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Gazette
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THOMSON ROUND HALL

On the cover

Solicitors may occasionally be asked to act as executor to a client's will. But there are issues to be considered before setting foot in what might be shark-infested waters

PIC: GETTY IMAGES

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LAW SOCIETY Gazette

July 2008

REGULARS

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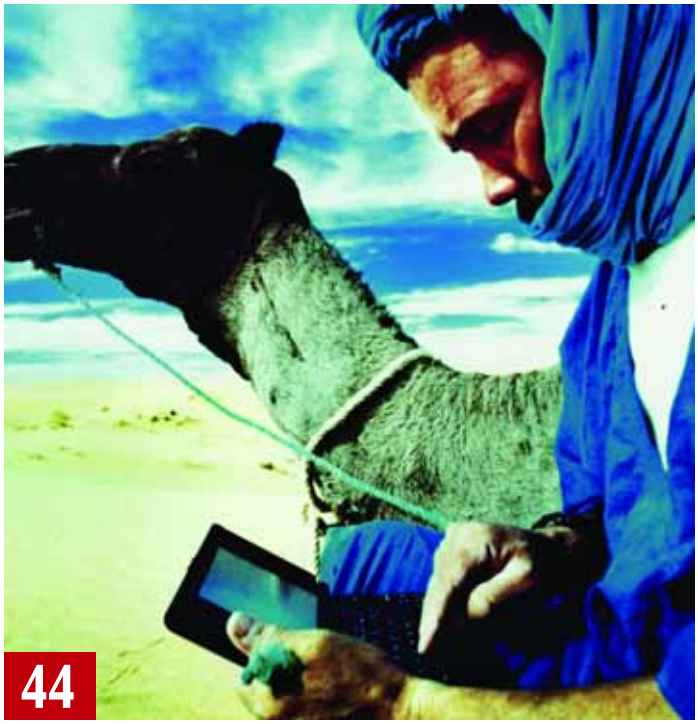
FEATURES



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LAW SOCIETY OF IRELAND

CPDFOCUS

ESSENTIALS OF LEGAL PRACTICE COURSE 2008

Dates: 5th August to 27th August 2008, (Monday to Friday)

Venue: The Education Centre, The Law Society of Ireland, Blackhall Place, Dublin 7

Times: 9.30am to 4.30pm each day

Cost: €2,700 per person

Who Should Apply:

- Barristers (with 3 years experience in practice, whose applications have been pre-approved by the Education Committee) who wish to transfer to the solicitor's profession.
- Solicitors who have been out of practice for a number of years and are seeking to refresh their knowledge, for the purpose of re-entering practice.
- Registered European Lawyers and Qualified Lawyers Transfer Test candidates.
- Other legally qualified applicants with the prior approval of the Education Committee.

Aim and Objectives:

This course aims to cover the core essentials of legal practice. Topics include Professional Conduct, Solicitors' Accounts Regulations, Conveyancing and Probate/Tax modules. Intensive in its nature, it will bring professionals up-to-speed in these areas, in a concise, condensed manner during the month of August, a time usually reserved for vacation.

Upon successful completion of this course (and the in-office period – up to a maximum of 6 months), barrister candidates are eligible to be entered on the Roll of Solicitors.

Course Outline:

Topics to be covered include:

1. Professional Practice, Conduct and Management
2. Solicitors' Accounts Regulations
3. Probate and Taxation
4. Conveyancing

This course will be delivered through a combination of lectures and tutorial based teaching and learning methodology. Attendance at all elements is mandatory.

Contact Details:

For further details please call Alison Egan, The Law Society of Ireland, Education Department phone :01 672 4802

email: a.egan@lawsociety.ie | website www.lawsociety.ie.

An té nach bhfuil láidir ní folair dó a bheith glic!

As the Chinese curse goes: 'May you live in interesting times'. Change in the general economy provokes change in the legal economy. Colleagues, therefore, have to respond promptly and flexibly to changing circumstances and tailor their practices to suit their personal requirements and market conditions.

To that end, the Society, through its Practice Management Task Force, chaired by Philip Joyce, has been hard at work over the last year, conducting research in order to offer guidance to colleagues who wish not only to rise to present challenges, but also to seize the opportunities that change can present. It is intended to present this guidance at seminars throughout the country, and I would encourage as many of you as possible to attend and benefit from the hard work and sound thinking of Philip and his team.

Continuing on the theme of flexibility and creative thinking, I want to bring to your attention an exciting development from the Law School. As you know, by virtue of *Bille na nDlí-Chleachtóirí (An Ghaeilge) 2007*, shortly to be enacted, the compulsory Irish examinations will be abolished. The Society welcomes this development and I am personally in no doubt that the compulsory, but tokenistic, examinations did more to damage the language than to preserve it. In its place, the Society is providing legal practice Irish courses. The first course for the PPCII students concluded on 19 June 2008. Hand on heart, I have to say, I am extremely proud of the imaginative 21st century course put together by our Law School, with the support of the Department of Community, Rural and Gaeltacht Affairs through Fiontar DCU. Fiontar is funded by the department to liaise with Foras na Gaeilge (which has statutory responsibility for the creation of new terminology in Irish) and Rannóg an Aistriúcháin (who translate primary legislation into Irish and accordingly have particular expertise on legal terminology matters). Peig Sayers would undoubtedly be spinning at double-time if she could see that the Law School's Moodle technology is now bilingual and that colleagues have an opportunity to improve their Irish online and with podcasts. The *pièce de resistance*, however, was securing the talents of Kevin O'Hara, linguist and psychologist, to lead the course. The feedback was universally enthusiastic and, in his own inimitable fashion, he has instilled in all of us a sense of fun, confidence and responsibility where the language is concerned.

Kevin also leads the more advanced CPD Certificate in Legal Irish course, geared to equip colleagues to practise through Irish. The feedback there is excellent also.

I would also like to bring you up to date with developments in relation to the *Legal Services Ombudsman Bill*. The bill has completed its second reading in the Dáil and we are hopeful that it will get priority for its committee stage. It was striking that, at the second stage, concern was expressed by a number of deputies that section 5(3), as presently drafted, might permit a former practising lawyer to be appointed as ombudsman. The Society readily understands those deputies' concerns and, for our part, we believe that, in the interests of transparency and to build public confidence, the legislation could be improved to make it plain that the ombudsman cannot be a person who has ever practised as a solicitor or barrister.

Congratulations of the month go to colleague Ken Murray, newly-elected mayor of Midleton. Only a heartbeat away...

Finally, I wish you an enjoyable summer break and good luck to those of you who hope to travel to Croke Park in September! G

James MacGuill
President

"Hand on heart, I have to say, I am extremely proud of the imaginative 21st century course put together by our Law School"

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MEATH

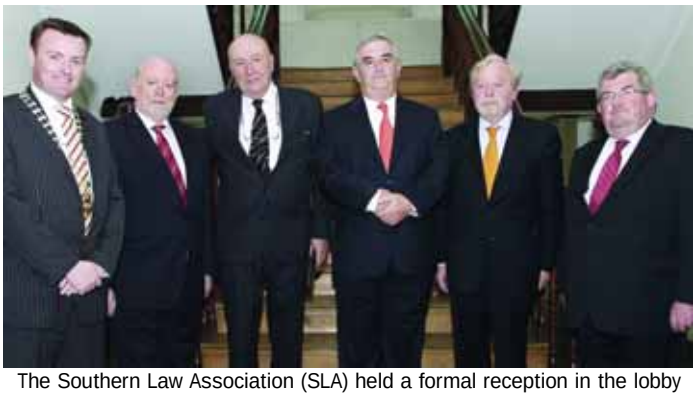
A presentation dinner was held recently to honour Judge John Brophy following his retirement after 16 years of sitting in the District Court. Presentations were made also to Judge Tom Fitzpatrick as the new sitting judge, Judge Brian McMahon on his elevation to the High Court bench, and to Mary O'Malley on her appointment as the Meath County Registrar.

DUBLIN

I was delighted to represent the Dublin Solicitors' Bar Association (DSBA) at a recent weekend in Northern Ireland. For many years now, Dublin has had a particular relationship with both Liverpool and Belfast. Each year, one bar association hosts a weekend in their respective jurisdictions. This year it was Belfast's turn, and we were based in the Slieve Donard in the picturesque maritime village of Newcastle, Co Down. Saturday was spent on a delightful trek through the majestic Mourne countryside, followed in the late afternoon by a sumptuous reception and a black-tie event. It will be Liverpool's turn next year and I cannot wait to see what delights await.

DSBA members are looking forward to Justin McKenna's next Probate Committee meeting, including Jennifer Tuite, Sonya Manzars, Cedric Christie, Finola O'Hanlon and Anne Stephenson. While the turgid matters of discretionary trusts, *de bonis non* grants and section 117 of the *Succession Act* will, of course, be parsed and considered, the compensations for Justin's hard-working committee is that the meeting takes place on water, courtesy of Justin's yacht, somewhere in Dublin Bay, followed by refreshments in the yacht club. Now, is that not a pleasant first!

A special meeting of the DSBA Council took place recently, examining the role of the association currently and into the next decade. It was regarded by all as a very useful meeting and was well attended. Michael Quinlan is putting together a group to look closely at all aspects raised.



PIC: BAUMANN AND MURPHY PHOTOGRAPHY

The Southern Law Association (SLA) held a formal reception in the lobby of the courthouse in Washington St recently to mark the first joint visit to the city by Chief Justice John Murray and President of the High Court Richard Johnson. *(L to r)*: SLA President Pat Mullins, Judge Seán Ó Donnabháin (Circuit Court), President of the High Court Richard Johnson, Chief Justice John Murray, Judge Patrick Moran (Circuit Court) and Judge Con Murphy (Circuit Court)

WEXFORD

Helen Doyle reports of several get-togethers among Wexford colleagues. There was a large attendance at a recent lively and informative practice management seminar. As bar association president, Helen and the secretary John Garahy attended a meeting of Co Wexford's court users' group. Says Helen: "I am delighted to report that progress has been made with the renovations of Enniscorthy courthouse. This is expected to be back in use by early next year, located within the new civic centre."

Work is in hand for the provision of a new court complex in Wexford town, while planning for the renovation of New Ross courthouse is underway. In the Circuit Court, Helen advises that there are currently three judges sitting in the south-eastern circuit, with eight weeks of sittings in Gorey in addition to the scheduled sittings in Wexford.

CORK

The Southern Law Association (SLA) held a formal reception at the courthouse in Washington St recently to mark the presence in the city of Chief Justice John Murray and President of the High Court Richard Johnson. SLA president Pat Mullins officiated. Both judges took the High Court on Circuit sessions and, at the conclusion, were presented with silver letter-openers engraved to mark the occasion. "This was the first time that the Chief Justice and President of the High Court had gone on circuit together outside the Pale," said Pat. "I was delighted on behalf of the SLA to thank the President of the High Court for the delivery of non-jury lists to Cork, in addition to the many other sittings of the High Court in Cork." The reception was attended by judges of the Circuit Court, senior and junior counsel, members of the Courts Service and SLA members.

Surprisingly for a proud Cork man, Pat did not mention either the Heineken Cup or the epic achievements of Niamh Gunn, a Cork lady who recently and deservedly made international headlines for her work on the Innocence Project, which led to the release of Walter Swift from prison after 26 years for a crime he did not commit. Walter, Niamh and famous US attorney Barry Scheck are due to visit the Law Society's HQ on 16 July.

GALWAY

James Seymour tells me that the final seminar in the Galway Bar Association spring series, on examinership (presented by BDO Simpson Xavier) and mediation, was held recently in the courthouse. This was followed by a barbecue in O'Connell's pub in Eyre Square. The series enjoyed significant support by paid-up members and contributed 15 hours of CPD. The association is currently compiling its autumn series and would welcome emailed suggestions to info@seymourandco.ie. Finally, James tells me that the GBA day at the Galway races is scheduled for Monday 28 July 2008 and is open to all colleagues nationwide. The Galway races would not have been my gig to date, but now that 'the tent' has gone, maybe this year! G

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

Client Care Task Force visits local bar associations

Established by the then president Michael Irvine in 2006, the Client Care Task Force is aimed at encouraging solicitors' firms to deliver a more client-focused service, *writes Thomas Murran (chairman, Client Care Task Force)*. The task force believes that there are significant benefits to be secured for individual practices that are prepared to implement systems and procedures designed to achieve service excellence.

The task force recently concluded a series of well-received client-care seminars around the country, and is now offering to provide a 'slimmed-down' version to any bar associations expressing an interest. This is a combined opportunity for bar associations to promote seminars at local level, for practices to pursue excellence in client care, and for the acquisition of CPD points at a convenient venue. (Bar association enquiries to: Emma Cooper, 01 672 4800 or e.cooper@lawsociety.ie).

PIC: BRIAN GAVIN, PRESS 22

At the client care seminar in Ennis on 18 June were *(l to r)*: Thomas Murran (chairman, Client Care Task Force), Linda Kirwan (Law Society), Carol Kelly (secretary, Clare Bar Association), John Glynn (member of the Client Care Task Force) and Oliver Hanrahan (Clare Bar Association)

PIC: KEN FINEGAN, NEWSPICS

At the seminar in the courthouse in Dundalk on 5 June were *(back, l to r)*: Thomas Murran (chairman, Client Care Task Force), Fergus Mullen and Frank McDonnell (both members of the Louth Bar Association). *(Front, l to r)*: Donal O'Hagan (president of the Louth Bar Association), John Glynn (member of the Client Care Task Force) and Linda Kirwan (Law Society)

GUIDANCE TO COLLEAGUES: JUDICIAL APPOINTMENTS ADVISORY BOARD

Colleagues are reminded that the utmost care should be taken in completing the application form to the Judicial Appointments Advisory Board, to ensure that all relevant information is available when their application is being assessed. Utmost care should be taken to ensure both accuracy and completeness.

Where a particular answer requires further detail to be properly understood, or to be seen in its correct context, that detail should be supplied. Where the form itself does not provide adequate space, it is perfectly acceptable to provide an addendum sheet.

Colleagues should ensure that applications are kept up to date and that, in particular, their current practising situation is correctly reflected in the application form. Legal constraints prevent applicants receiving individual feedback.

HLJ celebrates launch of new 7th volume

Volume 7 of the *Hibernian Law Journal* (HLJ) has just been published. The journal was officially launched by Mr Justice Michael Peart on 28 May 2008 in the Blue Room of the Law Society. Articles in this volume address the international legal personality of the European Union – of huge interest, no doubt, to all those who engaged in the recent *Lisbon Treaty* debate – international law in respect of terror suspects, child law, competition law, the law of insanity, environmental law, commercial law, and other pertinent issues. Mr Justice Peart, who wrote the foreword to the current edition, was glowing in his praise of the journal. Editor Nicholas Blake-Knox thanked Mr Justice Peart and the assembled authors, academic referees, the Law Society and the sponsors of the journal for their continued support. He congratulated the editorial committee and outgoing editor John-Hugh Colleran on their year's work.

At the official launch of the 2007 edition of the *Hibernian Law Journal* were *(l to r)*: TP Kennedy (director of education, Law Society), Nicholas Blake-Knox (editor, Arthur Cox), Mr Justice Michael Peart, Julie Clarke (Thomson Round Hall) and John-Hugh Colleran (outgoing editor, A&L Goodbody)

The *Hibernian Law Journal* has an annual distribution of approximately 1,500 copies. The 2007/08 editorial committee comprised TP Kennedy (editorial adviser), Nicholas Blake-Knox, John-Hugh Colleran, Sinead Hayes, Avril Mangan, Julia Emikh, Emer O'Connor, Erika O'Leary, Maeve Regan, Rosemary Wall, Paul Ryan, Alan Burns, Claire Hirst and Regan O'Driscoll.

Copies of the HLJ may be obtained by contacting any member of the editorial committee. Submissions are now being accepted for the 2008 edition. Further details may be obtained at www.hibernianlawjournal.com or by emailing editor@hibernianlawjournal.com.

Government announces new 'Justice for Victims Initiative'

The government has announced a major new legislative package for victims of crime entitled the 'Justice for Victims Initiative'. The initiative will include a new *Justice for Victims of Crime Bill*, to be drafted and presented to the Oireachtas early in 2009. The bill will contain measures to:

- Reform the victim impact statement mechanism in order to grant 'victim status' to next-of-kin in homicide cases,
- Introduce new mechanisms to deal with an acquittal where compelling evidence of guilt emerges after the acquittal,
- Enable cases to be reopened where an acquittal arises from an error in law by a judge,
- Provide for new prosecutions where there is evidence that the original acquittal was tainted by interference with the trial process, including intimidation of witnesses, and
- Introduce measures to restrict unjustified and vexatious imputations at trial against the character of a deceased or incapacitated victim or witness.

Justice Minister Dermot Ahern

Minister for Justice Dermot Ahern said that the package would also include the establishment of a new executive office in the Department of Justice to support victims of crime, "focusing on the coordination of delivery of services".

Reconstituted commission

The Commission for the Support of Victims of Crime would be reconstituted, with a role to distribute funding to groups working with crime victims, as well as providing general oversight of services and promoting awareness.

In addition, a new Victims of Crime Consultative Forum would be established to represent victims' interests, which would liaise with the commission.

Speaking at the announcement of the package, the minister said that the new "framework document" would look at the supports currently available to victims and outline how these might be strengthened to ensure that victims received adequate assistance in the aftermath of crime. "It is vital that there is a coordinated approach to the delivery of services to support victims," he said.

"It is my intention to accept the recommendations of the commission. I propose to move quickly to implement those recommendations. Furthermore, in regard to the provision of information to victims of crime, this is an important issue and I am asking the new commission to address this issue with the various agencies."

The minister said it was his intention to have the legislation published next spring. This would take account of several recommendations in the 2007 *Report of the Balance in the Criminal Law Review Group*, he concluded.

Responding to the announcement, the Irish Council for Civil Liberties said that the changes proposed by the minister "would diminish the rights of accused people without improving life for victims of crime. It is a fallacy that taking liberties from accused persons can enhance the lives of victims. If the government is genuinely interested in advancing the situation of victims, then it must adopt a rights-based approach, including a statutory charter for victims of crime". (See 'Human Rights Watch', p18.)

Essentials of Legal Practice course 2008

Have you been out of practice for a number of years and are about to return to the workplace? Do you need a refresher on the essentials of legal practice? Are you a barrister who wishes to transfer to the solicitors' profession?

A new Essentials of Legal Practice course starts on 5 August 2008 (fee: €2,700). This four-week course will cover the basics in solicitors' professional conduct, accounts regulations, conveyancing and probate/tax. Intensive in its nature, it will bring professionals up-to-speed in a concise, condensed manner.

The course will be of particular interest to barristers who wish to transfer to the solicitors' profession. (Such applicants must have three years' experience in practice, with their applications pre-approved by the Education Committee.) Upon successful completion of the course (and the in-office period – up to a maximum of six months), barrister candidates are eligible to be entered on the Roll of Solicitors.

For further details, contact Alison Egan in the Law School: 01 672 4802; email: a.egan@lawsociety.ie.

ORAC ANNUAL REPORT

The Office of the Refugee Applications Commissioner has published its annual report for 2007. During the year, a total of 3,985 applications for refugee status were received, representing a 7% reduction in applications compared with 2006. This is the lowest number of applications since 1997.

In 2007, ORAC says it made "the maximum use possible" of the EU *Dublin II Regulation*, which determines the EU state responsible for processing an asylum application. In all, 368 such determinations were made, with some 3,840 sets of applicants' fingerprints being sent to the EU EURODAC fingerprinting system – 468 hits were confirmed. Processing times for family reunification cases stood at 2.5 months and, for cases being considered under the *Dublin II Regulation*, 27 days.

INTERNET MUZZLED

Thanks to the change of Taoiseach and the publicity surrounding the *Lisbon Treaty*, one small announcement from the former Minister for Justice seemed to slip through the media net. On 29 April, the minister announced that the Justice and Home Affairs Council of the EU had reached agreement on a new measure to combat terrorism. The measure is specifically designed to "prevent the use of the internet for the dissemination of terrorist information and propaganda".

MOP IS 'BEST GRADUATE LAW EMPLOYER'

For the second year in a row, Matheson Ormsby Prentice has been named 'Best Graduate Employer 2008 for Law' at the Graduate Recruiters Awards.

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'Making the Connection'

Solicitors based in the North West got the opportunity to 'Make the Connection' at a workshop of the same name in Sligo on 23 May. The brainchild of the Technology Committee, the highly successful 'Make the Connection – Internet use for Solicitors' course was held in the Sligo Institute of Technology. This was a practical workshop aimed at showing solicitors how to use the internet to best advantage, to locate free and easy-to-view legal materials and databases (see p44 in this issue).

Part 1 of the workshop identified key legal resources available online. Participants learned new information about content, received practical hands-on training, and tips in using electronic recourses.

Part 2 provided an opportunity to use the online services available from the Courts Service, including the legal diary, the High Court search facility, and the judgments databases.

The committee has organised a number of similar workshops throughout the country and will be running another one later in the year. Member of the Technology Committee John Furlong (Matheson Ormsby Prentice), and Angela Denning (registrar, High Court) gave the workshop. Committee chairman Patrick Madigan, Tony Brady, Frank Nowlan and Raymond Smith were also present to assist participants with the workshop exercises.

PIC: BRENDA MCCALLION PHOTOGRAPHY

Members of the Technology Committee in Sligo *(back, l to r)*: John Furlong, Tony Brady, Veronica Donnelly (secretary, Technology Committee), Frank Nowlan and Raymond Smith. *(Front, l to r)*: Patrick Madigan (chairman) and Angela Denning (registrar, High Court)

Byrne struck off Roll of Solicitors and fined €1M

Disgraced lawyer Thomas Byrne has been struck off the Roll of Solicitors and fined €1 million by the President of the High Court, Mr Justice Richard Johnson.

On 16 June, making the order, the President of the High Court upheld the recommendations of the Solicitors' Disciplinary Tribunal that Mr Byrne be struck off and fined €1 million. The Law Society was also awarded its costs against Mr Byrne. The application to have Mr Byrne struck off was made by Shane Murphy SC on behalf of the Law Society. Byrne's practice at Walkinstown Road, Dublin, was closed down following an investigation that began last October. Byrne owes some €57 million to a number of financial institutions.

In separate proceedings the same day in the Commercial Court, in which Mr Byrne entered no defence or appearance, Mr Justice Peter Kelly ruled that Byrne was guilty of fraud in relation to transactions involving six rental properties in west Dublin, valued at €2.7 million.

EYBA ELECTS NEW PRESIDENT

Simona Oliskeviciute has been elected President of the European Young Bar Association (EYBA), a multi-national association of young lawyers. At the 31 May AGM in Belgrade, the EYBA also elected a new committee, among them two Irish lawyers.

In addition to the president, the committee comprises: immediate past-president, Annalisa Checchi; vice-president, Els Leuftink; honorary secretary, Ronnie Neville (Mason Hayes & Curran, Dublin); treasurer, Mary McKeever (Eugene F Collins, Dublin). Executive officers: Gabriella Geatti (Rome), Labud Raznatovic (Serbia), and Morten Schwartz Nielsen (Denmark).

Representation issues top the agenda for leaders of four Law Societies

'How law societies can best represent their members' was chosen as the dominant issue for consideration at a recent two-day meeting of the leaders of the 160,000 solicitors in Britain and Ireland in Blackhall Place.

The presidents, vice-presidents and chief executives of the Law Societies of Ireland, Northern Ireland, Scotland, and England and Wales meet twice a year. Once every two years the meeting is held in Dublin.

By coincidence, the meeting this year took place on the day that the ESRI published its report predicting that the Irish economy would go into recession in 2008 for the first time in 25 years. The most painful impact of this for solicitors in Ireland has been the sudden and precipitous decline in property-related legal work. Representatives of the other three jurisdictions confirmed that the economic position for members of the profession in their own countries was not much better.

All agreed that it was a time to encourage private practitioners to focus more intensively than ever before on the efficient management of their firms and on developing the legal knowledge and skills required to compete for work in new areas, where opportunities may still be developed. Not all areas of practice would be affected by the economic downturn in the same way or to the same extent. Individual practices must devise their own specific plans for their specific circumstances.

While the overall situation certainly gives cause for concern, the profession must not succumb to pessimism. There would be a recovery in time, and firms should avoid taking decisions on the downward slope that would damage their capacity to take advantage of the upturn when it comes.

Although all four societies updated each other on developments in their regulatory systems, the focus for the meeting on this occasion was on learning from each other's experiences in seeking to represent the interests of the profession as effectively as possible in the difficult circumstances that prevail everywhere. One of the best ways of representing the interests of the profession, it was agreed, was to do a good job in regulating it.

Public relations strategies, both internal and external to the profession, were discussed, with a view to the four societies learning from the others' successes and mistakes.

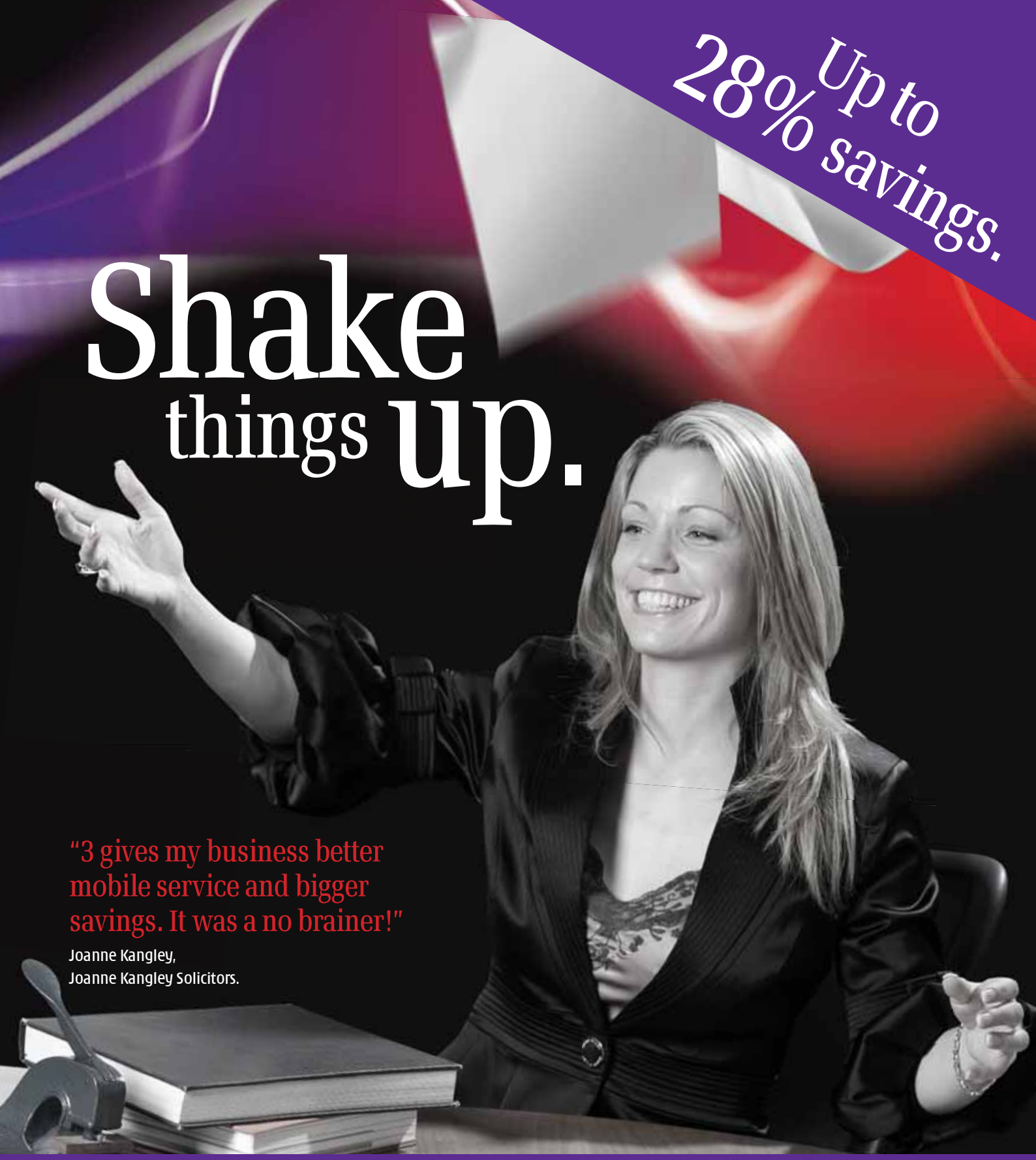
Information and insights based on other people's experiences of essentially the same problems are always valuable – even if only to confirm, once again, that 'magic solutions' simply do not exist.

ALL PICS: LENSMEN

Director general Ken Murphy (centre) putting across the Irish view, with *(l to r)*: Donald Eakin (president, Law Society of Northern Ireland), deputy director general Mary Keane, president James MacGuill, and senior vice-president John D Shaw

Andrew Holroyd, president of the Law Society of England and Wales

Scotland was represented by *(l to r)*: Richard Henderson (president, Law Society of Scotland), Ian Smart (vice-president) and Henry Robson (deputy chief executive)



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TECHNOSTRESS: THE PHANTOM MENACE

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Life in today's world has given rise to a whole range of new phenomena and our vocabulary has had to expand as new maladies have been identified. We are familiar with the concepts of desk rage and road rage. Now a new term has been coined –'technostress', the term used to describe what happens to us when we suffer from information overload, brought about by all the technical wizardry purportedly designed to make our lives easier.

In the average day, you might expect to receive information from the radio, television, fax, phone, voicemail messages, email and the internet. This obliges you to interact with a whole range of machines and to process vast quantities of new data. Moreover, this data is conveyed at a pace that scarcely allows for thinking time.

Technostress, described by authors Dr Larry Rosen and Michelle Weil in their book *Technostress: Coping with Technology@work@home@play* as "multitasking madness", results when you attempt to cope with a number of tasks at the one time. Although, from the outside, you may appear to only be dealing with one issue, in fact, your brain is having to perform a juggling act to keep all of those other issues that require attention active on a conscious level. The harder this juggling act becomes, the more performance levels decline. The more you get interrupted in the execution of one task, the harder it can be to pick up where you left off.

Multitasking can lead to people feeling as though they are no longer in control, which is a major symptom of stress. Other signs of the effects of multitasking are difficulty in concentrating, inability to remember things, inability to relax, and difficulty in getting to sleep due to the unwelcome presence of too many thoughts chasing each other around in your head.

Email appears to be responsible for a specific group of problems. Some people are reporting that, in the process of embracing email and its undeniable advantages of speed and immediacy, they find themselves becoming increasingly impatient when delays are experienced or when they actually come to deal with people directly. Others report feeling persecuted by a tool that is meant to aid, but to which they feel so attached and beholden that they can never turn it off, so that it comes to rule their lives rather than the other way around.

Further, the process of emailing documents is so simple that a trend has developed of distributing vast quantities of information indiscriminately, whereas, in the past, the time involved in duplicating the same data on paper would have made this impracticable. Hence, people are bombarded with information, much of which is utterly irrelevant to them.

The symptoms described above are just as likely to be experienced by technophiles – those who embrace new technology and the opportunities it presents – as by technophobes – those who struggle to come to terms with the technological revolution.

ABOUT LAWCARE

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

Some simple measures can be taken to minimise technostress:

- Dedicate a set time in your day for the task of replying to email, faxes and voicemails, and resist the temptation to respond to each new message the instant it arrives.
- Allow yourself to concentrate on one important task at a time by having a period during which you turn off the ringer on your fax, divert your line to voicemail or someone else, and turn off your email notification message.
- If you develop the habit of writing down those tasks that are lurking in the back of your mind, you will lighten the load on your brain and this should help you to focus on the task in hand, or, at night, help in getting a period of restful sleep.
- Before you send an email to a whole raft of people, ask yourself 'Who really needs to know this?'
- Ensure that you look after your physical well-being by getting enough sleep, eating healthily and taking some form of exercise.
- Take short breaks away from your desk during the day and perform some simple stretching exercises.
- Try to maintain a balance in your life and ensure that you can have some time totally free of interruptions to pursue a leisure interest.
- Leave your mobile phone at home or switched off when you go on holiday.

If you simply cannot break free of all of the gadgets in your life and you are feeling the stressful results, then contact LawCare (see panel for details). G

War crimes – what happens

The provision of legal advice aimed at justifying war crimes can amount to a war crime itself, a recent Dublin conference was reminded. Aisling Kelly reports

Several inspiring speakers turned up in Dublin this June for the Dublin Writers' Festival, one of whom was Philippe Sands QC, speaking about the US 'War on Terror'. Sands, a well-renowned and highly regarded international lawyer, shared the floor with *Paris Review* editor Philip Gourevitch and spoke about what has taken place in prisons such as Guantánamo Bay and Abu Ghraib.

Both speakers have recently released books on the two interlinked topics, which reveal an appalling breakdown of law and order.

Sands began his legal research with a one-page memorandum from Donald Rumsfeld, dated 2 December 2002, authorising interrogation techniques forbidden under the *Geneva Conventions*. Earlier that year, in February 2002, the US president had pronounced that the *Geneva Conventions* did not cover individuals believed to be associated with al-Qaeda and the Taliban. What makes the decision authorised by Rumsfeld interesting is that it was authored and approved by politically appointed lawyers. Sands examined the role of Bush administration lawyers in how they removed the legal barriers to abusive questioning techniques.

He spoke about the potential impact of the 1947 Nuremberg case of *United States of America v Josef Altstoetter et al*, which is the authority for the premise that lawyers can be investigated, prosecuted, and convicted for committing international crimes. "So what?" you say – if heads of state can be investigated then why not the lawyers? But what he draws our attention to is that it is not the *acts* of lawyers who may have (for one reason or another) physically inflicted physical or mental harm that are capable of being investigated as crimes – it is the act of *providing legal advice* that allows those things to happen that is the potential international crime. It is a very interesting proposition.

What the *Altstoetter* case states is that there is no distinction between the man or woman who interrogates and the man or woman who authorises by law an abusive interrogation. They are both subject to investigation. They are both subject to prosecution. The provision of legal advice aimed at justifying war crimes amounts to a war crime itself.

> ***"What the Altstoetter case states is that there is no distinction between the person who interrogates and the person who authorises by law an abusive interrogation. They are both subject to investigation"***

Sands has also recently testified before the US House of Representatives Judiciary Sub-Committee on the Constitution, Civil Rights and Civil Liberties. The committee is sitting to examine the role of senior Bush administration lawyers in promoting aggressive interrogations. Various lawyers involved in advising the president, including John Ashcroft, the former attorney general, have also been invited to testify – the testimony is due to be taken over the coming summer months. Whether anyone will be indicted arising out of these testimonies is, of course, another matter.

Theatre of war

Philip Gourevitch spoke about the how the policies and laws examined by Sands played out in the theatre of war. He spoke about a company of reservists – the 372nd Military Police – that was charged with holding the most valuable prisoners in Abu Ghraib. Instead of just guarding the men, the MPs were instructed by interrogators from military intelligence to "soften them up". In the absence of training – which would normally have been provided by a standard operating procedure document – aggressive practices that began with sleep deprivation and yelling degenerated into punching, sexual humiliation, brutal stress positions and the use of snarling, biting dogs.

These are the very same practices that resulted in the famous photographs of the hooded man and the prisoner-on-a-dog-lead photos, which were taken by the military police themselves. Why would they do that, one might ask? It would be easy to assume that the grinning, posing soldiers just did not know of the rules and risks. What is shocking is that Gourevitch indicated the contrary. The MPs knew something was seriously wrong – they were taking the photographs, and making sure that their superiors knew they were doing so, in a calculated effort to protect themselves. When faced with the threat that the photographs might become public, the military sought to cover up the crimes. Once the photographs were leaked, they prosecuted only the low-ranking soldiers who appeared in them. Nobody above the rank of sergeant was ever sent to prison; not a single civilian interrogator was charged. "That's how it worked," Gourevitch explained. "No photo, no crime – the exposé became the cover-up." For the soldiers who had sought to protect themselves, the irony must have been breathtaking.

Justifying torture

While there have been arguments advanced in a variety of arenas to say that torture may be justified in some extreme situations (the example of the ticking nuclear

when lawyers get involved?

Prisoner abuse at Abu Ghraib: chained to a door, a hooded detainee is forced to balance painfully on boxes

bomb is often cited), there are clear reasons why it is specifically outlawed by the *Geneva Conventions*. Obviously, the one most frequently relied upon is that it is contrary to our sense of what is acceptable behaviour among humans, even those at war.

But there is a more practical and arguably distasteful reason that some put forward. It simply does not generate reliable intelligence. The *Geneva Conventions* exist because generations of soldiers and politicians realised that humane treatment usually contributes to military and political objectives, not least by prompting grateful prisoners to talk and by undermining support for the enemy. The atrocities at Abu Ghraib failed to generate any significant intelligence, while doing almost irreparable damage to the reputation of an entire nation. The outcome was entirely predictable – in fact, our grandfathers could have told us so. G

Aisling Kelly is a Dublin-based solicitor specialising in criminal law.

ICCA arbitrators visit Fair

Over 800 delegates from 51 countries gathered at Croke Park in early June for the world's largest-ever conference of international commercial arbiters. Tom Rowe reports

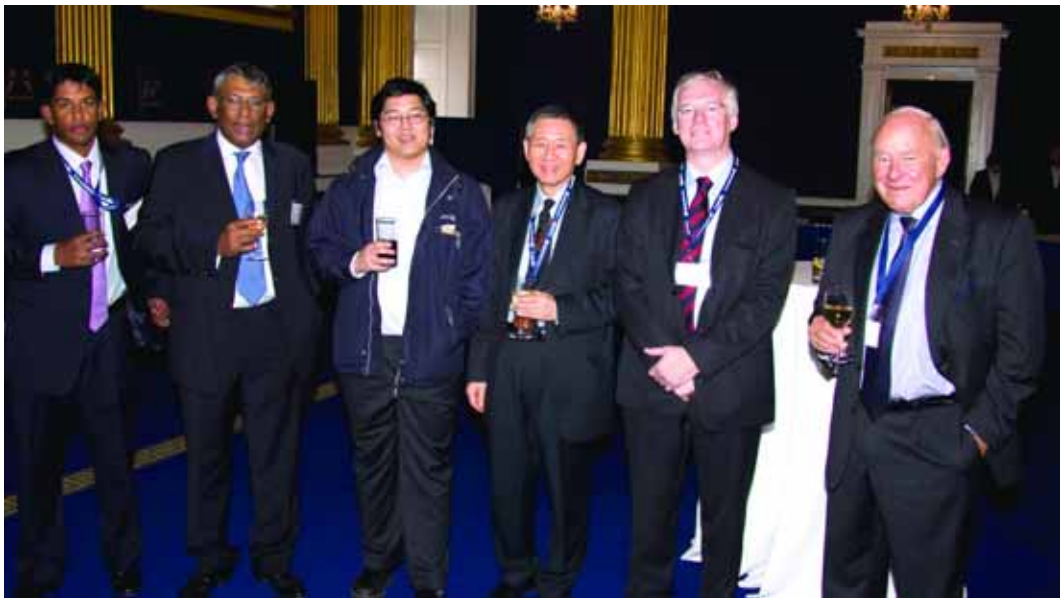
Overlooking the hallowed turf of Croke Park, 800 delegates from 51 countries recently gathered for the world's largest-ever conference of international commercial arbiters. Hosted by the Bar Council and sponsored by many leading solicitors' firms and the Law Society, the International Council for Commercial Arbitration (ICCA) held its biennial event in Dublin from 8-10 June. The dates marked the exact 50th anniversary of the 1958 *New York Convention on Recognition and Enforcement of Foreign Arbitral Awards*, the most important international instrument on arbitration law, currently adopted by 142 United Nations' member states.

The first speaker at the conference, Professor Benedict Kingsbury of New York University's law school, said that investor-state arbitration and the treaties from which it derives are a form of transnational power, power beyond the state, and that a type of global administrative law is slowly developing. International investment tribunals are the manifestation of this power, and the lawyers involved are now dealing with problems specific to this method of arbitration.

ALL PIX: HARRYWEIR.COM

The International Council for Commercial Arbitration held its biennial conference in Dublin from 8-10 June

The legitimacy of tribunals is a major issue. South Africa and countries in Latin America have recently talked of leaving the arbitration process, but a real crisis will come in the case of a major western country like the US losing in a tribunal over an issue like Chinese investment. Kingsbury wants to promote fair and equitable standards for tribunal jurisprudence through rationality, consistency, legality, protection of legitimate expectations, transparency and due process, as a method of gaining non-electoral legitimacy for tribunals, thus avoiding the impending crisis. He points to UN Security Council plans to adopt due process for actions like the freezing of countries' assets as an example of how legitimacy can be conferred on a process.



The ICCA conference dates marked the exact 50th anniversary of the 1958 *New York Convention on Recognition and Enforcement of Foreign Arbitral Awards* – the most important international instrument on arbitration law, currently adopted by 142 United Nations' member states

Changed international landscape

The eminent Professor Christopher Greenwood of the London School of Economics is widely regarded as an expert on international investment arbitration and considers himself "one of the usual suspects" at these events. For Greenwood, the adage "a treaty is a disagreement reduced to writing" applies to bilateral investment treaties (BITs), which make up the majority of international investment agreements.

The international landscape has changed enormously over the past decades. To have basic utilities owned by foreigners would have been unthinkable in most countries 30 or 40 years ago, but Greenwood recently looked at his own water, mobile phone and electricity suppliers, and discovered that all are foreign-owned businesses. BITs had a large role to play in this, as breaking down barriers to investment was one of the aims of their creation.

The professor went back to the initial expectations for governments that signed up to BITs. The wealthy capital-exporter states wanted to protect their investment through treaties, and negotiated BITs for 'them', the capital exporters. Now these exporter countries are recipients of

City

investment. The tables have turned, yet the US Senate is still shocked at the idea of being a defendant in a NAFTA case.

Fifty-year-old document

Perhaps the most significant development at the conference was on the afternoon of the second day, when Professor Albert Jan van der Berg, the acknowledged authority on the *New York Convention*, questioned whether that 50-year-old document would last for another 50. He answered in the negative, and introduced a hypothetical draft convention for the consideration of the delegates, some of whom began calling it the 'Dublin Convention'.

While giving all due respect to the professor, several of the subsequent speakers disagreed with him. Teresa Cheng SC, of Hong Kong, held that the problems in arbitration cases are not due to the inadequacies or ambiguities of the 1958 convention, but to interpretations by judges. Redrafting is not the answer, as the risk of states taking the opportunity to opt out of the new treaty is too great and interpretations of the new draft would just create new problems.

Professor Emmanuel Gaillard believed that there is "no need, no hope and no danger" of the current convention being remade. Like Cheng, he believes that 142 states would never agree to a new convention, as many have developed a defendant mindset. For him, the issues that need to be addressed are the enforcement of awards and getting away from the idea that the site of arbitration is so important.

Speakers at the ICCA conference included *(l to r)*: Klaus Reichart BL, An Taoiseach Brian Cowen, Turlough O'Donnell SC (Chairman of the Bar Council), Colm O hOisin SC, Michael Carrigan (member of the Law Society's Arbitration and Mediation Committee) and Jerry Carroll (Director of the Bar Council)

International delegates at the world's largest ever conference of international commercial arbiters, held in Dublin

INVESTMENT ARBITRATION

There are 2,300 international financial investment treaties currently in force. These are signed between states that seek inward investment or want the opportunity to invest in other states.

These treaties generally come under the remit of the 1958 *New York Convention*, which requires courts of contracting states to give effect to private agreements to arbitrate and to recognise and enforce arbitration awards made in other contracting states.

In the event of a dispute, an international investment tribunal can be convened, which allows parties from different legal and cultural backgrounds to resolve their disputes.

Much needed support for the draft convention came from Carolyn Lamm of Washington. She believed that van der Berg's draft eliminated much ambiguity and contradictory results and would give greater predictability, resulting in less litigation. She agreed that, while the effort to change the convention would be great, in 50 years they would look back and be glad.

The final words came from Donald Francis Donovan of New York, who reminded the audience of Taoiseach Brian Cowen's words on opening the conference, when he said that a commitment to international arbitration is an important part of Ireland's national policy; and Attorney General Paul Gallagher's speech, where he said that this commitment originates in Irish culture and Brehon law. For Donovan, the conference – and indeed the development of international arbitration over the last century – is evidence of the search for a transnational system of justice. G

Victims' human rights in the

It is possible to enhance the human rights of crime victims without compromising the fundamental principles at the heart of the criminal justice process: a fair trial and the presumption of innocence. Deirdre Duffy argues the case

On 19 June, the Minister for Justice announced a new Justice for Victims Initiative. In formulating his proposals, he drew on certain recommendations of the report of the Balance in the Criminal Law Review Group, published last year. Some of the measures proposed in the minister's initiative include the introduction of appeals against acquittals, the extension of circumstances where bad character evidence can be admitted, and the reopening of cases where a judge makes an error in law.

The Irish Council for Civil Liberties (ICCL) has considered the recommendations of the review group in its report *Taking Liberties: the Human Rights Implications of the Balance in the Criminal Law Review Group Report*. It has concluded that limiting the rights of accused persons in fact does little or nothing to serve the plight of victims, many of whom find their passage through the criminal justice process challenging and difficult.

In the ICCL's companion report, *A Better Deal: the Human Rights of Victims in the Criminal Justice System*, it is argued that commitment to the enhancement of rights for crime victims should focus on full protection of victims' rights rather than seeking to dilute the rights of defendants. To this end, the ICCL highlights a number of international human rights instruments that set out the standards required of states in affording protection to the human rights of crime victims:

- *European Convention on Human Rights* (incorporated into Irish law by the *European Convention on Human Rights Act 2003*),
- *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985*,
- The European Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings – Ireland's record in applying the standards laid down in this instrument has been assessed by the European Commission in their 2004 evaluation report,
- Recommendation Rec(2006)8 of the committee of ministers to member states on the assistance to crime victims.

At the centre of a victim experience is the right to be treated with respect, support

ONE TO WATCH: NEW LEGISLATION

Criminal Law (Human Trafficking) Act 2008

Minister for Justice, Equality and Law Reform Dermot Ahern recently announced the enactment of the *Criminal Law (Human Trafficking) Act 2008* on 7 June 2008. The act deals specifically with the offences of trafficking in both adults and children. The minister described the act as a "comprehensive, up-to-date set of criminal offences, which will ensure that human traffickers will find Ireland a very unwelcoming country to pursue their evil trade".

The main purpose of the act is to provide for a series of offences for human trafficking, appropriate punishments, and procedures in relation to the conduct of proceedings and issues in relation to jurisdiction.

Offences

The act makes it an offence to:

- Traffic a child for the purposes of exploitation, including sexual exploitation,
- Sell, offer, or expose a child for sale,
- Purchase, or invite the making of an offer, or making an offer to purchase a child,
- Exploit a child sexually,
- Take, detain or restrict the personal liberty of a child for the purposes of his/her sexual exploitation,
- Traffic a person who is mentally impaired for the purposes of exploitation,
- Traffic a person for the purpose of exploitation if, for the purposes of trafficking, the trafficker coerces, threatens, abducts or uses other force; deceived or committed a fraud against the trafficked person; abused his/her authority or took advantage of the vulnerability of the trafficked person to such an extent as to cause the trafficked person to have had no real and acceptable alternative but to submit to being trafficked; coerced, threatened or otherwise used force against any person in whose care or charge, or under whose control, the trafficked person was for the time being, in order to compel that person to permit the trafficker to traffic the trafficked person; made any payment to, or conferred any right, interest or other benefit on any person in whose care or charge, or under whose control, the trafficked person was, for the time being, in exchange for that person, permitting the trafficker to traffic the trafficked person,
- Sell, offer or expose another person for sale, or inviting the making of an offer to purchase another person,
- Purchase or make an offer to purchase another person,
- Solicit or importune another person in any place for the purposes of prostitution,
- Accept, agree to accept a payment, right, interest or other benefit from a person trafficked for the purposes of prostitution. It is a defence for the defendant to prove that he/she did not know and had no reasonable grounds for believing that the person in respect of whom the offence was committed was a trafficked person.

The offences apply to any person who commits the offence, persons who cause those offences to be

human rights watch

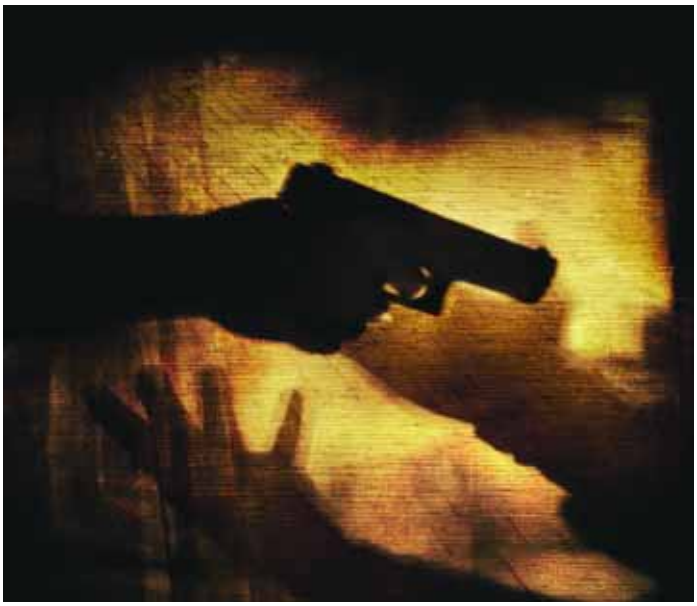
criminal justice system

and recognition. In Ireland, the Commission for the Support of the Victims of Crime distributes funding to organisations that support the victims of crime and is also charged with developing a framework for victims of crime into the future. Generally, victims are supported well through this system.

Statutory victims' support agency

However, victims would benefit greatly from the establishment of a statutory victims' support agency that could oversee all government policy relating to the victims of crime as well as the disbursement of funding.

One of the greatest challenges facing criminal justice agencies is the provision of information to crime victims. Many victims consider the prosecution of an accused as 'their case' and may feel disempowered when they are kept in the dark about its progress. The right of crime victims to receive information is dealt with comprehensively under article 4 of the European Council Framework Decision. It sets out the right of crime victims to information on, among other things, access to legal advice, attributes of the case, police procedures, court procedures and the role of witnesses, the sentence imposed, compensation matters, and the dates of hearings and their relevance, for example, bail, trial, and sentence hearings.



PIC: REX FEATURES

For the most part, Ireland has chosen to assume its obligations under this provision by maintaining the *Victims' Charter and Guide to the Criminal Justice System*. However, in its 2004 evaluation report, the European Commission stated that this

committed, and persons who attempt to commit any of those offences. Where the offence is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person, being a director, manager, secretary or other officer or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he/she were guilty of the offence.

Jurisdiction

As a broader global issue, human trafficking often involves multiple jurisdictions. The act purports to apply to acts committed outside the state and by persons who are not citizens or ordinarily resident in the state. The act applies to:

- Irish citizens or ordinary residents who commit an offence outside the state,
- Non-Irish citizens or ordinary residents who commit an offence against an Irish citizen outside the state,
- Persons who conspire with, or incite, another person in the state to commit an offence outside the state,
- Irish citizens or residents who conspire with, or incite, another person outside the state to commit an offence outside the state,
- Persons who conspire with, or incite, another person in the state or outside the state to commit an offence against an Irish citizen outside the state,
- Persons who conspire with or incite an Irish citizen or ordinary resident outside the state to commit an offence outside the state,
- Persons who attempt any of the above offences.

Proceedings relating to offences committed outside the state can be taken in any place in the state, and the offence may be treated as having been committed in that place. The act ensures that the rule of double jeopardy is maintained by ensuring that where a person has been acquitted or convicted of an offence outside the state, he/she shall not be proceeded against for an offence consisting of the alleged acts within the state.

In an effort to protect the anonymity of the victims of trafficking, proceedings for offences under this act shall be heard *in camera*. However, the verdict, decision and sentence shall be pronounced in public. Persons who publish or broadcast any information, including any photograph, depiction or other representation of the physical likeness of the alleged victim that is likely to enable the identification of the alleged victim, shall be guilty of an offence. A judge of the court in which proceedings for an offence of trafficking are brought may direct in writing that such information may be published or broadcast in such a manner and subject to such conditions as he/she may specify. Contravention of such a direction is also an offence. G

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

action alone does not completely fulfill the obligations imposed under article 4.

Privacy and protection from harm

Victims are also entitled to be protected from harm and to respect for their privacy. These rights are often interrelated and can be protected by a number of simple measures, such as adequate court facilities that allow entry to and exit from the court in a safe and private fashion. Separate waiting areas for victims and their families should also be provided. At present, the *Criminal Evidence Act 1992* allows for the tendering of evidence by video-link; however, not all courtrooms are equipped with the necessary technology. The ICCL report argues that such facilities are vital in ensuring the privacy and protection of some of the most vulnerable victims, such as children.

International instruments, as well as the European Court of Human Rights (for example, in relation to delay), set out a victim's right to participate in a fair and effective criminal process.

Victim impact statement

This includes the right of a victim to make a victim impact statement. Such statements serve an important role in the criminal justice process as a vehicle of contribution for the victim, which in turn assists the judge in sentencing. However, all aspects of sentencing – including the victim impact statement – must be placed in the context of the findings of the court. To achieve this, a statutory framework should be constructed to develop adequate and fair procedures.

A victim's right to a remedy encompasses the handing down of fair sentences by the courts. Judges are constrained by the system of judicial precedent under which they operate, and must sentence within their discretion on a case-by-case basis.

Reliable sentencing

In order to deliver justice to victims and defendants alike, clear, appropriate and reliable sentencing is essential. In this respect, the ICCL's report recommends that a system of sentencing guidelines should be introduced to provide direction for judges while maintaining a degree of flexibility.

The *UN Declaration*, the European Council Framework Decision and the Committee of Ministers' Recommendation provide a blueprint for the protection of the rights of crime victims in Ireland. Certain areas require an increase in, and better use of, resources by the gardaí, the courts and other criminal justice agencies. However, as demonstrated by the ICCL's report, many improvements are achievable through operational and ideological changes on the part of the aforementioned bodies, as well as the judiciary, the prosecuting authorities and the wider legal world. At the same time, it is possible for the government to deliver the human rights of crime victims without compromising the fundamental principles that lie at the heart of the criminal justice process: the right to a fair trial and the presumption of innocence. G

Deirdre Duffy is research and policy officer with the Irish Council for Civil Liberties.

letters

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

PII and the use of non-standard documents

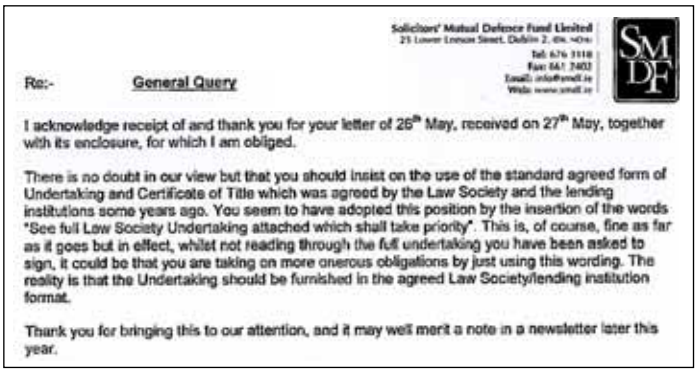
From: Patrick W McGonagle, Patrick W McGonagle & Co Solicitors, Swords, Co Dublin

I refer to the above and attach a copy of a letter that I received from the Solicitors' Mutual Defence Fund, which may well be of interest to the profession.

A number of years ago, the Law Society and the lending institutions came together to agree a standard certificate of title and solicitor's undertaking. Over the last number of years, a number of lenders have deviated from that agreed format and have insisted on the use of their pre-printed forms of undertakings and certificates of title.

Apart from the absolute nuisance that this causes in raising a plethora of different documents to be completed, I was concerned as to whether or not we were covered by our insurance for the use of non-standard documents. I brought this to the attention of the fund and, as a result, received the attached letter.

I think it is quite clear that the fund is stating that we should insist on the use of the standard documents, and it is my intention to use this letter in all future cases. I believe, however, if the profession is advised of this and, as a group, insist on the use of the standard documentation, then this issue could be resolved very quickly.



Solicitors' Mutual Defence Fund Limited
SMDF

Re:- General Query

I acknowledge receipt of and thank you for your letter of 26th May, received on 27th May, together with its enclosure, for which I am obliged.

There is no doubt in our view but that you should insist on the use of the standard agreed form of Undertaking and Certificate of Title which was agreed by the Law Society and the lending institutions some years ago. You seem to have adopted this position by the insertion of the words "See full Law Society Undertaking attached which shall take priority". This is, of course, fine as far as it goes but in effect, whilst not reading through the full undertaking you have been asked to sign, it could be that you are taking on more onerous obligations by just using this wording. The reality is that the Undertaking should be furnished in the agreed Law Society/lending institution format.

Thank you for bringing this to our attention, and it may well merit a note in a newsletter later this year.

Extract from reply of the Solicitors' Mutual Defence Fund: "There is no doubt in our view but that you should insist on the use of the standard agreed form of undertaking and certificate of title, which was agreed by the Law Society and the lending institutions some years ago. You seem to have adopted this position by the insertion of the words 'See full Law Society undertaking attached, which shall take priority'. This is, of course, fine as far as it goes, but, in effect, while not reading through the full undertaking you have been asked to sign, it could be that you are taking on more onerous obligations by just using this wording. The reality is that the undertaking should be furnished in the agreed Law Society/lending institution format.

Thank you for bringing this to our attention, and it may well merit a note in a newsletter later this year."

Press Ombudsman's addendum to 'no-frills process'

From: Professor John Horgan, Press Ombudsman, Office of the Press Ombudsman, 1, 2 and 3 Westmoreland Street, Dublin 2

I am gratified by the response to my recent article in the *Gazette* outlining the form and functions of my office and of the Press Council (March 2008, p42). However, I felt that it might be a good idea to add a PS for the benefit of solicitors in particular.

As I made clear in my article, complainants who decide to go to the Office of the Press Ombudsman retain complete freedom to take legal action on foot of their complaint at the conclusion of our processes. It is also open to them to approach the office through their legal representatives, should they so wish. However, the fact remains that, in the present climate, newspapers that receive letters from solicitors will, in most cases, refer them directly to their own legal departments, regardless of whether these letters involve potential legal actions or are simply a request for a complaint to be considered and, if necessary, adjudicated by my office. This will inevitably prolong what was intended to be a simple, no-frills process.

In brief, complainants who approach my office directly in the initial stages (which of course does not exclude the possibility that they might take legal advice before doing so), can do so in the expectation that the newspaper or periodical's legal department will generally not need to become involved, and that our action on their complaint will not be delayed by the addition of another layer of process.

Solicitors are welcome to contact me informally for further information on this or any other aspect of our procedures.

Dwelling house relief closed off

From: Sara McDonnell, Richard H McDonnell Solicitors, Ardee, Co Louth

I wonder are your readers aware of section 116 of the *Finance Act 2007*, which, with no warning to practitioners in advance, closes off the 'dwelling house relief' (CA10) available to an unmarried couple sharing a house – from 20 February 2007, a person receiving a half share in a dwelling house from his/her partner will pay gift tax on that transfer. This can obviously have very considerable tax consequences.

I would be much obliged if you would draw your readers' attention to this.

Are we criminalising

It may be argued that the DPP's discretion regarding prosecution creates uncertainty in the law for teenagers who engage in consensual sex, says Edel Kennedy

The acquittal of Mr K by a jury at the Dublin Circuit Criminal Court in April in respect of a charge of sexual assault of a 13-year-old girl reopened the public debate on the defence of mistake as to age and led to renewed calls for a referendum on the issue of child protection. Of even greater significance to considerations regarding future legislative reforms in this area is the High Court challenge launched in April by a Donegal teenager to the *Criminal Law (Sexual Offences) Act 2006*.

The teenage male was charged with the statutory rape of a 14-year-old girl in 2006, when he was aged 15. The High Court case will challenge section 5 of the *Criminal Law (Sexual Offences) Act 2006* on the basis that it constitutes a breach of article 14 of the *European Convention on Human Rights* by its discrimination on grounds of gender. In addition, the case will also seek to challenge the 2006 act on the grounds that the decision of the DPP to prosecute the young male represents a breach of his right to privacy, enshrined under article 8 of the convention.

Gender discrimination

The *European Convention on Human Rights* has been ratified by Ireland and is binding on the state. The convention is given effect in Irish law by virtue of the *ECHR Act 2003*. It places a duty on the organs of the state to act in a manner that is convention-compliant and on our courts to interpret and apply statutory provisions or rules of law in a compatible manner.

Section 5 of the *Criminal Law (Sexual Offences) Act 2006* states: "A female child under the age of 17 years shall not be guilty of an offence under this act by reason only of her engaging in an act of sexual intercourse." The 15-year-old male will challenge the non-availability of this defence to him under the 2006 act as a breach of article 14 of the ECHR.

Article 14 provides that the enjoyment of convention rights shall be secured without discrimination "on any ground such as" sex, religion, language, "birth or other status". While article 14 permits difference in treatment, this differential treatment is only permitted where there is a reasonable and objective justification for such treatment. The case of *Petrovic v Austria* (27 March 1998) illustrates that substantial grounds for justification will be required in instances of a gender bias. The justification argument may fail if the differential treatment does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means used and the aim sought.

> ***"In a move to prevent the criminalisation of motherhood, the criminalisation of teenage fathers has not concerned the legislature and has resulted in a further discrimination against young males"***

Criminalisation of teenage fathers

The explanatory memorandum to the 2006 legislation stated that section 5 was being introduced "primarily to protect females in the age group who might be pregnant". It may be argued that, in a move to prevent the criminalisation of motherhood, the criminalisation of teenage fathers has not concerned the legislature and has resulted in a further discrimination against young males. The ECHR has adopted a strict approach in relation to certain grounds of prohibited discrimination such as:

- Distinctions on the basis of religion,
- Distinctions on the basis of nationality,
- Distinctions between legitimate and illegitimate children,
- Distinctions on the basis of sex and sexual orientation.

While contracting states enjoy a margin of appreciation in deciding whether, and to what extent, differences justify a different treatment in law, this margin of appreciation differs according to the circumstances, the subject matter and the background. Taking such factors into account, it may be considered that the majority of states in the Council of Europe only criminalise sexual conduct between minors where the age-gap is greater than two years. Germany's laws do not criminalise consensual sex between young people less than 18 years of age. These other states' laws are based upon the same objectives as that of the 2006 act, namely to protect children and to prevent girls from prosecution. It may be found, however, that the 2006 act has utilised disproportionate measures in the circumstances in the pursuit of those same objectives.

It should also be noted that the judgment in the *CC* case contained numerous references to the gender inequality aspect in the 1935 provision. The accused argued that there was "discrimination on grounds of sex arising from the fact that,

viewpoint

teenage fathers?

where two persons engaged in consensual sexual intercourse, only the male appears to be guilty of a criminal offence". Such observations by the court in that instance would suggest the potential acceptance of the gender bias argument in the upcoming High Court case, due to the fact that gender differentiation continued in the 2006 act. Moreover, it is unclear whether the same differences of capacity and of social function that may have applied to the 1935 act can apply to the phraseology of the 2006 act.

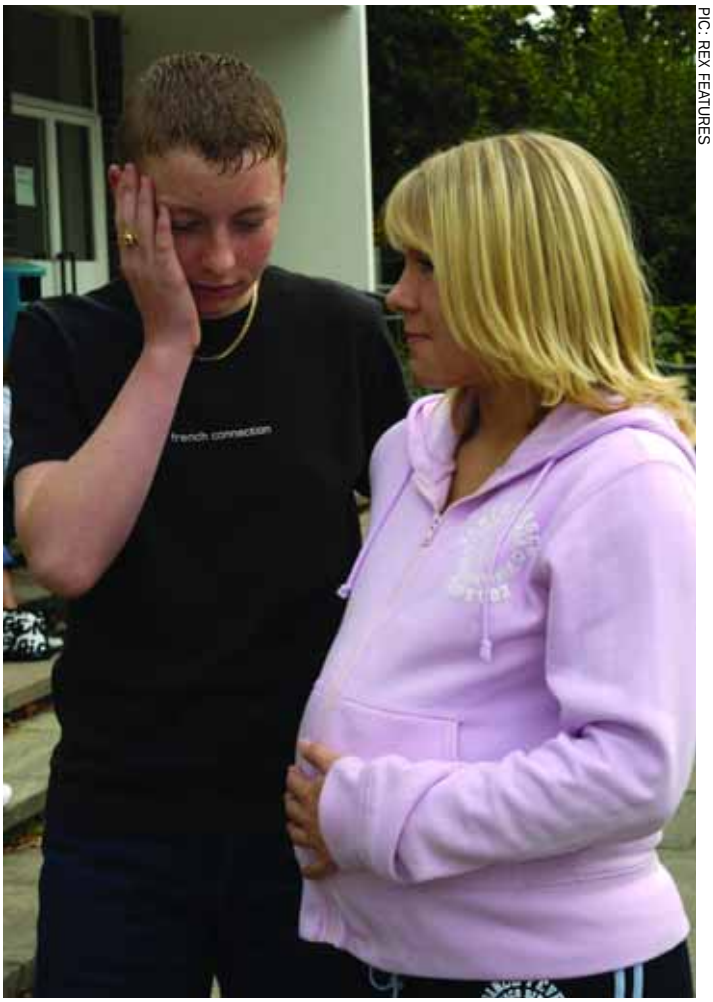
Private and family life

A breach of article 8 of the ECHR will also be claimed in the High Court challenge. Article 8 offers general protection of a person's private and family life, home, and correspondence from arbitrary interference by the state. However, the right to privacy is a qualified right and state interference is permitted where it is deemed to be justifiable and where the interference satisfies certain criteria. Permitted state interferences include instances where it is found to be:

- In accordance with the law,
- In the interest of legitimate objectives as per article 8(2), and
- Necessary in a democratic society.

The legitimate objectives as set out in article 8(2) are:

- Acting in the interests of national security, public safety or the economic well-being of the country,
- Acting for the prevention of disorder or crime,
- Acting for the protection of health or morals,
- Acting for the protection of the rights and freedoms of others.



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The *Criminal Law (Sexual Offences) Act 2006* gives legal basis to any claimed interference. However, no provision in the 2006 act protects young teenagers who engage in consensual sexual conduct from prosecution. The fact that a person is exposed to the risk of prosecution is sufficient to constitute an interference with article 8. Furthermore, it may be argued that the DPP's discretion regarding prosecution creates uncertainty in the law for teenagers who engage in consensual sexual intercourse. The absence of a stated policy on the part of the DPP not to prosecute in such circumstances may be deemed sufficient to constitute a violation of the Donegal teenager's rights. While the case of *Dudgeon v UK* ([1981] 4 EHRR 146) stated that the government may legislate to protect against the exploitation of the young, the 2006 act encompasses non-exploitative acts by consensual teenagers also. It remains to be seen whether an offence prescribed in statute is "necessary" and "proportionate" to a legitimate aim, such as the protection of health and morals, if it is so claimed.

The Joint Oireachtas Committee recommended that the age of consent be lowered to 16 years of age to reflect modern realities. This recommendation may be considered by the High Court, and most likely by the Supreme Court, when examining the impact of the convention arguments. The convention is frequently described as a living instrument, which means that the extent to which the convention's rights will be protected will depend upon society's values and modern realities at any one time. The outcome of challenges raised in the upcoming High Court case will provide insight as to whether the Irish legislation has duly reflected today's society by legitimate, reasonable and proportionate means. G

Edel Kennedy is a trainee solicitor with Dublin law firm Partners at Law and is the author of the Gazette *articles 'Age-old problem' (October 2005), which highlighted the significant legal issues in this area, and 'The hand that robs the cradle' (July 2006), which focused on the defence of mistake as to age and the* Mr A *judgment.*

What do you do when the issue of you acting personally as executor of your client's will comes up? Tom Martyn looks at the issues you should consider and the additional responsibilities of the solicitor executor

WILL YOU,

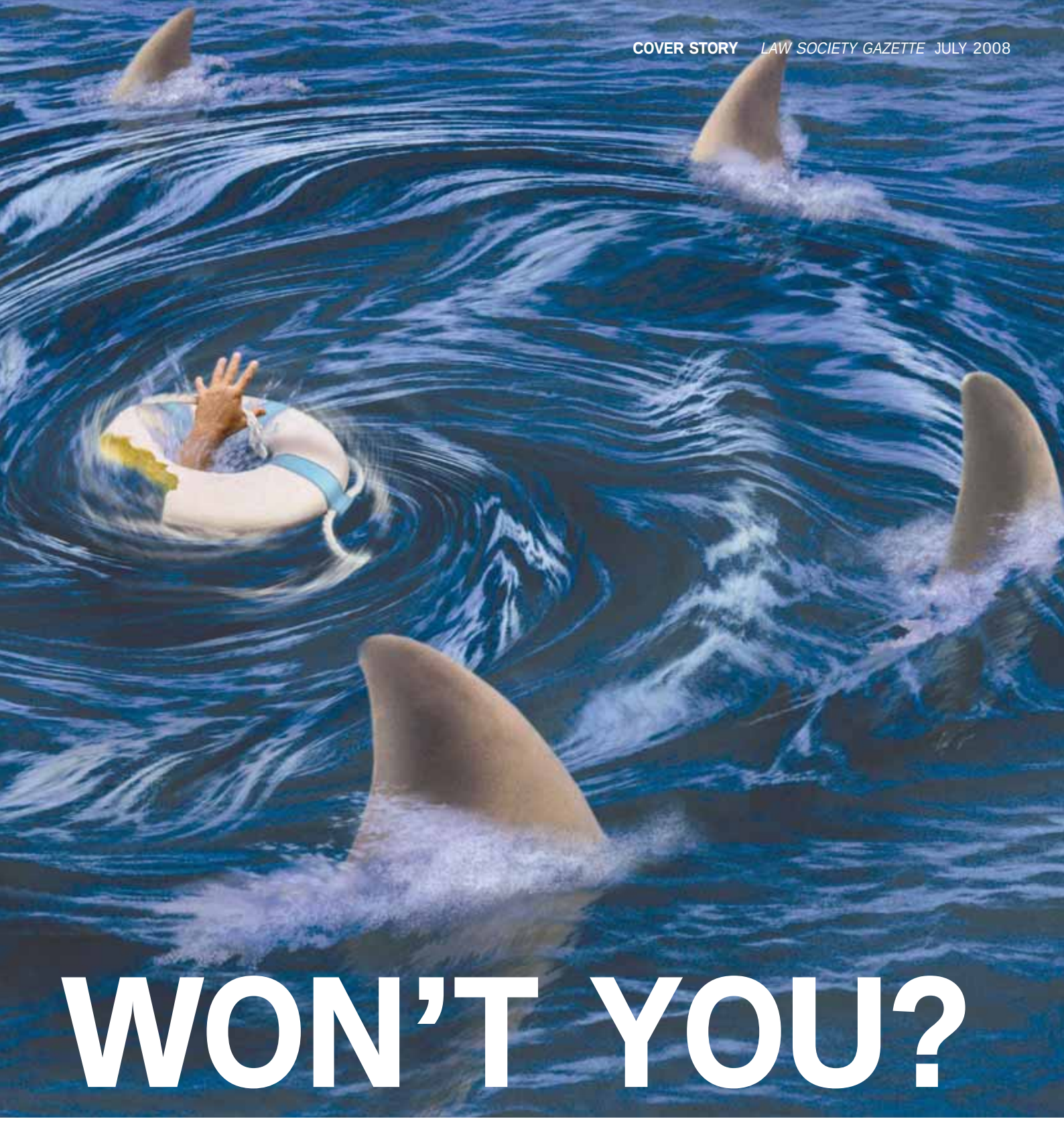
MAIN POINTS

- Acting as an executor of a will
- Issues to weigh up before agreeing to act
- Steps to take at the point of taking instructions

There are occasions when the issue of acting as an executor of a will arises for solicitors. When it does, there are issues you need to weigh up before you agree to act. This article guides you through the main points you need to consider when you are asked to act as executor and when you have been appointed to act as executor.

Testators are pretty much free to appoint whoever they wish to act as executors. When you advise a client on their choice of executor, common sense generally prevails. The choice of executor is, more often than not, obvious. If it isn't, then consider the following:

- Is it better to appoint someone who will benefit under the will? The practical reason is that they will have more interest in finalising the estate promptly.
- It is better to choose an executor who is likely to outlive the testator.
- Consider choosing more than one executor. In the case of certain types of trusts, a second trustee is



WON'T YOU?

essential. It is prudent to consider having a second executor in any case.
- The executor should preferably be resident in the state.

Remember – the acceptance of the appointment is optional at the hand of the appointee.

Should I, as a solicitor, act as executor?

There are occasions when the question of a solicitor acting as a professional executor arises:

- It may be perceived by the testator that the solicitor will be more objective and impartial in dealing with the estate. Bear in mind, though, that a solicitor can apply that objectivity and impartiality in the advice they give to a lay executor.
- There may be potential conflicts in the administration of the estate that would cause strain on a lay executor.
- There may be vulnerable beneficiaries of the estate. There may be minor children or a

ACTING AS A PROFESSIONAL EXECUTOR

If you do agree to act, there are steps you should take at the point of taking instructions:

- Include a charging clause in the will to enable you (or a partner of the firm) to charge for the time spent on the administration of the estate.
- Ensure that you (or any of your partners) do not witness the will.
- As in all matters, keep a careful note of your attendances surrounding the making of the will and the reasons for your appointment. If you are being appointed instead of a more obvious lay executor, record carefully the testator's reasons for appointing you.
- In larger offices, have an office policy on solicitors acting as executors. Does the firm insist on a particular partner being appointed? Is it an individual solicitor that is appointed, or the firm? If an individual is being appointed, should that solicitor notify a partner in the firm of the intention to appoint him or her?

It is vital that you include a charging clause if you wish to be paid for your work in the administration of an estate. You also should consider what the testator is looking for and draft accordingly. Does he want you personally to act as executor? Does he want the partners of your firm to act? If the latter, does he want the partners at the time when the will was drawn up – or at the date of the testator's death – to act?

Unusually in testamentary matters, if the will provides that it is the partners of the firm that are to act, then that will be interpreted as the partners at the time the will was made – not at the date of death. If the partners are all in their '80s and the testator is in his '40s, an obvious difficulty is created. Make sure in those circumstances that it's the partners at the date of the testator's death.

EXAMPLE OF A CHARGING CLAUSE:

I DECLARE that any of my executors who is engaged in a profession shall be entitled to be paid fees for work done by him, or his firm, on the basis that he were not one of my executors but employed to act on behalf of my executors.

If partners of the firm are being appointed, consider the following appointment:

I HEREBY APPOINT the firm of solicitors practising under the style of Sue and Grabbit of Easy Street as executors and trustees of my will, with the proviso that it shall be the partners of the said firm at the date of my death who shall be entitled to act as my executor.

Be especially careful if you are appointed executor and the testator has specific provisions concerning their funeral arrangements. These need to be made known to the persons who will be dealing with the testator's funeral arrangements.

significant benefit passing to a charity.

- The estate may be complicated. It may include a large or dispersed set of assets that will lead to difficulties in their collection and disposal.
- The testator may have a long relationship with, and has relied on, the solicitor, and wants the solicitor to act.
- Banks and accountancy practices offer to act as professional executors, so there is no reason why a solicitor should not offer that same service to their clients.

Think twice

There are also good reasons, however, why you should think twice before you act:

Communication – many beneficiaries will seek to get information from the executor on the progress of the administration of the estate, often on an informal basis. This can put an extra burden on the solicitor who is acting as executor.

Conflict – there are a number of potential points of conflict. Remember that you will probably have advised the testator for a considerable period prior to their death. On their death, that relationship changes in degree only, as you are now acting in the administration of his estate. If a lay executor is appointed, your responsibility is to advise and assist the executor in the proper administration and distribution of the estate. If you are acting as executor yourself, you are personally stepping into the testator's shoes in a way you did not do when the testator was alive. The change in the relationship is very fundamental, and you need to consider this change carefully.

Administering the estate

Where you have been appointed executor, and the testator dies, there are particular matters you need to have regard to:

Costs – one of your first steps as a solicitor advising a lay executor is to agree costs for administering the estate. You will typically agree these costs with the executor, and then inform the residuary beneficiaries of the will of the agreement. After all, these are the people who will ultimately be responsible for paying the bill.

Where you are the appointed executor, you cannot agree fees with yourself. For the purposes of section 68 of the *Solicitors Act*, a client includes a beneficiary under a trust, will or intestacy. It follows, therefore, that you must inform the

"Many of the difficulties reported to the Law Society by way of complaint in probate cases could be avoided if the solicitor kept the beneficiaries informed of the progress of the administration on a regular basis"

LOOK IT UP

Cases:

- *Learoyd v Whiteley* (1886 33 Ch D)
- *Rojack v Taylor and Another*, High Court, 10 February 2005 [2005] IEHC 28

Legislation:

- *Solicitors (Amendment) Act 1994*, section 68
- *Taxes Consolidation Act 1997*

Literature:

- Brian Spierin, *The Succession Act 1965 and Related Legislation: A Commentary* (Dublin: Butterworths, 2003)

residuary beneficiaries of the proposed charges. This is true of all administrations.

In Britain, the Office for Supervision of Solicitors states that, in general, it will not entertain a complaint about fees where there is a lay person acting as executor, but will investigate the complaint where the executor is a solicitor. The position in Ireland is different, in that a residuary beneficiary is a client within the meaning of section 68. The point, nonetheless, is reinforced that your obligations where you are executor are more onerous.

Communication – many of the difficulties reported to the Law Society by way of complaint in probate cases could be avoided if the solicitor kept the beneficiaries informed of the progress of the administration on a regular basis. Ideally, the letter should inform the beneficiary of what has happened to date and that a further update will be furnished within a period of time. This is true of every administration, but particularly one where the informal point of contact with the lay executor does not exist. It may also reduce the incidence of beneficiaries contacting you for updates.

Additional liabilities – be aware of the added responsibility that comes with being executor. You will personally swear the Revenue affidavit – any error in it will be yours. As executor of the estate, you have a secondary liability for any tax due in the administration of the estate. This is a mantle you adopt when you volunteer to act as executor.

Under section 1047 of the *Taxes Consolidation Act 1997*, the executor is personally responsible for any pre-death income tax arising to the testator.

It is settled law that a professional executor has a higher duty of care than a lay executor (*Learoyd v Whiteley*).

Independent legal advice – generally, as the solicitor acting in an administration, it is your role to advise the executor. In this case, you are the executor. Take care, therefore, when the beneficiaries come looking for advice from you. It may be prudent to encourage them to seek independent advice at the outset of the administration.

Brian Spierin, in his book *The Succession Act 1965 and Related Legislation: A Commentary*, stated that he was of the opinion that it would be imprudent for an executor, particularly a professional executor, to advise a beneficiary of their right to take a section 117 claim against an estate.

In *Rojack v Taylor and Another*, Judge Quirke quoted Mr Spierin's view with approval. In that case, the executor was the daughter of the testator, who unsuccessfully sued the solicitor for alleged breach of duty in failing to advise her of her right to make such a claim.

The case illustrates the potential for conflict that arises where an executor is a beneficiary of an estate, and Mr Spierin's commentary reinforces the need for a professional executor to be particularly conscious of his role and function as executor.

Swimming lessons can be a useful skill when acting as executor for your clients

Consider this

In summary, if you have acted for the testator, and then act advising the executor of your late client's estate, the change in role is a subtle one. Where you act as the executor of the estate, your role has changed more acutely. You should be aware of these changes and ensure that you are ready to meet the new challenges. G

Tom Martyn is a partner in the Sligo law firm McDermott, Creed & Martyn and is a member of the Law Society's Probate, Administration and Trusts Committee.

Breaking up IS HARD TO DO

Advising on and drafting a prenuptial agreement is fraught with difficulty. Ann FitzGerald looks to the *Report of the Study Group on Prenuptial Agreements* for marriage guidance

In a survey reported by KPMG Accountants in November 2007, almost half (47%) of private business owners were reported as being "concerned about the impact of divorce or a family dispute on their businesses". Of those questioned, nearly two-thirds (64%) of the respondents said they had not taken any measures to protect those who would eventually inherit the business from them.

It is clear that the business community is concerned that well-managed succession arrangements are put in place to protect both business owners and their employees in the event of the marriage breakdown of a primary shareholder. There is no reason why a limited prenuptial agreement (PNA) could not answer these concerns in appropriate cases. Postnuptial agreements may also be appropriate, so that well-organised, hard-working members of the public can provide for the possible eventuality of a separation or divorce, while also ensuring that the other spouse is protected and provided for within the law.

Study group recommendations

PNAs and their legal status in Ireland has been considered fully in the *Report of the Study Group on Prenuptial Agreements* submitted to the Minister for Justice in April 2007. The report reviews the law, both in Ireland and elsewhere, puts the arguments for and against their recognition, and makes useful and timely recommendations. In addition, it reviews all the recent Irish case law on 'proper provision' and 'finality' and how these might impact on the enforcement of PNAs. It is written in clear, concise and forthright language.

It sets out that PNAs are reckoned to be enforceable in Ireland, but should be open to variation by a court in exercise of its discretion – both at judicial separation and more particularly on the making of a divorce. The study group took the view that a PNA would be recognised and recommended legislation both to clarify the legal position and to improve certain procedural requirements and also to allow a court to vary the agreement.

The report recommended the following:

1) That an express statutory provision be made to recognise PNAs by introducing a new section 16(2)(a) of the *Family Law Act 1995* and a new section 20(3)(a) of the *Family Law (Divorce) Act 1996*. At present, section 20(3)(a) of the 1996 act provides for the court *to have regard to* the terms of any separation agreement that has been entered into by the spouses and still in force. The report recommends that a new section be inserted to allow the court to have regard to a PNA. This would, in turn, allow a court to examine and scrutinise a PNA, which is subject to different considerations than a separation agreement, and therefore an additional separate provision should be made to provide for same.
2) The study group recommends that no amendment be made to section 16(2) of the *Family Law Act 1995* or section 20(2) of the *Family Law (Divorce) Act 1996*. These sections deal with the various factors to be considered by the judge in exercising his or her decisionmaking power on separation or divorce. In the opinion of the study group, the inclusion of a PNA as one of the factors would not represent a sufficiently transparent way of showing whether or what weight had been attached to the agreement. It would place the execution of such an agreement on a par with factors such as the age of the parties, the duration of the marriage, and so on.
3) Given the provisions of section 113 of the *Succession Act 1965*, it is possible that a PNA might legally provide for the division and distribution of assets in the event of the death of one of the spouses. Thus, as a result of the passage of time or other intervening events, it is possible that a spouse could suffer hardship in the event of death, where the provisions of a PNA were enforced that included a renunciation of the legal right share of the surviving spouse on death. Section 113 is not

MAIN POINTS

- ***Report of the Study Group on Prenuptial Agreements***
- **Drafting a prenuptial agreement**
- **The use of questionable clauses**

much used at present, but legislation in this field is likely to increase the number of PNAs and *Succession Act* renunciations.

The study group recommends that a statutory provision should be introduced providing for the court to have an opportunity to review the renunciation on similar terms as section 15A of the 1995 act or section 18 of the 1996 act and to make provision for a surviving spouse, notwithstanding the existence of a waiver, and that the court have the power to make provision for a surviving spouse where the existence of a PNA might give rise to an injustice. Otherwise, the provisions in section 15A of the 1995 act and section 18 of the 1996 act, whereby a spouse can seek provision out of the estate of a deceased spouse, only applies in cases of marriage breakdown and not otherwise.

4) The study group recommends that certain formalities and procedural requirements must be carefully followed for a valid PNA to come into effect. The group recommends that the *Family Law Act 1995* and the *Family Law (Divorce) Act 1996* be amended to include a definition of a PNA, so that, for an enforceable agreement, it must be in writing, signed and witnessed, made after each party has received separate legal advice, with full disclosure of financial information, and executed by both parties not less than 28 days before the intended marriage.

Drafting a prenuptial agreement

There is little doubt that advising on and drafting a PNA is fraught with difficulty. In the first place, there is uncertainty surrounding its enforceability. In the case of a short marriage, it will almost certainly be of persuasive power if the reasonable formalities are fulfilled in its drafting and if each of the parties had independent legal advice with reasonable financial disclosure. Arguably, if the terms of the

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agreement are fair, it is more likely to be enforced and to satisfy the 'proper provision' test for each spouse.

This is a big thing to be asked of the unfortunate solicitor advising a client. If the marriage survives, you will probably never hear from the client again. If it breaks down, the solicitor may end up as a witness in court in relation to disclosure and the timing of the agreement. Further, it may be unwise or impossible for either solicitor involved in the PNA to act for either party on the separation or divorce if the validity of the PNA is an issue raised by either party.

The result is that, both in the US and Australia, many family lawyers refuse to draw up PNAs, given that the risk of a negligence action is high and the benefit to the lawyer in financial terms would be small in comparison.

Sunset clauses

There is a demand for such agreements and, in certain limited cases, you may find that, as a practitioner, drafting such an agreement is advisable. A PNA may be adapted to suit the needs of the particular case – for example, to protect property for children of a first marriage. A PNA can be a useful tool to protect long-established assets where there are other assets available to provide for the spouse. A clause could be included, for example, to protect a pre-existing business asset, whereby the value of it will be added to the couple's 'balance sheet' on breakdown, but with a proviso that the asset cannot be sold.

Some company lawyers have also devised a so-called 'poison shareholding clause' to protect a family business built up over many decades. Whether such devices will stand the test of close judicial examination remains to be seen. Whether disclosure should be provided by 'affidavit of means' may also require consideration.

So-called 'sunset clauses' also are an option to consider, whereby a PNA could provide for a review of the agreement to be carried out after a specified period, for example, two or five years, with the possibility that the agreement would expire after a further stated period. Whether such a clause would be recognised in Ireland remains to be tested. The study group did not favour the use of sunset clauses.

There is a pressing need for reform to make such agreements fully recognised and enforceable within the framework of the existing family law legislation. Failure to legislate will result in more couples opting for cohabitation as opposed to marriage, which renders at least one of the parties in a very weak position legally in the event of breakdown. This position does not serve the public well. G

Ann FitzGerald is senior partner at FitzGerald Solicitors.

TERMS CONDITIONS

When it comes to advertising financial services, the 'usual terms and conditions apply' – but what about the 'sneaky ones'? Max Barrett peers at the small print

Given the extent to which the general public in Ireland is exposed to advertisements for financial products and services, one might expect there to be a single statute that would address the difficulties that inappropriate and unregulated financial advertising presents. Instead, there are a number of key laws and codes that overlap to a greater or lesser extent in the provision they make regarding financial advertisements. This article briefly considers the swathe of law, regulation and self-regulatory codes that must be navigated by a person minded to publish a financial advertisement in Ireland.

The first port of call for anyone publishing a financial advertisement in Ireland relating to credit is the *Consumer Credit Act 1995*. Part II of that act is concerned with the advertising and offering of financial accommodation. Part IX of the act, which is concerned with housing loans by mortgage lenders, makes certain incidental provision in respect of advertisements for housing loans. The provisions of part IX do not operate separately from the provisions contained in part II. Thus, an advertisement that publicises credit for a housing loan will be subject to the requirements contained in the stated parts of the 1995 act. The *Consumer Credit Act* requires that prominent warnings be included in financial advertisements, information documents, application forms and approval documents, which now form an increasingly substantial portion of such documents. Anybody wishing to publish a credit advertisement should also be aware at all times of the prohibition on advertising credit to minors, contained in part X of the 1995 act. Breach of this prohibition, as well as other advertising provisions of the *Consumer Credit Act*, is a criminal offence.

ASAI CODE OF STANDARDS

The *Code of Standards for Advertising, Promotional and Direct Marketing in Ireland* is published by the Advertising Standards Authority for Ireland (ASAI). The authority was established by the advertising industry as an independent self-regulatory body seeking to promote the highest standards of advertising, promotional marketing and direct marketing.

Its *Code of Standards* is based on principles established by the International Chamber of Commerce, which require that all marketing communications "be legal, decent, honest and truthful", "be prepared with a sense of responsibility to consumers and to society", and "respect the principles of fair competition generally accepted in business".

The code comprises a series of general and then sector-specific rules that are intended to ensure that marketing communications do not mislead or cause general offence. An entity seeking to advertise financial products and services in Ireland cannot generally avoid encountering the code in practice. Any person who considers that a marketing communication has breached the code may institute a complaint before the ASAI. Alternatively, the authority may itself investigate matters that it identifies as part of its own compliance-monitoring programme.

and APPLY

Under section 135 of the *Consumer Credit Act* (as amended), the Central Bank and Financial Services Authority may, if it considers it expedient to do so, give a direction to any mortgage agent on the matter and form of any advertisement or information document published or displayed by or on behalf of the agent in relation to a housing loan. At the time of writing, two such directions have issued and contain a significant level of detail that must be included in financial advertisements. Under section 135(3) of the *Consumer Credit Act*, a mortgage agent must comply with a section 135 direction. Failure to do so is a criminal offence.

I don't want it

Part 3 of the *Consumer Protection Act 2007* is concerned with unfair, misleading, aggressive and prohibited commercial practices. Misleading commercial practice provisions are covered in section 44, which makes specific provision relating to misleading competitors or causing product confusion through marketing or advertising. Sections 55(1) and (3) of the *Consumer Protection Act* identify numerous prohibited commercial practices, some of which are of interest in the context of financial advertisements. A trader who contravenes section 55(1) or (3) of the 2007 act is guilty of an offence.

The *European Communities (Misleading and Comparative Marketing Communications) Regulations 2007* implement the *Misleading and Comparative Advertising Directive*. The general purpose of the regulations is to protect traders from misleading marketing communications and prohibited comparative marketing communications of other traders.

Though the regulations do not seek to benefit consumers directly, an indirect benefit to consumers

MAIN POINTS

- **Financial advertisements – key laws and codes**
- **Unfair, misleading, aggressive and prohibited practices**
- **Broadcasting legislation**

arises. The term 'marketing communication' is defined in regulation 2(1) of the regulations as "any form of representation made by a trader in connection with a trade, business or profession in order to promote the supply of a product".

Regulation 3 prohibits traders from engaging in a "misleading marketing communication". Regulation 4 prohibits traders from engaging in a "prohibited comparative marketing communication". Under regulation 5, the principal remedy for a trader who believes himself to have been adversely impacted by a misleading marketing communication, or a prohibited marketing communication, is to apply for a Circuit or High Court order prohibiting the offending trader from engaging or continuing to engage in the offending communications.

Consume me

The *Consumer Protection Code*, published by the Financial Regulator, is the most significant non-legislative measure concerned with the advertisement of financial services in Ireland. It has been adopted pursuant to, among other provisions, section 33S(6) of the *Central Bank Act 1942*. The significance of this is that a breach of the code constitutes a 'prescribed contravention' for the purposes of section 33AN of the *Central Bank Act 1942*, punishable in the first instance by the Financial Regulator, pursuant to the sanctions regime established by part IIIC of the 1942 act.

The *Consumer Protection Code* is wider in scope than the *Consumer Credit Act 1995*. Its definition of who constitutes a 'consumer' is considerably wider, and its focus is broader than consumer credit. That said, there is a degree of overlap between the two measures. In this regard, the Financial Regulator has stated that it does not seek in the *Consumer Protection Code* to duplicate any warning statement requirements already contained in the *Consumer Credit Act* – compliance with the relevant requirement of the *Consumer Credit Act* being deemed to constitute compliance with the *Consumer Protection Code* in this regard.

The *Consumer Protection Code* comprises seven chapters. Although chapter 7 is expressly concerned with advertising, there are provisions relevant to advertising in various other chapters. Perhaps one of the more visible results of the code has been a general expansion of the advisory text and warnings contained in financial advertisements.

This is attributable in part to the requirements in the code that all warnings required by the code be prominent – that is, in a box, in bold type and "of a font size that is larger than the normal font size used throughout the document or advertisement or information document" (chapter 2, paragraph 6) – and that the design and presentation of an advertisement allow it to be clearly understood, with small print and footnotes being of sufficient size and prominence as to be clearly legible (linked to the relevant part of the main copy, where appropriate) (chapter 7, paragraph 6).

"There are a number of key laws and codes that overlap to a greater or lesser extent in the provision they make regarding financial advertisements"

Like it, love it, need it

Although Irish broadcasting legislation is not directed at financial product and service providers, it is, nonetheless, of practical interest to them – not least in that such legislation determines whether and when broadcast advertising by such providers will be allowed.

At the time of writing, a *Broadcasting Bill* has been initiated before the Seanad and it is anticipated that this bill will make significant amendments to the current broadcasting regime, including the dissolution of the Broadcasting Commission of Ireland and the Broadcasting Complaints Commission and their replacement by a new Broadcasting Authority of Ireland.

It is not anticipated at this time that there will be significant changes to the *General Advertising Code* and

LOOK IT UP

Legislation:

- *Betting Act 1931*
- *Broadcasting Act 2001*
- *Broadcasting Bill 2008*
- *Building Societies Act 1989*
- *Central Bank Act 1942*
- *Central Bank Acts*
- *Consumer Credit Act 1995*
- *Consumer Protection Act 2007*
- *Copyright and Related Rights Act 2000*
- *Credit Union Act 1997*
- *Data Protection Acts 1988 and 2003*
- *Equal Status Act 2000*
- *European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004*
- *European Communities (Misleading and Comparative Marketing Communications) Regulations 2007*
- *Investor Compensation Act 1998*
- *Markets in Financial Instruments and Miscellaneous Provisions Act 2007*
- *Misleading and Comparative Advertising Directive*
- *Sale of Goods and Supply of Services Act 1980*
- *Television without Frontiers Directive*
- *Trade Marks Act 1996*
- *Trustee Savings Bank Act 1989*
- *Unit Trusts Act 1990*

Literature:

- Advertising Standards Authority for Ireland, *Code of Standards for Advertising, Promotional and Direct Marketing in Ireland*, www.asai.ie
- Broadcasting Commission of Ireland, *General Advertising Code* and *Children's Advertising Code*, www.bci.ie
- Financial Regulator, *Consumer Protection Code*, www.financialregulator.ie

the *Children's Advertising Code*, adopted under section 19 of the *Broadcasting Act 2001*, by the Broadcasting Commission of Ireland. The codes are directed at broadcasters, but are of practical significance for financial product or service providers in that their provisions will be applied by broadcasters in Ireland to any radio or television advertising that providers may seek to broadcast.

Lean on me

Consistent with the principle of home-state supervision established under the *Television without Frontiers Directive* – whereby television stations are obliged to conform with the rules laid down in the jurisdiction in which they are licensed – prominent foreign television broadcasters such as the BBC, Channel 4, ITV and Sky TV are not required to comply with the terms of the BCI's *General Advertising Code*. At the time of writing, alleged breaches of the *General Advertising Code* and/or the *Children's Advertising Code* are investigated and decided by the Broadcasting Complaints Commission.

The above measures are general measures that affect advertising. There is also an array of law and regulation that makes incidental provision as to advertising, including, but not limited to, the *Betting Act 1931*, the *Building Societies Act 1989*, the *Central Bank Acts*, the *Copyright and Related Rights Act 2000*, the *Credit Union Act 1997*, the *Data Protection Acts 1988 and 2003*, the *European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004*, the *Equal Status Act 2000*, the *Investor Compensation Act 1998*, the *Markets in Financial Instruments and Miscellaneous Provisions Act 2007* (and other MiFID legislation), the *Sale of Goods and Supply of Services Act 1980*, the *Trade Marks Act 1996*, the *Trustee Savings Bank Act 1989*, and the *Unit Trusts Act 1990*, in each case where and as amended from time to time – and the amendments have been manifold.

There is an increasingly complex tapestry of law, regulation and self-regulation applicable to the publication of financial advertisements in Ireland. Indeed, the abundance of legal, regulatory and self-regulatory requirements now applicable to the publication of financial advertisements makes compliance with those requirements a significant challenge for financial product and service providers generally. With enforcement of the requirements becoming ever more rigorous, it is a challenge that such providers cannot afford to ignore or fail to meet. G

Dr Max Barrett is head of legal at National Irish Bank and the author of Financial Services Advertising: Law and Regulation *(Clarus Press, 2008). Any views expressed in this article are entirely personal.*

it ain't what you

Following last month's article on the *Fyffes* case and the tests used in assessing whether a particular piece of information is price sensitive, Conor Feeney looks at another bunch of related issues

Last month's article looked at the tests used in assessing whether a particular piece of information is price sensitive. It addressed, in particular, the tests employed by the courts in *Fyffes v DCC* and analysed their relevance under the new statutory regime provided by the *Market Abuse (Directive 2003/6/EC) Regulations 2005*. This article deals with three other issues arising from *Fyffes*:

- Can the court look at the information standing alone, or can it 'offset' the potential impact of the information against other market factors?
- Can a post-disclosure market event be of evidential value in assessing price sensitivity?
- Can a statutory claim of insider dealing be defeated by a fundamental incongruity in the plaintiff's position?

...it's the way that you do it

So, must the court look at the information standing alone, or can it 'offset' the potential impact of the information against other market factors? While Laffoy J in the High Court found that the information was "unquestionably bad news about Fyffes' trading and earnings performance in the first quarter" and was of a type and quality that was potentially price sensitive, she refused to accept that this was the end of the matter and went on to hold that the negative impact of the information would have been 'offset' by certain factors that negated the price sensitivity of the information. For instance, she found that the reasonable investor would have concluded that the impact of the information would have been offset by the prospects of a merger or a major acquisition, as well as the potential of an internet-based venture that was being pursued by Fyffes and had been the main driver of the share price.

The Supreme Court rejected Laffoy J's approach in this regard. It held that the court could not 'offset' the hypothetical impact of the information on the market against certain factors already in the market. Denham J found that this approach was not provided for in the statute and that it involved making "an arbitrary choice" from the "myriad factors at play in the market". Denham J concluded that "the information disclosed a risk, and bad news for Fyffes, and this was not altered by making it generally available to the market. Other information, including the 'offsets', was already in the public domain."

Fennelly J further explained: "The very notion of offset supposes that there is something to 'offset'. It suggests a balancing of one influence against another. If the effect of the [internet] venture was to counteract or to cancel the effect of the 'bad news', it would still have materially affected the price."

There is no reference to the 'offsetting' of factors in the new statutory test provided under the *Market Abuse Regulations*. However, it is submitted that this process is a legitimate step in applying the reasonable investor test and that the Supreme Court decision in this regard might be distinguished as only applying to the old test under section 108(1) of the *Companies Act 1990*.

True confessions

Under the 'market effect'-based approach employed by the Supreme Court, the question to be answered is whether the piece of information is a factor having an effect – whether positive or negative – on market price. As Fennelly J emphasised, in this approach there is no requirement to balance the influence of the information against any other market factor and the effect of the information can be looked at in isolation.

By contrast, under the reasonable investor test required by the *Market Abuse Regulations*, which was analysed in last month's article, the question is whether the information would have been likely to have been *used* by the reasonable investor as part of

MAIN POINTS

- **Insider trading and manipulation of price-sensitive information**
- **Measuring price sensitivity in insider dealing claims**
- **High Court and Supreme Court approaches**

Does the difference between the judgments of the High and Supreme Courts suggest a banana split?

the *basis* of his investment decisions, taking into account the various other factors at play in the market that are influencing the price of the relevant instrument. In this test, a process of offsetting is essential if one is to assess whether a piece of information would have been positively put to use by the reasonable investor in his decisions and would have formed part of the basis of those decisions. It is not enough that it would have been a mere factor going into the mix. In this way, despite the fact that a piece of information is found to be objectively negative news about the issuer of shares, the court may find that, when offset against other stronger factors playing on his mind, it would nevertheless not have been used by the reasonable investor in his investment decisions in relation to that issuer.

I heard a rumour

The above argument is based on the formulation of the reasonable investor test as set out in the regulations. As discussed in last month's article, there is a potentially significant difference of emphasis between that formulation and the one employed by Laffoy J, which focused on what would have *impacted* on the judgement of the reasonable investor, rather than what would have been *used* by him in his investment decisions. It would appear that the process of offsetting lends itself even more readily to the new statutory formulation of the reasonable investor test.

Support for such an approach under the new regime might be found in the related *Market Abuse Rules*, which have been adopted by the Financial Regulator. Rule 5.3 of those rules requires an issuer, when conducting the reasonable investor test, to take account of the fact that "the significance of the information" will vary depending on "recent developments" and "market sentiments". Further, the issuer must account for "any other market variables likely to affect" the financial instrument in the circumstances. Further support is to be found in the first recital in Commission Directive 2003/124/EC, one of the implementing directives for the *Market Abuse Directive*, which states that, in assessing whether information would have been used by the reasonable investor in making his investment decisions, one must "take into consideration the anticipated impact of the information in light of … any other market variables likely to affect the related financial instrument".

Of course, it remains to be seen how the courts will approach this issue under the *Market Abuse Regulations*. Clearly, much will depend on the view taken of the applicability of the reasonable investor test and its formulation. However, it is reasonable to conclude that, given the change in the law affected by the regulations, the question of offsetting would at the very least be a live issue in any future claim of insider dealing.

Can a post-disclosure market event be of evidential value in assessing price sensitivity? A crucial aspect of Laffoy J's judgment in *Fyffes* was her decision to exclude the evidence of the market reaction to a profit warning given by Fyffes between four and six weeks after the share sales that were the subject of the insider dealing claim. The judge held that a post-disclosure market event was only of evidential value if:

1) There was parity of information between the alleged price sensitive information and the information that was the subject of the post-disclosure market event, and
2) The market conditions were the same on the date of the alleged insider dealing and the date of the post-disclosure market event.

Laffoy J refused to allow the profit warning to be used as a proxy, as she found that it failed to satisfy both elements of that two-part test.

Robert De Niro's waiting

The Supreme Court unanimously held that the High Court had erred in excluding this evidence and found it to be of evidential value in assessing the price sensitivity of the information in issue. The court favoured a more relaxed attitude to the use of a subsequent market event as a proxy or comparator in assessing the price sensitivity of a piece of information. The two pieces of information were not required to be identical. Any differences in the information and the market conditions would be matters affecting the weight afforded to the evidence, rather than requiring its exclusion.

Given the importance placed by the Supreme Court in *Fyffes* on the evidence of the market reaction to the profit warning, and the fact that the *Market Abuse Regulations* do nothing to restrict such evidence, it would seem that the use of evidence of a post-disclosure market event as a proxy in assessing price sensitivity will be a key factor in any future claim of insider dealing. Again, support can be found in Commission Directive 2003/124/EC, which states, in the second recital, that "*ex post* information may be used to check the presumption that the *ex ante* information was price sensitive".

The more permissive, weight-based approach of the Supreme Court will thus apply. However, it should be pointed out that, while the court will not automatically exclude such evidence by reason of differences in information or market conditions, the *Fyffes* judgments emphasise that extreme caution will be exercised before such evidence is allowed to be a determinative factor in a claim of insider dealing.

Really saying something

Can a statutory claim of insider dealing be defeated by a fundamental incongruity in the plaintiff's position? In her judgment, Laffoy J found that there was "an inherent incongruity in reason and common sense" between, on the one hand, Fyffes' assertion that, on receipt of the trading reports in question, the alleged insider dealer, Mr Flavin, had in his possession price-sensitive information and, on the other hand, the fact that Fyffes did not consider at that time that the very same information triggered its duty of disclosure under the listing rules of the Irish Stock Exchange, which employed essentially the same test for price sensitivity as section 108(1) of the 1990 act.

In addition, DCC highlighted other apparently contradictory actions on the part of Fyffes, such as the purchase of a congratulatory bottle of champagne for Mr Flavin. DCC did not pursue an estoppel argument in their final submissions to the court, but rather argued that Fyffes' conduct was evidentially significant in the determination as to whether the information in issue was price sensitive. In the end, having concluded that the information was not price sensitive, Laffoy J was not required to deal with this issue; however, she did state that, if the statute could accommodate such a fundamental incongruity, it would seem to be "at variance with fairness and justice".

The Supreme Court acknowledged this fundamental incongruity, but found that it did not affect its finding of insider dealing. Finnegan J held that, given that the test to be applied was an objective one, the subjective appreciation of Fyffes' directors was not determinative on the issue of price sensitivity but merely went "into the mix of evidence available as showing that experienced, responsible executive and non-executive directors of a public company had reached that appreciation".

Fennelly J suggested that the fundamental incongruity was a quirk that arose from the unusual nature of the proceedings, in which the plaintiff was not a disgruntled shareholder, but rather the company that had issued the shares that were the subject of the claim. It would seem that this is liable to arise again, as section 33(1) of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*, which governs liability for insider dealing under the *Market Abuse Regulations*, specifically provides for a remedy for issuers such as Fyffes. It was open to the legislature to condition the availability of relief under the new legislative regime by reference to the conduct of the plaintiff, but, once again, it chose not to do so.

Do not disturb

It is clear that the *Market Abuse Regulations* have thrown wide open many of the issues dealt with by the courts in assessing price sensitivity in *Fyffes*. If another plaintiff with the stomach and the resources to bring an insider dealing claim ever appears again, the courts will have to address these issues and bring clarity to the question of price sensitivity. More than most other areas of law, this is one that desperately needs clearly defined principles if it is to have its intended effect and influence the activities of those dealing in the market. G

Conor Feeney is a Dublin-based barrister.

"Extreme caution will be exercised before such evidence is allowed to be a determinative factor in a claim of insider dealing"

LOOK IT UP

Cases:

- *Fyffes plc v DCC plc, S&L Investments Ltd, James Flavin and Lotus Green Ltd* (Supreme Court, 27 July 2007 [2007] IESC 36; High Court (Laffoy J), 21 December 2005 [2005] IEHC 477)

Legislation:

- Commission Directive 2003/124/EC
- *Companies Act 1990*
- *Investment Funds, Companies and Miscellaneous Provisions Act 2005*
- *Market Abuse Directive* (2003/6/EC)
- *Market Abuse (Directive 2003/6/EC) Regulations 2005* (SI 342 of 2005)
- *Market Abuse Rules*

Far from the

Now that mental health tribunals have been in operation for the past 18 months or so, it might be useful to examine how they are working out in practice and to reflect upon some aspects of their operation, says Gary Lee

The *Mental Health Act 2001* established the Mental Health Commission "to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in approved centres" ('approved centre' being defined as a registered "hospital or other in-patient facility for the care and treatment of persons suffering from mental illness or mental disorder").

The main sections of the act became operative on 1 November 2006. These provide the procedures to admit and detain persons suffering from a 'mental disorder' (as defined by section 3 of the act), together with the automatic review of the detention by a mental health tribunal.

Involuntary admissions

Typically, although not exclusively, a spouse or relative will apply to a registered medical practitioner (RMP), usually the person's GP, for a recommendation to have the person involuntarily admitted to an approved centre. The RMP then examines the person within 24 hours and, if satisfied that the person is suffering from a mental disorder, may then proceed to make a recommendation that the person be involuntarily admitted.

Within 24 hours of such an admission, an examination has to be carried out by a consultant psychiatrist of the staff of the hospital concerned. If that psychiatrist is satisfied that the person is suffering from a mental disorder, he or she can make an involuntary admission order (which can last up to 21 days) for "the reception, detention and treatment" of the person. Once this order is made, the person becomes a 'patient' within the meaning of the act, and the commission is notified.

The commission then refers the matter to a mental health tribunal (chaired by either a solicitor or barrister) for review.

It is the patient's detention that is reviewed by the tribunal. The patient's psychiatrist may also make subsequent orders providing for further periods of detention – such subsequent orders are known as renewal orders. These are also reviewed by tribunals. While patients are detained pursuant to admission or renewal orders, a review by a tribunal is mandatory, the tribunal having to consider the case within 21 days of the making of the order. If the order is revoked by the psychiatrist prior to the review, the patient may elect to have his or her detention reviewed.

In addition to referring the matter to a tribunal, the commission must arrange to have the patient examined by an independent psychiatrist and must also assign a legal representative (usually a solicitor) to represent the patient concerned (unless he or she proposes to engage one).

The power to extend duration

Procedures are determined by the tribunal. However, it has to make provision for certain matters provided for by the act, such as the requirement that sittings be held privately.

The legal representative and witnesses are entitled to the same privileges and immunities as in a court. The tribunal has the power to direct any person whose evidence is required to appear before it and to produce "any document or thing in his or her possession or power specified in the direction". A person who disobeys any such direction or a person who does something that would amount to a contempt of court "shall be guilty of an offence" and liable to a fine of up to €1,500 or 12 months'

MAIN POINTS

- Mental health tribunal procedures and hearings
- Involuntary admission
- Extending the duration of an admission order

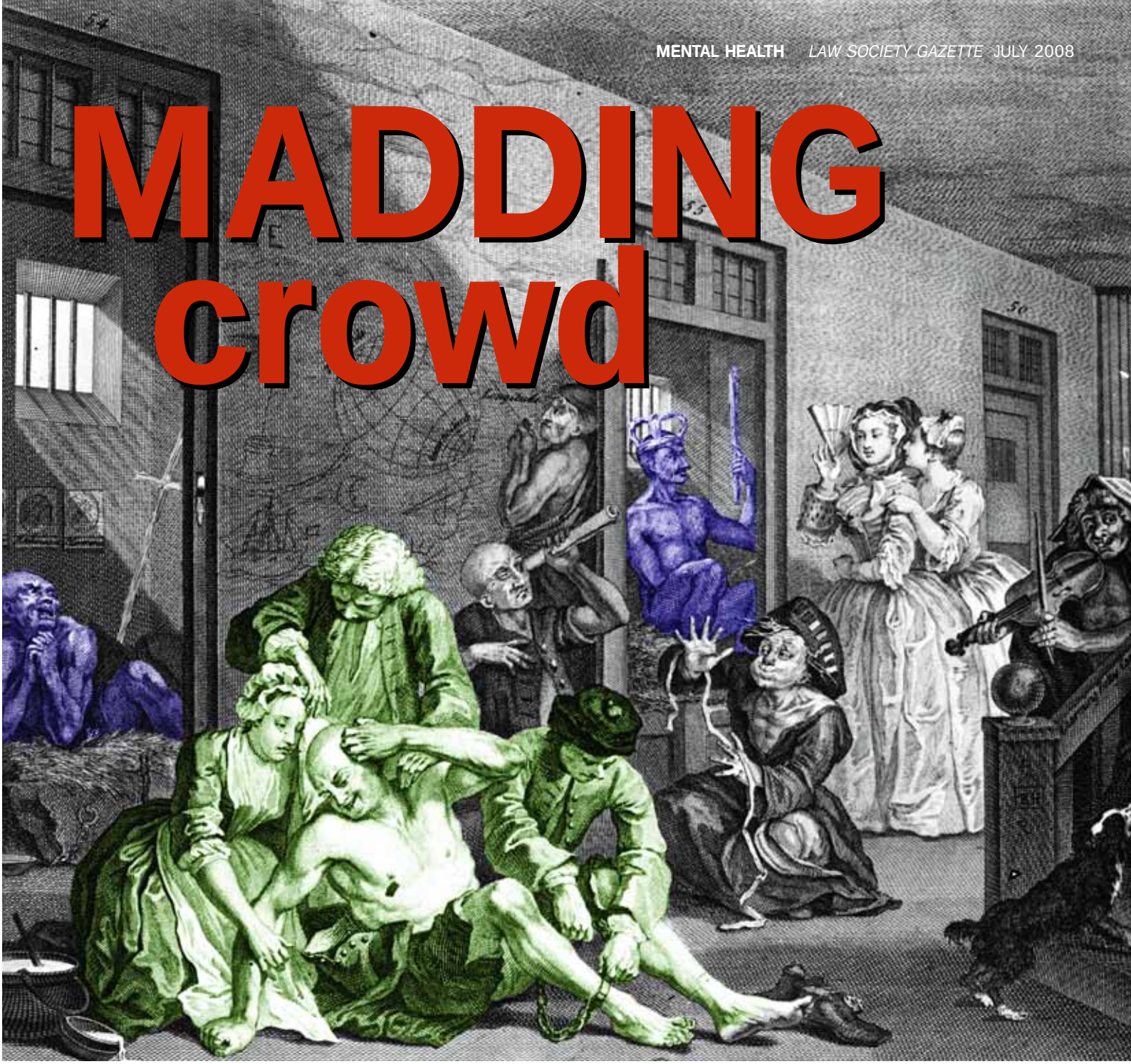
TRIBUNAL MEMBERS

Mental health tribunals consist of three members:

a) A consultant psychiatrist,
b) A practising barrister or solicitor who has had not less than seven years' experience as a practising barrister or solicitor ending immediately before such appointment, who shall be the chairperson of the tribunal, and
c) One shall be a person other than a person referred to in paragraphs (a) or (b) or a registered medical practitioner or a registered nurse.

As noted, it is the function of the barrister or solicitor to chair the tribunal.

MADDING crowd



Things ain't what they used to be: the bad old days of the 'Bedlam' Asylum

imprisonment or both.

Prior to the hearing, the tribunal members consider the independent psychiatrist's report and the hospital records.

Legal submissions regarding procedural matters and any motions for adjournments are usually heard at the outset of the hearing. Regarding adjournments, the tribunal can adjourn to a date within the 21-day period during which the decision is to be given. Section 18 allows the tribunal to extend the period "for a further period of 14 days and thereafter [the period] may be further extended by it by order for a period of 14 days on the application of the patient if the tribunal is satisfied that it is in the interest of the patient".

The effect of this provision, together with that of 15(1), is to confer upon the tribunal the power to extend the duration of an admission order for up to 28 days. However, as Mr Justice Sheehan held in *JB v Director of the Central Mental Hospital and Others*, section 18 does not operate to extend the duration of renewal orders.

Adjournments are not granted in the absence of a compelling reason, given that the patient's liberty is at stake and that he or she may continue to be detained for the duration of any such adjournment.

As regards the hearing, in my view, given the paternalistic nature of the act and in order not to undermine the doctor/patient relationship, it should be inquisitorial rather than adversarial. However, the act is silent on this.

It has become the practice to hear the evidence of

LOOK IT UP

Cases:
- *JB v Director of the Central Mental Hospital and Others*, High Court, 15 June 2007, [2007] IEHC 201

Legislation:
- *Mental Health Act 2001*

Literature:
- Law Society Law Reform Committee, *Mental Health: The Case for Reform* (July 1999)
- O'Neill, Ann-Marie (2005), *Irish Mental Health Law* (Dublin: FirstLaw)

Website:
- Mental Health Commission – www.mhcirl.ie

the responsible consultant psychiatrist (RCP) first, followed by that of the patient and any other person who may be called.

Evidence considered

Essentially, the tribunal considers evidence to decide whether or not a patient has a mental disorder, which the act defines as "a mental illness, severe dementia or significant intellectual disability where

a) Because of the illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons, or

b) (i) Because of the severity of the illness, disability or dementia, the judgement of the person concerned is so impaired that failure to admit the person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such admission, and

(ii) The reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent."

The tribunal can affirm the admission order if it is "satisfied that the patient is suffering from a mental disorder and

i) That the provisions of sections 9, 10, 12, 14, 15 and 16, where applicable, have been complied with, or

ii) If there has been a failure to comply with any such provision, that the failure does not affect the substance of the order and does not cause an injustice."

If not so satisfied, the tribunal shall revoke the order and direct that the patient be discharged from the approved centre concerned.

According to the commission, there were 2,248 hearings in 2007, of which 256 resulted in admission orders being revoked.

It should be noted that tribunals also review proposals to transfer patients to the Central Mental Hospital.

The tribunal's decision, together with written reasons, is given "as soon as may be" to the patient, his or her legal representative, the RCP and "any other person, to whom in the opinion of the tribunal such notice should be given". The tribunal has a relatively short period of time in which to draft the decision – in practice, it is usually delivered within an hour or so following the hearing.

The reasons for the decision should be written in such a way as to make it accessible for the patient, and it should exhibit a certain degree of sensitivity towards him/her. Once the decision is delivered, the tribunal, in my opinion, is *functus officio*. G

Gary Lee is a solicitor and a chairperson of mental health tribunals. The views of the author are not necessarily those of the mental health tribunal.

GOING

There has been a dramatic growth in the availability of Irish legal resources on the internet over the past ten years. What's remarkable is that so many of these are available free to use from primary and authoritative providers. John Furlong breaks out his surfboard

Are you a 'digital native' or a 'digital immigrant'? Of the 11,000 solicitors currently on the roll, almost half (5,150) qualified after 1997 and must be assumed to be digital natives – those who grew up with digital technology, including the internet. It is fair to assume that the rest of the profession can be termed 'digital immigrants' – people who grew up without digital technology but have adopted it in some form or another.

Within the digital immigrant population there are likely to be different levels of experience and ability in using technology – including the internet. The 2006 Technology Committee survey of the profession indicated almost universal access by firms to the internet, with 80% of this through broadband connections. However, it is not possible to identify whether this follows through to a high usage rate by individual solicitors. A high usage rate and understanding of the benefits of the internet are vital if the profession is to maximise the benefits and efficiencies that are available from internet use.

The last ten years have seen a dramatic growth in the availability of Irish legal resources on the internet. What is more remarkable is that so many of these resources are available free to use from primary and authoritative providers.

Free availability

There are a number of key elements that have contributed to the wide and free-to-use availability of Irish legal materials. Some are obvious milestones, while others might be overlooked. Aside from the initial publication of the *Irish Statute Book* in 1997, and the establishment of institutes such as BAILII (the British and Irish Legal Information Institute) and IRLII (the Irish Legal Information Initiative), other developments have also substantially promoted the development of internet access. Not least of these was the enactment in 1998 of the *Freedom of Information Act*. The act not only set out the ground rules for government bodies and agencies to make materials available (including legal information), but also confirmed governmental thinking that, as far as possible, national resources (inclusive of legal materials) should be made available to citizens – the latter including the legal sector! We moved from an era of official secrets and narrow protection of assets to one where a positive and proactive stance was taken in making them available.

This is now clear in 2008, where legislation, regulations, case law and official commentaries are readily available – once a legal researcher knows where to look. We have seen the provision of more and more materials on a free-to-use basis through the internet. It makes sense for providers to make materials available through an internet website – it is low-cost in terms of publishing, and access by end users is immediate and universal. This has been accompanied by subscription

MAIN POINTS

- Legal information initiatives
- Positive impact of the *Freedom of Information Act*
- Legislation, regulations, case law and official commentaries easily available

NATIVE

Osama suddenly discovered the limitations of his camel-powered notebook

"In 2008, legislation, regulations, case law and official commentaries are readily available – once a legal researcher knows where to look"

and other arrangements for access to official databases (most notably the Revenue Commissioners' ROS service, the Companies Registration Office online database and the Property Registration Authority's 'Land Direct' service).

In effect, a practitioner can now access, on a free-to-use basis, the most recent case law of the superior courts, all of the legislation of the state, virtually all of the regulatory material contained in statutory instruments, and an array of downloadable forms and official commentaries.

Courts and courts decisions

One of the most remarkable transformations since the late 1990s has been the more ready availability of decisions of the superior courts in electronic format. It is now possible, through the Courts Service website, to access decisions of the High Court from 2004 onwards, Supreme Court and Court of Criminal Appeal (both from 2001 onwards). Supreme Court decisions are normally available on the day of, or the day after, judgment is delivered. The higher volume of High Court cases results in a delay in their availability, but significant progress has been made in providing access in a timely manner. In addition, through the Courts Service website, it is also possible now to track a High Court case from its early listing in the legal diary, continuing through the High Court search system to track documents filed and orders made throughout the course of a case, and ending with the access to any written judgment.

The Courts Service judgments database was preceded by the availability of cases through BAILII (and its sister service IRLII), which now holds decisions of the High Court, Supreme Court and Court of Criminal Appeal from 1997 onwards. BAILII is also intent on providing access to notable Irish decisions from earlier years. In addition, of course, BAILII also provides free access to decisions of courts within the other jurisdictions of these islands – England and Wales, Scotland, and Northern Ireland, as well as providing easy-to-use access to decisions of the Courts of Justice of the European Communities.

Legislation

One of the earliest starting points in the progress to free availability of legal resources was the publication in 1997 of the *Irish Statute Book* on CD-ROM. Eleven years later, all of our primary legislation – the acts of the Oireachtas of the state from 1922 onwards – is available through the online *Irish Statute Book*. This is further complemented by the legislation directory – available also on the *Irish Statute Book* website – which enables users to identify whether or not provisions of legislation have been amended or appealed by later legislation. This is a significant requirement when advising clients on legislation.

The service provided through the *Irish Statute Book* service is augmented by materials available through the Houses of the Oireachtas website. Here, all primary legislation enacted since 1997 is available in PDF format. PDF versions of acts of the Oireachtas are facsimiles of the original document and can often be much easier to navigate, particularly when the legislation is lengthy. The Oireachtas website also provides a chronological history of its life as a bill for

QUICK TIP FOR SEARCHING THE *GAZETTE* ARCHIVE ONLINE

- Key this into google, selecting the 'pages from Ireland' option and including the inverted commas: "Law Society Gazette" and "your search term" (for example, "personal injury summons").
- In most cases, the relevant *Gazette* hits should be among the first results returned.
- Then open the PDF file of that issue and use the search facility (represented by a picture of binoculars in Adobe *Acrobat*) to look for the key words you want.
- Try it with "trunk monkey", for fun!

each statute enacted since 1997. This enables research to be carried out on the various amendments made to a bill during its parliamentary progress.

Statutory instruments and regulations

Again, the *Irish Statute Book* is the main depository of statutory rules and orders from 1922 to 1947, and thereafter to statutory instruments from 1947 to the present day. As a result of the 'Better Regulation' initiative, a procedure was established last year to also provide access on a more contemporaneous basis to recently published statutory instruments. At present, the additional service is available on the *Irish Statute Book* website and allows access to statutory instruments made during 2007 and 2008 in PDF format. It is also worth noting that both BAILII and IRLII also provide access to all of the acts of the Oireachtas and to the text of most statutory instruments.

Statutory instruments are produced in high volumes each year. Unfortunately, they are not always immediately available on the services above. Frequently, the most likely place to find a recent statutory instrument may be the appropriate departmental website.

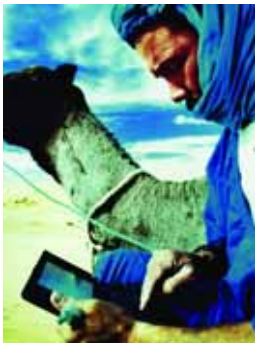
Official commentaries

Under section 16 of the *Freedom of Information Act 1997*, all of the prescribed agencies and governmental bodies are required to publish a manual, setting out the basis on which they administer the law. These manuals can be extremely useful to practitioners, as they set out the practice of law and the basis on which particular regulations and provisions are administered. The FOI requirements have also encouraged some departments and agencies to make available useful material, such as downloadable forms, for example.

The future

Over the next few years, there will be a greater proportion of 'digital natives' than 'digital immigrants' engaged in the provision of legal services. It will no longer be sufficient to provide access solely to depositories or databases of information. End users who regularly book airline tickets or cinema tickets will also demand the same level of interactive service online from government departments and agencies.

There is no doubt that the same agencies and departments are well aware of this, and a number of developments will see a movement from the mere provision of information online to greater interaction with the profession. In fact, this is already happening with the Revenue Commissioners' ROS online service, allowing for the online filing of tax returns (often on the basis of a beneficial arrangement such as later filing deadlines). This interaction will be significantly developed in the next few years through a number of key initiatives. Ultimately, these initiatives, if they are successful, will see the development of an effective 'e-legal sector'. This will demand a greater acceptance and use of the internet by all legal practitioners.



"We will see within the next 12 months the introduction of e-stamping by the Revenue Commissioners. This will transform the manner in which documents are stamped by allowing for the virtual stamping of electronic documents"

The key initiative looming ahead, of course, is electronic conveyancing, which is likely to be in place within the next five years. This will see a transition from paper-based transactions to ones that rely on virtual procedures, culminating in the transfer of electronic documents as the basis for the conclusion of a conveyancing transaction. It is highly probable that this will be linked to the introduction of e-registration – a system whereby electronic copies of documents will be filed with the Property Registration Authority to complete a transfer of title. To allow all this to happen, we will see within the next 12 months the introduction of e-stamping by the Revenue Commissioners. This will transform the manner in which documents are stamped by allowing for the virtual stamping of electronic documents. The old green-dye system is set to be replaced by a system of virtual stamping and certification.

What does all this mean for the legal practitioner? Firstly, there needs to be an awareness that so much material is available currently to make day-to-day legal practise a lot easier and more cost efficient. Secondly, practitioners need to familiarise themselves with what is currently available so that they can grapple with the changes looming ahead.

There is little doubt that, in the next five years, we will see increasing electronic or virtual interaction between the legal profession and various government agencies and bodies. It is only a matter of time until we will be conducting a lot of our business online in a more efficient and cost-effective manner for both our clients and ourselves. Those who prevaricate and ignore these changes will be neither digital natives nor digital immigrants, but will be set to lose out – as digital dinosaurs. G

John Furlong is director of legal resources and education at Matheson Ormsby Prentice, Dublin, and a member of the Law Society's Technology Committee.

LOOK IT UP

- BAILII: www.bailii.org
- Companies Registration Office: www.cro.ie
- Courts Service judgments database: http://www.courts.ie/Judgments.nsf/Webpages/HomePage
- Courts Service: www.courts.ie
- Department of Justice: http://www.justice.ie/
- European Union: http://europa.eu/
- House of the Oireachtas: www.oir.ie
- Irish Statute Book: www.irishstatutebook.ie
- IRLII: www.irlii.org
- Land Registry: http://www.landregistry.ie/eng/
- Law Reform Commission: http://www.lawreform.ie/
- Property Registration Authority: www.prai.ie
- Revenue Commissioners: www.revenue.ie

50 years serving the profession

The annual 'golden oldies' event of the Dublin Solicitors' Bar Association took place on 19 June in the Four Seasons hotel, *writes Kevin O'Higgins*. Michael Quinlan and council members John O'Malley, Helene Coffey, Pauline O'Donovan and Liam Fitzgerald hosted the event for colleagues who qualified in 1958.

The guests were warmly welcomed by DSBA President Michael Quinlan. Guests included Judges Peter Smithwick and Timothy Crowley; Enda Marren, Noel Tanham and William Young; and a number of past presidents of the DSBA: Orla Coyne, Gerry Doherty, Brian Gallagher, Ruadhán Killeen, Justin McKenna, Vivian Matthews, John O'Connor and David Walley. A '58er and past president of the DSBA, Johnny Hooper, is recovering from a recent illness – we wish him a speedy recovery.

Colleagues with over 50 years legal service: Tommy Bacon, David Bell, Eileen Bourke, William Bradshaw, Judge John Buckley, Fionbarr Callanan, Margaret Callanan, Gerard Charlton, Fintan Clancy, Brendan Fitzgerald, Eithne Flanagan, Norman Grusan, Michael Hayes, Gordon Henderson, Johnny Hooper, Joan Kelly, Patrick Kilroy, Judge Thelma King, Sean O'Ceallaigh, Colm Price, Moya Quinlan, Stanley Siev, Andy Smith, Frans Handrik van der Lee and Richard Woulfe.

Moya Quinlan and her son Michael Quinlan, DSBA president

Margaret Callanan, Mary Nolan and John O'Connor

Colm Price and Sean O'Ceallaigh

Margaret Callanan, Fionnbar Callanan, Gerry Charleton, Enda Marren and Fintan Clancy

There was a great turnout for the annual DSBA 'golden oldies' event on 19 June in the Four Seasons Hotel

PIC: LENSMEN

Meeting of the home law societies

Attending the meeting of the four home law societies at Blackhall Place from 23-24 June 2008 were *(back, l to r)*: Alan Hunter (chief executive, Law Society of Northern Ireland), Barry Finlay (junior vice-president, Law Society of Northern Ireland), John D Shaw (senior vice-president, Law Society of Ireland), Paul Marsh (vice-president, Law Society of England and Wales), Mary Keane (deputy director general, Law Society of Ireland), Desmond Hudson (chief executive, Law Society of England and Wales), Ian Smart (vice-president, Law Society of Scotland), Henry Robson (deputy chief executive, Law Society of Scotland), and Ken Murphy (director general, Law Society of Ireland). *(Front, l to r)*: Donald Eakin (president, Law Society of Northern Ireland), Andrew Holroyd (president, Law Society of England and Wales), James MacGuill (president, Law Society of Ireland) and Richard Henderson (president, Law Society of Scotland)

PIC: ADRIAN BUTLER, *THE LIMERICK LEADER*

Enthusiastic Munster reception!

Law Society President James MacGuill and director general Ken Murphy visited the Limerick Bar Association on 20 May 2008 for an enthusiastic discussion on topical issues. *(Front, l to r)*: Marese Quinlisk, Eileen Whelan and Julianne Kiely. *(Back, l to r)*: Liam Moore, Conor Delaney, Paddy D'Alton, Shaun Elder (president of the Limerick Bar Association), James MacGuill, Ken Murphy, Ger O'Neill and Rob Alfa

The Norwegian Bar Association recently celebrated the 100th anniversary of its foundation. It invited many representatives of other national Bars and Law Societies to Oslo as guests to help it mark the occasion. Among those photographed attending a function in the City Hall of Oslo, where the Nobel Peace Prize is conferred every year, were *(above left)*: Lisa MacGuill, James MacGuill and Andrew Holroyd (President, Law Society of England & Wales) and *(above right)*: Ken Murphy, Yvonne Chapman and William H Neukom (President, American Bar Association)

Casting far and wide in Mayo

Over 30 solicitors and barristers turned out for the 17th annual Lawyers' Fishing Club weekend on Lough Mask in mid May. There they enjoyed some great fly-fishing out of Cushlough Bay, Ballinrobe, Co Mayo.

Top prize went to Martin Foulds of Ernst & Young (Britain), who is a member of the Lawyers' Fishing Club of England. The top legal eagle had three trout for 4.5lbs on claret bumble and mayfly patterns. Second place went to Dublin barrister Garnet Orange who had two trout for 2.5lbs.

Almost half the group consisted of legal colleagues from Northern Ireland and England and Wales, making the event quite an international gathering of angling solicitors and barristers.

Due to the success of the weekend, the legal fishing fraternity plans to return to Ballinrobe and Lough Mask in the future.

Over 30 solicitors and barristers enjoyed a two-day trip to Lough Mask for the 17th annual Lawyers' Fishing Club weekend

Michael O'Byrne (O'Byrne Law, Kells) and Marc Bairéad (Nevin O'Shaughnessy, Edenderry) share advice at the recent lawyers' fishing weekend in Ballinrobe, Co Mayo

Marc Bairead (Edenderry), Noel Phoenix (Belfast), barrister Peadar Ó Maoláin (Moycullen) and Peter Matthison (London) make landfall at Devinish Island, Lough Mask

Dublin solicitor Simon McAleese *(left)* and Nick Fenton (Lisburn) about to head out from Cushlough Bay for a day's fly-fishing

Father and son – solicitor Jim Orange (Dublin) and his barrister son Garnet prepare for a peaceful day's fishing on Lough Mask

Hottest ticket in town!

The hottest ticket in town on 6 June was an exclusive red-carpet private viewing of *Sex and the City* at Cineworld Dublin, in aid of ACARA Lesotho Build Project. The viewing was hosted by Jeanne Boyle & Co Solicitors.

Dublin's elite descended on Parnell Street's Cineworld theatre for a flood of pink cosmos, champagne, music and high heels. It was difficult to tell whether there were more labels in the movie or in the audience, as style was very much the *menu du jour*!

The Lesotho Ambassador to Ireland, Mrs Mannete Ramaili attended and acknowledged the special relationship shared between Ireland and Lesotho. The biggest struggle facing Lesotho today is the prevalence of the HIV/AIDS pandemic, the stark consequences of which are 180,000 orphans – with over 200,000 children having lost at least one parent.

The ACARA Lesotho Build Project is part of a five-year commitment to provide funding to assist in the education and safety of the children of Lesotho by building and furnishing schools, medical centres, houses and halfway houses for orphans at high risk.

For further information on the project, email: info@acara.ie or: jeanne@jboyle solicitors.ie.

At the red-carpet event were *(l to r)*: Jessica Fergus (Lavelle Coleman), Nessa Gardiner (Lennon Heather) and Aisling Bergin (Croskerrys)

Organiser of the charity event, Jeanne Boyle (Jeanne Boyle & Co), Tony Boyle (Sigma Wireless, project corporate sponsor), Mannete Ramaili (Lesotho Ambassador to Ireland) and Colette O'Sullivan (ACARA Lesotho Build Project)

Melanie Bailey (Michael Finucane), Declan Moloney (John Lanigan & Nolan) and Hilary Lynch

Victoria O'Brien (GE Legal Department) and Marie-Louise Heavey (Matheson Ormsby Prentice) were at *Sex and the City*

Jeanne Boyle (Jeanne Boyle & Co) and Melanie Bailey (Michael Finucane)

Marguerite Walsh (McAleese) and Louise Walsh (Matheson Ormsby Prentice) were out in style at the *Sex and the City* viewing

Golden jubilee for Phibsborough

Seán Ó Ceallaigh celebrated 50 years' practice as a solicitor in Phibsborough, Dublin, with a gala ball at Blackhall Place on 14 June.

Seán O Ceallaigh and Co comprises sons Ruairi and Cormac (solicitors), Aodhagan (law clerk) and Seán's daughter Roisin (accountant and office manager). Graham Jones (partner) joined the firm in 2005. Seven other staff members greatly assist in the daily running of the firm.

A branch office opened in Ashford, Co Wicklow, in 2004, and in Dundrum in 2006.

Seán Ó Ceallaigh, his family, partners and staff celebrate 50 years in Phibsborough

PIC: LENSMEN

Home and away

President of the Law Institute of Victoria, Tony Burke, was a recent visitor to Blackhall Place, where he met with Law Society President James MacGuill

PIC: LENSMEN

European Court of Human Rights appointment

Dr Ann Power SC was appointed as a judge at the ECtHR in January. At a dinner held in her honour at Blackhall Place on 13 June 2008 were *(front, l to r)*: Mr Justice John Hedigan, Judge Ann Power and James MacGuill (Law Society president). *(Back, l to r)*: Maura Butler, Alma Clissmann, Eamonn MacAodha and Siobhan Phelan

***Divorce Law and Practice* launched**

At the launch in the Royal Irish Academy of Geoffrey Shannon's new book *Divorce Law and Practice* were *(l to r)*: Mrs Justice Catherine McGuinness (president of the Law Reform Commission), Geoffrey Shannon (author), Catherine Dolan (commercial manager, Round Hall), and Minister for Finance Brian Lenihan

The longest day…

The Blackhall Builders are fund-raising for their trip to Zambia in July, where they will assist Habitat for Humanity to build houses for the underprivileged. On the longest day of the year, 38 trainees braved the slopes of Carrontouhill in inclement conditions on a sponsored climb, earning them almost €2,800 in sponsorship

Anyone for World Cup cricket?

No one can deny that the Irish cricket team put in an incredible performance in its first ever World Cup in the West Indies in 2007 – which saw it qualifying for the Super 8 stages. Irish lawyers who play the game might like to follow in their heroes' footsteps by representing their country in the Lawyers' Cricket World Cup, to be held in Cambridge in July and August 2009.

In all, 12 international teams will take part: Australia, the Bar of England and Wales, English solicitors, India, Ireland (hopefully), Kenya, New Zealand, Pakistan, South Africa, Sri Lanka, West Indies – and one other.

The inaugural tournament, held in Hyderabad, India, during the Christmas and New Year period last year was a huge success, with many games being shown on several Indian TV stations!

You too could seek to emulate Jeremy Bray's performance at last year's ICC Cricket World Cup

Oval appearance?

The 2009 event holds out the exciting prospect of the final being staged at the Oval (dependant upon funding), the Lords Nursery Ground (dependant upon availability and funding), or Fenners (a pitch fit for test-playing sides in any event). Matches will be 35 overs per side and all but the final will be played on very high-standard Cambridge college pitches.

The rules of the tournament dictate that each member of a country's 17-man squad must be a qualified and practicing lawyer. It is also proposed that a minimum number will be above a certain age in order to encourage some consistency across the teams. The tournament is played at a good standard, but in a very friendly spirit, with the emphasis very much on mixing and socialising.

Teams will be accommodated in Cambridge – college accommodation will be available at a reasonable rate during the tournament. A small number of 'must attend' events are being organised, which are likely to be based at the college, but will include one at the Royal Courts of Justice and/or one of the Inns of Court in London.

Formal invitation

A formal invitation will go to those countries that have expressed a willingness, and ability, to enter a side approximately 13 months prior to the tournament. A formal response will be sought within one month of the invitation being sent out.

Given the (real) Irish team's excellent World Cup debut – remember Jeremy Bray's century against Zimbabwe and the team's defeat of the world's fourth-ranked Pakistan on St Patrick's Day? – it would be a real shame if Ireland could not be involved in the Lawyers' Cricket World Cup 2009. Anyone interested should contact Quinton Newcomb, email: quintonnewcomb@onepaper.co.uk.

The organisers are on the lookout for sponsorship and are likely to be able to provide publicity throughout all of the participating nations. This includes, of course, the fast-developing Indian market. "We believe there may – as there was last time – TV coverage in India," says Quinton.

We might have seen the demise of 'The Tent' at the Galway Races, but corporate hospitality is *de rigeur* for cricket. Any firms interested in entertaining clients on a corporate basis should email Quinton as soon as possible. In addition, the Irish team will require a kit, so firms interested in getting their branding on shirts would want to move as fast as a Shoaib Akhtar ball!

Q: Where can you find the most comprehensive and authoritative range of Irish property law in a single resource?

A: LexisNexis® Butterworths Online

LexisNexis have created a menu specifically for lawyers dealing with property issues in the Republic of Ireland.

LexisNexis® Butterworths Online is the only online research tool to offer you Irish property legal titles such as **Mary Laffoy's Irish Conveyancing Precedents** and **Wylie's Irish Land Law** as well as ALL the legislation, precedents and commentary that you would need.

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- Offer more accurate advice with reduced risk of error

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books

Clinical Practice and the Law (2nd edition)

Simon Mills. Tottel Publishing (2008), Fitzwilliam Business Centre, 26 Upper Pembroke St, Dublin 2. ISBN: 978-1-84592-786-8. Price: €65.

The publication of the second edition of Simon Mills' *Clinical Practice and the Law* is welcome. Dr Mills is qualified as both a solicitor and a medical doctor. His book is not intended solely for practitioners of medicine, but for those from whatever clinical or non-clinical discipline who are interested in how the law interacts with clinical practice. Dr Mills says that his book is predominantly concerned with the subject of 'legal medicine'. It covers a wide range of topics, from clinical negligence and health in the workplace to coroners and the aftermath of death.

The book aims to give a comprehensive view of the interaction of law and legal

frameworks with the everyday practice of the various clinical disciplines. However, from a legal practitioner's point of view, more concentration on the *Civil Liability and Courts Act 2004*, which has changed the basis for both the prosecution and defence of clinical negligence cases in this jurisdiction, would have been expected. For example, although the act is referred to in the annotated notes, direct references to it are limited to explanations of sections 7 and 12, which cover the limitation period and the fact that proceedings must now be initiated by way of personal injuries summons. For example, there is no mention of sections 15 and 16, which allow for court-ordered mediation and which have recently been invoked successfully. Equally, section 17, which deals with making formal offers, is largely ignored. That said, there are comprehensive chapters on consent and on clinical negligence and helpful quick reference guides in these chapters that outline the basics of consent and explore the elements of negligence, including the defences open when a claim of negligence has been made.

Overall, this text is useful to both the medical practitioner and the legal practitioner; however, on balance, it would objectively be a more useful text for the medical practitioner. G

Fiona Barry is a partner in William Fry.

tech trends

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

Technostress: a new hope

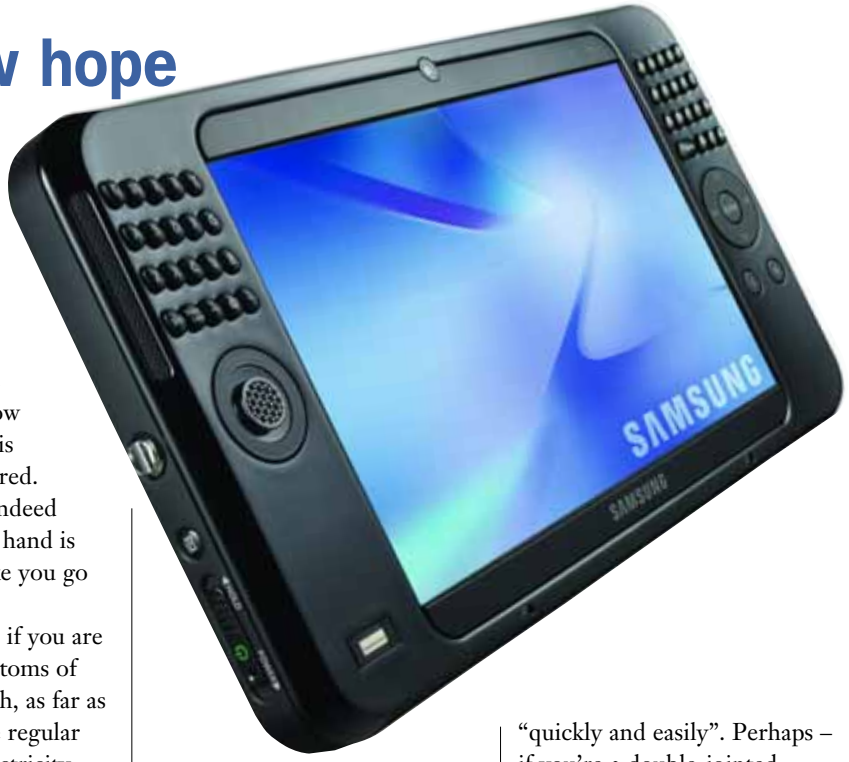
Technostress? Isn't that the burning rage you feel when you see yet another compilation album of 'Ibiza anthems' advertised on TV? No wait, it's a supervillian – yeah, that's it. He's the guy who fought Batman, right? Uses the gamma-amplified output of streamed binary code to weaken the structural fabric of buildings and harnesses the mystical power of the evil genius Wikipedia to stun you into thinking you actually know stuff.

But, like the previously unheard of 'desk rage' (not included in the lexicon of the eminently sensible compilers of the OED) and the woefully conceptually inadequate 'cyberterrorism' (don't get me started), it appears that 'technostress' actually exists in the real world. See p11 if you don't believe me. It's like something that the now fugitive and penniless Dr Hanson Koch, formerly of the Bremer Institut für Unechte und Unsinnige Forschung, might come up with.

However, if making fun of something that is mentioned seriously elsewhere on these pages leads you to think that the left hand doesn't know what the right hand is doing, then rest assured. The left hand does indeed know what the right hand is doing – and it'll make you go blind.

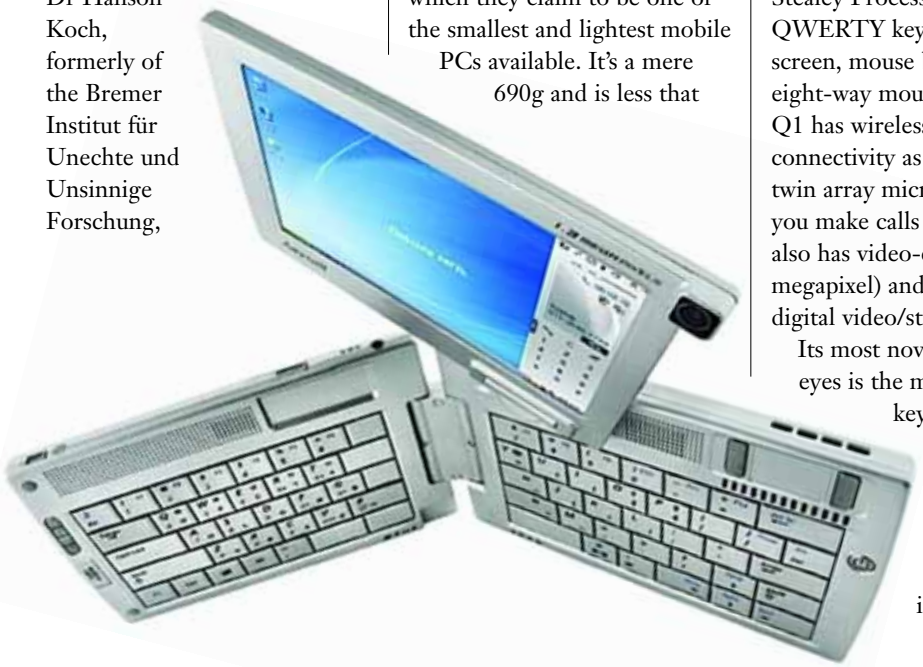
So look away now if you are plagued by the symptoms of 'technostress' – which, as far as we can gather, is like regular stress with added electricity – because all these products will allow you to work on your holliers and it'll just be rubbing salt into your psychocyberwounds (see? We can make up words, too!).

First up we have the rather nifty Samsung Q1 Ultra *(above)*, which they claim to be one of the smallest and lightest mobile PCs available. It's a mere 690g and is less that 24mm deep, and apparently offers the communications, multimedia and performance functionality of a conventional notebook PC.



Running Microsoft *Windows XP Tablet Edition* and 1GB of system memory via an Intel Stealey Processor and with a QWERTY keyboard, touch screen, mouse button and an eight-way mouse/joystick, the Q1 has wireless and bluetooth connectivity as standard, with a twin array microphone that lets you make calls over the web. It also has video-chat webcam (0.3 megapixel) and a 1.3 megapixel digital video/still camera.

Its most novel feature to our eyes is the miniature, split keyboard, which Samsung claims to be "compact and comfortable", allowing you to input text "quickly and easily". Perhaps – if you're a double-jointed ambidextrous midget.



Those with big Irish sausage fingers might be better waiting for the worldwide deployment of the currently Korean-only Samsung SPH-P9000 *(left)*. Now this looks really cool. It's a folding PC-alike that's shaped like a PDA, with *Windows XP*, a 30GB hard disk, 256MB of RAM, a 5" display, a 1GHz CPU, WiMAX (WiFi's big brother, and not supported here yet), CDMA EV-DO (meaning you can use it as a phone too), and a 1.3MP camera. It measures 143x94x29mm and weights 580g. 'Mobile convergence technology', they're calling it now. This one has a realistically sized QWERTY board, bluetooth, an MP3 player, and the keyboard folds up when not in use, so it can be used like a more traditional tablet PC. *Check 'em out on www.samsung.com.*

The spy who technostressed me

You never know when you might need to do some black ops. Well, you probably do, and the answer is probably 'never'. All the same, these might be a handy thing to have in your drawer for when that niggling insurance or tort case turns awkward.

What we have here is a (damn ugly) pair of glasses with an integrated digital camera hidden in the frame, giving colour pictures and clear audio, all recorded on to a supplied personal video recorder. So whatever you look at is what gets filmed.

The personal video recorder *(right)* has a colour monitor and speaker and 32MB of internal memory, which can be expanded by inserting a more powerful memory card, and the ability to time and date stamp all recordings.

If the glasses don't do it for you – which is likely, unless you happen to be Austin Powers – you can choose from cameras built into ties, baseball caps, books, shoulder bags, and brooches. Don't forget to include the "high capacity battery for body-worn cameras" and the wireless transmitter/receiver kit. With so many hidden camera possibilities, you're spoilt for choice. Sure why not use them all simultaneously, to be sure to be sure?

The downside is that they all cost the euro equivalent of around a grand (from Spycatcher of Knightsbridge – see 'Sites for sore eyes'). Still – stick them on your expenses or as a tax deductible. You never know when that Brockovich moment might come along. Yeah, you do. 'Cause you've sold your soul.

SITES FOR SORE EYES

No, Mr Bond, I expect you to buy (www.spycatcheronline.co.uk). You've seen the video-recording glasses; now feast your eyes on the rest of the stuff this site has to offer. From body armour to computer monitoring and from tracking devices to telecom encryption and night-vision equipment, you'll be amazed. We're intrigued by their 'anti-terrorism equipment' and 'nuclear/biological/chemical protection' offerings. The former includes 'bomb-jamming equipment' and devices for looking under your car, while the latter includes gas masks and Geiger counters. All very le Carré, don't you know.

Flying without wings ... no, wait! (www.westlaw.ie). Given the mag that's in it, with an article on online legal resources, it seems appropriate to include this site. It claims to offer the most comprehensive and authoritative Irish online legal research service, giving you access to an extensive collection of content, including full-text case law reports dating back to 1867, consolidated and annotated legislation, access to a unique collection of journals, and a daily updated current awareness service. It's a subscription service, but offers free trials. Give it a go. We're honest brokers. Honest.

practice notes

NEW VAT SPECIAL CONDITION FOR LAW SOCIETY CONDITIONS OF SALE

The new regime for VAT on property came into operation on 1 July 2008. Practitioners should note that VAT issues in relation to a property transaction can be extremely complex. Failure to apply the new VAT system correctly could result in serious and unexpected financial consequences for a party to a sale. If in doubt, an expert on VAT on property should be consulted.

Practitioners are notified that the subcommittee set up by the Taxation and Conveyancing Committees to review the new VAT on property regime has now prepared a new Special Condition 3 for the *General Conditions of Sale*. The *General Conditions of Sale 2001* (revised) edition has now been amended to take account of the changes. A copy of the new Special Condition 3 is circulated with this (July 2008) edition of the *Gazette* and can also be downloaded from the Society's website at www.lawsociety.ie.

Practitioners should note that the new VAT special condition will be incorporated into the Society's *General Conditions of Sale* document at the next available print run and the revised contract will thereafter be called the '2008 edition'. Pending this, it is suggested that the new Special Condition 3 be photocopied and inserted in contract documents in substitution for the old Special Condition 3.

To assist practitioners, the subcommittee has also prepared an explanatory memorandum with regard to the new Special Condition 3, which is also circulated with this (July 2008) edition of the *Gazette* and can also be downloaded from the Society's website at www.lawsociety.ie.

Practitioners should treat the suggested special condition with particular care, as it has not been possible to test it in practice. It is possible that, when a body of experience of the new VAT system has developed, the special condition will be adjusted to take account of it.

Conveyancing and Taxation Committees

REPRESENTATION AT MENTAL HEALTH TRIBUNALS: GUIDELINES FOR SOLICITORS

The following guidelines are intended to assist solicitors who are involved in the representation of patients before Mental Health Commission ('the commission') tribunals. The tribunals review all involuntary admissions of patients to hospital or psychiatric units. If the detention is not lawful, the patient will be discharged.

Most of those involved in this area of work will be members of the commission's panel and would therefore have fulfilled the selection criteria for membership of the panel (see below). Since representation of patients before the tribunals is not exclusive to panel members, these guidelines will also be of assistance to other solicitors.

The Law Society is keen to ensure that patients' representatives maintain the highest possible standards in the preparation, presentation and conduct of the clients' cases before the tribunals. Since the patients may not raise concerns about the performance of their legal representatives, solicitors have an obligation to ensure that proper standards are maintained. However, the commission has published its *Quality Assurance Directions for Legal Representatives* (1 June 2008).

The right to liberty is a constitutional imperative. Under the *Mental Health Act 2001*, an involuntary admission will now automatically trigger a referral to a tribunal.

Retainer and representation

Since the enactment of the *Mental Health Act 2001*, solicitors are in a new and evolving situation. In the past, solicitors were advised that, before they could accept instructions from a client, they had to be satisfied that that client had the necessary mental capacity to enter into a contract for legal services and also to understand the nature and implications of the transaction in which they were involved. If, during the course of such a retainer, it became clear that the client no longer had the mental capacity to continue to instruct the solicitor, or to understand what was being done on his/her behalf, the solicitor had an obligation to terminate his/her services.

New role

The *Mental Health Act 2001* has now created **a new role** for solicitors, which is **not** based on a **contract for legal services** between a solicitor and a client with full mental capacity. The main issue that solicitors must be aware of is that solicitors' contracts for legal services will be with the commission and that payment for the services provided will be made by the commission in accordance with the scale approved by the commission and the Department of Finance. (See the Mental Health Commission's *Terms and Conditions Pursuant to the Mental Health Legal Aid Scheme 2005*.) The solicitor's duty is, however, to give **individual representation** to the patient.

Client's instructions or best interests?

Questions will be raised as to whether solicitors representing patients should act in accordance with **the patient's instructions** or whether their role is to act in the patient's **best interests**. (See the Mental Health Commission website at www.mhcirl.ie for relevant High Court judgments, post-commencement of the *Mental Health Act 2001*.)

Section 4 of the *Mental Health Act 2001* obliges persons making

decisions under the act to act in the best interests of the patient. The solicitor's role is limited to acting in the client's best interests in terms of legal representation. What is in a patient's best interests is a matter for the professional judgement of the solicitor, taking into consideration the following points:

1) It is the patient's views or wishes that should be represented to the tribunal. A solicitor should act in accordance with the patient's instructions. However, in taking those instructions, the solicitor must determine whether or not the patient is capable or not capable of giving clear instructions.
2) It is recognised that some patients detained under the *Mental Health Act 2001* will not have the mental capacity to give clear instructions to their solicitor.
3) All solicitors have a general duty to act "in the best interests of the client" at all times. This includes a requirement to give the clients their best advice. In cases coming within the provisions of the *Mental Health Act 2001*, this might include a realistic assessment of the likelihood of the patient being discharged, or advice about possible steps towards discharge, but the client patient has the right not to accept that advice.
4) In deciding what is in the patient's best interests, regard should be had to the following:
   - The client should be encouraged to participate as fully as possible in the decisionmaking process,
   - The person's known past and present wishes and feelings and the facts that he or she would consider important,
   - The views of other people/professionals whom the solicitor decides are appropriate or practicable to consult in the preparation of the case, and
   - Whether the purpose for which any action or decision with regard to the detention and treatment of the patient was made can be achieved in a manner less restrictive of that person's liberty.

The solicitor should prepare the evidence on behalf of the patient as in any other case, defending primarily the patient's liberty and right to treatment in the least restrictive setting.

The solicitor should avoid an overly collaborative approach with the tribunal, leading to too easy an agreement to detention in the best interests of the patient.

It is acknowledged that there are no hard and fast rules or correct answers to some of the ethical and other questions raised in representing patients who are detained under the *Mental Health Act 2001*. However, **in general, the solicitor's role is to act on the patient's instructions, advocating the patient's views and wishes, even if these may be considered by the solicitor to be bizarre or contrary to the patient's best interests.** It is for the tribunal to decide, on the basis of the evidence before it, from the patient and from all the professionals purporting to act in the patient's best interests, whether the statutory criteria set out in the 2001 act are met.

Confidentiality

One particular matter that raises ethical and conduct issues concerns the solicitor's **duty of confidentiality** when acting for people whose capacity is impaired (see *Catherine Martin and Diarmuid Doorley v The Legal Aid Board, Ireland, and the Attorney General*, High Court no 2003/6150). The starting point must be that all solicitors are under a duty to keep the client's affairs confidential. However, there are certain exceptions to this duty, which are mainly statutory exceptions or cases where the client has consented that information may be disclosed. There are also extremely rare cases where it may be necessary to disclose information without the client's consent when a client discloses to the solicitor that they intend to do serious harm to themselves or to somebody else.

Where the solicitor feels it is essential and is in the client's best interest to disclose information confided in him/her by the client, the solicitor should first try to obtain the client's agreement to disclosure. If the client does not agree, but the solicitor still feels it is necessary to disclose the information, then the solicitor should inform the client that he intends to do so and discuss with the client whether he/she, the solicitor, should cease to act.

Solicitors who are concerned at any time about their own position on any matter of conduct should contact the Guidance and Ethics Committee helpline. The solicitor will be assisted so that he/she can make an informed professional judgment on the particular matter.

Training for solicitors

The commission provides training for solicitors on the panel and there is also a requirement for solicitors to keep their skills updated by undergoing relevant and appropriate training as required, in order to keep abreast of developments in the area. Solicitors who are not on the panel should themselves voluntarily undertake similar training.

Professional indemnity insurance

It would be essential for all solicitors who act as representatives for patients before the mental health tribunals to ensure that they are appropriately covered.

Selection criteria

The selection criteria for membership of the legal representatives panel were:

- To hold a current practising certificate from the Law Society of Ireland in the case of a solicitor or be currently subscribing to the Law Library, Ireland, in the case of a barrister,
- To have professional indemnity insurance to cover an individual claim of up to €1.3m, and
- To be a practising solicitor or barrister who has had no less than three years' experience as a practising solicitor or barrister, ending immediately before application.

At the time of application and at all times throughout their tenure, the legal representative must be practising. Any law firm who wished to participate in the scheme was requested to provide the above details for each legal representative who proposed to provide legal services on behalf of the firm under the scheme. All solicitors had to undergo a qualifying interview.

*Mental Health and Capacity Task Force **

**This practice note was first published in January/February 2007 by the Mental Health Subcommittee of the Law Society (Guidance and Ethics Committee, Family Law and Civil Legal Aid Committee). It has now been revised and is published by the Mental Health and Capacity Task Force.*

Further information about the Mental Health Legal Representative Panel is available from the Mental Health Commission website at www.mhcirl.ie.

RECTIFICATION OF THE REGISTER OF COMPANIES

The Companies Registration Office (CRO) has given a useful clarification of its position on the correction of errors in documents presented to it for filing. Where errors in documents come to light before registration, the document is usually returned by the CRO to the presenter, and a corrected version can be submitted for filing on the register. Because of the backlog situation in the CRO, documents may have 'received' status for a considerable period of time and, generally, if a 'received' document contains an error that comes to light before registration, it can be amended and resubmitted by the company in question. This does not apply to submissions made pursuant to section 99 of the *Companies Act 1963*, even those having 'received' status, as a section 106 application to the High Court would be necessary if amendment were required to be made to any of the prescribed particulars.

The position is different where an error in a submission comes to light after registration. The registrar has no statutory power to make amendments or corrections to registered documents. For the most part, errors can be corrected in practice by the company filing an up-to-date return, recording the correct information. For example, a new form B10 (change in directors and/or secretary or in their particulars) can be filed where a director's name was misspelt or the wrong address was supplied on the initial B10. Incorrect information on an annual return is frequently corrected by the following year's return being accurately completed.

Most difficulties arise, however, in the context of share capital, because of section 72 of the *Companies Act 1963*.

Section 122(5) of the *Companies Act 1963* permits a company to correct an error in its own register of members "without application to court" and to give notice to the registrar within 21 days if the error or omission also occurs in any document forwarded by the company to him.

In the considered opinion of the CRO, the necessary implication of section 122(5) is that, outside this particular scenario, an application to court by the company is necessary in respect of any errors in its own register and corresponding error or omission in any statutory filing.

The CRO has taken the view that, because of the section 72 prohibition on reductions of issued share capital, it was justified in not accepting section 122(5) notifications where registration of the notification would result in a reduction of the company's issued share capital as recorded on the CRO register. The view of the CRO has been bolstered by the decision of Laffoy J in *Air France Aircraft Leasing Limited v Registrar of Companies* (unreported, 2007). In the *Air France* case, Judge Laffoy invoked the inherent jurisdiction of the High Court to correct an error in three forms B5 that had been registered in 2001. She made an order reciting that the forms B5 registered in 2001 contained erroneous information and that the court was satisfied that the creditors of the company in question were on notice of the application and none of them objected to the making of the orders sought. She directed that the register of companies be rectified by removing the three forms B5 and allowing new forms B5 to be substituted containing the correct information. She further directed that an attested copy of her order be placed on the CRO file.

In a more recent case heard by Laffoy J on 28 January 2008, *3V Transaction Services Limited v the Registrar of Companies* (unreported), she ordered that the register of companies be rectified by the removal therefrom of a form B5 containing erroneous information and the substitution of a new form B5 containing correct information. She directed that a copy of her order be placed on the CRO file in relation to the company. Judge Laffoy allowed the company to dispense with the requirement to give notice to creditors and was satisfied that the mistake could not have had a material adverse effect on creditors.

Thus, where a registered form B5 overstates the amount of a company's issued share capital, the mistake cannot be corrected by a simple administrative act of the CRO. The mistake can only be corrected by order of the High Court.

Business Law Committee

RETAINED DEPOSITS AND CANCELLATION CHARGES NOT A SUPPLY FOR VAT PURPOSES

This year's *Finance Act* (sections 93 and 94) contains an amendment to sections 17 and 19 of the *VAT Act 1972*, to provide 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, which 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 to the effect 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. 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 is not a taxable amount for VAT purposes.

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

The amendment in the legislation now means that if, for example, a supplier charges VAT in respect of a deposit paid in advance of a supply of goods or services, and that transaction is subsequently cancelled by the customer, then, if the deposit is not refunded, the supplier will now have to issue a credit note to the customer refunding the VAT originally imposed on that deposit. The supplier may in turn reduce their tax liability for the taxable period in which the cancellation of the deposit arose by the same amount of VAT refunded to the customer. G

Taxation Committee

legislation update

21 May – 13 June 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

Local Government Services (Corporate Bodies) (Confirmation of Orders) Act 2008

Number: 9/2008

Contents note: Gives statutory effect to establishment orders made under section 3 of the *Local Government Services (Corporate Bodies) Act 1971* as if they were acts of the Oireachtas. There are seven such corporate bodies, listed in the explanatory memorandum to the bill. Amends the establishment orders of two of these bodies, as set out in the schedule to the act, and provides for related matters.

Date enacted: 20/5/2008

Commencement date: 20/5/2008

SELECTED STATUTORY INSTRUMENTS

Criminal Justice (Forensic Evidence) Act 1990 (Amendment) Regulations 2008

Number: SI 154/2008

Contents note: Amend the *Criminal Justice (Forensic Evidence) Act 1990 Regulations 1992* (SI 130/1992) by the substitution of new appendices A, B and C to those regulations. Appendix A is the form of consent by a person aged 17 years or over to the taking of a sample from him or her; appendix B is the form of consent by a person aged 14, 15 or 16 years, and the consent of his or her parent or guardian, to the taking of a sample from him or her; appendix C is the form of consent by a parent or guardian of a person aged less than 14 years to the taking of a sample from him or her.

Commencement date: 22/5/2008

European Communities (Cross-Border Mergers) Regulations 2008

Number: SI 157/2008

Contents note: Give effect to Directive 2005/56/EC on cross-border mergers of limited liability companies. The regulations provide a framework whereby limited liability companies may engage in a cross-border merger.

Commencement date: 27/5/2008

European Communities (Recognition of Professional Qualifications Relating to the Profession of Pharmacist) Regulations 2008

Number: SI 167/2008

Contents note: Implement Directive 2005/36/EC on the recognition of professional qualifications, as amended by Directive 2006/100/EC, insofar as these directives relate to the profession of pharmacist. Amend the *Pharmacy Act (Ireland) 1875*. Revoke the *European Communities (Recognition of Qualifications in Pharmacy) Regulations 1987 to 2004*.

Commencement date: 4/6/2008

Finance Act 2007 (Commencement of Section 26(1)) Order 2008

Number: SI 160/2008

Contents note: Appoints 27/5/2008 as the commencement date for section 26(1) of the *Finance Act 2007*. Section 26(1) relates to the taxation, from 1/8/2008, of profits and gains arising from stallion stud fees.

Finance Act 2007 (Commencement of Section 29) Order 2008

Number: SI 159/2008

Contents note: Appoints 1/6/2008 as the commencement date for section 29 of the *Finance Act 2007*. Section 29 provides for the mid-Shannon corridor tourism infrastructure investment scheme.

Foyle and Carlingford Fisheries Act 2007 (Commencement) Order

Number: SI 153/2008

Contents note: Appoints 1/6/2008 as the commencement date for part 1 (sections 1-4), part 3 (sections 5-33), and schedule 2 of the act.

Recognition of Professional Qualifications (Health and Social Care Professions) (Directive 2005/36/EC) Regulations 2008

Number: SI 166/2008

Contents note: Implement Directive 2005/36 on the recognition of professional qualifications, as amended by Directive 2006/100/EC, insofar as these directives relate to certain health and social care professions, and provide for related matters. Amend the *Opticians Act 1956*, as amended by the *Opticians (Amendment) Act 2003*, and amend the *National Social Work Qualifications Board (Establishment) Order 1997* (SI 97/1997), as amended, and the *Pre-Hospital Emergency Care Council (Establishment) Order 2000* (SI 109/2000), as amended.

Commencement date: 4/6/2008

Recognition of the Professional Qualifications of Nurses and Midwives (Directive 2005/36/EC) Regulations 2008

Number: SI 164/2008

Contents note: Give effect to Directive 2005/36/EC on the recognition of professional qualifications, as amended by Directive 2006/100, insofar as these directives relate to the professions of nursing and midwifery. Revoke the *European Communities (Recognition of General Nursing Qualifications) Regulations 1980* (SI 237/1980) and the *European Communities (Recognition of General Nursing Qualifications) Regulations 1983* (SI 20/1983).

Commencement date: 4/6/2008

Social Welfare and Pensions Act 2008 (Sections 26, 29, 30 and 31) (Commencement) Order 2008

Number: SI 84/2008

Contents note: Appoints 14/4/2008 as the commencement date for sections 26, 29, 30 and 31 of the *Social Welfare Act 2008*. Section 29 makes miscellaneous amendments to the *Pensions Act 1990* and sections 30 and 31 make technical amendments to the *Family Law Act 1995* and the *Family Law (Divorce) Act 1996*, respectively, consequent on an amendment made by section 29 to the definition in the *Pensions Act 1990* of 'defined contribution scheme'. G

Prepared by the Law Society Library

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 Brian Grogan, a solicitor practising as Brian Grogan & Company, Solicitors, at Main Street, Lucan, Co Dublin, and in the matter of the *Solicitors Acts 1954-2002* [3291/DT45/07]
Law Society of Ireland (applicant)
Brian Grogan (respondent solicitor)

On 8 April 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to comply with an undertaking dated 1 March 2005 to discharge both EBS mortgages (including arrears thereon) as of that date and to furnish the vacate/discharge release as soon as same came to hand in a timely manner, having only furnished same on 5 February 2007,
b) Failed to comply with an undertaking dated 1 March 2005 to encash the joint PIP with EBS and to pay over one-half thereof to the complainants as soon as same was received in a timely manner,
c) Failed to reply to the Society's correspondence in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

a) Do stand advised and admonished,
b) 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 William J Davis, solicitor, of William J Davis & Company, Solicitors, 14 Herbert Street, Dublin 2, and in the matter of the *Solicitors Acts 1954-2002* [4399/DT47/07]
Law Society of Ireland (applicant)
William J Davis (respondent solicitor)

On 10 April 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had, up to the date of the swearing of the Society's grounding affidavit (on 22 June 2007), failed to comply with the undertaking given by him to the complainant's client by letter dated 25 September 2000 and failed to do so despite requests for compliance with the said undertaking.

The tribunal made an order:

a) Admonishing and advising the respondent solicitor,
b) Directing the respondent solicitor to pay the sum of €250 to the compensation fund,
c) Directing the respondent solicitor to pay 25% 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 Cornelius J Noonan, a solicitor practising under the style and title of Cornelius J Noonan at Newcastlewest, Co Limerick, and in the matter of the *Solicitors Acts 1954-2002* [1553/DT18/07]
Law Society of Ireland (applicant)
Cornelius J Noonan (respondent solicitor)

On 10 April 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 March 2006 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (Statutory Instrument no 421 of 2001), in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €500 to the compensation fund
c) Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement.

In the matter of Ambrose Steen, a locum solicitor who previously carried on practice at Tara House, Trimgate Street, Navan, Co Meath, and in the matter of the *Solicitors Acts 1954-2002* [2851/DT11/07]
Law Society of Ireland (applicant)
Ambrose Steen (respondent solicitor)

On 10 April 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to discharge fees due to a named barrister in the sum of €5,362.74 and in the sum of €9,208.73, despite being requested to do so on numerous occasions,
b) Failed to respond to the Society's correspondence in the investigation of this complaint and, in particular, the Society's letters to the respondent solicitor dated 12 May 2006, 1 June 2006, 16 June 2006, 4 July 2006, 20 July 2006 and 3 November 2006,
c) Failed to comply with the direction of the Society that the solicitor pay €550 towards the costs of the investigation, which direction was made at the meeting of the Complaints and Client Relations Committee on 20 September 2006,
d) Failed to comply with the section 10 notice in relation to the production of the files and documents, pursuant to section 10 of the *Solicitors (Amendment) Act 1994*, served on the respondent solicitor by registered letter dated 19 October 2006.

The tribunal ordered that the respondent solicitor:

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

In the matter of Ambrose Steen, a locum solicitor who previously carried on practice at Tara House, Trimgate Street, Navan, Co Meath, and in the matter of the *Solicitors Acts 1954-2002* [2851/DT44/07]
Law Society of Ireland (applicant)
Ambrose Steen (respondent solicitor)

On 10 April 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to communicate with his client, the executor of the

estate of a named deceased person, in a timely manner or at all,
b) Failed to respond to the Society and, in particular, to the Society's letters dated 10 August 2006, 24 August 2006, 13 September 2006, 10 October 2006 and 13 October 2006,
c) Deducted fees of €5,000 plus VAT from the estate without authority to do so, in circumstances where he was a co-executor in the estate, where there was no charging clause in the will and where the respondent solicitor witnessed the will,
d) Deducted such fees without the consent or knowledge of the co-executor in the estate,
e) Failed to comply with a section 10 notice served upon him on 13 September 2006 in a timely manner, having only produced his file to the Society following a High Court application,
f) Failed to progress the administration of the estate in a timely manner,
g) Failed to refund the balance of fees that he had deducted in a timely manner.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €3,500 to the compensation fund,
c) Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement.

In the matter of Canice M Egan, a solicitor practising as Canice M Egan & Company at 9 Sarsfield Street, Clonmel, Co Tipperary, and in the matter of the *Solicitors Acts 1954-2002* [100484/DT58/07]
Law Society of Ireland (applicant)
Canice M Egan (respondent solicitor)

On 17 April 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had breached regulation 21(1) of the *Solicitors' Accounts Regulations* (SI no 421 of 2001) in failing to ensure that there was furnished to the Society an accountant's report covering his financial year ended 30 November 2005 within six months thereafter, that is by 31 May 2006.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a 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. G

NOTICE

THE HIGH COURT
2007 no 50SA
2008 no 32SA
In the matter of Michael Lynn, a solicitor previously practising as Capel Law, Unit 5, The Capel Buildings, Mary's Abbey, Dublin 7, and in the matter of the *Solicitors Acts 1954-2002*

Take notice that, by orders of the High Court made on Friday 23 May 2008, it was ordered that the name of Michael Lynn, solicitor, formerly practising as Capel Law, Unit 5, The Capel Buildings, Mary's Abbey, Dublin 7, be struck off the Roll of Solicitors.

John Elliot,
Registrar of Solicitors,
Law Society of Ireland

New Court Fees Orders from 7 July 2008

Practitioners should note that the anticipated new Court Fees Orders come into effect from 7 July 2008. To view the new orders for the Supreme and High Courts, Circuit Courts, and District Courts, visit www.lawsociety.ie. Click on 'Society committees' and 'Litigation' in either the members' or public areas to access the information, or go to the 'News' section on the members' home page. (In order to access the members' area, you will need to log in using your surname and solicitor number.)

Litigation Committee

firstlaw update

News from Ireland's online legal awareness service
Compiled by Flore Bouhey for FirstLaw

CONSTITUTIONAL LAW

Abuse of process

Practice and procedure – restraint of proceedings – inherent jurisdiction to strike out proceedings – access to courts – legal remedy for vindication of personal constitutional rights – wrongful death – action brought by dependants – whether any tangible benefit to be obtained from pursuing action after offer of damages – whether claim abuse of process – whether striking out claim would breach plaintiff's constitutional rights – Civil Liability Act 1961 (No 41), *section 48* – Constitution of Ireland 1937, *article 40.3.2.*

Article 40.3.2 of the Constitution provides, among other things, that "the state shall, in particular, by its laws … in the case of injustice done, vindicate the life … of every citizen". The plaintiff sought damages, pursuant to section 48 of the *Civil Liability Act 1961*, from the defendant for the wrongful death of his son due to what he alleged was his pharmacologically induced suicide by taking the defendant's product. The defendant, in an open letter, offered to pay the plaintiff the full statutory value of the claim plus the costs of the action, to be taxed in default of agreement. The plaintiff refused that offer. The defendant applied to have the proceedings stayed or struck out pursuant to the inherent jurisdiction of the court on the basis that there could be no further tangible benefit to the plaintiff by pursuing the action once the offer had been made and that the proceedings constituted, thereafter, an abuse of process. The High Court refused that application. The defendant appealed to the Supreme Court.

The Supreme Court dismissed the appeal, holding that:

1) The construction of part IV of the *Civil Liability Act 1961* had to be approached in the context of the Constitution. The word "vindicate" used in article 40.3.2 thereof had to be construed, if possible, in a manner that connoted an appropriate response to an "injustice". The process that was intended to be a vindication for an injustice required (a) a judicial process that (b) featured a determination of liability and (c) a pronouncement of liability.
2) The vindication of personal constitutional rights was as much a matter of civil – including tort – law as a matter for the criminal or regulatory law. The statutory form of action brought by the plaintiff was the only legal step capable of providing vindication for an alleged injustice.

***Grant (plaintiff/respondent) v Roche Products (Ireland) Ltd & Others*, Supreme Court, 7/5/2008, 248/05** [FL15166]

Public order

Judicial review – ultra vires – *delegated legislation – bye-laws – council powers – public drinking – denial of offence – local authorities' power* – Local Government Act 1994 – South County Dublin (Prohibition of Consumption of Intoxicating Liquor in Public Places) Bye Laws 2001 – *article 15.2.1 of the Constitution*.

The applicant was prosecuted for the offence of consuming liquor in a public place, which was denied. The applicant alleged that the *South County Dublin (Prohibition of Consumption of Intoxicating Liquor in Public Places) Bye-Laws 2001*, made pursuant to the *Local Government Act 1994* and used to prosecute the applicant, were *ultra vires* and in breach of article 15.2.1 of the Constitution.

Hanna J held that the bye-laws did not exceed the legal or constitutional framework in which the respondent operated. They were designed for a specific purpose. The requisite powers to so act had been delegated to the local authority and the broad powers given to the local authority encompassed a wide range of governance.

***Clarke (applicant) v South Dublin County Council (respondent)*, High Court, Mr Justice Hanna, 7/3/2008, 2006 no 39 JR** [FL15189]

CRIMINAL LAW

Delay

Right to fair trial – application to restrain further prosecution of offences – nature and strength of forensic evidence to be used in prosecution – whether exceptional factor justifying refusal of relief – whether accused prejudiced by prosecutorial delay – whether real and substantial risk of unfair trial – whether relief should be granted – Constitution of Ireland 1937, *articles 38.1 and 40.3.*

The High Court refused to grant an injunction restraining the further prosecution of the applicant for murder. The grounds upon which leave was granted to apply for judicial review were that there had been prosecutorial delay that prejudiced the applicant's right to a fair trial. It was contended, among other things, that because most of the witnesses had died during the period of delay, the accused's defence had been impaired. The respondent contended that there could be no prejudice to the accused, as his bloody handprint at the crime scene was strong forensic evidence that would be the major evidence at the trial. The applicant appealed to the Supreme Court. The applicant further argued that pretrial publicity since then had also prejudiced his right to a fair trial.

The Supreme Court dismissed the appeal, holding that:

- An accused had a right to a fair trial, which took precedence over the right of the public to have the accused prosecuted,
- One of the interests protected by the right to trial with reasonable expedition was the right to limit the possibility that the defence would be impaired,
- As none of the witnesses provided an alibi for the applicant, their absence would not prejudice the applicant's defence so as to justify prohibiting the trial,
- In a trial where there was independent forensic evidence implicating an accused, a court, in considering whether there was a real risk of an unfair trial and whether it should prohibit the trial, was entitled to take that fact into account,
- (*Per* Murray CJ) the evidence of the bloody hand-

print, in its unchallenged and unexplained condition, was itself an exceptional factor that was capable of deciding the general issue of the accused's guilt that was unaffected by delay or publicity,

- (*Obiter dictum*) prohibiting a criminal trial could not be adopted to punish the media for prejudicial publicity, as the contempt of court laws were the appropriate vehicle to use for that purpose.

***Rattigan (appellant/applicant) v DPP (respondent/respon-dent),* Supreme Court, 7/5/2008, 353/2006** [FL15213]

LANDLORD AND TENANT

Housing

Human rights – local authority – summary possession demand – tenant in breach of housing agreement – whether the Housing Act 1966, *as amended, is incompatible with Ireland's obligations under the* European Convention on Human Rights Act 2003.

The applicant tenant was a heroin addict living with an addict son and was alleged by her local authority to have been in breach of her housing agreement so as to warrant summary possession proceedings being brought to recover possession, pursuant to section 62 of the *Housing Act 1966*. The applicant alleged that the summary possession procedure contained in section 62 was incompatible with section 5 of the *European Convention on Human Rights Act 2003* and articles 3, 6, 8, 13 or 14 of the ECHR, and sought a declaration of incompatibility accordingly.

Dunne J held that it was reasonable and constitutional for a housing authority to be able to rapidly recover possession of a dwelling without reasons. Any abuse was subject to judicial review, which provided adequate safeguards. A district judge had no jurisdiction to conduct a hearing on its merits. The European Court of Human Rights had established that a wide margin of appreciation was afforded to a state in allocating housing resources and balancing conflicting interests in this regard. The reliefs sought would be refused.

***Leonard (applicant) v Dublin City Council (respondent),* High Court, Ms Justice Dunne, 31/3/2008, 2007 no 916 JR** [FL15178]

MENTAL HEALTH

Detention

Renewal order – statutory interpretation – words and phrases – "the psychiatrist responsible for care and treatment of patient" – purposive interpretation – whether renewal order validly made – Mental Health Act 2001, *s15.*

Section 15(2) of the *Mental Health Act 2001* provides, among other things, that "the period [of detention] … may be extended by … a renewal order … made by the consultant psychiatrist responsible for the care and treatment of the patient concerned". The respondent had made a return justifying the detention of the applicant pursuant to a renewal order under section 15 of the 2001 act. The applicant submitted that the renewal order was invalid on the basis that it had not been signed by the psychiatrist in daily charge of the applicant, but rather by a psychiatrist who travelled sporadically from Cork and who had been involved in the initial treatment of the applicant. The High Court held that the phrase in section 15 of the act encompassed both doctors. The applicant appealed to the Supreme Court.

The Supreme Court dismissed the appeal, holding that the absence of a statutory definition of the expression "the consultant psychiatrist responsible for the care and treatment of the patient" was deliberate. Given the lack of statutory definition, it was a question of fact to determine whether the doctor who signed the order fell within the description in section 15 of the 2001 act when he signed the order. As both doctors fell within the description and a renewal order signed by either would have been valid, it was immaterial to attempt to work out which might come within the definite article if one was to attach literal adherence to it. Given that the 2001 act was relevant to the question of the detention or release of patients who are potentially dangerous to themselves and/or the public, it would be wrong to give the legislation an interpretation that would leave it in doubt as to who would be entitled to sign a renewal order.

***M(M) (applicant/appellant) v Clinical Director of the Central Mental Hospital (respondent),* Supreme Court, 7/5/2008, 081/2008** [FL15162]

TORT

Medical negligence

Breach of duty – failure to properly interpret a cardiotocograph – delay in delivery – negligence of midwife – delay of parents to consent to form of delivery.

The plaintiff infant, suing through his parents, claimed damages for negligence on the part of the defendants for their treatment and care of him during labour and failure to act at critical moments, resulting in irreversible brain injuries. The defendants alleged that the undue delay in delivering the plaintiff was solely caused by the mother's refusal to permit a particular form of delivery.

Herbert J held that the senior midwife was negligent and in breach of duty for not calling a doctor and for turning off oxytocin and delivering the plaintiff at the earliest point in time. The plaintiff was deprived of the opportunity of being delivered without irreversible brain injury. The failure to adequately inform the parents as to the dangers of not having a particular form of delivery was negligent. The parents would have consented had they been adequately informed, and the brain injury suffered resulted in the cerebral dysfunction of the plaintiff.

***Fitzpatrick (a minor) (plaintiff) v National Maternity Hospital (defendant),* High Court, Mr Justice Herbert, 7/3/2008, 2002 no 14742 P** [FL15233] G

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

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

Has Irish competition legislation delivered on its promises?

It is five years now since Irish competition law was, for the third time in a decade, fundamentally revised. The revised statute – the *Competition Act 2002* – was heralded by enforcers as "a substantial step forward in the development of a strong and proactive competition policy in Ireland". In tandem, funding for the Competition Authority – Ireland's primary competition law enforcement agency – was significantly increased, from around €2 million in 2002 to nearly €5 million today. The question now being asked (including by department officials), however, is have the 2002 policy innovations delivered results?

Cartel enforcement

A primary aim of the 2002 act (according to Mary Harney, the sponsoring minister at the time) was to "toughen up on hard-core competition offences". Towards that end, the statute increased the maximum jail sentence for offences from two to five years, the stated aim being to "send the clearest possible signal that blatantly anti-consumer activities such as price fixing will not be tolerated in this country".

In addition, Irish legislators dramatically upgraded the Competition Authority's investigation powers – so-called "dawn raids" (surprise searches) can now be carried out at the homes, as well as the businesses, of any "director, manager or any member of staff" – and included a number of notable statutory presumptions against defendants, with a view to easing the prosecution burden.

What are the results? In many ways, it has been an impressive start by the Competition Authority. Since 2002, 19 criminal convictions have been obtained against companies and individuals for cartel offences. Fines totalling around €160,000 and three jail sentences (of respectively, six months, 12 months and three months, albeit all suspended) have been imposed by the courts. Undoubtedly, that's an impressive outcome. Indeed, the convictions are reportedly the first successful criminal cartel prosecutions across Europe.

The headline statistic masks a number of possible concerns, however.

First, of those 19 convictions, 17 were obtained in respect of one cartel investigation – the heating oil case in the west of Ireland. Of the two remaining prosecutions, one arose out of an investigation of various Ford car-dealers and resulted in the prosecution of one party only (an employee of the dealers' trade association on an 'aiding and abetting' charge), while the other came about on foot of the authority's ongoing investigation into an alleged price-fixing cartel among various Citroen car-dealerships. In other words, in five years, only three cartels have been brought to book.

Second, the Competition Authority did not appear to capitalise fully on its earlier success in, and experience from, the heating-oil case in the subsequent Ford dealers' case. As mentioned, the Ford dealers investigation has, to date, resulted in the prosecution of one trade association employee. The apparent failure to prosecute any of the car dealers involved (that is, those who might have been expected to have profited from any price fixing) suggests that the experience and lessons learned from the earlier investigation may not have been put into effect. That said, those issues seem now to have been overcome by Competition Authority enforcers. On foot of the Citroen dealers investigation, one conviction has already been secured, while charges exist against seven other individuals and five other dealerships.

Third, the heating-oil prosecutions (that is, 17 of the 19 convictions) were taken on foot of legislation predating the 2002 act. To a certain extent at least, that suggests that the major challenge to successful competition law enforcement may be as much operational as the law itself. Against that background, recent Competition Authority calls for amending legislation to further increase enforcement powers (including for "tough new penalties" for obstruction) may be viewed with some scepticism.

Merger control

Another key reform of the 2002 statute was the adoption of a new, "depoliticised" merger regime, the aim of which was to "take merger control out of the political arena". Without doubt, the Competition Authority's operation of the merger-control regime – particularly its technical expertise in terms of economic analysis – deserves recognition.

The authority's record on merger control (95% of transactions cleared at phase 1; 5% involving phase 2 investigations; and around 0.5% of notified deals blocked) is very much in line with international best practice.

In addition, the transparency of the existing merger regime, and the Competition Authority's efforts to clearly articulate its rationale in each determination, help achieve consistency, predictability and, ultimately, fairness in applying merger-control laws, thereby enhancing the credibility and effectiveness of merger-control enforcement.

Advocacy

Equally, it is appropriate to recognise the Competition Authority's ongoing efforts to keep competition in the forefront of economic policy in Ireland. Competition Authority advocacy clearly played an important role in bringing about the repeal of the *Groceries Order*. Some of the recent market studies undertaken by the authority (in particular, the eight studies on the professions) were, in terms of their breadth and scope,

extremely challenging. It is a credit to the responsible officials that those studies have been completed to the analytical standard achieved. Competition Authority studies and submissions clearly play an important role in influencing policymakers. In future, however, with a view to ensuring appropriate use of resources in the competition regime and limiting delay, the scope of such studies might need to be more focused.

In addition, the authority clearly needs to enhance the status and role of competition policy in the eyes of the public. In particular, the apparent priority enforcement focus on trade associations and other forms of collective representation needs to be properly explained. One of the most important roles of a competition authority is to educate business and consumers about the benefits of competition.

EU competition law is a bit like a tennis match. Er, what?

Tackling monopolies

Another stated Competition Authority priority – tackling monopolisation and other market restrictions via civil enforcement – remains, however, as much a challenge today as it did five years ago.

The two major civil enforcement cases taken since the coming into force of the *Competition Act* – the *ILCU* case and the *BIDS* case – have undoubtedly resulted in disappointing outcomes for the Competition Authority.

In *BIDS* – taken by the Competition Authority against an association of beef producers on foot of industry rationalisation plans – the High Court held that the authority had "failed to demonstrate by credible evidence that the objectionable features of the arrangements are likely, as a matter of probability, to have appreciable anti-competitive effects".

Similarly, in *ILCU*, in which the Competition Authority sought to require the Irish League of Credit Unions to share services and facilities with another representative association, the Supreme Court held that the authority had "failed to provide a convincing analysis of ILCU's activities as being anti-competitive".

The key issue in both cases, in other words, was the clear and fatal lack of evidence corroborating the Competition Authority's assertions and theories. This suggests that additional time should be spent stress-testing the strengths and weaknesses of cases internally, before a decision is taken to prosecute a case. Investigations of anti-competitive behaviour are complex and require specialist knowledge of economics and competition law. This complexity requires a strong focus on quality control.

Significant challenges

To be sure, the core changes implemented by the *Competition Act* – increased sanctions for hard-core violations and the adoption of an independent merger regime – were the right policy choices. As the Competition Authority has itself noted, however, competition law enforcement continues to encounter "significant challenges", and a key enforcement priority – achieving a consistent record of successful prosecutions – has yet to be realised. G

Philip Andrews is a partner in and co-head of the Competition, Regulated Markets, and EU Law Group of McCann FitzGerald.

Recent developments in European law

CRIMINAL

Case C-297/07, *Staatsanwaltschaft Regensburg v Klaus Bourquain*, opinion of Advocate General Ruiz-Jarabo, 8 April 2008. Klaus Bourquain was a German citizen who enlisted in the French Foreign Legion, deserted, and fled to the German Democratic Republic. He was tried *in absentia* by a French military tribunal in Algeria in 1961. The court found that, while trying to desert, he shot dead another German soldier in the Foreign Legion who was trying to prevent his escape. He was found guilty and sentenced to death. According to the code of military justice that was then applicable, the sentence would not have been enforced if he had reappeared, but a new trial would have had to be held and the imposition of any penalty would have depended on the outcome of that new trial. In 2002, the Public Prosecutor in Regensburg brought proceedings against him in order to try him in Germany for the crime committed in Algeria. The 1961 sentence was not enforceable in France, as the sentence was time-barred – France had abolished the death penalty and had passed a law proclaiming an amnesty in respect of events in Algeria. The German court was uncertain whether new criminal proceedings could lawfully be commenced. It asked the ECJ to give a ruling on the application in the Schengen Area of the principle of *ne bis in idem*. In accordance with this principle, a person whose trial has been finally disposed of in one state in the Schengen Area may not be prosecuted for the same acts in another such state when, in particular, the penalty can no longer be enforced. On this basis, Advocate General Ruiz-Jarabo took the view that Mr Bourquain cannot be prosecuted again for the facts dealt with in the sentence of the military tribunal. The sentence given *in absentia* was a judgment with the force of *res judicata*. This remains the case even though the penalty was not enforceable at any time in the past.

EMPLOYMENT

Case C-346/06, *Dirk Rüffert v Land Niedersachsen*, 3 April 2008. The law of Lower Saxony on the award of public contracts provides that they may be awarded only to undertakings that undertake in writing to pay their employees at least the remuneration prescribed by the applicable collective agreement. The contractor must also undertake to impose that obligation on the subcontractors and to monitor their compliance with it. Non-compliance with that undertaking triggers the payment of a contractual penalty. A German company, Objekt und Bauregie, undertook to pay employees working on the Göttingen-Rosdorf prison building-site the wages specified in the collective agreement for buildings and public works. A Polish subcontractor was paying its 53 workers only 46.57% of the prescribed minimum wage. A formal finding to that effect was made and a notice was issued against the person primarily responsible. Following a criminal investigation, the works contract was terminated. Land Niedersachsen required Objekt und Bauregie to pay a contractual penalty of €84,933.31 (1% of the contract amount) for breach of its undertaking concerning rates of pay. The case was appealed to a higher regional court. That court asked the ECJ to decide whether the freedom to provide services precludes a statutory obligation requiring a contractor in a public-works contract to undertake to pay its employees at least the remuneration required by a collective agreement. The ECJ found that the provisions at issue were incompatible with the EC directive concerning the posting of workers. The rate of pay provided for by the collective agreement was not fixed according to one of the procedures laid down by the directive. Germany has a system for declaring collective agreements to be of universal application but had made no such declaration in respect of the collective agreement here in question. This collective agreement only covers a part of the construction sector. The relevant German law only applies to public contracts, to the exclusion of private contracts, and the collective agreement has not been declared universally applicable. The ECJ found that the restriction on the freedom to provide services resulting from the obligation to pay employees the remuneration laid down by the collective agreement is not justified by the objective of ensuring the protection of workers. It had not been established that the protection resulting from such a rate of pay is necessary for a construction sector worker only when he is employed in the context of a public-works contract and not when he is employed in the context of a private contract.

Case C-267/06, *Tadao Maruko v Versorgungsanstalt der deutschen Bühnen*, 1 April 2008. In 2001, under German law, Mr Maruko entered into a registered life partnership with a designer of theatrical costumes. His partner had been a member of the respondent scheme since 1959. This institution is responsible for managing old-age insurance for theatrical professionals from the German theatres and for related survivors' benefits. Mr Maruko's life partner died in 2005 and he applied for a widower's pension. His application was rejected on the basis that the Versorgungsanstalt regulations make no provision for such an entitlement in the case of surviving life partners. The German court asked the ECJ whether this refusal could be seen as discrimination prohibited by Directive 2000/78 on equal treatment in employment and occupation. The aim of that directive is to combat discrimination on grounds of sexual orientation. The directive does not cover social security and social protection schemes whose benefits are equivalent to pay within the meaning of EC law. The court was asked to determine whether the survivor's pension at issue could be classified as pay. The ECJ pointed out that the occupational pension scheme has its origin in a collective agreement on employment, the objective of which was to supplement the social security benefits payable under the national legislation. The scheme is funded exclusively by the workers and their employers, without any state financial involvement. The retirement pension by reference to which the survivor's pension is calculated concerns only a particular category of workers and its amount is dependent on the period of the worker's membership and how much he has paid in contributions. The survivor's pension derives from the employment relationship of the deceased partner and must therefore be classified as pay. The court then turned to consider whether there had been discriminatory treatment. Germany has reserved marriage solely to persons of different sex. It has established the life partnership, the conditions of which have gradually been made equivalent to those applicable to marriage. The provisions of the respondent's regulations restrict entitlement to survivor's pensions to

surviving spouses. As this is the case and since life partners are denied the pension, the latter are thus treated less favourably than surviving spouses. This less favourable treatment is direct discrimination on grounds of sexual orientation.

FREE MOVEMENT OF GOODS

Case C-167/05, *Commission of the European Communities v Kingdom of Sweden*, 8 April 2008. Swedish legislation on excise duty on alcohol treats beer and wine differently. The commission took the view that this difference in treatment is liable to afford indirect protection to beer (mainly produced in Sweden) to the detriment of wine (mainly imported from other EU states). It brought an action against Sweden before the ECJ for failure to fulfil its EC law obligations. The ECJ pointed out that wine and beer are capable of meeting identical needs and thus, to some extent, they can be substituted for each other. The comparison between beer and wines must be with those wines that are most accessible to the public – the lightest and the least expensive varieties. On the basis of a comparison of the levels of taxation in relation to alcoholic strength, a wine with an alcoholic strength of 12.5% is subject to taxation per percentage of alcohol by volume, which is approximately 20% higher per litre than that on the beer with which it is in competition. Wine that is in competition with strong beer is subject to higher taxation. However, the court considered that the fact that wine is taxed more heavily is not liable to influence this market and does not have the effect of affording indirect protection to Swedish beer. The court pointed out that the price difference between the two is virtually the same before taxation as after it (a litre of wine of 12.5% costing over twice the price of a litre of beer). The court found that the commission had not shown that the difference between the price of strong beer and the price of wine in competition with that beer is so slight that the difference in the excise duty applicable to those products in Sweden is likely to influence consumer behaviour. Consequently, the court dismissed the commission's action. G

LOST LAND CERTIFICATES

Registration of Deeds and Title Acts 1964 and 2006

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

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

Regd owner: John Gahan; folio: 2235, now revised to 6746F; lands: Tinnahinch and barony of St Mullins Lower; **Co Carlow**

Regd owner: Christopher O'Brien; folio: 509F; lands: Carrickslaney and Drummin and barony of Forth; **Co Carlow**

Regd owner: Michael Sheill (deceased); folio: 2409F; lands: Ballymoon and barony of Idrone East; **Co Carlow**

Regd owner: John Tracey; folio: 4469F; lands: Coolasnaghta, Rathnageeragh, Knockendrane, and barony of Idrone East; **Co Carlow**

Regd owner: William Alexander Milligan and Dorothy Joan Milligan, Regaskin, Cavan; folio: 1575F; lands: Killyvanny; **Co Cavan**

Regd owner: Cornelius Clarke and Kathleen Clarke, Lisnahederha, Virginia, county of Cavan; folio: 20793F; lands: Lisnahederna; **Co Cavan**

Regd owner: Eugene Higgins and Marcella Higgins, Moylett, county of Cavan; folio: 8059F; lands: Moylett; **Co Cavan**

Regd owner: Mary Teresa Burke; folio: 226640; lands: townland of Glencolumbkille South and barony of Burren; area: 6 acres, 3 roods, 1 perch; **Co Clare**

Regd owner: Mary Melleney (deceased); folio: 5982F; lands: townland of Ballynagleragh and barony of Tulla Lower; area: 0.4930 hectares; **Co Clare**

Regd owner: Patrick Gerard Ryan and Christina Ryan; folio: 12793F; lands: townland of Breaffy North and barony of Ibrickan; area: 0.2150 hectares; **Co Clare**

Regd owner: John Raymond Conlon; folio: 17365F; lands: townland of Kildoorus and barony of Tulla Lower; **Co Clare**

Regd owner: Patrick Goonane (deceased); folio: 1078; lands: townland of Whitegate and barony of Leitrim; area: 0.5909 hectares; **Co Clare**

Regd owner: Thomas Joseph Lenihan and Ann Theresa Lenihan; folio: 16603F; lands: townland of Glendine South and barony of Ibrican; **Co Clare**

Regd owner: John Broderick and Josephine Dolores Broderick; folio: 48863; lands: plot of ground situate in the townland of Ballyandrew and barony of Fermoy in the county of Cork; **Co Cork**

Regd owner: Mary Buckley; folio: 86597F; lands: plot of ground situate in the townland of Ballycatoo and barony of Imokilly in the county of Cork; **Co Cork**

Regd owner: John L Barry and Abina Barry; folio: 3341; lands: plot of ground situate in the townland of Garraun North and barony of Barretts in the county of Cork; **Co Cork**

Regd owner: James Daly; folio: 41476; lands: plot of ground situate in the townland of Gortavallig and barony of Carbery West (West Division), in the county of Cork; **Co Cork**

Regd owner: Rory Finnegan; folio: 53307F; lands: plot of ground situate to the south of Model Farm Road of St Finbar's in the city of Cork; **Co Cork**

Regd owner: Denis P Forrest; folio: 49833; lands: plot of ground situate in the townland of Shean Upper and barony of Muskerry East, in the county of Cork; **Co Cork**

Regd owner: John Jennings and Dorothy Jennings (as tenants-in-common of equal shares); folio: 43673F; lands: plot of ground situate in the townland of Desert and barony of Carbery East (East Division) in the county of Cork, **Co Cork**

Regd owner: Stephen Pearce; folio: 10094F; lands: plot of ground situate in the townland of Shanagarry South and barony of Imokilly in the county of Cork; **Co Cork**

Regd owner: Old Chapel Enterprises Limited; folio: 61925F; lands: plot of ground situate to the north side of Chapel Street in the townland of Gully and barony of Kinalmeaky in the county of Cork; **Co Cork**

Regd owner: William Kingston and Orla Kingston; folio: 2362F/17966F; lands: plot of ground situate in the townland of Ballea and barony of Kerrycurrihy in the county of Cork; **Co Cork**

Regd owner: Florence O'Connell (deceased); folio: 22701F; lands: plot of ground situate in the townland of Carrigaline Middle and barony of Kerrycurrihy in the county of Cork; **Co Cork**

Regd owner: Michael Hennigan and Marian Hennigan, Drumaville, Malin, Co Donegal; folio: 33783F; lands: Drumaville; **Co Donegal**

Regd owner: Liam O'Kane, c/o CS Kelly & Co, Solicitors, Market House, Buncrana, Co Donegal; folio: 28375; lands: Stranacorcagh; **Co Donegal**

Regd owner: John King and Marie King, 6 Glentow Road, Whitehall, Dublin 9; folio: DN49756L; **Co Dublin**

Regd owner: Eileen Angela Clancy; folio: DN11220; lands: property situate in the townland of Palmerston Lower and barony of Uppercross; **Co Dublin**

Regd owner: Eamonn O'Connor and Emily O'Connor; folio: DN 82382L; lands: property known as apartment no 13, Block 1, Village Square Apartments, situate in the town and parish of Tallaght; **Co Dublin**

Regd owner: Quinnsworth; folio: DN80973L; lands: property situate in the townland of Loughlinstown and barony of Rathdown; **Co Dublin**

Regd owner: Joseph W O'Connell; folio: DN18482L; lands: property situate to the north of Griffith Avenue in the parish of Clonturk, district of Drumcondra; **Co Dublin**

Regd owner: Alan McLean and Angela McLean; folio: DN147160F; lands: a plot of ground known as site no 1, Parklands Avenue, Ballycullen, Firhouse and situate in the townland of Ballycragh and barony of Uppercross; **Co Dublin**

Regd owner: Chadwicks Dublin Limited; folio: DN1418F; lands: a plot of ground situate to the west of Finglas Road in the parish of Glasnevin, district of Finglas and county borough of Dublin; **Co Dublin**

Regd owner: Thomas Walsh; folio: DN9212; lands: property situate in the townland of Ballybrack and barony of Rathdown; **Co Dublin**

Regd owner: John Daly; folio: 51846; lands: townland of Laurencetown, Killevny and Oghil More and barony of Longford; **Co Galway**

Regd owner: Edward Grenham and Anne Grenham; folio: 8034F; lands: townland of Kilgarve and barony of Moycarn; **Co Galway**

Regd owner: Cornelius Mullen; folio: 27335; lands: townland of Ballynew (Ballynahinch By) and Cleggan and barony of Ballynahinch; **Co Galway**

Regd owner: Tralee Town Council; folio: 12639; lands: townland of Cloonmore and barony of Trughanacmy; **Co Kerry**

Regd owner: John Cogan (Junior) of Hobardstown, Moone, Co Kildare (trader); folio: 6016F; lands: townland of Belan and barony of Kilkea and Moone; **Co Kildare**

Regd owner: Philip Fennell (barrister-at-law) and Stephine O'Halloran (insurance company executive) of Timahoe East, Donadea, Naas, Co Kildare; folio: 40506F; lands: townland of Timahoe East and barony of Clane; **Co Kildare**

Regd owner: Christopher Hudson and Marie Hudson; folio: 11428F; lands: Ennisnag and barony of Shillelogher; **Co Kilkenny**

Regd owner: Andrew Murphy; folio: 16697; lands: Ballyrowragh, barony of Ida; **Co Kilkenny**

Regd owner: Brendan Scully; folio: 6664; lands: Coolagh and barony of Tinnahinch; **Co Laois**

Regd owner: Dineen and Company Limited; folio: 6462F; lands: townland of Gouldavoher and barony of Pubblebrien; area: 31 acres, 22 perches; **Co Limerick**

Regd owner: James Kilgallon; folio: 24957; lands: townland of Gouldavoher and barony of Pubblebrien; **Co Limerick**

Regd owner: Ann Healy; folio: 20720 (part 1633); lands: townland of Coonagh West and barony of North Liberties; **Co Limerick**

Regd owner: William O'Neill; folio: 22859; lands: townland of Castleroberts and barony of Coshma; **Co Limerick**

Regd owner: Patrick McParland and John McParland, c/o McDonough and Matthews, Solicitors, 14 Jocelyn Street, Dundalk; folio: 5366; lands: Redcow; **Co Louth**

Regd owner: Michael Shevlin and Mary Shevlin; folio: LH8739F; lands: property known as Dunaney, Togher, situate in the townland of Salterstown and county of Louth; **Co Louth**

Regd owner: Edward McQuaid and Anne McQuaid, 56 Kenyon Street, Nenagh, Co Tipperary; folio: 325, 593; lands: Drummullagh; **Co Louth**

Regd owner: Christopher Concannon; folio: 15392F; lands: townland of Carrowmore South and Drum or Knocktemple and barony of Carra; **Co Mayo**

Regd owner: Eamon Rattigan, Kilernan, Kilmaine, Co Mayo; folio: MY11004; lands: townland of (1) Killernan, Kilmaine, county of Mayo, area: 25 acres, 3 roods, 34 perches; (2) Caherwidaun, Kilmaine, county of Mayo, area: 10 acres, 1 rood, 36 perches; **Co Mayo**

Regd owner: James Kiernan, Kenliss Place, Kells, Co Meath; folio: 20182F; lands: Town Parks; **Co Meath**

Regd owner: Thomas Duffy, Boolies, Kells, Co Meath; folio: 12458; lands: Calliaghstown; **Co Meath**

Regd owner: Josephine Dowds and Declan McDermott, 24 Cherry

Park, Clones, Co Monaghan; folio: 11035F; lands: Clonkeen (Cole); **Co Monaghan**

Regd owner: Matthew Hogan; folio: 487F; lands: Brownstown, Rahenny, and barony of Clonlisk; **Co Offaly**

Regd owner: John R Caulfield; folio: 1782F; lands: townland of Knockroe (ED Castlereagh) and barony of Castlereagh; **Co Roscommon**

Regd owner: Michael O'Grady and Ann O'Grady; folio: 2646F; lands: townland of Kilcolman and barony of Costello; **Co Roscommon**

Regd owner: Tadhg Hayes and Adele Hanevy; folio: 37931F; lands: townland of Glengar and barony of Kilnamanagh Upper; area: 3.8300 hectares; **Co Tipperary**

Regd owner: Denis Hyland (deceased); folio: 2248; lands: plot of ground situate in the townland of Kilmanahan and barony of Glenahiry in the county of Waterford; **Co Waterford**

Regd owner: Stafford-Miller (Ireland) Limited, now known as Block Drug Dungarvan Limited; folio: 3902L; lands: plot of ground situate in the townland of Clogherane and barony of Decies without Drum in the county of Waterford; **Co Waterford**

Regd owner: Leo Phelan and Marie Phelan; folio: 9203F; lands: plot of ground situate in the parish of St John's Without P, known as Tara, 66 Saint John's Park, in the city of Waterford; **Co Waterford**

Regd owner: David Cassidy, Patrick Cassidy and Josephine Cassidy; folio: 30007F; lands: Goreybridge and barony of Gorey; **Co Wexford**

Regd owner: Brian Kenyon and Thelma Kenyon; folio: 4340F; lands: Ballyhow Lower, barony of Shelmaliere East; **Co Wexford**

Regd owner: Edward Reilly, Bloomfield, Mullingar, Co Westmeath; folio: 7004F; lands: Lynn; **Co Westmeath**

Regd owner: Christopher Austin, Monilea, Mullingar, Co Westmeath; folio: 3877; lands: Clonkill; **Co Westmeath**

Regd owner: Martha O'Byrne and Gerard O'Reilly; folio: 10278; lands: townland of Kilboy and barony of Arklow; **Co Wicklow**

Regd owner: Patrick Doran, Tomacork, Carnew, Arklow, Co Wicklow; folio: 11776; lands: townland of Cronyhorn Lower and barony of Shillelagh; **Co Wicklow**

Regd owner: Laurence Carroll, Mary Campbell, Ann Mannine and John Carroll; folio: 10528; lands: townland of Roundwood and barony of Ballinacor North; **Co Wicklow**

WILLS

Barry, George (deceased), late of 12 Sion Road, Glenageary, Co Dublin. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 7 April 2008, please contact Legal Support Services, Solicitors, Main Street, Sixmilebridge, Co Clare; tel: 061 713 767, fax: 061 713 642, email: gwen@legalsupportservices.ie

Cullen, Stephen (deceased), late of 1 Moylaragh Lodge, Balbriggan, Co Dublin, who died on 4 May 2008. Would any person having knowledge of a will made by the above-named deceased please contact Denis McSweeney, Solicitors, Grand Canal House, 1 Upper Grand Canal Street, Dublin 4; tel: 01 676 6033, fax: 01 661 5723, email: info@denismcsweeney.com

Casey, Michael (deceased), late of 6 Doris Street, Ringsend, Dublin 4, who died on 23 April 2007. Would any person having knowledge of a will made by the above-named deceased please contact Madigans Solicitors, 167 Lower Kimmage Road, Dublin 6W; tel: 01 492 1111, fax: 01 492 1348, email: info@madigans.ie

Carson, Mary (deceased), late of 18 Lissadel Court, Crumlin, Dublin 12. Would any person having knowledge of a will made by the above-named deceased, who died on 30 May 2008, please contact Cullen and Company, Solicitors, 86/88 Tyrconnell Road, Inchicore, Dublin 8, tel: 01 453 6114

Hume, Thomas (deceased), late of 108 Mulvey Park, Dundrum, Dublin 14, who died on 22 March 1980. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding the same, please contact Gallagher Shatter Solicitors, 4 Upper Ely Place, Dublin 2; tel: 01 661 0317, fax: 01 661 1685, email: bg@gallahershatter.ie

Murphy, Denis (deceased), late of Ballygibbon, Blarney, Co Cork, who died on 7 June 2008. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding the same, please contact Coakley Moloney Solicitors, 49 South Mall, Cork; tel: 021 427 3133, fax: 021 427 6948, email: smatthews@como.ie

McGurgan, Maureen (deceased), late of Bough, Rathvilly, Co Carlow. Would any person having knowledge of a will made by the above-named deceased, who died on 6 March 2008, please contact O'Gorman Begley Solicitors, Kincora, Athy Road, Carlow; tel: 059 914 0999, fax: 059 913 3095

Kelly, John (otherwise Sean) Joseph (deceased), late of 94 Haddington Road, Ballsbridge, Dublin 4, retired delivery man, who died on 7 August 2007. Would any person having knowledge of a will made by the above-named deceased please contact Wilkinson & Price Solicitors, South Main Street, Naas, Co Kildare; tel: 045 897 551, fax: 045 876 478, email: sohara@wilkinsonandprice.ie

Perry, Rita (deceased), late of 7 Maplewood Greens, Springfield, Tallaght, Dublin 24. Would any person having knowledge of a will made by the above-named deceased, who died on 4 May 1992 at St James' Hospital, Dublin, please contact John O'Leary & Co, Solicitors, Millennium House, Main Street, Tallaght, Dublin 24

MISCELLANEOUS

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

Full seven-day intoxicating liquor licence for sale. Contact Emerson & Conway, Solicitors, 1 St Francis Street, Galway; tel: 091 562 531/565 093

Merger opportunity: long-established Dublin city-centre solicitors' practice with significant expanding client base seeks merger with like-minded progressive legal practice. Principals only to: Dominick Tighe, KSi Faulkner Orr, KSi House, 10 Whitefriars, Aungier Street, Dublin 2; tel: 01 418 9970, email: Dominick.tighe@ksifo.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the application by Martin Morris: notice of intention to acquire the fee simple

Take notice that any person having an interest in the freehold estate of the property situate on the south side of Market Street in the town of Mountmellick in the parish of Rosenallis, barony of Tinnahinch, in the county of Laois, being part of the property comprised in folios 1128L of the register of leaseholders, Co Laois, and held under indenture of lease

dated 14 November 1918, made between Christopher Samuel Bailey, Wellesley Cosby Bailey, Thomas Andrew Bailey and Alfred Graham Bailey of the one part and Thomas Scott of the other part for the term of 99 years from 25 March 1918 at the annual rent of £16.

Take notice that Martin Morris intends to submit an application to the county registrar for Co Laois for the acquisition of the freehold interest in the aforesaid property, and any party or parties asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, Martin Morris 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 Co Laois for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown and unascertained.

Date: 4 July 2008

Signed: Vincent Garty & Co (solicitors for the applicant), O'Connell Square, Mountmellick, Co Laois

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 6 Fairview Strand, Dublin 3, and in the matter of an application by Sean Harte and Marie Harte

Take notice that any person having an interest in the freehold estate or any intermediate interests of the following property: all that and those the dwelling house and premises formerly known as no 6 St Michael's Terrace, but now known as no 6 Fairview Strand, being portion of the hereditaments comprised in and demised by indenture of lease dated 30 April 1906 between John Joseph Donnelly of the one part and John Ward of the other part (hereinafter 'the lease') for a term of 200 years from 25 March 1906, at the annual rent of £22, subject to the covenants and conditions therein contained, and therein described as all that and those that plot of ground situate at Fairview, containing in breadth in front to Fairview Strand Road 103 feet, 4 inches or thereabouts, in the rear in depth from front to rear on the west side 60 feet, 8 inches or thereabouts, and in depth from front to rear on the east side 86 feet or thereabouts, bounded on the south and west by premises in the possession of the lessee, on the north by Fairview Strand Road and on the east by a laneway or passage, said demised plot forming portion of the lands of Ballybough, formerly situate in the barony of Coolock and county of Dublin but now situate in the city of Dublin and more particularly described in the map hereon endorsed and thereon coloured red.

Take notice that Sean Harte and Marie Harte 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 said property to the below-named solicitors within 21 days from the date of this notice.

In default of any such notice being received, Sean Harte and Marie Harte 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 interests, including the fee simple, in the aforesaid property are unknown or ascertained.

Date: 4 July 2008

Signed: TJ Brabazon & Co (solicitors for the applicants), Brighton House, 29 Fairview Strand, Dublin 3

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Emir Donnelly

Any person having a freehold estate or any intermediate interest in all that and those the premises at Centaur Street, Carlow, the subject of a yearly tenancy agreement dated in or about 1908 between the estate of Kathleen Douglas, deceased, of the one part and Philip Robinson of the other part.

Take notice that Emir Donnelly, being the person currently entitled to the tenant's interest under the said yearly tenancy, intends to apply to the county registrar of the county of Carlow for the acquisition of the freehold interest and all immediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Emir Donnelly intends to proceed with the application before the Carlow county registrar at the end of the 21 days from the date of this notice and will apply for such direction as may be appropriate on the basis that the person or persons beneficially entitled to the super interests including the freehold reversion in the aforesaid premises are unknown and unascertained.

Date: 4 July 2008

Signed: PJ Byrne & Co (solicitors for the applicant), Athy Road, Carlow

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Sheila Magennis and in the matter of the property known as 40 Fair Street, Drogheda, Co Louth

This notice is directed to any person or persons having an interest in the freehold estate or any intermediate interests of the property known as 40

Fair Street, Drogheda, in the county of Louth, held under an indenture of underlease made on 11 August 1951 between Mary Bellew of the one part and Henry Sweeney of the other part.

Take notice that Sheila Magennis intends to submit an application to the county registrar for the county of Louth for the acquisition of the freehold interest in the aforesaid property and that any party asserting that they hold any superior interest in the aforesaid property are called upon to furnish evidence of title to the said property to the below-named solicitors within 21 days from the date of this notice.

In default of any such notice being received, Sheila Magennis 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 Louth for directions as may be appropriate that the person or persons beneficially entitled to the superior interest including the freehold interest in the aforesaid property are unknown or unascertained.

Date: 4 July 2008

Signed: Branigan & Matthews (solicitors for the applicant), 33 Laurence Street, Drogheda, Co Louth

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Tadgh Lynch and Mary Ann Lynch (otherwise Merlyn Lynch)

Take notice that any person having any interest in the freehold estate of the following property: all that and those the plot of ground in the village of Glanmire on which Linneylime Killan and Oldstable are now standing, in the possession of William Phair Esq and by him demised to Mr Bury and the next lately in the possession of John Martin, bounded on the north and west by premises in the possession of Mr Bateman, on the east by David Draddy's holdings and a house in the possession of Miss Alicia Martin, and on the south by the road commonly called the Grand Road from Cork through the village of Glanmire, which said premises are situate, lying and being in the parish of Rathcooney and North Liberties of the city of Cork, held under indenture of lease dated 25 February 1837, John Martin of the one part and John Arnold of the other part for a term of 200 years from 25 March 1837 at the yearly rent of £4, since adjusted to £3.75.

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

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

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

Take notice that Tadgh Lynch and Mary Ann Lynch (otherwise Merlyn Lynch) intend to submit an application to the county registrar for the county of the city of Cork for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the property or any of them are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar for the county of the city of Cork for directions as may be appropriate under the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the property are unknown and unascertained.

Date: 4 July 2008

Signed: Aidan M Deasy & Co (solicitors for the applicant), 34 Upper Fitzwilliam Street, Dublin 2

RECRUITMENT

North West/Sligo solicitor, 20+ years' experience in general practice, principally litigation, conveyancing, family law; Step International Diploma; currently employed with commercial firm overseas, seeks part-time position October '08. Email: moyamcdermott@gmail.com or tel: 0044 762 449 2541

Solicitor with excellent experience in litigation and other areas of general practice seeks immediate position in Cork area. Please contact 087 050 5647

Publication of advertisements in this section is on a fee basis and does not represent an endorsement by the Law Society of Ireland.