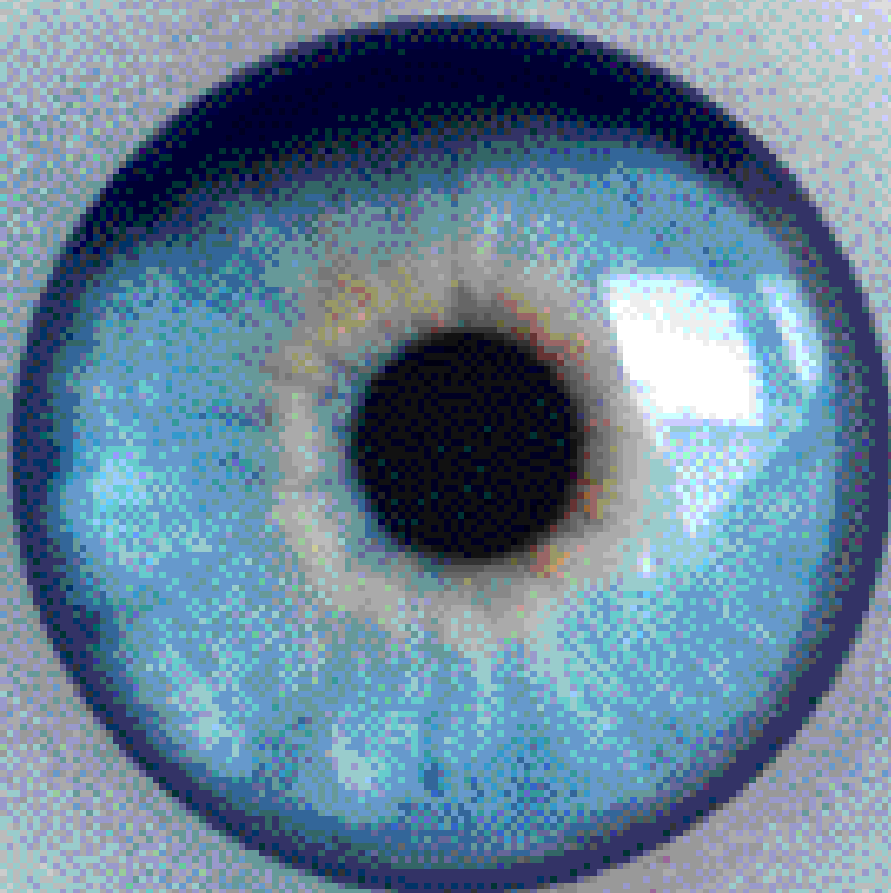


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On the cover

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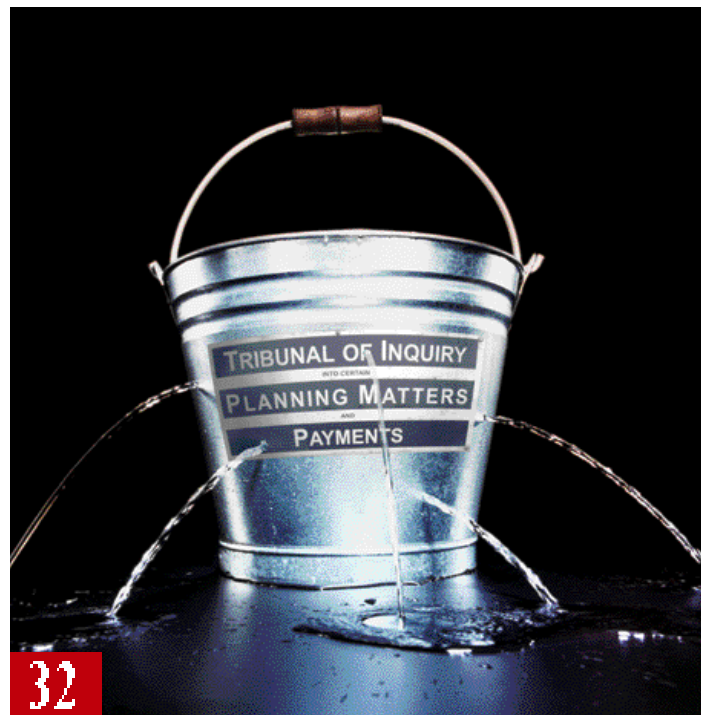
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40 Stone walls do not a prison make

The *Prisons Act 2007* provides for legally-aided hearings in respect of a prisoner's loss of remission, but there is no equivalent procedure yet for the revocation of temporary release. Cathal Ó Braonáin opens the case file



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2007 Preferred Partner



Unfair bias in judicial appointments?

As I write this message, the 29th Dáil has come to an end and the result of the general election, which was held on 24 May, is unknown. The outgoing government has recently appointed 17 members of the legal profession to various judicial positions, and of the 17, eight are solicitors.

I wish all those nominated well in their new careers and assure them, and indeed all judges, of the Law Society's continued support. The appointment of persons to judicial office raises many issues.

It is vitally important that the system of appointment of judges avoids, as much as possible, any perception that judges may ever be less than fully independent in their judicial decision making.

This requires a delicate balance to be maintained. Judges must inevitably be selected by the executive branch of government but, following their appointment, they must be – and be seen to be – truly independent of those who appointed them. It is essential that there should not be any perception of appointments being made on the basis of political patronage rather than on legal ability and personal suitability.

To assist with this, under the *Courts and Court Officers Act 1995*, the Judicial Appointments Advisory Board was established. The function of the board is to provide the minister with the names of persons whom the board recommends for appointment to any particular judicial position.

Further reform followed, with the enactment of the *Courts and Court Officers Act 2002*. The Law Society fully supported both the 1995 act, which created for the first time the eligibility of solicitors for appointment as judges of the Circuit Court, and the 2002 act, which made solicitors eligible to be judges of the High and Supreme Courts. We are fortunate that, since the foundation of the state, the persons appointed to judicial office have performed their functions independently and have sought to administer justice in accordance with the law and the highest standards of conduct and integrity. Lapses from these standards have been rare.

I believe that the current system of appointment

works about as well as any could in appointing judges of very high ability, integrity and independence – both actual and perceived independence. If it has a flaw, however, it lies in a lingering suspicion in the solicitors' profession that either the system itself or those involved in its operation at government level – not at Judicial Appointments Advisory Board level – retain an unfair bias in favour of appointment of barristers rather than solicitors to senior judicial office. Such a bias, if it exists – and I suspect it does – should have been consigned to history with the enactments of the 1995 and 2002 acts.

The first ever appointment of a solicitor as a judge of the High Court occurred in July 2002. Between then and the judicial appointments made on 2 May 2007, a further 12 High Court judges were appointed. All were excellent appointments. However, all were barristers. Can it really have been the case that the solicitors' profession, which constitutes approximately 80% of all practising lawyers, had not one member who merited a High Court appointment over that five-year period?

As president of the Law Society, I say that it still appears that governments place a greater value on a candidate's experience of practise as a barrister, rather than as a solicitor, as a prerequisite for appointment to the Superior Courts' bench. It is appropriate that I would express this concern. If there is any residual prejudice against the appointment of solicitors as judges of the Superior Courts, it exists contrary to the interests of the solicitors' profession but, more importantly, contrary to the public interest. Such a relic of history has no place in modern Ireland.

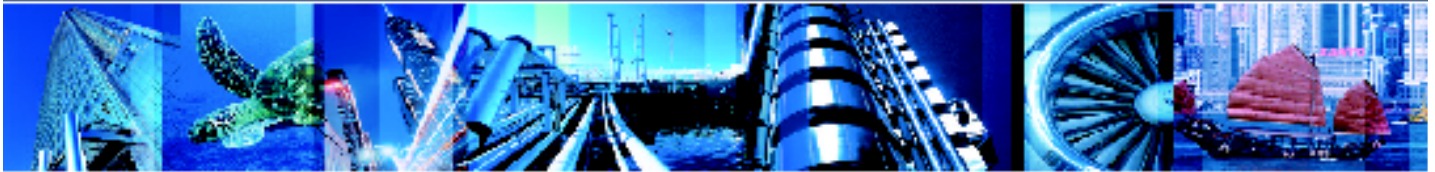
Philip M Joyce
President



“Such a bias, if it exists – and I suspect it does – should have been consigned to history with the enactments of the 1995 and 2002 acts”

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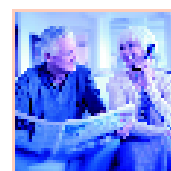
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n TIPPERARY

It's a long way...

The Council of the Law Society held its May meeting in Clonmel in the beautifully-renovated courthouse, with the kind permission of the county registrar, Mary Delehanty. A most enjoyable reception and dinner took place beforehand in the Hotel Minella. Judge Olive Buttmer of the Circuit Court was invited as a special guest. There was a very strong attendance of solicitors from the Tipperary Bar Association, headed by its president John Joy and secretary Ronan Kennedy.

The trip to Clonmel was instigated by Law Society president and local hero, Philip Joyce, who hails from Killenale. Fellow practitioner and practice partner, Charles David Barry, shared in the celebrations.

It was clear to those of us who had travelled to Clonmel that the Tipperary Bar Association is thriving. This, in itself, should not be surprising, bearing in mind the contribution of a number of its solicitors to the legal profession and to the Law Society down the years.

n CORK

Anyone for cricket?

After a break of over two decades, cricket fever has taken hold of Cork, with the Southern Law Association competing with the Cork Bar for the *Perpetuity Cup*. The cup was located during an intensive file review in an office on South Mall and is inscribed 'In Pale Tail for *Not-Too-Serious* Competition, Cork Bar v SLA'. The struggle for glory is



Ballina solicitor, Leo Loftus (Bourke, Carrigg & Loftus), and his family celebrate his 50 years in the profession at a special function in Healy's Hotel on the shores of Lough Conn

scheduled for Cork Cricket Club at the end of July.

The SLA annual conference, confirmed for Madrid at the end of September, is almost fully booked out.

Litigation practitioners in the city were delighted to see the appointment of Pat McCarthy SC to the bench.

n DUBLIN

Dedicated followers of fashion

Anyone who might have thought that solicitors are a dull, drab lot was clearly not at the DSBA ball for younger members, held recently in the Westbury, where the fashion, style and exuberance was given full vent.

At the other end of the spectrum, the DSBA was delighted to host a lunch for colleagues who have served over 50 years in practice. This is a regular event on the DSBA calendar and is looked forward to with anticipation by many of our older colleagues, who get the opportunity to catch up

and reminisce about practice in days gone by.

The month of May has been a busy time in the DSBA for seminars. There was a repeat of the multi-unit developments seminar, a half-day focused on the negative effects of bullying and harassment, and a seminar on privacy and defamation law. A number of property-law related seminars will take place in June.

Like all the profession, the DSBA was particularly pleased to note the nomination to the Circuit Court of one of its former presidents – Gerard Griffin. Always in good form and excellent company, Gerry has been a stalwart representative of the legal profession and will, no doubt, prove to be a popular, compassionate and understanding member of the judiciary.

Healthy lifestyle

The Health and Safety Lawyers Association of Ireland are holding an evening seminar on

13 June that is open to members and non-members alike.

The seminar takes place in the offices of McCann FitzGerald. Those wishing to attend should contact Aisling Butler of William Fry, email aisling.butler@williamfry.ie.

n MAYO

All's fair in love and war

Samuel Johnson said: "The Irish are a very fair people – they never speak well of each other!" However, Mayo Bar Association President Pat O'Connor challenged that myth when he and his colleagues held a dinner in honour of one of Mayo's finest – Leo Loftus, a solicitor of long standing from Ballina, where the name Bourke, Carrigg & Loftus is held in the highest regard.

The dinner, held in Healy's Hotel on the beautiful shores of Lough Conn, was attended by the Loftus family. In a tribute to Leo, Pat O'Connor noted that, despite his years of long service, Leo continues to work on, enjoying serving the law as much as ever. His brother, Kevin, retired from the family firm a number of years ago.

Something of a Loftus legal dynasty is being built. Four of Leo's six children have followed in his footsteps and have qualified as solicitors, namely: Cliona, Rosemarie, Barbara and Marc, all of whom were in attendance, as well as son Garrett, an auctioneer in Ballina, and his daughter Lyndann who lives in Sligo. **G**

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

n RETIREMENT TRUST SCHEME

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n WI-FI ACCESS IN THE FOUR COURTS

The Law Society and Global Air Net (GANAG) have teamed up to provide competitively-priced wireless internet (wi-fi) access in all of the Society's consultation rooms in the Four Courts. Members can access internet and email from their laptops or PDAs with four simple steps. Payment can be made by credit card, which is secure, for 30 minute (€3.95) and 120 minute (€9) segments.

n PPCI UPDATE

Two Professional Practice Course (PPCI) courses will be available in 2007, the Law Society has announced. The first will take place in Dublin in mid September 2007. The second will operate from the Law School in Cork, with an anticipated start date in early October.

n IBA TAXATION SECTION SCHOLARSHIP

This year, the Taxation Section of the International Bar Association is offering two scholarships to young lawyers who wish to participate in the IBA Annual Conference, but are unable to do so owing to financial constraints. The 2007 scholarship awards include:

- Contribution towards registration and travel costs for the IBA conference in Singapore, 14-19 October,
- Two years' free IBA membership.

The deadline for submissions is Friday 29 June 2007. For further application details, visit: www.ibanet.org/images/downloads/lpd/Taxation.pdf.

Judicial nominations chart a

The government has nominated 17 lawyers for appointment to judicial office by the President. In a welcome development, solicitors feature large among the nominees, writes *Mark McDermott*.

The recent announcement of 17 judicial appointments to High, Circuit and District Courts represents one of the biggest single expansions of the judiciary in the history of the state.

Of the 17 new judges nominated on 2 May 2007:

- Six will be appointed to the High Court,
- Five to the Circuit Court, and
- Six to the District Court.

High Court

Among the six new nominees to the High Court are solicitor Garrett Sheehan, Judge Bryan McMahon (currently a judge of the Circuit Court), George Birmingham SC, John Edwards SC, Mary Irvine SC and Patrick McCarthy SC.

Garrett Sheehan, solicitor, runs one of the biggest criminal law defence practices in the country. Educated in Gonzaga College in 1964, he was a classmate of Peter Sutherland, who describes him as "a real champion for justice and the less fortunate". Mr Sheehan qualified as a solicitor in 1969.

Circuit Court judge Bryan McMahon has also been appointed to the High Court.



The Hon Mr Justice Garrett Sheehan



The Hon Mr Justice Bryan McMahon

The Listowel man is the son of the writer of the same name. He qualified as a solicitor in 1964 and was a part-time law lecturer in NUI Galway before being appointed as a Circuit Court judge in 1999 – one of the first solicitors to be appointed to such a position.

He is well known to law students as the author of the leading textbook on the law of

torts. Mr Justice McMahon is also chairman of the Abbey Theatre and of the National Archives Advisory Council, and holds an adjunct professorship at University College Cork.

In addition, Judge McMahon has been appointed as the new chairman of the Residential Institutions Redress Board. He succeeds Judge Seán O'Leary, who died last year.

Circuit Court

Five new judges have also been nominated for the Circuit Court: solicitors Gerard Griffin (a past president of the Law Society) and Petria McDonnell, in addition to barristers Tony Hunt, Rory MacCabe and Martin Nolan.

Gerard Griffin was educated in Belvedere College, Dublin, and is a graduate of University College Dublin. He was admitted to the roll of solicitors in 1978. He is managing partner in the Dublin law firm Kelly & Griffin in Terenure, which specialises in civil litigation.

Gerry was first nominated to the Law Society Council in 1982 as a representative of the Dublin Solicitors' Bar Association and was elected to the Council in his own right in 1987. He became junior vice-president in 1998, senior vice-president in 2002 and served as president of the Law Society for the year



Her Honour Judge Petria McDonnell



His Honour Judge Gerard Griffin

new course for solicitors

2003/2004. He has chaired many of the Society's committees during his 25-year tenure on Council, including finance, registrar's, compensation fund, litigation, and was also chair of the Society's Legal Costs Task Force.

Petria McDonnell was admitted to the roll of solicitors in 1974. She was educated in University College Dublin and holds a diploma in law from the College d'Europe, Bruges. She is a partner in McCann FitzGerald's commercial litigation department. She has dealt with a wide range of commercial, insurance and shipping disputes.

She is accredited as a mediator by CEDR (the London-based Centre for Effective Dispute Resolution). She is also a founding member of the Irish Commercial Mediation Association and chair of the



PIC: LENS MEN

His Honour Judge Gerard Griffin, the Hon Mr Justice Bryan McMahon, President of the Law Society Philip Joyce, the Hon Mr Justice Garrett Sheehan, and Her Honour Judge Petria McDonnell. (Middle, l to r): director general Ken Murphy, Rosario Boyle SC, Judge Elizabeth McGrath, deputy director general Mary Keane, junior vice-president John Costello and Judge Denis McLoughlin. (Back, l to r): Council member Gerard Doherty, Judge John Lindsay, immediate past-president Michael Irvine, senior vice-president James MacGuill and Judge Eamon O'Brien

Arbitration and Mediation Committee of the Law Society. Publications include

contributions to *European Civil Practice* by Layton and Mercer (Sweet & Maxwell) and *Maritime Liens and Claims* by William Tetley.

District Court

Of the six judges nominated to the District Court, four are solicitors: Law Society Council member and Limerick city coroner Eamon O'Brien, Denis McLoughlin (a captain in the Reserve Defence Forces), Elizabeth MacGrath (who runs her own practice in Co Tipperary), and John Lindsay.

The remaining two District Court nominees are barristers Anthony Halpin (an expert in legal costs and employment law) and David McHugh (who has worked on the Refugee Appeals Tribunal).

Increase in judges

Fourteen of the nominations arise from the provisions of the recently enacted *Courts and Court Officers (Amendment) Act 2007*, which increased the maximum number of judges of

the High Court, the Circuit Court and the District Court.

The *Courts and Court Officers (Amendment) Act 2007* provides that the maximum number of ordinary judges of the High Court, Circuit Court and District Court be increased to 35, 37 and 60 respectively.

The act also provides for increases in the number of ordinary judges in both the Circuit and the District Courts. In the case of the Circuit Court, the act provides for an increase of four judges, from 33 to 37. In the case of the District Court, the act provides for an increase of six judges from 54 to 60.

The additional judges are required to deal with delays and generally speed up the judicial process. The increase is also intended to strengthen the criminal justice system in the context of a package of measures now in train to deal with serious crime.

Three appointments will fill the existing two vacancies in the High Court and one vacancy in the Circuit Court.



Judge John Lindsay



Judge Denis McLoughlin



Judge Eamon O'Brien



Judge Elizabeth McGrath

Senior lawyer calls for international support in Pakistan's 'hour of need'

A senior Pakistani lawyer has asked the Law Society to consider issuing a memorandum in support of the maintenance of an independent judiciary and the rule of law in Pakistan, writes *Colin Murphy*. This follows a prolonged political/legal crisis in Pakistan, which culminated with the intervention of the Pakistani president, General Pervez Musharraf, to remove Chief Justice Iftikhar Mohammad Chaudhry from office in March.

Sardar Latif Khosa, an advocate of the Supreme Court of Pakistan and also a senator with the Pakistan People's Party, addressed Society members at a talk in Blackhall Place on 27 April.

Charismatic and passionate, he gave a forceful address in which he railed against violations of the rule of law in both Pakistan and the wider world. He said that the world was now a 'global village', and that it was vital for lawyers, and concerned people generally, to voice their opposition to militarism and human rights violations, wherever they might happen.

Missing people

Iftikhar Mohammad Chaudhry was appointed chief justice of Pakistan in 2005. His tenure has been marked by a 2006 case in which he reversed the sale of a state-owned company, citing improprieties by government personnel, and recent comments pressuring the intelligence agencies to reveal the whereabouts of missing people they deny having detained. In March, President Musharraf accused him of misuse of office, forced him to stand aside and placed him



Sardar Latif Khosa

under house arrest. The legal profession launched protest demonstrations, which were violently broken up by the Pakistani security forces. Up to 80 lawyers were arrested and 20 were beaten and injured, including Sardar Latif Khosa.

Sardar Latif Khosa told the *Gazette* that the lawyers' protest had become a "popular struggle".

"The lawyers in Pakistan have endeared themselves to the people of Pakistan. If the judiciary is being subjugated and can't properly function, obviously the ultimate sufferer will be the people."

Showered with petals

"Wherever they go, they're showered with petals of flowers," he said, an experience unlikely to be familiar to lawyers in Ireland.

"The lawyers' struggle has translated into a mass movement for the rights of the people of Pakistan, to give them back their right of

governance," he said.

"In Pakistan, the army [should] protect and preserve the borders of the country – they have no right of governance. So when the army arrogates to itself the right of governance, that is at the cost of the rights of the people of the country, who are the real sovereign."

Sardar Latif Khosa invited

the Law Society to send a delegation to visit Pakistan, where they would see for themselves "how strong our lawyers are, and how strongly we react to injustice".

"We do not accept any tyrannical decision and we are not afraid of anything"

There are parliamentary elections in Pakistan later this year. The Pakistan People's Party, led by Benazir Bhutto, hopes to form a coalition with the Pakistan Muslim League of Nawaz Sharif, and together to obtain a two-thirds majority in the assembly. If they are successful, they will be able to amend the constitution without the consent of the president, in order to restore primacy to the parliament.

Sardar Latif Khosa told the *Gazette* that, even though General Musharraf seized power in a coup, during which he suspended the constitution, he would not be likely to suspend the constitution again: "He would have to impose martial law, but it is not possible now to impose martial law because he cannot show 'no confidence' in himself."

BELFAST SOLICITOR MAKES LEGAL HISTORY



Belfast solicitor Barra McGrory, of the firm PJ McGrory & Co, has made legal history by being appointed a Queen's Counsel (QC) in Northern Ireland. McGrory is the first solicitor to become a QC since a recent change in the selection process. Before that, only barristers were eligible for appointment as QCs (or silks).

Mr McGrory, whose late father Paddy was one of the best-known solicitors in Ireland, was one of six QCs named on 15 May 2007. The others are Charles McKay, Alan Kane, Philip Mateer, Stewart Beattie and Ms Monyeazo Anyadike-Danes.

Society Council meeting in Clonmel

For the first time in its history, the Council of the Law Society of Ireland convened a meeting in Clonmel on Friday 11 May 2007, writes *Melissa Healy*. The meeting was held in the Clonmel Courthouse, at the heart of the bustling town.

The courthouse was kindly made available by the Courts Service. The Council was greatly assisted by county registrar Mary Delehanty and her team of dedicated staff. The courthouse was recently renovated and is a jewel in the Courts Service crown. Members of the Tipperary Solicitors' Bar Association attended the meeting as observers. Topics on the agenda at the meeting included a proposed media advertising campaign, the Criminal Legal Aid Scheme, the *Criminal Justice Act 2007* and the government working group's review of legal costs.

On the previous evening, Law Society President Philip Joyce hosted a drinks reception and evening meal in the Hotel Minella. This was attended by Tipperary solicitors, members of the judiciary and delegates of the TSBA. The evening provided a valuable opportunity for local solicitors to meet members of Council and to discuss uniquely local issues



"Look out! They're behind you!"

that affect solicitors in their daily practice.

The Law Society Council was welcomed to Tipperary by TSBA president John Joy. Philip Joyce was presented with a set of engraved cufflinks to mark his year in office.

The occasion was also used by the president to mark the recent appointment of eight solicitors to the bench, including two members of the Council of the Law Society – Gerard Griffin to the Circuit Court and Eamon O'Brien to the District Court.

The Council meeting in Clonmel is part of the Society's

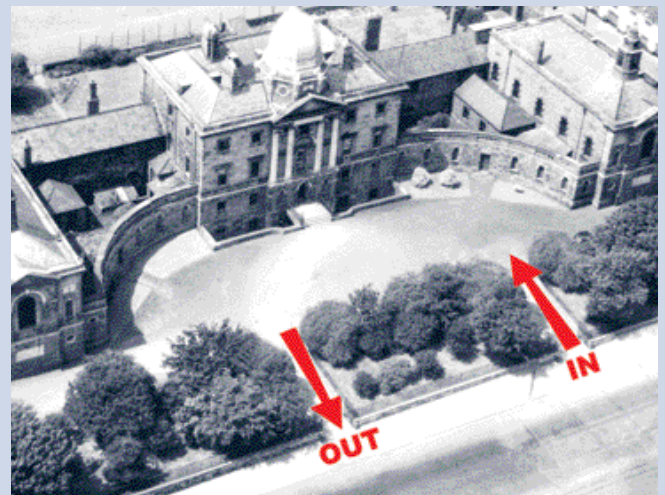
efforts to forge closer links with members of the profession throughout the country. The occasion proved highly

successful in this regard and the Council greatly appreciates the kind hospitality of the solicitors of Tipperary.



John Joy (president of the Tipperary Solicitors' Bar Association), Law Society President Philip Joyce, Mary Delehanty (county registrar, Tipperary), and Ronan Kennedy

Traffic-flow change at Blackhall



The direction of traffic flow entering and exiting the Law Society at Blackhall Place is set to change from 6 June 2007. The current 'in' and 'out' traffic flow will be reversed. This will lead to a more efficient and safer method of entering and exiting the Law Society's headquarters. Signs will be

erected to remind all users of the change. Drivers, cyclists and pedestrians should take extra care, particularly in the early days of the changeover, to ensure their own safety and that of others in the vicinity. Additional security staff will be on hand to assist with the changeover.

Visit of Kosovo Chamber of Advocates

The EU and International Affairs Committee hosted a training programme for a group of nine lawyers from the Kosovo Chamber of Advocates from 30 April to 4 May 2007, writes *Eva Massa*. Under the title 'Developing Disciplinary Processes and Procedures for Lawyers', the training aimed to introduce participants to the entire disciplinary system and regulation of the legal profession in Ireland, including an overview of the professional training for lawyers. The programme was structured in a series of lectures, workshops and round tables organised by the Law Society and the Bar Council. It also included visits to both institutions, as well as to the Four Courts and the



Law Society President Philip Joyce with members of the Kosovan delegation (l to r): Naser Peci, Abdylaziz Sadiku, Fljorin Vrtopi, Betim Sala and Hamijeta Miftari

Disciplinary Tribunal, with attendance at a hearing.

The Kosovo Chamber of Advocates (KCA) was established in 1973, suspended in 1990 and resurrected in the post-war period. It is a

professional membership association for practicing lawyers in Kosovo. The KCA has recently begun evaluating models for a more effective and transparent disciplinary system, using models from the region

for comparative purposes.

The experience attained during the visit will be used for drafting and implementing a new disciplinary model of the Kosovo Chamber of Advocates that will be functional and efficient.

From the Law Society's point of view, the event provided a great opportunity to learn more about the current status of Kosovo, its legal system and the expectations for the near future.

The EU and International Affairs Committee extends its thanks to the Bar Council, the Court Services, the Disciplinary Tribunal, McCann FitzGerald and Garrett Sheehan & Partners for their kind assistance with this project.

SUPPORT SERVICES FOR MEMBERS

OPENING THE DOOR TO SUPPORT SERVICES

The Society's annual PPCII open day showcases the support services available to trainees. Louise Campbell explains

The report by the Support Services Task Force, under the chairmanship of Ms Olive Braiden, recommended "that the Law Society should ensure that, during their time in the Law School, trainees are made familiar with all services that will be available to them from the Law Society and others when they qualify, in particular those that may be needed in times of crisis for themselves or their colleagues".

One way that the Society achieves this is through its annual PPCII open day, which showcases the support services available to PPCII trainees. This year's event took place on 30 April.

Support services executive Louise Campbell and information and professional development executive Michelle Nolan headed up a team of Law Society staff who

organised the open day, including Mary Ann McDermott, Sarah Stack, Pauline Smyth and Anne Walsh.

Trainees received welcome packs and staff were on hand to man stands in the members' lounge to explain services more fully and to answer trainees' queries.

The showcase included information on:

- The library – making trainees aware of the library's services, including the online library catalogue on the members' area of the Society's website; textbook loans and documents that can be sent to solicitors throughout the country; online precedents that can be emailed to members in Word format; and its general enquiry service on all aspects of legal information.



- Society requirements for setting up in practice, in particular practising certificates and professional indemnity insurance.
- Law Society committees, across many aspects of law, which were represented by their secretaries. These committees give guidance relating to best practice. Their contact details are

contained at the front of the *Law Directory*.

- The new employment and locum recruitment registers, as featured in the Jan/Feb 2007 issue of the *Gazette*. These were demonstrated to trainees, as were the Society's website and e-zine, where a wealth of information is available at the touch of a button.
- Support services for members, with information on the range of services on offer, including 'Solicitor Link', the mentor programme and the group life assurance scheme, among others. **G**

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

letters



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

'Raining on the parade' of the Commercial Court

From: *Michael Williams, Grosvenor Square, Dublin 6*

The new Commercial Division of the High Court seems to please practitioners, judges, and so far as can be measured, litigants. I am reluctant to rain on their parade, but think there are reasons to be wary.

The official view was that creating the new division did not require legislation, so it was brought into existence by a statutory instrument amending the rules of court. This seems technically valid, but meant that its gestation was not exposed to legislative debate, a process that can be useful. The main effect of the amended rules of court is as follows: the qualification for admission to the jurisdiction of the Commercial Court is, broadly speaking, that the cause of action is 'commercial' in nature (as defined by the rules) and exceeds €1 million. (There is judicial discretion to admit to the commercial jurisdiction claims that do not meet those criteria.) Personal injuries actions are excluded.

Once admitted to the jurisdiction, litigants receive treatment different from what other litigants can expect, including judicial directions designed to speed up the process, case conferences with the judge, electronic exchange of documents, and 'case management'. They can also expect a speedier trial than other litigants.

All of this seems very satisfactory, at least for those litigants and, I assume, their lawyers. But what about those litigants who wait their turn for

a judge ready to hear their claims, while 'commercial litigants' speed by them? Article 40.1 of the Constitution reads: "All citizens shall, as human persons, be held equal before the law."

"This shall not be held to mean that the state shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function."

People who do not qualify for admission to the Commercial Courts do not receive treatment reasonably equivalent to those who do. There must be a strong argument that a courts system that creates such inequality is inconsistent with the opening words of the article and that the instrument that brought it into existence is accordingly unconstitutional and void.

Is it saved by the second sentence? It is possible to argue

that people who find themselves engaged in €1-million commercial battles are likely to have different moral or social capacities from the rest of us. But I suspect most lawyers, if given a choice between arguing in favour of that proposition and against it, would have little difficulty in choosing.

Even if the concept might be validated by that sentence, what does the word 'enactments' in it mean? Does the fact that the Commercial Court was brought into existence by a statutory instrument, not an 'enactment', exclude the effect of the sentence?

Of course, it is impossible to predict how the Supreme Court would decide on a challenge to the rules of the Commercial Court – and the current court seems more unpredictable than many of its predecessors. And if it did strike down the rules,

would it negative all the court's decisions? Or apply a concept similar to the novel one it brought into existence in the *A* case, when it ordered 'A' to be returned to jail for committing a non-existent crime? Again, we can only guess.

If the rules had been brought into existence through the legislative route, the government would have been able to reassure us that they had taken advice on the constitutional validity of the Commercial Court, and we might have learnt what that advice had been. As it is, we can probably assume the question was addressed, but we do not know what the advice was, or how convincing, or confident, it was.

If I were still in practice and advising a prospective plaintiff whose claim might fall within the court's jurisdiction, these are issues that would concern me.

Affordable housing clawback 'is in breach of my human rights'

Martina Maher, Ringsend, Dublin 4

Iwould be grateful if you could place my query in your *Gazette*. It is in relation to taking a test case regarding the 'affordable housing clawback'. The thing is that when this was put into legislation it only focused on the resale of the property. There were no provisions made in relation to:

- 1) Changing mortgage provider – under the current legislation you have to stay with the same lender for the term of your


mortgage. To me this is discrimination and unconstitutional and is in breach of my human rights.

- 2) No provision is made for families who ~~need~~ to trade up due to expanding family, because currently there are more apartments being built.
- 3) Change in family circumstances, for example, separation.
- 4) Mortgage top-up.

I feel this whole legislation is in breach of my rights and would

be very grateful for any advice that you, or your readers, may be able to provide – bearing in mind that I am only one of thousands who this affects.

This is a case of discrimination because I had no choice but to buy affordable, because DCC [Dublin City Council] would not house me, even though I was pregnant with my fourth child in a one-bed flat, and because we couldn't afford to buy on the open market.

I would be really grateful for any help/advice. 

Will the ombudsman build

The new Garda Ombudsman Commission aims to reform policing and should contribute to making the gardaí a modern, more accountable service, writes Diarmuid Griffin

On 8 May, the Garda Síochána Ombudsman Commission was launched by Minister for Justice Michael McDowell. The establishment of the commission is one of a number of measures aimed at reforming policing in Ireland. The commission faces the difficult task of investigating complaints made by citizens against members of the gardaí and building public confidence in the system of accountability being provided.

An Garda Síochána has become enmeshed in controversy in recent history. From the tragic Kerry Babies case in the '80s to the damning findings of the Morris Tribunal, it was becoming increasingly evident that policing in Ireland was in need of modernisation. Justice Morris went as far to conclude that "An Garda Síochána is losing its character as a disciplined force".

Sustained criticism

After a period of sustained criticism levied at both the gardaí and government, legislative measures aimed at reforming policing came with the *Garda Síochána Act 2005*. The act aimed to provide a modern framework for policing in Ireland. Among the provisions of the act was the establishment of the Garda Inspectorate, the purpose of which is to ensure that the gardaí achieve the highest levels of efficiency and effectiveness in operation and administration through providing advice on best policing practice.

The act also gives the



Gardaí out on the beat

ombudsman commission its statutory framework and mandate. The commission replaces the Garda Complaints Board as the body responsible for dealing with complaints made against gardaí.

The Garda Complaints Board was established under the *Garda Síochána (Complaints) Act 1986* to provide a mechanism for citizens to make complaints of police misconduct. However, the board encountered a number of difficulties, not least the heavy reliance on members of An Garda Síochána to carry out the investigation of complaints. Further, the board was hampered by inadequate resources and a public scepticism about gardaí investigating complaints against themselves.

Effective accountability

As the commission becomes operational, it will be keen to mark its departure from the outgoing mechanism of

dealing with complaints. The powers conferred on the body would suggest that Ireland may finally establish an effective system of accountability in policing in which the public can have confidence.

The commission is empowered to directly and independently investigate complaints from the public against members of the gardaí. Importantly, the commission is empowered to investigate a matter or situation where no complaint has been made, but it appears to the commission that a garda has committed a

criminal offence or behaved in a way that would justify disciplinary proceedings and deems it in the public's interest to carry out an investigation. The commission may also investigate a practice, policy or procedure of the gardaí with a view to reducing the number of related complaints or incidents on request from the Minister for Justice.

Powers of investigation

There are a number of ways in which complaints can be dealt with. The commission itself can carry out the investigation of the alleged behaviour. Further, it *must* carry out an investigation where death or serious harm has resulted from a garda operation or while in the custody of the gardaí. The commission may also refer a complaint to the gardaí to investigate. In such an instance, an investigation may be supervised and directed by the commission and, if necessary, the commission may subsequently take over the investigation. The powers of investigation provided under the act are significant, particularly in relation to the seizure of evidence and the search of garda stations.

It may appear objectionable to permit the gardaí to investigate complaints but, in practicality, with the level of complaints expected (the commission has forecasted 4,000-5,000 complaints per annum), it is necessary in order to deal efficiently with all complaints. Such a system

The ombudsman commission has three commissioners: Mr Justice Kevin Haugh (chairman of the commission), Carmel Foley (former Director of Consumer Affairs) and Conor Brady (former editor of *The Irish Times*).

viewpoint

confidence in gardaí?



is consistent with the practice of other jurisdictions, where similar procedures operate successfully. It also enables the commission to focus resources on the investigation of more serious complaints. Of course, such investigations will require appropriate supervision where necessary and sufficient levels of co-operation between the commission and the gardaí.

Informal resolution

The act provides that complaints may be dealt with through mediation or informal resolution. This mechanism is targeted at complaints of a minor nature that do not require a full investigation and can be resolved quickly and efficiently. In such instances, it is often more appropriate and beneficial to all concerned to resolve the problem informally between the parties rather than invoking a formal investigation. Significantly, when the matter is resolved, no record is retained on the personnel file of the garda, an issue that

coloured previous attempts at providing informal approaches to the resolution of complaints under the Garda Complaints Board.

On completion of the report of an investigation, the commission may refer the report and any recommendation it may have to the Director of Public Prosecutions where they believe the conduct may constitute an offence. Alternatively, the commission may recommend disciplinary action to the Garda Commissioner where it appears that there has been a breach of the garda disciplinary regulations. New regulations intended to streamline disciplinary procedures are in the process of being adopted by the gardaí. Of course, if there is insufficient evidence to support a complaint, or if it appears that the complaint is frivolous or vexatious, it may be dismissed at any point.

An important function of the commission is to build public confidence in the system of accountability for the

gardaí. One of the best methods of achieving this is through building the confidence within An Garda Síochána itself in the operation of the commission. The gardaí, as an organisation, must recognise that a system of accountability is required to address the misbehaviour of members and that it is in the interests of the organisation that any misconduct is dealt with appropriately. Such structures are important in any organisation and should help develop greater public confidence, not only in the commission, but in the gardaí as an organisation capable of providing a professional, transparent and accountable police service to the public.

It appears that good relations are already a priority of the ombudsman commission and the gardaí. A consultative group was set up to create dialogue between the organisations and other interest groups. Further, there have been several public statements of support for the commission from top-ranking

gardaí, encouraging an open and co-operative response from members.

Resistance to change will always exist at some level in large institutions like An Garda Síochána. The public appetite for dramatic change in policing has existed for some time now. Political leadership for such change materialised in the *Garda Síochána Act 2005*. After suffering significant losses to its credibility, there now appears to be a growing willingness within An Garda Síochána to change and to provide the quality of service that is expected by the public. In that sense, it is hoped that the launching of the ombudsman commission will not only represent a departure from the previous mechanism of dealing with complaints against the gardaí, but also contribute to the transformation of the police force into a modern accountable service. **G**

Diarmuid Griffin lectures in criminal law and criminology at the Law Faculty, NUI Galway.

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New criminal court

Dublin's new criminal court complex, the largest courts project since the foundation of the state, aims to tackle the problem of 'circulation and segregation'

It will be 11 stories tall, 25,000 square feet in size, house 22 'double-height' courtrooms, cost €291 million over 25 years and take three years to build. But when it is finished, Dublin will have a new criminal court complex that will be "unique" in the world – a 21st century landmark at the entrance to the city, just inside the Phoenix Park, writes *Colin Murphy*.

The uniqueness stems from the peculiar challenge of designing a criminal court complex that will solve the key weakness of the overburdened Four Courts. The experts describe this as the problem of "circulation and segregation": how to run a courts complex in which judge, jury, accused, witnesses, lawyers and the public – not to mention the media – are not tripping over each other on their way in and out of the courts, bumping into each other in the entrance hall,



and queuing beside each other in the canteen. Justice shall be administered in public – but that hardly extends to everybody eating their lunch in full view of each other, a problem that may sound trivial, but can be acute in the case of serious criminal trials, for example, where discomfort for the families involved is heightened by the lack of

privacy or segregation.

This makes court buildings "the most complex building type that exists", says Peter McGovern of Henry J Lyons & Partners Architects, the man chiefly responsible for designing the new complex.

'Promoting equality and self-esteem'

And so McGovern and his colleagues have devised a scheme that he believes may be unique in the world, which will ensure that "judges, jury, witnesses, custodial and public never cross each other's paths till they meet in the courtroom itself". McGovern has also sought to create a "calm, light-filled space" where scale and quality of organisation will "promote equality and self-esteem".

The result is an immense, circular, glass-fronted building, which will soak in light during the day and radiate it at night. At its core is a 'great hall', an echo of the Round Hall of the Four Courts, but four times the size – in fact, it is similar in size to the Pantheon of Rome (the 'Temple of all the Gods' – an appropriate reference, perhaps). The courtrooms will sit off this hall, with the entrance to each visible from the hall itself, while "separate horizontal and vertical circulation systems" ('corridors, stairs and lifts' to you and me) will provide separate pathways and entrances to each court.

Lawyers will be pleased to hear of the dedicated facilities for legal practitioners. This will include 31 consultation rooms and legal practitioners' rooms in a secure area of the complex, which will have ancillary facilities, including a prison video link.

INSIDE THE CRIMINAL COURT COMPLEX

Professional facilities

- Legal practitioners' rooms in a secure area with ancillary facilities including prison video link;
- Accommodation and facilities in a secure area for the DPP, prosecution solicitors, court presenters, gardai and probation and welfare service;
- Facilities for 200 lawyers.

Courts and ancillary facilities

- 26 judges' chambers and ancillary facilities in a secure area,
- 16 jury courtrooms and several non-jury courtrooms,
- A large jury assembly space in a secure area for up to 400 people called for jury service,
- Victim support rooms and ancillary facilities within a secure area,
- 31 consultation rooms,

- Facilities for prosecution witnesses (including a secure area for vulnerable witnesses),
- Two courts fully equipped for technology use,
- Video conferencing and communications facilities,
- A media room and small broadcast studio.

Secure area

- Cell accommodation for up to 100 prisoners,
- A prisoner reception area with ancillary facilities,
- Prison officer accommodation and facilities,
- A control room and prison-van dock.

General

- Accommodation and facilities for security and jury-minding personnel,
- Kitchen and restaurant facilities and separate dining for juries,
- Parking for prison vans and official personnel.

complex underway



Work started on the complex in early May and it is expected to be ready for use in the early months of 2010. It will be located just inside the walls of the Phoenix Park, on the corner of Parkgate Street and Infirmary Road.

This is the largest courts project undertaken since the building of the Four Courts itself, in 1796. When completed, all of the criminal courts will be transferred to the new complex, leaving space for the subsequent redevelopment of the civil courts.

Axis change

The Chief Justice, Mr Justice John Murray, said that the move of the criminal courts to the new complex would create “a future which promises a great change in the axis of activity in

our capital’s legal quarter”, and would “benefit the administration of justice generally in Dublin”.

Speaking at a ceremony to launch the project, in the Round Hall at the Four Courts on 4 May, he said this was “because the transfer of all criminal cases and trials to the new criminal courts complex will relieve many of the pressures which currently impinge on the administration of justice here in the Four Courts, due to critical lack of courtrooms and space”.

Addressing the launch ceremony, the Minister for Justice, Michael McDowell, said: “Mountjoy Prison and the Four Courts have served Dublin well over centuries, but they were of their time and now fall dramatically short in many



ways of what we as citizens are entitled to expect of the state.” The new complex, and the new prison at Thornton Hall, would “meet the needs of the criminal justice system in Dublin and, indeed, Ireland, for many years to come”, he added.

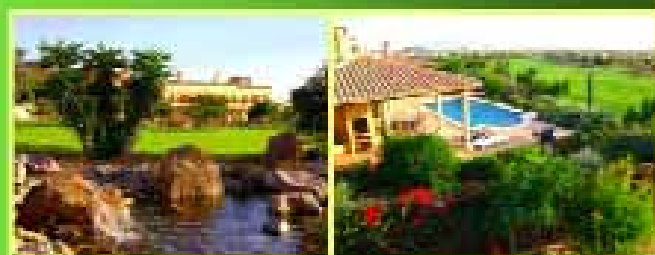
The complex is being built by the global investment firm Babcock and Brown as a ‘public

private/partnership’. They will build the complex and, once constructed, will effectively lease it back to the Courts Service for 25 years, after which it will revert to the ownership of the state. The Courts Service will pay for it in monthly instalments over the 25 years, at a total cost of €291 million in today’s terms. **G**

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PART V PLANNING AND DEVELOPMENT ACTS 2000-2006

"Letters of Compliance"

Taken notice that as and from the ~~1st day of July 2007~~ it will be the policy of Dun Laoghaire-Rathdown County Council not to issue what are known as "letters of compliance" confirming that developers have complied with conditions in grants of planning permission where:-

- (a) planning permission has been granted for development to which Part V of the Planning and Development Acts 2000-2006 applies, and
- (b) no binding legal agreement has been entered into by the developer with the Council to ensure compliance by the developer with the condition(s) in the planning permission which relate to Part V of the said Acts.

Dated the 1st day of June 2007

Dedán MacCulloch
Senior Executive Officer
Economic Development and Planning Department
Kathleen Holohan
Director
Housing Department

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Lawyers put on watch by leading human rights activist

Glasgow-born lawyer Baroness Helena Kennedy QC is a seasoned advocate for social reform, making her an inspiring choice for guest speaker at the Law Society's annual human rights lecture

Addressing the 150-strong audience assembled in the Presidents' Hall in Blackhall Place, Baroness Kennedy shared her professional and personal experiences involving the protection of human rights in the 'War on Terror'. Years of dedicated advocacy for marginalised and vulnerable members of the community, as well as a position with the International Bar Association's Taskforce on Terrorism, have given her unique insight into the human rights challenges of the 21st century, *writes Anna Bowen.*

Considering the current climate of terrorism, Kennedy pointed to the expansion of liberal democracy and its emphasis on globalisation as a cause for concern.

Bad law counterproductive

"The very developments that make global markets work – electronic transfer of money, telecommunications, the mobile phone, the internet, the web, email, ease of travel, the softening of borders, deregulation, off-shore banking – all equally facilitate markets in other commodities that perhaps we aren't so enthusiastic about, like drugs, arms, explosives, fissile material, people: the marketing and the trafficking in women and children and babies, as well as in human eggs and human organs," she said.

Baroness Kennedy suggested that this was the type of activity currently threatening the rule of law, creating widespread fear and prompting governments to claim uncircumscribed



"Terrorism always has its roots in perceptions of injustice"
– Baroness Helena Kennedy

mandates of power in the so-called 'War on Terror'.

"In this uncertain, frightening world, it's very easy for people to seek out strong government, and for government to read this as a licence to authoritarianism," said Kennedy.

Citing instances where civil liberties were eroded in the name of national security, Baroness Kennedy reminded her audience of the lessons learned from historical conflicts such as the Troubles in Northern Ireland.

"Bad law is counter-productive," she said. "It often keeps alive and, in some cases,

exacerbates, the antagonisms which underpin political violence. If particular communities feel that they are subjected to special laws, a sense of injustice is inflamed – and terrorism always has its roots in perceptions of injustice."


Baroness Kennedy urged the legal community to be vigilant, not only in its protection of civil rights for detainees, but also in its endorsement of a justice system reflecting community values. This, she claimed, was vital to both the credibility of democracy and the fight against marginalisation and poverty, often regarded as breeding

grounds of terrorism.

Reviewing the anti-terrorism legislation introduced since 9/11, including detention without trial and the use of torture to collect intelligence, Kennedy explained how war can become an alibi for the suspension of normal laws. "Amid the clash of arms," asserted Kennedy, "law should not be silent."

She proposed that it was the responsibility of the legal community to regulate the use of war power, thereby safeguarding due process and upholding international standards in human rights. Describing law as the "biography of a nation", she reiterated the duties of the legal community to defend the law, to protect those vulnerable to abuse, to support those defending the rule of law and, ultimately, to uphold legal principle.

Underpinning Baroness Kennedy's address was her belief that "law matters". And if the enthusiastic response from her audience was any indication, then we can safely assume she is right.

Baroness Kennedy follows Australian Justice Michael Kirby and former ANC activist Justice Albie Sachs as another prominent voice in the human rights debate appearing as part of the Law Society of Ireland's human rights lecture series, inaugurated in 2005. 



Chairman of the Human Rights Committee Noeline Blackwell, Baroness Helena Kennedy, Law Society Senior Vice President James MacGuill, and Parliamentary and Law Reform Executive Alma Clissmann

A full audio account of Baroness Kennedy's speech is available in MP3 file format on the Law Society of Ireland's website: www.lawsociety.ie.

International perspective

The *Miss D* case focused on questions of domestic childcare law and constitutional rights. Yet, as a 17-year-old, the girl's own wishes and views should have been given precedence

While legal argument in the case of *Miss D* has understandably been focused on questions of domestic childcare law and constitutional rights, there is another dimension to this case that has provoked little comment from inside or outside the High Court. This is the difficult question of how to assess the best interests of the child, when the child wishes to embark on a course of action that the adult in charge (leaving aside the fact that the High Court has now found that the HSE is not in charge of the decision) considers to be wrong because it is perceived to be contrary to the child's welfare or because it raises complex ethical issues.

As the hearings progressed over the past number of weeks, the HSE appeared to concede that, if *Miss D* received counselling so that she was fully informed, *and* if her mother continued to consent to her obtaining an abortion, *and* if it was legal for the HSE to authorise her to leave the

jurisdiction for the purpose, then this course of action would indeed be in her best interests. What was curiously missing from this equation was a prioritised consideration of what the girl herself wanted. Yet, as a 17-year-old, the girl's own wishes and views should have been given precedence as a matter of human rights. This human rights angle is not to be found in the thrust of legal argumentation in the case, and it will be interesting to see whether Justice McKechnie, who has been highly critical of the HSE, addresses the matter in his judgment.

'Freedom' versus 'protection'

The concept of children's rights as human rights is a vexed one. Human rights are classically associated with freedom to make choices and have those choices respected, regardless of whether, objectively, they promote or inhibit a person's welfare. It follows that human rights and paternalism are not easy bedfellows. However,

traditionally, children's rights were not associated with freedom, but rather with protection. It was thought that children needed special protection (including protection from themselves) because of their vulnerability and lack of experience.

However, the 1989 *UN Convention on the Rights of the Child*, while preserving some of the emphasis on protection, reconceived the child as a holder of rights – understood as freedoms in the classical sense. The protection emphasis finds its clearest expression in article 3 of the convention, which provides that “in all actions concerning children, whether undertaken by public or private social-welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. The rights emphasis is captured best in article 12, which provides that “States Parties shall assure to the child who is capable of

forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

To preserve the correct balance between the protection that children need as children and their freedom as rights-holders, article 3 must be read in the light of article 12. In basic terms, this means that when carrying out the best interests assessment, the child's views must be canvassed. The amount of weight to be given to child's own views of what are in his/her best interests will vary depending on the age and maturity of the child.

Ethical dilemmas

The assessment of age and maturity, however, is a separate question from the perceived rightness or wrongness of the child's views. If it were otherwise, a decision-maker could conclude that a child is too young and/or immature to

■ ONE TO WATCH

Consumer Protection Act 2007

At 102 sections and 90 pages, the *Consumer Protection Act 2007* is a major piece of legislation. It was signed into law on 21 April and was brought into effect on 1 May by statutory instrument numbers 178 and 179 of 2007. Only sections 48 and 49 have not been commenced; they deal with the prohibition on surcharges in relation to certain

methods of payment, such as by credit cards. The act mainly provides for the establishment of a National Consumer Agency and the implementation of the *Unfair Commercial Practices Directive* (Directive 2005/29/EC). Having common consumer protection standards across the EC will facilitate cross-border purchases, which the Irish engage in to a greater degree than most.

National Consumer Agency

The agency was a recommendation of the Consumer Strategy Group, and it has wide-ranging powers to research, advocate, educate, raise awareness and act in the interests of consumer protection. Its functions are set out in section 8. It was established in 2005 on a non-statutory basis.

Prohibited commercial practices

The *Unfair Commercial Practices Directive* prohibits unfair, misleading and aggressive commercial practices, which are defined widely and in detail in part 3 of the act. They include:

- Giving false, misleading or deceptive information,
- Competitor or product confusion in marketing or advertising,

human rights watch

on the *D* case



determine his/her own best interests simply from the fact that the decision-maker does not agree with the child's views. And as philosopher Ronald Dworkin famously commented, we would not be taking human rights seriously if we only granted rights when we thought the person was doing the right thing. This is not to suggest that there is no link between the assessment of age and maturity and the ethical complexity of the decision at hand. However, there is no obvious link between a person's age and maturity and their ability to wrestle with ethical dilemmas. After all, adults make unethical choices all the time and children's behaviour is frequently exemplary, as the present case illustrates.

This balancing between protection and freedom, with a greater emphasis on the latter as the child gets older, has been the subject of much discussion and guidance by the Committee on the Rights of the Child – the convention's international monitoring body. Unfortunately, as with most of



its international human rights obligations, while Ireland has ratified the convention, it has yet to incorporate its provisions into domestic law. In effect, this means that neither the

provisions of the convention nor the voluminous jurisprudence of the Committee on the Rights of the Child can be argued with binding effect before Irish courts. It also

means that institutions such as the HSE are not required to take the international understanding of such concepts as 'best interests' into consideration when discharging their duties.

Quite apart from the lack of legal obligation, Ireland's lukewarm attitude to international human rights norms on the domestic stage means that a source of valid and worthy legal guidance is lost to decision-makers. It is submitted that, if due regard had been shown to Miss D's views in accordance with international best practice, this unfortunate case would not have ended up where it did – enmeshed in litigation that nobody wanted, presumably at great personal cost to Miss D, who has already been through an ordeal that would test any adult. Expect Ireland to be criticised for its handling of this case the next time it appears before the Committee on the Rights of the Child. **G**

Ciara Smyth is a lecturer in international human rights law in the Faculty of Law, NUI Galway.

- Non-compliance with a code of practice that applies to the trader, and
- Withholding or concealing material information.

A list of 23 specified misleading practices are prohibited, such as bait advertising and phoney prize draws, and eight aggressive commercial practices are prohibited even without proof that

they affected a consumer's decision to enter into a transaction, for example persistent cold calling, exhorting children to buy (or pester a parent to buy) something being advertised, or stonewalling a customer's claim on an insurance policy (s55). Part 4 prohibits pyramid schemes and replaces the *Pyramid Selling Act 1980*, which had proved ineffective.

Many of the listed prohibited practices are common and will be familiar to consumers. These provisions of the act are a case of the law seeking to effect a cultural change.

Other more familiar rules are also included:

- Compliance with any regulations made by the minister providing for consumer information,

- Compliance with price-display regulations,
- Access to weighing scales where food is sold by weight.

Emergency orders

The government (not the minister) is empowered to make emergency orders in respect of a product, and fix maximum prices for such products for the duration of the order (the minister mentioned the

Q:



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example of oil). This limited provision replaces all other price-fixing powers, and was recommended by the Consumer Strategy Group, the Competition Authority and others.

Remedies and penalties

Remedies for contravention may include giving an undertaking of compliance, civil proceedings to obtain an order for the contravention to be discontinued, and the suing of a trader for damages by an aggrieved consumer. Compliance notices may be issued by agency officials and there is provision for appeal.

Many of the prohibited practices are also criminal offences, and may be prosecuted within two years of their commission. Persons acting for companies may be held personally liable, and there is a defence of due diligence. First summary conviction creates liability for a fine of up to €3,000, six months' imprisonment, or both, and on

subsequent summary convictions, the penalties rise to €5,000 and 12 months' imprisonment. Provision is made for daily fines of up to €500 for ongoing contraventions.

On indictment, in relation to certain offences only, the penalties are €60,000 and 18 months, or both, for a first offence, rising to €100,000 and 24 months for subsequent offences, with penalties for creating a pyramid-selling scheme rising to €150,000 and/or five years' imprisonment, and daily fines of up to €10,000. Further, on convicting persons for offences under this act, the courts are required to order convicted persons to pay the costs of investigation and prosecution to the National Consumer Agency, unless there are special and substantial reasons against doing so. Aggrieved consumers may apply for compensation orders on conviction of a trader, which a court may order in addition to any

other fine or penalty. In relation to certain offences, the court may order the publication of corrective statements by the convicted trader. Provision is also made for on-the-spot fines for price display and product-pricing offences.

Adverse publicity and guidance

The agency may keep a list – the 'Consumer Protection List' – of persons convicted, fined, the subject of compliance orders and those who have given undertakings, and it may publish it. There are protections for people reporting breaches of the act, and traders or trade organisations may submit codes of practice for the agency to review and approve, which may be relied upon in court proceedings. The agency may also publish guidelines.

The act replaces a large body of consumer protection law going back to 1887. The act also provides for consumer protection in the financial services sector in section 94, and there is provision

for directions to be given on health and safety grounds.

Concluding his introduction of the bill in the Seanad, Minister Micheál Martin summarised: "The bill represents a fundamental realignment of national consumer policy by establishing a new agency with much expanded and enhanced powers and creating a forceful new consumer advocate, a role lacking in public debate and policy-making in recent years. The bill replaces nine existing acts with a single statute. This represents a significant gain in the accessibility and transparency of our consumer protection code and one that I am determined to extend to the remaining areas of that code."

With sufficient resources available to the National Consumer Agency, it has the potential to deliver a sharp correction to 'rip-off Ireland'. ■

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



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a very PRIVATE affair

The parameters of privacy law are undergoing rapid change, with technology allowing cheap and effective tools for interfering with the privacy of others. But Irish privacy law remains in a state of flux, writes Denis Kelleher

At present, the parameters of privacy law are undergoing rapid change. Last year saw the publication of the *Privacy Bill 2006*, although it never got beyond first stage in the Seanad, and a number of recent judgments have had considerable implications for privacy law. However, the really significant changes are not occurring in courts and legislatures but rather in the fields of technology and online communications.

Technology has created cheap and effective tools for interfering with the privacy of others. Camera phones are probably the best example, but whole ranges of monitoring devices are now available at low cost that require minimal skills to set up. This means that private citizens have access to surveillance equipment vastly superior to what was only available to the secret police of repressive regimes just a couple of decades ago. Websites such as Bebo and YouTube make publishing the material gathered by such devices straightforward. Private citizens can now publish material derived from such surveillance to the whole world. A couple of decades ago, the principal threats to an individual's privacy were the press and the police. Since the vast majority of people were neither sufficiently delinquent nor important to merit the attention of either group, privacy was not a major issue. Now the principal threats to an individual's privacy are that individual's fellow citizens: his neighbours, employers, friends and acquaintances.

Two recent decisions on the right to privacy may have implications for Irish law. *Copland v United*

Kingdom may require that Ireland legislate specifically for workplace monitoring, and *Wainwright v United Kingdom* may require Ireland to provide a more general tort of privacy – if this issue has not already been dealt with by the High Court in *Gray v Minister for Justice*.

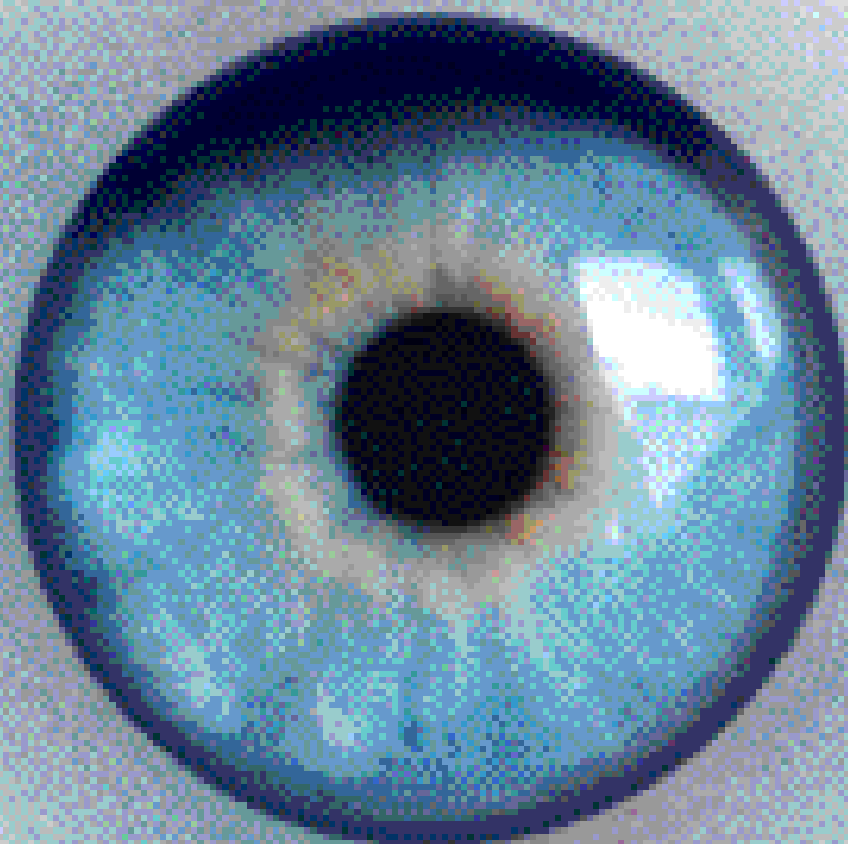
Journey into fear

One key area where privacy is under threat is the workplace. Article 8(1) of the *European Convention on Human Rights* (ECHR) provides individuals with a right to privacy. Article 8(2) provides for exceptions to this right. In *Halford v United Kingdom*, the European Court of Human Rights (ECtHR) held that, where an employee was not warned that her calls would be monitored, she then had a reasonable expectation as to the privacy of calls made from her work phone. In *Copland v United Kingdom*, this ruling was extended to email and internet usage. In *Copland*, the applicant was employed as a personal assistant to the members of the senior management of a college in Wales. The college intensively monitored the applicant's phone, email and internet browsing. The ECtHR held that "the collection and storage of personal information relating to the applicant's telephone, as well as to her email and internet usage, without her knowledge, amounted to an interference with her right to respect for her private life and correspondence".

The college had no internet-usage policy in place at the time that the monitoring took place, but it is not clear from the judgment that the existence of such a policy would have ensured that the

MAIN POINTS

- Right to privacy in Irish law
- Recent ECtHR and Irish decisions
- Requirement that Ireland legislates specifically for workplace monitoring?





monitoring was “in accordance with the law”. The court noted that, to be in accordance with the law, “there must be a measure of legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by article 8(1). This is all the more so in areas such as the monitoring in question, in view of the lack of public scrutiny and the risk of misuse of power.”

The ECtHR was of the view that any law that permitted monitoring would have to be compatible with the rule of law. This means that, in order to fulfil the requirement of foreseeability, a law must “be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which, and the conditions on which, the authorities are empowered to resort to any such measures”.

The ECtHR noted that there was no domestic law regulating monitoring in Britain at the time. This led the court to the conclusion that the interference was not in accordance with the law in this case. The ECtHR was careful to make it clear that it was not saying that monitoring of employees was illegal unless the monitoring was regulated by a domestic law such as the *Communications (Lawful Business Practice) Regulations 2000*, which was enacted by Britain in the years after the events gave rise to this action. The ECtHR stated that: “The court would not exclude that the monitoring of an employee’s use of a telephone, email or internet at the place of work may be considered ‘necessary in a democratic society’ in certain situations in pursuit of a legitimate aim.”

But the ECtHR declined to pronounce further on this issue. The ECtHR might consider that monitoring where an employer had an acceptable-use policy, of which employees were aware and to

which they had agreed, would be permitted by article 8(2) of the ECHR. But the ECtHR would appear to prefer that workplace monitoring be regulated by legislation. The ECtHR did not rule out the possibility that workplace monitoring could occur where regulations had not been enacted – but such monitoring would only occur in “certain situations”. The ECtHR did not define what these situations might be. The decision in *Copland* means that Ireland might prudently consider legislating for monitoring in the workplace.

Above suspicion

Copland would seem to suggest that some regulation of workplace monitoring is required. Another requirement of the ECHR is that Ireland must provide “an effective remedy” to those whose rights are violated. In *Wainwright v UK*, the applicants were visiting a relative in a prison that had an endemic drug problem. The applicants were incorrectly suspected of smuggling illegal drugs into the prison and were subjected to a strip search. The ECtHR held that these searches were a breach of the applicants’ right to privacy under the ECHR. The ECtHR then examined whether Britain had provided the applicants with an effective remedy for this breach. The ECtHR held that it did not, as the House of Lords had decided that “there was no general tort of invasion of privacy”.

One of the purposes of the *Privacy Bill 2006* was to provide for such a tort. Of course, Irish law differs from English law in that Ireland has a constitutional right to privacy. The argument can be made that this constitutional right provides the effective remedy required by the ECHR. Quirke J recently reviewed this remedy in *Gray v Minister for Justice*. In this case, the plaintiffs were a family who had moved from Dublin to Kerry. Unfortunately, a nephew of the family joined them there following his release from prison, where he had served a lengthy sentence for violent rape. The nephew became a suspect in a garda investigation into serious sexual offences and local gardaí sought to interview him at the family’s home.

Subsequently, the fact that a convicted rapist had moved from Dublin to Kerry became local and national news. As a result, the family left Kerry and went back to Dublin. They lived in a B&B for six months, spending their days in the family car and eating in fast-food restaurants. The mother became significantly depressed and contemplated suicide. The family initiated a claim for damages against the state, alleging that information relating to the nephew had been leaked by the gardaí to the media. Quirke J held that “a member ... of An Garda Síochána negligently disclosed confidential and sensitive information to an organ of the media”.

The difficulty with this judgment from a privacy perspective is that, while Quirke J referred to the plaintiffs’ right to privacy, he would appear to have

actually awarded damages against the defendant because of the “negligence” of the gardai. Specifically, Quirke J stated: “I am satisfied that the unlawful and negligent disclosure by a member ... of An Garda Síochána of the relevant information ... comprised a violation of the ... right enjoyed by ... the plaintiffs to privacy.”

The looking-glass war

Quirke J appears to have regarded the breach of the plaintiffs’ privacy as being a consequence of the defendant’s negligence. One interpretation of this judgment might be that Quirke J did not treat the breach of the plaintiffs’ privacy as being a cause of action. Quirke J appeared to regard the plaintiffs’ cause of action as being primarily one of negligence. Instead, Quirke J appeared to treat breach of privacy as being a head for the assessment of damages. The difficulty with this interpretation is that Quirke J did not assess damages for breach of privacy – instead, he assessed the plaintiffs’ damages purely in terms of the distress, upset and inconvenience that was caused to them, just as he might assess damages in any other negligence case. Unlike *Kennedy & Arnold v Attorney General*, *Gray* was not a decision purely about the right to privacy. In *Gray*, a number of different causes of action were mixed together: negligence, breach of confidence and breach of privacy. It is clear from the judgment that Quirke J gave the most weight to the defendant’s negligence, but it is not clear how much weight he attached to the other causes of action.

Gray undoubtedly extends the ruling of the High Court in *Hanahoe v Hussey*. In that case, it was held that the leaking to the media of the news that the gardai were about to search the offices of a highly

“So future claimants who wish to seek damages for breach of their privacy by the state may only need to prove negligence – not that the state deliberately breached their privacy”

reputable solicitor was misfeasance of public office by servants of the state. *Gray* means that, in future, plaintiffs may not have to establish misfeasance in similar cases – they may only have to establish negligence. This may make it much easier to establish similar claims in the future. *Gray* similarly extended the rule of the High Court in *Kennedy & Arnold*. In *Kennedy*, the High Court held that the state’s deliberate bugging of the plaintiffs’ telephone breached their privacy. In *Gray*, it held that the plaintiffs’ privacy had been breached by the state’s negligence. So future claimants who wish to seek damages for breach of their privacy by the state may only need to prove negligence – not that the state deliberately breached their privacy.

Gray ensures that those who sue the state for breach of privacy may have a more effective remedy. But the state and its officers are subject to very different duties than private citizens. It may not be possible to stretch the judgment of Quirke J in *Gray* far enough to create something analogous to the general tort of invasion of privacy that the ECtHR seemed to require in *Wainwright*. So it may be argued that, following the decision in *Gray*, Irish law still does not provide the “effective remedy” for victims of privacy breaches that is required by article 13 of the ECHR.

The human factor

Irish privacy law remains in a state of flux. The Irish print and broadcast media made its opposition to the *Privacy Bill 2006* very clear. Those media point to the controls that are offered by the *Defamation Bill 2006*, which would establish a press council. One of the principal objects of that council would be to “ensure that the privacy and dignity of the individual is protected”. The difficulty is that there is a variety of new media such as YouTube, Bebo and MySpace, where privacy can be breached in a whole variety of new ways. By definition, a private individual posting material on such a site will not be subject to the dictates of the press council.

It seems highly unlikely that a mechanism such as the proposed press council could be extended to such sites, but even if it could, publication is not necessary to breach another’s privacy. The development of modern communications technologies, and the development of a society where such technologies are pervasive, mean opportunities for breaching the privacy of others are multiplying. The challenge for the state is to ensure that individuals can effectively protect their right to privacy – on and offline – while ensuring that the right to freedom of expression provided by the Constitution and the ECHR is not unduly restricted. **G**

Denis Kelleher is a barrister and advisory counsel in the Office of the Attorney General. Views expressed in this article are his personal views.

LOOK IT UP

Cases:

- *Copland v United Kingdom*, 62617/00 [2007] ECHR 253 (3 April 2007)
- *Gray v Minister for Justice*, High Court, unreported, [2007] IEHC 52
- *Halford v United Kingdom*, 20605/92 [1997] ECHR 32 (25 June 1997)
- *Hanahoe v Hussey* [1998] 3 IR 69
- *Kennedy & Arnold v Attorney General* [1987] IR 587
- *Wainwright v United Kingdom*, 12350/04 [2006] ECHR 807 (26 September 2006)

Legislation:

- *Communications (Lawful Business Practice) Regulations 2000*
- *Defamation Bill 2006*
- *European Convention on Human Rights*, article 8(1)
- *Privacy Bill 2006*

THIS OLD

MAIN POINTS

- General Conditions of Sale
- Condition 36 – the 'vendor's warranty'
- The warranties covered by Condition 36
- Implications of deleting Condition 36

Condition 36 of the Law Society's General Conditions of Sale is often deleted, shifting the burden of planning investigation and compliance to the purchaser. John Gore-Grimes points out solicitors' responsibilities and asks whether the condition is a benefit or a burden

When the full implications of Condition 36 are realised, it is easy to understand why it is so frequently deleted in conveyancing transactions. The warranty that the vendor offers in Condition 36 is now so wide and goes back for so many years, that it is almost impossible to stand over it except in cases of recent development.

Condition 36 provides great comfort to the purchaser where it is not deleted but, in many cases, it might be asked whether the vendor realises the full extent of the warranty. The Condition 36 warranty is the vendor's warranty. It is *not* the vendor's solicitor's warranty.

In effect, by allowing Condition 36 to stand in a contract, the vendor warrants that:

- 1) No development has taken place since 1 October 1964 for which planning permission or bye-law approval was required.
- 2) Where development has taken place since 1 October 1964, planning permission and bye-law approvals were obtained (except in respect of matters of trifling materiality) and the conditions in the permissions were complied with substantially in relation to development on the site.
- 3) Unless altered by special condition, the vendor's warranty guarantees, in relation to the design or development of any property or any use, that it is in substantial compliance with the *Building Control Act 1990*.
- 4) All permissions and approvals under the planning acts (and, if relevant, under the building bye-laws) will be made available to the purchaser.
- 5) Fire safety certificates and (if available) commencement notices under the *Building Control Act 1990* referable to the property will be furnished.

- 6) Except for any developments intended to be carried out between the date of sale and the date on which the sale should be completed, the vendor will, prior to completion, furnish to the purchaser written confirmation from the local authority about payment of all financial contributions or the furnishing of bonds contained in planning permissions or fire safety certificates (if any), but this only applies in cases where the consents relate to a residential development that forms part of a residential housing estate.
- 7) The vendor will furnish to the purchaser a certificate or opinion from an architect or an engineer or other professionally qualified person competent to certify and confirm in relation to all planning permissions, bye-law approvals (if applicable) and building regulations. The certificate or opinion must relate to the subject property and, where applicable, confirm that the design of the buildings is in substantial compliance with the *Building Control Act 1990* and applicable regulations and that the

JIGSAW PUZZLE

The 'General Conditions of Sale' refers to the Law Society's standard conveyancing contract for the sale or purchase of an interest in property. The terms of this contract will determine the rights and duties of the buyer and seller. The current edition of this contract is the 2001 (revised) edition. This standard contract for sale is used in all types of property transactions and it provides a fair balance of rights between a vendor and purchaser. It deals, among other things, with the type of interest being sold, its physical location, title and when completion of the transaction will take place.

HOUSE



development of the property has been carried out in substantial compliance with the planning permission and in compliance with the provisions of the *Building Control Act 1990* and the relevant regulations.

19th nervous breakdown

Tracking the planning history of a development back to 1 October 1964 has, in many cases, become an impossibility. The records of the planning authority are often patchy, to say the least. Memories fade and, since 1964, a very large percentage of property in Ireland has changed hands many times. It is impossible, or almost impossible, to build a

complete picture that will enable a vendor to give a Condition 36 warranty – and that is why it is frequently deleted.

It is sometimes overlooked that the Condition 36 warranty is the vendor's warranty. It is therefore essential that the vendor realises the implications of the warranty that he is giving to a purchaser. On occasions, contracts are sent out by a solicitor on a vendor's behalf and the vendor has either no idea of the extent of the warranty being given or, more commonly, he is not aware that any warranty whatsoever is being given. There is only one safe way to deal with this. In preparing a contract and collecting details from the vendor, the vendor should

A full planning check might alert prospective purchasers that their desired property is not quite up to scratch

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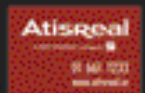
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AROUND AND AROUND

Until a planning amnesty becomes a reality, solicitors will be left in a limbo situation. In summary, and while we remain in limbo, the following guidelines must be followed as a minimum:

- 1) Fully explain the meaning of the warranty offered by Condition 36 to a vendor client.
- 2) Always think before deleting clause 36. In a spirit of co-operation, we should all try to assist a transaction so that it closes quickly and without difficulty. If a vendor's solicitor is satisfied from the investigations made that there are no planning defects and that the vendor is happy to warrant such, then Condition 36 should not be deleted. If, on the other hand, a vendor's solicitor is not so satisfied, then Condition 36 must be deleted.
- 3) If Condition 36 is deleted, the onus shifts in relation to all planning and building regulations matters from the vendor to the purchaser. The purchaser must therefore make all enquiries necessary that, in all but the simplest cases, will involve employing an architect, engineer or town planner to inspect the property and to inspect the local authority files.
- 4) Never take responsibility for other people's planning defects. If a development or part of a development does not have planning permission, then the only advice you can give to a client is that retention permission must be obtained. It is a matter for the client, and not for the solicitor, to decide whether or not to proceed with the application for retention permission. The client needs to be advised of the consequences of making a retention application.
- 5) Always include planning defects in the 'qualifications' section of a financial institution's certificate of title.

be advised (preferably in writing) of the extent of the warranty that is being given. A letter containing points 1 to 7 above would be a very comprehensive explanation, but it could be shortened and made more user-friendly. It might be sufficient to say that, in signing a contract for sale, the vendor is warranting that all matters relating to planning, bye-laws and building regulations are in perfect order and that there is no unauthorised development. If the warranty that the vendor is asked to give in all Law Society contracts is not explained, then it is open to the vendor to say that he did not know about it and that, if he had known, he could not possibly have given such a warranty. He would say that he certainly would not have given any warranty without notice of it. If a vendor denies that he was advised of the warranty contained in Condition 36 then, in the event of the warranty being seriously

"Where a planning warranty has been deleted it is often (but not always) a danger signal"

LOOK IT UP

Legislation:

- *Building Control Act 1990*
- *European Communities Act 1972*
- *Local Government (Planning and Development) Acts, 1963-2006*

Literature:

- *Local Government (Planning and Development), General Policy Directives 1982 and 1988*

defective, it is the vendor's solicitor who will be liable for the consequences.

In general, it is likely that the warranty required by Condition 36 is unsafe unless the vendor is personally aware of the full planning history of the development back to its 'development date', unless it was developed prior to 1 October 1964. If Condition 36 is not deleted, the vendor warrants an absolutely clean bill of health in relation to planning and building-control legislation.

Beast of burden

When a vendor's solicitor deletes Condition 36, the burden in relation to a planning investigation and in relation to planning compliance is shifted from the vendor to the purchaser. Where a purchaser's solicitor sees that the planning warranty has been struck out, he will be immediately suspicious. He will expect that there may be some serious planning defects. The purchaser *must* be advised by his solicitor that Condition 36 has been deleted, and the implications of that deletion must be fully explained. Where a planning warranty has been deleted, it is often (but not always) a danger signal.

Invariably, it will be necessary to employ an architect or planning consultant to examine the planning history of the premises and to scrutinise the planning files. If any planning defects are found (no matter how trivial), a solicitor must advise his client in writing. He must seek written instructions confirming that the client has been so advised and, if it is the case, the instruction should state that the client intends to proceed with the transaction. As a solicitor, you must *never* take responsibility for other people's planning defects. Most importantly, where planning defects are disclosed or where they are detected, they should always be included in the 'qualifications' section of a certificate or title where the purchaser is obtaining a loan from a financial institution.

(Can't get no) satisfaction

There is, of course, an absolute and pressing need for a 'planning amnesty'. Both the Law Society and the Law Reform Commission have advocated a planning amnesty but, so far, the Oireachtas has not listened to these recommendations. We cannot continue to look back over the past 43 years to 1 October 1964. A planning amnesty – which might, for example, provide that no investigation is required in respect of any development completed more than 15 years ago – is an immediate requirement. If a development contains planning defects, that development should be deemed by the amnesty to be in full compliance with all planning and building regulations' legislative requirements once 15 years have passed since the development was completed. **G**

John Gore-Grimes is partner in the Dublin law firm Gore & Grimes.

MAIN POINTS

- Legality of Mahon Tribunal leaks
- Free speech rights of the press and whistleblowers
- Constitutional rights of individuals in respect of disclosures

The recent systematic leaking to the press of Mahon Tribunal briefing material relating to the finances of the taoiseach makes for riveting reading and opportunist politics, but is it legal? Pamela Cassidy mops the floor

With a Garda investigation underway, the leaks of Mahon Tribunal briefing material to the press is an issue that may be troubling more than one newspaper editor who believed himself safe after the Supreme Court ruling last March that set aside a blanket-ban injunction on disclosure.

The consequences of the unauthorised publications have been sensational. The taoiseach's reputation and fitness to govern were questioned at the start of a general election campaign. It was rumoured that the government was on the brink of collapse. The tánaiste demanded a public statement and the taoiseach released material that almost certainly anticipates his evidence to forthcoming tribunal hearings. The disclosures have been variously blamed on the tribunal, on recipients of the briefing material, opposition leaders and the tánaiste, with accusation and counter-accusation taking centre stage. It all makes for good press and, perhaps, clever political timing.

It also brings to the fore two fundamental issues, the first being whether it is appropriate that a tribunal of inquiry can to be used to facilitate political opportunism and reputational attack.

The second is the protection of the free-speech rights of the press and of whistleblowers. Free speech has long proved to be a trump card in European convention jurisprudence, as any restriction on this right must be proportionate, necessary and prescribed by law (see panel).

Fix it, dear Henry

Both senior judges chairing the Tribunal of Inquiry into Certain Planning Matters and Payments have taken steps to protect the confidentiality of tribunal procedures. Their concerns are that the systematic leaking of information to the press affects due process, damages confidence in the working of the tribunal and interferes with the constitutional rights of participants. Although voluntary co-operation is not essential – the tribunal has statutory powers to compel the production of documents – it obviously helps, and the tribunal expressed concern that volunteers may be affected “by fear that confidential information disclosed by them would be published”.

In 1998, the tribunal devised a protocol to protect information that was ‘confidential’. To a lawyer, this means information that is *legally* confidential. In practice, the tribunal went further and directed that *all* information – intrinsically confidential or not – circulated in briefing notes prior to public hearings was confidential.

In 2004, the *Sunday Business Post* published two articles incorporating material from tribunal briefing notes. Some of this material was already in the public domain, for example, documents of title and company records. The tribunal asked the journalist to identify his source and return the material. Days later, the paper published a third article, which included material contravening a tribunal direction as to non-identification.

The journalist subsequently refused to reveal his source and return confidential material, which, he said, he had destroyed. The tribunal successfully applied *ex parte* to the High Court for an injunction restraining “the newspaper and persons having knowledge of the injunction from publishing or using information or reproducing any document in relation to which the tribunal has directed that such information should remain confidential until disclosed at public hearing of the tribunal or as otherwise directed by the tribunal; OR which the tribunal has circulated on a confidential basis to any party or witness to the tribunal (a) before such

FREEDOM OF EXPRESSION

Bunreacht na hEireann, article 40.6.1

“The state guarantees liberty for the exercise of the following rights, subject to public order and morality:
The right of citizens to express freely their convictions and opinions.”

European Convention on Human Rights, article 10

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”



in my bucket

information has been disclosed or read at a public hearing of the tribunal; OR until the tribunal has given express permission for the publication or use of such information.” That injunction remained in place until March 2007.

With what shall I cut it?

In 2005, the High Court rejected the tribunal’s application to make the injunction permanent.

Kelly J held that its terms were too wide and, had the tribunal been “less ambitious” and confined its claim to documents that it obtained in confidence, “there might be something to be said for the court’s intervention”, although he was doubtful about whether the tribunal could create a sufficiently precise, minimal impact, claim. He set aside the injunction, but it was reinstated pending appeal.

ENFORCING COMPLIANCE

Tribunals of Inquiry (Evidence) (Amendment) Act 1997, section 4

"Where a person fails or refuses to comply with or disobeys an order of a tribunal, the High Court may, on application to it in a summary manner in that behalf by the tribunal, order the person to comply with the order and make such other order as it considers necessary and just to enable the order to have full effect."

Tribunals of Inquiry (Evidence) (Amendment) Act 2002, section 7

"A person who, without reasonable cause, by act or omission obstructs or hinders an investigator in the performance of his or her functions under section 6, or fails or refuses to comply with a requirement made to the person under subsection (4) of that section, shall be guilty of an offence.

"A prosecution for an offence under this section may be brought only by or with the consent of the Director of Public Prosecutions.

"A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both."

The following year saw another serious leak, with publication in *The Irish Times* of a confidential letter of request from the tribunal to a potential witness, relating to the taoiseach's finances. The tribunal acted immediately: the editor and journalist were ordered to return the material, reveal the source and explain how they came to breach the injunction. They replied that the material was unsolicited, was now destroyed, and they were unaware of the injunction. At a public hearing, they maintained this position and declined to answer questions. The tribunal referred the matter to the High Court under section 4 of the 1997 act (see panel), seeking an order compelling compliance. This case is now at submissions stage.

The axe is too dull

The Supreme Court gave judgment in the *Sunday Business Post* case in March 2007. The court noted that the legal basis for the tribunal's requested injunction was confidence, and ruled that the law of confidence does not protect information that is not intrinsically confidential and, furthermore, does not permit a third party (the tribunal) to vindicate the rights of others. Additionally, "the

tribunal accepts that there is no provision in the *Tribunals of Inquiry Acts* conferring ...

confidentiality on the tribunal or ... its workings", and that "the tribunal, while referring to section 4 of the *Tribunals of Inquiry (Evidence) (Amendment) Act 1979*, does not claim that an order has been made pursuant to that provision or even that the section authorises such an order". The free-speech restriction was not, therefore, prescribed by law and could not stand.

While that disposed of the matter, the court also concluded that any such injunction must fail the proportionality and necessity test for free-speech restriction in article 10. Fennelly J ruled that "the tribunal seeks an order which will restrict freedom of expression. It claims that the press should be restrained from publishing information which it has designated as confidential. It has not been able to identify any legal power which it possesses to designate information released by it in that way. It seeks an order in very wide terms in respect of unspecified information, which would affect the entire media." The *Sunday Business Post* journalist was merely rebuked for breaching the identity order of the tribunal, the appeal was dismissed and the injunction set aside.

In what shall I fetch it?

There was a word of warning, however, from the court, which drew a distinction between the tribunal's investigative acts and its hearings. This distinction may prove to be crucial in the future. "Clearly ... none of this concerns the confidentiality of the private proceedings of the tribunal in its investigative phase, conducted prior to the decision to go on to public hearings and to circulate briefs. That is the ordinary right to confidentiality that a body possesses in respect of ... its own internal activities. Nobody, whether in or out of the media, has the right to invade or trespass upon the internal workings of any individual or organisation." It remains to be seen, therefore, whether the High Court will endorse the tribunal's right to question journalists about the source of disclosures relating to non-briefing material.

The judgment leaves unanswered the vital question of how the tribunal can accommodate the delicate balance between free-speech rights and the integrity of their procedures with regard to briefing papers. As it stands, the tribunal cannot, by the law of confidence, protect and vindicate the constitutional rights of individuals in respect of such disclosures. Vindication is for the courts in individual civil actions in defamation, confidence or privacy at the suit of the aggrieved person. The remedy for the tribunal may lie in carefully-crafted statutory intervention. **G**

Pamela Cassidy is principal of Dublin law firm Cassidy Law.

LOOK IT UP

Legislation:

- *Bunreacht na hÉireann*, article 40.6.1
- *European Convention on Human Rights*, article 10
- *Tribunals of Inquiry (Evidence) (Amendment) Act*, 1979
- *Tribunals of Inquiry (Evidence) (Amendment) Act 1997*, section 4
- *Tribunals of Inquiry (Evidence) (Amendment) Act 2002*, section 7

NOTES *from* underground

In the second part of a two-part analysis, Frank Buttimer looks at the new offences created by the miscellaneous provisions of the *Criminal Justice Act 2006*

MAIN POINTS

- *Criminal Justice Act 2006*, miscellaneous provisions
- New offences created
- Broad-ranging and potentially all-embracing charges

The miscellaneous provisions in the *Criminal Justice Act 2006* introduce a number of new offences, as well as, among other things, providing for amendments of existing laws and increases in judicial powers.

Section 176 makes it an indictable offence for any person having authority or control over a child or an abuser to intentionally or recklessly endanger a child by doing certain things. There is not, in fact, a definition under this section for authority or control. Presumably this is intentional, and is

probably therefore something that is designed to cover a range of possibilities and, for example, would probably apply to parents, teachers, baby-sitters, kindergarten school operators, school-bus drivers, sports coaches and any other possible range of such persons. An 'abuser' is defined as an individual believed by a person who has authority or control over that individual to have seriously harmed or sexually abused a child or more than one child.

The firm

This is a most interesting potential category of individuals. In order for a person to be deemed an abuser, the act states that this person must be under the authority or control of a person of the category outlined above – in other words, must be delegated or under the direction of the individual with control, and then the person with that control or power of delegation must believe that the person onto whom the power or control has been delegated has previously engaged in harm or abuse of children. A practical example would be, presumably, where somebody who would ordinarily be deemed to have control over a child and who then in turn leaves that child in the care or under the control of an abuser, does so in the belief that this person has previously harmed or sexually abused a child.

The section sets out that intentional or reckless endangerment can occur by such a person causing or permitting any child to be placed or left in a situation that creates a substantial risk to the child of being a victim of serious harm or sexual abuse or, alternatively, that a person may be guilty by failing to take reasonable steps to protect a child from such a risk, knowing that the child is in such a situation.

Risky business

The potential of this section is enormous. It only deals, one must remember, with the issue of risk of serious harm or sexual abuse. In order for one to be guilty of this type of offence, it is not at all necessary for any actual harm or abuse to befall the child – merely the risk of it. Other legislation, such as the *Children Act 2001* (section 246), deals with situations where people having care of children can commit offences whereby harm may be caused to such a child.

This particular new section certainly racks up the seriousness or the potential in terms of consequence for carers. Anybody who is in the legal capacity of advising schools, health boards, individual teachers or anybody of a category mentioned above will be well advised to bring this section to the attention of those who might be affected by it. A prosecution can only occur in this particular case with the consent of the DPP, which is an indicator of the seriousness of the charge. All I can say about this particular section is to 'watch this



"Intentional or reckless endangerment can occur by a person causing or permitting any child to be placed or left in a situation that creates a substantial risk to the child of being a victim of serious harm or sexual abuse"

space' and see what develops in terms of circumstances, which will probably be wide-ranging in terms of possibility and consequence.

Eyes wide shut

Section 181 deals with a situation where an application can be made in criminal proceedings to prohibit the publication of information identifying a person as having a medical condition. The section does not define or delineate the medical conditions that are subject to this act, but the act certainly says that, in order for the judge to apply the section, he or she must be satisfied that:

- The condition exists,
- The identification of the person as having the condition in question would be likely to cause undue distress to that person, and
- The order would not prejudice the interests of justice.

One can imagine scenarios to which this section would apply, especially for people who have certain communicable diseases such as AIDS, hepatitis, or types of ailments that carry a degree of public odium, and probably also in reality where the condition has some bearing on certain aspects of the facts pertinent to the charge or prosecution.

Certain practical implications pertaining to the application for a prohibition on publicity are set out in the section. The section also goes on to deal with the offences that exist for non-compliance with the order of the court in terms of prohibition of publication and also certain defences that apply in the event of such breach. Interestingly, breach of an order is prosecuted under subsection (a) and can only be dealt with on indictment.

Minority report

Section 182 deals with situations where a garda superintendent may apply to the High Court for an order to oblige disclosure of information in relation to any trusts in which any person may have an interest, or with which the person may have a connection.

The application can only be made to the High Court, and the order can only be granted if the judge is satisfied that there are reasonable grounds for suspecting that a person has committed an arrestable offence (an offence punishable on indictment to a term of imprisonment of at least five years) – and that the person has some interest or connection with the trust, that the information is required for the purpose of an investigation, and that there are reasonable grounds for believing that it is in the public interest that the information should be disclosed.

The High Court can order the trustees of the trust and any other person to disclose to the superintendent, or other member of the gardai, information as may be required by the superintendent for the above purposes.

In order for this section to have force, quite obviously the superintendent will have to be able to satisfy the High Court as to the necessity for making the order. Presumably, he or she would therefore have to be in possession of certain information, just as, in the ordinary course of events, a garda would give information to satisfy a commissioner or district judge with regard to a routine application for a warrant.

The act sets out penalties for non-compliance and confirms that offences can be tried either summarily or on indictment.

Top gun

Section 183 creates the offence of possession of articles with the intent to use such articles in the course of, or in connection with, an offence under section 15 of the *Non-Fatal Offences Against the*

Person Act 1997 (which deals with allegations of false imprisonment) or in connection with a kidnapping.

The section says that the court or jury may consider possession as sufficient evidence of intent – having regard to all the circumstances and where the court or jury considers it reasonable to do so. In effect, this may well reverse the burden of proof and cause the accused individual to have to justify the possession of the relevant article, unlike current or existing legislation to do with possession of articles under the *Firearms and Offensive Weapons Act 1990*, where there are existing defences built into the legislation. Offences are only triable on indictment and only with the consent of the DPP. An article is not defined specifically, but may include any substance, document or thing.

This is, again, a very broad-ranging and potentially all-embracing charge, and is clearly designed to cover the range of possible uses of objects, articles or things that might be in any way open to being used in connection with any of the offences set out in the act. The section confirms the definition of 'article' as including a substance, a document or anything. **G**

Frank Buttimer is partner in Cork law firm Frank Buttimer and Co.

LOOK IT UP

Legislation:

- *Children Act 2001* (section 246)
- *Firearms and Offensive Weapons Act 1990*
- *Non-Fatal Offences Against the Person Act 1997* (section 15)



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AIN'T misbehavin'

When a solicitor comes on record for a client in a personal injuries action, insurers should deal exclusively with the solicitor. But certain insurance companies have taken the opportunity to deal with the claimant directly, writes Stuart Gilhooly

Forget PIAB and the whole new personal injury litigation environment: a subject that has exercised certain litigation practitioners more than anything over the last three years has been the behaviour of one or two insurance companies towards their clients.

While Quinn Direct's methods have meant that they are rarely on most solicitors' Christmas card lists, we can at least be sure that when a solicitor comes on record for a client, they will abandon the fast-track settlement procedure and deal exclusively with the solicitor.

Before PIAB, this would be the expected norm, and any insurance company that attempted to contact a client directly after the engagement of a solicitor would get very short shrift. However, PIAB's initial *modus operandi* of writing to the claimant and only copying the solicitor (before being slapped on the wrist by the decision in the *O'Brien* case) meant that certain insurance companies saw an opportunity to approach the claimant directly.

Squeeze me

Leader of this new movement has been AXA Insurance. To begin with, it, in fact, ignored the solicitor altogether but soon agreed to deal with the solicitor when on record. However, it continued to send copies of all correspondence with the solicitor directly to the claimant.

This has created untold annoyance and confusion, both with claimants and their solicitors. One such claimant, Stephen Domican, became totally fed up and instructed his solicitor, Harry Ward of HJ Ward & Co, that he did not wish to receive any more correspondence, as he had instructed Harry Ward to act for him and could not understand why he was receiving correspondence he neither sought nor understood.

His solicitor advised him to sign an authority setting out his desire to have all correspondence sent to his solicitor only and making it perfectly clear that he did not wish to receive any more communication from the insurer. The authority finished with the words "please do not contact me". The authority was sent to AXA with a clear statement that any further correspondence with the claimant personally would result in an application for an injunction to restrain any further communication.

AXA, having received this letter of authority, completely ignored it, continued to correspond with him and, in fact, made an offer of settlement directly to the claimant. Proceedings were then issued in the High Court by way of plenary summons and notice of motion seeking to restrain AXA "from interfering in the solicitor/client relationship between the plaintiff and his solicitor by communicating ... directly with the plaintiff ... or otherwise howsoever harassing or molesting the plaintiff".

Jitterbug waltz

The case, *Domican v AXA Insurance Limited*, was heard by Mr Justice Frank Clarke in December 2006, and he gave judgment on 19 January 2007. Before dealing with the issue at hand, he made some very interesting observations. Domican's solicitors had advised him to wait for a PIAB assessment, as AXA's offers were almost invariably less than the assessment. Mr Justice Clarke found this to be reasonable advice.

He also observed that a line in AXA's correspondence to the claimant, that PIAB would take up to a year before making an award, was "interesting", in that "a significant insurance company appears to be suggesting to those who may have claims against it that there are delays in PIAB which are holding up the early resolution of proceedings ... If it were true that the existence of PIAB was acting as

MAIN POINTS

- Personal injury litigation
- Offer of settlement directly to the claimant
- High Court case on solicitor/client relationship



a barrier to early settlement of any significant number of cases, it would amount to an unfortunate consequence of legislation introduced to improve and streamline the resolution of straightforward personal injury litigation."

He went on to find that, although AXA was entitled to arrange a medical examination, the claimant had no obligation to attend such an examination until proceedings had been issued. He found that AXA was foolish to arrange such an examination until the claimant had agreed to attend.

Honeysuckle rose


Ultimately, however, he had to decide whether the copying of correspondence (making settlement offers, arranging medical examinations and seeking responses to certain questions) directly to the claimant, against his wishes, constituted an interference with the solicitor/client relationship. He decided that this did not constitute a "significant or material" interference.

He went on to say that "if it were to transpire to be the case that any actions of a party such as AXA were designed to or would, objectively speaking, be likely to, undermine the solicitor/client relationship

in any material respect, then I would come to a different conclusion ... There may well be circumstances where the copying of such correspondence directly to the client might be reasonably understood by a client to amount to a suggestion on the part of the insurers that the client's best interests were not being looked after by the solicitor concerned. In such circumstances, the direct copying of correspondence might give rise to different inferences and might amount to a material interference in the solicitor/client relationship. Nothing in this judgment should be taken, therefore, as implying that the copying of correspondence is always, and in all circumstances, lawful. Similarly, the volume of the communication, or its manner, might, in a different case, amount to nuisance, harassment or molestation."

This, however, was not the case in relation to Stephen Domican, and he dismissed his application.

It seems, therefore, that the bar has been set at quite a high level, and either a high volume of correspondence or an attempt to influence the claimant with adverse comment about the solicitor would be required to restrain an insurer from direct correspondence.

In the meantime, it seems likely that AXA and other insurers, which now include Hibernian, will continue to operate close to, but within, the margins of the law, and we have no choice but to grin and bear it. It is essential that your client be apprised of this and that no decisions should be made without consultation with you. 

LOOK IT UP

Cases:

- *O'Brien, Declan v Personal Injuries Assessment Board* [2006] IESC 62; [2007] 1 ILRM 304
- *Domican v AXA Insurance Limited* [2007] IEHC 14

Stuart Gilhooly is a partner in HJ Ward & Co.

STONE

do not a prison make

The *Prisons Act 2007* provides for legally-aided hearings in respect of a prisoner's loss of remission, but there is no equivalent procedure yet for the revocation of temporary release. Cathal Ó Braonáin opens the case file

There is in Ireland a right to legal aid for most people charged with a criminal offence. It is well established that the state should provide free legal representation to those people at risk of losing their liberty, but unable to afford legal professionals. Circumstances exist, however, where a person's right to liberty is at stake where there is no provision for legal aid. This incongruity arises most commonly regarding the revocation of licences for temporary release and prison disciplinary proceedings resulting in loss of remission.

Article 6.3.c of the *European Convention on Human Rights* includes a right for those charged with a criminal offence "to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require".

The European Court of Human Rights (ECtHR) has developed a substantial line of authority broadening the definition of the phrase "charged with a criminal offence" to include proceedings such as those mentioned above.

The government has recently taken stock of this line of authority. Section 15 of the *Prisons Act 2007* introduces a legally-aided appeal procedure for those prisoners who have lost remission due to disciplinary proceedings. In the course of debates in the Seanad, the Minister for Justice made it clear that the introduction was based on Ireland's obligations under the convention.

The operation of this provision has not yet commenced. The provision of legal aid requires regulations to be passed by the Minister for Justice with the consent of the Minister for Finance.

The question of whether prison disciplinary

procedures could amount to a criminal charge arose in the 1979 case of *State (Murray) v McRann*. The court considered that the governor was not exercising a judicial function and therefore rejected the prosecution's application for *certiorari* regarding the forfeiture of remission. The court looked no further than the question of definition in the strictest sense. That the loss of liberty arose as a consequence of the decision was unpersuasive.

The Irish courts have, however, considered the categorisation of certain procedures from a more practical point of view. This arose most frequently in relation to customs laws. The case most frequently considered in this regard is *Melling v Ó Mathghamhna*. In it, the Supreme Court concluded that section 186 of the *Customs Consolidation Act 1876* gave rise to criminal liability. The applicant had been brought before the District Court in relation to the unlawful importation of butter.

The court, in coming to its conclusion, looked beyond the text of the act and examined what has since been referred to as the *indicia* of a criminal charge. The first of these was whether the offence was against the community at large rather than an individual. The second was whether the sanction was punitive in nature. The final *indiciu* was whether *mens rea* was a necessary element of the offence. The potential deprivation of liberty was a significant determining factor in the case.

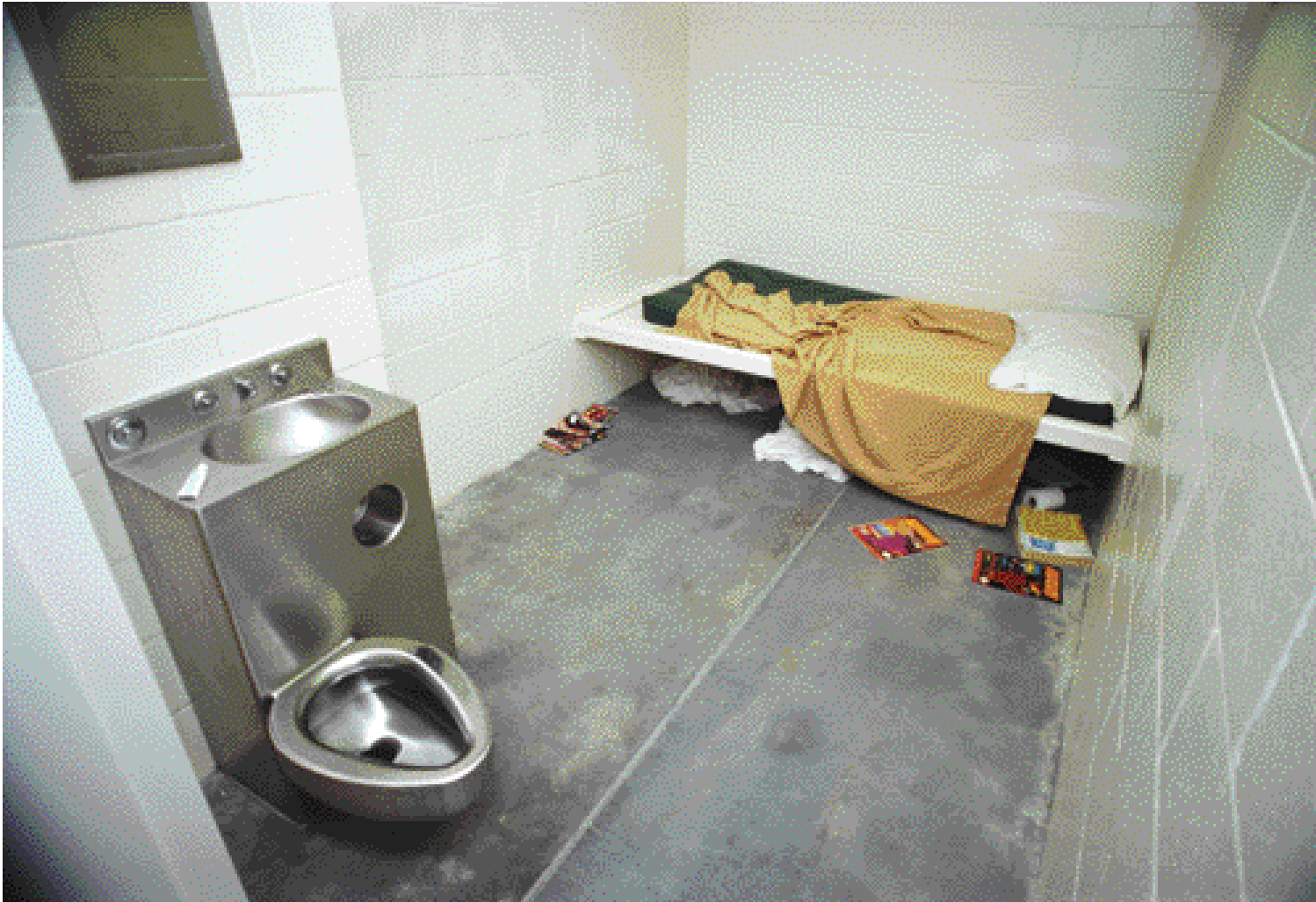
Release on temporary licence

The significance of the loss of liberty was the focus of the Supreme Court in *State (Murphy) v Kietl*. The case concerned the revocation of the prosecutor's release on temporary licence solely on the basis of the existence of criminal charges in the District Court. The Supreme Court held that the licence

MAIN POINTS

- Right to legal aid in prison disciplinary hearings and hearings for the revocation of temporary release
- Significance of the loss of liberty
- What amounts to being charged with a criminal offence?

WALLS



could be revoked only on the basis of evidence of a breach of a condition of release.

The court was silent on the question of legal representation. However, the court held that an informal hearing was required in any case where the rights of an individual were seriously threatened. Loss of liberty was considered to give rise to the need for such a hearing. The case is significant in that the court acknowledged the need for some minimum level of fair procedures. The fundamental basis for this need is the potential loss of liberty. This is most significant in relation to the applicability of European law domestically, as loss of liberty is the essential factor arising throughout the relevant ECtHR judgments.

As previously stated, the *European Convention on Human Rights* provides for free legal representation for those charged with a criminal offence. The question, therefore, is: what amounts to being charged with a criminal offence? The ECtHR has developed a clear line of authority in relation to the test applicable to proceedings when this question arises.

The landmark decision in the area is *Engel v Netherlands*. The applicants were conscript soldiers subjected to military disciplinary proceedings. The penalties had been imposed by their respective commanding officers. The court addressed the issue of whether the proceedings amounted to being charged with a criminal offence for the purposes of

“The court concluded that the practice of granting remission was such as to attract a legitimate expectation that the prisoner would recover his liberty before the end of his term of imprisonment”

the convention rights.

The court formulated a three-stage test. The first stage was whether the proceeding was considered criminal or civil under domestic law. The second was whether the nature of the offence gave rise to the conclusion that it was criminal. The final test was whether the offence should be considered criminal due to the severity of the penalty arising. The court, therefore, held that the proceedings in respect of one of the applicants were criminal due to the potential loss of liberty.

A privilege rather than a right?

The case of *Campbell and Fell v UK* related specifically to the issue of prison disciplinary proceedings and the loss of remission. The court applied the *Engel* test. Applying the final criterion, the court considered that the deprivation of liberty was such to attract the protection of the convention for such proceedings. The issue was whether loss of remission amounted to such deprivation in circumstances where remission could be considered a privilege rather than a right. The court concluded that the practice of granting remission was such as to attract a legitimate expectation that the prisoner would recover his liberty before the end of his term of imprisonment. Forfeiture of remission thus has the effect of causing the detention to continue beyond the period corresponding to that expectation. The absence of legal representation was therefore a breach of the applicants' convention rights.

It is apparent from European authorities that the phrase “charged with a criminal offence” has been given a broad interpretation under the convention. It is also apparent that the fundamental concern of the ECtHR relates to ensuring fair procedures where a person's liberty is at stake. Indeed, the specific area of prison disciplinary proceedings and loss of remission is settled law in Europe. The principles behind the decision in *Campbell and Fell* apply equally to the

revocation of licences for temporary release. This is supported domestically by the emphasis on the right to liberty in *State (Murphy) v Kieft*. The question arises, accordingly, as to the applicability of European authorities in Ireland.

The introduction of the *European Convention on Human Rights Act 2003* imposed an obligation on the courts to interpret any statutory provision or rule of law in a manner compatible with the state's obligations under the convention provisions. It also imposed an obligation on organs of the state to perform their functions in a similar manner.

These obligations are significant in relation to the recognition by Irish courts of a right to legal aid for those charged with a criminal offence. The case of *State (Healy) v Donoghue* held that the requirements of article 38 of the Constitution included a right to legal representation at the expense of the state where an accused person was unable to afford it. The potential loss of liberty was a significant factor in this decision. While the judgment did not envision the proceedings considered in this article, the right to legal aid could be considered to exist by virtue of the European authorities and the obligations they impose on the prison authorities.

Number of remedies

What this article proposes gives rise to a number of remedies applicable to a potentially substantial number of prisoners. The first is judicial review of the executive's decision to forfeit remission or revoke temporary release in the absence of legal representation. The second is an action for damages arising from the state's failure to put in place a system of legal aid for said procedures. One could also seek injunctive relief in circumstances where a state body's contravention gives rise to loss.

The *Prisons Act* provides for a legally-aided hearing before a tribunal of legal practitioners. However, one could make a cogent argument that one is entitled to have the matter determined before a judge in court. This argument would be grounded on articles 34.1, 38.1 and 40.4 of the Constitution in the light of European authorities.

While the *Prisons Act 2007* provides for legally-aided hearings in respect of the loss of remission, there is no equivalent procedure for the revocation of the temporary release forthcoming. Furthermore, prisoners who have lost remission during the intervening period running up to its enactment have a potential remedy.

Regulations will have to be made by the Minister for Justice with the consent of the Minister for Finance to give effect to the relevant provisions. It, therefore, remains to be seen whether the necessary resources to give effect to the act's proposal will be swiftly provided. **G**

Cathal Ó Braonáin is a Dublin-based barrister specialising in criminal law.

LOOK IT UP

Cases:

- *Campbell and Fell v UK* (App 7819/77)
- *Engel v Netherlands* (App 5100/71)
- *Melling v Ó Mathghamhna* [1962] IR 1
- *State (Healy) v Donoghue* [1976] 1 IR 325
- *State (Murphy) v Kieft* [1984] 1 IR 458
- *State (Murray) v McRann* [1979] 1 IR 133

Legislation:

- *Bunreacht na hÉireann*, articles 34.1, 38.1 and 40.4
- *Customs Consolidation Act 1876*, section 186
- *European Convention on Human Rights*, article 6.3.c
- *European Convention on Human Rights Act 2003*, sections 2, 3, 4
- *Prisons Act 2007*, sections 15, 16



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TIME

is on my side



Paul Davis: "Procrastinating is another way of losing valuable time"

Effective time management isn't complicated and the first step is as simple as keeping a log of all the day's activities. If you can identify with the 84% of SME directors who handle business at weekends, or the 58% who take files home to work on in the evenings (according to a survey by O2), then better time management will bring you and your practice clear benefits.

Analysing your current situation will help you determine what problem needs to be fixed. This is where the log comes in: it will help you weed out the most time-sapping areas of your working day.

Time to manage time

A common response is "I haven't got time to manage my time." But prioritising those important calls and tasks can be done on the commute to work or at the end of the previous day. A log will help you see where this could have helped you.

Procrastinating is another way of losing valuable time.

Tackling the difficult tasks quickly and effectively will help clear both your diary and your mind.

Pride in your work is important, but perfectionism can do more harm than good. Time spent labouring over one task that is largely completed would be better invested in getting on with a new one.

Slow decision-making also robs us of valuable time. Your first inclination on a decision – provided you've considered all the key details – might be the best. Slow decision-making means there's less time left for the other tasks in your diary.

Look at your log and you'll realise that some of the emails you replied to, or calls you answered, could

have waited until later. If interruptions are common, remember: you don't need to take every call or answer every email straight away. Do you need to do so, or are you saying to yourself: "I want to answer it, just in case..."? If it's the latter, then it can probably wait.


Queries from colleagues are a part of everyday working life, but if they're interrupting your work on an urgent task, then they need to be left until later in the day. If interruptions are increasingly common, then managing your team more effectively can help address the situation.

Afraid of saying 'no'?

Are you afraid of saying 'no'? Postponing less important tasks or delegating them to colleagues is an important part of effective time management. Going back over your log will show areas where this could free up some of your time.

If your office or workspace is disorganised, perhaps it's making your working day disorganised as well. Taking the time to file everything away or arrange it neatly at the end of the day will benefit you the following day.

If your log shows that a meeting was ineffective, ask yourself what could have been improved. Could it have been planned better? Was everyone well prepared? More effective meetings speed up decision-making and the pace of your practice's business, freeing up time for everyone that needs to attend them.

Analyse your current situation for the next month and see which of the above areas you fall into. Then in the next issue we'll cover how you can deal with the problem correctly to improve both your working life and your practice. 

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



PIC: LENS MEN

The Killenaule connection

Law Society President Philip Joyce welcomed the remarkably large number of solicitors born and raised in his home village of Killenaule, Co Tipperary to dinner at Blackhall Place. (*Front, l to r*): Brid O'Dwyer, Rosario Boyle, President Philip Joyce and Annette O'Connell. (*Back, l to r*): Breda Cullivan, Michael O'Grady, Gerard O'Connell, Niamh O'Grady, director general Ken Murphy, Deirdre Kelly, Tony O'Grady and Patrick Kennedy



PIC: MAXWELLS

Presidential summit

Attending a reception on St Patrick's Day at Aras an Uachtaráin were (*l to r*): Rosario Boyle SC, President of Ireland Mary McAleese, Mr Martin McAleese and President of the Law Society Philip Joyce



PIC: JOHN D KELLY PHOTOGRAPHY

Friendly meeting in Tipp

(*L to r*): Patrick F Treacy, President Philip Joyce, Her Honour Judge Olive Buttimer and Bryan Maguire



PIC: JOHN D KELLY PHOTOGRAPHY

Clonmel collection

Frank Gleeson, director general Ken Murphy, President Philip Joyce, Donald Binchy (Law Society Council member) and Judge Elizabeth McGrath



PIC: LENS MEN

Reasons to be cheerful

At the president's lunch in honour of past presidents of the Law Society (post 1990) on 3 May were (*front, l to r*): deputy director general Mary Keane, Elma Lynch (2002), Gerard Griffin (2004), Law Society President Philip Joyce, Geraldine Clarke (2003), Raymond Monahan (1993) and director general Ken Murphy. (*Back, l to r*): Andrew Smyth (1996), Owen Binchy (2005), Adrian Bourke (1992), Patrick Glynn (1995), Ward McEllin (2001) and Michael V O'Mahony (1994)

Crowley pursues Seanad seat



Killorglin-based solicitor Liam Crowley is running for the forthcoming Seanad election and is seeking the support of fellow members of the Law Society who have a vote in the NUI constituency.

"I deal on a daily basis with the legal affairs of my clients," he says, "and am more than aware of the concerns people face today. I believe in giving back to society and have been continually involved in community and political groups."

Liam's website can be accessed at: www.liamcrowley.ie. The period for nominations in the university constituencies expires on Friday 1 June 2007. Ballot papers will be issued on Tuesday 19 June 2007 and the poll will close at 11am on Tuesday 24 July 2007.

Bollywood Bling Ball brings hope to the street children of Calcutta

It has been a year of firsts for Croke Park: the first rugby match ... the first soccer match ... the first PPCII 'Bollywood Bling Ball' in aid of the Hope Foundation 'Street Children of Calcutta'. Guests arrived in spectacular saris adorned with glittering bindis, accompanied by their maharajas in flamboyant headgear, colourful tunics and even body paint! The ever-glamorous and ever-present Glenda Gilson welcomed guests. The ball began with captivating Indian dancing, followed by a sumptuous meal. The night exceeded all expectations, raising over €35,000 and changing the lives of nearly 100 young girls, providing them with a home in Calcutta.

Thanks to all who attended and to sponsors Sigmar Recruitment and Anglo Irish Bank.



PICS: CONOR HEALY

The beautiful Miss India Ireland, Sonya Reilly, lent her support to the event with Alannah Smyth and the gorgeous hostess of the evening Glenda Gilson



Ankita opened the evening with dazzling traditional Indian dancing



Belles of the ball (l to r): Amelia O'Beirne, Alma Whelan, Faye Bohan and Orla Nally



Displaying the glamour of Bollywood (l to r): Noleen Foley, Deirdre Griffin, Aoife Smyth, Muireann Reedy and Sinead Gormley



Dressed to impress: Lynn Martin and Ross McMahon

ON THE MOVE



Richard Ambery has been appointed by Arthur Cox as a partner in the firm's capital markets group, based in the Dublin office.

He is a leading property and finance lawyer and has specialised in advising leading financial institutions on commercial-mortgage backed securities.



Ciara McGoldrick joined McDowell Purcell Partnership Solicitors in March as head of the Professional

Regulatory Unit. Prior to joining McDowell Purcell, she spent four years working as a barrister for the Commission to Inquire into Child Abuse.



Eimear Burke has been working as an associate solicitor to the MDP regulatory department of McDowell Purcell Partnership

Solicitors since September 2006. She specialises in advising professional regulatory bodies in matters relating to fitness and registration and general litigation.



Orlaigh O'Dwyer joins McDowell Purcell from LK Shields Solicitors. Orlaigh is a specialist property

lawyer with wide experience in commercial property, development land and banking/commercial lending.



student spotlight

Tough Tallaght team trounces trainees

The newly-formed hurling team, King's Inns/Law Society, recently made history by reaching the final of the Fergal Maher Cup – the All-Ireland Intersvarsity for Division 3 Colleges, writes *Vincent Costello*. The cup competition was part of the Fitzgibbon weekend in March, organised this year by Carlow IT. King's Inns had won this trophy themselves last year with the help of some superb Blackhall players in their squad, including Bryan Coen and Conor Minogue. This was the first year the new officially-combined team was competing.

League games earlier this season against GMIT Letterfrack and Dun Laoghaire College aided preparations for the championship. The qualifying quarter-final against Marino Institute of Education/Colaiste Mhuire at home grounds in Islandbridge in February was a gruelling event in terrible conditions. Midfielder Billy Brick, despite a talented display, was lost to a broken wrist. The winning of this game by 1-12 to 1-9 granted entry to the final stages of the competition.

Superpower opponents

In March, the team made their way to the Fitzgibbon weekend, where the first semi-final saw Letterkenny IT beaten by a tough IT Tallaght by 1-5 to 4-13. The law students' semi-final at Éire Óg pitch was against Robert Gordon University of Aberdeen, a team comprising many hurlers from the 'superpower' hurling counties of Kilkenny, Tipperary and Cork, currently studying in



The (almost) magnificent seven

Scotland. After a shaky start, a strong effort by Alan Dodd helped the lawyers eventually to dominate the game. An excellent second half goal by PPCI student Pat Morrissey, together with six magnificent points from play by Kieran O'Donovan, saw the lawyers win, despite a late comeback by Aberdeen, by 2-14 to 3-6. With a final the next day, a quiet trip to the cinema was all the entertainment allowed that night.

The venue for the final on

Saturday was the Gaelic grounds at Carlow IT. From the throw-in, the game was a dogged affair. There were fine performances from Inns players James McDonald and Donnacha O'Tuama, with Jack Nicholas fearless as ever in midfield. Many players carried injuries into the final, but Blackhall panellists Patrick Quinn, Paul Lynch and Stephen Walsh all battled on. Kieran Cuddihy put in an imperious performance at full back. However, the luck was against

the advocates on the day and Tallaght, beaten in last year's final by the Inns, certainly got their revenge. Séan Óg Ó hAilpin presented the cup to a jubilant Tallaght with Stephen Larkin of St Jude's named 'man of the match'. The disappointed legal panel returned to the Boar's Head Pub in Dublin, where any sorrows were soon forgotten.

The Blackhall players thank:

King's Inns Hurlers, the Law Society, TP Kennedy, Martin Travers, Eddie McDonald, Lynn Kelly, Seamus Howlin (Leinster Council), Seamus MacKenna SC and Mel Christle SC for all their assistance during this year's campaign.

Blackhall hurlers: Billy Brick, Martin Cooney, Vincent Costello, Kieran Cuddihy, Neil Dunne, Will Greensmyth, John Kavanagh, Paul Lynch, Patrick Morrissey, Kieran O'Donovan, Patrick Quinn, Stephen Walsh.

Law Society's Jessup Moot Court Team took on the world

The Law Society of Ireland's Jessup Moot Court Team set its sights on glory at the finals of the international law moot court competition, held in Washington DC at the end of March. While it didn't walk away with the trophy, it certainly achieved some honour.

The team won three of its four rounds against India, Turkey, Nepal and Mexico, was awarded best individual 'oralist' in all three of its winning rounds, made it into the prestigious list of the top 30 international teams and was only

9.5 round points away from the highest-ranked team.

The team comprised four Autumn PPCI students: Nicholas Blake-Knox (Arthur Cox), Therese Lyne (A&L Goodbody), Cormac O'Culain (Reddy Charlton McKnight) and Regan O'Driscoll (Matheson Ormsby Prentice) and their coach, Elaine Dewhurst (course executive).

Over 100 international teams descended on Washington DC for the week-long competition. The Irish team competed on a daily basis and for several hours a day, team members debated

issues of international law and were vigorously questioned by international judges from many countries and backgrounds.

Three of the Law Society's speakers made it into the top 100 individual oralists' list, while Cormac O'Culain managed to debate his way into the top 32.

While the final trophy went to the University of Sydney, the Law Society team certainly set a very high standard and was commended by the judges for their spirit, enthusiasm and knowledge throughout the competition.

books



Ten in a bed: a memoir

Michael Regan. Abbeyview Press (2006), Trim, Co Meath. Available from Antonia's Bookstore and other local bookshops. Price: €15 (all proceeds go to Meath-based charities).

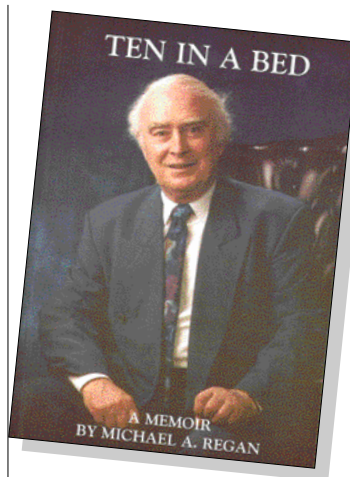
Even in the title of this memoir, there's a hint of mischief. This will surprise no one who knows Michael Regan, a man whose view of life is always fixed at a jaunty angle. In the course of his life, he has involved himself in an array of feats, which – if stacked and redistributed – would fill the lives of several less energetic people. He's been a porter, a pedlar, a politician, a publican, a philanthropist, a preservationist, a publicist, a punter and a prankster. And, above all, a country solicitor. When he qualified, he was the youngest solicitor in the country. By the time of his retirement, 50 busy years later, he was among the most original and memorable.

Michael's memoir reflects his perspicacious and warm personality. With characteristic generosity, he has donated its sale proceeds to charities in his beloved Meath. It is fitting that the book has sold very well, because its colourful author has

always generously and courageously given much of his own time and resources to worthy and selfless pursuits. And, in buying the book, the reader is not merely supporting his continuing altruism; the reader is buying a small treat.

Memoirs have been all the rage in Irish publishing for the past couple of decades. The most – and the least – talented have contributed to a body of publications ranging from tortured accounts of a miserable, rain-sodden past to coarse fables of an improbably utopian yesteryear. This book treads less strident paths.

It is written with the rhythm, timing, humour, colour and, sometimes, the unreliability of oral tradition. It is an engaging and compelling read. It has the leisured pace of stories spun at the hearth. There's the story about Parnell's lamentably wooden efforts at humour during an election meeting at Trim, as told by Michael's



father, who was a torch-bearer at that meeting. There's the story of how Andrew Rynne was prosecuted for prescribing condoms on Sunday to a farmer who couldn't wait for Monday to comply with the law of the day. The book is a tapestry of fading folk memories. Important memories for all of us.

And for us solicitors, the book is a treat – not as an authority on any legal principle,

because the book is slim on legal principles – but because of its richness of colour. Michael Regan simply and self-effacingly records the stories of local characters and creative judges. His patch is the District Court, the most exacting, eccentric, unreliable and interesting court in the land. And his book spills with stories.

We all, perforce, operate now in a climate of political correctness, accountability, profit margins, compliance and all sorts of sober, proper standards. Some of us will make a lot of money, some of us will set precedents, but few of us will ever tell as good a story as Michael Regan does.

Michael is remarkable because he remembers, and remarkable because he has done things worth remembering. Few of us can claim that distinction. **G**

Margaret McCann is a solicitor in the Law Centre in Navan.



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BRIEFING

council report



Report of Law Society Council meeting held on 30 March 2007

Presentation by McConnells on proposed media advertising campaign

The Council considered, and approved, a presentation from McConnells on a proposed media advertising campaign to be conducted through the print media and to commence after the general election. McConnells explained the objectives of the proposed campaign, together with the methodology used, the sampling and the key campaign messages. They then presented a series of potential advertisements, together with the results of focus-group studies in respect of each. Michele O'Boyle confirmed that the proposal had the endorsement and recommendation of the Society's Public Relations Committee. Tom Murrin endorsed the campaign as complementary to the work being undertaken by the Client Care Task Force.

Government working group review of legal costs

The Council considered the report of the Miller Implementation Advisory Group (IAG), the core proposal of which was contained in paragraphs 2.1 and 2.2, as follows: "The IAG is of the view that solicitors and barristers should be obliged to have in place a proper system of time-recording and that bills in relation to legal costs should, as appropriate, be supported by time records. The introduction of time-recording should also be accompanied by solicitors and barristers setting out, as the basis of their charging generally for legal services, their

hourly or daily rates, as appropriate."

The Council also noted paragraph 3.5 of the report, as follows:

"The point needs to be made that, insofar as solicitor and client costs are concerned, no party will be bound by recoverable costs guidelines. Parties will be free to enter into agreements with their lawyers as they see fit (subject to the provisions relating to client information). Parties liable to pay costs will also be free to decide to pay costs as they see fit. The guidelines are intended to offer an indication – where costs are recoverable – of amounts or time periods generally deemed reasonable. In cases of dispute, costs will be assessed on the basis of the guidelines while taking the particular circumstances of each case fully into account.

The IAG accepts that there is a wide range of litigation and it will neither be desirable nor feasible to put in place guidelines of a type which would provide a simple, mathematical model designed to pre-determine the legal costs recoverable in every type of case."

The Council agreed that the Society would have to take steps to assist the profession to move from the current fee-charging system to a system based on hourly rates. Clearly, the future lay in time-recording. There were a number of aspects to the matter, including technology, the management of costs in order to ensure that partnerships were profitable, and the need for a culture change in the approach

of the profession to the issue of fee-charging. While a time-recording system would not happen immediately, it was incumbent on the Society to organise itself as a body and its members as a profession in preparation for this move.

Mediation panel

At the request of Simon Murphy, the Council agreed to adopt, and to require mediators on the Society's new mediation panel to adopt, the *European Code of Conduct for Mediators* in respect of mediations undertaken by members of the Law Society of Ireland. The Council noted that the new mediation panel would be established in the coming months and that suitably-qualified members of the profession would be invited to seek appointment to the panel by way of advertisements in the *Gazette*.

Criminal Justice Bill

The president noted that, since the previous Council meeting, the Society had issued a press release expressing deep concern at the government's intention to rush through the *Criminal Justice Bill* before the general election. James MacGuill noted that there were five core areas of concern within the bill – restrictions on the right to bail, the creation of new criminal offences, changes in sentencing, the extension of periods of detention for interrogation and a significant curtailment of the right to silence. It was the view of the Society's Criminal Law Committee that each was so fundamental that

it should not be the subject of legislative change without thorough and public debate.

Professional indemnity insurance

Niall Farrell briefed the Council in relation to the work of the PII Task Force, which had been established in October 2004 with the following terms of reference:

"To fundamentally review the law and policy underlying the provision of professional indemnity insurance to solicitors in Ireland, having regard to best practice in other jurisdictions and including an examination of the current regulations, procedures and systems and to make recommendations arising from such review."

Mr Farrell noted that the task force had undertaken a fundamental re-drafting of the PII regulations after extensive consultation with the qualified insurers, the insurance market and specialist legal experts, and with members of the profession. The goal of the task force was to close any gaps in PII coverage to ensure more comprehensive public protection, while acknowledging the commercial realities of the market.

The PII regulations were almost complete and had been undertaken with the benefit of expert insurance advice and expert legal advice. A formal presentation would be made to the Council by the chairman of the task force, Joe Brosnan, at its July meeting, with the draft new PII regulations being circulated well in advance of that meeting. **G**

legislation update



17 April – 15 May

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.

Note: the 29th Dáil was dissolved on 29/4/2007; the 30th Dáil will meet on 14/6/2007. The Seanad adjourned sine die on 1/5/2007.

ACTS PASSED

Building Control Act 2007

Number: 21/2007

Contents note: Amends and extends the *Building Control Act 1990*, implements certain provisions of the energy performance of buildings directive (2002/91/EC); regulates the use of the titles 'architect', 'quantity surveyor' and 'building surveyor'; implements certain provisions of directive 2005/35/EC on the recognition of professional qualifications, and provides for related matters.

Date enacted: 21/4/2007

Commencement date: Commencement order(s) to be made (per s1(3) of the act)

Child Care (Amendment) Act 2007

Number: 26/2007

Contents note: Amends the *Child Care Act 1991* to provide that a foster parent or a relative who has had a child in their care for a continuous period of five years, the child having been placed with them by the Health Service Executive, may apply for a court order in relation to the care of the child. Amends part VII of the *Child Care Act 1991* to make provi-

sion in relation to school-age childcare services, including a provision enabling regulations to be made that will permit the VAT exemption that currently applies to pre-school childcare services to apply to school-age childcare services. Amends the *Child Care Act 1991* to allow for the attendance at and reporting of childcare proceedings that are held in private under that act in specified circumstances and by specified classes of persons. Changes the name, role and function of the Special Residential Services Board, established under the *Children Act 2001*, to the *Children Act* Advisory Board, and provides for related matters.

Date enacted: 8/5/2007

Commencement date: Commencement order(s) to be made (per s1(4) of the act)

Communications Regulation (Amendment) Act 2007

Number: 22/2007

Contents note: Amends the *Communications Regulation Act 2002* in order to confer additional powers and functions on the Commission for Communications Regulation and to increase penalties under that act for breaches of certain obligations. Amends the 2002 act to provide that regulations made under the *European Communities Act 1972* for the purpose of transposing EU law on electronic communications may provide for indictable as well as summary offences. Amends the *Electronic Commerce Act 2000* in order to transfer responsibility for the oversight and management of the Irish internet domain name '.ie' to the Commission for Communications Regulation.

Amends the *Competition Act 2002* to enable the commission to investigate breaches of competition law in the telecommunications sector, and provides for related matters.

Date enacted: 21/4/2007

Commencement date: 15/5/2007 for all sections, other than sections 9 and 21; 1/7/2007 for section 9; 15/5/2007 for section 21, except in relation to section 32(2) and (6) of the *Electronic Commerce Act 2000* (these provisions will be brought into force when the necessary commencement order is made) (per SI 224/2007)

Consumer Protection Act 2007

Number: 19/2007

Contents note: Provides for the establishment of the National Consumer Agency to promote and protect the interests and welfare of consumers and to investigate, enforce and encourage compliance with consumer protection legislation including, where appropriate, referring cases involving possible indictable offences to the DPP. Provides for the transfer of the functions of the Director of Consumer Affairs to the agency on its establishment. Gives effect to directive 2005/29/EC concerning unfair business to consumer commercial practices in the internal market (*Unfair Commercial Practices Directive*); makes new provision in relation to commercial practices including pyramid selling schemes. Sets out lists of existing and repealed enactments and provides for related matters.

Date enacted: 21/4/2007

Commencement date: Com-

mencement order(s) to be made (per s1(2) of the act)

Criminal Justice Act 2007

Number: 29/2007

Contents note: Amends the law relating to bail and the administration of the bail system; sentencing; the right to silence and inferences to be drawn in certain circumstances; mandatory minimum sentences under section 27 of the *Misuse of Drugs Act 1997*; mandatory minimum sentences under the *Firearms Acts 1925-2006*; management of An Garda Síochána and certain garda powers, including powers of detention; illegal fishing activity under the *Sea Fisheries Acts 2003 and 2006*, and provides for related matters. Amends a number of other acts, including the *Bail Act 1997*, the *Criminal Justice Act 1984*, the *Offences Against the State (Amendment) Act 1998*, the *Garda Síochána Act 2005* and the *Criminal Justice Act 2006*.

Date enacted: 9/5/2007

Commencement date: 9/5/2007 for part 8, 'Amendments to the *Sea Fisheries Acts 2003 and 2006*'; commencement order(s) to be made for all other sections (per s1(2) of the act)

Defence (Amendment) Act 2007

Number: 24/2007

Contents note: Amends and extends part 5 of the *Defence Act 1954* in relation to disciplinary procedures and military law. Makes consequential amendments to other acts and provides for related matters.

Date enacted: 21/4/2007

Commencement date: 21/4/2007 for part 1 (ss1-3, 'Preliminary') and for sections 6 to 9, 12, 14 to 17, 31 to 34

and 65 (per s1(3) of the act); commencement order(s) to be made for all other sections (per s1(2) of the act). All commencement dates are subject to the saving and transitional provisions set out in schedule 1 (per s3 of the act)

European Communities Act 2007

Number: 18/2007

Contents note: Amends the *European Communities Act 1972* to provide that offences under regulations made pursuant to that act can be prosecuted on indictment. Provides that power to make statutory instruments available to ministers of the government under a provision of any other act of the Oireachtas may be exercised for the purpose of implementing EC law (provisions of the treaties governing, and acts of the institutions of, the European Communities) if the obligations imposed on the state under the European act concerned relate, in whole, to matters to which the enabling provision of the act of the Oireachtas relates.

Date enacted: 21/4/2007

Commencement date: 21/4/2007

Health Act 2007

Number: 23/2007

Contents note: Provides for the establishment of the Health Information and Quality Authority and the Office of the Chief Inspector of Social Services within that authority and establishes a registration and inspection system for residential services for children in need of care and protection, people with disabilities and older people. Provides for the dissolution of certain bodies and for the transfer of their functions to the Health Information and Quality Authority. Inserts a new part 9A, 'Protected disclosures of information', in the *Health Act 2004*. Makes provision in rela-

tion to freedom of information. Amends the *Civil Registration Act 2004* to allow marriages to be solemnised, in particular circumstances, in a place that is not open to the public. Repeals and amends certain acts and provides for related matters.

Date enacted: 21/4/2007

Commencement date: Commencement order(s) to be made (per s3 of the act)

Medical Practitioners Act 2007

Number: 25/2007

Contents note: Updates the legislation regulating medical practitioners. Revokes and replaces the *Medical Practitioners Acts 1978-2002*. In addition to measures providing for the registration and control of medical practitioners, provides for the education, training and competence of medical practitioners. Amends the membership and functions of the Medical Council. Provides for the investigation of complaints against medical practitioners and for an increase in public accountability of the Medical Council. Provides for the implementation of directive 2005/36 on the recognition of professional qualifications as it relates to medical practitioners.

Date enacted: 7/5/2007

Commencement date: Commencement order(s) to be made (per s1(3) of the act)

Pharmacy Act 2007

Number: 20/2007

Contents note: Makes new provision for the regulation of pharmacy, including provision for the dissolution of the Pharmaceutical Society of Ireland and the setting up of a new Pharmaceutical Society of Ireland, for the establishment, constitution and functions of the new society's council, for a new system of registration of qualified pharmacists, drug-gists and pharmaceutical assistants and of pharmacies, for the creation of certain offences

relating to pharmacy, and provides for related matters.

Date enacted: 21/4/2007

Commencement date: Commencement order(s) to be made (per s1(2) of the act)

Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007

Number: 27/2007

Contents note: Provides for the establishment of a Redundancy Panel and the reference to it of certain proposed collective redundancies and for related action by the Minister for Enterprise, Trade and Employment, including the obtaining from the Labour Court of opinions on the nature of proposed collective redundancies. Removes the upper age limit for entitlement to redundancy payments. Makes consequential amendments to the *Protection of Employment Act 1977*, the *Redundancy Payments Act 1967*, the *Redundancy Payments Act 1971*, the *Redundancy Payments Act 1979*, the *Unfair Dismissals Act 1977* and the *Employment Equality Act 1998*, and provides for related matters.

Date enacted: 8/5/2007

Commencement date: 8/5/2007

Statute Law Revision Act 2007

Number: 28/2007

Contents note: Repeals certain statutes that were enacted before 6/12/1922 and have ceased to have effect or have become unnecessary; identifies those statutes primarily of a public and general nature that were enacted before 6/12/1922 but are not being repealed by this act and assigns short titles to some of these acts in order to facilitate their citation. Amends certain statutes insofar as they relate to short titles, provides for *prima facie* evidence to be given of certain early statutes, and provides for

related matters. Lists in the schedules all repealed and unrepealed acts. In effect, publishes for the first time a complete list of the pre-1922 statutes that are retained as part of the law with assigned short titles. Also retains in force all private, local or personal acts.

Date enacted: 8/5/2007

Commencement date: 8/5/2007

Water Services Act 2007

Number: 30/2007

Contents note: Makes provision in relation to the provision of water services. Makes administrative arrangements for planning and delivery of water services at local and national level. Provides that what are presently 'sanitary authorities' will become 'water services authorities' (defined in terms of county and city councils) insofar as delivery of water services is concerned. Replaces various enactments related to sanitary services that deal with the provision of water supply or waste-water services, including elements of *Public Health Acts* legislation from 1878, 1890, 1896 and 1907 and related *Waterworks Clauses Acts and Township Acts*. Also repeals and consolidates relevant provisions in the *Local Government (Sanitary Services) Acts 1948 and 1962* and water-services related provisions in the *Local Government (Water Pollution) Acts 1977 and 1990* and the *Planning and Development Act 2000*. Provides for miscellaneous amendments to the *Local Government (Water Pollution) Acts 1977 and 1990*, the *Environmental Protection Agency Act 1992* and the *Fisheries (Consolidation) Act 1959*. Implements a number of EC directives as listed below.

Date enacted: 14/5/2007

Commencement date: Commencement order(s) to be made (per s3 of the act)

Legislation implemented:

Directives 2004/22 on measuring instruments; 2001/42 on the assessment of the effects of certain plans and programmes on the environment; 2000/60, establishing a framework for community action in the field of water policy; 98/83 on the quality of water intended for human consumption; 98/15, amending Directive 91/271; 91/676 on the protection of waters against pollution caused by nitrates from agricultural sources; 91/271 on urban waste-water treatment; 86/278 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture; 80/68 on the protection of groundwater against pollution caused by dangerous substances; 76/464 on pollution caused by certain dangerous substances discharged into the aquatic environment of the community

SELECTED STATUTORY INSTRUMENTS

Broadcasting (Amendment) Act 2007 (Commencement) Order 2007

Number: SI 158/2007

Contents note: Appoints 18/4/2007 as the commencement date for all sections of the act.

Circuit Court Rules (Criminal Justice Act 2006) 2007

Number: SI 169/2007

Contents note: Amend the *Circuit Court Rules 2001* (SI 510/2001) by the insertion of a new order 68A, 'Criminal Justice Act 2006', which prescribe Circuit Court procedures and forms as provided for in the *Criminal Justice Act 2006*. **Commencement date:** 22/5/2007

Copyright and Related Rights Act 2000 (Certain Provisions) (Commencement) Order 2007

Number: SI 157/2007

Contents note: Appoints 1/5/2007 as the commencement date for sections not

already in operation, other than sections 98, 199 and 247 – that is, appoints 1/5/2007 as the commencement date for section 198 (replacing section 56 of the *Copyright Act 1963*) and for section 10(2), insofar as it applies to the repeal of section 56 of the *Copyright Act 1963*. Section 198 provides for the legal deposit of copies of books first published in the state in certain libraries.

District Court (Criminal Justice Act 2006) Rules 2007

Number: SI 203/2007

Contents note: Amend orders 13, 14, 17, 26, 31 and 100 of, and insert a new order 28A ('Proceedings under part 10 of the *Criminal Justice Act 2006*') into, the *District Court Rules 1997* (SI 93/1997) to prescribe District Court procedure and forms as provided for in the *Criminal Justice Act 2006*.

Commencement date: 31/5/2007

Finance Act 2005 (Commencement of Section 16) Order 2007

Number: SI 170/2007

Contents note: Appoints 5/4/2007 as the commencement date for section 16 of the *Finance Act 2005*. Section 16 amends section 128, 'Tax treatment of directors of companies and employees granted rights to acquire shares and other assets', of the *Taxes Consolidation Act 1997*.

Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007

Number: SI 168/2007

Contents note: Provide for the establishment of a charter by the Garda Commissioner containing guidelines and mechanisms for the confidential reporting of allegations of corruption or malpractice within An Garda Síochána.

Commencement date: 30/4/2007

Local Government (Business Improvement Districts) Act 2006 (Commencement) Order 2007

Number: SI 165/2007

Contents note: Appoints 24/4/2007 as the commencement date for sections 2, 3 and 6 of the act. Section 6 inserts a new part 13A, 'Business improvement districts', into the *Local Government Act 2001*.

National Oil Reserves Agency Act 2007 (Parts 1 and 2) (Commencement) Order 2007

Number: SI 153/2007

Contents note: Appoints 16/4/2007 as the commencement date for part 1 (ss1-3, 'Preliminary and general') and part 2 (ss4-6, 'Share transfer') of the act.

Prisons Act 2007 (Commencement) Order 2007

Number: SI 180/2007

Contents note: Appoints 1/5/2007 as the commencement date for part 1 (ss1-3, 'Preliminary and general'), part 4 (ss17-29, 'Requirements relating to construction and extensions of prisons'), part 5 (ss30-32, 'Inspector of prisons') and part 6 (ss33-43, 'Miscellaneous'), other than ss33, 34, 38 and s42(a).

Public Health (Tobacco) Act 2002 (Commencement) Order 2007

Number: SI 149/2007

Contents note: Appoints 31/5/2007 as the commencement date for subsections (1) and (3) of section 38, 'Prohibition of certain marketing practices', (inserted by section 9 of the *Public Health*

(Tobacco) (Amendment) Act 2004) of the *Public Health (Tobacco) Act 2002*.

Public Health (Tobacco) (Amendment) Act 2004 (Commencement) Order 2007

Number: SI 150/2007

Contents note: Appoints 31/5/2007 as the commencement date for section 9 of the act, insofar as it relates to subsections (1) and (3) of section 38, 'Prohibition of certain marketing practices', of the *Public Health (Tobacco) Act 2002*.

Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007

Number: SI 142/2007

Contents note: Consolidate all the social insurance payments other than occupational injuries benefits (part 2); all the social assistance payments other than supplementary welfare allowance (part 3); child benefit (part 4); respite care grant (part 5); family income supplement (part 6); related provisions governing the making of claims and payments (part 7), including loss of purchasing power, absence from the state and imprisonment, overlapping payments (provisions that set out the circumstances in which a person may receive more than one social welfare payment at the same time) and island allowance; control provisions (part 8); overpayments (part 9); and liable relatives (part 10). Revoke all previous regulations relating to the above.

Commencement date: 29/3/2007 **G**

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ABOLITION OF LAND CERTIFICATES: PROCEDURE FOR REGISTRATION OF A LIEN

Since 1 January 2007, the Property Registration Authority (PRA) has ceased to issue land certificates and certificates of charge (certificate) under the *Registration of Title Act 1964*. However, any certificate already issued before that date will still need to be lodged with applications for registration

for a three-year period after 1 January 2007. However, any certificate lodged with a dealing during that three-year period will not be reissued by the PRA, and will be cancelled. Any certificate issued before 1 January 2007, which has not already been cancelled by 1 January 2010, will cease to have force or effect

from 1 January 2010.

Section 73(3)(b) of the *Registration of Deeds and Title Act 2006* provides that any person holding a lien over a certificate may apply to the PRA before 1 January 2010 for registration of the lien in such manner as the PRA may determine.

The PRA has now drafted an

application procedure for registration of a lien created through deposit or possession of a certificate. This procedure and the format of application and notice are set out in the PRA Practice Direction (2006) No 3, which is available on the PRA website: www.prai.ie.

Conveyancing Committee

CREDIT UNION NOMINATIONS AND PROVISION FOR SMALL PAYMENTS ON DEATH: INCREASE IN STATUTORY LIMITS

Section 21 nominations

As practitioners are aware, section 21 of the *Credit Union Act 1997* (as amended) allows a member of a credit union to nominate up to (originally £10,000 and increased to €13,000 by section 6 of the *Euro Changeover (Amounts) Act*), which nominated sum will fall outside the terms of the will or intestacy of the mem-

ber. This nomination is revoked by the subsequent marriage, but not the subsequent will, of the member.

SI 546 of 2006 increased the sum that a credit union member could nominate under section 21 of the *Credit Union Act 1997* (as amended) from €13,000 to **€23,000**, with effect from 17 October 2006.

Section 23: provision for small payments on death

Section 23 of the act (as amended) allows the directors of a credit union to distribute the property of a member to those entitled by law without the necessity of a grant of representation up to (originally £5,000 and increased to €6,400 by section 6 of the *Euro Changeover (Amounts) Act*).

SI 546 of 2006 also increased the amount that the directors of a credit union could pay out without production of a grant of representation under section 23 of the *Credit Union Act 1997* (as amended) from €6,400 to **€15,000**, with effect from 17 October 2006.

Probate, Administration and Trusts Committee

ENTERPRISE IRELAND – LEGAL OPINIONS

The attention of the Business Law Committee has been drawn to the practice of Enterprise Ireland to seek a form of opinion from solicitors acting for companies into which Enterprise Ireland proposes to make an equity investment. The committee has taken the matter up with Enterprise Ireland.

Enterprise Ireland explained that, due to the large number of equity investments that Enterprise Ireland makes each year in Irish companies, it does not carry out a review of the statutory books of

the companies nor does it conduct searches at the Companies Registration Office against the companies as part of its investment process. Accordingly, reliance is placed by Enterprise Ireland on the opinion given by each company's solicitor to obtain verification on the various points contained in the opinion. The committee considered the form of the opinion sought by Enterprise Ireland and, following discussion with Enterprise Ireland, agreed that an opinion in the form of that set out on the facing page could

be described by Enterprise Ireland as having been agreed with the Business Law Committee.

The Business Law Committee is not advising solicitors that they ought to give such an opinion. Rather, the purpose of this note is to advise that the form of the opinion set out opposite is that which the Business Law Committee has agreed. Practitioners should decide themselves in individual cases whether they are willing to give such an opinion or not.

The committee was advised that some solicitors have pre-

ferred to issue a certificate rather than to express an opinion. While it is a matter for individual solicitors to decide which format they use, it is the view of the committee that it is preferable to express an opinion as to matters of law (which the practitioner can verify) rather than to certify certain matters. Accordingly, the committee recommends opining as to legal issues rather than certifying factual matters.

(See the form of opinion on the facing page).

Business Law Committee

FORM OF THE OPINION:

[Headed notepaper of solicitor representing the company]

Enterprise Ireland
Wilton House
Wilton Place
Dublin 2

[Insert date]

Matter: [insert name of investee company] Limited ('the Company')

Dear Sirs,

1. CONTEXT

We represent the Company in relation to the subscription by Enterprise Ireland for [insert the **no and class of share being allotted**] in the Company ('the Shares') pursuant to the Investment Agreement dated [] between the Shareholders (as defined in the Agreement) the Company and Enterprise Ireland ('the Agreement').

We have been asked by the Company to give Enterprise Ireland this **Opinion/Certificate** in connection with its subscription for the Shares.

2. EXAMINATION

For the purpose of this **Opinion/Certificate**, we have examined the following documents only:

1. A copy of the Memorandum and Articles of Association of the Company certified by either a director or secretary of the Company, as being a true and the most up to date copy;
2. A copy of the signed board minutes of the Company relating to a meeting of the board of directors held on [] approving the execution of the Agreement by the Company and the allotment of the Shares to Enterprise Ireland, certified by either a director or secretary of the Company as being a true copy;
3. The original Agreement executed by all the parties;
4. The result of searches conducted on [insert date] against the

Company at the Companies Registration Office;

5. A statement of the share capital table of the Company detailing (i) the authorised and issued share capital of the Company and (ii) the names of the shareholders of the Company and their respective shareholdings by number and class, which is certified by either a director or secretary of the Company as being up to date;
6. A confirmation from a director of the Company confirming that the Company has not received any notice of strike off from the Registrar of Companies.

[Insert specific details of any further documents that the solicitor for the company may have considered necessary for the giving of the certificate, for example, minutes of shareholder meetings.]

(collectively referred to as the 'Documents').

3. ASSUMPTIONS

In rendering this **Opinion/Certificate** we have assumed, without responsibility on our part if any assumption is incorrect:

1. The authenticity and conformity of all the copy Documents submitted to us with the originals;
2. The genuineness of all signatures and seals on the Documents;
3. The accuracy and completeness of all the Documents, and that such Documents remain in full force and effect as at the date of entering into the Agreement by the Company and have not been amended in any way;
4. That the signed minutes of meetings of directors of the Company and of members of the Company (that comprise part of the Documents) correctly record the proceedings of those meetings, the meetings referred to in each of the minutes were duly convened and held, those present at any such

meetings acted bona fide throughout and in the best interests of the Company, the resolutions set out in such minutes were duly passed and are in full force and effect and no further resolutions were passed or corporate or other action taken which would or might alter the effectiveness thereof;

5. That all representations and information given to us by or on behalf of the Company in reply to any enquiries we have made which we have considered necessary for the purpose of giving this certificate are true, correct and accurate;
6. That each of the directors of the Company were validly appointed and that all persons referred to as directors in the minutes attached to this letter were directors at the time of the relevant board meetings;
7. That nothing has been lodged for filing on, or has appeared on the file of the Company at the Companies registration Office subsequent to the results set out in the online search of the Company.

4. QUALIFICATIONS AND RESERVATIONS

1. This **Opinion/Certificate** is given only to Enterprise Ireland and in connection with the Agreement. It may not be relied upon as constituting a representation or other statement to any other person or for any other purpose. This certificate may not be provided or copied to any third party without our prior written consent.
2. We are solicitors of the courts of Ireland and members of the Law Society of Ireland. Accordingly our **Opinion/Certificate** is limited solely to the laws of Ireland. We express no opinion concerning the laws of any other jurisdiction.

5. CERTIFICATION/OPINION

Based solely on the Documents

and on the Assumptions set out in clause 3 hereof and the Qualifications and Reservations set out in clause 4 hereof we hereby **certify/are of the opinion** that:

1. The Company is a private company limited by shares and is duly incorporated under the laws of Ireland.
2. The Company has not been struck off the Register of Companies and has not received any notification of strike off from the Registrar of Companies.
3. The Company has sufficient authorised and unissued share capital of the relevant class to allot the Shares to Enterprise Ireland.
4. The execution and delivery of the Agreement by the Company to Enterprise Ireland does not violate the most up to date Memorandum and Articles of Association of the Company.
5. The directors are authorised to issue the Shares to Enterprise Ireland and the Company has been authorised by its board of directors to execute the Agreement under seal and to issue the Shares to Enterprise Ireland.

This **Certificate/Opinion** is given as of the date hereof and we are not under any obligation to update or supplement the **certificate/opinion** in this letter to reflect any facts or circumstances which may come to our attention or any changes in the law that may occur, after the date of this letter, in each case.

Yours faithfully

[Insert name of firm of solicitors]

Note to solicitor acting for company:

1. Please use either 'certificate' or 'opinion' where highlighted throughout the text.
2. Please don't amend the substance of the letter.
3. Please insert relevant text where italicised print appears.

STATUTORY DECLARATIONS MADE ABROAD IN PURSUANCE OF OR FOR THE PURPOSES OF THE COMPANIES ACTS OR THE TAXES ACTS

A. Companies Acts

Practitioners ought to be aware that, by reason of section 6 of the *Investment Funds, Companies and Miscellaneous Provisions Act 2006* (no 41 of 2006), a statutory declaration made outside of the state in pursuance of or for the purposes of the *Companies Acts* shall be regarded as having been validly made, but only in pursuance of those acts or for the purposes of those acts if it is made outside the state before:

- A person entitled under the *Solicitors Acts 1954* to practice as a solicitor in the state (a person holding a valid practising certificate and not merely a person who qualified as an Irish solicitor), or
- A person authorised under the law of that place (the foreign state) to administer oaths in the foreign state.

In the second situation, there are further provisions that must be complied with before the statutory declaration may be regarded as validly made in pursuance or for the purposes of the *Companies Acts*.

Where the statutory declaration sworn in the foreign state is sworn before a person authorised under the law of the foreign state to administer oaths there, then the signature of the person making the declaration and, to the extent that the law of the foreign state requires, either or both

of the following must be authenticated:

- The capacity in which the declarer has acted in making the declaration;
- The seal or stamp of the person who has administered the oath to the declarer in accordance with the law of the foreign state.

If the foreign state is one that is a contracting party to the *EC Convention*, then (unless the *EC Convention* does not extend to the foreign state), the provisions of the *EC Convention* with regards to authentication shall apply. If the foreign state is a contracting party to the *Hague Convention* but not a contracting party to the *EC Convention*, then (unless the *Hague Convention* does not extend to the foreign state) the provisions of the *Hague Convention* with regards to authentication shall apply in relation to the statutory declaration.

Where the foreign state is one to which neither the provisions of the *EC Convention* nor the *Hague Convention* apply, the Registrar of Companies in Ireland may, before receiving any statutory declaration purporting to be made in that foreign state in pursuance of or for the purposes of the *Companies Acts*, require such proof as he or she considers appropriate of any particular requirements of the law referred to at (b) above. The registrar has

advised that the following proof would be required in such circumstances: the declaration should be sworn before a diplomatic or consular officer of the relevant Irish embassy and stamped with the embassy's seal.

Section 6 of the 2006 act validates statutory declarations previously sworn abroad by providing that any statutory declaration made outside of the state purporting to be in pursuance of or for the purposes of the *Companies Act* shall, if the declaration was delivered to the Registrar of Companies before the passing of the 2006 act (24 December 2006), be valid and deemed always to have been valid, notwithstanding anything in the *Diplomatic and Consular Officers (Provision of Services) Act 1993* (the 1993 act) or any other enactment, and anything done on foot of the declaration's delivery to the registrar, including any subsequent registration of that declaration, shall be valid and deemed always to have been valid, notwithstanding anything in the 1993 act or in any other enactment.

B. Taxes Acts

For the purpose of any statutory declaration sworn in pursuance of or for the purposes of the *Taxes Acts*, section 157 of the *Stamp Duty Consolidation Act 1999* states that a statutory declaration can be sworn "outside the state

before any person duly authorised to administer oaths there".

C. Declarations for other purposes

Practitioners ought to be aware that if a statutory declaration is being made outside of Ireland for any purpose in pursuance of or for the purposes of any legislation other than the *Companies Acts* or the *Taxes Acts*, then it requires to be made before a person entitled under the *Solicitors Act 1954* to practice as a solicitor in Ireland (which may necessitate a solicitor travelling from Ireland – a person who qualified as a solicitor in Ireland and practised in the foreign state, but without holding a practising certificate issued under the *Solicitors Acts*, would not suffice) or in accordance with the provisions of the *Diplomatic and Consular Officers (Provision of Services) Act 1993*, which requires that a statutory declaration made abroad and not before a solicitor entitled under the *Solicitors Act* to practice as a solicitor in the state must be before a diplomatic or consular officer of Ireland who is posted to that foreign state.

D. Companies Registration Office information leaflet

The Companies Registration Office has issued an information leaflet (no 20 VNR.doc) on this matter.

Business Law Committee

SOLICITORS' HELPLINE

The Solicitors' Helpline is available to assist every member of the profession with any problem, whether personal or professional

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ARCHITECTS' CERTIFICATE OF COMPLIANCE: ARCHITECTS' DIRECTIVE 85/384

The Conveyancing Committee is of the opinion that practitioners should be in a position to accept a certificate of compliance from a person from another jurisdiction in the European Union whose qualification is entitled to recognition in Ireland under the *Architects' Directive 85/384*, as per paragraph (g) of the committee's recommendation entitled "Who Should Certify Compliance?" dated 26 October 1994, circulated with the October 1994 edition of the *Law Society News* and republished at page 7.53 of the 3rd edition of the *Conveyancing Handbook* on CD-ROM.

Conveyancing Committee

LAW SOCIETY CERTIFICATE OF TITLE DOCUMENTATION (1999 EDITION)

It has been brought to the attention of the committee that various lending institutions regularly issue letters of offer to clients and/or documentation as part of the 'solicitor's package' that contain requirements from the borrower's solicitor that appear to be in contravention of the certificate-of-title package of documentation, as agreed between the Law Society and the various lending institutions in 1999. The committee sets out its views below in relation to some of these matters that have been brought to its attention by practitioners.

- 1) **Conditions in letters of offer requiring solicitors to furnish certificates or letters confirming the position regarding planning matters:** the Conveyancing Committee is of the view that matters relating to planning are covered by the solicitor's certificate of title. There should not, therefore, be any requirement by way of a special condition in a letter of offer or otherwise that the solicitor should be required to furnish a letter or certificate to any lending institution as a prerequisite to the issuing of a loan cheque.
- 2) **Conditions requiring a solicitor to confirm the position regarding wayleaves on title:** The committee is of the view that matters concerning wayleaves on title are covered

by the solicitor's certificate of title and there should be no requirement that a borrower's solicitor furnish any letter or certificate to the lending institution in this regard as a prerequisite to the issuing of the borrower's loan cheque.

- 3) **A requirement that the borrower's solicitor agree to act as the borrower's attorney throughout the course of the loan for the service of proceedings by the lending institution during the course of the loan:** the Conveyancing Committee believes the above requirement is completely unreasonable and that no solicitor should agree to act as attorney for the borrower in these circumstances, bearing in mind that the solicitor may not even be instructed by the borrower at the time that any proceedings are issued.
- 4) (a) **A requirement that the borrower's solicitor certify the source of the borrower's balance of funds applied in the purchase of the property;**
- (b) **A requirement that the borrower's solicitor certify how the borrower will apply the proceeds of the loan cheque/certify the purpose of the borrower's loan:** it is the view of the Conveyancing Committee

that solicitors should not give certificates of this nature to any lending institution. These are matters on which the lending institutions can satisfy themselves by obtaining the necessary certificate or letter directly from the borrower. The committee is aware that solicitors have certain obligations under money-laundering legislation and the profession has been advised as to the type of documentation prudent solicitors should obtain from their clients in conveyancing transactions. However, it is also the case that lending institutions have their own obligations to fulfil under money-laundering legislation. These obligations are different to the obligations on a solicitor vis-à-vis their own client and, in the view of the Conveyancing Committee, solicitors acting for borrowers have no function whatever in attending to satisfaction or fulfilment of the money-laundering requirements placed on lenders by legislation. These are matters strictly for the attention of the lending institutions themselves.

- 5) **Requirement that solicitors collaterally stamp assign-**

ment of life policies: it is the view of the Conveyancing Committee that solicitors should only be expected to collaterally stamp assignment of life policies if the signed assignment forms are furnished by the lending institution to the solicitor before the solicitor attends to stamping of the client's title. It is expected that such requirements will disappear over time in any case, given that it is no longer necessary to stamp assignment of life policies.

- 6) **Requirement for production of an architect's certificate of compliance with planning permission and building regulations prior to drawdown:** it is the view of the committee that a purchaser is not entitled to a certificate of compliance until the purchase is completed or, where appropriate, the final stage payment has been made, and it should not be a requirement of any lending institution that the certificate of compliance must be lodged with the lender before the final stage payment/loan cheque issues. The committee is also of the view that the certificate of title and the solicitor's undertaking, as agreed with all lending institutions, covers planning matters.

Conveyancing Committee

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COMPETITION AUTHORITY REVOKES 1992 NOTICE IN RESPECT OF EMPLOYMENT AGREEMENTS

On 2 January 2007, the Competition Authority withdrew, with effect from 12 December 2006, its notice in respect of employment agreements dated 18 September 1992.

The 1992 notice had stated that, since an employee was not an undertaking, a contract of employment was not an "agreement between undertakings" for the purposes of competition law and that employment agreements were therefore not subject to the provisions of the *Competition Act*. The 1992 notice also stated that an employee who leaves his or her employment and sets up in business on his or her own account becomes at that point an undertaking.

While the authority is happy that these statements were (and

continue to be) correct, it believes that the additional statement in the notice that, at the point in time when an ex-employee becomes an undertaking, the original employment contract becomes an "agreement between undertakings" that is subject to the provisions of the *Competition Act*, is erroneous. The authority has therefore revoked the 1992 notice.

The practical importance of the 1992 notice lay in the effect it had on post-termination non-compete clauses. According to the 1992 notice, "if the former employer were to seek to enforce a non-competition clause in an employment contract in respect of an employee who had left and was seeking to establish his or her own business, the authority believes that this would represent a restriction of competition

within the meaning of section 4(1). While such an agreement between one individual and an employer may not have a substantial impact on competition, the existence of such agreements in many sectors of the economy means that their combined effect would be to greatly restrict competition."

The authority's revocation of the 1992 notice seems to reflect a view that a contract of employment cannot become an "agreement between undertakings" and that such contracts will therefore never come within the scope of section 4 of the *Competition Act*. Accordingly, any non-compete provisions in employment contracts will not fall to be reviewed under the *Competition Act* but will be reviewed under the common law doctrine of restraint of trade. Under this doctrine, a non-

compete clause in an employment agreement will be enforced only if it is reasonable in its scope, in terms of its duration and geographical application. What is reasonable will depend on the circumstances of each case.

Both the 1992 notice and the authority's revised position reflect the authority's understanding of the law. They do not constitute definitive statements of the law comparable to judicial decisions. They do, nonetheless, provide a useful guide to the authority's approach to such matters. Its revised position on employment agreements removes the uncertainty introduced by its 1992 notice in relation to the enforceability of post-termination non-compete covenants in some employment agreements.

Business Law Committee

PUBLICATION OF LISTS ON COURTS SERVICE WEBSITE CAUSES CONCERN

The President of the Law Society of Ireland, Philip Joyce, has brought to the attention of the Courts Service the concerns of certain members of the profession relating to the publication of lists on the Courts Service website.

Recently, a number of practitioners informed Limerick Circuit Court, on the morning of the hearing of their cases, that they did not, or could not find their case on the Courts Service website.

The matter was brought to the attention of the Courts Service Information Office in the hope that the home page of the website would be changed to provide clear directions about locating cases. A particular difficulty was cited

by one Limerick-based solicitor, who noted that practitioners had not only to check cases in their local area, but also cases in all Circuit Court areas where they might be dealing with cases. "This is a highly cumbersome and time-consuming process," he complained. "We have experienced difficulties here in Limerick where solicitors could not find their case on the website or missed cases where they were listed on the website. This presented difficulties in court where a Circuit judge refused to adjourn cases, despite representations and even consent by both sides in the light of the obvious difficulties."

Following correspondence from the Law Society's presi-

dent, the chief executive officer of the Courts Service, PJ Fitzpatrick, responded quickly, saying it would seek to have these concerns addressed and "to ensure that arrangements for listing of Circuit Court cases on our website are of assistance to practitioners, which is the whole intention of putting them on the website".

Nuala McLoughlin, the chief registrar and director of Supreme and High Court operations, also replied: "The present practice is that all lists are posted to the Legal Diary on the Courts Service website. I appreciate that this system generates a need for changed work practices in solicitors' offices. It has been in exclusive use in

the High Court and the Dublin Circuit Court now for approximately four years, and the response from the profession has been very positive.

"We will, of course, take what you say into account in devising the new system for civil cases. There are a number of ways of alerting solicitors to their own cases in an electronic diary, and we are keenly aware of the need to explore all possibilities.

"The point you have raised provides a very useful insight into the needs of the legal profession, and I would be very grateful if you would continue to keep me informed of any other issues or requirements that could be taken into account when we commission our new systems." **G**

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 Niall O'Connor, a solicitor practising as Niall O'Connor & Co Solicitors at 15/17 Upper Abbey Street, Dublin 1, and in the matter of the *Solicitors Acts 1954-2002* [9911/DT77/06]

Law Society of Ireland

(applicant)

Niall M O'Connor

(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 ensure that there was furnished to the Society an accountant's report in respect of the period ended 31 December 2004 not later than six months after his accounting date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001*;
- b) Through his conduct, showed disregard for his statutory obligations to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:

- a) Do stand admonished and advised,
- b) Pay a sum of €500 to the compensation fund,
- c) Pay 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 James O'Mahony, a solicitor practising under the style and title of James O'Mahony, Solicitor, at 16 Stoneybatter, Dublin 7, and in the matter of the *Solicitors Acts 1954-2002* [4831/DT76/06]

Law Society of Ireland

(applicant)

James O'Mahony

(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:

- a) Failed to ensure there was furnished to the Society an accountant's report for the year ended 31 August 2005 within six months of that date, in breach of regulation

21(1) of the *Solicitors' Accounts Regulations 2001*;

- c) Through his conduct, showed disregard for his statutory obligations to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:

- a) Do stand admonished and advised,
- b) Pay a sum of €500 to the compensation fund,
- c) Pay 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 J Butler, a solicitor practising as Michael J Butler Solicitors, 42-43 Main Street, Tipperary, and in the matter of the *Solicitors Acts 1954-2002* [2150/DT96/06]

Law Society of Ireland

(applicant)

Michael J Butler

(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 ensure there was furnished to the Society an accountant's report for the year ended 31 December 2005 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001*, Statutory Instrument No 421 of 2001;
- b) Through his conduct, showed disregard for his statutory obligations to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €500 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. **G**

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Compiled by Flore Bouhey for FirstLaw

CONSTITUTIONAL LAW

European law

Judicial review – insurance law – health insurance – private medical insurance – state monopoly – risk equalisation scheme – community rating – whether BUPA required to transfer large financial sums to VHI – whether scheme unconstitutional and in breach of articles 43, 49 and 86 EC – whether delegated legislation unconstitutional – Health Insurance Act 1994 – Council Directive 92/49/EEC.

The respondent health minister, in the exercise of statutory powers, established a 'risk equalisation scheme' pursuant to the *Health Insurance Act 1994* for the purposes of maintaining 'community rating' to neutralise differences in claims costs between health insurance providers arising out of variations in the health status of their members, involving cash transfers to insurers with a higher risk profile. The applicants alleged that the scheme in s12 of the 1994 act constituted, among other things, an unconstitutional delegation of powers, which was in breach of the property rights of the applicant and was in breach of the applicant's right to free movement of services and freedom of establishment, pursuant to articles 43 and 49 EC, and was in breach of articles 82 and 86 EC insofar as, among other things, the scheme failed to take into account differences between insurers' premiums or overheads, the scheme resulted in the less well-off subsidising the more affluent, and it would impact on the finances of the smaller insurer.

McKechnie J preferred the evidence of the economist witnesses on behalf of the respondents and notice party, holding that risk equalisation was designed to prevent market instability, which would be catastrophic for the consumer and would have consequences for public health and the public finances. It amounted to inter-generational solidarity. The scheme was fair, reasonable and proportionate. There was evidence that BUPA had shadow-priced the premium policy of VHI. The VHI had not been motivated by or adapted the monopolistic practice of maximising profits. Whether or not one described the profits made by BUPA as 'super profit', the percentage earned by BUPA was substantially in excess of any other relative indicator in the sector. There could not be an obligation on the state to defer corrective action until the presence of a worst-case scenario had been established. The scheme had been justified to underpin the operation of the regulatory regime in the country. The impact of the scheme on the property rights of the applicant was an exercise of regulation in accordance with the principles of social justice enshrined in the Constitution, which said such rights were not absolute. The proceedings would be dismissed.

BUPA Ireland Ltd & BUPA Insurance Ltd (applicants) v Health Insurance Authority & Others (respondents), High Court, Mr Justice McKechnie, 23/11/2006, 2005/532 JR [FL13589]

CONTRACT LAW

Specific performance

Land – lease – terms and conditions – duration and commencement of lease – construction – whether material terms sufficiently clear and precise – whether sufficient note or memorandum to comply with Statute of Frauds – whether completed and enforceable contract.

The plaintiffs submitted that the defendant gave them an opportunity to purchase a long lease on their local authority flat. They filled in an application form and correspondence flowed between the parties thereafter, culminating in a letter from the defendant that stated, among other things, that "if you are interested in purchasing ... you should complete and return the attached form ... all negotiations and any agreement ... shall be deemed to include a condition that the [defendant] shall not be bound until statutory approval ... has been obtained". The plaintiffs returned the form, which contained the words: "I am willing to purchase, please submit my offer". The defendant did not proceed with the scheme. The plaintiffs contended that they were entitled to an order for specific performance of a concluded contract for the sale. The defendants submitted that the documentation relied on by the plaintiffs was not a sufficient note or memorandum to comply with section 2 of the *Statute of Frauds (Ireland) Act 1695* and, further, that there was no completed and enforceable contract.

Mr Justice Smyth dismissed the claim, holding that the duration of a lease and its commencement date, as well as a certain rent, were material terms that had to be certain and precise before there would be a concluded contract for a lease. In construing documents, the court had to deduce the intention of the parties from the actual words of the document itself. The fact that material terms were not recorded in any of the documents relied upon by the plaintiffs meant that there was no concluded and enforceable contract between the parties. Furthermore, the existence of the words "please submit my offer" in the final document in the series of correspondence sent by the plaintiffs to the defendants was inconsistent with the existence of a concluded agreement and, therefore, prevented the documentation relied upon by the plaintiffs from constituting a sufficient note or memorandum of an agreement for sale in accordance with the provisions of section 2 of the *Statute of Frauds*. For those reasons, the doctrine of part performance did not apply, as a pre-condition of its application was the existence of a contract certain and definite in its terms.

Mateer (plaintiff) v Dublin City Council (defendant), Circuit Court, Mr Justice Smyth, 23/1/2006 [FL13528]

Telecommunications

Commercial law – 3G licence – right to negotiate – Comreg decision – curial deference – proportionality and rationality – public law and private law relief – obli-

gations on tenderer – whether bonds adequate – Communications Regulations Act 2002.

The plaintiff sought to challenge a decision of the defendant that it would not be awarded a licence to operate 3G mobile phone licences in the state. The plaintiff had initially won the competition for the licence and had sought an extension of time to furnish the financial guarantee. No executed performance bonds were presented to the defendant in time. The plaintiff sought, among other things, a declaration that there existed a concluded contract between the plaintiff and the defendant for a 3G mobile telecommunications licence, the defendant having selected the plaintiff as successful tender. The plaintiff alleged that the defendant was obliged to give the plaintiff a reasonable period of time to comply with the terms and conditions of the licence competition.

Kelly J dismissed the plaintiff's action, holding that the plaintiff had not been in a position to furnish executed bonds in a form acceptable to the defendant by the deadline, for which the plaintiff alone bore responsibility. The period stipulated by the defendant had been a reasonable one. The plaintiff was attempting to engineer a situation where the defendant would feel compelled to offer an extension of time. No breach of principles of non-discrimination, transparency or proportionality were detectable in the approach of the defendant. The defendant had done all that it could have to assist the plaintiff. The court would not usurp the function of the defendant.

Smart Mobile Ltd (plaintiff) v Commission for Communications Regulation & Others (defendants), High Court, Mr Justice Kelly, 31/10/2006, 2006 No 702P [FL13605]

CRIMINAL LAW

Appeal

Practice and procedure – jurisdiction on appeal – power to amend – whether a Circuit Court judge has the power to amend an order of the District Court in circumstances where the appellant has indicated an intention to withdraw the appeal – Civil Bill Courts Procedure Amendment (Ireland) Act 1864.

The second-named respondent appeared in the District Court on charges of drunk driving and breaking a red traffic light. The District Court judge stated that he was convicting the second-named respondent of drunk driving, disqualifying him from driving for a period of two years and imposing a fine. The other charge was stated to have been taken into consideration. The second-named respondent appealed his conviction to the Circuit Court and an issue arose regarding the terms of the District Court orders. No written order was recorded in relation to the drunk-driving charge. The matter was adjourned and it was indicated that the applicant wished to apply for an amendment of the District Court orders. However, it was subsequently indicated by the appellant that he wished to withdraw his appeal and, at that stage, the Circuit Court judge determined that he did not have jurisdiction to deal with the application to amend. The applicant in these proceedings submitted that the Circuit Court judge was obliged to consider the application to amend prior to acceding to the request of the second-named respondent to withdraw his appeal, and the applicant sought a declaration that the Circuit Court judge did have jurisdiction to deal with the application to amend. The applicant relied on the provisions of section 49 of the *Civil Bill Courts Procedure Amendment (Ireland) Act 1864* in support of its case.

Dunne J held, in favour of the applicant, that the appellate jurisdiction of the Circuit Court had been engaged in this case. The second-named respondent had invoked the appellate jurisdiction of the Circuit Court and the trial of the appeal had commenced, notwithstanding the fact that no evidence had been heard. Consequently, the first-named respondent was not correct in concluding that he had no jurisdiction to entertain the application to amend under section 49 of the act by reason of the desire of the second-named respondent to withdraw the appeal.

Director of Public Prosecutions v His Honour Judge Con Murphy and Anthony Joyce, High Court, Ms Justice Dunne, 5/2/2007, 2006 No 430 JR [FL13529]

Delay

Sexual offences – whether risk of unfair trial

This was an application for, among other things, prohibition of the applicant's trial on six charges of sexual offences alleged to have been committed between 1975 and 1985. The ground upon which the relief was sought was that of inordinate delay in the making of the complaint and further inordinate delay on the part of the prosecution authorities.

O'Neill J refused the application, holding that the applicant had not demonstrated at all that there was specific or actual prejudice to his defence or any other exceptional circumstances that would expose him to an unfair trial.

D(J) (applicant) v DPP (respondent), High Court, Mr Justice O'Neill, 19/1/2007, 2004 No 1179 JR [FL13587]

FAMILY LAW

Adoption

Constitution – family rights – child – welfare – consent – revocation – attachment of child to adoptive parents – whether failure in duty of

natural parents – whether child in lawful custody of adoptive parents – Guardianship of Infants Act 1964 (No 7), section 14 – Constitution of Ireland, articles 40.4.2, 42.5.

The plaintiffs' daughter was born in July 2004. In September 2004, they signed a consent form to her being adopted by the second defendants, which adoption was arranged by the first defendant. They revoked their consent to the adoption and sought her return some 18 months after the adoption. They instituted High Court proceedings seeking her production to them on the basis, among other things, that the constitutional presumption that the appropriate place for the upbringing and education of a child is within the family unit mandated her return to them.

The High Court granted a conditional order for the production of the child. The defendants successfully resisted the application for the making absolute of the order on the basis, among other things, that the child had developed emotional attachment to the adoptive parents and that removing her from them would breach the child's personal constitutional right to the preservation of her welfare. The plaintiffs appealed to the Supreme Court.

The Supreme Court allowed the appeal and directed the release of the infant from the custody of the second and third respondents and returned to the applicants, and that the question as to the appropriate manner and arrangements by which the transfer of the custody of the infant from that of the respondents to the applicants be further determined, holding that article 42.5 of the Constitution and the statutes deriving from it were designed to deal with extreme situations of parental unfitness, and the test set out therein of compelling reasons why a child's welfare could not be achieved within the constitu-

tional, natural family and required its removal therefrom was so exacting that it could not be met other than in the most extreme circumstances.

N & N (applicants/appellants) v Health Service Executive (respondents), Supreme Court, 13/11/2006, 273 & 283 of 2006 [FL13552]

PRACTICE AND PROCEDURE

Legal profession

Evidence – legal professional privilege – solicitor's attendance note – plaintiff's claim of privilege – whether privilege lost through inadvertence – whether abuse of process. The plaintiff sought to claim privilege in respect of an attendance docket from the solicitors for the plaintiff, which had been inadvertently disclosed to the defendants. It was common case that the documentation was protected by legal professional privilege and the sole issue for consideration was whether the privilege had been lost. The attendance docket evidenced a consideration of the various options open to the plaintiff and an assessment of certain tactical considerations in the course of litigation.

Smyth J held that, on the balance of probabilities, a reasonable solicitor would have realised that the attendance docket had come to the defendants in error and that the information was privileged and was clearly advice sought or given during the course of legal proceedings. There was no abuse of process or moral turpitude or impropriety on behalf of the plaintiff or its solicitors.

Shell E&P Ireland Ltd (plaintiff) v McGrath & Others (defendants), High Court, Mr Justice Smyth, 5/12/2006 840P/2005 [FL13514]

TORT

Medical negligence

Evidence – burden of proof – estab-

lishing negligence as matter of probability – contemporaneous notes – whether oral evidence alone after long lapse of time establishes liability unless supported by contemporaneous notes – allegation of inadequate counselling and consent – causation.

The defendant had performed a vasectomy on the plaintiff. The plaintiff instituted proceedings seeking damages for pain and suffering caused thereby. He alleged that he had not been fully informed of all of the risks associated therewith and had, accordingly, not given a full, free and informed consent to the operation. There was a difference in recollection of evidence, but the defendant had relied on contemporaneous notes when proffering his evidence.

MacMenamin J dismissed the claim, holding that:

- 1) In the absence of close supporting evidence, the court had to look at all the surrounding circumstances, in particular anything contemporaneous, particularly written records, to ascertain which version tendered to the court was the more likely;
- 2) It was more likely that the plaintiff's memory was fallible on the issue in dispute and that the contemporaneous written records in relation thereto were inconsistent therewith;
- 3) It was more probable that the question of risk of pain was dealt with as described by the defendant;
- 4) The duty to disclose any risk that carried the possibility of grave consequences for a patient was confined to such consequences as may be foreseeable or predictable;
- 5) When deciding what a reasonable person properly informed would have done in the plaintiff's position, it should be done in the context of the plaintiff's age, pre-existing health, family and financial circumstances, the

nature of the surgery and any other factor that could be objectively assessed, although personal to the plaintiff.

Winston (plaintiff) v O'Leary (defendant), High Court, Mr Justice MacMenamin, 19/12/2006, 1992/4080 P [FL13551]

Medical negligence

Discharge from hospital – mental trauma – doctor not called in evidence – note of doctor – onus of proof on plaintiff – prior condition – whether discharge of patient with unresolved hernia negligent – whether suffered damage – whether not appropriately treated. The plaintiff alleged negligence against the defendants arising from her discharge from hospital with a hernia unresolved and her subsequent readmittance to hospital on the day of discharge critically ill, causing her physical and mental injuries. A note existed from a doctor, not called by the defendants, referring to the plaintiff suffering from a bowel obstruction, the content of the note being denied by the defendants.

Hanna J held that the note of the doctor not called in evidence was of relevance and the conduct of the defendants had been unsatisfactory. The plaintiff was discharged from hospital without adequate medical examination and without being informed of the existence of the hernia, which was negligent. The absence of the note entailed that the hernia had been forgotten about, which was negligent. The plaintiff suffered psychological trauma and would be awarded €75,000 general damages.

H (plaintiff) v St Vincent Hospital Trustees Ltd (respondent), High Court, Mr Justice Hanna, 20/12/2006, 2001 12182/P [FL13550]


Personal injuries

Practice and procedure – Motor Insurers Bureau of Ireland agreement 1988 – whether the MIBI was obliged to satisfy the judgment

obtained by the plaintiff against the second-named defendant for damages for personal injuries sustained as a result of a road traffic accident.

The plaintiff obtained judgment against the second-named defendant for damages for injuries sustained as a result of a road-traffic accident. The second-named defendant was not insured to drive the vehicle that was involved in the accident and, therefore, the plaintiff sought to have that judgment satisfied by the MIBI. The second-named defendant was driving the plaintiff's vehicle at the time of the accident and was en route to the Coombe Hospital with the plaintiff, who was experiencing a medical problem related to her pregnancy.

De Valera J held that the anxiety and worry suffered by the plaintiff on the discovery of her medical problem was sufficient to remove other matters, such as the insurance situation, from her mind, and that constituted a relevant circumstance to be taken into account in ascertaining her knowledge regarding the absence of insurance. Consequently, the MIBI were obliged to satisfy the judgment obtained by the plaintiff against the second defendant. (*Kinsella v The Motor Insurers Bureau of Ireland*, Supreme Court, unreported judgment of Finlay CJ [1997] 3 IR 586 followed.)

Corrigan (applicant) v Conway and Others (defendants), High Court, Mr Justice de Valera, 31/1/2007, 7205 P/2003 [FL13538] 

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

Recent developments in European law

COMPETITION

On 7 December 2006, the commission adopted a revised *Notice on Immunity from Fines and Reduction of Fines in Cartel Cases* (the *Leniency Notice*). This allows the commission to offer full immunity or a reduction in the fines that would otherwise have been imposed on a cartel member in exchange for disclosure of information on the cartel and cooperation with the investigation. Improvements have been made in several areas of the *Leniency Notice* to provide more guidance to applicants and to enhance the transparency of the procedure. The revised *Leniency Notice* clarifies the information an applicant needs to provide to the commission to benefit from immunity, by setting out in an explicit and unambiguous manner what type of information and evidence the applicants should submit in order to qualify and by linking the threshold for immunity to information needed by the commission to carry out a 'targeted' inspection in connection with the alleged cartel, which will allow for the inspections to be better focused. The notice makes it clear that evidence that requires little or no corroboration will have greater value. The conditions for immunity and reduction of fines have been made more explicit by (a) clarifying that genuine cooperation requires, in particular, that the applicant provides accurate and complete information that is not misleading and (b) by extending the obligation not to destroy, falsify or conceal information to cover

also the period when the applicant was contemplating making an application. Another innovation in the revision is the introduction of a discretionary marker system. Where justified, an application can be accepted on the basis of only limited information. The applicant is then granted time to perfect the information and evidence to qualify for immunity. In order to ensure that applicants that cooperate with the commission investigation do not weaken their position in civil proceedings compared to companies who do not cooperate, the commission has developed a procedure to protect corporate statements given under the *Leniency Notice* from discovery in civil damage procedures. The revised notice came into force on 8 December 2006, when it was published in the EU *Official Journal*.

Case C-205/03, *Federación Española de Empresas de Tecnología Sanitaria (FENIN) v Commission of the European Communities*, [2006] OJ C212/1. FENIN is an industrial federation whose members market medical products. The main purchasers of these products are management bodies that run the Spanish healthcare system. FENIN accused these bodies of delaying invoices issued by its members and settling invoices from other suppliers considerably faster. FENIN argued that this was discriminatory behaviour that abused their dominant position on the demand side of the healthcare market. The ECJ

rejected the claim. Competition law is only applicable to 'undertakings'. An undertaking is "any entity engaged in an economic activity, regardless of the legal status of that entity and the way in which it is financed". It is characteristic for an undertaking to buy and also to offer goods or services in a market. The ECJ held that institutions in the public healthcare sector are not considered as undertakings, as they provide their services free of charge to those who are compulsorily insured. This was rejected by the court on the basis that it was not permissible to separate this activity from the subsequent use to which it is put and to assess it separately. Public bodies are thus not covered by EC competition law when they purchase goods or services for their own, non-commercial, purposes.

COPYRIGHT

Case C-306/05, *Sociedad General de Autores y Editores de España (SGAE) v Rafael Hoteles SA*, 7 December 2006. Directive 201/29/EC on copyright in the information society provides that authors have the exclusive right to authorise or prohibit any communication to the public of their works. This includes the making available to the public of their works in such a way that members of the public may access them from a place and at a time chosen by them. The SGAE is the body responsible for the management of intellectual property rights in Spain. It took the view that the use of television sets and the playing of

ambient music by the respondent in its hotel involved communication to the public of works belonging to the repertoire that it manages. SGAE brought proceedings in the Spanish courts for breach of copyright. The matter was referred to the ECJ. The ECJ held that "communication to the public" must be interpreted broadly. This is in order to achieve the principal objective of the directive, which is to establish a high level of protection in favour of authors and others to allow them to obtain an appropriate reward for the use of their works. It is necessary to take into account that hotel customer generally succeed each other quickly. A large number of people are involved, so they may be considered to be a public, having regard to the principal objective of the directive. If by means of television sets, the hotel distributes the signal to customers staying in its rooms or present in any other area of the hotel, a communication to the public takes place, irrespective of the technique used to transmit the signal. The directive requires authorisation by the author for communication by which the work is made accessible to the public. The private or public nature of the place where the communication takes place is immaterial. The right of communication covers the making available to the public of works in such a way that they may access them from a place and at a time individually chosen by them. That right of making available to the public, and therefore of communication

to the public, would be meaningless if it did not also cover communications carried out in private places.

DEBT RECOVERY

Regulation 1896/2006 entered into force in December 2006. The regulation creates a European order for payment procedure. It seeks to create a uniform debt recovery mechanism for use in the member states in cross-border cases. The procedure is based on a system of standard forms. The procedure is written, and legal representation is not mandatory. Costs are determined by national law, but they are not to exceed the "court fees of ordinary civil proceedings" in the member state of issue.

FREE MOVEMENT OF GOODS

Case C-5/05, *Staatssecretaris Van Financiën v BF Joustra*. On 23 November 2006, the ECJ held that only products acquired and transported personally by private individuals are exempt from excise duty in the member state of importation. Products that are not held for private purposes must necessarily be regarded as being held for commercial purposes for the application of the directive on excise duty. Therefore, if individuals buy wine for personal use while on holiday in France, the individuals must accompany that wine home and consume it themselves. If, however, an individual buys wine for personal use from France on the internet, then the wine is regarded as being held for commercial purposes for the application of the directive on excise duty, since the individual does not personally transport the wine home. This case originated in the Supreme Court of the Netherlands and involved the interpretation of certain provisions of Directive 92/12/EC, as amended, on the

general arrangements for products subject to excise duty and exemptions for products acquired by private individuals for their own use. The wine ordered by Mr Joustra, a citizen of the Netherlands, was released for consumption in France and excise duty was paid in France. The Netherlands tax authorities levied excise duty of €906.20 on that wine. Mr Joustra disputed liability for that excise duty. The court pointed out that, in order for products to be exempt from excise duty in the state of importation, the directive requires that those products be intended for the personal use of the private individual who has acquired them and that it therefore excludes products acquired by one private individual for the use of other private individuals. Furthermore, the products in question must be transported *personally* by the private individual who purchased them. The court considered that there would be an increased risk of fraud for the competent authorities of the member state if this were not so. The court was not convinced by the commission's argument that such an interpretation would be a retrograde step for the citizens of the EU insofar as small consignments of, for example, wine, which were not of a commercial nature from one private individual to another, were exempt from excise duty in the state of importation. The ECJ stated that if the directive contains a lacuna in this regard, it is for the EC legislature to remedy it if necessary. A proposed amendment to the directive has in fact been submitted by the commission to the council for the purpose of extending the benefit of the exemption to products transported *on behalf of* private individuals. The court also pointed out that the directive is based on the idea that products that are not held for private purposes must necessarily be regarded as being held for commercial pur-

poses. Where excise duty is levied in the member state in which the products are being held for commercial purposes, although they have already been released for consumption in another member state, the excise duty paid in that other member state should be reimbursed.

JURISDICTION

Case C-4/03, *Gesellschaft für Antriebstechnik mbH & Co KG v Lamellen und Kupplungsbau Beteiligungs KG*, 13 July 2006. The applicant and respondent are two German companies that compete in the field of motor vehicle technology. The respondent (LuK) argued that a mechanical dampener spring used by the applicant (GAT) infringed two French patents of which LuK was the proprietor. GAT brought an action in Germany arguing that it was not in breach of these patents and, further, that the patents were either void or invalid. The German court made a reference to the ECJ. It sought guidance on the interpretation of article 16(4) of the *Brussels Convention*, which provides for exclusive jurisdiction, in proceedings concerned with the registration of validity of patents, in the courts of the contracting state in which the registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place. It asked whether article 16(4) only applied to proceedings brought to declare a patent invalid or whether it could be invoked in infringement proceedings where one of the parties argues that a patent is invalid or void. The ECJ held that proceedings "concerned with the registration or validity of patents" must be interpreted in an independent manner with uniform application in all contracting states. In practice, the issue of a patent's validity is frequently raised as a plea in objec-

tion in an infringement proceeding. It can also be invoked in a case such as this in support of a declaratory action seeking to establish that there has been no infringement, whereby the claimant seeks to establish that the defendant has no enforceable right in regard to the invention in question. It cannot be established from the wording of article 16(4) whether the rule of jurisdiction applies only to cases in which the question of a patent's validity is raised by way of an action or whether it extends to cases in which the question is raised as a plea in objection. Thus, article 16(4) must be interpreted by reference to its objective and its position in the scheme of the convention. In relation to the objective, the rules of exclusive jurisdiction seek to ensure that jurisdiction rests with courts closely linked to the proceedings in fact and law. The rules of jurisdiction set out in article 16 are of an exclusive and mandatory nature. In the light of the position of article 16(4) within the scheme of the convention and the objective pursued, the court held that the exclusive jurisdiction provided for by it should apply, whatever the form of proceedings in which the issue of a patent's validity is raised. This applies whether the issue is raised by way of an action or a plea in objection. To allow a court, seised of an action for infringement or for a declaration that there has been no infringement, to establish indirectly the invalidity of the patent would undermine the binding nature of the rule of jurisdiction laid down in article 16(4). This would enable the circumvention of the mandatory nature of the rule of jurisdiction laid down in article 16(4). The possibility that this offers would be liable to undermine the predictability of the rules of jurisdiction laid down by the convention and consequently to undermine the principle of legal certainty. To

allow decisions in which courts, other than those of a state in which a particular patent is issued, rule indirectly on the validity of that patent would multiply the risk of conflicting decisions, which the convention seeks specifically to avoid.

Case C-292/05, *Lechouritou and Others*, opinion of Advocate General Ruiz-Jarabo Colomer, 8 November 2006. A number of Greek nationals brought a claim for compensation against Germany under civil law for acts of its armed forces during World War II. The applicants were seeking compensation to cover physical, moral and psychological damage suffered as a result of a massacre carried out by German soldiers in Kalavrita during the German occupation of Greece. The applicants contend that these acts were committed during a war of aggression and were contrary to the laws of war and can be considered as crimes against humanity. Greece is not a signatory of a 1972 European agreement that prevents other member states from claiming damages in this manner. The Court of Appeal in Patras referred a number of questions to the ECJ. The ECJ was asked whether a claim for compensation brought against a contracting state for acts or omissions of its armed forces fell within the scope of the convention. It asked whether a claim of this nature fell within the scope of article 1, as Germany had invoked the defence of sovereign immunity. The Advocate General indicated the term "civil and commercial matters" in article 1 does not extend to acts *iure imperii*. He suggested two criteria to determine whether an act *iure imperii* has to be identified as such. Firstly, one must look at the official role of the parties involved and, secondly, the origin of the claim. In this case, the official character of one of the parties was beyond doubt, as the action was directed



against a state. Martial acts are a typical example of the authority of a state. Thus, claims relating to damage caused by armed force in a war are not "civil matters" for the purposes of article 1, and the *Brussels Convention* should not apply.

LEGAL PROFESSION

Case C-506/04, *Graham Wilson v Luxembourg Bar*, 19 September 2006. An English solicitor and an English barrister applied to the Luxembourg Bar to establish themselves in Luxembourg, using the *Establishment Directive for Lawyers* (Directive 98/5). The Luxembourg Bar required incoming lawyers to demonstrate proficiency in the three official languages of the state – French, German and Luxembourgish. The ECJ held that this requirement was discriminatory and was an unnecessary barrier. Luxembourg was ordered to amend its rules implementing the directive to remove this requirement.

Cases C-94/04 and C-202/04, *Federico Cipolla v Rosaria Portolese* and *Claudia Capodarte v Roberto Meloni*, 5 December 2006. In the first case, Mr Cipolla was the lawyer of Ms Portolese and some others. He drew up some summonses for his clients, but the dispute was resolved in a settlement without his involvement. The clients had made an advance payment of €955 to Mr Cipolla. After the settlement, he

sought a further payment of €2,130, which was a scale fee. The clients refused to pay and he brought proceedings in the Italian courts. In the second case, Mr Meloni had been consulted by Mr Macrino and Ms Capodarte on a copyright matter. The clients refused to pay his fees, arguing that they were disproportionate having regard to the importance of the case dealt with and the services performed. The scale of lawyers' fees is set on the basis of criteria laid down by decisions of the National Lawyers' Council and approved by the Minister of Justice after he has obtained the opinion of the Interministerial Committee on Prices and the Council of State. The criteria are determined on the basis of the monetary value of disputes, the level of the court seised and the duration of the proceedings. Any agreement derogating from the minimum fees set by the scale for lawyers' services is void. It is only at the time of settlement of the fees that a court may exceed the maximum limit (in cases of exceptional importance) or fix fees below the minimum limit (where the case is easy to deal with). The ECJ held that it was the Italian state, and not the professional body, that exercised the power to take decisions on minimum fees for lawyers. The court went on to find that the prohibition of derogation, by agreement, from the minimum fees renders access to the Italian legal services market more difficult for lawyers established

outside Italy. Such lawyers cannot request fees lower than those set by the scale and thus cannot compete more effectively with lawyers established on a stable basis in Italy. This restricts the choice of recipients of legal services. The objectives of protecting consumers and the proper administration of justice may be regarded as overriding requirements relating to the public interest capable of justifying a restriction on the freedom to provide services. This is subject to the conditions that the national measure is suitable for securing the attainment of the objective pursued and that it does not go beyond what is necessary in order to attain that objective. That national court must make this assessment. In doing so, the ECJ indicated that it must take into account certain factors. It must consider whether there is a correlation between the level of fees and the quality of the services provided by lawyers. The court must also consider whether the setting of minimum fees actually protects consumers and is necessary for the proper administration of justice. In Italy, there are a large number of lawyers and the scale might serve to prevent competition taking the form of services being offered at a discount with the risk of deterioration in their quality. The national court must also take into account asymmetry of information between clients and lawyers. Lawyers have a high level of technical knowledge that consumers may not have, with the result that consumers may find it difficult to judge the quality of the services provided to them. The national court must also consider whether there are other means of ensuring client protection and effective administration of justice, such as through professional rules in respect of lawyers (relating to organisation, qualifications, professional ethics, supervision and liability). **G**

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 1 June 2007)

- Regd owner: Carlow Urban District Council; folio: 10033F; lands: Carlow and barony of Carlow; **Co Carlow**
- Regd owner: Carmel Redmond; folio: 17204F; lands: south side of Kennedy Avenue and barony of Carlow; **Co Carlow**
- Regd owner: Anne Brady and Patrick Brady, Main Street, Bailieborough, Co Cavan; folio: 21452; lands: Tanderagee; **Co Cavan**
- Regd owner: Ann Brady, Corner House, Bailieborough, Co Cavan; folio: 12960; lands: Corronagh; **Co Cavan**
- Regd owner: Robert McGrath; folio: 1571F; lands: Ballintemple and barony of Forth; **Co Carlow**
- Regd owner: John McCabe; folio: 949 (closed to 3434F); lands: Clonogan and barony of St Mullins Upper; **Co Carlow**
- Regd owner: John McCabe, Cloncovid, Kilcogy, Co Cavan; folio: 8958; lands: Lisatinny; **Co Cavan**
- Regd owner: Patrick Griffin; folio: 10496; lands: townland of Glendine South and Knockloskeraun and barony of Ibrickan; **Co Clare**
- Regd owner: Eileen Hassett and Jarlath Hassett; folio: 1069F; lands: townland of Cloonbooly and barony of Islands; **Co Clare**
- Regd owner: Michael Meade and Margaret Meade; folio: 2996; lands: townland of Fintra Beg and barony of Ibrickan; **Co Clare**
- Regd owner: Ted Nugent; folio: 30984F; lands: townland of Garuragh and barony of Tulla Upper; area: 4.9400 hectares; **Co Clare**
- Regd owner: Cyril Hooper; folio: 79999F; lands: plot of ground situate in the townland of Cloongown in the barony of Dunhallow in the county of Cork; **Co Cork**
- Regd owner: Donal Driscoll; folio: 33227; lands: plot of ground situate in the townland of Lahanaght in the barony of Carbery West (east division) in the county of Cork; **Co Cork**
- Regd owner: Sean Hynes; folio: 1467F; lands: plot of ground situate in the townland of Curragh (ED Kanturk) in the barony of Duhallow in the county of Cork; **Co Cork**
- Regd owner: Irene McCarthy; folio: 107688F; lands: plot of ground situate in the townland of Gearagh in the barony of Imokilly in the county of Cork; **Co Cork**
- Regd owner: Jeremiah Murphy and Margo Murphy; folio: 28582F; lands: plot of ground situate in the townland of Killuragh in the barony of Fermoy in the county of Cork; **Co Cork**
- Regd owner: Bernard Harrington; folio: 6254; lands: plot of ground situate in the townland of (1) Ardagh, (2) Cloonaghlin Lower in the barony of Bear in the county of Cork; **Co Cork**
- Regd owner: Marie Collins and John Collins (deceased); folio: 19212F (part of 44889F); lands: plot of ground being part of the townland of Ballygibbon in the barony of Muskerry East and the county of Cork; **Co Cork**
- Regd owner: Brendan White and Mary White; folio: 52613F; lands: plot of ground situate in the townland of Boulaling and barony of Kinalea, in the county of Cork; **Co Cork**
- Regd owner: John Donnelly and Grainne Donnelly; folio: DN29678F; lands: property known as 5 Hampton Street, situate in the town of Balbriggan and parish of Balrothery; **Co Dublin**
- Regd owner: Brian White and Ann Connors; folio: DN10338F; lands: a plot of ground known as 38 Georgian Hamlet, situate in the townland of Baldoyle and barony of Coolock; **Co Dublin**
- Regd owner: Ciaran Duggan; folio: DN48820F; lands: property known as 31 Joyce Road, situate in the parish of Clontarf and district of Drumcondra; **Co Dublin**
- Regd owner: Patrick McDonough and Marie McDonough; DN88925F; lands: property situate in the townland of Coolmine and barony of Castleknock; **Co Dublin**
- Regd owner: Brian Joseph Molloy; folio: DN12966L; lands: property situate to the northwest of Cornelscourt Hill Road in the townland of Cornelscourt and barony of Rathdown; **Co Dublin**
- Regd owner: Mide Roisin O'Connor; folio: DN69578F; lands: property situate in the townland of Dundrum and barony of Rathdown; **Co Dublin**
- Regd owner: Peter Briggs; folio: 6279F; lands: townland of Barnwells Grove and barony of Killian; area: 0.0910 hectares; **Co Galway**
- Regd owner: Patrick O'Brien; folio: 33378; lands: townland of Castlegar and barony of Galway; **Co Galway**
- Regd owner: John Rooney; folio: 10175F; lands: townland of Tallowroe and barony of Dunkellin; **Co Galway**
- Regd owner: Thomas Fleming; folio: 57735F; lands: townland of Woodquay and barony of Clare; **Co Galway**
- Regd owner: Padraig McGann; folio: 9981; lands: townland of Glennacloghaun North and barony of Tiaquin; **Co Galway**
- Regd owner: Dymphna Greaney and Patrick J Greaney; folio: 29431; lands: townland of Knockereen and Kilcoona and barony of Clare; **Co Galway**
- Regd owner: Pat Ferriter and Mary Ferriter; folio: 7665F; lands: townland of Ferritersquarter and barony of Corkaguiny; **Co Kerry**
- Regd owner: Michael Hurley; folio: 2580 and 1043L; lands: townland of Knockaunmore and barony of Clanmaurice; **Co Kerry**
- Regd owner: Joseph Egan; folio: 9145F; lands: townland of Farranwilliam and barony of Clanmaurice; **Co Kerry**
- Regd owner: James and Aisling McGovern; folio: 27548F; lands: townland of Curraduff and barony of Corkaguiny; **Co Kerry**
- Regd owner: Dorothy Gillespie; folio: 45023F; lands: townland of Illauncaun and barony of Corkaguiny; **Co Kerry**
- Regd owner: Eva Hickey and Mark Walder; folio: 26974F; lands: 16 Castlesize Green, Sallins, Co Kildare, and townland of Castlesize and barony of Naas North; **Co Kildare**
- Regd owner: Seamus Daly; folio: 38766F; lands: Fernslock, Nicholastown, Kilcock, Co Kildare, and townland of Nicholastown (Ikeathy By) and barony of Ikeathy and Oughterany; **Co Kildare**
- Regd owner: Mark Slattery and Elizabeth Slattery; folio: 91; lands: Kilmurry and barony of Ida; **Co Kilkenny**
- Regd owner: Sam Magwood and Caroline Mason; folio: 7573F; lands: townland of Coolruss and barony of Connello Upper; **Co Limerick**
- Regd owner: Gerard O'Connell; folio: 34188F; lands: parish of St Patrick and county borough of Limerick; **Co Limerick**
- Regd owner: Robert Carroll; folio: 9537F; lands: Rootiagh and barony of Pubblebrien; **Co Limerick**
- Regd owner: Brigid Fitzpatrick, Clonrallagh, Longford, Co Longford; folio: 1055F; lands: Cloonrallagh; area: 1.9248 hectares; **Co Longford**
- Regd owner: Anthony Cassells, Ballymahon, Co Longford; folio: 2829; lands: Cloonbreany; **Co Longford**
- Longford**
- Regd owner: Sean Barrett; folio: 35501; lands: townland of Corclough (ED Belmullet) and barony of Erris; area: 2.9780 hectares; **Co Mayo**
- Regd owner: John Finnegan and Mary Finnegan; folio: 6753F; lands: townland of Coolnahasouth and barony of Costello; **Co Mayo**
- Regd owner: Mary B McCabe; folio: 597; lands: townland of Glen and barony of Murrisk; **Co Mayo**
- Regd owner: Peter Hughes; folio: 4011F; lands: townland of Weatherfort, Knockataun, Cornanagh, Mountpleasant and barony of Carra and Kilmairne; **Co Mayo**
- Regd owner: Nicholas Rooney, Oberstown, Lusk, Co Dublin; folio: 10945F; lands: Ballymurphy; **Co Meath**
- Regd owner: Elizabeth Mary Berrill, Main Street, Duleek, Co Meath; folio: 171; lands: Bey Beg; **Co Meath**
- Regd owner: John Cadden, Knocknaveagh, Ryefield, Virginia, Co Cavan; folio: 1134; lands: Rahard; **Co Meath**
- Regd owner: John Cassidy, Monantin, Ballybay, Co Monaghan; folio: 3730; lands: at Edenaferkin, Ballybay; **Co Monaghan**
- Regd owner: Evelyn McMahon and Donal McMahon, Drumhillagh, Smithboro PO, Co Monaghan; folio: 1499F; lands: Drumhillagh; area: 0.1289 hectares; **Co Monaghan**
- Regd owner: James Coughlan (deceased); folio: 865F; lands: Coolreagh or Cloganhill, Cortullagh or Grove, and barony of Garrycastle; **Co Offaly**
- Regd owner: Thomas Kelly (deceased); folio: 27021; lands: townland of Glenrevagh and barony of Athlone North; area: 64 acres, 1 rood, 30 perches; **Co Roscommon**
- Regd owner: Michael Martin; folio: 1117F; lands: townland of Barry Beg and barony of Athlone South; area: 10 acres, 35 acres; **Co Roscommon**
- Regd owner: Joseph Finan; folio: 20055; lands: townland of Aghamore and barony of Carbury; **Co Sligo**
- Regd owner: Kevin O'Grady; folio: 7956; lands: townland of Kiltycloghan and Drumea and barony of Tirerrill; **Co Sligo**
- Regd owner: Catherine and Caimin O'Brien; folio: 7795F; lands: townland of Glenbower and barony of Lower Ormond; **Co Tipperary**
- Regd owner: John McGrath; folio: 1998F; lands: plot of ground situate in the townland of Carrickbeg in the barony of Upperrthird in the county of Waterford; **Co Waterford**
- Regd owner: Patrick Donnelly and Mai Donnelly; folio: 17953F; lands: plot of ground situate in the townland of Spring (Marquis) 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 the county of Waterford; **Co Waterford**

Regd owner: John Grennan and Patrick Grennan, Aharney, Tullamore, Co Offaly; folio: 1186; lands: Kilgaroan; area: 21.5419 hectares; **Co Westmeath**

Regd owner: Maurice Keogh and Elizabeth Keogh; folio: 10344; lands: townland of Dunlavin Lower and barony of Talbotstown Lower; **Co Wicklow**

Regd owner: John McElroy and Deirdre McElroy; folio: 8402F; lands: townland of Newcastle Middle and barony of Newcastle; **Co Wicklow**

Regd owner: Wendy Heavener; folio: 141; lands: situate in the townland of Ballycapple, barony of Arklow and county of Wicklow; **Co Wicklow**

Regd owner: Irish Forestry Property Management Limited; folio: 975; lands: townland of Crone More and barony of Ballinacor South; **Co Wicklow**

Regd owner: Irish Forestry Property Management Limited; folio: 977; lands: townland of Crone More and barony of Ballinacor South; **Co Wicklow**

Regd owner: Daniel McCarthy and Mary McCarthy; folio: 7821F; lands: at 31 Ardmore Park, Herbert Road, Bray, Co Wicklow, and townland of Killarney and barony of Rathdown; **Co Wicklow**

WILLS

Bauer, John Colin Caldecott (deceased), late of 'Blairfinde', Portland Road, Greystones, Co Wicklow (formerly of 1 Dunsborough Cottages, Ripley Green, Ripley, Surrey, GU23 6AL, England), retired wool-broker, who died on 23 January 2007. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Rutherfords, Solicitors, 41 Fitzwilliam Square, Dublin 2; tel: 01 661 5732, fax: 01 661 2071

Beattie, Teresa (otherwise Catherine Teresa) (deceased), late of 5 Castle Park, Castle Street, Roscommon, who died on 2 April 2007. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Timothy JC O'Keeffe & Co, Solicitors, Abbey Street, Roscommon; tel: 090 662 6239

Doel, Peter (deceased), late of DeVesci Terrace, Monkstown, Co Dublin, who died in or around 23

LAW SOCIETY Gazette PROFESSIONAL NOTICE RATES

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- Wills – €132 (incl VAT at 21%)
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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 July *Gazette*: 18 June 2007. For further information, contact Catherine Kearney or Valerie Farrell on tel: 01 672 4828 (fax: 01 672 4877)

March 2007. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact G O'Nualláin & Co, Solicitors, of 12 Main Street, Donnybrook, Dublin 4; tel: 01 218 9992, fax: 01 218 9994, email: gonual-lain@gonuallain.ie

Dunne, Carmel (deceased) late of Avondale Terrace, Crumlin, Perrystown, Dublin 12, who died on 6 October 2006. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, please contact Quinn & Company, Solicitors, 23A Village Green, Tallaght, Dublin 24; tel: 01 452 1744, fax: 01 452 1819, email: mail@quinnssolicitors.ie

Johnston, Maureen (deceased), late of Ballytore, Mullamast, Athy, Co Kildare, formerly of 149 Cherryfield Road, city of Dublin, who died on 26 May 2006. Would any person having knowledge of the whereabouts of any will made by the above-named deceased person please contact O'Hare O'Connor Walshe Solicitors, Ulysses House, Foley Street, Dublin 1; tel: 01 878 0055, fax: 01 878 0056, email: info@oocw.ie

Kavanagh, Mary Christina (deceased), late of 59 Coolatree Road, Beaumont, Dublin 9, who died on 21 December 2005. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Fagan Bergin, Solicitors, 57 Parnell Square West, Dublin 1; tel: 01 872 7655, fax: 01 873 4026, email: mbergin@faganlaw.com

Murphy, Patrick (deceased) (farmer), late of Gortnadrohid, Reengaroga, Baltimore, Co Cork. Would any person having knowledge of a will

made by the above-named deceased, who died on 12 September 1985, please contact Messrs Wolfe & Co, Solicitors, Market Street, Skibbereen, Co Cork; tel: 028 21177

McHale, Anthony (deceased), late of Tirrane, Clogher Post Office, Belmullet, Co Mayo and University College Hospital Galway. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died at University College Hospital Galway in February 2007, please contact Anne Leonard, solicitor, of Messrs P O'Connor & Son, Solicitors, Swinford, Co Mayo; tel: 094 925 1333, fax: 094 925 1833, email: aleonard@poconsol.ie

O'Loughlin, Anne (otherwise Ann, otherwise Nancy) (deceased), late of Punchersgrange House, Milltown, Newbridge, Co Kildare. Would any person having knowledge of the whereabouts of a will dated 15 August 2003, executed by the above-named deceased, who died on 3 January 2005, please contact Peter Flanagan & Co, Solicitors, The Square, Kildare, Co Kildare; tel: 045 521 252, fax 045 521 636

O'Neill, John (deceased), late of Sragh, Rhode, Co Offaly, who died on 18 March 2004. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Byrne Carolan Cunningham, Solicitors, Main Street, Moate, Co Westmeath; tel: 090 648 2090, fax: 090 648 2091, email: bccsolrs@eircom.net

O'Neill, Maurice (deceased), late of Frenchfort, Dublin Road, Oranmore, Co Galway. Would any person having knowledge of a will made by the above-

named deceased, who died on 11 March 2007, please contact Rutherfords, Solicitors, 41 Fitzwilliam Square, Dublin 2, fax: 01 678 5914

Organ, William (deceased), late of Riverchapel, Courtown, Gorey, Co Wexford, who died on 3 June 1978. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Maeve Breen, MT O'Donoghue & Co, Solicitors, 11 Main Street, Gorey, Co Wexford; tel: 053 942 1137, fax: 053 9421725, email: maeve.breen@mtodonoghue.com

Robinson, Stanley, Ian Derek (deceased), late of 103 Leighlin Road, Crumlin, Dublin 12, who died on 27 February 2007. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Egan O'Reilly, Solicitors, 19 Upper Mount Street, Dublin 2; tel: 01 613 0100, fax: 01 613 0101, email: law@eganoreilly.ie

Statutory notice to missing beneficiaries and/or creditors

In the estate of **Nora Higgins (deceased)**, late of Clogher, Tang, Ballymahon, Co Westmeath. Notice is hereby given pursuant to section 49 of the *Succession Act 1965* that particulars in writing of all claims against the estate of the above-named deceased, who died intestate at Loughloe House Nursing Home, Abbey Road, Athlone, Co Westmeath on 10 March 2005, should be furnished to the undersigned solicitors for the legal personal representative within three months of the date of this notice, after which date the assets will be distributed having regard only to the claims furnished.

Date: 1 June 2007

Signed: Groarke & Partners, Solicitors, 32/33 Main Street, Longford

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TITLE DEEDS

Harte, Clare (deceased), late of 11 Shamrock Street, Phibsboro, Dublin 7. Would any person having knowledge of the original title documents relating to the above property please contact Amorys, Solicitors, Suite 10, The Mall, Beacon Court, Sandyford, Dublin 18; tel: 01 213 5940, fax: 213 5946, email: amorys@eir.com.net

Harte, Clare (deceased), late of 11 Shamrock Street, Phibsboro, Dublin 7. Would any person having knowledge of

the original title documents relating to 27 Shandon Park, Grangegorman, Dublin 7, please contact Amorys, Solicitors, Suite 10, The Mall, Beacon Court, Sandyford, Dublin 18; tel: 01 213 5940, fax: 213 5946, email: amorys@eir.com.net

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 premises at 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69 Jones Road, Dublin 3: an application by Páirc An Chrócaigh Teoranta

Take notice any person having any interest in the freehold estate of or superior interest in the following premises: all that and those the premises known as 65 and 67 Jones Road, Dublin 3, held under an indenture of lease dated 16 April 1864 made between Robert Fowler of the one part and Maurice Buttery of the other part for the term of 500 years from 1 May 1863, subject to the yearly rent of £175; all that and those the premises known as 51, 53, 55 Jones Road, Dublin 3, held under indenture of lease dated 16 May 1866 between Maurice Buttery of the first part, Robert Erskine of the second part and Thomas Wall of the third part for the term of 300 years from 25 March 1866, subject to the yearly rent of £9; all that and those the premises known as 29 and 31 Jones Road, Dublin

3, held under indenture of lease dated 16 April 1866 between Maurice Buttery of the first part, Robert Erskine of the second part and Robert Shapland Edgar of the third part for the term of 300 years from 25 March 1866, subject to the yearly rent of £8; all that and those the premises known as 39, 41, 43, 45, 47, 49 Jones Road, Dublin 3, held under indenture of lease dated 8 May 1867 between Maurice Buttery of the first part, Robert Erskine of the second part and Denis Doyle of the third part for the term of 300 years from 25 March 1867, subject to the yearly rent of £19; all that and those the premises known as 59, 61, 63 Jones Road, Dublin 3, held under indenture of lease dated 6 November 1867 between Maurice Buttery of the first part, Robert Erskine of the second part and Thomas Wall of the third part for the term of 300 years from 29 September 1867, subject to the yearly rent of £6.15; all that and those the premises known as 33, 35, 37, 57 Jones Road, Dublin 3, held under indenture of lease dated 9 April 1868 between Maurice Buttery of the first part, Robert Erskine of the second part and Denis Doyle of the third part for the term of 300 years from 25 March 1868, subject to the yearly rent of £11.13s; all that and those the premises known as 27 and 27A Jones Road, Dublin 3, held under indenture of lease dated 5 April 1873 between Maurice Buttery of the first part, Robert Erskine

of the second part and Patrick Hozier of the third part for the term of 400 years from 25 March 1873, subject to the yearly rent of £4.16s.

Take notice that the applicant, Páirc An Chrócaigh Teoranta, being the person entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and any intermediate interests 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 within 21 days from the date of this notice.

In default of any such notice being received, Páirc An Chrócaigh Teoranta 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 such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold reversion in the aforesaid premises, are unknown or unascertained.

Date: 1 June 2007

Signed: Reddy Charlton McKnight (solicitors for the applicant), 12 Fitzwilliam Place, Dublin 1

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 2 Terenure Place in the parish of Rathfarnham, barony of Rathdown and county of Dublin: an application by Joseph Cripps

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 2 Terenure Place, being part of the lands formerly called the Terenure Estate, being part of the lands at Terenure in the parish of Rathfarnham, barony of Rathdown and county of Dublin (which said premises are held by the applicant under indenture of lease dated 4 October 1947, Percival J Hanna to Homestores Limited), should give notice to the undersigned solicitors.

Take notice that the applicant, Joseph Cripps, 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: 1 June 2007

Signed: Sheehan & Company (solicitors for the applicant), 1 Clare Street, Dublin 2

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* in the matter of premises situate at 4 Terenure Place in the parish of Rathfarnham, barony of Rathdown and county of Dublin: an application by Austin Cripps

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 2 Terenure Place, being part of the lands formerly called the Terenure Estate, being part of the lands at Terenure in the parish of Rathfarnham, barony of Rathdown and county of Dublin (which said

premises are held by the applicant under indenture of lease dated 24 July 1947, Percival J Hanna to Julia McGeeney), should give notice to the undersigned solicitors.

Take notice that the applicant, Austin Cripps, 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: 1 June 2007

Signed: Sheehan & Company (solicitors for the applicant), 1 Clare Street, Dublin 2

Landlord and Tenant (Ground Rents) Acts 1967-2005: notice of intention to apply to buy out the fee simple

To: Reps the Honourable John Robert William Viscount deVesci, the Honourable Sarah Cecelia Mandeville, Louisa Charlotte Fanny Countess d'Espons de Paul Algernon Barlow and Lyonell Barlow.

1. Description of land to which this notice refers: all that shop with apartment overhead situate at Newry Street, Carlingford, Co Louth, as more particularly delineated and described on the map annexed hereto and thereon coloured red.

2. Particulars of applicant's lease or tenancy: lease dated 1 July 1902 made between the Honourable John Robert William Viscount deVesci, the Honourable Sarah Cecelia Mandeville, Louisa Charlotte Fanny Countess d'Espons de Paul Algernon Barlow and Lyonell Barlow of the one part and William Charles Browne of the other part for a term of 150 years from 1 May 1902 at a yearly rent of £20 per annum.

Take notice that Sean Malone of Castletowncooley, Riverstown, Dundalk, Co Louth, being a person entitled to buy out the fee simple under section 8 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* proposes to apply, after 28 days from the date hereof, to the Louth county registrar to vest in it under the *Landlord and Tenant (Ground Rents) Acts 1967-2005* the fee simple in the property set out in paragraph 1 hereof.

Date: 1 June 2007

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e-mail companyformation@lawsociety.ie or tel (01) 6724914/6 or fax (01) 6724915



Signed: Executed on behalf of Sean Malone, John Woods (solicitor for the applicant), Woods Ahern Mulken, Dundalk, Co Louth

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant Acts (Ground Rents) (No 2) Act 1978: an application by Marie Tuite, Michael Tuite, Patrick Tuite, Ciaran Tuite, David Tuite and Peter Tuite

Take notice that any person having an interest in the freehold estate or any superior interest in the property known as "plot of ground at St Margaret's Road, Malahide in the barony of Coolock and the county of Dublin", more particularly delineated and shown on the map attached to a lease dated 14 February 1978 and made between the governor and company of the Bank of Ireland and the Honourable Rose Maude Talbot of the first part, the Malahide Estate of the second part and Michael Tuite of the third part, for the term of 999 years from 1 November 1968, subject to the yearly rent of one shilling, which said property forms part of the garden of the premises commonly known as Tir na nOige, Church Road, Malahide in the county of Dublin.

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

In default of such notice being received, the said Marie Tuite, Michael Tuite, Patrick Tuite, Ciaran Tuite and Peter Tuite 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 such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold reversion in the aforesaid premises, are unknown or unascertained.

Date: 1 June 2007

Signed: Gerald Kelly & Co (solicitors for the applicant), 11 Herbert Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant Acts (Ground Rents) (No 2) Act 1978, re: premises situate to the north side of 'St Helen's', Strand Road, Portmarnock in the county of Dublin, and in the matter of an application by Sean Hayes and Kathleen King

Take notice any person having an interest in the freehold estate or superior

interest in the property known as a plot of ground on the north side of 'St Helen's', Strand Road, Portmarnock in the county of Dublin, being part of the premises comprised in and demised by an indenture of sublease dated 11 October 1945 and made between Helena M Earley of the one part and Brendan Fogarty of the other part, the said sublease being a sublease under a lease dated 20 September 1853 and made between James Howard, Rev Michael Doyle and Catherine Elizabeth Daniel of the one part and Patrick O'Neill of the other part for 200 years from 29 September 1852, subject to the yearly rent of 1 penny (old money).

And further take notice that Sean Hayes and Kathleen King intend to submit an application to the county registrar for the city of Dublin for the acquisition of the fee simple and any intermediate interest in the aforesaid property, and any party or parties asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the party below named within 21 days of the date of this notice.

In default of any such notice being received, Sean Hayes and Kathleen King 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 and/or unascertained.

Date: 1 June 2007

Signed: Hennessy & Co (solicitors for the applicant), Wolfe Tone Square, Bantry, Co Cork

In the matter of the Landlord and Tenant Act 1967-1994 and in the matter of the Landlord and Tenant Acts (Ground Rents) (No 2) Act 1978: an application by T Peare & Sons Limited

Take notice that any person having any interest in the freehold estate of following properties: all that and those the dwellinghouse and premises situate at and known as no 3 Alma Terrace, Ardee Street, Bray in the county of Wicklow, being a portion of the premises comprised in and demised by indenture of lease dated 23 October 1900 and made between James Ernest McCormack of the one part and William Blackburn of the other part, subject to the yearly rent of £5.

Take notice that T Peare & Sons Limited intends to submit an application to the county registrar for the county of Wexford for the acquisition of the freehold interest in the aforementioned properties, and any party asserting that they hold a superior interest in the aforesaid premises (or

any of them) are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar for the county of Wexford 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: 1 June 2007

Signed: Garahy Breen & Co, Solicitors, 4 Castle Street, Ennis, Co Wexford

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

Take notice that any person having an interest in the freehold estate of or any superior interest in the property known as all that and those numbers 21 and 22 Old Market Place, situate in the parish of Saint Mary Shandon and city of Cork, being a portion of the hereditaments and premises comprised in and demised by an indenture of lease made 28 March 1911 and made between Arthur de Moleyns, lessor, of the one part, and Laurence McCarthy, lessee, of the other part for the term of 200 years from 25 March 1910, subject to the yearly rent of £16.7s.4d.

Take notice that Laurence McCarthy of 'Araglen', Menloe Gardens, Blackrock Road, Cork, being the person entitled under part 2 of the 1978 act, intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold and any intermediate interest in the aforesaid property, and any party or parties asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title in the aforementioned property to the party named below within 21 days from the date of this notice.

In default of any such notice being received, the applicant, Laurence McCarthy, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice to vest in him the fee simple interest and all intermediary interests if any such exist in the property set out above and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold reversion, in the property aforesaid are unknown or unascertained.

Date: 1 June 2007

Signed: GJ Moloney (solicitors for the applicant), City Quarter, Lapps Quay, Cork

In the matter of the Landlord and Tenant Acts 1967-1994 and in the

TD Fitzpatrick

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matter of the Landlord and Tenant Acts (Ground Rents) (No 2) Act 1978: an application by Laurence McCarthy

Take notice that any person having an interest in the freehold estate of, or any superior interest in, the property known as all that and those numbers 23 and 24 Old Market Place, situate in the parish of Saint Mary Shandon and city of Cork, held under a yearly tenancy arising on holding over on the expiry of an indenture of lease of 31 July 2006, and made between Henry C Cave, lessor, of the one part, and Patrick Honan, lessee, of the other part, whereby the aforesaid property was demised for a term of 100 years from 25 March 1905, subject to the yearly rent of £6.

Take notice that Laurence McCarthy of 'Araglen', Menloe Gardens, Blackrock Road, Cork, being the person entitled under part 2 of the 1978 act, intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold and any intermediate interest in the aforesaid property, and any party or parties asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title in the aforementioned property to the party named below within 21 days from the date of this notice.

In default of any such notice being received, the applicant, Laurence McCarthy, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice to vest in him the fee simple interest and all intermediary interests if any such exist in the property set out above and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, includ-

ing the freehold reversion, in the property aforesaid are unknown or unascertained.

Date: 1 June 2007

Signed: GJ Moloney (solicitors for the applicant), City Quarter, Lapps Quay, Cork

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Paul Dillon of 78 Francis Street, Dublin 8

Take notice that any person having an interest in the freehold estate in the property known as 118/119 The Coombe (front and rear), comprised in and demised by indenture of lease dated 27 January 1911 between William Francis De Visme Kane and W&R Jacob and Company Limited, for a term of 200 years, subject to the annual rent of £20 and therein described as "all those two tenements with the yards and gardens thereunto belonging, formerly called The Black Horse or Hall and known as Garrett Bryan's holding with the cottages at the rear in the Lower Coombe in the city of Dublin and now known as numbers 118 and 119 Coombe and situate in the parish of Saint Luke and county of the city of Dublin".

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

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar 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 the aforesaid property are unknown and unascertained.

Date: 1 June 2007

Signed: BCM Hanby Wallace (solicitors for the applicant), 88 Harcourt Street, Dublin 2

In the matter of the Landlord and

Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Leftbrook Limited

Take notice that any person having an interest in the freehold estate or any intervening estate in the property known as 'An Sibin', situate at Main Street, Cavan in the county of Cavan (hereinafter referred to as "the premises") should give notice of their intentions to the under-signed solicitors.

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

In default of any such notice being received, the applicant, Leftbrook 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 of Cavan for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold reversion, in the aforesaid premises are unknown or unascertained.

Date: 1 June 2007

Signed: Shane Kennedy & Co (solicitors for the applicant), 38 Dublin Street, Monaghan, Co Monaghan

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 Emer Carroll

Any person having a freehold estate or and intermediate interest in all that and those the plot or piece of ground known formally known as number 68 Barrack Street in the parish of Saint Nicholas and city of Cork and now known as 79 Barrack Street, Cork, otherwise known as Elaine's, Barrack Street, Cork, held under indenture of lease dated 26 July 1877 made between Richard Meade of the first part, Mary Ann Meade of the second part, Cork Investment Land and Building Society of the third party and James McEnery of the fourth part for the term of 990 years from 25 July 1877, subject to the yearly rent of £20,

since adjusted to £19.60, and to the covenants and conditions therein contained.

Take notice that Emer Carroll, being the person currently entitled to the lessees' interests under the said lease, intends to apply to the county registrar for the city of Cork for the acquisition of the freehold interest and all the intermediate interests in the aforesaid property, and any party ascertaining that they hold a superior interest in the aforesaid property (or any of them) are called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, Emer Carroll intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and would apply to the county registrar for the county of Cork for such directions as may be appropriate on the basis that the person of persons beneficially entitled to the superior interest including the freehold in each of the aforesaid premises are unknown and unascertained.

Date: 1 June 2007

Signed: J&P O'Donoghue (solicitors for the applicants), Langford Street, Killorglin, Co Kerry

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*.

RECRUITMENT

Locum solicitor required for Dublin city practice for the months of July to December 2007. Experience required in conveyancing, commercial and probate areas. Reply to John P Redmond & Co, 22/23 Merchant's Quay, Dublin 8. Reference JC/BC

Conveyancing solicitor required for legal practice in Letterkenny, Co Donegal. Please forward a curriculum vitae to box no 51/07

Solicitor required, Co Kerry, to specialise in probate/conveyancing. Reply to box no 52/07

Solicitor returning to work after a break seeks position as assistant solicitor in Dublin area. Has experience in general practice and criminal legal aid and lecturing Health Service Executive (HSE) staff on recent legislation. Awaiting results of Law Society diploma in employment law examination. Can finance own practising certificate. Also interested in assisting with a new practice start-up. Computer literate. Tel: 01 668 6901 or 087 223 5141

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Opportunity at the Law Society

Parliamentary and Law Reform Executive

This position reflects the Law Society's commitment to making a contribution in the public interest to law reform and the development of human rights law and practice.

The position entails acting as Secretary to the Society's Law Reform Committee; researching and writing law reform reports and policy papers; organising occasional seminars and supporting the work of the Committee; monitoring law reform proposals put forward by Government and others; reporting on new legislation in the *Gazette*; assisting in the preparation of submissions in relation to law reform proposals and draft legislation, and organising an annual student essay competition.

The successful appointee will also act as Secretary to the Society's Human Rights Committee and support the work of that Committee in promoting awareness of human rights law in

the profession, including reporting on human rights law developments and events in the *Law Society Gazette* and organising occasional seminars and conferences.

The successful candidate for this exciting position will be a solicitor, barrister or legal academic, with an interest in law reform, human rights law and public policy and with excellent legal, analytical and drafting skills.

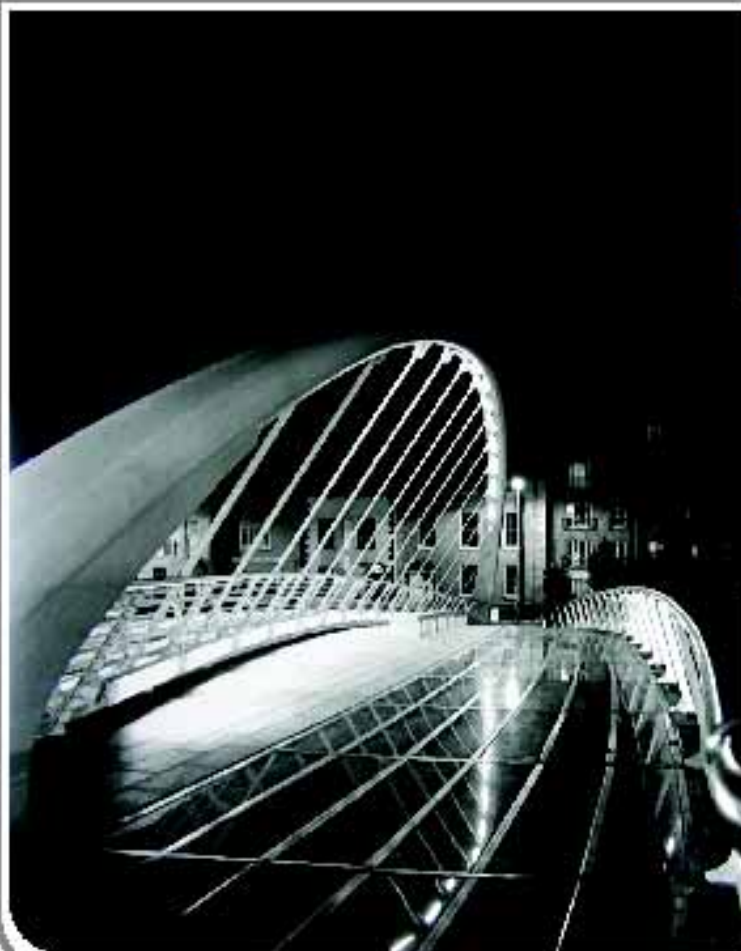
This is a senior position with an attractive remuneration package for the right candidate.

Applications should be sent to Maureen Seabrook, Human Resources Manager, Law Society of Ireland, Blackhall Place, Dublin 7, to arrive by Friday, 15 June 2007.

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NEW OPPORTUNITIES FOR June 2007

PRIVATE PRACTICE

Employment Solicitor

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.

PF02135

EU Solicitor

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.).

PF02132

Financial Services Solicitor

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 leasing, funds, debt listing, securitisation and structured finance.

PF02131

Construction Solicitor

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.

PF02130

Pensions Solicitor

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.

PF02129

Corporate Solicitors

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.

PF02127

PSL, Litigation Department, London

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 academics.

PF02134

Litigation Solicitor, Tokyo

This position is based in the Tokyo offices of a leading London law firm. The extensive arbitration and litigation practice covers commercial, industrial and professional sectors and encompasses life sciences, energy, consultancy, telecommunications, leisure and sport, fraud-related claims, shareholder and partnership disputes, and many others.

PF02133

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Successful candidates will have the ability to work independently whilst demonstrating first class interpersonal skills. You will be working in a friendly and supportive environment with the opportunity to join a comprehensive and focused training programme.

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The Candidate

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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 LEAD 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

€60K+

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.

JUNIOR COMMERCIAL LAWYERS - DUBLIN & CORK

€60K+

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

€70K+

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.

PENSIONS SOLICITOR - DUBLIN CITY CENTRE

€70K+

This is an opportunity to join the pensions team in a leading practice. The successful candidate will be advising a broad range of international and domestic companies, scheme trustees and individuals on all pension scheme aspects and related matters. Applicants should have preferably gained experience in a large or medium size practice.

TAX PROFESSIONAL - 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.

■ **Are you a qualified solicitor?**

■ **Are you looking for temporary work with flexible hours?**

■ **Are you available to commence from September 2007?**

An Post is a major commercial organisation providing a wide range of services which encompass postal, communication, retail and money transmission services. It is one of Ireland's largest companies directly employing almost 9,500 people through its national network of retail, processing and delivery points.

We are now seeking a suitable candidate as temporary solicitor to cover maternity leave from September 2007.

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The post holder will be a qualified solicitor with relevant experience in commercial law. Applicants will have the ability to develop productive working relationships with all relevant stakeholders and communicate effectively, both orally and in writing across all levels in the organisation. He/she will deploy technical and professional knowledge to exercise judgement and execute decisions in support of the business, demonstrating the personal credibility to work and influence at senior levels.

The remuneration will be commensurate with experience and will reflect the importance of this management position.

If you feel you meet the specification outlined above, please send a detailed CV, clearly indicating the position you are applying for, in strict confidence, to the HR Resourcing Manager, Block 2D, GPO, O'Connell St., Dublin 1. E-mail: kevin.pyke@anpost.ie www.anpost.ie

The closing date for receipt of applications is 27/06/2007.

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n IN-HOUSE OPPORTUNITIES

Senior Counsel Dublin: up to 150k + Bonus and Benefits

Leading service provider seeks to appoint Senior Counsel to provide high quality, accurate and effective legal advice on aspects of corporate governance, regulatory compliance, corporate/commercial issues, EU and regulatory, environmental and employment law matters. The successful candidate must be a senior lawyer with significant and proven experience as a general counsel in a large corporate environment, possessing strong, effective leadership and managerial influencing skills.

n PRIVATE PRACTICE OPPORTUNITIES

Professional Support Lawyer: 55k + Bonus and Benefits

Leading law firm requires an Associate Solicitor to add to the level of expertise in supporting its fee-earners in revising and upgrading the firms' data base, templates and auxiliary drafting procedures. Great opportunity for career advancement and flexible hours of work.

Commercial Property Solicitor: 80k + Bonus and Benefits

This role is for a commercial conveyancing solicitor. The successful candidate must have a strong and proven practice experience in a similar role. Exciting and genuine opportunity for career and earnings development.

Commercial Litigator: up to 80K + Bonus and Benefits

This challenging role is ideal for a proven commercial litigator who is seeking to develop their career and earning potential and can demonstrate a high quality of work to date.

Employment Solicitor- non-contentious: up to 80K + Bonus and Benefits

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Prestigious niche practice requires two Associate Corporate Solicitors to join a rapidly expanding practice. This is an exciting and varied role with a high-quality client list the candidate must be able to demonstrate strong practice experience of all core corporate practice areas.

n LEGAL EXECUTIVE OPPORTUNITIES

Our clients are seeking experienced legal executives with a track record in commercial and residential conveyancing, litigation and corporate practice. Excellent opportunities to advance your career and earning potential with prestigious law firms.

n COMPANY SECRETARIAL OPPORTUNITIES

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n LEGAL SECRETARIAL OPPORTUNITIES

Our clients are seeking highly professional and self-motivated secretaries across the core areas of practice, and excellent working conditions and pay are offered to the right candidates seeking to develop their careers.

DUBLIN

BANKING DUBLIN

Leading Irish firm is looking to add to its successful and established banking and financial services team. Candidates should have previous experience in this field and excellent client management skills are essential. Ref: 12373. €60,000+

PROJECTS DUBLIN

Major player in the PPP/PFI sector. Our client is looking to expand its team and candidates with large commercial project experience are of particular interest. Construction experience would also be an advantage. Ref: 13523. €65,000+

CORPORATE FINANCE DUBLIN

Top-tier Dublin practice is seeking corporate finance lawyers to work on domestic and international matters. Ideally candidates will also have some industry experience. Excellent career path on offer. Ref: 12283. €60,000+

IT / IP DUBLIN

Specialist technology and intellectual property department is looking to add to its high profile team. Candidates will have experience in general outsourcing and telecoms. Excellent work/life balance. Ref: 12363. €70,000+

INSURANCE DUBLIN

Superb opportunity to make the move into insurance law. Our client is a leading Dublin law firm with an outstanding reputation for its insurance work. Insurance experience desired but not essential. Ref: 12043. €60,000+

PROPERTY DUBLIN

Our client is a respected mid-tier Dublin firm looking to hire an additional commercial property lawyer. Excellent work/life balance and a fast-track to partnership. Large commercial development across the Capital. Ref: 12020. €65,000+

ENERGY DUBLIN

Interesting role for a corporate, commercial or projects lawyer looking to specialise in energy law. Working on high-profile transactions, with a focus on renewables, wind and hydro energy. Ref: 11993. €75,000+

CORPORATE M&A DUBLIN

Chance to join the market-leader in corporate. Working as part of Ireland's largest corporate units, the experience on offer is second-to-none. Focus on M&A and re-structuring transactions. Ref: 11963. €70,000+

STRUCTURED FINANCE DUBLIN

Specialist finance role within the general banking department of this leading Dublin firm. Candidates will have either finance or corporate backgrounds and be seeking a role with a high level of client contact. Ref: 12103. €65,000+

EU / COMPETITION DUBLIN

Rare opportunity within the highly rated EU/Competition team of this top-tier firm. Candidates will have some previous experience in this field. Additionally, language skills would be an advantage. Ref: 12133. €65,000+

FUNDS DUBLIN

Looking to make the move into funds? Our client is interested in lawyers with exposure to general banking or corporate, seeking a change in direction. Excellent support and training on offer. Ref: 12143. €65,000+

PENSIONS DUBLIN

Niche role working with one of Ireland's most respected pensions partners. Candidates can expect to work on an enviable client base of Irish and UK corporate clients. Make your mark in this challenging discipline. Ref: 13303. €70,000+

LONDON

FUNDS LONDON

Leading international firm is rated by the legal press as one of the top investment funds teams in the City. Will consider corporate lawyers looking to move into investment or property funds. Ref: 376460. €65,000+

INSOLVENCY LONDON

Rare opportunity has arisen to join leading international firm. Work in a team renowned for excellence and the high quality work they produce. Excellent academics and solid experience are a must. Ref: 513970. €60,000

CORPORATE LONDON

Excellent transactional work offered at leading City firm. Tremendous support & managed autonomy characterise this role offering a refreshing alternative to the drudgery of the stereotypical sweatshop. Ref: 257870. €65,000-€85,000

PROPERTY LONDON

This excellent City firm sits just outside the Magic Circle and is looking for a solicitor to join its established real estate team. You will need to have development and investment experience. Ref: 515790. €70,000

CONSTRUCTION LONDON

A fantastic opportunity to work with this highly-regarded national firm. The construction department can offer top quality predominantly non-contentious work to strong candidates of all levels. Ref: 522130. €53,000

CORPORATE LONDON

This highly-regarded corporate department of leading national firm can offer top quality work in a friendly and supportive environment. Good responsibility and competitive benefits package on offer. Ref: 520090. €53,000

INTELLECTUAL PROPERTY LONDON

An opportunity to deal with quality contentious and non-contentious IP work with this Magic Circle firm with exposure to some corporate support. Excellent package and ongoing training and support on offer. Ref: 524210. €55,000

ASSET FINANCE LONDON

This Top 5 finance practice will consider generalist banking lawyers as well as specialist asset finance lawyers to join its thriving practice. Great training and support on offer in a supportive team. Ref: 286740. €60,000-€90,000

PROJECTS LONDON

This firm is currently seeking high-calibre lawyers to join its rapidly expanding projects team based in London. You will work closely with the other international offices and play an integral part of the team. Ref: 163730. €75,000-€85,000

CORPORATE LONDON

Highly-regarded and friendly City firm is seeking an associate to work on an unusually varied range of corporate work. Encouragement to develop and engage in client-finding & marketing offered. Ref: 376910. €65,000-€75,000

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 welcomed. Ref: 478920. €65,000-€80,000

FINANCIAL SERVICES LONDON

Rare 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+

TAYLOR ROOT IN DUBLIN

David Thomson and Erica MacKinnon will be available to meet with you in Dublin on 28th and 29th June. If you are considering a move to London, or overseas, please contact them to arrange a confidential meeting to discuss your requirements.



Contact David Thomson or Erica MacKinnon
on +44 (0)131 226 8648.
E: david.thomson@taylorroot.com
E: erica.mackinnon@taylorroot.com

For more roles visit
www.taylorroot.com

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

Banking Solicitor

€80,000 - €100,000

An outstanding opportunity has arisen for an ambitious banking lawyer to join one of Ireland's leading banking teams. Experience in any of the following areas is desirable: general asset and tax based finance, financial services (advice on hedging, arbitrage, lending and documentary credit transactions) or banking strategy (advising domestic and international banks on internal corporate affairs). Ref: 16638

Employment Lawyer

€30,000+

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: 26474

Head of Private Client

€30,000+

Our client is a dynamic and progressive firm of solicitors based in Dublin. The firm prides itself on delivering a prompt, efficient, high quality legal service and has enjoyed rapid growth over the last number of years. The partners are now seeking to hire a head of private client as they continue their strategic expansion. This is an exceptional opportunity for a strong practitioner looking for more autonomy, responsibility and recognition in their job. Ref: 26483

Dublin In-House

Funds Lawyer

€30,000

Our reputable client is currently seeking a qualified solicitor with extensive experience within the funds industry. The ideal candidate must have good interpersonal skills, drive, professionalism and competence along with strong IT skills and business acumen. Applicants must also have the ability to build strong and effective working relationships within the business and across group legal services. Ref: 31496

Compliance Lawyer

€30,000

Responsibilities include assisting in the development of the compliance, as well as leading priority initiatives and improvements within the business. This role will provide support to business leaders and others within the business who are focused on improvements in line with the overall business strategy, ensure all significant business & compliance risks are identified & prioritised and also ensure control plans are in place. Ref: 31404

Capital Markets Lawyer

€70,000

This is an outstanding opportunity for a qualified lawyer to join a leading funds company located in Dublin. This capital markets lawyer will act as a chief legal point of contact and will liaise with clients and both local and international counsel. The successful candidate will have a wealth of experience working within structured finance and/or have extensive experience within a leading law firm. Ref: 31348

Solicitor/Barrister

€60,000

Our well respected client currently has an exciting opportunity for a solicitor/barrister to join their state owned company. Reporting to the company lawyer, the key responsibilities of this role will include providing legal advice and support to the company lawyer/company secretary. The successful candidate will also be responsible for supporting the procurement and regulatory function. This superb position is offering an excellent package. Ref: 30637



Connaught/Munster

Corporate Solicitor

€35,000+

Our client, a highly successful firm in Galway, is seeking a corporate solicitor to grow and develop their corporate/commercial department. This is a superb position which will offer the successful candidate excellent career progression and excellent quality of work. Applications for this role are encouraged from solicitors with experience in corporate work who have had interaction with commercial clients. Ref: 29943

Commercial Property

€30,000 - €95,000

Our client, an expanding firm of solicitors in Limerick city centre, is seeking a commercial conveyancing solicitor with a broad range of conveyancing experience including excellent drafting skills and a commercial approach. The role consists of advising on all aspects of commercial property law to include residential and commercial developments. Must have a proven track record of servicing clients at a senior level. Ref: 28972

Private Client Solicitor

€65,000 - €85,000

Our client is a long established and well respected firm of solicitors based in Cork city. They are seeking an experienced conveyancing (residential and commercial) & probate solicitor to join their dynamic team. The firm which has a recognised standard of excellence and a large commercial client base now wishes to expand their private client department. A competitive remuneration package is provided commensurate with experience. Ref: 31561

Commercial Property Solicitor

€30,000+

Superb opportunity for an experienced commercial property solicitor to join one of Cork's most prestigious firms in the property sector. The successful candidate can look forward to autonomy and responsibility at a senior level. The role consists of advising on all aspects of commercial property law including residential and commercial developments. Must have a proven track record of servicing clients at a senior level. Ref: 30734

Commercial Property Solicitor

€55,000 - €75,000

Commercial law is central to this firm's strategy so this is a superb opportunity to join a thriving practice which has enjoyed impressive growth. Due to expansion, this Cork city firm seeks commercial lawyers for their dynamic team. At this level the successful candidate will be expected to play a front line role in managing client relationships and on-going business development. Emphasis is placed on attracting high-calibre candidates from Dublin and London firms. Ref: 30202

Junior Commercial Law Solicitor

€45,000 - €65,000

A progressive Cork city firm seeks a junior commercial solicitor for their commercial team. With an excellent standard of training from a large firm, the ideal candidate will be eager to progress within a top-tier, commercially focused practice. Duties include working on high profile complex cases and providing general commercial advice to large, well known clients. With significant growth in this department, rapid progression is expected for the right candidate. Ref: 30205

Corporate & Commercial

t 01 619 0400

Commercial Property Belfast

Commercial Property associates required to join the expanding practice in one of Ireland's top 5 law firms. Representing international investors, developers and large financial institutions, you will have a strong property background with experience in commercial developments and investments. This is an excellent opportunity to become an integral part in some of Ireland's major commercial property deals. Real career prospects and excellent financial package are offered. (ref 15250/11)

Compliance (In House) Dublin/London

Experienced compliance specialist required to join this leading multi-national financial services company. Experience of compliance issues throughout EMEA essential along with management and development skills at a Director or senior level. Outstanding career opportunities. (ref 15172/20)

Corporate Belfast

Prestigious Irish law firm require solicitors to join the corporate team in their new Belfast office. This is an excellent opportunity to join the latest venture of this international and award winning firm. Outstanding client portfolio and work quality offered along with excellent career progression and remuneration. (ref 15250/1)

Financial Services Dublin

Prestigious law firm requires lawyers to join one of Ireland's leading Financial Services teams. Advising a wide range of clients including financial institutions, regulators and domestic and international corporations on a wide range of international financial services and banking law. (ref 15244/5)

General Counsel EMEA (In House) Dublin

This is an outstanding opportunity to join the in-house legal team of this multi-national household name in their EMEA Head Office in Dublin. Ideally you will have extensive experience in commercial transactions in a multi-jurisdiction environment specialising in sales contracts and other commercial matters. There will also be some level of employment and EU work throughout EMEA, but the focus will be on the expanding Irish market. You will be reporting directly to the US counsel, but will also be a support and advice mechanism to the EMEA business leaders. Excellent financial package offered to the right candidate. (ref 15251/1)

IP & Technology Dublin

Opportunity to join a leading practice within one of Ireland's top tier law firms. International and domestic clients list covering a broad range of IP and IT issues. This is an outstanding opportunity to work alongside renowned practitioners in a fantastic environment. (ref 15250/20)

Litigation & Dispute Resolution Belfast

Excellent opportunity to join the Belfast office of this leading Irish law firm in their litigation and dispute resolution practice. Candidates will be able to demonstrate a proven track record in commercial litigation and alternative dispute resolution. Excellent career progression and remuneration offered. (ref 15250/20)

Projects & Construction Dublin/Belfast

Exciting opportunity exists to join this leading firm in their expanding construction practice for their Belfast or Dublin office. Ideally you will have extensive commercial experience gained in a similar environment along with the ability and competence to manage a blue chip client list in all aspects of construction law. Excellent drafting and interpersonal skills essential. (ref 15250/20)

Dublin Conveyancing & General Practice

Commercial Property Dublin City Centre

Mid tier firm with an enviable reputation requires an experienced solicitor to join their commercial conveyancing practice. Experience of commercial lending would also be beneficial. This is an excellent opportunity for candidates to join a well respected firm in an excellent central Dublin location. (ref 15251/20)

Commercial Property Dublin City Centre

Mid size firm in central Dublin requires an experienced solicitor to join their team. The ideal candidate will be coming from a similar environment and be highly experienced in all areas of commercial property including developments and lease work. This is an excellent opportunity to join a friendly and well respected firm. (ref 15242/1)

General Practice Solicitor

Dublin City Centre

General Practice in Dublin 1 requires an experienced general practice solicitor to join their team. This role will involve a caseload 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 15225/20)

Litigation Solicitor Dublin City Centre

Our client, located in Dublin 7 requires a litigation solicitor to join their team. This role will involve a varied caseload to include commercial and general litigation. This is a new role and will suit ambitious candidates coming from a similar background looking to join a friendly and close knit team. (ref 16015/1)

Litigation Solicitor South Dublin

Niche practice located in South Dublin requires a litigation solicitor for their team. The ideal candidate will have experience in a similar role and be looking for a specialist litigation role in a friendly atmosphere. Salary and benefits are commensurate with experience. (ref 16225/20)

Dublin Office

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Out of Office Hours Paul Fahy 087 9109745 Alan Whelan 087 9374022 Neenan Cavanagh 087 9100067

Offices also in Birmingham • Brighton • Bristol • Edinburgh • Glasgow • Leeds • London • Manchester



t 01 619 0400

Regional

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Property Dublin City Centre

Mid tier full service firm requires an experienced solicitor for their busy practice in Dublin 2. With a caseload of residential conveyancing and probate, this role offers excellent prospects to the successful candidate to join a high profile practice with a longstanding reputation. (ref 16296)

Property Dublin City Centre

Mid tier firm in Dublin 2 requires an experienced property solicitor for their team. Candidates will ideally be coming from a mid tier background and be comfortable working with high value developments in a busy but friendly environment. Salary and benefits are commensurate with experience. (ref 16292)

Residential Conveyancing

Dublin City Centre

General practice firm located in Dublin 7 requires a solicitor for their conveyancing department. Candidates should have experience in all areas of residential conveyancing and probate and be a strong team player, with the ability to work independently. Salary and benefits are commensurate with experience. (ref 16291)

Residential Property West Dublin

General Practice in West Dublin requires an experienced solicitor to join their team for a busy caseload of residential property files. Excellent career progression for the right candidate. (ref 15726/2)

Legal Secretary South Dublin

Established firm in D14 requires an experienced legal secretary for a varied role involving residential conveyancing and general litigation. Candidates should have a track record in a similar role together with excellent typing and organisational skills. Salary and benefits are commensurate with experience. (ref 15726/1)

Conveyancing Cork

Leading city centre firm requires an experienced solicitor to join its conveyancing department. Candidates must be experienced in all matters of residential and commercial property. Great opportunity to join a firm with good career prospects. (ref 17224/1)

Conveyancing Donegal

Experienced solicitor required for one of County Donegal's largest conveyancing practices. Candidates must have a proven track record in all matters of both residential and commercial property. Attractive package for the right candidate. Excellent career prospects for the right candidate. (ref 17096/1)

Conveyancing Galway

Qualified solicitor required for locum position in County Galway. Ideal candidate will be experienced in all matters of residential and commercial property. Must be comfortable in handling large case loads and working to strict deadlines. Salary and benefits are commensurate with experience. (ref 17204/1)

Conveyancing Mayo

An established firm is looking for a conveyancing solicitor to join its growing practice. Candidates must have a proven track record in handling large volumes of residential and commercial property in a firm where hard work will be rewarded. (ref 16294)

Employment Galway

City centre firm requires a qualified solicitor to join its progressive practice. The ideal candidate will have a strong background in employment law and aspects of commercial. Great opportunity to be part of a practice with good career prospects. Salary and benefits are commensurate with experience. (ref 17252/2)

General Practice Carlow

Renowned general practice requires an experienced solicitor to join its firm. The ideal candidate must have a strong background in litigation and a proven track record in all matters of residential and commercial property. Salary and benefits are commensurate with experience. (ref 17274/1)

General Practice Crown

Our client, a renowned practice in Crown, is looking to add an experienced solicitor to its general practice. The ideal candidate will have a strong background in conveyancing, litigation and debt collection. Previous experience in handling local authority cases an advantage. Salary and benefits are commensurate with experience. (ref 17271/1)

General Practice Cork

Established city centre firm is seeking to strengthen its general practice. The ideal candidate will have a proven track record in family law and residential and commercial property. Competitive salary and benefits offered for right candidate together with good career prospects. (ref 17222/1)

General Practice Wexford

Leading Wexford firm is looking to add a qualified solicitor to its practice in accordance with its plans for expansion. The ideal candidate will have a varied general practice background with a proven track record in conveyancing, litigation, probate and family. (ref 16293/1)

Litigation Cork

City centre firm requires an experienced litigation solicitor to join its busy practice. The ideal candidate will have a strong family law and general litigation background. Excellent opportunity to join a practice with good career prospects. Salary and benefits are commensurate with experience. (ref 17224/1)

International Legal Recruitment

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COMMITTED TO FINDING THE RIGHT PERSON

In-house Legal

Our client, a leading international retail entity has a requirement for an in-house lawyer to join the global legal team as associate or junior partner level. The role is broad and will include real estate, leasing, brand commercialisation, corporate and compliance matters, marketing review, general commercial law, intellectual property & data protection. This is a exceptional opportunity.

Ref: 10008

Litigation, Dublin

An exciting opportunity exists for a litigation lawyer as associate or junior partner level to join a leading mid sized practice. You will get involved in an array of litigation matters at local and European level. Experience in arbitration and mediation is essential. Excellent terms and conditions on offer with this role.

Ref: 14498

Asset Finance, Dublin

Our client is a leading practice. An opening exists for an asset finance equity/loan equity partner to join the firm. You will have a recognised name in the international aviation leasing finance market, having gained experience from in-house or private practice. This will provide you with an opportunity to take you to the next level.

Ref: 10070

Please contact: Sharon Swan

Tel: +353 (0) 1 477 3066 Email: sharon.swan@laurencesimons.com

Legal Counsel, International Travel, Dublin

Ref: 90k

Our client, a leading global financial services institution, requires an in-house lawyer to join a growing team. This is an exciting and challenging opportunity for the right individual. You will have experience in managing a wide range of structured finance or other capital market transactions. An understanding of debt, capital markets, primarily structured debt transactions, is a bonus. This is a rewarding role for somebody within commercial firms.

Ref: 13433

Corporate Legal Counsel, Dublin

Ref: 90k plus

Our client, a global commercial entity with an exceptional reputation amongst clients and a market leader in its field, seek a corporate lawyer to join its European headquarters. You will work with the legal team to draft and monitor a broad range of legal matters including corporate/commercial agreements and associated opinions, MSA and venture capital agreements. It is a highly sought after.

Ref: 15503

Commercial Property Lawyer, Cork

Ref: 80k

Expanding firm requires a senior associate lawyer to join its growing team. Experience of acting for landlords, tenants and developers with a focus on expanding this territory 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: 15905

Please contact: Portia White

Tel: +353 (0) 1 477 3063 Email: portia@laurencesimons.com

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LEGAL MANAGER



Our client is one of Europe's leading commercial entities. Their success is based on strategic locations, quality service and providing sophisticated offerings to their customers. Central to the organisation's development is the appointment of a legal manager based in Ireland.

You will work closely with the local business team and form an integral part of the European legal team. Your role will be business focused and broad, including: real estate, licensing, client negotiation, corporate and compliance matters, marketing review, general commercial law, intellectual property, data protection and collaboration with external legal counsel.

You will have significant corporate/commercial experience gained with an inhouse legal department of an international company or within a major law firm. Essential skills for the role are: proven decision-making capability coupled with strong leadership, exceptional personal presentation and communication skills, a combination of strategic ability with natural creativity, a high level of intelligence, common sense and a hands-on approach.

An excellent remuneration package will be offered to the successful candidate.

Interested? Please send your resume to Sharon Swan, Manager, Laurence Simons International. Telephone 01 477 3066 or email: sharon.swan@laurencesimons.com

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