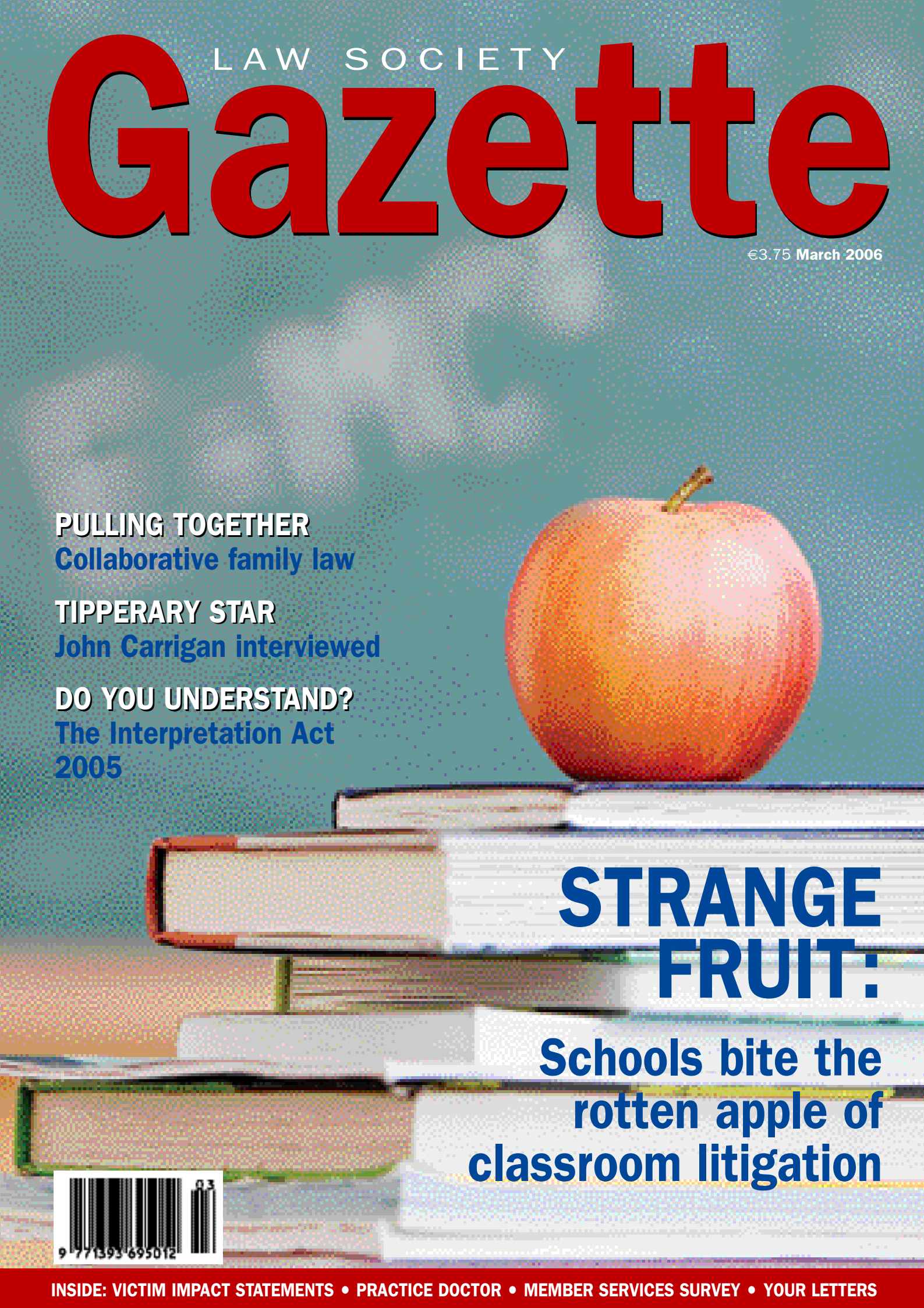
LAW SOCIETY
# Gazette
€3.75 March 2006



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TIPPERARY STAR
John Carrigan interviewed

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The Interpretation Act 2005

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## On the cover

Schools are on the alert, given certain recent judgments in bullying actions, which state that the standard of care required from them is that of a 'prudent parent'

LAW SOCIETY
# Gazette
March 2006

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## FEATURES





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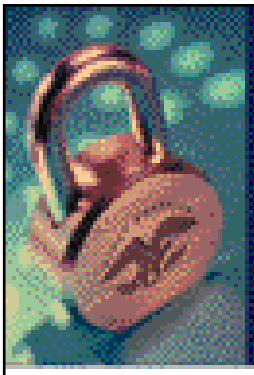

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## CORK

**Don't wait**

"We should be sensible and undertake CPD courses earlier rather than later and not wait until the panic sets in at the end of the CPD cycle," says Sinéad Behan of the Southern Law Association (SLA). Sinéad, a practitioner in Cork City, points out that the SLA is organising 12 lectures for 2006 and is optimistic of good attendances. They will cover the usual topics, including conveyancing and District Court practice. Colleagues should remember that, apart from the CPD points, the lectures will be helpful in themselves. In a further tilt at the consumer, the lectures will all be at lunchtime … so you get home in time for your tea!

## CARLOW

**We have something to say, too…**

There are serious practical downsides to rationalisation of the courts system that are not always apparent when they are being planned, according to the newly-elected President of the Carlow Bar Association, John G Foley.

John, who practices in Bagenalstown, regrets the passing of the local court sittings, which have been incorporated into the Carlow sittings. "Gardaí, probation officers and others, not to mention solicitors, now have to sit for many hours waiting for cases to be heard. This is hardly a good use of public funds," he suggests.

"Gardaí are now often seen sitting around in court waiting from 10.30am until late afternoon for a single case to come up in Carlow because that court is so busy. They should be out in the community doing some work," he adds. Taken nationally, this must amount to a significant waste of garda time.

The local Bagenalstown court, like so many local courts around the country, fell victim to the rationalisation programme of the Courts Service. But local solicitors had not been informed before the decision was announced. If they had been consulted, they would have identified costs to the community and financial costs that are not always apparent.

Perhaps greater sensitivity is required, as is wider consultation with solicitors and others directly affected.

Welcome to Waterford! Law Society President Michael Irvine and Director General Ken Murphy recently met with the members of the Waterford Law Society, including its President, Neil Breheny *(centre)*

## CLARE

**On the other hand…**

The new courthouse in Ennis is proving popular with practitioners. "We are very impressed with the facilities now available to practitioners and other users of the court and we feel that we now have a court for our times," says Mary Nolan, President of the Clare Bar Association.

Clare solicitors are also happy at the recent establishment of a liaison committee with the Courts Service, gardaí, probation officers and all associated with the court to see how they can further improve the service and facilities. "It is very important that those involved in the courts meet and listen to one another and this is what we will be doing," she said.

## DUBLIN

**Know thy neighbour**

Significant increases in the numbers of solicitors now means that there are up to 3,500 practitioners in Dublin alone.

Just one of the problems with such numbers is the loss of collegiality and simply knowing one another, according to DSBA Secretary Kevin O'Higgins.

"We're very conscious in the DSBA of the dangers of isolationism. There is still a large proportion of sole practitioners, but even those in the larger firms would recognise the benefits of rubbing shoulders with their colleagues outside of work," he says.

The DSBA detects a trend for colleagues wanting to meet socially. In late January, solicitors in Blackrock, Co Dublin, met for an informal lunch, while DSBA council members Stuart Gilhooly, Geraldine Kelly and Keith Walsh organised a recent social get-together of colleagues in the Dublin 6 West area. Of course, the annual DSBA dinner-dance in the Four Seasons Hotel was its usual sell-out, attended by over 400 of our colleagues and partners.

Unfortunately, in Dun Laoghaire, local sailor and solicitor (which comes first?), Justin McKenna, had to cancel, or at least defer, his celebrated annual black-tie dinner for south Dublin solicitors on 17 February, probably due to our coffers being empty after the Four Seasons. Watch this space for future developments.

So, in a demanding work environment, the message is still: 'Get to know your colleagues socially; a solicitor's life *can* be fun.' No, really.

**CPD – it's coming to a computer near you**

Just about everything else is on-line. Why not continuing professional development? The DSBA will launch CPD online on 20 March. Five introductory lectures will cover key areas of practice. Details will be posted on the DSBA website.

"This is a major initiative and should be of real and practical benefit to practitioners," says John Glynn, DSBA council member, who has worked assiduously with former DSBA President Orla Coyne on this initiative.

While not being a CPD panacea for everyone, it will provide an optional alternative for those who, for various reasons, cannot fulfil their requirements by conventional means. G

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

**'STEP' FOUNDATION COURSE**

**The Law Society of Ireland is pleased to announce a foundation course in Trust and Estate Planning in association with STEP Ireland.**

**The course will run from 1 April 2006 to 24 June 2006 on Saturday mornings in the Law Society.**

**The Foundation Certificate will give those with no experience a basic knowledge of the core areas of practice, including: wills, trusts, taxation (including CAT and CGT) and administration of estates.**

**For further details contact the Diploma Team in the Law School: diplomateam@lawsociety.ie**

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**All-Equity Fund: €1.28823**
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**REINTEGRATION PROJECT**

**The Minister for Justice, Michael McDowell TD, has announced that the International Organization for Migration (IOM) will undertake a new assisted voluntary return and reintegration programme for non-EEA nationals.**

**This will apply to asylum seekers and irregular migrants in Ireland.**

**The new project aims to help up to 300 persons to return to their country of origin over a period of 12 months.**

**SENIOR ASSOCIATE**

**Connor Manning has been appointed as senior associate in Mason Hayes & Curran's corporate group.**

**Connor practices in the areas of mergers and acquisitions, venture capital investment, joint ventures, corporate establishments and corporate finance. He is a graduate of both University College Dublin and University College Cork.**

# A message from the editor

Welcome to the March issue of the new-look *Gazette*. As flagged in the last edition (p19), you will see that the production team has been working extremely hard to deliver a fresh new design with many novel features.

In an effort to bring our readers a better product, you will notice a number of significant improvements, including:

- A modern, brighter, more attractive design,
- Gloss-laminated cover with perfect binding,
- A new contents, double-page spread, allowing readers to view content more conveniently,
- Clearer contact details, making it easier for readers and contributors to submit articles, letters and comments,
- New content ideas, including a 'Practice Doctor' column. I would encourage you to contact us with ideas or queries at: practicedoctor@lawsociety.ie or by ordinary post. These will be carefully filtered by a team of experts working in the fields of marketing, HR/recruitment and practice management – with the most pertinent issues chosen for publication. The aim is to assist you to better develop your practice by suggesting solutions to real or potential challenges,
- Colour-coded 'Briefing' and 'Professional notices' sections, making these areas easier to access,
- All delivered at a *lower* production cost than before.

Mark McDermott: "The new-style *Gazette* – bringing readers a better product"

**The test of time**

I hope you enjoy the new *Gazette*. It's entirely appropriate that we make these changes during the year when the magazine is celebrating the production of its 100th volume. There are few publications in these islands that can boast such longevity. It speaks volumes for the hard work and determined efforts of my predecessors that the *Gazette* has survived the test of time. It has done so by changing and developing to take account of readership preferences and technical advances.

The members of the current production team are no less proud of 'their' *Gazette*. I would like to thank them for sharing their vision, energy and ideas since my arrival all of five months ago and for their keen input to the new design, in particular: Garrett O'Boyle, Nuala Redmond, Seán ÓhOisín, Catherine Kearney, Valerie Farrell and Brian Johnstone and his crew at Turner's Printing.

None of these advances would have been possible without the enthusiastic backing of director general Ken Murphy, deputy director general Mary Keane and the *Gazette* Editorial Board, led by chairman Stuart Gilhooly.

It's now over to you, our readers, to tell us what you think. We look forward to hearing from you in the days, months and years ahead. No less than the people we serve, we are committed to continuous development, at the best value, and hope that the new *Gazette* reflects well on the profession.

**Mark McDermott**
Editor – *Law Society Gazette*

## EUROPEAN LAW FIRM OF THE YEAR

Arthur Cox has won the 'European Law Firm of the Year' award at the 'Legal Business' Awards 2006 in London. The award recognises the best international law firms, legal teams and lawyers. Among the European law firms short-listed for the award included White & Case and Cleary Gottlieb Steen & Hamilton. Arthur Cox has also topped the PLC 'Which Lawyer?' survey of Irish law firms for the seventh consecutive year, leading in eleven practice areas.

## Annual General Meeting of the Solicitors' Benevolent Association

Notice is hereby given that the 142nd Annual General Meeting of the Solicitors' Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7 on Monday 10 April 2006 at 12.30pm

(1) To consider the Annual Report and accounts for the year ended 30 November 2005.

(2) To elect Directors.

To deal with other matters appropriate to a General Meeting.

# Society joined in appeal against Master's 'unprecedented' costs order

The President of the High Court, Mr Justice Finnegan, has granted an application on 24 February 2006 by the Law Society to be joined as an *amicus curiae* in an appeal against a 'wasted costs' order of the Master of the High Court. The Master ordered that a firm of solicitors, not their client, should be responsible for the costs of a failed application for interrogatories in a personal injuries action entitled *Terence Kennedy v Killeen Corrugated Products Limited and another*.

In a decision issued on 2 February 2006, and widely reported in the media, the Master described the interrogatories application as "pointless and misconceived" and said that he was making an order under order 99, rule 7 of the *Rules of the Superior Courts* requiring the solicitor for the applicant "to reimburse his client with the costs the latter is liable to pay the respondent and cancelling the solicitor's entitlement to be paid by his client for the costs of the application". In the final sentence of his 24-page decision he said: "For solicitors, this decision should be a 'wake up' call." The Master also ordered that in the event of an appeal, a solicitor, who he named, should represent the interests of the plaintiff.

**Fundamental issues**

In his affidavit grounding the Law Society's application to be joined as an *amicus curiae* in the appeal, President of the Law Society, Michael Irvine, said: "The Law Society takes the view that fundamental issues are raised by the decision of the Master as to the jurisdiction to make 'wasted costs' orders and as to the parameters of such a jurisdiction. It is a matter of the utmost importance for the solicitors' profession that solicitors know whether, and in what circumstances, such an order might be made so that they can properly advise their clients and discharge their professional obligations in litigation. I say and believe that

Michael Irvine: 'It is a matter of the utmost importance for the solicitors' profession'

the decision of the Master has created great uncertainty in this regard, which requires clarification."

The affidavit continued: "An additional issue of great concern to the profession arises from the decision of the Master to interfere in the solicitor/client relationship by appointing, of his own motion, another solicitor to represent the plaintiff on any appeal. This is, to my knowledge, an unprecedented order and, given that it goes to the core of the solicitor/client relationship, I say and believe that it is very important that the jurisdictional basis to make such an order be clarified."

**Public interest**

In granting the Society's application, the President of the High Court said that the Society had shown in the past and continued to show "a general interest in the proper conduct of litigation". He said he believed the Society, in making the application to be joined as an *amicus curiae*, was acting "not just in the interests of its members but also in the public interest".

The joining of the Society, he continued, created the possibility "of achieving a clear statement of the jurisprudence" and "of saving of expense and court time".

He adjourned the matter for mention with a view to the exchange of affidavits and to the setting of an early date for a hearing of this appeal.


## CALCUTTA RUN 2006

IT'S A DATE

Saturday 27 May

**Fun run/walk at Blackhall Place**

Be one of the 1,500 solicitors, staff and their friends to help raise €250k for **Goal,s orphanage in Calcutta and Fr Peter McVerry,s** projects for homeless boys in Dublin

If you have not started already, you can still start at this point.
**See page 40 for March's training programme**

For previous training programme or a sponsorship card see our website
**www.calcuttarun.com**


## PERMANENT DRUGS COURT

The Drugs Treatment Court is to become permanent. On 1 February, the Courts Service said that the initial plan would be to extend the court on a staged basis – citywide. The court has operated on a pilot basis for a number of years and has had a positive effect on the lives of many of its participants. Eventually, the court is expected to become available to all court areas in the Dublin Metropolitan District.

**PROFESSIONAL STANDARDS**

**The Minister for Justice, Michael McDowell, has announced government approval for the establishment of a Garda Professional Standards Unit (GPSU) in An Garda Síochána.**

**Section 24 of the *Garda Síochána Act 2005* provides for the establishment of a Professional Standards Unit, with responsibilities for addressing performance, effectiveness and efficiency across all levels of policing activity.**

**Specific responsibilities for the Professional Standards Unit include:**

- **The maintenance, development and promotion of professional standards in keeping with best international practice,**
- **The monitoring and assessment of the performance (operational, administrative and managerial) of the gardaí, and**
- **The formulation of proposals for performance management and improvement.**

# Malawi appeal comes to Blackhall Place

Over the past six years, Sarah Molloy has worked in the Children's Court, Smithfield, for Terence Lyons & Co. Now she and her boyfriend, Jon Norton, have volunteered to take a year out to work for a small English registered charity – Friends of Mulanje Orphans (FOMO) – in rural Malawi.

FOMO is a community-based charity with ten centres across the rural district of Mulanje. Its aim is to provide assistance to orphans and their extended families. The centres provide day-care, including food (10,000 meals per week), education and medical assistance to over 3,000 children. Most children have been orphaned by AIDS, malaria, hunger and a chronically-poor health system.

Malawi is one of the poorest countries in Africa where one-fifth of children die before their fifth birthday.

The price of maize, the staple diet of Malawians, has gone well beyond most people's reach. People are reduced to eating the husks of maize grain and whatever fruit they can find. Talk is not about debt relief, pop concerts or globalisation, but survival.

Sarah and Jon are returning to Dublin in March to fundraise for a month. They have organised a race night in the Blue Room, Law Society, Blackhall Place, on Thursday 23 March.

There are two ways that you can help. First, your company could take out an advertisement in the printed race card:

- A full-page advert costs a minimum of €500,
- A half-page advert costs a minimum of €350.

Second, sponsored races will be named after companies listed in the race card and company details will be listed also on the back cover. The MC will not be shy about giving your company plenty of publicity!

Sarah says: "We are appealing to people to support this excellent cause. We would appreciate any support, sponsorship or advertisement you can give. Trainers, horses and jockeys can be purchased for €20. All winners will receive prizes."

Anyone wishing to contribute should contact Sarah Molloy and Jon Norton at: jono_norton@hotmail.com.

# ONE TO WATCH: NEW LEGISLATION

**Changes in maternity and adoptive leave**

The *Maternity Protection Acts 1994 and 2004 and the Adoptive Leave Acts 1995 and 2005* have been amended by SI nos 51 and 52 of 2006, in order to bring into effect increases in maternity and adoptive leave announced in the context of the 2006 budget. The entitlements are as follows:

**Changes to maternity leave**

***2006***

- Women who *commence* maternity leave on or after *1 March 2006* are entitled to *22 weeks'* maternity leave attracting a payment and *12 weeks'* unpaid maternity leave.
- Women who *commence* additional unpaid maternity leave on or after *1 March 2006* are entitled to *12 weeks'* unpaid maternity leave.

***2007***

- Women who *commence* maternity leave on or after *1 March 2007* will be entitled to *26 weeks'* maternity leave attracting a payment and *16 weeks'* unpaid maternity leave.
- Women who *commence* additional unpaid maternity leave on or after *1 March 2007* will be entitled to *16 weeks'* unpaid maternity leave.

**Changes to adoptive leave**

***2006***

- Adopting mothers or sole male adopters who *commence* adoptive leave on or after *1 March 2006* are entitled to *20 weeks'* adoptive leave attracting a payment and *12 weeks'* unpaid adoptive leave.
- Adopting mothers or sole male adopters who *commence* additional unpaid adoptive leave on or after *1 March 2006* are entitled to *12 weeks'* unpaid adoptive leave.

***2007***

- Adopting mothers or sole male adopters who *commence* adoptive leave on or after *1 March 2007* will be entitled to *24 weeks'* adoptive leave attracting a payment and *16 weeks'* unpaid adoptive leave.
- Adopting mothers or sole male adopters who *commence* additional unpaid adoptive leave on or after *1 March 2007* will be entitled to *16 weeks'* unpaid adoptive leave.

Entitlement of fathers to maternity and adoptive leave in the event of the death of the mother has also been increased.

Starting on or after 1 March 2006, the benefits will be paid by the Department of Social and Family Affairs for maternity or adoptive leave. G

*Adapted from the Equality Authority website, www.equality.ie, with permission.*

# Course cloning at Blackhall Place

Demand for legal training to become a solicitor has dramatically increased by 83% over the last three years. This upturn has led to the scheduling of an additional full-time Professional Practice Course (PPC), referred to as the winter course.

The curriculum, course content, delivery format, teaching hours and examination assessment on both courses mirror each other in every respect. The first course (autumn) is delivered from 9am to 4.30pm. The second course (winter) runs from 4.15pm to 10pm.

The preparation has been immense. Thirteen additional staff have been recruited, allowing the library, IT and study facilities to cater for students up to 10pm daily. The newly-remodelled student canteen has extended its opening hours.

"Although starting a full day's lectures at 4.15pm is challenging, I'm glad I'm on the course now, rather than waiting another 12 months for the next PPC," commented one student.

Student development advisor, Emma Cooper, observed: "The students are being innovative in structuring their self-learning and tutorial preparatory work in the morning, and attending lectures and tutorials later on in the day."

She points out that, like its autumn counterpart, the winter course is full-time, which requires that trainees commit all of their time and energy exclusively to it. The election of enthusiastic student social representatives means that social activities have not been neglected either!

# Advanced advocacy training for solicitors

The Law Society will once again run its annual Advanced Advocacy course this year in partnership with the US-based National Institute for Trial Advocacy (NITA), renowned worldwide for its trial-skills training.

The Advanced Advocacy course, now in its fifth year, has two parts. Barrister Paul Anthony McDermott will give a series of evening seminars in May on the rules of evidence. This will be followed by a five-day, full-time, intensive workshop from 11 to 15 September.

The workshop aspect of the course involves case analysis, followed by moot trials. The NITA tutors will help participants to analyse the particular case on two levels: first for points of law, and then from the perspective of how to present these points in the tight framework of the court. They analyse the other side's strong points and anticipate the weaknesses in their own case.

The course covers direct and cross-examination of witnesses and expert witnesses, opening statements and summing up. The mock trials are video-recorded in a simulated courtroom environment. NITA tutors, supported by Irish tutors, assess the individual participant's performance. The final trial takes place in the Four Courts in front of real High Court and Circuit Court judges.

This course is aimed at solicitors who already have significant courtroom and representational skills, with a minimum of seven years' post-qualification experience. Solicitors involved in civil or criminal practice will benefit from participation in this course, which will enable them to improve and develop their advocacy skills.

See this month's CPD brochure or contact Rachel D'Alton in the Law School for full details, tel: 01 672 4938.

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**Friday 31 March**
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**Saturday 1 April**
9.30 – 12.00: Lectures (full details of the speakers and topics to be covered will be available on the SYS website in due course – www.sys.ie)
14:00: H2O spa and other activities
19.30 - 20.00: Pre-dinner drinks reception
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**Sunday 2 April**
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human rights watch

# Delay under the constitution and the ECHR

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

Most cases coming before the European Court of Human Rights concern delay, and there is a wealth of case law on the matter. Here are some examples of established principles:

- A state is obliged to organise its legal system so as to allow its courts to comply with the reasonable time requirement of article 6. A principle of domestic law or practice that the parties to civil proceedings are required to take the initiative with regard to the progress of the proceedings does not dispense the state from complying with the requirement to deal with cases in a reasonable time. If a state lets proceedings continue beyond the reasonable time prescribed by article 6 without doing anything to advance them, it will be considered responsible for the resultant delay.
- Time should run from when a person is 'charged'. This may be as early as the date when preliminary investigations were opened. 'Charge' may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test of whether "the situation of the [suspect] has been substantially affected".
- The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the court's case law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation.
- Applicants are entitled to make use of all procedural steps relevant to them, but they should do so with diligence and they must bear the consequences when such procedural applications result in delay.
- All stages of legal proceedings, including stages subsequent to judgment on the merits, must be resolved within a reasonable time. The taxation of costs procedure has to be seen as a continuation of the substantive litigation.

In July 2004, the European Court gave judgment in a case concerning delay in civil proceedings (*McMullen v Ireland*). In December 2005, there were two judgments in Irish cases on delay in criminal proceedings, one in Strasbourg (*Barry v Ireland*, 15 December 2005) and one in the High Court (*Sweetman v DPP*, 20 December 2005).

### *Barry v Ireland*

Dr Barry was accused by a large number of female patients of indecent assault and his house was searched in June 1995. In October 1997, he was formally charged with sexual assault. From then until now, various aspects of the criminal proceedings and related

litigation were in progress.

The European Court held that the period to be taken into consideration started in June 1995, when his house was searched, which meant that the proceedings had been ongoing for over ten years. The sensitivity and complexity of the criminal investigation (237 charges and 43 separate criminal complaints) could explain the delay between 1995 and the formal charging of Dr Barry, but not the subsequent delay of eight years. The court accepted that Dr Barry contributed to the delay at various stages of the proceedings. However, the court also held that there were several periods of excessive delay that were partially or completely attributable to the authorities.

The court found a violation of articles 6 and 13 (right to an effective remedy) because judicial review proceedings are not capable of expediting a decision by the criminal courts or likely to result in a payment of compensation. Dr Barry was awarded €8,000 for non-pecuniary damage and €7,000 costs. The decision may yet be referred to the Grand Chamber of the European Court. The proceedings are down for mention in the Circuit Court in March.

What are the options for the DPP? A reference to the Grand Chamber will cause more delay. If the state decides not to appeal, the DPP can either proceed with the trial (in which event his decision is more than likely to be challenged) or he can enter a *nolle prosequi*. In *Quinn v O'Leary & Ors* ([2004] IEHC 103), O'Caoimh J held that the interests of justice required a conviction obtained in violation of the applicant's human rights under the ECHR to be quashed, even though the legislation under which he was convicted was constitutional. Dr Barry's case is not quite the same, because in his case it is the delay, not the charge itself, that is the cause of the problem – but if his trial goes ahead, there must be a strong possibility that the High Court or Supreme Court would hold that the delay was excessive on both constitutional and ECHR grounds.

### *Sweetman v DPP*

The High Court granted an order of prohibition in relation to the proposed retrial of the applicant, nearly ten years after the incident giving rise to the original charges. In doing so, it relied primarily on constitutional principles and case law, referring secondly to the *McMullen* case and the ECHR. G

# ‘Too heavy a workload’ – a solicitor’s

**The Support Services Task Force has delivered its report to the Law Society Council – the first step in reviewing services for Law Society members. Solicitors were asked for their views in a nationwide survey – the first of its kind. Ken Murphy reviews some of the key findings**

The report of the Support Services Task Force, chaired by Olive Braiden, was delivered to the Law Society Council towards the end of last year and was summarised in pages 4 and 5 of the December 2005 *Gazette*.

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

There was a 19% response rate – considerably higher than the average 10% response for this type of survey.

One of the headings under which the survey was carried out was ‘Barriers to successful practice’. The pressures on solicitors caused by ‘too heavy a workload’ and the likely associated difficulty of maintaining a good ‘work/life’ balance were identified as the greatest barriers to successful practice. Perhaps unsurprisingly, there was considerable similarity between responses from solicitors in all types of legal practice, and both male and female solicitors.

The survey also recorded assistant solicitors as the most disillusioned group in the profession. Among those members who would like to change their practice situation, the majority would prefer to move to a firm of two to five partners, or, alternatively, outside private practice.

One section of the questionnaire aimed to identify the barriers that solicitors face within their current practice. Ten barriers were named and the respondents were asked to place them in order of importance. The named barriers were:

1) Keeping legal knowledge up to date,
2) Too heavy a workload,
3) Mistakes and their consequences,
4) Practice management problems (if applicable),
5) Regulation (for example, clients making formal complaints to the Law Society),
6) Problems with relationships with clients/colleagues/superiors,
7) Personal problems (such as general health or stress problems),
8) Disillusionment with practice,
9) Not achieving a good work/life balance, and
10) Not making an adequate profit/earning a sufficient salary.

While some respondents did not answer this question correctly, naming one or two barriers as important and not ranking the remainder, nonetheless the most important barriers were identified in all cases.

The chart (p12, top) shows the barriers to a successful practice in the order identified by the respondents, with the most important barrier listed first (too heavy a workload) and the least important, last (regulation). ‘Too heavy a workload’ was the mean most important barrier named by respondents. The next biggest obstructions included work-life balance, keeping legal knowledge up to date, mistakes and their consequences, and practice management problems. ‘Regulation’ was seen as the least important barrier to successful practice overall.

The data can also be examined in terms of the percentage of respondents who named different factors as their first, second and third most significant barriers. ‘Too heavy a workload’ was named by 40% of respondents as their number one obstacle – it ranked in the top three barriers for 72% of respondents. The next most significant impediments were far behind this one in terms of importance – however, ‘work-life balance’ and ‘keeping legal knowledge up to date’ were both named as the most important barriers for 17% of respondents.

### Gender balance

Surprisingly, the barriers for male and female solicitors mirror each other very closely. It should be noted that the online data could not be stratified by gender, and hence only the postal data was analysed, giving a total number of 1,173. Even the work-life balance issue appears to hold the same level of importance for both male and female respondents.

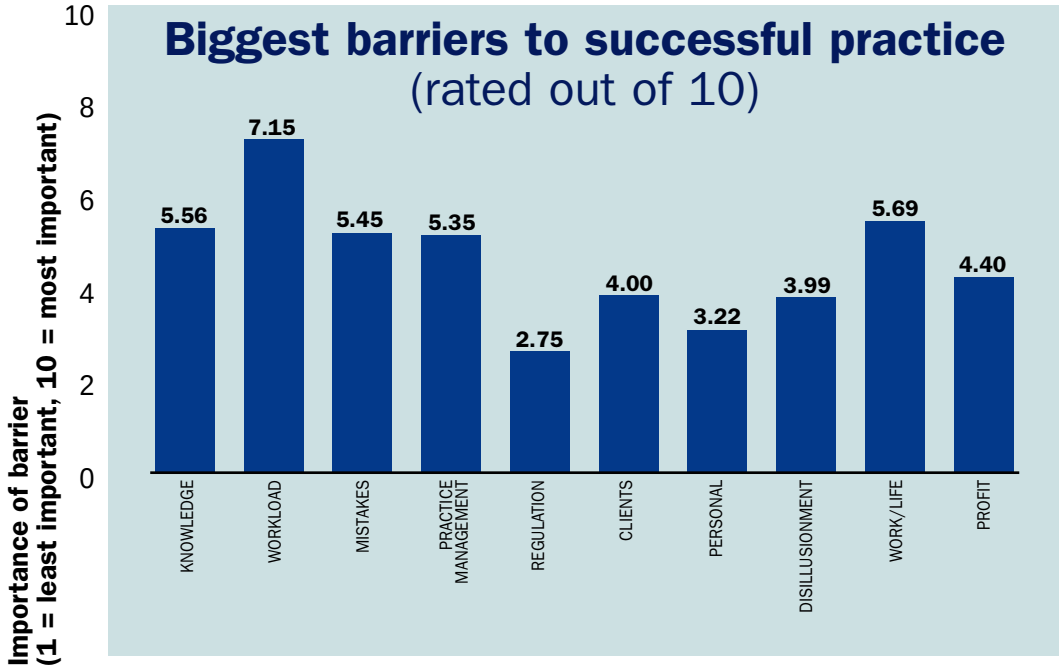
Marginally more important for male respondents are the barriers of regulation, practice management and work/life balance. For female respondents, profit was more commonly considered a barrier to successful practice, as were the difficulties of keeping legal knowledge up to date and ‘too heavy a workload’.

Keeping legal knowledge up to date was considered quite a significant barrier to successful practice by all groups. The

# greatest barrier to successful practice

group that considered it of least importance were the solicitors in large firms. Those who found it most important were solicitors outside private practice.

All groups considered having a heavy workload of great consequence – it was named as the mean most important barrier to solicitors in all kinds of practice. Bearing in mind that all responses were fairly similar, the group that identified it as the most common problem were those in large practices of six or more solicitors. The group that identified it as of least significance were sole practitioners.




### Mistakes

Assistant solicitors named mistakes as being a more significant barrier to successful practice than the other groups. Solicitors outside private practice considered it less important than others.

Partners in larger firms named practice management as a barrier to successful practice more often than other groups, while assistant solicitors considered it less important.

Regulation, in the sense that it was explained in the question ('Regulation, for example, clients making formal complaints to the Law Society') was not considered very important by the groups in general, but was regarded as more weighty by sole practitioners and sole principals.

### Client relationships

'Problems with client relationships as a hindrance to successful practice' was considered differentially important by the different groups. Those outside of private practice and those in larger firms of six or more partners were more likely to rate it as a considerable barrier than were other groups, particularly sole practitioners.

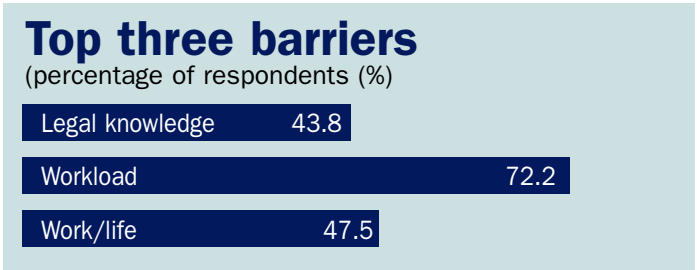
Personal problems were not considered a great barrier to private practice, though those in large firms of six or more partners considered it of higher significance. Sole principals and solicitors in firms of two to five partners named this as a less weighty barrier than the other groups.

### Ideal practice

The most disillusioned group were the assistant solicitors and the least were those working outside of private practice and in small firms – although this was considered only a barrier of average importance to all groups. When comparing this chart with the figures below regarding the ideal practice situation, it is noteworthy that the majority of solicitors who would change their situation would indeed prefer to work in firms of two to five partners or outside private practice.

Issues with work/life balance were considered important for all groups, but more so for those inside larger firms of six or more partners. Those in firms of two to five partners rated this as a less important barrier than the other groups.

The groups differed in terms of how important profit was as a barrier to successful practice. Sole practitioners and assistant solicitors considered it more important than the other groups, and those in firms of two to five, and six or more partners, considered it less important.




### Summary

In summary, solicitors in the different kinds of practice named the barriers to successful practice as of similar significance. The barrier that differed most between the various groups concerned 'relationships with clients' – sole practitioners found it less important than those outside private practice or those in larger firms.

Profit and regulation as barriers to successful practice were also different for the different groups. These were more important to sole practitioners and those outside private practice respectively. It is noteworthy that work/life balance was rated as an equally important issue, both by sole practitioners and by assistant solicitors.

# Hearing the voice of

**Introduced for very good reasons, victim impact statements have been used with little real consistency or control. A review of how the system works is overdue, argues Dara Robinson**

In the aftermath of the recent Wayne O'Donoghue trial at the Central Criminal Court, there has been much public debate about victim impact reports, previously a relatively obscure feature of the criminal justice system. That discourse has tended to generate as much heat as light, at least in the lay community, but discussion of this issue has been well overdue, both in the legal profession and in the community as a whole.

The concept of the victim impact report, or statement, derived from a perception in the 1980s that victims in rape cases were being reduced to bit players in the criminal justice system. Often personally devastated by the offence, they nevertheless, for perfectly correct legal reasons, found themselves limited in their evidence to a bald recital of the facts of their complaint, and even that tended to be subject to hostile cross-examination.

Majella Holohan: Her impassioned delivery may unwittingly have made an important contribution to our criminal justice system

### New mandate

That clearly unsatisfactory position was remedied, at least in theory, by the provisions of the *Criminal Justice Act 1993*, s5. This made allowance for the voice of the victim to be heard, post-conviction only, by way of an entirely new mandate to the court of trial.

Section 5 states: "In determining the sentence to be imposed on a person for an offence [of violence or sexual violence], a court shall take into account, and may, where necessary, receive evidence or submissions concerning, any effect (whether long-term or otherwise) of the offence on the person in respect of whom the offence was committed."

The act was silent as to how the experience of the victim, and the effects of the offence, might be conveyed to the court, although s5(3) made provision for the "evidence" of the victim.

The system of reporting, as originally operated (if not envisaged), was by way of a psychiatric assessment of the victim. This had the dual benefit of reporting the trauma felt by the victim (and that could include the trial process itself, if the accused had pleaded not guilty and been convicted), but seen through a professional 'filter'. These reports often provided a devastating insight into the effect of the offence on the victim, furnishing exactly what was envisaged by the act, absent in the past, and which spelled out to the court just what had been visited upon the complainant by the accused in the course of the commission of the crime and what consequences they had suffered.

### Supply and demand

So far, so relatively uncontroversial. But as the demand grew for the provision of such reports, and particularly as the Circuit Court began to appreciate that the act contemplated a statement in any offence involving personal violence (assault), the tendency to have a victim present a report through the lens of a professional (usually a psychiatrist) began to evaporate. This may well have been because demand outstripped supply, but for whatever reason, a tendency began to emerge, in the Dublin courts at least, for gardaí or victims to prepare their own impact statements.

Without wishing to denigrate any individual case, the potential for misuse appears obvious. Put bluntly, defendants and their representatives were being placed in a very difficult position, where victims were making assertions about the effect of the crime on their lives that could only be challenged at the risk of being accused of adding insult to injury. In the absence of the filter of a professional opinion, victims could be afforded free rein to make complaints about how they had been affected. Emotion, vindictiveness, and a desire for vengeance are understandable in these circumstances. But should they be taken into account in the proper measuring of the penalty by a legally qualified judge? Who is to say that those passing sentence remain unaffected by such considerations, when forcefully expressed by a victim of crime? Further in this regard, oral evidence by the victim tends to be without advance notice to the defence, contrary to the normal practice in criminal trials, thus making it doubly difficult to prepare for – and, if appropriate, challenge – the forthcoming evidence.

Defence practitioners, of whom the writer is one, have been becoming increasingly uneasy about the format and content of such reports and statements. In those circumstances, the torrent of criticism unleashed upon the system of criminal justice by the devastated bereaved Ms Holohan, mother of the deceased in the *O'Donoghue* case, may paradoxically be a matter of good timing and, in the long term, a helpful intervention. In such an extreme case, where aspersions have been cast on the integrity of the prosecution and upon the value of the trial process as a seeker of truth, it is easy to say that the boundary has been overstepped. But where should it lie?

### Third parties

There are two major theoretical difficulties that have arisen from the post-conviction statements of Ms Holohan. The first of these is that, strictly, the act only provides for a statement to be made by the victim of the crime and not by any third party, even one as closely affected as a bereaved

# the silent victim

parent. Whether the act should be so limited is a subject of proper, informed debate. The obvious problem is, if third parties become entitled to be heard, how to limit the categories of person? It is notable that anecdotal evidence, reported in the print media, suggests that since this controversy has arisen, judges are applying the law more strictly and correctly. In one of his last cases as a judge in the Circuit Court, in Waterford, Judge Kevin Haugh ruled out taking victim impact evidence from a relative of a deceased victim on this basis. Having said that, it would be ironic if the law operated so that no evidence could be heard of the effect on the bereaved in any case of unlawful killing.

The second issue relates to the content of the report and its presentation. The act implicitly, if not explicitly, envisaged the reporting of both physical and psychological effects of the offence. It may be time, more than a decade on, to review both the format and content of such statements, as well as considering how to present the material. This is so all the more because the act originally envisaged a first person presentation by the victim, and considerations of sensitivity, among others, may have determined that best practice was via a psychiatrist. But it is not unknown for the prosecuting garda – hostile to the interests of the accused – to prepare reports, in the full knowledge that they are a critical pre-sentence tool. Might it be proper, or perhaps better, for the victim to be legally represented at this stage? For that matter, is there not an argument for legal representation for the victim throughout? It is certainly worthy of debate – and is already provided for in certain, admittedly limited, circumstances. Although the DPP has undertaken to maintain a flow of information about the trial process for complainants, that is clearly no substitute for one's own lawyer. Many of the traditional complaints about the system, which led to the idea of the victim impact statement in the first place, might evaporate if such a step were taken. This is not to argue either for or against the proposition, merely to indicate that, since the victim impact report has moved to centre stage of the debate, why not discuss thoroughly where this rather anomalous provision should be going?

The voice of the victim long went unheard by the courts. There has been no real consistency or control in the presentation of that voice. After more than a decade of patchy operation, a review of how the system works is overdue. If that review is to emerge as a result of the impassioned delivery of Ms Holohan, then she may well unwittingly have made an important contribution to the operation of our system of criminal justice. G

*Dara Robinson is a solicitor with Garrett Sheehan & Company.*

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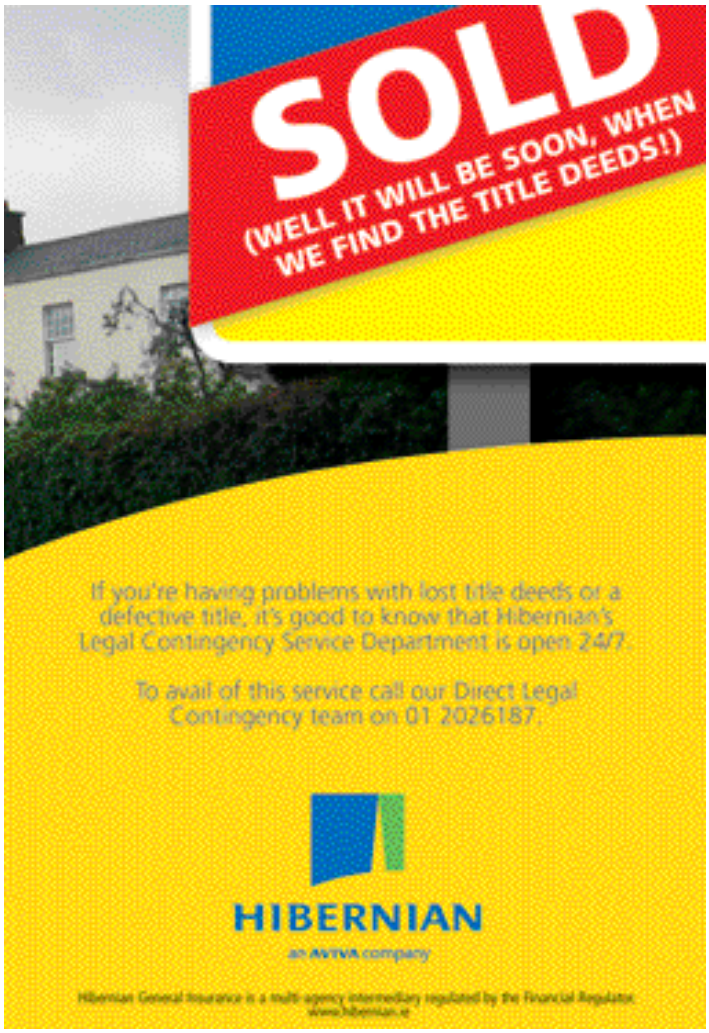


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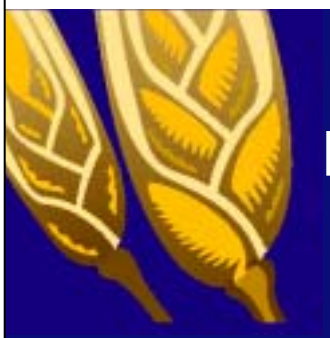

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# letters

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## CIRCULAR ARGUMENT LEAVES DAVID IN A TIZZY!

*From: David Alexander, Rutherfords, Dublin 2*

We received this morning from First Active plc one of its securities department's 'standard' letters, sent ostensibly to assist the company in monitoring the whereabouts of title deeds and other items held, or to be held, as security.

The first paragraph of the letter reads: "As part of our deeds/security tracking procedure, we note that the above borrower obtained a mortgage from First Active on the above date. If you have already received a discharge of your undertaking *for this transaction*, please ignore this letter and we apologise for the administration error."

Confused? Us too

The letter continues with a number of further requests and observations.

Taking, however, the first paragraph of the letter:

1) If the recipient receives the letter and does not reply to it, the letter has, from First Active's perspective, been ignored. Has it, however, been ignored because the relevant undertaking was previously discharged or, alternately, was it ignored for a less worthy reason?
2) First Active, in sending the letter in the first place, appears to recognise that it may not know whether, in fact, it discharged the relevant undertaking. It follows, therefore, that if it does not receive a reply to the letter, it still does not know whether the undertaking has been discharged, something which would only have happened if the relevant title deeds had been forwarded by the solicitor to First Active.
3) It in turn follows that First Active does not know whether, in fact, it ever received the title deeds but, if it did, it does not now know where the title deeds are.

All part, as stated, of a "deeds/security tracking procedure"!

## LIVING IN A STATUTORY LIMBO

*From: Julian Deale, Julian Deale & Co, Solicitors, Monkstown, Co Dublin*

It is coming close to 12 years since the *Solicitors (Amendment) Act 1994* became law.

Among its provisions, *inter alia*, was a widening of the powers of the Law Society to investigate the conduct of solicitors in regard to their financial relationship with their clients and indeed to entertain any other kind of complaints.

The sanctions imposed by the legislature and the conferring of those powers by the legislature on the Law Society have never been rendered into statutory form. There is no procedure set out to protect solicitors from frivolous and vexatious complaints and there is no procedure to dictate how natural justice should operate in regard to any penalty imposed upon a solicitor for a dilatory attitude in regard to any matter.

It is a disgrace to the Law Society and to the legislature that solicitors are left in such an exposed position without any statutory basis for imposing sanctions, which seem to be done, to use a colloquialism, on the hoof. It could not be done any other way, as there are no regulations.

I note, with interest, the zeal with which the legislature is beefing up, if I may use a metaphor, the powers to be conferred on the Law Society, when it has not even regularised the initial tranche of powers that were conferred without any statutory instrument setting out the procedure in regard to natural justice; the entertainment or otherwise of clearly vexatious complaints; and, most of all, no criteria for dealing with and addressing the large sums of money a solicitor frequently has to expend in terms of time and disbursements in dealing with what are patently frivolous complaints. That is inherently unjust and unfair, and I am surprised that my professional body behaves in such a cavalier way towards its members who are, after all, providing an extremely in-depth service to the public. While there have been one or two instances of solicitors overstepping the mark in financial terms in terms of tribunal monies, or so I am led to believe from the public press, I do not know whether those complaints by the public have any veracity. I suspect a number of those complaints have been generated by clients of solicitors jumping on the bandwagon that seems to be the order of the day, that is, that all solicitors are in some way underhand, devious and dishonest.

The Law Society's rights to discipline solicitors for breaches of the provisions set out in the 1994 act are not statutory. It is a disgrace, and I believe it is something that should be rectified as a matter of urgency before the legislature seeks to impose further impediments.

## AND NOW WE'RE SOLID, SOLID AS A ROCK

***From: Anthony F Sheil, Sheil, Dublin 7***

**On perusal of the title to our offices in Dublin 7, we note with interest a covenant in the head lease: "The plumbing facilities shall not be used for any other purpose for which they are constructed and no solid matter of any kind shall be allowed therein."**

# SCHOOL'S OUT

**A couple of recent judgments in bullying actions have emphasised that the standard of care required from schools is that of a 'prudent parent'. Murray Smith goes to the head of the class**

Judgments were recently given in two school bullying cases where the plaintiff students alleged negligence by the defendant schools. The first case was in the Supreme Court, *Kenneth Murphy v County Wexford VEC* ([2004] 4 IR 202), and that judgment was applied by the High Court in the second case, *Wayne Maher (a minor) v The Board and Management of Presentation Junior School, Mullingar* ([2004] 4 IR 211). Though both reached different judgments, due to different facts, both reaffirmed that the standard of care required from the school was that of a 'prudent parent'.

In reaching their judgments, each court took into account the relevant school's level of awareness of bullying – first, in terms of general awareness and, second, in terms of particular awareness of incidents that took place there, an important factor in *Murphy*.

**MAIN POINTS**

- Recent school bullying cases
- Alleged negligence of schools
- 'Prudent parent' standard of care

### Standard of care

While the *Murphy* and *Maher* cases do not mention it, an earlier High Court case dealt with the question of negligence and also upheld the existing standard of care: *Nicola Mulvey (a minor suing by her mother and next friend Margaret Mulvey) v Martin McDonagh* ([2004] 1 IR 497).

The plaintiff took a case against her school, claiming damages for personal injuries due to an assault by a fellow pupil or pupils while attending the school on the last day of her first year, in June 1998, when she was four years of age. She alleged that she had been bullied since the previous October and that numerous complaints had been made to the school, but the school had been negligent in refusing to monitor the conduct of the pupils.

The evidence supporting the plaintiff's claim was mostly from herself and her mother, who claimed to have made a number of complaints about Nicola being beaten up in the schoolyard. In November 1997, an incident took place when her tracksuit trousers were pulled down. Her mother reported this to Sister Gemma, the class teacher, who appeared to have resolved the matter.

In December, on the last day of term, Mrs Mulvey complained to Mrs Mularkey, the principal, about Nicola being bullied that term. As Mrs Mularkey was going to retire, she referred the matter to her successor, Mrs Sweeney, who took up her duties the next term. In January 1998, Mr and Mrs Mulvey met Mrs Sweeney, who said that she would take more measures to monitor the schoolyard. At a later meeting, it was agreed that if Mrs Mulvey had any further complaints, she should go directly to Mrs Sweeney.

On 3 February, Mrs Mulvey said that she went to the classroom where Nicola was sitting, asked Sister Gemma for permission to address the class, and berated them for their treatment of Nicola, threatening to "kick them up the backside" if they did not stop. Mrs Sweeney came into the classroom towards the end of this address.

There were no more communications from

PIC: IMAGE SOURCE/REX FEATURES

Nicola's parents until 25 June, the last day of term, though Mrs Mulvey claimed that Nicola was still being bullied. That day, Mrs Mulvey claimed that Nicola had been beaten up and kicked by a number of people in the schoolyard. She was taken to Crumlin Hospital, her mother claiming that she "was covered in bruises and that she had been covered in bruises for some considerable length of time prior to this date".

The plaintiff gave evidence, which the judge, Johnson J, hinted might be, in his opinion, the result of coaching by her mother, because it "agreed in almost every word with the evidence of the next friend [her mother] and, despite the fact that she was now ten, appeared to have an extraordinarily good recollection of what took place when she was four years of age".

Two expert witnesses supported the evidence of the plaintiff and her mother. The problem about this evidence, in the eyes of the judge, was that "they only heard the plaintiff and the next friend [her mother] and did not have an opportunity of witnessing the witnesses for the defence or the manner in which they gave evidence".

The paediatrician who dealt with the plaintiff when she was brought to the hospital gave evidence which, despite the plaintiff's statement of claim, said: "…there was no damage to the spleen and no rupture of the spleen" and "there was no bruising whatsoever on any part of the plaintiff's body". The judge said that it was "very necessary" to note the evidence regarding the bruising.

Johnson J ruled in favour of the school. There was, he said, in a number of incidents, "a direct contradiction" between the plaintiff's and the defendant's evidence. He preferred the latter, because of his opportunity of "watching the witnesses in court, of seeing them give evidence and of watching their reactions in the witness box under cross-examination. I have also taken the opportunity of visiting the school yard and I am satisfied that it is an open yard, not very large, in which any adult would have no difficulty in observing incidents as described by the plaintiff taking place."

The evidence given by the defendant, which neither of the expert witnesses "had an opportunity of seeing" was "extremely convincing and I am satisfied that the defendant and each of the school's witnesses were responsible, caring, alert, concerned and truthful people".

In terms of case law, the judge followed previous precedents that the degree of care to be taken in the case – which was accepted by both sides – was that of "a prudent parent exercising reasonable care and I accept that that must be taken in the context of a prudent parent behaving responsibly with a class of 28 four-year-olds having their first experience of mingling socially with other children".

He was satisfied that this care was taken. In any disputes over the facts, the judge was satisfied, "having had the opportunity of watching both of them and listening to them, that the defendant's version of the evidence of what took place is far more reliable and acceptable and so I find".

This, he felt, was borne out by the medical evidence, which showed that there was no bruising. The judge also held that he accepted and adopted the definition of bullying given in the Department of Education's 1993 anti-bullying guidelines (see panel p23).

**Dangerous behaviour**

The *Murphy* case involved a fifth-year pupil who was with his class in the resource area at lunchtime. There were about 50 students present. One pupil arrived with a packet of chocolate bars, which he offered to everyone. The bag burst and the bars began to be thrown around. The plaintiff was struck in the eye by one of the bars and was seriously injured. A High Court judge awarded him €50,000 for personal injuries, which was appealed to the Supreme Court.

That court rejected the appeal by a two-to-one majority. McCracken J gave the judgment of the majority. He said that both sides accepted the duty of care as set out by the Supreme Court in *Lennon v McCarthy* and followed by the High Court in *Flesk v King* (unreported, High Court, Laffoy J, 29 October 1996), where that judge said "the law does not require children in the school playground to be under constant supervision and watched at every instance".

## ALMA MATER

A school is liable in negligence towards its students and their parents or guardians under the neighbour principle – outlined in the famous Scottish case of *Donoghue v Stevenson* ([1932] AC 562) – having a duty of care towards those students regarding reasonably foreseeable injuries happening to them. The particular standard of care imposed by the courts on schools is that of a 'prudent parent', first developed in the English case *Williams v Eady* (10 TLR [1893-94] 41).

There, the Court of Appeal heard a case by a schoolboy against a schoolmaster, alleging negligence for an injury after the teacher left a bottle containing a stick of phosphorus in a conservatory to which the boys had access. The judge in the court of first instance directed the jury: "…that if a man keeps dangerous things, he must keep them safely, and take such precautions as a prudent man would take, and to leave such things about in the way of boys would not be reasonable care".

The jury then found for the plaintiff. The schoolmaster unsuccessfully appealed the decision to the Court of Appeal. The judgment of that court held that "it was correctly laid down by the learned judge that the schoolmaster was bound to take such care of his boys as a careful father would take of his boys, and there could not be a better definition of the duty of a schoolmaster. Then he was bound to take notice of the ordinary nature of young boys, their tendency to do mischievous acts, and their propensity to meddle with anything that came in their way."

This standard of care regarding schools was later accepted by the Irish Supreme Court in the case of *Lennon v McCarthy* (unreported, 13 July 1966).

PIC: IMAGE SOURCE/REX FEATURES

McCracken J went on to say: "Quite clearly, school authorities are not insurers of the pupils under their care. However, they do owe a duty to those pupils to take reasonable care to ensure that the pupils do not suffer injury. To do this, some degree of supervision is clearly required. The extent of such supervision will depend on a number of factors, for example, the age of the pupils involved, the location of the places where the pupils congregate, the number of pupils which may be present at any one time and the general propensity of pupils at that particular school to act dangerously."

The judge found relevant evidence that, in the defendant's school, "there had been serious disciplinary problems, following which the defendant considered it necessary to ensure that a teacher was present in certain specific areas", including where the present incident took place, during lunch hour. These problems had led to the expulsion of 20 pupils and, following the introduction of the rota system, "the supervision was reasonable and that, for some unexplained reason, the rota system did not operate on the day in question and there was no supervision".

In the light of this, the judge concluded: "I am of the view that the particular circumstances of this case and the history of indiscipline in the school imposed a duty of care on the defendant to provide supervision at lunch time in accordance with its rota system and that the failure to do so constituted negligence on the part of the defendant."

***"For a breach of duty of care to occur, there must exist in addition to the relationship of proximity, the requirement of forseeability"***

**Behind teacher's back**

The *Murphy* judgment was followed by Mr Justice Michael Peart in the High Court case of *Maher*. In that case, the plaintiff, a boy of six, was severely injured in his right eye when, in a classroom of the defendant's school, another boy of the same age sitting at a table opposite to him used a rubber band to fire a pencil at him when the teacher had her back turned.

The judge concluded that the class was "a normal class of six-year-olds and that there is no evidence that there was any particular or unusual or special difficulty as far as the known behaviour of these children is concerned. I am sure that they were no better and no worse than any other group. I am also satisfied that from the evidence which I have heard that it was entirely appropriate that one teacher should be in charge of this class."

He then looked at what McCracken J had said in *Maher*, particularly in paragraph 27. In applying this, the judge said that "…for a breach of duty of care to occur, there must exist in addition to the relationship of proximity (which clearly exists in the case of a school and pupil) the requirement of forseeability".


A limited number of places still remaining. Participants are strongly encouraged to register on line at www.lawsociety.ie. If online registration is not possible please contact Evelyn O'Sullivan, Law Society Annual Conference 2006, C/O Ovation Group, 1 Clarinda Park North, Dun Laoghaire, Co. Dublin, Ireland.
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In the present case it means that "before the defendant can be liable, the court would have to be satisfied that it is reasonable that Ms Shaw [the teacher] should be expected to anticipate that the moment she turned her back (not literally) on the class in order to have a very short conversation with Ms Fitzsimons at the door of the classroom, it was probable or likely that some behaviour would occur which would cause injury to one or more of the pupils in her charge".

Peart J made the observation that: "There can of course be situations in any school where the school is well aware of potential dangers, where for example there has been a history of disruptive and even violent behaviour on the part of a pupil or a group of pupils. Bullying would be a case in point. The duty of care of the school in such circumstances would extend to taking appropriate account of these known circumstances when deciding on the appropriate level of supervision in the school, particularly during break and recreation periods when pupils are outside the more controlled environment of the classroom."

Again confirming that the standard of care required in school was that of a prudent parent, he explained that this meant: "The school is expected to be no more and no less vigilant of those in its care than a prudent parent would be in his or her own home. In any normal child, if there be such a creature, there is always a certain propensity for horseplay and high spirits. Indeed, if it were not so, there might be some cause for concern."

In the particular circumstances of the case, the judge held that the school was not guilty of negligence and that the student's claim failed.

### Living by the code

In these three cases, the incidents complained of all took place in the late 1990s. A court dealing with more recent incidents might take account of newer developments, including the obligations of section 23 of the *Education (Welfare) Act 2000*, which obliges schools to have a code of behaviour.

Section 23(1) says that a school's board of management should prepare such a code after consultation with the principal, teachers, parents, and the educational welfare officer who is assigned functions in relation to that school.

In terms of what this code needs to contain, subsection 2 says that it shall specify:

a) The standards of behaviour that shall be observed by each student attending the school,
b) The measures that may be taken when a student fails or refuses to observe those standards,
c) The procedures to be followed before a student may be suspended or expelled from the school,
d) The grounds for removing a suspension imposed in relation to a student, and
e) The procedures to be followed relating to notification of a child's absence from school.

## GRIM FACTS

According to the Department of Education's 1993 *Guidelines on Countering Bullying Behaviour in Primary and Post-Primary Schools*:

- Bullying is repeated aggression – verbal, psychological or physical – conducted by an individual or group against others.
- Isolated incidents of aggressive behaviour, which should not be condoned, can scarcely be described as bullying. However, when the behaviour is systematic and ongoing, it is bullying.

Subsection 3 says that this code of behaviour shall be prepared in accordance with such guidelines as may (following consultation by the National Educational Welfare Board with national associations of parents, recognised school management organisations, and trade unions and staff associations representing teachers) be issued by the board.

Subsection 4 says that the principal of a recognised school shall, before registering a child as a student at the school under section 20 of the act, provide the parents with a copy of the code of behaviour, and may, as a condition of registering the child, "require his or her parents to confirm in writing that the code of behaviour so provided is acceptable to them and that they shall make all reasonable efforts to ensure compliance with such code by the child".

Under subsection 5, a principal shall also, on a request made by a student registered at that school or by such a student's parent, provide the student or parent with a copy of the school's code of behaviour.

### Raising the standard

While the code of behaviour does not mention the word 'bullying', the specified provisions (particularly section 23(2)(a) and (b)) set out the standards of behaviour expected of students and the measures to be taken when a student fails or refuses to observe those standards. These implicitly include the prohibition of bullying and how to deal with it when it occurs. The Department of Education's 1993 anti-bullying guidelines are an invaluable aid to schools in drawing up such a code.

Looking at these cases, it is evident that the courts have upheld the 'prudent parent' standard of care. The difference is that, from the facts of the cases, certain schools were found to have kept to this standard – others not. Also, the courts have taken into account the school's level of awareness of bullying, first, in terms of *general* awareness (including awareness of the department's 1993 guidelines) and, second, in terms of *particular* awareness of incidents that took place at the particular school – an important factor in the decision in *Murphy*. G

*Murray Smith is a Dublin-based barrister.*

# PULLING

**Collaborative family law is a relatively new process of dispute resolution in Ireland. Anne O'Neill gives an insider's view of how the process works to bring about a 'win-win' solution for those involved in relationship break-up**

Collaborative family law is a relatively new process of dispute resolution on these shores. It's a problem-solving approach where people affected by relationship break-up work towards solving their legitimate needs, rather than taking up irreconcilable positions. The aim is a 'win-win' solution for both.

Each spouse retains a solicitor so that both can receive independent advice that will help them to negotiate an outcome that they consider to be fair and acceptable. In reaching an agreeable solution, clients and solicitors must agree to work together respectfully, honestly and in good faith. This problem-solving approach necessarily involves full and mutual disclosure of all assets.

In the June 2005 *Gazette* (pp24-25), Cork solicitor and well-known family practitioner, Rosemary Horgan, gave an overview of the collaborative approach. Since then, those of us who attended training in UCC's Glucksman Theatre went on to form a 'documents committee'. Our task was to draft the core documentation grounding this new process and, from there, to form the first Association of Collaborative Practitioners (ACP). The association was officially launched in Cork's Clarion Hotel in July 2005. At all stages, the process has had the full support and backing of the Southern Law Association (SLA).

It has been quite a voyage and we are still sailing. Those of us who formed the documents committee learned that a group of solicitors could work together in harmony, week in and week out, and that we could draft, redraft and refine documents without any rows or walkouts.

**MAIN POINTS**

- Problem-solving approach
- Four-way meetings
- Participation agreement

### Hot spots

This augured well for the success of collaboration, a process that works on face-to-face meetings rather than through paperwork. It involves lawyer-to-lawyer and lawyer-to-client meetings, after which clients and lawyers meet together around a table. Meetings are carefully choreographed. The solicitors meet to discuss problems that might arise for their clients – to address so-called 'hot spots'. With that in mind, the agenda for the 'four-way meeting' is carefully crafted.

The four-way meeting is the highlight of each stage, where all parties, including the two clients and their solicitors, come together to try to work out final solutions. The agenda endeavours to ensure a measure of success at each four-way meeting, thus building confidence in the process. Each solicitor and client then meet to prepare for the meeting, during which the setting of the agenda is all-important.

A core contract document, the 'participation agreement', underpins the collaborative process and is signed by both parties and their solicitors. The agreement sets out the principles of collaboration and is a useful referral for everyone. Crucially, it sets out a core principle that, should the process fail, the solicitors collaborating cannot then go to litigation and the parties must find new lawyers. Solicitors hate to lose clients, so this provides a wonderful incentive to make the process work.

For the clients, the incentive is their investment of themselves and their time in the process – which ensures their commitment. Each solicitor will test the client's commitment through preparatory groundwork carried out before the first four-way meeting.

This consists of carefully identifying the reasons why the client wants to collaborate, thoroughly explaining the process, and securing the agreement of the client to interest-based rather than position-based bargaining.

### Menu of options

Collaboration is offered to clients as one choice on a menu of options to resolve their family issues. It is never sold to the client but is rather held out as something to which they might aspire. This generally puts the client in the right frame of mind to contemplate collaboration.

Clients who are contemplating collaboration are

# together

often worried about what protection they will have within the process. A full exchange of affidavits of discovery and/or affidavits of means is undertaken at a very early stage. Vouching documentation can then be sought or inspected. Accountants can be spoken to if necessary, or further documentation sought.

Because experienced family lawyers are presiding over the process – unlike in mediation – a rigorous examination of the finances can be undertaken. Each party has the benefit of their own lawyer at the table. Any suspicion of bad faith will automatically lead to a termination of the process. The exchange of sworn affidavits is also done on the basis that these documents survive the process should it break down, so a party negotiating in bad faith will have it follow them. Also, an accountant can be involved in the collaboration process as part of the team if necessary – either to advise on some aspect of the finances, tax issues, or even how best to deal with financial planning after separation.

From a professional point of view, the experience in America – where collaboration has been longest established – is that collaborating lawyers do not get sued for malpractice. Professionals in the USA and England are also advising that their earnings since adopting collaboration as a model are at least equal to, if not better than, their previous family-law returns. It is hard to say why this might be the case,

# AIB Mortgage Bank

Transfer of Home Mortgage Business from Allied Irish Banks, p.l.c. to AIB Mortgage Bank

## Transfer of Business

- With effect from 13th February 2006, Allied Irish Banks, p.l.c. ('AIB') has transferred its home mortgage loan business, relevant mortgage loans and related security to AIB Mortgage Bank ('AIBMB').
- AIBMB is a wholly owned subsidiary of AIB and a designated mortgage credit institution within the meaning of the Asset Covered Securities Act 2001 (the 'ACS Act').
- The transfer was effected pursuant to Section 58 of the ACS Act with the approval of the Financial Regulator.
- Related security held for the transferred home mortgage loans, including solicitors' undertakings and certificates of marketable title, have been transferred to AIBMB.
- In accordance with the ACS Act, AIBMB has the same rights (including priorities) and obligations in respect of the business and home mortgage loans transferred as AIB had immediately before the transfer took effect.
- Customers whose home mortgage loans have transferred will be advised upon receiving their next mortgage statement. A notice giving particulars of the transfer has or will be published by the Financial Regulator in one or more daily Irish newspapers in accordance with the ACS Act.
- AIB Home Mortgage documentation in circulation before the transfer is now in favour of AIBMB under the terms of the transfer. This has effect without any amendment to the documents. Solicitors should continue with the process of execution and registration of mortgages, and should in due course return all documentation and continue to correspond with AIB Home Mortgages Department, Hume House, Ballsbridge, Dublin 2 or the relevant AIB Branch as appropriate.

## New Form of Mortgage in favour of AIBMB and AIB (the 'New Mortgage')

In order to allow customers to provide security to both AIBMB and AIB for loans from either of them, AIB and AIBMB have introduced a single mortgage and charge in favour of AIBMB and AIB as tenants in common. The New Mortgage will be used for new residential property mortgage lending by AIBMB and by AIB. The New Mortgage avoids the need to create separate security for AIBMB and for AIB for loans made by them. The New Mortgage will secure all sums due to AIBMB and AIB, but it will only operate as security where the terms of the loan offer expressly require the mortgagor to provide or maintain the mortgage as security for the loan.

but it is definitely encouraging. For my part, I suspect the answer might be that collaborators organise their time more productively, both because of the nature of collaboration, which works essentially on a time basis, but also because the work is ultimately so much more rewarding.

### Practice makes perfect

You will not be surprised to learn that the documents committee went on to form a practice group. Practice groups are part of the collaboration network or design. A practice group will work together to tease out difficulties that members might encounter in implementing the process, and to share insights. In addition, the ACP was formed so that training for would-be collaborators could be provided both initially and on an ongoing basis. This has helped to maintain standards and to distribute the core documents necessary to collaborate.

New collaborators might be said to have a slightly evangelical tinge to their make-up – I, for one, have set to with gusto designing a room specifically for collaboration. It has a round table, which I believe to be essential, an up-beat painting oozing vitality, refreshing lilac curtains, comfortable chairs, a tea and coffee trolley, plants and even a very large amethyst rock. This last was suggested by my first collaborating client and I am not finished yet … it's a work in progress!

ACP was most anxious to launch collaboration as a 'new' way of doing things – both for solicitors and clients. We felt, therefore, that the image projected to the public of the process was extremely important. The association sought the services of a graphic designer, who designed a new logo, notepaper and client handbooks. Next, we secured the services of a web designer. With our image established, our association formed, and our core documents ready, we were rearing to go.

### Turbulent waters

Some of us are now collaborating and are finding it challenging and exhilarating all at the same time. Charting through the turbulent waters of marital breakdown, parental disputes and family difficulties is always going to be tough work, but this method is civilised, fair and cost effective. It is an honest attempt to offer hard-pressed families a method of resolving their family crisis. The method is tailor-made to each individual family's particular needs in a way that puts the parties on genuinely equal footing during the negotiations. This ensures that future dialogue will be possible for them.

These are early days, but already we feel that the support of counsellors and psychologists for this process is vital. Because collaborators work on a team basis to provide solutions for a family, rather than adopting a position for their particular client and negotiating or litigating around that, the other professionals who assist the process are part of that team. These include child therapists, auctioneers, counsellors and accountants. The ACP is now sourcing family or mental-health professionals who are interested in this process and would like to work within it. Early feedback is positive, as many of these professionals have found the adversarial system very wearying.

Thus far, most of my clients opting for collaboration could be described as 'well-heeled'. As a method, it certainly is more cost effective for such clients, since litigation costs in 'ample resources' cases can be very high. Collaborators mainly charge on an hourly rate, since most of their work is time-based. So the costs will, to a very great extent, be dependent on the number of meetings required and can therefore be controlled to some extent. More importantly, however, is the ultimate cost saving involved in ensuring that the parties can dialogue into the future, thus minimising future applications to court.

Working outside the 'adversarial comfort zone' can be very scary. Collaborators have to constantly re-examine the way they talk as lawyers, the way they relate to clients and the terminology they use. We have no recourse to our usual arsenal. As a fellow collaborator said recently, "the weapons closet is locked". G

*Anne O'Neill is a family law solicitor in PJ O'Driscoll's, Bandon, Co Cork, a trained collaborator, secretary of the Association of Collaborative Practitioners and social secretary of West Cork Bar Association.*

## COLLABORATIVE FAMILY LAW IN A NUTSHELL

Collaborative family law is a relatively new process of dispute resolution. Each spouse retains a solicitor so that both can receive independent advice in helping them to negotiate an outcome that they consider fair and acceptable. In reaching an agreeable solution, clients and solicitors must agree to work together respectfully, honestly and in good faith.

This problem-solving approach necessarily involves full and mutual disclosure of all assets. In collaborative law, each party works towards solving their legitimate needs rather than taking up positions that cannot be reconciled.

When working within the collaborative law process, no one may go to court, or even threaten to do so. Should the process end, both solicitors are disqualified from any further involvement in the case. The solicitors engaged for a collaborative law representation may never, under any circumstances, go to court for the clients who retained them in a contentious capacity, or as witnesses to such litigation.

Clients wishing to proceed with the process must sign a legally binding agreement to disclose all documents and information relating to the issues – early, fully and voluntarily. Open and honest disclosure of assets is essential. If it becomes clear that one party is not proceeding in good faith, then their solicitor must withdraw from the process and may not continue to represent the client.

The ultimate aim of the collaborative process is to achieve a 'fair' outcome for both parties.

**John Carrigan – president of the Law Society almost 50 years ago – is one of life's gentlemen. Mark McDermott spoke to him about his student days in the 1930s, his career in law and his time as president**

John Carrigan – president of the Law Society in 1957/58 – is not someone you forget after a first meeting. A natural leader, he possesses a vigorous character, a memory as deep as the Mid-Atlantic Ridge and a wit as bright as the Cullinan Diamond.

I first met John and his wife Shirley at a special lunch held in the past president's honour at Blackhall Place last October. It's not every year that the Society can celebrate the life of a man who was president one year shy of 50 years ago. So, this lunch, hosted by the then president, Owen Binchy, was a fitting tribute to an historic figure in Law Society terms. It also presented a golden opportunity to ask him a few questions about his life as a solicitor.

**Was there a background to law in your family?**
My grandfather was a farmer, two of whose sons went into law. One was my Uncle William who qualified as a solicitor and started a solicitor's practice in Thurles in 1889. The other was my father, John Pierce Carrigan, who followed him into the practice seven years later. However, shortly afterwards, William decided to go to the Bar and as a result of a successful criminal law practice, took silk in 1908, becoming what was then called a King's Counsel. He was appointed the first Catholic Recorder of the City of Belfast and later became Crown Prosecutor and then State Prosecutor on the formation of the Irish state.

**When did you decide to become a lawyer?**
I didn't choose early on to become a lawyer, but it was presented to me by the family that I should go into the office to help my father, who had done so much for me. That seemed to me to be a perfectly reasonable request. I went to the Law Society in

PIC: MARK RUSSELL HILL

# TIPPERARY STAR

1934. In those days, the course was five years but they had a scheme where you could get out in four for good behaviour! To achieve this I was compelled to take conveyancing lectures in UCD twice a week during term. These were given in the most uncomfortable surroundings by a senior counsel in the late evening after the courts had risen. I learnt nothing at these, but they served their purpose.

I was, of course, an apprentice to my father but I very rarely attended his office – this was the plight of all country apprentices then. It was impossible otherwise to attend lectures regularly in the Four Courts.

**What do you recall of the Law Society then?**

At that time, the Law Society was based in the Solicitors' Buildings at the Four Courts. The Four Courts had been destroyed in 1922 and the reconstruction had only been completed in 1931. The Solicitors' Buildings was not a place where you would spend longer than you had to. My recollection of it is as one of the bleaker, more soulless places in the world. There were only two good rooms in it – one was the Council Chamber. I haven't seen it as it is today, but I hear it's all cubbyholes full of barristers. It was a magnificent room then, with a fabulous table and carvings. It had the president's chair, which is in Blackhall Place now. The other room equally large was the library. It was cold, austere and empty, with very few books, with just, if I recall correctly, the acts of the Oireachtas and some reports. The original collection had been lost in the 1922 fire.

In those days, the Law Society was run by William G Wakely. He went by the title of 'secretary' – today's equivalent of the director general – as did Eric Plunkett after him. When you were an apprentice, you didn't speak to Mr Wakely. It was a different generation. The reason you didn't speak to Mr Wakely was because Mr Wakely was 'God'. I recall that he always wore a butterfly collar with a tie, and his hair was always carefully brushed. He had a moustache and was, or at least seemed to me then, an elderly man. The only time I really spoke with him was when I passed my finals and I went to talk to him about my admission to the Roll of Solicitors. Afterwards, I thought what a nice man he was.

**Where did you study?**

Apart from studying at home and at the Solicitors' Buildings, I stayed for my last two years with my uncle William and his wife in Donnybrook. He was a 'Bencher' and obtained permission for me to read in the library of King's Inns. I have always looked upon this as one of the turning points of my life. The world of literature was opened to me and, with the permission of the librarian, I had access to any book I wanted, legal or otherwise. My gratitude to the Benchers of that day knows no bounds, more so when I learnt some years later that I was the only solicitor's apprentice who was ever granted that privilege.

I never went to university. Like all others I attended lectures in the Solicitors' Buildings. It is fair to say that they were, by and large dull, lacklustre and boring. Our lecturers read from textbooks for an hour, explanations were rarely offered and questions were never allowed.

But for our finals, some of us went for tuition to Brendan P McCormack. He was a practising solicitor with an office in Bachelor's Walk. He was a brilliant teacher with a gift for explanation. No subject was ever abandoned until he was satisfied with one's understanding of it. He was the only person who

**MAIN POINTS**

- **Student days in the 1930s**
- **Changes in the Law Society**
- **Tipperary Bar Association**

taught me to understand, with a blinding clarity, the *Statute of Uses*. He was kind and always reassuring and I still think of him with affection and respect.

**When did you qualify?**

I finished all my law exams in 1938, but still needed to pass final Irish so I went to Spiddal for three months. It was intended that when I passed this examination I should go to the Sorbonne in Paris for a year before joining my father. That was the plan. I sat the exam and got 68%. The pass mark was 70% and they failed me. I came back to Dublin and, with others, went to a man named Fenton in Parnell Square who gave tuition in Irish. He was absolutely first class – he could make the Irish language sing. He got me through in March 1939, but at that stage war was looming in Europe and I never got to France until Shirley and I went there on holiday in 1950.

**What memory most stands out for you as a practising solicitor?**

I have many. I remember a matrimonial dispute that was fought most bitterly, as such cases can be. It was so bitter that, when our success in the High Court was appealed to the Supreme Court, their lordships ordered that both sides should appear before them with the children and the matter would be dealt with on oral evidence. I attended on the day with my client and the children and all my witnesses, and with my three counsel, the late Niall McCarthy SC, William Finlay SC and Frederick Morris BL (as he then was). The other side came equally prepared.

I think the full court sat and the chief justice was the late Cearbhall Ó Dálaigh. All the evidence was oral and the case lasted four days. The children were interviewed privately by their lordships and the appeal was dismissed. I have been told that this was the only time oral evidence was ever heard by the Supreme Court. It may be worth remarking that, at the next Law Society annual dinner, I met the chief justice and asked him how he enjoyed the oral evidence. His eyes lit up, he put his hand on my shoulder and shook me very gently, saying: "John, the days simply flew."

**There have been incredible changes in the Law Society since you were first admitted to the Roll. Which ones most stand out?**

Today, the Law Society is unrecognisable from what it then was. The Law Society has moved from the Four Courts to the buildings vacated in 1970 by the King's Hospital School in Blackhall Place. This was largely due to the enormous foresight of two Law Society presidents – Peter Prentice, who masterminded the original purchase, and Moya Quinlan who completed the move.

I was elected to the Council in 1949. Mr WS Hayes, the doyen of the Council, was there on the day when I walked into the Council Chamber to take my seat as a new boy. Great deference was always paid to him. To me, he seemed to have been there forever and, indeed, I noted when you took me up to see the Council Chamber earlier this morning that he is listed on the board of past presidents as having been elected president in 1906, almost 100 years ago.

PIC: MARK RUSSELL HILL

***"In those days, the course was five years but they had a scheme where you could get out in four for good behaviour!"***

Until recently, past presidents could always go for re-election and very many of them did and, indeed, I did it myself. The bar associations seemed to be happy with the operation of the status quo – which meant that as many as eight or more past presidents were re-elected. The General Council of Provincial Solicitors had an unwritten understanding with the Dublin Bar Association that the country solicitors would refrain from proposing more than 15 of their members, leaving the remaining 16 to the Dublin Bar. This worked quite well until it was changed some years ago, but I always felt that the number of past presidents on the Council should be restricted.

**What were your goals as president?**

The Society, now, is a significantly different place to what it was in 1957/58. When I was elected president, I had only been a member of the Council for eight years. Nowadays, presidents of the Law Society have been members of the Council for a much longer time and set goals for their year in term. Back then, presidents had no goals! You went in and you did the best you could, with a little variation, to keep the show on the road. That's really what the presidency was.

One particular change is worth mentioning, however. In those days, and I think until 1960, the president paid for himself. He paid for everything out of his own pocket – all his travelling expenses and his dinner for the Council members at the end of his year of office (the only payment of this sort by the Council being for the annual Council dinner in March or April each year). For that reason, some members of the Council who would most certainly have been outstanding presidents were never agreeable to letting their names go forward for the presidency.

You would, however, probably have been given a very small subvention to attend the International Bar Association (IBA) conference, should there be one during your year of office. During my presidency, I was elected to the council of the IBA. When I retired after my two-year stint, I was asked to chair several of their committees, which I was happy to do. It meant not only attending conferences every two years, but more especially attending IBA council meetings, usually two but sometimes three or more in that time. It was all a bit arduous, but I felt it very necessary that the Irish Law Society should stay at the forefront of an international organisation such as the IBA. I hope that I managed, in some way, to do that. Let me say that none of this would have been possible without the constant support of my wife, Shirley, who has always been there when I needed her, with sound help and advice.

**Is it true that you were secretary of the Tipperary Bar Association for over 40 years?**

Yes. I was elected secretary and treasurer of the Tipperary Bar Association (which was then known as the Tipperary and Offaly (Birr Division) Sessional Bar Association) on 12 January 1940, for no other reason, I imagine, than that nobody else wanted the job and I was the youngest member of the bar association. In those days (and it's probably the same today), the younger members were expected to take the jobs that nobody else wanted.

I remained secretary of the bar association until I retired in July 1982, when I was succeeded by Philip Joyce, who I am delighted to see is now about to become senior vice-president of the Law Society. Forty-two years is a long time in any position. The responsibilities, if they are to be taken seriously, are considerable. I had the luck of being able to benefit from the advice of my father, who himself had been secretary of the bar association before me. He was a first-class solicitor who always had a clear conception of what the conduct and integrity of a solicitor should be.

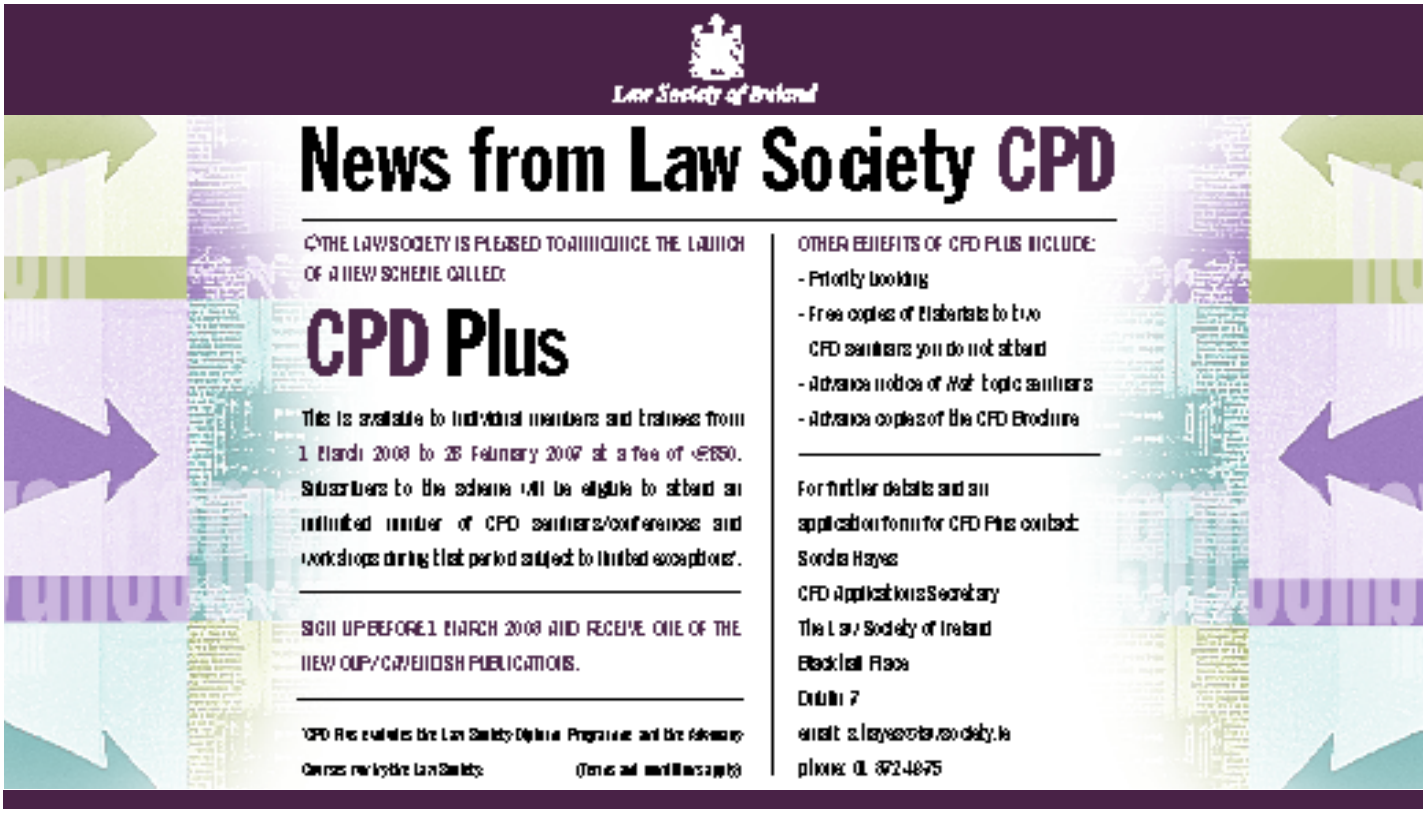
The Tipperary Bar Association was the first in these islands, or anywhere else, to run courses for what is now called 'continuing professional development', the first of a series of lectures being given in February 1960. From its very beginning, it passed the 'vendor and purchaser rule' to the effect that, except in very few stated cases, a member should in no circumstances act for a vendor and purchaser of the same property.

**What are your other interests outside of the law?**

I lived in the country and I lived a country life. I had all the outdoor country sports, particularly hunting and racing. In 1966, I was elected to the Irish National Hunt Steeplechase Committee and was made a steward in 1986 and became senior steward in 1988. That pleased me greatly. At one time I played golf – a lot of golf. At my best, I got to play off a handicap of eight, but that's another story!

**Any advice for today's trainee solicitors?**

Look, I am still writing with a fountain pen, which I have to fill with ink from a bottle, and you ask me that! G

# A MATTER OF INTERPRETATION

**The recently enacted *Interpretation Act 2005* came into force on 1 January, and its importance cannot be overstated, says Brian Hunt**

## MAIN POINTS

- ***Interpretation Act 2005***
- **Significant new provisions**
- **Repeal of previous acts**

Interpretation acts govern the interpretation of both primary and secondary legislation and play an important role in ensuring the consistency of some aspects of legislation. Their existence has tended to shorten enactments and to make their language more uniform.

The enactment of the *Interpretation Act 1850* marked the beginning of a tendency towards the standardisation of terms used in legislation. In 1875, a select committee of the House of Commons on the improvement of legislation advocated the preparation of a further *Interpretation Act*. This led to the enactment of the *Interpretation Act 1889*, which has been in force here for over 100 years. The *Interpretation Act 2005* repealed the *Interpretation Acts* of 1889, 1923, 1937 and 1993. *The Interpretation (Amendment) Act 1997* is not being repealed. The 2005 act is, to a large degree, a consolidating act. This is reflected in the fact that virtually all of the previous *Interpretation Acts* are repealed. However, the new act does contain some new and interesting provisions. In view of the important, over-arching nature of the act, it is perhaps helpful to visit, in brief terms, some of its provisions.

### Plain intentions

Section 5 is a new provision. It provides for a purposive construction to be given to legislation, so as to give effect to the decision of the High Court in *Mulcahy v Minister for Marine* (1994) and also a recommendation of the Law Reform Commission. Section 5(1) directs that, when interpreting a provision (other than a penalty provision) that is ambiguous, absurd or fails to reflect the intention of the Oireachtas, the provision must be given a meaning that reflects the plain intention of the Oireachtas, insofar as that intent can be gleaned from the act as a whole.

Section 6 is also new, enabling provisions to be given an updated meaning so as to take account of technological and other developments that have occurred since the passing of the act or making of the statutory instrument. This issue was addressed by the Supreme Court in *Keane v An Bord Pleanála* (1996) as well as in other cases, and was also the subject of a recommendation by the Law Reform Commission.

### Margins of error

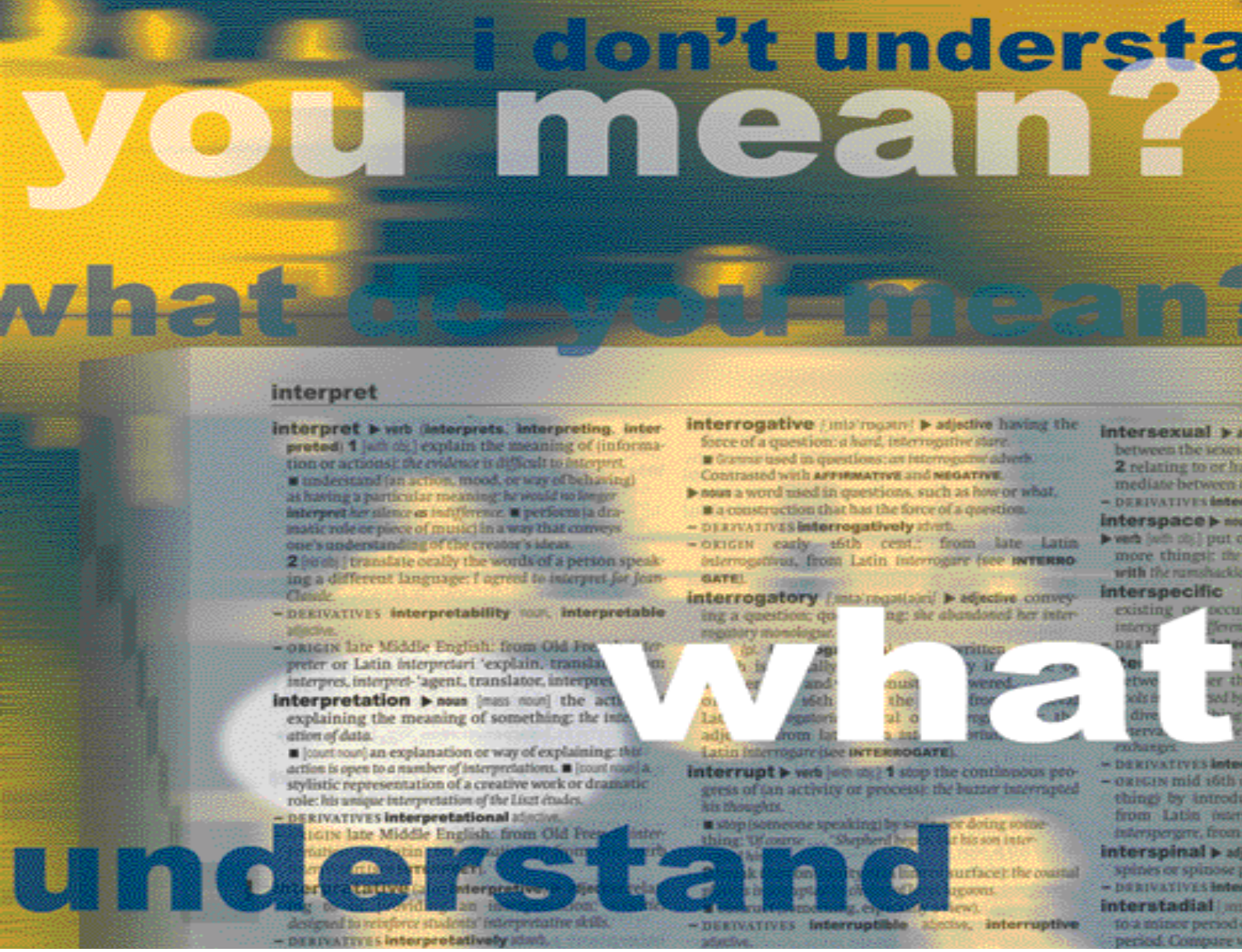
With reference to the use of marginal notes and headings, the Law Reform Commission also recommended "that all intrinsic aids should be available for use in interpretation and that their use should not be contingent on establishing, as a prerequisite, that there is some ambiguity in the text". Under the 1937 *Interpretation Act*, marginal notes may not be relied on by the courts under any circumstances. This has been relaxed somewhat by section 7 of the 2005 act. While it does not give effect

## POWER TO PROSECUTE

Section 8 is a new provision that addresses the power of prosecution. Let's put this section in context. Collective construction provisions are unable to carry over matters of a substantive nature from an earlier act into a later act. Provisions of this kind are, however, suitable for carrying over matters of a procedural nature. The inability of collective construction provisions to carry over matters of a substantive nature, such as the power to prosecute, has presented some difficulties.

For example, where an 'amendment' act containing offence provisions (but no prosecution provisions) was to be collectively construed with a principal act that contained the power to prosecute, prosecutions in respect of the offences contained in the 'amendment' act could not proceed. Section 8 of the *Interpretation Act 2005* appears to be intended to address problems such as this.

Here are just some examples that should be remedied by section 8. It would seem that the Central Bank would not have power to prosecute for any of the offences created by the *Central Bank Act 1997*, as it contained no power of prosecution, and section 10 of the 1989 act only gave the bank the power to prosecute offences "under the *Central Bank Acts 1942 to 1989*". Also, it seems that offences created under the *Wildlife (Amendment) Act 2000* would encounter similar difficulties.




to the commission's recommendation, it is perhaps one of the act's most significant new features. It states that when construing a provision of an act for the purposes of sections 5 and 6, the court may make use of all matters that are set out in the act as enrolled in the Supreme Court. Section 7 therefore permits the use of marginal notes and headings in an act for the purpose of interpretation, albeit in the limited circumstances described. This amounts to a significant departure from pre-existing practice.

Over many years, the courts were very uneasy about lending any weight to marginal notes and headings, particularly as they are not debated or voted upon as the bill goes through the Houses of the Oireachtas and, consequently, are not formally part of the act itself. Despite this, the courts have, on occasion, had resort to marginal notes when interpreting legislation.

Section 7 is, to some degree, a recognition of reality. The overly restrictive approach imposed by the 1937 act has long been criticised by the judiciary and academics alike. Despite the 1937 act, it is clear that judges have had regard to marginal notes. A practical example of this was in the Supreme Court case of *Rowe v Law* (1978), where O'Higgins CJ made it clear that he had read the marginal note accompanying section 90 of the *Succession Act 1965* and was, in fact, placing considerable weight upon it.

From a purely pragmatic point of view, when a judge reads a section of a statute, he does not close his eyes when he sees a marginal note nearby. Even Mr Justice Hardiman alluded to this reality when speaking at a legislative drafting conference in 2000. He was critical of the notion that judges were not allowed to look at marginal notes, particularly when they were printed on the same page that they were reading. In this context, as a good first step, section 7 is to be welcomed.

### Pedants' heaven

Section 14(1) sets out the various ways in which an act may be cited. Section 14(2) states that a reference to an act is deemed to include amendments made to that act, irrespective of whether the amendments pre- or post-date the reference in question. When citing an act, it has long been the practice to insert a comma before the year. The purpose of section 14(3) is to state that the comma may now be omitted. And so, the *Freedom of Information Act, 1997* now becomes the *Freedom of Information Act 1997*. However, just why it was felt that a statutory provision was needed to

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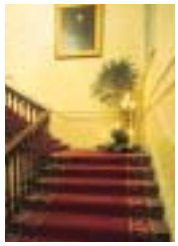

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sanction the redundancy of the comma is bemusing. Surely, far more radical and meaningful reform of the statute book is what is warranted.

Section 15 states that the date of passing of an act is the date on which the act is signed by the president. In any act, that date can be found in square brackets immediately following the long title. Section 16(1) states that an act comes into effect on the date of its passing, unless it contains a commencement provision, in which case, in accordance with section 16(2), it commences at the beginning of the day upon which it is stated to commence. Section 17 applies to acts that do not commence upon their passing. Its purpose is to enable secondary legislation to be made and other preparatory measures to be implemented, even before the act actually comes into force.

Section 18 sets out ten rules of construction applicable to all acts and statutory instruments, such as: a word expressing the singular can be read as expressing the plural, a word expressing the masculine can be read as also expressing the feminine, and the word 'person' includes a body corporate as well as a natural person. It also expresses the rule that, where a period of time such as a 14-day statutory appeal period is concerned, that period is inclusive of the commencement and end dates mentioned.

Section 19 provides that words used in a statutory instrument have the same meaning as they do in the act under which the statutory instrument was made. This means that it is not necessary to define words used in a statutory instrument, if those words have already been defined in the parent act. Section 20 is a new provision and applies to the definition or interpretation provisions in an act or statutory instrument. It states that unless the contrary intention appears, where an enactment contains interpretation provisions, those definitions apply to the enactment itself. It also states that where, for example, a piece of secondary legislation defines a word, that definition is deemed to apply to the act under which that piece of secondary legislation is made.

### High definition

Section 21 relates to the schedule, which defines terms that are commonly used throughout legislation. Some terms have been assigned definitions that might not accord with the ordinary or expected meaning of the terms. For this reason, it can be helpful to be familiar with the terms defined in parts 1 and 2 of the schedule. Section 21(1) states that the words defined in part 1 of the schedule apply to acts and statutory instruments. Part 1 of the schedule defines 31 terms and is largely similar to the schedule to the 1937 act. It defines terms such as land, week, writing and year. Section 21(2) states that the words defined in part 2 of the schedule apply to acts and statutory instruments that are enacted or made after 1 January 2006. Part 2 of the schedule contains eight new definitions.

Section 22 deals with the exercise of legislative powers. Section 22(1) provides that a power contained in an enactment does not expire once it is first utilised. Section 22(2) states that a power conferred on an office-holder may be exercised by the person who occupies that office for the time being. Section 22(3) provides that the power to make a statutory instrument includes the power to amend or revoke that statutory instrument. Section 23(1) is similar to section 22, but it relates to the performance of duties.

## LEADING BY EXAMPLE

Section 11 is one of the more significant new provisions and is designed to give effect to one of the recommendations of the Law Reform Commission. It provides a legislative basis for the use of worked examples in legislation. Formulaic examples should prove to be particularly helpful in tax and other finance legislation.

Precedent forms are often provided in the schedule to a piece of secondary legislation. Section 12, which is new, provides that where these forms are used and there are trivial deviations from the form set out in the legislation, such trivial deviations cannot be regarded as invalidating the form. This provision would apply, for example, to the forms that are set out in the District Court rules.

***"Just why it was felt that a statutory provision was needed to sanction the redundancy of the comma is bemusing"***

### Return to sender

Section 24 states that where an enactment confers a new jurisdiction on the courts, the body with responsibility for making rules for that court automatically has the power to make rules in respect of the newly-conferred jurisdiction. Section 25 addresses the rule that governs service by post. It provides that where legislation requires a person to 'serve', 'give', 'deliver' or 'send' a document, that requirement may be satisfied by sending that document by ordinary post.

Section 26(1) is designed to ensure that where an enactment is repealed and replaced by another, the repealed enactment continues in force until the replacement enactment is in place. The purpose of section 26(2) is to ensure that where an enactment is repealed and re-enacted, that appointments made, security given, proceedings taken, statutory instruments made, and so on, shall continue as if they came into being under the new enactment.

Section 27 explains the effect of a repeal. Section 27(1) states that where an enactment is repealed, its repeal does not revive anything that was not in force at the time of the repeal, nor does it affect any right acquired or penalty imposed under the repealed enactment. In accordance with section 27(2), where an enactment is repealed, legal proceedings relating to a right, obligation or liability, and so on, may be instituted or continued as if that enactment had not been repealed. G

*Brian Hunt is a consultant with Mason Hayes & Curran.*

# Another TIME,

**Continuing with our celebration of 100 volumes of the *Law Society Gazette*, this month Mark McDermott examines the contents of its pages, covering the years 1910-1919**

The decade 1910-1919 proved to be one of the most violent in the world's history. The Great War of 1914-18 left nobody untouched – including Irish solicitors and apprentices, a good number of whom left to fight in the war, several giving their lives for the sake of freedom in Europe. Those who stayed at home experienced other momentous political change. Royalist sentiment is deeply evident in the *Gazette's* reports on the death of King Edward VII and the coronation of George V, while the Easter Rising provides an opportunity for the Council to reassure the king of its "continued loyalty". However, the Society decried the "proposed exclusion" of the Six Counties in the *Government of Ireland Act*. It was, without doubt, another time, another place.

### Death of King Edward VII

In vol 4, no 2 (June 1910), the *Gazette* gave over an entire page to the death of King Edward VII (p117). It ran as follows:

"A Special Meeting of the Council was held upon Monday, the 9th May. The President [Richard A Macnamara] stated that owing to the death of His Majesty the King he had summoned the Council so that they might give expression to their feelings of regret. They all deplored the death of the King, which took place with such startling suddenness. He was a great and beloved Monarch, a great Diplomatist, and his voice was ever raised in the cause of peace. The sympathy of the Council would go out at this time to Her Majesty Queen Alexandra and to His Majesty King George, who, though he had gained a crown, had lost a loving father."

A number of telegrams were sent to the private secretary at Buckingham Palace on behalf of the members of the Incorporated Law Society of Ireland, expressing their most respectful sympathy on the king's bereavement, and "humbly to assure His Majesty of their feelings of loyalty and devotion to His Majesty's Throne and person".

Queen Alexandra was assured of "their most profound sympathy in her bereavement, and of their deep sorrow for the calamity which has befallen the nation".

In the July issue of 1911, under the heading 'Coronation', it was reported: "The President [Frederick W Meredith] informed the Council that, in obedience to the King's command, he had attended in Westminster Abbey at the Coronation of Their Majesties King George V and Queen Mary, upon June 22nd" (p24).

Matters of a more trivial nature were dealt with in March 1911, when the provision of a smoking room received the 'thumbs up'. "It was resolved that the room opening off the gallery of the Society's large Hall, formerly used as a Library, should be furnished as a Smoking Room for the use of members of the Society" (p197).

During his presentation of the annual report in the December 1911 issue, the president remarked on the "stirring events" that had taken place that year: "We had the visit of Their Majesties to this country, where they were received with enthusiasm by all classes. Your President, and several members of the Council, acted as Vice-Presidents or members of the Council of the Citizens' Reception Committee, which did so much to make Their Majesties visit a success" (p58).

Taking a less royalist view, on 6 May the Solicitors' Apprentices' Debating Society organised a debate titled: 'That Home Rule is the true solution of the Irish question' (April 1912, p128).

### Women and the law

The *Gazette* covered a very interesting test case in its February 1913 issue (p92). Headlined 'A High Court Test Case', it stated:

"*The Times* of 25th January, 1913, states they have received the following statement from Messrs. Withers, Bensons, Birkett, and Davies, Solicitors, of Arundel Street, with reference to the claim of four women to enter the profession of Solicitors:—

Four ladies applied to the Law Society for permission to attend the preliminary examination to enable them to enter the profession of Solicitors. These applications have been refused by the Law Society on the ground of the sex of the applicants. The four ladies

1916: Children pick over ruins in Dublin following the Easter Rising against British rule. The Rising began on 24 April. While it ultimately failed, it proved to be a major propaganda victory in the struggle for independence

# another PLACE

have accordingly commenced four separate actions against the Law Society in the Chancery Division of the High Court claiming that they are entitled to be examined and to enter the profession of Solicitors."

The four women were Miss Gwyneth Marjorie Bebb, Miss Karin Costello, Miss Maud Isabel Ingram and Miss Lucy Frances Nettlefold.

**The Great War**

In 1913, the Society boasted 884 members out of 1,587 solicitors on the Roll. In his half-yearly general meeting speech (reported in the December 1914 issue), Society President Henry J Synnott, in moving the adoption of the annual report, made considerable reference to the outbreak of the Great War:

"I am afraid our domestic concerns have been almost completely overshadowed by the great war, which is the first subject referred to in the Annual Report. The Society has reason to be proud of the attitude of the Profession in reference to the war, and of the appreciation shown by its members, in more ways than one, of the gravity of the issues involved for all of us in that great struggle."

The council decided that year not to hold its customary official dinner, instead sending an 'entertainment' amount of £127 2s 0d to Sir Lambert Ormsby "to assist in the provision of Irish Motor Ambulances for our wounded soldiers".

"Better far, however, than these contributions to patriotic funds is the fact that since the outbreak of war no fewer than 40 young Irish Solicitors and 33 Solicitors' Apprentices have joined His Majesty's Forces—a total of 73, the majority of whom have obtained commissions in Lord Kitchener's new Armies" (December, 1914, p56).

A list of the names of many of those who left to take an active role in the war appeared in the November 1914 issue of the *Gazette* (p48ff) and was followed by another in the December issue (p65ff), and still more as the war progressed. Interestingly,

# PRESIDENT'S ADDRESS, 17 MAY 1915

"The president [Arthur E Bradley], addressing the meeting, said that since their last Half-yearly meeting in November the war had continued to dominate the affairs of the Empire both at home and abroad. Our sailors and soldiers were engaged in the greatest war the world had ever known. They were fighting for the integrity and honour of the Empire, and for a cause that they believed must ultimately be victorious (hear, hear) [sic]. They joined with their fellow-countrymen in condemning the atrocities which had been committed from time to time by the enemy since the commencement of the war, culminating in the sinking of the Lusitania, when over 1,000 innocent lives were lost, including many women and children. There were now 55 Irish Solicitors and 46 apprentices to Irish Solicitors serving with His Majesty's forces (hear, hear), and he regretted to say that two of their members had fallen in the field of battle in France doing their duty gallantly, he was proud to say. He referred to Capt. Robert Orr [3rd Battallion, Somersetshire Light Infantry] and Lieut. Brendan Fottrell [3rd Battallion, Royal Irish Regiment], and their sympathy went out to their relatives" (June 1915, pp11-12).


*(By November, six more had been killed in action – three solicitors and three apprentices – all in the Dardanelles.)*

***"The Council has no politics, so you need not be afraid of my saying anything injudicious"***

this issue reports that time spent in service with the naval or military forces would "be allowed to be counted as part of the period of service of the apprentice under his indentures of apprenticeship", so long as the service had been approved by the apprentice's master.

### Insurrection

The Easter Rising was discussed at the council meeting on 10 May 1916, taking an anti-nationalist stance (looking back through a modern lens):

"At the meeting of the Council held upon the 10th May, the following resolution was adopted, and copies directed to be sent to His Majesty the King, the Prime Minister, the Chancellor of the Exchequer, and the Lord Lieutenant: –

Resolved – 'The Council of the Incorporated Law Society of Ireland, at their first meeting since the Sinn Fein insurrection in Ireland, hereby tender to His Gracious Majesty the King the assurance of their continued loyalty to his person and Throne. The Council express their abhorrence and condemnation of the scenes of outrage and destruction which have taken place, and urge upon His Majesty's Government the justice and necessity of providing promptly the funds necessary for restoring the buildings and property destroyed, and for compensating adequately all loyal subjects who have suffered by reason of the outbreak" (*Gazette*, May 1916, p4).

Discussing the *Government of Ireland Act* at the half-yearly general meeting on 27 November 1916, the president, Charles St George Orpen, opined: "The Council has no politics, so you need not be afraid of my saying anything injudicious. The Council only considered the Act in connection with the proposed exclusion of the six Northern Counties, and as to how such exclusion would affect Irish Solicitors, and the powers of the Incorporated Law Society. The Report tells you of my visit to London, and my interview with Sir Edward Carson and Mr John Redmond. At present—*just at present, at any rate*—proposed exclusion, and such like, have become a 'wash out'. But these things may come up again. There is always something new coming up in Ireland" (December 1916, p42).

### War is over

At last, during the half-yearly general meeting on 26 November 1918, the president, William V Seddall, could speak in the past tense of "the shadow of war which hung over the country at the period of the previous meeting of the Society":

"He was sure they would agree with him that those members of the profession who had joined the Army or Navy would have a hearty reception on their return, and that the members of the Society would endorse the action of the Council in giving to those apprentices who had risked their lives every facility to enable them to become honourable and honoured members of the profession.

"Steps should be taken to perpetuate in a suitable manner the memory of those members of their profession and apprentices who had laid down their lives for their King and country," he concluded. G

1919: The first aircraft to cross the Atlantic, a Vickers-Vimy biplane, was piloted by Captain John Alcock and Arthur Whitten Brown. It crash-landed in a bog outside Clifden, Co Galway, on 15 June, after a 3,040km journey from Newfoundland, Canada

practice doctor

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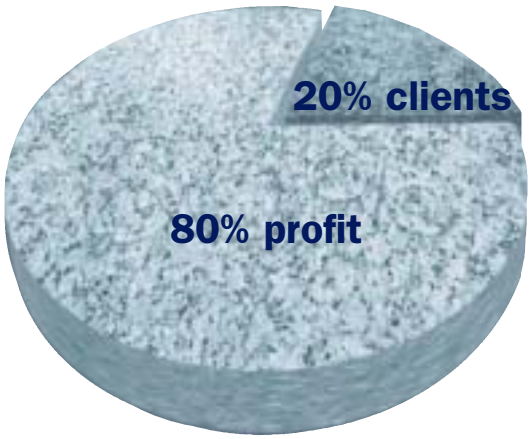
# Minding your own BUSINESS

Adrienne Regan: "It's time to listen to your clients"

According to the Professional Marketing Forum – the worldwide body for professional services marketing – 2006 is the year for client care. The increased competition we see today, coupled with the bigger opportunities appearing as a result of economic growth, have created greater awareness among clients about service expectations and more aggression within the legal profession. Now, more than ever, it's time to talk and listen to your clients.

Don't be afraid to ask them what they think of the service you deliver. Talking regularly to clients is common sense, but not common practice. A lot of practitioners see this as a taboo subject. The reality is that clients want the opportunity to speak. And they can be a gold mine of information.

Some practices that currently invest in client feedback can manage this in-house, with nominated partners conducting the interviews. However, this route can be subjective and clients are not always likely to be completely open, sometimes feeling that certain matters they would like to discuss might be considered trivial. Independent feedback interviews mean that clients are both curious and willing to give constructive and honest feedback, which maximises your chances of keeping your clients' business.




THE PARETO PRINCIPLE

We know that, for most professional service firms, the 'Pareto Principle' applies: the top 20% of clients provide 80% of the profit. So seeking the views of this group is essential. The consequences of losing these clients are too great.

**Clear benchmark**

The effect of asking clients for feedback ensures that the firm has a clear benchmark to make informed business decisions about its future.

Of all the marketing tools available to you, independent feedback always gives back a high return on your investment, simply because you are being proactive in anticipating the crucial elements that could bolster or save your relationship.

What your clients say to you is more valuable than any other opinions, thoughts or conjectures you might hear from friends, foes or textbooks.

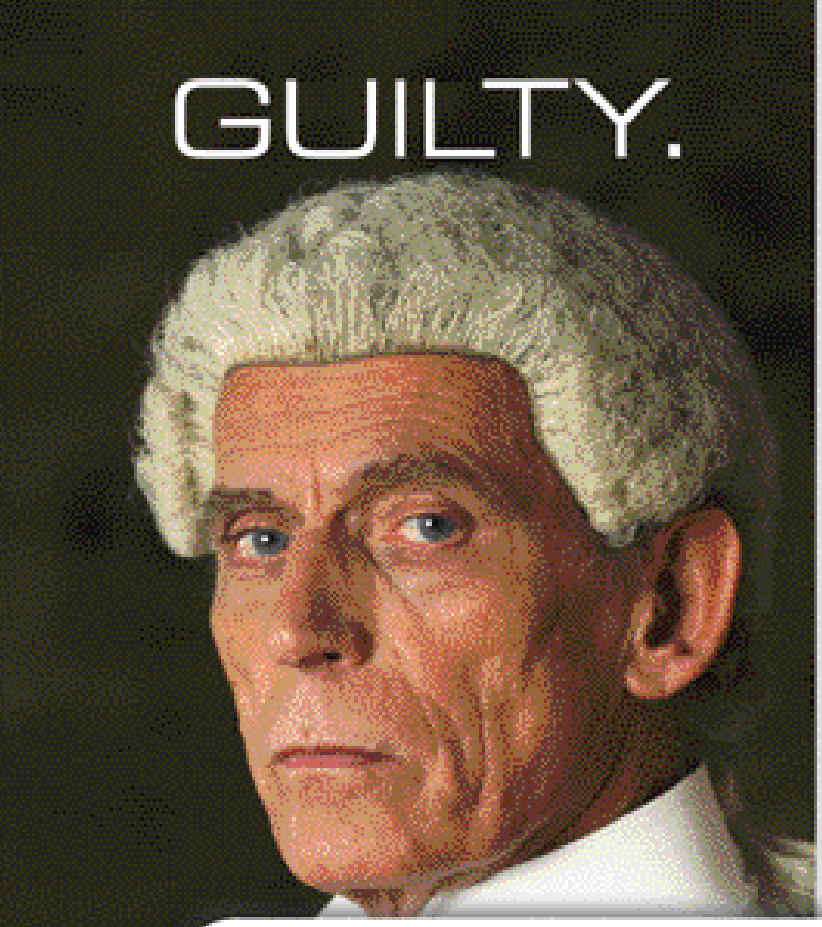
Although some firms remain ambivalent about the merits of gaining client feedback, a vital part of improving the service to clients is listening to what they want and have to say. G

*Adrienne Regan is a partner in Regan Lowey, which offers practical marketing advice to professional advisors.*

## QUALITY FEEDBACK

Standard feedback, written questionnaires and client-care policies have their place, but the best way to get feedback in ways that give you meaningful information is through face-to-face interviews. There are many tangible benefits to independent research including:

- Communicating the extent of your firm's expertise,
- Finding out about new business opportunities,
- Discovering problems or concerns,
- Communicating the fact that you value the relationship the client has with your practice,
- Understanding why clients choose your firm and other professional advisors they use,
- Building empathy and goodwill, and
- Finding out about their personal interests (just in case they might not appreciate an invitation to the Ryder Cup!).




- Of still manually recording the details of phone conversations with clients?
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# CALCUTTA RUN 2006

## Saturday 27 May • Fun run/walk at Blackhall Place

Be one of the 1,500 solicitors, staff and their friends to help raise €250k for **Goal,s Orphanage in Calcutta and Fr Peter McVerry,s** projects for homeless boys in Dublin.

## IT'S NEVER TOO LATE TO START

Here is the next four weeks' training programme (target 80 min)

**WEEK 5, 13 MARCH**
1. Walk 30 min, jog 5 min
2. Walk 30 min
3. Jog 5-7 min, walk 30 min, jog 7-10min

**WEEK 6, 20 MARCH**
1. Walk 35 min, jog 5-7 min, walk 10 min
2. Jog 5-7 min, walk 35 min
3. Jog 10 min, walk 30 min, jog 10 min

**WEEK 7, 27 MARCH**
1. Jog 7 min, walk 35 min, jog 10 min
2. Jog 7 min, walk 35 min, jog 7 min
3. Walk 20 min, jog 10 min, walk 10 min

**WEEK 8, 3 APRIL**
1. Jog 10 min, walk 30 min, jog 7 min
2. Jog 10 min, walk 20 min, jog 10 min, walk 10 min
3. Jog 10-15 min, walk 30 min, jog 7 min

Always make sure you are warmed up before you jog!

If you have not started already, you can still start at this point.
For previous training programme or a sponsorship card see our website **www.calcuttarun.com**

**Glass act**

Members of the Waterford Law Society met recently in the Woodlands Hotel, Waterford. *(Front, l to r)*: Claire Ryan, Valerie Farrell, Rosie O'Flynn, Neil Breheny (President, Waterford Law Society), Michael Irvine (President, Law Society of Ireland), Ken Murphy (Director General, Law Society of Ireland), Helen Bowe O'Brien, Bernadette Cahill, Joyce Cunningham and Eva Lawlor. *(Standing, l to r)*: Niall King, Paddy Gordon, John Goff Snr, Gerard O'Herlihy, Jim Hally, Tom Murran, Derry O'Carroll, Pat Aherne, Emmett Halley, Gerard McCullagh, Nicholas Walsh, Myles O'Connor and Gerry Halley

**Girls just wanna have fun**

Lining out for the Law Society's women's Gaelic football team are: *(back, l to r)* Pádraig Mawe (mentor), Siobhán McCarthy, Claire McGrath, Deirdre Lennon, Ciara Cahill (vice-captain), Aoife Walsh, Theresa Murphy, Deirdre McCarthy, Máiréad Cronin, Orlaith Ní Bhróin, Aishling Meehan, Catherine Boner, Ross Phillips (mentor); *(front, l to r)* Fiona O'Keefe, Carol Kelly (captain), Trina Galvin, Olive Heneghan, Mary Blake, Elaine McCarthy and Lynne Martin


**New offices for McDowell Purcell**

The Minister for Justice, Equality and Law Reform, Michael McDowell, officially opened the new offices of McDowell Purcell Partnership at the Capel Building in Mary's Abbey, Dublin, on Thursday 24 November. The firm was originally established by the minister's grandfather, John McDowell, in 1898. *(L to r)*: Thomas O'Malley, Michael McDowell, JP McDowell and Breen Purcell

PIC: NICK BRADSHAW/JASON CLARKE PHOTOGRAPHY

**Taking it handy**

The winner of the MRCS Canon Maurice Handy Award 2006, for contributions to understanding marriage and relationships, is Geoffrey Shannon, Law School Deputy Director at Blackhall Place. Geoffrey was presented with his award by MRCS Chief Executive Elizabeth Everett and Dennis Handy

OBITUARY

# The Hon Miss Justice Mella Carroll 6 March 1934 – 15 January 2006

The recent death of Mella Carroll, shortly after her retirement as a High Court judge, brought great grief and a deep sense of loss to a remarkable number of almost infinite variety.

Mella was called to the Bar, as a Brooke Scholar, in 1957. Her choice of the Bar as a career was probably influenced by the fact that her father (who was then a garda chief superintendent, and eventually retired from the force as its commissioner) had in 1932 been called to the Bar but, clearly influenced by a strong sense of duty to the still emerging police force, never practised.

Mella very successfully practised at the Bar for 23 years, taking silk in 1976. The esteem in which she was held by her colleagues is reflected by the fact that, in 1979, she was elected as chairman of the Bar Council, the first lady to hold that post. In October 1980, she was appointed as the first lady High Court judge and commenced a remarkably successful, and for good reasons, popular career that lasted for 25 years.

### Compelling sense of justice

First and foremost, during her career on the Bench, she was driven by a sincere and compelling sense of justice, which she applied with the highest intelligence and a deep compassion to every task she undertook.

Although she had concentrated on chancery work at the Bar, she undertook on appointment all the varied legal issues that were required of a High Court judge, including criminal trials, with complete success.

For 15 years of her term as a High Court judge, Mella acted each year for a period as a judge of the Administrative Tribunal of the International Labour Organisation (ILO) in Geneva, Switzerland.

Her career as a judge was not only regarded as particularly valuable here in Ireland, but also received a strong recognition abroad. Her work in Geneva, together with her election as president of the International Association of Women Judges and her discharge of that office, added significantly to the international prestige of the Irish judiciary.

### Major contribution

Her interest in, and capacity to relate to, younger people was well reflected in the success she made of her appointment as chancellor of Dublin City University. In addition, she made a major contribution to the development of Irish society by her work on the Nursing Commission and on the Commission on the Status of Women. All these achievements were infused with (and almost, in a sense, dwarfed by) a wonderful and endearing personality.

Mella Carroll was an immensely kind and caring person with a splendid sense of humour and an infinite capacity for making and keeping friends. As many people will remember, meeting her for any length of time and for any purpose was guaranteed to lighten the darkest day.

Her interests outside of the law and her close-knit family, to whom she was devoted, included travel, music (especially opera) and the arts. They brought her into contact with many people of varied types and occupations who, together with those of us who knew her from the legal professions, now so deeply mourn her loss.

May she rest in peace. G

***TAF***

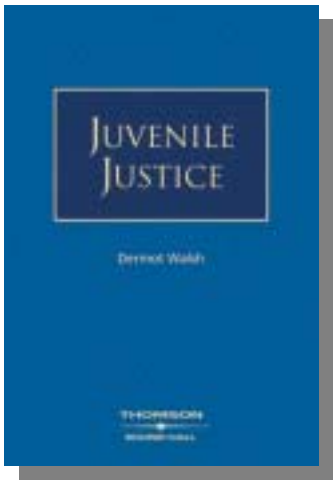
books

# Juvenile Justice

**Dermot Walsh.** Thomson Round Hall (2005), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-402-0. Price: €296 (hardback).

In the preface to this work, Professor Dermot Walsh refers to "the challenge of tackling youth crime in a manner which is sensitive to the circumstances of the youth, while at the same time satisfying the law-and-order demands of adult society". He further adds that "subjecting young offenders to the full rigours of the criminal law and the criminal justice system is unjust, inappropriate and counter-productive. They do not have the maturity, foresight and experience of life to appreciate fully the harm caused by their offending, both to themselves and to the community around them." He says that "it would seem appropriate, therefore, to have interventions designed to divert young offenders away from an offending lifestyle and to help them appreciate that crime is neither normal nor acceptable".

The author (professor of law at the University of Limerick), in association with the Department of Justice, has produced a most valuable work, covering all aspects of trial and pre-trial procedures affecting juveniles. A work of this magnitude has long been awaited and it will be of enormous assistance to all people involved in the area of juvenile crime, including practitioners, judges, gardaí, the probation service, social workers, students and academics.




It includes an in-depth examination of the age of criminal liability, powers of An Garda Síochána, the Juvenile Diversion Programme and trial procedure, together with the full range of detention facilities and non-custodial options under the *Children Act 1908* and the *Children Act 2001*. The book is divided into three parts:

1) A comprehensive account of the juvenile justice system. This expansive section takes us through the system step by step, from the moment a young offender first comes in contact with it, right through to the point where the order or conditions imposed are satisfied.
2) Juvenile crime data. This section gives valuable insights into juvenile offending and the juvenile justice system. It contains a unique analysis of publicly-available data on youth crime and youth justice sanctions. However, Professor Walsh, in referring to the quality of official crime statistics, says: "They are totally and absolutely riddled with inaccuracies. Apart from the fact that they do not cater adequately for the substantial volume of unreported crime, the manner in which they are recorded, compiled and presented renders it very difficult to extract any meaningful or reliable trends from them." Recently it has been announced that crime statistics face a major overhaul under a new system being planned by the Central Statistics Office. The function was removed from the gardaí following ongoing concerns over the recording, analysis and presentation of crime statistics. The CSO is considering recasting Irish crime statistics along the lines of British or Australian models.
3) A summary of available literature. The final part is a comprehensive bibliography of published works dealing with youth crime and youth justice in Ireland, making it quicker and easier to identify relevant materials. This is a very valuable and most important part of the book. It sets out full details of official reports and publications in relation to juvenile crime, young offenders, and so on. Also listed is non-governmental research into juvenile crime and justice in Ireland, together with extensive reference to legal commentary on juvenile justice. This section clearly shows very serious failures of our governments to adequately and properly research and resource this area. There is a very close link between child poverty and juvenile justice.

For over 90 years, the law in relation to young offenders was governed by the *Children Act 1908*. Recently, the Oireachtas enacted the *Children Act 2001*. This book deals fully with the provisions of both the 1908 and the 2001 acts, as there is currently a transitional period – during which the 1908 act is being gradually phased out in favour of the 2001 act. Professor Walsh deals with this in a very clear and easy-to-follow manner. The transitional process is still ongoing.

*Juvenile Justice* is a most valuable work that brings together material from many different sources that is frequently difficult to find (for example, it is extremely difficult to locate the 1908 *Children Act*). This is a most important and relevant book and is the first such work in this jurisdiction dealing with juvenile justice. It must be warmly welcomed. G

*Pól Ó Murchú is a solicitor.*

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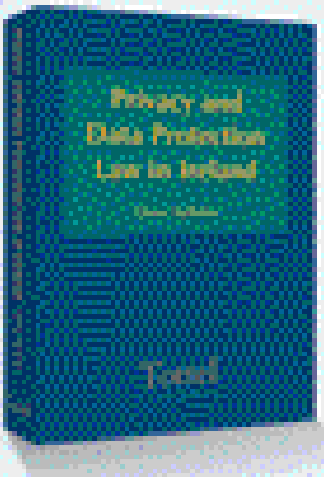


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Tottel publishing

# A Memoir

**Terry de Valera.** Currach Press, 55a Spruce Avenue, Stillorgan Industrial Estate, Blackrock, Co Dublin. ISBN: 1-85607-921-X. Price: €14.99 (paperback).

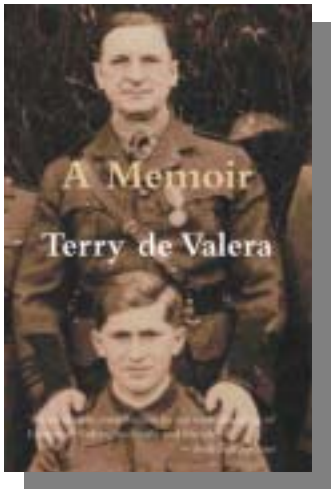
Nowadays, most books written by solicitors are erudite tomes on technical legal subjects and, as such, are worthy of review in the *Gazette*. On this occasion, while the author was in his time an eminent solicitor, this book does not address a legal topic – rather, it is in the nature of an autobiography. Its interest to *Gazette* readers, however, should lie firstly in the fact that Terry de Valera is the youngest son of Eamon de Valera and, secondly, in the fact that the author was between 1969 and 1992 one of the taxing masters of the High Court and as such was, particularly for litigation practitioners during that period, a household name.

The author, who was born on 4 June 1922 (named after Terence MacSwiney, who in 1920 had died on hunger strike in Brixton Prison), ranges far and wide in conveying not only his personal recollections as a member of one of *the* families of 20th century Ireland but also in conveying his mother Sinéad's written record of earlier times. Much has been written about Eamon de Valera as soldier, advocate for national independence, politician and statesman, as well as the publicly-perceived, somewhat austere figure, who in his time has been the subject of both adulation and opprobrium. But this book is the most intimate insight into Dev as a husband and a father and, for that reason, is historically of value in addressing that aspect of his persona.

Throughout the book, Terry does not hold back in expressing his sometimes singular point of view, negative as well as positive, on many and varied people and events. He does manifest a filial sense of duty to protect his father's reputation and memory, but in a style that tends to be more in sorrow than in anger, and sometimes with distinctive literary aplomb.

He does not unduly linger on his term as a taxing master, but what he does say is at times illuminating of both the man and the office. Of particular contemporary interest to solicitors is the author's allusion to being "disturbed" towards the latter part of his career as taxing master:

"Unlike my days in practice, it became the norm to charge not what the case was worth, what was fair and reasonable and the true value of the work and services rendered, but rather what the case could bear in financial terms. Sadly, I noted that attitudes were changing all round, applying even to newly-appointed judges who took a decidedly more liberal view than their predecessors. It would be frightening if a position should arise (and it looks like it is fast approaching) whereby only the very poor




man or the very rich one … could ensure the enforcement of their rights. The law should be for the benefit of all citizens. It should not be allowed to become a means, as my father once remarked, 'for the benefit of rapacious lawyers'."

This book is to be recommended because of who the author is and the family he belongs to, and because it is a well-written commentary. It reflects on a life that started in the same year as the Treaty was marginally approved by Dáil Éireann (64 to 57) on 7 January 1922 and in the same month as the Civil War started (28 June 1922), and is still going strong. It has been a period of extraordinary change, political, social and cultural, and reveals how one man, close to the action, perceived himself throughout that 80-year transition to where we all find ourselves today.

On a more personal note, I would like to record the wider Michael Collins family's appreciation of the part played by Terry de Valera and his daughter Síle, TD, in ensuring the success of the celebration of the centenary of the birth of Michael Collins held in Cork in 1990. In organising the event, Liam Collins, solicitor (Michael's nephew, who died in 1997), wished it to be a way of 'handing Collins back' to all Irish people of whatever political or religious persuasion so that he would no longer be perceived only in partisan political terms. To achieve that, Liam wished that then president Patrick Hillery, as well as all shades of representatives of church and state and the judiciary should be present. Liam and Terry had been at school together and were subsequently apprentices at the same time.

When contacted, Terry assured Liam that Síle would be delighted to accept an invitation to attend. When the fact of Síle's acceptance became public, all potentially 'closed doors' opened and on 14 October 1990, the president, the then chief justice, and represent-atives of all the political parties and churches attended. G

*Michael V O'Mahony is a consultant with McCann Fitzgerald.*

# 75 Years of the UCC Law Society

**Therese Lyne (ed).** Nonsuch Publishing (2005), 73 Lower Leeson Street, Dublin 2. ISBN: 1-84588-513-9. Price: €18.99.

In her preface to this charming volume, the editor expresses the hope that the book will pay the UCC Law Society a well-deserved tribute. It certainly achieves that.

This is a beautifully written, meticulously researched and most entertaining view of the various activities of the Law Soc from the 1930s to the present day. It is accompanied by wonderful and often humorous photos, many supplied by the well-known social photographer and judge, Harvey Kenny, who was a member of the society in the swinging '60s. During this era, we are told that a motion of

censure was passed on the so-called 'dinosaurs' – the administrators of the college – for daring to criticise the excesses of the then infamous Law Ball. Sadly, the rigours of life in the law have put paid to many a handsome face beaming from these fascinating pages, and a worthwhile way to pass the tedious hours waiting in the round hall or the draughty corridors of rural courthouses would be to spot the rather battered countenances of current pillars of legal and public life from these engaging, fresh-faced youths.

This book resonates with tales of well-known and often colourful characters of Irish legal, academic and public life, such as Gerald Goldberg, Ralph Sutton SC, Professor Edward Ryan and Jack Lynch, to name but a few. It is most interesting to note how many leading lawyers, judges, academics, lord mayors, TDs, ministers and even a former taoiseach started their careers debating in the UCC Law Soc.

Divided into decades, this book gives a concise and very readable view of the social history of the time, detailing the debates on subjects from the mischievousness of trade unions to gay rights over 35 years ago. The subjects of the debates and the calibre of the speakers show the central role played by law students as the articulators of the controversial issues of their time. It is not surprising that so many of its members went on to make such a contribution to public life in Ireland. Such was the esteem in which the Law Soc was held that, in the 1950s, the taoiseach of the day, John A Costello, addressed the society as a guest speaker.

This book contains a wealth of research and record that ought to ensure its place in every legal library in Ireland. For anyone with a connection to UCC or an interest in social history and the evolution of public debate in this country, read this book. G

*Isabelle Sutton is a solicitor with the Cork law firm Dillon Mullins & Co.*

# Murdoch's Dictionary of Irish Law, 4th edition

**Henry Murdoch.** Tottel Publishing (2004), Fitzwilliam Business Centre, 26 Upper Pembroke St, Dublin 2. ISBN: 1-854-75362-2. Price: €110 (hardback).

Whether you need a definition of a legal term or its legal meaning, or an introduction to an area of law that you are not particularly familiar with, *Murdoch's Dictionary of Irish Law*, now in its fourth edition, is an excellent research tool.

Now three times the size of the 1988 first edition, *Murdoch* has established itself as the definitive Irish legal dictionary. Actually, the title 'dictionary' doesn't really convey the scope and depth of its coverage. It gives definitions of words and phrases, including Latin phrases, and, in most cases, the legal sources of such definitions, whether statutory or judicial, as well as a brief introduction to the relevant law.

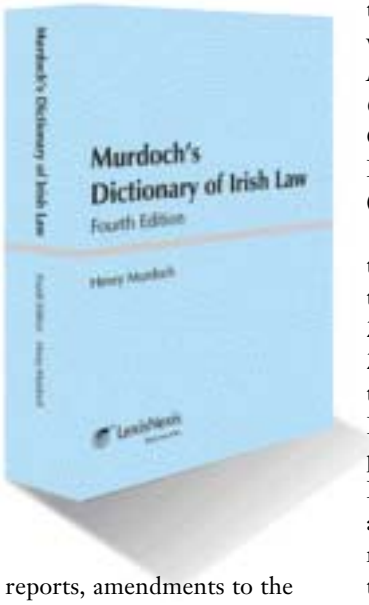
There are entries for law-related organisations (both national and international), Irish statutory bodies, and review groups such as the Company Law Review Group and the review of the courts system. There are entries for particular services, such as the Land Registry electronic access service.

Reflecting recent developments and new legislation, hundreds of new entries have been added to the fourth edition. Newcomers include 'case management conference', 'commercial proceedings', 'eGovernment', 'emissions trading', and 'European arrest warrant'.

The entry under 'dictionary, use of' states that a dictionary may be used in court to ascertain the meaning of words to which no particular legal interpretation attaches. A number of cases are listed that refer to the use of a dictionary, including this dictionary, in court.

Many entries run to half a page and longer and there are extensive cross-references to other related headings. Very usefully, entries also point to further information – cases, textbooks, government reports, journal articles and websites.

The appendices include lists of law report abbreviations, Law Reform Commission




reports, amendments to the constitution (including defeated amendments) and bibliographies of books on Irish and UK law referred to in the dictionary entries.

This is an extremely useful reference work that is constantly consulted in the library. Every solicitor would find it useful to have a copy in his/her office.

While I have been asked to review the hard copy version of *Murdoch*, I should point out that there is also an electronic version of the dictionary, *Murdoch's Irish Legal Companion*, available on both CD-ROM and online from Lendac Data Systems Ltd (http://milcnet.lendac.ie).

In addition to the dictionary, this product also has the full text of Irish statutes up to 2004, statutory instruments to 2003 plus certain later SIs, the text of the constitution, Law Reform Commission publications and some European and other materials, and there are links from references in the dictionary to the full text of these materials. It allows for cross-referencing between related terms in the dictionary and for access to websites given in the entries. For further information and pricing, contact Lendac Data Systems Ltd, Unit 6, Trinity Enterprise Centre, Pearse Street, Dublin 2; tel: 01 677 6133, email: milc@lendac.ie; website: www.lendac.ie. G

*Margaret Byrne is the Law Society's librarian.*

# council report

## Report of Law Society Council meeting held on 13 January 2006

**Motion: *Solicitors' Accounts (Amendment) Regulations***

*"That this Council approves the* Solicitors' Accounts (Amendment) Regulations 2006 *and that the regulations of the Council be amended to delegate the implementation of the* Solicitors' Accounts (Amendment) Regulations 2006 *to the Regulation of Practice Committee without reference to the Council."*

**Proposed:** James B McCourt
**Seconded:** John O'Connor

The Council approved the *Solicitors' Accounts (Amendment) Regulations 2006*, which gave effect to a recommendation of the Regulatory Review Task Force to provide for the monitoring of compliance with section 68 as part of a standard investigation into compliance with the *Solicitors' Accounts Regulations*.

The Council noted that the Regulation of Practice Committee already had the power to institute investigations to monitor compliance with section 68 and that the effect of the regulations was to combine pre-existing functions so that, where there previously had been two separate investigations, there would now be only one.

**Motion: Office of Public Guardian**

*"That this Council supports the Law Reform Commission's recommendations in recommending the establishment of a new independent Office of Public Guardian to promote and protect the interests of vulnerable adults."*

**Proposed:** John O'Connor
**Seconded:** John Costello

The Council noted, with approval, extracts from the Law Reform Commission's consultation paper entitled *Vulnerable Adults and the Law: Capacity* and endorsed the commission's recommendation for the establishment of the Office of Public Guardian.

**Legal services ombudsman**

The Council noted the announcement made by the minister for justice, equality and law reform that he intended to appoint a legal services ombudsman, who would perform the functions of the current independent adjudicator, but in relation to both branches of the profession and with an additional function to monitor entry to the profession on an annual basis to ensure that entry was not determined by the profession's financial interests but by society's needs. The Council indicated its support for the proposal, subject to sight of the detail of the legislation.

**Appointment of Law Society representatives**

The Council approved the appointment of Helene Coffey as the Society's representative on the Irish Auditing and Accounting Supervisory Board and the appointment of John Costello as the Society's representative on the Elder Abuse National Implementation Group established by the Department of Health and Children.

**Government working group review of legal costs**

Gerard Griffin outlined the principal recommendations of the report of the working group reviewing legal costs. In particular, he noted that the Society's key submissions on the issues of 'access to justice' and 'no foal, no fee' had been accepted by the working group. The group had also accepted that "the costs should follow the event".

Mr Griffin noted that the group had rejected the concept of setting scales of fees having mandatory effect. Instead, the group had recommended the establishment of "a legal costs regulatory body to formulate guidelines setting out the amounts of legal costs that normally can be expected to be recovered in respect of particular types of proceedings or steps within proceedings". Such costs guidelines would be based on "an assessment of the amount and nature of work required to be done in such a case", including such elements as "the appropriate hours expended by the various persons to be remunerated, the complexity of the proceedings and the stages therein, and the level of the court in which the case is heard". The onus would be on a party seeking costs higher than those set out in the guidelines to show why, in the particular circumstances of the case, the higher amount claimed should be paid.

Significantly, the report recommended that "the body responsible for issuing guidelines be charged under statute with keeping its costs guidelines up-to-date".

The group had also recommended that "the taxation system be replaced by a new system of costs assessment carried out by a legal costs assessment office". The legal costs assessment office would operate on the basis of a written procedure, with an oral appeals process.

The Council noted that the minister had announced the appointment of an implementation group, under the chairmanship of Desmond Miller, accountant. It was agreed that the Society should act immediately to impress upon the minister the importance of including a representative of the solicitors' profession in the implementation group.

A number of Council members noted that, while the report sought to reduce the costs for those who could afford to go to litigation, it did nothing for those who could not afford to go to litigation. Paragraph 5.51 of the report timidly suggested that the government might consider doing something about legal aid. However, a negative effect of the implementation of the report would be that many individuals who had meagre financial means, but did not qualify for legal aid, would now go unrepresented. It was noted that, in England and Wales, this factor had been recognised and had been dealt with by a provision that allowed for an uplift in fees where a solicitor successfully represented a client in such circumstances. It was also noted that reviews of civil legal aid were being conducted throughout the world and new initiatives, such as drop-in centres and part-payment of fees, were being introduced. G

# practice notes

## EU *SAVINGS DIRECTIVE*

The EU *Savings Directive* imposes certain obligations on 'paying agents' (which includes solicitors), who make or secure interest payments in the course of their business for the benefit of individuals. A return must be submitted to Revenue by 31 March in each tax year in respect of relevant payments.

Practitioners are reminded that the first such return, covering the period from 1/7/05 to 31/12/05, must be submitted to Revenue by **31 March 2006**. Practitioners are urged to begin the process of collating the necessary information in early course, in order to meet the Revenue deadline. The information required includes, *inter alia*, the paying agent's name, address and tax reference number; details of the type of interest payment made and when it was paid; the amount of the interest payment and the currency it was paid in; either the account number associated with the interest payment or information identifying the asset giving rise to the interest payment, if there is no account number. (A more detailed outline of the directive is available in the 'Practice Note' section of the July 2005 issue of the *Gazette*.)

Returns can be made online via the Revenue Online Service (www.revenue.ie) or a hard-copy form of return can be obtained from the VIMA Office, Government Offices, Millennium Centre, Dundalk, Co Louth. Further information in relation to completion of returns is available from: Direct Taxes Interpretation and International Division, Stamping Building, Dublin Castle, Dublin 2; tel: 01 674 8016 or 01 674 8018.

*Taxation Committee*

## GARDA STATION LEGAL ADVICE SCHEME

The Criminal Law Committee has received a response from the Department of Justice in relation to its query regarding the number of consultations permitted under the Garda Station Legal Advice Scheme.

Three consultations are allowed over the detention period where the person is detained under section 4 of the *Criminal Justice Act 1984*, as amended.

Seven consultations over the detention period, subject to a maximum of three paid consultations in a calendar day, are allowed for persons detained under section 30 of the *Offences Against the State Act 1939*, as amended.

For persons detained under section 2 of the *Criminal Justice (Drug Trafficking) Act 1996*, as amended, 11 consultations over the detention period, subject to a maximum of three paid consultations per calendar day, are allowed.

Practitioners should note that, for the purposes of the Garda Station Legal Advice Scheme, 'consultation' is taken to include telephone consultations.

*Criminal Law Committee*

## STAMP DUTY RELIEFS

The committee recommends that solicitors obtain written instructions from clients confirming their entitlement to first-time buyer's relief and owner occupier relief, and also confirmation from the client that the client understands the implications of receiving rent from the property within the first five years of ownership, other than under a permitted rent-a-room scheme, or failing to have it occupied as a main residence. The simple questionnaire (see below) may be considered by practitioners for use and retention on the file. It is not intended as a substitute for comprehensive advice.

*Taxation Committee*

### STAMP DUTY ENQUIRY FORM

**(to be completed by each purchaser)**

**First-time buyer**: **Yes/No**

- Do you intend to claim first-time buyer's relief?
- Have you ever purchased or built on your own behalf a house, or do you, or have you had, an interest in a house (either in Ireland or abroad)?
- Do you, or does anyone on your behalf, intend to reside in this house as a principal private residence for a minimum of five years?
- Do you intend to charge rent within the first five years of ownership, other than under a permitted rent-a-room scheme?

**Owner occupier**:

- Do you, or does anyone on your behalf, intend to reside in this house as a principal private residence for a minimum of five years?
- Do you intend to charge rent within the first five years of ownership, other than under a permitted rent-a-room scheme?

Dated:
Signed:
Name:

## PAYMENT FOR INTERPRETERS ATTENDING AT GARDA STATIONS

Queries have recently arisen regarding the payment structure for interpreters providing services to persons detained in garda stations and the proper procedure for the processing of claims in relation to same.

The Department of Justice, Equality and Law Reform has advised that, in such circumstances, the invoice for the interpreter should be submitted along with the practitioner's own claim form under the Garda Station Legal Advice Scheme. Both will then be submitted to the finance division of the department for payment.

*Criminal Law Committee*

## NON-JURY LIST – SPECIAL CALL-OVER ON 9 MARCH TO FIX CASES FOR HEARING IN DUNDALK FROM 24 APRIL 2006

Practitioners should note that the High Court will sit at Dundalk, commencing on Monday 24 April 2006, for two weeks, to hear non-jury actions.

In any action where there is the consent of all parties, an application can be made to have the case listed for hearing at Dundalk during those two weeks.

There will be a call-over of the non-jury list (in Dublin) on 9 March 2006 where consent applications can be made to have cases listed for Dundalk or, on production of letters of consent from all parties, the application can be made to the registrar. Cases that are not disposed of in these two weeks will retain their position in the Dublin list.

In cases of long duration, arrangements will be made to have the case heard at a venue other than Dublin.

*Litigation Committee*

## SINGLE PAYMENT SCHEME FOR FARMERS

In their *Taxbriefing 61*, the Revenue Commissioners have outlined how they intend to deal with the Single Payment Scheme for tax purposes. This deals with the income tax, CAT, CGT, stamp duty and VAT issues on dealings with the Single Payment and is available at the Revenue website at www.revenue.ie.

Some points to note in Revenue's intended treatment of the Single Payment are:

- It is a separate asset with a nil base cost.
- It is not attached to the land.
- It is not an agricultural asset for CAT or stamp duty but may be considered a business asset under the right circumstances.
- Consolidation of entitlements is not considered a disposal for CGT purposes.

It is vital that colleagues look at the *Taxbriefing* in more detail before advising clients in any dealings with the Single Payment.

*Conveyancing Committee*

# PRACTICE DIRECTIONS

## APPOINTMENT BY THE CHIEF JUSTICE OF NOTARIES PUBLIC

In pursuance of the powers vested in me by order 127 of the *Rules of the Superior Courts (No 2 of 1993)*, I hereby make the following direction and regulation concerning applications of persons to be appointed a notary public:

1) In an application to be appointed a notary public, the petitioner shall not be required to establish that the existing number of notaries available for the transaction of notarial matters in the county, city or district for which appointment is sought is inadequate to meet the needs of business and commerce and no averment as to such matter shall be necessary in the petition or supporting documents.
2) This direction shall take effect on and from 26 January 2006.

*John L Murray,*
*Chief Justice,*
*25 January 2006*

## APPOINTMENT BY THE CHIEF JUSTICE OF COMMISSIONERS FOR OATHS

In pursuance of the powers vested in me by the *Courts (Supplemental Provisions) Act 1961*, I hereby make the following direction and regulation concerning applications of persons to be appointed a commissioner for oaths:

1) In an application to be appointed a commissioner for oaths, the petitioner shall not be required to establish that the existing number of commissioners available for the administration of oaths in the county, city or district for which appointment is sought is inadequate to meet the needs of business and commerce and no averment as to such matter shall be necessary in the petition or supporting documents.
2) This direction shall take effect on and from 26 January 2006.

*John L Murray,*
*Chief Justice,*
*25 January 2006*


# legislation update

## ACTS PASSED IN 2005

**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. Commencement dates are up to date to 15 February 2006.**

***Adoptive Leave Act 2005***
**Number:** 25/2005
**Date enacted:** 2/11/2005
**Commencement date:** 28/11/2005 for all sections of the act other than ss9 and 10 (per SI 724/2005); 30/1/2006 for ss9 and 10 (per SI 16/2006)

***Air Navigation and Transport (Indemnities) Act 2005***
**Number:** 13/2005
**Date enacted:** 4/7/2005
**Commencement date:** 4/7/2005

***Appropriation Act 2005***
**Number:** 29/2005
**Date enacted:** 16/12/2005
**Commencement date:** 16/12/2005

***British-Irish Agreement (Amendment) Act 2005***
**Number:** 6/2005
**Date enacted:** 6/5/2005
**Commencement date:** 6/5/2005

***Civil Registration (Amendment) Act 2005***
**Number:** 19/2005
**Date enacted:** 9/7/2005
**Commencement date:** 9/7/2005

***Civil Service Regulation (Amendment) Act 2005***
**Number:** 18/2005
**Date enacted:** 9/7/2005
**Commencement date:** Commencement order(s) to be made for all sections, except for part 10 (s33, 'public service superannuation'), which is deemed to have come into operation on 1/4/2004 (per s2 of the act): 6/10/2005 for section 8 (per SI 763/2005)

***Commission to Inquire into Child Abuse (Amendment) Act 2005***
**Number:** 17/2005
**Date enacted:** 9/7/2005
**Commencement date:** 9/7/2005. Establishment day order to be made not later than one year from the date of the passing of this act for the establishment of the Education (Former Residents of Certain Institutions for Children) Finance Board (per s23)

***Coroners (Amendment) Act 2005***
**Number:** 33/2005
**Date enacted:** 21/12/2005
**Commencement date:** 21/12/2005

***Criminal Justice (Terrorist Offences) Act 2005***
**Number:** 2/2005
**Date enacted:** 8/3/2005
**Commencement date:** 8/3/2005 for all sections other than section 32; 8/7/2005 for section 32 (amendment of section 32 of the *Criminal Justice Act 1994*, as amended by the *Criminal Justice (Miscellaneous Provisions) Act 1997*, s14) (per section 2 of the act)

***Development Banks Act 2005***
**Number:** 34/2005
**Date enacted:** 21/12/2005
**Commencement date:** 21/12/2005 for certain sections, and see act for other commencement provisions

***Disability Act 2005***
**Number:** 14/2005
**Date enacted:** 8/7/2005
**Commencement date:** Commencement order(s) to be made, except for provisions whose commencement dates are otherwise provided for by the act (per s1(2) and 1(3)). These commencement dates are: 31/12/2005 for s25 (access to public buildings), s26 (access to services), s27 (accessibility of services supplied to a public body), s28 (access to information), and 31/12/2007 for s29 (access to heritage sites). 29/7/2005 for part 1 (ss1-6), sections 24, 30, 31, 32, 33, 34, 35, 36 and 37, and part 7 (ss53-58); 31/12/2005 for sections 38, 39 and 40, part 4 (ss41-45) and part 5 (ss46-51); 1/1/2007 for part 6 (s52) (per SI 474/2005)

***Dormant Accounts (Amendment) Act 2005***
**Number:** 8/2005
**Date enacted:** 25/5/2005
**Commencement date:** 1/9/2005 for all sections of the act (per SI 545/2005)

***Electoral (Amendment) Act 2005***
**Number:** 16/2005
**Date enacted:** 9/7/2005
**Commencement date:** 9/7/2005, but provisions relating to the new constituencies and the repeal of the *Electoral (Amendment) (No 2) Act 1998* will come into force on the dissolution of the Dáil that next occurs after the passing of this act (per ss2, 3(1) and 5(2))

***Finance Act 2005***
**Number:** 5/2005
**Date enacted:** 25/3/2005
**Commencement date:** Various – see act and commencement sections 150(8) and 150(9). Commencement order(s) to be made for certain provisions: 1/5/2005 for ss100(1)(a), 100(1)(b) and 104(1)(b) (per SI 225/2005); 1/7/2005 for ss65, 66, 67(b) and 69 and so much of the amendment of schedule 2 to the *Finance Act 1999* referred to in s64(b) as relates to rates of mineral oil tax on coal (per SI 284/2005); 1/7/2005 for s87 (per SI 291/2005); see SI 317/2005 for application of s898P of the *Taxes Consolidation Act 1997* (substituted by s144(1)(h)) on and from 1/7/2005; 23/9/2005 for s21(1)(e)(ii) (per SI 570/2005)

***Garda Síochána Act 2005***
**Number:** 20/2005
**Date enacted:** 10/7/2005
**Commencement date:** Commencement order(s) to be made (per s2 of the act): 1/8/2005 for part 1 (ss1-5), other than s4, and for ss7, 39, 40, 41, 47, 48, 49, 60, 62, 121 (other than subsections (2)(b) and (2)(c)), 124, 130 and 131 (per SI 370/2005); 9/12/2005 for the following provisions: sections 24, 63 to 66, 67(3), 67(4), 67(5), 68 to 72, 76 to 80, 121(2)(b), schedule 2 (insofar as it relates to a person transferred under section 72 of the act to the commission), and schedule 4 (per SI 801/2005); 12/12/2005 appointed as the establishment day for the establishment of the Garda Síochána Ombudsman Commission (per SI 802/2005)

***Grangegorman Development Agency Act 2005***
**Number:** 21/2005
**Date enacted:** 11/7/2005
**Commencement date:** 11/7/2005. Establishment day order to be made appointing a date for the establishment of the Grangegorman Development Agency (per s5 of the act)

***Health (Amendment) Act 2005***
**Number:** 3/2005
**Date enacted:** 11/3/2005
**Commencement date:** 11/3/2005

***Health and Social Care Professionals Act 2005***
**Number:** 27/2005
**Date enacted:** 30/11/2005
**Commencement date:** Commencement order(s) to be made (per s2 of the act)

***International Interests in Mobile Equipment (Cape Town Convention) Act 2005***
**Number:** 15/2005
**Date enacted:** 9/7/2005
**Commencement date:** 9/7/2005

***Interpretation Act 2005***
**Number:** 23/2005
**Date enacted:** 17/10/2005
**Commencement date:** 1/1/2006 (per s1(2) of the act)

***Investment Funds, Companies and Miscellaneous Provisions Act 2005***
**Number:** 12/2005
**Date enacted:** 29/6/2005
**Commencement date:** 29/6/2005 for sections 85 and 86; commencement order(s) to be made for all other sections (per s2 of the act): 30/6/2005, 1/7/2005, 6/7/2005 and 1/9/2005 for specified sections of the act (per SI 323/2005); 1/12/2005 for ss57, 58, 61 and 71 (miscellaneous company law amendments) (per SI 695/2005)

***Land Act 2005***
**Number:** 24/2005
**Date enacted:** 26/10/2005
**Commencement date:** 4/11/2005 for all sections except section 5, which comes into operation on 2/12/2005 (per SI 689/2005)

***Landlord and Tenant (Ground Rents) Act 2005***
**Number:** 7/2005
**Date enacted:** 19/5/2005
**Commencement date:** 19/5/2005

***Maritime Safety Act 2005***
**Number:** 11/2005
**Date enacted:** 29/6/2005
**Commencement date:** 29/6/2005 for sections 53 and 56 and for part 6 (sections 59 and 60), 29/7/2005 for all other sections (per s1(10) of the act)

***Proceeds of Crime (Amendment) Act 2005***
**Number:** 1/2005
**Date enacted:** 12/2/2005
**Commencement date:** 12/2/2005

***Railway Safety Act 2005***
**Number:** 31/2005
**Date enacted:** 18/12/2005
**Commencement date:** 18/12/2005 for all sections other than part 9 (ss84-91) and part 10 (ss92-112) for which commencement order(s) will be made (per ss84 and 92 of the act); 1/1/2006 for the establishment of the Railway Safety Commission under part 2 (ss7-35)(per SI 841/2005)

***Safety, Health and Welfare at Work Act 2005***
**Number:** 10/2005
**Date enacted:** 22/6/2005
**Commencement date:** Commencement order(s) to be made (per s1(2) of the act): 1/9/2005 for all sections, except section 4(2) other than as that subsection applies to the repeal of the *Safety, Health and Welfare at Work Act 1989* (per SI 328/2005)

***Sea Pollution (Hazardous Substances) (Compensation) Act 2005***
**Number:** 9/2005
**Date enacted:** 30/5/2005
**Commencement date:** Commencement order(s) to be made (per s1(4) of the act)

***Social Welfare Act 2005***
**Number:** 30/2005
**Date enacted:** 16/12/2005
**Commencement date:** Various – see act

***Social Welfare and Pensions Act 2005***
**Number:** 4/2005
**Date enacted:** 14/3/2005
**Commencement date:** Various – see act. Commencement orders to be made for ss7(1), 16 and 24 to 39 (per s1(4), 1(5) and 1(6) of the act): 11/4/2005 for ss38 and 39 (per SI 187/2005); 3/5/2005 for s7(1) (per SI 230/2005); 1/6/2005 for s16, various dates – 7/4/2005, 1/6/2005, 2/6/2005 and 6/6/2005 – for ss24 and 25 as they apply to different benefits, 11/4/2005 for s26 (per SI 182/2005); 23/9/2005 for part 3 (ss27-39), other than ss38 and 39 (per SI 591/2005)

***Social Welfare Consolidation Act 2005***
**Number:** 26/2005
**Date enacted:** 27/11/2005
**Commencement date:** Commencement order(s) to be made (per s366); 6/4/2012 for para 3 of schedule 6 (per s366(2)(c))

***Statute Law Revision (Pre-1922) Act 2005***
**Number:** 32/2005
**Date enacted:** 18/12/2005
**Commencement date:** 18/12/2005

***Transfer of Execution of Sentences Act 2005***
**Number:** 28/2005
**Date enacted:** 13/12/2005
**Commencement date:** Commencement order(s) to be made (per s14(2) of the act)

***Veterinary Practice Act 2005***
**Number:** 22/2005
**Date enacted:** 12/7/2005
**Commencement date:** 12/7/2005; 1/1/2006 appointed as the establishment day for the establishment of the Veterinary Council of Ireland in accordance with section 3 of the act (per SI 598/2005) G

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# firstlaw update

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

## CONVEYANCING

### Deed of transfer

*Trespass to goods – whether the deed of transfer created an option or other future interest, which was void as infringing the rule against perpetuities.*

The plaintiff, by deed of transfer, transferred certain lands in consideration of a sum of money. Those lands were ultimately transferred to the defendants. The deed stated that certain minerals found on/in the land were excepted and reserved to the plaintiff, subject to the payment to the transferee of repurchase. The plaintiff sought damages for trespass to goods and conversion, claiming that the defendants converted those minerals, the property of the plaintiff, to their own use and sold same.

The defendants pleaded that the deed did not reserve or except to the plaintiff the minerals alleged and, further, that the deed purported to create an option or other future interest in the lands, which was void in law for infringement of the rule against perpetuities.

Carroll J, in determining a preliminary issue as to the validity of the deed, held that on a true construction of the deed of transfer, it did reserve to the plaintiff the minerals alleged. However, the deed created an option to repurchase in order to extract the minerals, which was void for offending the rule against perpetuities.

***Roadstone Dublin Ltd v William McDonnell*, High Court, Ms Justice Carroll, 6/11/2003** [FL11812]

## CRIMINAL

### Jurisdiction

*Confiscation order – jurisdiction of Special Criminal Court to make order under s4 of* Criminal Justice Act 1994 – Bunreacht na hÉireann, *article 38.3.*

The attorney general and the DPP appealed against the determination of the High Court that the power to make a confiscation order following a conviction was not sufficiently ancillary to the trial of offences to come within the jurisdiction of the Special Criminal Court pursuant to article 38.3 of the constitution and that the powers contained in s4 of the *Criminal Justice Act 1994*, as amended, were not conferred on the Special Criminal Court.

The Supreme Court (Murray CJ, Denham, Geoghegan, Fennelly and Macken JJ) dismissed the appeal, holding that the Special Criminal Court did not have jurisdiction to make orders pursuant to s4 of the *Criminal Justice Act 1994*. Given the nature of the court, a court of trial, matters other than a trial could not be inferred into its jurisdiction.

***Gilligan v Special Criminal Court*, Supreme Court, 21/12/2005** [FL11784]

### Sentencing

*Unduly lenient – application by DPP for review – rape – medical issues – second offence – whether question of rehabilitating regime, medical or otherwise, matter for executive and not court –* Criminal Justice Act 1993, *s2.*

The DPP applied for a review of a sentence of six years imposed on the respondent for sexual offences, on the grounds of undue leniency.

The Court of Criminal Appeal held that a sentence of ten years' imprisonment commencing from the date of the commencement of the original sentence was the appropriate sentence in all the circumstances of the case. A sentence for a second, quite similar offence committed in close proximity to the release from the sentence for the first had to be greater than that for the first offence. The question of the regime, medical or otherwise, appropriate to the applicant was a matter for the executive.

***DPP v Moore*, Court of Criminal Appeal, 20/12/2005** [FL11801]

## EUROPEAN LAW

### Practice and procedure

*Jurisdiction – European law – articles 235 and 288 of the* EC Treaty *– whether the court had jurisdiction to hear and determine the plaintiffs' claim for damages against the European Commission for infringement of copyright.*

The plaintiffs' claimed damages for infringement of copyright, infringement of their right of paternity, false attribution of authorship and conversion. By notice of motion, the defendant sought an order dismissing proceedings on the basis that the court had no jurisdiction to hear and determine the plaintiffs' claim having regard to articles 235 and 288 of the *EC Treaty*, which vested exclusive jurisdiction in relation to claims concerning the non-contractual liability of the EC for actions by its institutions in the European Court of Justice (ECJ) to the exclusion of any national court.

Herbert J dismissed the proceedings, holding that the plaintiffs' claim was based solely on non-contractual liability for damage allegedly caused to the plaintiffs by the institutions or by one or more servants of the community acting within the scope of their official duty and, accordingly, the claim came within the provisions of article 288, paragraph 2, and was maintainable only by virtue of that provision. Article 235 of the *EC Treaty* conferred exclusive jurisdiction on the European Court of Justice in respect of claims to which article 288, part 2, applied, and consequently this court had no jurisdiction to hear and determine the plaintiffs' claim.

***Kearns v European Commission*, High Court, Mr Justice Herbert, 21/10/2005** [FL11794]

## FREEDOM OF INFORMATION

### Access to information

*Entitlement of parent to hospital notes about illness of daughter –* Freedom of Information Act 1997.

At issue in this case was whether a father, a widower who had been separated from his late wife, who was joint guardian of his children, was entitled under the *Freedom of Information Act 1997* to information, in the form of hospital notes, about his daughter's illness.

The Supreme Court (Denham, McGuinness, Hardiman, Geoghegan and Fennelly JJ) dismissed the appeal, affirmed the decision of the High Court and remitted the matter to the Information Commissioner for review in accordance with the

correct test, holding that the approach of the commissioner was in error when he required "tangible evidence" that the release of such information would serve the best interests of the minor.

***McK v Information Commissioner*, Supreme Court, 24/1/2006** [FL11823]

## IMMIGRATION

### Judicial review

*Asylum –whether the deportation order made by the respondent was invalid and ought to be quashed* – Criminal Justice (United Nations Convention Against Torture) Act 2000.

The applicant sought leave to apply for judicial review and an order of *certiorari* quashing the decision of the respondent to make a deportation order against her. The applicant submitted that the minister's failure to consider the question of torture pursuant to s4 of the 2000 act and his failure to consider certain country of origin information that was favourable to the applicant invalidated the deportation order. The applicant further submitted that there was an error on the face of the record and that the order failed to state the destination of deportation, thus rendering it invalid.

O'Neill J refused the application, holding that the applicant failed to demonstrate that there were substantial grounds for contending that the decision of the first-named respondent should be quashed.

***Amadi v The Minister for Justice, Equality and Law Reform*, High Court, Mr Justice O'Neill, 13/10/2005** [FL11744]

### Asylum

*Whether the respondent erred in its assessment of the applicant's credibility in determining her application for asylum.*

The applicant sought an order of *certiorari* quashing the decision of the respondent refusing to grant her refugee status. The applicant alleged that the finding by the respondent that her story was not credible was reached without carrying out a proper assessment of credibility. The applicant further claimed that certain matters were not put to her, which ultimately became significant factors in the assessment of her credibility.

O'Neill J dismissed the application, holding that:

1) The respondent assessed credibility correctly by reference to factors set out in its decision, which it was entitled to treat as factors relevant to an assessment of the applicant's credibility;
2) There was no evidence as to what took place at the oral hearing of the applicant's appeal. In any event, there was no dereliction by the respondent in failing to put certain matters expressly to the applicant at the oral hearing.

***Nicolai v Des Zaidan (Sitting as the Refugee Appeals Tribunal)*, High Court, Mr Justice O'Neill, 7/10/2005** [FL11818]

## JUDICIAL REVIEW

### Licensing

*Granting of broadcasting licence – whether the respondent erred in awarding a broadcasting licence to the successful applicant, who had previously engaged in illegal broadcasting.*

The applicant was the unsuccessful bidder for a broadcasting licence on the FM radio band in Dublin and challenged the award of the contract to Dublin Rock Radio Ltd on the grounds that the respondent failed to consider the character of the successful candidate, erred in law in affording Dublin Rock credit for the experience and expertise gained by it during a period of illegal broadcasting, prejudged the issue of the award of the contract, and erroneously took into account Dublin Rock's track record under two separate temporary broadcasting contracts in circumstances where it was only entitled to credit for one.

O'Sullivan J refused the application, holding that the several elements that comprise character were considered by the respondent. Furthermore, the applicant failed to establish that the respondent gave an advantage to Dublin Rock arising out of its illegal broadcasting experience. The applicant's allegation regarding bias did not establish the level of coherent evidence required to substantiate such an allegation of a fraudulent nature. Finally, the respondent did not err in considering the provision of services provided pursuant to the two temporary contracts.

***Scrollside Ltd, trading as 'ZED FM' v Broadcasting Commission of Ireland*, High Court, Mr Justice O'Sullivan, 1/11/2005** [FL11752]

## PLANNING AND DEVELOPMENT

### Injunction

*Unauthorised development – whether court has jurisdiction to deal with s160 application when basis for application is question of validity of planning permission – principles of construction of planning documents* – Planning and Development Regulations 2001, *article 23* – Planning and Development Act 2000, *s160.*

The applicant applied, pursuant to section 160 of the *Planning and Development Act 2000*, for an order restraining the continuation of works by the respondent on a drainage system, on the basis that it was unauthorised development as it did not conform to planning permission granted to the respondent, in that it occurred outside the area delineated in red on the maps submitted to the planning authority in respect of which planning permissions had been granted, in breach of article 23 of the *Planning and Development Regulations 2001*. At the hearing of the application, the works had been completed and the applicant then sought to have the use of the said works restrained instead. The respondents contended that the works were within the scope of the permission granted by the planning authority.

Murphy J refused the relief sought, holding that:

1) Section 160 of the act did not allow the court to restrict the use of development even if it proved to be unauthorised, as the power of the court was only to order the carrying out of any works, including the restoration, reconstruction, removal, demolition or alteration of any structure or other feature once it was proven that development was unauthorised;
2) Section 160 applied to development in respect of which no planning permission had been applied for, or having been applied for, was refused;
3) The drawings submitted to the planning authority by engineers for the respondent did not amount to such a breach of the planning regulations as to invalidate the planning permission granted for the development complained of, and the development was authorised.

***Cantwell Ltd v McCarthy*, High Court, Mr Justice Murphy, 1/11/2005** [FL11773]

## TORT

### Personal injuries

*Award of damages – back injury – foreseeable future.*

The plaintiff suffered a low-back injury as a result of a collision between her vehicle and a vehicle being driven by the defendant. As a result of her injuries, the plaintiff was unable to assist her husband on

the family farm, she experienced difficulties carrying out household chores, and she was unable to return to her job.

Peart J awarded the plaintiff a sum of €393,044 by way of compensation, holding that it was likely that the plaintiff would not gain any full-time or even part-time work of any permanence. Furthermore, the plaintiff's injuries would continue to cause her difficulty for the foreseeable future and, accordingly, she was entitled to an award of damages for past and future pain and suffering, loss of earnings and loss of pension.

***O'Neill v Kenny*, High Court, Mr Justice Peart, 24/10/2003** [FL11793]

### Estoppel

*Road accident – personal injury – plaintiff passenger in vehicle owned by second defendant and driven by its employee – personal injury proceedings brought against lorry owner and road authority – driver previously struck out claim for injuries sustained in same accident as against second defendant – whether issue of second defendant's negligence* res judicata.

The plaintiff was a passenger in a lorry owned by the second defendant and driven by a person whose claim for personal injuries was struck out in respect of the second-named defendant in separate, prior proceedings relating to the same crash. Notices of indemnity and contribution had been served in those proceedings as in the present action. The driver was found to be 60% and the first defendant 40% at fault in his personal injuries action. The second defendant claimed that the issue of liability as between itself and the first defendant had been determined in the earlier action. In short, issue estoppel was claimed.

Finnegan P held that the issue of liability between the first and second defendants remained to be determined and that the withdrawal of a claim not leading to an adverse adjudication did not operate as an estoppel. While the first and second defendant had been parties to earlier action brought by the driver, the issue between them on their respective defences and notices of indemnity and contribution had not been determined and remained to be dealt with. As the driver of the lorry was not the privy of the second defendant, the apportionment of liability in that action was not determinative of the apportionment between the defendants in the present action on the basis of issue estoppel.

***Murrin v Sligo County Council and Waste Disposal Sligo Ltd*, High Court, Mr Justice Finnegan, 5/12/2005** [FL11828]

### Duty of care

*Occupier's liability – invitee – duty to take reasonable care to see that premises safe for visitors – whether danger foreseeable – child toppling shop shelf on to herself and sustaining injuries –* Occupier's Liability Act 1995, *section 1(1), 3.*

The plaintiff, a two-and-a-half-year-old infant, injured her thumb when she destabilised a glass shelve that was three feet from the ground in the defendant's shoe shop, which she was visiting with her mother. She alleged that the heavy glass shelves protruding from the wall in a children's shoe shop was an unreasonable danger.

McMahon J dismissed the plaintiff's action, holding that an occupier of premises would only be liable to visitors injured due to a danger thereon if he had not taken reasonable care with regard to the danger on the premises. In this respect, each case is determined on its own facts. Here, the shelving was not obviously unsafe in any way and the curving in it was an aesthetic concession that could not be foreseen as providing a child with a levering grip that would cause it to topple. Furthermore, given that young children would inevitably be accompanied by an adult when visiting such a shop, there was no duty on the occupier to stabilise the shelf so as to render it immoveable.

***Coffey v Moffit*, Circuit Court, Judge McMahon, 17/6/2005** [FL11827] G

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

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



# Seasonal offerings in EC competition law

Most of us were hopefully fortunate enough to enjoy a traditional Christmas and New Year holiday. EC competition law practitioners enjoyed some 'traditional' December offerings of their own, in the guise of two major policy developments and the Court of First Instance's judgment in *GE/Honeywell*.

This article will review the two Christmas 'presents' from the European Commission's Directorate General for Competition – the green paper on damages actions for breach of the EC antitrust rules and a discussion paper on the application of article 82 of the *EC Treaty* to exclusionary abuses. The article will conclude with a brief overview of the judgment in *GE/Honeywell* and its likely implications for the commission's future merger policy.

### Private enforcement of the EC competition rules

On 20 December 2005, the European Commission published a green paper and an accompanying staff working paper that suggest facilitating damages claims caused by violations of the EC competition rules.

According to the commission, private enforcement of the EC competition rules (through litigation before the national courts) is lagging far behind public enforcement. The lack of a clear set of rules for damages claims in the EU member states means that there is currently virtually no successful private litigation for damages resulting from infringements of the EC competition rules.

The commission has invited comments before 21 April 2006 on a range of issues such as:

- What disclosure rights and other rights of access to documentary evidence should a claimant have?
- Should there be a defence of excusable error, or can liability be established without proof of fault?
- How should damages be calculated (and should punitive damages be available)?
- Should the defendant be able to use the 'passing-on defence' (ie reducing the damages payable on the ground that the claimant was able to recover some or the entire overcharge from its customers)?
- Should a class action regime be introduced for end consumers or, more broadly, for representative groups of purchasers?
- Should claimants benefit from special rules concerning the payment of the other side's costs in the event of an unsuccessful action?
- How should private and public enforcement mechanisms be co-ordinated?
- What rules should regulate where claims can be brought, and the law applicable to those claims?
- Are special rules on the appointment of experts to assess damages required in competition cases?
- When do limitation periods start and stop (particularly where a regulatory investigation is started)?
- Do the rules on causation need clarification?

For each of these issues, the EC suggests various solutions or 'options' that chart fairly clearly how, at the outcome of the consultation, it wants to significantly enhance the complementary role of private enforcement of the EC competition rules – firmly grounded in the 1 May 2004 'modernisation' package – in the not-too-distant future.

In Ireland, some of the commission's options are likely to be less than controversial. For example, the availability of wide-ranging pre-trial discovery from a defendant in 'stand alone' actions (taken without a prior decision of a competition regulator) that is the norm in Ireland and England and Wales is offered as one of five options to overcome the obstacles to obtaining the factual evidence necessary to bring a claim that litigants in other member states face.

Similarly, and as there is no need for a plaintiff to prove fault on the part of the defendant in competition cases, the option to introduce some form of no-fault liability (ie simply proving the infringement would suffice) should not prove problematic, in Ireland at least.

However, in several areas, the options canvassed by the commission would merit some attention from Irish competition law practitioners before the consultation ends. According to the Irish sections of the September 2004 study (www.europa.eu.int/comm/competition/antitrust/others/actions_for_damages/study.html) that confirmed to the EC the 'totally underdeveloped' state of private enforcement of the competition rules in the EU, while there is currently no reported case law, on the basis of general principles, it may be possible, in theory, for a defendant to argue the passing-on defence before the Irish courts.

Reading between the lines of the concisely worded relevant section of the EC's working paper, it would appear likely that one of the outcomes of the consultation will be that, like in the United States, the EC will recommend that the passing-on defence in competition cases is excluded in damages actions before the Irish courts (or suggest such conditions as to render the defence practically useless).

In that case – and assuming that the EC's position in the staff paper (that inevitably a trade-off will have to be made between the effective enforcement of EC competition law and justice, in the sense of a full recovery for all those who have suffered loss from an illegal practice) is endorsed by the member states and commentators – it is also likely that in Ireland and for the foreseeable future, indirect purchasers (or even final consumers) will find it very difficult to translate their theoretical right to bring damages claims available now into actual compensatory awards in the courts.

Finally, both the green paper and the working paper suggest that the hopes of some Irish practitioners may be bolstered to the extent of introducing some pan-EU basis for collective or representative actions by consumer associations or other qualified entities claiming damages for violation of the EC competition rules.

The green paper (and much more detailed staff working paper) can be downloaded from www.europa.eu.int/comm/competition/antitrust/others/actions_for_damages/index_en.html.

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### EC paper on abuse of dominance

Notwithstanding the long-term importance of the outcomes of the consultation on the private enforcement green paper, the 'talk of the town' in Brussels in December was mostly about the long-awaited (and selectively leaked) European Commission discussion paper on the review of article 82 of the *EC Treaty* (and the implications of the *GE/Honeywell* ruling).

The first concrete step in a process that should lead to a comprehensive set of EC guidelines by the end of the year, the article 82 discussion paper published on 19 December describes a general framework for analysing abusive exclusionary conduct by a dominant company. The discussion paper is intended to introduce a more refined economic approach for assessing some of the more common abusive exclusionary practices (ie that exclude a competitor from the market), such as tying, rebates and discounts.

Other forms of abuse, such as discriminatory and exploitative conduct (ie where the dominant company exploits market power) will be the subject of further work by the EC in 2006.

A public hearing will be held in spring 2006 as part of the consultation process.

Following modernisation and the refocused drive to detect and prosecute cartels, which was launched last year, the proposals made in the discussion paper signal a change in the commission's enforcement priorities for article 82 towards those abuses of dominant positions most likely to harm consumers.

According to the commission, the ultimate aim of the discussion paper and the guidelines that are nearly certain to emerge from the consultation is to design a workable and operational tool both for making enforcement decisions by competition authorities across the EU and for dominant companies to know whether their conduct is legal.

Listening to senior commission officials before the discussion paper was published, two 'holistic' messages were clearly heard. First, the EC has identified that it should intervene only in exceptional cases that raise abuse of dominance issues (and consequently expects to receive a substantial volume of comments on what constitutes an 'exceptional' case). Second, the EC does appear ready to change tack on certain points discussed in the article 82 paper (for example, whether the specificities of monopolisation and abuse of dominance cases suggest that (unlike in the EC's initial draft of the paper), the article 82 analysis should start by examining the effects of the relevant conduct and then turn to analysing the conduct itself).

Practices dealt with by the discussion paper include predatory pricing, single branding and rebates, tying and bundling and refusal to supply. As stated earlier, the EC intends to pay more attention to the economic effects of conduct, moving away from the application of rigid rules. Defining abuse is not clear-cut, as unilateral conduct may have both competitive and anti-competitive effects.

In relation to pricing abuses, the discussion paper sets out arguments as to whether only conduct that risks the exclusion of equally efficient competitors (ie competitors with the same costs as the dominant firm – the so-called 'as efficient competitor' test) should be considered abusive. It also considers whether, and how, efficiencies should be taken into account as part of an article 82 assessment.

Some of the reactions so far have expressed disappointment about the discussion paper's apparent failure to live up to its billing since the article 82 review was launched by the former competition commissioner, Mario Monti. Recently, Commissioner Kroes set the standard for assessing the outcome of the whole article 82 review as one that would produce 'rules' that would enable the EC to reach preliminary conclusions about when conduct may exclude competition, yet at the same time allow companies to know when they are on safe ground.

Measured against that standard – and notwithstanding the additional complexities inherent in moving away from a form-based approach towards a more robust economic analysis of the potential effects of a particular conduct trumpeted by the article 82 paper – the EC certainly has its work cut out in 2006 to move beyond this 'discussion' paper and produce some real 'guidelines' that companies, their advisers and national competition authorities/courts can rely on in this notoriously difficult area.

### The Court of First Instance's judgment in *GE/Honeywell*

On 14 December 2005, the CFI delivered its two judgments in the appeals brought by General Electric (GE) and Honeywell of the United States (cases T-209/01 and T-210/01).

Nearly five years after the GE/Honeywell merger was notified to the European Commission and subsequently blocked in June 2001, the CFI upheld the commission's prohibition decision. This prohibition was – and probably remains – the most important case that showed how the EC in Brussels could adopt decisions affecting the strategies of companies operating in the EU (European and non-European alike) and when non-European antitrust agencies had already approved the same strategies.

Following the July 2001 prohibition decision, GE and Honeywell abandoned their proposed merger but nonetheless filed an appeal against the decision before the CFI.

In the December judgments, the CFI upheld the commission's prohibition decision. Nevertheless, the court found some serious errors with the commission's analysis in key parts of that decision.

In particular, the CFI found that the EC had not produced sufficiently convincing evidence in three key areas of its case. Two of these related to the alleged so-called conglomerate effects of the proposed merger. For example, the conglomerate effects alleged by the EC were that the merger would have allowed GE to force aircraft builders to take a bundle of products including Honeywell's avionics equipment, giving Honeywell an unfair advantage over its direct competitors.

The CFI also found that the EC had not correctly assessed the likelihood of GE's pre-merger dominance on the market for jet engines for large commercial aircraft, as a result of an overlap between Honeywell's engine starters and GE's large engines as a result of the merger.

Despite these 'manifest errors of assessment', the CFI approved the commission's analysis based on three other key aspects of the case that were sufficient, in the court's view, to justify the overall prohibition decision.

Given the mixed outcome of the judgments, all the parties (the commission, GE and Honeywell) publicly welcomed the rulings. However, Commissioner Kroes stated that the commission will "consider carefully what lessons may be learned from this judgment for our future merger policy", reflecting the CFI's criticisms of the EC's analysis.

GE and Honeywell have until 13 February 2006 to decide whether to appeal the CFI's judgment to the European Court of Justice, but such an appeal can be on points of law only.

One of the likely but perhaps less visible consequences of the CFI's reiteration in *GE/Honeywell* is that, while it embraces the theories of potential anti-competitive harm stemming from conglomerate effects and bundling used by the EC, the evidential threshold the EC (and by extension national competition authorities after 1 May 2004) must satisfy in order to produce "accurate, reliable and convincing evidence" means that in future (like in the US) there will be a much greater burden on the notifying parties and market players for the discovery of economic evidence.

In the circumstances, it would not be surprising if, in the absence of such compelling evidence from the market players/competitors to the merging parties, the EC were to refrain from prohibiting or even challenging (by way of remedies imposed) proposed but anti-competitive conglomerate mergers that did not present significant market overlaps.

Similar considerations will no doubt operate when, in the years to come, the commission takes the first few article 82 prohibition decisions under the forthcoming guidelines. G

*Conor Maguire is a Brussels-based solicitor.*

# Recent developments in European law

## AIR TRAVEL

**First stage of discussion in "open skies" pact**

On 21 November, the EU and the US opened up discussions on a long-awaited deal on the access to air services between the US and Europe. The consequence of such a deal would be to allow European and American-based airlines to compete on transatlantic routes and to allow subsequent internal correspondence. Currently, the situation is that airlines can only operate transatlantic flights from their own home countries. This deal would facilitate airline mergers and acquisitions; however, both European and US airlines would have to open up to the possibility of foreign ownership.

## FREE MOVEMENT OF GOODS

Case C-320/03, *Commission of the European Communities v Republic of Austria*, 15 November 2005. A 2003 Austrian regulation banned lorries of over 7.5 tonnes carrying goods such as waste, stone, soil, motor vehicles, timber or cereals from using a 46km section of the A12 motorway in Inn Valley. The Court of Justice has held that this sectoral ban obstructs the free movement of goods, particularly their free transit. The measure concerns a road of the utmost importance, constituting one of the main land routes between the south of Germany and the north of Italy. The court did, however, stress that an obstacle to the free movement of goods may be justified by imperative requirements relating to the protection of the environment. Concerning protection of the environment in general, the court has held that the sectoral traffic ban infringes the principle of proportionality. It was held that the prohibition in question is disproportionate, as they did not sufficiently study whether there was actually a realistic alternative to the ban.

## FREE MOVEMENT OF PERSONS

Case C-258/04, *Ioannis Ioannidis*, 15 September 2005. Belgium provides a social welfare allowance to young people who have completed their studies and are seeking their first employment. This is known as a tideover allowance. To obtain this allowance, the young person must have pursued education or training in another member state of the EU at the same level as, and equivalent to, that provided by an educational establishment run, subsidised or approved by a Belgian community. He must also, at the time of the application, be the dependent child of migrant workers who are resident in Belgium. Mr Ioannidis is a Greek national who completed his secondary education in Greece. His Greek certificate of education was recognised as being equivalent to the approved certificate of high secondary education giving access to vocational higher education in Belgium. After three years of study, he obtained a graduate diploma in physiotherapy in Belgium. He also did a paid training course in vestibular rehabilitation in France. In 2001, he returned to Belgium and applied to the national employment office for a tideover allowance. The office rejected this application as he had not completed his secondary education at an educational establishment run, subsidised or approved by one of the three communities in Belgium, as required by Belgian legislation. The Court de Travail asked the ECJ whether it was contrary to EC law for a member state to refuse an allowance to a national of another member state who is seeking his first employment on the sole ground that he completed his secondary education in another member state. The ECJ held that nationals of a member state seeking employment in another member state fell within the scope of the *EC Treaty* and therefore enjoy the right to equal treatment. The principle of equal treatment prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, lead in fact to the same result. The Belgian legislation introduces a difference in treatment between citizens who have completed their secondary education in Belgium or in another member state. Only the former have the right to the tideover allowance. This requirement can more easily be met by Belgian nationals and can place nationals of other member states at a disadvantage. Such a difference in treatment can only be justified if it is based on objective considerations, independent of the nationality of the persons concerned and proportionate to the aim legitimately pursued by national law. It is legitimate for the national legislature to wish to ensure that there is a real link between the applicant for the allowance and the geographic employment market concerned. However, a single condition regarding the place where the diploma of completion of secondary education was obtained is too general and exclusive in nature. It goes beyond what it necessary to attain the objective pursed. The fact that the applicant's parents are not migrant workers residing in Belgium cannot provide a reason for refusing to grant the allowance. That condition cannot be justified by the wish to ensure that there is a real link between the applicant and the geographic employment market. It is possible that a person, after completing secondary education in one state, pursues higher education in another state and obtains a diploma there, may establish a real link with the employment market of that state, without, however, being the dependent child or migrant workers residing in that state. G

## 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 3 March 2006)*

Regd owner: Marcus McInerney; folio: 14503; lands: townland of Cloondorney More and barony of Tulla Upper; area: 18 acres, 3 roods, 25 perches; **Co Clare**

Regd owner: Sarah O'Connor (deceased); folio: 26051; lands: townland of Barnageeha and barony of Islands; **Co Clare**

Regd owner: Martin Reidy; folio: 25213; lands: townland of Crossderry and barony of Clonderalaw; area: (1) 17.4419 hectares, (2) 10.0412 hectares, (3) 1.3152 hectares; **Co Clare**

Regd owner: John Ahern; folio: 4201F; lands: plots of ground being part of the townland of Raheens in the barony of Kerrycurrihy and county of Cork; **Co Cork**

Regd owner: Marion Cronin and Liam Cronin; folio: 44148; lands: plots of ground being part of the townland of Glenfield South in the barony of Dunhallow and county of Cork; **Co Cork**

Regd owner: David Kiely; folio: 29725; lands: plots of ground being part of the townland of Ballyvolane in the barony of Cork and county of Cork; **Co Cork**

Regd owner: Patrick and Theresa Murphy; folio: 15249F; lands: plots of ground being part of the townland of Eyeries in the barony of Bear and county of Cork; **Co Cork**

Regd owner: Johanna Tobin; folio: 10927F; lands: plots of ground being part of the townland of Glenagurteen in the barony of Condons and Clangibbon and county of Cork; **Co Cork**


LAW SOCIETY Gazette

# PROFESSIONAL NOTICE RATES

**RATES IN THE *PROFESSIONAL NOTICE* SECTION ARE AS FOLLOWS:**

- **Lost land certificates** – €126 (incl VAT at 21%)
- **Wills** – €126 (incl VAT at 21%)
- **Lost title deeds** – €126 per deed (incl VAT at 21%)
- **Employment/miscellaneous** – €126 (incl VAT at 21%)

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All notices must be paid for prior to publication. **CHEQUES SHOULD BE MADE PAYABLE TO THE LAW SOCIETY OF IRELAND.** Deadline for April *Gazette:* 24 March 2006. For further information, contact Catherine Kearney or Valerie Farrell on tel: 01 672 4828 (fax: 01 672 4877)


Regd owner: Mitchelstown Cooperative Agricultural Society Limited; folio: 5915L; lands: plots of ground being part of the townland of Oatencake in the barony of Imokilly and county of Cork; **Co Cork**

Regd owner: Mitchelstown Cooperative Agricultural Society Limited; folio: 37783; lands: plots of ground being part of the townland of Mogeely in the barony of Imokilly and county of Cork; **Co Cork**

Regd owner: Eileen O'Reilly; folio: 14315; lands: plots of ground being part of the townland of Rathpeacon in the barony of Cork and county of Cork; **Co Cork**

Regd owner: Michael and Delia O'Riordan; folio: 28177F; lands: plots of ground being part of the townland of Mitchellsfort in the barony of Barrymore and county of Cork; **Co Cork**

Regd owner: John O'Neill and Claire Curran, 58 Wheatfield, Muff, Co Donegal; folio: 47055F; lands: Muff; **Co Donegal**

Regd owner: Henry Leo Doherty, Castlequarter, Inch, Co Donegal; folio: 30765; lands: Carrowreagh; area: 0.6171 hectares; **Co Donegal**

Regd owner: John O'Donnell (Mick), Termon, Maghery, Dunloe, Co Donegal; folio: 10901; lands: Termon and Two Islands, adjacent to Termon; area: 9.0421 hectares, 0.5311 hectares; **Co Donegal**

Regd owner: Martin Cosgrave; folio: DN15437; lands: a plot of ground situate to the north side of Howth Road in the parish of Kilbarrack, district of Raheny; **Co Dublin**

Regd owner: Michael McCarthy; folio: DN119115F; lands: property situate in the townland of Finnstown and barony of Newcastle; **Co Dublin**

Regd owner: Kevin Monaghan; folio: DN70842F; lands: property situate in the townland of Murphystown and barony of Rathdown; **Co Dublin**

Regd owner: Anthony Mulholland; folio: DN77101L; lands: property known as site 22 Sandyford Office Park, Sandyford, situate in the townland of Tipperstown and barony of Rathdown; **Co Dublin**

Regd owner: Alan Connolly; folio: DN18590; lands: property situate in the townland of Rath and barony of Nethercross; **Co Dublin**

Regd owner: David Nolan; folio: DN121004F; lands: property situate in the townland of Drummartin and barony of Rathdown; **Co Dublin**

Regd owner: William Wogan; folio: DN72306F; lands: property situate in the townland of Wimbleton and barony of Balrothery East, property situate in the townland of Irishtown and barony of Balrothery East; **Co Dublin**

Regd owner: Vincent Woods and Margaret Woods; folio: DN22628L; lands: property known as no 17 Ballygall Parade, situate in the parish of Finglas, district of Finglas North; **Co Dublin**

Regd owner: Patrick Connors; folio: 10487; lands: townland of (1) Farnaun, (2) Gardenblake and barony of (1) and (2) Loughrea; area: (1) 3.7559 hectares, (2) 10.5218 hectares (one undivided moiety); **Co Galway**

Regd owner: Matthew Darcy; folio: 24701; lands: townland of (1) Leagaun (Moycullen By), (2) and (3) Moycullen, and barony of Moycullen; area: (1) 11.4865, (2) 0.7815 hectares, (3) 0.1593 hectares; **Co Galway**

Regd owner: Brendan Madden and Sean Osborne (as tenants-in-common of five undivided ½ shares); folio: 5096F; lands: townland of (1) and (2) Carrowmore Knock, (3) and (4) Freeheen Island, and barony of (1), (2), (3) and (4) Moycullen; **Co Galway**

Regd owner: Cecilia Diskin; folio: 3822F; lands: townland of Dangan Upper and barony of Galway; **Co Galway**

Regd owner: Michael J Rowland (deceased) and Bridget Rowland; folio: 5786F; lands: townland of Dangan Lower and barony of Galway; **Co Galway**

Regd owner: Catherine Teresa O'Donnell; folio: 40040; lands: Gortnaleck and barony of Galway; **Co Galway**

Regd owner: Michael Brosnan; folio: 20201F; lands: townland of Parkboy and barony of Trughanacmy; **Co Kerry**

Regd owner: Gerald and Joy Mullane; folio: 19867F; lands: townland of Dooneen and barony of

Trughanacmy; **Co Kerry**

Regd owner: Jeremiah Meehan; folio: 27801F; lands: townland of Kilmoyly South and barony of Clanmaurice; **Co Kerry**

Regd owner: Cyril Reeves; folio: 9977F; lands: Tuckmilltown and barony; **Co Kildare**

Regd owner: Landenstown Estates; folio: 4956; lands: townland of Landenstown and barony of Clane; **Co Kildare**

Regd owner: Michael Dowling; folio: 1182; lands: Clonmantagh Upper and barony of Crannagh; **Co Kilkenny**

Regd owner: James Dowling; folio: 585 Kilkenny; lands: Borrismore and barony of Galmoy; **Co Kilkenny**

Regd owner: Peter Gabb (deceased) and Margaret Gabb; folio: 15915; lands: Tinnaranny and barony of Ida; **Co Kilkenny**

Regd owner: John Duggan; folio: 14534; lands: Knickeen, Ballynalinagh, Curraghnadimpaun and barony of Kells; **Co Kilkenny**

Regd owner: Dermot and Linda O'Connor; folio: 11812F; lands: Bracklone and barony of Portnahinch; **Co Laois**

Regd owner: Michael P McGarry, Ballygeeher Hill, Barnacoola, Co Leitrim; folio: 17534; lands: Bellageeher; area: 0.7866 hectares; **Co Leitrim**

Regd owner: Elizabeth Leahy; folio: 2242F; lands: Rathjordan, Herbertstown, Co Limerick; **Co Limerick**

Regd owner: Joseph and Ann Danagher; folio: 5743L; lands: townland of Kilbane and barony of Clanwilliam; **Co Limerick**

Regd owner: Jeremiah Burke and Annie M Burke; folio: 1164F; lands: townland of Gortroe and barony of Glenquin; **Co Limerick**

Regd owner: Vincent Smith, Gelshagh, Ballinalee, Co Longford; lands: Gelshagh; Co Longford; area: 21.0007 hectares and 0.7107 hectares; **Co Longford**

Regd owner: Teresa Marsden, 54 Teffia Park, Longford, Co Longford; folio: 74L; lands: Deanscurragh; area: 0.0405 hectares; **Co Longford**

Regd owner: James J Coleman, Barronstown, Dundalk, Co Louth; folio: 4868; lands: Barronstown; area: 65.9081 hectares; **Co Louth**

Regd owner: Mary Aloysius Durkan, 26 Norfolk Road, Dublin 7; folio: 1166F; lands: Callystown; area: 1.4039 hectares; **Co Louth**

Regd owner: Kathleen McKenna, Belrobin, Kilkerley, Dundalk, Co Louth; folio: 11127; lands: Balrobin; **Co Louth**

Regd owner: James Foody; folio: 10236; lands: townland of Ballinahaglish and barony of Tirawley; area: 24.0187 hectares; **Co Mayo**

Regd owner: Laurence Flannelly and Teresa Flannelly; folio: 9729F; lands: townland of (1), (2), (3) Westland, (4) Cornaveagh and barony of (1), (2), (3) and (4) Carra; area: (1) 13.1200 hectares, (2) 23.2540 hectares (one undivided 21st part), (3) 23.2540 hectares (one undivided 21st part), (4) 1.2970 hectares; **Co Mayo**

Regd owner: Martin O'Brien; folio: 4138F; lands: townland of Carrowgowan and barony of Gallen; area: 0.3237 hectares; **Co Mayo**

Regd owner: Seamus Meegan, Dunbin, Knockbridge, Dundalk, Co Louth; folio: 18403F; lands: Ricetown; area: 82.8257 hectares; **Co Meath**

Regd owner: Eamonn Fitzsimons, Killegland, Ashbourne, Co Meath; folio: 2104L; lands: Killegland; **Co Meath**

Regd owner: James Lambe, Drumcatton, Inniskeen, Co Monaghan; folio: 17489, 17596; lands: Monaghan; area: 4.6918 hectares Bocks Lower (folio 17489) and area: 2.0361 hectares Bocks Lower (folio 17596); **Co Monaghan**

Regd owner: Matthew Fleming (deceased); folio: 211F; lands: Clara and barony of Kilcoursey; **Co Offaly**

Regd owner: Josephine Rothwell (deceased); folio: 4611; lands: Rath More and barony of Clonlisk, **Co Offaly**

Regd owner: William Spain; folio: 1766F; lands: Killaun and barony of Eglish; **Co Offaly**

Regd owner: Sean T Farrell; folio: 14558F; lands: road and barony of Warrenstown; **Co Offaly**

Regd owner: Michael Sheehan and Nora Sheehan; folio: 7194F; lands: townland of Warren or Drum and barony of Boyle; **Co Roscommon**

Regd owner: Fionan Rafferty and Helen Rafferty; folio: 18321F; lands: townland of Ardsallagh Beg and barony of Ballintober South; **Co Roscommon**

Regd owner: Owen McLean; folio: 12732; lands: townland of Drumaskibbole and barony of Carbury; area: 5.9741 hectares; **Co Sligo**

Regd owner: Michael Beirne; folio: 32319; lands: townland of Garryduff East and barony of Kilnamanagh Lower; **Co Tipperary**

Regd owner: Aivars Greislis; folio: 34605F; lands: townland of Garryard East and barony of Upper Ormond and county of Tipperary; **Co Tipperary**

Regd owner: Aivars Greislis; folio: 32565F; lands: townland of Garryard East and barony of Upper Ormond and county of Tipperary; **Co Tipperary**

Regd owner: Michael McCarthy; folio: 22267; lands: townland of Newtown and barony of Middlethird and county of Tipperary; **Co Tipperary**

Regd owner: Albert Donnelly and Nora Donnelly; folio: 3629L; lands: plots of ground known as no 32

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***Law Society of Ireland***

## CRIMINAL LAW COMMITTEE SEMINAR

Cashel Palace Hotel, Cashel, Co Tipperary. Saturday 1 April 2006. 10am – 4pm

**Registration:** 9.30am
**Seminar:** 10am – 4pm
**CPD hours:** five hours (group study)

**€130 per person**
**Trainee solicitors:** €80
(includes materials, morning coffee and lunch)

- **Speeding offences.** Speaker: *Evan O'Dwyer, solicitor*
- **Drunk driving offences.** Speaker: *Vincent Deane, solicitor, Office of the Director of Public Prosecutions*
- **The *Criminal Justice Bill*** (as amended). Speaker: *Conal Boyce, solicitor*

SEMINAR CHAIRMAN: *Alan Gannon, solicitor, Chairman, Criminal Law Committee*

**BOOKING FORM**

Name(s): _____

Firm: _____

Please reserve place(s): _____ Cheque in the sum of € _____ attached.

Please forward booking form and payment (to be received no later than 29 March 2006) to:
Colette Carey, solicitor, Criminal Law Committee, Law Society of Ireland, Blackhall Place, Dublin 7.

McCarthyville in the urban district of Dungarvan and county of Waterford; **Co Waterford**

Regd owner: Michael Kenny and Ann Kenny; folio: 12843F; lands: plots of ground known as 11 Beechwood Avenue, situate to the west of St Johns Park in the parish of St Johns Without, division B, and in the county borough of Waterford; **Co Waterford**

Regd owner: Michael Kett; folio: 12721F; lands: plots of ground being part of the townland of Ballintlea in the barony of Decies without Drum and county of Waterford; **Co Waterford**

Regd owner: Michael Grehan, Toorlisnamore, Kilbeggan, Co Westmeath; folio: 2645; lands: Toorlisnamore; area: 21.0917 hectares; **Co Westmeath**

Regd owner: William Loughlin, Killula, Delvin, Co Westmeath; folio: 16407; lands: Killulach; area: 9.3457 hectares and 1.5428 hectares; **Co Westmeath**

Regd owner: Ciaran Daly, Mabrista, Ballinagore, Co Westmeath; folio: 6864; lands: Ballynacoska; area: 4.1050 hectares; **Co Westmeath**

Regd owner: Nicholas Dempsey; folio: 10101F; lands: Dunanore and barony of Bantry; **Co Wexford**

Regd owner: Nicholas Dempsey; folio: 23975F; lands: Dunanore and barony of Bantry; **Co Wexford**

Regd owner: Peter Levingston (deceased); folio: 14101 Wexford; lands: St Iberius and barony of Forth; **Co Wexford**

Regd owner: International Travel Bureau Limited; folio: 2127L; lands: townland of Kilpoole Lower and barony of Arklow; **Co Wicklow**

Regd owner: Marguerite McConnell; folio: 10720; lands: townlands of Santryhill and baronies of Talbotstown Lower; **Co Wicklow**

Regd owner: Michael Osborne; folio: 3399; lands: townland of Derrybawn and barony of Ballinacor North; **Co Wicklow**

## WILLS

**Brennan, Deirdre (deceased),** late of Killea, Barnhill Road, Dalkey, Co Dublin. Would any person having knowledge of a will executed by the above-named deceased, who died on 25 October 2005, please contact Donal O'Kelly, Solicitor, Bank of Ireland Chambers, Westland Row, Dublin 2; tel: 01 672 6115/4/6, fax: 01 672 6099, email: donalok@iol.ie

**Culhane, Wilhelmena (deceased),** late of 64 Seapark Drive, Clontarf, Dublin 3. Would any person having any knowledge of the whereabouts of a will made by the above-named deceased please contact David M Turner & Co, Solicitors, 32 Lower Abbey Street, Dublin 1; tel: 01 878 7922, email: nwalsh@dmturner.ie

**Duffy, Maura (deceased),** late of 40 West Priory, Kilvane Avenue, Navan Road, Dublin, and Lismunga, Ruan, Co Clare. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased, who died on 14 August 2005, please contact Michael Houlihan & Partners, Solicitors, 9/10/11 Bindon Street, Ennis, Co Clare; tel: 065 684 6000

**Duncan, George A (deceased),** late of 7 Braemor Road, Rathgar, Dublin 14, who died on 14 January 2006. Would anybody having knowledge of the whereabouts of the original of the deceased's will, which is dated 23 September 1988, or of a later will, please contact Eugene F Collins, Solicitors, 3 Burlington Road, Dublin 4

**Keogh, Brendan (otherwise Brendan Kehoe) (deceased),** late of 35 Coolbawn, Ferns, Co Wexford. Would any person having knowledge of the whereabouts of a will dated 20 May 1983 or any other will executed by the above-named deceased, who died on 23 January 1990, please contact Dermot F Davis & Co, Solicitors, 1 Lymington Road, Enniscorthy, Co Wexford; tel: 054 35887, fax: 054 36350

**O'Brien, Thomas (deceased),** late of 59 Belton Park Road, Dublin 9. Would any person having knowledge of a will executed by the above-named deceased, who died on 30 July 1996, please contact Corrigan & Corrigan, Solicitors, 3 St Andrew Street, Dublin 2; tel: 01 677 6108, fax: 01 679 4392, email: info@corrigan.ie

**O'Hanlon, Mary (deceased),** late of 47 Cedarmount Road, Mount Merrion, Co Dublin, also 39 Devenish Road, Kimmage, Dublin 12 and 9 St Gerrard St, Limerick, who died on 6 January 2006. Would any person having knowledge of a will made by the above-named deceased please contact Tim O'Hanlon, 47 Cedarmount Road, Mount Merrion, Co Dublin; mobile: 086 880 3576

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**O'Reilly, Paul (deceased),** late of 7 Carlingford Road, Drumcondra, Dublin 9. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased, who died on 14 April 2003, please contact Orla O'Donnchadha & Co, Solicitors, 208 Botanic Avenue, Glasnevin, Dublin 9; tel: 01 857 4099, fax: 01 857 4098 or email: info@odonnlaw.com

**Shanney, Thomas (deceased),** late of Kilcastle, Ballydangan, Athlone, Co Roscommon. Would any person having knowledge of a will made by the above-named deceased, who died on 30 May 2005, please contact Tormeys, Solicitors, Castle Street, Athlone, Co Westmeath

**Tuohy, Brigid Anne (deceased),** late of Deer Island, Ballynacally, Co Clare. Would any person having knowledge of a will made by the above-named deceased, who died on 25 August 2004, please contact Michael Houlihan & Partners, Solicitors, 9-11 Bindon Street, Ennis, Co Clare; tel: 065 684 6000, fax: 065 682 1870

## MISCELLANEOUS

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

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## TITLE DEEDS

**In the matter of the *Registration of Title Act 1964* and of the application of Anthony Morris and Celine Morris in respect of property in the county of Laois. County: Laois; lands: Ullard or Lea; dealing no: T10223/98**

Take notice that Anthony Morris and Celine Morris, of 341 Morell Avenue, Naas, Co Kildare, have lodged an application for registration on the freehold register free from encumbrances in respect of the above property.

The original title documents specified in the schedule hereto are stated to have been lost or mislaid.

The application may be inspected at this registry.

The application will be proceeded with unless notice is received in the registry within one calendar month from the date of publication of this notice that the original documents of title are in existence. Any such notice should state the grounds on which the documentation is held and quote the

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dealing reference above.
*Sean MacMahon, Examiner of Titles*
**Schedule:** conveyance dated 8 October 1952 from Margaret McCormack to Margaret Fraser

**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 David Mac Nicholas**
Take notice that any person having an interest in the freehold estate or in any superior interest in the property known as: all that and those the premises formerly known as no 115 Upper Leeson Street and now known as no 152 Upper Leeson Street in the city of Dublin, being part of the property comprised in and demised by indenture of lease dated 14 December 1840 and made between Henry Read of the one part and Robert Chambers of the other part for the term of 200 years and subject to the yearly rent of £20.

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

In default of any such notice being received, the applicant, David Mac Nicholas, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.
*Date: 3 March 2006*
*Signed: Leo Buckley & Co (solicitors for the applicant), 78 Merrion Square, Dublin 2*

**In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Ruby Holdings**
Take notice that any person having an interest in the freehold estate or in any superior interest in the property known as: all that and those the premises formerly known as no 116 Upper Leeson Street and now known as no 153 Upper Leeson Street in the city of Dublin, being part of the property comprised in and demised by indenture of lease dated 14 December 1840 and made between Henry Read of the one part and Robert Chambers of the other part for the term of 200 years and subject to the yearly rent of £20.

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

In default of any such notice being received, the applicant, Ruby Holdings, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.
*Date: 3 March 2006*
*Signed: Leo Buckley & Co (solicitors for the applicant), 78 Merrion Square, Dublin 2*

**In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Dundonnell Estates Limited**
Take notice that any person having any interest in the freehold estate of the following properties: all that and those the hereditaments and premises known as no 1, no 1a and no 2 Brandon Terrace, Basin Lane, in the city of Dublin, all held under indenture of lease dated 24 January 1878 and made between William J Gormley and Marianne Gormley of the one part and Richard Hayden of the other part for a term of 400 years from 24 January 1978, subject to the yearly rent of £12 thereby reserved and the covenants on the part of the lessee to be performed and conditions therein contained.

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

In default of any such notice being received, the applicant 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 interest including the freehold reversion in the aforesaid premises is unknown or unascertained.
*Date: 3 March 2006*
*Signed: Nelson & Co (solicitors for the applicant), Templeogue Village, Dublin 6W*

**In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Mary Holohan**
Take notice that any person having an interest in the freehold estate or any superior interest in the property known as: all that and those the premises known as 151 Upper Leeson Street in the city of Dublin, being part of the property comprised in and demised by indenture of lease dated 14 December 1840 and made between Henry Read of the one part and Robert Chambers of the other part for a term of 200 years and subject to a yearly rent of £20.

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

In default of any such notice being received, the applicant, Mary Holohan, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown and unascertained.
*Date: 3 March 2006*
*Signed: Pearse Mehigan & Co (solicitors*

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*for the applicant), 83/84 Upper Georges Street, Dun Laoghaire, Co Dublin*

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

Take notice that any person having interest in the freehold estate of the property known as 8 Thompson Cottages, North Circular Road, Dublin 1, being portion of the property held under an indenture of lease dated 8 August 1878 and made between the Honourable Charles Spencer Cowper of the one part and John Thompson of the other part for the term of 200 years from 1 May 1878, subject to the yearly rent of £40 and the covenants and conditions therein contained, and an indenture of lease dated 11 January 1878 and made between Luke Reilly of the one part and John Thompson of the other part for the term of 91 years from 1 November 1877, subject to the yearly rent of £65 and the covenants and conditions therein contained and being all of the property the subject of a deed of assignment dated 27 June 1997 and made between Alan Hoey and Gina Hoey of the one part and John Shane Dalton of the other part.

Take notice that John Shane Dalton intends to submit an application to the county registrar for the county of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7 for the acquisition of the freehold interest in the aforesaid property and that any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the below named within 21 days from the date of this notice.

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

*Date: 3 March 2006*

*Signed: Niall Corr & Company, Solicitors (solicitors for the applicant), 32 Malahide Road, Artane, Dublin 5*

**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 Seamus Smyth and Thomas Smyth**

Take notice that any person having any interest in the freehold estate of the following property: all that and those the dwellinghouse and premises known as 70 South Circular Road, in the city of Dublin, held under an indenture of lease made 9 April 1878 between Joseph Kelly of the one part and Stephen Adams of the other part for the term of 137 years from 9 April 1878, subject to the annual rent of £3 and 14 shillings (since adjusted to £3.60) and subject to the covenants and conditions therein contained.

Take notice that Seamus Smyth and Thomas Smyth intend to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the 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, Seamus Smyth and Thomas Smyth intend to proceed with the application before the county regis-


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

*Date: 3 March 2006*

*Signed: Walter Odlum & Co (solicitors for the applicant), 2A Main Street, Blackrock, Co Dublin*

**In the matter of the *Landlord and Tenant (Ground Rents) Act 1967* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Leo Reynolds and Marie Reynolds**

Take notice any person having interest in the freehold estate of the property known as Brookfield House, Brookfield Terrace, Carysfort Avenue, Blackrock, Co Dublin, being part of the premises held under an indenture of lease dated 25 October 1920 and made between Noel Thomas Kershaw of the one part and Robert Allen of the other part and now being a portion of the lands comprised in folio 76393L of the register county Dublin for a term of 999 years less one day from 29 September 1844 at the annual rent of £3.6s.8d, and an indenture of lease dated 1 January 1921 and made between Noel Thomas Kershaw of the one part and John Mooney of the other part and now being a portion of the premises comprised in folio 76393L of the register county Dublin, for a term of 999 years less one day from 29 September 1844 at the annual rent of £3.6s.8d.

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

In default of any such notice being received, Leo Reynolds and Marie Reynolds 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 superior interest including the freehold reversion in the property aforesaid are unknown or unascertained.

*Date: 3 March 2006*

*Signed: Arthur Cox (solicitors for the applicant), Earlsfort Centre, Earlsfort Terrace, Dublin 2*

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- **Construction Lawyer - Top Tier firm. Dublin. €85,000+**
  Construction lawyer with experience in non-contentious construction law, skilled at advising private developers and public sector bodies in all elements of construction law. Must be familiar with FIDIC type contracts and public procurement procedures. Min of four years PQE with genuine career development opportunities with this highly reputable firm.

- **Commercial Lawyer - Dublin City Centre. € Market leading salary and benefits**
  A rapidly expanding business law firm in Dublin's Southside city centre is looking for an Associate Solicitor with 3 - 5 years PQE to join their Commercial department. Solid knowledge of Irish Company Law necessary for this role. Excellent potential for progression within this firm.

- **Banking Solicitor - Top Tier firm. Dublin. €85,000+**
  Candidate with particular experience in property based commercial lending within the banking law sector required for this leading firm in Dublin. Candidate will have experience of structure and tax based lending transactions and in advising lenders. Must have impressive track record in this field. Excellent career advancement opportunities within this firm.

- **Investment Funds Lawyer. Dublin €64,000+**
  My client, a well-established large law firm has a rare vacancy for an investment funds lawyer with a minimum of three years experience both advising on and establishing investment funds. This role offers an exceptional working atmosphere as well as very attractive benefits in this city centre location.

- **Commercial Property Lawyer. Top Tier Firm. Dublin. €70,000+**
  Prestigious top tier firm is looking to recruit a solicitor with a minimum of three years PQE in Commercial Property. Role will involve dealing with major retailers, various institutions, large private investors and both public and local authorities. This role is ideally suited to someone wishing to take the next step in their career.

- **Conveyancing Solicitor. Donegal. €Neg**
  Highly regarded firm in Donegal has an opening for a solicitor with any amount of PQE mainly in Conveyancing. Experience in family law and probate would be an added advantage but not deemed necessary.

### In House

- **In House Legal Advisor. Dublin South. €55,000+**
  International investments management company in Dublin's Southside is looking to recruit a lawyer with one to three yrs PQE to begin as Legal Advisor. A background in Corporate/ Commercial law is necessary with experience of funds and asset management a distinct advantage. Excellent location.

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- **Legal Executives, Legal Secretaries, Company Secretarial**
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- **General Banking Lawyers**
- **Capital Markets Lawyers**
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- **Corporate Lawyers**
- **Commercial Property Lawyers**

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## Dublin Corporate

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**Asset Finance** 1 - 5 yrs PQE up to €90k
Opportunity to join an expanding practice within one of the Ireland's top 5 law firms. Candidates of particular interest will have experience in aircraft financing and leasing transactions, but applications from other strong individuals welcome. (ref: 16455/3)

**Asset Management** 1 + yrs PQE €60k+
Top 5 practice requires an Assistant Solicitor to join their expanding finance team. Applicants should have a strong academic background with excellent technical and drafting skills. Relevant experience in the funds industry or asset management is essential. (ref: 15866/7)

**Banking** 5 yrs+ PQE up to €90k
Top 5 law firm requires a Solicitor with 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: 15866/5)

**Corporate/Banking** 3 yrs+ PQE €60k+
Solicitor required to join this expanding practice within one of Ireland's leading mid tier law firms. You should have at least 3 years PQE in any area of financial law and enjoy a challenging caseload for a diverse range of clients. (ref: 16066/1)

**Corporate** 3 - 5 yrs PQE €70k+
Corporate Solicitor required for this prestigious practice. Ideally from a large or medium firm you will have experience in M&A's, joint ventures, corporate finance and corporate governance. Strong analytical and interpersonal skills are essential. (ref: 15866/6)

**Financial Services** 3 yrs+ PQE €75k+
Prestigious law firm requires lawyers to join on of Ireland's leading Financial Services teams. Advising a wide range of clients including financial institutions, regulators and domestic and international corporations on a wide range of international financial services and banking law. (ref: 15866/5)

**Funds** All PQE €Fantastic
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: 15950/3)

**Structured Finance** 2 yrs+ PQE €65k+
Our client a top 5 practice requires Solicitors with at least 2 years 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: 16455/3)

**Tax** 1 yrs+ PQE €60k+
Globally recognised corporate tax practice requires 2 Solicitors to join their expanding team. Advising on a diverse range of Corporate Tax matters candidates will ideally have experience in a similar environment, but strong candidates from other areas will be considered. (ref: 16455/4)

## Dublin Commercial

**Commercial Property** 2 yrs+ PQE €60k+
Solicitors required for this expanding practice in one of Ireland's top 5 law firms. Representing international investors, developers and large financial institutions you will have a strong property background with experience in commercial developments and investments. (ref: 16455/4)

**Commercial Property**
5 yrs+ PQE to Partner €Fantastic
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: 15727/3)

**Construction** NQ - 1yr PQE €50k+
Exciting opportunity for a newly qualified Solicitor 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: 15950/15)

**Construction** 5 yrs+ PQE up to €110k
Leading law firm requires an experienced Solicitor to join their expanding construction practice. Advising 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.
(ref: 15866/1)

**Employment** 3 yrs+ PQE €60k+
Experienced Solicitor required to join the expanding team in one of Ireland's best regarded mid size law firms. Managing a broad range of contentious and non-contentious cases for an exceptional client list, you will have at least 3 years PQE in a similar environment. (ref: 15973/3)

## Dublin Office

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Out of Office Hours Paul Fahey 087 9109745
Offices also in Birmingham • Brighton • Bristol • Edinburgh • Glasgow • Leeds • London • Manchester

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## Regional & In House

t 01 669 4646

**Health Care** 5 yrs+ PQE €Fantastic
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: 16481/3)

**IT/IP** 3 yrs+ PQE €60k+
Top 20 law firm requires a Solicitor to join their established practice. Operating within a highly skilled team you will be working for a diverse client base protecting their interests and assets. You will have experience in trademark, copyright, licensing and other related issues. (ref: 16068/4)

**Insurance** 3 yrs+ PQE €60k+
Prestigious city firm requires Solicitors to join their progressive insurance practice. You will have at least 3 years PQE and experience of providing a full range of corporate and insurance regulatory services. Advising on largely non-contentious issues. (ref: 15560/6)

**Tax** 2 yrs+ PQE €60k+
Prestigious law firm seeks an ambitious lawyer to join their respected tax practice. You will have 2 years PQE and a strong academic background with a broad knowledge of commercial transactions. This is an excellent opportunity to join a top tier practice in their leading dedicated tax practice. (ref: 15560/5)

**Trusts & Estates** 1 yr+ PQE €50k+
Opportunity to join this respected practice in one of Ireland's leading law firms. Providing specialist legal services and tax advice to private and public bodies on issues including succession law, trust law, powers of attorney and charity law. (ref: 15866/2)

**Commercial** 5 yrs+ PQE €Fantastic 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: 16481/1)

**Litigation** 5 yrs+ PQE €Fantastic 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: 16481/2)

**General Practice** 1 yr+ PQE €45k+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 years PQE in conveyancing and probate. (ref: 16725/3)

**General Practice** 3 yrs+ PQE €55k+ Waterford
Assistant Solicitor required in the Conveyancing & Probate department of this large general practice in Waterford. Managing a large workload you will have at least 3 years PQE in conveyancing and probate related issues. (ref: 16725/2)

**In House Corporate** 1 yr+ PQE €50k+
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: 16047/1)

**In House Funds** 4 yrs+ PQE up to €90k
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: 16113/1)

**In House Funds Consultant** 5 yrs+ PQE €Fantastic
Senior Funds Solicitor required by this leading investment house to consult on compliance and legal issues involving funds. Candidates should have at least 5 years PQE gained in a leading investment company or law firm. (ref:16286/1)

**In House Contract Specialist** 3 yrs+ PQE €50k+
Exciting opportunity for a Contract Specialist to join this international IT solutions company. Working directly under the management of Legal Counsel you will have at least 3 years experience in a contracts role. Applications are welcome from qualified and non qualified solicitors. (ref: 17513/1)

**In House Company Secretary** 1YQ- 3 yrs PQE €Fantastic
Leading international company requires qualified or part qualified to join their expanding team. You should be ICSA qualified or working towards qualification. Advising on company law and company secretarial issues. (ref:16047/3)

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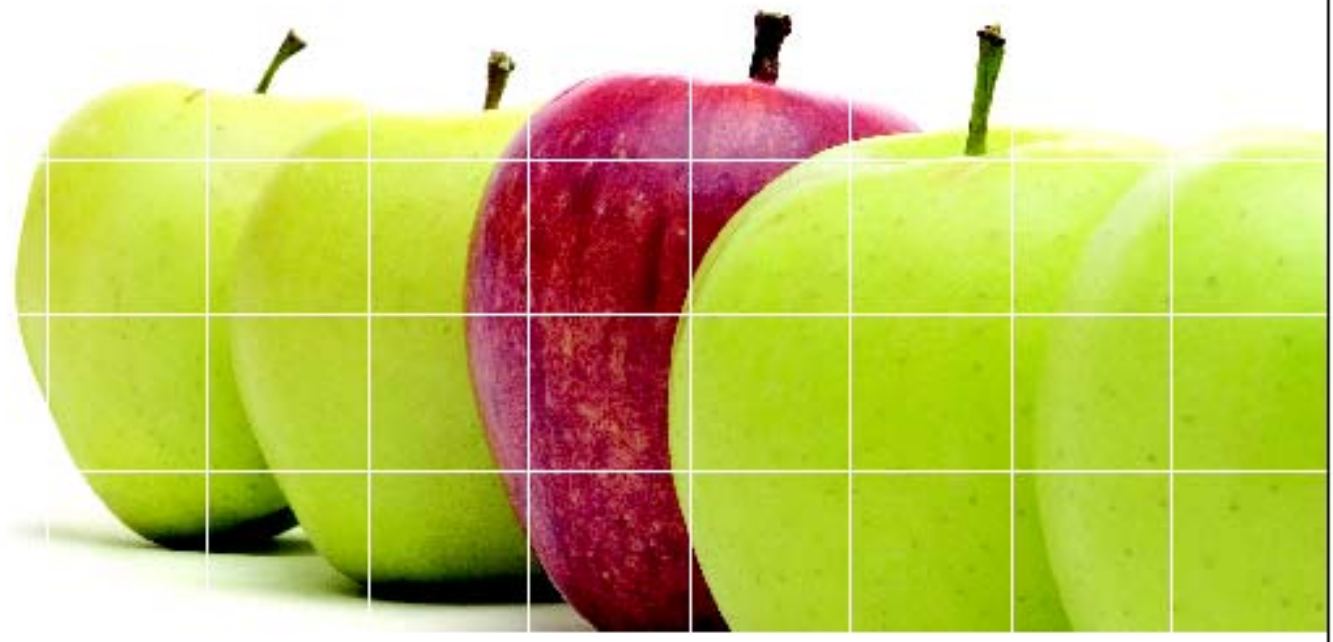

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### Practice

Banking Lawyer – 0-3 years' PQE €75k + bonus

A leading Dublin law firm with a reputation for excellence and professionalism seeks to appoint a lawyer with 0-3 years' PQE to join their banking and financial services department. The successful candidate will be ambitious and driven, in return you will enjoy an unrivalled remuneration package. Ref: GAE125811

Conveyancing Solicitor – 2-3 years' PQE €55k + bonus

Our client, a progressive mid-tier Dublin law firm, seeks to appoint a conveyancing solicitor to join their expanding private client department. The successful candidate will have circa 2-3 years' solid conveyancing experience with a desire to develop a career in a fast moving and progressive firm. Some development experience is preferable but not essential. Ref: JCY295420

Private Client Solicitor – 3 years' PQE €Excellent

One of Dublin's most prominent law firms seeks a solicitor to join its private client practice. The successful candidate will have at least 3 years' PQE in trusts, tax and estates, and planning for high net worth individuals. The successful candidate will be a motivated individual seeking to progress their career in a leading law firm. Ref: MKC224760

### In-House

In-House Projects Lawyer – 2-5 years' PQE €Neg + bens

Our client, an Irish state agency, seeks to appoint an in-house projects lawyer to join their expanding legal team. The ideal candidate will have between 2-5 years' PQE in one of the following areas: construction law, projects, PPP/PFI, public procurement, planning and/or contracts negotiation. Ref: GAE293390

Contract Manager – 5 years' PQE €Excellent + bens

A prominent professional services firm wishes to appoint a Contract Management Manager. The successful candidate will have 5 years' PQE with experience drafting and managing a variety of government, international and commercial contracts. This is an excellent opportunity for an ambitious lawyer looking for a new challenge. Ref: MCC252320

Funds Lawyer – 1-3 years' PQE €Excellent + bonus

A leading funds company seeks to appoint a qualified solicitor with 0-2 years' PQE to join their in-house team. This is a varied role and will include assisting the head of legal with fund launches, new product development as well as legal input into a large number of varied cross-functional projects. An exceptional opportunity for an ambitious solicitor with strong funds or other financial services experience to move in-house. Ref: JCY119116

If you are interested in these or any other legal opportunities please send your Curriculum Vitae in strictest confidence to Gemma Allen, gemma.allen@robertwalters.com or dublinlegal@robertwalters.com or Tel (01) 668 4111.

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The successful candidates should have gained experience from a recognised property department of a major or medium sized firm. In addition, candidates should have a strong academic background and the ambition to succeed. You will advise on all aspects of commercial property business including commercial landlord and tenant matters, portfolio acquisitions and disposals. All levels of PQE are in demand and there are roles available in medium to large firms.

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### Solicitor General Practice
(1-3 years' PQE)
Cork €Negotiable
Our client is seeking a solicitor with experience in residential and commercial conveyancing, probate and general practice work. Can you work on your own initiative and run your own files. Excellent terms on offer. Ref:21975
Contact Justin Loughnane

### Employment Lawyer
(2-5 years' PQE)
Dublin €Negotiable
Our client a leading firm 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. Ref:11313
Contact Justin Loughnane

### Commercial Lit Lawyer
(0-2 years' PQE)
Dublin €Negotiable
Our client a leading firm require a commercial litigator to join their team. You will advise domestic and international clients in the areas of product liability, administrative, environmental and commercial litigation generally. Excellent terms. Ref:13734
Contact Justin Loughnane

### Health Law Lit Lawyer
(3 years' + PQE)
Dublin €Negotiable
Our client a leading mid sized firm in Dublin is seeking a health law litigation lawyer to join their team. Experience before tribunals, compensation tribunals & the superior courts would be highly beneficial. Salary commensurate with experience. Ref:26530
Contact Justin Loughnane

### Legal and Compliance
Dublin €55-60k plus benefits
Our client a global funds and asset management provider are looking to expand their investment compliance team. The ideal candidate will have a third year qualification in business/finance/law, a solid background in funds relating to several jurisdictions. Italian/German would be an advantage but not essential. Ref:14065
Contact Portia White

### Residential Property Lawyer
(2 years' plus PQE)
Dublin €60k plus benefits
A prestigious medium size firm based in Dublin require a residential property lawyer. The ideal candidate will possess a broad range of experience within residential property coupled with the ability to handle their own caseload of sales and purchases from inception through to completion. Ref:14060
Contact Portia White

### Banking/Property Lawyer
(3 years' plus PQE)
Dublin €70k-100k
Our client is a medium sized private practice firm based in Dublin. The successful candidate will have a minimum of 3 years PQE and will have a solid property background coupled with good banking/finance experience. Ref:14045
Contact Portia White

### Life Sciences lawyer
(3 years'+ PQE)
Dublin €70k plus
Our client a top 5 private practice firm based in Dublin require a life sciences lawyer. The role will involve having experience in mergers and acquisitions, private equity, joint ventures and the full range of early to late stage R&D, partnering and commercialisation agreements in the life sciences industry. Ref:13771
Contact Portia White


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