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About the author

Mary Redmond is Consultant Solicitor at Arthur Cox Dublin where she specialises in Employment Law. She writes and lectures extensively in the subject. With over 20 years' experience of employment law practice, she is consistently rated internationally as one of Ireland's most recommended employment lawyers.

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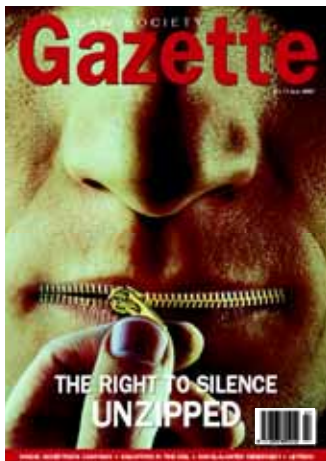


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On the cover

Every time *Eastenders'* Phil Mitchell gets hauled in by the Old Bill, he won't say nuthin' till he sees his brief. But what advice *should* a lawyer give to a client suspect?

PIC: GETTY IMAGES



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Upholding the right to freely choose a lawyer

Many of you will have seen the public information campaign carried out in various newspapers recently by the Law Society. This is in response to repeated calls by our members over the years to have us promote the work and the value of solicitors within the community.

There will be divided opinion as to whether the Law Society should engage in this type of campaign or not. There will also be many views on the nature and content of any campaign. It seems to be the case that the one thing that many people consider themselves expert on is public relations.

The decision to go ahead was taken only after the most careful thought and discussion, and after the most detailed external advice was obtained. It is an innovative and modern campaign. It is designed to draw attention to the profession. We could have gone for a predictable and safe option that might even have been considered boring. We will shortly be assessing the effect of the campaign and this assessment will form the basis of our views for any future activities.

Our members have also been concerned that, in recent times, there has been a concerted effort by various groups to discourage people from taking their case to court. Hardly a week goes by without somebody saying to me that the Law Society should do something to redress this imbalance. It is the case that victims – and I am not simply referring here to personal injury cases – have rights too.

Victim compensation

Very often, the only way that one can redress a wrong is to offer a victim compensation. Sometimes a combination of a rights-based judgment and compensation *is* the answer. There are over 10,000 solicitors on the roll in Ireland. In

the Law Society, we are constantly being told that people who feel their rights have been infringed are reluctant to take cases because of some stigma that has been portrayed, either in the media or elsewhere. The Law Society will never condone improper or exaggerated claims. It

will, however, constantly fight for the rights of individuals to be represented by lawyers of their choice in the vindication of their rights. A person always has the right to employ a solicitor or barrister – or not. The public will never hear the Law Society advising them not to consult an independent professional for advice and assistance and, thus, there is nothing unusual in the Law Society promoting the services of solicitors to the general public.

However, the public should be very wary when individuals or bodies constantly try to assert the proposition that one need not necessarily employ a lawyer. If one could guarantee that a client's rights would never be infringed, then lawyers would not be necessary, but this situation is not likely to occur any time soon. When a solicitor is employed by a person, that individual's rights are paramount to the solicitor. It is a pillar of our democracy that the public should be allowed choose their lawyer without let or hindrance from any other source. This is a fact that those who would prefer to see people go unrepresented would do well to remember.

Philip M Joyce
President



"In recent times, there has been a concerted effort by various groups to discourage people from taking their case to court"



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As a result of recent experience in both the UK (by reason of the impact of ADR in the new Civil Procedure Rules) and the US (by reason of the impact of ADR cases going to trial in New York are at a 40 year low), Irish civil and

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■ WATERFORD

'Cushy' number

Waterford Law Society hosted a special event to honour two eminent members, Edward King and John Goff. The so called 'Cushion Dinner' was held to recognise their half century of practice in the county and to acknowledge appreciation by their colleagues for instituting *mandamus* proceedings and providing cushions for the courthouse.

The well-attended dinner was hosted by bar association president Morette Kinsella and was held in the delightful Tannery. Those attending included John PC Goff (senior) and John (junior) (Nolan Farrell & Goff), Secretary of the Waterford Law Society Rosie O'Flynn (Peter O'Connor & Son), Niall King (JF Williams & Co), E Hegarty, M Moloney, A Thompson, Fiona Fitzgerald (Neil J Breheny & Co), Kenneth Cunningham (Newell Quinn Gillen), Liz Dowling (MM Halley & Son), Bernadette Cahill (BM Cahill & Co), Maire Nic Craith (Joseph P Gordon & Co), Myles O'Connor, and Marie Dennehy (Peter O'Connor & Son).

WIT and wisdom

UCC Law Society took up a debating challenge from WIT Law Society. Much to the surprise of the seasoned Cork University Team, the WIT team was unanimously chosen as winner by adjudicators Nora Owen (former minister for justice), Mr Justice Roderick Murphy (High Court) and barrister Mark Flynn. The master of ceremonies was President of the Waterford Law Society Morette Kinsella. The motion 'Mandatory sentencing extinguishes justice' was hotly



Waterford Law Society recently recognised a half century of practice by John Goff and Edward King (l to r): John PC Goff (senior), Secretary of the Waterford Law Society Rosie O'Flynn, John Goff (junior), President of the Waterford Law Society Morette Kinsella, Niall King and Edward King

contested. It was obvious from the outset, however, that WIT (proponents of the motion) had thoroughly done their homework, while UCC adopted a more relaxed, mace-style approach.

"We are over the moon to have won. As law students in WIT, we feel we are as good as any law students in any Irish university and we have proved it tonight," said Waterford team member and president of WIT Law Society, Roisin O'Shea. Best individual speaker on the night was Conor O'Brien, UCC.

■ WEXFORD

In fine voice

A large group of Wexford solicitors enjoyed an evening to remember at Wexford Festival Opera. To accommodate the building of a new opera house, the festival switched dates this year from October to June, and was relocated to a temporary theatre constructed at Johnstown Castle, just outside Wexford town. The double-bill production featured Stravinsky's *Pulcinella* and Busoni's *Arlecchino*. Guests of the association included Law Society President Philip Joyce, his wife Rosario Boyle SC, immediate past-president Michael Irvine and his

wife Ann, and newly-appointed judge Tony Hunt (Circuit Court), who sat in Wexford the same week.

Bar association president Helen Doyle and secretary John Garahy recently attended a meeting of the Court Users' Group, chaired by Gerry Nugent. Says Helen: "These are very useful meetings for keeping us and the profession informed, as there are many changes taking place in Wexford and ongoing works with the four courthouses in the county."

■ DUBLIN

Having a ball

Great satisfaction was expressed throughout the legal community at the appointment to the High Court of solicitor Garrett Sheehan and former president of the DSBA Gerard Griffin.

The Younger Members' Committee of the DSBA held a splendid ball in the Westbury, kindly sponsored by Brightwater and organised by Alma Sheehan and her hard-working committee. Some 'older fogeys', such as David Bergin and John Glynn, also turned up. The large attendance included Ann Matthews of PC Moore, an emerging celebrity since becoming the 10,000th solicitor

on the roll.

The DSBA hosted its annual dinner for senior colleagues – some of whom have been serving the legal world since 1957. President David Bergin and members of the DSBA Council attended.

Dun Laoghaire solicitors gathered in large numbers for a town-hall event, organised by the DSBA, and attended by President of the Law Society Philip Joyce and director general Ken Murphy. They took soundings on the issues of the day, and the current media campaign in particular.

Meanwhile DSBA President David Bergin is putting the finishing touches to the arrangements for his conference, which takes place in Bordeaux in the second week in September. It's purely coincidental, of course, that the Rugby World Cup takes place at the same time! Places are filling fast. Anyone interested should contact David as soon as possible.

■ GALWAY

Day at the races

The Galway Bar Association has extended an open invitation to all colleagues throughout the country to attend its social at the Galway Races on Monday evening, 30 July 2007.

The ticket price is €85 per person and includes coach transfer to and from Ballybrit Racecourse, admission, and supper and refreshments afterwards in the Radisson Hotel, Galway. This fun occasion is being sponsored by AIB. Contact Yvonne Francis at 091 562 531 for tickets. **G**

'Nationwide' is compiled by Kevin O'Higgins, principal of the Dublin law firm Kevin O'Higgins.

CCBE dismayed by Court of Justice decision on reporting obligations

The European Court of Justice has ruled against the challenge by the Belgian Bars against the reporting obligations on lawyers imposed by the 2001 *Money Laundering Directive* (Case C-305/05 with regard to Directive 2001/97/EC).

In 2004, the Belgian Bars challenged the implementation of provisions of the 2001 directive, which imposed reporting obligations on lawyers in Belgium for the first time.

The Council of Bars and Law Societies of Europe (CCBE) intervened in support of the contention by the Belgian Bars that the reporting obligations were an unjustified infringement of the right to a fair trial, guaranteed by article 6 of the *European Convention on*

Human Rights. (Previously, reporting obligations were confined to financial institutions.) The CCBE did so, believing that the introduction of reporting obligations on lawyers, who are members of a regulated profession, would breach article 6, as it would compromise the independence of lawyers.

The CCBE maintains that such reporting obligations will lead to the “irrevocable violation of the principle of client confidentiality”. Access to legal advice will be jeopardised, it says, and subsequent defence cannot be guaranteed if the necessary confidence of a client in his or her lawyer will be betrayed by the obligation imposed on lawyers to report



The European Court of Justice, Luxembourg

their suspicions to state authorities.

In its judgment on 26 June, the European Court of Justice decided that the reporting

obligation imposed on lawyers participating in financial transactions, with no link to judicial proceedings, did not breach the right to a fair trial.

Responding to the judgment, the CCBE said that it has never accepted that lawyers should have been included in the scope of the reporting obligation.

“The CCBE has consistently requested that the Commission and the Financial Action Task Force on Money Laundering (FATF) provide evidence that lawyers are being *unwittingly* used to facilitate money-laundering activities which would justify reporting obligations being imposed on them. Such evidence has never been provided by either the commission or the FATF.”

Darragh counts down to ‘Rugby Tour de France’

As the countdown to the Rugby World Cup 2007 in France begins in earnest, Darragh McElligott of Matheson Ormsby Prentice (MOP) is finalising plans for a gruelling three-week charity cycle around the host country in aid of Médecins Sans Frontières (MSF).

A solicitor in the retail and leisure group of MOP (specialising in licensing), Darragh is, however, not going to France for the wine or the rugby. Instead, he’ll be undertaking a 1,500km solo cycle over a period of 20 days, encompassing 16 days of cycling while covering an average distance of just under 100km per day.

Aptly named the ‘Rugby Tour de France’, the cycle will pass through seven World Cup host cities. He’ll set off from Nantes on the west coast on 1 September, heading south to



Supporting Médecins Sans Frontières and the ‘Rugby Tour de France’ are (l to r): senior Ireland rugby internationals Rob Kearney, Darragh McElligott (not an international rugby player!), Bernard Jackman and Jamie Heaslip

Bordeaux, where Ireland plays its opening match. He’ll then pedal southeast to the legendary rugby heartland of Toulouse, and afterwards to the coastal city of Montpellier. The next stop is Marseille, where he’ll turn north towards Saint Etienne, and finish in the world

heritage city of Lyon on 20 September.

The cycle is in aid of MSF (often referred to in the English-speaking world as ‘Doctors without Borders’) – one of the world’s leading organisations for emergency medical aid – which has

recently opened an office in Dublin. In over 70 countries worldwide, MSF provides relief to the victims of war, natural disasters and epidemics, irrespective of race, religion, or political affiliation. An entirely independent organisation, MSF won the Nobel Peace Prize in 1999 in recognition of its contribution to humanitarian causes. For more detailed information about MSF, visit www.msf.ie.

The aims of the Rugby Tour de France are twofold – to raise much-needed funds for MSF, which relies almost entirely on private donations to finance its projects, and to increase public awareness in Ireland of MSF and its work.

For anyone interested in learning more about the Rugby Tour de France or in making a donation, visit the event website at www.rugbytourdefrance.com.

Three more solicitors elected to Dáil

No less than ten solicitors were elected to the 30th Dáil in the recent general election. This is up from seven solicitors in the 29th Dáil.

Although the *Gazette* has not checked the records on solicitor membership of all previous Dáils, it seems likely that ten is the most TDs the solicitors' profession has ever had at one time.

The highest vote for any candidate in the country – a whopping 19,102 first preferences in his Laois-Offaly constituency – was obtained by Tullamore-based solicitor Brian Cowen. A key figure in the election campaign, he was subsequently reappointed Minister for Finance in the new government. Added to this was his appointment for the first time as Tánaiste.

Senior political figures

Another solicitor to be appointed to one of the most senior government ministries was Louth-based Dermot Ahern who, once again, is the Minister for Foreign Affairs.

Kerry South poll-topper John O'Donoghue has ended ten years as a cabinet minister to become Ceann Comhairle of the new Dáil.

In addition to these three very senior political figures, two more solicitors were elected for Fianna Fáil, to bring that party's share of the ten solicitor TDs to five. Peter Power was re-elected in Limerick East and 29-year old Drogheda-based solicitor Thomas Byrne was elected to



Dermot Ahern FF
(Louth)



Thomas Byrne FF
(Meath East)



Brian Cowen FF
(Laois-Offaly)



Olwyn Enright FG
(Laois-Offaly)



Charles Flanagan FG
(Laois-Offaly)



John O'Donoghue FF
(Kerry South)



Jim O'Keeffe FG
(Cork South-West)



Peter Power FF
(Limerick East)



Alan Shatter FG
(Dublin South)



Joanna Tuffy Lab
(Dublin Mid West)

the Dáil for the first time in the new constituency of Meath East.

The most senior of the four Fine Gael solicitor TDs is the party's outgoing justice spokesman, Jim O'Keeffe, who was returned again in Cork South-West. Olwyn Enright, whose father Tom was also a solicitor TD, was re-elected in Laois-Offaly. Two very experienced Fine Gael solicitor TDs who lost their seats in the 2002 general election won them back on this occasion, namely Alan Shatter in Dublin South and Charles Flanagan in Laois-Offaly.

The sole Labour solicitor TD and only the second completely new TD (in addition to Thomas Byrne) is the former senator Joanna Tuffy, who was elected for Dublin Mid-West.



Brian Lenihan FF (Dublin West).
Deserved appointment as
Minister for Justice, Equality
and Law Reform

The voters in Laois-Offaly, not for the first time, showed exceptionally good judgement, in that no less than three of the constituency's five TDs are solicitors.

Only one outgoing solicitor TD, Denis O'Donovan in Cork South-West, was unsuccessful in his bid for re-election.

Barristers elected

Three barristers were elected to the 30th Dáil, namely Barry Andrews for Fianna Fáil in Dun Laoghaire, Willie Penrose for Labour in Longford-Westmeath and Brian Lenihan in Dublin West.

The latter is of most significance for the legal profession in the 30th Dáil, as he has very deservedly been promoted to full cabinet status as Minister for Justice, Equality and Law Reform. In this role, he replaces another barrister, former leader of the Progressive Democrats Michael McDowell, who was not re-elected in Dublin South-East.

The Society has privately communicated, and now publicly extends, its warmest congratulations to all of the lawyers elected to the 30th Dáil.

WILLS, PROBATE & ESTATES

The Law Society is now selling *Wills, Probate & Estates*, published by the Law Society of Ireland/Oxford University Press. Contact Julianne Ward: email: j.ward@lawsociety.ie or phone: 01 672 4942 if you wish to order a copy.



■ FINANCE ACT CERTIFICATES

Revenue has recently launched a new web-based routine to help solicitors find the correct *Finance Act* certificates for stamp duty when drafting deeds. Members of the Society's Conveyancing Committee and Technology Committee, along with other practitioners, have worked with Revenue in the analysis and user-testing phases of this project and are happy to recommend it to the profession. Any further suggestions for improvement or expansion of the routine, or in relation to e-stamping in general, should be directed to: Mick O'Hanlon, E-stamping Project, Revenue Commissioners, Dublin Castle, Dublin 2, or by email to mohanlon@revenue.ie.

The new web routine is now live on Revenue's website and can be accessed through the following link: www.revenue.ie/revguide/stampduty/stampdutycert1.htm

■ COSC HEAD NAMED

Éimear Fisher, principal officer, Department of Justice, Equality and Law Reform, has been appointed as the first head of COSC – the National Office for the Prevention of Domestic Violence. The new office will develop the state's response to tackling domestic violence and related issues.

A career civil servant, Éimear has worked for the Legal Aid Board, the Courts Service – where she served as registrar in the Dublin Circuit Family Law Court, the Dublin Civil and Criminal Circuit Courts and the Central Criminal Court – and in the policy divisions of the Department of Justice, Equality and Law Reform.

■ RETIREMENT TRUST SCHEME

Unit prices: 1 June 2007
Managed fund: €6.474078
All-equity fund: €1.566962
Long-bond fund: €1.341916
Cash fund: €2.738906

Release of security files opens history's door

The Department of Justice, Equality and Law Reform has transferred a total of 187 files and records – dealing with national security matters relating to the period 1923 to 1933 – to the National Archives.

The release of the security files results from the advice of the Archives Advisory Group, established in February 2006.

The records, which have now been released, consist of all the files and records relating to national security matters that were closed before the end of 1933. These records were



Kevin O'Higgins – assassinated on 10 July 1927 by the IRA while walking to Sunday Mass in Booterstown, Co Dublin

retained until now in the department under provisions of the *National Archives Act 1986*.

The released files are likely to become a primary source of research in terms of the development and operation of security policy in the state in the first decade following independence.

Of particular interest will be the files relating to the murder of Minister for Justice Kevin O'Higgins in Dublin on 10 July 1927 and the file relating to the disappearance of Laurence Griffin – the 'Stradbally Postman' case.

The papers are available for inspection by members of the public.

Linda O'Shea Farren seeks your Seanad vote

Solicitor Linda O'Shea Farren is a candidate on the NUI Panel in the Seanad Éireann election. A BCL graduate of UCC, Linda was enrolled as a solicitor in 1985. She was then admitted to the New York Bar and practised as an attorney in New York and London. After she returned to Ireland in 1993, her career brought her into investment banking, the Department of Justice and the Irish Wheelchair Association, before opening her own solicitor's practice in 2000.

Linda believes she is an energetic, committed



campaigner with a proven track record in the areas of disability, music education, the teaching of foreign languages in primary schools, the Irish language,

shareholder rights, among other matters. If elected, Linda says that she will advance ground-breaking, progressive and balanced legislation on the issues that affect us all.

She is asking NUI graduates among the solicitors' profession for their 'no 1' vote. If you are an NUI graduate, you can check/update your registration details by emailing the NUI at records@nui.ie. Close of poll is 24 July 2007. For further information about Linda's candidacy, visit www.lindaosheafarren.ie. Email: osfarren@indigo.ie.

Land certificates – liens and undertakings

As readers of the *Gazette* will know, land certificates are being phased out. It follows therefore that (a) solicitors' undertakings in respect of land certificates should no longer be sought or given, including accountable trust receipts for land certificates; (b) Lending

institutions or any other parties holding land certificates as security should make arrangements to have any equitable lien registered as a burden on the folios to which the land certificates relate.

Practitioners should note that only equitable liens already in existence from 1

January 2007 can be registered as burdens, and that the law does not allow for the creation of new equitable liens since that date, whether by way of deposit of land certificate, certificate of charge, or otherwise.

(Please refer to 'Practice Notes' in this issue. See page 53.)

Promoting the profession to the public

In late May and early June, the Law Society ran a series of five different advertisements in the national print media. They were designed to promote the solicitors' profession and the services it provides to the public.

The feedback within the profession suggests there is, perhaps not surprisingly, a range of opinions about the campaign. Some solicitors dislike it intensely and believe it should never have been undertaken. Some members of the profession like some of the advertisements but don't like others. Still more were delighted with the campaign, describing it as "excellent", "clever" and "very effective".

Based on widespread soundings and on discussions at bar associations, however, it seems that the great majority of solicitors agree with the view expressed by one colleague that "the solicitors' profession has been on the receiving end of abuse from various quarters for years and it is great to see the Law Society fighting back".

Expert advice

This was not a campaign that the Society rushed into. A great deal of thought went into it. Some considerable time ago, the Society conducted a 'beauty parade' of the leading advertising agencies in Ireland and chose what to us was the most impressive agency – which also happens to be the biggest and longest-established Irish-owned agency – namely McConnells. Within McConnells, the Society has been advised throughout by probably the most senior and experienced director of that agency.

The decision to explore

whether or not such a campaign would benefit the image of the profession was based on detailed research undertaken by McConnells about the profession's image with the public. There has been pressure on the Law Society from within the

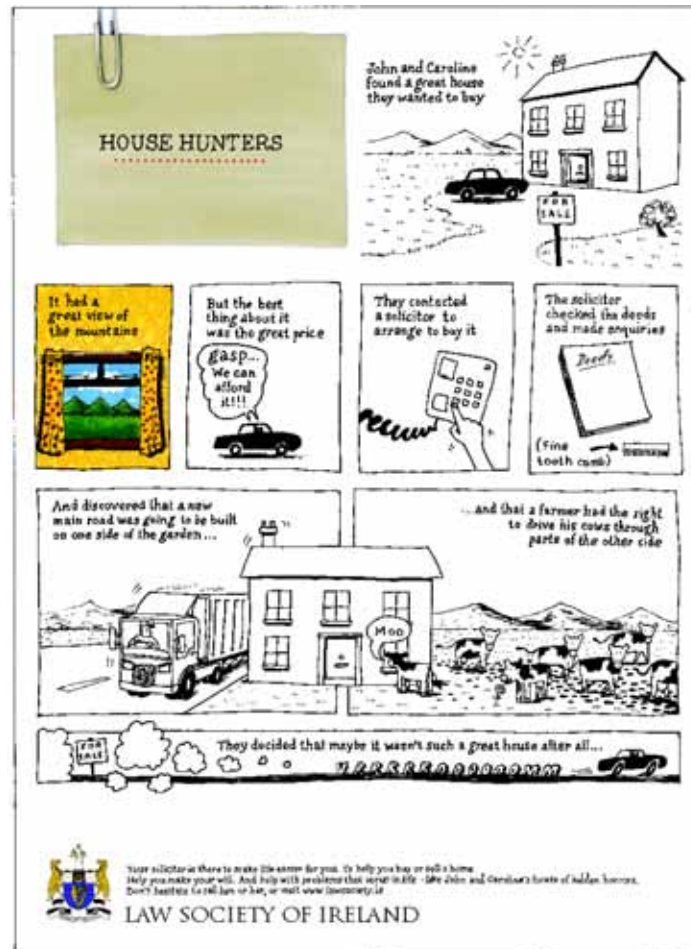
were tested on focus groups that were representative of the Irish adult population as a whole. Simplicity was required in the 'storylines'. Based on this research, some advertisements were dropped (usually on the basis that they were too complex) and others

understand and agree to the objective of the proposed campaign and its key messages. The overall objective, in summary, was to show the value and variety of the mainstream services that the solicitors' profession provides to the general public. It was deliberately not focused on the business community.

The idea of presenting narratives was so that the value of the services would not merely be asserted, but actually demonstrated in very brief and simple stories or 'parables'. The Society was advised that the use of this surprising, informal, light and humorous style, while still communicating a message, had been received very positively by the focus groups, who would have expected something much more conservative and, frankly, dull from the solicitors' profession.

The Council debated the campaign at length following the presentation by McConnells. The element of risk in the campaign was fully recognised. It was certain that it would not please everyone and would attract flack from certain predictable quarters, which it subsequently did. However, the Council decided unanimously to proceed with the campaign based on the expert advice it had received.

Now that the three-week campaign has ended, independent research is being conducted into the public's reaction to the campaign. Members of the Council have also been gathering views from members of the profession. All will be considered at the July Council meeting, when the decision will be made whether or not to proceed with the campaign again in the autumn.



'House hunters' – one of the five different advertisements

profession for many years to undertake a media campaign to try to improve this.

McConnells recommended a print rather than broadcast media campaign, and their creative department devised this campaign following a series of meetings with the practitioner members of the Society's Public Relations Committee. The cartoon format was chosen for creative communication reasons.

The specific advertisements

were adjusted. Those recommended for the campaign received an overwhelmingly positive response from these focus groups.

Campaign objective

At the end of March 2007, the entire campaign was presented and explained by McConnells for over an hour to a full meeting of the Law Society Council. This was to ensure that the Council would

Gardaí quizzed on insurance collusion

A Garda investigation team has questioned nearly 50 serving gardaí as part of an internal inquiry into allegations that members of the force supplied confidential information to insurance companies relating to road-traffic claims. The

investigation is being headed by Assistant Garda Commissioner Eddie Rock. It is trying to determine whether the Pulse crime-recording system was improperly used to gather information about individuals. Every time a garda opens a Pulse

incident, it is electronically recorded and fully traceable. It is understood that some gardaí have accessed several hundred road incidents on the Pulse system – they are being asked to account for their actions. Some gardaí – mainly those based in

regional or divisional traffic units – would have reason to examine accidents, but the reasons why other officers would have accessed the information is less obvious. The Data Protection Commissioner is examining the allegations.

SUPPORT SERVICES FOR MEMBERS

FOUR COURTS SERVICE WITH A SMILE!

Louise Campbell explains the Society's facilities at the Four Courts complex

Litigation practitioners will be familiar with the Law Society's office at the Four Courts. This office is managed by Paddy Caulfield, Delores Maguire and Mary Bissett (pictured right) – a longstanding, extremely helpful and dedicated team of Law Society staff (see contact details below).

The office provides Law Society members with many of the support services they require during their working day, including:

- **Internet access** (since January 2007), on a time-costed basis, from two new computer terminals – one located in the Law Society's Four Courts office and the other in the members' Writing Room – or from personal laptops with wireless internet capabilities. (Full wireless coverage is available in the Law Society's Four Courts office, in all consultation rooms and their vicinity.) Members have the option to pay the internet charge either by credit card or by an internet card purchased in the office. (WiFi is provided by Ganag.)
- **26 consultation rooms** available to Law Society members. To book a consultation room, contact the Law Society's Four Courts office. Consultation



rooms can be booked for one hour, two hours or the entire day – charges vary accordingly. (These consultation rooms should not be confused with the consultation rooms in the Distillery Building, Church Street, which are operated by the Law Library.)

- **The Friary Café** provides convenient, quality catering facilities to Law Society members. Open from 9am to 4pm, Monday to Friday, the café provides a varied menu of hot and cold drinks, soups, sandwiches, pastries and confectionary. Members have the option of ordering food and beverages from consultation rooms, including it on their booking invoice, and having these items delivered. This is particularly useful for

members who find themselves under time pressure while in consultation at the Four Courts.

- **Faxing, photocopying and phone services** are available to members from the counter at the Law Society's Four Courts office. Black and white or colour photocopying is available. The colour photocopier also has the ability to print off information from CD or floppy disc.
- **Package delivery and storage facility** – members can have packages delivered to the Law Society's Four Courts office marked for their attention, to be collected by them in the course of the day. There is also a storage facility, at members' own risk, for

coats, umbrellas, excess files and so on. Members should note, however, that unclaimed items are destroyed at the end of each term.

- **Members' writing room** – where members can prepare for cases in peace and quiet. As a matter of courtesy, members should refrain from using this room for consultations or for mobile phone conversations.

The Law Society has made a consultation room available to the Courts Service, to facilitate the technology needed to provide a live video link to Clover Hill prison. This service, which has yet to be launched by the Courts Service, will enable members to conduct consultations with their clients held at Clover Hill, directly from the Four Courts.

The Law Society's Four Courts office staff can be contacted at: Law Society Office, Four Courts, Inns Quay, Dublin 7; tel: 01 668 1806, fax: 01 873 5615, email: fourcourts@lawsociety.ie. **G**

For information on any Law Society member service, contact Louise Campbell, support services executive, Blackhall Place; tel: 01 881 5712 or email: l.campbell@lawsociety.ie.

letters



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

Gearing up for e-registration and digital mapping

From: Peter McHugh, e-registration project manager, Property Registration Authority

Peter McHugh, e-registration project manager of the Property Registration Authority, is currently writing to all bar associations in relation to recent and forthcoming developments on their e-registration and digital mapping projects. Bar associations and solicitors are invited to contact Mr McHugh to arrange briefing seminars on these projects. The following is the text of his letter, explaining why solicitors should make themselves aware of these developments.

It is apparent from recent seminars held in counties Wexford, Kilkenny and Westmeath that some practitioners may not have been fully aware of all the features offered by 'digital mapping' via our online portal, www.landdirect.ie. Customers can now, in addition to the earlier services, use their online account to:

- Conduct mapping searches in all counties by navigating the map and using location marks ('seedpoints') to identify folios,
- Conduct searches by postal address in all counties,
- View aerial photography in conjunction with Land Registry detail,
- Search by many other methods, such as plan number, map co-ordinates, OSi sheet reference, and so on.

There is no fee payable for conducting online map searches until a folio is inspected, with the exception of the 'search by plan number'.

The current phase of the project will result in the digitisation of boundary data for each county in turn. Parcel boundary data for counties Longford, Carlow and Meath is now available online. Boundary data for counties Westmeath and Kilkenny is expected to be made available over the coming weeks and, as additional counties come online, this will be notified on our website.

New arrangements have also been put in place in relation to the use of filed plan maps for registered land in counties that have been digitised. These arrangements are essential, as the new Ordnance Survey digital 'ITM' map replaces the national grid map for those digitised counties. It is very important that customers make

themselves aware of these arrangements.

Our e-registration project has recently commenced and is still in its early stages. However, we recognise that stakeholder engagement is critical to the success of all such projects. To reflect this, representatives from the Law Society, the Irish Mortgage Council and the Revenue Commissioners have joined the e-Registration Project Board. While a successful e-registration system will be an integral part of any future e-conveyancing solution, it should also offer an improved and more efficient service to our customers in advance of e-conveyancing. It is intended that the first phase of e-registration will result in electronic releases of registered charges. Work on

this 'e-releases' element is now under way.

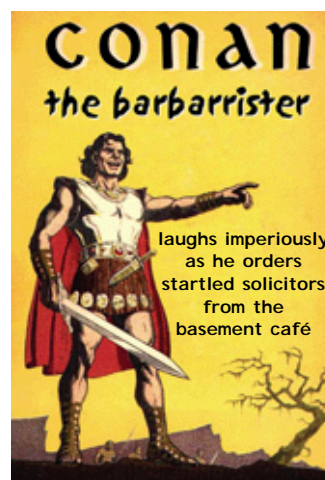
We have now commenced an extensive programme of customer consultation and are offering all bar associations an opportunity, in conjunction with the PRA, to organise briefing seminars for their members. Feedback received to date from attendees at recent seminars has been very positive, useful and encouraging. Members of our digital mapping and e-registration project teams will be available to attend and make presentations, as well as discussing relevant issues with your members. If interested, you should contact Peter McHugh by email at peter.mchugh@prai.ie or by phone at 01 804 8011.

Members of the bar 'revel in their exclusivity', says former barrister

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

I read with interest the letter of Mr Tim Shannon (May *Gazette*, p15) over the way in which the café in the basement of the Four Courts is administered and the way in which the bar wishes to try and make that café, or portions of it, exclusive for their use.

The bar wants to be alone. I speak as a person who practised for a number of years at the bar. They revel in their exclusivity. So much so that if a person is elevated to the bench from the bar they



have a benching for him or her. Only barristers are entitled to attend.

Likewise, they have their own dining room within the purlieu of the Four Courts; they have adequate dining facilities in the Distillery Building and adequate dining facilities in what is known as Shanley Towers.

They now want to take over the one place where solicitors are able to move without let or hindrance. This is a public facility and one is not entitled to reserve seats there, and I think it is iniquitous and I am writing under separate cover to the chief executive of the Courts Services.

'Harsh' law offends against

It is unjustifiable that the government continues to deny child benefit payments to children from the more vulnerable sections of society, writes Karen Berkeley

On 1 May 2004, the *Social Welfare (Miscellaneous Provisions) Act 2004* provided a new system of assessing those who might or might not qualify for child benefit. Prior to the implementation of this act, child benefit, then known as 'children's allowance', was universal in nature and was paid to the designated carer of each child in the state, regardless of their financial means or their immigrant status. The benefit was also non-contributory, in that it could be claimed whether or not the parent had paid PRSI. It was paid in line with the government's commitment to end child poverty and was seen as a major mechanism in the fight against poverty in the state.

However, this all changed with the introduction of the 2004 *Social Welfare Act*. According to section 17 of the act, to qualify for child benefits, one must first prove that he or she is "habitually resident in the state at the time of making the application". This new condition, known as the 'habitual residence condition' (HRC) applies not only to applicants of child benefit, but also to a number of other state-funded benefits that provide minimum financial assistance to people who fall within the Department of Social and Family Affairs means test.

These other benefits restricted by the HRC include unemployment assistance, old-age (non-contributory) pension, blind pension, widow's/widower's (non-contributory)

pension, orphan's (non-contributory) pension, one-parent family payment, carer's allowance, supplementary welfare allowance and disability allowance. Clearly, the HRC has targeted those sectors of society who, through vulnerable circumstances, may not be able to provide adequately for themselves. Prior to the implementation of the act, such people were guaranteed a minimum means of subsistence, yet now, for some, the situation is much less certain.

Section 17 of the act does not provide a definition of 'habitual residence'. While completely unsatisfactory, this is not surprising, as the term is a complex legal one that, time and again, has deliberately been left vague by legislating bodies to allow for the utmost flexibility in respect of their social welfare policies. Recently, the term has been expanded upon by section 30 of the *Social Welfare and Pensions Act 2007*, which obliges deciding officers to take account of certain considerations when determining whether a person is habitually resident in the state. These considerations include all the circumstances of the case and, in particular, the length and continuity of residence, length and purpose of absence from Ireland, nature and pattern of employment, the applicant's main centre of interest, and the future intention of the applicant.

In this state, whether or not an applicant classifies as habitually resident – and is thus entitled to one of the above-

mentioned benefits – is decided by a special unit in the Department of Social and Family Affairs known as the HRC unit, and in the case of child benefit by the child benefit unit. These deciding officers make discretionary decisions about the HRC that are not regulated by statute, but instead are made through an unaccountable and non-transparent system of internal policy decisions. These internal guidelines state that, unless a person has been present in the state for two years, is employed here, and has a settled intention to remain in Ireland, he or she will not satisfy the HRC.

Indirect discrimination

In practice, the HRC affects only small minority sections of people residing in Ireland. For instance, the measure was initially considered to affect all EU citizens and non-EU citizens alike. However, it soon transpired that the HRC was in breach of EU law, in that it operated as an indirect form of discrimination between Irish and EU citizens within the state, and was therefore an obstacle to the freedom of movement within the EU. Regulation 1408/7 was implemented to clarify matters in respect of EU citizens' entitlements to social welfare payments in other member states.

The regulation states that payments such as child benefit are to be granted to EU citizens working in another member state, regardless of how long the EU citizen has resided in the

state. This is because child benefit is regarded as a social advantage and EU law prohibits discrimination in respect of social advantages. Interestingly, it seems that the habitual residence condition continues to apply to EU nationals in respect of the other non-contributory benefits that do not come within the terms of Regulation 1408/7, such as unemployment assistance, disability allowance, blind person allowance, widow's/widower's (non-contributory) allowance and old age (non-contributory) pension.

While the HRC still applies to all families who first claimed child benefit after 1 May 2004, there is little doubt that the condition impacts disproportionately on specific sectors of residents in the state. These include persons who are legally resident in the state but who are not permitted to work, such as asylum seekers and those awaiting residency application decisions such as humanitarian leave to remain in the state. Such people are no longer entitled to monthly child benefit and are left with only a weekly payment of €19.10 per adult and €9.60 per child to live on in the direct provision, including bed and board. This is so even after they have resided in the state for many years. Other groups disproportionately affected are non-Irish nationals with no work record in Ireland, including those undocumented through exploitation, non-EEA nationals working here for less than two years who cannot prove a centre of interest in Ireland and previous EU work



most vulnerable

experience, and some Romanian and Bulgarian nationals who have been refused child benefit on the basis that they are now EU nationals. It seems that Irish migrants returning home and members of the Travelling Community may also be denied child benefit on the basis of the HRC.

'Pull factor'

There is little doubt that fear concerning immigration in the context of the EU enlargement was the principal factor behind this harsh arbitrary legislation. To put it simply, child benefit is seen as a 'pull factor' in terms of immigration, and any payments that might potentially encourage further migration to Ireland are resisted by our government. However, such deliberate restrictions on what was previously considered the most basic entitlement of children highlights clearly how the government has placed immigration policy before the welfare of children.

In fact, the restriction on child benefit is in direct conflict with the government's self-acclaimed strong stance on the promotion of children's rights and the elimination of child poverty in the state. For example, in June 2003, the government published its revised National Anti-Poverty Strategy (NAPS) review, in which it reiterated its commitment to eliminate child poverty, to promote greater equality for all children and to break the cycle of disadvantage and exclusion experienced by certain children in society. One of the targets of the revised NAPS was to eliminate consistent poverty among



Government has placed immigration policy before the welfare of children

children in the state altogether by 2007. However, in complete contradiction of these statements, 11 months later, our government introduced the HRC and substantially qualified the children who would be entitled to the benefit. The government is soon due to publish an updated NAPS, and it will be interesting to see how the qualifications for child benefit will be addressed, if in fact they are addressed at all.

Government's hypocrisy

Further evidence of our former government's hypocrisy in relation to the elimination of child poverty in the state can be seen from the more recent *Second Report to the UN Committee on the Rights of the Child 2006*. In this report, the government commended itself on significant achievements made in terms of the reduction of child poverty in the state, and attributes this to a number of factors including "significant real increases in social welfare payments, particularly in child-income support". The report completely ignored the fact


that, while there might have been increases in the quantity of child benefit payments in the state, the introduction of the HRC had simultaneously prevented entire sectors of our community from claiming child benefit altogether.

On a brighter note, it must be pointed out that all is not lost, and a coalition of organisations – including the National Consultative Committee on Racism and Interculturalism, the Free Legal Advice Centres (FLAC), the Immigrant Council of Ireland, the Irish Refugee Council, Integrating Ireland and the Migrants' Rights Centre to name a few – have come together in order to research the HRC for the purpose of highlighting the negative impact it is having on the more vulnerable sectors of our society and to campaign for the abolition of the condition altogether. FLAC has specifically taken the initiative in regards to campaigning for reinstatement of universal child benefits.

On 20 November 2006, at

the launch of the campaign, FLAC appealed to the government to respect its own pledge to end child poverty and to honour its commitments to children by restoring child benefit as a universal payment. About the HRC, the director of FLAC, Noeline Blackwell, stated: "On an analysis of the law and the practice, we had no option but to conclude that the outcome of this policy is that child benefit is denied to some of the children most at risk of poverty in Ireland and that it discriminates between children on the grounds of their status, contrary to the principles and laws contained in the *UN Convention on the Rights of the Child*."

In light of the government's many proclamations regarding its promotion of children's rights, and in light of the fact that Ireland has signed and ratified the *International Convention on the Rights of the Child* and is seriously considering creating a new constitutional provision guarding the rights of children, it is unjustifiable that the government continues to deny child benefit payments to children from some of the more vulnerable sections of society. FLAC is confident that, should enough people become aware of this ongoing injustice, pressure will mount for the abolition of the HRC and that universal child benefit will be restored.

For information on how to become involved in the campaign to restore child benefit, visit www.flac.ie. 

Karen Berkeley is a PPCII student in the Law School and is a volunteer with FLAC.

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Ireland waltzes to victory in Vienna

Despite some stiff competition, Ireland has won the honour of hosting the Second European Collaborative Law Conference in Cork in 2008

After a long wet winter, Vienna was just the ticket. Two solicitors from Cork city and two from West Cork set off for Vienna on 22 March to attend a two-day collaborative law conference in Vienna, writes *Anne O'Neill*. They were joined en route by three solicitors from Dublin and two mental-health professionals from Cork city. The occasion was the first European Collaborative Law Conference, held in the Trend Hotel Schloss Wilhelminenberg, an old hunting lodge in the hills outside the city.

For those of us in Ireland who had nursed the collaborative project from its infancy, the Vienna event was very exciting. We looked forward to meeting lawyers who would impart their considerable knowledge and expertise. In all respects, our expectations were delivered and exceeded.

Lawyers, mental-health professionals and accountants were present from Switzerland, Germany, France, Czech Republic, Austria, Ireland and England. Many highly experienced collaborative lawyers also travelled from Canada and the United States. The North Americans have led the way in collaborative law, with the Europeans following in their wake.

Over 100 people travelled to Vienna under the auspices of the International Association of Collaborative Practitioners. Collaborative practice is relatively new to Europe. For the North Americans, the European development is a further stage on what has been a long and



Irish collaborative law is on a Vienna roll

interesting journey. Discussion with British neighbours revealed that there are now collaborators practising in Scotland and Wales. On the other side of the globe, the practice is growing healthily in Australia and New Zealand.

Ireland unique

Expecting to be behind everybody else, the Irish were proud to discover that, while collaborative law is relatively new here, it appears that we have pulled ahead of the other European countries in many respects. We are unique in having trained 40 mental-health practitioners to work with us in the team-based model that is collaborative

practice. We are also well ahead in terms of the number of lawyers trained in the country, as there are now over 300 trained practitioners. Most amazingly, we are the only country that has collaboratively trained legal-aid solicitors with



Patricia Mallon: speaking in tongues

TALK THE TALK

'Collaboration' is a lawyer-designed method of resolving family-law disputes. It continues to evolve in a climate of increasing litigation and increasing complaints about the adversarial system.

Collaboration works on a series of face-to-face meetings between solicitors and clients, solicitors and solicitors, and finally both sets of solicitors and clients – so-called 'two-way and four-way meetings' that involve people in round-table talks according to a preset agenda to try and resolve their problems.

The talks are issue-based rather than position-based and are totally client-driven. There are a number of golden rules:

- Good faith bargaining is essential, and
- A participation agreement must be signed.

government backing. John McDaid of the Legal Aid Board is to be congratulated on his vision and initiative in this regard.

Collaborative cases are now underway nationwide. In Cork city and county, practitioners are dealing with growing numbers of cases. The story is the same for Wicklow-based practitioner Joe Maguire, who appears to be well ahead of the posse. Cases have been completed and ruled in Cork and other parts of the country, and judges are becoming familiar with the practice.

The national Association of Collaborative Practitioners (ACP) now has members from all over the country. Two Dublin solicitors sit on the ACP board. It is hoped in the coming months to increase the breadth of representation. As part of that process, the ACP intends to have a 'think-tank day' to determine how best to move forward as a national association and to better serve the needs of the growing countrywide collaborative movement.

Exciting times lie ahead. Ireland will host the second European Collaborative Law Conference in Cork in 2008 at the five-star Carlton Hotel on beautiful Fota Island. This was despite some very strong competition from our English neighbours. Ireland's victory was due in no small part to the sterling efforts of ACP chairwoman Patricia Mallon, whose deft manoeuvring and display of linguistic prowess – she addressed the Vienna conference in four languages – sealed Ireland as the venue for 2008. **G**

Deportation and the ECHR –

European courts applying the ECHR have had to make extremely poignant decisions on the deportation of illegal immigrants

Olivia Agbonlahor came to Ireland from Italy with her twins, fleeing persecution there by Nigerian mobsters because of her husband's journalism. Her application for asylum was refused and, despite her young son being diagnosed as suffering from ADHD and intellectual disability, her application for permission to remain on humanitarian grounds was refused by the minister. Mrs Agbonlahor anticipates that if they are returned to Nigeria, her son's mental disability will receive no treatment and will result in them becoming outcasts. She argued that these were exceptional circumstances that should be considered under article 8 of the *European Convention on Human Rights Act 2003*, the right to private and family life. However, Feeney J held that the circumstances were not sufficiently exceptional to amount to a breach of article 8 if the family were returned.

European courts applying

the ECHR have had to make extremely poignant decisions on the deportation of illegal immigrants where their future health, and even lives, were going to be drastically affected because of the lack of medical and social services in their home countries. They had to decide whether their actions would result in the person concerned suffering inhuman or degrading treatment, which

is absolutely prohibited under article 3. Private life under article 8 is considered to include "moral and physical integrity" and protection against treatment that is not severe enough to engage article 3 (*Raninen v Finland*). Mental health is considered a crucial aspect of private life associated with moral integrity, so that the preservation of mental stability is an indispensable precondition

to effective enjoyment of the right to respect for private life. Therefore, article 8 may become engaged in cases like that of the Agbonlahor family, where a person's mental health is threatened.

The general position was summed up in *Henao v The Netherlands* as follows: "According to established case law, aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a contracting state in order to benefit from medical, social or other forms of assistance provided by the expelling state. However, in exceptional circumstances, an implementation of a decision to remove an alien may, owing to compelling humanitarian considerations, result in a violation of article 3" – and also, in exceptional circumstances, a violation of article 8.

In *D v UK*, the applicant, extremely ill and dying of AIDS, was threatened with expulsion to St Kitts. He had no family there, and no treatment or care would

LOOK IT UP

Cases:

- *Agbonlahor and others v Minister for Justice and the AG* (2006) IEHC 56, Herbert J – application for leave for judicial review
- *Agbonlahor and others v Minister for Justice and others*, (2007) IECH 166, Feeney J – judicial review
- *Raninen v Finland* (1997) 26 EHRR 563
- *Henao v Netherlands*, ECtHR, 14 June 2003
- *D v UK* (1997) 24 EHRR 423
- *Bensaid v UK* (2001) 33 EHRR 10/205
- *N v Secretary of State of the Home Department* (2003) EWCA Civ 1369
- *R (Razgar) v Secretary of State of the Home Department* (2004) 2 AC 368
- *Baby O (suing by mother and next friend IAO) and IAO v Minister for Justice and others* (2002) 2 IR 169

ONE TO WATCH

Assessments start under the Disability Act 2005 (Part 2)

Part 2 of the *Disability Act 2005* was brought into effect for children under five years of age by SI no 234 from 1 June 2006. It gives people with disabilities an entitlement to an independent assessment of health and education needs and a service statement identifying the services to be delivered – which do not

necessarily amount to the same thing. It also establishes a system of complaints and appeals.

For those who lobbied long and hard to have a 'rights-based' *Disability Act*, the legislation that was finally enacted came as a disappointment because of the discretionary and resource-bound nature of the services to be available to disabled children and

adults. Part 2 sets out a detailed procedure, involving five different types of officers, and it makes it clear that, while an assessment may identify everything a person should ideally have, what will be available will be subject to the constraints of budgets and availability. Furthermore, the entitlements are not justiciable. Only appeals on a point of law lie to the High Court from

determinations of the appeals officers.

The government was determined to keep away from the justiciable model on grounds of cost, arguing that resources would be spent on litigation rather than on service provision, which was its priority. Is there therefore a role for legal professionals? Not a large one, probably, but in Britain, certain

human rights watch

the *Agbonlahor* case

be available, so that he would be exposed to acute suffering while he was dying. It was held that, in these exceptional circumstances, it would be a breach of article 3 to deport him. This case was described as “an extension of an extension”.

In *Bensaid v UK*, the applicant was an Algerian national undergoing treatment for schizophrenia in Britain, where he had been living for 11 years in an alleged marriage of convenience. In addition to great mental suffering, he risked relapse into hallucinations and psychotic delusions involving self-harm and harm to others if deprived of appropriate medication, which was likely. The ECtHR recognised that his personal integrity, including his sanity, could be breached under article 8. However, the ECtHR found that the risk assessment was based on largely hypothetical factors and that it was not substantiated that he would suffer inhuman and degrading treatment. Nor had it been established that his moral integrity would be substantially affected to a degree falling



Olivia Agbonlahor, with her son Great and daughter Melissa, outside the High Court in Dublin

PHOTO: COLLINS PHOTO AGENCY

within the scope of article 8, and even the dislocation to his life caused by deportation would be permissible under the qualifying article 8(2), as being in accordance with law and necessary in a democratic society. He failed under both articles 3 and 8.

In *N v Secretary of State for the Home Department*, the applicant was a Ugandan suffering from AIDS, who would not get the treatment she required to stay alive in Uganda

and who anticipated dying within months if deported, whereas she could live for decades in Britain if permitted to remain. This was not sufficient to engage her rights under article 3 and prevent her from being deported.

In *R (Razgar) v Secretary of State for the Home Department*, the Kurdish Iraqi applicant was resisting return to Germany under the *Dublin Convention*. He was receiving treatment in Britain for a psychiatric

condition, which treatment allowed him a measure of autonomy that would not be available in Germany, so that he was at risk of committing suicide if deported. The House of Lords (3:2) confirmed the decision of the Court of Appeal that his case could come within article 8 and would have to be reconsidered.

Ireland

In the *Baby O* case, the mother of the unborn Baby O resisted deportation on the ground that this would constitute a failure on the part of the state to defend and vindicate the right to life of her unborn child in breach of the Constitution, as the pregnancy would be at risk in Nigerian conditions. (The case arose before the *ECHR Act 2003* came into effect.) The lower standard of healthcare was held not to be a ground to refuse deportation, and rights that would not be accorded to born persons would also not be extended to unborn babies. **G**

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

firms do work in the field of education and disability rights, and frustrated parents consult them when they feel they are not getting a fair hearing. It is likely that there is scope for some work of this nature here also.

The following is a brief summary of some of the more salient points of the legislation. The act itself can be viewed on www.irishstatutebook.ie.

Definition of disability

The first thing to note is the definition of 'disability' in section 2: "Disability', in relation to a person, means a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the state or to participate in social or cultural life in the state by reason of an enduring physical, sensory, mental health or intellectual impairment."

The impairment must be enduring; a temporary disability does not qualify. Further, for the purposes of part 2 of the act, the disability only qualifies if it:

(a) Is permanent or likely to be permanent, results in a significant difficulty in communication, learning or mobility, or in significantly disordered cognitive processes, and

(b) Gives rise to the need for services to be provided continually to the person whether or not a child or, if the person is a child, to the need for services to be provided early in life to ameliorate the disability.

Therefore the disability threshold is quite high, and mild disabilities that do not need continuous services may not qualify.



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Assessment

Independent assessment officers are to carry out assessments "without regard to the cost of, or the capacity to provide, any service identified in the assessment as being appropriate to meet the needs of the applicant concerned". Although they are to be independent, assessment officers are appointed for such period as the HSE may determine. If the HSE does not like their assessments, will they be reappointed? Their independence will require a genuine ethos to be established and protected. Assessment officers may call on the council to provide outside expert help with educational assessments. Their reports must state the existence or otherwise of disability, its nature and extent, the person's health and education needs, a statement of services considered appropriate by the assessment officer and their duration, and a review date. The person concerned is to be involved, as appropriate. If the person concerned is a child who is already in school, the matter must be referred to the school for an assessment under the *Education for Persons with Special Educational Needs Act 2004*.

A person or someone on his or her behalf (for example, a parent,

legal representative, advocate assigned by Comhairle, or HSE official) may apply for an assessment, and it must take place within three months. There is to be no duplication with assessments under the *Education for Persons with Special Educational Needs Act*, and repeat assessments cannot be undertaken unless a year (if a child) or the review date has passed, or there have been changed circumstances, further information or a material mistake of fact.

Service statement

After the assessment is made, it is passed to a HSE-appointed liaison officer, whose task it is to translate the assessment into specified services in a service statement. This is where a disconnect can arise between the ideal and reality, as there is no guarantee that the health and education needs identified in the assessment will be met in the service statement. In developing a statement, the liaison officer must have regard to:

- (i) The person's eligibility under the *Health Acts* (which is means-tested, with children deemed to have the same means as their parents),
- (ii) The practicality of providing the services in the assessment,
- (iii) The need to ensure that the

service would not result in any expenditure in excess of the amount allocated to implement the approved service plan of the HSE in the relevant year,

(iv) An education service provider's capacity to provide the service within its annual budget.

The council is required to comply with the service statement, but has considerable discretion not to if it considers, for example, that the assistance is not required, that compliance would be inconsistent with its functions or would unduly prejudice their performance, or that it would not be reasonable, having regard to its resources. The liaison officer may appeal against this to the council, who can decide otherwise.

Where a child is concerned, a service statement must not contain any provisions relating to education services – perhaps because this is intended to come within the scope of the *Special Educational Needs Act* above.

Records

Records are to be kept identifying, among other matters, the needs not covered by service statements and the number of persons to whom services are not provided, so that they can be taken into

account in planning. An annual report to the minister is to indicate needs and the periods of time ideally required for the provision of services.

Complaints, mediation and appeals

Complaints officers (HSE employees, also to be independent) are to investigate complaints and refer them, if suitable, to mediation officers, failing which they are to be sent to another complaints officer. Parties must have an opportunity to be heard, and hearings are to be in private. Appeals officers are appointed by the minister and are also independent. Appeals officers have extensive powers to seek and compel the production of information. Hearings are to be as informal as is consistent with the appeal. Non-cooperation is an offence. Ultimately, determinations may be enforced by the Circuit Court on the application of an appeals officer, the disabled person or his or her representative.

Starting with under-fives is taking the first baby steps. Minister Harney says she aims to have Part 2 apply to all persons with a disability by 2011. **G**

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

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The 2007 *Criminal Justice Act* allows for adverse inferences to be drawn from a suspect failing to mention matters subsequently relied upon in their defence. Diarmuid Collins ain't sayin' nuthin' till he sees his brief

MAIN POINTS

- *Criminal Justice Act 2007*
- Adverse inferences to be drawn from remaining silent
- Sections 18, 19 and 19A – principal changes

As of 1 July, solicitors attending garda stations will be in the unenviable position of having to advise detainees about how to deal with garda questioning in the wake of the changes made by the *Criminal Justice Act 2007*. The act allows for adverse inferences to be drawn from a failure to mention matters subsequently relied upon in their defence. As such, simply advising a detainee to remain silent will no longer be best practice.

There are substantial questions as to how these provisions will operate in practice, and it will take several years for the courts to begin to put a definitive shape on them. In the meantime, solicitors will be left somewhat in the dark as to how best to advise on them. This position is all the more unenviable since, as has been the case in England, the actual advice of attending solicitors may come into issue in some cases and become the subject of reported decisions.

The scope of these changes is broad and cannot be adequately covered here, but this article flags some of the issues and contributes to the discussion that must now take place among practitioners about these provisions.

Slip slidin' away

The act makes two principal changes. The first is a substantial redrafting of the existing inference-drawing provisions in sections 18 and 19 of the *Criminal Justice Act 1984*, which, it will be recalled, allow for the drawing of inferences from a failure to account for the accused's presence at a place, or for objects or marks found on them or at a place where they were present. These provisions are rarely used – some of the purported reasons for this are addressed in this legislation. In particular, any garda, and not just the arresting member, will now be able to put the matters to the suspect. The matters that the suspect may be required to account for have also been broadened, now covering the presence of any object, substance or mark, *in any place* where the suspect was *during any specified period*, not just the place of arrest. Similarly, in section 19, the suspect may now be required to account for his or her presence *at any particular place* at or about the time the offence, not

just the place of arrest.

Sections 18, 19 and 19A contain a proviso preventing these provisions being employed where the questioning is not recorded, unless the suspect consents to this. There is, however, no requirement that charging the suspect, or informing him or her that they may be charged, must be recorded. In the light of the recent jurisprudence on the area of unrecorded confessions, it has to be doubted that an inference could be drawn from an unrecorded failure to account for or mention matters, whether consented to or not.

Learn how to fall

A key difference between the three provisions is that sections 18 and 19 must be formally invoked by the gardaí when calling for an account. Of themselves, these can form a positive part of the prosecution case at trial. Section 19A (see panel, page 25) is only triggered by an accused relying on a fact they have not mentioned before (see *DPP v Bowes*).

It seems likely, then, that we will see an increase in the use of sections 18 and 19. It is more difficult to say what the effect of the new section 19A will be. Similar provisions, now repealed by this act, have only resulted in one reported case, *DPP v Bowes*, which merely reminds us that the defence must trigger the provision by relying on facts.

However, there is a body of English and ECtHR authority on a similar provision in England that might assist in determining some of the issues that will arise, subject, of course, to the rider that Irish courts may interpret section 19A differently. In England, the concept of a fact relied upon in one's defence has been given a broad interpretation, such that it incorporates a scenario where an accused does not give evidence but elicits matters from witnesses in order to put forward a specific and positive case (*R v Webber*). An admission or denial of an aspect of the prosecution case may, in some circumstances, constitute a fact relied upon (*R v Betts and Hall* and *R v Daly*). This means that, in some circumstances, even if the accused is not putting forward any positive defence at trial, the provision may operate against him if he has failed to

The sound

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of SILENCE



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Let's see the interrogator make sense of that!

admit or deny certain matters at interview.

How, then, might these provisions alter current advices? Simply advising suspects to remain silent is no longer the best advice, since the jury will be invited to infer that any defence subsequently advanced at trial is false. However, the dilemma facing a suspect and their attending solicitor is that, in some cases, by mentioning matters, they might incriminate themselves and contribute to an otherwise weak prosecution case that would have dissolved had they remained silent. This may be the principal effect of the new provisions – in borderline cases, the giving or withholding of an account may be the difference between a prosecution being brought or not.

The best-case scenario from a defence perspective is that the accused's silence does not go to the jury at all, since they will invariably draw a negative inference from it. In an ideal world, therefore, the accused would mention all matters they would rely on in their defence at interview stage, including admissions or denials. This can have the added bonus of enabling the defendant to adduce this defence at trial without him actually giving evidence, by leading the prosecution garda through the relevant sections of the interview.

If the accused puts his version of events to the gardaí during questioning, his barrister can ask the gardaí about it at trial. Thus the defence can put their case to the jury without giving evidence themselves, thus avoiding the danger of prosecution cross-examination. This already occurs and is a significant advantage to a weak defence.

In England, the practice has developed of

furnishing a statement setting out such matters. Provided the accused does not stray beyond its terms at trial, this mere mentioning of matters without answering questions has been held to prevent the operation of the inference-drawing provisions (see, among others, *R v Knight*). It is to be presumed that this approach would be followed here since, as section 19A restricts the recognised constitutional right to silence, it must be construed strictly.

Of course, in England, solicitors are able to sit in on interviews and read out their clients' statements, which is not yet possible here. It would then fall on the suspect to read their statement, or at least remember to mention all the given matters. While this solution would be most plausible in those rare cases where a suspect has anticipated his questioning and sought legal advice prior to being arrested, it is possible that a list of matters could be produced on consultation during detention. It would, however, be a brave lawyer indeed who would be willing to tie their client to a given version of events in the absence of full disclosure of the prosecution case or clear and complete instructions – neither of which will often be available in a detention scenario, since the inferences would still arise if the accused changed or added to their story at trial.

Another consideration is that an accused who might subsequently plead guilty might tie themselves to a particular version of events. Giving no comment could offer a plea in mitigation based on a more favourable interpretation of events. This underscores how important it is that attending solicitors attempt to assess the strength of the case

against the suspect before advising them.

There remains the option of the suspect remaining silent, but advice to this effect could come back to haunt a solicitor. In Britain, where defendants have sought to rebut inferences being drawn against them by stating that they remained silent on legal advice, evidence is led as to the basis for the solicitor having given that advice. The jury is then asked to assess whether it was reasonable for the suspect to remain silent. There are conflicting decisions in this regard, but some at least, including the ECtHR in *Condron v UK*, indicate that, once this has occurred, the accused may lose privilege and the solicitor can be cross-examined as to what the suspect told them. This would be an unattractive enough proposition from a solicitor's point of view, but would also involve the accused's silence being put to the jury, which is to be avoided. It is submitted that the only instances where it would be correct for a solicitor to counsel silence would be where it seemed that there was no evidence against the accused, and he therefore only stood to lose by talking and possibly incriminating himself, or where the account that the suspect offered to the solicitor was plainly unsustainable.

Homeward bound

It may be that, over time, lawyers will be able to identify specific facts that ought to be mentioned in certain circumstances, or where certain offences are alleged, and may therefore be able to advise detainees what to mention on a case-by-case basis. It seems likely, for instance, that a no-comment interview would fail to best serve someone accused of a sexual offence, since they would invariably have to put forward a positive defence, and as such would then have to mention this in interview. Similarly, someone maintaining they were innocently present at a crime

LOOK IT UP

Cases:

- *Condron v UK* [2000] Crim LR 215
- *DPP v Bowes* [2004] 2 IR 223
- *DPP v Finnerty* [1999] 4 IR 364
- *Lavery v Member in Charge, Carrickmacross Garda Station* [1999] 2 IR 390
- *R v Betts and Hall* [2001] 2 Cr App R 257
- *R v Daly* [2002] 2 Cr App R 201
- *R v Knight* [2004] 1 WLR 340
- *R v Webber* [2004] 1 WLR 404

Literature:

- Archbold, *Criminal Pleading, Evidence and Practice* (2007), pp1,651-1,662
- Blackstones, *Criminal Practice* (2007), pp2,647-2,664
- *Final Report of the Balance on the Criminal Law Review Group* (available at www.justice.ie)

MATTER OF FACT – SECTION 19A

Practitioners will have more immediate interest in the new section 19A, which is much broader, in that it allows inferences to be drawn where the accused fails to mention any fact subsequently relied upon in their defence – such a fact, in the circumstances existing at the time, clearly calling for an explanation from them.

There is a certain amount of overlap in relation to the application of sections 18, 19 and 19A and the 'safeguards' that are imposed when they are operated. All three apply to a failure by the suspect to account for or mention matters that take place, not just during questioning, but also on being charged or informed that they may be charged with an arrestable offence. These latter inclusions are curious and seem to have been copied from English legislation. They may allow for situations where a file has been sent to the DPP and comes back with instructions to invoke the provisions on charge, perhaps after a failure to properly do so during detention, or new information being received since. Whether this will occur or will be tolerated by the courts remains to be seen.

In each instance, the suspect must have been told in ordinary language what the effect of a failure to account for or mention matters might be – and they must have been afforded a reasonable opportunity to consult with a solicitor before the failure occurred. In accordance with ECtHR jurisprudence, a person cannot be convicted solely or mainly on the basis of an inference drawn.

scene, perhaps where drugs or stolen items were found, would have to mention why they were there, as would someone seeking to rely on self-defence. Unless such matters were mentioned, the position would revert to pre-*DPP v Finnerty*, with the jury being invited to infer that a defence had more recently been fabricated.

It should also be stated that, where these provisions will inevitably be challenged, the Supreme Court in *DPP v Finnerty* stated that statutory incursion on the right to silence was possible. The ECtHR, in a long line of cases including *Condron*, has upheld similar provisions, provided they operate fairly. As such, practitioners should await an individual case where there is a specific unfairness arising out of the operation of the section during detention or at trial, rather than mounting a general challenge to the provision. It seems that this unfairness is most likely to arise from the giving of inadequate or conflicting cautions, from non-provision of legal advice or from misapplication of the provisions, particularly in the District Court.

In the meantime, it seems that the most appropriate advice should be the caution most likely to be given by gardaí – you do not have to say anything, but you may harm your defence if you fail to mention matters you subsequently rely on. It may also be that, like the existing sections 18 and 19 (contingent as they are on gardaí asking the right questions at the right time), section 19A will not as often become a feature of the trial process as might be expected. It is only in those borderline cases that this provision is likely to be the difference between an acquittal and conviction. **G**

Diarmuid Collins is a Dublin-based barrister.

“Simply advising suspects to remain silent is no longer the best advice, since the jury will be invited to infer that any defence subsequently advanced at trial is false”

Dangerous

The LRC's consultation paper on involuntary manslaughter makes provisional recommendations that could lead to a redefinition of 'unlawful and dangerous act manslaughter'. Jane Mulcahy opens the dictionary

The Law Reform Commission's recent *Consultation Paper on Involuntary Manslaughter* was prepared with a view to determining whether the existing configuration of involuntary manslaughter should be retained as it is, or whether the scope of involuntary manslaughter should be readjusted. Involuntary manslaughter currently comprises two subcategories, unlawful and dangerous act manslaughter and gross negligence manslaughter. The commission's provisional recommendations might entail redefinition of unlawful and dangerous act manslaughter and/or placing gross negligence outside manslaughter into a separate, possibly lower, homicide offence.

Unlawful and dangerous

Unlawful and dangerous act manslaughter occurs where the killing involves an act constituting a criminal offence, carrying with it the risk of bodily harm to the person killed. Generally, the unlawful act will involve an assault. The second arises where the death arose from a negligent act or omission by the accused that involved a high risk of substantial personal injury.

In establishing unlawful and dangerous act manslaughter in Ireland, dangerousness is judged objectively and liability is *constructive*. An accused's intention to inflict some minor injury to another person makes him legally accountable for the unexpected result of his behaviour, that is, death. In *People v Crosbie and Meehan*, the victim died from a knife wound inflicted during the course of a fight at the docks. The accused were acquitted of murder, but convicted of manslaughter. The Court of Criminal Appeal held that the act must be both unlawful *and* dangerous. Here, the act was unlawful and dangerous because the knife was brandished in order to frighten or intimidate, and not in self-defence.

People v O'Donoghue is a recent example of unlawful and dangerous act manslaughter where death arose out of an assault – that is, the accused caught the deceased boy in a headlock and forcibly grasped his neck. The Court of Criminal Appeal noted that the trial judge's description of the act as being at the

"horseplay end of things" did not mean that the act could not also be justly described as "dangerous". In that respect, the court affirmed that the death was capable of amounting to unlawful and dangerous act manslaughter.

Gross negligence

The objective test for gross negligence manslaughter was laid down in *People (AG) v Dunleavy*, where the accused, a taxi driver, drove his unlit car on the wrong side of the road and killed a cyclist when he hit him. In quashing his conviction for manslaughter, the Court of Criminal Appeal held that a conviction for gross negligence manslaughter will not arise unless the prosecution proves that the negligence was of a very high degree and involved a high degree of risk or likelihood of substantial personal injury to others. Under the current test, the capacity of the accused to appreciate the risk at the time when the negligent act or omission causing death took place is not relevant to liability.

Convictions for gross negligence manslaughter are extremely rare in Ireland. In *People (DPP) v Cullagh*, the defendant was convicted of manslaughter where the victim died after her chair became detached from a 'chairplane' ride at a funfair. The ride was 20 years old at the time of the accident and had lain in an open field for three years before the defendant purchased it. The trial judge directed the jury that the defendant had owed a duty of care, both to the deceased and to members of the general public using the chairplane. Although the defendant did not know about the rust in the inside of the machine, which caused the accident, he was generally aware of the decrepit state of the ride. The Court of Criminal Appeal refused the defendant's application for leave to appeal and affirmed the conviction for gross negligence manslaughter.

Reform options

The LRC provisionally concluded that, in general, the current law of involuntary manslaughter is satisfactory, but that a number of specific amendments should be considered. As regards moderate reform of unlawful and dangerous act

MAIN POINTS

- Involuntary manslaughter
- Redefining 'unlawful and dangerous act manslaughter'
- 'Gross negligence' as a lower homicide offence?

liaisons

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When conga lines go bad

manslaughter, the commission discussed the possibility of restricting this category of constructive homicide to those who deliberately attack others. The commission suggested that this offence might be named 'causing death by assault' or 'killing by attack', so as to describe the essence of the wrongdoing in the offence label. The commission did not ultimately subscribe to such a change to the law, but would welcome submissions on this point.

The commission believes that the most problematic aspect of unlawful and dangerous act manslaughter is the fact that it very severely punishes people who deliberately engage in low levels of violence. An accused who punches a person with a thin skull in the face once, with fatal results, can be found guilty of manslaughter, despite the fact that neither the accused nor a reasonable person in a similar situation would have foreseen death or serious injury as a likely outcome of the assault. A manslaughter conviction is possible because the act of deliberately harming someone renders the wrongdoer

responsible for whatever consequences ensue, regardless of whether they were unforeseen or unforeseeable.

The commission observed that the severity of unlawful and dangerous act manslaughter might be tempered by requiring the act to be unlawful and life threatening, rather than simply 'dangerous'. Such a reform would mean that people who unforeseeably caused death due to a minor act of violence would escape liability, because the acts of punching someone once in the face or pushing them in the supermarket queue are highly unlikely to end in death.

Radical options

The commission also looked at radical options for reform. It discussed the structure of homicide under the *Indian Penal Code* and the *Model Penal Code* and suggested that radical reform of involuntary manslaughter might involve making subjective recklessness the *mens rea* for the offence. On this basis, therefore, a conviction for manslaughter would



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DANGEROUS DRIVING

Most fatal road-traffic cases caused by negligent or aggressive driving lead to charges of dangerous driving causing death. This offence was introduced in the 1960s, after juries persistently acquitted drivers who had been charged with manslaughter. In addressing reform of motor manslaughter and the related statutory driving offences, the commission discussed the option of simply maintaining the legal status quo, as well as the possibility of excluding road deaths from the scope of manslaughter. The potential abolition of the statutory driving offences was also considered.

The commission expressed the provisional opinion that the specific offence of dangerous driving causing death should continue to exist alongside the more serious offence of manslaughter. The commission believed that prosecutions for manslaughter might be appropriate in extreme road-death cases of very high culpability, such as in the English case of *R v Spree and Keymark Services Ltd* (2004). There, the manager of a trucking company was convicted of manslaughter after one of his employee truck-drivers fell asleep at the wheel halfway through an 18-hour shift and crashed through a motorway crash barrier, killing himself and two other motorists. It emerged that the manager had organised a bonus scheme for employees who drove shifts longer than those prescribed by law.

The commission also provisionally recommended that judges should be able to take the fact that a death occurred into account when imposing sentence in careless driving cases, where the prosecution clearly established the culpability of the accused.

only arise if the prosecution proved that a person who assaults another foresaw that death or serious injury was a probable (as opposed to a virtually certain) consequence of the assault.

The commission made two main provisional recommendations in relation to unlawful and dangerous act manslaughter. Firstly, it provisionally recommended that low levels of deliberate violence should be removed from the scope of unlawful and

“A conviction for manslaughter would only arise if the prosecution proved that a person who assaults another foresaw that death or serious injury was a probable consequence of the assault”

LOOK IT UP

Cases:

- *People (AG) v Crosbie and Meehan* [1966] IR 490
- *People (AG) v Dunleavy* [1948] IR 95
- *People (DPP) v Cullagh* (93/1998 IECCA, unreported), *Irish Times* report, 31 May 2000
- *People (DPP) v O'Donoghue* [2006] IECCA 134
- *R v Adomako* [1994] 3 All ER 79
- *R v Dias* [2001] EWCA Crim 2896
- *R v Kennedy* [1999] Crim LR 65
- *R v Spree and Keymark Services Ltd*, Crown Court, December 2004

Legislation:

- *Indian Penal Code 1860*

Literature:

- American Law Institute, *Model Penal Code and Commentaries* (2nd ed, 1980), part II §210.0-210.6
- Law Reform Commission, *Consultation Paper on Involuntary Manslaughter* (LRC CP 44-2007) – available online at www.lawreform.ie.

dangerous act manslaughter and be prosecuted as assault instead. Under this proposal, a person who pushes someone, causing them to fall and fatally hit their head off the ground, would be charged with assault rather than manslaughter. In relation to punishment, the commission was of the view that the fact of death renders the assault more serious and therefore justifies the imposition of a more severe sentence than in a case of a minor assault where no fatality results.

Secondly, the commission provisionally recommended that, in the event of a person assisting another by supplying drugs, preparing a syringe containing heroin, holding a belt as a tourniquet or directly injecting a drug, and death results, that person should not be charged with such a serious homicide offence as manslaughter. The commission took this stance, not simply because of the difficulties involved in identifying the base unlawful act for the purposes of causation in unlawful and dangerous act manslaughter, but because typical English drug-injections cases such as *R v Kennedy* and *R v Dias* involved a free, deliberate and knowing act of the deceased.

The commission considered that moderate reform of gross negligence manslaughter might include making the capacity of the accused at the time of the alleged gross negligence relevant to the issue of culpability and/or raising the level of risk from “risk or likelihood of substantial personal injury” to “risk of death” or “risk of death or serious injury”. Since 1994, when the House of Lords upheld an anaesthetist’s manslaughter conviction in *R v Adomako*, the English test for establishing gross negligence manslaughter is stricter than the Irish one, by requiring that the risk posed by the defendant’s negligence apply to death only.

The commission also investigated the possibility of placing death caused by gross negligence into a lesser category of killing, such as negligent homicide. The homicide ladders of the *Indian Penal Code* and the *Model Penal Code* position negligent, inadvertent killings in a less culpable category than manslaughter.

The commission provisionally recommended that the current test for gross negligence manslaughter should be amended so that a person would only be liable for gross negligence if he or she was mentally and physically capable of averting to, and avoiding the risk of, substantial personal injury at the time of the fatality. The commission was satisfied that criminal liability for negligence should only arise where a person was capable of meeting the law’s expectations but failed to behave as a reasonable person in the same situation would. ©

Jane Mulcahy is a legal researcher at the Law Reform Commission. Those who wish to comment on any of the commission’s provisional recommendations may make their submission in writing by post to the commission or by email to info@lawreform.ie.

GO, MOVE,

Tenants may appear to have a right to a new tenancy, but landlords may have a way out. As the law stands, avoiding the grant of a new tenancy is possible. Andrew Sexton calls the bailiffs

In an era of quickening development and redevelopment of property, landlords and tenants must tune into the minutiae of their statutory rights. Legal advisors of clients embroiled in (or heading towards) a dispute over the granting of a statutory tenancy need to examine closely the provisions of the *Landlord and Tenant (Amendment) Act 1980*. A tenant may appear to have a right to a new tenancy, but does the act provide the landlord with a way out?

The answer is contained mainly in section 17, which is entitled 'Restrictions on right to a new tenancy'. To understand this section, it is helpful to consider that there are two broad categories within it. The first is contained in subsection 1, which lists a number of ways in which (generally speaking) the tenant's own conduct causes the loss of the right. The second category is contained in subsection 2, which lists various ways in which the tenant can lose the right by virtue of the landlord's particular circumstances.

The errant tenant

If the right is lost by the application of section 17(1), the tenant gets no compensation for disturbance, so it can be of great financial benefit to a landlord to find that the provisions of this subsection apply. These provisions do need to be read in full, but frequently encountered circumstances that are covered by the provisions consist of termination of a tenancy due to non-payment of rent or termination on account of a breach of covenant. In either circumstance, the right to a new tenancy is lost.

Given that non-payment of rent is widespread, and breaches of covenant are common, it is on the face of it surprising that more landlords do not avail of this subsection. One practical reason may be that, when the time comes around for claiming the right to a new tenancy, the tenant is less likely to give the landlord an opportunity to terminate for these reasons. Furthermore, the attempted forfeiture of a lease within term rarely provides an opportunity for considering whether a new lease ought to be granted, and it opens up the possibility of relief against forfeiture, which is itself a means of

precluding or undermining the termination of the tenancy.

Where a periodic tenancy is terminated, however, the complication of relief against forfeiture does not arise, and a well-advised landlord may seek to build up a case for the application of section 17(1) by carefully worded correspondence in advance of serving a notice to quit. It is not customary to state in the notice itself why the tenancy is being terminated (and to suggest doing so here might add to the heap of mistakenly drafted notices), but pre-notice correspondence provides an opportunity to lay the foundation for reliance on section 17(1).

Given the distinction between service of a forfeiture notice and service of a notice to quit, the landlord with a tenant on a long periodic tenancy (or a periodic tenancy after a fixed term) is the landlord most likely to try to rely on section 17(1). If there is non-payment of rent or a breach of covenant, and the landlord serves a notice to quit expressly for either reason, the tenant will be in difficulty. Legal advisors of tenants with *prima facie* rights to new tenancies ought to be aware of these potential difficulties. In the case of a tenant with rights who is nearing the end of a fixed term, it would seem sensible to address the issue of a new lease before the tenant drifts (as many do) into a post-term periodic tenancy.

Real reason

Aside from cases involving non-payment of rent or breaches of covenant, section 17(1) also allows for new tenancy rights to be lost if the tenancy is terminated for "good and sufficient reason". This is broadly defined in section 17(1)(b) as "a reason which emanates from or is the result of or is traceable to some action or conduct of the tenant and which, having regard to all the circumstances of the case, is in the opinion of the court a good and sufficient reason for terminating or refusing to renew (as the case may be) the tenancy".

This definition is narrowed by the requirement that the reason be both "good" and "sufficient" and, while the case law on this subsection is limited, it is generally accepted that the reason must be a very

MAIN POINTS

- Landlords can avoid granting new tenancies
- Landlords can avoid paying compensation
- Tenants must know when exceptions apply
- Periodic tenants need to be careful

SHIFT



PIC: REX FEATURES

convincing one: “[The tenant] is not to forfeit the immense advantage promised by statute, unless the court is of the opinion, in all the circumstances of the case, that he ought to pay that penalty” (per Gavan Duffy J in *McEvoy v Arnott & Co*).

It has been said that the reason must be the real reason and not, for example, a device to enable a landlord to obtain possession for redevelopment purposes. If a real reason does exist, however, the fact that the landlord requires possession for development purposes ought not to nullify it. In these circumstances, legal advisors need to take careful instructions as to the wider activities of a given tenant. The usual reasons for termination, such as failure to pay rent, failure to repair, commission of nuisances by tenants and suchlike, will often be covered by the specific categories referred to above, but the “good and sufficient reason” category can be useful to landlords faced with difficult tenants not constrained by express covenants capable of being breached.

If the tenant has done nothing wrong, but the landlord wants to do something with the property,

then section 17(2) becomes important. Its provisions are detailed and require careful reading, but generally speaking they enable a landlord to avoid granting a new tenancy if the landlord intends or has agreed to pull down and rebuild or reconstruct the buildings at issue and has planning permission for the work. The same applies if the landlord requires vacant possession for the purpose of carrying out a scheme of development and has planning permission for the scheme.

It must be emphasised that these provisions only arise for consideration in the context of an application for a new tenancy, so they are of no assistance in bringing an existing tenancy to an end. Furthermore, if they do apply, the tenant has to be compensated fully, so they are costly in their operation.

In the case of both development exceptions, the planning permission provisions are probably of overriding significance, since the landlord, and not some other party, must have the planning permission. If the landlord’s real reason for seeking to avoid a new tenancy is to facilitate an onward sale

to a developer, careful advice needs to be given to avoid falling outside the provisions of the 1980 act. The landlord could seek to assign his interest to a developer who has obtained planning permission (or is seeking it), leaving the developer to then try and rely on section 17(2). However, the landlord who tries to sell on undeveloped property that has already benefited from a section 17(2) restriction is at the very least running the risk of a punitive damages award pursuant to section 17(4). It is a situation calling for careful consideration and advice.

There is one helpful paragraph tucked into the end of section 17(2), enabling the landlord to avoid granting a new tenancy if “for any reason the creation of a new tenancy would not be consistent with good estate management”. These provisions are made helpfully vague by the lack of any defining section in the act. They have been relied on in various cases and held to include prudent management of adjoining or contiguous properties (*Stakelum v Ryan*) and the desire to achieve a good ‘mix’ of tenants in a shopping centre (*OHS Ltd v Green Property Co*).

The hidden exception


The Law Reform Commission’s recent consultation paper on business tenancies suggests that a further exception should be created to cover the circumstance of a landlord requiring a building for personal use. In advance of any legislative change in this area, it is arguable that the “good estate management” provisions are so vague as to already allow for this further exception – an argument that may create some commercial leverage at times, but not a convincing one.

Aside from the statutory provisions referred to above, there is one further section in the 1980 act

that is of potential assistance to the landlord seeking to recover possession from a tenant who might otherwise be intent on staying put and availing of new tenancy rights as they arise. The section in question is the seldom, if ever, invoked section 60. This section again requires careful reading, but it generally provides that, where buildings are situated in an obsolete area, or their age, condition and character is such that repairing them would involve expenditure excessive in relation to their value, or they cannot be profitably used unless reconstructed or altered, the court may terminate the tenancy if it considers it reasonable to do so. It only applies if the tenant holds for a term of which not less than three and more than 25 years are unexpired, and the landlord must have a scheme for the redevelopment of the property and have planning permission. Its application is therefore limited, but it may represent the only option open to a landlord faced with an intransigent tenant who might otherwise succeed in thwarting an entire scheme of development. Subsection 3 gives the court very wide compensatory powers, but these may be palatable to a landlord if the alternative is a tenant refusing to surrender at any price. The concept of an ‘obsolete area’ has recently been redefined as an area to which an ‘integrated plan’ relates (per the *Residential Tenancies Act 2004*), and shifting trends and property values may now lead to the dust being shaken from section 60.

The last refuge

Apart from the statutory restrictions referred to above, there is the possibility of a new tenancy being avoided by means of an equitable estoppel. Take, for example, a tenant who gains possession of premises by representing that it is for temporary purposes, pending relocation to another premises, and that no statutory rights will be enforced. If the landlord relies on such a representation, to its ultimate detriment, can an estoppel be raised to avoid granting a new tenancy? The anti-contracting out provisions contained in the 1980 act (section 85) militate against this argument succeeding, and there is the principle that there ought to be no estoppel in the face of a statute, but the continued development of the law of estoppel is such that one could not rule it out entirely.

As the law stands, avoiding the grant of a new tenancy is possible, and legal advisors need to be aware of the various possibilities. The entire area of landlord and tenant law is soon to be reported on by the Law Reform Commission, and legislative changes will no doubt be proposed. Even if proposals are adopted, however, certain restrictions on the granting of new tenancies are likely to remain, so this is an area that needs to be monitored carefully. 

Andrew Sexton is a barrister in general practice.

LOOK IT UP

Cases:

- *Bank of Ireland v Fitzpatrick*, unreported, High Court, 28 July 1988
- *Dolan v Corn Exchange Corporation* [1983] IR 269
- *McEvoy v Arnott and Co Ltd* [1943] IR 214
- *OHS Ltd v Green Property Company Limited* [1986] IR 39
- *Stakelum v Ryan* (1979) 114 ILTR 42

Legislation:

- *Landlord and Tenant (Amendment) Act 1980*
- *Landlord and Tenant (Amendment) Act 1994*
- *Residential Tenancies Act 2004* (section 199)
- *Urban Renewal Act 1998* (section 7)

Literature:

- Law Reform Commission, *Consultation Paper on Business Tenancies* (LRC CP 21-2003)
- Wylie, *Irish Landlord and Tenant Law* (2nd edition)



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LIVING the

ethos?

The winning entry in this year's Law Reform Student Essay Competition is 'Section 37(1) of the *Employment Equality Act: living the ethos?*' This version of the winning essay has been abridged for the *Gazette* by the author, Mark Coen

MAIN POINTS

- *Employment Equality Act 1998*
- Exemption relating to certain religious institutions
- Religious ethos and matters of discrimination

In an age where the focus of employment law is on eliminating discrimination and fostering equality in the workplace, any derogation from these principles is noteworthy. A derogation rooted in the ever-controversial sphere of religion becomes doubly conspicuous. Ireland, with its historical dependence on religious denominations as providers of education and healthcare, has enshrined an exemption relating to certain religious institutions in the *Employment Equality Act 1998* and was instrumental in securing the inclusion of an

ethos-based exemption in the *European Framework Directive on Discrimination in Employment*.

A statutory provision that legitimises discrimination demands the strictest scrutiny. There must be balance – in this case, balance between the rights of the religious employer to maintain a religious ethos and the rights of the employee to earn a livelihood and have their privacy respected. It is arguable that present Irish legislation fails to attain the appropriate balance.

At the time of the drafting of the *Employment*



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Equality Act, it was felt that, in order to avoid constitutional difficulties, an exemption for institutions under religious management would be required. The proposed exemption led to much debate and was opposed by the National Women's Council of Ireland, the Irish Congress of Trade Unions and the Irish National Teachers' Organisation (INTO), among others.

The passage of the then bill was dogged by heated accusations that various sections were discriminatory, but the religious exemption was retained and is found in section 37(1) of the act. The exemption allows a religious, educational or medical institution under the control of a religious body to discriminate on the grounds of religion regarding employees or prospective employees. This is reasonable and proportionate, as it is arguable that a religious ethos cannot be preserved unless co-religionists can be favoured. Further, the decision of the Supreme Court in *Quinn's Supermarket v AG*, to the effect that discrimination can be required to give effect to freedom of religion, would appear to make this limb of the exemption a constitutional prerequisite.

It is the second limb of the exemption that is objectionable. This permits an institution under religious management to take any action that is reasonably necessary to prevent an employee or prospective employee from undermining its ethos. This provision of the act is extremely wide-ranging, as it is not limited to discrimination on the grounds of religion.

Burning ground

The subsection applies to prospective, as well as existing, employees and therefore allows an employer to refuse employment to an applicant on the basis that they would undermine the ethos of the institution. Thus, it would seem that an interview for a job in a religious institution could involve questions about deeply personal matters such as

sexual orientation and relationships. How else could an employer identify those candidates who must be ruled out of consideration for fear that they would undermine the ethos?

The application of the second limb of the exemption to existing employees raises the question of those employees who work diligently and in apparent harmony with the ethos of the institution concerned, but whose private lives are not in conformity with the tenets of that religion. Should the inspirational English teacher, who takes his or her responsibilities seriously and has never criticised or disrespected the school's ethos, live in fear that, if his or her relationship with a partner of the same gender becomes known, they may be removed from their job? To paraphrase the dissent of Henchy J in *Norris v AG*, does section 37 not condemn such people to "intolerance, harassment, blackmail and other forms of cruelty" to an extent that is "inimical to the common good"?

It could be said that section 37 retrospectively validates the decision in the infamous case of *Flynn v Power*, in which the dismissal of a teacher from a convent school because of her relationship with a married man was upheld by the High Court. However, the section raises issues beyond the realm of the private sexuality of employees. If a teacher intervenes to stop homophobic bullying and, in the process, discusses sexual diversity, is that teacher undermining a religious ethos?

Given that 'religious ethos' embraces much more than mores of sexuality, but generally includes broader values such as charity, honesty and civic responsibility, could a nurse in a hospital managed by a religious congregation be dismissed if it was discovered that he or she was exploiting an asylum seeker as a cleaner or had stolen from a local supermarket? Crucially, what religions come within the terms of section 37(1)? In an increasingly multicultural Ireland, this is a matter of no little import. Would the Church of Scientology or Druidism qualify?

Out of sight

Section 37(1) would appear to be in breach of article 4(2) of the *Framework Equality Directive*, which states that a difference of treatment in relation to preservation of a religious ethos may only have its basis in a person's religion or belief, and should not justify discrimination on another ground. Furthermore, the directive requires that such a discrimination "constitute a genuine, legitimate and justified *occupational* requirement, having regard to the organisation's ethos", whereas, as we have seen, section 37(1) refers only to "reasonable" or "reasonably necessary". Section 37 is also in conflict with *Smith and Grady v UK*, in which the European Court of Human Rights held that a breach of article 8, on the right to respect for one's private life, had occurred in the case of the applicants, who were

members of the British armed forces. A breach occurred both in relation to investigations conducted into their sexual orientation and in their subsequent discharge on the grounds of their homosexuality.

The Supreme Court has upheld the constitutionality of the exemption. In *Re Article 26 and the Employment Equality Bill 1996*, Hamilton CJ, speaking for the court, said that the question of what is reasonably necessary to protect an ethos “will rest with the court, and the court in making its overall decision will be conscious of the need to reconcile the various constitutional rights involved”. This provides scant solace to an employee whose lifestyle conflicts with the ethos of the institution, however, as the Irish courts have been consistently deferential to religious interests.

The Supreme Court was undoubtedly correct in *Re Article 26 and the Employment Equality Bill* when it said that, under the Constitution, freedom of religion had to be given “life and reality”. The creation and maintenance of a religious ethos in institutions managed by various denominations is obviously an important aspect of this freedom. However, the current law is arguably weighted too much in favour of the institution, without regard to the rights of the individual.

Philosopher’s stone

A reform is proposed in which section 37(1)(a), permitting the favouring of co-religionists, would be amended so that this could only occur where, in the words of the directive, “religious belief constitutes a genuine, legitimate and justified occupational requirement, having regard to the organisation’s ethos”.

In section 37(1)(b), relating to action reasonably necessary to prevent the undermining of an ethos,

“The exemption allows a religious, educational or medical institution under the control of a religious body to discriminate on the grounds of religion regarding employees or prospective employees. This is reasonable and proportionate”

LOOK IT UP

Cases:

- *Campaign to Separate Church and State v Minister for Education* [1998] 3 IR
- *Flynn v Power* [1985] IR 648
- *Loscher v Mount Temple Comprehensive School* [1994] ELR 84
- *McGrath and O’Ruairc v Trustees of Maynooth College* [1979] ILRM 166
- *Quinn’s Supermarket v Attorney General* [1972] IR 1
- *Re Article 26 and the Employment Equality Bill 1996* [1997] 2 IR 321
- *Smith and Grady v UK* [1999] 29 EHRR 493

Legislation:

- *Bunreacht na hÉireann*, article 42
- *Employment Equality Act 1998*
- *European Framework Directive on Discrimination in Employment*, 200/78/EC, 27 November 2000

the reference to prospective employees would be deleted, and the following additions would be made: “The undermining of an ethos does not arise by virtue of the fact that an employee possesses a characteristic which constitutes a discriminatory ground under section 6 of the act.

“The ethos of an institution may only be undermined by the conduct of an employee in the course of his/her employment. The private life of the employee may not be so invoked.”

Under the revised subsection (1)(a), a religious institution could favour an existing or prospective employee on the religion ground, thus maintaining their ethos. The language used is that of the *Framework Directive*, ensuring greater compliance with European law. The revised subsection (1)(b) would render the private life of the employee off limits, but failure to support and adhere to the institutional ethos in one’s professional capacity would constitute grounds for action by the religious employer. Thus a prospective or existing Protestant teacher could be preferred for appointment or promotion in a Protestant school, but a Catholic teacher could not be dismissed on the grounds that his or her non-adherence to the religion of the school was undermining its ethos. Similarly, a doctor in a religiously managed hospital could be dismissed for advocating euthanasia in defiance of the ethos, but could not be dismissed if it were discovered that he/she was cohabiting with a same-gender partner. Any reform would be wise to consider the workability of including a definition of ‘ethos’ and the incorporation of a procedure whereby religious denominations could apply for recognition as a religion for the purposes of the act.

At present, section 37 – and in particular, subsection (1)(b) – is more redolent of a draconian disciplinary code than a provision of an equal-opportunities statute. In effect, it undermines the egalitarian ethos of the *Employment Equality Act* as a whole. It has been criticised by the United Nations Human Rights Committee. The formation of a support group for lesbian, gay, bi-sexual and transgendered teachers within the INTO, and their attempts to have the imbalance of section 37 addressed, is but one indicator of the need for reform in this area. Given the increasing numbers of cohabiting couples – of every sexual orientation – the number of employees who could fall foul of the exemption is not insignificant. The preponderance of religiously managed schools, especially at primary level, makes this a pressing issue. Uncertainty regarding one’s security of tenure leads to under-performance, stress and anxiety in an employee. If an enlightened approach is taken, the preservation of religious ethos and the promotion of equality need not be mutually exclusive. ■

Mark Coen is an LLB candidate and scholar at Trinity College, Dublin.

You've been TERMINATED

Employers must consult with employees before terminating contracts of employment and cannot implement redundancies until at least 30 days from the start of the consultation process. Ian Moore examines employers' responsibilities

Collective redundancies have been regulated by a 30-year-old piece of legislation, the *Protection of Employment Act 1977*. The act's provisions are triggered where there might be as few as five employees being made redundant over a 30-day consecutive period by an employer who employs between 20 and 50 employees. This minimum number increases depending on the size of the workforce. The effect of the 1977 act was to add a layer of information and consultation that was not otherwise required in respect of individual redundancies covered by the *Redundancy Payments Act 1967*.

In short, the employer must give certain information to the representatives of the employees likely to be affected by the proposed redundancies, and give that information to the Minister for Enterprise, Trade and Employment, and also enter into consultations with a view to reaching an agreement with the representatives. The employer is prohibited from implementing those redundancies until at least 30 days expire from the commencement of the process. Historically, therefore, employers have given the information to the representatives and the minister on the first day, and probably also issued notices of redundancy at the time or shortly thereafter, and have then embarked upon consultation with employee representatives, but not implemented the redundancies until the expiry of those 30 days.

While the 1977 act was amended by statutory instrument on a number of occasions over the years, perhaps the most significant impact on it came with the decision of the European Court of Justice in the case of *Junk v Kühnel*. That case imposed upon employers an obligation to consult prior to deciding to terminate contracts of employment. This meant that an employer could not on 'day one' inform, give notice, and then start consultation. Instead,

employers now had to give the information and embark upon consultation, arguably for those 30 days, and only after consultation could they give notice of intention to make the employee redundant. The effect of this was to prolong the period between initiation of the process and the implementation of redundancies. The 1977 act was not amended, but employers now had to be advised that they could not give notice to employees until such time as the consultation had concluded.

Hasta la vista, baby

The 2007 *Protection of Employment Act (Exceptional Collective Redundancies and Related Matters) Act* is, therefore, welcome to the extent that it tidies up this gap in legislation. With section 12, it amends the 1977 act so that it now provides: "Consultations under this section shall be initiated at the earliest opportunity and in any event at least 30 days before the first notice of dismissal is given."

The 2007 act did not, however, have its origins in the *Junk* case. Instead, it had its origins in the very public Irish Ferries dispute. The partnership discussions were concluded in 'Towards 2016', where the social partners agreed on measures designed to prevent its recurrence. This has, in turn, been converted into legislation in the 2007 act.

The issue that 'Towards 2016' and, in turn, the 2007 act was intended to address was the "collective compulsory replacement of workers by lower-paid workers" from the newer EU member states. Legislative effect is given to this by section 16 of the 2007 act, which in turn amends section 7(2) of the *Redundancy Payments Act 1967*. It defines an 'exceptional collective redundancy' as being the involuntary redundancy of a number of employees and their replacement by the employer at the same location or elsewhere in the state (except where the employer has an existing operation with established terms and conditions) by other persons who are

MAIN POINTS

- Terminating contracts of employment
- Section 12 and the 30-day consultation phase
- The Redundancy Panel and the Labour Court



HR in the 21st century
is a tough business

either directly employed by the employer, or by others who are provided to the employer. Effectively, the same functions are performed but the terms and conditions of employment of the substitute workers are “materially inferior to those of the dismissed employees”. Parallels can be seen with the Irish Ferries circumstances.

While the circumstances of the Irish Ferries dispute may well be unique, there have been many situations when businesses have contracted out or outsourced some of their core functions and that, in turn, have sometimes led to redundancies. In some cases, those employees have been replaced by others. Unlike the Irish Ferries situation, these redundancies may have arisen from an amalgamation of employee functions with those of other individuals. The key driver for such decisions is often cost, and in many such cases it may well be that the replacement employee costs less. On the face of matters, such outsourcings might now be caught by the issue we are told the 2007 act was meant to address.

Section 4(2) states that, “for the avoidance of doubt”, the provisions of the 2007 act do not apply to:

- The employment of agency workers for temporary or recurrent business needs,
- The use of outsourcing, contracting out or other forms of business restructuring.

However, this is subject to the proviso that the circumstances are “other than” those referred to in the amendment made to the *Redundancy Payments Act*, which defines exceptional collective redundancies. Therefore, if agency workers are brought in or if there is a contracting out, it is still possible for an argument to be made that the circumstances are not excluded if the elements of the definition of exceptional collective redundancies can be said to apply.

Judgment day

The 2007 act establishes a process by which a determination can be made by the Labour Court as to whether or not particular circumstances constitute an exceptional collective redundancy. Where an employer proposes to create collective redundancies, they or the employee representatives can write to the chairman of the Redundancy Panel (established by section 5), referring the particular circumstances to

the panel for its consideration.

The panel informs the Minister for Enterprise, Trade and Employment and also invites the parties to make submissions in relation to the proposed collective redundancies. The panel, having considered the matter, either requests the minister to seek an opinion from the Labour Court as to whether the proposed collective redundancy is an exceptional collective redundancy, or it expresses the view that certain preconditions to the panel's determination of matters have not been satisfied. The minister can make a request to the Labour Court to issue its opinion. As a result of section 8(4), no appeal lies from an opinion given by the Labour Court.

The giving of an opinion by the Labour Court that the circumstances constitute an exceptional collective redundancy can have very serious implications for the employer who, despite the court's opinion, progresses with those redundancies:

- Where the employer pays statutory redundancy lump sums to the affected employee, the minister can refuse to pay the 60% rebate;
- The exemption from income tax that usually applies to statutory redundancy payments will not apply;
- If a claim is brought by an employee made compulsorily redundant under an exceptional collective redundancy, the ceiling of the Employment Appeals Tribunal's award can be

lifted – in the case of an employee with under 20 years' service to 208 weeks' pay, and in the case of employees with over 20 years' service to a limit of 260 weeks' compensation;

- Where the collective redundancy is implemented in disregard of the required consultation period and notice, the employer is guilty of an offence and liable on conviction on indictment to a fine not exceeding €250,000.

I'll be back

It will be the brave, or perhaps foolish, employer who will press ahead with redundancies in circumstances where there has been an opinion of the Labour Court that the circumstances constitute an exceptional collective redundancy. For most employers awaiting the opinion of the Labour Court, the concern – if not frustration – is going to be around the delay it will cause to the ability of the employer to implement the redundancy. Immediately after a matter is referred to the redundancy panel, it will have the effect of extending the time during which a dismissal may not take place. This is less likely to be an issue where the referral is made early in the 30-day consultation period, but will become one the later the referral takes place.

Of the "related matters" referred to in the title of the act, the most significant measure is the removal of the previous upper age limit of 66 years for the entitlement of an individual to a redundancy payment and the protection of the *Redundancy Payments Act*.

The 2007 act may ultimately prove to be a storm in a teacup. This will depend upon the extent to which we see referrals being made to the Redundancy Panel, the delay factor that it has on proposed collective redundancies, and the interpretation that the Labour Court places on the particular circumstances. **G**

Ian Moore is a partner and head of employment law at A&L Goodbody.

LOOK IT UP

Cases:

- *Junk v Kühnel* (2005) IRLR 310

Legislation:

- *Protection of Employment Act (Exceptional Collective Redundancies and Related Matters) Act 2007*
- *Protection of Employment Act 1977*
- *Redundancy Payments Act 1967*



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Canterbury Tales

The education committees from the law societies of Ireland, England and Wales, Scotland, and Northern Ireland met in Canterbury this year to discuss policy and strategy. Dominic Dowling's paper 'On being a solicitor – or a member of the legal profession – in 2007' won many plaudits and is abridged here by the author

MAIN POINTS

- The development of the legal profession
- The legal system and the evolution of society
- Competency and fitness of character
- The desire to see justice done

In the years before the Norman Conquest, for the 'well off', resolution of serious disputes was largely accomplished by force of arms. For more ordinary folk, local custom, enforced by informal arbitrary public assemblies, served the purpose. For rich and poor alike, either route could be dangerous, unpredictable and expensive. During the 300 years after William the Conqueror, the kings (in some respects pushing an open door) unified diverse local customs and courts into a system that became broadly known as common law (common to the whole country).

As society developed, so dispute resolution by negotiation and adjudication became more valued and widespread. From the king in council (the precursor to parliament), there emerged (in an early manifestation of the doctrine of the separation of powers) the Court of Exchequer, the Court of

Common Pleas and, finally, the King's Bench.

This common-law court process was, almost from the beginning, hopelessly rigid and procedure bound. It was expensive, slow and delivered remedies 'as of right' instead of just decisions. People began to petition the king seeking to alleviate the consequences of some of the more bizarre common-law decisions. The king quickly delegated the hearing of these petitions to his chancellor and, from this, there emerged equity and the Courts of Equity. Equity set about the recognition and enforcement of a diverse set of 'natural law' principles. In 1474, there is the first record of the chancellor issuing a decree in his own name. The modern court system was substantially born. Common law (and equity) essentially vest in appellate courts the power to make legal decisions in accordance with statute, the constitution, EU and



Ride a cock horse:

(above) this 15th century engraving depicts the Man of Lawe from Chaucer's *Canterbury Tales*

(Previous page): Crying out for justice – the murder of Thomas à Becket, as depicted in this stained-glass image in Canterbury Cathedral

other superior international laws. The decisions of these courts, when so made (based on a system of precedent), are – with certain 'exception principles' – binding on other courts in the future.

This was never an easy system to understand or to operate. There emerged, even in the earliest days, a more directed group of professional advocates who could operate the courts system on behalf of others. From their ranks, eventually, judges began to be appointed. A judgeship was no longer a matter of grace and favour. Judges, barristers and solicitors, in terms of ultimate purpose and in different ways, are all serving justice through the operation of the legal and courts system. Collectively, we term them lawyers.

In tandem with the emerging legal system, society was also evolving. As each developed, so it affected the operation of the other. Parliamentary democracy, property rights, rights of succession, civil war, international wars, the industrial revolution, the British Empire, the abolition of slavery, female emancipation, the universal franchise, two world wars, the rise and fall of communism, and global communications and corporations – all these events and developments took place over the space of centuries. In all cases, law and the rule of law acted as prompter, catalyst, facilitator, thwarter, enforcer and destroyer. The rule of law (based on justice) was and is recognised as one of society's essential components. Governments and political parties come and go, but even in times of momentous events, people (and the state), by and large, had sufficient confidence to submit themselves to, or assert themselves by, the rule of law.

The rule of law was and is authoritative, pervasive, important and complex. As the law grew and matured, so too did the body of people who

'operated' the law for society. As part of this process, judges, barristers and solicitors (being 'operators' of the law) recognised the need to establish and maintain high standards of character and competency within their professions and for entry to them. They coalesced with each other in the form of societies – called by different names over the years – to ensure the maintenance of high standards. Government took note of the aims and the effectiveness of these societies. It liked what it saw. It empowered them to regulate their professions in the interests of the public. To that end, lawyers were given certain monopolistic rights, which were backed by force of law. The government made it illegal for anybody other than a qualified lawyer to provide certain legal services for reward. This status quo endured for some time. Change was then precipitated by a number of factors including:

- Better standards of universal education,
- A legal system that was made easier to operate,
- The emergence of legal service providers who were non-lawyers,
- The emergence of more vigilant consumers,
- The operation of competition law,
- Abuses by minorities within the legal professions, and
- Society posing the question "*Quis custodiet ipsos custodes?*" ("Who guards the guardians?").

There is emerging, and in some jurisdictions there has emerged, state regulatory authorities. In the case of solicitors in England and Wales, they are no longer regulated by their Law Society but are regulated by the Solicitors Regulation Authority.

Significance of the profession

In 2007, against this background, what ought it to mean to be a solicitor or a member of the legal profession?

At a macro level, the legal profession is a societal tool with almost 1,000 years of development behind it. It helps government devise, administer and enforce the rule of law. It has a proven (but not perfect) track record in so doing. It helps people to oppose government and 'big business' in circumstances of oppression. Think of the lawyers of South Africa, in particular Nelson Mandela. Motivated and effective lawyers can, and do, affect the lives of very many people for the better.

At a micro level, lawyers carry out and get paid for performing legal tasks that clients are not competent to do themselves or which, for reasons of cost, expedition or efficiency, they ask lawyers to perform.

At micro and macro level, there is a useful, illustrative scale upon which a legal task or the undertaking of an item of legal business can be graduated. At one end of the scale there is simple transactional and completely non-contentious work. At the other end, there are disputed cases, fully

contested in open court, where final judgment is enforced by state sanction. Between both ends of this scale, there have emerged areas of alternative dispute-resolution, such as arbitration, mediation and conciliation. Since it is all part of the one seamless system, the same principles of justice, truth and fair procedure should apply throughout. This appears sometimes to be forgotten, and so there has grown among lawyers a slightly two-faced approach, depending on whether a matter is transactional or contested. This disconcerts clients and governments.

In the provision of any service for reward, there is an element of entrustment. As the matter of the subject of the service becomes more grave, so the level of entrustment increases. The expectations of the trustor must be matched by manifested and verifiable high standards on the part of the trustee (in this case the lawyer). The standards themselves should be constant, regardless of the size, value or nature of the service.

Since entrustment forms such an essential part of the relationship between lawyer and client – and at a macro level between government and the legal profession – then, if the former cannot trust the latter, the whole relationship is in jeopardy.

Being technically competent to transact a particular piece of legal business is not of itself a sufficient measure to mark out the complete lawyer. A lawyer must also be someone who can be trusted. A lawyer must be a fit and proper person. He or she must be fit for purpose – in terms of character and suitability. He or she must be not only psychologically sound, but also sound in matters of character, morals and behaviour. Technical competency can be objectively measured with relative ease. Character, suitability, fitness and propriety are more problematic.

Good character

The distinction between competency and fitness of character goes further. Technical competencies can be taught with relative ease. Good character is an internal attribute of a person. It is, in turn, based on belief in a standard of behaviour or a moral code. ‘Teaching’ it is far more problematic. You can certainly impart all the superficial characteristics of trustworthiness to a student, but at the end of the day, it is a ‘hearts and minds’ issue.

A good lawyer is someone who is technically competent in the practice of law but is also someone who at least aspires to be of good character, and doesn’t just imitate the surface features of ‘good character behaviour’ as part of some quality assurance exercise. In the same context, and returning for a moment to the concept of entrustment, which I believe is central to the work of a lawyer, I pose the question: would a person be more inclined to trust someone who has a virtuous character as opposed to someone who has a vicious character?

If government, or the people whom lawyers serve, cease to view lawyers as people who can be trusted then, in my view, all the technical competencies in the world will not save the profession from degradation, and in some of its branches, possible dissolution.

If lawyers themselves accept this proposition, then we should be doing something now, in 2007, to ensure that the profession is not only technically competent (for this is a *sine qua non* for any service provider) but also that those who engage in the profession have the attributes of character that would enable people by and large to ‘trust’ lawyers.

The old common lawyers in the 12th and 13th centuries were noted for their technical competencies, but these skills weren’t enough to keep the system working. Then, as now, if technical competency is to be the predominant characteristic for a lawyer, what will motivate a lawyer to seek justice on behalf of his or her clients? From where will substantive reforms in the law come? If clients no longer believe that lawyers are particularly interested in justice, then to whom do they turn when they encounter occasions of injustice?

The desire to see justice done

From a training and educational standpoint, it seems to me that the profession ought to produce people in whom the public and government can have trust and confidence for the reasons, among other things, that they are of good and suitable character and are motivated (at least in part) by a desire to see justice done.

It seems to me that this is one of the reasons why we have a period of in-office training (historically called an apprenticeship) for solicitors – or devilling at the bar.

The best lawyers and the best societies of lawyers have always sought to bring something to society and to their clients. They have added value, not just in the economic sense of that term, but in its moral and ethical sense. So long as lawyers continue to do this (or at least strive to do this), they will hold a worthwhile place in society.

I recently heard it said that the small-town lawyer who goes to help his or her client in the local police station in the early hours of the morning no longer has anything in common with their colleague who – at an equally early hour of the morning – is advising a major corporation in a takeover or merger. I disagree. There are many things that separate them, but I believe both lawyers are viewed by their respective clients as people who are technically competent and people whom their respective clients can trust. They would both probably also view each other as colleagues. In 2007, just as in 1207 or 1707, lawyers ought to be far more than mere providers of legal services. ©

Dominic Dowling is a solicitor in private practice.

“If government, or the people whom lawyers serve, cease to view lawyers as people who can be trusted then, in my view, all the technical competencies in the world will not save the profession from degradation”



practice doctor

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

The times they are a CHANGIN'



Paul Davis: "Strive for accuracy instead of perfection"

Last month we suggested that you keep a log of all your day's activities. Have you done this? The log that you kept during the last month will show you which problem needs to be solved. Now that you have pinpointed the problem, here are some initial tips to help you manage your time more effectively.

■ **Not prioritising what is important:** the evening before or at the start of the day, pick the top three things you want to get done. Doing the most difficult or boring tasks first means you will look forward to the easier ones, rather than dreading the difficult ones. If you get to lunchtime, and you have already done your top three, guess what that will do for your performance?

■ **Procrastination:** identify the things you usually avoid and start them now. Give yourself a time limit and stick to it. Break the task down into smaller goals and reward yourself with a break or perhaps a snack so that you're feeling positive before starting the next one.

■ **Perfectionism:** strive for accuracy instead of perfection, use realistic standards and forgive mistakes. You're not being rewarded for your perfectionism, you're being rewarded for your expertise.

■ **Slow decision-making:** start by defining the goal of a task, then gather the information and the facts. Next, see what other options there are and evaluate them. Select an option and implement your decision. By evaluating your decision, you can learn from and improve your decision-making process.

■ **Phone interruptions:** carry out easy jobs while on the phone. Return calls at specific times and be firm but polite with long-winded callers.

■ **Email interruptions:** don't read your email every time your computer beeps to say you have new mail. If using Microsoft Outlook, go to 'tools', then 'options', under the 'preferences' section, click on 'email options', then 'advanced email options', and un-tick all the boxes in the section headed 'when new items arrive in my inbox', then click 'ok'. Depending on how busy you are, set aside certain times to read your mail throughout the day and stick to them.

■ **People interruptions:** allow time to talk to colleagues and employees, stick to the point and wrap up brief meetings by standing up and heading for the door. Postpone interruptions and say 'no' if you have to.

■ **Not being able to say 'no':** ask if you need to make the task a priority before saying 'yes', to a colleague or employee. If it isn't a priority, then offer to do it later. Before taking on a new commitment, ask yourself if the task or piece of work fits in with your objectives or goals. If it doesn't, then justify why you're saying 'no'.

■ **Disorganised workspace:** organise your workspace and invest in a good filing system that includes document scanning. Keep your desk clear, read effectively and write efficiently. Consider investing in the latest technology to help organise your workflow.

■ **Ineffective/inefficient meetings:** have an agenda. Appoint a timekeeper, and more importantly a leader who can ask people to get back to the point if it starts to meander. Remember to agree what the next action is, who is responsible for carrying it out and within what timeframe. **G**

Paul Davis is principal of Davis Business Consultants and is a fellow of the Chartered Institute of Management Accountants.

Calcutta Runners pound their way towards €200,000

Over 1,000 brave souls ran, walked, strolled and crawled their way to a damp finishing line at this year's Calcutta Run on 26 May. Organised annually by the solicitors' profession under the auspices of the Law Society of Ireland, the 10k event in the Phoenix Park raised over €200,000 for two charities: GOAL in Calcutta and the Peter McVerry Trust for homeless youngsters in Dublin. The money will be divided equally between both charities, which are involved in rescuing street children at home and abroad. Over the past 30 years, GOAL has rescued over 70,000 children, while the Peter McVerry Trust has helped numerous homeless youngsters to break the cycle of homelessness.

For the fourth year running (pun intended), the main sponsor of this year's event was IrishJobs.ie. The recruitment agency's support helps to ensure that every cent raised goes to the nominated charities. Valuable support was also provided by numerous volunteers, as well as Riverrock, DX, File Stores and Greyhound Recycling and Recovery.



ALL PICS: PATRICK BOLGER

The hokey cokey, samba and Viennese waltz wouldn't have looked out of place during the warm-up exercises at Blackhall Place



It's a family affair. The Calcutta Run attracted contestants – and supporters – of all ages

Most important of all were the 1,000 runners, walkers and supporters who gave so generously of their time and money. As a thank-you gesture, all were invited to the post-run barbecue at the Law Society's headquarters in Blackhall Place, where 750 participants enjoyed hot food and cool music.

Next year, the Calcutta Run celebrates its tenth anniversary. Planning has already begun. An ambitious fund-raising target of €300,000 has been set. If achieved, it will bring overall Calcutta Run donations over the past decade to €2 million. The organising committee is grateful for all the support to date and looks forward to your assistance next year. Here's to achieving that momentous milestone in 2008!



Leading from the front! President of the Law Society Philip Joyce takes on the challenge of the Calcutta Run

CALCUTTA RUN GOES GREEN

Enough plastic bottles and cups to hold 5,000 litres of water, 1,000 bananas skins, the leftovers of a barbecue that catered for 750 people and a lot of paper and other waste besides – the Calcutta Run generates a huge amount of money for worthy causes each year, but also a significant amount of waste.

For the first time since it began in 1998, this year's run was billed as a 'green' run, with the organisers seeking to minimise the waste generated from the day. The Law Society engaged Greyhound Recycling and Recovery to help develop an environmentally-friendly plan for the day. Its success was due in great part to the co-operation of all those attending the run, and to the 'green police' appointed by the Law Society to oversee the waste management for the day. A big thank you to everyone for doing your bit! Over the coming weeks, Greyhound will recycle almost 95% of the material collected on the day of the run.



"I'd like to place an emergency call..." The pain kicked in early for this gravity-challenged contestant

Annual dinner a spectacular success

The annual dinner of the Law Society was held on 22 June in the Presidents' Hall, Blackhall Place. Special guests included the Chief Justice Mr Justice John Murray, President of the High Court Mr Justice Richard Johnson, other members of the judiciary, Attorney General Paul Gallagher SC, guest speaker Minister for Education and Science Mary Hanafin, various members of the Oireachtas and many other guests with whom the solicitors' profession comes in contact throughout the year.

The President of the Law Society Philip Joyce took the opportunity to acknowledge the help and assistance the Law Society receives from various bodies in public life.

He also acknowledged the work and commitment of the judiciary and said that the Society welcomed the opportunity to meet with its friends in a social setting.

Congratulating the new Attorney General Paul Gallagher SC, Philip pointed out that both Paul and he had been in the same class in secondary school. "Academically, Paul always came at one end of the class while I was towards the



PICT: LENS/MEN

Mr Justice Declan Budd, the former Minister for Justice, Equality and Law Reform Michael McDowell SC, Past President Walter Beatty and Director General Ken Murphy



Winners of the International Client Counselling Competition Michelle Cronin and Melanie Evans met Boyce Shubotham at the annual dinner

other," he joked.

Other guests included Chairman of the Bar Council, Turlough O'Donnell, President of the Law Society of Northern

Ireland James Cooper and Junior Vice-President Donald Eakin. The first solicitor appointed Queen's Counsel in Northern Ireland, Barra

McGrory, was also present.

A guest of note was John Hennessy, the solicitor of Baiba Saulite, who was murdered in a suspected contract killing. John's own life continues to remain under threat and he receives armed garda protection, 24 hours a day. The president thanked Garda Commissioner Noel Conroy for the manner in which the force had dealt with the threat against our colleague's life.

Other luminaries included students of the Law School in Cork, Michelle Cronin and Melaine Evans, who earlier this year won world first place in the International Client Counselling Competition in Sydney.

Finally, the president paid tribute to his wife, Rosario Boyle SC, for her support down the years, but particularly during his year as president.



Past president Michael V O'Mahony and Labour Party leader Pat Rabbitte



President Philip Joyce, Minister for Education and Science Mary Hanafin TD, who was the guest speaker, Senior Vice-President James MacGuill and Junior Vice-President John Costello



Sean Kelly (executive chairman, Irish Institute of Sport) and President of the Law Society Philip Joyce

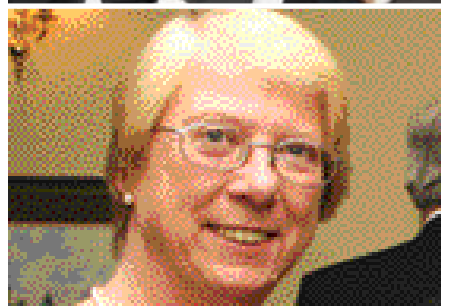


Sinead Kearney (BCM Hanby Wallace) and *Gazette* Editor Mark McDermott

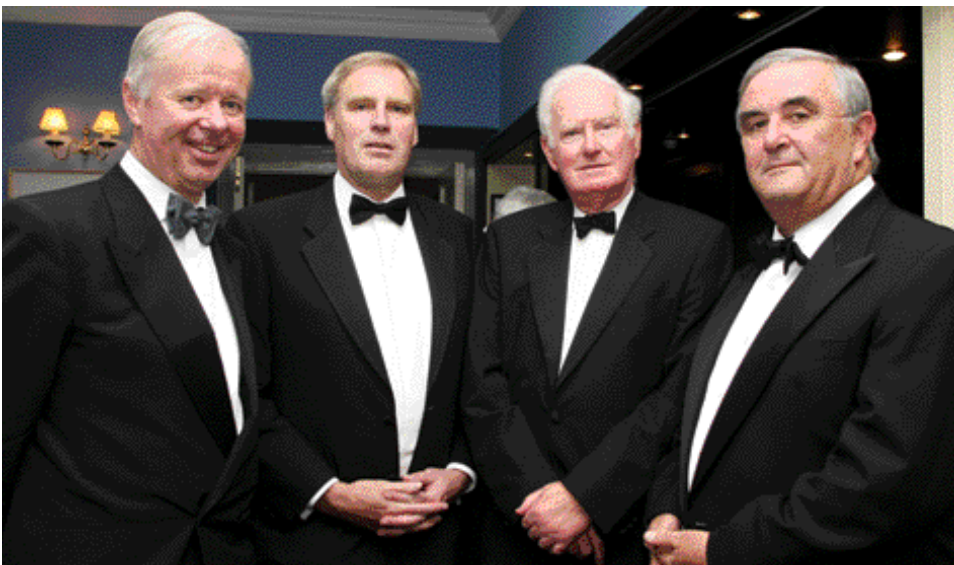


Solicitor John Hennessy, Garda Commissioner Noel Conroy, Deputy Director General Mary Keane and Deputy Garda Commissioner Fachtna Murphy

FACES IN THE CROWD



Maura Derivan (Council member), Rosario Boyle SC, Mary Delahanty (County Registrar, Tipperary), Minister Mary Hanafin TD and Judge Elizabeth McGrath



Paul O'Higgins SC (Vice-Chairman of the Bar Council), Peter Boyle (President of the IRFU), John F Buckley (solicitor) and Chief Justice, Mr Justice John L Murray

Goodness, gracious, great balls of fire!

The fourth annual DSBA Younger Members' Summer Ball was held in the Westbury Hotel, Dublin, on Saturday 26 May. The committee's great efforts ensured an evening to remember. The superb meal was followed by a raffle, with impressive prizes on offer.

The post-dinner dance encouraged just about everybody onto the dance floor until the early hours. The summer ball has now firmly established itself in the social calendar. Keep an eye out for the summer barbeque in July!



Hilary Flynn and Michael Shoebridge represented sponsors Brightwater Recruitment at the DSBA Younger Members' Summer Ball



It was all grace and style at the DSBA Younger Members' Summer Ball (l to r): Sandra Maloney of A&L Goodbody, Alma Sheehan and Andrea Carroll of Sheehan & Co

ALL PICS: EDEL KENNEDY



At the Westbury Hotel for the ball on Saturday 26 May were (l to r): Colm Hickey, Aoife McKelvey, Neil Kidd, Lorraine Staunton, Evelyn Savage, Veronica Walsh and Jonathan Groome of Frank Ward & Co, Solicitors



Adding glamour were Deborah Flood (left) and Susan Gray of Partners at Law

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Young solicitor socialites Emer Carey (right) and 10,000th solicitor on the roll, Ann Matthews (both of PC Moore & Co) enjoying themselves at the DSBA Younger Members' Summer Ball



Amy Hayes of Tottel Publishing, John Savage of AXA Legal and Evelyn Savage of Frank Ward & Co enjoy the convivial atmosphere of the ball

Top woman Keira-Eva takes Intercollegiate Championship

Keira-Eva Mooney has done it again. Following on from her recent win at the World Corporate Triathlon Championships in Mexico, the newly-qualified solicitor at Matheson Ormsby Prentice took to bike, road and water to see off all other female contenders at this year's Irish Intercollegiate Triathlon Championships in Camlough, Newry, Co Armagh.

Queen's University Triathlon Club hosted this year's event on 9 June. Trinity College, Dublin, stole the show that day, but Keira-Eva did the Law Society proud, taking first place in the women's event, despite some technical problems with her bike and being on the wrong end of a bicycle smash! It was a case of dusting herself off and keeping going. Her determination paid off with a well-deserved first-place victory. Second home was Joanne Doran from the University of Ulster, closely followed by Frances Buckley (UCC).

European Duathlon medal

The following weekend, Keira-Eva was joined in Edinburgh by fellow MOP colleagues Joanne O'Sullivan and Paul Gillick for the European Duathlon Championships (10k run/40k cycle/5k run) on 16 June. Despite it being the middle of June, Keira-Eva described the conditions as "horrific", with cold temperatures, strong winds and driving, horizontal rain!

"The cycle and run brought us around Arthur's Seat, with very sharp inclines and descents," she said.



"Thirty athletes represented Ireland at the European Championships and we brought home two medals."

Both medals were won by women – Anne Paul took gold, while Keira-Eva received a bronze – quite apt when one considers that, this year, the Sports Council is promoting women's participation in sport. "Conditions made it a very tough race and I was absolutely thrilled to bring home a medal," Keira-Eva told the *Gazette*. Her colleagues, Joanne and Paul, also put in creditable performances. Joanne came 11th in her category while Paul finished 21st in his category.

Keira-Eva has had great success in the past year. In addition to her win in Mexico last November, she has won a number of duathlon races in the Irish league.

Her attention now turns to triathlon as the season is in full swing. Her next race will be 'The Hell of the West' in Kilkee and a number of other races on the Irish circuit before she prepares for the World Triathlon Championships in Hamburg, Germany, in September.

Spring in their step

The annual Society of Young Solicitors (SYS) spring conference was held in the Slieve Donard Hotel, Newcastle, recently.

Tony O'Sullivan, Imogen McGrath and Susan Frisby gave informative and enlightening talks on current legal issues during the working session. The black-tie gala ball on Saturday got off to a great start with a sparkling wine reception, followed by a sumptuous meal and dancing to the sounds of the '80s, courtesy of Springbreak.

The organising committee extends its thanks all who attended and to loyal sponsor, Brightwater Recruitment. The autumn conference takes place from 16-18 November in Mount Juliet, Co Kilkenny.



Michelle Tierney and Mary-Michelle O'Connor



Tony O'Sullivan (about to start part 2 of his talk on 'VAT on property') with attentive listener Deirdre Walsh!



The hard-working SYS Committee members (l to r): Karen Dunleavy, Catherine Allen, Victoria Clarke and Elizabeth Bradley (chairperson) met with guests representing loyal sponsors Brightwater Recruitment (l to r): John Macklin, Eileen Moloney, Allannah O'Reilly and Hilary Flynn



Enda Hurley and his girlfriend Gill Woods enjoyed the convivial atmosphere at the annual SYS conference



Here's looking at you kid! Gareth Murphy, Marie O'Brien and Adam Donoghue at the SYS conference

Donegal one week, Dun Laoghaire the next – face to face with members of the profession

“People tell me I am ‘sad’, but I really enjoy attending bar association meetings,” quips director general Ken Murphy. “For me, it is not only essential but a very enjoyable part of the job to travel around the country, with the president, meeting the members face to face to explain what the Law Society is doing and to listen to their views on any issue they want to raise. The feedback is invaluable. We constantly make changes, large and small, when we get back to Blackhall Place based on what we hear.”

Over a typical two-week period recently, president



PICS: DERMOT DONAGHUE

President of the Law Society Philip Joyce and director general Ken Murphy met the Donegal Bar Association at the Castlegrove Country Hotel, Letterkenny, on 12 June. The attendance included Margaret Mulrine (Council member), Brendan Twomey (president of the Donegal Bar Association) and Brian McMullin (CPD coordinator of the Donegal Bar Association)



Round of applause at the DSBA meeting



Director general Ken Murphy makes a point at the Dun Laoghaire meeting



Support services executive Louise Campbell explains the Society's useful services

PICS: LENS MEN



Sharing a laugh in Dun Laoghaire were (l to r): DSBA Vice-President Michael Quinlan and Joan O'Mahony



All smiles – President of the Law Society Philip Joyce, DSBA President David Bergin and director general Ken Murphy



PIC: LENS MEN

The Dublin Solicitors' Bar Association organised a town-hall event on 20 June in Dun Laoghaire, where members met with Law Society President Philip Joyce and director general Ken Murphy

Philip Joyce and the director general spent an evening with the members of the Donegal Bar Association in Letterkenny. The following lunchtime, they met with Leitrim solicitors in Carrick-on-Shannon. An evening a week later was spent with members of the Dublin Solicitors' Bar Association who practice in the Dun Laoghaire and Blackrock areas, at a meeting held in Dun Laoghaire town hall.

Nowadays, such meetings typically begin with a *Powerpoint* presentation by the Society's support services executive, Louise Campbell, on the range and value of services that the Society has available for its members.

Wide-ranging briefings

Briefings are then given by the president and director general, and feedback is obtained on a wide range of subjects. Currently, these include the report of the Legal Costs Working Group (the 'Haran' and 'Miller' reports and their implications for solicitors); the Society's litigation which overturned, in the public interest, the decision of the Master of the High Court to make a 'wasted costs' order

against a solicitor; and the Society's successful judicial review of the Competition Authority's attempt to illegally restrict citizens' freedom of choice of solicitor. Then there's the Society's advertising campaign to improve the image of the profession, the Competition Authority study of the legal profession, the implications of the *Civil Law (Miscellaneous Provisions) Bill*, the Society's new Law School in Cork and

education issues generally, improving client care in solicitors' practices, the appointment of more solicitors as judges, proposed legislation on judicial conduct and ethics, concern about the questionable conduct of certain insurance companies in dealing with personal injury claims, issues in relation to the Personal Injuries Assessment Board, and a great variety of other topics that colleagues wish to raise.

Ken Murphy knows that

these meetings play a vital role in helping the Society to stay in touch with the views of rank-and-file members of the profession throughout the country. The meetings are also, he believes, usually found both genuinely informative and, yes, enjoyable by the many members who participate.

Make sure that you attend the next time you hear, from your bar association, that the president and director general are coming to a town near you.



PIC: SEAN DUGGAN

At the 13 June meeting of Leitrim Bar Association (LBA) attended by president Philip Joyce and director general Ken Murphy were (back, l to r): secretary of the LBA Gabriel A Toolan, Elaine Gorman, Gerard Cullen, Peter Collins, Elaine Gordon and James Faughnan. (Front, l to r): Mary McDermott, President of the Law Society Philip Joyce, Director General of the Law Society of Ireland Ken Murphy and Evelyn Doherty



student spotlight

Blackhall Builders: 'Project Build It'

In July, a team of 16 trainees will be getting their hands dirty in Nkwazi, Zambia, providing assistance to international charity Habitat for Humanity, writes Julie O'Neill. While there, they will be working hard to provide financial and physical support to underprivileged families to build simple, decent and affordable houses in the community.

Habitat for Humanity works on the principle of "give a man a fish and you feed him for a day; teach him how to fish and you feed him for a lifetime". The charity doesn't build houses for people – it builds with them, working with homeowners and volunteers to construct the houses using donations of land, money, materials and professional expertise. Each homeowner family invests hundreds of hours of their own labour into the building of their home and the homes of other families. This fosters community development, increases the pride of ownership, and reduces the cost of labour – thereby making the homes affordable to families on low incomes.

The trainees have been busy fundraising ever since they



Members of the Blackhall Builders share the limelight at the Laughter Lounge (l to r): Frankie Rafferty, Jane Moffat, Louise Fernandez, Ronan Dunne, Saorlaith Bourke, Julie O'Neill and Cliodhna Guy

closed their exam books in April, and while the daunting target figure of €54,000 seemed at times unattainable, I am glad to report that it is now almost in their clutches, thanks to the kindness and compassion shown by fellow students, families and corporate donors. The team would like to thank everyone who has supported them by donating on the website and by attending the various fundraising events over the last few weeks.

The first event, which was sold out to the delight of the team, was the Blackhall table

quiz, kindly sponsored by Arthur Cox. Another successful event, sponsored by Cuisine de France, Superquinn and Fresh, was the barbecue held at the Neptune Rowing Club, where, after the sun went down, students battled for the much-coveted title of karaoke queen/king. Another great night was the comedy night at the Laughter Lounge in Eden Quay, the comedians donating their talent being Steve Cummins, John Colleary, Colm O'Regan and Paddy Courtney. Other events, such as the golf day in Athlone, raffle at the Blackhall Ball, and

bag-packing in Tesco and Superquinn have added greatly to the fund.

BCM HanbyWallace, Arthur Cox and William Fry have been very generous, as have many small businesses around the country. Wherever there is a team member, people have been amazingly generous. We are particularly thankful for the anonymous donation of €10,000 via Matheson Ormsby Prentice. Contributions may be made to any group member. Cheques should be made payable to Habitat for Humanity.

The valiant few are: Saorlaith Burke (Reddy Charlton McKnight), Sadhbh Burke (Collins Crowley), Julie O'Neill (Arthur Cox), Ronan Dunne (William Fry), Diana Geraghty (Connolly Sellors Geraghty), Cliodhna Guy (BCM Hanby Wallace), Martin Fallon (Hugh J Campbell & Co), Louise Fernandes (Paul H Moore & Co), Kevin Moore (MG Ryan & Co), Erika O'Leary (O'Rourke Reid), Regan O'Driscoll (Mathew Ormsby Prentice), Nigel O'Neill (Eugene Collins), Patrick Quinn (Opren Franks), Francis Rafferty (Bowman McCabe), Christina Sauer-Dechant (Michael E Hanahoe) and Jane Moffat (course manager).

PIC: BOB DIXON, WWW.MYSPACE.COM/DREBORIXON

THE NEXT TIME YOU ARE IN TOWN WHY NOT AVAIL OF THE LAW SOCIETY'S B&B FACILITY

SINGLE ROOMS, OF WHICH THERE ARE THREE, ARE CHARGED AT A RATE OF €45 PER NIGHT, WHILE TWIN AND DOUBLE ROOMS, OF WHICH THERE ARE ALSO THREE IN TOTAL, ARE CHARGED AT A RATE OF €65 PER NIGHT



books



Irish Maritime Law, Statutes Annotated 2000-2005

Prof Clive Symmons. Thomson Round Hall (2006), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-470-5. Price: €190.

For those interested in maritime law, this book heralds the entry of a comprehensive handbook on recent maritime legislation into what is the dearth of any substantial works on Irish maritime law. Clive Symmons provides us with the second main Irish title in the area of maritime law, Clive being the author of the only other main title in this area, *Ireland and the Law of the Sea*. For this achievement alone, Clive Symmons must be congratulated.

As identified by Clive in the introduction to this title, maritime law generally has not had a high priority in the legislative process in Ireland. Clive Symmons's book, however, is perhaps a good indicator that at last this state of affairs is changing. The book is an annotated review of seven maritime statutes, all of which have been passed in the last seven years: the *Merchant*

Shipping (Investigation of Marine Casualties) Act 2000, the *Criminal Justice (Illicit Traffic by Sea) Act 2003*, the *Fisheries (Amendment) Act 2003*, the *Maritime Security Act 2004*, the *Dumping at Sea (Amendment) Act 2004*, the *Sea Pollution (Hazardous Substances) (Compensation) Act 2005* and the *Maritime Safety Act 2005*.

The book provides very detailed commentary on these pieces of legislation and gives the reader a very clear insight into the purpose of the legislation and the state of the legislation prior to the introduction of the statutes. The author's commentary includes recommendations of the review group, changes and input at the committee stage, and detailed commentary on various definitions used within the pieces of statute. The author goes beyond simple annotations by providing useful commentary on potential loopholes and drafting errors in the statutes and insight in some cases on the



relevant international practice. The author suggests the book will be of use to those in national local government service, including law enforcement personnel or water safety officers who are charged with implementing or enforcing the law. This book will, however, appeal to a much wider audience and indeed will be a useful handbook and reference guide for the maritime lawyer practising in Ireland.

One drawback of the book, which is acknowledged by the author himself, is that the compilation of annotated statutes does not include the *Sea Fisheries and Maritime Jurisdiction Act 2006*. Given this was one of the most controversial acts at the time of its enactment and made headline news, it is perhaps unfortunate that we do not have Clive Symmons's input on this 'hot' statute. It can only be hoped that, in a revised edition of this book or a further book of this nature, this statute might be covered in the same amount of detail.

This book represents good value and is an exceedingly well-written, interesting reference guide. As the Irish maritime lawyer's library hopefully develops, this work should certainly be on the shelf. **G**

Helen Noble is a partner in Mason Hayes & Curran.

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council report



Report of Law Society Council meeting held on 11 May 2007

Appreciation

The president thanked the Tipperary Bar Association, county registrar Mary Delehanty and the Courts Service for the use of the Clonmel Courthouse facilities for the Council meeting. He welcomed John Joy, Ronan Kennedy and Susanna Manton, members of the local bar association, who were in attendance.

Congratulations

On behalf of the Council and the profession, the president congratulated Council members Gerard Griffin and Eamon O'Brien on their recent appointments to the bench. He also extended the congratulations of the Council to Garrett Sheehan, Bryan McMahon, Petria McDonnell, Elizabeth McGrath, John Lindsay and Denis McLoughlin.

Criminal Legal Aid Scheme

The Council considered an exchange of correspondence between the Society and the Minister for Justice, Equality and Law Reform in relation to the Criminal Legal Aid Scheme. James MacGuill said that the Society had been nego-

tiating with the Department of Justice, Equality and Law Reform for ten years for an increase in the criminal legal aid fees. The Society had submitted a claim for an increase in fees prior to the establishment in 1996 of the Criminal Legal Aid Review Committee (the Buchanan Committee).

At the request of the department, the Society had agreed to defer consideration of its claim until that committee had completed its work. The *Report of the Buchanan Committee* had been published in February 2002. One of its central conclusions was that the work performed by solicitors in criminal cases differed from that carried out by barristers, that the fees for solicitors should not be linked to the fees for barristers, and that solicitors should be paid fees for cases under the Criminal Legal Aid Scheme that reflected the work done.

Mr MacGuill said that, in the five years since the publication of that report, repeated efforts to agree a basis upon which fees should be calculated had yielded no meaningful response from the Department of Justice, Equality and Law Reform, which had not sought

to engage in any meaningful way with the claim on its merits. Mr MacGuill said that there was deep disquiet among those members of the profession who practised criminal law. He said that the issue was not one of fees for colleagues, but one of justice. The response of the department to date had been most unsatisfactory.

Donald Binchy said that the Society had been waiting for a response since 1996. Since the process began, Ireland had had three general elections, the entire peace process had concluded and Tony Blair had served ten years in government. In his view, it was time that the Society should set a deadline for an appropriate response.

The Council noted that the president and director general had raised the matter personally with the tánaiste and that meetings with department officials had commenced. It was agreed to review progress at the July Council meeting.

Media advertising campaign

On the recommendation of the PR Committee, the Council approved a proposed media advertising campaign, to com-

mence on 26 May 2007. The Council noted that there had been demands from the profession over many years to engage in such a campaign, and that the style and content of the proposed advertisements had been advised upon by McConnells Advertising, one of the leading advertising agencies in the country. Each of the proposed advertisements had been received positively by a number of focus groups.

Garda investigation

The Council discussed a recent *Sunday Tribune* article in which it was alleged that a named insurance company was obtaining access to garda reports and was also pressurising clients to accept settlements. The allegations were hotly denied by the insurance company, and the Garda Commissioner had commenced an investigation in relation to the allegation that insurance companies had access to garda reports. A detective inspector and detective sergeant had met with the Society and, as a consequence, it had been agreed to ask the profession, via the *Gazette*, to provide any evidence they might have of the allegations made. **G**

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The Law Society's partners in this initiative are GlobalAirNet International Ltd.



LIENS AND UNDERTAKINGS FOR LAND CERTIFICATES

As practitioners will be aware, land certificates are being phased out. The PRA stopped issuing new land certificates as of 1 January 2007. Between now and 1 January 2010, any land certificates already issued will still need to be lodged in relation to any dealings where lodgement of a land certificate is normally required. However, these land certificates will be cancelled and will not be reissued following completion of the dealings. After 1 January 2010, any land certifi-

cates still in circulation will no longer have any legal force or effect, and possession of them will not prevent further dealings on the folios to which they relate.

It is the view of the Conveyancing Committee, consequent on the changes in the law arising from section 73 of the *Registration of Deeds and Title Act 2006*, that:

a) Solicitors' undertakings in respect of land certificates should no longer be sought or given, including accountable

trust receipts for land certificates;

b) Lending institutions or any other parties holding land certificates as security (for example, on equitable deposit, and so on) should make arrangements to have any equitable lien registered as a burden on the folios to which the land certificates relate, in accordance with the provisions of section 73 of the *Registration of Deeds and Title Act 2006* and as set out in the Land Regist-

ry's practice direction on this topic, which also contains the necessary forms of application and notice for this procedure.

Practitioners should note that only equitable liens already in existence as of 1 January 2007 can be registered as burdens and that the law does not allow for the creation of new equitable liens since that date, whether by way of deposit of land certificate, certificate of charge, or otherwise.

Conveyancing Committee

2007 VACATION SITTINGS – DUBLIN DISTRICT COURT

The following is an update to the practice note that appeared in the May issue of the *Gazette* and sets out the details of the sittings to be held in Court 52 (the Richmond Courts) and Dun Laoghaire District Court for the month of August 2007.

Court no 44, Chancery Street: each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday, commencing at 10.30am to 5pm each day.

Court no 46, Chancery Street, shall sit each Monday (except Monday 6 August 2007),

Tuesday, Wednesday, Thursday and Friday, commencing at 10.30am to 5pm each day.

Court no 41, Dolphin House, shall sit each Monday (except Monday 6 August 2007), Tuesday, Wednesday, Thursday and Friday, commencing at 10.30am each day.

Court no 55, Smithfield, shall sit for juvenile business each Tuesday and Thursday, commencing at 10.30am.

Court no 51, the Richmond Courts, shall sit for the hearing of summary business each

Monday (except Monday 6 August 2007), Tuesday, Wednesday, Thursday and Friday, commencing at 10.30am each day.

Court no 52, the Richmond Courts, shall sit for the hearing of summary business on Monday 13, Tuesdays 7 and 14, Wednesdays 1, 8 and 15, Thursdays 2, 9 and 16, and Fridays 3, 10 and 17 August 2007, commencing at 10.30am each day.

Court no 52, the Richmond Courts, shall sit for the hearing of criminal business on Mondays

20 and 27, Tuesdays 21 and 28, Wednesdays 22 and 29, Thursdays 23 and 30 and Fridays 24 and 31 August 2007, commencing at 10.30am each day.

The Court at Cloverhill shall sit each Tuesday, Wednesday, Thursday and Friday, commencing at 10.30am each day.

Dun Laoghaire Court shall sit from 13 August to Friday 23 August 2007 for the hearing of criminal cases and possibly the week commencing 27 August 2007 for the hearing of road traffic cases.

Criminal Law Committee

NEW VAT DIRECTIVE

Work has been underway at EU level to codify the first and sixth *VAT Directives*, in order to produce an instrument that will give a clear overview of existing EU VAT legislation. To achieve this objective, it was decided to revise (recast) the text of the

directives to provide a coherent legal text where the structure is modified but the substance remains unchanged. Some non-substantive amendments were made to ensure that the text is as clear, simple and precise as possible. On 28 November 2006,

the EU Council of Ministers adopted a revised (recast) *VAT Directive* (Directive 2006/112) to replace both the first and the sixth *VAT Directives*. This new principal *VAT Directive* is effective from 1 January 2007.

The new directive is repro-

duced in the *Official Journal of the European Communities* dated 11 December 2006 or may be accessed on the internet at www.eur-lex.europa.eu/JOH.tml.do?uri=OJ:L:2006:347:SOM:EN:HTML.

Taxation Committee



legislation update

16 May – 18 June 2007

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.

SELECTED STATUTORY INSTRUMENTS

Civil Service Regulation (Amendment) Act 2005 (Sections 28, 29 and 30) (Commencement) Order 2007

Number: SI 229/2007

Contents note: Appoints 16/5/2007 as the commencement date for sections 28, 29 and 30 of the act.

Consumer Protection Act 2007 (Establishment Day) Order 2007

Number: SI 179/2007

Contents note: Appoints 1/5/2007 as the establishment day for the National Consumer Agency under the *Consumer Protection Act 2007*.

Consumer Protection Act 2007 (Commencement) Order 2007

Number: SI 178/2007

Contents note: Appoints 1/5/2007 as the commencement date for all sections of the act, except sections 48 and 49 (dealing with surcharges).

Coroners Act 1962 (Fees and Expenses) Regulations 2007

Number: SI 240/2007

Contents note: Prescribe various fees and expenses for the purposes of the *Coroners Act 1962*. The fees and expenses specified in schedule 1 of the

order, for the purpose of section 57 of the *Coroners Act 1962*, are prescribed with effect from 1/1/2007. Other provisions of the regulations have effect from 18/5/2007, the date of the making of the regulations. Revoke the *Coroners Act 1962 (Fees and Expenses) Regulations 2006* (SI 122/2006).

Criminal Justice Act 2007 (Commencement) Order 2007

Number: SI 236/2007

Contents note: Appoints 18/5/2007 as the commencement date for the following provisions of the *Criminal Justice Act 2007*: part 1 (other than section 3); part 2 (ss5-23, 'Amendment of enactments relating to bail') (other than sections 6, 9-15, 18 and 19); part 3 (ss24-27, 'Sentencing'); parts 5 (s33, 'Misuse of drugs') and 6 (ss34-40, 'Amendment of *Firearms Acts 1925 to 2006*'); part 7 (ss41-43, 'Amendment of *Garda Síochána Act 2005*') (other than section 41); part 9 (ss45-60, 'Miscellaneous') (other than section 57); schedule 2. Appoints 1/7/2007 as the commencement date for the following provisions of the *Criminal Justice Act 2007*: section 3; sections 6, 9, 10, 14, 15 and 18; part 4 (ss28-32, 'Inferences to be drawn in certain circumstances'); section 57 and schedule 1.

Defence (Amendment) Act 2007 (Section 71) (Commencement) Order 2007

Number: SI 204/2007

Contents note: Appoints 7/5/2007 as the commencement date for section 71 of the act. Section 71 inserts a new section 240A, 'Courts martial rules

committee', into the *Defence Act 1954*.

Disability Act 2005 (Commencement) Order 2007

Number: SI 234/2007

Contents note: Appoints 1/6/2007 as the commencement date for part 2 (ss7-23, 'Assessment of needs, service statements and redress') of the act in relation to persons under five years of age.

Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007

Number: SI 263/2007

Contents note: Make various provisions to enable part 2 of the *Disability Act 2005*, as it relates to persons under five years of age, to have full effect and provides for procedures and timescales for the making of applications for assessment of needs and preparation of service statements.

Commencement date: 1/6/2007

European Communities (Admissions to Listing and Miscellaneous Provisions) Regulations 2007

Number: SI 286/2007

Contents note: Replace the *European Communities (Stock Exchange) Regulations 1984* (SI 282/1984) as amended, including further amendments arising as a result of the implementation of the *Transparency Directive* (see *Transparency (Directive 2004/109/EC) Regulations 2007* (SI 277/2007) below). The Irish Stock Exchange will continue as the competent authority for the purposes of these regulations.

Commencement date: 13/6/2007

European Communities (Controls of Cash Entering or Leaving the Community) Regulations 2007

Number: SI 281/2007

Contents note: Make provision for the implementation of regulation (EC) 1889/2005 and for the measures to be taken when a person entering or leaving the community, and carrying cash of a value of €10,000 or more, fails to make a declaration to customs or makes an incorrect or incomplete declaration. Specify that the Revenue Commissioners, as the customs authority in the state, are the competent authority for the control of cash entering or leaving the community. Also create offences and provide for related penalties and enforcement powers.

Commencement date: 15/6/2007

European Communities (Electronic Communications Networks and Services) (Framework) (Amendment) Regulations 2007

Number: SI 271/2007

Contents note: Amend the *European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003* (SI 307/2003) by: (a) moving the determination of appeals against ComReg decisions from electronic communications appeal panels to the High Court, (b) creating new summary offences, (c) increasing the penalties for new and existing summary offences, (d) creating certain indictable and continuous offences and providing for the penalties that may be imposed on conviction of those offences.

Commencement date: 13/6/2007

European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007

Number: SI 259/2007

Contents note: Give effect to Directive 2003/72/EC supplementing the *Statute for a European Cooperative Society*. Regulation (EC) 1435/2003 on the *Statute for a European Cooperative Society* (SCE) enables the establishment of an SCE, the objective of which is to make it easier for cooperatives to operate across the EU. Directive 2003/72 provides that a new SCE cannot be registered without first negotiating with employees on their involvement in the cooperative, whether through information and consultation and/or, in certain circumstances, participation at board level.

Commencement date: 29/5/2007

Garda Síochána Act 2005 (Commencement) (No 2) Order 2007

Number: SI 216/2007

Contents note: Appoints 2/5/2007 as the commencement date for section 123 ('Disciplinary regulations') of the act.

Garda Síochána Act 2005 (Commencement) (No 3) Order 2007

Number: SI 217/2007

Contents note: Appoints 9/5/2007 for the following provisions of the *Garda Síochána Act 2005*: (a) section 4 and schedule

1, insofar as they relate to the repeal of section 12 of the *Dublin Police Act 1924* and the repeal of all provisions of the *Garda Síochána Act 1989* and all provisions of the *Garda Síochána (Police Co-operation) Act 2003*; (b) chapter 8 (ss50-58, 'International service and co-operation with other police services') of part 2; (c) sections 67(1), 67(2), 73, 74(3) and 81; (d) part 4 (ss82-112, 'Complaints, investigations and other procedures'); (e) sections 125 and 126; (f) schedules 3 and 5.

Garda Síochána (Discipline) Regulations 2007

Number: SI 214/2007

Contents note: Prescribe new discipline regulations for An Garda Síochána, providing for the procedures to be followed in cases of minor, less serious breaches and serious breaches of discipline. Revoke the *Garda Síochána (Discipline) Regulations 1989* (SI 94/1989).

Commencement date: 1/6/2007

Health Act 2007 (Commencement) (No 2) Order 2007

Number: SI 262/2007

Contents note: Appoints 6/6/2007 as the commencement date for sections 8(1)(d) and 9 of the act and for a number of sections in parts 9 ('Inspections and investigations') and 10 ('Offences') of the act – see SI for details. The sections commenced will provide that the Health Information and Quality

Authority may appoint authorised persons for investigations undertaken by the authority in accordance with sections 8(1)(d) and 9 of the act, and will also provide the authorised persons with the powers set out in part 9 of the act respecting the investigations undertaken.

Industrial Relations Act 1990 (Code of Practice for Protecting Persons Employed in Other People's Homes) (Declaration) Order 2007

Number: SI 239/2007

Contents note: Declares that the code of practice for protecting people employed in other people's homes, set out in the schedule to the order, shall be a code of practice for the purposes of the *Industrial Relations Act 1990*.

Commencement date: 18/5/2007

Intoxicating Liquor Act 1988 (Age Card) Regulations 2007

Number: SI 159/2007

Contents note: Prescribe a new form of National Age Card for persons between the ages of 18 and 21 years with enhanced security features and processing procedures. Revoke the *Intoxicating Liquor Act (Age Card) Regulations 1999* (SI 4/1999).

Commencement date: 23/4/2007

Irish Medicines Board (Miscellaneous Provisions) Act 2006 (Commencement) Order 2007

Number: SI 194/2007

Contents note: Appoints 1/5/2007 as the commencement date for sections 3, 4, 16, 27 and 29 of the act. These provisions relate to nurse prescribing and the extension of the schools' dental service to all primary level pupils.

Pharmacy Act 2007 (Commencement) Order 2007

Number: SI 243/2007

Contents note: Appoints 22/5/2007 as the commencement date for the following provisions of the act: part 1 (other than section 4), part 2 (ss5-9, 'The Pharmaceutical Society of Ireland'), part 3 (ss10-12, 'The council of the society'), section 18 ('Regulation of retail pharmacy businesses'), section 76 ('Codes, rules and regulations'), schedule 1.

Prison Rules 2007

Number: SI 252/2007

Contents note: Prescribe new prison rules for the government of prisons. Revoke the following: *Rules for the Government of Prisons 1947* (SI 320/1947), *Regulations as to the Measuring and Photographing of Prisoners 1955* (SI 114/1955), *Rules for the Government of Prisons 1955* (SI 127/1955), *Rules for the Government of Prisons 1976* (SI 30/1976), *Rules for the Government of Prisons 1983* (SI 135/1983), *Rules for the Government of Prisons 1987* (SI 90/1987), and regulations 4, 5, 6, 7, 8 and 10 of the *Saint Patrick's Institution*

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Regulations 1960 (SI 224/1960).
Commencement date: 1/10/2007

Social Welfare Law Reform and Pensions Act 2006 (Section 42) (Commencement) Order 2006

Number: SI 136/2007

Contents note: Appoints 2/4/2007 as the commencement date for section 42 of the act. Section 42 inserts a new section 51A into the *Pensions Act 1990* to provide that the minister may make regulations requiring the work carried out by a pension scheme actuary to be reviewed to ensure that it complies with the provisions of the *Pensions Act* and any regulations made under the act. Section 51A further provides that the review shall be carried out in accordance with professional guidance issued by the Society of Actuaries in Ireland.

Social Welfare and Pensions Act 2007 (Sections 5, 8, 22, 23 and 28) (Commencement) Order 2007

Number: SI 219/2007

Contents note: Appoints 1/5/2007 as the commencement date for sections 5, 8 and 28(b) of the act; appoints 3/5/2007 for sections 22 and 23 of the act and 7/6/2007 for section 28(a) of the act.

Social Welfare and Pensions Act 2007 (Sections 18, 20, 25(1), 35 and 36) (Commencement) Order 2007

Number: SI 256/2007

Contents note: Appoints 22/5/2007 as the commencement date for section 18 of the act; 6/6/2007 for sections 25(1), 35(b)(i), (c)(i) and (d), and 36 of the act; 4/7/2007 for section 20 of the act.

Social Welfare and Pensions Act 2007 (Section 34) (Commencement) Order 2007

Number: SI 268/2007

Contents note: Appoints 5/6/2007 as the commencement date for section 34 of the act. Section 34 provides for the

inclusion of the managers of social welfare branch offices and their staff in the categories of persons designated by the minister to decide claims for certain payments under the social welfare code.

Social Welfare and Pensions Act 2007 (Section 37) (Commencement) Order 2007

Number: SI 181/2007

Contents note: Appoints 27/4/2007 as the commencement date for section 37 of the act, insofar as it relates to: (a) part 1 of schedule 2, (b) part 2 of schedule 2 (except insofar as it relates to section 3A of the *Pensions Act 1990*), and (c) part 3 of schedule 2 of the *Social Welfare and Pensions Act 2007*. These provisions in schedule 2 of the act provide for amendments to the *Pensions Act 1990*, including amendments relating to trust retirement annuity contracts (trust RACs) and relating to fines and penalties that may be imposed under the *Pensions Act 1990*.

Transparency (Directive 2004/109/EC) Regulations 2007

Number: SI 277/2007

Contents note: These regulations, together with part 3 of the *Investment Funds, Companies and Miscellaneous Provisions Act 2006* and certain rules that may be made by the competent authority (The Central Bank and Financial Services Authority of Ireland) under regulation 40(3) of the regulations, give effect to Directive 2004/109 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and to Directive 2007/14 on laying down detailed rules for the implementation of certain provisions of Directive 2004/109 (see also *European Communities (Admissions to Listing and Miscellaneous Provisions) Regulations 2007* (SI 286/2007) above).

Commencement date: 13/6/2007 **G**

Prepared by the
Law Society Library

PIAB ALERT

TIME LIMITS UNDER CIVIL LIABILITY AND COURTS ACT 2004 AND OTHER ACTS – EFFECT OF s50 OF THE PERSONAL INJURIES ASSESSMENT BOARD ACT 2003

Section 7 of the *Civil Liability and Courts Act 2004* came into effect on 31 March 2005 and reduced the limitation period for the issuing of proceedings for personal injury claims, including medical negligence claims, from **THREE** years to **TWO** years from the relevant date (see practice note, March 2007 issue of *Gazette*).

Section 50 of the *PIAB Act 2003* provides that the period of time beginning on the making of an application under section 11 in relation to a claim, and ending six months from the date of the issue of an authorisation, shall be disregarded for the purposes of

reckoning any period of time under the provisions of the *Statute of Limitations 1957* or the *Statute of Limitations (Amendment) Act 1991*.

For the purposes of the *Statute of Limitations*, the clock stops on the date a valid application under section 11 is deemed to be received by the board and does not start ticking again until six months after the issue of the authorisation.

However, the *Statutes of Limitations* are **not** the only acts that set time limits in respect of personal injury actions. For example:

a) An action for personal injuries against the estate

of a deceased person – section 9 of the *Civil Liability Act 1961*;

b) An action for personal injuries suffered on board a maritime vessel – section 46 of the *Civil Liability Act 1961*;

c) An action for personal injuries suffered while on board, embarking or disembarking an aircraft – governed, among other things, by the *Warsaw Convention 1929*;

d) In all such claims, the period of limitation is two years.

Because of the way in which section 50 of the *PIAB Act* is worded, the lodging of a valid

application with PIAB in respect of the above three types of claim does **NOT** stop the clock ticking against the claimant.

In PI claims falling within any of the above categories, the time limit for issuing a personal injuries summons is two years from the date of the incident giving rise to the claim. The claim must be lodged with PIAB in the ordinary way **but the clock is still ticking against the claimant**. Practitioners should **demand** an assessment/authorisation from PIAB in good time to enable a summons to be issued within the two-year period.

Litigation Committee

Solicitors Disciplinary Tribunal

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

In the matter of Ambrose Steen, a solicitor previously practising under the style and title of Ambrose Steen Solicitors at Tara House, Trimgate Street, Navan, Co Meath, and in the matter of the *Solicitors Acts 1954-2002* [2851/DT67/06]

Law Society of Ireland (applicant)
Ambrose Steen (respondent solicitor)

On 6 March 2007, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

- a) Failed to reply to the Society's correspondence in the investigation of a complaint in a timely manner or at all, and in particular to the Society's letters of 5 October 2005, 19 October 2005, 1 November 2005 and 9 November 2005;
- b) Failed to comply with the direction of the Complaints and Client Relations Committee, made at its meeting on 30 November 2005, to make a payment of €250 contribution towards the costs of the investigation.

The tribunal ordered that the respondent solicitor:

- a) Do stand admonished and advised,

- b) Pay a sum of €250 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland, as taxed by a taxing master of the High Court, in default of agreement.

In the matter of Ambrose Steen, a solicitor previously practising under the style and title of Ambrose Steen Solicitors at Tara House, Trimgate Street, Navan, Co Meath, and in the matter of the *Solicitors Acts 1954-2002* [2851/DT90/06]

Law Society of Ireland (applicant)
Ambrose Steen (respondent solicitor)

On 6 March 2007, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

- a) Failed to deal with the administration of an estate in a timely manner,
- b) Failed to correspond with the complainants and/or to explain the reasons for the delay in the administration of the estate,
- c) Failed to properly distribute to the beneficiaries the estate in a timely manner,
- d) Failed to co-operate in the investigation of the complaint by the Society by per-

sistently failing to deal with correspondence and failing to attend meetings and failing to provide any information.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €2,000 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement.

In the matter of Michael A Dowling, a solicitor carrying on practice under the style and title of Michael A Dowling & Company, Solicitors, Church Street, Tralee, Co Kerry, and in the matter of the *Solicitors Acts 1954-2002* [3995/DT64/06]

Law Society of Ireland (applicant)
Michael A Dowling (respondent solicitor)

On 20 March 2007, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to furnish the following documentation in a timely manner or at all:
 - i) Counterpart lease for each apartment,
 - ii) Land Registry-approved

- iii) Certificate of incorporation of management company,
 - iv) Memorandum and articles of association of management company,
 - v) Memorandum of agreement between a named company of the one part and the management company of the other part to transfer the common areas;
- b) Failed to respond to the Society's letters, and in particular those letters dated 14 April 2005, 18 May 2005, 24 May 2005, 14 June 2005, 4 July 2005, 12 August 2005, 21 October 2005, 9 October 2005, 5 December 2005, in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

- a) Do stand advised,
- b) Pay a sum of €10,000 to the compensation fund,
- c) Pay the sum of €10,000 as restitution to his clients, without prejudice to any legal right they may otherwise have, same to be paid within seven days of the making of the tribunal's order;
- d) Pay the whole of the costs of the Law Society of Ireland, together with witnesses' expenses, as taxed by a taxing master of the High Court in default of agreement. ■



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Meet at the Four Courts

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CRIMINAL LAW

Case stated

Evidence – proof of controlled drug – nature of consultative case stated. The defendant was charged with the possession of cannabis resin. The district judge referred a question for the opinion of the High Court, namely, whether the defendant's admission that the substance was cannabis was sufficient evidence that it was cannabis in the absence of a certificate of analysis from the Garda Forensic Science Laboratory confirming that the substance was in fact cannabis.

Charleton J held that the admission by the accused that he was in possession of cannabis constituted an admission against interest and was therefore admissible against him. In all the circumstances of the case, there was sufficient *prima facie* proof through the admission of the accused, coupled with the pipe and the knife, that the substance in his back trouser pocket was the relevant controlled drug.

DPP (complainant) v Buckley (defendant), High Court, Mr Justice Charleton, 8/5/2007, 2006 1638SS [FL13660]

Delay

Judicial review – sexual offences – delay – prohibition of trial – whether prosecutorial delay – whether H v DPP applied – whether unique circumstances of case – whether deprived of right to a fair trial.

The applicant sought to prohibit his trial for sexual offences relating to his stepchild on ground of delay, including prosecutorial delay, alleging that he

had been deprived of his right to a fair trial. The applicant alleged that the circumstances of the case were unique, whereby he had initially brought the matter to the attention of the gardaí.

O'Neill J held that no prosecutorial delay existed, as the actions of the gardaí had been reasonable in dealing with allegations relating to a family. The decision of the Supreme Court in *H v DPP* applied and the applicant had not discharged the onus of proof in demonstrating that a real risk of an unfair trial existed. The reliefs sought would be refused.

(S)K (applicant) v Director of Public Prosecutions (respondent), High Court, Mr Justice O'Neill, 2/2/2007, 2006 No 319 JR [FL13643]

Drink driving

Judicial review – unlawful detention – Road Traffic Act 1961 – whether the applicant's detention was rendered unlawful by the alleged delay in a doctor attending the garda station in order to take a sample from him.

The applicant sought an order of *certiorari* quashing his conviction on appeal in the Circuit Court for the offence of drunken driving on the grounds that the prosecution failed to comply with the terms of the *Road Traffic Act* and failed to vindicate the applicant's constitutional rights by ensuring the timely attendance of a doctor at the garda station for the purpose of taking a sample from the applicant. It was submitted on behalf of the applicant that there was no evidence upon which the Circuit Court judge could have decided that the

detention of the applicant remained lawful, having regard to the delay in the arrival of a doctor at the garda station.

Charleton J refused the application, holding that there was sufficient evidence before the Circuit Court judge to have enabled him to decide that there had been no culpable delay on the part of the gardaí in ensuring the attendance of a doctor for the purpose of the procedure under the 1961 act, as amended, in taking samples for analysis by the Medical Bureau of Road Safety.

O'Neill (applicant) v Judge Patrick McCartan and DPP (respondents), High Court, Mr Justice Charleton, 15/3/2007, 2006 No 611 JR [FL13629]

Evidence

Appeal – whether a statement could be severed so as to exclude inculpatory portions but preserve and admit into evidence those parts of the statement that could be regarded as exculpatory.

The applicant sought leave to appeal his conviction for rape on the grounds that the trial judge erred in law in excluding all the contents of a memorandum of interview of the accused in circumstances where objection had only been taken to the admissibility of part of the memorandum of interview.

The Court of Criminal Appeal (Kearns, Dunne, MacMenamin JJ) refused the application for leave to appeal, holding that once the trial judge reached the conclusion that the entire interview process was tainted, the trial judge was correct to exclude the entirety of the interview.

DPP (respondent) v O'Neill (applicant), Court of Criminal Appeal, 16/3/2007, CCA 100/06 [FL13608]

Evidence

Prohibition – application to restrain trial on basis that prosecution failed to gather CCTV footage – whether evidence of such probative value such that its absence would binder fair defence of charge – whether trial should be restrained – whether discretion should be exercised in applicant's favour – judicial review – time limits – whether application made promptly – exercise of discretion by the courts to enlarge time for bringing proceedings – whether discretion should be exercised in applicant's favour.

The applicant became obstreperous in and around a licensed premises and was subsequently arrested outside the premises. In the patrol car leaving the scene, he was alleged to have assaulted a garda. He was subsequently convicted in the District Court of various offences relating to public order and assault of a barman arising out of the incidents. Subsequently, he was charged under section 3 of the *Non-Fatal Offences Against the Person Act 1997* in relation to the assault of the garda in the patrol car, the return for trial being in December 2003. In July 2004, the applicant sought an order of prohibition restraining the trial of that charge on the basis that the prosecution failed to obtain CCTV footage from the licensed premises, which he contended would assist his defence of self-defence.

Mr Justice O'Neill refused the relief sought, holding that, despite the fact that the prosecution had failed in their duty to retrieve the CCTV footage, the probative value of such evidence was not such that the applicant's right to a fair trial would be compromised, in as much as the relevant incident had occurred in the patrol car away from the camera in question. The application for judicial review was also outside the prescribed time limit and, as no explanation had been given for the delay, it was not open to the court to extend the time for making the application.

Harte (applicant) v Director of Public Prosecutions (respondent), High Court, Mr Justice O'Neill, 19/2/2007, 2006 No 242 JR [FL13737]

Extradition

European arrest warrant – identity – delay – abuse of process – whether the surrender of the respondent ought to be refused on the grounds of lack of correspondence, delay and/or an abuse of process.

The surrender of the respondent was sought on foot of a European arrest warrant (EAW) in order for him to face trial in London in respect of offences of rape, indecent assault and gross indecency allegedly committed between 1995 and 1999. The surrender of the respondent on foot of an earlier EAW was previously refused by the court on the basis that the court was not satisfied that the person before the court was the person in respect of whom the EAW had issued. The respondent submitted that there was no corresponding offence in relation to the offence of gross indecency. The respondent also submitted that the applicant was guilty of an abuse of process by seeking the surrender of the respondent a second time, having failed on the first occasion, and furthermore that there was such delay since the date of the alleged

commission of the offences that the respondent's constitutional and convention rights to a fair trial and trial within a reasonable time had been breached.

Peart J ordered the surrender of the respondent, holding that the difficulty regarding the identity of the respondent that arose in the previous case did not arise in this case. In the circumstances of this case, the court was satisfied that the person before the court was the person in respect of whom the EAW issued. The alleged acts set forth in the warrant, amounting to gross indecency, would, if committed in this state, give rise to the offence of sexual assault. There was no abuse of process in this case nor was there any breach of the respondents constitutional and convention rights.

Minister for Justice, Equality and Law Reform (applicant) v McG(C) (respondent), High Court, Mr Justice Peart, 30/1/2007, 2006 No 55 Ext [FL13744]

Practice and procedure

Sexual offences – disclosure – prosecutorial delay – whether the prosecution was guilty of delay, specifically in relation to its duty to provide disclosure to the applicant.

The DPP appealed against the decision of McKechnie J in the High Court restraining the further prosecution of the applicant in respect of charges for sexual offences allegedly committed by him in the early 1980s. McKechnie J held that there had been such delays by the prosecution in complying with its obligations to make full disclosure promptly as to amount to blameworthy delay. Essentially, the applicant alleged that, notwithstanding the respondent's compliance with the undertaking given on behalf of the DPP to disclose to the applicant copies of the complainant's psychiatric reports from her doctor, the prosecution was guilty of delay in com-

plying with its obligation of disclosure, specifically by delaying in providing the details of the authors of various notes contained in the medical reports/notes previously disclosed. The applicant received in 2001, following the collapse of his earlier trial, notes containing references to the fact that the complainant previously complained of sexual abuse by her uncle and also made a reference to the Rape Crisis Centre.

The Supreme Court (Murray CJ, Denham, Hardiman, Fennelly JJ) allowed the appeal (Kearns J dissenting), holding that the prosecution complied with their undertaking to disclose the reports of the complainant's doctor. The Chief State Solicitor endeavoured to assist the defence in tracing the identity of the authors of certain notes contained in the doctor's reports. However, even assuming that the prosecution had accepted responsibility for carrying out further inquiries, as was suggested and indeed as found by the trial judge, it was not clear how the prosecution was said to be in breach of that responsibility. Furthermore, it was not suggested that the information that arose in due course regarding a previous complaint of sexual abuse had been in the possession of the prosecution or that they were even aware of it. The applicant failed to make out any case for prosecutorial delay. In any event, applying the balancing test, the applicant's trial ought not to be prohibited.

O'H (applicant/respondent) v The Director of Public Prosecutions (respondent/appellant), Supreme Court, 28/3/2007, 172/03 [FL13612]

INTELLECTUAL PROPERTY

Procedure – interpretation of court order.

This judgment concerned an issue that arose out of a previ-

ous judgment and the order made on foot of that judgment relating to the determination of the equitable remuneration payable by a nightclub owner under s17(4)(b) of the *Copyright Act 1963*. The matter was brought before the court by way of motion to "speak to the minutes of the judgment and order", so as to resolve a dispute between the parties as to the correct interpretation of an aspect of the judgment and order. Essentially, the issue was whether, in computing the aforementioned equitable remuneration, the relevant price to be applied was the full admission price or the average admission charge.

Laffoy J held that the judgment was silent on the issue and that issue never featured in the submissions before this court on the hearing of the appeal. However, if the issue had been raised, the court would have determined that the full admission price ought to be used.

Carrickdale Hotel Ltd (plaintiff) v The Controller of Industrial and Commercial Property and Phonographic Performance (Ireland) Ltd (defendants), High Court, Ms Justice Laffoy, 23/2/2007, 2002/350 SP [FL13712]

TORT

Breach of contract

Nuisance – damages – whether the damage caused to the plaintiff's premises was as a result of any negligence, nuisance or breach of contract on the part of the defendant.

The plaintiff claimed damages for negligence, breach of duty, breach of statutory duty, nuisance and breach of contract against the defendants, arising out of damage to a factory premises let by the plaintiff to the defendant. Essentially, the plaintiff claimed that the defendant caused or permitted sulphuric acid to escape into

the ground underneath the factory and this acid reacted with materials in the ground forming an expansive compound that ultimately caused the damage to the building. The defendants vehemently denied the scientific basis of the plaintiff's explanation for the damage and contended that there was no discharge of sulphuric acid into the ground.

O'Neill J dismissed the plaintiff's claim, holding that, having regard to the evidence, it was highly unlikely that there was any significant discharge of sulphuric acid into the ground. The plaintiff's explanation for the damage that occurred was not established on the balance of probabilities. There was no negligence on the part of the defendant as alleged. Furthermore, the plaintiff's cause of action in nuisance and breach of contract failed.

Údarás Na Gaeltachta (plaintiff) v Uisce Glan Teoranta (defendant), High Court, Mr Justice O'Neill, 13/3/2007, 1996 No 6285P [FL13636]

Damages

Whether award of damages made in the High Court was sufficient to compensate the plaintiff for the wrongs he suffered as a result of the disreputable conduct of the defendants – Criminal Procedure Act 1993.

The plaintiff appealed against the quantum of damages award-

ed by the High Court for the wrongs he suffered as a result of disreputable conduct and shocking abuse of power by two members of An Garda Síochána, specifically the concocting of evidence that led to the plaintiff's conviction for knowingly allowing drugs to be sold on his premises and resulted in a three year custodial sentence. The plaintiff's conviction was ultimately set aside and the Court of Criminal Appeal certified that he had been the subject of a miscarriage of justice. The trial judge in the High Court awarded the plaintiff the total sum of €1,923,871 by way of compensation. The judge excluded the making of an award under the heading of aggravated damages on the basis that it would constitute double compensation, having regard to the award for general damages, and reduced the award for exemplary damages so as to avoid providing double compensation to the plaintiff.

The Supreme Court (Murray CJ, Denham, Hardiman, Geoghegan, Fennelly JJ) allowed the appeal and substituted an award of a total of €4,623,871 to the plaintiff against the defendants, holding that:

1) The plaintiff was entitled to general damages far in excess of that awarded in the High Court. The appropriate approach in this case was

to make a global award that included ordinary general damages and aggravated damages. Furthermore, any future aspect of the plaintiff's damages was to be taken into account in the overall award of compensatory damages. The plaintiff was entitled to an award of €2,250,000 by way of compensatory damages.

2) In this case, the grounds for exemplary damages were compelling and it was necessary, in order to display the court's level of disapproval with the conduct of the two gardaí, to make a separate and distinct award under this heading, and the sum of €1,000,000 was appropriate.

3) The plaintiff's appeal against the trial judge's findings in relation to special damages failed, as the judge, in assessing the plaintiff's losses in that regard, relied on facts that he was entitled to find on the basis of the evidence before him and the inferences drawn from those facts were reasonable and correct.

Shortt (plaintiff/applicant) v The Commissioner of An Garda Síochána & Others (defendant/respondent), Supreme Court, 21/3/2007, 394/05 [FL13661]


Personal injuries

Sexual abuse – whether proceedings statute barred – vicarious lia-

bility – Statute of Limitations 1957, s48(A) – Statute of Limitations (Amendment) Act 2000, s2.

Between the years 1969 and 1971, the plaintiff was sexually abused by the first-named defendant. The plaintiff claimed damages against the first-named defendant and claimed that the second, third, fourth and fifth-named defendants were vicariously liable for the conduct of the first defendant. The defendants contended that the proceedings were statute barred.

Johnson J assessed damages against the first-named defendant in the sum of €300,000, holding that the plaintiff fell within the provisions of s48(A) of the *Statute of Limitations 1957*. The second, third, fourth and fifth-named defendants were not vicariously liable for the actions of the first-named defendant.

M(T) (plaintiff) v H(J) (defendant), High Court, Mr Justice Johnson, 18/7/2006, 1998 No 9749P [FL13685] 

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

Repackaging and relabelling pharmaceutical products

The ECJ has provided further guidance on the extent to which parallel importers may repackage and relabel pharmaceutical products. The latest ruling was handed down on 26 April 2007 in Case C-364/04, *Boehringer and Others v Swingward Ltd*. While the ECJ has previously established the right of a trademark owner to object to the repackaging of its product if certain conditions are not met, it has now clarified that this right extends to relabelled products. In addition, the judgment means that parallel imports of pharmaceutical products can be challenged if the repackaging or relabelling does not match the standards of the original packaging. The judgment also clarifies the burden of proof applicable to the parallel importer and the trademark owner.

Boehringer Ingelheim and others manufactured medicinal products under various trademarks in the community. Swingward and Dowelhurst imported these products into Britain. In order to market them there, they altered the packaging and the information leaflets of the products. The alterations varied from product to product and included relabelling (where a label setting out certain critical information was attached to the original packaging and the original trademark remained unaltered) and repackaging (in boxes designed by the parallel importer on which the original

trademark was reproduced and in boxes that did not bear the original trademark but the generic name of the product). *Boehringer Ingelheim* and others objected to these alterations and brought proceedings before the English High Court, which in turn made a reference to the ECJ.

Article 28 of the *EC Treaty* provides for the free movement of goods between member states by prohibiting quantitative restrictions on imports and measures having an equivalent



effect. Article 30 provides an exemption to this general prohibition where such restrictions are justified by the protection of industrial and commercial property, provided such restrictions do not constitute a means of arbitrary discrimination or a disguised restriction on trade between member states.

Directive 89/104/EEC (*Trademark Directive*) provides that, once goods have been marketed in the EU, a trademark owner can only prevent a

third party from using its trademark if such use is liable to impair the guarantee of the identity of the product's origin or of its integrity.

These provisions have been interpreted by the European courts in a line of cases (see, for example, Joined Cases C-427/93, C-429/93 and C-436/93, *Bristol-Myers Squibb* [1996] ECR I-3457; Case C-379/97, *Upjohn* [1999] ECR I-6927; Case C-143/00, *Boehringer Ingelheim* [2002] ECR I-3759; and Case E-3/02,

sary to market the product in the country of import (in other words, reliance on trademark rights by the trademark owner to oppose the marketing of repackaged products would contribute to the artificial partitioning of the markets between member states);

- 2) The repackaging does not affect the original condition of the product inside the packaging;
- 3) The new packaging clearly states who repackaged the product and the name of the manufacturer;
- 4) The presentation of the repackaged product is not liable to damage the reputation of the trademark and its owner (that is, the repackaging must not be defective, of poor quality, or untidy); and
- 5) The importer gives notice to the trademark owner before the repackaged product is put on sale and, on demand, supplies him with a sample of the repackaged product.

Once the parallel importers have fulfilled these conditions, the trademark owner cannot oppose the further commercialisation of a repackaged pharmaceutical product.

The ECJ judgment in *Boehringer v Swingward* clarifies the application of these conditions. In particular, the court held that:

- The BMS conditions apply to relabelled products as well as repackaged products.

Paranova v Merck [2003] EFTA Court Report 2004, p1). The principle emerging from the case law is that, once trademarked goods are legally marketed in one EU country by the trademark owner, they can be repackaged or relabelled by parallel importers and resold in a different EU member states as long as the parallel importers comply with the following five conditions (also known as the Bristol-Myers Squibb or BMS conditions):

- 1) The repackaging is neces-

- The first condition (that repackaging is necessary) is directed only at the fact of repackaging the product for the purposes of allowing that product to be marketed in the importing state and not at the style or manner in which it has been repackaged. It is not therefore necessary for a parallel importer to prove that the way in which the packaging is styled is a requirement of national law.
- The fourth condition (that the presentation of the repackaged product must not be liable to damage the trademark's reputation) is not limited to cases where the repackaging is defective, of poor quality or untidy. For example, a repackaged product may damage the trademark's reputation where the carton or label detracts from the image of reliability and quality attaching to such a product and the confidence it is capable of inspiring in the public concerned.
- The question as to what forms of repackaging and relabelling are likely to damage the trademark's reputation is a question of fact to be determined by the national courts. In principle, the following actions are liable to damage the trademark's reputation: failure to affix the trademark to the new exterior carton (de-branding), application of the parallel importer's own logo or house style or get-up to the product (co-branding), positioning of an additional label so as to wholly or partially obscure the original trademark, failure to state on the additional label that the trademark in question belongs to the trademark owner, or printing the name of the parallel importer in capital letters.

The ECJ also clarified that the burden of proof lies on the parallel importers to prove the existence of the BMS conditions. However, in relation to the second and fourth conditions, it is sufficient for the par-

allel importer to provide evidence that leads to the reasonable presumption that the condition has been fulfilled.

Finally, the court addressed the consequences of failure by the parallel importer to give notice to the trademark owner of the intended repackaging (fifth condition). The ECJ held that compensation for failure to give notice must be determined in accordance with principles of national law on financial remedies, provided that those principles are compatible with community and international law and, in particular, with the principles of equivalence, effectiveness and proportionality. Those measures must not only be proportionate but must also be sufficiently effective and a sufficient deterrent to ensure that the *Trademark Directive* is fully effective. It is for the national court to determine the amount of the financial remedies according to the circumstances of each case, in particular in the light of the extent of damage to the trademark owner caused by the par-

allel importer's infringement, and in accordance with the principle of proportionality.

This most recent judgment of the ECJ concerning the repackaging and relabelling of pharmaceutical products is welcomed, as it further clarifies the extent to which parallel importers can repack and relabel parallel traded products.

While the ECJ has previously established the right of the trademark owner to object to the repackaging of its product if the BMS conditions are not met, it has now clarified that this right extends to relabelled products. In addition, the judgment means that parallel imports of pharmaceutical products can be challenged if the repackaging or relabelling does not match the standards of the original packaging.

In delivering this judgment, the ECJ is once again attempting to strike a balance between the fundamental principle of the free movement of goods between member states and the legitimate right of trademark owners to protect their marks. **G**

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RECENT DEVELOPMENTS IN EUROPEAN LAW

COMPETITION

The European Commission has formally requested Spain to comply with the commission's decisions requiring the withdrawal of certain conditions, concerning EON's bid for Endesa, imposed by the Spanish Energy Regulator (CNE) in July 2006 and other conditions imposed by a ministerial decision of 3 November 2006. The conditions in question were declared illegal under article 21 of the EU *Merger Regulation* by commission decisions adopted on 26 September 2006 and 20 December 2006. These decisions have immediate binding effect. The formal request takes the form of a 'reasoned opinion', the second stage of infringement proceedings under article 226 of the *EC Treaty*.

If there is no satisfactory reply within seven working days, the commission may decide to refer Spain to the ECJ for breach of the commission's two article 21 decisions. On 26 September 2006, the commission adopted a decision to the effect that CNE's decision, subjecting EON's bid for Endesa to a number of conditions breached, article 21 of the EU *Merger Regulation*. Moreover, this decision required Spain to withdraw without delay the conditions imposed by CNE's decision, which had been declared incompatible with community law. The Spanish authorities did not take any action in this respect and therefore, on 18 October 2006, the commission sent Spain a first letter of formal notice.

As part of their reply, the Spanish authorities referred to the ministerial decision of 3 November 2006, which modified CNE's decision (a) by withdrawing some of the conditions imposed by CNE, (b) by reducing the duration or the scope of some other conditions, (c) by

clarifying the requirements of certain conditions, and (d) by modifying or replacing some other conditions through the imposition of 'new requirements' for EON's acquisition of control over Endesa.

On 1 February 2007, the commission sent an additional letter of formal notice where it requested Spain to explain why it had not fully withdrawn the conditions declared incompatible with EU law. In particular, the commission concluded that the reduction of the duration and scope of some conditions and the clarifications introduced by the ministerial decision were not sufficient to comply fully with the commission decision of 26 September. As far as the 'new requirements' introduced by the ministerial decision are concerned, by a decision of 20 December 2006, the commission declared some of them incompatible with article 21 of the *Merger Regulation* and required Spain to withdraw them by 19 January 2007. The Spanish authorities have failed to inform the commission of any steps or measures taken in order to comply with the 20 December decision.

The Spanish authorities' replies to both the October letter of formal notice and the February additional letter of formal notice failed to inform the commission that the illegal measures had been withdrawn. Therefore, in its reasoned opinion, the commission concluded that Spain has failed to comply with the two decisions adopted on 26 September 2006 and 20 December 2006 and formally requested Spain to comply with the article 21 decisions by withdrawing the conditions that have been declared illegal. The commission subsequently announced that it will be referring the case to the ECJ, as Spain has failed to withdraw the alleged illegal conditions.

ESTABLISHMENT

Case C-170/06, *Denkavit Internationaal BV, Denkavit France SARL, Minstre de L'Économie, des Finances et de l'Industrie*, 14 December 2006. Denkavit Internationaal, having its registered office in the Netherlands, is the parent company of Denkavit France and Agro Finances, both of which are resident in France for tax purposes. Dividends paid by Denkavit France and Agro Finances to Denkavit Internationaal were levied with a withholding tax of 5% in accordance with the *Franco-Netherlands Tax Convention*.

Under the French tax code, a parent company, having its registered or permanent place of business in France, was entitled, under certain conditions, to almost full exemption from corporation tax in respect of dividends paid by its subsidiary.

Denkavit Internationaal was repaid the amount of withholding tax following an action brought before the Administrative Court, Nantes. The Administrative Court of Appeal, Nantes, subsequently set aside the judgment of the Administrative Court and reinstated the liability of Denkavit Internationaal to pay the tax. Denkavit Internationaal and Denkavit France brought an appeal in cassation against that judgment before the Conseil d'État, contending that the French tax law contravened article 43 EC. The Conseil d'État asked the court (ECJ) whether the French tax code was open to challenge in light of the principle of freedom of establishment regarding the taxation treatment of resident and non-resident parent companies and the status of the *Franco-Netherlands Convention* in this regard.

The court noted that the dispute related to matters that occurred before the adoption of

Council Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states. It stated that freedom of establishment seeks to guarantee the benefit of national treatment in the host member state by prohibiting any discrimination, even minimal, based on the place in which companies have their seat (*Commission v France*, paragraph 14, and *Saint-Gobain ZN*, paragraph 35).

Although, in tax law, a taxpayer's residence may constitute a factor that might justify rules involving differing treatment for resident and non-resident taxpayers, those two categories of taxpayer must be categorised as discrimination where there is no objective difference such as to justify that difference in treatment. The French legislation at issue gave rise, irrespective of the *Franco-Netherlands Convention*, to a difference in the tax treatment of dividends according to whether a parent company is resident or non-resident, which amounts to a discriminatory measure that is incompatible with the treaty. The combined effect of the Netherlands legislation and the *Franco-Netherlands Convention* did not serve to avoid the discriminatory measure. It accordingly ruled that articles 43 and 48 EC preclude national legislation that, in imposing a liability to tax on dividends paid to non-resident parent companies and allowing resident parent companies almost full exemption from such tax, constitutes a discriminatory restriction on freedom of establishment.

SERVICES

On 18 December 2006, the *Services Directive*, a fiercely debated piece of EU legislation aimed at rejuvenating Europe's

services sector, was signed into law. Parliament finally approved the law in November after more than two years of debate and revision between the parliament, the council and the commission. It is one of the most important texts to be agreed by the EU in recent years, as it aims to make the 'free movement' of services within the EU a reality.

The final directive, substantially rewritten by parliament, attempts to balance the positions of the enthusiasts of greater liberalisation and those who fear a decline in social protection. It is an attempt to strike a balance between the interests of consumers, workers and service providers. The *Services Directive* will cover lawyers, and so will apply to solicitors. There is, however, an exemption for notaries who are appointed by an official act of government. The directive endorses multidisciplinary practices but allows a derogation for the regulated professions insofar as is necessary to comply with rules relating to professional ethics and conduct.

There is a requirement for member states to examine whether the exercise of a service activity is subject to compliance with requirements that relate to the shareholding of a company and to ensure that such requirements comply with the principles of non-discrimination, necessity and proportionality. This could concern requirements relating to ownership of law firms or membership of legal partnerships. Whether it could eventually be invoked to allow for non-lawyers to have shareholdings or equity

stakes in law firms remains to be seen. The *Services Directive* belongs to the field covered by the co-decision procedure and will enter into force by 2010 at the latest.

STATE AID

The European Commission adopted a new framework to clarify to member states how best they can give state aid to, not only research and development, but also innovation projects without infringing *EC Treaty* state-aid rules. The framework sets out a series of guidelines for specific types of state-aid measures – such as aid for R&D projects, aid to young innovative enterprises and aid to innovation clusters – that could encourage additional R&D investments by private firms, thus stimulating growth and employment and improving Europe's competitiveness.

These guidelines allow individual member states to tailor aid measures to particular situations, subject to the overall test that the aid must address a defined market failure, must be well designed and the identified benefits must outweigh distortions to competition resulting from the aid. The new framework applied from 1 January 2007.

Under the framework, member states will still be obliged to notify aid measures to the commission for verification and authorisation, but if the measures have been drawn up in accordance with the guidelines, authorisation will be faster. The European Commission has adopted a regu-

lation exempting small subsidies from the obligation to notify them in advance for clearance by the commission under *EC Treaty* state-aid rules. Under the new regulation, aid of up to €200,000 (compared with the current ceiling of €100,000), granted over any period of three years, will not be considered as state aid. The new regulation will also apply to the transport sector and to the processing and marketing of agricultural products. Nevertheless, since many companies in the road transport sector are relatively small, a specific ceiling of €100,000 will apply to this sector.

Loan guarantees will also be covered, to the extent that the guaranteed part of the loan does not exceed €1.5 million. Forms of aid for which the inherent aid amount cannot be calculated precisely in advance (so-called 'non-transparent' aids) and aid to firms in difficulty have been excluded from the regulation in order to avoid abuses. The regulation entered into force on 1 January 2007.

TAXATION

Case C-313/05, *Maciej Brzezinski v Dyrektor zby Celnej w Warszawie*, 18 January 2007. Polish legislation applies excise duty to the acquisition of second-hand vehicles originating from other member states but not to the acquisition of second-hand vehicles already registered in Poland. These vehicles have already been subject to the duty upon their initial registration.

For cars that are new or less

than two years old, the level of excise duty is 3.1% or 13.6%, depending on engine capacity. For vehicles over two years old, the percentage varies according to the age of the vehicle, attaining a maximum of 65%. The applicant purchased a Volkswagen Golf in 1989 in Germany and imported it to Poland. He paid PLN855 as excise duty. He requested reimbursement of the duty, arguing that it was contrary to the provisions of the treaty.

The ECJ noted that the aim of article 90 of the treaty is to ensure the complete neutrality of internal taxation as regards competition between products already on the domestic market and imported products. The court found it necessary to compare the effects of the excise duty imposed on vehicles imported from another member state with the effects of the residual excise duty imposed on second-hand vehicles already on the Polish market.

It held that a system of taxation may be considered compatible with article 90 only if it is so arranged as to exclude any possibility of imported products being taxed more heavily than similar domestic products, so that it cannot in any event have discriminatory effect. Thus, the court held that EC law precludes an excise duty, insofar as the amount of the duty imposed on second-hand vehicles over two years old, acquired in a member state other than Poland, exceeds the residual amount of the same duty incorporated into the purchase price of similar vehicles already registered in Poland. G

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LOST LAND
CERTIFICATES**Registration of Deeds and Title Acts
1964 and 2006**

An application has been received from the registered owners mentioned in the schedule hereto for an order dispensing with the land certificate issued in respect of the lands specified in the schedule, which original land certificate is stated to have been lost or inadvertently destroyed. The land certificate will be dispensed with 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.

*Property Registration Authority, Chancery Street, Dublin 7
(Published 6 July 2007)*

Regd owner: Roderick Cummins and Maureen Cummins; folio: 10285F; lands: Court Place and barony of Carlow; **Co Carlow**

Regd owner: Fintan and Brigid Lalor; folio: 8204F; lands: Shangarry and barony of Forth; **Co Carlow**

Regd owner: Nora Harte; folio: 19424 and 22433; lands: townland of Cloonbony and barony of Ibrickan; **Co Clare**

Regd owner: Moira Hannon; folio: 11469; lands: townland of Lisbarreen and barony of Tulla Upper; area: 10.5290; **Co Clare**

Regd owner: Liam Carroll; folio: 15434F and 17251F (both closed to 19565F); lands: plot of ground situate in the townland of Knockacur in the barony of Fermoy in the county of Cork; **Co Cork**

Regd owner: Thomas Ernest Cotter (deceased) and Jane Cotter; folio: 5946; lands: plot of ground situate in the townlands of (1) Fountainstown North, (2) Fountainstown in the barony of (1) Kerrycurrihy, (2) Kinalea, in the county of Cork; **Co Cork**

Regd owner: William Christopher O'Brien; folio: 5173; lands: plot of ground situate in the townland of Derreennatra in the barony of Carbery West (west division) in the county of Cork; **Co Cork**

Regd owner: Pat Cotter and Laura Cotter; folio: 63929F; lands: plot of ground known as no 64 Ashford Heights, situate in the townland of Lota More in the barony and city of Cork; **Co Cork**

Regd owner: Thomas Hunter; folio: 44579F; lands: plot of ground situate in the townland of Castlewidham in the barony of Fermoy in the county of Cork; **Co Cork**

Regd owner: Francis Russell, Dooen Glebe, New Mills, Co Donegal; folio: 7929; lands: Doon Glebe; **Co Donegal**

LAW SOCIETY
Gazette**PROFESSIONAL NOTICE RATES**

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for Aug/Sept *Gazette*: 17 August 2007. For further information, contact Catherine Kearney or Valerie Farrell on tel: 01 672 4828 (fax: 01 672 4877)

Donegal

Regd owner: Joseph Dowling and Patricia Dowling; folio: DN63386F; lands: property situate in the townland of Piercetown and barony of Balrothery East; **Co Dublin**

Regd owner: Kevin Joseph Dowling; folio: DN2111; lands: property situated in the townland of Milverton and barony of Balrothery; **Co Dublin**

Regd owner: Kevin Joseph Dowling and Patricia Dowling; folio: DN1187F; lands: (1) property situate in the townland of Holmpatrick and barony of Balrothery, (2) property situate in the townland of Piercetown and barony of Balrothery; **Co Dublin**

Regd owner: Noel Fitzpatrick; folio: DN72869L; lands: property known as flat no 8 on the second floor of Crescent House, situate on the north of Marino Crescent in the parish and district of Clontarf; **Co Dublin**

Regd owner: Patricia Kent; folio: DN433; lands: property situate in the townland of Kiltiernan and barony of Rathdown; **Co Dublin**

Regd owner: Sarah Maguire; folio: DN74315L; lands: property known as 52 Reuben Avenue, South Circular Road, situate in the parish of St James and South Central District; **Co Dublin**

Regd owner: Barbara M Wadland and John Clancy (as tenants-in-common); folio: 6729F; lands: townland of Kilroe East and barony of Moycullen; **Co Galway**

Regd owner: Michael Daly; folio: 27210; lands: townland of Lurganshanny and barony of Longford; **Co Galway**

Regd owner: Christopher Camillus Gavin, John Leonardi Gilmore; folio: 1681L; lands: townland of

Castlequin and barony of Iveragh; **Co Kerry**

Regd owner: Daniel B Linehan; folio: 32022; lands: townland of Shinnagh and barony of Magunihy; **Co Kerry**

Regd owner: Patrick Mulhall (farmer) of Dunbyrne, Kilmeague, Co Kildare; folio: 4320; lands: townland of Dunbyrne and barony of Connell, containing 28.0093 hectares, shown as plan(s) 4320 edged red on the registry map (OS map ref(s) 18/5, 9), and townland of Dunbyrne and barony of Connell, containing 1.2798 hectares, shown as plan(s) 4320 edged red on the registry map (OS map ref(s) 18/9); **Co Kildare**

Regd owner: Seamus Donohoe and Sarah Campbell of 9 Newtown, Glendale, Leixlip, Co Kildare; folio: 12218F; lands: townland of Newtown (ED Leixlip) and barony of North Salt, shown as plan(s) 820 edged red on the registry map (OS map ref(s) 3194/12); **Co Kildare**

Regd owner: Finbar and Sheila O'Sullivan; folio: 7699F; lands: townland of Naas East and barony of Naas North; **Co Kildare**

Regd owner: Eamonn Lawlor of Clonsast, Rathangan, Co Kildare; folio: 8760; lands: townland of Pollagorteen in the barony of Offaly West; **Co Kildare**

Regd owner: Alphonsus and Maura Harte, Main Street, Carrigallen, Co Leitrim; folio: 13713; lands: Bredagh; **Co Leitrim**

Regd owner: Michael Coffey and Adreina Coffey; folio: 25807F; lands: townland of Newcastle and barony of Clanwilliam; **Co Limerick**

Regd owner: Anne Kennelly; folio: 5725F; lands: parish of St Nicholas and electoral division of Rathbane; **Co Limerick**

Regd owner: Mary Maurer; folio:

16506; lands: parish of St Patrick's and electoral division of Abbey A; **Co Limerick**

Regd owner: Michael O and Geraldine White; folio: 15243F; lands: townland of Kilbane and barony of Clanwilliam; **Co Limerick**

Regd owner: Mary P Doran; folio: 52340; lands: townland of Lisdoonaun and Townparks and barony of Longford; **Co Longford**

Regd owner: Thomas McNally, Lanesboro, Co Longford; folio: 155D; lands: Lanesborough (part); **Co Longford**

Regd owner: John Kearns; folio: 48235; lands: townland of (1) Murrisk, (2) Tawnyameeltoge or Midgefield and barony of (1) and (2) Midgefield; area: (1) 14.3790 hectares and (2) 14.4040 hectares; **Co Mayo**

Regd owner: Patrick Lynott; folio: 26621; lands: townland of Croghan and barony of Tirawley; area: 1.7753; **Co Mayo**

Regd owner: John Fitzsimons, Derrypatrick, Drumree, Co Meath; folio: 41691F; lands: Laracor; **Co Meath**

Regd owner: Meath Vocational Education Committee, County Office, Navan, Co Meath; folio: 5340F; lands: Dunshaughlin; Co Meath; area: 7.2388 hectares; **Co Meath**

Regd owner: Vincent Matthew O'Reilly and Brendan Joseph Steen, c/o Steen O'Reilly & Company, Solicitors, 31/34 Trimgate Street, Navan, Co Meath; folio: 4292F and 25406F; lands: Kilcarn; **Co Meath**

Regd owner: Patrick Oliver Tallon and Elizabeth Anne Tallon, Main Street, Slane, Co Meath; folio: 26631; lands: Slane; **Co Meath**

Regd owner: Edward Stone (deceased); folio: 18945 (closed to 5342F); lands: Raheen and barony of

Kilcoursey; Co Offaly

Regd owner: John Guinan; folio: 15882 (closed to 3274F); lands: Clonony Beg and barony of Garrycastle; **Co Offaly**

Regd owner: Pierre and Mary Boissel; folio: 3402F; lands: Crinkill and barony of Ballybrit; **Co Offaly**

Regd owner: John Murphy and Elizabeth Murphy; folio: 3403; lands: townland of Creggaslin and barony of Castlereagh; area: 4.8663 hectares; **Co Roscommon**

Regd owner: John Rourke; folio: 3357; lands: townland of Creggamen and barony of Castlereagh; **Co Roscommon**

Regd owner: Eamonn Jinks; folio: 9934F; lands: townland of Coolbock and barony of Tirerrill; area: 10.9590 hectares; **Co Sligo**

Regd owner: James Connolly; folio: 286; lands: townland of Farranyharpy and barony of Tireragh; area: 8.8146 hectares; **Co Sligo**

Regd owner: Joseph O'Dowd; folio: 2348; lands: townland of Drinaghan Beg and barony of Tireragh; area: 27.5180 hectares; **Co Sligo**

Regd owner: Thomas Durack and Maura Durack; folio: 12918F; lands: townland of Ballyhenry and barony of Ikerrin; **Co Tipperary**

Regd owner: Patrick Purcell and Teresa Purcell; folio: 10785F; lands: townland of Killinane and barony of Eliogarty; **Co Tipperary**

Regd owner: James Brennan and Myra Brennan; folio: 2685F; lands: plot of ground situate in the townland of Coxtown East, in the barony of Gaultiere, in the county of Waterford; **Co Waterford**

Regd owner: Mary Bridget Stapleton; folio: 2516; lands: plot of ground situate in the townland of Affane Hunter in the barony of Decies-without-Drum in the county of Waterford; **Co Waterford**

Regd owner: Walter Norris and Mary Norris; folio: 22674F; lands: plot of ground situate in the townland of Lahardan in the barony of Upperthird in the county of Waterford; **Co Waterford**

Regd owner: Ann Fitzgerald; folio: 4039; lands: plot of ground situate in the townland of Knockane (Decies-without-Drum By), in the barony of Decies-without-Drum in the county of Waterford; **Co Waterford**

Regd owner: Michael Bourke and Nicola Cunningham; folio: 26180F; lands: plot of ground known as no 32 The Estuary, Somerville, in the parish of Tramore and in the town of Tramore and in the county of Waterford; **Co Waterford**

Regd owner: Denis Connell and Margaret Connell, Mardyke Street, Athlone, Co Westmeath; folio: 2662F; lands: Hillquarter; **Co Westmeath**

Regd owner: Thomas Foley; folio: 15280; lands: Ballyprecas and barony

of Scarawalsh; Co Wexford

Regd owner: Philip Rochford; folio: 8710F; lands: Raheenahoon and barony of Bantry; **Co Wexford**

Regd owner: Raymond Parle; folio: 6685F; lands: Ballyhote, Kilrane, and barony of Forth; **Co Wexford**

Regd owner: Patrick Gilmartin; folio: 23373; lands: Ballindinas and barony of Shelmaliere West; **Co Wexford**

Regd owner: Patrick Dolan, 11 Woodview, Castletown, Celbridge, Co Kildare; folio: 15360F; lands: townland of Blessington Demesne in the barony of Talbotstown Lower; **Co Wicklow**

Regd owner: Stephen O'Toole and Michael O'Toole (tenant-in-common of one undivided half share each); folio: 3748L; lands: apartment known as apartment 52 Deerpark Court, situate on the ground floor, townland of Blessington Demesne, barony of Talbotstown; **Co Wicklow**

WILLS

Coughlin, James (otherwise Jimmy) (deceased), late of Joristown, Killucan, Co Westmeath, a retired farmer who died on 5 June 2007. Will anybody with knowledge of the whereabouts of a will made by the above-named deceased please contact Hamilton Sheahan & Co, Solicitors, Kinnegad, Co Westmeath; tel: 044 937 5040, fax: 044 937 5041, email: hamshea@indigo.ie

Crowe, Mary (deceased), late of 15 New Houses, Ruan, Ennis, Co Clare. Would any person having knowledge of a will made by the above-named deceased, who died on 31 May 2001, please contact the Office of the General Solicitor for Minors and Wards of Court, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin 7; ref: DS/1784; tel: 01 888 6231, fax: 01 872 2681

Crowe, Patrick (deceased), late of 15 New Houses, Ruan, Ennis, Co Clare. Would any person having knowledge of a will made by the above-named deceased, who died on 29 November 2005, please contact the Office of the General Solicitor for Minors and Wards of Court, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin 7; ref: DS/1784; tel: 01 888 6231, fax: 01 872 2681

Farrell, Thomas (deceased), late of 89 Mourne Road, Drimnagh, Dublin 12. Would any person having knowledge of the above-named deceased, who died on 25 July 2000, please contact Nelson & Co, Solicitors, Templeogue Village, Dublin 6W; tel: 01 490 0159, fax: 01 490 4899

Flannery, Howard Gerard (deceased), late of Cahercalla Road,

Ennis, Co Clare, who died on 3 June 2007. Would any person having knowledge of the whereabouts of any will made by the above-named deceased person please contact Desmond J Houlihan & Co, Solicitors, Salthouse Lane, Ennis, Co Clare; tel: 065 684 2244, fax: 065 684 2233, email: desmondjhoulahan@securemail.ie

Gardiner, Edward Noel (deceased), late of 2 Michaelmallon House, Vicar Street, Dublin 8, who died on 26 February 2006. Would any person having knowledge of an original will dated 7 August 1998, executed by the above-named person, please contact Niall Murphy & Co, Solicitors, 3 Greenhills Centre, Greenhills Road, Walkinstown, Dublin 12; tel: 01 450 6626, fax: 01 450 6701, email: niallco@eircom.net

Gleeson, Winifred (otherwise Una) (deceased), late of 15 Father Matthew Street, Tipperary, retired housekeeper. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Kennedy Frewen O'Sullivan, Solicitors, St Michael Street, Tipperary; tel: 062 51184, fax: 062 51718, email: pasqualinecosgrave@kfos.ie

Hegarty, James (deceased), late of 15 Moorefield Avenue, Clondalkin, Dublin 22. Would any person having knowledge of a will or a grant of probate or letters of administration extracted or about to be extracted in relation to the goods of James Hegarty, who died on 12 January 1996 at St James's Hospital, please contact John Sherlock & Co, 9-10 Main Street, Clondalkin, Dublin 22; ref: EC

Hegarty, Monica (deceased), late of 15 Moorefield Avenue, Clondalkin, Dublin 22. Would any person having knowledge of a will or a grant of probate or letters of administration extracted or about to be extracted in relation to the goods of Monica Hegarty, who died on 27 May 1998 at St James's Hospital, please contact John Sherlock & Co, 9-10 Main Street, Clondalkin, Dublin 22; ref: EC

Jackson, Samuel (Sam) Desmond, late of Avalon, Seaford Avenue, Clontarf, Dublin 3. Would any person with knowledge of a will executed by the above-named deceased, who died on 25 May 2007 at home, please contact Cullen & O'Beirne, Solicitors, 1 Castle Street, Christchurch Place, Dublin 2; tel: 01 478 9031

McEntee, Terence (deceased), late of 24 Clyde House, Serpentine Avenue, Dublin 4. Would any person having knowledge of a will executed by the above-named deceased, who died on 29 January 1991, please contact Kelly & Ryan, Solicitors, Manorhamilton, Co Leitrim; tel: 071 985 5034, email: kieran.ryan@kellyryanmanor.com

Murphy, Joseph (deceased), late of 47 Chord Road, Drogheda, Co Louth. Would any person having the knowledge or whereabouts of any will made by the above-named deceased, Joseph Murphy, who died on 8 February 1999, please contact Deirdre Moran, Messrs Tallan & Co, Solicitors, The Haymarket, Drogheda, Co Louth; tel: 041 983 8708, fax: 041 983 9111, email: patricktallandrogheda@eircom.net

Murphy, Michael (deceased), late of 47 Chord Road, Drogheda, Co Louth. Would any person having the knowledge or whereabouts of any will made by the above-named deceased, Michael Murphy, who died on 27 March 2007, please contact Deirdre Moran, Messrs Patrick Tallan & Co, Solicitors, The Haymarket, Drogheda, Co Louth; tel: 041 983 8708, fax: 041 983 9111, email: patricktallandrogheda@eircom.net

O'Reilly, John (deceased), late of 34 Broadmeadow Green, Ashbourne, Co Meath, who was born on 15 July 1916 and died on 22 November 2006. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Dillon Eustace, Solicitors, 33 Sir John Rogerson's Quay, Dublin 2; tel: 01 667 0022, fax: 01 667 0042, email: info@dillon-eustace.ie

O'Sullivan, James (deceased), late of Knockboy, Waterford. Would any person having knowledge of a will dated 7 March 1968 executed by the above-named deceased, who died on 26 July 1971, please contact Dobbyn & McCoy, Solicitors, 4/5 Colbeck Street, Waterford; tel: 051 874 087, fax: 051 855 249

Rigley, Gladys (deceased), late of 3068 Merritt Avenue, Mississauga, Ontario, L4T 1P2, Canada (formally of Cut Bush, The Curragh, Co Kildare), retired quality-control officer, who died on 22 February 2006. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Larke Doyle Solicitors, 50 Tullow Street, Carlow; tel: 059 913 4988, fax: 059 913 9272, email: info@larkedoyle.ie

Skehan, Patrick (deceased), late of Boola, Rathgormack in the county of Waterford, who died on 19 December 1990. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Mary T Ronayne, Solicitor, The Brewery, Shandon, Dungarvan, Co Waterford; tel: 058 48717, fax: 058 48718, email: info@mttronayne.com

Walsh, Desmond (deceased) (retired bus driver), late of 16 The Bailey, Circular Road, Galway, and place of birth Fedamore, Co Limerick, on 16 June 1938. Would any person having

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Web site: www.berdaguerabogados.com

knowledge of a will made by the above-named deceased, who died on 23 April 2007, please contact Niamh Kavanagh of Keane Solicitors, 2nd Floor, Hardiman House, Eyre Square, Galway; tel: 091 566 767, email: nkavanagh@pmkeane.ie

Secure office storage, space available for up to 1,500 bankers' boxes in James's Street, Dublin 8. Contact Andrew Turner/Marie Doyle of Hamilton Turner, Solicitors, on 01 671 0555

TITLE DEEDS

Joseph Murphy (deceased) and Michael Murphy (deceased), late of 47 Chord Road, Drogheda, Co Louth. Would any person having the knowledge or whereabouts of any title documents for 47 Chord Road, Drogheda, in the county of Louth, please contact Deirdre Moran, solicitor, Messrs Patrick Tallan & Co, Solicitors, The Haymarket, Drogheda, Co Louth; tel: 041 983 8708, fax: 041 983 9111, email: patricktallandrogheda@eircom.net

In the matter of the Landlord and Tenant No 2 Acts 1967-1994 and the Landlord and Tenant (Ground Rents) (No 3) Act 1978

Take notice any person having an interest in the freehold estate in the property known as 6 Mary's Abbey in the city of Dublin. Take notice that John Meagher intends to submit an application to the county registrar for the county of the city Dublin for the

acquisition of the fee simple interest in the aforesaid property, and any person asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the solicitors for the applicant within 21 days from the date of this notice.

Unless such details have been received, the applicant intends to proceed before the county registrar and will apply 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: 6 July 2007

Signed: CCK Law Firm (solicitors for the applicant), 11-12 Eastmoreland Place, Ballsbridge, Dublin 4

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Gerard Nolan and Philomena Nolan

Any person having a freehold estate or any intermediate interest in all that and those the premises at the rear of number 56 Amiens Street, also known as 56A, in the parish of St Thomas and in the city of Dublin, the subject of an indenture of lease dated 4 May 1945

and made between Annie Crinion and Elizabeth Crinion of the one part and Edward Kevelighan of the other part for the term of 100 years from 1 January 1945 at a rent of £4 per annum.

Take notice that Gerard Nolan and Philomena Nolan, being the persons currently entitled to the lessees' interest under the said lease, intend to apply to the county registrar for the county and city of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to David Walley & Co, solicitors for the applicants, within 21 days from this notice.

In default of any such notice being received, Gerard Nolan and Philomena Nolan intend to proceed with the application before the county registrar at the expiration of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for such directions as maybe appropriate on the basis that the person or persons beneficially entitled to the reversionary interest including the freehold reversion in the premises is unknown or unascertained.

Date: 6 July 2007

Signed: David Walley & Co (solicitors for the applicant), 54 Amiens Street, Dublin 1

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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 Simon Curley Limited

Take notice that any person having any interest in the freehold estate of the following property: rear 67 and 69 Upper Rathmines Road, Dublin 6, being portion of the premises known as numbers 67 and 69 Upper Rathmines Road in the city of Dublin, more particularly described in an indenture of lease dated 15 February 1975, made between Michael Devlin, Michael Campbell, Heather Hewson and Patrick Campbell of the one part and Simon Curley Limited of the other part for the term of 678 years from 1 May 1974, at the yearly rent of €0.05 (if demanded).

Take notice that Simon Curley Limited intends to submit an application to the county registrar for the county/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 (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, Simon Curley Limited intends

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

Date: 6 July 2007

Signed: Brian Matthews & Co (solicitors for the applicant), 7 Main Street, Dundrum, Dublin 14

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2004 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and the matter of premises situate at 40 Hill Street, Dublin 1: an application by John Kelly

Take notice that any person having any interest in the freehold estate of, or any superior or intermediate interest in, the hereditaments and premises situate at 40 Hill Street, Dublin 1, previously known as 36a and 36b North Great Georges Street (which said premises are held by the applicant under indenture of lease dated 29 April 1784 between Alexander Nixon, Sarah Archdall, Robert Archdall, Richard Archdall, Nicholas Archdall, Edward Archdall, James Byrne,

Catherine Byrne, Reverend Jonathan Bruce, James Dalbiac of the one part and Hampden Evans of the other part), should give notice to the undersigned solicitors.

Take notice that the applicant, John Kelly, intends to apply to the county registrar for the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the above-mentioned property, and any party asserting that they hold an interest superior to the applicant in the aforesaid property is called upon to furnish evidence of title to same to the under-named solicitors within 21 days from the date hereof.

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

Date: 6 July 2007

Signed: Thomas Byrne & Company (solicitors for the applicant), Unit 4, 78 Walkinstown Road, Walkinstown, Dublin 12

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2004 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and the matter of premises situate at 41 Hill Street, Dublin 1: an application by John Kelly

Take notice that any person having any interest in the freehold estate of or any superior or intermediate interest in the hereditaments and premises situate at 41 Hill Street, Dublin 1 (which said premises are held by the applicant under indenture of lease dated 14 December 1773 between Sarah Archdall, Luke Sterling, Alexander Nixon, Richard Hall, Samuel Baker of the one part and Thomas Oldham of the other part), should give notice to the undersigned solicitors.

Take notice that the applicant, John Kelly, intends to apply to the county registrar for the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the above-mentioned property, and any party asserting that they hold an interest superior to the applicant in the aforesaid property is called upon to furnish evidence of title to same to the under-named solicitors within 21 days from the date hereof.

In default of any such notice being



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Law Society of Ireland

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

Date: 6 July 2007

Signed: *Thomas Byrne & Company* (solicitors for the applicant), Unit 4, 78 Walkinstown Road, Walkinstown, Dublin 12

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2004 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and the matter of premises situate at 42 Hill Street, Dublin 1: an application by John Kelly

Take notice that any person having any interest in the freehold estate of or any superior or intermediate interest in the hereditaments and premises situate at 42 Hill Street, Dublin 1 (which said premises are held by the applicant under indenture of lease dated 16 June 1785 between Francis Ryan of the one part and John Moore of the other part), should give notice to the undersigned solicitors.

Take notice that the applicant, John Kelly, intends to apply to the county registrar for the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the above-mentioned property, and any party asserting that they hold an interest superior to the applicant in the aforesaid property is called upon to furnish evidence of title to same to the under-named solicitors within 21 days from the date hereof.

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

Date: 6 July 2007

Signed: *Thomas Byrne & Company* (solicitors for the applicant), Unit 4, 78 Walkinstown Road, Walkinstown, Dublin 12

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the property 'The Boathouse', Esplanade, Bray, Co Wicklow (also known as 'The Boat House Shop', Strand Road, Bray, Co

Wicklow): an application by David Tew

Take notice any person having any interest in the freehold estate of the following property: all that and those the premises known as 'The Boathouse', Esplanade, Bray, Co Wicklow and also known as 'The Boathouse Shop', Strand Road, Bray, Co Wicklow, being the property demised by indenture of lease dated 14 November 1944 and made between Marion Naylor of the one part and John Cowen of the other part for a term of 99 years from 30 September 1944, subject to the yearly rent of £7.10.0d.

Take notice that David Tew intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property and that 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 from the date of this notice.

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

Date: 6 July 2007

Signed: *Cabill & Co* (solicitors for the applicant), 21 Windsor Place, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of property 340A and 336B North Circular Road, parish of Grangegorman and city of Dublin: an application by Sangrove Properties Limited

Take notice that any person having any interest in the freehold estate of the following property: all that and those the premises know as 340A and 336B North Circular Road in the parish of Grangegorman and city of Dublin, being part of the property demised by indenture of lease dated 25 August 1877 and made between Sir Francis William Brady of the one part and William Martin of the other part for a term of 200 years from 25 March 1874, subject during the first year to the yearly rent of one shilling and thereafter to the yearly rent of £40.

Take notice that Sangrove Properties Limited intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property and that any party asserting that they hold a superior

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interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, Sangrove Properties Limited intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially enti-

pled to the superior interest including the freehold reversion in the aforementioned property are unknown or unascertained.

Date: 6 July 2007

Signed: *Cabill & Co* (solicitors for the applicant), 21 Windsor Place, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Clylim Properties Limited in respect of the rear of 34,

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Law Society of Ireland

35, 36 and 37 Catherine Street and Upper Mallow Street, Limerick

Take notice any person having any interest in the freehold estate or the superior interest of the following properties: rear of 34, 35, 36 and 37 Catherine Street and Upper Mallow Street, Limerick, all that and those the premises situate at the rear of 34, 35, 36 and 37 Catherine Street and Upper Mallow Street in the parish of Saint Michael and city of Limerick, held under indenture of lease dated 17 July 1908 and made between William Henry Fogarty of the one part and William Christy of the other part for a term of 99 years from 1 July 1908, subject to an annual rent of £12 (€15.24).

Take notice that Clylim Properties Limited intends to apply to the county registrar for the county/city of Limerick 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 (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, Clylim Properties Limited intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county/city of Limerick for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 6 July 2007

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

UNKNOWN OWNER OF FEE SIMPLE INTEREST

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the purchase of the freehold estate of property situate at

418 South Circular Road, Dublin 8: an application by Paul O'Reilly, Derek O'Reilly, Larry O'Reilly and Gerard Moore

Take notice that any person having any interest in the freehold estate being part of the property held under an indenture of lease dated 29 June 1896 between William Hamilton Maffet of the one part and Richard McHale and Lisa McHale of the other part for the term of 150 years from 1 April 1896, subject to the yearly rent of £50 but indemnified against the payment of £44.15s thereof and the covenants and conditions therein contained.

Take notice that Paul O'Reilly, Derek O'Reilly, Larry O'Reilly and Gerard Moore intend to submit an application to the county registrar for the city of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the freehold interest 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 said property to the below named within 21 days from the date of this notice.

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

Schedule: all that part of the premises comprised and demised by the said lease and therein described as "all that and those dwellinghouse, tanyard, drying house and small field at the rear thereof situate on the north side of Dolphin's Barn Lane in the county of the city of Dublin, together with the several handler's vats leches now in and upon the said premises, which said premises are meared and bounded on the south west partly by premises in the possession of William Coleman and partly by land property of the Corporation of the city

NOTICE TO THOSE PLACING RECRUITMENT ADVERTISEMENTS IN THE LAW SOCIETY GAZETTE

Please note that, as and from the August/September 2006 issue of the *Law Society Gazette*, **NO recruitment advertisements will be published that include references to years of post-qualification experience (PQE).**

The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998 and 2004*.

of Dublin and partly by the South Circular Road, on the north west by Mr Leeche's holding and on the north east partly by Mr Laurence Byrne's holding and partly by premises in the tenure of the said William Coleman, on the south east by Dolphin's Barn Lane, which said premises are now known as 35 Dolphin's Barn as more particularly described on the map endorsed thereon", formerly known as 4 Margaret's Terrace and later as 22 South Circular Road, Rialto, and now as 418 South Circular Road, Dublin.

Date: 6 July 2007

Signed: Donal Reilly & Collins (solicitors for the applicant), 20 Manor Street, Dublin 7

December 2007. Experience in commercial and conveyancing essential. Reply to **box no 61/07**

Trainee solicitor seeks new training contract. Post-PPCI, enthusiastic, confident and hard-working student seeks transfer of training contract. Law graduate with extensive experience in legal and IT environments. CV on request. Enquiries to **box no: 62/07** or email: postppc1@gmail.com

RECRUITMENT

Dermot G O'Donovan & Partners, Limerick, has a vacancy for an experienced conveyancing solicitor on 12-month contract. Part-time work available to suitable candidate. Salary highly competitive. Send CV to afrawaley@dgod.ie or to Dermot G O'Donovan & Partners, Solicitors, 5th Floor, Riverpoint, Lower Mallow Street, Limerick - www.dgod.ie

Locum solicitor required. Cavan town, three to four month period - general practice/residential and commercial conveyancing. Please reply to **box no 60/07**

Part-time locum solicitor required for Dublin 2 practice from October -

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Thinking of establishing your own legal practice in the Dublin area?

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AXA Legal Services, Solicitors is the in-house practice of AXA Insurance. AXA is one of Ireland's most progressive insurance companies and we have made our name by placing great emphasis on teamwork and a great working environment. Over the next few months, we are expanding our dynamic and innovative team.

Litigation Solicitors Solicitors will have a track record in the efficient management of cases. In addition, you will have excellent negotiation skills and trial experience. This is a unique opportunity to advance your litigation career. Excellent opportunities for advancement are available. Remuneration and benefits will be generous and will reflect the experience of the successful candidates.

Legal Secretary We are also recruiting a Legal Secretary to be part of the team. Experience in litigation is desirable, but not essential. You will be highly organised, experienced in efficiently managing a diary and familiar with generating Court documents. Remuneration and benefits will be generous and will reflect the experience of the successful candidate.

All positions are located at Wolfe Tone House, Wolfe Tone Street, Dublin 1. Applications by email please to John.Savage@axa.ie, Solicitor, Head of Legal Services. John.Savage@axa.ie All applications will be dealt with in the strictest of confidence.



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NEW OPPORTUNITIES FOR July 2007

PRIVATE PRACTICE

Employment Solicitor

PP0235

Our client is seeking an employment practitioner to join its expanding department at Associate level. Ideally, candidates will be from well-established practices who are technically sound and commercial in their approach. This represents an exceptional career opportunity for the successful candidate.

EU Solicitor

PP0232

An opportunity has arisen for an experienced EU Competition lawyer to join this expanding team at Senior Associate level. The key types of work carried out include competition and regulatory complaints to and investigations by the European Commission and national competition authorities, advice on regulatory law and general EU law (including free movement of goods, services etc.).

Financial Services Solicitor

PP0231

An opportunity has arisen for an Associate solicitor to join the Financial Services department of this well-regarded law firm. You will deal with a broad range of work, including asset finance, aviation, shipping, ticket law, finance, debt listing, securitisation and structural finance.

Construction Solicitor

PP0230

Our client is keen to recruit an additional Associate solicitor to work alongside the Partner on all aspects of construction law. You will act for developers, employers, banks, contractors and construction professionals in negotiating and drafting building and engineering contracts, terms of professional appointments, collateral warranties, guarantees and all ancillary documents. The work generally has a non-contentious bias.

Pensions Solicitor

PP0229

Our client is seeking an experienced Pensions Solicitor to join an expanding team. As part of the pensions team you will be involved in general pensions advisory work for companies and trustees and pensions support in corporate transactions. You will be required to advise on and draft complex documentation. This opportunity is a very client-facing role with lots of responsibility and excellent career prospects.

Corporate Solicitors

PP0227

Due to rapid expansion, our client is seeking ambitious corporate solicitors from Newly Qualified to Senior Associate level to join the team. This firm continues to attract high quality lawyers drawn by a combination of good quality work and a realistic approach to work/life balance.

PSL Litigation Department, London

PP0234

Working in the International Arbitration practice of this major London law firm, an opportunity has arisen for a strong PSL to join the team on a part-time basis. The successful candidate will be a qualified solicitor with experience in international arbitration practice. You will have excellent legal knowledge and strong academic credentials.

Litigation Solicitor, Tokyo

PP0233

This position is based in the Tokyo office of a leading London law firm. The extensive arbitration and litigation practice covers commercial, industrial and professional sectors and encompasses life sciences, energy, accounting, telecommunications, leisure and sport, franchise related claims, shareholder and partnership disputes, and many others.

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For more vacancies, please visit our website or contact Michael Benson *in strict confidence*, at Benson & Associates, Suite 113, The Capel Building, St Mary's Abbey, Dublin 7.
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Transaction Manager

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An excellent opportunity has arisen for an experienced legal professional to join the corporate services division as Transaction Manager in Luxembourg.

The Role

- Responsible for ensuring new business including Capital Markets SPVs are administered in accordance with a strong legal framework.
- Interface with clients and intermediaries anticipating their requirements.
- Conceptualise and review transactions to completion.
- Facilitate client & risk adoption of new mandates and monitor the potential impact transactions could have.

The Person

- Ideally, the person will be an experienced lawyer with a specialisation in financial services or tax.
- Comprehensive knowledge of the set up and the administration of corporate and other structured investment products.
- Strong project management and communication skills.
- Additional European languages would be a distinct advantage.

Interested candidates should contact Hilary Flynn in the strictest confidence on 01 662 1000. Alternatively you may email your CV to h.flynn@brightwater.ie

36 Merrion Square, Dublin 2
Tel: 01 662 1000



Email: dublin@brightwater.ie
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Irish Human Rights Commission

'Promoting and Protecting Human Rights in Ireland'

The Human Rights Commission was established under the Human Rights Commission Acts 2000 & 2001. The Acts set out the Commission's powers and functions conferring on it a wide-ranging remit to promote and protect human rights as defined both in international agreements to which Ireland is a party and in the Irish Constitution. The Commission has an active working relationship with UN bodies, the Council of Europe and has a leadership role working with other national human rights institutions. The Commission, which consists of a President and fourteen members, is independent of Government and seeks to appoint a Chief Executive.

Chief Executive

In carrying out its responsibilities the Commission has a substantial programme of work.

Reporting to the President and the Commission and working with a professional team, the person appointed will have overall responsibility for the management and co-ordination of the Commission's work areas: legal and enquiries, legislation and policy review, human rights awareness and corporate services, as well as performing appropriate delegated functions. The Chief Executive also has responsibilities engaging with international bodies and working with a Joint Committee formed with the Northern Ireland Human Rights Commission.

The successful candidate will have a strong commitment to human rights concerns and will be an experienced individual with the initiative and capability

to manage the work of the Commission. A proven record of achievement in a senior position displaying strong senior management experience in human rights, public administration, legal, business, not-for-profit, humanitarian, community or non-governmental organisations is essential.

With excellent leadership, analytical, communication, interpersonal and organisational skills, the Chief Executive will have the capacity to motivate, manage and co-ordinate the work of a multi-disciplinary team and to manage the Commission's business and administration. Experience of working in co-operation with other agencies and with government departments as well as the ability to represent the Commission and to work co-operatively with the media will be an advantage.

The remuneration package will reflect the seniority of this position.

For a confidential discussion, you may call Ellen Roche on +353 1 7926703 to whom a comprehensive curriculum vitae may be sent, preferably by e-mail to ellen.roche@pwc.com or to PricewaterhouseCoopers, One Spencer Dock, North Wall Quay, Dublin 1, Ireland.

Counsel

GE Financial Markets

The Organisation

General Electric Company "GE" is a diversified services, technology and services company dedicated to creating products that make life better, from aircraft engines and power generation to financial services, medical imaging, television programming and plastics.

GE operates in more than 100 countries and employs more than 315,000 people worldwide. GE Capital is a wholly owned subsidiary of GE with assets in excess of US\$425 billion. Based in Stamford, Connecticut, it is the holding company of GE's global financial services businesses: Commercial Finance, Consumer Finance, Equipment Manufacture and Insurance.

GE Financial Markets is the GE derivatives hub established to handle the majority of derivatives for all GE companies. GEFM serves as an in-house derivatives dealer for GE entities and currently transacts interest rate swaps and FX for GE on a collateralised and uncollateralised basis. It is expected to be handling Credit Derivatives shortly and the retail derivatives in acquired banks.

The Role

Our client is seeking to appoint a high calibre Legal Counsel who will be responsible for domestic and international legal and compliance aspects of GEFM operations.

The successful candidate's duties will include but are not limited to:

- Advice on all corporate matters relating to GEFM
- ISDA Master Agreements
- Master Repurchase Agreements
- Collateral agreements (including ISDA Credit Support Annex)
- Inter-company loans
- IT and confidentiality agreements and various other contracts
- Corporate filings and minutes
- Compliance with corporate policies and applicable laws and regulations
- Managing outside counsel

The position will be both challenging and varied and a paralegal or similar support professional will assist. You will report in to Rajiv Mehra, Managing Director at GEFM.

The Person

The ideal candidate will be at Senior Associate or Partner level with excellent Derivatives and Capital Markets experience. Experience with a leading law firm is preferred. You will have a demonstrable ability to develop and manage standard documentation process and have gained significant experience negotiating and drafting Derivatives, Repurchase and Collateral Documentation. Experience with Credit Default Swaps and Structured Finance is desirable.

This is a pivotal appointment with a high degree of customer focus. In addition to strong technical ability, you will need to be able to work independently whilst exhibiting first class leadership and interpersonal skills.

A highly attractive salary and benefits package will be offered to the successful applicant.

Please contact Michael Benson at Benson & Associates who is our exclusive contact with respect to this announcement. All applications will be treated in the strictest confidence.

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The Office of the Parliamentary Counsel to the Government, which is a constituent part of the Office of the Attorney General, will shortly be looking for Solicitors or Barristers interested in developing their careers in a challenging and modern legal environment. The position involves legal drafting work of the highest level and importance to the Government and provides an opportunity for developing expertise in new and existing areas of law both here and abroad. The work is interesting, topical and stimulating. The Office provides opportunities for further education and has up to date IT facilities and a well resourced Library.

OFFICE OF THE PARLIAMENTARY COUNSEL TO THE GOVERNMENT:

The Office of the Parliamentary Counsel to the Government is responsible for the drafting of Government Bills and Government Orders and for the drafting or settling of most statutory instruments made by Ministers of the Government.

TRAINING:

Each new entrant at Assistant Parliamentary Counsel Grade II level will be trained by working on drafting assignments of increased complexity. Initially, the Assistant Parliamentary Counsel Grade II will work with senior colleagues on drafts and gradually begin to work on his or her own initiative. Practical training on the job is the key element in the training process for entrants at Grade II level which will be supplemented by seminars on aspects of drafting.

SALARY SCALE:

The salary scale as at 1 June 2007 is;
€69,179 - €88,895 (Modified scale, conditions apply)
€72,823 - €93,582 (PPC Scale)

LOCATION:

The Office is currently located in Government Buildings, Merrion Street, Dublin 2. It has not been listed by the Government as part of its decentralisation programme. The Office has been adopted for accessibility for persons with disabilities.

FUTURE VACANCIES:

A panel may be established from which future vacancies may be filled. All the posts are permanent and pensionable.

QUALIFICATIONS:

Applicants must, on 1 August 2007, have been called to the bar or have been admitted and be enrolled as a Solicitor in the State, and since qualifying, have relevant experience practising as a Barrister or Solicitor in the State. (Periods spent in a wholetime position in the Civil Service, for appointment to which qualification as a Barrister or Solicitor was an essential requirement, will be reckonable for the purpose of practice).

CLOSING DATE:

The above recruitment competition, including the closing date, will be advertised shortly. Full details will be available on the Office website at www.attorneygeneral.ie and will also be published in the national newspapers.

If you would like any additional information on these vacancies please feel free to contact the Human Resources Unit on (01) 6314000.

DUBLIN

CONSTRUCTION DUBLIN

Join one of Ireland's leading construction teams. Our client is interested in speaking to candidates with contentious or non-contentious experience. Projects experience would be an advantage for this position. Ref: 143590. €65,000*

EMPLOYMENT DUBLIN

High profile employment unit within this top-tier Dublin practice. Candidates will have tribunal experience and ideally presentation skills. Excellent position with impressive client portfolio and partnership prospects. Ref: 13523. €75,000*

ASSET MANAGEMENT DUBLIN

Specialist role working on asset management matters for clients across Ireland and Europe. Ideally, candidates will have experience in finance, banking or funds. Superb long-term prospects for the right candidate. Ref: 12183. €80,000*

CORPORATE M&A DUBLIN

Working with one of Dublin's most respected corporate partners, this is a superb role for candidates looking for a niche role in M&A. Transactional experience is essential for this position. Ref: 12373. €70,000*

COMMERCIAL PROP DUBLIN

Leading mid-tier Dublin firm is looking to further expand its property department. Working with investors and on large commercial developments across Ireland, this role offers genuine diversity. Established property team. Ref: 12363. €80,000*

INSURANCE DUBLIN

Major player in the insurance field. Excellent opportunity for commercial candidates looking to make the move into insurance law. Insurance experience desired, however, banking or corporate backgrounds of interest. Ref: 12313. €70,000*

BANKING DUBLIN

Our client has a superb reputation for their banking practice. Candidates will have prior experience in general banking or financial services law. Chance to work with clients across Europe. Make your mark in this field. Ref: 292360. €60,000*

FUNDS DUBLIN

Top-tier Dublin practice is seeking to strengthen its funds group. Our client is looking for lawyers with solid client management skills. Funds law experience desired, but not essential. Chance to work with a market leader. Ref: 291900. €65,000*

PROJECTS / PPP DUBLIN

One of the foremost project teams in Ireland is looking to grow its Dublin-based practice group. Work on high-end, high value commercial projects across the capital and in the UK. Excellent hands-on experience. Ref: 12143. €65,000*

COMM LITIGATION DUBLIN

Reputable mid-tier firm is looking to expand its litigation practice. Our client seeks candidates with dispute resolution experience and the ability to manage a large portfolio of commercial clients in this challenging role. Ref: 12353. €60,000*

LIFE SCIENCES DUBLIN

Niche position in the life science department on one of Ireland's most recognised commercial law firms. Our client is interested in candidates with life science, healthcare or HSS experience. Client management skills essential. Ref: 12153. €65,000*

COMMERCIAL DUBLIN

Mid-tier law firm is looking for a general commercial lawyer to advise on a broad spectrum of legal matters. Experience of commercial contracts is required. Excellent work/life balance and competitive package on offer. Ref: 12103. €60,000*

LONDON

TECHNOLOGY LONDON

This firm has an enviable base of both private and public sector clients. The role involves a broad range of IT work including IT/telecoms outsourcing, commercial, IP (contentious and non-contentious). Ref: 375270. €60,000-€70,000

REAL ESTATE LONDON

Great opportunity to join a leading real estate practice in London. Work on offer includes big ticket investment work for entrepreneurial clients. Top rates, career progression and new offices. Ref: 446800. €67,000*

CORPORATE TAX LONDON

Leading European team seeks a versatile tax assistant to deal with cutting-edge funds related work. Whilst direct funds experience is not expected, intellectual ability is a must. Top rates. Ref: 445150. €70,000

CORPORATE LONDON

Highly regarded and friendly City firm is seeking an associate to work on an universally varied range of corporate work. Encouragement to develop and engage in client-facing & marketing offered. Ref: 376910. €80,000*

REAL ESTATE LONDON

Tremendous career development potential and variety of commercial work for a varied blend of prestigious UK and international clients. Business development & marketing initiatives welcomed. Ref: 478920. €65,000-€80,000

STRUCTURED FINANCE LONDON

This US firm is well established within the London market and has recently made high profile lateral hires from a top UK finance practice. Now growing its structured finance capability. Top salary. Ref: 513370. €75,000*

FINANCIAL SERVICES LONDON

Pure opening for lawyer with training contract with high quality F&R regulatory background. Described as a superb team with impressive experience in regulatory and enforcement work. Excellent package. Ref: 512420. €55,000*

CORPORATE LONDON

Fantastic opportunity to join an award-winning team. Work on a plethora of high profile M&A, JVs and private equity deals. Amazing quality of work on offer. Work under the best in the business. Ref: 65450. €76,000*

BANKING LONDON

Join a world class firm that has a thriving award-winning banking practice. This group has an outstanding reputation and handles the highest profile transactions in the City. Top NY salary. Ref: 505670. €90,000*

BANKING LONDON

The impressive banking team of this top class London firm offers the chance for you to thrive in a commercial and entrepreneurial environment. You will be a genuine part of this collegiate banking team. Ref: 500870. €72,000*

COMMERCIAL PROPERTY LONDON

Great chance to join a friendly, inclusive and market-leading property team. Work to include £multi-million transactions, commercial landlord and tenant matters and portfolio acquisitions and disposals. Ref: 249860. €62,000*

BANKING LONDON

This international City firm has a highly regarded general banking team where assistants will not be pigeon-holed too early in their careers. Great team spirit. Currently interviewing Irish lawyers. Ref: 215800. €62,000*



Erica
Mackinnon

Contact Erica Mackinnon on +44 (0)131 224 0440.
Erica.mackinnon@taylorroot.com

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Oifig an Ard-Aighne

THE OFFICE OF THE ATTORNEY GENERAL

GOVERNMENT OF IRELAND



BARRISTERS REQUIRED

FOR POSITIONS AS

Advisory Counsel (Grade III)

The Office of the Attorney General will shortly advertise for Barristers who are interested in developing their careers in a challenging and modern legal environment.

ROLE:

The role of the Advisory Counsel is to assist and advise the Attorney General in carrying out his or her functions. It involves advising in the fields of domestic, European and international law, participation in the formulation of legislation and legal policy at these levels, representing the State in international fora and advising on the conduct of litigation in which the State is involved. This comprises a very wide range of legal topics including Constitutional, administrative, European and Human Rights Law. It involves giving legal advice to Government Departments and Offices in relation to all areas of public administration. The Office is unique among law practices due to the scope and variety of the work it undertakes. Advisory Counsel will be required to be available for secondment from time to time to other Government Departments or Offices and it is expected that such secondments will be for approximately 2 years.

LOCATION:

The Office, which is located in Government Buildings, Merrion Street, Dublin 2, has not been listed by the Government as part of its decentralisation programme. The Office has been adapted to facilitate access to persons with certain disabilities. Secondment to another Government Department or Office may be to a location outside Dublin.

PANEL:

A panel may be established from which future vacancies may be filled. All the posts are permanent and pensionable.

QUALIFICATION EXPERIENCE:

Applicants must, on 1 September 2007, have relevant experience practising as a Barrister in the State. (Experience in certain whole-time positions in the Civil Service may also be acceptable as practice as a Barrister in the State).

SALARY SCALE:

The salary scale as at 1 June 2007 is;
€69,179 - €88,895 (Modified scale, conditions apply)
€72,823 - €93,582 (PPC Scale)

CLOSING DATE:

The above recruitment competition, including the closing date, will be advertised shortly. Full details will be available on the Office website at www.attorneygeneral.ie and will also be published in the national newspapers.

If you would like any additional information on these vacancies please feel free to contact the Human Resources Unit on (01) 6314000.



For information on these vacancies or to discuss other career opportunities, please contact John Cronin Solicitor, PRC Recruitment Limited, 1D Corn Exchange, Poolbeg Street, Dublin 2. Tel: 01-6139510 or e-mail johncronin@prc.ie

IN-HOUSE BANKING LAWYER - DUBLIN SOUTH €70-90K
Our client, a retail banking organisation with its Irish Headquarters is now looking for an in-house counsel to join its legal team. The successful candidate will provide advice and support to the management as and when required regarding a broad range of relevant legal issues which arise in the business as well as translate regulatory legal issues to the business to ensure that the business is compliant.

IN-HOUSE LEAD COMMERCIAL COUNSEL - DUBLIN 3 €80-100K
A software company based in East Point Business Park is now looking for in-house legal counsel. Dealing with all legal affairs and functions for the group of companies throughout Europe, the incumbent will take an active and pivotal commercial role in providing strategic commercial legal advice and protecting the intellectual property and trademarks of the company. Strong experience in IP and commercial contract negotiation is required.

CONVEYANCING - DUBLIN CITY CENTRE €60-80K
A leading Commercial Law firm in Dublin are now seeking a Conveyancing Solicitor with experience in commercial and residential conveyancing. The successful candidate will have experience in conveyancing transactions advising investors, developers and financial institutions and investigating title.

CORPORATE LAWYERS - DUBLIN & CORK €70K+
Top law firms in Dublin and Cork are now looking for commercial solicitors. You will have experience in some of the following areas: Mergers and Acquisitions both public and private, securities, private equity, restructuring, fundraising, commercial contracts and compliance. These firms offer great opportunities for career development.

BANKING / FINANCIAL SERVICES - DUBLIN 2 €80K+
One of Dublin's leading commercial law firms requires a Banking Solicitor to join its growing team. The successful candidate will have a number of years' experience working in the banking and financial services sector, either in-house or in practice.

TAX SOLICITOR - DUBLIN CITY CENTRE €65K+
This is an interesting and varied position that has very little compliance or tax return filing duties with a leading commercial law firm. It provides an excellent opportunity for a qualified tax person (A.I.T.I.) with appropriate experience to be exposed to complex national and international tax planning opportunities.

NQ SOLICITOR - DUBLIN 2 €50K
A leading Wealth Management Consultancy, with an emphasis on a good work life balance, is now seeking a newly/recently qualified solicitor to join its team in providing advice to its high net worth individuals and corporate clients on a wide range of issues. Ideally you will have gained some experience of commercial legal drafting during your traineeship. You will have the intention of obtaining professional tax qualifications.

EMPLOYMENT SOLICITOR - DUBLIN 2 €70K+
Excellent opportunity has arisen for an employment solicitor to join a prestigious employment law team. The ideal candidate will have strong non-contentious employment law experience in advising clients in matters of equality/discrimination, employment contracts, health and safety statements, staff handbooks, etc

PROJECTS LAWYER - DUBLIN CITY CENTRE €60K+
An opportunity now exists to join an expanding team within a top tier firm. The team has experienced a high level of involvement in a wide range of PPP projects dealing with private and public sector clients. The successful candidate would gain exposure to high profile projects.

Arbitration and Mediation Committee

Panel of mediators

The Arbitration and Mediation Committee of the Law Society of Ireland is now taking applications for inclusion in a panel of mediators to be maintained by the committee and that will be available to members of the Society.

The panel will also include mediators available for nomination pursuant to section 15(4)(b)(ii)(II) of the *Civil Liability and Courts Act 2004*.

Guidelines for membership of the panel and applications forms are available from Colleen Farrell, Law Society of Ireland, Blackhall Place, Dublin 7; tel: 01 672 4800



Law Society of Ireland

www.lawsociety.ie



COMHAIRLE CATHRACH CHORCAI/CORK CITY COUNCIL

Applications are invited from suitably qualified persons for inclusion on a panel from which appointments, either permanent or temporary, may be made to the position of:

EXECUTIVE SOLICITOR

ESSENTIAL REQUIREMENTS:

Candidates shall:

- a) Have been admitted and enrolled as a Solicitor in the State
- b) Have satisfactory experience as a solicitor, including adequate experience of court work, after admission and enrolment as a solicitor, and
- c) Possess a high standard of professional training and experience.

SALARY: €46,387 – €48,137 – €49,890 – €51,645 – €53,400 – €55,154 – €56,909 – €58,655 – €60,417 – €62,166 (max.) – €64,181 (following three years service on the maximum) – €66,202 (following six years service on the maximum).

Application forms and full particulars may be obtained from the **Reception Desk, Cork City Council, City Hall, Cork** or alternatively, may be downloaded from Cork City Council's web site at: <http://www.corkcity.ie/recruitment>

Completed application forms must be returned to the **Personnel Dept., Cork City Council, City Hall, Cork, not later than 5.00pm on Friday, 3rd August 2007**

Applicants may be shortlisted on the basis of the information supplied on the application form.

Cork City Council is an equal opportunities employer.

Where will the future take you?

Dublin Practice

Corporate Partner

€150,000+

Our client is a highly successful and growing boutique firm. They are currently seeking to recruit an experienced corporate partner to grow and develop a corporate/commercial department within the firm. Applications are encouraged from both lawyers who are presently partners and associates who are seeking a direct route to partnership. This is an excellent opportunity for the right candidate. Ref. 29012

Employment Lawyer

€80,000+

An excellent opportunity has arisen for an experienced employment lawyer to join one of Ireland's most prestigious employment law teams. The successful candidate will have experience with some/all of the following: employment contracts/staff handbooks, restrictive covenants, personnel policies and procedures, trade disputes, employment equality/discrimination. This position has a superb package on offer. Ref. 28474

Commercial Property Solicitor

€50,000 - €75,000

Our client, an expanding practice based in the city centre, has a vacancy for a commercial property solicitor. Must have commercial property and/or banking experience. Should also be capable of working on a high volume of files with the initiative to work independently. This position offers an outstanding opportunity to develop a career within a highly autonomous role. An excellent package is on offer to the successful candidate. Ref. 32410

Junior Banking Solicitor

€45,000 - €60,000

Our client, a growing medium sized Dublin law firm, has a superb opportunity for a junior banking solicitor. The successful candidate must have the drive and ambition to succeed in a corporate environment and ideally have experience with commercial law or/and banking from an apprenticeship. This is an outstanding opportunity to build a profile within a growing Dublin law firm. Excellent salary and package on offer. Ref. 32409

Dublin In-House

Funds Lawyer

€80,000

Our well respected client is currently seeking to hire an ambitious qualified solicitor with solid experience within the funds industry. The successful individual should have good interpersonal skills, drive, professionalism and competence with good IT skills and a strong business acumen. Must also have the ability to build effective working relationships within the business as well as across group legal services. Ref. 31348

In House Solicitor

€70,000

This is an outstanding opportunity for a qualified solicitor to join one of Ireland's leading financial services companies. The key responsibilities of this position include providing legal support to the structured credit desk of the bank, reading and reviewing role of transaction documentation supported by external legal counsel and co-ordinating the execution of legal documentation for structured credit transactions. Ref. 30451

Legal Counsel

€70,000

An excellent opportunity has arisen for a qualified solicitor to join a leading aviation company as an in-house legal counsel. This exciting position will provide the opportunity to gain a broad range of experience within a very dynamic business environment. The successful candidate will ideally have solid experience from a top firm as well as the willingness and interest in developing a rewarding in-house career. Ref. 32179

In House Solicitor

€65,000

Our client, a reputable and progressive firm, is currently seeking to recruit an experienced solicitor with a strong background in conveyancing and litigation to join their busy legal department. The main responsibilities of this position will include commercial litigation, residential & commercial conveyancing and banking & regulatory issues. This role is offering an excellent remuneration package to the right candidate. Ref. 32296





Connaught/Munster

Commercial Solicitor

€70,000+

Our client, a progressive practice based in Cork city, has been experiencing significant growth over the last decade and to this end they seek to recruit a commercial solicitor. Duties include commercial conveyancing but the work will be of a more general corporate nature including management buy outs, shareholders agreement etc. Would suit an ambitious solicitor interested in assisting in the growth of the firm and sharing in its success. Ref: 32142

Commercial Property Solicitor

€55,000 - €75,000

Commercial law is central to this firm's strategy so you will join a thriving team which has enjoyed impressive growth. Due to continuing expansion, this firm seeks a commercial lawyer to slot into a dynamic team in Cork city. At this level you will be expected to play a front line role in managing client relationships and on going business development. Particular emphasis is placed on attracting high calibre candidates from Dublin and London firms. Ref: 30202

General Practice Solicitor

€55,000 - €65,000

Strong firm with a superb reputation seeks an experienced general practice solicitor for their Waterford practice. This firm covers all areas of law including conveyancing, family law, commercial law and litigation. Must have an excellent academic background with good people skills in order to maintain key working relationships with clients. Candidates will have a range of experience in conveyancing and civil litigation in the District and Circuit Courts. Ref: 32193

Litigation Solicitor

€65,000+

Our client, a renowned practice in Cork, seeks to recruit a litigation solicitor to strengthen their expanding team. The ideal candidate will have received excellent experience from a reputable firm and will be motivated and eager to progress their career within a top-tier, commercially focused firm. The successful candidate will have exposure to a wide variety of work and the opportunity to enjoy an improved work/life balance. Ref: 25115

Family Law Solicitor

€55,000 - €65,000

Our client, a well respected and progressive firm based in Cork city, is currently seeking to hire an experienced family law solicitor to join their rapidly expanding practice. This is an excellent opportunity to build up a solid client base and run files with autonomy and the support of a strong and experienced peer group. This excellent role comes with potential partnership progression for the right candidate. Ref: 30384

Litigation Solicitor

€55,000+

Our client, a commercially orientated firm in Limerick, seeks to recruit a litigation solicitor for their expanding practice. The ideal candidate will have experience in the area of litigation and be extremely interested in working exclusively in this area. This firm has a reputation for excellence and the successful candidate can look forward to a challenging yet rewarding legal career. This is a unique opportunity to work in a dynamic and ambitious practice. Ref: 31792

Corporate & Commercial

t 01 619 0400

Dublin Conveyancing
& General Practice**Banking & Financial Services Dublin**

Prestigious mid-tier corporate practice is seeking assistant or associate solicitors to join their expanding banking team. Performing all aspects of corporate lending, acquisition finance, project finance, property and construction finance and asset finance you will have extensive experience and good business acumen. Excellent remuneration and career prospects offered in this very progressive firm. (ref 15616/2)

Capital Markets Dublin

Leading Irish law firm require experienced Capital Markets lawyers to join their leading established practice. Working directly with partners and clients you will have previous experience in a similar environment. Excellent career progression and financial package offered to the successful candidate. (ref 12212/2)

Commercial (in-house) Dublin

International sports governing body seeks an Assistant Legal Counsel to join their expanding legal team. Candidates will ideally have gained experience in a commercial environment and have experience in broadcasting agreements, sponsorship agreements, services agreements, consultancy agreements, IT agreements and merchandising and licensing agreements. This is an excellent opportunity to join this international brand in a fantastic city centre location. (ref 12519/1)

Commercial Litigation Dublin

Leading mid-size Dublin law firm require an experienced solicitor for their growing practice. Candidates will ideally have a background in a busy commercial litigation department, and be able to demonstrate strong litigation skills ideally in a similar environment. EU knowledge would be an advantage. Excellent career progression and prospects will be offered to the successful candidate. (ref 16222/2)

Commercial Property Dublin

This renowned practice require an experienced property solicitor to strengthen their expanding commercial property team. You should be fully conversant in all aspects of commercial property, including landlord and tenant, commercial leases and industrial, office and retail developments. This is a great opportunity to join a high profile team within a leading practice. Salary and benefits are commensurate with experience. (ref 15612/6)

Corporate Dublin

Due to expansion, high profile mid-tier practice require experienced corporate solicitors to join their team. Candidates should have experience in M&A, joint ventures, private equity, capital markets and commercial transactions in order to service an Irish and EU client list. Excellent career prospects and remuneration will be offered to the successful candidate. (ref 12222/2)

Corporate Dublin

Opportunity for Corporate Lawyers to join this prestigious practice within one of Ireland's leading law firms. Applicants should have relevant experience, preferably gained in a large or medium-sized firm in Mergers & Acquisitions, Joint Ventures, Privatisations, Restructures, General Corporate Advice, Venture Capital, Corporate Finance & Public and Private Equity Fin-raising. (ref 15266/2)

Employment Dublin

This prestigious law firm is looking for a solicitor to act as legal adviser to international and domestic clients on a broad range of employment law issues. Candidates should have a background in corporate, employment or pensions law, and excellent analytical, drafting and interpersonal skills. Remuneration is commensurate with experience. (ref 15266/2)

Financial Services Dublin

Due to ongoing expansion within the financial services team and the company overall this prestigious mid-tier firm is seeking assistant and associate solicitors. Advising financial providers and service providers on the establishment and ongoing operation of investment funds in Ireland. This is a fantastic opportunity to work for a progressive corporate firm in a fantastic new office environment. (ref 16757/2)

Commercial Property Dublin

Leading mid-size Dublin law firm require an experienced solicitor for their growing practice. Candidates will ideally have experience in a busy commercial property department, and be able to demonstrate excellent knowledge in all aspects of commercial property and development work. Excellent career progression and prospects will be offered to the successful candidate. (ref 16222/1)

Conveyancing Dublin

Mid-tier firm located in Dublin 2 require an experienced conveyancing solicitor to join their team. Working with an enviable client portfolio, candidates will need to be fully experienced in all aspects of conveyancing, with commercial experience being an advantage. This is an excellent opportunity to join a high profile firm with excellent prospects. (ref 16257/2)

General Practice Dublin

General Practice in Dublin 1 require an experienced general practice solicitor to join their team. This role will involve a casual based around residential conveyancing as well as probate and some general litigation and would suit a candidate coming from a similar background. Salary and benefits are commensurate with experience. (ref 15226/2)

Litigation Dublin

Dublin 7 firm require an experienced solicitor to join their team. This role will be based in a busy litigation department and candidates with medical negligence experience are particularly sought after. Candidates will ideally have a background in high quality litigation and be looking to join a progressive and high profile firm with an excellent reputation. The excellent salary and benefits package is commensurate with the local market. (ref 16721/2)

Litigation Dublin

Due to expansion, mid-tier firm Dublin 2 require an experienced litigation solicitor. This varied role will suit candidates with experience in debt recovery, personal injury, family law and professional negligence. This is an excellent opportunity to join a progressive firm with an excellent reputation. (ref 16005/1)

Dublin Office

t +353 (0)1 619 0400 f +353 (0)1 611 4448 e dublin@g2legal.ie 18 Fitzwilliam Square Dublin 2 Ireland

Out of Office Hours: Alan Whelan 087 9374022 Noreen Cavanagh 087 9100067

Offices also in Birmingham • Brighton • Bristol • Edinburgh • Glasgow • Leeds • London • Manchester



t 01 619 0400

Regional

t 01 619 0400

Property Dublin

Mid tier firm in Dublin 2 require an experienced property lawyer for their busy property department. Candidates should have experience in all aspects of residential and commercial conveyancing, particularly developments, plot sales, CPO's, and landlord and tenant. Experience in UK and EU transactions would be advantageous. (ref 12062/2)

Residential Conveyancing Dublin

General Practice in Dublin 15 require a general practice solicitor for a new role in their practice. This role will mainly involve residential conveyancing with some probate and will ideally suit candidates with appropriate experience. Excellent entry and prospects offered to the successful candidate. (ref 16012/1)

Residential Conveyancing Dublin

General Practice law firm in North Dublin require a solicitor experienced in residential conveyancing to join their team. Those interested must be able to demonstrate excellent residential conveyancing skills. The successful candidate will be offered a salary commensurate with experience as well as outstanding long term prospects. (ref 16017/1)

Residential & Commercial Conveyancing Dublin

Qualified solicitor with excellent property experience required for Dublin 7 general practice. The ideal candidate will be able to demonstrate excellent knowledge of all aspects of residential and commercial conveyancing. Working with an enviable client portfolio, this is an excellent opportunity to join a well respected and busy firm. The excellent entry and benefits package will be commensurate with experience. (ref 16520/2)

Legal Secretary Dublin

Our client located in central Dublin require an experienced legal secretary to join their team. Candidates will ideally have experience of general litigation gained in a similar role. This is an excellent opportunity to join a well established team. (ref 15022/1)

Commercial Cork

Experienced commercial lawyer sought to join progressive practice. The ideal candidate will have experience in all aspects of company and commercial law. Commercial lending and development experience a distinct advantage. Salary and benefits are commensurate with experience. (ref 17552/1)

Commercial Cork

City centre firm require an experienced commercial lawyer to join its growing team. The ideal candidate will have a proven track record in all areas of company and commercial law. This is an excellent opportunity to join a practice with good career prospects. (ref 17572/2)

Commercial Conveyancing Cork

City centre practice require an experienced solicitor to its growing team. The ideal candidate will have considerable experience in matters of commercial lease and landlord and tenant cases. This is an excellent opportunity to join a firm with excellent career prospects. (ref 17567/1)

Conveyancing Westmeath

Renowned firm require an experienced solicitor to join its growing practice. The ideal candidate will have a strong background in residential conveyancing. Commercial property experience would be a distinct advantage. Attractive entry and benefits for the right candidate. (ref 17657/2)

General Practice Crown

Expanding practice require an experienced solicitor to its team. The ideal candidate will have a strong background in conveyancing, litigation and debt collection. Salary and benefits are commensurate with experience. (ref 17971/2)

General Practice Louth

General practice solicitor required for growing firm. Candidates must have experience in handling large volumes of residential and commercial property, probate and family law cases. Precise E.A.T. experience a distinct advantage. Salary and benefits are commensurate with experience. (ref 16025/1)

General Practice Westmeath

Growing Westmeath practice require an experienced solicitor to join its practice. The ideal candidate will have a proven track record in conveyancing, family and district court work. Attractive entry and benefits for the right candidate. (ref 17657/2)

General Practice Wexford

Growing Wexford practice require a qualified solicitor to join its team. The ideal candidate will have a varied general practice background in the areas of residential property, family and probate. Exciting opportunity to be part of a practice with good career prospects. (ref 16276/2)

Litigation Limerick

City centre practice require an experienced litigation solicitor to join its growing team. The ideal candidate will have a proven track record in all matters of civil litigation. This is an excellent opportunity to join a firm with good career prospects and attractive remuneration package. (ref 17929/2)

Medical Negligence Cork

In line with its plans for expansion, our client require a qualified solicitor to join its practice. The ideal candidate will have a strong litigation background and previous experience in medical negligence. Attractive entry and benefits for the right candidate. (ref 17606/1)

International Legal Recruitment

Local knowledge



OPPORTUNITIES ACROSS THE BOARD

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When you make a career move through Laurence Simons you'll find we take a very personal approach to making sure your move is in the right direction.

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Tel +353 (0) 1 402 9400 Fax +353 (0) 1 402 9590
Search for positions online at www.laurence-simons.com

In-house Legal

Our client, a leading international retail retailer has a requirement for an in-house lawyer to join the global legal team at associate or junior partner level. The role is based in Ireland and will include real estate, licensing, brand commercialization, corporate and compliance matters, marketing review, general commercial law, intellectual property & data protection. Ref: 10038. Contact sharon.swan@laurence-simons.com

Asset Finance, Dublin

Our client, a leading international practice is now seeking a junior lawyer to join the firm. You will have a law firm background and you want to continue your career in an international setting. This is an excellent opportunity to develop your career within an internationally renowned firm. Ref: 10070. Contact sharon.swan@laurence-simons.com

Junior Corporate/Banking, Dublin

Our client, a leading firm with a strong domestic & international focus, are looking to recruit commercial and banking lawyers. You will have strong academic and have a graduate or first class honours degree in law. An opportunity to develop your career within a leading corporate. Ref: 14840. Contact sharon.swan@laurence-simons.com

Corporate Lawyer, Dublin

Our client is a boutique firm with an excellent reputation among its clients and are looking to recruit a commercial lawyer at associate level for a team based role. You will have experience in one or more of the following matters and jurisdictions, venture capital, joint ventures, private equity and IPOs. Ref: 12037. Contact sharon.swan@laurence-simons.com

Construction Lawyer

Small expanding practice based in Dublin is seeking to appoint a construction lawyer at associate level. You will have experience in preliminary non-commercial construction work. Candidates with commercial experience will also be considered. This is an excellent opportunity to develop your career within a highly successful role. Ref: 14428. Contact sharon.swan@laurence-simons.com

Legal Counsel, Dublin

Our client is looking to recruit an in-house counsel with experience in company, commercial and employment law. You will work with senior management on all legal matters. Reporting to the CEO, you will have the responsibility for formalising the legal framework in the company and also take with company lawyers on day to day issues. Ref: 11516. Contact portia@laurence-simons.com

Corporate Tax Lawyer, Dublin

Our client, a global technology provider require a corporate lawyer to join its global office in Dublin. With a large international standing, you will advise on the corporate tax issues that impact the organisation over a number of jurisdictions. This is an exciting role for somebody who wants to be part of the strategic direction of rapidly expanding organisation. Ref: 10344. Contact portia@laurence-simons.com

Capital Markets Lawyer, Dublin

A leading international bank, seek a capital markets lawyer to join its team. The successful candidate will work closely with the bank's treasury in negotiating document and dealing with general counsel. Experience in foreign jurisdictions a plus. Excellent opportunities for career development and progression. Ref: 13489. Contact portia@laurence-simons.com

Commercial Property Lawyer, Limerick

Leading firm requires a senior associate lawyer to join its growing team. Experience of acting for landlords, tenants and developers with a view to expanding this activity is essential. You will have excellent drafting skills and a commercial outlook. You will be self-motivated and have the ability to take responsibility in a fast paced environment. Ref: 15906. Contact portia@laurence-simons.com

Probate Lawyer, Cork

Our client wishes to appoint a probate lawyer or associate lawyer to join its team. You will advise high net worth individuals in relation to administration of trusts and estates, capital tax planning and associated areas. An excellent opportunity in a growing firm. Ref: 16262. Contact portia@laurence-simons.com

Excellent Terms

Negotiable

Excellent terms on offer

Excellent

90k

Negotiable

80k plus

85k plus

85k plus

Negotiable