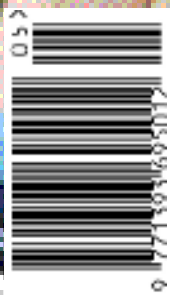


LAW SOCIETY Gazette

€3.75 May 2008

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On the cover

Recent on-pitch events may ultimately lead to referrals to the GAA's sports disputes resolution body. But what is the Disputes Resolution Authority and how does it work?

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Volume 102, number 4
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42 End of the age

There are two ways to look at well-funded retirement: the end of employment income or the start of a pension. Jo Kenny and Philip Smith consider the interaction between employment and pension law definitions of retirement



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Éist le fuaim na habhann agus gheobhaidh tú breac

Thankfully, the year is flying in. There is a Law Society adage that, once the annual conference is over, the president is yesterday's man and any available respect is directed at the heir apparent. Proof positive of this is that my good friend John Shaw's forehead is a little more furrowed these days!

The conference was a great success, largely due to the high-quality presentations from our speakers: Barry Donoghue (deputy director of public prosecutions), John Bruton (EU ambassador to the US), and Minister for Justice Brian Lenihan.

Despite the fact that some speakers had a clear position on the *Lisbon Treaty*, the general view was that a lot of useful non-partisan information was exchanged – much of it for the first time. Irrespective of anyone's perspective, I would encourage colleagues to fully participate in public information events concerning the treaty. From a legal point of view, the minister outlined that it will now be possible to challenge Brussels' directives by reference to the provisions of the *Charter of Fundamental Rights*. This is a type of jurisdiction with which we are all familiar, both in the context of constitutional challenges and incompatibility declarations by reference to the *European Convention on Human Rights*.

It remains to be seen how practical this remedy will be in the event that the treaty is passed, but certainly the present position, whereby legislation emanating from Brussels is immune from fundamental challenge by virtue of article 29 of the Constitution, is a most frustrating one.

Next year, our conference will be in Bilbao, with precise dates and arrangements to be confirmed shortly. I would encourage all members, especially younger colleagues, to attend the conference and see for themselves.

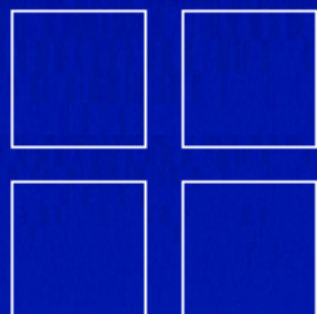


On 22 April, the Minister for the Environment John Gormley launched the Society's detailed report entitled *Enforcement of Environmental Law: The Case for Reform*. This wonderful document shows that, while media headlines are consumed with regulatory issues, it is business as usual in all our other departments. I would like to compliment all involved with the project and, in particular, our full-time personnel, Alma Clissman, who is now with the Law Reform Commission, and Elaine Dewhurst.

One of the great pleasures of the presidency is that it gives an opportunity to record the appreciation of the profession for many of the unsung heroes who do so much good work on our behalf. Recently, I attended the annual general meeting of the Solicitors' Benevolent Association, whose members put in an enormous effort to assist colleagues or their families who have fallen on hard times. In thanking members for their contribution each year (with the practising certificate fee), I would nonetheless ask colleagues to consider incorporating a bequest to the association in their own will. The good work of the SBA has been essential since 1863, and there is no reason to believe other than that they will be needed long after we are all gone. 

James MacGuill
President

"The present position, whereby legislation emanating from Brussels is immune from fundamental challenge by virtue of article 29 of the Constitution, is a most frustrating one"



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■ DUBLIN

DSBA President Michael Quinlan's trip in September to China has created tremendous interest among members of the profession. Colleagues seem to appreciate that a conference of this nature represents a chance in a lifetime. While there is still availability, places are filling up, and those seriously interested in going are strongly encouraged to secure a place by putting down their deposit now. It promises to be an amazing experience.

The DSBA is to hold a lunch for esteemed colleagues who have soldiered on in practice for over 50 years. While a date for the event has yet to be fixed, it is likely to be in the early summer. We would be particularly pleased to hear from any colleagues who qualified in 1958.

■ LEITRIM

Colleagues throughout the county and beyond have welcomed the appointment of Mohill solicitor Kevin P Kilraine to the bench. Kevin has been an outstanding advocate for many decades and his appointment will bring to the bench a huge amount of common sense and legal expertise.

■ WEXFORD

The provision of courthouses throughout the county has been of huge concern to bar association president Helen Doyle and her colleagues for many years. She tells us that the Courts Service has now acquired the municipal buildings in Wexford town for the provision of court facilities. Currently, the District Court and offices are in Ardavan, two



Rosie O'Flynn, Bernadette Cahill and Marie Dennehy at the Waterford Law Society's dinner on 4 April (see p48)

miles outside the town, with the considerable inconvenience that entails for practitioners and witnesses alike. The new Gorey courthouse is under construction, but is not due for completion until next year. The Enniscorthy courthouse renovations are to be completed next year also. Funds are to be made available for the renovation of the New Ross courthouse during the current year. The present courthouse in New Ross is located in a GAA club.

Helen has recently arranged for a number of seminars in the county, one on the new VAT regime, as well as a presentation from the Property Registration Authority. Anne Neary's seminar 'Succeeding in a Downturn' will be held in June and a dinner will take place in July.

■ MIDLANDS

Charlie Kelly tells us that the bar association organised a most successful seminar in Mullingar in early April on compulsory registration and

registration of title based on possession. John Murphy, examiner of titles, who had gone to school in the town, was delighted to return and meet up with many of his former classmates at a very well-attended seminar. He was assisted by Brenda Feeney, examiner of titles for the north midlands region. The bar association also held a seminar on issues affecting the elderly and the practical aspects of caring for the elderly in vulnerable situations. Charlie hopes to hold a further seminar on tax issues and conveyancing.

■ DONEGAL

Bar association president Brendan Twomey is distinctly unimpressed by the Courts

Service proposal for solving the county's chronic backlog of cases. "Their solution is to hive off Donegal Town and Ballyshannon to Sligo, but this will have a negligible effect, as the heart of the problem is the huge caseload in Letterkenny." Brendan tells us that, as of February of this year, there were 3,123 cases on the District Court lists throughout the county, with Donegal and Ballyshannon accounting for a mere 15% of the total, compared with Letterkenny's 61%. Says Brendan: "The problem can only be solved with the appointment of a second permanent judge, as the ceding to Sligo will not address the problem, making negligible difference to the overall situation." Likewise, Brendan feels the county is crying out for the appointment of a second Circuit Court judge, where again there is a chronic overhang of 800 cases, with the county having only 64 court days in the year. However, he is fulsome in his praise of the heroic efforts of Judge O'Hagan to deal with matters, but feels that without the assistance of another full-time judge, there is no hope of ever clearing the backlog. **G**

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



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France's highest court supports lawyers on money laundering

The French Conseil d'Etat – the highest administrative court in France – has effectively ruled against the implementation of the second *Money-laundering Directive* in France.

In a challenge mounted by the French Bar and the Council of Bars and Law Societies of Europe (CCBE) against the implementation of the directive in that country, the Conseil d'Etat ruled (10 April 2008) that EU member states should not just have the option to respect lawyers' professional secrecy within the framework of judicial activities and legal advice (as mentioned in the directive) – but are under an obligation to do so.

The Conseil d'Etat also stated that, in order to safeguard professional secrecy, all direct contacts between the lawyer and the national financial intelligence unit should be forbidden.

In referring to article 8 of the *European Convention on Human Rights*, the Conseil



'It is not possible to impose on the European legal order an obligation on lawyers to betray the trust of their clients' – Péter Köves, CCBE president

d'Etat gave the widest possible meaning to 'legal advice', putting to one side 'ascertaining the legal position of a client' mentioned in article

6 of the directive.

The decision complements the recent case law decision of the European Court of Justice (26 June 2007) and that of the

Belgian Constitutional Court (23 January 2008).

The CCBE has warmly welcomed the decision. CCBE President Péter Köves said: "This decision, as well as the recent decisions given by the European Court of Justice and the Belgian Constitutional Court, are a very firm warning. It is not possible to impose on the European legal order an obligation on lawyers to betray the trust of their clients, nor to impose on them obligations other than those of guarding with independence the interest of their clients alone."

The CCBE states that, at a time when the third *Money-laundering Directive* – which increases the information and cooperation duties on lawyers – is about to be implemented, the member states have a compelling need to take account of the respect for fundamental rights, unanimously called for by the European Court of Justice, the Belgian Constitutional Court and now by the Conseil d'Etat.

Litigation Committee in Courts Service dialogue

The Litigation Committee has continued its ongoing dialogue with the Courts Service. On 27 March last, its chairman Stuart Gilhooly and its secretary Colette Carey met with Nuala McLoughlin and Angela Brennan of the High Court section of the Courts Service to discuss ongoing service issues with the central office. Top of the list of concerns was the length of queues to be served and the new closing times.

In January, the Courts Service announced that the central office would close at



4.30pm sharp. The effect of this has been that anyone still waiting in the queue at this time has not been served.

The Courts Service has asked the *Gazette* to remind practitioners of express services available. In the event that you have less than five documents to file, you may avail of the express queue – it also operates an even quicker express service for those with only one document.

In terms of improving the general service into the future, following an independent review of its services, the Courts Service plans shortly to introduce a postal system. It is hopeful that this will reduce the sizes of queues. In addition, it plans to streamline the checking

service it provides in respect of filed documents.

The Courts Service has stated that it is very anxious to liaise closely with the legal profession before introducing these changes and will be in further contact with the Litigation Committee in the near future.

In the meantime, the Litigation Committee strongly advises practitioners with many documents to arrive early in the central office and, if possible, to avoid Wednesday afternoons, which are especially busy with bail application documentation.

Law Society launches report on environmental law reform

The Law Society's Law Reform Committee has launched a new report, focusing on environmental law. *The Enforcement of Environmental Law: the Case for Reform* was launched by Environment Minister John Gormley, at Blackhall Place on 22 April 2008.

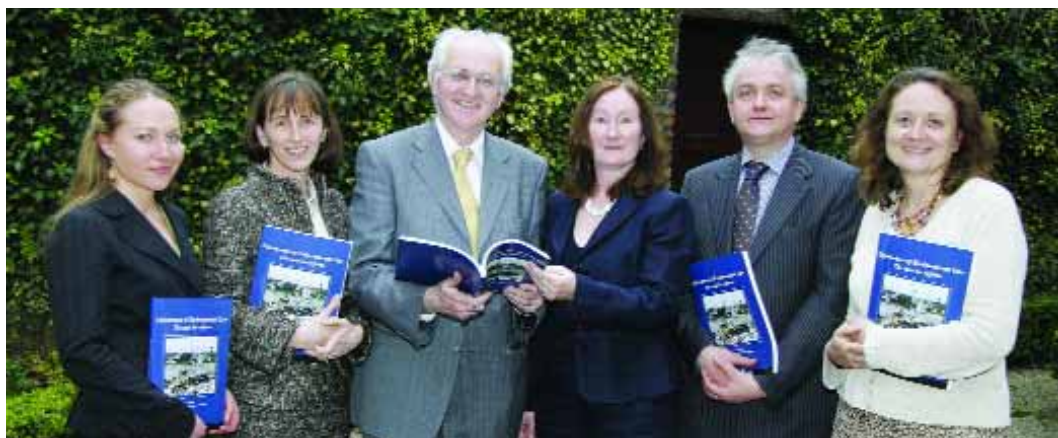
The report considers the wide range of regulations currently in force in Ireland relating to environmental enforcement. It concludes that a rebalancing of the enforcement regime should be implemented. This would encourage and reward compliance without hindering the effective use of the available enforcement measures.

Environmental enforcement is considered from a number of perspectives – that of public enforcement, citizen enforcement, environmental agreements and pre-emptive costs orders. The report strongly supports the introduction of unambiguous and effective mechanisms for enforcing environmental law by the state and its citizens.

New enforcement measures

The report recommends new enforcement measures, including the use of environmental community service orders, publicising breaches, mandatory audit orders, the introduction of a 'penalty points' system, as well as the imposition of corporate responsibility for major environmental damage.

The report concludes that the current model of public enforcement – which relies on criminal prosecution and fines consequent on conviction as the sole penalty – fails to give regulators adequate means to



At the launch of the report *Enforcement of Environmental Law: The Case for Reform* on 22 April 2008 were (l to r): Aoife Shields, Finola McCarthy, Minister for the Environment John Gormley TD, Deborah Spence, Owen McIntyre and Alma Clissmann

effectively deal with many cases in a proportionate and risk-based way.

The issue of implementing environmental agreements is addressed, on the basis of their successful adoption in other EU member states. These are usually set against a background of the threat of more formal, binding regulation – but nonetheless offer more negotiation, agreement and flexibility for industry.

Citizen enforcement

The Law Reform Committee report also deals with the concept of citizen enforcement. It makes a number of recommendations on the legal standing of citizen enforcers and their right not only to complain to regulatory authorities, but for such complaints to set in motion an obligation on the part of that authority to take further action.

The issue of partnerships between members of the public, NGOs and regulatory bodies in the enforcement of environmental law is examined. The report also addresses the possibility of widening the remit of the Legal Aid Board to encompass public interest

actions taken by special interest groups in the area of environmental law.

Legal costs have also been considered. It was concluded that such costs could often be a barrier to potential litigants taking environmental judicial review proceedings. The report recommends that pre-emptive costs orders be made available. The Law Reform Committee endorses the consideration and use of these by the judiciary to date.

The committee hopes that this report will go some way to assisting the legislature in the task of implementing legislation and framing policy in Ireland in a balanced manner. Indeed, Minister Gormley was very receptive to the ideas raised in the report and has invited an open discussion on the issues raised. The report is available on the Law Reform Committee pages of the Law Society's website: www.lawsociety.ie.

Trainee solicitor Human Rights Essay Prize

The Law Society of Ireland is pleased to announce the second annual competition for the Human Rights Essay Prize. Trainee solicitors, those qualified in the previous year, and those preparing for FE1 exams are invited to submit an essay identifying a particular aspect of human rights law that they believe will have importance in the application or interpretation of Irish law. They should briefly explain the current understanding of law in this area and outline their

argument for the influence of human rights law.

Entries should be typed and approximately 2,000 – 3,500 words in length. Entries may be co-authored. Two prizes will be awarded in total: a first prize of €600 and a runner-up prize of €300.

Prize-winning and shortlisted essays may be published. Information in relation to marking, prizes and eligibility are available on the Law Society website under the Human Rights Committee at www.lawsociety.ie.

HEALTH ADVICE AND SUPPORT FOR LAWYERS

YOU CAN MAKE A DIFFERENCE

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

Soon after she qualified as a lawyer, Laurie (not her real name) got a job with a medium-sized firm. Although she was promised that she would be doing family law, she was almost immediately placed in the civil litigation department, 'to help out'. She found herself floundering, but there was no one to turn to for support. "I had no knowledge, experience or even interest in the work. I hadn't a clue what I was supposed to be doing, but when I asked for help, everyone was too busy, or they said: 'Are you qualified or aren't you?'" Laurie spent a large amount of her time looking through books for the guidance she needed, and working 12-hour days in order to keep up with both the reading and the workload.

Inevitably, Laurie made a major mistake on a file and was disciplined. "Because of this, I was lucky enough to get one-to-one time with the senior partner, and so I told him why it had happened and he reluctantly agreed that I should be moved to family law after all. At least there I had some idea what I was doing, but that department was understaffed too. There was only one secretary, so I had to do all my own admin, and our billing targets were the same as for those in civil litigation. It was totally unrealistic."

Laurie began suffering severe headaches and mood changes, which caused problems in her relationship with her fiancé. She went to her GP, who diagnosed her symptoms as being stress-related and suggested she take at least a week off sick, before she had a complete breakdown.

LawCare volunteer

During that week, Laurie called LawCare for help. After talking through all her worries, she felt



the burden had lifted a little. LawCare sent her some practical advice about stress management, which she found very helpful. They also offered her the support of a LawCare volunteer, which she gratefully accepted.

Anne (not her real name) called her the next day. Anne was a sole practitioner working in a town 30 miles away, but she well remembered the stress Laurie described from experiences in her own career. She offered support and, through talking to her, Laurie began to see light at the end of the tunnel.

intention of employing more solicitors to lessen the burden. I explained that I wasn't prepared to work the long hours I had been doing."

Manageable stress

Laurie continued: "After a couple of months, while I felt better, I could see that the firm was a shambles and it was a stressful environment, even though I did my best to apply the stress management techniques I'd learned. So, with Anne's support, I left and now I have a job in a provincial firm doing the family-law work I love, with lots of autonomy and manageable stress. I can't thank LawCare, and especially Anne, enough for the help they gave me. I dread to think what might have happened without it."

There are currently over 150 LawCare volunteers and the support that they give is absolutely vital to LawCare's work in assisting the legal professions. Currently, around a quarter of all LawCare's cases are referred to a volunteer for help, but this isn't enough.

If you have useful life experience, experience of recovery from addiction or mental illness, association with such problems through family or friends, and/or knowledge of counselling techniques (as opposed to being a trained counsellor), then please consider becoming a volunteer for LawCare. You'll receive no monetary reward, but you will have the satisfaction of knowing that you are putting something back into the profession and helping your fellow lawyers. Like Anne, you will have the reward of seeing people you have helped resuming effective professional and personal lives. 

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IBA conference to return to Ireland after 44 years

The International Bar Association's (IBA) annual conference will be returning to Ireland in 2012 after a period of 44 years. The last IBA annual conference was held in Dublin in 1968.

The National Conference Centre has been booked for the event, which will be held between 30 September 2012 and 5 October 2012. Around 4,000 lawyers from around the world will descend on the capital to discuss a vast range of topics in more than 260 sessions throughout the week.

The Law Society has worked hard to secure Dublin as the choice for this conference. Particular recognition goes to Geraldine Clarke, John Buckley and Laurence Shields for their efforts in securing Dublin as next year's venue.

"The International Bar Association is the world's leading organisation of international leading practitioners, bar associations and law societies," explains Michael Greene, the nominated treasurer of the IBA for 2009 and 2010. "The IBA has a membership of around 33,000 individual lawyers drawn from just about every country in the world. It also comprises more than 195 bar association and law societies spanning every continent.

"People join the IBA for a variety of reasons," says Michael. "Sometimes it is for the purpose of networking and ensuring a regular stream of foreign referrals; sometimes it is in order to be at the cutting edge of international practice and to raise awareness of the latest developments in the relevant practice area in other jurisdictions. Whatever their reasons, most lawyers find



membership of the IBA very rewarding."

The current membership includes around 140 Irish solicitors. One firm, McCann FitzGerald, has signed up all of its lawyers under the IBA's group membership scheme. "I would hope that by 2012 we will see a very significant

increase in Irish membership of the IBA," says Michael. "Joining the association is very easy – a few clicks and your credit card details on www.ibanet.org will see you signed up."

Queries about the association should be addressed to Michael at: michael.greene.ireland@gmail.com or tel: 087 2585 649.

Publication of Legal Services Ombudsman Bill

Justice Minister Brian Lenihan has published the *Legal Services Ombudsman Bill 2008*. The ombudsman will oversee the handling of complaints from clients of solicitors and barristers by the Law Society and Bar Council.

The key functions of the ombudsman will be to:

- Provide a form of review for clients of solicitors and barristers who are dissatisfied with the handling of a complaint made to the Law Society or Bar Council,
- Oversee the complaints procedures in place in the Law Society and Bar Council, and
- Monitor and report annually to the minister and the Oireachtas on the adequacy of the admissions policies of both professions.

"As the bill progresses through the Oireachtas," said the minister, "I will consider any

practical amendment to the bill that complements the overarching purpose of this piece of legislation – the improved regulation of the legal professions."

The current regulatory arrangements for solicitors include the independent Solicitors Disciplinary Tribunal appointed by the President of the High Court to investigate complaints of misconduct against solicitors and an Independent Adjudicator.

In addition, the *Civil Law (Miscellaneous Provisions) Bill 2006* – currently before the Seanad – provides for a majority of lay membership of Law Society complaints committee. Provision is also made to ensure better enforcement of orders of the Solicitors Disciplinary Tribunal.

The *Legal Services Ombudsman Bill 2008* is available on the Oireachtas website, www.oireachtas.ie.

■ RETIREMENT TRUST SCHEME

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■ 'PLAIN ENGLISH' THUMBS UP

The National Adult Literacy Agency (NALA) has awarded its 'Plain English' mark for the Law Society's new precedent letter of engagement (see insert with this issue). This document, and a precedent letter of disengagement, were prepared by the Guidance and Ethics Committee as an aid to solicitors. The committee suggests that the precedent document be used simply as a letter, with the client's details added. Alternatively, it can be incorporated into a pamphlet or brochure with the firm's own logo. It can then be sent to potential clients with a covering letter.

■ BROWN FACES REVOLT OVER COUNTER-TERRORISM BILL

A new *Counter-terrorism Bill* that proposes to lengthen the time a suspect can be detained without charge seems set for defeat in Britain's House of Commons. Ten former ministers look set to join a growing revolt against Labour's plans to hold terrorist suspects for 42 days.

Separately, on 24 April 2008, the High Court ruled against powers to freeze suspects' bank accounts after five men successfully challenged the British government's powers to freeze bank accounts, stop benefit payments and control the spending of people it has designated as terrorist suspects.

■ LOST IN TRANSLATION

Interpretation and translation services provider, Lionbridge Technologies, has secured a major contract for the provision of services to the Courts Service. The contract is the second largest interpretation contract in the country.

Justice delayed is justice

Whenever there is an allegation that a person may have been ill-treated in custody, there must be an 'effective' investigation. Mark Kelly reviews the summary of the report into the death of Brian Rossiter

In early September 2002, 14-year-old Brian Rossiter was found unconscious in a cell in Clonmel Garda Station. He died in hospital, without having regained consciousness, three days later. According to a number of witnesses, he had been ill-treated by a member or members of An Garda Síochána during his arrest or detention.

This April, the Department of Justice released a summary of the Hartnett Inquiry's report into the circumstances surrounding his death. Hugh Hartnett SC found that "the documentation produced in the course of the investigation into the death of Brian Rossiter and the evidence heard at this inquiry does not show any indication of there being any real investigation in relation to the possibility of Brian Rossiter having been assaulted or his having received a fatal injury while in custody".

In a line of judgments stretching back to 2001 (see panel), the European Court of Human Rights has stated unequivocally that, whenever there is an allegation that a person in custody may have been ill-treated by police officers, there must be an 'effective' investigation.

The jurisprudence of the Strasbourg court has provided a series of clear benchmarks against which the effectiveness of an investigation may be judged. When the findings of the Hartnett report are set against those benchmarks, the shortcomings of the



The European Court of Human Rights, Strasbourg

investigations into Brian Rossiter's death are thrown into sharp relief.

Benchmarks of effectiveness

1. The persons responsible for and carrying out the investigation should be independent from those implicated in the events.

The investigation was carried out by Superintendent Richard Burke who, according to the Hartnett Inquiry, failed to arrange for witness statements "to be taken by members of An Garda Síochána other than Clonmel members".

2. The investigation must be capable of leading to a determination of whether force used was or was not justified under the circumstances and to the identification and, if appropriate, the punishment of those concerned.

Some media reports have suggested that the Hartnett report finds no evidence that any member of the gardaí assaulted Brian Rossiter.

This is not the case: rather, the inquiry records that it "is not

satisfied that Brian Rossiter was assaulted in the course of arrest or when he was in custody" [emphasis added]. It is plain from the summary of the inquiry report that the original criminal investigation failed to take adequate steps to establish whether or not force was used at or after detention. As a result, the inquiry was simply not in a position to satisfy itself on the issue of whether – or not – Brian Rossiter was assaulted by gardaí.

3. All reasonable steps should be taken to secure evidence concerning the incident, including, among other things, eyewitness testimony, forensic evidence, and, where appropriate, an autopsy that provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death.

According to the Hartnett report, "despite the evidence of Superintendent Burke to the effect that the possibility of an assault on Brian Rossiter during his arrest or detention was a line of enquiry, this inquiry

finds that there was no adequate investigation of this possibility" and "certain investigative steps were not taken after the possibility of an assault in custody was raised".

In particular, the inquiry found that there was a failure to direct that a material witness be interviewed in relation to what he had seen or heard while in custody. Dr Marie Cassidy, who carried out an autopsy, was never asked by gardaí if any of Brian Rossiter's injuries could have been incurred in an assault other than one known to have taken place before his detention. This was despite the fact that, while the criminal investigation was active, the investigating superintendent received a letter from the regional director of the South Eastern Health Board setting out an allegation that a 'Mr C' had witnessed ill-treatment of a young man in Clonmel Garda Station between 9.30pm and 10pm on 10 September 2002. The inquiry finds that the failure to make adequate inquiries after the receipt of the allegation contained in that letter is "inexplicable".

4. The investigation must be conducted in a prompt and reasonably expeditious manner.

The Hartnett Inquiry found that "there was a failure to investigate all the circumstances surrounding the death of Brian Rossiter and that this was a neglect of duty on the part of Superintendent Burke". Moreover, it was more than



denied

three years after Brian Rossiter's death before the Hartnett Inquiry itself was set up, and its full report has yet to be made public.

5. There must be a sufficient element of public scrutiny of the investigation or its results in order to secure accountability in practice as well as in theory.

Five-and-a-half years after Brian Rossiter's tragic death, only a redacted summary of the Hartnett report has been published. Brian's parents were reportedly informed only a few hours beforehand that this material would be published. It seems plain that they have not – as is required by the case law of the European Court of Human

Rights – been involved in the investigation to “the extent necessary to safeguard their legitimate interests”.

ECHR and article 2

Article 2 of the *European Convention on Human Rights* requires that, whenever there is an allegation that someone has been injured or has died as the result of a garda assault, that allegation must be investigated in a way that is independent, effective, prompt and transparent. In the leading case of *Hugh Jordan v the United Kingdom*, the Strasbourg court made clear that “the essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases

ECTHR judgments

- *Assenov and others v Bulgaria*, N 90/1997/874/108
- *Hugh Jordan v United Kingdom*, N 24746/94
- *Kelly and others v the United Kingdom*, N 30054/96
- *McKerr v United Kingdom*, N 28883/95
- *McShane v United Kingdom*, N 43290/98
- *Sevtap Veznedaroglu v Turkey*, N 32357/96

involving state agents or bodies, to ensure their accountability for deaths occurring under their

responsibility”.

To date, no one has been held accountable for the death of Brian Rossiter, and there has yet to be an investigation into his death that complies with Ireland's obligations under article 2 of the ECHR.

In future cases, investigations by the independent Garda Síochána Ombudsman Commission may well meet the standard required by the convention. However, where the death of Brian Rossiter is concerned, it would appear that justice delayed is truly justice denied. **G**

Mark Kelly is an international human rights lawyer and director of the Irish Council for Civil Liberties.



Law Society of Ireland

CRIMINAL LAW COMMITTEE SEMINAR

Hotel Meyrick, Eyre Square, Galway • 9.30am – 1pm, Saturday 17 May 2008

Criminal Law (Insanity) Act, 2006

Speaker: Dara Robinson, solicitor

Penalty Points Offences

Speaker: Alan Gannon, solicitor

DPP's "Reasons" Project

Speakers: Hugh Sheridan, solicitor; Michael Staines, solicitor

Hostile Witnesses – Legislative Developments

Speaker: Hugh Sheridan, solicitor

Registration: 9am • Seminar: 9.30am – 1pm

CPD hours: three (group study)

€160 per person (€80 trainee solicitors), includes materials, morning coffee and lunch

BOOKING FORM

Name(s): _____

Firm: _____

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

Please forward booking form and payment (to be received no later than 15 May 2008) to:
Colette Carey, solicitor, Criminal Law Committee, Law Society of Ireland, Blackhall Place, Dublin 7.

Sweet Liberty, I speak of thee

The Law Society's annual conference in Budapest tackled big questions like the *Lisbon Treaty*, EU/US relations, and the possibility of an EU federal prosecutor. Mark McDermott reports

If the Minister for Justice had ventured to gaze to his right as he took to the podium in the Academy of Sciences in Budapest, he would have seen, through the nearby window, the graceful form of Lady Liberty standing guard over the city.

'Lady Liberty', the 'Liberation Monument', or the 'Liberty Statue' – take your pick – has been standing guard over the Hungarian capital since 1947, as a monument to the Soviet Army's liberation of the city in 1945. The statue survived the 1992 purge of more than 40 busts, statues and plaques of Soviet-era leaders, heroic workers and communist martyrs that, till then, had graced the city's public spaces.

The statue's beauty – and its universal theme of liberty – ensured that its place was secure. It's now a fitting iconic connection between Hungary's darker, historic past and its brighter, Europe-focused future.

And it was on Europe's future that the gaze of Justice Minister Brian Lenihan was firmly fixed during his address to the 180 Law Society members who had travelled to Budapest for this year's annual conference.

Quasi-religious terms

Minister Lenihan emphasised the government's view that Ireland's future would be best served by a reformed Europe in which Ireland was a fully committed member. He spoke of the treaty in quasi-religious terms: the plebiscite on the treaty would "give us all an opportunity to renew our faith in the European project, which has been such a benefit to the nation".



Lady Liberty holds aloft the palm of victory on Gellért Hill in Budapest

"The treaty has to be ratified by all 27 states to have legal effect. And the other member states ratified the treaty by parliamentary process. So this referendum is unique to Ireland and to the Irish people, and that's a constitutional requirement," he said. "And my script writer has kindly said that I should not see this as a negative and potentially embarrassing process. I have to say I'm on the record on this as saying it *is* a negative and embarrassing process. I don't actually agree with it.

"I think one of the problems with our Constitution is that we have had it since 1937. It's an excellent document. How could I say anything else, since the drafter was the founder of my party? But it has gone through a minute-by-minute analysis by the Supreme Court, which has led to an extraordinary set of conclusions. For example, our present Supreme Court requires that we have a referendum every time there is a marginal change in the structure of the European Union. Now, of course, it was very difficult to

explain to people that this [the *Lisbon Treaty*] is only a marginal change in the structure of the European Union. People rightly think there is something afoot here. And one of the biggest difficulties in the referendum is going to be explaining to people that there isn't all that much in the *Lisbon Treaty*. Because people naturally say, 'Well, why are we having a referendum then?'"

The minister addressed some of the key features of the treaty, including the *Charter of Fundamental Rights*, which will have legally-binding status if the treaty carries and will be seen as a significant development in underpinning the values of the EU in the areas of citizens' rights and freedoms.

Another feature of the treaty is its proposal for a greater role for national parliaments in relation to EU legislation. "I think that's important. I think that, given the volume of European legislation, it's important that the scrutiny measures that do exist at a national level in national parliaments are strengthened," he said.

Justice matters

The minister next turned to justice matters, specifically the issue of majority voting in the fields of criminal law and police cooperation.

"We were prepared to go along with majority voting in criminal law and police cooperation. But Chancellor Merkel was anxious to bring finality to the treaty. There were certain redline issues which Prime Minister Brown, in my view, wrongly identified as important issues for the



Speakers at the business session of the annual conference were (l to r): EU Ambassador to Washington John Bruton, Minister for Justice, Equality and Law Reform Brian Lenihan TD, President of the Law Society James MacGuill, and Deputy Director of Public Prosecutions Barry Donoghue

United Kingdom – and one of them was this area. And he secured for the United Kingdom an opt-out in relation to justice matters, which allows the United Kingdom to decide not to accept qualified majority voting in this area. Now, when Chancellor Merkel agreed this with Mr Brown, Chancellor Merkel simply went to our Taoiseach and said, ‘We are giving the British this – we have to offer it to you as well, because you are a common-law country’.

“So, we were offered an opt-out. We are not opting out of justice cooperation, of course. We are opting out of qualified majority voting if we want to [but] I don’t see us, I have to say, exercising an opt-out very often ... But again, I think what we have negotiated on the justice front is in our interests. It allows us to look at matters on a case-by-case basis. We have lodged a declaration making clear our intention to participate to the maximum extent possible on justice cooperation and justice proposals. But we do have the right to opt out if a significant cultural problem presents itself – and significant cultural problems can present themselves in the legal area.”

European public prosecutor?

The Deputy Director of Public Prosecutions, Barry Donoghue, addressed the topic of ‘The European Public Prosecutor: Will it Happen?’ Mr Donoghue pointed out that article 69E of the treaty made specific reference to a European public prosecutor (EPP). “As there is no European criminal code and no European criminal court before which such a prosecutor could lay a charge,” he said, “the question arises as to what such a prosecutor would be expected to do and why it was felt necessary to signal in the treaty the possibility of establishing such an office.”



Law Society members and guests in front of a Soviet-era monument in the quirky Statue Park, outside Budapest



Is it a bird, is it a plane? ... No it's 'heroic worker' Gulliver – demoted from pride of place in downtown Budapest to the suburbs in Statue Park

“If the EPP is established, what will its functions be?” asked the Deputy DPP. “The EPP will be ‘responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the union’s financial interests’. In carrying out this role, it shall exercise the functions of prosecutor in the courts of the member states.”

The idea of establishing the office of EPP remained a controversial proposal, he continued. “Having regard to the reaction of a number of member states to the Green Paper, one wonders whether there would be unanimity at European Council level about

establishing such a body in the short-to-medium term. In the absence of such unanimity, of course, a group of at least nine members could establish the EPP on the basis of enhanced cooperation between them. However, this EPP could only operate in the territories of those states and would have to work alongside Eurojust, which would continue to operate on a union-wide basis. Would such an arrangement enhance the fight against EU fraud?” he questioned.

How the US sees us

The EU Ambassador to Washington, John Bruton, speaking on the future of EU/US relations, addressed the issue of American perceptions of the EU and European countries. “I think they regard us with a mixture of admiration and adoration,” said the ambassador. “They do admire the fact that we have been able to come together voluntarily – that the union has worked.

“They, however, feel that we Europeans are not fully prepared to take our military share of the policing role in the world that they feel they are being asked to bear.

“But, of course, we say that if you want us to share the

policing role, will you agree that you won’t do any policing unless we agree – both of us? Then they get a little bit less keen. They are happy for us to play – but they want to have the final say.”

The meaning of freedom

As the business session drew to a close, Lady Liberty continued to stand guard over Budapest, her giant palm frond lying steely still through the windows of the magnificent Academy of Sciences building.

It remains to be seen what the Irish people will decide in the impending vote on the *Lisbon Treaty*. Will the result signal a cataclysm in European politics, or will it be seen as a mere ripple, leading simply to the smoother running of the 27-member union?

One thing you have to admire about Ireland’s position, whether it accepts or rejects the treaty, is the opportunity presented to her people to vote on an issue that they care very deeply about – having a say in shaping Europe’s future. No other European country can make that boast – which makes you wonder about where liberty stands in the modern experiment that is the European Union. **G**

Delay and the right to an

Two recent cases provide an insight into how the Supreme Court will examine the issue of prosecutorial delay, writes Elaine Dewhurst

In two recent cases, *Devoy v DPP* and *McFarlane v DPP*, the Supreme Court was faced with the challenge of balancing the entitlement of the community to have an accused prosecuted for the offences of which he/she is suspected and the right of the accused to an expeditious trial. The cases provide a great insight into the manner in which the Supreme Court will examine the issue of prosecutorial delay and the factors that will be taken into account in determining whether a trial should be prohibited where the right of the accused to a fair and expeditious trial has been breached.

The applicants, Devoy and McFarlane, had faced lengthy delays in the prosecution of the offences of which they were accused. They sought the prohibition of the criminal proceedings against them on the grounds that the

prosecution had been delayed to such an extent that it constituted a violation of their rights to an expeditious trial in the due course of the law under article 38.1 of the Constitution and article 6.1 of the *European Convention on Human Rights*. In *Devoy*, the Supreme Court held that, while the delay did constitute a breach of the applicant's rights under the Constitution and the convention, the applicant was not entitled to prohibition of the trial, taking into account all the circumstances of the case. In *McFarlane*, the applicant did not succeed in establishing that the delay was a breach of either his constitutional or convention rights. However, the Supreme Court did set down the test that would be followed in determining whether the right to an expeditious trial had been breached in a particular case

and the circumstances in which the remedy of prohibition could be granted.

Test under the Constitution

Article 38.1 of the Constitution provides that no person shall be tried on any criminal charge save in the due course of the law. This includes a right to a trial with reasonable expedition.

The Supreme Court held that a court should consider the following four conditions in determining whether the applicant had suffered a breach of their right to an expeditious trial:

- a) **Length of the delay.** The length of the delay suffered by the applicant and a determination as to whether this constitutes a breach of the applicant's rights will depend on all the circumstances of the case. Where the delay constitutes a "significant deviation from

the norm", this would be an important factor to consider in determining whether that delay was excessive or inordinate. Evidence should be adduced to the court as to the normal timeframe for a particular proceeding to be taken. The court may also take into account the type of crime alleged against the accused. The delay that might be tolerated for a relatively minor crime would be considerably less than that for a complex case.

- b) **Reason for the delay.** First, the court should consider whether there was a deliberate attempt to delay on the part of the prosecution. If this is found, then this will weigh heavily against the prosecution. Secondly, the court should examine the more neutral reasons for a delay, such as negligence or overcrowded courtrooms. The court

ONE TO WATCH: NEW LEGISLATION

Income Tax (Relevant Contracts) (Amendment) Regulations 2008 (SI no 80 Of 2008)

Recent regulations on relevant contracts tax (RCT) came into force on 1 April 2008. These regulations amend the *Income Tax (Relevant Contracts) Regulations 2000* (SI no 71 of 2000) and govern the operation of RCT in respect of payments made by principal contractors to subcontractors in the construction, meat processing and forestry industries. The

regulations stem from a commitment made by the social partners in *Towards 2016* to strengthen the RCT system by putting in place new procedures to help ensure that workers are correctly classified as employees or self-employed subcontractors.

A relevant contract is defined in section 530(1) of the *Taxes Consolidation Act 1997* as a contract whereby a person (the contractor) is liable to another person (the principal) to carry out relevant operations, to be

answerable for the carrying out of such operations by others, or to furnish the contractor's own labour or the labour of others in the carrying out of such operations.

DECLARATIONS

The principal and subcontractor to a relevant contract must make a joint declaration to the Revenue Commissioners, prior to entering into the contract, to the effect that they are satisfied that the contract is not a contract of employment. The declaration is to

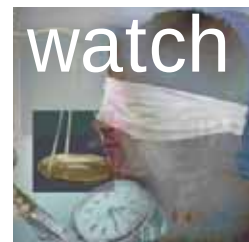
be made on the RCT 1 form. This declaration is to be retained by the principal for a period of six years, or a shorter period, as may be prescribed in writing by the Revenue Commissioners.

The declaration must be delivered to the Revenue Commissioners within seven days where:

- The relevant contract is the first such contract to be entered into by the principal and the subcontractor with each other,
- The PPS number or tax

human rights watch

expeditious trial



should be aware that ultimate responsibility for this lies with the state. With this in mind, the Supreme Court held that it would be advisable to give the state agencies responsible the opportunity to be heard, as issues such as the failure of a court to sit or the absence of facilities may be amenable to an explanation from the responsible authority. Finally, the court should consider other valid reasons for the delay, for example, a missing witness.

c) **Role of the applicant.** The applicant should make sure that he/she asserts the right to a speedy trial. Where an applicant makes such an assertion, this should be given strong evidential weight.

d) **Prejudice.** The court should take into account the interests protected by the right to an expeditious trial. The right protects against oppressive pretrial incarceration, reduces the

anxiety and concern of the accused and, most importantly, limits the possibility of an impaired defence. These are all important matters to be weighed up by the court in making a determination as to prejudice.

Prohibition under the Constitution

The Supreme Court held that, where the delay is inordinate and exceptional, prejudice will be presumed and prohibition will be granted. However, where the delay is less than excessive and where there is no proof of actual prejudice, the court will revert to a balancing exercise as to whether prohibition will be granted. The court must weigh up the entitlement of the community at large to have the accused prosecuted for the offences of which he is suspected, against the right of the accused to an expeditious trial. In making this determination, the court is entitled to take into account



Prosecutorial delay: Cyril was only 22 when he was first indicted for crimes against facial hair

certain factors, including the gravity and seriousness of the offence alleged, the delay itself, and the role of the various parties in contributing to the delay. The Supreme Court also held that, where there was a confession made by the applicant, it would be

extraordinary to prohibit the trial in such circumstances.

Test under the ECHR

The Supreme Court held that the rights under article 38.1 of the Constitution and article 6.1 of the convention are indistinguishable. Article 6.1 protects the right of the accused to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. A reasonableness test has been applied by the European Court of Human Rights in many cases and provides useful guidance on the question of whether there has been a breach of the right of an accused person to a trial within a reasonable time. The court, in considering whether a particular delay is reasonable, should look at the complexity of the case, the conduct of the applicant, the conduct of the relevant authorities, and what is at stake for the applicant in the case. At the end of this, a

reference number, the VAT registered number, or the employer registered number of the subcontractor is not entered on form RCT 1,

- The subcontractor is not registered for income tax or corporation tax, is not registered for VAT, or is not included in the register of principals maintained by the Revenue Commissioners, where the subcontractor intends to subcontract some or all of the work to other subcontractors.

EXCLUSIONS

The principal and the subcontractor will not have to make a declaration where the subcontractor has been issued with a notice of exclusion by the Revenue Commissioners.

A notice of exclusion will be issued to the subcontractor where the average annual sales of the contractor arising from relevant operations exceed €6.34 million in the last three years. Exclusions can be applied for by using form RCT 1-E. If the contractor qualifies, it will be issued with a notice of

exclusion, which will be valid for a period of up to three years from the date of issue.

A notice of exclusion will be cancelled where false or misleading information is given to the Revenue Commissioners or where the notice is misused. Where a notice is cancelled, the Revenue Commissioners will notify the contractor in writing and the contractor will be obliged to return the notice to the Revenue Commissioners.

More information on the new RCT regulations as well as the new RCT forms is available from the

Revenue Commissioners at www.revenue.ie. The Revenue Commissioners have also produced a series of electronic briefings on the matter, which are available on their website: e-Brief 16/2008 on the eligibility for exclusion from the new form RCT 1 process for subcontractors in the construction, meat-processing and forestry sectors and e-Brief 17/2008 on the new regulations. **G**

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

New VAT on Property Regime



A new VAT on Property regime will be introduced on 1 July 2008. Anyone owning or selling property and their legal advisors need to consider the impact of the new regime.

Purcell McQuillan Tax Partners can review property portfolios and advise on the implications of the new regime on existing and future property transactions. Purcell McQuillan Tax Partners is a leading independent taxation consultancy practice which was established in 2001.

Please contact Marian Lee if you would like to discuss the implications of the new regime.

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Fax: 01 668 2750

Email: marian@pmqtax.com

Address: 17 Clyde Road, Dublin 4.



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determination can be made as to whether there has been a breach of the applicant's rights.

Prohibition under the ECHR

In deciding whether such a remedy was available, the Supreme Court made a distinction between the remedies available under the convention and those available under the Constitution. While the remedy of prohibition is available under the Constitution, the Supreme Court held that this was not available where a breach of the convention was established. A determination that there has been a breach of article 6.1 of the convention will have no effect on the decision as to whether a remedy of prohibition could be granted. There is nothing in the case

law of the European Court of Human Rights to suggest that a prosecution must be stopped where a breach is established. This was based on a reading of article 41 of the convention, which allows an applicant to claim just satisfaction but does not entitle the applicant to relief not otherwise available to him.

Structured determination

In these two cases, the Supreme Court provides for a very structured determination of whether a breach of the accused's rights has occurred in a case involving prosecutorial delay. While the determination of the Supreme Court that there is no entitlement to prohibition in cases where the applicant establishes a breach of article 6.1 of the ECHR is

unfortunate, the court did provide that the rights under article 6.1 of the convention and article 38.1 of the Constitution are indistinguishable. This

LOOK IT UP

- *B v DPP* [1997] 3 IR 140 at 202
- *Barker v Wingo* [1972] 407 US 514
- *Barry v Director of Public Prosecutions* [2003] IESC 63
- *Devoy v DPP* [2008] IESC 13
- *DPP v Arthurs* [2000] 2 ILRM 363
- *DPP v Byrne* [1994] 2 IR 236
- *McFarlane v DPP* [2008] IESC 7
- *PM v DPP* [2006] 3 IR 172
- *PM v Malone* [2002] 2 IR 560
- *SA v DPP* [2007] IESC 43

determination effectively means that, if an applicant can show a breach of article 6.1, it will follow that a breach of article 38.1 can also be established. The Supreme Court also held that, in cases where a breach of article 38.1 is found, the remedy of prohibition would be available as long as the applicant can satisfy the balancing test laid down by the court. While this test sets a high bar for the applicant, it does at least provide an avenue through which the applicant can argue for a tangible method of enforcing his/her constitutionally protected rights. **G**

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

Essential additions to your bookshelf

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A GAME OF

The courts are often the only avenue available to obtain satisfactory resolution of a sports dispute, but they are not always the most appropriate forum. Liam Keane fists one over to the GAA's Disputes Resolution Authority

The role of the law in sport is increasing, as people become more conscious of their rights and as the role and profile of sport increases. This applies both to professional and amateur sport. The courts have traditionally been slow to intervene in sports disputes, but will do so in certain circumstances. The position was summarised by McMahon J in *Barry and Rogers v Ginnity and Others* when he pointed out: "The law will demand a level of fair procedures which is sufficient in all the circumstances to ensure justice for the player or member affected by the decision. The more serious the consequences, the higher the standard that will be required."

While the courts are often the only avenue available to obtain a satisfactory resolution of a sports dispute, they are not always the most appropriate forum for a number of reasons:

- Court procedures can be slow and inflexible,
- Legal proceedings can be costly,
- The publicity attendant on a court hearing is rarely beneficial for either the sports governing body or for the person or body challenging a disciplinary decision.

Of major concern to sporting bodies is the concept of the 'ambush injunction', where a player who has been the subject of a disciplinary sanction by a governing body applies *ex parte* to the court for a temporary injunction to allow him/her to participate in an imminent sporting fixture. The legal test applied is the requirement to show that the party seeking such relief can establish a *prima facie* case and that the balance of convenience favours the granting of an injunction (*Campus Oil*) – not a difficult hurdle to cross in the sporting context.

Jumpers for goalposts

Internationally, many sports disputes are dealt with by the Court for Arbitration in Sport, to which some – though not all – international sporting bodies are affiliated. In some jurisdictions there is an equivalent local body, for example, the Sports Resolution Disputes Panel in Britain. There is currently no equivalent body in Ireland.

In 2004, the then president of the GAA set up a Rule Book Task Force

OFF THE BALL

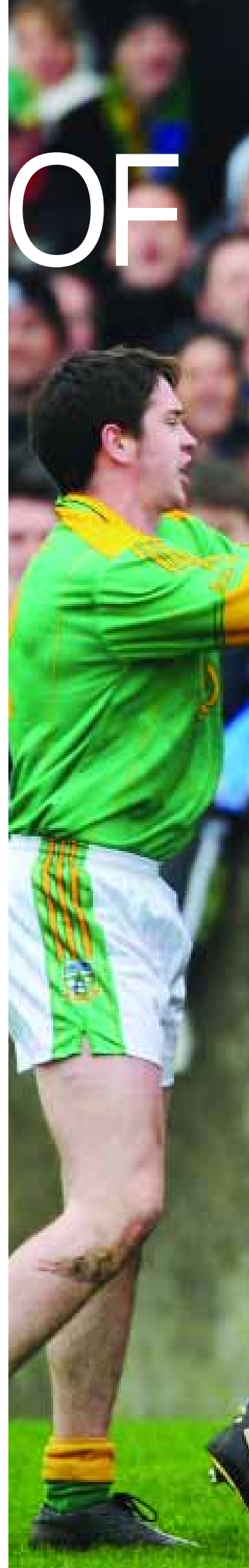
The Disputes Resolution Authority (DRA) comprises a secretary who maintains a panel of arbitrators available to sit on arbitration tribunals. The secretary and the arbitrators all work in a voluntary capacity. There are two sections to the panel – one comprised of qualified solicitors, barristers and arbitrators (group 1) and a second (group 2) comprised of persons "who, by virtue of their experience and expertise in the affairs

of the association, are properly qualified to resolve disputes relating to the rules of the association" (section 1.1 of the *Disputes Resolution Code*).

At present, there are 65 arbitrators in group 1 – of whom 37 are solicitors – and 38 in group 2. It is most heartening to witness the large number of solicitors prepared to give freely of their time and expertise to assist in the provision of a professional sports arbitration system.

MAIN POINTS

- Dispute resolution in sport
- Sports arbitration
- GAA's Disputes Resolution Authority



TWO HALVES?





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(RBTF) to examine the association's administrative (as distinct from playing) rules. As part of this review, the RBTF looked at the concept of sports arbitration as an alternative to the courts. After looking carefully at various models internationally and taking into account the particular nature and structure of the GAA, the RBTF proposed the establishment of the Disputes Resolution Authority (DRA) – a sports arbitration body to be created by, but independent of, the GAA. This proposal was ultimately adopted unanimously at the GAA congress in 2005.

The basic principles underpinning the operation of the DRA are that it is fast, flexible, fair and final. This is reflected in the rules under which the DRA operates – the *Disputes Resolution Code*. The code is incorporated into the rules of the GAA (the *Official Guide*). The secretary can amend the code, though any such amendments must be approved by the Central Council of the GAA. Arbitration is conducted under the provisions of the *Arbitration Acts*. The *Official Guide* is the contract governing the relationship between GAA members, and rule 154 of that guide is its arbitration clause.

Breaking balls

Where a member or unit of the association wishes to refer a matter to arbitration, it must submit a request for arbitration to the DRA secretary within seven days of the date of its last appeal under the rules of the GAA. This time limit is to ensure that disputes are resolved with due expedition. In appropriate cases, the secretary has the power to extend time limits, but the practice has been to use this power sparingly. Respondents to claims must deliver a reply within seven days, though again, in appropriate cases, this time limit can be reduced or extended.

The secretary then appoints a tribunal from the panel of arbitrators. Each tribunal contains at least one lawyer and one non-lawyer. This balance has proved most useful in ensuring that all issues are fully understood by the tribunals, even where cases are presented by non-lawyers. The practice has been to



try to ensure that at least one member of each tribunal has sat on a previous tribunal, to ensure a level of consistency in procedure. This consistency in procedure is also helped by the presence of the secretary at each hearing.

Tribunal hearings are conducted with a reasonable degree of formality, though much less so than at full court proceedings. One observer described it as being midway between a raucous GAA county board meeting and a solemn High Court hearing! All decisions are given in writing, though it is common for tribunals to give an oral decision at the conclusion of the hearing, followed by a written reasoned decision. Hearings are not open to the public, but all decisions are published on the DRA website (www.sportsdra.ie). This is done in the interest of openness and consistency. It also contributes to the development of a body of sports law jurisprudence.

Despite the flexibility of the procedures and the speed at which tribunals can be assembled – often at a

“One observer described [a DRA tribunal hearing] as being midway between a raucous GAA county board meeting and a solemn High Court hearing!”

JUST SPORT IRELAND

Just Sport Ireland (JSI) was established as an independent organisation to resolve sporting disputes by solicitor Deirdre McCarthy and barrister Ercus Stewart.

JSI aims to ensure the independent and cost-effective resolution of sports disputes through the intermediaries of mediation and/or arbitration so that the disruption of sports seasonal patterns by frequent High Court challenges will be reduced and, hopefully, eliminated.

Arbitration proceedings are conducted in private and remain private unless there is an issue in the proceedings that becomes the subject of a reference to the courts. JSI panel members have the ability to act quickly should the case in question require urgent resolution, similar to

the way in which the Court of Arbitration for Sport/Tribunal Arbitral du Sport (CAS/TAS) arbitrators are empowered to act.

The JSI panel of mediators and arbitrators comprises solicitors, barristers and arbitrators familiar with/and or experienced in some field of sport. The Law Society of Ireland and the Bar Council are supporting the involvement of qualified members who act as JSI arbitrators or as advocates on a *pro bono* basis to represent indigent parties, be they athletes or national governing bodies, who are without the resources to afford legal representation, where legal representation is necessary.

Incidents of doping, employment disputes or industrial relations disputes of any nature are not subject to appeal or amenable to review by JSI.



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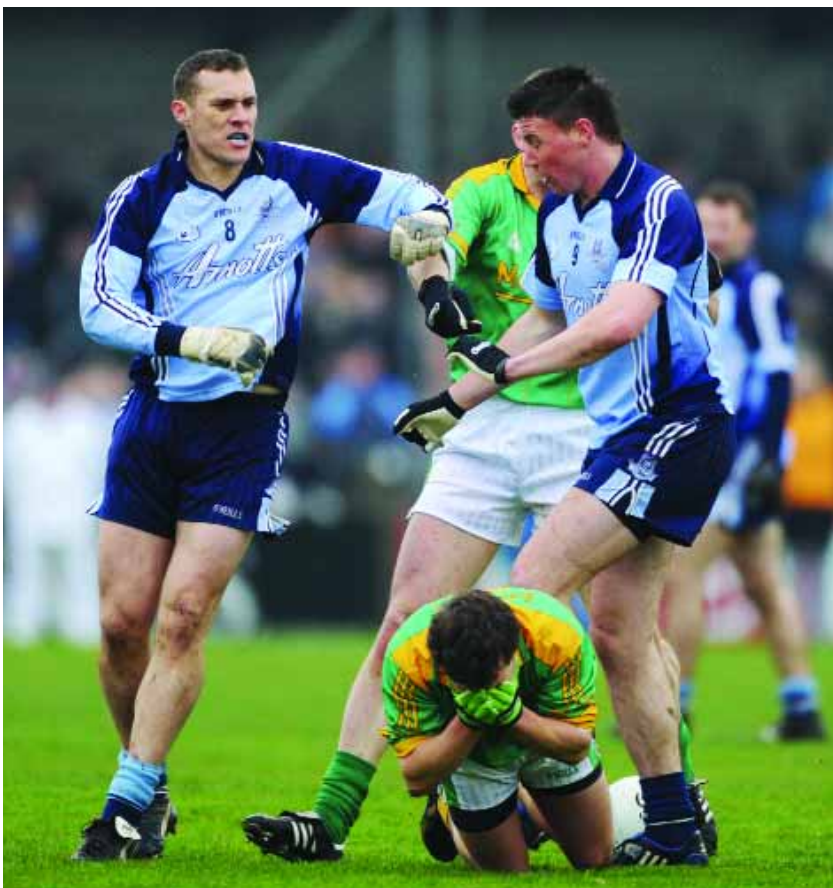
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day's notice in urgent cases – there are occasions when an emergency application for interim relief is the only possible course of action. While these can be heard *ex parte*, the practice has been to conduct them in a manner akin to an interlocutory hearing. This is only possible with the cooperation of all parties to a particular dispute. Where it is impossible to assemble a tribunal, the secretary can hear applications for interim relief pending a full hearing.

Take your point

Has the DRA worked? Because the DRA provides a forum that is considered to be more accessible than the courts, a greater number of disputes have been referred to arbitration than would heretofore have been dealt with in the courts. The only requirements are the exhaustion of internal GAA remedies, the completion of a claim form, and the submission of a deposit of €1,000. In its first year of operation, the DRA was dealing with an average of one case per week. This frequency has now reduced. During 2006, the DRA dealt with 37 requests for arbitration, while the reduction in the number of cases continued through 2007, with 24 being dealt with in that year. To date this year, the average number of cases has continued to fall, to about one per month. This means that, since 2005, the average number of cases dealt with per month has fallen from five to one. For some, the relatively large number of cases suggests that the existence of the DRA encourages litigation – but for others, it suggests that there is now an independent



LOOK IT UP

Cases:

- *Barry and Rogers v Ginnity and others*, unreported, Circuit Court, 13 April 2005
- *Campus Oil v Minister for Industry and Commerce*, 1983 IR 82
- *Mark Vaughan and others v Mícheál Ó Dubhshláine*, DRA 1/2005

Legislation:

- *Arbitration Acts*

Literature:

- *Disputes Resolution Code*, section 1.1
- *Official Guide 2007*, rule 154
- *Sport and the Law* (Dr N Cox and A Schuster, Firstlaw, Dublin, 2004)

forum where disputes can be satisfactorily finalised in a setting that is more appropriate than the courts. As hearings are conducted under the provisions of the *Arbitration Acts*, decisions can really only be set aside where arbitrators have misconducted themselves within the meaning of section 38 of the *Arbitration Act 1954*. Despite having dealt with 99 cases since its inception, there has been no legal challenge to either the structure of the DRA or to any decision made by a DRA tribunal.

It is undoubtedly the case that some senior GAA administrators were dismayed to see certain decisions made by GAA committees set aside. Indeed, the very first case dealt with by the DRA, *Mark Vaughan and others v Mícheál Ó Dubhshláine*, involved a successful challenge to the interpretation of a rule in the GAA's *Official Guide* (incidentally, this hearing took place at the Law Society building in Blackhall Place). However, most GAA members, including their senior officials, recognise that the price of a fair and independent sport arbitration system is that decisions made by respected and experienced officials may well be overturned.

The real test of a system such as that operated by the DRA is its general acceptance and its efficacy. On both these counts, the DRA has been successful.

Other sporting bodies are becoming aware of the benefits of sports arbitration. Some are, indeed, in the process of setting up a system similar to the DRA. The Federation of Irish Sports has recently established an arbitration system for its affiliates, called Just Sports Ireland (see panel). Ultimately, consideration might be given to the establishment of a national sports arbitration body to which sporting disputes arising from all sports could be referred. **G**

Liam Keane is partner in the Meath law firm Liam Keane & Partners, secretary of the DRA, and a member of the Law Society's Arbitration and Mediation Committee.

...lest ye be

In the second of two articles on judicial conduct, Brian Hunt examines the various proposals for reform that have been put forward by a range of committees – but which have never been implemented – and argues that there is a pressing need for immediate action

It is now *de rigueur* for policymakers to precede any radical reform measures with the referral of the matter to an Oireachtas committee, a panel of experts, or even external consultants. In the case of introducing reforms in the area of judicial conduct, it's very definitely a case of 'been there, seen that, done that'.

This issue has been in the spotlight since 1996 – and even long before that. When speaking on the *Second Amendment of the Constitution Bill 1940*, Senator Douglas emphasised the absence of any detailed mechanism on how the removal of a judge, pursuant to article 35.4.1, was to take place: "Machinery to deal with that is not in the Constitution, and I do not think it is anywhere. It seems that, if in the future it should be necessary for the minister to move for the removal of a judge from office, there should be some specific machinery by which a representative committee of both houses would immediately be called and the facts, or alleged facts, put before them. It would obviously not be a party matter. Responsible members of the house would be able to give a considered judgment, and parliament would exercise its functions as between the executive and the judiciary."

In 1980, when contributing to the second stage debate on the *Courts Bill 1980*, Deputy Keating spoke at length on the need to make improvements on article 35.4.1. He spoke about the measures in place in Japan for dealing with the misconduct of judges and said: "There should be some way in which the public can ventilate displeasure and disquiet at events in the court."

In more recent times, the terms of article 35.4.1 were the subject of detailed consideration by the Constitution Review Group. In giving its prognosis of the article in 1996, the group stated that "the present impeachment procedures are unsatisfactory" and went on to recommend that a process similar to the article 12.10 impeachment process relating to the President should also be provided in respect of the judiciary.

Ethics: not a place near Sussex

The question of judicial conduct and ethics was the subject of scrutiny by the Working Group on a Courts Commission, whose 1998 *Sixth Report* advocated the establishment of a non-statutory "self-

disciplining" body that would be "controlled by the judiciary" and thus be comprised of existing and retired members of the judiciary and be headed up by the Chief Justice. It was envisaged that that body would be responsible for preparing a code of ethics.

The matter was subsequently examined by the all-party Oireachtas Committee on the Constitution and was reported on in its *Fourth Progress Report on the Courts and the Judiciary*, published in 1998. That report restated the need for improved procedures surrounding judicial conduct and recommended the establishment of a judicial council whose function would be to review judicial conduct and, to that end, it proposed a number of constitutional changes. The report also recommended the establishment of a committee to examine the report and prepare for its implementation. That committee took the form of the Committee on Judicial Conduct and Ethics, chaired by then Chief Justice Ronan Keane and which reported in January 2001.

The Keane Committee found that the existing procedures in place to deal with judicial misconduct are inadequate. It proposed the establishment of a judicial council, comprised solely of judges. It envisaged that the council would have a number of subcommittees, one of which would be a judicial conduct and ethics committee that would receive complaints about the conduct of judges and would then send the more serious complaints to a panel of inquiry.

First steps

The first piece of concrete action emerged in the form of the *22nd Amendment of the Constitution Bill 2001*, which would have formed the basis of a referendum. The bill proposed the insertion of a new article 35.4 of the Constitution, which would provide that a body (comprised of judges and laypeople) could be established to investigate the misbehaviour or incapacity of judges. The new provision would also have given effect to the *Report of the Constitution Review Group* by spelling out how a charge of "stated misbehaviour or incapacity" was to be pursued through the provision of a process similar to the article 12.10 presidential impeachment process.

The opposition parties strenuously opposed the

MAIN POINTS

- Past and current efforts at reform
- Oireachtas committees, working groups and consultants
- Need for a more elaborate mechanism for dealing with the conduct of judges

judged in turn



bill, and that opposition was given as the reason for the government's subsequent abandonment of its proposal to put the bill to the people. Informing the house of the withdrawal of the bill, the taoiseach stated: "The government considered that a fundamental proposal touching on the separation of powers between the respective organs of government in the state should not be proceeded with in a situation in which there is such fundamental disagreement as was seen in this House on Tuesday night."

The issue of reform was raised again in 2002, when Deputy Brendan Howlin tabled a number of

amendments to the *Courts and Court Officers Bill 2001*, which, if accepted, would have required members of the judiciary to abide by a code of conduct. Deputy Howlin was prevented from tabling additional amendments that sought the establishment of a judicial ethics tribunal to inquire into complaints about alleged misconduct by judges.

Current efforts

Successive programmes for government and numerous legislative programmes have promised and signalled the imminence of legislation in the area of judicial conduct. However, ever since the



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abandonment of the 22nd Amendment of the Constitution Bill 2001, no new legislation in this area has been initiated. In 2006, the minister for justice circulated a draft of the *Judicial Council Bill*. It provided for the establishment of a judicial council that would feature lay participation, a code of ethics for judges, and a mechanism for the investigation of complaints of judicial misconduct.

In view of the persistent absence of the necessary reform measures, in 2007 the Irish Council for Civil Liberties published its own report on the matter, *Justice Matters: Independence, Accountability and the Irish Judiciary*. The report was prepared following a process of engagement with members of the judiciary and it recommended the establishment of a judicial council and ethics committee, as already advocated in the *Report of the Committee on Judicial Conduct and Ethics*.

In March 2007, it was reported that the government's plans to introduce a code of conduct for judges were to be deferred until after the general election. One of the reasons given for the deferral was, in part, due to a delay in the judiciary making a formal submission on the process. In an interview in *The Irish Times* on 28 December 2007, Justice Minister Brian Lenihan revealed that he was still awaiting a submission from the Chief Justice, and the minister informed the Dáil on 31 January 2008 that he had still not received a final response to his department's proposals from the Chief Justice. According to the Department of Justice website (as of 15 April 2008): "Work is proceeding on the development of a *Judicial Council Bill*. The intention is that the bill will establish a judicial council representative of the judiciary of all the courts. The council will have functions relating to judicial ethics and judicial information."

Astonishing inaction

By virtue of the sparse nature of article 35.4.1, it is clear that the framers of the Constitution intended that the legislature would, after the coming into force of the Constitution, devise a statutory mechanism along with parliamentary procedures under which the stated misbehaviour or incapacity of a judge could be investigated and adjudicated upon. The fact that we have experienced a number of controversial and serious incidents of judicial misconduct in recent years, followed only by inaction in terms of reform, is astonishing.

A number of controversies later, five expert reports and 12 years after the Constitution Review Group identified the pressing need for the provision of a more elaborate mechanism for dealing with the conduct of judges, we seem no closer than ever to seeing the implementation of the constitutional and legislative reforms

LOOK IT UP

Cases:

- *Curtin v Clerk of Dáil Éireann* [2006] 2 ILRM 99

Legislation:

- 22nd Amendment of the Constitution Bill 2001
- *Bunreacht na hÉireann*
- *Courts and Court Officers Bill 2001*
- *Courts Bill 1980*
- *Judicial Council Bill 2006*
- *Second Amendment of the Constitution Bill 1940*

Literature:

- Committee on Judicial Conduct and Ethics, *Report of the Committee on Judicial Conduct and Ethics* (2001)
- Constitution Review Group, *Report of the Constitution Review Group* (1996)
- Irish Council for Civil Liberties, *Justice Matters: Independence, Accountability and the Irish Judiciary* (2007)
- Oireachtas Committee on the Constitution, *Fourth Progress Report on the Courts and the Judiciary* (1998)
- Working Group on a Courts Commission, *Sixth Report of the Working Group on a Courts Commission* (1998)
- www.justice.ie/en/JELR/Pages/Civil_law_reform_proposed_legislation

necessary. We can only console ourselves with the thought that, should the reforms be preceded by yet another controversy, the Supreme Court in *Curtin v Clerk of Dáil Éireann* very helpfully shone a light into the dark and untouched corner that is article 35.4.1.

The need to introduce reforms that will provide a mechanism for the investigation and handling of incidents of judicial misconduct is not urgent in the sense that judicial misconduct is problematic or commonplace in the day-to-day workings of our courts – it goes without saying that our judiciary is honourable, fair-minded and courteous. However, the need to introduce reforms in this area is urgent in the sense that it is in the interests of the public, lawyers and even the judiciary itself that a fair, efficient, transparent and manageable code of conduct and disciplinary mechanism is put in place for dealing with those incidents that do occur. The price for not doing so is a very high one, as was demonstrated by the failure, through no fault of its own, of the Oireachtas committee to conclude its work on the conduct of Brian Curtin in a timely and efficient manner. **G**

Dr Brian Hunt is the head of public affairs at Mason Hayes & Curran.

MEDIATION

Ms Justice Maureen Harding Clark recently urged Pat Kenny and his neighbours to consider mediation as a means of resolving their property dispute. Caroline Murphy looks at the advantages of mediation in dealing with contentious litigation

As a solicitor working in an adversarial and litigious environment for almost 14 years, I began to wonder whether there really was a better way. Rising legal costs, delays in court timetables, complexities in PIAB/personal injury claims, and the inflexibility and formality surrounding litigation is often reason enough for clients to be left with some residual dissatisfaction as to the process itself. Not surprisingly, they often blame their lawyers for this.

Undoubtedly there are other factors at play. The historic lack of any really viable alternative to litigation, and a legal system over which the solicitor has no control, play a role. Delays in court timetables due to overworked and under-resourced court staff are also factors.

Perhaps, however, though difficult to admit, we have to recognise that this dissatisfaction could also be fed by our own traditional prejudices and fears as solicitors. We therefore stick with what we know and trust – regardless. Although clients look to us as the experts to give them all the options, is it possible, just maybe, that we are in fact partially responsible for our own fate?

The ‘feel-good’ factor that we desperately crave for our profession rarely exists in the process of dispute resolution and is a challenge for even the best and most committed of solicitors. While some clients are often delighted with the excellent service and advice provided, this sentiment is, more often than not, influenced by a favourable outcome – but for every ‘winning’ client there is, in turn, a ‘losing’ client, who may not share those happy sentiments. The penalty of significant legal costs being borne by the losing client plays no small part in their response, especially after, perhaps, several years of litigation.

A rose by any other name

When an opportunity arose for me to study and qualify as a mediator, I approached the subject with interest, though not without a certain level of scepticism (which, as it happens, was initially shared by a lot of my colleagues on my training course – many of whom were solicitors also). Let’s just say

that we were ‘reserving our judgment’ until the course was completed. Nothing had prepared me, however, for the change that followed my training and subsequent qualification as a mediator, insofar as I recognised the potential held by mediation to bring back satisfaction into a process that, up to now, has caused so much dissatisfaction – and to bring back that elusive ‘feel-good’ factor to the solicitor/client relationship.

What is mediation?

It is a voluntary and non-binding ‘without prejudice’ process, in which a specially trained independent person – the mediator – attempts to bring parties in dispute to a mutually acceptable and binding written agreement regarding the issues in dispute, which can be enforced like a contract. All of the information revealed in a mediation is entirely confidential and ‘without prejudice’ and, if no settlement is reached, the parties can still exercise their legal rights.

Why do we need to know about it?

The *March Gazette* (p21) reported on the first medical negligence case to be referred to mediation by Mr Justice Kevin Feeney, under section 15 of the *Civil Liability and Courts Act 2004*. Where one judge has gone, others are likely to follow.

Part 6 of the *Commercial Court Rules* provides for mediations in the Commercial Court, and Mr Justice Peter Kelly has indicated a desire to see claims go to mediation if it can assist in reaching a settlement without the need for a full trial. He has also indicated a willingness to apply costs against the party who unreasonably refuses to consent to the process of mediation. A similar power exists under section 16(3) of the 2004 act in a personal injuries case.

Why consider mediation?

- It is estimated that 95% of litigated cases settle prior to trial, with a portion of the value of the settlement being incurred for legal costs,
- Consumers are demanding more creative and efficient ways to resolve disputes,
- More business leaders, particularly those with an

MEDITATION



Mediation evangelists:
coming to a town near you

international presence, want to resolve disputes without the publicity of litigation,

- Mediation has proved hugely successful in the US and Britain to date – in the US, litigation rates are at a 40-year low, and
- Almost 80% of disputes that go to mediation are successful.

What's involved?

- The mediation takes place over the course of a day, at a suitable (neutral) venue, where both parties have their own separate meeting rooms, and one joint meeting room.
- The mediator, who is suitably competent to deal with the subject matter of the dispute, is jointly chosen by the parties. He or she hears both parties give their account of the dispute and – through the application of a variety of different techniques and private meetings with the parties – attempts to facilitate them in arriving at a solution to the dispute.
- The solicitors will then draft the written settlement agreement.
- The mediator's costs are set relative to the estimated time it will take to resolve the dispute,

the complexity of the issues and the number of parties involved.

- Bear in mind that a minor or a person with a disability cannot enter a mediation session for obvious legal reasons. The next friend could act, however, but would need formal legal advice in order for the settlement to be ruled, so there will be a certain amount of legal costs involved.

Why is it different from litigation?

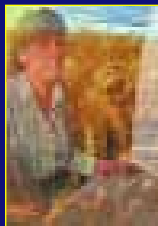
- It is the parties who arrive at the solution – not the mediator, who does not 'sell' any particular solution, unlike a judge or an arbitrator,
- Because the process is not 'legal', the mediator is not adjudicating on the rights or wrongs of the dispute, and any solution – as long as the parties are happy to accept it – can be used,
- While litigation limits the remedies that can be claimed to purely legal ones, such as damages or a court order, mediation, on the other hand, can deal with 'non-legal' remedies also, such as preserving a commercial relationship or negotiating a new one,
- The process takes place behind closed doors: unlike a traditional court case, where 'evidence' is

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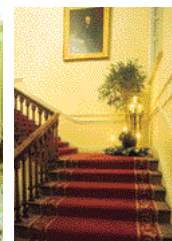


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given and then goes 'on the record' – and is sometimes reported in the media (as we have seen in the *Charlton v Kenny* case) – any information provided during mediation remains confidential and no transcript is recorded.

Turkeys voting for Christmas?

Well maybe not. Here's the good bit – if you speak to any experienced mediator, any mediation body, or any client who has been through the mediation process, all will tell you that the solicitor's role is vital, insofar as he/she guides the client through the process, explains the implications of any decisions reached at a mediation, finalises the terms of any settlement, and draws up the written settlement agreement.

Mediation could, if supported, significantly free up the judiciary's time, help clear backlogs and long waiting lists, and enable the courts to deal with priority cases. It could also free up a solicitor's time, allowing him or her to deal with other clients, or simply go out and find new ones!

A bird in the hand

There is no reason why mediation cannot be mutually advantageous. I also believe that it's time for a fresh approach to dispute resolution. We are experiencing a changing economy, globalisation is creeping in, and clients are demanding more for less. Most do not want to go to court and deal with all that this involves. It is time to constructively address this fear, however, and remember that we are in the service of our clients.

When it comes to commercial clients, understanding their underlying needs and what drives their business is paramount in maintaining a profitable solicitor/client relationship. This is especially so if, through the delivery of practical, commercially focused and client-specific advice, the solicitor can help to continue to drive that business forward. The requirement to reduce the overhead of legal costs, and the need to stay out of court for certain disputes (not all!) is often paramount to commercial clients and to preserving corporate reputation. A successful

HOW DOES MEDIATION DELIVER CLIENT ADDED VALUE?

- It can be set up very quickly, thereby allowing a much speedier form of dispute resolution, which keeps legal costs, management time costs and resources focused.
- If the claim is settled quickly, those resources can be freed up more quickly and applied elsewhere, allowing the client to get back to running the business more swiftly.
- As it allows parties to come together in a non-threatening, non-legal environment, mediation avoids the stress, cost and delay involved in traditional litigation.
- It allows for a more flexible type of settlement, which might better meet the business needs of the commercial client and the personal needs of the claimant. It can often be the quickest and most cost-effective method of putting an income-generating relationship back on track.
- It offers a discreet and confidential means by which to resolve sensitive disputes.
- The costs can be set and agreed in advance, giving better financial certainty to clients.

mediation instead of litigation, therefore, could well exceed client expectations.

Similarly, many people who have suffered a personal injury, and even those who are being sued in connection with it, often don't want to go to court – they just want their compensation or, if liable, want to pay that compensation as quickly and cheaply as possible.

By promoting mediation as a viable alternative to litigation, the solicitor can deliver on many client objectives. His or her role in facilitating a successful outcome becomes vital, if not essential. Bringing about client satisfaction without compromising fee income should surely amount to that elusive 'win-win' situation. It could, in fact, increase income, because as we all know, a satisfied client is a repeat client. **G**

Caroline Murphy is a solicitor specialising in civil litigation. Previously a partner in private practice, she is currently the principal of Dawson Solicitors, an accredited mediator and member of the Mediators' Institute of Ireland).



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Good Thinking

Oracle of

In October 2007, the government brought forward the *Criminal Justice (Forensic Evidence) Bill 2007* – suggesting that the establishment of a DNA database is on the cards. Patrick McGonagle uses his spectrometer to analyse the bill's strengths and weaknesses

There can hardly have been a development in the area of criminal forensic investigation that has quite captured the public imagination like the advent of DNA profiling. High-profile cases, whether at home or abroad, that resort to the use of DNA evidence are seized upon by media commentators and members of the general public – almost to the exclusion of any other evidence in such cases. Just as the Victorians hailed the advent of fingerprinting as the dawn of a new and better crime-free world, now similar claims are being made in some quarters on behalf of DNA sampling.

Of one thing there can be no doubt: the persuasive value of DNA evidence taken from a crime scene – if its integrity has been impeccably preserved – is very high indeed, as very ably demonstrated by John Dolan in the October 2007 issue of the *Gazette*.

The various branches of law enforcement in the country seem equally uniformly enthusiastic for the use of DNA evidence in criminal trials. This enthusiasm is reflected in a new bill currently being promulgated by the Department of Justice and soon to go before the Dáil.

As far back as February 2003, the former attorney general, Rory Brady SC, charged the Law Reform Commission with the task of reporting on the establishment of a national DNA database and to consider the “constitutional and human rights issues that may arise”. The commission subsequently reported in 2005, recommending the establishment of such a national database, a framework for the taking of samples, and administration of the database.

In October 2007, the government brought forward the *Criminal Justice (Forensic Evidence) Bill 2007*

(general scheme). As we go to press, the proposals are at outline stage and the bill is yet to be brought in its final form before the Dáil. However, the bill would seem to be destined to become law with some variations, and it is timely at this stage to consider some of the significant changes for suspects and the novel ideas that could follow in its wake.

The right profile

As envisaged, the legislation would repeal our current *Forensic Evidence Act 1990* and provide for the setting up of a national DNA database. The database would store profiles derived from samples – rather than the samples themselves – and would have two functions:

- 1) An identification division that would consist of profiles for use in identifying missing and unidentified persons, and
- 2) A criminal investigation division.

The database would consist, firstly, of profiles taken from samples from suspects and convicted people and, secondly, what are called ‘evidential samples’. This article is concerned with the criminal investigation aspects of the database and lays aside discussion of the identification division.

The bill proposes, at head 8, that samples may be taken from suspects in custody, and indeed from convicted people serving prison sentences, and those on the sex offenders’ register. These will be used to supply a DNA profile for retention on the DNA database. These samples are investigatory in their nature and can be used for comparison with samples taken from the particular crime scene under investigation or from other crime scenes if, for example, it is believed the suspect in another matter

MAIN POINTS

- Provision for the establishment of a national DNA database
- Criminal investigation aspects of the DNA database
- ‘Reasonable force’ and the taking of samples
- Investigatory and evidential samples



truth?

‘REASONABLE FORCE’

Very significantly, it is intended to empower the gardaí to use reasonable force to take a sample. Couple this with the fact that the suspect’s consent will not be required for non-intimate samples, and that a sample may be taken from a citizen against his or her will and by use of force, and it will be understood why closer analysis is merited.

Under the *Forensic Evidence Act 1990*, there was no specific power to use reasonable force bestowed upon the Garda Síochána. During the life of the act, the view came to be formed that such power was implicit. This view was recognised by the Law Reform Commission in its report on the establishment of a DNA database and commented upon. The commission’s view was that, if there were to be such a power of using reasonable force in the taking of samples, it should be explicit and its parameters should be set out. The powers proposed in the current heads of bill under head 8D would appear to be an attempted response to this concern.

or an already convicted prisoner, might have been involved in another crime scene.

Police on my back

Of equal significance under this head is that a sample taken from a suspect could not be treated as evidence unless it were taken in connection with the *specific* offence for which the person had been detained. However, the bill goes further and proposes a framework whereby such a sample could become evidence in a prosecution.

The sample that is intended to be used as evidence in a case is given separate treatment in the bill. The gardaí are empowered, at head 14, to require the taking of an evidential sample. That sample taken in the correct statutory circumstances, can be used in a subsequent trial as evidence, and presented to a jury as such.

What is of particular interest here is what happens if a suspect in a particular case who gave an *investigatory* sample refuses to give a further *evidential* sample. In that situation, the bill allows, at head 8G, for the prosecution to apply for leave of court to use the investigatory sample as an evidential sample, and to rely on it as evidence in the prosecution of any particular offence.



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What this means, then, as the bill currently stands, is that a suspect in custody could have a sample taken from him without his consent, with the application of force – and the profile extracted from that sample, if relevant, could be used as evidence to convict him. Significant fines and terms of imprisonment are envisaged for those who refuse to cooperate (€5,000, and three years respectively).

How this proposed situation squares with what remains of the rule against self-incrimination in this jurisdiction is open to comment. The view that the power to use reasonable force was implicit under the 1990 act was always open to question, given the rule that criminal statutes should be strictly construed. The commission, in its comments on the subject, merely accepted the existence of the implicit power and, “considered” that the powers should be explicitly prescribed but, in terms of recommendations, confined itself to recommending “implementation of safeguards to ensure that the power to use reasonable force is not arbitrarily exercised” (see LRC report, *The Establishment of a DNA Database*).

The widely adopted view that the proposed bill will simply be recognising a *de facto* situation in making explicit the power to use excessive force will, no doubt, inevitably short-circuit debate on the issue – a regrettable situation in my view.

I fought the law

The other main area of concern is the taking of samples from people not in custody, such as volunteers and those taking part in a wider mass screening. Where a person volunteers to give a sample, that sample may be analysed both for the purposes of general criminal investigations or in connection with a particular offence (or to assist in the identification of a missing person or unidentified person). Mass screening is only to be undertaken as part of an investigation for a particular offence under the bill. However, unhelpfully, the bill as currently drafted does not say whether a sample taken under a mass screening for a particular offence can be then used for the investigation of other offences.

A volunteered sample will not be capable in the first instance of being presented as evidence in a criminal prosecution. However, a volunteered sample



“As the bill currently stands, a suspect in custody could have a sample taken from him without his consent, with the application of force – and the profile extracted from that sample, if relevant, could be used as evidence to convict him”

can be transformed into an evidential sample if certain circumstances are triggered. As currently proposed, a person from whom a sample has been taken, whether he was a volunteer or part of a mass screening, who then fails or refuses to give a second sample for the purposes of providing an evidential sample admissible in court, can have their original sample entered in evidence as part of a prosecution, once leave has been granted by the court.

The significance of this from a citizen’s point of view is obviously quite worrying. From a criminal investigation standpoint, the cooperation of volunteers on an individual basis and in relation to mass screening demands faith in the process. A clear understanding of its significance must be a prerequisite for the citizen.

Complete control

Absent from the bill at the moment is an appropriate statutory warning to be given to any participant, to the effect that the sample that he is about to provide could – should he fail to cooperate further if required – be used as evidence in a potential prosecution against him. In the absence of such a statutory admonition, the courts, no doubt, will feel constrained to agree with the first defendant who argues that he was not warned of the consequences of his failure to give the sample, and that the evidence was illegally obtained.

Given the general consensus in the Department of Justice, the Garda Síochána, and other arms of the criminal prosecution process on the desirability of setting up and maintaining a database, its establishment would appear to be a foregone conclusion. Powers of the type outlined above (in some shape or form) are likely to become the law of this country within the next 12 months.

Confidence in the integrity of the database, and in the investigative procedure in the taking of samples, is of fundamental importance for the proposal to have credibility. Public fascination with the science of DNA and its reputation as an oracle of guilt or truth is almost symmetrically balanced in the public mind by Orwellian fears of the misuses of personal information on its innocent citizens by the state.

The proposed use of physical force requires close examination. At a minimum, the commission’s recommendations that the safeguards should be similar to those “suggested by the Irish Human Rights Commission”, and should be explicitly used “only where it is strictly necessary to the extent required by the performance of the garda duty”, should be immediately addressed by the draftsman.

We might all spare a thought for colleagues who have to advise in relation to the above proposal when enacted. For solicitors attending upon clients in garda stations, life is about to become significantly more interesting. **G**

Pat McGonagle is a partner in the Dublin law firm McGonagle.

LOOK IT UP

Legislation:

- *Criminal Justice (Forensic Evidence) Bill 2007* (general scheme)
- *Forensic Evidence Act 1990*

Literature:

- ‘DNA under the microscope’, by John Dolan, *Law Society Gazette*, October 2007, p24ff
- Law Reform Commission, *The Establishment of a DNA Database* (LRC 78-2005)

When is overtime not really overtime, and when do you get paid for it? Using a couple of examples, Michael Prendergast assesses whether overtime is an outmoded concept or a phoenix rising from the ashes

MAIN POINTS

- Irish law on overtime and European norms
- Employment contracts
- US trends

Recently encountered Monika and Lasma. Monika was employed as a cleaning/kitchen assistant in a nursing home, worked on average 42 hours per week, and was not paid above the standard rate of €9 per hour for any overtime worked. No specific mention of overtime was made in her contract of employment; however, the contract did state that she would be required to work approximately 36 hours per week or such other hours/days as directed by management.

Similarly, Lasma was employed in an industrial launderette where she was, as per her contract of employment, required to work 39 hours per week and any overtime as requested by management. She, like Monika, was again paid €9 per hour for all hours worked, regardless of what days of the week she worked or what hours she worked.

These two scenarios contrast starkly with the evolving growth of overtime litigation in the US, as highlighted by Michael Orey in the September 2007 issue of *Business Week*. The article detailed recent class actions that disgruntled workers and professionals are taking against stockbroking, trucking and IT companies, claiming overtime – notwithstanding the fact that there was no requirement for overtime in their contracts of employment. These class actions have resulted in settlements, with employers paying out more than \$1 billion in compensation.

Irish status quo

In Ireland, legislation on overtime is fragmented, disconnected and not all-inclusive, consisting of acts and statutory instruments dating back to the 1930s.

such qualifying activities, section 43 of the act stipulates that overtime should be remunerated at a rate 25% above the standard rate. The act is silent on overtime rates for activities not covered under section 3.

The *Industrial Relations Act 1946*, while not specifically addressing overtime, introduced the concepts of JLCs (joint labour committees), which are independent bodies made up of equal numbers of employers' and workers' representatives, appointed by the Labour Court and chaired by the Minister for Enterprise, Trade and Employment. Currently, there are 19 JLCs covering bottling, agriculture, catering, cleaning, hairdressing, hotels, groceries, clothing, millers, law clerks, security and contract cleaning. Agreements on pay and conditions made by the JLCs are known as employment regulation orders (EROs), and there are 18 such agreements currently in place.

The 1946 act, under section 25, also introduced the concept of REAs (registered employment agreements) where "the remuneration and conditions of employment of workers of any class" can be agreed between trade unions and employers and registered with the Register of Employment Agreements. There are currently 45 such agreements, covering drapery, footwear and allied trades, construction, printing and electrical contracting.

EROs and REAs can essentially therefore be described as industry-specific collective agreements that bind all employers and employees within a specific sector but, unfortunately, it is not all-

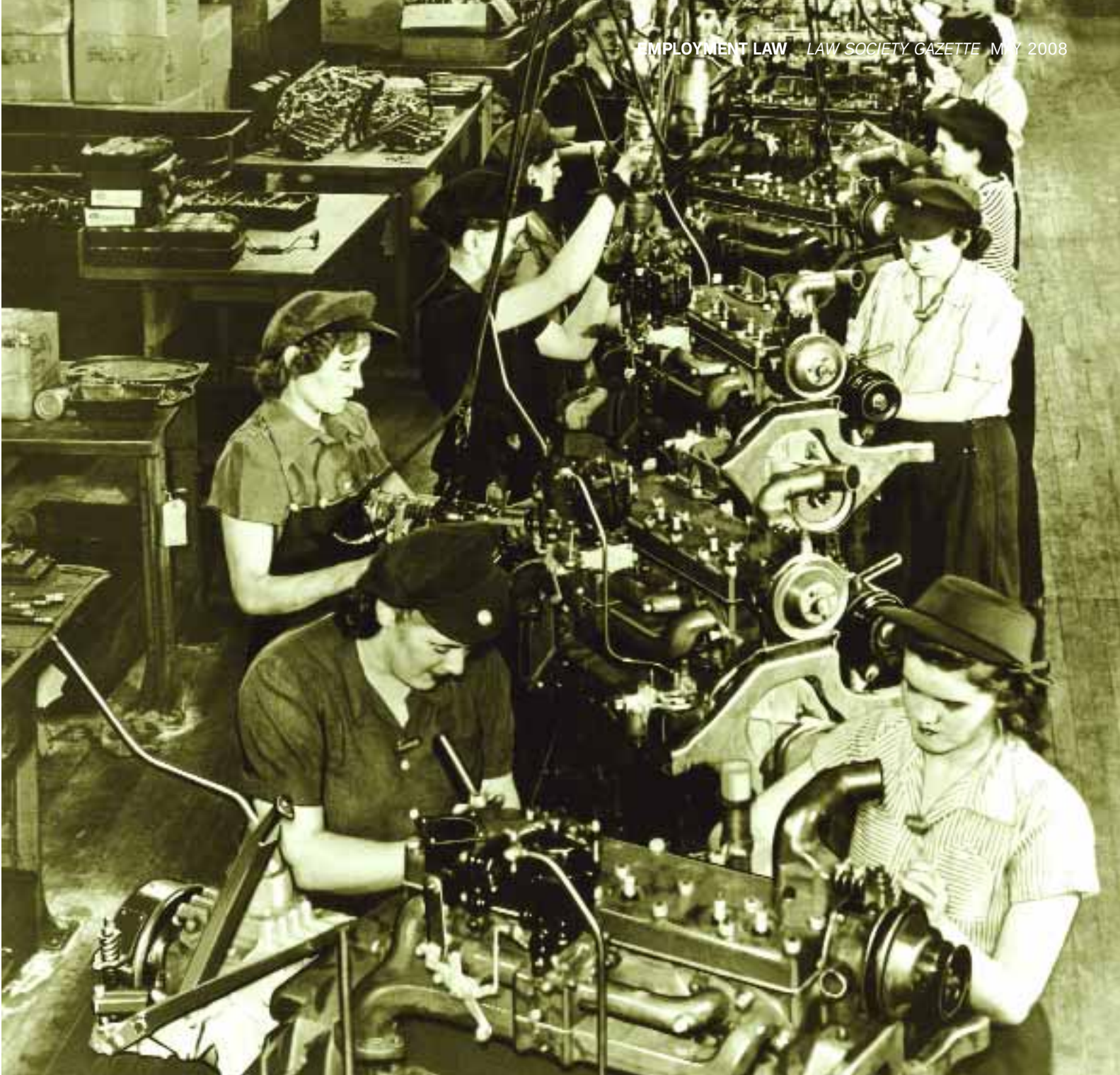
WORK, REST

The main acts of the Oireachtas dealing with overtime are the *Conditions of Employment Act 1936* and the *Industrial Relations Act 1946*; however, qualifications apply to both acts. The *Employment Act* applies only to activities outlined in section 3 of the act, such as manufacturing, construction, quarrying, shipbuilding, printing, public utilities, animal slaughtering and industrial cleaning. For

inclusive, and stockbrokers, truckers, Lasma, Monika and many other workers are not covered by such agreements.

European status quo

This contrasts greatly with the European norm, where legislation directly intervenes to define overtime and set overtime rates. In 1919, the *ILO*



Factory girls,
beavering away
with their tools

AND PLAY

Hours of Work Convention (No 1) introduced the standard maximum working week as 48 hours, and this was adopted across Europe with the 1993 Directive 93/104/EC. This 48-hour week is inclusive of overtime. It is interesting to note that, in this regard, the 1936 *Conditions of Employment Act* defined “weekly overtime” as hours worked after a worker had completed 48 hours, and was thus in

conflict with the directive. This brings into question whether the 25% overtime premium, also mentioned in section 43(3) of the act, is any longer applicable.

To do a normative comparison between various countries, a threshold is set above which overtime must be paid. This threshold is normally below the maximum 48 hours. The hourly thresholds above

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which overtime is paid are set by legislation and are as follows: Austria (40), Belgium (38), Hungary (40), Finland (40), France (35), Greece (40), Italy (40), Luxembourg (40), Norway (40), Poland (40), Portugal (44), Spain (40), Slovakia (40), and Sweden (40). In Ireland, Britain, Denmark, the Netherlands and Germany, the thresholds are determined by collective or sector agreements, and in both Germany and the Netherlands, they must be ratified by works councils. Denmark has a 37-hour threshold determined by an industry sector agreement, and no common national sub-48-hour threshold exists in either Ireland or Britain, above which overtime must be paid.

Furthermore, it is common practice that overtime pay rates are also subject to legislation in countries where overtime thresholds are legislated for. In Portugal, overtime pay is at the rate of +50% for the first hour and +75% thereafter. For rest days and holidays, the rate is +100% above normal rates, plus time in lieu at 25% of the hours worked. In Greece, the rate is +50% for the 40th to 43rd hour and +150% thereafter, while in Italy, the legislated rate is +10%.

Trends

As noted earlier, there is growing litigation in the US over overtime, primarily due to the evolution of the workplace from an industrial/manufacturing, blue-collar environment to a services, white-collar one. Technology and economics are blurring this distinction, with always-on technology redefining when the working day begins and ends, and the inadequacies in the federal *Fair Labor Standard Act* of 1938 are beginning to appear. Mark Thierman, a US specialist in labour law, has highlighted two circumventions of the act: (a) the misclassification of employees and (b) the off-the-clock work that is not compensated for. Thierman contends that when employees of Starbuck's are called store managers, or when employees check emails and the like remotely or telecommute, they are still eligible for overtime. Settlement in these areas alone have cost Siebel Systems \$27.5m, IBM \$65m, Wal-Mart \$72.5m, Merrill Lynch \$37m and Morgan Stanley \$42.5m.

LOOK IT UP

Cases:

- Case C-350/99, *Lange v Schunemann*

Legislation:

- *Conditions of Employment Act 1936*
- Directive 93/104/EC
- *Fair Labor Standard Act 1938* (USA)
- *Industrial Relations Act 1946*
- *International Labour Organisation Hours of Work Convention* (No 1)
- *Terms of Employment (Information) Act 1994*

EMPLOYMENT CONTRACTS

One cannot broach the subject of overtime without encountering the contract of employment, which an employer is now mandated to give to an employee within two months of his or her start date. Section 3(i) of the *Terms of Employment (Information) Act 1994* states that, in the terms of employment, the employer must outline "any terms and conditions related to hours of work (including overtime)". No further mention of overtime was made within the 1994 act, thus creating the lacuna of the definition of overtime. Under the act, it was not necessary for overtime to be included in the contract, nor was it necessary to define overtime, with the result that the default definition is that as laid down in the 1936 act (that is, hours above 48 hours per week). This lacuna was somewhat filled following the *Lange v Schunemann* decision, which directed that an employer must inform an employee in writing if there is a requirement on him or her to work overtime. The directive, however, fell short on a requirement to stipulate the terms and conditions associated with such overtime, and today all that is required in a contract of employment is for the employee to be informed of a requirement for overtime.

In Ireland, like the US, our labour laws are founded on a vintage 1930s mindset, and they have not been updated or reviewed to cater for the technological advances that have since occurred or the subsequent changes in work practices that have resulted. Subsequently, the overtime penumbra has become less clear, with workers working longer hours, while not necessarily being compensated as the legislation had intended.

Interestingly, a recent Labour Court decision (LRC18673) reinforced this US litigation trend when it mandated that academic staff of the National College of Art and Design are entitled to Saturday overtime, notwithstanding that they were not party to any labour agreement.

Irish legislation in the area of overtime is fragmented and not all-inclusive, leaving employees open to working 48 hours per week without any additional premium compensation for the first nine hours of 'overtime' above the standard 39-hour week. In addition, misclassification of work and off-the-clock overtime can allow for the circumvention of the requirement to pay overtime. However, it would appear that some employees are becoming enlightened to these circumventions. How they choose to address it – through the industrial relations processes or through litigation – remains to be seen. **G**

Michael Prendergast is a practising barrister on the Western Circuit.

"In Ireland, our labour laws are founded on a vintage 1930s mindset, and they have not been updated or reviewed to cater for the technological advances that have since occurred or the subsequent changes in work practices that have resulted"

End of the AGE

There are two ways to look at well-funded retirement: the end of employment income or the start of a pension. Jo Kenny and Philip Smith consider the interaction between the employment and pension law definitions of retirement

Last month's article on age discrimination, 'No Country for Old Men', concluded, following the ECJ's *Palacios* judgment, that a member state's competence to impose a mandatory retirement age is subject to an EU yardstick of objective justification – and that the exemption in the *Employment Equality Act 1998* for the setting of retirement ages is open to challenge. In the best Hollywood tradition, the author provided a cliffhanger ending in raising the question of occupational pension schemes.

There are two ways to look at well-funded retirement – as either the end of employment income or the start of a pension. There is a continuing debate as to where employment law ends and pension law starts.

You might think 'retirement age' was an obvious term but, as with mortality statistics, the difficulty lies in moving from the general to the individual. Ideally, the employment 'contractual retirement age' and pension scheme 'normal retirement age' would be one and the same. Often, the employment and pension documentation do not agree. This can create difficulties if a member wishes or is forced to leave service in line with the contract, but before the pension scheme normal retirement age, as she may suffer early retirement penalties. Alternatively, a member may wish to remain in service until the date in the pension booklet – does this override his employment contract?

A number of British cases have had to consider such situations. It's difficult to draw direct analogies, not least because of Britain's statutory provisions concerning retirement age, but the general approach (see *Waite* and *Jayawardane*) has been to resolve

ambiguity by reference to the custom and practice applicable to the group of employees in question.

So what does 'retirement age' really mean? In the employment approach, 'contractual retirement age' means the date an employer can force an employee to retire and the date the employee can elect to retire without seeking anyone's consent. 'Normal retirement age' may, in practice, be another date on which an employee has an expectation (from custom or practice) of retiring.

In the pension approach, 'contractual retirement age' has no significance for the rights under a pension scheme. 'Normal retirement age' means the date specified in a scheme for the purposes of Revenue limits, *Pensions Act* preservation, and benefit calculations. This is the date at which members will retire provided they haven't already left service (or been permitted to retire late). 'Normal pensionable age' is a *Pensions Act* definition for preservation and funding standard purposes. It means the normal retirement age under the scheme unless a member can receive benefits before then without obtaining employer/trustee consent, in which case such earlier date is treated as the normal retirement age.

Having worked out the terminology, where do you turn for the law on pension-related discrimination disputes?

Part VII of the *Pensions Act*

The curious nature of part VII of the *Pensions Act 1990* is evident even before reading its provisions. Its title, 'Equal Pension Treatment in Occupational Benefit Schemes', provides the clue, referring both to 'pensions' and 'occupational benefits'. Part VII is

MAIN POINTS

- Definitions of retirement
- Contractual retirement age has no impact on benefits under most pension trusts
- Beware – 'normal pensionable age' and 'early retirement rule' have specific and technical meanings



broader in scope than any other part of the *Pensions Act*. While the rest of the act is concerned with 'occupational pension schemes' (and the similar trust RACs and PRSAs), part VII covers any form of "benefit ... in the form of pension".

The *Pensions Act* provides (section 69) that every occupational benefit scheme must comply with the principle of equal pension treatment – that is, the scheme rules must not be discriminatory on the familiar grounds (including age discrimination).

Exempting retirement ages

EC Directive 2000/78 provides that the fixing of ages for entitlement to benefit under 'occupational social security schemes' shall not constitute discrimination

on the age ground, provided it does not discriminate on the gender ground. This is implemented into Irish law (sections 72(1)(c) and 72(4) of the *Pensions Act*) as one of a number of exemptions in respect of age discrimination. There is no requirement for objective justification in relation to this exemption.

However, matters are less clear-cut if a member ceases to accrue pension benefit while still employed. For a number of reasons, but primarily Revenue requirements, benefit accrual has traditionally stopped at normal retirement age. With flexible working, this may no longer be the case (see comments on the Green Paper, p33). It would seem at odds with the *Palacios* approach to justification of a mandatory retirement age if the effect of a pension scheme's

Does having to fiddle for your crock of gold count as pension-related discrimination?

OCCUPATIONAL BENEFITS

'Occupational benefits' mean benefits (other than remuneration, to which sections 19 and 29 of the *Employment Equality Act 1998* apply) in the form of pensions, payable in case or in kind in respect of:

- a) Termination of service,
- b) Retirement, old age or death,
- c) Sickness or invalidity,
- d) Accidents, injuries or disease,
- e) Unemployment, or
- f) Expenses incurred in connection with children or other dependants – and, in the case of a member who is an employee, includes any

other benefit corresponding to a benefit provided by virtue of the *Social Welfare Acts*, the *Maternity Protection Act 1994* or the *Health Acts 1947 to 2001*, payable as a consequence of his employment.

The definition, therefore, captures, among other things, income replacement arrangements, *ex gratia* pensions and maternity benefit schemes. Technical exclusions include benefits to the extent that they are financed by a member's voluntary contributions, one-member schemes for the self-employed, and insurance contracts to which the employer is not a party.



Flatley reinvents his routine once again

“You might think ‘retirement age’ was an obvious term but, as with mortality statistics, the difficulty lies in moving from the general to the individual”

WHAT YOU SHOULD KNOW

- Occupational benefit schemes may impose retirement ages, as long as imposing a retirement age is not discrimination on the gender ground,
- Less favourable accrual of defined benefits/contribution rates on the ground of age requires justification,
- The government is considering proposals to prohibit a mandatory retirement age of less than 68.

HOW TO FIND THE PROVISIONS GOVERNING DISPUTES CONCERNING OCCUPATIONAL BENEFIT SCHEMES

The age exemptions for occupational benefit schemes are contained in s72 of the *Pensions Act 1990*.

The statutory provisions governing equal treatment occupational benefit schemes disputes are to be found in sections 81D-J in part VII of the *Pensions Act 1990*. Section 81J(2) sets out which of the administrative provisions of the *Employment Equality Act 1998* are relevant. Section 81J(3) modifies those provisions (as set out in the fourth schedule to the *Pensions Act*). These modifications mainly alter cross-references to part VII of the *Pensions Act* and effect amendments to cater for the role that the Pensions Board has under some of the relevant sections. Disputes are still referred primarily to the director of the Equality Tribunal (s81E of the *Pensions Act*).

normal retirement age were to hinder a member from building up reasonable pension provision.

The normal retirement age in itself is not subject to challenge (unless its imposition gives rise to a claim of gender discrimination). However, age-related conditions to the accrual of benefits/contributions are subject to justification (section 72(e) of the *Pensions Act*). If, in future, employment and retirement overlap, a rule that terminates or diminishes accrual/contributions after normal retirement age may be held to be subject to a requirement for justification.

Dealing with disputes

Discrimination claims under part VII of the *Pensions Act* are referred to the Equality Tribunal and, on appeal, to the Labour Court. The Pensions Board has jurisdiction to prosecute all breaches of the *Pensions Act*, including those under part VII. The mechanism is essentially that under the *Employment Equality Act 1998*, but the machinery of that EEA has been

incorporated into the *Pensions Act* for these purposes (see ‘What you should know’ panel above for details).

Green Paper on pensions

The recent Green Paper on pensions proposes:

- An optional later retirement age,
- Prohibiting mandatory retirement ages (at all or below a given age), and
- Increasing the flexibility of tax legislation to allow employees to draw partial pensions while working.

The government proposes that retirement age needs to “be appropriate to make it possible to provide an adequate pension; to rise in a rational way as life expectancy increases; and to enable labour market flexibility permitting a phased move from full-time work to full-time retirement”.

The proposal for flexible working arrangements envisaged under the Green Paper would appear to result in the employment/retirement overlap referred to above. Comments on the Green Paper are invited to www.pensionsgreenpaper.ie, and consultation closes on 31 May 2008.

LOOK IT UP

Cases:

- *Bloxham v Freshfields Bruckhaus Deringer* (2007, *Pensions Law Reports* 375)
- *HM Customs & Excise v Jayawardane* (2003, *Pensions Law Reports* 1)
- *Palacios de la Villa v Cortefiel Servicios SA*, C-411/05
- *R (on the application of the Incorporated Trustees of the National Council for Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform*, C-388/07 (‘Heyday’)
- *Waite v GCHQ* [1983] IRLR 341

Legislation:

- *Employment Equality Act 1998*
- *Pensions Act 1990*
- Council Directive 2000/78/EC

Heyday judgment

As noted last month, any default retirement age in Ireland will need to take into account the realities of the Irish labour market. The *Heyday* judgment should be instructive, as it considers the imposition of a blanket retirement age that is not dependent on a trade-specific collective agreement.

For clients, the message is that, to minimise exposure, they should ensure that retirement dates in their employment and pension documentation are aligned and that the written word is not contradicted by custom and practice. They may also wish to consider whether their late retirement policies are justified. **G**

Philip Smith is a partner in the pensions group at Arthur Cox and a former chairman of the Association of Pension Lawyers in Ireland. Jo Kenny is an associate in the pensions group at Arthur Cox.



PIC: LENS MEN

At the dinner held in honour of outgoing SMDF chairman Maurice Curran on 3 April were (back, l to r): Ken Murphy, Patrick Dorgan, Maria McCarthy, Pat Howett, Jim Graham, Michael P Houlihan, Cyril Forbes, Philip Joyce, Gerard Doherty, John F Buckley, Mary Keane and John Shaw; (front, l to r): Elma Lynch, Patrick Groarke, Margaret Moran, Thomas D Shaw, Maurice Curran, James MacGuill (president, Law Society of Ireland), Geraldine Clarke and Laurence K Shields

Maurice honoured for service to solicitors

Past president of the Law Society, Maurice Curran, has retired as chairman of the Solicitors' Mutual Defence Fund. Maurice played a leading role in establishing the mutual indemnity fund back in 1987 and has been closely involved in its running ever since. It was fitting, then, that the Law Society should host a dinner in his honour on 3 April at Blackhall Place.

Law Society President James MacGuill praised the "significant achievements of those visionary colleagues, led

by Maurice, who had established the mutual indemnity fund as an alternative protection to its members, and through them to the public at large".

The establishment of the fund in the late '80s – for solicitors and by solicitors – was welcomed by practitioners throughout the country. Not only had it provided an alternative to other insurers, but it had influenced the offers made by insurance companies to solicitors. "This achieved immediate and lasting reductions and ensured a

healthier, more honest and more competitive marketplace," said Mr MacGuill. "More importantly," he added, "the Solicitors' Mutual Defence Fund had underlined the concern for the protection of the public and of the profession."

Twenty-one years after its establishment, the fund is still the preferred method of protection for a majority of the profession. It provides excellent cover at reasonable prices – particularly to certain vulnerable sections of the market – and provides terms

and conditions that identify the real concerns of the practising profession.

The president concluded: "At a time where we are, once again, exposed to the commoditisation of every service, with the bottom line apparently being the only consideration, I trust that colleagues will continue to reflect on the great achievements of the Solicitors' Mutual Defence Fund in delivering a qualitative difference to practitioners and, most importantly, to the public at large."



PIC: LENS MEN

The Norsemen cometh

A group of Norwegian lawyers recently visited the Law Society on a fact-finding mission on ad hoc government tribunals. The Norwegian law commission members include: Arild O Eidesen (president of the Court of Appeal of North Norway), Marit Arnstad (former Minister of Oil and Energy), Harald Stabell (defence attorney), Professor Aanund Hylland (University of Oslo), Edith Irgins (inspector with the Accident Investigation Board), Brit Denstad (former permanent secretary of the Ministry of Government Administration) and Kristian Trygstad (lawyer with the Parliamentary Ombudsman). They are seen here with Law Society President James MacGuill and Director General Ken Murphy



PIC: LENS MEN

Eating your Greens

Green Party leader John Gormley was the guest of honour at a dinner held at Blackhall Place on 14 April 2008. Those who attended included (front, l to r): Ciaran Cuffe TD (Green Party), John Gormley, James MacGuill (president of the Law Society) and John D Shaw (senior vice-president). (Back, l to r): Philip Joyce (past president of the Law Society), Cllr Mark Deary (Green Party), Donald Binchy (junior vice-president) and Ken Murphy (director general)

Annual Dinner at Blackhall Place

The annual dinner of the Law Society was held on 11 April 2008 in the Presidents' Hall at Blackhall Place, Dublin, *writes Mark McDermott*. President of the Law Society, James MacGuill, welcomed guests to the black-tie event, which included guest speaker, the Minister for Foreign Affairs Dermot Ahern TD, the Minister for Education and Science Mary Hanafin TD, and select members of the Opposition. Also present were advisors to government, senior civil

servants, members of the judiciary, members of the Defence Forces, past presidents of the Law Society, Council members and senior executives, senior executives of the Law Society of Northern Ireland, members of the General Council of the Bar of Ireland, luminaries of the legal profession and of various legal bodies, specially invited members of the media and other guests.

Minister Ahern spoke about the impending vote on the Lisbon Treaty, underscoring

the significant benefits that Ireland had gained from EU membership. He also reminded guests about the significant aid that Ireland continued to invest in Third World countries. He referred to the sterling work being carried out in the tsunami-hit regions of the Far East, in Kenya, Darfur in Sudan, Liberia, Chad and Lebanon, to name a few. He said that he would be happy to consider certain Law Society projects in South Africa for potential Irish Aid funding in the future.

The *Gazette* camera was on hand to capture the night's proceedings.



Olive Braiden and Michael Carrigan



Mary Keane (deputy director general) and Sinéad Kearney (Chair of the Family Law Committee)



James MacGuill (Law Society President) and Pat Rabbitte TD



Frances Twomey (Council Member), Carol Ann Casey (Independent Adjudicator) and Mairéad Ahern (Dundalk County Registrar)

ALL PICS: LENS MEN



John D Shaw (Senior Vice President), James MacGuill (Law Society President), Minister for Foreign Affairs Dermot Ahern TD, and Donald Binchy (Junior Vice President)



James MacGuill, Lisa MacGuill, and Murdo McLeod (Faculty of Advocates, Edinburgh)



Ken Murphy (director general), James MacGuill (Law Society President) and Michael McDowell SC



Colm Murphy (Minister for Regional Development in the Northern Ireland Assembly), Arthur Morgan TD, Boyce Shubotham, and James MacGuill (Law Society President)

FACES IN THE CROWD



Waterford Law Society does it in style

The glad rags were dusted down for Waterford Law Society's annual dinner, which took place on Friday 4 April 2008 in the Athenaeum Hotel, *writes Fiona Fitzgerald*. The dinner was hosted by President of the Waterford Law Society, Morette Kinsella.

This year, however, the feasting was put on temporary hold for a short questions-and-answers session. Members submitted their questions in advance and the result was a detailed agenda, which centred on representation of solicitors in and by the Law Society, the regulation and discipline of solicitors, and the public's perception of solicitors and the Law Society generally. Fielding the questions were honoured guests, Law Society President James MacGuill and Director General Ken Murphy. Waterford members left the session with a sense of confidence that the Law Society is, indeed, committed to its constantly evolving role of representation and the defence of its members. It is hoped that a further session can be tabled in Waterford later this year to conclude the lively discussion.

Following the business session, the assembled guests feasted on the Athenaeum Hotel's wonderful culinary offerings, washed down with



Fiona Gillen, Tom Murran, Gillian Mahony and Sinead Gillen

champagne. Guests included Judge Bill Harnett, Judge Elizabeth McGrath, County

Registrar Niall Rooney, Dr Ann O'Connor (Vice President of Waterford

Clinical Society), Frank Treacy (PRA), Superintendent Chris Delaney, Owen O'Mahony (President of Kilkenny Bar Association), and Paddy Derivan (Vice President of Tipperary Bar Association).

An excellent turn-out from city and county solicitors included John Goff Snr, Iain Farrell, Helen Bowe O'Brien, Frank Heffernan, Fiona FitzGerald, Finola Cronin, Danny and Edel Morrissey, John Purcell, Deirdre McSweeney (our wonderful organiser), Niall King, Fiona and Sinead Gillen, Ronan Curran, Bernadette Cahill, Derry O'Carroll, Tom Murran, Neil Breheny and Andre Thompson.



Frank Heffernan, John Goff, Morette Kinsella, Peter Cusack and Judge Bill Hartnett



Deirdre McSweeney, Fiona Grogan



James MacGuill (president, Law Society of Ireland) and Morette Kinsella (president of the Waterford Law Society)



Gerrard O'Connor, Niall Rooney (Jim Halley at rear) and Ian Farrell



ALL PICS: CIARAN CONNOLLY. PHOTOS CAN BE ORDERED BY EMAIL AT: CIARAN33@EIRCOM.NET

(Back, l to r): Marie Dennehy, Neil Breheny, Deidre McSweeney, Owen O'Mahony, John O'Donovan, Pat Dervan, Gerard Halley, Della Power, Liz Dowling, Orla Kenny, Sonja Kennedy, Gerard O'Connor, Jim Halley, Claire Ryan, Liz McArdle and Niall Rooney. (Sixth row, l to r): Finola Cronan, Peter Cusack, Fiona Grogan, Sinead Gillen, Fiona Gillen and John PC Goff. (Fifth row, l to r): Frank Heffernan, Cyril Cawley, Hellen Bowe O'Brien, Bernadette Cahill, Rosie O'Flynn and Danny Morrissey. (Fourth row, l to r): Derry O'Carroll, Niall King, Judge Bill Hartnett, Jill Murphy, Rosa Eivers, Ellen Hegarty, Leona McDonald and Frank Tracey (Land Registry). (Third row, l to r): Kieran Curran, Sarah Power, Gillian O'Mahony, Ian Farrell, Bridget Hynes and John Purcell. (Second row, l to r): Michael McLaughlin, Paddy O'Riordan, Ronan Curran, Jill Walsh, Laura Farrelly, Judge Elizabeth McGrath, Ann O'Connor (clinical society) and Jill Walsh. (Front row, l to r): Ken Murphy (director general, Law Society), Morette Kinsella (president, Waterford Law Society), James MacGuill (president, Law Society), Tom Murrin, William Hackett, Fiona Fitzgerald and Edel Morrissey



Ann O'Connor, Ken Murphy (director general of the Law Society) and Morette Kinsella



Stan Power (proprietor), Michael McLaughlin, Gillian Mahony and Niall King



Sarah Power, Ian Cunningham and Andrew Thompson



Rosie O'Flynn, Liz Dowling, Sonja Kennedy and Finola Cronin

A spring in their step at the Slieve Russell!

One would have been forgiven for wanting to stay at home on Friday 29 February 2008. What with sheets of rain pouring down so hard, driving to the SYS Spring Conference in Cavan felt more like being in a carwash, *writes Alina Jokinen*.

Some 200 young solicitors bravely wended their way to the Slieve Russell Hotel for the joint conference, organised by the Society of Young Solicitors (SYS) and the Northern Ireland Young Solicitors' Association (YSA).

Some of our Northern colleagues took the scenic route, taking in a brief tour of the M50 on their five-hour bus journey from Belfast to Ballyconnell. There were never travellers so relieved to see the bright, beckoning lights of the hotel. The weekend had started!

Friday night was all about catching up, as many had not seen friends and colleagues since the previous similar engagement, and catch up they did until the early hours, mingling with the remnants of a wedding and a GAA ball. Luckily, there was plenty of room for all.

Unprecedented crowd

Saturday morning started bright and early, with the impressive speaker line-up drawing an unprecedented crowd. Brightwater Recruitment Specialists, loyal sponsors of SYS conferences, took the first slot, sharing with us the recent trends in legal recruitment both north and south of the border. Unfortunately, Mr Justice Treacy had been forced to cancel at short notice, so Law Society President James MacGuill took the floor

instead, in response to Ben Rigby's reflections on being past president of the European Young Bar Association. Addleshaw Goddard, the newest sponsor of the SYS, finished the morning on a lighter note, with an entertaining quiz.

The afternoon golfers got their fair share of rain and cold winds, the spa-goers delighted in their choice to stay inside, but one way or another, by 7pm all delegates looked primed and ready for another night of socialising.

Husky-voiced diva

Thanks to the pre-dinner drinks reception, a lively crowd took their places for the gala ball in the elegant ballroom. Before dinner was served, the outgoing chairperson of the SYS, Catherine Allen, thanked the

many generous sponsors, and introduced President of the Northern Ireland Law Society Donald Eakin, who also spoke a few words. The entertainment for the night was provided by Spring Break, a favourite and frequent performer at SYS conferences, after which DJ Glenn Tector made sure the dance floor never emptied until the full lights in the room were turned on and the microphone was removed from the grasp of a lone, husky-voiced diva. Back at the hotel bar, delegates yearning for more managed to carry on for even longer.

A roaring success, the 2008 joint spring conference between the SYS and the Northern Ireland YSA proved once again that relations between north and south are now better than ever.



Niall Pelly, Deirdre St John, Michelle Quinn, Sinead Casey and Tristan Conway-Behan

ALL PICS: FINBARR O'DONOGHUE



James MacGuill (president of the Law Society of Ireland), Catherine Allen (chairperson of the SYS), Donald Eakin (president of the Northern Ireland Law Society)



Fionnuala Finn, Fiona Neville and Melissa McCague



Julie Reid, Conor Houston, Claire Reid, Emma Hunt (all from the committee of the NIYSA) and Ronan Savage (Brightwater Recruitment)



Mary Hurley, Siobhan Kirrane, Susan Quigley, Eadaoin Ni Chaoimh, Marilyn Walsh and Katie Byrne



Ronan Savage, John Macklin, Kate Coughlan (all Brightwater), Catherine Allen, Donogh O'Donovan, Alina Jokinen, Micheál Grace (all SYS), Hilary Flynn, Alannah O'Reilly, Eileen Moloney (all Brightwater)

Annual conference dinner

The Law Society's annual conference in Budapest from 26-30 March 2008 was a wonderful success. The welcome reception in the historic Dominican Courtyard of the Hilton Hotel in the Castle District, sponsored by recruitment firm Benson & Associates, broke the ice.

Friday's business session, sponsored by the Solicitors' Mutual Defence Fund and Jardine Lloyd Thompson Ireland Ltd, proved a major draw (see page 14). This was chiefly due to the pulling power of Minister for Justice, Equality and Law Reform Brian Lenihan TD, EU Ambassador to the US, John Bruton, and Deputy DPP Barry Donoghue.

Budapest offered many delights, chief among them being the night at the city's stunning opera house, where the audience enjoyed a performance of Bizet's *Carmen*, with Attila Wendler in the role of Don José and Erika Gál as Carmen.

No one missed out on the opportunity to tour the city by bus, which gave us the opportunity to view the stunning St Mátyás Church in the Castle District, the Royal Palace, the Chain Bridge linking Buda and Pest, the outstanding parliament building, the impressive Heroes' Square, art museums, the surreal Statue Park, the chilling House of Terror museum, and the Gellért Baths, among so much more.

The social highlight of the week was Friday night's gala dinner, generously sponsored by Bank of Ireland. Here we present a number of photos from a night that had everything – fun, laughter, great food and wonderful entertainment. See you next year in sunny Bilbao!



European Commission survey

At the European Commission Survey dinner at Blackhall Place on 8 April 2008 were (l to r): Julia Bateman, Mr Justice Michael Peart, Dara Robinson, Laura Surano, President of the Law Society James MacGuill, Madame Gisele Vernimmen-Van Tiggelen, Barry Donoghue, Kenneth Ruane and Derek Kenneally SC

PIC: LENS MEN

student spotlight



Society team makes final four in Mumbai moot

A Law Society team of PPCI students represented Ireland at the DM Harish International Moot Court Competition, held in Mumbai, India, from 8-11 February 2008. This was the first time for the Law Society to enter this competition, being represented by Carol Eager (William Fry), Fionnuala Hynes (Astons Wealth Management), Jerry Healy and Michelle Cunningham (Arthur Cox).

The competition involved representing a fictitious nation, through a written submission and oral advocacy, in a hypothetical dispute before the International Court of Justice. The focus was on human rights issues, including euthanasia, abortion, secular and economic rights. Judges included members of the bench of the High Court in Mumbai, legal practitioners and scholars. Outside of the competition, there were visits to the state palaces and the High Court, as well as many meetings with dignitaries.



The PPC1 team and friends fly the flag for Ireland

Trainee Moot Court Competition victors



PIC: JASON CLARKE PHOTOGRAPHY

Congratulating the winners of the recent Trainee Moot Court Competition at the Society's Law School were (l to r): Ken Murphy (director general), Louise Rouse (Arthur Cox), James MacGuill (Law Society president), TP Kennedy (director of education), the Mr Justice Nicholas Kearns (Supreme Court), the Mr Justice Michael Peart (High Court), winning team members Eleanor Dunne (Autumn 2007 PPCI, A&L Goodbody) and Maria O'Donnell (Cork 2007 PPCI, Wolfe & Co Solicitors, Cork), James O'Sullivan (Chairman, Education Committee), Catherine Dolan (commercial manager, Thomson Roundhall, sponsors) and Mr Justice Joseph Finnegan (Supreme Court)

From a field of over 26 international participants, the Law Society team was the only European team to reach the semi-finals. In the preliminary rounds, teams from Cambridge (last year's winners), Westminster, Exeter, Southampton, Greece, Spain, Australia and India were knocked out. The semi-finals were also contested by Cornell Law School (USA), NALSAR University of Law (India) – and the eventual winners, the University of Washington St Louis (USA).

Irish trainee Fionnuala Hynes won the competition's joint award for 'best researcher', alongside the NALSAR's Indian researcher. In addition, Carol Eager was named fifth-best speaker in the competition, with Jerry Healy finishing in a commendable eighth position.

Given the success of our maiden trip to the competition, it is hoped that future teams can emulate or better this year's performance. Congratulations to all concerned. **G**

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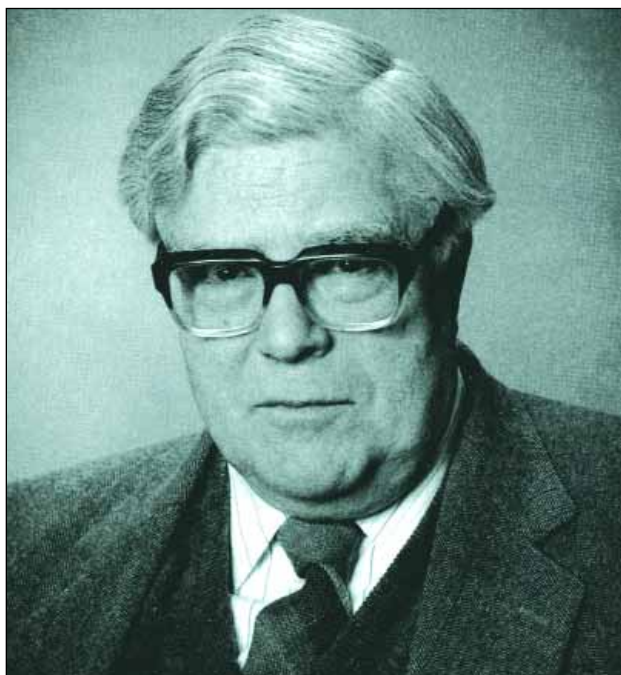


For more information, contact Catherine Henley at cahenley@taxandaudit.ie or phone 01463 1733

*Subscription is for 12 months

Professor Paul O'Higgins

4 October 1927 – 13 March 2008



The contribution to Irish law of Professor Paul O'Higgins (a former Regius Professor of Laws at Trinity College, Dublin) has been significant. As a law student in Trinity in the period 1954–1957, he found his law teachers, for the most part, unaware of the vast literature of Irish law. His teachers were also unaware of the great Irish lawyers – practitioners and advocates – of the past. The

law student, Paul O'Higgins, at the Trinity College of the time, stated that if he were preparing a paper for the Dublin University Law Society or drafting a minor piece of research, he found the basic tools of research, in particular adequate bibliographies of Irish law, to be almost wholly lacking. Trinity College was not unique.

These influences compelled Paul O'Higgins, as an undergraduate, to commence the mammoth task of preparing a bibliography of Irish law, which is his permanent legacy to anyone interested in Irish law and legal proceedings.

Paul O'Higgins was born on 4 October 1927, spent his early years in Ireland, and studied medicine at Trinity College, Dublin. His left-wing political views were not to the liking of the medical establishment and he parted with medicine. He then switched to law. He was called to the Irish and English bars in 1957, at the age of 30. His doctoral thesis in Cambridge University, under Professor (later Sir) Robert Jennings, on political asylum was regarded as outstanding, although it has never been published. Subsequently, O'Higgins lectured in law at Cambridge, with a particular focus on human rights and labour law.

The part-time hobby of Prof O'Higgins was, in time, to yield an accumulation of bibliographical data about Irish law, which constitutes (to this day) building blocks for future generations.

In 1966, Paul O'Higgins published his *Bibliography of Periodical Literature Relating to Irish Law*. At that time, in the general absence of textbooks on Irish law, periodical literature (for example, articles in the *Gazette* of the Law Society of Ireland, which are frequently cited) was the main source on Irish law. Paul O'Higgins was primarily interested in the requirements of practitioners as well as the research scholar –

and these requirements were kept constantly in mind. In the 1966 work, he made reference to over 5,000 legal articles culled from 130 periodicals on Irish law from all over the world. The 1966 opus was followed by two supplemental periodicals in 1973 and 1983.

O'Higgins returned to Ireland (where his heart lay) in 1984 as the Regius Professor of Laws in Trinity College, Dublin.

In 1986, O'Higgins

published a *Bibliography of Irish Trials and other Legal Proceedings*, dedicated as a token of affection and respect to Colum Gavan Duffy, solicitor, the librarian of the Law Society of Ireland, whom he described as the doyen of Irish law librarians, and Willi Steiner, whom he described as the doyen of British law librarians. O'Higgins' thesis was that, in a small country such as Ireland, it was important not to lose contact with the scholars who had laboured before us in the past, often to great effect, and whose work had been largely forgotten and overlooked.

O'Higgins was elected to the Royal Irish Academy in 1986. Sadly, health and personal reasons compelled him to resign the Trinity chair, and he returned to England in 1987. King's College London subsequently offered him a chair, which he held for five years until his retirement. Later, he became a vice-master of Christ College, Cambridge, until 1995.

Prof O'Higgins was not only a graduate of Trinity College with an LLB degree, but was a doctor of the university, a member of the Royal Irish Academy, the holder of a PhD degree, and was awarded the degree of honorary doctor of laws from Cambridge University. He was an honorary fellow of TCD and Christ College, Cambridge.

Paul O'Higgins died (aged 80 years) on 13 March 2008 in Cambridge. His principal interests as a law teacher were in civil liberties, human rights and social law (described as labour law to most of us), of which he was a dedicated pioneer. He wrote many works on these subjects. He left a legacy to each of us in the form of his bibliographies of Irish law, which are unique and unrivalled. 

EH

books



Defamed! Famous Irish Libel Trials

AJ Davidson. Gill & Macmillan (2008), Hume Avenue, Park West, Dublin 12. ISBN: 978-0-71713-803-6. Price: €12.99.

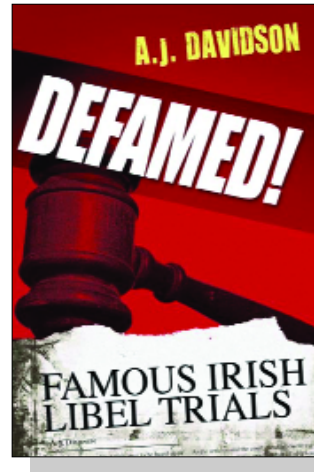
Lawyers should declare all possible conflicts of interest. I must do so in relation to AJ Davidson's book, a racy and readable account of what he describes as a "litany of libel highs and lows". Of the cases highlighted, I acted in two – one for the defendant and the other for the plaintiff. I lost both. Mostly lows for me then!

Davidson's book is aimed at the general reader. His book on notorious Irish kidnappings was also published by Gill & Macmillan.

Davidson highlights 11 well-known defamation actions involving Irish plaintiffs. These range from politicians (Albert Reynolds, Proinsias De Rossa and Beverly Cooper Flynn), to members of our own profession (Judge Joseph Mangan and the Northern Irish solicitors' firm of McCartan, Turkington &

Breen).

Not all of the cases took place in this jurisdiction. The now infamous award of one penny to Albert Reynolds, in his case against the British edition of *The Sunday Times*, was given by a jury in London. McCartan, Turkington & Breen sued *The Times* in Northern Ireland. They had represented a British soldier, Lee Clegg, who was convicted of murdering a young woman joyrider. Their handling of the case was criticised at a press conference in Yorkshire, upon which *The Times* reported. They were awarded stg£145,000 by a Belfast jury, subsequently reduced on appeal to stg£75,000. However, the House of Lords overturned the award, as the report was privileged. The firm's disappointment was probably



tempered by previous settlements with three newspapers for an estimated stg£500,000.

The fact that Gill & Macmillan have published a book on defamation for the general reader reflects an interest in such trials that is

beaten only by the human drama of criminal cases. This public interest is prompted less by the minutiae of the law than by the theatrical element involved in defamation cases before a jury.

While focusing on the personal stories of the victors and vanquished, Davidson is not afraid to analyse the procedural quirks of libel law, including the shameful inability of defendants to lodge without an admission of liability, a rule that hinders settlement and acts, in my view, to the detriment of both claimants and defendants. Perhaps this popular publication will help bring about reform quicker than the many legal articles written on the topic. **G**

Michael Kealey is a partner in William Fry.

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Admissable evidence?

You know the way you're cruising down the dual carriageway, just a tad-and-a-half over the speed limit, flashing your high beams in an aggressive manner at any poor sod in a Micra who can't compete with the girth of your massive torque? And then some spotty boy racer in a modified purple Corsa (with those ridiculous neon lights under the door sills) tears up behind you and sits on your tail until you give up and get back into the lane you should have been in to begin with? Well now you can take 'em down!

But not in an Arnie sort of way. No siree, we're talking about the sort of documentary evidence that is one step away from hearsay, in the wrong

direction. Witness the Oregon Scientific 'action camera' (www.oregonscientific.co.uk, stg£99), designed to be worn on the helmets of skiers and climbers, but equally capable of sitting on your shoulder and capturing on film the outrageous law-breaking of that young fellow who was probably only boosting his first car stereo at the time you qualified.



But if you're serious about portable cameras, you owe it to yourself to check out what Sony claims to be the world's smallest high-definition digital camcorder, the snappily monikered HDR-TG3E (www.sony.ie). Just a bit bigger than your mobile, this wee beastie features HD 1920x1080 recording on removable memory stick, a top-notch Carl Zeiss lens with 10x optical

zoom, optical image stabilisation, face detection for video and photo, and four megapixel still photo recording plus "Dual Rec" while recording movies – whatever that means; we only reproduce the press releases and pocket the cash.



It's good to talk, unless you're on the run

And in the 'that's a good idea, must get one of those' folder, we have a few mobile-phone-related products. First up are the emergency chargers.

They're all basically the same, varying only in the number of AA batteries they use: two batteries good, one battery, er, a bit less than that. They all involve batteries, a case, and a variety of connection leads, including adaptors to power up an iPod. Naturally, our favourite is the PowerChimp Travel Charger (www.ogormans.co.uk/powermonkey, stg£15). The emergency chargers from www.paramountzone.com

(stg£4.95) and www.iwantoneofthose.com (about €10) are cheaper and will do the job, but don't have that monkeyish cachet.

And if you're of the green persuasion and can't be doing with those nasty toxic battery things, you could always try the wind-up multi-mobile charger (www.iwantoneofthose.com, about €9). Even if your local 7/11, 9/11 or 24/7 is closed, you still have the power of the owl pedal and crank. Three minutes winding will get you "up to" eight minutes talk time. Don't forget to bill for all that wrist activity.

Also worthy of note is the USB SIM-card reader, which enables you to back up your contacts, appointments, saved

messages and all that jazz from your phone to your PC. We're surprised we don't have one already. Indeed, we're going out for one now (available from Argos at about €15). Just watch out for that dodgy-looking boy racer in the purple Corsa who's getting a new sovereign ring. He's mental, he is.



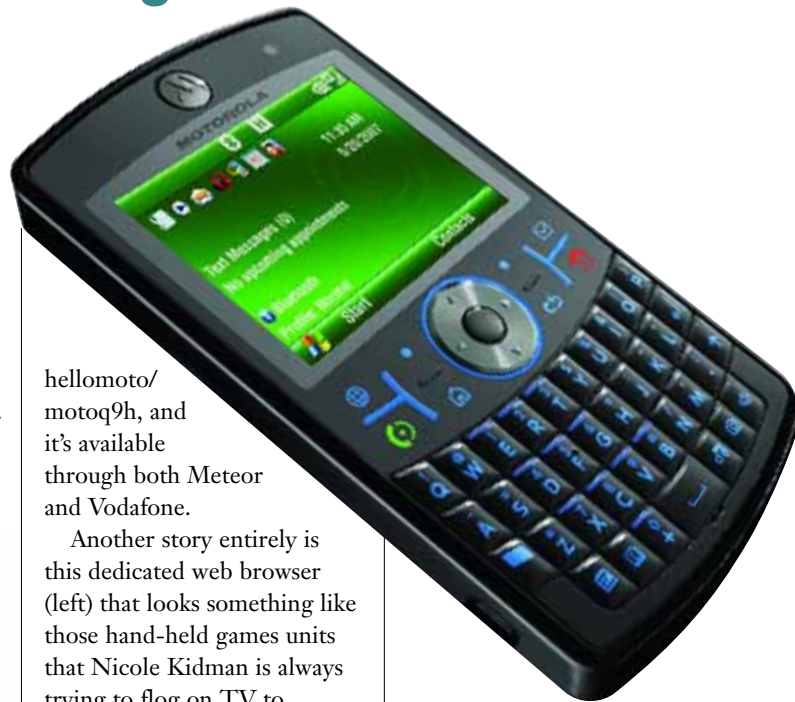
Looks like a calculator, though...

It certainly won't win any design awards – not with the overhyped and overpriced iPhone and the new Samsung Armani on the scene – but the super-slim Motorola Moto Q 9h (right) might win out in terms of functionality for those sick of predictive and, indeed, non-predictive texting. Although what your average stubby-fingered badger-baiter might make of its QWERTY keyboard is anyone's guess.

But for those of us with

opposable thumbs, this quad-band phone (pretty much meaning that you can use it all over the world) handles text messaging and emails with aplomb. It also supports various music files for your ultra-hip toons and has an impressive camera and video facility.

Altogether, quite a tasty package, even if it does look like something you took into your Leaving Cert maths exam. Check out the impressive specs at <http://direct.motorola.com/>



hellomoto/
motoq9h, and
it's available
through both Meteor
and Vodafone.

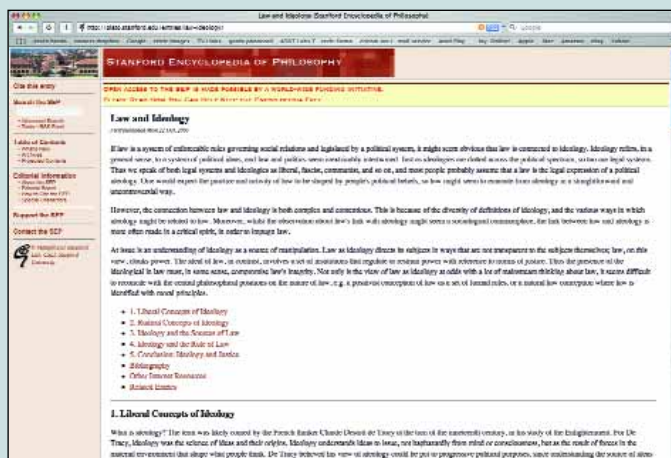
Another story entirely is this dedicated web browser (left) that looks something like those hand-held games units that Nicole Kidman is always trying to flog on TV to increase your brainpower. Bet she wished she'd used one before she signed up for *Far and Away*...

Anyway, the Pocket Surfer 2 promises an end to the patchy and slow web access you might get on your 'internet-enabled' phone. This thing isn't a

phone, but promises to allow you to wirelessly surf the web with full graphics, Java support and all the other techy stuff you can find out about at www.pocketsurfer.co.uk. But we're still not sure if it is supported by any Irish network provider.



SITES FOR SORE EYES



Impress your friends and alienate your boss. Or vice versa (<http://plato.stanford.edu/contents.html>). Why do anarchists only drink herbal tea? Because all proper tea is theft. If you've ever had trouble telling your Kropotkin from your Bakunin or tried desperately to understand how libertarians and anarchists seem so similar yet are so different, then this site is for you: the Stanford University *Encyclopaedia of Philosophy* online.



Monkeys in the news (www.monkeydaynews.blogspot.com). Everyone loves monkeys, and this site will give you your daily fix of monkey-related happenings around the world, including "Man in trouble for feeding monkey chilli peppers", "Boozy smoking chimp rescued from navy", and "How to survive a monkey attack", which is especially important if you happen to be an elected city official in New Delhi.



council report

Law Society Council meeting, 29 February 2008

Vision of an electronic system of conveyancing

The Society's eConveyancing Task Force, represented by the chairman, Dan O'Connor, Eamonn Keenan and Gabriel Brennan, made a presentation to the Council of the task force's 'Vision of an Electronic System of Conveyancing' ('eVision').

It was noted that the task force had been established in 2005 with terms of reference that required them, having regard to the rapid progress in technological development of all systems that supported the conveyancing process, to ascertain and define all relevant areas where issues arise, to develop a policy in relation to all such issues, to examine how the current system might better embrace technology, and to liaise with the Land Registry and the Law Reform Commission to this end.

Dan O'Connor briefed the Council on developments in the area of conveyancing since 2003, both in terms of legislation and policy. He noted that, following its 2006 report entitled *eConveyancing: Modelling of the Irish Conveyancing System*, the Law Reform Commission had commenced a process of engagement with other stakeholders, including the financial institutions, the Property

Registration Authority, the Revenue Commissioners, the local authorities, the government, estate agents, law searchers, architects and surveyors, builders and property developers, the Ordnance Survey and the Consumers' Association. As part of this process, the Law Society had been asked to draft its vision for e-conveyancing in Ireland.

Eamonn Keenan presented the principles underpinning the task force's 'eVision'. Gabriel Brennan then presented a series of diagrams that summarised how the new proposed system would operate in practice, both in circumstances where there was a simple e-contract and in circumstances where there was both an e-contract and an e-deed. Following a series of questions from Council members, the Council formally endorsed the task force's eVision, and it was agreed that the proposal should be formally launched at an event to which the Minister for Justice, Equality and Law Reform would be invited.

Report on meeting with the Bar Council

The president reported on a meeting of the Joint Consultative Committee of the Law Society and the Bar Council, held on 21 February.

In relation to the Bar Council ruling on fee estimates, it had been agreed that both the Bar Council and the Law Society would establish small working groups to consider issues arising from the ruling.

Criminal Justice (Money Laundering) Bill 2008

The president reported that the draft scheme of the *Criminal Justice (Money Laundering) Bill 2008* had been published recently and the Society intended to engage in a consultation process with the Department of Justice, Equality and Law Reform on the content of the draft scheme.

Civil Law (Miscellaneous Provisions) Bill 2006

The director general reported that the report stage of the bill had been taken in the Dáil on the previous Wednesday. However, the bill was still capable of amendment in the Seanad.

Education – in-office training period

The chairman of the Education Committee, James O'Sullivan, reported that the committee was engaged in an examination of the in-office training period and, in particular, the requirement of training solicitors to provide trainees with four sep-

arate blocks of training. This structure had been in place since 1978, and certain difficulties were experienced in complying with the requirement to provide experience in all four blocks. The committee would review the matter further and feedback would be sought from training solicitors.

CCBE

Michael Irvine reported briefly on the *Akzo Nobel* case in relation to privilege for in-house counsel and also on the conveyancing study conducted by the EU Commission. He also noted that the Belgian Constitutional Court had confirmed the decision of the European Court of Justice in relation to money laundering and the priority in law for solicitors' advices and that there was a discussion being conducted within the CCBE about multi-jurisdictional practices. The president noted that it was the policy of the Society to support the concept of privilege for in-house counsel. An unhelpful decision had been handed down in the *Akzo Nobel* case, and it was proposed that the Society would write to the Attorney General indicating its support for the intervention announced by the Irish government in relation to the matter. **G**

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practice notes



JUDICIAL REVIEW AND NON-JURY LISTS – WAITING TIMES

The Courts Service has advised that the waiting time for a hearing date for certified non-jury cases has recently been reduced from a period in excess of three years to less than three months.

Non-jury and chancery cases have been fixed for hearing at a number of courthouses outside Dublin, thereby clearing significant backlogs in lists. To date, cases have been listed at Bruff, Castlebar, Cork, Dundalk, Ennis, Galway, Limerick, Tullamore and Tralee. This approach has allowed the listing of an additional 140 non-jury cases in Hilary Term 2008.

At the last non-jury list to fix

dates, all remaining cases in the list were assigned hearing dates before the summer vacation. In all, 135 certified non-jury actions were listed for hearing at Castlebar, Cork, Dundalk, Trim and Tullamore for both Easter and Trinity terms 2008. Practitioners wishing to ascertain the status of a case can check it online using the High Court search facility on www.courts.ie.

With additional judicial resources and the resultant increase in the throughput of cases, pressure for courtroom space in Dublin has increased significantly. The President of the High Court has directed that

on any day where there is a shortage of courtrooms in Dublin, cases will be assigned to venues close to Dublin for hearing. It is also very likely that, in the near future, non-jury miscellaneous matters will be listed for hearing at venues outside Dublin. This ensures that cases get dates quicker, that High Court business is spread across the country, and that courthouses are fully utilised.

Queries in respect of non-jury cases assigned to **provincial venues** should be directed to Paul Gunning, Registrar, Courts Service, tel: 01 888 6691.

Judicial review cases are cur-

rently taking approximately 18 months to get a hearing date from the time they are transferred into the list to fix dates. This waiting period does not apply to cases to which priority is given or to cases that can be heard within a period of two hours. Short cases are listed for hearing on Mondays and are heard within a few weeks of the court being notified that the case is ready for hearing.

Queries in respect of the non-jury or judicial review list to fix dates should be directed to Angela Denning, Registrar, Courts Service, tel: 01 888 6454. **G**

Litigation Committee

NOTICE

The High Court

In the matter of James P Murphy, a solicitor of Doire, Ballygaddy Road, Tuam, Co Galway, and in the matter of the

Solicitors Acts 1954–2002.

Take notice that, by order of the High Court made on Monday 7 April 2008, it was ordered that

James P. Murphy, solicitor, of Doire, Ballygaddy Road, Tuam, Co Galway, be suspended from practice as a solicitor until fur-

ther order of the court.

*John Elliott, Registrar of Solicitors,
Law Society of Ireland,
21 April 2008*



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legislation update

11 March – 15 April 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.

ACTS PASSED

Finance Act 2008

Number: 3/2008

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

Commencement date: 1/1/2008 for part 1, except where otherwise expressly provided in part 1 (per section 144(8) of the act); 13/3/2008 for other parts of the act, except where otherwise expressly provided or where provisions of the act will come into force on the making of commencement orders – see act for details

Motor Vehicle (Duties and Licences) Act 2008

Number: 5/2008

Contents note: Gives effect to increases in motor taxation with effect from 1/2/2008 and provides for a new motor-tax system based on CO₂ emissions for new and pre-owned imported cars registered on or after 1/7/2008. Amends and extends the *Finance (Excise Duties) (Vehicles) Act 1952* and the *Finance (No 2) Act 1992*, and provides for related matters.

Commencement date: 26/3/2008

Passports Act 2008

Number: 4/2008

Contents note: Provides for the issue by the Minister for Foreign Affairs, on the authority of the government, of passports to Irish citizens; provides for the processing of personal data, including biometric data, for the issue of passports; provides for the cancellation and surrender of passports in certain circumstances, for offences relating to passports and for the issue of emergency travel certificates in certain circumstances. Amends the *Diplomatic and Consular Officers (Provision of Services) Act 1993* and provides for related matters.

Commencement date: Commencement order(s) to be made (per section 1(2) of the act)

Social Welfare and Pensions Act 2008

Number: 2/2008

Contents note: Provides for the implementation of certain social welfare measures announced in the 2008 budget. Provides for increases in child benefit, early childcare supplement and the respite care grant. Also provides for an increase in income limit for the one-parent family payment and for change in the assessment of income for the purposes of qualification for the payment. Provides for the operation of Council Regulation 259/68 to allow officials employed in an EC institution to transfer the actuarial value of their pension rights from the Social Insurance Fund into the Pension Scheme of the European Communities Institution (PSEC) and vice versa. Makes the necessary legislative changes to the *Pensions*

Act 1990 to allow for the implementation of the recommendations in the *Report of the Pensions Board to the Minister for Social and Family Affairs on Trusteeship*. Provides for a number of miscellaneous amendments to the *Social Welfare Consolidation Act 2005*, the *Pensions Act 1990*, the *Family Law Act 1995* and the *Family Law (Divorce) Act 1996*, and provides for related matters.

Commencement date: 1/4/2008 for section 3, 8/5/2008 for section 8, 5/6/2008 for section 9 and 1/6/2005 for section 10 (per section 1(5) and the respective sections of the act); commencement orders to be made for sections 5, 12 to 17, 18(2) to (4) and 27 to 31 (per section 1(6) of the act); 7/3/2008 for all other sections (per section 1(4) of the act); 14/4/2008 for sections 29, 30 and 31 (per SI 84/2008)

SELECTED STATUTORY INSTRUMENTS

Asset Covered Securities (Amendment) Act 2007 (Commencement) (Section 30) Order 2008

Number: SI 90/2008

Contents note: Appoints 6/5/2008 as the commencement date for section 30 of the act. Section 30 relates to the regime for designated commercial mortgage credit institutions.

Energy (Miscellaneous Provisions) Act 2006 (Commencement of Certain Provisions) Order 2008

Number: SI 68/2008

Contents note: Appoints 12/3/2008 as the commencement date for sections 4, 11 and 12 of the *Energy (Miscellaneous Provisions) Act*

2006 and for section 13 of the act, except insofar as section 13 relates to subsections (3) and (4) of section 9G (inserted by the said section 13) of the *Electricity Regulation Act 1999*. The sections being commenced assign responsibility for the regulation of electrical contractors, gas installers and gas undertakings with respect to safety and related matters to the Commission for Energy Regulation.

European Communities (Public Limited Companies – Directive 2006/68/EC) Regulations 2008

Number: SI 89/2008

Contents note: Amend the *Companies Act 1963* and the *Companies Act 1990* to give effect to certain provisions of Directive 2006/68/EC, which amended Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital. The provisions implemented by these regulations deal with creditor protection in cases of capital reduction and purchase by a company of its own shares.

Commencement date: 15/4/2008

European Communities (Railway Safety) Regulations 2008

Number: SI 61/2008

Contents note: Amend the *Railway Safety Act 2005* to give effect to Directive 2004/49/EC on safety on the community's railways. Make minor amendments to the *European Communities (Licensing of Railway Undertakings) Regulations 2003* (SI 537/2003) and the *European Communities (Allocation of*

Railway Infrastructure Capacity and the Levying of Charges for the use of Railway Infrastructure and Safety Certification) Regulations 2004 (SI 643/2004).

Commencement date: 6/3/2008

**European Communities
(Road Transport) (Working
Conditions and Road Safety)
Regulations 2008**

Number: SI 62/2008

Contents note: Prescribe procedures to facilitate the implementation of: (1) Council Regulation (EEC) 3821/85 on recording equipment in road transport, as amended by Council Regulation (EC) 2135/98 and Commission Regulation (EC) 1360/2002 and Council Regulation (EC)

561/2006; and (2) Council Regulation (EC) 561/2006 on the harmonisation of certain social legislation relating to road transport, and amending Council Regulations (EEC) 3821/85 and (EC) 2135/98 and repealing Council Regulation (EEC) 3820/85. Revoke the *European Communities (Road Transport) Regulations 2006* (SI 88/2006) and the *European Communities (Road Transport) (Recording Equipment) Regulations 2006* (SI 89/2006).

Commencement date: 6/3/2008

**European Communities
(Settlement Finality)
Regulations 2008**

Number: SI 88/2008

Contents note: Transpose the

mandatory provisions of Directive 98/26/EC on settlement finality in payment and securities settlement systems. The primary aim of the directive is to reduce the legal risk associated with participation in settlement systems, in particular as regards the legality of netting agreements and the enforceability of collateral security. The directive's provisions apply to any European Community payment or securities settlements system operating in any currency or the euro, any European Community institution that participates in such a system, collateral security provided in connection with participation in such a system, and collateral security provided in connec-

tion with monetary policy operations.

Commencement date: 9/4/2008

**Health Act 2007
(Commencement) Order
2008**

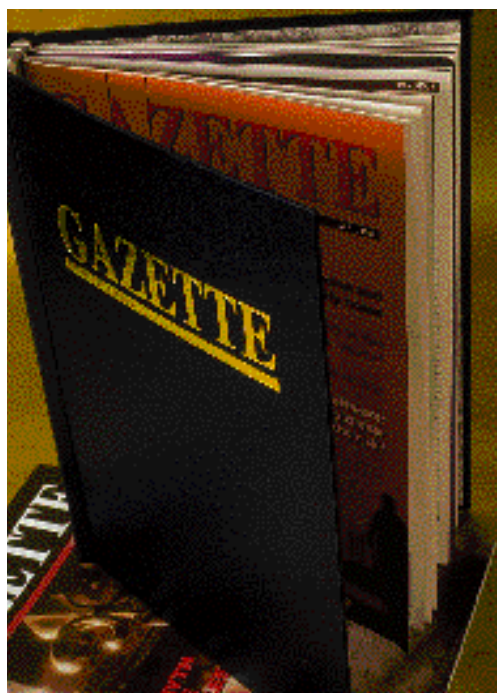
Number: SI 57/2008

Contents note: Appoints 29/2/2008 as the commencement date for section 8(1)(c) and associated provisions of the *Health Act 2007*. See SI for full details. Section 8(1)(c) of the act makes provision for the Health Information and Quality Authority to monitor compliance with standards it sets on safety and quality of services. **G**

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BRIEFING

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COMMERCIAL LAW

Compliance

Interlocutory relief requiring bank to resume compliance with mandate – application imminent in Commercial Court – whether necessary for court to intervene at this stage.

This was an application for an interlocutory order requiring the defendant to, in effect, resume compliance with a mandate given by two companies to pay out on cheques and accept other orders for payment drawn on the account of these two companies.

Hedigan J adjourned the matter for mention, holding that the making of an interlocutory order at a stage where there was an application imminent in the Commercial Court might have the opposite effect to that of helping to resolve the very difficult situation in which the companies and the family found themselves.

Sherlock (plaintiff) v Ulster Bank Ireland Ltd (defendant), High Court, Mr Justice Hedigan, 13/7/2007, 2007 no 5072 P [FL14485]

CRIMINAL LAW

Practice and procedure

Rape – sentencing principles – suspension of sentence – aims – Sex Offenders Act 2001.

A jury convicted the accused of one count of rape of a student. The accused had not given evidence and had claimed in statements that the events had been consensual. He had committed the offence when he was 18 years of age and had had no previous convictions. The victim had suffered seri-

ous adverse effects from the incident.

Charleton J held that the nature of the attack and its effect on the victim were worse than usual and required a sentence at the upper end of the normal range. The sentence would be imposed under the *Sex Offenders Act 2001*. Seven years would be imposed, with the last 18 months being suspended on an undertaking of a bond to keep the peace and to take a course of counselling. The convicted defendant would be registered as a sex offender.

People (DPP) (prosecutor) v Drought (accused), High Court, Mr Justice Charleton, 4/5/2007, bill no CC 50/2006 [FL14498]

IMMIGRATION

Asylum

Delay – extension of time – persecution in civil war – credibility – whether breach of fair procedures or lack of jurisdiction – Illegal Immigrants (Trafficking) Act 2000, s5.

The applicant applied for leave to apply for judicial review, contending, among other things, that the tribunal applied the incorrect test of persecution in a civil war and erred in finding the applicant not credible.

Hedigan J refused the applicant leave, holding that the motion was issued well outside the time limit and there were no good and substantial reasons to extend the time. There was no breach of fair procedures or lack of jurisdiction.

B(J) (applicant) v Minister for Justice, Equality and Law Reform (respondent), High

Court, Mr Justice Hedigan, 18/5/2007, 2004 no 1016 JR [FL14484]

Asylum

Delay – whether good or sufficient reasons to extend time – whether minister complied with obligations – Illegal Immigrants (Trafficking) Act 2000, s5(2).

This was an application for leave to apply for judicial review for an order of *certiorari* quashing the decision of the second respondent to refuse the applicant refugee status and also for an order of *certiorari* quashing the decision of the first respondent to issue a deportation order in respect of the applicant.

McGovern J refused the relief sought, holding that the applicant was out of time and there were no good or sufficient reasons for extending the period to enable the applicant challenge the decision of the second respondent. The first respondent complied with his obligations under the legislation and there was no basis for quashing the deportation order.

I(H) v Minister for Justice, Equality and Law Reform (respondent), High Court, Mr Justice McGovern, 19/6/2007, 2005 no 1035 JR [FL14500]

INTELLECTUAL PROPERTY

Copyright

Assessment of damages – innocent infringer defence – discovery of infringement – quantification of damages – convoyed goods principle – damage to business generally – aggravated and exemplary damages – Copyright and

Related Rights Act 2000, s128. The plaintiff claimed that its copyright in an electronic point-of-sale software product known as 'iTouch' had been infringed by the defendants. Liability was conceded and the plaintiff elected for an assessment of damages rather than an account of profits.

Kelly J held that there would be judgment for the plaintiff against the first and second defendants in the total sum of €214,000.

Retail Systems Technology Ltd (plaintiff) v McGuire (defendant), High Court, Mr Justice Kelly, 2/2/2007, 2005 no 2599 P [FL14486]

PLANNING AND ENVIRONMENTAL LAW

Social and affordable housing

Letters of compliance – legitimate expectation – limits of expectation – Planning and Development Act 2000, part V – Planning and Development (Amendment) Act 2002.

These proceedings concerned the legal entitlement, if any, of the defendant to alter the previously existing practice of issuing what had come to be called 'letters of compliance' in relation to the payment of financial contributions required under a planning permission. The issues concerning certificates of compliance were inextricably linked to the statutory regime in respect of social and affordable housing.

Clarke J held that he would make a declaration to the effect that the defendant was obliged to make available certificates of compliance in respect of any unit within the development

unless the defendant had reasonable grounds for believing that the grant of such a certificate would facilitate a sale that would deprive the defendant of the opportunity to obtain the benefit of obtaining units in the development under part V. **Glenkerrin Homes (plaintiff) v Dun Laoghaire Rathdown County Council (defendant), High Court, Mr Justice Clarke, 26/4/2007, 2006 no 5574 P** [FL14499]

PRACTICE AND PROCEDURE

Delay

Want of prosecution – interest of justice – whether plaintiffs justified in delaying proceedings – whether balance of justice in favour or against matter proceeding – whether proceedings should be dismissed.

The plaintiffs brought proceedings alleging corruption, misfeasance in public office, fraud, and deceit against the state defendants in connection with the 1995 decision to award a mobile phone licence to the other defendants in preference to the plaintiffs' application. The state defendants brought a motion seeking to have the plaintiffs' claims against them dismissed pursuant to the

inherent jurisdiction of the court on the grounds of delay and want of prosecution and in the interest of justice. The plaintiffs submitted, among other things, as a reason for the delay, the fact that they were awaiting the outcome of the inquiries in the Moriarty Tribunal before proceeding with the High Court action.

Mr Justice Gilligan dismissed the plaintiffs' claims as against the state defendants, holding (1) that the inquisitorial inquiry before the Moriarty Tribunal could have no bearing on the outcome of the within proceedings in the High Court and failed to excuse the delay; (2) that the factors to be considered in exercising the inherent jurisdiction of the court to dismiss were (a) whether the defendant contributed to the lapse of time, (b) the nature of the claims, (c) the probable issues to be determined, in particular whether there would be factual issues or only legal issues, (d) the nature of the principal evidence, in particular whether there would be oral evidence, (e) the availability of relevant witnesses, (f) the length of the lapse of time, and in particular the length of time between the acts or omissions in relation to which the court

would be asked to make factual determinations and the probable trial date; (3) that the delay was both inordinate and inexcusable; (4) that where (a) the responsibility for inordinate and inexcusable delay rested primarily with the plaintiff, (b) there was presumed prejudice of a moderate nature, (c) the issues to be determined were of a substantial commercial nature, (d) the actions leading to the delay involved were deliberate and conscious, (e) the prospects of a fair trial had been undermined, and (f) the plaintiff had failed after a late start to advance the proceedings expeditiously, the balance of justice favoured the dismissal of the proceedings; (5) that the *European Convention on Human Rights* was an extra factor to be added into consideration, subject to the application of existing Irish law and jurisprudence.

Comcast International (plaintiff) v Minister for Public Enterprise (defendant), High Court, Mr Justice Gilligan, 13/6/2007, 2001 no 9223 P [FL14542]

TORT

Professional negligence

Practice and procedure – Medical

Council – cancel decision – onus of proof – evidence – beyond reasonable doubt – whether decision of Medical Council correct – Medical Practitioners Act 1978.

The deceased had lodged a complaint with the Medical Council in relation to his medical treatment. The Medical Council asked a fitness-to-practice committee to inquire into the conduct of the appellant as to professional misconduct, which formed an opinion that professional misconduct existed. Extensive evidence was given as to the treatment.

Finnegan J held that the decision of the Medical Council would be cancelled. Insufficient evidence or findings of fact were adduced to support the validity of the decision. The evidence had to establish findings of fact beyond all reasonable doubt.

O'Connor (appellant) v Medical Council (respondent), High Court, Mr Justice Finnegan, 17/7/2007, 2005 638 Sp [FL14487] 

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News from the EU and International Affairs Committee

Edited by TP Kennedy, Director of Education, Law Society of Ireland

Recent developments in European law

CONTRACT

Scottish & Newcastle v Othon Galanos [2008] UKHL 11. The case concerned a contract for the sale of goods. The contract was characterised as a contract FOB (free on board). The invoices referred to Cyprus as the place of delivery. The question considered was the interpretation of article 5(1)(b) of the *Brussels I Regulation* (44/2001) relating to contracts for the sale of goods or the supply of services. This provides that the courts of the place of performance of the contract have jurisdiction. In the case of contracts for the sale of goods, this is deemed to be where the goods have been or are to be delivered. The House of Lords held that this jurisdiction was England, as possession, title and risk had passed to the seller in England under English law, the law governing the contract.

EMPLOYMENT

Case C-438/05, *International Transport Workers' Federation & The Finnish Seamen's Union v Viking Line ABP & Oü Viking Line Eesti*, 11 December 2007. Viking Line is a Finnish ferry company that owns the *Rosella*, a ferry that sails between Finland and Estonia, flying the Finnish flag. Its crew are members of the Finnish Seamen's Union (FSU), which is affiliated to the International Transport Workers' Federation (ITF). The *Rosella* was operating at a loss. In October 2003, Viking notified the FSU of its intention

to reflag the *Rosella* in Estonia, which would enable Viking to employ an Estonian crew at a lower rate of pay than that applicable in Finland. In November, the ITF, following a request from the FSU, sent a circular to its affiliates requiring them to refrain from entering into negotiations with Viking, with the threat of sanctions if they failed to comply. This prevented the Estonian trade unions from entering into negotiations with Viking. The FSU laid down conditions on the renewal of the manning agreement with Viking and announced its intention to strike. It required an increase in the number of the crew on the *Rosella* and the conclusion of a collective agreement under which, even if the ship were reflagged, Viking would continue to comply with Finnish labour law and would not lay off crew members. After Estonia joined the EU, Viking brought proceedings in Britain, where the ITF has its seat. Viking requested that the ITF withdraw the circular and that the FSU be ordered not to infringe its right of establishment with regard to the reflagging of the ship. The Court of Appeal referred a number of questions to the ECJ on the application of rules on freedom of establishment and free movement to the facts of the case. The ECJ confirmed that the treaty rules on establishment apply to collection action initiated by a trade union against an undertaking in order to induce it to enter into a collective agreement, the terms

of which are liable to deter it from exercising that freedom. The establishment provisions confer rights on a private undertaking, which can be relied on against a trade union negotiating about conditions of employment and the pay of workers. The conditions laid down for registration of vessels should not form an obstacle to freedom of establishment. Collective action, such as that envisaged by the FSU, has the effect of making Viking's exercise of its right to freedom of establishment less attractive or pointless. The threatened action of the FSU prevents both Viking and its Estonian subsidiary from enjoying the same treatment in Estonia as other economic operators established there. Collective action taken in order to implement the ITF's policy of combating the use of flags of convenience must be considered to be at least liable to restrict Viking's exercise of its right of freedom of establishment. Such a restriction can only be accepted if it pursues a legitimate aim, such as the protection of workers. It is for the national court to determine whether the objectives pursued by the FSU and the ITF by means of the collective action that they initiated concerned the protection of workers. The objective of the FSU was to protect the jobs and conditions of employment of the members of the union likely to be adversely affected by the reflagging of the ship. However, this objective would not be regarded as tenable if it were established

that the jobs or conditions of employment at issue were not jeopardised or under serious threat. If there was a serious threat, it would then have to be ascertained whether the collective action is suitable for the achievement of the objective pursued and does not go beyond what is necessary to achieve that objective. The national court will have to examine whether, under the national rules and collective agreement law, the FSU did not have other means at its disposal that were less restrictive of freedom of establishment in order to bring the collective negotiations entered into with Viking to a successful conclusion and whether that trade union had exhausted those means before initiating such action.

FAMILY LAW

Case C-435/06, C, 27 November 2007. In February 2005, a social welfare board in Sweden ordered the taking into care of two children who were living in that town, with a view to placing them with a foster family. Both the children have Finnish nationality and the older child also has Swedish nationality. The following month, the mother of the two children, Mrs C, took up residence in Finland. An administrative court confirmed the decision of the social welfare board in Sweden, and an appeal taken by C against the decision was dismissed. The Swedish police asked their Finnish counterparts to assist them in the

enforcement of that decision. The Finnish police agreed to assist, and Mrs C challenged that decision in the Finnish courts. The matter was appealed to the Supreme Administrative Court, which considered that an interpretation of the scope of Regulation 2201/2003 was necessary for it to decide the dispute. Decisions on the taking into care and placement of children are governed by public law in Finland. Thus, it sought guidance from the ECJ on whether such decisions fell within the definition of 'civil matters' in the regulation. In Finland, child protection requires the adoption of not just one decision, but a whole series of decisions. The court asked for guidance on whether the regulation covers both the taking into care and the placement of children, or solely the placement decision. The ECJ indicated that, while taking a child into care does not feature expressly among the matters that, according to article 1(2) of the regulation, relate to parental responsibility, that does not exclude a decision to take a child into care from the scope of the regulation. The court then turned to the interpretation of 'civil matters'. It held that if decisions on the taking into care and placement of a child, which in some states are governed by public law, were for that reason alone to be excluded from the scope of the regulation, the very purpose of mutual recognition and enforcement of decisions in matters of parental responsibility would be compromised. The ECJ held that such decisions are covered by the term 'civil matters'.

INSURANCE

Case T-289/03, *British United Provident Association Ltd (BUPA) and Others v Commission of the European Communities*, 12 February 2008. Between 1957

and 1996, the Voluntary Health Insurance Board (VHI) was the only operator on the private health insurance market in Ireland. Between 1994 and 1996, this market was liberalised and, on 1 January 1997, BUPA Ireland commenced operations. It is now the VHI's main competitor. The legislation that allowed for competition in the market provided for the establishment of a risk equalisation system administered by a state body – the Health Insurance Authority. This system provides for a levy to be paid by insurers with a risk profile below the average market risk profile and for a corresponding payment to insurers with a risk profile higher than the average. The system specifies different thresholds at which the payments may be activated. At present, BUPA should transfer funds to VHI under the system. In 2003, Ireland notified the system to the commission, in accordance with the commission's rules on state aid. The commission decided not to raise objections to it. BUPA brought an action before the CFI seeking annulment of that decision. The CFI dismissed the action. The court noted that member states have wide discretion as to the definition of services of general economic interest, particularly in the area of health, which falls almost exclusively within their competence. The control that the EC institutions are authorised to exercise is limited to ascertaining whether there is a manifest error of assessment. However, where a member state invokes the existence and the need for the protection of a special economic interest, certain minimum criteria must be satisfied. In particular, that must be an action of a public authority entrusting the operations in question with a special general economic interest mission that must be universal and compul-

sory. Those conditions are satisfied in this case. The legislation is the act of a public authority. The fact that insurers are required to cover any person requesting insurance means that the private medical insurance services are compulsory and universal. The commission was thus entitled to consider that the imposition of the payment scheme related to a service of general economic interest mission. The court found that the commission was correct in finding that risk equalisation was necessary where insurers are required to cover any person at the same price and independently of the individual risk in order to ensure the cross-subsidy of premiums between the generations to permit each such insurer to bear only the burdens associated with the average market risk profile. In addition, the system seeks only to compensate insurers for the financial consequences arising from the insurance obligations, which prohibit them from setting premiums according to the risk insured and from rejecting the 'bad' risks.

Case C-436/06, *FBTO Schadeverzekeringen NV v Jack Odenbreit*, 13 December 2007. Jack Odenbreit is domiciled in Germany and was injured in a road traffic accident in the Netherlands. The other party to the accident was insured by FBTO. Mr Odenbreit brought proceedings in the German courts against FBTO. FBTO contested the jurisdiction of the German courts and the case reached the Federal Court of Justice. It referred the matter to the ECJ, asking whether article 11(2) of Regulation 44/2001 means that an injured party can bring an action against an insurer in the courts of the member state where the injured party is domiciled, provided that such a direct action is permitted and the insurer is domiciled in a member state. The

ECJ considered the special jurisdictional rules relating to insurance that are contained in articles 8 to 14. Article 9 allows for an insurer to be sued in the member state where it is domiciled or where the plaintiff is domiciled if the action is brought by the policyholder, the insured or a beneficiary. Article 11(2), concerning liability insurance, refers back to article 9 in the case of actions brought by the injured party directly against the insurer. The reference back leads to a widening of the scope of the article 9 rule to categories of plaintiff other than the policyholder, the insured or the beneficiary of the insurance contract. Thus, the reference adds injured parties to the list of plaintiffs contained in article 9(1)(b). These provisions are designed to give more favourable protection to the weaker party in a dispute than the general rules of jurisdiction. To deny the injured party the right to bring a case in the courts of his own domicile would deprive him of the same protection as that afforded by the regulation to other parties regarded as weaker in disputes relating to insurance. This would be contrary to the spirit of the regulation, one of the aims of which was to strengthen such protection relative to the *Brussels Convention*.

INTELLECTUAL PROPERTY

Case C-276/06, *Productores de Música de España (Promusicae) v Telefónica de España SAU*, 29 January 2008. Promusicae is a Spanish non-profit-making organisation of producers and publishers of musical and audiovisual records. It applied to the Spanish courts for an order that Telefónica should disclose the identities and physical addresses of certain persons to whom it provided internet access services, whose IP address and date and time of

connection were known. The applicant argued that these individuals were using file exchange programmes to provide access to recordings in which their members held the exploitation rights. It sought disclosure of this information so that it could bring civil proceedings against these persons. Telefónica argued that communication of this data was only authorised in a criminal investigation or for the purpose of safeguarding public security and national defence. The Spanish court asked the ECJ whether EC law requires member states to lay down an obligation to communicate personal data in the context of civil proceedings to ensure effective protection of copyright. The ECJ noted that the directives on the protection of personal data permitted exceptions such as measures necessary for the protection of the rights and freedoms of others. These

directives should be interpreted as expressing the EC legislature's intention not to exclude from their scope the protection of the right to property or situations in which authors seek to obtain that protection in civil proceedings. Member states are not precluded from laying down an obligation to disclose personal data in the context of civil proceedings. However, they are not compelled to lay down such an obligation. There is equally no obligation on member states to lay down an obligation to communicate personal data in the context of civil proceedings to ensure effective protection of copyright. This reference raises the question of the need to reconcile the requirements of the protection of different fundamental rights, namely the right to respect for private life on the one hand and the rights to protection of property and effective remedy on the other. In transposing

directives on intellectual property and the protection of personal data, member states must allow a fair balance to be struck between the various fundamental rights protected by the EC legal order. When implementing the measures transposing those directives, the authorities and courts of member states must not only interpret their national law in a manner consistent with the directives, but also ensure that they do not rely on an interpretation of them that would be in conflict with those fundamental rights or with other general principles of EC law, such as the principle of proportionality.

Case T-134/06, *Xentral LLC v OHIM*, 13 December 2007. In 2000, the applicant sought to register the word sign 'PAGES-JAUNES.COM' as an EC trademark for various goods – printed matter, periodicals and directories. Following publica-

tion of the application, Pages Jaunes SA opposed the registration. OHIM refused the registration and in 2006 the Board of Appeal upheld this ruling. It said that the relevant goods were identical and there was the likelihood of confusion in France. The trademark applied for could be perceived as the internet version of the paper-based directory bearing the 'LES PAGES JAUNES' trademark. Consumers may consider the goods in question to come from the same undertaking. The applicant contested that decision before the CFI. The CFI found that the marks in question are similar. The Board of Appeal was fully entitled to find that the similarity between the marks was striking, both at the visual and aural levels and at the conceptual level. The court held that there was the likelihood of confusion and, on that basis, upheld the decision of the Board of Appeal. **G**

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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 2 May 2008)*

Regd owner: Padraic Bruen and Matthew Mulvey; folio: 9327F; lands: Staplestown Road, Carlow and barony of Carlow; **Co Carlow**

Regd owner: Peter Carroll (deceased); folio: 6051F; lands: Knocklishen Beg and barony of Rathilly; **Co Carlow**

Regd owner: Hugh Kevin Reilly, Carrigan, Co Cavan; folio: 9828; lands: Carrigan; **Co Cavan**

Regd owner: Mary Garry; folio: 1350; lands: townland of Inishmacowney and barony of Clonderalaw, Co Clare; area: 5.6479 hectares; **Co Clare**

Regd owner: Frank J Slattery and Mary Slattery; folio: 4770F; lands: townland of Ballyellery and barony of Corcomroe; area: 11.2040 hectares; **Co Clare**

Regd owner: Shannon Free Airport Development Company Limited; folio: 5382; lands: townland of Ballycasey More and barony of Bunratty Lower; area: 10.7848 hectares; **Co Clare**

Regd owner: William Cronin (deceased) and Marie Cronin; folio: 45474F; lands: plot of ground situate in the townland of Fergus and barony of Muskerry East in the county of Cork; **Co Cork**

Regd owner: David Richards; folio: 55321; lands: plot of ground situate in the townland of Castleredmond and barony of Imokilly in the county of Cork; **Co Cork**

Regd owner: (a) CK22829F Liam Dunne (deceased) and (b) CK432 64F Liam Dunne (deceased) and Rosalie Dunne; folios: (a) 22829F and (b) 43264F; lands: (a) a plot of ground situate in the townland of (1), (2), (3) Ballylongane and (4)

LAW SOCIETY Gazette PROFESSIONAL NOTICE RATES

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- **Lost land certificates** – €138.50 (incl VAT at 21%)
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Shanagary North and barony of Imokilly in the county of Cork, (b) a plot of ground situate in the townland of Ballycotton and barony of Imokilly in the county of Cork; **Co Cork**

Regd owner: Catherine Walsh (deceased); folio: 37301; lands: plot of ground situate in the townland of Ballymagooly and barony of Fermoy; **Co Cork**

Regd owner: Biddy Barr, Magheraclogher, Bunbeg, Co Donegal; folio: 3693F; lands: Magheraclogher; **Co Donegal**

Regd owner: Elizabeth Fusco, Tirhomin, Milford, Co Donegal; folio: 11464F; lands: Tirhomin, Co Donegal; **Co Donegal**

Regd owner: John James McGuinness, Roshine, Killybegs, Co Donegal; folio: 23071; lands: Roshine, Co Donegal; **Co Donegal**

Regd owner: Martin McLaughlin, Main Street, Kilcar, Co Donegal; folio: 19812F; lands: Kilcasey; **Co Donegal**

Regd owner: Matthew Stevenson, Ballygay, Milford, Co Donegal; folio: 7710; lands: Ballylin; **Co Donegal**

Regd owner: Margaret Carton and Cathleen Oldham; folio: DN12619; lands: property situate in the townland of Westmanstown (ED Rathcoole) in the barony of Newcastle; **Co Dublin**

Regd owner: Denis Feeley and Ellen Ruane; folio: DN16435L; lands: property situate in the townland of Sheepmoor and barony of Castleknock, situate to the east of Coolmine Road in the town of Blanchardstown; **Co Dublin**

Regd owner: Thomas Finn and Suphaphorn Finn; folio: 2764L;

lands: no 114 Collins Avenue West, Finglas, Dublin 9; **Co Dublin**

Regd owner: Padraig Judge and Eddie Doyle; folio: 108091F; lands: no 11 Westbourne Green, Westbourne Manor, Clondalkin, Dublin 22; **Co Dublin**

Regd owner: Siobhan Reid; folio: DN60862F; lands: property situate in the townland of Shanganagh and barony of Rathdown, known as no 26 Dorney Court, Shankill, Co Dublin; **Co Dublin**

Regd owner: Siobhan Reid; folio: DN74761L; lands: property situate in the townland of Shanganagh and barony of Rathdown, Co Dublin; **Co Dublin**

Regd owner: Siobhan Reid; folio: DN74756L; lands: the property known as 26 Dorney Court, Shankill, Co Dublin; **Co Dublin**

Regd owner: Patrick V Smyth; folio: DN30290F; lands: property known as 20 Glasnamana Road, situate on the west of Ballygall Road; **Co Dublin**

Regd owner: Sean Harte and Maria Patricia Harte; folio: DN89044F; lands: property known as 7 Woodview Grove, Blanchardstown, situate to the south of Clonsilla Road in the town of Blanchardstown; **Co Dublin**

Regd owner: James Beckett; folio: 46885; lands: townland of Ballygar and barony of Killian; area: 22 perches; **Co Galway**

Regd owner: Donal Hickey and Margaret Hickey; folio: 34599F; lands: townland of Knocknacarragh and barony of Galway; area: 0.02 hectares approximately; **Co Galway**

Regd owner: Michael McGann (deceased); folio: 42820; lands:

townland of Baunoges and barony of Tiaquin; area: 0.4046 hectares; **Co Galway**

Regd owner: Hermann Scho; folio: 44799; lands: townland of Kilkieran and barony of Ballynahinch; area: 0.3010 hectares; **Co Galway**

Regd owner: Thomas Coyne and Bernadette Coyne; folio: 18085F; lands: townland of Ballynahallia and barony of Moycullen; area: 0.555 acres; **Co Galway**

Regd owner: Bryan Kelly and Alan Kelly; folio: 39978F; lands: situate in the townland of Gannoughs and barony of Ballynahinch and county of Galway; **Co Galway**

Regd owner: James Cox; folio: 8585; lands: townland of Cummeen Upper and barony of Glanarought; **Co Kerry**

Regd owner: Denis Lucey; folio: 8168; lands: townland of Gortnanooran and barony of Corkaguiny; **Co Kerry**

Regd owner: Michael Ashe and Catherine Ashe, 4 Oldtown, Sallins Road, Naas, Co Kildare; folio: 20162F; lands: townland of Monread South, known as 4 Oldtown Court, Naas, Co Kildare, in the barony of Naas North in the electoral division of Naas Urban, Co Kildare; **Co Kildare**

Regd owner: Kathleen Cody and Paul Duggan, 7 Butterstream Lawn, Clane, Co Kildare; folio: 25413F; lands: townland of Crockaun Commons and barony of Clane; **Co Kildare**

Regd owner: Tom Whelan and Angela Whelan of Tyrrellstown, Athy, Co Kildare; folio: 6065; lands: townland of Tyrrellstown and barony of Narragh and Reban West; **Co Kildare**

Regd owner: Sophie Shirley; folio: 17372; lands: Donaguile and barony of Fassadinin; **Co Kilkenny**
 Regd owner: Bridget Cleere; folio: 9882; lands: Listorlin and barony of Iverk; **Co Kilkenny**

Regd owner: John Phelan (deceased); folio: 16442F; lands: Killeen or Killeenlynagh (Maryborough East By) and barony of Maryborough East; **Co Laois**

Regd owner: Elsie Moloney; folio: 19114F; lands: townland of Mountblakeney and barony of Coshma; **Co Limerick**

Regd owner: William J Ambrose; folio: 6078F; lands: townland of Gortnacraha Lower and barony of Connello Upper; **Co Limerick**

Regd owner: Daniel Kirby; folio: 27847; lands: townland of Mongfune and barony of Ownybeg; **Co Limerick**

Regd owner: Peter Reilly, Drumhaldry, Moyne, Co Longford; folio: 389; lands: Lettergullion, Co Longford; **Co Longford**

Regd owner: Kathleen Sheridan; folio: 32727; lands: townland of Sraheen and barony of Burrishoole; **Co Mayo**

Regd owner: (1) Henry Barrett, Birdhill, Drumconrath, Co Meath; folio: 987F; lands: Birdhill; (2) Henry Barrett and Kathleen Barrett, Drumconrath, Navan, Co Meath; folio: 1834F; lands: Rathcoon; **Co Meath**

Regd owner: Elizabeth Burke, 57 Bourne Avenue, Ashbourne, Co Meath; folio: 1471L; lands: Killegland; **Co Meath**

Regd owner: Joseph Sheridan, Johnstown, Enfield, Co Meath; folio: 23033; lands: Johnstown; **Co Meath**

Regd owner: Sean G Treanor and Anne M Treanor, Drumbart, Tydavnet, Co Monaghan; folios: 2049 and 2054; lands: Drumfurrer; **Co Monaghan**

Regd owner: Brendan Cosgrove; folio: 12100; lands: Fenter and barony of Geashill; **Co Offaly**

Regd owner: Anne Scully; folio: 9026; lands: Ballycollin and barony of Ballyboy, Co Offaly; **Co Offaly**

Regd owner: Mildred Beirne; folio: 2229F; lands: townland of Loughlinn Demesne and barony of Frenchpark; **Co Roscommon**

Regd owner: Patrick Joseph McCrann; folio: 13990; lands: townland of Sheepwalk and Runnabehy and barony of Frenchpark, Co Roscommon; **Co Roscommon**

Regd owner: Mae Keane; folio: 11810F; lands: townland of Curry and barony of Athlone South; area: 5.767 hectares; **Co Roscommon**

Regd owner: Annie Maria McDermott (deceased); folio: 33341; lands: townland of Strokestown and barony of Roscommon; **Co Roscommon**

Regd owner: Michael Leyden; folio: 2783; lands: townland of Doonfore and barony of Carbury; area: 3.288 hectares; **Co Sligo**

Regd owner: Keith Barry; folio: 35047F; lands: townland of Cashel and barony of Middlethird; **Co Tipperary**

Regd owner: James Hennessy; folio: 24695; lands: townland of Cormackstown/Beakstown and barony of Eliogarty; **Co Tipperary**

Regd owner: John Hourigan; folio: 3405; lands: townland of Bawnbrack and barony of Clanwilliam; **Co Tipperary**

Regd owner: Geraldine O'Dwyer; folio: 27984; lands: townland of Clonoulty Hill and barony of Kilnamanagh Lower; **Co Tipperary**

Regd owner: Gerard O'Meara and Ina O'Meara; folio: 28005F; lands: townland of Stonepark and barony of Ormond Lower; **Co Tipperary**

Regd owner: Sean and Mary Minogue; folio: 39914; lands: townland of Shesherahgkeale and barony of Ormond Lower; **Co Tipperary**

Regd owner: Helen Askins; folio: 2838; lands: plot of ground situate in the townland of Derrinlaur Lower and barony of Upperthird in the county of Waterford; **Co Waterford**

Regd owner: Thomas Neville (deceased); folio: 3423; lands: plot of ground situate in the townland of Ballyroe and barony of Coshmore and Coshbride in the county of Waterford; **Co Waterford**

Regd owner: James Whelan; folio: 8697; lands: plot of ground situate in the townland of Kingsmeadow and barony of Middlethird in the county of Waterford; **Co Waterford**

Regd owner: Desmond Purcell; folio: 4217L; lands: plot of ground situate to the south of Scotch Quay in the parish of St John's Without, Division A, and in the city of Waterford; **Co Waterford**

Regd owner: Paul Walsh and Amanda Flynn; folio: 20078F; lands: plot of ground known as no 13 Williamstown Park situate in the parish of Ballynakill, Division A1, and in the city and county of Waterford; **Co Waterford**

Regd owner: John Murphy; folio: 254F; lands: Drumgold, known as Clonhaston, and barony of Ballaghkeen South, Co Wexford; **Co Wexford**

Regd owner: Patrick Kenny; folio: 19374F; lands: Rosminogue and barony of Gorey; **Co Wexford**

Regd owner: Damien Kiernan, 14 Grattan Park, Greystones, Co Wicklow; folio: 10203; lands: townland of Kindlestown Lower and barony of Rathdown; **Co Wicklow**

WILLS

Burke, William (deceased), late of 114 Shelmartin Avenue, Fairview, Dublin 3, who died on 1 January 2008. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Paul O'Sullivan & Co, Solicitors, Upper Floor, 63 Deerpark Road, Mount Merrion, Co Dublin; tel: 01 278 4050, fax: 01 278 4052, email: pos@indigo.ie

Cunnea, Andy (deceased), otherwise known as Andrew Quinn, late of Meenaneary, Carrick, Co Donegal. Would any person having knowledge of a will executed by the above-named deceased, who died on 10 March 2008, please contact O'Donnell McKenna, Solicitors, Waterloo Place, Donegal Town, Co Donegal; tel: 074 974 0444, fax: 074 974 0455

Farrell, Peadar (deceased), otherwise Peter Joseph, late of Bond House, Derrymullen, Robertstown, Co Kildare, haulage contractor (deceased), who died on 23 December 2007. Would any person having knowledge of a will made by the above-mentioned deceased please contact Wilkinson & Price, Solicitors, South Main Street, Naas, Co Kildare; tel: 045 897 551, fax: 045 876 478, email: sohara@wilkinsonandprice.ie

Gillan, William Stuart (deceased), late of 64 Ringsend Park, Ringsend, Dublin 4, who died on 30 January 2008. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Thomas P O'Reilly, Solicitors, 20 Sandymount Green, Dublin 4; tel: 01 260 2099, fax: 01 260 2195, email: info@torlegal.com

Leonard, Gerard (otherwise Jerry) (deceased), late of Ballywilliam, Kilcormac, Co Offaly. Would any person having knowledge of a will made by the above-named deceased, who died on 5 July 2007, please contact Messrs Donal Farrelly & Co, Solicitors, Tullagh House, High Street, Tullamore, Co Offaly; tel: 057 932 1324, fax: 057 932 1328

Meehan, Mary Elizabeth (otherwise Maura) (deceased), late of 10 Annville Grove, Dundrum, Dublin 14. Would any person having knowl-

edge of a will made by the above-named deceased, who died on 14 March 2008, please contact Cora Higgins, Regan McEntee & Partners, Solicitors, High Street, Trim, Co Meath; tel: 046 943 1202, fax: 046 943 1932, email: chiggins@reganmcen-tee.ie

McGann, Patricia (deceased), late of 22 Ratoath Drive, Ratoath, Finglas, Dublin 11, who died on 12 March 2007. Would any person having knowledge of any will made by the above-named deceased please contact Bowler Geraghty & Co, Solicitors, 2 Lower Ormond Quay, Dublin 1, under reference 'KOB'

Quail, Christopher (deceased), late of Castletown, Kilberry, Navan, Co Meath, who died on 16 March 1989 at Our Lady's Hospital, Navan, Co Meath. Would any person having knowledge of a will made by the above-named deceased please contact Oliver Shanley & Co, Solicitors, 62-63 Academy Street, Navan, Co Meath; tel: 046 909 3200, fax: 046 902 9937

Rainsford, Sara (deceased), late of Cappanahanagh, Murroe, Co Limerick, who died on 24 November 2007. Would any person having knowledge of a will made by the above-named deceased please contact Patrick J D'Alton, solicitor, no 119 O'Connell Street, Limerick; tel: 061 417 2886

Sheridan, Donald JR (deceased), late of St Germans, Vico Road, Dalkey, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 9 February 2008, please contact Coonan Cawley, Solicitors, Wolfe Tone House, Naas Town Centre, Naas, Co Kildare; tel: 045 899 571, fax: 045 899 572, email: office@coonanawley.ie

Timothy, Patrick (deceased), late of Corgarva, Creggs, Co Galway, who died on 19 December 1984. Would any person having knowledge of a will made by the above-named deceased please contact John O'Leary & Co, Solicitors, Millennium House, Main Street, Tallaght, Dublin 24; tel: 01 427 1000, fax: 01 427 1001, email: info@johnolearysolicitors.com

MISCELLANEOUS

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Seven-day publican's licence for sale. Contact: SF Hughes & Co, Solicitors, Castlebar Road, Westport, Co Mayo; tel: 098 28422

Seven-day on-licence for sale. Please contact: Gearóid McGann, Sweeney McGann, Solicitors, 67 O'Connell Street, Limerick; tel: 061 418 277, fax: 061 319 496, email: gmcgann@sweeneymcgann.com

Thinking of retiring? Dublin north. Shannons of Swords have acquired adjoining premises. They now wish to acquire a solicitor's practice or take over a retiring solicitor's caseload/clientele. Reply in confidence to Vincent Shannon at 01 840 1780 or Vincent@shannons.ie

James Shanley, born at Corgowan, Strokestown, Co Roscommon, Republic of Ireland, on 26 October 1936. The above named or any person aware of his current whereabouts is requested to contact the under-named solicitors.

Date: 2 May 2008

Signed: Peter A Connellan & Co, Solicitors, Strokestown, Co Roscommon, Republic of Ireland; tel: (00353) 71 963 3009

TITLE DEEDS

Title deed search re: 1 Churchyard Lane, Blackrock, Cork. Any solicitor holding/having knowledge of title deeds to the property at 1 Churchyard Lane, Blackrock, Cork, please contact: John Sheehan, JW O'Donovan, Solicitors, 53 South Mall, Cork; tel: 021 730 0200, email: jsheehan@jwod.ie

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Mel Bates and Patricia Bates

Any person having a freehold estate or any intermediate interest in all that

and those the property known as no 17 Fairview Strand, in the parish of Clontarf, barony of Coolock and city of Dublin, held under an indenture of sublease dated 1 September 1964 made between Kathleen Mary Agnes Maguire of the one part and James Flynn of the other part for a term of 88 years from 25 July 1964, subject to the yearly rent of £10 and subject to the covenants on the part of the lessee and conditions therein contained.

Take notice that Mel Bates and Patricia Bates, being the persons currently entitled to the lessees' interest in the premises, intend to apply to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

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

Date: 2 May 2008

Signed: Ralph McMahon Solicitors (solicitors for the applicants), Suite 130-132 The Chapel Building, Mary's Abbey, Dublin 7

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 Colm Carroll

Take notice that any person having interest in the freehold estate or any intermediate interest in the following property: all that the premises known as number 100/100A Parnell Street, formerly Great Britain Street, in the parish of St Thomas and city of Dublin, held under a lease dated 7 August 1865, made between William Todd of the one part and Ellen Cleary of the other part for a term of 868 years from 25 March 1865, subject to the yearly rent of 22 pounds, ten shillings sterling.

Take notice that Colm Carroll intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the afore-



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

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

Date: 2 May 2008

Signed: Smith Foy & Partners (solicitors for the applicant), 59 Fitzwilliam Square, Dublin 2

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the property known as Ferrybank Mills, North Wharf, Dock Road, Ferrybank, in the city and county of Waterford: an application by Zella (Waterford) Limited

Take notice that any person having an interest in the freehold estate or any superior interest in part of the property known as all that Ferrybank Mills, North Wharf, Dock Road, Ferrybank, in the city and county of Waterford, held under one of the following leases, namely a lease dated 18 August 1857 made between Thomas Samuel Grubb of the one part and William Parle of the other part for the term of 300 years from 25 March 1857, subject to the yearly rent of £40.0s.0d; a lease dated 9 October 1854 made between Thomas Samuel Grubb of the one part and Charles Smith and Henry Penrose of the other part for the term of 300 years from 29 September 1854,

subject to the yearly rent of £40.0s.0d; and a lease dated 14 October 1758 made between John Congreve of the one part and John Hulings of the other part for the term of 900 years from 12 May 1790, subject to the yearly rent of £3.0s.0d, should give notice of their interest to the undersigned solicitors.

And take notice that the applicant, Zella (Waterford) Limited, intends to submit an application to the county registrar for the county of Waterford for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the said property is called upon to furnish evidence of title to the said property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said applicant, Zella (Waterford) Limited, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Waterford for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion are unknown or unascertained.

Date: 2 May 2008

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

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by O'Regan Brothers (Electrical) Limited of 13 Fitton Street, in the city of Cork

Take notice any person having interest in the freehold estate of the following property: 26b and 26d Wellington Road, otherwise 5/6

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CHARTERED VALUATION SURVEYORS

Belgrave Avenue, in the city of Cork. Take notice that O'Regan Brothers (Electrical) Limited intend to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all superior interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below named.

In particular, such person or persons who are entitled to the interest of Margaret Coughlan, deceased, pursuant to a lease of 25 March 1965

between Margaret Coughlan and O'Regan Brothers (Electrical) Limited for a term of 83 years from 25 March 1965 in lands, the stables, coach house and gardens at the rear of the premises known as no 26 Wellington Road, in the parish of St Anne Shandon and city of Cork, should provide evidence of their title to the below named.

In default of any such notice being received, the applicant, O'Regan Brothers (Electrical) Limited, intends to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold in each of the aforesaid premises are unknown or unascertained.

Date: 2 May 2008

Signed: Chris O'Shea, Solicitors, Woodview, Glanmire, Co Cork

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-1987 and in the matter of an application by Richard Power and Jytte Power: notice of intention to acquire the fee simple

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

1. Description of land to which this notice refers: all that and those the lands and premises now known as 10 Avondale Crescent, Killiney, in the county of Dublin, and as more particularly described in an indenture of lease dated 30 June 1956 and made between Richard Bohan of the one part and Robert Elliott Nixon of the other part and therein described as site

number 20 Avondale Crescent, Killiney Road, situate in the barony of Rathdown and county of Dublin, and as more particularly delineated on the map attached thereto.

2. Particulars of applicants' lease: the applicants hold the lessee's interest in the said lands under the said lease dated 30 June 1956 and made between Richard Bohan of the one part and Robert Elliott Nixon of the other part, whereby the lands and hereditaments as therein described were demised to the lessee therein for a term of 300 years from 5 October 1955 (less the last three days thereof).

Date: 2 May 2008

Signed: Paul MacCormack (solicitor for the applicants), Coyle Kennedy McCormack Solicitors, Thomas Street, Castleblayney, Co Monaghan

In the matter of the Landlord and Tenant (Ground Rents) Act 1967-1987 and in the matter of an application by Jimmy Conlon and Kathleen O'Neill: notice of intention to acquire the fee simple

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

1. Description of land to which this notice refers: all that and those the lands and premises now known as 9 Avondale Crescent, Killiney, in the county of Dublin, and as more particularly described in an indenture of lease dated 14 December 1959 and made between Frances Bohan of the first part, Richard Belton of the second part and John Quinn of the third part, and therein described as site number 21 Avondale Crescent, Killiney Road, situate in the barony of Rathdown and county of Dublin, and

as more particularly delineated on the map attached thereto.

2. Particulars of applicants' lease: the applicants hold the lessee's interest in the said lands under the said lease dated 14 December 1959 and made between Frances Bohan of the first part, Richard Belton of the second part and John Quinn of the third part, whereby the lands and hereditaments as therein described were demised to the lessee therein for a term of 288 years from the 14 December 1959 (subject to a yearly rent of £18).

Date: 2 May 2008

Signed: Tom Conlon Solicitors (solicitors for the applicants), 14 South Leinster Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005, and in particular the Landlord and Tenant (Ground Rents) Act 1967, sections 8 and 17, and the Landlord and Tenant (Ground Rents) (No 2) Act 1978, sections 9 and 10: an application by Basil Good, Charles Henry Brett and Christopher Bennett

Take notice that any person having an interest in the freehold estate of the property at the rear of 33/35 Talbot Street, in the parish of St Thomas in the city of Dublin, being part of the property comprised in folios 141L and 77848L of the register of leaseholders, Co Dublin, and held under indenture of lease dated 11 February 1891 made between Robert Spencer and Edmund Spencer of the first part, Michael King of the second part and Joseph Downes of the third part for the term of 500 years from 1 July 1889 at the annual rent of £75.

Take notice that Basil Good, Charles Henry Brett and Christopher Bennett intend to submit an application to the county registrar for the city

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Law Society of Ireland

of Dublin 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, Basil Good, Charles Henry Brett and Christopher Bennett intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 2 May 2008

Signed: *Rutherford's (solicitors for the applicants), 41 Fitzwilliam Square, Dublin 2*

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant

(Ground Rents) (No 2) Act 1978: acquisition of fee simple (section 4 of the said act of 1967)

To any person having interest in the following property: all that piece or plot of ground heretofore built upon by Issac Gatchell, situate, lying and being in the town of Rathangan, barony of Offaly East and county of Kildare, together with the buildings thereon and appurtenants thereto and all other premises comprised in and demised by a lease for lives renewable forever dated 24 October 1799 and made between Joshua Pimm of the one part and Issac Gatchell of the other part, which said premises are subject to a perpetual fee farm rent of £14.14s.0d, since adjusted to £14.11s.6d per annum.

Take notice that John Dunne (otherwise Sean Dunne) and Anne Dunne hereby intend to submit an application to the county registrar for the county of Kildare for the acquisition in fee simple in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) to the leasehold interest created by the said indenture of lease for life perpetual

renewable forever made 24 October 1799, and made between Joshua Pimm of the one part and Issac Gatchell of the other part, are called upon to furnish evidence of title to the aforementioned

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*.

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

In default of any such evidence being adduced, Sean Dunne (otherwise John Dunne) and Anne Dunne intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Kildare at Naas Courthouse, Main St, Naas, Co Kildare, for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the fee simple in each of the aforesaid premises are unknown or unascertained.

Date: 2 May 2008

Signed: *Burns Nowlan (solicitors for the applicants), 31 Main Street, Newbridge, Co Kildare*

RECRUITMENT

Solicitor, semi-retired: experienced general practitioner experienced in all areas of law, interested in part-time/full-time or locum work. Please contact: 086 320 7180

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