

LAW SOCIETY Gazette

€3.75 December 2008

CHIEF INSPECTOR:

Charting the course
of the Garda force



INSIDE: MEET THE PRESIDENT • HUMAN RIGHTS CONFERENCE • WRITING A KILLER CV • ELDER ABUSE

Specialist legal guidance from the experts



BRAND NEW

Irish Company Secretary's Handbook

By Jacqueline McGowan-Smyth and Eleanor Daly

The very latest company secretarial procedures and legal guidelines

This practical NEW handbook takes you through the company secretarial procedures in use today - the latest Acts and regulations, plus your practical day to day tasks. Whatever the situation faced, you'll find the instructions you need within the pages of this superb guide.

Designed as an everyday manual, **Irish Company Secretary's Handbook** enables you to:

- Prepare the necessary resolutions for a wide variety of corporate actions
- Complete and file CRO forms
- Maintain company registers with accuracy
- Comply with all company disclosure requirements
- Incorporate and terminate different types of companies

For a practical and comprehensive guide to current company secretarial practice, order a copy of this excellent new book TODAY.

ISBN: 978 1 84766 146 3 Format: Paperback
Publication date: February 2009
List price: €150 (approx)



BRAND NEW

Employment Law

General editor: Maeve Regan

Your **definitive** guide to employment law

This practical new book brings together the knowledge and expertise of Ireland's leading employment, tax and pension practitioners. It supplies comprehensive legal information on all aspects of employment and labour law. This includes:

- Sources of employment law
- The employment relationship
- Pensions and benefits
- Employment equality
- Termination of employment
- Collective aspects of the employment relationship
- Employee involvement
- Trade unions and industrial relations
- Transfer of undertakings
- Immigration and cross-border issues
- Practice and procedure

Whatever information you need on employment and industrial relations, you'll find it within the pages of **Employment Law**.

ISBN: 978 1 84766 162 3 Format: Paperback
Publication date: February 2009
List price: €195 (approx)



NEW TITLE

Regulatory Law in Ireland

By Niamh Connery and David Hodnett

A unique new examination of the enforcement and practice of regulatory law in Ireland

This new title outlines and examines the regulatory landscape in Ireland including the regulator's power to prosecute. The guidance highlights the powers of authorised officers on a raid or inspection and the rights of the persons raided.

You will benefit from easily digestible information on the very latest cases and legislation. Completely up-to-date, it guides you through the legal aspects of doing business in regulated sectors. Order your copy without delay.

ISBN: 978 1 84766 254 5 Format: Hardback
Publication date: January 2009
List price: €150 (approx)

ORDER YOUR COPIES USING OUR 30-DAY FREE TRIAL OFFER TODAY

Call Direct Sales on: 0044 1235 465500 Fax: 0044 1235 465556

Email: direct.orders@marston.co.uk

Write to: Jennifer Lynch, Tottel Publishing,
Fitzwilliam Business Centre, 26 Upper Pembroke Street,
Dublin 2, Ireland

Website: www.tottelpublishing.com

Tp **Tottel**
publishing



Where can you track the status of key EU Directives instantly – all in one place?



LexisNexis® EU Tracker

LexisNexis EU Tracker is the **ONLY** complete and accurate product on the market that offers you:

- **Indispensable tracking** of the implementation status of EU Directives across 16 Member States using a simple and effective traffic light system
- **Expert analysis** by our in-house team of EU law editors, qualified in the jurisdictions of the UK, Germany, France and Spain and working closely with our Business Units in France, Germany, Austria, Italy and Poland
- **Seamless links to LexisNexis® Butterworths** – the UK's most comprehensive online research library for the full EU legislation, cases, treaties and materials
- **Complete and accurate information from official sources** – our team use only trusted and checked information, meaning you are assured the most up-to-date and accurate information available

For more information, please contact Seamus Donnelly on 07917 534236 or seamus.donnelly@lexisnexis.co.uk.



On the cover

From mugging decoy on the mean streets of Boston, to boss of the body charged with overseeing the efficiency and effectiveness of the gardaí – it's been an interesting career for Kathleen O'Toole, and she tells us all about it

PIC: LENS MEN



Volume 102, number 10
Subscriptions: €57



LAW SOCIETY Gazette

December 2008

REGULARS

5 President's message

6 News

12 Analysis

12 **News feature:** Justice Media Awards 2008

14 **News feature:** annual human rights conference

16 **News feature:** what the Regulation of Practice Committee is all about

18 **Human rights watch:** the role of the *amicus curiae*

18 **One to watch:** new rules on recording court proceedings

22 Viewpoint

Are the proposed measures on gangland crime useful?

44 People and places

49 Parchment ceremony photographs

56 Student spotlight

58 Book review

A Night at the Inns and Other Stories

59 Briefing

59 Council report, 7 November 2008

60 Practice notes

66 Legislation update: 21 October – 17 November 2008

68 Solicitors Disciplinary Tribunal

69 Firstlaw update

71 Eurlegal: recent developments in European law

72 Professional notices

77 Recruitment advertising

Editor: Mark McDermott. **Deputy editor:** Dr Garrett O'Boyle. **Designer:** Nuala Redmond.

Editorial secretaries: Valerie Farrell, Laura Wipfler. For professional notice rates (lost land certificates, wills, title deeds, employment, miscellaneous), see page 73.

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.

Editorial board: Stuart Gilhooly (chairman), Mark McDermott (secretary), Paul Egan, Richard Hammond, Simon Hannigan, Michael Kealey, Mary Keane, Aisling Kelly, Patrick J McGonagle, Ken Murphy.

Get more at lawsociety.ie

Gazette readers can access back issues of the magazine as far back as Jan/Feb 1997, right up to the current issue at lawsociety.ie.

You can also check out:

- **Current news**
 - **Forthcoming events**, including CPD seminar (three hours' group study) on management and professional development, 12 December, Blackhall Place
 - **Employment opportunities**
 - **The latest CPD courses**
- ... as well as lots of other useful information

PROFESSIONAL NOTICES: send your small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: gazettestaff@lawsociety.ie.
ALL CHEQUES SHOULD BE MADE PAYABLE TO: LAW SOCIETY OF IRELAND.

COMMERCIAL ADVERTISING: contact Seán Ó hOisín, 10 Arran Road, Dublin 9, tel: 01 837 5018, fax: 884 4626, mobile: 086 811 7116, email: sean@lawsociety.ie

HAVE YOU MOVED? Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie
Subscribers to the *Gazette* should send change-of-address details to: *Gazette* Office, Blackhall Place, Dublin 7, or to: gazettestaff@lawsociety.ie

HOW TO REACH US: *Law Society Gazette*, Blackhall Place, Dublin 7.
 Tel: 01 672 4828, fax: 01 672 4877, email: gazette@lawsociety.ie

FEATURES

24 COVER STORY: Uncharted waters

Just over two years into her new job, Kathleen O'Toole speaks with Colin Murphy, in a two-part interview, about her role as chief inspector of the Garda Inspectorate

28 Probable cause

In the second of two articles on legal liability for hospital-acquired infections, Rody O'Brien looks at recent Irish cases on causation in medical negligence cases and breach of statutory duty in Britain

32 Chain gang

The new president of the Law Society, John D Shaw, is the third generation of his family to wear the chain. Mark McDermott asks him about the main challenges facing him during his term of office

35 Do not go gentle...

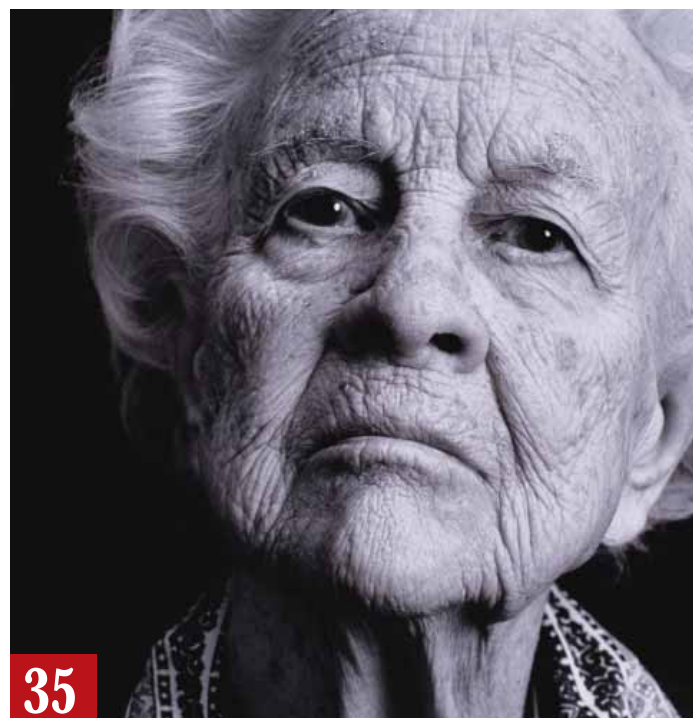
Many solicitors deal with elderly clients on a regular basis, and must be alert to the possibility of pressure on the client and the existence of financial abuse, says James Cahill – especially if that client is dependent in any way

38 A good job of work

For those looking to move to the next stage of their career – or start on a new one – the challenges can be daunting, particularly in these straitened times. In the first of a series of such articles, Aoife Coonagh gives some valuable tips on preparing your CV in order to get to the interview stage

41 Footballers of the world unite!

...you have nothing to lose but your seven-figure salaries and gold-plated Bentleys! Stuart Gilhooly slums it at the FIFpro annual congress and reports on the latest initiatives by sport's most powerful union



The Law Society of Ireland can accept no responsibility for the accuracy of contributed articles or statements appearing in this magazine, and any views or opinions expressed are not necessarily those of the Law Society's Council, save where otherwise indicated. No responsibility for loss or distress occasioned to any person acting or refraining from acting as a result of the material in this publication can be accepted by the authors, contributors, editor or publishers. The editor reserves the right to make publishing decisions on any advertisement or editorial article submitted to this magazine, and to refuse publication or to edit any editorial material as seems appropriate to him. Professional legal advice should always be sought in relation to any specific matter.

Published at Blackhall Place, Dublin 7, tel: 01 672 4800, fax: 01 672 4877.
 Email: gazette@lawsociety.ie Website: www.lawsocietygazette.ie



TIMES ARE TOUGH IN THE LEGAL PROFESSION MAKE SURE YOU ARE GETTING THE BEST DEAL FROM YOUR BANK

Are you

Happy with the Interest you are Earning?
Happy with the interest you are Paying?
Are you paying Set-Off Interest on all Facilities?
Paying Uncleared/Surcharge Interest?

Talk to **Kieran Finnan**

We will make Money for your Practice

with our

Banking Health Check

A Nationwide Service to the Legal Profession

Call us now

Finnan Financial Limited

Dublin: Merchants House, Merchants Quay, Dublin 8 (opposite Four Courts) 01 675 0819

Waterford: 21 O'Connell Street, Waterford. DX 44058 Waterford 051 850672

kieran@finnanfinancial.com www.finnanfinancial.com



Gwen Malone
Stenography Services Ltd.

Ireland's Leading Stenography Agency

- specialising in live feed transcription
- same day transcripts
- arbitrations and depositions
- public inquiries
- litigation support
- exhibit handling and linking
- secure internet transcription
- video conferencing throughout Europe

Law Library, P.O. Box 5939.

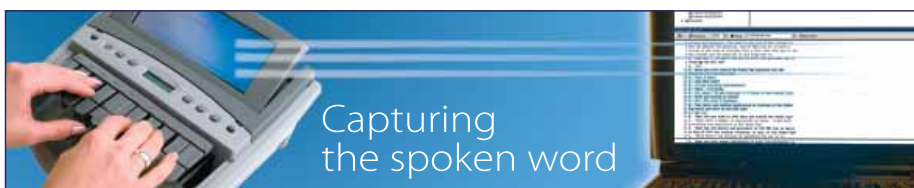
145 -151 Church Street, Dublin 7.

tel. 01 878 2000 / 878 2033

fax 01 878 2058

mobile 087 249 1316 DX1071 Dublin

email- gmalone@gmss.ie



Capturing
the spoken word

agents for



**RealLegal®
Binder**

www.gmss.ie

Learning to adapt to major change

This is my first message as your new president, and I want to commence by paying tribute to my predecessor, James MacGuill. I have worked closely with James over the last year, which can, with some degree of certainty, be said to have been one of the most turbulent years for the Law Society in recent times.

The profession owes a great debt to James for the manner in which he handled the Lynn and Byrne controversies, and it will be hard to match his enthusiasm and energy, not to mention his linguistic skills. I have a lot of work to do on my Irish!

We are facing very tough economic times involving, very sadly for the first time in decades, a significant level of unemployment in the profession. No firm and no solicitor, from the trainee right up to those who are long qualified, is immune from the recession, and we are facing a period of substantial adjustment.

Antidote to excess

As a practising solicitor in a country firm, I know the realities of having to pay the overheads, but it is very important to keep matters in perspective. The skills that we all have can be brought to bear in many areas of the law, and the legal profession has shown itself in the past to be flexible and able to adapt to major changes.

In my first speech to the Council as president, I referred to Voltaire, the great French philosopher, who, as an antidote to excess, recommended the virtues of diligence, order and moderation. This is advice that we could usefully heed in these times.

It is also important to understand that the



downturn does provide some opportunities to retrain and reskill. James MacGuill will assume a new role, as chairman of the Practice Management Task Force. This, together with the other advisory committees, will be working hard on your behalf during the year to try and make you aware of new opportunities and to present different ways in which you can develop your practice.

Annual conference in Ireland

With this in mind, I have also taken the decision not to hold our annual conference in Bilbao as planned. Instead, I hope to shortly announce details of a conference in Ireland – venue and date to be confirmed – with an emphasis on practice management in a recession.

I am encouraged by the many individual messages of support I have received from practitioners all over the country who recognise the difficulties facing us. I look forward to meeting as many of you as possible during my year, and if you have any ideas or suggestions that you think could be of benefit to the profession, please do not hesitate to drop me a line or give me a call.

John D Shaw
President

“The skills that we all have can be brought to bear in many areas of the law, and the legal profession has shown itself in the past to be flexible and able to adapt to major changes”



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

■ CORK

It has been a busy time for the incoming SLA president, Mortimer Kelleher. We heartily congratulate Mortimer on his succession. By all accounts, the AGM in early November was attended by close to 200 members. A lively discussion followed on work/life balance and the committee (comprising Joan Byrne, Raymond O'Neill, Terry O'Sullivan, Eamonn Murray and Mortimer) collated the various questionnaires. An analysis of the results will be published later.

The SLA annual conference took place at the end of September in Nice, where the acknowledged organisational skills of Deirdre Foley were much appreciated. The business session included talks by Judge Con Murphy, Patrick Dorgan and Mortimer Kelleher.

■ MIDLANDS

A special function to celebrate the election of John D Shaw as president of the Law Society was hosted by the Midland Bar Association. Those in attendance included Supreme Court judges Susan Denham and Hugh Geoghegan, Judge Abbott of the High Court and Judge Desmond Hogan of the Circuit Court. County registrars Elizabeth Sharkey (Westmeath) and Verona Lambe (Offaly) and Garda Superintendent John Gantley and Law Society director general Ken Murphy also attended.

Charlie Kelly, president of the MBA, remarked that it was a measure of the high esteem in which John Shaw is held by his colleagues that so many distinguished guests and members of the profession were



At the Society of Young Solicitors autumn conference in Seafeld Golf and Spa Hotel on 7-9 November 2008 were (l to r): Mark O'Shaughnessy, Craig Sowman, Tom O'Byrne, Emer Carey, Orla O'Leary and Devilla Lannon

in attendance. There was also a message of congratulations to John from Taoiseach Brian Cowen.

■ WATERFORD

Waterford Law Society continues to have a busy schedule, with a keen interest in the election of officers at the AGM at the end of November. President Morette Kinsella, secretary Rosie O'Flynn and treasurer Valerie Farrell and committee are happy to wrap up a very busy two-year term.

The society has just concluded its CPD programme and is very proud to have provided 19 CPD points in Waterford at a very reasonable overall cost.

The society also continues to nurture and develop its relationship with WIT law students, with the officers and members recently attending a debate 'that this house would legalise cannabis'.

■ DUBLIN

Seminars have been held on costs and file management, and there was a trilogy of seminars

on practice management issues for the current commercial environment, including service and interaction with clients, practice development and marketing, and the sustainability of the practice through succession planning. The seminars, organised by Paddy Kelly of McKeever Rowan, have been expertly facilitated by John Loughran of People in Mind and Ken Greene of Greene 6 Partners. Current partnership issues were also dealt with in a recent seminar by Michael Twomey and Anne Neary, and Michael O'Connor and his tax team from William Fry gave a very enlightening seminar on the new VAT regulations.

It was my great pleasure (along with my council colleagues) to host a black-tie dinner in honour of all of our High Court judges and our Dublin-based Circuit judiciary. We were privileged to have over 45 judges in attendance and about 50 other colleagues drawn from the litigation departments of the larger firms. My grateful thanks to Geraldine Kelly for all her work in organising the event.

On 9 December next, the DSBA council will hold their monthly meeting in Dun Laoghaire, where a reception in the St George Yacht Club has been arranged on our behalf by Justin McKenna, to which all local colleagues will be invited.

■ GALWAY

Collaborative law has arrived west of the Shannon. Pauline Tesler, an experienced American attorney qualified in the discipline, was invited to Galway to train family law practitioners in this approach. The course trained a further 30 lawyers in this process, adding to those who had previously trained in collaborative law. Galway solicitors trained in the practice have recently formed a group known as Galway Collaborative Law Practitioners. See www.collaborativelawgalway.ie and www.acp.ie for details of participating solicitors. **G**

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

ALL PICS: JOHN IRONSIDE

Third-generation Shaw makes Law Society history

For the first time in the history of the Law Society, three generations of one family now hold the distinction of having worn the chain of president. John D Shaw has started his presidential term for the year 2008/09, with effect from Friday 7 November 2008. John's father, Thomas D Shaw, was president of the Law Society in 1988, while his grandfather, Dermot P Shaw, held the office in 1956.

John (age 44) is a partner at the law firm JA Shaw & Co Solicitors, Mullingar, Co Westmeath. He will serve a one-year term as president of the 12,000-strong solicitors' profession until November 2009.

Gerard J Doherty has been elected senior vice-president for 2008/09, while James B McCourt becomes junior vice-president.

Westmeath background

John is a native of Mullingar and is the eldest son of Tom and



New Law Society President John D Shaw, with Senior Vice-President for 2008/09 Gerard J Doherty (left) and Junior Vice-President James B McCourt

Yvonne. He has one brother and four sisters. Married to Eileen, they have two children, Caoimhe (12) and Patrick (10).

John was educated in CBS Mullingar primary school and Clongowes Wood College, Co Kildare. He graduated with a BCL law degree from University College, Dublin. Apprenticed

to his father Tom, he qualified as a solicitor in 1989 and has practised in JA Shaw & Co since then.

He became a member of the Council of the Law Society in 1992. He is currently a member of the Property Registration Authority (formerly the Land Registry).

Council election results

The count of election ballot papers was conducted and results declared on 31 October 2008. In all, 3,092 members voted in the elections, of which 79 ballot

papers were rejected because they were received after the close of poll. The number of valid papers was 2,959.

Overall results

The results were as follows:

- James MacGuill (1,469)
- Donald Binchy (1,452)
- John P Shaw (1,420)
- James B McCourt (1,330)
- Michael Quinlan (1,305)
- Maura Derivan (1,290)
- Gerard J Doherty (1,283)
- Michelle Ní Longáin (1,272)
- Simon Murphy (1,243)
- Brendan J Twomey (1,238)
- Patrick Dorgan (1,160)
- Daniel E O'Connor (1,152)
- Barry MacCarthy (1,130)
- Dara Robinson (1,128), and
- Gerard O'Donnell (1,018).

Brendan J Twomey, Dara Robinson and Gerard O'Donnell were elected to Council for the first time.

Provincial elections

As there was only one candidate nominated for each of the two relevant provinces (Ulster and Leinster), there was no election and the candidate nominated in each instance was returned unopposed. Margaret M Mulrine was elected for Ulster and Andrew J Cody for Leinster.

Joint bank accounts and older clients

The Guidance and Ethics Committee has been reviewing the current guidance available to solicitors acting on behalf of older clients who may be vulnerable to pressure from others. It is hoped that, over the coming months, a series of practice notes relevant to this topic will be published.

The first practice note is on the topic of joint bank accounts (see page 63). Patricia Rickard-Clarke, a member of the group reviewing the matter, is hopeful that the practice note will clear up, once and for

all, the mistaken belief that all joint bank accounts pass to the survivor of the account after the death of the original depositor.

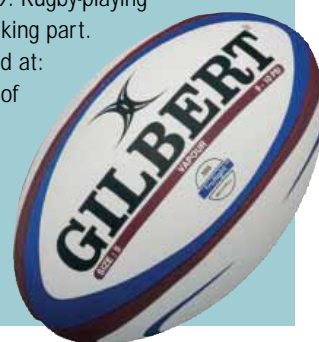
"This is not correct," she says. "It all depends on the intention of the depositor when the account was opened. The banks must play their part in ensuring that the money passes in accordance with law and with the original depositor's wishes. The banks must have appropriate systems in place to ensure that the depositor's wishes are recorded when the account is opened."

Lawyers' Rugby World Cup 2009

The Law Society of Scotland is hosting the Lawyers' Rugby World Cup in Edinburgh from 6-8 May 2009. Rugby-playing lawyers from all over the world will be taking part.

Further details and rules can be found at: www.lawscot.org.uk/rugby. Registration of interest closes on 31 December 2008.

To register a team or find out more about the rugby tournament, contact: Law Society of Scotland, tel: +44 (0) 131 476 8360, e-mail: rugby@lawscot.org.uk.



A code of practice for family law

The Law Society has launched its new *Family Law Handbook* – effectively a code of practice for family law. It says that solicitors should be mindful of the best interests of the family as a whole and of children in particular.

Director General Ken Murphy says that, while the code of practice is not legally binding, breach of it could amount to misconduct if it were serious and had serious consequences for the client – depending on the facts of the case. It would be up to the Solicitors' Disciplinary Tribunal to decide how far short of the required standard the conduct might fall.

The handbook, which was launched on 13 November 2008 at Blackhall Place, stresses that solicitors should advise, negotiate and conduct matters in order to help the parties settle their differences as speedily and amicably as possible. "You should encourage the attitude that the dispute is not a contest in which there is a winner and a loser, but rather that it is a search for fair solutions," it states.

Solicitors should avoid



PICT: LENS MEN

kept separate where possible, it continues. The client should be told that the welfare and interests of the child are paramount. Solicitors should also be aware that the interests of the child and those of their client may not always coincide. In addition, the other party's strengths as a parent should be stressed.

Up to now, guidelines for solicitors practising family law comprised of two or three pages that had been compiled some 12 years ago. In mid 2007, the Society's Family Law Committee decided that, given the significant growth in family law, the guidelines should be updated.

Launching the booklet, Mrs Justice Catherine McGuinness said that it was "valuable, practical and, importantly, ethical".

"In no other aspect of law is the ethical stance of lawyers more important," she said. "Litigation concerning children should never be treated as a battlefield. The casualties in such a contest can only be the children."

The *Family Law Handbook* is being distributed to all members of the profession.



At the launch of the new *Family Law Handbook* were (l to r): John D Shaw (president), Mrs Justice Catherine McGuinness, Family Law Committee member Sinead Kearney, and Ken Murphy (director general)

inflaming the dispute, and consider the effect all correspondence could have

on other parties and on their own clients. Issues relating to children and finance should be

Regulation Department moves to George's Court

The Law Society's Regulation Department has relocated from Blackhall Place to new accommodation at George's Court, George's Place, North King Street, Dublin 7. The department moved to its new offices on 1 December 2008.

The Society has taken a lease on a newly-constructed office premises in George's Place, which is on the northern side of Smithfield and some three or four minutes' walk from the gates of

the Law Society's headquarters at Blackhall Place.

Meetings of the Society's three main regulatory committees – the Regulation of Practice Committee, the Complaints and Client Relations Committee and the Professional Indemnity Insurance Committee – will all be held in the new premises.

The rest of the Society's representative and educational activities will remain in the Blackhall Place building.



Regulation's new premises at George's Court, Dublin 7

Society explores virtual reality

At the Law Society's recent 'Virtual reality' conference, an attentive audience heard newly inaugurated president John Shaw emphasise the importance that the Society attaches to the introduction of electronic conveyancing. In what was his first public function on taking office, the president reiterated both the Society's commitment to e-conveyancing through the work of its task force, and his own personal support, underpinned by his membership of the Property Registration Authority.

'Virtual reality – towards the electronic conveyance' looked at a number of the technical aspects of e-conveyancing, as well as some of its component parts. Over 80 delegates heard solicitor Eamon Keenan emphasise the changes that the technical process will require from practitioners, including a need to consider the practical use of electronic or digital signatures. Gabriel Brennan, the Law Society's e-conveyancing project manager, explained the manner in which any new process would deal with standard conveyancing steps from start to finish. Using the Law Society's guide, *eConveyancing: Back to Basic Principles*, Gabriel illustrated the key role of the electronic hub through which the process would operate.

On the topic of digital signatures, John King, head of legal services at the Registers of Scotland, explained how that office has incorporated them into its e-registration system (ARTL). Solicitors use a client authorisation or special mandate and a smart card issued by the Registers of Scotland to authenticate documents for registration on their clients' behalf.

Part of any new process will have to provide for electronic funds transfer between vendor



Speakers at the 'Virtual reality' conference included (l to r): Gabriel Brennan, then chair of the Technology Committee Patrick Madigan (Jnr), Russell Bourke (head of strategic development, Irish Payment Services Organisation), Eamonn Keenan (Technology Committee) and John King (head of legal services, Registers of Scotland)



Jim Heney (Technology Committee) makes a point at the conference, watched by Mick O'Hanlon (e-stamping, Revenue) and a member of the audience

and purchaser. Russell Bourke, head of strategic development at the Irish Payment Services Organisation, presented some telling statistics on what he called Ireland's love affair with the cheque and other forms of paper payment. Ireland continues to be one of the heaviest users of paper-based payments in Europe. (In 2006, the Irish use of cheques

per capita was twice the EU average, with a per-capita value per cheque of over ten times the EU average!) A number of developments, including the impact of the *Payment Services Directive* and the work of the National Payments Strategy Group, should deliver a basis for substantial movement away from paper transactions to electronic funds transfer.

The conference concluded with two practical demonstrations of soon-to-be-launched elements that will form part of the e-conveyancing process. Mick O'Hanlon from the Revenue Commissioners demonstrated prototypes of the Revenue Commissioners' new electronic stamping system. This system is due to be implemented in mid to late 2009. It will replace the existing method of 'die stamping' on paper documents with a virtual stamping process completed and paid online.

E-discharge and the PRAI

The Property Registration Authority's new e-discharge system was outlined by information systems manager John O'Sullivan and demonstrated by Peter McHugh, the PRAI's electronic services manager. This system, which will launch in early 2009, will provide for the electronic discharge of charges on registered title upon request by the relevant lending institution and following a verification check by the PRAI. A key element of the new system is the level of security checks and verification that is built in – an element that will have to be reflected in all components of any e-conveyancing system.

Attendees at the conference were provided with an interesting insight into the technical concepts relevant to e-conveyancing and demonstrations of a number of practical steps being taken to achieve it. In his concluding remarks, chair of the Technology Committee Paddy Madigan further commended the Law Society's support for a working system that will provide greater efficiency for the profession and, consequently, lower costs in a challenging conveyancing environment.

HEALTH ADVICE AND SUPPORT FOR LAWYERS

CONTROLLING YOUR DRINKING

Christmas is the time of year when even the most cautious among us suddenly seizes upon the opportunity to 'eat, drink and be merry'. The number of calls received by LawCare from people concerned about their alcohol use is higher in January and February than at any other time of the year, as people begin to worry about their seasonal excesses.

Most alcohol treatment centres, including Alcoholics Anonymous, work on the principle of lifelong abstinence 'a day at a time'. They reason that alcoholics are, by definition, unable to control their drinking and, once they have that first drink, they cannot stop. The solution is never to take that first drink. Our experience at LawCare would seem to support this.

In some cases, however, controlled drinking may be of use in preventing a more serious addiction developing. If you recognise that you are someone who has a tendency to overindulge on occasion, then reviewing your drinking behaviour may be of considerable value. Try using these controlled drinking skills on each occasion that you drink. If you find reason to be concerned about your alcohol intake, call LawCare for further advice.



Before drinking:

- Eat something before you go out,
- Go out later,
- Take less money and leave

your cash card at home,

- Don't drink in places where you have previously drunk heavily,
- Take alcohol-free drinks with you to parties and friends' houses.

ABOUT LAW CARE

LawCare is an advisory and support service to help solicitors, their staff and their immediate families to deal with health problems such as depression and addiction and related emotional difficulties. The service is free and entirely confidential.

For totally confidential, non-judgemental help, ring freephone

1800 991 801

(9am – 7.30pm weekdays and 10am – 4pm at weekends/bank holidays, 365 days a year.

Web: www.lawcare.ie **Email:** help@lawcare.ie

While drinking:

- Drink a long soft drink first,
- Drink halves rather than pints, singles rather than doubles, ordinary beer rather than strong beer,
- Drink more diluted drinks – spirits with mixers, shandy rather than beer,
- Drink low or no-alcohol beers and wines,
- Drink at the pace of the slowest drinker in your group,
- Alternate between alcoholic and non-alcoholic drinks,
- Time yourself, for example, only drink one unit every 30 minutes.
- Practice refusing drinks,
- Avoid rounds, but if they are unavoidable, don't buy yourself one on your round,
- Go home when you have reached your limit.

Enjoy the Christmas season – but in moderation. If this doesn't work for you, it does not mean that you can never escape your pattern of drinking. If you genuinely want to address the amount you are drinking, then ring LawCare for totally confidential, non-judgemental help: 1800 991 801 (9am – 7.30pm weekdays and 10am – 4pm at weekends/bank holidays). **G**

Human Rights Essay Prize

The Law Society of Ireland is pleased to announce the third annual Human Rights Essay Prize. All law students, including trainee solicitors and barristers, are invited to submit an essay identifying a particular aspect of human rights law that they believe will have importance in the application or interpretation of Irish law.

They should briefly explain the current understanding of law in this area and outline their argument for the influence of human rights law. Entries

should be typed and be approximately 2,000 – 3,500 words in length. Entries may be co-authored. Three prizes will be awarded: a first prize of €1,000, and two second-place prizes of €500 each. Prize-winning and shortlisted essays may be published in the *Law Society Gazette*.

Information about marking, prizes and eligibility are available on the Law Society website's Human Rights Committee page at www.lawsociety.ie.

CPD focus on recession

CPD Focus extends a sincere thanks to members for supporting CPD Focus training events during 2008. Conscious of the fact that 2009 will be a difficult year for everyone, it will be offering a range of courses that will help in times of recession including:

- Insolvency,
- Redundancy,
- Dismissals,
- Career planning, and
- Debt collection.

Details of the full programme and the CPD Focus Skillnet Scheme for 2009 are now available on the website: www.lawsociety.ie/cpdfocus. Remember, membership entitles you to a 30% discount on all CPD Focus training events.

For further information, contact a member of the CPD Focus team on email: cpdfocus@lawsociety.ie or tel: 01 672 4802.

10% drop in number of new applications to Disciplinary Tribunal

The Solicitors Disciplinary Tribunal has published its annual report, covering the period 1 January to 31 December 2007, *writes tribunal chairman, Francis D Daly*.

While there has been a welcome 10% decrease in the number of new applications made to the tribunal in the year under review, there has been an increase in the number of complaints arising from the administration of estates and delays on the part of respondent solicitors in attending to conveyancing procedures.

A continuing flow of applications arising out of a failure to ensure that an accountant's report was furnished to the Law Society within the prescribed time also arose in the year under review. Fines ranging from €500 to €5,000 were imposed on respondents. The tribunal has reminded solicitors, especially those who are newly qualified and are setting up in practice for the first time, of the importance of keeping properly written-up books of account and ensuring that the proper resources are in place to ensure compliance with all aspects of the accounts regulations.

Breaches of section 68

A number of cases involving alleged breaches of section 68 of the *Solicitors (Amendment) Act 1994* were heard during this review period. Allegations included breaching section 68(6) by failing to ensure that there was furnished to a client a bill of costs as prescribed by the provisions of the said section; agreeing or causing to be agreed the party-and-party costs of a client without the client's knowledge and authority;



and causing or allowing to be caused the procurement of further monies as fees from a client, notwithstanding that the respondent was not entitled in the circumstances to procure such solicitor-and-client fees.

The tribunal recognises that a solicitor is entitled to be paid for work done and should draw a bill of costs for the totality of that work. However, if a solicitor is paid in full by the other party, he is not entitled

to charge an additional fee to the client. Further, the fact that a client may have paid the additional sum is not a bar to finding that it was improper or misconduct in circumstances where the client was misinformed about his entitlements.

Every solicitor has a duty to reply promptly, fully and accurately to correspondence and communications from the Law Society. However, it

is evident from the findings of the tribunal that some respondents find themselves unable to be open and frank in their responses and dealings with their clients and the Law Society, and indeed have shown a disregard for the Society's complaints process. Such behaviour is of serious concern to the tribunal because, if regulation is to be effective, members of the public have to be confident that it works properly and fairly.

Adequate resources

The tribunal is mindful of the many problems facing solicitors in the daily conduct of their practice. Nevertheless, it is a matter for solicitors to ensure that they have adequate resources to ensure they are fit to cope with the pressures and responsibilities of practice. The tribunal have had to consider the ability of some solicitors to cope with the difficulties associated with private practice and, on occasions, have deemed it appropriate to recommend to the President of the High Court that the respondent concerned should not be permitted to practise as a sole practitioner or in partnership.

The concept of service, not just to the individual client but to society, is inherent in the legal profession. To maintain confidence in this concept, it is imperative to ensure that the highest possible standards are scrupulously enforced. In this regard, the tribunal is conscious of its role under the *Solicitors Acts* and recognises the onerous responsibility it has to ensure that the interests of the public are safeguarded and that confidence is maintained in the disciplinary process and in the legal profession.



Supreme Court judge

This year's Justice Media Awards had everything – deserving winners, sporting losers – and a highly controversial speech from Mr Justice Adrian Hardiman. Mark McDermott reports on a night packed with drama

The winner of the overall award in this year's Justice Media Awards is Cormac O'Keeffe of the *Irish Examiner*; for his three-part series 'Inside Ireland's prisons'. Earlier, Cormac had won the Justice Media Award in the daily newspapers category for the same article. Day 1 of his excellent and thought-provoking series set out the facts on the prison system, looking at issues of overcrowding, protection, violence, contraband-smuggling and high committal numbers. Day 2 brought readers a typical day in the life of Wheatfield Prison, placing the spotlight on several of its inmates who agreed to be interviewed for the piece. Day 3 looked at alternative solutions to prison, presenting less costly options for the state and more successful outcomes for prisoner rehabilitation. His three-part investigation was described by the judges as being very well researched and written.

Cormac's award made it something of a clean sweep for the *Irish Examiner* and its parent group, Thomas Crosby Media. In all, the group picked up the overall award, two Justice Media Awards and five certificates of merit – making it a clear leader among the nation's newspaper media.

Among its prizes, the *Irish Examiner* won two certificates of merit in the daily newspaper category, including one for Conor Ryan for his article 'Rape – public attitudes – national survey'; a second for Vicki Maye of the same newspaper for her article 'The Irish intern who



Overall award winner Cormac O'Keeffe of the *Irish Examiner* receives his specially-commissioned Dublin Crystal trophy from President of the Law Society John D Shaw and Director General Ken Murphy

never gave up' – the story of the exoneration of Walter Swift after 26 years in prison for a crime he didn't commit.

A Justice Media Award went to journalist Maria Rolston, of their sister newspaper, the *Evening Echo*, for her series 'Community service – an exploration', described by the judges as "an example of a regional newspaper leading the nationals". Her colleague Ann Murphy of the *Evening Echo* won a certificate of merit in the same category for her three-part series 'Justice for juries'. Kieron Wood of the *Sunday Business Post* took a certificate of merit for his article 'Laws on sexual violence and guns must be codified'.

Chris Fingleton of the *Kildare Nationalist* – also a Thomas Crosby Media publication – won a certificate of merit for his 'Reports from Athy District Court'. Chris's reports were concise and laced, where appropriate, with humour, and gave some fascinating insights

to the reasons behind the judge's sentences in Athy District Court.

The farmer and the cowgirl...

Earlier in the evening, Mr Justice Adrian Hardiman of the Supreme Court presented what transpired to be a highly-controversial speech. Heavily critical of the way the media reports court cases, the judge expressed the hope that the legal profession and the world of journalism might forge closer links through a more professional approach to the coverage of court matters.

From his own perspective, he said that he often felt that "the sentiments of suspicion and grievance" were inherent in the relationship between the legal profession and journalists. In an attempt at humour that fell flat, Mr Justice Hardiman resorted to a metaphorical analogy inspired by the words of a Rogers and Hammerstein song from the musical *Oklahoma*, exhorting that "The farmer

and the cowman [sic] should be friends" – the farmer being in this instance the lawyer; the cowman, the journalist.

Quickly substituting the word 'cowman' with 'cowgirl' – a term he largely stuck with for the remainder of his speech – the judge's comments drew the ire of the female and male legal affairs journalists present.

"There are, it seems to me, two reasons for what I see as the inadequate and uninformative reporting of the courts," Judge Hardiman said. "The first is an unwillingness to come to grips with detail. Not surprisingly, the result of a court case often depends on matters of detail. A witness will often omit to present the vital detail of his evidence in its forefront, or to emphasise it particularly. Often the vital detail will be buried in a mass of other material, be presented out of sequence or perhaps only emerge in the course of painstaking cross-examination. All too often, details of this sort are simply missed by journalists covering a case, with the result that the verdict is presented quite outside the context of the evidence that led to it and thereby appears rather inexplicable, when no adequate attempt is made to explain it.

"Just as the conduct of court proceedings is a matter of importance rightly entrusted to skilled professionals, so the proper reportage of cases in which there is a major public interest is a task for a skilled professional...

"A good deal of the time of any judge in the superior courts is spent after court hours,

wrangled by 'cowgirls'



PICS: LENS MEN

Winners in this year's Justice Media Awards 2008 celebrate in the Council Chamber at the Law Society's headquarters in Blackhall Place

writing the judgments whose scope and detail can be seen from the collected volumes of the *Irish Reports* ... we write the judgments for the public so that they, advised by the media, can see that the system of administration of justice is a logical, rigorous, developing and humane one. I have to confess,

to my great disappointment, that this can no longer be said, because many organs of the media, including some of the most important, are unable or unwilling to engage in the process at all...

"It is no exaggeration to say that legal reporting in Ireland has yet to find its Des Cahill

or Joshua Rosenberg. One is not entitled to require media coverage, but if it occurs, it should surely be of reasonable standard...

"I have indeed been expressing these criticisms in one form or another since 2002," he concluded. "I am sure that the media, which

so trenchantly insists on its constitutional right to be critical of others, will not object to the occasional critique of itself."

Taking the podium, Law Society Director General Ken Murphy offered a 'right of reply', which was taken up by legal affairs editor of the *Irish Independent* Dearbhail McDonald. She countered, saying that the media did a very good job of reporting court cases – quite often in difficult and pressurised situations. Mr Justice Hardiman, she said, had ignored the very good work done by the media in informing the public, despite judges' use of arcane and often impenetrable language. She argued that members of the judiciary could do more to make their rulings more accessible and comprehensible to members of the public. Her comments earned her a standing ovation.

The judge's comments – and Dearbhail McDonald's reply – were covered first in *The Irish Times* by Carl O'Brien on Wednesday 26 November, and were subsequently aired on Joe Duffy's *Liveline* programme and RTE's *Drivetime*. **G**

OTHER AWARD WINNERS

The Justice Media Award in the Sunday Newspapers category went to Mark Tighe of the *Sunday Times* for his article 'How many solicitors would it take to weed out the dodgy ones?'

Emer Connolly of the *Clare People* won a certificate of merit for her special investigation 'Juvenile crime in County Clare' in the Regional Newspaper category.

In the Court Reporting for the Print Media category, Carl O'Brien of *The Irish Times* won a Justice Media Award for his series of articles: 'Inside the Children's Court'.

In the same category, a certificate of merit was awarded to Carol Byrne of *The Clare Champion* for her article 'Former doctor faces deception charges, as patients' families claim promises of cure'.

In Court Reporting for Broadcast Media, John Cooke of Clare FM won a Justice Media Award for his coverage of the 'Lying Eyes/Ennis Hitman' case.

The winner of the Justice Media Award in the Legal News Photo of the Year category went to *Irish*

Examiner staff photographer Denis Minihaue for his beautifully evocative photos of Walter Swift, which accompanied the story by his colleague Vicki Maye of Swift's release.

Declan Carty and John O'Donovan of Newstalk's 'Legal column' on *Late Night Live* won the Justice Media Award in the National Radio category.

In the Local Radio category, a Justice Media Award was presented to Radio Kerry's Deirdre Walsh of *Kerry Today* for 'Laura's story'.

The winner of the Justice Media Award in the category for TV Features and Documentaries was Trevor Birney and Ruth O'Reilly of Below the Radar Productions for their programme 'The devil in the detail', broadcast on *Prime Time* in January 2008.

A certificate of merit was presented to Rita O'Reilly and Sam Gleeson of RTÉ News and Current Affairs' *Prime Time* for their programme on victims' rights.

A second certificate of merit was presented to Brian O'Donovan of TV3 for the programme 'Undercover Ireland: the drugs trade'.

Human rights conference examines

This year's Human Rights Conference looked at the impact of the *European Convention on Human Rights Act 2003*, writes Elaine Dewhurst

On Saturday 8 November 2008, over 300 people attended the sixth annual Human Rights Conference, hosted by the Irish Human Rights Commission and the Law Society's Human Rights Committee. The conference examined the impact of the *European Convention on Human Rights Act 2003* on Irish law through a series of plenary and parallel sessions.

Since the inception of the 2003 act, there have been a number of important developments in Irish law. The rights protected by the convention touch on every aspect of daily life, and the interpretation, use and effect of those rights on the judicial, legislative and executive arms of government have implications for everyone in Ireland. Recent declarations of incompatibility by the courts, although under appeal, have great significance for changes to Irish law that may be required as a result and open



Attending the *amicus curiae* session were (l to r): Ellis Barry BL, Colin Daly and Des Hogan

up different areas of human rights for discussion and debate.

A just and democratic society

Opening the conference, the newly elected president of the Society, John D Shaw, described human rights as "crucial to the

development and maintenance of a just and democratic society. This is even more true during difficult economic times, where there is a real danger that the rights of citizens and, in particular, the most vulnerable sectors of society, will be eroded

by increasing financial pressures on the state. The Law Society is committed to ensuring current practices are kept under critical review, and this conference will assist in highlighting the dangers facing human rights in the current economic climate and the importance of maintaining and developing existing protections to the fullest extent."

Echoing this sentiment, Dr Maurice Manning, president of the Irish Human Rights Commission, concentrated on the important role to be played by the commission "as the only independent statutory body that monitors the compliance of the organs of the state with the *European Convention on Human Rights*". Dr Manning continued: "An important aspect of the 2003 act is that state officials must now act in compliance with the convention. From the IHRC's perspective, it must be notified in cases where declarations of incompatibility are sought under the act and can track such declarations where they are made by the courts. Following the first declaration of incompatibility in the recent *Foy* case in the High Court, involving the human rights of a transgendered person, now the subject of an appeal, the IHRC reviewed the international human rights standards as set out in the ECHR and concluded that Irish law does not conform to the standards relating to the rights of transgendered people and recommended the introduction of amending legislation."

Excellent contributions

The first plenary session of the conference benefited from the excellent contributions of Donncha O'Connell (law



Participants at the immigration law session at the Human Rights Conference, held at Blackhall Place

impact of *ECHR* Act in Ireland

lecturer at NUI Galway), Ms Justice Mary Finlay-Geoghegan of the High Court, and Northern barrister Karen Quinlivan on the theme of the impact of the 2003 act on Irish law, including an assessment of the act and its use in the Irish courts. A comparison between the use of the convention in Northern Ireland and the South was also examined.

The middle session included contributions from 18 of Ireland's most eminent practitioners and academics in the area of human rights, in parallel sessions that discussed the impact of the 2003 act on the right to a fair trial and an effective remedy, immigration law, criminal law, family law and privacy and the role of an *amicus curiae*. The parallel sessions proved very popular among delegates, as they allowed them to delve more deeply into the application and impact of particular provisions of the convention in various areas of legal practice.

The afternoon plenary session took the opportunity to examine the practical use of the 2003 act in litigation and also the relevance of the ECHR to the wider public service and community. The conference heard interesting commentary on this theme from Michael Farrell (Free Legal Advice Centres), Ceri Goddard (acting director of the British Institute of Human Rights) and Rosalind McKenna (Amnesty International).

The afternoon parallel sessions were also ably attended by five conference rapporteurs, who reported expertly on the proceedings of the sessions and provided interesting feedback on the impact of the 2003 act on the work and lives of the conference delegates and speakers in each session. The rapporteurs



At the conference were (l to r): Judge Tom O'Donnell, Karen Quinlivan BL, John D Shaw (president of the Law Society), Ms Justice Mary Finlay-Geoghegan, Michael Kealey (William Fry), Maurice Manning and Donncha O'Connell (NUIG)

included four trainee solicitors – Cliodhna Murphy and Doireann O'Brien (both of McCann FitzGerald), Katie Mannion (Brophy Solicitors), and Grainne Murphy (BCM Hanby Wallace) – and the IHRC's enquiry and legal officer, Gerry Finn.

In closing the conference, both IHRC chief executive Éamonn Mac Aodha and Colin Daly, chairperson of the Society's Human Rights Committee, referred to the large attendance as an indication of the growing interest in the application of the convention



Participants at the criminal law session were (l to r): Dara Robinson, Claire Loftus and Michael O'Higgins SC



Attending the conference were (l to r): Éamonn MacAodha, Ceri Goddard, Rosalind Higgins and Michael Farrell

in Irish law and its impact on the further protection of human rights in Ireland. The conference had one of the highest levels of attendance ever recorded. The organisers hope to build on this success in the future. The papers from the conference are available on the websites of the IHRC (www.ihr.ie) and the Law Society (www.lawsociety.ie). **G**

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

Promoting confidence in the

The Regulation of Practice Committee seeks to maintain confidence in the solicitors' profession through the promotion of best practice in all aspects of solicitors' work, says Michael Quinlan

The overall function of the Regulation of Practice Committee is to provide for the protection of solicitors' clients and the public within the framework of the *Solicitors Acts*, through the enforcement of all provisions of the *Solicitors Acts* and regulations and all other relevant legislation.

This article focuses on the main work of the committee, which is to provide for the safeguarding of clients' monies, through the monitoring of compliance by solicitors with, and the enforcement of, the *Solicitors' Accounts Regulations* and by the promotion of proper accountancy standards and practice in the maintenance of solicitors' accounts. The committee has a policy of seeking to maintain confidence in the solicitors' profession, through the promotion of best practice in all aspects of solicitors' practices.

The other most important function of the committee – namely, maintenance of the compensation fund – was described in detail by John O'Connor, the immediate past chairman of the committee, in last month's *Gazette* (p14).

Structure and powers

The committee is comprised entirely of solicitors, two-thirds of whom must be members of the Society's Council. However, this requirement will be repealed on 1 January 2009. The committee also has two non-solicitor observers who participate at meetings but do not vote. The committee sits in two divisions to consider individual cases.

The powers of the committee include, but are not limited to:

- Issuing a warning to improve

the standard of bookkeeping,

- Directing that a practice be reinvestigated earlier than would be usual, for example, after 12 to 18 months instead of the typical five years,
- Levying a contribution towards the costs of the investigation,
- Attaching conditions to a practising certificate in force,
- Referring a solicitor to the independent Solicitors Disciplinary Tribunal,
- Applying to the High Court for an order prohibiting a solicitor from contravening the *Solicitors Acts* or regulations,
- Applying to the High Court to suspend a practising certificate, and
- Applying to the High Court for a freezing order against a solicitor's bank accounts.

The procedure followed at meetings of the committee is non-adversarial, and the outcome of cases depends on the seriousness of the regulation breaches. Only matters of serious concern are pursued in the High Court.

Accounts investigations

Immediately following an accounts investigation, the investigating accountant will

prepare a report. A copy of this report is sent to the firm investigated. A non-contentious report indicates that the firm has been given a 'client bill of health' and usually only occurs where there are adequate client funds, properly maintained and up-to-date books of account, and well-maintained files and records.

A contentious report indicates that there are issues of concern and may include suggestions for improvements. The report is forwarded to the firm, which is given 14 days to respond.

The report and firm's response are then considered at the next meeting of the committee, which, on the basis of the information before it, will determine whether or not to interview the principal or partners of the firm.

A contentious report that identifies serious issues will require the principal or partners of the firm to attend a meeting of the committee. The report is sent to the firm, which is given 14 days to respond, together with a letter notifying the principal or partners of their required attendance at a meeting of the committee to discuss the report and the firm's response.

A contentious report may identify an emergency situation, usually where substantial client monies are found to be missing, and often with falsified books of account to hide the deficit. This results in an emergency meeting of the committee.

There is a common misconception that correspondence arising in the aftermath of an accountant's investigation invariably spells 'bad news' for the solicitor and that any indications of desired improvement signify that the solicitor is 'in difficulty' with the Society. This is very far from being the reality, and the perception that it is so can give rise to considerable and needless stress of the part of solicitors. Ordinarily, between a quarter and a third of all accounts investigations result in a solicitor being required to attend before the committee.

Serious cases

Serious cases may result in the committee referring the solicitor to the independent Solicitors Disciplinary Tribunal. Tribunal hearings are held in public and its findings are published in the *Gazette*. In cases of serious misconduct, a further referral may occur to the President of the High Court. Sanctions may be more severe if the solicitor has previously been found guilty of misconduct.

Emergency situations, where there has been dishonesty and clients' monies are at significant risk, may result in the Society applying to the High Court for an order to freeze the firm's bank accounts and the solicitor's personal accounts, suspend the solicitor's practising certificate, and take immediate steps to

"There is a common misconception that correspondence arising in the aftermath of an accountant's investigation invariably spells 'bad news' for the solicitor"

work of the profession



secure the firm's files. Such a situation usually ultimately results in a solicitor being struck off the Roll of Solicitors.

Legal representation

A solicitor required to attend before the committee is entitled, but not obliged, to be legally represented. If the

solicitor chooses to have legal representation, then it is advised that the solicitor consult with their legal representative as soon as possible to allow their legal representative to be fully briefed before their attendance at the committee and to have an opportunity for input into the response to the investigating

accountant's report.

For most solicitors, attendance for interview by the committee is not, nor ought it be, a portentous experience. The solicitor should come prepared to address the investigating accountant's report and have a plan of action to resolve the problems identified

by the report. It is in the interest of the solicitor to cooperate with the committee to ensure swift rectification of identified regulation breaches. **G**

Michael Quinlan is the new chairman of the Regulation of Practice Committee.

Promoting human rights

In a seminal case in 2003, the Supreme Court recognised the value of the *amicus curiae* function and confirmed its place in the Irish judicial system, writes Betsy Keys Farrell

It has been a long-standing practice of courts in common-law jurisdictions to consider the views of non-parties when it is in the interest of justice to do so. The *amicus curiae* – or ‘friend of the court’ – has been recognised as an important tool in the administration of justice. This is particularly the case when human rights are being considered. However, in Ireland until recently, the participation of *amici* has been rare and the position uncertain. In 2003, in the seminal case of *HI v Minister for Justice, Equality and Law Reform* ([2003] 3 IR 197) the Supreme Court recognised the value of the *amicus curiae* function and confirmed its place in the Irish judicial system.

Principles of *amicus curiae*

In the first case of its kind in Ireland, the Supreme Court granted leave to the United Nations High Commissioner

for Refugees to appear as *amicus curiae* in an asylum case. In doing so, the court adopted the principles enumerated in its sister common-law jurisdictions, where the nature of *amici* has been the subject of extensive judicial discussion. Most significantly, the court confirmed the inherent jurisdiction to appoint an *amicus curiae* in those cases where it appears the court might be assisted in the determination of the issues before it.

Implicit in the court’s inherent jurisdiction is the complete discretion to determine the parameters within

which *amici* may participate. The court retains full power over the procedures and is obliged to protect the primacy

of the parties, so that any potential burdens on the parties, such as delay or additional costs, are not disproportionate to the benefits derived from the intervention.

In this regard, the burden is on the applicant to demonstrate the appropriateness of intervention. An application for leave to appear as *amicus* must

articulate the *bona fide* interest of the applicant, the extent to which the applicant is in a position to assist the court, and

the nature of the assistance or, more particularly, the issues the *amicus* proposes to address.

The position of the *amicus* is different from that of an intervener, in that it is not a party *per se* and has no rights of appeal or entitlement to adduce evidence. The *amicus* should not duplicate the arguments already before the court; instead, it is expected to bring to the court’s attention information or arguments that the parties would not otherwise canvass, so long as it does not widen the *lis* between the parties.

In the case of statutory bodies, the applicant must demonstrate a legal capacity to act as *amicus*. This is evidenced by the participation of the Irish Human Rights Commission and the Equality Authority as *amici* in cases asserting fundamental human rights. Whereas the Human Rights Commission has a specific statutory function

“A measured approach to hearing amicus submissions will promote the administration of justice in the course of protecting human rights”

ONE TO WATCH: NEW LEGISLATION

Rules of the Superior Courts (Recording of Proceedings) 2008 (SI no 325 of 2008); *Circuit Court Rules (Recording of Proceedings) 2008* (SI no 354 of 2008)

From 10 September 2008, digital and other non-manual means of recording, in addition to shorthand recording, have been introduced in criminal and civil proceedings. The *Courts Service News* (October 2008) reported that digital audio recording has already gone live in Circuit Criminal Courts 15, 23, 25 and

29 in the Four Courts and is due to be rolled out in the Central Criminal Court and the High Court Family Law Court in November. Certain courts around the country, including courts in Trim, Roscommon, Letterkenny, Bray, Cork, Naas, Donegal town and Portlaoise, are scheduled to go live before Christmas.

Definition of ‘record’

A ‘record’ is defined (*Rules of the Superior Courts*, order 86, rule 1; *Circuit Court Rules*, order 67A, rule 1) as “a contemporaneous

record of the proceedings concerned made by any one or more means, including, without limitation:

- Any shorthand or other note, whether written, typed or printed, and
- Any sound recording or other recording, capable of being reproduced in legible, audible or visual form, approved by the court.”

Who may record proceedings?

Unless otherwise specified in the order or by the court, no person,

other than the Courts Service or a person authorised on its behalf, shall make a record of proceedings, otherwise than by written or shorthand notes (*Rules of the Superior Courts*, order 123, rule 8; *Circuit Court Rules*, order 67A, rule 7).

What is to be recorded?

The new rules provide that any party may make or cause to be made a record of the proceedings of any trial or hearing, with the permission of the court and subject to any direction of the

human rights through *amici curiae*



under section 8 of the *Human Rights Commission Act 2000* to appear as an *amicus* when leave is granted, the *Equality Authority Act* does not have a similar provision. Nevertheless, the Supreme Court, in *Doherty v South Dublin County Council* ([2006] IESC 57), found an implicit power to intervene that is incidental and consequential to the Equality Authority's expressed statutory powers. The *Doherty* case is instructive for other statutory bodies that might want to consider their potential role as *amici curiae*, even in the absence of specific statutory authority for the function.

Public-interest law

In matters with a public law dimension, where the outcome will have ramifications beyond the individual interests before the court, the *amicus* has a critical role to play by giving a voice to non-parties whose interests may be indirectly affected by the judgment.



United Nations High Commissioner for Refugees Antonio Guterres

Principles of natural justice – whereby a court must assure itself that it is properly informed of all relevant matters – will militate in favour of an *amicus* application when cases of general public interest are to be decided. An *amicus* is in a better position to contextualise the individual facts of the case

within a wider ambit, thus demonstrating the potentially far-reaching and penetrating effects the judgment is likely to have. For example, evidence of systemic practices, socio-legal research and other data that demonstrate in more concrete terms the effects of impugned policy or statute can further

illuminate the issues and inform the final decision. Public-interest organisations and entities working on the ground may be better equipped to provide this type of information than the main parties in the case. This approach is exemplified in the judgment of the ECtHR in the case of

court. This shall include a record of:

- The oral evidence,
- The judge's charge and directions to the jury, and the submissions and requisitions made to the judge and his rulings thereon,
- In a case tried by a judge without a jury, the judge's judgment (unless it is a written judgment) (*Rules of the Superior Courts*, order 123, rule 2; *Circuit Court Rules*, order 67A, rule 2).

Hearings by the master/county registrar may similarly be recorded

in accordance with the permission and directions of the master/county registrar. Records shall include:

- Any oral evidence,
- Any speech or submissions by counsel or solicitor,
- The master's/county registrar's judgment or ruling (unless written) (*Rules of the Superior Courts*, order 123, rule 3; *Circuit Court Rules*, order 67A, rule 4).

In such cases, the master need not take down or preserve the

evidence as required by the *Superior Court Rules*, order 36, rule 44.

In the case of criminal trials, the Courts Service will make records, and this will include submissions by counsel in the course of the trial, including opening and closing speeches to the jury and any submissions made in mitigation of sentence. In cases before the Court of Criminal Appeal, the transcript writer will furnish to the registrar, at the registrar's request, a transcript of the whole of the

record of the proceedings at the trial (which shall contain all submissions made by counsel in the course of the trial, including opening and closing speeches to the jury and any submissions made in mitigation of sentence) or of such part thereof as the registrar may require. The transcript shall be typewritten or printed and certified by the transcript writer to be a complete and correct transcript of the whole of such record, or of the part required (*Rules of the Superior Courts*, order 86, rule 14(2);



Conor Ó Cléirigh & Company
CHARTERED VALUATION SURVEYORS

OFFICE SUITES TO LET

4 MARY'S ABBEY,
DUBLIN 1



- Refurbished offices ranging from 45m² - 223 m²
- Located on the red LUAS Line directly opposite Capel Buildings
- 3 minutes walk from The Four Courts
- 15 minutes walk from the Stephen's Green LUAS stop
- Very competitive rates and flexible lease terms
- Excellent base for Solicitors/ Barristers/ Legal Cost Accountants

CONTACT: CONOR Ó CLÉIRIGH & COMPANY
TELEPHONE: 01 8096030

keepitsafe



WHEN LOSING DATA IS NOT AN OPTION

Can you afford to have your data exposed to human error, theft, power surges or file corruption?

Don't fall victim to data loss!

77% of Solicitors found they were unable to fully recover data after file corruption.

keepITsafe's online backup solution offers a secure and automatic backup that guarantees successful recovery and 24/7 monitoring.

NEVER LOSE A FILE AGAIN

1890 222 587
www.keepitsafe.ie



"As a society, perhaps the most sensitive measurement of our maturity is the manner in which we care for those who are facing the ultimate challenge – the loss of life."

(REPORT OF THE NATIONAL ADVISORY COMMITTEE
ON PALLIATIVE CARE, 2001)

QUALITY HOSPICE CARE FOR ALL



Over 6,000 people use hospice care each year.

Hospice care involves the total care of patients and their families at the stage in a serious illness where the focus has switched from treatment aimed at cure, to ensuring quality of life. It seeks to relieve the symptoms of illness and cater for a person's entire needs – physical, emotional, psychosocial and spiritual.

The demand for hospice care is growing. While the service has expanded in recent years, much more needs to be done to ensure quality end-of-life care for all.

Please remember the Irish Hospice Foundation when drafting a will.
Irish Hospice Foundation, Morrison Chambers, 332 Nassau Street, Dublin 2
Tel: 01 679 3188; Fax: 01 673 0040
www.hospice-foundation.ie

No-one should have to face death without appropriate care and support.

Christine Goodwin v UK (11 July 2002), where the submissions of the independent human rights organisation Liberty were heavily relied upon by the court.

For obvious reasons, individual litigants are not likely to focus their arguments beyond those required to achieve the specific reliefs requested. For strategic reasons, they may choose to emphasise certain arguments over others. Nevertheless, the vindication of fundamental human rights, by its nature, will have a broader impact – thus it is important that all issues arising are fully ventilated. The *amicus* can assist the court by offering submissions on those legal issues that might not attract the same level of attention from the parties, but are nevertheless significant. This may also involve bringing to the court's attention non-binding legal sources and other relevant material that will persuasively support the interpretation and application of the principles at issue.

ECHR

The integration of international human rights norms into the domestic legal system brings an increased level of complexity to the court's decision-making process. Following on from the incorporation of the



European Court of Human Rights, Strasbourg

European Convention on Human Rights, the court is mandated to consider the ever-increasing jurisprudence of the European Court of Human Rights. By extension, this includes the international instruments and other sources of 'soft law' on which the ECtHR might rely when interpreting the convention. In addition, emerging legal trends in other jurisdictions, including Council of Europe members, may be relevant. This places a greater

burden on the court and parties alike and underscores the need for increased participation of *amici curiae* in appropriate cases.

Since the incorporation of the ECHR into Irish law and the Supreme Court's decision in *HI*, there has been a significant increase in the number of cases that raise complex issues concerning human rights. Organisations and entities whose efforts are focused on specific issues and vulnerable

groups may possess particular expertise and information that would be useful to the courts when they are called upon to adjudicate on human rights-related matters. A measured approach to hearing *amicus* submissions will promote the administration of justice in the course of protecting human rights. **G**

Betsy Keys Farrell is a practising solicitor and a member of the Law Society's Human Rights Committee.

Circuit Court Rules, order 67A, rule 3).

A judge also has the power, during the course or at the conclusion of a trial or hearing, to direct that a transcript of the record be made available to him at the public expense or to be furnished to any party applying for the record at the expense of that party (*Rules of the Superior Courts*, order 123, rule 5; *Circuit Court Rules*, order 67 A, rule 6).

Appeals and transcripts

In the case of an appeal, only such part of the record as the parties agree to be relevant shall

be transcribed and included in the book of appeal to be lodged by the appellant. There is provision made in the new rules for a party to cause any additional part of the record to be transcribed and included in the book of appeal, but the party will bear the cost of this. However, if the Supreme Court, immediately after the appeal, certifies that, in its opinion, it was expedient or desirable that the transcript or such additional part of the record should have been lodged with the books of appeal, the party will be granted the costs (*Rules of the Superior Courts*, order 123, rule 6(1)).

The Supreme Court also has the power, before or during the hearing of an appeal, to direct that any part of the record of the proceedings, which has not been included in the book of appeal, should be so included (*Rules of the Superior Courts*, order 123, rule 6(2)).

The Supreme Court or the court may require the production of a record in a manner it so requires (*Rules of the Superior Courts*, order 123, rule 7).

Who bears the costs?

The party making or causing to be made a record at a trial or

hearing of any cause or matter or any hearing by the master/county registrar shall bear the cost of the production of the record and any transcript required. However, there is provision for the judge/master/county registrar to certify after the trial or hearing that, in his opinion, it was expedient that the proceedings or any part should have been so recorded or a transcript produced. In such cases, the cost shall be part of the costs in the cause. **G**

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

New crime provisions

The murder of Shane Geoghegan in Limerick provoked outrage in both the public and political arenas. Diarmuid Griffin asks whether recent proposals will be effective

The public have once again voiced their concern over violent gang crime in Ireland and have called for something to be done. So what have politicians come up with, and will their proposals be effective?

The political response has been to put forward new legislative provisions designed to tackle organised crime and the apparent ability of those involved in such crime to evade the criminal justice system. In this instance, the suggested provisions address the use of covert surveillance to aid in the investigation and prosecution of criminals, and new legislation dealing with the licensing of firearms.

Justice Minister Dermot Ahern published the heads of a draft *Surveillance Bill* to provide a legislative framework for the use of covert surveillance by the gardaí. The minister said that the “bill is evidence of the government’s serious intentions in ensuring that the security forces of the state have every possible advantage ... so that they can effectively thwart the activities of those involved in serious crime”.

I spy

The draft bill proposes that a member of An Garda Síochána can make an application to a judge for the authorisation of the use of covert surveillance in the investigation of an arrestable offence. This authorisation can last for up to three months and may be renewed for a further three months by order of a judge. It also contains a

provision allowing for the use of surveillance by the gardaí without authorisation by a judge in cases of exceptional urgency for a period of up to 14 days. Evidence and information gathered through the use of this surveillance may be disclosed in criminal trials.

A High Court judge is to be appointed to review these powers and report to the taoiseach on any relevant matter he or she deems necessary.

The minister explained that these proposals formalise procedures that the gardaí already use in the investigation of suspected offences, namely, the use of a variety of surveillance techniques.

As only the heads of the bill have been published to date, it is difficult to give any detailed analysis – however, there are a couple of points of import.

The draft bill is not directed specifically at organised or gangland crime, but at all arrestable offences. Public concern about these issues in the past has been used to justify the implementation of draconian criminal justice legislation without appropriate safeguards.

This has been evident in the proliferation of extensive arrest and detention provisions over the last number of decades.

The adoption of a legal framework for the use of surveillance by the gardaí is to be welcomed cautiously. But the legislation will necessarily require appropriate limits on the use of surveillance while

ensuring the protection of the citizenry’s human rights and civil liberties.

The protection of the right to privacy – an unenumerated right in the Constitution and a right explicitly guaranteed under article 8 of the *European Convention on Human Rights* – is of crucial importance here. While there is an absence of Irish case law in relation to police surveillance, ECHR case law indicates that, as long as there is a legal

basis for surveillance and sufficient safeguards (such as judicial oversight), there will be no violation of article 8. Thus, the provision to allow gardaí to carry out surveillance for 14 days without judicial authorisation may be vulnerable to challenge. Furthermore, the legislation and its practical

application will need to be drafted so as not to offend the current understanding of the absolute exclusionary rule.

It is impossible to predict whether these measures will result in a greater number of prosecutions or convictions of those involved in gangland crime.

The man with the golden gun

The Minister for Justice has also proposed to introduce new provisions to deal with the licensing of firearms in the yet to be published *Criminal Justice (Miscellaneous Provisions) Bill*. In particular, Mr Ahern plans to ban the licensing of handguns and to place further restrictions on applications for the renewal of handguns already licensed.

Provisions dealing with the licensing of firearms are spread over numerous pieces of legislation, dating back to the *Firearms Act 1925*. Possession of a firearm is illegal unless it has been licensed by a garda superintendent and, from 1972-2004, the gardaí operated a stringent practice in the licensing of firearms. However, from 2004 onwards, this practice was called into question by a number of judicial review proceedings in the High Court, resulting in the gardaí adopting a more liberal approach to the licensing of firearms, in particular handguns.

These proposals are unusual, in that they do not appear to acknowledge recent reform in the area and are not specifically targeted at gangland crime.

Part 5 of the *Criminal*

“If the minister wishes to further restrict firearms, he is empowered to do so under section 29 of the 2006 act. A new legislative provision is not needed to achieve this goal”



not a panacea

Justice Act 2006 has already introduced a new framework for licensing. Unfortunately, many of its provisions have yet to be brought into force by the minister. It makes no sense to introduce new measures when provisions in the 2006 act have yet to be activated.

Further, with a view to achieving the goals outlined by Mr Ahern, the then Minister for Justice, Brian Lenihan, signed an order in February of this year restricting the type of firearms and ammunition that can be licensed. The order states that all other firearms, other than those listed in the order, are restricted firearms. Thus, the restriction of firearms is already in place and if the minister wishes to further restrict firearms, he is empowered to do so under section 29 of the 2006 act. A new legislative provision is not needed to achieve this goal.

Garda Commissioner Fachtina Murphy recently stated that he has no power to issue guidelines on the licensing of firearms and handguns. This is a strange statement to make, because section 31 of the act empowers the commissioner, with the consent of the minister, to issue guidelines to superintendents on the practical application of the *Firearms Act 1925-2006* and the conditions attached to applications for and the authorisation of firearms. This section was brought into force in August 2006.

Finally, new provisions that deal with the licensing of firearms will in no way tackle the circulation of illegal firearms in the state. It is these non-licensed firearms that are



being used by those involved in organised or gangland crime.

The 39 steps

There appears to be a great deal of confusion surrounding the legislative provisions and judicial decisions in the area of firearms legislation. Rather than introduce further piecemeal provisions, the area needs to be codified to ensure that a restrictive approach to the licensing of firearms is adopted. This will probably have little or no effect on gangland crime, but it may impact on incidences of firearm-assisted suicide and firearm-related deaths and injuries.

In March 2007, I wrote a 'Viewpoint' piece for the *Gazette* (p14) on the provisions contained in what is now the *Criminal Justice Act 2007*. That piece of legislation was proposed by the then Minister

for Justice, Michael McDowell, to tackle serious gangland crime and to address the imbalance in the criminal justice system. The legislation was also interpreted by some as a ploy to boost the profile of the minister prior to the general election. In any event, the act was not equipped to deal with what McDowell stated it would achieve and, incidentally, he went on to lose his seat in that election.

Perhaps the public are more discerning on criminal justice issues than politicians assume. This does not appear to have occurred to the opposition, who have not produced anything of significance that would inspire confidence in a fresh approach.

The sense that the murder of Shane Geoghegan could have happened to anyone in the wrong place at the wrong time generated a great feeling of fear and powerlessness among

the public, who usually look at gangland crime from the outside in. Dealing effectively with those who commit violent crime of this nature is an almost impossible task. However, if there is a lesson to be learned from our attempts to tackle this kind of crime since the death of Veronica Guerin and Detective Garda Gerry McCabe in 1996, it is that there are limits to what legislation alone can achieve.

A renewed government commitment to fund and implement the Limerick Regeneration Plan, which aims to transform the city's most deprived areas at a time of scant resources, would be evidence of the government's true commitment to tackle the cycle of violence in those communities. **G**

Diarmuid Griffin lectures in criminal law at the NUI Galway.



MAIN POINTS

- Subway robberies
- Police academy
- Inspectorate's role

Uncharted WATERS

She's come a long way from her days as a mugging decoy on the streets of Boston. Just over two years into her new job, Kathleen O'Toole speaks with Colin Murphy, in a two-part interview, about her role as Chief Inspector of the Garda Inspectorate

Late one night in the early 1980s, a young woman was waiting for a train at a deserted subway station in Field's Corner, Boston. A group of five men entered the station. She muttered to herself nervously. They sized her up, moved towards her. She braced herself. They surrounded her. One drew a knife. They threatened her. She said something to them, and there was a sudden commotion. Moments later, she was holding one of the men up against the wall and was pointing a gun at another. The other three in the gang fled, disoriented. They ran straight into the arms of the woman's backup officers – colleagues in the Boston Police Department.

Kathleen O'Toole, now the Chief Inspector of the Garda Síochána Inspectorate, was in her early years in the force and had been allocated to decoy work.

"My job was to get robbed on the subways every day, for a while," she says.

She would go out with a backup team, wired so that they could hear her – though often they wouldn't be able to see her from their hiding point – and she wore no earpiece, so couldn't hear them. The safer alternative to standing in deserted subway stations, waiting to get robbed, was riding on the subway at rush hour, waiting to get pickpocketed. Either way, she loved it.

"I got a great sense of satisfaction in knowing I prevented someone else from being robbed. It gave me a greater empathy for victims of crime. I was well trained, I was armed, I had backups, and it was still terrifying from time to time. It gave me a much greater appreciation of the trauma crime victims suffer."

Did that trauma ever dwell with her? "I was lucky. I always reacted as I'd been trained to react. I was never seriously injured on the job. The reality of it never set in until afterwards. But two months later, I'd wake up in the middle of the night and say, 'Oh my God, that was really a close call!'"

Did it ever get to be too much – did she ever consider leaving?

PICS: LENSEMEN



"Oh, no way!" she says, laughing. She glows at the memory of it. "And you know what? If I had the opportunity to go back there and do it again tomorrow, I would."

Establishing credibility

Kathleen O'Toole was a law student in Boston in the late 1970s, working in sales for an electronics distributor by day to pay for her classes by night, when a friend suggested they sit the police test together. She thought it would be good test-taking experience. When, some months later, that test ultimately led to the offer of a position, she initially dismissed it. Her friends in law told her it would be great experience, and ultimately dared her to do it. She joined up and was sent to the police academy, which "resembled a marine corps boot camp". "It was still a military-type training model. Most of the instructors were former marines."

But Kathleen O'Toole was a keen sportswoman, and she thrived. "I was in it for a few months when I realised I'd found my calling." She did her year in training, then a year on probation, then her time on the beat in downtown Boston. Women comprised a small portion of the force then, but she had no problems. "I think I've always anticipated the worst, but I never encountered the resistance I thought I would." Offering oneself up as a potential knife victim can't have harmed her chances of being taken seriously by her more macho colleagues, however. "It's a business where one has to establish credibility early in one's career, out there in the field, where our lives do depend on one another. During my early days as a patrol officer, a decoy officer, I was able to establish my credibility as a hard-working, front-line police officer."

She moved up quickly. By the age of 32, she

was a deputy superintendent, equivalent to deputy commissioner in the gardaí. She later served in the Massachusetts' governor's cabinet, as Secretary of Public Safety, and then joined the Patten Commission on policing in Northern Ireland and became the first female police commissioner in Boston in 2004. In July 2006, she moved to Dublin to become the head of the newly-created Garda Inspectorate. Sitting in a fine Georgian office overlooking St Stephen's Green, under a large framed photo of her father-in-law, also a Boston police officer, she seems utterly at home. (Which may be appropriate, as home is an apartment just above the office.)

"I thought I'd have a lot tougher road ahead," she says about taking up the job first. "I thought there'd be a lot more resistance to an outsider, particularly a woman. Happily, that hasn't been the case."

Clearly, this is – in part at least – down to her demeanour. She jokes with the *Gazette's* photographer about being a reluctant model and exchanges good-natured banter with her staff, who call her Kathy. When the interview gets underway, she talks for two hours with a combination of a nerdy interest in policy detail and a radiant enthusiasm both for her subject and for communicating it. She manages to be personable without being impolitic; passionate without being sentimental. Her first action upon her arrival, she says, was to do a nationwide tour, visiting "countless" garda stations to "talk to the people on the front lines and in the communities they serve".

Charting her own course

"The inspectorate's role," she says, "is so loosely defined in the legislation, it's really been an opportunity to chart our own course here." She has ranged widely in her three reports so far (there are a further three currently in the pipeline) and has met

"I thought I'd have a lot tougher road ahead," she says about taking up the job first. "I thought there'd be a lot more resistance to an outsider, particularly a woman. Happily, that hasn't been the case"

SPOT THE DIFFERENCE!

The inspectorate's role is consistently confused with that of the Garda Ombudsman – both bodies having been set up under the same legislation, the *Garda Síochána Act of 2005*. In Kathleen O'Toole's words: "The inspectorate is a body that advises the Minister for Justice on policing, benchmarks the Garda Síochána against international best practice, and makes recommendations to promote effectiveness and efficiency in the police. Our role is modernisation and reform – it's not investigating cases of wrongdoing." (The Garda Síochána Ombudsman Commission, to give it its full title, is "responsible for

receiving and dealing with all complaints made by members of the public concerning the conduct of members of the Garda Síochána", as stated on its website, www.gardaombudsman.ie. The three ombudsman commissioners are Justice Kevin Haugh, Carmel Foley and Conor Brady.)

"Because there's confusion, we often get calls here [from the public] and we refer them to the ombudsman," says Kathleen O'Toole. "No sooner were we set up here when some woman arrived with a placard, wanting to protest, and we said, 'Here's the address of the ombudsman!'"



with broad acceptance from both the Department of Justice and the garda representative organisations. Of her 134 recommendations so far, just one has been rejected: in her third report, she recommended that superintendents outside Dublin should have their District Court prosecution role delegated to their local inspectors. This idea was originally brought to her by the superintendents themselves, she says.

"It's great that they visit the court," she says, "but they have to spend a day or two preparing, and then a day in court, and they just don't have the time to do the rest of the job."

The garda superintendent's position is "one of the most crucial in the organisation", she says. "People out there in the community look at the local 'super' as being their police chief. He has to be visible, has to be out and about in the community, has to attend community meetings and lead the community policing agenda. Being locked up in the courthouse [makes that impossible]."

As anyone who's ever attended the District Court will know, it's not just garda superintendents who spend an inordinate amount of time in court. The halls and benches of the courts seem to be cluttered with uniformed gardaí, many waiting to attend minor proceedings in cases involving them. Kathleen O'Toole similarly hopes this will ultimately be dealt with. One of the inspectorate's ongoing studies is on 'resource allocation', concentrating on the primary resource of uniformed officers, and this issue will come under that. "In the Dublin Metropolitan region, they've piloted a 'court presenters' scheme, so that a sergeant appears on behalf of the Garda Síochána, up to the point where the testimony is actually required, so you don't have people hanging around court all day – a waste of resources."

And where those resources are ultimately being missed, she says, is on the streets, where she is a strong advocate of high-visibility, community-oriented policing. She tells a Boston story to illustrate her approach to policing. "In the spring of 2005, I called the gang unit in and said, 'Find me the 1,000 young people in this city who are most likely to pull a trigger or be the victim of a violent crime this summer, and let's see what we can do in advance to prevent that from happening'."

The unit worked with the schools, probation, social services and the health service. "Everybody came together, because we're accustomed to working together," she says. "We focused on those families facing the biggest challenges. In over 850 cases, we got

into the home of that young person and said, 'Look, we're concerned'.

"Often, you had a single mother just trying to make ends meet. We said, 'What can we do to help you to keep this young person out of harm's way this summer? Does he need a job? Does he need a literacy programme? Do the younger people need summer camp? Do you need additional social services?'"

Relentless enforcement

"Okay, there are some of these gang members that are beyond hope at this stage – we're not going to rehabilitate them, so good, tough, relentless enforcement is the only thing that will work in those instances – but I think we need to focus on the next generation and help develop them."

This is the approach she advocates for dealing with situations such as those in Limerick. She refers to former Dublin city manager John Fitzgerald, who is behind the blueprint for the regeneration of deprived areas of Limerick city.

"John Fitzgerald is absolutely on track. The police alone are not going to resolve the problems in Limerick. It has to be a multidisciplinary, collaborative approach. Prevention and intervention are more important than enforcement."

In the week of this interview, Justice Minister Dermot Ahern proposed a ban on handguns as one response to gangland gun crime. Kathleen O'Toole would "absolutely" support such a ban.

"I have always been anti-handgun. I've had to respond to those horrific calls of teenagers shot and killed or injured in inner-city neighbourhoods. I think any major city police chief in the US would be."

She is, she says, a "civil libertarian", and on issues such as guns and surveillance – also in the news recently as a result of new measures being proposed for the use of evidence in court obtained through those means – she believes a balance must be struck between civil liberties and crime fighting. But in the US, on the guns issue, that balance has been missed.

She cautions about relying on the argument that most gun-owners are law-abiding. "A lot of guns that are used in the commission of crime in the States – and I suspect that that trend will develop here, if there aren't controls – are guns that are stolen from their rightful owners." **G**

Part 2 of this interview will be carried in the Jan/Feb 2009 issue, out on 6 February.

PROBABLE

In the second of two articles on legal liability for hospital-acquired infections, Rody O'Brien looks at recent Irish cases on causation in medical negligence cases and breach of statutory duty in Britain

Two recent and instructive decisions of the Irish courts on causation in medical negligence cases are *Philp v Peter Ryan and the Bon Secours Health System* and *Quinn (minor) v Mid Western Health Board & anor.*

In *Philp*, the plaintiff was negligently diagnosed as suffering from acute prostatitis. He had an aggressive form of prostate cancer. There was breach of duty and subsequent injury. On the balance of probabilities, even without the negligence, the court heard that the plaintiff would have gone on to suffer the injury.

Mr Justice Peart held that the plaintiff was deprived of the opportunity of seeking alternative treatment, which might have been of benefit, as a result of the defendant's negligence. This is referred to as the doctrine of 'loss of chance'. He awarded the plaintiff damages to the extent of the plaintiff's reasonably held belief that his life was shortened and the stress this caused the plaintiff.

In the Supreme Court decision in *Quinn*, the plaintiff was born on 4 May 1990 with severe brain damage attributable to a condition subsequently diagnosed as periventricular leukomalacia (PVL). Her claim in the High Court was that she should have been delivered not later than week 35 of gestation, in which case all or substantially all of the brain damage that occurred would have been avoided. The defendants conceded that the management of the pregnancy had been negligent and that the plaintiff should have been delivered earlier than she was. The defendants contended that the plaintiff's injury was as a result of an acute episode that occurred between weeks 28 and 30. They argued that the outcome would not have been any different had she been delivered at any earlier time than she was. Mr Justice O'Sullivan held that the plaintiff had failed to establish, on the balance of probability, that she would have avoided her catastrophic injuries had she been delivered by the 35th week of gestation.

In the Supreme Court appeal, Mr Justice Kearns very interestingly wondered why, with such a case, 'lost chance' or 'material contribution' to the injury were not pleaded.

Modified approach to proof

Would the Supreme Court be open to the argument of 'lost chance' or 'material contribution' in cases concerning hospital-acquired infections? If the answer

is 'yes', would it weaken the defence that the plaintiff acquired the infection prior to being admitted to the hospital? The plaintiff might have a better case in pleading 'lost chance' or 'material contribution'. As neither of those were pleaded in this case, the decision of the court was based on the traditional 'but for' test of causation.

The plaintiff argued for a modified approach to proof of causation on the particular facts of this case. The Supreme Court examined the cases of *McGhee v National Coal Board* and *Wilsher v Essex Area Health Authority*. This quote from Mr Justice Kearns could be very instructive of any future direction of the Supreme Court in deciding on causation in hospital-acquired infection cases:

"*Wilsher* suggests that it is less open to a court to relax the onus of proof in relation to causation where the condition brought about by negligence is multi-factorial or is capable of being triggered for a variety of reasons or by a variety of agents. Conversely, where only one reason or agency can be identified, a court may more readily make good any evidential shortfall to draw an appropriate conclusion, notably when scientific and medical science is incapable of providing the requisite information. Such an approach may also be more appropriate to cases where the negligence or breach of duty precedes the injurious event, particularly where the injury falls in shortly afterwards and is thus clearly proximate to it. A difficulty may obviously arise in cases where the injurious event occurs first and there is then negligence, whether by way of misdiagnosis or delay in providing appropriate treatment. In the latter situation, the injury or some of it will in many cases have already occurred to a greater or lesser degree, so that the negligence may perhaps better be characterised as giving rise to the 'loss of chance' or 'loss of an opportunity' of avoiding most, or at least a significant part, of the ensuing damage. It must be said that there is a dearth of Irish authority on the topic of 'loss of chance', which perhaps explains why the plaintiff's advisers steered clear of it at trial."

Relaxing the rules on causation?

In analysing this quote, the first sentence could be interpreted as saying that, where there is more than one cause of injury or damage, the traditional 'but for' test of causation will apply. This type of scenario

MAIN POINTS

- Legal liability for damage sustained as a result of hospital-acquired infections
- Recent decisions of the Irish courts
- Breach of statutory duty



CAUSE

may be seen in verdicts of coroner's courts here, where a hospital-acquired infection is stated by the coroner to be one of the causes of death. The next two sentences could be interpreted as saying that, in cases of hospital-acquired infection, where it is claimed that the infection was acquired as a result of the negligence of the defendants, a court might relax the rules on causation where the medical evidence was inconclusive. This is an argument open to a plaintiff in the appropriate circumstances, based on an interpretation of this part of Mr Justice Kearns' judgment. The last three sentences may be applicable in the type of hospital-acquired infection cases where

it is claimed that, once the defendant knew of the existence of the infection, they were negligent in treating it. In such cases, Mr Justice Kearns seems to be saying that it is open to the plaintiff to claim under the doctrine of 'loss of chance', and one could then conclude, if one accepts this interpretation, that the Supreme Court might be open to such a claim.

Mr Justice Kearns agreed with the trial judge when the trial judge stated:

"I am left, therefore, with two mutually inconsistent bodies of evidence, neither of which wholly and satisfactorily resolves the issues in the case. It is not for me, following Finlay CJ in

With fingernails like that, you too would linger over your choice of scissors



Whose copy of the
Gazette are you reading?

Why not
subscribe ...

€57
FOR
10 ISSUES

I would like to subscribe to the *Law Society Gazette*

I enclose my cheque for €57

Please charge my ☐ Access ☐ Visa ☐ Mastercard ☐ Eurocard

Credit card number:

Expiry date:
MONTH/YEAR

Name: _____

Address: _____

Telephone: _____

Signature: _____

Please return to *Law Society Gazette*, Blackhall Place, Dublin 7.

LOOK IT UP

Cases:

- *Anderson v Milton Keynes General NHS Trust and another* [2006] All ER(D) 175
- *McGhee v National Coal Board* [1973] 1 WLR 1
- *Ndri v Moorefields Eye Hospital NHS Trust*

[2006] EWHC 3652 (QB)

- *Philp v Peter Ryan and the Bon Secours Health System* [2004] IEHC 77
- *Quinn (Minor) v Mid Western Health Board and another* [2005] IEHC 19
- *Wilsher v Essex Area Health Authority* [1988] AC 1074

Legislation:

- *Control of Substances Harmful to Health Regulations 2002* (Britain)
- *Controlled Substances Hazardous to Health Regulations 1999* (Britain)
- *Safety, Health and Welfare at Work Act 2005*

the authority cited above, to set myself up as a determining authority in regarding these specialist issues, nor do I attempt to do so. I am unable in this case, however, by the application of common sense and a careful understanding of the logic and likelihood of events, to reach a conclusion that the evidence adduced by the plaintiff establishes her case on the balance of probabilities. I am unable to conclude, that is, that on the balance of probabilities that had the plaintiff been delivered by the 35th week of gestation, she would have been spared all or a significant part of her injuries. In that event, I must dismiss her claim."

Causation – breach of statutory duty?

With plaintiffs finding causation a very difficult hurdle to overcome in hospital-acquired infection cases, the focus of their claims has, very recently in Britain, been on breach of statutory duty by the defendant hospitals. The *Control of Substances Harmful to Health Regulations 2002* require employers to control exposure to substances that can put people's health at risk. It defines the substances as those used at work, such as chemicals, fumes and dust. It also includes biological agents like bacteria and micro-organisms. There is an interesting recent case in Britain on these regulations in a medical negligence case. In *Ndri v Moorefields Eye Hospital NHS Trust*, the plaintiff had a cornea graft at the defendant hospital. The tissue was infected with bacteria and, as a result, she developed endophthalmitis and lost sight in the eye. This was a very rare but known risk of cornea transplant surgery. She claimed against the hospital in negligence and for breach of statutory duty (*Controlled Substances Hazardous to Health Regulations 1999*). Her claim failed in negligence, but it is the second heading that we are particularly interested in here. The High Court judge (Sir Douglas Brown) stated:

"I turn to breach of statutory duty. This is an interesting, perhaps ingenious attempt to fix the defendant with absolute liability. If Mr Whitfield's submissions are correct, then there must be that result, and a crucial precedent would have been created in personal injury litigation. They are, however, not correct ... the claimant must show the damage he or she suffered fell within the ambit of the regulation, namely, that it was of the type that the legislation was intended to prevent and that the claimant belonged to the category of persons the

regulations were intended to protect."

The judge interpreted the intention of the legislation as to protect employees and others in the workplace and from workplace-type harmful substances. He concluded:

"It is clear, in my view, from the whole structure of the regulations, that patients in a hospital are not to be included amongst the persons to be protected ... It is, in my view, inconceivable that it was the intention of Parliament to impose absolute liability in the circumstances of this case..."

The equivalent legislation in this jurisdiction is the *Safety, Health and Welfare at Work Act 2005*. We await a pronouncement from our courts on a claim of breach of statutory duty as causation in a hospital-acquired infection case. It would indeed be a new departure in personal injury litigation if the courts here were to accept the proposition that liability to patients for hospital-acquired infections was as a result of breaching a statute intended to protect employees or others in the workplace.

No precedent

There is a great deal of complexity in establishing and defending cases involving hospital-acquired infections. There is no precedent yet from the courts in this jurisdiction on legal liability in hospital-acquired infection cases and the applicable test to use to establish causation. The decisions in the neighbouring jurisdiction are instructive, and some are of persuasive authority.

For hospital acquired-infection cases, we saw that there are generally two types of claims. The first type is that the infection was acquired in the hospital as a result of the negligence of the hospital. The second is that, after the infection was acquired, the hospital was negligent in diagnosing and treating it. We saw in the recent Supreme Court decision in *Quinn* the various alternative approaches the court might entertain to the plaintiff's attempt to establish causation. This is a complex area of law. It will remain so at least until there is clear authority given on the issues by our courts. **G**

Rody O'Brien is a practising barrister and a guest lecturer in law in the Royal College of Surgeons. The author expressly divests himself of any responsibility for the accuracy of the contents of this work, which are not intended to be relied upon in the absence of proper legal advice.



"It would indeed be a new departure in personal injury litigation if the courts here were to accept the proposition that liability to patients for hospital-acquired infections was as a result of breaching a statute intended to protect employees or others in the workplace"

The new president of the Law Society, John D Shaw, is the third generation of his family to wear the chain. Mark McDermott asks him about the main challenges facing him during his term of office



Does your presidential lineage place an extra burden of responsibility on your shoulders?

"I suppose a little bit. I mean if you're following in the footsteps of your father and your grandfather, particularly when they both were regarded as successful presidents, there is a certain amount of 'you don't want to let the side down' about it. You always hope that your year is going to go well.

"I wouldn't call it a burden, though. I've never found working in the Law Society a burden. I think if you did, you could never have stuck at it this long, because it does take quite a while to become president. People have often asked me why I do it, or how I stick it, and the answer has always been the same: I actually, genuinely, have enjoyed my time on Council. I've made some great friends here and I've learned an awful lot."

Has your dad given you any advice about the role?

"The only advice that my father and any of the past presidents have given to me – and it's always been uniform – is just to enjoy it. You know, all you can do is do your best. While there are a few things that

you're aware of, you really have no idea what might be coming down the tracks towards you. Each week, each month, is going to bring something different, something new. It's not daunting, though, as you are surrounded by a very good team. You take advice, you consult, you make your decisions, you do your best."

If your grandfather were still alive, what advice would he offer you?

"It's changed so much since 1956. I think it's a totally different kind of profession. When he was president, he probably knew most of the people in his law directory personally. It was a much smaller profession. They didn't have issues like the compensation fund. It didn't exist back in 1956. It was a totally different style of practising law. Nowadays, you have a profession of close to 9,000 practising solicitors, and 12,000 on the roll. It's impossible to know everybody. You really are talking about a different animal in terms of the Law Society and its membership. So I think any advice he might have given me, quite honestly, would be of limited value perhaps."

MAIN POINTS

- Third-generation president
- Major goals
- Dealing with the recession



THE C HAIN GANG

Was becoming president something that was spoken about when you were a young solicitor?

“No, never. In fairness, I have to say my father never even suggested I become a solicitor – never mind president of the Law Society! It was very much left to me.”

What are your major goals for the year?

“There are certain issues that just come down the tracks at you that you have to deal with. The clear one at the moment is the state of the economy. I wouldn’t have seen such a sudden and severe recession coming 12 months ago – I don’t think anybody did. If you had asked me 12 months ago what I thought was going to be the major issue of my year, I probably would have said the legal services ombudsman.”

How do you think the profession is going to deal with that?

“I am very confident that members of the profession will see the ombudsman as being a good move for them and for the public. We do have a job to do in terms of having a calm and informed conversation

with the profession, explaining why we believe this model of representation and regulation is the best model for us. We have done a lot of research in the past few years. We’ve looked at the models in England and across the world. Quite honestly, we’ve seen the mistakes that have been made elsewhere, and we’re determined not to repeat them here. It’s a very complex area – I think more complex than people realise. It’s not simply a matter of separating representation and regulation. That, in my opinion, is too simplistic. I think that there’s a lot more to it, and it would be a mistake for the profession to try and disown regulation. I don’t think, first off, it’s actually possible. Quite apart from the fact that you’re always going to be saddled with the cost of regulation, no matter what happens.”

Given the recession, how can the Society help members deal with it?

“Obviously, we are limited in a sense in what we can do. We can’t directly influence economic conditions in the country. And I suppose the real major issue

A SLICE OF LIFE

Most influential person in your personal or working life?

"My father, due to his skills as a lawyer and with people."

Best movie of all time?

"At Christmas, it would have to be *It's A Wonderful Life*. It always catches me in the throat. There's also something special about *The Godfather*."

Favourite band or type of music?

"I love a bit of everything, I have very eclectic tastes, including Neil Young, Tom Waits and Frank Sinatra. Anything from classical to rock really. I also sing in the Mullingar Cathedral Choir. We did a local

charity concert recently and have recorded a couple of CDs.

"We've done a backing track for a Joe Dolan single that will be out for Christmas – a version of 'O Holy Night'. It's quite a nice recording and I think it's going to be a big sell-out this Christmas, what with Joe's first anniversary coming up on St Stephen's Day. It might just catch the public imagination."

Alternative job or profession?

"For a brief time, when I was in school, I thought I'd like to be an architect. I was hopeless at spatial relationships and physics, however. I failed the aptitude test in spatial relationships. But I do love architecture and buildings."

"I know what members of the profession are going through – the ordinary practitioners. 'Full-on' conveyancing is an important part of their business and I feel the pain, believe me"

is the effective collapse of the property market in terms of activity. I do still think you will see stronger activity returning at some stage, but unfortunately it's impossible to say when. In the meantime, it's certainly causing a cash-flow difficulty for firms. There is just simply very little activity in the market. We certainly need to look at the profession's excessive dependence on the traditional core areas – conveyancing, probate and litigation. These are all areas that are going to undergo – if not already – substantial change in the next five to ten years.

"In conveyancing, you have got e-conveyancing coming down the track. There has been downward pressure for many years, and it's not an area of law that can sustain the profession on its own, as it might have done in the past. Litigation likewise – there is a substantial move now towards alternative dispute resolution. The Society has to be more active in promoting mediation, arbitration and collaborative law. This is certainly something we will be looking at during the year.

"We are going to establish a task force, to be chaired by Council member Liam Kennedy, which will examine the various models of alternative dispute resolution available for business disputes. The task force's primary objective will be to identify opportunities for the profession.

"In addition, there are opportunities in tax planning and estate planning as a result of the enormous amount of wealth that has been generated in this country. So there is still plenty of work for solicitors. Many solicitors have diversified and are becoming specialised in certain areas of law. I think that, increasingly, this is going to be the way forward."

Do you specialise in any area of law yourself?

"When I started off, I had quite an interest in tax, and tax law in particular. I was keen on estate planning and what was then still fairly novel, the *Capital Acquisitions Tax Act 1976*.

"I quickly realised, I suppose, that when you get into a speciality, particularly tax, the focus becomes narrower and narrower, and I just couldn't see myself

spending the next 20 or 30 years concentrating solely on CAT planning, CAT returns and CAT whatever! Much as I enjoyed it, I was glad to get back to the mix of general practice. One of the things I very much enjoyed doing was being in the District Court. I think it's very important that solicitors get a chance to actually stand up in court and present something, even if it's only once or twice.

"I suppose I became slightly disillusioned with litigation as my career developed. It was time consuming and I didn't particularly enjoy the adversarial aspect of it. I didn't mind the District Court, funny enough, but the Circuit Court and High Court just didn't grab me. So I concentrated more and more on property, conveyancing and probate. What with the property boom, I became more and more a property conveyancing solicitor, albeit with quite an amount of commercial work.

"In terms of the effect of the economic downturn, I am speaking directly from first-hand experience, and I know what members of the profession are going through – the ordinary practitioners. 'Full-on' conveyancing is an important part of their business and I feel the pain, believe me."

Any doubts about your career choice?

"None. I mean, everybody has a bad day, you know. In general, it is a stressful job and one that takes it out of you a lot of the time. Ricky Gervais once said that some days you're the statue, and some days you're the pigeon. You always have to remember that!

"The only regret I feel, perhaps, is that I could possibly manage the old work/life balance a bit better, but that's easier said than done. I'm very lucky. I live in a town where I live close to my office. Nowadays, many solicitors don't get to see their kids because they're working so hard. It's very easy to get sucked into that kind of lifestyle when everything is booming. Perhaps the downturn will give people time to take stock of what they're doing, to look at the direction they're going in, to retrain and reskill if needs be, and to try and get some balance back into their lives if that's what's required." **G**



Do not go gentle...

Many solicitors deal with elderly clients on a regular basis. They must be alert to the possibility of pressure on the client and the existence of financial abuse, says James Cahill, especially if that client is dependent in any way

MAIN POINTS

- Mistreatment of the elderly
- Psychological and financial abuse
- Solicitors' role and Law Society guidelines

Over the past number of years, the mistreatment of the elderly has been highlighted. Stories of physical abuse of patients in nursing homes were shocking. More recently, the debate surrounding the proposed withdrawal of medical cards for the over 70s gave insights into the hardships suffered by many elderly.

Solicitors deal with elderly clients on a regular basis. The reality is that many older people are at a stage where they wish to dispose of assets or organise their affairs. They often find themselves making bigger decisions than have previously been necessary

in their lives. They then seek the advice of a solicitor to assist them.

Most older people are extremely independent and capable of arranging their affairs, provided they have access to the right information. However, many are dependent on others and this may make them vulnerable to abuse. Anyone can become dependent because of failing health, whether physical or mental. Isolation, perhaps following the death of significant family members or friends, can also be a factor. Solicitors are well placed to ensure that, when they deal with an elderly client, that client is protected – especially if they are dependent in any way.

HSE ADVERTISING CAMPAIGN

The HSE advertising campaign encouraged older people to protect themselves with the following advice:

- Seek independent financial and legal advice,
- Know your rights,
- Conduct your own financial affairs as much as possible, ensuring your legal and financial matters are in order,
- Plan ahead and make your wishes known in relation to assets,
- Make sure you understand any documents you are asked to sign, and any transactions, such as creating a power of attorney,
- Ask for more time if needed,
- Think about options.
- Where possible, stay active within your community and keep in regular contact with friends and family,
- Maintain independence,
- Ask questions: do not be fobbed off,
- Speak out – let somebody know if you are being abused,
- Be suspicious and vigilant,
- Be awkward if necessary.

“Elder abuse has been defined as ‘a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person, or violates their human and civil rights’”

Sometimes abuse is obvious. Sometimes it is subtle. Elder abuse has been defined as “a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person, or violates their human and civil rights”.

We understand physical abuse. However, there are many other forms of abuse. For instance, psychological abuse includes threats of harm or abandonment, refusal to facilitate contact with others, humiliation, intimidation or coercion. It also includes depriving a person of their right to make decisions about themselves and their affairs.

Abuse is not always motivated by malice. It may be motivated by concern. For instance, family members may decide that ‘they know best’ when decisions are being made about where an older family member should live. A typical example would be where pressure is put on an older person to move from a family home to an apartment or granny flat, when this is not necessarily the only option.

The older person’s circumstances may be such that they believe that they have no choice in the matter because of their dependency for their needs. Solicitors will be familiar with the client who is reluctant to oppose their family’s wishes, although the solicitor explains that decisions being made may be against their best interests. Certain phrases are often heard, such as “I don’t have a choice – they are very good to me,” or a fearful “Where would I be without them?”

Financial abuse

In a recent HSE survey of over 1,500 cases reported within a 15-month period, psychological abuse was the most common type of abuse reported. However, a fifth of the reported cases related to financial abuse. The survey showed that the average person had a very limited understanding of what might be involved in financial abuse. They presumed that it referred mainly to actual theft of cash from a person’s home. Some people were aware that it might also include the control of a person’s pension book and the theft of the pension.

The prevalence of financial abuse surprised many. Solicitors, however, would be unlikely to be surprised

by the statistics. They know that financial abuse of the elderly also includes fraud, exploitation or pressure in connection with disposals of real property and are aware of difficulties occurring in relation to cash, bank accounts, grants and benefits. Solicitors may sometimes see pressure being exerted when a will is being made.

Sometimes, exasperated family members try to take the decision away from the older person because they simply do not agree with the wishes of the elderly person, or believe that their affairs are not being organised to the best advantage of the next generation.

Sometimes elderly clients are brought to the solicitor at a time of crisis – for instance, when a parent is moving from a family home to a nursing home. They are brought to a solicitor if there is fear that the older person is losing mental capacity, even though that person might still be capable of making many important decisions and will continue to retain some capacity. If the elderly person is the client, the solicitor must ensure that, regardless of family wishes, no decision is acted upon unless it is the free decision of the client.

As with any form of abuse, a wide range of people may be involved in carrying out financial abuse. Perpetrators may be relatives, paid care workers, volunteers, neighbours, friends and associates. Solicitors have encountered the neighbour who is intent on getting the client’s land. The elderly can also be victims of financial abuse at the hands of tradesmen, professionals, financial institutions or other organisations.

HSE advertising campaign

The HSE has organised an advertising campaign to raise awareness of elder abuse. It employs senior caseworkers dedicated to coordinate services for the elderly, and to coordinate the response to allegations and concerns about all forms of elder abuse.

The campaign focuses on financial abuse. The HSE is aware that, unlike in the case of physical abuse, it can only play a limited role in protecting the elderly from financial abuse. The HSE believe that protections must be put in place in a much wider context than the

health services it provides to the elderly.

With this in mind, the HSE sought advice and support from agencies that they believed might be best placed to respond to the problem on a continuing basis. These included the:

- Department of Social and Family Affairs,
- National Consumer Agency,
- Financial Services Ombudsman,
- Law Reform Commission,
- Law Society of Ireland,
- Irish Bankers' Federation,
- Financial Regulator,
- Money Advice and Budgeting Service,
- An Garda Síochána,
- Irish League of Credit Unions.

All were requested to take initiatives to ensure that staff are trained to deal with services to the older client. It was recommended that there should be a code of practice within organisations for dealing with all vulnerable people.

The problem of isolation leading to vulnerability was highlighted. It was noted that there are many organisations in the wider community that can help to keep older people in contact with others: Citizens' Information Board, Meals on Wheels and Seniors' Helpline.

Law Society response

The Law Society, when approached by the HSE, saw an opportunity to undertake a project to give guidance to solicitors to assist them in dealing with elderly and vulnerable clients. Relevant practice notes, some already published by the Society, are now being reviewed for republication, with a changed emphasis, where necessary.

It is intended to publish a number of practice notes to include:

- Joint bank accounts (see practice note, p63 of this *Gazette*),
- Wills,
- Enduring powers of attorney,
- Equity release schemes.

The traditional role of the valued 'family solicitor', taking instructions from more than one member of the family may not be tenable – in many cases, the solicitor is liaising with both the elderly person who is disposing of assets and family members or unrelated persons who may be the recipient of the assets or who may have some interest in the situation. The solicitor must be alert to the fact that there may be a conflict of interest between the parties, no matter how well-intentioned all may be.

The practice notes will highlight the essential question that every solicitor must ask: 'Who is the client?' If the solicitor is clear about who his or her client is, and acts in the best interests of that client, there can be no conflict of interest for the solicitor. If there is a conflict, then – as with all situations where



Be awkward if necessary, says the HSE

two clients of a firm are in conflict – the solicitor must refuse to act for one, or possibly both.

The solicitor must be alert to the possibility of pressure on the client and the existence of financial abuse. They must know:

- How to recognise it,
- How to probe for it,
- How to address it.

The solicitor must fully advise the client of the consequences of any particular decision. They should also explain that the decision must be made in the context of the legal rights and needs of immediate and extended family members who may be affected, but who may have been overlooked, to provide for the client's own needs.

If, following independent advice to all parties, the disposition of assets by the elderly person that was originally proposed does not happen as planned, or as quickly as planned, it is likely that, if and when a different arrangement is eventually put in place, it may well be the more satisfactory outcome, particularly for the elderly person.

Each practice note will address the issue of mental capacity. It is now well established that there are different tests for different situations, and solicitors must inform themselves on this issue. (The heads of a *Mental Capacity Bill* have been published, and the Law Society will issue guidelines on this legislation when enacted.)

Solicitors' role

Solicitors can have a general role in encouraging clients to organise their affairs, and to review them regularly, so that the result will be that satisfactory arrangements are in place to ensure provision is made for their future needs.

In their early or middle years, everyone hopes, or even presumes, that when they get older they will be among those elderly who maintain good health and all their faculties, work as long as they please and stay fully in control of their own affairs. The reality will be different for many. Solicitors can play their part in protecting this important group of clients. **G**

James Cabill is chairman of the Guidance and Ethics Committee.

A GOOD JOB OF WORK

For those looking to move to the next stage of their career – or start on a new one – the challenges can be daunting, particularly in these straitened times. In the first of a series of articles, Aoife Coonagh gives some tips on preparing your CV in order to get to the interview stage

In the current times, there is increasing pressure on candidates to get shortlisted for interviews, let alone actually get the job. Candidates are finding it more difficult to get to the interview stage than before – clearly, there's no shortage of skilled people out there willing to fight for good positions, especially with the current economic difficulties.

The legal profession is no different. Whether you're an experienced lawyer coming from, say, a conveyancing background and now considering other options, or you've completed your traineeship and have not been kept on, or you're a graduate seeking a traineeship, you face strong competition for the available positions.

Winning a place on the prized graduate traineeships is becoming more competitive. The larger Dublin and London firms can afford to be choosier due to the increase in the number and quality of those applying for secure positions, while many firms will simply take

on fewer trainees.

The first impression you make, therefore, is critical. Your curriculum vitae or application form and cover letter are the first impression potential employers will get. They use the CV and application form to screen and select the best candidates for interview. At interview, they will probe and question the information you have supplied to find out if you can really do the job and what skills you will bring to the firm. Some firms use other tests and group interviews to assess skills as well. We will cover these in other articles.

Either way, you need to put your very best foot forward at the outset; otherwise you may not get past the first round for the opportunity of an interview.

The job for you?

The first step is to be sure that this is the job for you. You need to find out as much as you can about the job and the firm. Talk to whoever you can, including

MAIN POINTS

- Getting called to interview
- First impressions are critical
- Matching yourself to the job



people who've dealt with the firm before. Read what you can, including specialist publications, newspapers, the website and the annual statement, among other information, to try to find out the vital details. Discover the ethos, the clients, the areas of expertise, the size and nature of the work. Ask yourself if this is the sort of place where you want to work.

You also need to find out about the job itself. What will you be expected to do if you get the job? What will you need to know? A typical issue that we come across is of a solicitor moving from a back-office role into direct dealings with clients. You should be clear on what will be involved. Clearly, this kind of information can be found from the above-mentioned sources. However, there is another highly effective source – the firm itself. Ring up, or even arrange to meet, someone from the firm to get your bearings on these issues. If you are not sure that the role is suited to you, you'll find it hard to prove yourself to a potential employer.

A final issue to consider for anyone applying for a traineeship, or any role, is whether this is the career for you? Again, find out as much as you can and consider your options.

What are they looking for?

The question that I receive from clients on an almost daily basis, whether legal or not, is: "What are they looking for?" Employers, consciously or unconsciously, have a series of criteria in mind as to what they're looking for in a candidate – broadly speaking, a list of qualities or skills. The job ad or the website is the first place to look. Often there will be a list of essential qualifications, experience, legal skills, other skills, competencies, and bodies of knowledge, among other requirements. You need to identify and analyse this list, as this will inform your preparation for the application.

If there's a job description, it will be important to consider what's needed to fulfil these tasks. If there is no information available, or indeed no independent



source, then it's vital to consider what you understand the job to entail, and thus what is needed in terms of your skills and qualities to do such a job.

You should come up with a short list. Typically, a solicitor will need some (although this is certainly not an exhaustive list) of the following: experience, such as 'five years' experience of probate'; analytical skills, which are needed in, say, analysing contracts; interpersonal skills in dealing with colleagues and clients; and so on. There will, of course, be others. Some will be specific to the position that you're going for and others will be more general. Either way, you must ensure that you cover the essential criteria on your application form or CV.

Getting it on paper

"So," you say, "I understand all that. But how does it work in an actual application?"

Normally, applications take two forms: a CV or an application form (or perhaps both). In both cases, you have to show the required skills, qualities and criteria, and prove your suitability and motivation for the role.

The first sections of a CV, 'personal details' and 'education' (*see panel, left*), should be short and factual: your name, contact details, and email address. Interviewers are not interested in your age, whether you're married to Mary, or that you've two children. In the 'education' section, clarity and accuracy is key – include specific course details, dates, subjects, grades, project work and qualifications achieved.

The main body of the CV, and indeed the area where the links are made most easily, is in your work experience. When outlining a previous position, you need to give the name of the firm, dates and job title. Then give a comprehensive overview of what you did, not just a list of generic responsibilities. Tell them exactly what was involved and what you did. Don't just say "I worked in family law". Try to link what you've done to the individual tasks and requirements of the job you're going for. In describing your role, show where you've used or developed key skills, such as "I established excellent relations with clients using good interpersonal skills, even in emotional legal situations". This reinforces the fact that you have these skills and further allows the interviewer to ask targeted questions to test these skills.

It is also useful to link personal achievements to these criteria. Coming up with achievements can sometimes be difficult for solicitors – clearly the measure of success is not merely winning or losing cases. Think about those achievements you are most proud of and then identify the skills you used to succeed. Ideally, these should relate to the skills

required in the role, for example: "In 2006, I increased revenue to the firm by €30,000 by focusing on clients' needs and introducing new services to them, such as A, B, and C."

The 'profile' section is completely optional. It is the section where you outline the main selling points that make you a suitable candidate. These may be particular areas of experience or achievement. You might discuss what makes you suitable for the particular firm, what you can provide, and the types of positions you would be suitable for, among other qualities. You may also want to highlight the skills that you will bring. Education can be useful, too, in displaying particular personal skills, especially if you don't have much work experience. Some candidates prefer to tackle this in their covering letter.

The 'interests' and 'achievements' sections should be specific and relevant. Don't claim interests or successes in areas you cannot back up at the interview.

So, make sure that you give all the necessary information on your CV and answer all parts of the application form – and don't leave anything out. Similarly, don't invent items for your CV or make up experience – you will be caught out!

Layout and spelling

Finally, the layout is important, particularly for CVs. Think about your reader. Make it easy to read using clear sections and headings. Use bullet points, bold, small caps, and paragraphs – where necessary – to achieve this. Remember that it should not be too long, although there's no hard and fast rule. You don't want to bore the reader, so two to four pages is appropriate.

Remember, too, attention to detail is a key skill for lawyers. Thus spelling and clear, concise, correct language are vital. I know for a fact that a shoddy CV with typos and mistakes will end up in the bin; likewise, generic CVs and applications. Each application needs to be tailored to the individual firm.

Remember, your CV and application form are the part of the recruitment and selection process where you have complete control. Don't get screened out before the interview because of a bland generic CV, or because the 'find and replace' feature in *Word* didn't find and replace all instances of the firm's name. Put the time into carefully editing and proofreading to get the content right.

This will be the first step towards moving on to the next stage of your career or starting out on a new one. Good luck! **G**

Aoife Coonagh is head of career development services at Carr Communications.

STRUCTURE OF A CV

There is no fixed structure to a CV, but it should include some or all of the following sections:

- Personal details,
- Education,
- Experience,
- Achievements,
- Profile,
- Other interests,
- Skills, and
- Referees.

Simply put, you need to make a link between the information contained in these sections and the skills already discussed.



Footballers of the world unite!

**You have nothing to lose but your exorbitant salaries and gold-plated Bentleys!
Stuart Gilhooly slums it at the FIFpro annual congress and reports on the
latest initiatives by sport's most powerful union**

Did you ever feel like a Chloe handbag? I did. Once. When Fran Gavin, the then general secretary of the Professional Footballers' Association of Ireland (PFAI), first asked me to act for the footballers of the League of Ireland, he asked me if I would attend the annual FIFpro congress with him. "Everyone brings their lawyer with them. It's a

must-have accessory." Having got over the indignity of being objectified so crassly, I've been to a few congresses now and he was right: nobody's anybody without their briefs by their side.

Acting for Ireland's footballers, of course, is not all champagne and caviar. Like many of the poorer football jurisdictions, the League of Ireland struggles to fill its grounds and, consequently, to pay the already



The professional footballer's must-have accessory (plus girl)

very modest salaries of its players. In many ways, being boss of the union of footballers in Ireland is much harder than being head of a large but richer one such as England, France, Spain or Italy. For instance, in England, the union doesn't deal with many of the Premiership footballers, as they all have their own well-paid lawyers.

Well, I can confirm that this lawyer is not in the well-paid category. Much of the work is done for the love of the game and a desire to ensure that the players are treated fairly by clubs who occasionally see them as commodities that can be tossed out as soon as their sell-by date has passed.

Commodity fetishism

FIFpro is the world union for soccer players and brings together the unions of 40 countries, providing a network whereby the diverse problems of other countries and the solutions they have found can be

shared among members. It also provides much-needed finance for the unions' activities out of their share of the players' image rights from computer games.

The organisation has been in existence for over 40 years, but has recently come to prominence due a number of high-profile court cases and their player awards, which are threatening to become the premier individual awards in world football.

This year, its annual congress brought us to sunny Santiago in Chile from 6-9 November. Taking one for the team – as usual – I agreed to accompany current PFAI general secretary Stephen McGuinness to provide the much-needed legal support.

FIFpro don't tend to do things in half-measure, so it came as only a mild surprise to find that our first engagement was to meet with the Chilean head of state, President Michelle Bachelet. I can confirm that things have changed much for the better since Pinochet's day, and the remarkable President Bachelet seems to have the country under control, even if her first touch isn't great. She certainly seemed well happy to be presented with a signed personalised shirt from Cristiano Ronaldo, the current FIFpro world player of the year.

After this, it was down to business – and believe me, this was no junket. Three full days of work, the first of which ended at eight o'clock in the evening, left us too tired for a drink (ok, well maybe one or two).

Much of FIFpro's best work has been in the legal sphere in supporting national unions in protecting player's rights. While the case of Jean Marc Bosman, who created the significant precedent of a player becoming a free agent at the end of his contract, is the most celebrated of these cases, much of the work behind the scenes has been less noticed by the general public.

From each according to his ability

In Chile, we heard about the *Webster* decision, which has the potential to be nearly as significant as *Bosman*. In this case, Andy Webster, the Hearts player, wished to move to Wigan Athletic and claimed that article 17 of the FIFA transfer regulations allowed him to buy out the remainder of his contract. After a protracted dispute – which has been heroically fought as far as the Court of Arbitration for Sport by the Scottish PFA, led by former Rangers and Motherwell star Fraser Wishart and former Hibernian striker Tony Higgins – Andy Webster finally got his wish, buying out his contract for as little as stg£150,000.

This has now opened the door for players under 28 to buy out their contracts if three years of the contract have expired and, if over 28, where two years have passed. They must also be moving to another football jurisdiction. In the era of hugely inflated transfer fees, this could yet have a significant effect on player movement.

On a similarly controversial note, the remarkably ambitious (and very naïve) plan by FIFA president

Sepp Blatter to limit the number of foreigners who can play in any given game was discussed. Known colloquially as the 'six-plus-five rule', FIFA announced that they wish bring in a rule that, in any given game, six players on the pitch must be citizens of the country in which they play. Unsurprisingly, the European Commission have completely rubbished this idea and, while FIFpro supports the idea in principle, it recognises that it has virtually no prospect of success without the commission's backing.

One of the most notorious cases of recent years involves the Romanian striker, Adrian Mutu, who cost over €20 million when he signed for Chelsea in 2003. The striker had been only moderately successful at the club when he tested positive for cocaine. This resulted in a seven-month ban from football and drove Chelsea to terminate his contract. He has since made a successful return to football in Italy, but Chelsea sued him for the cost of the transfer fee paid to him. The Dispute Resolution Chamber has ordered that Mutu must pay Chelsea €17.5 million. FIFpro quite rightly regard this punishment as grossly excessive and have, through their legal team, appealed this decision to CAS.

To each according to his needs

It's not all bad news, though. The worldwide image rights of the players have been the subject of much negotiation within FIFpro, and there has been a

significant payment in respect of these rights by computer game companies. This is in return for indemnity by the individual player unions in the event that any player seeks to assert these rights. The *quid pro quo* is that member unions of FIFpro receive an annual royalty payment, which is then used by the unions for the benefit of the players in that country.

There is no doubt that FIFpro has, as a brand, gained increased recognition over the past few years, and this is in no small measure down to the success of its player-of-the-year award. It is the only international award voted for by the players and is seen as more prestigious and worthwhile as a consequence. Not surprisingly, Cristiano Ronaldo has succeeded Kaka as the 2008 FIFpro player of the year, and the team of the year, while named along predictable lines, reads like a who's who of English and Spanish football. Unfortunately, no League of Ireland players made the cut...

So, after three gruelling days in 30-degree heat in Santiago, we returned to Ireland, emboldened and enlightened as we always are by the organisation, enthusiasm and dynamism of FIFpro. As long as the players of the world continue to be represented by this group, they needn't worry that the credit crunch is going to bite them too hard. **G**

Stuart Gilbooly is the solicitor for the Professional Footballers' Association of Ireland.



Many professional footballers value big, fun bags



Complete **two hours** of your annual ten hour CPD requirement **on-line** from the comfort of your own home or office.

ON-LINE CPD FOR SOLICITORS*

Six engaging on-line courses to choose from in the area of Law and Management/ Professional Development:

- 1 **The Personal Injuries Assessment Board**
- 2 **Restrictions in Employment Contracts**
- 3 **A Guide to Employment Legislation**
- 4 **Business Planning**
- 5 **Basic Business Management**
- 6 **Principles of Marketing and Selling**

*Courses may be used for Law Society CPD purposes



FETAC
CPD College is a FETAC registered provider

Places filling fast! Only a few days left to meet your CPD requirement for 2008.
Call us now to secure your place.

Call us now on **053 9230344**
or visit **www.cpdcollege.com**

All CPD College courses for solicitors are delivered on-line, offering our students maximum flexibility and control over their learning.

TWO CPD HOURS IN 3 SIMPLE STEPS - ANYWHERE ANYTIME



LEARN LEAD



PIC: JASON CLARKE PHOTOGRAPHY

The Minister for Justice, Equality and Law Reform was the guest speaker at the parchment ceremony on 23 October 2008. (*L to r*): John D Shaw (then senior vice-president), Ken Murphy (director general), Minister for Justice Dermot Ahern, James MacGuill (then Law Society president), and Mr Justice Richard Johnson (President of the High Court)



PIC: LENS MEN

Labour Day

The leader and other elected representatives of the Labour Party were special guests for dinner at the Law Society on 3 November 2008 (*front, l to r*): Douglas Mill, Eamon Gilmore TD, then president of the Law Society James MacGuill, Pat Rabbitte TD and Joanna Tuffy TD. (*Back, l to r*): Philip Joyce (past-president), Ken Murphy (director general), Donald Binchy (then junior vice-president) and John D Shaw (then senior vice-president)

Courts Service CEO praises Law Society

During his 20 November parchment ceremony speech to newly qualified solicitors, the CEO of the Courts Service, PJ Fitzpatrick, complimented the profession's "openness and willingness to embrace change and modernisation equal to any other profession I know".

"Over the past ten years, I and my colleagues have had many occasions to approach

your presidents, committees and your director general for support for our initiatives to reform and improve the courts. I always found collaboration and a willingness to make those initiatives work in the interests of litigants, the public and practitioners alike." In his ten years at the helm of the Courts Service, Mr Fitzpatrick said that he could

not think of a single proposal or change that the service had sought to implement that was frustrated or prevented from proceeding. This amply illustrated the openness and willingness of solicitors and the legal system generally to embrace change and modernisation.

Mr Fitzpatrick said that he was also very encouraged

by the support given by the Law Society, though its representatives on the relevant court rules committee, to the new case progression regime for family law proceedings in the Circuit Court. "Solicitors can – and, I believe, will – play a vital role in making this regime a model for the further case progression initiatives currently in development."



PIC: LENS MEN

At a dinner held in his honour on 20 November at Blackhall Place, the Chief Executive of the Courts Service, PJ Fitzpatrick, was joined by past-presidents and senior executives of the Law Society, including (*back, l to r*): Owen Binchy (past-president), Mary Keane (deputy director general), Laurence K Shields (past-president), Gerard Doherty (senior vice-president), Ken Murphy (director general), James MacGuill (past-president), and Pat O'Connor (past-president). (*Front, l to r*): Judge Gerard Griffin (past-president), PJ Fitzpatrick, John D Shaw (President of the Law Society), Brendan Ryan (Courts Service) and Noel Rubotham (Courts Service)

Thinking globally and acting locally

Law Society Director General Ken Murphy has been elected vice-president of the International Institute of Law Association Chief Executives (IILACE). All previous vice-presidents have proceeded to become president of this worldwide association of chief executives of law societies and bar associations.

In his final address to the Law Society Council, outgoing president James MacGuill described Murphy's achievement of this office as "no small honour for Ireland".

Murphy was previously the chair for four years of CEEBA (Chief Executives of European Bar Associations) and is the only one of the 25 CEEBA members on the executive of the world body.

IILACE meets once a year, but its executive is in conference-call contact once a month to share information and ideas on how the education, regulation

and representation of the legal profession can be improved.

At its most recent annual conference, the CEOs of law societies and bar associations – with almost a million members around the globe – discussed such issues as:

- Effective strategic planning for law societies,
- Public relations and the legal profession,
- The affordability of legal services,
- Competition and regulatory reviews of the profession in different jurisdictions,
- Gender issues,
- Stress in the profession, and
- Emerging national and international issues in professional indemnity insurance.

"The problems and pressures on the profession are remarkably similar all over the world. We can all learn from each others' experiences, avoiding



The members of the newly-elected executive of IILACE (*back, l to r*): Don Deya (Law Society of East Africa), Retha Steinmann (Law Society of Namibia), Jan Martin (Law Society of South Australia), Raymond Ho (Law Society of Hong Kong). (*Front, l to r*): Ken Murphy (vice-president of IILACE) and John Hoyle (Canadian Bar Association, president of IILACE)

mistakes that have been made elsewhere and both identifying and adopting emerging best practice," said Murphy.

He is also looking forward to next October when he will host in Dublin the first ever joint conference of IILACE and

CEEBA, with potentially 60 law society CEOs from every continent. "The first item on the agenda will be 'How to help the legal profession to survive the recession'. The recession for lawyers is a global phenomenon also," he remarked ruefully.



The Kilkenny Bar Association held its AGM on 4 November 2007 in the Kilkenny Rivercourt Hotel, with special guests James MacGuill (president, Law Society) and Ken Murphy (director general) in attendance. (*Back, l to r*): Brian Kiely, Michael Lanigan, Tim Kiely, Laurie Grace, Conor Bass, John G Harte (Jnr) and Kieran Boland. (*Middle, l to r*): Tony Canny, Katie Gilhooly, Martin Crotty, Emer Foley, Tom Walsh, Yvonne Blanchfield, David Dunne, Jane Harte, Pdraig Butler, Mary Molloy, Eugene O'Sullivan, Celine Tierney, John B Harte, Sarah Brophy, John Fitzgerald and Susan O'Donnell. (*Front, l to r*): St John Donovan, Sonya Lanigan (secretary, KBA), Ken Murphy, James MacGuill, Owen O'Mahony (president, KBA) and John G Lanigan

Spanish armada

The Tipperary Solicitors' Bar Association (TSBA) held its annual conference in Madrid from 3 to 5 October 2008. The group of 24 solicitors was led by TSBA President John Spencer. The conference was organised by subcommittee members Brendan Hyland, Billy Gleeson and Marcella Sheehy.

The group visited the Cortes Generales (General Courts) or legislature in Spain, where they had their picture taken (*right*) in the Chamber of Deputies – the site of an attempted military coup on 23 February 1981 while

the Cortes was voting on a new prime minister. The TSBA called in on the Irish Embassy, where it was entertained by Ambassador Gunning, who gave an interesting talk on Spanish-Irish relations.

The group also learned about the main differences between the Spanish and Irish legal systems from international counsel and member of the Spanish Bar Association, Ralph Smith, who spoke on the topic of 'Legal surprises for an English-speaking lawyer doing business in Spain'.



Attending the recent CPD Focus Annual Property Law Conference were (*l to r*): John O'Sullivan (PRA), Michael O'Connor (partner, William Fry), Attracta O'Regan (head of CPD Focus), Gabriel Brennan (project manager, eConveyancing Task Force), Michelle Nolan (communications executive, CPD Focus), Majella Egan (McCann FitzGerald) and Deirdre Fox (Deirdre Fox & Associates)



First 'Legal Irish' conferring

At the recent conferring for the CPD Focus Certificate in Legal Irish were (*back, l to r*): Peter McGarry, Pól Ó Murchú, James MacGuill, Alan McCrea, Declan Duggan, Leachlainn Ó Catháin, John Dolan and Kevin O'Hara. (*Front, l to r*): Michelle Nolan, Rita Hamilton, Attracta O'Regan, Mr Justice Adrian Hardiman, Deirdre Thompson and Aine Sheehan



Calcutta Run hands over €340,000 to worthy charities

At the handing-over of the Calcutta Run cheque for €340,000 to GOAL and the Fr Peter McVerry Trust on 25 November 2008 were (*front, l to r*): Lisa O'Shea, John D Shaw (President of the Law Society), Minister Peter Power (Minister of State at the Department of Foreign Affairs with responsibility for Overseas Development Aid), and Anne Marie Connolly. (*Back, l to r*): Cillian MacDomhnaill (director of finance), James MacGuill (past-president), Michael Irvine (past-president), John O'Shea (founder and CEO of GOAL), Pat Doyle and Mick Barr



Attending the recent CPD seminar on bullying, harassment and stress were (*l to r*): Patrick Groarke (Groarke and Partners, Solicitors, Longford), Barbara Joyce (Law Society), Joanne Hyde (O'Donnell Sweeney Eversheds), Kevin Langford (Arthur Cox) and Dr Abbie Lane (consultant psychiatrist, Dublin County Stress Clinic)



At the AGM of the Southern Law Association (SLA) held on 5 November in Court Chambers, Cork, were senior members of the SLA, seen here with then Senior Vice-President of the Law Society John D Shaw, SLA President Patrick Mullins, President of the Law Society James MacGuill and director general Ken Murphy



There was a very strong turnout for the SLA AGM



SLA President Patrick Mullins (left), seen here with President of the Law Society James MacGuill and director general Ken Murphy



The Southern Law Association recently hosted a lunch for solicitors from Cork city and county who have been qualified for 50 years or more. (Back, l to r): Finbarr MacCarthy, Dermot Moloney, Gerard Murphy, Tony Neville, Brian Russell and Patrick J O'Driscoll. (Front, l to r): John Russell, Dermot J O'Meara, Patrick Mullins (president, SLA), Edward O' Driscoll and Jack Phelan

SYS Conference really sparkles!



ALL PICS: JOHN IRONSIDE

Alina Prendergast, Micheál Grace (both SYS), Kate Coughlan (Brightwater Recruitment), Niall Pelly, Victoria Clarke, Donogh O'Donovan, Simon Hannigan (all SYS), John Shaw (president of the Law Society), Eileen Moloney (Brightwater Recruitment) and William McAuliffe (SYS)



At Seafeld Golf and Spa Hotel on 7-9 November 2008 were (l to r): Denise Fanning, Paul Diggin, Aoife Costello, Becky Coyle, Hilary Ryan and Triona Ryan



Adding glamour to the recent SYS conference were (l to r): Ciara Cullen, Jennifer McCarthy, Jude Wrixon, Elaine Keane and Susan O'Leary

Poor weather, challenging golf, and the prospect of very late nights failed to deter members of the Society of Young Solicitors (SYS) from attending the autumn conference on 7 November 2008.

Ballymoney, Co Wexford, was the venue for this year's conference. The modest façade of the Seafeld Hotel provided a deceptive front to a spacious, modern interior – the perfect setting for a weekend of catching up with colleagues and building new friendships.

The conference proper started on Saturday and was presided over by SYS chairperson Simon Hannigan. There was an interesting mix of topics. Kate Coughlan of Brightwater Recruitment gave an update on the resilient legal recruitment market during these difficult times for the profession. Deirdre Finn (William Fry) advised attendees how to save on their tax bills by making the most of personal tax reliefs. Mason, Hayes & Curran's Ronnie Neville shared his unique and frank insight into the daily life of being a partner – extreme multi-tasking sprang to mind!

Finally, Junior Vice-President of the Law Society James McCourt encouraged young solicitors to build connections with the Society and to get involved by airing their views.

Brave Saturday golfers who had chosen to battle the elements won well-deserved respite from the poor weather conditions at the 19th! The highlight of the weekend was undoubtedly the gala ball.

SYS's special guest for the evening was the newly-elected president of the Law Society, John D Shaw. This year's ball had extra sparkle in the form of a magnificent lady's pendant as top prize for the evening's draw, kindly sponsored by Boodles of Grafton Street, Dublin. The prize sparkler was won by Ita Robinson – congratulations!

Socialising, dancing and chatting continued right through to breakfast time for the hardest of SYS-ers. Thanks to Brightwater Recruitment for its continuing strong support of the society (it has been SYS's headline sponsor for the past ten conferences), and to the other sponsors, law firms and, of course, the delegates.

Newly qualified solicitors at the presentation of their parchments on 29 May 2008



Mr Justice Bryan McMahon, President of the Law Society James MacGuill, Niamh Gunn (guest speaker) and Director General of the Law Society Ken Murphy were guests of honour at the 29 May 2008 parchment ceremony for newly qualified solicitors: Jennifer Beggs, Mary T Blake, Grace Boland, Elaine Breen, Nicola Byrne, Maeve Carney, Olwyn Cassells, Brenda Caulfield, Barbara Clear, Gina Cleary, Andrew Croughan, Orla Farrell, David Fitzgerald, Noeleen Foley, Sinead Gormley, Deirdre M Griffin, Scarlett Griffin, Niamh Gunn, Colin Hayes, Aidan Healy, Elena Hernandez Fernandez, Ruth Hicks, Deborah Hutton, Laura Kehoe, Ciara Kennedy, George Kennedy, Aoife Marrinan, Claire McCabe, Hugh McDowell, Rory McIntyre O'Brien, Geraldine McKenzie,

Eamonn McKeogh, Melanie Morris, Barry Murphy, Claire Murphy, Laoise Ni Chonaili, Ruth Niland, Bronach O'Connell, Rosanne O'Connor, Claire O'Doherty, John Paul O'Donoghue, Norma O'Donovan, Mary O'Loughlin, Peter O'Toole, Fionnuala Power, Kevin Power, Muireann Reedy, Eleanor Ryan, Laura Shannon, Anne Smith, Aoife Smith, Alannah Smyth, Susan Walsh, Claire Whelehan, John Williams

Newly qualified solicitors at the presentation of their parchments on 20 June 2008



President of the High Court Mr Justice Richard Johnson, President of the Law Society James MacGuill, Moya Quinlan (guest speaker), and Director General of the Law Society Ken Murphy were guests of honour at the 20 June 2008 parchment ceremony for newly qualified solicitors: Denise Bohan, Catherine Boner, Eimear Branigan, Sine Brennan, Anna Broderick, Ciara Brogan, Nessa Browne, Daragh Burke, Clara Cassidy, Deirdre Coleman, Sabrina Comerford, Kate Cremins, Rita Crowley, Marie Cullen, Julia Dineen, Patrick Donaghy, Laura Fannin, Garret Farrelly, Kenneth Fitzgibbon, John Flynn, Catherine Foley, Emma Guinan, Clodagh Harvey, Dara Hayden, Ruth Heavy, Shane Kelly, Emily Lee, Alva Linnane, John Lunney, Aoife Malone, Marianne Marron, Claire McGrath, Ruth Milne, Elaine Morrissey, Marie-Therese Mulcahy, Fiona Murphy, Aileen Murtagh, Aoife Nally, Aoife Nash, Maria O'Brien, Michael O'Connor, Katie O'Dea, Maureen O'Hara, Michael O'Leary, Gillian O'Shea, Jane O'Sullivan, Pamela Potterton, Thomas Sheridan, Jamie Sherry, Marie Therese Kelly, Antoinette Vahey, Caitriona Walsh, Stephanie Walsh, Tracey Wilkinson, Martha Wilson, Richard Young

Newly qualified solicitors at the presentation of their parchments on 24 July 2008



Judge Michael C. Reilly (Inspector of Prisons), President of the High Court Mr Justice Richard Johnson, President of the Law Society James MacGuill, and Director General of the Law Society Ken Murphy were guests of honour at the 24 July 2008 parchment ceremony for newly qualified solicitors: James Beesley, Cillian Bredin, Jeremiah Breen, Mary Casserly, Audrey Collieran, Sharon Cooney, Patrick Cunningham, Paul Dempsey, Michelle Diamond-Kelly, Emma Falsey, Ciara Feighrey, Cormac Foley, Daniel Forbes, Orla Gahan, John Gallagher, Trina Galvin, Sarah Hall, Olive Heneghan, Gillian Joyce, Claire Kennedy, Dalip Laloo, Ian Lavelle, Gavin Lawlor, Gemma Lyons, Paul Madden, Lynne Martin, Sandra McAleer, Cabrini McCarthy, Donna McCarrick, Simon McElwee, Aoife McMahon, Thomas McNamara, Aisling Meehan, Esther Morrissey, Sarah Jane Murphy, Ewan Murtagh, Sinead Neillan, Rachel Nolan, Deirdre O'Connell, Deirdre O'Doherty, Grian O'Kelly, Susan O'Leary, James Phelan, David Quinn, Emmet Quish, Aoife Raftery, Richard Scannell, George Simmons, Mark Smith, Mary Travers, Rosemary Wall, Crona Winston

Newly qualified solicitors at the presentation of their parchments on 31 July 2008



President of the High Court Mr Justice Richard Johnson, President of the Law Society James MacGuill, Fr Peter McVerry (Peter McVerry Trust) and Director General of the Law Society Ken Murphy were guests of honour at the 31 July 2008 parchment ceremony for newly qualified solicitors: John Barrett, Niamh Boland, Jerry Burke, Emer Butler, Rachel Carroll, Mark Cockerill, Danielle Conaghan, Catherine Conroy, John Crean, Laura Daly, Catherine Day, Alan Del Rio, Patrick Delaney, Lisa Devlin, Aisling Feeney, Ryan Flynn, Pauline Gallagher, Ailis Garvey, Helen Gaynor, Aileen Goggin, Sharon Hayes, Jean Hourigan, Peter Johnston, Christine Kane, Geraldine Kearney, David Kelly, Roisin Kenny, Lisa Kinsella, Raymond Lambe, Sarah Lipsett, Siinead Lynch, Ellis McCabe, Elaine McCarthy, Isibéal McCoy, Caroline McEvoy, Anna Neary, Aisling Nic Aoidh, Stephanie Niland, Kerrie O'Connor, Ciara O'Loughlin, Leanne O'Loughlin, Eoghan O'Regan, Fiona O'Reilly, Patrick O'Riordan, Deaglan O'Siothchain, Niall O'Sullivan, Andrea Reynolds, Gerardine Ryan, Cian Smith, Paul Smith, Majella Tynan Walsh, Frances Walsh

Newly qualified solicitors at the presentation of their parchments on 28 August 2008



Mr Justice Garrett Sheehan, President of the Law Society James MacGuill, Prof Maurice Manning (president of the Human Rights Commission) and Director General of the Law Society Ken Murphy were guests of honour at the 28 August 2008 parchment ceremony for newly qualified solicitors: Daniel Barry, Iseult Beatty, Anna Beresford, Fiona Buckley, Martin Burke, Keith Burke, Grace Burns, Emma Cafferky, Alma Campion, Jerilynn Carroll, Justine Carly, Gina Conheady, Karol Corcoran, Sarah Coughlan, Judith Curtin, Maureen Dennehy, William Dillon Leetch, Clare Dowling, Hilary Duggan, Gillian Fitzgibbon, Aimee Gallagher, Edward Geoghegan, April Gilroy, David Halford Fitzpatrick, Ciaran Haran, Tima Harnett, Deirdre Hughes, Fintan Jackson, Carol Kelly, Veronica Kelly, Eleanor Keville, Emily King, Timothy Leddin, John Magee, Dermot Marah, Ciaran Markey, Andrew Massey, Brendan McDonald, Alan McGill, Laura McInerney, Dianne McMahon, Jillian Mills, Elaine A Morrissey, Ian Murray, Robert O'Beirn, Aidan O'Brien, Maeve O'Brien, Edel O'Dwyer, Edel O'Kelly, Orla O'Leary, Joanne Page, Sinead Power, John Quinn, Ian Ryan, Roisin Scullion, Edel Sheerin, Craig Sowman, Mary Townsend, Lisa Tumilson, Ciara Tunney, Aoife Walsh

Newly qualified solicitors at the presentation of their parchments on 10 September 2008



Mr Justice Kevin Feeney, President of the Law Society James MacGuill, Director General of FLAC Noeline Blackwell, and Director General of the Law Society Ken Murphy were guests of honour at the 10 September 2008 parchment ceremony for newly qualified solicitors: Laura Armah-Kwantreng, Flachra Baynes, Alison Bearpark, Sally Anne Boyle, Angela Brennan, Gareth Byrne, Susan Byrne, Victoria Byrne, Emer Carey, Bryan Coen, Hugh Cummins, Federica Curcuruto, Elizaveta Donnelly, Keira Dowling, Fionnuala Doyle, Colin Duggan, Joseph Durkin, Laura Farrelly, Stiofán Fitzpatrick, Ciara Gaffney, Kevin Gaffney, Susan Gannon, Paul Hannon, Frazer Hanrahan, Sally-Anne Hinfey, Marianne Hourihane, Justin Hughes, Mary Jarrett, Catherine Keane, Daniel Kiely, Florence Loric, Siobhán McCarthy, Kevin McElhinney, Barry McGettrick, Eoin McManus, Anne McSharry, Brendan Michael Colgan, Ciara Millar, Theresa Murphy, Majella Ní Ghallcháoir, Orlaith Ní Bhroin, James John Paul O'Brien, Marcus Ó Buachalla, Karl O'Connor, Timothy O'Hanrahan, Mark O'Shea, Joanne O'Sullivan, Karina O'Sullivan, Fiona Ormond, Mark Quinn, Louise Smith, Sean Smith, David Sweeney, Emma Tivy, Ciara Treacy, Michelle Treacy, Grainne Whelan

Newly qualified solicitors at the presentation of their parchments on 23 October 2008



President of the High Court Mr Justice Richard Johnson, President of the Law Society James MacGuill, Minister for Justice, Equality and Law Reform Dermot Aherne, and Director General of the Law Society Ken Murphy were guests of honour at the 23 October 2008 parchment ceremony for newly qualified solicitors: Carol Ann Bergin, Faye Bohan, Jennifer Brennan, John Brick, Louis Burke, Grattan Butler, Joann Carson, Claire Casey, Pamela Cheevers, Finbarr Coughlan, Derek Gately, Kevin Geraghty, Michelle Geraghty, Paul Gillick, Marie Gormley, Ciara Hanratty, Naoise Harnett, Sarah Hayes, Theresa Howlett, Mairtin Kearney, Mark Ludlow, Seamus Maher, John Martin, William McAuliffe, Niall McCarthy, Louise McDarby, Leona McDonald, David McElroy, Aine McGuigan, Patrick McHugh, Niamh Muldoon, Yvonne Murphy, Aine Murray, Eamonn O'Hanrahan, Aoife O'Neill, Attracta O'Regan, Geraldine O'Sullivan, Suhaila Othman, Karen Reidy, Ivana Rubino, Jane Staunton, Niamh Tierney, Stephanie Tierney, Olivia Treston, Justin Walsh

Proud of their cool Cork jerseys!



The official unveiling of the Law Society of Ireland's Cork football jerseys took place on 8 November in Garryduff, Cork. The jerseys have been sponsored by student sponsor favourites, Brightwater. The game saw 2007 PPCI take on 2008 PPCI, with the latter being victorious on the day.

Another game took place on 15 November, which saw the 2008 PPCI Dublin students travelling to Cork to play their Southern counterparts – fielding both men's and women's teams. Brendan O'Sullivan was men's captain and Niamh O'Connor was women's captain.



88 hockey caps for Cork trainee – and counting!

To date, John Jermyn has 88 caps playing hockey with Ireland's national team. Now a trainee on the 2008 PPCI in Cork, he talks to the *Gazette* about playing for Ireland.

"I originally started playing hockey because I attended Ashton School, Blackrock, Cork, where it was the primary sport. I won my first cap against Belgium in 2002. Despite some of the disadvantages of playing at this level, such as missing the class trip to Kenmare and having to miss class nights out, hockey has opened up a lot



Cork trainee John Jermyn

of opportunities to me, travel being one.

"In the last couple of years, we have travelled to countries such as New Zealand, Australia, South Africa and China.

"Last season I played for the Dutch side HGC and we were beaten finalists in the European Hockey League – hockey's equivalent of the Champions League in soccer. Hockey is one of the main sports in Holland and is played as a professional game.

"At the moment, on the Irish scene, we are going through a transitional period

with the appointment of a new South African coach. Things are quiet, with the occasional friendly, such as against Argentina in October 2008 and Scotland in November. Things should pick up approaching August 2009 with the European B Division in Cardiff and the World Cup qualifier.

"As I said, despite the occasional missed nights out and the constant travelling to Dublin for weekend training sessions, I wouldn't change it for the world and look forward to a few more years of involvement at this level."

student spotlight



In their founder's footsteps

Last July, 12 Arthur Cox trainees filed away their PPCII manuals, dusted down their backpacks, pleaded with their bank managers and travelled to southern Zambia to assist in a renovation project. They coordinated their efforts with Slí Eile, a Jesuit-based young adult initiative that promotes the concepts of action for justice and self-development. Involvement with Slí Eile was particularly fitting, as the firm's founder, Arthur Cox, had a longstanding affiliation with the Jesuits – in his later years, he became a priest and joined a Jesuit mission in Zambia where he ministered until his death in 1965. *Ciara O'Donovan takes up the story:*

On our arrival, we set up camp in the small town of Mwandi. There, a Scottish couple, Keith and Ida Waddell, have set up a very successful orphan and vulnerable children project. Through this programme, children of the town are provided with one meal and at least three hours of



Do unto others... the Arthur Cox trainees who travelled to Zambia were (l to r): Ciara O'Donovan, Niamh Dillon, Michael Gill, Iseult Ní Ghallchoir, Martin Cooney, Peter Callanan, Michael Keaveney, Louise Howard, Aisling Burke, Derek Hegarty, Tara Creegan and Deirdre O'Mahony

school a day. They also seek to achieve a level of self-sufficiency and have developed a successful bakery and farm. During our time there, we painted a number of buildings and took breaks to play with the children, many of whose parents have died from AIDS-related illnesses. The opportunity to spend time with the children was an unforgettable experience.

Having found our feet, we left Mwandi and travelled to the small rural village of Masese.

Here we spent one week renovating a health clinic, which is extremely important in a rural area that suffers greatly from AIDS. In Zambia, one in nine adults are HIV positive, while the average life expectancy is 41. The clinic is vital to the effort to educate people about the spread of AIDS and in providing anti-retroviral drugs. Unfortunately, due to lack of state funding, the clinic was in a very poor state of repair. Against this backdrop, we donned our oldest clothes and

'Marigolds' and began stripping and washing the clinic. We repainted the exterior of the building, the porch, two wards and the doctor's surgery. We filled in the cracks and holes and inserted new vents and windows. We also cleaned all the beds and purchased new bedding and mattresses.

While the days were tiring, the evenings were spent around the campfire, cooking in a way that brings new meaning to the phrase 'one-pot cooking'.

We would like to thank everyone who assisted us, including our friends in Blackhall Place and all in Arthur Cox who supported our fundraising efforts. We raised approximately €12,000, all of which went towards the building materials used in our renovation project and in donations to the orphan and vulnerable children centre. Some of the fund went towards hiring a cleaner for the clinic, to assist in its upkeep and also towards the purchase of a solar panel to bring much needed electricity to the clinic. **G**

LYONS KENNY SOLICITORS

DO YOU WANT TO RETIRE FROM PRACTICE, OR SPEND TIME ON THE FINER THINGS IN LIFE?

For further information about what we can do for you, please call Barry Lyons at (01) 673 2700, write to us at blyons@lyonskenny.ie, or at 57 Fitzwilliam Square, Dublin 2

If you want to;

- Release equity from your practice,
 - Provide for your retirement in a tax efficient manner,
 - Work less, but ensure that your clients are well cared for without worrying about day to day matters,
- then we would like to talk to you.**

Lyons Kenny is a dynamic young Fitzwilliam Square based practice adding growth by acquisition to our organic expansion. We have assisted four principals realise these life goals in the past five years, and testimonials about the way we do business are available.



books

A Night at the Inns and Other Stories

Henry Murphy. Blackhall Publishing (2008), 33 Carysfort Avenue, Blackrock, Co Dublin. ISBN: 978-1-84218-145-4. Price: €14.95.

Henry Murphy SC has now surpassed himself as a raconteur with wit, humour and much hilarity when recounting the continued fictional career progression of Dermot McNamara BL in his third book of short legal stories.

The stories commence with annual Mass for the legal profession in early October – where “male members of the Bar, whose theology is unlikely to be over-influenced by Vatican II, pack the altar, while their leader shakes the thurible with gusto”.

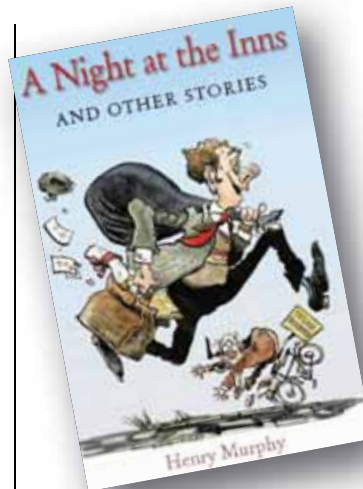
Dermot’s career has now taken off, so that he receives three types of mail – “the small envelope through which he can feel the staple securing the cheque, the new set of instructions and the dreaded reminder, distinguishable from the cheque only by the absence of a staple”.

The reported cases include a libel action, a defective car and a personal injuries action.

All these cases are reported in a jovial style. In the libel action, the courtroom is packed as tightly as the plaintiff’s skirt. The plaintiff is asked whether she experienced something of a conversion on the road to Damascus. Her reply, that she was never in Damascus, has the courtroom in convulsions. During the hearing, the silks are dropping in and out of the case like characters in a play.

In another case, when Dermot’s witness, a professor, suggests that he might start at the beginning, he received a judicial rap on the knuckles from Judge Pilkington: “Certainly not, Professor. That sort of thing might be fine for academia, but down here we have a day’s work to do. Cases to hear, lists to clear, real lives to sort out. What chance would we have if we all started everything at the beginning?”

Unlike Judge Pilkington, Judge Humphries has never been in a pub. His idea of a



night on the town is an early bird in the Fitzwilliam followed by a requiem in the Concert Hall. The Ivory Tower seemed like his sort of address. He is the proud possessor of a razor-sharp mind and likes nothing better than to be surrounded by lever-arch files on reported cases. People are not his forte, and he has been heard to say that “the Four Courts would be a far better place without witnesses”.

The Annual Bar Tennis Tournament is also a *tour*

de force. Judge Fleming was wearing a tennis shirt, the colour of which was closest to Van Gogh’s *Sunflowers* than the dress code of Donnybrook Tennis Club. Unfortunately, Dermot’s tennis is not brilliant. His “serve had never been the bedrock of my game. Indeed, my game didn’t have a bedrock in any identifiable sense.”

The book reveals how Dermot applies his skill in sidestepping awkward remarks from opponents in court. This is not surprising, as his creator and author was also adept at sidestepping opponents on the rugby field.

Henry Murphy is the Irish John Mortimer and Dermot McNamara is his Rumpole. This book will make a wonderful present for Christmas or birthdays. **G**

John Costello is the head of the private client department at Eugene F Collins and is a Council member of the Law Society.



CPD FOCUS would like to extend a sincere thanks to you for your support at CPD FOCUS training events during 2008. Conscious of the fact that 2009 will be a difficult year for everyone we will be offering a range of courses which will help in times of recession including:

Insolvency | Redundancy | Dismissals
Career Planning | Debt Collection

Our full programme as well as details on the CPD FOCUS Skillnet Scheme for 2009 are **NOW** available on our website www.lawsociety.ie/cpdfocus and remember membership of CPD FOCUS Skillnet entitles you to **30% discount** on all CPD FOCUS training events.

For further information contact a member of the CPD focus team on cpdfocus@lawsociety.ie

council report



Law Society Council meeting, 7 November 2008

New Council members

The Council welcomed its new members – Gail Enright, Gerard O'Donnell, Dara Robinson, Brendan Twomey and Keith Walsh – and wished them well for their term of office.

Taking of office of president and vice-presidents

The outgoing president, James MacGuill, thanked the Council, director general and staff for their practical help and support during his year of office. He acknowledged that it had been a year of dramatic change on many fronts, which required extraordinary effort on the part of a great number of people to enable the Society to cope. He wished the incoming president, John D Shaw, every success in the year ahead.

Mr Shaw was then formally appointed as president. He said that he was deeply conscious of the trust being placed in him and he had been greatly encouraged by the many individual messages of support. He acknowledged his pride to be following in the footsteps of many great presidents, including his father, Tom, who was in attendance. He paid tribute to James MacGuill, "whose indefatigable energy, commitment and idealism, combined with a powerful intellect, meant that he never gave it less than his best shot". He also expressed the Society's gratitude to James's wife, Lisa, and son, Conor, who supported James throughout his year of office.

Mr Shaw noted that the major challenge facing the Society and the profession was the current difficult economic conditions. Many solicitors and their clients were struggling,

and it was incumbent on the Society to do what it could to assist them in their difficulties. While there was little the Society could do to influence the economic conditions, there was a great deal that solicitors could do to retrain and reskill themselves for the inevitable up-turn in the economy. Professional development would be a major theme for the coming year, and he had asked the Society's advisory committees to promote the Society's strategy of 'Excellence in Representation' and to make an extra special effort in the coming year to take steps to assist colleagues.

The senior vice-president, Gerard Doherty, and the junior vice-president, James McCourt, then took office and expressed their support for the Council and the president for the coming year.

Report of the Complaints Review Task Force

The chairman of the task force, Joe Brosnan, outlined the salient features of the task force's report to the Council and addressed questions raised by Council members. He noted that, while there had been no belief that there was any fundamental problem with the existing complaints-handling system, the review had been conducted because of a desire to maximise efficiency and performance. The report was adjourned to the December Council meeting for further discussion.

Outcome of the 2008 AGM

The Council noted that, at the annual general meeting held on the previous evening, the members had approved an amend-

ment to the bye-laws to provide that: "A copy of the accounts of the Society shall be posted on the Society's website and a comprehensive and user-friendly report and summary of the accounts sent to each member of the Society by not later than 31 May in the following year."

Relocation of the Society's Regulation Department

The director general reported that the relocation of the Society's Regulation Department to George's Court was on time and on budget. It was intended to invite the Minister for Justice, Equality and Law Reform to attend the official opening of the premises.

Parchment ceremony speech by minister

The president briefed the Council on the parchment speech delivered by the Minister for Justice, Equality and Law Reform on 23 October, during which he had praised the Society for its "progressive approach". He had indicated that the *Legal Services Ombudsman Bill* would be enacted in the New Year and he had paid personal tributes to the president and director general for their effective representation on behalf of the profession.

Finance

The chairman of the Finance Committee, Gerard Doherty, reported that, despite some fall-off in practising certificate numbers and PPCI students, both the Law Society and the Law School would achieve their budgets for 2008. The committee continued to monitor the staff pension scheme and the Education Centre Fund investments closely, as they had both been affected by the financial turmoil. Mr Doherty noted that the recommended budget and practising certificate fee for 2009 would be a matter for decision by the Council at its December meeting.

Professional indemnity insurance

The chairman of the PII Committee, Niall Farrell, reported that insurance premia were increasing significantly for 2009 and the standard SMDP premium was increasing from €4,700 to €8,200. Regrettably, it also appeared that matters would get worse before they got better, and the premia for 2010 were unlikely to improve. He noted that it was intended to publish an article in the next issue of the e-zine advising members to consider their choice of insurer carefully. **G**

CONSULT A COLLEAGUE

The Consult a Colleague helpline is available to assist every member of the profession with any problem, whether personal or professional

01 284 8484

THE SERVICE IS COMPLETELY CONFIDENTIAL AND TOTALLY INDEPENDENT OF THE LAW SOCIETY



BRIEFING

practice notes

PRACTISING CERTIFICATE 2009: NOTICE TO ALL PRACTISING SOLICITORS

Why you need a practising certificate

It is misconduct and a criminal offence for a solicitor (other than a solicitor in the full-time service of the state) to practise without a practising certificate. Any solicitor found to be practising without a practising certificate is liable to be referred to the Solicitors Disciplinary Tribunal.

When you must apply

A practising certificate must be applied for on or before 1 February in each year in order to be dated 1 January of that year and thereby operate as a qualification to practise from the commencement of the year. It is a legal requirement for a practising solicitor to deliver or cause to be delivered to the Registrar of Solicitors on or before 1 February 2009 an application in the prescribed form, duly completed and signed by the applicant solicitor personally, together with the appropriate fee. The onus is on each solicitor to ensure that his or her application form and fee is delivered by 1 February 2009. Applications should be delivered to the new address of the Regulation Department of the Society at: George's Court, George's Place, North King Street, Dublin 7.

Section D of the application form

Each year, a considerable number of application forms are returned to solicitors who omit to complete section D, which relates to investment business services or investment advice. It is necessary for either part I

or part II of this section to be completed in order for the Society to process your application.

What happens if you apply late?

Any applications for practising certificates that are received after 1 February 2009 will result in the practising certificates being dated the date of actual receipt by the Registrar of Solicitors, rather than 1 January 2009. There is no legal power to allow any period of grace under any circumstances whatsoever.

Please note that, again during 2008, a number of solicitors went to the trouble and expense of making an application to the High Court for their practising certificate to be backdated to 1 January because their practising certificate application was received after 1 February.

The Regulation of Practice Committee is the committee of the Society that has responsibility for supervising compliance with practising certificate requirements. A special meeting of this committee will be held on 12 February 2009 to consider any late or unresolved applications for practising certificates. At this meeting, any practising solicitors who have not applied by then for a practising certificate will be considered for referral forthwith to the Solicitors Disciplinary Tribunal and will be informed that the Society reserves the right to take proceedings for an order under section 18 of the *Solicitors (Amendment) Act 2002* to prohibit them from practising illegally.

Continuing Professional Development (CPD)

The application form includes a section regarding completion of, or exemption from, the ten-hour CPD requirement (section E). You must complete this section, but please do not send in your CPD record card with the application form.

If you are an employed solicitor

Solicitors who are employed should note that it is the statutory obligation of every solicitor who requires a practising certificate to ensure that he or she has a practising certificate in force from the commencement of the year. Employed solicitors cannot absolve themselves from this responsibility by relying on their employers to procure their practising certificates. However, it is the Society's recommendation that all employers should pay for the practising certificate of solicitors employed by them.

Some of your details are already on the application form

The practising certificate application form will be issued with certain information relating to each solicitor's practice already completed.

What can you access on the website (www.lawsociety.ie)?

The application form for a practising certificate will be available on the Society's website. You can print out a blank form or, alternatively, complete the form on-screen and print out the form for signing and returning to the Society with the appropriate fee. The form can be

accessed in the members' area of the website using the solicitor's surname and reference number. Alternatively, you may request a form to be emailed to you by phoning the Society at 01 672 4800.

If you are ceasing practice

If you are intending to cease practice in the coming year, please notify the Society accordingly in writing on or before 1 February 2009.

Correspondence from the Society

An application form for obtaining a practising certificate, together with an application form for membership of the Society, will issue to all solicitors on the Roll of Solicitors, irrespective of whether or not they are currently practising.

Acknowledgement of application forms

Please note that it is not the Society's policy to acknowledge receipt of application forms as received.

Duplicate practising certificate

Recently, an increasing number of solicitors have requested a duplicate practising certificate for the purpose of presenting their practising certificate to the firm's reporting accountant. With effect from 1 January 2009, a fee of €50 will be payable in respect of each duplicate practising certificate issued for any purpose.

John Elliot, Registrar of Solicitors and Director of Regulation

VAT: CHANGES TO STANDARD CONDITIONS OF SALE AND REQUISITIONS ON TITLE

1. Conditions of Sale

Practitioners will be aware that there have been a number of changes to the wording of special condition 3 of the standard Law Society contract for sale, since May of this year, in anticipation of and following the introduction of the new VAT legislation that came into effect on 1 July 2008. It has become clear to the Conveyancing and Taxation Committees that the wording of this special condition will continue to evolve and change as the practical application and interpretation of the new legislation develops over time. It seems clear to the committees that, rather than run the risks inherent in changing the text of the special condition in the printed document every few

months, the amended wording of the special condition should be provided to the profession on the Law Society's website. In this way, practitioners can access the current recommended wording at all times and the risk of using out-of-date printed documents will be minimised to the extent possible.

It has therefore been decided to amend the text of special condition 3 in the Society's *Conditions of Sale* document to read as follows: "(3) Attach/insert the current recommended format of VAT special condition (available on www.lawsociety.ie), amended as appropriate."

This change in wording will be reflected in the next print-run of the document.

The current recommended form of special condition will be available on both the Conveyancing Committee's page and the Taxation Committee's page on the website (log on to the members' area and click in turn on 'Society committees', 'Conveyancing Committee' or 'Taxation Committee', scroll to the item on the committee page, and click on the relevant link) and will be updated as necessary. Practitioners should ensure to use the latest version and should copy and attach it to the printed contract document or insert it in their template document as appropriate.

2. Requisitions on Title

Requisition 16A previously applied to the old VAT legisla-

tion. Since the new legislation came into effect on 1 July 2008, requisition 16A is obsolete. As VAT is now entirely a matter to be addressed pre-contract, it is not proposed to replace 16A in the requisitions document, as it is too late at requisitions stage to address the question of VAT. Therefore, requisition 16A is now being removed from the printed *Requisitions on Title* document, and this will be reflected in the next print-run of the document. The Society's VAT subcommittee is currently working on the format of a set of pre-contract VAT enquiries, and this will be published in due course to the profession.

Conveyancing Committee,
Taxation Committee

LAW SOCIETY COMPANY FORMATION SERVICE

Your Company Formation Service forms approx 1100
companies every year for over 300 solicitor firms.

ISO 9001:2000 accredited.

WHY USE US

- Fast Efficient Service
- Competitive Prices
- 5 day Electronic Filing

WE FORM

- Private Companies limited by shares
- Single Member Companies
- Guarantee Companies
- Charitable Status Companies
- Unlimited Companies

COMPANY FORMATION SERVICE SCHEDULE OF FEES

Private Company limited or unlimited

- Electronic Filing (5 days) €310
- Paper Filing (3-4 weeks) €330

Guarantee Companies from €350

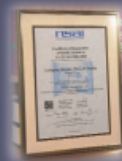
To include, bound copies of Memorandum
& Articles of Association, Company Seal and Register.

Also Available

Combined Share Register and Share Certificate Book €25

Company Seal €30

Company Kit from €70



For further information, application form and form A1
see our website www.lawsociety.ie or contact us directly by;

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



RETAINED DEPOSITS AND CANCELLATION CHARGES NOT A SUPPLY FOR VAT

This year's *Finance Act* (sections 101 and 102) contains an amendment to sections 17 and 19 of the *VAT Act 1972* (*VAT Act*), which provides that VAT is not payable on deposits retained in the event of a customer's cancellation.

The change arises as a result of a European Court of Justice (ECJ) case that was handed down on 18 July 2007 concerning the VAT treatment of hotel deposits (*Société Thermale d'Eugénie-les-Bains*). While the judgment concerned the hotel industry, the principle laid down applies to all deposits received before the supply of goods and services takes place, and subsequently the supply does not take place as a result of a customer cancellation, resulting in the deposit being forfeited.

Prior to this case, the Irish Revenue had published guidance that such cancellation charges were subject to VAT at 21%. Furthermore, the Irish government even went a step further and had observations submitted to the ECJ on its behalf that such cancellation charges were subject to VAT. Fortunately, the ECJ disagreed and ruled that, where a customer exercises the cancellation option available to them and forfeits their deposit, then such compensation does not constitute a fee for a service and forms no taxable amount

for VAT purposes.

The Law Society's Taxation Committee (as a result of the above ECJ case) made representations to Revenue to amend the VAT legislation.

The amendments in the legislation now mean that, where a supplier accounts for VAT on an amount received by way of a deposit from a customer before the supply of the goods or services to which the deposit relates and:

- That supply does not subsequently take place owing to a cancellation by the customer,
- The cancellation is recorded as such in the books and records of the supplier,
- The deposit is not refunded to the customer, and
- No other consideration, benefit or supply is provided to the customer by any person in lieu of the refund of that amount,

then the supplier may in turn reduce their VAT liability for the taxable period in which the deposit is forfeit by the amount of the VAT originally accounted for on the deposit.

Where the above applies, the consideration on the original invoice issued to the customer is deemed to be reduced to nil, and a document (to be treated as if it were a credit note) detailing the reduction is required to be issued by the

supplier to the customer. Consequently, where the customer is an accountable person, the amount that may be claimed as an input credit shall be reduced accordingly.

As a result of the above legislative amendments, Revenue published eBrief no 49/2008, in which they advised on the change in Revenue policy and procedures that have arisen as a result of measures in the *Finance Act 2008* amending the *VAT Act*. While reaffirming that there is no change in the existing VAT treatment of a deposit when it is initially paid, and elaborating on the position with respect to forfeited deposits, the Revenue further provided in the eBrief that a charge levied by a supplier when a customer makes a cancellation (and consequently a supply does not take place) is also to be treated as falling outside the scope of VAT by virtue of it being regarded as compensation and not a payment in respect of a taxable supply.

The eBrief subsequently deals with claims for a refund of VAT previously accounted for in prior years on forfeited deposits and cancellation charges. According to the eBrief, such claims should be submitted to the relevant local district tax office, and the normal statutory four-year period applies. In addition, where an

amount is refundable, interest will be paid, calculated from the taxable period(s) to which the claim relates (that is, the period in which the deposit was forfeit or the cancellation charge was paid) up to the date of the refund payment. In relation to claims for refunds, the Revenue also points out that taxpayers who had previously reduced their liability for income tax or corporation tax, in order to take account of VAT accounted for on retained deposits, will also need to adjust their income tax/corporation tax liability for the relevant period arising from the repayment of any VAT. However, in order to avoid having to reopen previous income tax/corporation tax returns, in such a case where a refund of VAT on deposits is sought by a taxpayer, the amount of the VAT repayment (plus any relevant interest) sought should be reduced by the amount of any additional income tax or corporation tax liability.

The eBrief also sets out that, when making a refund claim, claimants should:

- Submit evidence of the terms upon which the deposit was paid and retained, and
- Certify that such deposits were not applied to any other taxable supply.

Taxation Committee

INJURIES BOARD: ATTENDANCE AT MEDICAL APPOINTMENTS

The Litigation Committee reminds practitioners of their obligations to their client in that, when a medical appointment is received, the claimant should be informed of the appointment and of the impor-

ance of attendance. The committee recognises that there will always be certain circumstances in which clients cannot or will not attend. A solicitor is not responsible for the non-attendance of a client but should

simply ensure that a claimant is aware that, in those circumstances, the Injuries Board can only assess the claim with the benefit of the medical records available. Therefore, in order to ensure that the claimant has

the opportunity to place his or her full claim before the Injuries Board and achieve the fairest possible award, attendance is in the claimant's best interests.

Litigation Committee

JOINT BANK ACCOUNTS – GUIDELINES FOR SOLICITORS

"Financial abuse is a widespread concern" – *Protecting our Future: Report of the Working Group on Elder Abuse* (September 2002). The group recommended that health, legal and financial professionals should develop the skills needed to recognise, address and minimise financial abuse against older people. A 2008 HSE research study on elder abuse found that frailty and dependence amounted to over 60% of reasons for elder abuse.

One particular aspect of financial abuse that has been identified is the misuse and abuse of joint bank accounts. Older people are often encouraged to add the name of a family member or carer to their bank account 'for the convenience' of the older person. Solicitors should be aware of the legal implications of the transfer of a bank account into joint names and advise a client on the different rules that can apply, depending on the intention of the original account holder.¹

For example:

- Does the presumption of a resulting trust arise?
- Is there an intention to make a gift?
- Does the presumption of advancement apply?

A. Transferring an account into joint names

In advising a client on the legal implications of the transfer of bank accounts into the joint names of the older person (who is the original account owner and who has provided the funds in the account) and the name of another person, the following points should be fully discussed with the client:

- Is the reason for transferring an account into joint names simply for the convenience of the original account holder?

- Is there an intention to make a gift?
- Does the presumption of advancement apply?

A solicitor should advise a client of the implications of the access to and use of funds in an account by a joint account holder, depending on each of the above circumstances. There is clear evidence that, particularly, older people who are opening joint accounts do not always fully understand the nature of the transaction being undertaken.

1. Resulting trust

1.1. Usually at a time when older people are particularly vulnerable – for example, when being admitted to hospital or long-term care, or they may simply be physically infirm and unable to access services directly – they are encouraged to transfer their bank accounts into the joint names of themselves and some other person. They are encouraged to do this 'for their convenience', and the arrangement is to facilitate the second account owner to operate the account on their behalf. A solicitor should advise a client that, in such circumstances, the joint account holder merely becomes an agent for the older person. While the legal interest in the account is transferred into joint names to facilitate the arrangement, there is no intention to transfer any beneficial interest, therefore the presumption of a resulting trust arises. In such a case, on the death of the original account holder, the proceeds of the account revert on a resulting trust to his or her estate and do not pass by survivorship to the joint account holder.

1.2. A solicitor should advise any joint account holder of the

legal nature of an 'agency' account:

- The named joint account holder (agent) only has authority over the funds in the account to the extent agreed by the original account holder (principal). There may of course be a specific agreement between the joint account holders as to how the account should be used, but this is not usually the case. However, if the account was opened for convenience only, then any withdrawal from the account should be purely for the care and maintenance of the principal. (The agreement referred to is of course distinct from the contract entered into with the financial institution as to the operation of the account and the rights of the joint holders against the financial institution.)
- If the principal becomes mentally incapacitated, the relationship of agent and principal ends. If the principal becomes mentally incapable, then the operation of the joint account automatically comes to an end, and the accounts fall to be operated either by an attorney under an enduring power of attorney that has been registered, if there is one, or alternatively by the committee of the ward if wardship proceedings have been instigated.
- On the death of the principal, the funds in the joint account pass on a resulting trust to the estate of the principal and not to the surviving joint account holder, who has no beneficial interest in the account. This can also be stated thus: on the death of the principal (original account holder) there is a presumption of a resulting trust in favour of the estate

of the deceased, unless the relationship between the account holders was such as to raise the presumption of advancement, which was not rebutted.

2. Intention to make a gift

2.1. If a client wishes to make a gift, then there must be clear evidence to indicate such an intention. The first place to look for that intention is in the documentation by which the transfer is effected. If those documents themselves disclose the transferor's intentions, then extraneous evidence is not admissible.² If the documentation is neutral as to intention, then clear evidence of proof to make a gift is essential. In such a case, the onus of rebutting the implications of a resulting trust by evidence rests on those claiming to be beneficially entitled by survivorship to the monies standing to the accounts in which they were named as joint creditors.³

2.2. Where a client wishes to transfer an account into the joint names of him/herself and that of another person in order to either:

- Give an immediate gift to the joint account holder, in which case there is an immediate transfer of the legal interest in the account but there is also an transfer of a beneficial interest, or
- Alternatively, the original account owner wishes to enjoy the benefit (income) of the joint account during his or her lifetime and then for the benefit to pass to the survivor on his/her death, in which case there is an immediate transfer of the legal ownership in the account with an intention to confer a beneficial interest in the account to the survivor on the death of the original account owner,

a clear intention must be indicated of an intention to make a gift either at the time of the transfer into joint names or, in the alternative, an intention to make a gift subject to a contingency, viz that of the death of the donor.⁴

2.3. There may be taxation implications in either of these alternatives, and client and donee should accordingly be advised to obtain taxation advice.

2.4. In such circumstances, where there is a clear intention by the client to make a gift with regard to a joint account, a solicitor should advise the client of the impact this could have on the provisions of the client's will, if they have made one.

2.5. In circumstances where a gift was intended, the question of undue influence may still arise.

3. *Presumption of advancement*

3.1. The relationship between the account holders may be such as to give rise to a presumption of advancement.⁵ In other words, if accounts are transferred into joint names, the relationship of the account holders may be such as to give rise to the presumption of advancement – the transaction being treated as an intention to make a gift unless it can be shown that the original account holder intended otherwise. If a presumption of advancement is established, that may neutralise the imposition of a resulting trust in favour of the estate of the deceased, and the surviving account holder may become entitled to the proceeds of the account.

3.2. The relationships that can give rise to a presumption of advancement are limited to the following:

- Husband [transfers property] to a wife,

- Father [transfers property] to a child.

The presumption of advancement does not apply in respect of a transfer of property from wife to husband, and it does not apply if property is transferred from mother to child.

A solicitor should advise a client who wishes to add the name of his wife or his child to a joint account, but who does not wish the presumption of advancement to apply, of the necessity to clearly document his intention not to confer any benefit with regard to the account to his spouse or child. In which case, the presumption of resulting trust will stand and, on his death, the proceeds of the relevant account will be an asset in his estate.

If there is an intention to allow the presumption of advancement to apply, then the client should be advised of the possible need to review his will and should also be advised of the provisions of the *Succession Act 1965*.

A solicitor should advise the client of the likely taxation consequences if the presumption of advancement does arise.

B. Financial institutions

A solicitor, in advising a client of the legal implications of transferring accounts into the joint names of the client and that of another person, should, in addition, inform the client of the need for the client to clearly confirm the intention with regard to the joint account to the financial institution. The confirmation of intention should distinguish the type of joint account it is intended to have:

- Is it a joint account for the original account owner's benefit only, with the joint account holder merely acting as agent for the principal?
- Is it a joint account where there is an intention that

both parties should enjoy the benefit of the joint account, that is, to confer a gift on the joint account holder either at the date of the opening of the account or on the death of the original account holder?

- If the transfer is from husband to wife or father to child, is it the intention of the transferor to benefit (make a gift to) wife or child?

A client should be advised that the agreement with regard to the reason (intention) for putting the account into joint names should preferably be in writing. A client should be also advised of the distinction between any agreement between the joint account holders themselves and any contractual agreement between the financial institution and the joint account holders that will set out the requirements with regard to the operation of the joint account and the rights of the joint account holders against the bank.

C. Administration of estate

On the death of the original account holder, it is extremely important that the true intention for the opening of any joint account is ascertained.

A solicitor who is advising in the administration of an estate should make sure that full enquiries are made and that there is no attempt to either facilitate fraud⁶ or frustrate the wishes of the deceased. A solicitor should advise a personal representative of an estate of the duty of full disclosure of all assets and, where assets were in the joint names of the deceased and some other person or persons, the duty to make full enquiries and disclosure with regard to the intention of the deceased with regard to assets held in joint names.

Where a grant of represen-

tation to the estate of a joint account holder is being extracted, there is a requirement for the personal representative to make a return to the Revenue Commissioners and to complete a form CA24, which raises a very specific question with regard to any property that was in the joint names of the deceased and another (or others) at the date of death.⁷

The Probate Office may also raise questions where it is on notice of property held in joint names.⁸

Where the only asset in the estate is a joint bank account, and it appears that it may not be necessary to extract a grant of representation to the estate of a deceased, it is particularly important for solicitors to ensure that the personal representative is fully advised of the legal position with regard to property held in joint names.

If there is no clear intention of evidence to make a gift, then the equitable principle of the presumption of a resulting trust will apply. If there is an argument to the contrary, then the onus of rebutting the presumption of a resulting trust lies with the surviving joint account holder.

D. Undue influence

If it is clear that no gift was intended and the proceeds of the joint account revert on a resulting trust to the estate of the original account owner, then the question of undue influence does not arise.

Where, however, it is proved that a gift was intended, then the further question may arise as to whether the original account owner was induced by undue influence into making the gift. The presumption of undue influence may arise where:

- One party reposes trust and confidence in the other or is somehow vulnerable to influence, and

- The transaction in question calls for an explanation.

The parties therefore do not need to be in any special relationship, and the transaction does not have to be of 'manifest disadvantage' to the donor. Once a presumption of undue influence has arisen, it then becomes a matter for the donee to rebut the presumption and to show that the donor entered into the transaction with full knowledge of the advantages and disadvantages – and this will generally turn on whether the donor has had compre-

hensive and independent legal advice about all aspects of the transaction.⁹

In the alternative, whether or not undue influence is established, the issue of the improvidence of the transaction may arise, in which case the transaction may be set aside on the grounds of its improvidence.

Guidance and Ethics Committee

Footnotes

1 These guidelines are limited to joint bank accounts that are personal property. They are not intended to deal with issues

that may arise where real property is owned jointly, either by way of a joint tenancy – where the right of survivorship applies – or on a tenancy in common, where the right of survivorship does not apply.

2 *Sillet v Meek* [2007] EWHC 1169 Ch.

3 See *Lynch v Burke* [1990] 1 IR HC at p6.

4 *Lynch v Burke* [1995] 2 IR 159.

5 The presumption of advancement is now viewed as somewhat anachronistic and some query whether it contravenes the *European Convention on Human Rights*.

6 In the case of equitable fraud, someone who assists another in committing a fraud may be li-

able as a constructive trustee for dishonest assistance in the breach of trust or fiduciary duty ("Finance and law for the older client", Tolley's/STEP, issue 31, June 2008, at H1.8).

7 See question 8 of form CA24 (2003 edition).

8 Liability for dishonest assistance can arise not only for individuals but also for undertakings that facilitate a dishonest scheme.

9 See "Finance and law for the older client", Tolley's/Society of Trust and Estate Practitioners, issue 31 at A5.41. See also *Carroll v Carroll* [1999] 4 IR. This latter case also raises the question of the 'improvidence of the transaction'.

CHANGES TO STATUTORY DECLARATIONS

Sections 49 to 52 of the *Civil Law (Miscellaneous Provisions) Act 2008* amend the statutory provisions relating to statutory declarations originally provided for in the *Statutory Declarations Act 1938*. This note summarises the changes, section by section, and provides practitioners with information about how to download precedent standard forms of jurat from the Society's website. These changes are effective from 20 July 2008. There are no changes to the existing position relating to the swearing (or affirming) of affidavits.

The changes

The effects of each of the amending sections contained in the 2008 act are summarised below.

New additional means of identification

Section 49 of the 2008 act amends section 2 of the 1938 act as to the means by which the proposed declarant identifies himself/herself to the person taking and receiving the statutory declaration. The 1938 act originally provided for two alternatives set out in the jurat (that is, the attesta-

tion clause) of the statutory declaration: either (a) that the declarant was personally known to the person taking and receiving the statutory declaration, or (b) the declarant was identified by another person who was personally known to the person taking and receiving the statutory declaration.

Section 49 of the 2008 act retains these two alternatives and adds a third alternative. The proposed declarant can now establish his/her identity by reference to a "relevant document" containing a photograph of the declarant, and this means of identification is then attested to in the jurat. A "relevant document" means a valid passport, a national identity card or a document equivalent to a passport, a refugee travel document or a travel document issued by the Minister for Justice, Equality and Law Reform.

Making of statutory declarations outside the state

Section 50 of the 2008 act inserts section 3A into the 1938 act and provides for the making of statutory declarations outside the state. A person who needs, for Irish law purposes,

to make a statutory declaration abroad will now have a range of processes available to him/her.

Changes to penalties for making false declarations

Section 51 of the 2008 act substitutes section 6 of the 1938 act, as amended by section 26 of the *Standards in Public Office Act 2001*, thereby amending the offence and penalties for making a false declaration.

New standard form of jurat

Section 52 of the 2008 act substitutes the schedule to the 1938 act (which set out the text of the original standard form of jurat) to reflect the change introduced by section 49 of the 2008 act relating to the identification of the declarant by means of a "relevant document".

How to download precedent standard forms of jurat

Practitioners should log on to the members' area of the Society's website and click on the link to 'precedents for practice' in order to access the 'statutory declarations information' page. A Word version of the new combined standard form

of jurat for a statutory declaration is available for download and this can be easily 'cut and pasted' into current precedent documentation. Alternatively, and more conveniently in terms of space, practitioners can use a specific form of jurat, if it can be anticipated by whom the statutory declaration will be taken and received and the means of identification of the declarant that will be required by the person taking and receiving the declaration. These specific forms of jurat can also be downloaded from the members' area of the website.

Affidavits

The 2008 act does not alter the existing arrangements for the completion of affidavits. In regard to the administration of oaths by practising solicitors, practitioners are referred to the practice note contained in the June 2005 issue of the Society's *Gazette* and to the memorandum to all solicitors from the then Chief Justice (Hamilton CJ), dated 22 December 1994, relating to section 72 of the *Solicitors (Amendment) Act 1994* (copies can be downloaded from the 'statutory declarations information' webpage). **G**



legislation update

21 October – 17 November 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

Mental Health Act 2008

Number: 19/2008

Contents note: Confirms that certain unexpired and expired renewal orders for involuntary detention under the *Mental Health Act 2001* were not invalid by reason of the wording and layout of the Mental Health Commission's prescribed forms signed by a consultant psychiatrist. Provides that replacement renewal orders, in respect of the unexpired renewal orders referred to above, will issue within five working days of the passing of this act, and provides for related matters.

Date enacted: 30/10/2008

Commencement date: 30/10/2008

SELECTED STATUTORY INSTRUMENTS

Credit Institutions (Financial Support) Scheme 2008

Number: SI 411/2008

Contents note: The scheme, made pursuant to section 6(4) of the *Credit Institutions (Financial Support) Act 2008*, sets out an enabling framework for the Minister for Finance to guarantee, for the period 30/9/2008 to 29/9/2010, the covered liabilities of a covered credit institution or subsidiary that the minister may specify by order.

Credit Institutions (Financial Support) (Specification of

Institutions) Order 2008

Number: SI 416/2008

Credit Institutions (Financial Support) (Specification of Institutions) (No 2) Order 2008

Number: SI 425/2008

Contents note: Section 6(1) of the *Credit Institutions (Financial Support) Act 2008* provides that the Minister for Finance may provide financial support in respect of covered liabilities of any credit institution or subsidiary that the minister may specify by order. The institutions named in these two orders are specified for the purposes of section 6(1) of the act.

Criminal Evidence Act 1991 (Section 16(1)(b)) (Commencement) Order 2008

Number: SI 401/2008

Contents note: Appoints 15/10/2008 as the commencement date for section 16(1)(b) and section 19, insofar as it relates to the reference in it to section 16(1)(b), of the *Criminal Evidence Act 1992*. These sections relate to the admissibility of video-recorded statements by a person under 14 years of age as evidence at a trial.

Double Taxation Relief (Taxes on Income) (Republic of Macedonia) Order 2008

Number: SI 463/2008

Contents note: Gives the force of law to the agreement between Ireland and the Republic of Macedonia, 14/4/2008, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes and income. The agreement is set out in the schedule to the order.

Double Taxation Relief (Taxes on Income) (Socialist Republic of Vietnam) Order 2008

Number: SI 453/2008

Contents note: Gives the force of law to the agreement between Ireland and Vietnam, 10/3/2008, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes and income. The agreement is set out in the schedule to the order.

Exchange of Information Relating to Tax Matters and Double Taxation Relief (Taxes on Income) (Isle of Man) Order 2008

Number: SI 459/2008

Contents note: Gives the force of law to the tax information exchange agreement and the agreement for affording relief from double taxation with respect to certain income of individuals and establishing a mutual agreement procedure in connection with the adjustment of profits of associated enterprises between Ireland and the Isle of Man, 10/3/2008. The agreements are set out in the schedule to the order.

Passports Act 2008 (Commencement) Order 2008

Number: SI 412/2008

Contents note: Appoints 1/11/2008 as the commencement date for all sections of the *Passports Act 2008*, other than s14(8) and (9), which deal with consent in writing by a guardian of a child to the issue of a passport to the child.

Passports (Appeals) Regulations 2008

Number: SI 413/2008

Contents note: In accordance with section 19(15) of the *Passports Act 2008*, prescribe time limits for the making and determination of appeals against decisions by the Minister for

Foreign Affairs to refuse to issue or to cancel a passport. The regulations also prescribe matters of procedure regarding the making of appeals and the decision-making process.

Commencement date: 1/11/2008

Passports (Periods of Validity) Regulations 2008

Number: SI 414/2008

Contents note: In accordance with section 9(1) of the *Passports Act 2008*, prescribe the periods of validity for different types of passports.

Commencement date: 1/11/2008

Public Health (Tobacco) Act 2002 (Commencement) Order 2008

Number: SI 404/2008

Contents note: Appoints 1/7/2009 as the commencement date for the following provisions, all save one of which were inserted or amended by the *Public Health (Tobacco) (Amendment) Act 2004*: (a) s33 (inserted by s5 of the 2004 act); (b) s35 (inserted by s6 of the 2004 act); (c) s36 (inserted by s7 of the 2004 act); (d) s37 (inserted by s8 of the 2004 act); (e) s38(2), (4), (6), (7), (8), (9), (10) and (11) (inserted by s9 of the 2004 act); (f) s39 (as amended by s10 of the 2004 act); (g) s42 (inserted by s13 of the 2004 act); (h) s43 (inserted by s4 of the 2004 act) and (i) s44. These provisions relate to the prohibition on advertising and sponsorship of tobacco products and of certain marketing practices and assertions in relation to tobacco products, the establishment of a register of retailers of tobacco products, and offences relating to the sale by retail of tobacco products.

Public Health (Tobacco) (Amendment) Act 2004 (Commencement) Order 2008

Number: SI 405/2008

Contents note: Appoints 1/7/2009 as the commencement date for the following sections of the *Public Health (Tobacco) (Amendment) Act 2004*: ss5, 6, 7, 8, 9 (insofar as it relates to subsections (2), (4), (6), (7), (8), (9), (10) and (11) of s38 of the *Public Health (Tobacco) Act 2002*), 10, 13 and 14. These sections amend or substitute new sections in the *Public Health (Tobacco) Act 2002* relating to

the prohibition on advertising and sponsorship of tobacco products and of certain marketing practices and assertions in relation to tobacco products, the establishment of a register of retailers of tobacco products, and offences relating to the sale by retail of tobacco products.

Safety, Health and Welfare at Work (Construction) (Amendment) (No 2) Regulations 2008

Number: SI 423/2008

Contents note: Amend the *Safety, Health and Welfare at Work (Construction) Regula-*

tions 2006 (SI 504/2006). The amendments include the substitution of a new regulation 97 relating to guarding, lighting and signage in connection with construction works on roads, footpaths and cycle tracks.

Commencement date: Various – see SI 6/7/2009 for the substituted regulation 97 (as per amendment made by SI 130/2008 to SI 504/2006)

Taxes Consolidation Act 1997 (Accelerated Capital Allowances for Energy Efficient Equipment) Order 2008

Number: SI 399/2008

Contents note: Lists, in accordance with the provisions of section 285A of the *Taxes Consolidation Act 1997* (inserted by section 46 of the *Finance Act 2008*), those energy-efficient products whose capital cost will be eligible for accelerated capital allowances and specifies the energy-efficiency criteria used to determine eligibility for inclusion on those product lists.

Commencement date: 9/10/2008 **G**

Prepared by the Law Society Library

CHRISTMAS CARDS

IN AID OF THE SOLICITORS' BENEVOLENT ASSOCIATION

This is an opportunity to support the work of the Solicitors' Benevolent Association, whose needs are particularly acute at Christmas time



Card A

ADORATION OF THE MAGI
Peter Paul Rubens



Card B

MESSENGER OF PEACE

GREETING PRINTED INSIDE EACH CARD:

With Best Wishes for Christmas and the New Year

ORDER FORM

Firm: _____

Contact: _____

Address: _____

DX: _____ Tel: _____ Fax: _____

Each card sold in packets of 50 costing €100 (including overprinting of your firm's name). Minimum order 50 cards. Add €7.00 for postage and packaging for **each** packet of 50 cards.

I wish to order _____ pack(s) of card A @ €100, _____ pack(s) of card B @ €100.

Text to be overprinted: _____

SAMPLE OF OVERPRINTED TEXT WILL BE FAXED FOR CONFIRMATION BEFORE PRINTING.

I enclose cheque for € _____ payable to Santry Printing Ltd (**€107 per pack**).

SEND ORDER FORM AND CHEQUE TO:

SBA Christmas Cards, Santry Printing Ltd, Unit 5, Lilmar Industrial Estate, Coolock Lane, Dublin 9. Tel: 842 6444. Contact: Amanda

BRIEFING

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 Jacqueline M Durcan, a solicitor practising as Durcans Solicitors at 1 Hazel Grove, Spencer Park, Castlebar, Co Mayo, and in the matter of the *Solicitors Acts 1954-2002* [7083/DT23/07]

***Law Society of Ireland* (applicant)**

***Jacqueline M Durcan* (respondent solicitor)**

On 16 September 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- a) Failed to respond adequately or at all to correspondence from the complainant,
- b) Failed to respond to the Society's correspondence, and

in particular to the letters sent to the respondent solicitor by the Society on 23 March 2004, 28 April 2004, 17 May 2004, 16 June 2006, 4 July 2006, 13 July 2006, 26 July 2006, 28 September 2006 and 19 October 2006,

- c) Failed to register her client's title to property at a named location in Co Mayo in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay the sum of €5,000 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland, as taxed by a taxing master of the High Court in default of agreement.

In the matter of Niall Sheerin, a solicitor practising as Niall Sheerin & Company, Solicitors, at 17 North King Street, Dublin 7, and in the matter of the *Solicitors Acts 1954-2002* [5132/DT47/08]

***Law Society of Ireland* (applicant)**

***Niall Sheerin* (respondent solicitor)**

On 23 September 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to ensure there was furnished to the Society an accountant's report for the year ended 31 March 2007 within six months of that date, in breach of regulation

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

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

The tribunal ordered that the respondent solicitor:

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

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

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



- ⇒ ALL ROOMS HAVE BEEN FULLY RENOVATED TO THE HIGHEST STANDARD
- ⇒ ALL ARE EN-SUITE
- ⇒ TV IN EVERY ROOM
- ⇒ TEA AND COFFEE MAKING FACILITY
- ⇒ FREE CAR PARKING



TEL: 01 672 4800


Law Society of Ireland

firstlaw update



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

EMPLOYMENT LAW

Redundancy

Permanent and pensionable – tenure – whether the appellant's employment was terminable on reasonable notice.

The appellant, whose employment as diocesan secretary with the respondent was terminated by reason of redundancy, claimed that Ms Justice Carroll of the High Court misdirected herself in law in arriving at the conclusion that the appellant's contract of employment was terminable on reasonable notice and, further, that the appellant had been given reasonable notice by the respondent. The appellant argued that her employment was permanent and pensionable and essentially could not be terminated until she reached retirement age.

The Supreme Court dismissed the appeal, holding that the High Court judge was correct in her view that the appellant was employed pursuant to

an employment agreement terminable on reasonable notice.

Sheehy (appellant/plaintiff) v Ryan and Moriarty (respondents/defendants), Supreme Court, 9/4/2008 [FL15128]

PLANNING AND ENVIRONMENTAL LAW

Planning permission

Judicial review – whether condition imposed was unlawful – whether condition ultra vires – failure to provide reasons – proportionality – Planning and Development Act 2000 – Planning and Development Regulations 2001 – European Convention on Human Rights Act 2003.

The applicant was a registered company with unlimited liability. It sought to challenge an imposition by An Bord Pleanála of a condition imposed on a decision to grant planning permission. It alleged that the condition that had been imposed was unlawful and sought orders removing such condition from

the grant of planning permission. The applicant contended that the condition sought to deny the applicant the benefit of an exempted class of development. The applicant further contended that An Bord Pleanála had failed to provide reasons for the condition.

McMenamin J granted an order of judicial review and remitted the matter to An Bord Pleanála, holding that, having regard to the unusual evidential features, the reason given for the condition was insufficient to comply with the statutory duty of An Bord Pleanála. There was an obligation to state reasons for the condition clearly, cogently, and in a manner as to eliminate a reasonably held doubt as to whether there had been an error in law, a misunderstanding or other unlawful basis for the condition.

Weston (applicant) v An Bord Pleanála (respondent), High Court, Mr Justice MacMenamin, 14/3/2008 [FL15127]

Practice and procedure

Appeal from High Court – refusal to dismiss proceedings for failure to disclose a reasonable cause of action – refusal of leave to review planning decision.

The defendant appealed to the Supreme Court against an order of the High Court refusing an application to dismiss proceedings related to a planning law dispute. It was alleged that the defendant had engaged in fraud and that the decision of the High Court was procured by fraud and whether the proceedings merited dismissals.

The Supreme Court held that the action was doomed to failure and disclosed no cause of action and was frivolous and vexatious. The appeal would be allowed and the action dismissed. The facts allegedly concealed from the trial judge with fraudulent intent would not have been material.

Kenny (plaintiff/respondent) v The Provost, Fellows and

THE LAW SOCIETY'S TRIBUNAL AND ARBITRATION CENTRE

- Five minutes walk from Four Courts
- Tribunal room with PA system and public gallery
- State-of-the-art recording system
- Five consultation rooms

Also suitable for:

- Board meetings
- Training sessions

Tribunal and arbitration facilities are located at Bow Street Friary, Dublin 7:

For booking phone: 01 804 4150



Scholars of the University of Dublin, Trinity College (defendants/appellants), Supreme Court, 10/4/2008 [FL15068]

PRACTICE AND PROCEDURE

Appeal

Hepatitis C Tribunal award – husband and wife – loss of earnings – deterioration in condition of wife – loss of consortium – second loss of earnings claim rejected – first claim as bar to second claim for loss of earnings – statutory interpretation – Hepatitis C Compensation Tribunal Act 1997.

The appellant sought to appeal a question of law to the High Court and then to the Supreme Court as to a claim made before the Hepatitis C Compensation Tribunal. In 1997, the appellant was awarded €5,000 for loss of earnings incurred on account of the illness of his wife. Her

condition subsequently deteriorated and the appellant made a subsequent claim, again alleging loss of earnings. In 2004, he was awarded €10,000 for loss of consortium, but the second loss of earnings claim was dismissed on account of his inability to succeed on a second claim for loss of earnings. The issue arose as to the interpretation of the jurisdiction for awards. The applicant alleged that the award made was provisional.

The Supreme Court held that the act did not provide for provisional awards of the type claimed by the appellant. There was no such jurisdiction for a court to exercise. The High Court was correct in finding that a bar to a future claim then existed.

F(J) (appellant) v Minister for Health and Children (respondent), Supreme Court, 10/4/2008 [FL15070]

PROPERTY LAW


Equity

Sale of land – right of way – arbitration – auction – general condition – estoppel – rescission – whether plaintiff vendor entitled to rescission of the agreement.

The plaintiff agreed to sell land to the defendants. An issue arose as to a right of way. The folio stated that the land benefited from a right of way. The right of way provided access to a main road. The defendant signed the agreement on the basis of the existence of the right of way. Subsequently, evidence suggested that the right of way did not exist and the defendant sought compensation. Arbitration between the parties was entered to resolve the matter, but the attitude of the plaintiff to arbitration was impugned as uncooperative. The plaintiff sought to rescind the agreement

and raised contractual conditions of the agreement.

MacMenamin J held that the plaintiff engaged in extensive efforts to avoid the arbitration taking place. Her delay led to the defendants acting to their detriment. On the basis of her conduct, the plaintiff lost the right to rescind. A high degree of imprudence existed on the part her agents to induce bids at the auction, sufficient to be a bar for rescission. The relief sought would be refused. The sale had not been rescinded by the plaintiff in accordance with the contract.

Kiely (plaintiff) v Delaney (defendant), High Court, Mr Justice MacMenamin, 14/3/2008 [FL15056] 

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



Law Society of Ireland

WEDDING CEREMONY AND RECEPTION IN ELEGANT BLACKHALL PLACE



Full catering and bar services for up to 200 people • Private grounds with extensive car parking
Attractive location for photographs, both inside and outside • Centrally located and easily accessible
Prestigious premises designed by Thomas Ivory • Available to solicitors' families and friends

CONTACT OUR CATERING MANAGER

Tel: 01 672 4800, fax: 01 672 4801, e-mail: a.gilhooly@lawsociety.ie, website: www.lawsociety.ie

Law Society of Ireland, Blackhall Place



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-54/0-7, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*, 10 July 2008. Feryn is a company that specialises in the installation of garage doors. The applicant brought an action before the Belgian labour courts seeking a declaration that Feryn had applied a discriminatory recruitment policy. A director of that company had made a public statement that his company was seeking to employ garage door installers but could not take on immigrants owing to the reluctance of its customers to give such persons access to their homes during the installation work. The ECJ was asked whether such statements, made by an employer in the context of a recruitment process, constitute discrimination if there is no identifiable complainant who considers himself to be the victim of it. The court looked to directive 2000/43 on implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin. It held that the absence of an identifiable complainant does not permit the conclusion that there is no direct discrimination within the meaning of the directive. Such statements are likely to strongly dissuade some applicants from applying for the post. Thus, the statements constitute direct discrimination in respect of recruitment within the meaning of the directive. The court held that, in a situation such as this, it is for the employer to prove that it has not infringed the principle of equal treatment.

The national court must then ascertain whether the facts alleged are established and assess the sufficiency of the evidence put forward to support the employer's claims that it has not infringed the principle of equal treatment. Public statements by which an employer lets it be known that, under its recruitment policy, it will not recruit any employees of a certain ethnic or racial origin are sufficient for the purpose of the directive to give rise to a presumption of the existence of a recruitment policy that is directly discriminatory. The court finally looked at sanctions. The directive requires that the member states provide effective, proportionate and dissuasive sanctions, even where there is no identifiable victim. They may consist, in particular, in a finding of discrimination by the national court in conjunction with an adequate level of publicity, in an order that the employer cease the discriminatory practice, or in an award of damages to the body bringing the proceedings.

FREE MOVEMENT OF PERSONS

Joined cases C-329/06, C-343/06 and C-334/06 to C-336/06, *Arthur Widemann v Land Baden-Württemberg*, *Peter Funk v Stadt Chemnitz*, *Matthias Zerche and Manfred Seuke v Landkreis Mittweida* and *Steffen Schubert v Landkreis Mittlerer Erzgebirgskreis*, 26 June 2008. Directive 91/439 provides that driving licences issued by a member state are to be given mutual recognition. According to the directive,

when the licence is issued, the holder must have his normal residence in the territory of the state issuing the licence. The holder must pass a test of skills and behaviour and a theory test and must meet certain medical standards. Several German nationals had their driving licences withdrawn in Germany for driving under the influence of alcohol or narcotic drugs. They went to the Czech Republic in 2004 and 2005 to obtain Czech driving licences. Some of them were resident in Germany when they obtained these licences. In Germany, anyone whose licence has been withdrawn for driving under the influence of alcohol or drugs must provide the competent authorities with a medical-psychological report establishing that the grounds that had justified the withdrawal are no longer valid. The German authorities refused to recognise the validity of these Czech driving licences in Germany, as such reports had not been presented. These were administrative decisions that were then challenged before the German courts. Those courts referred questions to the ECJ about the extent of member states' right to refuse to recognise in their territory driving licences issued by other member states. The ECJ held that, as a general rule, every member state must recognise, without any prior formality, driving licences issued by another member state, even if the latter does not impose the same requirements regarding the medical examination that makes it possible to obtain a licence. It is for the issuing state

to investigate whether the minimum conditions imposed by the directive for obtaining a driving licence have been satisfied. In consequence, the possession of a driving licence issued by one member state has, as a rule, to be regarded as constituting proof that its holder fulfilled those conditions when that licence was issued. However, a member state may, when a person has been the object of a measure within its territory withdrawing his driving licence and prohibiting any application for a new licence for a given period, refuse to recognise a new licence issued by another member state during that period of prohibition. It may not refuse to recognise a new licence issued by another member state following the expiry of any period in which the person concerned is forbidden to apply for a new licence, on the ground that the licence holder has not satisfied the necessary conditions in that first state for the issue of a new licence following the withdrawal of a previous licence. For reasons of road traffic safety, member states may apply their national provisions on the restriction, suspension, withdrawal or cancellation of driving licences to any licence-holder having normal residence in their territory. This right may only be exercised by reason of some conduct of the person concerned after he has obtained a driving licence issued by another member state. The sole residence condition ensures road safety, for it is indispensable if observance of the condition of fitness to drive is to be monitored. **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 5 December 2008)

Regd owner: Thomas Duignan, Swellan, Cavan, Co Cavan; folio: 1872; lands: Habsborough; **Co Cavan**

Regd owner: James V Malone; folio: 29143; lands: in the townland of Kilkerin in the barony of Clonderlaw; **Co Clare**

Regd owner: Edmond Walsh; folio: 2444F; lands: in the townland of Ballaghafadda West in the barony of Islands; area: 0.2478 hectares; **Co Clare**

Regd owner: Gerard Moloney; folio: 20527F; lands: in the townland of Doolough in the barony of Ibrickan; area: 19.997 hectares; **Co Clare**

Regd owner: Mary Leahy; folio: 6372; lands: in the townland of Derrynacarragh in the barony of Islands; **Co Clare**

Regd owner: Patrick and Margaret O'Gorman; folio: 27249; lands: in the townland of Fodry, Ross, Carrowmore South, Kilnaha North, in the barony of Moyarta, Ibrickan; **Co Clare**

Regd owner: Donal Buckley and Eileen Buckley; folio: 51658; lands: plot of ground situate in the parish of Rathcooney, known as 5 Saint Joseph's Park, Lotabeg, Mayfield, and in the county of Cork; **Co Cork**

Regd owner: Mervyn Sweetnam; folio: 43555F; lands: plot of ground situate in the townland of Chetwynd and barony of Cork; **Co Cork**

Regd owner: John (or) Sean O'Mahony (deceased); folio: 57543; lands: plot of ground situ-

ate in the townland of Maughanaclea and the barony of Bantry in the county of Cork; **Co Cork**

Regd owner: Aidan Kehoe and Anne-Marie Kehoe; folio: 3143L; lands: plot of ground situate in the townland of Carraigaline West and barony of Kerrycurrihy in the county of Cork; **Co Cork**

Regd owner: Jeremiah O'Riordan (deceased); folio: 28235F; lands: plot of ground known as 6 Clifton Road, in the parish of St Anne's-Shandon (ED Montenotte B) in the county of Cork; **Co Cork**

Regd owner: Donnacha O'Liathain; folio: 43927; lands: plot of ground situate in the townland of Coolflugh and barony of Muskerry in the county of Cork; **Co Cork**

Regd owner: Adrienne McCarthy; folio: 27297; lands: plot of ground situate in the townland of Foildarraig and barony of Bear; **Co Cork**

Regd owner: John Linehan; folio: 100587F; lands: plot of ground situate in the townland of Lackendarragh and barony of Dunhallow in the county of Cork; **Co Cork**

Regd owner: Patrick Allen; folio: 26163; lands: plot of ground situate in the townland of Curra (ED Kinure) and the barony of Kinalea in the county of Cork; **Co Cork**

Regd owner: Laurence Lenahan; folio: DN7327, DN7330; lands: property situate in the townland of Ballybrack and barony of Rathdown; **Co Dublin**

Regd owner: George Nitoi and Carol Maples-Nitoi; folio: 121153F; lands: 19 Millcourt Avenue, New Nangor Road, situate in the town and parish of Clondalkin; **Co Dublin**

Regd owner: Maura O'Connor; folio: DN2461; lands: property situate in the townland of Damastown and barony of Balrothery; **Co Dublin**

Regd owner: Patrick Hilliard and Lucy Irene Hilliard; folio: DN7724L; lands: property situate on the west side of Ballymun Drive, in the parish of Glasnevin and district of Glasnevin; **Co Dublin**

Regd owner: Noel Connolly; folio: DN16941F; lands: property situate in the townland of Bluebell and barony of Uppercross; **Co Dublin**

Regd owner: Margaret Bevan; folio: 13067; lands: 19 Dodsboro Cottages, Lucan, Dublin; **Co Dublin**

Regd owner: Terence and Noreen Byrne; folio: DN20014F; lands: property situate in the townland of Oldbawn and barony of Uppercross; **Co Dublin**

Regd owner: James Walsh and Anne Walsh; folio: DN46085L; lands: property situate in the townland of

Kilnamanagh and barony of Uppercross; **Co Dublin**

Regd owner: Michael J Murphy; folio: DN96410F; lands: property situate in the townland of College-land and the barony of Newcastle; **Co Dublin**

Regd owner: Anna Halpin; folio: DN8762; lands: property situate in the townland of Killalane and barony of Balrothery East; **Co Dublin**

Regd owner: Myra Margaret Graham; folio: DN12609F; lands: a plot of ground situate in the north side of Skelly's Lane in the parish of Artane and district; **Co Dublin**

Regd owner: Larkhill Credit Union Ltd; folio: DN4113L; lands: property situate on the east side of Swords Road in the townland of Santry and barony of Coolock; **Co Dublin**

Regd owner: Joseph Monks; folio: 5589; lands: certain lands at Kilrush, Rush, Co Dublin, being part of the townland of Rush and the barony of Balrothery East; **Co Dublin**

Regd owner: Eimear Hennessy and Sean Kennelly; folio: DN95547F; lands: property situate in the townland of Cooldrinagh and barony of Newcastle; **Co Dublin**

Regd owner: Brian Doherty; folio: 26372; lands: Druncrow; **Co Donegal**

Regd owner: William Joseph Power; folio: 9260; lands: townland of Ballyscully in the barony of Leitrim; area: 12.9499 hectares; **Co Galway**

Regd owner: Jarlath Dempsey; folio: 20540; land: townland of Mullaghmore East, Mullaghmore West in the barony of Tiaquin; **Co Galway**

Regd owner: James J Collins (deceased); folio: 16276 and 1650F; lands: townland of Aille in the barony of Galway; **Co Galway**

Regd owner: Mary Roche; folio: 34531; lands: townland of Cregacclare and Lackan (Dunkellin By) in the barony of Dunkellin; **Co Galway**

Regd owner: Galway City Council; folio: 16125F; lands: townland of Ballybaan Beg in the barony of Galway; area: 0.4734 hectares; **Co Galway**

Regd owner: Ann Hussey; folio: 62843F; lands: townland of Culleen in the barony of Clare; areas: 0.2300 hectares; **Co Galway**

Regd owner: Cyril Loughrey and Mairead Loughrey; folio: 32100F; lands: townland of Donaghpatrik in the barony of Clare; area: 2.671 hectares; **Co Galway**

Regd owner: John Enright; folio:

KY51957F; lands: townland of Shinnagh in the barony of Maguinihi; **Co Kerry**

Regd owner: Executive Golf World Ltd; folio: KY24680F, KY24438F; lands: townland of Reenroe, Emlaghmore West, Emlaghnamuck in the barony of Iveragh; **Co Kerry**

Regd owner: John P and Mary Galvin; folio: KY20222F; lands: townland of Doonmanagh in the barony of Corkaguiny; **Co Kerry**

Regd owner: Sean MacCarthaigh, Miceal O'Ruairc and John J Walsh, of St Mary's GAA Club; folio: KY22522; lands: in the townland of Caherciveen and in the barony of Iveragh; **Co Kerry**

Regd owner: John Moriarty of Baltracey, Donadea, Co Kildare; folio: KE574F; lands: in the townland of Baltracey (Ikeathy and Oughterany By) in the barony of Ikeathy and Oughterany in the electoral division of Balraheen; **Co Kildare**

Regd owner: Deirdre Forde of 21 Walshestown Abbey, Newbridge, Co Kildare; folio: 43220F; lands: townland of Walshestown (Connell By) and barony of Connell; **Co Kildare**

Regd owner: Mayor, Aldermen and Burgesses of the Borough of Kilkenny; folio: 12313; lands: Archerstreet Lot in the barony of Shillelogher; **Co Kilkenny**

Regd owner: Lance O'Brien; folio: 12156F; lands: Grange Lower in the barony of Gowran; **Co Kilkenny**

Regd owner: Seamus Freyne; folio: 2314F; lands: Luffany in the barony of Ida; **Co Kilkenny**

Regd owner: Anthony Nolan and Mary Nolan (deceased); folio: 4206F; lands: Rathmoyle in the barony of Cullenagh; **Co Laois**

Regd owner: Michael J Flynn; folio: LK3069F; lands: townland of Sugarhill in the barony of Glenquin; **Co Limerick**

Regd owner: James Gerard Alphonsus Hickey; folio: LK8471, LK11055; lands: townland of Inch St Laurence North in the barony of Clanwilliam; **Co Limerick**

Regd owner: Thomas Noel Malone; folio: LK381L; lands: townland of St Mary's in the barony of John's C; **Co Limerick**

Regd owner: John and Philomena Birdthistle; folio: LK24539F; lands: in the townland of Woodpark in the barony of Clanwilliam; **Co Limerick**

Regd owner: Ross Flanagan; folio: LK16049F; lands: townland of St Patrick's in the barony of Limerick; **Co Limerick**

Regd owner: Richard O'Shaughnessy;

folio: LK48048F; lands: townland of Baunacloka in the barony of Pubblebrien; **Co Limerick**

Regd owner: Sean Maguire and Jacinta Byrne, Soran Lower, Ballinalee, Co Longford; folio: 185F; lands: Soran; **Co Longford**

Regd owner: Adrian Sharkey and Patricia Sharkey; 101 Cherrybrook, Ardee, Co Louth; folio: 4964F; lands: Stonylane; **Co Louth**

Regd owner: Frank Czerski (deceased) and Bozena Czerski; folio: 13955F; lands: townland of Garryduff in the barony of Carra; **Co Mayo**

Regd owner: Martin T McLoughlin; folio: 39385; lands: townland of Salvia in the barony of Burrischoole; **Co Mayo**

Regd owner: Aidan and Mary Walsh; folio: 8385F lands: townland of Knockrooskey, Aghagower, Westport, in the barony of Burrishoole; **Co Mayo**

Regd owner: Paula Moran; 1 Old Fair Green, Dunboyne, Co Meath; folio: 28266F; lands: Dunboyne; **Co Meath**

Regd owner: Mathew Farrell; folio: 2004F; lands: Townsparks in the barony of Philipstown Lower; **Co Offaly**

Regd owner: Gerard Fallon; folio: 5518F; lands: townland of Ard-mullan, part of Carrick, Castlesampson, in the barony of Athlone South; **Co Roscommon**

Regd owner: John Clarke; folio: 14223F; lands: townland of Doon in the barony of Roscommon; area: 8.025 hectares; **Co Roscommon**

Regd owner: Percy Hanly; folio: 1762F; lands: Ashbrook, Knocknabarnaboy, Bellmount, Cloggernagh; **Co Roscommon**

Regd owner: Charles Nicholson (deceased); folio: 136L; lands: townland of Calry in the barony of Sligo; **Co Sligo**

Regd owner: Helen O'Connor; folio: TY10838F; lands: townland of Burgagery West in the barony of Iffa and Offa East; **Co Tipperary**

Regd owner: Patrick and Theresa Ryan; folio: TY5218F; lands: townland of Rathcloheen in the barony of Clanwilliam; **Co Tipperary**

Regd owner: Michael Caplis Junior; folio: 39919 Co Tipperary; lands: townland of Cooleen and barony of Owney and Arra; **Co Tipperary**

Regd owner: Annie Coffey (deceased); folio: 5931; lands: plot of ground situate in the townland of Knockboy (ED Seskinan) and barony of Decies-Without-Drum; **Co Waterford**

LAW SOCIETY Gazette

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICE SECTION ARE AS FOLLOWS:

- **Lost land certificates** – €144.50 (incl VAT at 21.5%)
- **Wills** – €144.50 (incl VAT at 21.5%)
- **Title deeds** – €144.50 per deed (incl VAT at 21.5%)
- **Employment/miscellaneous** – €144.50 (incl VAT at 21.5%)

These rates will apply from January 2009 until further notice

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €33 EXTRA

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND**. Deadline for Jan/Feb *Gazette*: 21 January 2008. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

Regd owner: Quest Contracting Limited; folio: 25936F; lands: plot of ground situate in the townland of Ballygarran and barony of Gaultiere in the county of Waterford; **Co Waterford**

Regd owner: Barry F Finnegan; folio: 820F; lands: plot of ground situate in the townland of Clashanahy and barony of Decies-Within-Drum in the county of Waterford; **Co Waterford**

Regd owner: Patrick Swan (deceased) and Pauline Swan; folio: 23842F; lands: Ramstown in the barony of Shelburne; **Co Wexford**

Regd owner: William Tanner and Dawn Tanner; folio: 848; lands: Hilltown in the barony of Forth; **Co Wexford**

Regd owner: John Doyle (otherwise John Joseph Doyle); folio: 3398F; lands: Shelbaggan, barony of Shelbourne; **Co Wexford**

Regd owner: Joan O'Connell, of 6 Kilronan Court, Saint Lawrence Road, Clontarf, Dublin 3; folio: 5785F; lands: townland of Blackditch, known as 10 Seacourt, Blackditch, Newcastle, in the barony of Newcastle, in the electoral division of Newcastle Lower; **Co Wicklow**

Regd owner: Peter Kelly; folio: 7828; lands: townland of Eadestown South and Eadestown Hill and the Barony of Talbotstown Upper; **Co Wicklow**

Regd owner: Terence Aiden Hayes; folio: 12099; lands: situate in the townland of Kilcavan Lower, barony of Shillelagh and county of Wicklow; **Co Wicklow**

WILLS

Lalor, Margaret (deceased), late of Boherard, Clough, Ballacolla in the county of Laois. Would any person having knowledge of a will executed by the above-named deceased, who died on 6 March 2007, please contact James E Cahill & Company, Solicitors, Market Square, Abbeyleix, Co Laois; tel: 057 873 246 or 057 873 1220, email: donalwdunne@securemail.ie

Moran, Winifred (deceased), would any person having knowledge of the whereabouts of a will made by the above-named Winifred Moran, dated 5 November 1990, of St Kieran's, Rathcabbin, Roscrea, Co Tipperary, and formerly of Redwood, Lorrha, Nenagh, in the county of Tipperary, please contact James J Kearns & Sons, Solicitors, Portumna, Co Galway; tel: 090 974 1003/41212, fax: 090 974 1298

Quinn, Margaret (deceased), late of 33 Island Road, Upstreet, Kent, and Annagh, Tourlestrane, Co Sligo, who died on 15 March 1971 at St John's Hospital, Sligo, having made a will on 20 May 1969 at Kent in England. Would any person having knowledge of a will made by the above-named deceased please contact Henry Kearins & Co, Solicitors, 14 Lord Edward Street, Sligo; tel: 071 914 5348, fax: 071 914 6622, email: valeriekearins@eircom.net

MISCELLANEOUS

Outsourcing: Dublin law firm with experienced staff and extensive precedents available for legal work on contract basis. Direction from principals in relation to client contact respected and assured. Files can be actioned on a project or retainer basis. Suitable to firms reducing overheads or pressurised by expanding caseloads. Contact **box 90/12** in confidence

Wanted for purchase: small to medium-size solicitors' practice in the North East area. If interested, please contact **box no 90/13**. Genuine enquiries only, which will be treated in the strictest of confidence

Furnished office space – available to let mid-November. Top floor, Ulysses House, Foley Street, Dublin 1. The space consists of three individual offices, a meeting room and open space. Excluding the common areas, the net space is approx 700 sq ft. Close to all public transport: beside Connolly, Bus Áras and IFSC. Adjacent to LUAS – five minutes to Four Courts. Very suitable for small professional firm. Terms are flexible and service charge is incorporated in the rent. Please contact: James Staines at js@oocw.ie or 087 273 5934 for further details

Full off-licence – intoxicating liquor licence (spirits, beer and wine) – for sale. All enquiries to Sreenan & Company Solicitors, Kenmare; tel: 064 664 2656, fax: 064 664 2658

GALWAY CITY Solicitor's practice for sale by tender

OWNER RETIRING

Please contact: KJ Rooney & Co Solicitors,
Colonial Buildings, Eglinton Street, Galway,
for copies of tender documents.

All enquiries in writing only please.

Small office suite (950sq ft) to let in The Capel Building, Dublin 1 – convenient to Four Courts, Luas and city centre. Communal amenities include kitchen, bathrooms, lifts, meeting rooms, shower facilities, car parking and impressive foyer. Price €35 psf. Flexible lease terms. Call Pat on 087 243 0027

Westside bookkeeping services, specializing in solicitors' accounts. Experienced bookkeeper available to maintain and update accounts – on site. Professional references available. Contact: Michelle Ridge @ Westside Bookkeeping; mobile: 087 293 0347, email: mridge@indigo.ie

Full seven-day intoxicating liquor licence for sale. Contact Martin J Kearns & Co, Solicitors, 1 Devon Place, The Crescent, Galway; tel: 091 589 219, fax: 091 589 193, email: mjkearns@martinjkearns.ie

TITLE DEEDS

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 Dublin City Council in the matter of the properties at 51 and 52 Lower Sean McDermott Street in the city of Dublin

Take notice that any person having an interest in the freehold estate in the properties now known as 51 and 52 Lower Sean McDermott St, in the city of Dublin, and described in the four indentures of lease (details of which are set out below) as "all that and those that plot or parcel of ground situate on the west side of Buckingham Street next adjoining to and on the north side of Lower Gloucester Street in the parish of Saint Thomas and county of the city of Dublin containing in front to Buckingham Street one hundred and twelve feet of building ground the same number of feet in the rear and extending in depth from Buckingham Street to the flank wall of the houses and premises called Gloucester Terrace together with the free use of a lane to be laid out fifteen

feet wide at the least from the north west angle of said demised premises to the opening or street called Belle Street".

Lease dated 12 June 1843, made between William Parsons Hoey of the one part and William Kenny of the other part, subject to the yearly rent of stg£1.3s.4d.

Lease dated 12 June 1843, made between Anthony Lyster of the one part and William Kenny of the other part, subject to the yearly rent of one peppercorn, if demanded, for the first three years and thereafter £3.10s.

Lease dated 12 June 1843, made between Lancelot Fisher of the first part, Laurence Walker of the second part and William Kenny of the third part, subject to the rent of stg£10.

Lease dated 12 June 1843, made between Elfrida Lady Neville of the first part, Higott Tench of the second part and William Kenny of the third part, subject to the yearly rent of one peppercorn, if demanded, for the first three years and thereafter stg£1.3s.

All of said leases demised for a term of 500 years from 1 May 1843.

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

In default of any such notice being received, the applicant, Dublin City Council, 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 persons or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown and unascertained.

Date: 5 December 2008

Signed: Terence O'Keeffe, Dublin City Council, Civic Offices, Wood Quay, Dublin 8 (law agent and solicitor for the applicant)

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the lands and premises situate at Jones Road, Dublin 3, formerly known as 51 Jones Road (Russell Terrace): an application by Pairc an Chrocaigh Teoranta

Take notice that any person having an interest in the freehold estate or any superior interest in the property formerly known as no 51 Jones Road (formerly Russell Terrace), held under indenture of sublease dated 16 May 1866 and made between Maurice Butterly of the first part, Robert Erskine of the second part and Thomas Wall of the third part for the term of 300 years from 25 March 1866 and therein described as "all that and those that piece or plot of ground situate on the East side of the Street or Road called Jones's Road in the Parish of Saint George and County of Dublin containing in front to the said Street or Road sixty feet or thereabouts in breadth in the rear sixty feet or thereabouts in depth from front to rear on the North side one hundred and thirty seven feet or thereabouts and in depth from front to rear on the South side one hundred and thirty seven feet or thereabouts bounded on the West by Jones' Road and on the North and South by land now in the possession of the said Maurice Butterly and on the East by other land called Loves Charity in the possession of the said Maurice Butterly".

Take notice that Pairc an Chrocaigh Teoranta intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below named within 21 days from the date of this notice.

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

Date: 5 December 2008

Signed: Reddy Charlton McKnight (solicitors for the applicant), 12 Fitzwilliam Place, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of no 5 Airfield Court, Donnybrook, Dublin 4, and in the matter of an application of Keavy Lalor ('the applicant')

Take notice that any person having any interest in the freehold estate of the following property: no 5 Airfield Court, Donnybrook, Dublin 4.

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

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

Date: 5 December 2008

Signed: Richard Black (solicitors for the applicant), Beechfield House, Clonee, Dublin 15

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

Any person having any interest in the freehold estate of the property known as number 30 Lower Grange in the city of Waterford.

Take notice that Edward Heazle intends to submit an application to the county registrar for county of the city of Waterford for the acquisition of the freehold interest of 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 the title to the aforementioned premises to the below named within 21 days from the date of the publication of this notice.

In default of any such notice being received, Edward Heazle intends to proceed with the application before the county registrar at the end of 21 days from the date of the publication

of this notice and will apply to the county registrar for the county of the city of Waterford for directions as may be appropriate on the basis that the persons beneficially entitled to a superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 5 December 2008

Signed: Peter O'Connor & Son (solicitors for the applicant), Wyse House, Adelphi Quay, Waterford

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 7A Oakley Road, Ranelagh, Dublin 6, and in the matter of an application by Brian Hade, Noel Griffin and John Lyons

Take notice that any person having an interest in the freehold estate or any intermediate interest of the following property: all that and those "all that piece or plot of ground and the dwelling house thereon known as Wellington Park House situate at Oakley Road Rathmines and more particularly described on the map indorsed on an indenture of lease dated the nineteenth day of April one thousand nine hundred and seventy

six and made between Percival Albert Jones of the one part and Elizabeth MacNaughton of the other part" and thereon coloured red and, secondly, "the piece of land adjoining the first named premises and forming a way or passage into Charlestown Road, Rathmines, and more particularly shown on the said map and coloured green, all of which premises are in the parish of Saint Peter and the barony of Upper Cross and county of Dublin to hold the premises first described unto the lessee from the first day of September one thousand nine hundred and twenty five for the term of two hundred and fifty years and to hold the premises secondly described unto the lessee from the twenty fifth day of March One thousand eight hundred and sixty nine for the residue of the term of one hundred and thirty three years and for such longer term up to and ending the first day of September two thousand one hundred and twenty five as the lessor may hereafter be able to give, yielding and paying therefor during the said term of two hundred and fifty years the yearly rent of twenty five pounds", being the properties also comprised in folios 56604L and 56605L of the register of leaseholders county of Dublin.

Take notice that Brian Hade, Noel Griffin and John Lyons intend to submit an application to the county registrar for the city of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and that any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property are called upon to furnish evidence of title to the below named solicitors within 21 days from the date of this notice.

In default of any such notice being received, Brian Hade, Noel Griffin and John Lyons intend 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 the 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 intermediate interest including the fee simple in the aforesaid property are unknown or unascertained.

Date: 5 December 2008

Signed: Padraig O'Donovan and Company (solicitors for the applicants), Abberley Law Centre, High Street, Tallaght, Dublin 24

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) Act 1967 and the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of premises situated at Castle Street, Mullingar, Co Westmeath, being part of the premises known as the Ritz Cinema: an application by Darragh Caffrey

Take notice that any person having any interest in the freehold estate of, or any superior or intermediate interest in, the hereditaments and premises situate at Castle Street in the town of Mullingar, barony of Moyashel and Magheradernon, county of Westmeath, being part of the property now known as the Ritz Cinema, Castle Street, Mullingar, and part of the property held under an indenture of lease made 16 March 1870 between James O'Brien and others of the one part and Patrick McCormack of the other part for the term of 200 years from 29 of September 1869, should give notice to the under-signed solicitors.

Take notice that the applicant, Darragh Caffrey, intends to apply to the county registrar for the county of Westmeath for the acquisition of the

Publication of advertisements in this section is on a fee basis and does not represent an endorsement by the Law Society of Ireland.

ENGLISH LAW AGENCY SERVICES

Fearon & Co SOLICITORS

Established 1825

Fearon & Co specialise in acting for non-residents in the fields of Probate, Property and Litigation. In particular:-

- Obtaining Grants of Representation for Estates in England, Channel Islands, Isle of Man and elsewhere
- Administering English Estates
- Buying and selling homes and business premises
- Recovering compensation for accident victims
- Litigation including Debt Recovery and Matrimonial

Our offices are within easy reach of the London Airports and Central London Stations

VISIT OUR WEBSITE
www.fearonlaw.com

Westminster House, 6 Faraday Road,
Guildford, Surrey GU1 1EA, United Kingdom

Tel: 00 44 (0)1483 540840 Fax: 00 44 (0)1483 540844
General Email: enquiries@fearonlaw.com

LITIGATION
Martin Williams
00 44 (0)1483 540843
mw@fearonlaw.com

PROPERTY
John Phillips
00 44 (0)1483 540841
ajp@fearonlaw.com

PROBATE
Francesca Nash
00 44 (0)1483 540842
fn@fearonlaw.com

Regulated by the Solicitors Regulation Authority of England and Wales



SPANISH LAWYERS

RAFAEL BERDAGUER

ABOGADOS

TWENTY YEARS ADVISING CLIENTS
IN REAL ESTATE TRANSACTIONS IN SPAIN

PROFILE:

Spanish Lawyers Firm focused on serving the need of the foreign investors, whether in company or property transactions and all attendant legalities such as questions of inheritance, taxation, accounting and bookkeeping, planning, land use and litigation in all Courts.

FIELD OF PRACTICES:

General Practice, Administrative Law, Civil and Commercial Law, Company Law, Banking and Foreign Investments in Spain, Arbitration, Taxation, Family Law, International Law, Litigation in all Courts.

Avda. Ricardo Soriano, 29,
Edificio Azahara Oficinas, 4 Planta, 29601 Marbella, Malaga, Spain

Tel: 00-34-952823085 Fax: 00-34-952824246
e-mail: rberdaguer@berdaguerabogados.com
Web site: www.berdaguerabogados.com

HIRING CHALLENGES?

Temporary Litigation, Mediation/ADR and Legal Consultancy Services may be your solution. Cost and tax efficient. Provided by former Partner in Private Practice and Principal of In-House Law Firm. References available.

Contact: Caroline Murphy BCL DBS,
Solicitor & Accredited Mediator.
carolinemurphysolicitor@gmail.com
087-6521135

freehold interest and all intermediate interests in the above-mentioned property, and any party asserting that they hold an interest superior to the applicant in the aforesaid property are called upon to furnish evidence of title to same to the below-named solicitors within 21 days from the date hereof.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Westmeath for such direction as may be appropriate on

the basis that the person or persons beneficially entitled to such superior interest including the freehold reversion in the aforementioned property are unknown or unascertained.

Date: 5 December 2008

Signed: Liam F Cogblan & Co, Solicitors, 'Woodhaven', Ballycasheen Upper (off Hazelwood Drive), Killarney, Co Kerry

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 a dwellinghouse and premises with forge attached thereto, being part of the lands of

Keaymore, situate in the parish of Kilmacabea and barony of West Carbery (East Division) in the county of Cork: an application by Maura McCarthy

Take notice that any person or persons having any interest in the freehold estate or the superior interest of the following property: dwellinghouse and premises with forge attached thereto, being part of the lands of Keaymore, situate in the parish of Kilmacabea and barony of West Carbery (East Division) in the county of Cork, held by Julia O'Donoghue, deceased, late of Keaymore, Co Cork, under an indenture of reversionary lease dated 14 April 1938 and made between Johanna Callaghan and Margaret Frances Callaghan (therein called 'the lessors') of the one part and Julia O'Donoghue (therein called 'the lessee') of the other part, for the term of 99 years from 25 March 1938, subject to the yearly rent of £1 (€1.27) and subject to the covenants and conditions therein contained.

Take notice that Maura McCarthy, of 7 Grangebrook Close, Rathfarnham, Dublin 16, in the city of Dublin, intends to submit an application to the county registrar for the county of Cork 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 aforesaid 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, Maura McCarthy, intends to proceed with the application before the county registrar for the county of Cork at the end of 21 days from the date of this notice and shall apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold interest of the aforesaid property are unknown or unascertained.

Date: 5 December 2008

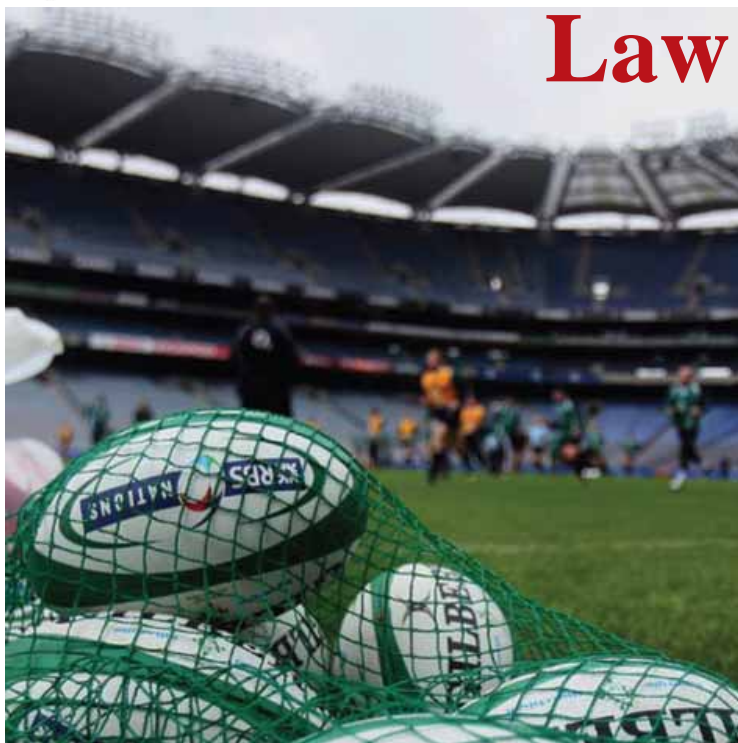
Signed: Carroll Kelly & O'Connor (solicitors for the applicant), 90 Marlborough Road, Donnybrook, Dublin 4

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of an application by Heuston Property Trading and Development Company Limited

Take notice that any person having any interest in the freehold estate or any intermediate interests in the following property: all that and those the premises comprised in the lease dated 7 April 1919 between Sarah Crozier and Herbert Charles Crozier of the one part and A&B Taxis



Rugby lunch at the Law Society



Members are invited to a buffet lunch at the Law Society, Blackhall Place, on 7 February 2009 and 28 February 2009 on the occasion of the home Six Nations rugby matches against France and England.

Tickets at €25 each, in aid of the Solicitors Benevolent Fund, can be obtained from Maria Hoey and can be ordered by post or by email to m.hoey@lawsociety.ie. Tickets will entitle members to a buffet lunch, glass of wine and shuttle bus to Croke Park. Numbers are limited to 100 and will be provided on a 'first come, first served' basis.

SOLICITOR'S PRACTICE FOR SALE

Limerick city

UNIQUE OPPORTUNITY

Contact (principals only) to:

Micheál Ó Laoide FCA
Norman O'Leary &
Company,
Chartered Accountants
River Front,
Howleys Quay,
Limerick.

Phone: 061 401111
email:
molaoide@oleary-co.ie

Limited of the other part (hereinafter called 'the lease') and therein described as "all that piece or plot of ground situate at the rear of Nos 27, 27A, 28 and 29 Parkgate Street and adjoining the garden at No 25 Montpellier Hill aforesaid now in the occupation of the said Sarah Crozier bounded on the North side by the lessor's premises and measuring 180 feet 6 inches on the South-west by the lessor's premises and measuring 121 feet 4 inches on the South by part of the lessee's premises behind no 28 Parkgate Street and by the premises Nos 27 and 27A Parkgate Street and measuring 63 feet 6 inches on the East by premises in the possession of the lessors and by the Lucan Dairy premises and measuring 30 feet 6 inches and on the West by a passage or cul de

sac in possession of the lessors and measuring 11 feet 10 inches which said premises are more particularly delineated on the map drawn in the fold of these presents and thereon coloured red and are situate in the parish of St Paul and city of Dublin otherwise county borough of Dublin", and held under the lease for a term of 99 years from 1 December 1918 and subject to the yearly rent of £15 thereby reserved.

Take notice that that the applicant, Heuston Property Trading and Development Company Limited, intends to submit an application to the county registrar for the county of the city of Dublin for acquisition of the freehold interest and all superior interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the property to the below named within 21 days from the date hereof.

In default of any such notice being received, the applicant, Heuston Property Trading and Development Company Limited, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of 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 in the property are unknown and unascertained.

Date: 5 December 2008

Signed: Kilroys Solicitors, 69 Lower Leeson 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

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 (POE).**

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*.

in the matter of an application by Joseph O'Reilly

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises known as 52 Upper O'Connell Street, in the parish of Saint Thomas and city of Dublin, the subject of a lease dated 28 February 1916 made between John Hunt of the one part and Frank William Chambers of the other part (with an endorsement thereon dated 3 May 1934 made between Thomas Hunt of the one part and The Carlton Cinema (Dublin) Limited of the other part), for a term of 250 years from 2 January 1914, subject to the yearly rent of £265 thereby reserved.

Take notice that Joseph O'Reilly, being the person entitled to the lessee's interest in the said lease, intends to apply to the Dublin county registrar at Aras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly 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 registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 5 December 2008

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

RECRUITMENT

Cannot afford a solicitor on a continuing basis? Working

long hours, worried about difficult and tedious files? Experienced travelling locum solicitor, general practitioner, now available full time or part time. CV and references available on request. Please contact Sean, mobile 086 320 7180

Post-PPCI trainee solicitor seeks to complete training contract from March 2009.

Highly motivated, hardworking individual with good experience in many areas and excellent skills. All locations and fields of practice considered. Contact Paul on 087 977 1716

FREE LOCUM RECRUITMENT REGISTER

For Law Society members seeking a position as a **locum solicitor** or seeking to employ a locum solicitor.

Log onto the new self-maintained locum recruitment register on the members' area of the Law Society website, www.lawsociety.ie, or contact Trina Murphy, recruitment administrator, at the Law Society's Cork office, tel: 021 422 6203 or email: t.murphy@lawsociety.ie



Law Society of Ireland

FREE EMPLOYMENT RECRUITMENT REGISTER

For Law Society members to advertise **for all their legal staff requirements**, not just qualified solicitors.

Log onto the new expanded employment recruitment register on the members' area of the Law Society website, www.lawsociety.ie, or contact Trina Murphy, recruitment administrator, at the Law Society's Cork office, tel: 021 422 6203 or email: t.murphy@lawsociety.ie



Law Society of Ireland