LAW SOCIETY
Gazette
€3.75 December 2009

HOLE IN ONE:
Portmarnock and the Equality Authority

12
9 771393 695012

INSIDE: NEW PRESIDENT INTERVIEWED • APPOINTING AN EXAMINER • NEW LIQUOR LICENSING RULES

CLEAR, FOCUSED ANALYSIS

MEDICAL MALPRACTICE LAW

BY JOHN HEALY

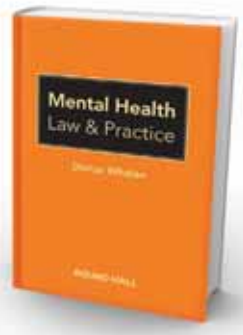
Medical Malpractice Law provides the reader with a detailed and developed account of the law of medical negligence and consent. It covers all relevant case law and legislation, takes you step by step though the related practice and procedure and helps you get to grips quickly with complex issues. It is an essential reference for both generalist and specialist legal practitioners. It is also a useful reference for medical practitioners, including doctors, consultants and general practitioners, to have to hand.

PRICE: € 415.00 Publishing December

MENTAL HEALTH LAW AND PRACTICE

BY DR DARIUS WHELAN

This book is a comprehensive examination of the civil and criminal aspects of mental health law. It guides the practitioner and mental health professionals through the legal process of dealing with people with mental disorders from voluntary and involuntary admission to hospital to the role of doctors and psychiatrists. It is up to date and includes full analysis of Mental Health Act 2001 and the Criminal Law (Insanity) Act 2006. It is an essential reference tool for both generalist and legal practitioners.



PRICE: €275.00 Publishing December

DIRECTORS' DUTIES: LAW AND PRACTICE

BY DR DEIRDRE AHERN

Directors' Duties: Law and Practice is the only title devoted exclusively to directors duties, it comprehensively addresses the legal obligations of company directors in Ireland. It is a detailed examination of the practical application of the common law and equitable duties of directors as interpreted by the courts as well as key statutory obligations under the Companies Acts 1963 to 2009 with which directors must comply. It is an essential reference tool for Barristers, Solicitors, Accountants, Financial Service Institutions, Financial Advisors, Liquidators, Company directors and company secretaries.

PRICE: €295.00 Publishing December

PLACE YOUR ORDER TODAY!

To order, or for more information, simply call us on +353 (0) 1 662 5301 or visit www.roundhall.ie

ROUND HALL

THOMSON REUTERS

Law Society of Ireland

Law Society Annual Conference

9th/10th April 2010

Book online at **lawsociety.ie**

Lyrath Estate Hotel
Kilkenny

Conference package (delegates): €275

- CPD programme on Friday afternoon (3 CPD hours)
- Gala dinner on Friday evening
- One night's bed and breakfast
- Conference business session on Saturday morning (3 CPD hours)
- Lunch on Saturday

Conference package (accompanying persons): €175

- Gala dinner on Friday evening
- One night's bed and breakfast
- Lunch on Saturday

Friday 9 April 2010

1.30pm	**Registration**
2pm	**Address by the President of the Law Society, Gerard Doherty**
2.10-5pm	**CPD programme**
8pm	**Gala dinner**

Saturday 10 April 2010

9.30am-12.30pm	**Conference business session, with keynote speakers**
12.30pm	**Lunch**

Conference business session keynote speakers

Dermot Ahern, Minister for Justice, Equality and Law Reform

Mr Justice Nicholas Kearns, President of the High Court

SPONSORED BY

SMDF · JLT Jardine Lloyd Thompson Ireland Limited · Benson & Associates Legal Recruitment Specialists

SEE BROCHURE AND RESERVATION FORM WITH THIS ISSUE OF THE *GAZETTE*

On the cover

The long-running question over the admission of women as full members of Portmarnock Golf Club has finally gotten out of the rough, and the Supreme Court has confirmed that the men of Portmarnock indeed have discriminating tastes

PIC: JUPITER UNLIMITED

Volume 103, number 10
Subscriptions: €57

LAW SOCIETY Gazette

December 2009

REGULARS

Editor: Mark McDermott. **Deputy editor:** Dr Garrett O'Boyle. **Designer:** Nuala Redmond. **Editorial secretaries:** Catherine Kearney, Valerie Farrell. For professional notice rates (lost land certificates, wills, title deeds, employment, miscellaneous), see page 61.

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

Get more at lawsociety.ie

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

- **Current news**
- **Forthcoming events**, including details of a conference hosted by TCD's law school and the Dublin Rape Crisis Centre entitled 'Rape law: victims on trial?' on 16 January
- **Employment opportunities**
- **The latest CPD courses**

... as well as lots of other useful information

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

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

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

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

FSC independently-certified wood and paper products used by the *Law Society Gazette* come from ecologically-managed forests. Visit: www.fsc.org

PEFC certifies that wood and paper products used by the *Law Society Gazette* are sourced by suppliers from sustainable, managed forests. Visit: www.pefc.org

FEATURES

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

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

KILDARE

Sadly, I don't usually get snippets from the these parts, so when Andrew Cody got on to me about a seminar that Frank Taaffe and David Osborne are putting together in the Kilashee Hotel, Naas, on 18 December, I was delighted. Getting the most out of technology is the topic, in which colleagues Neil Butler and Dan O'Connor are the draw. Andrew hopes to keep this page abreast with what is going on in the months ahead.

KILKENNY

Sonya Lanigan, secretary of the bar association, reports that her president, Owen O'Mahony, attended the court users group meeting and advises that the capital refurbishment of the courthouse is due to be completed in April 2010, at which point furniture and IT installation will begin. It is expected that court sittings will start in the new building in autumn 2010 or earlier.

DONEGAL

The Inishowen Bar Association had a great turnout for what was billed as their last CPD event of the year at the Inishowen Gateway Hotel on 19 November. Roisin Doherty had prepared a very interesting lecture on the new provisions contained in the recently enacted *Civil Partnership Act*. The management CPD hours were to be covered by a workshop on planning for emergencies, such as death.

However, a more pressing emergency was discussed by the 25 solicitors attending, as none had received a quote with only five working days left until the expiry of their annual professional indemnity cover. All the members were concerned, as no firm had received a quote for renewal, despite most having a claims-free history.

Anger was expressed, and it was agreed that a request be made to the Law Society to extend the time for renewal of cover up to 31 December.

There was a general discussion that, not only did the members not know what it would cost, but then they would have to arrange finance from banks who were now slow to advance finance. It was reported that premiums had increased by up to 200%.

Miceal Canavan, who practises both north and south of the Border, explained the Northern system, which allowed him to cover his southern practice for a reasonable additional premium through Marsh UK, who underwrite the policy in the North. Roisin Doherty said that she kept an eye on what was happening in England, and it seemed that a serious number of smaller one and two-partner practices had been forced to close as a result of not being quoted at all for insurance.

A real concern was the effect of the changes in cover, in that virtually all high-risk activities, like fraud, misrepresentation and commercial undertakings, had been removed for all renewals of policies of indemnity.

It was agreed that the members would approach various insurers and look for a group rate for its members, and also approach the Law Society to sponsor schemes for smaller firms to avail of expertise in identifying risk areas and setting up risk management systems, and to assist its members on how to respond to the very detailed (and utterly varied) questions in proposal forms.

PIC: LENSMEN

Reforming land and conveyancing law

At the conference to discuss the *Land and Conveyancing Law Reform Act 2009* were *(back, l to r)*: Attracta O'Regan, Professor John Wylie, William Devine, John Buckley, John Murphy, William Prentice and Brian Gallagher. *(Front, l to r)*: Patricia Rickard-Clarke, Judge Mary Laffoy, Rachael Hession, Una Woods and Gabriel Brennan

LONGFORD

Longford solicitors are currently braving the floods of water from the Camlin, but it is a little more difficult to survive the floods of professional insurance proposal forms. So says bar association president Brid Mimnagh. "The proposal forms have been of such complexity in completion and the anticipation of very high quotes is much more terrifying than the floods at the moment."

DUBLIN

No longer being in power, you see, I have to glean the goings on in our bar association from a respectful distance, allowing our new supremo John P O'Malley some bedding-down time. But no sooner had he wrestled the chain off my back, than he was in the High Court the next morning bidding adieu to the retiring Judge Johnston.

CLARE

When you make contact with colleagues around the country, as I do in putting this page together, you can sometimes overlook the particular traumas engulfing their communities – as in Cork, Galway, Limerick and Clare. And so when I got on to Sharon Cahir, as I would frequently do, I soon realised that even more pressing than PII for local colleagues at this time was managing to cope with the mayhem caused by the appalling floods, including damage to firms. Our hearts go out to affected colleagues. G

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

Gerard Doherty elected as new Law Society president for 2009/10

Gerard Doherty has been elected president of the Law Society of Ireland for the year 2009/10, with effect from 6 November 2009. Mr Doherty is a partner in the law firm O'Reilly Doherty & Co in Finglas, Dublin 11. He will serve a one-year term as president of the 12,000-strong solicitors' profession until November 2010.

A native of Westport, Co Mayo, Mr Doherty is the youngest son of Charles and Lily Doherty, and has one sister, Anne. He has two sons, Ronan (26) who works in financial services, and Kevin (19) who is studying in University College Dublin.

Gerard was educated in the CBS primary school in Westport, and Castleknock College, Dublin. He graduated with a BCL law degree from UCD. Apprenticed to the late Joseph King in Westport, he qualified as a solicitor at Blackhall Place, Dublin, in 1973. He moved into partnership at O'Reilly Doherty in 1984.

Gerard became a member of the Council of the Law Society of Ireland in 1989. He has chaired many of the Society's most senior committees, including the Regulation of Practice Committee, the Complaints and Client Relations Committee, the Professional Indemnity Insurance Committee and the Finance Committee.

Gerard Doherty, new Law Society president for 2009/10, with senior vice-president John Costello *(left)* and junior vice-president John P Shaw

Council election results

The count of election ballot papers was conducted and results declared on 6 November 2009. In all, 3,253 members voted in the elections, of which 28 ballot papers were rejected, while three others were judged to be spoiled. The number of valid voting papers was 3,222. The results were as follows:

- John O'Connor (1,753)
- Stuart Gilhooly (1,749)
- Kevin O'Higgins (1,696)
- John D Shaw (1,688)
- Valerie Peart (1,436)
- James Cahill (1,356)
- John Costello (1,330)
- Hilary Coveney (1,295)*
- Michele O'Boyle (1,295)*
- Niall Farrell (1,176)
- Moya Quinlan (1,140)
- Conall Bergin (1,114)
- Paul E Connellan (1,083)
- Liam Kennedy (1,063)
- Thomas Murran (1,062)
- Martin G Lawlor (925)

*(*Equal number of votes)*

Conall Bergin, Hilary Coveney and Valerie Peart were elected to Council for the first time.

Provincial elections

As there was only one candidate nominated for each of the two relevant provinces (Connaught and Munster), there was no election and the candidate nominated in each instance was returned unopposed.

Rosemarie J Loftus was elected for Connaught and Frances Twomey for Munster.

Are you a match for Boardmatch?

The 'Celtic Tiger' is well and truly locked up in the zoo, but every cloud has a silver lining. Due to the current economic climate and the fact that professionals have found themselves with more time on their hands than previously, many are putting their spare time to good use by volunteering with various organisations in the not-for-profit (charity) sector. One organisation that facilitates the matching of professional people with not-for-profit groups is Boardmatch Ireland.

Boardmatch Ireland, founded in 2005, is a web-based skills-matching service between business people and not-for-profits. Solicitors, accountants, IT specialists, HR specialists, marketing and PR specialists, financial advisors and project managers can log on to the website to offer their skills and expertise to not-for-profit boards in a formal, structured and regularised way. Not-for-profit organisations will register the specific skills required at board level and the link will be made.

The progress and success of Boardmatch since its inception is testimony to the needs of organisations and the willingness of professional volunteers to lend a hand. To date, more than 250 matches have been made.

Among the thousands of not-for-profit organisations that are run by voluntary boards, many recognise the need for thought leadership, legal expertise, and experience in strategic corporate governance to lead organisations through times of change and financial challenges. Until now, these specialist skills might have been out of the question for voluntary groups. Through Boardmatch, they can now register their specific needs and find the right match of skills and experience – at no cost.

Professionals like solicitors can make a huge difference to an organisation that can't afford to buy in these skills. But, in truth, the benefits to the individual far outweigh what they give in terms of time and expertise. Not only do they gain great experience, develop strong leadership skills and build new networks, but they also achieve immense personal satisfaction from giving something to a worthy cause of their choosing.

There is a growing need at present in the not-for-profit sector for more and more skilled people to contribute to boards in these challenging times.

To find out more, contact Fiona O'Connor in Boardmatch, tel: 01 671 5005, email: fiona@boardmatchireland.ie. To register, visit www.boardmatchireland.ie.

It's official: no UN help with 'Hand of Gaul'

The United Nations High Commissioner for Human Rights, Navanethem Pillay, was the special guest speaker on 21 November 2009 at a conference in Blackhall Place on 'Economic, social and cultural rights: making states accountable'. The conference was jointly organised by the Society's Human Rights Committee and the Irish Human Rights Commission.

High Commissioner Pillay was the guest of honour at a dinner the previous night in Blackhall Place – less than 48 hours after Thierry Henry's notorious and blatant handball had cheated Ireland out of at least a penalty shoot-out to determine whether Ireland or France would go to the 2010 World Cup in South Africa.

UN High Commissioner for Human Rights, Navanethem Pillay, sympathised with Ireland's plight – but could provide no helping hand

Given the national outrage being expressed by prominent members of the government, among others, director general Ken Murphy took an initiative. He asked Ms Pillay whether, as the UN High Commissioner for Human Rights, she might intervene to seek to redress the injustice that had been done to the Irish soccer team and, indeed, to the Irish people. Could she not, he enquired, as a minimum, summon a meeting of the Security Council of the United Nations to discuss the matter and threaten sanctions against France unless a replay of the match was agreed to?

She replied that she had not seen the match but agreed from all reports that an injustice had been done, for which she sympathised with all her Irish friends. However, she pointed out that France was a member of the Security Council and undoubtedly would veto any measure such as Murphy had proposed.

So, no joy from the UN, therefore. But at least the Law Society was ensuring that no stone was being left unturned in the national search for redress of this injustice.

Perhaps, as a man who personifies the philosophy of 'forgive and forget', Roy Keane, has suggested, we will just have to "get over it".

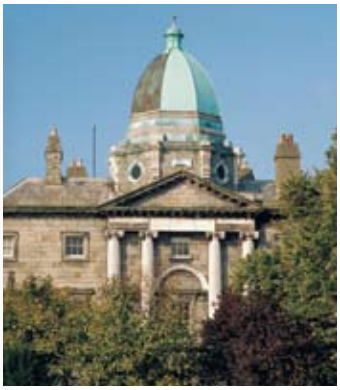
PII tops agenda at Society's AGM

The Law Society's annual general meeting was held on 5 November 2009 in Blackhall Place. Over 100 members attended. The meeting approved the minutes of the 2008 AGM and adopted the 2008/2009 *Annual Report*, together with the annual accounts for the year ended 31 December 2008. The reports of the scrutineers on the annual and provincial elections were approved, together with the election of auditors. Scrutineers for the Council Election 2010/2011 were appointed.

PII report

The chairman of the Professional Indemnity Insurance Task Force, Niall Farrell, presented a special report to the meeting about the steps taken by the Society on behalf of the profession to ensure a viable market:

- A special task force had been appointed by Council at the beginning of the year charged with the task of charting the best course for the Society and its members,
- Specialist advice was obtained from expert insurance advisors,
- Existing PII regulations were reviewed and amended in order to make the market more ap pealing to insurers and also to stabilise the market.
- Meetings were held with



all insurers and also with potential insurers in Ireland and Britain with a view to encouraging them to remain in the market, or join it.

Niall reported that the Council had adopted three major changes at special Council meetings held in August and October:

1) To remove the obligation to provide cover in commercial cases where there is an undertaking to a bank to pay off a mortgage, furnish a certificate of title, furnish title deeds or stamp and register a title,
2) To reduce the minimum level of cover to €1.5 million, and
3) To suspend the Assigned Risks Pool for the next indemnity period.

All of these steps and regulatory changes had been communicated to members who had, in turn, been urged to apply to a number of insurers and complete their proposal forms very accurately and comprehensively. In light of the recent reduction in the obligation to hold run-off cover to two years, Patricia McNamara withdrew her motion to make the requirement to maintain insurance run-off cover discretionary.

Limited liability companies

Sonia McEntee had proposed a motion that solicitors and legal practices be permitted to incorporate their businesses as limited liability companies, which was seconded by Anthony Brady. Ms McEntee outlined the benefits that would be available to a solicitor's practice if they were allowed to incorporate.

The director general spoke in favour of the motion and outlined the various steps that had been taken by the Society over the course of the past 20 years to seek to enable solicitors to avail of the benefits of incorporation through limited liability partnership. He noted that the Society would continue to lobby for solicitors in Ireland to have the same options to form limited liability partnerships as their counterparts across the world.

Patrick Dorgan proposed an amendment to the motion to replace the word 'companies' with 'entities'. It was agreed that the support of the members through the adoption of the motion might greatly assist the Society in its lobbying efforts for the introduction of such a measure. The motion was overwhelmingly adopted by the meeting.

Issues raised

Members raised a number of issues from the floor of the meeting, including the following:

- The write-down on the value of the Benburb Street property,
- Costs levied by the Complaints and Client Relations Committee,
- Tendering for legal work for the Society,
- The cost of unsuccessful litigation,
- The cost of the practising certificate for newly-qualified solicitors,
- Whether professional indemnity insurance could be made optional and whether a 'no-claims bonus' scheme could be introduced,
- The possibility of returning to the three-solicitor conveyancing system,
- The introduction of a quality standard similar to the Lexcel system in England and Wales, and
- The importance of risk management in solicitors' practices.

MARINE RESOURCE LAW

Marine Resource Law **is a new book on maritime law by Dr Ronan Long of NUI Galway. Published by Thomson Round Hall, it runs to 940 pages and costs €265. It discusses the law relating to all types of marine licensing, including offshore development, sea fisheries, marine habitat protection, underwater cultural heritage and marine scientific research. It also provides over 40 handy maps and tables.**

KEEP YOUR CLIENTS CLOSE!

While solicitors are still the favoured source of advice on how to manage inheritance tax and make financial gifts, 44% of British people now consider their bank manager a good source of advice, according to Standard Life's *Wills and Trusts Research Report*. Last year, 32% sought such information from their bank manager. Solicitors are concerned that the advice given may not be adequate. The reason for the drop in the number of people going to their solicitor or accountant for advice on estate planning is thought to be a greater effort by bank managers to contact their customers in the wake of the credit crunch. The lesson – keep in contact with your clients.

NEW REGISTER FOR ARCHITECTS

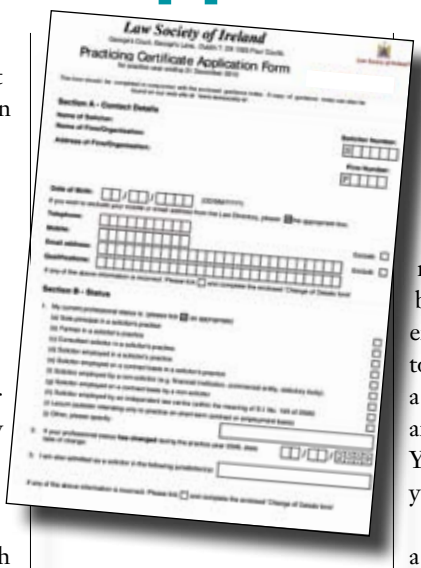
The Royal Institute of the Architects of Ireland (RIAI) has launched a new register for architects. Established under the *Building Control Act 2007*, the register lists architects whose qualifications meet the standards set out in the act. Only architects who are on the register may use the title 'architect'. The new system also provides consumers with an advice service and with dispute resolution mechanisms in the case of poor service or suspected malpractice. Visit www.riai.ie.

All change for practising certificate applications

The time of the year that we all dread is approaching fast – filling out your PC application form. Wading through pages and pages of dense text, eventually getting to the end and hoping you managed to fill it in correctly … and then the Law Society sends it back to you!

Well the good news is that things are about to change. Your PC application form is now only four pages long, more of your data is preprinted on it, all of the data relating only to firms has been removed, and it is much more intuitive to complete.

The fees due are much easier to understand, which means, hopefully, that payments made will be right, first time. The completion instructions will be contained in a separate guidance notes document, which will make the form much more manageable.


Law Society of Ireland
Practising Certificate Application Form

Based on member feedback, all of the forms relating to firms will be sent directly to the managing partner/principal – this eases centralised control and processing.

Other good news – the ten pieces of paper that used to come with the form are no more. A *Support Services Directory* will be issued with your practising certificate in January.

If you misplace your form you can download one, pre-printed with your individual details, from the members' area on the Society's website, www.lawsociety.ie.

If you are a non-practising member, you will no longer be bombarded with lots of enclosures that are not relevant to you and will simply be sent a membership application form and *Support Services Directory*. You can apply and pay online if you wish.

The Society has undertaken a major project to streamline this process in order to make it easier for members, to effect direct and indirect cost savings, and improve the quality of data-trapping and processing. Inpute Technologies, a company that specialises in forms processing, form design and electronic data-trapping, were engaged to assist with the project.

Society-wide action on opportunity generation

Since early 2009, the Law Society has been working to address the challenge of reduced employment opportunities within the profession – and to support solicitors who lose their jobs or are otherwise faced with related career challenges.

The Career Support service was established in May 2009, and a three-pronged approach was initiated, involving:

- Support provision,
- Information provision,
- Opportunity generation.

Moving into 2010, all advisory committees within the Society have been asked to actively progress opportunity generation initiatives within their area of activity, as part of the ongoing 'Excellence in Representation' project.

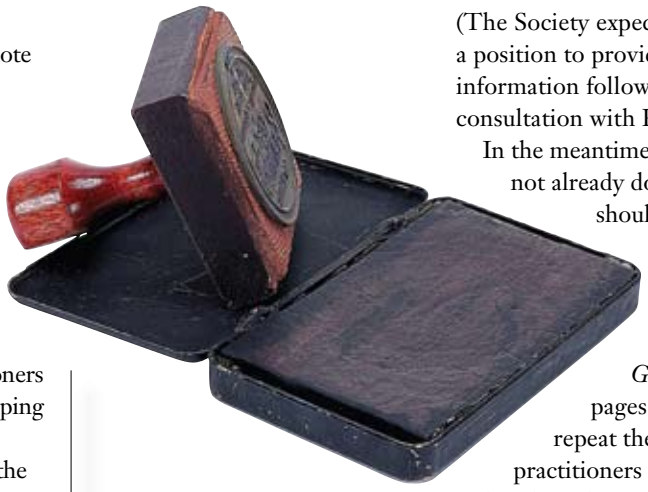
Committees will seek to identify steps that can be taken, or contacts that can be made, in order to create new employment opportunities and will constantly identify, pursue and review new and emerging opportunities that might arise. No definitive list of actions has been drawn up. Instead, individual committees are being asked to identify and to progress whatever opportunities they believe have best potential in their area.

Possible actions being undertaken by individual committees will include ones like the following:

- Lobbying government departments, NGOs and state agencies for internships and employment-creating initiatives for solicitors,
- Lobbying to ensure that the Society is consulted on, and included in, all job market activation and training programmes being considered by government,
- Identifying and exploiting new and emerging business opportunities,
- Seeking to ensure that roles for solicitors are included in legislation whenever possible,
- Identifying non-solicitor roles where solicitors might be encouraged to up-skill in order to be eligible to seek positions,
- Encouraging and facilitating non-legal employers to hire solicitors,
- Promoting the 'Support your colleagues' initiative.

Urgent warning – change in stamp duty practice

Your urgent attention is drawn to the Society's note referring to a major change in stamp duty practice. The note, entitled 'Note on eStamping' and dated 25/11/09, can be found in the 'News' section of the members' area of the website at www.lawsociety.ie.



The Revenue Commissioners have announced that e-stamping will come into effect on 30 December 2009. Details of the proposed new system can be found on the Revenue website: www.revenue.ie/e-stamping.ie.

The Law Society has engaged in extensive consultations with the Revenue about the introduction of e-stamping. This has resulted in changes in the legislation and the regulations being implemented to take account of the views of the Law Society. There have also been extensive discussions concerning many practical aspects, and many of these features can be seen from the guidelines contained on the Revenue website.

The Society is continuing in its discussions with the Revenue on the various issues relating to e-stamping – feedback from practitioners is welcome. These discussions will continue after 30 December 2009 to deal with any difficulties that might arise. It would be useful if members could alert the Law Society of any difficulties with the system when it goes live, so that these can be raised with the Revenue.

Every office will have to review its procedures to ensure that mistakes are not made in computer entries and that an audit system is established. The Society is recommending that solicitors establish procedures to have the client verify the information furnished by him/her at the earliest opportunity. The Revenue intends to devote substantial resources to the audit of returns and there are substantial fines for the making of an incorrect return. (The Society expects to be in a position to provide more information following further consultation with Revenue.)

In the meantime – if you have not already done so – you should register on the Revenue Online Service (see the October *Gazette*, pages 10-11). To repeat the warnings: practitioners should ensure that they obtain PPS numbers (for individuals) or tax reference numbers (for others) so that they are in a position to stamp instruments post 30 December 2009. **After that date, stamping any instrument (including share transfers) can *only* be done *either* through the e-stamping system *or using the new paper return, both of which require PPS and/or tax numbers for the parties*. There will be no other way to stamp instruments, and penalties and interest will accrue if the return is not made on time.**

Get ready for e-stamping now and submit any outstanding instruments before 30 December 2009.

(See also the practice note on p48 of this issue.)

SÍN AMACH DO LÁMH!

Does the phrase 'sín amach do lámh' ('hold out your hand') set your heart racing? If so, Red Pepper Productions wants to talk to you! The TV production company is producing a new four-part television series on education in Ireland, to be broadcast next year on TV3. The series will focus on the history of education in Ireland over the last 40-50 years, as seen through the eyes of students (past and present), teachers, principals and parents. To speak to Red Pepper Productions about your primary and secondary school experiences – good and bad – contact Eimear or David at: research@redpepper.ie; or tel: 01 670 7277.

EC STRENGTHENS FINANCIAL SUPERVISION

The European Commission (EC) adopted legislative proposals on 26 October 2009 to further strengthen financial supervision in Europe. The EC proposes to make targeted changes to existing financial services legislation to ensure that the new authorities can work effectively. The proposals set out the authorities' powers and open the way to develop draft technical standards, settle disagreements between national supervisors, and facilitate the sharing of 'micro-prudential' information (on individual financial institutions). The European Council and the European Parliament will now consider the proposals.

Pantheon of justice

The new €140 million Criminal Courts of Justice have opened, representing the state's largest ever investment in court facilities in the country's history. Mark McDermott got the grand tour

"A brand new Pantheon of justice," is how the Courts Service describes the new Criminal Courts of Justice (CCJ) complex in Dublin, which was handed over to it on 25 November 2009. The claim is justifiable, given that the diameter of the internal great hall of the new building falls just one metre short of the diameter of Rome's famous Pantheon *(see panel)*. Encompassing an area of 23,000 square metres on a site of 2.5 acres, the building is a commanding 11 storeys tall and is a spectacular addition to the city's skyline.

The relocation of courts and court offices to the new complex will take place on a phased basis from 7 December through to the first week of January 2010, with all courts sitting in the CCJ at the start of the Hilary term.

The new building boasts 450 rooms and 22 courts, as well as 27 lifts and about 250 flights of stairs. Its courts will handle all criminal business in Dublin city, from every court jurisdiction – up to the Court of Criminal Appeal.

ALL PICS: LENSMEN

Courts Service CEO Brendan Ryan

Speaking at a special media briefing in advance of the opening, the CEO of the Courts Service, Brendan Ryan BL, commented that the CCJ was "the first state building of such monumental proportions to be built since 1796 – when the Four Courts were first brought into operation".

The striking landmark building is certainly the most significant investment in court buildings and services since the completion of the Four Courts structure. Back in 1796, the Four Courts cost the equivalent of €125 million. The modern Criminal Courts of Justice building was delivered at a cost of €140 million – though the Courts Service says that the total cost of designing, building, maintaining and providing support facilities in the complex over the 28-year period of the PPP contract will be €291 million net, in present terms. The building will then be handed over to the Courts Service in an "as new" state.

Ireland's courts deal with over 400,000 criminal matters every year, with over half of these being heard in Dublin. It is expected that up to 200,000 cases will be held annually in the CCJ.

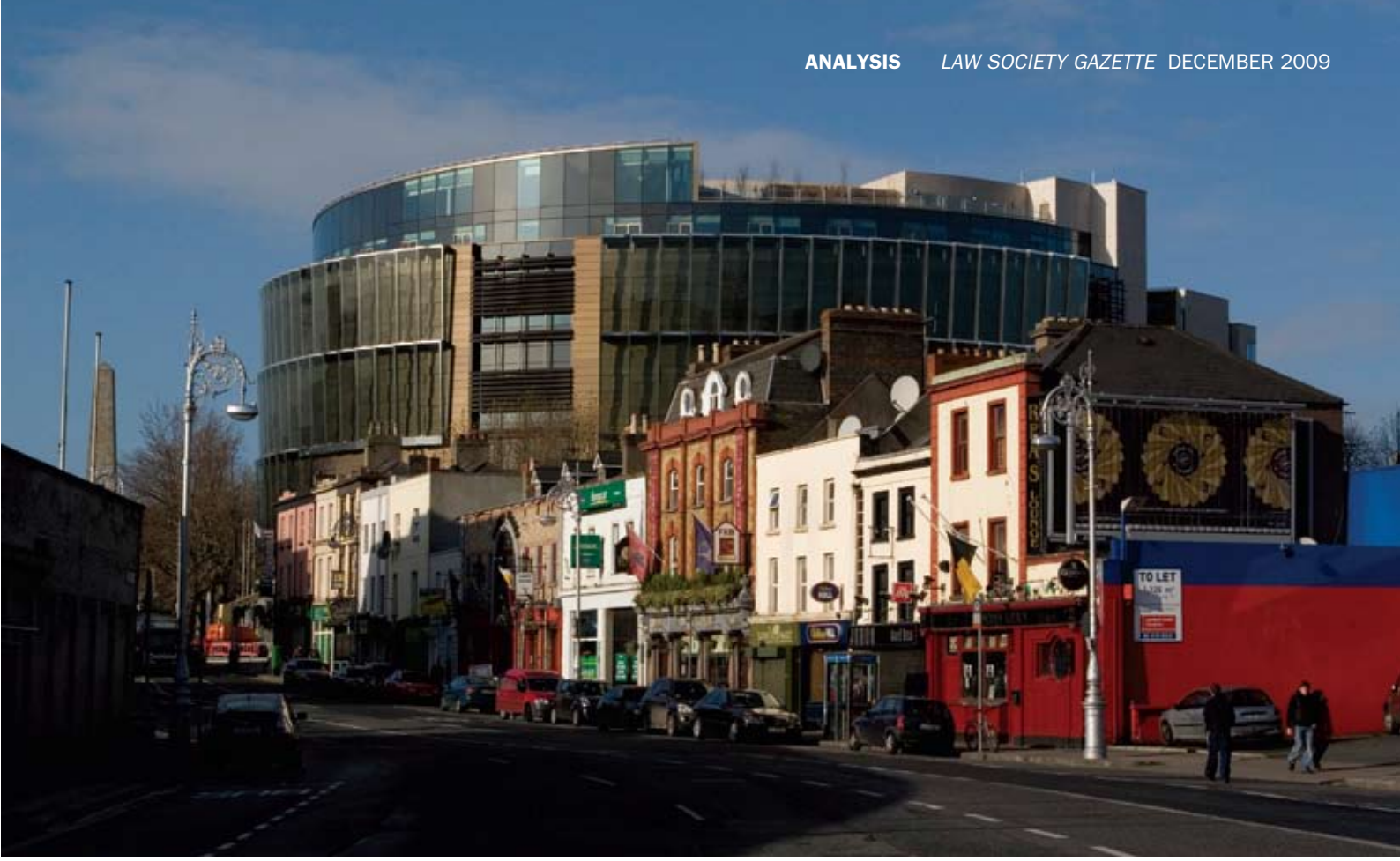
The new building will centralise all criminal courts and offices currently housed in various buildings around the city, including:

- District Court – Chancery Street,
- Some Richmond Courts (courts 50 and 52),
- Circuit Court – Four Courts complex,
- Central Criminal Court – Four Courts,
- Court of Criminal Appeal – Four Courts, and
- Special Criminal Court – Green Street.

Location, location, location

The CCJ is situated on the western side of the city's legal quarter, on the corner of Parkgate Street and Infirmary Road. Located close to current court buildings, Blackhall Place, the Luas line and Heuston station, it boasts a great hall four times the size of the Round Hall in the Four Courts, modern courtrooms of various sizes, and comfortable consultation rooms and waiting areas.

Jurors are well catered for in the new complex. There is a



THE INSPIRATION BEHIND THE DESIGN

As lead architect on the project, Peter McGovern of Henry J Lyons, Architects, has much to be proud of. Just before starting the design work on the building in August 2006, Peter had returned from a trip to Rome, where he had visited the Pantheon. The circular shape of the 2,000-year old Roman building was his chief inspiration when it came to deciding the diameter and height of the great hall in its Dublin counterpart. Believe it or not, the diameter of the great hall is only one metre smaller than the Pantheon's 142 ft. 'We wouldn't want to outdo such a major, iconic building, now would we!' jokes Peter.

"The Courts Service was keen to get natural daylight into all courtrooms – which we have managed to achieve," he says, "and the acoustics requirements, too, were very specific. As architects, we're very privileged to get the opportunity to design buildings like this. With the Criminal Courts of Justice, I can say that we're very, very pleased with what we've achieved."

dedicated jury reception area, a large jury assembly space in a secure area sufficient to cater for up to 400 people, separate dining and 'fresh-air' facilities, and jury retiring rooms – all within a segregated space. Sixteen jury rooms are accessible from jury courtrooms via secure areas. The building has been specially designed to provide separate and secure waiting areas and routes to court for the public, jurors, those in custody and members of the judiciary and staff.

In all, 11 of the CCJ's 22 courtrooms can display evidence by means of electronic display screens, while six have video-conferencing and video-link facilities. Basement cells can house over 100 people, with holding rooms provided at all court levels. Dedicated accommodation is available for garda and prison service personnel.

Ensuring that all of this runs smoothly are the 400-500 people who will work in the building, daily. Much thought has gone into the structure of this ground-breaking building. In order to provide the desired segregation of various court users, special accommodation has been provided for prosecution witnesses (including vulnerable witnesses), victims and relatives in a calm environment. The Courts Service claims that these are among the best such facilities in the world.

A special children's evidence suite has been specially designed, with the assistance of Barnardos. This allows remote, safe facilities for children giving evidence via video-conferencing facilities. The bright-coloured, lighthouse themed room features soft furnishings and a TV games console.

Lawyers and members of the media have their own dedicated facilities. Rooms are provided for members of the legal profession in a secure area, while a prison video link is available for those who wish to communicate by secure, private means with clients in prison. G

letters

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

Amended application process for authorisation as a mortgage intermediary

From: Ciarán Farrell, Financial Institutions and Funds Authorisation, Financial Regulator

Please note the following, which may affect some members of the Law Society of Ireland.

The Financial Regulator intends amending the application process for mortgage intermediary authorisation with immediate effect. The process will be amended to include the submission of an individual questionnaire (for all directors, senior managers, etc) as part of the application process. The aim is to achieve consistency of approach across the application processes for all retail intermediaries, that is, mortgage, insurance and investment intermediaries.

It is not anticipated that the amended process will cause any significant extension of the current anticipated processing time for mortgage intermediary applications (approximately six to eight weeks for a complete application with no issues of concern arising).

Please note that an amended mortgage intermediary application has been published on the Financial Regulator's website, www.financialregulator.ie, with effect from 2 November 2009.

If you have any queries in this regard, please do not hesitate to contact me at ciaran.farrell@financialregulator.ie or on 01 224 4369.

'Nine to five' and the right to consult

From: Sinead Morgan, Dalkey, Co Dublin

I refer to my article entitled 'Nine to five', published in the November 2009 issue of the *Gazette*, and would refer readers to page 20 of that piece.

For the purpose of clarification, I would like to point out that the right to consult under the 2006 act is not an automatic right. There is a requirement for 10% of the workforce to assert their right to consult by approaching their employer to agree consultation arrangements. If they cannot agree arrangements within six months, the employees are free to appoint employee representatives, whom the employer must meet when significant changes are anticipated within the workplace.

Furthermore, one should note that, when an employee's hours are reduced, they have the right to take a claim for unpaid wages under the *Payment of Wages Act 1991*, in addition to the other remedies set out on page 20 of the article. G

'Wearing the shoes of th

The LRC provides an invaluable link between legislators devising new law and the public they serve. 'An Bord Snip' argued that the LRC should be 'discontinued'. Frank Murphy argues strongly to the contrary

"The group concludes that the Law Reform Commission (LRC) should only be convened on a temporary basis as required. Therefore, the group recommends that the LRC be discontinued, with half of its staffing complement assigned to the AGO to finish remaining projects. This proposal should yield €2.8 million annually" – Report of the Special Group on Public Service Numbers and Expenditure Programmes, July 2009.

'What is law?' is the question that has troubled legal philosophers throughout the ages. As some might argue, the answer wouldn't put bread on the table, and it would be hard to find it a place on the agenda in the cut and thrust of deciding on government cutbacks. Social welfare, health and education measures are more likely to dominate cabinet room discussions. This is only right when draconian cuts are being proposed.

PIC: CIAN REDMOND

The BCLC is a window of opportunity

At the same time, however, we must not lose sight of the foundations of our community. Law would surely figure prominently in the foundations of our democratic republic. So 'What is law?' is as important today as at any time – and law without law reform is like a body without life.

Take the family – everyone has one. Our 1937 constitutional version is based on marriage, but given the plethora of family arrangements in existence in 2009, it can lead to both legal and non-legal difficulties. Then there are folk who think they are parties to a common law marriage that in fact doesn't exist and, despite their family life together, they have no legal rights whatsoever.

Law reform is essential to our law. Call it what you will, our community needs a Law Reform Commission. At the moment, we are fortunate in having a very effective commission headed by Ms Justice Catherine McGuinness and her learned commissioners, with productive and focused researchers and staff. Recognition, not discontinuation of their public service work, is well deserved.

'Looking for my view?'

Ballymun Community Law Centre (BCLC) has been fortunate to benefit from the commission's engagement with the community over a number of years, which is just a small part of its huge law reform workload. It was family matters that had a packed attendance five years ago in the Axis Centre for the commission's first Ballymun presentation on the rights and duties of cohabitees, when Patricia T Rickard-Clarke (commissioner), Raymond Byrne (director of research) and Darren Lehane (researcher) presented their consultation paper. In the course of their presentation, somebody tapped me on the shoulder and whispered: "Are they looking for my view?"

Local community organisations were well represented at the meeting, and some questions on the rights of fathers may well have raised those very issues that the commission is now considering.

At the presentation of the Law Reform Commission's *Legal Aspects of Family Relationships* consultation paper in the civic offices, Ballymun, were *(l to r)*: Frank Murphy (solicitor, BCLC), Patricia Rickard-Clarke (solicitor, LRC commissioner), Ms Justice Catherine McGuinness (president, LRC), Aine Rooney (director, BCLC), Paul Kane (director, BCLC), Catherine Hickey BL (director, BCLC), Christina Beresford (law clerk, BCLC) and Raymond Byrne BL (director of research, LRC)

ose affected by the law'

PIC: CIAN REDMOND

The LRC has visited Ballymun many times

The year 2005 saw the commission in Ballymun for a discussion on their consultation paper *Vulnerable Adults and the Law*, with Deirdre Aherne (legal researcher). It being the commission's 30th anniversary, Judge McGuinness outlined the law reform process, noting that, in recent times, there had been a good take-up on their proposals.

In 2006, BCLC was part of a Spent Convictions Task Force and, as the commission was working on that issue itself, it visited our Shangan Road offices one evening for an exchange of views.

Later that year, a large Ballymun contingent attended their annual conference in Belfield, where the Minister for Justice received the rights and duties of cohabitees report, which included a draft *Cohabitants Bill* for consideration.

Wearing another's shoes

In 2007, the commission was identifying new areas of law to be included in its Third Programme of Law Reform. Committed to ensuring that its programme would reflect the needs of a modern society, it came to Ballymun as part of the process.

BCLC participated in its annual conference in July on the Third Programme of Law Reform, which opened with an inspirational address from Mr Justice Michael Kirby in Dublin Castle, who issued the challenge: "Let us see the law as if wearing the shoes of people affected by the law." The commission's consultative role strives to achieve this.

In 2008, a series of lunchtime seminars took place in the 'Reco' (the central youth facility in Ballymun), including a public consultation on advance care directives with the commission.

In addition to all this work, LRC researcher Charles O'Mahoney, on a voluntary basis, has himself presented and sourced contributors for criminal law courses for adults and young people in Ballymun.

"It is good to see this learned, legal institution in the community endeavouring to ensure that our law is the people's law"

Value for money not an issue

Legal academics will give judgement on the volumes of work of the commission – and there are volumes. Value for money is not an issue. Its valuable public engagement with BCLC has energised the surrounding community, involving them in an inclusive process of legal dialogue, contributing to the common good both locally and in the wider community.

It is important, particularly at this critical time, that our law is valued by the community – and law reform is a vital part of the law. Engagement between the legal system and the community it serves is critical for effective governance.

In a society where it is often thought that the law is out of touch with the community, it is good to see this learned, legal institution in the community endeavouring to ensure that our law is the people's law.

Last month, the commission came to Ballymun again to present the new *Consultation Paper on Family Relationships*, which considers the rights and duties of fathers in relation to guardianship, custody and access to their children and the rights and duties (if any) of grandparents and other members of the extended family.

The paper makes wide-ranging, provisional recommendations for reform of the law, including that there be a statutory presumption that a non-marital father be granted an order for guardianship (parental responsibility), unless to do so would be contrary to the best interests of the child or would jeopardise the welfare of the child.

The room was packed again, and both the audience and the commission made pertinent, thought-provoking contributions grounded in life as it is lived, with the goal of improving that quality of life for each person and civic society.

As usual, the commission is inviting submissions from everyone for this current *Consultation Paper on the Legal Aspects of Family Relationships*, by 31 December 2009. G

Frank Murphy is a solicitor with Ballymun Community Law Centre.

Discriminating TASTES

The recent judgment confirming that Portmarnock Golf Club did not breach equality legislation has far-reaching implications for clubs throughout the country, writes Larry Fenelon

The Supreme Court recently confirmed that Portmarnock Golf Club – which excludes women from membership – did not breach equality legislation. The decision marks an end to a long-running legal battle that dates back to 2003, but which has far-reaching implications for clubs throughout the country.

In an appeal brought by the Equality Authority against an earlier High Court decision upholding the right of Portmarnock to exclude woman as members, the authority had argued that Portmarnock was in breach of section 8 of the *Equal Status Act 2000*.

Battle of the sexes

Portmarnock was registered as a club under licensing legislation that permitted it to sell alcohol to its members. The Equality Authority applied successfully to the District Court for a determination that Portmarnock was a discriminating club in order to deprive it of its registration as a club and, therefore, the right of its members to purchase intoxicating liquor. The District Court judge decided on 20 February 2004 that the club was a discriminating club and ordered the suspension of its licence to sell alcohol to its members. Portmarnock then appealed the decision to the High Court to ascertain whether the District Court decision, which would have far-reaching consequences, was correct in law.

Parallel to the District Court proceedings, Portmarnock issued proceedings to the High Court seeking declarations that it was not a discriminating club and, in the alternative, that the relevant legislation was unconstitutional. The matter was heard before Mr Justice O'Higgins, who decided in June 2005 that Portmarnock was not a discriminating club. The matter was then appealed by the Equality Authority to the Supreme Court.

What women want

Section 8 of he *Equal Status Act 2000* provides that a club's right to sell alcohol under a 'certificate of registration' licence could be suspended if a club was considered to be a 'discriminating club' – if it had as its rule or policy or practice to discriminate against a member or an applicant for membership.

While Portmarnock admitted that it was a 'discriminating club' as defined in the act, it successfully argued that the club fell within one of the exceptions allowed under section 9 of the act.

Section 9 provides an exemption for clubs that are deemed to be a 'discriminating club' under section 8 if their principal purpose is to cater only for the needs of the group in membership to the exclusion of another grouping. Section 9 permits clubs for specific groups of the community – for example, men or women, gay people, travellers, married people, single people, ethnic minorities and so on – to exist and to exclude other people and to be registered as clubs.

MAIN POINTS

- 'Discriminating clubs'
- Exceptions under section 9 of the *Equal Status Act 2000*
- Implications for clubs

NDP National Development Plan 2007 2013

SEI is funded by the Irish Government under the National Development Plan 2007 - 2013 with programmes part financed by the European Union.

sei SUSTAINABLE ENERGY IRELAND

ACE OF CLUBS

Portmarnock Golf Club was founded in 1884. It has 626 members and 625 associate members.

Women are permitted to play at Portmarnock on identical terms to male non-members. Women are permitted to play on the course seven days a week upon payment of green fees. Competitions are organised exclusively for women at the golf club during the year. Full changing facilities and locker rooms are provided for women, and women have access to the bar and restaurant, save and except that, as non-members, they are not permitted to purchase alcohol without a member being present.

The rules of Portmarnock provided for a club consisting "of Members and Associate Members, as defined below, which shall be gentlemen" and clarified that the club was "primarily devoted to golf".

Section 9 of the act introduced exceptions because of fears that, without such provision, the interference with the free right of association under the Constitution might lead to the section being declared unconstitutional.

The question that the Supreme Court had to decide was whether Portmarnock was entitled to rely on the exception created under section 9 of the *Equal Status Act 2000*.

The Equality Authority contended that the club was not permitted the benefit of section 9 because its principal purpose is not to cater "only" for the "needs" of persons of a particular gender. On the contrary, the Equality Authority alleged that the purpose of the club is to provide facilities for the playing of golf, which cannot be described as catering for the needs of one gender only.

War of the Roses

The authority also argued that there had to be a "logical connection" between the purpose or activity of the club and the gender, sexual orientation, religious belief or other grouping mentioned in section 9. However, when the court asked the authority to provide one such example, it could not. The Supreme Court could think of many sports that were seriously important to persons of either sex, but noted that it was quite impossible to say which of these were a need of either gender exclusively.

"If Katie Taylor were a member of a ladies-only boxing club, the Equality Authority's argument would mean that boxing clubs were in breach of the Equal Status Act 2000"

The court acknowledged that the sport of boxing, historically, was thought to be the preserve of men, which is untenable today in light of the achievements of Katie Taylor. If Katie Taylor were a member of a ladies-only boxing club, then the Equality Authority's argument would mean that boxing clubs were also in breach of the *Equal Status Act 2000*. The court acknowledged that such a club should not be disqualified from becoming a club. Under the Equality Authority's argument, they would have to show that boxing was the need of women exclusively as women.

The Supreme Court recognised that, on the basis of the Equality Authority's interpretation of section 9, no club anywhere ever could ever benefit from that exemption.

The court emphasised that there is no prohibition on the establishment of clubs or associations whose membership is limited to persons of a particular gender. The court recognised that ordinary social life provides everyday examples of organised associations that cater exclusively for persons in a particular place or of a particular gender (ladies' clubs, certain book clubs, sporting organisations). The court made a specific reference to the Emerald Warriors, the gay men's rugby club. The court recognised that rugby is not a 'need' of gay men and the court could not cite any game or sport that might be the 'need' of gay men. Furthermore, the court recognised that there is increasing momentum behind single-sex associations.

The court also recognised that the number of all-women groups is much greater than the number of all-male groups. It also recognised that there was little doubt that these bodies were legally entitled to function on a single-gender basis.

What excluded Portmarnock Golf Club from the exemption under section 9(1) in the Equality Authority's view was that facilities for the game of golf were not a 'need' of men exclusively. The court believed that the authority's construction of the term 'needs' was narrow, outdated and unnatural. The appeal was dismissed.

The implications for clubs in this jurisdiction are profound. Until and unless the exemptions under section 9 of the *Equal Status Act 2000* are removed or amended, then it will be permissible for clubs to discriminate on the grounds of gender, religion, sexual orientation or otherwise without fear of the club being penalised through liquor licence penalties. G

Larry Fenelon is a partner with Leman Solicitors. Leman Solicitors are official legal partners to the Federation of Irish Sport.

New president of the Law Society, Gerard Doherty, might never have chosen a career in law – or sought a Council position – had it not been for the influence of friends. Mark McDermott speaks to him about the challenging year that lies ahead

THE INFLUEN

Gerard Doherty doesn't answer questions quickly, preferring to think before he answers. If he were a card-player, he'd play his cards very close to his chest, but once he spotted an opportunity, you'd have no doubt but that you'd have been played by an expert! Born and reared in Westport, Co Mayo, until the age of 13, his life took a significant turning when he left for Castleknock College, Dublin, to start his secondary schooling. Was there much of a difference between the two schools in their approach to education?

"Yes, you could say that!" he laughs. "Castleknock was more civilised in terms of how it meted out corporal punishment – it was more selective about it!"

He says that moving from Westport was not his choice. "That was the way it was then. You weren't consulted about these things. You would be now, but not then. You just got on with it."

His decision to go into law was inspired, not by some heartfelt desire, or by his parents (his father was a chemist and his mother a teacher), but by fellow students at third level. (One of them is his fellow partner in his firm.) He agrees that it was a pretty haphazard decision at the time: "*They* had decided on law and I said I'd give it a go."

He describes his years studying for his law degree in UCD as "absolutely brilliant! I escaped from the conservatism of Westport of the 1960s to the freedom of living in a flat in Dublin." Having completed his degree, he was apprenticed to Joe King in Westport. Once he had fully qualified, he remained in Dublin, working with three firms during a relatively short period. He describes this movement as "all study on my part. I was gaining experience in different aspects of the law. I learned something in each office – from the start of the learning curve, when I was getting to grips with general litigation in Patrick Kevans; to Frank O'Mahony's, where I learned how to deal with large volumes of personal injury litigation; and subsequently to Smith Foy for broader experience, where I did a little of everything, but mostly litigation."

Is he happy that he chose the solicitor route? "Yes, for purely selfish reasons, I suppose. I like the intellectual challenge. I like the sense of satisfaction you get when you feel you have done a job well. There have been cases where you felt the odds were stacked against you, and you did better than other people might have expected." He regards himself, chiefly, as a personal injuries lawyer.

He looks genuinely surprised when asked if he ever seriously considered becoming president of the Law Society at any stage during his career. His answer is a direct "no!" So how and why did he get involved with the Council of the Law Society?

"It arose in the mid '80s," he replies. "I was speaking to Council member Elma Lynch, giving out about the bar association and the Law Society, asking what they were doing for members, and she replied: 'Why don't you run for

CE OF FRIENDS

election?' I did run for election – in the DSBA – and, in 1989, DSBA president Geraldine Clarke appointed me as the bar association's nominee to the Law Society's Council. From there on, I received more nominations than possibly any other Council member. I was nominated six times on various tickets." He puts this down to the influence of friends.

Becoming president

Gerard subsequently served on the Council of the Law Society for over two decades. When did he feel that the role of president was achievable? "Never! It's not something you ever think about – until you are almost there, in fact. I have been fully involved on the committees of the Law Society for quite a long period. I think the immediacy or imminence of serving as president only hits you when you become senior vice-president."

So how does he feel about his new role? "It's strange! I feel that it's an enormous honour. I like the challenge of it. These may be challenging times, but we must seek ways to meet those challenges during my year as president."

What are the main goals for his term? "Well the very obvious ones are employment and professional indemnity insurance. In relation to employment, significant inroads were made by the immediate past-president, John D Shaw, when he established

MAIN POINTS

- From Mayo to Dublin
- 'Absolutely brilliant' student days
- Choosing the solicitor route
- A challenging year ahead

IN BRIEF

- Gerard Doherty serves a one-year term as president of the Law Society for the year 2009/10, with effect from 6 November 2009.
- A native of Westport, Co Mayo, he is the youngest son of Charles and Lily Doherty, and has one sister, Anne. He has two sons – Ronan (26), who works in financial services, and Kevin (19), who is studying in University College Dublin.
- Qualified as a solicitor at Blackhall Place, Dublin, in 1973 and is partner in the law firm O'Reilly Doherty & Co in Finglas, Dublin 11. He became a member of the Council of the Law Society of Ireland in 1989.

the Career Support Service, which answers to deputy director general Mary Keane. Clearly, the demands on the service will increase and – even though its successes may be small – nonetheless they are significant to the people involved. It's not going to solve the entire problem. For some individuals it may lead to employment; for others, it will give hope.

"On a more optimistic note, however, we've gone through difficulties before and anybody who has been in the profession for as long as I have will know that the areas of work we have been engaged in have dramatically increased in recent years. There is no reason not to expect that trend to continue."

PII woes

"Turning to the second major challenge – PII – we don't know what the outcome will be this year, and probably won't fully know until after Christmas, but certainly it's not satisfactory that we should find ourselves in the position that obtaining PII should depend on whether other players in the insurance sector decide to enter the PII market.

"No matter what the end result is going to be in relation to PII this year, the PII Task Force will remain in place. Insofar as is possible, we must firstly examine the reasons for the difficulties that arose and look at implementing quite significant changes in the manner in which we, as solicitors, run our offices. Risk management must become part and parcel of our practice management skills. Secondly, we must also ensure that we are never held out as hostages to the insurance companies again. How that is going to be achieved is still an open question."

Gerard believes strongly that the impact of Lynn and Byrne has had very little to do with the current PII difficulties. "The reason for the difficulty in obtaining PII cover with the insurers is nothing more than the huge increase in the number of claims. It really is as simple as that, and I believe that solicitors will have to take a different view in relation to matters like risk management."

He believes that the filling out of the proposal forms this year has exposed weaknesses in large numbers of firms. "We have to look and see why there has been such an increase in the number of claims. We must get as much information as we can from the insurers and the Solicitors Mutual Defence Fund to discover precisely the nature of the claims that have arisen, and then seek ways to ensure that this doesn't happen again," he says.

How is the Society assisting its members through these crises? "No one person, no matter how well-intentioned, can address all aspects of the difficult issues facing the profession – but the Council and its committees, working together, can make a difference. I've already mentioned the establishment of Career Support. Each committee has been asked to address seven action points in their dealings with government, state agencies or other bodies in order to assist with lobbying for the inclusion of solicitors in job creation and training initiatives.

"In relation to the uncertainties surrounding PII cover, the Society has put in place a PII Helpline – 01 879 8790 – to assist firms in dealing with the renewal process in the current radically changed circumstances. Queries about the revised regulations can also be emailed to piihelpline@lawsociety.ie.

"In terms of helping members run their businesses more efficiently, the Society launched a practice advisory service last June for existing and start-up firms. Separately, the 'Solicitor Link' service assists firms to merge or share overheads, while the locum service and free employment register on the Society's website have been experiencing increases in the number of legal jobs advertised – the first increase since September 2008."

Looking back

What would he like to be able to say about his year as president when it's completed?

"I think there are two obvious challenges that face me as president. In relation to PII, in my view it is resolvable and solvable. It is a question, however, of whether or not it can be done within the year, but I certainly intend to try.

"In relation to the economic challenge – well, that indeed is a much greater difficulty. Before the profession can feel any benefits, there has got to be an improvement in the economic situation. That hopefully will start in 2010, but the benefits could take some time to filter down to our members.

"People are inclined to sympathise with me on becoming president at a particularly difficult time but, as a Society, we need to confront these challenges and look for new and innovative ways to meet them and resolve them. If we don't, we will just be overwhelmed by the enormity of it and do nothing. Any successes we have had to date may be small – but they're a start." G

House of

The recent Supreme Court judgment on the Zoe Group case provides significant practical guidance and clarification on the current thinking of the courts when considering a petition to appoint an examiner. Andreas McConnell and Aillil O'Reilly survey the site

The recent judgment of the Supreme Court, delivered on 14 October 2009 by Denham J, brought the final curtain down on the series of applications and appeals brought by a group of companies controlled by well-known property developer Liam Carroll (the Zoe Group) for the appointment of an examiner to the Zoe Group. Though it is arguable that little new law was created in the Zoe Group petitions, with the benefit of two written High Court and two written Supreme Court judgments, significant practical guidance and clarification has been provided to the profession, giving a clear insight to the current approach and thinking of the courts when considering a petition to appoint an examiner.

While the process of examinership may often be considered to be the preserve of the large corporation (and the gargantuan levels of debt, together with the presence of a 'who's who' list of lenders, placed the Zoe Group petitions squarely in the big-ticket bracket), it is projected that there will be in excess of 14,000 corporate insolvencies in the state this year and the vast majority of these insolvencies will be SMEs. Obtaining some advice on the law of examinership will be relevant to many of these SMEs (even if that advice is to dismiss examinership as an option), and it is in this broader context to the profession that this article investigates how the law on examinership has been further clarified with the benefit of these recent judgments.

MAIN POINTS

- Process of examinership
- Practical guidance and clarification
- Duty on a petitioning company to present all relevant information

Grounds for appointing an examiner

The statutory test for the appointment of an examiner is well known to most practitioners, and it is set out in section 5(b) of the *Companies (Amendment) (No 2) Act 1999*, which amends section 2(2) of the *Companies (Amendment) Act 1990*. The test established by that section is:

"The court shall not make an order under this section unless it is satisfied that there is a *reasonable prospect of the survival of the company* and the whole or any part of its undertaking as a going concern."

A company satisfying this statutory test does not, however, acquire a right to have an examiner appointed – there is, in addition, a judicial discretion. The judgment of Fennelly J in Gallium was cited in the Zoe Group petitions. That judgment held that a judicial discretion to appoint an examiner according to all the circumstances is "triggered" by the establishment of a reasonable prospect of the survival of the company as a going concern – that is, satisfying the test did not establish an entitlement to enter into examinership. This judicial discretion was further investigated in the judgment of Kelly J in the High Court in refusing the first petition made by the Zoe Group for the appointment of an examiner. In that judgment, considerable focus was attached to the fact that the proposed scheme of arrangement involved a restructuring of bank debt and a moratorium on capital payments being accepted by creditors and approved by the court. Kelly J noted that the proposed scheme "is most unusual, in that it does not require any investment in the companies or a write down of the debts".

Indeed, Kelly J confirmed in his judgment that, even if the company had satisfied the statutory test (that is, demonstrated that the company had a reasonable prospect of survival), he would have been disinclined to exercise his discretion to appoint an examiner in favour of the petitioners. Among other reasons, he stated: "It is clear that there is something artificial about what is involved here. The only creditors are banks. They will be able to take steps to realise their debts and deal with the property. They will wish to maximise the return on that and thus can be expected to enhance the properties' values as they see fit with a view to obtaining a greater realisation. They have already behaved in this way."

This judicial discretion was given further clarification by Murray CJ on appeal in the Supreme Court, where he stated that "mere assertions on behalf of a petitioner [including it would follow, the opinion of an independent accountant] that a company has a reasonable prospect of survival as a going concern cannot be given significant weight unless he is supported by an objective appraisal of the circumstances of the company concerned and an objective rationale as to the manner in which the

cards

End of an era for Zoe Developments?

company can be reasonably expected to overcome the insolvency in which it finds itself and survive as a going concern."

Both judgments firmly underline the established principle of judicial discretion. It is clear that the test upon which this judicial discretion is now based involves a detailed practical and commercial assessment of the actual prospects for survival of the company, based upon the evidence supplied to the court and the court's interpretation of this evidence in the prevailing economic climate. In Kelly's judgment, he commented that the "commercial market, particularly in Dublin ... is grossly over-subscribed. The residential sector is hardly moving at all." Little or no evidence had been presented to him to form this view.

The decision of Clarke J in the second Zoe Group examinership petition clarified the approach of the court to evidence placed before it. Clarke J stated that the courts were very familiar with estimating the likelihood of future events when assessing damages in common law actions. He characterised this as an objective appraisal of the relevant evidence.

Clarke J also focused on the timescale for a plan

PRACTITIONERS SHOULD NOTE...

In summary, in advising any client in connection with a possible examinership, practitioners should note:

- Judicial discretion – the threshold of the level of scrutiny has been raised by the courts,
- Independent accountant's report – must demonstrate a rigorous independent verification of facts and interrogation of the actual prospects of survival of the company in question,
- Consent of creditors/third parties – if an argument is going to be made that creditors are supporting an application, then obtain their written support – tacit support may not be sufficient,
- Present all information – failure to do may constitute an abuse of the courts.

to restore a company's fortunes. He held that there was no strict cut-off, that the relevant timescale was that which was reasonable based upon all of the facts. In doing so, he commented that the aim of the legislation is to save ailing companies, not to achieve a more orderly winding up of insolvent enterprises.

From a practical perspective, the threshold of the test has been raised, as the courts will now subject the contents of reports submitted as part of a petition to a more rigorous and commercial practical assessment of whether a company has a reasonable prospect of survival in the prevailing economic climate. Practitioners should take note of this development.

Independent accountant's report

In the judgment of Kelly J, as endorsed by the Supreme Court, it was noted that the independent accountant's report:

a) Was based upon certain assumptions that formed part of a business plan (which was not furnished to the court), and
b) Referred to certain property valuations that had been prepared some time in advance of the application (and which were not furnished to the court).

Kelly J took issue with the fact that the independent accountant had not independently verified the assumptions of the business plan, nor the valuations upon which it was predicated. In his judgment, Kelly J stated that "there is no evidence of any independent view being formed by him [the independent accountant] or of him consulting with anybody else".

In the Supreme Court, Murray CJ noted that the independent accountant expressed "no view as to the reasonableness" of certain projections that formed part of the report of the independent accountant, "or about the assumptions upon which they are based".

LOOK IT UP

Cases:

- *Re Gallium Ltd* ([2009] 2 ILRM II)

Legislation:

- *Companies (Amendment) Act 1990*, section 2(2)
- *Companies (Amendment) (No 2) Act 1999*, section 5(b)

It is clear that, in parallel with the increased rigour with which the courts will scrutinise a petition for the appointment of an examiner, the courts expect and demand the independent accountant to do likewise. It is not sufficient for the independent accountant to simply accept assumptions or projections on face value; they must be independently analysed and verified. If the independent accountant does not possess the expertise to do this, then it is advisable that an independent expert be retained by the independent accountant to do so.

The message here for practitioners is that, where a series of scenarios or facts or predictions are presented to an independent accountant, the independent accountant must demonstrate that he has independently interrogated/verified such facts if the report of the independent accountant is to be considered positively by the court.

Confirmed support of creditors

Significant importance was attached by the petitioner in the first Zoe Group petition to the fact that various lenders to the group of companies had agreed to impose a moratorium on interest repayments due to such lenders (ACC Bank being the exception). It was argued that such forbearance constituted ongoing support for the companies and that such action "speaks louder than words".

The Supreme Court, however, found that there was no evidence of any commitment by any bank to continue to provide financing in the future for the day-to-day operations of the Zoe Group. It further found that the "relevant fact is that the basis on which the banks support the petitioner's application has not been articulated to the court, and no opinion has been expressed on their behalf that the appointment of an examiner could reasonably be expected to result in the survival of the company as a going concern".

Following the theme of increased scrutiny, it is clear that tacit support may not be sufficient, and a clear consent (which can be easily obtained by letter of 'in principle' support) by a bank or other creditor to any company considering examinership should always be obtained.

Present all information

It is well known that the Zoe Group case involved the issuing of two High Court petitions for the appointment of an examiner and that additional

evidence was presented to the court in the making of the second petition (including the business plan and the valuations referred to earlier in this article). The court accepted that the reason behind the failure to provide all of the relevant evidence in the first application was contrary to legal advice provided to the petitioner by his representative team, and the High Court held that there was no malevolent attempt to conceal the matters from the court with a view to misleading it.

The question that was first considered by Cooke J in the High Court, and subsequently by Denham J in the Supreme Court, was whether allowing the presentation of the second petition constituted an abuse of the courts by the petitioner.

In the High Court, Cooke J – having considered all of the facts presented to him – determined that the second petition could proceed on the basis of an "overriding consideration". The High Court stated: "In the final result, however, the court's view is that the overriding consideration in this situation must be the legislative objective of securing, if feasible, the interests of the creditors, the employees, of those doing business with the companies, and of the economy as a whole by investigating any reasonable prospect of survival of the enterprise in whole or in part."

This 'overriding consideration' argument was overturned in the Supreme Court in order to avoid multiple petitions.

Denham J stated: "There is a duty on a petitioning company to present all relevant information to the court. The petitioner has failed to present relevant information in the first petition." She continued: "If the 'overriding situation' was determinative of the issue, it would mean that petitions could be presented routinely as a dry run. Then, having got a negative decision from a court, essentially an advice on proofs, a second petition, and indeed further subsequent petitions, could be brought and legitimised by the 'overriding consideration'."

The judge ultimately noted that the petitioner had the opportunity to present its case for the appointment of an examiner on the hearing of the first petition and to present all documents to the court at that stage. It was further noted that there was a procedure to present documents that were commercially sensitive to the court, but that this had not been availed of by the petitioner. Ultimately, Denham J found that "to take a deliberate strategic decision to withhold evidence from the court (contrary to legal and financial advice), then moving the first petition for the protection of the companies by the appointment of an examiner, and, having lost, to seek then to go again with fundamentally the same petition but this time with the previously withheld evidence, is an abuse of the court's process".

Consequently, the presentation of the second petition was disallowed, and there ended the entire process. The very clear direction given to practitioners in this judgment is to present all evidence available at the making of the petition. G

Andreas McConnell is a partner in Philip Lee Solicitors and head of its insolvency and restructuring group, and Aillil O'Reilly is a practising barrister and contributing editor to Lyndan MacCann and Thomas B Courtney's Companies Acts.

1 BOURBON 1 SCOTCH 1 BEER

The *Intoxicating Liquor Act 2008* made significant changes to the area of intoxicating liquor licensing in the District Court. Karl Dowling and Brendan Savage get a round in

MAIN POINTS

- Liquor licensing in the District Court
- New wine retailers' off-licences
- Grounds of refusal and the grant of off-licences
- Special and general exemption orders

The enactment of the *Intoxicating Liquor Act 2008* made significant changes in the area of intoxicating liquor licensing in the District Court. In particular, sections 6, 7 and 8 of the act relate to (a) new provisions concerning the grant of new wine retailers' off-licences, (b) the grounds on which the District Court may refuse to grant a certificate in respect of a new relevant off-licence, and (c) provisions concerning the enlargement of the District Court's licensing jurisdiction.

Red wine and whiskey

Order 68 of the *District Court Rules* provides for the making of applications to the District Court for off-licences. Traditionally, however, the District Court would only entertain applications for spirit retailers' off-licences and beer retailers' off-licences; an application for a wine retailer's off-licence was previously made directly to the Revenue Commissioners. However, section 6 of the 2008 act now provides that a new wine retailer's off-licence shall not be granted except pursuant to a certificate issued by the District Court.

Section 6 states: "The Revenue Commissioners shall not grant a new wine retailer's off-licence to a person unless a certificate is presented to them which has been received by the person from the District Court and which entitles the person to a wine retailer's off-licence."

The procedure for making an application for an off-licence to the District Court under order 68 is as follows.

An application for a new off-licence must be preceded by the issue of a notice stating the intention of the applicant to make the application. The notice should take one of the Forms 68.1 to 68.5 in the appendix of forms to the *District Court Rules* and must be signed by the solicitor for the applicant. The notice should set out the following details:

- The name, address and place of residence of the applicant.
- The nature of the licence for which the applicant requires a court certificate.
- The exact location of the premises – that is, city or town, street, house number, etc – where the applicant intends to carry on the business.
- In circumstances where the applicant has previously held licences for the sale of wine, spirits or beer etc, full particulars shall be given in respect thereof. (If the applicant has held a licence as a spirit grocer or beer retailer within the two years preceding the application, the notice shall give full particulars of the premises in respect of which the applicant held the said licence. Also, see section 4 of the *Beer Houses (Ireland) Act 1864*; where the applicant has held a licence for the sale of wine, spirits, beer etc, at any previous time, the notice shall set forth the last place of business where such intoxicating liquor has been sold.)

145 bottles of beer on the wall

- In relation to an application for a beer retailer's off-licence, the notice should set out the annual rateable valuation of the premises (section 2 of the *Beer Licences Regulation (Ireland) Act 1877*).

It is important to note that, in circumstances where the application for a new wine retailer's off-licence is successful, the applicant will be required to apply to the Revenue Commissioners for the licence itself. This must be done within one year of the granting of the District Court order. On the expiration of each off-licence (under the *Finance Act (1909-1910) 1910*, each licence shall expire on 30 September each year). Renewal applications are made directly to the Revenue Commissioners, but only in the absence of any objection by the gardaí (section 7(5) of the 2008 act).

Furthermore, the applicant must produce to the Revenue Commissioners a current tax clearance certificate and, where appropriate, either a certificate of incorporation pursuant to section 370(1)(b) of the *Companies Act 1963* or a certificate of registration under section 16(1)(b) of the *Registration of Business Names Act 1963*.

Beer drinkers and hell raisers

Pursuant to section 7(1) of the 2008 act, the District Court may refuse to grant a person a certificate entitling him or her to receive a new off-licence in respect of premises on the grounds of:

- The character, misconduct or unfitness of the person,
- The unfitness or inconvenience of the premises,
- The unsuitability of the premises for the needs of persons residing in the neighbourhood, or
- The adequacy of the existing number of licensed premises of the same character in the neighbourhood.

It will, of course, be open to the applicant to demonstrate to the court and to satisfy the court accordingly that he or she is a suitably qualified person to hold a liquor licence. The applicant should also demonstrate a willingness to comply with the relevant licensing laws. In relation to the premises and place of business, the applicant will be required to satisfy the court that the premises are fit and convenient to be licensed and are suitable for the needs of persons residing in the neighbourhood. Furthermore, the court will require the applicant to submit plans or a map of a premises, which should include:

- A location map indicating the precise position of the premises in relation to neighbouring premises,
- A site plan,
- Floor plans,
- Elevations, and
- The area proposed should be delineated with a red verge (see *Re Brannigan* (1947) and *Application to Terence J Maguire* (1963).

One Bourbon, one Scot, one bear

Pursuant to section 7(2) of the 2008 act, the District Court is empowered to impose conditions on the grant of a certificate, relating specifically to the installation, use and operation of a closed-circuit television system in respect of the premises concerned. Furthermore, the section states that a failure to comply with such conditions shall relate to the good character of the licensee for the purpose of a renewal under the *Courts (No 2) Act 1986*.

Champagne supernova

Section 7(3) of the 2008 act provides that, at the hearing by the District Court of an application to give a person a certificate entitling him or her to receive a new relevant off-licence in respect of a premises, (a) the garda superintendent within whose district the premises are situate and (b) any person who resides in the neighbourhood may object to the application and, for that purpose, may appear and give evidence.

Accordingly, the garda superintendent within whose district the premises are situate must be put on notice of the application at least 21 days prior to the date of hearing of the application. It is also noteworthy that notice of the application for the grant of a certificate should be published in a newspaper circulating in a place in which the premises concerned are situate, at least 21 days before the day of the hearing of the application.

"Notice of the application for the grant of a certificate should be published in a newspaper circulating in a place in which the premises concerned are situate, at least 21 days before the day of the hearing of the application"

Order 68 of the *District Court Rules* was amended by the *District Court (Intoxicating Liquor Act 2008) Rules 2009*, which came into operation on 25 May 2009.

Whiskey in the jar

Order 71 of the *District Court Rules* concerns the grant by the District Court of special exemption orders within the meaning of the *Intoxicating Liquor Act 1927*, as amended by the *Intoxicating Liquor Act 2003* and further amended by the *Intoxicating Liquor Act 2008*. Section 10 of the 2008 act now prescribes further conditions that may be attached to the grant of special exemption orders under order 71 of the *District Court Rules* and must be read in light of the 1927 and 2003 acts. The amended section 5 of the 1927 act states that special exemption orders shall contain the following conditions:

i) That intoxicating liquor shall not be sold at the event, function or dance to which the order relates during the hours specified in the order to persons other than those attending the event,

ii) That members of the public, other than persons so attending, shall not be admitted to the part of the premises in which intoxicating liquor is being supplied or consumed pursuant to the order,

iii) That the event, function or dance is held in compliance with the relevant provisions of the definition of 'special occasion' in subsection (1),

LOOK IT UP

Cases:

- *Application to Terence J Maguire* (unreported, High Court, Murnaghan J, 4 April 1963)
- *Re Brannigan* ([1947] 13 Ir Jur Rep 1)

Legislation:

- *Beer Houses (Ireland) Act 1864*, section 4
- *Beer Licences Regulation (Ireland) Act 1877*, section 2
- *Building Control Act 1990*
- *Companies Act 1963*, section 370(1)(b)
- *Courts (No 2) Act 1986*
- *District Court Rules*, orders 68, 71 and 72
- *District Court (Intoxicating Liquor Act 2008) Rules 2009*
- *Finance Act (1909-1910) 1910*
- *Intoxicating Liquor Acts* (1927, 1960, 1962, 2003 and 2008)
- *Private Security Services Act 2004*, section 2(1)
- *Registration of Business Names Act 1963*, section 16(1)(b)

iv) That, in the case of a special occasion which does not fall within paragraph (a)(ii) of the definition of 'special occasion' in subsection (1), a closed-circuit television system be in operation on the premises concerned during the course of the special occasion,

v) If subparagraph (iv) is applicable but the premises concerned do not have a closed-circuit television system installed in them, that a closed-circuit television system be installed in them for the purposes of that subparagraph, and

vi) That any person providing, in respect of the event, function or dance, a security service as a door supervisor, within the meaning of section 2(1) of the *Private Security Services Act 2004*, be the holder of a licence required under that act to provide such service.

Cigarettes and alcohol

The practitioner should be aware that conditions (i) to (vi) above should not be considered to be an exhaustive list, with the amended section 5(4)(b) of the 1927 act conferring on the court jurisdiction to impose such other conditions as it may think proper. Section 5(6) of the 1927 act, as inserted by section 10 of the 2008 act, now states that the court shall not grant a special exemption order in respect of any premises unless it is satisfied that:

a) The premises comply with the fire safety standards under the *Building Control Act 1990* applicable to such premises, and

b) The special occasion will be conducted in a manner that will not:
   i) Cause undue inconvenience or nuisance to persons residing in the locality, or
   ii) Create an undue threat to public order or public safety in the locality.

Order 72 of the *District Court Rules* concerns the grant by the District Court of general exemption orders within meaning of the *Intoxicating Liquor Acts* of 1927, 1960, 1962 and 2008. Section 5 of the 2008 act further amend section 4 of the 1927 act and, among other things, prescribes that no general exemption orders shall be granted in respect of premises unless a general exemption order was in force in respect of the premises on 30 May 2008.

Section 5 of the 2008 act states: "Section 4 (as amended by section 10 of the act of 1960) of the act of 1927 is amended (a) in subsection (1), by substituting 'Subject to the other provisions of this section, the' for 'The', and (b) by substituting the following for subsection (7):

'(7) No general exemption order shall be granted

a) In respect of premises unless a general exemption order was in force in respect of the premises on 30 May 2008, or

b) For any time on any Sunday or Saint Patrick's Day, Christmas Day or Good Friday'."

The above amendments to the *District Court Rules* allow for the practical application of the relevant provisions of the *Intoxicating Liquor Act 2008*. In particular, the new powers conferred on the District Court to attach specific conditions to the granting of off-licences will be of some significance to practitioners advising their clients as to their duties and obligations in the context of compliance with the new provisions. G

Karl Dowling and Brendan Savage are practising barristers and the authors of the recently published Civil Procedure in the District Court *(Thompson Round Hall).*

Disputes over the relocation of children are a by-product of travel, technology, and a smaller world. But recession is also a factor, and courts in all jurisdictions are seeing increasing applications as a result of job-seeking in other jurisdictions. Marion Campbell phones home

WHEREVER I

Parental disputes over the relocation of children are a relatively modern phenomenon. They are a by-product of travel, technology, lowered frontiers and the world becoming increasingly smaller. Recession is also a factor, and courts across all jurisdictions are seeing increasing numbers of applications being brought before them in relation to relocation issues as a result of families job-seeking in other jurisdictions.

Judges and child custody evaluators often look on relocation issues as the most difficult to resolve.

Father and son

In this jurisdiction, the starting point for any consideration of an application for relocation to change the residence of children must be pursuant to section 11(1) of the *Guardianship of Infants Act 1964* (as amended) and, in particular, section 3, which provides: "Where in any proceedings before the court the custody, guardianship or upbringing of a child is in question, the court in deciding that question shall regard the welfare of that child as the first and paramount consideration."

In considering the welfare of the child, consideration by the court must be given to a variety of factors.

In the 1990 High Court case of *K v W*, Finlay CJ, delivering the judgment for the majority in a case concerning the position of an unmarried father in relation to his child, held: "The blood link between the infant and the father and the possibility for the infant to have the benefit of the guardianship by, and the society of, its father is one of the many factors which may be viewed by the court as relevant to its welfare."

The conclusions in *K v W* were applied in the subsequent Supreme Court decision in the 1996 case of *WO'R v EH*, where Hamilton CJ approved the words of Finlay CJ in *K v W* to the following effect: "The extent and character of the rights which accrue arising from the relationship of a father to a child to whose mother he is not married must vary very greatly indeed depending on the circumstances of each individual case. The range of variation would, I am satisfied, extend for the situation for a father of a child conceived as a result of a casual intercourse, where the rights might well be so minimal as practically to be non-existent, to the situation of a child born as the result of a stable and established relationship and nurtured at the commencement of his life by his father and mother in a situation bearing nearly all of the characteristics of a constitutionally-protected family, when the rights would be very extensive indeed."

Letter from America

There is a dearth of Irish case law to guide practitioners in this jurisdiction in terms of advising parties seeking or opposing an application for relocation of their children.

The leading authority on the point in this jurisdiction is a decision of Flood J in the 1992 High Court case of *EM v AM*. In that case, the applicant mother, who was an American woman, met and married the respondent father in 1983. They lived in Dublin as a family with the applicant's child from a previous relationship and had another child together in 1986. The marriage broke down, resulting in the respondent father leaving the home in or about July 1987. Arrangements were entered into *vis-à-vis* parenting. The respondent husband enjoyed regular weekend and midweek access to the child.

These arrangements ultimately broke down. The applicant then applied to the court and sought leave to remove the parties' child to America on the basis that she had secure employment there with accommodation provided by her parents, and that she would forward generous access to the respondent husband. The respondent rejected this application and argued that the child was well settled in Ireland and enjoyed a very good relationship with their extended family.

Flood J, in determining whether or not to grant the application, set out a list of factors to which the court "must" have regard:

1) Which of the two (hypothetical outcomes) would provide the greater stability of lifestyle for the child,

MAIN POINTS

- Relocation applications
- Welfare of the child
- Irish case law
- Situation in England and Wales

LAY MY HAT

2) The contribution to such stability that would be provided by the environment in which the child will reside, with particular regard to the influence of (his/her) extended family,
3) The professional advice tendered,
4) The capacity for, and frequency of, access by the non-custodial parent,
5) The past record of each parent in the relationship with the child, insofar as it impinges on the welfare of the child, and
6) The respect in terms of the future of the parties to orders and directions of this court.

Ultimately, it would appear that Flood J was swayed by expert evidence and concluded that the applicant was in a better position to offer the child stability of environment, and leave to remove the child from the jurisdiction was duly granted on terms.

Where do the children play

The most recent judgment in the Irish courts pertinent to relocation of children is a judgment of Mr Justice Roderick Murphy, delivered on 15 May 2009, in *KB v LO'R*. This arose out of an appeal from a Circuit Court judgment. In that case, the Circuit Court had made an order appointing the father as joint guardian and joint custodian of three children, with primary care and control to the children's mother. Before that, the mother was the sole guardian and the father's applications in that regard to become guardian had not been successful.

The court had further ordered that the children be allowed to take up residence with their mother in England. A detailed order was made in relation to custody/access. By notice of appeal, the applicant father appealed the part of the judgment in relation to the relocation of the three dependant children. The court, in considering matters, looked at a strong line of authorities from Britain and, in particular, the 1970 decision of *Poel v Poel* and the 2001 decision of *Payne v Payne*. The court, in making its decision, was of the view that the welfare of the children and of their mother, who had constituted a unit since 2003, was of paramount importance.

The court believed in this case that the welfare of the children was best served by all three remaining with the mother, the primary carer. The court confirmed the order made by the Circuit Court regarding the children moving to England. The court took on board the line of authority in the English courts dealing

suites.ie

St Stephen's Green,
Harcourt Street, Baggot Street Bridge

Mediation Rooms

- Teas, Coffees & Broadband included
- From Only €499 per day for 3 rooms

Serviced Offices

- Fully serviced rooms from 100sq feet
- State-of-the-art IT and telephone services

Meeting Rooms

- Tele and Video Conferencing
- Ideal for product launches, training seminars, conferences and board meetings
- Teas, Coffees and broadband included
- Full catering available upon request



Call +353 1 4283300

LOOK IT UP

Cases:

- *EM v AM* (High Court, 1992, unreported)
- *K v W* (1990 2IR437)
- *KB v LO'R* (2009 IEHC 247)
- *Payne v Payne* (Britain, 2001 2WLR; 2001 FLR1052; 2001 FAM473)
- *Poel v Poel* (Britain, 1970 WLR1469)
- *W v R* (Family Court of Australia [2006] 35)
- *WO'R v EH* (1996 2IR248)

Legislation:

- *Guardianship of Infants Act 1964* (as amended)

with relocation of applications. The line of authority as adopted by the English courts was consistent with the requirements of section 3 of our *Guardianship of Infants Act 1964* – the welfare of the children being of paramount consideration.

Land of hope and glory

The leading authorities in England and Wales on the standard to be applied in relocation cases are the decisions of the Court of Appeal in *Poel v Poel* (1970) and *Payne v Payne* (2001).

In *Poel*, the applicant's mother wished to emigrate to New Zealand with her husband (whose job prospects were better there), together with the parties' infant son. The respondent father paid maintenance and had been enjoying regular weekly access. The Court of Appeal overturned the decision of the trial judge, who had initially refused the leave sought, on the basis that the plan would cut off contact between the boy and the respondent father. In the hearing by the Court of Appeal, Sachs LJ stated: "The court should not likely interfere with such a reasonable way of life as is selected by that parent to whom custody had been rightly given. Any such interference may produce considerable strains, which would not only be unfair to the parent whose way of life is interfered with but also to any new marriage of that parent. In that way, it might well in due course reflect on the welfare of the child."

Payne was an appeal against a High Court decision acceding to a mother's application to remove a child born to the parties during the marriage (which had subsequently broken down) to her home country of New Zealand in order to live there. In considering that appeal, Thorpe LJ set out a four-stage test in determining relocation applications:

a) "Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life? Then ask, is the mother's application realistic, by which I mean founded on practical proposals both well researched and investigated? If the application fails either of these tests, refusal will inevitably follow.
b) If, however, the application passes these tests, then there must be careful appraisal of the father's opposition. Is it motivated by the genuine concern for the future of the child's welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child's relationship with the child's maternal family and homeland?
c) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal?
d) The outcome of the second and third appraisals must then be brought into an overriding review of the child's welfare as the paramount consideration directed by the statutory checklist insofar as appropriate."

The judgments in *Payne* considered specifically two categories of cases in which the court recognised that the proposed relocation was consistent with the welfare of the child. The first category was that of the repatriating mother, whose only attachment to England came with the marriage and went with its breakdown. The second category was that of the mother who was married again to a man whose roots and whose employment must take him to some other jurisdiction.

Recently, it has been suggested that a third category is emerging, which has been labelled 'the lifestyle-choice category'. Clearly, in a lifestyle-choice case, the applicant faces a harder task in satisfying a judge that the refusal of his/her application would profoundly destabilise his/her emotionally and psychologically. The paramount consideration across all relocation applications is the child's welfare.

Hard lessons

An extremely comprehensive review of Australian, English, New Zealand, US and Canadian authorities in relocation cases were conducted by Carmody J in the Family Court of Australia in the case of *W v R*. Analysing the authorities, Carmody J noted that there was a presumption in favour of relocation in the US; the New Zealand and Canadian courts tended to resist it; while, in England, the child's welfare was seen as best being served by allowing mothers to chose the geographical proximity between the children and their father, based on the theory that a happy mother meant a happy household. If the only way that this could be achieved was at the expense of contact with the father, then regretfully that is how it had to be.

The gravity of relocation applications for all the individuals concerned is not to be underestimated. The best outcome for any family involved in such applications must be resolution by agreement rather than by court order. Litigation procedures should require a judge to consider and, if appropriate, to direct mediation at a very early stage before positions are hardened and proceedings take over. G

Marion Campbell is a solicitor specialising in family law.

‘A scene well set and excellent company’

The above was the line from WB Yeats, quoted by Seamus Heaney in his letter accepting on behalf of his wife, Marie, and himself an invitation to a very special dinner in Blackhall Place on 29 October 2009. The guest of honour was the President of Ireland, Mary McAleese, accompanied by her husband, Dr Martin McAleese.

This was the third time in her 12 years in office that President McAleese had been a guest of the Law Society for dinner. We would like to have her as a guest every year, but given the extraordinary demands on her time – resulting from her continuing immense popularity and her tireless devotion to duty – this is not possible.

President McAleese has been a strong supporter of the Society and its work, however. She opened the Society’s new Education Centre on 2 October 2000, and she again visited Blackhall Place on 30 April 2004 to welcome to Ireland the presidents of the law societies of the ten new member states formally joining the European Union at ceremonies held in Dublin during the Irish presidency on 1 May 2004.

In addition, she hosted a reception in Áras an Uachtaráin for Law Society Council members and staff to celebrate the 150th anniversary of the Society’s Charter in October 2002. As recently as 1 October 2009, she very graciously welcomed to the Áras the chief executives of law societies in 50 jurisdictions around the world, who were in Dublin for the CEEBA and IILACE joint conference.

President McAleese and Seamus Heaney were welcomed to Blackhall Place by then Law Society President John D Shaw

The poet and the director general swap verses

By contrast, Seamus and Marie Heaney had never been to Blackhall Place before. His status as Ireland’s greatest living writer was established beyond doubt when, in 1995, he joined with literary icons WB Yeats, George Bernard Shaw and Samuel Beckett as the fourth Irish winner of the Nobel Prize for Literature.

Earlier this year, Heaney celebrated his 70th birthday. The number of birthday parties held in honour of the poet in different parts of the world was estimated by his wife as about eight so far. An excellent hour-long portrait of the man and his work appeared on RTÉ television entitled *Out of the Marvellous*.

When director general Ken Murphy, a fan of Heaney’s work for decades, revealed that in the 2006 *Annual Report* of the Law Society he had structured his report around, and concluded with a quote from, Heaney’s poem *Postscript*, the poet kindly expressed himself pleased to hear it. He said he was always pleased when he discovered “poetry breaking out beyond the circle of poetry readers and into the grit of the world”.

It was, truly, a very special, ‘marvellous’ evening. One to “catch the heart off guard and blow it open”.

At the dinner in Blackhall Place were *(front, l to r)*: Dr Martin McAleese, Seamus Heaney, President Mary McAleese, then president John D Shaw and Marie Heaney; *(back, l to r)*: Yvonne Chapman, then senior vice-president Gerard Doherty, Eileen Shaw, director general Ken Murphy and deputy director general Mary Keane

Gathering of West Cork clan in Clonakilty

The West Cork Bar Association met at Dunmore House Hotel, Clonakilty, on 2 November 2009, where the special guests were the president of the Law Society and the director general. *(Front, l to r)*: Roni Collins, Richard Barrett (president, WCBA), John Shaw (then president of the Law Society), Ken Murphy (director general), Lorna Brooks and Veronica Neville. *(Back, l to r)*: Jim Brooks, Karen Crowley, Shane McCarthy, Emma O'Brien, Frank Purcell, Paul O'Sullivan, Michael Purcell, Ray Hennessey, Myra Dineen, John Flynn, Michelle Corcoran and Diarmuid O'Shea

Meeting of minds in Meath

At the Meath Bar Association meeting with the president of the Law Society and director general in the Knightsbrook Hotel, Trim, on 27 October 2009 were *(front, l to r)*: Vincent O'Reilly, James Martin, Helen McGovern (president, MBA), Gerard Doherty (then senior vice-president), John D Shaw (then president of the Law Society), Ken Murphy (director general), Anthony Murphy, Katie Barbour (secretary, MBA) and Cora Higgins. *(Centre, l to r)*: James Walsh, Martina Sheridan, Claire Keaney, Esmond Reilly, Oliver Shanley, Joseph Curran, Elaine Murtagh and Annie Walsh. *(Back, l to r)*: Brendan Steen, Kevin Martin, Pat O'Reilly, Declan Brooks, Adrian Shanley, Paul Brady, Ronan Regan and Paul Moore

PII AND THE ECONOMY RAISED AT SLA AGM

PIC: DEE BAUMANN

(Front, l to r): Law Society President John D Shaw, Fiona Twomey, Don Murphy, Mortimer Kelleher (president, SLA) and Ken Murphy (director general). *(Second row, l to r)*: Sean Durcan, Joan Byrne, Eamon Murray, Gail Enright and Pat Mullins. *(Third row, l to r)*: Fergus Long, John Sheehan and Peter Groarke. *(Back, l to r)*: Eamon Harrington, Jonathan Lynch and Terry O'Sullivan

The AGM of the Southern Law Association (SLA) enjoyed its usual large attendance and was held at the Cork premises of the Law Society of Ireland on 3 November 2009. The meeting was presided over by the outgoing president, Mortimer Kelleher, with the special guests being then President of the Law Society John D Shaw and director general Ken Murphy. The SLA president pointed out that the year had been dominated by the vexed question of professional indemnity insurance, the plight of the sole practitioner and large-scale unemployment – and how the profession was endeavouring to deal with all these issues.

Outgoing Law Society President John D Shaw spoke on PII, re-skilling, the Society's radio advertising campaign and the regulation/representation dichotomy. The last two issues provoked much discussion and debate. Ken Murphy spoke about the case of *O'Brien v PIAB*. Mr Kelleher paid particular tribute to vice-president Gail Enright and wished the incoming president Eamon Murray and vice-president Fergus Long success for the coming year.

Diploma in Commercial Litigation

The Diploma in Commercial Litigation conferral ceremony took place on 21 October at Blackhall Place, Dublin. Conferees are pictured with *(front, centre)* Freda Grealy (diploma manager), Michelle Ní Longáin (chair, Education Committee) and Mr Justice Peter Kelly (High Court)

PIC: LENSMEN

Conference on *Civil Partnership Bill 2009*

At the *Civil Partnership Bill 2009* conference, presented by the Society's Family Law Committee and CPD Focus were: *(back, l to r)*: Paula Fallon, Michelle Nolan, Attracta O'Regan, Eoin Collins, Muriel Walls and Rosemary Horgan. *(Front, l to r)*: Geoffrey Shannon, Hilary Coveney and John Mee

PIC: CONOR MCCABE/JASON CLARKE PHOTOGRAPHY

Caroline follows in Dad's legal footsteps

At the parchment ceremony for newly-qualified solicitors at Blackhall Place on 15 October 2009 were *(l to r)*: Tony Ensor (past-president), Mr Justice Richard Johnson (then president of the High Court), Caroline Ensor and Beatrice Ensor

Diploma in Employment Law

Conferees are pictured at the conferral of parchments for the Diploma in Employment Law at the Presidents' Hall, Blackhall Place, on 11 November, with *(centre)* John O'Connor (vice-chair, Education Committee) and Colin Daly (chair, Human Rights Committee)

Putting the 'hope' into Stanhope Street

It's just past 1pm on a Wednesday, and in room 12 in Stanhope Street girls' primary school, on Aughrim Street, a dozen or so glamorous young women have 24 seven and eight-year-olds hanging on their every word, *writes Colin Murphy*.

Scattered around the classroom on tiny stools, the women, students of the Law Society, sit at low tables with the girls – books of all shapes and sizes laid out before them. This is the weekly reading club. For almost an hour, the students read to and with the girls, from any book from the class library.

Eight-year-old Krithya is reading a Ladybird book called *GloCricket*. What's it about? I wonder. "Molligans," she tells me, and then asks if I have been to the Taj Mahal. Krithya is from Tanjore in India, she tells me, and moved to Ireland last year. Is it very different?

"There's a lot more shops than Aughrim Street," she says.

Beside her, seven-year-old Taylor, from O'Devaney Gardens, explains that the women around them are "going to be lawyers". "They help people convince others that they didn't do things." None of these three are interested in being lawyers: Taylor wants to be a beautician, and eight-year-old Emma, from Smithfield, thinks she might become a teacher. "Teachers give stickers out, and jellies, and learn you how to write an' all."

"When we're finished the other school, secondary, we're going to college," says Emma.

"That's how you get a job," says eight-year-old Stephanie, also from O'Devaney Gardens.

"That's how you get a good job," says Taylor.

"But you have to be very smart," says Emma.

Role models for reading

This reading club is one part of a volunteer programme run by the Law Society's Student Development Service, set up by Antoinette Murray when she arrived at the Law Society as student development officer eight years ago.

The benefits of the club are two-way, Antoinette says. For the girls, in a school officially designated as 'disadvantaged', it provides them with role-models for further education – and, more simply, for reading.

"Research has shown that the more contact you have with people who've gone on to third level, the more chance you have of going."

And for the law students, it provides the chance for many of them to gain a new perspective on disadvantage and social problems.

"They're not all going to be practising in Donnybrook or Ballsbridge," she says. "It's important for them to get an insight into what's going on in the community around them."

Of 395 students starting this year, says Murray, a record 305 signed up for the volunteer programme, which takes place in six-week blocks. Numbers have surged – a sign of a student body that is more aware of economic hardship and insecurity, she says.

"They want to be out there, making a contribution."

The projects are a contribution in themselves, but perhaps more importantly, they may help the students make more of a contribution in the long run, she suggests.

"It makes for a much more humane profession, and one that's far more responsive to what's happening in society."

Newly qualified solicitors at the presentation of their parchments on 25 June 2009

ALL PHOTOS: JASON CLARKE PHOTOGRAPHY

Mr Justice Michael Peart of the High Court, John D Shaw (then president of the Law Society), Dearbhail McDonald (legal editor, *Irish Independent*) and Ken Murphy (director general) were guests of honour at the 25 June 2009 parchment ceremony for newly qualified solicitors: Eva Barrett, Nicholas Blake Knox, Paul Brady, Aisling Burke, David Burke, Sorcha Burns, Gerald Byrne, Katie Byrne, Peter Callanan, Elizabeth Cass, Lorraine Clifford, Morgan Coleman, David Collins, Tara Creegan, Geoffrey Dillon Leetch, Cian Duffy, Emer Durkan, Emma English, Siobhan Farrell, Sinead Feeney, Sarah Flynn, Hilary Forde, Michael Gill, Derek Hegarty, Claire Higgins, Claire Hirst, Louise Howard, Jill Hughes, Linda Hynes, Eoin Kealy, Killian Kehoe, Thomas Kiely, Siobhan Kirrane, Ruth Lyndon, Therese Lyne, Conor McClements, Andrea McGurn, Mary Miles, Claire Moran, Denis Moriarty, Fiona Moriarty, Niamh Mulherin, Jennifer Murphy, Vicki O'Brien, Blandina O'Brien, Brendan O'Brien, Dearbhla O'Brien, Eoin O'Connor, David O'Dea, Ciara O'Donovan, Sile O'Dowd, Sarah O'Gorman, Deirdre O'Mahony, Julie O'Neill, Joanne O'Rourke, Celene O'Shaughnessy, Ciara O'Sullivan, Susan Quigley, Majella Regan, Padraic Roche, Niall Rooney, Christina Sauer Dechant, Catriona Savage, Michelle Sheerin, Deirdre St John, Gareth Steen, Sally-Anne Stone, Trevor Wills and Sheila Young

Newly qualified solicitors at the presentation of their parchments on 16 July 2009

Mr Justice Richard Johnson (then president of the High Court), John D Shaw (then president of the Law Society) and Ken Murphy (director general) were guests of honour at the 16 July 2009 parchment ceremony for newly qualified solicitors: Michele Barker, Jane Beattie, Louise Bennett, Lucy Boyle, Caroline Brennan, Ken Byrne, Helen Cahill, Darina Cochrane, Cora Coffey, Gemma Corcoran, Rebecca Cotter, Caitriona Cummins, Barry Curran, Elizabeth Sarah Divilly, Shane Doorley, Nicola Doran, Helen Dorris, James Doyle, Ronan Dunne, Declan Finn, Sarah Fleming, William Foot, Mark Foster, Caitlín Friel, Elsbeth Gabbett, Roger Geraghty, Shane Geraghty, William Greensmyth, Clare Hannon, Julie-Anne Hannon, Bronagh Hardiman, Louise Harrison, Gavin Hinchy, Margaret Holden, Ashling Holden, Daniel Hughes, Lisa Jackson, Aifric Jordan, Sinead Kane, Bobby Kennedy, Edel Kennedy, Paul Kennedy, Lisa Killilea, Jeff Mackey, Colm Manning, Fiona McConnell, David McEvoy, Kelly McGowan, Denise McPhillips, Jason Milne, Alison Mitchell, Aisling Molony, Mary Mullen, Breege-Anne Murphy, Orla Murphy, Mary O'Callaghan, Shane O'Donovan, Shane O'Driscoll, Rachel O'Halloran, Susan O'Hara, Rory O'Loghlen, Alison O'Mahony, Kerill O'Shaughnessy, James P O'Mahony, Geoffrey Rooney, Deirdre Sheehan, John Sheehy, Jessica Smith, Kevin Smith, Billie Sparks, Orlagh Toal, David Trethowan and Helena Walsh

Newly qualified solicitors at the presentation of their parchments on 27 August 2009

Mr Justice Patrick McCarthy (High Court), John D Shaw (then president of the Law Society), Mortimer Kelleher (president, Southern Law Association), James O'Sullivan (chairman, Education Committee) and Ken Murphy (director general) were guests of honour at the 27 August 2009 parchment ceremony for newly qualified solicitors: Lindsay Ahern, Leo Barry, Megan Breen, Caroline Buckley, Bríd Cahill, David Carroll, Claire Ann Coleman, Deirdre Costello, Sarah Coughlan, Victoria Creber, Ita Crowley, Peggy Cusack, Sean Daly, Melanie Evans, Kieran David Fitzpatrick, Clare Flavin, Julie Gallwey, Susan Gleasure, Leah Goold, Caroline Jost, Alison Kelleher, Anita Kelly, Patrick J Kiely, Mary Liddane, Jonathan Lynam, Patrick Martin, Claire McCarthy, Bríd McDonnell, Declan McHugh, Elisa McMahon, Roberto Miller, Clare Mungovan, Michelle O'Connell, Tara O'Connor, Mary O'Donnell, Cliona O'Donoghue, Finghin O'Driscoll, Mícheál O'Dubhda, Brian O'Keeffe, Rhona O'Kelly, Gillian O'Leary, Michelle O'Mahony, Louise O'Riordan, Sean O'Shea, Jennifer L O'Sullivan, Anthony Noel Power, Marianne Quill, Gerard Quinn, Diane Reidy, Deirdre Russell, Deirdre Ryan, James Stokes, Gillian Sweeney, Deirdre Ryan, James Stokes, Gillian Sweeney, Declan Thomas, Claire Tuohy, Sinead Turner and Karen Walsh

Newly qualified solicitors at the presentation of their parchments on 3 September 2009

Mr Justice William McKechnie (High Court), John D Shaw (then president of the Law Society), Colin Daly (solicitor) and Ken Murphy (director general) were guests of honour at the 3 September 2009 parchment ceremony for newly qualified solicitors: Caroline Austin, Timothy Brennan, Billy Brick, Eoghan Browne, Martin Browne, Angela Byrne, David Callinan, Ellen Campbell, Niamh Charlton, Zoe Chatten, Robert Clancy, Airy Cleere, Julia Collins, Julie Conlon, Conor Corcoran, Vincent Costello, Byran Cotter, Lynn Cramer, Carol Daly, Claire Davis, Sinead Dooley, Mary Dunne, Paul Eaton, Lesley Farrington, Michael Fitzgibbon, Catherine Fitzsimons, Julisa Flanagan, Mark Gilligan, Cliodhna Guy, Kate Hallissey, Ciara Hanley, David Hannigan, Lisa Ellen Healy, Caitriona Healy, Emma Jane Hyland, Lorcan Keenan, Leonore Kelleher, Vera Kelly Keane, Sinead Kerin, Ian Knight, Cleo Lambert, Leonard Leader, Barbara Lydon, Barry Lynam, Aideen Mawe, Declan McBride, Madeleine McDonnell, David McKechnie, Sarah-Jane Mulcahy, Micheál Mulvey, Declan Murphy, Gemma Neylon, Aoileann Ní Dhúill, Emer O'Hora, Emma O'Dolan, Shane O'Dowd, Regan O'Driscoll, Eleanor O'Farrell, Donal O'Loinsigh, Marcus O'Sullivan, Lisa Patten, Sarah Prendeville, Michelle Quinn, Elizabeth Ryan, Michelle Ryan, Stephen Ryan, Donal Scanlon, Kevin Sherry and Aideen Young

Newly qualified solicitors at the presentation of their parchments on 15 October 2009

Mr Justice Richard Johnson (then president of the High Court), John D Shaw (then president of the Law Society), Michael Collins SC (chairman of the Bar Council) and Ken Murphy (director general) were guests of honour at the 15 October 2009 parchment ceremony for newly qualified solicitors: Sadhbh Burke, Roisin Cahill, Sally Anne Carney, Eileen Carr, Tom Casey, Sinead Casey, Anne Cassidy, Caoimhe Collins, Michael Commons, Gwen Considine, Catherine Cooney, Fergal Corcoran, Aine Corrigan, Kieran Cuddihy, Alice Cummins, Niamh Dillon, Una Duggan, Eimear Dunne, Saranna Enraght-Moony, Caroline Ensor, Cairbre Finan Jnr, Marilyn Finnan, Greg Flanagan, Róisín Forde, Christine Galbraith, John Gallagher, Brendan Gavin, Shiofra Hassett, Jessica Hickey, Mona Jackson, Louise Jennings, Anne-Marie Keaveny, Niamh Keogh, Andrea Liston, Sam Lyons, Shane Mackessy, Aishling Mahon, Stephen Mahon, Kenny McArdle, Aoife McCarthy, Ciara Monaghan, John Moran, Joseph G Moroney, Grant Murtagh, Robert Nolan, Aveen O'Brien, Andrew O'Connell, David O'Connell, Daragh O'Donovan, Cathal O'Gorman, Audrey O'Hara, Lelia O'Hea, Kimberley O'Leary, Anderina O'Meara, Louise O'Neill, Nigel O'Neill, William O'Reilly, Rachel Power, Aisling Quinn, Emma Quinn, Mark Quinn, Shane Reynolds, Lorraine Rooney, Ruairi Rynn, Kate Sheppard, Nigel Sweeney, Rowena Toomey, Simone Walsh, Patrick Walsh and Jennifer Ward

student spotlight

Night of the big Gael!

Congratulations to Law School trainees Áine Bhreathnach and Ruth Ní Fhionnáin, who reached the final of Bréagchúirt Uí Dhálaigh in the High Court on 6 November, *writes Maura Butler*. The trainees were pipped at the post by Niall Ó hUiginn and Stiofán Ó hAinifidh of the King's Inns.

The Irish language moot court competition is organised annually by Gael Linn in memory of the late Cearbhall Ó Dálaigh, former President and Chief Justice of Ireland.

The competition is open to third-level law students who are fluent in the Irish language, and it provides a platform for aspiring young solicitors and barristers to practise their courtroom skills. Participants either defend or prosecute in an appeal against a court judgment.

This year saw the largest number of entries since the competition began 12 years ago. Preliminary rounds were held on 6 November 2009 in the King's Inns.

The Law Society's team was runner-up in Bréagchúirt Uí Dhálaigh, the Irish language moot court competition organised by Gael Linn. *(L to r)*: Áine Bhreathnach, Antoine Ó Coileáin (príomhfheidhmeannach, Gael Linn) and Ruth Ní Fhionnáin

Teams of a very high standard participated from the King's Inns, the Law Society, NUI Galway, University College Dublin and Trinity College Dublin.

The final was held in the Four Courts that evening, presided over by High Court judge Roderick Murphy, who was assisted in his adjudication by barristers Daithí Mac Cárthaigh and Séamus Ó Tuathail SC.

The winners were awarded a cheque for €600 along with the Gael Linn Perpetual Trophy, while the Law Society's Áine and Ruth received a cheque for €300.

Mr Justice Roderick Murphy (High Court), Niall Ó hUiginn, Stiofán Ó hAinifidh (both King's Inns) and Antoine Ó Coileáin (príomhfheidhmeannach, Gael Linn)

Presenting the prizes, Gael Linn CEO Antoine Ó Coileáin said: "I urge Irish speakers to avail of their right to use Irish in the courts, a right which is enshrined in the *Official Languages Act 2003*. Through Bréagchúirt Uí Dhálaigh, Gael Linn is pleased to provide a forum for student solicitors and barristers to present a case in Irish."

This is the first time that a team from the Law Society has reached the final stages in this competition.

Thanks goes to Doireann Ní Mhuircheartaigh BL, Caroline O'Connor BL and Pól Ó Murchú (solicitor) for offering their assistance to the Law School's participants. G

Whose copy of the Gazette are you reading?

Why not subscribe ...

€57 FOR 10 ISSUES

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

I enclose my cheque for €57

Please charge my ☐ Access ☐ Visa ☐ Mastercard ☐ Eurocard

Credit card number: | | | | | | | | | | | | | | | |

Expiry date: | | | | (MONTH/YEAR)

Name: _____

Address: _____

_____ Telephone: _____

Signature: _____

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

books

Employment Law

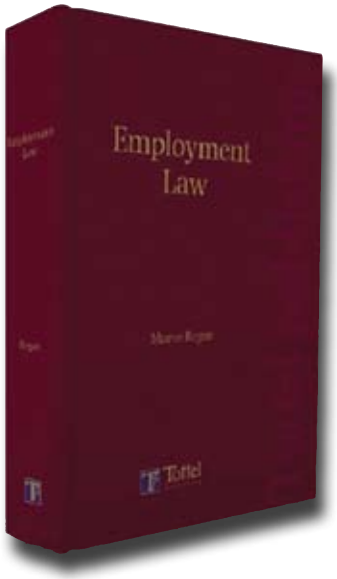
Maeve Regan (ed). Bloomsbury Professional (2009), www.tottelpublishing.com. ISBN: 978-1-84766-162-3. Price: €195.

Learning of the launch of *Employment Law*, my initial reaction was one of some scepticism. Surely the market could not sustain yet another book on the subject? Over the last 20 years, a host of authors (including modest efforts by this reviewer) have produced a variety of textbooks touching mostly on the individual aspects of labour law.

The catalyst for this formidable output was the extraordinary burst of legislation produced by the late Michael O'Leary as Minister for Labour in the mid 1970s, which first established a floor of rights for Irish workers, especially in terms of unfair dismissal and employment equality. If Irish employment law was indigenous in its seminal form, it has since mushroomed under waves of European directives in the intervening period, not to mention immense case law.

Under the editorship of Maeve Regan, a large group of leading practitioners and academics have produced in *Employment Law* an outstanding new textbook, covering nearly every aspect of the subject. The strength of the work is its diversity, with the expert knowledge of the authors being brought to bear on a range of topics usually beyond the scope of earlier works. Take, for example, the comprehensive discussion on vicarious liability, which considers the recent decision in *O'Keefe v Hickey*, where the judges of the Supreme Court took divergent routes to a common decision rejecting liability. Another novel chapter is the treatment of immigration and international employment: an unimaginable chapter in the Ireland of the 1990s. Other useful chapters deal with pensions, taxation, practice and procedure.

Space is found for topics from other fields of law that impinge on the workplace. I found the chapter on data protection



and workplace privacy quite comprehensive and a useful reference point. Collective aspects of the employment relationship are also well covered.

Running through the texts of each contribution are helpful and up-to-date case references, not just to Irish sources, but across common law jurisdictions and, of course, from the ECJ.

No book on this field can ever stay up to date, and the intention of Ms Regan and her colleagues to have expanded subsequent editions is to be welcomed. One topic that could usefully be considered in the future is the explosion in whistleblowing provisions that has occurred in literally dozens of statutes in recent years.

It could be said that a challenge for our law makers is to bring some coherence and, indeed, streamlining to the growth of Irish labour law and the myriad of fora for disputes in an area of law that had the avowed, but unreal, intention of keeping lawyers away.

In the meantime, Regan on *Employment Law* will have a central place in the library of any practitioner who wishes to readily access this very complex area of modern law. G

Ciaran O'Mara is a partner in O'Mara Geraghty McCourt, Solicitors.

BRIEFING

practice notes

WARNING: UNDERTAKINGS IN COMMERCIAL LOAN TRANSACTIONS

1) From 1 December 2009, as a result of new PII regulations contained in SI no 384 of 2009, undertakings (as set out at 4(a) to (d) below) given on or after that date by solicitors to lending institutions in commercial loan transactions, where the solicitor acts either
   - For the borrower alone or
   - For the borrower and the lending institution jointly,

   are no longer covered by the minimum terms and conditions of professional indemnity insurance cover that solicitors are obliged by law to hold.

   The regulations provide that undertakings given by a solicitor in relation to a commercial loan transaction where that solicitor acts solely for the lending institution in the transaction are not affected.

   Practitioners should carefully read the new PII regulations. They contain definitions of 'Commercial Development', 'Commercial Property Transaction', 'Financial Institution', 'Relevant Undertaking', 'Residential Property Transaction' and 'Undertaking', and practitioners are urged to familiarise themselves with these regulations.

   Any queries on the content or implications of these regulations should be referred to the Society's PII helpline for solicitors at 01 879 8790 or email piihelpline@lawsociety.ie.
2) In order to have insurance cover for such undertakings given after 1 December 2009, practitioners will have to obtain separate additional cover.
   - Where solicitors obtain additional cover for commercial undertakings, it should be noted that, in order to ensure there is PII cover in place at the time of any claim, it will be advisable to renew the additional cover (or obtain run-off cover if the solicitor ceases practice in the interim period) for subsequent indemnity periods (normally for at least six years).
   - The same requirement applies where solicitors obtain top-up cover for any amount in excess of the current minimum level of cover (which after 1 December 2009 will be €1.5 million each and every claim).
3) **Any solicitor contemplating giving an uninsured under-taking to a lender or to any other party would be advised not to do so, as this would place their personal assets at risk.**
4) The Conveyancing Committee is not in a position to give any interpretation of the regulations or any legal opinion on what specific categories or types of undertaking are to be excluded from the minimum terms and conditions of cover. The regulations provide that the following types of undertakings are affected:
   a) An undertaking given to a lender to provide the lender with a certificate of title relating to any commercial property. **Effectively, anything other than a principal private residence or a not-for-letting holiday home is commercial property for the purpose of the regulations.** The regulations specifically provide that 'buy-to-let' properties are classed as commercial property.
   b) An undertaking given to a lender to provide the lender with title deeds to any commercial property.
   c) An undertaking given to a lender to pay or procure the payment of any stamp duty or to register or procure the registration of title to any commercial property.
   d) An undertaking given to a lender to discharge or procure the discharge of a commercial mortgage or other security or a commercial loan.

The committee will keep the matter under review and will issue further practice notes if necessary as the practical operation of the new regulations becomes clearer.

Conveyancing Committee

E-STAMPING: 30 DECEMBER 2009

E-stamping will be introduced on 30 December 2009. From that date, any document not already stamped will require a return to be filed in order for the document to be stamped. This can be done either through ROS (which, it is expected, practitioners will find the preferable method), using the new e-stamping regime, or by filing a long-form new paper return.

To use the new e-stamping system, practitioners will need to be registered for ROS and should contact Revenue to arrange this as soon as possible. Revenue has set up a special email address for any queries on e-stamping. The address is E-stampingProject@revenue.ie.

In order to make a stamp duty return (either through ROS or in paper form), it will be necessary to include the PPS number for individuals (or tax reference number for others) of **all** the parties to a document to be stamped, even in the case of non-Irish-resident persons. (Revenue may relax this in the case of specific categories of persons yet to be clarified.)

Practitioners should start collecting this information (which should be verified where possible) to enable stampable documents to be stamped when the new system is introduced on 30 December 2009, as this will apply irrespective of when the contract was entered into. Returns with incorrect reference numbers will be rejected by the system.

The Law Society has been engaged in active consultation with the Revenue about e-stamping and will be communicating in more detail with the profession about this exciting development closer to the introduction date.

Taxation Committee

URGENT WARNING: NEW IBF STANDARD MORTGAGE DEED – NEW LAND REGISTRY FORM OF CHARGE FROM 1 DECEMBER 2009

Following commencement of the *Land and Conveyancing Law Reform Act 2009*, all Land Registry charges must be in the form prescribed or approved by the PRA, and there will be a new formula for a mortgage over unregistered land. The PRA has drafted a new form of charge for Land Registry title, which will shortly be available on the PRA website as part of the new *Land Registration (No 2) Rules 2009*. It should be noted that the old Form 67 (charge for a principal sum) is to remain.

The members of the Irish Banking Federation (IBF) and the Irish Mortgage Council (IMC), which include the majority of the lending institutions involved in residential mortgage lending in Ireland, have agreed the text of a standard, combined mortgage deed/charge. A dual version, which will be issued initially, is suitable for use for residential mortgages executed and dated either before or after 1 December 2009. We are advised that most of these mortgage lenders hope to start distributing the new IBF mortgage deed with solicitor's packages in November, so that practitioners will have them available for use straight away. The remaining members will distribute their own form of revised mortgage deed documentation in November and will move to the IBF format over the coming months.

The PRA has indicated to the Society and to the IBF that either its own new statutory form of charge, or the new approved IBF forms of mortgage deed/charge, or any forms approved by the PRA with respect to individual lending institutions, are acceptable for registration purposes.

Practitioners dealing with the execution of mortgage documentation by clients on or after 1 December should ensure that the correct form of mortgage deed/charge is used.

1) If you have already received a solicitor's package with the old form of charge or mortgage in respect of a loan already approved, but where the mortgage may not complete before 1 December 2009, you should **either** expect to receive a replacement package before 1 December **or** apply to the relevant lender for a replacement package.
2) A replacement package, once provided, can be used straight away, as it will contain a dual version of the mortgage deed/charge, which is suitable for use whether the mortgage is executed before or after 1 December. If your loan transaction completes before 1 December 2009 and no replacement package has been made available, you should ensure that the old form of charge/mortgage is executed and dated before 1 December 2009.
3) If you are dealing with a lender that is not a member of the IBF/IMC (the members of the IBF/IMC that are signed up to the new 2009 certificate of title system are listed in the *Guidelines and Agreement 2009 Edition*) and your client is entering into a mortgage on or after 1 December 2009, you should ensure that you use the relevant new PRA form of charge or updated mortgage as appropriate.
4) Solicitors drafting mortgage documentation for clients, including mortgage deeds in commercial conveyancing matters, should familiarise themselves with the PRA's requirements for approving forms for registration purposes.

Conveyancing Committee

UPDATE – SECTION 52(1), *LAND AND CONVEYANCING LAW REFORM ACT 2009*

Since the publication of the practice note in the November 2009 issue of the *Gazette* in relation to the above matter (entitled 'New special condition of sale', p51), in response to a submission from the Taxation Committee, Revenue has confirmed in a *Tax Briefing*, published on 2 November 2009, that, notwithstanding the coming into force of the section on 1 December 2009, Revenue does not regard the section as changing the existing position regarding the time of supply of immovable property for VAT purposes. Therefore, practitioners are advised that they may disregard the practice note.

Taxation Committee

NOTICE TO ALL PRACTISING SOLICITORS – UNDERTAKINGS

The Society continues to receive an unprecedented number of complaints relating to undertakings. While many of these complaints are ultimately resolved, the investigation of them suggests that many members of the profession still fail to understand the obligations imposed upon them when they give an undertaking. This practice note is to remind practitioners that non-compliance with an undertaking amounts to misconduct.

Not only is dealing with a complaint of this nature likely to take up a great deal of time that could have been spent more profitably, it may also involve a substantial financial claim, with the additional possibility of a referral to the Solicitors Disciplinary Tribunal. Undertakings considered to have been given negligently have also given rise to a considerable number of insurance claims resulting, inevitably, in a substantial increase in premiums. The affairs of clients are more easily transacted because people can rely on a solicitor's undertaking. An undertaking should not therefore be given or accepted carelessly.

Remember:

Undertakings should be clearly understood and agreed, and they should always be confirmed in writing. If an undertaking involves the payment of a sum of money, make sure the amount is clear or that it is easy to calculate. Ambiguous undertakings will generally be construed in favour of the recipient, and they are binding even if they do not include the word 'undertake'.

A solicitor's undertaking is a professional conduct issue. Consideration is not required for it to be enforceable.

There is no obligation on a solicitor either to give or accept an undertaking, and a client cannot instruct you to do so. Likewise, you cannot avoid complying with

an undertaking because you have been instructed to do so, or because it is no longer in your client's interests.

Undertakings should refer to a particular task or action that is clearly identified and defined. Do not give general undertakings, such as an undertaking to discharge "all outstanding mortgages on a property" or "pay costs on the conclusion of the case".

Do not give "the usual undertaking", or think in terms of 'routine' or 'standard' undertakings. An undertaking to pay monies out of a fund should be qualified by the proviso that the fund comes into your hands, and that it is sufficient.

Undertakings should be achievable at the time they are given. You must consider carefully whether you will be able to implement it. Likewise, an undertaking should only be accepted if it relates to matters under the direct control of the person giving the undertaking. If any events must happen before you will be able to comply with your undertaking, it is good practice to spell out those events in the undertaking, and only give a qualified undertaking.

Undertakings should indicate when they will be complied with. In the absence of an express term, there is an implied term that an undertaking will be preformed within a reasonable time.

Particular care should be taken if you agree to hold title deeds, documents, cheques, money, or anything else on accountable trust receipt or 'to the order' of another solicitor or third party, as you may well be deemed to have given an undertaking to do so.

Litigation

Do not ask other solicitors to provide an undertaking in terms you would not give yourself. This applies particularly to undertakings as to costs. Do not give, or expect another solicitor to give, an open-ended undertaking to pay costs. Refer to specific bills if possible but, if not, at least make provision for the costs to be "taxed in default of agreement". It should be clear from the terms of the undertaking when and how such costs are to be paid.

You should not pay out monies due to your client on the successful conclusion of a case without ensuring that you have sufficient funds to discharge undertakings that may have been given on their behalf. Make sure that such undertakings have been given with your client's written agreement, and that they understand that these monies do have to be repaid out of their damages/settlement. You should think very carefully before giving what may amount to a financial guarantee for your client.

Conveyancing

Make sure that an undertaking to discharge a mortgage specifies exactly which mortgage(s) you intend to discharge. Vague replies may result in you being liable to discharge all mortgages, whether you know of them or not. Particular care should be taken with 'all sums due' or 'all monies' mortgages.

Particular care should also be taken when acting for a purchaser of a property/apartment in a new development. Vague undertakings are often given to deal with the conveyance of the common areas or to transfer the management company on the completion of the development. A distinction must always be made between those issues that are in the contract/lease and are to be dealt with by the vendor/developer, and those that are to be the subject of an undertaking given by their solicitor.

You should not accept carelessly worded undertakings to provide missing plans, planning documents or deeds, which are often outside the control of the vendor's solicitor. An undertaking is only binding upon the parties to it. It cannot compel a third party to do anything. If a document is not available, consider whether you should be closing the transaction without it at all.

A solicitor cannot assign the burden of an undertaking (and claim to be released from its obligations) without the express agreement of the recipient of the undertaking. The recipient can assign the benefit of an undertaking, but you should be cautious of accepting such an assignment unless there is a good reason why the original undertaking has not been complied with. For this reason, you should not accept a 'chain of undertakings', as these could prove to be unenforceable.

Do not treat the Law Society's approved form of undertaking for residential mortgage lending as a mere formality. In giving that undertaking, you undertake, among other things, that you "are in funds to discharge all stamp duty and registration fees", that you will lodge the deed for stamping "within the time prescribed by law" and, following receipt of the deed stamped, lodge it and the mortgage deed in the appropriate registry "as soon as practicable but in any event within four months".

Good management

Principals are responsible for undertakings given by staff, whether qualified or not. Clear guidance should be given to all staff as to who is permitted to give or accept undertakings. You should also consider drawing up approved forms of undertakings that are to be used unless otherwise agreed.

Make sure that undertakings are not overlooked, by indicating on the file that an undertaking has been given and its date. You could, for example, print off a copy of the undertaking on different-coloured paper, or keep a separate register of undertakings. It should be apparent to anyone taking over a matter that an undertaking is still outstanding.

The recipient of an undertaking is entitled to make reasonable enquiries as to the discharge of the undertaking, and you must therefore ensure that such enquiries are not ignored.

Have available and refer to the current Law Society publications on the subject, in particular the *Guide to Professional Conduct of Solicitors in Ireland* (2nd edition), as this practice note is in addition to, rather than in substitution for, that material. Practice notes are not legal advice; they are notes issued by the Law Society for the use and benefit of its members. The Law Society will not therefore accept any legal liability in relation to them.

Complaints and Client Relations Committee

PRACTISING CERTIFICATE 2010: NOTICE TO ALL PRACTISING SOLICITORS

Why you need a practising certificate

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

When you must apply

A practising certificate must be applied for on or before 1 February in each year in order to be dated 1 January of that year and thereby operate as a qualification to practise from the commencement of the year. It is a legal requirement for a practising solicitor to deliver or cause to be delivered to the Registrar of Solicitors, on or before 1 February 2010, an application in the prescribed form, duly completed and signed by the applicant solicitor personally, together with the appropriate fee. The onus is on each solicitor to ensure that his or her application form and fee is delivered by 1 February 2010. Applications should be delivered to the new address of the Regulation Department of the Society at: **George's Court, George's Lane, Dublin 7; DX 1025 Four Courts.**

What happens if you apply late?

Any applications for practising certificates that are received after 1 February 2010 will result in the practising certificates being dated the date of actual receipt by the Registrar of Solicitors, rather than 1 January 2010. There is no legal power to allow any period of grace under any circumstances whatsoever.

Please note that, again during 2009, a number of solicitors went to the trouble and expense of making an application to the High Court for their practising certificate to be backdated to 1 January because their practising certificate application was received after 1 February.

The Regulation of Practice Committee is the committee of the Society that has responsibility for supervising compliance with practising certificate requirements. A special meeting of this committee will be held on a date after 1 February 2010 (to be decided) to consider any late or unresolved applications for practising certificates. At this meeting, any practising solicitors who have not applied by then for a practising certificate will be considered for referral forthwith to the Solicitors Disciplinary Tribunal, and will be informed that the Society reserves the right to take proceedings for an order under section 18 of the *Solicitors (Amendment) Act 2002* to prohibit them from practising illegally.

If you are an employed solicitor

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

Some of your details are already on the application form

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

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

A blank application form for a practising certificate is downloadable from the practising certificate section in the members' area (which is accessible by using your username and password – for assistance please visit www.lawsociety.ie/help). Alternatively, the form can be completed on-screen and printed out for signing and returning to the Society with the appropriate fee. You may also request a form to be emailed to you by emailing m.mcdermott@lawsociety.ie or n.darby@lawsociety.ie.

If you are ceasing practice

If you have recently ceased practice or are intending to cease practice in the coming year, please notify the Society accordingly.

Acknowledgement of application forms

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

Duplicate practising certificate

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

John Elliot, Registrar of Solicitors and Director of Regulation

BRIEFING

legislation update

13 October – 22 November 2009

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – www.lawsociety.ie (members' and students' areas) – with updated information on the current stage a bill has reached and the commencement date(s) of each act. All recent bills and acts (full text in PDF) are on www.oireachtas.ie and recent statutory instruments are on a link to electronic statutory instruments from www.irishstatutebook.ie.

ACTS PASSED

European Union Act 2009

Number: 33/2009

Contents note: Amends the *European Communities Act 1972* to give effect to the relevant provisions of the *Treaty of Lisbon* amending the *Treaty on European Union* and the *Treaty Establishing the European Community*, signed at Lisbon on 13/12/2007, in the domestic law of the state. In accordance with the *Lisbon Treaty*'s conferral of explicit legal personality on the European Union, provides that references in any enactment (other than this act and the 1972 act) to the European Communities shall be construed as references to the European Union and that references in any enactment to the *Treaty Establishing the European Economic Community* or the *Treaty Establishing the European Community* shall be construed as references to the *Treaty on the Functioning of the European Union*. Provides for powers of the houses of the Oireachtas under the terms of the *Lisbon Treaty* and provides for the continuation in force in domestic law of certain statutory instruments giving effect to EU directives, regulations or decisions.

Date enacted: 27/10/2009

Commencement date: 27/10/2009 for s8 (continuation in force of certain statutory instruments); commencement order(s) to be made for other sections (per s9(3) of the act)

National Asset Management Agency Act 2009

Number: 34/2009

Contents note: Provides for the establishment of the National Asset Management Agency (NAMA) for the purposes of acquiring bank assets from credit institutions as designated by the Minister for Finance; transferring those assets to the agency; holding, managing and realising those assets; and facilitating the restructuring of credit institutions of systemic importance to the economy. Provides for the valuation of the assets concerned and the review of any such valuation. Gives NAMA certain powers and other functions in respect of land or an interest in land acquired by NAMA, including powers relating to the development of land. Provides for the issuing of debt securities by the Minister for Finance and by NAMA in the performance of its functions under the act. Provides for certain legal proceedings relating to assets acquired by NAMA, amends the *Central Bank Act 1942* and provides for related matters.

Date enacted: 22/11/2009

Commencement date: Commencement order(s) to be made (per s1(1) and (2) of the act)

Twenty-Eighth Amendment of the Constitution Act 2009

Contents note: Amends article 29.4 of the Constitution to enable the state to ratify the *Treaty of Lisbon*, amending the *Treaty on European Union* and the *Treaty Establishing the European Community* (which will be renamed the *Treaty on the Functioning of the European Union*, signed at Lisbon on 13/12/2007.

Date enacted: 15/10/2009

Commencement date: 15/10/2009

SELECTED STATUTORY INSTRUMENTS

Broadcasting Authority of Ireland (Establishment Day) Order 2009

Number: SI 389/2009

Contents note: Appoints 1/10/2009 as the establishment day for the purposes of part 2 (ss5-38), sections 49 and 157 and part 12 (ss174-179) of the *Broadcasting Act 2009*. Part 2 establishes the Broadcasting Authority of Ireland (BAI). Section 49 provides that the BAI must, within six months of this order, prepare a scheme for the exercise of the right to reply in respect of persons whose honour or reputation have been impugned by an assertion of incorrect facts or information in a broadcast. Section 157 provides for the establishment and maintenance of a fund of monies paid to, and expended by, the BAI under part 10 (ss153-159) of the act, and part 12 provides for the dissolution of the Broadcasting Commission of Ireland and the Broadcasting Complaints Commission and for the vesting of their assets, rights, obligations and liabilities in the BAI.

Cluster Munitions and Anti-Personnel Mines Act 2008 (Commencement) Order 2009

Number: SI 410/2009

Contents note: Appoints 8/10/2009 as the commencement date for all sections of the act.

Copyright and Related Rights Act 2000 (Notice of Seizure) Regulations 2009

Number: SI 440/2009

Contents note: Prescribe the form of the notice, to be given at the time of seizure, to the owner, occupier or person in charge of the place where infringing copies, illicit recordings, protection-defeating devices, or articles associated with making infringing copies or illicit recordings, as the case may be, are seized under section 133 or section 257 of the *Copyright and Related Rights Act 2000*.

Commencement date: 5/11/2009

Data Protection Act 1988 (Section 5(1)(d)) (Specification) Regulations 2009

Number: SI 421/2009

Contents note: Section 5(1)(d) of the act empowers the minister, by regulations, to restrict access to personal data kept by persons or bodies with statutory functions designed to prevent financial loss to members of the public where such access would be likely to prejudice the performance of those functions. These regulations specify the functions under the *Companies Acts* of the Director of Corporate Enforcement, officers of the Director of Corporate Enforcement and inspectors appointed by the High Court or by the Director of Corporate Enforcement for the purposes of the restrictions set out in section 5(1)(d) of the act.

Commencement date: 21/10/2009

European Communities (European Cooperative Society) Regulations 2009

Number: SI 433/2009

Contents note: Provide for the establishment of a European co-

operative society, to be known as an SCE, in accordance with Council Regulation (EC) no 1435/2003 on the *Statute for a European Cooperative Society*. The objective of the statute is to facilitate cross-border activities by cooperative entities. (Employee involvement in SCEs was provided for separately under EU Directive 2003/72/EC, which was transposed into Irish law by the *European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007*, SI 259/2007.)
Commencement date: 29/10/2009

Health (Miscellaneous Provisions) Act 2009 (Commencement) (No 2) Order 2009
Number: SI 401/2009
Contents note: Appoints 1/10/2009 as the commencement date for part 3 (ss15-25) of the act. Part 3 provides for the dissolution of the Women's Health Council and for the transfer of the council's employees, liabilities, property, etc, to the Minister for Health and Children.

Nursing Homes Support Scheme Act 2009 (Commencement) (Remaining Provisions) Order 2009
Number: SI 423/2009
Contents note: Appoints 27/10/2009 as the commencement date for all remaining provisions of the act not already in operation. (Other sections of the act were brought into operation by SI 256/2009, SI 381/2009 and SI 394/2009.)

Nursing Homes Support Scheme Act 2009 (Commencement) (Specified Forms) Order 2009
Number: SI 394/2009
Contents note: Appoints 28/9/2009 as the commencement date for section 44 of the act. This section enables the Health Service Executive to specify forms required under the scheme.

Nursing Homes Support Scheme (Assessment of Capacity Report) Regulations 2009
Number: SI 409/2009
Contents note: Prescribe the format of reports for submission to the Circuit Court by medical practitioners in accordance with section 21 of the *Nursing Homes Support Scheme Act 2009*. Section 21 of the act provides for the appointment of care representatives to act on behalf of persons who are assessed by two medical practitioners as lacking the capacity to make decisions in relation to ancillary state support.
Commencement date: 5/10/2009

Nursing Homes Support Scheme (Collection and Recovery of Repayable Amounts) Regulations 2009
Number: SI 436/2009
Contents note: Provide for the collection and recovery of repayable amounts by the Revenue Commissioners, as agents of the Health Service Executive, in accordance with the provisions of the *Nursing Homes Support Scheme Act 2009*.
Commencement date: 2/11/2009

Nursing Homes Support Scheme (Making and Discharge of Orders) Regulations 2009
Number: SI 437/2009
Contents note: Prescribe the format of charging orders made under the *Nursing Homes Support Scheme Act 2009* in connection with applications for ancillary state support and prescribe the format of applications and receipts for the release or discharge of such charging orders.
Commencement date: 30/10/2009

Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment (No 2)) Regulations 2009
Number: SI 441/2009
Contents note: Make a number of amendments to the *Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007* (SI 617/2007) relating to the run-off cover mandatory period and the run-off cover premium, the suspension of the Assigned Risks Pool for the next indemnity period, and misrepresentation or non-disclosure in placing the insurance. (See article on p22 of the November 2009 *Gazette*.)
Commencement date: 1/12/2009

Taxes Consolidation Act 1997 (Accelerated Capital Allowances for Energy Efficient Equipment) (Amendment) (No 2) Order 2009
Number: SI 393/2009
Contents note: Amends the *Taxes Consolidation Act 1997 (Accelerated Capital Allowances for Energy Efficient Equipment) Order 2008* (SI 399/2008). Updates, in accordance with the provisions of s285A of the *Taxes Consolidation Act 1997* (amended by s37 of the *Finance (No 2) Act 2008*), those energy-efficient products whose capital cost will be eligible for accelerated capital allowances, and updates the energy-efficient criteria used to determine eligibility for inclusion on those product lists. The accelerated capital allowance scheme involves quarterly updates to those product lists.
Commencement date: 28/9/2009 G

Prepared by the Law Society Library

NOTICE: THE HIGH COURT

In the matter of Charles O'Neill, solicitor, practising as Cathal O'Neill & Co Solicitors, 10 Church Avenue, Rathmines, Dublin 6

Take notice that, by order of the High Court made on Monday 19 October 2009, it was ordered that the name of Charles O'Neill, solicitor, of 10 Church Avenue, Rathmines, Dublin 6, be struck from the Roll of Solicitors.

John Elliot, Registrar of Solicitors,
29 October 2009

Solicitors Disciplinary Tribunal

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

In the matter of Niamh McGovern, a solicitor, of McGovern & Associates, Equity House, Dublin Road, Carrick-on-Shannon, Co Leitrim, and in the matter of the *Solicitors Acts 1954-2002* [6996/DT40/08]
A named client of the respondent solicitor
(applicant)
Niamh McGovern
(respondent solicitor)

On 10 September 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she produced misleading reports of her actions on behalf of her client.

The tribunal ordered that the respondent solicitor:

a) Do stand admonished and advised,
b) Pay a sum of €250 towards the applicant's expenses.

In the matter of John B Harte, a solicitor carrying on practice as a partner in the firm of James Harte & Son, Solicitors, at 39 Parliament Street, Kilkenny, and in the matter of the *Solicitors Acts 1954-2008* [2259/DT53/09]
Law Society of Ireland
(applicant)
John B Harte
(respondent solicitor)

On 15 September 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Delayed in complying with an undertaking given to National Irish Bank and dated 16 November 2006 in respect of named properties in a timely manner, having only complied with same in April 2009,
b) Failed to reply to the Society's correspondence, and in particular to the Society's letters of 6 May 2008, 25 June 2008, 7 July 2008, 11 August 2008, 27 August 2008, 28 October 2008 in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €7,500 to the compensation fund,
c) Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement. G

firstlaw update

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

ARBITRATION

Remittal of award

Decision – award – misconduct – decision reasons – Arbitration Act 1954.

The plaintiff was a contractor, and the second-named defendant made an award determining liability. Five issues were put before an arbitrator and a sum was awarded. The plaintiff alleged bias or misconduct on the part of the arbitrator and sought to have the award set aside and/or the arbitrator removed, pursuant to the *Arbitration Act 1954*, or to have the award remitted to the arbitrator. The plaintiff contended that the arbitrator was bound to give reasons.

Murphy J held that the arbitrator had discretion under the relevant rules to provide reasons separate to the award. The document listing the reasons behind the award answered all but one of the issues identified in the award. To accord with best practice, the arbitrator should make an explicit award on claims and counterclaim. The award should state reasons in sufficient detail. The court would remit the matter for reconsideration by the arbitrator.

***JJ Rhatigan & Company Limited (plaintiff) v Paragon Contracting Limited (defendant)*, High Court, 13/2/2009** [FL16492]

COMPANY

Practice and procedure

Costs – section 150 application – conduct of liquidator – delay in taking s150 proceedings – directors found to have acted honestly and responsibly – Company Law Enforcement Act 2001 – Companies Act 1990, *as amended – order 99, rule 1*, Rules of the Superior Courts.

The applicant was the liquidator of the company that was the subject of the proceedings and provided a report to the Director of Corporate Enforcement pursuant to section 56 of the *Company Law Enforcement Act 2001*. He was informed by letter in 2005 that he was not relieved of his obligations to bring restriction proceedings pursuant to section 150 of the *Companies Act 1990*, as amended. The applicant subsequently brought such proceedings in 2007. The issue arose as to whether the company was insolvent at the commencement of the winding up and whether the respondents had acted honestly and responsibly as directors as to the affairs of the company. The court held that the directors had acted honestly and responsibly and the issue arose as to costs, in light of the silence of the 1990 act, as amended, in this regard and the application of order 99, rule 1 of the *Rules of the Superior Courts*.

Finlay Geoghegan J held that the liquidator failed to make appropriate enquiries before deciding to make a report to the director and had failed to give the respondents any opportunity of commenting on what must have been his determination then. The respondents also failed to make all relevant enquires before responding to the letter in question. The applicant was put to the expense of continuing to deal with proceedings that might have been resolved at an earlier time by reason of this failure. The court would exercise its discretion pursuant to order 99, rule 1 of the *Rules of the Superior Courts* and would make no order for costs.

***In the matter of Kranks Korner Limited (in voluntary liquidation) – McCarthy (applicant) v Gibbons & Gibbons (respondents)*, High Court, 19/12/2008** [FL16328]

CRIMINAL

Evidence

Constitutional law – CCTV footage – identification – whether loss of evidence resulted in real and serious risk of an unfair trial.

The respondent obtained an order of the High Court prohibiting his trial on a charge of theft. The original CCTV footage had been obliterated. The sole issue arose as to whether the respondent had established that, in the absence of any possibility of access to the original moving CCTV footage, there was a real and serious risk of an unfair trial. It was alleged that, if the case was sent to trial, the prosecution would be relying on unusual evidence of identification recorded on CCTV footage that was now unavailable.

Fennelly J (Denham and Hardiman JJ concurring) held that there was a real risk to the fairness of the trial in the circumstances of the case. The defence was simply unable to test the identification evidence of the state witnesses. This did not entail that still photographs taken from a missing video were generally inadmissible. The appeal would be dismissed and the order of the High Court affirmed.

***McHugh (respondent/applicant) v Director of Public Prosecutions (appellant/respondent)*, Supreme Court, 24/2/2009** [FL16305]

FAMILY

Child abduction

Hague Convention – *habitual residence – return of child – stepfather – wrongful retention – Latvia* – Child Abduction and Enforcement of Custody Orders Act 1991.

The applicant was the father of the child in question, and the stepfather of the child was the respondent. The mother of the child had died. The applicant sought an order pursuant to article 12 of the *Hague Convention* for the return of the child to Latvia, as the alleged place of habitual residence of the child.

Finlay Geoghegan J held that the child was habitually resident during the period in question in Ireland and had not acquired a habitual residence in Latvia. The applicant had failed to establish that the child was habitually resident in Latvia prior to the date of the alleged wrongful retention, and the application would be dismissed.

***G(U) (Minor) B(E) (applicant) v G(A) (respondent)*, High Court, 4/3/2009** [FL16506]

LANDLORD AND TENANT

Recovery of possession

Lease – dilapidated premises – Circuit Court appeal – Landlord and Tenant (Amendment) Act 1980 – *whether premises could be recovered as dilapidated.*

On appeal from a decision of the Circuit Court, the plaintiffs sought to recover possession of premises in Limerick, the subject of a lease that had expired in 2004. The plaintiffs were the successors in title of the lessors. It was alleged that the premises were in a deplorable state of re-

pair. The building was alleged not to be capable of being rented in light of its condition. The plaintiffs sought to rely on good and sufficient reasons for refusing to renew the lease, pursuant to the *Landlord and Tenant (Amendment) Act 1980*.

Clark J held that the plaintiffs had established good and sufficient reason in that the tenants had failed to keep the premises in good repair and were unable to do so. The plaintiffs were entitled to recover possession of the entire premises as set out in the civil bill.

***McCarthy, Bolding, Cambridge (plaintiff) v Larkin (defendant)*, High Court, 18/2/2009** [FL16502]

PRACTICE AND PROCEDURE

Solicitor's lien

Professional negligence – taxation – lien – transfer of files – orders to be made for transfer of files, documents and papers to new solicitors.

The plaintiff was the daughter of the testatrix and the defendant solicitors were the executors of the will. The plaintiff sought an order directing the former solicitors to deliver all files, documents and papers to new solicitors. Proceedings had been commenced in 2001 and were reconstituted. The former solicitors were no longer happy to act for the plaintiff on account of a professional negligence allegation made against the defendants *qua* solicitors. The plaintiff made a complaint to the Law Society about the conduct of her affairs by the former solicitors and sought the transfer of papers to her.

Laffoy J held that an order would be granted referring the bill of costs delivered by the former solicitors to the plaintiff for taxation. There would be an order directing the plaintiff to take all reasonable steps to facilitate the taxation process, subject to an undertaking to the new solicitors to receive, *inter alia*, all files, documents and papers, to preserve the lien over those items, to notify the former solicitors when proceedings were finalised, and to prosecute the proceedings in an active manner. The court would make an order referring the bill of costs for taxation on solicitor-and-own-client basis.

***Treacy (plaintiff) v Roche and Roche (defendants)*, High Court, 27/2/2009** [FL16501]

ROAD TRAFFIC

EU law

Direct effect – indirect effect – article 234 EC referral – insurer – indemnification – exclusion – exemption – transposition – Case C-106/89, Marleasing SA v La Comercial Internationale de Alimentacion SA *([1990] ECR I-4135)* – Road Traffic Act 1961 – *Council Directive 72/166/EC, Council Directive 84/5/EEC and Council Directive 90/232/EEC (first, second, third directives on insurance for civil liability in respect of motor vehicles)*.

The plaintiff was injured in 1999 when the car in which he was a passenger, owned by the second defendant and driven by the first defendant, was in collision with another vehicle. The plaintiff was in part of the vehicle not designed and constructed with seating accommodation and FBD, the insurer, sought to refuse to indemnify the defendants pursuant to section 65 of the *Road Traffic Act 1961*, as amended. Section 65 provided for a definition of excepted persons who were not required to be covered in a policy of insurance. Three directives were of relevance, Council Directives 72/166/EC, 84/5/EEC and 90/232/EEC. The second directive deemed void insurance exemption clauses in certain instances, and the third directive covered liability for personal injures to all passengers and sought to protect injured persons from gaps in insurance. The third directive had not been transposed into Irish law by 1999. The Court of Justice had held in *Farrell v Whitty* ([2007] ECR I-3067), a decision arising from a referral from the Irish High Court, that article 1 of the third directive had direct effect. The issue arose as to whether the High Court was under an obligation to read Irish law in light of the directive, pursuant to Case C-106/89, *Marleasing SA v La Comercial Internationale de Alimentacion SA* ([1990] ECR I-4135).

Peart J held that there was no dispute but that, at the date of the accident in 1999, the third directive had not been transposed into Irish law. The objectives thereof were very clear. The objectives of the earlier directive were clear that an exclusion of liability as here was void. The amendment in section 65 of the *Road Traffic Act 1961* was in conflict with these objectives. The court was required to read section 65 of the 1961 act, as amended, in light of the third directive. The clause contained in the policy of insurance was void. disentitling FBD from relying thereon to refuse to indemnify the first and second defendants for the loss of the plaintiff.

***Smith (plaintiff) v Meade, Meade, FBD Insurance Plc, Ireland and the Attorney General (defendants)*, High Court, 5/2/2009** [FL16478] G

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

eurlegal

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

Collective action in the pharmacy sector

On 23 September, the Competition Authority published its *Notice in Respect of Collective Action in the Community Pharmacy Sector*. The notice provides guidance on the application of competition law to collective action by pharmacists and other health professionals when engaging with the Health Service Executive. This article examines the notice and any clarification it provides with respect to the scope of permissible collective action in relation to the setting of prices and other terms in the health sector.

In the past number of years, the Competition Authority has investigated and considered a number of instances involving collective negotiation within the medical profession. In September 2005, it concluded an investigation into fees for consultants' services negotiated with private health insurers. In May 2007, it reached settlement terms with the Irish Medical Organisation following an investigation into allegations of price fixing by the IMO in relation to the provision of private medical attendant reports. In October 2007, it launched an investigation into collective withdrawal by pharmacies from the methadone programme.

The notice is not the first piece of guidance by the Competition Authority on collective negotiations in the health sector. In January 2007, the Competition Authority published a similar notice on collective negotiations relating to the setting of medical fees of consultants. The notice is published in a different context, however, in that it addresses a more particular situation relating to the community drugs scheme, with the state acting as purchaser.

Background to the notice

The HSE is a public body charged under the *Health Act 2004* with the management and delivery of health and personal social services in the state. It administers a variety of schemes for the provision of prescription drugs to the public, known as the community drugs schemes. It does this through a series of contractor agreements. On 17 September 2007, the HSE informed pharmacists that it would be altering, as of 1 January 2008, the mark-up payable for the reimbursement of prescription drugs provided by community pharmacies under the community drugs schemes. Historically, the terms of the contractor agreement, including the fee paid, were negotiated between the HSE and a representative body for pharmacists, the Irish Pharmaceutical Union (IPU). The HSE maintained that competition law prevented consultation with the IPU. Numerous pharmacists threatened to withdraw from the provision of community pharmacy services, and a number commenced court proceedings against the HSE. In *Hickey and Others v HSE* (2007), the High Court ruled that the unilateral reduction in fees payable to pharmacists breached the relevant contractor agreement on the basis that the minister did not consult prior to setting the new rate. The court further ruled that the relevant provision of the contractor agreement was not contrary to section 4(1) of the *Competition Act 2002* because it was simply a contractual obligation to consult in advance of a unilateral determination of the rates of payment by the minister. Following an investigation, the Competition Authority initiated a public consultation in October 2008 into the extent to which independent pharmacy contractors could act collectively in respect of setting of terms and conditions, including fees, for the supply of services by community pharmacies under the various drugs schemes administered by the HSE.

Legal context

Section 4(1) of the *Competition Act 2002* prohibits agreements between undertakings, decisions of associations of undertakings, and concerted practices that have as their object or effect the prevention, restriction or distortion of competition within the state or any part of it. Article 81(1) of the *EC Treaty* contains a similarly worded provision that prohibits such practices where they affect trade between member states. An undertaking is defined in section 3 of the act as "a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service". Thus any self-employed professional, such as a pharmacist, would be regarded as an undertaking.

Essentially, both section 4 and article 81 prohibit collective behaviour, as opposed to unilateral behaviour. There must be some form of cooperation between separate undertakings. Where self-employed professionals come together to agree a fee for the services they provide, this is prohibited where it has as its object or effect the prevention, restriction or distortion of competition. It is not just obvious activities such as price fixing that are caught by section 4 and article 81. Also caught are actions where undertakings unite to withdraw the provision of services to a customer, known as a collective boycott. Undertakings can come together separately, but often do so through a representative body, such as in the form of the IPU. Such representative bodies or trade associations are usually deemed to be associations of undertakings and thus any decision of such a body that has as its object or effect the prevention, restriction or distortion of competition is prohibited under section 4. The practical difficulty, of course, is that individual undertakings may consider it more desirable and efficient for their representative body to negotiate on their behalf on various matters. However, from a competition law perspective, the danger is that any decisions reached may fall foul of section 4 and/or article 81. This results not simply in technical breaches of the law, but may have a real anticompetitive result, in that higher fees may be set than would otherwise be the case where individual negotiations take place with each separate undertaking.

'Collective behaviour' covers not just agreements between

undertakings and decisions of associations of undertakings, but also concerted practices. A concerted practice is a form of joint conduct by undertakings that does not result in an actual agreement, yet the undertakings involved "knowingly substitute practical cooperation between them for the risks of competition" (*ICI v Commission*).

Section 4(5) of the act and article 81(3) allow for the saving of what would otherwise amount to a breach of section 4(1)/article 81(1) where four conditions, or exemption criteria, are met. Where these are satisfied, it is considered that any pro-competitive effects of the agreement or decision of association of undertakings outweigh its anticompetitive effects.

Another relevant legal provision, insofar as the notice is concerned, is the *Financial Emergency Measures in the Public Interest Act 2009*, section 9(1) of which provides for the unilateral reduction by the Minister for Health and Children of fees paid to health professionals for services provided for or on behalf of the state. The section makes further provision for consultation by the minister, including with representatives of health professionals, when carrying out such reductions. Section 9(10) also contains a rather interesting and unusual reference that "nothing in the *Competition Act 2002* shall prevent participation by that minister or any such representative in such consultations, or the communication and discussion of the outcome of such consultations by the representatives with the health professionals they represent".

Follow-up to the consultation

The purpose of the consultation was to allow the Competition Authority to better assess whether to issue a guidance notice on the issues presented, pursuant to section 30(1)(d) of the act, or a declaration pursuant to section 4(3) of the act to the effect that a specified category of agreements, decisions or concerted practices does not, in its opinion, breach the act for meeting the exemption criteria of section 4(5). On the ground, there was more action on the part of pharmacists when, in March of this year, pursuant to section 9 of the 2009 act, the minister commenced a consultation on fees payable to health-care professionals and subsequently introduced changes to the remuneration for pharmacists under the community drugs schemes. In response, a substantial number of pharmacists withdrew service to the HSE. Services were subsequently resumed by a substantial majority of these.

The Competition Authority received four submissions to its consultation, including from the HSE and the IPU. In its notice, the Competition Authority stated that, having reviewed the submissions, it was unable to issue a declaration pursuant to section 4(3) of the act, as there was nothing in them to indicate that collective negotiations in the community pharmacy sector fulfil the exemption criteria. Instead, it chose to issue guidance on its current thinking as regards the legal position in this area.

Limits on collective action

The notice reiterates the position of the Competition Authority as set out in the consultation, while also taking account of the impact of the 2009 act. It provides specific examples relating to the pharmacy sector of the type of price fixing that is prohibited by section 4. This includes any agreement between pharmacists on the dispensing fee or rate of remuneration for drugs dispensed, where the pharmacists intend that the agreed price will be imposed on the purchaser (in this instance, the HSE). Also mentioned as prohibited are an agreement to threaten a collective withdrawal of services and an agreement that reduces competition through non-price factors such as opening hours and the range of drugs available. Coordinated conduct that does not result from an actual agreement is also included in this context. Although both the contractor agreement between the HSE and pharmacists and section 9 of the 2009 act make provision for consultation among health professionals, the notice points out that there is a real risk that a consultation process may lead to anticompetitive coordination.

However, it goes on to state that the provision in the 2009 act merely reiterates the existing position in law (as set out in *Hickey*) that there is nothing wrong with an association of undertakings being consulted as to what might be an appropriate price, so long as the final decision is not made by agreement with that association. This line of thinking follows the 'Italian lawyers' decisions of the European Court of Justice (Case C-35/99 *Arduino* and Joined Cases C-4/04 *Cipolla* and C-202/04 *Meloni*), which held that, where a professional body representing undertakings prepares a draft tariff of fees that becomes compulsory only when approved by the state, competition law is not infringed because the tariff was not the result of a discretionary decision of the professional body; rather, the state has the decisive role in fixing the tariff. This means that the professional body cannot agree fees with the state, as an agreement of this nature means that no one party is the decision maker. Such thinking has also been given the imprimatur of EU competition commissioner Neelie Kroes in response to a question from the European Parliament on this issue. She indicated that the state cannot simply rubber stamp agreements or a decision of a collective body; it must have the power to alter or change the proposal.

The notice further states that section 9(10) does not exempt collective action by health professionals in response to changes in remuneration for services provided, beyond the communication and discussion of proposed changes. It indicates that, while section 9(8) of the 2009 act gives health professionals a right to terminate

their contract with the state where their remuneration has been reduced, any agreement between undertakings or decision by association of undertakings to collectively withdraw services following a refusal by the buyer to adopt proposals made to it in the course of a consultation would be likely to be contrary to section 4(1) and article 81. In relation to situations where there is no evidence of an agreement between undertakings or a decision of an association of undertakings, the notice provides that widespread withdrawal by undertakings following a decision by the buyer to fix a fee different from that recommended by the undertakings, in circumstances that are likely to give rise to a reasonable suspicion that the action is collective, might trigger an investigation by the Competition Authority. The question here would be whether such a series of withdrawals would amount to a concerted practice. Finally, the notice highlights the 'messenger model' as permitting a degree of collective input by service providers into fee setting by the state. The authority recommends this model as being within the boundaries of competition law, provided appropriate safeguards are in place. The messenger model allows for a third party or messenger to obtain individually from each service provider the level of fees that the service provider would require from the state. It uses this to devise a fee scale. All communications between the messenger and the service providers remains confidential *vis-à-vis* other service providers. The Competition Authority is of the view that the broad drafting of section 9 of the 2009 act is such as would provide scope for the development of a messenger model for fee setting for services provided by health professionals.

Conclusion

The notice serves the useful purpose of providing guidance in relation to the specific situation of the setting of fees and terms in relation to the community drugs schemes. Such guidance is useful for all parties involved. At a wider level, it serves as useful guidance for collective negotiations in the health sector. Even more generally, the notice gives an indication of the Competition Authority's and the European Commission's current thinking on the limits of collective bargaining. In fact, subsequent to the publication of the notice, the Competition Authority published additional guidance on this area on 9 November, entitled *Notice on Activities of Trade Associations and Compliance with Competition Law*. This was no doubt prompted by the scope of the Competition Authority's examination over the last few years in relation to the conduct of associations of undertakings. This more general guidance is a very useful supplement for anyone wishing to have an overview of applicable law in this area and contains some useful hypothetical and past competition enforcement examples. Both notices can be obtained on the Competition Authority's website, www.tca.ie. G

Rosemary O'Loughlin is a solicitor with the Commission for Communications Regulation.

Recent developments in European law

CONSUMER LAW

Joined Cases C-261/07 and C-299/07, *VTB-VAB NV v Total Belgium NV* and *Galatea BVBA v Sanoma Magazines Belgium NV*, 23 April 2009. The *Unfair Commercial Practices Directive* (2005/29) prohibits unfair commercial practices likely to distort consumers' economic behaviour. It also lays down rules on misleading or aggressive commercial practices. Annex 1 lists commercial practices that are unfair in all circumstances. Total Belgium is a company that sells fuel at filling stations. Since early 2007, it has offered free breakdown services for a period of three weeks to consumers who are Total Club cardholders with every purchase of at least 25 litres of fuel for a car or at least ten litres for a motorcycle. VTB, an undertaking that operates in the breakdown service sector, brought an action before the Belgian courts seeking an order requiring Total Belgium to discontinue that commercial practice on the ground that it was a combined offer prohibited by Belgian law. A separate dispute was before the Belgian courts between Galatea, a firm that runs a lingerie shop in Belgium, and Sanoma, a Finnish publisher that published the weekly magazine *Flair*. The 13 March 2007 issue of the magazine contained a voucher entitling the holder to a reduction on products sold in various lingerie shops. Galatea brought an action seeking an order prohibiting that commercial practice, arguing that Sanoma had infringed Belgian law. The Antwerp Commercial Court, which was seised of both cases, referred a question to the ECJ for a preliminary ruling. It asked whether the directive is to be interpreted as precluding national legislation, such as the Belgian law, which imposes a general prohibition of combined offers made by a vendor to a consumer. The ECJ pointed out that combined offers are commercial acts that form part of an operator's commercial strategy and relate directly to promotion and its sales development. Thus, they constitute commercial practices within the meaning of the directive and fall within its scope. The directive fully harmonises the rules on unfair commercial practices at EC level. Accordingly, member states may not adopt stricter rules than those provided for in the directive, even in order to achieve a higher level of consumer protection. By establishing a presumption of unlawfulness of combined offers, national legislation such as this does not meet the requirements of the directive.

EMPLOYMENT

Case C-559/07, *Commission v Greece*, 26 March 2009. The commission brought proceedings against Greece, arguing that the Greek *Civil and Military Pensions Code* infringed the principle of equal treatment (in article 141 of the treaty). The code provides for differences between male and female workers with regard to pensionable age and minimum length of service. Greece did not dispute that there were differences in treatment, but submitted that the Greek pension systems, as a statutory social security scheme, does not fall within the scope of the treaty, but under Directive 79/9. This directive provides for the equal treatment of men and women in matters of social security, but permits member states to exclude from its scope the determination of pensionable age. The ECJ noted that the treaty provides that each member state is to ensure that the principle of equal pay for male and female workers for equal work is applied. 'Pay' means the wage or salary and any other payment in cash or in kind that the worker receives, directly or indirectly, in respect of his employment from the employ-

er. The concept of pay does not include social security schemes directly governed by legislation, but does include benefits paid under a pension scheme that relate to the employment of the person concerned. The pension paid under the Greek code complies with the three criteria defined by the court's case law, enabling it to be classified as pay. It is applied to a wide and varied group of workers, it is calculated on the basis of length of service completed, and it is calculated on the basis of the final salary. The ECJ held that it is contrary to the principle of equal treatment to impose for the grant of a retirement pension paid in relation to employment age conditions and rules on minimum periods of service required that differ according to sex for workers in identical or comparable situations. This does not preclude a member state from applying measures providing for specific advantages intended to facilitate the exercise of a professional activity by the under-represented sex or from preventing or compensating for disadvantages in professional careers. National measures, covered by the principle of equal treatment, must contribute to helping women conduct their professional life on an equal footing with men. The ECJ held that the provisions of the Greek *Civil and Military Pensions Code* are not of a nature to offset the disadvantages to which the careers of female civil servants and military personnel are exposed by helping them in their professional life.

FAMILY LAW

Case C-523/07, *A*, 2 April 2009. Three children lived originally in Finland with their mother (A) and their stepfather, but moved to Sweden in December 2001. In summer 2005, they moved back to Finland, with the original purpose of spending their summer holiday there. In Finland, the family lived on campsites and with relatives, and the children did not go to school there. In November 2005, the children were taken into care and placed into a childcare unit. This was unsuccessfully challenged by the mother and stepfather. They appealed, and the appeal court referred a number of questions to the ECJ on the interpretation of the *Brussels II bis Regulation* (2201/2003). The first question asked was whether the regulation applied to the enforcement of a public law decision concerning the immediate taking into care of a child and his/her placement outside the home. The ECJ held that this exact question had already been dealt with and that the regulation did apply. The court had also asked for guidance on the concept of habitual residence in article 8 of the regulation. In this case, the children had a permanent residence in one member state but were staying in another member state without a fixed place of residence. The ECJ held that the concept of 'habitual residence' must be interpreted as meaning that it corresponds to the place that reflects some degree of integration by the child in a social and family environment. The duration, regularity, conditions and reasons for the stay on the territory of a member state, and the family's move to that state, the child's nationality, the place and conditions of attendance at school, linguistic knowledge, and the family and social relationships of the child in that state must be taken into consideration. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances specific to each individual case. The referring court asked, if a child's habitual residence is not in the member state, on what conditions an urgent measure (such as taking into care) may be taken in that state. The ECJ confirmed that a protective measure, such as taking into care of children, may be decided by a national court under article 20 of the regulation. If the measure is urgent, it must be taken in respect of persons in the member state concerned and it must be provisional. The taking of the measure and its binding nature are determined in accordance with national law. After the protective measure has been taken, the national court is not required to transfer the case to the court of another member state having jurisdiction. However, insofar as the protection of the best interests of the child so requires, the national court that has taken protective measures must inform the court of another member state having jurisdiction. The referring court finally asked whether a court of a member state that has no jurisdiction at all must declare that it has no jurisdiction or transfer the case to the court of another member state. The ECJ held that, in such circumstances, the court must declare of its own motion that it has no jurisdiction, but is not required to transfer the case to another court. However, insofar as the protection of the best interests of the child so requires, the national court that has declared of its own motion that it has no jurisdiction must inform, directly or though the central authority, the court of another member state having jurisdiction.

INTELLECTUAL PROPERTY

Case T-191/07, *Anheuser-Busch Inc v OHIM*, 25 March 2009. In 1996, the US brewery Anheuser-Busch applied to the Office for Harmonisation in the Internal Market (OHIM) for registration of the word sign 'Budweiser' as a community trademark for beer, ale, porter, malted alcoholic and non-alcoholic beverages. Budejovický Budvar, a Czech brewery, opposed the registration. It relied on earlier international trademarks and appellations of origin, including the word 'Budweiser' registered for beer. OHIM had rejected the US application on the basis that it was identical to the earlier word mark 'Budweiser', protected in particular in Germany and Austria. The goods in the application were identical to the goods ('beer of any kind') covered by the earlier trademark. OHIM also upheld the Czech brewery's opposition for malted non-alcoholic drinks, in view of the identity of the marks and the obvious similarities of the goods concerned. Anheuser-Busch appealed this decision to the Court of First Instance. The CFI noted that Budvar had proved the validity of its trademark during the proceedings before OHIM. Budvar had submitted advertisements and invoices bearing the earlier trademark addressed to potential customers in Germany and Austria dating back five years before the publication of the appellant's application for a community trademark. The CFI found that those advertisements and invoices constituted proof of genuine use by the Czech brewery of the earlier trademark. Accordingly, Budvar was entitled to rely on that trademark for the purpose of opposing registration for beer of the trademark applied for by Anheuser-Busch. In respect of malted non-alcoholic beverages, the CFI found that these were similar to the goods ('beer of any kind') covered by the earlier trademark. 'Beer of any kind' would include non-alcoholic beer, which is a malted non-alcoholic beverage. Such similarity gives rise to a likelihood of confusion on the part of German and Austrian consumers. They may believe that malted non-alcoholic beverages sold under the mark 'Budweiser' come from the same source as beer sold under the trademark 'Budweiser'. G

LOST LAND CERTIFICATES

Registration of Deeds and Title Acts 1964 and 2006

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

Property Registration Authority, Chancery Street, Dublin 7
(published 4 December 2009)

Regd owner: Peter Farrelly, Old Mill, Kill, Naas, Co Kildare; folio: 1354F; lands: townland of Ardkill and barony of Carbury; **Co Kildare**

Regd owner: Richard Murphy; folio: 23055F; lands: Robinstown and barony of Ida; Co Kilkenny; **Co Kilkenny**

WILLS

Fahy, Teresa (deceased), late of Kilderry (otherwise Keelderry), Loughrea, Co Galway, who died on 20 April 2009. Would any person having knowledge of a will made by the above-named deceased please contact the General Solicitor's Office for Wards of Court, Courts Service, 15/24 Phoenix Street, Smithfield, Dublin 7; tel: 01 888 6231

Farrell, Thomas (deceased), late of 122 Briarfield Road, Kilbarrack, Dublin 5. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, who died on 18 October 2009, please contact Edel Farrell; email: deldel56@gmail.com or 087 291 6299

Gleeson, Nora (otherwise Hanora) (deceased), late of Sacre Coeur Nursing Home, Station Road, Tipperary, Co Tipperary, and formerly of 98 Crumlin Road, Dublin 12, who died on 10 December 2007. Would any person having knowledge of a will made by the above-named deceased please contact Michael O'Shaughnessy, solicitor, Patrick F O'Reilly & Co, Solicitors, 9/10 South Great Georges Street, Dublin 2; tel: 01 679 3565, email: michael.oshaughnessy@pforeilly.ie

Gooney, Christopher (deceased), late of 35 Neilstown Park, Clondalkin, Dublin 22 and formerly of 343 Galtimore Road, Drimnagh, Dublin 12, who died on 18 June 2007. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Aoife Sheehan of John Sherlock & Co, Solicitors, 9-10 Main Street, Clondalkin, Dublin 22

King, Mary (deceased), late of 13 Clontigora Road, Newry, Co Down, BT35 8DR. Would any solicitor/person having knowledge of the whereabouts of any will in relation to the above-named deceased please contact Michael Gilfedder of Fisher and Fisher, Solicitors, 9 John Mitchel Place, Newry, Co Down, BT34 2BS; tel: 028 3026 1811, fax: 028 3026 6695

O'Brien, Thomas (deceased), late of Vale Road, Arklow, Co Wicklow, who died on 21 August 2008. Would any person having knowledge of a will made by the above-named deceased

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICE SECTION ARE AS FOLLOWS:

- **Lost land certificates** – €144.50 (incl VAT at 21.5%)
- **Wills** – €144.50 (incl VAT at 21.5%)
- **Title deeds** – €289 per deed (incl VAT at 21.5%)
- **Employment/miscellaneous** – €144.50 (incl VAT at 21.5%)

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €33 EXTRA

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for Jan/Feb *Gazette*: 20 January 2010. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

PROFESSIONAL NOTICES ANNOUNCEMENT

The *Law Society Gazette* has found it necessary to increase the price of advertising 'Title deed' notices in the professional notices section. The price will double to €289 per notice, reflecting the significantly greater amount of space that such notices consume (usually four to five times longer than other professional notices).

The price of advertising for all other professional notices will remain unchanged at €144.50 from January 2010 until further notice.

IMPORTANT NOTICE:

Abolition of land certificates and certificates of charge

Section 73(1) of the *Registration of Title Act 2006* provides that the Property Registration Authority (PRA) shall cease to issue land certificates and certificates of charge under the *Registration of Title Act 1964*. The section commenced on 1 January 2007.

The subsection also provides that section 105 of the *Registration of Title Act 1964* (requirement to produce land certificates or certificates of charge) will only apply to certificates issued before commencement, and then only for a three-year period after the commencement of the section.

Section 73(2) of the 2006 act provides that land certificates and certificates of charge issued before commencement of section 73 that are not already cancelled will cease to have force or effect three years after the commencement of the section, that is on 31 December 2009. Until that date, land certificates must be furnished with all applications by the registered owner. Certificates of charge, where issued, must be produced on all releases of charge except where such release is by discharge.

From 1 January 2010, both land and charge certificates will cease to have any force and effect and should not be lodged with applications. In the interim, if an application is lodged without the land certificate, where one issued, it will be rejected. If the land certificate is not forthcoming, the application should be held over and relodged after 31 December 2009.

Registration of lien created through deposit or possession of land certificate or certificate of charge

Section 73(3)(b) of the 2006 act provides that a holder of a lien may apply to the authority for registration of the lien in such manner as the authority may determine.

The section applies to a person holding a lien. This may include a solicitor's letter of undertaking to lodge a land certificate or certificate of charge.

The application shall be on notice by the applicant to the registered owner and must be accompanied by the original certificate (see section 73(3)(c)).

The last date for lodgement of applications is 31 December 2009. Applications lodged after that date will not be accepted. Applicants must therefore ensure that the prescribed notices are served in good time, as the application may only be lodged after the expiration of 26 days from such service.

Where the certificate is claimed to be lost or destroyed, the applicant for a lien must first apply for its production to be dispensed with, pursuant to rule 170(2) *Land Registration Rules 1972*.

This procedure can be lengthy, as the authority must satisfy itself that the certificate has been lost or destroyed and has not been pledged as security (other than in respect of the application before it). Proofs would include affidavits from the applicant and registered owner and notices would be directed in the *Law Society Gazette* and a local or national newspaper.

PROFESSIONAL NOTICES

please contact Cooke & Kinsella, Solicitors, Wexford Road, Arklow, Co Wicklow; tel: 0402 32928, fax: 0402 32272 or email: fergus@cookesolicitors.ie

Saich, Herbert (otherwise Bertie) John (deceased), late of 4 Fermoy Road, Mitchelstown, Co Cork, who died on 1 March 1969 at 4 Fermoy Road, Mitchelstown, Co Cork. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Sheena Lally, Office of the General Solicitor for Minors and Wards of Court, Court Services, 2nd Floor, Phoenix House, 15-24 Phoenix St, Smithfield, Dublin 7; tel: 01 888 6231, fax: 01 872 2681

Wilson, Kevin Joseph (deceased), late of Orwell Lodge Nursing Home, Orwell Lodge, Rathgar, Dublin 6, and also Tudor House, Woodlands Park, Mount Merrion, Co Dublin. Would any person having any knowledge of a will made by the above-named deceased, who died on 10 February 2009, please contact Michael O'Hanrahan, solicitor, William J Brennan & Co, Solicitors, 33 Upper Merrion Street, Dublin 2; tel: 01 440 4890/440 4802, fax: 01 440 4891, email: mohanrahan@williamjbrennan.com

MISCELLANEOUS

Reduce your overheads – outsource your bookkeeping/accounts. Westside Bookkeeping Services. Specialising in all aspects of solicitors' accounts/payroll. Experienced bookkeeper available on a contract basis – on site. Excellent references available. Contact: Michelle Ridge at 087 293 0347, email: mridge@indigo.ie

For sale: complete set, bound acts of the Oireachtas 1922-2006 and other law books. Contact: Hugh M Fitzpatrick, library and information consultant, 9 Upper Mount Street, Dublin 2; tel: 01 269 2202, fax: 01 661 9239, email: hmfitzpa@tcd.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Patrick Leader of 20 Belair, Douglas Road, Cork and Catherine Leader of 23 Chesterton Court, Knockrea Lawn, Cork

Take notice any person having interest in the freehold estate or any other estate of the following property: 76 North Main Street in the city of Cork.

Take notice that Patrick Leader and Catherine Leader intend to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all intermediate interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below named.

In particular, such persons who are entitled to the interest of Elizabeth Augusta Julian, Elizabeth Geraldine Sylvia Julian, Francis Marjorie Ruth Julian and Donal McCarthy, pursuant to a lease dated 11 June 1952 between Elizabeth Augusta Julian, Elizabeth Geraldine Sylvia Julian, Francis Marjorie Ruth Julian and Donal McCarthy on the one part and James J Murphy & Co Ltd of the other part, for a term of 99 years from 29 September 1951, in the property known as 76 North Main Street in the city of Cork, should provide evidence of their title to the below named.

In default of any such notice being received, the applicants, Patrick Leader and Catherine Leader, intend to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold in the premises are unknown and unascertained.

Date: 4 December 2009
Signed: Babington, Clarke & Mooney, Solicitors (solicitors for the applicant), 48 South Mall, Cork

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Patrick Leader of 20 Belair, Douglas Road, Cork and Catherine Leader of 23 Chesterton Court, Knockrea Lawn, Cork

Take notice any person having an interest in the freehold estate or any other estate of the following property: 77 North Main Street in the city of Cork.

Take notice that Patrick Leader and Catherine Leader intend to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all intermediate interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below named.

In particular, such persons who are entitled to the interest of Justin McCarthy, deceased, pursuant to a lease of 9 September 1891 between Justin McCarthy by his committee of John George McCarthy of the one part and William Joe Shinkwin of the other part, for a term of 200 years from 1 March 1892, in the property known as 77 North Main Street in the city of Cork, should provide evidence of their title to the below named.

In default of any such notice being received, the applicants, Patrick Leader and Catherine Leader, intend to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold in the premises, are unknown and ascertained.

Date: 4 December 2009
Signed: Babington, Clarke & Mooney, Solicitors (solicitors for the applicant), 48 South Mall, Cork

In the matter of the *Landlord and Tenant (Amendment) Acts 1980-1994* and in the matter of an application by Patrick Murphy and in the matter of a premises situate at 2 Cattlemarket Street in the city of Cork

Take notice that any person having interest in any estate in the following property: 2 Cattlemarket Street (otherwise Cattlemarket), formerly known as 2 Glen Ryan Road in the parish of St Mary and Shandon and city of Cork.

And take notice that Patrick Murphy is applying to the Circuit Court for the reversionary lease in the above-mentioned property, and any party asserting that they hold a superior interest, and in particular in fee simple or any superior leasehold interest in the property, are called upon to furnish evidence of the title to the below named.

In particular, any persons having an interest in a lease of 27 September 1869 between Rosa Anne Chambers of the one part and James Russell of the other part, in respect of premises at Cattlemarket Street in the parish of St Mary and Shandon and the city of Cork for a term of 100 years from 29 of March 1869 at a rent of £21, should furnish evidence of title to the below named.

In default of any such notice being received, the applicant intends to proceed with the application before the Circuit Court and will apply to the Circuit Court for directions as maybe ap-

propriate on the basis that a person or persons entitled to the superior interest in the property are unknown and unascertained.
Date: 4 December 2009
Signed: Diarmaid Falvey, Solicitors (solicitors for the applicant), Church Street, Cloyne, Co Cork

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) Act 1967* and in the matter of an application by Patricia Regina O'Brien
Any person having a freehold estate or any intermediate interest in all that and those the piece or parcel of ground situate in the town of Ferbane in the parish of Wheery and Tissann and barony of Garrycastle in the King's County, the subject of an indenture of lease (hereinafter called 'the lease') dated 12 November 1923 between Ernest Hamilton Browne and Edward White of the one part and Bridget Fanning of the other part for the term of 99 years from 1 September 1923 at a yearly rent of IR£5.

Take notice that Patricia Regina O'Brien, being the person currently entitled to the lessee's interest under the lease, intends to apply to the county registrar of the county of Offaly for the acquisition of the fee simple and all intermediate interests in the aforesaid property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, Patricia Regina O'Brien intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of Offaly for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the fee simple and any intermediate interest in the aforesaid premises are unknown and unascertained.
Date: 4 December 2009
Signed: Brian P Adams & Company (solicitors for applicant), Cormac Street, Tullamore, Co Offaly

In the matter of the *Landlord and Tenants Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of purchase of the freehold estate or superior intermediate interests of property situate at 94 and 96 Terenure Road North, Terenure, Dublin 6: an application by Camrose Inns Limited
Take notice that any person for the time being entitled to or having an interest in the freehold estate or superior intermediate interests of the following property situate at 94/96 Terenure Road North, Terenure, Dublin 6: property no 94 Terenure Road North, held under an indenture of lease dated 3 April 1924, made between Patrick Joseph Barry of the first part, the Irish Civil Service (Permanent) Building Society of the second part, the Munster and Leinster Bank of the third part, and Patrick J Fox of the fourth part, for a term of 130 years from 18 January 1924, subject to yearly rent of £20; and property no 96 Terenure Road North, held under an indenture of lease dated 11 June 1920 and made between Patrick Joseph Barry of the first part, the Irish Civil Service Building Society of the second part and Alfred Samuel Russell of the third part for a term of 135 years and five months from 25 March 1920, subject to the yearly rent of 12 pounds (£12).

Take notice that the applicants intend to submit an application to the county registry for the county/city of Dublin for the acquisition of the freehold interest and all superior intermediate interests in the aforesaid properties under section 10 of the 1978 (no 2) act, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) is called upon to furnish evidence of the title to the aforementioned premises to the below name within 21 days from the date of this notice.

In default of such notice being received, the applicants intend to proceed with the application before the county registrar and the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the person beneficially entitled to the superior interest including the freehold reversion in the aforesaid properties are unknown or unascertained.
Date: 4 December 2009
Signed: Kelly Kennedy & Co (solicitors for the applicant), 22 Upper Mount Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of premises situate at numbers 12 and 14 McCurtain Street (formerly King Street), Fermoy in the county of Cork, and in the matter of an application by Thomas O'Driscoll and Olive O'Driscoll

PROFESSIONAL NOTICES

We desire to apply to the county registrar of the county of Cork pursuant to the provisions of the above-mentioned legislation in respect of the above-described premises for an order that the applicant is entitled to acquire by purchase the fee simple and all intermediate interests in the subject premises, being part of the premises comprised in and demised by an indenture of lease made on 19 December 1800 between John Anderson of the one part and Mathias Hendley of the other part for the term of 999 years from 29 September 1800 at the yearly rent of £21 and all the premises comprised in and demised by a lease made on 8 January 1803 between John Anderson of the one part and John Minton Redman of the other part for the term of 999 years from 29 September 1802 at the yearly rent of £20.

Take notice that any person having any superior interest in the said premises is invited to make representations to the solicitors on behalf of the applicants, namely Messrs PJ O'Driscoll & Sons, 73 South Mall, Cork.

And further take notice that, in default, the said application will be listed for hearing before the county registrar of the county of Cork at such date as may be available for such hearing.

Date: 4 December 2009

Signed: PJ O'Driscoll & Sons (solicitors for the applicants), 73 South Mall, Cork

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

Take notice any person having an interest in the freehold estate or any intermediate interest in the property now known as no 2 Dawson Street, Monaghan, in the county of Monaghan, partially held, together with other lands, under fee farm grant dated 17 December 1852, made between the Reverend Thomas Dawson, Henry Dawson, Richard Dawson and the Reverend William Augustus Dawson of the one part and James Warren of the other part, subject to the yearly fee farm rent of 20 pounds, five shillings and five pence thereby reserved but primarily liable to £1.50 (late Irish currency) thereof forever and forming a portion of the premises therein described as all that and those that dwellinghouse tenement and premises situate in Back Street in the town of Monaghan, together with the back yard tenement and premises in the rear thereof, containing in front including one-half of the gate-way 39 feet and from front to rear 157 feet, all which tenements and premises are situate, lying and being in the parish, barony and county of Monaghan, and partially held under indenture of lease dated 21 October 1948 between Mary Josephine McEntee of the one part and John Francis Owens of the other part, for the term of 99 years from 5 December 1941, subject to a yearly rent of £11 and therein described as all that and those that dwellinghouse and premises situate in Dawson Street in the town, parish, barony and county of Monaghan containing in front to Dawson Street 11 feet and from front to rear 26 feet be the same more or less together with a back house at the rear of the said premises containing in front including the steps 20 feet eight inches and from front to rear 16 feet ten inches be the same more or less.

Take notice that James Cassidy, being the person entitled to the grantee's interest in the said fee farm grant as respects the said premises and to the lessor's interest in the said lease, intends to submit an application to the county registrar for the county of Monaghan for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforesaid property to the below named within 21 days of this notice.

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

Date: 4 December 2009

Signed: Wright Solicitors (solicitors for the applicant), Mill Street, Monaghan

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Richard R O'Hanrahan

Any person having a freehold estate or any intermediate interest in all that and those the premises at 28 William Street, Limerick (formerly known as 22 William Street and 46 William Street), the subject of an indenture of lease dated 11 May 1836 between Timothy Bunton and George Cooke Bunton of the one part and William English and Thomas English of the other part, take notice that Richard R O'Hanrahan, being the person currently entitled to the lessee's interest under the said lease, intends to apply to the county registrar of the county of Limerick to obtain the fee simple in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, Richard R O'Hanrahan intends to proceed with the application before the Registrar of Titles at the end of 21 days from the date of this notice and will apply to the Limerick county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 4 December 2009

Signed: Richard R O'Hanrahan, Limerick Law Chambers (solicitors for the applicant), 22 High Street, Limerick

RECRUITMENT

Solicitor's apprenticeship sought by hard-working, highly qualified law graduate, soon to become AITI-registered tax consultant. Passed all FE1s, trained typist, very confident and excellent work experience. Tel: 086 331 3039

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*.

Mako Search,
Alexandra House,
The Sweepstakes,
Ballsbridge, Dublin 4.

T: 01 631 9126
F: 01 631 9001
E: admin@makosearch.ie
W: www.makosearch.ie

CORPORATE PARTNER — DUBLIN

This firm's corporate practice has the hallmarks of a team to watch, as they continue to attract high quality work and are now seeking to recruit a further partner for the team. They have significant experience across the corporate market, from handling m&a and jv work, flotations (AIM), private equity and funds. This firm is known for punching above its weight and is consistently a magnet for outstanding lawyers from larger firms who join without compromising on quality of work. **Ref: S2026**

AVIATION PARTNER — DUBLIN

This client is a leading player in the aircraft leasing and finance market. They are now seeking a partner for their expanding aviation finance division. The role will take on an existing client base with the intention of growing it further. It is an ideal time to join this law firm as they proceed to take market share in one of the world's fastest growing aircraft leasing and finance regions. You will have gained experience in all aspects of asset finance and leasing of heavy transportation assets (such as aircraft, vessels and rolling stock). **Ref: S2031**

INSOLVENCY PARTNER — DUBLIN

Our client is a leading firm and is currently looking to recruit a restructuring and insolvency lawyer at senior associate or partner level. With an outstanding reputation in dispute resolution and corporate work, they are leaders in a number of industry sectors. Working in the restructuring and insolvency team you should have excellent academics and an established track record in this area. You will have strong communication skills, have the ability to use initiative and be able to establish professional credibility. **Ref: S2032**

FUNDS ASSOCIATE/PARTNER — DUBLIN

You will have funds background gained from a leading law firm locally or internationally. The team is focused on regulated/unregulated funds. The role will involve working alongside associates and partners for the division and the firm's clients. Candidates should also have excellent academics. Strong technical expertise combined with an ability to deliver clear, precise and practical advice is a must. In addition an interest in business and business development is important. **Ref: S2029**

IN-HOUSE COUNSEL — DUBLIN

Our client is a market leader in the technology and software space and has set up an Irish operation in Dublin. They are now seeking to recruit a senior and junior lawyer reporting to the General Counsel based in the US. You will have excellent commercial contracts experience in the IT/telecoms/software sector and also have experience in advising in the following areas: contracts, corporate, competition, employment, regulatory, environmental and property. In-house experience is preferable. **Ref: C2033**

PROFESSIONAL NEGLIGENCE — DUBLIN

This firm is looking to recruit an ambitious partner and associate with experience in the professional negligence/indemnity market. You will be familiar with dealing with insurers and the insured, be able to advise on policy cover issues and adopt a commercial approach at all times. You will have gained experience within a well established law firm in Dublin and are ready to take your career to the next level. You will have very strong academics and will be technically excellent. **Ref: C2024**

ENERGY PARTNER — DUBLIN

Strong practice group is looking to recruit an energy generalist. This exciting role will involve a mixture of work within the oil & gas sector. You will also be working on projects and acquisitions both domestic and cross border. This role offers a great opportunity to build on your existing skills within a law firm that believes in supporting its lawyers in order to achieve their maximum potential. You will have gained experience working with a well regarded law firm or in-house within the energy sector. **Ref: C2034**

SENIOR DERIVATIVES LAWYER — DUBLIN

Specialist derivatives lawyer required for in-house role. You will identify and analyse legal structures and documentation relating to treasury products. In addition, you will draft agreements pertaining to interest rate and inflation derivatives, structured FX options, equity derivatives and structured notes, collateral and liquidity management. Committed and highly motivated senior personnel need only apply. Excellent package on offer to attract the most suitable candidate. **Ref: C2035**

www.benasso.com

Remaining the number one Irish legal recruitment consultancy takes a dogged determination, thinking creatively, spotting new opportunities and keeping an open mind

True Pedigree

Partnership Positions

Our clients are searching for high calibre candidates at both Salaried and Equity level in the following practice areas:

Commercial Property

Insolvency

Banking & Financial Services

Senior Associate Positions

Good opportunities exist for first class practitioners with strong exposure to the following practice areas:

Litigation: Senior Associate

Funds: Senior Associate

Commercial Litigation: Senior Associate

For more information on these or other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7. T +353 (0) 1 670 3997 E mbenson@benasso.com

Benson & Associates
Legal Recruitment Specialists