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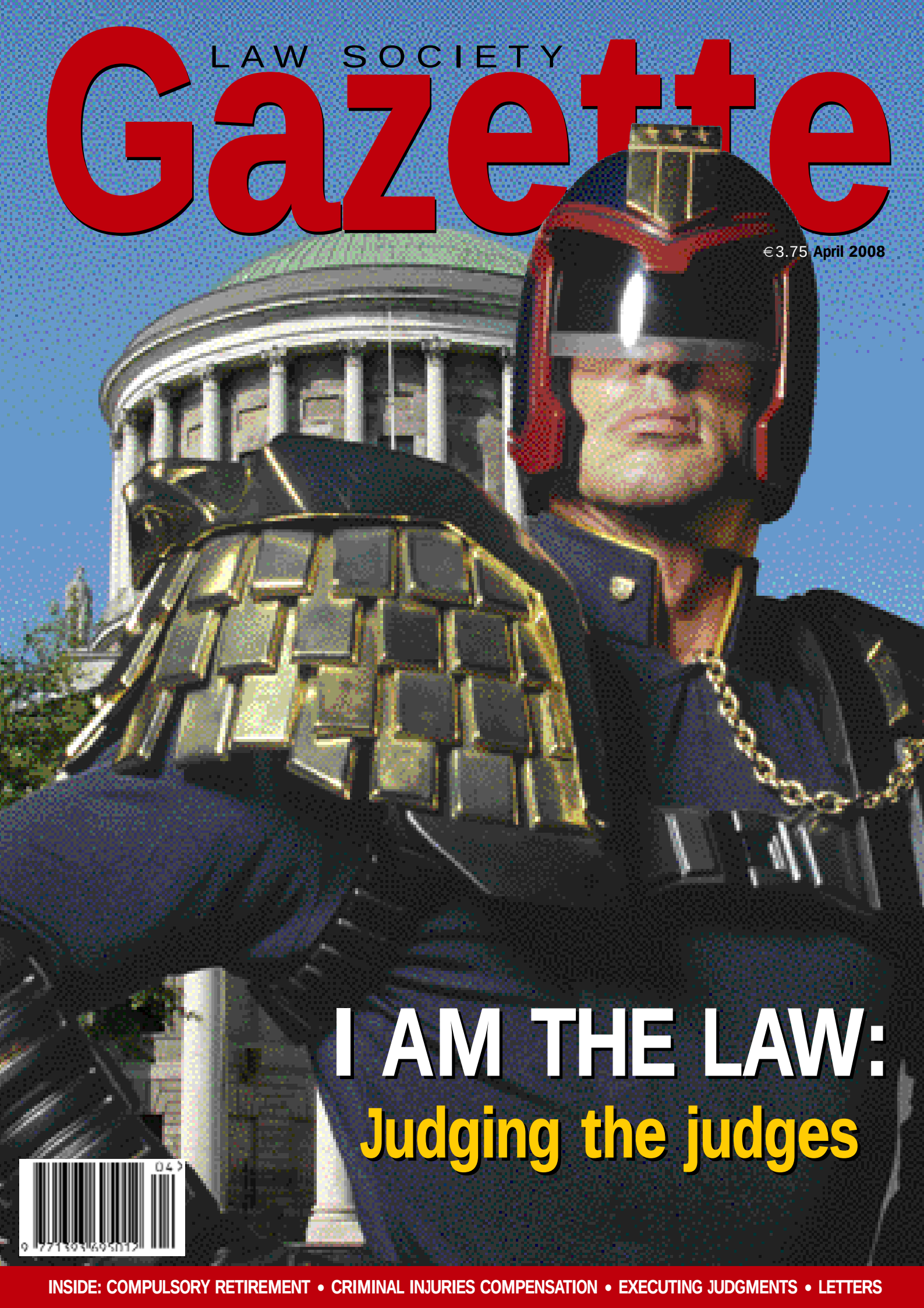
Gazette
€3.75 April 2008



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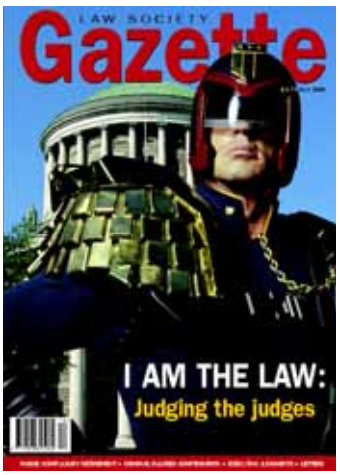

On the cover

In Mega-City One, Judge Dredd is the sole arbiter of the law: judge, jury and executioner rolled into one. But were he to ride his Lawmaster through the Irish courts, what would he make of judicial conduct here?

PIC: GETTY IMAGES

Volume 102, number 3
Subscriptions: €57

LAW SOCIETY Gazette

April 2008

REGULARS

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Commercial advertising: Seán Ó hOisín, 10 Arran Road, Dublin 9; tel: 01 837 5018, fax: 01 884 4626, mobile: 086 811 7116, email: sean@lawsociety.ie.
Printing: Turner's Printing Company Ltd, Longford.

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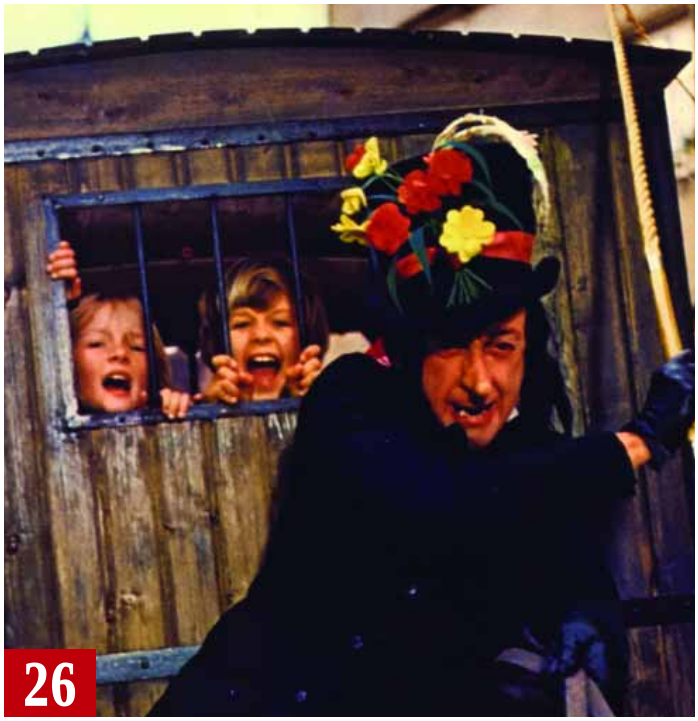
FEATURES



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Beart dá réir ár mBriathar

On 5 March last, I had the honour of participating in a Law Society delegation to meet with the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights. We were invited to address the topic of solicitors' undertakings and the certificate of title system. Also invited to participate were the Irish Bankers' Federation (IBF).

Clearly, from the point of view of the Society and all of our members, both the topic and the timing were extremely sensitive. It was vital that, amid the furore of recent high-profile cases, we delivered a fuller and more representative perspective on the huge benefits of the certificate of title system in achieving time and financial savings for our clients.

Both we and the IBF took the opportunity to reinforce the point that the system works satisfactorily in over 99.99% of cases. The IBF produced figures to show that, in the period from 2005-2007, 563,000 mortgages were written, to a value of €108 billion. On those figures, the recent 'problems' amount to less than 0.01% of the value of all mortgages transacted in the market.

Nevertheless, both the Society and the IBF are involved in a review to improve the system and to learn all lessons from practical experience since the current system was introduced in 1999. Collectively, we indicated a commitment to ongoing discussions to ensure that the current review is a positive one.

For our part, we indicated that we shortly hoped to present our *e-Vision for e-Conveyancing* to the Law Reform Commission.

Many of the points we made were well received, but there clearly remain areas of significant concern to Oireachtas members, which we have agreed to examine and review. The most consistent concern expressed by the legislators, many of whom – coincidentally – are solicitors, was the absence of any policy on the part of the Society to prohibit a solicitor acting to draw down funds on their own behalf using the certificate of title system.

We informed the Oireachtas members that this issue was already under a serious review in the Society. We gave a commitment to the Oireachtas to continue to review this issue. To prepare for discussions at Council, we will be taking feedback throughout the profession. Colleagues should please feel free to let me know your own point of view on this subject at president@lawsociety.ie.

While we explained to the committee that we did not approve of changing accepted practice 'on-the-hoof', there can be no doubt that there is a clear imperative on us to critically review our present guidance. For those of you who wish to do so, the full text of the discussion can be accessed at www.irlgov.ie/oireachtas.

On your behalf, I would like to thank all those who had an input to our presentation, particularly those tasked with bringing your president up to speed on the topic. Thanks are due to our director general, Ken Murphy, Catherine O'Flaherty (secretary to the Conveyancing Committee), senior vice-president John D Shaw, Conveyancing Committee chairman Barry MacCarthy, vice-chairman of the Conveyancing Committee Majella Egan, William Devine and Linda Kirwan.

I hope that, at the time of the next president's message, those responsible for the Calcutta Run will have reached their ambitious target of raising €300,000 this year for GOAL and the Peter McVerry Trust, and of therefore breaking the €2 million ceiling in their activities over the last ten years. Please do all you can to support them through participation or sponsorship and make every effort to join us on 17 May for the tenth birthday party! G

James MacGuill
President

"Amid the furore of recent high-profile cases, we delivered a fuller and more representative perspective on the huge benefits of the certificate of title system in achieving time and financial savings for our clients"

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MAYO

A dinner has recently taken place, hosted by the Mayo Bar Association, in honour of Ballina stalwart Liam MacHale, to mark his 50 years on the Roll of Solicitors.

The constitution of the association has been finalised by Samantha Geraghty and will be bound and sent out to every member with the subscription renewal notice. Pat O'Connor has noted that, according to the constitution, past presidents of the association are entitled to attend all committee meetings. It was agreed to circulate the notice and the agenda of every committee meeting to past presidents in future.

KERRY

Little did Robert Pierse think, back in 1962, when operating from his mother's converted hen house, that the practice he was setting up would emerge to be one of the main employers and economic contributors to the town of Listowel.

The firm of Pierse & Fitzgibbon has just completed a major extension to its premises on Market Street and now employs up to 60 people. The new extension was officially opened on 29 February.

Staff at Pierse & Fitzgibbon, Solicitors, at the official opening of the new extension to the firm's premises

Speaking on behalf of the partners and the firm, Robert Pierse said: "We consider our contribution to the local economy and employment as one of our biggest achievements. We also see ourselves as ambassadors for Listowel and actively promote the benefits of our North Kerry home and heritage."

DUBLIN

A good gathering of practitioners in the Rathfarnham, Rathgar, Terenure, Harolds Cross and Walkinstown areas met for a social night in Harolds Cross, which was very ably organised by Keith Walsh, Geraldine Kelly and Stuart Gilhooly. DSBA President Michael Quinlan and other council members were in attendance.

Michael Quinlan has just returned from China in advance of the DSBA conference there in September. He was in awe at the buzz and excitement of Beijing and Shanghai, where the conference will be held. With the brochures having only been recently circulated, he is well satisfied with the take up – even at this relatively early stage – and believes the venue will be a once-in-a-lifetime experience for those wishing to travel.

CAVAN

Bar association president Martin Cosgrove reports that things are quiet enough in the drumlin county and, like our colleagues in Kerry, is looking forward to their international conference on the weekend of 4 April in Berlin. G

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

Major changes in regulation near

The draft legislation to create a non-solicitor majority on the Law Society's Complaints and Client Relations Committee is now at an advanced stage. It was passed by the Dáil in March and could well be passed by the Seanad in April.

The *Civil Law (Miscellaneous Provisions) Bill 2006*, as approved by the Dáil, provides that, where certain complaints-handling powers of the Society are delegated to a committee, then "a majority of the committee, any quorum of the committee, any division of the committee or quorum of such division, shall be persons who are not solicitors". However, it also provides that such a committee or any division of it "shall be chaired by a person who is a solicitor".

The Dáil has already approved the draft bill

The current lay members of the Complaints and Client Relations Committee have expressed strong support for the latter provision.

It is expected that within days of this *Gazette* going to press, a new and separate bill providing for the establishment of a Legal Services Ombudsman will be published. "The ombudsman will replace the Law Society's Independent Adjudicator and will provide both for a review of complaints and of complaints procedures, as well as overseeing admission to the profession, particularly with regard to the adequacy of numbers admitted," Justice Minister Brian Lenihan told a parchment ceremony in Blackhall Place on 20 December last.

On the same occasion, Law Society President James MacGuill welcomed the ombudsman proposal "to further increase – in the public interest – the independence, transparency and accountability of the system".

Society supports in-house lawyer privilege

The Law Society has written to the Attorney General, Paul Gallagher SC, to support the intervention by Ireland in the appeal to the European Court of Justice (ECJ) in the controversial *Akzo Nobel* case.

In the Society's long-held view, the advices of in-house lawyers should enjoy lawyer/client privilege in the same way as those of lawyers in private practice. This is the legal position in Ireland – as it is, generally speaking, throughout the common law world. However, in many civil law jurisdictions, only advice to the clients of lawyers in private practice attract legal professional privilege.

In a case in the 1970s, the ECJ followed the civil law tradition and held, in relation to EU law matters, that the client communications and advices of in-house lawyers were not privileged and could,

PIC: AKZO NOBEL

Akzo Nobel's headquarters in Amsterdam

for example, be seized and used by European Commission officials 'dawn raiding' a corporate headquarters as part of an investigation of possible breaches of EU competition law.

This ECJ jurisprudence has been highly controversial and was recently challenged in principle in the European Court of First Instance in the *Akzo Nobel* case. However, late last year, the Court of First Instance confirmed the earlier position that there is no privilege in EU law investigations for in-house lawyers.

The Law Society of Ireland had supported the CCBE position in that case in arguing that communications with in-house legal advisers should be protected if the legal advisers were fully subject to professional ethics and discipline under the supervision of the bar or law society of the member state in question. The Court of First Instance decision is now being appealed to the European Court of Justice.

A great many interventions are being made on both sides, including one by Ireland in support of the appeal. The Law Society has told the Attorney General that it would be happy to provide any support or assistance it can in relation to this appeal.

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Oireachtas committee reassured on certificate of title system

A Law Society delegation consisting of President James MacGuill, director general Ken Murphy and the vice-chair of the Conveyancing Committee, Majella Egan, answered questions for over an hour at a meeting of the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights on 5 March 2008. Representatives of the Irish Bankers' Federation then answered questions for a further half an hour.

Both delegations had been invited to appear before the committee to discuss the certificate of title system, which has been in place in residential property conveyancing since 1999 on the basis of an agreement between the Law Society and the IBF, representing the banks, building societies and other lending institutions. A particular focus of the discussion was the role that solicitors' undertakings play at the heart of this system.

At the outset, committee chairman Peter Power made it clear that there were strict limits on what could be discussed by the committee. Although the Oireachtas committee invitation might well have been prompted by recent very high-profile investigations and court cases initiated by the Law Society, these investigations were ongoing, and the cases were being adjourned on a weekly basis before the President of the High Court. Accordingly, they were *sub judice* and should not be referred to directly or indirectly.

James MacGuill began with a detailed presentation on the history and benefits of the certificate of title system, emphasising the key role that solicitors play in this area. Solicitors are central to ensuring that the interests of purchasers, vendors and financial institutions are well protected in the course of the sale or purchase of a property.

The director general, the president and the vice-chair of the Conveyancing Committee before the Oireachtas Committee

One of the key features of the streamlined system is that the purchaser's solicitor certifies to a financial institution that the title to his or her client's property is good and marketable – and undertakes to register the lending institution's interest in the property.

The development of the certificate of title system has been a major advance for consumers in reducing the cost and delay that was formerly associated with borrowing for a house purchase. The system was agreed with lenders only in relation to residential mortgage lending. This was to facilitate borrowers and lenders in doing away with the cost to the borrower of the 'third solicitor' – that is, the vendor's solicitor. At the time of its introduction, it was welcomed by all stake-holders in the conveyancing process and by government as a positive move in the interests of reducing the cost for the average person of buying his or her home.

The president concluded by pointing to the future and, in particular, to the work that the Society has been undertaking with the Law Reform Commission and the Property Registration Authority to prepare to place the complete conveyancing system on an electronic platform. The Society's eConveyancing Task Force has been working for the past three years on developing its e-conveyancing strategy to help shape a new conveyancing process and initiate new standards and new systems.

The Law Society representatives then responded to a lengthy series of questions from committee members, beginning with Fine Gael justice spokesman Charles Flanagan and Labour Party justice spokesman Pat Rabbitte, but ultimately extending to all members of the committee.

Majella Egan replied to detailed queries in relation to the practice whereby financial institutions lend money in respect of commercial property. She explained that there are many different arrangements, which do not relate to private residences, that take place between individuals acting in transactions.

Ken Murphy pointed out that there was a Law Society practice note published in the January/February 2004 *Gazette* that made clear that "there is no certificate of title system for commercial lending agreed between the lenders and the Conveyancing Committee of the Law Society". He also explained how seriously the Society took any breaches of undertakings by solicitors, and he quoted the chief executive of AIB, Eugene Sheehy, who had said publicly that the undertakings on certificate of title system worked without any problems in 99.99% of cases. He also emphasised the hugely beneficial role in protecting consumers that is played by the Society's compensation fund and by compulsory professional indemnity insurance.

Deputy Rabbitte enquired: "Was it ever envisaged that the undertaking system would be used on behalf of one's own business as distinct from on a client's behalf? What is the attitude of the Law Society in this regard?"

A number of other committee members pressed the Society on this question, and one even asked what the Society's view would be if the Oireachtas were to make breach of a solicitor's under-taking into a criminal offence.

The president acknowledged that "risks are inherent" in this practice. Although most, if not all, financial institutions had recently ceased to accept solicitor's undertakings offered in relation to the solicitor's own investment borrowings, the Society is currently undertaking a review to analyse what is best practice and whether or not the Society should introduce a regulation to prohibit solicitors giving undertakings in relation to their own personal transactions, where no clients were involved.

'Confidential recipient' appointed under whistleblower regulations

Minister for Justice Brian Lenihan has announced the appointment of Brian McCarthy as a 'confidential recipient' under the *Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007*. Mr McCarthy retired last year from the post of secretary general to the president.

The confidential recipient, based on a proposal in the reports of the Morris Tribunal into events in Donegal, will be available to receive – in confidence – reports of corruption or malpractice within An Garda Síochána from garda members or civilian employees.


Garda Commissioner Fachtna Murphy

This appointment is in addition to other internal appointments of confidential recipients that may be made by the Garda Commissioner from among the members and civilian employees of the gardaí.

The Garda Commissioner is currently finalising the text of a charter under the 2007 regulations. When this has been finalised and approved by the minister, Mr McCarthy and the internal confidential recipients appointed by the Garda Commissioner will formally begin their duties. The charter is expected to come into operation at the end of March 2008.

British statute book gets spring clean

In Britain, law commissions are wading through hundreds of acts as part of a spring clean of the statute book.

The commissions are lucky that it's only a few hundred, as many ludicrous laws have already been repealed. One curious rule included the maximum penalty for attempting to commit suicide – death! It was repealed in 1961. That might be regarded as 'slightly strange', but not as bizarre as the laws passed during the time of young Edward VI, such as the law that decreed: "Any person found breaking a boiled egg at the sharp end would be sentenced to 24 hours in the village stocks."


Breaking an egg the 'wrong' way would have got you 24 hours in the village stocks back in the 1500s

That was repealed in 1561, but one of Edward VI's laws is still around today. He decreed that everybody has to walk to church on Christmas Day.

ISEL Competition Law Forum

The Irish Society for European Law (ISEL) has announced the launch of the Competition Law Forum. The forum aims to foster a growing interest in Irish and EU competition law and policy and will be held monthly (except for July and August).

Each session will begin at 6.30pm and last for up to 90 minutes, and will feature a chaired round-table discussion about a preselected topic, including issues such as court judgments, commission decisions, guidelines and other practice statements of the Competition Authority and the commission, legislative and policy initiatives in Ireland and at the EC level, and interesting developments in other EU member states and other jurisdictions. Those interested in attending will be required to register in advance.

To register for any session, email: iselcompetition@gmail.com. Attendees who register for a session will be sent relevant background information on the topic for discussion in advance by email.

Further information on the forum and details of forthcoming events can be found on the ISEL website (www.isel.ie). Questions about the forum or requests to be added to the mailing list should be addressed by email to: iselcompetition@gmail.com. The forum is free of charge and open to all.

Irish chair-woman for Britain's AWS

Fiona Fitzgerald has been named the new chairwoman of the Association of Women Solicitors in Britain. AWS is celebrating its 85th anniversary this year and is a recognised group of the Law Society of England and Wales. Membership is available to any woman solicitor or trainee in Britain, whether in, or seeking, a training contract.

Fiona is a partner at Colemans-CTTS – a national practice with over 270 staff. She originally comes from Birr, Co Offaly, where her family still lives. During her year in office, she aims to focus on equality of pay. Fiona says: "Women are entering the legal profession at an unprecedented level. What is hard to understand is why women are, on average, paid less than males, from trainees to partners. One of the questions I am constantly asked is 'why is there a need for an association such as ours?' Part of that answer is the fact that women continue to be paid less than men."

Society raises 'grave concerns' over *IRP Bill 2008*

The Law Society has a number of very serious concerns in relation to the manner in which the state has chosen to implement aspects of the *Immigration, Residence and Protection Bill 2008*, which was published on 29 January 2008. In general, however, the Society welcomes this unique opportunity to consolidate and clarify the law in relation to immigration and protection and to ensure compliance with international and regional standards.

The Law Society: concerned over new immigration law

Different challenges

Immigration and protection law present the state with very different challenges. Immigration law will always be related to the power of the state to control the entry, residence and removal of foreign nationals. Protection, on the other hand, raises very serious human rights considerations, most particularly the right to *non-refoulement*. The Law Society is seriously concerned by the uneasy tension in the bill between these two competing interests and does not believe that the correct balance has been attained. The Society would prefer to see these two areas of law dealt with separately in different bills.

Executive discretion

The bill was intended to provide a comprehensive scheme for immigration and protection law to replace the large amount of existing legislation in this area. The Law Society is very worried by the fact that the bill does not attempt to deal comprehensively with any of the major issues, but prefers instead to provide a bare framework upon which the minister will build – by policy statement or statutory instrument – more comprehensive provisions.

The Society is gravely concerned that legal certainty, clarity and accessibility will be undermined by this development. Any regulations introduced will not have been subjected to the scrutiny of the Oireachtas. It will also make it extremely difficult to verify that the provisions of the bill comply with international, regional and domestic human rights standards.

The issue of transparency is of great importance to both legal professionals and foreign nationals, is a pillar of good government, and a cornerstone of human rights. The Law Society feels strongly that any procedures developed should be open and transparent, and a conscious effort should be made to establish an organisational structure that increases the opportunities for transparency.

The Law Society calls on the government to publish decisions and annual reports and to develop independent monitoring and inspection mechanisms. The Society would strongly advise that the structure, composition and organisation of the Protection Review Tribunal should be reviewed.

Access to justice

Of grave concern is the manner in which the bill appears to be designed to reduce access to justice for foreign nationals. Provisions allowing for summary deportation, a reduction in the time in which to bring a judicial review application, non-suspensory judicial review, and the penalty for legal representatives who take a case that is, in the opinion of the judge, "frivolous or vexatious" should be deleted.

All of these provisions are in breach of recognised constitutional and international human rights standards and are incompatible with the ethos and philosophy that should permeate any immigration and protection law enactments.

English solicitors 'itchy and scratchy'

The ultimate distinction between solicitors and barristers has been breached in recent months in England and Wales, and the world may never be the same again.

Certain solicitor-advocates in the criminal courts have begun wearing, not merely robes but, for the first time in history, wigs. As solicitor-advocate Ged Hale in Doncaster said: "At least there will be no more notes to the judge from jurors asking why one of the advocates is unwigged."

Solicitor-advocates in England and Wales are a

relatively small number of solicitors who have undertaken special training before being permitted to exercise limited rights of audience in the superior courts. The concept is unknown in this jurisdiction in that, by operation of the *Courts Act 1971*, all solicitors have rights of audience without limitation in all courts.

Would any solicitor appearing in court in this jurisdiction want to wear a wig? It would seem highly unlikely.

Asked for comment by the *Gazette* of the Law Society of England and Wales after wearing a wig for the first time at Sheffield Crown Court recently, solicitor-advocate Shawn Williams confided that it made him feel "itchy and scratchy".

HEALTH ADVICE AND SUPPORT FOR LAWYERS

ALCOHOL – THE RECOVERY STATISTICS

LawCare provides a range of health services to lawyers, their staff and families in Ireland

According to British statistics, around one in five people regularly drink above the recommended safe levels of alcohol, and around 5% are dependent on alcohol – meaning that they can't stop drinking without suffering unpleasant and dangerous withdrawal symptoms. Somewhere between these two figures are those for whom alcohol is a problem. They drink despite the difficulties it causes them, they are preoccupied with drinking, they find it hard to stop at just one or two drinks, and they cannot imagine enjoying themselves without a drink.

Alcoholism is difficult to define, and even more difficult to quantify. At what stage does someone cross the line between heavy drinking and alcoholism? And once that line is crossed, what hope do they have of recovery?

Let's look at what happens to 100 imaginary, but typical, alcoholics over a ten-year period. These are people who drink daily, often at inappropriate times, and who have faced criticism at work and at home because of their drinking. Although these alcoholics will come from all walks of life, a higher percentage will be men, or will be aged 18-30, or will have only basic education and work in unskilled jobs. Don't get complacent, however – at least one is likely to be a lawyer.

The good news is that ten years down the line, 18 of these alcoholics will be likely to have recognised their problem and entered inpatient treatment at some point. Of those 18 alcoholics, eight will have left against medical advice, before the course of treatment is completed, and gone back to their old drinking patterns. However, statistics tell us that 61 of the original 100 will either have failed to recognise their problem or will not have addressed it.

Denial is typical in alcohol addiction, the addict insisting to himself and others that there is nothing wrong with his pattern of drinking, even though it may be costing him his health, his family and his career. He will come up with ever more ingenious excuses and ways to attribute his problems to anything but the bottle, holding up alcohol as his solution and saviour.

Fifty-seven of our problem drinkers will still be vehemently defending their right to drink ten years after our start date, despite the fact that many of them will have lost their jobs, families and friends through drinking. Four will have died as a direct result of their addiction, through liver disease, alcohol-related cancers, road accidents, falls and house fires. In addition, most alcoholics can expect their lives to be significantly shorter, as the health problems alcohol causes assert themselves in later years.

If you have the nagging feeling that you might be drinking more than is safe for you, don't bury your head in the sand. Look at the LawCare website on www.lawcare.ie. Here, you will find informative articles and interactive tests you can do in total privacy. If you then feel that there is a problem that needs to be addressed and you want help to deal with it, ring LawCare (see panel, left, for contact details).

You can speak in total confidence to someone who will do their best to help you move forward with your resolve to stop drinking. G

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letters

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'Unnerving experiences of the Irish legal sector'

From: Kathleen Redmond, virtual-assistants@hotmail.com

I am a postgraduate law student who moved to Ireland from London in 2005. I am one of a growing number of legal graduates struggling to make my mark on the industry and find a practical and affordable way to complete my training and qualify as either a barrister or a solicitor. Having left the cut-throat English legal world, my move to Ireland brought with it some interesting and unnerving experiences of the Irish legal sector.

It is common practice in England for law graduates to do a stint on the shop floor, either as a personal assistant, secretary or clerk in a law firm or chambers. Such practice ensures that the graduate can find their niche and later qualify in the area that best suits their abilities. It is also the most practical way to secure a training contract, which, in the ever-increasing marketplace of graduates, is exceptionally difficult to achieve.

Upon my move to Ireland, I secured a position as a legal secretary in a 'middle-of-the-road' firm in Co Roscommon. Having come from a similar position in England, I wasn't aware that it was rather uncommon for legal students to take part in such employment, mid training. I remained in the position for some two years, on the basis that I would be given the next available training contract. Unfortunately for me, two such contracts came and went in that period, while I continued to type dictation and

It's not what you know ... ?

file scraps of paper. During my time in this firm, I discovered that the general rule in Ireland seems to be to gather your qualifications as quickly as possible and then hit the marketplace in search of a traineeship. Having three years' in-house experience in many law firms, both large and small (including the legal team of the *Daily Telegraph* newspaper in London), two degrees and a wealth of knowledge and enthusiasm under my belt, I found myself losing out to trainees with no law degrees, who barely scraped through the FE1 exams and had no prior work experience.

Later, having moved to another firm in Sligo, I found myself facing another postgraduate (first class) student working as a receptionist for a small and struggling law firm. Like myself, this individual did not come from a 'legal family' and, as a result of same, had no connections in the profession. Unfortunately for us, we are far too good at the ground-level work and basically dig ourselves into a pit whereby, if our employer decides to provide the apprenticeship we so desperately seek, they, in turn, lose support staff who are practically irreplaceable.

I personally staggered through such a scenario for over four years and, last September, made the decision that it was time to go it alone. Working at a lower-level position, I discovered that my abilities and interests were far more in line with that of the bar, and I knew that no employer was going to support me in this training route. One night I sat down with a law directory and emailed every barrister a letter offering my services as a 'virtual clerk'. From my humble abode in the wilds of Co Sligo, I would carry out their research, type their digital dictation and peruse and summarise their briefs, while they could rest assured that they had a highly qualified and hard-working assistant, without any of the woes of being an employer, such as PAYE, office space, health and safety or holiday/sick pay.

The following day, I received a phone call from a jolly and excited barrister, who informed me that I was exactly what he needed. That evening, I began working for him and continue to do so today. Although my catalogue of clients is not yet bursting at the seams, it is growing, and the clients I do have are extremely pleased with my service. I am constantly learning the industry in preparation for studying for the barrister-at-law degree and, further, I have the capability to now continue my education while keeping the bank manager at bay.

Personal experience has taught me that the real and most competent legal minds are born out of the initial experiences gained prequalification. If everyone spent a gap year in-house prior to completing the PPC or BVC courses, you would only have those who truly wanted a career in law coming out the other side – those who simply wished to have an impressive job title or who thought of law as an easy route to becoming a wealthy professional would soon slip by the wayside.

To err is human

From: Gavan Carty, Kent Carty Solicitors, Dublin

Thank you for including my article as part of the March issue of the *Gazette* ('Landmark mediation decision will impact on costs', p21).

I note, however, on reviewing the matter online, that there were two minor typographical errors that I overlooked in the haste to meet the deadline.

In first instance, I should have referred to section 16 instead of section 15, and in the final paragraph should have referred to section 16(3) instead of section 16(2).

I do not think that these minor errors go to the substance of the article, but wish to point out these errors for your readers. G

Impact of *McCartney* divorce

The *McCartney* ruling means that, after a short marriage where assets are acquired prior to marriage, spouses will only be able to seek enough to meet their reasonable needs, writes Geoffrey Shannon

The long-awaited ruling of the English High Court in *McCartney v McCartney* ([2008] EWHC 401 Fam) considered ancillary relief proceedings involving a short marriage with one child where "the vast bulk of the husband's fortune was made not only before their marriage" but also indeed before the wife and husband ever met.

The High Court awarded Heather Mills stg£24.3 million following her four-year marriage to Paul McCartney. Mr Justice Bennett paid particular regard to three issues in making the award. The first matter concerned the claim by Heather Mills that she was wealthy before the marriage. The judge rejected this, in that she had failed to provide documentary evidence backing up her assertion that she was independent and wealthy by the time that she met McCartney.

Heather Mills and friend: Mr Justice Bennett said that conduct had not been considered as part of the award

Ticket to ride

The next matter to be decided concerned when the parties began cohabiting. Mr Justice Bennett found McCartney's evidence more reliable on this issue and held that the parties started to cohabit in June 2002, and not in March 2000, as claimed by Mills.

The third key factual issue to be determined by Mr Justice Bennett concerned the claim by Mills regarding her own contribution to McCartney's career and as to whether this gave rise to a consideration of compensation. The judge rejected this. Relying on the *dicta* of Lord Nicholls of Birkenhead at paragraphs 66 and 67 of *Miller v Miller* ([2006] UKHL 24, [2006] 2 AC 618), he described Mills' claim that her contribution to McCartney's career was exceptional as "devoid of reality".

What impact will the *McCartney* ruling have in any divorce settlement negotiations? Initially, the British courts were reluctant to award large payments where the marriage was of short duration, especially if there were no children of the marriage. In the 2006 *Miller* case, referred to on a number of occasions in the *McCartney* judgment, the Law Lords held that Melissa Miller could keep the stg£5 million she was awarded by the Court of Appeal after a childless marriage lasting less than three years to Alan Miller, a multi-millionaire funds manager. Lawyers for Miller had argued that the House of Lords should cut the award to stg£1.3 million, as the marriage was childless and lasted only two years and nine months, with the added factor of Melissa Miller bringing no wealth to the marriage. Describing the stg£5 million award upheld by the Court of Appeal as "a jaw-dropping amount", Mr Miller's lawyers argued that it would give Melissa Miller "a meal ticket for life" after a very short marriage.

Hard day's night

Significantly, in *Miller*, the House of Lords refused to draw a distinction between a short and long-term marriage: "A short marriage is no less a partnership of equals than a long marriage … To confine the *White* approach to the 'fruits of a long marital partnership' would be to reintroduce precisely the sort of discrimination the *White* case … was intended to negate."

In that case, it was held that, due to the investments that the husband made in a new company during the marriage, he was actually worth an additional stg£12-18 million. No such wealth was generated during the Mills/McCartney marriage.

The *Miller* case can therefore be distinguished from the *McCartney* case in that, in *Miller*, there was a significant increase in the asset base during the marriage, thereby allowing the sharing principle to be engaged. In the *McCartney* case, Mr Justice Bennett held that the wife's needs were the "magnetic factor" in making the award. Pre-marital wealth was the overarching consideration in this case and was such as to displace the sharing principle altogether.

In paragraph 311, Mr Justice Bennett states the position in the following terms: "In my judgment, in this case the needs of the wife (generously interpreted) are not simply one of the factors in the case but are a factor of magnetic importance. In a case where the vast bulk of the husband's enormous fortune was made not only before their marriage but also indeed before the wife and husband ever met; where the 'marital acquest' (if such there has been) is of a very small amount compared to the total

viewpoint

settlement clear

assets; where the compensation principle is not in any way engaged; where the marriage is short and where the standard of living lasted only so long as the marriage; where the wife is now and will be very comfortably housed; and where Beatrice's needs are fully assured, surely fairness requires that the wife's needs (generously interpreted) are the dominant factor."

Day tripper

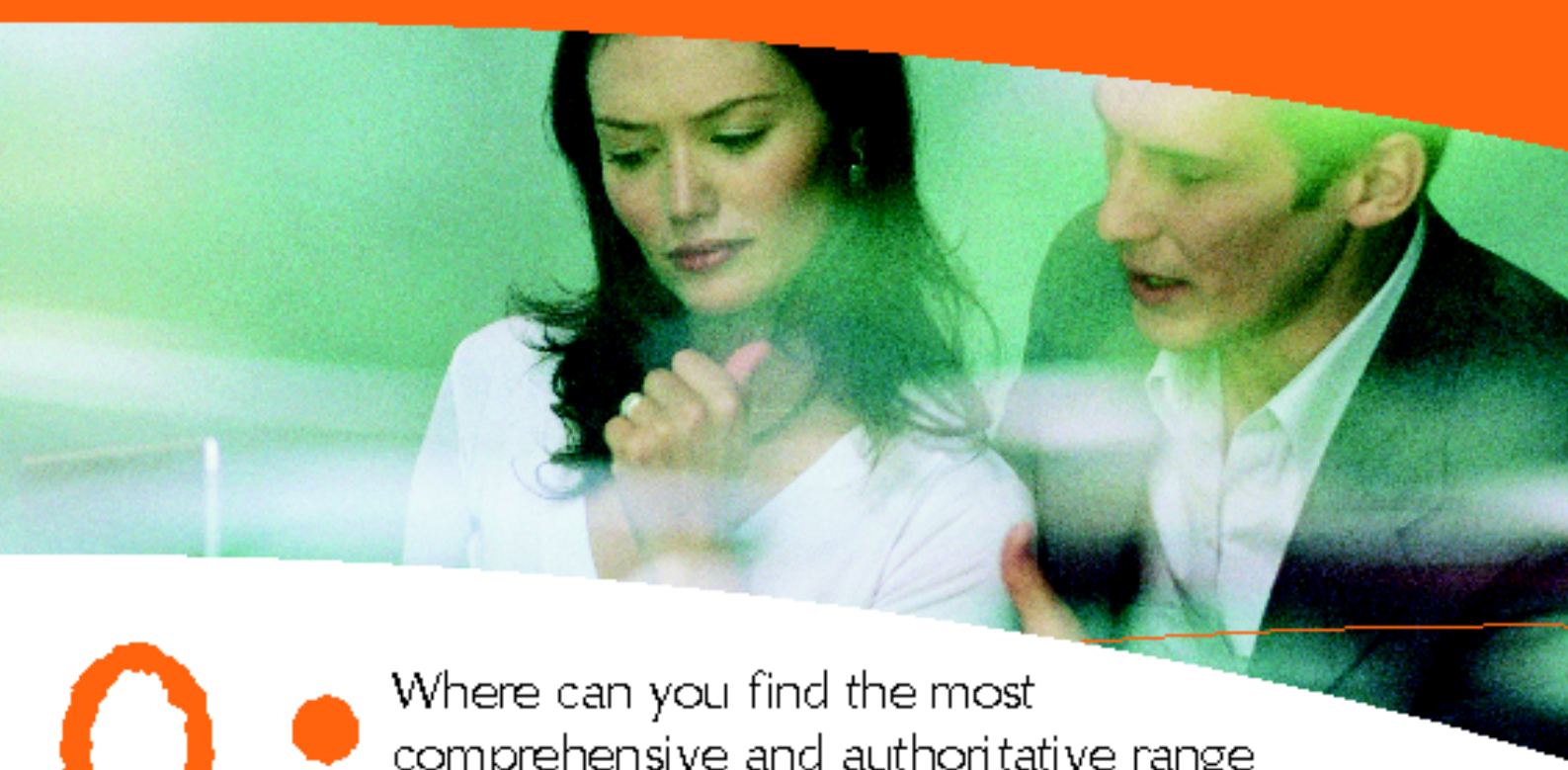
The *McCartney* case also reiterates another important rule: the conduct of the parties should not be taken into account through the size of the award, except in exceptional circumstances. Mr Justice Bennett stated that conduct had not been considered as part of the award. He relied on the following *dicta* of Baroness Hale of Richmond in *Miller*: "Once the assets are seen as a pool, and the couple as equal partners, then it is only equitable to take their conduct into account if one has been very much more to blame than the other: in the famous words of Ormrod J in *Wachtel v Wachtel* ([1973] 1 All ER 829 at 119, [1973] Fam 72 at 80), the conduct has been 'both obvious and gross'. This approach is not only just; it is also the only practicable one. It is simply not possible for any outsider to pick over the events of a marriage and decide who was the more to blame for what went wrong, save in the most obvious and gross cases."

The Irish Supreme Court in *T v T* ([2002] IESC 68) has also ruled on this point. Mrs Justice Denham said that Irish divorce law did not establish a fault-based divorce system, and the High Court should not have reduced the husband's share in light of what it considered to be his adultery. The only conduct an Irish court is likely to take into account is that which is "gross and obvious", for example, domestic violence.

Frog chorus

The *Miller* and *McCartney* cases are of particular interest to Irish practitioners and may very well be followed in Ireland. One of the factors an Irish court can take into account is the length of the marriage, although it should be stated that it is only one of a number of factors. The House of Lords' groundbreaking ruling in *Miller* indicates that, even in a short marriage, a wife might be entitled to a 50:50 split of the wealth generated during that marriage. This is likely to strike fear in the hearts of wealthy Irish men contemplating separation or divorce after a short marriage. The *McCartney* case makes clear that, after a short marriage, where the assets are almost all acquired prior to the marriage, the wife will not be able to avail of the sharing principle. She will only be able to seek enough to meet her reasonable needs. G

Geoffrey Shannon is the Law Society's deputy director of education and the author of the recently published Divorce Law and Practice *(Thomson Round Hall, 2007). He is the Irish expert on the Commission on European Family Law and the editor of the* Irish Journal of Family Law.



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Criminal Injuries Compensation Tribunal still going strong

Many practitioners labour under the misapprehension that the Criminal Injuries Compensation Tribunal was abolished some years ago, writes Eamon Murray

Some practitioners have lost sight of the extensive powers of the Criminal Injuries Compensation Tribunal to make awards of compensation in appropriate cases, but the scheme is still going strong. In fact, the only change was in 1986, when the tribunal was deprived by the government of its power to award damages for pain and suffering to applicants.

The tribunal operates an administrative scheme that provides for the making of *ex gratia* payments in respect of personal injuries or death, where they were caused:

- By a crime of violence,
- In circumstances where the victim was assisting in the prevention of a crime of violence, or
- In the course of the saving of human life (no criminality need be present in cases of this nature).

The tribunal can make awards in respect of actual or prospective losses incurred by an applicant, subject to certain qualifications, but principally subject to the exception that compensation will not be payable in respect of pain and suffering for injuries sustained after 1 April 1986.

Damages for out-of-pocket expenses, loss of income (including future losses), loss of opportunity, and damages for mental distress in fatal cases, as provided for in the *Civil Liability Act* (currently €25,394.76), are all recoverable by qualifying applicants. General damages can be awarded in respect of incidents that occurred prior to 1986 if certain criteria are found by the tribunal to have been met.

For example, substantial general damages have recently been awarded in respect of child sex-abuse cases that occurred prior to 1 April 1986, where the applicants were able to satisfy the tribunal that they had been suffering from a 'disability' as contemplated by the *Statute of Limitations*.

Restrictions

There are certain limitations and restrictions placed on the tribunal, but it can exercise considerable discretion in relation to these matters. They include:

- The question of whether or not the matter was reported to the gardaí without delay and whether or not all reasonable efforts were made by or on behalf of the claimant to notify the gardaí of the offence and to cooperate with them in relation to the investigation and subsequent prosecution,
- The extent to which the victim was responsible, by provocation or otherwise, for the offence giving rise to the injuries,
- Where the conduct, character or way of life of the victim make it inappropriate that they be granted an award by the tribunal.

Applications need to be made within three months of the event giving rise to the injury. However, the tribunal may extend the time in cases that justify 'exceptional treatment'. Incidents that occurred many years outside the three-month time limit have been treated as being exceptional where an applicant can show good grounds for such treatment.

The tribunal will generally allow a period of 12 months for the bringing of an application and will, for good cause shown, extend the time further.

Decisions and appeals

Tribunal decisions are generally made, in the first instance, by one member of the tribunal sitting alone. The member does so based on the papers submitted by or on behalf of the applicant. The tribunal also has discretion to hear any claim at a hearing before three members. If an applicant is dissatisfied with the decision given by the single member, he may appeal to an oral hearing of three members (other than the member who made the initial decision).

Many applicants do not seek legal advice and simply rely on the helpful advice of the tribunal staff. However, in my view, it is highly desirable for members of the public to seek legal advice in the preparation and assembly of their claims. No legal costs are recoverable under the scheme.

The oral hearings of the tribunal are relatively informal, and most applicants who reach this point are legally represented. Because of the potential for high awards in certain cases, full teams of solicitor and counsel frequently appear before the tribunal.

The Criminal Injuries Compensation Tribunal can and does make substantial awards of damages to deserving applicants who are the victims of crime and who meet the liberal criteria of the scheme.

The Criminal Injuries Compensation Tribunal can be contacted at: 13 Lower Hatch Street, Dublin 2; tel: 01 661 0604, fax: 01 661 0598.

The board has paid out in excess of €4.5 million in each of the years 2006 and 2007 respectively and received approximately 300 applications in each of those years. G

Eamon Murray is one of seven members of the tribunal and is its only solicitor member.

'Bugging' solicitor / client

Amid rumours about the monitoring of solicitor / client consultations in Britain, Elaine Dewhurst examines the human rights issues involved

Solicitors in the North and in Britain have been concerned recently by rumours that the authorities are 'bugging' consultations between clients and their solicitors. This arose out of an allegation of the surveillance of visits by Sadiq Khan MP to Babar Ahmad at HMP Woodhill in May 2005 and June 2006. On 4 February 2008, Justice Secretary Jack Straw announced the establishment of an inquiry to investigate the circumstances relating to the visits, in order to establish whether the visits were subject to any form of surveillance and, if so, by whose authority and with whose knowledge this had taken place. On the same day as the inquiry was established, Straw made a statement to the effect that consultations between legal advisers and their clients were subject to legal privilege and were protected against arbitrary interference.

The introduction of recent anti-terrorism legislation in Britain, and in particular the *Regulation of Investigatory Powers Act 2000*, has now called into question this highly respected privilege. In a recent decision of the Divisional Court in Northern Ireland, *In the Matter of an Application for Judicial Review by C, A, W, M and McE* ([2007] NIQB 101), Lord Chief Justice Kerr held that the act, which allows for various forms of surveillance, including direct surveillance, also applied to consultations between solicitors and their clients and limited their right to have a private consultation. While the court held that this was compatible with article 6 of the *European Convention on Human Rights*, it held that it was not compatible with article 8.

The facts

The applicants were arrested under anti-terrorism legislation in April 2006. They were taken after their arrest to the Serious Crime Suite at Antrim Police Station, where each of them nominated a solicitor that they wished to represent them. In each case, the nominated solicitor asserted their client's right to a private consultation and asked for an assurance from the police that those consultations would not be monitored. The police refused to provide the assurances that the solicitors for the applicants had sought. They said that it was their practice "not to comment" on such issues. The applicants sought declaratory relief to the effect that they were entitled to the guarantee of freedom from covert surveillance. They asserted that the failure to provide them with assurances was incompatible with articles 6 and 8 of the ECHR.

Article 6

Article 6 of the ECHR guarantees the right to a fair trial and sets out the requirements of a fair trial. One of these requirements is the right to communicate with an advocate out of the hearing of a third person. The

ONE TO WATCH: NEW LEGISLATION

***Registration of Deeds and Title Act 2006 (Commencement) Order 2008* (SI no 1 of 2008); *Registry of Deeds Order 2008* (SI no 51); *Registration of Deeds Rules 2008* (SI no 52)**

From 1 May 2008, the commencement of certain provisions of the *Registration of Deeds and Title Act 2006* and subsequent regulations will introduce major changes into the procedures for the Registry of Deeds. The Property Registration Authority, which manages and controls the Registry of Deeds and the Land Registry, has a mandate to modernise and extend the registration of ownership of land in Ireland. The tánaiste recently noted that "the reforms to the land registration system contained in the new legislation – which represent the most significant reform of the Land Registry and Registry of Deeds since the foundation of the state – are intended to simplify the procedures involved in buying and selling land and to reduce the delays and extra costs that frequently arise in land transactions. They will also pave the way for a system of e-conveyancing of property, which will revolutionise the conveyancing process for the benefit of private individuals and business alike."

REGISTER OF DEEDS

The Property Registration Authority currently maintains a register of deeds. From 1 May 2008, the new rules provide that the register will record certain information, including the name of the deed, the date of the deed, the names of grantors in the deed, the grantees in the deed, a description of the property, the serial number, the date of registration and the general nature of the deed. Applications can be lodged by hand, post or other such means as may be determined by the authority. Registration is deemed to be complete when the authority records the information. Every deed registered shall have a certificate of its registration endorsed thereon.

Applications for registration of a record must be carried out by submitting the appropriate form and, in certain cases, paying a prescribed fee. Registration can be refused or may have to be modified where it is not in the appropriate form. The rules contain detailed forms that should be submitted for various types of record.

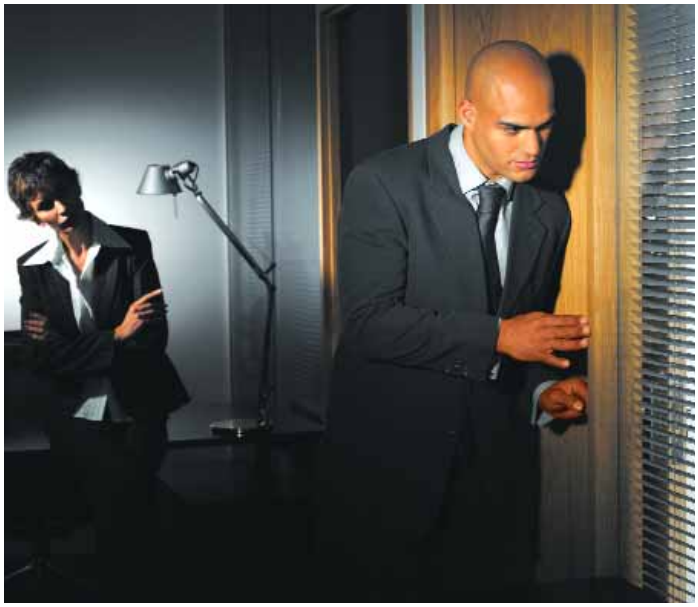
SERIAL NUMBERS

The Property Registration Authority will allocate a serial number to an application for registration. The registration of the deed is taken as good and effectual in law and equity according to the priority determined by the serial number.

human rights watch

consultations

European Court of Human Rights has held that "if a lawyer were unable to confer with his client and receive confidential instructions from him without such surveillance, his assistance would lose much of its usefulness" (*S v Switzerland* (1991) 14 EHRR 670). However, while the right to consult with a legal adviser in private is an important one, it is not absolute. It will depend on the impact the restriction had on the fairness of the hearing and will be justifiable where there is good cause to interfere. There was no evidence adduced by the applicants in this case that their consultations had been monitored or that their trials would be prejudiced as a result. Even if they had been bugged, there was no evidence to suggest that a violation of article 6 would have occurred.



Superglue and doors rarely mix

Article 8

The court held that the bugging of consultations between legal advisers and their clients was incompatible with article 8 of the ECHR. Article 8 guarantees a right to privacy in a consultation between an accused and their legal representative. Direct surveillance of a private consultation constitutes an interference with article 8. In particular, secret surveillance has been described as characterising the police state and hence as "tolerable under the convention only insofar as strictly necessary for safeguarding the democratic institutions" (*Klass and Others* (1978) 2 EHRR 214).

The essential question then is whether this interference could be justified under article 8(2). The interference would be justified only if it was in accordance with law, pursued a legitimate aim, and was necessary in a democratic society.

In relation to whether it is in accordance with law, it has been held that tapping and other forms of interception represent a serious interference with private life and must be in accordance with a law that is especially precise (*Huvig* (1990)

A deed that is not registered is void as against a registered deed. However, this is without prejudice to a rule in law or in equity in cases where a person claiming under a registered deed had knowledge, or is deemed to have had knowledge, of a prior unregistered deed. If two or more applications are received at the same time, they will be numbered randomly unless lodged by the same party, in which case the party can express in writing which one is to be lodged first.

RECTIFICATION OF ERRORS

The Property Registration Authority may rectify any errors on the deed with the consent of the applicant in writing in the terms agreed. If the deed can be rectified without any loss to any person, the authority may rectify the deed by giving such notice as may be prescribed. If it can be rectified without causing injustice to any person, the Circuit Court can order the error to be rectified on such terms as to the costs or otherwise it thinks just.

PROCUREMENT OF REGISTRATION

Anyone who procures or attempts to procure a registration of a deed knowing it to be false in any material particular, or knowing any signature on it to be false, is guilty of an offence. This is punishable on summary conviction to a fine not exceeding €3,000 and/or a term of imprisonment not exceeding 12 months and, on indictment, a fine and/or imprisonment not exceeding five years.

SEARCHES AND INSPECTION

These will now be carried out by means of an official search. Any person who would like to have an official search carried out must pay a prescribed fee. A certificate of the result of the search can be obtained. Any person can also copy, examine, take extracts from or make short notes of any records in a manner determined by the Property Registration Authority.

EVIDENCE IN PROCEEDINGS

A document purporting to be a copy or a reproduction of a record that is certified as such by the Property Registration Authority is admissible in evidence without further proof.

More information can be obtained from the website of the Property Registration Authority, www.prai.ie, including links to the Registration of Deeds and Title Act 2006 *and the new rules.* G

Elaine Dewhurst is the Law Society's parliamentary and law reform executive.

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12 EHRR 528 and *Kruslin* (1990) 12 EHRR 547). It should be set out in a provision of national law that is accessible to the public, and it is important that the public can foresee the circumstances and conditions in which interference may occur. The court found that the private consultation between a legal adviser and a client was in accordance with the law as set out in the *Regulation of Investigatory Powers Act 2000*.

However, the act was held not to be proportionate, as the interference could take place, on the authorisation of the police. Interference with the fundamentally important right arising under article 8 to consult a legal adviser privately cannot be justified where there is no demonstrable measure of independence on the part of the authorising agency. The confidence that a legal adviser and his client can have in giving advice and providing information is increased by the knowledge that no monitoring of their consultations will take place, unless this has been shown to the satisfaction of an independent person to be strictly necessary. In the absence of this independent monitoring, surveillance of a consultation between a legal adviser and their client could not be justified.

As the applicants had not received assurances that their consultations would not be monitored, the privacy they were entitled to under article 8 had been interfered with. The court granted a declaration that the monitoring of solicitor/client consultations would be unlawful and that the refusal to give the applicants assurances that no such monitoring would take place was in violation of their article 8 rights.

Implications for Ireland

The court held that, even though the *Regulation of Investigatory Powers Act 2000* allows surveillance of consultations between legal advisers and their clients, this is incompatible with article 8 of the ECHR because there is no independent authorising body in place to ensure that surveillance occurs only where strictly necessary. The court's finding that the act applies to consultations between legal advisers and their clients at all is the basis for the applicants' decision to appeal the case to the House of Lords, despite the positive finding for them in the Divisional Court.

The decision has positive implications for both Britain and Ireland. It upholds the concept of the importance of privacy in solicitor/client consultations. However, if the Oireachtas decided to introduce a statutory procedure in Ireland that would include the authorisation by an independent monitor of surveillance of solicitor/client consultations, it might well be compatible with article 8.

The present position in Irish law would appear to be that such legislation, if introduced, would not be justified. The common law has long recognised a general right of an accused person to communicate and consult privately with his solicitor (*Cullen v Chief Constable of the Royal Ulster Constabulary* [2003] 1 WLR 1763), and this has been considered as a fundamental human right (*R (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax* [2003] 1 AC 563). The *Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987* place on a statutory footing the guarantee that consultations with a solicitor may take place in the sight, but out of the hearing, of a member of the Garda Síochána.

There is also the added protection of the Constitution, which protects the right to privacy. Over the years, surveillance, in the forms of phone tapping (*Kennedy and Arnold v Ireland* [1987] IR 587) and intensive garda surveillance (*Desmond v Glackin (No 2)* [1993] 3 IR 67), has been found to constitute an interference with the constitutional right to privacy. However, the courts have found that, where state security is at issue (*Murray v Ireland and the Attorney General* [1991] ILRM 465) or where the investigation or detection of crime was necessary (*Norris v Attorney General* [1984] IR 36), such interferences could constitute a legitimate interference. However, adequate justification would have to exist before the courts would consider that a legitimate interference had occurred. The courts will look at all the circumstances of a particular case and the nature and importance of the particular police duty being discharged before coming to this decision (*Kane v Governor of Mountjoy Prison* [1988] IR 757).

Therefore, it would appear that, unless the Garda Síochána had a specific justification, surveillance of this type would infringe the constitutionally-protected right to privacy.

International covenants

There are also various international covenants that protect the right to privacy and the fact that there must be a legal basis for any interference (*International Covenant on Civil and Political Rights*, article 17). Specific rules, such as the 1955 *UN Standard Minimum Rules for the Treatment of Prisoners* (article 93), provide that interviews between the prisoner and his legal adviser may be within the sight, but not within the hearing, of a police or institution official. Similarly, the UN's *Basic Principles on the Role of Lawyers* (article 8) provides that all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship, and in full confidentiality. Such consultations may be within the sight, but not within the hearing, of law enforcement officials.

Such protections, along with the recent pronouncements in relation to the protection available under article 8 of the ECHR, would seem to preclude any monitoring of solicitor/client consultations in Ireland. G

Elaine Dewhurst is the Law Society's parliamentary and law reform executive.

Judge

In the first of two articles, Brian Hunt argues that incidents of judicial misconduct are not the once-in-a-blue-moon occurrences they are widely believed to be. Indeed, a surprising number of incidents have come to light in recent years

District Court Judge John Neilan's recent outburst, in which he launched an attack on the Courts Service, saying that it was "totally, absolutely, utterly incompetent, from the CEO down" and labelling Courts Service staff as being lazy, has again served to highlight the absence of any forum to which the conduct of judges can be reported and investigated.

Successive governments have shied away from introducing much-needed reforms in the area of judicial conduct. This is despite the fact that the matter has been high on the political agenda for the past ten years or so.

In an interview published in *The Irish Times* in 2001, the then Chief Justice, Ronan Keane, stated that he received "a steady trickle" of complaints against judges (26 February 2001). In recent years, there have been a number of incidents involving conduct on the part of members of the judiciary that have attracted notoriety. The incidents have ranged from those involving serious misconduct that warranted resignation, to those incidents at the lower end of the scale involving inappropriate comments or incidents of discourtesy that, in the current climate, go unchecked.

From recent times, two major incidents involving members of the judiciary stand out above all others – the 'Sheedy affair', which resulted in some resignations, and the 'Curtin affair', which gave rise to the commencement of the first process of the removal of a judge to be instigated under article 35.4 of the Constitution.

MAIN POINTS

- **Judicial misconduct or questionable conduct**
- **Extra-judicial comment**
- **Non-delivery of reserved judgments**

Sheedy affair

The Sheedy affair centred on Philip Sheedy, who in October 1997 was sentenced by Judge Matthews to four years' imprisonment and whose case was improperly relisted at the instigation of Mr Justice O'Flaherty, at which the remainder of his sentence was suspended. When Sheedy's release came to light, the matter was the subject of two investigations, the first carried out by then Chief Justice Liam Hamilton and the second by the Department of Justice.

Following the publication of the *Hamilton Report*, Mr Justice O'Flaherty resigned, as did Mr Justice Cyril Kelly (then a judge of the High Court). Despite an earlier offer, Mr Justice O'Flaherty refused to appear before an Oireachtas committee, on the grounds that he was constitutionally prohibited from appearing.

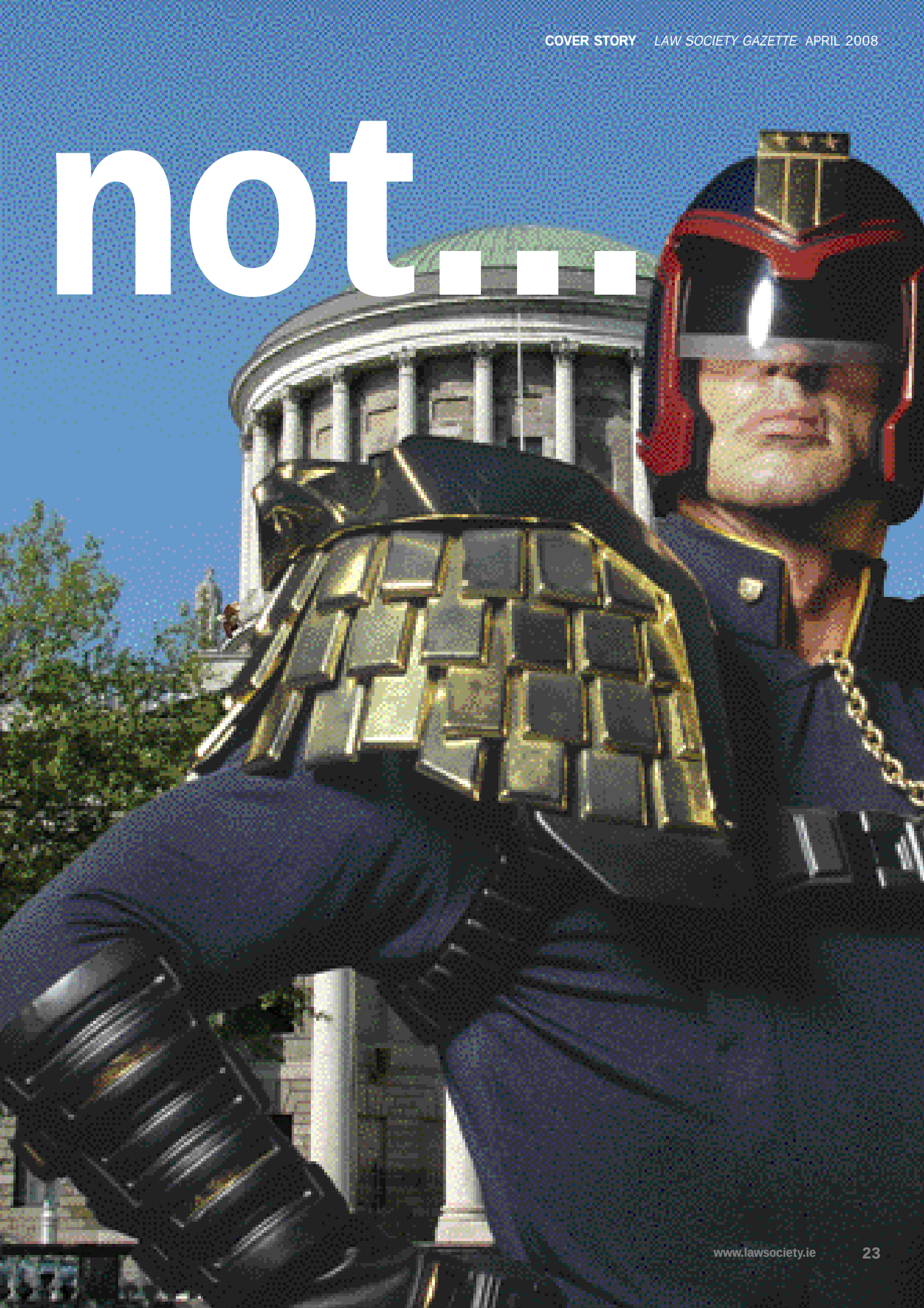
Curtin affair

Almost four years later, the judiciary found itself at the centre of another high-profile and embarrassing episode when, in April 2004, Circuit Court Judge Brian Curtin was acquitted of possession of child pornography following a ruling that the search warrant that led to the seizure of his computer had expired at the time of its execution. A government decision was then taken to establish an Oireachtas committee to inquire into Curtin's conduct.

While the work of the committee got underway in June 2004, due to a number of factors – including legal challenges taken by Judge Curtin and the complexity of operating in the absence of a detailed roadmap – its work was interrupted and delayed on several occasions. The work of the committee came to an early end when Judge Curtin resigned on health grounds in November 2006.

An Oireachtas committee ceases to exist upon the dissolution of the Dáil. Throughout that committee's life, it always remained a very real possibility that the investigative process would have been delayed to such an extent as to prevent it completing its work before the dissolution of the Dáil in May 2007. Upon any consideration of the detail of the Curtin affair, the unavoidable conclusion is that, had Brian Curtin not resigned in November 2006, the Oireachtas

not...



LOOK IT UP

Cases:

- *Attorney General v X*, Supreme Court ([1992] 1 IR 1)
- *Curtin v Dáil Éireann*, Supreme Court ([2006] 2 ILRM 99)
- *Doran v Ireland* (50389/99)
- *DPP v O'Donoghue* [2006] IECCA 134
- *DPP v Sheedy* [2000] 2 IR 184
- *Flattery v Ireland* (28995/95)
- *McCoppin v Kennedy* [2005 HC] 4 IR 66

Legislation:

- *European Convention on Human Rights*, articles 6(1) and section 13
- *Courts of Justice Act 1924*, section 39
- *Courts of Justice (District Court) Act 1946*, section 20
- *Courts (Supplemental Provisions) Act 1961*, section 10(4)
- *Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 2004*
- *Child Trafficking and Pornography (Amendment) Act 2004*
- *Constitution of Ireland*, article 35.4.1

Literature:

- Hogan, G and G Whyte (eds), *JM Kelly: The Irish Constitution*, 4th edition (Dublin: Butterworth's, 2003)
- Kennedy, R (2005), "Extra-judicial comment by judges", 5(1) *Judicial Studies Institute Journal* 211

"The fact remains that, by virtue of their role, judges bring a particular perspective to legal and social issues of the day and there is a question as to whether their views on certain matters should be heard in some way"

committee established to inquire into his conduct would have collapsed upon the dissolution of the Dáil in April 2007 without having reached a conclusion, as it would not have had sufficient time to complete its work.

Extra-judicial comment

Respecting the doctrine of the separation of powers means that judges should feel unable to make public comment on the actions of the executive and the legislature. However, there is a dearth of guidance on what judges can and cannot say when they are speaking away from the bench. This has not served to prevent individual judges from, on occasion, venturing into the area of discussing a case over which they presided or publicly expressing views about the actions of the executive or legislature.

In 1993, Mr Justice O'Hanlon got into some difficulty when he criticised the then government's commitment to legislating for the decision of the Supreme Court in *Attorney General v X*. Part of the government's reaction to his extra-judicial comment was to seek to remove him from his position as president of the Law Reform Commission.

More recent examples of extra-judicial comment include the relatively recent comments made by Mr Justice Carney regarding the use and content of victim impact statements, not only generally, but specifically in relation to the case of *DPP v O'Donoghue* – a case over which he had presided and in which a victim impact statement was a matter of some controversy. During the course of his annual address to the Law Society at University College Cork (as published in *The Irish Times*, 11 October 2007), Mr Justice Carney was highly critical of certain aspects of the victim impact statement read out in court by Majella Holohan. Unsurprisingly, his comments became the subject of some controversy and were a cause of considerable upset to Mrs Holohan.

These two incidents, and in particular the latter one, give rise to the question as to whether extra-judicial comment is appropriate or even desirable. The fact remains that, by virtue of their role, judges bring a particular perspective to legal and social issues of the day and there is a question as to whether their views on certain matters should be heard in some way.

Non-delivery of reserved judgments

The non-delivery or late delivery of a reserved decision is another aspect of judicial conduct, and it has given rise to liability on the part of the state. One such instance gave rise to an action (*Flattery v Ireland*) being taken against the state for a six-year delay in the delivery of a reserved judgment by the then Chief Justice Liam Hamilton. In 1995, Flattery lodged a case against the state with the European Court of Human Rights. Following an agreement between the parties, the case was withdrawn and was referred to an arbitrator. It was suggested in the Dáil that liability in the region of £2 million accrued to the state as a result of this delay (504 *Dáil Debates* Col 167).

In a case that went before the European Court of Human Rights (*Doran v Ireland*), the state was found to have been responsible for the delays that caused a case, which was neither "administratively or factually complex", to last approximately eight years and five months. In awarding the plaintiffs €25,000, the court found that the proceedings had not been determined within a reasonable time and this delay was found to have constituted a violation of article 6(1) and article 13 of the *European Convention on Human Rights*.

Courtroom controversies

In the cut-and-thrust of presenting a case in court, solicitors and counsel do, on occasion, cross swords with the presiding judge. In the main, any contentious exchanges that take place are soon forgotten. However, in a small number of cases, judges have reacted in an adverse way to such exchanges.

The decision of District Court Judge Michael Patwell to order the arrest of a solicitor, Marguerite Fennell, on the grounds that, during an *in camera* hearing, she had committed contempt, attracted considerable publicity. Ms Fennell was taken into custody for a short time and was later fined £2 (*Irish Independent*, 17 February 2000). A similar controversy erupted approximately five years later, when solicitor

Yvonne Bambury sought to have a bail application for a client heard by Judge Patrick Brady as soon as possible so as to avoid the client spending an extra day in custody. When Ms Bambury insisted on seeking the hearing for the next available day, Judge Brady ordered her removal from the court. This in turn led to other solicitors withdrawing from the court (*The Irish Times*, 18 October 2005).

Mobile phones ringing in court have given rise to some controversies. On one occasion, a judge is reported to have ordered that a journalist be placed in a cell because his mobile phone had rung during a court sitting.

The circumstances in which a hearing was interrupted by the ringing of two mobile phones are set out in *McCoppin v Kennedy*. That case involved a judicial review of a decision of the Circuit Court to abandon a hearing and award costs against the applicant. While evidence was being heard in the Circuit Court, the plaintiff was removed from the court when his mobile phone rang, and when the mobile phone of the plaintiff's counsel then rang, Judge Kennedy rose from the bench and, on his return, pronounced that the hearing was "aborted" due to the plaintiff's contempt and also due to the ringing of his counsel's phone, and he awarded costs against the plaintiff in favour of the defendant on a "thrown away" basis. That award of costs was subsequently quashed by the High Court.

While those accounts of high-profile incidents involving the judiciary are not representative of what ordinarily goes on in the courts on a day-to-day basis, other incidents of less significance do occur on a more frequent basis. Certain judges have in the past made inappropriate comments, including intemperate remarks and generalisations about non-nationals and other groups in society. Judges can, on occasion, be discourteous and demeaning of

witnesses, solicitors and counsel appearing before them. While such incidents may be viewed as being at the lower end of the scale, they can be demeaning or distressing for those at the receiving end, and that distress is exacerbated by the fact that there is currently no forum where such incidents can be reported and investigated. G

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STEADY

Over 300 children have gone missing from the care of the Irish authorities in recent years. So, ask Gráinne Brophy and Bernadette McGonigle, are the best interests of immigrant children a 'primary consideration' in the new *Immigration, Residence and Protection Bill 2008*?

Of the asylum applicants seeking protection in Ireland over the last decade, over 4,500 separated children are estimated to have arrived in the state. Many of these children have been in need of special care and protection. A startling fact is that over 300 children have gone missing from the care of the Irish authorities in recent years.

The viewpoint expressed by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, is that: "Children in migration should get better protection. Migrant children are one of the most vulnerable groups in Europe today." He goes on to state that, when dealing with migrant children, "the starting point must be that migrant children are, first and foremost, children".

Article 3(1) of the *UN Convention on the Rights of the Child* states that "the best interests of the child shall be a primary consideration" in all actions concerning children. Are the best interests of immigrant children coming to the state a 'primary consideration' in the *IRP Bill*?

According to Dr Nalinie Mooten of the Irish Refugee Council, a total of 599 separated children seeking asylum were presented to, or presented themselves to, the Office of Refugee Applications Commission (ORAC) between 2003 and 2006. There appear to be many reasons why children arrive in the state unaccompanied, and many of these children are in need of special care and protection. Child trafficking is unfortunately a reality in Ireland. The Irish Refugee Council refers to the invisibility of separated children. They note that over 300 children have gone missing in recent years – further, only a very small percentage of separated children are identified at the border. The UN Committee on the Rights of the Child notes that there is often a link between the situation of separated children and trafficking.

The *Refugee Act 1996* (as amended) does not define what constitutes a 'separated child'. The *Convention on the Rights of the Child 1989* sets out internationally accepted principles governing the rights of children. The convention was ratified by Ireland but is yet to be incorporated into domestic law.

The Separated Children in Europe Programme defines separated children as: "Under 18 years of age who are outside their country of origin and separated from both parents or their previous/legal customary primary caregiver … they may be victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation."

It is submitted that this definition be included in Irish legislation.

Anti-trafficking provisions in the bill?

The *Criminal Law (Human Trafficking) Bill 2007* relates to the criminal aspect of trafficking but does not address the protection needs of the victims. As noted by Geoffrey Shannon in his *Report of the Special Rapporteur on Child Protection* – a report submitted to the Oireachtas in December 2007 – the *Criminal Law (Human Trafficking) Bill 2007* is "intended to solely deal with the response of the criminal law to these offences and not victim support".

While the *IRP Bill* contains specific provisions relating to the protection of suspected victims of trafficking, these provisions do not go far enough in relation to trafficked children. In particular, the 45-day 'recovery and reflection period' prescribed under section 124 of the *IRP Bill*, and the subsequent six months' temporary residence permission to remain, is predicated on the victim cooperating with An Garda Síochána. A child victim of trafficking may not be in a position to cooperate, and the reflection period may be regarded as too short.

IRP Bill

Section 24 of the *IRP Bill* states that: "Where … it appears to an immigration officer that a foreign national under the age of 18 years … is not accompanied or to be accompanied by a person of or

MAIN POINTS

- Children seeking asylum
- *Immigration, Residence and Protection Bill 2008*
- Anti-trafficking provisions?
- Detention of children

TRAFFICK

Three hundred missing children? Best look out for guys like this

over that age who is taking responsibility for the foreign national, the officer shall, as soon as practicable, notify the Health Service Executive of that fact."

There is no provision for the immigration officer to assess the suitability of the adult claiming responsibility or to consider the 'best interests' of the child. This, in effect, could lead to safe passage for traffickers or those who accompany minors into the state for the purposes of exploiting them.

There are some obvious dilemmas for solicitors acting in such circumstances. If concerns arise about the suitability of the adult accompanying the child, there is no provision to seek that a DNA test be conducted to ensure they are related, if this has been asserted. The issue of the relationship between a minor and an adult accompanying them, claiming to be their parent or sibling, is fraught with difficulties. Apart from DNA testing, there is no guarantee that the relationship is as stated. Taking instructions is a clear example of where difficulties may arise; in particular, where there is a conflict between the instructions of the minor and of the adult accompanying them.

If there is doubt regarding the age of an applicant, ORAC may conduct an age assessment. There are

When dealing with migrant children, the starting point must be that migrant children are, first and foremost, children

difficulties surrounding this process, which is discretionary in nature and which does not allow for a formal appeal. The special rapporteur also recommends that age assessment procedures be introduced. However, this issue is not currently covered in the *IRP Bill*.

Children not in the state

The *IRP Bill* provides that a protection application made by a foreign national "shall be deemed to be made on behalf of all the dependants of the foreign national who are under the age of 18 years, whether present in the state at the time of the making of the application or born or arriving in the state subsequently" (section 73 (13)).

It is intrinsically wrong to exclude someone who has not yet been born from making a protection application in the future. Circumstances change and a child may be endangered in later years, perhaps when of an age to be regarded as a threat.

"The issue of the relationship between a minor and an adult accompanying them, claiming to be their parent or sibling, is fraught with difficulties"

ACCESS TO COURT

The *Rules of the Superior Courts* require that a minor may not institute proceedings in the courts without the assistance of a 'next friend'. The next friend will sign the affidavit and is liable for costs if they are ordered by the courts. Asylum seekers who are separated children experience difficulties with access to the courts due to the absence of a next friend to act on their behalf.

The *IRP Bill* reiterates that costs can be awarded against the applicant and/or the legal representative for pursuing the matter in the High Court, where the application has been found to be frivolous or vexatious.

Detention of children

Section 54 of the *IRP Bill* allows for detention of a foreign national where it appears to an immigration officer or member of An Garda Síochána that they are "unlawfully present" in the state and they may be removed. It does not exclude minors from these provisions but instead states that the person having charge or responsibility for the minor must cooperate in any way necessary to facilitate the removal of the minor, and will be guilty of an offence if they do not do so. There is no judicial supervision of this detention.

Section 70 of the *IRP Bill* also allows for detention of a foreign national who makes a protection application at a frontier where it is "not practicable" to issue a protection application entry permit to him or her. There is no statutory prescribed time limit on the detention, no judicial supervision of the detention, and no express provisions that exempt minors from these provisions.

There is no prescribed right of access to a lawyer, and no right of appeal against the continued detention. The only safeguard is to be found in section 70(6), which provides that the detention is only for the purpose of issuing the protection application permit, which should be issued as soon as practicable, and that the minister shall accord priority to the issuing of such permits. Minors are, however, excluded from the arrest and detention provisions set out in section 71.

General comment no 6 of the Committee on the Rights of the Child (2005) notes that: "Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof … States should ensure that such children are not criminalised solely for reasons of illegal entry or presence in the country … In the exceptional case of detention, conditions of detention must be governed by the best interest of the child."

Child's right to be heard

Article 12 of the *UN Convention on the Rights of the Child* provides that the child has the right to be heard in all matters affecting him or her, with due regard to the child's age and maturity. However, when assessing a protection application for a minor, there is provision in the *IRP Bill* to dispense with an interview or oral hearing on appeal, where the interviewer or the tribunal is of the opinion that such an interview or oral hearing would not usefully advance the appeal, due to the minor's age and degree of maturity. While these provisions can be welcomed, as they free the minor from the trauma of orally recounting the details of their

LOOK IT UP

Legislation:

- *Criminal Law (Human Trafficking) Bill 2007*
- *Immigration, Residence and Protection Bill (IRP Bill) 2008*
- *Ombudsman for Children Act 2002*
- *Refugee Act 1996* (as amended)
- *UN Convention on the Rights of the Child 1989*

Literature:

- *Making Separated Children Visible*, by Dr Nalinie Mooten, the Irish Refugee Council, Dublin (2006)
- *Report of the Special Rapporteur on Child Protection*, by Geoffrey Shannon (December 2007)

case, they can also be seen as a restriction on the child's right to be heard in proceedings relating to him or her.

Role of the Ombudsman for Children

The role of the Ombudsman for Children is unclear in this area, as the *Ombudsman for Children Act 2002* precludes the ombudsman from investigating an action "taken in the administration of the law relating to asylum, immigration, naturalisation or citizenship".

As there appears to be a link between separated children and trafficking for sex and other exploitative purposes, separated children are therefore in need of special protection. It is submitted that what constitutes a 'separated child' be clearly defined in the legislation following the recommendations of the special rapporteur, and in line with international best practice. The appointment of a guardian *ad litem* should be considered where appropriate (see *Gazette*, March 2008, p38). The issue of a temporary protection permit to a minor claiming to be a victim of trafficking should not be linked to their cooperation with the authorities. It is hoped that these concerns will be taken into consideration in amendments to the *IRP Bill* to ensure that the best interests of the minor are reflected in, and underpin, the legislative provisions. G

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No country OLD

As four top gardaí make a case to the Equality Authority alleging age discrimination, Geraldine Hynes says it's time to look at the law and jurisprudence on compulsory retirement and how courts and tribunals have interpreted it

Significant decisions outside this jurisdiction and an important case pending before the European Court of Justice (which will in turn influence the interpretation of Irish legislation), have the potential to revolutionise working patterns throughout Europe by expanding the choices open to workers about the length of their working lives. While one part of the workforce is striving for early retirement, others are clamouring for the right to continue working as long as they are willing and able.

Age discrimination in employment was first outlawed here by the *Employment Equality Act 1998*. The protection was limited to people between the ages of 18 and 65 and was qualified by several exemptions. The amending *Equality Act 2004* removed the upper age limit but retained most of the exemptions and, indeed, added new provisions allowing age discrimination in various employment contexts. So it is still permissible under Irish law to fix different retirement ages for employees and to offer fixed-term rather than permanent contracts to those over the compulsory retirement age for a particular employment. Setting age limits for occupational benefit schemes is permitted, provided it does not discriminate on grounds of gender.

These are all forms of direct discrimination that require no justification under Irish legislation. However, the EC *Framework Employment Directive*, which prohibits age discrimination and takes precedence over Irish domestic law, does require that discriminatory measures be justified "objectively and reasonably" by a legitimate aim (including legitimate employment policy, labour market and vocational training objectives) and that the means of achieving that aim are appropriate and necessary (article 6).

The *Palacios* case

The European Court of Justice considered the legitimacy of direct age discrimination in the form of compulsory retirement in a judgment delivered in October 2007 in *Palacios de la Villa v Cortefiel Servicios SA*. That case was referred by a Spanish Court, which was adjudicating on the validity of compulsory retirement clauses in collective agreements, whereby workers were compelled to retire at the age of 65, provided that they were eligible for a full retirement pension. The ECJ ruled that the national legislation that authorised these clauses was permissible under the *Framework Employment Directive* where it met the justification requirements of article 6(1) of the directive. Although this decision, at first sight, appeared to give an ECJ imprimatur to compulsory retirement ages in general, it emerges – on closer inspection – that the application of the decision is quite restricted.

In the first place, Spanish law explicitly allows for collective agreements fixing compulsory retirement

MAIN POINTS

- Age discrimination in employment
- Compulsory retirement
- European decisions

for MEN

Under Spanish law, these guys would never work again

LOOK IT UP

Cases:

- *Bloxham v Freshfields Bruckhaus Deringer*, 2205086/2006 (ET)
- Case C-411/05, *Palacios de la Villa v Cortefiel Servicios SA*, ECJ
- *Hampton v The Lord Chancellor*, ET/2300835/2007
- *R (on the application of the Incorporated Trustees of the National Council for Ageing (Age Concern England)) v Secretary of State for Business, Enterprise and Regulatory Reform* ('*Heyday*')
- *Seldon v Clarkson Wright &* Jakes, ET/110275/2007

Legislation:

- *Employment Equality Act 1998*
- *Equality Act 2004*
- *Framework Employment Directive* (Council Directive 2000/78/EC)

at 65. Recital 14 of the directive states: "This directive shall be without prejudice to national provisions laying down retirement ages." The judgment makes it clear that Recital 14 does not have the effect of placing such national provisions outside the terms of the directive, but "merely states that the directive does not affect the competence of member states to determine retirement age". There is no legally prescribed retirement age in Ireland.

The judgment also puts beyond doubt the fact that laws that govern retirement age do come within the scope of the directive, since they affect "employment and working conditions, including dismissals and pay". This means, in effect, that any dismissal on retirement may be challenged as being unlawfully discriminatory.

Secondly, the decision in the *Palacios* case relates to provisions in collective agreements, and the court specifically referred to the fact that the provision setting the compulsory retirement age in Spain was introduced following consideration and agreement by both employers and trade union organisations. The court approved the mechanisms and procedures employed by the Spanish government and the social partners in creating law and policy in the interests of promoting employment and creating opportunities in the labour market.

The court applied each stage of the test, in article 6 of the directive, for objective and reasonable justification in the context of national law. It found that the aim of regulating the national labour market was legitimate and the means used to achieve that aim did not go beyond what was appropriate and necessary.

This justification element of the decision is what is likely to restrict its application to similar cases, where the facts disclose objective and reasonable justification in accordance with article 6. The justification in *Palacios* was explicit in terms of the prerequisite of pension eligibility and was real in terms of the principles agreed between the unions, employers and government.

The *Heyday* challenge

Britain implemented the age provisions of the *Framework Employment Directive* by regulations in December 2006. These regulations provided for a default retirement age of 65, which could be imposed without requiring justification. Age Concern England challenged the default retirement age and a case has now been referred to the ECJ (known as the *Heyday* case). The questions the European court has been asked to address relate to the scope of the directive with regard to compulsory retirement ages and the nature and extent of the justification defence. The question on scope has already been answered in *Palacios* and the justification issue has been considered, but not conclusively dealt with.

The specific questions in the *Heyday* case are, first, whether justification of direct age discrimination under article 6(1) of the directive must be explicit and, second, whether there is any significant practical difference between the test for justification of indirect discrimination and that for direct age discrimination under the directive. This is particularly significant for Britain, since the regulations there explicitly permit direct discrimination when it is justified. The opinion of the advocate general is expected in the coming months and a judgment will follow, probably in 2009.

Application to Ireland

The Irish exemptions to the prohibition on age discrimination related to retirement ages are broad and unqualified. In particular, section 34(3) of the *Employment Equality Act* permits the fixing of retirement ages but does not specify what that age might be and does not require any justification. Following the decision in *Palacios*, it is highly unlikely that blanket policies on compulsory retirement age would be considered acceptable by the ECJ where the retirement age cannot be justified with reference to the particular job, the particular sector, and the employment conditions that prevail in the country at the time. The question of full pension eligibility may also be highly relevant and could, in fact, be particularly so in the case of women who have been out of the workforce for some time or workers who have come from abroad and have not accrued full pension entitlements.

Other developments

English employment tribunals have considered the justification defence to direct discrimination that is permitted under their regulations in a number of age discrimination cases recently. In the first of these, *Bloxham v Freshfields Bruckhaus Deringer*, a 54-year-

old partner who was retiring from his law firm claimed discrimination on grounds of age when the pension scheme was amended in a way that disadvantaged him because he would not have reached the normal retirement age of 55 on the operative date for the new pension arrangements.

The tribunal considered the process engaged in by the firm in arriving at the new arrangements and recognised that extensive consultation had taken place and legal advice was obtained before the new arrangements were agreed on. Because the pensions in this firm were funded from current profits, it was felt that the amendment was necessary to prevent "intergenerational unfairness", whereby younger partners would be compelled to fund increasingly large numbers of retirement pensions without the prospect of benefiting to the same extent when they reached retirement age. This was a direct result of the demographic profile of the firm, which would be likely to mirror the demographic profile of the workforce in general.

The tribunal found that the measure was in fact directly discriminatory against Mr Bloxham on grounds of his age, but was justified because the aim was legitimate and the means of achieving it were proportionate. In arriving at this latter conclusion, the tribunal considered not only the comprehensive procedures and consultation engaged in, but also the fact that no alternative, less discriminatory way of reforming the scheme could be identified.

The Irish *Employment Equality Act*s make no provision for justification of direct discrimination in general, but both those acts and the *Pension Acts* contain exemptions in relation to access to, and benefits from, occupational benefit/pension schemes. However, the pension scheme in *Bloxham* was stated explicitly not to be an occupational pension scheme as defined in the legislation and, in similar circumstances in this jurisdiction, it is arguable that this type of arrangement would fall outside the exemptions in both acts and, as such, would constitute 'remuneration' under the *Employment Equality Acts* and therefore be subject to the general prohibition on discrimination. The characterisation of a pension scheme for these purposes would be a matter of law and fact in any particular case.

"It is still permissible under Irish law to fix different retirement ages for employees and to offer fixed-term rather than permanent contracts to those over the compulsory retirement age for a particular employment"

Discriminatory but lawful

In another British employment tribunal case, *Seldon v Clarkson Wright & Jakes*, the compulsory retirement of a law firm partner at the age of 65 was found to be directly discriminatory, but objectively justified and therefore lawful. In that case, the tribunal again examined the aim of the compulsory retirement, which was stated to include ensuring access to partnership for associates after a reasonable period, avoiding the need to expel partners for performance management reasons, and facilitating the planning of the partnership and workforce across individual departments. The tribunal concluded that these aims were legitimate, but that other suggested aims – such as assisting partners to make financial provision for retirement and protecting the firm's partnership model – were not legitimate aims. However, the tribunal concluded that those aims that were legitimate had been achieved by proportionate means and in the least discriminatory manner. The tribunal did state that while a compulsory retirement rule was acceptable in a small firm, such as the respondent in this case (a firm with ten partners), the same arguments might very well fail if raised by a larger firm with a more competitive culture and a corporate style of management where, for example, performance management would be more common.

In yet another British case (*Hampton*), a part-time judge/recorder succeeded in a claim of age discrimination in December 2007 when he was forced to retire at age 65. In that case, the tribunal found that the policy of retiring judges at 65 was not a proportionate means of achieving a legitimate aim, as it had not been persuaded that the enforced retirement of judges was necessary to ensure a "reasonable flow" of new appointments.

The outlook

Compulsory retirement in this country has been upheld by the Equality Tribunal in almost all cases on the basis of section 34(3) of the *Employment Equality Act*, which permits the fixing of retirement ages without any requirement for justification. This has continued to be the position since the transposition of the *Framework Employment Directive* and, until the decision in *Palacios* issued in October 2007, no valid argument appears to have been advanced or succeeded in determining otherwise. However, given the justification requirements of the ECJ in that decision, the relatively buoyant state of the economy and high levels of employment in this country, together with the common shortfall in pension accrual, especially among women, it is likely that a case with favourable facts would succeed in a challenge to that section.

The fact that there is no national retirement age fixed by law in Ireland and that section 34(3) does not stipulate any minimum age that employers might fix for retirement would also indicate that the general principles prohibiting age discrimination contained in the framework directive are not correctly implemented in this respect by the *Employment Equality Acts*. The operation of pension schemes, particularly those that do not fall within the definition of occupational pension schemes in equality legislation, must also be open to challenge before the tribunal. No decisions have yet issued in these areas, but it is only a matter of time. G

Geraldine Hynes is vice-chair of the Law Society's Employment and Equality Law Committee.

JUDGE, JURY &

Having obtained judgment, many a litigant has discovered that the real battle lies in enforcing that judgment. Grainne Fahey reviews the steps involved in enforcing a judgment and the time limits that apply

The law and practice governing the execution of judgments is set out in order 42 of the *Rules of the Superior Courts*, rule 36 of the *Circuit Court Rules* and order 53 of the *District Court Rules*. The *Statute of Limitations* provides that an action to recover on foot of a judgment must be brought within 12 years, but a plaintiff may need to apply for leave to execute when acting within 12 years.

There are several steps involved in enforcing a judgment. First, you must get your judgment order. The next step is to issue execution (the step of applying for an execution order). You have successfully issued execution when an execution order is granted. The execution order entitles you to take certain action to enforce the judgment. If the action taken on foot of the execution order proves fruitful, then execution is complete. Execution is therefore a process.

Methods of execution

The rules provide for several methods of execution. An execution order, if unexecuted, shall remain in force for only one year from its issue. Execution orders available include orders of *fi fa* (*fieri facias* – literally, 'cause to be made'), sequestration, possession, garnishee and committal. The appropriate execution order to seek depends on the nature of the judgment, that is, whether it is a judgment for a liquidated sum, a judgment relating to the possession or delivery of property, or a judgment directing a party to do or abstain from an act. The rules provide guidance as to the appropriate execution order and clearly set out the procedure to be followed in applying for such an order. Certain execution procedures must be initiated by issuing court proceedings, and other methods simply require an application to the High Court Central Office or the appropriate District Court or Circuit Court Office.

A party seeking to enforce a judgment for a liquidated sum must consider whether the likelihood of recovery lies in real property, personal property or income, and then choose the appropriate execution order. The execution order most commonly sought to enforce a High Court judgment for a liquidated sum is an order of *fi fa*. An order of *fi fa* issues from the Central Office and does not require a judgment creditor to issue court proceedings. It entitles a judgment creditor to direct the sheriff to seize and sell property belonging to the debtor. Another common means of enforcing a judgment for a liquidated sum is the creation of a judgment mortgage. This is done by filing an affidavit of ownership in the court where it was entered. This affidavit must be registered in the Registry of Deeds or the Land Registry.

As indicated above, actions to recover on foot of a judgment must be brought within 12 years of obtaining judgment, but a party acting within this time period may nonetheless require leave of the court before issuing execution. The rules provide, among other things, that where a change has taken place to the original parties to the judgment or order, or where six years have elapsed since judgment, leave to issue execution (leave to apply for an execution order) may be required. An application for leave should be made by motion on notice to that party sought to be made liable.

Process of elimination

Execution is a process rather than a single step, and a judgment creditor may issue execution a number of times and act on foot of more than one execution order in respect of the same judgment. In the recent High Court decision of *Hollinball v Cunningham*, Laffoy J confirmed that a party may pursue two or more execution processes concurrently until the debt is discharged. Execution processes can also be pursued consecutively – for example, a writ of *fi fa* might be returned *nulla bona* (no goods can be found to be seized) before a creditor registers the judgment against lands belonging to debtor. Therefore it is conceivable that a creditor would issue execution within six years of the judgment and issue execution again in year seven. In such circumstances, it could be argued that execution issued within six years because the process

MAIN POINTS

- Execution orders
- Judgment mortgages and other charging orders
- Methods of enforcing a judgment

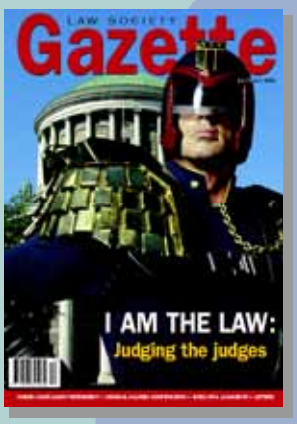
EXECUTIONER

Solomon usually had no trouble executing his judgments. It was just that once when it got out of hand

of execution has been triggered within the six-year period. Therefore it could be said that the leave requirement in respect of the attempt to issue execution in year seven is obviated. Despite this reasoning, it is safer to assume that leave to issue execution after six years is required, even if execution has already issued within the six-year period.

Issuing execution

Judgment mortgages are not specifically included in the definition of execution contained in order 42, rule 8 of the RSC. Nonetheless, it is safe to assume that judgment mortgages and other charging orders are governed by order 42. There is authority for the proposition that a judgment mortgage is not execution, but rather is a substitute for execution, but the Supreme Court in *Tempany v Hynes* referred to a judgment mortgage as a "process of execution". Assuming, therefore, that judgment mortgages and other charging orders come within order 42, we must then consider the applicability of order 42(24) to proceedings issued on foot of charging orders, for example, an application for a declaration that a mortgage is well charged.



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This issue arose in *Cooke v Finlay*. In 1996, the plaintiff, having obtained judgment in 1995, sought to realise the debt by way of appointment of an equitable receiver and by writ of *fi fa*. The *fi fa* having been returned *nulla bona* and the appointment of the receiver having been unsuccessful, the plaintiff registered the judgment against the defendant's family home in 1997. In 2006, the plaintiff issued High Court proceedings by way of special summons seeking various reliefs, including a declaration that the monies secured by the judgment mortgage stood well charged. This was approximately 11 years after judgment was given. The defendant argued that the application should be struck out because the plaintiff had not sought leave to issue execution as required by RSC order 42(24). The defendant contended that the step of issuing the special summons, not the step of registering the judgment, constituted "issuing execution".

The plaintiff put forward the contrary view that the step of issuing execution had been completed in 1997 when the judgment was registered. The plaintiff argued that RSC order 42 applies to a judgment, whereas the application before the court was in reference to a mortgage. He argued that registering a judgment has the effect of transforming the judgment into a mortgage; registering a judgment as a mortgage creates the ordinary relationship of mortgagor and mortgagee. He contended that, because of this change in relationship, order 42 no longer applied to the plaintiff's application. In summary, he submitted, when the judgment mortgage was created, execution thereby issued and therefore order 42 was not applicable.

In an *ex tempore* decision delivered on 24 July 2007, Ms Justice Dunne held that order 42(24) was not applicable. The court affirmed the view that the creation of a judgment mortgage has the effect of creating the relationship of mortgagor and mortgagee. The judge distinguished between an execution order and the process of execution and noted that, while creating a judgment mortgage is part of the process of execution, this does not have the effect of bringing an application for a well-charging order within the remit of order 42(24).

Among the authorities considered by the court in *Cooke* was the 1963 English Court of Appeal decision in *Overseas Aviation Engineering (GB) Ltd.* In that case, the defendant judgment creditor had registered the judgment on the company lands but had not registered the charge with the Register of Companies prior to the debtor company going into liquidation. The company liquidator challenged the charge on the basis that execution had not been completed prior to the commencement of winding up. The defendant argued that the charge was not subject to the registration requirement because it was not a form of execution.

Delivering the majority judgment in the Court of Appeal, Lord Denning held that a charging order on lands is execution: "I am clearly of the opinion that when a judgment creditor obtains a judgment charge on specific land of a company, he thereby issues 'execution' against the land of the company … Execution means, quite simply, the process for enforcing or giving effect to the judgment of the court and it is 'completed' when the judgment creditor gets the money or other thing awarded to him by the judgment … In cases where execution was had by means of a common law writ, such as *fieri facias* or *elegit*, it was legal execution; when it was had by means of an equitable remedy, such as the appointment of a receiver, then it was equitable execution. But in either case, it was execution because it was the process for enforcing or giving effect to the judgment of the court."

LOOK IT UP

Cases:

- *Acc v Markham* [2005] IEHC 437
- *Barnett v Bradley* 24 Ir LT (1890) 41
- *Hollinball v Cunningham* [2006] IEHC 326 at 331
- *Overseas Aviation Engineering (GB) Ltd* [1963] Ch 24 (Britain)
- *Re Lambe's Estate* 3 Ir LT 224
- *Tempany v Hynes* [1976] IR 101

Legislation:

- *Circuit Court Rules*, rule 36
- *District Court Rules*, order 53
- *Rules of the Superior Courts*, order 42, rule 24
- *Statute of Limitations*

Literature:

- Glanville, Stephen, *The Enforcement of Judgments* (Dublin: Round Hall, 1999)
- Maddox, Neil, "The Law and Practice of Judgment Mortgages", *Bar Review*, December 2006
- Scanlon, John W, *Practice and Procedure in Administration and Mortgage Suits* (Incorporated Council of Law Reporting for Ireland, 1963)

Transformation

Overseas Aviation seemed to signal a departure from previous English authorities such as *Barnett v Bradley* and *Re Lambe's Estate*, wherein registration of a judgment was not deemed to be execution.

Notwithstanding the older authorities, it now appears to be settled law that judgment mortgages and other charging orders are processes of execution. The judgment in *Cooke v Finlay* confirms this, but the decision would also suggest that registering a judgment in the Registry of Deeds or the Land Registry has the effect of transforming the judgment into a mortgage. This transformation takes the mortgage outside the procedural rules set down in order 42. It should be noted, however, that for the purpose of the *Statute of Limitations*, the cause of action is still the judgment and that therefore any proceedings on foot of the mortgage must still be initiated within 12 years of the judgment. G

Grainne Fahey is a Dublin-based barrister.

Lawyers are beginning to use some pretty nifty technology to share information with colleagues and clients, and today's high-tech tools typically use the internet as a platform. Dennis Kennedy and Tom Mighell google for smarter ways to work

GET SMA

The practice of law is, by its very nature, collaborative. Even the solo lawyer works and interacts with many people – staff, colleagues, court personnel, judges, experts, opposing counsel, and, of course, clients. Increasingly, lawyers work using technology. Today's collaboration tools and technologies typically involve or use the internet as a platform for working together. As a result, we are seeing some fundamental changes in the way lawyers use technology.

Improving productivity has long been a selling point for legal technology, but lawyers are well known for the ability to resist this message. Although vendors and technology advocates attempt to entice lawyers with hardware and software that allow them to work better, faster and cheaper, lawyers are nevertheless notorious as late adopters of technology. If you examine instances where lawyers adopted technology quickly (fax machines or email) or dramatically changed technologies in a short time (the widespread changeover from *WordPerfect* to *Word*), you will notice a common element: lawyers react to the need to work better with others, especially clients.

Collaboration technologies are unique in that they always involve interactions with others. As a result, lawyers often find that they must use collaboration tools whether or not they are ready for them. A lawyer might not plan to use 'track changes' in *Word*, but if opposing counsel sends an agreement with track changes activated, the lawyer suddenly must become conversant with the facility.

MAIN POINTS

- Collaboration tools and technologies
- Internal and external differences
- Tools for document and project management

On the same side

In simplest terms, lawyers collaborate in two different dimensions – internal and external. While each dimension has many similarities, the methods, and tools used are different for each.

Internal collaboration typically occurs within the organisation, where everyone is on the same side. Think about how collaboration actually occurs within your office. Revisions are written on drafts of documents. Post-it notes are attached to file folders or chairs. Chance hallway meetings turn into project assignments, updates or knowledge transfer.

Internal collaboration also tends to be more open and free-flowing. Documents are not intended for public viewing. Drafts, questions and revisions are all useful parts of a shared process.

With internal collaboration, you want to find ways to use existing technology to streamline and improve the ways you currently collaborate. A side benefit is that you also record and collect the actual moments of collaboration. Post-it notes disappear into the bin, but instant messages might take the place of post-its and can be kept, organised and referred to later.

Contrast that with external collaboration, where you work with people outside the organisation, and a different set of principles applies. Security, confidentiality and protecting documents become more important. In a very real sense, when you collaborate outside your practice, you are 'publishing' work product to others. Geographic and temporal concerns also come into play: the tools that work inside your office may not necessarily work with lawyers and others in different cities or countries and different time zones.

Increasingly, external collaboration uses the internet as a platform – email, data, voice, audio, video, web conferencing, to name a few examples. Secure and private internet tools – variations on the basic concept of extranets – are often key tools for this type of collaboration. Unlike internal collaboration, where everyone is using the same system, external collaboration requires that parties cooperate and find compatible tools.

The thin red line

The most common areas of collaboration for lawyers involve working on documents and projects.

Document collaboration illustrates the evolutionary aspect of collaboration tools. Many lawyers remember 'red lining' documents to show

RT

Shoe phones: right up there with jet packs and rocket cars

changes by using a ruler and a red-ink pen. Red-lining software simply automates the same process. However, learning and mastering 'track changes' in Microsoft *Word*, while conceptually similar, is not a simple task. Even if you have red-lining software, you might find that opposing counsel does not, making the exchange of drafts problematic. Where making or showing revisions is impossible or undesirable, some lawyers may send 'locked' documents or PDFs instead.

Working on documents today involves a negotiation and accommodation on how documents will be exchanged, edited and finalised, as well as the technology that will be used to work on them.

TOOLS OF THE TRADE

How might you use collaboration tools? Here is an overview of some of the most common and helpful collaboration tools lawyers are using today.

WORKING ON DOCUMENTS ONLINE

When you want to work on a document with others, how many of you attach that document to an email, send it out to multiple people, and sit back waiting for their various edits to be returned to you? Several online document sites make it easy for your group to work on the same document *at the same time*. For example, Google Docs (http://docs.google.com) allows you to create simple documents, spreadsheets, and even presentations, and share them so that others can view or edit them online. When you're finished with the document, you can save it as a *Word* or PDF file. Although, for security reasons, you might not want to keep these documents online for long periods of time, services like Google Docs are terrific ways to work on documents with others.

SIMPLE SCREEN-SHARING

Sometimes you might need to work on a document or other file with another person – but in real time. What about using a screen-sharing program for an online meeting? One of our favourite *free* options is CrossLoop (www.crossloop.com), but it can only be used by two people at a time. Each user must install the program on their computer, then one person requests access to the other's screen. After access is granted, the user can see everything that happens on that person's computer – documents, drawings, images, and so on – and can even control that person's computer. A more advanced (but not free) screen-sharing program is Adobe *Connect* (www.adobe.com/products/connect), which allows larger groups to participate in the online meeting.

PROJECT MANAGEMENT

A number of project-management sites have appeared on the internet that make it simple to manage teams on cases, transactions, or other projects. One such tool is Basecamp (www.basecamphq.com), which provides different levels of service and online storage for between $12 and $149 a month. Basecamp's features include file storage, message boards, 'to do' lists, and other collaboration tools. Many solo and small-firm lawyers have started to use Basecamp as a client extranet – clients have their own dedicated Basecamp page where they can view case files, ask questions, or keep track of deadlines. This is a great way to work with your clients online at a relatively low cost.

WIKIS

A wiki is, simply, a web page that can be easily edited by anyone. The most famous example of a wiki is Wikipedia (www.wikipedia.org), the online 'encyclopaedia' that anyone can edit. Wikis have tremendous potential for lawyers who want to collaborate with their clients and others – for example, you can create a wiki for trial strategy and preparation, an online manual of employee policies and procedures, or a simple directory of resources in a particular subject area. To learn more about wikis and whether they might be right for you, check out WikiMatrix (www.wikimatrix.org), a site that helps you choose the wiki that best suits your needs.

FILE-SHARING

Have you noticed that the electronic files we use in our daily work keep getting bigger and bigger? Whether they are PDF e-briefs or transaction documents, the size of these files is often more than our mail servers can handle. A number of sites now make it much easier to send large files to others. One of the oldest, best-known sites is YouSendIt (www.yousendit.com), which allows you to send a document up to 100MB for free. Simply upload the file to the YouSendIt site, and an email with a download link to the file is sent to the recipient. YouSendIt also offers subscription plans if you want to send larger files. Another current favourite is drop.io (http://drop.io). Here, you can create an online exchange site, where you can drop multiple files (up to 100MB). Then simply send the URL of the site to your recipients, and they can download the files at their leisure (you can keep the site live for up to one year).

'Taking control of the draft' definitely has a new meaning these days.

The broader area of project management involves a wide range of new issues. It's surprising how much of a lawyer's time today is taken up with conference calls and simply meeting people to discuss a case or matter.

Project collaboration can involve scheduling, calendars, to-do lists, online meetings, delegation and review of work, notification of new activity and much more. All of this has become easier with the use of the internet as a collaboration platform. Lawyers are moving from email and telephones to instant messaging, web conferences and extranets. Also, a new generation of internet applications, popularly called 'Web 2.0', offers a variety of specialised internet tools for collaboration. Extranets and deal rooms offer one-stop websites where everyone involved in a project can securely work on it at any time they want, from wherever they're located.

If you evaluate collaboration tools in the context of how they might help you with your documents or projects, you can develop a good framework for assessing the tools that you're considering.

Real world

Remember that your choice of collaboration tools will usually take place in collaboration with other people. Almost by definition, it cannot happen in isolation. And sometimes your collaboration tools will be chosen by others, especially your clients or the courts. To make sure you're not left behind, it's important to prepare a collaboration strategy. The following checklist will help you get off to a great start with these technologies:

- **Do a 'collaboration audit'.** Collaboration tools work best when they reflect and enhance existing

ways that people work together. If you identify and understand the ways you work with others, you can make great choices about the right tools to use.

- **Determine what collaboration tools you already use and own.** One excellent way to improve collaboration tools is to make better use of the technologies you already have. Another is to build upon people's comfort with familiar tools and interfaces. For example, explore Microsoft's *Office* suite; in recent years, Microsoft has been building more collaboration features into the popular productivity software.
- **Ask your collaborators what they use.** More specifically, ask your clients how they prefer to work with you and what tools they use. A simple one-page questionnaire can provide you with useful information and indicate to your clients that you are concerned with making it easier for them to work with you.
- **Learn about the wide variety of tools now available.** Do some research. Ask existing vendors. Find out what young lawyers and law students are using. Get comfortable with the internet.
- **Experiment.** An astonishing number of collaboration tools are either available for free or at a very small cost. Jump in and try some of the tools discussed in the panel. Some might work well and some might not be right for you, but standing still in today's world means that you are moving backwards.

Collaboration technologies affect lawyers in real-world ways. There is nothing theoretical about using technology to work with others. These tools will have a dramatic impact on the day-to-day work of lawyers, perhaps bringing revolutionary changes in the way legal services are delivered. The good news is that collaboration tools evolve logically out of the existing ways lawyers work with others and, in many cases, are free or inexpensively priced. The best time to get started is now. G

Dennis Kennedy and Tom Mighell are the authors of The Lawyer's Guide to Collaboration Tools and Technologies: Smart Ways to Work Together *(www.lawyersguidetocollaboration.com). Kennedy is an IT lawyer and legal technologist based in Missouri. Mighell is senior counsel and litigation technology coordinator at Cowles & Thompson in Texas. Check their blog sites: www.denniskennedy.com/blog and www.inter-alia.net.*

Crystal clear

Waterford city is coming of age. Tom Rowe meets the legal doyens of the Waterford Law Society and hears about past and present campaigns to put their city on the map

The pedestrianised centre of Waterford looks a much happier place than a few years ago. The city had always lacked a centre, but the new triangular plaza acts as a focal point, attracting walkers, shoppers, tourists and locals. The city has lost its grey tint and now has a 'Galway feeling', with small, brightly painted boutique stores, friendly cafés and clothes shops, all on narrow, winding, cobblestoned streets. New hotels and office blocks, some still being built, give Waterford the air of a thriving city, rather than the provincial town the uninitiated might assume it to be.

The members of the Waterford Law Society emphasise this point. Over a fantastic seafood lunch in a Michelin-bibbed restaurant, Morette Kinsella and Tom Murran speak of the impression that Waterford – a city with a charter – is "being treated like a county town".

MAIN POINTS

- Gateway city
- Men in kilts
- 'Cushion Dinner'

WIT and wisdom

According to Tom, the region has "a population of about half a million, is a gateway city under the National Spatial Plan. The whole thrust of the plan is for regions to be self sufficient, to build a critical mass to be able to attract business." One factor that they feel would make a vital difference would be to turn Waterford Institute of Technology (WIT) into a university.

Links between the institute and the local law society are strong. Every year, they host the Waterford Law Society WIT Award Debate, organised by Helen Bowe O'Brien and chaired by the president, Morette Kinsella of Kinsella, Heffernan, Foskin. Many people who now work in the legal profession in Waterford have come through the well-regarded law courses in WIT.

Morette Kinsella explains that the Waterford Law Society has always been a vibrant group. When elected president in 2006, she was concerned that communication within the society needed to be improved. With collegiality in mind, she gathered all email contact details of the members, ensuring that all would be notified of events taking place. She believes this has tended to encourage people to see themselves as members of a larger group.

She regards it as very important that Waterford has Tom Murran as a Law Society Council member, and that the greater region has Carrick-on-Suir solicitor Maura Derivan and New Ross solicitor Martin Lawlor on the Council.

By all accounts, the society does not have a problem drawing a crowd, perhaps down to the efforts of hardworking committee members like Deirdre McSweeney, who has again organised the annual ball, which took place on 4 April, and Bernadette Cahill, who organised a recent dinner for High Court judges sitting in Waterford. The society has a very active court-user group subcommittee.

Let the wind blow high

A number of successful functions have been organised, including CPD seminars, a dinner for Judge Harnett, and trips to London – the most

City sights

recent attended by 15 women and organised by Fiona Fitzgerald and Rosa Eivers. The men of the society were invited – however, a strict dress code was imposed, with men being required to wear kilts for the entire trip, should they decide to take up the offer. They declined! The ladies warmly recall the jaunt to London. Also remembered is the one-woman performance by Denise Quinn in the Munster Bar last December. This local solicitor, who is taking a break to study drama, put on a marvellous show. The monologue had a legal theme, under the title *Sharon, Lady Sarah, Lorena and I*.

Rosie O'Flynn of Peter O'Connor and Sons, secretary of the society, wondered aloud if the dress code on the London trip was in retaliation for all those years when "you couldn't find a male solicitor for love nor money in Waterford on a Friday afternoon, unless you were somewhere near a golf course, while the women were working hard in the summer afternoons". Some of the ladies wondered where their golfing invitations had been going all those years!

There are 98 fully paid-up members of the society, with another 14 still hiding out. Tom Murran, of Peter O'Connor and Sons Solicitors, aired the possibility of publishing a list of non-members, maybe under the headline "These people are not members of the Waterford Law Society"! As with other bar associations around the country, Waterford is trying to entice greater participation in the society's activities through providing highly relevant CPD seminars. Going to seminars in Dublin or Cork is seen as costly, not only in terms of travelling expenses, but also in terms of time spent out of the office. A lecture in Dublin could involve six hours of travelling, with three hours attending the seminar. The society, this year, has looked into the possibility of providing the entire

CIARAN CONNEELY PHOTOGRAPHY

Up the Deise! Members of the Waterford Law Society *(l to r)*: Frank Heffernan, Tom Murran, Morette Kinsella (president), Rosie O'Flynn (secretary), Brian Chesser, Finola Cronan (committee member), John Goff and Bernadette Cahill (committee member)

ten hours of CPD in Waterford. A number of committee members are extremely active in this, with involvement by solicitors from Wexford, Tipperary and Kilkenny. The aim is to provide such courses as cheaply as possible. Speakers are encouraged to provide their services for free, thus allowing speakers' fees to be used to fund other events.

Judging from the banter around the lunch table, collegiality is not a problem in Waterford. At a table full of storytellers, senior statesman John PC Goff stood out. Former senior partner in Messrs Nolan Farrell and Goff, the venerable solicitor has worked in the city for over 50 years, and in that time has obviously earned the respect and admiration of his peers.

"The councillors hated solicitors and the law society, so they decided not to put cushions on the benches for the solicitors to sit on"

John feels strongly about fee reduction and cites the old days, when solicitors could not live on what they made from the profession, but had to have another source of income.

Other members believe that the new compulsory registration is going to transform the landscape when it comes to conveyancing. They agree with the new plans for residential conveyancing, but warn of increased payments in insurance premiums in the future, due to the mistakes of people who have treated conveyancing as a process.

Cushion kings

John Goff told the story of his battle to save Waterford Courthouse and the reason behind the 'Cushion Dinner', hosted by the society for him and Eamonn King in Dungarvan last year.

"In 1975, the courthouse was falling down. We ended up going to Tramore for the District Court, in a room smaller than the one we are in now. The place was so small, and the seating arrangements so close, that on the occasions when a defendant would get obstreperous, he would fall in on top of us, with the gardaí trying to quieten him.

"This went on for quite a while. There were no High Court hearings in Waterford then – we were abandoned. Then Waterford Corporation told us that we would be moved to the Friends Meeting House in O'Connell Street in Waterford – a huge building. There was a large conference room, and another smaller room. When the corporation told us they were going to do up the hall as a courthouse, we assumed they were going to do up the big room, which would have been grand. But they did up the smaller room, for District Court and Circuit Court hearings. There was no air in this room at all. You would have a blinding headache by four in the evening. We suffered that for a long time, until Waterford Law Society, led by Eamonn King and myself, decided that we had to bring a writ for *mandamus*, even though the members were nervous.

"This was highly contested by Waterford Corporation, by Waterford County Council, by the Department of Justice, and Kilkenny County Council. The day before proceedings came before the judge in Dublin, I went down to the courthouse and got the key from the caretaker. Inside, I saw a pigeon sitting on the judge's chair, discharging his cargo. As well as this, the seagulls were coming in from the river. I gave my description of the courthouse to the judge, which appeared in the paper the next day with the headline 'Seagulls in Court'. A written judgement was given and we got the order to repair the courthouse.

"This was 1978. Ireland was on its uppers and there was no money. They took two years to carry out the order. A firm was hired to repair the building for one-and-a-quarter million pounds. They did a good job, but Waterford Corporation had resisted the repairing of the courthouse in a big way. The councillors hated solicitors and the law society, so they decided not to put cushions on the benches for the solicitors to sit on. You would feel it after four hours of sittings!

"When we got the courthouse repaired, we couldn't get the High Court to come back. We tried everything, and they wouldn't even reply to letters.

"I was in Dublin one day. Liam Hamilton, a very nice man, was President of the High Court. I saw his crier, Ambrose, and asked him if I could see the president. I was in with him in five minutes and I explained the situation. He went over and looked at his calendar. 'We'll come for a week in July – would that be alright?' he replied. And so the High Court returned to Waterford."

In 2007, John Goff and Eamonn King donated cushions for the benches in the courthouse – hence the celebratory dinner! G

PIC: LENSMEN

Irish-American relations

A dinner was held on 6 February in honour of the ambassador of the United States to Ireland *(seated, l to r)*: Mr Justice Bryan McMahon, Ambassador Thomas C Foley, James MacGuill (president of the Law Society), Mr Justice Joseph Finnegan, and Judge Petria McDonnell; *(standing, l to r)*: Mary Keane (deputy director general), Finbar Cahill, Tony Caher, Ken Murphy (director general), Jim McLaughlin, Anthony T Hanahoe, Robert Ballagh and Fiona Donnelly

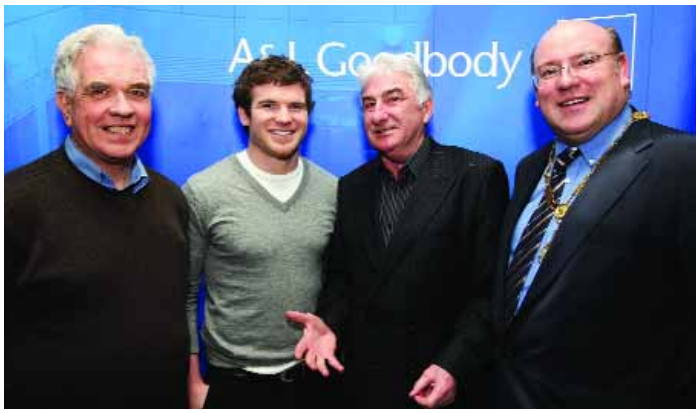
PIC: DOMNICK WALSH

Kerry's gold

The Kerry Law Society met at the Brandon Hotel Conference Centre in Tralee, Co Kerry, on 4 March. Special guests included Law Society President James MacGuill and director general Ken Murphy. Pictured are *(front, l to r):* Pat Mann (vice-president, Kerry Law Society), Joseph Mannix, Carmel Sreenan, John Galvin (chairman, KLS), James MacGuill, Ken Murphy, Matt Breslin (president, KLS), Mary Horgan, Eanna O'Malley, Donal J Browne; *(middle, l to r)*: Conor Murphy, Nora O'Mahony, Stephen Kennedy, Catherina Healy, Marguerite Fitzgerald, Mary Twomey, Noreen Broderick, Deirdre Quinn, Judith Curtin, Liam Crowley; *(back, l to r)*: Pat Sheehan, Paddy Whelehan, Shane O'Donoghue, Niall Lucey, Brian O'Regan, Gearoid Ryle, John Baily, Pat F O'Connor, and Michael O'Donnell

WIT award

Waterford Law Society's WIT Award Debate on 31 January was won by Roisin O'Shea. The annual debate is organised by Waterford Law Society committee member Helen Bowe O'Brien



Pictured at the launch of this year's Calcutta Run, due to be held on 17 May, were *(l to r)*: Fr Peter McVerry of the Peter McVerry Trust, international rugby star Gordon D'Arcy, GOAL's John O'Shea and Law Society President James MacGuill

PIC: LENSMEN

Mr Speaker!
Attending the parchment ceremony on 13 March 2008 at Blackhall Place were *(l to r)*: President of the Law Society James MacGuill, Chairman of the Bar Council Turlough O'Donnell SC, who was the guest speaker, and Director General of the Law Society Ken Murphy

21st century solicitors
At the '21st century solicitors' dinner at Blackhall Place on 19 March 2008 were *(back, l to r)*: Patrick O'Riordan, Loughlin Deegan, John D Shaw (senior vice-president), Ken Murphy (director general), Gerard Doherty (Council member) and Gareth Bourke; *(front, l to r)*: Louise Rouse (Council member), Claire O'Regan, James MacGuill (president), Elizabeth O'Shea and Aisling Kelly

PIC: LENSMEN

North meets South
At the parchment ceremony on 25 January 2008 were *(l to r)*: President of the High Court Mr Justice Richard Johnson, the Lord Chief Justice for Northern Ireland Sir Brian Kerr, who was guest speaker, President of the Law Society James MacGuill, and director general Ken Murphy

Lady golfers name new captain

The captain of the Lady Solicitors' Golf Association for 2008 is Mary Morrissey from Tullow, Co Carlow, who is current Lady President in Mount Wolseley, *writes Petria McDonnell*. We wish her all the best for the year ahead.

Any lady golfers not already on the circulation list who would like to be notified of events that she is planning for the year can contact Mary at: mmorrissey@morrisseycosolicitors.ie.

2007 outings and winners

- At a spring outing in Mount Juliet, all prizes went west to Galway. The winner of the Patrick O'Connor Cup was Damhnait O'Loughlin, while Maria O'Brien was the winner of the Sheila O'Gorman Trophy.
- The Captain's Outing in Headford was held in glorious sunny weather on 6 September. The Moya Quinlan Trophy was presented by Moya herself (who has been a tremendous supporter), and won by Paula Daly from Sligo.
- Outings took place in September with the Edinburgh Lady Solicitors in Millicent and Portmarnock Links, which resulted in the Irish team retaining the trophy yet again.

The other staples on the year's golfing menu were the ever-popular mixed outing against the bar, played as usual at Rathsallagh, and the solicitors' mixed outing at Carton on 30 September. The year ended with a fine outing in Luttrelstown on 25 November, at which the winner was Geraldine Lynch Bourke, playing on her home course.

Lady golfers (including trainee solicitors) interested in participating at any of the golfing events for 2008 should contact Mary Morrissey by email at the above address.

DSBA ball

The DSBA held its annual ball at the Four Seasons Hotel on 1 February 2008. Glitz and glamour were very much in evidence at Michael Quinlan's presidential dinner-dance, as can be seen from these photos of the night. The great news is that €8,000 was raised for charity from the night's raffle. Congratulations to all who participated. We hope you enjoy the photos, taken on the night by John Glynn.

Southern Law Association annual dinner

The Southern Law Association's annual dinner on 22 February at the Maryborough House Hotel in Cork was a huge success for its president, Patrick Mullins, and the officers of the SLA. Over 320 practitioners and guests attended, including President of the Law Society James MacGuill, his counterpart in Northern Ireland Donal Eakin, and director general Ken Murphy. The highlight of the event was the 'topical song', presented by Charlie Hennessy and Kieran McCarthy, with lyrics input by the irrepressible Patrick Dorgan. The *Gazette* camera was present on the night to capture the atmosphere.

Donald Eakin (president of the Law Society of Northern Ireland), James McGuill (president of the Law Society of Ireland) and Patrick Mullins (president of the Southern Law Association)

John Kelly, Suzanne Kelly, Gail Mullins and Pat Mullins (president of the SLA)

ALL PICS: BAUMANN AND MURPHY PHOTOGRAPHERS

Mary O'Callaghan and Orla O'Connell (Eamon Murray & Co)

Crowded house!

Louise O'Brien, Justin Condon and Kate Murphy (all from Murphy & Condon)

Tonya O'Mahony, Shane Healy and Benita Meagher

Ciaran Lewis and Grattan Roberts

practice notes

CHANGES TO REGISTRY OF DEEDS RULES AND FEES

On 1 May 2008, the *Registration of Deeds Rules 2008* come into operation. The rules can be viewed on the Property Registration Authority (PRA) website at www.prai.ie.

In summary, the effect of the new rules is that:

1) On or after 1 May 2008, there will no longer be a requirement to lodge a memorial. The rules see the introduction of standard application forms, the format of which is set out in the rules.
2) All applications will be allocated a priority number on lodgement and processed in the strict sequential number order allotted on lodgement.
3) On registration, a serial number will be allocated to each application, maintaining such priority.
4) Registration by personal presentation will cease from close of business on 30 April 2008.
5) Any application for registration returned with a query on or before 30 April 2008 and lodged subsequently on or after 1 May 2008 will be treated as a new application. It will be necessary in these cases to lodge the following:
   - Application form,
   - Original deed,
   - Additional fees in the sum of €6, that is, the difference between the old memorial fee and the new application form fee, and
   - The memorial as evidence that the original fee has been paid.
6) Common and negative searches will be replaced from 1 May 2008 with an official search.

Registry of Deeds (Fees) Order 2008

On 1 May 2008, the *Registry of Deeds (Fees) Order 2008*, which provides for a revised scale of fees in respect of Registry of Deeds applications, comes into operation.

The most commonly used application fees increase as follows:

1) Registration of a deed – €50,
2) Registration of a vacated mortgage – €20,
3) Resubmission of a deed and application – €20. This fee increase does not come into operation until 4 August 2008.

The fees order can be viewed on the PRA website at www.prai.ie.

All practitioners should now familiarise themselves with the *Registration of Deeds Rules 2008* and the *Registry of Deeds (Fees) Order 2008*.

Conveyancing Committee

CLAWBACK OF STAMP-DUTY RELIEF

The Conveyancing Committee is aware that the Revenue Commissioners are currently investigating claims for owner-occupier relief, and the investigation may, in time, be extended to other areas of stamp-duty relief, including a more specific focus on first-time-buyer relief.

Practitioners should note that a clawback of stamp-duty relief arises where a purchaser has claimed relief in respect of the first purchase of either a new house or apartment, as an owner occupier, whether a first-time buyer or not, and subsequently derives rent from the property within the specified period, other than under the rent-a-room scheme.

The relief is clawed back by Revenue in the form of a penalty from the original purchaser and the adequacy of the stamping of the instrument is not questioned. There is no requirement to return the original instrument to Revenue.

The details of how to account to Revenue and the forms required are available on the Revenue website at www.revenue.ie. The requisite form, together with a copy of the deed, the penalty and interest arising thereon, should be forwarded to Revenue.

Conveyancing Committee

NEW VAT ON PROPERTY REGIME

The *Finance Bill 2008*, which is currently before the Oireachtas, introduces a new regime for VAT on property. A subcommittee has been set up by the Taxation and Conveyancing Committees to look at the implications of same and to review the VAT provisions of the Society's particulars and conditions of sale and the requisitions on title. This process will take some time, as the bill has not yet been enacted, and it will be necessary to let the new regime bed-in to ensure that the new documentation is as comprehensive as possible.

Practitioners, however, are dealing with and entering into contracts at this stage, which contracts will not complete until after 1 July and, accordingly, will be subject to the new regime.

Certain properties that are now within the VAT net will not be in the VAT net under the new regime, unless an option to tax is exercised jointly by the purchaser and the vendor. If the option is not made, the vendor will not be able to charge VAT; however, it could be subject to a clawback in relation to the input credit received in respect of the property.

As an interim measure, the subcommittee has drafted a clause to be inserted as Special Condition 3(e) of the contract for sale. This condition entitles the vendor to require the purchaser to exercise a joint option to tax in order that a clawback of the input credit can be avoided. Solicitors acting for the purchaser should consider the implication of the clause for their client before agreeing to same. If in doubt, specialist advice should be obtained.

KEY TO NEW VAT ON PROPERTY SYSTEM

1. VENDORS'/PURCHASERS' OBLIGATIONS WHERE SALE COMPLETED ON OR AFTER 1 JULY 2008

Property	Tax status	Vendor must	Purchaser must	VAT calculated by reference to	Deductibility adjustment for vendor
New or nearly new freehold/freehold equivalent property	Taxable	Give VAT invoice. Charge VAT at 13.5%.	Ask for: a) Invoice, b) Date of development, and c) Evidence of dates and periods of occupation, if relevant.	Market value	n/a
Developed second-hand property sold during adjustment period (vendor a taxable person)	Exempt with option to tax	Consider: a) Obliging purchaser to exercise joint option to tax, and (if appropriate) claiming VAT rebate, or b) Accounting to the Revenue for deductibility adjustment.	If joint option exercised: a) Ask for VAT history, and b) Apply reverse charge VAT.	If option exercised: market value. If option not exercised: Apply the formula[1]: $B \times \frac{N}{T}$	Yes, if option to tax not exercised
Developed property sold during adjustment period (vendor not a taxable person)	Exempt with option to tax	Consider: a) Obliging purchaser to exercise joint option to tax to secure partial refund of VAT under the *VAT Act*, section 12 E(7)(a), on acquisition or development, or b) Treating supply as exempt	If joint option exercised: a) Ask for VAT history, and b) Apply reverse charge VAT.	If option exercised: market value.	n/a
Transitional leasehold property sold during adjustment period (vendor a taxable person)	Taxable	Give: a) VAT statement, and b) Copy of capital goods record.	Ask for: a) VAT statement, and b) Copy of capital goods record, and self account for VAT.	Apply the formula[2]: $T \times \frac{N}{Y} \times 13.5\%$	n/a
Transitional leasehold property sold during adjustment period (vendor not a taxable person)	Exempt with option to tax	Consider: a) Obliging purchaser to exercise joint option to tax to secure partial refund of VAT under section 12 E (7)(a), or b) Treat supply as exempt.	If option exercised ask for: a) VAT statement, and b) Copy of capital goods record, and self account for VAT.	Apply formula as above.	n/a
Out of scope property	Not taxable	Confirm tax status	Ask for tax status to be confirmed	n/a	n/a

The subcommittee has also prepared a table (below) that sets out some of the key points of the new provisions and the implications of same. The table is for guidance only and is not a substitute for reading and applying the legislation.

Subclause to be added as Special Condition 3(e) of the Law Society's conditions of sale

"In the event that the within sale (which term shall include the surrender or assignment of a leasehold interest created prior to the 1st day of July 2008) is to be completed on or after 1 July 2008, and an option to charge VAT on the sale is available under Section 4B or Section 4C of the VAT Act, by notice in writing issued to the Purchaser at or before the completion of the sale, the Vendor shall have the right to require that VAT shall be chargeable on the sale as provided in such sections as the Vendor shall nominate in such notice. If such notice is issued, the Purchaser hereby irrevocably agrees that VAT as appropriate will be charged on the sale, and without prejudice to the generality of the foregoing, he will execute such further documentation as may reasonably be requested by the Vendor to confirm that the option to charge VAT on the sale has been exercised. If such option to charge VAT on the sale is exercised, the Vendor shall provide the Purchaser with such information in relation to the property as is necessary to enable the Purchaser to comply with the Purchaser's obligations under the VAT Act which arise as a result."

Note

This subclause is suitable for the majority of commercial property sales completing after 30/6/08.

KEY TO NEW VAT ON PROPERTY SYSTEM (contd)

2. OWNER OF CAPITAL GOODS HELD ON 1 JULY 2008 AND ACQUIRED BEFORE THAT DATE

- Retain data on:

a) Any acquisition, development and refurbishment expenditure and on associated services (including legal, engineering, architectural and other fees), and

b) Dates of acquisitions, developments, refurbishments and periods of occupations of a property that is a capital good.

- Before any sale, update and verify capital goods record in a case of any development after 30 June 2008.
- On any sale, be sure the VAT clause in the agreement for sale is appropriate.

3. OWNER OF A PROPERTY THAT IS A CAPITAL GOOD ACQUIRED ON OR AFTER 31 JULY 2008

As 2, but also deal with deductibility adjustments after each interval, and account for or reclaim VAT after each interval.

4. LANDLORD IN RESPECT OF A LETTING

- Consider exercise of landlord's option to tax the rent as service at 21% to avoid deductibility adjustment. The tenant will then pay VAT on rent.
- Be wary of connected person rules.
- Keep capital goods record.

5. NEW CONCEPTS INTRODUCED

a) **Adjustment period**: a period of intervals, 20 for most property (approximately 20 years) – ten for refurbished property (approximately ten years) from the date of development or acquisition of a property in respect of which the capital goods scheme operates.

b) **Capital good:** a developed property or part thereof, including a refurbished property.

c) **Capital goods scheme:** reflects use of a capital good over an adjustment period between VATable and exempt use, with corresponding adjustments as regards VAT recovery.

d) **Completion:** development has reached the state (apart from minor finishing) at which it can effectively be used for the purposes for which it was designed, with all necessary utility services connected.

e) **Connected person:** defined very widely – it includes spouse, relative, spouse of relative, partnership, control, common purpose, and so on – can impact on lettings and sales.

f) **Development:** construction, demolition, extension, alteration, or reconstruction of a building on land; and/or carrying out engineering or other operations in, on, over or under land to adapt it for a materially altered use.

g) **Exempt disposal:** the disposal during the adjustment period of a commercial freehold/freehold equivalent property that is not new/nearly new.

h) **Exempt with option to tax (sale):** a most misleading expression. On the sale during the adjustment period of a second-hand property, a vendor must repay all or part of VAT claimed on acquisition or development or, by using the joint option, charge VAT on the selling price to the purchaser. The exercise of the option will preserve the vendor's VAT recovery position. A purchaser should consider his ability to recover this VAT, as the exercise of this option brings a property that could potentially be outside the VAT net back into the VAT net. The option to tax is not available for residential property.

i) **Freehold equivalent interest:** The effective economic interest or substantially the effective economic interest in a property, including where payment is staggered over a period of up to five years.

j) **Occupation:** in use or let and in use (in accordance with planning permission, if granted).

k) **Option to tax (leases):** lessor can, without lessee agreement, opt to apply VAT at the 21% rate to rent payable under a lease of developed commercial property. Therefore, VAT recovery on acquisition/development costs for the lessor will be preserved. Option can be exercised property by property.

l) **Refurbishment:** development on a previously completed building.

m) **Transitional property interests:** freehold/freehold equivalent commercial property acquired/developed before 1/7/2008 that has not been disposed of prior to that date until disposal of that property on or after that date, and leasehold interests of ten years or more (other than a freehold equivalent) created before 1/7/2008 and held on 1/7/2008.

n) **New/nearly new property:** (i) unoccupied commercial property completed/developed within the last five years; (ii) commercial property developed within the last five years until the property has been occupied for at least 24 months since development and until there has been at least one arm's length sale; and (iii) developed residential property sold by a developer at any time (whether or not let since development).

o) **Second hand:** not new/nearly new property, but property that is still in the adjustment period.

6. CONCEPTS ABANDONED

a) Capitalised value of a lease,

b) The economic value test for leases,

c) Section 4A procedure,

d) Waiver of exemption for short-term residential letting.

7. CONCEPT TRANSFORMED

New rules apply for a vendor and a purchaser on the transfer of a business where a capital good is transferred.

8. WARNING

This note is intended to highlight some of the more significant features of the new VAT on property system. It is not a substitute for reading and applying the legislation.

Footnotes to table

1. *'B' is the amount of VAT reclaimed. 'N' is the number of full intervals remaining in the adjustment period in relation to that property at the time of supply plus one. 'T' is the total number of intervals in the adjustment period in relation to that property (see* VAT Act 1972*, section 12 E(7)(c)).*

2. *'T' is the total VAT incurred on acquisition/development, 'N' is the number of full intervals, plus one, that remain in the adjustment period at the time of the assignment or surrender, and 'Y' is the total number of intervals in that adjustment period for the person making the assignment or surrender.* G

legislation update

17 January – 10 March 2008

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

ACT PASSED

Control of Exports Act 2008
Number: 1/2008
Contents note: Provides for the control of the exportation of goods and technology and the control of the provision of brokering activities and technical assistance; provides for the control of technical assistance related to certain military end-users in accordance with *EU Joint Action 401/2000 CFSP* of 22/6/2000 and for the control of arms brokering in accordance with *EU Common Position 2003/468/CFSP* of 23/6/2003. Enables regulations and orders to be made under this act for the purpose of giving effect to EC legislation. Repeals the *Control of Exports Act 1983* but confirms the validity of the *Control of Exports Order 2005* (SI 884/2005), and provides for related matters.
Commencement date: Commencement order(s) to be made (per s12(2) of the act)

SELECTED STATUTORY INSTRUMENTS

Building Control Act 2007 (Commencement) Order 2008
Number: SI 50/2008
Contents note: Appoints 1/3/2008 as the commencement date for parts 1 and 2 of the act, except for the provisions of sections 5 and 6 of part 2. Appoints 1/5/2008 as the commencement date for parts 3 to 7 of the act.

District Court (Criminal Justice Act 2006) (No 2) Rules 2008
Number: SI 25/2008
Contents note: Substitute a new rule 8 in order 28A of the *District Court Rules 1997* (SI 93/1997) to provide procedures and forms in relation to the operation of section 99 of the *Criminal Justice Act 2006*, as amended by section 60 of the *Criminal Justice Act 2007*, in relation to suspended sentences.
Commencement date: 12/3/2008

District Court (Criminal Justice Act 2007) Rules 2008
Number: SI 41/2008
Contents note: Amend orders 13, 14, 17, 18, 27, 31 and 101 of the *District Court Rules 1997* (SI 93/1997) to provide forms and procedure in respect of changes, mainly in relation to bail, arising from the entry into force of certain provisions of the *Criminal Justice Act 2007* and to take account of the provisions of the *Criminal Procedure (Amendment) Act 2007*.
Commencement date: 19/3/2008

Food Safety Authority of Ireland Act 1998 (Amendment of First and Second Schedule) Order 2007
Number: SI 839/2007
Contents note: Amends parts I, II and III of the first schedule to the *Food Safety Authority of Ireland Act 1998* in order to update the lists of acts, statutory instruments and EC regulations in force relating to food. Amends the second schedule (official agencies designated for the purposes of the act) to the act. The full list of legislation contained in the first schedule and the list of official agencies listed in the second schedule are set out in the explanatory note to SI 839/2007.
Commencement date: 19/12/2007

Medical Practitioners Act 2007 (Commencement) Order 2008
Number: SI 24/2008
Contents note: Appoints 13/2/2008 as the commencement date for sections 1, 2, 17, 18 and 88(2)(a) and (6) of the act.

Personal Injuries Assessment Board (Fees) (Amendment) Regulations 2007
Number: SI 869/2007
Contents note: Make an amendment to the charge the Personal Injuries Assessment Board may make on respondents in respect of the processing by the board of applications under section 11 of the *Personal Injuries Assessment Board Act 2003*.
Commencement date: 1/1/2008

Registration of Deeds and Title Act 2006 (Commencement) Order 2008
Number: SI 1/2008
Contents note: Appoints 1/5/2008 as the commencement date for section 4 (insofar as it applies to part I of the schedule to the act), sections 32 to 45 and 49 of, and part I of the schedule to, the *Registration of Deeds and Title Act 2006*.

Registration of Deeds (Fees) Order 2008
Number: SI 51/2008
Contents note: Provides for a revised scale of fees to be charged in the Registry of Deeds. Revokes the *Registry of Deeds (Fees) Order 1999* (SI 346/1999).
Commencement date: 1/5/2008

Registration of Deeds Rules 2008
Number: SI 52/2008
Contents note: Provide general rules for the Registry of Deeds in accordance with section 48 of the *Registration of Deeds and Title Act 2006*.
Commencement date: 1/5/2008

Safety, Health and Welfare at Work (Quarries) Regulations 2008
Number: SI 28/2008
Contents note: Set out requirements for the safety, health and welfare of persons working in quarries (as defined in regulation 3) and replace a range of provisions formerly applied in the *Mines and Quarries Act 1965* and in regulations made under that act. Give effect to Directive 92/104/EEC on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral extracting industries.
Commencement date: 1/5/2008 for all regulations except regulations 13(c) and 16(b), which come into operation on 1/11/2009

Safety, Health and Welfare at Work Act 2005 (Quarries) (Repeals and Revocations) (Commencement) Order 2008
Number: SI 29/2008
Contents note: Appoints 1/5/2008 as the commencement date for section 4(2) of the act

for the purpose of repealing the *Mines and Quarries Act 1965*, insofar as that act relates to quarries, and revoking all orders, regulations and rules made under that act insofar as they relate to quarries. Statutory instruments in the latter category are listed in the explanatory note to the order.

Waste Management (Collection Permit) Regulations 2007

Number: SI 820/2007

Contents note: Revoke, subject to transitional arrangements, and replace the *Waste Management (Collection Permit) Regulations 2001* (SI 402/2001) and the *Waste Management (Collection Permit) (Amendment) Regulations 2001* (SI 540/2001). Set out procedures for the making of permit applications, public consultation, consideration by local authorities of submissions in relation to permit applications, and the grant, refusal and review of collection permits by local authorities. Provide for the operation of a number of EC regulations and give effect to the directives listed below.

Leg-implemented: dir 74/439 (waste oils), as amended by dir 87/101; dir 75/442 (waste), as amended by dir 91/156 and codified under dir 2006/12; dir 2006/11 (aquatic environment); dir 80/68 (ground water); dir 87/217 (asbestos); dir 91/676 (nitrates); dir 91/689 (hazardous waste); dir 2000/60 (framework for water policy); dir 2000/53 (end of life vehicles), as amended by dir 2005/673; dir 2002/96 (WEEE), as amended by dir 2003/108; dir 94/62 (packaging), as amended by dir 2004/12; dir 2000/76 (waste incineration); dir 91/157 (batteries and accumulators), as amended by dir 93/86 and by dir 98/101; dir 2006/66 (batteries and accumulators) repealing dir 91/157; dir 2006/118 (ground water).

Commencement date: 31/3/2008

Rules of the Superior Courts (Cape Town Convention) 2008

Number: SI 31/2008

Contents note: Amend orders 12, 13 and 64A of, and insert a new order 81A ('*International Interests in Mobile Equipment (Cape Town Convention) Act 2005*') into, the *Rules of the Superior Courts 1986* (SI 15/1986) to regulate the manner in which proceedings under the *Cape Town Convention* concerning the taking of security in respect of aircraft parts and other high-value mobile assets may be conducted. Include such proceedings in the category of proceedings in which one or more of the parties may make an application to the judge of the commercial list for an order entering the proceedings in the commercial list.

Commencement date: 12/3/2008

Rules of the Superior Courts (Costs) 2008

Number: SI 12/2008

Contents note: Amend order 99 of the *Rules of the Superior Courts 1986* (SI 15/1986) in relation to the awarding of costs of interlocutory applications, the consideration by the court of offers in writing when awarding costs, and the court's powers to require the production and exchange of estimates of costs.

Commencement date: 21/2/2008

Waste Management (Facility Permit and Registration) Regulations 2007

Number: SI 821/2007

Contents note: Revoke, subject to transitional arrangements, and replace the *Waste Management (Permit) Regulations 1998* (SI 165/1998). Set out procedures for the making of permit and registration applications, public consultation, consideration by local authorities of submissions in relation to permit or registration applications, and the grant, refusal and review of facility permits and registration by local authorities. Provide for the operation of a number of EC regulations and give effect to the directives listed below.

Leg-implemented: dir 74/439 (waste oils), as amended by dir 87/101; dir 75/442 (waste), as amended by dir 91/156 and codified under dir 2006/12; dir 2006/11 (aquatic environment); dir 80/68 (ground water); dir 87/217 (asbestos); dir 91/676 (nitrates); dir 91/689 (hazardous waste); dir 2000/60 (framework for water policy); dir 2000/53 (end-of-life vehicles), as amended by dir 2005/673; dir 2002/96 (WEEE), as amended by dir 2003/108; dir 94/62 (packaging), as amended by dir 2004/12; dir 91/157 (batteries and accumulators), as amended by dir 93/86 and by dir 98/101; dir 2006/66 (batteries and accumulators) repealing dir 91/157; dir 2006/118 (ground water); dir 1999/31 (landfill of waste); dir 79/409 (conservation of wild birds); dir 92/43 (habitats).

Commencement date: 31/3/2008 G

Prepared by the Law Society Library

Solicitors Disciplinary Tribunal

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

In the matter of Andrew Walker, a solicitor formerly practising as a partner in Hayes Solicitors, Lavery House, Earlsfort Terrace, Dublin 2, and in the matter of the *Solicitors Acts 1954-2002* [3453/DT 59/05]
Law Society of Ireland (applicant)
Andrew Walker (respondent solicitor)

On 10 January 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to disclose a material fact about the alteration of clinical notes prior to the commencement of a hearing in a named High Court case in a timely manner or at all, such material fact only being revealed to the court and to the plaintiffs as a result of queries raised by the presiding judge during the examination-in-chief of one of the defendants in the High Court case on 6 November 2003.

The tribunal ordered that the respondent solicitor:

a) Do stand admonished and advised,
b) Pay a sum of €5,000 to the compensation fund,
c) Pay 50% of the costs of the Law Society of Ireland, as taxed by a taxing master of the High Court in default of agreement. G

Solicitors' Benevolent Association

144th report and accounts

Year: 1 December 2006 to 30 November 2007

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

The amount paid out during the year in grants was €397,733, which was collected from members' subscriptions, donations, legacies and investment income. Currently, there are 45 beneficiaries in receipt of regular grants and approximately one-half of these are themselves supporting spouses and children.

There are 18 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices, Blackhall Place. They meet at Law Society House, Belfast, every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and approving of new applications. The directors also make themselves available to those who may need personal or professional advice. The directors have available the part-time services of a professional social worker who, in appropriate cases, can advise on state entitlements, including sickness benefits.

The directors are grateful to both Law Societies for their support and, in particular, wish to express thanks to Philip M Joyce, past president of the Law Society of Ireland, James Cooper, past president of the Law Society of Northern Ireland, Ken Murphy, director general, Alan Hunter, chief executive, and the personnel of both societies.

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

- The Law Society,
- Belfast Solicitors' Association,
- Donegal Bar Association,
- Dublin Solicitors' Bar Association,
- Limavady Solicitors' Association,
- Local Authority Solicitors' Bar Association,
- Medico-Legal Society of Ireland,
- Sheriffs' Association,
- Southern Law Association,
- Tipperary and Offaly Bar Association,
- Waterford Law Society.

To cover the ever-greater demands on the association, additional subscriptions are more than welcome, as of course are legacies and the proceeds of any fundraising events. Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained at 73 Park Avenue, Dublin 4. I would urge all members of the association, when making their own wills, to leave a legacy to the association. You will find the appropriate wording of a bequest at p30 of the *Law Directory 2008*.

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

Thomas A Menton, chairman

RECEIPTS AND PAYMENTS ACCOUNT
YEAR ENDED 30 NOVEMBER 2007

	2007	2006
	€	€
RECEIPTS		
Subscriptions	321,850	310,371
Donations	96,603	24,299
Investment income	80,918	65,288
Bank interest	7,481	3,441
Repayment of grants	24,287	-
Refund of dividend withholding tax	33,508	-
	564,647	403,399
PAYMENTS		
Grants	397,733	442,626
Bank interest and charges	1,037	830
Administration expenses	27,056	28,315
Currency loss	4,077	-
	429,903	471,771
SURPLUS/(DEFICIT) FOR THE YEAR BEFORE SPECIAL EVENTS	134,744	(68,372)
Other income	66	505
Currency gain	-	223
SURPLUS/(DEFICIT) FOR THE YEAR BEFORE LEGACIES	134,810	(67,644)
Legacies	16,350	753
SURPLUS/(DEFICIT) FOR THE YEAR	151,160	(66,891)

DIRECTORS AND OTHER INFORMATION

DIRECTORS
Thomas A Menton (chairman)
John Sexton (deputy chairman)
Robert Ashe (Carlow)
Sheena Beale (Dublin)
Caroline Boston (Belfast)
Felicity M Foley (Cork)
William B Glynn (Galway)
John Gordon (Belfast)
Colin Haddick (Newtownards)
Niall D Kennedy (Tipperary)
Dermot Lavery (Dundalk)
John M O'Connor (Dublin)
Brian K Overend (Dublin)
Colm Price (Dublin)
David Punch (Limerick)
Andrew F Smyth (Dublin)
Brendan J Twomey (Letterkenny)
Brendan Walsh (Dublin)

TRUSTEES (*ex-officio* directors)
John M O'Connor
Andrew F Smyth
John Sexton
John Gordon

SECRETARY
Geraldine Pearse

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

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

BANKERS
Allied Irish Banks plc, 37/38 Upper O'Connell Street, Dublin 1; First Trust, 31/35 High Street, Belfast BT1

OFFICES OF THE ASSOCIATION
Law Society of Ireland, Blackhall Place, Dublin 7; Law Society of Northern Ireland, Law Society House, 90/106 Victoria Street, Belfast BT1 3JZ

CHARITY NUMBER: CHY892

BRIEFING

firstlaw update

News from Ireland's online legal awareness service
Compiled by Bart Daly for FirstLaw

COMPANY LAW

Winding up

Court winding up – voluntary winding up – Companies Acts 1963-2006.

The petitioner petitioned for the company to be wound up. The only real issue that arose was whether the court should make an order for the winding up of the company or whether the creditors' voluntary liquidation should be allowed to proceed.

Laffoy J dismissed the petition, holding that it was in the interests of the general body of creditors that the liquidation of the company be effected as cheaply and as expeditiously as possible. A winding up under the supervision of the court would be more costly and would be of longer duration than a creditors' voluntary winding up.

***In re Permanent Formwork Systems Ltd*, High Court, Ms Justice Laffoy, 23/5/2007, 2007 No 161 COS** [FL14458]

CONSTITUTIONAL LAW

Mental health

Inquiry into legality of detention of applicant – applicant involuntarily detained pursuant to section 184 of the Mental Treatment Act 1945 *– original temporary detention order extended and new detention order made following expiration of original order – whether section 184 can be used on more than one occasion* – Bunreacht na hÉireann, *article 40.4.*

The applicant had been involuntarily admitted and detained in the respondent's hospital under section 184 of the *Mental Treatment Act 1945*. That detention order had been extended twice, making a total detention period under the order of 18 months. A new section 184 order was made after the end of that initial period of detention, which was also extended twice. The applicant sought his release pursuant to article 40.4 of the Constitution. It was contended on behalf of the applicant that his detention was unlawful as, in effect, he had been detained under section 184 for a total period of 36 months, which frustrated the purpose of section 184. The respondent contended that section 184 could be operated on more than one occasion if the circumstances justified it and was more appropriate than the more drastic option of declaring a person to be of unsound mind.

Mr Justice McGovern declared the applicant's detention lawful, holding that the courts should adopt a purposive approach in interpreting the provisions of the *Mental Treatment Acts*. However, in so doing, the courts should not encroach upon or usurp the constitutional role of the Oireachtas. There was nothing in the 1945 act that prevented section 184 being used on more than one occasion, depending on the circumstances of each case. If a fresh section 184 application was brought in circumstances that did not make it a fiction or a contrived means of getting around the intention of the provisions of the act of 1945, with regard to temporary chargeable patient reception orders, it was not unlawful.

***B(J) v Director of Central Mental Hospital (respondent)*, High Court, Mr Justice McGovern, 4/5/2007, 2007 No 434 SS** [FL14467]

CRIMINAL LAW

Drunk driving

Judicial review – adequacy of reasons for refusal of directed acquittal – fair trial.

The applicant was convicted of the offence known as drunk driving. The applicant applied by way of judicial review for an order of *certiorari* and a declaration condemning the order on the grounds that the trial judge failed to give adequate reasons for her refusal of a directed acquittal.

McCarthy J quashed the decision and remitted it to the District Court for further hearing, holding that the reasons were not adequate.

***Smith (applicant) v Judge Aingeal Ní Chondun (respondent)*, High Court, Mr Justice McCarthy, 3/7/2007, No 2006/1240 JR** [FL14452]

Extradition

European arrest warrant – error in information provided in warrant – whether error such that surrender should not be ordered – whether risk of real injustice to respondent by ordering surrender – European Arrest Warrant Act 2003.

Article 26 of the Council Framework Decision provides, among other things, that "the issuing member state shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing member state as a result of a custodial sentence or detention order being passed". The applicant sought an order directing the surrender of the respondent to Britain, which requested his surrender on foot of a European arrest warrant, to serve out the remainder of a sentence imposed on him there. The respondent submitted, among other things, that article 26 of the Council Framework Decision required that time spent in custody in Spain awaiting surrender had to be deducted when calculating the time that he should remain in prison and that time had not been allowed for in the sentence imposed.

Mr Justice Peart ordered the surrender of the respondent to the requesting state, holding that the error in the information provided in the warrant as to the length of sentence imposed (in that no reference was included in relation to the reduction in that sentence of six months) did not invalidate the warrant, as it worked no injustice upon him. While it was important that warrants should be prepared correctly and that, in the case of serious error, the court could refuse to order surrender, that ought not to be taken to an extreme by surrender being refused by reason of some error or omission of a minor nature that caused no real disadvantage or injustice to a respondent.

***Minister for Justice, Equality & Law Reform (applicant) v Michael Power (respondent)*, High Court, Mr Justice Peart, 27/6/2007, 2004 No 24 Ext** [FL14466]

FAMILY LAW

Jurisdiction

Contact/access proceedings of High Court of Ireland – abuse of process – Brussels II Bis Regulations, *no 2201/2003.*

The applicant father issued proceedings claiming relief under

the *Guardianship of Infants Act 1964*, seeking custody and access arrangements. The respondent mother applied by way of notice of motion to stay the guardianship proceedings on the grounds that the Irish High Court had no jurisdiction or, in the alternative, that the proceedings should be stayed or dismissed on the grounds that they were an abuse of process.

Abbott J refused the respondent's application, holding that the High Court of Ireland had jurisdiction to deal with the proceedings insofar as they related to custody/access only, pursuant to article 8 of the *Brussels II Bis Convention*. The proceedings were not an abuse of process.

***R(RGH) (applicant) v G(L) (respondent)*, High Court, Mr Justice Abbott, 11/5/2007, 2007 No 5 M** [FL14477]

REFUGEE AND ASYLUM LAW

Judicial review

Residency – EC (Freedom of Movement of Persons) Regulations 2006, *SI no 226/2006* – *whether the decision refusing to grant the applicant the right of residency in this state was unlawful* – *whether SI no 226/2006 properly transposed EU law into domestic law*.

The applicants sought to challenge, by way of judicial review, the decision of the respondent refusing to grant the first-named applicant the right of residency in this state. The first-named applicant was a citizen of India and married the second-named applicant, a national of Estonia, in Ireland in May 2006. The applicants submitted that the instrument under which the first-named applicant's right of residency was refused, namely SI no 226/2006, was *ultra vires* Directive 2004/38/EC, which dealt with the rights of citizens of the EU and their family members to move and reside freely within the territory of the member states. Specifically, they argued that the requirement in the regulations that a spouse or family member who was a national of a non-EU state be lawfully resident in another member state prior to entering Ireland was *ultra vires* the provisions of the directive. The first-named applicant had previously applied for asylum in Belgium. When his application was refused, he entered Britain and resided there illegally for approximately three years. The first-named applicant applied for asylum in this state prior to marrying the second-named applicant. In his application, the first-named applicant made no reference to his unsuccessful application for asylum in Belgium or the fact that he was illegally resident in Britain for three years. The Office of the Refugee Applications Commissioner determined that Belgium was the country responsible for dealing with the first-named applicant's application for asylum and, consequently, an order was made transferring him to Belgium.

Hanna J refused the application, holding that SI no 226/2006 reflected and gave effect to the 2004 EC directive. The 2006 regulations were an administrative implementation of the policies and principles of the 2004 directive and took account of the scope and latitude afforded to individual member states to enact and maintain the integrity of their respective immigration laws. The 2006 regulations were *intra vires* and in accordance with law. The intention of the first-named applicant in filing his asylum application was to buy time in this state. The first-named applicant had no right to remain in this jurisdiction following the making of a valid decision to refuse him the right of residency. The applicant's transfer to Belgium for the consideration of his application for asylum was an appropriate course to take, and his rights under the *European Convention on Human Rights* were not breached or disregarded.

***K(S) and T(T) (applicants) v Minister for Justice, Equality and Law Reform & Others (respondents)*, High Court, Mr Justice Hanna, 28/5/2007, 2006 No 758 JR** [FL14457]

PLANNING AND DEVELOPMENT LAW

Judicial review

Application for leave – substantial grounds – locus standi – *whether applicant establishing substantial grounds and that he has sufficient interest to seek to have decision of respondent judicially reviewed – whether leave to seek judicial review should be granted* – Planning and Development Act 2000, *section 50*.

The applicant sought leave to judicially review the decision of the respondent to grant the notice party planning permission that did not contain any condition(s) preventing him building upon a portion of a disused railway line. He contended, among other things, that the decision would render it impossible to protect and reinstate the line, contrary to national and regional policy and the county development plan, and that the permission had been granted in breach of the *Planning and Development Regulations 2001*. The respondent contended that the applicant had no *locus standi* and that he had also been guilty of delay in bringing the application. It was also contended that his failure to make any observations on the planning application disentitled him to seek judicial review of the decision.

Mr Justice de Valera granted the applicant leave to seek the reliefs sought at paragraphs 1, 2 and 3 of his notice of motion, holding that the applicant had established that there were substantial grounds on which he should be granted leave to seek judicial review, as he was motivated by genuine concern in relation to the preservation of the old railway route and that the decision was capable of affecting him personally. His failure to make objections or submissions on the planning application was the result of assurances given to him by the respondent.

***Cummins (applicant) v Limerick County Council (respondent)*, High Court, Mr Justice de Valera, 20/7/2007, 2005 No 1112 JR** [FL14444]

Judicial review

Leave – substantial grounds and substantial interest – environmental impact statement – Council Directives 85/337/EEC and 97/11/EC – European Communities (Environmental Impact Assessment) Regulations 1989-2000 – Planning and Development Act 2000, *s50(4)(b)* – Planning and Development Regulations 2001, *SI 600/2001*.

The applicant applied for leave to apply for judicial review of a decision of an Bord Pleanála on the grounds, among other things, that the environmental impact statement submitted with the application failed to comply with the mandatory requirements in Council Directives 85/337/EEC and 97/11/EC and with the *European Communities (Environmental Impact Assessment) Regulations 1989-2000* and/or the *Planning and Development Regulations 2001*.

De Valera J granted leave, holding that the applicant had established substantial grounds and substantial interest as required by s50(4)(b) of the *Planning and Development Act 2000*.

***Klohn (applicant) v An Bord Pleanála (respondent)*, High Court, Mr Justice de Valera, 31/7/2007, 2004 No 544 JR** [FL14461] G

This information is taken from FirstLaw's legal current awareness service, published every day on the internet at www.firstlaw.ie.

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

Recent developments in European law

EMPLOYMENT

Case C-300/06, *Ursula Voß v Land Berlin*, 6 December 2007. In Germany, certain categories of civil servants can receive payment for overtime instead of additional leave. However, the hourly rate of pay for overtime is lower than the hourly rate of pay for hours worked during normal working hours. The applicant is a teacher employed by Land Berlin. She worked part time but gave additional classes between January and May 2008. The remuneration she received was lower than that received by a full-time teacher for the same number of hours worked. She argued that she should be entitled to payment at the same rate. The German court asked the ECJ whether the principle of equal pay precludes national legislation that results in a lower rate of pay for part-time civil servants as compared with full-time civil servants. The ECJ indicated that the principle of equal pay precludes both direct and indirect discrimination. Indirect discrimination covers unequal treatment, which affects considerably more women than men and cannot be justified by objective factors wholly unrelated to discrimination based on sex. The court found that, in this case, there was a difference in treatment to the detriment of teachers working part time. They receive a lower hourly rate for those teaching hours, which are worked over and above their normal teaching hours. This difference in treatment could affect a considerably higher number of women than men. The ECJ asked the German court to determine whether there were objectively justified criteria wholly unrelated to sex discrimination. If such criteria did not exist, the principle of equal pay had been infringed.

FAMILY LAW

Case C-68/07, *Kerstin Sundelind Lopez v Miguel Enrique Lopez Lizazo*, 29 November 2007. Mrs Sundelind Lopez is a Swedish national who married Mr Lopez Lizazo, a Cuban national. When living together, they were resident in France, but the husband subsequently moved to Cuba. Mrs Sundelind Lopez petitioned the Swedish courts for a divorce. The Swedish court dismissed her petition on the basis that, under article 3 of Regulation 2201/2003, only the French courts have jurisdiction. Accordingly, article 7 of that regulation precluded Swedish rules on divorce from applying. The applicant appealed against that judgment and the Swedish Supreme Court made a reference to the ECJ. The ECJ indicated that it was not in dispute that France had jurisdiction on foot of article 3. The Swedish courts are obliged by article 17 of the regulation to declare of their own motion that they have no jurisdiction. The court concluded that articles 6 and 7 of the regulation are to be interpreted as meaning that where, in divorce proceedings, a respondent is not habitually resident in a member state and is not a national of a member state, the courts of a member state cannot base their jurisdiction to hear the petition on their national law if the courts of another member state have jurisdiction under article 3 of the regulation.

FREE MOVEMENT OF GOODS

Case C-319/05, *Commission of the European Communities v Federal Republic of Germany*, 15 November 2007. Germany refused to allow the importation and marketing of "garlic-extract powder capsules" on the ground that they constituted a medicinal product rather than a foodstuff. The commission brought an action against Germany on free movement of goods grounds. The ECJ reviewed the issue of whether these capsules should be regarded as a food product or a medicine. A product may be regarded as medicinal either by presentation or by function. Presentation in capsule form is an indicator towards classification among medicinal products, but that indicator cannot be the sole or conclusive evidence. Capsule form is not exclusive to medicinal products. The court then turned to looking at the function of a product. One of the criteria is the physiological effect of the substance. The garlic-extract capsules do not contain any substance other than natural garlic and have no additional effects, either positive or negative, as compared to those that derive from the consumption of garlic in its natural state. In order to correspond to the definition of a medicinal product by function, a product must have the function of preventing or treating disease. Beneficial effects for health in general, such as those of garlic, are insufficient. The court, therefore, held that the capsules in question do not correspond to the definition either of a medicinal product by presentation or of a medicinal product by function. The German requirement for marketing authorisation as a medicinal product is a measure having equivalent effect to a quantitative restriction. It creates an obstacle to intra-community trade in products legally marketed as foodstuffs in other member states. The court considered whether there was a justification for this. It is for the member states to decide on their intended level of protection of health, while taking into account the requirements of the free movement of goods. In exercising their discretion, the member states must comply with the principle of proportionality. In this case, the requirement for authorisation cannot be justified by the arguments put forward by Germany. These related to the risks connected with taking garlic in general and do not concern the capsules in question. Other measures exist that are just as effective but less restrictive of the free movement of goods than prior authorisation. Thus, Germany has failed to fulfil its treaty

obligations concerning the free movement of goods.

FREE MOVEMENT OF PERSONS

Joined Cases C-11/06 and C-12/06, *Rhiannon Morgan v Bezirksregierung Köln* and *Iris Bucher v Landrat des Kreises Düren*, 23 October 2007. Ms Morgan is a German national who completed her secondary education in Germany. She moved to Britain and worked there for a year as an au pair. She commenced university studies in Britain and applied to the German authorities for a grant. Her application was refused, as German legislation required such grants to be for a course that constituted a continuation of education or training pursued for at least one year in Germany. Ms Bucher is also a German national. She lived with her parents in Bonn and moved with them to a German town near the Dutch border. She began to pursue a course of study across the border in the Netherlands. The German authorities refused her application for a grant on the ground that she was not "permanently" resident near a border. The German administrative court asked the ECJ whether the EC rules on free movement of persons precludes the condition that studies abroad must be a continuation of education or training pursued for at least one year in Germany. The ECJ indicated that member states are competent to determine the content of teaching and the organisation of their respective education systems. However, that competence must be exercised in compliance with EC law and, in particular, in compliance with freedom of movement for EU citizens. Where a member state has a system of education or training grants that can be received by students pursuing studies in another member state, it must ensure that the detailed rules for the award of those grants do not create an unjustified restriction on freedom of movement. The court held that these German restrictions would discourage students from leaving Germany to pursue studies in another member state owing to the personal inconvenience, additional costs and possible delays caused. The rules restrict freedom of movement for EU citizens. Germany argued that it was endeavouring to ensure that students completed their courses in a short period of time. The court accepted that a member state may grant financial assistance only to students who have demonstrated a certain level of integration into that state. This is to ensure that those students do not become an unreasonable burden on the state, which could have implications for that state's overall level of financial assistance. However, the German requirement of having completed a year of studies in Germany is too general and exclusive in that it unduly favours an element that is not necessarily representative of the degree of integration into the society of that member state at the time the application for assistance is made.

LITIGATION

On 13 November 2007, a new regulation on the service of judicial and extrajudicial documents in civil or commercial matters was adopted. Regulation 1393/2007 (EC) repeals Regulation 1348/2000. It introduces a number of modifications from the previous regulation. Article 7 provides that the receiving agency shall take all necessary steps to serve the document as soon as possible. The time limit for service is within one month of receipt. Article 8 provides that the receiving agency is to use a standard form set out in annex II. One of the purposes of the form is let the addressee know about his right to refuse to accept the document at the time of service or his right to refuse service by returning the document to the receiving agency within one week. Article 14 provides that each member state is free to effect service of these documents by post. This is to take the form of a registered letter with acknowledgement of receipt.

On 30 October 2007, the new *Lugano Convention* was signed. This applies rules on jurisdiction and the enforcement of judgments in civil and commercial matters between the EC and Switzerland, Norway and Iceland. This replaces the former *Lugano Convention* and effectively extends the revised rules in the *Brussels Regulation* to the EFTA states. G

LOST LAND CERTIFICATES

Registration of Deeds and Title Acts 1964 and 2006

An application has been received from the registered owners mentioned in the schedule hereto for an order dispensing with the land certificate issued in respect of the lands specified in the schedule, which original land certificate is stated to have been lost or inadvertently destroyed. The land certificate will be dispensed with unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

Property Registration Authority, Chancery Street, Dublin 7
(published 4 April 2008)

Regd owner: Sheila Phelan (née Corrigan); folio: 5351F; lands: Maplestown and barony of Rathvilly; **Co Carlow**

Regd owner: Sheila Phelan (née Corrigan); folio: 7819F; lands: Ricketstown and barony of Rathvilly; **Co Carlow**

Regd owner: Patrick Brennan (deceased); folio: 8539F; lands: Tullowbeg and barony of Rathvilly; **Co Carlow**

Regd owner: Gerard Brennan (deceased); folio: 2870F and 2875F; lands: Ballyoliver and barony of Rathvilly; **Co Carlow**

Regd owner: Joseph Keane (as tenant-in-common of five undivided 1/8 shares); folio: 13695; lands: townland of Woodcockhill and Meelick and barony of Bunratty Lower; **Co Clare**

Regd owner: Stuart Bryan; folio: 75701F; lands: plot of ground situate in the townland of Kilclare Upper and barony of Kinnatalloon in the county of Cork; **Co Cork**

Regd owner: Philip Cotter and Anna Cotter; folio: 45680F; lands: plot of ground situate in the townland of Caherduggan South and barony of Fermoy in the county of Cork; **Co Cork**

Regd owner: Hannah O'Connor; folio: 8841; lands: plot of ground situate in the townland of Cahernagh (Morgel) and barony of Duhallow in the county of Cork; **Co Cork**

Regd owner: Helena O'Connor and Peter Aherne; folio: 75854F; lands: plot of ground situate in the townland of Castletreasure and barony of Cork in the county of Cork; **Co Cork**

Regd owner: Creative Ventures Limited; folio: 49966F; lands: plot of ground situate in the townland of Ardbrack and barony of Kinsale in the county of Cork; **Co Cork**

Regd owner: Nora Healy; folio: 69825F; lands: plot of ground known as no 7 Skehard Law, Skehard Road, Blackrock, situate in the parish of St Finbar's in the city and county of Cork; **Co Cork**

Regd owner: Leonard Anthony Hunt and Deirdre Hunt; folio: 11294F; lands: plot of ground situate in the townland of Gneeves (ED Boherboy) and barony of Duhallow in the county of Cork; **Co Cork**

Regd owner: Mary Geaney; folio: 1287; lands: plot of ground situate in the townland of Nursetown More and barony of Duhallow in the county of Cork; **Co Cork**

Regd owner: Denis Duggan; folio: 57162; lands: plot of ground situate in the townland of Pillmore and barony of Imokilly in the county of Cork; **Co Cork**

Regd owner: Eileen Crowley; folio: 24147F; lands: plot of ground situate in the townland of Timoleague and barony of Ibane and Barryroe in the county of Cork; **Co Cork**

Regd owner: Cornelius Keane and Teresa Keane; folio: 41554; lands: plot of ground situate in the townland of Pookeen and barony of Carbery East (West Division) in the county of Cork; **Co Cork**

Regd owner: Marcus Knight and Helena Knight; folio: 76776F; lands: plot of ground situate in the townland of Gortavehy West and barony of Muskerry West in the county of Cork; **Co Cork**

Regd owner: John Joseph O'Callaghan; folio: 4736L; lands: plot of ground situate to the north of Castleclose Road and town of Blarney, being part of the townland of Shean Lower and barony of Muskerry East in the county of Cork; **Co Cork**

Regd owner: Valentine O'Driscoll; folio: 35619; lands: plot of ground situate in the townland of Courtstown and barony of Barrymore in the county of Cork; **Co Cork**

Regd owner: Jerry O'Riordan Limited; folio: 12355L; lands: plot of ground situate to the north of Blarney Road in the parish of St Mary's Shandon and in the county borough and city of Cork; **Co Cork**

Regd owner: James Kennedy, Rushey Hill, Inver, Co Donegal; folio: 27987; lands: Drumnakilly; **Co Donegal**

Regd owner: Howard L Temple, Magherabeg, Donegal, Co Donegal; folio: 2293; lands: Ardchicken; **Co Donegal**

Regd owner: Brendan Collins; folio: DN743; lands: a plot of ground being part of the townland of Mooretown and barony of Nethercross; **Co Dublin**

Regd owner: Michael Gibney and Ann Gibney; folio: DN2151F; lands: property situate in the townland of Rush and barony of Balrothery East; **Co Dublin**

Regd owner: Eugene Behan and Margaret Behan; folio: DN69892F; lands: property situate on the south side of Old County Road in the parish and district of Crumlin; **Co Dublin**

Regd owner: Josephine Mc-Gowan and Paddy Mc-Dermott; folio: DN94291F; lands: property situate to the south of Skreen Road in the parish of Castleknock and district of Cabra, known as site no 57 Hampton Green; **Co Dublin**

Regd owner: Carol O'Reilly; folio: DN55311L; lands: the property known as 53 Plunkett Green, situate in the parish of Finglas and district of Finglas; **Co Dublin**

Regd owner: Alan Keating; folio: 22223F; lands: Lurga, Ashfield Demesne, Ballyboy (Kiltartan By) and barony of Kiltartan; **Co Galway**

Regd owner: Martin F O'Malley; folio: 1244F; lands: townland of Cloon (Ballynakill By) and barony of Ballynahinch; area: 0.4046 hectares; **Co Galway**

Regd owner: Timothy Tully; folio: 41430F; lands: townland of Rosmore and barony of Leitrim; area: 0.249 hectares; **Co Galway**

Regd owner: John Denis O'Sullivan; folio: 42917F; lands: townland of Kilmurry and barony of Glanarought; **Co Kerry**

Regd owner: William Holdings Limited; folio: 36586F; lands: townland of Waterville and barony of Iveragh; **Co Kerry**

Regd owner: Patrick J Leahy, Eileen Leahy; folio: 22251F; lands: townland of Emlagh East and barony of Corkaguiny; **Co Kerry**

Regd owner: William Timothy Heaslip and Mary E Heaney; folio: 14454F; lands: townland of Gallowfields and barony of Trughanacmy; **Co Kerry**

Regd owner: John James O'Neill (orse Sean) (farmer) of the Shoulder, Kilcullen, Co Kildare; folio: 2084; lands: townland of Killinane and barony of Kilcullen; **Co Kildare**

Regd owner: Patrick Drennan and Marie Drennan; folio: 698L; lands: Gallowshill and barony of Shillelogher; **Co Kilkenny**

Regd owner: Robert Harper; folio: 18207; lands: Annamult and barony of Shilleogher; **Co Kilkenny**

Regd owner: Anna Bergin; folio: 4592F; lands: Forest Upper and barony of Tinnahinch; **Co Laois**

Regd owner: Ethnea Costello and John Costello (deceased) and Mary Casey (deceased); folio: 1384F; lands: Guileen (ED Luggacurren) and barony of Stradbally; **Co Laois**

Regd owner: Michael Ryan (deceased); folio: 18359; lands: Townparks and barony of Tinnahinch; **Co Laois**

Regd owner: David Browne; folio: 7215F; lands: Ballynakill and barony of Slievemargy; **Co Laois**

Regd owner: Thomas P Cox and Eileen Cox, Dromod, Co Leitrim; folio: 4059F; lands: Clooncolry; **Co Leitrim**

Regd owner: John Coyle and Catherine Coyle, Lisacoghill, Drumkeerin, Co Leitrim; folio: 13464; lands: Lisacoghil; **Co Leitrim**

Regd owner: Ann Laide; folio: 25023F; lands: a plot of ground situate on the west side of Mill Road in the parish of St Patrick and county borough of Limerick; **Co Limerick**

Regd owner: Paul Daly and Sinead Daly, Smarmore, Ardee, Co Louth; folio: 17650F; lands: Smarmore; **Co Louth**

Regd owner: Mary Marron, Reaghstown, Ardee, Co Louth; folio: 8086; lands: Reaghstown; **Co Louth**

Regd owner: James F Grogan; folio: 3922F; lands: townland of Ballinlena and barony of Tirawley; **Co Mayo**

Regd owner: Austin Kelly; folio: 3323F; lands: townland of Derrynacong and barony of Costello; **Co Mayo**

Regd owner: Brigid McDermott, Balsitrick, Drumconrath, Navan, Co Meath, and Laurence McDermott, Balsotric, Drumconrath, Navan, Co Meath; folio: 17724F; lands: Posseckstown; **Co Meath**

Regd owner: Robert Agnew, Clonfad, Killanure, Co Cavan; folio: 17095; lands: Clonfad; **Co Monaghan**

Regd owner: Michael Brophy; folio: 8795; lands: Ballincur and barony of Ballybritt; **Co Offaly**

Regd owner: Desmond Downey (deceased); folio: 1337; lands: Glenamony Glebe and barony of Eglish; **Co Offaly**

Regd owner: Patrick Dunne (deceased); folio: 12390; lands: Townparks and barony of Philipstown Lower; **Co Offaly**

Regd owner: John Fowler; folio: 17803; lands: Grange and barony of Ballybritt; **Co Offaly**

Regd owner: Kathleen Glynn (deceased); folio: 2716F; lands: Maenahanny or Ashgrove and barony of Garrycastle; **Co Offaly**

Regd owner: Patrick Joseph Harrington; folio: 6433F; lands: Rathbeg, Ballyegan, Kilnalacka and barony of Clonlisk; **Co Offaly**

Regd owner: Edward Spain; folio: 13833; lands: Ballywilliam and barony of Ballyboy; **Co Offaly**

Regd owner: Francis Sullivan; folio: 15192; lands: Shean, known as Shean Edenderry, Tullamore, and barony of Coolestown; **Co Offaly**

Regd owner: James Mangan; folio: 18248; lands: Edenderry and barony of Coolestown; **Co Offaly**

Regd owner: Martin Jennings and Bridget Jennings; folio: 29848; lands: Gorteenacammadil, Moigh Upper and Moigh Lower and barony of Castlereagh; **Co Roscommon**

Regd owner: Stephen Higgins and Patricia Higgins; folio: 18387F; lands: townland of Bearvaish and barony of Corran; **Co Sligo**

Regd owner: Mark Kelly; folio: 17270; lands: townland of Cartontaylor and barony of Tirerrill; area: 6.93 hectares; **Co Sligo**

Regd owner: Thomas and Maureen Canavan; folio: 7607F; lands: townland of Carrowhubbock South and barony of Tireragh; area: 0.106 hectares; **Co Sligo**

Regd owner: Tipperary (NR) County Council; folio: 2467F; **Co Tipperary**

Regd owner: Philomena O'Brien; folio: 35999; lands: townland of Kilroe, barony of Iffa and Offa West; **Co Tipperary**

Regd owner: James Whelan; folio: 12270; lands: plot of ground situate in the townland of Woodstown (ED Killoteran) and barony of Middlethird in the county of Waterford; **Co Waterford**

Regd owner: James Merrigan and Kathleen Merrigan; folio: 5614F; lands: Grange (ED Fethard) and barony of Shelburne; **Co Wexford**

Regd owner: Cyril Treacy and Margaret Treacy; folio: 3056F; lands: Seafield and barony of Ballaghkeen North; **Co Wexford**

WILLS

Grandison, Thomas (otherwise Tommy) (deceased), late of 14 Joachim's Terrace, Sligo, formerly of 69 Rathgar Road, Rathgar, Dublin 6 and 31 Beechmount, Green Road, Newbridge, Co Kildare, retired lecturer, who died on 10 January 2008. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Fergal T Kelly, solicitor, Harmony Hill, Sligo; tel: 071 914 6800, fax: 071 914 1936, email: info@ftksolicitor.com

Lee, Richard (deceased), late of 29 Cherrywood Villas, Nangor Road, Clondalkin, Dublin 22. Would any person having knowing of a will made by the above-named deceased, who died on 20 August 2007 at the Mater Hospital, Dublin, please contact John Sherlock & Co, Solicitors, 9/10 Main Street, Clondalkin, Dublin 22

Logue, Kenneth (deceased), late of 162 Lohunda Downs, Clonsilla, Dublin 15. Would any person having knowledge of a will made by the above-named deceased, who died on 24 November 2007, please contact Brian Matthews & Co, Solicitors, 7 Main Street, Dundrum, Dublin 14; tel: 01 295 1187, fax: 01 298 0280

Mulcahy, Michael (deceased), late of Aldergrove, Highfield West, Cork, who died on 27 January 2008 at the South Infirmary Hospital, Cork. Personal representative: Mary Quain. Would any person having knowledge of a will made by the above-named deceased please contact Michael Purcell & Son, Solicitors, Main Street, Macroom, Co Cork; tel: 026 41614, fax: 026 42105

Murphy Patrick (deceased), late of 164 Alymer Road, Newcastle, Co Dublin. Would any person having any knowledge of a will made by the above-named deceased, who died on 20 January 2008, please contact Gerald Griffin, solicitor, St Paul's Church, North King Street, Dublin 7; tel: 01 617 4846, fax: 01 617 4898, email: geraldnagriffin@eircom.net

Nolan, Joan Therese (deceased), late of Kildoon, Nurney, Co Kildare, who died on 6 May 2006 at Kildoon, Nurney, Co Kildare. Would any person with knowledge of a will being made by the above-named deceased please contact Morrin & McConnell, Solicitors, Trident House, Dublin Road, Naas, Co Kildare; tel: 045 881 055, fax: 045 880 156, email: info@morrinmcconnell.ie

O'Brien, John Anthony (otherwise Tony) (deceased), late of 27 Greentrees Road, Dublin 12, retired garda, who died on 26 September 2007. Would any person having knowledge of a will made by the above-mentioned deceased after 6 October 1988 please contact Thomas Montgomery & Son, Solicitors, 5 Anglesea Buildings, Upper Georges St, Dun Laoghaire, Co Dublin; tel: 01 280 8632, fax: 01 284 3845, email: info@montgomerysolicitors.ie

O'Donohue, John (deceased), late of Gleantrasna, Camus, Connemara, Co Galway, writer and poet, who died on 4 January 2008 at Maubec, France. Would any person having knowledge of a will made by the above-named deceased please contact Crowley Millar, Solicitors, 15 Lower Mount Street, Dublin 2; tel: 01 676 1100, fax: 01 676 1630, email: anne@crowleymillar.com

Thornberry, Gertrude (deceased), late of San Remo Private Nursing and Convalescent Home, 14/15 Sidmonton Road, Bray, Co Wicklow, and formerly of Florence Garden Nursing Home, Bray, Co Wicklow, 35 Riverdale, Dargle Road, Bray, Co Wicklow, and 12 Rosslyn Court, Bray, Co Wicklow, who died on 24 September 2006 at San Remo Private Nursing & Convalescent Home, Bray, Co Wicklow. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Sheena Lally, Office of the General Solicitor for Minors and Wards of Court, Court Services, 2nd Floor, Phoenix House, 15-24 Phoenix St, Smithfield, Dublin 7; tel: 01 888 6231, fax: 01 872 2681

Walsh, John (deceased), late of Ballyogarty, Kilmacthomas, Co Waterford, and formerly of 16 Willow Park, Ashley Court, Waterford, who died on 24 December 2007 at Waterford Regional Hospital. Would any person having knowledge of a will made by the above-named deceased please contact Kenny Stephenson Chapman, Solicitors, Newtown, Waterford; tel: 051 875 855, fax: 051 877 620, email: Waterford@ksc.ie

MISCELLANEOUS

London solicitors will be pleased to advise on UK matters and undertake agency work. We handle probate, litigation, property and company/commercial. Parfitt Cresswell, 567/569 Fulham Road, London SW6 1EU; DX 83800 Fulham Broadway; tel: 0044 2073 818311, fax: 0044 2073 814044, email: arobbins@parfitts.co.uk

London solicitors available to advise on UK matters. The firm specialises in property and also offers legal advice in a range of areas including litigation, probate and company and commercial. Bishop & Sewell LLP, 46 Bedford Square, London WC 1B 3 DP; DX 278 London/Chancery Lane; tel: 0044 2076 314141, fax: 0044 2076 365369, email: nbarry@bishopandsewell.co.uk

PROFESSIONAL NOTICES

TITLE DEEDS

Breen, Norah (deceased), late of 224 The Sweepstakes, Ballsbridge, Dublin 4. Would anybody knowing the whereabouts of the title deeds for 224 The Sweepstakes, Ballsbridge, Dublin 4, please contact Herman Good & Co, Solicitors, 22/23 Dawson Street, Dublin 2, tel: 01 677 4734 or fax: 676 7198

In the matter of the *Landlord and Tenant Acts 1967-1974* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of John Rohan, premises at 35 Parnell Street in the city of Waterford

Take notice that any person having an interest in the freehold estate or any intermediate interests in the property known as 35 Parnell Street, in the city of Waterford, held partly under an indenture of lease dated 13 May 1935 and made between Donald William Henry Penrose of the one part and Mary Alica King of the other part (hereinafter called 'the 1935 lease') for a term of 99 years from 29 September 1955, subject to the yearly rent therein specified at six pounds and 50 pence (old currency), now apportioned to two pounds (old currency), and subject to the covenants and conditions therein contained, and partly held under an indenture of lease dated 16 July 1859 and made between Joshua Hamilton Ball of the one part and Henry Whitney of the other part (hereinafter called 'the 1859 lease') for a term of 99 years from 29 September 1852 and subject to the yearly rent of six pounds, five shillings and eight pence (old currency) and subject to the covenants and conditions therein contained.

Take notice that John Rohan intends to submit an application to the county registrar for the city and county of Waterford at the Court House, Catherine Street, and city of Waterford, for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior or any intermediary interest in the aforesaid property are called upon to furnish evidence of title to the said property to the below-named solicitors within 21 days from the date of this notice.

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

Date: 4 April 2008

Signed: Purcell Cullen Kennedy (solicitors for the applicant), Ash House, Cove Roundabout, Dunmore Road, Waterford, and/or 21 Parnell St, Waterford

In the matter of the *Landlord and Tenant Acts 1967-1974* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of John Rohan, premises at 36 Parnell Street in the city of Waterford

Take notice that any person having an interest in the freehold estate or any intermediate interests in the property known as 36 Parnell Street, in the city of Waterford, held partly under an indenture of lease dated 13 May 1935 and made between Donald William Henry Penrose of the one part and Mary Alica King of the other part (hereinafter called 'the 1935 lease') for a term of 99 years from 29 September 1955, subject to the yearly rent therein specified at six pounds and 50 pence (old currency), now apportioned to two pounds (old currency) and subject to the covenants and conditions therein contained, and partly held under an indenture of lease dated 16 July 1859 and made between Joshua Hamilton Ball of the one part and Henry Whitney of the other part (hereinafter called 'the 1859 lease') for a term of 99 years from 29 September 1852 and subject to the yearly rent of six pounds, five shillings and eight pence (old currency) and subject to the covenants and conditions therein contained.

Take notice that John Rohan intends to submit an application to the county registrar for the city and county of Waterford at the Court House, Catherine Street, and city of Waterford, for the acquisition of the freehold interests in the aforesaid property, and any party asserting that they hold a superior or any intermediary interest in the aforesaid property are called upon to furnish evidence of title to the said property to the below-named solicitors within 21 days from the date of this notice.

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

Date: 4 April 2008

Signed: Purcell Cullen Kennedy (solicitors for the applicant), Ash House, Cove Roundabout, Dunmore Road, Waterford, and/or 21 Parnell St, Waterford

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 Calaroga Limited

Take notice any person having any interest in the freehold estate or the superior interest of the following property: all that and those the property described as that plot on the north-east side of Upper Dominick Street in the city of Dublin, containing in front to said street 21 feet, in the rear the like number of feet, and from front to rear 146 feet, be the said several admeasurements more or less, bounded on the north and east partly by a stable lane at the rear of the said premises and partly by premises known as no 30 Upper Dominick Street, on the south and west partly by Upper Dominick Street aforesaid and partly by the adjoining premises known as no 32 Upper Dominick Street, all of which said premises, now demised and known as no 31 Upper Dominick Street, are situate lying and being in Upper Dominick Street in the parish of St Mary and city of Dublin, held under indenture of lease dated 29 September 1935, made between Elizabeth Hickey and Margaret Hickey of the first part, Jane McGrane of the second part and John Joseph O'Mara and Mary Jane O'Mara of the third part for a term of 99 years from 29 September 1935, subject to the annual rent of £19.05.

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

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

Date: 4 April 2008

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

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises at 18 Berkeley Road, Dublin 7: an application by Kenneth and Ann Hannigan

Take notice that any person having an interest in the freehold estate or any intermediary interests in the property known as 18 Berkeley Road, Dublin 7, held by the applicants under an indenture of lease dated 28 September 1874, made between Peter Talty of the one part and Daniel Daly of the other part for a term of 200 years from 1 August 1874.

Take notice that the applicants intend to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property and that any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of the title to the aforementioned prem-

ises to the below named within 21 days from the date of this notice.

In default of 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 city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the reversion of the aforesaid property are unknown or unascertained.

Date: 4 April 2008

Signed: Ann Hannigan and Kenneth Hannigan, c/o Doyle Geraghty & Co (solicitors for the applicant), 61 Lower Baggot Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-1987* and in the matter of an application by Philip Cullen and Patricia Cullen: notice of intention to acquire fee simple

Take notice that the applicants, being the persons entitled under the above mentioned acts, propose to purchase the fee simple in the lands described in paragraph no 1.

1. Description of land to which this notice refers: all that and those the lands and premises now known as 13 Leinster Avenue, North Strand, Dublin 3, in the county of the city of Dublin, being part of the lands demised in a certain indenture of lease dated 5 October 1868 (which indenture is more particularly described at paragraph 2, below) and therein described as "all that and those two building plots or parts of the plot or piece of ground on the North Strand known and numbered on the original map of the North Strand as acre lot Number 22, one building plot being bounded on the North by part of said acre lot Number 22 and houses and buildings thereon lately purchased by William Henry Jackson Esquire in the landed estates court on the east by acre lot number 23, on the south by acre lot number 38 and on the west by part of acre lot number 22 in the possession of Susanna Harte, Grace Harte and Edward Richard Carolin and laid out by them as an avenue or new road forty feet wide intended to lead from Clontarf Road to Stoney Road bounding the Dublin and Drogheda Railway and the other building plot being bounded on the north by a portion of the said lot number 22 with the houses and buildings thereon other part of the said premises lately purchased in the landed estates court by said William Henry Jackson Esquire on the east by the intended avenue or New Road aforesaid 40 feet wide leading from Clontarf to said Stoney Road aforesaid on the south by part of the acre lot number 39 in the possession of said Susanna Harte, Grace Harte and Edward Richard Carolin and on the west by acre lot number 21 in the possession of Hugh Boyd Esquire and his undertenants said premises being more particularly marked and described by a map thereof on these presents traced all being situate lying and being in the parish of Saint Thomas and city of Dublin, said two plots containing in the whole one acre three roods and ten and a half perches statute measure be the same more or less together with the appurtenances thereunto belonging", and further held under indenture of lease dated 31 October 1871 and made between Hugh Fitzgerald of the one part and John McDermott of the other part, whereby the lands and hereditaments as therein described (of which the premises herein form a portion) were demised to the said John McDermott for the term of 700 years from 29 September 1871, subject to the rent of £5.1s.8d thereby reserved.

2. Particulars of applicant's lease: the applicants hold the lessee's interest in the said lands under an informal yearly tenancy and further hold the lessee's interest in the said lands under an indenture of lease dated 5 October 1868 and made between Paul Askin, Richard Ephraim, Edward Richard Carolin of the first part, Emor Harte, Susanna Harte, Grace Harte of the second part and Hugh Fitzgerald of the third part, whereby the lands and hereditaments as therein described (of which the premises herein form portion) were demised unto the said Hugh Fitzgerald for the term of 999 years from 1 November 1868, subject to the yearly rent of £26 thereby reserved and subject to the covenants and conditions therein contained.

3. Part of lands excluded: excluding all the lands comprised in the 1868 lease that do not form part of the premises now known as 13 Leinster Avenue, North Strand, Dublin 3, in the county of the city of Dublin.

Date: 4 April 2008

Signed: Denis I Finn (solicitors for the applicants), 5 Lower Hatch Street, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Gerard O'Herlihy and Julia O'Herlihy and in the matter of no 4 French Church Street, Cork

Take notice that any person having an interest in the freehold estate or estates of all that and those the hereditaments, premises and tenements known as no 4 French Church Street, Cork, held as regards the hereditaments, premises and tenement known as the ground floor, no 4 French Church Street in the city of Cork, under a lease dated 10 December 1965 between the trustees of the Society of People called the Methodists of the one part and Breda Lee of the other part for the term of 300 years from 29 September 1963, subject to the yearly rent of £0.1.0 and further subject to the covenants on the part of the lessee and the conditions therein contained, and held as regards the hereditaments, premises and tenement known as the first, second and third floors of no 4 French Church Street in the city of Cork, under a lease dated 4 September 1950 between Edwin J Warner of the one part and James B Haynes of the

other part for the term of 105 years from 1 September 1950, subject to the yearly rent of £19.7s.6d and further subject to the covenants on the part of the lessee and the conditions therein contained.

Take notice that Gerard O'Herlihy and Julia O'Herlihy intend to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all superior interests in the aforementioned properties, and any party asserting that they hold a superior interest in the aforesaid properties 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 any such notice being received, the applicants, Gerard O'Herlihy and Julia O'Herlihy, 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 Cork for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold in each of the aforesaid premises are unknown or unascertained.

Date: 4 April 2008

Signed: JW O'Donovan (solicitors for the applicants), 53 South Mall, Cork

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 the premises formerly known as no 5 Walter Terrace, Richmond Road in the city of Dublin, and now known as no 120 Richmond Road in the parish of Drumcondra (alias Clonturk) and city of Dublin: an application by Aidan Glennon

This notice is directed to any person or persons having any interest in the freehold estate of the following property: the premises formerly known as no 5 Walter Terrace, Richmond Road, in the city of Dublin, and now known as no 120 Richmond Road in the parish of Drumcondra (alias Clonturk) and city of Dublin, held by the applicant under an indenture of reversionary lease dated 22 June 1956 and made between Lilian Creaser, Cyril John Moore Swete, Honoria Jane Swete, Dorothy Henrietta Ronson, and James Henry Swete (therein called 'the lessors') of the one part and Mary Pauline Hoey (therein called 'the lessee') of the other part for the term of 99 years from 25 December 1946, subject to the yearly rent of £12.0s.0d (€15.24) and subject to the covenants and conditions therein contained.

Take notice that Aidan Glennon, of 9 Lennox Street in the city of Dublin, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party or parties asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the solicitors for the applicant, named below, within 21 days from the date of this notice.

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

Date: 4 April 2008

Signed: Carroll Kelly & O'Connor (solicitors for the applicant), 90 Marlborough Road, Dublin 4

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Aidan Walsh and Eileen Moore

Take notice that any person having an interest in the freehold estate of or any superior interest in the property situated at Main Street in the town of Ferbane, parish of Wheery, barony of Garrycastle and county of Offaly, held under an indenture of lease dated 19 March 1929 between Joseph M Coolahan and Elizabeth Dillon Doyle of the one part and Lavina Baird of the other part (hereinafter called 'the lease') for a term of 99 years from 1 November 1928 for the yearly rent £4.4s.0d and subject to the covenants and conditions therein contained.

Take notice that Aidan Walsh and Eileen Moore intend to submit an application to the county registrar for the county of Offaly for the acquisition of the freehold and any intermediate interest in the aforesaid property, and any party or parties asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title in the aforementioned property to the party named below within 30 days from the date of this notice.

In default of any such notice being received, Aidan Walsh and Eileen Moore intend to proceed with the application before the county registrar at the end of 30 days from the date of this notice to vest in them the fee simple interest and all intermediary interests, if any such exist, in the property set out above and will apply to the county registrar for the county of Offaly for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold reversion, in the property aforesaid are unknown or unascertained.

Date: 4 April 2008

Signed: Joseph Brophy & Co (solicitors for the applicants), Patrick's Court, Patrick Street, Tullamore, Co Offaly

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* and in the matter of an application by Conn McCluskey and Katy Hanley

Any person having any interest in all that and those the premises known as no 12 South Earl Street, Dublin 8, held under indenture of lease dated 16 November 1959 between Emma Frances Hamilton of the one part and Bridget Lawlor of the other part for a term of 117 years from 1 November 1959 at a rent of £2 per annum.

All that and those the premises known as no 1 Meath Market, Dublin 8, held under indenture of lease dated 21 December 1961 between Emma Frances Hamilton of the one part and Mary White of the other part for a term of 115 years from 1 November 1961 at a rent of £2 per annum.

Take notice that Conn McCluskey and Katy Hanley, being the persons currently entitled to the lessees' interest under the said leases, intend to apply to the county registrar of the county/city of Dublin for the acquisition of all outstanding superior interests in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises 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, Conn McCluskey and Katy Hanley intend to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests in the aforesaid premises are unknown and unascertained.

Date: 4 April 2008

Signed: Kirwan McKeown James (solicitors for the applicant), 22 Kildare Street, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of 65 O'Connell Street, Dublin 1: an application by Danske Bank A/S

Take notice that any person having an interest in the freehold estate or in any superior interest in the property known as 65 Upper O'Connell Street, Dublin 1, being the property comprised in a lease dated 4 October 1860 from John Rose Byrne and Benjamin Tilly to William Thomas Thompson, trustee for and on behalf of the Colonial Insurance Company.

Take notice that the applicant, Danske Bank A/S, intends to submit an application to the county registrar for the city of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the fee simple interest in the aforesaid property and that any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the below named within 21 days from the date of this notice.

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

Date: 4 April 2008

Signed: Matheson Ormsby Prentice (solicitors for the applicant), 70 Sir John Rogerson's Quay, Dublin 2

NOTICE TO THOSE PLACING RECRUITMENT ADVERTISEMENTS IN THE *LAW SOCIETY GAZETTE*

Please note that, as and from the August/September 2006 issue of the *Law Society Gazette*, **NO recruitment advertisements will be published that include references to years of post-qualification experience (PQE).**

The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998* and *2004*.

RECRUITMENT

Post-PPCI trainee urgently requires a change of traineeship. Highly motivated, mature individual with approximately one year's legal experience and considerable industrial/commercial experience. All areas of law and locations considered. Please contact 086 300 5793

Trainee solicitor due to attend PPCII seeks new training contract. Hardworking, bright and highly motivated trainee seeks general practice traineeship. BCL and LLM in European law with excellent drafting, communication and IT skills. Full driver's licence. CV on request. **Reply to box no 30/08**

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Experienced locum solicitor available up to one/two days per week for probate and capital acquisitions, tax/capital gains tax. Leinster area; tel: 086 373 4149

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