights of the plaintiff, the courts will consider the competing right of freedom of speech and where "the portrayal functions primarily as a means of commercial exploitation" it will not be immune from liability (*Estate of Elvis Presley v Russen*, 513 F Supp 1399, US District Court, DNJ 1981).

### Don't worry about a thing

In the case of *Bob Marley Foundation v Dino Michelle Limited* ([1994] no CLR 115 of 1992, 12 May 1994), the Jamaican Supreme Court approved of the extended form of passing off and, furthermore, wholly recognised the tort of appropriation of personality.

On the facts, there was a likelihood of confusion or connection between the plaintiff's goods and those of the defendants, so it could fall to be decided under the rubric of passing off in the classic sense.

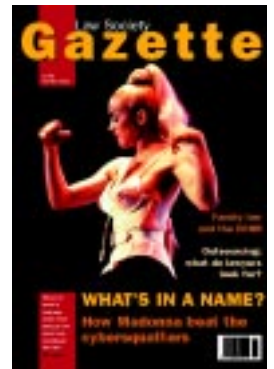
Nonetheless, the court, per Clarke J, went on to pronounce that "just as the law recognises property ... in the goodwill of a business, so must the law recognise that property rights attach to the goodwill generated by a celebrity's personality. On that basis, those rights are violated where the indicia of a celebrity's personality are appropriated for commercial purposes."

The Jamaican judiciary, therefore, seems to be one of the most radical of those considered, in firmly accepting a separate tort of appropriation of personality.

It can be seen from the analysis of the case law in the area that, generally, there must at least be some form of implication of connection between the defendant's goods/advertising and the plaintiff in order for an action to protect one's image to succeed. This is commonly in the form of an implication of endorsement of the defendant's goods on the part of the plaintiff. It is clear that the courts have not yet overwhelmingly recognised a right to personality/image per se.

This is particularly notable from the English case of *Kaye v Robertson* ([1991] FSR 62 CA). The plaintiff in this case failed to be able to point to a cause of action, as there was no suggestion of endorsement or misrepresentation. It concerned Gordon Kaye, a well-known British actor who was recuperating in hospital after sustaining serious head injuries when he was photographed and interviewed by a newspaper.

Due to the nature of Mr Kaye's injuries, he had no recollection of the interview and, shortly afterwards, sought to prevent the publishing of the photographs and details of the interview.





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A limited injunction was granted by the court, merely preventing publication of the materials in such a way as to suggest that it had been approved by Mr Kaye. In my opinion, the denial of any adequate remedy to Mr Kaye (despite the obvious gross invasion of his privacy) seems wholly unjust. The court felt that it was powerless to come to the aid of Mr Kaye in the absence of legislative intervention.

### Don't lie to me

It is of note that paragraph 2.29 of the *Code of Advertising Standards for Ireland* (2001) requires that advertisements do not portray nor refer to any person unless their express prior permission has been obtained. Paragraph 2.31 also prohibits advertisements from claiming or implying an endorsement where none exists. It reminds advertisers that people who do not wish to be associated with the advertised product may take legal action against them.

In Ireland, the constitutional protections in relation to property and good name may also be of assistance to a person whose name has been prejudicially appropriated but, as of yet, there has been no judicial recognition of any right to personality in Irish case law.

It is clear that there is some divergence in judicial opinion as to how protection of personality rights might be achieved, whether through extending the



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law of passing off or whether to recognise a new tort of appropriation of personality.

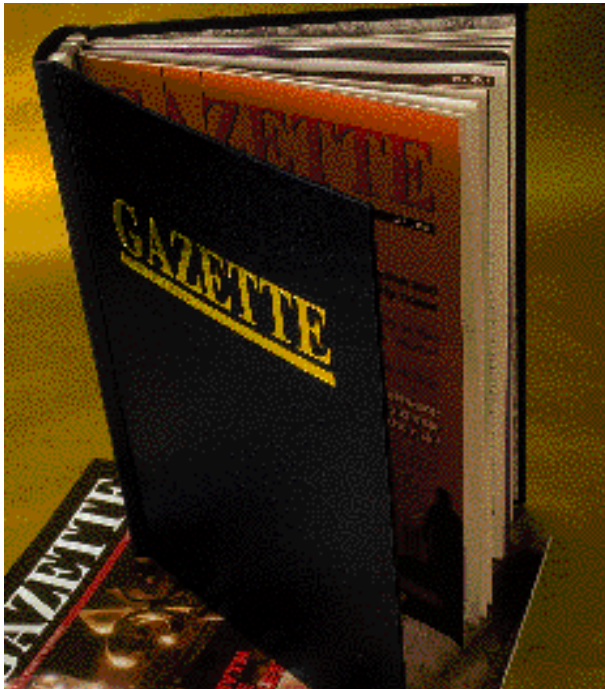
What is clear is that there should be some form of protection afforded to individuals so that their image is not anyone's fodder.

Rather than the judiciary usurping the legislature's function and extending or morphing the law in a piecemeal fashion, statutory intervention would be welcomed. It will be interesting to see how the Irish courts will deal with this when the case arises. Given the proliferation of Irish celebrities in recent years, this is likely to be only a matter of time. **G**

*Sinead Brady is a trainee solicitor with the Dublin law firm Lennon Heather & Co. The author would like to thank Richard Hammond, solicitor with Reddy Charlton McKnight, for his helpful comments.*

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# GIFTto

**It may come as a surprise, but not all gifts and inheritance between married couples are tax-exempt. When advising Irish nationals returning to this country, it's important to consider the tax laws in place in their former homeland, say Richard Grogan and Barry Kennelly**

**T**here is a mistaken belief that all gifts and inheritance between married couples are tax-exempt. For the vast majority of married couples they are. However, for a small but increasing minority, the position is different. Many solicitors will act for Irish nationals who have lived abroad and return home. When they return, it's important to consider the tax laws in the country from where they have come.

The foreign jurisdiction may impose a tax liability on gifts and inheritances received from one spouse due to its rules of residence. In particular, care needs to be taken when clients return from the US. This is particularly so if they have acquired US citizenship or have a 'green card'.

## **Beware of US tax**

Here, we examine the tax position of two Irish nationals. They have lived in the US for many years, were married in Ireland and have returned to Ireland. The wife has obtained US citizenship. The husband has a green card.

**The tax treatment of gifts from wife to husband:** The wife can only make limited gifts to her husband free from US tax. She may make an 'annual exclusion' gift of \$11,000. She may make gifts totalling up to \$117,000 for the tax year 2005 to her husband. Gifts of this amount to a non-citizen spouse qualify for the marital deduction. Therefore no tax applies. Gifts in excess of \$11,000 and \$117,000 in 2005 will be subject to US 'gift tax'.

In this case, the wife may also shelter \$1 million during her lifetime from gift tax. However, all gifts in excess of \$11,000 and \$117,000 per annum must be reported in a 'gift tax return'.

There is a misconception that where the gift is of Irish property, US tax does not apply. This is incorrect. Worldwide property from the US citizen

spouse is subject to US gift tax. The fact that she is an Irish citizen, possibly resident and domiciled in Ireland, is irrelevant.

If her husband were also a US citizen, there would be no limit on the amount of gifts. This is not the case, however, in this example.

**The US tax treatment of gifts from husband to wife:** The position of the husband is that, in the situation described above, different considerations arise. He is not a US citizen and has a green card. He can make annual exclusion gifts of up to \$11,000 per donee for the tax year 2005.

Where the gift exceeds this amount, the tax liability depends on the domicile of the husband. If he lives in the US, then all gifts in excess of the annual exclusion amount are potentially subject to US gift tax.

Gifts to his wife, however, will qualify for the marital deduction and no gift tax arises because she is a US citizen.

If he is not domiciled in the US, then only gifts of real estate and tangible personal property located in the US are potentially subject to US gift tax. However, where the gifts are to his wife, she will be required to report gifts from her husband if they exceed in aggregate of \$100,000 during the calendar year.

If he is domiciled in the US (given that his wife is a US citizen), gifts of Irish property to his wife in excess of \$11,000 dollars are not subject to US gift tax. If he is not domiciled in the US, gifts of Irish property are not subject to US gift tax.

**Difference between husband and wife for tax purposes:** The 'annual exclusion' amount for US gift tax purposes is \$11,000 per donee for the tax year 2005. This is regardless of whether the donor is a US citizen or resident or a 'non-resident alien'.

For gifts to a US-citizen spouse, the marital deduction is unlimited. For gifts to a non-citizen spouse, the deduction is limited to \$117,000 for 2005.

## MAIN POINTS

- Gifts and inheritance liable to tax
- Worldwide property subject to US gift tax
- Green-card holders are subject to US income tax



# ken

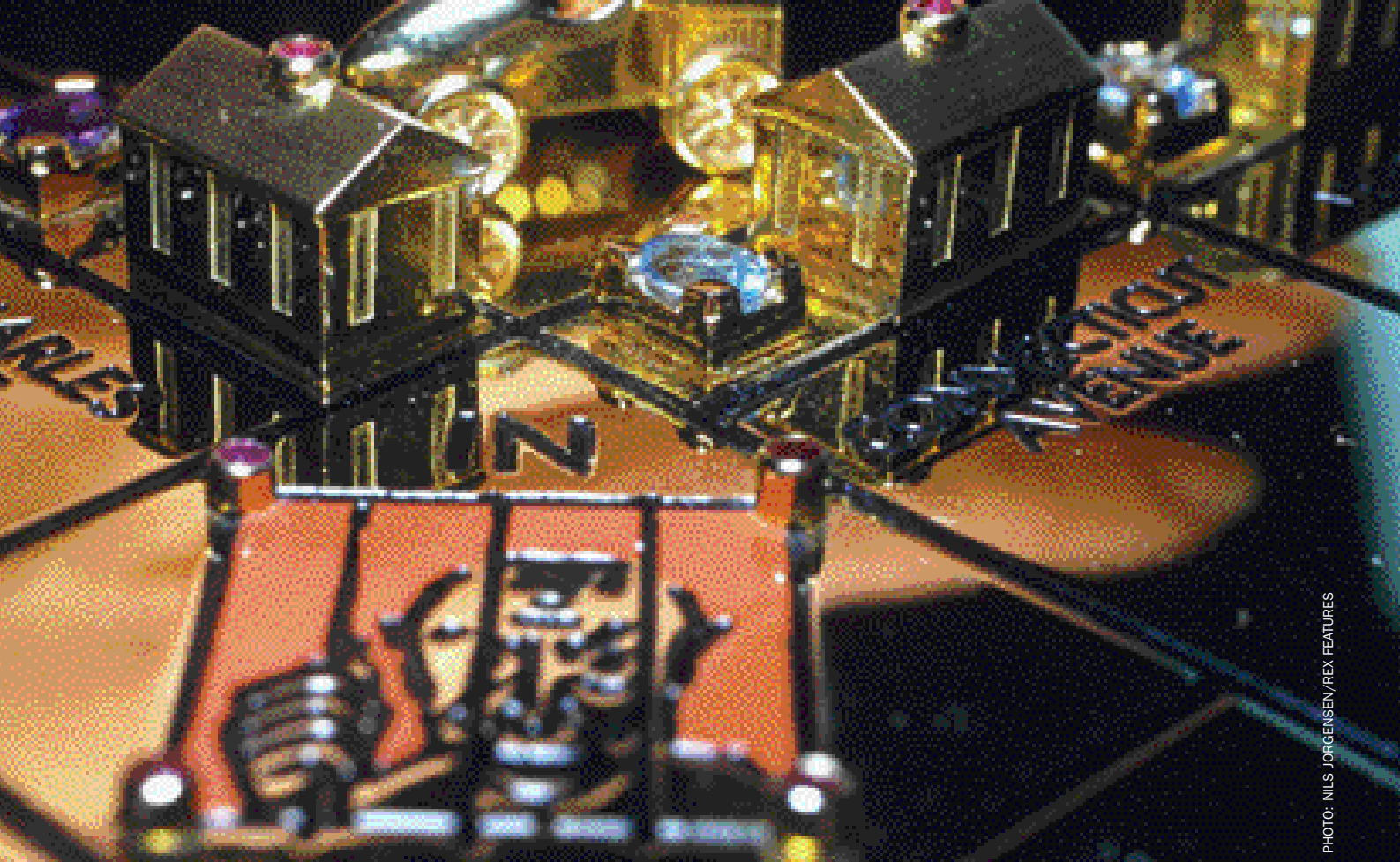


PHOTO: NILS JORGENSEN/REX FEATURES

Every US citizen and person domiciled in the US is entitled to a credit that offsets the tax on lifetime gifts of up to \$1 million. There is a difference for the husband and wife, however. If the husband is not US-domiciled, he is not entitled to this gift tax credit. The upside is that only his US real estate and tangible assets are subject to US tax.

## What happens at death?

If the wife in this case dies and is a US citizen at the time of her death, her worldwide property will be subject to US estate tax. As her husband is not a US citizen, any property passing to him will not qualify for the 'estate tax marital deduction' and will be subject to US estate tax.

Her estate, however, will be entitled to a credit that will shelter \$1.5 million from estate tax. She can

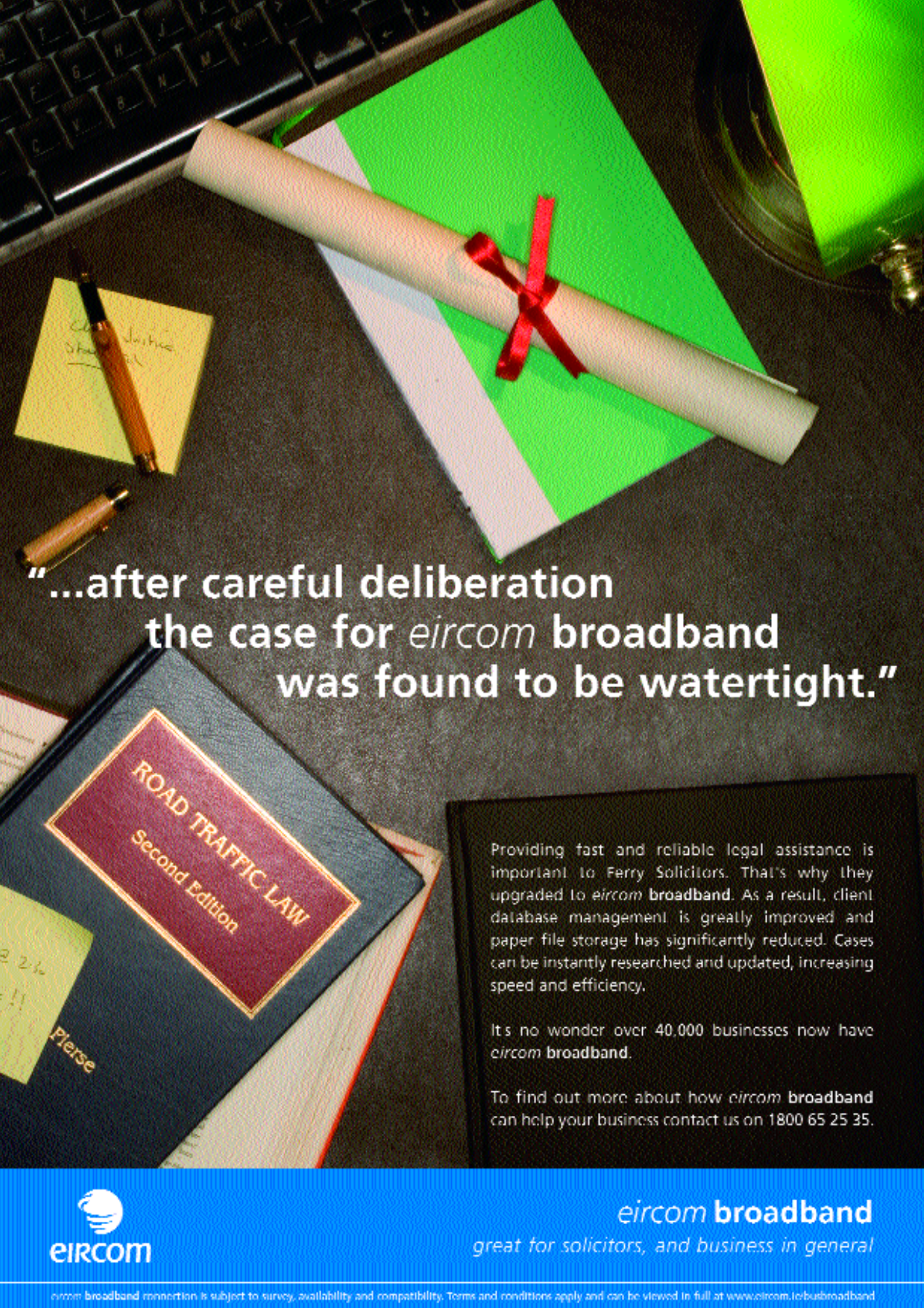
leave this amount to her husband. This is assuming the wife has not applied any of the lifetime taxable gift exemption. In addition, if the couple have children, the \$1.5 million estate-tax exemption will have to be shared between the surviving spouse and the children.

Where there is a benefit to a surviving spouse who is a non-citizen, the tax can be delayed until the surviving spouse's death if the property passes to a 'qualifying domestic trust' (QDOT). However, an Estate Tax Return Form 706 must be filed.

A further downside of this type of planning is that, unless the QDOT is very carefully checked by an Irish practitioner in advance, it may be that the QDOT will become subject to Irish discretionary trust tax and annual levies if the surviving spouse is over 21 years of age.

Failure to deal with outstanding tax liabilities during the administration of an estate could result in you and your client going to jail under money-laundering rules





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On the death of the husband, the position is different. If he lives in the US, his entire estate is subject to US estate tax. His estate can shelter \$1.5 million from such tax, assuming no part of the credit has been applied to lifetime gifts if he is US-domiciled. If, however, as in this case, he is not US-domiciled, only the value of his US estate will be subject to US estate tax.

Unlike US gift tax, US situs property for estate tax purposes includes securities in US companies ('situs' refers to the place to which a property belongs for the purposes of legal jurisdiction or taxation). His estate will be entitled to a credit sheltering of just \$60,000 from estate tax for 2005. His estate exemption can be used by a child or spouse. If the spouse is a US citizen, any benefit is exempt. In the case of a non-resident deceased, a US Estate Tax Return Form 706-NA must be filed.

In this case, if both the husband and the wife simply had green cards, the tax in the US will arise on anything over \$60,000. This can come as a nasty shock. It can be particularly relevant where a spouse has shares in US companies, which were acquired under shares options. It also often arises where the parties have retained a property in the US as a holiday home.

#### Child benefit

For 2005, a US citizen can pass \$1.5 million free from US estate tax (assuming the gift tax credit has not been used). A non-citizen, but US domiciled, person can pass the same value, free from tax.

In the case of a non-domiciled person, only \$60,000 of US property can be protected from US estate tax.

The difficulty is that this is not an exemption per donee. It is an exemption for the estate of the deceased. Therefore the tax exemption may have to be shared between a number of beneficiaries, depending on the manner on which it is passed to them.

The benefit a child can receive will depend on the citizenship or domicile of a parent with US situs property.

#### The role of executors and solicitors

Many people who return from the US will have either a US green card or US citizenship, which they retain. They may not consider US tax – whether gift tax, estate tax or income tax. It may only arise as a side 'comment' that they have a green card or are a US citizen when they are asking their solicitor to transfer property into their joint names, or when making a will. The client should be advised to obtain US tax advice. Before agreeing to act to transfer property, every client should be alerted to the potential for US tax.

For executors where US estate tax and income tax has not been dealt with, they will be left with a large tax problem. Income-tax returns may not have been made or paid. US gift tax and interest may be due on lifetime transfers. US estate tax may be due. Because of the way US estate tax exemptions apply, the terms

## SHELTERED AMOUNTS TO INCREASE

The position of a person who is a US citizen or green card holder is that they must file US income tax returns and pay US income tax. This is regardless of the fact that they live and work in Ireland. They are entitled to an annual exemption of up to \$80,000 for foreign-earned income. (This would mean income earned in Ireland.) Anything over this is subject to US income tax. This point is often overlooked.

The amounts that can be sheltered from US estate tax will increase to \$2 million for 2006-2008 and \$3.5 million for 2009.

From 2010, only the marginal gift-tax rate is to be reduced to the top income tax rate of 35%. From 1 January 2011, the US estate and gift tax credits and rates will revert to a maximum of \$1 million. The maximum rate would be 55% and a further 5% surcharge on certain large estates.

of the will, particularly if made in Ireland, could have significant US-estate-tax consequences, which could have been avoided if US tax advice had been obtained.

Nobody should assume that Irish law will apply where you have a US citizen or green-card holder. Equally, if our clients have lived abroad for a number of years, they may, for a number of years after they return, be subject to residence-based obligations relating to tax in the foreign jurisdiction.

We are now living in a much more mobile environment. People will go abroad to places like the US and acquire assets there. They will return to Ireland. More often than not, they will not seek tax and legal advice on their return. They will wrongly assume that, as Irish citizens (regardless of their being US citizens or green-card holders) living in Ireland, they will be covered by the laws of Ireland in relation to tax matters. Nothing could be further from the truth. Not all gifts or inheritances will be exempt from tax between spouses, particularly if one or both are either US citizens or hold a US green card.

The difficulties are most likely to return to haunt their estates and their executors. Failure to deal with outstanding US tax liabilities as part of the administration of an estate can result in the US federal tax authorities making a complaint under the money-laundering rules against the executors here in Ireland. This is not some idle option.

We are already aware of one case where the Dutch tax authorities issued a formal complaint under the money-laundering rules in respect of an Irish citizen who was ordinarily resident in Ireland, but who had been resident in the Netherlands. Because of their residence rules, which still deemed that person resident there for their equivalent of inheritance tax, there was a Dutch tax liability.

We are living in ever-increasingly complex times. Estate planning is becoming more complex. Foreign tax laws and, in some cases succession laws, are now impacting upon Irish nationals after they return to Ireland. **G**

*Richard Grogan and Barry Kennelly are a partner and associate, respectively, in the Dublin law firm, PC Moore & Co.*

***'If both husband and wife simply had green cards, the tax in the US would arise on anything over \$60,000. This can come as a nasty shock'***

# Knowing me, KNO

**As PIAB celebrated its first anniversary, it invited its best customers, the solicitors' profession, to its headquarters to discuss issues of mutual interest. Stuart Gilhooly reflects on an interesting meeting and examines the solicitor's responsibility to his client as the awards start to arrive**

It was hardly a guilt-edged invitation, but when Patricia Byron wrote to director general Ken Murphy with a request to come and visit the Personal Injuries Assessment Board's nerve centre in Tallaght, it seemed a great opportunity to get a few things off our collective chests. And so it was that the intrepid expedition comprising Ken Murphy, Ward McEllin, Geraldine Clarke and myself descended upon PIAB headquarters on 26 July.

We were quickly ushered upstairs to a plush boardroom with a fantastic view of Tallaght's famous skyscrapers. The entire executive team, led by chief executive Patricia Byron, greeted us. You will be glad to hear that the taxpayer's and insurance industry's money has been well spent on a 42-inch plasma screen, which blinded us with the usual statistics.

The PIAB chief launched into a presentation telling us that, at that stage, over 11,500 applications had been received, of which 7,000 had been completed. Interestingly, in only 50% of these applications has there been a consent to assessment. The rest have either received authorisations or have been settled between the parties.

She did not provide up-to-date statistics on the amount of awards accepted, although we know that of the first 25 awards, 20 were accepted. Latest figures in the annual report suggest that the acceptance rate has since fallen to 75% out of 350 awards accepted.

The Law Society delegation raised its eyebrows in unison at the revelation that PIAB intends to be self-financing by next year. Operation costs are apparently estimated at €5 million a year. We shall see.

## **Money, money, money**

The presentation didn't take long and, in any event, we had plenty to say. The first issue was the price of medical reports. We wanted to know how they could possibly justify a payment of only €150 towards a claimant's medical report when the dogs in the street



knew you couldn't get one for less than €250, and often considerably more. It was even more galling to hear that PIAB's own doctors were receiving a payment of €240.

The suggestion that a medical report might cost more than €150 was met with incredulity by PIAB.

## MAIN POINTS

- Society meets PIAB
- Medical reports
- PIAB's Supreme Court appeal



# WING YOU



Personal injuries – the number of 'do-it-yourself' claimants is falling

PHOTO: AGB PHOTO LIBRARY/REX FEATURES

If you didn't know better, you would think they had never heard this before. They explained that their own doctors carried out examinations but that the claimant's doctors did not need to and only needed to fill out the form from their notes. When we had picked our chins up off the table, we explained that

this did not happen in reality and that almost all doctors carried out an examination for the purposes of the report. After further discussion, they agreed to look at the issue and would get back to us.

The next matter on our agenda was the number of 'DIY' applications. PIAB had no figures on this but revealed that, over the weeks before our meeting, they had seen a very definite trend toward solicitors representing claimants. They expect this trend to continue and have promised to release data setting out the percentage of represented claimants. They subsequently confirmed at the launch of their annual report that, while they still do not have exact figures, about 75% of all claimants are represented by solicitors. It appears as though this figure is increasing all the time.

## **Voulez-vous**

A very important concern for us was PIAB's insistence on sending out medical reports to all respondents with the initial notification. Many colleagues have expressed concern that their clients' right to confidentiality is being unnecessarily negated in order that respondents can get a free look at the claimant's medical report before deciding whether or not to consent. In view of the revelation that 50% of all respondents do not consent, we wanted to know why they could not at least wait until a consent was received. They explained that this would not be possible, but did confirm that they were taking care that any medical reports with particularly sensitive aspects were not sent out, as they realised the difficulties that could arise in those circumstances. We would suggest that colleagues draw attention to any such medical reports in their initial correspondence and ask PIAB not to send them out.

This brought us to the issue of the independent PIAB medical report, and we wondered why it was necessary in nearly every case. They explained that the reports they received usually did not provide a prognosis and they needed their own report for this purpose. We also asked them why they couldn't send this report out when received rather than with

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the actual award. They said they would consider this suggestion and come back to us.

They alluded to cases involving serious injuries and complex issues being released without any delay and claimed PIAB had no desire to build up case numbers. They wished to point out that any case that was close to the statute deadline would be dealt with immediately and cases were being registered without medical reports where absolutely necessary.

#### Take a chance on me

With most of our queries exhausted, Patricia Byron finished by proclaiming that they wished for a fruitful working relationship with solicitors in the future. We asked whether this meant she was not proceeding with the appeal to the Supreme Court, which would have the opposite effect should they be successful. She replied that this was a board decision and they would accept the decision of the Supreme Court and draw a line under the matter. When asked whether she would then not be proceeding with her proposed plan to ask the government to amend the legislation if they lost, she was unable to confirm this. It would seem this too is a decision for the board.

After the meeting, we received a response to the two matters they were considering. In a three-line letter, Patricia Byron confirmed that medical reports would remain at €150 and the independent report would be sent out with the assessment. In other words, absolutely no progress. There was no indication that any consideration was given to our arguments.

#### The winner takes it all

The Supreme Court appeal will presumably be heard in the next few months and we must live with the consequences of its decision. Either way, PIAB is not going away, you know. It will not be decommissioning any time soon. We, as a profession, must accept that it is here for the foreseeable future and represent our client's interests to the best of our abilities. This doesn't mean that we have to be happy about it, though. We will continue to expose its flaws and ensure that our clients are not sold short. We are their only defence and they rely upon us to give robust and impartial advice.

The first awards are starting to filter through at last, and our most important task is to advise our clients whether or not to accept them. There are three factors to bear in mind here.

Firstly, is the case ready to be settled? In other words, can we put a figure on the injury and is there a firm prognosis? If the answer is 'no', then sensible advice is to suggest that the client refuses the award. Remember, there is absolutely no penalty for refusing an award. The only risk is that the client may get less. Not a pleasant thought, but better than the risk of a serious injury being settled for a fraction of its value. We must



Stuart Gilhooly:  
"Keep fighting for  
your clients"

not be afraid to make brave decisions – that's what we are paid to do.

Secondly, if the case is ready to be settled, is the award sufficient? The awards received so far have been on the low to moderate end of the scale in general. If you are happy that it is a fair amount, then you must advise the client to accept it. If not, then your obligation is to advise them they can do better. The court system is still there and if the claimant has an opportunity to obtain fairer compensation and his costs, you must advise him accordingly.

Thirdly, is the client happy with the award? Very often, we have our views, but they are very different to that of the client. The client's view is paramount. They come to us for advice but, in the final analysis, it's their choice. Our personal views must be disregarded if they make a contrary decision.

#### Thank you for the music

Interestingly, when PIAB launched its annual report on 13 September, they confirmed that of the 25% of awards that have not been accepted, the vast majority have been refused by claimants advised by solicitors and practically none by respondents. This tells its own story and confirms the importance of our role in the process. PIAB have admitted that while a year ago nearly half of the claimants were unrepresented, this is now down to 25%. I anticipate that it will get lower still, as more and more claimants become aware of the potential pitfalls that lie ahead of them. It is also very likely that, as more solicitors advise claimants, the acceptance rate will fall further, simply because unadvised claimants will inevitably accept the award whereas those receiving impartial advice will be able to make an informed decision.

They're still very early days and we will see how the courts react to assessments that come before them. In the meantime, keep fighting for your clients – and you may rest assured that we will be keeping a very close eye on proceedings in Tallaght! **G**

*Stuart Gilhooly is a partner in the Dublin law firm Hf Ward & Co and is a member of the society's PIAB Task Force.*



# • THE saying

**Irish solicitors would be wise to take account of recent decisions in the English courts, where failure to offer a client the option of mediation in a litigious dispute can amount to professional negligence, says Mary Keane of McCann FitzGerald**

**M**ediation has been pushed to the top of the alternative dispute resolution (ADR) pyramid – thanks to a series of recent English court decisions. It has been given greater judicial support in the context of the determination of the issue of costs.

These court decisions have reinforced the considered view among British legal practitioners that failure to advise – or at least discuss with – a client the option of mediation in a litigious dispute can amount to professional negligence.

Irish solicitors would be wise to take account of the prevailing wind in our neighbouring jurisdiction, particularly in terms of the recently introduced sections 15 and 16 of the *Civil Liability & Courts Act 2004* (which passed into English law on 31 March 2005). Among other things, these sections provide that:

- 15.(1) *Upon the request of any party to a personal injuries action, the court may:*
- (a) *at any time before the trial of such action, and*
  - (b) *if it considers that the holding of a meeting pursuant to a direction under this subsection would assist in reaching a settlement in the action, direct that the parties to the action meet to discuss and attempt to settle the action, and a meeting held pursuant to a direction under this subsection is in this act referred to as a 'mediation conference'.*
  - (6) *The costs incurred in the holding and conducting of a mediation conference shall be paid by such party to the personal injuries action concerned as the court hearing the action shall direct.*
- 16.(3) *At the conclusion of a personal injuries action, the court may:*
- (a) *after hearing submissions by or on behalf of the parties to the action; and*



## MAIN POINTS

- Mediation option should be discussed
- Cost implications of declining to take part
- When is a court likely to impose cost sanctions?

# COST OF g NO



*(b) if it is satisfied that a party to the action failed to comply with a direction under section 15(1) make an order directing that party to pay the costs of the action or such part of the costs of the action as the court directs, incurred after the giving of the direction under section 15(1).*

Further, in relation to the recently-established Commercial Court (as part of the High Court), order 63A of the *Rules of the Superior Courts* includes, among other things:

6. (1) [A] judge may, at the initial directions hearing –
  - (a) of his own motion and after hearing the parties, or
  - (b) on the application of a party by motion on notice to the other party or parties returnable to the initial directions hearing, give any of the following directions to facilitate the determination of the proceedings ...
    - (xiii)...that the proceedings, or any issue therein, be adjourned for such time, not exceeding 28 days, as [the judge] considers appropriate to allow the parties time to consider whether such proceedings or issues ought to be referred to a process of mediation, conciliation or arbitration, and where the parties decide so to refer the proceedings or issues, to extend the time for compliance by any party with the provision of these rules or any order of the court.
15. At the case management conference the judge chairing the case management conference may...
  - (e) without prejudice to any powers conferred on the judge by order 33, rule 11 and order 99, rule 37, sub-rule 31, disallow the costs of any party occasioned by a delay or default by that party in complying with a time limit for doing any act or taking any proceedings, and award against that party the costs thereby occasioned to any other party.

While there is no compulsion to do so, one would be brave to disregard judicial invitations to the parties to engage in good faith in a mediation conference. At the very least, one would have to consider the potential cost implications that might ultimately follow if the litigation were pursued because one party had declined to participate in such mediation.



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The crucial question is: when would a court view a refusal to engage in mediation as unreasonable and thus impose cost sanctions against a successful litigant? In addressing this question, it is useful to consider the recent UK decisions.

### Warnings

Since the implementation of the *Civil Procedure Rules 1999*, the UK courts have been positive in their support for mediation, where appropriate. They have not been slow to issue warnings about the possibility of imposing cost sanctions where parties unreasonably refuse to mediate.

The Court of Appeal has given some guidance on what would constitute an unreasonable refusal to mediate – and when cost sanctions for such a refusal should be applied (for example, *Dunnett v Railtrack*<sup>1</sup> and *Hurst v Leeming*<sup>2</sup>). The recent (combined) Court of Appeal judgment in *Halsey v Milton Keynes General NHS Trust* and *Steel v Joy*<sup>3</sup> has clarified what the approach should be to this issue of mediation and costs.

The two separate appeals in *Halsey* were brought after the successful parties, who had declined to mediate, were not penalised in costs; in which appeals the Civil Mediation Council involved itself as an intervener. The cases involved, respectively, a fatal injuries claim and a personal injuries claim.

Although both appeals were in fact dismissed, Irish practitioners should pay particular attention to the factors – indicated by the Court of Appeal – that a court should consider before awarding costs where an ultimately successful party had refused mediation.

### Support for mediation

The Court of Appeal (per Dyson LJ) in *Halsey* prefaced its broad support for the use of mediation as follows:

- It is inappropriate for the courts to compel unwilling parties to submit a dispute to mediation as such compulsion would be a violation of Article 6 of the *European Convention on Human Rights*, which provides for the right of access to the courts.
- Depriving an ultimately successful litigant of his costs because he had refused at an earlier stage of the litigation process to mediate is an exception to the rule of practice that ‘costs-follow-the-event’. The burden is on the unsuccessful party to justify why there should be a departure from this rule. (It is worth noting that Dyson LJ specifically rejected the submission made by the Civil Mediation Council, as an intervener, that there should be a presumption in favour of mediation.) Such a departure from the rule will not be found to be justified unless it is shown that the unsuccessful party acted ‘unreasonably’ in refusing to agree to mediation.

In summary, while the balance appears to be in favour of the established rule that ‘costs-follow-the-

## THE *HALSEY* CASE

The judgment in *Halsey* went on to address in some detail the issue as to when a court should regard a refusal to mediate as unreasonable and indicated a number of factors that should be considered by a court before drawing any conclusion, as follows:

- **The nature of the dispute:** Mediation will not always be appropriate. Cases that require the court to determine an issue of law or construction, or to set a binding precedent or give injunctive or other relief, are clearly not suitable. Most cases, however, are suitable.
- **The merits of the case:** If a party reasonably believes he has a strong case, this is relevant to how reasonable his actions are. The court should, however, be alert to the danger of one party seeking to use the threat of cost sanctions to extract a settlement from another party where the claim is without merit. This factor will only provide justification where the party refusing mediation reasonably believes that his case is ‘watertight’, for example, where the party would have succeeded in an application for summary judgment.
- **Other settlement methods have been attempted:** This may be relevant but the court also pointed out that mediation often succeeds where previous attempts to settle have failed.
- **The costs of the mediation may be disproportionately high:** This is relevant where the sums at stake in the litigation are comparatively small and that mediation can sometimes be at least as expensive as a day in court.
- **Delays:** If mediation is only suggested close to the trial date and acceptance of the suggestion would delay the trial, then this factor may be taken into account.
- **Whether the mediation had a reasonable prospect of success:** It may sometimes be difficult for a court to decide this question. However, the burden is on the unsuccessful party to show that there was a reasonable prospect that the mediation would have been successful. This is not an onerous burden to discharge and it should be fairer and easier for the unsuccessful party than for the successful party to prove the contrary, that the mediation would not have succeeded.
- **Judicial encouragement:** The stronger the judicial encouragement, the easier it would be for the unsuccessful party to discharge its burden of showing that the successful party’s refusal was unreasonable. Therefore, although the court should not compel parties to undertake mediation, if it has robustly encouraged mediation at an earlier stage, a party who refuses it runs a higher risk of being penalised in costs for that reason alone.

event’ and, therefore, that the successful party who had refused to mediate is awarded his costs, *Halsey* stands as a strong reminder to legal practitioners for parties that the suitability of a dispute for mediation should be actively considered at an early stage of a litigation process.

### ‘Horrible picture’

In the later case of *Burchell v Bullard*,<sup>4</sup> the Court of Appeal again took the opportunity to set out its approach to the question of mediation as an alternative to litigation to be considered by the parties. This case provides a useful demonstration of how the court might apply the factors set out in *Halsey* in deciding whether a refusal to mediate was or was not unreasonable.

*Burchell v Bullard* arose from a relatively straightforward house renovation dispute between the contractor and the owners involving unpaid invoices and a counterclaim for defective





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### **CONFLICT RESOLUTION: PEACE & RECONCILIATION**



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### **CROATIA - A COUNTRY OF A THOUSAND ISLES**

"Those who seek paradise on earth", George Bernard Shaw once wrote, "should come to Dubrovnik". A World Heritage Site, the old city of Dubrovnik has remained basically unchanged since the thirteenth century. Its medieval ramparts encircle the city which pedestrians enter through one of two gates - either way, they cross a stone bridge under the watchful gaze of the city's patron Saint Blaise.

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Please note full brochure and booking form will be available in the December issue of the Gazette. At present delegates can register online at [www.lawsociety.ie](http://www.lawsociety.ie). Registration forms will be available by contacting Evelyn O'Sullivan or Niamh McCrystal at Ovation Group, 1 Clarinda Park North, Dun Laoghaire, Co. Dublin. Tel: 01 280 2641 or email: [lawsociety@ovation.ie](mailto:lawsociety@ovation.ie)



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workmanship. The solicitors for the plaintiff contractor wrote to the defendant owners suggesting that, to avoid litigation, the matter be referred to mediation. The defendants refused the offer, maintaining that it was inappropriate as the matters involved were “too complicated” for mediation.

#### **‘Horrific picture’**

The Court of Appeal was presented with a “horrific picture” in relation to costs on the appeal. The parties had between them incurred legal costs of Stg£186,000, with a netted-off judgment of just Stg£5,000 in favour of the plaintiff contractor being the final result of the hearing of the liquidated claim and the unliquidated counterclaim. As a result, the plaintiff paid approximately Stg£136,000 in costs despite his net success. Ward LJ referred to the general rule that costs follow the event but stated that the circumstances of the case might justify a departure from the general rule and that the conduct of the parties might be relevant.

In the light of *Halsey*, the question was whether the defendants had acted unreasonably in refusing mediation. On its application of the factors set out in *Halsey*, the Court of Appeal held in *Burchell* that the defendants had acted unreasonably. Ward LJ went on to observe that this was a small construction dispute, perfectly suited, he felt, to mediation and that the merits of the case favoured mediation as there was clearly room for give and take.

#### **‘Plain nonsense’**

He viewed the defendant’s refusal to mediate because the matters involved were too complex as “plain nonsense”. Ward LJ said that the costs of mediation would have been inconsequential compared with the cost of the trial, that the approach that had been adopted by the plaintiff contractor suggested that mediation had a reasonable prospect of success, and that the defendants were not entitled to rely on their own obstinacy in asserting that mediation did not have a reasonable prospect of success.

However, in this instance, the Court of Appeal did not impose a costs sanction against the defendants, notwithstanding their successful counterclaim, as the refusal to mediate had to be considered against the background of the case law at that time. The Court of Appeal, however, gave a clear warning to the legal profession in the following terms:

*“The profession can no longer with impunity shrug aside reasonable requests to mediate. These defendants have escaped the imposition of a cost sanction in this case but defendants in a like position in the future can expect little sympathy if they blithely battle on regardless of the alternatives. The importance of mediation has been established as a track to a just result running parallel with that of the court system.”*

**‘Mediation  
will become  
a recognised  
alternative to  
potentially  
long and  
expensive  
court  
litigation’**

Rix LJ gave a short judgment in support of the judgment of Ward LJ and of the judgment in *Halsey*. He emphasised that a party “could not rely on its solicitor’s or expert’s advice, where the result shows that mediation ought reasonably to have been attempted”.

*Burchell* highlights a number of important principles:

- The court will scrutinise the behaviour of the parties in conducting any dispute when making cost orders.
- Mediation must be considered from the pre-action stage. If proposed, both solicitors and litigants would do well to consider participation carefully. If they choose to refuse, the reasons for such refusal should be carefully recorded, as they may become subject to scrutiny in relation to costs at a later date.
- The fact that a party unreasonably believes that his case is ‘watertight’ is no justification for refusing mediation; but the fact that a party reasonably believes he has a watertight case may well be a sufficient justification for a refusal to mediate, leaving the crucial question to answer: what is reasonable in the circumstances?

#### **‘Fast track to a just result’**

It is clear that, in the UK, mediation is a firmly established and expanding facet of procedural law. While the attitude of the Irish courts has yet to be defined, there is no doubt that the option of mediation must now be given careful consideration by legal practitioners at an early stage of any litigious dispute.

In *Halsey*, its importance as a “fast track to a just result running parallel to that of the court system” was established. It is probable that, in time and in the appropriate context, the Irish courts will regard as persuasive the *Halsey* and *Burchell* precedents when considering Section 15 of the *Civil Liability & Courts Act 2004* and Order 63A of the *Rules of the Superior Courts* in the context of a refusal of a party to mediate.

What is certain is that mediation will increasingly become a recognised alternative to potential long and expensive court litigation. Litigators must understand the process and be in a position to discuss it with their clients, particularly if proposed by the opposition.

To all litigators, the headline message must be: ‘Ignore a proposal of mediating at your peril: it could transpire to be a very expensive mistake when it comes to the awarding of costs for your client – or for you.’

#### **Footnotes**

1. [2002] All ER 850
2. [2003] 1 Lloyd’s Reports
3. [2004] EWCA Civ 576
4. 2005 EWCA Civ 358 **G**

*Mary Keane is a trainee solicitor in McCann FitzGerald.*



## As the library prepares to extend its opening hours for the duration of the new PPCI winter course, Margaret Byrne reviews the services available to members



**T**he library aims to collect and provide accurate current resources and information to solicitors and trainee solicitors in a timely manner. Its collection includes all Irish legal publications and law-related government publications, with multiple copies of many titles. It also holds a wide collection of textbooks, journals, law reports, encyclopaedic works and legislation covering the jurisdictions of Northern Ireland, England and Wales and the institutions of the European Communities. Requested materials that are not held in the library can be obtained from other libraries through inter-library loan services.

The collection is supplemented by a range of subscription-based on-line databases and CD-ROMs, which solicitors and trainee solicitors can access directly on a PC in the library and which the library staff use when sourcing information in response to enquiries. The most important of these are:

- Sweet and Maxwell's *Current Legal Information Service*, which includes the *Legal Journals Index*, an index to articles in all UK-published law journals since 1986 and in Irish law journals since 1993. The service also includes the complete contents of the UK *Current Law* case citators and digests,
- The *Irish Reports*, *Irish Digests*, and EU Celex databases (*Justis*),
- The Casetrack database of transcripts of UK judgments,

- The Irish statute book
- Europa
- Copac – combined catalogues of TCD's library and the largest UK university libraries.

There are links to these websites from the search screens on the library's on-line catalogue. For a more comprehensive list of legal websites, click on 'Links' on the library pages in the members' area of the Law Society website.

### Textbook loans

You may borrow up to five textbooks at a time, either by calling in person to the library or by requesting them by letter, phone, fax or e-mail. You can also send a request for a book when you locate it in the library catalogue (see below for more details). The books will be sent out to you by DX/Cork Express, by post, or left at reception for collection by a courier. The lending period is ten days and loans may be renewed once, on request, for a further ten days, provided no one else is waiting for the books. There is no charge for this service.

More limited borrowing rules apply to students attending a current PPC.

### Document supply

Subject to copyright legislation, information contained in the library can be photocopied, faxed or electronically transmitted. There is self-service photocopying and printing from PCs in the library.

# DOING THINGS

- *The Irish Times* archive,
- The Irish Taxation Institute's *TaxFind*, which includes the full text of the institute's *Irish Tax Review* and its textbooks,
- Butterworth's Irish property law service, which includes the full text of Laffoy's *Irish Conveyancing Precedents*.

On the internet, available on all PCs in the library, the most frequently used and freely available websites are:

- BAILII (British and Irish Legal Information Institute)

A new photocopier/scanner has recently been installed that enables you to scan a document and e-mail it to yourself as a read-only Adobe *Acrobat* portable document format (pdf). You can also send requests to the library by post, phone, fax or e-mail for copies of materials to be sent to you – for example, law reports, unreported judgments, legislation, EU regulations and directives, precedent forms for drafting purposes, extracts from textbooks and journal articles. The copies can be sent to you in hard copy or by e-mail as pdf documents that you can print from your own PC. Requested materials that are not held in the library can be obtained from other libraries.

- Library services
- Using the catalogue's features
- Print and electronic resources



# BY THE BOOK

There is a €9.50 handling charge per request, plus photocopying and fax charges. Full details of charges are available from the library.

## General enquiry service

Many enquiries and requests to the library are of a general rather than a specific nature. You can contact the library for lists of textbooks and articles on a particular subject, details of cases by subject, information on legislation, names and addresses of lawyers in other countries, and for advice generally on any aspect of legal information sources. The following are some examples of the types of queries

## OPEN ALL HOURS

For the duration of the PPCI winter course – from Monday 28 November 2005 to Friday 2 June 2006 – the library opening hours will be 8.30am to 10pm (Monday to Friday). All services will be available to 10pm on each of these days and solicitors as well as trainees are welcome to avail of the later opening hours.

At all other times, the library's hours are 8.30am to 6pm (Monday to Thursday) and 8.30am to 5pm (Friday).

regularly dealt with:

- *What have you in the library on...?*
- *Can I have copies of the recent cases on school inspectors' reports?*
- *I believe there is new legislation on the proceeds of crime*
- *What stage is the Registration of Deeds Bill at – has it been passed yet?*
- *Has the Safety, Health and Welfare at Work (Amendment) Act 2005 been brought into force yet?*
- *What regulations have been made under the Civil Liability and Courts Act 2004?*
- *Has the EC Waste Electrical and Electronic Equipment Directive been implemented into Irish law?*
- *Have you a copy of a software licence agreement?*
- *I have a client buying property in Budapest – can you give me the names of some law firms there and the address of the Hungarian Bar Association?*
- *Where can I buy a copy of Murdoch's Dictionary of Irish Law, or how do I subscribe to Laffoy's Irish Conveyancing Precedents?*

The library staff use all available indexes and other sources, both paper and electronic, to answer these queries, if possible on the same day. Some enquires can be dealt with on the spot, but if the query takes time and results in materials being copied, then a handling charge and copying charges apply in the same way as with the document-supply service. You will be advised if a case or piece of legislation is freely available on a website and you will be directed where to find it.

### Library catalogue

One of the first places the library staff will search, in response to many queries, is the library's own on-line catalogue. You can also access the catalogue directly in the members' or students' areas of the Law Society website ([www.lawsociety.ie](http://www.lawsociety.ie)). Click on the 'Members and Students' log-in button on the top right-hand corner of the first page of the website. Then log on to the members' or students' areas with your surname and solicitor or trainee number. Click

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personalised  
function that  
allows you to  
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account”**

### THIS JUST IN

To see the library's recent acquisitions, click on 'New Books', 'New Judgments' or 'New Legislation' in the 'Library Info' list on the front screen of the catalogue to see what books, judgments or legislation have been added to the library in the previous three months.

on 'library' in the drop-down menu and follow the links to the catalogue. If you don't know your number, contact the library.

### Personalised use of catalogue

On the front screen of the catalogue you will see a further log-in, which is optional, prompting you to type in your user ID, which is your solicitor number, and your library PIN, which is available from the library. After logging in the first time with your user ID and PIN, you can change your PIN to match your user ID or any other number you prefer (to a maximum of ten digits). This further log-in allows you to use the personalised interactive functions of the catalogue, such as requesting a book on-line. To do this, just locate the book in the catalogue and click on the 'place hold' button to the left of the catalogue record. If the book is available, it will be sent out to you that day. If the item is already out on loan, a message will display and the book will be sent out as soon as it comes back to the library. 'My account' is another personalised function that allows you to review your account to see what books you have on loan, renew your loans on-line or see what holds you have placed for books. You can skip this further log-in option and go straight to searching the catalogue, and you will be given an option to log in at a later stage if you wish to use any of the personalised features.

The catalogue has been built up over the last seven years and is an index to three broad categories of material:

- All textbooks, lecture/seminar papers (including all CLE and CPD papers) and government and other reports held in the library,
- All High Court, Supreme Court and Court of Criminal Appeal reserved written judgments since 1990. Records of judgments include a short summary of the case, a list of any cases mentioned in the judgment, the law report citation if the case has been reported, and a link to the full text of the judgment (if available) on BAILII,
- All bills, acts and statutory instruments since 1997. The information on acts is updated to include commencement dates and the information on bills is updated to show the present stage a bill has reached in the Dáil or Seanad. Statutory instrument records indicate the section(s) of the enabling acts under which they are made, whether they are amending previous regulations or whether they have been subsequently amended. Acts and statutory instrument records include details of EC directives they may implement.

All fields of all records are fully searchable. Detailed instructions on 'How to Use the Catalogue' can be found on the 'Catalogue' pages on the website. Please contact the library if you need any assistance. **G**

*Margaret Byrne is the Law Society's librarian. Contact the library on tel: 01 672 4843/4, fax: 01 672 4845, e-mail: [library@lawsociety.ie](mailto:library@lawsociety.ie).*



# Book review

## Intellectual Property Law in Ireland (second edition)

**Robert Clark and Shane Smyth.** Tottel Publishing Ltd (2005), Fitzwilliam Business Centre, 26 Upper Pembroke Street, Dublin 2. ISBN: 1-84592-020-1 (hardback). Price: €150.

In his foreword to the first edition, Mr Justice Brian McCracken referred to Professor Bob Clark's "vast" knowledge of intellectual property law, combined with "an enquiring mind". Reference was also made to Shane Smyth's career as a solicitor and "all the practical experience gained over many years as a partner in the largest patent and trademark agents in the country".

The judge celebrated the arrival of the first edition as a book "well researched and learned on the one hand and practical and all-embracing on the other". He concluded there would be a *prima facie* case of professional negligence against any solicitor, barrister, trademark or patent agent who does not have this book in their library. Rich praise indeed: well-deserved praise.

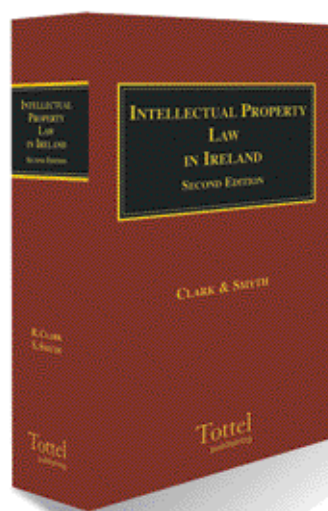
The authors in their preface to the second edition refer to profound changes in many areas of intellectual property law since the first edition of their book in 1997. The *Copyright Act 1963* (with 60 sections) has been supplanted by the *Copyright and Related Rights Act 2000* with 376 sections. Other examples include

the *Industrial Designs Act 2001*, the concept of an unregistered design right and the registration system for community designs.

The qualification of 'intellectual' before property used to frighten many young lawyers. We knew something about the law of property, but intellectual property was different. The word 'intellectual' carried with it a connotation of superiority. Yet many practitioners must now know about copyright and trademark issues generally, about unregistered rights and the issue of passing off. We have no excuse now: we have Clark and Smyth to guide us.

It is of interest that there are expanded chapters in the book to take account of case law on passing off, the duty of confidence in a commercial context, goodwill, misrepresentation, injurious or malicious falsehood and unlawful interference with economic relations. These are areas where practitioners are often asked for advice and appropriate legal action.

In a brief review such as this, it is only possible to give an overview of what the book contains. First, there are 1,113



pages in this significant work. The early chapters deal with patents, including the Irish patent systems and international conventions. The *Patent Act 1992* is considered in several chapters, under patentability, acquisition of patent rights, maintenance and dealings in patents, infringements and remedies, revocations and proceedings before the controller and courts, and voluntary and compulsory licences.

Copyright naturally receives considerable attention; several chapters are devoted to the law of copyright. The whole issue of protected works – literary and artistic works, the protection of computer pro-

grammes as copyright works, databases, ownership and dealings in copyright works, defences to copyright infringement, remedies for copyright infringement and rights in performances are the subject of specific chapters. Several chapters also deal with trademark law, both Irish trademark law and international conventions, including in particular the community trademark and the *Trade Marks Act 1996*. As stated, there are also chapters on the duty of confidence and remedies in tort.

Many of the applicable treaties, conventions and EC instruments are also included as appendices. There is a comprehensive table of references to statutes, statutory instruments, EU and international legislation, as well as a comprehensive table of cases. There is also an impressive index.

Well written, packed with detailed information and legal analysis, engaging: Professor Clark and Shane Smyth have written a 'must-have' for those practitioners, academics and others who advise on intellectual property matters. **G**

*Dr Eamonn Hall is the chief solicitor of Eircom Group plc.*

## SEMINAR FOR NOTARIES PUBLIC

**A Seminar dealing with various aspects of notarial practice and procedure has been arranged for the Clarion Hotel, Limerick on Friday 11th November 2005 commencing 2pm.**

All Notaries in the country have been invited to attend and a good attendance is expected. Following on the change in procedure leading to the appointment of Notaries Public outlined on Page 38 of the October 2005 *Gazette*, it is expected that there will be an increase in the number of applications for appointment. Non-Notaries are welcome to attend the Seminar on payment of €50.00 which will entitle

them to a copy of E. Rory O'Connor's *The Irish Notary* and supporting documentation. Non-Notaries intending to attend should be present at 1.45pm to facilitate registration. It is anticipated that the Seminar will end approx 5pm/5.30pm.

For the avoidance of confusion, this Seminar attracts no CPD points.

– Brendan Walsh, Registrar, The Faculty of Notaries Public in Ireland.

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# Practice note

## RESTRICTIONS EASED ON USE OF FAMILY LAW COURT ORDERS

**S**ection 40(4) of the *Civil Liability and Courts Act 2004* provides that "Nothing contained in a relevant enactment shall operate to prohibit a party to proceedings to which the enactment relates from supplying copies of, or extracts from, orders made in the proceedings to such persons and in accordance with such conditions (if any) as may be prescribed by order of the minister."

The above provision was intro-

duced in order to alleviate the practical difficulty caused by the application of the *in camera* rule (adverted to in the decision in *Tesco v McGrath*) to the provision for conveyancing purposes of copies or extracts from court orders in family law cases.

The minister has now made the relevant order under Statutory Instrument No 338 of 2005 (entitled *Civil Liability and Courts Act 2004 (Section 40(4)) Order 2005*)

and the persons specified in the schedule to the order have been prescribed for the purposes of section 40(4) of the act of 2004.

A copy of such part only of an order or extract from an order as is necessary to enable the prescribed person concerned to perform his or her functions may be supplied to any person listed in the schedule, including a solicitor and the Land Registry. The prescribed person to whom such a

copy is supplied shall not show or supply the copy to any person other than a person to whom it is necessary for it to be supplied or shown for the purpose of enabling the prescribed person to perform his or her functions.

Extracts from court orders in family law cases may now be exhibited in family law declarations without fear of breaching the *in camera* rule.

Conveyancing Committee

## LEGISLATION UPDATE: 10 SEPTEMBER – 21 OCTOBER 2005

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

### SELECTED STATUTORY INSTRUMENTS

#### *District Court (EU Regulations) Rules 2005*

**Number:** SI 635/2005

**Contents note:** Amend order 11 of the *District Court Rules 1997* (SI 93/1997) to prescribe procedures for regulation 1348/2000 on the service within the member states of judicial and extra-judicial documents in civil or commercial matters; amend order 62 of the *District Court Rules 1997* to prescribe procedures for regulation 1348/2000 and regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

**Commencement date:** 1/11/2005

#### *European Communities (European Enforcement Order) Regulations 2005*

**Number:** SI 648/2005

**Contents note:** Amend legislation to provide for the administration of council regulation (EC) 805/2004 creating a European

enforcement order for uncontested claims. The regulations provide, among other things, that where a judgment, court settlement or authentic instrument on an uncontested claim has been certified as a European enforcement order in a member state of origin, that judgment, court settlement or authentic instrument shall be of the same force and effect as a judgment of the High Court and may be enforced by the High Court and proceedings taken on it as if it were a judgment of that court.

**Commencement date:** 21/10/2005

#### *European Communities (Protection of Employees (Employers' Insolvency)) Regulations 2005*

**Number:** SI 630/2005

**Contents note:** Give effect to directive 2002/74, amending directive 80/987, concerning the protection of employees in the event of insolvency of their employer. Amend the *Protection of Employees (Employers' Insolvency) Act 1984* by including a provision to cover employees who are employed in Ireland by an employer who has become insolvent under the laws, regulations and administrative procedures of another member state. Also extend the coverage of the act to

include additional entitlements that may be owed to employees by an insolvent employer.

**Commencement date:** 8/10/2005

#### *Finance Act 2005 (Section 21(1)(e)(ii)) (Commencement) Order 2005*

**Number:** SI 570/2005

**Contents note:** Appoints 23/9/2005 as the commencement date for section 21(1)(e)(ii) of the *Finance Act 2005*. Section 21 amends part 30 of the *Taxes Consolidation Act 1997*, which deals with the tax treatment of Revenue-approved occupational pension schemes, retirement annuity contracts and PRSAs by providing for tax relief for contributions to EU pension plans in certain circumstances. Section 21(1)(e)(ii) of the *Finance Act 2005* facilitates Irish pension providers, authorised and approved by the Pensions Board to accept contributions from an undertaking located in another EU member state, in offering trust-based occupational pension schemes to such undertakings under the *EC Pensions Funds Directive 2003/41* on the activities and supervision of institutions for occupational retirement provision by providing that the investment returns from such a scheme will be exempt from

income tax (and capital gains tax under s58 of the *Finance Act 2005*). The *EC Pensions Funds Directive* comes into effect on 23/9/2005.

#### *Garda Síochána (Admissions and Appointments) (Amendment) Regulations 2005*

**Number:** SI 560/2005

**Contents note:** Make changes to the rules governing entry to An Garda Síochána. Replace the requirement to hold a qualification in both Irish and English in the Leaving Certificate or equivalent with a requirement to hold a qualification in two languages, at least one of which must be Irish or English. Provide that entry to An Garda Síochána will be open to (i) nationals of an EU member state, an EEA state or the Swiss Confederation, and (ii) nationals of any other state who are lawfully present in Ireland and have a period of five years legal residence in Ireland. Also broaden the category of persons who may be recruited by the garda commissioner under regulation 14 of the *Garda Síochána (Admissions and Appointments) Regulations 1988* (SI 164/1988) to provide for the recruitment of a person who has special aptitudes, knowledge, skills or technical qualifications.

**Commencement date:** 12/9/2005



# IMPORTANT

## Law Report

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**First Law**

**Health (Miscellaneous Provisions) Act 2001 (Section 4) (Commencement) Order 2005**

**Number:** SI 628/2005

**Contents note:** Appoints 28/9/2005 as the commencement date for section 4 of the *Health (Miscellaneous Provisions) Act 2001*. Section 4 provides that the minister for health and children shall, not later than nine months after the end of each year, beginning with the year 2002, make a report to each house of the Oireachtas on the measures taken by health boards during the preceding year to prevent suicides.

**Land Registration Rules 2005**

**Number:** SI 643/2005

**Contents note:** Amend rules 19 and 35 and forms 3 and 15 of the *Land Registration Rules 1972* (SI 230/1972) as amended.

**Commencement date:** 1/1/2006

**Ombudsman (Defence Forces) Act 2004 (Commencement) Order 2005**

**Number:** SI 568/2005

**Contents note:** Appoints 31/8/2005 as the commencement date for sections 1, 2, 3, 14, 16, 17, 18 and 19 of the act; appoints 1/12/2005 as the commencement date for all other sections. Provides specifically that the exclusion contained in section 5(1)(g) of the act – that the ombudsman shall not investigate any complaint concerning an action referred to in section 6(1) or 6(2) of the act if the action is taken before the commencement of the act – shall not have effect by reference to a date earlier than 1/12/2005.

**Pensions (Amendment) Act 2002 (Section 42) (Commencement) Order 2005**

**Number:** SI 590/2005

**Contents note:** Appoints 23/9/2005 as the commencement date for section 42 of the *Pensions Act 1990* insofar as it inserts section 59(2) into the *Pensions Act 1990*. Section 59(2) of the *Pensions Act 1990* sets out the requirements with which trustees of a scheme must comply in relation to investing the resources of the scheme in accordance with directions given by members. It also provides that where trustees comply with these requirements they will be exempt from any liability based on the members' decisions.

**Contents note:** Appoints 30/9/2005 as the commencement date for sections 4 to 8 and section 11 of the *Road Transport Act 1999*.

**Road Transport Act 1999 (Commencement) Order 2005**

**Number:** SI 611/2005

**Contents note:** Appoints 30/9/2005 as the commencement date for sections 4 to 8 and section 11 of the *Road Transport Act 1999*.

**Sheriff's 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

**Social Welfare and Pensions Act 2005 (Part 3) (Commencement) Order 2005**

**Number:** SI 591/2005

**Contents note:** Appoints 23/9/2005 as the commencement date for part 3 (ss27 to 39 – amendments to the *Pensions Act 1990*), other than sections 38 and 39. Sections 27-37 of the *Social Welfare and Pensions Act 2005* amend the *Pensions Act 1990* in order to implement directive 2003/41 on the activities and supervision of institutions for occupational retirement provision and to provide for related matters.

**Taxi Regulation Act 2003 (Part 3) (Commencement) Order 2005**

**Number:** SI 610/2005

**Contents note:** Appoints 26/9/2005 as the commencement date for part 3 (other than ss35, 36 and 44(5)) of the *Taxi Regulation Act 2003*, except insofar as it is already in operation. Part 3 (ss33-52) deals with small public-service vehicle regulation.

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# Legislation focus

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

This is the second article on the new *Safety Health and Welfare at Work Act 2005* (the 2005 act). It deals with issues ranging from protective and preventative measures, to penalties.

### **Part 3 – Protective and Preventative Measures**

Since the enactment of the *Safety, Health and Welfare at Work Act 1989* (the 1989 act), there have been a number of specified 'general duties' applicable to employers.<sup>1</sup> While the 2005 act also lists 'general duties' for employers, part 3 provides for a number of protective and preventative measures that are, in reality, additional duties.

Among these provisions, an employer has a duty<sup>2</sup> to appoint one or more competent persons (as defined<sup>3</sup>) from among employee numbers if possible,<sup>4</sup> to deal with protection from, and prevention of risks to, health and safety in order to comply with all or any relevant statutory provisions.

The number of competent persons appointed will depend on the size of the business and

any risks to which employees might be exposed. Such person(s) must be given adequate time to perform their functions without any loss of pay. To perform such functions, they must also be given, *inter alia*, all information regarding factors that will, or are suspected to, affect the health and safety of employees.<sup>5</sup>

### **Co-operation**

Where there are safety representatives within the organisation, the employer must ensure there are adequate arrangements for co-operation between the competent person(s) appointed and such representatives.

An employer has an additional duty to identify all hazards and assess any risks presented by those hazards and, subsequently, to generate a written risk assessment setting out any risks.<sup>6</sup> When carrying out this assessment, it is incumbent on an employer to take account of the type of work in conjunction with the duties imposed by any relevant statutory provision. This risk assessment must be continually reviewed in light of

any significant change in the matters to which it relates, or where there is reason to believe that the risk assessment is no longer valid. It should be reviewed at least annually, or sooner if there has been any significant change. Where necessary, the risk assessment must be amended.

Under the 1989 act, employers had to prepare a safety statement.<sup>7</sup> The 2005 act<sup>8</sup> requires that the statement must contain more detail and include more headings than previously provided for.

In brief, the safety statement must set out:

- 1) The hazards identified,
- 2) The protective and preventative measures in place,
- 3) Any plans and procedures to be followed in case of emergency or imminent danger, and
- 4) The employees' duties, giving details of names and job titles of any employees responsible for performing safety tasks, together with arrangements in place for the appointment of safety representatives and for safety consultation.

Employers then have a duty to bring that statement to the attention of all employees when they begin their employment with the company, in addition to all other employees on at least an annual basis, or following any amendment to the statement.

### **Specific risk**

Where there is a specific risk to any other person who might attend to the place of work, such person should be made aware of the safety statement. In circumstances where a task will pose a serious risk to health and safety, the relevant extracts of the safety statement must be brought to the attention of those relevant employees and/or contractors.

There is also an obligation that the statement in its latest form should be available for inspection at, or near, every place of work to which it relates while work is ongoing in those areas.

Where employers share a place of work, each employer must ensure that they co-operate in the compliance and implementation of health and safety statutory provisions, and co-

## CONTROL OF THE WORKPLACE

### **\*Designers, manufacturers, importers and suppliers of articles or substances used at work**

Once again there was a similar provision in the 1989 act.<sup>1</sup> The provision is that, insofar as design, manufacture, importation and supply of any article is concerned, as far as reasonably practicable, any article used for work is safe and without risk to health when properly used. It must also comply with any relevant statutory provision, including EC directives (the latter obligation being new).

There is still the obligation to provide information about the arti-

cle, but a new provision has been inserted requiring that persons "to whom the article is supplied" are provided with any revisions of any information that the supplier knows to be a "serious risk" to safety and health. *Note that the obligation only arises where "serious risk" becomes known. This obligation could be far reaching, as there is no limit in time for the provision of information. In theory, details of the consignee would have to be held indefinitely in case information came to light at some time in the future.*

This section also has obligations about the testing and

research of the articles similar to the 1989 act.

### **\*Construction work project**

The 1989 act had a short section dealing with the obligation of "any person who designs or constructs places of work" so that "they are, so far as reasonably practicable, safe and without risk to health".

The 2005 act<sup>2</sup> removes any reference to "places of work" and simply refers to "construction work."<sup>3</sup>

Construction work is defined in the *Safety Health and Welfare at Work (Construction) Regulations 2001* as "any building, civil engineering or engineering construction

work" and not just construction "of the place of work" as in the 1989 act. *In discussions with the department, I understand that they take the view that this definition has been effectively imported into the 2005 act by virtue of section 4(3) and (4). I am not sure that they are correct in their view, but I do not propose in this article to advance my reasoning, given that I understand that new regulations will have been completed by the time this article appears and will have gone for public consultation with an expectation that the new regulations will be in place before the end of the year.*



ordinating protective and preventative actions, as well as informing employees and safety representatives of all or any risks.<sup>9</sup>

#### Health surveillance

There must be a system in place to ensure that health surveillance, appropriate to the risks, is available to relevant employees. Where employees are carrying out tasks which involve a 'serious' risk, the employer must ensure that these employees undergo assessment with a registered medical practitioner to assess their fitness for that task.<sup>10</sup> An example of this might be testing the hearing and sight of heavy goods drivers.

An entirely new provision in the 2005 act allows for the implementation of a joint safety and health agreement. Trade unions can enter into an agreement with employers (or employers' unions) in respect of health and safety issues. In certain circumstances, an application to the Health and Safety Authority (the authority) may be made to approve a joint agreement. The 2005 act sets out the steps to be followed in order to reach approval by the authority.<sup>11</sup> When there is an approved joint agreement in place, it should be taken into account by an inspector when assessing an

employer's compliance with relevant statutory provisions.

#### Part 4 – Safety Representatives and Safety Consultation

The existence of safety representatives and the need for consultation has existed since the 1989 act<sup>12</sup> and the 2005 act continues to emphasise the need for these practices. As in the 1989 act, employees are entitled to select a safety representative(s) from among their number.<sup>13</sup> Such safety representatives have the right to inspect the place of work on giving reasonable notice, or immediately following an accident, dangerous occurrence or imminent danger. They also have a role in investigating accidents or dangerous occurrences (or accompanying an inspector when carrying out an inspection), as well as investigating complaints made by other employees relating to health and safety. They can make representations to employers and/or inspectors on any matters relating to safety and health, in addition to having the right to receive advice or information from inspectors. Once the nature and extent of hazards in the workplace have been identified, employers and safety representatives should agree on the frequency of inspections

required. In this regard, employers have a duty to consider any representations made by their safety representative.

Alternatively, employers can agree to the creation of a safety committee made up of persons representative of the employer and employees for the purposes of consultation or representations on health and safety issues.<sup>14</sup> Any employees involved in these arrangements for consultation must be given time off without loss of pay to enable them to acquire any knowledge and/or training necessary or to discharge those functions.

#### Statutory protection

For the first time, employees have been given statutory protection in order to prevent an employer (or any person acting on his behalf), by act or omission, from affecting an employee to his/her detriment.<sup>15</sup> It protects the employee from dismissal, demotion, transfer of duties, discipline or intimidation where that employee is acting in compliance with any of the statutory provisions, performing a duty, or exercising a right under the statutory provisions.

Generally, all claims under this section are brought before the Rights Commissioner within six months of the occurrence. However, there is an exception,

whereby an employee who is dismissed for any of the above reasons is deemed to be unfairly dismissed for the purposes of the *Unfair Dismissals Acts 1977-2001*<sup>16</sup> and (s)he can choose to make a claim under that legislation. In any dismissal claim, it will be a defence if an employer can show that it was, or would have been, negligent for an employee to take the steps in question.<sup>17</sup>

The Rights Commissioner will hear the parties before either deciding that the complaint was or was not well founded, requiring an employer to take a specific course of action, or requiring an employer to pay compensation to the employee. Any appeal from that decision is made to the Labour Court (within six weeks of the date of the decision). Any further appeal is on a point of law only to the High Court.

When an employer, for whatever reason, does not carry out the matters directed by the Rights Commissioner, an employee can bring a complaint to the Labour Court if the time has passed for an appeal. Once the Labour Court issues (and publishes) its determination, if the employer refuses to carry out the matters therein within six weeks from that determination, an employee may apply to the Circuit Court for an appropriate order.

When the definition is prescribed, the new obligation will require the person who commissions or procures a project to appoint a "competent person", or require the person who designs the project, to ensure that the project, so far as reasonably practicable:

- 1) Is designed and is capable of being constructed to be safe and without risk to health,
- 2) Is constructed to be safe and without risk to health,
- 3) Can be maintained safely and without risk to health when used, and
- 4) Complies in all respects with relevant statutory provisions.

The person who carries out the construction has obligation 2 and 4 above.

A 'competent person' is a term used throughout the act and is defined as a person who has "sufficient training, experience and knowledge appropriate to the nature of the work undertaken", having regard to the task to be performed and taking into account the size or hazards undertaken.

Section 18 requires an employer to appoint one or more<sup>4</sup> competent persons to "perform such functions as are specified by the employer, relating to the protection from and the prevention of risks to safety,

health and welfare at work".

A 'competent person' should not be confused with a 'safety representative', the latter being appointed by employees. (This is dealt with above.) The competent person has to be given adequate time, without loss of remuneration, to enable him/her perform such functions specified by the employer.

*Note that, subject to the following, the control over the competent person's remit in safety, health and welfare matters remains with the employer, that is, the employer must specify the functions to be performed. The employer must appoint an employee, unless there is no*

*employee who has adequate or appropriate knowledge or experience for the functions conferred by the employer.*

#### Footnotes

1. Section 10
2. Section 17
3. Defined as "the carrying out of any building, civil engineering or engineering construction work as may be prescribed".
4. "Adequate having regard to the size of the place of work, the risks to which employees are exposed and the distribution of those risks in the place of work" section 18(2)(a).

## Part 6 – Regulations, Codes of Practice and Enforcement

Part 6,<sup>18</sup> in addition to enforcement issues, extends the provisions previously provided in the 1989 act<sup>19</sup> concerning the monitoring and the making of regulations and codes of practice.

Where codes of practice are relevant to any contravention for which a person is being prosecuted, that code may be used in evidence, in a prosecution under the act, a code or codes of practice may be used as evidence of non-compliance with the act.

While the 1989 act provided a range of powers to inspectors, the 2005 act<sup>20</sup> enhances those powers and gives an inspector the authority to enter into, inquire, search, examine, inspect, take measurements and/or recordings and/or photos of any place and/or work activity, installation, process or procedure that is subject to relevant statutory provisions.

He may also require records to be produced in a legible form, to inspect or take copies of any documents or computer records and remove and retain such records.

Furthermore, the inspector may, by written notice, require that a specified person furnish information to the inspector. He may examine any person who he reasonably believes may be able to assist in the search, examination, inspection or inquiry and to have that person sign a declaration as to the truth of his answers. If it is found that any such article or substance appears to be, or has been, a risk to safety or health, the inspector can require it to be dismantled or subjected to further testing.

Where it is thought that there is occurring, or likely to occur, any activity which is likely to involve a risk of personal injury or to health and safety, or where there has been an accident, etc, an inspector/the authority may:

- Seek an improvement plan<sup>21</sup> identifying the risk, and seek the employer's plan as to any remedial action proposed to

be taken, together with any other conditions within the time specified,

- Issue an improvement notice<sup>22</sup> where the inspector opines that there is, or has been, a contravention of a statutory provision, or a failure to submit an improvement (or revised) plan, (s)he may, by notice in writing, issue such notice setting out the action that must be taken to remedy such contravention or failure to comply,
- Issue a prohibition notice<sup>23</sup> where an inspector is of the opinion that there is an activity occurring, or likely to occur, that would involve a risk of serious personal injury. This notice should detail the reasons for his opinion, the activity in question, whether the activity contravenes the legislation, and prohibit the activity until the risk, or matter(s) likely to give rise to such risk, is remedied,
- Investigate and issue a special report.<sup>24</sup> The authority can investigate and issue special reports regarding circumstances surrounding any accident, incident, personal injury, occurrence or situation, or any other matter related to the general purposes of the act. Its inspectors may also make an *ex parte* application to the High Court in order to restrict or prohibit a place of work, where it considers that there is a risk to health and safety which is so serious that such place of work must be prohibited or restricted until such time as specified measures have been taken to reduce such risk to a reasonable level.

## Part 7 – Offences and Penalties

Most notably, unlike the 1989 act, a breach of obligations in the 2005 act is an offence that will attract criminal sanctions, although the 2005 act separates two main categories of offence into 'serious'<sup>25</sup> and 'less seri-

ous'.<sup>26</sup> Among the matters listed as less serious offences are such things as, *inter alia*, failure to discharge a duty such as hazard identification and risk assessment, failure to consider representations made by a safety representative, preventing a person from answering any question posed by an inspector, failure to submit an improvement plan within the time specified or to implement such a plan adequately.

The more serious offences include, *inter alia*, failure by an employer to discharge his general duties as set out in section 8 and failure to provide information, instruction, training and supervision for employees; and any obstruction or impeding in any way an inspector in exercising his functions, or forging documents or making false entries intentionally into record books.

Any prosecution for the former, less serious, offences shall be brought in the District Court where, on summary conviction, a person will be liable to a fine not exceeding €3,000.<sup>27</sup>

In relation to the more serious offences,<sup>28</sup> liability on summary conviction will be a fine not exceeding €3,000 or imprisonment for a term not exceeding six months, or both. If convicted on indictment, a person will be liable to a fine not exceeding €3,000,000 or imprisonment for a term not exceeding two years, or both.

### On-the-spot fines

There is also an enabling section<sup>29</sup> that allows the minister to introduce regulations to allow for on-the-spot fines in certain circumstances. Such a fine should not exceed €1,000 and, once paid, a receipt should issue. Where such a fine is paid, no prosecution in respect of the alleged contravention should occur. If, for any reason, proceedings are nonetheless issued, the onus will be on the accused to show that payment was made in respect of the notice.

The 2005 act<sup>30</sup> goes on to pro-

vide for liability of directors and officers in circumstances when an offence is committed by an undertaking, and where it can be shown that the commission of such an offence was authorised/consented to in some way by a director, manager or other similar officer, and in such circumstances that both the person and the company will be guilty of an offence and liable to prosecution. Summary proceedings may be instituted in the District Court. Any appeal from the District Court is made to the Circuit Court, whose decision will be final and conclusive.

The authority has the power to publish the names of any persons upon whom fines or other penalties are imposed or upon whom a prohibition notice has been served.<sup>31</sup>

### Footnotes

1. Section 6, 1989
2. Section 18
3. Section 2(2)(a) and (b)
4. Section 18(4)
5. Pursuant to section 11
6. Section 19
7. Section 12, 1989
8. Section 20
9. Section 21
10. Sections 22 and 23
11. Section 24
12. Section 13, 1989
13. Section 25
14. Section 26
15. Sections 27 to 31
16. Section 27(4)
17. Section 27(7)
18. Sections 57 to 76
19. Part IV, sections 27-31, 1989
20. Section 64
21. Section 65
22. Section 66
23. Section 67
24. Section 70
25. As set out in section 77(1)
26. As set out in section 77(2)
27. Section 78
28. As set out in section 77(2) to (8) and (9)(a)
29. Section 79
30. Section 80
31. Section 85 **G**

*Boyce Shubotham is a member of the Employment and Equality Law Committee.*

# First Law Update

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## CRIMINAL

### Delay

*Judicial review – prohibition – delay – sex abuse – whether the delay was such as to give rise to a real risk that the applicant would not receive a fair trial.*

The applicant was a Christian Brother charged with a number of counts of buggery, indecent assault and attempted buggery, allegedly perpetrated against six minors, five of whom were residents of Artane Industrial School and alleged to have occurred as far back as 1961. The applicant sought orders of prohibition in respect of the charges, on the ground that due to the lengthy delay between the dates of the alleged commission of the offences and the making of complaints in relation thereto, and further by reason of the delay in prosecuting the offences, he could not receive a fair trial. Furthermore, the applicant alleged that his defence was prejudiced by the fact that essential witnesses were either dead or non-traceable and he also alleged that he could not receive a fair trial due to the large amount of prejudicial press coverage of the Artane Industrial School in recent times.

O'Neill J dismissed the application, holding that:

- 1) The delay in prosecuting the applicant did not contribute to a risk of an unfair trial and

the applicant failed to establish any particular prejudice relative to that delay.

- 2) Although there was an inordinate delay between the date of the commission of the alleged offences and the reporting of same, that delay was explained and justified. Furthermore, the applicant failed to establish specific prejudice in regard to his capacity to defend himself against the allegations by reason of that delay.
- 3) Any problems arising from the prejudicial publicity could be dealt with by the trial judge by way of an appropriate direction.

**A(S) v DPP, High Court, Mr Justice O'Neill, 18/7/2005 [FL11180]**

### Extradition

*European arrest warrant – transitional arrangements – whether application should have been made under provisions of European arrest warrant – European Arrest Warrant Act 2003 (Designated Member States) Order 2005 – Extradition Act 1965, section 26(1) – European Arrest Warrant Act 2003, sections 3, 4.* The authorities in the Czech Republic sought the extradition of the respondent. On 15 March 2005, an application for an arrest warrant was made to the High Court, which was granted pursuant to section 26(1)(b) of the

*Extradition Act 1965* and upon which the respondent was subsequently arrested and detained pending his extradition. From 1 January 2004, the *European Arrest Warrant Act 2003* was in operation in the state. On 1 May 2005, the Czech Republic became a member of the European Union and, by the *European Arrest Warrant Act 2003 (Designated Member States) Order 2005*, the Czech Republic was designated as a member state that had given effect to the European arrest warrant scheme. Section 4(1) of the 2003 act provides that “this act shall apply in relation to an offence, whether committed or alleged to have been committed before or after the commencement of this act”. The respondent sought a discharge of the High Court order on the basis that, in those circumstances, the 1965 act ceased to be the appropriate legislative provision for the purposes of any request from the Czech Republic seeking extradition of any person from the state and that the correct way of proceeding was for the Czech Republic to seek the respondent's extradition by means of a European arrest warrant.

Peart J discharged the order that directed the arrest of the respondent to allow his extradition, holding that nothing in the EU Council framework decision permitted or contemplated a

postponement of the operation of the new procedures for the European arrest warrant to a date beyond the date of accession of the Czech Republic on 1 May 2004. It followed that once the Czech Republic had been designated for the purposes of section 3 of the 2003 act, there was no other arrangement for extradition between that state and Ireland, and the Czech Republic ought to have withdrawn its prior request for extradition and issued a fresh application under the European arrest warrant.

**Attorney General v Klier, High Court, Mr Justice Peart, 19/7/2005 [FL11216]**

### Proceeds of crime

*Whether gardai failed to comply with provisions of the Police (Property) Act 1897 – whether insufficient evidence to recite belief that respondent in possession of proceeds of crime – whether statements admissible in evidence – Proceeds of Crime Act 1996, s3.*

The plaintiff sought an order pursuant to s3 of the *Proceeds of Crime Act 1996*. The plaintiff contended, firstly, that the gardai seized property but failed to bring an application to comply with the provisions of the *Police (Property) Act 1897*; secondly, that there was insufficient evidence to recite a belief that the respondent was in possession of property that constituted the



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proceeds of crime; and thirdly, that statements taken by the gardaí and signed by the defendant were not admissible in evidence.

Finnegan P granted the relief sought, holding that:

- 1) The 1897 act did not oblige the gardaí to bring an application pursuant to the 1897 act, but merely empowered them to do so.
- 2) The witness held the belief and there were reasonable grounds for the belief and the evidential burden then shifted to the defendant.
- 3) The statements were admissible evidence in a civil case.

**McK(FJ) v McD(S), High Court, Finnegan P, 4/7/2005 [FL11244]**

## DAMAGES

### Assessment

*Miscarriage of justice – malicious prosecution – causation – damages – principles to be applied – classification – whether grounds for award of aggravated damages encompassed by award of general damages under statutory scheme for miscarriage of justice – Criminal Procedure Act 1993, ss2 and 9.*

The plaintiff had been imprisoned for 27 months on conviction of various charges of knowingly allowing drugs to be used on his licensed premises, the Point Inn. It subsequently transpired that his conviction had been secured as a result of planted and perjured evidence by the gardaí. He obtained a certificate from the Court of Criminal Appeal, pursuant to section 9(1) of the *Criminal Procedure Act 1993*, that a newly discovered fact showed that there had been a miscarriage of justice in his case. The plaintiff then had the option, under section 2(2) of the act, of applying to the minister for compensation or of instituting an action for damages arising out of the conviction. The plaintiff opted to institute an action for damages. The defendant accepted that the matter should proceed as an assessment, the issues being causation and

remoteness of damage. The plaintiff claimed damages for financial loss arising from the loss of his properties and businesses carried out thereon, general damages under common law in respect of events pre-dating his being charged with the offences by the gardaí, general damages under section 9 of the 1993 act in respect of events post-dating his charge, and aggravated and exemplary damages.

Finnegan P awarded the plaintiff €1,923,871 in damages (encompassing €550,000 for loss of profits at the Point Inn, €806,221 in respect of property loss, €5,000 in respect of general damages prior to his being charged, €500,000 general damages under the 1993 act, and €50,000 for exemplary damages), holding that the plaintiff had established the required factual nexus between his malicious prosecution by the gardaí and his conviction and the damage he suffered, including loss of liberty and reputation, stress and other mental and physical injury, financial loss arising from a fire and the receivership of his premises, which satisfied the test of causation. While grounds for awarding aggravated damages existed, they were encompassed by the award of general damages made under the *Criminal Procedure Act 1993*, as it was intended to take account of injury to feelings, loss of dignity, humiliation, frustration, helplessness and despair, including despair at the failure of the criminal justice system.

**Shortt v Commissioner of An Garda Síochána, High Court, Mr Justice Finnegan, 12/10/2005 [FL11272]**

## LAND LAW

*Lis pendens – legal and beneficial interest in property – whether plaintiff entitled to legal and beneficial interest in property – retention of sum if bona fide sale on open market.*

The plaintiff was a solicitor practising in Dundalk and, for a num-

ber of years, the defendant was his client. The plaintiff sought a declaration that he was entitled to a legal and beneficial interest in certain properties in Dundalk. The basis of the claim was an alleged agreement between the plaintiff and the defendant. The parties brought various motions that required the determination of two issues, namely: whether the plaintiff had an arguable case that he had an interest in the property and therefore was entitled to retain the *lis pendens* and, in the event of a sale, what portion of the net proceeds should be retained pending the resolution of the proceedings.

Clarke J declined to vacate the *lis pendens*, holding that the plaintiff retained a claim to a beneficial interest in the property. In the event of a *bona fide* sale on the open market, an appropriate sum to represent the plaintiff's claim to a beneficial interest together with an additional sum to represent the stamp duty would be retained.

**McCourt v Tieran, High Court, Mr Justice Clarke, 29/7/2005 [FL11309]**

## TORT

### Negligence

*Causation – plaintiff falling on public footpath – allegation of misfeasance in leaving manhole cover protruding as trap to unwary pedestrians – whether cause of fall due to manhole cover – whether case proven on balance of probabilities.*

The plaintiff, an 84-year-old lady, sought damages for personal injuries suffered as a result of a fall on a public footpath, which she alleged had been caused by the misfeasance and negligence on the part of the defendants in leaving a manhole cover protruding above the footpath surface during works thereon. One of the defendant's witnesses was a man who had witnessed the plaintiff immediately prior to and after the fall and who had come to her aid after the fall. His evidence was that the plaintiff had fallen some distance from the manhole cover

and had been unsteady on her feet prior to the fall.

Herbert J dismissed the plaintiff's claim against all three defendants, holding that the onus of proof was on the plaintiff to demonstrate, on the balance of probabilities, that she fell and was injured because she tripped over a manhole cover that had been left elevated above the surface of the footpath. On the balance of probabilities, the plaintiff fell at a point removed from the manhole cover and for reasons unassociated with any misfeasance or negligence on the part of the defendants.

**Cuddy v Laois County Council, High Court, Mr Justice Herbert, 28/7/2005 [FL11213]**

### Nuisance

*Injunction – whether serious issue to be tried – whether irreparable harm would be suffered by plaintiff – where balance of convenience lay – whether interim injunction should be granted to abate nuisance.*

The plaintiffs carried on business on a site adjacent to that owned by the defendant. They complained that the defendant allowed Travellers to create a nuisance on its lands by, among other things, parking and littering there, and they failed to take any or any adequate steps to abate the nuisance. They sought an interlocutory injunction directing the defendant to abate the nuisance and prevent further trespasses on its lands by the Travellers.

Gilligan J directed the defendant to abate the nuisance, holding that the responsibility that attached to an occupier because he had possession and control of the property could not logically be limited to the mere creation of the nuisance and should extend to his conduct if, with knowledge, he left the nuisance on his land. The plaintiff had made out a serious issue to be tried, had demonstrated irreparable harm and had shown that the balance of convenience favoured the grant of an injunction, as the defendant had not taken all reasonable steps to abate the nuisance and remedy

the situation when it became aware of it.

**Harrington Confectioners Ltd v Cork City Council, High Court, Mr Justice Gilligan, 5/7/2005** [FL11273]

#### Personal injuries

*Road traffic accident – assessment of damages – whether principle in assessment by trial judge correct.*

The plaintiff suffered injuries arising from a road traffic accident and received €45,000 for general damages and €4,500 for special damages. The appellant argued that the approach of the trial judge was wrong in principle, in that he took three separate areas, then added them together but failed to look at the amount as a whole. No offer in this case had been made to the plaintiff prior to the appeal.

The Supreme Court held, in

an *ex tempore* judgment, that the trial judge did err, and amended the amounts. It also considered it desirable that, in this case, an offer be made to the plaintiff.

**McCarthy v Walker, Supreme Court, 3/6/2005** [FL11172]

#### PIAB

*Personal Injuries Assessment Board Act 2003 – whether the action that was the subject matter of these proceedings was a civil action.*

The plaintiff instituted proceedings claiming damages for personal injuries suffered by him due to the negligence of the first and second-named defendants arising out of a road traffic accident. In its defence, the third-named defendant pleaded that the plaintiff was not entitled to issue proceedings without reference to the Personal Injuries Assessment Board

(PIAB) and, accordingly, these proceedings were misconceived and ought to be dismissed. The plaintiff contended that the action was not a civil action within the meaning of section 4 of the act of 2003 or, alternatively, if it was such an action, it came within the exclusion contained in section 4(i). Finnegan P dismissed the proceedings, holding that:

- 1) The action against the third-named defendant, while not an action for damages, was an action to recover damages and in respect of damages and, accordingly, was a civil action within the meaning of section 4 of the act of 2003 and came under the provisions of section 3(d) of that act.
- 2) The cause of action against the third-named defendant was the same as against the first

and second-named defendants and the intention of joining the third-named defendant was to recover damages for negligence awarded against the uninsured first and second-named defendants. Accordingly, the action did not come within the exception provided for in section 4(l)(i).

**Campbell v O'Donnell and Boyle and The Motor Insurers Bureau of Ireland, High Court, Finnegan P, 26/7/2005** [FL11163] **G**

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

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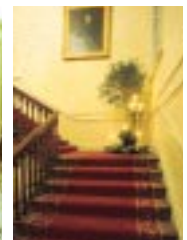
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# Eurlegal

News from the EU and International Affairs Committee

Edited by TP Kennedy, Director of Education, Law Society of Ireland

## The *State Aid Action Plan*: issues for Innovation Ireland (part 2)

The action plan's emphasis on strengthening the economic analysis of state-aid measures is seen in Brussels as long overdue and a key tool to ensure that the reformed state-aid policy contributes to the revitalized *Lisbon Agenda* objectives.

At this early stage of the four-year reform, the types of issues that could benefit from a more refined economic analysis include:

- Using economic principles and guidance to increase the effectiveness of state aids
- Identifying and, most importantly, better targeting 'market failures'
- Simpler and more transparent and predictable state-aid measures and procedures.

From the chief economist's perspective, the last of these may be the most crucial aspect of the planned reforms for boosting investment and jobs. Given the dynamic nature of state-aid econometric analysis – which, unlike standard economic analysis in merger cases, must also take account of the social objectives of state aid written into the treaty – the key task for the economist will be to maximise the efficiency of state-aid policy in achieving these economic and social objectives by targeting market failures.

This in turn requires the economist to ask three fundamental questions:

- Does the particular aid measure have an incentive effect or does the aid solve the relevant 'market failure'?
- Is the aid measure the best-placed policy instrument to remedy the market failure?

- Is the aid the minimum necessary as regards both the amount and the duration?

Despite the fact that the commission is already using this three-stage analysis to underpin its most recent state-aid decisions, the chief economist has warned that the complexity of the economic analysis in state-aid cases means that it will be much easier to build economic principles into the expanded block-exemption regulations to achieve the action plan's key objectives than trying to apply the analysis in individual cases.

### Identifying and better targeting the 'market failures'

The Neelie Kroes approach to state aid can be summarised as one that seeks to identify and focus on those situations where spending public money can make a difference. According to the action plan, this occurs only where there are 'market failures'.

So what is a market failure? Officially, this is generally defined as one where the market does not lead to an economically efficient outcome. For example, according to the commission, in the risk capital markets – where normal market conditions typically mean that small, innovative and thus risky businesses face real problems in getting funding – state support is sometimes the only way to incentivise investors, to make them consider supporting innovative ventures.

Unofficially, senior commission officials refer to the recent withdrawal by the government

of the €170 million aid for the development of the Intel plant at Leixlip as a prime example of a situation where there was *no* market failure. From Brussels' perspective, the fact that Intel announced that it was proceeding with the investment two days after the commission had told Dublin that it would open a formal investigation into the planned aid underlines how the action plan's focus on 'market failures' is needed to strictly limit those cases where large employers and dominant companies in particular can persuade governments to support an otherwise commercially-viable investment.

### Rebuilding the procedural state-aid architecture

The third key objective of the action plan is to achieve more effective state-aid procedures, better enforcement, higher predictability and enhanced transparency of the state-aid rules (including sharing responsibility for enforcement with the member states).

#### More effective procedures:

According to the commission, the starting point is to achieve more predictable and shorter timelines in its investigations. Unofficially, the aim is to reduce the time taken to complete a second-phase investigation – that frequently overruns the 18-month backstop laid down in the procedural regulation (regulation 659/1999, *Official Journal*, L83 of 27/3/1999, as amended) – to between four and six months (except in major cases and where the commission has to call on external consultants).

To achieve this remarkable time compression, the commission plans to adopt more transparent state-aid rules that will make it easier for national authorities to fill in the notification forms. This will help reduce the regular situations where the commission has to dispatch several requests for information and analyse the replies before the notification can be declared complete.

More interestingly from the practitioner's perspective, the commission will seek to enhance the role of the national authorities on two different levels.

Firstly, the commission pleads for a 'change of mentality' at member-state level by, for example, appointing a central entity to filter the quality of notifications before they go to Brussels while simultaneously allowing the member state to build up a valuable, central store of state-aid experience. At present in most member states, that knowledge and experience is dissipated across a wide variety of regional and local granting authorities and the central entity merely acts as the 'postman' to Brussels.

The commission is also examining significantly increasing its use of the powers in the procedural regulation to issue information injunctions and implementation injunctions to require notifying authorities to supply information to back up their notifications.

**Better enforcement:** As underlined earlier on, the action plan's reliance on considerably expanded block-exemption regulations will require the commission to strengthen its *ex post* control of state-aid decisions or

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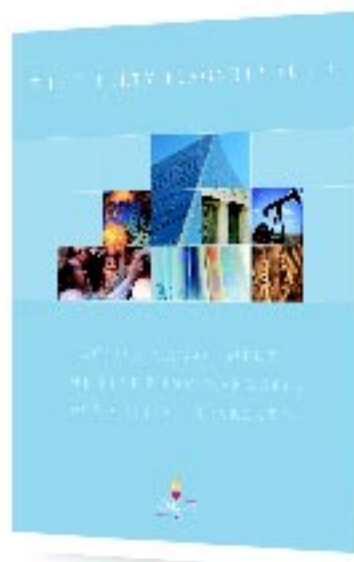


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risk that the aid-measures ostensibly covered by the block exemption regulation do not fulfil the necessary exemption criteria.

In the light of the case law (for example, *C-57/97 Belgium v Commission* [1999] ECR-I 3671), the commission plans to further strengthen its enforcement role by adopting a much stricter approach as regards non-notification of aid measures that are either not *de minimis* or not covered by a relevant block-exemption regulation. This 'get tough' attitude will also extend to more active monitoring of existing aid decisions and recovery decisions by the new Enforcement Unit within DG Competition.

To this end, in September 2004, the commission launched a study of the national procedures for enforcing state-aid decisions. The study has two broad aims:

- To give DG Competition a better understanding of the national procedures used for the enforcement of state-aid law, in order to enable them to assess whether those procedures (in particular in protecting the rights conferred on competitors of the beneficiaries of unlawful aid) allow the immediate and effective execution of the commission's state-aid decisions imposing a recovery obligation
- To determine whether the national authorities are taking all the necessary steps available in their national legal systems to execute these recovery decisions.

Furthermore, since its launch, some senior commission officials have emphasised the references in the action plan to various novel, if not, revolutionary ideas to 'decentralise' the enforcement of state-aid decisions. In particular, the commission appears intent on pursuing the suggestion in the action plan that independent authorities (such as Courts of Auditors in some countries) could assist the commission in the detection and the



Complainants: 'the commission's best friend'

provisional recovery of illegal (ie, non-notified) aid and the execution of formal recovery decisions.

**Rights of complainants:** Despite assurances by commissioner Kroes at a recent conference that the complainant "was the commission's best friend", in the action plan at least the commission has deliberately left out any discussion of enhancing the procedural rights of third parties (including complainants and affected competitors) during state-aid investigations. (In joined cases T-228/99 and T-233/99, *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v Commission* (ECR 2003 II-00435), the CFI reiterated that third parties, including complainants, are treated as 'information sources' only and do not enjoy the same rights to be involved in the commission's investigation as, for example, member states.)

Not surprisingly, the commission was anticipating a significant volume of comments on this missed opportunity – especially from the European bars – by the time consultation on the action plan closed on 15 September 2005. While individual officials may be inclined to move further on this, the party line remains that the commission's role of assessing the anti-competitive effects of an aid measure does not require it to intervene in any relationship between member states and ben-

eficiaries and/or affected complainants.

However, the action plan's aim to substantially increase the use of block-exemption regulations, coupled with enhanced oversight by the national courts and/or independent competition authorities, implies potentially significant procedural, complainant-friendly developments. For example, national courts prodded by complainants could play a greater role in verifying that individual aid measures ostensibly covered by a block-exemption regulation or significantly higher *de minimis* threshold – and that have not therefore been notified to the commission – actually fulfil the necessary exemption criteria.

Beyond these developments, the action plan refers to some equally interesting changes, including a proposal to amend the procedural regulation to allow the commission to apply to the European courts to impose penalties on particularly recalcitrant member states that fail to notify their state-aid measures, and to enhance the commission's powers to carry out market investigations to gather relevant sectoral information.

#### Issues for innovation Ireland

In the first part of this article, I noted that the first step in the rollout of the action plan was to be the October publication of a consultation on state aid for innovation. The *Innovation Communication*, only launched on 21 September, is already being portrayed as one of six key actions to make EU business more competitive, alongside, for example, a new industrial policy and the controversial *Services Directive*.

According to European Commission studies, financing innovation for highly innovative SMEs is a significant challenge in several key European industrial sectors in Ireland. More generally, European business R&D expenditure has consistently been significantly lower relative to the US and Japan.

The data confirm that, in the country's five most important manufacturing R&D sectors (electrical and electronic equipment, pharmaceuticals, instruments, food, drink and tobacco, and machinery and equipment), Ireland is investing significantly less than the average of its OECD competitors and, in some cases (pharmaceuticals), far less than the European leaders in R&D (in this case, Sweden). Almost two-thirds of Irish business R&D is performed in foreign-owned industry, mainly in pharmaceuticals and electronics and engineering. Since their establishment in Ireland, many multinational companies have set up either formal or informal R&D activities but, in the main, these are related to manufacturing process improvements and rely on innovation generated outside Ireland.

#### Market failures in innovation Ireland

The first part of this article stressed the importance placed by the European commission in the action plan on the need to focus state aid on 'market failures'.

According to the July 2004 Enterprise Strategy Group (ESG) report, "*while the financial environment for enterprise has improved considerably ... there are still market failures in the ... availability of risk capital for start-up companies. In these situations, the potential wider economic and social benefit of investment is not fully captured by private investors, and there is a need for some state intervention.*"

#### State aid for innovation in Ireland

At first sight, the core provisions of the *Innovation Communication's* recommended future treatment of public support for R&D activities in Ireland would appear to go some way towards removing any state-aid concerns associated with government measures to remedy the innovation 'market failures' identified in the ESG report.



In particular, the *Innovation Communication* suggests that any future general block-exemption regulations, guidelines and/or other notices offering automatic exemption from the notification obligation for innovation state-aid measures will cover three distinct types of activities:

- Supporting the creation and growth of innovative start-ups
- Increasing the availability of risk capital for innovation
- Aid for technological experimentation and risks of launching innovative products.

Nonetheless, any public support for innovation that seeks the protection from the sanctions against illegal state aid, which would be the main advantage offered by such a general block exemption regulation, will need to be measured against the following four yardsticks set out in the action plan, namely:

- There must be a *well-defined* market failure
- State aid should be the appropriate policy instrument, as opposed to structural policy or regulatory action
- The aid must have an incentive effect and be proportionate
- Distortions of competition must be limited.

When applying these tests, the proponents of the innovation measure could take some comfort from the fact that, in the light of the mounting evidence of the EU R&D gap with the US and Japan (and in the not-too-distant future, China and India), the European Commission generally accepts the need for support measures for innovation.

However, the application of these tests could still prove controversial in Ireland.

#### Large corporations need not apply

The *Innovation Communication*, as drafted, would only benefit state aid for technological innovation carried out by Irish SMEs. The commission's initial

position is that "state aid ... to large undertakings or to undertakings with a high market share may only be authorised after an investigation by the commission" (paragraph 24). (Under the current *Regional Aid Guidelines* (2000-2006), the aid beneficiary would be 'dominant' if it accounts for more than 25% of the product concerned.)

Under community law, an SME is currently defined as an enterprise that employs less than 250 people and has an annual turnover not exceeding €50 million, and/or an annual balance sheet total not exceeding €43 million.

On the basis of the latest figures available relating to R&D expenditure relative to company size, most companies in Ireland are therefore likely to welcome the added legal certainty derived from the *Innovation Communication*'s clear bias towards, and presumption of pro-competitiveness for, state aid for innovation by SMEs. This should be especially helpful for any government efforts to stimulate large-scale R&D investment (in excess of €2 million) by indigenous (as opposed to foreign-owned) companies in key sectors.

On the other hand, and as the Intel controversy earlier this year demonstrated (noted in the first part of this article), the initial presumption in the *Innovation Communication* against state aid to large companies with a dominant market position – with the exception, perhaps, of those in the biotech and pharmaceuticals sectors and/or where the companies are central to the establishment of so-called 'poles of excellence' – could still prove politically difficult in Ireland.

#### Aid for 'technological innovation' only

The *Innovation Communication* proposes that any general block exemption regulation would only cover activities that relate to technological innovation (paragraph 25). According to the commission, this restriction in the scope of any *de jure* exemp-

tion from notification for state-aid measures is necessary for two main reasons, because: (a) non-technological innovation activities could practically cover any routine activity of the beneficiaries (thus potentially encompassing operating aid that is invariably prohibited under the state-aid rules); and (b) of insufficient data concerning the significance of state-aid measures for innovation in the services sector.

#### Regional flexibility?

The extent to which Ireland could still benefit from any flexibility implicit in the *Innovation Communication* allowing for a more lenient approach to state aid for large companies located in assisted regions of the EU remains to be seen.

Recently, the commissioner has suggested that, despite the radical review of the *Regional Assistance Guidelines* after 2007 – particularly in favour of the new member states – it would be possible to allow the member states some room for manoeuvre to define some of their other regions as needing special treatment and in the commission's own words, "to promote the realisation of the objectives and targets of the *Lisbon Agenda*."

Finally, Ireland produces fewer of the researchers necessary to support an innovation-driven economy than most of its OECD competitors. In the light of recent reports concerning the recruitment difficulties in the Irish high-tech sectors, the proposed limits on state aid to attract researchers and engineers to Ireland will probably feature in the government's response to the *Innovation Communication*.

#### Issues and questions

The proposals in the *Innovation Communication* for extending the legal benefits of a block-exemption regulation or other form of guidance to public measures supporting investment in R&D should be welcomed by the government and the vast majority of companies in Ireland that take

up the challenge of closing the 'innovation gap' with our EU and foreign competitors.

Nevertheless, and before the public consultation period on the *Innovation Communication* closes on 21 November, it would be sensible to consider to what extent the presumptions and trends described in the *Innovation Communication* (for example, away from aid to large companies and employers and, at least initially, excluding aid for innovation in the services sector) present particular difficulties in the light of the structure of the Irish economy.

Looking beyond Ireland, it may be legitimate to ask how a 'modernised' state-aid regime focused exclusively on identifying and allowing public support for 'market failures' as described in the action plan and the *Innovation Communication* will enable European companies (both large and small) to continuously move up the value-chain to meet the challenges from Indian and Chinese innovators.

For state-aid practitioners in Ireland, the procedural ramifications of the action plan are likely to prove most interesting. In the absence of any suggestion in the action plan of improvements to third-party rights of access and intervention in state-aid cases, the procedural changes mooted by the commission hold out the prospect not just that potential state-aid beneficiaries will require more assurances from their advisers, but that the particular measures fulfill the relevant block-exemption regulation criteria.

In the event of a challenge, the lawyers should also prepare to protect the complainant's rights under national law before the national courts and/or the independent competition bodies that will play a much greater role in declaring the aid illegal and thus repayable. **G**

*Conor Maguire is a Brussels-based solicitor. The first part of this article appeared in last month's 'Eurlegal'.*

# Recent developments in European law

## COMPETITION LAW

Case C-438/02, *Krister Hanner*, 31 May 2005. Since 1970, the retail sale of medicine in Sweden has been entrusted to Apoteket, a company that is under state control and has a monopoly on the sale of medicine in Sweden. In 2001, Bringwell International AB sold 12 packages of nicotine patches and nicotine chewing gum in Stockholm. As these products are regarded as medicines in Sweden, this was in breach of Swedish law. Criminal proceedings commenced against Mr Hanner, the general manager of Bringwell. The Swedish court referred a number of questions to the ECJ to ascertain whether the

sales monopoly on medicine was contrary to EC law. The ECJ held that Apoteket is a state monopoly of a commercial character within the meaning of EC law. EC law does not require total abolition of such monopolies but requires them to be adjusted in such a way as to ensure that no discrimination exists between nationals of member states. For sales monopolies, the court had held that monopolies arranged in such a way that trade in goods from other member states is placed at a disadvantage, compared with trade in domestic goods, are not allowed. The agreement between the Swedish state and Apoteket does not provide for a purchasing plan for calls for tender, providing

an opportunity for the producers of products that are not selected to ascertain the reasons for the selection and to contest selections decisions before an independent supervisory authority. Apoteket appears to be entirely free to select a product range of its choice. This agreement does not ensure that all discrimination is ruled out and the Swedish government has not claimed that any other measure exists that might compensate for that lack of safeguards. The ECJ held that Apoteket's system of selecting medicines is liable to place medicines from other member states at a disadvantage, and its sales monopoly is not arranged in such a way as to rule out any discrimi-

nation against such medicines. It is, therefore, in principle contrary to EC law. The grant of exclusive rights contrary to EC law may be justified. This is in the case of an exclusive right granted to an undertaking providing services of general economic interest in circumstances where the task undertaken in the general interest can only be carried out through the grant of such a right and provided that the development of trade is not affected to such an extent as would be contrary to the interests of the EC. However, in the absence of a selection system that excludes all discrimination against medicines from other member states, the sales monopoly in question cannot be justified.

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## Wicklow Bar Association in the dock

Local members of the Wicklow Solicitors' Bar Association (WSBA) found themselves in the unusual position of standing in the dock of a German courthouse recently. However, it was not for any untoward reason, but to experience a piece of history.

Thirteen members of the WSBA and two counsel took part in the second annual trip to Europe (last year being Finland). This year's venue was Nuremberg, Germany. These trips encourage legal and cultural exchange. Contact with Nuremberg was made by Ian Munnelly, solicitor in the law department of Wicklow County Council, with Nuremberg lawyer, Norbert Oswald.

Nuremberg was the venue for the famous trials of Nazi war criminals after World War II. The dock in which our lawyers found themselves was the same dock used by war criminals during their trial. The courtroom is still used for trials.



PHOTO: KEVIN STAUNTON BL

(Back, from left): Richard Cooke, Fergus Kinsella, Edmund Louth, Mary Miley, Bernard O'Beirne, Cathal Louth (president) and David Tarrant; (front, from left): Damien Sheridan BL, Ian Munnelly, Donal O'Sullivan, Tom Honan, Jennifer Haughton, Karl Cearney and Pat O'Toole

Members were treated to a visit to the opera, to the stadium (now in ruins) where

the famous Nuremberg Rallies were held by Hitler, and to Nuremberg football club,

which will be one of the venues for the forthcoming World Cup.

The hospitality far exceeded our usual *céad míle fáilte*. The highlights of the trip for two members of the association was to take Mr Oswald's BMW M Sports car to the limit on the autobahn (where there is no limit).

The WSBA would like to thank their German hosts for their hospitality and kindness and look forward to a reciprocal visit from our Nuremberg colleagues in the near future. **G**

### SOLICITORS' HELPLINE

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01 284 8484



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PHOTO: M MORIARTY

#### Tipperary Star!

Rosario Joyce is congratulated by her husband Philip (currently Junior Vice-President of the Law Society) after she took silk on 7 October



#### Chain of gold, grip of steel

The new president of the Dublin Solicitors' Bar Association is Brian Gallagher, who received the chain of office from outgoing president Orla Coyne



#### The real deal

In the October Gazette (page 61), we inadvertently published a picture that was not Alex Findlater, great-grandnephew of William Findlater, founder of the Law School's Findlater Scholarship. So here's Alex in all his glory. The person responsible for the error will not be named and shamed, but she knows who she is and has been severely dealt with

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SADSI

Solicitors Apprentices Debating  
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# Planet of the babes

For those of you in the profession who are making your own money or indeed making loads of money for somebody else, you may have long forgotten your days in the Solicitors' Apprentices' Debating Society of Ireland. However, for those who are starting on the professional path, you must first tackle the Law School.

Having taken part in some of the student orientation tutorials recently, I get the feeling that all the students coming behind me may well be my employers in the future – none more so than the fresh-faced recruits who took part in the SADSI debate on whether the legal profession is becoming too feminised.

The meeting took place in the Blue Room of the main building (which, I might add, is a superb venue for our debates) on 29 September. The meeting

itself was informal, more like a casual discussion than any kind of an organised debate, which worked well, considering that this was the new members' first outing.

That said, the meeting did step up a notch when the first motion hit the table. That motion, proposed by Julie Shackleton, was "That this house believes that the people present at this meeting should get preference on the SADSI trip to Toronto". Needless to say, there were many opinions, most for the motion and only two against. (Well, some people felt that they should generate some kind of a debate and represent the people who are not the newest recruits.)

But the discussion hit a high point when Daragh Burke proposed "That this house believes the legal profession is becoming too feminised". This



Top boffins predict the future of the profession may look something like this

motion was the winner of 'best motion of the evening', and it was no surprise that this motion exacerbated the sexual divide. Those who did oppose the motion did a fine job of it, especially when Ciara and Zoe highlighted the fact that many male decision makers are unable to make decisions for themselves. But it was a heated

discussion, and Tom and John didn't let the proposition down, especially when it was proposed that women are too emotional to be in a dominant position.

The 'best speaker' award went to Damien Glancy, who, while speaking incisively, managed to avoid alienating either sex. Maybe this was the secret of his success and truly the way forward in the greater gender debate.

Now you'll understand why I say that those who are coming behind us could well be the force to be reckoned with in the future.

In conclusion, a great night was had by all and the future looks bright for SADSI. So I'll leave you by saying thanks to our sponsors, Bank of Ireland, Michael Benson Recruiting and of course the Law Society. **G**

*Liam Fitzgerald, auditor*

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

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

(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin  
(Published 4 November 2005)

Regd owner: Joseph Mescall and Mary Mescall; folio: 8361F; lands: townland of Breaghva (ED Moyarta) and barony of Moyarta; **Co Clare**

Regd owner: Don and Margaret Buckley; folio: 77706F; lands: plots of ground being part of the townland of Sleeven East in the barony of Muskerry West and county of Cork; **Co Cork**

Regd owner: James Clement Casey; folio: 9101F; lands: plots of ground being part of the townland of Fahane in the barony of Carbery West (west division) and county of Cork; **Co Cork**

Regd owner: Denis and Julie Coleman; folio: 36876F; lands: plots of ground being part of the townland of Dromin in the barony of Muskerry East and county of Cork; **Co Cork**

Regd owner: Susan Creamer and Noel Murphy; folio: 99755F; lands: plots of ground being part of the townland of Townparks (ED Cloyne) in the barony of Imokilly and county

of Cork; **Co Cork**

Regd owner: Margaret Cronin; folio: 43597F; lands: plots of ground being part of the townland of Greenhills in the barony of Barretts and county of Cork; **Co Cork**

Regd owner: Annie Monica Kelly; folio: 27638; lands: plots of ground being part of the townland of Shrone in the barony of Bear and county of Cork; **Co Cork**

Regd owner: Andrew Murphy; folio: 2915L; lands: plots of ground being part of the townland of Ballincollig in the barony of Muskerry East and county of Cork; **Co Cork**

Regd owner: National Trailers Agricultural and Commercial Limited; folio: 19343F and 19344F; lands: plots of ground being part of the townland of Acres in the barony of Fermoy and county of Cork; **Co Cork**

Regd owner: John Ryan and Margaret Ryan; folio: 30029; lands: plots of ground being part of the townland of Ballylangley in the barony of Carbery East (east division) and county of Cork; **Co Cork**

Regd owner: Mary Boyle, Ardlaghan, Cloghan, Co Donegal; folio: 8978; lands: Kinletter; area: 40.4685 hectares; **Co Donegal**

Regd owner: James Boylan; folio: DN2737; lands: property situate in the townland of Townparks and barony of Balrothery East, situate on the south side of the Station Road in the town of Skerries and parish of Holmpatrick; **Co Dublin**

Regd owner: James Boylan; folio: DN16249; lands: property situate in the townland of Townparks and barony of Balrothery; **Co Dublin**

Regd owner: Churchdown Limited (limited liability company); folio: DN9563; lands: property situate in the townland

of Oldcourt and barony of Uppercross; **Co Dublin**

Regd owner: John Connaughton Limited (limited liability company); folio: DN19351; lands: a plot of ground situate on the north side of the Blessington to Tallaght road, in the parish and town of Tallaght, being part of the townland of Jobstown and barony of Uppercross; **Co Dublin**

Regd owner: Patrick and Pauline Doolin; folio: DN13259F; lands: property situate in the townland of Carrickmines Great and barony of Rathdown; **Co Dublin**

Regd owner: Judith Houston (formerly Murray); folio: DN74506L; lands: property known as 33 Lower Leeson Street, situate on the west side of the said street in the district of south central, parish of Saint Peter; **Co Dublin**

Regd owner: Edward Keeley; folio: DN88900F; lands: property situate in the townland of Glenamuck South and barony of Rathdown; **Co Dublin**

Regd owner: Liam Keeling; folio: DN3591F; lands: property situate in the townland of Brazil and barony of Nethercross; **Co Dublin**

Regd owner: Elizabeth McCaffrey; folio: DN85417F; lands: property situate on the north side of Chapel Street in the town and parish of Balbriggan; **Co Dublin**

Regd owner: John MacNeill; folio: DN10958; lands: property situate in the townland of Commons East and barony of Nethercross; **Co Dublin**

Regd owner: Sean McDermott and Fiona Daly; folio: DN34368F; lands: property situate in the townland of Seatown West and barony of Nethercross; **Co Dublin**

Regd owner: Tony McMahon; folio: DN68492F; lands: property situate in the townland of Templeogue and barony of Uppercross; **Co Dublin**

Regd owner: John Nolan; folio: DN91552F; lands: property situate to the west of Adamstown Road in the town of Lucan; **Co Dublin**

Regd owner: Michael O'Brien and Marian O'Brien; folio: DN79402F; lands: property situate in the townland of Mooretown and barony of Nethercross; **Co Dublin**

Regd owner: Ray Gannon; folio: DN29179F; lands: property situate in the townland of Balally and barony of Rathdown; **Co Dublin**

Regd owner: Kevin Broder; folio: 26336; lands: townland of (1) Carra, (2) Lurganmore and barony of (1) Leitrim, (2) Longford; area: (1) 23.1480 hectares, (2) 0.5615 hectares; **Co Galway**

Regd owner: Dorothy Herzer; folio: 10348F; lands: townland of Drummaveg and barony of Moycullen; area: 0.2379 hectares; **Co Galway**

Regd owner: Concepta Langan; folio: 49807F; lands: townland of Shantallow and barony of Galway; **Co Galway**

Regd owner: John Costello; folio: 36623; lands: townland of Cloonmore (ED Belclare) and Cloonaglasha and barony of Clare and Dunmore; area: 17.4390 hectares and 0.9560 hectares; **Co Galway**

Regd owner: Thomas Walsh; folio: 11178; lands: townland of Prospecthill and Garraun Lower and barony of Dunkellin; area: (1) 24 acres, 1 rood, 39 perches, (2) 4 acres, 2 roods, 8 perches; **Co Galway**

Regd owner: Bridget Dempsey; folio: 19783; lands: townland of (1) Abbeyland Great, (2) Clonfert (Butson) and barony of Longford; area: (1) 11.7662 hectares and (2) 1.1002 hectares; **Co Galway**

Regd owner: Patrick Ferris; folio: 10727F; lands: townland of Dunloe Lower and barony of Dunkerron North; **Co Kerry**

Regd owner: Daniel and Catherine Foley; folio: 6562F; lands: townland of Muing West and Trughanacmy; **Co Kerry**

Regd owner: Alacoque Wright; folio: 3058L; lands: townland of Common and barony of Connell; **Co Kildare**

Regd owner: Senan Daly; folio: 8616F; lands: townland of Ticknevin and barony of Carbury; **Co Kildare**

Regd owner: Eugenie T Stokes; folio: 11802F; lands: townland of Celbridge and barony of Salt North; **Co Kildare**

Regd owner: Michael Egan; folio: 6272F; lands: Knockroe and barony of Crannagh; **Co Kilkenny**

Regd owner: Laurence Gibbons and Mary Gibbons; folio: 13340F; lands: Gowran Demesne and barony of Gowran; **Co Kilkenny**

Regd owner: Herbert Harper; folio: 2125F; lands: Annamult and barony of Shillelogher; **Co Kilkenny**

Regd owner: Rory M Hogan; folio: 13217; lands: Beeline and Rogerstown and barony of Iverk; **Co Kilkenny**

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Regd owner: William Holohan; folio: 16968; lands: Coan West and barony of Fassadinin; **Co Kilkenny**

Regd owner: Andrew Townsend; folio: 6453; lands: Ballyclogan and Ballyclogan Meadows and barony of Callan; **Co Kilkenny**

Regd owner: Gerard Woodcock; folio: 17745; lands: Booly and barony of Shillelogher; **Co Kilkenny**

Regd owner: Patrick Fitzpatrick; (deceased); folio: 2231; lands: Dysart and barony of Maryborough East; **Co Laois**

Regd owner: Thomas Edward Stephenson, West Barrs, Glenfarne, Co Leitrim; folio: 11296; lands: Moneenageer; area: 5.2508 hectares; **Co Leitrim**

Regd owner: Patricia Enright; folio: 14120; lands: townland of Bushyisland and barony of Kenry in the county of Limerick; **Co Limerick**

Regd owner: Jeremiah Newman (deceased) and Joseph O'Beirne (deceased) and Joseph Dempsey; folio: 1976F and 5634F; lands: townland of Newcastle and barony of Clanwilliam, Co Limerick; **Co Limerick**

Regd owner: Patrick Sheehan; folio: 2383F; lands: townland of Drombanny and barony of Clanwilliam; **Co Limerick**

Regd owner: Bernard Gunshinan, Lettergullion, Drumlish, Co Longford; folio: 128R; lands: Lettergeeragh; area: 0.3410 hectares; **Co Longford**

Regd owner: Josephine Feeney, Clondra, Co Longford; folio: 195F and 9976; lands: Aghnagore and Clogher and Rinn; area: 1.5757, 2.1372, 0.0809 and 0.4040 hectares; **Co Longford**

Regd owner: Liam M Rice, 'Ben Vista', Stapleton Place, Dundalk, Co Louth; folio: 68; lands: Bellurgan; area: 3.7838 hectares; **Co Louth**

Regd owner: Kieran Feeney; folio: 27693; lands: townland of (1), (2) and (3) Carrowmore (ED Kilmaine), (4) Cregmore (Browne) and (5) Bloomfield and barony of (1), (2), (3), (4) and (5) Kilmaine; area: (1) 4.0923 hectares, (2) 1.8640 hectares, (3) 5.1369 hectares, (4) 7.0440 hectares, (5) 0.5109 hectares; **Co Mayo**

Regd owner: Anthony Healy; folio: 10076; lands: townland of (1) Scotchfort, (2) Deelcastle and barony of (1) and (2) Tirawley; area: (1) 13.3647 hectares, (2) 0.3186 hectares; **Co Mayo**

Regd owner: Patrick O'Malley; folio: 25983F; lands: townland of Cross West and barony of Kilmaine; area: 0.114 hectares; **Co Mayo**

Regd owner: Thomas Conlon, Baltinoran, Kinnegad, Co Westmeath; folio: 23765; lands: Knockersally or Colehill and Baltinoran; area: 45.7522 hectares and 8.6602 hectares; **Co Meath**

Regd owner: Patrick Smith, Ardlonan, Carlanstown, Kells, Co Meath; folio: 9798; lands: Ardlonan; area: 12.4264 hectares; **Co Meath**

Regd owner: Hugh Goulding, Peterstown, Trim, Co Meath; folio: 3131F; lands: Peterstown; area: 17.5205 and 0.2807 hectares; **Co Meath**

Regd owner: Patrick Molloy (deceased); folio: 11421; lands: Puttaghan and barony of Ballycowan; **Co Offaly**

Regd owner: James Murphy (deceased); folio: 11475; lands: Castletown and Glinsk and barony of Ballybrit; **Co Offaly**

Regd owner: Kevin and Margaret Hynes; folio: 3066F; lands: Killurin and barony of Geashill; **Co Offaly**

Regd owner: Cronan Kelly; folio: 4073; lands: Ballynasrah and barony of Garrycastle; **Co Offaly**

Regd owner: Michael Costello; folio: 2203; lands: townland of (1) Cornashinnagh, (2) Corradrehid and barony of (1) and (2) Ballintober South; area: (1) 5.3241 hectares, (2) 0.4527 hectares; **Co Roscommon**

Regd owner: Vincent Murray; folio: 1202F; lands: townland of Muff and barony of Athlone North; area: 0.0935 hectares; **Co Roscommon**

Regd owner: Kevin Naughton; folio: 4983; lands: townland of Tonroe or Green and barony of Frenchpark; area: 7 acres, 3 roods, 24 perches; **Co Roscommon**

Regd owner: Mary Naughton; folio: 18646; lands: townland of (1) and (2) Ballyconboy (part) and barony of (1) and (2) Castleragh; area: (1) 8 acres, 2 roods, 28 perches, (2) 11 acres, 2 roods; **Co Roscommon**

Regd owner: George Francis Casserly; folio: 3947F; lands: townland of Rathnaglye and barony of Roscommon; area: 0.2885 hectares; **Co Roscommon**

Regd owner: Thomas McLoughlin; folio: 12078; lands: townland of Lisroyne (parts), electoral division of Strokestown and barony of Roscommon; **Co Roscommon**

LawSociety

# Gazette

## PROFESSIONAL NOTICE RATES

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

- Lost land certificates – €121 (incl VAT at 21%)
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*All notices must be paid for prior to publication. Deadline for December Gazette: 25 November 2005. For further information, contact Catherine Kearney or Valerie Farrell on tel: 01 672 4828 (fax: 01 672 4877)*

Regd owner: Bridget Mullaney; folio: 5454; lands: townland of (1) Cloysparra, (2) Drumfad and barony of Carbury; area: (1) 2.1245 hectares, (2) 4.0342 hectares; **Co Sligo**

Regd owner: Thomas and Rosie Oates; folio: 8745F; lands: townland of Abbeyquarter North and barony of Carbury; **Co Sligo**

Regd owner: Gerard Bailey and Maria Bailey; folio: 34781F; lands: townland of Kilshane and barony of Clanwilliam, Co Tipperary; **Co Tipperary**

Regd owner: Regina Carroll; folio: 3051L; lands: townland of Burgagery Lands West and barony of Iffa and Offa East; **Co Tipperary**

Regd owner: Susan and Pascal Mansfield; folio: 32192; lands: townland of Derrygarth Lower and barony of Iffa and Offa West; **Co Tipperary**

Regd owner: George and Ann Gandy; folio: 1091L; lands: townland of Carrickbeg and barony of Upperthird; **Co Tipperary**

Regd owner: Nancy Mahony; folio: 1221; lands: plots of ground being part of the townland of Beallough in the barony of Upperthird and county of Waterford; **Co Waterford**

Regd owner: Joseph Power; folio: 8817F; lands: plots of ground being part of the townland of Gaulstown in the barony of Middlethird and county of Waterford; **Co Waterford**

Regd owner: Patrick Tobin; folio: 12212F; lands: plots of ground being part of the townland of Knockaunacuit in the barony of Coshmore and Coshbride and county of Waterford; **Co Waterford**

Regd owner: Patrick Tobin; folio: 7818; lands: plots of ground being part of the townland of Knocknafallia in the barony of Coshmore and Coshbride and

county of Waterford; **Co Waterford**

Regd owner: Kieran and Louise Brophy; folio: 23385F; lands: plots of ground being part of the townland of Ballinamona in the barony of Gaultiere and county of Waterford; **Co Waterford**

Regd owner: Brigid Bannon, Corbally, Gaybrook, Mullingar, Co Westmeath; folio: 6103; lands: Corbally; area: 27.6577 hectares; **Co Westmeath**

Regd owner: William Gaffney, Delvin, Co Westmeath; folio: 57R; lands: Mabestown; area: 62.3520 hectares; **Co Westmeath**

Regd owner: John Carroll, Dublin Road, Kilbeggan, Co Westmeath; folio: 2860; lands: Kilbeggan; **Co Westmeath**

Regd owner: James McKenna; folio: 14663 and 14664; lands: Ballaghblake and barony of Shelmaliere East; **Co Wexford**

Regd owner: Francis Albert Hillis (deceased); folio: 1975; lands: Fannystown and barony of Bargy; **Co Wexford**

Regd owner: William Stanley Mowbray (deceased); folio: 7575F; lands: Forth Commons and barony of Forth; **Co Wexford**

Regd owner: John Condon; folio: 3872F; lands: Dunanore and barony of Bantry; **Co Wexford**

### **Registration of Title Act 1964 – dispense with production of land certificate**

An application has been received from Dublin City Council for an order to dispense with the production of a land certificate in respect of the lands specified in the schedule hereto, which the original land certificate is stated to have been lost or inadvertently destroyed. An order to dispense with the production of the land certificate will be issued unless notification is received in the reg-



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istry 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. Any such notification should state the grounds on which the certificate is being held.

(Registrar of Titles), *Chancery St, Dublin. Date: 4 November 2005*

**Schedule:** Regd owner: Patrick Costigan and Maureen Costigan; folio: DN63016F; lands: St Catherine's and barony of North Central in the county of Dublin; area: three square metres as per map attached to dealing D2005DN004688G; **Co Dublin**

**Schedule:** Regd owner: Patrick Costigan and Maureen Costigan; folio: DN63016F; lands: St Catherine's and barony of North Central in the county of Dublin; area: as per map attached to dealing D2004DN044451W; **Co Dublin**

## WILLS

**Creighton, Nicholas (deceased)**, late of Lower Main Street, Rush, in the county of Dublin. Would any person with any knowledge of a will executed by the above named deceased, who died on 16 April 2005, please contact Ryan Smyth & Co, Solicitors, Park House, Upper Kilmacud Road, Dublin 14; tel: 01 298 0753. There is a reward of €10 offered for the return of the original will

**Fleming, Kathleen (deceased)**, late of 169 Glasaree Road, Finglas, Dublin 11. Would any person having knowledge of a will executed by the above named deceased, who died on 26 September 2004, please contact Frank Ward & Co, Solicitors, Equity House, Upper Ormond Quay, Dublin 7; tel: 873 2499, fax: 873 3484, e-mail: [evlyn@frankward.com](mailto:evlyn@frankward.com)

**Kearney, Catherine (deceased)**, late of 106 Knockpogue Avenue, Farranree in the city of Cork.

Would any person having knowledge of the original will dated 7 June 1991 made by the above named deceased, who died on 9 January 2005, please contact Patrick Mullins, Dillon Mullins and Co, Solicitors, Lower O'Connell Street, Kinsale, Co Cork; tel: 021 477 2000

**Kelly, Margaret (deceased)**, late of 5 Carndonagh Lawn, Donaghmede, Dublin 13. Would anyone with any knowledge of a will made by the above named deceased please contact Mary Dorgan, Solicitor, 15 South Terrace, Cork; tel: 021 497 5651

**McCarthy, David (deceased)**, late of 5 Chapel Street, Cloyne, Co Cork. Would any person having knowledge of a will made by the late David McCarthy, who died on 4 May 2005, please contact Diarmaid Falvey, Solicitors, Church Street, Cloyne, Co Cork; tel: 021 465 2590, fax: 021 465 2868

**McGinn, Patricia (née Fahy) (deceased)**, late of 6 St Agnes Road, Crumlin, Dublin 12, previously of 48 Park Crescent, Blackhorse Avenue, Dublin 7 and 7 Sheltin Drive, Dublin 7. Would any person having knowledge of a will executed by the above named deceased, who died on 21 June 2005, please contact Fagan Bergin, Solicitors, 57 Parnell Square West, Dublin 1; tel: 01 872 7655, fax: 01 873 4026, e-mail: [info@faganlaw.com](mailto:info@faganlaw.com)

**McLoughlin, Mary (otherwise Molly) (deceased)**, originally from Glackstown, Collinstown, Co Westmeath and late of Holly Road, Northampton, Northamptonshire, England, and who died at the Thornccliffe Grange Nursing Home, 2 Windmill Lane, Denton, Manchester, England. Would any person having knowledge of a will made by the above named deceased, who died on 29 August 2005, please contact Kelly Caulfield Shaw, Solicitors, 1

Chapterhouse, Friars Mill Road, Mullingar, Co Westmeath

**O'Sullivan, David (deceased)**, late of Kilmurry, Slieverue, Ferrybank, Co Kilkenny. Would any person having knowledge of the whereabouts of a will dated 31 March 1978, executed by the above named deceased who died on 14 May 1993, please contact T Kiersey & Co, Solicitors, 17 Catherine Street, Waterford; tel: 051 874 377, fax: 051 870 390

**Pingston O'Neill, Marie J (deceased)**, late of 106 Walkinstown Road, Dublin 12. Would any person having knowledge of the whereabouts of a will made by the above deceased, who died on 4 July 2005, please contact Frizelle O'Leary & Co, Solicitors, Slaney Place, Enniscorthy, Co Wexford; tel: 054 33547; ref: PIN0001/1 JOL.SW

**Sheehy, Johanna Christina (deceased)**, orse Johanna Christine Sheehy, orse Chrissie Sheehy, publican, late of Ballylooby, Cahir, Co Tipperary. Would any person having knowledge of the whereabouts of a will made by the above named deceased, who died on 10 January 2005 at Ballylooby, Cahir, Co Tipperary, please contact John Kelly, Donal T Ryan, Solicitors, Castle Street, Cahir, Co Tipperary; tel: 052 41244, fax: 052 42050, e-mail: [johnkelly@dtryan.ie](mailto:johnkelly@dtryan.ie)

**Shields, Sean (otherwise known as John) (deceased)**, late of 48 St Brigid's Park, Blanchardstown, Dublin 15. Would any person having knowledge of the whereabouts of any will made by the above named deceased, who died on 18 October 2004 at 48 St Brigid's Park, please contact Eimear Sampson of Lavelle Coleman, Solicitors, 51/52 Fitzwilliam Square, Dublin 2; tel: 01 644 5800, fax: 01 644 5848, e-mail: [esampson@lavellecoleman.ie](mailto:esampson@lavellecoleman.ie)

**Stephens, Mary (deceased)**, late of 204 Ard Foyle, Merville, Co Donegal and formerly of Tullynavin, Redcastle, in the county of Donegal, widow. Would any person having knowledge of a will made by the above named deceased, who died on 10 January 2005, please contact MacBride Conaghan, Solicitors, Malin Road, Merville, Co Donegal; tel: 074 938 2184/938 2269, fax: 074 938 2256, e-mail: [info@donegallaw.com](mailto:info@donegallaw.com)

**Twohig, Winifred (deceased)**, late of 'The Paddocks', Templehill,

Carrigrohane, Co Cork. Would any person having knowledge of a will made by the above deceased, who died on 11 December 2004, please contact Coakley Moloney, Solicitors, 49 South Mall, Cork; tel: 021 427 3133, fax: 021 427 6948

**Ward, Thomas J (deceased)**, late of 97 Hyde Park Road, Prospect, Limerick, and formerly of 11 Sycamore Heights, Patrickswell, Co Limerick and also of Harrisons Place, Charleville, Co Cork. Would any person having knowledge of a will made by the above named deceased, who died on 17 June 2005, please contact Colbert & Associates, Solicitors, Old Limerick Road, Charleville, Co Cork; DX 73 007 Charleville; tel: 063 30759, fax: 063 30755

## MISCELLANEOUS

**Northern Ireland agents** for all contentious and non-contentious matters. Consultation in Dublin if required. Fee sharing envisaged. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry; tel: 048 3026 1616, fax: 048 3026 7712, e-mail: [norville@danefisher.com](mailto:norville@danefisher.com)

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## TITLE DEEDS

**In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Christopher Singh**

Take notice that anyone having an interest in the freehold estate of



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the following property: all that and those the hereditaments and premises known as 24 Mountjoy Square in the city of Dublin, being a portion of the premises held under indenture of fee farm grant dated 9 March 1870 and made between May Collins and Eacy Kennedy of the one part and George Thorpe of the other part and therein described as "all that parcel of ground situate on the east side of Mountjoy Square with the messuage or dwellinghouse erected on part thereof known as number 24, together with the garden yard coach house and stable lying behind the said messuage or dwellinghouse, which premises are particularly described on the plan drawn hereon, being coloured pink thereon, and are situate in the lordship of St Mary's Abbey, parish of St George, and county of the city of Dublin, together with all cellars, vaults, areas, passages, water-course rights, easements and appurtenances thereon to belonging thereon or with the same usually held occupied or enjoyed."

Take notice that Christopher Singh intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Christopher Singh intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for

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the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 4 November 2005

Signed: FH O'Reilly & Co (solicitor for the applicant), The Red Church, North Circular Road, Phibsborough, Dublin 7

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by John Meagher



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Take notice any person having an interest in the freehold estate in the following property: all that and those the shop and premises known as 6 Mary's Abbey in the city of Dublin, bounded on the north by portion of the holding of Messieurs George John Alexander and Company's holding and on the west by said premises number 7 Mary's Abbey, containing in front to Mary's Abbey 18 feet, in the rear 16 feet and in depth from front to rear 42 feet, 10 inches be the said several admeasurements more or less.

Take notice that John Meagher intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple 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, John Meagher, intends to proceed with the application before the

county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.

*Date: 4 November 2005*

*Signed: MacGinley (solicitors for the applicant), 3 Inns Quay, Chancery Place, Dublin 7*

**In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the lands and premises in the townland of Ardaravan, parish of Lower Fahan, barony of Inishowen and county of Donegal: an application by Patrick Doherty and Christopher Flanagan**

Take notice that any person having any interest in the freehold estate of or superior interest in the following premises: all that and those that plot or parcel of ground situate at the Shore Road, Buncrana, with a frontage to the said road of 141 feet, 6 inches or thereabouts, and in the rear 67 feet, 6 inches or thereabouts, and extending from front to rear on the north-west side adjoining the grounds of Rockford, the property of the lessor, 163 feet, 6 inches or thereabouts, and on the east side adjoining the lane leading to the cottage the property of the trustees of the estate of the late Robert Colhoun, deceased, 163 feet or thereabouts, which said plot or parcel of ground is situate lying and being in the townland of Ardaravan, barony of Inishowen, parish of Lower Fahan and county of Donegal, held under an indenture of lease dated the 23 November 1918 made between Isaac Trew Colquhoun of Rockford, Buncrana in the county of Donegal, solicitor, of the one part and the British Foreign Sailor's Society, incorporated, having their registered office at Commercial Road, London in England of the other part for a term of 585 years from 1 May 1918, subject to the yearly rent of ten pounds sterling.

Take notice that the applicants, Mr Christopher Flanagan and Mr Patrick Doherty, being the persons entitled under sections 8, 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 coun-

ty of Donegal for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the said aforesaid premises or any of them are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Patrick Doherty and Christopher Flanagan intend to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of Donegal 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 are unascertained.

*Date: 4 November 2005*

*Signed: CS Kelly & Co (solicitors for the applicant), Market House, Buncrana, Co Donegal*

**In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by William Rogers and Lisa Rogers**

Take notice that any person having any interest in the freehold estate of the following property: all that and those the piece or plot of ground with the buildings thereon now known as 11a Edward Street, Newbridge, in the county of Kildare.

Take notice that William Rogers and Lisa Rogers intend to submit an application to the county registrar for the county of Kildare for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice 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 in the aforesaid premises are unknown or unascertained.

*Date: 4 November 2005*

*Signed: HC Browne (solicitors for the applicants), Malabide Road/Kilmore Road Corner, Artane, Dublin 5*

**In the matter of the Landlord and Tenant Acts 1967-1984 and****the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Alan McGrory and Terence McGovern**

Take notice that any person having an interest in the freehold estate of the following property: Bridge Street, in the barony of Swords, Co Dublin, and more particularly described along with other property in an indenture of lease dated 10 September 1850 and made between Philip O'Dwyer Greene of the first part, William Greene of the second part and George Waters of the third part for a term of 200 years from 25 March 1850, subject to the yearly rent of £5 thereby reserved and to the covenants on the part of the lessee and the conditions therein contained.

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

In default of any such notice being received, Alan McGrory and Terence McGovern intend to proceed with the application before the county registrar at the end of the 21 days from the date of notice and will apply to the county registrar for the county/city of Dublin 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 each of the aforesaid premises, are unknown or unascertained.

*Date: 4 November 2005*

*Signed: Patrick W McGonagle & Co (solicitors for the applicants), North Street, Swords, Co Dublin*

**In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of premises situate at 1-9 Alexandra Road, St Luke's Cross, Cork: an application by Michael O'Brien**

Take notice that any person having an interest in the freehold or intermediate estate of the following property: all that and those the nine cottages and premises on Alexandra Road, formerly known as Warhams Lane, being part of the lands of Glanmire in the parish of St Anne Shandon and city of Cork, held under an indenture of lease dated 12 May 1844

and made between Hayward St Ledger and others of the one part and John Warham of the other part for the term of 200 years from 25 March 1844, subject to the yearly rent of £12 thereby reserved and to the covenants and conditions therein contained.

Take notice that Michael O'Brien intends to submit an application to the county registrar for the city of Cork for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforesaid property to the below named solicitor within 21 days from the date of this notice.

In default of any such notice being received by the below named solicitors, the said Michael O'Brien intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.

*Date: 4 November 2005*

*Signed: John J Murphy & Co (solicitors for the applicant), Courthouse Chambers, 27-29 Washington Street, Cork*

**In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Brian M Durkan & Co Limited and in the matter of the properties known as 14 Mountjoy Street, 15 Mountjoy Street, 4 St Mary's Place, 5 St Mary's Place, 6 St Mary's Place, 7 St Mary's Place, 8 St Mary's Place (all in the city of Dublin)**

Take notice that any person having an interest in the freehold estate or any intermediate interests of the property known as 14 Mountjoy Street in the city of Dublin, held under an indenture of lease dated 30 August 1872 and made between John Arnott, James Fitzgerald Lombard and Edward McMahon of the one part and Patrick Murray of the other part for the term of 400 years from 30 August 1872 at the annual rent of £10 sterling and to the covenants and conditions therein contained.

Take notice that any person having an interest in the freehold estate or any intermediate inter-

ests of the property known as 15 Mountjoy Street in the city of Dublin, held under an indenture of lease made 5 May 1877 between Patrick Murray of the first part and Thomas Stuart of the other part for the term of 390 years from 1 May 1877 at the annual rent therein reserved and subject to the covenants and conditions therein contained.

Take notice that any person having an interest in the freehold estate or any intermediate interests of the property known as 4 St Mary's Place in the city of Dublin, held under an indenture of lease made 12 July 1875 between Patrick Murray of the one part and Vincent O'Brien of the other part (hereinafter called 'the lease') for the term of 395 years from 12 July 1875 at the annual rent of £9 sterling, and take notice that any person having an interest in the freehold estate or any intermediate interests of the property known as 5 St Mary's Place in the city of Dublin, held under an indenture of lease made 22 July 1948 and made between Marks Brass of the first part and John McGrath of the other part for the term of 300 years from 12 January 1948 at the annual rent of £5 sterling, and subject to the covenants and conditions therein contained.

Take notice that any person having an interest in the freehold estate or any intermediate interests of the property known as 6 St Mary's Place in the city of Dublin, held under an indenture of lease made 28 January 1948 between Marks Brass of the first part and Agnes Tormey of the other part for the term of 300 years from 12 January 1948, at the annual rent of £5 sterling, and subject to the covenants and conditions therein contained.

Take notice that any person having an interest in the freehold estate or any intermediate interests of the property known as 7 St Mary's Place in the city of Dublin, held under an indenture of lease dated 20 February 1874 and made between Patrick Murray of the one part and Patrick Doran of the other part for the term of 390 years from 1 March 1874, subject to the yearly rent of £5 and subject to the covenants and conditions therein contained.

Take notice that any person having an interest in the freehold estate or any intermediate interests of the property known as 8 St Mary's Place in the city of Dublin, held under an indenture of lease dated 20 February 1874 and made between Patrick Murray of the

one part and Patrick Doran of the other part for the term of 390 years from 1 March 1874, subject to the yearly rent of £5 and subject to the covenants and conditions therein contained.

Take notice that Brian M Durkan & Co Limited intends to submit an application to the county registrar for the city of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7 for the acquisition of the freehold interest and all intermediate interests in the aforesaid properties, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid properties are called upon to furnish evidence of title to the said properties to the below named solicitors within 21 days from the date of this notice.

In default of any such notice being received, Brian M Durkan & Co Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the intermediate interests, including the fee simple, in the aforesaid properties are unknown or unascertained.

*Date: 4 November 2005*

*Signed: Messrs Kelly Noone & Co, Taney Hall, Eglinton Terrace, Dundrum, Dublin 14*

**In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Kieran Argue and Seamus Comer**

Take notice that any person having an interest in the freehold estate of the following property: all that and those the premises now known as 1B Sandymount Avenue, Ballsbridge, Dublin 4, being the premises held under an indenture of lease dated 8 October 1919 and made between Thomas

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McMillen of the one part and Harold Senier of the other part for the term of 999 years from 1 May 1919 (save the last day thereof), subject to the rent of £8.6.8 per annum and to the covenants on the part of the lessee and the conditions therein contained. The interest of Thomas McMillen being held under an indenture of lease dated 14 July 1914 and made between Ada S Berman of the one part and Thomas McMillen of the second part for a term of 999 years from 1 July 1914, subject to the rent of £25 per annum and to the covenants on the part of the lessee and the conditions therein contained.

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

In default of any such notice being received, Kieran Argue and Seamus Comer 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 city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to this superior interest including the freehold reversion in the aforesaid premises are unknown or ascertained.

*Date: 4 November 2005*

*Signed: Eamonn Greene & Co, 7 Northumberland Road, Ballsbridge, Dublin 4*

**In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Kieran Argue and Seamus Comer**

Take notice that any person having an interest in the freehold estate of the following property: all that and those the premises now known as 1C Sandymount Avenue, Ballsbridge, Dublin 4, being the premises held under an indenture of lease dated 8 October 1919 and made between Thomas McMillen of the one part and Brendan MacCarthy of the other part for the term of 999 years from 1 May 1914 (save the last day thereof), subject to the rent of £8.68 per annum and to the covenants on the part of the lessee and the conditions therein contained. The interest of Thomas McMillen being held under an indenture of lease

dated 14 July 1914 and made between Ada S Berman of the one part and Thomas McMillen of the second part for a term of 999 years from 1 July 1914, subject to the rent of £25 per annum and to the covenants on the part of the lessee and the conditions therein contained.

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

In default of any such notice being received, Kieran Argue and Seamus Comer 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 city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to this superior interest including the freehold reversion in the aforesaid premises are unknown or ascertained.

*Date: 4 November 2005*

*Signed: Eamonn Greene & Co, 7 Northumberland Road, Ballsbridge, Dublin 4*

## RECRUITMENT

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**Commercial solicitor required** – Lavery Kirby Gilmartin require a commercial solicitor with zero to three years' PQE. Based in Glashule, Co Dublin, the role offers very high-calibre commercial work with great quality of life; attractive remuneration package commensurate with experience – reply in confidence to Neil Keenan at neilk@laverykirby.ie or tel: 01 231 1430

**Locum solicitor required** for busy Ennis practice; experience in conveyancing essential. Commencing mid-December or at latest January 2006. May suit newly qualified candidate with good apprenticeship experience. E-mail: sharoncahir@cahir-solicitors.com or tel: 065 682 8383

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

# The Irish Legal Recruitment SPECIALISTS

A selection of new opportunities for November 2005

## PRIVATE PRACTICE

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

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

## IN-HOUSE

### **Conveyancing: 2-4 yrs ppe.**

This position may suit an experienced solicitor who wishes to work parttime. For a promising candidate, our client will actively consider providing a fulltime role.

### **Procurement: 1-4 yrs ppe.**

This is a challenging position with the opportunity for the successful applicant to deal with a range of projects. A strong background in commercial law is an essential prerequisite.

### **Intellectual Property: 5 yrs+ ppe.**

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 Checkick 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 bel.sol for a discussion in the strictest confidence.

Michael Benson, Benson & Associates, Carrichael House, 60 Lower Baggot Street, Dublin 2.  
T +353 (0) 1 670 3397 F +353 (0) 1 644 5745 E mbenson@benasso.com

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## The Company

G2 Legal is a highly successful UK based specialist Legal Recruitment agency with 8 regional offices across the UK.

As part of on-going expansion programme we will be opening an office in Dublin to provide our services to the Irish legal recruitment sector. We see significant advantage in cross-referral of candidates between our offices in England and Scotland. G2 Legal believes in the highest standards of recruitment practice, ongoing training and full support of its consultants to include significant investment in advertising and IT systems.

As a result we are keen to hear from prospective candidates for the following key positions.

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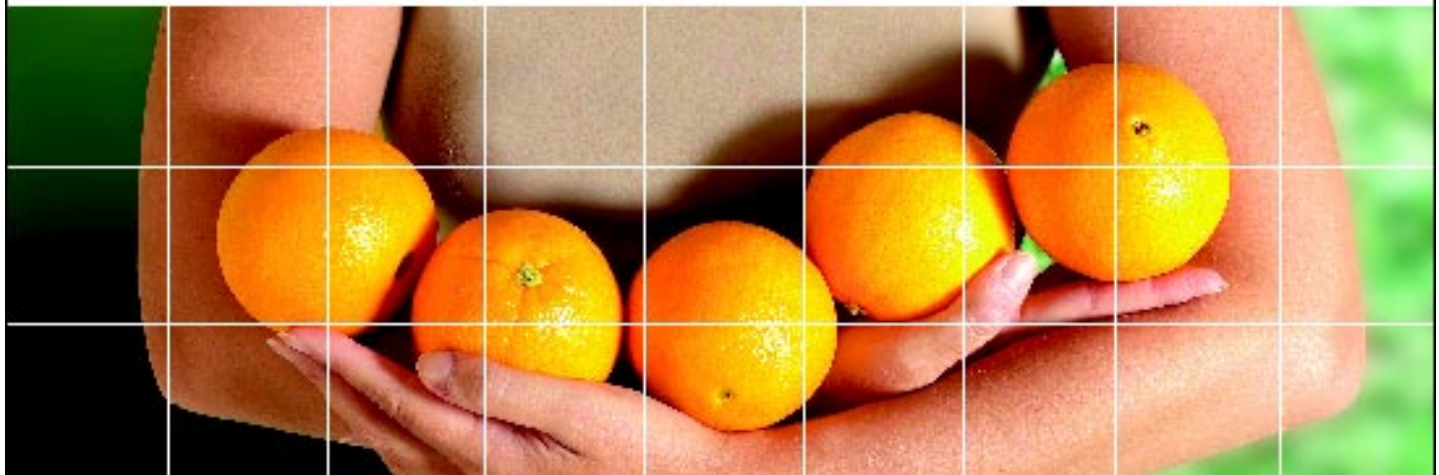
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# the pick of the crop



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Robert Walters is a leading global legal recruitment specialist with 23 offices in 19 countries. Our Dublin legal and compliance division provides a high quality, proactive and professional service in both the private practice and in-house markets.

### Private Practice

**Construction Lawyer 2-5 years' PQE To €90K + Bonus**  
Highly regarded Dublin firm seeks to recruit a Construction Lawyer with experience in drafting and negotiating construction contracts and sub-contracts as well as dispute resolution. Ideally you will have circa 2-5 years' PQE and be looking to develop your career in a progressive Dublin law firm. Ref: J0117097

**Personal Tax Solicitor 1-2 years' PQE To €55K + Bonus**  
Prominent Dublin firm is looking for a qualified Tax Lawyer to provide innovative tax advice to the firm's high net worth clients. This will include tax and estate planning and wealth management strategy. Tax experience is essential, as is a commitment to develop this interest further. Ref: J0115727

**Conveyancing Solicitor 2-3 years' PQE To €65K**  
Progressive mid tier Dublin law firm seeks to appoint a Conveyancing Solicitor to join their private client department. You will have circa 2-3 years' conveyancing experience with the desire to develop your career in a fast-growing and progressive Dublin firm. Commercial experience is preferable, but not essential. Ref: J0227930

**Tax Lawyer 1-3 years' PQE To €60K + Bonus**  
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 and transactions and commercial matters including contract issues. Ref: J0119727

**Senior Funds Lawyer 4-6 years' PQE To €110K + Bonus**  
Highly regarded Dublin firm with a reputation for excellence and professionalism, now seeks to appoint a Senior Solicitor with experience in advising institutional clients and establishing alternative investment funds. The chosen candidate will be ambitious and driven and in return will enjoy an unrivalled opportunities and remuneration package. Ref: J0116734

**Banking Lawyer 2-5 years' PQE To €85K**  
Top 5 Dublin City law firm requires an accomplished Banking Lawyer to join their high profile team. The successful candidate will have a number of years' experience working in the banking and financial services department of a leading Dublin or international law firm. This is a significant career enhancing opportunity with partnership prospects. Ref: J0125811

**Banking Solicitor HQ-2 years' PQE To €65K**  
Leading Dublin law firm with a reputation for excellence would like to appoint a well-presented Solicitor to join their banking and financial services department. Ideally, candidates will have relevant experience in capital markets, corporate banking, aircraft and asset financing and/or banking regulatory work. Ref: J0126811

**Commercial Solicitor 1-3 years' PQE To €65K**  
Progressive mid tier Dublin law firm requires a Commercial Solicitor to join their team. You will have 1-3 years' experience in a medium or large practice environment with the desire to develop your career in a fast-growing and progressive Dublin firm. Ref: J0127425

### In-House

**Funds Lawyer HQ-2 years' PQE To €55K**  
Leading asset management firm seeks a qualified Solicitor with 0-2 years' PQE to join their in-house team. The role is varied to include advising the head of legal with fund launches, documentation and various client legal matters. This is an exceptional opportunity for a HQ with strong funds, banking or corporate experience to move in-house. Ref: J0119118

**Legal Counsel 2-4 years' PQE To €75K + Bonus + Benefits**  
Prominent financial services organisation requires a qualified Lawyer with 2-4 years' PQE, ideally from a legal practice or 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: J0118903

If you are interested in these or any other legal opportunities, please send your curriculum vitae to Gemma Allen at [gemma.allen@robertwalters.com](mailto:gemma.allen@robertwalters.com) or John Cleary at [john.cleary@robertwalters.com](mailto:john.cleary@robertwalters.com) or call (01) 432 4111 to speak to a consultant in the legal division.

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- **Conveyancing Solicitor**  
Dublin City Centre, 1-3 yrs PQE. Neg.
- **Conveyancing Solicitor**  
Cork City, 2-4 yrs PQE. €38,000 - €47,000.
- **Commercial Solicitor**  
Dublin Southside, 3 yrs PQE. €57,000
- **General Practice Solicitor**  
Limerick, min 2 yrs PQE. €39,000.
- **Employment Law Solicitor**  
Dublin City Centre, 2-4 yrs PQE. €45,000 - €63,000
- **Banking/Financial Services Solicitor**  
Dublin 7, 2-5 yrs PQE. €45,000 - €70,000.

##### In House

##### ■ In House IP Solicitor

A progressive European top ten consumer health company located on Dublin's Northside is looking for a solicitor/barrister with 2-4 yrs PQE in Intellectual Property Law. Willingness to travel regularly to Europe is necessary. This role offers excellent potential for advancement as well as an above industry standard salary and attractive benefits package.

##### ■ In House Tax Solicitor

A leading international company are seeking a solicitor with a minimum of three years PQE and a background in taxation to begin as an in house solicitor. The role will involve dealing with CGT and CAT. Salary €60,000+ depending on experience and qualifications.

If you are interested in finding the right position in the right firm with an agency who genuinely respects your need for confidentiality do not hesitate to call Stephen Kelly B.A., LL.B. at Stelfox Legal on (01) 679 3182 or email your CV to [Stephen@stelfox.ie](mailto:Stephen@stelfox.ie) or log on to our website for more opportunities [www.stelfox.ie](http://www.stelfox.ie)

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Senior Associate required for the banking division of this prestigious firm. Partnership path for suitable candidate. 4-7 years PQE in broad-based banking practice is required, advising a wide range of lenders and borrowers. Work will include acquisition finance, working capital facilities and finance for real estate projects. The ideal candidate will be a self-starter who is keen to develop work and bring on junior fee-earners. Superb salary and prospects on offer. Ref: 17246

### Senior Legal Counsel - Financial Services

Dublin

€80,000

Advising the board of directors in all legal matters, you will join a team of solicitors who draft, review, and negotiate commercial contracts. You will advise the company on compliance and regulatory risk under the Irish Financial Services Regulatory Authority, and advise on the production of new financial service products. You shall also draft and negotiate partnership agreements, joint venture agreements, agency agreements and intermediary agreements. Ref: 21176

### Commercial Property Solicitor

Dublin

€75,000 - €95,000

Due to continued growth there is a need for a Commercial Property Lawyer with 5 years plus PQE in this prestigious Dublin city centre firm. This is especially appealing for those looking for a friendly, pro-active, team environment. This role will include development - including hotels / airports / golf courses (incorporating mixed development deals); tax implications - co-ownership / joint venture deals; and banking and financing exposure - leasing. Ref: 21168

### Regulatory Lawyer

Dublin

€75,000 - €95,000

As part of a team of 5 people, the successful candidate is likely to have the following attributes - a legal qualification with 2 years post qualification experience in financial services; excellent interpersonal and report writing skills; good analytical and investigative skills so that issues/problem areas can be identified and resolved in a timely fashion; sound judgement and an ability to prioritise and work effectively as part of a team within tight timeframes. Ref: 21032

### Corporate Lawyer

Dublin

€60,000 - €90,000

Top 5 Dublin city centre firm is seeking a Corporate Lawyer with corporate experience of 2-5 years to join their highly reputable corporate team. The ideal candidate will have solid M&A and Private Equity experience; capital markets / PLC / international experience; ideally sectoral specific or have other expertise. Must be a self starter and have a proven track record for business development. Superb opportunities for career development within this prestigious firm. Ref: 15179

### Senior Legal Counsel

Galway

€80,000

This large multinational company is currently looking for an experienced In-House Lawyer to act as EMEA regional legal Counsel. Reporting to the Vice President and General Counsel you will provide legal service and support to all aspects of the Company's operations in the region. You will also assist with regional corporate governance and regulatory compliance matters. This role will involve some travel to offices within the EMEA region. Excellent opportunities for progression for the successful candidate. Ref: 20052



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### COMMERCIAL PROPERTY SOLICITOR

Excellent opportunity for commercial property solicitor with 6-10 years relevant PQE to join growing practice. We would urge highly motivated senior solicitors with proven ability and client development skills to apply. High quality work includes acting for financial institutions in all aspects of taking commercial property and corporate security and acting for commercial property investors, developers and a wide range of clients. Excellent career prospects await the successful candidate. Salary commensurate with experience.

Apply in absolute confidence to Gartlan Furey, 20 Fitzwilliam Square, Dublin 2 (DX 51) Ref. S.J. or by e-mail to [recruitment@gartlan.ie](mailto:recruitment@gartlan.ie).

### RESIDENTIAL CONVEYANCING SOLICITOR

Our growing practice requires an additional conveyancing solicitor with 5-8 years relevant PQE. The successful candidate will deal primarily with all aspects of residential conveyancing, some commercial conveyancing and probate work. As a senior solicitor the successful candidate should demonstrate proven ability coupled with client development skills. Excellent career prospects await the successful candidate. Salary commensurate with experience.

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## IN-HOUSE

### In-house Counsel

Ref: SR15545 to £100,000

Our client is a well known multinational plc. You will support senior management, draft commercial contracts, advise on corporate law matters, dispute resolution, competition law and employment. The successful candidate will be a qualified solicitor or barrister with at least 5 years' ppe, either from a law firm or in-house.

### Listing Advisor

Ref: AW15571 to £40,000

Well established listings firm is looking for a listing advisor to join their expanding team. The role includes the review of prospectuses and close liaison with issuers, IFSCA and other listing organisations. You will have experience in the legal, financial or compliance sectors and ideally some knowledge of listings.

### Company Secretary

Ref: AW14765 to £55,000

Working closely in a team, you will be responsible for your own portfolio of clients. Close liaison with the CRO is required and you will ensure all statutory changes are in compliance with IFSCA legislation. The successful candidate will be partially ICSA qualified and ideally have 1-2 years' experience in a company secretarial environment.

### Legal Director

Ref: SR14865 to £140,000

As a senior manager of the management team you will be responsible for providing general corporate legal support for Dublin operations. Areas of responsibility include contract documents, Irish regulatory compliance and advising on matters of Irish, Luxembourg and UK law. Ideal candidate will have 8+ years' of relevant experience, preferably in the financial services industry. Excellent package on offer.

### Compliance Officer

Ref: AW15768 to £50,000

Leading global insurance firm in Dublin currently require a compliance officer as part of their preparation for the regulation of the reinsurance industry. The successful candidate will have an ability to interpret the law and responsibilities will include the development of a compliance system to adhere to new legislation and provision of compliance training and supervision.

### Senior Commercial Lawyer

Ref: SR15255 to £100,000

Our client is a top 5 law firm with an excellent reputation for corporate and commercial work. This role is commercially focused with an emphasis on contract law. The ideal candidate for this role will have at least 5 years' ppe from a strong commercial/corporate department of a law firm or from an in-house role. This is an excellent opportunity for a fast track to partnership.

## PRIVATE PRACTICE

### Commercial Property

Ref: RC15480 to £60,000

A top 5 firm is looking for ambitious individuals with at least one year of relevant experience to join their expanding property department. They advise leading investors, retailers, developers and financial institutions on tax, financing, environmental and planning issues.

### Commercial Lawyer

Ref: RC15285 to £70,000

This niche firm requires an experienced commercial lawyer to join their busy and progressive firm. Ideally you will have experience dealing with government departments and large public sector organisations, and at least 2 years' experience would be advantageous.

### Solicitor - Cork

Ref: RC15055 to £70,000

A medium sized Cork based firm are looking for a solicitor to work in the areas of conveyancing and litigation. This is a one year contract with a view to permanency. Working in this general practice you will deal with all conveyancing and litigation matters, in addition to other legal issues as they arise. Ideally you will have 4-5 years' ppe and have dealt extensively with property and litigation.

## OVERSEAS

### Bermuda- Commercial

Ref: CB15078 to \$120,000

This leading Hamilton based firm is looking to recruit a lawyer with 5+ years' ppe. You will have worked in a top practice and have the confidence and commercial acumen to advise clients directly with minimal supervision. Your experience should include structured/asset finance and exposure to funds.

### Luxembourg- Funds

Ref: CB15082 to £70,000

Our client seeks a qualified solicitor with at least 4 years' ppe in securities/banking and general corporate. Candidates from both in-house and private practice backgrounds will be considered. Proficiency in French and ideally another European language would be advantageous.

### London- Corporate Finance

Ref: CB15089 to £70,000

Our client, a well known private practice, is looking to recruit a qualified solicitor with 1-2 years' ppe to work in their corporate finance department. The main focus will be on public and private M&A, equity capital markets and general corporate work. You will have experience in a corporate department in a large practice and have very strong communication skills.

For information on these roles please contact Sarah Randall or Allison Watson on 01 637 7012 or email [sarah@thepanel.com](mailto:sarah@thepanel.com)

For information on overseas roles please contact Charlie Blacque on 01 661 4774 or email [charlie@thepanel.com](mailto:charlie@thepanel.com)

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