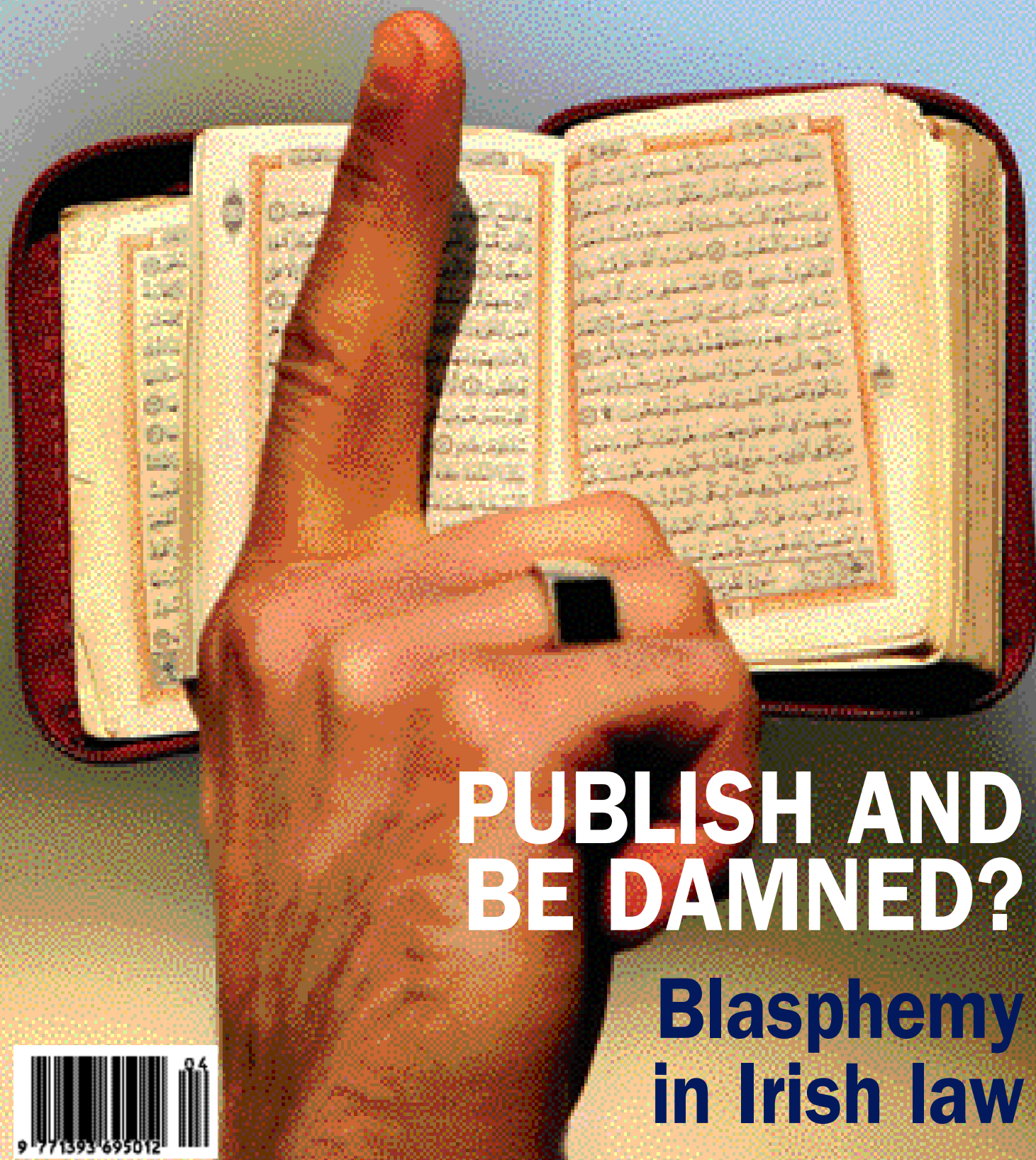


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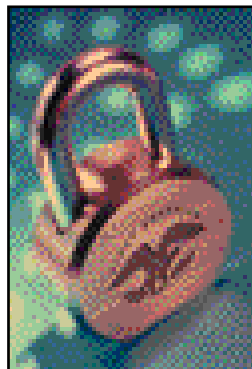


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BE DAMNED?**

**Blasphemy
in Irish law**



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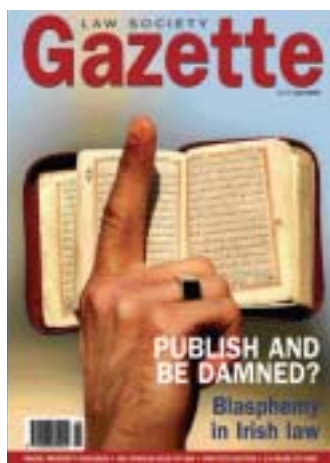
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On the cover

The Danish cartoons controversy sparked a fierce debate about the limits of free speech. But a similar debate took place in Ireland when a case on the boundaries of free speech and blasphemy went to the Supreme Court



Volume 100, number 3
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5



12



15

LAW SOCIETY Gazette

April 2006

REGULARS

5 News

- 11 Human rights watch: slopping out in prisons –
Martin v Northern Ireland Prison Service

12 Strategic property acquisition

The Law Society has acquired a 1.09 acre property, adjacent to Blackhall Place, at a total cost of €22.4 million

15 Child law report launched

The Law Society has called for reforms in the law to give greater rights and protection to children

16 Viewpoint

The recent Oireachtas committee report on the family

19 Letters

41 Practice doctor

42 People and places

45 Book reviews

49 Briefing

- 49 Council report
50 Practice notes
51 Legislation update: 16 January 2006 – 20 March 2006
54 Solicitors Disciplinary Tribunal
56 Solicitors' Benevolent Association report and accounts
57 FirstLaw update
60 Eurlegal: recent developments in European law

63 Professional notices

68 Recruitment advertising

Fifteen pages of vacancies, offering over 130 jobs

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FEATURES

20 **COVER STORY:** **Publish and be damned**

The issue of blasphemy has hit the headlines once again. But what does blasphemy really mean in the context of Irish law? Michael Kealey goes to hell and back in search of answers

24 **Red card for referees**

It's difficult for employers to refuse to give references and to avoid liability for their contents. But how can they be sure that what they say never comes back to haunt them, ask Peter McInnes and Aoife Henry

27 **Free radical**

Waheed Mudah was granted the right to Irish residency, thanks in part to representations made by the Law Society and some close friends. He spoke to Mark McDermott about his experiences

30 **Can't sue, won't sue**

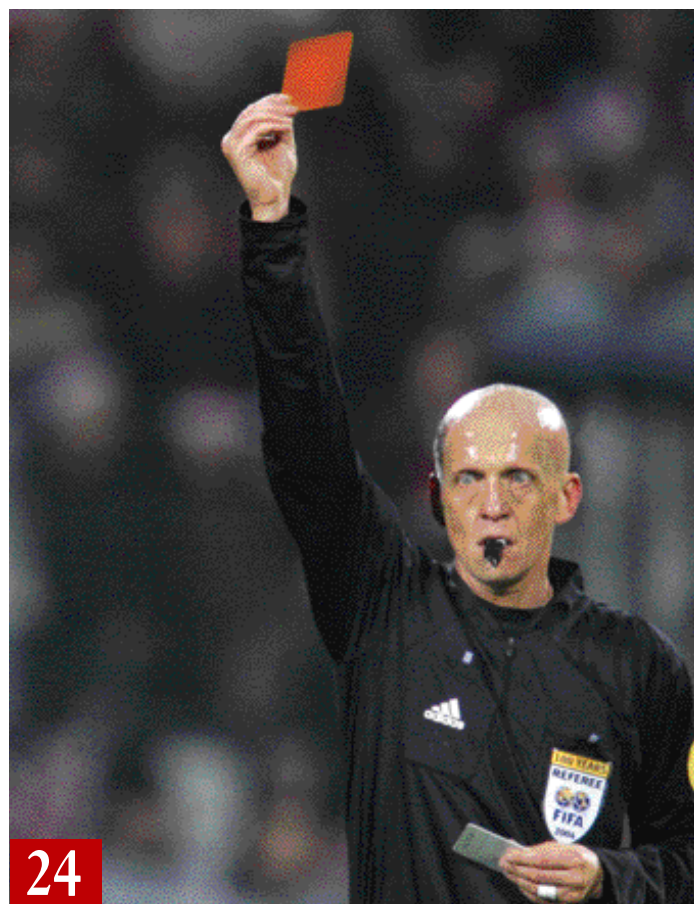
Despite recent activity in the enforcement of competition law, private actions are rare when seeking remedies against anti-competitive conduct on the part of businesses. Margaret Gray examines the issue

34 **Schools of thought**

Discipline, bullying, health and safety in crèches, and school evaluations are still hot topics. But are the people managing schools competent to do so? Emer Woodfull works it out

38 **The turbulent '20s**

Partition, the destruction of the Four Courts and the civil war: we continue our celebration of our 100th volume. Mark McDermott delves between the dusty covers and picks the best from the early '20s



24



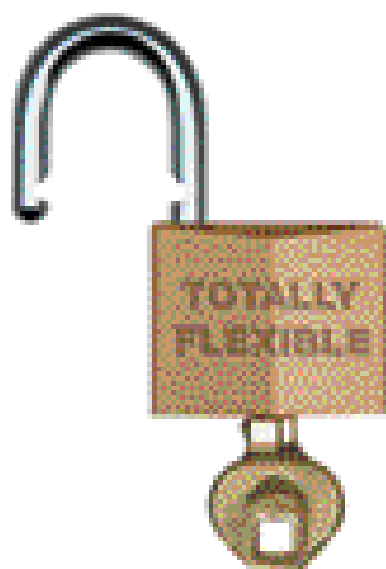
38

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■ WEXFORD

Farewell to 1798

Legal history will soon be made in Wexford with the announcement that the old courthouse will be vacated and a totally new courthouse provided in two years' time.

The current courthouse at the county hall has been one of the most important courthouses in the south-east since the 1800s. The building had been used for some years by the British as a prison, following the 1798 rebellion.

"While we will be sad to leave such a historic building, it is important that we move forward," says John Garahy, honorary secretary of the Wexford Solicitors' Association. The Courts Service had been working on court facilities in the south-east and local solicitors were satisfied that the public would soon be getting a court building in Wexford that the administration of justice deserved and required.

Progress has also been made in reducing the backlog of cases in the Circuit Court in the south-east region, with the court sitting for significant periods. Three judges have been hearing Circuit Court cases since the beginning of this year – Judges Olive Buttimer, Michael O'Shea and Alice Doyle.

Howdy do

A strong attendance is expected by the Wexford Solicitors' Association for their full-day programme of CPD courses on 20 April. "We plan to have four excellent speakers covering basic topics in conveyancing, efficient transfers of family property, family law and

mergers and acquisitions," says John Garahy.

The programme will begin at 10am and continue to 5pm. "The idea is to include lunch and to add an important social dimension to the day. This way, we can learn while getting to know each other a bit better," he added.

■ LIMERICK

A tradition continues

The Dermot Morrissey-Murphy Golf Classic 2006 will take place again this summer,

died only a few years ago, but his contribution to charities was such that the golf classic, which began in 2004, is in his name and in recognition of his charitable efforts, Ann Marie noted.

■ DUBLIN

Here comes the judge

Dinners with all Dublin judges of the Circuit Court and the District Court are being planned for members of the DSBA. "This was originally begun by John O'Connor when

and details can be got from Kevin O'Higgins, Blackrock, or from Maura Smith at the DSBA office, email: maura@dsba.ie.

■ LOCAL AUTHORITIES

It's all rubbish

The law and rubbish collection, incinerators and litter are among the topics to be covered at next month's annual spring seminar of the Local Authorities' Solicitors' Bar Association (LASBA), to be held in Cork.

There will be a series of papers on various legal aspects of waste management, which are important issues for solicitors, notes Bryan F Curtin, secretary of LASBA and a solicitor with Dún Laoghaire-Rathdown County Council.

Let's talk

Last month, Bryan F Curtin represented LASBA at the annual dinner of Solicitors in Local Government (SLG) at the University of Warwick in Staffordshire. SLG is a body of some 4,000 solicitors in local government in England and Wales. Terence O'Keeffe, law agent of Dún Laoghaire-Rathdown County Council and president of LASBA, attended the Scottish Local Authority Association (SLAA) dinner also last month. LASBA, SLG and SLAA are all organisations of Irish, English, Welsh and Scottish solicitors working in local government. All spoke of similar problems and the exchange of views and information was helpful. **G**



Pictured at a recent meeting with the Sligo Bar Association are Law Society Senior Vice-President Philip Joyce (centre), flanked by SBA president Ita Lyster and director general Ken Murphy

organised by the Limerick Bar Association. Already preparations are afoot for the golf classic, which has now become an annual event.

"The event is a major fundraiser here and achieved more than €11,000 for charity last year," says Ann Marie O'Hanrahan, honorary secretary of the association. They hope to raise similar funds this year. The benefiting charities include multiple sclerosis and the Children's Ark Project for sick children in Limerick Regional Hospital.

Dermot Morrissey-Murphy

he was president of the DSBA a few years ago and proved to be very popular and helpful," noted the DSBA's honorary secretary, Kevin O'Higgins. The DSBA will try to gain access for a broad spectrum of solicitors practising in litigation.

Ferry across the Mersey

The DSBA continues to encourage both greater cross-border and Anglo-Irish contact and understanding. The annual weekend for solicitors of Dublin, Belfast and Liverpool will be held in Liverpool next month. Places are still available

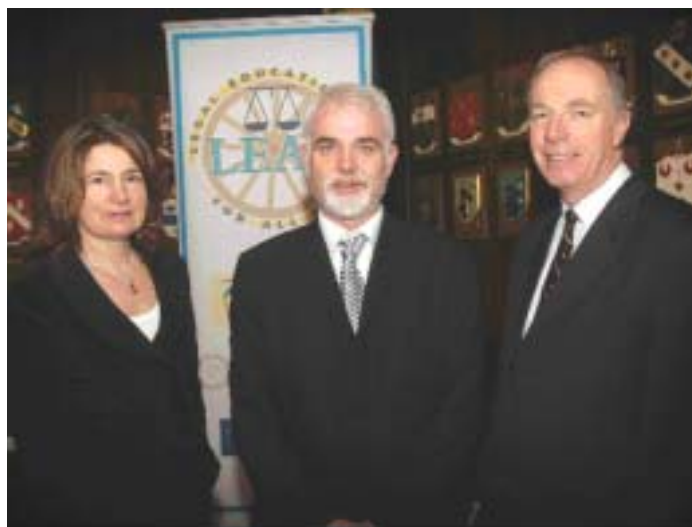
Nationwide is compiled by Pat Igoe, principal of the Dublin law firm Patrick Igoe & Co.

Students LEAP into the unknown

It may be a 'LEAP' into the unknown, but a new project that has the backing of the Law Society's Education Centre is going to change the lives of many underprivileged students for the better.

The Legal Education for All Project (LEAP) is attempting to encourage students from disadvantaged communities to consider a career in the law. The project will introduce students to the legal process and assist them in developing routes into legal education and information.

Following its launch at the Law Society on 1 December, a follow-up seminar was held in the Mansion House on 23 March to give an update on the project and to draw in new supports. The seminar was addressed by the Deputy Mayor of Dublin, Councillor Bronwen Maher, and President of the Law Society Michael Irvine, who expressed the Law Society's support for the initiative. The Society's education centre is offering different types of assistance that will be incorporated into the training



At LEAP's Mansion House seminar were (l to r) Elizabeth Davidson (project coordinator), David Joyce BL, and President of the Law Society Michael Irvine

of participants over the lifetime of the project, which is funded until December 2007.

The Mansion House seminar was co-chaired by David Joyce BL, who is the first member of the Traveller community to be called to the Bar, and Brigid O'Donoghue, a tutor on the project.

Several participants spoke about their involvement in LEAP. Tutors and mentors – Roderic O'Gorman, a PhD

student from Trinity College Law School, Brendan Foley BL and Roisin Webb BL – spoke about their work.

To date, 20 participants have been recruited – ten from Ballymun and ten from the Traveller community nationally. Students are linked to law centres, where they are given high levels of support to assist them in fast-tracking to legal education. Tutors will deliver weekly law modules

that will be accredited by FETAC.

LEAP is also working to:

- Design legal studies modules for community organisations, with the aim of providing accredited modules through informal routes,
- Design and pilot a law course for local secondary schools. The aim is to make disadvantaged communities aware of the possibility of law studies as a viable career option,
- Commission research to document the project and its impact on participants and on the providers of legal education and training,
- Build solidarity with Slovakian partners, the Kolping Foundation, on a range of issues and to exchange modules of learning, principally in human rights law.

LEAP is funded by EU EQUAL, through the Department of Enterprise, Trade and Employment.

ONE TO WATCH: NEW LEGISLATION

Competition (Amendment) Act 2006

This act ends the ban on the below-cost selling of groceries and prohibits resale price maintenance for food and drink. To balance this, certain practices are prohibited: unfair discrimination in conditions for doing business and seeking payments for advertising or 'hello money'. The act was substantially commenced on 20 March 2006 by SI no 127 of 2006.

The act is based on a report by the Department of Enterprise, Trade and Employment on a public consultation on the *Groceries Order*. The Competition Authority will be responsible for enforcing

the act instead of the Director for Consumer Affairs. Any person aggrieved may also seek a civil remedy in the Circuit or High Court.

Outline

Section 1 inserts new sections 15A, 15B and 15C into the *Competition Act 2002*. Section 15A contains definitions, section 15B prohibits conduct by groceries goods undertakings and retailers, and section 15C gives rights of action for breach of section 15B.

Definitions

The definition of 'allowance' in section 15A is wide enough to

include advertising allowances and 'hello money'. The definition of 'grocery goods' refers only to food and drink and does not include other household goods, such as cleaning materials. The prohibitions in section 15B, therefore, apply only to food and drink.

The definition of 'grocery goods undertaking' appears to be wide enough to cover any organisation or person involved in the chain of production and supply. However, persons involved in the additive, ingredient or processing-equipment business are not affected, nor do these provisions apply to catering, restaurant or

take-away services, or the supply of intoxicating liquor for consumption on the premises. Lastly, these provisions are in addition to part 2 of the 2002 act, which imposes criminal penalties. This means that the same undertaking or persons could be liable for criminal and for civil sanctions for the same actions.

Prohibitions

The actions prohibited in section 15B concern attempts to compel or coerce retail price maintenance (actual success would probably result in an agreement prohibited by section

IBA deplors the increasing global erosion of the rule of law

The International Bar Association (IBA) has launched a worldwide campaign to promote the rule of law. At a recent conference, the IBA Council passed a resolution that said 'no' to arbitrary arrests, secret trials, indefinite detention without trial, cruel or degrading treatment or punishment, and intimidation or corruption in the electoral process.

According to IBA President Francis Neate, the resolution was proposed in response to the increasing erosion around the world of the rule of law. The resolution, passed by the Council in Prague, deplors "the increasing erosion around the world of the rule of law". The IBA's 20,000 members comprise more than 190 law societies and Bar associations across the globe.

The resolution states: "The IBA welcomes recent decisions of courts in some countries that reiterate the principles underlying the rule of law. These decisions reflect the



Prague's Vltava River: bluer than the Danube

fundamental role of an independent judiciary and legal profession in upholding these principles. The IBA also welcomes and supports the efforts of its member Bar associations to draw attention and seek adherence to these principles."

The resolution continues: "An independent, impartial judiciary, the presumption of innocence, the right to a fair and public trial without undue delay, a rational and proportionate approach to

punishment, a strong and independent legal profession, strict protection of confidential communications between lawyer and client, equality of all before the law: these are all fundamental principles of the rule of law. Accordingly, arbitrary arrests, secret trials, indefinite detention without trial, cruel or degrading treatment or punishment, intimidation or corruption in the electoral process are all unacceptable."

"The rule of law is the

foundation of a civilised society," the resolution states. "It establishes a transparent process accessible and equal to all. It ensures adherence to principles that both liberate and protect. The IBA calls upon all countries to respect these fundamental principles. It also calls upon its members to speak out in support of the rule of law within their respective communities."

The authoritative statement on behalf of the world's legal profession is seen as an important reminder to the United States and United Kingdom – long seen as models of respect of the rule of law – to maintain acceptable standards.

The IBA president said: "The rule of law is a rare and precious commodity. It is the only method yet devised to control the arbitrary exercise of state power. It is imperative that the global legal community stands united in its commitment to ensure that the fundamental principles of the rule of law are upheld."

4 of the 2002 act). Also prohibited are the application of dissimilar conditions to equivalent transactions, the compelling or coercion of payments or allowances for advertising or display, and the compelling or coercion of 'hello money'.

But as well as breaching these prohibitions, the conduct must also have as its object or effect the prevention, restriction or distortion of competition in trade. Thus, any breach of this section must prove the action, and also the objective or likely effect. The reason this additional proof was considered necessary was to

avoid an absolute prohibition of such behaviour by small players in the market. In such circumstances, it would be hard to justify an absolute prohibition in economic terms.

Remedy

Section 15C gives any aggrieved person a right of action against the undertaking or persons concerned. As mentioned above, the Competition Authority also has a right of action. Section 15C(4) applies certain subsections of section 14 of the 2002 act to actions taken. This means that an aggrieved person may avail of the reliefs listed:

injunction, declaration, damages and/or exemplary damages, and the Authority may be granted a declaration or injunction. Where actions were taken by a company, it is presumed that those in a position to be involved in decisions on the actions were involved.

Effect in practice

Apart from removing the ban on below-cost selling, will the act make much difference in practice? It re-enacts existing provisions of the *Groceries Order*. Unfair discrimination is already dealt with by sections 4 and 5 of the 2002 act. It is also

arguable that demands for advertising allowances or 'hello money' are also covered by those sections.

Proving attempts to coerce and compel may be difficult. It may also be difficult to prove that the object or effect of actions prohibited by section 15B is to limit competition.

It remains to be seen if the measures introduced to balance the lifting of the prohibition on below-cost selling in fact bring anything new. **G**

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



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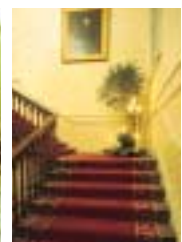
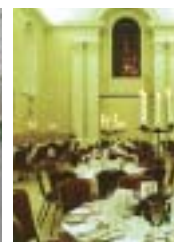
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Land Registry's landdirect.ie at your fingertips

The latest milestone in the Land Registry's extensive online service delivery strategy – landdirect.ie – will go live on 28 April. The new system will replace the internet service that the organisation has operated since 1999. It will provide customers with an extended set of services that will enable them to view and search its vast database, using digital mapping technology.

Until now, professional customers wishing to inspect Land Registry maps, and locate ownership details from such maps, had to visit the Registry offices in person. For the first time, customers using the Land Registry's online service will now be able to conduct map searches over the internet and view the results and details from the comfort and convenience of their own premises.

Effectively, this is the final piece of a jigsaw that was begun in the mid 1990s. It will integrate seamlessly with the major information and communications technologies infrastructure operated by the Registry.

From 28 April, account holders will be able to conduct online searches of the Land Registry map across the entire country in three ways, by:



- Entering the folio number,
- Simply navigating the online map, or by
- Entering the postal address of the property.

The Land Registry detail will be overlaid on the current Ordnance Survey Ireland (OSI) digital map series and will also be linked to a database of addresses jointly produced by An Post and OSI, known as the GeoDirectory.

The project also covers digitisation of the individual land parcels in each county. This programme has also begun, with Westmeath as the initial county to 'go live'. The remaining 25 counties of the Republic will be digitised over the next five years.

The Land Registry's online service has enjoyed huge success since it was introduced in 1999. Uptake and usage of the service continues to grow steadily within a thriving property market. At present:

- More than 9,200 subscribers – approximately 85% of the Land Registry's traditional professional customer base – regularly use the service,
- Over 90% of applications for certain services are made online,
- More than 4,200 business transactions per day are conducted online,
- During 2005 alone, well over one million services were availed of online by customers.

■ MINIMUM TERMS FOR MURDERS

People found guilty of murder involving aggravating factors, such as the use of firearms or gangland involvement, should serve sentences of at least 15 to 20 years, the justice minister has said.

Speaking at the launch of the Parole Board's annual report, the minister said he wanted to send out a message "loud and clear" that respect for human life must be a cornerstone of our society. He said he wished to dispel the notion that life sentence prisoners were being released after seven years.

■ IRELAND IN 'DARK AGES'

Leading British human rights solicitor, Imran Khan, has said that he is "incredibly shocked" by the findings of a new report on institutional racism in Ireland. The *Breaking Down Barriers* report, commissioned by Amnesty International, found that the government had failed to acknowledge the existence of racial discrimination in its laws, policies and practices and had failed to take meaningful steps to combat it.

The report was written by Dr Vinodh Jaichand and Louise Beirne of the Irish Centre for Human Rights at NUI Galway.

■ RETIREMENT TRUST SCHEME

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■ FRANK MURRAY APPOINTED COMMISSIONER

The governments of Ireland and Britain have jointly appointed Frank Murray as Commissioner of the Independent Commission for the Location of Victims' Remains. Mr Murray is currently chairman of the Public Appointments Service and is a former secretary general to the government.

Minister for Children to look at putting rights of children to the people

The Minister for Children, Brian Lenihan, has said that he is looking at how a statement on the rights of children could be put to the people in a constitutional referendum.

The minister was speaking at the launch of the Law Society's report *Rights-based Child Law*:

The Case for Reform on 21 March (see page 15). He stressed, however, that he was speaking in a personal capacity and that no government decision had been taken on the matter. However, he was of the opinion that the proposal of the Oireachtas Committee on the

Constitution on the issue could not be put to the people in its current format.

Mr Lenihan stated that the principles underlying the 2001 *Children Act* were sound. Any amendments he was bringing forward were aimed at strengthening it.



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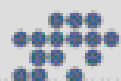


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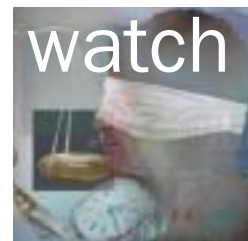


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Magilligan, slopping out and article 8 of the ECHR

Alma Clissmann reports on *Martin v Northern Ireland Prison Service* ([2006] NIQB 1, 6 January 2006)

Mr Martin spent eight months in an individual cell in Magilligan Prison. The H-blocks at Magilligan were built in the 1980s without in-cell sanitation facilities. The situation was reviewed in 1993 and an electronic locking system was installed to enable prisoners to be released to use the toilets during lock-up periods, which were lunchtime (90 minutes), teatime (60 minutes) and night-time (12 hours, sometimes 16 hours).

The judgment goes into considerable detail on the circumstances that prevailed. Girvan J found that there was a lack of clear directions to prison staff, there could be delays in releasing prisoners, much was left to staff discretion, and sometimes staff were less than considerate. Generally, prisoners were not released to go to the toilets after midnight. There was a problem with hygiene, poor sanitation, smell, spillages, cleaning materials and humiliation.

The judge examined the awareness among prison authorities of human rights obligations under s6 of the *Human Rights Act 1998*, which is similar to s3 of the *ECHR Act 2003* in this jurisdiction. He found that those formulating policy and devising administrative procedures appeared to be insufficiently trained in relation to human rights obligations.

The plaintiff alleged that his private life under article 8 suffered an unjustified and disproportionate interference because of the sanitation regime, and that it amounted to degrading treatment under

article 3. The judge examined the Scottish slopping-out decision in *Napier* ([2004] Scot CS). He also examined the *Prison and Young Offenders Centre Rules (Northern Ireland) 1995* and the *European Prison Rules 1987*, both of which stressed the need to ensure prisoners' human dignity, to treat prisoners at an acceptable standard, and the need to avoid adding to the punishment of imprisonment by the removal of other rights and freedoms. Girvan J held that the circumstances were not comparable with those in the *Napier* case and did not amount to a violation of article 3.

The prison authorities accepted that more should have been done to achieve hygienic conditions. They also accepted that clear instructions to staff in relation to cell release should have been given and that prisoners should also have been informed of their entitlement to use the toilets. They accepted that no analysis of procedures in the light of convention provisions or health and safety standards had been carried out.

Managing slopping out

Girvan J held, following a previous decision in *Carson, Re Application for Judicial Review* ([2005] NIQB 80, 20 April 2005), that the lack of in-cell sanitation, in itself, did not establish a lack of respect for the prisoner's privacy rights under article 8. He also held that considerable care in the management of the practice of slopping out would be needed to avoid significantly demeaning a prisoner. The Prison Service was bound to put in place and operate a system that minimised,



so far as possible, interference with the prisoner's rights. It had, on its own admission, failed to properly direct its mind to the requirements of article 8 in relation to the sanitation system. The judge set out what a focused inquiry would have to consider (§ 36):

- a) How to keep to a minimum the occasions when excretion within the cells has to occur;
- b) How to make as inoffensive and as hygienic as possible the circumstances in which such excretion occurs;
- c) How the disposal of bodily waste material can be effected as discreetly and hygienically as possible, in a way that keeps to a minimum the indignity and humiliating nature inherent in any process of disposal;
- d) How to set in place mechanisms designed to ensure, so far as possible, the attainment of objectives (a), (b) and (c) – such mechanisms to include periodic reviews and education of prisoners and staff.

The judge held that the plaintiff was entitled to a declaration that the Prison Service had failed to adequately respect his right to

respect for his private life.

The judge considered the question of damages and examined case law on the question of when damages are appropriate – and, if appropriate, how they should be assessed. He referred to Lord Woolf's discussion in *Anufrijeva v Southwark London BC* ([2004] 1 All ER 833), in which Lord Woolf concluded that damages are not an automatic entitlement, but a remedy of last resort.

Public interest

Girvan J found that, while the plaintiff found the toileting arrangements demeaning and disgusting, they did not cause him anxiety or psychiatric or psychological consequences, but rather annoyance and frustration. There was no evidence he suffered from ill health as a result of the poor hygiene. He held that the Prison Service did not set out to deliberately humiliate or demean prisoners. The failure of the system was a failure to understand and appreciate the obligation to carry out a focused enquiry with explicit reference to article 8. He concluded that, having regard to the wider public's interest in the continued funding of a public service and the financial consequences of even a modest award (in view of the large numbers of prisoners going through Magilligan), the granting of declaratory relief represented just satisfaction and an adequate remedy for the plaintiff. **G**

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

Law Society purchases Benburb

In a strategic move that allows for future expansion, the Society has invested in a site adjacent to its Blackhall Place headquarters

Members of the Law Society will be aware of the purchase of a 1.09 acre property, adjacent to Blackhall Place, costing €22.4 million. The acquisition has been completed by a wholly-owned subsidiary of the Society – Benburb Street Property Company Limited.

Law Society President Michael Irvine says: “I believe that this acquisition is a very good decision, from which the solicitors’ profession will benefit for a great many years to come.”

The property is situated between Benburb Street and the Society’s existing Blackhall Place property. This is the last undeveloped site on the Society’s periphery. On the Luas line, it opens up the possibility of access to the rear of the existing landlocked Blackhall Place property.

“The purchase of this site

was a strategic decision,” says the president. “The opportunity for such an acquisition might never have occurred again. The Society is positioned at the centre of a developing legal services zone and this site can be at the forefront of development within that zone.”

Fair market value

In the course of a lengthy debate at the Law Society Council, one Council member seemed to sum up the view of most when he said that “very few purchasers ever regret acquiring the site next door”.

The total purchase price of the property was €20,425,000. Additional transaction costs, including survey, professional fees and 9% stamp duty, bring the full cost to €22.4 million. The Society’s overall income in 2005, excluding compensation fund income, was €17.5 million.

The acquisition can be funded by a combination of reserves, management of cash flow, obtaining a ten-year commercial mortgage averaging €7,500,000 per annum, and an addition to the practising certificate fee averaging €95 per solicitor per annum over a ten-year period. The funding of the acquisition has been undertaken on a conservative basis. The financial projections have been approved by the Society’s accountants and bankers.

At a purchase price of €20,425,000, a fair market value has been paid for the site. This has been confirmed by the Society’s professional advisers, based on values achieved recently for a number of reference sites in the immediate vicinity of Blackhall Place. The valuers advised that a slightly smaller

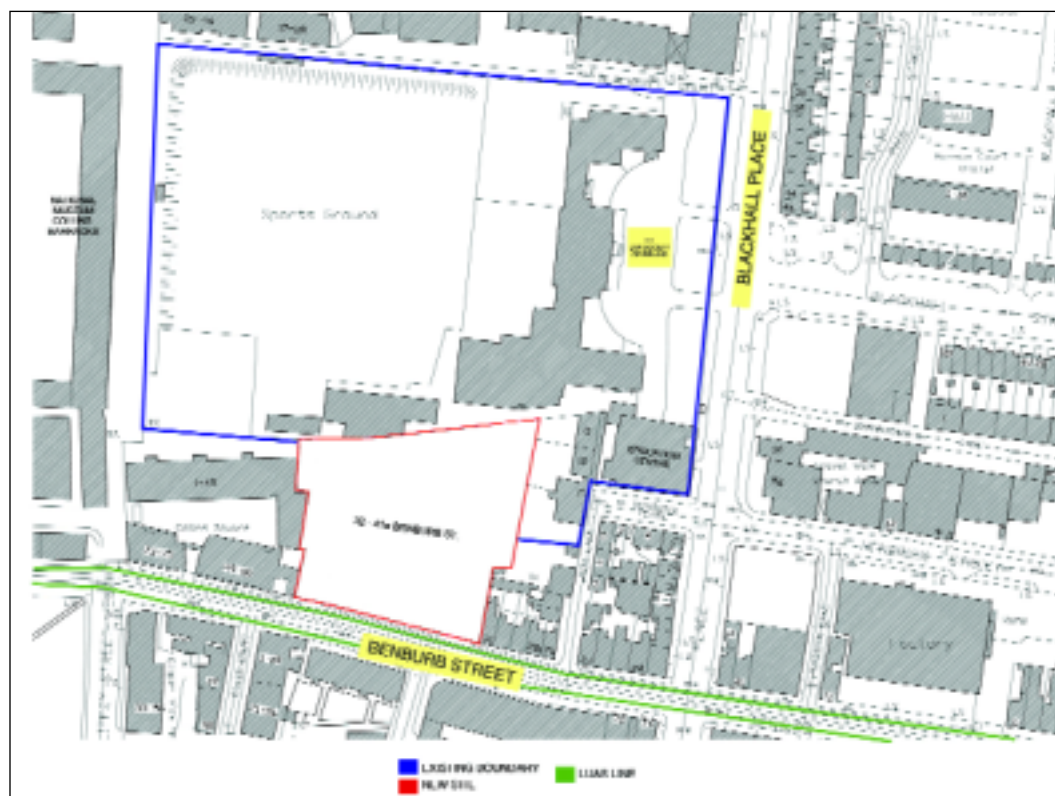
site in the immediate vicinity of Blackhall Place sold recently for a sum representing €19.5 million per acre. The site that has now been acquired at Benburb Street represents €18.57 million per acre. The Benburb Street site was not available for purchase in smaller parcels.

The site is zoned ‘Z5’, which includes educational, office, car park, retail or residential use. Indeed, An Bórd Pleanála last year granted planning permission for a development on the site of 141 apartments.

Lengthy debate

The Property Strategy Sub-Committee, as well as the Finance Committee, debated the issue at length, with the benefit of comprehensive professional advice. Both recommended the purchase to the Council. The Council, having heard from the Society’s property valuers, architects and financial advisers, and following a lengthy debate, resolved by a vote of 29 votes in favour, with no votes against, to purchase the property.

Under a resolution passed at an annual general meeting a number of years ago, the Society’s Property Strategy Sub-Committee has the power to acquire property. Any development of that property that would cost more than €635,000, however, requires the approval of the members at a general meeting. No specific plan exists for the development of the site. A special task force will examine all options and report to the Council with specific proposals. Members of the Society are encouraged to



Street property for €22.4m




contact the president in writing with any queries or observations. Michael Irvine

concludes: "I believe that the great majority of solicitors today, and in the future, will

view the purchase of this Benburb Street site, like the purchase of Blackhall Place, as

a wise and practical decision made in the long-term interests of the profession." **G**



Law Society of Ireland

News from Law Society CPD

THE LAW SOCIETY IS PLEASED TO ANNOUNCE THE LAUNCH OF A NEW SCHEME CALLED:

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Society launches wide-ranging study on reform of child law

The Law Society has launched a new report that calls for law reforms to give greater rights and protection to children

A new report published by the Law Society has identified serious weaknesses in child law. In a wide-ranging study published on 21 March, the Society has called for reforms in the law to give greater rights and protection to children.

The report puts forward proposals for amending the Constitution that go considerably further than the All-Party Oireachtas Committee on the Constitution's report on the family, which was published in January (see *Viewpoint*, p16 of this issue).

The study, entitled *Rights-based Child Law: The Case for Reform*, asks:

- Should children conceived through assisted human reproduction have the right to know the identity of their biological parents?
- Should it be possible to donate surplus embryos conceived using *in vitro* fertilisation techniques to infertile couples, and if so, under what conditions?
- Is the new requirement of a parent's PPS number for a birth certificate likely to result in more fathers refusing to register?
- When should the consent of both parents be required to treat a child?
- In the absence of legislation, how do we protect the position of child donors of organs and tissue?
- Do mature minors have the right to doctor/patient confidentiality when they seek contraception or addiction advice?
- Should dependent foster or stepchildren be able to apply for provision from the estate



of their deceased foster/stepparent?

The study was launched by the Minister for Children, Brian Lenihan. It recommends specific rights for children as individuals – and not just as family members – based on the children's rights chapter of the South African Constitution.

Geoffrey Shannon, one of the Law Society authors, said that

the Oireachtas committee's amendment recommendation did not require that the child's best interests be paramount. This did not improve on the existing situation, he said, where children were already entitled to equal rights under the Constitution. The statement that children's interests should be considered "when their welfare is at stake" could actually worsen the position of some

children, he said.

He also warned that some children were seriously vulnerable to having second-best choices made for them in the absence of a constitutional provision protecting their interests.

"Without constitutional change, the rights of children in Ireland will never be truly recognised, nor will Ireland live up to ... international law. The Council of Europe recommends that we guarantee children's rights through explicit recognition in constitutional texts," he said.

Chief Executive of the Children's Rights Alliance, Jillian van Turnhout, said that the report's findings were disturbing. "Bad law means children are left vulnerable to abuse and without a means to have a say on decisions affecting them."

The study examines modernising rules on minors' autonomy in relation to health care. This raises sensitive issues related to contraception and drug addiction. For example, to what extent should parents have the legal capacity to consent to treatment for their children?

The study also looks at protection for children's succession rights in the event that they are orphaned or a conflict of interest arises with the next of kin. It makes recommendations to improve them.

The Law Society's study will be submitted to the Department of Health and Children and circulated among interested organisations as part of its on-going programme of highlighting areas of the law in need of reform. **G**

AMONG THE REPORT'S CHIEF RECOMMENDATIONS ARE:

- Legislation to clarify children's rights to guardians *ad litem*
- Measures to involve the Health Service Executive and the Education Welfare Board in criminal cases involving children.
- Training and codes of practice for professionals involved with children in the criminal justice system, including judges, lawyers and members of the Garda Síochána.
- Measures to protect children in the asylum system. This would include the use of DNA tests where necessary to help protect against child trafficking.
- The best interests of the child to be paramount in decisions affecting separated children in the asylum system.
- The right of children for their identity to be upheld in law, including in cases involving donated genetic material.
- The clarification of the law with regard to the consent of children and both parents to medical treatment for children, including the issue of organ donation.

Falling short of our

The recent report on the family by an Oireachtas committee fails to meet a commitment given by the State to recognise children's rights, argues Geoffrey Shannon

The All-Party Oireachtas Committee on the Constitution published its report *The Family* on 24 January. Based on a year-long process of public hearings and private deliberations, the report examines the changing nature of the Irish family and makes a number of recommendations.

While acknowledging the fact that the nature of the Irish family has changed since the adoption of the Constitution in 1937, the committee has recommended retaining the traditional definition of the family. Instead of proposing an amendment to article 41 of the Constitution to extend the definition of the family, the committee has recommended legislation to provide for cohabiting heterosexual and same-sex couples.

The committee recommends legislation to provide for cohabiting heterosexual couples by either some type of registration system or a presumptive scheme. A presumptive regime provides a scheme whereby certain rights and duties automatically accrue to couples once they have cohabited for a certain number of years. Significantly, the committee, in recommending legislation by means of a registration system for same-sex couples, states that a presumptive scheme would not be appropriate.

The Law Reform Commission, in its 2004 consultation paper, *Rights and Duties of Cohabitees*, proposes a

presumptive scheme for 'qualified cohabitees', which it defines as intimate non-marital couples who have lived together for at least three years in a 'marriage-like' relationship – two years if the couple has resident children. Unlike the committee, the commission does not discriminate between

recent global endorsement of the family as an institution". It cites this declaration in defence of "the institution of marriage", stating that it was adopted without a vote by the United Nations in December 2004. That, however, was not the end of the matter.

It can be seen from a press release dated 6 December

as the foundation for family policy.

The failure of the committee to make reference to the withdrawal from the resolution on the part of the EU is regrettable. The reality is that the Doha declaration is not an authoritative source for the protection of the marital family.

A recommendation to change article 41.2 of the Constitution to a gender-neutral form has also been advanced by the committee. The outdated and sexist nature of article 41.2, which assigns to women a domestic role as wives and mothers, has long been criticised as being discriminatory.

Paramount consideration

The current constitutional position in Ireland embodies a 'seen but not heard' approach to children, an issue the committee sought to address. Apart from a right to education, children have no defined rights under the Constitution. Our fundamental law fails to recognise the child as a legal person and lacks a child focus.

In 1993, the Kilkenny Incest Investigation Committee recommended that consideration be given to amending articles 41 and 42 so as to include a statement of the constitutional rights of children. In 1996, the *Report of the Constitution Review Group* indicated the need to "put into the Constitution an express obligation to treat the best



At the recent launch of *Rights-based Child Law: the Case for Reform*, a report by the Law Society's Law Reform Committee, were John Costello, Chairman of the Society's Child Law Group, committee secretary Alma Clissmann, Minister of State Brian Lenihan, Geoffrey Shannon and Law Society President Michael Irvine

cohabiting heterosexual couples and same-sex couples. The approach adopted by the committee is more than lamentable in what is clearly an equality issue. It also shows a disregard for the state's international commitments on the equality value.

Global endorsement

The committee refers to the November 2004 declaration of the Doha International Conference as "the most

2004 that, after the adoption of the aforementioned resolution, the EU (including Ireland) withdrew from the resolution, citing as a primary reason "the omission of language previously accepted at international levels, which recognised that the family structure could take various forms". Another reason cited was the need to reaffirm the importance of the United Nations *Convention on the Rights of the Child 1989* (CRC)



obligations

interests of the child as a paramount consideration in any actions relating to children”.

In 1998, the United Nations Committee on the Rights of the Child, in its concluding observations on Ireland's implementation of the CRC, emphasised that the recommendations of the *Report of the Constitution Review Group* would reinforce “the status of the child as a full subject of rights”.

The Oireachtas committee has recommended that a new clause should be inserted in article 41 of the Constitution dealing with the rights of children as follows: “All children, irrespective of birth, gender, race or religion, are equal before the law. In all cases where the welfare of the child so requires, regard shall be had to the best interests of that child.”

The recommendation on children is worthy of closer scrutiny. It provides that children, as between each other, are equal before the law. This merely reinforces the constitutional requirement of equality contained in article 40.1: “All citizens shall, as human persons, be held equal before the law.” The first



Brian Lenihan addresses the audience at the launch in Blackhall Place

sentence of the proposed amendment does not therefore seem to improve the position of children under the Constitution.

The second sentence provides that regard should be had to the child's best interests, where the welfare of the child so requires. It does not require that the child's best interests must be paramount, nor does it elaborate on what weight should be given to the best interests of the child. It appears also that the child's welfare must be under consideration before the ‘best interests’ rule will apply. Therefore, the recommendation does not give

children rights that may be applied in a general and systemic manner. Moreover, the proposal does not address fundamental issues identified in the CRC.

Weak, ambiguous and indecisive

A decade after the Kilkenny investigation and the *Report of the Constitution Review Group*, and eight years after the recommendations of the UN Committee on the Rights of the Child, the foregoing recommendation of the Oireachtas committee is weak, ambiguous and indecisive. Despite protestations to the contrary, the proposal falls far

short of our international obligations, including the requirements of the CRC. The recommendation also departs from the approach adopted by the Constitution Review Group, that the Constitution should be amended to include an express guarantee of certain rights for children and an express requirement that in all actions concerning children, the best interests of the child must be the paramount consideration.

In summary, the committee's recommendation on children is a clear departure from the recommendations of various expert groups. It fails to meet a commitment given by the state to the recognition of children's rights through the signing and ratification of various international instruments. More importantly, the recommendation will not cause a re-evaluation of Irish society's view of children, which emerges from the Kilkenny incest and Ferns inquiries as an important requirement. **G**

Geoffrey Shannon is the Law Society's deputy director of education.

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letters



Send your letters to: **Law Society Gazette, Blackhall Place, Dublin 7**, or email: gazette@lawsociety.ie

THE PIAB ACT AND APPLICATIONS TO JOIN CO-DEFENDANTS

From: Patrick V Boland & Son, Solicitors, Newbridge, Co Kildare

We wish to bring it to the attention of the Society that we recently brought an application to join a co-defendant before the Master of the High Court, and the Master refused to make the order, indicating that we would need the consent of the Personal Injuries Assessment Board to join the proposed co-defendant. The matter was adjourned and, eventually, after our senior counsel attended before the Master, the Master refused to join the said co-

defendant. This necessitated appealing the Master's order to the High Court and the matter was heard before Judge Johnson, who allowed the application joining Deerhaven Limited. He specifically ruled that section 6 of the *PIAB Act* was expressly designed to meet a situation as had arisen in our case.

We wish to bring this to the attention of fellow practitioners, as when our counsel made initial enquiries in the Law Library, he was informed that the Master had been making this order for some



time and solicitors were approaching the PIAB board and obtaining the necessary

authority. This, to us, did not seem to be a correct interpretation of the *PIAB Act* and, indeed, would have subjected our client to the possibility of being fixed with substantial costs and delay, as the PIAB board had indicated to us that we would have to file a claim in the usual manner and would have to wait for the appropriate time periods to expire. Incidentally, the High Court has had no difficulty to date in joining co-defendants on consent, where the application is that of a defendant to join a third party. **G**



Law Society of Ireland

DIPLOMA PROGRAMME 2006

The Law Society of Ireland has been offering a variety of diploma and certificate courses for more than ten years. These courses are open to solicitors, barristers, trainee solicitors and members of the business community with the requisite knowledge and experience.

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Publish and be DAMNED

The issue of blasphemy has hit the headlines once again. But what does blasphemy really mean in the context of Irish law? Michael Kealey goes to hell and back in search of answers

MAIN POINTS

- Crime of blasphemy
- *Corway v Independent Newspapers*
- English case law

The publication of cartoons of the Prophet Muhammad in European and US newspapers and on television has sparked protests across the Muslim world. Alone among Irish national daily newspapers, the *Irish Daily Star* reprinted them. They were also published on an Irish-based website.

The cartoons first appeared in a Danish newspaper, *Jyllands-Posten*, last September. One of them shows the prophet wearing a headdress shaped like a bomb, while another shows him saying that paradise is running short of virgins for suicide bombers. Some Islamic tradition bans depictions of the prophet or Allah.

Many Muslims view the cartoons as blasphemous. Their publication has sparked a fierce debate about the limits of free speech. Largely unnoticed, a

similar debate took place in Ireland not that long ago when a case on the boundaries of free speech and blasphemy went as far as the Supreme Court. The case was *Corway v Independent Newspapers* ([1999] 4 IR 484). In addition, in 1991, the Law Reform Commission carried out a detailed review of the law on blasphemy and recommended that the government amend a grossly outdated law. It has, thus far, failed to do so.

Article 40.6.1 of *Bunreacht na hÉireann* provides that “the publication or utterance of blasphemous, seditious, or indecent matter is an offence”. Significantly, this appears as a reservation on the right to freedom of expression rather than in that part of the Constitution dealing with freedom of worship. The *Defamation Act 1961* lays down penalties for blasphemous publications in newspapers: these include a possible two-year prison term. Yet there is no definition of blasphemy in the Constitution or in any act of the Oireachtas.

Opium of the people

In 1937, Ireland was an almost exclusively Christian country with a predominantly Catholic population. Its constitution reflected that ethos. For example, the Constitution recognised the “special position” of the Catholic Church in Irish life. The prohibition on blasphemy was clearly there largely to protect Christian churches from insult.

In 1995, a constitutional referendum to allow for divorce, until then banned, was passed by a small majority. Many commentators viewed this as a sign of the waning influence of the Catholic Church on political life in Ireland. The then *Sunday Independent* columnist and former government minister, Conor Cruise O’Brien, wrote an article to this effect. It was

UTTER PROFANITY

“The Constitution declares that the publication or utterance of blasphemous matter is an offence, which shall be punishable in accordance with law: 1937 Constitution, article 40(6)(1)(i). Every person who composes, prints or publishes any blasphemous libel is guilty of an offence: *Defamation Act 1961*, s13(1). However, blasphemy is not defined in the Constitution or in any act of the Oireachtas and it is impossible to say of what the offence consists; neither the *actus reus* nor the *mens rea* is clear: *Corway v Independent Newspapers* ([2000] 1 ILRM 426 SC and [1999] 4 IR 484 SC). It was for the legislature and not the courts to define the crime (*Corway* case). See LRC 41, 1991, *The Crime of Libel*.

It is an offence to be guilty of riotous, violent or indecent behaviour in a chapel or churchyard or burial ground, or to molest, disturb, vex or trouble a preacher or clergyman celebrating any sacrament or divine service or rite: *Ecclesiastical Courts Jurisdiction Act 1860*, s2.”

From Murdoch’s Dictionary of Irish Law (4th edition), p110.



ROAD TO PERDITION

Section 13 of the *Defamation Act 1961* provides:

1) Every person who composes, prints or publishes any blasphemous or obscene libel shall, on conviction thereof on indictment, be liable to a fine not exceeding £500 or imprisonment for a term not exceeding two years or to both fine and imprisonment or to penal servitude for a term not exceeding seven years.

a) In every case in which a person is convicted of composing, printing or publishing a blasphemous libel, the court may make an order for the seizure and carrying away and detaining in safe custody, in such manner as shall be directed in the order, of all copies of the libel in the possession of such person or of any other person named in the order for his use, evidence upon oath having been previously given to the satisfaction of the court that copies of the said libel are in the possession of such other person for the use of the person convicted.

b) Upon the making of an order under paragraph (a) of this

subsection, any member of the Garda Síochána acting under such order may enter, if necessary by the use of force, and search for any copies of the said libel any building, house or other place belonging to the person convicted or to such other person named in the order and may seize and carry away and detain in the manner directed in such order all copies of the libel found therein.

c) If, in any such case, the conviction is quashed on appeal, any copies of the libel seized under an order under paragraph (a) of this subsection shall be returned free of charge to the person or persons from whom they were seized.

d) Where, in any such case, an appeal is not lodged or the conviction is confirmed on appeal, any copies of the libel seized under an order under paragraph (a) of this subsection shall, on the application of a member of the Garda Síochána to the court which made such order, be disposed of in such manner as such court may direct.

“The failure of the Oireachtas over the last 70 years to legislate, or even debate, the boundaries of blasphemy is unfortunate”

accompanied by a cartoon that showed three government ministers from the so-called Rainbow Coalition – including the then taoiseach, John Bruton, Prionsias de Rossa and Ruairí Quinn – rejecting a host and chalice being offered by a priest. The caption to the cartoon was a play on an anti-divorce slogan “Hello, divorce – bye, bye daddy?” The cartoon’s heading was “Hello, progress – bye, bye Father?” The priest was drawn wearing an old-fashioned surplice and holding a chalice in one hand and a host in the other.

A Dublin carpenter, John Corway, told the High Court that he had “suffered offence and outrage by reason of the insult, ridicule and contempt shown towards the sacrament of the Eucharist” in the cartoon. Echoing the views of many Muslims in the present controversy, he argued that any representation of the Eucharist was blasphemous. He sought to bring a private prosecution against the newspaper.

Under the *Defamation Act 1961*, blasphemy prosecutions can only be brought if the High Court approves. Section 8 of the act provides that: “No criminal prosecution shall be commenced against any ... person responsible for the publication of a newspaper for any [blasphemous] libel published therein without the order of a judge of the High Court...”

The need for this approval, of itself, reflects the level of controversy to which such cases can give rise. The High Court refused Mr Corway’s application and its decision was upheld by the Supreme Court.

In the High Court, Mr Justice Geoghegan said that the principles to be applied in deciding whether the requirements of section 8 were satisfied were:

- Is there a *prima facie* case, that it is beyond argument there is a case to answer before a criminal court,

- The blasphemy must be so serious that it is proper for the criminal law to be involved,
- Although not a necessary ingredient, whether publication could provoke a breach of the peace, and
- Does the public interest *require* the institution of criminal proceedings?

Judge Geoghegan was “of the opinion that the applicant ... failed to establish the very first principle, to say nothing of the others”. The Supreme Court upheld this decision.

Saints and sinners

Worryingly, as it is a criminal offence, the Supreme Court was forced to conclude that “it is impossible to say of what the offence of blasphemy consists” under Irish law. There had been no blasphemy prosecutions in Ireland for over 75 years and case law was scant. The court reviewed relevant English cases, including *R v Lemon* ([1979] AC 617), a *cause célèbre* involving proceedings by Mary Whitehouse over a depiction of Christ in a poem in the magazine *Gay News*. It laid down a gauntlet to the Oireachtas by pointing out that “the task of defining the crime is one for the legislature, not for the courts”. Yet our legislators have allowed almost 70 years to pass since the enactment of the Constitution without doing so.

It is even unclear which religions are protected. As they are specifically mentioned in the Constitution, they appear to include those from the Judeo-Christian tradition. However, in a prescient reference to the challenges facing the now more culturally-mixed Ireland, Judge Barrington posed the question: “What then is the position of the Muslim religion? Or of the polytheistic religions such as Hinduism? Would the constitutional guarantees of equality before the law and of the free profession and practice of religion be respected if

one citizen's religion enjoyed constitutional protection from insult but others did not?"

In Britain in 2003, a House of Lords select committee report, *Religious Offences in England and Wales*, found that the law of blasphemy there only protected the Church of England. Catholicism, as well as Islam, does not find shelter under this branch of the English common law.

Losing my religion

A few years before the Supreme Court tackled this issue, the Law Reform Commission had also concluded that Ireland's blasphemy laws were in need of reform and were unlikely to withstand a challenge before the European courts. The commission said that it was "absurd" that a crime existed in Irish law, carrying a potentially lengthy term of imprisonment, whose component parts were "totally uncertain". It believed that the law of blasphemy was discriminatory in that it only protected religions in the Judeo-Christian tradition.

Accordingly, the Law Reform Commission concluded that the offence had no place in a society that valued free speech. It recommended that it should be abolished and religious adherents protected by incitement to hatred legislation. But the commission's hands were tied because of the constitutional ban on blasphemy – there would have

to be a referendum if the crime of blasphemy were to be abolished.

The commission therefore reluctantly recommended a redefined, and more limited, offence of the publication of "matter the effect of which is to cause outrage to the adherents to a religion by reason of its insulting content concerning matters held sacred by that religion" (cf LRC 41, 1991, *The Crime of Libel*, S21(3), p12). The offence would be extended to protect Christian and non-Christian religions, including Islam. The prosecution would, however, have to show that the publisher knew that the material was likely to cause outrage and that this was the sole intent.

The challenges posed by the newly religiously-diverse and multicultural Ireland are great. Those challenges are arguably greatest at the intersection of freedom of expression – which western democracies hold dear, and which carries the concomitant right to give offence – and the deeply-held religious views of many of the old and new Irish. The failure of the Oireachtas over the last 70 years to legislate, or even debate, the boundaries of blasphemy is unfortunate. As events of the last few months have shown, this issue is not of academic legal interest. **G**

Michael Kealey is a partner in William Fry.



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Red card for REFEREES

It's increasingly difficult for employers to refuse to give references and avoid liability for their contents. But how can they be sure that what they say never comes back to haunt them, ask Peter McInnes and Aoife Henry

MAIN POINTS

- **Obligation to provide a reference**
- **English case law**
- **Employee remedies**

While one used to be able to say with a reasonable degree of confidence that there was no absolute obligation on employers to provide an employee with a reference, English case law has developed a number of exceptions to the proposition. It would now appear that, in certain circumstances, an employee can require an employer to give a reference. British case law suggests that it may be appropriate, in some cases, to imply a term into a contract of employment that the employer will provide the employee with a reference at the request of a prospective employer. We would suggest that the body of English case law that has developed over the last number of years would most likely find favour in the Irish courts.

There are several legal questions that flow from the issue of employment references. For example:

- Is there a general legal obligation on employers to provide an employee with a reference?
- If such an obligation exists, what information should a reference contain?
- What are the potential legal consequences of a breach of this obligation, should it exist?
- To whom might an employer owe a legally enforceable obligation in relation to the provision, and the contents of, a reference?
- Does the increasingly common practice of providing brief factual statements of employment meet an employer's obligations?

'Kiss of death'

The leading case is *Spring v Guardian Assurance* ([1995] 2 AC 296). The plaintiff was dismissed from his position of sales director (designate) and office manager by the defendant. He subsequently sought to sell the insurance products of another company. Under the rules of the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO), the other company was required to seek – and the defendant to supply – a reference before they could appoint the plaintiff as one of their representatives. In consequence of the unfavourable reference

supplied (described by the trial judge, with very little understatement, as the “kiss of death”), the other company declined to appoint the plaintiff.

The plaintiff brought an action against his former employers on several grounds, including negligent misstatement, malicious falsehood and breach of contract. The plaintiff would presumably have included a claim of defamation but for the fact that there is no legal aid in Britain for such claims. The House of Lords observed that the defendant might have had a good defence to any such claim on the basis of qualified privilege, but that this line of defence would not avail the defendant to a claim based on the tort of negligence.

The Lords held that an employer who gives a reference in respect of a former employee owed that employee a duty to take reasonable care in its preparation, and would be liable to him in negligence if he failed to do so and the employee thereby suffered economic damage. Interestingly, the Lords did not draw a material distinction as to whether the plaintiff had been an employee of the defendant or acting under a contract for services.

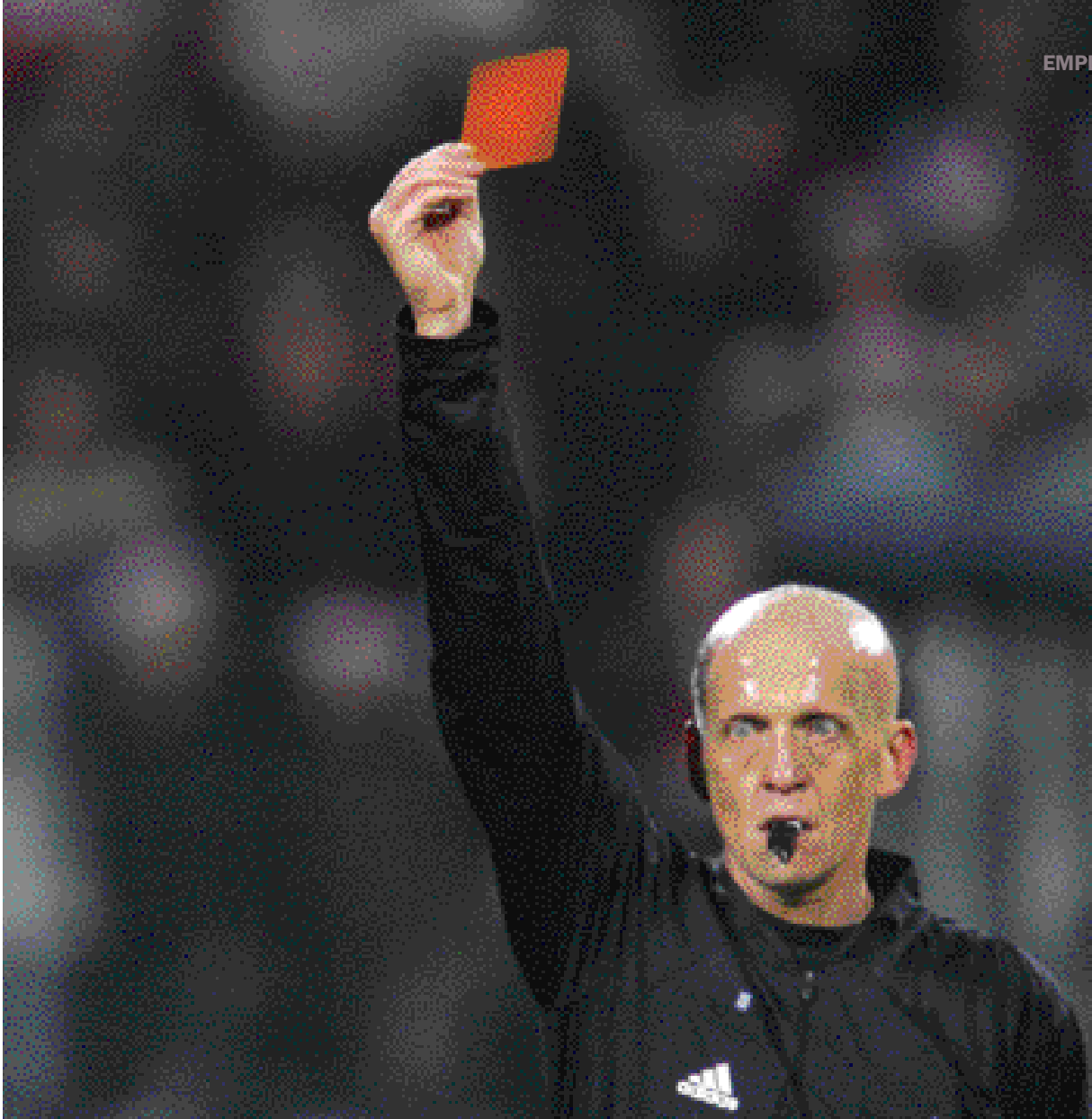
The Lords also held that an implied term of the contract existed between the plaintiff and the defendant to ensure that reasonable care was taken in the compiling and giving of the reference, and that the defendant was in breach of that implied term.

Hope springs eternal

Lord Slynn commented, albeit *obiter*, that even if there is no universal duty on an employer to give a reference, it would seem that contracts may exist when it is necessary to imply such a duty. He also said: “It is a relevant circumstance that, in many cases, an employee will stand no chance of getting another job, let alone a better job, unless he has been given a reference.”

Furthermore, Lord Woolf attempted to specify the circumstances that would enable such a term to be implied. Those circumstances are:

- 1) The existence of the contract of employment or of services,



- 2) The fact that the contract relates to an engagement of a class where it is normal practice to require a reference from a previous employer before employment is offered, and
- 3) The fact that the employee cannot be expected to enter into a class of employment, except on the basis that the employer will, on the request of another employer made not less than a reasonable time after the termination of the previous employment, provide a full and frank reference to the employer.

In *Spring*, there was a duty on the employer to provide a reference under the LAUTRO rules. However, not every industry has guidelines as comprehensive, and the issue of whether there is a custom in a particular industry to provide references will, more often than not, be a question of fact. We would, however, suggest that the tests laid out by Lord Justice Woolf could be readily applied to a wide variety of industry sectors in Ireland.

The existence of an obligation to provide a reference was approved by subsequent British cases, also in the insurance industry: *Kidd v Axa Equity & Life Assurance Society plc* ([2000] IRLR 301) and *Cox &*

Cross v Sun Alliance Life Limited ([2001] IRLR 448).

The duty of care set out in *Spring* was extended in *Bartholomew v Hackney London Borough and Another* ([1999] IRLR 246). In *Bartholomew*, the Court of Appeal held that, on giving a reference to a former employee, a former employer owed a duty of care to the former employee to provide a reference that was true, fair and accurate. It stated that, in order to determine the fairness of the reference, it was necessary to have regard to the whole of the reference and the surrounding context, as a number of discrete statements, though factually accurate in themselves, could nevertheless – read as a whole – give an unfair, or potentially unfair, impression to a recipient of the reference. Significantly, it was held that it is not necessary that a reference, in every case, be full and comprehensive.

Duty of care to future employers?

We would suggest that it has long been the case that an employer who provides a reference owes not only a duty of care to the employee but also to the third party recipient of that reference. The fact that the third party and the employee will rely on the reference is clearly foreseeable. This creates a duty

EMPLOYEE REMEDIES

The possible remedies available to an employee for failure to provide a reference, or for provision of an inaccurate reference, could include:

- Breach of contract
- Negligence
- Unfair/constructive dismissal
- Defamation
- Malicious falsehood
- Discrimination
- *European Convention on Human Rights Act 2003*
- Constitutional right to earn a livelihood
- Data protection rights.

If an employer undertakes (or a duty is imposed on it) to provide a reference and it fails to do so, this may be a breach of contract. The employee may be able to claim a breach of the employer/employee mutual duty of trust and confidence.

Employers should be aware that a reference given on termination may subsequently reappear in any dispute arising from the termination. Accordingly, a reference should not be embellished to assist an employee in gaining future employment, as it may restrict an employer's defence in any such claim. It could also expose an employer to a claim from a third-party recipient of the reference.

Employers should also be wary of including details of investigations, complaints or allegations of which an employee is

unaware in a reference (see *TSB Bank v Harris*, [2000] IRLR 157).

The British case of *Coote v Granada Hospitality* ([1999] IRLR 452) suggests that a refusal by an employer to provide a reference may be found to constitute discrimination under equality legislation.

Alleged breaches of various provisions of the *European Convention on Human Rights* have been unsuccessfully advanced in recent British cases in the area of references: *Griffith v Newport County Borough Council* ([2001] EWCA Civ 1860) and *Legal and General Assurance v Kirk* ([2002] IRLR 124 CA). There is, however, potential for the rights recognised by the convention to have application in this area.

Under the 1988 and 2003 *Data Protection Acts*, an individual has the right to obtain a copy, clearly explained, of any information relating to him/her kept on computer or in a structured manual filing system, including personnel records.

The acts also provide that personal data containing expressions of opinion about the data subject may be given to the data subject without the permission of the person who expressed that opinion. This does not apply if the expression of opinion was given in confidence or on the understanding that it would be treated as confidential.

Accordingly, an employer may restrict itself to giving only confidential expressions of opinion as references, in order to prevent former employees gaining access to references under data protection legislation.

of care, on the basis of the accepted principles set out in the famous case of *Hedley Byrne & Co Limited v Heller & Partners Limited* ([1964] AC 465).

The duty arises because the employer has special knowledge derived from experience of the employee's character, skill and diligence while working for the employer. When the employer provides a reference to a third party, he does so not only for the assistance of the third party, but also for the assistance of the employee.

What emerges from this case law is that there is still no absolute obligation to provide a reference and no requirement, where it is given, that it must be full and accurate *in every respect*. However, it must be true, accurate and fair. Overall, the reference must not give a misleading impression.

Damned by faint praise

Recent case law has contributed to the increasing practice of employers adopting a formal policy regarding the provision of references. It is now relatively common for employers to only provide references in the form of a brief 'statement of employment', containing only very basic, factual information concerning the employee.

However, in light of the *Bartholomew* case, there is a question as to whether or not the non-disclosure of a material fact on a 'statement of employment' would meet the duty of care, developed by case law, to both employee and, perhaps in this context more particularly, a third-party recipient. Also, any prospective employer who receives such a bland reference may consider the employee to be 'damned by faint praise'.

An increase in the attempted use of disclaimers in relation to references has also been noted. Where a disclaimer is used, it should pass the 'reasonableness' test. It is questionable if any disclaimer of liability would be held to be operative as against the employee. It is also extremely doubtful if a disclaimer could exclude liability for any misstatement of facts that would normally be expected to be within the employer's knowledge. These would include matters such as performance or disciplinary record. A disclaimer may be reasonable in relation to an opinion on the employee's suitability for a particular position or job.

It goes without saying that it would be unwise for employers to divulge their true feelings about an employee over the phone to a prospective employer where they have not been divulged in a written reference. How could an employer be certain that what is said would never come back to haunt them?

It is becoming increasingly difficult for employers to refuse to give references and to avoid liability for their contents, although it does remain to be seen whether the Irish courts will adopt the jurisprudence of the British courts. Consequently, significant care must be taken by an employer when preparing an employment reference. The practice of providing 'statements of employment' is likely to increase, but employers should be wary of omitting material facts relating to the employee's employment that could result in a breach of the duty of care imposed by case law. **G**

Peter McInnes and Aoife Henry are solicitors in the employment law unit at Mason Hayes & Curran.

FREE radical

Asylum seeker Waheed Mudah was granted the right to Irish residency, thanks in part to representations made to the justice minister by the Law Society and some close friends. Waheed spoke to Mark McDermott about his experiences



Waheed Mudah is animated, friendly and direct. He's also extremely honest – as evidenced by his description of his arrival in Ireland as an asylum seeker in July 2001. Before coming here, he had practised as a solicitor, having been called to the Bar in Nigeria. (There is no distinction between solicitors and barristers in that country.) He says that he experienced nothing untoward in Nigeria that meant having to leave his home country, but it was the prospect of a better life for him and his wife that encouraged his departure.

“When you are somebody from a non-EU country and you are seeking residency here, it is known to you, me and most people that the majority of asylum seekers are not asylum seekers in the true sense. It's just to give you a platform to get a visa or permission to remain in the country. So I applied first and was refused. I appealed, making my application under section 3 of the *Immigration Act 1999* – which is for leave to remain on humanitarian grounds. As soon as

I came into this country I had in mind to work as a solicitor, having already served in the legal profession in Nigeria.”

Waheed and his wife Kemi were transferred to a hostel in Tramore, Co Waterford. “Fortunately, the barrister who was appointed to us was Kieran Kelly. Since he was one of the first contacts I had with the legal profession in Ireland, I asked Kieran how to go about seeking permission to practise here as a solicitor. He told me that I should contact the Law Society.

“I put in an application seeking the consent of the Law Society to allow me to start my legal training. I also made contact with the law school at Griffith College, where I met Philip Burke, who advised me not to go ahead with the entrance examination for the preparatory course until I got the consent of the Law Society. When the consent came in October 2002, I registered at Griffith College and started training for the FE1 entrance examination. In 2003, I passed all the exams. I did the preparatory course, got my results and was left with the option of finding a master for my traineeship.

MAIN POINTS

- Seeking asylum
- The search for a master
- Experiencing free speech



NIGERIA IN BRIEF

- The Federal Republic of Nigeria in western Africa is the continent's most populous country. Nigeria re-achieved democracy in 1999 with the adoption of a new constitution, following a 16-year interruption by a series of corrupt and brutal military dictators.
- From 1966 until 1999, Nigeria had been ruled (except the short-lived second republic, 1979-1983) by military dictators who seized (or attempted to seize) power in coups and counter-coups.

- Nigeria borders the Republic of Benin in the west, Chad and Cameroon in the east, Niger in the north and the Gulf of Guinea in the south. Major cities include the capital Abuja and the former capital Lagos, among others.
- The country's name comes from the river Niger.
- Although the April 2003 elections were marred by some irregularities, Nigeria is currently experiencing its longest period of civilian rule since independence.

"I went all over Dublin looking for someone to take me on as an apprentice. It was very, very difficult. I want to tell you, it is easier to pass the FE1 exam than to get an apprenticeship!"

Getting nowhere

At this time, he returned to Kieran Kelly again, looking for some advice. Waheed had made more than 200 applications but was getting nowhere. "Kieran told me to continue until I had made as many as 500 applications. I thought that because I was from Africa doors were refusing to open, but speaking to other people I realised that the problem was not peculiar to me. Not having roots and connections here, however, was definitely a disadvantage."

Eventually, after he had made about 300 applications, Kieran spoke on his behalf to solicitor Kevin Tunney, who promised to try some other contacts. "I want to tell you, it was all in the negative," says Waheed. "Nobody was prepared to take me on."

"I discovered that the biggest obstacle was money. Most people out there think that, just because you are a legal practitioner, you are rolling in money. This is not the case for all practitioners – some are struggling to make ends meet. It was the fear of having to pay an apprentice that deterred many from taking me on."

"I got to the stage wondering if anyone would help me. I was going about some business at the Four Courts one day when I saw Niall Sheerin, whose office is nearby. I explained my situation. He asked me to give him two days. Between Niall and Kevin, we eventually got it sorted out, which meant that I could now register in the Law Society. This was in October 2004."

Grasping everything

Before moving to Ireland, Waheed graduated with an LLB degree from the University of Sokoto in Lagos, and followed it up with a BL.

How has he been finding his studies here? "You have so much information put before you. What would take nine to ten months in Nigeria would be covered in six months in Ireland. There is so much information put in front of you and they expect you

to grasp everything!"

Waheed hopes to qualify by the end of 2006. The most difficult aspect of his studies, he says, has been with communication. "As a non-national solicitor aspiring to practise in Ireland, it is not that easy because I have a problem with my communication. You see, we speak very quickly in Nigeria. It is not easy talking in another society, to integrate and to try to learn how to speak slowly. To help me with this, I have joined Toastmasters. You have to move outside yourself, because you are in another community entirely. People who are relating to you want to know about you. If you continue to have friends only among your own people, it is very difficult to integrate into society."

He says that he would like to specialise in immigration and criminal litigation when he qualifies. "But even if I want to specialise, I will have to look after my clients first," he says. "In the next five or six years, people who are getting residency today will want to buy their own private houses, which means that conveyancing is an area I will have to go into."

Despite the initial setbacks, Waheed says that he is very happy with his new life in Ireland. "They have got so many solicitors in Nigeria, but practice there is not as rewarding as it is here. You give advice to people here – you get your fees. In Nigeria, in our culture, the only time clients want to come to you is when they see that they cannot resolve the matter among themselves. It's not a priority to go and get legal advice. People prefer to resolve affairs among themselves, among the family."

And is that not preferable, in one sense? "Well it could be, but how would solicitors live if everybody settled matters themselves! All joking aside, the reason I say it is more rewarding here is that people value what you do."

Danish cartoons

Waheed's ethnic background is Yoruba – one of the majority tribes of Nigeria – a fact of which he's very proud. "I am a Yoruba man from Erin-Ile, Kwara State, north of Nigeria, and a Muslim." He says that Yoruba Nigerians distinguish themselves from other ethnic Nigerian groups by being highly educated and hard working.



Being a Muslim, what's his take on the recent Danish cartoons controversy over depictions of the Prophet Mohammed? "What is happening all around the world is down to the failure of Muslims to dialogue with people about their Islamic faith," he answers. "The Koran says that you must obey the constituted authority, no matter what. But what if that authority commits atrocities all over? In Islamic countries, people do not question authority. I am not necessarily talking about God here – just the constituted authority, you understand. Islam enjoins obedience to constituted authorities and discourages us from judging others. It is for God alone to judge."

"The problem is that we fail to dialogue – to explain this to people. Let's be honest with ourselves, most of the rights that Muslims have in the western world are not enjoyed by westerners in some Muslim countries. I mean, it is something that has to be considered."

"People in my country have been ruled many times by the military. They don't believe that there is something like free speech until they come to places like Ireland. What we see here is democracy in practice – the majority of us have not experienced it back home before we came to Ireland. When Nigerians and many others from the Third World come here and witness free speech they are surprised. In Ireland, a western democracy, you live a fulfilled life – so much so that you do not want to go back. You are content with what you now have."

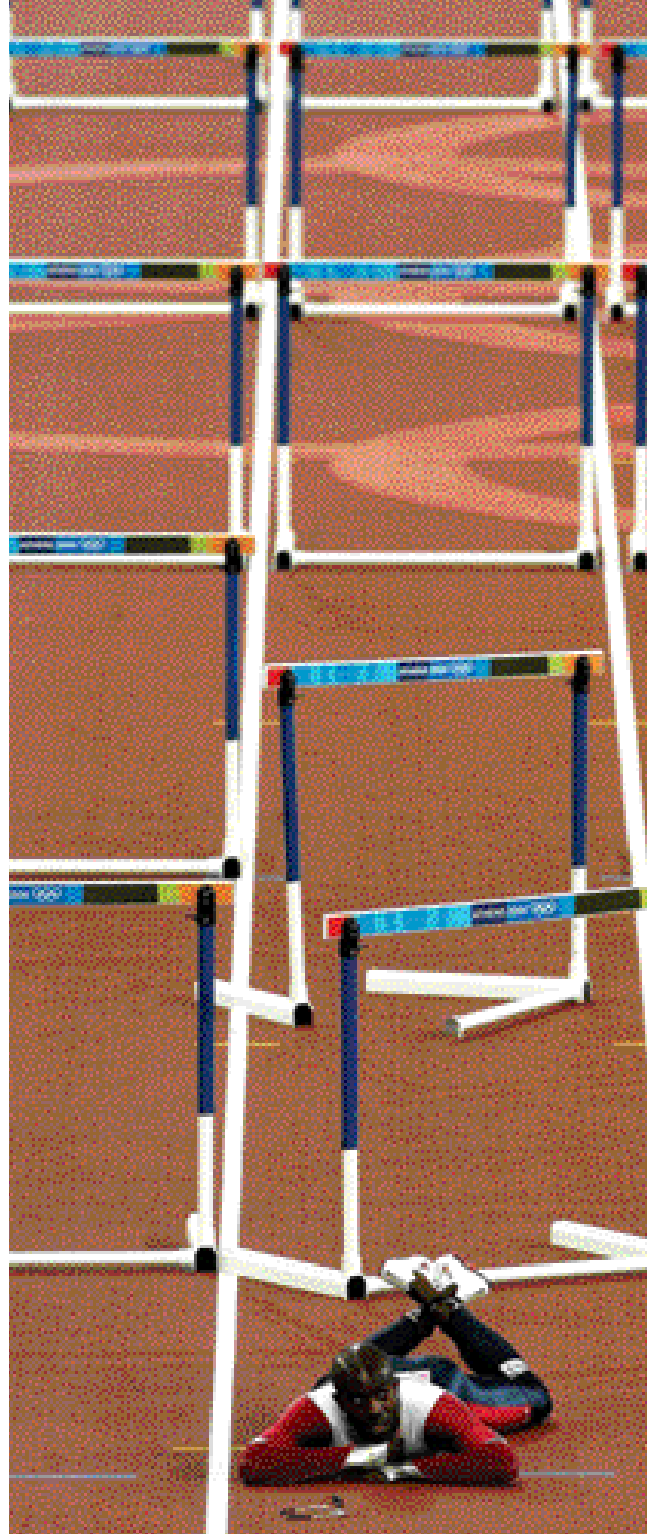
"In all of this I owe a great deal of gratitude to many people – among them, the Law Society of Ireland and, in particular, the director general Ken Murphy, my training solicitor Kevin Tunney, and very many others for their support in making my residency and dream of practising as a solicitor in Ireland a reality." **G**

Despite recent activity in the public enforcement of competition law, private actions seeking remedies against anti-competitive conduct on the part of businesses are rare. Margaret Gray examines the issue

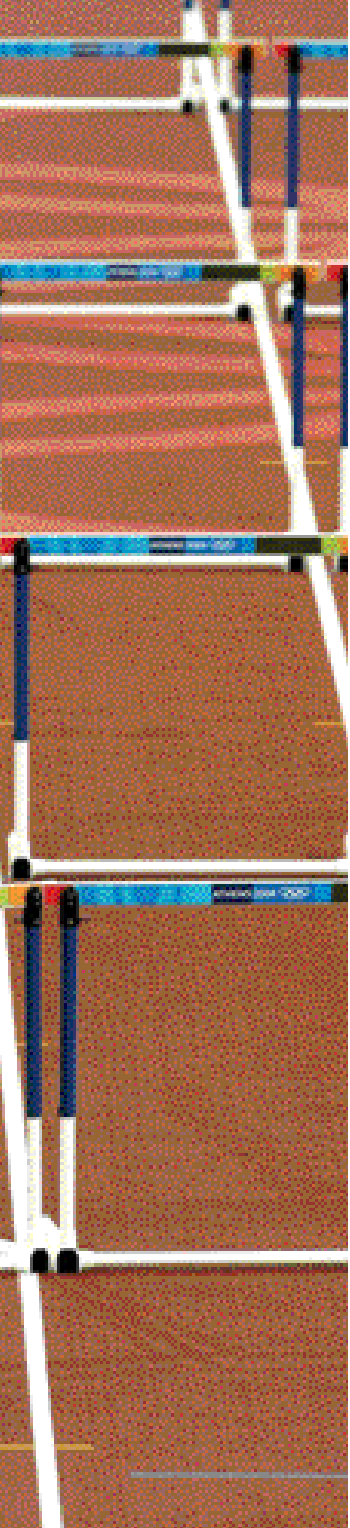
In April, May and June of 2004, the DPP took proceedings against 24 defendants in 11 District Courts across the west of Ireland. The charges related to allegations of fixing the price of gas oil and kerosene and followed a Competition Authority investigation. During March 2006, a number of defendants were tried and sentenced, including one defendant who was tried at Galway Circuit Court and received a fine of €3,500. Another defendant, who pleaded guilty to the relevant charges, received a six-month suspended sentence and a fine of €15,000. Clearly, competition law is not to be taken lightly.

Fair trade

Another news item was Minister for Enterprise, Trade and Employment, Micheál Martin, signing the order to commence the *Competition (Amendment) Act 2006* with effect from 20 March 2006. That act abolishes the *Restrictive Practices (Groceries) Order 1987*, which prohibited retailers from passing on off-invoice discounts to customers. It also amends the *Competition Act 2002* by creating four separate civil offences for anti-competitive conduct in the grocery market. The new section outlaws resale price maintenance, the application of dissimilar conditions to equivalent transactions and the requirements of paying retailers in exchange for advertising or displaying grocery goods in their stores and of paying retailers 'hello money' for providing shelf space for goods. These offences relate to conduct in the grocery goods trade not already covered by the *Competition Act 2002*. Such conduct must also be shown to have as its object or effect the prevention, restriction or distortion of competition in trade in grocery goods in Ireland or any part of it (the so-called 'competition test'). The prohibitions are enforced by the Competition Authority, which has the right to sue for breaches, a right also available to any person aggrieved by such conduct.



So, will the new causes of action invite a rash of suits against the bigger players in the grocery sector? "Highly unlikely" was the unequivocal response of a number of experts speaking at a March conference organised by *Competition Press* that addressed the impact of these amendments as well as wider aspects of competition law enforcement in Ireland. For starters, in situations that require the examination of allegedly anti-competitive commercial conduct in the past and over a potentially short period of time, evidentiary problems loom for any private party considering claiming – this is particularly true as regards meeting the 'competition test'. Moreover, there are a number of general obstacles to bringing claims in this field, which means that, while private



CAN'T SUE won't sue?

actions are not entirely impossible or without precedent, they are rare. More radical change would be required to encourage private actions.

Bringing competition closer

This litigation malaise in the competition field is not confined to the Irish courts but spreads to the rest of the EU, as a recent EC Commission Green Paper shows (*Damages Actions for Breach of the EC Antitrust Rules*, COM [2005] 672 available at http://europa.eu.int/comm/competition/antitrust/others/actions_for_damages/index_en.html). The Green Paper provides a useful summary of the disincentives to bringing claims for infringements of EC competition law. Similar disincentives apply to bringing claims for breaches of Irish competition law. The Green Paper is part of a Commission programme that aims to encourage damages actions for infringements of antitrust rules, which could bring radical change to the competition enforcement regime. If, looking to the future, such legislative changes are made, plaintiffs appearing before Irish courts could benefit from procedural changes, specifically as regards the burden of proving an infringement and loss, quantification of damage and costs, making it easier for them to bring civil actions for damages caused by anti-competitive behaviour. Why does the current situation of competition law enforcement require such drastic reforms? A quick synopsis can put us in the picture (see panel p32).

The role of private parties bringing civil actions and contributing to a more effective enforcement of the EC antitrust regime has, however, been a key theme running through recent public statements of Commissioner Kroes, the member of the Commission in charge of competition policy. Kroes views private enforcement not only as a device for “optimising the impact of competition policy” but also as a way of providing direct justice via the courts. That potential is nowhere near being realised. A 2004 study for the Commission revealed that, despite the possibility of bringing an action for breach of antitrust rules as a matter of a general right of EC law or on foot of a separate right protected by national law, the member states’ legal systems were in a state of “total underdevelopment”. The figures tell the story: there have been around 60 judged cases for damages actions (12 on the basis of EC law, around 32 on the basis of national law and six on both). Of these judgments, only 28 resulted in an award being made (eight on the basis of EC competition law, 16 on national law and four on both). According to the Irish contribution to that study (see *Ireland Report*, available at http://europa.eu.int/comm/competition/antitrust/others/actions_for_damages/study.html), there has only been one award of damages for infringement of Irish competition law (*Donovan and others v Electricity Supply Board* [1994] 2 IR 305, [1997] 3 IR 573) and none as regards EC law. There have been claims for breaches of article 81 and article 82 in civil actions

The Competition (Amendment) Act 2006 – removing hurdles for customers?

MAIN POINTS

- Enforcement of competition law
- Private civil actions
- EC Commission Green Paper

COMPETITION LAW ENFORCEMENT – A WHISTLE-STOP TOUR

The competition rules are set down in article 81 of the *EC Treaty*, which prohibits anti-competitive agreements, decisions and concerted practices, and article 82, which prohibits the abuse of a dominant position. The corresponding provisions in Irish law are section 4 and section 5 of the *Competition Act 2002*. These prohibitions operate as deterrents to anti-competitive behaviour and provide protection to competitors and consumers. In Ireland, the prohibitions are enforced by public, private, criminal and civil law procedures.

On the one hand, as regards public enforcement, the role of the Competition Authority, which can bring summary criminal proceedings, can ask the DPP to bring criminal proceedings on indictment, and can initiate civil suits for breaches of either prohibition, is key. It was the Competition Authority that referred the Connaught home-heating oil cartel to the DPP. It was also the Competition Authority that successfully brought proceedings against the Irish League of Credit Unions, seeking declarations and injunctions in respect of anti-competitive practices operated by it. Public enforcement of competition law, both at national and EU level, is in the driving seat.

On the other hand, as regards private enforcement, a right of action for any person aggrieved by conduct prohibited by either section 4 or section 5 of the *Competition Act 2002* is provided by section 14(1) of that act. In addition, as articles 81 and 82 of the *EC Treaty* are directly applicable, private parties can rely on those provisions in civil disputes before national courts when there is an element of inter-state trade. In Case C-453/99 *Courage v Crehan* [2001] ECR I-6297, the ECJ affirmed that the effective protection of the rights granted by the treaty requires that individuals who have suffered a loss arising from an infringement of articles 81 and 82 have the right to claim damages. As to remedies, an aggrieved person may be granted a declaration that an agreement is void, as well as injunctive relief. He may also be awarded damages, including exemplary damages, relief that is not available to the Competition Authority. Yet, despite the availability of these remedies, actions by private parties are rare.

before the Irish courts: see, for example, *Cadbury Ireland Ltd v Kerry Co-Operative Creameries Ltd and Dairy Disposal Co Ltd* [1982] ILRM 77 and *Masterfoods Ltd v HB Ice Cream Ltd and HB Ice Cream Ltd v Masterfoods Ltd* [1993] ILRM 145.

‘Underdevelopment’ is an understatement.

The Green Paper does not provide a clear solution to the disincentives facing parties contemplating litigation to protect their rights. Rather, it poses a number of questions and offers a range of options. Depending on which options are adopted, damages actions could be made subject to specific procedural rules which would make them easier to bring under a new procedural code distinctly different from that governing civil actions. Private parties would derive significant incentives to litigate if some of the options discussed by the Commission are adopted in practice as regards evidentiary rules, quantification of damages and costs.

Shifting the burden of proof

Assistance to the plaintiff is proposed, first, by a shift of the burden of proof in cases of ‘information asymmetry’ between the plaintiff and defendant, alleviating any weak disclosure rules applicable to

the plaintiff. Secondly, an unjustified refusal by a party to provide evidence could shift the burden of proof. This could vary between, on the one hand, a rebuttable presumption or an irrebuttable presumption of proof and, on the other hand, the mere possibility for the court to take that refusal into account when assessing whether the relevant fact has been proven.

Another related difficulty identified by the Commission is the fact that evidence that is key to making damages claims effective is often held by the party committing the anti-competitive behaviour. To alleviate this problem, the Commission suggests an obligation of disclosure of documents either by individual relevance or by class, as well as an obligation to preserve and a sanction for the destruction of evidence. The Irish courts could, subject to the preservation of confidentiality of business secrets, be given access to documents held by the Commission.

Doing the maths

Arguably, the most controversial proposals and those likely to be of most interest to clients concern the scope and quantification of the damages claim. Should an award be calculated by reference to the loss suffered by the plaintiff (compensatory) or to the illegal gain made by the infringer (restitutionary)? An award made on the latter basis is far from the established principles of Irish tort law, which allow damages to be recovered for loss suffered by a plaintiff (see *Donovan and others v Electricity Supply Board* [1997] 3 IR 573). Even more foreign to the Irish courts is the possibility raised by the Commission that, in the case of ‘hard-core’ infringements – such as price-fixing cartels – damages could be doubled at the discretion of the court. (Section 14(5) of the *Competition Act 2002* does provide that exemplary damages may be awarded to the plaintiff in an action for breach of section 4 or 5. However, according to the *Ireland Report*, citing *Kennedy v Ireland* ([1987] IR 587), exemplary damages are rarely awarded in Ireland and are usually relatively modest.) This would bring the EC position closer to that in the United States, where section 4 of the *Clayton Act* permits any injured person to bring actions for treble damages for federal antitrust violations.

Favourable rules on costs would further strengthen the position of the plaintiff. Bringing an action for infringement of antitrust provisions, which almost certainly involves complex factual evidence and expert evidence as well as a team of specialist legal advisers, is an expensive business. The substantial costs incurred are likely to deter potential plaintiffs, particularly in borderline cases. To get over that disincentive and to ensure effective access to courts, the Commission proposes either establishing a rule that unsuccessful plaintiffs pay costs only if they act in a manifestly unreasonable manner, or giving the court a discretionary power to order, at the beginning of a

“Providing plaintiffs with additional rights requires removing corresponding rights from others”

trial, that the plaintiff not be exposed to any costs even if unsuccessful. Provided, therefore, that a client has an arguable case, the risk of litigating would be low, given that he could have unconditional or conditional costs protection.

A relaxed approach to standing

Beyond the specific protection of consumer interests, collective actions can serve to consolidate a large number of smaller claims into one action, saving time and money. The first proposal in the Green Paper is a cause of action for consumer associations without depriving individual consumers of the right to bring an action. This in turn raises questions of standing, the distribution of damages (whether to the association or its members), and the quantification of damages (whether based on the illegal gain of the defendant where awarded to the association or based on damage caused where awarded to individuals). The second proposal is for collective action by groups of purchasers other than final consumers. This type of group litigation would be new in Ireland.

Crystal-ball gazing

The Commission's proposals are no more than opening bids at this early stage and only one small step on the long and winding road to EC legislation.

However, they do represent the culmination of serious comparative research into an area that is ripe for improvement. The Green Paper represents a distinct shift in thinking at EC level that will directly affect national law. The proposal for a separate procedural code favouring plaintiffs that applies in respect of damages actions for breaches of articles 81 and 82 could easily be tailored to fit actions for breaches of section 4 and section 5, as well as the new section of the *Competition Act 2002*. But how likely is the codification of distinct procedural rules applying to this field? And how desirable? Providing plaintiffs in these cases with additional rights requires removing corresponding rights from others. The debate is only getting started.

One thing is clear, however. Heightened public awareness of competition law brought about by the recent activity of the Competition Authority and High Court case-management procedures that can accommodate anti-trust disputes in the competition list may facilitate private enforcement. The outlined procedural amendments would, by contrast, be a major catalyst for change. **G**

Margaret Gray BL, Brick Court Chambers London, was a référendaire in the chambers of Judge Macken and Judge Ó Caoimh at the ECJ from 2002-2005.



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Schools of THOUGHT

MAIN POINTS

- Education litigation
- Schools' boards of management
- Recent cases

Discipline, bullying, health and safety in crèches, and school evaluations are hot topics. But are the people managing schools competent to do so? Emer Woodfull works it out

With the growth in school-related legislation, there has been an associated increase in litigation. “While boards of management may be doing their best,” says Seán Cottrell, Director of the Irish Primary Principals’ Network, “they are under-resourced, unqualified, untrained and under-supported. There is no value put on prevention – €1 million spent now on training them could save €10 million in litigation.”

Both Cottrell and Fr Dan O’Connor, General Secretary of the Catholic Primary Schools’ Management Association, agree that employment law is the biggest area of concern for boards of management. Fr O’Connor says: “Boards of management are supposed to be applying all the new employment legislation with no training and no back-up.”

Whatever the shortcomings in the current system, two recent cases have highlighted the penalties schools will face if proper procedures are not followed by boards of management. In February, in the Circuit Court case of *Ó Donnchadha v Scoil Chearbhaill Uí Dhálaigh*, Judge Joseph Matthews approved a settlement offer of €10,000 damages, to include costs, in relation to the claim that the then six-year-old boy had been bullied, verbally abused, kicked and punched, spat and jeered at, and had stones thrown at him over a one-year period.

Counsel for the boy told the court that his parents felt the school was not doing enough to protect their son after complaints were made. Judge Matthews

said that the circumstances of the bullying had not been beyond the control of the school and that it was unfortunate that it had taken so long to come to the attention of the school.

Commenting on this case, Fionnuala Kilfeather, Chief Executive of the National Parents’ Council, said this case was “very significant and set down a real marker for schools not dealing with bullying and other behaviour issues in a fair way”.

Final hurdle

The second case, *Hennessy v St Gerard’s School Trust* (High Court, 17 February 2006), concerned a probationer teacher in a private school who was awarded €15,000 damages because of a failure by the school board to grant her a hearing before deciding whether to keep her on or let her go at the end of the probationary period.

While Mr Justice Kevin Haugh ruled that the school’s board of governors had been entitled to reach its decision not to continue Ms Hennessy’s contract, he went on to say that he was satisfied that certain agreements or understandings had been concluded between a school management organisation, of which St Gerard’s was a member, and the ASTI, which would have afforded a probationer the right to address the board. It would appear that, in the lead-up to the making of the decision, the school had followed correct procedures, in that the “headmaster had carried out appropriate and reasonable investigation”, the conclusion “was reached on reasonable grounds”, “the plaintiff had been informed in sufficient detail



throughout her period at St Gerard's as to Mr Foley's concerns", and "she had been offered help and assistance".

But the school fell at the last fence by not giving the plaintiff the opportunity to address the board about complaints about her performance before they made the crucial decision to terminate their relationship with her. Mr Justice Haugh said: "Since I am satisfied as a matter of strong probability that the plaintiff would have been let go, even had she been afforded the opportunity to which she was entitled, I think the compensation should be on a modest scale," and, accordingly, he awarded a sum of €15,000. The plaintiff was awarded costs at Circuit Court level for four days of a six-day hearing.

In contrast, in a case where the court ruled that

correct procedures had been followed, a complaint against a school was not upheld. In *Mulvey v Mc Donagh* (High Court, [2004] 1 IR 497), featured in the last issue of the *Gazette* (p18ff), Mr Justice Johnson, in refusing a claim for damages as a result of an alleged assault and bullying by a fellow pupil, said, among other things, that "the school had provided documents for the parents, had attended seminars and were all very concerned about the question of bullying". He also found that the required degree of care – that of a 'prudent parent' – had been exercised by the school.

It would appear, therefore, that schools that fail to have procedures in place in relation to how school policies should be implemented, and/or who fail to implement those procedures in a fair way, do so at their peril.

A primary school's board of management is charged with a very difficult task. While the overall responsibility for providing education in the state lies with the minister, the board of management of the school has responsibility for managing the school, is required to publish the policy of the school, and is the employer who appoints teachers and other staff and who may suspend or dismiss staff. The board of management, therefore – which is unpaid, untrained and part time, with a requirement to meet only four times a year – has to negotiate and implement the dizzying statutory array of everything from the *Education Act 1998* to the *Occupiers' Liability Act 1995*, the *Health, Safety and Welfare at Work Act 2005*, the *Equal Status Act 2000*, the *Employment Equality Act 1998* and the

STANDARDS OF BEHAVIOUR

In addition to the areas of law outlined, schools should also be implementing the *Education Welfare Act 2000*, which requires that the school publish a fairly wide-ranging code of behaviour that covers matters including acceptable standards of behaviour by students, and the procedures to be followed in the event of any breach.

It also states that the code of behaviour shall be prepared in accordance with guidelines as may be issued by the National Educational Welfare Board, set up under the act. Schools have, however, been in the somewhat unfortunate position of having had to meet this requirement without the assistance of guidelines that still haven't been published.

In relation to bullying, departmental guidelines issued in 1993 state that the anti-bullying code outlined therein "should be included as part of the school plan/policy statement and should be available to all, by way of a written code of behaviour and discipline for the school".

Education Welfare Act 2000. In addition, boards need to have a general understanding of what the ever-growing body of common law has decided in relation to school-related and employment issues.

Heavy load

It's not surprising that teachers, principals and boards of management may feel overwhelmed. Seán Cottrell has described the current system as "harnessing a team of Clydesdales to a 40-foot trailer and asking them to negotiate their way safely home along a four-lane motorway". Cottrell would prefer to see a system whereby school boards were governors of schools, as opposed to managers.

It is essential, however, that all of these parties are aware of what they are required to do to ensure that the school is properly run and is following fair procedures that may go some way to providing a defence in the face of litigation.

While schools may indeed feel overwhelmed by, and afraid of, the law, it will not be a defence to plead ignorance of it. At a bare minimum, schools must adhere to, and properly understand, the legal principles of *audi alteram partem* ('hear the other side') and *nemo iudex in sua causa* ('no-one can be a judge in his own cause') in all of its dealings. These principles should obviously permeate everything, including fair and accurate record-keeping, sharing such records in a transparent manner where a party seeks to rely on them, affording the other side the opportunity to respond to any allegations made, conducting any oral hearing or job interview in an impartial way and not asking questions like: "Considering that you've been teaching for 27 years, why would you now be bothered with the hassle of the job of deputy principal?" This was mentioned in the case of *O'Neill v Board of Management, St Gabriel's NS*. An equality officer held that the claimant had been discriminated against on the ground of age.

Parents, of course, have a statutory right of appeal to the board of management against the decision of a teacher or other member of staff of

the school under the *Education Act 1998*, and they also have the right of appeal against a decision to expel a pupil.

While schools will, no doubt, be familiar with this procedure, they may not have fully appreciated the increased obligations they must now take on board on foot of the *Health, Safety and Welfare at Work Act 2005*, which provides litigants with an enlarged statutory basis on which they might rely.

Section 8 of that act requires that: "Every employer shall ensure, so far as is reasonably practicable, the safety health and welfare at work of his or her employees." The act defines 'reasonably practicable' as meaning "that an employer has exercised all due care by putting in place the necessary protective and preventive measures, having identified the hazards and assessed the risks to safety and health likely to result in accidents or injury to health at the place of work concerned and where the putting in place of any further measures is grossly disproportionate having regard to the unusual, unforeseeable and exceptional nature of any circumstance or occurrence that may result in an accident at work or injury to health at that place of work".

Risky business

Apart from requiring the school to exercise all due care in assessing any potential physical hazards in the workplace, and putting in place necessary preventive measures, there are clear implications for the school regarding identifying hazards such as adult bullying, and having in place an adequate written risk assessment and safety statement in relation to this. The act goes on to require that the risk assessment be updated as appropriate and that a safety statement be prepared based on the identification of the hazards.

In formulating such a statement, schools should have regard to identifying what the hazard might be, who and how many people might be exposed to it, what might constitute a resultant injury, and what loss a person might suffer.

In undertaking such an assessment, schools might consider the kind of behaviour that was reported to a teacher's bullying helpline. It ranged from the discontinuing of school duties without explanation, comments ignored at school meetings, interference by principals with arrangements made by teachers, and teachers interfering with other teachers' classes. They might also consider that, in addition to the most commonly reported instance of bullying reported to the helpline – that of teacher by principal – parties exposed might be 'teacher by parent' or 'teacher to teacher'. Special care assistants also come into the equation.

There is an obligation also on the employer under the *Health, Safety and Welfare at Work Act 2005* to provide training to staff. This is an area where boards of management might find

'Schools that fail to have procedures in place in relation to how school policies should be implemented do so at their peril'

themselves exposed by not complying with the statutory requirements.

In addition to these obligations, it would appear that the safety statement should also be brought to the attention of other persons within the school, including parents and pupils, who may be exposed to any specific risk to which the safety statement applies.

Staff in schools also have wider statutory duties. Section 13(1) of the act states that "an employee shall, while at work ... comply with the relevant statutory provisions, as appropriate, and take reasonable care to protect his or her safety, health and welfare and the safety, health and welfare of any other person who may be affected by the employee's acts or omissions at work".

As the employee's obligations now extend, therefore, to any other person, that may be found to include parents and pupils and other visitors. The act also mandates that the employee not engage in any improper conduct towards those other persons. As the act has enlarged the category of persons it affects, that would seemingly also widen the categories for which the employer will be vicariously liable for torts done by its employees – in this case, by teachers.

There would also appear to be a reporting

requirement placed on employees in relation to any breaches. It will be interesting to see how strictly the courts require schools to follow these enlarged requirements.

It is obvious, however, that boards of management and staff in schools carry a heavy legal burden. The publication of departmental circulars obviously provides some guidance. Individual teachers can avail of legal back-up from their unions. Support is also provided by the different religious and secular management bodies, the National Parents' Council and the Irish Primary Principals' Network. The publication of documents such as *Working Together: Procedures and Policies for Positive Staff Relations* (INTO, 2000), which sets out a very clear, graduated procedural framework at primary level for inter-staff complaints from the bottom up, is also helpful.

How well any procedures are implemented depends on how well they are understood. It appears, however, that there isn't any one umbrella under which boards of management can find support and guidance in their pivotal role. **G**

Emer Woodfull, a former teacher and journalist, is a practising barrister.

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The turbulent '20s

The *Gazette* continues its celebration of the production of its 100th volume. Mark McDermott delves between the covers and picks the best from the early 1920s

The 1920s were a time of momentous change in the Irish political landscape. Again, the *Gazette* contains numerous references to many of the events that took place – though sometimes it's necessary to read between the lines to get a true sense of the political and military turmoil of the civil war years.

In May 1921, the *Gazette* contained news that a report had been submitted by the Privileges Committee over the searching of solicitors' offices by the military authorities. A letter was written to the Commander of the Forces stating: "That in the opinion of this Council the removal by the Crown forces from Solicitors' offices of Counsel's briefs, or any documents prepared by a Solicitor in connection with the defence of his client, is a grave infringement of the recognised privileges of the Solicitors' profession. The Council urge for the protection of Solicitors' privileges that where the competent military authority exercises the right to search Solicitors' offices, every care should be taken to prevent undue interference with confidential or privileged papers the property of the clients of the Solicitors" (May 1921, p2).

'Disastrous condition'

The half-yearly general meeting that year was held on 11 May in the Solicitors' Buildings, Four Courts. During his address to the meeting, the president (Charles G Gamble) had reason to refer to the civil strife then taking place:

"The disastrous condition of this country, and the continuance of civil strife is one that, in common with the rest of the community, we, as a profession, deplore, for professional pursuits have become most difficult and harassing to carry on. The conditions prevailing re-act acutely on the prosperity and utility of the legal professions, and we who are dependent on professional pursuits naturally desire, not only from that point of view, but for every other reason, to see our country as it might and should be in peace and prosperity.

"... I may be permitted to express the conviction that in the grave circumstances of the present its members will at all times and at all seasons be true to the best traditions and dignity of professional life, and lend their influence to subduing and effacing the angry passions at present prevalent" (June 1921, p7).

"I don't think it is expedient on this occasion to conjecture as to our position under Partition, for at present nothing is very definite. We, as a Council, are fully alive to it, and will come to you in General Meeting if occasion arises, and a Committee has been set up and has our position under the Government of Ireland Bill in consideration. Meantime I ask you to accept my assurance that your interests are watched. If enforced loss of income results from this Partition legislation, this Society will have to consider its position and formulate its claims" (p9).

War memorial

In August 1921, the *Gazette* reported that the war memorial to the memory of the 20 Irish solicitors and 18 apprentices who had laid down their lives during the Great War had been unveiled in the Solicitors' Buildings on 8 July 1921. (In all, 155 Irish solicitors and 83 apprentices joined the military forces during the war.)

Referring to meetings between Dublin and London in 1921 on the possible partition of the North and South of Ireland, the Society's president spoke of the "wholly unprecedented and exceptional circumstances of present day national life" at November's half-yearly general meeting (December 1921, p34):

"The conference which has since opened, probably the most unique and the most criticised of its kind in our history, we in common with the rest of the community are watching with much concern and anxiety ... Whatever be the eventual form of Government or constituted authority in this country, or the mode of electing representatives, the Solicitors may be depended upon to assist and loyally support it in every way as a section of the

MAIN POINTS

- **Military searches of solicitors' offices**
- **Partition**
- **The burning of the Four Courts**



community who are wedded to the country and concerned in its prosperity and in the maintainance [sic] of its legally constituted institutions" (p34).

Destruction of the Custom House

In the December issue, the president refers in his half-yearly address to the destruction of the Custom House: "Exactly a fortnight after our last General Meeting, the Custom House – for a century past the centre and scene of many of our professional activities – was destroyed.

"With the passing of this classic edifice and the manifold activities carried on therein, was involved the destruction of all records relating to the various classes of Crown Duties affecting the landed and other property of this country ... a loss which has imposed on us as a profession additional work, complication and responsibilities. Many of these records can only be reconstructed from the records in the Solicitors' offices, and ... it can be readily appreciated what a block was threatened to all sales and transfer of property in this country ... All pending land purchase sales and all private transactions were affected" (p36).

'Legal cataclysm'

On 1 October 1921, Ireland was legally divided – a point that earned much commentary from the president, Charles Gamble, in the *Gazette*: "The 1st of October marked a legal cataclysm in this

country in its division into two separate legal jurisdictions and that too in a country the legal business of which had for centuries been hitherto efficiently administered under one. The Council made official protest against it, and endeavoured by amendments to the Bill to retain the whole country under one jurisdiction, but without avail. The setting up of the Northern jurisdiction has taken from amongst us some of those men most appreciated in our local legal life ... I do not labour the subject on this occasion more than to say that I

1921: The treaty negotiations didn't go well for the nation

1922: British troops leave Dublin, but not Ireland



FIRST WOMEN OF LAW

The *Gazette* received a number of queries in relation to the article 'Another time, another place' that appeared in the March 2006 issue. In particular, readers wanted to know the final outcome of actions taken by four Oxbridge women – Gwyneth Bebb, Karin Costelloe, Maud Ingram and Lucy Nettlefold – against the Law Society in the English High Court in 1913. In their actions, the women argued their right to sit solicitor examinations, the first taken being that of *Bebb v Law Society*.

Relying on the *Solicitors Act 1843* and, in particular, the proviso that a 'person' with appropriate qualifications was entitled to train as a solicitor, the main argument focused on the definition of 'person'. Counsel for the Law Society "argued that a woman was not a 'person', relying on the long-established principle at common law".

Mr Justice Joyce in his July 1913 judgment affirmed the Law Society's argument, noting that the above act and the *Interpretation Act* "never intended to make such a revolution" and "that there was no statute which showed any intention of the legislature to alter the common law". The case was dismissed. An appeal held in late December 1913 and reported in the January 1914 *Gazette* reaffirmed the decision of the lower court, arguing that since there had never been a woman attorney, they were "very loth to depart from anything supported by long usage". The courts, therefore, returned responsibility to the legislature.

While a working group was set up in early 1914 to formulate a bill, this was interrupted by the outbreak of war. By June 1919, the *Gazette* was able to report that the *Barristers and Solicitors (Qualification for Women) Bill* had passed through the House of Lords.

Ireland's first woman solicitor was Mary Dorothea Horan, who was admitted in April 1923, but the number entering the profession was extremely small. By 1940, only 27 practising certificates were held by women. However, it should be noted that since such certificates were not the norm until the late 1940s, it is not certain how many women were solicitors in all but name (and certificate).

As for the four women mentioned above, Gwyneth Bebb worked in the Ministry of Food during the war and was admitted to a solicitor's firm in 1919. Lucy Nettlefold completed part 2 of the Cambridge Law Tripos in 1915, was appointed as an articled clerk and, subsequently, had a celebrated career in local government, culminating in the awarding of an OBE in 1960. Karin Costello, who had graduated from Newnham College in 1911, turned her attention to psychiatry and married Adrian Stephen in 1914, who became part of the famous Bloomsbury Group. Maud Ingram Crofts was one of the first women to be admitted as a solicitor in 1922. She was to specialise in women's rights throughout her lengthy career.

Thanks to Pamela Marin PhD for providing the above information.

"In the opinion of this Council the removal by the Crown forces from Solicitors' offices of Counsel's briefs is a grave infringement of the recognised privileges of the Solicitors' profession"

deplore this partition as a great blow to the legal profession, and opposed to that unity which, in any phase of national life, especially in a small country, whether political, professional, commercial or otherwise, stands for strength, national stability and efficiency, and much will depend on keeping the rules and procedure in both jurisdictions identical.

"The ladies have now invaded, or are attempting to invade, our profession under their new statutory privilege, and there are already several lady apprentices in process of qualification" (p37) (see panel).

Occupation of the Four Courts

At a meeting of the Council on 21 April 1922, a special meeting was held "to consider matters arising in consequence of the occupation of the Four Courts by a force of armed men.

"It was resolved that offices be immediately secured for the Secretary and his staff. It was further resolved that the Vice-Presidents (in the absence of the President) should interview the Controller of the Inland Revenue in reference to the arrangements for stamping of documents" (May 1922, p3).

As a result of the occupation of the Four Courts and the Solicitors' Buildings, the Law Society took up temporary residence at 33 Molesworth Street, Dublin (June 1922, p6).

It would be some time before the Society returned to the Four Courts. In the July/August 1922 issue of the *Gazette*, the Council announced "with very great regret that on the 28th June the premises of the Society were destroyed by fire, during military

operations conducted by the Free State Army for the purpose of recovering possession of the Four Courts from the armed force which had been in occupation since 14th April.

"The contents of the Society's premises, including the furniture and fittings, the library of books, and the paintings and engravings, were destroyed. The bronze figures and the tablets of the Society's War Memorial have been salvaged in good condition. The strong room, containing many of the Society's records, withstood the effects of the fire. The Society held the premises under lease of 28th June, 1874, for 999 years, at one shilling per annum."

The Council made a claim under the *Malicious Injuries Acts* for a sum of £300,000 compensation for the destroyed premises and their contents. A similar claim was sent to the Provisional Government.

Luckily, prior to the destruction of the Solicitors' Buildings, the secretary, WG Wakely, had managed to get possession of the more important records of the Society. These included current minute books, the Registers of Practising Solicitors, the Roll of Solicitors, the Roll of Members, apprentices' examinations books, a complete set of the Society's *Gazette*, and other books relating to the affairs of the Society.

"The Society has sustained a very serious loss at a critical time," mourned the *Gazette*, "but the Society will be carried on for the advancement and use of the profession, and the Council have no doubt that they will receive the assistance of the profession towards the thorough restoration of the Society" (July/August, 1922, p15). **G**



Got an issue you would like addressed by our panel of practice doctors? Email: practicedoctor@lawsociety.ie

Too busy to MANAGE?



David Rowe: "Looking after your practice is no longer optional"

Practice management is an area where many small and medium-sized practices struggle. For many firms, the client always comes first – and it's easy to understand why. In an environment where clients demand more for less, response times are expected to be almost instant, and the management of the solicitor's own practice often falls to the bottom of the priority list. This usually means that important management issues are not addressed at all, or else are not given the necessary time, leading to greater problems in the future.

As well as the challenge of making the time available, many solicitors do not feel adequately equipped to run a modern legal practice. Many say that they qualified as lawyers to address legal issues and find solutions for clients – they did not qualify with the objective of managing and running a business. This role demands abilities in the areas of finance, human resources, information technology, marketing and general administration – areas outside a solicitor's formal training.

Looking after your practice is no longer optional. The results reveal themselves in:

- The profitability of practices,
- The stress levels for practitioners and for the staff in general,
- The quality of the legal work and, ultimately,
- The service given to the client.

To get practice management right, you need to start with establishing the proper structures, which will depend on the type of firm you have. These vary significantly between private-client firms and commercial firms.

Installing the correct structures begins with employing competent staff who are right for the services that the firm provides. They should be trained adequately to fulfil their roles. It is also essential to install systems for reviewing staff performance, incentivising them and rewarding them.

Business model

In the area of finance, the correct structure entails having an appropriate business model for the type of firm you are running, having a budget, having fee targets, and ensuring that you are getting value from all of the people and companies who supply services to you.

Managing today's busy legal practice presents diverse challenges in different areas. You can employ the skills of external providers who work with law firms on a part-time basis to supplement the skills available in-house. An excellent starting point is to have your practice benchmarked against others. This benchmark will include a financial review, an evaluation of best practice in all areas of practice management, and a strategic review, all tailored to the size of the firm.

There is a consistent link between getting practice management right and strong profits and peace of mind for owners. This means that firms finally have to give their own affairs some time and attention. Those that have already done so are reaping the rewards, while those that have not frequently have to run faster to stand still. **G**

David Rowe is a management consultant.

TOP TIPS FOR A SUCCESSFUL PRACTICE

- Have a business plan that involves knowing where the firm is, where it's going, and how it's going to get there;
- Plan and implement a programme for winning and retaining clients, and keep in touch with key clients who are not currently active;
- Hold regular meetings with other partners/professional staff to manage workloads, allocate new work, pool legal knowledge and share market intelligence;
- Keep your finger on the financial pulse of the firm by regularly reviewing relevant and timely management information;
- Have the appropriate IT systems and support for your firm – well-implemented IT systems are a competitive advantage;
- Manage staff through a combination of regular meetings and appraisals, together with appropriate incentives and rewards – for solicitors this means having a visible career path;
- Use the in-house resources, together with creating your own time and relying on some external assistance, to give your own affairs the time and attention they deserve.

Annual Dinner of the Law Society 2006



Senior Vice-President of the Law Society Philip Joyce, President Michael Irvine, guest speaker Nic Swart (Law Society of South Africa) and Junior Vice-President Gerard Doherty



Attending the Annual Dinner were (l to r) Rory McShane, President of the Law Society of Northern Ireland, James Hamilton, DPP, Carol Coulter, legal affairs correspondent, Irish Times, and James Cooper, Junior Vice-President of the Law Society of Northern Ireland



At the dinner, where the theme was 'A South African Adventure', were (l to r) Catherine Treacy, Registrar of Titles, Her Excellency Priscilla Jana, South African Ambassador to Ireland, and Simon Murphy, Council member of the Law Society



Desmond Miller, Chairman of the Legal Costs Implementation Group, and Director General of the Law Society Ken Murphy share a word at the pre-dinner reception



At the Law Society's Annual Dinner were Dermot McCarthy, Secretary General to the Government, and Josephine Feehily, Revenue Commissioner



Attending the Annual Dinner were (l to r) Mr Justice Matthew Deery, President of the Circuit Court, Brendan Ryan, Director of Corporate Services, Courts Service, and Olive Braiden, lay member of the Judicial Appointments Advisory Board



Chief Justice John Murray and President of the Law Society Michael Irvine



Mingling at the annual dinner on 10 March were Mr Justice Michael Peart and the Director of Operations of the Supreme and High Courts, Nuala McLoughlin



John D Shaw, Law Society Council member, and Noel Conroy, Garda Commissioner, at the pre-dinner reception at Blackhall Place



Enjoying the Law Society's Annual Dinner were members of the Irvine family (l to r) Janet, Michael, Colin, Anne and Heather



At the recent launch of *Environmental and Land Use Law*, written by Yvonne Scannell and published by Thomson Round Hall, were (l to r): Catherine Dolan, commercial manager with Thomson Round Hall, Mr Justice Nicholas Kearns, Supreme Court, Yvonne Scannell, author, and Pádraig Ó'Riordáin, managing partner, Arthur Cox Solicitors

Legal teams put the 'va va voom' in Gaelic!

Who says that the GAA isn't sexy? If you'd been at the 'Inaugural GAA Gala Night' at the Law Society on 2 March, you would have experienced a change of mind more dramatic than a ref on rohypnol! Dirty jerseys made way for glitzy dresses and dapper suits as the members of the women's and men's teams celebrated the official inauguration of the Law Society's Gaelic football teams.

Among those invited to the celebrations were: Uachtarán Cumann Lúthchleas Gael, Sean Kelly, ministers of government, former GAA players, Law Society luminaries, staff and students.

Taoiseach Bertie Ahern sent his warm wishes in an open letter, expressing his belief that the launch of both football teams in the Society represented the coming together of two important organisations. He was confident, he said, that the Law Society teams would contribute significantly to the development of the game.

Captain's speech

The speech from the president of the GAA was insightful, and was followed by a lively questions and answers session. Enthusiastically welcoming the inauguration of both teams, Sean Kelly said that trainees, as both players and solicitors, had a significant role to play in the future of the GAA – both at grassroots and administrative level.

You can't speak about the GAA these days without nodding in the direction of the courts. More and more, players are seeking recourse to the law to settle disciplinary grievances. The president referred to the significant role that the law continues to play in the evolution of the GAA – and how it has forced the

association to reconsider some of its own procedural rules. He also spoke about the development of Croke Park, the change in Rule 42, and guerrilla marketing.

The past six months will, no doubt, prove to be historic in the development of Gaelic sport in the Law Society. Much hard work has been put in behind the scenes by a significant team of enthusiasts, including: Pádraig Mawe, Ciara



Uachtarán Cumann Lúthchleas Gael, Sean Kelly

Cahill, Carol Kelly, Marcus Ó Buachalla, Ross Phillips, Conor O'Sullivan and Éamon Ó Cuív. Both teams also acknowledge the generous support of their sponsors, including: TP Kennedy of the Law School, William Fry, Matheson Ormsby Prentice, Pierse & Fitzgibbon, HG Donnelly & Son, Meghen Group and the Legal Panel.

Gura fada buann an dá fhoireann.



Women's team (Back, l to r): Deirdre Lennon, Catherine Boner, Elaine McCarthy, Aishling Mehan, Emer Carey, Mary Teresa Blake, Deirdre McCarthy, Ciara Cahill (vice-captain), Theresa Murphy, Lynne Martin, Orla Ni Bhroin, Aoife Walsh, Carol Kelly (captain) and Anna Beresford. (Front, l to r): Alma Whelan, Trina Galvin, Roisin Ni Dhonechadha, Mairead Cronin, Philip Joyce (senior vice-president), Sean Kelly (Uachtarán Cumann Lúthchleas Gael), Ken Murphy (director general), Siobhan McCarthy, Sally Ann Boyle and Fiona O'Keeffe



Men's team (Back, l to r): John Crean, Cormac Foley, Gerry Burke, Pádraig Mawe (manager), Bryan Coen, Raymond Lambe, Rob Ryan, Déaglán Ó Síocháin, David Fitzgerald, Ross Phillips (PRO) and Danny Kiely. (Middle, l to r): Kevin McElhinney, Eoin McManus, Karol Corcoran, John Williams, Eamon Ó Cuív, Stiofán Fitzpatrick, Roy O'Carroll, Gavin Lawlor, Conor Minogue, John Lunney, Brendan McDonald, Marcus Ó Buachalla (captain) and Barry Murphy. (Front, l to r): Gerard Gallagher, Alan McGill, David Sweeney, Tony Hanahoe (solicitor and former Dublin captain), Philip Joyce (Law Society senior vice-president), Seán Kelly (Uachtarán Cumann Lúthchleas Gael), Ken Murphy (director general), Conrad Murphy, John Flynn, Paddy Delaney and Conor O'Sullivan (PPCI 2004)



Family Law Negotiations: An Alternative Approach

Kevin Liston. Thomson Round Hall (2005), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-403-9. Price: €192 (hardback).

Couples whose relationship has broken down find themselves in uncharted waters and expect their lawyers to guide them to a safe haven. The inadequacy of the court route has encouraged a move towards alternative dispute resolution (ADR) and prompted initiatives such as 'collaborative law' (described in the book), and now Kevin Liston's 'structured legal negotiations', which is a very valuable addition to the family lawyer's toolbox. Mrs Justice Catherine McGuinness, in the foreword, states: "While I appreciate the advantages of ADR in many cases, years of experience as a family lawyer and later a family law judge have convinced me that Kevin Liston is right in the emphasis he puts on the value of well-prepared and structured negotiations within the traditional framework."

Very concrete guidelines are offered on how to achieve an early resolution of disputes in a non-confrontational way, which are lawyer led. Negotiations can be tailored to each case – for example, meetings can be on the standard 'shuttle' basis or with the two lawyers and both clients present, as in the collaborative law model.

There are chapters on the bargaining phase, formalising the agreement reached, and managing the conflict. Chapter 10 has an example of an

information leaflet that is designed to explain to the client the function and purpose of structured negotiations. (This could be adapted to give very useful general information to family-law clients.)

Kevin Liston's book is a breath of fresh air. It is written in a fluid, clear style without waffle and is full of ideas, suggestions, critical evaluations and nuggets of useful information for the family lawyer (for example, the difference between making an agreement a rule of court and an order, the distinction between liberty to apply and re-enter, and the enforceability of separation agreements and consent orders).

Managing the conflict can be the key to a successful resolution. As lawyers, we are familiar with conflict behaviour, though we can fall short on understanding its nature and management and sometimes "can communicate with the other side in a manner that reflects and exacerbates the confrontational exchanges" of the parties themselves. The author gives examples of a destructive initial letter (including, for instance, an inappropriate heading – 'Anne Murphy v You', references to 'intolerable behaviour' and the threat of judicial separation proceedings), and examples of non-confrontational letters to the other side. There is a section on the dynamics of conflict, and we are reminded also of the need

to be aware of, and manage, our own behaviour and prejudices.

The present family court and structures are evaluated, with suggestions for improvement, for example, by judicial case management and extending the courts' mandate to take responsibility for actively facilitating constructive negotiations. The sections in the book on pleadings will hopefully come to the attention of rules committees. The unfortunate and often unnecessarily confrontational language in pleadings "increases polarisation and brings about conflict expansion", with negative consequences on attempts to negotiate. Again, the author goes the extra mile, with draft suggestions for pleadings that would be intelligible and less threatening to the receiving party. He also makes a strong case for appropriate forms in consensual divorce applications.

The use of plain language is topical and supported by the author (and, in my opinion, is particularly appropriate in family cases). There are examples of the standard form of separation agreement written in plain language that is "client friendly and intelligible to the layperson" – important, as it is "a working document for the husband and wife in their post-separation relationship".

The alternative form of separation agreement resembles

wording used in mediated agreements. There are two chapters on mediation: the first is a very useful description of the process that family lawyers will benefit from reading. The bargaining techniques in mediation and the climate it encourages sit well with the author's structured legal negotiations. The second deals with the strengths and weaknesses of mediation and would form a useful backdrop for discussions between lawyers and mediators.

Chapter 9 deals with ethical considerations, including responsibilities to the unrepresented child, with a thoughtful examination of the Law Society's family law code of practice and its significant recommendations that there be a non-adversarial approach and a search for fair solutions.

General practitioners, trainee solicitors, mediators and others who want a general overview of the principles and on-the-ground practice of family law will find the book most readable and informative. For those of us who claim to be family lawyers, this book is essential reading. **G**

Phil Armstrong is vice-chair of the Law Society's Family Law and Civil Legal Aid Committee. This review has been republished due to technical errors during magazine production in the January/February 2006 issue.

SLAUGHTER AND MAY

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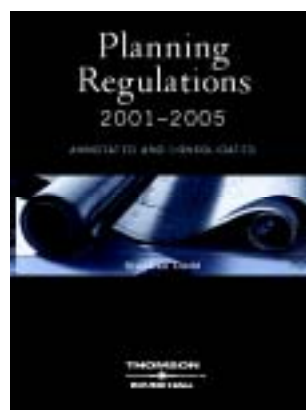
Planning Regulations, 2001-2005

Stephen Dodd. Thomson Round Hall (2005), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-425-X. Price: €195.

This is a timely publication, consisting of a detailed annotation of the current planning regulations, including the draft *Planning and Development Regulations 2004/2005* (which provide for a revised format for a site notice and a standard planning application form). Stephen Dodd's commentary is both comprehensive and lucid, and the busy professional advising on planning issues (and indeed the interested layperson) will readily find in the text the answer to common and not-so-common questions that may arise. A further benefit is the inclusion of references to decisions of An Bórd Pleanála as well as a detailed commentary on relevant case law (as recent as July 2005).

The principal regulations now in force are the *Planning and Development Regulations 2001* (SI 600/2001), enacted under the *Planning and Development Act 2000*, which replaced the earlier regulations

of 1977 and 1994. The 2001 regulations introduced many significant changes to the planning code and it is no surprise that the commentary runs to 390 pages of the text. The author takes great care to illustrate the many changes and additions to the former regulations. Regulation 26 of the 2001 regulations is of particular importance, as it provides that planning applications that do not satisfy formal notice requirements are automatically invalid. This has the effect of removing the previous discretion vested in a planning authority to accept incomplete applications. Strict compliance with the formal requirements of the 2001 regulations is now mandatory for all applications. Attention is drawn to the decision of Macken J in *Openeer v Donegal County Council* (unreported, High Court, 13 April 2005), where it was held that an applicant who paid the incorrect fee could not blame an



administrative officer of the respondent for requesting the wrong amount.

The commentary on exempted development in schedule 2, parts 1 to 4 of the 2001 regulations is particularly impressive. Each class of exempted development is reviewed in detail and helpful reference is made to the relevant decisions of An Bórd Pleanála. One imagines that this part of the book will be frequently referred to and the discussion of what changes of

use within a class constitute exempted development is comprehensively dealt with by Mr Dodd.

At first glance, the book appears to be overpriced at €195, given that one may source material free of charge from the internet, and such material can also be purchased in hard copy for a modest sum. However, the real benefit of the book lies in the incisive commentary and analysis of the regulations, An Bórd Pleanála decisions and case law. The quality of the commentary justifies the price. Although the book is not stated to be a companion volume to the other recent publication from Thomson Round Hall, *Planning and Development Law* by Garrett Simons, taken together, they provide a comprehensive and reliable guide to the distinct statutory regime that comprises the current planning code. **G**

Owen O'Sullivan is a partner in Matheson Ormsby Prentice.

King's Inns Barristers, 1868-2004

Kenneth Ferguson (ed). Honorable Society of King's Inns, in association with the Irish Legal History Society (2005), Henrietta Street, Dublin 1. ISBN: 0-9512443-2-9. Price: €30 (plus post and packaging of €10).

My father treasured a little book, *In a Nook with a Book*, a book of quotations for book lovers. One quotation that I remember was from *The Praise of Books* by JA Langford: "In books, the past is ours as well as the present. With them we live yesterday over again. All the bygone ages are with us."

Kenneth Ferguson has revived the past, brought the past into the present and recalled vividly some wonderful memories of bygone ages.

The book is, in one sense, a continuation of *King's Inns Admission Papers, 1607-1867*,

edited by Keane, Phair and Sadlier and published in 1982. The principal part of the book contains the names of the graduating barristers from King's Inns from 1868 to 1968, the names and places of residence of the graduate's parents, and details of the graduate's age and education.

Two essays, one written by Prof WN Osborough, 'Landmarks in the History of King's Inns: 1872, 1885, 1921, 1925', and 'A Portrait of the Irish Bar, 1868-1968' by Dr Ferguson, provide fascinating insights into King's Inns. One

interesting detail is how students reading for the Irish Bar were obliged, from the reign of Henry VIII, to reside for a specific number of years at one of the Inns of Court in London. This lasted until 1885.

The issue of women being called to the Bar is considered by both Prof Osborough and Dr Ferguson. The first woman called to the Bar was Frances Christian Kyle on 1 November 1921. This story and the role of women at the Bar is enlightening.

The period of the First World War is a fascinating section of the book, as is the

description of the turbulent period following 1916 up to the foundation of the state.

This is a gem of a book, a tour de force, a book of enormous authority, a most balanced and insightful analysis. Dr Ferguson and his colleagues have produced an absorbing history of the most intriguing of men and women who have played a significant role in Irish life over the centuries. **G**

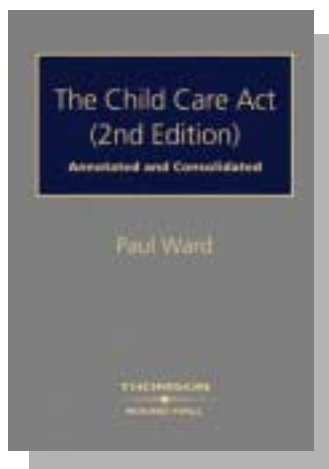
Dr Eamonn Hall is the chief solicitor of the Eircom group of companies.

Child Care Act (2nd edition)

Paul Ward. Thomson Round Hall (2005), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-288-5. Price: €102.

Paul Ward's book provides us with a comprehensive and detailed examination of the childcare legislation from 1991 to 2001 inclusive. His first edition was published in 1997, only two years after the implementation of the *Childcare Act 1991* and, of necessity, had little case law in it. Proceedings in the District Court are *in camera* but the intervening years have allowed for the important major decisions that reached the High and Supreme Courts to be reported, and this considerable body of judgments is now available. It is indeed useful to have a concise reference in respect of the various sections of the *Child Care Act 1991* available handily to practitioners. The book contains the full text of the act, as amended by the *Children Act 2001*, with considerably expanded notes and case law. It is particularly useful that other pieces of legislation dealing with different aspects of child welfare, such as the *Immigration Act 1998*, the *Mental Health Treatment Act 2001* (to be implemented) and the *Children Act 2001* are flagged, where appropriate.

Mr Ward devotes considerable space to an



analysis of section 3 of the 1991 act and he teases out, with the help of the relevant case law, the extent of the duties and functions of the Health Service

Executive in promoting the welfare of children in its area.

Of particular interest is that part of the book dealing with special care orders in the *Children 2001 Act*, which are inserted by section 16 thereof into the *Child Care Act 1991*. It is worth noting that the vast bulk of this section has been brought into effect as and from September 2004 – however, none of the special care units has been certified and, in those circumstances, applications for civil detention of minors continue to be brought before the High Court under the inherent jurisdiction of that court.

I found the section on access

and the implications for access arrangements of judgments of the European Court of Human Rights very useful. It appears from an examination of the European case law that, while the European court will allow each individual state a “wide margin of appreciation” in considering whether or not a child should be taken into care, it will not tolerate an *ad hoc* approach to the provision of access between children and their parents, and that any interference with this will be rigorously scrutinised. The message coming from the European court is that access is the right of the child, that any consideration of a restriction of access and any decision made afterwards will not be valid unless the parents have been consulted and have taken part in the decision-making process, and that decisions with regard to access must be taken promptly and without delay.

I have no doubt that this book will be consulted regularly by students and practitioners in the legal and social work field alike. **G**

Sinead Kearney is a partner in BCM Hanby Wallace.

RECENTLY PUBLISHED

Sources for the Study of Crime in 19th Century Ireland, 1801-1921

Brian Griffin. Four Courts Press (2005), 7 Malpas Street, Dublin 8. ISBN: 1-85182-8214. Price: €45.

A Star Chamber Court in Ireland: the Court of Castle Chamber, 1571-1641

Jon G Crawford. Four Courts Press (2005), 7 Malpas

Street, Dublin 8. ISBN: 1-85182-934-2. Price: €85 (hardback).

Adventures of the Law: Proceedings of the 16th British Legal History Conference, Dublin 2003

Paul Brand, Kevin Costello and WN Osborough (eds). Four Courts Press (2005), 7 Malpas Street, Dublin 8. ISBN: 1-85182-936-9. Price: €55.



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council report



Report of Law Society Council meeting held on 10 February 2006

Motion: independent law centres

"That this Council approves the Solicitors Acts 1954-2002 (Independent Law Centres) Regulations 2006, and that the regulations of the Council be amended to delegate the implementation of the Solicitors Acts 1954-2002 (Independent Law Centres) Regulations 2006 to the Regulation of Practice Committee without reference to the Council."

Proposed: James McCourt

Seconded: John O'Connor

The Council approved the draft *Solicitors Acts 1954-2002 (Independent Law Centres) Regulations 2006*, which contained the criteria applying to solicitors working in specified independent law centres in order to permit them to provide legal services to members of the public in pursuance of the charitable objectives of those centres. James McCourt confirmed that the organisations listed in the second schedule to the regulations had satisfied the Regulation of Practice Committee as to their governance arrangements. Any additional applications would be considered by the committee as and when they arose.

Tax treatment of work-in-progress

The Council discussed section 52 of the *Finance Bill*, together with the relevant extract from the explanatory memorandum to the bill. Section 52 provided for a deferment of tax over a five-year period in terms of the treatment of work-in-progress for tax purposes. The Council noted that the Taxation Committee was considering the matter further and would prepare a practice note for the profession in due course. In the meantime, solicitors were encouraged to discuss the implications of section 52 directly with their accountants.

Civil Law (Miscellaneous Provisions) Bill 2006

The Council discussed a number of statutory provisions that it was proposed the Society would seek to be included in the *Civil Law (Miscellaneous Provisions) Bill*, currently being drafted.

Purchase of property adjacent to Blackhall Place

The president reported that the property at 32-41a Benburb Street had been purchased in trust by O'Connor

Solicitors on behalf of Benburb Street Property Company Limited. A letter to the profession would issue in due course.

Lay member of Complaints and Client Relations Committee

The Council approved the appointment of Vera Hogan to replace Carmel Foley as a lay member of the Complaints and Client Relations Committee. The Council noted that Ms Foley would remain on the committee until a number of matters in which she had been involved were completed. On behalf of the Council, the president extended the Society's appreciation for Ms Foley's selfless participation in the work of the Complaints and Client Relations Committee over several years.

Decision by Master of the High Court

The Council considered a decision of the Master of the High Court made on 2 February 2006, and also noted the contents of a number of orders made by the Master on the following day, including an order directing that the costs

of the motion and order of the plaintiff's solicitor be disallowed and that the plaintiff's solicitor should repay to his client any costs that the client had been ordered to pay to the defendant. The order went on to provide that, in the event of the solicitor for the plaintiff making an application to the High Court appealing the order, the Master had appointed Manus McClafferty as the solicitor to represent the plaintiff at the hearing of any such application. The Master had himself described the order as "unprecedented" and a "wake-up call" for solicitors.

The Council agreed that the decision raised fundamental issues as to the jurisdiction of the Master to make 'wasted costs' orders and as to the parameters of such a jurisdiction. It also raised issues about the jurisdiction of the Master to interfere in the solicitor/client relationship by appointing another solicitor to represent the plaintiff in any appeal.

It was agreed that the Society should take independent legal advice and, if advised to do so, possibly with the status of *amicus curiae*, should seek to be joined in any appeal or judicial review. **G**



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BRIEFING

practice notes



SECTION 68 AND PIAB

Section 68 of the *Solicitors (Amendment) Act 1994* imposes various obligations on solicitors in relation to charges to clients. Certain of these obligations contain specific provisions in relation to “contentious business” – most notably the prohibition on so-called percentage charging contained in section 68(2).

The question has arisen as to

whether the representation of a client making an application to the Personal Injuries Assessment Board (PIAB) is contentious business for the purposes of section 68.

The Law Society has received legal advice that applications to PIAB do fall within the definition of contentious business under section 68.

The legal advice referred to

the High Court judgment in the case of *O'Brien v Personal Injury Assessment Board* and the effect of the observation of Mr Justice McMenamin in that case that the assessment by a statutory body for compensation in respect of personal injuries comes within the category of proceedings in which the right to retain legal representation in the context of various contentious

matters has been recognised.

Accordingly, the Society is satisfied that the representation of a client making an application to PIAB is contentious business for the purposes of section 68 and that, in particular, percentage charging in such cases is prohibited.

John Elliot, Registrar of Solicitors and Director of Regulation

COMPANIES CONSOLIDATION BILL

It is expected that the *Companies Consolidation Bill* will be presented for enactment this year. The aim of the bill is to reform, restructure and update company law in Ireland. The bill will replace the existing ten acts of the Oireachtas (including the *Companies Act 1963*) plus a substantial amount of secondary legislation. The Company Law Review Group (CLRG) has drafted a ‘General Scheme of New Companies Bill’, which is available through the following link on the CLRG website: www.clrg.org/

companiesbill/default.asp.

On behalf of the profession, the Law Society’s Business Law Committee is coordinating a submission to the CLRG. If you would like to contribute to this submission, please send your comments to the secretary of the Business Law Committee, Denise Collins, at the Law Society, Blackhall Place, Dublin 7, or email: d.collins@lawsociety.ie.

This opportunity is unlikely to be available again for a number of decades.

Business Law Committee

RIAI ONLINE OPINIONS ON COMPLIANCE

Practitioners should note that it is open to RIAI members to use the pre-printed forms of opinions on compliance published by the RIAI or the online version of those forms downloaded from the RIAI website. The downloaded online versions must contain endorsements as follows:

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- On the last page at the signature after “registered member of the Royal Institute of the Architects of Ireland”, “**who warrants that the standard text of this digital document is unaltered**”.

Certifying architects must sign their original signatures on the downloaded forms and apply a current membership stamp in the same way as for the pre-printed forms.

Conveyancing Committee

COMMITTEE MEDIATION SERVICE

Solicitors are reminded that the Law Society’s Guidance and Ethics Committee offers a mediation service for solicitors in areas

such as partnership break-up. The solicitors will be offered one mediation session with a member of the committee, free of charge,

except the mediator’s out-of-pocket expenses. The panel of mediators comprises the committee members of the Guidance and

Ethics Committee and other non-committee solicitors who have a mediation qualification.

Guidance and Ethics Committee

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legislation update



16 January – 20 March 2006

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

ACTS PASSED

Competition (Amendment)

Act 2006

Number: 4/2006

Contents note: Amends the *Competition Act 2002* by the insertion of a new part 2A (ss15A-15C) to prevent certain unfair trading practices in the grocery trade; revokes the *Restrictive Practices (Groceries) Order 1987* (SI 142/1987); repeals the *Restrictive Practices (Confirmation of Order) Act 1987* and other confirming acts in respect of orders made under the *Restrictive Practices Acts*, which are now redundant; repeals the *Restrictive Practices Act 1972* insofar as it is unrepealed; and provides for related matters.

Date enacted: 11/3/2006

Commencement date: Commencement order(s) to be made (per s6(3) of the act): 20/3/2006 for all sections of the act except s5(2) (repeal of the *Restrictive Practices Act 1972* insofar as it is unrepealed) (per SI 127/2006)

Irish Medicines Board (Miscellaneous Provisions) Act 2006

Number: 3/2006

Contents note: Amends the *Misuse of Drugs Act 1977* (as amended by the *Misuse of Drugs Act 1984*), the *Irish Medicines Board Act 1995*, the *Control of Clinical Trials Act 1987*, and consequentially amends regulations that are either made under the

Irish Medicines Board Act 1995 or referred to in section 34(4) of that act and amends the *Animal Remedies Act 1993*.

Date enacted: 4/3/2006

Commencement date: 4/3/2006 for part 7 (s41 – amendment of *Animal Remedies Act 1993*); commencement order(s) to be made for all other sections (per s1(7) of the act)

Teaching Council (Amendment) Act 2006

Number: 2/2006

Contents note: Makes provision for the operation of certain sections of the *Teaching Council Act 2001* and the validity and effect of certain things purported to be done under the act. Provides that, notwithstanding section 1(2) (which provides for the making of commencement orders to bring the sections of the act into operation) of the *Teaching Council Act 2001*, ss1, 2, 4, 5, 6, 8, 9 and 10 of that act shall be deemed to have come into operation on 10/9/2004, and that, accordingly, the *Teaching Council (First Election of Members) Regulations 2004* (SI 916/2004) shall be deemed to have been validly made and to have come into operation on the date of their purported making, 10/9/2004, and that anything done under these regulations shall be deemed to have been validly done, as if a commencement order had been made

under section 2(1) of the act appointing 10/9/2004 as the commencement date for the relevant sections.

Date enacted: 4/3/2006

Commencement date: 4/3/2006

University College Galway (Amendment) Act 2006

Number: 1/2006

Contents note: Amends section 3 of the *University College Galway Act 1929* in relation to the provision of education at the college through the Irish language.

Date enacted: 22/2/2006

Commencement date: 22/2/2006

SELECTED STATUTORY INSTRUMENTS

Adoptive Leave Act 1995 (Extension of Periods of Leave) Order 2006

Number: SI 52/2006

Contents note: Extends the periods of adoptive leave under the *Adoptive Leave Act 1995*, as amended by the *Adoptive Leave Act 2005*.

Commencement date: 1/2/2006 for articles 1-7 (subject to paragraphs 2 and 3 of article 2); 1/2/2007 for articles 8-11 (subject to paragraphs 5 and 6 of article 2) (per articles 2(1) and 2(4) of the SI)

Adoptive Leave Act 2005 (Commencement) Order 2006

District Court (Criminal Justice Act 1994, Section 38) Rules 2006

Number: SI 47/2006

Contents note: Amend order 38 of the *District Court Rules 1997* (SI 93/1997) by the substitution of new rules 4 to 8 inclusive, 'Detention of cash under section 38 of the *Criminal Justice Act 1994* (as amended)', to take account of section 20 of the *Proceeds of Crime Act (Amendment) Act 2005* amending section 38 of the *Criminal Justice Act 1994*.

Commencement date: 24/2/2006

Number: SI 16/2006

Contents note: Appoints 30/1/2006 as the commencement date for the sections of the *Adoptive Leave Act 2005* not already in operation (sections 9 and 10 of the act)

Aer Lingus Act 2004 (Commencement of Certain Provisions) Order 2005

Number: SI 645/2005

Contents note: Appoints 28/9/2005 as the commencement date for section 2 of the *Aer Lingus Act 2004*, insofar as it relates to section 5(2) of the *Air Companies (Amendment) Act 1993*, and for section 7 of the *Aer Lingus Act 2004*, concerning the employee shareholding scheme in Aer Lingus.

Companies (Auditing and Accounting) Act 2003 (Commencement) Order 2006

Number: SI 56/2006

Contents note: Appoints 3/2/2006 as the commencement date for the following sections of the act: s9 (other than paragraph 1 of s9(2)), s10, s23, s24, s25, s27, s28, s29 (other than s29(5)), s32 and schedule 1. These provisions bring into effect many of the powers and functions of the Irish Auditing and Accounting Supervisory Authority (IAASA) and, in particular, transfer the powers of the Minister for Enterprise, Trade and Employment in relation to the recognition of accountancy bodies under the *Companies Acts* to the IAASA.

Double Taxation Relief (Taxes on Income) (Adjustment of Profits of Associated Enterprises) (Accession States) Order 2006

Number: SI 112/2006

Contents note: Gives the force of law in Ireland to the admission of the ten newest EU accession states (Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia) to the convention between the member states of the European Communities on the elimination of double taxation in connection with the adjustment of profits of associated enterprises. The original convention is contained in SI 88/1994.

Electoral (Amendment) Act 2001 (Commencement) Order 2006

Number: SI 26/2006

Contents note: Appoints 26/1/2006 as the commencement date for section 22 of the *Electoral (Amendment) Act 2001*. Section 22 provides for the inclusion of additional information on the polling information cards issued to voters under section 92 of the *Electoral Act 1992*.

Rules of the Superior Courts (Arbitration) 2006

Number: SI 109/2006

Contents note: Amend order 56, rule 4 and insert a new order 56A, 'Arbitration (International Commercial) Act 1998', in the *Rules of the Superior Courts* (SI 15/1986) to provide procedures for the UNCITRAL model law on international commercial arbitration – the text of the model law is set out in the schedule to the 1998 act.

Commencement date: 31/3/2006

Rules of the Superior Courts (Commissions of Investigation Act 2004) 2006

Number: SI 23/2006

Contents note: Insert a new order 135, 'Commissions of Investigation Act 2004', into the *Rules of the Superior Courts* (SI 15/1986) to provide for the procedure to be followed in applications made to the High Court under various sections of the *Commissions of Investigation Act 2004* and in an appeal to the High Court against a determination of a commission of investigation under section 22(1) of that act.

Commencement date: 21/2/2006

European Communities (Road Transport) (Recording Equipment) Regulations 2006

Number: SI 89/2006

Contents note: Give effect to regulation 3821/85 as amended by regulation 2135/98 and regulation 1360/2002 on recording

equipment in road transport. Provide for the introduction and enforcement of digital tachograph technology that will gradually replace the existing analogue tachograph devices used to record information on driving times, breaks and rest

periods for professional drivers. **Commencement date:** 20/2/2006

European Communities (Road Transport) Regulations 2006

Number: SI 88/2006

Contents note: Provide for the implementation and enforcement of regulation 3820/85 on the harmonisation of certain social legislation relating to road transport. The regulation applies to the carriage of goods and passengers by road within the European Union. It applies the provisions of the European agreement concerning the work of crews of vehicles engaged in international road transport (AETR) to certain international road transport operations; prescribes the maximum periods of daily and fortnightly driving, minimum breaks, and daily and weekly rest periods for drivers; lays down minimum ages for drivers; prohibits certain types of payments to wage-earning

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drivers; prescribes the use of duty rosters and service timetables on certain regular passenger services; obliges transport undertakings to ensure compliance with the requirements of the regulation and of regulation 3821/85 on recording equipment in road transport; and provides for related matters.

Commencement date: 20/2/2006

Industrial Relations Act 1990 (Code of Practice on Access to Part-Time Working) (Declaration) Order 2006

Number: SI 8/2006

Contents note: Declares that the code of practice set out in the schedule to this order is a code of practice for the purposes of the *Industrial Relations Act 1990*.

Commencement date: 12/1/2006

Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006

Number: SI 51/2006

Contents note: Extends the periods of maternity leave under the *Maternity Protection Act 1994* as amended by the *Maternity Protection (Amendment) Act 2004*.

Commencement date: 1/2/

Solicitors' Accounts (Amendment) Regulations 2006

Number: SI 111/2006

Contents note: Amend the *Solicitors' Accounts Regulations 2001* (SI 421/2001) to provide, for the avoidance of doubt, that the investigation of solicitors' practices by the Law Society under the *Solicitors' Accounts Regulations 2001 to 2005* includes investigating into whether there has been due compliance with section 68 of the *Solicitors (Amendment) Act 1994* relating to charges to clients.

Commencement date: 1/3/2006

Solicitors Acts 1954 to 2002 (Independent Law Centres) Regulations 2006

Number: SI 103/2006

Contents note: Provide that a solicitor who is an employee of an independent law centre operated by a charitable organisation approved by the Law Society for the purposes of these regulations may give advice to and otherwise act for the public, provided certain conditions are complied with. Constitute an exception to sections 59 and 62 of the *Solicitors Act 1954* as provided for in those sections.

Commencement date: 1/3/2006

Solicitors (Adjudicator) (Amendment) Regulations 2005

Number: SI 720/2005

Contents note: Amend the *Solicitors (Adjudicator) Regulations 1997* (SI 406/1997) to provide for the adjudicator's functions extending to the receiving and examining of complaints by clients of solicitors concerning decisions of the Law Society relating to the making of a grant, or the refusal to make a grant, out of the compensation fund to clients of solicitors or relating to the quantum of any such grants. Provide for the appointment of an acting adjudicator in certain circumstances.

Commencement date: 1/12/2005

2006 for articles 1-7, subject to paragraphs 2 and 3 of article 2; 1/2/2007 for articles 8-11, subject to paragraphs 5 and 6 of article 2 (per articles 2(1) and 2(4) of the SI)

Private Security (Licence Fees) Regulations 2005

Number: SI 835/2005

Contents note: Prescribe the fees payable in respect of applications for licences under the *Private Security (Licensing and Standards) Regulations 2005*.

Commencement date: 19/12/2005

Private Security (Licensing and Standards) Regulations 2005

Number: SI 834/2005

Contents note: Prescribe categories of licence and the standards to be observed by licensees in the provision of security services under the *Private Security Services Act 2004*.

Commencement date: 19/12/2005

Private Security (Licensing Applications) Regulations 2005

Number: SI 836/2005

Contents note: Prescribe the form of application for a licence under the *Private Security Services Act 2004* and the particulars to be included in the register of licensees.

Commencement date: 19/12/2005 **G**

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BRIEFING

Solicitors Disciplinary Tribunal

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

In the matter of Nora McCarthy, a solicitor practising as McCarthy & Company, Solicitors, at 42 Temple Road, Dartry, Co Dublin, and in the matter of the *Solicitors Acts 1954-2002* [3732/DT44/05]

Law Society of Ireland
(applicant)

Nora McCarthy
(respondent solicitor)

On 8 December 2005, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she had failed to file her accountant's report for the year ended

31 December 2002 with the Society in a timely manner, having only filed same with the Society on 30 March 2005, being approximately 21 months late, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001).

The tribunal ordered that the respondent solicitor:

- Do stand advised and admonished,
- Pay a sum of €500 to the compensation fund,
- Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement.

In the matter of Niall C Sheerin, a solicitor practising as Niall Sheerin & Company, Solicitors, Merchant's Court, 24 Merchant's Quay, Dublin 8, and in the matter of the *Solicitors Acts 1954-2002* [5132/DT17/05]

Law Society of Ireland
(applicant)

Niall C Sheerin
(respondent solicitor)

On 8 December 2005, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

- Failed to comply with an undertaking to hand over documentation on the closing of a sale in October 2002, and in particular those items summarised in the letter of 22 June 2004 sent by the complainants to the solicitor, in a timely manner;
- Failed to reply to the Society's correspondence and in particular the letters dated 7 July 2004, 20 July 2004, 3 August 2004, and 19 August 2004.

The tribunal ordered that the respondent solicitor:

- Do stand censured,
- Pay a sum of €1,000 to the compensation fund,
- Pay the whole of the costs of the Law Society of Ireland, including the certified and reasonable travelling expenses of a named witness, as taxed by a taxing master of the High Court in default of agreement.

In the matter of Sheila McConnell (otherwise Duff), a solicitor practising as Sheila McConnell & Company, Solicitors, at 30 Main Street,

Newbridge, Co Kildare, and in the matter of the *Solicitors Acts 1954-2002* [7489/DT36/05]

Law Society of Ireland
(applicant)

Sheila McConnell
(respondent solicitor)

On 10 January 2006, the Solicitors Disciplinary Tribunal found that the respondent solicitor, Sheila McConnell, had been guilty of misconduct in her practice as a solicitor in that she breached regulation 21(1) of the *Solicitors' Accounts Regulations* (SI no 421 of 2001) in failing to ensure that there was furnished to the Law Society an accountant's report within six months of her financial year ended 30 June 2003.

The tribunal ordered that the respondent solicitor:

- Do stand advised and admonished,
- Pay a sum of €500 to the compensation fund,
- Pay a sum of €500 towards the costs of the Law Society of Ireland.

In the matter of Declan McCourt, solicitor, practising as McCourt & Company at Apollo's Wings, Defenders' Row, Dundalk, Co Louth, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal and in the matter of the *Solicitors Acts 1954-2002* [S6951/DT/03/05]

Law Society of Ireland
(applicant)

Declan McCourt
(respondent solicitor)

On 12 January 2006, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct as follows,

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in that he had:

- a) Failed up to the date of the swearing of the affidavit of the applicant (on 13 January 2005) to comply with an undertaking dated 3 January 2001 to a named building society in relation to a named property,
- b) Failed without reasonable cause to comply with a notice served on him pursuant to section 10 of the *Solicitors (Amendment) Act 1994* within the time specified.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €10,000 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland and of any person appearing

before the tribunal, as taxed by a taxing master of the High Court in default of agreement.

In the matter of Edward Farrell, a solicitor of Edward Farrell & Company, Solicitors, Irishtown, Athlone, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2002* [4555/DT475/04] *Law Society of Ireland* (applicant) *Edward Farrell* (respondent solicitor)

On 31 January 2006, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had failed to file his accountant's report for the

year ended 30 June 2003, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001), in a timely manner.

The tribunal ordered that the respondent solicitor:

- a) Pay a sum of €500 to the compensation fund,
- b) Pay a contribution of €500 towards the costs of the Law Society of Ireland.

In the matter of Canice M Egan, solicitor, practising as Canice M Egan & Company at 9 Sarsfield Street, Clonmel, Co Tipperary, and in the matter of the *Solicitors Acts 1954-2002* [10044/DT32/05] *Law Society of Ireland* (applicant) *Canice M Egan* (respondent solicitor)

On 2 February 2006, the Solicitors Disciplinary Tribunal found that the respondent solicitor was guilty of misconduct in his practice as a solicitor in that he had breached regulation 21(1) of the *Solicitors' Accounts Regulations* (SI no 421 of 2001) in failing to ensure that there was furnished to the Society an accountant's report covering his financial year ended 30 November 2003 within six months thereafter, that is, by 31 May 2004.

The tribunal ordered that the respondent solicitor:

- a) Do stand admonished and advised,
- b) Pay a sum of €500 to the compensation fund,
- c) Pay a contribution of €500 towards the costs of the Law Society of Ireland. **G**

CALCUTTA RUN 2006

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BRIEFING

Solicitors' Benevolent Association 142nd report and accounts

Year: 1 December 2004 to 30 November 2005

The Solicitors' Benevolent Association is a voluntary charitable body, consisting of all members of the profession in Ireland. It assists members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, family and immediate dependants who are in need. The association was established in 1863 and is active in giving assistance on a confidential basis throughout the 32 counties.

The amount paid out during the year in grants was €421,414, which was collected from members' subscriptions, donations, legacies, investment income and royalties from the Northern Ireland *Land Registration Manual*. Currently, there are 52 beneficiaries in receipt of regular grants and

approximately one third of these are themselves supporting spouses and children.

There are 15 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices, Blackhall Place. They meet at Law Society House, Belfast, every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and approving of new applications. The directors also make themselves available to those who may need personal or professional advice. The directors have available the part-time services of a professional social worker who, in appropriate cases, can advise on state entitlements, including sickness benefits.

The directors are grateful to both law societies for their support and, in particular, wish to express thanks to Owen M Binchy, past president of the Law Society of Ireland, Attracta Wilson, past president of the Law Society of Northern Ireland, Ken Murphy, director general, John Bailie, chief executive, and the personnel of both societies.

I wish to express particular appreciation to all those who contributed to the association when applying for their practising certificates, to those who made individual contributions, and to the following:

- The Law Society,
- Dublin Solicitors' Bar Association,
- Belfast Solicitors' Association,
- Limavady Solicitors' Association,
- Local Authority Solicitors' Bar Association,
- Roscommon Bar Association,
- Tipperary and Offaly Bar Association,
- County Wexford Solicitors' Association,
- Contributors to *Irish Conveyancing Precedents*,
- Faculty of Notaries Public in Ireland,
- Sheriffs' Association,
- Arthur Moir,
- The Southern Law Association.

To cover the ever-greater demands on the association, additional subscriptions are more than welcome as, of course, are legacies and the proceeds of any fundraising events. Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained at 73

DIRECTORS AND OTHER INFORMATION

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AUDITORS

Deloitte & Touche, Chartered Accountants, Deloitte & Touche House, Earlsfort Terrace, Dublin 2

STOCKBROKERS

Bloxham Stockbrokers, 2-3 Exchange Place, IFSC, Dublin 1

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AIB plc, 37/38 Upper O'Connell Street, Dublin 1;
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OFFICES OF THE ASSOCIATION

Law Society of Ireland, Blackhall Place, Dublin 7; Law Society of Northern Ireland, Law Society House, 90/106 Victoria Street

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RECEIPTS AND PAYMENTS ACCOUNT YEAR ENDED 30 NOVEMBER 2005

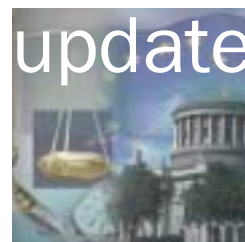
	2005 €	2004 €
RECEIPTS		
Subscriptions	288,372	273,868
Donations	38,957	38,816
Net investment income	65,800	60,737
Bank interest	2,362	2,359
Repayment of grants paid by way of loan	28,420	—
Refund of dividend withholding tax	25,814	—
	449,725	375,780
PAYMENTS		
Grants	(421,414)	(379,735)
Bank interest and charges	(1,940)	(3,013)
Administration expenses	(24,327)	(25,832)
Currency loss	(140)	(1,434)
	(447,821)	(410,014)
SURPLUS/(DEFICIT) FOR THE YEAR BEFORE SPECIAL EVENTS	1,904	(34,234)
Royalties from NI <i>Land Registration Manual</i>	33,861	—
Lawyers diaries and Christmas cards	353	20,924
<i>Irish Conveyancing Precedents</i>	808	667
Royalties from <i>Law Society of Ireland: 1852-2003</i>	—	499
Proceeds of sale of library books	—	640
Other income	—	571
SURPLUS/(DEFICIT) FOR THE YEAR BEFORE LEGACIES	36,926	(10,933)
Legacies	1,000	—
SURPLUS/(DEFICIT) FOR THE YEAR	37,926	(10,933)

Park Avenue, Dublin 4. I would urge all members of the association, when making their own wills, to leave a legacy to the association. You will find the appropriate wording of a bequest at page 30 of the *Law Directory 2006*.

I would like to thank all the directors and the association's secretary, Geraldine Pearse, for their valued hard work, dedication and assistance during the year. **G**

Thomas A Menton, chairman

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Compiled by Flore Bouhey for FirstLaw

COMPETITION LAW

Search warrant

Whether plaintiff breached defendant's constitutional rights by entering the defendant's premises and retaining documents on foot of an illegal warrant – whether evidence ought to be excluded as inadmissible. The plaintiff instituted proceedings seeking declarations and injunctive relief on the basis that the respondent breached section 4 of the *Competition Act 2002* and article 81 of the *EC Treaty*. In order to investigate the alleged breach, the plaintiff obtained a search warrant and used that warrant to search the defendant's premises and remove certain documentation. However, due to an oversight, the warrant, on its face, permitted the authorised officer to enter and search the defendant's premises and remove documents in connection with its business of selling, supplying or distributing motor vehicles. The respondent submitted that the search was carried out on foot of an illegal warrant and was in breach of the respondent's constitutional rights and, consequently, the evidence obtained was inadmissible.

McKechnie J ruled the evidence inadmissible, holding that the search warrant was illegal and the activities of the plaintiff in pursuance of that warrant, namely the search of the defendant's premises and the removal of documents, constituted a breach of the defendant's constitutional rights. Furthermore, the public interest favoured the exclusion of the evidence in this case.

Competition Authority v The Irish Dental Association, High Court, Mr Justice McKechnie, 27/4/2005 [FL11849]

CONSTITUTIONAL

Legal aid

Whether the plaintiff was entitled to the provision by the state of legal representation to her in respect of the inquest to be held into the death of her son – Civil Legal Aid Act 1995.

The plaintiff, whose son collapsed while in the custody of the Garda Síochána and died a short time later, sought legal representation in respect of the inquest into her son's death. However, she did not have the necessary financial means to secure such representation. The plaintiff claimed that the failure of the state to provide for a publicly funded system of legal aid in respect of enquiries into the death of persons in state custody, in circumstances where they could not be reasonably expected to effectively represent themselves, constituted a breach of the constitutional right to life and a breach of the right to fair procedures and right of access to an effective remedy.

Gilligan J held in favour of the plaintiff: having regard to the fact that the coroner presides over the relevant inquest and his role is judicial in nature, that the inquest of itself is inquisitorial and that a jury will record a verdict, and further considering the circumstances of this case, fair procedures under the Constitution required that the plaintiff be provided with legal aid for the purpose of being adequately represented at the forthcoming inquest into her son's death.

Magee v Farrell, High Court, Mr Justice Gilligan, 26/10/2005 [FL11923]

CRIMINAL

Contempt of court

Criminal trial – sub judice – article published after verdict but before sentencing – report containing material prejudicial to accused – whether publication likely to interfere with administration of justice.

The respondents published articles in their newspapers containing comments about the notice party, referring to his conviction for various crimes, in respect of which he was due to be sentenced by the trial judge shortly. The articles were highly prejudicial, containing material that was not before the trial court, and referred to what the authors thought would be an appropriate sentence. The applicant sought orders granting leave to serve an order of attachment and committal on the respondents to answer the contempt referred to in the articles.

Dunne J declared that the articles were a contempt of court in that they were highly prejudicial to the notice party, thus interfering in the administration of justice, holding that the issue was not whether the trial judge had been affected or not but whether there had been an interference with the administration of justice or whether a perception had been created that the administration of justice had been interfered with. In that respect, the timing of the publication, before sentencing had been concluded, was of great importance. In deciding the issue, it was necessary for the applicant to satisfy the court beyond reasonable doubt.

DPP v Independent Newspapers (Ireland) Ltd, High Court, Miss Justice Dunne, 21/7/2005 [FL11987]

Indictment

Form of indictment – whether unnecessary proliferation of counts in indictment – whether sufficient information provided in indictments – whether lack of specificity in charges – whether trial conducted in due course of law – whether miscarriage of justice.

The applicant was convicted by a jury of unlawful carnal knowledge and was sentenced to two years' imprisonment on the first count and five years on each of the other 15 counts, to run concurrently. He sought leave to appeal against his conviction on the grounds, *inter alia*, that the number of counts on the indictment was prejudicial and that there was a lack of specificity in the counts in the indictment.

Herbert J dismissed the application for leave to appeal, holding that the number of counts on the indictment did not amount to overloading and was not prejudicial to the applicant and that the statutory obligation to provide such particulars as may be necessary for giving reasonable information as to the nature of the charges could only be satisfied if the indictment was so framed as to inform the accused in plain and unambiguous language what it was that each count in the indictment alleged he had done, and with sufficient particularity as the circumstances of the case would allow, to enable the accused to marshal his mind on more important evidence to counter those allegations. In this case, there was an unduly rigid approach to drafting the indictment and insufficient attention was given to the actual times and dates indicated by the complainant. However, no

miscarriage of justice actually occurred in the case.

DPP v D(E), Court of Criminal Appeal, 17/2/2006 [FL12004]

DAMAGES

Practice and procedure

Judicial review – reliefs sought – claim for damages only remaining relief sought in judicial review application – whether judicial review proceedings should be remitted to plenary hearing.

The applicants, in judicial review proceedings, made a complaint in relation to the validity of a search warrant and the alleged illegal seizure of records and other material and sought damages. It was agreed by all parties that no order of *certiorari*, *mandamus* or declarations were required and therefore the only live issue remained in relation to the claim for damages.

O'Leary J remitted the matter to plenary hearing, holding that the issue in relation to damages could not be decided in the course of a judicial review as the issues relating to the alleged illegal seizure of documents and equipment were matters that required oral evidence at plenary hearing.

Rogers v Maloney, High Court, Mr Justice O'Leary, 21/12/2005 [FL11833]

FAMILY LAW

Child abduction

Hague Convention – consent and acquiescence – husband living in USA – whether husband acquiesced in retention of children in state – whether wrongful retention of children – whether grave risk in returning children – Child Abduction and Enforcement of Custody Orders Act 1991, section 9.

The applicant applied for the return of his children to the USA under the *Hague Convention*, after the respondent had retained them in Ireland

after a holiday. The respondent contended that the applicant had consented and/or acquiesced in their retention in the state. She further contended that there would be a grave risk to the children if they were returned to the US. The High Court made an order for their return to the US, the place of their habitual residence. The respondent appealed to the Supreme Court.

The Supreme Court varied the order of the High Court, holding that the onus of proving consent rested on the person asserting it; the consent had to be proved on the balance of probabilities; the evidence in support of consent had to be clear and cogent; the consent had to be real, positive and unequivocal; and there was no need for consent to be in writing. *Re K (Abduction: Consent)* ([1997] 2 FLR 212) applied. The trial judge was entitled to make the findings of fact that there was no consent to the permanent removal of the children to Ireland. Primary findings of fact made by a trial judge could only be interfered with if they were unreasonable, ie if there was no evidence upon which to arrive at such a decision. The court also held that the defence of grave risk was a rare exception to the requirement under the convention to return children who had been wrongfully retained in a jurisdiction other than that of their habitual residence and had to be construed strictly, thereby imposing a heavy burden on the person asserting it.

R(S) v R(MM), Supreme Court, 16/2/2006 [FL11995]

Divorce

Ancillary orders – proper provision – whether court should have regard to prior separation agreement – Family Law (Divorce) Act 1996, section 20.

The parties separated by agreement in 1986. The sole dependent child of the marriage suf-

fered from cerebral palsy and was primarily cared for by his mother, the applicant. The separation agreement dealt only with property and provided that the respondent would reside in the former family home, subject to paying the applicant a sum representing 72% of the value of the house so that the applicant could purchase a house suitable for the son's needs. The former family home had risen substantially in value since then. The applicant then sought a decree of divorce and ancillary orders, primarily that the former family home and her present house be both sold and that she be awarded 50% of the joint proceeds. The respondent contended that the terms of the separation agreement could not be revisited in the present proceedings.

McMahon J ordered, *inter alia*, that the respondent pay to the applicant a lump sum of €400,000, holding that the absence of a maintenance provision, a custody clause, a clause dealing with pension rights or a full and final settlement clause indicated that the agreement was not a comprehensive and final separation agreement. Accordingly, section 20(3) of the *Family Law (Divorce) Act 1996* did not apply and the court did not have to have regard to that agreement. Moreover, there was sufficient change in the circumstances of the parties since it had been signed for it to be disregarded in considering what orders should be made ancillary to the order for divorce. In assessing property values, the relevant value was the value at the date of the hearing.

O'M v O'M, Circuit Court, Judge McMahon, 5/5/2004 [FL11839]

FREEDOM OF EXPRESSION

Injunction

Whether the injunction sought by the plaintiff was proportionate to the legitimate aim pursued.

The plaintiffs were members of a tribunal of inquiry. The tribunal experienced difficulties concerning the unauthorised disclosure of confidential information. Consequently, it sought and was granted an *ex parte* injunction by Finnegan P restraining the defendant from publishing or using information or reproducing any document in relation to which the defendant was aware that the tribunal had directed that such information/document should remain confidential until disclosed at public hearing or as otherwise directed by the tribunal. Furthermore, an injunction was sought restraining the publication of documents circulated on a confidential basis to any witness before such documentation was disclosed at a public hearing. In these proceedings, the tribunal sought a perpetual injunction in the same terms as the injunction granted by Finnegan P.

Kelly J refused the relief sought, holding that the orders sought could not be regarded as proportionate. The applicant failed to establish relevant and sufficient reasons to justify the restriction and the restriction did not correspond to a pressing social need. Furthermore, the restriction was not proportionate to the legitimate aim pursued. The tribunal sought to impose confidentiality on material some of which was not and could not be regarded as confidential in nature. The fact that the material in the brief might contain information obtained in confidence could not justify the wide form of restraint sought by the applicant. The injunction sought went too far and sought to enforce a species of confidentiality created unilaterally by the tribunal.

His Honour Judge Alan P Mahon v Post Publications Ltd, High Court, Mr Justice Kelly, 4/10/2005 [FL11932]

LANDLORD AND TENANT

Legitimate expectation

Promissory estoppel – Housing Act 1966 – *whether in the particular circumstances the plaintiffs' legitimate expectation was justifiable.*

The plaintiffs, who were all residents of local authority housing and were tenants of the defendant, claimed that as a result of representations made or promises given by the defendant, they had a legitimate expectation that their maisonettes would be sold to them at prices prevailing at that time. They further pleaded that, as local authority tenants, they were entitled to the benefit of the *Housing Acts* and they also sought to rely on the doctrine of promissory estoppel. The plaintiffs sought declarations to the effect that they were entitled to purchase their respective maisonettes by reference to the market price prevailing at that time under the relevant sales scheme.

Macken J made a declaration in favour of the plaintiffs, holding that, within a reasonable period of time subsequent to the coming into effect of the *Housing (Sale of Houses) Regulations 1995* and the adoption of a model scheme by the

defendant, the plaintiffs had a legitimate expectation that the maisonettes would be sold to them at the prices appropriate to that period. The plaintiffs were also entitled to invoke an entitlement to have the maisonettes offered to them under the doctrine of promissory estoppel.

Dunleavy & Others v Dun Laoghaire-Rathdown County Council, High Court, Mrs Justice Macken, 2/11/2005 [FL11969]

TORT

Medical negligence

Wrongful death – mental distress – whether the defendants were negligent in their medical treatment of the plaintiff and thus liable for the death of her twins, who were stillborn – Civil Liability Act 1961.

The plaintiff sought damages for negligence, as well as in respect of mental distress arising out of the death of her unborn twins and for the treatment she received both during and after her pregnancy. Essentially, the plaintiff claimed that the defendants incorrectly identified the type of twins she was carrying, in that they diagnosed dichorionicity instead of monochorionicity and conse-

quently failed to check for or diagnose twin-to-twin transfusion syndrome, thus resulting in the death of her unborn babies. The issue of liability, solely in respect of the medical aspects of this case, was dealt with as a preliminary issue.

Macken J determined that the fourth and fifth-named defendants were liable, holding that the negligence of both the fourth and fifth-named defendants, although both of them were skilled and experienced, caused the twins to be stillborn, in that, but for their negligence, the twins would have been delivered and would have survived birth. The first-named defendant was the employer of the fourth-named defendant and therefore was liable for her negligence.

Cunningham v Governor and Guardians of the Coombe Lying-in Hospital and others, High Court, Mrs Justice Macken, 5/9/2005 [FL11893]

PRACTICE AND PROCEDURE

Costs

Whether costs should follow the event – order 99, rule 1(1) of the Rules of the Superior Courts.

The respondent successfully opposed the applicant's appli-

cation for judicial review and applied for the costs of the proceedings. The issue of costs was adjourned to allow the parties a reasonable opportunity to consider the judgment of the court. The respondent again sought the costs of the proceedings and the applicant opposed that application.

Herbert J awarded costs to the respondent, holding that the proceedings comprised a *lis inter partes* and the applicant failed to establish the existence of very exceptional circumstances sufficient to deprive the respondent, as successful party, of the costs of the proceedings. Furthermore, the respondents were not guilty of misconduct sufficient to override the rule that costs follow the event.

Phelan v The Minister for Justice, Equality and Law Reform, High Court, Mr Justice Herbert, 4/11/2005 [FL11838] **G**

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News from the EU and International Affairs Committee

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

Recent developments in European law

AIR TRANSPORT

Case C-344/04, *The Queen, on the application of International Air Transport Association & European Low Fares Airline Association v Department for Transport*, 10 January 2006. The ECJ confirmed the validity of EU legislation on air passengers' rights. This legislation, which came into force on 17 February 2005 (IP/05/181), has introduced very significant improvements to the protection of air passengers' rights in the European Union in the event of denied boarding, flight cancellation or long delays.

The reference for a preliminary ruling concerned the validity of legislation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. Regulation (EC) no 261/2004 requires each member state to set up an independent body responsible for dealing with passengers' complaints and any disputes they may have with airlines to avoid long and expensive court cases.

CIVIL PROCEDURE

Case C-443/03, *Götz Leffler v Berlin Chemia AG*, 8 November 2005. Regulation 1348/2000 establishes the principle of direct transmission of judicial and extrajudicial documents in civil and commercial matters. The regulation provides that the addressee of such a document may refuse to accept it if it is not in the official language of the member state to which it is transmitted or a language of the

member state of transmission that the addressee understands.

In 2001, the applicant applied to a Dutch court for interim relief against the respondent, a German company. He sought the order to recover goods that the company had seized from him and to prohibit further such seizure. His claim was dismissed and he appealed to a higher court. It summoned the respondent to appear at a sitting. However, it did not enter an appearance, having refused to accept the summonses because they were not in German. The applicant requested judgment in default. This was refused as the language rules in the regulation had not been complied with and thus the summoning of the German company had no legal effect.

The applicant appealed against this judgment to the Dutch Supreme Court. It referred several questions to the ECJ for a preliminary ruling. The ECJ held that the consequences of refusal of the document must be determined by an autonomous interpretation of the regulation and not by national law. When the addressee of a document refuses it on the ground that it is not in an official language of the member state addressed, or in a language of the member state of transmission that the addressee understands, it is possible for the sender to remedy that by sending a translation of the document as soon as possible and in accordance with the procedure laid down by the regulation. A period of one month from receipt by the transmitting

agency of the information relating to the refusal may be regarded as appropriate, but this period can be determined by the national court according to the circumstances.

The court then considered the effect that sending a translation has on the date of service. The applicant must be able to benefit from the effect of the initial service insofar as he has displayed diligence in regularising the document by sending a translation as soon as possible. However, effective protection of the addressee entails taking into account only the date on which he received the translation of the document.

The court concluded that if a document has been refused on the ground that it is not in accordance with the language rule and the defendant has not appeared, judgment is not to be given until it is established that the document in question has been regularised by the sending of a translation, and that this took place in sufficient time to enable the defendant to prepare his defence.

COMPETITION

Cases T-33/02, T-52/02, T-62/02 and T-64/02, *Britannia Alloys & Chemicals Ltd, Société nouvelle des couleurs zinciques SA (SNCZ), Union Pigments AS and Dr Hans Heubach GmbH & CO KG v Commission of the European Communities*, 29 November 2005. The CFI dismissed the applications for annulment or reduction of fines imposed by the commission on members of a cartel in the zinc phosphate market.

In view of the gravity and duration of the infringement, the court considered that the fines were justified and were calculated in an appropriate manner. By a decision dated 11 December 2001 (decision 2003/437/EC), the commission imposed fines totalling €11.95 million on six European undertakings, producing and selling zinc-based products frequently used in the paint industry, for an infringement of community competition law.

The cartel, which was limited to standard zinc phosphate, gave rise to an agreement on market sharing and sales quotas. It also involved the fixing of 'base' or 'recommended' prices and the allocation of customers. The infringement was properly classified as "very serious", having regard to the nature of the conduct involved, its actual impact on the market, and the fact that it covered the entire common market and, after its creation, the European Economic Area.

DATA PROTECTION

Cases C-317/04 and C-318/04, *European Parliament v Council of the European Union and European Parliament v Commission of the European Communities*, 22 November 2005. Advocate General Léger proposed annulment of the Commission and Council decisions on transfer to the US authorities of personal information concerning air passengers.

Following the New York terrorist attacks, the US adopted legislation to the effect that airlines carrying passengers to, from, or across US territory are

required to give the US authorities electronic access to the data contained in their system for controlling and monitoring departures (passenger-name records).

In the view of the advocate general, neither the Council decision approving the agreement, nor the Commission decision holding that information to be sufficiently protected by the United States, have an adequate basis. The judges of the ECJ are now starting to deliberate in this case. The judgment will be delivered at a later date.

EMPLOYMENT

Case C-14/04, *Abdelkader Dellas and Others v Premier Ministre and Others*, 1 December 2005. In this case, the ECJ confirmed that on-call duty is classified as working time. Council directive 93/104/EC of 23 November 1993 lays down minimum safety and health requirements in this field. Under the directive, workers are entitled to minimum rest periods – particularly daily and weekly – and adequate breaks. It also fixes the maximum weekly working time at 48 hours, including overtime.

This case was referred from the council of state in France in relation to a special needs teacher who works in residential establishments for handicapped young persons. The teacher was dismissed by his employer as a result of disagreements relating in particular to the definition of actual work and the remuneration due for hours of night work on call. The ECJ found that the hours of presence in question must be counted in their entirety as working time for ascertaining whether all the minimum requirements laid down by directive 91/104, in order to provide effective protection of the safety and health of workers, have been complied with.

Case C-144/04, *Werner Mangold v Rüdiger Helm*, 22 November 2005. In this case,

the court consolidated protection for workers with regard to different treatment on grounds of age. Questions were referred for a preliminary ruling on the interpretation of directive 2000/78 in a dispute concerning the German law on part-time working and fixed-term contracts. The German law in question authorises, without restriction, except in cases of a continuous employment relationship, the conclusion of fixed-term contracts of employment once the worker has reached the age of 52.

In this case, it was not shown that fixing an age threshold, as such, regardless of any other consideration linked to the structure of the labour market in question or the personal situation of the person concerned, is objectively necessary to the attainment of the objective, which is the integration into working life of unemployed older workers.

FREE MOVEMENT OF GOODS

Case C-366/04, *Georg Schwarz v Bürgermeister der Landesbaupstadt Salzburg*, 24 November 2005. Austria prohibits the sale of sugar confectionery or similar products made using sugar substitutes from vending machines without wrapping.

Mr Schwarz marketed various kinds of unwrapped chewing gum in vending machines in Salzburg. The mayor of Salzburg then brought proceedings against him. He appealed, arguing that the Austrian rules were incompatible with EC law and, in particular, with the treaty provisions on free movement of goods.

The Independent Administrative Chamber, Salzburg, referred a question to the ECJ for a preliminary ruling. The ECJ pointed out that packaging of confectionery distributed by vending machines has not been harmonised by the food hygiene directive (directive 93/43/EEC).

National measures must, therefore, be assessed against the *EC Treaty* provisions relating to the free movement of goods. The Austrian legislation is an impediment to the free movement of goods. Importers wishing to sell confectionery in vending machines in Austria have to package it. This makes its importation into Austria more expensive.

Nevertheless, the court considered that the ban was justified, as it constitutes an adequate and proportionate measure for the protection of public health. Non-packaged confectionery has, in the past, been found to be exposed in vending machines both to pathogenic germs and to moisture and insects.

HUMAN RIGHTS

Cases T-306/01 and T-315/01, *Abmed Ali Yusuf and Al Barakaat International Foundation and Yassin Abdullah Kadi v Council of the European Union and Commission of the European Communities*, 21 September 2005. The United Nations Security Council had adopted several resolutions aimed at the Taliban, Osama bin Laden and al-Qaeda. All the UN member states were called on to freeze the funds and other financial resources controlled directly or indirectly by those individuals and entities. A UN sanctions committee identifies the persons concerned and the financial resources to be frozen and considers requests for exemption.

Within the EU, these resolutions were put into effect by regulation (EC) no 881/2002. This regulation orders the freezing of the funds of individuals and entities listed in an annexe to the regulation. This list is regularly reviewed by the Commission, on the basis of updates from the UN sanctions committee. Derogations from the freezing of funds may be granted by states on humanitarian grounds. Several of the per-

sons and entities concerned requested annulment of the regulations before the CFI. The CFI reviewed the legality of these measures.

Articles 60 and 301 of the *EC Treaty* empower the Council to impose economic and financial sanctions on third states, on the basis of a common position adopted by the EU under the common foreign and security policy.

The CFI held that the council is competent, under similar conditions, to impose economic and financial sanctions such as the freezing of funds on individuals, in connection with the fight against international terrorism. The court found that, under international law, the obligations of the member states of the UN under its charter prevail over any other obligation, including obligations under the *European Convention on Human Rights* and the *EC Treaty*.

Although the EC is not a member of the UN, it must be considered to be bound by the obligations flowing from the *UN Charter*, in the same way as its member states, by virtue of the treaty. The EC may not infringe on the obligations imposed on its member states by virtue of the charter or impede their performance. The EC is also required to adopt all the provisions necessary to allow its member states to fulfil those obligations.

The contested regulation is limited to putting into effect at EC level, decisions of the Security Council. Therefore, any review of the lawfulness of the regulation would involve the court in examining the lawfulness of the decisions in question. These decisions fall, in principle, outside the ambit of the court's judicial review. The court has no authority to call into question, even indirectly, their lawfulness in the light of EC law or of fundamental rights as recognised in the EC legal order. On the contrary, the court is bound, so far as possi-

ble, to interpret and apply that law in a manner compatible with the obligations of the member states under the *UN Charter*.

Nevertheless, the court is empowered to check the lawfulness of the contested regulation and, indirectly, of the Security Council resolutions implemented by that regulation in the light of peremptory norms of public international law (*jus cogens*). The ECJ held that the freezing of funds provided for by the contested regulation does not infringe the applicant's fundamental rights as protected by *jus cogens*. The contested regulation makes express provision for possible derogations, at the request of interested persons, allowing access to funds necessary to cover basic expenses. It is therefore neither the purpose nor the effect of those measures to subject the applicants to inhuman or degrading treat-

ment. The applicants have not been deprived of their right to property.

The freezing of funds is one aspect of the UN's legitimate fight against international terrorism and is a precautionary measure. Unlike confiscation, it does not affect the very substance of the right of the persons concerned to property in their financial assets, but only the use thereof. Furthermore, the Security Council resolutions provide for a means of reviewing, after a certain period, the overall system of sanctions and for a procedure enabling the persons concerned to present their case to the sanctions committee for review, through their state.

The court then considered rights of defence. No rule of *jus cogens* appears to require a personal hearing of those individuals concerned by the sanctions committee. The ECJ

then looked at the right to effective judicial review. In respect of the applicants' action, the court carried out a complete review of the lawfulness of the contested regulation with regard to observance by the EC institutions of the rules of jurisdiction and the rules of lawfulness and the essential procedural requirements that bind their actions.

It also reviewed the lawfulness of the regulation from the viewpoint of procedural and substantive appropriateness, internal consistency and whether the regulation is proportionate to the Security Council's resolutions.

The court also reviewed the lawfulness of the regulation in the light of *jus cogens*. However, it is not for the court to review indirectly whether the Security Council's regulations are compatible with fundamental rights as protected by the EC

legal order, or to verify that there has been no error of assessment of the facts and evidence relied on by the Security Council in support of the measures it has taken, or to check indirectly the appropriateness and proportionality of those measures. To that extent, there is no court procedure available to the applicants.

However, that lacuna in the judicial protection available to the applicants is not in itself contrary to *jus cogens*. The right of access to the courts is not absolute. In this instance, it is curtailed by the immunity from jurisdiction enjoyed by the Security Council. The applicant's interest in having a court hear their case on its merits is not enough to outweigh the essential public interest in the maintenance of international peace and security clearly identified by the Security Council. **G**

ON THE MOVE

Career moves, new appointments and promotions



MAURA CONNOLLY

Maura has been named as a partner in Eugene F Collins Solicitors. She heads the firm's employment law group. From 1 May 2006, her appointment brings the total number of partners in the firm to 18.



ELIZABETH RYAN

Elizabeth has been appointed senior associate with Mason Hayes & Curran. Her focus areas are employment law, industrial relations law and health and safety law.

A graduate of University College Cork, prior to qualifying as a solicitor Elizabeth worked in IBEC.



SINÉAD HAYES

Sinéad has been appointed as a solicitor in the litigation department and competition/regulatory law group in Eugene F Collins.

She holds a BSc (food science) and a postgraduate diploma in legal studies.



TRÍONA SUGRUE

Triona has been appointed solicitor to the employment law group of Eugene F Collins.

Triona holds a BCL (law and German) and a masters degree in European law and has extensive experience in the areas of litigation and employment law.

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 7 April 2006)

Regd owner: Gerard Carroll and Eilish Carroll, Knocktemple, Virginia, Co Cavan; folio: 2088F; lands: Tullynaskeagh; area: 0.2048 hectares; **Co Cavan**

Regd owner: Michael Clancy; folio: 4748; lands: townland of Clooncolman and barony of Islands; area: 12.2790 hectares; **Co Clare**

Regd owner: Martin Michael O'Shea and Teresa O'Shea; folio: 5415; lands: townland of Breaghva and barony of Moyarta; area: 46 acres, 3 roads, 36 perches; **Co Clare**

Regd owner: Patrick Duggan (deceased); folios: 17841 and 11616F; lands: townland of Cappaghlogde (17841) and Caherycahill (11616F) and barony of Bunratty Lower (17841) and Corcomroe (11616F); area: (17841) 4.1733 hectares and (11616F) 0.0930 hectares; **Co Clare**

Regd owner: James Fitzgibbon; folio: 28700; lands: plot of ground being part of the townland of Mohera in the barony of Barrymore and the townland of Glenarousk in the barony of Barrymore in the county of Cork; **Co Cork**

Regd owner: Jeremiah Kehily; folio: 11220; lands: plot of ground being part of the townland of Sranavidoge of Carbery East (west division) and county of Cork; **Co Cork**

Regd owner: Hannah Keniry; folio: 33561; lands: plot of ground being part of the townland of Seafeld in the barony of Imokilly and county of Cork; **Co Cork**

Regd owner: Patrick O'Brien; folio: 9806; lands: plot of ground situate in the electoral division of Warrenscourt, being part of the townland of Curraghbeha in the barony of Muskerry West and county of Cork; **Co Cork**

Regd owner: Michael O'Carroll; folio:

LAW SOCIETY Gazette

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22957; lands: plot of ground being part of the townland of Glenacarne in the barony of Dunhallow and county of Cork; **Co Cork**

Regd owner: John O'Leary; folio: 18278; lands: plot of ground being part of the townland of Inchinarihen in the barony of Bantry and county of Cork; **Co Cork**

Regd owner: Patrick O'Sullivan; folio: 359; lands: plot of ground being part of the townland of Ballynafarsid in the barony of Imokilly and county of Cork; **Co Cork**

Regd owner: Patrick O'Sullivan; folio: 69281F; lands: plot of ground being part of the townland of Ballinbritt in the barony of Barrymore and county of Cork; **Co Cork**

Regd owner: Sean O'Sullivan and Celine O'Sullivan; folio: 59722; lands: plot of ground being part of the townland of Carriganeeleagh in the barony of Muskerry West and county of Cork; **Co Cork**

Regd owner: Martin Foley and Cora Foley; folio: 34826F; lands: plot of ground known as 36 The Rise, Waterfall Road, in the parish of St Finbar's in the county borough of Cork; **Co Cork**

Regd owner: Michael Kieran Sullivan; folio: 6206; lands: plot of ground being part of the townland of Derrycreeven in the barony of Bear and county of Cork; **Co Cork**

Regd owner: Francine Renee Lamotte and Jean Pierre Hingre, c/o John Murray, Solicitors, Bayview Avenue, Bundoran, Co Donegal; folio: 1547F; lands; Carricknahorna; area: 0.1669 hectares; **Co Donegal**

Regd owner: William John McElchar, Drummannon, Killygordan, Co Donegal; folio: 25276F; lands:

Drummannon; area: 19.7944 hectares; **Co Donegal**

Regd owner: John Martin, Carrick, Laghy, Co Donegal; folio: 28655; lands: Mullanasole; area: 3.9836 hectares; **Co Donegal**

Regd owner: Sandra Clarke and Garry Clarke; folio: DN128320F; lands: property situate in the townland of Irishtown and barony of Castleknock; **Co Dublin**

Regd owner: Kenneth Deeter and Georgina Deeter; folio: DN5252F; lands: property situate in the townland of Streamstown and barony of Coolock, situate to the west of Malahide Road in the town of Malahide; **Co Dublin**

Regd owner: Peter Evans and Gillian Evans; folio: DN83335L; lands: property known as Flat 254, Level 4, Block W1, together with car space no 168, Custom House Harbour, Custom House Docks, in the parish of St Thomas and district of North Central; **Co Dublin**

Regd owner: Sarah Hogan; folio: DN26251F; lands: property known as 27 Melvin Road, situate in the parish of Rathfarnham and district of Terenure; **Co Dublin**

Regd owner: Mark Lyons; folio: DN44366L; lands: property situate in the townland of Tonkegee and barony of Coolock; **Co Dublin**

Regd owner: Liam O'Hara; folio: DN3666L; lands: the leasehold interest in the property situate to the west of Greenhills Road, being part of the townland of Greenhills and barony of Uppercross; **Co Dublin**

Regd owner: Derek Ward; folio: DN11738F; lands: property situate in the townland of Hartstown and barony of Castleknock; **Co Dublin**

Regd owner: John Chaney and Anne

Chaney; folio: DN47194L; lands: property known as 21 Redwood Close being part of the townland of Kilnarnagh and barony of Uppercross; **Co Dublin**

Regd owner: Desmond Conran; folio: DN29772F; lands: property known as no 8 Larkfield Park, Kimmage, situate on the south west of Larkfield Park in the parish of St Peter's and district of Rathmines; **Co Dublin**

Regd owner: the county council of the county of Dublin; folio: DN15534; lands: property situate in the townland of Saggart and barony of Newcastle; **Co Dublin**

Regd owner: Dakota Properties Limited; folio: DN1328F; lands: property situate to the east of the Ratoath Road; in the parish of Finglas, district of Finglas North; **Co Dublin**

Regd owner: Don Breen and Michelle Bennett; folio: DN116490F; lands: property situate in the townland of Murphystown and barony of Rathdown; **Co Dublin**

Regd owner: Gary Ryan; folio: DN136050F; lands: a plot of ground known as no 27 The Grove, Pheasant Run, Navan Road, Blanchardstown, situate in the townland of Huntstown and barony of Castleknock; **Co Dublin**

Regd owner: Paul Thorne; folio: DN7850; lands: property situate in the townland of Rush and barony of Balrothery East; **Co Dublin**

Regd owner: Bridget Cannon; folio: 47707; lands: townland of (1) Loughaunbreen, (2) Lecarrowmac-tully and barony of (1) and (2) Kilconnell; area: (1) 13 acres, 1 rood, 27 perches, (2) 18 acres, 17 perches; **Co Galway**

Regd owner: John Naughton; folio:

15399; lands: townland of (1) Skeaghadeeren, (2) Carrowntober East and barony of (1) and (2) Athenry; area: (1) 31.4010 hectares, (2) 1.0243 hectares; **Co Galway**
 Regd owner: Bridie Brassil; folio: 4657; lands: townland of Gortalea and barony of Trughanacmy; **Co Kerry**
 Regd owner: Patrick Cronin; folio: 17267F; lands: townland of Ballyhorgan West and barony of Clanmaurice; **Co Kerry**
 Regd owner: Michael Dineen; folio: 24179F; lands: townland of Aghabeg West and barony of Clanmaurice; **Co Kerry**
 Regd owner: Joseph Brosnan; folio: 20284F; lands: townland of Drom East and barony of Corkaguiny; **Co Kerry**
 Regd owner: Patrick King; folio: 23387; lands: townland of Clash West and barony of Trughanacmy; **Co Kerry**
 Regd owner: Thomas John Kelliher; folio: 1951; lands: townland of Kilgobnet and barony of Dunkerron South; **Co Kerry**
 Regd owner: James O'Gorman and Maureen O'Gorman; folio: 32015; lands: townland of Farrannahow and barony of Iveragh; **Co Kerry**
 Regd owner: Patrick Clarke; folio: 10837; lands: townland of Ballymore Eustace East and barony

of Naas South; **Co Kildare**
 Regd owner: Patrick Fadden and Anne Fadden; folio: 4773F; lands: townlands of Capdoo and Capdoo Commons and baronies of Clane; **Co Kildare**
 Regd owner: Landenstown Estates Limited; folio: 4961; lands: townlands of Landenstown and Longtown and baronies of Clane; **Co Kildare**
 Regd owner: Edward Millea; folio: 177 Kilkenney; lands: Warrington and barony of Shillelogher; **Co Kilkenney**
 Regd owner: James Roche (deceased); folio: 360 Kilkenney; lands: Bohilla and Ballyvoole and barony of Gowran; **Co Kilkenney**
 Regd owner: James Malone (deceased); folio: 2460; lands: Kilinapason and barony of Tinnahinch; **Co Laois**
 Regd owner: Peter McHugh, Annaghbrennan, Cloone, Co Leitrim; folio: 18483; lands: (1) Annaghmacullen, (2) Sunnagh Beg, (3) Sunnagh More, (4) Sunnagh More, (5) Sunnagh Beg; area: (1) 6.3864, (2) 7.7168, (3) 0.2074, (4) 4.1834, (5) 0.0075 hectares; **Co Leitrim**
 Regd owner: Patricia Enright; folio: 16290F; lands: townland of Castletown and barony of Kenry; **Co Limerick**
 Regd owner: Seamus Fitzgerald; folio: 13890F; lands: townland of Ballyellinan and barony of Connello Lower; **Co Limerick**
 Regd owner: Timothy J O'Connor; folio: 16282; lands: townland of Abbeyfeale West and barony of Glenquin; **Co Limerick**
 Regd owner: Daniel J O'Riordan and Margaret O'Riordan; folio: 24254; lands: townland of Abbeyfeale West and barony of Glenquin; **Co Limerick**
 Regd owner: Michael Quinn, Cartrongolan, Drumlish, Co Longford; folio: 488; lands: Cartrongolan; area: 6.2347 hectares; **Co Longford**
 Regd owner: Edward McCloskey, Beltichbourne, Termonfeckin Road, Drogheda, Co Louth; folio: 10574; lands: Castlebellingham; area: 0.4856 hectares; **Co Louth**
 Regd owner: Joseph Daly; folio: 8162F; lands: townland of Tully Commons and barony of Carra; area: 0.3391 hectares; **Co Mayo**
 Regd owner: Kevin Gallagher and Anne-Marie Gallagher; folio: 4114; lands: townland of Lecarrow and barony of Costello; area: 27 acres, 2 roods, 7 perches; **Co Mayo**
 Regd owner: Thomas Lynchenkaun; folio: 7111F; lands: townland of Derreen and barony of Burrishoole; area: 9.3659 hectares; **Co Mayo**

Regd owner: John Malone and Helen Malone; folio: 9998F; lands: townland of Rathkelly and barony of Kilmaine; **Co Mayo**
 Regd owner: James Murtagh (deceased); folio: 1414; lands: townland of Treankeel and barony of Gallen; area: 4.8563 hectares; **Co Mayo**
 Regd owner: Edward Carroll and Philomena Carroll, 61 Russell Avenue, Dublin 3; folio: 5026F; lands: Reask; area: 0.3338 hectares; **Co Meath**
 Regd owner: Paul Darragh, Waterside Stud, Balrath, Co Meath; folio: 25256; lands: Waterside Great; area: 12.5647 hectares; **Co Meath**
 Regd owner: Patrick O'Gorman and Barbara O'Gorman, Robertstown, Ashbourne, Co Meath; folio: 17088F; lands: Robertstown; area: 1.2140 hectares; **Co Meath**
 Regd owner: Christopher, Bridget and Jack O'Loughlin, 22 Rathfarnham Road, Terenure, Dublin 6; folio: 18660; lands: Ballinderrin; **Co Meath**
 Regd owner: Charles Toal, Smithboro, Co Monaghan; folio: 14353R; lands: Mulladuff; area: 2.9210 hectares; **Co Monaghan**
 Regd owner: William Delaney (deceased); folio: 2655; lands: Ballyphilip and barony of Ballybrit; **Co Offaly**
 Regd owner: John O'Reilly; folio: 910L; lands: Kilmalogue and barony of Philipstown; **Co Offaly**
 Regd owner: Ronald Walsh; folio: 334L; lands: Tullamore and barony of Ballycowan; **Co Offaly**
 Regd owner: Martin Keaveney; folio: 21848; lands: townland of Tonaphubble and barony of Carbury; area: 0.0227 hectares; **Co Sligo**
 Regd owner: Joseph McNasser and Marie McGlynn; folio: 791F; lands: townland of Fermoy and barony of Carbury; area: 0.1920 hectares; **Co Sligo**
 Regd owner: Kathleen Finn; folio: 10587; lands: townland of Munia and barony of Owney and Arra; **Co Tipperary**
 Regd owner: Frank Gleeson; folio: 38234; lands: townland of Lackenavea and barony of Owney and Arra; **Co Tipperary**
 Regd owner: John McCormack; folio: 34862; lands: townland of Kilcommon and barony of Kilmanagh Upper; **Co Tipperary**
 Regd owner: Patrick Flannery; folio: 14133F; lands: townland of Monsea and barony of Lower Ormond; **Co Tipperary**
 Regd owner: Cornelius Ryan; folio: 9672; lands: townland of Rathcloheen and barony of Clanwilliam; **Co Tipperary**

Regd owner: Mary Crowley; folio: 4456; lands: plot of ground being part of the townland of Dysert in the barony of Decies within Drum and county of Waterford; **Co Waterford**
 Regd owner: Laurence Kiernan, Beechlawns, Mullingar, Co Westmeath; folio: 10794; lands: Mullaghcrocy; area: 15.8860 hectares and 5.8420 hectares; **Co Westmeath**
 Regd owner: Thomas McLoughlin, Hall, Moate, Co Westmeath; folio: 15781; lands: Magheramurry; **Co Westmeath**
 Regd owner: Marie Dempsey (deceased); folio: 16371; lands: Ballyhighland and barony of Bantry; **Co Wexford**
 Regd owner: John Devereux (deceased); folio: 19832; lands: Castlebridge and barony of Shelmaliere East; **Co Wexford**
 Regd owner: Paul O'Boyce and Catherine Dunne; folio: 4250F; lands: townland of Whitestown Lower and barony of Talbotstown Upper; **Co Wicklow**

WILLS

Dollard, Joseph (deceased), late of Willow Cottage, Bannpark, Gorey, Co Wexford. Would any person with any knowledge of a will executed by the above-named deceased, who died on 16 May 2004, please contact Miriam Carr of Dermot P Coyne, Solicitors, Liffey Bridge House, 1 Main Street, Lucan, Co Dublin; tel: 01 628 1000

Dunleavy, John J (deceased), late of Shanaghan, Loughros Point, Ardara, Co Donegal. Would any person having knowledge of a will executed by the above-named deceased, who died on 2 May 2001, please contact Hartnett Hayes, Solicitors, Gweedore Road, Dungloe, Co Donegal; tel: 074 952 2208, fax: 074 952 2249

Gildea, Patrick, and Gildea, George (deceased), both late of Corsallagh, Cloonacool, Tubbercurry, Co Sligo. Would any person having knowledge of a will or the whereabouts of a will in respect of either the aforesaid Patrick Gildea or the aforesaid George Gildea please contact Johnson and Johnson, Solicitors, Ballymote, Co Sligo; reference KVJ/K005060001; tel: 071 918 3304

Lynch, Dominic (deceased), late of Kilmoon, Ashbourne, Co Meath, who died in September 2005. Would any person having knowledge of a will or the whereabouts of a will executed by the above-named deceased please con-

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tact **B Vincent Hoey & Co, Solicitors**, Law Chambers, Fair Street, Drogheda, Co Louth; tel: 041 983 1001/2/3; fax: 041 983 9060

Mernagh, Bridget (deceased), late of Greenanemore, Rathdrum in the county of Wicklow. Would any person having knowledge of a will executed by the above-named deceased, who died on 21 April 1972, please contact **Aine S Hogan & Co, Solicitors**, 32 Ferrybank, Arklow, Co Wicklow; tel: 0402 91255, fax: 0402 91256, email: aineshogan@eircom.net

O'Donnell, Michael and Dolores Mary (deceased), both late of 11 Ailesbury Lawn, Dundrum, Dublin 16, who died on 1 February 2006 and 14 July 2005 respectively. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased persons please contact **Cahill & Company, Solicitors**, 21 Windsor Place, Dublin 2; tel: 01 662 4454, fax: 01 676 5279, email: aturrey@cahillsolicitors.ie

O'Herlihy, Daniel Joseph (otherwise Dan Joe Herlihy), late of Drishane Road, Millstreet, Co Cork, and previously of Kiletra, Dromagh, Mallow, Co Cork, who died on 27 January 2006. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact **Deirdre O'Callaghan, James Lucey & Sons, Solicitors**, Kanturk, Co Cork; tel: 029 50026

MISCELLANEOUS

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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
and in the matter of 43 Homefarm
Road, Drumcondra, Dublin 9: an
application by Niall McCrudden
and Kevin McCrudden**

Take notice that any person having
an interest in the freehold estate of
the following property: the shop and
premises situate at no 43 Homefarm
Road, Drumcondra, in the city of

Dublin, held under lease dated 20
August 1936 between James J Hart of
the one part and Eileen McMahon of
the other part for a term of 150 years
from 1 November 1935.

Take notice that Niall McCrudden
and Kevin McCrudden intend to sub-
mit an application to the county reg-
istrar for the city of Dublin for acqui-
sition 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 the
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, Niall McCrudden and
Kevin McCrudden intend to proceed
with the application before the coun-
ty 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 per-
sons beneficially entitled to the supe-
rior interest including the freehold
reversion in each of the aforesaid
premises are unknown or unascertained.

Date: 7 April 2006
*Signed: Colm Murphy (solicitors for the
applicant), Laurel Lodge Business
Centre, Castleknock, Dublin 15*

**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 Helen Morrow**

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
McCurtain Street, Clones, in the
county of Monaghan.

Take notice that Helen Morrow
intends to submit an application to
the county registrar for the county of
Monaghan 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 afore-
mentioned premises to the below
named within 21 days of the date of
this notice.

In default of any such notice being
received, the applicant, Helen
Morrow, intends to proceed with the
application before the county regis-
trar at the end of 21 days from the
date of this notice and will apply to
the county registrar for the county of
Monaghan for directions as maybe
appropriate on the basis that the per-
son or persons beneficially entitled to
the superior interest including the

freehold reversion in the aforesaid
premises are unknown or unascertained.

Date: 7 April 2006
*Signed: Barry Healy & Co (solicitors for
the applicant), Laurel Lodge, Hillside,
Monaghan*

**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
Drumacrin, parish of Innismac-
saint, barony of Tirhugh and coun-
ty of Donegal: an application by
Rosemary Daly**

Take notice that any person having an
interest in the freehold estate or supe-
rior interest in the following premis-
es: all that and those that piece or par-
cel of ground situate at Main Street,
Bundoran, in the parish of
Innismacsaint, barony of Tirhugh and
county of Donegal, now trading as
Daly's Fashions and originally held by
lease dated 21 February 1871,
Hamilton Scott to Robert Moffitt, for
a term of 90 years from 1 November
1870, subject to the yearly rent of
seven pounds, eight shillings sterling.

Take notice that the applicant, Ms
Rosemary Daly, being the person
entitled under section 3 of the
*Landlord and Tenant (Ground Rents)
Act 1967*, as saved by section 73 of the
*Landlord and Tenant (Amendment) Act
1980*, sections 8 and 15 of the
*Landlord and Tenant (Ground Rents)
(No 2) Act 1978*, intends to submit an
application to the county registrar for
the county of Donegal for the acqui-
sition 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 Rosemary Daly
intends to proceed with the applica-
tion 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 rever-
sion in the aforesaid premises are
unknown or are unascertained.

Date: 7 April 2006
*Signed: Kelly & Ryan (solicitors for the
applicant), Teeling Street, Sligo*

**In the matter of the Landlord and
Tenant (Ground Rents) Acts 1967-**

**2005 and in the matter of an appli-
cation by Players Square Limited**

Take notice that any person having
an interest in the freehold estate or
any intermediate interest in those
parts of the property formerly known
as the Bailey Gibson Printing Works,
South Circular Road, in the parish of
St James and city of Dublin, which
are held under:

- a) A fee farm grant dated 13
November 1852, made between
Cooper Penrose and Reverend
John Dennis Penrose of the one
part and Reverend John Alexander
of the other part;
- b) A fee farm grant dated 13
November 1924, made between
Harold B Bompas and Edwina M
Brush of the one part and George
William Shannon, Arthur C
Sibthorpe and George Birney of
the other part;
- c) An indenture of lease dated 28
October 1920, made between
Maria Ryan of the one part and
Patrick Higgins and Jane Higgins
of the other part;
- d) An indenture of lease dated 20 July
1944, made between George
William Shannon, Arthur C
Sibthorpe, James C Evans, Alfred
D Baldwin, James W Ross and
William J Walsh of the one part
and Bailey Son & Gibson Limited
of the other part

should give notice of their interest to
the undersigned solicitors.

And take notice that Players
Square Limited intends to submit an
application to the county registrar for
the county of the city of Dublin for
the acquisition of the freehold and all
intermediate interests in the prop-
erty aforesaid, and any party asserting
that they hold a superior interest in
the said property is called upon to
furnish evidence of their title thereto
to the undersigned within 21 days of
the date of publication of this notice.

In default of such notice being
received, Players Square Limited
intends to proceed with the applica-
tion before 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
interests including the freehold
reversion in the property are
unknown or unascertained.

Date: 7 April 2006
*Signed: Eugene F Collins (solicitors for
the applicant), Temple Chambers, 3
Burlington Road, Dublin 4*

**In the matter of the Landlord and
Tenant (Ground Rents) Acts 1967-
2005 and in the matter of an appli-
cation by Players Square Limited**

Take notice that any person having an interest in the freehold estate or any intermediate interest in those parts of the property known as John Player House, South Circular Road, parish of St James and city of Dublin, which are held under lease by way of sublease dated 20 July 1923, made between Michael Flanagan of the one part and the Imperial Tobacco Company (of Great Britain and Ireland) Limited of the other part and a fee farm grant dated 28 February 1895, made between William Hamilton Maffett of the one part and Edward Dawson Atkinson, Reverend William Atkinson Dickson and James Searight Atkinson of the other part, should give notice of their interest to the undersigned solicitors.

And take notice that Players Square Limited intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the said property is called upon to furnish evidence of their title thereto to the undersigned within 21 days of the date of publication of this notice.

In default of such notice being received, Players Square Limited intends to proceed with the application before 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 interests including the freehold reversion in the property are unknown or unascertained.

Date: 7 April 2006

Signed: Eugene F Collins (solicitors for the applicant), Temple Chambers, 3 Burlington Road, Dublin 4

In the matter of the Landlord and Tenants Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Brendan Cahill and Bairbre Shelly

Take notice that any person having an interest in the freehold estate or any intervening estate in the property known as 61 Mount Prospect Avenue, Clontarf, in the city of Dublin, being the premises comprised in and demised by indenture of lease dated 28 April 1930 and made between John J Fitzpatrick of the one part and Edithna Webb of the other part for a term of 249 years, subject to the yearly rent of £10.10 shillings.

Take notice that the applicants, Brendan Cahill and Bairbre Shelly, intend to submit an application to the county registrar for the county of

Dublin for the acquisition of the freehold interest and all intervening 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 aforesaid property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicants, Brendan Cahill and Bairbre Shelly, intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the intervening interest and the freehold reversion in the aforesaid property are unknown and unascertained.

Date: 7 April 2006

Signed: Aidan M Deasy & Co (solicitors for the applicants), 34 Upper Fitzwilliam Street, Dublin 2

In the matter of the Landlord and Tenants Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Anthony Bradfield and Irene Bradfield

Take notice that any person having an interest in the freehold estate or any superior or intermediate interest in the hereditaments and premises situate at 1B Ring Terrace, Inchicore, Dublin 8. Take notice that Anthony Bradfield and Irene Bradfield intend to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforementioned properties, and any party asserting that they hold a superior interest in the aforesaid properties (or any of them) are called upon to furnish evidence 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 applicants, Anthony Bradfield and Irene Bradfield, intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin for directions as may be appropriate on the basis that the person or person beneficially entitled to the superior interest including the freehold in each of the aforesaid premises are unknown or unascertained.

Date: 7 April 2006

Signed: W&E Bradshaw (solicitors for the applicant), 79 Merrion Square, Dublin 2

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Locum solicitor required to cover maternity leave from 1 June 2006 to end of October 2006. Principally conveyancing and probate. County Limerick office. Reply with full curriculum vitae to **box no 33/06**

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In House Positions, €Neg

Excellent opportunities have arisen for a number of legal administrators and solicitors to work in this multinational corporation.

- **Solicitor (3-7 yrs PQE)** – will involve negotiation, drafting and analysis of a wide variety of commercial agreements as well as managing a team of paralegals. The successful candidate will have extensive knowledge of contract law with experience of technology and intellectual property law an excellent academic record and another European language is strongly preferred.

- **Contracts Administrator** – will involve reviewing inbound revenue deals and verifying contractual and taxation documentation for approval. Successful candidates will have 1-2 years related experience as an administrator.
- **Legal Administrator** – will involve coordination of contractual documentation for approval and signature and liaising with solicitors. Successful candidates will have 2-5 years related experience as contract administrator/company secretarial assistant.
- **Legal Notifications Administrator** – will involve responding to customer service enquiries, approval and disapproval of drafting. Successful candidates will have customer service experience, be able to complete a large volume of work quickly and be fluent speakers in French or German.

Banking/Commercial/Corporate Solicitors x3 €70-100K

Assistant and Associate tax lawyers are required for a leading Dublin based law firm. The successful candidate will work in this thriving tax department and advise corporations and financial institutions on all taxation and transaction aspects. Excellent opportunity for career development with an attractive package for the right candidate.

Legal Secretaries, €Neg.

Various roles (temp and perm) available for legal secretaries with at least 1 year's experience in the following areas: Conveyancing, Rights, Banking, Finance and Property. Excellent PC skills and typing/dictaphone typing skills.

If you are interested in these or any other legal opportunities please contact Monica Palmer, mpalmer@blueprint-international.com or Agnieszka Wlodek wlodek@blueprint-international.com. Tel: 00353 1 448 9900, Castle River House, 14 – 15 Parkland Gate, Dublin 2, www.blueprint-international.com

Blueprint
appointments

COURTS AND COURTS OFFICERS ACTS 1995 – 2002 JUDICIAL APPOINTMENTS ADVISORY BOARD

Appointment of Ordinary Judge of the District Court

Notice is hereby given that applications are invited from practising barristers and solicitors who are eligible for appointment to the Office of Ordinary Judge of the District Court for a vacancy that is due to arise in the District Court.

Those eligible for appointment and who wish to be considered should apply in writing to the Secretary, Judicial Appointments Advisory Board, Phoenix House, 15/24 Phoenix Street North, Smithfield, Dublin 7, for a copy of the relevant application form.

The closing date for receipt of completed application forms, in relation to this advertisement, is 5p.m. on Thursday 20th April, 2006.

It should be noted that The Standards in Public Office Act, 2001 prohibits the Board from recommending a person for judicial office unless the person has furnished to the Board a relevant tax clearance certificate (TC4) that was issued to the person not more than 18 months before the date of a recommendation.

Applicants may, at the discretion of the Board, be required to attend for interview.

Canvassing is prohibited.

Dated the 30th March 2006.

Brendan Ryan BL
Secretary
Judicial Appointments Advisory Board

Noonan Linehan Carroll Coffey Solicitors

54 North Main Street
Cork

require an Assistant Solicitor

*Three years ppe with conveyancing
essential*

Court experience desirable

*This position will offer the right person
the opportunity to do interesting work*

Contact: Joe Noonan
jnoonan@nlcc.ie
Fax: 021 4274347
Tel: 021 4270518

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Benson & Associates is a niche consultancy, specialising in the recruitment of high calibre lawyers for private practice, commerce and industry, from newly qualified to partner level.

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.

A selection of opportunities for April 2006

PRIVATE PRACTICE

- Arbitration: 3-5 yrs pqe
- Banking: All levels
- Commercial Property: All levels
- Construction (contentious): 2-5 yrs pqe
- Employment: 2 yrs+ pqe
- Insolvency: 3-5 yrs pqe
- Paralegal (corporate): 2 yrs+ pqe
- Pensions: 2 yrs+ pqe
- Private Client: 1-2 yrs pqe
- Snr Commercial Property
- Tax: All levels

IN-HOUSE

- Aircraft Finance: 1-3 yrs pqe
- Corporate/Commercial: NQ – 3 yrs pqe
- Corporate/Commercial: 3-5 yrs pqe
- Senior Corporate/Commercial: 10 yrs+ pqe

POSITIONS IN LONDON AND REGIONAL UK

In association with our colleagues Chadwick Nott, Legal Recruitment Specialists, we are very keen to hear from solicitors who are seeking to relocate to London and other major cities in the United Kingdom.

For more vacancies, please visit our website or contact Michael Benson bol solr. in strict confidence, at Benson & Associates, Carmichael House, 60 Lower Baginbun Street, Dublin 2, Ireland. T +353 (0) 1 670 3997 E mbenson@benasso.com

**Benson
& Associates**
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Commercial Contracts Lawyer (Dublin based)

AIB Group, Ireland's leading banking and financial services group, is seeking to recruit an ambitious and talented lawyer to work at a senior level in the Group Law Agent's office.

The Office of the Group Law Agent has responsibility across a wide range of legal issues including company and commercial law, acquisitions, capital raising, banking supervision law and regulation and employment law.

The Role

- ♦ The provision of legal assistance in the drafting and negotiation of a wide variety of commercial agreements.
- ♦ The provision of legal advice and assistance on issues arising from the Group's contracts with its suppliers
- ♦ Responsibility for the creation of standard terms and conditions for use in the Group's contracts with suppliers of goods and services
- ♦ Where applicable, responsibility for managing and facilitating liaison with external lawyers in relation to commercial contracts

The Person

You will be a successful professional with at least three years experience as a practising solicitor or barrister (whether in private practice or in an organisation other than a law firm) in the field of commercial contracts.

Your key skills will include:

- ♦ A high degree of technical legal knowledge and skill
- ♦ Excellent drafting abilities
- ♦ Energy and enthusiasm
- ♦ A high degree of skill and experience in negotiation
- ♦ Excellent communication skills and experience of influencing at all levels of an organisation
- ♦ Good business judgement
- ♦ Willingness and capacity to work within a team and to provide leadership, where required, to small teams
- ♦ Adaptability to change and the ability to react promptly

Applications, including career details to date, should be forwarded in strictest confidence to:

Olivia French, AIB Group HR Shared Services, 3rd Floor, Lena Building, Block B, 156 Greshamstown Road, Ballsbridge, Dublin 4. Email: specialist@aib.ie.

Closing date for receipt of applications is April 13th, 2006.

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WALLACE**

MAKE THE RIGHT MOVE

SOLICITORS

BCM Harby Wallace is one of Ireland's largest and fastest growing commercial law firms. To support our continued growth we are currently seeking experienced solicitors for the following key positions:

Construction Solicitor

Solicitor ideally with good transactional experience in advising clients on construction law issues and drafting construction contract documentation. Solicitors with experience in other related areas of law e.g. property or banking, will also be considered.

Corporate Solicitor

Solicitor required with general corporate and commercial experience, and should also have a particular expertise and interest in intellectual property licensing. Science based degree an advantage but not a prerequisite.

Residential Property Development Solicitors

Two solicitors with high level experience of handling all aspects of conveyancing transactions on behalf of residential property developers. Ability to work closely with clients and develop one-to-one relationships essential.

So if you are looking to make the right move where you will be given responsibility, independence and direct access to clients, then forward your CV to Patricia Barr, HR Director, at pbarr@bcmhw.com or call Patricia on 01 418 6312. For further information on the above roles see our website www.bcmhanbywallace.com/careers.

BCM Harby Wallace, 88 Harcourt Street, Dublin 2

Legal Opportunities

In-House

Corporate Lawyer

Dublin €100,000 - €120,000

Our Client is seeking to hire an experienced (7-10 year's PQE) Corporate Lawyer. The successful candidate will have strong M&A experience coupled with corporate reorganisations and restructurings, structuring management buy outs and buy ins, inward and outward investment, private equity participation etc. This role will combine excellent legal experience with a strong business acumen. Ref: 22088

General Counsel

Dublin €60,000 - €75,000

Our client is a specialist asset management company and is seeking a general commercial solicitor with some banking and securitisation exposure. This is an excellent opportunity for a solicitor with 2-4 year's PQE to make that move to an in-house role or to take their in-house career to the next level. Ref: 23512

Commercial Contracts

Dublin Lawyer €50,000 - €65,000

Our client is seeking a solicitor or barrister, who is ambitious and wishes to develop their career. The successful candidate will have 3 year's PQE in the field of commercial contracts as you will be required to provide legal advice and assistance in relation to contracts with the suppliers of goods and services to the Group. Ref: 23404

Commercial Lawyer

Dublin €50,000 - €65,000

Our client is a dynamic department within the public sector. They are seeking a commercial lawyer with 2-5 year's PQE to join their legal team. Some funds experience would be desirable but is not essential. This role offers excellent progression, benefits and overall package. Ref: 22990

Employment Lawyer

Dublin €45,000 - €55,000

Large multinational company seeking to hire a dedicated Employment Lawyer to join their legal department. You will have responsibility for providing a professional legal service and specialist support for all employment, labour affairs, HR and industrial relations matters and also providing expert opinion in respect of EU law and domestic law as it relates to employment. Ref: 23199

Practice

General Practice Solicitor

Dublin South €65,000 - €85,000

Our client is a boutique law firm based in South Dublin. They have a progressive ethos and are committed to providing quality service to their clients. Due to continued growth the Principal is seeking to hire a solicitor with experience in both residential and commercial property. Experience of a cross section of litigation is highly desirable. Ref: 21525

Commercial Property Lawyer

Dublin €60,000 - €70,000

Prestigious medium large sized firm is urgently seeking a Property Solicitor with 2-3 year's experience to join its growing property department. This opportunity will appeal to a solicitor looking for a clearly defined career path and someone looking to work on major projects, from selling investor leases to developing large sites. Ref: 17486

Private Client Legal Executive

Dublin €30,000 - €40,000

This Top Tier firm has a fantastic opportunity for a Private Client Legal Executive. The successful candidate will have experience in property, probate and corporate. This role is excellent for a capable and ambitious candidate looking to build their career with a large firm in a competitive industry. Ref: 22897

Conveyancing Legal Executive

Dublin €30,000 - €40,000

This mid tier firm is looking for a Conveyancing Legal Executive to join their team. This role may suit a Legal Executive with strong conveyancing experience in dealing with registrations. Suitable candidates will be driven and competent. The role offers a fantastic opportunity to develop your career in a growing industry. Ref: 23450

Debt Recovery Legal Executive

Dublin €25,000 - €35,000

This small and busy firm has a great opportunity for a strong Legal Executive in their debt recovery department. Candidates will have experience on the legal side of the recoveries, preferably with 1-2 year's experience. This is an ideal role for a candidate that is motivated, ambitious and works well in a team environment. Ref: 23469

SLAUGHTER AND MAY

INVEST IN A CHANGE -

THREE OF OUR PENSIONS

PARTNERS DID.

Our Pensions practice advises some of the largest household names, banks and financial institutions. Recent and future changes in national and EU legislation require the team to be ahead of the game in advising clients on a wide range of headline making issues in this area. These include dealing with pension fund deficits (including the MISA aspects), pension fund investment issues, age discrimination and tax simplification.

The work appeals to those who enjoy the challenge of applying black letter law at the high profile interface between employers, trustees and pension scheme members. Our aim is to create innovative solutions to the practical commercial problems experienced by our clients.

The team recruits lawyers who have had a conventional Pensions background but we also recognise the contribution that lawyers from other disciplines can bring to the team. Corporate, Tax and Finance are just three of the areas from which we have successfully recruited. A well trodden path, followed by three of our partners, has been established for those making the transition including substantial support and training.

If you would like to find out whether a change could be a good investment in your future, please contact, in complete confidence, Sonya Boxer or Adam Brown at Shilton Sharpe Quarry on 020 7 187 7400 or by email: sonya.boxer@ssq.com

www.ssq.com

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At The Legal Panel we focus on recruiting experienced solicitors from newly qualified to partner level and pride ourselves on our confidential and personal approach. We listen carefully to your requirements and tailor our search to your skill set and career aspirations. All applications are strictly confidential. We are currently recruiting for a number of opportunities for experienced solicitors both in-house and in private practice.



IN-HOUSE

Structured Finance Lawyer Ref: SR16566 to €100,000

Our client is a well known multinational financial services company with offices all over the globe. Due to continued growth they are now looking for a lawyer with strong structured finance experience. The role will involve working closely with the capital markets team on a variety of transactions. The ideal candidate will be a qualified solicitor with 2-3 years' ppe with relevant experience in debt and securitisations. Fluency in another European language would be advantageous although not essential.

Commercial Lawyer Ref: SR16649 to €80,000

Our client is a multinational bank with headquarters in Dublin. Your responsibilities will be to: provide legal advice and assistance in relation to contracts with the suppliers of goods and services to the group, minimise risk and assist in the specification of a contract management database. The ideal candidate will be a qualified Barrister or Solicitor with at least 3 years' ppe in the field of commercial contracts. Good negotiation and influencing skills are key requirements for this position.

PI Defence Lawyer Ref: SR16627 to €65,000+

Our client is a well established insurance company who are seeking a well qualified lawyer to join their respected team. The role will involve working principally on PI Defence claims but also general corporate and commercial issues. The ideal candidate will be a qualified solicitor with at least 3 years of ppe in personal injury defence. This is an excellent opportunity to move into an in-house role. Salary is commensurate with experience and a good benefits package is on offer to the right candidate.

Legal Advisor Ref: AW16607 to €45,000

A leading telecoms firm require an experienced conveyancing solicitor to join their rapidly expanding team. This is an excellent opportunity to gain experience in a progressive and developing firm. Responsibilities will include the review of all conveyancing agreements, provision of legal advice regarding leases and licences, title registration and other conveyancing matters. The successful candidate will have 1-3 years' ppe and ideally a good knowledge of planning and environmental law. This is a great opportunity to gain niche experience in a growing sector.

Compliance Officer Ref: AW16631 to €65,000

World leading accountancy firm currently require a Compliance Officer for their expanding Dublin office. This is a great opportunity to join a dynamic team working on all regulatory and compliance issues affecting the industry. The successful candidate will advise on all compliance issues and provide staff training on regulatory issues. Ideally you will have 1-3 years' ppe, a good working knowledge of compliance guidelines and local legislation.

Listing Advisor Ref: AW16607 to €45,000

Our client is a well-established financial company who currently seek a Listing Advisor to join their expanding fund investment team. The role includes the review and listing of prospectuses and close liaison with issuers, IFSCA and other listing organisations. You will develop an excellent knowledge of listing rules and fund investments as well as providing support to solicitors and the investment team. You will have experience in the legal, financial or compliance sectors and ideally some knowledge of listings.

PRIVATE PRACTICE

Construction Ref: SR16714 to €100,000

Working for a top tier practice in their highly reputed construction department you will have solid industry experience including dealing with lenders, contractors and developers. This is an excellent opportunity to join a high calibre team in a dynamic and fast growing practice area. You will be rewarded with a definite career path and a professional and exciting team to work with.

Commercial Litigation Ref: SR16712 to €75,000

Due to continued expansion this top 5 law firm are now seeking to add a high calibre lawyer to their well respected commercial litigation team. The role will cover professional indemnity, media and defamation, intellectual property, product liability and insurance. The ideal candidate will have 3-4 years' ppe from a top tier or well respected mid tier firm. Strong academic and technical ability are key for this role.

Investment Funds Lawyer Ref: AW13588 to €65,000

One of the top 5 firms require investment funds lawyers to join their dynamic financial team. This is an excellent opportunity to develop in a market leading fund department. Responsibilities include the operation of fund and advising prime brokers, international banks, fund administrators and investment managers on all aspects of fund regulations in Ireland. The successful candidate will ideally have 1-2 years' ppe in the area of funds or a good familiarity with the area. There is a very attractive remuneration package on offer to the successful candidate.

Corporate/Commercial Lawyer Ref: AW10933 to €65,000

One of the top 5 firms require a lawyer to join their expanding commercial team. The successful candidate will be required to work on high profile and complex cases, M&A, private equity and venture capital transactions. On the commercial side they will be required to draft licensing agreements, contracts and all relevant policies and procedures. Ideally they require a strong individual with 1-3 years' ppe, excellent communication skills and a proven track record in the area.

Company Secretary Ref: AW16144 to €40,000

A Company Secretarial Assistant is required for one of the leading legal practices in Ireland. Working closely in a team, you will be responsible for your own portfolio of clients. Close liaison with the CFO is required and you will ensure all statutory changes are in compliance with FSRA legislation. The successful candidate will be part or fully IOSA qualified and ideally have 1-3 years' relevant experience.

Tax Lawyer Ref: SR16718 to €75,000

One of Ireland's leading firms, with a strong reputation in tax, is looking for a qualified lawyer to join their rapidly expanding department. With at least 3 years' corporate experience you will advise on commercial taxation matters such as structured finance and investment projects, mergers and acquisitions, property and tax litigation. With a strong commercial background, relevant tax experience is preferable. AITF exams would be advantageous.

putting you in great company

For more information on these roles, please contact Sarah Randall or Allison Watson on (01) 637 7012 or email sarah@thepanel.com or allison@thepanel.com

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Interested in hearing more? If you are a 0-5 year ppe corporate lawyer, please contact Sharon Swan on +353 (0) 1 477 3086 or email sharon@laurencsimons.com.



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MACFARLANES

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STELFOX LEGAL IS IRELANDS FASTEST GROWING LEGAL RECRUITMENT AGENCY WITH AN EVER-EXPANDING CLIENT AND CANDIDATE BASE THROUGHOUT THE GREATER DUBLIN AREA, AS FAR NORTH AS DONEGAL AND SOUTH AS FAR AS CORK. WE PLACE SOLICITORS AND BARRISTERS ACROSS ALL AREAS OF THE LEGAL FIELD RANGING FROM SMALL INDIGENOUS FIRMS TO TOP TIER FIRMS AS WELL AS MULTINATIONAL CORPORATIONS.

WE HAVE A NUMBER OF POSITIONS FOR ALL LEVELS OF LAWYERS AS WELL AS EXPERIENCED SUPPORT STAFF.

CURRENT OPPORTUNITIES INCLUDE:

Private Practice

■ E-business/Regulatory IP Lawyers

Mid Tier Practice. Dublin. Excellent.

This is one of the fastest growing firms in Dublin with an excellent reputation across all areas of practice. They are at present looking to recruit two solicitors (one with two to three yrs exp and one at senior level) both for the E-business/Regulatory IP Unit of the firm. Successful candidates will have experience in contentious and non-contentious IP, regulatory litigation, and commercial litigation.

■ Commercial Litigator

International Law Firm. Dublin. 70,000+

Solicitor with three to five years PQE is required for a well-known international law firm to join their Commercial Litigation team. Candidate must have strong commercial litigation experience from a first class commercial firm having dealt with insolvency, investment funds disputes, company/shareholder disputes etc. Excellent career progression prospects.

■ Construction/Projects Lawyer

Top Tier firm. Dublin. 85,000+

Hugely successful firm is expanding their Construction department and is looking to recruit a solicitor with four yrs minimum post-qualified experience. Experience in both contentious and non-contentious construction law and advising private and public sector developers on all elements of construction law essential. Knowledge of FIDIC contracts a necessity. Excellent opportunity for the right candidate.

■ Funds Lawyer

Leading Law firm. Dublin. 70,000+

Excellent opportunity to join one of Ireland's strongest funds teams within a leading legal practice. Experience in funds is a prerequisite for this position as is a natural ability to work well both within a team and as an individual. Salary and benefits are extremely competitive for the chosen candidate who will have a minimum of four years experience.

■ General Practice Solicitor

Donegal. Market leading salary.

Well known firm in Donegal is looking for a solicitor with any amount of General Practice experience, ideally with strong conveyancing skills. Exceptional working atmosphere as well as market leading regional salary and benefits for the North West.

■ Property solicitor

Cork City. Excellent salary.

Highly regarded city centre Cork firm has an opening for a solicitor with a minimum of two years PQE in conveyancing. Experience in both residential and commercial is essential. Excellent opportunity for career progression.

In House

■ Legal Advisor.

Dublin city centre. 60,000.

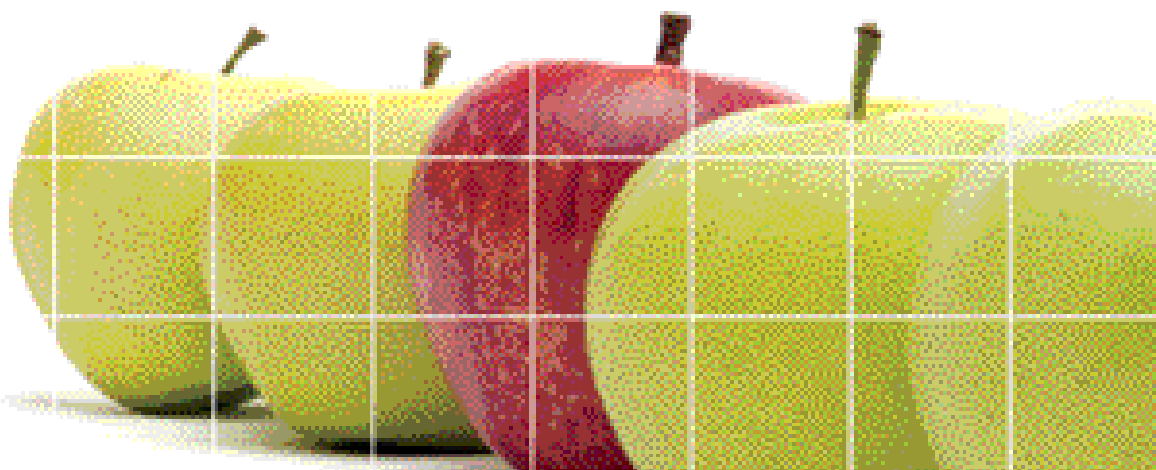
In house solicitor/barrister required to join legal & compliance team for International Division of large company. Strong general commercial experience and an ability to be flexible on workload essential. Ideal candidate will have between 1 - 3 years PQE. Experience in top tier legal practice or financial services a distinct advantage.

If you are interested in finding the right position in the right firm with an agency who genuinely respects your need for confidentiality contact Stephen Kelly B.A., LL.B. at Stelfox Legal on (01) 679 3182 or email your CV to Stephen@stelfox.ie

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Robert Walters is a leading global recruitment specialist with 33 offices in 13 countries. Our Dublin legal division provides a high quality proactive and professional service in both the private practice and in-house markets to meet your career needs in Ireland.

In-House

Commercial Contracts Lawyer 3-4 years' PQE €75k + Bonus + Bens

Our client, a global consultancy, seeks to appoint a Contract Management Manager. Successful candidates will have circa 4 years' PQE with experience of managing a variety of government, international and commercial contracts, post-signature. You will possess strong leadership and organisational skills. This is an excellent opportunity for an ambitious lawyer looking for a new challenge in a challenging and highly professional environment.

Ref: 301440

In-House Commercial Lawyer 1-3 years' PQE €65k + Bonus + Bens

A leading international insurance company seeks to appoint a solicitor with at least 1 years' PQE to join their in-house legal department. Applications are invited from solicitors with previous experience in an in-house position or the commercial department of a large or medium sized law firm. Candidates with experience in financial services are preferred, though this is not an essential requirement. The successful applicant will enjoy excellent salary, benefits and bonus with exceptional prospects for career development with one of Ireland's leading companies. Ref: 318320

Legal Advisor 1-3 years' PQE €60k + Bonus + Bens

Our client, a leading international financial services organisation, seeks to recruit a general commercial in-house lawyer to join their legal and compliance team as Legal Advisor. The role will suit a commercial solicitor looking to move or remain in-house. The main remit will be to support the asset management activities of the organisation and draft, review and negotiate Irish and cross-border contracts. The ideal candidate will have 1-3 years' PQE with experience of software licensing, general contract law and employment law. Financial services experience would be an advantage but is not a prerequisite. Ref: 318950

Private Practice

Commercial Property Partner 6-8 years' PQE €120k + Bonus

Our client, a medium sized Dublin law firm, has enjoyed exceptional growth in the past few years. Due to continued expansion, they now seek to appoint a Commercial Property Partner to join their well-regarded property unit. This is an exceptional opportunity for a senior solicitor with partnership aspirations to join one of Dublin's most progressive firms. The ideal candidate will have 6-8 years' PQE with strong experience in development, investment and leasing.

Ref: 320090

Construction Lawyer 2-4 years' PQE To €85k + Bonus

A prestigious medium sized firm seeks to appoint a construction solicitor. The successful candidate will have 3-4 years' PQE and will work on the non-contentious aspect of this dynamic firm's construction practice. This is an excellent opportunity for career progression in one of Dublin's most sought after medium sized firms with an exceptional track record in the property and construction sector. Exceptional remuneration package will be offered to the successful candidate.

Ref: 313050

Banking Lawyer 0-3 years' PQE To €70k + Bonus

A top Dublin law firm with one of Ireland's largest finance practices and a reputation for excellence seeks to appoint a lawyer with 0-3 years' PQE to join their banking and financial services department. This is an exceptional opportunity for a junior to mid-level solicitor with good experience in general banking, asset finance, capital markets or structured finance to advance their career in one of Dublin's leading firms. Excellent career prospects will be offered to the successful candidate.

Ref: 1258810

If you are interested in these or any other legal opportunities please send your Curriculum Vitae to Gemma Allen, gemma.allen@robertwalters.com or Tel: (01) 433 4111.

www.robertwalters.com

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Dublin

t 01 669 4646

Asset Finance 1 - 5 yrs PQE

Opportunity to join an expanding practice within top 5 law firm. Candidates of particular interest will have experience in aircraft financing and leasing transactions, but applications from other strong individuals welcome. (ref: 152543)

Asset Management 1 - 7 yrs PQE

Top 5 practice requires Solicitors to join their expanding finance team. Applicants should have a strong academic background with excellent technical and drafting skills. Relevant experience in the fund industry or asset management is essential. (ref: 152667)

Banking 1 yr + PQE

Prestigious practice requires Banking Solicitors to join their leading banking team. Previous experience of a wide range of banking issues essential. This is an outstanding opportunity for ambitious lawyers to become part a major law firm. (ref: 172973)

Banking 5 yrs + PQE

Top 5 law firm requires a Solicitor with a minimum of 5 years PQE to join their expanding banking practice. You will have extensive experience in general banking, securitisation, structured finance, asset finance and corporate banking work. (ref: 152665)

Capital Markets 3 yrs + PQE

Leading law firm requires experienced Capital Markets Lawyers to join their leading established practice. Working directly with partners and clients you will have previous experience in a similar environment. Excellent career progression and financial package offered to the successful candidate. (ref: 172973)

Commercial Property 2 yrs + PQE

Solicitors required for this expanding practice in this top 5 law firm. Representing international investors, developers and large financial institutions you will have a strong property background with experience in commercial developments and investments. (ref: 152543)

Commercial Property 5 yrs + PQE

Senior lawyer required for rapidly expanding practice in this prestigious medium size law firm. Advising a broad client base on issues including commercial leasing, land acquisition and development, funding and security, taxation issues, planning and environmental law. (ref: 152573)

Construction 1 yr + PQE

Exciting opportunity to specialise in this leading construction practice. You will ideally have strong academics and a keen interest to specialise and progress within construction law. (ref: 152613)

Construction 5 yrs + PQE

Leading law firm requires an experienced solicitor to join their expanding construction practice. Advising a widerange of private and public bodies on all aspects of construction, you will have at least 5 years PQE in a similar environment. (ref: 152613)

Corporate 1 - 5 yrs PQE

Opportunity to join the corporate department of this prestigious law firm. Working alongside partners you will have some experience in M&A's, Banking, Drafting or other corporate area. You will have a minimum of 1 year's PQE in a similar environment. (ref: 172973)

Dublin

Employment 2 yrs + PQE

Experienced solicitor required to join the expanding team in this leading practice. Managing a broad range of non-contentious issues for an exceptional corporate client list. Experience in terms and conditions of employment, post-termination restrictive covenants and implementing redundancy programs advantageous. (ref: 152665)

Financial Services 1 yrs + PQE

Opportunity to join a leading Financial Services department. Covering a broad range of Financial Services issues you should have at least 1 year PQE in a similar environment. Excellent career opportunities for the right candidate. (ref: 172973)

Funds All PQE

Opportunity to join one of Ireland's leading law firms in their renowned funds team with an enviable client portfolio. Ideally you will have experience in a similar environment, but strong candidates from other financial and corporate practices will be considered. (ref: 152613)

Funds Partner

Leading practice requires a Partner to join their expanding team. You will have extensive experience in investment funds in a leading law firm or prestigious investment bank. Established client list and work load, but a following is welcome. (ref: 152613)

Health Care 5 yrs + PQE

Health care Solicitor required for this progressive law firm in their expanding specialised litigation practice. You should have at least 5 years PQE in health care litigation with experience of class actions and tribunal work along with cases involving the state. (ref: 152613)

Life Science & Healthcare 1 - + yrs PQE

Opportunity to join this leading practice acting for a large and growing number of multinational and domestic clients in the pharmaceutical, medical devices, life sciences and healthcare sectors. (ref: 152665)

Dublin Office

t +353 (0)1 669 4646 f +353 (0)1 669 4644 e dublin@g2legal.com Fitzwilliam Hall Fitzwilliam Place Dublin 2 Ireland

Out of Office Hours: Paul Fahy 087 9109745

Offices also in Birmingham • Brighton • Bristol • Edinburgh • Glasgow • Leeds • London • Manchester



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Regional & In House

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Project Finance 3 yrs + PQE

Project Finance Lawyer required to join this leading law firm. Extensive previous experience in project finance in a similar environment essential. Outstanding opportunity to join this leading established team. (ref 17217/3)

Pensions 2 yrs + PQE

Prestigious law firm requires an experienced Pensions Solicitor to join their expanding employment team. Advising on a wide range of pension related issues, previous experience is desirable. (ref 15264/3)

PPP/PFI 3 yrs + PQE

Opportunity to join one of Ireland's leading and most prestigious law firms in their PFI/PPP team. You will have extensive experience in a similar environment along with at least 3 years PQE and a determination to succeed in this award winning firm. (ref 17217/3)

PSL (Corporate) 3 yrs + PQE

Opportunity to join the Banking and Capital Markets team as a Professional Support Lawyer in this leading firm. Previous experience in financial services or as a professional support lawyer desirable. Good career prospects offered to the successful candidate. (ref 15264/3)

Structured Finance 1 yr + PQE

Our client a top 5 practice requires Solicitors with at least 1 year's PQE to join their expanding team. Solicitors of particular interest will have experience in establishing and advising on the legal issues related to bond repackaging and commercial paper programmes. (ref 16123/3)

Tax 3 yrs + PQE

Globally recognised Corporate Tax practice requires 2 Solicitors to join their expanding team. Advising on a diverse range of corporate tax matters you will ideally have experience in a similar environment. You should be qualified or working towards ATT qualification. (ref 16254/3)

Commercial 5 yrs + PQE Carlow

Commercial Solicitor required for the Carlow practice of this renowned and dynamic practice. You will have at least 5 years PQE in a similar environment and have excellent commercial knowledge and IT skills. The position offers an excellent opportunity for career development. (ref 16121/3)

Litigation 5 yrs + PQE Carlow

Opportunity for an Associate Solicitor to join this progressive practice in Carlow. You will have at least 5 years PQE in general litigation and have excellent client facing skills. Strong IT and interpersonal skills are essential. (ref 16121/3)

General Practice 1 yrs + PQE Waterford

Assistant Solicitor required in the Conveyancing & Probate department in this large regional general practice. The position will suit a self-motivated Solicitor with a minimum of 1 year's PQE in conveyancing and probate. (ref 16253/3)

General Practice 3 yrs + PQE 6551+ Waterford

Assistant Solicitor required in the Conveyancing & Probate Department in this large general practice in Waterford. Managing a large workload you will have at least 3 years PQE in conveyancing and probate related areas. (ref 16253/3)

In House Corporate 1 - 3 yrs PQE

Opportunity to join this leading international asset management company as a Legal Advisor within their corporate team. Ideally you will have some general commercial experience as well as some asset management experience. (ref 16224/3)

In House Corporate 1 yr + PQE

International company seeks a Barrister or Solicitor to join their Corporate Legal Advisory Service. Working directly with partners you will advise their international blue chip clients on a wide range of corporate and commercial issues. (ref 16097/3)

In House Funds 3 yrs + PQE

Funds lawyers required for leading off shore practice in their Dublin office. Previous experience essential. Accelerated partnership opportunities for strong candidates. (ref 17225/3)

In House Funds + yrs + PQE

Opportunity to join an established legal team within this international investment company. Responsible for advising on regulatory matters relating to hedge funds in Dublin, Bermuda and the US. Strong funds experience essential. Some international travel. (ref 16112/3)

In House Funds Consultant 5 yrs + PQE

Senior Funds Solicitor required by this leading investment house to consult on compliance and legal issues involving fund. Candidates should have at least 5 years PQE gained in a leading investment company or law firm. (ref 16224/3)

In House Legal Advisor 1 - 3 yrs PQE

Opportunity for an experienced Funds Solicitor to join this international financial services company. Advising on a wide range of compliance and corporate governance issues you will have experience in a similar environment. (ref 16224/3)

International Legal Recruitment

Local knowledge



Keane McDonald is an executive search and selection firm focusing exclusively on legal & compliance appointments. We specialise in the recruitment of executive legal, compliance & regulatory professionals into private practice law firms, accountancy firms and in-house legal departments both in Ireland and overseas. Candidates are assured the utmost confidentiality and discretion when working with us.

In-House Opportunities:

Compliance Manager – Dublin

A prestigious professional services provider is seeking to recruit a compliance manager to manage all regulatory and compliance matters. This is a new and exciting role for an ambitious individual. You will have 3-5 years compliance experience in any industry sector although exposure to construction or property law a bonus. You must be self-motivated and ambitious. Unique opportunity for a bright compliance specialist to join a highly successful organisation. €60,000 – 70,000

Legal Advisor/Conveyancing Solicitor - Dublin

Boutique financial services organisation now has a need for an in-house lawyer. The successful candidate will have a good knowledge of conveyancing matters but also have good business acumen to take on this very varied in-house role. Sound experience in giving legal advice is essential as is the ability to work well internally with sales support, legal and regulatory and general operations. Excellent working terms in this young dynamic international organisation. €60,000 – 70,000

Corporate Legal Advisor - Dublin

Our client, a prestigious financial institution wishes to recruit an in-house lawyer to join the well established legal and compliance team. This role is a very general and varied commercial role and needs a lawyer who has 1-3 years experience in a commercial/corporate role either from a law firm or an in-house legal department of a large organisation. Exceptional career path and package on offer. €55,000 – 65,000

Private Practice Opportunities:

Commercial Lawyer – Cayman Islands

Due to the continuing growth of the commercial practice of this prestigious Cayman Islands based law firm, the firm are seeking to employ a UK or Irish qualified commercial and mutual funds lawyer with a minimum of 3 years ppe and a proven record of handling mutual fund and company/commercial transactions at an unparalled level. €150,000 – Tax Free

Corporate Lawyers – Dublin

One of Ireland's most prestigious and highly regarded corporate divisions now has a number of vacancies for good corporate lawyers due to an expansion in business. Successful candidates will have between 3 and 6 years ppe in corporate transactions, will have ambition to work in a driven environment and have sound client management skills. €60,000 – 90,000

Financial Services Lawyers – Dublin

Top Tier law firm is seeking strong banking/financial services lawyers with between 2 and 6 years ppe from a mid/top tier firm. Experience in one or more of the following areas required: general banking, asset finance, structured finance, capital markets and funds. You will be self-motivated, well spoken and present yourself immaculately. Outstanding opportunities for bright lawyers keen to join one of Dublin's strongest banking teams. €55,000 – 90,000

For more vacancies visit our website at www.KeaneMcDonald.com

Interested applicants should contact Yvonne Keane in strict confidence on 01 6415614 or 087 6624581.

Alternatively email your CV to ykeane@keanemcdonald.com



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In addition to these vacancies we currently have a wide variety of opportunities for all levels of solicitors in most areas of law. Visit our website to view further opportunities. www.meghengroup.com

Construction Lawyer

Leading law firm requires an experienced Solicitor to join their progressive Construction practice. Advising on a wide range of private and public bodies on all aspects of construction, you will have at least 5 years PQE in a similar environment. 0603-74

Commercial Property

A number of Solicitors are required to build an entire new team for this medium sized practice. Partnership opportunities for senior solicitors and a great progression plan for assistant/associate solicitors. 1 year + PQE.

Employment /Family Lawyer

This Dublin based medium size law firm requires a Solicitor with experience in family law and employment law to join their busy litigation team of five Solicitors. The ideal candidate will have circa 2 years PQE in family law and have the ability to work unsupervised managing a number of complex law matters in a thriving department. 0603-71

IP/IT Lawyer

Top 20 law firm requires a Solicitor with a minimum of 2years PQE with specialist knowledge of trademark, copyright, licensing and other related issues. 0603-145

Corporate/Banking Solicitor

Corporate Solicitors of all levels of PQE are required for this Top 5 law firm. Applicants should come from medium/large size commercial firms. 0603-89

Conveyancing Solicitor

An Assistant Solicitor is required to join this rapidly expanding firm. The successful candidate will have approximately 2-3 years solid Conveyancing experience. Exposure to commercial developments is preferable but not essential. 0603-30

Newly Qualified Solicitor vacancies in all areas of law

In House Funds

Senior Funds Lawyer is required by this leading Dublin based investment house to consult on compliance and legal complexities. Interested parties will have a minimum of 5 years PQE.

In House Company Secretary

This leading Dublin based company requires ICSA qualified/part qualified company secretaries to join its expanding team. Excellent progression path on offer.

Cork: Commercial Property and Conveyancing Positions. 2-6 years PQE. 0603-28

Louth: Conveyancing and Probate Position. 3 years + PQE. 0603-72

Monaghan: General Practice Solicitor. 2 years + PQE. 0602-174

Wicklow: Senior Litigation Solicitor. 5 years +PQE. 0602-165

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It's all about **Laurence Simons**

In-house Lawyer (4+ years' PQE)

Dublin €Negotiable

Our client is a leading project and construction management company that delivers a range of technical and consulting services to clients in industry, commerce and the public sector. The company is seeking a lawyer with a minimum of 4 years experience in the construction/engineering or projects field. Ref:13886 **Contact Sharon Swan**

PPP/PFI Lawyer (3+ years' PQE)

Dublin €70k+

Our client has substantial experience in advising many leading Irish and international companies, as well as various public and private sector bodies. Primarily you will be responsible for providing advice throughout the life-cycle of PFI projects as well as procurement and outsourcing. Ref:14365 **Contact Sharon Swan**

Commercial Property (Salaried Partner)

Dublin €120k+

Our client is a leading medium practice and is seeking a commercial property lawyer. You will be responsible for developing the firm's commercial property practice. You will have at least five years experience for a leading midsize or top practice. Ref:13897 **Contact Sharon Swan**

Corporate Lawyer (Min 2 years' PQE)

London €Negotiable

Our client is one of Dublin's premier firms. An excellent opportunity exists for a corporate lawyer to join the London office of an Irish law firm. You will have experience in one or more of the following areas: mergers and acquisitions, venture capital, public or private financings or restructurings. Ref:12422 **Contact Sharon Swan**

Medical Negligence Lawyer (3-5 years' PQE)

Dublin €Negotiable

Leading medium size law firm require a medical negligence lawyer to join their healthcare department. The successful candidate will have a solid background in medical defence. The role will include defending negligence cases of all types, joining a progressive and expanding team. Ref:13726 **Contact Portia White**

Aviation finance Lawyer (2 years' +PQE)

Dublin €Negotiable

Leading Dublin law firm require an aviation finance lawyer to join their expanding team. The role involves advising on aircraft transactions and acting for leading aircraft lessors, lenders and arrangers. It will involve drafting and negotiating leasing purchase and aviation finance documentation. You will also manage asset finance transactions. Ref:12952 **Contact Portia White**

Employment Lawyer (2-5 years' PQE)

Dublin €Negotiable

A leading practice based in the city centre is looking to recruit an employment lawyer with 2-5 years PQE. You will work with national & multinational clients. Experience before tribunals and the EAT would be highly beneficial. Excellent prospects on offer. Ref:11813 **Contact Justin Loughnane**

Commercial Property (0-5 years' PQE)

Dublin €Negotiable

A number of opportunities exist with leading firms at all levels. Experience in residential and commercial development, leases, tax, lending & landlord and tenant desirable. Excellent remuneration packages on offer with genuine opportunities for career development. Ref:99384 **Contact Justin Loughnane**

Property & Litigation Lawyer (2-6 years' PQE)

Carlow €Negotiable

Our client is looking to recruit a lawyer for their established firm. You will have strong conveyancing & litigation experience, excellent interpersonal skills and an ability to work in a team environment. Excellent earning potential and prospects for career development. Ref:13457 **Contact Justin Loughnane**

Commercial Property Lawyer (3 years' + PQE)

Cork €Negotiable

Our client an established Cork based firm are looking to recruit a Lawyer for this team based role. You will act for a range of public and private sector clients including developers, investors and financial institutions on a variety of issues including the tax, financing, environmental and planning aspects of commercial property deals. Ref:13764 **Contact Portia White**

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Portia White Tel: +353 (0) 1 477 3066 email: portia@laurencsimons.com

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