

LAW SOCIETY **Gazette**

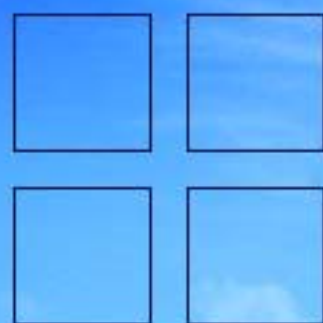
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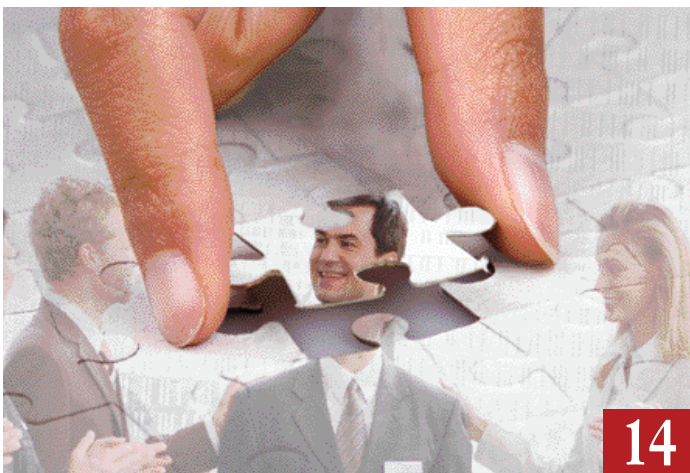
**On the cover**

Economic downturns and redundancies tend to go hand in hand, but what should you know about advising clients on any unfair dismissals claims that might arise?

PIC: REX FEATURES



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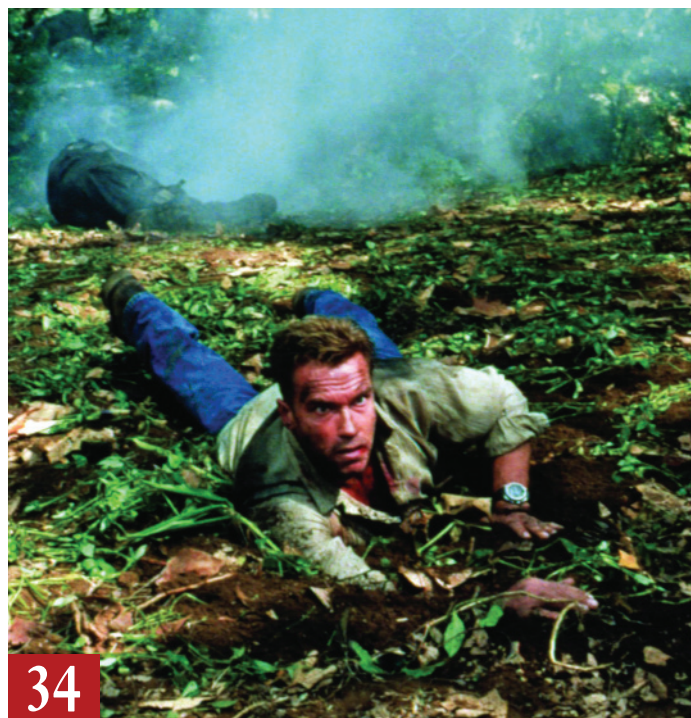
Given the many varying forms of collateral warranties, there are a number of points that should be considered, from various perspectives, when negotiating them. Margaret Austin assesses the lie of the land

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The dearth of rights for unmarried fathers is not serving the best interests of the child, says Roisin O'Shea in this abridged version of her 2008 essay for the Law Society's Law Reform Committee competition

42 Key to VAT on sales of property

The new VAT rules relating to property transactions came into force on 1 July. To assist with the complexities that may arise, Michael O'Connor has produced this key



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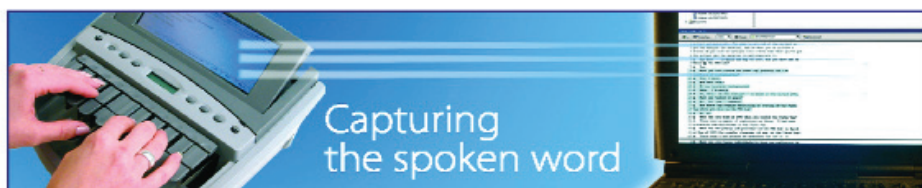
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Mair a chapail agus gheobhaidh tú féar

Solicitors in general can be very proud of the immense contribution they make in so many ways to our country and our community life. I understand the pain of hardworking colleagues at a time when our practices are under pressure.

Our professional calling is to represent our clients at times of great difficulty for them. We are trained in showing initiative and leadership. Therefore, at a time of economic difficulty for our country, we have both the responsibility and the opportunity to work collectively and constructively towards protecting the progress of recent decades. I think everyone is agreed that the key to recovery is composure and the rebuilding of confidence. We are trained in this skill, which we implement on a daily basis where both personal and corporate clients encounter major difficulty. I know that Ireland can rely on the solicitors' profession to assist our clients and our broader community to approach decision-making calmly – neither underestimating or exaggerating the difficulties we face.

Skills as problem-solvers

Central to recovery will be reform. Undoubtedly, a period of affluence increases tolerance for inefficiency and wasteful practices. The current change in circumstances requires us to apply 2008 standards to how best business might be transacted. We all must use our skills as problem-solvers to eliminate wasteful practices and achieve economies, both of time and of cost for our clients. This is obviously a period where alternative dispute resolution can come into its own.

Parties legitimately in dispute with each other, nonetheless, need to ascertain their actual position as quickly as may be. I would encourage colleagues to think anew about resolving such disputes through arbitration or mediation. The benefits from a client's point of view are enormous at a time of economic difficulty. Make a call today and get instructions. The Law Society will assist in every way it can in promulgating the panels it has, and in



appointing arbitrators or mediators where the parties cannot agree. I would like to invite experienced colleagues to undertake appropriate training and offer themselves for inclusion on our panels, in order that we can ensure that there is an adequate number of arbitrators and mediators to meet the expected demand.

Equally, we must pay particular attention to protect our clients from those who would unscrupulously attempt to gain advantage from the current economic difficulties.

As a profession, the key to our continued growth is flexibility. Our core legal skills are transferable and can be employed to great effect in new and developing areas of legal practice.

The Society will continue to provide state-of-the-art training opportunities for colleagues seeking to diversify their talents, and hopes shortly to finalise the details of an LLM programme in legal practice with UCC.

We should not lose sight of the fact that, building on the economic success of recent times, our profession is one of the youngest and best-educated in the world – it is time now to put those talents to use. In that context, I would like to applaud Patricia O'Brien, lately of the Department of Foreign Affairs, who has been appointed legal counsel to the United Nations – a post carrying under-secretary rank. This is one of the most important legal jobs on the planet, and it is held by an Irish lawyer – the sky remains the limit! **G**

James MacGuill
President

“At a time of economic difficulty for our country, we have both the responsibility and the opportunity to work towards protecting the progress of recent decades”

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■ DONEGAL

The Inishowen Bar Association held its inaugural first 'all-day CPD' in Fahan on 6 September. On offer were ten CPD hours, including four for management. Speakers included accountants Claire Scott and Clodagh Hegarty from local tax advisory firm Carlin McLaughlin, who brought members through the intricacies of the new VAT on property rules, the theme of capital taxes and the main reliefs.

Next up was the Inishowen bar's own member, Tom Wylie of Babington and Croasdaile (Derry, practicing on both sides of the Border), who explained the effects of sections 29, 31 and 60 of the *Companies Act* on commercial lending.

The afternoon session was dedicated to management, with Lynn McLaughlin of Buncrana tackling people-management solutions. Donegal-based consultant Pat McCusker spoke to members about how to comply with the accounts regulations. The use of accounts packages to achieve better profitability was also addressed.

Eimer Hayden of the Family Mediation Service took the graveyard shift from 6-8pm, talking on the topic of mediation.

The evening ended with dinner, where the members discussed their concerns about the Courts Service's plan to sever the Southern Court District area of Co Donegal and cede it to the Sligo District Court area, not to mention the precipitous closing of Carndonagh Court, leaving only Buncrana.



■ MAYO

Local colleagues went to the trenches on the issue of government proposals to shut down some of the local courthouses – and won – at least for now. It seems that the courthouses in Ballyhaunis and Ballinrobe have been saved from closure, with sittings continuing as before.

The *Western People* acknowledged on its front page that "Huge pressure from the legal profession in Mayo teamed with representations from local TDs played a huge role in reversing the decision."

Bar association president Pat O'Connor welcomed the reversal of the decision, saying: "We have been canvassing since last June when decisions to close these courts were announced. We have lobbied politicians, who got behind us, and we are delighted that the courts in Ballyhaunis and Ballinrobe will now not close. This is the case for the foreseeable future."

According to the Courts Service, however, planned closure and transfer of business

to Claremorris has merely been deferred on account of the realisation that the present facilities in Claremorris were not adequate. The Courts Service advises that the amalgamation will proceed as soon as a suitable site has been located.

However, with that success of sorts behind them, Pat and his colleagues still face the further challenge of holding onto Charlestown, which is threatened with closure and a transfer of its business to Tubbercurry – in another county altogether. The Courts Service is also insistent that this trans-county jurisdictional change will also happen.

■ DUBLIN

Michael Quinlan and his DSBA council colleagues are looking forward to hosting a dinner for all Dublin-based district judges. Upwards of 30 judges are expected.

The exercise will be repeated for the Circuit and High Courts later in the year, with hard-working council colleague Geraldine Kelly already

working on the arrangements.

The AGM of the DSBA will take place on Tuesday 21 October 2008 – a big turnout would be greatly appreciated. Notices will issue shortly.

The SMDF is to be congratulated for the very fine seminar held recently in Kildare Street on 'Risk management and regulation for solicitors in Ireland'. A large turnout of Dublin colleagues and a fair smattering from outside enjoyed excellent papers from Law Society President James MacGuill, Paddy Groarke and Seamus McGrath, all expertly chaired by Laurence K Shields.

Go easy, dear readers, on those of us who will have returned from the highs and lows of China when you get this issue – where the wonderful people of Beijing and Shanghai were our gracious hosts. Michael Quinlan and Jimmy McCourt put in a huge work in organising the event. The 100 colleagues who travelled had the experience of a lifetime.

■ CARLOW

Frank Lanigan has been good enough to tell me of a very informative seminar in Carlow on the new BER rules. Colleagues were acquainted with an overview of the new rules, solicitor obligations, the type of certificates to look for when closing a sale, and the key implementation dates. Distinguished taxation lawyer Michael O'Connor brought colleagues up to date on a taxation topic. **G**

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

11% decline in PPC I trainee numbers

The number of trainee solicitors beginning their professional practice course (PPC I) at Dublin and Cork has dropped by 11%. In all, 596 students started the PPC I course in September this year. Of those, 520 are attending the Law School in Dublin, while 76 are in Cork. The equivalent figure in 2007 was a total of 671, with 565 attending in Dublin and 106 in Cork.

This 11% reduction is the first significant decline in the demand for training places since 2001. Over the last number of years, the Law School saw significant growth in trainee numbers, which climbed from 348 in 2001 to 672 in 2006 – a 93% increase in six years. More recently, the number of trainees had stabilised – there was a difference of only one in 2006 figures compared with 2007.

The decline in 2008 is



caused in large part by a reduction in training contracts outside of the larger urban centres. This can be seen in counties like Mayo, where the number of training contracts has decreased from 14 to four; in Tipperary, from ten to two;

and in Monaghan, from seven to two.

In contrast, the number of trainees in Dublin and the bordering counties shows only a slight fall. Generally, there are far fewer trainees in small general practices – the number

of firms taking on one trainee has dropped from 245 to 205.

In 2008, a much greater number of trainees are working in commercial law firms, semi-state bodies and in-house legal departments. In commercial law firms alone, trainee numbers have jumped by over 10% in 2008 compared with the same period last year.

The age profile of trainees has also changed. They are much younger, with 92% being 30 years or under – this compares with 83% in 2001. The large majority are female – 64% in 2008 as against 55% in 2001.

Despite the reduction of traineeships in many counties in the past year, the number of trainees working outside Dublin is higher than it has been historically. In all, 32% of all trainees are based outside the capital, compared with 25% in 2001.

A finance scheme for hard times

The Law Society, with Penpro Ltd and Friends First Finance Ltd, has put together a finance scheme for members who want to fund the cost of their preliminary tax liability, pension contributions, professional indemnity insurance, practising certificate fee(s) or any personal loan, *writes support services executive, Louise Campbell*. The Society is

conscious that, in the current economic climate and with the preliminary tax deadline of 31 October drawing close, many members will find this finance scheme useful this year.

Law Society members may qualify for a loan through Friends First at a special fixed rate of 10.9% APR. Friends First has consistently provided a competitive and reliable finance

scheme for Society members. Its scheme offers same-day processing and funds issue, with a third-party payee service available – for example, payment directly to the Revenue Commissioners – and with the minimal of form completion.

In October, and again in December, a letter explaining the finance scheme will issue to

members, attaching the Friends First application forms and a freepost envelope. The letter and forms will also be available on the members' area of the Society's website: www.lawsociety.ie.

If you have any queries, you should contact a Friends First representative, tel: 1850 403 404, or Liz O'Brien of Penpro Ltd on tel: 01 2000 100.

Director general slates divorce websites

Law Society director general Ken Murphy had some scathing criticism for 'DIY divorce websites' in a recent article in the *Sunday Business Post*.

Under the headline "Debate over value of divorce websites", Murphy maintained strongly that "anyone contemplating divorce should consult a

solicitor or risk compromising rights that they might not be aware they had".

"There's more to divorce than simply filling out a form," he said. "One of the main areas of difficulty is pension rights, as well as considerable complexity involved in the division of pensions. The manner in which assets can be divided can also

have tax implications.

"A court appearance is obligatory and a solicitor would be able to attend and advise the client and assist with that. If there are children involved and provision is made for maintenance, there is all the more reason for these matters to be dealt with by the courts at the time of the divorce, so all

issues of that kind are tied up properly."

Casting further doubt on whether divorce websites were of any value, the director general added that there was no need to use one of these services for divorce forms, since they are all available from the Circuit Court office without charge.

Litigation substantially up in all courts

On 25 September, Central Statistics Office figures were published to show that the Irish economy is officially in recession. This was of no surprise to solicitors in private practice, who could have predicted this many months ago.

Speaking on Newstalk 106 recently, Law Society director general Ken Murphy said that both residential and commercial conveyancing work for solicitors had been in decline since mid 2006, but that earlier this year “it had fallen off a cliff”. He acknowledged that both this and the economic slowdown in general had caused a deep decline in income for the solicitors’ profession with, regrettably, “significant levels of underemployment and unemployment for solicitors, like so many others connected with the property sector of the economy”.

Fortunately, he said, solicitors nowadays do a great variety of work, and not all legal work has been affected by the economic downturn in the same way. He pointed to the contrasting experience with litigation, based on figures in the recently-published Courts Service Annual Report. This showed that, as he said, “in practically every category in which the Courts Service keeps statistics, the volume of legal work has substantially increased”.

So what are the figures to which the director general was referring? Well, according to the Courts Service report issued in July:

- A total of 19,435 new cases commenced in the High Court in 2007 – a 26% increase on the 2006 figure of 15,432,
- Civil bills issued in the Circuit Court in 2007 increased by 15% to 30,435 from 26,503 in 2006,



- High Court personal injury summonses were 5,951 in 2007, twice the 2006 figure of 2,673,
- There was a substantial increase in new medical negligence cases, with 566 initiated, an increase of 70% on the 2006 figure of 334,
- Criminal matters in the District Court increased by more than 15%, from 378,047 in 2006 to 436,617 in 2007,
- Appeals disposed of by the Supreme Court in 2007 increased by 13% and reserved judgments increased by 25% in 2007 over 2006,
- Civil business in the District Court increased by more than 18%, from 49,965 in 2006 to 59,061 in 2007,

- Applications under domestic violence legislation increased by almost 15%, from 9,924 in 2006 to 11,387 in 2007,
- In addition, new claims for liquidated debt increased by 21%, European arrest warrant cases also saw an increase of 21%, compensation act summonses increased by 85%, judgment on foot of master's order also increased by 25%, and there was a 17% increase in judgment mortgage affidavits,
- On judicial review, in 2007 there were 306 *certiorari* applications to the High Court, a 27% increase on the number in 2006,
- In relation to what the Courts Service call “personal injury actions finalised”, the figure 8,045 in 2007 was an increase of no less than 49% on the 5,389 actions disposed of in 2006.

Digital audio recording to be introduced in family law courts

The Courts Service will introduce digital audio recording in the Circuit Criminal, Central Criminal and High Court family law courts throughout Michaelmas term 2008. Advisory notices will be placed in those courtrooms where the recording system is installed.

There will be a digital clock on the registrar's desk, which will be visible to both the judge and the courtroom. When the clock displays the current time, this means that audio recording is in operation. When it displays a series of red dashes, the system is not in operation.

Each microphone in the courtroom will be linked to a recording device and will be equipped with a button that will stop the recording of sound from that microphone for as

long as the button is continuously depressed. Court stenographers will be replaced by ‘loggers’, who will take notes – for example, keeping a record of which party is speaking at any given time.

The digital audio recording system is expected to be extended to civil courts in 2009, but there are no immediate plans for its introduction in the District Court. A Courts

Service information leaflet on the system will shortly be published. Further information regarding the specific courts involved in the current phase of the project and regarding the operation of the audio recording system itself is available on the Courts Service website (www.courts.ie) and in the members' area of the Society's website (www.lawsociety.ie).

UIA'S BUCHAREST CONGRESS

The International Association of Lawyers (UIA) is holding its 52nd congress for lawyers and legal professionals in Bucharest from 29 October to 2 November 2008. Participants will take part in four debates on:

- The information society
- Water and the law
- The legal profession – just another business?
- Competition law.

For more information, visit: <http://congres.uianet.org>.

HEALTH ADVICE AND SUPPORT FOR LAWYERS

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Unfortunately, more and more former LawCare clients are finding that their history of mental illness and/or addiction becomes a barrier to employment: 47% of people with past mental health problems report that they have experienced discrimination and difficulty getting a job because of it.

In a 1998 survey, 200 personnel managers in Britain were asked to assess the employment prospects of two fictional job applicants. The applications were identical except that one applicant had diabetes, and one had recovered from depression. The applicant who had recovered from depression was seen as “significantly less employable” than the applicant who had diabetes. Statistics bear this out: 33% of people with long-term health problems such as diabetes and MS are in employment, as against only 13% of those with mental-health problems.

Employers are naturally wary of what they do not know or understand. In today’s competitive and strictly regulated



profession, they need to be certain that their staff are reliable and competent. A better understanding of certain health issues on their part could benefit hundreds of lawyers who find themselves regarded with suspicion because of past problems. Those suffering from, or recently recovered from, depression or other mental illnesses need to be treated with

fairness and understanding, and given every opportunity to rebuild their lives and careers.

Some pointers for employers:

- Many people associate mental illness with a tendency to be violent and dangerous – in reality, the most violent and dangerous section of society are young men who drink to excess regularly.

- The main symptoms of depression are lethargy, an inability to concentrate and lack of motivation. If a previously depressed lawyer is recovered enough to feel that he or she wants to work, then that individual is probably well able to do so.
- Work – if not too stressful – is beneficial to recovery for most forms of mental illness. Being flexible regarding hours and the type of work undertaken can help enormously.
- As lawyers, partners are in no position to make a medical diagnosis or to speculate about the effects of the illness on their employees or potential employees. Asking staff to have a medical is the most practical way to assess their state of health.
- Ask for LawCare’s free publication *Back to the Beehive*, which contains a wealth of helpful information about helping a stressed or depressed colleague back into the workplace.

Some pointers for employees:

- If you are fully recovered, while honesty is always the best basis for a successful working relationship, you don’t necessarily have to mention your past mental health problem, unless you are specifically asked to do so.
- If you are asked, make sure the potential employer is aware of *all* the facts about the illness. Give him a leaflet if you can. A recent survey showed that 30% of people don’t know the difference between mental illness and mental disability – despite the fact that one in four people will experience mental illness in any given year. **G**

ABOUT LAW CARE

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

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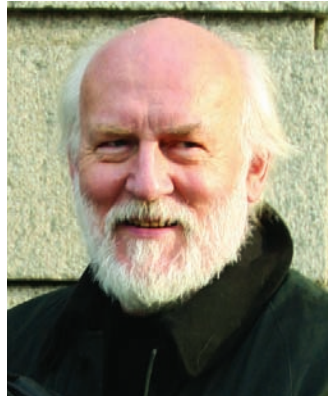
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Press Ombudsman receives 193 complaints in first half of 2008

The Press Council of Ireland and the Office of the Press Ombudsman have been in operation for nine months now. The Press Ombudsman has just published details of complaints received from January to June 2008.

In all, the ombudsman received a total of 193 complaints during the first half of the year. Of these, 102 were outside the ombudsman's remit, leaving 91 cases to deal with. Of these 91 cases, the ombudsman's office successfully conciliated or mediated in three cases, while 20 cases were decided on. The remaining 68 included cases that were still under conciliation at the end of June, cases that were not pursued by complainants and were time-barred at the end of June, or those that were still within the three-month period within which complaints could be made, but in respect of



Press Ombudsman
John Horgan

which no complaints had been formally lodged.

Complaints made under the code of practice included:

- Truth and accuracy: 63
- Distinguishing fact and comment: 22
- Fairness and honesty: 20
- Respect for rights: 13
- Privacy: 28
- Court reporting: 8
- Incitement to hatred: 8
- Children: 3.

Of the 12 decisions by the Press Ombudsman that were appealed to the Press Council, eight were appealed by complainants, while four were appealed by newspapers. The Press Council upheld three decisions, one was upheld in part, but eight applications to appeal were not admitted due to insufficient grounds for appeal. It's worth noting that past-president of the Law Society, Pat O'Connor, is an independent member of the Press Council.

The largest number of complaints were made against national newspapers, 77 in all. Eight complaints were made against regional newspapers, while no complaints were made against periodicals. However, 33 complaints were made against non-member publications – those who have not signed up to the code of practice of the Press Council.

Have you done your hours?

The end of the 2008 CPD cycle looms! With less than 13 weeks to go in the current cycle (it ends on 31 December 2008), now is the time to get your documentation in order and make sure you've completed all that is required, writes *James O'Sullivan* (chairman of the Education Committee).

The CPD scheme unit recently completed the audit of the 2006/07 cycle. It reviewed 986 solicitors for compliance with the CPD scheme from March to July 2008. Of those reviewed, 84% of practitioners had returned their documentation to the unit and were found to have complied with the scheme's requirements.

The remaining 16% of practitioners were referred to a special Education Committee

meeting held in July 2008. At that meeting, a variety of decisions were reached on those referred. To date, there remains a small handful of practitioners who have not complied with any of the scheme requirements and have ignored correspondence from the Law Society to date.

What documents are required?

As the CPD scheme is one of self-certification, this causes some confusion. What this means is that the onus is on the practitioner to hold onto proof of attendance at seminars. On the annual practising certificate application, 'section E' (CPD scheme) is completed by the practitioner. Once the practising certificate applications are reviewed, and a practitioner is chosen as part of the random

audit, only then will they be asked to return 'proof of attendance' at seminars.

What constitutes proof?

The scheme booklet allows members to note their hours in a variety of formats, including:

- Online CPD record card (members' area on Law Society website),
- Hard copy CPD record card (available on request from the CPD scheme unit),
- Certificates of attendance from training providers,
- Copies of sign-in sheets from training providers.

Any further questions?

Any questions on the CPD scheme should be addressed to the CPD scheme executive at: 01 672 4954.

IRISH M&A MARKET PROVES STRONG

Irish companies were involved in more than 150 merger and acquisition (M&A) transactions during the period January to June 2008. The total value of these deals achieved €5.2 billion, according to British-based analysts CorpFin. Half of all M&A deals occurred in the manufacturing industry, making it by far the most lucrative sector for this period, with a total value of €1.7 billion.

Looking at the origins of investors in Ireland, North American firms showed the greatest interest in Irish businesses, completing 14 acquisitions. British companies were also very active in Ireland, purchasing 12 Irish firms. Of the 47 international acquisitions by Irish firms, the top two target markets were the US and Britain respectively.

LOGAN TO CHAIR ENOC
Children's Ombudsman Emily Logan has been elected chair of the European Network of Ombudsmen for Children (ENOC). Her appointment was made at the annual ENOC conference in early September and continues through to September 2009.

ODSE EXPANDS
O'Donnell Sweeney Eversheds (ODSE) has expanded its insolvency and restructuring group. "Significant growth in requests for advice and the increased diversity of clients' requirements have necessitated the group's extension," the firm says. The 12-lawyer team specialises in advising on restructuring and workout options, as well as all aspects of formal insolvency processes.

RETIREMENT TRUST SCHEME

Unit prices: 1 September 2008
Managed fund: €5.025591
Cash fund: €2.881323
Long-bond fund: €1.387792
All-equity fund: €1.179273

Society launches civil

The Law Society's Civil Legal Aid Task Force has launched a booklet that brings together practical details about existing civil legal aid schemes in Ireland in one convenient package, writes Elaine Dewhurst

The Minister for Social and Family Affairs, Mary Hanafin, launched a booklet prepared by the Society's Civil Legal Aid Task Force on 5 September in Blackhall Place. Entitled *Civil Legal Aid in Ireland: Information for the Profession*, the booklet conveniently brings together practical details about existing civil legal aid schemes in Ireland. This is the first time that all of this information has been brought together in a single publication.

The information will be of interest to members of the legal profession, community activists, NGOs and members of the public. It will be available on the Law Society website (www.lawsociety.ie) and in Legal Aid Board law centres, Citizens' Information Centres, the Family Mediation Service and in all city and county libraries. Ultimately, the booklet aims to better inform the less well off about their potential entitlement to civil legal aid.

Legal Aid Task Force

The task force was established by Law Society President James MacGuill with the objective of producing a constructive, independent report on legal aid in Ireland and to make recommendations for improving access to justice for those who otherwise could not afford to access legal services. The task force offered the Society the opportunity to work collaboratively with other bodies that have, for many years, worked tirelessly on access-to-justice issues,



Minister Hanafin speaking at the launch on 5 September

including FLAC, the community law centres, and also with the Legal Aid Board. The first project undertaken by the task force was the publication of this booklet.

An access-to-justice issue

Minister Hanafin commented at the launch that: "People seeking civil legal advice and aid often do so at a time of great stress and trauma in their personal lives, so having clear direction from their solicitor is vitally important so that they can work their way through whatever difficulties they have. This new report will provide valuable information to solicitors in private practice in relation to the schemes available. I also believe that many other groups and individuals around the country involved in providing

community advice will find it an invaluable resource."

The booklet has also been welcomed by various organisations. According to Noeline Blackwell, spokesperson for FLAC (Free Legal Advice Centres), an independent human rights organisation that campaigns for equal access to justice for all, the publication is an "important step in raising awareness of people's entitlements". In welcoming the publication, she noted that: "While an important gap is now filled, people are also entitled to a decent, comprehensive service. This has yet to be fully delivered."

The chair of the Legal Aid Board, Anne Colley, also welcomed the booklet as another means of widening the awareness and appreciation of

the work that the board is engaged in. She stated that the booklet will inform solicitors, state bodies, NGOs and others, and enable them to refer people to the board's services for legal aid and advice.

Speaking at the event, she described the booklet as "an extremely valuable information tool, particularly for solicitors ... The board recognises that there are many solicitors giving advice to clients and representing them in court on a *pro bono* basis or for fees that bear no relation to the cost of providing the service. They are doing so, often out of a sense of civic responsibility, but also because they are not aware that the client may well be entitled to legal aid."

She referred in particular to the common misconception that the Legal Aid Board only

ALL PICS: LENS MEN

legal aid booklet

provides services in relation to family law matters. She noted that this is not the case and that “legal aid and advice is available in all areas of civil law, other than a limited number of defined excluded areas. While the reality is that demand for the board’s services is – in common with all other jurisdictions with developed legal aid systems – primarily in the area of family law, the preponderance of family law cases is in response to demand rather than being attributable to any comprehensive exclusions contained in the civil legal aid legislation.”

What's in the booklet?

The booklet provides information on the civil legal aid scheme operated by the Legal Aid Board, including its Refugee Legal Service, the Mental Health Legal Aid Scheme, the Coroners Court Legal Aid Scheme and the Attorney General’s Scheme. The information is presented in a simple, clear and easy-to-read

format, with details on every aspect of the schemes. It sets out information in relation to the administration of the schemes, how the services are provided, and when and how solicitors can get involved in the various schemes. The types of services that each scheme provides, as well as the various exclusions from the schemes, are also addressed.

There is a very useful section on the eligibility criteria for the civil legal aid scheme and the levels of contributions payable. A number of working examples are included to guide solicitors through the process and to explain in a clear and easy manner the relevant calculations. This section aims to assist solicitors in advising clients on their rights in relation to civil legal aid. The booklet also provides very practical information in relation to the waiting times, priority service, refusals and appeals, and inter-jurisdictional legal aid.



At the launch were Colin Daly (chair, Legal Aid Task Force), James MacGuill (president), Mary Hanafin (Minister for Social and Family Affairs) and Ken Murphy (director general)

Finally, the booklet presents a list of all the law centres, both full-time and part-time, in the country, with contact details to assist solicitors in advising clients. Every solicitor will find this publication useful in advising clients.

A warm welcome

In welcoming the report, President MacGuill said: “The Law Society is delighted to have worked on this project

with others who share our commitment to securing equal access to justice for all.

“Because of the incremental development of the provision of civil legal aid, even the most experienced practitioner would be challenged to keep up-to-date with every development. This booklet will allow citizens and solicitors to access information on their civil legal aid rights conveniently in one source.

“While the Law Society has ongoing concerns about unmet legal needs, it would be churlish not to accept the great progress that has been made since the introduction of the *Civil Legal Aid Act 1995*. Great credit must go to those solicitor colleagues who work in the public interest, either within the Legal Aid Board law centres or on their private practitioner schemes, with the community law centres, FLAC, the Equality Authority and, last but not least, those private practitioners who participate in the other schemes outlined in this publication.” **G**



Celebrating the launch of *Civil Legal Aid in Ireland: Information for the Profession* at Blackhall Place on 5 September 2008 were (front, l to r): Moya Quinlan (past-president), Anne Colley (chairperson of the Legal Aid Board), Mary Hanafin (Minister for Social and Family Affairs), James MacGuill (president) and Colin Daly (chair, Legal Aid Task Force). (Back, l to r): Elaine Dewhurst (Law Society), John McDaid, John D Shaw (senior vice-president), Ken Murphy (director general), Sinead Kearney and Noeline Blackwell

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

Finding the job of

Finding the perfect job was the theme of a CPD course organised by the Law Society during the summer. The *Gazette* glances over the CV of this very popular seminar

Theodore Roosevelt once said: "Far and away the best prize life offers is the chance to work hard at work worth doing." Finding the perfect job, then, is a goal worth pursuing for every legal professional. The Law Society's continuing professional development (CPD) seminar on 19 June assisted practitioners in a practical way and encouraged them to take control of their job-search to find their dream job.

The seminar heard presentations from individuals who imparted their professional and personal experiences from both sides of the interviewing table. With a subjective title like 'How to find the perfect job', the speakers necessarily tailored their information to suit the broad range of perspectives and objectives of the audience. Taking into account the difficulties of finding a job in the current challenging economic climate, the speakers tried to provide as much up-to-date, practical information and guidance as possible.

The search

The realities of the present legal job market were outlined by Michael Benson of Benson and Associates, the specialist legal recruitment agency. Areas where growth is strong include banking, financial services and funds, with demand for experienced practitioners holding steady in the litigation arena. The regulatory and compliance sectors could be expected to continue expanding, but there had been a definite contraction in the residential and commercial

property sectors.

Benson's hands-on experience in the recruitment business gave him the opportunity to impart some vital information for the job-seeker, with research being the key to finding the perfect job. His own research gave a detailed breakdown of salary levels and potential benefits for positions in both private practice and in-house. This included references to particular practice areas and geographical locations, to which the *Gazette* will return in a future issue.

The job-seeker's research must identify the size of firm to be targeted and then recognise the employer's most crucial requirement – a matter that should be addressed in the cover letter accompanying a CV, a "candidate's most effective calling card". The advice was to assess your ability to meet that need and to tailor your CVs and cover letters to promote yourself as the right candidate for the position. Michael warned candidates of the necessity of proofreading and the veracity of the information on CVs and cover letters.

The interview

Hannah Carney, an individual and organisational development consultant, pointed to new

research published in Britain on the reasons why employers decided to hire or not.

The top five reasons for a decision to select and hire are:

- Personality – how a candidate presents at interview,
- Relevant experience,
- Qualifications – the ability to do the job and deliver results,
- Personal background and references,
- Attitude: enthusiasm shown for the role/the practice, interest in the business, among others.

The top five reasons for decisions not to hire:

- Poor personal appearance,
- Verbal diarrhoea (there are techniques to avoid this!) and bluffing,
- Inability to express information clearly,
- Lack of interest or enthusiasm in the role/practice and business,
- Lack of a sense of career direction – evidence of a lack of goals/ambition/personal planning.

Some of these points may seem obvious, but they can be easily overlooked in the heat of the job hunt. In addition, Carney recommended some 'personal' research as a means of finding the best match for the jobs on offer. On your own, with a

colleague or with professional assistance, she suggested reflecting on your personal objectives, purpose, occupational preferences in terms of work type, environment and working style (as an individual or as a team member), as well as personal talents, style and potential.

"When 'the fit' is right," she says, "there is clarity in respect of expectations and performance requirements – and if lawyers feel that their contribution and work is meaningful and valued, they are more likely to be at their best. If stimulated and involved, there is a significant prospect, not only of efficiency and effectiveness, but also of active focus and engagement in the development of the business through strengthened client relationships and business activity. Firms and practitioners need, and expect, both technical delivery and business results. Getting the match and fit right in terms of talent, interest and capability is crucial from both perspectives."

Focusing on practical interview techniques, Carney spoke of the process of ending an interview gracefully as an essential part of the process. Her tips included using the 'Q&A' opportunity, reiterating your genuine interest in the role, leaving with a firm handshake, a smile and a thank you, showing genuine enthusiasm and leaving a good impression.

In-house experience

In-house counsel to Tesco Ireland, Darragh Byrne, told the seminar of his move from a general practice environment to

"The regulatory and compliance sectors could be expected to continue expanding, but there had been a definite contraction in the residential and commercial property sectors"

your dreams

that of in-house advisor. The in-house sector is growing across many industries, primarily to manage the overall exposure of businesses to legal risks. This includes providing expeditious, internal, business-focused advice and managing the relationship with external advisors in areas of specialisation. It also includes ensuring that suitable internal controls are in place to reduce the risk of laws being breached in the first place.

The recruitment of in-house lawyers is often motivated by the fact that businesses are subject to an increasing range of complex regulation, and compliance is of fundamental importance to good corporate governance.

There is no standard role for a solicitor working in house. Byrne believes each role integrates with the realities of the business and should be regarded as a core strategic support – not just a replacement for external advisors.

Before you leap into such a position, Byrne recommends



looking at two important questions. The first is the purpose of the legal function in that organisation – don't simply consider the areas of legal practice you would like to work in. The second is an assessment of your capability to deliver in this role, from the perspective of the business. If you believe that the role and responsibilities suit you, Byrne thinks that working in a large, in-house legal team can be comparable to working in a core business unit in private practice – the difference being that there is only one client. For smaller legal teams, there is likely to be a very high degree of integration with the business.

In any event, the lawyer will gain a deep understanding of the business, bringing opportunities to make a broader contribution and even taking on non-legal work – a variety that some might relish. Byrne sounds one note of warning: working in a smaller legal unit

may result in a loss of collegiality and mentoring relationships that private practice provides.

Public sector

Increasing regulatory activity in the public sector means more opportunities for lawyers, according to the chief prosecution solicitor at the DPP's office, Claire Loftus. The majority of regulatory agencies now have their own in-house solicitors and legal advisors, including the Competition Authority, the Health and Safety Authority, the Garda Ombudsman Commission, and the Office of the Director of Corporate Enforcement. These new areas are in addition to the expansion of traditional employment in the DPP and State Solicitor's Offices.

Work in the public service can afford opportunities to specialise across a wide range of areas, often in large supportive

teams, says Loftus. Many openings for solicitors do not require post-qualification experience, emphasis is placed on continuing professional development, and family-friendly working practices are promoted. Entry-level salary scales are often structured so as to provide an incentive to solicitors to stay on for at least three years. More information on legal vacancies in the public service may be found on www.publicjobs.ie, the website for the public appointments service.

For those of you who missed the opportunity to attend this thought-provoking seminar, there will be another opportunity to catch it in 2009. Keep an eye on the Law Society's *CPD Focus* brochure for details. **G**

Hannah Carney is an independent consultant in the areas of individual and organisational development.

SPEAKERS AND PANELLISTS

Speakers and panellists included: Michael Benson (Benson & Associates), Darragh Byrne (in-house counsel, Tesco Ireland), Hannah Carney (Hannah Carney & Associates), Claire Loftus (chief prosecution solicitor at the Office of the DPP), June Reardon (parliamentary counsel, Office of the Attorney General), John Savage (head of legal, AXA Insurance) and Martin Sills (legal advisor, Permanent TSB).

UN HRC has both praise and

Last July, the UN's Human Rights Committee praised Ireland's legislative and institutional advances since 1999, but there was much to criticise too, says Niamh Hayes

On 14 and 15 July this year, the United Nations' Human Rights Committee met in Geneva to consider Ireland's record on civil and political rights. At issue was Ireland's third periodic report to the committee, submitted by the government as part of their obligations under article 40 of the *International Covenant on Civil and Political Rights* (ICCPR). The periodic reporting mechanism requires every state party to provide information on the measures it has adopted to give effect to the civil and political rights recognised by the covenant and on what progress it has made in guaranteeing the enjoyment of those rights. Ireland's report was then scrutinised before the Human Rights Committee, the expert body responsible for assessing the compliance of states with their obligations under the ICCPR.

The government's report, submitted in 2007, provided a thorough breakdown of statutory and institutional developments implemented since Ireland's last report to the Human Rights Committee in 1999. The committee also received a number of 'shadow reports' from various NGOs and human rights organisations within Ireland, highlighting what they viewed as deficiencies in the government's record on civil and political rights.

At the Geneva meeting, Ireland was represented by the Attorney General, Paul Gallagher, and a contingent of senior civil servants. The committee also heard from representatives of the Irish Council for Civil Liberties, the Irish Penal Reform Trust, Free Legal Advice Centres and various other delegations from Irish NGOs. Among the ongoing human rights issues

that came in for criticism by NGO representatives were Ireland's acceptance of diplomatic assurances from the US regarding the use of Shannon Airport for extraordinary rendition flights, the overcrowded and unsanitary conditions in Irish prisons, the government's failure to recognise the rights of transgendered people, and the high number of people imprisoned for debt in Ireland.

Violence against women

Following its public consideration of the government's submissions and the various shadow reports, the committee produced a number of concluding observations. It began by praising the legislative and institutional advances undertaken since its examination of Ireland's second periodic report in 1999. These included the establishment of the Equality Authority in 1999,

the Irish Human Rights Commission in 2000 and the Garda Síochána Ombudsman in 2007. However, the committee did express regret at the limited resources available to the Irish Human Rights Commission and recommended that the government should take steps to strengthen the commission's independence and capacity to effectively fulfil its mandate.

There was praise for the long-awaited incorporation of the *European Convention on Human Rights* into domestic law in 2003, although it was noted that many of the rights guaranteed under the ICCPR went beyond the scope of the convention and had not been given full effect in domestic law. The committee praised the state's progress in addressing domestic violence and establishing the National Office for the Prevention of Domestic, Sexual and Gender-based Violence (Cosc), but criticised

■ ONE TO WATCH: NEW LEGISLATION

European Communities (Free Movement of Persons) (Amendment) Regulations 2008, SI no 310 of 2008

In response to the decision of the European Court of Justice in *Metock and Others v Minister for Justice, Equality and Law Reform* (C-127-08) on 25 July 2008, the following statutory instrument was introduced to amend the *European Communities (Free Movement of Persons) (No 2) Regulations 2006* (SI no 656 of 2006) and to give effect to directive 2004/38/EC of

the European Parliament and of the council of 29 April 2004 on the right of citizens of the union and their family members to move and reside freely within the territory of the member states.

The situation before *Metock*

Prior to the decision in *Metock*, nationals of non-member countries (countries not in the EU) who were married to a union citizen residing in Ireland were not entitled to reside in Ireland unless they had been lawfully resident in another

EU member state prior to arriving in Ireland. The legal basis for this was *European Communities (Free Movement of Persons) (No 2) Regulations 2006* (SI no 656 of 2006), which transposed directive 2004/38/EC into Irish law.

The decision in *Metock*

The ECJ held that the directive precludes legislation of a member state that requires a national of a non-member country who is the spouse of a union citizen residing in that

member state, but not possessing its nationality, to have previously been lawfully resident in another member state before arriving in the host member state in order to benefit from the provisions of the directive. Such persons may benefit from the provisions of the directive, irrespective of when and where their marriage took place and of how the national of a non-member country entered the host member state.

human rights watch

criticism for Ireland



the failure to compile adequate gender-based statistics regarding complaints, prosecutions and sentences in cases involving violence against women.

The concluding observations acknowledged with satisfaction the state's intention to provide for civil partnership, but urged the government to ensure that any proposed legislation was not discriminatory against non-traditional forms of partnership in relation to taxation and welfare benefits.

Gender issues

The committee also criticised the state's failure to recognise the right of transgender persons to have their change of gender reflected in the issuance of an amended birth certificate. Ireland is very much in the minority among European countries in failing to make provision for this (only Albania, Andorra and the Vatican have similar shortcomings) and this matter has been the subject of extensive litigation in the *Foy* case.



The UN's European base in Geneva

Continuing on the issue of gender, the committee reiterated its concerns about the persistent gender inequality in Irish society. Article 41.2 of the Constitution – relating to the family and women's 'duties in the home' – came in for repeated criticism for perpetuating outdated attitudes regarding the status and value of women in public and private life.

Abortion

The committee once again addressed the highly restrictive circumstances under which a

woman can lawfully have an abortion within the state and expressed regret at the slow progress of the government in adequately addressing this issue. The government was urged to take measures to help women to avoid unwanted pregnancies and prevent resort to illegal or unsafe abortions – or abortions abroad – and urged that the Irish laws on abortion should be brought into line with the covenant, which, among other issues, would require that therapeutic abortions should be available in cases of fatal foetal abnormality.

Extraordinary rendition

In relation to the use of Shannon for extraordinary rendition of individuals to countries where they may face torture or ill-treatment, the committee concurred with previous human rights jurisprudence in advising the government to exercise the "utmost care" in relying on official diplomatic assurances that such flights were not using Irish airspace. It was recommended that the state should establish a regime to control suspicious flights and should ensure a full public investigation of all allegations of renditions through Irish jurisdiction.

Counter-terrorism measures

The committee made several recommendations regarding Irish counter-terrorism measures, including urging a comprehensive definition of 'terrorist acts' and careful monitoring of the investigation and prosecution of terrorist offences, pretrial detention, and

The result of *Metock*

These new regulations reflect the ECJ's decision in *Metock* and amend the 2006 regulations to this effect. The requirement that the non-member country national must have resided lawfully in another EU member state prior to residing in Ireland has now been removed. The 2008 regulations provide that the provisions of the directive apply to all:

- Union citizens,
- Qualifying family members of

union citizens, who are not themselves union citizens and who seek to enter the state in the company of those union citizens of whom they are family members, or who seek to join those union citizens in respect of whom they are family members, who are lawfully in the state, and

- Permitted family members of union citizens who seek to enter the state in the company of those union citizens in

respect of whom they are family members, or who seek to join those union citizens in respect of whom they are family members who are lawfully present in the state.

What about applications before *Metock*?

Where, before the coming into operation of the 2008 regulations, a qualifying family member or a permitted family member had made an application to the minister for a residence card and

the application had not been determined by the minister, then that application shall be deemed to be an application under the 2008 regulations and shall be dealt with accordingly.

More information is available from the Irish Naturalisation and Immigration Service (www.inis.gov.ie).

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



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access to a lawyer for terrorist suspects.

In regular domestic criminal investigations, the committee recommended that Ireland should amend its legislation to ensure that adverse inferences from the failure to answer questions put to an accused person should not be drawn, not least where that person has not had access to a lawyer. The continued justification for the Special Criminal Court was called into question and its eventual abolition was urged. The state should ensure that, for any case that the DPP has certified as requiring a non-jury trial, objective and reasonable grounds should be provided.

Substandard penal system

The committee reserved some of its strongest condemnation for the treatment of prisoners in the Irish penal system. Like the Council of Europe's Committee for the Prevention of Torture before them, the committee highlighted the substandard sanitary and safety conditions in Irish prisons, the lack of adequate mental health care for prisoners, the issues of over-crowding and 'slopping

out' (30% of Irish prison cells have no sanitation facilities) and the high levels of inter-prisoner violence. The government was urged to detain remand prisoners in separate facilities and pursue alternatives to imprisonment, with the committee concluding that the government could not "build [itself] out of a prison overpopulation problem".

The provisions for increased detention of asylum seekers under the *Immigration Act 2003* were also criticised. The committee focused on the lack of specific accommodation facilities, leading to detention in ordinary prison facilities, and the detention of people on the basis of an unverified assessment by an immigration officer that such a person was over 18. The proposed system of summary removal of asylum seekers contained in the *Immigration, Residence and Protection Bill 2008* would be incompatible with Ireland's obligations under the ICCPR. The committee urged that the bill be amended and that the government review the apparent

lack of independence of the proposed Protection Review Tribunal and the lack of an independent appeals procedure, as well as providing for suspensive effect when asylum decisions are the subject of judicial review or other appeal.

Non-denominational education

Another issue discussed by the committee, and one that has been the subject of much debate in the past year, was the lack of sufficient secular or non-denominational educational facilities. Given the increasingly diverse and multinational nature of the state's population, the government has an obligation to ensure that non-denominational primary education is widely available in all regions of the country.

The committee's final recommendation was in relation to the Travelling Community. Ireland's continued failure to recognise Travellers as an ethnic minority group was condemned, along with its failure to provide for adequate representation for members of

the Travelling Community in public policy initiatives such as the High Level Group on Traveller Issues.

The committee's concluding observations were well-publicised and welcomed by several NGOs and human rights bodies in Ireland. Although many have criticised the UN human rights reporting procedures for their effective lack of a concrete enforcement mechanism, one of their greatest strengths is the public nature of the reporting and observations, and the fear states have that their own human rights' record will embarrass them on an international stage.

The government is obliged to provide information on its implementation of the committee's recommendations within a year, and the concluding observations of the Human Rights Committee will be a strong resource for those engaged in advocacy on human rights issues within Ireland. **G**

Niamh Hayes is a PhD candidate and Government of Ireland scholar at the Irish Centre for Human Rights, NUI Galway.

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Dublin Simon Community

Once more unto the

Recent headlines have brought to prominence how vulnerable our personal data is when it is in the hands of the organisations we entrust it to. Brian Honan breaks the password and gets snooping

This summer was replete with stories of organisations losing sensitive data. We had the reports of the loss last year of a laptop by the Comptroller and Auditor General's office that contained the personal details of over 380,000 citizens. In August, an online retailer's security was breached and the hackers accessed the credit card details of customers. And in April, Bank of Ireland announced that they had lost a number of laptops in 2007 that contained the personal data of over 30,000 customers.

These incidents are worrying enough in their own right, but what is of grave concern is the lack of notice that those affected by these security incidents received. Also, each of these issues only came to light a number of months after the original incidents occurred, leaving the sensitive personal and financial details of individuals at risk of being abused by criminals. The data lost in most of these cases could provide criminals with enough information to attempt a number of crimes, ranging from credit card fraud to full-blown identity theft.

While our data protection laws require that companies ensure they provide "adequate security" to protect the personal details of staff and customers, there is no obligation on organisations to notify individuals if those "adequate security" measures fail. Without this type of notification, individuals may

not be aware their personal details have been exposed to criminals until they themselves notice unusual transactions on their credit cards, bank accounts or indeed find their credit rating has been ruined as a result of defaulted loans falsely taken out in their names.

With great power comes great responsibility

Organisations need to realise that the data they hold on staff and customers is not theirs, but rather has been entrusted to them by those individuals. In this age of cybercrime and sophisticated online criminal gangs, we can no longer hope that the data do not fall into the wrong hands. Individuals need to know that the trust they placed in an organisation to keep their data safe has been breached in order for them to take measures to protect themselves.

In July 2003, the *California Bill SB 1386* came into effect,

requiring companies or organisations to notify any Californian resident if their data has been exposed. Companies are not obliged to notify people affected by the security breach if that data was encrypted – which was not the case in the examples at the beginning of this piece – or if such notification would jeopardise an ongoing criminal investigation. Since 2003, over 35 other US states have implemented their own versions of the law.

It is interesting to note that, in January 2007, the TJX Corporation (the parent company of TK Maxx stores here in Ireland) announced they had discovered a security breach that exposed over 40 million credit card details belonging to its customers. TJX admitted that the breach could also have affected

Irish customers. However, because there is no obligation on TJX to notify the affected

Irish individuals, TK Maxx customers in Ireland do not know if their details have been exposed.

Not only have the data breach disclosure laws in the US helped individuals better protect their personal and financial data, but it has also been of benefit to companies. When details are disclosed by the affected company as to how the breach occurred – in the case of TJX it was insecure wireless networks – other companies can learn from the incident and ensure their systems and data are secure. This is no different to hearing that your neighbour's house has been burgled and taking steps to secure your own home.

Webheads

The European Commission is proposing amendments to the *Privacy and Electronic Communications Directive*, which will oblige telecommunications companies to notify individuals should their personal data be exposed as a result of a security breach. However, this proposal only applies to telecommunications companies and will most likely not come into being until 2011. In that time, it is likely that the proposal will be further watered down by industry lobbyists.

Ireland should not wait until this proposed amendment comes into place. We cannot wait until 2011, and now is the time that we

"We cannot wait until 2011, and now is the time that we should introduce mandatory data breach disclosure laws so that individuals whose data is exposed as the result of a security breach are notified"

breach

viewpoint



should introduce mandatory data breach disclosure laws so that individuals whose data is exposed as the result of a security breach are notified. This legislation

could complement the existing *Data Protection Act* and ensure that businesses that do take proper precautions are not overly burdened by the

legislation – for example, as with the Californian law, companies that encrypt the personal data could be exempt from the notification requirements.

Some will argue that data-breach notification legislation of this sort will place yet another burden on businesses already tied up with bureaucracy and red tape. I think those supporting this argument miss the point that companies taking the required steps to protect their clients' data will not be overly impacted by this proposal.

Ireland has taken bold steps in the past to lead the way with introducing legislation to benefit its citizens, the smoking ban and plastic bag tax being two that come to mind. She should once more take the lead among our European neighbours and introduce legislation that better protects her citizens and provides an effective information security governance framework for businesses to follow. **G**

Brian Honan is senior consultant for BH Consulting and has worked in an advisory capacity for various government agencies and the European Commission.



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IN THE LINE OF FIRE

In these straitened economic times, companies are focusing on how to reduce costs to remain competitive and stay in business. Joanne Hyde examines employment law issues that some practitioners are dealing with for the first time in a generation

We know that the number of redundancies is continuing to increase, with more than 20,000 redundancies for the first seven months of 2008 – a rise of over one-third on the same period in 2007. Some of those have been high-profile cases involving large numbers of employees in multinational companies. Others have been small-scale reductions that attracted little or no publicity. As employees struggle to obtain alternative employment quickly, employer decisions are more likely to be challenged through the Employment Appeals Tribunal (EAT) and other legal forums.

Given the boom times of the last decade-and-a-half, companies and their HR professionals are in unfamiliar territory as they turn to their legal advisors in exploring their options and mitigating their risks. Equally, employees facing unemployment are seeking advice on their potential remedies.

Redundancy a defence to unfair dismissal

A practitioner advising a company considering a redundancy action, and looking at the likelihood of its being challenged as an unfair dismissal, must look at the proposed termination from two perspectives.

First, there must be a genuine redundancy. The dismissal of an employee is deemed not to be unfair

MAIN POINTS

- Redundancies
- Unfair dismissal
- Reducing the wage bill



There's no 'Sugar'-coating it – redundancy rules might 'Trump' unfair dismissals claims if you're 'Cullen' the workforce



if it results wholly or mainly from redundancy. That means it must fit within one of the five statutory definitions of redundancy in the *Redundancy Payments Acts*. The common feature of each of these definitions is that of *change* – that is, something is different in the organisation that is leading to the business needing to have fewer employees or employees with different skills. Without this element of change, it is difficult to legally justify a statutory redundancy. The other common characteristic of the five definitions of statutory redundancy is that of *impersonality*, that is, positions or jobs become redundant and the person is only affected as a consequence.

The second aspect to consider arises in any redundancy that does not involve a complete shutdown of an activity and the loss of all employees. That is the mechanism for selecting affected employees. In advising a company on this aspect, a practitioner must enquire about any company policy or collective agreement that might prescribe a selection methodology, such as 'last in, first out'. Even where there is no documented methodology, enquiries should be made about any previous actions and any practice that, it could be argued, might form an employment term by virtue of custom and practice and should therefore be applied to the current situation. Assuming no such constraints, a legal advisor can add practical value and reduce the risk of subsequent legal challenge by establishing what the client is trying to achieve in terms of critical skills or experience that need to be retained. A critical skills matrix against which all relevant employees would be scored is a useful means of achieving headcount reductions that are best for the business. Finally, the employer should be mindful of any specific historical issues with any impacted employees, such as grievances or interpersonal difficulties that may give an employee a platform from which to challenge the reason for selection and therefore the fairness of the redundancy.

It is important that a record exists for the rationale for all decisions. A company should document its

business rationale for making redundancies, the desired end result, and the selection process being applied. An inability to demonstrate the process used to reach a decision will leave an employer open to an allegation of unfair dismissal.

Procedural and notification requirements

The *Redundancy Payments Act 1967* requires that the employee is given two weeks' notice of termination of employment by reason of redundancy. If the employee's contract provides for a longer period of notice, the longer contractual notice period must be given. Similarly, the notice provisions of the *Minimum Notice and Terms of Employment Act 1973* must be complied with.

A collective redundancy situation arises if, during any period of 30 consecutive days, the employees being made redundant amount to:

- Five employees in an establishment normally employing more than 20 but less than 50 employees,
- Ten employees in an establishment normally employing more than 50 but less than 100 employees,
- 10% of the employees in an establishment normally employing more than 100 but less than 300 employees, or
- 30 employees in an establishment normally employing more than 300 employees.

Where a collective redundancy arises, the following requirements must be complied with:

- The Minister for Enterprise, Trade and Employment must be provided with certain information about the redundancy, and
- The employer must put in place a process for an election of employee representatives (where none exist) and consult with such representatives, again with a view to reaching agreement on the manner in which the redundancies will occur.

The *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007*, in an attempt to give greater protections to employees in collective redundancy situations in the wake of the Irish Ferries dispute, introduced changes in consultation time limits in collective redundancy situations. These changes were also required to take account of the ECJ case of *Junk v Kubmel*, in which the court determined that a redundancy took effect when the redundancy notice issued, not when the notice period expired and the employment ceased. This means that the consultation process should take place at least 30 days before the first notice of dismissal is issued to employees.

Redundancy payments

An employee is entitled to a statutory redundancy payment if he or she has been employed for a continuous period of 104 weeks and is aged at least 16

"Given the boom times of the last decade-and-a-half, companies and their HR professionals are in unfamiliar territory as they turn to their legal advisors in exploring their options and mitigating their risks"

years (the upper age limit of 66 was removed by the 2007 act for both individual and collective redundancies). Details of how to calculate the payment, what service is reckonable, and how an employer can recoup a 60% rebate on the payment are all available on the website of the Department of Enterprise, Trade and Employment (www.entemp.ie).

Many companies choose to make enhanced or *ex gratia* payments. In determining if there is a legal obligation to make such payments, regard should again be had to any commitment in a contract, policy or collective agreement or to any payments made in previous redundancy actions that might give rise to an implied right to a payment.

Remedies for employees

The most common legal remedy sought by an employee is an unfair dismissal claim to the EAT on the grounds of unfair selection. The burden of proof is on the employer to show that the criteria used for redundancy selection were reasonable, fair and objective and that they were properly applied.

In the 2007 EAT case of *O'Kelly v Xsil Ltd*, the EAT held that the claimant had been unfairly selected for redundancy and ordered his reinstatement. The process used in selecting staff for redundancy was based on the relevance of the work at the time, and the company used a template in relation to qualifications, skills and disciplinary record. The template was not produced before the EAT, nor was documentary evidence in relation to the financial position of the company. It was also relevant that there had been no meeting with the claimant, no discussion with him about the criteria being used for selection, and no discussion about any suitable alternatives. The EAT held that the respondent did not act fairly and reasonably when addressing the need to reduce the number of employees. The case is a good lesson in the


importance of procedures and process in effecting redundancies.

If an employee believes that there has been direct or indirect discrimination in the selection process, there is the potential for a claim to the Equality Tribunal. This is particularly a concern where there are a disproportionate number of employees in a particular category who are affected. Sometimes this may be unintentional, but advisors should be watchful, for example, for any disproportionate impact on part-time employees (a majority of whom might be women). A disproportionate impact on a protected group does not prove unlawful discrimination, but it should be checked that it has resulted from the pursuit of a legitimate and nondiscriminatory aim through proper and appropriate means.

Historically, employees facing redundancy have sought High Court injunctions to restrain the proposed termination. In fact, the first Irish case in which such an injunction was successfully applied for, *Fennelly v Assicurazioni Generali & Another*, involved a purported dismissal for redundancy. However, since this case, the jurisdiction on the granting of injunctions restraining dismissals has developed considerably. Probably the most important case in this respect has been the decision of Carroll J in *Sheehy v Ryan* and the subsequent decision of the Supreme Court earlier this year. Ms Sheehy had been employed as diocesan secretary for the Kildare diocese by successive bishops. In July 2002, she was advised that her employment would be terminated by reason of redundancy. She sought an injunction restraining the termination of her contract. However, Carroll J found that an employer is entitled to dismiss an employee for any or no reason, on giving reasonable notice. The Supreme Court upheld that finding.

Although injunctions continue to be sought in employment litigation, the chances of an employee who faces dismissal by reason of redundancy (particularly where appropriate notice has been given) succeeding in an injunction application seems more unlikely now than was previously the case. *Sheehy* suggests that the appropriate remedy for an employee challenging the fairness of a termination is an unfair dismissals claim rather than an injunction.

Balancing the risks

Our clients are facing business risks and challenges the like of which they have not faced in decades. As legal advisors, we can help them ascertain, balance and mitigate those risks in restructuring their businesses in such a way as to minimise the likelihood of legal challenge while, at the same time, advising on appropriate options to ensure that the restructured businesses are best positioned with the right mix of skills and experience to avail of future opportunities. 

Joanne Hyde is a partner in the Dublin law firm O'Donnell Sweeney Eversheds.

LOOK IT UP

Cases:

- *Fennelly v Assicurazioni Generali SPA and another* [1987] 3ILT 73
- *O'Kelly v Xsil Limited*, UD 1086/2007
- *Junk v Kuhnel* [2005] IRLR 310
- *Sheehy v Ryan* [2005] ELR 49, Supreme Court, 9 April 2008

Legislation:

- *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007*
- *Redundancy Payments Act 1967*
- *Minimum Notice and Terms of Employment Act 1973*
- *Protection of Employment Act 1977*

Literature:

- www.entemp.ie/employment/redundancy

FAMILY

Why do so many solicitors restrict their search for lost or missing kin to the often-ignored small ads at the back of newspapers? Steven C Smyrl explains how research undertaken by professional legal genealogists can generally uncover the legitimate beneficiaries of estates assumed to have become escheated

The question of what happens after a client dies intestate should, in theory, be straightforward. There are three scenarios. The first is that all relatives of the deceased are known. The second scenario is that the full extent of the deceased's family is unknown. And the third is that there are no known relations and, in the fullness of time, the deceased's property – both real and moveable – will be considered escheated and referred to the Chief State Solicitor.

In the latter two instances, research will need to be undertaken to try to establish whether relatives can be located and, if so, which of them will be entitled to inherit under the provisions of sections 66 to 74 of the *Succession Act 1965*. In principle, this sounds relatively easy, but in practice it is fraught with difficulty, particularly where a search for relatives has to extend to those outside the immediate family circle of siblings and nieces and nephews. Such a search will usually require delving back into records compiled over 100 years ago. More often than not, it will also be necessary to undertake research in jurisdictions outside of Ireland.

Destruction myths

The tumultuous period between the Great War and the end of the Civil War has been the cause of a raft of legends about the fate of Ireland's civil and public records. All the stories have been well rehearsed. If the records weren't 'all destroyed in 1916 during the shelling of the GPO', then it was 'in 1921 with the burning of the Custom House'. While one cannot understate the loss that occurred to Ireland's recorded past when the Public Record Office of Ireland was consumed by fire in June 1922, it does need to be reiterated that not all of our records were housed there at that time.

Contrary to popular belief, none of Ireland's civil records of birth, death and marriage (the earliest of

which are extant from 1845) were affected. Nor were the Registry of Deeds, the Valuation Office or early 20th century census returns, and the damaged Land Registry files were successfully reconstructed. While many original wills were destroyed, official copies for almost all wills proved outside of Dublin can be obtained back to the creation of the civil probate courts in 1858. And, given the recent improvements in data recorded in civil records since the passing of the *Civil Registration Act 2004*, the reality of research in Ireland is not as bleak as it is too often painted.

Lack of awareness

So, given this, why do so many Irish solicitors continue to restrict their search for lost or missing kin to the often-ignored small ads in the under-read back pages of newspapers? The answer must lie in a lack of awareness that help is close to hand. Ireland is no different to most other countries the world over in having experienced professionals who specialise in locating and contacting missing heirs and beneficiaries.

Such researchers are experts in tracking down and locating missing relatives and heirs in Ireland and throughout the world. This is particularly important in Ireland's case, where, from the middle of the 19th century, there has been continuous emigration to all corners of the globe. So much archival material – Irish and otherwise – is now available over the internet that an expert can undertake initial local and international research with relative ease.

This can be demonstrated through the following example. In a recent case, preliminary research found that a male intestate had two sisters and a brother, all a number of years older than himself. It was soon established that the two sisters predeceased him as spinsters, but no trace could be found of the fate of the brother. Extended searching eventually located two living cousins (siblings) in California who were able to say that the deceased's older brother had



MAIN POINTS

- Inheritance-related issues
- Tracing beneficiaries
- Professional genealogical research

IES



visited the home of their parents in San Diego in the 1930s. They recalled that, at the time, the brother had been working on a farm in Colorado, but had left that state during the Depression. Further research eventually established that the brother had died in the late 1960s, but had married and was the father of two daughters. These two ladies, then in their 60s and living in Texas, reported that their father rarely spoke of Ireland and certainly never admitted that he had three siblings. As well as receiving their unexpected inheritance, they were delighted to meet their newfound cousins in California. (Such reunions are frequently the happy by-product of this type of work.)

Family circle

Ireland's 1965 *Succession Act* draws a distinct difference between close family, the 'family circle', and more distant relatives. Those within the family circle can inherit the share from an estate that would

have been due to their deceased parent. Thus, a deceased's living siblings will inherit, and the share due to any deceased siblings will pass to their issue, and so forth. However, this is not the case once one moves back a generation to the siblings of a deceased's parents and their children (who would be the deceased's first cousins). Surviving first cousins will inherit to the exclusion of the issue of those who have predeceased. For instance, this rule can give rise to the unfortunate situation where, at the time of death of an intestate, a maternal first cousin once-removed might commence to administer a deceased relative's estate, only to find at a much later stage that, on the deceased's paternal side, there exists a first cousin. In this instance, the first cousin would be entitled to the entire estate.

An example of this occurred in another relatively recent case. An elderly deceased lady, who had died over 13 years previously, proved eventually to have

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European Convention on Human Rights

FIVE YEARS ON

Date:	Saturday 8 November 2008
Time:	9.15am to 3.30pm
Venue:	Law Society, Blackhall Place, Dublin 7
Fee:	None
CPD Hours:	5

The aim of the conference is to give an overview of the impact of the *European Convention on Human Rights Act* since 2003; to examine the practical implications of the *European Convention on Human Rights Act* in different areas of law; and to demonstrate the impact of human rights standards on shaping legislative developments in Ireland.

TOPICS AND ISSUES COVERED

- Overview of the *European Convention on Human Rights* and its impact since 2003,
- Five parallel sessions on article 6 and 13 of the *European Convention on Human Rights*, criminal law, family law and privacy, immigration law and *amicus curiae*,
- Practical impact of the *European Convention on Human Rights* in Ireland.

relatives in Ireland, Scotland and Canada. Although she had two siblings, one of whom was married, neither had issue. The search then moved to establish the extent of her parents' siblings. It was soon discovered that the mother and father, both of whom had prolific surnames and were born in the late 1890s, had numerous older siblings, the eldest in each case being born back in the 1870s. On the paternal side, the nearest living relations proved to be grandchildren of first cousins of the deceased. Initially, this also proved to be the case on the maternal side. However, after discovering and contacting relatives in Scotland, further family information was provided that allowed the search to continue in Canada. There it was established that, although all children of first cousins in Canada were by then dead, two had outlived the deceased and therefore their estates would be entitled, to the exclusion of the grandchildren of first cousins.

Given that more remote kin will inherit in order of precedence, it is important to establish the closest living relatives to an estate before proceeding to extract a grant of representation. Some years ago, a bizarre case arose in which a paternal third cousin of a male intestate extracted a grant of representation. The estate was almost completely administered by the time the cousin admitted to his legal advisors that no work had been undertaken to locate all of the deceased's other distant cousins who might also be entitled to share in the estate. It was only at this point, after expert assistance had been called in, that, to everyone's surprise, the researchers quickly unearthed living maternal first cousins. Needless to say, this discovery only served to highlight how rash the third cousin's initial haste had been.

Accumulated experience

Quite often, cases are resolved simply through the accumulated knowledge of the researchers involved. Some years ago, the beneficiaries of an estate involving a Kehoe family from south Wexford evaded all attempts by the deceased's solicitors to locate them. However, after a legal genealogist was brought in, the search was soon concentrated on the Canadian province of Newfoundland, where searches quickly proved successful and a living child of a first cousin was located.


The genealogist knew instinctively that, for over the last 150 years, the preferred place of emigration for south Wexford families was Newfoundland. By comparison, Dublin families, for instance, have usually opted for England, while Donegal families have particularly strong social links with Scotland's second city of Glasgow. Protestant families from Ireland have generally been drawn to Canada since the 19th century and, in the years after the foundation of the state, particularly to Vancouver, in British Columbia, which to this day retains a very strong British identity. Another intriguing fact is that, after the disbandment of the Royal Irish



Constabulary in 1922 (and later the Dublin Metropolitan Police in 1926), former members of all ranks often preferred to retire across the water to the greater Liverpool area of Lancashire.

Need for urgency

After the death of an intestate without relations, it is imperative that research for possible relatives should begin as soon as possible. Too often, it is left for many years, and by the time serious searching gets underway, many people with connections to the deceased and who might have crucial family knowledge have also passed away. It goes without saying that a living first cousin in their 80s or 90s, located and interviewed not long after the deceased's death, will yield much more family data than the same exercise a decade later with that first cousin's issue.

Undoubtedly, locating missing heirs and beneficiaries will continue to present problems to the legal profession. And as can be seen from these case studies, this can be a complex process. Professional skills in the use of a wide range of genealogical, historical and other archival sources are required, as well as a precise knowledge of inheritance law. Fortunately, however, experienced probate researchers are available who can assist in bringing even the most difficult and taxing cases to conclusion. 

"The tumultuous period between the Great War and the end of the Civil War has been the cause of a raft of legends about the fate of Ireland's civil and public records"

Steven C Smyrl is a director of Massey & King Ltd, which specialises in legal genealogy, and is co-author of Irish Civil Registration – Where Do I Start? published by the Council of Irish Genealogical Organisations in 2000.

PRIVILEGED POSITION

Solicitors have a professional duty to keep all material coming within the solicitor/client relationship confidential.

Rosemary Horgan and Joan O'Mahony address the thorny issue of professional privilege versus disclosure in circumstances involving the sexual abuse of children

The confidentiality of the solicitor/client relationship is a fundamental principle in Ireland. Trust is a hallmark of that relationship. The public and judiciary are entitled to both expect and demand that solicitors adhere to the highest ethical standards. The solicitor has a professional duty to keep confidential all material coming within the solicitor/client relationship, including the existence of that relationship. The privilege belongs to the client and not to the solicitor.

The *Guide to Professional Conduct of Solicitors in Ireland* makes it quite clear that legal professional privilege is a fundamental feature of the administration of justice and the rule of law. It follows that any abrogation of that right can only be justified where the client consents to the disclosure, or where the court orders the disclosure of legally privileged material, notwithstanding the client's objection.

The guide goes on to say that "in exceptional circumstances involving children" there may be circumstances where the threat to the child's life or health, both mental or physical, is sufficiently serious to justify a breach of the duty of confidentiality or, alternatively, to warrant an application to the President of the High Court for directions. Similarly, the duty of confidentiality may be abrogated to the extent necessary to avoid a real risk of death or injury to the client himself or to a third party.

Privilege and confidentiality

The law divides a client's instructions to the solicitor into two categories:

- 1) Information that attracts the shield of legal professional privilege, and
- 2) Information that is furnished for the purpose of seeking legal assistance, unconnected with litigation or potential litigation.

While all consultation and dealings with one's solicitor are confidential, not every such consultation or dealing is covered by legal professional privilege.

There is a critical difference, and it is necessary to distinguish between them.

Ethical standards for solicitors demand that the duty of confidentiality embraces both types of information. In the practice of family law, information or communications almost always fall into the first category and attract legal professional privilege.

The leading Irish authority on the distinction between legal professional privilege and confidentiality is *Smurfit Paribas Bank Limited v AAB Export Finance Limited*. Finlay CJ sets out the principles underlying the law of privilege applicable to communications between a client and his lawyers. He goes on to explain the rationale for the distinction:

"The existence of a privilege or exemption from disclosure for communications made between a person and his lawyer clearly constitutes a potential restriction and diminution of the full disclosure both prior to and during the course of legal proceedings which in the interest of the common good is desirable for the purpose of ascertaining the truth and rendering justice. Such privilege should, therefore, in my view, only be granted by the courts in instances which have been identified as securing an objective which in the public interest in the proper conduct of the administration of justice can be said to outweigh the disadvantage arising from the restriction of disclosure of all the facts.

"It is necessary to bear these general considerations in mind in attempting to ascertain the underlying principle which appears to have led to the extension of the privilege for communications with a lawyer from cases of actual or contemplated litigation, to cases of communication seeking legal advice and/or legal assistance other than advice."

Privilege and communications

This judgment makes it quite clear that legal professional privilege applies where the client seeks legal advice in the context of litigation or potential

MAIN POINTS

- Legal professional privilege
- Abrogation of the right of privilege
- Exceptions
- Mandatory reporting of child sexual abuse

ON?



litigation. The exceptions to the client's right to the protection of an absolute shield of confidentiality in respect of such communications are limited. Exceptions include communications in furtherance of a crime, or fraudulent communications, or communications that result in an affront to the administration of justice. In the category of legal assistance, the court may demand disclosure of any relevant documentation. The range of possible

exceptions is, potentially at least, significantly wider.

Legal professional privilege has been characterised as a substantive right or a fundamental right or immunity that embodies a substantive legal right. It has also been characterised as a 'human right'. The European Court of Human Rights has held that an abrogation of the privilege will ordinarily involve a violation of the right to a fair trial and the right to privacy. In *S v Switzerland*, the court held that,

When the welfare of children is at stake, professional privilege can be a real balancing act

DISTINCTIONS ARE RARELY CLEAR-CUT

The borders between the duty to maintain absolute client confidence/professional privilege and a duty or ethical obligation to make a 'public safety disclosure' are rarely clear-cut.

The solicitor's discretion or indeed obligation to disclose is narrowly drawn by the *Guide to Professional Conduct*. The discretion is limited to the following situations:

- Where the child is the client and the child reveals information that indicates continuing sexual or other physical abuse but refuses to allow disclosure,
- Where an adult client discloses abuse either by himself or herself or by another adult against a child but refuses to allow disclosure.

In such circumstances, where the solicitor considers that the threat to the child's life or health, both mental and physical, is sufficiently serious, it justifies a breach of the client's confidence or warrants an application to the President of the High Court for directions.

The practitioner appears to be caught between (a) the risk of suit by the client for breach of a constitutional and legal duty to them for breach of their right to confidentiality and legal professional privilege, and (b) public, professional or judicial censure for breach of professional ethics and standards for failure to make such a disclosure. The solicitor also appears to be at risk of a potential suit by a child or third party who is injured or abused by virtue of the non-reporting of the risk.

"an accused's right to communicate with his advocate out of the hearing of a third person is one of the basic requirements of a fair trial in a democratic society. If a lawyer were unable to confer with his client and receive confidential instructions from him without such surveillance, his assistance would lose much of its usefulness."

In *Niemietz v Germany*, it was held that an abrogation of the privilege will involve a violation of articles 6 and 8 of the ECHR.

The ECJ also espouses the importance of the rule and, in the case of *AM&S Europe Ltd v Commission of the European Communities* said:

"Whether it is described as the right of the client or the duty of the lawyer, this principle has nothing to do with the protection or privilege of the lawyer. It springs essentially from the basic need of a man in a civilised society to be able to turn to his lawyer for advice and help and, if proceedings begin, for representation; it springs no less from the advantages to a society which evolves complex law reaching into all the business affairs of persons, real and legal, that they should be able to know what they can do under the law, what is forbidden, where they must tread

circumspectly, where they run risks. Community law must take into account the principles and concepts common to the laws of those states concerning the observance of confidentiality, in particular, as regards certain communications between lawyer and client. That confidentiality serves the requirement, the importance of which is recognised in all of the member states, that any person must be able, without constraint, to consult a lawyer whose profession entails the giving of independent legal advice to all those in need of it."

While public and private interests underpin the principle of legal professional privilege, there are some exceptions to facilitate defined statutory exceptions (money laundering) and non-statutory exceptions (the commission of a crime/perversion of the course of justice) or 'public safety exceptions'. In everyday practice, however, it may be difficult to make a clear judgement call as to whether the disclosure is objectively merited. Clearly, the protection of human life would clearly trump the duty to maintain client confidentiality, but real-life situations are rarely that clear cut.

Child sexual abuse

The reports of both the Law Reform Commission on child sexual abuse and the Kilkenny Incest Investigation Team addressed the issue of mandatory reporting of child sexual abuse. Neither report, however, came to firm conclusions as to whether professionals should be mandated to make disclosures of suspicions or disclosure of child abuse. Each report emphasises the need for inter-agency cooperation and inter-professional cooperation in order to protect children. Neither report touched on the position of the lawyer in the picture.

The common law exceptions to the absolute duty of confidentiality differ from jurisdiction to jurisdiction and can be found generally in the rules of professional conduct for lawyers in those jurisdictions. The exceptions in Ireland are contained in rule 4.2. In the context of family law, the appropriate rules are to be found in 4.5 and in *Family Law in Ireland – Code of Practice*, which was

LOOK IT UP

Cases:

- *AM&S Europe Ltd v Commission of the European Communities* (C-155/79 [1982] ECR 1575 at 1611-12)
- *Niemietz v Germany* (1992) 351-B Eur Court HR (ser A)
- *S v Switzerland* (1992) 14 EHRR 6770
- *Smurfit Paribas Bank Limited v AAB Export Finance Limited* [1990] 1 IR 469

Literature:

- Bentham, Jeremy (1827) *Rationale of Judicial Evidence* (book IX, chapter V, pp302, 312)
- Law Society of Ireland, *Family Law in Ireland – Code of Practice*, available on the Family Law Committee's page on the Law Society website and as appendix 4 of the *Guide to Professional Conduct*
- Law Society of Ireland, *Guide to Professional Conduct of Solicitors in Ireland* (2nd ed), available on the Guidance and Ethics Committee's page on the Law Society's website

recently updated and will be relaunched shortly.

The legal profession is increasingly discomfited by the uncertain position they hold in striking a balance and disclosing information imparted by a client in confidence and in a situation where they would normally expect and be entitled to expect legal professional privilege to apply.

Statutory delineation

Given the legislative changes to the general principle of legal professional privilege to overcome problems relating to money laundering, it is not unreasonable to expect a similar statutory delineation in the context of child abuse. Even with such statutory guidance, there will continue to be a need for the application of the informed discretion of solicitors who must work within and advise clients in the area of family law. No doubt there will be challenges to the exercise of that judgement in individual cases. It may be argued that substantive or human rights should only be abrogated by clearly defined language rather than by general or ambiguous words merely contained in rules of professional conduct.

The utilitarian philosopher and jurist Jeremy Bentham was not a fan of legal professional privilege (or indeed of lawyers in general) and argued that:

“Disclosure of all legally operative facts, facts investitive or divestitive of right, of all facts on which right depends, such, without any exception, ought to be, such, with a few inconsistent exceptions, actually is, the object of the law ... If falsehood is not favoured by the law, why should concealment? ... Expect the lawyer to be serious in his endeavours to extirpate the breed of dishonest litigants! Expect the fox-hunter first to be serious in his wishes to extirpate the breed of foxes.”

While his views did not translate into the development of the general principle of legal professional privilege as we know it today, it has a certain resonance in the current overarching theme, which suggests that the best interest of a child should prevail where there is a clear chasm between the rights of the child and the rights of adults in a civilised society.

The Law Society's Family Law Committee is currently examining the thorny question of the limits to the principle of the right to confidentiality. Please let us know your views on this issue. **G**

Rosemary Horgan (Ronan Daly Jermyn) and Joan O'Mahony (O'Mahony's Solicitors) are members of the Family Law Committee.

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COLLATERAL

Given the many varying forms of collateral warranties, there are a number of points that should be considered, from various perspectives, when negotiating them. Margaret Austin assesses the lie of the land

Most property lawyers will come across various forms of collateral warranties when dealing with property transactions. Given the many varying forms, there are a number of points that should be considered when negotiating these from the perspective of a developer, tenant, purchaser, funder or the party providing the collateral warranties (CWs). While there are industry standard form CWs, there are pitfalls in these. This article sets out the background to the requirement for CWs and some basic pointers on their review and negotiation.

The origin for the requirement of CWs lay in the development of the law of tort in England. Throughout the 1980s and 1990s, concern arose on the recoverability of damages for pure economic loss in a claim brought in negligence. Funders in particular became concerned about their ability to recover such losses in respect of defective premises. The practice of putting in place a CW developed so as to give a third party, such as a funder, who otherwise would have no connection with the principal players of a construction project – that is, the contractor, the design team and the specialist design subcontractors – rights in contract in relation to any defects in the property.

To some extent, the original reason for requiring CWs has been undermined by the fact that most parties who provide CWs now usually limit their liability such that they will have liability for repair of physical damage only and will have no liability for consequential or financial types of loss. Nevertheless, the requirement to provide CWs persists and there are advantages to obtaining them. CWs define the contractual rights between the parties and provide a level of certainty on rights of recovery. They also deal with matters such as design rights, professional

indemnity insurance and warranties on non-use of prohibited materials, all of which offer contractual protections to any party taking a substantial interest in a property.

Who provides them? Who requires them?

The parties from whom CWs will usually be required are the building contractor, the design team and any specialist design subcontractors – in particular, as a building contractor does not have liability for the design of a nominated design subcontractor. (Under the new GCCC forms of contract for public works, the concept of nomination of specialist subcontractors no longer applies. Under these new forms, the contractor will have liability for the specialist subcontractor's works. Nonetheless, there is a new model form CW to be provided by specialist subcontractors, which would provide an additional level of cover in respect of specialist subcontractors' works.)

The parties usually seeking CWs are a tenant taking a lease of the property, a purchaser, a funder providing funds for the development and a management company (which may own the common areas).

The RIAI and ACEI have standard forms of CW, which may be offered by their members. However, for many large commercial developments, the significant limitations on, and preconditions to, liability in these may not be acceptable. Therefore, the practice of drafting bespoke forms of CW arose. Any party being offered a CW ('the beneficiary') will want to ensure it provides adequate protection and does not unduly restrict the beneficiary's right to bring a claim. In reviewing a CW, the underlying contract upon which it is based should be reviewed – that is, the letter of appointment, the building contract, or the design subcontract. If the underlying

MAIN POINTS

- Negotiating collateral warranties
- Perspectives of developers, tenants, purchasers, funders or parties providing the collateral warranties
- Limitations, net contribution clauses, insurance, design and step-in rights, assignments



DAMAGE

contract has significant caps on, unusual defences to, or preconditions to liability, and the CW provides that the provider of the warranty shall have no greater liability under the CW than under the underlying contract, such a term may affect the level of redress available.

Limitations

The limitations that may be negotiated will largely relate to:

- Time periods for liability under the CW,

- The nature of the losses recoverable,
- Caps on liability,
- Net contribution/proportionate liability.

If a party wishes to exclude liability for specific losses, it is best to define those. The use of the generic term 'consequential' or 'indirect' loss does not necessarily exclude all types of financial loss.

In most CWs, the provider will limit its liability to the cost of repair of physical defects to the property. However, a party may also seek to cap the

Even Arnie could use the protection of collateral warranties



Strong skills of persuasion are required when negotiating collateral warranties

“The introduction of agreed standard forms reflecting a more balanced approach between the needs of the provider and beneficiary would be welcome”

level of losses for which it will have a liability or cap its liability at its level of insurance cover. As a trade-off for such a cap, it might be agreed that the CW does not exclude liability for consequential loss.

There may be debate on whether liability will be for six or 12 years. It is more usual that it be for six years; however, for larger commercial developments, 12 years may be negotiated.

Net contribution clauses

Many CWs will have net contribution/proportionate liability clauses. The intended effect of such clauses is to limit the liability of the provider of the CW to the extent of its responsibility for any defects in the property. Such clauses are used in an attempt to overcome the provisions of the *Civil Liability Act 1961*, which provides for joint and several liability of “concurrent wrongdoers”, that is, two or more persons where both or all are responsible to a third party for the same damage. A claim for a defective property may be against the several parties involved in its design and construction. If a court finds that each of the parties is a concurrent wrongdoer, the plaintiff is entitled to look to each of the parties to recover the entirety of its judgment. For example, although an architect may be found to be only 10% liable and the contractor is found to be 90% liable for a defective property, but it turns out that only the architect holds professional indemnity insurance and the contractor is not a financial mark, the plaintiff could recover all of its judgment against the architect. The insertion of a net contribution clause is an attempt to overcome such a scenario. It should be noted that these clauses have not been tested in the Irish courts, so it remains to be seen whether they will effectively defeat the intention of the act.

Insurances

The ACEI form warranties require that consultants use ‘reasonable endeavours’ to maintain professional indemnity insurance for a defined sum for a period of six years, provided that such cover is available at commercially reasonable rates. A ‘reasonable

endeavours obligation’ may not be satisfactory and a party might insist on an absolute obligation. There can be negotiation on the period of time for which insurance cover is to be kept in place. Some parties may require that it be kept in place for a period of 12 years (if the CW is for 12 years), although six years is more usual. The parties may also try to define what ‘commercially reasonable rates’ means.

Professional indemnity insurance is placed on a ‘claims made’ basis. Therefore, the insurance must be in place in the year in which a claim is made. The beneficiary of CWs should ensure that there is a follow-up mechanism put in place to ensure that the insurance is indeed maintained. Contractors who have design obligations under a design-and-build building contract should be required to put in place professional indemnity insurance in respect of such design obligations. Similarly, design subcontractors should hold professional indemnity insurance in respect of their design function. This might arise in the case of design specialities, such as cladding, glazing, lifts or roofing works. Advice may be required from insurance brokers on whether the levels of professional indemnity cover are appropriate, given the design input in the development and the potential consequences of failure of these works.

Design rights

There may be negotiation on the extent of design rights being given or required. A design consultant may endeavour to limit design rights so that its design would not be used without payment of an additional fee for a licence to use it or subject to all fees being paid. The beneficiary may wish to obtain design rights without payment of any additional fees. In such instances, the more usual design right sought is for ‘an irrevocable and royalty free licence to use the design’. The beneficiary of a warranty should beware of a clause providing that a licence is subject to payment of the design consultant’s fees by its employer, as it may be difficult for a beneficiary to ascertain, if there is a dispute, whether the fees have been paid and it may be left without any design rights due to an outstanding dispute.

Step-in

Where a funder is providing funds to the developer, it may wish to secure step-in rights into the principal construction contracts. If a developer becomes insolvent, the funder may wish to step into the shoes of the developer in the letters of appointment, in the building contract and the specialist design subcontracts, so that each of these parties will continue to provide their services for the works, notwithstanding the insolvency of the developer, and thereby allowing the funder to realise its interest in the property. The funder will obtain the step-in rights into these contracts through the inclusion of a step-in clause in the CW. Where such clauses come

LOOK IT UP

Cases:

- *Glasgow Airport v Messrs Kirkham & Bradford*, 2007 [CSIH] 47
- *Norta Wallpapers (Ireland) Ltd v John Sisk and Sons (Dublin) Ltd*, 1978 [IR] 114
- *Safeway Stores Limited v Interserve Project Services Limited*, [2005] WHC 3085 (TCC)

Legislation:

- *Civil Liability Act 1961*

into operation, they will operate to effect a novation of the underlying letter of appointment, building contract or design subcontract from the developer to the funder or the funder's nominee. The developer should be a party to these CWs to consent to the novation of its underlying contract to the funder or its nominee. The provider of a CW will wish to ensure that any funder stepping in will pay any outstanding fees, whereas a funder will seek to limit its obligation to pay from the date it steps in.

Parties may also wish to preserve their common law rights so that, notwithstanding that they have defined their liability and limitations within the CW,

they preserve their rights to sue under the law of negligence, although the provider of a warranty may seek that any caps or limitations would also extend to claims made in negligence.

Assignments

A tenant, as a beneficiary of a CW, may wish to ensure that it is assignable freely or, more usually, that the beneficiary may assign at least twice without having to seek the consent of the provider of the warranty. There may be negotiation on the nature and number of the rights of assignment and a proviso that any assignment restriction does not apply to an inter-company transfer. The provider will wish to limit the number of parties to whom it will potentially have liability.

A solicitor may be faced with reviewing myriad forms with nuances in drafting, which, if not carefully considered, may result in a client's ability to claim being restricted in unforeseen ways. Given these myriad forms, the introduction of agreed standard forms reflecting a more balanced approach between the needs of the provider and beneficiary would be welcome. **G**

Margaret Austin is a partner in construction, planning and environmental law at Eugene F Collins Solicitors.

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DADS' ARMY

The dearth of rights for unmarried fathers is not serving the best interests of the child, says Roisin O'Shea, in this abridged version of her 2008 essay for the Society's Law Reform Committee competition, in which she was runner-up

Unless we rectify the current dearth of rights for unmarried fathers, Ireland is likely to be taken to the European Court of Human Rights. There is no automatic right in Ireland for fathers to care for or bring up their children, a situation repeatedly highlighted by vocal unmarried father and journalist John Waters, who maintains that the "attitude of officialdom and the wider society to this issue is that the welfare, wishes, and needs of the mother are the only matter to be considered". Reform is needed to protect the best interests of the child by ensuring that the child and its father can have a relationship protected by way of an amendment to existing guardianship legislation.

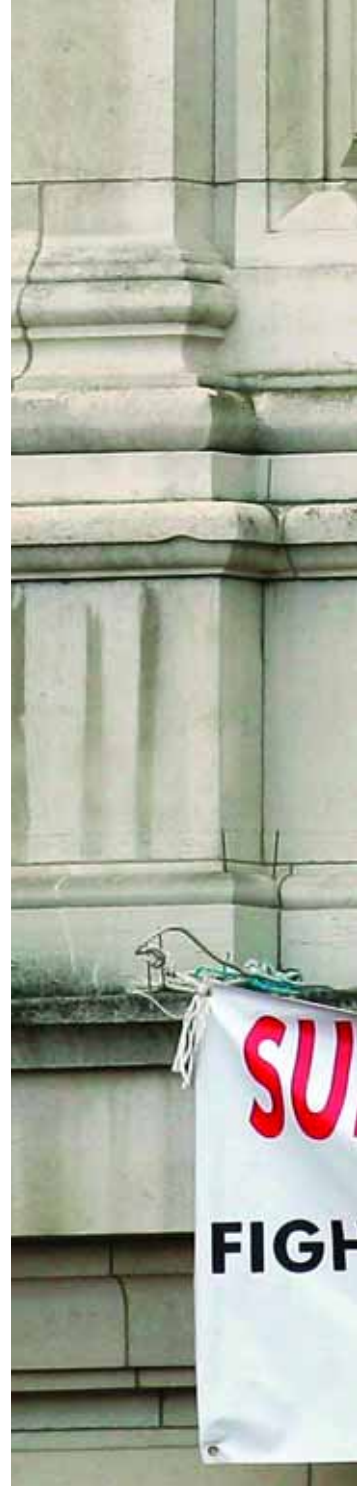
Constitutional presumption

There is a constitutional presumption that the welfare of the child is best protected by the parents, as part of the family. Under article 41 of the Constitution, the married family is recognised as the fundamental unit group of society, having rights under natural law that pre-date and are superior to positive law. The original common law definition (Lord Penzance in *Hyde v Hyde*), constantly referred to by the courts, is that of a Christian (voluntary

union for life of one man and one woman to the exclusion of all others. For 120 years, this definition stood in Ireland – until 1995, when divorce became legal and the permanency aspect of that definition no longer applied.

Married parents retain superior rights

The 1980 landmark judgment in *G v An Bord Uchtala* should have heralded the start of constitutional jurisprudence on the rights of the child, and indeed a redefining of 'family' and 'parent' outside lawful wedlock. The most significant aspect of the interpretation by Walsh J of the independent existence of children's rights is that he drew no distinction between children of married parents and children of unmarried parents. Yet only five years later, Finlay CJ rowed back on that potential expansion when, in *Re JH*, he redefined the rights of the child as a member of the family – as defined under article 41. According to Alan Shatter, this case "renders it impermissible to regard the welfare of the child as the paramount consideration in any dispute as to its upbringing or custody". The retrenching by Finlay CJ ensures that married parents retain superior rights over the rights of their child, such rights being copper-fastened in *North Western Health Board v HW and CW*.



MAIN POINTS

- Rights of unmarried fathers
- Best interests of the child
- Canadian approach



Batman forever.
Father never?

The current statutory position in relation to fathers, under the *Guardianship of Infants Act 1964*, is that they have an automatic right to be a joint legal guardian only if they are married to the mother of the child. Crucially, the act defines a 'father' as not including the natural father of an illegitimate infant – in this situation, it is only the mother who has automatic legal guardian rights (section 6(4)).

The *de facto* family

In the recent *Mr G* case, the High Court for the first time gave recognition to the rights of unmarried fathers in Ireland under European law. Mr Justice McKechnie, referring to article 8 of the ECHR, found that the couple "constituted at all relevant times, a *de facto* family within the meaning of that article". This case indicates that we ought to have

regard to the substance of the relationship rather than the form. Mr Justice McKechnie set down tests that unmarried fathers may be able to avail of to invoke their rights, such as how long the couple lived together, the length of the relationship, and the ways in which the parents showed their commitment to one another. As posited by Geoffrey Shannon, "there is a need now for a framework to reflect our obligations under the European convention within domestic law". The issue is, how do we draw up such a framework?

'Dead-beat dads'

In Re JH, Hardiman J stated: "the Constitution does not prefer parents to children. The preference the Constitution gives is this: it prefers parents to third parties." Academic commentary in the US would



“Without addressing the absence of the rights of unmarried fathers, we continue to ensure that the best interests of the child are not served in this jurisdiction and that the rights of marital parents trump both the rights of children and those of natural fathers”

appear to somewhat support this position, as observed in 1979 in the *Harvard Law Review*, “parents typically possess a sensitivity to a child’s personality and needs that the state cannot match, and because the closeness of the familial relationship provides strong assurance that parents will use their special knowledge of the child to act in his best interests”. Unlike their married counterparts, unwed fathers in most states in the US are not automatically presumed to be the biological parent of their children, despite the fact that they may be listed on the child’s birth certificate. The focus in the US in relation to the birth of illegitimate children, like other common law jurisdictions, has historically been on the ‘unmarried mother problem’, ignoring or giving little attention to unmarried fathers.

In *Stanley v Illinois*, Chief Justice Burger held that the failure to afford Stanley, the father, a hearing on

his parental qualifications, while extending it to other parents, denied him equal protection of the laws, constituting a breach of his constitutional rights under the 14th amendment. It has been well documented that custody, visitation and indeed guardianship issues have taken a back seat to child support in recent years in the US, with the emphasis on establishing paternity to pursue so-called ‘dead-beat dads’. The US model would not suggest any answers to the reform issues identified by Geoffrey Shannon in relation to unmarried fathers and their rights in Ireland.

In Britain, an unmarried father does not have automatic guardianship rights, but can acquire parental responsibility and rights by subsequent marriage to the mother, or by being appointed guardian in the mother’s will if she dies, or by formal agreement with both signatures witnessed by the court, or through the terms of the *Adoption and Children Act 2002*. While there may be ministerial consensus in Britain that the distinction between married and unmarried fathers is outdated, legislative change is slow in coming, says Claire Dyer.

Canadian answer?

Most Canadian provinces, however, declare that unmarried fathers are joint guardians with the mother. The automatic presumption is subject to certain conditions – conditions that are curiously mirrored in the tests recommended by Justice McKechnie in the *Mr G* case. For example, under Alberta Province’s *Domestic Relations Act 1980*, as amended, it is stated that the joint guardians of a minor child are the mother and the father, subject to certain conditions, including that he cohabited with the mother of the child for at least one year immediately before the birth of the child. In New Brunswick, under the *Family Services Act 1981*, the commencement acknowledges the family as the basic unit of society

LOOK IT UP

Cases

- *G v An Bord Uchtala* [1980] 1 IR 32 55-56
- *Hyde v Hyde* (1866) LR 1 P&D 130
- *North Western Health Board v HW and CW* [2001] 3IR 622
- *Re JH* [1985] IR 375
- *Stanley v Illinois*, 405 US 645 [1972], Supreme Court appeal
- *T v O* [2007] IEHC 326 (the *Mr G* case)

Legislation

- *Adoption and Children Act 2002* (Britain)
- *Bunreacht na hÉireann*, article 41
- *Constitution of the United States*, 14th amendment
- *Domestic Relations Act 1980* (Alberta, Canada), section 50(1)
- *Domestic Relations Act*, RSA, 1980 c D-37, as

amended in RSA 2000, c D-14

- *European Convention on Human Rights*, article 8
- *Family Services Act 1981* (New Brunswick, Canada)
- *Family Services Act*, chapter F-2.2 1981, as consolidated to June 2006
- *Guardianship of Infants Act 1964*

Literature

- Coulter, C, “Case ‘recognises’ unmarried fathers’ rights”, *The Irish Times*, 28 November 2007
- Dyer, C, “Unmarried fathers offered full parental rights”, *The Guardian*, 27 March 2001
- Gartland, F, “Unmarried fathers getting a ‘raw deal’ in Irish law”, *The Irish Times*, 3 March 2007
- Spencer, JR, and A Du Bois-Pedain, *Freedom and Responsibility in Reproductive Choice* (Oxford: Hart Publishing, 2006)

and states that children have rights (fundamental freedoms) no less than those of adults. Under this act, the definition of a child includes a child whose parents are not married to one another. A father who is a 'parent' is defined "as the natural father who must have signed the birth registration form or have filed with the mother a statutory declaration under s105, or has been named the father of the child in a declaratory order under part VI, or is a parent with whom the child ordinarily resides and has demonstrated settled intention to treat that child as a child of his family". There is therefore a presumption that where the parents of the child live together, or have lived together, at any time during the life of the child, whether or not married to each other, they are deemed to be joint guardians of their child.

Time for change

The above-cited provisions remove the distinction between married and unmarried parents, replacing it with a presumption that is both conditional and rebuttable, but significantly improves the rights of unmarried fathers – which is ultimately in the best interests of the child. We are on the cusp of significant new developments in family law brought about by the technological advances of assisted reproductive technologies. These advances bring with them a myriad range of legal, ethical and social problems.

Sooner rather than later, the legislature must move to define who is now a 'parent', particularly who is a 'father'. An amendment to existing guardianship legislation could incorporate elements of the above-cited Canadian provisions, allowing for a redefining of the family unit, subject to the tests as recommended by Justice McKechnie, to include the *de facto* family referred to by Geoffrey Shannon in relation to article 8 of the ECHR.

Societal changes and technological advances dictate that our traditional concepts and definitions of parenthood, and indeed the family unit, need redefinition. As observed by Judith Masson, we must question what legal recognition we give to the manifold ways of 'parenting by doing' and 'parenting by being', interrelated concepts that define the position of parents *vis à vis* their children in law. Without addressing the absence of the rights of unmarried fathers, we continue to ensure that the best interests of the child are not served in this jurisdiction and that the rights of marital parents trump both the rights of children and those of natural fathers. **G**

Roisin O'Shea is currently undertaking a master's in family law and has recently received permission from the Minister for Justice to attend in camera family law proceedings in the Circuit Court.



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William Kunstler

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KEY TO VAT ON SALES OF PROPERTY

The new VAT rules relating to property transactions came into force on 1 July 2008. To assist with the complexities that may arise, Michael O'Connor of William Fry Tax Advisors has produced this key

This key has been prepared to assist practitioners acting for either a vendor or a purchaser of property where the sale could have VAT consequences. It is assumed that the user will have at least a basic familiarity with the new VAT on property regime.

The approach taken is to identify the different classifications of sales of property where VAT has an impact or where a doubt as regards VAT may arise. For example, table 1 deals with sales where the vendor is accountable for VAT at the 13.5% rate. The tables deal with classes of property, tax status,

obligations of the vendor and the purchaser and suggest relevant VAT special conditions. References to the VAT conditions are to those currently published. These may change.

On the basis that the contents of the key do not represent an official Revenue interpretation, some senior Revenue officials have kindly provided me with comments and helpful suggestions.

The key is not intended to be taken as a substitute for reading the legislation.

I would welcome any ideas for improvement that practitioners might care to give.

TABLE 1

Sale of freehold/freehold equivalent interest or assignment/surrender of legacy lease where VAT is mandatorily chargeable at 13.5%

Property sold	Tax status	Vendor must	Purchaser must	VAT calculated by reference to	Deductibility adjustment for vendor	Relevant VAT special conditions
A. Residential property sold by the developer (including property covered by s4B(7))	Taxable	Charge VAT at 13.5%	If acting as taxable person, ask for invoice	13.5% of market value/selling price	N/A	3.1 and 3.2
B. Partially developed property	Taxable	Give VAT invoice Charge VAT at 13.5%	Ask for invoice	13.5% of market value/selling price	Possible credit if vendor has partial VAT recovery	3.1, 3.2 and 3.9
C. New or nearly new freehold/freehold equivalent commercial property (including property covered by s4B(3))	Taxable	Give VAT invoice Charge VAT at 13.5%	Ask for: a) Invoice, b) Date of development, and c) Evidence of dates and periods of occupation if relevant	13.5% of market value/selling price	Possible credit if vendor has partial VAT recovery	3.1, 3.2 and 3.9
D. Assignment or surrender during adjustment period by an accountable person of occupational lease created by a taxable person prior to 1/7/08 of commercial property (a legacy lease)	Taxable	Give: a) Statement under section 4C(8)(a), and b) Copy of capital goods record	Ask for: a) Document under section 4C(8)(a), and b) Copy of capital goods record, and self account for VAT	Apply the formula ¹ : $T \times \frac{N}{Y}$ Premium/reverse premium ignored	Possible credit if vendor has partial VAT recovery	3.1, 3.4 and 3.9 or 3.1 and 3.2 and 3.9

1) T is the total VAT incurred on acquisition/development. N is the number of full intervals plus one that remain in the adjustment period at the time of the assignment or surrender. Y is the total number of intervals in that adjustment period for the person making the assignment or surrender (see section 12E(7)(a)).

TABLE 2

Exempt sale during adjustment period of second-hand freehold/freehold equivalent interest where, unless option exercised, deductibility adjustment may apply

Property sold	Tax status	Vendor must	Purchaser must	VAT calculated by reference to	Deductibility adjustment for vendor	Relevant VAT special conditions
A. Developed second-hand commercial property sold during adjustment period (both vendor and purchaser are taxable persons)	Exempt, and if joint option to tax not exercised, deductibility adjustment may apply	Consider: a) Obliging purchaser to exercise joint option to tax, and (if appropriate) claiming VAT rebate (if any), or b) Accounting to the Revenue for deductibility adjustment	If joint option exercised, apply reverse charge VAT at 13.5%	If joint option exercised: 13.5% of market value/selling price If joint option not exercised: Apply the deductibility adjustment formula ² : $B \times \frac{N}{T}$	Debit if option to tax not exercised. Possible credit if vendor has partial VAT recovery and option is exercised	3.1, 3.3 (first alternative) and 3.9 if joint option is exercised 3.1 and 3.3 (second alternative) if joint option is not exercised

TABLE 3

Sale of transitional freehold/freehold equivalent interest or legacy lease by a taxable person with no entitlement to deduct VAT

Property sold	Tax status	Vendor must	Purchaser must	VAT calculated by reference to	Deductibility adjustment for vendor	Relevant VAT special conditions
A. Commercial property acquired or developed prior to 1/7/08 and sold during adjustment period	Exempt with joint option to tax (with no deductibility adjustment)	Consider: a) Obliging purchaser to exercise joint option to tax to secure partial refund of VAT under section 12 E(7)(a), or b) Treat supply as exempt	If joint option exercised, apply reverse charge VAT at 13.5%	If option exercised: 13.5% of market value/selling price	Possible credit if option exercised	If VAT is charged: 3.1, 3.2 or 3.3 (first alternative) and 3.9, or if no VAT is charged, delete VAT clause entirely
B. Assignment during adjustment period of occupational lease created by a taxable person prior to 1/7/08 of commercial property (a legacy lease)	Exempt with joint option to tax (with no deductibility adjustment)	Consider: a) Obliging purchaser to exercise joint option to tax to secure partial refund of VAT under section 12 E(7)(a), or b) Treat supply as exempt	If joint option exercised: a) Ask for VAT statement; b) ask for copy of capital goods record; and c) Apply reverse charge according to $T \times \frac{N}{Y}$ formula ¹	Apply formula in table 1D Premium/reverse premium ignored for assignment or surrender of a legacy lease	Possible credit if option exercised	3.1, 3.3 (first or second alternative) and 3.9

TABLE 4

Exempt sale of freehold/freehold equivalent property where no deductibility adjustment applies

Property sold	Tax status	Vendor must	Purchaser must	VAT calculated by reference to	Deductibility adjustment for vendor	Relevant VAT special conditions
A. Freehold/freehold equivalent property, which was never developed or is out of the adjustment period	Exempt with option to tax	Confirm tax status of property to purchaser	Ask for tax status to be confirmed by documentary evidence	N/A unless option to tax is exercised, then 13.5%	N/A	None necessary if joint option is not exercised If joint option to tax is exercised as Table 1, item D
B. Second-hand residential property (not developed since acquisition) in private residential use by owner	Not taxable	N/A	N/A	N/A	N/A	None necessary

2) B is the amount of VAT reclaimed (as adjusted if necessary). N is the number of full intervals remaining in the adjustment period in relation to that property at the time of supply plus one. T is the total number of intervals in the adjustment period in relation to that property (see VAT Act 1972, section 12 E(7)(b)).

TABLE 5

**Assignment or surrender for premium/reverse premium of occupational lease (other than legacy lease)
by taxable person: VAT is chargeable at 21% on premium/reverse premium³**

Property sold	Tax status	Vendor must	Purchaser must	VAT calculated by reference to	Relevant VAT special conditions
A. Assignment or surrender for premium/reverse premium by taxable person of occupational lease created after 30/6/08 not covered in table 6, item B	Premium/reverse premium taxable as service	If payer, ask for invoice If payee, provide invoice and charge VAT at 21%	If payer, ask for invoice If payee, provide invoice and charge VAT at 21%	21% of premium/reverse premium	3.1, 3.5 or 3.6 and 3.9
B. Assignment or surrender by taxable person for premium/reverse premium of occupational lease created prior to 1 July 2008 for a term of less than ten years where the landlord's waiver of exemption from VAT applies	Premium/reverse premium taxable as service	If payer, ask for invoice If payee, provide invoice and charge VAT	If payer, ask for invoice If payee, provide invoice and charge VAT at 21%	21% of premium/reverse premium	Not covered. Use 3.1, 3.5 adapted and 3.9

TABLE 6

Assignments/surrenders of lease where no VAT is chargeable as either a supply of a good or a service

Property sold	Tax status	Vendor must	Purchaser must	VAT calculated by reference to	Deductibility adjustment for vendor	Relevant VAT special conditions
A. Assignment or surrender by taxable person for premium/reverse premium of: a) Occupational lease for a term of ten years or more created prior to 1/7/08, where VAT was not chargeable on supply of lease, b) Occupational lease for a term of less than ten years created prior to 1/7/08, where landlord did not waive exemption from VAT on rent	Exempt (by Revenue concession)	N/A	N/A	N/A	N/A	None necessary
B. Surrender for premium/reverse premium of occupational lease created after 30/6/08 where landlord has not exercised the landlord's option to tax	Exempt (by Revenue concession)	N/A	N/A	N/A	N/A	None necessary

TABLE 7

Transfer of business under section 3(5)(b)(iii) and section 5(8)

Property sold	Tax status	Vendor must	Purchaser must	VAT calculated by reference to	Deductibility adjustment for vendor	Relevant VAT special conditions
A. Partially developed commercial freehold/freehold equivalent property	Not taxable because not a supply for VAT purposes	Claim for deductibility adjustment (if any)	Account for any deductibility adjustment on acquisition	For purchaser's CGS: VAT that would have been charged had the transaction been a supply for VAT purposes	Possible credit if vendor has partial VAT recovery	3.1, 3.8 and 3.9
B. New or nearly new freehold/freehold equivalent interest	Not taxable because not a supply for VAT purposes	Claim for deductibility adjustment (if any)	a) Set up capital goods records based on 20 intervals, b) Account for any deductibility adjustment on acquisition	For purchaser's CGS: VAT that would have been charged had the transaction been a supply for VAT purposes	Possible credit if vendor has partial VAT recovery	Not covered 3.1, 3.8 and 3.9
C. Second-hand freehold/freehold equivalent interest	Not taxable because not a supply for VAT purposes	Give copy of capital goods record	a) Maintain capital goods record based on continuation of business, b) Account for any deductibility adjustment at end of vendor's current interval	For purchaser's CGS: vendor's VAT position	N/A	3.1, 3.8 and 3.9
D. Assignment/ surrender of legacy lease	Not taxable because not a supply for VAT purposes	Give capital goods record	a) Maintain capital goods record based on continuation of business, b) Account for any deductibility adjustment at end of vendor's current interval	For purchaser's CGS: vendor's VAT position	N/A	3.1, 3.8 and 3.9
E. Assignment/ surrender of occupational lease (other than legacy lease) for premium/reverse premium	Not taxable because not a supply for VAT purposes – the Revenue accept as intangible asset for section 5(8)	N/A	N/A	Premium/reverse premium	N/A	3.1, 3.8 and 3.9 and insert new special condition as appropriate

3) Where no premium/reverse premium is charged on an assignment or surrender covered in table 5, no VAT is chargeable.

NOTES

The sale of second-hand residential property (unless developed) and commercial property held by the same owner for at least 20 years and undeveloped is not taxable.

1. Owner of a capital good held on 1 July 2008 and acquired before that date

Retain data on:

- a) Any acquisition, development and refurbishment expenditure and on associated services (including legal, engineering, architectural and other fees), and
- b) Dates of acquisitions, developments, refurbishments and periods of occupations of a property that is a capital good.

Before any sale, update and verify capital goods record in a case of any development after 30 June 2008.

On any sale, be sure the VAT clause in the agreement for sale is appropriate.

2. Owner of a property that is a capital good acquired on or after 1 July 2008

Retain data on:

- a) Any acquisition, development and refurbishment expenditure and on associated services (including legal, engineering, architectural and other fees), and
- b) Dates of acquisitions, developments, refurbishments and periods of occupations of a property that is a capital good.

Deal with deductibility adjustments after each interval, and account for or reclaim VAT after each interval.

3. Landlord in respect of a letting

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

4. New concepts introduced

- a) *Accountable person*: a taxable person who is obliged to register and account for VAT.
- b) *Adjustment period*: a period of intervals, 20 for most property (approximately 20 years in all), ten intervals for refurbished property (approximately ten years in all) from the date of development or acquisition of a property in respect of which the capital goods scheme operates.
- c) *Capital Good*: a developed property or part thereof, including a refurbished property.
- d) *Capital Goods Scheme*: reflects use of a capital good over an adjustment period between VATable and exempt use, with corresponding adjustments as regards VAT recovery.
- e) *Completion*: development has reached the state (apart from minor finishing) at which it can effectively be used for the purposes for which it was designed, with all necessary utility services connected.
- f) *Connected person*: defined very widely – it includes spouse, relative, spouse of relative, relationship with or through partnership, control of company or companies, common purpose, and so on – can impact on lettings and sales.
- g) *Development*: while the definition is unchanged, instances where development is disregarded are now dealt with in section 4B(2)(d) and (e) rather than through the concessionary '10% rule'.
- h) *Exempt disposal*: the disposal during the adjustment period of a commercial freehold/freehold equivalent property that is not new/nearly new.

- i) *Exempt with joint option to tax (sale)*: A misleading expression. On the sale during the adjustment period of a second-hand property, a vendor must repay all or part of VAT claimed on acquisition or development or, by using the joint option, charge VAT on the selling price to the purchaser. The exercise of the joint option will preserve (and may improve) the vendor's VAT recovery position. A purchaser should consider his ability to recover this VAT, as the exercise of this joint option brings a property that could potentially be outside the VAT net back into the VAT net. The joint option to tax is only available where both the purchaser and the vendor act as taxable persons, and will therefore only rarely apply to residential property.
- j) *Freehold equivalent interest*: the sale of the effective economic interest or substantially the effective economic interest in a property, including a sale where payment is staggered over a period of up to five years.
- k) *Interval*: a reference period for a capital good (see 4(b) above).
- l) *Occupation*: in use or let and in use (in accordance with planning permission, if granted).
- m) *Option to tax (leases)*: a landlord can exercise the landlord's option to apply VAT at the 21% rate to rent and other consideration payable under a lease of developed commercial property. Therefore, VAT recovery on acquisition/development costs for the landlord will be preserved. The landlord's option is exercised letting by letting.
- n) *Refurbishment*: development (including extensions) to a previously completed building.
- o) *Transitional property interests*: freehold/freehold equivalent commercial property acquired/developed by a taxable person before 1/7/2008 that has not been disposed of prior to that date until disposal of that property on or after that date and leasehold interests of ten years or more (other than a freehold equivalent) created before 1/7/2008 and held by a taxable person on 1/7/2008.
- p) *New/nearly new property*: (i) unoccupied commercial property completed/developed within the last five years; (ii) commercial property developed within the last five years until the property has been occupied for at least 24 months since development and until there has been at least one arm's-length sale; and (iii) developed residential property sold by a developer at any time (whether or not let since development).
- q) *Second hand*: property that is still in the adjustment period (a capital good), but which is not new/nearly new property.
- r) *Taxable person*: Generally a person engaged in economic activity, but not necessarily obliged to register for VAT in respect of that activity.

5. Concepts discontinued after 30 June 2008

- a) Capitalised value of a lease,
- b) The economic value test for a lease,
- c) Section 4A procedure,
- d) Waiver of landlord's exemption for short-term letting – although existing waivers may continue in many cases.

6. Revenue VAT on property guide

The Revenue have published a guide to VAT on property transactions and an FAQ paper – see www.revenue.ie.

WARNING: This key is intended to highlight some of the more significant features of the new VAT on property system as at 25 September 2008. It is not a substitute for reading and applying the legislation. No responsibility is taken for any consequences to any party relying on any information contained in this key. G

Michael O'Connor is a partner in William Fry, tax advisors.

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Roscommon Bar Association AGM



PIC: GERRY O'LOUGHLIN

At the AGM were (back, l to r): Eithne Deane, Elisha Commins, Terry O'Keeffe, Declan O'Callaghan, Paul Wynne, Conleth Harlow and Ivan Moran; (third row, l to r): Roderick McCrann, Dermot Neilan, Corina Harlow, Eilish Lowe, Rebecca Finnerty, Gerry Kelly and Alan Gannon; (second row, l to r): William Henry, Dara Callaghan, Joan Devine, Mary Rose McNally, Mary Francis Fahy, Brid Miller and Donal Keigher; (front, l to r): Harry Wynne, Brian O'Connor, Michael O'Dowd, James MacGuill, Ken Murphy, Louise Campbell and Gerard Gannon

The Roscommon Bar Association AGM was held recently in the Abbey Hotel. Guests included Law Society President James MacGuill and director general Ken Murphy. The newly-elected

committee for 2008 is: Michael O'Dowd (president), John Duggan (vice-president), Declan O'Callaghan (treasurer), Brian O'Connor (secretary), Padraig Kelly (PRO) and Mary Rose

McNally (CPD officer).

The bar association recently organised a well-attended seminar on VAT on property and will continue to offer CPD seminars at local level to fill the quota of hours required.

Support services executive at the Law Society, Louise Campbell, gave a presentation on the various member services. Recent developments in the profession were discussed, followed by dinner.



PIC: ENDA SHEEHAN PHOTOGRAPHY

The Longford Bar Association met on 2 July 2008 in the Longford Arms Hotel. The meeting was attended by Law Society president James MacGuill, director general Ken Murphy and Longford Bar Association president Bríd Mínnagh

Legal counsel of the United Nations

Legal adviser to the Department of Foreign Affairs, Patricia O'Brien, has been appointed legal counsel of the United Nations and Under Secretary General for Legal Affairs. The announcement was made on 6 August by Secretary General of the United Nations, Ban Ki-Moon. Ms O'Brien has been legal adviser to the Department of Foreign Affairs since 2003. Before that she was a senior legal adviser in the Office of the Attorney General and also served as legal counsellor at Ireland's permanent representation to the EU in Brussels. Ms O'Brien was educated at Trinity College Dublin and the King's Inns. The legal counsel of the UN advises the secretary general and acts on his behalf in all legal matters. The counsel also heads the office of legal affairs at the UN headquarters in New York.



PIC: LENS MEN

Ms O'Brien was the guest of honour at a dinner in Blackhall Place on 3 September 2008 (*front, l to r*): Judge James Scally (District Court), Lt General Dermot Earley (Office of the Chief of Staff), Patricia O'Brien, James MacGuill (president), James Hamilton (Director of Public Prosecutions) and Mr Justice Kevin Haugh. (*Back, l to r*): Peter O'Reilly (Patrick F O'Reilly & Co), John D Shaw (senior vice-president), Ken Murphy (director general), Conor Quigley QC, Kathleen Mulcahy, TP Kennedy (director of education), Aisling Kelly, Michael Collins SC (chairman of the Bar Council of Ireland) and Mary Keane (deputy director general)



PIC: LENS MEN

President of the IHRC

A dinner was held at Blackhall Place in honour of Mr Maurice Manning on 28 August 2008, attended by (*front, l to r*): Ken Murphy (director general), guest of honour Dr Maurice Manning (president of the Irish Human Rights Commission), and James MacGuill (Law Society president). (*Back, l to r*): Michael Kealey, TP Kennedy, James O'Sullivan, Elaine Dewhurst and Alma Clissman



Standing Ovation

Dinner guests at the Law Society on 9 September 2008 included members of the Law Society's Annual Conference task force (*back, l to r*): Siobhan Canney, Gerry Doherty, Padraic Gilligan, Elma Lynch, Mary Keane, Ken Murphy and John D Shaw. (*Front, l to r*): James McCourt, Anna Keating, James MacGuill and Jean Evans



PIC: LENS MEN

All rise!

At the awards ceremony for the 2008 Advanced Advocacy Course were (*back, l to r*): Mary Horgan, Áine Swift, Eva Massa, David Soden (course coordinator), Jane Moffatt, Brian Johnson (National Institute for Trial Advocacy – NITA), Suzanne Neale, David Irwin, Marita Dockery, Prof Laurence (Lonny) Rose (NITA), Gillian O'Mahony, Michael O'Donnell, Janice Walshe and Jacinta Bourke. (*Front, l to r*): Ken Murphy (director general), Mr Justice George Birmingham, Judge Nancy Vaidik (NITA), James MacGuill (president), Robert Stein (NITA), Attracta O'Regan (head of CPD Focus) and Mr Justice Daniel Herbert

Essentials of legal practice – the inaugural course!

The inaugural Essentials of Legal Practice course ran in August 2008, and is set to become an annual event. The course is designed for those seeking to transfer from the barrister to solicitor profession. It also proved very useful to five lawyers, qualified from New York, Sri Lanka and other jurisdictions, who found the practical element excellent preparation for moving into practice.

Intensive in its nature, the course ran for 17 consecutive days at a time usually reserved for holidays. The Society is grateful to those lecturers and tutors who gave so generously of their time during August.

Participants were brought up to speed on solicitors' accounts regulations, ethics, conveyancing, probate and tax. The first class of 23 benefitted from the relatively small size of the group, with firm



The first participants in the Essentials of Legal Practice course celebrated with Law Society president James MacGuill, Stuart Gilhooly (*ex officio* chairman of the Education Committee) and Alison Egan (outgoing CPD scheme executive)

friendships being made and future colleagues identified. The course will run again in

August 2009. More information can be found at www.lawsociety.ie. Queries

about the course should be addressed to the CPD scheme executive.

ON THE MOVE



A&L Goodbody announces seven new partners

A&L Goodbody has appointed seven new partners from a wide range of legal practices across the firm. The promoted partners are Niamh Coyne and Cian McCourt in corporate; Maireadh Dale in banking; Ross Moore in project finance and energy; David Main in pensions; Paula Reid, head of the firm's knowledge department; and Carol Widger in investment funds



New partner for MH&C

Mason Hayes & Curran has established a new healthcare service practice area and appointed a new partner, Ann O'Driscoll, to lead it. The healthcare service area will provide risk management and medico-legal advice to the healthcare sector



MOP's asset finance appointment

Matheson Ormsby Prentice has appointed shipping lawyer Helen Noble as a partner in the firm's asset finance group. Her expertise and experience in shipping law strengthens MOP's position in advising on Ireland's emerging ship finance and maritime commerce market



Maples and Calder's new corporate lawyer

Maples and Calder has appointed Irish corporate lawyer Edward Miller as a partner to its growing team. Edward joins the firm from Matheson Ormsby Prentice. He has advised numerous corporates and private equity houses on significant transactions in Ireland



ODSE appoints M&A partner

O'Donnell Sweeney Eversheds has appointed Abigail St John Kennedy as partner in its mergers and acquisitions department. Abigail is a graduate of the University of Western Australia and the Law Society of Ireland and has over ten years' M&A experience



Sigmar appointment

Nuala Rymell has become legal recruitment consultant with Sigmar Recruitment, specialising in legal recruitment. Nuala manages assignments with private practice, industry and financial services. She qualified as a solicitor in England and Wales in October 2006 and, until recently, practiced in a mid-sized firm in England. She holds a degree in civil law from UCD, a masters in media and entertainment law, and a family law diploma from the Law Society of Ireland



NUI Maynooth appoints two adjunct professors

NUI Maynooth has announced two new adjunct professors to the Department of Business and Law. Mr Justice Peter Kelly of the Commercial Court and Mr Justice Paul Carney of the Central Criminal Court (seen here with the president of NUI Maynooth, Prof John Hughes) will provide input and guidance for the university's two new law courses – a joint honours business and law degree and a separate degree in law and arts

books



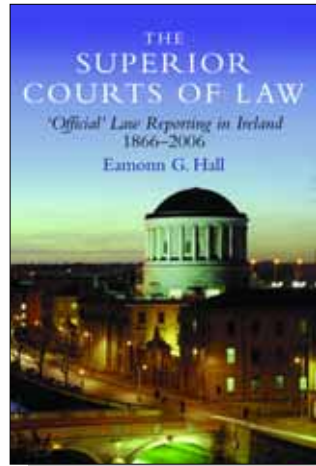
The Superior Courts of Law – ‘Official’ Law Reporting in Ireland, 1866-2006

Eamonn G Hall. Incorporated Council of Law Reporting for Ireland (2007), Áras Uí Dhálaigh (first floor), Inns Quay, Dublin 7.
ISBN: 094-6-73808-4. Price: €75.

This is a book of record. The author, Dr Eamonn G Hall, a long-serving solicitor member of the Incorporated Council of Law Reporting for Ireland (responsible for the publication of the annual *Irish Reports*), has written a book that has been waiting to be written for many a long day. To quote the author in his introductory essay: “Proper and efficient law reporting assists in the government of law and of society. Slowly, but surely, the reporters of the [council] put together Ireland’s own common law and constitutional law independently of the common law of England.”

The “slowly, but surely” element of that statement is expounded in clarifying detail, particularly in the chapters describing the difficulties faced by the council in the production of the *Irish Reports* in the successive decades of the 1960s, ’70s and ’80s due to a number of interacting factors, including limited financial resources, the choosing of judgments to be reported, the lack of numbers of efficient court reporters, and delays in publication. Part of the source material for the book is derived from the minutes of council meetings down through the years.

The council was established in 1866, some two years after its English counterpart, with a view to “incorporating the present system of preparing, editing and publishing the



reports of the judicial decisions in Ireland”.

Before 1866, judicial decisions had been reported as voluntary and unofficial ‘free-trade’ initiatives by individual lawyers – some better than others. This prior history is described in the chapter on the development of law reports.

From the outset of this more ‘official’ law reporting structure, there were issues about the council’s selection of the cases to be reported and the quality of the reporting. This is illustrated in the chapter describing the tense but delicately crafted acerbic correspondence during 1876/77 between the council and Jonathan Christian LJ, a judge of some repute in his time, but encumbered with a regrettably ‘short fuse’.

Closer to our time, we see the more tactful communications to the council of John Kenny J in the 1960s, querying the value of reporting certain cases turning

only on their particular facts, to the exclusion of other cases of much more legal precedent value.

Also, there is an illustrative exchange of correspondence between Nevil Lloyd-Blood BL (the long-time editor of the *Irish Reports* and also secretary of the council) and Brian Walsh J about the leading judgment of Walsh J in the Supreme Court decision in *State (Sheerin) v Kennedy* ([1966] IR379), which shows the particular importance of the court reporter in ensuring that the unapproved judgment as originally delivered is thoroughly checked by the reporter in conference with the judge for internal consistency of language before its final circulation and publication.

Ironically, perhaps the highlight of the criticisms of the council for delays in publishing reports of important decisions came in February 1979, with the comments made in Dáil Éireann by the late Prof John Kelly, specifically referable to the delay in the publication in the *Irish Reports* of the 1976 Supreme Court decision in *McL v An Bord Uchtala*, in the course of which this eminent and articulate jurist and parliamentarian described the law reporting situation as “undoubtedly the worst in Western Europe ... [and] may be the worst in all of Europe, and other parts of the world as well”.

Fortunately, the council’s

‘fight back’ and the civil service embarrassment at these and other adverse political comments ensured a radical and very helpful increase in the state subvention to the council.

Nowadays in this electronic age, as the author describes, the availability and the expedition of the reporting of judgments of the High Court and Supreme Court has radically improved, and most of the difficulties of the past are of historical significance only.

In terms of elucidating the centrality of effective law reporting for the precedent-based incremental growth of our common law and constitutional law, this book is to be highly recommended and will no doubt find its way onto the shelves of law libraries far beyond our shores.

By way of postscript, the photographs of a considerable cohort of people associated at one time or other with the council appear in this volume – most of them being, understandably, of the barrister persuasion. It will therefore be a source of particular pride to his fellow members of the solicitors’ profession that Dr Hall should be the council member with the drive and energy to produce such a valuable work of record. **G**

Michael V O’Mahony is past-president of the Law Society of Ireland.

The Irish War on Drugs: the Seductive Folly of Prohibition

Paul O'Mahony. Manchester University Press (2008), Oxford Road, Manchester, England, M13 9N. ISBN: 978-0-71907-790-6, price: stg£60 (hb); ISBN: 978-0-71907-902-3, price: stg£16.99 (pb).

The rate of drug abuse in Ireland, it now appears clear, is among the highest in Europe for all kinds of drugs – 'hard' or 'soft', legal or illegal. In this very timely work, the author, best known for his investigations into the socioeconomic breakdown of offenders and the prison population, turns his scholarly – and beady – eye on the controversial question of the decriminalisation of all drugs.

O'Mahony has conducted a well-researched, forensic analysis of our anti-drug laws, and comes down firmly in the anti-prohibition camp. His broad hypothesis is that, at a minimum, drug prohibition does more harm than good, maybe even a lot more harm.

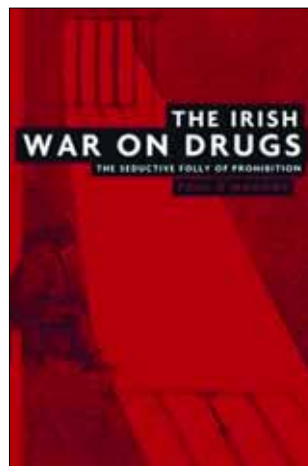
A starting point for the examination of the value of any legal regime is obviously the extent to which it achieves its stated aim. By this yardstick, the author shows that prohibition has failed as a policy, having no evident impact on either the supply of, or demand for, illicit drugs. That, in itself, one might think, should encourage the legislature to take stock. But it gets worse: as in the Prohibition regime (of alcohol) in the early 20th century USA, our laws have led directly to the fearsome drug-gang wars in Dublin and Limerick, as the temptation of huge profits drives increasing ruthlessness.

Meanwhile, our prison population increases steadily, with more people, few of them in any sense major players in the drugs business, serving increasingly longer sentences. At the same time, legislative changes in the criminal justice system, often specifically driven

by 'war on drugs' rhetoric (as opposed to rational debate), encroach on the right to bail, the right to silence, and other due-process entitlements. In this we are no different to Britain and the USA, but O'Mahony suggests that we should be slow to slavishly follow their example, as the USA now has by far the highest prison population, in both absolute and relative terms, of any country on Earth.

O'Mahony also suggests, and this has often previously been posited, that the very fact of prohibition, coupled with the widespread flouting of the law by many otherwise good citizens, is in itself an undesirable thing, tending, as it does, to criminalise many law-abiding people and simultaneously undermine respect for the law. The author suggests that outlawing 'recreational' drug use, when such use is seen by many as a personal choice, tends to alienate people and undermine their identification with the legitimacy of the forces of law and order. In this regard, he asserts – incorrectly, in the professional experience of this reviewer – that the impact of prohibition is softened in this jurisdiction by a blind eye being turned to the offences of simple possession. It is both regrettable and worthy of note that such offences were specifically, and belatedly, excluded from the Adult Caution Scheme implemented by the DPP in early 2007.

O'Mahony asserts, with some force in his analysis, that prohibitionism has attained the status of a faith-based belief system, with two main articles: that illicit drug use is wrong in




itself, and that a world free of illicit drugs is possible – each belief having considerable emotional appeal, and neither being susceptible to a single fatal argument. He thus concedes that unravelling the case for prohibition can be complex, but has devoted great care and skill to it and bases his case on a wide cast of the net over the substantial international literature on the topic. Whatever about the rights and wrongs, he points out that a number of our European partners, most notably Spain, Portugal and Holland, have introduced laws that, in their various ways, acknowledge the ongoing existence of drug-taking among a substantial part of the community and seek to address that behaviour in ways other than a crude prohibition that is doomed to fail.

It is perhaps unfortunate that O'Mahony characterises one's entitlement to consume 'mind-altering' substances, ranging from alcohol to heroin, as a 'human right'. Our human rights obligations are unlikely to be seen as extending quite this far, except by the most

zealous proponent of reform of our drug laws. Having said that, there is a rich intellectual tradition of libertarianism, dating back to John Stuart Mill, which amounts to much the same thing – being that citizens should be permitted to do more or less as they like, provided that third parties come to no harm.

Whatever about the considerable force of the arguments made in this book, the dominant thinking in Ireland today on this subject, given the almost non-existent reasoned debate, is unlikely to be persuaded by a human-rights argument. The case for removal of prohibition is more comfortably made when readers are asked to consider why some drugs, such as alcohol and tobacco, are widely legally available, despite being manifestly intrinsically more dangerous than others, such as cannabis and ecstasy, which are illegal – a policy devoid of logic.

Well-researched and annotated, and written in clear and lucid prose, this is an extremely readable book, as good for the general reader as it is for the specialist. Despite near worldwide prohibition, the drugs industry is now an enormous multi-billion euro business, corrupting all who take part in it, and with significant and demonstrable adverse effects. As our prisons fill to overflowing and mayhem increases on our streets, it is to be hoped that this book will promote some debate on the very important issues it addresses. 

Dara Robinson is a solicitor in Garrett Sheehan & Company.

council report



Law Society Council meeting, 18 July 2008

Comparative review of models of regulation and representation

The president noted that there was a real appetite for an informed discussion on how best to regulate and represent the profession. In order to facilitate this debate, the Council had decided that it should seek to obtain concrete information in relation to the systems operating in other jurisdictions and had asked Joe Brosnan, former secretary general of the Department of Justice, Equality and Law Reform, to conduct a comparative review of models of regulation and representation internationally, with assistance from SORCHA HAYES at the Society.

Mr Brosnan outlined his methodology and noted that, because of a dearth of published material, a substantial amount of original research had to be done. This had been supplemented by discussion with authoritative sources in the countries concerned although, in the time available, it had not been possible to engage in a comprehensive verification process. He had concentrated on those countries that seemed

to be most relevant from an Irish point of view, primarily the other common law jurisdictions – the other jurisdictions in these islands, New Zealand, the Australian states and territories and Canada. Within Europe, he had selected Germany, Denmark and Sweden. He had not examined the situation pertaining in the United States, because there were so many states involved and so many variations of systems.

Mr Brosnan said that the picture internationally was very complex and there was no single model of regulation and representation that was paramount or emerging into predominance throughout the world. It was still very common throughout Europe and in democracies worldwide for legal professional bodies to retain both representative and regulatory functions. For the purpose of analysis, he had identified four broad categories, which he outlined in detail to the Council. Mr Brosnan concluded with a number of observations arising from his research and responded to questions from Council members.

On behalf of the Council,

the president complimented Mr Brosnan on his thorough and insightful report, and it was agreed that the matter would be discussed in detail at the September Council meeting.

Proposal to relocate the Society's regulation department

The Council approved a proposal to relocate the Society's regulation department to a leased building at George's Place with effect from November 2008. It was noted that it was unlikely that there would be approved development proposals for the Benburb Street site for a number of years and that accommodation pressures in the Blackhall Place building could not await those proposals.

Proposed amendments to the certificate of title system

Barry McCarthy obtained the Council's approval for a number of proposed amendments to the solicitor's undertaking, the guidelines and agreement and the certificate of title, which had been agreed following

meetings of the Society's Conveyancing Committee with the Irish Banking Federation. It was agreed that the Conveyancing Committee would select an appropriate commencement date for the new documentation, which would be promulgated to the profession.

Council election dates 2008

The Council approved Monday 15 September 2008 as the final date for receipt of nominations for the Council election and Thursday 30 October 2008 as the close-of-poll date.

Proposed radio advertising campaign

McConnells Advertising presented a number of proposed radio advertisements for consideration by the Council. It was noted that no decision had been taken as to whether to proceed with such a campaign, but feedback from the Council was regarded as useful at this stage in the process. It was agreed to seek similar feedback from the presidents, secretaries and PROs of bar associations at the meeting scheduled for the following week. **G**



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BRIEFING

practice note



AFFIDAVITS OR STATEMENTS OF MEANS AND VOUCHING DOCUMENTATION IN THE CONTEXT OF NEGOTIATING SEPARATION AGREEMENTS

The Family Law Committee has recently discussed the question of affidavits or statements of means and vouching documentation in the context of negotiating separation agreements.

The committee is of the view that it is recommended best practice that vouched affidavits of means be sworn by both parties and exchanged prior to the negotiation and/or conclusion of a deed of separation.

The committee is also of the view that this practice should

occur following the conclusion of a mediated agreement, even in circumstances where all parties are agreed that it is unnecessary to raise financial queries. In these circumstances, practitioners should advise clients, and indeed colleagues, that the exchange of vouched affidavits of means also applies in this situation. This is not with a view to reopening any issues that may have already been discussed and agreed within the mediation process. The purpose is to satisfy the requirements of full finan-

cial disclosure in the context of implementing what has been agreed through mediation into a legally-binding separation agreement. If anything arises from the disclosure process, the parties should be recommended to return to the mediation process to deal with such additional matters in order to maintain the integrity of the mediation process and build upon what they have already achieved through that process.

The exchange of vouched and sworn statements of

means may also be of assistance in the context of subsequent divorce or other applications, where the level or adequacy of financial disclosure may be at issue. Finally, the committee is also of the view that it may be advisable to annex or append the sworn affidavit of means to the separation agreement as a schedule.

This practice may also, of course, apply to the negotiation and conclusion of prenuptial agreements.

Family Law Committee

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SELECTED STATUTORY INSTRUMENTS

Building Regulations (Part G Amendment) Regulations 2008

Number: SI 335/2008

Contents note: Amend part G ('hygiene') of the second schedule to the *Building Regulations 1997* (SI 497/1997) to make dual flush toilets mandatory in new buildings and in existing buildings where sanitary conveniences are being replaced.

Commencement date: 1/11/2008

Criminal Justice (Mutual Assistance) Act 2008 (Commencement) Order 2008

Number: SI 338/2008

Contents note: Appoints 1/9/2008 as the commencement date for the act, except for part 3 (ss22-30, 'Interception of telecommunications messages').

European Communities (Rights of Disabled Persons and Persons with Reduced Mobility when Travelling by Air) Regulations 2008

Number: SI 299/2008

Contents note: Designate the Commission for Aviation Regulation as the body responsible for the enforcement of regulation (EC) 1107/2006 on the rights of disabled persons

Circuit Court Rules (Case Progression in Family Law Proceedings) 2008

Number: SI 358/2008

Contents note: Amend subrules 10, 11 and 17 of, and insert a new subrule 38 ('Case progression') into, order 59, rule 4 of the *Circuit Court Rules* (SI 510/2001). These amendments facilitate the supervision by the county registrar of the preparation for trial of the categories of family law proceedings in the Circuit Court to which order 59, rule 4 applies.

Commencement date: 1/10/2008

Circuit Court Rules (Costs) 2008

Number: SI 353/2008

Contents note: Substitute a new rule 1 in order 66 of the *Circuit Court Rules 2001* (SI 510/2001) in relation to the awarding of the costs of inter-

locutory applications, the consideration by the court of offers in writing when awarding costs, and the court's power to require the production and exchange of estimates of costs.

Commencement date: 1/10/2008

Circuit Court Rules (Recording of Proceedings) 2008

Number: SI 354/2008

Contents note: Amend the interpretation of terms provisions and amend order 58 of, and insert a new order 67A ('Recording of proceedings') in, the *Circuit Court Rules 2001* (SI 510/2001) to provide for the introduction of digital and other non-manual means of recording proceedings, in addition to shorthand recording, in criminal and civil proceedings in the Circuit Court.

Commencement date: 1/10/2008

and persons with reduced mobility when traveling by air, as regards flights departing from or arriving at airports in the state. Provide that the Commission for Aviation Regulation may issue general directions to air carriers, their

agents, tour operators or the managing bodies of airports in relation to compliance with the regulations. Provide for sanctions for infringement of the regulations.

Commencement date: 25/7/2008

Rules of the Superior Courts (Recording of Proceedings) 2008

Number: SI 325/2008

Contents note: Make the following amendments to the *Rules of the Superior Courts 1986* (SI 15/1986) to provide for the introduction of digital and other non-manual means of recording proceedings, in addition to shorthand recording, in criminal

and civil proceedings: (a) substitute new subrules 23(3) and 23(4) in order 58; (b) substitute new rules 14, 17(2) and 26 in order 86, and amend rule 1 of order 86 and the heading to part VII of order 86; (c) substitute a new order 123 ('Recording of proceedings'); (d) make an amendment to order 125.

Commencement date: 10/9/2008

Immigration Act 2004 (Registration Certificate) (Amendment) Regulations 2008

Number: SI 340/2008

Contents note: Amend part 2 of the schedule to the *Immigration Act 2004 (Registration Certificate) Regulations 2004* (SI 95/2004) to include in the particulars that the registration certificate shall contain an image of all or any of the fingerprints furnished, where fingerprints were required by the registration office under s9(2)(a) of the *Immigration Act 2004*.

Commencement date: 16/8/2008

Immigration Act 2004 (Registration Certificate Fee) Regulations 2008

Number: SI 336/2008

Contents note: Prescribe a fee of €150 for the issue of a registration certificate under the *Immigration Act 2004*. Waive the fee in respect of certain categories of persons. Revoke the *Immigration Act 2004 (Registration Certificate) Regulations 2006* (SI 253/2006).

Commencement date: 23/8/2008

Irish Nationality and Citizenship (Fees) Regulations 2008

Number: SI 294/2008

Contents note: Substitute a new regulation 14 in the *Irish Nationality and Citizenship Regulations 1956* (SI 216/1956) to prescribe revised fees payable by the applicant on the issue of a certificate of naturalisation. Revoke the *Irish Nationality and Citizenship (Fees) Regulations 1993* (SI

89/1993) and the *Irish Nationality and Citizenship (Fees) Regulations 1996* (SI 291/1996).

Commencement date: 1/8/2008

Land Registration Rules 2008

Number: SI 326/2008

Contents note: Provide for the application in electronic form for cancellation of a registered charge and amend rule

162 of the *Land Registration Rules 1972* (SI 230/1972).

Commencement date: 1/9/2008

District Court (Search Warrants) Rules 2008

Number: SI 322/2008

Contents note: Amend the *District Court Rules 1997* (SI 93/1997) by the substitution of new subrules 1 and 3 in order 34 and by the insertion of rules 17, 18 and 19 in order 34 to take account of the provisions of sections 6(1)(a), 190(1), 192(1)(a) and 192(1)(b) of the *Criminal Justice Act 2006* in relation to search warrants.

Commencement date: 8/9/2008

Prisons Act 2007

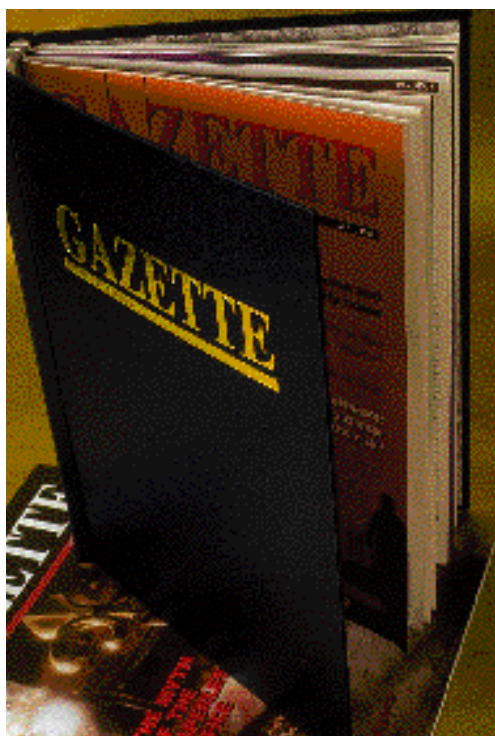
(Commencement) Order 2008

Number: SI 337/2008

Contents note: Appoints 29/8/2008 as the commencement date for sections 33 and 34 of the act. These sections provide for certain applications to a court in criminal proceedings to be heard using video link and where the accused or convicted person is in prison, in a remand centre, or in a children's detention centre within the meaning of the *Children Act 2001*. **G**

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Solicitors Disciplinary Tribunal

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In the matter of Joseph Fahey, solicitor, of Ballygar Road, Mountbellew, Co Galway, and in the matter of the *Solicitors Acts 1954-2002* [6687/DT68/06 and High Court record no 2SA 2008]

Law Society of Ireland

(applicant)

Joseph Fahey

(respondent solicitor)

On 6 November 2007, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that:

- a) At the early stages of the investigation, it was not possible to determine the true clients' fund position because the books of account were in arrears. The accountant's report for 28 February 2003 showed a deficit of €270,083 as of the reporting date. This deficit was mainly caused by debit balances. The accountant's report for the year ended 29 February 2004 showed a deficit in client funds of €116,103 at the date, again mainly caused by debit balances. The accountant's report for the year ended 28 February 2005 showed a deficit in client account of €64,216 as of the reporting date.
- b) Subject to the matters set out in paragraph 2.2 of the investigating accountant's report, there was an apparent deficit of €32,687 in the client account as of 31 August 2005.
- c) Debit balances amounted to €32,687 as of the date of 31 August 2005.
- d) In June 2004, the books of account were almost two years in arrears. Since October 2004, the books were written up by a very

competent bookkeeper and at the time of the investigation they were approximately five weeks in arrears.

- e) In a purchase by a named client from a named vendor, the stamp duty amounted to €5,142. Interest and penalties were avoided because the transfer deed was 'updated' to 12 May 2004, although the purchase closed in January 2002.
- f) In another purchase by the aforementioned named client, it would appear that stamp duty at 9% plus interest and penalty may have been avoided because the deed was 'updated' from on or about 30 October 2001 to 20 November 2002.
- g) In the course of acting for a named client in relation to a purchase of property, interest and penalty on stamp duty of €7,140 were avoided because the transfer deed was 'updated' from in or about September 2003 to 20 August 2004.
- h) In the course of acting for a named client in relation to the purchase of a property, interest and penalty on stamp duty of €9,560 were avoided because the transfer deed was 'updated' from 2 February 2004 to 4 April 2005.
- i) In the course of acting for two named clients in relation to the purchase of one site each, interest and penalty on the stamp duty amounts of €1,125 were avoided because the transfer deeds were 'updated' from in or about August 2004 to 20 April 2005 and 25 August 2005 respectively.
- j) The solicitor acted for a named builder in relation to the sale of new houses, and

in six cases he also acted for the purchasers of the houses, in breach of the *Solicitors (Professional Practice Conduct and Discipline) Regulations* of 1997 (SI no 85 of 1997).

The tribunal directed that the matter be referred forward to the High Court and, on 7 April 2008, the President of the High Court ordered, pursuant to section 8 of the *Solicitors (Amendment) Act 1960*, as substituted by section 18 of the *Solicitors (Amendment) Act 1994* and amended by section 9 of the *Solicitors (Amendment) Act 2002*:

- i) That the respondent solicitor should not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
- ii) That the respondent solicitor do deliver to Fair & Murtagh Solicitors all or any documents, files and papers in his possession or within his procurement arising from his practice as a solicitor, including all ledger cards and funds held for and on behalf of clients files,
- iii) That the Law Society do recover the costs of the proceedings in the High Court and the costs of the proceedings before the Solicitors Disciplinary Tribunal.

In the matter of Brian Grogan, a solicitor practising as Brian Grogan & Company, Solicitors, at Main Street, Lucan, Co Dublin, and in the matter of the

***Solicitors Acts 1954-2002* [3291/DT99/06]**

Law Society of Ireland

(applicant)

Brian Grogan

(respondent solicitor)

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

- a) Failed to deal with the administration of the estate of a named deceased, who died on 15 September 2001, in a timely manner,
- b) Failed to deal with the sale of the house, which was a substantial asset in the estate of the named deceased, in a timely manner or at all,
- c) Failed to deal with taking up the monies due to the estate from An Post and the Ulster Bank in a timely manner or at all,
- d) Failed to deal with the payment of the funeral expenses in the estate of the named deceased in a timely manner or at all,
- e) Failed to respond to the Society's correspondence, and in particular to the letters from the Society sent to the solicitor on 28 November 2004, 14 December 2004, 19 January 2005, 3 March 2005, 8 April 2005, 25 July 2005, 27 September 2005, 6 October 2005, 24 October 2005, 9 November 2005, 2 December 2005, 20 January 2006, 28 March 2006, 5 May 2006, 19 May 2006,
- f) Failed to comply with the direction of the Complaints and Client Relations Committee, made on 20 September 2005, to lodge his own affidavit and the Land Registry receipt with

- the secretariat of the Society within two weeks, and also to write to the complainant with a copy to the secretariat advising her of the position within two weeks,
- g) Failed to comply with the direction of the committee, made on 18 January 2006, that the solicitor should follow up the application with the Land Registry and furnish an additional progress report prior to the main meeting with the Society,
- h) Failed to comply with the direction of the committee on 30 November 2005 that the solicitor furnish copies of the sworn affidavit together with the Land Registry receipt on or before 1 January 2006.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
b) Pay a sum of €10,000 as restitution to the aggrieved

- parties without prejudice to any legal right of such party,
c) Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement.

In the matter of Mary Miley, a solicitor formerly practising as Mary Miley & Company at Brewery Place, Rathdrum, Co Wicklow, and in the matter of the *Solicitors Acts 1954-2002* [3916/DT65/07]

Law Society of Ireland
(applicant)
Mary Miley
(respondent solicitor)

On 11 June 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- a) Failed to reply to multiple letters from a solicitor colleague,

- b) Failed to reply to multiple correspondence from a lending institution,
c) Failed to disclose in a timely fashion that she had lost a deed of vacate furnished to her in November 2004 by the lending institution,
d) Through her conduct, frustrated the sale of the property of the clients of her solicitor colleague,
e) Failed to reply to correspondence from the Society,
f) Failed to comply with a notice served by the Society on her, pursuant to section 10 of the *Solicitors (Amendment) Act 1994*,
g) Represented that she would deliver the file to the Society on 14 May 2007 but did not do so,
h) Misrepresented to the Society, in a letter dated 16 May 2007, that the matter had been resolved,
i) Failed to comply in a timely manner with a direction of

the Complaints and Client Relations Committee, made on 16 May 2007, that she make a contribution of €500 towards the costs incurred by the Society in the investigation of the complaint.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
b) Pay a sum of €1,695.70 as restitution to a firm of solicitors, in order to be then transmitted to the relevant member(s) of a named family,
c) Pay the whole of the costs of the Law Society of Ireland, including witnesses' expenses if any, as taxed by a taxing master of the High Court, in default of agreement.

In the matter of John J Kilrairie, solicitor, formerly practising as Kilrairie & Company at Nile Lodge Corner, Galway, and in the

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**matter of the *Solicitors Acts 1954-2002* [6868/DT87/07]
Law Society of Ireland
(applicant)
John J Kilraine
(respondent solicitor)**

On 12 June 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- Breached regulation 21(1) of the *Solicitors' Accounts Regulations* (SI no 421 of 2001) in failing to ensure that there was furnished to the Society an accountant's report covering his financial year ended 28 February 2007 within six months thereafter, that is, by 31 August 2007,
- Failed to attend a meeting of the Regulation of Practice Committee when required to do so on 18 October 2007,
- Through his conduct, showed a disregard for his own statutory obligations and the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients, the solicitors' profession and the public.

The tribunal ordered that the respondent solicitor:

- Do stand censured,
- Pay a sum of €2,000 to the compensation fund,

- Pay the whole of the costs of the Law Society of Ireland, as taxed by a taxing master of the High Court, in default of agreement.

**In the matter of John J Kilraine, solicitor, formerly practising as Kilraine & Company at Nile Lodge Corner, Galway, and in the matter of the *Solicitors Acts 1954-2002* [6868/DT88/07]
Law Society of Ireland
(applicant)
John J Kilraine
(respondent solicitor)**

On 12 June 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- Breached regulation 21(1) of the *Solicitors' Accounts Regulations* (SI no 421 of 2001) in failing to ensure that there was furnished to the Society an accountant's report covering his financial year ended 28 February 2006 within six months thereafter, that is, by 31 August 2006,
- Through his conduct, showed a disregard for his own statutory obligations and the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients, the solicitors' profession and the public.

The tribunal ordered that the respondent solicitor:

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

**In the matter of Keith Finnan, a solicitor practising as Keith Finnan & Company, Solicitors, Humbert Mall, Main Street, Castlebar, Co Mayo, and in the matter of the *Solicitors Acts 1954-2002* [4346/DT27/08]
Law Society of Ireland
(applicant)
Keith Finnan
(respondent solicitor)**

On 24 July 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- Up to the date of swearing of the Society's affidavit, failed to comply fully with an undertaking given to the complainants on 22 December 2005 in a timely manner,
- Failed to respond to the complainants' correspondence in relation to the undertaking in a timely manner,
- Failed to respond to the Society's correspondence, and in particular the Society's letters of 24 July 2006, 4 August 2006, 24

August 2006, 8 November 2006, 4 December 2006, 19 December 2006, 30 January 2007, 8 March 2007, 18 May 2007, 8 June 2007, 2 July 2007, 5 July 2007, 30 July 2007, 13 August 2007, 21 August 2007, 3 September 2007, and 28 September 2007,


- Failed to comply with a notice served pursuant to section 10 of the *Solicitors (Amendment) Act 1994*, which notice was served by registered post on 30 January 2007, in a timely manner,
- Failed to comply with the directions of the Complaints and Client Relations Committee at its meeting on 16 May 2007 to have a progress report filed with the Society on or before 6 June 2007,
- Failed to attend a meeting of the committee on 20 January 2007 despite being required to do so, thereby obliging the Society to apply to the High Court for an order requiring his attendance before the committee.

The tribunal ordered that the respondent solicitor:

- Do stand censured
- Pay a sum of €1,500 to the compensation fund
- Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement. **G**

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CRIMINAL LAW

Delay

Duty of prosecution to preserve evidence to be used against accused – extent of duty – judicial review – application to restrain further prosecution of offences – whether absence of evidence for inspection by accused creating real and unavoidable risk of unfair trial – whether further prosecution of offences should be restrained – whether applicant disentitled to relief by reason of delay in applying for leave to seek judicial review – Rules of the Superior Courts 1986, order 84, rule 21(1).

The applicant had been charged, among other things, with dangerous driving causing death. The basis of the prosecution case against him was that he had been driving a lorry that had excessively and illegally worn tyres, which had caused the fatal accident. The gardai had carried out a forensic examination of the lorry at the time of the incident, which formed the evidential basis of the prosecution, and thereafter disposed of the physical evidence. Some time later, the prosecution informed the applicant of the evidential basis of the prosecution, which caused the applicant to request that the gardai provide him with the evidence in question so that he could arrange for his own engineer to examine the evidence and prepare a report for the purposes of the defence. Some months later, in October 2004, the applicant was made aware that the evidence was no longer available for inspection. The applicant obtained leave to seek judicial review restraining the prosecution in December 2004. The High Court made

an order restraining the prosecution on the basis that, due to the unavailability of the evidence for inspection by the applicant, his right to a fair trial would be irreparably harmed. The respondent appealed to the Supreme Court against the judgment and order of the High Court. The respondent contended, among other things, that the applicant was disentitled to relief by reason of delay in applying for leave to seek judicial review.

The Supreme Court (Denham and Hardiman JJ, Murray CJ concurring) dismissed the appeal, holding that:

- 1) The gardai had a duty to take possession of and retain any evidence that could affect the guilt or innocence of an accused. This was particularly so when the evidence against the applicant was entirely technical, indirect and left the offence to be inferred, so that any positive defence had to be technical as well.
- 2) The duty to preserve and disclose evidence could not be defined precisely, as it was dependent on all the circumstances of the case.
- 3) The duty did not require the gardai to engage in disproportionate commitment of manpower and resources and had to be interpreted in a fair and reasonable manner on the particular facts.
- 4) In the alternative to retaining large physical objects as evidence, such as motor vehicles, it could be reasonable in certain circumstances for the gardai to have a forensic report on the object. However, an accused should, in general, be given

an opportunity to examine such evidence.

- 5) If the evidence no longer existed, the reason for its destruction was part of the matrix of facts but was not a determinative factor in the test to be applied.
- 6) The principles were subject to the fundamental test to be applied, that being whether there was a real risk of an unavoidable unfair trial. In the circumstances, neither photographs nor garda statements were adequate to the defence to enable a fair trial.
- 7) Allowing for the time needed to establish what had become of the evidence, the applicant took about three months to seek leave to obtain judicial review, which was reasonably prompt in all the circumstances.

Ludlow v Director of Public Prosecutions, Supreme Court, 31/7/2008 311/05 [FL15512]

Evidence

Leave to appeal – perverse decision of jury – right of access to solicitor – whether the trial judge erred in law in failing to withdraw the case from the jury and in admitting in evidence statements of interview made by the applicant prior to a breach of his rights – whether the decision of the jury to convict on some charges and acquit on another was perverse.

The applicant sought leave to appeal against his conviction for rape and assault causing harm. The applicant had been found not guilty of sexual assault arising out of the same incident as the other offences. The applicant objected at trial to the admission of statements of interview on the basis that

his solicitor was not granted immediate access to the applicant. The trial judge ruled that everything that occurred at interview after the interrogating officers were informed of the presence of the applicant's solicitor in the garda station was inadmissible in evidence and, further, that the signed notes of interview were inadmissible. In this application, the applicant submitted that the trial judge erred in law in failing to withdraw the charges at the end of the prosecuting case following an application by the defence, that the decision of the jury was perverse, and furthermore that the trial judge erred in law in failing to rule the entirety of the interview inadmissible and in failing to rule as inadmissible the videotape of that interview. The applicant submitted that either the jury accepted the claimant's account of events, of which sexual assault was an integral part, or they did not so accept the evidence. He submitted that it was perverse for the jury to convict in respect of some counts and not in relation to others.

The Court of Criminal Appeal (Finnegan J, Gilligan, MacMenamin JJ concurring) refused leave to appeal against the conviction, holding that the trial judge asked himself the correct question when determining whether to withdraw the case from the jury. Having regard to the allegations made in the complainant's evidence and pointed out to the jury as constituting the basis for the charge of sexual assault, the evidence led in relation to same and tested in cross-examination and the judge's charge, the ver-

dicts were not inconsistent, but rather reflected a diligent and conscientious approach on the part of the jury to their function. The video of interview did not disclose any of the material that had been ruled inadmissible. Any statements/admissions made by the applicant during the course of his detention and prior to the point at which the detention became unlawful were admissible in evidence.

People (DPP) (prosecutor) v D(A) (applicant), Court of Criminal Appeal, 25/7/2008, 58/07 [FL15578]

INTELLECTUAL PROPERTY

Trademarks

Passing off – whether the defendant was guilty of passing off its product Botox as goods of the plaintiffs and whether the defendant infringed the plaintiffs' registered Botox trademarks – Trademark Act 1996 – Council Regulation (EC) no 44/94.

The plaintiffs claimed that the defendant infringed the first-named plaintiff's registered 'Botox' trademarks and also that the defendant was guilty of passing off goods as or for the goods of the plaintiffs under or by reference to their name or mark 'Botox'. This case concerned a well-known pharmaceutical product produced by the plaintiffs, namely Botox. The plaintiffs claimed that the Botox trademark was the best-known purified Botulinum Toxin Type A product and had become a household consumer name. The defendant's product, which was complained of, namely Botox, did not contain Botulinum Toxin Type A. However, both products were used for therapeutic and cosmetic purposes. Both parties provided evidence in relation to the origins of their product names. The plaintiff was the owner of a number of community trademarks in relation to

Botox. The defendant relied on the provisions of section 15(1) of the *Trademark Act 1996* by way of defence.

McGovern J allowed the plaintiffs' claims, accepting the plaintiffs' evidence in relation to the coining of the word 'Botox' and rejecting the defendant's contention that the mark was weak or generic. The end-users of both products were, broadly speaking, the same. There was a significant visual similarity between 'Botox' and 'Botoina', there was an aural or phonetic similarity between the words, and there was no conceptual similarity between the words. The products themselves were similar and there was an obvious link between the two. Consequently, the use of the mark Botox created a likelihood of confusion with the plaintiffs' mark, where the relevant members of the public could be mistaken as to the origin of the goods. Having regard to the fact that the plaintiffs were the holders of a community trademark, giving them exclusive rights therein, the defendant's defence under section 15(1) of the 1996 act could not succeed. Furthermore, the entire way in which Botox was marketed was calculated to cause confusion, and the product was presented in a manner that was likely to mislead the public into believing it was connected in some way with Botox.

Allergan Inc & Allergan Pharmaceuticals (Ireland) Ltd (plaintiffs) v Ocean Healthcare Ltd (defendant), High Court, Mr Justice McGovern, 24/6/2008, 2007 4458 P [FL15542]

PLANNING AND DEVELOPMENT LAW

Abuse of process

Practice and procedure – judicial review – application to dismiss proceedings – inherent jurisdiction of the court – principles to be

applied – application brought by notice party on foot of agreement between it and applicant – agreement that applicant would not object directly or indirectly to planning application made by notice party.

The applicant entered into a contract with the notice party whereby he sold certain lands to it. The notice party obtained planning permission to develop the said lands. The applicant sought leave to institute judicial review proceedings in respect of the decision of the respondent to grant planning permission to the notice party on the ground that the respondent failed to take into account the effect of a variation of the county development plan that had the effect, he alleged, of restricting the number of units that could be developed upon certain lands. The notice party brought a motion seeking to dismiss the proceedings on the basis that they were not maintainable by virtue of special condition 13 of the contract, which provided, among other things, that the "vendor undertakes that he will not object directly and/or indirectly to any planning application to be made by the purchaser in respect of the lands in sale" and were an abuse of process. The applicant claimed that the application to dismiss was irregular and that the notice party should have instituted plenary proceedings seeking an injunction instead.

Ms Justice Irvine dismissed the proceedings, holding that it was in the interest of all parties that proceedings be disposed of in an efficient manner and that to seek to enforce the provisions of the contract by the notice party's motion to dismiss avoided the delay, which could lead to a potential loss to the applicant. The High Court had an inherent jurisdiction to dismiss any proceedings where they amounted

to an abuse of process – however, that jurisdiction should be exercised sparingly. Proceedings that concerned the interpretation of a contract were more amenable to the exercise of the court's jurisdiction to dismiss proceedings as an abuse of process than cases where the extent of the evidence that may be available at the trial was less clear. Special condition 13 of the contract was unambiguous, and the proceedings were an indirect objection to the notice party's planning application and should, therefore, be dismissed.

Connolly (applicant) v An Bord Pleanála & Meath County Council (respondents), High Court, Ms Justice Irvine, 8/7/2008, 2008 no 509 JR [FL15553]

REFUGEE AND ASYLUM LAW

Judicial review

Leave – Nigeria – Igbo tribe – domestic violence – black magic – failure to give reasons for decision – whether decision warranted review.

The applicant, from Nigeria, sought to review a decision of the respondent refusing refugee status to the applicant. The applicant, among other things, impugned the adequacy of the reasons for the decision and asserted that the tribunal merely commented upon the observations in the case and failed to specify where the credibility issues were.

Birmingham J held that a detailed analysis had been carried out and a number of specific findings had been made. The applicant could not be in any doubt as to why she lost and the decision was satisfactory such that no substantial basis existed for contending that the decision could be quashed.

N(P) and Others (applicants) v Minister for Justice, Equality and Law Reform and Another



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(respondents), High Court, Mr Justice Birmingham, 3/7/2008, 2006 no 1045 JR [FL15568]

TORT

Bullying

Psychiatric injuries – harassment at work – whether the plaintiff's depression was caused by the harassment.

The defendant appealed against the order of the High Court awarding damages in the total sum of €75,773.94 to the plaintiff for psychiatric injury in the form of depression caused by bullying or harassment in the workplace. The defendant appealed on the grounds that, firstly, the evidence, though uncontradicted, did not bear out the plaintiff's complaints of bullying and, secondly, there was not sufficient evidence of a causal link

between the bullying that the High Court judge found that the plaintiff had been subjected to and the depression his doctor found him to have suffered. The defendant also appealed against the *quantum*. The plaintiff gave evidence that he was subjected to excessive and humiliating scrutiny by the defendant's plant manager. The plaintiff's evidence in that regard was supported by the evidence of other employees. The plaintiff first attended his doctor on 8 January 2001. He informed her that he had been dismissed from his employment in October 1999 and that he had been suffering from depression for six months prior to his visit to her. The plaintiff was successful in his claim for unfair dismissal before the Rights Commissioner and again on appeal by the defendant before the Employment

Appeals Tribunal. The medical report did not mention any complaint regarding bullying, but stated that the plaintiff was suffering from depression arising out of his industrial relations problems. The plaintiff in his own evidence stated that it was not until after he realised he would not get his job back that the situation affected him mentally. He did not give evidence that he suffered depression arising out of the plant manager's treatment of him.

Fennelly J (Denham and Geoghegan JJ concurring) allowed the appeal and set aside the order of the High Court, holding that the evidence of the plaintiff established that he was subjected to bullying in the workplace. It was agreed that the plaintiff was not entitled in these proceedings to recover damages for any personal injuries suffered as a conse-

quence of his dismissal from his employment. The medical evidence presented was consistent only with the plaintiff's depression having been caused by his dismissal and the subsequent unfair dismissal proceedings, and there was no medical evidence of a link with the harassment. That was consistent with the plaintiff's own evidence. Consequently, the plaintiff failed to discharge the burden of proving that his depression was caused by his treatment during his employment.

Quigley (plaintiff/respondent) v Complex Tooling and Moulding Ltd (defendant/appellant), Supreme Court, 22/7/2008, 143/2005 [FL 15520] G

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Maurice Williams
00 44 (0)1483 540840
mw@fearonlaw.com

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News from the EU and International Affairs Committee

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

BRIEFING

Irish planning legislation and the European Court of Justice

The recent decision of the European Court of Justice in Case C-215/06, *Commission v Ireland* (3 July), concerning the requirement of carrying out environmental impact assessments in respect of certain projects before they are executed, as required by directive 85/337/EEC of 27 June 1985 (as amended), provides lucid guidance as to the object and scope of that directive and how Ireland singularly failed to meet its requirements.

The commission sought a declaration that Ireland had failed to fulfil its obligations by failing to adopt all measures necessary to ensure that projects falling within the scope of the directive are, before they are executed in whole or in part: (a) considered with regard to the need for an environmental impact assessment, and (b) where those projects are likely to have significant effects on the environment by virtue of their nature, size or location, that they are made subject to an assessment in accordance with the directive. It sought a similar declaration with regard, in particular, to development consents given for, and the execution of, wind farm developments and associated works at Derrybrien, Co Galway. In the course of the construction of that development, a landslide of a mass of peat on 16 October 2003 became dislodged from the area under development for



The wind farm at the heart of it all

the wind farm, resulting in an ecological disaster, polluting a nearby river and causing the death of some 50,000 fish and lasting damage to the fish spawning beds.

Transposition of the directive

The requirements of directive 85/337, as amended, are transposed into Irish law by the *Planning and Development Act 2000* (PDA), as amended, and the *Planning and Development Regulations 2001*.

The parties' submissions

The commission submitted that, since it is possible under the Irish legislation to comply with the obligations imposed by directive 85/337, as amended, "during or after" execution of a development, there is no clear obligation to subject developments to an assessment

of their effects on the environment *before* they are carried out.

Ireland submitted that the requirements of the directive are "wholly procedural" and are silent as to whether there may or may not be an exception by virtue of which an environmental impact assessment might, in certain cases, be carried out after commencement of works. It contended that nowhere in the directive was it expressly stated that an assessment can solely be carried out before the execution of a project and, further, that the word 'proceed' as used in the definition of the term 'development consent' provided by the directive is significant, in that that term was not confined to commencement of works, but also to the continuation of a development project.

The court stated that member states must implement directive 85/337 in a manner that fully corresponds to its requirements, having regard to its fundamental objective, which, as is clear from article 2(1), is that before development consent is given, projects likely to have significant effects on the environment by virtue, for example, of their nature, size or location, should be made subject to a requirement for development consent and an assessment with regard to their effects. It noted further that development consent under article 1(2) of directive 85/337 (as amended) is the decision of the competent authority or authorities that entitles the developer to proceed with the project. Given that this wording regarding the acquisition of entitlement is entirely unambiguous, article 2(1) of that directive must necessarily be understood as meaning that, unless the applicant has first carried out the environmental impact assessment when it is required, he cannot commence the works relating to the project in question if the requirements of the directive are not to be disregarded.

Retention permission

The court noted that Irish legislation as it currently stands requires, as a general rule, that environmental impact assessments be carried out and

obtained when required prior to the execution of works, but that it also establishes retention permission and equates its effects to those of the ordinary planning permission granted, even though the project to which it relates, and for which an environmental impact statement is required pursuant to the directive, has been executed.

The court averred that a system of regularisation such as that in force in Ireland may have the effect of “encouraging developers to forego ascertaining whether intended projects satisfy the criteria of article 2(1) of the directive” and consequently not to undertake the action required for identification of the effects of those projects on the environment and for their prior assessment.

In relation to the commission’s claim of shortcomings in the Irish legislation relating to enforcement measures, the court noted that it was undisputed that, in Ireland, the absence of an environmental impact assessment as required by the directive can be remedied by obtaining a retention permission that makes it possible, in particular, to leave projects undisturbed that were not properly authorised, provided that the application for such a permission is made before the commencement of enforcement proceedings. The consequence of that possibility may be that the competent authorities do not take action to suspend or put an end to a project that is within the scope of the directive, as amended, and is being carried out or has already been carried out with no regard to the requirements relating to the development consent, and that they refrain from initiating the enforcement procedure provided by the PDA, in relation to which Ireland had pointed out that the powers are discretionary.

The court averred that the inadequacy of the enforcement

system set up by Ireland was accordingly demonstrated, inasmuch as the existence of retention permission deprives it of any effectiveness, and that that inadequacy is the direct consequence of Ireland’s failure to fulfil its obligations.

The Derrybrien wind farm

Regarding the commission’s complaint concerning the circumstances surrounding the construction of wind farm developments at Derrybrien, it argued that while, pursuant to the Irish legislation, environmental impact assessments were carried out for various parts of the development, those assessments were deficient. In particular, it claimed that the environmental impact assessment carried out in 1998 did not properly address the environmental risks attached to the execution of the various constituent parts of the development and that the environmental impact assessment carried out for the third phase of the development was vitiated by the same inadequacies.

Further, it submitted that the construction of the wind farm required the destruction of large areas of coniferous forest, amounting to 263 hectares – however, no environmental impact assessment was carried out for that operation, contrary to the very requirements of the Irish legislation. Furthermore, after the landslide of the mass of peat into the river that caused the ecological disaster, Ireland conducted no fresh environmental impact assessment of this construction before the resumption of work on the site by the developer in 2004.

Significant effects on the environment

The court stated, in relation to Ireland’s contention that the competent authorities took the view that annex II to directive 85/337 was not applicable since the ancillary works of peat

extraction and road construction were minor aspects of the project of wind farm construction itself, that the fact that the projects as mentioned falling under annex II to the directive may have been of secondary importance *vis à vis* the wind farm construction project taken as a whole did not mean that, by virtue of that fact alone, those projects were not likely to have significant effects on the environment.

The intended projects of peat extraction and road construction were not insignificant in terms of scale by comparison with the overall area of the wind farm project, which covered 200 hectares of peat bog, which were moreover essential both to the installation of the turbines and to the progress of the construction works as a whole. It followed from those factors, which were not disputed by Ireland, that the location and size of the projects of peat and road construction and the proximity of the site to a river all constituted specific characteristics that demonstrated that those projects, which were inseparable from the installation of the 46 wind turbines, had to be regarded as likely to have significant effects on the environment and, accordingly, had to be subject to an assessment of their effects on the environment.

Purpose of the assessment

The court stated that the purpose of carrying out an environmental impact assessment in conformity with the requirements of the directive is to identify, describe and assess, in an appropriate manner, the direct and indirect effects of a project on factors such as fauna and flora, soil and water, and the interaction of those factors. In the case under consideration, the environmental impact assessment supplied by the developer had certain deficiencies and did not examine, in particular, the question of soil sta-

bility, although that is fundamental when excavation is intended.

Similarly, in relation to the approval given by the competent Irish authorities to the change in the type of wind turbines originally planned, without requiring an environmental impact assessment in conformity with the directive, and given that the consent for the third phase of construction was not accompanied by such an assessment, the court noted that the relevant selection criteria in annex III to directive 85/337, as amended, which are applicable to the installations of the harnessing of wind power listed in annex II, include the risk of accidents having regard, among other things, to the technologies used. Noteworthy among those criteria were the environmental sensitivity of the geographical area, which must be considered having regard, among other things, to the “absorption capacity of the natural environment”, paying particular attention to mountain and forest areas.

Since the installation of 25 new turbines, the construction of new service roadways, and the change in the type of wind turbines initially authorised, which was intended to increase the production of electricity, are projects that are referred to in annex II to the directive, as amended, and which were *likely*, having regard to the specific features of the site, to have significant effects on the environment, they should, before being authorised, have been subject to a requirement for development consent and to an assessment of their effect on the environment in conformity with the requirements of the directive, as amended. Having had regard to all the above, the court gave the declaration sought by the commission. **G**

James Kinch is a senior executive solicitor in the law department of Dublin City Council.

Recent developments in European law

FREE MOVEMENT OF PERSONS

Case C-164/07, *James Woods v Fonds de garantie des victimes des actes de terrorisme et d'autres infractions*, 5 June 2008. James Woods is a British national who lived in France for more than 20 years with his partner, a French national. They have three children, the eldest of whom died in a road traffic accident in Australia. The family brought a claim before the compensation board for the victims of crime for an assessment of the non-material damage suffered by the family. The agreement reached on compensation excluded the applicant, as the French criminal code requires the claimant of compensation to have French nationality or for the acts to have been committed on French territory. He challenged that decision, and the French court referred a question to the ECJ on the compatibility of the French legislation with EC law. The ECJ held that this situation fell within the scope of application of the treaty and that Mr Woods could rely on his right not to suffer discrimination on the ground of his nationality. The court observed that he was in a comparable situation to his family as regards the damage suffered following the loss of their daughter. The only distinction between Mr Woods and his partner is their nationality. The difference in treatment based expressly and solely on Mr Wood's nationality is direct discrimination and cannot be justified.

Case C-499/06, *Halina Neerowska v Zakład Ubezpieczeń Społecznych Oddział w Koszalinie*, 22 May 2008. The applicant was born in 1946 in the territory of present-day Belarus. She was deported in 1951 to the former USSR. She returned to Poland in

1957 and left it in 1985, when she settled permanently in Germany. The respondent (a social security institution in Poland) refused to pay her a pension in respect of the damage her health had suffered while she was a deportee, on the ground that she was not resident in Poland. She would have been entitled to the pension had she been resident in Poland. She challenged that decision before the Polish courts, arguing that, since Poland had joined the EU, her current place of residence could not constitute an obstacle to the payment of that benefit. The regional court asked the ECJ whether the right to move and reside freely within the territory of the member states precludes national legislation such as the Polish legislation at issue. The ECJ held that a benefit intended to compensate civilian victims of war or repression for physical or mental harm that they have suffered falls within the competence of the member states. However, the member states must exercise that competence in accordance with EC law, in particular the treaty provisions concerning the freedom accorded to every citizen of the EU to move and reside freely within the territory of the member states. The opportunities offered by the treaty in relation to freedom of movement cannot be fully effective if a national of a member state can be deterred from availing of them by obstacles raised by legislation of his state of origin penalising the fact that he has used them. Thus, the Polish legislation in question is a restriction on the freedoms conferred by the EC Treaty on every citizen of the EU. The court then turned to consider whether the Polish legislation was based on objective considerations of public interest independent of the nationality of the persons concerned and whether it was proportionate. It held that the

requirement of residence throughout the period of payment of the benefit must be held to be disproportionate, since it goes beyond what is necessary to ensure a connection between the state and the recipient of the benefit. The fact that a person is a national of the member state granting the benefit in question and lived in that state for more than 20 years may be sufficient to establish such a connection. Furthermore, the objective of verifying that the recipient of a disability pension continues to satisfy the conditions for its grant may be achieved by other means that, although less restrictive, are just as effective.

INTELLECTUAL PROPERTY

Case C533/06, *O2 Holdings Limited and O2 (UK) Limited v Hutchinson 3G Limited*, 12 June 2008. The mobile telephone company O2 uses bubble images to advertise its mobile telephone services. It is the proprietor of two British national trademarks that consist of a static picture of bubbles. In 2004, Hutchinson 3G, a competitor of O2 that markets its services under the name '3', launched an advertising campaign for its pay-as-you-go service known as 'Threepay'. It broadcast a television advertisement comparing the price of its services with those of O2. The advertisement began by using the name O2 and moving black and white bubble imagery followed by Threepay and 3 imagery with a message that 3's services were cheaper. O2 brought proceedings in the English High Court for infringement of its bubbles trademark. It accepted that the advertisement was not misleading, as the price comparison was accurate. The action was dismissed. O2

appealed to the Court of Appeal. It asked the ECJ whether a proprietor of a mark is entitled to prevent the usage of a sign that is identical with, or similar to, its mark in a comparative advertisement that does not give rise to a likelihood of confusion between the advertiser and a competitor or between the advertiser's marks, goods and service and those of a competitor. The ECJ examined the interaction between the *Trademark Directive* (89/104) and the *Directive on Comparative Advertising* (84/450, amended by directive 97/55). It noted that the legislature sought to promote comparative advertising and thus to limit to a degree the right conferred by a trademark. The proprietor of a trademark is not entitled to prevent the use by a third party of a sign identical with or similar to his mark in a comparative advertisement that satisfies all the conditions under which comparative advertising is permitted. However, this only applies if there is no likelihood of confusion between the advertiser and a competitor or between their marks, goods or services. The proprietor of a mark can prevent the use by a third party of a sign that is similar to his mark if four conditions are satisfied. That use must be in the course of trade, it must be without the consent of the proprietor, it must be in respect of goods or services that are identical with or similar to those for which the mark is registered, and it must affect or be liable to affect the essential function of the mark (to guarantee to consumers the origin of the goods or services by reason of a likelihood of confusion on the part of the public). The first three conditions were satisfied in this case. In contrast, the use by 3 of bubble images similar to the trademarks did not give rise to a likelihood of confusion on the

part of consumers. The advertisement was not misleading and did not suggest any form of commercial link between O2 and 3. Thus, the fourth condition is not satisfied. The court held that O2 was not entitled to rely on its trademark rights to prevent the use by 3 of a sign similar to its mark in a comparative advertisement, where such use does not give rise to a likelihood of confusion on the part of the public.

LITIGATION

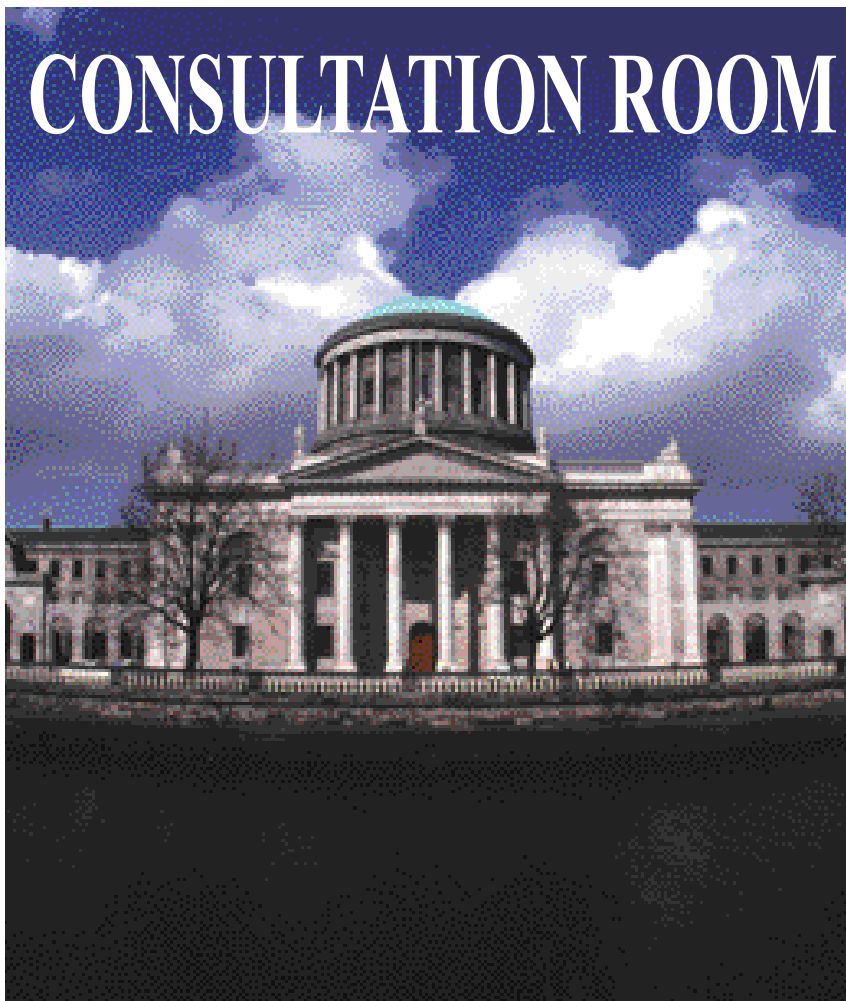
Case C-462/06, *GlaxoSmith-Kline, Laboratoires GlaxoSmith-Kline v Jean-Pierre Rouard*, 22 May 2008. The applicant brought proceedings against two

defendants, arguing that they were his co-employers. He claimed damages from both defendants for his dismissal. He had relied on article 6(1) of regulation 44/2001 (the *Brussels Regulation*), which allows co-defendants to be sued in the domicile of one of them where the claims are so closely connected that it is expedient for one forum to hear them so as to avoid the risk of irreconcilable judgments. One of the two companies had its seat in France. The French Cour de Cassation asked the ECJ whether the special rules on employment in the regulation preclude the application of article 6(1). The ECJ held that it did. It held that it was

clear from article 18 that any dispute concerning an individual contract of employment must be brought before a court designated in accordance with the rules of jurisdiction laid down in section 5 of chapter II (the special rules relating to employment). The court also held that the rules in section 5 cannot be amended or supplemented by other rules of jurisdiction laid down in that regulation unless specific reference is made therein to section 5 itself. Article 6(1) is not referred to at all in section 5, unlike other similar articles that are. Likewise, there is no corresponding provision to article 6(1) in section 5. This is contrast to article 6(3), which allows

counter-claims to be heard in the same state as the original claim – there is a corresponding provision in article 20(2). If article 6(1) was available in the employment context, it would be open to both employers and employees. The purpose of the employment rules is to safeguard the position of employees and limit the jurisdictions in which action can be taken against them. Article 20(1) restricts employers to bringing actions only in the court of the member state in which the employee is domiciled. Thus, to apply article 6(1) could defeat the purpose of this article. Article 6(1) cannot be interpreted in such a way to allow only an employee to invoke it.

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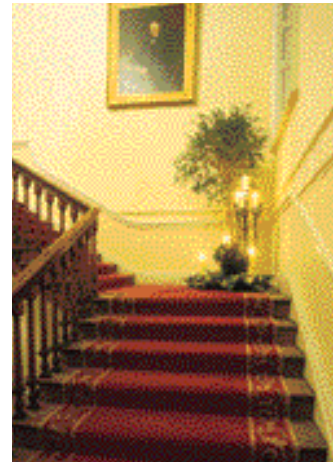


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Property Registration Authority, Chancery Street, Dublin 7 (published 3 October 2008)

Regd owner: Carlow Urban District Council; folio: 8500, now revised to 9445F; lands: Carlow and barony of Carlow; **Co Carlow**

Regd owner: Noel C Reddy; folio: 16939F; lands: Carlow and barony of Carlow; **Co Carlow**

Regd owner: John Reddy; folio: 11335F; lands: Carlow and barony of Carlow; **Co Carlow**

Regd owner: Luke Roche; folio: 13798F; lands: Moanmore and Bannagogle and barony of Idrone East; **Co Carlow**

Regd owner: Bridget Browne; folio: 2785F; lands: Newtown and barony of Idrone East; **Co Carlow**

Regd owner: Thomas Maguire, Drumgoon, Cootehill, Co Cavan; folio: 4642, 6907, 10182; lands: Drumgill Cran, Drumgoon, **Co Cavan**

Regd owner: Mortimer Flanagan; folio: 1009; townland of Knocknagrough and barony of Burren; area: 6.6260 hectares; **Co Clare**

Regd owner: Marion Spellissey; folio: 16234F; lands: townland of Lifford and barony of Islands; **Co Clare**

Regd owner: Patrick Halton; folio: 1353L; townland of Tullyglass and barony of Bunratty Lower; **Co Clare**

Regd owner: Marie Talty and Jamie Kelleher; folio: 32014F; lands: townland of Glendine South and barony of Ibrickan; area: 0.5590; **Co Clare**

Regd owner: Mary O'Leary; folio: 12324; lands: townland of Newpark and barony of Bunratty Upper; **Co Clare**

Regd owner: Mary Fennessy; folio: 15104; lands: townland of

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Coologory and barony of Tulla Upper; **Co Clare**

Regd owner: Tim Moloney; folio: 15275F; lands: townland of Curragh and barony of Tulla Upper; area: 7.555 hectares; **Co Clare**

Regd owner: Patrick O'Riordan (deceased) and Julia O'Riordan; folio: 59234F; lands: plot of ground situate in the parish of St Finbar's, known as 13 Uam Var Grove, Bishopstown, in the barony and county of Cork; **Co Cork**

Regd owner: Ann Hyland (deceased); folio: 49140; lands: plot of ground situate in the townland of Shrone and barony of Bear in the county of Cork; **Co Cork**

Regd owner: John Kevin Sexton; folio: 95187F; lands: plot of ground situate in the townlands of (1) Lehenagh More and (2) Doughcloyne and barony of Cork; **Co Cork**

Regd owner: Philip O'Shea; folio: (a) 77F, (b) 28902F; lands: (a) plot of ground situate in the townlands of (1) Lissard and (2) Ballyhillloge, situate in the barony of Barretts in the county of Cork, (b) plot of ground situate in the townland of Ballyknockane in the barony of Barretts in the county of Cork; **Co Cork**

Regd owner: Gerard O'Keeffe; folio: 312; lands: plot of ground situate in the townland of Paal West and barony of Duhallow in the county of Cork; **Co Cork**

Regd owner: James Tobin; folio: 6777; lands: plot of ground situate in the townland of Peafield (ED Templebodon) and barony of

Barrymore in the county of Cork; **Co Cork**

Regd owner: John McDermott and Jennifer McDermott, Church Brae, Greencastle, Co Donegal; folio: 42337; lands: Drumaweer; **Co Donegal**

Regd owner: Josephine Sutton, Glenmacannive, Glenties, Co Donegal; folio: 13342; lands: Glenmacannive; **Co Donegal**

Regd owner: Edward O'Hanlon, Saltpan, Rathmullan, Co Donegal; folio: 9302; lands: Saltpan; **Co Donegal**

Regd owner: Gerard Hanlon; folio: DN73053F; lands: property known as 116 Killinnardan Estate, situate in the parish and townland of Tallaght; **Co Dublin**

Regd owner: Siobhan Doherty; folio: DN99916F; lands: property being no 12 Old Rectory, situate on the north side of the Old Hill in the parish of Lucan and town of Lucan; **Co Dublin**

Regd owner: Sean Walsh and Marie Walsh; folio: DN4267L; lands: property situate on the south side of Bunting Road in the townland of Wilkinstown and barony of Uppercross; **Co Dublin**

Regd owner: Joseph Walsh and Nancy Walsh; folio: 9220F; lands: townland of Turlough and barony of Moycullen; area: 3.7433 hectares; **Co Galway**

Regd owner: Karl FitzMaurice; folio: 15359; lands: townland of Boggauns (Killian By) and barony of Killian; area: 4.3818 hectares; **Co Galway**

Regd owner: Noel Larkin and Rita Larkin; folio: 5254L; lands: town-

land of Morroogh and barony of Galway; **Co Galway**

Regd owner: Peter Maloney; folio: 27802; lands: townland of Cornanaff and Springfield (Ballymoe By) and barony of Ballymoe; **Co Galway**

Regd owner: Thomas Reilly; folio: 25545F; townland of Ballymarcahaun, Coolfin (Kiltartan By) and barony of Kiltartan; **Co Galway**

Regd owner: Bernadette Kenny (née Madden); folio: 11304F; lands: townland of Saint Nicholas and barony of Menlough; **Co Galway**

Regd owner: Patrick Keane; folio: 12317; lands: townland of Ardagh and barony of Ballymoe; **Co Galway**

Regd owner: John A Kavanagh; folio: KY14988; lands: townland of Glancullare South and barony of Iraghticonnor; **Co Kerry**

Regd owner: (1) Gerald Bermingham (shop assistant) of Rahin, Edenderry, Offaly, is full owner as tenant-in-common of one undivided half share(s); (2) Denis Bermingham (farmer) (deceased) of Rahin, Edenderry, Offaly, is full owner as tenant-in-common of one undivided half share(s); folio (1): KE 10544; lands: townland of Brackagh and barony of Carbury; folio (2): KE 8440; lands: townland of Rahin and barony of Carbury; **Co Kildare**

Regd owner: Charles O'Neill of Abbey Lands, Clane, Co Kildare; folio: 2227; lands: townland of Clane in the barony of Clane in the electoral division of Clane; **Co Kildare**

Regd owner: Kathleen Murphy of 61 Dara Court, Celbridge, Co Kildare; folio: 3649F; lands: townland of Celbridge, known as 61 Dara Court, Celbridge, Naas, in the barony of Salt North, in the electoral division of Celbridge; **Co Kildare**

Regd owner: John McCartin (deceased) (farmer) of Smithstown, Maynooth, Co Kildare; folio: 11713; lands: townland of Smithstown and barony of North Salt; **Co Kildare**

Regd owner: Martin McDonagh (farmer) of Timard, Maynooth, Co Kildare; folio: 15729; lands: townland of Timard and barony of North Salt; **Co Kildare**

Regd owner: Sean Byrne (farmer) of Castleroe, Maganey, Co Kildare; folio: 817; lands: townland of Castleroe East and barony of Kilkea and Moone; **Co Kildare**

Regd owner: Richard Newman and Lareina Smith, 20 The Elms, Newbridge, Co Kildare; lands: south of Strandhouse Road in the town of Newbridge, situate in the townland of Ballymany and barony of Offaly East; **Co Kildare**

Regd owner: Joan Fogarty of 20 Castle Village Avenue, Celbridge, Co Kildare; folio: 14626F; lands: west of Big Lane in the town of Celbridge, being part of the townland of Thornhill and the barony of North Salt; **Co Kildare**

Regd owner: Anne Murphy, Silverhills, Ballymore Eustace, Co Kildare; folio: 17671; lands: townland of Silverhill Lower and barony of Naas South; **Co Kildare**

Regd owner: Thomas Roche, The Hollies, Dunlavin, Co Wicklow; folio: 545; lands: townland of Usk and barony of Narragh and Reban East; **Co Kildare**

Regd owner: Paul Flynn and Patricia Flynn of Ardenode East, Ballymore Eustace, Co Kildare; folio: 14003; lands: townland of Ardenode East and barony of Naas South; **Co Kildare**

Regd owner: John Walsh of Newtown, Castledermot, Co Kildare; folio: 84F; lands: townland of Davidstown Upper in the barony of Kilkea and Moone, in the electoral division of Castledermot; **Co Kildare**

Regd owner: Kevin Lynch of Cross Keyes, Kilcock, Co Kildare; folio: 8310; lands: townland of Laragh Demesne and barony of Ikeathy and Oughterany; **Co Kildare**

Regd owner: Martin Kaltenberger; folio: 3970F; lands: Ballyda and barony of Shillelogher; **Co Kilkenny**

Regd owner: Anastasia Medlar; folio: 15154; lands: Paulstown and barony

of Gowran; **Co Kilkenny**

Regd owner: Anthony Lowry; folio: 10896F; lands: Clogrenan and barony of Slievemargy; **Co Laois**

Regd owner: Jeremiah Carmody; folio: 5386; townland of Kilfinny and barony of Connello Upper; **Co Limerick**

Regd owner: Maria Cosgrave; folio: LK20996; lands: townland of Mountshannon and barony of Clanwilliam; **Co Limerick**

Regd owner: Gerard Lynch and Anne Lynch; folio: LK27012F; lands: townland of Newcastle and barony of Clanwilliam; **Co Limerick**

Regd owner: Olivia Noel Donegan, St Echins, Monasterboice, Drogheda, Co Louth; folio: 4977; lands: Timullen; **Co Louth**

Regd owner: Joseph Mullen, 16 Brookwood Lawns, Red Barns Road, Dundalk, Co Louth; folio: 22083F; lands: Marshes Lower; **Co Louth**

Regd owner: Elizabeth Toner, 237 Cedarwood Park, Dundalk, Co Louth; folio: 21089F; lands: Cedarwood Park; **Co Louth**

Regd owner: Kevin Burke; folio: 43209; lands: townland of Carrowkibbock Upper and barony of Tirawley; **Co Mayo**

Regd owner: William Campbell (deceased); folio: 8723F; lands: townland of Pollnacraoghy and Carrowluggaun and barony of Costello; **Co Mayo**

Regd owner: Kevin McGrath; folio: 1035F; lands: townland of Kilsallagh Lower and barony of Murrisk; **Co Mayo**

Regd owner: John Maye; folio: 4492; lands: townland of Derrynaleck and barony of Costello; area: 9.7098 hectares; **Co Mayo**

Regd owner: John Farrelly, Kieran Road, Carnaross, Kells, Co Meath; folio: 11363; lands: Newrath Big; **Co Meath**

Regd owner: Seamus O'Brien, Clonmacullion, Lisnalong, Co Monaghan; folio: 16004; lands: Clonacullion; **Co Monaghan**

Regd owner: Peter Paul Rooney, Tievidinna, Inniskeen, Co Monaghan; folio: 868; lands: Tievadinna; **Co Monaghan**

Regd owner: Sarah McCourt and Kathleen McCourt, Sillis, Glasslough, Co Monaghan; folio: 18752; lands: Sillis; **Co Monaghan**

Regd owner: Rosemary McElerney, Knappagh, Ballybay, Co Monaghan; folio: 12764; lands: Knocknamaddy; **Co Monaghan**

Regd owner: Margaret Higgins (deceased) of Clooncalagy More, Ballinlough, Co Roscommon; folio: 26215; lands

Clooncalgymore; **Co Roscommon**

Regd owner: Paul Tully; folio: 20073; townland of Castlereagh and barony of Castlereagh; **Co Roscommon**

Regd owner: Henry Crean; folio: 4100; lands: townland of Moyne and barony of Frenchpark; **Co Roscommon**

Regd owner: Mary O'Connor and Carmel Ann O'Connor; folio: 6393F; lands: townland of Lisroyme and barony of Roscommon; area: 0.2630 hectares; **Co Roscommon**

Regd owner: Joseph Lennon; folio: 26074; townland of Ardkeen and barony of Athlone South; **Co Roscommon**

Regd owner: Anthony Connor and Annie M Connor; folio: 32132; lands: townland of Carrowmurragh and barony of Athlone South; **Co Roscommon**

Regd owner: Martin Raftery; executrix: Maureen Flynn; folio: 101; lands: all that and those the property comprised in folio 101 of the register, Co Roscommon; **Co Roscommon**

Regd owner: Anthony Boland; folio: 17569; lands: townland of Carrownrod and barony of Tileragh; area: 9.7883 hectares; **Co Sligo**

Regd owner: Thomas Cummins; folio: TY1819; lands: townland of Garraun and barony of Eliogarty; **Co Tipperary**

Regd owner: James Ryan, Michael Frawley, Donal Nealon, Con Cash, James Fogarty; folio: TY29555; lands: townland of Mantlehill Great and barony of Clanwilliam; **Co Tipperary**

Regd owner: Daniel Reilly; folio: 1492; lands: plot of ground situate in the townland of Kilnagrange and barony of Decies without Drum; **Co Waterford**

Regd owner: Patrick McKeown and Margaret McKeown; folio: 375L; lands: plot of ground to the west of Brown's Road in the parish of Trinity Without, in the city and county of Waterford; **Co Waterford**

Regd owner: Bridget Geary; folio: 2709; lands: plot of ground situate in the townland of Kilcalf West and barony of Coshmore and Coshbride in the county of Waterford; **Co Waterford**

Regd owner: Thomas Dolan, Dunlum, Mount Temple, Moate, Co Westmeath; folio: 670; lands: Dunlom West; **Co Westmeath**

Regd owner: Bridget Reilly, Roan, Glasson, Athlone, Co Westmeath; folio: 2525; lands: Lissakillen; **Co Westmeath**

Regd owner: Anthony Dolan, Dunlum, Mount Temple, Co

Westmeath; folio: 8354; lands: Cappaghbrack (part) and Tullywood (part); **Co Westmeath**

Regd owner: Michael Fagan and Francis Fagan, Corboy, Castletown F, Mullingar, Co Westmeath; folio: 11337; lands: Carlanstown; **Co Westmeath**

Regd owner: Patrick Cunneen, Craddenstown, Raharney, Co Westmeath; folio: 12344; lands: Craddenstown; **Co Westmeath**

Regd owner: New Ross Urban District Council; folio: 11335F; lands: Pondfields and barony of Bantry; **Co Wexford**

Regd owner: John Murray; folio: 7629; lands: Kilmichael and barony of Gorey; **Co Wexford**

Regd owner: William and June Bates; folio: 16371F; lands: Ardavan and barony of Shelmalieri East; **Co Wexford**

Regd owner: Josephine Reville; folio: 12892F; lands: Deerpark, Tottenhamgreen, Shawstown and barony of Shelmalieri West; **Co Wexford**

Regd owner: Helen Margeret and Ernest Pullen; folio: 4809; lands: Kildermot and Ballaghkeen North; **Co Wexford**

Regd owner: Paul Nagle and Sandra Fitzsimons, 62 Seaview, Kilcoole, Co Wicklow; folio: 6354F; lands: townland of Kilcoole and barony of Newcastle; **Co Wicklow**

Regd owner: Karl Mullen of 'Altamont', Stoney Road, Dundrum, Dublin 14; lands: townland of Tulfarris and barony of Talbotstown Lower; **Co Wicklow**

Regd owner: John Moody and Philomena Moody, 6 Lower Kindlestown, Greystones, Co Wicklow; lands: townland of Kindlestown Lower and barony of Rathdown; **Co Wicklow**

Regd owner: Joseph McGrath and Elaine Dromey of 7 Broomhall Court, Rathnew, Co Wicklow; lands: townland of Merrymeeting and barony of Newcastle; **Co Wicklow**

Regd owner: Turloch Bracken and Patricia Mooty of Kilcarra, Arklow, Co Wicklow; folio: 1108F; lands: townland of Kilcarra East and barony of Arklow; **Co Wicklow**

Regd owner: Ciaran Doyle is full owner as tenant-in-common of one undivided half share(s); Eugene Kidney is full owner as tenant-in-common of one undivided quarter share(s); Anthony Rooney is full owner as tenant-in-common of one undivided quarter share(s); folio: 11036; lands: townland of Kindlestown Upper and barony of Rathdown; **Co Wicklow**

WILLS

Cody, Richard (deceased), late of Castlecolumb, Knocktopher, Co Kilkenny. Would any person with knowledge of a will executed by the above-named deceased, who died on 15 April 2008, please contact O'Shea Russell Solicitors, Main Street, Graignamangh, Co Kilkenny; tel: 059 972 4106

Cox, Peter (deceased), late of Cronkell, Rooskey, Carrick-on-Shannon, Co Roscommon, who died on 5 May 2008. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding the same, please contact Michael J Kennedy & Company, Solicitors, The Parochial House, Baldoyle, Dublin 13; tel: 01 832 0230, fax: 01 839 3663

Cregan, Michael (deceased), late of 8 Mellows Terrace, Navan, Co Meath, who died on 2 July 2008 at Connolly Hospital, Dublin. Would any person having knowledge of a will made by the above-named deceased please contact Oliver Shanley & Company, Solicitors, 62-63 Academy Street, Navan, Co Meath; tel: 046 909 3200, fax: 046 902 9937

Doyle, Matilda (otherwise Tilly) (deceased), late of 76 Hillside, Greystones, Co Wicklow (formerly of Morehampton Road, Donnybrook, Dublin 4), who died on 14 February 2008. Would any person having knowledge of a will made by the above-mentioned deceased please contact Stuart Stein & Company, Solicitors 10 Adelaide Court, Adelaide Road, Dublin 2; tel: 01 478 3632, fax: 01 478 3724, email: stuartstein@eircom.net

Dwyer (or O'Dwyer), Thomas (deceased), late of Scrähane, Enniskane, Co Cork and The Golden Meadows Retirement Village, Clonakilty, Co Cork, who died on 8 September 2008. Would any person having knowledge of a will made by the above-named deceased please contact Messrs R Neville & Co, Solicitors, South Main St, Bandon, Co Cork; tel: 023 41308

Gray, Veronica (deceased), late of 94 Faussagh Road, Cabra, Dublin 7. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 13 July 2008, please contact Enda P Moran, solicitor, Main Street, Celbridge, Co Kildare; tel: 01 627 1137, fax: 01 627 2505, email: endapmoran@eircom.net

McCabe, Mary Bridget (deceased), late of Clare Island, Westport, Co Mayo. Would any person having knowledge of a will made by the above-named deceased, who died on 26 April 2008, please contact Karen A O'Malley & Co, Solicitors, Altamount St, Westport, Co Mayo; tel: 098 27757, fax: 098 29035

Kearns, Bridget (deceased), late of 36 Henley Park, Churchtown, Dublin 14, widow of the late William Kearns, deceased. Would any person having knowledge of a will made by the above-named deceased, who died on 18 September 1992, please contact Mannion Solicitors, Taney Road, Dundrum, Dublin 14; tel: 01 298 9344, email: thomas@mannonisolicitors.ie

Kirwan, Patrick (deceased), late of Bridgetown, Clonea Power, Carrick-on-Suir, Co Waterford, who died on 20 July 2008 at Suirmount Nursing Home, Carrickbeg, Carrick-on-Suir, Co Tipperary. Would any person having knowledge of a will made by the above-named deceased please contact Michael J O'N Quirk & Co, Solicitors, Main Street, Carrick-on-Suir, Co Tipperary; tel: 051 640 145, fax: 051 640 145

O'Brien, Sean (otherwise John) (deceased), late of 12 Marian Crescent, Rathfarnham, Dublin 14, who died on 7 May 2008. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Maguire McNeice & Co, Solicitors, Bray House, 2 Main Street, Bray, Co Wicklow; tel: 01 286 2399, fax: 01 282 9428, email: info@maguiremcneice.com

O'Hara, Eric (deceased), late of 7 Sutton Downs, Bayside, Dublin 13, who died on 7 June 2008. Would any person having knowledge of a will

made by the above-named deceased, or if any firm is holding the same, please contact Dermott S Dunleavy & Son, Solicitors, Ross Road, Taghmon, Co Wexford; tel: 053 913 4188, fax: 053 913 4309, email info@dermottsdunleavy.com

O'Mahony, Mary (deceased), late of Tullyland, Bandon, Co Cork, who died on 7 August 2007. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Gerard McCullagh and Company, Solicitors, of 1-2 Cois Mara, Dungarvan, Co Waterford; tel: 058 44166, fax: 058 44182

Styles, Helen (otherwise Eileen) (deceased), would any person having knowledge of a will made by the above-named, or if any firm is holding the same, please contact Elaine Dunne, solicitor, 27 Jessop Street, Portlaoise, Co Laois; tel: 057 868 0603, fax: 057 868 0637, email: info@elainedunnesolicitor.ie

Walsh, Mary (deceased), late of Camus Eigher, Camus PO, Co Galway (otherwise known as Lower Camus, Co Galway), widow. Would anybody having knowledge of the whereabouts of the original deceased's will, which is dated 17 May 1988, please contact WB Gavin & Co, Solicitors, 4 Devon Place, The Crescent, Galway

Whyte, Joseph (or Josie) (deceased), late of Cloonsheecahil, New Inn, Ballinasloe, Co Galway, who died on 11 May 2008. Would any person with any knowledge of a will executed by the above-named deceased please contact Messrs Padhraic Harris & Company, Solicitors, Merchant's Gate, Merchant's Road, Galway; tel: 091 566 653, email: cirwin@harris-solrs.ie

MISCELLANEOUS

Ordinary seven-day licence for sale. Contact T Mullan & Co, Solicitors, Bowgate Street, Ballinrobe, Co Mayo; tel: 094 954 1800 or fax: 094 954 1802

TITLE DEEDS

Property at Bridge House, Dublin Hill, Cork. Any solicitor holding or having any knowledge of any deeds or documents in respect of the above property kindly contact John Hinchion & Co, Solicitors, The Bakehouse, Waterloo Road, Blarney, Co Cork; tel: 021 438 2870, email: veronica@blarneylaw.com

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 Richelle Flanagan, 7 Rathfarnham Road, Terenure, Dublin 6W

Take notice that any person having any interest in the freehold estate or the superior interest of the following property: all that and those the property known as the plot or parcel of ground situate at Upper Terenure Road in the barony of Rathdown and county of the city of Dublin, containing in front to said road, 22 feet and a half inch; in the rear 22 feet, 4 1/2 inches; and from front to rear on the north side, 63 feet, 9 1/2 inches; on the south side, 64 feet, 2 inches, be all said several admeasurements more or less together with the dwellinghouse and other erections thereon, and known or intended to be known as number 7 Bushy Park Terrace, and also the further plot of ground containing 17 feet, 9 inches on the north west side; 25 feet, 5 inches on the south east; 8 feet, 10 1/2 inches on the north east side; and 11 feet, 5 inch-

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es on the west side, together with the garage erected thereon (but since removed) with a right of way to the lessee and his under-tenants and the occupiers for the time being of the said premises at all times and for all purposes over the laneway leading from Terenure Road (now Rathfarnham Road) to the said garage (or garage space) and to the rear of said other premises. The said premises formerly known as number 7 Bushy Park Terrace are now known as 7 Rathfarnham Road, Terenure, Dublin 6W.

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

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

Date: 3 October 2008

Signed: Brian Crowe & Co (solicitors for the applicant), Newcourt, 177 Harold's Cross Road, Harold's Cross, Dublin 6W

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 number 28 Richmond Road, Drumcondra, Dublin (the property) and Maxol Limited (the applicant)

Take notice that any person having any interest in the freehold estate of the following property: take notice that the applicant intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid (or any of them) are called upon to furnish evidence of the title to the aforementioned property to the below named within 21 days from the date of this notice.

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

Date: 3 October 2008

Signed: Eugene F Collins (solicitors for the applicant), Temple Chambers, 3 Burlington Road, Dublin 4; DX 25

Notice: advertisement for the unknown owner of fee simple interest – an application by Michael Kennedy and Angela Kennedy

Any person having interest in the estate of the following property: plot of ground adjoining 7 Glenalua Heights, Killiney, Co Dublin.

Take notice that Michael Kennedy and Angela Kennedy intend to submit an application to the Property Registration Authority for the acquisition of the freehold interest in the

aforesaid property, and any party asserting that they hold an interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the below named within 28 days of the date of this notice.

In default of any such notice being received, Michael Kennedy and Angela Kennedy intend to proceed with the application to the Property Registration Authority at the end of 28 days from the date of this notice and will apply to the Property Registration Authority for registration of the freehold interest on the basis of adverse possession as persons beneficially entitled to the interest in the property.

Date: 3 October 2008

Signed: Partners at Law (solicitors for the applicant), 8 Adelaide Street, Dun Laoghaire, Co Dublin

Notice of intention to acquire the fee simple in respect of lands known as no 5 Anglesea Villas, Anglesea Street, Cork

Take notice that any heir, administrator, executor or assign of William Wise of the city of Cork, or William Scannell with a last known address at no 4 Anglesea Villas, Anglesea Street, Cork, or anyone with an interest in their estates, should contact the undersigned solicitors, who act on behalf of the current lessee of lands situate at and known as no 5 Anglesea Villas, Anglesea Street, Cork. The said William Wise demised the aforesaid lands by lease dated 13 October 1860 for a term of 150 years. By way of intermediate lease dated 15 June 1921, the said William Scannell demised the said lands for a term of 88 years. The current lessee is making an application to the county registrar for the city of Cork on the 17 November 2008 at 10 o'clock in the forenoon to purchase the

freehold in the said lands.

Date: 3 October 2008

Signed: Nash McDermott & Co (solicitors for the applicant), Templemore, Co Tipperary

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 an application by Heber O'Farrell and Avril O'Farrell

Take notice that any person having an interest in the freehold estate of the following property: the lands and messuages known as St Mary's, Novara Avenue, Bray, in the county of Wicklow, held under an indenture of lease dated 23 July 1936 and made between John O'Toole of the one part and John Joseph Keenan of the other part for the term of 900 years from 1 January 1936, subject to the yearly rent of £10 thereby reserved and to the covenants and conditions therein contained.

Take notice that Heber O'Farrell and Avril O'Farrell, the applicants herein, intend to submit an application to the county registrar in and for the county of Wicklow for the acquisition of the freehold interest together with any intermediate interest in the aforesaid property, and any persons asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the undersigned within 21 days from the date of this notice.

In default of any such notice being received, the said applicants, Heber O'Farrell and Avril O'Farrell, 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 registry in and for the county of Wicklow for directions as

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may be appropriate on the basis that the person or persons beneficially entitled to any superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 3 October 2008

Signed: McGarry & Company (solicitors for the applicants), 33 Main Street, Bray, Co Wicklow

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*, as amended, and in the matter of an application by Kieran McDermott and Dermot McDermott as the legal personal representatives of Anthony McDermott, deceased

Any person having a freehold estate or any intermediate interest in all that and those part of the lands of Houghton's Farm with another parcel of land formerly in the possession of Richard Stone and the town and lands of the Old Orchard formerly in the possession of William Dixon, together with part of the town of Rathfarnham lying between Mr Watson's house and Rathfarnham Mill, held on foot of an indenture of lease dated 14 January 1679 for the term of 999 years, subject to the yearly rent of £208 per annum and made between Adam Loftus of the one part and Daniel Reading of the other part, subject to an indenture of sublease for the term of 300 years from 25 May 1745 at the yearly rent of £8.10s.0d per annum, made between George Martin of the one part and George Fraser of the other part and thereby subdemised to the said George Fraser for 300 years from 25 March 1745 and subject further to a second sublease dated 16 April 1746, made between George Martin of the one part and William Coates of the other part, being for a term of 300 years at a yearly rent of £10.10s.0d, which said premises are now known as no 34 Glenbrook Park, Rathfarnham, Dublin 16.

Take notice that Kieran McDermott and Dermot McDermott, as the legal personal representatives of Anthony McDermott, deceased, who died on 12 August 2007, and being the persons by virtue of a grant of probate currently entitled to the lessee's interest under the said leases and subleases, intend to apply to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest, together with all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest or an intermediate interest in the aforesaid property (or any part of same) 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, Kieran McDermott and Dermot McDermott 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 direction as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold reversionary interest in the property, are unknown or unascertained.

Date: 3 October 2008

Signed: Dermot G McDermott & Co (solicitors for the applicants), 1 Union Street, Sligo

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Curdworth Limited of Maxwell Road, Rathmines, Dublin 6

Take notice that any person having an interest in the freehold or any superior interest in the property known as: all that and those the lands at Winfield Motors, Maxwell Road, Rathmines, Dublin 6, being part of the property comprised in folio 2757L, the register of leaseholders, Co Dublin, held under lease dated 9 February 1949 between Anne Josephine Kennedy of the one part and Frederick Gorman and Laurence Gorman other part for a term of 150 years from 1 February 1947, subject to a yearly rent of £65 and subject to the covenants and conditions therein contained.

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

In default of such notice being received, the applicant, Curdworth Limited, intends to proceed with the application before 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 the aforesaid property are unknown and unascertained.

Date: 3 October 2008

Signed: Pierse & Fitzgibbon Solicitors (solicitors for the applicants), Market

Street, Listowel, Co Kerry

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-1994* and in the matter of the *Landlord and Tenants (Ground Rents) (No 2) Act 1978*: an application by Curdworth Limited of Maxwell Road, Rathmines, Dublin 6

Take notice that any person having an interest in the freehold or any superior interest in the property known as: all that and those part of the lands at Winfield Motors, Maxwell Road, Rathmines, Dublin 6, held under lease dated 9 August 1892 between Richard Keogh of the first part, Elizabeth Collins of the second part and Peter Doyle of the third part for a term of 400 years from 9 August 1892, subject to a yearly rent of £21 and 10 shillings (as apportioned) and subject to the covenants and conditions therein contained.

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

In default of such notice being received, the applicant, Curdworth Limited, intends to proceed with the application before 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 the aforesaid property are unknown and unascertained.

Date: 3 October 2008

Signed: Pierse & Fitzgibbon Solicitors (solicitors for the applicants), Market Street, Listowel, Co Kerry

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant Act 1978* and in the matter of an application by John Gallagher, Dermot Fahy and Richard Henry

Any person having a freehold estate or any intermediate interest in all that and those that portion of property adjacent to the Westbourne Hotel, Bray, Co Wicklow, the subject of an indenture of lease dated 19 February 1946 between Alexander Rochfort Jackson and others of the one part and John C Jackson of the other part for a term of 150 years from 1 August 1945 at a rent of £52 per annum.

Take notice that John Gallagher, Dermot Fahy and Richard Henry, being the persons currently entitled to the lessees' interest under the said lease, intend to apply to the county registrar of the county of Wicklow for the acquisition of the freehold interest and all intermediate interests in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid property 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, John Gallagher, Dermot Fahy and Richard Henry intend to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of Wicklow for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid premises are unknown and unascertained.

Date: 3 October 2008

Signed: D Fahy & Associates (solicitors for the applicant), 42 St Stephen's Green, Dublin 2

NOTICE TO THOSE PLACING RECRUITMENT ADVERTISEMENTS IN THE LAW SOCIETY GAZETTE

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

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