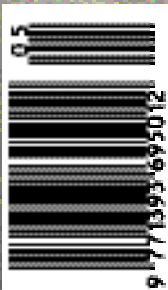


LAW SOCIETY Gazette

€3.75 May 2007



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On the cover

For the first time, the EU is moving towards the imposition of penal sanctions and the use of criminal law for breaches of environmental protection regulations

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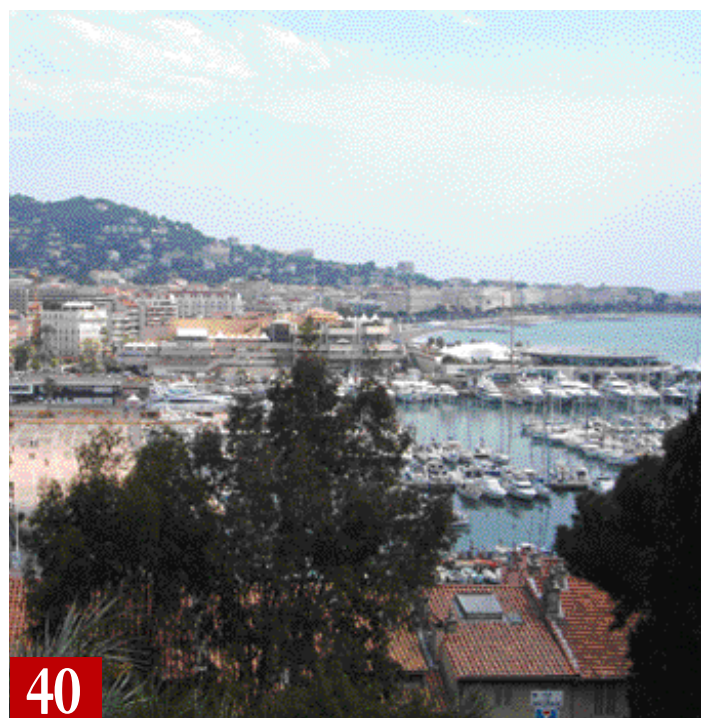
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Over 200 Irish lawyers travelled to the south of France to attend the Law Society's annual conference. Mark McDermott reports



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Criminal legal aid funding now

I would first like to congratulate Michelle Cronin (trainee solicitor with David J O'Meara and Son Solicitors, Mallow) and Melanie Evans (trainee solicitor with Fitzgerald Solicitors, Cork) on their terrific achievement in winning the Louis M Brown International Client Counselling Competition. Michelle and Melanie are both students on the PPCI course in the Law School in Cork. The final took place in Sydney on Friday 13 April against New Zealand. Over 200 teams took part in the qualification rounds, while 18 national teams advanced to the international rounds in Sydney.

I would also like to thank all those who contributed to a most successful conference in Cannes. Of particular note was the contribution made by our speakers, Her Excellency the Irish Ambassador to France, Anne Anderson, Mr Justice Michael Peart of the High Court, former president of the American Bar Association Robert Grey, and Hilary Tilby of LawCare.

Crime doesn't pay

For the last number of months, at the request of the Criminal Law Committee, the director general and I have been pressing the minister for justice to engage positively with the profession on reform of the Criminal Legal Aid Scheme. The basis of payment of solicitors for trials on indictment under the scheme is completely out of date. The amount of work that a solicitor is required to do has increased greatly over the years. No provision for this is made in the fee structure. In indictable matters, the fees paid to solicitors are linked to fees paid to members of the Bar, notwithstanding that the work undertaken by each is wholly different.

In 1996, the Society submitted a claim to the Department of Justice for a review of the fee structure. The department urged the Society to await the outcome of the *Buchanan Report*. This report was issued in 2002, and one of its conclusions was that "the committee accepts that the work performed by solicitors in criminal cases

differs from that carried out by barristers and that solicitors should be paid fees for cases under the Criminal Legal Aid Scheme which reflect the work that they do".

Since then, the Society has been pressing the department to bring forward proposals that would try and address the unsatisfactory situation.

On 27 January 2007, the director general and I raised this issue in a meeting with the tánaiste, Michael McDowell. He promised that the matter would be given priority. On 18 April 2007, a meeting between the minister's representatives and members of the Criminal Law Committee took place. It is with profound regret that I have to record that no proposals were made by the department, despite the fact that the Society had set out its case in detail as long ago as June 2006. I have since communicated again to the tánaiste that there is a deep and increasing anger among criminal law solicitors. It is essential to the administration of justice. The provision of a proper Criminal Legal Aid Scheme is not a method of providing pay for lawyers. The members of our profession who participate in the scheme do so from a very strong sense of duty and commitment to the rights of the individual.

It is necessary and urgent that the tánaiste and his officials make serious proposals to put into practice the funding recommendations of the *Buchanan Report*. The solicitors' profession has discharged its responsibilities to the letter, and it is now up to government to play its part and to provide proper funding for the scheme so that it can comply with its legal and international obligations.

Philip M Joyce
President



"It is now up to government to play its part and to provide proper funding for the scheme so that it can comply with its legal and international obligations"



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■ CAVAN

I'm glad you asked me that

Traditionally, the Central Criminal Court sat only in Dublin. Recently, it sat for the first time in Cavan, presided over by Mr Justice Paul Carney. Jacqueline Maloney, president of the Cavan Bar Association, welcomed the judge on behalf of the members of the association. In the final analysis, there is a certain logic about the concept of crime committed locally resulting in justice being delivered locally.

A dinner was hosted that evening in honour of Mr Justice Carney. Jackie Maloney presented him with a suitably inscribed Cavan Crystal stem bowl to mark the occasion of the first visit of the Central Criminal Court to the county.

■ DONEGAL

Flight of the earls

The bar association is alive and well in our most northern region in this jurisdiction, where Brendan Twomey and his team (especially Brian McMullin) have put on an impressive menu of seminars over the coming months.

They have very shrewdly and alluringly sought to tap into the goodwill of the DSBA by opening their seminar doors to them with the enticement of weekends away in Donegal! The seminars are held on Saturday mornings, so you can make a weekend of it, chill out and gain some points at the same time – a sort of CPD tourism, in a way.

Captain Non-sequitur

Dublin's Willie Devine recently lectured in Donegal on the stirring subject of the



At the recent launch of the Law Society of Ireland/Oxford University Press series were (from l to r): Lorcan Gogan (author), Brian Magee (author), Stuart Gilhooly (chairman of the Education Committee), Gabriel Brennan (co-editor, *Conveyancing Manual*, 3rd edition), Mr John L Murray (Chief Justice), Philip Joyce (President of the Law Society) and Pat O'Brien (author)

Registration of Deeds and Title Act 2006, followed by the *Land and Conveyancing Law Reform Bill 2007*. But hang on – this seminar took place in the backdrop of the renowned and beautiful Rosnowlagh's Sandhouse Bay Hotel. Dublin's Brian Bohan and Stuart Gilhooly set up camp in Rathmullan House Hotel, for the tax and litigation slots.

Blue blood

It's back to Rosnowlagh on 12 May, when 'true blues' Paula Fallon and Paul Keane will speak on probate and commercial law matters. At the end of the month in Rathmullan, Gerry Durcan SC will speak on family law, while Tom Mallon BL will make a presentation on employment law. So anyone interested in a long weekend in beautiful Donegal should contact Brian McMullin in VP McMullin.

■ DUBLIN

Costa packet

The DSBA is due to hold a

number of seminars in May. April kicked off with a free seminar on costs by expert Paul Behan (legal costs accountant), while Gerry Griffin (solicitor) dealt with the pending changes regarding the regulation of costs.

A week earlier, the Younger Members' Committee of the DSBA organised a seminar on capital taxes. Other seminars will deal with legal aspects relating to multi-unit developments, an employment law seminar on bullying and harassment (8 May), and one on privacy and defamation (23 May).

Raffle and hum

A raffle held during the DSBA dinner-dance in late January raised a staggering €10,000, showing the generosity and decency of our colleagues. DSBA President David Bergin had nominated Our Ladies Hospice, Harolds' Cross, together with the Blackrock Hospice, as recipients of the donation. The president and

council of the DSBA also made a donation of €7,500 to the Solicitors' Benevolent Association.

■ MAYO

All the presidents' men

Mayo Bar Association is celebrating its centenary this year. During its first 100 years, it has been served by some 35 presidents, including its first – Alfred Kelly from Castlebar – followed by members from other great Mayo legal families, including Bourkes, Dillon-Leetchs, McHales, Durkans, McEllins, Egans and Brownes. In more recent years, the mantle has been assumed by Rosemarie Loftus, James Cahill, Caroline Barry, Jacqueline Durkan, Fiona McAllister and the incumbent Pat O'Connor.

■ KERRY

Pure gold

The Kerry Law Society has just completed a number of seminars recently. Anne Neary spoke on practice management, Eliza Kelleher BL on probate practice and procedure, and Cormac O'Neill BL on reinstatement of management companies. Newly-appointed county registrar Pdraig Bourke addressed colleagues on court procedures. **G**

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

Diplomas offer exciting choices

With your *Gazette* this month you are receiving the *Diploma Programme Information Booklet*. You will notice some new and exciting courses in the autumn 2007/2008 programme. These include the launch of the Diploma in Commercial Litigation and the Diploma in Family Law.

The commercial litigation course will appeal to seasoned litigators, as well as those with only a limited exposure to litigation practice. It aims to give a comprehensive and current overview of commercial litigation practice and procedure in this jurisdiction.

The objective is to provide practitioners with comprehensive knowledge of certain aspects of large-scale commercial litigation, to include an examination of the Commercial Court, rules of discovery, evidence, injunctions, judicial review and the *Rules of the Superior Courts*. A module will also focus on alternative dispute resolution and its increasing impact on litigation practice.



The Diploma in Family Law recognises that the changing nature of Irish society has brought many challenges, not least to the traditional understanding of the family in Ireland and the legal framework supporting it. This course will be invaluable to solicitors who are relatively new to this field, and to seasoned family lawyers who require a comprehensive and up-to-date overview of the area, including all the major legislative changes over the last ten years.

The diploma team has introduced a new Certificate in Applied Conveyancing, offered by the Law Society of Ireland Cork, as well as the extension of its new online, distance-learning Certificate in Judicial Review.

The new Certificate in Applied Conveyancing will be based in the Law Society of Ireland Cork, Courthouse Chambers, Washington Street. The two-month certificate course will start in mid-September and will run on

Wednesday evenings from 6pm to 9.15pm.

The certificate is part of a dynamic range of non-Dublin based initiatives undertaken by the diploma team, which is proving extremely popular with the profession. Participants can expect to be kept updated on recent developments when acting in different types of property transactions. For further information and an application form, contact Freda Grealy, diplomas manager, or email: f.grealy@lawsociety.ie.

There was an excellent response from practitioners to the new Certificate in Judicial Review, due to start on 28 April 2007. This course is now full. Keen to respond to demand, however, the Law Society is publicising a second offering of the certificate, due to commence in October 2007. Contact Freda Grealy for further information and an application form.

Comprehensive information on the Law Society's 2007/2008 diploma offerings can be viewed at: www.lawsociety.ie, under 'Diploma programme'.

€15M Tullamore Courthouse reopens

Tullamore's Courthouse has officially reopened after an 18-month refurbishment and extension programme costing €15 million.

The refurbished courthouse has been totally renovated and extended to include the following new facilities:

- Three courtrooms with the latest technology,
- Judges' chambers and a jury suite,
- A family law suite and a victim-support suite,
- A video-evidence suite,
- 12 consultation/waiting rooms,

- A media room and probation office,
- New facilities for An Garda Síochána and the Prison Service,
- New prisoner accommodation, including six cells and a secure interview room located in the basement, and
- New accommodation in the centre of the building for legal practitioners.

The refurbished courthouse was officially reopened by the Minister for Justice, Equality and Law Reform, Michael McDowell on 17 April.

Presiding over the event was President of the Circuit Court Mr Justice Matthew Deery, representing the board of the Courts Service.

The renovated building can now handle business from the District Court, Circuit Court, High Court and the Central Criminal Court. The Courts Service Midlands Regional Office is also housed in the building.

Over the past six years, the Courts Service has invested over €170 million in modern court facilities across the country.

New finance forum chair

The managing partner of Arthur Cox, Pádraig Ó Ríordáin, has been appointed chair of the Financial Legislation Advisory Forum.

The forum will advise the Department of Finance on the updating of the legislative framework governing the regulation of financial services. The international financial services sector now directly employs over 22,000 people and accounts for about one-third of all of Ireland's services exports.

Ann 'wowed' at becoming the 10,000th solicitor on the roll!

Ann Matthews didn't know she was the 10,000th solicitor on the roll until she was contacted by the *Gazette*, and is still reeling with surprise, writes Colin Murphy.

"I feel like a celebrity solicitor," she says, beaming. "Everybody here is thrilled." 'Here' is PC Moore & Co, a venerable general practice on South Great George's St in Dublin, where Ann has been taken on, having completed her traineeship there.

"I love working here. It's been around since the 1930s, so there's a lot of people with a lot of experience and they're happy to share it." She quickly stresses, laughing, that her colleagues themselves have not been around since the 1930s.

She had no family background in law, though her father can't have been too surprised at her chosen career. "My Dad used always say I should be a solicitor because he said I'd argue till the cows came home."

He may have meant it literally. Her father has a dairy farm in Castlebellingham, Co Louth, and the family divided their time between there and



Ann Matthews: feels like a celebrity

Glasnevin, where her mother was a teacher. Ann's job on the farm, at weekends and holidays, was feeding the calves.

After school in St Mary's Holy Faith, Glasnevin, she took a four-year degree in International Business and Languages at Dublin City University. She spent summers working in Germany, at the Audi plant outside Munich, on an assembly line. "I had two drills, tools, Audi overalls, the lot. I don't think I got one car right the whole time I was there. We had to do a car every three minutes, and you had to distinguish between right-hand drive and left-hand drive, and

between diesel and petrol cars, fitting the air conditioning pipes." She loved it though.

Ann spent her third university year in Paderborn, close to the Dutch border in Germany, on the Erasmus programme. In her final year, she took her first law courses, as part of the 'business' component, and thought about going into a legal career.

She spent a year after graduation working as an information officer for Mental Health Ireland in Dun Laoghaire, advising clients on processes and their rights under the *Mental Health Act*. Then, she decided she "needed

a fresh challenge" and decided to take the FE1s. Having got through those, the next task was to find an apprenticeship.

"I had always heard it was difficult if you didn't have family or contacts [in the profession], but I think if you have the determination and perseverance, you will succeed," she says.

Ann spent six months looking for an apprenticeship, but eventually her own unique experience won out. James Watters, who specialises in asylum law, was impressed by her experience of travel and of working with refugees and asylum seekers as a voluntary English teacher in the One World Society at DCU, and took her on. After an initial period there, she decided she would like to get "a broader range of experience, to keep all my options open", and moved to PC Moore & Co.

She is still "in the throes of excitement of just qualifying", she says, but envisions ideally having her own general practice, someday. "I don't think I'll ever sit still."

Fitting, then, that her outside interests include salsa dancing and hillwalking. She also professes a love of traditional Irish cooking, and a particular fondness for the weekend food market in St Anne's Park in Clontarf.

"Eventually, I'd like to live in the country. It's a career that you could bring anywhere with you. It gives you great freedom. There's a great many roads you can take."

Ann Matthews appears to have taken a few different roads already, and there seems little doubt that some interesting paths lie ahead for Ireland's 10,000th solicitor.



Ann (centre) with her colleagues at PC Moore

Irish trounce Kiwis in International Client Counselling trophy win

This year's winners of the Louis M Brown International Client Counselling Competition are two students from the Society's law school in Cork. PPCI trainees Michelle Cronin and Melanie Evans, representing Ireland, took on 17 other national teams at the international rounds in Sydney in mid April. Michelle is a trainee solicitor with David J O'Meara and Son Solicitors, Mallow, while Melanie is training with Fitzgerald Solicitors, Cork.

The International Client Counselling Competition is the largest legal skills competition in the world – other than mootings contests. It requires students to conduct interviews with role-playing clients. Students are required to elicit the relevant information from a client, outlining the nature of the problem, exploring the client's preferred outcomes, and presenting the client with a means for resolving the issue.



We are the champions!

The competition was established by the American Bar Association and is now linked with the International Bar Association. This year's event was hosted by the University of Sydney and

funded by the Law Society of New South Wales. Over 200 law schools took part in the qualifying rounds. Participating states tend to have common-law systems. This year's competition concentrated on

issues of family law.

To get the chance to represent Ireland in Sydney, Michelle and Melanie initially won their qualifying round in Cork, subsequently defeating the Dublin champions in the national round.

In Sydney, they scored the highest mark in the initial round and advanced to the semi-finals. They won through to the final round where they competed against New Zealand – the winners of the competition for the last two years. By a unanimous vote of the five judges, Michelle and Melanie were awarded the final round.

This is the most prestigious legal skills competition won by students of the Law Society. It follows on from the Society's success in the International Negotiations Competition in 2004. As a result of this win, the Law Society will host the International Client Counselling Competition, most likely in 2011.

22-courtroom contract signed

The Courts Service has signed the contract for a new 22-courtroom Dublin criminal court complex. The project will be delivered through a public/private partnership with Babcock and Brown.

The design, specifics of the contract and construction details will be announced at an official event in central Dublin in early May. Significantly, it will pave the way for a major redevelopment of the Four Courts as a civil courts complex.

Guildford Four lawyer for HR lecture

Baroness Helena Kennedy will give the Law Society's annual human rights lecture at 6pm on 10 May in Blackhall Place. The theme will be 'Human rights and the war on terror'. Those interested in attending this public lecture should notify Anthea Moore at: a.moore@lawsociety.ie. It will be followed by a reception, to which attendees are invited.

Baroness Kennedy practices predominantly in criminal law and has acted in many of the prominent cases of the last decade, including the Brighton bombing trial, Guildford Four appeal, the bombing of the



Helena Kennedy

Israeli embassy, the abduction of baby Abbie Humphries, and a number of key domestic

violence cases. She is currently acting in cases connected to recent terrorism attacks.

She holds a number of public appointments and is a frequent broadcaster and writer on law and women's rights. Her publications include the widely-acclaimed *Eve Was Framed: Women and British Justice*, updated and reissued in 2005. Another book, *Just Law: the Changing Face of Justice and Why it Matters to Us All* (Chatto and Windus, 2004), was published in paperback in March 2005. She is an outstanding speaker and advocate.

Insurers – the force is with them?

The Law Society is urging solicitors to provide evidence to gardaí who are investigating serious allegations made in articles published in the *Sunday Tribune* on 1 and 8 April. One of the many headlines in the articles, which appeared on the front and inside pages of the newspaper, claimed that an internal memo from a named insurance company “explains how the Irish insurers accessed garda intelligence and offered solicitors sweeteners to settle claims more quickly – and more profitably”.

The insurance company named by the *Sunday Tribune* has vigorously denied the allegations and has reportedly instituted proceedings against the newspaper.

The gardaí are now investigating allegations of improper conduct by members of their own force in collusion with any insurance company, not just the one primarily focused on by the *Sunday Tribune*. The investigating gardaí are particularly interested in reviewing evidence that insurers have had ability to access, source and relay detailed information on

road accidents through the garda computer system and records.

According to the *Sunday Tribune*, the strategy outlined in the alleged insurance company memo “is heavy with legal, ethical, and competitive issues. If the company, through its garda panel, had access to garda information, criminal and data protection matters arise. A private company had access to ‘background checks’ from classified information.”

‘Very worrying’

The *Sunday Tribune* goes on to ask: “Who were these members and former members representing themselves as when they exercised their ‘negotiation, influencing and persuasive skills in settling claims on the doorsteps?’ Many vulnerable people might be unfairly persuaded by a serving or recently-retired garda to settle rather than seek independent legal advice.”

The *Sunday Tribune* made contact with the Law Society in researching its initial article and spoke with the director general, Ken Murphy, who said: “We are getting a lot of reports that one company in



Ken Murphy: “Time for facts that can be investigated”

particular appears to be using representatives, often ex-guards, to approach people, even in hospital, and offer an amount that might seem very large at the time but would be a fraction of what they are entitled to.” He described it as “very worrying”.

On the subject of plaintiff solicitors receiving extra payments or incentive fees from a defendant’s insurance company, Murphy said: “The Society has never received reports of this kind” and “A solicitor’s fundamental obligation is to represent the interests of their client, and

their client only.”

Having met with the gardaí investigating the various allegations in the *Sunday Tribune* articles, Murphy volunteered on behalf of the Society to communicate with practising solicitors via the *Gazette* to request that solicitors who had evidence of impropriety or possible illegality on any of these issues should communicate this in writing to the Law Society, having first obtained their client’s permission to breach confidentiality for this purpose.

Murphy said: “There have been rumours and allegations in the solicitors’ profession for years about this type of improper activity by certain insurers. It is time for solicitors to get beyond anecdotes and bring forward specific facts that can be investigated by the gardaí. The Society is asking practitioners to write to the Society, at first instance, with specific names, dates and all other relevant facts, with a view to the Society passing this information to the appropriate gardaí for investigation.”



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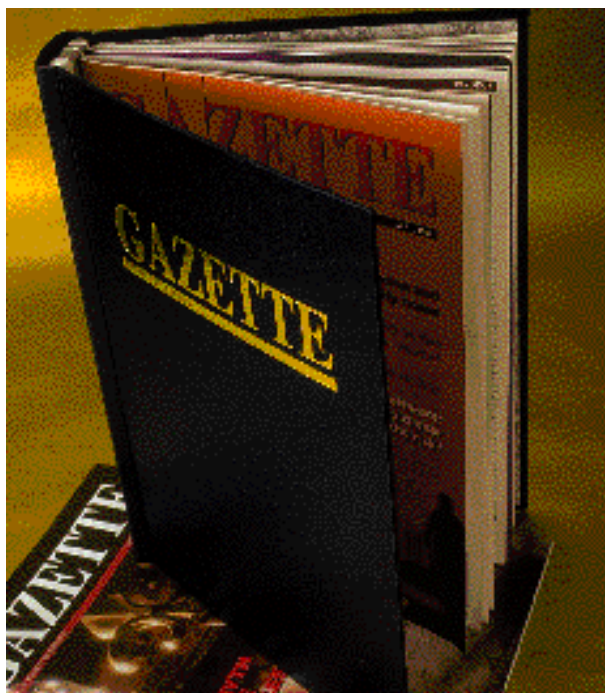
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HLJ launches latest 'high quality' edition

The 2006 edition of the *Hibernian Law Journal* (HLJ) was launched by High Court judge Mr Justice Michael Peart at the Law Society recently. Mr Justice Peart gave glowing praise to the latest edition and observed how the journal has grown, both literally and figuratively, since its beginnings in 1999.

He commented on individual articles and expressed approval of the high quality of writing and research and the wide variety of topics addressed. Editor John Hugh Colleran introduced Mr Justice Peart and thanked the assembled authors, academic referees, the Law Society and the sponsors of the journal for their support. He congratulated the editorial committee and outgoing editor, Jennifer Tuite, on their year's work.



Pictured at the official launch of the 2006 edition of the *Hibernian Law Journal* are members of the journal's editorial committee with guest speaker Mr Justice Michael Peart. (Left to right): Rosemary Wall, Emer O'Connor, Éadaoin Rock, Jennifer Tuite (2006 editor), Mr Justice Michael Peart (speaker), Helena Hickey, Julia Emikh and John Hugh Colleran (2007 editor)

The *Hibernian Law Journal* is now accepting submissions for the 2007 edition. Articles should be submitted in soft copy to: editor@hibernianlawjournal.com. While submissions are accepted from

all sources, they are particularly welcome from newly-qualified and trainee solicitors.

More details about the journal are available at: www.hibernianlawjournal.com.

Pre-nups get 'thumbs up'

The report of the study group on pre-nuptial agreements has been published.

The study group's core recommendation is that the courts should be required to recognise existing pre-nuptial agreements when making ancillary relief orders in judicial separation and divorce proceedings. Separate provision should be made in both the *Family Law Act 1995* and *Family Law (Divorce) Act 1996* to provide for this.

The report recommends that anyone party to such agreements should be both fully informed and protected. In this regard, it makes recommendations on the formalities necessary for drawing up pre-nuptial agreements.

SUPPORT SERVICES FOR MEMBERS

IF THE MOUNTAIN CAN'T COME TO MOHAMMED...

Support services executive Louise Campbell has been travelling the country to tell regional bar associations about the support services offered by the Law Society for its members

Part of the role of the new support services executive is to act as a liaison with the bar associations. She keeps them informed about the Law Society's support services for members, and answers questions or listens to suggestions for introducing new or improved services.

Bar associations, nationwide, play a very valuable role in the legal profession. In particular, they represent the views and promote the interests of solicitors practising in their geographical areas. In doing so, they promote a feeling of collegiality among members,

encouraging a social aspect to their associations.

The contact details of the president and secretary of every bar association in the country are contained at the front of the Law Directory. In January of this year, the support services executive wrote to each one, requesting the opportunity to meet, to give a short presentation, and to hear the views of members about the Law Society's support services. To date, there has been a strong response. There have been meetings with the bar associations of Meath, Clare, Galway, the



Midlands, Wexford, Louth, a joint meeting of the Kilkenny and Carlow Bar Associations, and the council of the

Southern Law Association.

Meetings are usually held in the evenings and incorporate presentations from a variety of speakers. The support services executive has been highlighting the valuable services available to members, new services being considered, and contact details for Society staff working in the area. **G**

Louise Campbell would be delighted to hear from the presidents or secretaries of the country's other bar associations. You can contact her at tel: 01 881 5712, or email: l.campbell@lawsociety.ie.



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letters



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

'Deferential nonsense' in Four Courts restaurant

From: Tim Shannon, *Shannons, Swords, Co Dublin*

I wonder do colleagues agree that the practice of reserving tables for counsel in the Basement Restaurant of the Four Courts is completely unacceptable.



This sort of deferential nonsense has no place in the running of a modern restaurant and puts the staff in the awkward position of having to defend the indefensible.

Barristers have their own

restaurant, indeed they have their own Inns, where they can dress up and jolly each other to their hearts' content without forcing the public and their hard-working solicitors to endure such behaviour.

Compliance letters and Dún Laoghaire Council

From: Owen P Keegan, *County Manager, County Hall, Dún Laoghaire, Co Dublin*

Last year, I decided that 'letters of compliance' confirming compliance with financial conditions in planning permissions would no longer issue in circumstances where a condition that related to part V of the acts had not been complied with.

Subsequently, High Court proceedings entitled *Glenkerrin Homes v Dun Laoghaire Rathdown County Council* (record no 5574 P/206) were instituted in the

High Court. On 9 March 2007, Mr Justice Clarke delivered his principal conclusions.

The council has appealed to the Supreme Court against the findings of Mr Justice Clarke and there is, at present, a stay on his order until 16 April (by agreement).

Without prejudice to the council's appeal, I have decided to give members of the Law Society and members of the general public notice that, as and from 1 July 2007, no 'letter of compliance' will issue from the council where:

- 1) Planning permission has been granted for a development to which part V of the *Planning and Development Acts 2000-2006* applies, and
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A newspaper notice to this effect will be published very

shortly in the national newspapers.

The council also intends to use the enforcement powers conferred in the planning acts, including the powers conferred by s160, to secure compliance with part V conditions and to ensure that the objectives of the development plan and the council's housing strategy are achieved.

I ask that you bring the contents of this letter and the judgment of Mr Justice Clarke to the attention of your members.

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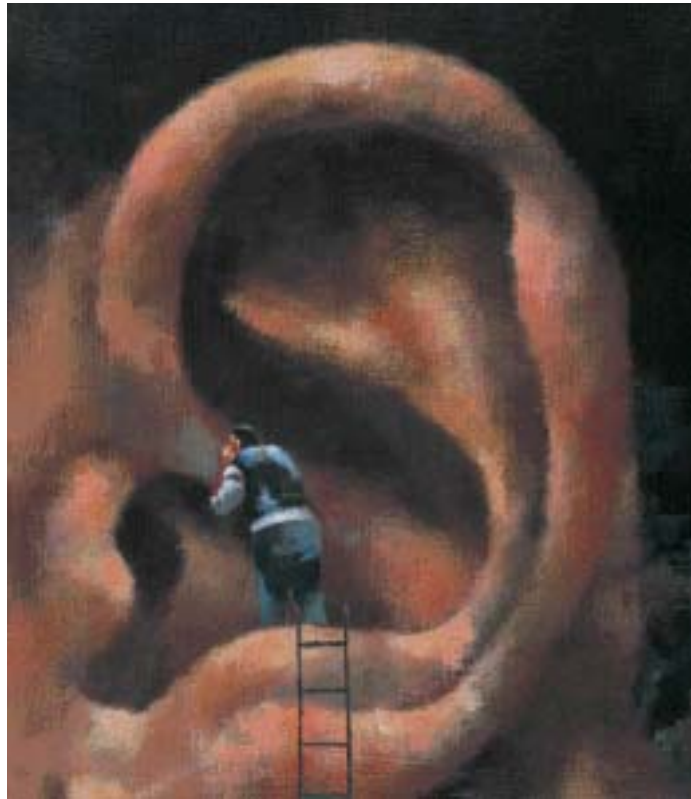
Skilled advocacy is vital in

The art of good advocacy is among those things that are poorly understood. Joe Buckley speaks up in favour of the Law Society's Advanced Advocacy course, from a participant's perspective

Something about the older man's eyes galvanised our attention. The speaker drew his remarks – on ethics and advocacy – to a close with a gesture. Moving towards the centre, closer to the class, there was a noticeable glint in the eyes: “Stand up! Stand still! Breathe!” James Carey's every utterance bore the hallmark of the practical.

The art of good advocacy is among those things that are poorly understood. James P Carey is director of Loyola (Chicago) University's Centre for Advocacy and a former practising lawyer. Over a lifetime, Professor Carey has distilled the essence of the art. In September 2006, Carey was in Ireland with Leo Ramero of the New Mexican Bar – both members of the NITA faculty – to share insights with participants in the Law Society's Advanced Advocacy Course. Those fortunate enough to have enrolled encountered a master.

NITA is an acronym for National Institute for Trial Advocacy, a not-for-profit foundation – established in the United States circa 1971 – to promote skilled and ethical advocacy as an integral and critical component of legal professionalism in all systems of dispute resolution that seek justice as a primary objective. In the past decade, the organisation has extended its area of operations beyond the US to the rest of the English-speaking world. Its aim is to provide the best possible training in advocacy skills and



PICTURE: GETTY IMAGES

Go on – listen to the little voices in your head

techniques for resolving disputes, while fostering professionally-responsible behaviour, emphasising ethics, candour, civility, and judicial economy.

Persuasive communication

A dispassionate observer, ‘fresh from brawling courts’, might readily agree that NITA's objective is ‘a consummation devoutly to be wished’. It is to the Law Society's credit that it facilitates, under the umbrella of continuing professional development (CPD), the making available of world-class expertise to the solicitors' profession in Ireland.

Many solicitors, upon reading the advance publicity

for the course, will immediately think: “I am not a trial lawyer ... nor was meant to be!” Every legal practitioner, however, is engaged in the business of persuasive communication – effectively leveraging points of view. Those of us who rarely see the interiors of courtrooms regularly and frequently utilise the principles of advocacy – in consultations, around the board table, at partners' meetings – wherever two (or more) competing perspectives, or courses of action, emerge. We might all aspire to a better understanding of the underlying skills, with a view to their more effective application.

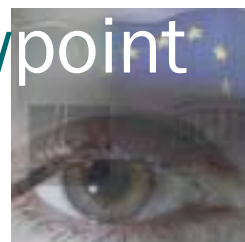
At an entirely different level, when, as lawyers, we hear a

particularly persuasive statement, be it an opening statement in a trial or otherwise, or witness an undistinguished cross-examination, or form any particular view about a set trial piece, we ought to be able to identify with some precision the reasons for our appraisal. The advanced advocacy course opens up what journeymen carpenters of a bygone era were wont to call ‘the box of traps’, identifying the tools and their various applications, such that participants will, at least, recognise the handiwork of the consummate or indifferent craftsman.

Learning through doing

For those with an aspiration to hone their own skills, the week-long course alternates between providing minimalist inputs and placing participants in simulated courtroom settings and asking them to perform. The methodology is distinctly learning through doing. The course follows a model that is based upon telling participants about a particular skill, showing them the skill through demonstration, and then asking them to do what was demonstrated. Performances are short – no more than three to five minutes.

During and following each performance, skilled instructors talk with the student and offer concrete suggestions on how they can be more effective. The process of hearing, seeing, and doing, with frequent repetitions of each skill, reinforces learning and builds confidence. With



the search for justice

critiques from experts and tutors (and sometimes fellow class members), all round performance levels showed a marked improvement – even to the uninitiated – over the duration of the course. All the while, proceedings are video-taped and participants review their own performances with tutors, not present when the recordings were made. Seeing them afresh, they can offer further encouragement, critique and suggestions on a one-to-one basis.

While the process is distinctly incremental, a consensus emerged among participants as the course drew to a close that one of its cumulative achievements was the imparting of a comprehensive methodology and technique on the one hand, and the confidence on the other, to tackle the breaking down of complex sets of facts

for the purpose of constructing and presenting arguments on either side of a case.

The matter of evidence

At the core of any such undertaking lies the matter of evidence. A series of lectures (attendance at which is an integral and required element of the course) on aspects of the subject were delivered in May by Paul Anthony McDermott. McDermott's agility of mind and flair for the subject are well known in the profession, and his presentations were a *tour de force* in intellectual challenge, insight and elucidation. It is clearly not possible to cover the entire area of evidence in four or five lectures – albeit each a marathon of three-hours' duration – but Dr McDermott's selective and penetrative approach opened up major developing areas, leaving many participants investing in text

books for underlying principles, background, and lines of development.

The president of the High Court hosted the course at the Four Courts on the final afternoon, when two High Court judges (McMenamin and Clarke, JJ) sat to hear moot trials, while working (or, perhaps, recently resting) thespians played the roles of litigants and witnesses. Proceedings were wound up with a Law Society-sponsored reception and dinner.

This course was, by turn, intensive, challenging, enjoyable and rewarding. Apart from the American expertise – and encountering Carey was a real privilege – a number of practitioners from both our own ranks and that of the Bar participated as tutors. In addition, there were practitioners from the Incorporated Law Society of

Northern Ireland. This most welcome association between the two branches of the profession on the island has been a feature of the course from the outset. Indeed, Northern Ireland was first in the field with an association with NITA, but the project was scarcely floated when James MacGuill, who attended the first course in Belfast, secured Council approval for a course in Dublin, with the involvement of Northern Ireland personnel. With James's continued involvement, it may be anticipated that the commendable North/South linkage will be encouraged and developed. **G**

Joe Buckley is a solicitor practising in Bray. For information on the Law Society's Advocacy Courses, please contact the CPD team at: cpdapplications@lawsociety.ie or on 01 672 4802.

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From 1 January 2007, the Four Courts consultation room will be a broadband 'hotspot' for wireless enabled laptops. No laptop? Simply use the internet kiosks in the Four Courts consultation room office.

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

Rights of a mother

In *Legal Aid Board v District Judge Patrick Brady, the Northern Area Health Board & Others* (High Court, nos 2005/474 JR and 2006/652 SS), the right of an adult lacking – or of limited – capacity to the assistance of a guardian *ad litem* was addressed

In 2004, the HSE commenced proceedings before the District Court pursuant to the *Child Care Act 1991*, in which it sought to take the daughter of MG into its care on foot of a care order. MG, who was diagnosed as having a mental illness and a mild intellectual disability, was in receipt of legal aid and, in due course, her legal representatives informed the District Court that, by reason of her illness and disability, their client was unable to instruct them. Accepting that there was a lack of capacity on the part of MG, the District Court acceded to the request that a guardian *ad litem* be appointed on her behalf

in order to enable her to give instructions to her legal representatives and thus to partake in an effective manner in the court proceedings. An issue then arose regarding the costs of the guardian *ad litem*. The Legal Aid Board asserted that it would be acting in an *ultra vires* manner if it discharged those costs.

The matter came back before the District Court on a number of occasions and ultimately, in April 2005, District Judge Brady stated a case to the High Court, seeking its determination on a number of points of law. The district judge queried, in essence, whether MG had a

right to the assistance of a guardian *ad litem*, whether it was *ultra vires* the Legal Aid Board to meet the costs of such a person, and whether the board could lawfully refuse to apply, under section 11(7) of the *Civil Legal Aid Act 1995*, for the consent of the Minister for Justice to engage a guardian *ad litem* under a contract for services to the board on such terms as may be determined by the board, when directed by the District Court to so apply. The Legal Aid Board thereupon instituted judicial review proceedings in which it sought primarily to have quashed a direction of District Judge Brady

of January 2005 that the Legal Aid Board ought to exercise its discretion to apply to the minister pursuant to section 11(7) of the 1995 act. In May 2005, O'Sullivan J granted leave to the board to apply by way of judicial review for the reliefs sought.

In April 2006, the Human Rights Commission was invited by the High Court (MacMenamin J) to become involved in the proceedings. The commission was subsequently joined as *amicus curiae* to the judicial review proceedings, which, it was agreed, would be heard in conjunction with the case-stated proceedings. The

■ ONE TO WATCH

New Civil Service Disciplinary Code

In the drive to deliver better government, the *Civil Service (Regulation) Act 2005* applies the statutory code of unfair dismissal to civil servants. While preserving the principle that civil servants hold office at the will and pleasure of the government, the act provides for the delegation of power from the government to "the appropriate authority", that is, ministers or secretaries general, depending on the grade of civil servants involved.

Under s9(1)(f) of the *Public Service Management Act 1997*, the appropriate authority may assign to another officer the power to perform functions in respect of appointments,

performance and discipline, while at the same time retaining responsibility for disciplinary action under the act. Most probably, this other officer will be a personnel officer.

A new *Civil Service Disciplinary Code* issued on 4 July 2006, the same day the act came into effect. The code, in circular 14/2006, applies to all new disciplinary cases beginning after that date, regardless of when the alleged offence occurred. It covers disciplinary procedures relating to grades equivalent to principal officer and below.

Underperformance

Performance management and development systems were introduced to manage individual

performance within the civil service in 1999. Yet 65% of civil servants surveyed in 2002 believed under-performance was still unchallenged, while only 10% believed it had been challenged. Over half the respondents received no regular feedback on performance. Senior managers lacked the tools to tackle non-performance. Disciplinary action under the principal act, the *Civil Service Regulation Act 1956*, could be taken only in cases of misconduct, irregularity, neglect or unsatisfactory behaviour.

The biggest change in human resource practice brought about by the new act is that disciplinary action may now be taken in cases of underperformance. The code requires that departments

ascertain, before taking disciplinary action in cases of underperformance, that staff have been given adequate and reasonable warning that action may be taken, a reasonable opportunity to improve their performance in a specified period with an appropriate level of assistance and, where necessary, the offer of relevant training.

The code runs to 16 pages. After outlining the main purpose of the act, it spells out some general principles regarding disciplinary procedures, such as: "It is essential that staff be managed appropriately, fairly, and consistently in all aspects of their work", and an officer "is entitled to a fair and impartial determination of the issues

human rights watch

lacking capacity



commission proposed to make submissions to the court upon the right of an adult lacking or of limited capacity to a guardian *ad litem*, upon the right to have the costs of such a guardian *ad litem* discharged by the state and upon the functions of a guardian *ad litem* for such an adult.

In July 2006, the HSE notified the High Court that it proposed to discharge the costs of the guardian *ad litem* in this instance on a purely *ex gratia* basis. Although this resolved the difficulties encountered by MG, issues of principle remained to be addressed and thus the proceedings were set down for a four-day hearing before Dunne J, to commence on Tuesday 27 March 2007.

Before the case was heard, a settlement was reached that was based, in essence, upon the



establishment of a Legal Aid Board scheme to apply in child-care proceedings and in which a parent instructing the Legal Aid Board has impaired capacity rather than full incapacity. In the former circumstances, the scheme provides that the board shall appoint an appropriate

person to provide support and assistance to the client in order to enable him or her to partake in the proceedings. Guidelines shall be prepared setting out the circumstances in which an application to appoint such a person shall be made, the criteria for determining when such an application shall be acceded to, the role of the person so appointed, the criteria for identifying suitable persons to provide assistance, and for remuneration of persons thus appointed.

The commission relayed to the court its satisfaction that the needs of MG had been met in the instant case and also expressed the view that the proposed scheme represented a significant advance on the current situation. The commission noted that one of its

functions, pursuant to section 8(a) of the *Human Rights Commission Act 2000*, is to keep under review the adequacy and effectiveness of law and practices in the state relating to the protection of human rights. Bearing that in mind, the commission expressly reserved its position at the conclusion of the proceedings as to the adequacy of the scheme as an effective device for the protection and vindication of the human rights at issue.

The Human Rights Commission's submission to the High Court is available on www.ihrc.ie/home/whatsnew.asp, 'Mechanism established to protect the rights of people with disabilities'. **G**

Thanks to the Human Rights Commission for this summary.

concerned". It enjoins that: "All matters of discipline must be dealt with by management in a manner that protects the dignity of the officer."

This provision, not generally found in disciplinary procedures, is arguably an application of the obligation of mutual trust and confidence to the manner in which disciplinary procedures are exercised. The mutual nature of the obligation implied by law is echoed in the next paragraph: an officer who fails to co-operate in a disciplinary procedure will be in breach of his terms of employment and subject to appropriate disciplinary action.

The code addresses assignment of functions to the appropriate authority, and then

gets to the core of the document – disciplinary action and disciplinary procedures.

Action and procedures

'Disciplinary action' may be taken where the officer concerned has, "*in the opinion of the appropriate authority*", failed to perform his or her duties to an adequate or appropriate standard or has been guilty of misconduct, irregularity, neglect or unsatisfactory behaviour. The italicised words will, no doubt, lead to legal argument. Is the test subjective, objective, or a mixture of both?

In addition to suspension and dismissal, disciplinary action under the code may comprise, for instance, formal written notes placed on the officer's personnel

file, deferral of an increment, debarment from competitions or from specified competitions, or from promotion for a specified period of time.

Formal disciplinary procedures are detailed. Conduct or performance issues may merit a verbal, written, or final written warning. The code is prescriptive regarding the disciplinary interview, who may attend, who should be consulted, and what the officer should be told before and after the interview.

Where there is serious misconduct or underperformance resulting "in a breakdown of the relationship of trust and confidence between the department/office and the member of staff concerned",

disciplinary action, including dismissal, may be justified. This reference to the mutual obligation of trust and confidence (albeit styled a 'relationship') links it to the standard set out in the general principles. The code deals with serious misconduct or underperformance under the implementation of "further disciplinary action".

An officer may be suspended on "ordinary remuneration" pending the conclusion of disciplinary proceedings in accordance with section 9 of the act. This relates to precautionary suspension or special leave, pending the outcome of enquiries. No guilt has been found and the employer must keep an open mind.

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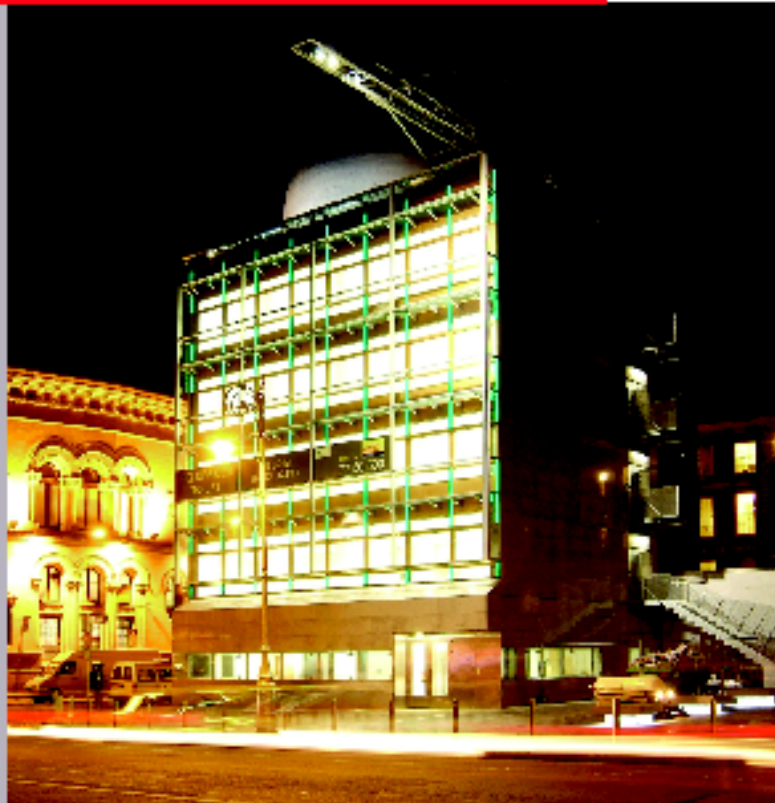
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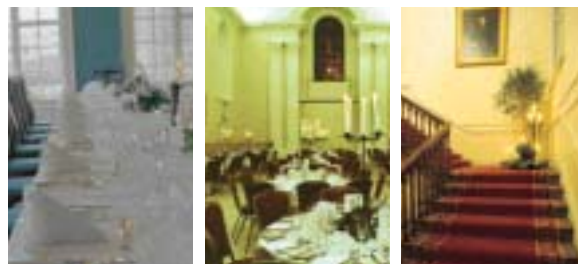
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Where the personnel officer "is satisfied", on the basis of consideration and such investigation as he or she has or has had undertaken, that disciplinary action as provided for in the code is warranted, he or she must furnish the officer with:

- 1) The probative material gathered in the course of the investigation supporting the allegation that he or she will take into account in arriving at a decision,
- 2) Statement of the penalty that, having regard to the breach or breaches of this code alleged, he or she considers appropriate, and
- 3) A copy of the code.

Where termination of employment is proposed, the personnel officer must make a recommendation to the appropriate authority and provide them with a written report on the circumstances of the case. In accordance with s9(1)(f) of the *Public Service Management Act 1997*, a decision to dismiss an officer must be made by the appropriate authority and communicated to the officer in writing. Where the decision is made other than for reasons of misconduct, notice of termination will be given in accordance with the officer's terms of employment.

A general principle of unfair dismissals law is that the person with authority to dismiss must afford natural justice to the

employee. Sometimes the EAT is confronted by a decision to dismiss that required confirmation at senior level within an organisation. This inevitably leads to legal submissions that the senior manager confirming (or, as it is generally submitted, 'rubberstamping') the dismissal should have heard the claimant employee and accorded them the benefits of natural justice. These arguments will surface under the 1977 act in relation to the act.

Appeals

Where a decision has been made to take disciplinary action against an officer, the code provides that an appeal may be made within ten days to the *Civil Service Disciplinary Code Appeal Board*. Although called an 'appeal board', the process that it will be engaged in is not one of appeal, but of review. That is, it will not ask itself whether the decision being appealed is right or wrong. Rather, it will ask whether the provisions of the code were adhered to and all the relevant facts were ascertained. The code deals with the composition of the board and describes the appeal process. Given experience in the private sector, it may come as a surprise that the outcome of the appeal process is not necessarily binding.

The officer making an appeal is entitled to make oral submissions to the board either in person or

through a serving civil servant of his or her choice, a whole-time official of the union holding recognition for his or her grade, or "such other person as the board agrees may be present for that purpose". The possibility of legal representation appears for the first time.

Eventually the board "shall form an opinion" as to whether or not a case has been established on one or more grounds and, if so, the board may, at its sole discretion, "recommend" to the personnel officer or appropriate authority, as the case may be, that:

- 1) No further action should be taken in the matter, or
- 2) The disciplinary action decided by the personnel officer or appropriate authority should be amended in a specified manner, or
- 3) The case should be reconsidered by the personnel officer to remedy a specified deficiency in the disciplinary proceedings (in which event the provisions of this code shall continue to apply).

The personnel officer may take disciplinary action other than in accordance with the board's opinion but, if so, he or she must refer the matter to the appropriate authority for review before making a final decision. The code finishes with a general aspiration that "the opinion of the board will be taken into account and decisions to

implement disciplinary action contrary to the opinion of the board should be an exceptional event".

The code's two appendices concern the application of the *Unfair Dismissals Acts* and the *Minimum Notice and Terms of Employment Act* and serious misconduct.

The code is qualitatively a far better document than its predecessor. It and the act are two important additions to unfair dismissals law.

Personnel officers in the different departments are no doubt reviewing practices regarding dismissal and discipline to ensure compliance, not just with the new code, but also with the standards the EAT and the civil courts have developed over the last three decades. Because authority will be delegated across departments, it will be essential to have consistency of practice between managerial units. Concern about the maintenance of the public-service ethic will lead to calls for a consistent approach both within and across public services.

It will be interesting to see how, in turn, this ethic may influence determinations of the EAT and the courts. **G**

Dr Mary Redmond is consultant solicitor to Arthur Cox. Her third edition of Dismissal Law was published by Tottel in spring 2007.



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green machine

The European Commission has proposed a directive on environmental protection through criminal law. This is significant – a directive has never before required the introduction of penal sanctions. David Geary hacks his way through the greenery

In February, the European Commission proposed a directive on the protection of the environment through criminal law. Its purpose is to eliminate safe havens for environmental crime by harmonising member states' criminal law in relation to certain environmental offences. It requires member states to introduce penalties of up to ten years' imprisonment and fines of up to €1.5 million.

The significance of this directive goes beyond the field of environmental law, as an EC directive has never before required the introduction of penal sanctions. It follows from a judgment of the European Court of Justice in September 2005 (Case C-176/03, *Commission of the European Communities v Council of the European Union*), which held that the European Community can specify the criminal sanctions to be imposed by member states for breaches of EC law.

The proposed directive is set to become the first community instrument to mandate specific criminal sanctions and marks the beginning of a new era for EC law. To understand the background of the judgment and the proposed directive, it is useful to briefly review the treaty system from which they stem (see panel, page 22).

Fire and brimstone

The member states and the commission were agreed on the need to criminalise certain actions that damage the environment and to provide for similar criminal

sanctions in all member states for the same offence. However, they were not agreed on the question of how this was to be achieved.

The council considered that, as the objective was to harmonise criminal sanctions, it fell outside the competence of the European Community and was a matter for the third pillar of the EU – police and judicial cooperation in criminal matters. It considered that the appropriate legislative instrument was a framework decision that it adopted in 2003.

The commission considered that the objective was to protect the environment – one of the core competences of the European Community. It argued that, even though community legal instruments had never required member states to impose criminal sanctions before, the community has the competence to do this where it is necessary to attain a community objective. The battle lines were drawn for a classic confrontation on the extent of the powers of the European Community.

The commission applied to the ECJ and sought the annulment of the framework decision. It argued that the purpose and content of the framework decision were within the scope of the community's powers on the environment, as they are stated in the *EC Treaty*. The commission did not claim that the community has a general competence in criminal matters, but that it is competent to require the member states to prescribe criminal penalties for infringements of community environmental-

MAIN POINTS

- **Proposed EC directive on environmental protection**
- **Specific criminal sanctions**
- **New era for EC law**



PILLAR OF SALT

The EU consists of three 'pillars', the first of which is the 'European Community'. This concerns the internal market and the range of policies over which the community has competence by virtue of the *Treaty of Rome* (the *EC Treaty*).

Regarding the powers of the European Community, once the member states have transferred functions to the community, they no longer have competence to act in relation to the same issues. Legislation concerning matters that fall within the competence of the European Community, such as directives, can only be adopted following the community's legislative procedures.

The *Treaty on European Union* supplements the *EC Treaty* with policies and forms of cooperation concerning a common foreign and security policy (the 'second pillar'), and police and judicial cooperation in criminal matters (the 'third pillar').

Matters falling under the second and third pillars of the EU are, in essence, matters over which the member states are not currently willing to transfer competence to the community, but in relation to which cooperation is considered to be beneficial.

The *EU Treaty* provides a framework for such inter-governmental cooperation while allowing member states to retain sovereignty in these areas. It provides that member states, through the Council of the European Union, may adopt various legislative instruments, including 'framework decisions'. These are similar to EC directives, in that they seek to harmonise national legal provisions, but differ in a number of important respects, as they do not have direct effect and are generally not subject to the jurisdiction of the ECJ.

Prior to the ECJ judgment, it was widely considered that the European Community had no competence in criminal law and that neither criminal law nor the rules of criminal procedure fell within the community's competence – this being an integral part of the sovereignty of member states.

Therefore, while a community legal instrument such as a directive could require member states to impose sanctions for breaches of the law, it could not specify that penalties imposed by member states would be criminal in nature and member states remained free to impose either administrative or criminal sanctions.

protection legislation if it considers this necessary to ensure that the legislation is effective.

The commission admitted that there was no precedent on this subject and relied instead in support of its argument on the case law of the ECJ concerning the 'duty of loyal cooperation' of member states and the principles of the 'effectiveness and equivalence of penalties' imposed by member states for breaches of EC law. This, in effect, requires member states to impose similar sanctions for breaches of EC law as for equivalent breaches of national law.

The council argued that, as the law stood, the community did not have power to require the member states to impose criminal penalties in respect of the conduct covered by the framework decision. It argued that, not only is there no express conferral of any such power to the community, but, given the considerable significance of criminal law for the sovereignty of member states, there were no grounds for accepting that this power can have been implicitly transferred to the community.

In addition, the council argued that the ECJ had never held, either expressly or by implication, that the community is competent to harmonise the criminal laws applicable in member states, but rather that it had always held that the choice of penalties is a matter for member states.

Judgment of Solomon

The court observed that the *EU Treaty* provides that nothing in it is to affect the *EC Treaty* and that it was common ground between the parties that the protection of the environment constitutes one of the essential objectives of the European Community.

The court noted that its case law has established that, as a general rule, neither criminal law nor the rules of criminal procedure fall within the community's competence. However, it held that this does not prevent the community legislature from taking measures that relate to the criminal law of the member states, which it considers necessary in order to ensure that the rules that it lays down on environmental protection are fully effective.

Following the judgment, the commission set out its understanding of the implications of the judgment in a communication. In this communication, the commission acknowledges that the judgment makes it clear that criminal law, as such, does not constitute a community policy, since community action in criminal matters must be associated with a specific legal basis in the *EC Treaty*. Therefore, questions linked to general rules of criminal law and criminal procedure will normally fall outside the scope of community law and remain a matter for the third pillar of the *EU Treaty*.

However, the commission considers that, in addition to environmental protection, the court's reasoning can be applied to all community policies

ASHES TO ASHES

The proposed directive aims to ensure a minimum level of protection of the environment under criminal law throughout the European Union. Member states will be required to ensure that a range of activities (for example, illegal shipment of waste and unlawful trade in endangered species or in ozone-depleting substances) already prohibited by EU or national legislation are considered criminal offences, when committed intentionally or with serious negligence. Member states will have to ensure that particularly serious environmental crimes are punishable by a

maximum of up to ten years' imprisonment and fines for companies of up to €1.5 million.

These cases would include crimes that have resulted in death or serious injury of a person or substantial damage to air, soil, water, animals or plants, or when the offence has been committed by a criminal organisation. In addition, the directive foresees supplementary or alternative sanctions, such as the obligation to clean up/reinstate the environment or the possibility of stopping businesses from operating.

and freedoms that involve binding legislation with which criminal penalties should be associated in order to ensure their effectiveness.

Where the commission considers that criminal law measures are required in order to ensure that community law is fully effective, these measures may, depending on the needs of the sector in question, include the actual principle of resorting to criminal penalties, the definition of the offence – that is, the constituent element of the offence – and, where appropriate, the nature and level of the criminal penalties applicable, or other aspects relating to criminal law.

Eye for an eye

The position as it now stands, following the judgment and the commission's communication, seems to be sensible and reflects the need to ensure that community law is adequately enforced in all member states.

Arguments about the competence of the community regarding criminal matters and the sovereign powers of member states will, no doubt, continue. In many policy areas, the European Court of Justice has gradually expanded the powers of the community as the political climate has permitted, and further cases concerning the community's competence in criminal matters are expected to fuel this debate.

In relation to environmental offences, the member states are in favour of harmonising criminal penalties and, for the moment, the commission can be expected to introduce criminal penalties in a limited number of areas where the member states already support this. The communication clarifies that this process will begin with certain legislative proposals that are



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Environmental protection – flexing its muscles

currently pending, and legislation that has already been adopted, and will cover issues such as money laundering, corruption and fraud against the community.

In time, criminal sanctions may be introduced in other areas. Competition law could be one such area – as the member states that already have criminal penalties, such as Ireland, believe that effective enforcement requires the introduction of criminal penalties in all member states.

Tower of Babel

The transposition of directives that foresee the creation of offences in national law will also raise issues for member states, in particular where this is by way of secondary legislation. However, the normal democratic checks and balances will still be in place – as the community legislative process involves scrutiny of directives by the European Parliament and the Council of the European Union, and incorrect transposition by any member state can be corrected by the European Court of Justice. In addition, the improper implementation of a directive could give rise to 'direct effect' actions by citizens or claims for damages against the state before the Irish courts.

Following the judgment and the proposed directive, a body of EC law creating criminal offences is sure to develop. This, in turn, may prompt further action under the third pillar in relation to police and judicial cooperation in criminal matters. Without doubt, we have entered a new era. The European Community has brought many changes that have been to the benefit of the people of Europe, and this dynamic process is continuing. Certainly, the advent of EC criminal laws will make life for lawyers in the EC more interesting and life for criminals a little harder. **G**

David Geary is head of EU, competition and regulatory law at Eugene F Collins, Solicitors, Dublin.

LOOK IT UP

Cases:

- Case C-176/03, *Commission of the European Communities v Council of the European Union*

Legislation:

- Council Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law [2003] OJ L29/55
- *EC Treaty*, articles 3(1) and 174-176
- Proposal for a directive of the European Parliament and of the council on the protection of the environment through criminal law, COM (2007) 51 final.

Literature:

- Communication from the commission to the European Parliament and the council on the implications of the court's judgment of 13 September 2005 (Case C-176/03, *Commission v Council*), COM (2005) 583 final/2

CRIME & punishment

In the first part of a two-part analysis, Frank Buttimer puts the miscellaneous provisions of the *Criminal Justice Act 2006* under the microscope

The miscellaneous provisions in the *Criminal Justice Act 2006* provide for certain amendments of existing laws and certain amendments and increases in judicial powers, clarification of the law in respect of same and other matters, and also introduces a number of new offences. Part 15 of the 2006 act came into force on 1 August 2006, pursuant to SI 390/2006. Those sections that amend or substitute existing legislation are briefly addressed below.

Clarifying ambiguity

Section 177 of the act amends section 7 of the *Criminal Justice Act 1951* by effectively introducing a new section to clarify any remaining ambiguity with regard to the issue of time limits for the institution of proceedings. In effect, the section says that, in cases of all indictable offences that are tried summarily, the limitation period within which proceedings may be initiated does not apply. This had already, in effect, been the decided position following *DPP v Logan*. The effective position, therefore, is that quite clearly (subject to very rare exceptions) the six-month limitation period for the initiation of proceedings by application for summons shall only now apply to those offences that are summary in nature, and can only be dealt with summarily at District Court level. In respect of all indictable offences that, because they are scheduled offences or because under modern statute they are triable summarily – although indictable provided the DPP and the court consent – the limitation period will not apply.

The purpose of section 178 is primarily to deal with offences where an accused person is not resident in the state. Previously, the venue for the prosecution of offences was where the accused was

arrested, where the accused resided or where the offence was committed. Section 178 introduces a new section 79(A) after section 79 of the *Courts of Justice Act 1924*.

It effectively says that, in respect of a crime committed in the state and where the accused does not reside in the state:

- Where the accused was not arrested for, or/and charged with the crime within the state and
- Where either the crime was committed in more than one District Court district or, alternatively, it is *known* that the crime was committed in one of not more than five District Court districts, but
- The actual district where the crime was committed is not known, then
- In order for the crime to be prosecuted in a given district, the crime shall be deemed to have been committed in each of the districts concerned and a judge assigned to any of the districts can deal with the case.

This section is designed to deal with the loophole where there has been uncertainty as to the venue of the commission of a crime, thereby giving rise to concern in relation to the initiation of proceedings because of uncertainty. Subsection 2 of the section goes on to state that, where the circumstances of a crime committed in the state suggest that the accused does not reside in the state, and that the accused has not been arrested for and charged with the crime in the state, and it is not in fact at all possible to determine the District Court district in which the crime was committed, then the crime shall be deemed to have been committed in the Dublin Metropolitan District in order for proceedings to be given valid jurisdiction. The clear implication of this section is that it applies only to

MAIN POINTS

- ***Criminal Justice Act 2006*, miscellaneous provisions**
- **Amending legislation**
- **Proceedings in the District and Circuit Courts**
- **Extra powers for district judges**



the summons procedure, because if a person is arrested and charged, then the court process will derive under the old provisions. Furthermore, it is clear that, in order for the new section to be applied, the court will require to be satisfied that 'reasonable efforts' have been made to ascertain the whereabouts of the accused for the purpose of effecting an arrest and charge. Presumably, therefore, at the time when application is to be made to the District Court for the initiation of a summons under this process, there would have to be an averment from the applicant for the summons as to efforts that have been made before the provisions of the section can be invoked.

The other obvious practical difficulty is that it will be all very well to issue the summons, but service will clearly be a problem in the event that either the alleged offender has left the jurisdiction

or that he or she cannot otherwise be traced for the purpose of effecting service of the summons. Equally, and as a consequence, the practical implications in terms of limitations of time and particularly implications in terms of delay will arise unless it can be shown that there has been a deliberate and conscious policy of evasion of service by the accused in respect of the summons.

Section 179 applies similarly to the initiation of proceedings in the Circuit Court.

Extra powers

Section 180 amends the law so that extra powers are granted to district judges in respect of:

- The power to issue a warrant for the arrest of a person,
- The power to issue a warrant to a member of the gardaí, or any other person, authorising entry to



and searching of any place or premises and, if appropriate, the searching of any person found at such place for the purpose of gathering evidence relating to the commission of an offence,

- The gathering of evidence in relation to the contravention of any enactment of law,
- Ascertaining whether there is, or has been, compliance with any provision of any enactment,
- The gathering of evidence in connection with proceeds of crime.

This section also grants power to the district judge to make an order, on application of a garda or any other person, directing another to produce books, documents, material or objects in order to enable such applicant to pursue an investigation into any criminal offence, any breach of any enactment, or whether there has been any benefit accruing to any person in respect of proceeds of crime.

The power is granted on the basis that the relevant district judge to whom the application is made can exercise these powers while outside the district to which he or she has been assigned. This section was introduced effectively to cover the loophole that arose in the *Dylan Creaven Silicon Technologies v CAB*, where the Supreme Court held that there was a clear requirement for a district judge physically to sit in the district area to which he or she has been assigned for the judge to have jurisdiction.

Public order offences

Section 184 introduces section 23(a) after section 23 of the *Public Order Act 1994*. In effect, this introduces a new fixed-penalty type procedure to deal with the commission of offences under section 5 of the *Public Order Act*. Section 23(a)(i) says that a member of the gardaí, who has reasonable grounds for believing that a person is committing, or has committed, an offence under section 5, may serve on the person personally or by post a notice referred to

in subsection 5 or cause it to be served.

In effect, this is a mirror image of what has been occurring recently in relation to the application of fixed-penalty notices for certain motoring offences such as speeding, failure to wear a seat belt, and so on. The practical effect is that a member of An Garda Síochána, as opposed to initiating a criminal process by means of summons, may cause to be sent to the offending person a fixed-penalty notice. What this will probably mean is that the garda will apply to the Central Administration Authority, similar in nature to the one that is used for motoring offences, to have sent to the person a fixed-penalty notice. If within a certain period of time, set out in this act as being 28 days, the person pays the penalty, then the statute would have been satisfied by the payment of the penalty and no criminal proceedings would be initiated.

Pay the penalty

There will be a presumption of non-payment, which means that the burden of proving either non-receipt of the penalty or other non-compliance with procedure will rest with the offender, just as is the case for the new motoring offences. It will be an offence for an offender not to give his or name and address upon demand, which is fairly much the case in any event under the *Public Order Act*, where the gardaí have power to seek and demand the name and address of an offender. Failure to comply with this requirement is itself an offence and prosecutable as such. Presumably, the regulations will make it an attractive proposition to pay the penalty. Of course, one of the consequences of payment of the penalty will be that the risk of being given a criminal conviction through the courts for section 5 will be obviated.

Assault on a peace officer

Section 185 creates, in effect, a new subsection 1 of that particular section of the act. The old section 19(1) created three offences: assault on a peace officer acting in the course of his duty, assault on any person acting in the aid of a peace officer, and assaults on any other person with intent to resist or prevent apprehension of that person or another. One of the highly unusual aspects of these offences under the previous subsection 1 is that an accused person actually has the right to elect to be tried either summarily or on indictment. For that particular reason, it is my experience that prosecutions under subsection 1 are extremely rarely brought. For example, the huge majority of offences involving assaults on members of An Garda Síochána are brought under section 2 of the 1997 *Non-Fatal Offences Against the Person Act*. I have rarely seen assaults on gardaí being prosecuted under the *Public Order Act*. My belief is that the state does not want the accused to have the right to elect to be tried before a jury because of the obvious difficulties that

“The new section confirms that an accused has the right to be tried on indictment or summarily”

LOOK IT UP

Cases:

- *DPP v Logan* (1994) 3 IR 254
- *Dylan Creaven Silicon Technologies v CAB* (2004) No 4 IR

Legislation:

- *Courts of Justice Act 1924*
- *Criminal Justice (United Nations Convention against Torture) Act 2000*
- *Criminal Justice Act 1951*
- *Non-Fatal Offences Against the Person Act 1997*
- *Offences Against the State Act 1939*
- *Public Order Act 1994*

that would cause for the state.

In any event, the new subsection creates offences of a similar nature by creating new categories of persons the subject of assaults, and now includes a person providing medical services at or in a hospital, or a person assisting such a person. Therefore, the present position is that anybody who assaults a doctor, a nurse or any assistant or medical person of any kind, or indeed any security person or anyone of that kind at a hospital, is guilty of this offence. Furthermore, 'peace officer' as previously defined means a garda, a prison officer or a member of the

defence forces. Again, the new section confirms that an accused has the right to be tried on indictment or summarily, and there is an increase in the available penalties on indictment from five years to seven years.

Detention

Section 187 extends the detention period under section 30 of the *Offences Against the State Act 1939* in the specific instance where the time period for the detention would actually expire during the application for the extension of time itself. The net effect is that the detention period shall be deemed not to expire until after the determination of the application. This is designed to deal with situations where people are detained up to the point in time legally where an application is made for a 24-hour extension following upon an initial 48-hour extension and where, in technical terms, the time of 48 hours for the detention shall expire during the time when the district judge is hearing the application. This section now makes it clear that the original detention remains in force, notwithstanding that the district judge is still hearing the application for additional extension for the further period of 24 hours. **G**

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

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TAX TRAPS

for the unwary

Many commercial transactions requiring the services of a solicitor have some form of tax consequence. Conor Kennedy audits the common areas of difficulty that confront professional advisors on a regular basis

Tax legislation is ambulatory in nature and updated, and in some cases amended, on an annual basis. The *Finance Act 2006*, for example, encompasses 130 sections and two schedules. Other notable events during 2006 included the controversial High Court decision on our general anti-avoidance provisions and several groundbreaking decisions from the European Court of Justice. To compound matters, Revenue issued 57 practice statements and two newsletters.

The complexity in our tax laws is not assisted by the continually changing domestic and European economic and political landscapes. However, the recognised sources of difficulty are attributable to the following:

- Taxation is a penal statute that necessitates meticulous detail in its drafting,
- The legislative timescale within which a finance bill has to be enacted places enormous pressure on Revenue staff, and
- Complex anti-avoidance provisions are regularly grafted onto existing legislation to counteract any perceived abuses of the tax system.

An interesting insight into how Revenue counteracts perceived abuses of our tax laws was expressed by revenue commissioner Michael O'Grady in an address to a KPMG tax conference in November 2003. Mr O'Grady acknowledged that legislative drafting is not infallible, and it is virtually impossible to address every potential contingency. Revenue is also mindful of the complexities in devising anti-avoidance-type legislation to ensure that it does not cause 'collateral damage' to legitimate business.

Problem areas

Many commercial transactions requiring the services of a solicitor invariably have some form of tax consequence. The complexity of the transaction and

the financial resources of the client will determine the necessity for the procurement of a specialist tax advisor. However, some clients, regardless of their financial well-being, are mindful of the cost of engaging professional advice and may attempt to reduce costs – and the solicitor may ultimately end up as the sole professional advisor.

Where only an accountant is engaged to assist a solicitor, the issue of the experience and expertise of that accountant may come into question, specifically in the case of a sole practitioner. As highlighted above, tax has become extremely complicated, and problems can therefore arise where the accountant assumes that the solicitor has undertaken to advise on the tax-related issues. The solicitor may have corresponding views, rendering both parties open to litigation in the event that an unforeseen tax liability arises. Therefore, as a matter of course, all parties involved in a transaction should clearly set out the advice for which they will undertake responsibility.

The common areas of difficulty that confront professional advisors on a regular basis are set out below.

Letters of engagement: there is a particularly useful practice direction issued by the British Chartered Institute of Taxation to its members on the importance of engagement letters. The institute strongly recommends that its members issue engagement letters "particularly so, given the increasingly litigious world in which business is conducted. In this context, the attention of practitioners is drawn to *Hurlingham Estates v Wilde & Partners* [1997] STC 627, following which the courts will infer that a practitioner has the knowledge and expertise appropriate to the ordinary, competent professional practising in his particular field."

In the *Hurlingham* judgment, Lightman J could not comprehend "how a solicitor possessed of no

MAIN POINTS

- Problematic taxation issues for solicitors
- Need for letter of engagement
- Economic value tests



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Softly, softly catchee monkey

real knowledge of tax laws can be allowed to occupy such a position, at any rate in a case such as the present, where he does not have the necessary tax law back-up; certainly it must be questionable whether he should be allowed to do so if any regard is to be paid to the safety of the public”.

Below is a sample of everyday issues that would involve a multi-disciplinary involvement. Murphy's Law aside, it should be noted that the more advisors are involved in a transaction, the greater propensity to risk of litigation. Therefore, the engagement letter provides damage-limitation and peace of mind.

Company share buy-backs: it is now possible for individuals to be assessed for capital gains tax on the disposal of shares to a company. As the disparity between the income and capital-gains-tax treatment is significant, there are numerous conditions to be satisfied and many possibilities for error. The company share buy-back procedure is a classic example of the need for an assortment of advisors ranging from the legal to tax and financial practitioners.

Corporate residence: company residence is usually determined with reference to where the central management and control actually abide. With effect from 1 October 1999, all Irish-incorporated companies, subject to certain exceptions, are liable to corporation tax in Ireland

on their worldwide profits by virtue of the deemed residence rules.

Problems can arise where Irish solicitors instruct foreign colleagues to form companies on their client's behalf. The consequences of having Irish-resident directors may determine the residency of the company to be Irish, rendering any income derived by the company liable to Irish tax. In addition, where the foreign company has been incorporated to acquire a holiday home for Irish residents, a benefit-in-kind charge or deemed distribution could be applied to the Irish resident director/shareholder.

Revenue may also invoke the provisions of section 590 of the *Taxes Consolidation Act 1997* to look through the non-resident controlled company and tax the Irish-resident shareholders on the gains made by the company.

Deemed distributions: a distribution is very broadly defined by section 130 of the *Taxes Consolidation Act 1997* and includes the transfer of an asset at undervalue to a member. A solicitor may be engaged to transfer a property from a company to a shareholder. Assuming the company-law obligations have been satisfied, the tax consequences can be material for unsuspecting clients, who may seek recompense from all the professional advisors.

Discretionary trusts: the legal definition of a discretionary trust applies to types of trusts whereby



“The complexity of VAT has been eloquently described as ‘a kind of fiscal theme park in which factual and legal realities are suspended or inverted’”

trust property is held on trust to apply the income or capital, or both, for the benefit of one or more beneficiaries, as the trustees in their absolute discretion think fit. However, section 2 of the *Capital Acquisitions Tax Consolidation Act 2003* defines a discretionary trust to include a trust whereby property is held “on trust to accumulate the income or part of the income of the property”.

To compound matters, section 805 of the *Taxes Consolidation Act 1997* imposes a surcharge of 20% on trustees where the income of the trust is accumulated or payable at the discretion of the trustees.

While the legal and tax definitions of a discretionary trust differ, unsuspecting tax liabilities may accrue to the trustees where the will or trust document grants a power to the trustees to accumulate income for the benefit of beneficiaries.

Property transactions: many solicitors understandably struggle to get to grips with VAT on property. Tax advisors also share this struggle. In fact, the complexity of VAT has been eloquently described as “a kind of fiscal theme park in which factual and legal realities are suspended or inverted” (Sedley LJ in *Royal & Sun Alliance Insurance*).

From 2008, a new system of VAT on property is to be introduced. As it will take some time to address the mess caused by the incumbent VAT provisions, it would be imprudent to dispense with the knowledge of the current rules.

Development history of the property: the aspect of VAT on property that causes most frustration centres on the vendor’s uncertainty as to whether a property is within the VAT net by virtue of having been developed or redeveloped since 31 October 1972. The requirement to be fully conversant with the property’s history, spanning a period of 35 years, poses understandable difficulties for many vendors. This uncertainty can be invariably compounded by the number of previous owners of the property.

Entitlement to an input credit: it would be imprudent to assume that the disposal of an interest

in property is not liable to VAT if the vendor did not reclaim any VAT on the purchase or development. The fact that a vendor was entitled to, but did not reclaim the VAT input credit, does not remove the subsequent disposal of the property from the VAT net. Therefore, the key issue is to determine whether the vendor was entitled to reclaim the VAT before determining whether any subsequent disposal is within the charge to VAT.

Surrenders and assignments: where a lease is surrendered or assigned, the reverse-charge procedures usually apply, requiring the person who obtains the interest in the property to be the accountable person for VAT purposes. While the reverse-charge mechanism applies in most circumstances, there can be exceptions.

Economic value test: the *Finance Act 2002* introduced an economic value test (EVT) in relation to the disposal of leasehold interests, to counteract the use of avoidance schemes whereby leases were being valued at a fraction of the cost of development. As a result of this amendment, landlords now ensure that the capitalised value of a lease is either greater than or equal to the minimum set by the EVT. To fail the EVT will deem the disposal of the lease to be exempt from VAT, invoking a clawback of the VAT input credits claimed on the acquisition or development of the property.

Licence agreements: the popularity of disposing of property through licence agreements has recently come to the attention of Revenue. Following on from Revenue’s review, the *Finance Act 2007* proposes to address the stamp-duty avoidance scheme. However, adverse VAT issues remain for landowners, specifically in relation to residential developments.

Taxation is a specialist discipline. Even those who profess to have some proficiency in the science would readily admit to its complexity. This complexity can be traced to bad legislative drafting, uncertain interpretation and the volume of authorities extending across Europe and most of the common-law world.

The complexity of transactions often requires the services of an assortment of advisors from different disciplines. While the competency of the respective advisors in many cases is not the issue, the lack of understanding of each of the advisors’ roles may give rise to an unforeseen tax liability.

The threat of *Hurlingham* certainly focuses the minds of all professional advisors – not only solicitors. Therefore, to defuse any potential negligence actions, a client, or indeed a potential client, should be furnished, at the outset, with an engagement letter. **G**

LOOK IT UP

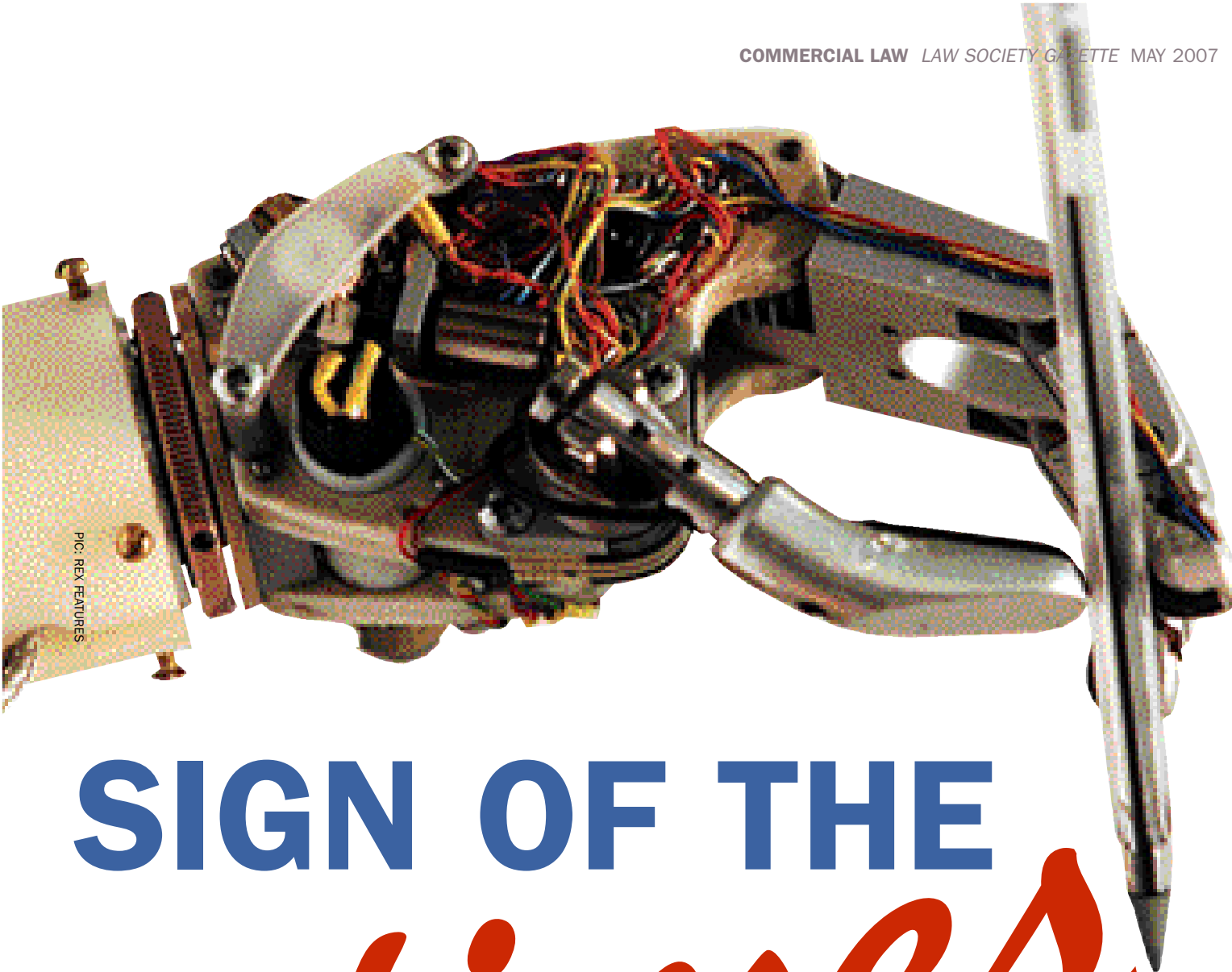
Cases:

- *Hurlingham Estates v Wilde & Partners* [1997] STC 627 (England)
- *Royal & Sun Alliance Insurance Group plc v Customs and Excise Commissioners* [2001] STC 1476 (CA) (England)

Legislation:

- *Capital Acquisitions Tax Consolidation Act 2003*, section 2
- *Finance Acts 2002, 2006, 2007*
- *Taxes Consolidation Act 1997*, sections 130, 590, 805

Conor Kennedy is a practising barrister specialising exclusively in tax law. The author wishes to acknowledge the contribution made by Daragh O’Shaughnessy of KSi Faulkner Orr.



SIGN OF THE *times*

The role of electronic signatures in online business transactions is widely accepted, but how useful are they for the legal profession – and can they be trusted? Kate Browne analyses the handwriting

MAIN POINTS

- Legally-accepted electronic signatures
- *Electronic Commerce Act 2000*
- Forgery and tampering – a criminal offence

Despite initial security concerns about information sent over the internet, online contracts are becoming much more frequent. The internet is now the fastest-growing global commercial marketplace. It enables parties to sell goods and services electronically to consumers, in a borderless environment. E-commerce regards electronic signatures and communications as being legally acceptable, recognisable alternatives to their handwritten counterparts.

A signature shows an intention to be bound that prevents a signatory from repudiating his position, while also providing a form of identification for an enforceable contract. Many contracts are informal in nature and thus can be validly concluded on the internet. Also, many commercial contracts do not require a signature formality, but are still signed for identity and intention purposes.

Other contracts, however, such as transfers of land, wills, enduring powers of attorney and trusts still require a physical 'paper' signature or

attestation. There are concerns about whether a digital document can meet the same requirements as their paper counterparts. In England, the courts have established a wide interpretation as to what constitutes a signature – in *Goodman v Eban Ltd*, a rubber stamp on a document was held to be equivalent to a handwritten signature. A faxed signature has also been held to be acceptable in *Re a Debtor*.

Electronic contracting can be achieved by typing a name on an email, by clicking a website 'acceptance' button, by way of a manuscript signature that is scanned into a document, or by digital signature using public key cryptography.

An email is the digital equivalent of a letter and is the easiest method of online contracting, but it is also the weakest evidence. Emails are not usually instantaneous and operate through an internet service provider (ISP), which can slow up their delivery. Emails can suffer from delays, disappear in the system, or arrive incomplete or in non-legible form. There are also problems as raised in *Brinkibon Ltd v Stabag Stahl*, where recipients have not personally accessed their emails because they were sent outside office hours. In *Schelde Delta Shipping BV v Astarte Shipping BV (the Pamela)*, the court held that, during office hours or times when the parties were normally in communication, the actual time of receipt of the communication would normally apply for acceptance purposes.

The thin line

Section 13 of the *Electronic Commerce Act 2000*, which came into effect on 20 September 2000, makes it clear that parties can contract by using electronic signatures, regardless of whether these are

“Other contracts, however, such as transfers of land, wills, enduring powers of attorney and trusts still require a physical ‘paper’ signature or attestation”

typed or scanned. Section 9 gives formal recognition to electronic signatures and gives them the same status in law as written signatures. It attempts to deal with discrepancies between paper, hand-written signatures and electronic signatures.

Section 14 provides that signatures can be witnessed electronically. In electronic communications that are not intended to be legally binding, they should be made ‘subject to contract’ or contain an appropriate disclaimer. The act also provides for the use of the more elaborate, advanced electronic or digital signature, which is generally a more technologically-advanced version of electronic signatures. This advanced signature, which is uniquely linked to the signatory, is capable of identifying the signatory and is created by the signatory himself under his sole control. It is linked to data in such a way that any subsequent change of the data is detectable. It may also be changed periodically to protect its authenticity.

If a signature is certified by a certification service provider based on a qualified certificate, and has been created by a secure signature-creation device, it will be treated the same as a handwritten signature. The certificate itself should state the name of the signatory and contain signature verification data. Documents executed under seal and witnessed signatures require an advanced electronic signature coupled with a qualified certificate. Qualified electronic signatures provide a higher level of legal validity, are more favourable than electronic signatures, are useful for cross-border transactions and serve as a passport in Europe.

The 2000 act is not compulsory and requires parties to the electronic communication to consent to the information being provided in electronic

KEY CODES

An electronic signature is a string of electronic data that is used to identify and authenticate the sender of a message. It is a generic, technology-neutral term that refers to all of the various methods by which one can sign an electronic record. Authentication is where an entity seeks to verify the validity of a piece of communication. The burden of proof is normally on the person that relies on the signature to prove that it was genuine. The question as to whether an email was deemed to be signed was considered in Britain in *Hall v Cognos Ltd*. Here, the tribunal accepted that printed copies of emails were indeed in writing and validly signed.

Cryptography, or ‘secret writing’, can enhance the integrity and authenticity of electronic signatures. This involves writing messages in such a way that they cannot be read by third parties and ensures the authenticity of the information and the integrity and source of the message. Attempts to amend digital signatures should be detected once a secure encryption programme has been used. Cryptography involves the use of a public and a private key. A key is a mathematical code, usually in the form of a large number. The public key can be made available to the world at large, but the

private key should be kept by the keyholder alone. The message is encrypted using one key and can then only be decrypted using the other. The contents of the communication are encrypted to ensure that the confidential data has not been changed before it is received and that it came from the sender who appears to have sent it.

As it is possible for anyone to create such an encryption key or for the key’s secrecy to become compromised, an electronic certificate can be attached to the signature, which provides certification that the key emanated from the individual from whom it is purported to emanate. Similarly, while an electronic signature gives assurances that the signature is that of a particular person, it cannot guarantee that its use has been authorised by the owner. In *Standard Bank London Ltd v The Bank of Tokyo Ltd*, the banks involved authenticated money transfers by using validated telexes. A fraudster forged three telexes from the Bank of Tokyo and the court held that a validated telex recipient was entitled to rely on the validation, unless otherwise notified. A sending party has a significant responsibility to secure the codes and keys being sent.

LOOK IT UP

Cases:

- *Brinkibon Ltd v Stahag Stahl* (1982 1 All ER 293) (England)
- *Goodman v Eban Ltd* (1954 QB 550) (England)
- *Hall v Cognos Ltd* (Industrial Tribunal Case No 1903325/97) (England)
- *Re a Debtor* (No 2021 of 1995) (England)
- *Schelde Delta Shipping BV v Astarte Shipping BV (the Pamela)* (1995 2 Lloyd's Rep 249)
- *Standard Bank London Ltd v The Bank of Tokyo Ltd* (1996] 1 CTLR) (England)

Legislation:

- *Electronic Commerce Act 2000*
- *Electronic Commerce Directive* (2000/31/EC)
- *Electronic Signatures Directive* (1999/93/EC)
- *UNICTRAL Model Law on Electronic Commerce*
- *UNICTRAL Model Law on Electronic Signatures*

form. Section 21 provides that where an electronic communication enters an information system or the first information system outside the control of the originator, unless the parties have otherwise agreed, it is deemed to have been sent when it enters that information system. An emailed acceptance of a contract would be deemed to have been sent once it had passed outside the sender's email system. Thus, a party may in effect be bound by an email that has not yet come to his attention. The act also makes it a criminal offence to forge or tamper with electronic signatures and certificates. The act does not apply to powers of attorney, transfers of land (as opposed to contracts), wills, trusts, affidavits, statutory declarations and court procedures.

Screaming in digital

The *Electronic Commerce Act 2000* implements the European Union's *Electronic Signatures Directive*, which aims to facilitate the use of electronic signatures throughout the EU, and aspects of the *Electronic Commerce Directive*. Most of the EU member states have transposed the signatures directive into national legislation. Many non-EU states have based their electronic signatures legislation on the directive. The directive provides that certification service providers are free to provide their services without requiring prior authorisation or notification, thus promoting market access and free cross-border flow of certification services in the EU. However, the certification service providers must demonstrate the reliability necessary for providing such certificates and must provide customers with basic information regarding their activities. Furthermore, a certification service provider established in one member state can provide certification services in another member state without having to ask the prior permission of a national authority. It also gives the certification

service provider the right to limit its liability for third-party losses.

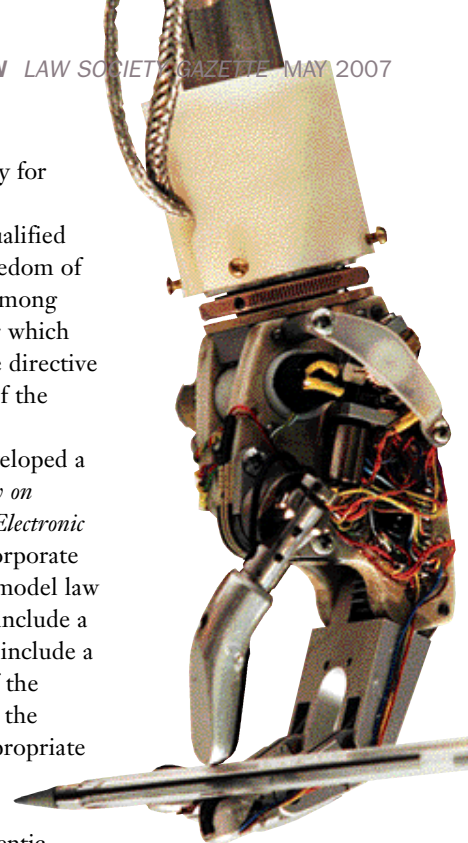
The directive does not deal with non-qualified certificates. The directive regulates the freedom of parties (subject to national laws) to agree among themselves the terms and conditions under which they accept electronically-signed data. The directive does not attempt to regulate the conduct of the signatory or the relying party, unlike the UNICTRAL model law. UNICTRAL developed a set of two-tier rules, namely the *Model Law on Electronic Commerce* and the *Model Law on Electronic Signatures* and encouraged its states to incorporate both models into their domestic law. The model law requires that an electronic signature must include a method to identify the signer. It must also include a method to indicate the signer's approval of the information contained in the message, and the method used must be as reliable as was appropriate for the purpose for which the message was generated.

Thus, electronic signatures must be authentic, should not be capable of being forged nor capable of reuse, and the document that has been signed should not be capable of being altered without rendering the signature unverifiable. These methods are common in financial services for online payments (secret codes/passwords are used for authentication), credit-card processing and in insurance. The Revenue online website service and the Land Registry service also use advanced electronic signatures to ensure integrity and to protect the identities of its users. Indeed, an electronic conveyancing system is expected to begin operation shortly.

There are still certain risks with using electronic signatures in cyberspace and the number of parties linked to the signature will differ depending on the type of signature used. There are fears that electronic signatures are not of the same legal efficacy nor as confidential as traditional hand-written signatures. Electronic signature legislation in the future should aim to remove actual and perceived barriers to e-commerce and should enable, advance and promote the desirable public policy goal of e-commerce by helping to establish the trust and the predictability needed by parties doing business online.

We need to adapt our legislative approaches as new business models and technologies emerge and case law develops. To date, few cases have come before the courts on electronic signatures, so it too soon to establish judges' positions in this area. Future contract terms should provide for the acceptability of the electronic signatures method. The importance of trust and confidence for the success of electronic signatures and e-commerce transactions will continue to be prerequisites for the success of this process. **G**

Kate Browne is principal of Browne & Co Solicitors in Wicklow.



In good COMPANY

The draft *Companies Consolidation and Reform Bill* looks likely to be given the go-ahead in the near future. Paul Egan says that the bill, when enacted, will completely overhaul the substance and structure of company law

When it comes to assimilating new law, most solicitors manage to get through their careers by learning the additional laws, but retaining the core law as their reference point. There may be amending acts, but what the Parliamentary Counsel's Office always calls 'the principal act' will usually be the starting point.

There are, admittedly, consolidation acts every now and then – the *Taxes Consolidation Act 1997* is a recent example – but those acts generally do not reform the law. Rather, they repackage and re-sequence the rusty accumulation of a generation's laws in a given subject, in (marginally) more accessible language.

A draft *Companies Consolidation and Reform Bill* has been in preparation and appears likely to be given the go-ahead for formal drafting in the near future, regardless of the political complexion of the next government.

What is different about this bill – is it just a matter of getting used to the new section numbers? Why is the *Gazette* writing about a proposal maybe a year ahead of enactment? The reason is simply that this consolidation bill will constitute the implementation of the greatest and truest reform of company law that has ever taken place in the state. The bill, when enacted, will completely overhaul the substance and structure of company law. This is no cut-and-paste exercise.

Competitive edge

All this has been made possible by the inspired decision in 2000 to create the Company Law Review Group. Formed under the leadership of solicitor and leading company-law author and practitioner, Dr Thomas B Courtney, it was put on a statutory footing in 2001 by the *Company Law Enforcement Act* of that year.

Company law in Ireland is correctly perceived to have the potential to provide Ireland with a competitive edge. It doesn't have the overt

advantages that tax law has, but, where company law is perceived to be hard to understand and for the delectation of expensive advisers, expect a flight from its clutches.

An example of this is the wholesale abandonment by German corporate financiers of German-incorporated companies for English limited companies as acquisition vehicles for German businesses. When such an acquisition vehicle comes to be sold off, it can be done with relative ease. That means the German economy is down on fees and transfer taxes and the British economy is up.

Root-and-branch reform

In the CLRG's first full report in respect of its work programme for 2000-2001, the structure of a consolidation act was put forward. Instead of the dreary adoption of existing law with clever relocation of various amendment provisions, this was to be a root-and-branch reform.

Among the main questions addressed were:

- Why was company law based around the public limited company (PLC) and not the private company?
- Why keep the doctrine of *ultra vires*, when many of the leading *ultra vires* cases appeared to facilitate the avoidance of what were perceived to be proper contracts?
- Why keep important legal principles hidden away in court judgments – many from other jurisdictions?
- Why have 'Table A' as the basis for the governance of companies, when it was ignored in PLCs and amended in private companies?
- Why have a company constitution consisting of (and called) a memorandum and articles of association? Why not a 'constitution'?
- Why AGMs in small private companies? Why the need for two directors?

In brief, the CLRG knew that it could not treat the existing law as the ideal. Something new was needed.

MAIN POINTS

- ***Companies Consolidation and Reform Bill***
- **Radical reform of company law**
- **Reports of the Company Law Review Group**
- **Structure of the bill**



“Instead of the dreary adoption of existing law with clever relocation of various amendment provisions, this was to be a root-and-branch reform”

The CLRG has published a further six reports, including a special report on the directors' compliance statement.

Structure of the bill

In chapter 17 of the first report, expanded by chapter three of the second report in respect of the period 2002-2003, the overall structure of the *Companies Consolidation and Reform Bill* was laid out.

The most radical decision was to split the law

into two halves. The first group of 'Parts of the Bill' (Group A) would be dedicated to legislating for the private company limited by shares – 90% of all companies fall under this heading. The new-model private company would be formed by the incorporator(s) signing up to a simplified one-page standard form constitution, which would have no 'objects' clause. The new-model private company would have unlimited corporate capacity, so no *ultra vires* rule.

The second group of 'Parts' (Group B) would apply and modify the Group A law for the purposes of all other forms of companies such as the PLC, the guarantee company, the unlimited company and a new form of company – a designated activity company (DAC). A DAC is a company limited by shares, which has an objects clause, or a company limited by guarantee *with* a share capital.

What's different?

A draft of the text of the Heads of the Bill is available for inspection at www.clrg.org. This represents the fruits of extensive work by the CLRG generally, and of its many committees.

The layout of part A of the Heads of Bill takes the new-model private company from incorporation through to dissolution, with parts on interpretation and enforcement as bookends.

Part A1 – preliminary and definitions. There are a number of new defined terms, indicating new procedures and thinking. For example, there is now a generic procedure akin to that used to approve financial assistance – a directors' statutory declaration of solvency and a special resolution of members. This is defined as a 'validation procedure'. This procedure is adopted for a number of purposes under other parts of the bill.

Part A2 – incorporation and registration. The incorporation process is simplified by there being no requirement for a memorandum and articles – rather, all that will be needed is the filling-out of papers by the intending shareholder director(s) and secretary. It will be optional, but not obligatory, for Group A private companies to have supplemental regulations. As *ultra vires* will no longer apply for such private companies, there will be no requirement for the tortuously verbose and tautological prose of *ye olde objects clauses*.

Part A3 – share capital. In the area of share capital, there has been a complete overhaul of concepts and preoccupations of the law.

First, there will be 'company capital', being the



“The bill will, for private companies, remove the antiquated obsession with the preservation of share capital”

value of money or assets contributed for shares. Share capital, plus share premium, plus capital redemption reserve fund, equals company capital. Shares will have a par value, but it will be possible to increase or reduce the par value by (if possible) taking or shifting value from what will now be called 'undenominated capital'.

Next, the bill will, for private companies, remove the antiquated obsession with the preservation of share capital. Solvency is what matters, rather than the satisfaction of disconnected mathematical rules. Therefore, by the proper use of a 'validation procedure' a private company limited by shares will be able to:

- Reduce its share capital in any way, without the requirement for High Court approval, as is now required under s72 of the *Companies Act 1963*;
- Enter into a three-party shares-for-undertaking transaction, that is, where a company transfers an asset or undertaking to a new company in return for the allotment of shares to the company's shareholders, rather than to the company – without fretting as to the amount of the company's distributable profits.

In relation to the provisions of Table A as to share capital, calls on shares, lien and forfeiture are now integrated into the statute.

Part A4 – corporate governance. New-model private companies will be allowed to have one director only, but must have a separate company secretary. (In a two-director company, one of the directors can be the secretary.)

Radical changes have been made to the methodology of procedural decisions by the shareholders of companies. Not only will it be possible for there to be unanimous written resolutions of members – it will now be possible for there to be majority resolutions. The AGM can be dispensed with, thereby aligning the law with reality for a great number of companies.

REMIT OF THE CLRG

The CLRG's remit is to advise the Minister for Enterprise, Trade and Employment on the implementation, amendment and modification of the *Companies Acts*, as well as the introduction of new laws on companies and commercial practices. In so doing, the CLRG is to seek to:

- Promote enterprise,
- Facilitate commerce,
- Simplify the operation of the *Companies Acts*,
- Enhance corporate governance,
- Encourage commercial probity.

When the CLRG was constituted, a number of bodies were invited to nominate members, including the Law Society, the Bar Council, the Irish Stock Exchange, the Consultative Committee of Accountancy Bodies – Ireland (CCABI), the Institute of Chartered Secretaries and

Administrators, the Institute of Directors, IBEC, the Irish Banking Federation and the Irish Congress of Trade Unions.

The CLRG also has members from the Office of the Director of Corporate Enforcement, the Companies' Registration Office, the Central Bank and Financial Services Authority of Ireland, the Irish Auditing and Accounting Supervisory Authority, as well as Department of Enterprise, Trade and Employment representatives. The aim of such representation was to thrash out the arguments and special pleading that normally accompanies the enactment of new law.

In addition, the minister made some special appointments – solicitor and leading banking law author William Johnston and, significantly, in view of the importance to Ireland of the funds industry, solicitor and investment funds practitioner Máire O'Connor. The Law Society's current nominee is John Olden, a member of the Society's Business Law Committee.

Part A5 – duties of directors and other officers. A non-exhaustive list of the common-law fiduciary duties of directors is set out in the statute for the first time. Rather than setting out over-detailed duties, as was done in Britain recently, the CLRG took up a discarded line of thinking from a joint report of the English and Scottish Law Commissions of 1999, deciding to state the principal judicially-approved duties. These include the duty to act, *bona fide*, in the best interests of the company and to avoid conflicts of interest and secret profits.

One express change has been made to these duties, in that directors will be entitled to have regard to the interests of their appointer in the case of joint-venture companies. This part also simplifies what has been called the ‘witch’s brew’ of law concerning notification of interests in shares by directors and proposes the introduction of a sensible *de minimis* exception to the general rule that all interests in shares or debentures must be notified to the company.

Part A6 – financial statements, audit and annual return. Accounting law is now firmly the province of the EU, with the fourth and seventh directives (with their myriad amendments) and the *International Accounting Standards Regulation* the driving force. As a result of extensive (largely EU-driven) amendments introduced by statutory instruments, such as SI 116 of 2005, the law relating to financial statements (formerly known as ‘accounts’!) is a patchwork quilt of amended and re-amended provisions. With the help of the CCABI and Una Curtis of KPMG, the CLRG took the opportunity to completely re-write the law relating to financial statements – part A6 is the result.

Part A7 – debentures and the registration of charges. It will now be possible to seek priority for a charge, along the lines of the ‘priority search’ procedure in the Land Registry.

Part A8 – receivers; part A9 – reconstructions; and part A10 – examinerships. In these parts, there has been a rationalisation and removal of anomalies. For example, in the case of schemes of arrangement, the number of court hearings involved has been reduced from three to one.

Part A11 – winding up. As well as the root-and-branch revision and rationalisation of the law, the biggest change proposed is the placing of official liquidations on a more similar plane to creditors’ voluntary liquidations, by transferring the powers of the court (and examiner’s office) to the official liquidator in a controlled manner. One of the controls that will make this possible is mandatory insurance for liquidators, and also the requirement that liquidators must be qualified to act. It is an amazing fact that, at the present time, *anyone* may lawfully be appointed to act as a liquidator of a company!

Part A12 – dissolution and reinstatement.

This part will provide a statutory basis for voluntary strike-offs of companies, as well as a tidying-up of the multifarious procedures and reasons for strike-off at present.

Part A13 relates to compliance, investigation and enforcement and part A14 to the powers and duties of the minister and the various regulatory and advisory bodies.

Group B

Group B sets out, in successive parts, the law specific to public limited companies (including European SEs, that is ‘*Societas Europaea*’), designated activity companies, guarantee companies (without a share capital), unlimited companies and branches of non-Irish companies. In relation to non-Irish companies, the distinction between a *Companies Act* ‘established place of business’ and EU branch is removed.

The ability to change corporate form – limited to unlimited, public to private – is now gathered together, and companies will be able to change status more than once (changing the law that allows a limited company to become unlimited, but not to change except via being a PLC).

What’s not in?

The transposition of the EU Financial Services Action Plan measures – *Prospectus Directive*, *Market Abuse Directive* and *Transparency Directive* – will not be included. Instead, although the legal structure establishing criminal and civil liability will be in the statute, the detailed regulations will continue to be bespoke statutory instruments, pending a consolidated *Securities Act* in due course.

Internal Market Commissioner Charlie McCreevy announced his intention late last year to bring forward the 14th *Company Law Directive*. This directive will allow limited companies to move their registered offices across member-state borders – adopting the nearest legal form in the new member state. It means that a French SARL or German GmbH will be able to cross over the border into Ireland and become an Irish limited company. But conversely, it means that an Irish limited company can migrate to a more benign jurisdiction.

Therefore, the consolidation and reform of our company law could not have come at a more timely moment. We have the opportunity to produce a fresh, new, comprehensive, comprehensible enactment that, as well as fulfilling our European obligations, most importantly will facilitate and attract enterprise. **G**

Paul Egan is a partner in Mason Hayes and Curran and a member of the Company Law Review Group. He was the Law Society’s nominee to the CLRG from 2000–2005.

LOOK IT UP

Legislation:

- *Companies Act* 1963
- *Companies Consolidation and Reform Bill* (draft only)
- *Company Law Enforcement Act* 2001
- Fourteenth *Company Law Directive* (EEC) on the cross-border transfer of the registered office of limited companies (in gestation)
- Fourth Council Directive (25 July 1978) based on article 54(3)(g) of the treaty, on the annual accounts of certain types of companies (78/660/EEC)
- *International Accounting Standards Regulation* (EC) 1606/2002
- *Market Abuse Directive* (EU)
- *Prospectus Directive* (EU),
- Seventh Council Directive (13 June 1983) 83/349/EEC
- *Taxes Consolidation Act* 1997
- *Transparency Directive* (EU)

'Cannes do' ATTITUDE

MAIN POINTS

- An independent legal system in a united Europe?
- Adapt or die
- The guardians of democracy

Over 200 Irish lawyers travelled to Cannes to attend the Society's annual conference. From a national, pan-national and international perspective, the legal profession is facing many challenges. Mark McDermott reports

Cannes is magnificent in the sunshine – but we had to wait until the penultimate day of the Law Society's annual conference to find out. While Ireland was basking in unseasonal, glorious weather, delegates who had travelled to the south of France had to be content with hazy sunshine,

a certain coolness in the air, some rain – and hefty beverage prices that stripped the colour from the faces of even the most hardened travellers. This was Cannes – five-star style.

To escape from the bling, you simply had to take a jaunt on Shank's Mare to discover mediaeval Cannes – an entrancing city of character, featuring narrow streets filled with quaint shops and 'native' restaurants, urging the curious visitor to trudge upwards to the simply beautiful Église Notre Dame d'Espérance (the Church of Our Lady of Hope). From there, breathtaking views of the city aided recovery. The knowledge that it was all downhill from here – and that there would be the chance of taking in a game of boules – made the return trip a certain pleasure.

Soul-searching

The working session of this year's conference was 'Maintaining an independent legal system in a united Europe'. While several of the speakers evoked deep soul-searching among their listeners, the overall feeling remained one of hope rather than despair. The call went out that embracing change is laudable, resistance is futile, but that the independence of the legal profession is sacrosanct and must be defended at all costs.

The most challenging of the four speakers during the working session was High Court judge Michael Peart, whose theme was 'Surviving the change or changing to survive?' He quoted the eminent evolutionary biologist Ernst Mayr (1905-2005):



Speakers at the annual conference were (l to r): Mr Justice Michael Peart of the High Court, the Irish Ambassador to France Anne Anderson, President of the Law Society of Ireland Philip Joyce, Hilary Tilby of LawCare, and former president of the American Bar Association Robert Grey



Overlooking modern Cannes from the old quarter of the city

“The history of life on earth has refuted the claim that it is better to be smart than to be stupid – at least judging by the biological success of beetles and bacteria.”

Dr Meyr suggested that the chances of ever finding extra-terrestrial intelligence were very low, based on what he considered the poor adaptive capabilities of the higher-intelligence species. The lower-intelligence species, such as beetles and bacteria, appeared to have been more successful in adapting to changing environments over the millennia.

Said Michael Peart: “We, the so-called higher intelligence, seek always to make war upon and conquer our environment, in order to control it, to use it and abuse it, rather than successfully adapt to it and live in harmony with it. Evolution has demonstrated clearly that life forms either adapt or die – so, too, solicitors!”

The judge said that the survival of an independent profession in a united Europe might be dependent on an ability to adapt and change rather than constantly resist. “I am somewhat concerned about the future of

the solicitor’s profession, and its independence at a national level – let alone a European level. I am not alone, I suspect.”

The end of the Roman Empire

“I ask at this point, rhetorically of course: have we, as a profession, been so successful in conquering the client market environment in which we operate, that we are in danger of causing our own extinction, like the end of the Roman Empire. While clearly there are challenges to maintaining an independent legal profession in a united Europe, my immediate concern is to maintain one at home.

“Will the profession as we now know it survive in an ever-changing environment – one over which it will have less control? Or, like the higher-intelligence species of Dr Meyr, has the profession become so sophisticated and successful that it is now an endangered species? One has only to look at how closely the activities of the profession are scrutinised by the media and other outside bodies, including the parties in government – and listen to the persistent howls for change, in relation to entry, education,

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The stunning Italian-style villa and gardens of Ephrussi de Rothschild in the Cote d'Azur. The 'palace' was constructed in just five years, with the main garden being modelled in the style of a ship's deck

"I am somewhat concerned about the future of the solicitors' profession and its independence at a national level – let alone a European level. I am not alone, I suspect"

regulation and costs – to realise that the ways in which legal services will be delivered in the future may be very different to how they are delivered now. It will be a struggle to ensure that a vibrant independent legal profession is maintained free of unnecessary interference and control from outside."

Two-tier profession

"If I were to ponder what is the greatest difference within the profession since I qualified in 1970, I think I would say that there are now, in effect, two tiers to the profession. While, in 1970, there was a handful of so-called 'large firms', which were even then handling the major commercial work of the day, there was not the same chasm in terms of sheer scale and sophistication that divides a somewhat greater

number of large firms that exist today from the medium and small firm. It is as if the former have entered a different league – a premiership division, so to speak, where a different brand of legal football is played by players of both sexes ... That difference is now marked, I believe, just as it is in other jurisdictions and may be something that will have an impact in the future on the nature of the profession.

"We now have a highly educated and talented pool of young solicitors available to service the needs of clients at the very time that this is needed. The Law Society has met the challenges associated with that demand for training in an extraordinary manner in my view ... But will there be a need for a further radical re-think in how the solicitors of the future are to be trained? We have always prided ourselves on the ability to provide training from a position of independence. There is every reason to fear that, over the coming few years, efforts will be made to make inroads into that independence and control.

"Another positive development has been the manner in which the Society regulates itself and its members. It has been necessary to ensure more transparency and accountability in this area to meet the public's concerns and expectations. Much has been done, but will more be required? And if so, at what cost to professional independence? Again, this is not really a consequence of a united Europe, but a threat from within our own jurisdiction."

'Why do they not like us?'

"Why is it that we are under attack on so many fronts as a profession?" Paraphrasing former US President Richard Nixon, Justice Peart asked: "Why do they not like us?" Is this something that we have brought upon ourselves, or is there some myth being perpetuated by the media?

LAWYERS UNDER PRESSURE

"How many times do you go home at the end of yet another shattering day, too drained, too exhausted to do what you want to do, to spend time with people you want to be with, and say to yourself: 'There has got to be more to life than this'." This was the question posed by Hilary Tilby of LawCare – a confidential advisory service set up to help lawyers, their staff and immediate families to deal with the health issues that can result from a stressful career as a lawyer.

LawCare was established by the Law Societies of England and Wales, Scotland and Northern Ireland, the Bar Council and the Institute of Legal Executives (ILEX). The Law Society of Ireland is looking at providing a similar service for its members.

Hilary spoke about the range of problems that the company deals with on a daily basis and backed up her points with many sober statistics.

Why do lawyers need such a facility? According to

research carried out by John Hopkins University, quoted by Hilary, lawyers are three-and-a-half times more likely than the general population to suffer from depressive illnesses. One in three lawyers are likely to suffer from clinical depression, alcohol and drug abuse.

"When people pick up the phone to us, they have reached a point they don't want to be at anymore. They ring us and say, 'Help me'. So we are able to pick up on that impetus and quickly place one of our volunteers to support them and help them participate in whatever in-house treatment or support mechanism they want to pursue." This would include Alcoholics Anonymous, Gamblers Anonymous or drug treatment centre, for example.

She urged lawyers to remember the old adage, "Nobody ever lies on their death bed and wishes they had spent more time in the office".

"In my view," he answered, "it is a vital question to be asked of ourselves and to be answered honestly, because perception is everything, and even if the masses out there are completely wrong in their estimation of the profession, the fact is that this is how they feel. As far as any government is concerned, there must be votes in pandering to their delusion. This is why I am suggesting that our success contains within it the seeds of our destruction, and if not destruction, then at least serious inroads being made into our traditional independence by government. The profession is, and must, remain on guard."

"I firmly believe that, as a profession, we need to develop for ourselves a clear vision for the future so that the changes that will inevitably occur will be led and embraced by the profession. We must be proactive and not reactive."

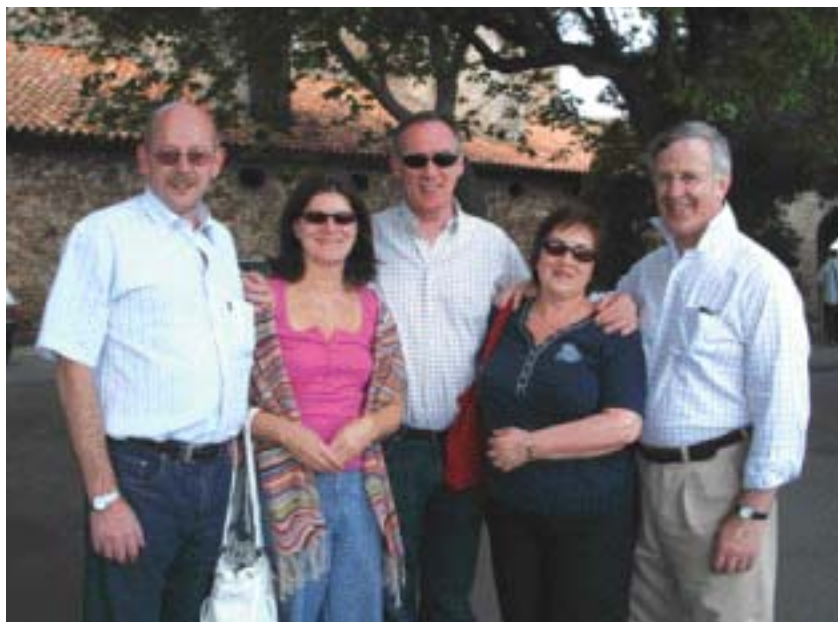
'Less defensive attitude'

The perspective moved from the national to the pan-national when Irish Ambassador to France, Anne Anderson, took the stage. She challenged members of the legal profession in Ireland to adopt a less defensive attitude and, instead, to adopt a more 'pro-European' approach.

As an 'outsider', the ambassador said it seemed to her that members of the profession should "look to the larger picture of what Europe is trying to do in the wider world, as relates directly to values, including the values of the rule of law and the independence of the legal profession".

In very broad terms, she sketched out what she thought the European public expected of the justice and home-affairs categories within the European Union.

"I would urge the legal profession [in Ireland] to engage constructively, with a sense of pride about what



Enjoying the view from the base of l'Église Notre Dame d'Espérance, overlooking Cannes, were (l to r): Pat McDermott and his wife Margaret, Cathal Louth and his wife Sheila, and Brendan Hyland

Europe is trying to build in wider terms, building trust, being honest where there are issues that really require caution in terms of increased judicial co-operation, increased harmonisation, diagnosing those issues correctly, and having practical, clear, workable solutions to overcome these problems."

Guardians of democracy

Moving from the pan-national to the international, the former president of the American Bar Association, Robert Grey, delivered one of the most erudite, consummate speeches you are ever likely to hear. His earnest, thoughtful, impassioned words warmed us, challenged us, chilled us, and enthused us. From his description of his attempts as a student to get into law school, it was obvious that, from an early age when he sported an Afro, loud polyester suit, tie as wide as a 'chest defender', and platform shoes that added to his natural height by a good two inches, Robert Grey had a passionate vocation for his profession.

"Lawyers are special in our society," he said.

"Lawyers have a unique training and they have a unique responsibility of leadership. Judging people, judging their character, judging their will and their desire is something uniquely suited to the work that we do. And as we talk and think about the independence of the profession, we should be clear that lawyers are the guardians of democracy – lawyers are the trustees of our justice system. With that responsibility, we have to maintain and to share with the public the perception, as your president said, that we will do whatever it takes to preserve that system of democracy, to preserve that system of justice.

"Our responsibility, our work, can't be in isolation. We can't just assume that the public understands. We can't just believe that legislators and executive brains will do the right thing. Our responsibility is one of continuing to dialogue and to educate the public about the importance of an independent profession and an independent judiciary." **G**



Members of the traditional Provençal group, Academi Nou Miejour, entertained the public with dance, song – and blunderbusses! – during a ceremony on 15 April, celebrating the 75th anniversary of the coronation of the statue of Notre Dame d'Espérance in Cannes



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WORK SMARTER



Paul Davis: "By working smarter, not harder, you can achieve a better quality of life"

Small and medium-sized practices are perhaps the most vulnerable to the 'always on' culture of overworking. Increasingly dependent on mobiles, Blackberrys, email and internet, it's easy to get caught up on a treadmill of endless work tasks that diminish your time for leisure, friends and family. In the worst cases, this leads to stress.

Personally, I don't agree with the terminology 'work/life balance', because it implies that, as one area of your life improves, something else suffers. In my experience of working with business professionals, the first thing that needs to be done is to analyse and find the root cause of the problem. We can then solve the problem, which in turn frees up your time and improves your quality of life.

To improve your quality of life, you need to organise your time and your team's time properly, build an effective team that works together, and earn more fees while working less hours. This is all possible.

If you recognise that you don't have as much 'me

time' or family time as you would like, you then need to make yourself accountable to someone. Clients can find that being accountable to their business consultant when making the necessary changes helps in achieving success. You can then step off the treadmill and get back in control – not just of your time but, more importantly, your life.

By working smarter, not harder, you can achieve a better quality of life that takes your whole life into account, rather than compromising either area at the expense of the other. In future articles, we will cover ways of improving the team that works with you, how to manage your time better and how to earn higher fees in more detail. In the meantime, if you would like to receive a copy of our e-book *Top 100 Tips to Find More Time*, send an email to: paul@davisbusinessconsultants.com. **G**

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

TEMPUS FUGIT SOME INITIAL STEPS TO HELP YOU FIND MORE TIME

Analyse:

- How can your employees or colleagues help you more effectively? Would better team-building and management strategies help you free up more of your time?
- Identify your own needs and those of your employees and provide arrangements accordingly. Teleworking and flexi-working, for example, allow earlier or later starts and finishes to avoid rush hours. Commuting time can be used to give you a head-start on the day.
- What tasks are urgent and most important? If you're spending too much time on less important work, set limits and come back to them later.
- Are you spending too much time with less important clients? Keeping a log or diary of work for each client will help you see where you should set limits that will free up some time for more important clients.
- Put some boundaries on your day. For example, give yourself permission to start as early as you wish, but decide on a no-work zone after say, 6pm. This means no voicemail, emails or checking the diary.

Prioritise:

- When you're working on an important task, be proactive, not reactive. Don't answer emails and calls right away if the current task is a priority. Using voicemail, email rules, autoreplies and spam filters effectively can help with this.
- Are you often interrupted when working on important tasks? Would it help to minimise interruptions through team-building and better management?
- Lunchtime exercise will re-energise you; even a 15-minute walk sharpens our attention for the afternoon and restores our perspective. A short swim or workout is even better. If this helps you work better in the afternoon, make it a priority.
- Working for shorter periods with regular breaks is often more effective than completing longer tasks in one go. It should also improve your concentration.
- Prepare for meetings and plan them so that important issues are dealt with first. Stick to the designated time for them and avoid lengthy follow-ups.

Annual conference dinner



(Front, l to r): Ann McEllin, Helene Coffey, Angela Farrell and Helen Sheehy. (Back, l to r): Ruadhan Killeen, Philip Joyce (president), Mary Geraghty and Gerry Sheedy



PICS: MARK MODERMOTT

(Front, l to r): John and Maura O'Mara, Maura Donnelly, Shane O'Mara and Alison O'Mara. (Back, l to r): Brendan and Catherine Johnson, Bernard Murphy, Orla Deasy and Adrian McNamara



PICS: SEÁN Ó HOISÍN

(Front, l to r): Catherine Griffin, Frank Daly, Elma Lynch, Laurence K Shields and Mary Cantrell. (Back, l to r): Mark McDermott, Geraldine Clarke, Mr Justice Paul Gilligan and Caroline O'Connor



(Front, l to r): Phil McCarthy, Joe Buckley, Mary Connolly, Norville Connolly and Mary McCarthy. (Back, l to r): Heidi Lidholm, Niamh McCrystal and Rachel O'Hare (both Ovation), Maresa Wren, Emer Joyce and Anna Fenn



Sing me a song, piano man: Geraldine Clarke and Mary Laverty do an enthusiastic duet



(Front, l to r): Colette Crotty, Maeve Maguire, Julie McMullin, Mary Ward and Claire Cusack. (Back, l to r): Martin Crotty, Conor Maguire, Brian McMullin, James Ward and Donald Binchy



Act of supremacy

Celebrating Mr Justice Joseph Finnegan's elevation to the Supreme Court were (*front, l to r*): Sara Moorehead, Rosario Boyle, Mr Justice Joseph Finnegan, Philip Joyce, Kay Finnegan and Elma Lynch. (*Back, l to r*): Mary Keane, Owen Binchy, John Costello, Barry McCarthy, Fiona Twomey, Michael Quinlan, Stuart Gilhooly, James MacGuill, Ken Murphy and Niall Farrell



Surveying the landscape

At the Society of Chartered Surveyors Annual Dinner in Dublin were junior vice-president of the Law Society John Costello, and President of the Society of Chartered Surveyors (SCS) Conor Hogan



You're my no 1

Celebrating the achievement of Griffith College students, who won eight of the Law Society's nine entrance examination first-place prizes in 2006 were (*l to r*): student prize-winners David Weir, Michael Doyle, Philip Burke (head of the Professional Law School, Griffith College Dublin), Maeve Moran and Michael Cantwell

Get more at lawsociety.ie

Gazette readers can access back issues of the magazine as far back as Jan/Feb 1997 right up to the current issue at lawsociety.ie. You can also check out: current news; forthcoming events; employment opportunities; the latest CPD courses, as well as lots of other useful information.



Annual conference delegates visited Chateau de Bellet to learn about the finer skills of viniculture (l to r): Joe Buckley, Mr Justice Michael Peart, Patrick Howett of Jardine Lloyd Thompson and Michael Benson of Benson and Associates (annual conference sponsors), Thomas Creed, Judge Con Murphy and Judge Elizabeth Dunne

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Summertime and the living is easy...



Enjoying the friendly atmosphere at the PPCI ball were Eamon Buckley and Siobhan Corbett



These summer PPCI trainees provided some competition for the Irish rugby team



The Legal Panel were the sponsors of the summer ball – and didn't they look well!



Sitting pretty at the summer PPCI ball were Pamela Campion and Orla Cleary



Aoife McCarthy, Sarah O'Dowd and Kimberly O'Leary share stories about their traineeships during the summer PPCI ball held in the Stillorgan Radisson Hotel

student spotlight



Students have a ball

The recent summer PPCI ball was an evening of glitz and glamour at the Stillorgan Raddison Hotel, *writes Edel Kennedy*. As predicted, the afternoon's ground-rent lecture had a disappointing female turnout in favour of attendance at the capital's hair and beauty salons. Much more pressing issues required attention in advance of the evening ahead! Almost unrecognisable to each other in our glad rags, the evening began with aperitifs in the company of the Irish rugby team – an obvious incentive for the ladies to arrive on schedule. Thereafter, we enjoyed a superb meal while the Merlot flowed.

The hotly-contested awards ceremony was a nail-biting experience, which provided much entertainment and plenty of giggles. Awards were presented in recognition of the



Adding glitz and glamour at the summer ball were (l to r): Edel Kennedy, Naomi Harty and Edel Haughton

talented PPCI students' vast accomplishments during the course. The honoured winners and impressive accolades included:

- Lord of the dance – Paul Lynch (we understand Maria Gleeson's dental bill is in the post),

- Least likely to do a parachute jump – Kevin Sherry,
- Best dressed lady – Sally-Anne Stone,
- Most likely to buy a fellow student a drink – David Callinan (who understandably received a

standing ovation),

- Most likely to win *X-Factor* – Sarah O'Dowd (whose dulcet tones entertained us on many an evening),
- Little Miss Sunshine – Emer McGuire,
- GAA all-star – Peter Feeney,
- Mr Congeniality – a controversial win by Andy Nagle – a narrow victory over Neil Dunne?
- Jose Mourinho Award – presented to Martin Travers for his sporting endeavours,
- Final award of the evening – future Chief Justice, presented to Máire Barr.

Our marvellous social reps, Tara Woulfe and Kevin Lavin, were presented with gifts by the students for their inventive efforts to entertain a tireless group of socialisers! Roll on PPCII!

Blackhall beat LIT in first round of Trench Cup

The Blackhall men's Gaelic team followed up victory in the Higher Education League final with a magnificent win over Limerick IT (LIT) in the first round of the Trench Cup.

Blackhall triumphed over one of the tournament favourites in a gripping contest where both sides enjoyed periods of dominance, with the lead changing hands on several occasions. The result was in doubt up to the final whistle, with Blackhall eventually prevailing by a single point, 0-14 to 2-07.

LIT got off to a flying start, leading 1-02 to no score after just five minutes. Blackhall soon found their rhythm, however,

cutting the deficit to the minimum at the interval with some fine points from Gerry Byrne, Kevin Smith and Tadgh Boyle.

Two quick points at the start of the second-half gave Blackhall the lead for the first time. It was short-lived, however, as LIT responded with a goal and a point. This spurred the team to greater efforts – four unanswered points from Fergal O'Sullivan, Colm Mullen and another from pacy wing-back Kevin Smith enabled Blackhall to go ahead once again.

LIT fought back and, with five minutes remaining, led by a solitary point. The never-say-

die attitude of the Blackhall men was epitomised by the team's refusal to buckle as they poured forward in search of an equaliser. Tadgh Boyle maintained his 100% accuracy from frees as he landed a monster kick from the sideline to restore parity. Sensing victory was there for the taking, Blackhall regained the lead for the last time, with Cian Duffy punching the ball over the bar for the winning score, deep into injury time.

There was a great sense of satisfaction at the final whistle – the team had at last played to its full potential when it mattered most. The magnitude of this achievement can only be

understood when one considers the playing numbers, facilities and resources available to LIT compared with Blackhall. As a result, this victory meant so much more to the team than winning the league.

Mary Immaculate College of Education proved very strong opposition in the following round. Blackhall failed to fire on all cylinders, however, so the team's winning run came to an end. This has been Blackhall's most successful season to date. The team would like to express its sincere thanks to manager and coach, Martin Travers, whose Trojan work throughout the year was the basis for such an enjoyable campaign. **G**



tech trends

Read all the technology news here first, in your glorious *Gazette*. Or not, as the case may be

Give your new car some ba-baboon

Never let it be said that your glorious *Gazette* would ever simply invent a product for these pages merely for comic executive relief – notwithstanding the deranged ramblings of the disgraced and now unemployable Dr Hanson Koch, formerly of the Bremer Institut für Unechte und Unsinnige Forschung.

However, this is such a brilliant and obvious idea that we were left wondering why Tech Trends hadn't already thought of it. In what could be the ultimate in automotive security, and with features way better than any AA roadside emergency assistance, US car giant, Suburban, has developed the innovative 'Trunk Monkey'.

Picture the scene: a bad guy breaks into your car and sets about trying to hotwire it. But alerted by the sounds of

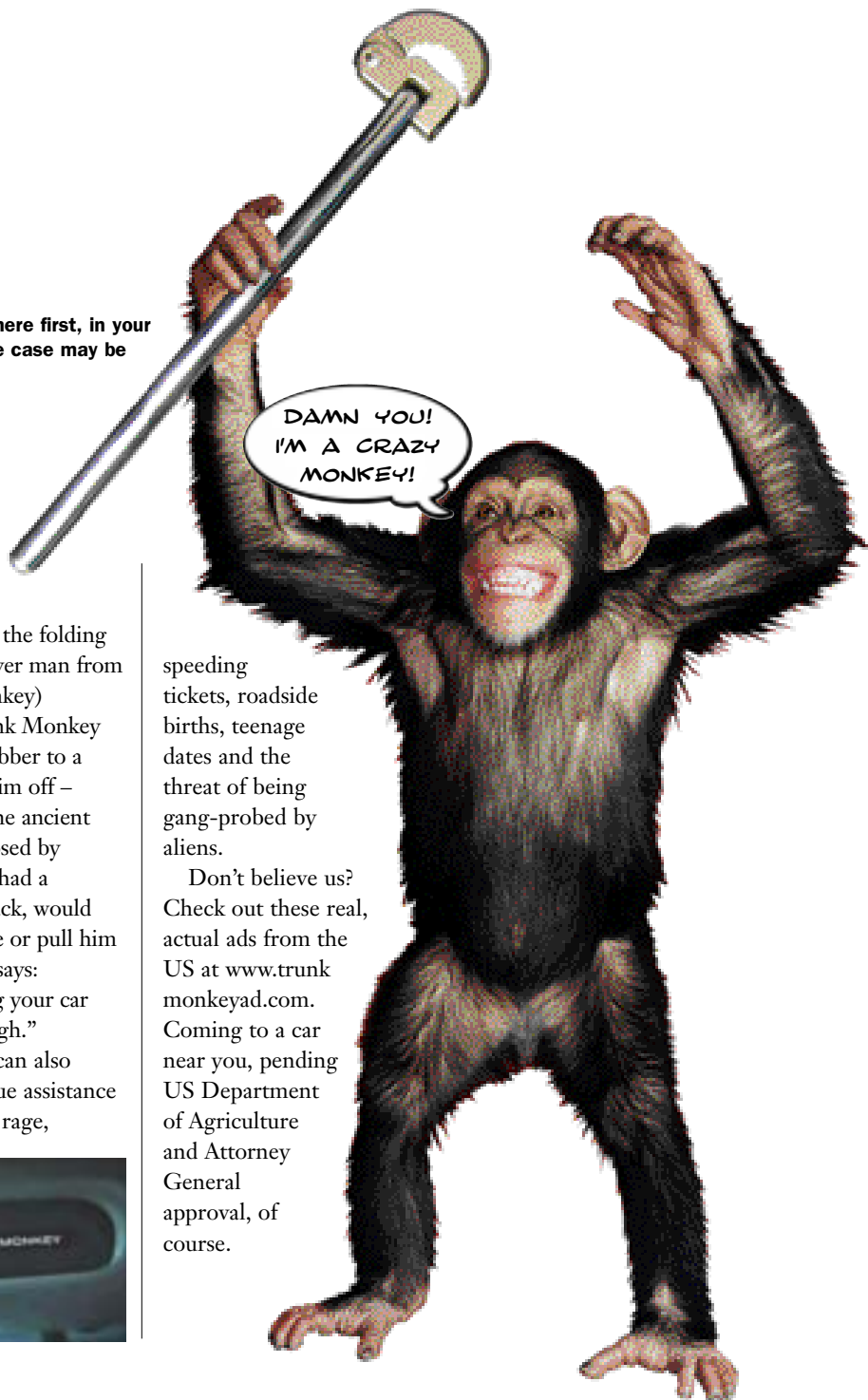
breaking glass, Trunk Monkey creeps out through the folding seats and clobbers yer man from behind with a (monkey) wrench. Then Trunk Monkey drives the prone robber to a bridge and tosses him off – bringing to mind the ancient conundrum first posed by Confucius: "If you had a monkey on your back, would you leave him there or pull him off?" As Suburban says: "Sometimes getting your car back just isn't enough."

Trunk Monkey can also offer his own unique assistance with first aid, road rage,



speeding tickets, roadside births, teenage dates and the threat of being gang-probed by aliens.

Don't believe us? Check out these real, actual ads from the US at www.trunkmonkeyad.com. Coming to a car near you, pending US Department of Agriculture and Attorney General approval, of course.



No, use your finger like everyone else

The days of people wandering into your office to ask if they can borrow your dictaphone are well and truly numbered. Harvest Law, with their accounts management system designed especially for law firms, has teamed up with Cork-based Documatics to provide a completely integrated solution – including a digital dictation facility – that will seamlessly integrate Documatics' case management software with an existing Harvest Law system.



PIC: GETTY IMAGES

The 'Legal Evolve' system stores all the details gathered on a particular case in one centralised location, with all necessary information easily retrievable. The companies say that storing all the information for a case in one convenient and central location allows your office to manage and organise data more efficiently, allowing multiple users to work on the same case at the same time.

Check it out at www.documatics.net.

Connecting people with fat wallets

Personally, we're holding out until your phone, digital camera, music player, GPS, web access, email, digital TV and whatever you're having yourself are integrated into a pair of glasses. With ray guns. But Nokia's N95 is at least a step in the right direction. It boasts satellite navigation with GPS

technology, a massive (for a phone) five megapixel camera with Carl Zeiss optics, and a digital video camera that can record up to 30 frames per second, as well as a multi-format music player and up to 2GB of memory with an associated memory card.

Download tracks or upload pics to the web via its

sophisticated and powerful browser, and stay in contact via high-speed email – though, at this price, you'll mainly be emailing your accountant. Still, you can use the integrated GPS mapping system to escape the bailiffs.

The N95 is €879 from www.phonesonline.ie.



Giving it loads of stick



Floppy discs are virtually dead, and CD-ROMs are on the way out, too. These days, the world and its mother are using USB memory sticks to carry around in their pockets the sort of data storage capacity that a NASA super-computer could only dream about a generation ago. And those little things just keep getting better. Take the A-Data Mini Cube, a micro hard drive that's about 5cm long but has a whopping 12GB of

memory capacity.

Let's put that into context. You know the *Gazette* archive on the Law Society website? Well, 12GB is enough to hold about 250-years-worth of those pdf files. That's 250 years of the *Gazette* in your pocket (which is about five hours CPD?), and we're only in our 101st year. Of course, by the year 2257, you'll either be able to inject the *Gazette* directly

into your eye to be processed in your sleep, or it'll be available in pill form to take with your by-then illegal coffee. And lawyers will have been replaced by trained cybernetically enhanced apes. It's true: the designs are in our office.

SITES FOR SORE EYES



Oo-oo ah-ah (www.monkeymania.co.uk/gosounds). If you've just forked out close to a grand for the Nokia N95, you'll want to do two things. First, tell us where you live and leave the key under the mat. Second, get an annoyingly unique ring tone. That's where this site comes in. The monkeymania site isn't great, but it does have sound files of various monkey noises – and that famous Johnny Weissmuller 'Tarzan' cry – that you can record onto your phone. Or use it to freak out your office mates.



Lunch is for wimps (www.xe.com/ucc/). How is the dong moving against the ringgit? Or the baht against the leva? And do you care? But there's always room in anyone's life for an online currency converter that uses up-to-the-minute money-market exchange ratios for its conversion algorithm. Not strictly fun, but useful for checking out property value equivalents, calculating your expenses, or discovering whether you'd really be getting a bigger gross in Bangkok.




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books



Freedom of Information Law (2nd edition)

Maeve McDonagh. Thomson Round Hall (2006), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-437-3. Price: €260.

The passing of the *Freedom of Information Act* constituted a legislative development of major importance. By it, the Oireachtas took a considered and deliberate step which dramatically alters the administrative assumptions and culture of centuries. It replaces the presumption of secrecy with one of openness. It is designed to open up the workings of government and administration to scrutiny. It is not designed simply to satisfy the appetite of the media for stories. It is for the benefit of every citizen. It lets light in to the offices and filing cabinets of our rulers. The principle of free access to publicly held information is part of a world-wide trend" (Fennelly J in *Barney Sheedy v The Information Commissioner & Ors* [2005] 2 IR, 272).

This passage is but one example of similarly expansive judicial pronouncements in the superior courts since the *Freedom of Information Act 1997* came into operation in 1998, concerning the spirit and purpose of this liberal legislation, its bias in favour of disclosure, and its important role in a functioning democracy.

Given the importance of this 'special' statute, and the practices, procedures and proceedings that were to follow from its commencement, the almost simultaneous publication by Maeve McDonagh of the first edition of *Freedom of Information Law in Ireland* in 1998 was particularly welcome.

Since then, and not without significant assistance from that first edition, a large body of decisions has built up, both in

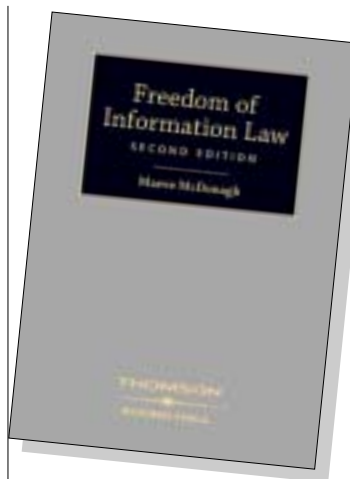
the Office of the Information Commissioner and in the superior courts, which has given colour, perspective and clarification to the legislation and the intended manner of its implementation.

I do not think it is an overstatement to say that Maeve McDonagh, and her book, are part of the freedom of information 'firmament', and she can be justifiably proud of her contribution to the development and understanding of this complex area of law.

In that regard, *Freedom of Information Law* (as it is now called), even in its second edition, is still the only comprehensive legal textbook on Irish freedom of information law. That is not to sideline publications like *Freedom of Information: Law and Practice* (FirstLaw, 2006), to which I and Maeve McDonagh are contributors of chapters. But the latter publication, for example, does not, and does not purport to, comprise the type of A-Z guide (and more) that one will find in Maeve McDonagh's book.

While the author does not set out any particular aim or target readership for her book in the preface, it can safely be said that it successfully straddles the sometimes inconsistent needs of academics and students on the one hand and, on the other, requesters, practitioners, lawyers and freedom of information decision-makers (be they public bodies subject to the legislation, the Information Commissioner, or the courts).

In catering for all of these potential users, the book may, at times, contain too much for



some and too little for others. Also, there is a small element running through the book of academic legal creativity and of characterising certain matters through pro-freedom-of-information-tinted glasses – but these are very minor criticisms, and, indeed, in some cases, strengths.

All readers will find that it is a readable, well-written, and seriously researched book of substance. Moreover, it benefits from having been written by someone who clearly has a great interest in, and enthusiasm for, her subject, as well as being someone of strong academic legal prowess. The book, therefore, has that satisfying, helpful, and confidence-inspiring element of a person with a good cushion of perspective and deep comparative and domestic knowledge guiding the reader through the subject.

In structure, the book is 'topped' by useful, general, introductory, background and comparative sections, and 'tailed' by putting freedom of information into its wider domestic access-to-information law context (where the law on

freedom of information, data protection, national archives and access to information on the environment are dealt with and related to one another). The main bulk of the book, then, takes the reader through the legislation from beginning to end, describing and analysing its concepts (some of which are legal concepts 'imported' from other areas of law) and its implementation machinery.

The particular strength of the second edition is the significant updating of the text throughout with a peppering of references to that body of domestically generated precedent that has been generated since the first edition was published. This applies to decisions of the Information Commissioner and of the High and Supreme Courts. In evidently having conducted a painstaking trawl through the large number of decisions that have emanated from the Information Commissioner's office over the years, and in quoting from and citing them, Ms McDonagh has performed a particularly valuable service. Where appropriate, and where domestic authority may not yet have illustrated or clarified a particular matter, the author has continued the first edition's references to useful comparative materials from other jurisdictions, and, in particular, from Australia, New Zealand and Canada.

This book is an indispensable part of the library of anyone involved with, or interested in, freedom of information law and practice in Ireland. **G**

Niall Michel is a partner in Mason Hayes & Curran.

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

Brian Griffin. Maynooth Research Guides for Irish Local History; Four Courts Press (2005), 7 Malpas Street, Dublin 8. ISBN: 1-85182-950-4. Price: €45 (hardback), €14.95 (paperback).

Frequently, as a person gets older, he or she becomes more interested in the past, in one's ancestors, 'the family-tree syndrome', and those especially 'interesting' members of one's family. I certainly admit to a fascination for the past and my ancestors.

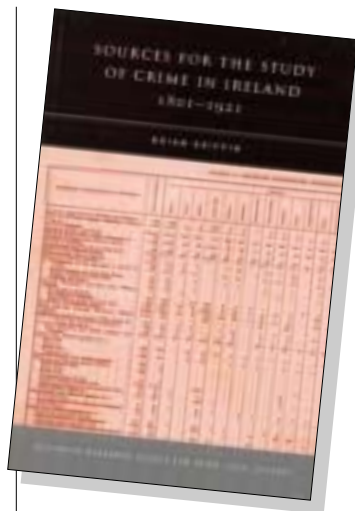
This book is one of the Maynooth Research Guides for Irish Local History Series. Although the book relates to the sources for the study of crime in Ireland, 1801-1921, it has a wider significance. This book will prove useful to lawyers and others who have an interest in sources of history – be it aspects of crime, general law or other aspects of legal history or family history.

Readers may be familiar with sources in the National Archives – a rich treasure trove. Lawyers have played a crucial role in the regulation of the National Archives, including the late Mr Justice Mr Niall

McCarthy, Mr Justice Hugh O'Flaherty and Judge Bryan McMahon.

The registered papers of the Chief Secretary's Office between 1918 to 1924 fill 3,770 cartons: they document virtually all aspects of British administration of Ireland in the period of the Union. There are also the *State of the Country Papers* and the *Outrage Papers*. The registered papers of the Chief Secretary's Office contain not only, among other things, details of major crimes but also lesser offences, such as illicit distillation, common assault, drunkenness, vagrancy, poaching, allowing cattle to stray onto the public road and, from the early 1890s onwards, illegally cycling on footpaths. Few of us can admit to not cycling on a footpath – at least once! There are of course indices and registers to the Chief Secretary's papers.

The National Archives also



hold papers of the Chief Crown Solicitor. In 1801, there were six Crown Solicitors, one for each assize. Starting in 1846, Crown Solicitors were distributed on a county basis instead of being confined to circuits.

Among sources of local history, newspapers are important. The author, Brian Griffin, who wrote *The Bulkies:*

Police and Crime in Belfast (Dublin, 1999) and who lectures in history and Irish studies at Bath Spa University, England, points out that many 19th and early 20th century newspapers were often politically partisan, and editorial bias may colour reporting. Newspapers of note for the period include the *Freeman's Journal*. Interestingly, the Chief Secretary's Office collected newspaper cuttings, and these are available in the National Library.

It was Patrick Kavanagh who said "the parish was the universe". Here, he said we were all the weakness and strengths of a community. Indeed it may be said that from the parish or local history, the story of a nation becomes a reality. The author, Brian Griffin, deserves our gratitude. **G**

Dr Eamonn G Hall is the chief solicitor of Eircom.

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COLLAINE E. FARMER – *Dublin Independent*

council report



Report of Law Society Council meeting held on 23 February 2007

Appointment of independent adjudicator

The Council approved the appointment of Carol Ann Casey as independent adjudicator, replacing Lenore Mrkwicka, who had retired. The Council noted that Ms Casey was managing director of CA Consulting Limited, was a specialist in outsourced human resource management and consultancy advice, and a fellow of the Chartered Institute of Personnel and Development.

Advice to the profession on anti-money-laundering obligations

James MacGuill briefed the Council in relation to further guidance and advice to be issued to the profession in the context of their obligations under the anti-money-laundering obligations. He noted that a consultation process would be undertaken with the Bar Council, following which it was intended to commence a series of seminars and to issue a practice note and client leaflets to assist the profession in their compliance with the requirements.

Criminal Justice Bill 2007

The Council agreed that the Society should issue a public statement expressing its concern

about the manner in which the *Criminal Justice Bill 2007* was being rushed into law without any proper opportunity for debate in public or in the Oireachtas. The Council was of the view that fundamental freedoms of citizens should only be reduced following a proper opportunity for informed debate.

The proposed bill contained 57 pages of very complex drafting, consisting of hundreds of individual amendments to a great many different pieces of legislation. However, only four hours had been set aside for the Dáil committee stage, rather than the several weeks that the content of the bill merited.

The bill contained a whole series of new measures, restricting the right to bail, creating new criminal offences, changing sentencing, extending periods of detention for interrogation and significantly curtailing the right to silence. The Council urged that the bill be withdrawn until after the general election to ensure not only a thorough and considered debate in the Oireachtas, but a wider public debate.

Civil Law (Miscellaneous Provisions) Bill 2006

The director general reported

that, following discussions with the relevant department officials, it now appeared unlikely that the *Civil Law (Miscellaneous Provisions) Bill* would be enacted before the general election.

Report of lay members

The Council noted the contents of the 13th report of the lay members of the Complaints and Client Relations Committee for the year ended 31 August 2006.

Conveyancing issues

The Council considered a submission by the Conveyancing Committee to a government inter-agency group in relation to the proposed regulation of home reversions and lifetime mortgages. The Council also noted a press release from Minister for Housing and Urban Renewal Noel Ahern, which announced that the practice of stage payments in housing estates was to be ended. On behalf of the Council, the president complimented Patrick Dorgan, who had lobbied tirelessly on this issue, on an excellent result. Mr Dorgan said that it was gratifying to see an end to this dreadful practice. While the announcement related to a voluntary code and not to legislation, it was to be hoped that the Irish Home Builders' Association would adhere to their commitment.

Association would adhere to their commitment.

Client care seminars

Tom Murran reported on the success of the client-care seminars, which were continuing throughout the country. Workshops for those who had participated in the seminars during 2006 would commence in May 2007.

Committee to review a court of appeal

The president informed the Council of the nomination of the director general as the Law Society representative on a committee chaired by Mrs Justice Susan Denham to review the issue of a court of appeal.

Office of Public Guardian

The Council noted, with approval, that in the course of his speech on the *Mental Capacity and Guardianship Bill 2007*, Frank Fahey, minister of state at the Department of Justice, Equality and Law Reform, had announced the government's intention to establish the Office of Public Guardian. The Council of the Law Society had previously passed a resolution calling for the creation of such an office. **G**

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'GOOD OFFICES' FUNCTION OF THE GUIDANCE AND ETHICS COMMITTEE

The Guidance and Ethics Committee exercises the 'good offices' function of the Society. This is done in two ways:

- Correspondence with solicitors to assist the resolution of disputes between solicitors arising because of delay,
- Providing a mediator for solicitors who are in dispute about personal/professional matters such as partnerships.

Correspondence to resolve disputes

A solicitor can write to the Guidance and Ethics Committee requesting that the good offices of the committee be used to persuade a colleague to deal with a

matter about which the colleague has delayed. The initial letter is copied to the colleague, essentially requesting him/her to co-operate with his/her colleague.

It is the committee's experience that most solicitors are anxious to co-operate and that the majority of problems presented are resolved quickly.

Because the Guidance and Ethics Committee is not a regulatory committee, the committee cannot make a ruling or direction in relation to the matter. If a solicitor is seeking a ruling or direction on any matter, that can only be obtained in the context of a complaint to the Complaints

and Client Relations Committee.

There is no obligation on a solicitor to correspond with the Guidance and Ethics Committee.

The Guidance and Ethics Committee has no sanctions. If there is no response to the letter emanating from the committee, that is the end of the matter. The first solicitor can proceed to make a formal complaint to the Complaints and Client Relations Committee.

Provision of mediator

The committee can provide a volunteer mediator to assist solicitors to negotiate a settlement of a personal dispute/partnership. (This function does not apply to

disputes relating to client matters.) The mediator will be a member of the committee or one of the solicitors on the committee's panel of mediators. This latter group hold the CEDR mediators' qualification.

One mediation session of approximately three hours is provided. The mediation is on a voluntary basis, but the mediator's out-of-pocket expenses must be borne by the parties to the mediation.

Any solicitor wishing to avail of either of these good offices functions should write to the secretary to the committee at the Law Society.

Guidance and Ethics Committee

2007 VACATION SITTINGS – DUBLIN DISTRICT COURT

The president of the District Court has advised that the following courts will sit during the month of August 2007:

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

Court no 46, Chancery Street: shall sit each Monday (except Monday 6 August 2007), Tuesday, Wednesday, Thursday and Friday, commencing at 10.30am to 5pm each day;

The court at Cloverhill: shall sit each Tuesday, Wednesday, Thursday and Friday, commencing at 10.30am each day;

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

Court no 55, Smithfield: shall

sit for juvenile business each Tuesday and Thursday, commencing at 10.30am; and

Court no 51, the Richmond Courts: shall sit for the hearing of summary business each Monday (except Monday 6 August 2007), Tuesday, Wednesday, Thursday and Friday commencing at 10.30am each day.

It is intended to fix criminal cases for hearing for two weeks, that is the fourth and fifth weeks of August in one court in the Richmond.

It is intended to fix criminal cases in Dún Laoghaire District Court for three weeks during the month of August. The Courts Service has yet to specify the exact dates, and these will be published on the Society's website/in the *Gazette* in due course.

Criminal Law Committee

THE HIGH COURT CHANCERY AND NON-JURY LIST – CORK

Transferring cases from Dublin to Cork list

The present sessions of the non-jury/Chancery sittings in Cork have, again, been very successful, and it is hoped that another session can be arranged for November of this year. An approach has been made to the Courts Service for two-week, two-judge sessions in November. When this has been approved and a date fixed, a further notice will be published. A call-over will then be arranged to transfer any non-jury cases into the Cork list. **It is worth noting that transferred cases will not lose their place in the Dublin non-jury/Chancery list.**

Until such time as the call-over takes place, practitioners should serve their notice of trial for the Dublin non-jury list as heretofore – application can be

made at a later stage to have the case transferred into the Cork list.

The Cork sessions now deal with non-jury and Chancery cases and, as practitioners will have noted from the present list, some judicial review and family-law cases were also transferred and dealt with in Cork.

By transferring cases into the Cork list, it means that there is a certainty that the cases will be dealt with during the sessions and that the cases are dealt with much more quickly than they would be if they remained in the Dublin list.

It is important that the sessions continue in Cork – your continued support for these sessions is requested.

Litigation Committee

legislation update



21 March – 16 April 2007

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

ACTS PASSED

Asset Covered Securities (Amendment) Act 2007

Number: 13/2007

Contents note: Amends the *Asset Covered Securities Act 2001*.

Date enacted: 9/4/2007

Commencement date: Commencement order(s) to be made (per s61(3) of the act)

Broadcasting (Amendment) Act 2007

Number: 15/2007

Contents note: Provides for the establishment, maintenance and licensing of multiplexes for digital terrestrial television and digital terrestrial sound broadcasting to RTÉ and other providers. Provides for the RTÉ Authority to establish and maintain a broadcasting service of a public-service character that reflects the RTÉ services and TG4 to Irish communities outside the island of Ireland. Confers additional functions on the Commission for Communications Regulation, RTÉ, the Broadcasting Commission of Ireland and Teilifís na Gaeilge; amends the *Broadcasting Authority Acts 1960–2001* and certain other enactments and provides for related matters.

Date enacted: 10/4/2007

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

Carbon Fund Act 2007

Number: 12/2007

Contents note: Provides for the establishment of a carbon fund for the acquisition of 'Kyoto units' on behalf of the state to meet international climate change obligations under the 1992 *UN Framework Convention on Climate Change* and the 1997 *Kyoto Protocol* to that convention. Provides for the designation of the National Treasury Management Agency as the agent of the Minister for the Environment, Heritage and Local Government in managing the fund, and provides for related matters.

Date enacted: 7/4/2007

Commencement date: 7/4/2007

Education (Miscellaneous Provisions) Act 2007

Number: 9/2007

Contents note: Provides for changes in the hearing of an appeal under section 29 of the *Education Act 1998* against the decision of a school board of management to permanently expel a pupil, to suspend a pupil for a prescribed period, or to refuse to enrol a pupil. Regulates the factors that an appeals committee must consider in appeals relating to expulsion and suspensions. Provides for changes in the functions performed by the inspectorate under section 13 of the *Education Act 1998*. Makes provision with regard to access to certain information under section 53 of that act and provides for related matters. Amends the *Education Act 1998* and the *Education (Welfare) Act 2000*.

Date enacted: 31/3/2007

Commencement date: Commencement order(s) to be made (per s9(3) of the act)

Electoral (Amendment) Act 2007

Number: 14/2007

Contents note: Amends the *Electoral Act 1992* (as amended) by the substitution of new sections 44 to 52, dealing with the nomination of candidates for election to Dáil Éireann. The new sections include provisions for regulating the nomination of non-party Dáil candidates following the Supreme Court decision in *King and ors v Minister for the Environment, Heritage and Local Government*, 13/11/2006. The Supreme Court held in this case that section 46(4B) of the *Electoral Act 1992*, as inserted by the *Electoral (Amendment) Act 2002*, which required the personal attendance at a prescribed office of the assentors wishing to sign the nomination paper of a non-party candidate, was unconstitutional.

Date enacted: 10/4/2007

Commencement date: 10/4/2007

Finance Act 2007

Number: 11/2007

Contents note: Provides for the imposition, repeal, remission, alteration and regulation of taxation, of stamp duties and of duties relating to excise, and otherwise makes further provision in connection with finance, including the regulation of customs.

Date enacted: 2/4/2007

Commencement date: 1/1/2007 for part 1 (ss1–56, 'Income tax, corporation tax and capital gains tax'), except where otherwise expressly provided in part 1 (per s130(9) of the act); 2/4/2007 for other sections of the act, except where otherwise expressly provided for or where there is provision for the making of a commencement order

Foyle and Carlingford Fisheries Act 2007

Number: 17/2007

Contents note: Extends the functions of the Foyle, Carlingford and Irish Lights Commission (one of the six North/South implementation bodies provided for in the *British-Irish Agreement Act 1999* and the *North/South Co-operation (Implementation Bodies) (NI) Order 1999*) in relation to the development of inland fisheries in the Foyle and Carlingford areas. Also provides for the regulation and licensing of aquaculture operations in the Foyle and Carlingford areas and establishes an appeals board to deal with appeals against aquaculture licensing decisions by the commission. Amends the *Foyle Fisheries Act 1952* and provides for related matters.

Date enacted: 10/4/2007

Commencement date: Commencement order(s) to be made (per s2 of the act)

National Development

Finance Agency (Amendment) Act 2007

Number: 16/2007

Contents note: Amends the *National Development Finance Agency Act 2002* by providing for additional functions of the agency, specifically in the area of procurement of public/private partnership arrangements, and provides for related matters.

Date enacted: 10/4/2007

Commencement date: 10/4/2007

Prisons Act 2007

Number: 10/2007

Contents note: Enables the Minister for Justice, Equality and Law Reform to enter into agreements for the provision of

services relating to the escort of prisoners by persons other than prison officers. Provides for revised prisoner disciplinary procedures, including the establishment of appeal tribunals. Makes planning provisions for the construction of new prisons and extensions to existing prisons and provides for the closure of Mountjoy Prison. Provides for the appointment of an Inspector of Prisons. Provides for the participation by prisoners, from prison, in certain applications to court by means of a live television link. Sets out new statutory provisions for the making of prison rules. Amends and repeals certain enactments in relation to prisons and prisoners and provides for related matters.

Date enacted: 31/3/2007

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

Social Welfare and Pensions Act 2007

Number: 8/2007

Contents note: Provides for the implementation of certain social welfare measures announced in the 2007 budget. Provides for increases in child benefit, one-parent family payment income limit and respite care grant. Also provides for enhancements to the illness benefit, maternity benefit, adoptive benefit and supplementary welfare allowance schemes. Provides for the introduction of a special rate of carer's allowance that will, in specified circumstances, be payable simultaneously with certain other social welfare payments. Makes a number of miscellaneous amendments to the *Social Welfare Consolidation Act 2005* and amends the *Pensions Act 1990* in relation to occupational pensions and retirement annuity contracts. Amends the *Combat Poverty Agency Act 1986* and the *Family Support Agency Act 2001* in relation to attendance before the Public Accounts Comm-

ittee, and the *Taxes Consolidation Act 1997* in relation to employment data.

Date enacted: 30/3/2007

Commencement date: 30/3/2007 for all sections of the act other than sections 5, 8, 9, 14, 18, 20 to 25, 27, 28 and 34 to 37, for which commencement orders are to be made (per s1(4) of the act); 3/4/2007 for s35(a)(ii) and (iii), 5/4/2007 for s35(c)(ii) and (iii) and 6/4/2007 for s35(b)(ii) (per SI 146/2007)

SELECTED STATUTORY INSTRUMENTS

Citizens Information Act 2007 (Commencement) Order 2007
Number: SI 141/2007

Contents note: Appoints 30/3/2007 as the commencement date for the act other than section 4 (insofar as it relates to the insertion of paragraph (bb) in section 7(1) of the *Combairle Act 2000*) and section 5.

District Court (Children Summonses) Rules 2007

Number: SI 152/2007

Contents note: Substitute a new rule 3 in order 37 of the *District Court Rules 1997* (SI 93/1997) to provide a form of children summons for issue under the *Petty Sessions (Ireland) Act 1851* and a form of children summons for issue under the *Courts (No 3) Act 1986*, both of which, in accordance with section 64 of the *Children Act 2001*, specify the provisions of section 91 of that act concerning the non-attendance, without reasonable excuse, of a parent or guardian of a child at the specified sitting of the court.

Commencement date: 26/4/2007

Employment Regulation Order (Law Clerks Joint Labour Committee) 2007

Number: SI 118/2007

Contents note: Made by the Labour Court on the recommendation of the Law Clerks Joint Labour Committee. Fixes

statutory minimum rates of pay and regulates statutory conditions of employment for certain employees in solicitors' offices.

Commencement date: 3/4/2007

European Communities (Access to Information on the Environment) Regulations 2007

Number: SI 133/2007

Contents note: Implement Directive 2003/4/EC on access to environmental information and revoke SI 125/1998, which implemented an earlier EC directive on the same matter. Define environmental information and the public authorities from which it may be requested. Set out the manner in which environmental information is to be sought and provided, and the grounds on which public bodies may decline to provide information in certain circumstances. Provision is made for an appeals mechanism. Provide that public authorities may charge a fee for making environmental information available. The Minister for the Environment, Heritage and Local Government is empowered to publish guidelines to which public authorities must have regard in implementing the regulations.

Commencement date: 1/5/2007

European Communities (Enforcement of Community Judgments, Orders and Decisions) Regulations 2007

Number: SI 121/2007

Contents note: Provide for the enforcement in Ireland of judgments of the Court of Justice of the European Communities and of decisions of the Council of Ministers or the commission imposing pecuniary obligations on persons other than states. Revoke the *European Communities (Enforcement of Community Judgments) Regulation 1972* (SI 331/1992).

Commencement date: 23/3/2007

Health and Social Care Professionals Act 2005 (Commencement) Order 2007

Number: SI 126/2007

Contents note: Appoints 20/3/2007 as the commencement date for part 1 (ss1-5, 'Preliminary matters'), part 2 (ss6-25, 'Health and Social Care Professionals Council'), sections 92, 93, 95 and 96, and schedule 1 of the act.

Health and Social Care Professionals Council (Establishment Day) Order 2007

Number: SI 124/2007

Contents note: Appoints 20/3/2007 as the establishment day for the Health and Social Care Professionals Council under the *Health and Social Care Professionals Act 2005*.

Health (Repayment Scheme) (Public Notice) Regulations 2007

Number: SI 120/2007

Contents note: Made under section 20 of the *Health (Repayment Scheme) Act 2006*. Provide for the establishment of a public register to record the amount of repayment of a recoverable health charge made in respect of a deceased relevant person. The register will be maintained by the Health Service Executive and the relevant information will be made available for at least a two-year period.

Commencement date: 20/3/2007

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 parts 1 (ss1-3, 'Preliminary and general') and 2 (ss4-6, 'Share transfer') of the act.

Planning and Development (No 2) Regulations 2007

Number: SI 135/2007

Contents note: Make certain

amendments to the *Planning and Development Regulations 2001-2007*, including amendments in relation to data-protection requirements.

Commencement date: 31/3/2007

Road Traffic Act 2006 (Commencement) Order 2007
Number: SI 86/2007

Contents note: Appoints 5/3/2007 as the commencement date for sections 6 (consequential disqualification orders), 7 (removal of disqualification) and 18 (increase of certain penalties) of the *Road Traffic Act 2006*.

Solicitors Act 1954 (Section 44) Order 2007
Number: SI 127/2007

Contents note: Brings section 44 of the *Solicitors Act 1954*, inserted by section 52 of the *Solicitors (Amendment) Act 1994*, into operation in relation to the profession of solicitor in New South Wales. The effect of the order is that a solicitor qualified in New South Wales will be eligible to sit the Law Society's Qualified Lawyers Transfer Test

(QLTT) and will have exemptions in some subjects, subject to conditions. The making of this order is dependent on reciprocal provisions being in place in New South Wales for Irish solicitors.

Commencement date: 21/3/2007 **G**

Prepared by the Law Society Library

Solicitors Disciplinary Tribunal

This report of the outcome of a Solicitors Disciplinary Tribunal inquiry is 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 Shane M Allen, a solicitor practising as Allen & Associates, Main Street, Newtownmount-kennedy, Co Wicklow, and in the matter of the *Solicitors Acts 1954-2002* [8094/DT 64/05]

Law Society of Ireland

(applicant)
Shane M Allen
(respondent solicitor)

On 8 February 2007, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in

that he failed to hold purchase monies that were sent to him in trust until all outstanding documentation was handed over to the complainant's solicitor.

The tribunal, having been apprised of the substantial sum expended by the respondent solicitor in resolving this com-

plaint, ordered that the respondent solicitor:

- Do stand advised and admonished,
- 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**



Law Society of Ireland

CRIMINAL LAW COMMITTEE SEMINAR

Marina Hotel, Waterford • 10am – 1pm, Saturday 19 May 2007

Road traffic law – recent developments

Speakers: Dara Robinson, solicitor, and Michael Staines, solicitor

Forensic science

Speaker: To be announced

ASBOs

Speaker: Frank Buttimer, solicitor

Registration: 9.30am

Seminar: 10am – 1pm

CPD hours: three

€130 per person (€80 trainee solicitors), includes materials, morning coffee and lunch

BOOKING FORM

Name(s): _____

Firm: _____

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

Please forward booking form and payment (to be received no later than 17 May 2007) to:
Colette Carey, solicitor, Criminal Law Committee, Law Society of Ireland, Blackhall Place, Dublin 7.

BRIEFING

firstlaw update



News from Ireland's online legal awareness service

Compiled by Flore Bouhey for FirstLaw

COMPANY LAW

Disqualification order

Whether at the time of this application the past conduct of the respondent was such as to make him presently unfit to act as an auditor – Companies Acts 1963-2001 – section 160(2) of the Companies Act 1990.

The applicant sought a disqualification order under section 160(b) and 160(d) of the Companies Act 1990 in respect of the respondent, essentially preventing the respondent from acting as an auditor and/or director of any company registered in this state. The applicant sought the order against the respondent on the basis of his involvement with a company known as Kentford Securities Limited, which was suspected of involvement in a certain scheme of tax evasion. The applicant alleged that the respondent was guilty of certain conduct, which was of such seriousness as to merit disqualification from holding the position of auditor, namely that:

- 1) He simultaneously acted as an auditor and director of Kentford,
- 2) His resignation as a director was deliberately backdated to make it appear as though he was not also acting as an auditor at that time,
- 3) He issued unqualified auditor reports on Kentford's financial statements for four consecutive years between 1990 and 1993 and,
- 4) He submitted a forged document to the effect that Kentford was a trust company only, with no assets or liabilities.

Mr Justice Peart refused to make the order sought, holding that it was accepted that the respondent was never part of any scheme to defraud the Revenue Commissioners and at no time had any intention of committing any wrongful act, nor was he aware that anything illegal was taking place in relation to Kentford. However, all of the complaints made by the applicant against the respondent were well founded. Nonetheless, having regard to the fact that the matters complained of occurred between 1988 and 1994 and, further, that the respondent did not make any financial gain from the illegal activity of Kentford, the order sought was not necessary to protect the public and therefore the application was refused.

Director of Corporate Enforcement (applicant) v Patrick McCann (respondent), High Court, Mr Justice Peart, 23/1/2007, 2005 No 101 Cos [FL13432]

CONSTITUTIONAL LAW

Locus standi

General principles – relaxation of locus standi rules.

The plaintiffs sued the defendants for various declaratory reliefs upon the basis that the defendants had failed in their constitutional obligation to provide adequate psychiatric treatment and/or facilities and/or services for prisoners in Mountjoy Prison. The defendants filed a full defence and, in particular, claimed that the first plaintiff had no *locus standi* to maintain the proceedings and that the second and third plain-

tiffs' *locus standi* was limited to certain claims.

Mr Justice Gilligan, in declining the defendants the relief sought, held that the first plaintiff and the second and third plaintiffs had *locus standi*. If the first plaintiff were denied *locus standi*, the persons whose interests it represented might not have an effective way of bringing the issues involved in the proceedings before the court.

Irish Penal Reform Trust Ltd (plaintiff) v Governor of Mountjoy Prison (defendant), High Court, Mr Justice Gilligan, 2/9/2005, 2001/16889P [FL13417]

CRIMINAL LAW

Delay

Trial with reasonable expedition – whether unnecessary delay within courts process – whether delay such that trial should be restrained – European Convention on Human Rights, article 6(1) – Bunreacht na hÉireann.

The applicant was charged in 1998 with offences alleged to have been committed in 1983. His trial was fixed for 1999, when he was granted leave to restrain the further prosecution of the offences on the grounds, among other things, that delay by the prosecuting authorities in determining the proceedings violated his constitutional right to a trial with reasonable expedition and exposed him to a real risk of an unfair trial. The Supreme Court ultimately dismissed those judicial review proceedings in 2006. The applicant brought fresh judicial review proceedings to restrain

his trial on the grounds that his right to a trial with reasonable expedition under the constitution and article 6(1) of the European Convention on Human Rights had been violated by reason of delays inherent in the court process.

Mr Justice Quirke refused the relief, holding that the appeal to the Supreme Court in respect of the earlier judicial review proceedings was unnecessarily delayed by the respondent. No evidence had been adduced by the applicant that any risk of an unfair trial flowed from the delay that interfered with his right to an expeditious trial. Where prosecutorial delay had not jeopardised the right to a fair trial but had caused unnecessary stress and anxiety, the court had to balance the right of the accused to be protected from stress caused by inordinate delay with the public interest in the prosecution of offences. Any stress or anxiety caused thereby did not outweigh the community's interest in having the offences with which he had been charged prosecuted.

McFarlane (applicant) v Director of Public Prosecutions (respondent), High Court, Mr Justice Quirke, 8/11/2006, 2006 No 542 JR [FL13468]

Detention

Estoppel – whether detention of the accused under section 4 of the Criminal Justice Act 1984 for the investigation of an offence was rendered unlawful by the decision of the DPP to proceed by way of summary prosecution – Summary Jurisdiction (Ireland) Act 1857 – Courts Supplemental Provi-

sions Act 1961 – Criminal Law Act 1984 – Criminal Justice Act 1984.

This matter related to an appeal by way of case stated arising out of the District Court judge's refusal to dismiss certain charges against the accused at the hearing of their cases. It was submitted on behalf of the accused that their detention following arrest was unlawful, having regard to the provisions of section 4 of the *Criminal Law Act 1984*, that the member in charge did not have the requisite independent *bona fide* belief that the accused parties were persons who should be detained pursuant to section 4(2) of the *Criminal Justice Act 1984*, that the preferring of summary charges against the accused rendered the detention unlawful, and that the DPP was estopped from preferring summary charges.

Murphy J dismissed the appeal by way of case stated, holding that the subsequent decision to prefer summary charges against the accused under section 11(a) of the *Firearms and Offensive Weapons Act 1990* did not undermine the arresting member's "reasonable cause" for believing that the accused were guilty of an offence contrary to section 11(b) of the *Firearms and Offensive Weapons Act 1990* at the time of arrest. The District Court judge concluded that the member in charge possessed the requisite independent *bona fide* belief that the accused should be detained pursuant to section 4 of the *Criminal Justice Act* and it was not established that there was any error of law made by the district judge or any legal grounds for challenging that finding of fact made by him. In the circumstances, the district judge was entitled to hold that the detention of the accused was lawful and that the DPP was not estopped from preferring summary charges.

DPP (Garda Dillane) (prosecutor) v Alcock and Alcock

(*accused*), **High Court, Mr Justice Murphy, 21/12/2006 2006, No 847 SS** [FL13426]

Diminished capacity

Constitutional law – sexual offences – whether real and serious risk of an unfair trial – application of H v DPP to capacity of applicant.

The applicant/appellant had sought to appeal a decision of the High Court refusing to injunct the trial of the applicant in respect of sexual offences allegedly committed at a time beginning in 1976. The applicant alleged, among other things, that he had been deprived of his right to a fair trial and was prejudiced in his defence by reason of delay in light of his diminished capacity.

Mrs Justice Denham, in dismissing the appeal, held that the issue of the applicant's fitness to plead was a matter for the trial judge. The applicant had not established that, by reason of delay, there was a real or serious risk of an unfair trial.

T(D) (applicant/respondent) v DPP (respondent/appellant), Supreme Court, 25/1/2007, 261 & 295 of 2004 [FL13447]

Extradition

European arrest warrant – prosecutorial delay – whether delay such that surrender should not be ordered – whether other exceptional circumstances such as prejudice to respondent to justify refusal of surrender – EU Framework Decision of 13 June 2002 (2002/584/JHA) – European Arrest Warrant Act 2003, section 5.

The respondent was charged with various offences alleged to have been committed between 1995 and 1998 by the English authorities. A European arrest warrant was issued in December 2006. The respondent contended that, by reason of lapse of time, he should not be extradited and that it would be unjust and oppressive to deliver him up by reason of prosecutorial delay. The English authorities contended that the delay was

due to the fact that they were unaware of the respondent's whereabouts. The respondent contended that no serious effort was made to locate him up to 2006 by the prosecution authorities.

Mr Justice Peart made an order pursuant to section 16(1) of the *European Arrest Warrant Act 2003* for the surrender of the respondent, holding that, despite the fact that the delay had not been fully explained, the mere existence of unexplained delay was not of itself sufficient to justify refusal of surrender, and there were no other exceptional circumstances, such as the assertion of a particular prejudice by the respondent.

Minister for Justice, Equality and Law Reform (applicant) v Draisey (respondent), High Court, Mr Justice Peart, 24/11/2006, 2006 No 3 Ext [FL13448]

Practice and procedure

Damages – sexual assault – whether aggravated and exemplary damages ought to be awarded in this case.

The plaintiff previously obtained judgment against the first-named defendant. This case concerned the appropriate measure of damages to be awarded to the plaintiff against that defendant as a result of sexual abuse suffered by the plaintiff and whether it was appropriate to award aggravated and exemplary damages also.

De Valera J awarded the sum of €305,104 by way of damages to the plaintiff, holding that the appropriate figure for general damages in this case was the sum of €200,000, comprising €150,000 for general damages to date and €50,000 for damages into the future. Having regard to the fact that the defendant refused to take any part in this trial, his behaviour at the criminal trial and the nature of the wrong committed by the defendant, it was appropriate to

award the sum of €50,000 by way of aggravated damages and €50,000 by way of exemplary damages. Furthermore, the compensation awarded by the Criminal Injuries Compensation Tribunal was not taken into account in respect of the amount of damages awarded in this case. **LO'K (plaintiff) v LH and Others (defendants), High Court, Mr Justice de Valera, 24/10/2006, 1998/10555 P** [FL13411]

Sentencing

Robbery – previous convictions – whether crimes committed after the crime at issue – whether suspension of sentence unduly lenient – Criminal Justice Act 1993.

The DPP sought to review sentences pursuant to section 2 of the *Criminal Justice Act 1993* in respect of two sentences for assault and robbery of two years to run concurrently and to be suspended for two years on bond, with compensations of €5,000, as being unduly lenient having regard to the previous convictions of the accused.

The Court of Criminal Appeal held that the trial judge failed to take into account the previous convictions of the accused and the vicious and unprovoked nature of the assault and robbery. The suspension of the sentence for two years was unduly lenient. The sentences would be quashed and the sentence of two years on each count would run concurrently.

DPP (prosecutor/applicant) v Dwyer (respondent), Court of Criminal Appeal, Mr Justice de Valera, Mrs Justice Denham, Mr Justice McGovern, 2/2/2007, 101 CJA/06 [FL13443]

PLANNING AND DEVELOPMENT

Planning permission

Appeal to An Bord Pleanála – application for planning permission for same development as development that was subject of undeter-

mined appeal – statutory interpretation – Planning and Development Act 2000, sections 34 and 37.

The applicant applied for planning permission for a hotel and the respondent refused the permission. The applicant submitted a planning application for a revised development and appealed to An Bord Pleanála against the decision refusing the initial application for planning permission. The respondent determined that it could not consider the revised application because of the appeal lodged with An Bord Pleanála. The applicant applied for judicial review seeking, among other things, an order of *certiorari* on the grounds that the development proposed in the revised application was significantly different to the development proposed in the first application, and section 37(5)(a) of the

Planning and Development Act 2000 only prohibited the making of an application for planning permission for the same development as a development that was the subject of an undetermined appeal.

Herbert J refused the application, holding that the narrow and constructionist interpretation of section 37 contended for by the applicant would be to defeat the manifest intention of the Oireachtas. The purpose of the legislature was to assert the primacy of the decision of An Bord Pleanála as the appellate body and to prevent the altogether inappropriate circumstance of the same issues being simultaneously considered by the planning authority and by An Bord Pleanála, with the unacceptable possibility of divergent opinions.

Swords Cloghran Properties Ltd (applicant) v Fingal

County Council (respondent), High Court, Mr Justice Herbert, 29/6/2006, 2005 No 823 JR [FL13400]

TORT

Personal injuries – whether plaintiff proved on the balance of probabilities that the injuries she sustained as a result of a fall were caused by the negligence of each or any of the defendants.

The plaintiff gave evidence that she was caused to trip and fall on the public footpath at Killarney Road, Bray, Co Wicklow on 10 April 1999 and sustained an injury to her left leg as a result. There was a serious dispute as to the exact locus of the accident and precisely what caused the plaintiff to trip and fall.

Herbert J dismissed the claim, holding that the plaintiff had no reliable recollection of

exactly where the relevant fall occurred. Furthermore, the plaintiff had no reliable recollection of what caused her to trip and fall on that occasion. Consequently, the claimant failed to discharge the onus of proving her case on the balance of probabilities and therefore her claim ought to be dismissed. *McFadden (plaintiff) v Bray Urban District Council and Others (defendants), High Court, Mr Justice Herbert, 19/1/2007 2002 No 4890 P [FL13423] G*

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

Public procurement and the ECJ

The decision of the European Court of Justice in Case C-220/05, *Jean Auroux and Others v Commune de Roanne, Intervening party – Société d'équipement du département de la Loire (SEDL)*, 30 January 2007, offers an instructive guide as to the scope and object of Directive 93/37/EEC concerning the coordination of procedures for the award of public-works contracts.

In 2002, the French municipality of Roanne authorised its mayor to sign an agreement with SEDL, a semi-public company whose capital includes private funds, for the construction of a leisure centre. The agreement provided for the leisure centre to be constructed in successive phases, the first phase consisting of the construction of a multiplex cinema and commercial premises intended to be transferred to third parties and works intended to be transferred to the contracting authority, that is, a car park as well as access roads and public spaces. The later phases, which required the signature of an addendum to the agreement, principally concerned the construction of other commercial or service premises and a hotel. According to the preamble to the agreement, the municipality of Roanne sought, by means of the project, to regenerate a run-down urban area and promote development of leisure and tourism.

Certain members of the municipal council, who took the view that the agreement should have been made subject to advertising and a call for tenders, requested the Lyon

Administrative Court to annul the council's resolution that resulted in SEDL's engagement. The court asked the ECJ for a preliminary ruling concerning the interpretation of Directive 93/37/EEC and, in particular, whether the engagement of SEDL, which was itself a contracting authority, constituted the award of a public-works contract that must be the subject of a call for competition in accordance with the directive.

Admissibility of the reference

Both the municipality of Roanne and the French government submitted, as a preliminary point, that the reference for a preliminary ruling was inadmissible. The municipality submitted that, in accordance with a recently enacted French law, under which public-development agreements signed before the enactment of that law were to be declared valid, insofar as their lawfulness was contested on the ground that the appointment of the developer was not preceded by a notice procedure enabling a number of competitive tenders to be submitted, the French legislature had retroactively validated public-development agreements that were concluded without having been preceded by an advertising procedure and a call for competition. It submitted that, as the national court is obliged to apply French law, and to find that the agreement had been validated by that law, the interpretation of EC law requested was no longer necessary in order to resolve the dispute in the main proceedings.

The French government asserted that the reference for a preliminary ruling incorrectly treated the agreement at issue as a development agreement within the meaning of the French town-planning code, whereas, in reality, it concerned merely the construction of buildings. Accordingly, it submitted, the question whether an agreement for the implementation of a development project constitutes a public-works contract within the meaning of the directive was inadmissible, since it bore no relation to the purpose and actual facts of the dispute.

The court noted that it was common ground that the municipality of Roanne's and the French government's pleading that the reference for a preliminary ruling was inadmissible was based on considerations relating to the interpretation of French law and the classification of the facts forming the basis of the dispute in the main proceedings in the light of that law. It stated that it had consistently ruled that the procedure laid down in article 234 EC is based on a clear separation of functions between national courts and tribunals and the ECJ, and that the latter is only empowered to rule on the interpretation or validity of community acts referred to in that article. In that context, it was not for the court to rule on the interpretation of national laws or regulations or to decide whether the referring court's interpretation of them is correct (Case C-27/74, *Demag* [1974] ECR 1037, para 8; Case C-347/89, *Eurim Pharm* [1991] ECR I –

1747, para 16; and Case C-246/04, *Turn-und Sportunion Waldburg* [2006] ECR I – 580, para 20).

Similarly, it was solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver a judgment and the relevance of the questions that it submits to the court (Case C-448/01, *EVN and Wienstrom* [2003] ECR I – 14527, para 74; Case C-145/03, *Keller* [2005] ECR I 2529, para 33). Consequently, where the questions submitted concern the interpretation of EC law, the court is in principle bound to give a ruling.

The meaning of 'public-works contract'

The French and Polish governments and Roanne submitted that the agreement did not correspond to the definition of a public-works contract as contained in article 1(a) of the directive and, therefore, did not constitute a public-works contract within the meaning of the directive. Roanne submitted that, in the light of its purpose, the agreement did not constitute a public-works contract, since, as a public-development agreement, its purpose went beyond that of the execution of the works. In accordance with French law, public-development agreements concern the overall implementation of all aspects of a town planning project or of

certain town planning policies, in particular, the planning of the project, management of the legal and administrative aspects, the acquisition of land by way of expropriation and putting in place procedures for the award of contracts.

The Polish government observed that, according to the agreement, SEDL would undertake to implement an investment project that consisted of various tasks. It submitted, in that regard, that SEDL was not the contractor that would execute the works provided for in the contract, but would merely undertake to prepare and manage a public-works contract. Taking the view that the most important aspect of the contract consists in commissioning works and supervising their execution, the Polish government submitted that the agreement ought to be classified as a 'public-service contract' within the meaning of article 1 of directive 92/50/EEC relating to the coordination of procedures for the award of public-service contracts.

The French government submitted that the part of the leisure centre that concerns the execution of the works that are intended to be sold to third parties did not constitute a public-works contract within the meaning of the directive. It was precisely by reason of that part being intended for third parties that it could not, it submitted, be regarded as corresponding to the municipality's requirements. It added that only the construction of the car park on behalf of the municipality of Roanne could, in principle, constitute a public-works contract. It submitted, however, that the car park did not fall within the meaning of the directive either, as it was to be transferred to the municipality only after it had been constructed in accordance with a special procedure laid down under French law called '*vente en l'état future d'achèvement*', to the effect that it was

essentially a simple purchase of real property, the subject matter of which was not so much the works as the sale of works to be constructed.

The Lithuanian and Austrian governments and the commission submitted that the agreement was a public-works contract within the meaning of the directive. The commission, in particular, submitted that, even if the agreement contains a number of tasks that are supply of services, its main purpose was the execution of a work that corresponds to the requirements specified by the contracting authority within the meaning of article 1(a) and (c) of the directive.

The court referred to the definition in article 1(a) of the directive, which provides that public-works contracts are contracts for pecuniary interest concluded in writing between a contractor and a contracting authority within the meaning of article 1(b), which have as their object either the execution, or both the execution and design, of works or work defined by the directive, or the execution, by whatever means, of a work corresponding to the requirements specified by the contracting authority.

It stated that it was true that, in addition to the execution of the works, the agreement entrusted SEDL with further tasks that have the character of a supply of services. However, contrary to Roanne's submissions, it did not follow from the mere fact that the agreement contains elements that go beyond the execution of the works that it falls outside the scope of the directive. It was clear from the case law of the court that, where a contract contains elements relating both to a public-works contract and another type of public contract, it is the *main purpose* of the contract that determines which directive on public contracts is to be applied in principle (Case

C-331/92, *Gestión Hotelera Internacional* [1994] ECR I – 1329, para 9).

In relation to the application of the court's case law to the proceedings, the court stated, contrary to the Polish government's arguments, that under the agreement, SEDL's commitment was not limited to the administration and organisation of works, but also extended to the execution of the works set out therein. Further, as the court had previously ruled, in order to be classed as a contractor under a public-works contract within the meaning of article 1(a) of the directive, it is not necessary that a person who enters into a contract with a contracting authority is capable of direct performance using his own resources (Case C-389/92, *Ballast Nedam Groep* [1994] ECR I – 1289, para 13 and Case C-176/98, *Holst Italia* [1999] ECR I 8607, para 26). It followed that, in order to ascertain whether the main purpose of the agreement is the execution of the works, it was irrelevant that SEDL does not execute the works itself but has them carried out by subcontractors.

National legal classification

In relation to the French government's legal classification of the car park to the effect that what was involved was simply a purchase of real property, the court stated that it must be observed that the definition of a public-works contract is a matter of EC law. Since article 1(a) of the directive makes no express reference to the law of the member states for the purpose of determining its meaning and scope, the court stated that the legal classification of the contract in French law was irrelevant for the purpose of determining whether the contract falls within the scope of the directive (Case C-264/03, *Commission v France*, by analogy).

The court stated that it was clear from article 1(c) of the

directive that the existence of a work must be determined in relation to the economic or technical function of the *result* of the works undertaken (see joined cases C-187/04 and C-188/04, *Commission v Italy*, para 26). As was apparent from a number of clauses in the agreement, the construction of the leisure centre was intended to accommodate commercial and service activities, so that the agreement must be regarded as fulfilling an economic function. Further, the construction of the leisure centre must be regarded as corresponding to the requirements specified by Roanne in the agreement. In that regard, the court stated that it must be observed that the work referred to by the agreement was a leisure centre as a whole, including the construction of a multiplex cinema, a service premises for leisure activities, a car park and, possibly, a hotel. The court stated that it was clear from a number of clauses in the agreement that, by the construction of the leisure centre as a whole, the municipality of Roanne was seeking to reposition and regenerate the area around the railway station.

As regards the other elements covered by the definition of 'public-works contract' set out in article 1(a) of the directive, the court stated that it must be observed, first, that it was not disputed that the municipality of Roanne, being a local authority, had the capacity of 'contracting authority' within the meaning of article 1(b) of the directive and that there was a written contract in existence. Second, it was common ground that SEDL, as an economic operator active on the market, which undertakes to execute works provided for in the agreement, was to be regarded as a contractor within the meaning of the directive. In this respect, it was again irrelevant that SEDL was to use subcontractors for the design and execution of the works (Case C-

399/98, *Ordine degli Architetti and Others* [2001] ECR I – 5409).

Finally, the court stated that it was clear that the agreement was concluded for pecuniary interest. The pecuniary interest in a contract refers to the consideration paid to the contractor on account of the execution of the works intended for the contracting authority (Case C-399/98, *Ordine degli Architetti and Others*, para 77). Under the agreement, SEDL was to receive a sum from Roanne as consideration for the transfer of the car park. The municipality also was to undertake to contribute to the costs of all the works to be executed. Further, under the agreement, SEDL was to be entitled to obtain income from third parties as consideration for the sale of the works executed.

The court concluded that it was apparent from an examination of the agreement that its main purpose was the performance of works that, *taken as a whole*, lead to the execution of a work within the meaning of article 1(c) of the directive – that is, a leisure centre. The service elements provided for in the agreement, such as the acquisition of property, obtaining finances, organising an architecture and/or engineering competition and marketing the buildings, were part of the completion of that work.

The court accordingly ruled that an agreement by which a first contracting authority entrusts a second contracting authority with the execution of a work constitutes a public-works contract within the meaning of article 1(a) of the directive, regardless of whether or not it was anticipated that the first contracting authority was to or would become the owner of all or part of that work.

Value of the contract

By its second question, the national court raised the matter



Public works: Paint. Drying

PHOTO: REX FEATURES

of the methods for determining the value of the contract at issue, in order to establish whether the threshold laid down in article 6 of the directive had been reached.

The national court submitted three possible bases for calculation of the threshold. First, that the value of the contract was to be determined only on the basis of the amounts paid by the contracting authority as consideration for the works that were transferred to it. Second, that the value of the contract was constituted by all the sums paid by the contracting authority – that is, the consideration for the works transferred to it as well as the financial contribution paid in respect of all the works to be executed. Third, that the determination of the value of the contract is to take account of the total value of the works, including the amounts paid by the contracting authority and those received from third parties as consideration for the works executed on their behalf.

The ECJ noted that article 6 of the directive provides that its provisions apply to public-works contracts whose value reaches the relevant threshold. It noted

that it does not lay down any rule limiting the amounts to be taken into account in order to determine the value of the contract to the amounts received from the contracting authority. Moreover, it stated, to infer such a rule from article 6 would be contrary to the spirit and the purpose of the directive.

The court averred that, as was apparent from the second and tenth recitals, the directive aims to abolish restrictions on freedom of establishment and the freedom to provide services in respect of public-works contracts in order to open up such contracts to genuine competition (Case C-399/98, *Ordine degli Architetti and Others*, para 52). As the tenth recital states, the development of such competition entails the publication at EC level of contract notices containing sufficient information to enable contractors established in the community to determine whether the proposed contracts are of interest to them. The court noted that the threshold in article 6 of the directive serves to ensure that public contracts with a sufficiently high value to justify intra-community participation

are notified to potential tenderers.

Since the object of the procedures for the award of public-works contracts laid down in the directive is precisely to guarantee to potential tenderers (established in the EC) access to public contracts of interest to them, it followed that whether the value of a contract reaches the threshold laid down in article 6 of the directive should be calculated from the tenderer's perspective.

It was clear, the court stated, in that regard, that, if the value of a contract is constituted by revenue from both the contracting authority and from third parties, the interest of a potential tenderer in such a contract resides in its overall value. Conversely, the argument that only the amounts paid by the contracting authority should be taken into account in the calculation of the value of a contract within the meaning of article 6 of the directive would undermine its purpose. The result would be that the contracting authority could award a contract with an overall value exceeding the threshold laid down in article 6, which might interest other contractors active on the market, without applying the procedures for the award of public-works contracts provided for in the directive.

Finally, the court stated that, under article 3 of the directive, public-works concession contracts are subject to the advertising rules laid down by the directive where the threshold referred to in that provision is reached. Since an essential characteristic of concessions is that the consideration for the works comes either wholly or partly from third parties, it would be contrary to the purpose and scheme that underpin the directive that, in the context of public-works contracts, the amounts coming from third parties were excluded from the calculation of the value of the contract for the

purposes of article 6.

The court accordingly ruled that, in order to determine the value of a contract for the purpose of article 6, account must be taken of the total value of the works contract from the point of view of a potential tenderer, including not only the amounts to be paid by the contracting authority, but also all the revenue received from third parties.

Exemption in accordance with national law

The national court asked whether, in order to conclude an agreement such as that in the main proceedings, a contracting authority was exempt from using the procedures for the award of public contracts laid down by the directive, on the ground that, in accordance with national law, that agreement may be concluded only with certain legal persons that themselves have the capacity of contracting authority and that will be obliged in turn to apply those procedures in order to award any subsequent contracts.

The court stated that it must be observed that the only permitted exceptions to the directive's application are those that are expressly mentioned in it (Case C-107/98, *Teckal* [1999] ECR I – 8121, para 43 (by analogy) and Case C-340/04, *Carbotermo and Consorzio Alise* [2006] ECR I 4137, para 45). Further, it noted that the directive does not contain any provision comparable to that in article 6 of Directive 92/50, which excludes from its scope public contracts awarded, under certain conditions, to contracting authorities.

It observed that article 11 of Directive 2004/18/EC on the coordination of procedures for the award of public-works contracts, public-supply contracts and public-service contracts provides an exception as regards contracting authorities that purchase, among other things, works from a central purchasing

authority, as defined in article 1(10) of that directive. However, it noted that that provision was not applicable *ratione temporis* to the facts in the proceedings.

It followed that a contracting authority is not exempt from using procedures for the award of public contracts provided for by the directive, on the ground that it plans to conclude the contract concerned with a second contracting authority (*Teckal*, para. 51; Case C-94/99, *ARGE* [2000] ECR I – 11037, para 40; Case C-26/03, *Stadt Halle and RPL Lochau* [2005] ECR I – 1, para 47). Further, that finding does not affect the obligation on the latter contracting authority to apply in its turn the tendering procedures laid down in the directive.

The court stated that it was true that, according to the court's case law, a call for competition is not compulsory for contracts concluded between a local authority and a person legally distinct from it, where the local authority exercises over the person concerned a control that is similar to that which it exercises over its own departments and, at the same time, that person carries out the essential part of its activities with the controlling local authority or authorities (*Teckal*, para 50 and Case C-84/03, *Commission v Spain* [2005] ECR I – 139, paras 38 and 39).

The fact, however, that the entity at issue, SEDL, is a semi-public company, whose capital includes private funds, prevents the municipality of Roanne from being regarded as exercising a control over it similar to that which it exercises over its own departments. As the court had previously ruled, any private capital investment in an undertaking follows considerations proper to private interests and pursues objectives of a different kind from those pursued by a public authority.

In relation to the French and Polish governments' submis-

sions and those of Roanne, that the effectiveness of the directive is preserved where, as in the case at issue, a second contracting party is obliged to use the procedures for the award of public contracts laid down by the directive for any subsequent contract, the court stated that it must be recalled that the directive does not contain any provisions that enable its application to be avoided where a public-works contract is concluded between two contracting authorities, even if the second contracting authority is obliged to subcontract the total value of the contract to successive contractors and, for that purpose, to use the procedures for the award of public contracts laid down by the directive.

Further, in the case at hand, it was not stipulated in the agreement that SEDL was obliged to subcontract the whole of the initial contract to successive contractors. Moreover, as the advocate general had observed in her opinion, where a second contracting authority has recourse to subcontractors, the subject matter of any successive contract may often represent only *part* of the overall contract. It may follow that the value of any subsequent contracts awarded by a second contracting authority will be lower than that set out in article 6(1)(a) of the directive. Therefore, by setting up a series of successive contracts, the application of the directive could be avoided.

The court accordingly ruled that a contracting authority is not exempt from using the procedures for the award of public-works contracts laid down in the directive on the ground that, in accordance with national law, the agreement may be concluded only with certain legal persons, which themselves have the capacity of contracting authority and which would be obliged, in turn, to apply those procedures to the award of any subsequent contracts.

Auroux shows that, where a contract contains elements that relate to both a public-works contract and another type of public contract, it is the main purpose of the contract that determines which EC directive on public contracts is to be applied. Further, the classification that a contract may have under national law is irrelevant for the purpose of determining whether a contract falls within the scope of the directive. The existence of a work must be determined in relation to the economic or technical function of the result of the works undertaken. In order to be classed as a contractor, it is not necessary that a person who enters into a contract with a contracting authority is capable of direct performance using his own resources. Since the object of the procedures for the award of public-works contracts is to guarantee to potential tenderers established in the EC access to public contracts of interest to them, the assessment as to whether a contract reaches the threshold laid down in the directive is to be calculated from the perspective of the tenderer. Finally, while the court notes the exception under Directive 2004/18/EC in relation to contracting authorities that purchase works from a central purchasing authority, under Directive 93/37/EEC, a contracting authority is not exempt from using the procedures for the award of public-works contracts laid down in the directive on the ground that, in accordance with national law, the agreement may be concluded only with certain legal persons, which themselves have the capacity of contracting authority and which would be obliged, in turn, to apply those procedures to the award of any subsequent contracts. **G**

James Kinch is a senior executive solicitor in the Law Department of Dublin City Council.

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 4 May 2007)

Regd owner: William Griffey; folio: 5524; lands: townland of Cappalea North and barony of Islands; area: 12.821 hectares; **Co Clare**

Regd owner: John Horan; folio: 11755F; lands: townland of Gauras and barony of Bunratty Upper; area: 4.108 hectares; **Co Clare**

Regd owner: Bernard Lynch; folio: 2875; lands: townland of Moanmore and barony of Moyarta; **Co Clare**

Regd owner: Denis O'Dea; folio: 8809F; lands: townland of Dulick and barony of Bunratty Upper; **Co Clare**

Regd owner: Denis J McCarthy, Denis P O'Sullivan (deceased), James McAuliffe (deceased), Denis Conroy (deceased), Conchubhar O'Murchu, Patrick Moynihan, Jeremiah Breen, Tomas Lovett (former and current trustees of Boherbue GAA); folio: 14317F and 14319F; lands: plot of ground situate in townland of Gneevs (ED Boherboy) in the barony of Duhallow in the county of Cork; **Co Cork**

Regd owner: Liam Broderick and Marie Broderick; folio: 2388L; lands: plot of ground in the townland of Monfieldstown in the barony of Cork in the city of Cork; **Co Cork**

Regd owner: Denis Keating; folio: 3070; lands: plot of ground situate in the townland of Glannagaul in the barony of Barrymore in the county of Cork; **Co Cork**

Regd owner: Hanna Murphy; folio: 35734; lands: plot of ground situate in the townland of Killeens and barony of Cork in the city of Cork; **Co Cork**

Regd owner: John Shorten; folio: 17589; lands: plot of ground situate in the townland of Rushfield, in the barony of Carbery East (west division) in the county of Cork; **Co Cork**

Regd owner: Dunnes Stores; folio:

LAW SOCIETY Gazette

PROFESSIONAL NOTICE RATES

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18246F; lands: plot of ground situate in the townland of Garranedarragh in the barony of Cork in the county of Cork; **Co Cork**

Regd owner: Robert Farrell; folio: DN3418F; lands: property situate in the townland of Lissenhall Little and barony of Nethercross; **Co Dublin**

Regd owner: James Kavanagh and Evelyn Kavanagh; folio: DN54447F; lands: property situate in the townland of Priorswood and barony of Coolock; **Co Dublin**

Regd owner: Douglas Pye and Marie Louise Pye; folio: DN100271F; lands: property situate in the townland of Yellow Walls and barony of Coolock; **Co Dublin**

Regd owner: Patrick (orse Paudie) Ryan; folio: DN112484L; lands: property known as unit L12 Greenogue Business Park, Rathcoole, situate in the townland of Greenogue and barony of Newcastle; **Co Dublin**

Regd owner: South Dublin County Council; folio: DN132823F; lands: plot of ground known as 18 Fortunestown Close, Tallaght, situate in the townland of Fortunestown and barony of Newcastle; **Co Dublin**

Regd owner: Anne Anderson; folio: DN13294; lands: property situate on the south side of the main street in the village of Blanchardstown in the townland of Blanchardstown and barony of Castleknock; **Co Dublin**

Regd owner: William Conway and Orla Conway; folio: 15798F; lands: townland of Barraderry and barony of Moycullen; area: 0.1460 hectares; **Co Galway**

Regd owner: Carmel Flaherty; folio: 2836; lands: townland of Clybaun and barony of Galway; **Co Galway**

Regd owner: Michael and Marlene Ladden; folio: 30426F; lands: townland of Castledrum and barony of Trughanacmy; **Co Kerry**

Regd owner: Francis and Nora Flahive; folio: 29748 (part KY 194) Co Kerry; lands: townland of Knockanush West and barony of Trughanacmy; **Co Kerry**

Regd owner: Margaret O'Donoghue and John J O'Donoghue; folio: 22836F; lands: townland of Faghcullia and barony of Magunihy; **Co Kerry**

Regd owner: Hugh Nolan and Catherine Nolan; folio: 9366F; lands: townland of Thomastown and barony of Clane; **Co Kildare**

Regd owner: Georgina Murphy; folio: 12050; lands: townland of Newtownallen and barony of Kilkea and Moone; **Co Kildare**

Regd owner: Peter Scully; folio: 11252; lands: Knockmay and barony of Maryborough East; **Co Laois**

Regd owner: John Whelan and Deirdre Whelan; folio: 16148; lands: Coolederry and barony of Portnahinch; **Co Laois**

Regd owner: Patrick Kiernan, Monaduff, Drumligh, Co Longford; folio: 609; lands: Monaduff; **Co Longford**

Regd owner: Eric Abercrambie, Newport, Legan, Co Longford; folio: 11525; lands: Agnavealogue; **Co Longford**

Regd owner: Patrick Rooney and Catherine Rooney, Drybridge, Drogheda, Co Louth; folio: 12695; lands: townland of Mell and barony of Ferrard; area: 0.24 acres; **Co Louth**

Regd owner: James Greaney; folio: 51079; lands: townland of Swineford and barony of Gallen; area: 0.0050 hectares; **Co Mayo**

Regd owner: Joseph Davern and Ann

Margaret Davern; folio: 41071; lands: townland of Corragoole and barony of Costello; area: 8 acres, 1 rood, 16 perches; **Co Mayo**

Regd owner: Rafeenan Nurseries Limited, Rafeenan, Ballinode, Monaghan, Co Monaghan; folio: 20644; lands: Rafeenan; **Co Monaghan**

Regd owner: Charles Connally; folio: 19908; lands: townland of Castlereagh and barony of Castlereagh; **Co Roscommon**

Regd owner: Patrick Giblin; folio: 10769; lands: townland of Sheepwalk and barony of Frenchpark; area: 19 acres, 25 perches; **Co Roscommon**

Regd owner: Bridget Earley; folio: 31661; lands: townland of Knockroe (ED Castlereagh) and barony of Castlereagh; **Co Roscommon**

Regd owner: Teresa Rowan (deceased); folio: 21845; lands: townland of Cornageeha and barony of Carbury; area: 0.0720 hectares; **Co Sligo**

Regd owner: Anthony F Giblett and May W Giblett; folio: 23081; lands: townland of Rosses Upper and barony of Carbury; **Co Sligo**

Regd owner: Mary Josephine McCarrick; folio: 451L; lands: Abbeyquarter North and barony of Carbury; **Co Sligo**

Regd owner: Mary Costelloe; folio: 1914L; lands: parish and town of Nenagh; **Co Tipperary**

Regd owner: Mortimer Barron and Breda Barron; folio: 12728; lands: plot of ground situate in the townlands of (1), (4) Toberagoole, (2), (5) Pilltown, (3) Garrananaspick in the barony of Decies within Drum in the county of Waterford; **Co Waterford**

Regd owner: Richard Power (deceased); folio: 14436; lands: Inish and Ballytiege Slob, Grange (ED Bannow), Rickardstown and barony

of Bargo; **Co Wexford**
 Regd owner: Richard Power (deceased); folio: 16310; lands: Inish and Ballytiege Slob, Grange (ED Bannow), Rickardstown and barony of Bargo; **Co Wexford**
 Regd owner: Richard Joseph O'Connor; folio: 16044; lands: Ballysilla and barony of Ballaghkeen South; **Co Wexford**
 Regd owner: John Patrick Kehoe; folio: 8787; lands: situate in the townland of Killadreenan in the barony of Newcastle North; **Co Wicklow**
 Regd owner: Myles Kenna, Liam Kane, Desmond Burton, Thomas Reid and Michael Waters; folio: 2633L; lands: situate in the townland of Parknasiloge in the barony of Rathdown in the county of Wicklow; **Co Wicklow**

WILLS

Banks, Susan Jemima (deceased), late of 341 Grays Inn Road, Camden, London WC1H, UK. Would any person with knowledge of a will executed by the above-named deceased, who died on 23 November 1988 at University College Hospital, Euston Road, Camden, London NW1, UK, please contact David J O'Hagan, Chief State Solicitor, Osmond House, Little Ship St, Dublin 8, Ireland; tel: 01 417 6000,

fax: 01 417 6299 or email: eleanor_clifford@csso.gov.ie. Ref: 9632/2005/emc

Bingham, James (deceased), late of Kilkishen House, Kilkishen, Co Clare. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 1 May 1969, please contact Legal Support Services, Solicitors, Main Street, Sixmilebridge, Co Clare; tel: 061 713 767, fax: 061 713 642, email: gwen@legalsupportservices.ie

Bolger, Thomas Joseph (deceased), late of 1 South Dock, Ringsend, Dublin 4. Would any person with knowledge of any will made by the above-named deceased, who died on 16 January 2007, please contact Joan Passi, PJ Walsh & Co, Solicitors, 12 Upper Fitzwilliam Street, Dublin 2; tel: 01 661 1215

Brennan, Marcella (deceased), late of 88 10 34 Avenue AG, Jackson Heights, New York 11372, USA, and also of Kilrooskey, Co Roscommon, who died on 19 March 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

Burke, Philip (deceased), late of 117 Floraville Avenue, Clondalkin, Dublin

22, who died on 3 May 2006. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Madigans, Solicitors, 167 Lower Kimmage Road, Dublin 6W; tel: 01 492 1111, fax: 01 492 1348, email: info@madigans.ie

Carmody, Jeremiah (deceased), late of Kilfinny, Adare, Co Limerick. Would any person having knowledge of a will made by the above-named deceased, who died on 4 March 1971, please contact the Office of the General Solicitor for Minors and Wards of Court, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin 7. Reference: AC/1812; tel: 01 888 6231, fax no: 01 872 2681

Costello, Laurence (Larry) (deceased), late of Knockanroe, Thomastown, Co Kilkenny. Would any person with any knowledge of a will executed by the above-named deceased, who died on 21 December 2006, please contact O'Shea Russell, Solicitors, Main Street, Graignamanagh, Co Kilkenny

Crowe, Mary (deceased), late of 15 New Houses, Ruan, Ennis, Co Clare. Would any person having knowledge of a will made by the above-named deceased, who died on 31 May 2001, please contact the Office of the General

Solicitor for Minors and Wards of Court, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin 7. Reference: DS/1784; tel: 01 888 6231, fax: 01 872 2681

Delaine, Ivor William (deceased), late of Cherry Orchard, Strand Road, Rosslare, Co Wexford. Would any person having knowledge of a will made by the above-named deceased, who died on 10 September 2006, please contact the Office of the General Solicitor for Minors and Wards of Court, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin 7. Reference: AC/1660; tel: 01 888 6231, fax: 01 872 2681

Joyce, Kathleen (deceased), late of 21 Baskin Cottages, Cloghran, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 22 December 2003, please contact the Office of the General Solicitor for Minors and Wards of Court, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin 7. Reference: AC/1733; tel: 01 888 6231, fax: 01 872 2681

Kelly, Clare (deceased), late of 19 Claremont Road, Sandymount, Dublin 4. Would any person having knowledge of the whereabouts of any will made by the above-named

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deceased, who died on 29 December 2006, please contact James D Aitken & Co, Solicitors, 107 Trees Road Upper, Mount Merrion, Co Dublin; tel: 01 288 2772, fax: 01 288 8204, email: jamesdaitken@eircom.net

Long, James Joseph (otherwise Jim) (deceased), late of 30 New Cabra Road, Dublin 7 and formerly of Pullerick, Crookstown, Co Cork. Would any person having knowledge of a will made by the above-named deceased, who died on 21 June 2004, please contact Michael Moloney & Co, Solicitors, 3 Moorefield Terrace, South Douglas Road, Cork; tel: 021 432 0155, fax: 021 432 0166

Patten, Catherine (Kitty) (deceased), late of Derreens, Achill Sound, Co Mayo, who died on 27 October 2005. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Egan, Daughter & Co, Solicitors, Castlebar, Co Mayo; tel: 094 902 1375, fax: 094 902 2136

Quinlan, Mary T (otherwise Maura) (deceased), late of Glengara Park Nursing Home, Glengarry, Co Dublin, formerly of 4 Ballygihan, Sandycove Road, Sandycove, Co Dublin. Would any person having knowledge of the whereabouts of any

will made by the above-named deceased, who died on 24 May 2006, please contact Pearse Mehigan & Co, Solicitors, 83/84 Upper George's Street, Dun Laoghaire, Co Dublin; tel: 01 280 8292, fax: 01 280 8651, email: info@pearsemehigan.com

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veyancing, probate, litigation, family law, labour law. Would suit a partnership, branch office or sole practitioner. Please reply to **box no 42/07**

TITLE DEEDS

Estate of the late William Rossiter (deceased). Property at Ivy House, Esmonde Street, Gorey, Co Wexford. Would any person having knowledge of the original title documents relating to the above property please contact Doyle's Solicitors, Westgate, Wexford (Ref: JOH), tel: 053 912 3077, fax: 053 912 3071, email: johanlon@doylesolicitors.ie

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 Tim Connolly and Michael Fitzgerald

Any person having a freehold estate or any intermediate interest in all that and those the plot or piece of ground on the east side of Harcourt Street, Dublin, the subject of an indenture of lease dated 11 August 1860 between Thomas Lefroy and another of the first part, the Honourable Sophia Hely Hutchinson of the second part, and Thomas Hall of the third part, for a term of 250 years from 25 March 1860

at a rent of £8.15s per annum, which premises are described in the said lease as bounded on the west by Harcourt Street, on the east by Stable Lane, on the north by number 68 Harcourt Street and on the south by another piece of ground demised by the said Thomas Lefroy and another to the said Thomas Hall and are now known as number 67 Harcourt Street in the city of Dublin.

Take notice that Tim Connolly and Michael Fitzgerald, being the persons currently entitled to the lessees' interests under the said leases, intend to apply to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid properties (or any of them) are called upon to furnish evidence 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, Tim Connolly and Michael Fitzgerald intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold rever-

sion in each of the aforesaid premises are unknown or unascertained.

Date: 4 May 2007

Signed: TG McVeagh & Co (solicitors for the applicants), 28 Molesworth Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-1978: an application by Myles O'Neill and Anne O'Neill

Take notice any person having an interest in the freehold estate or any intermediary interest in the dwelling-house and premises in the town of Ferns in the barony of Scarawalsh in the county of Wexford, being part of the property demised by an indenture of lease dated 28 April 1919 and made between Marion Eleanor Jervish White of the one part and George Thomas Chapman of the other part for the term of 99 years, subject to the yearly rent of £24.2 shillings but indemnified against £21.2 shillings thereof by the remainder of the premises the subject of the lease.

Take notice that Myles O'Neill and Anne O'Neill intend to submit an application to the county registrar for the county of Wexford for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of tagging to the aforesaid property to the below named within 21 days of this notice.

In default of any such notice being received, Myles O'Neill and Anne O'Neill intend to proceed with the application before the county registrar of the county of Wexford at the end of 21 days from the date of this notice and will apply to the county registrar of the

county of Wexford for such orders or directions as may be appropriate on the basis that a person or persons beneficially entitled to this interest including the freehold reversion in the aforesaid property are unknown and unascertained.

Date: 4 May 2007

Signed: M J O'Connor (solicitors for the applicant), Drinagh, Co Wexford

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 and in the matter of premises at 47 and 48 Chelmsford Road, Ranelagh, Dublin 6: an application by Milan Schuster, Senan Burke and William Twomey

Take notice any person having any interest in the freehold estate of or superior interest in the following premises: all that and those that premises known as 47 and 48 Chelmsford Road, Ranelagh, Dublin 6, held under an indenture of lease dated 12 February 1935, made between Victor W Scales of the one part and Virginia Kathleen Scales of the other part for the term of 470 years from 29 September 1934, subject to the yearly rent of £10 (€12.69).

Take notice that the applicants, Milan Schuster, Senan Burke and William Twomey, being the persons entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, intend to submit an application to the county registrar for the 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 are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Milan Schuster, Senan Burke and William Twomey intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/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: 4 May 2007

Signed: Adams Corporate Solicitors (solicitors for the applicants), Exchange Place, International Financial Services Centre, Custom House Dock, Dublin 1

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 and in the matter of an application by William O'Flaherty, David

O'Flaherty, Denis O'Flaherty, Sile O'Flaherty and Susan Abrook

Any person having a freehold estate or any intermediate interest in all that and those part of the lands of Cannonsfield Athlone, being part of the lands of Garrow Cottage, Athlone, demised by an indenture of lease dated 6 August 1910 between Jonas Swain of the one part and John G Smith of the other part for a term of 99 years from 14 July 1910 at a yearly rent of £18.

Take notice that William O'Flaherty, David O'Flaherty, Denis O'Flaherty, Sile O'Flaherty and Susan Abrook, being the persons currently entitled to the lessee's interest in same under the said lease, intend to apply to the Registrar of Titles to vest in them under section 22 of the said act the fee simple in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, William O'Flaherty, David O'Flaherty, Denis O'Flaherty, Sile O'Flaherty and Susan Abrook intend to proceed with the application before the Registrar of Titles at the end of 21 days from the date of this notice and will apply to the Registrar of Titles for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 4 May 2007

Signed: William Fleming & Partners (solicitors for the applicants), Belmont House, Belmont, Kilkenny Road, Carlow

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 Allied Irish Banks plc

Take notice that any person having any interest in the freehold estate of the following property: 9 Terenure Road East, Rathgar, Dublin 6, more particularly described in an indenture of lease dated 26 July 1855 between Gerald Osprey, esquire, of the first part, George B Rochfort of the second part, the Reverend Charles Doherty Quinlan of the third part, Elizabeth Osprey of the fourth part and John Bond of the fifth part for the term of 600 years from 1 November 1855 at the yearly rent of £6 and subject to the covenants and conditions therein contained.

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

In default of any such notice being received, Allied Irish Banks plc intends to proceed with the application before the county registrar at 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 persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 4 May 2007

Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Rory O'Sullivan and Colin Stanley re: 250 North Circular Road, Dublin 7 (formerly 12 Rathdowne Terrace, in the parish of Grangegorman and city of Dublin)

Take notice that any person having an interest in the freehold estate of the following property: the premises known as 250 North Circular Road, Dublin 7 (formerly 12 Rathdowne Terrace, in the parish of Grangegorman and city of Dublin).

Take notice that the applicants, Rory O'Sullivan and Colin Stanley, intend to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as maybe appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the above premises are unknown or unascertained.

Date: 4 May 2007

Signed: Miley and Miley (solicitors for the applicant), 35 Molesworth Street, Dublin 2 (ref: 15)

In the matter of the Landlord and Tenant (Ground Rents) Act 1967 and the Landlord and Tenant (Ground Rents) (No 2) Act 1978: notice of intention to acquire fee simple (section 4 of the said act of 1967)

To any person having an interest in the following property: all that and those the dwelling house and plot of ground known as 11 Vernon Avenue, Clontarf, barony of Coolock, in the city of

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Dublin, as more particularly delineated on the map annexed hereto and held under:

- 1) A lease dated 17 June 1955 between Peter George Connolly of the first part and Kieran J Whelan of the other part for a term of 148 years, subject to the annual rent of £10, and
- 2) A superior lease dated 20 April 1904 from Colonel Edward Vernon of the first part, Thomas Picton R Bradshaw of the second part and Edith Maud Robb of the third part for a term of 200 years, subject to the annual rent of £60.6s.4d.

Take notice that David Furlong, being the person entitled by sections 9 and 10 of the *Landlord and Tenant (Ground Tenants) (No 2) Act 1978* intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any part of them) to the leasehold interest held by the said David Furlong are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such evidence being adduced, David Furlong 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 at the end of 21 days for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests are unknown or unascertained.

Date: 4 May 2007

Signed: Cafferky Solicitors (solicitors for the applicant), 17 Talbot Street, Dublin 1

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Dublin 14: solicitor sought. Please send details and CV by email to info@leeandsherlock.ie or by post to Lee & Sherlock Solicitors, Unit F5a, Nutgrove Office Park, Rathfarnham, Dublin 14; contact: Dermot Sherlock; tel: 01 296 0931, fax: 01 296 0932

Experienced litigation and employment solicitor available. I have over six years' commercial litigation and employment law (advisory and contentious) experience. I am seeking a part-time or locum position in South Dublin or Wicklow. I am also interested in taking on residential/commercial property and family-law work. Please reply to expsolicitor@gmail.com or to **box no 40/07**

Solicitor with extensive experience seeks part-time probate/conveyancing position in Galway city/Tuam. Reply to **box no 41/07**

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*.

Attention: overworked practitioners/concerned principals. Put your mind at rest. When you need assistance temporarily that doesn't justify a locum – experienced independent solicitor (in DX) available to clear backlog, complete registrations/undertake specific projects. Discreet, efficient service. Own insurance and practising certificate. All areas. References available. Reply to **box no 21/07** or email: emoroney@practiceassistance.ie

Locum solicitor required with strong background in general practice/residential and commercial conveyancing for medium-sized dynamic practice just 20 mins from city centre. July 2007 to December 2007. Apply in writing to Elaine O'Keefe, Damien Maguire & Co, Solicitors, J2 Maynooth Business Campus, Maynooth, Co Kildare; DX 98004 or email: elaine@damienmaguire.ie

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Assistant solicitor required for medium-sized dynamic practice just 20 mins from city centre. Some experience necessary in conveyancing and litigation. Apply in writing to Elaine O'Keefe, Damien Maguire & Co, Solicitors, J2 Maynooth Business Campus, Maynooth, Co Kildare; DX 98004 or email: elaine@damienmaguire.ie

CHARLTONS CORPORATE/CORPORATE FINANCE HONG KONG SHANGHAI

Solicitor required for corporate finance practice based in Hong Kong

Charltons' practice covers a range of corporate transactions including corporate finance, restructurings, capital markets, securities, funds and M&A, frequently with a cross-border and mainland China focus.

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

A selection of opportunities for May 2007.

Banking Solicitor – Junior to Mid Level

PP0014

This front ranking practice seeks junior to mid level banking solicitors for its rapidly expanding department. You will be dealing with an interesting and diverse workload and have a solid background in commercial lending matters.

Corporate/Commercial Solicitor – Associate Level

A progressive mid tier firm is seeking an ambitious solicitor to deal with a range of high quality work including mergers and acquisitions, private equity, IPOs and venture capital investments. Working closely with the managing partner, this is an excellent opportunity for rapid career advancement.

Commercial Conveyancing Solicitor – Associate Level

PP0156

A leading Dublin-based law firm is seeking an experienced solicitor to join its commercial conveyancing department. The successful candidate will be an ambitious and enthusiastic practitioner.

Company Secretarial Assistant

PP0181

Our client is seeking a top-class Company Secretarial Assistant to join the busy Company Secretarial Department. You will work within a team of highly experienced company secretarial professionals. The department provides the full spectrum of company secretarial services, including annual secretarial services, management of changes in officers and constitution, corporate restructuring, corporate governance advice and transaction support.

Corporate Commercial Solicitors – Associate to Senior Associate Level

PP0154

This highly successful Dublin-based law firm is seeking solicitors to join its Corporate Commercial Department. You will be exposed to a wide variety of commercial transactions advising both Irish and international public and private companies.

Experienced Professional Support Lawyer

PP0172

One of Ireland's leading corporate law firms is seeking a Professional Support Lawyer to join its existing team. You will assist with the ongoing development of a Knowledge Management System for professional staff and provide professional support services to Fee Earners specifically in Corporate/Commercial, Financial Services, Banking, Asset Management and Investment Funds.

IT/IP Solicitor – Associate Level

Leading Dublin firm requires a solicitor with strong exposure to IT/IP work to join its existing team. You will be dealing with an interesting and varied workload of high quality work. The group is an expanding and profitable part of the firm's practice.

Projects/Energy Lawyer – Associate Level

PP0176

You will be dealing with all aspects of energy law from exploration, development and production, through to refining and sales. Specific areas of experience should include some of the following: CC&T power station development, wind farm development, waste-energy power station development and project financing of energy projects including gas pipelines. You should have excellent academic and strong technical skills. Previous exposure to project work will be an advantage.

For more vacancies, please visit our website or contact

Michael Benson sol. in strict confidence, at Benson & Associates, Carmichael House, 60 Lower Baggot Street, Dublin 2, Ireland.

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ANAGRAM GARLIC SLEEVES

SOLICITOR

This leading Irish Bank, has an immediate requirement for an in-house lawyer. With experience in the funds industry your main responsibilities will be to provide legal services vital to key management decisions. You will keep the department apprised of legal and regulatory developments, provide general legal support and ensure legal responsibilities are discharged across all areas of the business. Excellent interpersonal skills and commercial flair are a must. **€Negotiable + benefits**

IN HOUSE**SENIOR LEGAL ACCOUNT MANAGER****IN HOUSE**

This global company provides outsourcing solutions for a range of company administration services, fund services and specialist financial services to an international client base. The company's Dublin operation is rapidly expanding and is looking to recruit a Senior Legal Account Manager. You will manage the drafting and review of documentation in complex cross border structured finance transactions and act as account manager for client companies and structured finance SPV's at both local and international level. Excellent communication, interpersonal skills and good management experience is essential. **€Excellent**

DEPUTY GROUP SECRETARY**IN HOUSE**

Our client, a leading financial institution, is looking to appoint a Deputy Group Secretary. Working at Board level you will have a legal or company secretarial qualification. You will ensure the bank's adherence to statutory and regulatory requirements as well as advising on developments in this area. This position would suit a lawyer or company secretary looking to move into a senior and dynamic role within a large organisation. You will have gained corporate governance experience in a legal department or other professional service. **€90,000 plus + benefits**

INTELLECTUAL PROPERTY LAWYER**DUBLIN**

This boutique firm in Dublin City Centre is seeking to appoint an IP/Commercial lawyer with proven ability in this practice area. Coming from a recognised firm in Ireland or the UK you will have experience in contentious and non-contentious matters with a desire to further develop your expertise in this area. Reporting to the Head of Department this position presents an excellent opportunity to work alongside Europe's leading IP practitioners with an enviable portfolio of clients. **€Excellent**

COMMERCIAL LAWYER**DUBLIN**

Our client a long established law firm is offering an opportunity for a commercial lawyer to join its rapidly expanding practise. You will be involved in a broad range of transactions at all levels, including the investigation of title, advising on title and related planning matters, commercial lending and preparation of security documentation, review of FRI leases and Landlord and Tenant matters, advising on Shareholders Agreements, Share Purchase Agreements and legal due diligence. This position would suit an experienced lawyer with good business development skills. Excellent prospects for partnership! **€Negotiable + bonus**

IN HOUSE PROJECTS LAWYER**DUBLIN**

Due to continued growth this leading energy company wishes to appoint an experienced Projects Lawyer. Negotiating and providing advice on commercial contracts you will be the single point of contact on project legal matters and be involved in the mitigation of legal risk, participate in issues affecting key management decisions and additional legal services projects which may arise. You will come from a leading commercial practice or a leading blue chip company. Some travel required. An excellent opportunity to work within an exciting global business. **€Competitive**

ANAGRAM SOLUTION: LEGAL SERVICES



Lisa Weston BL MA(Oxon), Osborne Recruitment, 104 Lower Baggot Street, Dublin 2
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THE LAW SOCIETY OF NORTHERN IRELAND

Chief Executive

The Law Society of Northern Ireland was set up by Royal Charter, both to represent and to regulate the solicitors' profession in Northern Ireland and ultimately protect the public. It acts as the regulatory authority governing the education, accounts, discipline and professional conduct of solicitors.

The Society operates through an elected Council of members, all practising solicitors who serve on a voluntary basis. The Society employs qualified solicitors and accountants to carry out the administrative role of the Society which is to regulate and to provide a service for its members.

The Society now wishes to appoint a Chief Executive to promote the interests of the Society, namely the interests of the Solicitor Profession in Northern Ireland and the interests of the public in relation to that Profession.

Based in Belfast, and reporting directly to the President and Council of the Society the successful appointee must have experience of implementing and overseeing procedures to support financial management and delivery of sound corporate governance, coupled with experience of building positive working relationships with a wide range of people. Candidates must be able to demonstrate a wide range of skills including the analysis of strategic issues, the delivery of optimal solutions in a complex environment and the establishment of plans and goals in line with the vision of the organisation.

Candidates must also be able to demonstrate clear leadership and communication skills, together with the ability to present reports at senior levels and influence at all levels.

This is an exciting opportunity to lead a prestigious Society and will carry an attractive remuneration package which will reflect the importance of this position.

To apply please write in confidence for an application form, quoting reference number LCE/0407 to:

Claire Dooly, PricewaterhouseCoopers LLP, Waterfront Plaza, 3 Laginbank Road, Belfast BT1 1LR or telephone 02 8 9041 5069 or e-mail pwni.recruitment@uk.pwc.com

Closing date for receipt of applications is 5.00 pm on Monday 14th May 2007.

The Law Society of Northern Ireland is an Equal Opportunities Employer.

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Ideally, you should be a highly communicative, ambitious professional who thrives on challenge and can recognise this as a superb opportunity. You should have a strong work ethic, be extremely customer focussed and possess a driving ambition to realise the significant earnings available. A comprehensive training programme and a clearly defined career path will be available to the successful candidate.

If you would like to find out more about how to commence, develop or continue a career in recruitment, please contact in the strictest confidence: Olive Cunniffe, HR Director, HRM Recruitment, Dublin 2.
Phone: 01 632 1888 or email: olive.cunniffe@hrm.ie

DUBLIN

FINANCIAL SERVICES DUBLIN

One of Dublin's strongest financial services teams is currently looking to recruit. On offer is the chance to work on high-end, major financial transactions with clients across Ireland and Europe. Ref: 12033. €65,000+

CORPORATE FINANCE DUBLIN

Are you a corporate lawyer looking to widen your skill set? Our client is seeking ambitious corporate lawyers looking to take on challenging corporate finance matters for major Irish companies. Ref: 12013. €70,000+

REAL ESTATE DUBLIN

Our client has one of the largest commercial property teams in Ireland. Working on large real estate developments, and working closely with the projects team, this role offers genuine diversity. Ref: 143590. €65,000+

PROJECTS DUBLIN

Top-tier Dublin practice is currently seeking PPP or PFI candidates looking to join the market-leader. Candidates should have solid experience in this field and a track record in business development. Ref: 11993. €60,000+

IT / IP DUBLIN

With the technology market booming in Ireland, this is a chance to join one of the most innovative legal teams in Ireland. Candidates should have experience in the following IT/IP or outsourcing. Ref: 341860. €60,000+

EU / COMPETITION DUBLIN

Niche competition role with this respected practice. Our client is seeking candidates with at least 6 months' experience in this discipline. Exceptional quality of work and impressive client base. Ref: 12093. €65,000+

CONSTRUCTION DUBLIN

Leading construction practice with a strong reputation for its national and international construction experience. Candidates will have construction, projects or PFI backgrounds. Ref: 341870. €65,000+

ENERGY DUBLIN

Rare position in Dublin focusing on energy law. Our client is interested in speaking to candidates with experience/interest in this field. Blue-chip client base and innovative renewable energy projects. Ref: 13533. €70,000+

AVIATION FINANCE DUBLIN

Niche aviation finance role with one of Dublin's largest commercial firms. Ideally, candidates will have prior experience of aviation/transport finance, however general banking lawyers should apply. Ref: 12183. €70,000+

LEGAL COUNSEL DUBLIN

Leading global financial institution seeking to add to its in-house legal team. Candidates should have a background in corporate, finance or general banking and seeking a challenging in-house role. Ref: 14403. €55,000+

LEGAL MANAGER DUBLIN

Major player in the financial sector. Our client seeks a general commercial manager, ideally with corporate and finance experience (although not essential) and with a similar in-house background. Ref: 14183. €120,000+

LIFE SCIENCE DUBLIN

Specialist position in dedicated life science team of this leading Dublin law firm. This role offers diversity and will involve working with the pharmaceutical, medical and healthcare sectors. Ref: 12153. €65,000+

LONDON

IT / OUTSOURCING LONDON

Terrific opportunity to work with dazzling array of public & private sector clients. Supportive autonomy & client-facing in a warm, collegiate work environment. Excellent prospects. Ref: 384950. €60,000+

CORPORATE LONDON

Stellar opportunity to enjoy refreshing degree of autonomy at this excellent City firm. Working for entrenched bank of clients you will achieve work/life balance without compromising quality of work. Ref: 497450. €60,000+

CORPORATE TAX LONDON

The tax team at this Top 20 firm forms part of the larger corporate department. There is a clear gap for a technically able assistant who enjoys high levels of client contact. Great opportunity. Ref: 418080. €70,000-€80,000

BANKING LONDON

Great range of work on offer at this friendly mid-sized firm which punches above its weight. Expect exposure to bank lending (including acquisition finance), property finance and capital markets. Ref: 498490. €55,000+

IT / OUTSOURCING LONDON

IT/outsourcing lawyer sought to join one of the City's leading teams to assist in developing the practice and client base. Work on headline projects with both public/private sectors and suppliers. Ref: 341420. €75,000+

CORPORATE LONDON

Niche City law firm with an international outlook and client base is undertaking excellent work and continuing to build its practice. Opportunity to join a different type of firm and be part of the team. Ref: 480130. €85,000

EMPLOYMENT LONDON

Great opportunity to join this happy, innovative and industry recognised market-leading team which continues to grow rapidly and deals with the full spectrum of heavyweight employment work. Ref: 333590. €65,000-€85,000

CORPORATE LONDON

Fantastic opportunity to join an award-winning team. Work on a mix of high profile M&A and JVs under a renowned rainmaker. Good quality work and solid deal flow. Our client is interviewing now. Ref: 500140. €54,000+

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. €50,000+

FUNDS LONDON

Fantastic move to leading international firm recognised as one of the top investment funds teams in the City. Will consider corporate lawyers with excellent drafting skills. Top market package. Ref: 376460. €70,000+

CORPORATE LONDON

International firm recognised for its cutting-edge, global corporate work offers a supportive culture within which to develop a first rate career. Interested in lawyers from Scottish market. Ref: 440450. €60,000+

TAYLOR ROOT IN DUBLIN

David Thomson and Erica MacKinnon will be available to meet with you in Dublin on 24th and 25th May. 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)131 224 6446.
E: david.thomson@taylorroot.com
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Jamie Palmer, Solicitor, Sydney

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Our partners are visiting in late May. To find out more or to make an appointment please contact our consultants David Thomson and Erica MacKinnon at Taylor Root on +44 (0)131 226 0640 or email davidthomson@taylorroot.com or ericamackinnon@taylorroot.com

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Where will the future take you?

Dublin Practice

Commercial Partner

€150,000 + Equity

Our highly regarded client is currently seeking to hire a commercial partner to build and develop on their busy commercial department. They are ideally looking for articulate applicants who are commercially astute, adept at business development and convey strong interpersonal and communication skills. In return for these attributes, our client is willing to consider immediate equity for the successful candidate. Ref: 29012

Structured Finance Lawyer

€85,000 + Bonus

Our client, a leading Irish law firm, is seeking an experienced structured finance lawyer to join their highly reputable department. The nature of such transactions usually involves advising on each of the taxation, banking & financial services and capital markets elements of cross-border structures and results in working closely with arrangers, originators and law firms in jurisdictions throughout the world. Ref: 18952

Head of Private Client

€85,000

Managing a team, the successful candidate will lead from the front in offering a professional service to the firm's various private clients. This is an exciting marketing/practice development role, where you will exploit synergies across other practice areas of the firm. The ideal candidate must have excellent experience in dealing with all aspects of residential property. Excellent package on offer for the right individual. Ref: 28483

Employment Lawyer

€65,000 - €85,000

An outstanding 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 of the following employment contracts/staff handbooks, restrictive covenants, personnel policies & procedures, trade disputes, employment equality/discrimination. Ref: 28474

Dublin In-House

In-House Solicitor/Barrister

€65,000 - €75,000

This is an outstanding opportunity for a solicitor/barrister to join a reputable state owned independent company. The key responsibility of this exciting position includes giving advice and support to the company lawyer/company secretary. The successful candidate will also give legal advice and support to the procurement and regulatory function. This role has an excellent package on offer for the right professional. Ref: 30637

Investment Banking Legal Officer

€65,000 - €75,000

Our well respected client is one of Europe's leading banks. They currently have a requirement for an experienced qualified solicitor to support the structured credit desk in the execution of complex credit derivative and securitisation transactions. The successful individual will provide legal support to the structured credit desk of the bank and co-ordinate the execution of legal documentation for all transactions. Ref: 30451

In-House Lawyer

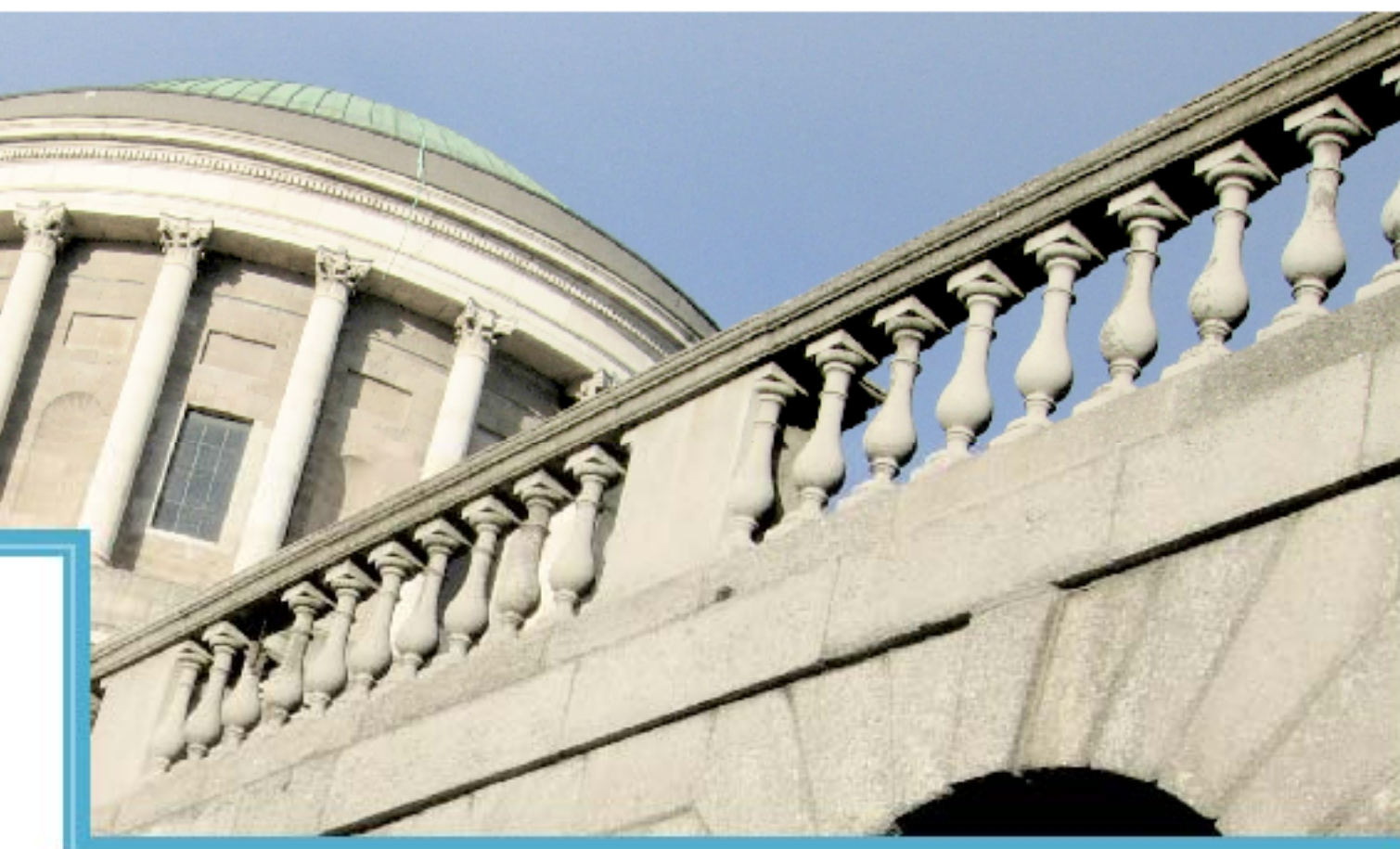
€55,000 - €65,000

Our reputable client currently has a requirement for a solicitor or barrister with a wealth of experience in the commercial department of a law firm or in-house. The successful applicant should ideally possess cross border and/or asset finance or banking experience. You will assist the CLO providing general assistance and support on day to day matters, special projects and strategic initiatives. Ref: 27557

Junior In-House Litigation Lawyer

€45,000 - €55,000

Our client, a large insurance organisation based in Dublin city centre, is seeking to hire an in-house litigation lawyer to join their legal team. You should have experience with litigation law and commercial law from either private practice or in-house. This is a superb opportunity for an ambitious lawyer to build a rewarding career in the insurance sector. Ref: 29721



Connaught/Munster

Commercial Solicitor

€35,000+

Our client, a commercially orientated firm in East Cork, is looking for an experienced lawyer who is at partnership level and seeks a challenging and similar level role with a new firm. This is an interesting opportunity for an experienced senior solicitor to join an expanding firm where they can assist in this period of growth. A motivated solicitor could build a highly successful and rewarding career in this dynamic and ambitious environment. Ref: 30916

Commercial Property Solicitor

€70,000+

Our client, a highly respected law firm based in Cork city, seeks a senior level solicitor for their property team. A team player with excellent client skills is a must as the firm has long and well established commercial clients. Experience in commercial conveyancing an advantage but solicitors with residential conveyancing experience who wish to move to commercial property may also be considered. Superb opportunity to forge a path to partnership. Ref: 14386

Employment Law Solicitor

€65,000 - €85,000

Our client is a long established firm in Cork city with a recognised standard of excellence and a large commercial client base. They currently wish to grow their employment law department. The ideal candidate will have experience in employment contracts/staff handbooks, restrictive covenants, personnel policies & procedures, trade disputes, employment equality/discrimination as well as experience handling contentious matters in court. Ref: 30383

Conveyancing Solicitor

€55,000 - €75,000

Medium to large Cork city practice seeks a conveyancing solicitor. This position represents a unique opportunity to join a highly respected team in the property sector. The role consists of advising on all aspects of commercial property law to include residential and commercial developments. The successful candidate can look forward to autonomy and responsibility at a senior level and should have a proven track record of servicing clients at a senior level. Ref: 30734

Commercial Law Solicitor

€50,000 - €60,000

Our client is a progressive firm of solicitors in Cork city. They pride themselves on delivering a prompt, efficient and high quality service where commercial law is central to the firm's strategy. This practice requires a junior commercial solicitor with good experience for their expanding commercial team. The successful candidate will have the opportunity to work on high profile complex cases and provide general commercial advice to large well known clients. Ref: 30205

Commercial Property Solicitor

€45,000 - €65,000

Commercial law is central to this firm's strategy so you will join a thriving, buoyant team which has enjoyed impressive growth. Due to continuing expansion, this firm is looking for commercial lawyers for their dynamic and progressive team. You will be expected to play a front line role in managing client relationships and on-going business development. Particular emphasis is placed on attracting high calibre candidates from Dublin and London firms. Ref: 30202

Corporate & Commercial

t 01 619 0400

Commercial Litigation Dublin

Experienced commercial litigator required for the expanding litigation practice in this Top 5 law firm. Ideally you will have a proven track record in all matters of commercial litigation including insolvency dispute resolution for a broad range of high end corporate clients. Exciting opportunity to join a leading firm with excellent career prospects and continued professional development. (ref 152542)

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 152541)

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 151745)

Corporate Belfast

Prestigious Irish law firm requires 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 152543)

Corporate Tax Dublin

Top tier law firm seeks an ambitious lawyer to join their respected tax practice. You will have a strong academic background along with an extensive knowledge of corporate tax and corporate transactions. This is an excellent opportunity to become a valued member in one of Ireland's leading dedicated Corporate Tax practices. (ref 152545)

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 152546)

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 152547)

IP & Technology Dublin

Opportunity to join a leading practice within one of Ireland's top tier law firms. International and domestic clients list covering broad range of IP and IT issues. This is an outstanding opportunity to work alongside renowned practitioners in a fantastic environment. (ref 152548)

Dublin Conveyancing & General Practice

Commercial Property Dublin City Centre

This renowned practice requires an experienced property solicitor to strengthen their expanding commercial property team. You should be fully conversant in all aspects of commercial property including landlord and tenant, commercial leases and industrial, office and retail developments. This is a great opportunity to join a high profile team within a leading practice. (ref 151145)

Commercial Conveyancing Dublin City Centre

An assistant solicitor is required by our client in Dublin & a busy general practice. The role will involve a number of commercial conveyancing files and is an excellent opportunity to join an established team at a well regarded firm. Salary and benefits will be commensurate with the local market. (ref 151746)

General Practice Dublin City Centre

General practice firm located in Dublin city centre requires a conveyancing solicitor for their practice. The ideal candidate will have experience in a busy general practice, particularly in residential conveyancing and be looking for a role where their expertise and enthusiasm will be rewarded. (ref 151747)

General Practice North Dublin

General Practice located to the west of Dublin requires a solicitor to join their team. This role will involve a mix of residential and commercial conveyancing, litigation and probate. This role may suit a newly qualified candidate, but all qualified candidates will be considered. (ref 151748)

General Practice South Dublin

General Practice in Dublin SW is currently looking for a solicitor to join their growing practice. Candidates will ideally have experience in residential conveyancing and probate. Litigation experience would also be beneficial to this role. Salary and benefits are commensurate with the local market. (ref 152149)

Litigation Dublin City Centre

City centre firm requires an experienced solicitor to join their team. This role will be

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Out of Office Hours Paul Fahy 087 9109745 Alan Whelan 087 9274022 Neehan Cavanagh 087 9100067

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based in a busy litigation department and candidates with medical negligence experience are particularly sought after. Excellent terms and prospects available. (ref 15621/5)

Property Dublin City Centre

Well regarded firm in Dublin 2 requires an experienced solicitor to join their team. Candidates will ideally be coming from a property background and this role will be of particular interest to candidates with strong commercial conveyancing experience. (ref 15664/5)

Property Dublin City Centre

Well known midtier firm in Dublin 7 requires an experienced solicitor for a busy caseload of residential and commercial conveyancing. This is an excellent opportunity to join a firm with genuine long term prospects. (ref 15664/5)

Property (in-house) South Dublin

A fantastic opportunity has arisen for an experienced property solicitor to join a high profile property development company based in South Dublin. The successful candidate will have full responsibility for the completion of all commercial and retail deals and will involve liaising with all levels and reporting directly to the board. An excellent package and bonus structure is available to the successful candidate. (ref 15671/5)

Residential Conveyancing West Dublin

General Practice in West Dublin requires an experienced solicitor to join their team for a busy caseload of residential property files. General litigation and probate experience would also be beneficial to this role. Excellent career progression for the right candidate. (ref 15724/5)

Legal Executive Dublin City Centre

Niche practice in Dublin 2 requires an experienced legal executive for a busy caseload involving debt collection. Candidates should be able to demonstrate knowledge in all aspects of debt collection and recovery and be looking for a busy role in a thriving practice. (ref 15741/5)

Regional

t 01 619 0400

Commercial Cork

City centre firm is seeking to strengthen its commercial department. Candidates with varied commercial backgrounds will be entertained; previous experience with financial institutions an advantage. This is an excellent opportunity to join a practice renowned for good career prospects. (ref 15725/5)

Conveyancing Cork

City centre firm requires an experienced solicitor to join its expanding practice. The ideal candidate will have vast experience in all matters of residential and commercial property and feel comfortable in handling a large caseload. Salary and benefits are commensurate with experience. (ref 15737/5)

Conveyancing Donegal

Renowned practice requires a solicitor to join its conveyancing department. Candidate must be well versed in all aspects of residential and commercial conveyancing. Cross border work to be expected at times. Great opportunity to join a firm with good career prospects. (ref 15740/5)

General Practice Donegal

Established firm requires an experienced solicitor to join its general practice. Ideal candidates will have previous experience in handling residential conveyancing and probate files in a high volume capacity. Great opportunity to join a progressive firm where hard work will be rewarded. (ref 15740/5)

General Practice Galway

City centre practice requires a solicitor to join its team. Ideal candidate will have experience handling conveyancing, probate and litigation files with the ability to handle large caseloads and work independently. Realistic career goals and attractive remuneration for the right candidate. (ref 15742/5)

General Practice Longford

Small firm requires a solicitor to join their team. Ideal candidate will have a proven track record in all matters of conveyancing and probate with the ability to work independently and handle a large caseload. This is a role where your hard work will be rewarded. (ref 15741/5)

Conveyancing Louth

Leading law firm requires two solicitors to join its conveyancing department. Ideal candidates will have experience in handling all matters relating to residential and commercial property. This is a great opportunity to join a renowned practice with excellent career prospects. (ref 15747/5)

Conveyancing Mayo

Renowned firm requires an experienced solicitor to join its conveyancing practice. Ideal candidate will have vast experience in handling property files from start to finish and be comfortable with handling a large caseload. Salary and benefits are commensurate with experience. (ref 15747/5)

General Practice Mayo

Leading firm requires a general practice solicitor to join its expanding firm. Ideal candidate will have a proven track record in matters of conveyancing, probate and litigation. Excellent opportunity to join a practice where hard work will be rewarded. (ref 15747/5)

General Practice Westmeath

Large firm requires an experienced solicitor to join its general practice. The ideal candidate will have an extensive background in commercial and residential conveyancing as well as probate. Salary and benefits are commensurate with experience. (ref 15747/5)

International Legal Recruitment

Local knowledge





HERE TO GUIDE YOU

Junior Corporate / Banking, Dublin €Excellent

Our client, a leading firm with a strong domestic & international focus, is looking to recruit commercial and banking lawyers. You will have strong academics and have apprenticed in a mid-sized or leading firm. Most importantly, you will have a desire to develop your career within a leading corporate.

Ref: 14040

Corporate Lawyer, Dublin €Excellent

Our client is a boutique firm with an excellent reputation among its clients and is looking to recruit a commercial lawyer at associate level for a team based role. You will have experience in one or more of the following: mergers and acquisitions, venture capital, joint ventures, privatizations and flotations.

Ref: 12667

Construction Lawyer, €90k

Small expanding practice based in city centre is seeking to appoint a construction lawyer at associate level. You will preferably have experience in non contentious construction work. Candidates with contentious experience will also be considered.

Ref: 14420

Please contact Sharon Swan +353 (0) 1 477 3066
sharonswan@laurencesimons.com

Legal Counsel, Dublin (with international travel) €90k

Our client is a leading global financial services institution and requires an in-house lawyer to join a growing team. You will have experience in managing a wide range of structured finance or other sophisticated transactions. An understanding of debt capital markets, primarily securitisation transactions, would be an advantage.

Ref: 13433

Global Counsel, Dublin €80k

Our client, a global IT provider, requires a global counsel. You will have a corporate background with a tax focus. You will advise on all corporate transactions across the organisation in order to minimise its tax exposure and also assist in tax matters in Asia and in the group's private equity structure. Excellent terms for the right candidate.

Ref: 16344

Commercial Property Lawyer, Umeck €80k

Expanding firm requires a senior associate lawyer to join its growing team. Experience of acting for landlords, tenants and developers with a view to expanding this activity is essential. You will have excellent drafting skills and a commercial outlook. You will be self-motivated.

Ref: 15005

Please contact Portia White +353 (0) 1 477 3066
portia@laurencesimons.com

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Send us your CV to: cv@laurencesimons.com



LAURENCE SIMONS
INTERNATIONAL LEGAL RECRUITMENT

LONDON HONG KONG PARIS DUBLIN SYDNEY AMSTERDAM DUBAI BRUSSELS FRANKFURT

PLAN YOUR NEXT MOVE



Our client is a mid-sized legal practice with a reputation for providing excellent legal advice to both private individuals and the international business community.

The following opportunities exist for very bright, switched-on lawyers to join the firm.

Wealth Management Lawyer

Our client is seeking an associate to join the firm with experience in probate/wealth management, and advising high net worth individuals. In this newly formed role you will have the opportunity to demonstrate your commercial acumen and build this practice area.

Commercial Property Lawyer

As an associate with experience in commercial property you will join a team advising on a broad array of commercial property transactions often with an international component. You will have gained excellent experience from a renowned practice.

Corporate/Commercial Lawyer

Joining a team of highly skilled lawyers you will be a junior corporate lawyer. Advising local and international companies on various corporate commercial matters, you must demonstrate a practical and business focused approach.

These are key roles within the firm offering autonomy within a well supported environment.

The firm is dedicated to training and development and embraces change and flexibility.

For a confidential discussion please contact Sharon Swan at Laurence Simons International.

Phone 01 477 3066 or e-mail sharonswan@laurencesimons.com

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