

LAW SOCIETY

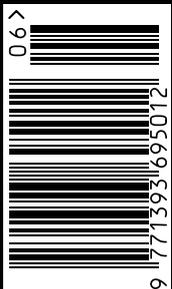
Gazette

€3.75 June 2009



MUSIC PIRACY:

Will illegal file-sharers be
walking the plank?



INSIDE: ANNUAL CONFERENCE REPORT • JUSTICE MINISTER INTERVIEWED • SOCIETY'S NEW CAREERS ADVISOR



ESSENTIALS OF LEGAL PRACTICE COURSE 2009

Dates: 21 July 2009 to 13 August 2009 (weekdays only)

Venue: Law Society of Ireland, Blackhall Place, Dublin 7

Times: 9.30am to 5.15pm approximately each day

Cost: €2,800 per person

Who Should Apply:

- Barristers with 3 years' experience in practice who wish to transfer to the solicitors' profession and who have been pre-approved by the Society's Education Committee.
- Solicitors who have been out of practice for a number of years and are seeking to refresh their knowledge before re-entering practice.
- Registered European Lawyers and Qualified Lawyers Transfer Test candidates.

Aim and Objectives:

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

LAW SOCIETY OF IRELAND CPDFOCUS

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

Course Outline:

Topics to be covered include:

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

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

Contact Details:

*For further details please contact Vanessa Bainbridge,
Education Department, Law Society of Ireland
phone: 01 672 4802 | email: bltransfer@lawsociety.ie
website www.lawsociety.ie.*

Coping with change



As I write this, I am in South Africa as part of the teaching team for the commercial law course that the Law Society has run, in conjunction with the Law Society of South Africa, for the last seven years.

It is a great privilege for me to be part of this rule of law project, and the challenges that face the young, mostly black, lawyers on the course certainly put our own economic difficulties in perspective. In our short visit, one can still get a sense of a country struggling to find its feet, both politically and economically. The legal profession is also trying to cope with this huge change and although they have issues that are unique to them, they also have issues that are very familiar to us.

While here, I was invited to address the Council of the Law Society of South Africa on our experience of regulation and representation. Contact with other law societies is an important part of the exchange of information, which informs and tests our own policies.

Quick response

One area where we do appear to be ahead of the posse is in our quick response to the downturn. In particular, the recruitment of our new career development advisor has excited the interest of many other bar associations and law societies. Keith O'Malley is profiled in this *Gazette* and he has wasted no time in 'hitting the ground running'.

It is uncharted waters for him and for all of us, but I am sure that we can all contribute to make his efforts more successful.

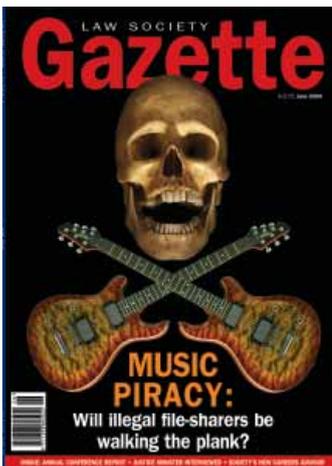
It is increasingly clear that many of us are going to have to look beyond the traditional areas of practice for work. We must constantly deliver the message that solicitors have the skills to be of considerable benefit to a wide range of businesses. Every day, solicitors are dealing with such businesses and may come across opportunities for employment, even on a short-term basis. One of our greatest assets as a profession is our network, and one practical thing you can do is to identify or highlight such possibilities and bring them to the attention of Keith.

Every year for every president, there are a number of events that are put in the calendar from the very start of the presidential term. One of these is the annual conference, which took place at the end of April in Carton House, Co Kildare. We had a full house and the feedback has been very positive. Another important event is the Calcutta Run, which took place in Blackhall Place on 16 May.

Over 1,100 people participated, most of them with some legal connection and, as we go to press, we are closing in on our target to raise €200,000 – and it's still not too late to make a donation. Well done to all involved.

John D Shaw
President

"We must constantly deliver the message that solicitors have the skills to be of considerable benefit to a wide range of businesses"



On the cover

The recent action against a Swedish-based website that facilitated music file sharing has implications for music consumers, record companies and owners of copyrighted material

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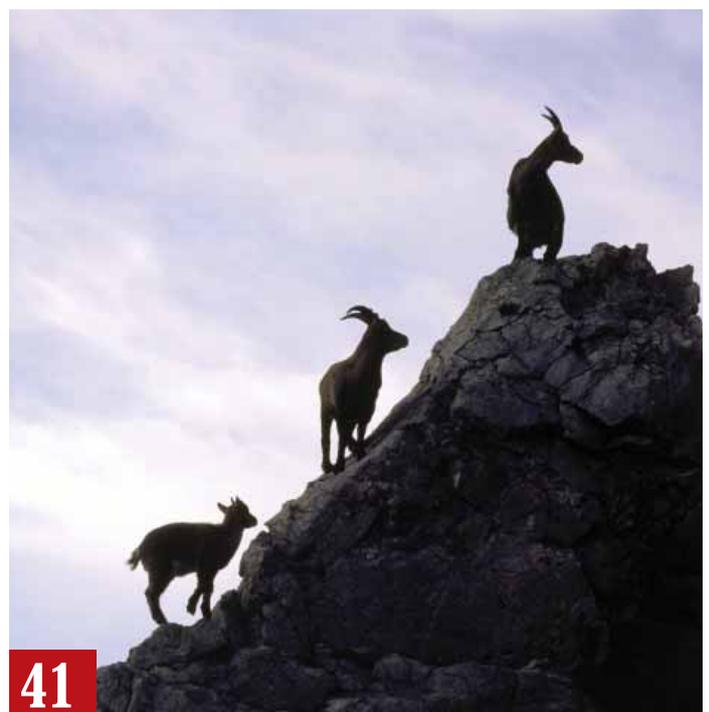
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Communicating with your team is vital in helping them to be the team that sees the firm through to better times, writes Aoife Coonagh



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■ ROSCOMMON

Mary Rose McNally, the bar association's CPD officer, tells me that, with the support of the neighbouring bar associations, they have continued to hold sufficient CPD courses to enable colleagues to complete the full CPD cycle locally. They recently ran a series of successful CPD courses, which included topics such as recession-proofing your firm, the *Child Care Act*, debt collecting and judicial review. Upcoming topics include determining next of kin and probate litigation.

As a result of the large subscriptions received from running the seminars, the association recently made a donation of €2,500 to the Solicitors' Benevolent Association (SBA), representing the proceeds of one seminar. The association encourages other bar associations that organise CPD courses to consider donating the proceeds of at least one seminar to the SBA. A social outing to the Roscommon races is also in the pipeline.

■ CORK

Hot on the footsteps of Michael Byrne's *Legal Offaly*, which has been proving very popular with members of the Midland Bar, I hear of a similar project taking shape in the Rebel County. The putative authors are current president Mortimer Kelleher and Eamonn Harrington, who have answered the call to write a history of the legal profession in Cork from the earliest times. Says Mortimer: "This will involve a considerable amount of research. However, very good material exists in such repositories as the Cork city archive. We would also hope to garner the assistance



At the meeting and annual dinner of the Waterford Law Society on Friday 24 April 2009 were (l to r): Ellen Hegarty, Ronan Curran and Sarah Power (see page 49)

and involvement of offices throughout the county and city that may have archived material that would be of interest and relevance to the work."

Mortimer tells me that the history will necessarily be documentary in nature, but that Eamonn and himself would hope to carry anecdotes and include a large photographic section in order to appeal to a wide readership. (The anecdotal sections could end up being a printed version of the famous topical song!)

On the activities front, Terry O'Sullivan has put in place a very comprehensive programme of sporting events for the Cricket Club at the Mardyke, Cork, on Friday 17 July. This will be preceded by a charity walk organised by vice-president Gail Enright. Other sports include tag rugby, athletics, tennis and golf. The SLAGS (which I'm told is not rude, but rather the acronym for the SLA Golf Society) will hold the captain's prize sometime in September – but will not clash with the SLA conference in Lisbon.

A very busy CPD schedule has been undertaken, with lectures on the *Solicitors' Accounts Regulations*, complaints and client relations,

and, of course, the conundrum of work/life balance issues. Later in the month, the SLA hopes to put on a CPD course on professional indemnity insurance. All of these courses are heavily subscribed to, with great credit due to the SLA's CPD officer Jonathan Lynch.

■ DUBLIN

Since we last reported, the survey on the younger members of the profession in Dublin has been completed by the DSBA. The information has been shared with the Law Society in order to feed into other worthwhile and essential work being carried out by the Society that is aiming to ensure that our younger colleagues are well informed on the current challenging employment situation. The results from the DSBA's survey are a bit of a curate's egg. *The Parchment* will deal with the issue in the next few weeks. Thanks to the YDS and all those who participated.

Seminars have been extremely popular during the last month, covering issue like 'Probate – the clash of laws', where international tax planning is an issue, 'How to close the probate file', and 'Making a living out of law – the survival

tactics'. The six-day family law course on mediation, leading to the awarding of recognised international accreditation, has proved a huge success. The pilot course has just concluded and attracted colleagues from inside and outside the county. A rerun will occur in September – anyone interested should contact the DSBA offices immediately.

In addition, Paddy Kelly's Practice Management Committee is putting on a superb seminar on issues affecting the retiring solicitor. This will be the third of a trilogy of PM seminars and, it is hoped, will prove useful for solicitors contemplating retirement, many of whom are facing unexpected difficulties due to matters like run-off cover, uncertainty of retirement income, pensions and other matters. This all-day seminar will feature nine contributors.

The Chicago brochure for the DSBA conference in September has been launched. Those interested in going should sign up as soon as possible. The dates are 16-20 September.

A lunch to celebrate those Dublin colleagues still happily with us who qualified in 1959 is the next big DSBA event, which takes place in mid June.

As I write, it's the eve of the Heineken Cup Final – the European challenge cup. For those unable to get to the game in Edinburgh, the YDS Committee decided to organise a cup final party in the Mansion House, complete with big screen, music, dancing and food. Up to 200 young lawyers and their friends were expected to attend. **G**

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

Launch of practice advisory service

The Law Society is pleased to announce the launch of a practice advisory service for solicitors' firms. The objective of the service is to:

- Improve awareness in the profession of the regulatory and financial management issues in running a firm,
- Advise practitioners in how they should run their firms,
- Benchmark against different sizes of firms within the profession,
- Focus on profitability, and
- Suggest the strategic options open to firms.

This service is available to members throughout the country.

The service takes the form of a half-day forum conducted on a one-to-one basis in the solicitor's office. It is totally confidential. Any information given to the service will not be disclosed, for example, either to the Society or to the solicitor's reporting accountant.

The Law Society, while subsidising the service, has decided (following a tender process) to contract the service to Outsource, which provides strategic and financial direction to Irish law firms.

This service has been



initiated and will be sponsored by the Regulation of Practice Committee of the Law Society. The committee has recognised that, particularly in the current climate, there are a number of firms that are facing especially severe difficulties. These could benefit significantly from a service focused on the needs of firms in such a situation, and available at low cost to the firm.

It is expected that this service will be of benefit, not only to those firms who avail of it, but also to the entire profession, by helping firms in particular difficulty to move towards improving their situation.

The cost to a member is €250 plus VAT. The service is a limited offer, available on a 'first-come, first-served' basis.

If you would like to learn

more about this service and how to avail of it, contact, in total confidence: David Rowe, Managing Director, Outsource, Hambleton House, 19-26 Lower Pembroke Street, Dublin 2; tel: 01 678 8490.

A separate service is being developed, aimed at new solicitors' firms. The Law Society will write directly to such firms about that service.

New career development advisor announced

Keith O'Malley is the Law Society's new career development advisor. Reporting to deputy director general Mary Keane, who heads up the Policy, Communication and Member Services (PCMS) department, Keith took up his new posting on 5 May (see story, page 16 of this *Gazette*).

He has a degree in business studies and a master's in rehabilitation studies, and has worked in professional placement, human resources



management and enterprise development.

As career development

advisor, Keith is a key resource for the Society's members who are facing unemployment, adjustment to working arrangements, or transition to another jurisdiction or career choice. He is assisted by Sharon Hanson.

Career Support provides solicitors with support and advice on:

- Career assessment,
- Life coaching,
- CV preparation,
- Interview techniques,
- Financial planning,

- Psychological support,
- Requirements for legal qualification in other jurisdictions, and
- How to capitalise on the transferable skills of a solicitor in order to find employment in other walks of life.

Keith can be contacted in the Career Support Section at tel: 01 672 4800; email: k.o'malley@lawsociety.ie; or post: Keith O'Malley, Career Support, Blackhall Place, Dublin 7 (DX 79).

Collaboration helps with separation

A new collaborative family law practice group has been launched in the Kildare/West Wicklow region, writes Mark McDermott. The new group was launched by retired Supreme Court judge and President of the Law Reform Commission Mrs Justice Catherine McGuinness at a special ceremony in Newbridge Silverware.

The 20 April launch attracted significant attention, including RTÉ news cameras (the launch was covered on the station's evening news bulletins), local newspapers and radio stations. A large number of legal luminaries from the Kildare and West Wicklow region turned out to wish the venture well.

The Kildare/West Wicklow Collaborative Law Group aims to provide an alternative approach to resolving family disputes. The founders – all legal practitioners from the area – believe that a collaborative approach to settling marital break-up and family disputes is a more positive way of dealing with such matters, compared with the more common adversarial approach.

The group's ambition is to spread the collaborative law concept to the general public, as a more positive approach to resolving family disputes. In particular, it wants to



Founders of the new Kildare/West Wicklow Collaborative Law Group at the official launch in Newbridge Silverware on 20 April



Mrs Justice Catherine McGuinness is presented with a Newbridge Silverware vase at the launch

establish a positive framework for parents to move forward after separation, and to ensure that children will be the chief beneficiaries of the process.

Helen Coughlan (Patrick J Farrell and Co) told the *Gazette*: "The aim is to create a positive

environment where separating couples work together with their solicitors to achieve a resolution that is in the best interest of the whole family."

Edel Poole, head solicitor with the Legal Aid Board's Newbridge office, added: "In collaborative family law, negotiations take place in four-way meetings. Solicitors and the parties concerned work together in a structured process to find a solution that is based on respect and integrity."

Nostalgic trip

Addressing the gathering, Justice McGuinness described her visit to Newbridge as "a nostalgic trip", recalling fond memories of "booting it down" the dual carriageway to attend family law hearings in the Naas Circuit Court. To much

laughter, she told of being passed on one such occasion by Inge Clissmann SC on her BMW motorbike while on her way to the same venue as the judge.

On a more serious note, she said that most of those involved in "the sad difficulties of marriage breakdown" wanted the facility of being able to rely on expert legal advice. The growth of collaborative law in Ireland reflected this. "Parties are aware of their legal rights, but can also see the crucial importance of reaching the best solution for themselves and, above all, for their children," she added.

A special guest at the launch was Cork-based Patricia Mallon, who is a member of the Collaborative Practitioners of Ireland. The collaborative law approach was based on openness, honesty and putting family and children at the centre of the discussion, she said.

Naas-based solicitor and member of the Kildare/West Wicklow Collaborative Law Group, Eoin O'Connor, outlined the aims and process involved.

To find out more about the Kildare/West Wicklow Collaborative Family Law Group, visit its website: www.collaborativesolicitors.ie.



Legal practitioners from the Kildare/West Wicklow region attended the launch of the new collaborative family law practice group

Surviving the economic downturn – what next for in-house solicitors?

'Surviving the downturn – what next for in-house solicitors?' was the theme of a discussion forum organised by the Law Society's Corporate and Public Sector Committee on 14 May at Blackhall Place.

The forum discussed strategic issues faced by in-house solicitors and shared advice on how solicitors could help to protect their organisations. In all, 65 in-house solicitors, employed across the state, semi-state and private sectors, attended.

Chairman of the Corporate and Public Sector Committee Mary O'Connor launched the forum, explaining the composition, function and work of the committee. Comprising 11 solicitors who are employed in the state, semi-state and private sectors, the committee's aims are to represent the views and promote the interests of in-house solicitors. The committee works to build and strengthen the relationship between and the Society and its 988 in-house members.

Paul McCann, leading partner in the corporate services department of Grant Thornton, spoke about current trends in examinership and emphasised the importance of retention of title. He outlined the timelines in examinership, the impact of examinership on security, recent examples of agreements that had been reached with financial institutions, and options available to creditors.

Paul White, head of the corporate department of A&L Goodbody, addressed significant issues about directors' duties and the implications of insolvency for boards of directors. He referred to recent cases of reckless



PIC: LENS MEN

Corporate and Public Sector Committee members, with speakers at the Forum for In-house Solicitors at Blackhall Place on 14 May (front, l to r): Louise Campbell, Mary O'Connor and Colin Babe. (Back, l to r): Sylvia Keane, Paul McCann, Caroline Dee-Browne, Andrew Smith, Edward Hughes, Deirdre Nagle, Anne-Marie Curran, Paul White and Donall King

CORPORATE AND PUBLIC SECTOR COMMITTEE – WHAT IT DOES

In November 2008, the committee produced its *Guide for Solicitors Employed in the Corporate and Public Sectors*, available for download from the 'committees' section at www.lawsociety.ie. The committee responds to queries from in-house solicitors. Information and guidance is based on committee members' own experiences.

In recent years, the committee has run management seminars tailored for in-house solicitors with the Society's CPD Focus team. The committee liaises with the European Company Lawyers' Association and the Corporate and Public Lawyers' Association. It communicates with in-house solicitors through the Society's website, mail-shots, e-bulletins, and periodic articles in the *Gazette* and e-zine.

trading and misfeasance and the potential personal liability for directors and shadow directors. Fraudulent preferences and restriction orders were highlighted. White pointed out the practical issues

that in-house solicitors should consider when negotiating or renegotiating contracts.

Ann-Marie Curran, a partner with A&L, tackled the subject of procurement law, concentrating on the

competition law issues of bid-rigging, as well as the dos and don'ts for organisations that are the subject of dawn raids.

Andrew Smith, associate solicitor in A&L's employment, pensions and benefits team, summarised ten topical employment law issues and outlined some recent cases and pitfalls.

Lively discussion followed each speaker's submission, with attendees making comments, raising concerns and submitting queries.

The chairman concluded the forum with an invitation to in-house solicitors to get involved in the work of the committee. Anyone wishing to apply to become a committee member should contact Louise Campbell, committee secretary, Blackhall Place, Dublin 7; tel: 01 881 5712 or email: l.campbell@lawsociety.ie.

Leading Europe in helping colleagues

Apparently even in Iceland, despite that country's much publicised and very deep economic troubles, the legal profession is doing better at present than it is in Ireland, writes Ken Murphy.

Certainly that was the considered view of the chief executive of the Law Society of Iceland at a meeting that I organised recently of representatives of the legal profession from all over Europe.

The purpose of the meeting, the first to my knowledge of its kind, was to compare notes on the impact that the economic and financial crisis has had on the legal profession in the different jurisdictions in Europe – and to review what the different national law societies and bar associations were doing to help their members to survive it.

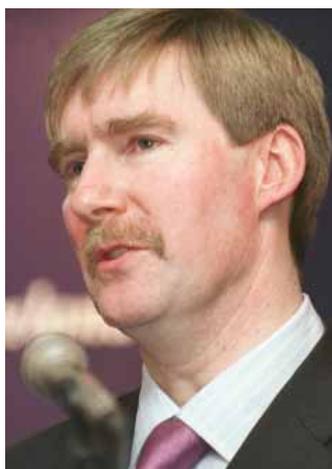
This meeting of bar executives and bar leaders generally from many different parts of Europe – although mainly from within the EU – was held alongside a scheduled plenary meeting of the CCBE in Copenhagen in mid May. The CCBE is the EU institutionally-recognised voice of the legal profession and umbrella group for all the bars and law societies of Europe.

Elephant in the room

Although the CCBE meeting in Copenhagen was continuing its important work on other matters, it had not planned to formally address what (it seemed to me without resorting to a cliché involving an elephant and a room) was the issue of the most pressing importance of all, namely the effects on the legal profession of the economic recession.

The initiative of holding this meeting was universally welcomed and seen as valuable.

Once we had gone around the table and heard detailed reports from every jurisdiction present,



Ken Murphy organised and chaired the first European Bars' meeting on the recession

the main conclusions were that:

- Ireland, Britain and Spain were the jurisdictions with the worst performing economies and, as a consequence, the hardest-hit legal professions.
- In Ireland, we tend to see the whole world as being in the throes of economic recession – that is not so. As the Danish representative pointed out, there has been a slowdown in the growth of the Danish economy from 3.5% per annum to 2.5% per annum. But it is still growing, banks are lending, employment levels are stable and neither the population at large nor the legal profession are particularly worried at present. The same was reported to be generally true also of all the other Scandinavian countries, the Netherlands, Switzerland and Poland.
- In Germany, where the economy is contracting severely by -3.5% on recent figures, the legal profession certainly is suffering. However, there have been reports of the profession suffering from an oversupply of lawyers for many years. My German counterpart in the past has often recounted stories of practising lawyers who work part-time as taxi drivers.

- Interestingly, many continental law societies do not seem to see a role for themselves in actively supporting their profession to anything like the extent to which we in the Law Society of Ireland have tried to support our suffering colleagues. Practitioners in Ireland may be interested to hear that, in Denmark, most employed lawyers are members of a trade union, the Union of Jurists, and it is the responsibility of the union to help unemployed lawyers, not the bar association.
 - Most other jurisdictions have not experienced the enormous increase in the number of lawyers that public policy in Ireland has insisted on for decades.
 - Some countries, as in Lithuania where the government some years ago imposed swingeing 'overnight tax reforms' on the legal profession, have professions suffering for reasons not directly connected to the current world economic downturn.
- Dismal performance**
- There was a sharp intake of breath when I informed the meeting that Ireland's economy, having grown so spectacularly for a decade and a half, was projected to contract in 2009 by a devastating 9%. Only the Spanish economy seemed likely to match this dismal performance.
- The representative of the Spanish bar disclosed that Spain had recently been told it would be the last eurozone country to emerge from this recession. I announced that this was good news to my ears, as I had feared Ireland would have been the last eurozone country to emerge from the recession.
- The Spaniard's rapier-like reply was "What makes you think you'll still be in the eurozone?"
- Ouch!
- So, finally, it seemed from this unique meeting that other national law societies and bar associations had more to learn from Ireland than we had from them on measures to help the legal profession through the recession.
- Nevertheless, there were a few new and good ideas, which emerged from discussions with our European colleagues, which could be adopted to benefit solicitors in Ireland and which we hope to announce shortly.

Is it time to re-evaluate your career?

The current challenging economic market is forcing many to re-evaluate their career paths. This was evidenced at a Law Society-sponsored CPD seminar titled 'Managing your career in challenging times' recently. The course was vastly over-subscribed. The realities of the current market place and potential employment prospects were examined. The importance of positioning yourself for future opportunities was highlighted – sharpening your skills was described as 'critical'. The recession was the time to up-skill and re-tool. Participants were encouraged to imagine what their future CV might look like. Would practitioners be ready for the up-turn?

Solicitors were asked to identify how they could become even more valuable member of their firms. Partners, business owners and employees were invited to assess their



Speakers at the 'Managing your career in challenging times' seminar on 31 March were (l to r): Gerry Hussey (Institute of Sport), John Deely (Pinpoint), Ken Murphy (director general), Barbara Joyce (Law Society), Hannah Carney (Hannah Carney and Associates), Sophie Rowan (Pinpoint), Michael Benson (Benson and Associates)

knowledge, talents, skills and attitude. Participants were encouraged to focus on four core areas:

- Legal service delivery,
- Client relationship

- management,
- Team and business management,
- New business development.

The seminar recognised that managing one's career has an important psychological dimension. It provides direction and tips to support effective self-management in times of uncertainty and change. Self-belief is also important. While every situation contains elements

that are out of one's control, it has been discovered that successful individuals apply their energy in areas where control is possible. One speaker also produced evidence to show that optimistic individuals outperform others. The good news is that optimism can be measured and developed.

The seminar concluded with a lengthy and lively question and answer session, which was a measure of its success.

PRACTICE MANAGEMENT TASK FORCE

We are halfway through the year and, already, the Society's Practice Management Task Force (PMTF) has:

- Presented the 'Survival skills' seminar in Dublin (at half-price),
- Created a web resource area for practice managers (login to the members' area to check it out),
- Produced a free vodcast of the 'Survival skills' seminar for all members (with two free e-learning hours),
- Published an interactive version of the 'Ready reckoner' (a tool to calculate how much it costs to run your office per hour),
- Encouraged the publication of many *Gazette* articles on aspects of practice management in a recession.

Please contact the task force, indicating any ideas you'd like it to examine. If you have any handy hints on how to manage a practice through a recession, or details of your survival skills, please email them to us. Or, if there are any management tools that you have deployed, please email us with these ideas, too. Contact: Emma-Jane Williams, policy development executive, secretary to the PMFT, Law Society of Ireland, Blackhall Place, Dublin 7; tel: 01 672 4821, email: e.williams@lawsociety.ie.

Check out the 'Practice management' section of the Society's website and send us your ideas.

Danish bacon!

The Council of the Danish Bar and Law Society has launched its rule of law programme 2009. Among its provisions are prizes for academic papers on the subject of the rule of law. Extremely generous prizes are being awarded to the three best papers – 1st prize: DKK 500,000 (approximately €67,115); 2nd prize: DKK 300,000 (approximately €40,270); and 3rd prize: DKK 200,000 (approximately €26,850). The competition is open to lawyers, researchers,

students and others who have an interest in such matters. All information and rules on the competition and the rule of law programme are available on the website of the Danish Bar and Law Society, www.advokatsamfundet.dk. Detailed conditions can be obtained by emailing Hanne Christensen at hch@advokatsamfundet.dk; or tel: 0045 33 969 771. Papers can be submitted in either Danish or English to the Danish Bar and Law Society, Kronprinsessegade 28, DK-1306 København K, Denmark, before 1 June 2010.



Gwen Malone.

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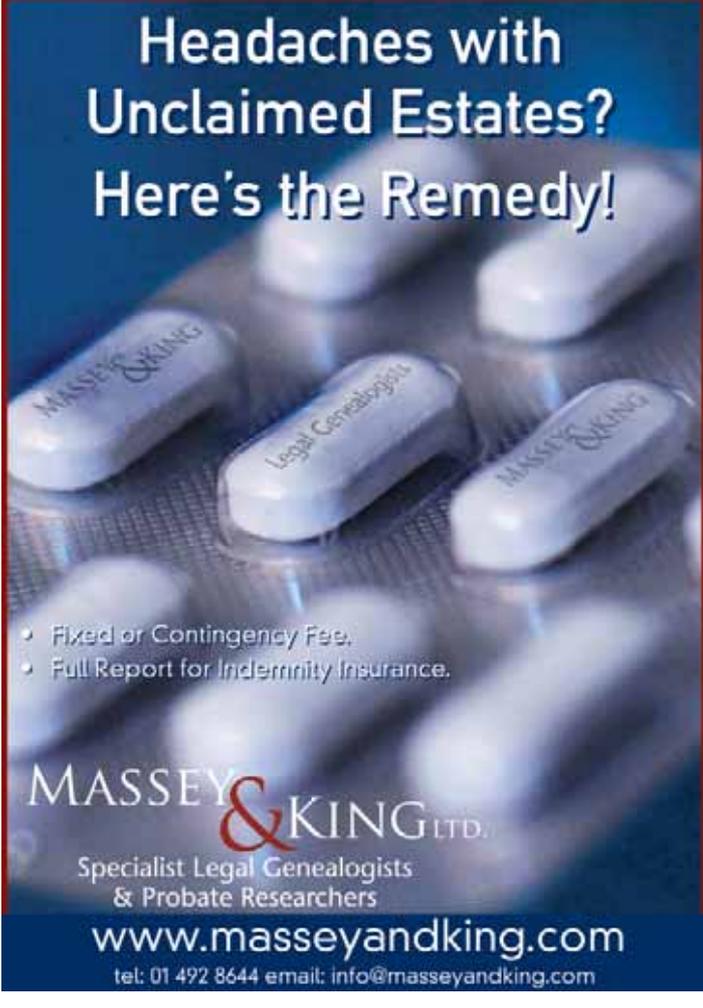
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Revenue STAMP DUTY

New Stamp Duty Procedures from December 2009

In December 2009 Revenue will introduce changes in the Stamp Duty system. The main changes will be:

- **A new Stamp Duty return** which will be mandatory in every case
- **A new stamping process** where Revenue will stamp the instruments on the basis of the stamp duty return (paper or electronic) eliminating the requirement to present documents/deeds to Revenue before stamping except in certain cases such as adjudication.
- **A new form of stamp** (called a stamp certificate) to replace the existing foil/hologram stamp
- **A new facility** (called **e-Stamping**) providing the option to file the return and stamp the instrument electronically through Revenue's on-line system (ROS)

More information on the changes will be made available to practitioners on a regular basis over the coming months. In addition, Revenue will host nationwide *information seminars* next Autumn on the new system.

To register for these seminars and to register for on-line updates please contact the e-Stamping project team at: E-StampingProject@revenue.ie

For more information on e-Stamping, please go to the link:
<http://www.revenue.ie/estamping>

To find out more about Revenue's on-line system (ROS) please go to the link: <http://www.ros.ie/PublisherServlet/info/setupnewcust>

Achieving the right CPD mix

The revised CPD scheme booklet, effective from 1 January 2009, has been circulated to the profession. While the annual CPD requirement remains the same as in 2008, solicitors are advised to familiarise themselves with the updated scheme booklet.

The annual requirement for the 2009 cycle (1 January to 31 December 2009) remains at ten hours' CPD, of which a minimum of three hours must comprise management and professional skills.

Audit results show, in some cases, that solicitors complete in

excess of the required ten hours, but nevertheless fail to complete the three-hour management and professional skills requirement. It is important that solicitors check that the CPD hours they undertake fall within the relevant category of CPD, and that they achieve the right mix between 'general' CPD and 'management and professional skills' training.

The revised scheme booklet clarifies the categories of CPD and the different ways of completing the CPD requirement. Importantly, the booklet also includes guidance

on the proofs of completion of CPD that may be provided by solicitors who are selected in the Society's annual random audit. The 'frequently asked questions' section has also been extended.

Copies of the revised booklet and the 2009 CPD scheme record card can be downloaded from the CPD scheme section of the Society's website, www.lawsociety.ie.

All queries regarding the CPD scheme should be directed to the CPD Scheme Unit, Law Society, Blackhall Place, Dublin 7; email: cpdscheme@lawsociety.ie; tel: 01 672 4802.

Diploma in insolvency and corporate restructuring

The Law Society's diploma team will launch a new diploma this autumn on insolvency and corporate restructuring. The six-month course will start on 8 October and will run each Thursday night from 6 to 8.30pm, with on-site lectures and workshops in the Education Centre in Blackhall Place. It is hoped that, subject to demand, the course would be video-linked to the education centre in Cork.

The diploma will provide in-depth and practical knowledge of the practice and procedure of insolvency and corporate restructuring in Ireland, from an analysis of basic concepts, including receiverships and liquidations, to a consideration of more complex issues, such as taxation and financing considerations that may arise during the corporate recovery process. The course will focus on typical events during an insolvency process that a practitioner may be required to advise on and will take an integrated approach to the area of corporate

governance, with an analysis of specific issues related to corporate compliance and secretarial management during the insolvency process. The diploma will devote a module to the issues of personal insolvency and debt recovery, including bankruptcy and litigation against insolvent entities.

For further information on these and all other diploma programme courses, refer to the diploma programme pages at www.lawsociety.ie or email: diplomateam@lawsociety.ie; tel: 01 672 4802.

Elder mediation world summit for Dublin

A world summit and symposium on elder mediation will take place from 8-10 June 2009 at the Stillorgan Park Hotel, Dublin.

Organised by the Elder Mediation International Network, together with the Alzheimer Society of Ireland, the summit will provide a comprehensive overview of elder mediation and an opportunity to examine established initiatives in this area from Canada and to look at its potential for Ireland and Europe.

■ SOLICITOR ADVOCATES

The Law Society's CPD Focus team is promoting its annual advanced advocacy course. Taking place from 14 September to 18 September 2009, tutors and mentors come from the National Institute of Trial Advocates.

This course will especially suit those involved in civil or criminal practice. Ideally, participants should have courtroom or representational experience. The course is restricted to those with a minimum of three years' post-qualification experience. Numbers are strictly limited. Email: cpdfocus@lawsociety.ie; tel: 01 881 5727.

■ VOLVO OCEAN RACE

The official legal advisor for the Volvo Ocean Race 2008-2009 during its Galway stopover was RDJ Glynn (the Galway office of Ronan Daly Jermyn). RDJ Glynn's partner-in-charge, Pdraic Brennan, said: "We were delighted to be chosen as the official legal advisor in Galway for the stopover. Our offices are based on Long Walk, so we were fortunate to be at the heart of the build-up."

■ NEW HUMAN RIGHTS DEFENCE PORTAL

The International Association of Lawyers (UIA) has launched a new portal on its website, www.uianet.org, devoted to legal cases it supports and defends in the areas of human rights, the protection of lawyers, and international criminal law. The portal is available in three languages, English, French and Spanish. A search engine helps locate cases that are grouped by country and subject, including women's rights, the death penalty, legal practice, the independence of bars, and the international criminal court, among others. The portal also offers a database that includes all fundamental international and regional human rights law texts, international criminal law and international humanitarian law, as well as numerous pieces of national legislation.

COMPANY FORMATION SERVICE – CLOSURE

After 40 years in business, the Law Society's Company Formation Service will close on 30 June 2009.

Unfortunately, this has been necessitated by a significant fall in the overall company formation market and the Law Society service's share of that market.

The Law Society would like to thank all its loyal solicitor clients for their custom and support

over the years. It is hoped that the closure of the service will not cause too much inconvenience.

The service will continue to take instructions for new formations up to 10 June 2009.

Any solicitor who has lodged instructions with the service, but has not progressed a formation, has been written to by the service with a view to finalising matters.

The 'profession in the

Carton House, Maynooth, was the setting for this year's sold-out annual conference. For 'the profession in the recession', the importance of adapting to change was a key theme, writes *Gazette* editor Mark McDermott

Magnificent Carton House outside Maynooth in Co Kildare was the fitting venue for the Law Society's annual conference this year. Built in the 17th century, the Palladian house has experienced significant changes since it was first built – but those very changes have secured its survival for generations to come. The chief instigator of change in the 18th century was Lady Emily Lennox, daughter of the Duke of Richmond. She married James FitzGerald, the 20th earl of Kildare, who owned the property, and spearheaded its development into the architectural *tour de force* it is today. The house moved out of the control of the FitzGerald family in the 1920s and, in 1977, ownership transferred to Lee and Mary Mallaghan.

As the new millennium dawned, so too did an entirely new era for Carton House. It was developed as a hotel and golfing resort. If it was going to be brought back to life, then this was the only way it was going to happen. Change had a price – but what a change!

Adapting to change

The importance of adapting to change proved to be a major theme among speakers at the annual conference on 17 and 18 April. Themed 'The profession in the recession', President John D Shaw and his organising team had had to work swiftly to move the original conference venue from Bilbao to Maynooth. As the president put it, this would provide a small measure of support for the local economy. And when one had Carton, who

needed Bilbao? We found out later that even the weather was better in Kildare that weekend than in rainy Spain!

In his opening address, the president said that solicitors, like every other profession, had been affected by the recession. It followed, then, that members had a substantial interest in the recovery of the economy, and in particular, the property market.

"I think it is also fair to say that solicitors, like many other businesses, fell into the trap of becoming more dependent on property-related work," he said, "although we are perhaps luckier than most – in that we have a greater degree of flexibility and adaptability, which means that we can make the necessary adjustments to survive the recession." It was his firm belief that the Society and its members

had a very important role to play in carrying through the plan to restructure the Irish economy.

With this in mind, an impressive array of keynote speakers was assembled, including justice minister Dermot Ahern, senior economist with the *Economist* Intelligence Unit Dan O'Brien, managing partner in Sherry FitzGerald Mark FitzGerald, and director general of IBEC Turlough O'Sullivan.

Addressing the challenges

In his opening words, the minister applauded the Council of the Law Society "for taking a positive approach to addressing the challenges facing solicitors as a result of the recession. Challenges arise both in terms of equipping solicitors' practices to better serve and advise clients



recession' session

in difficulty and in the face of a decline in demand for some legal services", he said.

He went on to address the changes that, soon, will radically affect land law and conveyancing practice and outlined the government's policy and future intentions in this regard. "Far reaching reforms have already been introduced in the *Registration of Deeds and Title Act 2006*. I am very pleased to be able to announce this evening that I intend to make an order in the near future which will extend compulsory registration to 12 additional counties, that is, all remaining counties except Dublin and Cork, before the end of this year."

As part of the next step in this process, he said that the Property Registration Authority had proposed the introduction of compulsory certification of title by solicitors, rather than the current examiner of title system. "I am aware that some discussions have taken place with the Law Society on the matter, but have yet to reach a conclusion," he said.

The minister added that he expected that the *Land and Conveyancing Law Reform Bill* would be enacted before the summer recess and that, "together with those already enacted in the *Registration of Deeds and Title Act 2006*, will bring land, conveyancing and registration law into the 21st century".

Leading arbitration centre

Minister Ahern then went on to highlight two pertinent developments in relation to arbitration and mediation. He pointed out that the *Arbitration Bill* had been published in June 2008 and that he hoped to see it enacted during the course of 2009. "The new bill will



Turlough O'Sullivan, Mark FitzGerald, John Shaw, Dan O'Brien and Dermot Ahern

provide the necessary legal underpinning for the future development of Ireland as a leading arbitration centre," he said.

"However, if the potential of the bill is to be realised, it will require a considerable effort on the part of practitioners, such as you, to ensure that we position ourselves in terms of marketing and training to capitalise fully upon the opportunities which it will provide. I am sure the Society will be up to that challenge."

The second pertinent

development would be the introduction of an EU directive that would deal with certain aspects of mediation in civil and commercial matters. This will enter into force in May 2011.

Vulnerable adults

The minister said that he wanted to "publicly acknowledge the engagement of the Law Society in consultations on the development of proposals to reform the law in relation to vulnerable adults". The

Society had submitted a broad-ranging and well-informed paper to the Department of

"We have a greater degree of flexibility and adaptability, which means that we can make the necessary adjustments to survive the recession" – John D Shaw

Justice on the *Scheme of the Mental Capacity Bill*, published in September 2008.

In broad terms, he said that the bill would achieve two objectives: to modernise the law on mental capacity, and to establish a new guardianship structure. It would replace the wards of court system as it pertains to adults, applying instead "a modern statutory framework to regulate decision-making in support, or on behalf of, adults who lack some, or all, capacity to make important decisions for themselves".

The minister complimented the members of the profession for their obvious efforts in adapting to the changes wrought by the current economic situation. "I know that adaptability is not something on which the members of the Society are short," he said. "The sophistication of the Society's management of its complex regulatory, educational

and representational functions and its ability, and indeed willingness, to respond in a proactive way to changing circumstances and challenges is impressive.”

He congratulated the Society and its law school on maintaining its ‘business-as-usual’ attitude. “I know that the Society has been responding creatively to the needs of its members with a series of initiatives aimed at supporting them through these economic difficulties.” He concluded by saying that the innovative and adaptable approach of the Society typified the response needed across the board today.

Largest exporter of services

Dan O’Brien delivered a pessimistic forecast for Ireland’s economy. “Unfortunately, things are not good. In Ireland, the situation is grim. As we economists measure recessions and depressions, Ireland is now technically in a depression. It’s that serious. The rest of the world is in the worst recession seen since the first half of the



PICS: LENS MEN

Questions answered, answers questioned: speakers from the floor

20th century and it is teetering on the brink of a depression, [possibly in] another six months. So that is certainly not good news.”

There were positives, however, including the fact that Ireland as an island economy continues to punch above its weight in the amount of services we export. “Ireland is, I think, still the largest per capita exporter of services in the world. Its balance between exports of goods and exports of services is now close to equal, which is extremely unusual. There is no

other medium or large economy to have that kind of mix. And that’s exactly where you want to be.”

Ireland also enjoys a strong labour market, he said: “We didn’t make the mistakes of many other countries by creating too rigid a labour market and that, hopefully, combined with the quality and levels of education, means that when demand conditions improve, hopefully unemployment will fall quickly again.”

However, lest anyone’s optimism levels started soaring,

Dan deflated them by telling the assembly that Ireland had a serious housing ‘overhang’. “There are simply more houses than this country needs, and that will have a major effect for quite a long time to come.”

Looking at the longer term and to the challenges Ireland was now facing, he pointed out that the country had inflicted three separate crises on itself in the past 60 years. “The ’50s was perhaps understandable – economically and politically. The ’80s crisis was a fiscal disaster. By the mid-1980s, Ireland was the first country in the OECD to have a debt-to-GDP ratio of 100%. So we’ve done this before. It seems quite remarkable to me that, for the second time in a generation, we can go and blow our public finances to this extent; and it suggests to me there is a lot pretty radically wrong about how we manage, not only our public finances, but other things as well.”

Formula for recovery

IBEC boss Turlough O’Sullivan reminded practitioners of the enormous success that the country had enjoyed over the past 15 years. However, he didn’t spare the horses when describing what had led to the sudden economic decline:

“In the last ten years, government spending on health has increased by 230%. Government spending on education has increased by about

HOT ISSUE – PROFESSIONAL INDEMNITY INSURANCE

Question from the floor: “We are all subject to professional indemnity insurance. I would just like the minister to know that this is becoming more and more difficult. Is there a ‘plan B’ in the event that solicitors cannot get insurance or cannot get it at a reasonable cost? Because if that difficulty arises, a lot of solicitors are going to be out of business.”

Reply from the Minister for Justice: “Well, in relation to professional indemnity insurance, I would say [that] probably about 20 years ago, it was £9,000 for a two-man practice, and at that stage the Law Society stepped in and put together the mutual scheme, which reduced our professional indemnity overnight from £9,000 to £1,000, which I have to be thankful to the Law Society for negotiating that.

“I do appreciate because of recent controversies over the last number of years, there is much more difficulty with both the compensation fund and the whole issue of professional indemnity insurance. I am not

aware of any discussions in this regard with government ... but, you know, you are in the same situation as any other professional – obviously you have to get insurance wherever you can get it.”

Comment from professional indemnity broker Pat Howett of Jardine Lloyd Thompson Ireland Limited (conference sponsor):

“Professional indemnity underwriters have suffered significant losses in recent years due to an increase in the number of claims and an increase in the number of large claims. In particular, there has been an increase in claims arising from property-related transactions. This increase in claims activity has continued through 2009.

Accordingly, we expect that the market at next renewal will be very difficult. Consequently, solicitors should budget for very significant increases in premiums for the renewal of their professional indemnity next December.”

160%. Over the same period, GDP has increased by 100%. So, to have government spending so far ahead of GDP is not good for our economy. That's the truth of it and there is no way out of that."

Ireland's financial institutions weren't spared either. "The banks, well, I don't need to say any more about that. They were linked far too closely with the whole property development regime. Not good. So what's the formula for recovery? The formula for recovery, in my view (and why wouldn't I say this) is of course enterprise-based. It's not because I represent enterprise that I'm blind to the fact and realities. The main fact is that this economy, Ireland, has no hope of paying for anything unless the private productive sector is competitive,

unless the private productive sector is employing people, unless the private sector has lots of firms in existence to do all of those things."

"Challenges arise both in terms of equipping solicitors' practices to better serve and advise clients in difficulty and in the face of a decline in demand for some legal services" – Dermot Ahern

Sherry FitzGerald's managing partner, Mark FitzGerald, wanted to move us into upbeat mode. He wanted to talk about consumer sentiment. "I acknowledge most of what Dan [O'Brien] has said in terms of where the Irish economy is, where the world economy is – it's a fact of life. But the very important thing is that consumer sentiment matters." He revealed a study produced by the University of Michigan more than a decade ago that looked at a 30-year time span between 1965 and '95. What it showed, he said, was that "when consumers anticipate that prices will go up, they go up; and when



Food for thought

consumers anticipate prices will go down, they go down. And that's in terms of the Consumer Price Index in America over a 30-year period."

Another study by the Federal Reserve in America examined the effect that the news media has on public sentiment. "The news media don't create recessions," Mark commented, "but they impact to the degree in how recessions are received – in terms of being acknowledged by consumers as having an impact on their lives. And what this study shows between 2004 and 2009, by two economists in the Federal Reserve in America, is that the more mention of recessions or lay-offs, the greater the recession is. So the

media have a responsibility as well, in the way they report recession."

These realistic appraisals of where Ireland currently stands were thought provoking, refreshing and provided many strands for discussion. While some speakers strongly suggested that Ireland was heading for the rocks if the government refused to take sufficient offsetting measures, others countered by saying that this would only happen if the Irish people utterly lost their self-belief. Consumer sentiment will be a significant – if unknown – factor in how this story will eventually play out. The roller coaster continues... **G**



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We can work it out

The Law Society's new career development advisor, Keith O'Malley, took up his position on 5 May. Mark McDermott spoke to him about his game plan and targets for assisting out-of-work solicitors

Keith O'Malley likes change. The proof is in his employment pudding. Over the past 30 years, he has held nine different positions for a variety of organisations – many of which he helped set up himself. As such, it makes him an ideal candidate for the post of the Law Society's new career development advisor, which he took up in early May.

Born in San Francisco, he considers himself a Dubliner, having moved back to Ireland with his parents at the age of seven. He was schooled by the Christian Brothers in Mount Merrion, Dublin, but spent the last two years of his secondary education in boarding school in Sligo. All this change appears to have sowed the seed for the transformations that would become an integral part of his life in the world of work.

His first foray was into accountancy, studying with the Institute of Certified Public Accountants. "I started doing chartered accountancy but didn't like working in practice, so I moved across to certified public accountancy. I did that for a number of years, sat the final exam and wanted out. So I got involved in recruitment and very quickly set up a company called Professional Placement, which specialised in accountancy recruitment. That was 1985. I was 26 years old."

Keith stayed with this business venture for nine years. He changed its name to The Professional Placement Group and expanded into other areas of recruitment and HR services, to build it into the biggest Irish recruitment firm of its time. CPL, started with Anne Heraty,

was part of the group. That company has since gone on to become the country's leading provider of permanent, contract and temporary staff. In 1994, however, Keith decided to sell his interest in the group and get involved in the provision of career advice and support. "I got increasingly involved in this area. I enjoyed it and felt I was quite good at it. So I just saw it as the next thing to do."

After a variety of positions with other organisations, he eventually set up Career Consultants, a career-counselling business. Early in 2009, after a year-and-a-half, he sold it to the CPL group.

"The plan was that I would continue on and stay within CPL to continue running that business. But then this opportunity came up. I saw it advertised and thought: 'This would be something I'd be interested in.'

"I guess what interests me about this business, compared with what I was doing with Career Consultants, is that this involves working with one body – the Law Society. I would like to think that there is an opportunity to do something here that will have a significant impact at an individual level – but also with a fairly large group of people who are faced with significant challenges."

Has he ever been in the situation himself where he has been faced with job loss, having

no idea where to turn, what do to next, worrying about his family and the mortgage?

"Yes. There were two such times, I guess. The time that I found most frightening in terms of my career would have been back in the 1980s, when everything just imploded. You were working and you knew if you lost your job, the likelihood was that you were not going to be able to get another one. The only good thing about that period was that you were able to get up and go to Britain or further afield. But that was a scary time.

"The last year-and-a-half or so was also daunting. When you have set up a business and stuff is not coming in as fast as it should be, you really wonder whether you have done the right thing – or have put yourself out there on a rock that you are going to perish on. What I found was not to think too much about the future. You have got certain things to do today and tomorrow, and you do those – you go through the steps."

A different life

"The worst thing you can do is allow this job or career problem to become all engrossing," he says.

"The first thing that you have to understand is, while this is about an important part of one's life – one's ability to earn a living – it really is only one part

of your life. Given the nature of things, you will move on and things will get better. You need to figure out a good way of going forward – and then doing that, step by step. Also, go out and enjoy other things in life. It is terribly, terribly important that you do not allow job loss to negatively affect your mental health, your well-being. That kind of stress can do huge harm to you, both physically and mentally. Everything starts with self-care.

"The most important aspect about self-care is talking to people, particularly if you are in a relationship – talking to your spouse or partner. Anything within your career that is affecting you will also affect the people around you. They tend to respond in a more delayed way than you do and, as a result, this can put huge pressure on relationships. While you might have gone through the various stages of denial, despair, anger and moved on to acceptance, those around you can be caught in the earlier stages. So really, it is very important that you talk and ask the other person on an ongoing basis how they're feeling about things. They need to be clear that you are on top of matters in as much as you can be. Remember, you can only work on certain things, and you should work on those well."

Game plan

So what's Keith's game plan and what are his targets?

"The Law Society is concerned about the number of solicitors who have found themselves unable to get work because of the downturn in the economy. There are several

"The big opportunities for Irish solicitors require them to look beyond simply working in practice"



The Society's career support team: Keith O'Malley and Sharon Hanson

hundred solicitors who are out of work and who find themselves in very, very difficult circumstances. A lot of these people are recently qualified solicitors who had expected to continue on with the firm they were in, gain more experience and really establish their careers in an area of law they liked and were good at. But that opportunity has been ripped out of their hands. A lot of them have financial commitments and need to have an income coming in. They need to be working for their own self-worth. My job is to facilitate change and to assist the Society in supporting solicitors who are currently not in gainful employment.

"The big opportunities for Irish solicitors require them to look beyond simply working in practice. Career management is all about being responsive to change and understanding that, within a changed environment, you have got to take on a new and appropriate approach. I think one way that I can facilitate change is to introduce out-of-work solicitors to some

pertinent figures – only 10% of Irish solicitors are working outside of a practice. In England and Wales, the percentage is 20%. These are qualified solicitors who are working in government jobs, for corporates, the NGO sector and journalism, for instance. If we can shift the Irish situation from 10% to 20%, that would equate with 1,000 jobs – that's a good deal more than the number of solicitors who are currently out of work.

"This is going to take time, obviously, and there is every possibility that the number of solicitors within practice could reduce further. We, naturally, will do what we can to support

solicitors in career transition, as effectively as possible. I'm not saying that, if 500 solicitors find their way into occupations outside of practice over the next 12 months, we will be able to claim the credit for that, but I think our contribution will lead people to say: 'Well, I got help from the Society and, as a result, my career transition was much easier; I was more effective; I did it more quickly; I did it with less hardship and personal angst.'

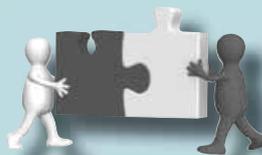
"What we are doing now is establishing an online programme of career development. This will help solicitors looking for work to expand their options. It will

be available to all solicitors and trainee solicitors on the Law Society's website, www.lawsociety.ie. We are planning other initiatives that will be self-help and group based. In addition, we are keeping a record of anyone who contacts us. They are being kept in touch on an ongoing basis with updates of interest, and are being kept aware of any supports as they become available."

Keith gives one last piece of advice to solicitors who are job-seeking. "The secret is to understand the importance of response to change. Darwin said that it's not the strongest, it's not the brightest, it's not the most intelligent who survive. It's those who respond best to change. This is particularly relevant to people who find themselves out of work. We are in changed times at the moment, and the people who are going to do the best are the people who respond best to the change." **G**

Support Your Colleagues

Please be alert for all opportunities that might suit a solicitor who is currently looking for work and send this information as well as any ideas you have that might benefit a colleague to Career Support at the Law Society and we will make this available to people it will benefit.



E-mail: careers@lawsociety.ie

To contact Keith O'Malley or Sharon Hanson of Career Support, tel: 01 672 4800 or email: careers@lawsociety.ie.

ECHR applies to soldiers on

The protections of the ECHR have been found to apply at all times to British army personnel serving overseas, writes Elaine Dewhurst

In a recent case, the Court of Appeal of England and Wales held that article 1 of the *European Convention on Human Rights* extends the protection of the ECHR to soldiers of contracting states serving overseas. The case, *Secretary of State for Defence v The Queen on the application of Mrs Catherine Smith, HM Assistant Deputy Coroner for Oxfordshire and the Equality and Human Rights Commission* ([2009] EWCA Civ 441), arose as a result of the death of a British soldier, Private Jason Smith, from heatstroke while serving in Iraq. One of the questions for consideration by the court was to what extent soldiers serving overseas are protected by the ECHR. It was conceded that a soldier is protected while at a military base

or hospital, but the question as to whether the soldier is so protected while outside that area still remained. The Court of Appeal held that, in the case of a British soldier serving in Iraq, the soldier is at all times entitled to the protection of the rights guaranteed by the ECHR.

The facts

Private Jason Smith was sent to Iraq in June 2003 and died in August of the same year after suffering heatstroke. A coroner was appointed to investigate the death and, in particular, to consider whether Private Smith's death was caused by a defective system operated by the state and whether all reasonable steps were taken to prevent it. The question of the application

of the ECHR and the British *Human Rights Act 1998* arose as a result of a decision to convene a new inquest after a number of anomalies in relation to the first inquest were discovered. The question then arose as to whether the new inquest should be carried out in accordance with article 2 of the ECHR. However, in order to secure the right to an article 2 inquest, the victim's family had to show that the ECHR applies to a British soldier serving outside British territory. The High Court held that the ECHR would apply to such a case. The Secretary of State appealed the decision.

Article 1 of the ECHR

Article 1 of the ECHR provides that the "high contracting

parties shall secure to everyone within their jurisdiction the rights and freedoms defined in section 1 of this convention". The court then had to consider what 'jurisdiction' actually means.

The interpretation offered by the Secretary of State was that 'jurisdiction' refers only to geographical jurisdiction and is limited to locations over which Britain has effective control. The Secretary of State did say that some soldiers overseas would be covered by the ECHR and conceded that a British base or hospital in Iraq would be within Britain's jurisdiction. However, soldiers outside a British base or hospital would not be within British jurisdiction.

ONE TO WATCH: NEW LEGISLATION

Circuit Court Rules (Service) 2009 (SI no 132 of 2009)

As and from 3 April 2009, new rules in relation to issue and service of civil bills came into force. These rules formalise the current service procedures, make amendments to bring the service procedures for various rules of the Circuit Court in line with the new procedures, and introduce new forms relating to endorsement of service and statutory declarations.

Issue of civil bills (order 11, rules 1-4)

The original civil bill must, prior to being issued, be stamped with the required amount of court fees, signed and presented (by post or in person) in duplicate to the office

of the court in a county having jurisdiction, sealed and given a record number. The duplicate shall be filed in the office. At the time of issue, the proper officer shall mark upon the duplicate civil bill the date of issue, full details in relation to stamping and the record number assigned to the original civil bill. The original civil bill shall be returned to the plaintiff. Where the original civil bill is presented by post, the proper officer shall return it to the plaintiff or the plaintiff's solicitor by ordinary prepaid post. Once this is complete, every civil bill shall be deemed to be issued and shall be entered in the cause book in date and numerical order of issue.

Where a civil bill is to be served outside the jurisdiction, the leave of the court or the county registrar is required before the civil bill can be issued.

Service (order 11, rules 5-6)

Service of a civil bill and other originating documents may be effected by:

- Sending a copy by registered prepaid post in an envelope addressed to the person to be served at his last known residence or place of business in the state. The person on whose behalf it purports to be issued or a person authorised by him in that behalf may post the document.
- Personal service (by a

summons server or other person) upon the person to be served, wherever he is to be found within the jurisdiction.

- Personal service (by a summons server or other person) upon another person on behalf of the person to be served. This may occur where it appears by affidavit that the defendant is personally within the jurisdiction and that due and reasonable diligence has been exercised in endeavouring to effect personal service. In such cases, service may be effected by delivering a copy at the defendant's place of residence within the jurisdiction to the husband or wife of the defendant or to some relative

human rights watch

tour, says English court



The respondents proposed that the term 'jurisdiction' includes both geographical jurisdiction and personal jurisdiction. As a British soldier serving in Iraq is within the personal jurisdiction of the army, he is thus within the personal jurisdiction of Britain.

Jurisdiction

Sir Anthony Clarke MR in the Court of Appeal considered the key cases on the issue of jurisdiction. The first of these decisions was the 2001 case of *Bankovic v Belgium* (11 BHRC 435), where the European Court of Human Rights held that the jurisdictional competence of the state is primarily territorial, with other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case.



British soldiers serving overseas have been found to be protected by the ECHR

In another case, *R (Al-Skeini) v Secretary of State for Defence* ([2007] UKHL 26), the House of Lords highlighted key examples of situations where a state would

have jurisdiction outside their own territory, thus allowing victims to enforce their rights against that state:

- Where a state's responsibility

could, in principle, be engaged because of acts that produced effects or were performed outside their own territory,

of the defendant over the age of 16 years and apparently living there, or at the defendant's place of business or employment or office within the jurisdiction to some employee of the defendant over the age of 16 years.

- Service on a solicitor, provided that he shall, at the time of service, indorse his acceptance of service thereof and his undertaking to enter an appearance thereto.

Indorsing the civil bill (order 11, rule 7)

Once service has been effected, the person serving shall indorse his name upon the original civil bill or other originating

documentation, stating the day of the week, the date, the manner, the place and the person upon whom service was effected.

Authentication of service (order 11, rules 8-9)

Service shall be authenticated by affidavit or statutory declaration by the person serving same within a reasonable time of service having been effected. If the service was by registered post, this should be completed not earlier than ten days after the date of posting. The authentication may be indorsed on the original civil bill or other originating documentation.

Where personal service is alleged to have been effected,

but the person who has effected service does not know to his own knowledge that the person served is the person named, he may make the affidavit or statutory declaration, stating therein that same is true to the best of his knowledge and belief. In any case, a judge may, on his own initiative or on the application of any person who is alleged to be affected by the said service, require such further evidence thereof as he may think right.

Substituted service (order 11, rules 11-12)

Whenever an order for substituted service or for the substitution for service of notice by advertisement is made, a copy of that order

shall be served with the civil bill, or the terms of that order shall be stated in such notice. Every such order shall state the time within which the defendant may enter an appearance or comply with the requirements of such order. Every application for substituted service shall be supported by an affidavit setting out the grounds upon which the application is made. In any case, the judge or county registrar may declare the service actually effected sufficient.

Service on particular defendants (order 11, rules 14-15)

The rules provide for different service requirements for infants and persons of unsound mind:

- Infants: service on his parent or



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- In cases involving the activities of the diplomatic or consular agents abroad and on board craft and vessels registered in, or flying the flag of, that state, and
- Where the state, through the effective control of the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the government of that territory, exercises all or some of the public powers normally to be exercised by the government of that territory.

Court of Appeal

The court held that there was no question but that a British soldier is protected by the ECHR when he is on a military base or hospital. However, is he still protected if at the relevant time he is not within a military base or hospital? The relevant question to be asked is whether there is a link between the victim and the state at the time the relevant incident occurs, and the specific exceptions as described in *Al-Skeini* are

examples of this link. The court held that the actions of the British army could fall into these exceptions:

- 1) There is a plain link between the soldier and Britain, because the soldier was serving in the British army and therefore the state's responsibility was engaged.
- 2) There is a similar link between a consular agent and the state and a soldier and the state. In short, the court concluded that if consular officials have protection, there was no reason the same should not be true of military personnel. The court also held that consular agents would have the protection of the ECHR whether or not they are in an embassy or consulate and the same would be true of a soldier – that is, a soldier would have the protection of the ECHR whether or not they are in a British military base or hospital. It “makes no sense to hold that there is a distinction between a person inside and outside premises controlled by the UK, whether he or she is a consul or a soldier”.

- 3) There was also a potential argument that the British army, with the consent of the government of Iraq, had been exercising all or some of the public powers normally to be exercised by the government of Iraq. However, the court concluded that it may well be that at the time of the death of Private Smith, the army was neither in effective control of Iraqi territory or acting through consent, invitation or acquiescence of the local government, and therefore the link between the victim and the state was not as clear in this case.

On that basis, there were clearly exceptional circumstances in existence in this case that proved that there was a link between the soldier and the state. The court held that a British soldier who is on military service in Iraq (whether within the military base or hospital or on the street or in the desert) is within the jurisdiction of Britain for the purposes of article 1 of the ECHR and thus is entitled to the protection of the rights guaranteed by the ECHR.

The decision highlights a number of important principles relating to the jurisdiction of the ECHR in the Irish context.

Effect of the decision

Irish soldiers working overseas, whether they are on a military base/hospital or whether they are serving in the field, may now be protected by the ECHR.

This would extend rights such as the right to an inquest held in accordance with article 2 and the right to protection under article 6 (fair trial rights) in the case of a court martial.

There is also potential for the extension of the principle to diplomatic and consular agents working abroad, who will now be entitled to the protection of the ECHR both within the consulate or embassy and outside of that area. The decision is an interesting and exciting development in human rights law and its application, if accepted in Ireland, could be widespread. **G**

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

guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall be deemed good service on the infant, unless the judge or county registrar otherwise orders. The judge may order that service made or to be made on the infant shall be deemed good service.

- Persons of unsound mind (whether or not so found by inquisition): service on the committee of that person, or upon the person with whom the person of unsound mind resides, or under whose care he is, shall be deemed good service on the defendant, unless the judge or the county registrar orders otherwise.

Service of other documents (order 11, rules 16-19)

All notices of motion, other notices, orders of the court and witness summonses shall be served in the same manner as a civil bill. Any document to which no mode of service is prescribed by statute or these rules may be served by delivering the same to the party or person personally, the residence or place of business of such person, or by registered prepaid post to his last known residence or place of business. Where a party acts by a solicitor, any document required to be delivered or served may be so delivered or served upon that solicitor, except in cases where personal service is required.

Service will be deemed good where it is served upon that solicitor, or by delivery of it to his office or to his document exchange, or sending the same to him by prepaid post.

Proof of service (order 11, rules 20-21)

A person who has effected service shall, within four days after service, return the original document properly indorsed to the solicitor or other person from whom the same was received.

New forms (1B and 1C)

The endorsement of service and the statutory declaration shall be in the form set out in form 1B. Personal service or service by

registered post may be endorsed on the civil bill and proved by statutory declaration in the form set out in form 1C.

Changes to various proceedings

Schedule 2 provides for amendments to various orders of the Circuit Court to bring them in line with the new rules on service. Amendments are made to orders 24, 52, 56, 57, 59 and 68.

Full details of the full changes and the new forms are available at www.courts.ie. **G**

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

Remembering the

This June marks the 200th anniversary of the death of Thomas Paine, one of the most influential thinkers on individual rights, governance and freedom of expression in the last two centuries, writes Peadar Browne

These are the times that try men's souls," George Washington declared to his troops as they gathered in darkness on the banks of the Delaware River before the crucial American victory at the Battle of Trenton (1776) in the American Revolutionary War.

Washington was reading the opening lines from the first of Thomas Paine's great pamphlet series, *The American Crisis*, published just one week before. Paine wrote 13 pamphlets in the series throughout the eight years of the war between the American colonies and the Kingdom of Great Britain, in which he documented the developments of the struggle, ridiculed the British and, to incalculable effect, entreated Americans to always be aware of what was at stake: "What we obtain too cheap, we esteem too lightly: 'tis dearness only that gives everything its value."

The influence of Paine's pamphlets on the successful outcome of the American struggle for independence cannot be overstated. "Washington's sword would have been wielded in vain had it not been for the pen of Paine," said James Monroe. But it is true also to say that there might not have been a War of Independence without Paine's influence. Self-determination on issues such as taxation was the goal of the patriots, not independence. On 14 February 1776, the publication of Paine's *Common Sense* changed the aspiration.

In this, without question the most influential pamphlet of the American Revolution, Paine wrote about the design of government – he excoriated monarchy and hereditary succession; he condemned British rule and espoused American independence.

An army of principles

Born in Thetford in England on 29 January 1737, Paine's early life was unremarkable. His father was a master stay-maker and, after a brief service on a privateer, Paine finished an apprenticeship with his father. He then worked as an excise officer, a post from which he was twice dismissed. He married twice, his first wife having died, and the second marriage of just three years ended in formal separation. In November 1774, he sailed to America with a letter of introduction from Benjamin Franklin.

Paine was in London in July 1789 when the Bastille was stormed. He travelled to Paris in November that year. In January 1790, he corresponded with Edmund Burke on the French Revolution and the following month Burke

gave a speech to parliament denouncing the revolution. The following November, Burke published his *Reflections on the Revolution in France*. Initially, Burke was not opposed to the revolution, writing in August 1789 of "England gazing with

astonishment at a French struggle for Liberty and not knowing whether to blame or to applaud!" But when a mob marched on Versailles in October that year to compel the king to return to Paris, Burke turned. He considered France a "country undone" where "the Elements which compose Human Society seem all to be dissolved, and a world of Monsters to be produced in the place of it".

He considered the revolution had "subverted Monarchy, but not recover'd Freedom". Burke posited that social stability could only be achieved if an elite and wise group, whose wisdom is hereditary, governed.

In February 1791, Paine published *Rights of Man: Being an answer to Mr Burke's attack on the French Revolution*, in which he describes Burke's *Reflections* as "darkness attempting to illuminate light" and rebutted

Burke's assertions, stating that government was a contrivance of man and that hereditary rights to govern cannot compose a government, because wisdom to govern cannot be inherited. The following year, Paine published *Rights of Man, Part the Second, Combining Principle and Practice*, containing discussion on possible formats for a successful republic and proposals for programs of education, pensions and other reliefs for the poor and a system of taxation based on income to fund it. In October, the Irish revolutionary Lord Edward Fitzgerald lodged with Paine, who voiced his support for a French-funded insurrection in Ireland.

Reason obeys itself

In December 1793, Paine was arrested and imprisoned in the former Luxembourg Palace. Shortly before his arrest, he began work on *The Age of Reason: Being an Investigation of True and of Fabulous Theology*, published in January 1794, in which Paine published his thoughts upon religion. He wrote: "I believe in one God, and no more; and I hope for happiness beyond this life. I believe in the equality of man, and I believe that religious duties consist in doing justice, loving mercy, and endeavouring to make our fellow creatures happy." In this work, and in *The Age of Reason, Part the Second* (1795), Paine treated the bible literally and applied reason and common sense to its contents, debunking it with a cool logic.

"He proposed that those privileged enough to own land owed a debt to those who did not and suggested a property tax to assist the unpropertied poor"



rights of man



Paine argued that to be devout within the established religions, one must make a sacrifice of the greatest gift from God, the gift of reason.

After James Monroe had secured his release in November 1794, Paine remained in Paris until his return to America in 1802. During those years, he wrote numerous pamphlets, including *Dissertation on First Principles of Government* (1795), in which he espoused universal male suffrage, abolished by the new French constitution; *The Decline and Fall of the English System of Finance* (1796), which predicted that war with France would cause the Bank of England to collapse; and *Agrarian Justice* (1797), in which Paine argued that all land was in the common ownership of humankind but that, to better cultivate it, property ownership

was necessary. He proposed that those privileged enough to own land owed a debt to those who did not and suggested a property tax to assist the unpropertied poor. That same year, Paine met Theobald Wolfe Tone and James Napper Tandy and encouraged their plans to surprise the English by landing a French army in Ireland.

In July 1796, Paine wrote an open letter to President Washington, accusing him of treachery and criticising his performance in the Revolutionary War. On his return to America, Paine continued to attack Washington and John Adams. He received a letter from Samuel Adams, who described *The Age of Reason* as a “defence of infidelity”, echoing the opinion of many. His attacks on Washington no doubt had a cooling effect on the affections

many Americans had held for him. In the years following 1802, Paine contributed articles to various publications. In his final years, he moved from lodging to poorer lodging. Paine died on 8 June 1809, his funeral attended by only a handful of people.

Titles are but nicknames

Paine’s works continued to influence thinkers and writers in his time and beyond. His influence is clear in the original *Declaration of the United Irishmen*, which alludes to the rights of man, common sense and common interests, and government originating from the people. Some suggest that Paine penned some or all of the *American Declaration of Independence* and, in the *Universal Declaration of Human Rights*, Paine’s philosophies loom

large. In his inaugural speech, President Barack Obama quoted Paine: “Let it be told to the future world that in the depth of winter, when nothing but hope and virtue could survive, that the city and the country, alarmed at one common danger, came forth to meet it.”

Speaking in 1805, John Adams stated: “I know not whether any man in the world has had more influence on its inhabitants or affairs for the last thirty years than Tom Paine.” Today it can be argued that no man has had more influence on the development of mankind’s understanding of individual rights, governance or freedom of expression for the last 200 years than Tom Paine. **G**

Peadar Browne is a legal executive with Brendan Maloney & Co and is a former journalist

PIRATE

The recent action against a Swedish-based website that facilitated music file sharing has implications for music consumers, record companies and owners of copyrighted material. Gail O'Keeffe pumps up the volume

Pirates are no longer to be found plundering just on the high seas, but are also raiding our bandwidths. 'The Pirate Bay' is a website based in Sweden that provided information to internet users to search and illegally store and access music, films and games through the website.

Six Swedish record companies, two Nordic film companies and six American film companies brought individual claims against the four cofounders of the website for breach of copyright and for damages arising from this breach. On 17 April 2009, the Stockholm District Court found the four guilty of making copyright-protected recordings available to the general public and of aiding and abetting others in making copies of the recordings. The court sentenced each of the defendants to a year in jail and imposed a fine of \$3.6 million.

The decision is a controversial one, particularly as it has now emerged that Judge Tomas Nordstrom has connections with a number of bodies lobbying for tougher copyright laws. Three lay judges were appointed to sit with Judge Nordstrom. One lay judge stood down when it emerged that he was involved with a music rights group. All four defendants have indicated that they will appeal.

The decision has led to The Pirate Party in Sweden announcing its intention to run candidates in the European elections: "The Pirate Party wants to fundamentally reform copyright law, get rid of the patent system and ensure that citizens' rights to privacy are respected. With this agenda, and only this, we are making a bid for representation in the European and Swedish parliaments."

The Pirate Bay operated by using BitTorrent technology to provide a file-sharing service. The files contained data such as music, films and computer games. A computer user who wanted to make a file available, known as a 'seeder', either owned or produced a copy of the file on his or her computer. The file was then divided, given a number and called a

torrent file. The location of the torrent file was stored on The Pirate Bay by the user and could be accessed by another computer user, known as a 'leecher'. While this may sound complicated, the website provided instructions on how this could be done.

A hard rain's gonna fall

The *Copyright and Related Rights Act 2000* provides that copyright is a property right and provides protection to original literary, dramatic, musical or artistic works for 70 years after the death of the author. It also permits the owner of the copyright to authorise other persons to undertake certain acts that would otherwise be restricted under the act. In other words, it permits the owner of the copyright to license the work to a third party, who is then permitted to copy the work.

Section 40 of the act allows the copyright owner to make copies of the work available to the public – but also to control that right. This section also addresses the liability of internet service providers (ISPs), as it specifically includes the internet as a method of making works available and removes any doubt as to whether making works available over the internet without a licence could constitute infringement of copyright.

IRMA brought proceedings against Eircom, which were settled earlier this year. The settlement reached between the parties provides that the record companies will supply Eircom with the IP addresses of all persons who they detect illegally uploading or downloading copyrighted works on a peer-peer ('P2P') basis.

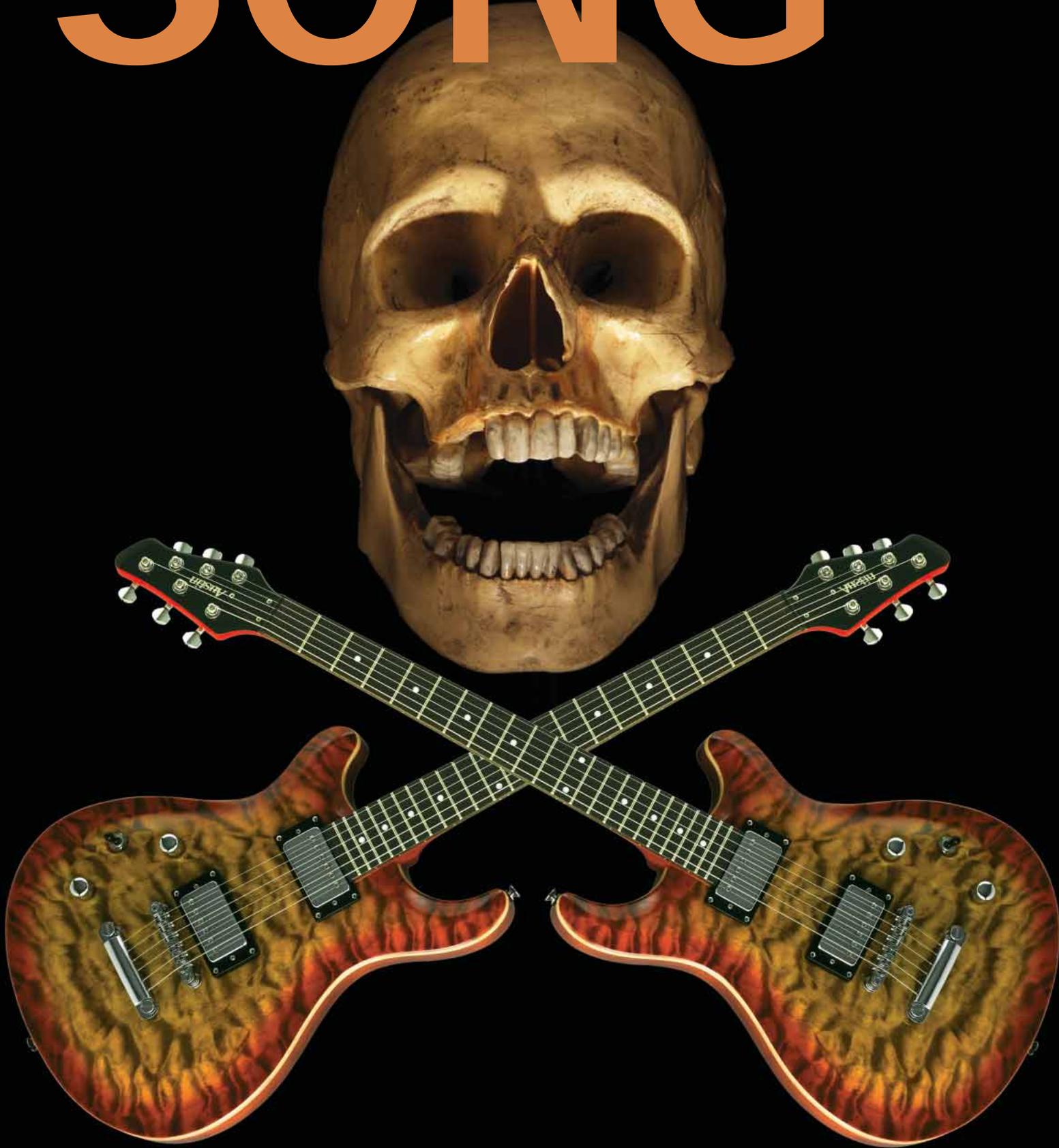
Eircom has agreed that it will, from now on, implement a graduated process in which it will:

- 1) Inform its broadband subscriber that the subscriber's IP address has been detected infringing copyright,
- 2) Warn the subscriber that, unless the infringement ceases, the subscriber will be disconnected, and
- 3) In default of compliance by the subscriber who has

MAIN POINTS

- Music piracy and the law
- Consequences of music piracy
- The legal positions in Ireland and other countries
- Solutions

SONG



WHILE MY GUITAR GENTLY WEEPS

The music industry states that music piracy is a worldwide problem that potentially costs US\$5 billion per annum. The Irish Recorded Music Association (IRMA) estimates that the Irish industry alone loses €3.8 million per annum and that this figure increases significantly if software and videos are taken into account.

Industry lobbyists argue that the people who lose out most are the artists, musicians and those employed in the industry. It is claimed that piracy stifles the careers of up-and-coming artists and bands by depriving them of much-needed royalties from the legal sale of their recordings, and is a loss of revenue for the record publishers and labels.

Music is readily available to those who want to access it and it no longer needs to be in a packaged, tangible format. For younger music fans, the days of saving up to buy your next album are long gone. This is also identified by the industry as part of the problem. Young teenagers are unlikely to be concerned with the result of the latest legal challenge. A cultural change needs to take place.

The Recording Industry Association of America (RIAA) has developed a free educational programme designed to “spotlight the intersection of technology, copyright law, and civic responsibility”, which it offers to school pupils aged from eight years and upwards. This is part of its anti-piracy campaign, which also includes legal action as a last resort.

been warned, it will disconnect the subscriber.

The record companies have agreed that they will take all necessary steps to put similar agreements in place with all other ISPs in Ireland.

While the settlement may provide the Irish music industry with some comfort, the agreement can only apply to Eircom and not to any other ISP operating in Ireland. The agreement has met with criticism from ISPs in Ireland, as it is their view that it threatens the privacy of their customers and service users, that it damages the development of new internet services, and that they should not be required to monitor what is being transmitted. Further, they argue that they are protected by the ‘mere conduit’ defence provisions of the *Electronic Commerce Directive 2000*.

If not for you

A case was brought by the Belgian Society of Authors and Composers (SABAM) against SA Tiscali (Scarlet), an ISP, seeking injunctive relief so that the court could assess the existence of copyright infringements of musical compositions from the SABAM repertoire due to unauthorised exchange of electronic music files. Such exchanges used peer-to-peer software through the use of Tiscali’s services. SABAM sought an order that Tiscali would take steps to stop those infringements by making it impossible for music files to be transmitted without authorisation from the copyright holders.

The court held that SABAM had standing for injunctive relief and agreed that infringement of copyright had taken place through the unauthorised

***“The IRMA/
Eircom
agreement
has met with
criticism from
ISPs in Ireland,
as it is their
view that it
threatens the
privacy of their
customers and
service users,
that it damages
the development
of new internet
services, and
that they should
not be required
to monitor
what is being
transmitted”***

exchange of music files via peer-to-peer software through the Tiscali internet network. The court ordered Tiscali to take steps to stop the infringement on the basis that it found that there were technically possible measures that could be taken to avoid infringement. The court also imposed financial penalties on Tiscali for each day that it failed to comply with the ruling. Tiscali obtained an order from the Court of First Instance on 24 October 2008, allowing it to be temporarily released from paying the financial penalties. An appeal has been lodged by SA Tiscali and is due to be heard by the Court of Appeal in October 2009.

In Britain, the BPI, which represents the British recorded music industry, reached an agreement with major ISPs and the government on measures that they believed would significantly reduce illegal file sharing. Negotiations were facilitated by the Department for Business, Enterprise and Regulatory Reform (BERR), and a memorandum of understanding was signed with six of the largest ISPs operating in Britain. The BERR and the British film industry were also parties to the agreement. The main principles in the agreement were:

- 1) That a joint industry solution is the best way forward,
- 2) That they will work together to educate consumers about why illicit file sharing is wrong,
- 3) That making content available in a wide range of user-friendly formats is important,
- 4) That they will engage in a three-month trial to send letters to 1,000 subscribers per week suspected of downloading or uploading unlicensed copyrighted material,



- 5) That they will work with OfCom (Office of Communications) to identify effective measures to deal with repeat offenders.

The Open Rights Group, a British digital rights lobby group, has expressed concern at any attempt that might be made to disconnect users, as set out in the BERR consultation paper, arguing that this will only serve to drive illegal file sharers underground. It argues that consumers should be offered “legal, attractive and competitive alternatives”.

In New Zealand, the government recently decided

that section 92A of the *Copyright Act 1994* would not come into force on 27 March 2009. Section 92A required ISPs to have a warning policy and, ultimately, to disconnect users accused of copyright infringement. The decision not to proceed with section 92A was made following protests that the section did not address a user’s rights if the accusation proved to be wrong.

The Commerce and Justice Minister, Simon Power, stated that the section would be amended to address areas of concern: “This legislation was put in place to combat unlawful file sharing, which facilitates copyright infringement on a large scale. Section 92A traverses an important issue in an emerging area of copyright law reform, both in New Zealand and internationally. This behaviour is very costly to New Zealand’s creative industries and needs to be addressed.”

Devil’s radio

Piracy raises many legal issues and questions in relation to the rights of the interest groups affected by it.

Digital technology is constantly evolving; therefore, the music industry needs to engage with ISPs to consider ways of licensing music online so that consumers can legally enjoy it. Consumers have a right to communicate online and this right should not be unreasonably withheld or restricted.

The emergence of Spotify, a website that legally streams music, is a step in the right direction. Spotify has reached agreement with the copyright holders that the music can be used in this way. It is funded by advertising, is free in Britain, and is legal and easy to use. The good news for the music industry is that people still want access to music. The lesson that they should learn from the pirates is that they need to come up with a user-friendly and legal way of allowing access to music – sooner rather than later. **G**

Gail O’Keefe is a partner with O’Connor Solicitors, Dublin.

LOOK IT UP

Cases

- Stockholm District Court Division 5, verdict B13301-06 17, April 2009
- *SABAM V SA Scarlet*, District Court of Brussels, no 04/8975/A, decision of 29 June 2007, 25 Cardozo Arts & Ent LJ

Legislation:

- *Constitution of Ireland*, article 40,
- *Copyright and Related Rights Act 2000*
- *Copyright Act 1994* (New Zealand)
- *E-Commerce Regulations 2003* (SI no 68/2003)
- *Electronic Commerce Directive 2000* (directive 2000/31/EC)

Websites:

- www.berr.gov.uk
- www.bpi.co.uk
- www.iaa.ie
- www.irma.ie
- www.legislation.govt.nz
- www.openrightsgroup.org
- www.riaa.com
- www.sabam.be
- www.spotify.com

THE

MAIN POINTS

- The *Surveillance Bill* and *Criminal Justice (Amendment) Bill*
- Civil liberties fears
- Invasion of privacy

PICS: LENS MEN

Minister for Justice Dermot Ahern was the keynote speaker at the Law Society's annual conference. Mark McDermott spoke with him the day after he announced the publication of new legislation designed to tackle gangland crime – head on

LAW LORD

Yesterday was a big day in terms of announcing new legislation you're hoping to introduce, namely the *Criminal Justice Surveillance Bill 2009* and the *Criminal Justice (Amendment)*

Bill. Why announce these pieces of legislation now?

"The *Surveillance* [bill] was ready basically because we had agreed that we would fast-track it and treat it as a priority after the Shane Geoghan murder and, more recently, in regard to the murders in the North of the two British soldiers and the PSNI officer. It's a pretty complex piece of legislation because there is balance to be found in it. It was approved by cabinet last week, subject to some final small drafting amendments that the Attorney General's office had to make. In the interim, the Roy Collins murder happened and I used the opportunity to indicate – given the gravity of what happened Roy Collins particularly – that we would look at a number of other options."

What will the *Surveillance Bill* allow the gardaí to do, and what restrictions will apply to ensure that it's not abused?

"I suppose the first thing to emphasise is that the gardaí have been indulging in covert surveillance for many years. They have been using the latest technology, [but] they don't have the legal basis for it. It was, in effect, covert. The evidence couldn't be used in court and, to a certain extent, there would have been a doubt as to the legality of its use. Now the fact that they didn't disclose it obviously wasn't at issue really, and was never queried from a legal point of view. But strictly speaking, the ability to go in on people's property and put a bugging device, they have to have legal grounds for doing that, and that's what this bill provides. But more importantly, it provides them with an opportunity of using the evidence that is garnered in court."

How will complaints be handled in relation to surveillance?

"In the [bill] there is a complaints procedure, which is

very well laid down and will be subject to regulation, but it's basically a judge who would decide on whether or not someone is entitled to compensation, or there is a level of compensation indicated in the bill, or some other redress."

Concerns have been expressed by the Irish Council for Civil Liberties and the UN Human Rights Committee in Ireland, who disapprove of the Special Criminal Court being used to try possible members of gangs or suspected gang members. Do you think those fears are well founded?

"I don't – given the turn of events that have taken place in recent times with some of these gangs. We have to stretch every available resource we have, both from a legislative point of view and also a financial point of view, to defeat this attack on society. It's an affront to society what they are doing, particularly in Limerick, but in other areas of the country, in Dublin as well. And if we find that people are living in fear and that there is a potential for witness intimidation and juror intimidation, well then obviously we have to take measures. And proposing to schedule the offence of being a member of a criminal gang into the Special Criminal Court – unless otherwise directed by the DPP – I think is a reasonable move, given the fact that there is this potential for witness intimidation and juror intimidation. And aided by the new surveillance legislation, it may very well obviate the necessity for as many witnesses as possible."

In terms of proving membership or leadership of a criminal gang, this has been exceptionally difficult to prove in the past. Are these pieces of legislation going to make much of a difference?

"At the moment, there is already an offence of participation in a criminal gang. We are proposing now that membership, and also directing – because directing is probably the most difficult one – [be included]. Because there are people who are pulling



strings. A lot of these murders are committed by 'patsies' basically, who are sent out to do the dirty work, so it's really [about] getting the 'lords'; and what we want to do, basically, is try and define 'membership' of a gang. I think the surveillance legislation will help, in that it will give the guards a little bit more corroborative evidence, and perhaps we might be able to ground a prosecution based on opinion evidence of a chief superintendent, with corroboration, including surveillance."

Deputy Michael Noonan said on RTÉ's *Six One News* (17 April 2009) that gardaí would be 'selective' in how they would be able to present evidence gathered through covert surveillance. Surely that could be abused?

"Well again, everything is subject to judicial authorisation, so if it's decided [the gardaí] will have to use it, they will have to use it in the context of the parameters that are laid down. So they will only be using it then, you know, with full oversight of the judiciary. And again, I think, there are checks and balances in it. But it is the case that they may not use the evidence always; they may decide that they don't want to show their hand, and that obviously is up to the gardaí, and the prosecuting service, the DPP as well."

Is there any danger that 'pieces' of covert surveillance and evidence – whether voice or video recordings – could be spliced together in order to incriminate somebody that the guards really want put behind bars?

"I suppose there is always a danger in these things, but we now have a new panoply of balances in this, and checks. The Garda Ombudsman Commission is a very, very powerful body as a complaints body for people who are aggrieved. But, obviously, the legislation is there and I have no doubt there will be people who will try and find fault with it and try and challenge it. But in my view, it's a necessity and it's something to give the guards an added tool in the fight against crime."

Michael Noonan also mentioned that the gardaí would not have to reveal how surveillance evidence was obtained. In relation to the right to privacy, guaranteed through our Constitution, surely there's a fear that this could be abused?

"Automatically, it's a matter for the prosecution to put their case together, and it would be up to them, in conjunction with the DPP, obviously, who will direct what evidence is to be used. No, I can't see there being any difficulty in that respect."

A SLICE OF LIFE

Why did you become a solicitor?

Because it was the next quickest thing in college that wasn't teaching.

There was no other reason than that?

It was faster than teaching. My father wanted me to do teaching because my brother did teaching. My brother is now a solicitor and my sister is a solicitor as well. So we have changed in one fell swoop – mainly because of me – from a family of teachers to a family of solicitors.

Why did you get into politics?

Because there was a recession at the time in the first couple of years. I qualified in '76 and I

became a councillor in '79. I was doing a nine-to-five job, but there was time in the evening, and I got involved in politics mainly by coincidence – through sport, it has to be said.

Why do you decide to stay in politics?

It's a job.

Just that?

It's a job. Well, I am where I am. It's very hard to get out of politics once you're in it, even if you wanted to get out. There is an element of loyalty, and ultimately there's an element that it puts bread on the table. I would have to find a job elsewhere, and it's probably a bit difficult nowadays.

You could go back to law ...

I don't really ever see myself going back into law, to be honest. If I retire from politics, I'd like to do something else.

What do you do to relax?

I windsurf, I swim. I am a big skier in winter. I swim twice a week and I play golf. Work.

Golfing handicap?

18 – not very good.

Who is the person who has most influenced you?

Oh, my wife Maeve.

What with the advent of this new legislation and changes introduced in the *Criminal Justice Act 2007* – which meant that inferences could be drawn from suspects who decide to remain silent while being questioned – do you think civil liberties are more under threat from the state than from criminal gangs or criminal elements?

“I don’t, no. [In relation to] criminal gangs – I have said it many, many times – the state has to work with not one, but two hands tied behind its back. The criminal can use every trick in the book. So obviously we have to respond if they are, in effect, putting it up to society here – and that’s what we’re doing. But we obviously have to do it in the context of the protections that are in our Constitution, the protections that are in the *Human Rights Convention*, and other international obligations.

“But our own Constitution is probably even more firm in regard to the right to private property and the right to privacy. When you look at the exceptions that are in the *Convention on Human Rights*, there’s quite a significant exemption enumerated there, where the surveillance legislation would easily fit as an exemption.”

During your talk to members of the Law Society earlier today, you referred to the Legal Services Ombudsman. Any idea about who is under consideration for the post?

“No, there is no consideration at the moment. We are setting up the procedure whereby someone would be picked, but obviously there is nothing on the horizon just yet, but I will have to address it in the coming months.”

Before the summer recess?

“I would hazard a guess not – no. I would say some time after the summer probably.”

You also referred to the *Defamation Bill 2006*, which got as far as the second stage. Has it been shelved?

“I am hoping to bring forward amendments to that bill very soon and get it finished before summer.”

Do you still think there is a need for it, given the introduction of the Press Ombudsman and the Press Council?

“There is a large lobby of the media in favour of the *Defamation Bill* and there is an understanding that it will be brought forward. It’s more the *Privacy Bill* I think the media have a problem with. But it’s two sides of a coin in my view. There is an opening up of the defamation laws, for good reason, to allow apologies to be given without any admission of liability, and to look at the whole issue of lodgements and to try and reform it a bit – and you have to be fair to everybody.

“But at the same time, given the ever-increasing infringements on privacy – the media seem to be concentrating on how it will affect them – but I mean the fact is, with new technology such as Facebook, Bebo, all of these things, there is huge potential for invasions of privacy, of people’s individual privacy, and other than our Constitution, we have nothing to protect it. So in my view, we should be looking at this. And, I mean, even in the context of the *Surveillance Bill*, there is an aspect of invasion of someone’s privacy. We are conscious of that. Obviously, there is the security of the state and the fight against crime on the one hand, but equally so, there is the necessity to ensure that we are not going beyond the bounds of any normal democratic society, interfering with people’s right to privacy.”

You don’t think there is an inherent contradiction between the *Surveillance Bill* and the *Privacy Bill*?

“No, but there has to be a balance between the two. And that balance we will find.” **G**

“We have to stretch every available resource we have, both from a legislative point of view and also a financial point of view, to defeat this attack on society. It’s an affront to society what they are doing, particularly in Limerick, but in other areas of the country, in Dublin as well”

Why do you say that?

Well, I’m going out with her since I was 19 and she was 16, on her 16th birthday. So other than my parents and my own brother, to be honest, she has been the main rock in my life.

Apart from the usual reports you have to read, what novels are you reading at the moment?

I’m terrible for reading novels because I don’t have time. I read the four Irish papers every day, including Sunday, and to be honest, I don’t have time to read novels. I read novels when I’m on holidays. If the novel is half-finished, it remains half-finished. I don’t finish them. And that’s a joke in our family.

Favourite singer or band?

I am big into music. I have three iPods. I am a big fan of Aimee Mann, but I like everyone. I’m going to Leonard Cohen hopefully again this year.

What do your children say about their dad?

I have been very lucky in that I remember Frank Aiken Jnr saying to me when he contested an election with me in 1987 that, due to the impact of politics, he never knew his father, Frank Aiken. And I said to myself after that, if I ever have children – I didn’t at the time – I will never let my children say that. So I have travelled up and

down every day for 22 years. It’s been okay in recent years because I’m driven, but you know, it’s hard going still. And then you’ve to do a weekend of work sometimes. So it has been a good life, but I can validly put my hand on my heart and say my children cannot say they didn’t see me. I always made a case of making sure I saw them early in the morning or late at night.

What do you most want to achieve in life?

Well, other than being a professional footballer, a beach-bum windsurfing all the time... That’s really what I want to do, but unfortunately I have to earn a crust!

Employers who fail to take care of the mental health of their employees may be breaching the duty of mutual trust and confidence and exposing themselves to wrongful dismissal or personal injuries claims, writes Emma Hanratty

An employer's liability for the well-being of the mental health of employees was first recognised a little over four years ago, and claims for stress, bullying and harassment in the workplace have increased ever since.

In times of economic hardship, these types of claims can be expected to rise even more, as focus shifts to keeping businesses afloat and employee welfare slips down the list of priorities. Stressed-out employers may forget their obligations to their staff. Employees may be subject to increased workloads and extra stress as companies lay off staff. Tensions will no doubt run high in workplaces in this uncertain economic climate, leading to an increase in bullying cases.

The 2004 case of *McGrath v Trintech Technologies Ltd* was the first Irish case in this area, in which Laffoy J reviewed the authorities and adopted the English *Hatton* principles. In *Maher v Jabil Global Services Limited*, Clarke J identified the starting position for consideration of liability by posing the following questions:

- Has the plaintiff suffered an injury to his or her health, as opposed to what might be described as ordinary occupational stress?
- If so, is the injury attributable to the workplace?
- If so, was the harm suffered by the particular employee concerned reasonably foreseeable in all the circumstances?

Interestingly, the Supreme Court has recently delivered two decisions overturning High Court awards, showing just how difficult it can be to prove a claim.

Quigley v Complex Tooling

The employee had been subjected to bullying and harassment, ultimately leading to his dismissal. Lavan J, in the High Court, held that the defendant had breached its duty to the plaintiff and awarded damages.

In July 2008, the Supreme Court, in a judgment delivered by Fennelly J, overturned Lavan J's determination on appeal by the defendant. Both parties accepted the definition of 'workplace bullying', and it was accepted by the court that bullying must be:

- Repeated,
- Inappropriate, and
- Undermining of the dignity of the employee at work.



BULLY

The evidence of bullying and harassment was not contradicted in the High Court, nor was evidence of the injury. The defendant was successful in the appeal, however, on the issue of causation.

The Supreme Court reviewed the medical evidence and noted that the general practitioner's evidence indicated that the injury was related to the fact that the plaintiff had lost his job, and the impending unfair dismissal litigation. The Supreme Court held that there was no medical evidence of the injury having been caused by the plaintiff's treatment at work, and he had therefore failed to reach the burden of proof in relation to causation and his claim failed.

Berber v Dunnes Stores

The plaintiff, who had Crohn's disease, had been working for the defendant for over 20 years. The defendant sought to move him, and the circumstances



for you

surrounding the move and his perceived treatment by the defendant following the move led to the plaintiff's claim for wrongful dismissal and personal injury.

Laffoy J first addressed the plaintiff's breach of contract claim. She found that the treatment of the plaintiff by the defendant, when the defendant was aware of the plaintiff's medical condition and had been notified that the situation was causing him stress and exacerbating his medical condition, constituted a breach of the term of mutual trust and confidence. She awarded damages for wrongful dismissal.

Laffoy J then went on to consider the plaintiff's personal injury claim, which was founded in both contract and tort and, after reviewing the English authorities, stated that it was not necessary to distinguish between the two causes of action. She applied the *Maber* test to the facts at hand. There was clear medical evidence that the plaintiff had suffered

an illness beyond mere ordinary occupational stress, which had been caused by the manner in which he was treated by the defendants and was reasonably foreseeable. The defendant argued that the plaintiff must prove negligence on their part and Laffoy J accepted this, but held that the defendants had fallen short of what a reasonable and prudent employer would have done and had breached their duty of care to the plaintiff. The plaintiff was awarded damages for both the breach of contract and the personal injury.

Breach of contract?

The Supreme Court first looked at the breach of contract claim. Upon reviewing the case law, the court laid out the factors to be considered in determining whether there has been a breach of the implied term of mutual trust and confidence:

- The test is objective,
- The test requires that the conduct of both the employer and the employee be considered,
- The conduct of the parties as a whole and the accumulative effect must be looked at,
- The conduct of the employer complained of must be unreasonable and without proper cause, and its effect on the employee must be judged objectively, reasonably and sensibly in order to determine if it is such that the employee cannot be expected to put up with it.

Finnegan J reviewed the facts of the case and the conduct of both the employer and the employee. Although Laffoy J had found that the appellant was aware at the time of the respondent's vulnerability, Finnegan J understood this to mean the "normal anxiety and concern which any employee might feel on a significant change in his employment taking place". The court looked at the conduct of the employee and found he had acted unreasonably on a number of occasions: "the respondent's stance in this regard [was] as damaging to the relationship and unreasonable".

Finnegan J held that the appellant had acted reasonably in all instances and its conduct, judged objectively, "did not evince an intention not to be bound by the contract of employment". The employee had not been justified in accepting a purported repudiation of his contract and his claim for breach of contract was therefore denied.

Turning to the personal injuries claim, the Supreme Court first acknowledged that the claim

MAIN POINTS

- Personal injuries
- Workplace bullying and harassment
- Employers' liability for employees' mental well-being
- Recent case law

LOOK IT UP

Cases:

- *Berber v Dunnes Stores Limited* [2006] IEHC 327 and [2009] IESC 10
- *Gogay v Hertfordshire County Council* [2000] IRLR 703
- *Hatton v Sutherland* [2002] EWCA Civ 76; [2002] ICR 613; [2002] 2 All ER 1
- *Maher v Jabil Global Services Limited* [2005] IEHC 130
- *McGrath v Trintech Technologies Ltd* [2005] 4 IR 382
- *Quigley v Complex Tooling & Moulding Ltd* [2005] IEHC 71 and [2008] IESC 44
- *Walker v Northumberland County Council* [1995] 1 All ER 737

could be founded in contract or in tort and it was not necessary to distinguish between the two, as Laffoy J had found in the High Court. Citing the English case of *Hatton v Sutherland*, the court noted the difficulty in cases dealing with psychiatric injury in establishing foreseeability, causation and identifying a relevant breach of duty.

Finnegan J stated the test for foreseeability as being whether the harm sustained to the particular employee was reasonably foreseeable. The court must decide whether the employer knew or ought to have known of a particular vulnerability and must distinguish between signs of stress and signs of impending harm to health. An employer may rely on a doctor's certification as fit for work unless there is good reason to think the contrary. To determine whether the employer acted reasonably to fulfil his duty of care, the court must look at what the employer could have and should have done in each case. Finnegan J said that it was also necessary to show that any breach of duty caused the harm complained of and went on to state that "where there are several factors contributing to stress-related illness, if the employer made a material contribution, he will be liable for the whole, subject to any rights he may have to seek contribution from others who have contributed to the injury".

Causation was not an issue in the case, as medical evidence established that the injury was caused by the respondent's work circumstances. In relation to foreseeability, the court noted that a reasonable employer would be aware of a vulnerability on the part of the employee, but stated that it was not a vulnerability to mental injury but "rather that the respondent felt vulnerable by reason of the changes

in his occupation". It was foreseeable that failure to take reasonable care would result in stress and that, from 7 December 2000, it was actually aware of the stress being suffered by the respondent. The question, therefore, was did the employer take reasonable care?

Finnegan J stated that what is reasonable depends on "the foreseeability of harm, the magnitude of the risk of that harm occurring, the gravity of the harm which may take place, the cost and practicality of preventing it and the justifications for running the risk". He went on to quote Hale LJ in *Hatton*, who noted that, where the risk of harm was foreseeable and occurred, there may be a temptation to conclude there was a breach of duty, but "in every case it is necessary to consider what the employer not only could but should have done".

Having already determined that the appellant had acted reasonably to each incident complained of in the case before him, Finnegan J rejected the respondent's claim for breach of duty causing personal injury.

Essential elements

Case law has now established the essential elements for a successful personal injuries claim against an employer:

- There must be a recognised psychiatric or psychological injury – more than just everyday occupational stress,
 - The injury must be caused by the employee's experiences in the workplace,
 - It must be foreseeable by the employer – an injury to a particularly vulnerable employee may be foreseeable if the employer is aware of the vulnerability,
 - The courts must look closely at the actions of both the employer and employee and ask whether their conduct was reasonable before deciding whether there was a breach.

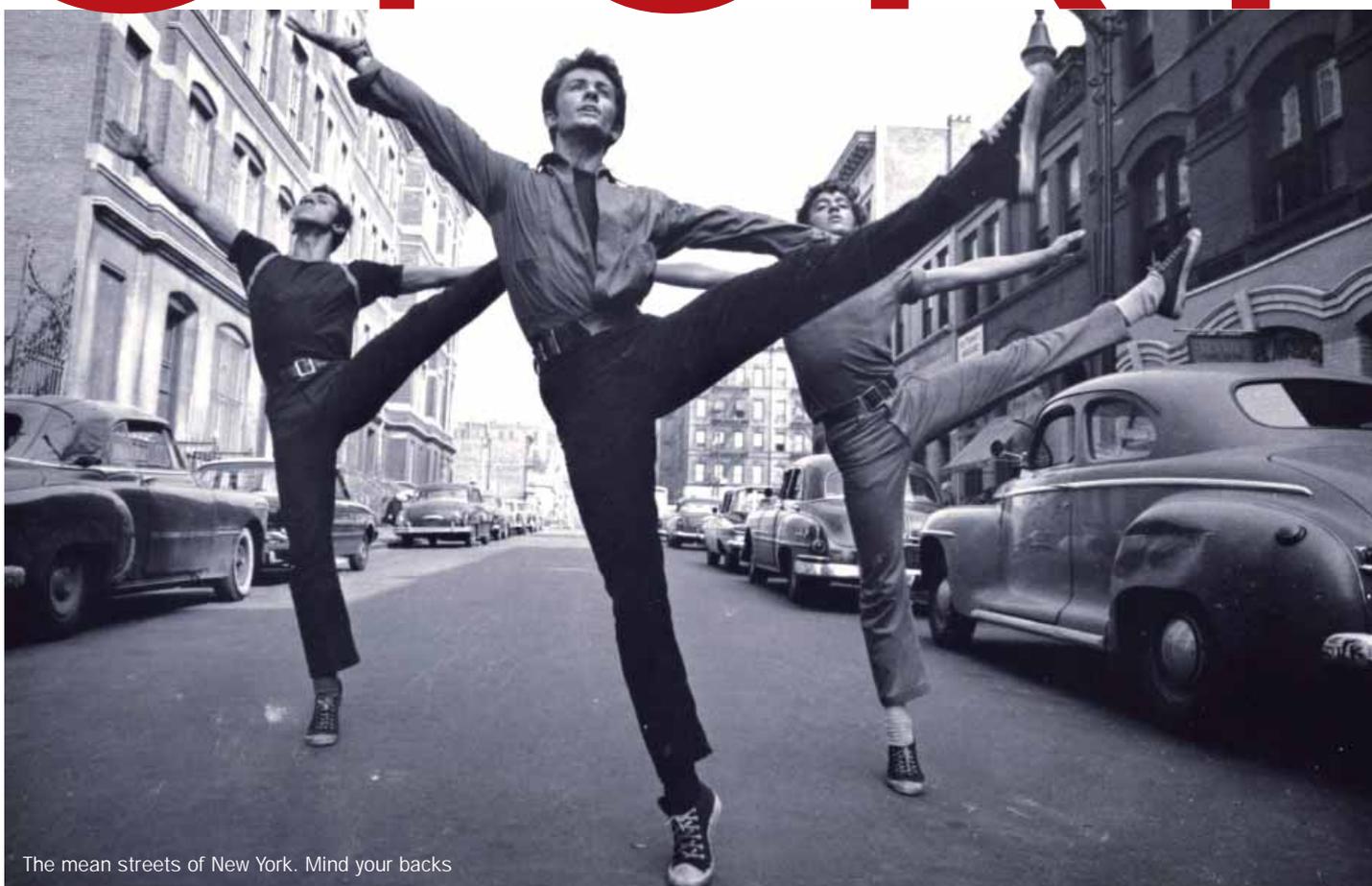
It is also clear that an employer who does not take care of the mental health of his employee may be breaching the duty of mutual trust and confidence and exposing himself to a wrongful dismissal claim in addition to a personal injury claim. Despite the new challenges a recession may bring,

it's important – now more than ever – for employers to be aware of their obligations to keep an eye on the mental and physical wellbeing of their staff, thus guarding themselves against potential personal injuries claims. **G**

Emma Hanratty is a barrister practising on the Dublin and northern circuits.

"It's important – now more than ever – for employers to be aware of their obligations to keep an eye on the mental and physical wellbeing of their staff"

WEST SIDE STORY



The mean streets of New York. Mind your backs

MAIN POINTS

- Irish lawyers practising in the US
- Non-immigrant options
- Permanent residence
- Alternative legal careers

In the March 2009 issue of the *Gazette*, we discussed the options for Irish lawyers to practice overseas, including in the United States. Elaine Martin elaborates on the immigration options available and suggests alternative careers for lawyers who are not licensed there

There are two main options for entering the US legally – non-immigrant (temporary) status and permanent residence (green card) status. The permanent residence process can take years, so most people use

a non-immigrant status first.

There are many categories of non-immigrant visas – covering almost every letter of the alphabet! Some letters have many subcategories, for example, H-1B, H-1B1, H-2, H-3, H-4. Many of these categories will

not apply to Irish lawyers, for example, A/G status (diplomats), T (victims of human trafficking), O/P (generally athletes and performers), to name a few. Only those categories likely to apply to Irish nationals are covered below.

H-1B – specialty occupation

The most common US immigration status for professional employees is H-1B. This status is appropriate where the position requires a bachelor's degree in a specific field and the employee has that degree. Most legal positions meet this requirement, including jobs as 'legal consultants' or similar with non-law-firm employers, for example, telecom companies. H-1B status is granted for a maximum of six years in total, in three-year increments. The status can be extended beyond six years if the foreign national has reached a certain point in the permanent residence ('green card') process.

US Citizenship and Immigration Services (USCIS, formerly INS) requires a four-year course of study for a bachelor's degree. Non-US degrees must be evaluated by a US evaluation company in the US to show that they are equivalent to a US bachelor's degree. A three-year degree is unlikely to meet this equivalency standard, unfortunately. However, USCIS does allow for experience to be used in lieu of education, on a three-for-one basis. This means that for every year missing from a four-year degree, the foreign national needs to show three years' experience in the field.

US immigration rules state that if the H-1B occupation requires a US licence, the foreign national must hold that licence. This means that a person cannot get a H-1B for a position as a lawyer in the US without having the relevant state law licence. However, it is possible to get H-1B status for a non-lawyer position, such as 'legal advisor' or 'consultant',

for example, if the position requires a bachelor's degree and the employee will not be advising on US law. For example, I have successfully got H-1B status for foreign lawyers coming to work for multinational corporations, where the lawyer will be primarily advising regarding the laws of her home country, not the US.

There is a limit of 65,000 H-1Bs that can be approved every year. In the past few years, USCIS has received up to three times the number of applications for H-1Bs on 1 April (the first available filing day) as there were H-1Bs available. However, as a sure sign of dire economic times, USCIS has only received 45,000 H-1B applications as of 4 May 2009. At the time of writing, therefore, there are still H-1Bs available for the next fiscal year.

J-1 – exchange visitor

Deborah Flood mentioned the J-1 programme in her March *Gazette* article. J-1 status is not just for university students wanting to work in bars for the summer! The category covers a wide range of 'exchange visitors'. An Irish lawyer might get J-1 status as an 'intern' or as a 'trainee'.

An intern must be currently enrolled in, and studying at, a post-secondary academic institution outside the US, or must have graduated from such an institution no more than 12 months before the J-1 programme start date. The maximum duration of an internship in any occupational field is 12 months.

Internship programs are designed to allow foreign professionals to come to the United States to gain exposure to US culture and to receive training in US business practices in their chosen occupational field.

A trainee must have: (a) a degree or professional certificate from a post-secondary institution outside the US and at least one year of related work experience outside the US, or (b) five years of work

"It is possible to get a position using a foreign law degree, even if you don't have a US law licence ... The most likely non-lawyer occupation is as a paralegal with a law firm or in-house legal department"

EMPLOYMENT-BASED PERMANENT RESIDENCE APPLICATIONS

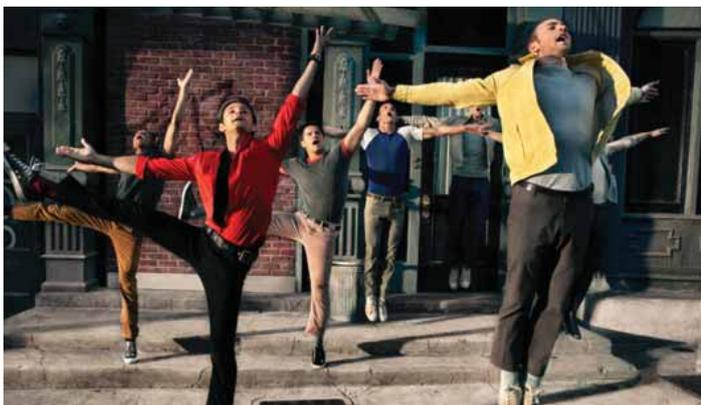
Most employment-based permanent residence applications involve three steps:

- 1) Labour certification: where the employer must advertise and test the local US job market to see whether there is an available, qualified, US worker interested in the position. This process is strictly regulated by the US Department of Labor, and it usually takes over a year to complete just this step. Naturally, especially in this economy, it is the most uncertain part of the process. If even one US worker, who responds to a job ad, meets the minimum requirements for the position, the labour certification cannot be filed and the process ends for the time being. The employer can restart the process later, if it wishes.
- 2) Immigrant petition: the employer files a petition with USCIS showing that it has an approved labour certification, that the employee meets the job

requirements (including having the necessary licences), and that it can pay the offered salary.

- 3) Adjustment of status: the employee (and dependent family, if applicable) requests USCIS to change his status from, for example, H-1B, to permanent resident. Applicants need to show a clean US immigration history, no medical problems (via a doctor's exam), minimal criminal issues, and 'good moral character'.

Depending on the requirements for the position, there could be a long wait before step three can be filed. If the job requires less than: (a) a master's degree, or (b) a bachelor's degree and five years' experience, there is a backlog of about six years before a foreign national could file 'adjustment of status'. During that time, the applicant will need to stay in non-immigrant status or leave the US.



experience outside the US in the relevant field. The maximum duration for the trainee category is 18 months.

All J-1 visitors must have a 'programme sponsor'. USIT acts as a sponsor for many Irish students and graduates. There are other 'umbrella sponsor' organisations, such as the American Council on International Personnel (www.acip.com) and the Association for International Practical Training (www.aipt.org).

F-1 – student

If an Irish lawyer wants to study in the US, perhaps before sitting the relevant state bar exams, s/he can do this in F-1 status. This is for students engaging in a full course of study in an accredited educational programme. It is valid for the duration of the study programme and often allows for one year of work authorisation (called 'optional practical training') at the end.

E-2 – treaty investor

An enterprising Irish lawyer who wants to set up her own practice or other business in the US might qualify for E-2 status. This is for people from certain 'treaty countries' (including Ireland) who are going to the US to manage a business owned by nationals of the same treaty country, including self-employment. The investor needs to show that she is buying an existing active business or that she has invested enough capital to establish a real, commercial enterprise.

The investment must be substantial. It must be sufficient to ensure the successful operation of the enterprise. The funds must also be 'at risk', that is, not borrowed and secured on the success of the business.

E-2 status is granted indefinitely. E-2 visas are usually approved for five years at a time, and the foreign national is admitted for two years on each entry to the US.

Permanent residence ('green card')

There are two main ways of getting permanent residence in the US: via (a) a family relationship, or (b) employer 'sponsorship'. Unless the foreign national has a US citizen spouse or adult child, the

waiting period in family-based categories is long. For example, adult children of US citizens have the shortest wait now, about seven years.

Getting permanent residence via employment can also take a few years, and it is extremely rare for an employee to undergo this process from overseas. Not surprisingly, most employers will only start the process once the employee has been working in the US for some time, so that the employer can assess whether it wants to incur the time and expense involved in the permanent residence process.

Diversity lottery

Irish nationals are usually eligible to apply for permanent residence via the diversity lottery – however, the chances of success are slim. The US State Department received 9.1 million entries for 50,000 visas in the last round. The visas are divided among six geographic regions, with a maximum of 7% to any one country. Ireland got 132 in the last round.

Alternative legal careers

As mentioned above, it is possible to get a position using a foreign law degree, even if you don't have a US law licence. Most state bar rules prevent a person providing legal advice or otherwise acting as a lawyer without a licence, but there are other options.

The most likely non-lawyer occupation is as a paralegal with a law firm or in-house legal department. Paralegals are often highly trained professionals with a detailed knowledge of their area of law. In some fields, such as immigration, paralegals have extensive client contact, and it can be difficult to decide when a paralegal's help crosses the line into giving legal advice. Depending on the law firm and practice area, a paralegal's work can be very rewarding (financially and professionally) or it can be pretty boring!

When I first moved to the US, before I passed the Texas bar exams, I worked as a litigation paralegal with a huge law firm. Initially, I was doing extensive legal research and writing briefs, journal articles, and other documents. This was really legal work, but my wonderful maverick boss wanted to make use of my skills. Unfortunately, once the firm's management realised that a non-attorney was doing this work, it stopped, and I was given more 'normal' litigation paralegal work. In my case, this was administrative work: lots of organising, indexing, tabbing and redacting. This work is important, but not exactly something most of us would get passionate about. I suggest that, if you start as a paralegal, it might be better in a small firm with more flexibility. **G**

Elaine Martin has been practicing immigration law in Dallas, Texas since 1997. She became licensed as a US lawyer in 1995. She graduated from UCD and was a solicitor in Dublin before moving to the US in 1994. She can be reached at www.martinvisalaw.com.

Share and sh

Section 60 of the *Companies Act 1963* prohibits a company directly or indirectly providing financial assistance for the purchase of its (or its holding company's) own shares – with certain exceptions. Compliance is particularly important, because the consequences of a breach are so serious, says Barbara Cotter

Section 60 of the *Companies Act 1963* is directed against a form of assistance that either actually or potentially uses funds, capital or assets of a company as a means of implementing a purchase transaction of its own shares. It prohibits a company directly or indirectly providing financial assistance for the purchase of its (or its holding company's) own shares, with certain exceptions – the most common of which is often referred to as the 'whitewash' procedure.

Compliance is particularly important because the consequences of a breach are so serious. Any assistance given in breach of the section is voidable at the instance of the company, and officers of the company in default will be liable to a fine or imprisonment, or both.

It is worth looking at section 60(1): "Subject to subsections 2, 12 and 13, it shall not be lawful for a company to give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with the purchase or subscription made or to be made by any person of or for any shares in the company or, where the company is a subsidiary company, in its holding company."

By the words "directly or indirectly", "by means of a loan, guarantee, the provision of security or otherwise, any financial assistance", and "for the purpose of or in connection with", we can see how broad the prohibition is.

Financial assistance

The challenge can be identifying where 'financial assistance' arises – that is, is section 60 an issue? There is no definition of 'financial assistance'. Sometimes it is obvious – for example, where a company gives a guarantee or other security to secure a loan used to purchase its shares, then that guarantee or security will be 'financial assistance'. So, unless an exemption is availed of, there will be a breach of section 60.

But it is not always so obvious and there may be a number of transactions at the one time. One test that is quite useful was given by Lord Denning (*Wallersteiner v Moir*), when he said: "You look to the company's money and see what has become of it. You look to the

company's shares and see into whose hands they have got. You will soon see if the company's money has been used to finance the purchase."

Although in most cases the financial assistance will be given to, and received by, the purchaser of the shares, section 60(1) is not limited in this regard, and it may be irrelevant whether the financial assistance made by the company is for the benefit of the seller or the purchaser of the shares.

Whitewash

Subsection 2 sets out a procedure that, if complied with, means the financial assistance can be given. If it is going to be relied on, the thing to do is to have the section in front of you and follow it, step by step. There are timelines to be followed. The procedure must be strictly followed, and resolutions passed subsequently cannot ratify a breach.

Essentially, it comprises a special resolution passed not more than 12 months previously (and every member, regardless of voting rights, has the right to receive notice of and attend the meeting at which the resolution is to be considered); a statutory declaration made at a board meeting by a majority of directors (or if there are only two, by both directors); and a copy of the declaration, to be delivered to the Companies Registration Office within 21 days of the assistance being given.

The declaration must provide information about the assistance to be given and, importantly, that the declarants have made a full enquiry into the affairs of the company. Having done so, they will have formed the opinion that the company, having carried out the transaction, will be able to pay its debts in full as they become due. If a director makes the declaration without reasonable grounds for his opinion, he shall be liable to imprisonment or to a fine.

If the company has an insolvent winding up within 12 months after making the statutory declaration, it shall be presumed, unless the contrary is shown, that the director did not have reasonable grounds for his opinion. If advising the company, it is important to bring this to the attention of the directors. The directors should be advised to discuss with the company's auditors the projected position of the company over the following 12 months or so.

MAIN POINTS

- Section 60 of the *Companies Act 1963*
- What constitutes 'financial assistance'?
- The 'whitewash' procedure
- Exceptions and other provisions

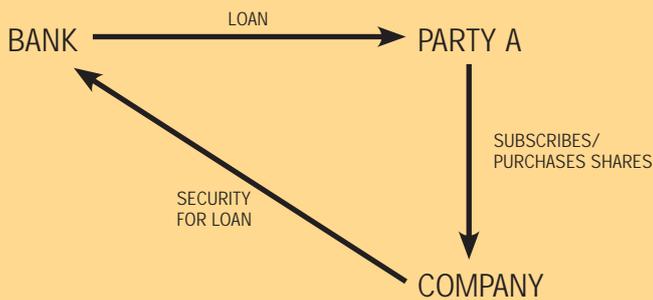
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EXCEPTIONS AND OTHER PROVISIONS

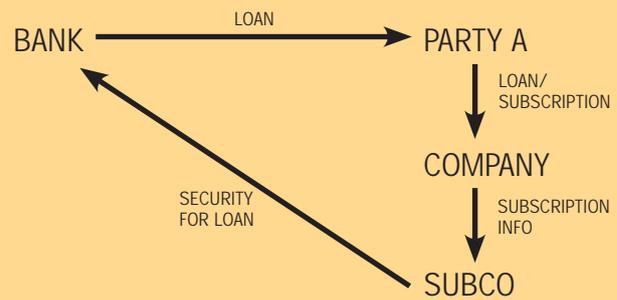
Although the 'whitewash' procedure is the most common exception, there are a number of others (some of which were added by the *Investment Funds, Companies and Miscellaneous Provision Act 2005*):

- The payment of a dividend or any distribution out of profits available for distribution.
- The discharge of a liability lawfully incurred.
- Refinancing and security granted in connection with a refinancing. As there is no reference to guarantees, it is unclear whether this exemption can be relied on where there are guarantees involved.
- The lending of money in the ordinary course of its lending business.
- The provision of funding for an employee share scheme.
- The making of loans to employees (other than directors) to enable them to purchase/subscribe for shares in the company.
- The making or giving of representations, warranties or indemnities to a person who has purchased or subscribed for shares in the company/its holding company. This has clarified an area that previously caused some doubt.
- The payment of fees and expenses of the advisers of any subscriber for shares in the company/its holding company incurred in connection with that subscription. This refers only to the payment of subscriber's fees and expenses. It is not clear whether it could be interpreted to apply to purchaser's fees.
- The incurring of expenses relating to a prospectus or to facilitate the admission of any shares in the company.
- The incurring of expenses to facilitate the admission of any shares in the company for the trading of such shares on a regulated market or other securities market.
- The incurring of expenses by the company to ensure compliance with the *Irish Takeover Panel Act 1997*.
- The reimbursement of expenses pursuant to an agreement approved by the Irish Takeover Panel.
- The payment to an intermediary of commission not exceeding 10%, and professional fees in connection with an allotment of shares.
- Insofar as a provision is not otherwise authorised, the provision of financial assistance by a holding company or a subsidiary in connection with the holding company or the subsidiary purchasing or subscribing for shares in the holding company on behalf of present or former employees and employee share schemes.

EXAMPLE 1: FINANCIAL ASSISTANCE



EXAMPLE 2: FINANCIAL ASSISTANCE



Generally, it is accepted that directors are not being asked to speculate as to what may happen in the future, other than by reference to facts known to them now.

In practical terms, usually, the following happen at the same time:

- The meeting of the directors,
- The swearing of the statutory declaration,
- The convening and consent to short notice of the EGM,
- The filing of a copy of the statutory declaration,
- The passing of the special resolution, and
- The execution of the relevant documentation.

In the case of statutory declarations made abroad, section 6 of the *Investment Funds, Companies and Miscellaneous Provisions Act 2006* sets out what constitutes a validly sworn statutory declaration made abroad.

Rights of minorities

Unless all members entitled to vote at the general meeting of the company vote in favour of the special resolution, the transaction cannot be carried out until 30 days after the resolution has been passed – or an application (within 21 days of the resolution) made by the holders of at least 10% of the nominal value of the issued share capital or any class thereof to the court to cancel the resolution. The resolution then will have no effect, except to the extent that it is confirmed by the court. Such application cannot be made by anyone who voted in favour of the resolution.

PLCs

There is a proviso to certain of the exceptions (lending of money in the ordinary course of business, funding for an employee share scheme and loans to employees to purchase shares) in relation to public limited companies. A PLC may only give financial assistance in those circumstances if the company's net assets are not thereby reduced or, to the extent that those assets are reduced, if the assistance is provided out of profits that were available for distribution. Net assets are defined in the section.

Most importantly, PLCs cannot use the validation provision unless the company is being registered or

reregistered as a PLC, and a special resolution was passed before such change.

Consequences

A transaction in breach of section 60 is voidable at the instance of the company against any person (whether a party to the transaction or not) who had notice of the facts that constitute such breach.

The likely way a company will try and avoid such a transaction is through a liquidator.

Where a company acts in contravention of the section, every officer of the company who is in default is liable to imprisonment, or to a fine, or both.

Other relevant provisions

Section 60 does not apply to the acquisition by a company of shares in its holding company, or to investment companies.

If a director is the subject of a restriction order (section 150, *Companies Act 1990*), then the company cannot use the 'whitewash' procedure.

An Irish subsidiary of an Irish PLC may not use the 'whitewash' procedure to give financial assistance for the subscription or purchase of the PLC's shares.

Put section 60 on your checklist when advising on share acquisition and financing transactions. Consider if there might be financial assistance. Where it does arise, look and see if an exemption applies. If using the 'whitewash' procedure, follow it carefully. **G**

Barbara Cotter is a partner in the banking and financial services department in A&L Goodbody.

LOOK IT UP

Cases:

- *Armour Hick Northern Limited V Armour Trust Limited & Others* 1980 3 AER 833
- *Bank of Ireland v Rockfield Limited* 1979 IR 21, re notice requirements
- *Brookhouse School Case* (High Court, unreported) 2 June 1987 – *Lombard and Ulster Banking Limited v The Governor and Company of the Bank of Ireland and Brookhouse School*.
- *Wallersteiner v Moir* 1974 3 AER 217

Follow the LEADER

Communicating with your team is vital in helping them adapt to any organisational changes that have occurred and in encouraging them to be the team that sees the firm up that hill to better times, writes Aoife Coonagh

You may be working in a firm where tough decisions have been taken, the number of roles in your department and team have been cut, and some people are on reduced hours. You have some bright newly qualified solicitors whose contracts have not been confirmed, and they are naturally anxious about their future. Meanwhile, the volume and value of work may be declining and, ironically, your own workload is increasing. And you, as the manager or senior fee earner, have to lead and motivate staff to deliver the same high level of professional service your firm has always delivered.

It doesn't really help a whole lot that others are going through the same thing. Not unexpectedly, many senior people are having mixed feelings in the current climate. They are more and more stretched trying to achieve the same output with fewer resources. They're missing their colleagues and friends who have left –

MAIN POINTS

- Choppy waters
- Rocky shores
- All hands on deck

Billy goats can be gruff. Just watch out for trolls

in some instances, senior and experienced people to whom they could have turned for advice and help. And, in the midst of all of this, they are trying to manage existing business well, grow business, and motivate their teams.

Now more than ever, managers and team leaders need to make time for themselves – time to chat with others who are experiencing the same thing, time to communicate. Managing existing work with fewer resources, developing new work, and motivating colleagues – all of these take physical and mental energy. To maintain that energy, you need to take time. And you also need to know some of the traps people can fall into during – and after – times of change.

The way we never were

Back in the good old days, summer was summer, the sun shone every day, tomatoes and strawberries had taste, and people had more time for one another. At least, that's the way we remember it. In a fascinating book a number of years ago, *The Way We Never Were: American Families and the Nostalgia Trap*, Stephanie Coontz wrote about this phenomenon – our nostalgia for the way things used to be. But she also makes the point that not everything may be as we fondly remember it – we tend to remember the good bits and omit the rest.

The same is true with your firm, with your team. People remember 'the way things were' – but more importantly, they start to live in suspended animation, waiting for things to 'get back to normal'.

Problem is, what you have now may very well be 'normal' for quite some time. As a leader, you need people to recognise this reality, but you also need to fill them with hope and optimism. In tough times, hope and optimism are valuable leadership qualities.

As leaders and managers, there are number of things you can do to support and reassure your people at this time, and confidently lead them to be the team that sees the firm through to better times.

And the first is to communicate.

Communication breakdown

If your team structure has changed, then you now have a brand-new team and you should treat them as such. You can't – and they can't – spend time wishing things could be 'just like they were before'. You have all been through a difficult time and it is natural that this would be followed by the equivalent of a 'grieving' process. But now you need to start afresh with your new team.

It is important that you draw a line in the sand. Have a night out with your team to celebrate the team that was – like a wake. And, once the wake is over and you

have chatted about the good old days, park it and move on. They will also take their cue from you. Staff are highly attuned to the moods of their managers: show them now that you have shaken the gloom and that you are re-engaged. That does not mean that you are in any way dismissing those who have gone, but you cannot mourn them indefinitely, and your responsibility right now is to the team you have. Focus your energy on thinking about new projects and creative ideas and solutions to move them forward with a renewed sense of purpose.

Now, start to talk to your team about the future. They need to know your firm has a plan for the future and that they are a part of it. Outline the reality and challenges facing the firm. Be honest and hopeful. Your people need to understand the main targets and priorities. Talk to your team about the business priorities. Is business development a priority? Is client

turnover an issue? Are costs a concern? In my experience, your team will be more engaged and productive when they understand the reality of the situation and are clear on the direction you want them to go in.

Engage your people; most people can be re-energised by new and exciting work. Create team forums and have regular meetings to discuss these issues openly with staff. Invite them to join with you and the management team in coming up with ideas, solutions and plans to make the business stronger.

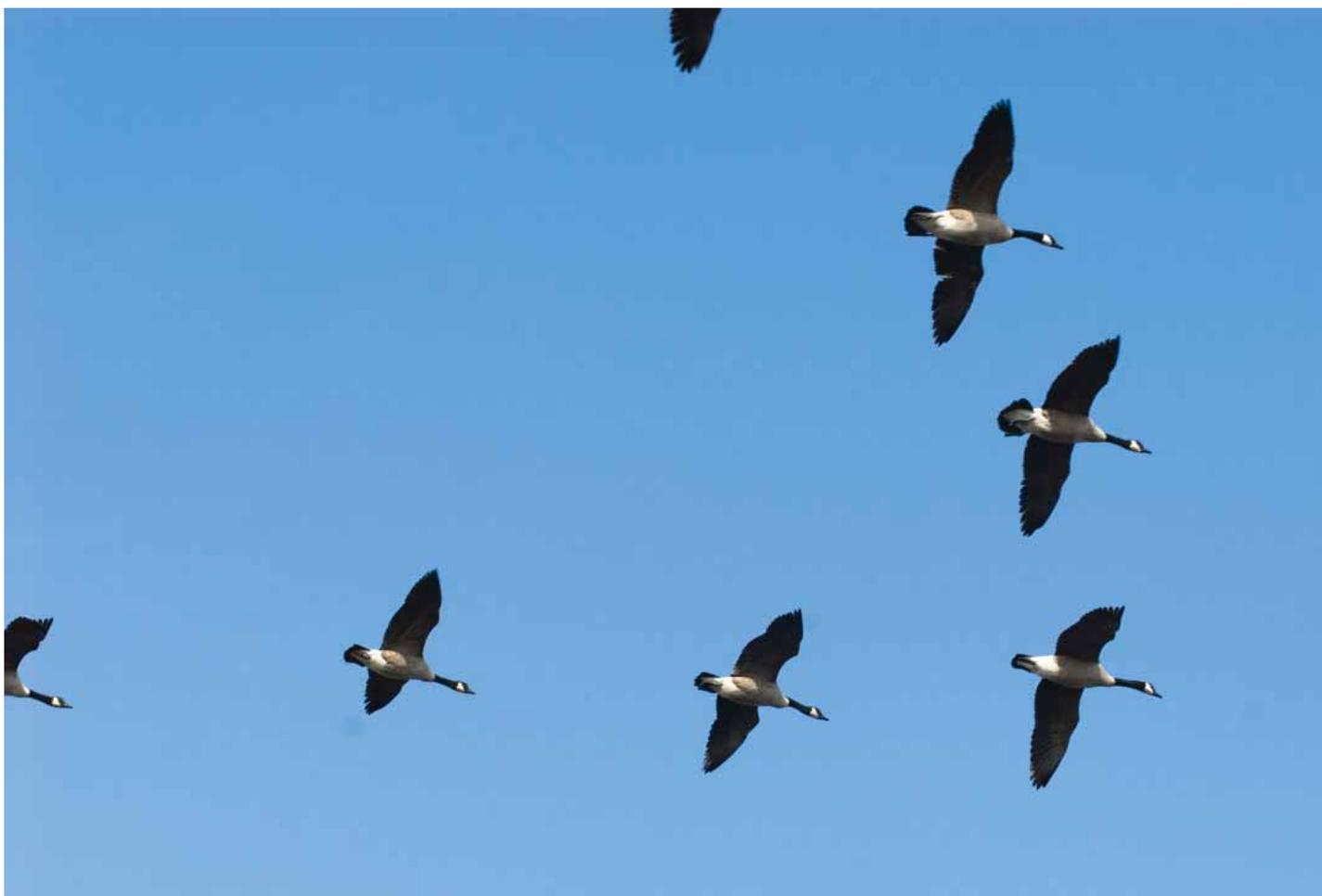
Talk to team members one-to-one as well. Reassure them of their individual value and contribution to your team and the firm. Reiterate the reasons for the restructure and listen to their personal concerns and perspectives. You can't promise them that their job is 100% secure; however, you can outline how their role and contribution aligns to the business plans and results.

“You cannot do with ten people what you used to do with 15 or 20. Some less important things may have to go. Be realistic about what can and must be achieved”

Something's gotta give

Many of us are feeling an increasing pressure to deliver more, in less time and with less help and assistance. I worked with one client recently, whose day had stretched by an hour at each end – and she worked long hours prior to this change. She was now pretty much having breakfast, lunch and dinner at her desk. Apart from the health and time implications – she had no energy or time to herself – it would not have been long before she suffered diminishing returns.

I helped her find ways to prioritise and streamline her current workload. We looked at all her tasks and projects and prioritised the work that was critical and contributed to the business goals. We identified the work processes that added the least value to the client experience in her business. She eliminated them. You cannot do with ten people what you used to do with



15 or 20. Some less important things may have to go. Be realistic about what can and must be achieved, and ensure that everyone's skills and strengths are being used effectively.

You can start helping your team by firstly recognising and appreciating the extra work being done. Know what they have done, and thank them.

You can help to alleviate the impact of the increased workload by working with them to discuss their workload and prioritise actions in line with the business priorities. Often this results in the team agreeing a sensible redistribution of the work among themselves. Empowering them to do this also means they will be more committed to making it work.

Your team knows only too well the processes and procedures that can be streamlined. Encourage them to simplify processes and get rid of those that are no longer relevant in the current climate.

Soul survivor

Sometime the survivors of a downsizing feel that they don't have the appropriate skills set or knowledge to perform to their best in their new or expanded role. This can also be heightened by the fact that the person who they used to go to for help is no longer with the firm. As manager, you need to enable your team to stretch and grow into their new and broadened roles. Help them to contribute quickly and

improve their confidence by providing support using team mentoring, on-the-job coaching and formal skills training as required. Encourage cross-training across your team, and document new processes and procedures.

Some managers use this time as an opportunity to help their people to develop new skills that will ultimately enable them to move and transfer to a completely new role in the future. Career discussions are particularly important now, so you can facilitate your people to be prepared to progress when the time comes.

Are you gonna go my way?

As your new business plans become reality, and your team begin to see the results they can achieve, it is critical that you continue to communicate with them frequently. Monthly briefings and weekly updates outlining business performance and progress against targets will go a long way to reassure and focus your team on what's important.

Proactively communicating with your team as you lead them through this difficult time will not only motivate them, but they will also realise how their efforts are linked to making your business stronger. **G**

Aoife Coonagh is head of career development at Carr Communications.

The remake of *Dambusters* isn't all it's cracked up to be



PICTURE: LENS MEN

The President of the Law Council of Australia, John Corcoran, was a recent visitor to the Law Society of Ireland's headquarters at Blackhall Place. At a special dinner to mark the occasion on 18 May were (*front, l to r*): Jacqui O'Mahony, Margery Nicoll, Eileen Shaw, John Corcoran (President of the Law Council of Australia), John D Shaw (President of the Law Society of Ireland), Anne Plunkett (Australian Ambassador to Ireland), Gill Corcoran and Yvonne Chapman. (*Back, l to r*): Michael V O'Mahony (past-president), Ken Murphy (director general), Geraldine Clarke (past-president), Gary Gray, Hugh Mohan SC and Dr Eric Falkiner



A dinner was held in honour of the Archbishop of the Dublin Diocese, Dr Diarmuid Martin, at Blackhall Place on 30 April 2009 (*back, l to r*): James McCourt (junior vice-president), Ken Murphy (director general) and John O'Connor (Council member). (*Front, l to r*): Fr Martin Clarke, Archbishop Diarmuid Martin, John D Shaw (president) and Fr Tom Kennedy. Fr Clarke and Fr Kennedy are former solicitors



PICTURE: LENS MEN

At a dinner held in honour of the Garda Commissioner at Blackhall Place on 15 May 2009 were (*l to r*): John D Shaw (president), Garda Commissioner Fachtna Murphy, Mary Keane (deputy director general) and Gerard Doherty (senior vice-president)



The 'Panel to Assist Solicitors in Difficulty with the Law Society' came together at Blackhall Place on 11 May 2009 for their annual workshop

Sligo practitioners mark judge's retirement

The Sligo Bar Association (SBA) hosted a gala ball to mark the recent retirement of Judge Oliver McGuinness. Over 200 members of the legal profession attended a very enjoyable night in the picturesque surrounds of the Castle Dargan Hotel, Sligo. Among the dignitaries in attendance were 19 District Court judges, many distinguished local solicitors and their partners, senior and junior counsel, Circuit and District Court staff and members of An Garda Síochána.

After practising as a solicitor for 15 years, Judge McGuinness served for 26 years on the bench, initially as a movable judge (appearing in every county in Ireland and at 240 different venues) before serving as the resident District Court judge in Sligo for the last 14 years.

The master of ceremonies, SBA president Seamus

Monaghan, and other distinguished speakers paid glowing tributes to Judge McGuinness and wished him and his wife Marie well in their retirement. Thanks go to the SBA's organising committee for making the night such a great success.

The judges who attended were: Judge Oliver McGuinness, Judge Miriam Malone (president of the District Court), Judge Conal Gibbons, Judge David Anderson, Judge Desmond Zaidan, Judge Tom O'Donnell, Judge Michael Patwell, Judge Murrrough Connellan, Judge Geoffrey Browne, Judge Anne Watkin, Judge William Harnett, Judge John Neilan, Judge Bernard Brennan, Judge Aeneas McCarthy, Judge William Hamill, Judge Thomas Fitzpatrick, Judge Sean McBride, Judge David McHugh and Judge Elizabeth McGrath.





Galway Shaw

The president and director general of the Law Society attended a meeting of the Galway Bar Association on 8 April 2009, where there was much discussion and debate on a variety of topics affecting the profession

Lady Solicitors' Golf Society spring outing

The Lady Solicitors' Golf Society held its annual spring outing in Mount Juliet, Co Kilkenny, on 15 May. Louise Moloney, playing off a handicap of 28, enjoyed a winning score of 35 points. Louise was presented with the Patrick O'Connor Trophy by the lady captain, Fiona Ryan.

In April, the society travelled to Edinburgh to play in the biennial match-play trophy against the Legal Ladies' Golf Association of Scotland. After a closely fought battle over two days of golf, the Irish team retained the trophy and title by virtue of a draw. Muriel Walls of McCann FitzGerald Solicitors clinched the vital point in the very last match at Murrayfield Golf Club. The team that travelled was: Fiona Ryan (lady captain), Judge Petria McDonnell, Mary Morrissey, Muriel Walls, Mary Casey, Maeve Carroll, Mary Molloy, Deirdre O'Connor,



PICT: MAURA DERVAN

Louise Moloney (*right*) receives the Patrick O'Connor Trophy from the lady captain, Fiona Ryan

Mary C Dillon, Geraldine Lynch Burke and Paula Daly.

Captain's Prize

Another major society event will be the Captain's Prize, which will take place at Glasson Hotel and Golf Club in Athlone, Co Westmeath, on Friday 4 September. Players will be contesting for the Moya Quinlan Trophy.

The lady golfers are also set to take part in two mixed match-play events with colleagues from

the Irish Solicitors' Golfing Society. The first event will be against members of the bar at Rathsallagh Golf Club on Sunday 5 July. The second will be held at Carton House at the end of September (date to be confirmed).

The Lady Solicitors' Golf Society is open to all lady

solicitors and trainees, and is delighted to welcome new members.

Anyone wishing to join the society, or who would like to enquire about any of the above-mentioned events, should contact Fiona Ryan (captain) at 01 677 2519 or email: fiona@arthurmclean.ie.



PICT: LENS MEN

Opportunities In Oz

During his recent visit to Ireland, the president of the Law Council of Australia, John Corcoran, confirmed that many Australian law firms are still hiring – litigation practitioners in particular. John (*right*) is seen here with the Australian Ambassador to Ireland, Ms Anne Plunkett, and Law Society President John D Shaw

Waterford meeting and annual dinner

Waterford Law Society held its annual meeting and dinner in the Banyan Restaurant in Tramore on 24 April 2009. The dinner followed a full meeting of the bar association with Law Society President John D Shaw and director general Ken Murphy.



Fiona Gillen and Gillian Kiersey at Waterford Law Society's annual dinner in the Banyan Restaurant, Tramore, on Friday 24 April 2009



Special guests at the annual dinner of the Waterford Law Society were (l to r): Sean Aylward (secretary general, Department of Justice, Equality and Law Reform), Gail Enright (vice-president, Southern Law Association), John D Shaw (president of the Law Society), Bernadette Cahill (president, Waterford Law Society), Ken Murphy (director general, Law Society), Tom Murrán (Council member, Law Society) and Garda Inspector Jerry Lynch

ALL PICS: GARRETT FITZGERALD PHOTOGRAPHY



Waterford Law Society committee members Kieran Curran, Derry O'Carroll, Tom Murrán, Jim Hally, and Niall King, with President of the Law Society John D Shaw



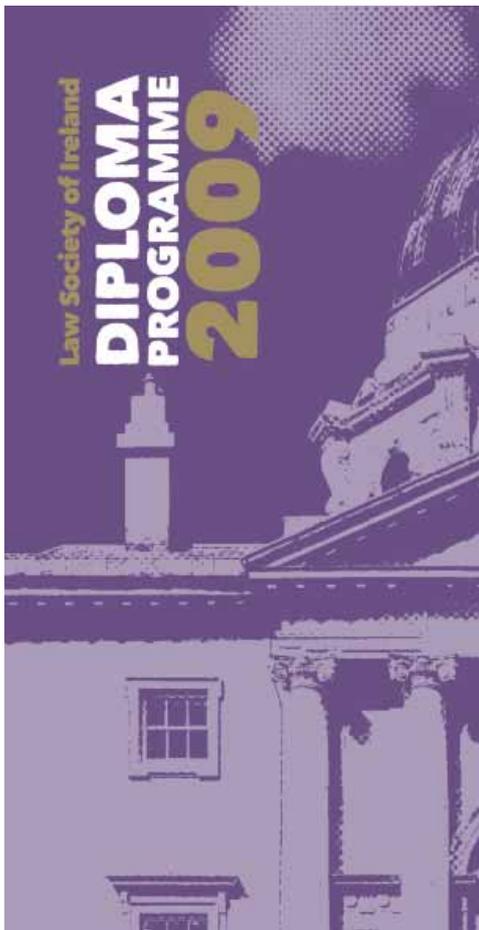
Bringing style to Waterford Law Society's annual dinner on 24 April were (l to r): Rosa Eivers, Fiona FitzGerald and Jill Walsh (committee members)



Enjoying the atmosphere at the annual dinner were (l to r): Neil Breheny, Gill Mahony and Gill Sweeney



Claire Ryan, Frank Treacy (Property Registration Authority) and Edel Morrissey attended the annual dinner in Tramore



Diploma Programme Autumn 2009

The Diploma Team is delighted to announce an expanded and diverse portfolio of courses for our Autumn 2009 Programme. In total there are eleven courses on offer, which includes the launch of two new diplomas, namely our Diploma in Insolvency and Corporate Restructuring and our Diploma in Civil Litigation. In addition, we will also run three new certificates as part of our Autumn 2009 Programme, a Human Rights course and two certificates in Cork, a Taxation course and a Litigation course.

Our full Autumn 2009 Programme is as follows:

- Diploma in Trust & Estate Planning **23 September**
- Cert. in Criminal Litigation and Procedure **26 September**
- Diploma in Finance Law **29 September**
- Diploma in Family Law **03 October**
- Dip. Insolvency & Corporate Restructuring **08 October**
- Diploma in Civil Litigation **10 October**
- Certificate in Human Rights **10 October**
- Certificate in Litigation (Cork) **16 September**
- Certificate in Taxation (Cork) **22 September**
- Diploma in Legal French **14 October**
- Certificate in Legal German **September/October**

Full details of the above courses are available on the web www.lawsociety.ie/diplomaprogramme or by contacting a member of the Diploma Team at diplomateam@lawsociety.ie or Tel. 01 672 4802.



Law Society of Ireland

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Law Society of Ireland, Blackhall Place

You hit the streets – so they don't have to

As the warm-up began for the 1,100 participants at this year's Calcutta Run on Saturday 16 May, the heavens opened – but this seemed only to steel their determination, writes Maree Crowley. Grey clouds hung overhead for most of the afternoon. The least that the wet and cold participants deserved after crossing the finishing line was a well-deserved BBQ and beer.

The 10th anniversary of the Calcutta Run last year raised €340,000 for charity. Given the effects of the recession this year, a lower target was set. In the end, a tremendous effort by everyone added €200,000 to the fund. All money raised will go to GOAL projects in Calcutta and the Fr Peter McVerry Trust in Dublin – both charities work tirelessly to keep homeless youngsters off the streets in both cities.

John O'Shea (GOAL) and Peter McVerry commented on the incredible generosity and commitment of the solicitors' profession to both charities. Yet again, it was a mix of solicitors, trainees, Law Society staff, families and friends who gave up their time to support these worthy causes.

The support of the sponsors of the Calcutta Run is also significant, because it ensures



Doing the hokey cokey en masse



President John D Shaw and Lisa O'Shea, GOAL



RTÉ's Michael Lester and his crew (from 1Escape Gym) do some old-skool MC-ing



Aedhamair Blennerhassett

that every cent raised goes directly to the two charities. The main sponsor, once again, was IrishJobs.ie, with valuable support being provided by DX, File Stores, 1Escape Gym and Greyhound Recycling.

The organising committee is sincerely grateful to all the

runners and walkers, and to everyone who assisted with administration and services, or who lent their financial support.

While we can't promise the weather for next year, we can guarantee a great day of fun at Calcutta Run 2010. Keep your diary free!



Stop talking and let us run!



Odd one out



Kevin O'Higgins goes all the way



student spotlight

Blackhall GAA strikes Dutch Gold!

The PPCI Blackhall GAA team had cause to celebrate this year with their victory in the 2009 GAA Invitational Tournament at the Den Haag GAA ground in Holland. Spurred on by their victory in round one of the Trench Cup the previous week, the Blackhall Barbarians continued their winning form in Europe. The team faced Glencar/Glenbeg from Kerry in the first round and overcame the challenge with the help of some first-class score-taking from Odhran Lloyd and Daniel Kelly.

The second game was a one-sided affair against UCD, with the university students unable to match the physical presence of Blackhall defenders Robbie Kelly, David Kelly, John Cronin



Gold-getters! Blackhall's European GAA champs!

and Eamonn Harrington.

The semi-final against a Ballinteer side saw Blackhall play a firebrand style of football. Winning goals came from Paul Prenty and there were excellent performances from midfielders Barry Noonan and Johnny Maher.

As light began to fade in Den Haag, a crowd gathered for the centrepiece event between Blackhall GAA and Ballyboden St Enda's. Ballyboden led 1-5 to 1-4 at half time, with the PPCI side facing a Canute-like struggle to turn the tide.

Inspired by the tactical team talk of manager John Crowe (injured) on the sideline and another goal from the enigmatic Paul Prenty in the closing stages of the game, the Blackhall side powered to the final whistle, winning on a scoreline of 2-8 to 1-7.

Captain Jonnie O'Doherty was presented with the cup while the 'Player of the Tournament' award went to Odhran Lloyd. The team would like to thank the Law Society for its support, the Legal Panel for sponsoring the jerseys, and Frank Ryan's of Queen Street for the polo shirts. The team looks forward to seeing a Blackhall team defend the crown in Europe next year!

Law Society duo reaches client counselling semi-finals

Last April, two trainee solicitors from Arthur Cox, Michael Doyle and Jerry Healy, travelled to the University of Nevada's William S Boyd School of Law in Las Vegas to represent Ireland at the international final of the Louis M Brown Client Counselling Competition.

The competition was established by the Los Angeles lawyer Louise M Brown in 1969 to address the need in legal education to include the skills of interviewing and advising clients. The international competition was inaugurated in 1985. This year, 19 countries were represented at the three-day international finals.

In all, 250 law schools took part during the qualifying rounds, including teams from as far afield as Cambodia, Malaysia, Nigeria, India and Ukraine.



Jerry Healy and Michael Doyle are congratulated on their international achievement by Law Society Senior Vice-President Gerard Doherty

This year's competition focused on negligence and related torts. The competition simulates an initial consultation with a client, with both team members acting out the role of solicitors. Each team is required to conduct interviews with role-playing clients and to elicit

relevant information from them about a hypothetical problem. The team must then outline the nature of the problem and present the client with a means of resolving it. Each consultation is followed by a post-consultation period, during which the team summarises

the interview and discusses the legal and other work to be undertaken, including the legal issues to be researched.

During the final, teams were evaluated by a panel of three judges against specific criteria, which emphasised the use of listening, questioning, planning and analytical skills in a solicitor/client interview.

The Irish scored the highest marks in the two preliminary rounds and advanced to the semi-finals, where they faced a team from the University of Moscow – last year's finalists. Sadly, the Irish team was defeated by the narrowest of margins.

The final was contested by the University of Moscow, the Anglia Ruskin University (England) and the University of Nebraska, with the US team emerging victorious. **G**

books



The Right to Privacy

Hilary Delany and Eoin Carolan. Round Hall (2008), 43 Fitzwilliam Place, Dublin 2. ISBN: 9781858005089. Price: €180 (hardback).

This book is timely. It comes when the law of privacy in Ireland, Britain and Europe is undergoing significant change. Recently, Dermot Ahern announced the reactivation of the *Privacy Bill 2006*, which his predecessor at the Department of Justice had 'parked'. (The bill is scrutinised in detail in the book.) Last year, an Irish woman, Michelle Herry, received compensation for an article on her private life in *Ireland on Sunday*, in one of the first cases of its sort against the media to go to trial here.

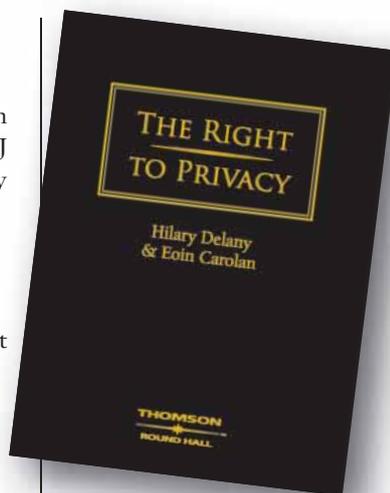
Delany and Carolan's book seeks to place the right to privacy in its historical and philosophical content. Much of it is academic and comparative, which will limit its usefulness to Irish practitioners. For example, there is a section by Cliodhna Murphy on French privacy law, which is more stringent but less financially onerous than ours. This is interesting, but unlikely to be of major practical use.

That said, the book contains a comprehensive review of Irish privacy law, including

an interesting analysis of the differing approaches on the often countervailing constitutional right of freedom of expression taken by Clarke J in *Cogley v RTE* and by Fennelly J in *Mahon v Post Publications Ltd.* Case law on privacy in Britain is also well covered, from the House of Lords' decision in Naomi Campbell's case against the *Daily Mirror*, to the many High Court decisions by Judge Eady, who has presided over many interlocutory and substantive applications on the topic.

The importance of European precedents on the development of the law of privacy cannot be underestimated, and the authors helpfully outline the case law on the 'right to respect for private and family life' under article 10 of the *ECHR*.

The number of privacy cases to go to hearing in the Irish courts is surprisingly limited, given the long-standing recognition of the unenumerated right under article 40.3. That appears to lead the authors to occasionally



stretch the concept beyond what may be warranted. Thus, the decision of the Divisional High Court on journalistic privilege in *Mahon v Keena* is framed in terms of the protection of privacy of sources, making it more likely that they will speak about issues of public importance. This appears to me to be a distance away from privacy issues and much closer to the right to freedom of expression, also guaranteed under article 40.3 and under article 10 of the *ECHR*.

I have a quibble about pricing. The cost of production and the difficulties of making a profit on specialist publications are significant. However, a price tag of €180 on a book of just over 350 pages seems steep.

The Right to Privacy came out just before Max Mosley's successful award of stg£60,000 against the *News of the World* for breach of his rights. The case concerned the publication of details of sadomasochistic sex sessions involving Mosley, which had been secretly recorded on DVD by a prostitute paid by the paper. Similarly, the publication date just missed out on Judge Elizabeth Dunne's important decision in *Herrity v Associated Newspapers*, where the claimant received a similar sum in damages.

With this case law, and the possibility of the *Privacy Bill* becoming law, a second edition of Delany and Carolan's book will have additional fertile ground to explore. **G**

Michael Kealey is a solicitor at Associated Newspapers.

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Law Society of Ireland

A LAW SOCIETY FAMILY LAW COMMITTEE/CPD FOCUS SEMINAR

“Credit Crunch” Implications for Family Law Practice

Date:	Friday 19 June 2009
Time:	2pm to 6pm
Venue:	Law Society of Ireland, Dublin
Fee:	€228 per person
Skillnet/public sector subscriber fee:	€160 per person
CPD hours:	3.5 general CPD (by group study)

The Law Society’s Family Law Committee and CPD Focus will present a family law seminar to examine the implications of the ‘credit crunch’ on family law practice. The seminar will also flag for practitioners pending developments in family law that will impact on practice in the coming months. The objective is to provide practitioners with informed and up-to-date information that can be applied in advising clients to make informed decisions.

SOME OF THE TOPICS THAT WILL BE DISCUSSED

- Recent High Court developments
- Recent Circuit Court developments
- Applications to vary existing settlements
- ‘Ample resources’ cases
- Dealing with ‘credit crunch’ implications in a proactive or ‘forward planning’ way
- Domestic violence – recent developments
- Recent developments in District Court practice.

CHAIRMAN AND SPEAKER

GEOFFREY SHANNON, The Law Society of Ireland, Dublin

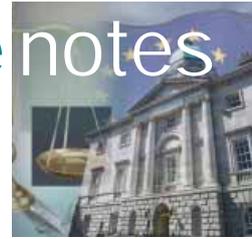
SPEAKERS

HILARY COVENEY, Matheson Ormsby Prentice Solicitors, Dublin

ROSEMARY HORGAN, Ronan Daly Jermyn, Solicitors, Cork

COLM ROBERTS, Legal Aid Board, Cork

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RENUNCIATION OF RIGHT TO A NEW TENANCY

Section 47 of the *Civil Law (Miscellaneous Provisions) Act 2008*, which came into effect on 20 July 2008, has significantly extended the situations in which tenants or prospective tenants can renounce their rights to a new tenancy in tenements within the meaning of the *Landlord and Tenant Acts*. Section 4 of the *Landlord and Tenant (Amendment) Act 1994* (as amended by section 191 of the *Residential Tenancies Act 2004*) permitted this right to be renounced, but only where the renunciation was completed before the commencement of the tenancy. Section 47 now permits renunciations to be entered

CONTD ON NEXT PAGE

PRECEDENT RENUNCIATION

THIS RENUNCIATION made the _____ day of _____ 20 _____

WHEREAS:

1. I (*the Tenant*) _____
of _____
(delete one of the following alternatives)
 - A. have negotiated with (*the Landlord*) _____ of _____
to take a tenancy ('the Tenancy') of the premises ('the Premises') at _____
to be granted by a lease or tenancy agreement in the form of the draft lease or tenancy agreement annexed hereto
 - B. am the tenant under a tenancy ('the Tenancy') created by a lease or tenancy agreement made the _____ day of _____
between _____ of the one part and _____ of the other part of the
premises ('the Premises') at _____ which are a tenement within the meaning of the
Landlord and Tenant Acts and of which the said _____ is now the landlord.
2. I have received independent legal advice in relation to this renunciation from _____
3. I have been advised that under the existing legislation I would, subject to the terms of that legislation, be entitled to a new tenancy in the Premises on the termination of the Tenancy.

NOW I, (*the Tenant*) _____, for the consideration hereinafter set forth under the provisions of section 47 of the *Civil Law (Miscellaneous Provisions) Act 2008* DO HEREBY RENOUNCE any entitlement which I may have under the provisions of the *Landlord and Tenant Acts* to a new tenancy in the Premises on the termination of the Tenancy AND DO HEREBY UNDERTAKE as set out hereunder.

UNDERTAKING

In consideration of

(i) the landlord granting the Tenancy

OR

(ii) the payment by the landlord of the sum of € _____ in consideration of the premises

I, (*the Tenant*) _____, undertake:

- (1) To notify any proposed assignee of my interest of the existence of this renunciation
- (2) To notify any proposed subtenant of mine of this renunciation and to obtain from the proposed sub-tenant a renunciation in similar terms as a term of the subtenancy
- (3) To consent to the registration of an inhibition by the lessor on any leasehold folio opened in respect of the Tenancy

SIGNED by the said

_____ in the presence of:

into, both before and during the course of a tenancy, regardless of whether the lease was created prior to the date on which section 47 came into force.

Advice to clients

Solicitors acting for or advising tenants contemplating executing renunciations should advise such tenants that, as a consequence of executing such renunciation, they will automatically be waiving any rights that they might have had to compensation under section 16 of the *Landlord and Tenant (Amendment) Act 1980* on quitting the tenement, because such compensation is a consequence of an application for a new tenancy being defeated by a landlord establishing one of the grounds listed in section 17(2) of the 1980 act.

It would appear that a tenant's right to compensation for improvements under section 46 of the 1980 act would not be affected by a renunciation, as it does not arise from a refusal under section 16. Accordingly, solicitors acting for both landlords and tenants should draw the attention of their clients to the survival of the right to compensation for improvements.

Temporary convenience

On the face of it, there would not appear to be any point in effecting a renunciation in respect of a tenancy or lease that, for ex-

ample, contains a temporary convenience provision or is granted in respect of an office or employment, since the effect of such provisions is to take the property concerned outside the definition of 'tenement'. However, a renunciation would pre-empt the possibility of such provisions being subsequently held to be ineffective in a particular case.

Independent legal advice

As the tenant must obtain independent legal advice before executing a renunciation, it is clearly desirable that the solicitor giving such independent advice should witness the signature of the tenant on the renunciation. In the event of the tenant's signature not being witnessed by the independent solicitor, the landlord's solicitor should consider whether, in the particular circumstances, it is desirable to obtain confirmation from the independent solicitor named in the renunciation that he did, in fact, advise the tenant in relation to the renunciation.

Putting assignee on notice

The Conveyancing Committee is of the view that if the tenant assigns his interest under the lease, the assignee will be bound by the renunciation, even if he is not on notice of it, but that clearly it is desirable that the renunciation should be incorporated in the lease so that it cannot be overlooked by a proposed assignee.

This can be done by reciting in the lease that: "The tenant has renounced his rights as set out in the deed of renunciation annexed hereto."

If the renunciation is signed after the execution of the lease, it should be physically annexed to the original lease and a copy annexed to the counterpart.

Renunciation prior to execution of lease

A draft form of renunciation is set out (previous page) with options A and B. Option A should be used where a renunciation is signed before the execution of the lease and option B crossed out or deleted.

Renunciation subsequent to lease

Where a renunciation is signed subsequent to the execution of the lease, option B of the draft renunciation should be used and option A crossed out or deleted.

Recital of consideration when renunciation is subsequent to lease

A renunciation following the execution of the lease will invariably be granted only as a result of a financial or other consideration offered by the landlord, and this should be recited, as it cannot be taken that it is given as a term of the original lease. While this may not be relevant to the renunciation of the tenant's rights (as section 47

specifies that no consideration is necessary), it may be relevant to other aspects of the renunciation as drafted – the agreement to notify any proposed assignee or subtenant of the existence of the renunciation and to consent to the registration of an inhibition by the lessor on any leasehold folio opened in respect of the tenancy.

Subtenancy

In the case of a tenant subletting an interest in his tenancy, the proposed subtenant should (a) be informed of the renunciation and (b) be obliged as a term of the subtenancy to enter into a renunciation on similar terms to that signed by the tenant.

Such renunciation by a subtenant should be incorporated in his deed or physically attached to it.

If the subtenant gives a renunciation subsequent to the granting of the subtenancy, again option B of the precedent should be used.

Purchase of leasehold interest

A purchaser of a leasehold interest should (1) carry out a search in the registry of deeds to establish if a renunciation has been registered, and (2), by way of requisition on title, ask: "Has the vendor or any superior tenant executed a renunciation of his rights under the *Landlord and Tenant Acts*."

Conveyancing Committee

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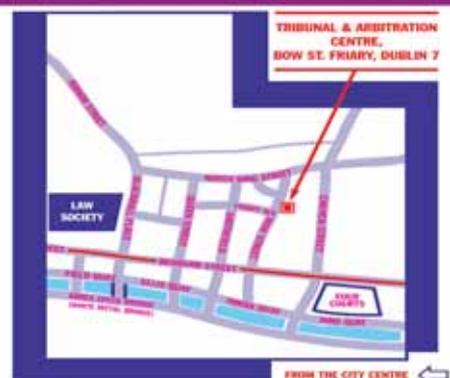
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RENT-TO-BUY SCHEMES

The Conveyancing Committee has received several enquiries seeking standard precedents for the 'rent-to-buy' scheme from:

- Solicitors acting for prospective tenants,
- Builders' solicitors,
- Solicitors advising banks/mortgagees.

The committee has also been asked to advise generally on matters such as the advisability of cooperating with such schemes and on potential pitfalls, including (but not limited to):

- What is to happen regarding the rental payments/potential deposit monies in the event of insolvency or winding-up of the builder at any stage of the transaction?
- What is to happen regarding the rental payments/potential deposit monies in the event of charges or judgment mortgages being registered against the property between the time of any tenancy/option agreement, and whether any option agreement should be registered?
- Whether any deposit protection, such as that afforded by HomeBond or other similar schemes, extends to any of these 'rent-to-buy' scenarios and, if so, whether the usual time limitations inherent in those deposit protection schemes also applies,
- Whether and/or when investigation of title should take place and, if not at the outset/option stage, whether the option agreement should be made subject to title, and so on,
- Whether or not a house or apartment rented by a tenant for a period of time could later

be sold to that person, or indeed to any other party, as a new property for stamp-duty purposes,

- Landlord and tenant issues for the builder – including whether the tenant would acquire statutory rights to a new tenancy,
- Tax implications for a builder, including implications in terms of VAT (clawback possibilities),
- Whether, if the development was mortgaged, the bank's consent, including consent to any option agreement, would be necessary,
- Implications for banks for possession of a mortgaged property if they consent to or join in any option agreement under such schemes.

The committee has confirmed that the above questions involve matters of law and the interpretation of statute law and case law, and they are not matters of conveyancing practice and procedure. The committee is precluded from giving advice on matters of law and from interpreting legislation and legal documentation.

Contrary to what many solicitors appear to believe:

- There is no statutory rent-to-buy scheme,
- There is no one standard scheme in operation, and
- There does not appear to be a consensus in the profession, or indeed in the auctioneering profession, on what 'rent-to-buy' means.

The committee has received anecdotal evidence of various types of proposed schemes. Some of the proposed schemes seem to envisage tenancy agreements with an option for the ten-

ant to purchase in two or three years' time at a price that is set now. Rent is payable in the interim – but there is no deposit as such. The sum paid as rent over the two or three years is set off against the purchase price (either in whole or in part) if the option to purchase is exercised. There is no obligation on the purchaser to purchase/exercise the option.

Other proposed schemes do not appear to contain any element of tenancy whatever, with the only documentation offered to the 'tenant' being the standard contract for sale and building agreement – albeit with a long closing date and a facility for the 'purchaser/tenant' to pay the deposit (in some proposals called 'rent') direct to the builder over the course of two years. It appeared to the committee that little thought had been given to what would happen to the 'deposit/rent' in the event of the builder going into liquidation before completion, etc. Such proposed schemes would also typically have no provision allowing the purchaser to walk away at the end of the two or three-year period if he/she simply did not want to buy the property at that time, and it appears that the builder in many of these proposed schemes intends to reserve all the usual contractual rights to sue for specific performance and damages for breach of contract, etc.

Other proposed schemes purported to provide that, rather than have a purchaser/tenant sign a tenancy agreement and exercise an option to purchase after a set period of time, there would be a requirement that full contract documents would be executed, and the purchaser/ten-

ant could walk away or 'opt-out' of the agreement only if the market value of the property dropped between the time of the initial agreement and the time of closing, and it did not appear that there were provisions made in those cases for how market value would be determined at either time.

Whether some of such proposed schemes could be termed 'rent-to-buy' schemes is open to question.

While there may be a certain appetite among developers, banks, and prospective purchasers for such rent-to-buy schemes, the committee is of the view that it is not within its remit or function to seek to give validity to any particular scheme or concept.

The committee accepts that its function includes giving consideration to the provision of precedent documentation in order to assist the profession in appropriate circumstances. Having considered the matter, the committee unanimously agreed that it should not be involved in drafting precedent scheme documentation to cater for these types of schemes. It appeared to the committee that there are so many variations of the rent-to-buy theme that it would not be possible to draft a set of documentation that would suit all cases.

However, the committee urges practitioners to be alert to the need to take all matters into consideration, depending on who they are asked to advise, in relation to such schemes. The committee urges practitioners to ensure that all documentation is carefully examined so that the exact nature of the transaction is ascertained and the client fully advised.

Conveyancing Committee

FURTHER EXTENSION OF COMPULSORY REGISTRATION

As of 1 January 2010, compulsory registration will be extended by virtue of SI 176/2009 to counties Cavan, Donegal, Galway, Kerry, Kildare, Leitrim, Limerick,

Mayo, Monaghan, North Tipperary, Offaly, South Tipperary and Waterford, and to the cities of Galway, Limerick and Waterford.

This means that registration will then be

compulsory in all but two counties, Dublin and Cork.

Conveyancing Committee

TIMELINES IN LOAN APPROVALS AND REVALUATION OF SECURITY BY LENDERS

The Conveyancing Committee would like to remind practitioners, when acting for borrowers, of the importance of checking certain matters in a timely fashion, including the following:

- 1) Many letters of loan offer will set down time limits for various matters, and the banks reserve the right to withdraw loan approval or an offer of loan if these time limits are not met. Solicitors should carefully check for any time limits in loan approvals, for example, time limits within which the letter of offer must be accepted, time limits within which drawdown must occur, etc. This is to ensure that solicitors and borrowers are both aware of the relevant time limits.
- 2) In recent times, the committee has been advised by practitioners that, in some cases where loan approval has been granted but the loan funds have not yet been drawn down, some lending institutions are

revaluing properties to be offered as security. It appears that, in cases where the value of the property to be offered as security is perceived to have fallen since the grant of loan approval, either the approval is being withdrawn by the lending institution or is being adjusted downward. A potential borrower may have entered into a binding contract to buy the property on the strength of the original loan approval, and, as a result of a withdrawal or reduction in the amount of the loan approved, may find that the purchase cannot be completed, resulting in the potential loss to the borrower of any contract deposit paid and the possibility of an action for specific performance and/or damages for breach of contract. Solicitors are advised to warn purchaser clients of the possibility that this may occur. In the event of with-

drawal of loan approval, a client should be advised of the option of making a complaint to the Ombudsman for Financial Institutions and/or to the Financial Regulator.

The committee recommends that solicitors acting for purchasers where a loan is required in order to complete the purchase transaction insert a special condition (or amend their usual form of special condition regarding loan approval) to provide that the contract and the completion thereof is subject to the purchaser's loan approval being in place at the date of completion in a sum sufficient to allow the purchaser complete the contract.

A sample special condition is set out below:

This contract shall be subject to the purchaser obtaining approval for a loan of € _____ from (lender) _____ on the security of the premises PROVIDED ALWAYS that if this loan

has not been approved in writing within four weeks from the date hereof either party shall be entitled to rescind this contract and in such event the purchaser shall be refunded his deposit without interest costs or compensation thereon.

If the loan approval is conditional on a survey satisfactory to the lending institution or a mortgage protection or a life insurance policy being taken out or the lending institution being satisfied at any time prior to drawdown of the loan that its valuation of the property has not changed since the date of loan approval or some other condition compliance with which is not within the control of the purchaser, the loan shall not be deemed to be approved until the purchaser is in a position to accept and draw down the loan on terms which are within his reasonable power or procurement.

Conveyancing Committee

REVENUE OFFSHORE TRUST INVESTIGATION – REPORTING OBLIGATIONS: DON'T THINK IT DOESN'T AFFECT YOU!

Revenue has announced an investigation into trusts and offshore structures, that is, where the settlor was resident or ordinarily resident in the state and the trustees of the settlement were not resident in the state. The investigation will commence on 1 September 2009 and taxpayers who are affected may make a qualifying disclosure before that date.

As part of the initiative, Revenue is focusing on section 896A of the *Taxes Consolidation Act 1997* (inserted by section

93, *Finance (No 2) Act 2008*), which requires third parties, such as solicitors, who are concerned with the creation of a settlement that involves non-resident trustees, to make a return of information to the Revenue Commissioners.

At first glance, it may seem that this is of no relevance to you, as you are not involved in the creation of offshore trusts. However, in the context of this investigation, the definition of 'a settlement' is much wider than what would normally be

considered 'a trust'. Also, the phrase 'concerned with a settlement' is a very wide concept. Therefore, you are urged to carefully consider the section and its application to your practice. **Revenue requires returns to be delivered by 1 September 2009 in relation to qualifying settlements made between 24 December 2003 and 30 April 2009. For settlements made on/after 1 May 2009, the return is due within four months of the making of the settlement.**

Revenue has confirmed that the investigation does not require returns to be made in respect of offshore trusts created as a result of intestacy. Clarification regarding testate situations is awaited and will be posted on the Society's website when received.

Further information is available on the Revenue website, www.revenue.ie/en/practitioner/investigations/trusts/faqs.html.

Taxation Committee



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legislation update



9 April – 19 May 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.irish-statutebook.ie.

ACTS PASSED

Industrial Development Act 2009

Number: 11/2009

Contents note: Provides for the transfer of shares held by Shannon Free Airport Development Company Limited to Enterprise Ireland; amends the *Industrial Development Act 1986* and the *Industrial Development Act 1993*; provides for the transfer of all property of the Minister for Enterprise, Trade and Employment under section 19 of the *Industrial Research and Standards Act 1961* to Enterprise Ireland and provides for related matters.

Date enacted: 19/5/2009

Commencement date: Commencement order(s) to be made (per s6(3) of the act)

Social Welfare and Pensions Act 2009

Number: 10/2009

Contents note: Provides for certain amendments to the *Social Welfare Acts* as announced in the Minister for Finance's budget statement of 7/4/2009. These measures include amendments to PRSI, the jobseeker's benefit, jobseeker's allowance

and supplementary welfare allowance schemes and the early childcare supplement. Provides for an amendment to the domiciliary care allowance scheme in respect of late claims. Amends the *Health Contributions Act 1979* by providing for an increase in the rate of the contribution, and the lowering of the earnings threshold. Amends the *Pensions Act 1990* to change the order in which liabilities are calculated on the winding-up of a defined-benefit pension scheme; to allow greater flexibility for defined-benefit pensions schemes to restructure benefits in the event of underfunding and to strengthen the regulatory provisions in relation to the obligation on employers to remit pension contributions that were deducted from the wages and salaries of employees. Provides for the introduction of a pensions insolvency payments scheme (PIPS), whereby if a defined-benefit scheme is in deficit and the sponsoring employer becomes insolvent, the trustees of the scheme may apply to the Minister for Finance to purchase pension payments for its retired members at a lower cost than that available on the open market. Amends the *Financial Emergency Measures in the Public Interest Act 2009* to introduce new rates and bands in relation to the pension-related deduction on lower-paid public servants that was introduced in that act. Provides for related matters.

Date enacted: 29/4/2009

Commencement date: 29/4/2009 for part 5 (ss14-23, 'Provisions relating to pension schemes'); 1/5/2009 for most other sections – see act for details.

SELECTED STATUTORY INSTRUMENTS

Air Travel Tax Regulations 2009

Number: SI 134/2009

Contents note: Set out the procedures for payment of air travel tax by airline operators on departures by passengers from Irish airports, in accordance with section 55 of the *Finance (No 2) Act 2008*.

Coroners Act 1962 (Fees and Expenses) Regulations 2009

Number: SI 155 /2009

Contents note: Prescribe various fees and expenses for the purposes of the *Coroners Act 1962*: the fee chargeable by the coroner or a county registrar for furnishing copies of inquest documents and the fees and expenses payable in respect of postmortem and special examinations, the attendance of witnesses at inquests and the removal or custody of a body. Replace the *Coroners Act 1962 (Fees and Expenses) Regulations 2008* (SI 561/2008).

Commencement date: 29/4/2009

Criminal Justice Act 1984 (Electronic Recording of Interviews) (Amendment) Regulations 2009

Number: SI 168/2009

Contents note: Amend the *Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997* (SI 74/1997) to extend the application of the regulations to persons detained under section 30A (inserted by section 11 of the *Offences Against the State (Amendment) Act 1998*) of the *Offences Against the State Act 1939* and under section 50 of the *Criminal Justice Act 2007* or under section 50 of the *Criminal*

Justice Act 2007 as modified by section 51(3) of that act.

Commencement date: 29/4/2009

Criminal Justice Act 2007 (Commencement) Order 2009

Number: SI 165/2009

Contents note: Appoints 1/5/2009 as the commencement date for section 19 of the *Criminal Justice Act 2007*, insofar as it inserts paragraph (a) of section 28(3) of the *Criminal Procedure Act 1967*. Section 28(3)(a) provides that an applicant for bail or the prosecutor may appeal to the High Court if dissatisfied with a refusal or grant of the application for bail or, where bail is granted, with any matter relating to the bail.

Financial Emergency Measures in the Public Interest (Reduction in Payments to State Solicitors) Regulations 2009

Number: SI 159/2009

Contents note: Provide for an 8% reduction in the remuneration rates (other than under the headings 'Expenses element' and 'Photocopying expenses') payable to a state solicitor in respect of services rendered to or on behalf of the state under an agreement entered into with the DPP.

Commencement date: 30/4/2009

Housing (Local Authority Loans) Regulations 2009

Number: SI 145/2009

Contents note: Regulate the provision of loan finance by housing authorities to first-time buyers for the acquisition of houses, or for the construction of new houses, including: the purchase of a house under sec-

tion 90 of the *Housing Act 1966*, the purchase of an affordable house within the meaning of part 2 of the *Housing (Miscellaneous Provisions) Act 2002* or part V of the *Planning and Development Acts 2000-2007*, and the grant of a shared ownership lease under section 2 of the *Housing (Miscellaneous Provisions) Act 1992*. Amend and revoke articles of the *Housing Regulations 1980* (SI 296/1980) and revoke articles in subsequent amending regulations.

Commencement date: 27/4/2009

Registration of Title Act 1964 (Compulsory Registration of Ownership) (Cavan, Donegal, Galway, Kerry, Kildare, Leitrim, Limerick, Mayo, Monaghan, North Tipperary, Offaly, South Tipperary and Waterford) Order 2009

Number: SI 176/2009

Contents note: Extends compulsory registration of ownership of land to the above counties and to the cities of Galway, Limerick and Waterford.

Commencement date: 1/1/2010

Road Traffic Act 2002 (Commencement of Certain Provisions) (Penalty Points) Order 2009

Number: SI 149/2009

Contents note: Appoints 1/5/2009 as the commencement date for bringing into effect the penalty-point system in respect of the following offences: the use of a mechanically propelled vehicle without a test certificate, the use of a mechanically propelled vehicle without a certifi-

Circuit Court Rules (Service) 2009

Number: SI 132/2009

Contents note: Substitute a new order 11, 'Issue of civil bills: service of documents', in the *Circuit Court Rules 2001* (SI 510/2001) and make a number of amendments to orders 24, 52, 56, 57, 59 and 68 of the *Circuit Court Rules 2001* in relation to service of documents. Substitute a new form 1B, 'Endorsement of service (registered post)' and add a new form 1C, 'Endorsement of service (personal service)'.

Commencement date: 16/4/2009

cate of road-worthiness, driving a dangerously defective mechanically propelled vehicle, driving a mechanically propelled vehicle before remedying a dangerous defect, and bridge strikes.

Road Traffic Act 2006 (Part Commencement Section 16) (Penalty Points) Order 2009

Number: SI 148/2009

Contents note: Appoints 1/5/2009 as the commencement date for the insertion into the *Road Traffic Act 2002*, by the *Road Traffic Act 2006*, of penalty-point offence provisions in relation to using a vehicle without a certificate of roadworthiness and bridge strikes.

Road Traffic Acts 1961 to 2005 (Fixed Charge Offences) (Prescribed Notice and Document) Regulations 2009

Number: SI 113/2009

Contents note: Prescribe the form of notice and document to be used for the purposes of section 103 of the *Road Traffic Act 1961*.

Commencement date: 4/5/2009

Social Welfare and Pensions Act 2008 (Sections 15 and

16) (Commencement) Order 2009

Number: SI 143/2009

Contents note: Appoints 1/4/2009 as the commencement date for sections 15 and 16(a), (b), (d), (e), (f), (g), (h) and (i) of the *Social Welfare and Pensions Act 2008*. These sections set out the conditions for eligibility for receipt of domiciliary care allowance, the rates of payment and consequential amendments to allow for the transfer of the administration of the scheme, in respect of new applications made on or after 1/4/2009, from the Health Service Executive to the Department of Social and Family Affairs.

Social Welfare (Miscellaneous Provisions) Act 2008 (Section 22) (Commencement) Order 2009

Number: SI 164/2009

Contents note: Appoints 6/5/2009 as the commencement date for section 22 of the *Social Welfare (Miscellaneous Provisions) Act 2008*. Section 22 provides for the deduction of any contributions payable under the income levy in calculating weekly family income for the purposes of family income supplement.

Solicitors Acts 1954 to 2008 (Apprenticeship and Education) (Amendment) Regulations 2009

Number: SI 144/2009

Contents note: Amend the *Solicitors Acts 1954 to 1994 (Apprenticeship and Education) Regulations 2001* (SI 546/2001) in order to include the provisions of the *Legal Practitioners (Irish Language) Act 2008* in relation to the Irish language in place of the first and second Irish examinations; to increase the maximum secondment period during the in-office training period from six to eight months; to remove the direct involvement of the Law Society in the remuneration arrangements between the training solicitor and trainee solicitor and to change the existing 'block' structure of areas of legal practice to be the subject of experience by a trainee solicitor during his/her period of in-office training.

Commencement date: 18/5/2009

Water Services Act 2007 (Commencement) Order 2009

Number: SI 139/2009

Contents note: Appoints 30/4/2009 as the commencement date for subsections 6 and 7 of section 70 of the *Water Services Act 2007*. These subsections deal with complaints to the District Court by a water services authority or any person affected by a failure or alleged failure of a third party to comply with a duty of care provided for under section 70 of the act. (All other provisions of section 70 came into force on 31/12/2007.) **G**

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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 James O'Neill, a solicitor of Lindos, Mount Venus Road, Rathfarnham, Dublin 14, and in the matter of the *Solicitors Acts 1954-2008* [2586/DT99/08] *Law Society of Ireland* (applicant)
James O'Neill (respondent solicitor)**

On 24 February 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

i) Failed to comply with an undertaking that he furnished to the complainant on 25 February 2004 in a timely manner or at all,

ii) Furnished a letter of undertaking dated 25 February 2004 to the complainant at a time when he did not have a current practising certificate and had indicated to the Society that he had retired from practice on 31 December 2003.

The Solicitors Disciplinary Tribunal ordered that the respondent solicitor:

- Do stand censured,
- Pay the whole of the costs and expenses of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement. **G**



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

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Compiled by Bart Daly for FirstLaw

CRIMINAL LAW

Appeal

Sentence – thought process of trial judge – appropriate sentence for crime – guilty plea – mitigating factors – Misuse of Drugs Act 1977, s15(A).

The applicant was stopped while driving his car and a large quantity of cocaine to the value of €564,000 was found. He was charged under section 15A of the *Misuse of Drugs Act 1977*. He was caught red-handed, pleaded guilty, and cooperated with the gardaí as far as possible without putting his family in fear of other persons involved. The trial judge sentenced him to ten years.

The Court of Criminal Appeal took into consideration that he was a family man, hard working with employment, and had had a drug problem.

The Court of Criminal Appeal (Finnegan, Budd and Herbert JJ), in an *ex tempore* judgment, reduced his sentence to eight years. The court considered *DPP v Dunne* (17/10/02), where the value of the drugs involved was €570,000 with a seven-year sentence imposed, and *DPP v Galvin* (14/2/05), where the value of the seized drugs was €320,000 and the sentence was eight years.

People (DPP) (respondent) v Nelson (applicant), Court of Criminal Appeal, 31/7/2008 [FL15762]

Sentence

Application for increase in sentence – vicious assault – Criminal Justice Act 1993, s2.

The respondent received a four-year sentence on a guilty plea for a vicious assault. His victim suffered greatly from the injury and after-effects on his life, including

his sporting career coming to an abrupt end and losing out on a year at TCD. The injury had a profound impact on the victim.

The Court of Criminal Appeal (Kearns, Budd and Clark JJ), in an *ex tempore* judgment, found that the applicant was justified in seeking the sentence reviewed and increasing it to eight years, with the last four suspended. The court found that there was a substantial departure from what was the appropriate sentence having regard to the savagery of the assault and the fact that the respondent had 25 previous convictions.

People (DPP) (applicant) v Mooney (respondent), Court of Criminal Appeal, 20/10/2008 [FL15763]

FISHERIES LAW

Judicial review

Aquaculture licence – certiorari – fair procedures – reasons for decision – orders to be granted – Fisheries Amendment Act 1997 – whether decision of first respondent would be quashed.

The applicant sought to quash a decision of the first respondent of 17 July 2007 to grant an aquaculture licence to the notice party. The applicant also sought *certiorari* against the minister in respect of a decision to refuse to consider an application for a foreshore lease. The applicant alleged that the first respondent had refused to give reasons for its decision, and the applicant also complained that the procedures followed were unfair. The status of the letter from the minister and its propriety also arose.

Kelly J held that a just result was achieved by quashing the decision of the first respondent

and refusing to remit it. The determination of the first respondent would be quashed in respect of Bed 30A and no order would be made against the minister, in the expectation that he would deal with any applications concerning Bed 30A.

Deerland Construction Ltd (applicant) v The Aquaculture Licences Appeals Board & Another (respondents), High Court, 9/9/2008 [FL15711]

LAND LAW

Judgment mortgage

Severance of joint tenancy – death – well-charging order – tribunal of inquiry – determination of status of judgment mortgage on death of a spouse.

A judgment mortgage had been registered against the deceased's interest in certain lands that were the subject of a joint tenancy. The wife of the deceased sought the determination as to the status of the judgment mortgages and whether the registration of the judgment mortgage had severed the joint tenancy and whether the defendant had sole ownership of the lands.

Laffoy J held that the registration of a judgment mortgage against the deceased's interest was subject to the right of survivorship of the defendant in the event that he predeceased her without the joint tenancy having been severed. An order would be made that the judgment mortgage registered against the deceased did not sever the joint tenancy of the spouses and the lands registered on the folios ceased to be affected.

Judge Mahon & Others (plaintiffs) v Lawlor & Others (defendants), High Court, 30/7/2008 [FL15710]

PLANNING AND DEVELOPMENT

Environmental law

EU law – judicial review – EIA directive – proceedings brought by European Commission – stay on proceedings – whether proceedings could be further adjourned in interests of justice – article 234 EC – Council Directive 85/337/EEC.

In the first set of proceedings, the appellants challenged a decision of the first respondent to grant planning permission for a waste incinerator. It was alleged that the grant of planning permission was invalid, on the basis that the board had failed to carry out an integrated assessment of the project as required by the *Environmental Impact Assessment (EIA) Directive*. In the second set of proceedings, the appellants sought to set aside a decision to grant a waste licence, also in respect of the *EIA Directive* assessment. Both sets of proceedings had been adjourned pending a Supreme Court decision on the validity of the transposition of the directive, which it had upheld. The appellants sought a further adjournment of the proceedings, since the commission had instituted proceedings against Ireland pursuant to article 226 EC in respect of the transposition of the *EIA Directive*. The issue arose as to whether the proceedings should have been further adjourned so as to avoid conflict between a decision of the Irish court and the Court of Justice or commission, if the commission proceedings were to be upheld.

The Supreme Court, per Murray CJ (Denham, Hardiman, Geoghegan and Fennelly JJ concurring), dismissed the

appeal, holding that to adjourn the proceedings pending the outcome of non-existent proceedings could deprive the respondents and/or notice parties of any effective protection of their rights. The interests of justice would not be served by the adjournment of the proceedings.

Ringaskiddy & District Residents' Association & others (applicants/appellants) v Environmental Protection Agency (respondents); O'Leary (applicants/appellants) v An Bord Pleanála & Others (respondents), Supreme Court, 31/7/2008 [FL15746]

Statutory interpretation

Exempted works – de-exempted works – protected structure – works commenced subsequently – whether unjust to preclude completion of the works – literal interpretation – purposive interpretation – whether the board had misconstrued the legislative provisions – Planning and Development Act 2000 – Interpretation Act 2005.

A dispute arose as to the erection of a signal communication mast and whether or not the works were exempted development for the purpose of section 5 of the *Planning and Development Act 2000*. Irish Rail contended, among other things, that section 57 of the act of 2000 de-exempted the works, that the station became a pro-

tected structure after work on the development had been commenced but not completed, and that the decision of the board was open to challenge on the merits. The issue arose as to the appropriate interpretation of the act of 2000 and the interplay of sections 5 and 57 of the act.

Clarke J held that the decision of the board would be quashed, but only on the grounds that the development had lawfully commenced and progressed to a significant extent during a time when it was exempted development and that it would be unjust to preclude its completion. The board was wrong to conclude that the development lost its exempted status. Section 5 of the *Interpretation Act 2005* applied to section 57 of the 2000 act, such that the literal interpretation of the section had to be departed from on grounds of absurdity and thus the board had adopted a correct interpretation of section 57 of the act of 2000.

CIE (applicant) v An Bord Pleanála & others (respondent), High Court, 19/6/2008 [FL15769]

PRACTICE AND PROCEDURE

Want of prosecution

Defamation – inordinate and inexcusable delay – balance of competing interests – Rules of the Superior Courts, order 27.

This was an appeal against the refusal of the High Court to dismiss the plaintiff's claim for want of prosecution either pursuant to order 27 of the *Rules of the Superior Courts* or pursuant to the inherent jurisdiction of the court. The basis for the plaintiff's failure to progress his claim was, among other things, that he acted on legal advice received not to progress the proceedings, bearing in mind that the same subject matter was also the subject of the Moriarty Tribunal.

The Supreme Court (Geoghegan, Kearns and Macken JJ) dismissed the appeal and affirmed the order of the High Court, holding that the delay was wholly inordinate and inexcusable. However, the balance between competing interests lay in favour of the plaintiff being permitted to vindicate his name.

Desmond (plaintiff/respondent) v MGN Ltd (defendant/appellant), Supreme Court, 15/10/2008 [FL15751]

TORT

Duty of care

Defence forces – soldier – Lebanon – post-traumatic stress disorder – damages – exposure to trauma – alcohol abuse – whether failure to examine the plaintiff and provide appropriate treatment after Lebanon.

The plaintiff was a soldier in the defence forces and volunteered to serve in Lebanon. The plaintiff was exposed to considerable stress. The plaintiff alleged that the defendants were negligent in not providing treatment for him for his exposure to stressful incidents that led to post-traumatic stress disorder (PTSD) and alleged that the defendants had been under a duty to take reasonable care for his safety.

Budd J held that there had been a failure to diagnose and treat the plaintiff, and his vulnerability to PTSD was obvious. The defendants had been negligent and in breach of their duty of care to the plaintiff, and there was a failure to have a proper system in place so as to treat him properly. Employers were under a duty of care to take reasonable care for his safety, and the plaintiff was entitled to damages for the injury caused to him by reason of the negligence and breach of duty by the defendants. General and special damages would be awarded to the plaintiff in the amount of €305,513.

Murtagh (plaintiff) v Minister for Defence, Ireland and the Attorney General (defendants), High Court, 22/7/2008 [FL15755] 

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News from the EU and International Affairs Committee

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

Irish planning legislation and the ECJ

The decision of the European Court of Justice in case C-66/06 of 20 November 2008 regarding the transposition by Ireland of the provisions of directive 85/337/EEC of 27 June 1985 (as amended), concerning the assessment of the effects of certain projects on the environment, provides guidance as to the measure of discretion conferred on member states regarding the establishment of thresholds or criteria as to whether a given project requires an environmental impact assessment.

The commission sought a declaration that, by not adopting, in conformity with articles 2(1) and 4(2) to (4) of directive 85/337/EEC of 27 June 1985 (as amended) on the assessment of the effects of certain public and private projects on the environment, all measures to ensure that, before consent is given, projects likely to have significant effects on the environment that belong to the category of projects covered by point 1(a) to (c) and (f) of annex II to that directive are made subject to a requirement for development consent and to an assessment with regard to their effects in accordance with articles 5 to 10 of the directive, Ireland had failed to fulfil its obligations under the directive.

The commission submitted that the Irish legislation transposing the directive – the *Planning and Development Act 2000* (PDA), as amended, and the *Planning and Development Regulations 2001* (PDR) – is deficient in that it does not provide, in respect of project categories covered by point 1(a) to (c) of

annex II to the directive, for effective measures to achieve the objectives laid down in article 2(1) and article 4(2) and (3) of the directive. Article 4(2) of the directive permits member states, in respect of projects listed in annex II, to determine through a case-by-case examination and/or through thresholds or criteria set by the member states whether a given project requires an environmental impact assessment in accordance with articles 5 to 10 of the directive.

Establishment of thresholds

The court stated that, in accordance with settled case law, where member states have decided to have recourse to the establishment of thresholds and/or criteria, the limits of the measure of discretion that is thus conferred upon them are to be found in the obligation (set out in article 2(1) of the directive) that projects likely, by virtue, among other things, of their nature, size or location, to have significant effects on the environment are to be subject to an impact assessment before consent is given. In addition, pursuant to article 4(3) of the directive, member states are under an obligation to take into account, when establishing those criteria or thresholds, the relevant selection criteria set out in annex III to the directive.

The court noted that, among these criteria, annex III distinguishes (i) the characteristics of projects, which must be considered having regard, in particular, to their size, the cumulation with other projects, the use of natural resources, the produc-

tion of waste, pollution and nuisances and the risk of accidents; (ii) the location of projects, so that the environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to the existing land use and the absorption capacity of the natural environment; and (iii) the characteristics of the potential impact, having regard, among other things, to the geographical area and the size of the population. It followed that a member state that, on the basis of article 4(2) of the directive, established thresholds and/or criteria taking account only of the size of projects, without taking into consideration the relevant criteria, would exceed the limits of its discretion under articles 2(1) and 4(2) of the directive. Further, a member state that established those thresholds and/or criteria at a level such that, in practice, all projects of a certain type would be exempted in advance from the requirement of an impact assessment would likewise exceed the limits of that discretion, unless all the projects excluded could, when viewed as whole, be regarded as not likely to have significant effects on the environment.

The court stated that it was clear from section 176 of the PDA, in conjunction with article 93 of the PDR and paragraph 1 of part 2 of schedule 5 thereto, that Ireland had chosen, for projects falling within point 1(a) to (c) of annex II to the directive, to set, in respect of each project category, a threshold based exclusively on project size, below which an environmental assess-

ment is not obligatory.

It noted that, under paragraph 1(a) and (b) of part 2 of schedule 5 to the PDR, the threshold is 100 hectares in relation to projects for the restructuring of rural land holdings and the use of uncultivated land or semi-natural areas for intensive agricultural purposes and, under paragraph 1(c), the threshold is a catchment area of 1,000 hectares, or 20 hectares of affected wetland, in relation to water-management projects for agriculture.

Regarding the commission's presentation of some of the characteristics of the Irish countryside, which showed that projects of a certain size below the thresholds set by the Irish legislation are nevertheless likely to have significant effects on the environment by virtue of their size or location, the court noted that the average field size in Ireland is approximately 2.4 hectares. The effect of setting, in particular for the restructuring of rural land holdings, a threshold of 100 hectares is that a project relating to the consolidation of around 40 fields, which would entail the destruction of numerous hedgerows and other means of enclosure, could be granted consent without having been subject to an environmental impact assessment, although it is such as to have significant effects on biodiversity. Similarly, it was common ground that, in practice, projects falling within point 1(a) to (c) of annex II to the directive are closely linked – the drainage of wetland often results in the use of semi-natural areas for intensive agricultural purposes.

Although Ireland asserted that, in the case of projects falling within point 1(a) to (c) of annex II to the directive that are of a size below the thresholds laid down by schedule 5 to the PDR, planning authorities may apply article 103 of the PDR in conjunction with schedule 7 thereto and thus require submission of an environmental impact assessment, such a possibility could not be considered equivalent to a case-by-case examination complying with the community requirements. Those provisions of Irish legislation would be capable of applying only if the planning authorities have become aware of a project before it is carried out, and specifically if an application for consent has been made to them.

The court stated that there was consequently no guarantee that, should those projects be likely to have significant effects on the environment, the competent authority would necessarily be able to require that an environmental impact assessment as provided for by the directive be carried out before the decision entitling the developer to proceed with the project. Furthermore, as Ireland had acknowledged, it is apparent from article 6 of the PDR in conjunction with part 3 of schedule 2 thereto that certain projects falling within point 1(a) to (c) of annex II to the directive are exempt from any requirement for prior consent, a fact that in principle precludes, in their regard, compliance with the procedure



Ecological interest: a weasel's weasily recognised, while a stoat's stoatally different

involving development consent and the assessment of their effects on the environment that is established by article 2(1) of the directive.

Safeguard clauses

The court noted Ireland's submission that such exemptions, which thus have the effect in particular that no application for planning permission is required in respect of the projects concerned, do not apply where one of the safeguard clauses contained in article 9 of the PDR is applicable to the carrying out of the project envisaged and that the effect of the application of the safeguard clauses is that only projects that are not likely to have significant effects on the environment can benefit from those exemptions. In this regard, the court stated that Ireland had not demonstrated that those safeguard clauses are such as to ensure compliance with the requirements imposed by

the directive.

The court observed that the safeguard clauses are subject to the fulfilment of a number of conditions that make their application too uncertain to be capable of being regarded as limiting the operation of the exemptions in such a way that projects likely to have significant effects on the environment are systematically subject, before consent is given, to a requirement for development consent and an assessment of their environmental effects. It observed further that most of those clauses are operative only where they fall within the framework of development plans drawn up by the planning authorities specifying that the protection of the matters of archaeological, geological, historical or ecological interest constitutes one of their objectives. It followed that the carrying out of an environmental impact assessment in respect of a given project accordingly depends on

the inclusion of those objectives in the development plan, and not solely on the effects that the project may have on the environment. The court averred that these factors were sufficient to establish that the application of the safeguard clauses does not guarantee that the requirements of the directive are observed, despite the fact that, as is recalled in recital 1 to the directive, the assessment procedure is a fundamental instrument of environmental policy.

Having regard to all the above, the court stated that, by setting thresholds that take account only of the size of projects – to the exclusion of the other criteria laid down in annex III to the directive – for project categories covered by point 1(a) to (c) of annex II to the directive and by not providing for a case-by-case examination for those project categories, ensuring that projects likely to have significant effects on the environment do not escape an assessment of their environmental effects, Ireland had exceeded the limits of its discretion under articles 2(1) and 4(2) of the directive and had consequently not adopted all necessary measures to ensure that projects likely to have significant effects on the environment are made subject to their environmental effects in accordance with articles 5 to 10 of the directive. **G**

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



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CRIMINAL LAW

Case C-388/08, *PPU Leymann and Pustovarov*, 1 December 2008. Leymann and Pustovarov were suspected of illegally importing drugs into Finland with a view to selling them. Finland sent a European arrest warrant to the Polish authorities in the case of Leymann and the Spanish authorities in the case of Pustovarov. The warrants stated that they were suspected of committing serious drug-trafficking offences between 1 January 2005 and 31 March 2006 in the case of Leymann and between 19 and 25 February 2006 in the case of Pustovarov. The warrants stated that the offences related to a large quantity of amphetamines. The warrant for Pustovarov mentioned two separate offences. Leymann and Pustovarov were surrendered to the Finnish authorities on the basis of those arrest warrants and were remanded in custody. Some months later, the indictment against the two stated that the offences concerned hashish rather than amphetamines and had been committed between 12 and 26 February 2006. A new arrest warrant with those alterations was sent to the Spanish authorities, but they did not give their consent until much later. Leymann and Pustovarov were both convicted and sentenced to imprisonment for that offence and, in the case of Pustovarov, for two separate offences. They appealed, arguing that they had been convicted for an offence other than that for which they had been surrendered, contrary to the 'speciality rule' in the framework decision (2002/584/JHA) on the European arrest warrant and the

surrender procedures. The Finnish Supreme Court made a reference to the ECJ on the scope of the rule and an exception to it. A person may be prosecuted for another offence if the judicial authorities of the member state executing the arrest warrant give their consent. The ECJ said that to require that consent for every amendment to the description of the facts would go beyond what is implied by the speciality rule and would interfere with the objective of the decision. Alterations may be made to the description of the facts in the course of the proceedings and may describe more precisely or amend the ingredients of the offence. To determine whether or not another offence is concerned, it must be ascertained whether the ingredients of the offences as defined in the arrest warrant are still present in the later procedural document and whether there is a sufficient correspondence between the information stated in the two documents. Alterations to the circumstances of the time and place are allowed under certain conditions. In this case, a change to the class of narcotics concerned is not in itself capable of characterising another offence.

FREE MOVEMENT OF PERSONS

Case C-158/07, *Jacqueline Förster v Hoofddirectie van de Informatie Beheer Groep*, 18 November 2008. The applicant is a German national. She settled in the Netherlands from 5 March 2000, and from 1 September 2001 enrolled in a programme in Amsterdam that provided a course in educational theory leading to a bachelor's de-

gree. During her studies, she had various kinds of paid employment. The Dutch higher education financing authority granted her a maintenance grant from September 2000. It took the view that she was to be regarded as a 'worker' and thus should be treated in the same way as a Dutch student as regards maintenance grants. Following a check, the authority determined that between July 2003 and December 2003, she had not been gainfully employed. On that basis it decided that she could no longer be viewed as a worker and thus was not eligible for a maintenance grant between July and December 2003. She was requested to repay grants paid during this period. Ms Förster argued that she was sufficiently integrated into Dutch society to be able to claim a maintenance grant as a student under EC law. The court made a reference to the ECJ asking it to state under what conditions a student from another member state may be entitled to a maintenance grant. The ECJ pointed out that a student who is lawfully resident in another member state can rely, for the purposes of obtaining a maintenance grant, on the prohibition of any discrimination on the grounds of nationality. The Dutch authorities have no rule on duration of residence for Dutch students. However, the court found that it is legitimate for a member state to grant maintenance assistance only to those students who have demonstrated a certain degree of integration into that state. This degree of integration can be established by a finding that a student has resided in the host member state for a certain length of time. In this case,

the court held that a period of five years' uninterrupted residence is appropriate for the purpose of guaranteeing that the applicant for the maintenance grant at issue is integrated into the society of the host member state. That condition cannot be held to be excessive. The rule enables those concerned to know, without any ambiguity, what their rights and entitlements are. Thus, the rule by its very existence guarantees a significant level of legal certainty and transparency in the context of the award of maintenance grants to students.

Case C-274/05, *Commission v Greece*, 23 October 2008. Directive 89/48 sets out a general system for the recognition of professional qualifications. Following complaints from 37 individuals, the commission brought an action against Greece for non-compliance with the directive. Greece has refused to recognise diplomas obtained after courses in Greece provided by private bodies but granting awards of educational establishments in other member states. The ECJ observed that the general system for the recognition of higher education diplomas is based on the mutual trust that member states have in the professional qualifications they award. There is a presumption that the qualifications of a person entitled to pursue a regulated profession in one member state are sufficient for the pursuit of that profession in other member states. It is for the competent authorities awarding the diploma to verify the conditions necessary for their award and the nature of the establishment in which the holder received his education

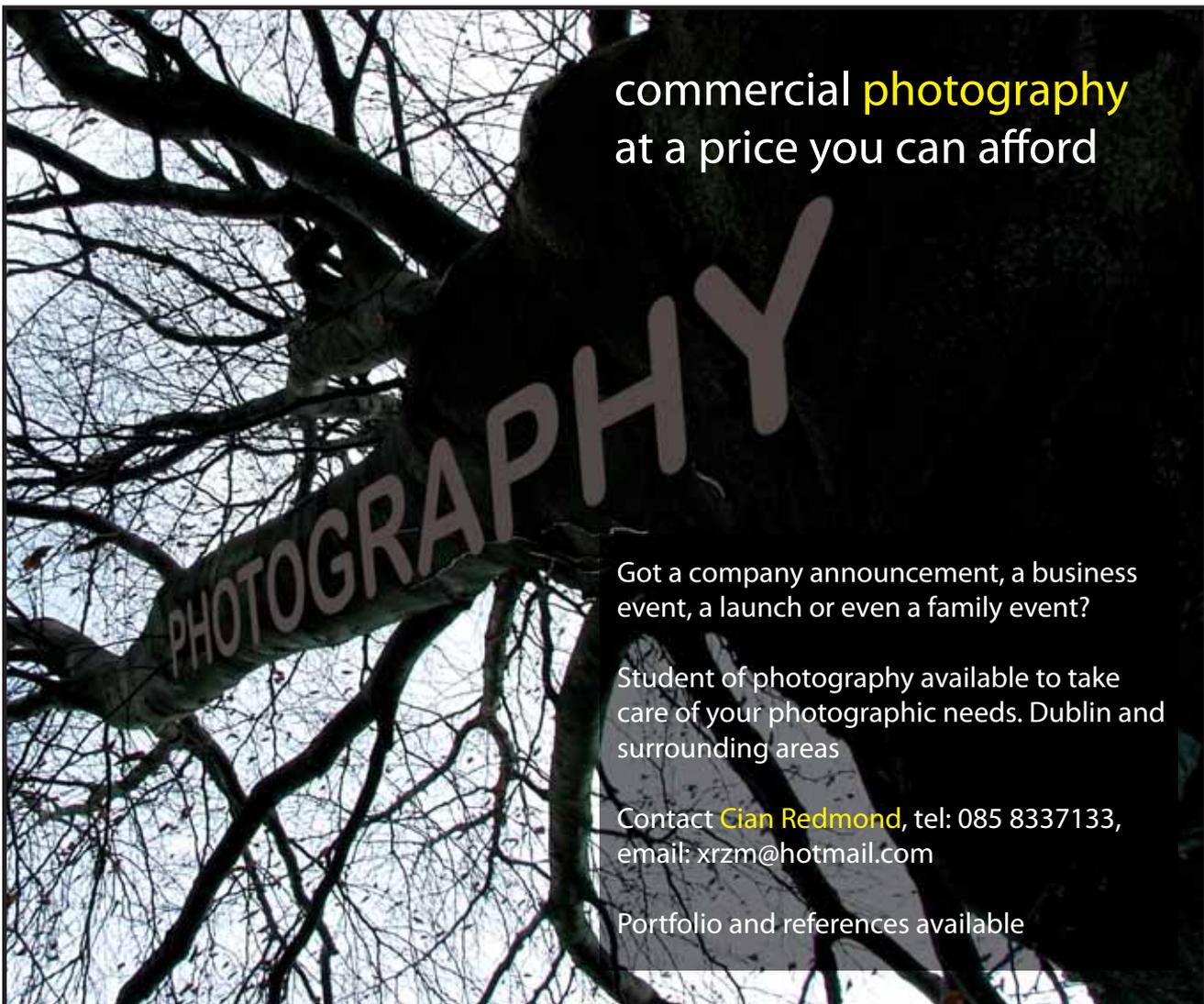
and training. The host member state cannot examine the basis on which the diplomas have been awarded. Greece has infringed EC law rules on the recognition of diplomas.

Case C-353/06, *Stefan Grunkin and Dorothee Regina Paul v Standsamt Niebüll*, 14 October 2008. Leonhard Matthias Grunkin was born on 27 June 1998 in Denmark. His parents, Dorothee Paul and Stefan Grunkin, were married and of German nationality. The child also had German nationality and had lived in Denmark since he was born. His surname, composed of the surnames of both his mother and father, was entered on his Danish birth certificate.

In Denmark, double-barrelled surnames are permissible. In 2006, his parents applied to have him registered in Germany with the surname Grunkin-Paul. The German authorities refused, on the ground that German law does not allow a child to have a double-barrelled surname and, as both parents were German, German law applied. His parents brought proceedings before the German courts. The German court asked the ECJ whether community law precludes national law from requiring a citizen of the EU to bear a different surname according to the member state in which he happens to be. The court pointed out that the rules governing a person's surname are mat-

ters coming within the competence of the member states, but these rules must none the less comply with community law. The situation of this child falls within the scope of community law as he is a national of one member state and is lawfully resident in the territory of another. Having to use a surname in the state of which the person concerned is a national that is different from that conferred and registered in the member state of birth and residence is liable to hamper the exercise of the right, established in article 18 of the treaty, to move and reside freely within the territory of the member states. Many day-to-day activities require proof of identity that is nor-

mally provided by a passport. The issuance of that document for the child falls within the competence of the German authorities. If they refuse to recognise his surname as registered in Denmark, he will be issued with a passport in a name different to the name he was given in Denmark. Such a discrepancy could cause him serious inconvenience at both professional and private levels. It may give rise to doubts as to his identity. The court held that the right of European citizens to move and reside freely within the territory of the member states precludes the German authorities from refusing to recognise Leonhard Matthias' surname as determined and registered in Denmark. **G**



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LOST LAND CERTIFICATES

Registration of Deeds and Title Acts 1964 and 2006

An application has been received from the registered owners mentioned in the schedule hereto for an order dispensing with the land certificate issued in respect of the lands specified in the schedule, which original land certificate is stated to have been lost or inadvertently destroyed. The land certificate will be dispensed with unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held. *Property Registration Authority, Chancery Street, Dublin 7 (published 5 June 2009)*

- Regd owner: Andrew Keogh; folio: 13300F; lands: Coolasnaghta, Rathnageeragh, Knockendrane and Myshall and barony of Idrone East and Forth; **Co Carlow**
- Regd owner: Liam Heery, Greaghnamale, Bailieborough, Co Cavan; folio: 2480; lands: Greaghnamale; **Co Cavan**
- Regd owner: Bridget Clune, Ballymacahill, Barefield, Co Clare; folio: 17337; lands: townland of Skehanagh and Killow and barony of Islands; **Co Clare**
- Regd owner: Peter Fitzgerald and Mary Fitzgerald; folio: 9126F Co Clare; lands: townland of Ballyconry and barony of Burren; **Co Clare**
- Regd owner: Thomas Mescall and Anne Mescall; folio: 14112 Co Clare; lands: townland of Cahercannavan and barony of Clonderalaw; **Co Clare**
- Regd owner: William Neylon (deceased), Killark, Darragh, Ennis, Co Clare; folio: 603; lands: townland of Muckinish and barony of Bunratty Upper; area: 4.8110; **Co Clare**
- Regd owner: Pat Fitzpatrick; folio: 28655; lands: Cappaghcastle and barony of Bunratty Lower; **Co Clare**
- Regd owner: Oliver Sexton, David Linehan and Breda Callanan; folio: 45634F; lands: plot of ground situate in the townland of Ballincollig and barony of Muskerry East in the county of Cork; **Co Cork**
- Regd owner: Sean Lehane and Claire Collins; folio: CK66481F; lands: property situate in the townland of Knocknahilan and barony of Muskerry East and in the county of Cork; **Co Cork**
- Regd owner: Daniel Murphy (deceased); folio: 21793; lands: property situate in the townland of Commons South and barony of Duhallow; **Co Cork**
- Regd owner: Glashedy Investments Ltd, Trae Breige Bay House, Carnodonagh, Co Donegal; folio: 41391, 41392; lands: Balleaghan; **Co Donegal**
- Regd owner: Maria Clarke; folio: 5619F; lands: townland of Seatown East and barony of Nethercross; area: 0.809 hectares; **Co Dublin**
- Regd owner: Brian Price and Marion Price; folio: DN55500L; lands: property situate in the townland of Burrow and barony of Coolock; **Co Dublin**
- Regd owner: Thomas Keenan and Ellen Keenan (both deceased), 10 Magenta Hall, Santry, Dublin; folio: 15540F; lands: 10 Magenta Hall, Santry, Dublin; **Co Dublin**
- Regd owner: Derek McCarthy and Ciara Judge; folio: DN117179F; lands: property situate in the townland of Gibbons and barony of Uppercross known as site no 43 Sundale Park, Jobstown, Tallaght; **Co Dublin**
- Regd owner: St Anne's Development Company Ltd; folio: 3231; lands: a plot of ground situate on the east side of Ballymun Road in the parish of Glasnevin, district of Clonturk and city of Dublin; **Co Dublin**
- Regd owner: Patrick J Flanagan, 38 The Glen, Woodpark, Ballinteer, Dublin 16; folio: 54215F; lands: townland of Kingstown and barony of Rathdown; **Co Dublin**
- Regd owner: Herbert Little and Georgina Little; folio: 16390F; lands: a plot of ground on the north side of Victoria Road in the parish and district of Clontarf; **Co Dublin**
- Regd owner: Brendan Henry; folio: 79831L; lands: area known as flat 85 Bertram Court, situate in the parish of St Nicholas Without and district of South Central; **Co Dublin**
- Regd owner: Anne Teresa Flanagan; folio: 75059F; lands: townland of Kilmacud West and barony of Rathdown; **Co Dublin**
- Regd owner: Vincent Carew (deceased); folio: 4786F; lands: townland of Clonbrock Demesne and barony of Kilconnell; **Co Galway**
- Regd owner: Brian McNicholl and Joan McNicholl (both deceased), Kingston, Taylor's Hill, Galway; folio: 48431; lands: townland of Ragoon and barony of Galway; **Co Galway**
- Regd owner: Annie Reynolds (deceased); folio: 19719F; lands: townland of Ballymoneen and barony of Galway; area: 0.0844 hectares; **Co Galway**
- Regd owner: Michael Maloney and Bernadette Maloney, Carrowmoreknock, Roscahill, Co Galway; folio: 15590F; lands: townland of Carrowmoreknock and barony of Moycullen; **Co Galway**
- Regd owner: Mary Connolly (deceased), 51 O'Conaire Road, Shantalla, Galway; folio: 20182F; lands: townland of Ragoon and barony of Galway; **Co Galway**
- Regd owner: Michael J O'Connor; folio: 15333 Co Kerry; lands: townland of Kilshannig and barony of Corkaguiny; **Co Kerry**
- Regd owner: Patrick O'Donnell; folio: 29783 Co Kerry; lands: townland of Dromavally and barony of Corkaguiny; **Co Kerry**
- Regd owner: Karl Joseph Matuschka; folio: 410; lands: townland of Moone and barony of Kilkea and Moone; area: 17.0967 hectares; **Co Kildare**
- Regd owner: Raymond Nolan; folio: 3164F; lands: townland of Plunketstown Lower and barony of Kilkea and Moone; **Co Kildare**
- Regd owner: John Fitzgerald; folio: 10144; lands: Busherstown and barony of Ida; **Co Kilkenny**
- Regd owner: Paul Smithwick; folio: 20095F; lands: Walton's Grove or Mountjuliet and barony of Knocktopher; **Co Kilkenny**
- Regd owner: Mervyn Harper; folio: 6648F; lands: Rathduff Upper and Lawcus and barony of Kells and Shillelogher; **Co Kilkenny**
- Regd owner: Raymond Williams (deceased); folio: 16911; lands: Cooltedery and barony of Portmahinch; **Co Laois**
- Regd owner: Charles Mitchell; folio: 17353; lands: Clonmore and barony of Clandonagh; **Co Laois**
- Regd owner: Joseph O'Donoghue; folio: 6488F Co Limerick; lands: townland of Elmpark Demesne and barony of Pubblebrien; **Co Limerick**
- Regd owner: John Verling; folio: 2736 Co Limerick; lands: townland of Kilpeacon and barony of Smallcountry; **Co Limerick**
- Regd owner: Michael Ryan; folio: 16762 Co Limerick; lands: townland of Routagh and barony of Clanwilliam; **Co Limerick**
- Regd owner: Michael Vaughan; folio: 2751L Co Limerick; lands: townland of Shannabooly and barony of North Liberties; **Co Limerick**
- Regd owner: Teresa Fallon, Clonbrack, Kilashee, Co Longford; folio: 11721; lands: Cloonbrock and Moydow; **Co Longford**
- Regd owner: James Kelly, Killykeen, Ballinarry, Co Cavan; folio: 2515; lands: Cloghchurnel; **Co Longford**
- Regd owner: John P Cawley, Blackfort, Castlebar, Co Mayo; folio: 26453; lands: townland of Garryduff and barony of Carra; **Co Mayo**
- Regd owner: Thomas McNulty (deceased), Foghill, Carrowmore, Lacken, Ballina, Co Mayo; folio: 48657; lands: townland of Foghill, Cloonboy, Carbadmore and barony of Tirawley; **Co Mayo**
- Regd owner: Peter Collins and Ann-Marie Collins, Aghalusky, Castlebar, Co Mayo; folio: 36628F; lands: townland of Aghalusky and barony of Carra; area: 0.2320 (property 1) and 0.0104 (property 2); **Co Mayo**
- Regd owner: Seamus Ryan; folio: 1015; lands: townland of Brackloon East and barony of Costello; area: 19.4173; **Co Mayo**
- Regd owner: Patrick B Segrave, 59 Wyattville Park, Ballybrack, Co Dublin; folio: 10273; lands: Townparks; **Co Meath**
- Regd owner: David Dooley; folio: 18739; lands: Fernamona and Sranure and barony of Philipstown Upper and Upper Philipstown; **Co Offaly**
- Regd owner: Joseph Kenaghan (deceased); folio: 894; lands: Parkaree or Boherfadda and barony of Garrycastle; **Co Offaly**
- Regd owner: Paul McGrath; folio: 10958F; lands: Ashfield and Tara and barony of Ballycowan; **Co Offaly**
- Regd owner: Thomas Laffey (deceased), Cloontymullen, Roscommon; folio: 32573; lands: townland of Clooneigh, Cloontimullan and barony of Ballintober South; **Co Roscommon**
- Regd owner: Frank McIntyre; folio: 24215; lands: townland of Clooningan and barony of Leyny; **Co Sligo**
- Regd owner: Paula Hinnell and Ivor Hinnell (deceased); folio: 14988F; lands: property situate in the townland of Tallow and barony of Coshmore and Coshbride; **Co Waterford**
- Regd owner: Seamus Skehan (otherwise James Skehan); folio: 16765F; lands: property situate in the townland of Graigavalla and barony of Uppertird; **Co Waterford**
- Regd owner: Eileen Byrne (deceased); folio: 19325; lands: Coleman and barony of Shelburne; **Co Wexford**
- Regd owner: Thomas Mythen (deceased); folio: 12711; lands: Toberlolina and barony of Ballaghkeen North; **Co Wexford**
- Regd owner: Patricia O'Brien; folio: 2016F; lands: Little More and

barony of Ballaghkeen North; **Co Wexford**

Regd owner: Brian McElhinney and Mary McElhinney (deceased); folio: 18006F; lands: Carricklawn and barony of Shelmaliere West;

Co Wexford

Regd owner: Gerald Benson; folio: 3382L; lands: townland of Cornagower West and barony of Arklow; **Co Wicklow**

Regd owner: Edmund Doyle (deceased) and Ann Doyle, Tinnakilly, Aughrim, Co Wicklow; folio: 190; lands: townland of Tinnakilly Lower and barony of Ballinacor South; **Co Wicklow**

Regd owner: Laurence Miley (deceased), Cullentrath, Rathdrum, Co Wicklow; folio: 2685; lands: townland of Ballardpark and barony of Ballinacor; area: 9.4870 hectares; **Co Wicklow**

WILLS

Bartley, Deirdre (deceased), late of 10 Newtownsmith, Sandycove, Dublin, who died on 31 March 2009. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding the same, please contact Johnson & Johnson, Solicitors, Ballymote, Co Sligo; tel: 071 918 3304, fax: 071 918 3526, email: johnson.johnson@securemail.ie; file reference: B00 1790004

Boyle, Mary (deceased), late of 53 Howth Road, Clontarf, Dublin 3 and of 74 St Assam's Road West, Raheny, Dublin 5 and formerly of 26 Manor Place, Dublin 7, 32 Seville Place, Dublin 1 and Stranagroug, Glenties, Co Donegal, retired schoolteacher. Would any person having knowledge of a will made by the above-named deceased, who died at Beaumont Hospital on 22 March 2009, please contact Donnacha O Baoighill, solicitor, Front Street, Ardara, Co Donegal; tel: 074 953 7872, fax: 074 953 7869

Byrne, James (otherwise Jim) (deceased), late of apartment 9, Kilbrev Nursing Home, Ashbourne, Co Meath (formerly of 44 Dollymount Park, Dublin 3 and Portmannia, Clonee, Co Meath), retired, who died on 30 January 2009. Would any person having knowledge of a will made by the above-named deceased please contact Gartlan Furey Solicitors, 20 Fitzwilliam Square, Dublin 2; tel: 01 799 8000, fax: 01 799 8001, email: info@gartlanfurey.ie

Carroll, Alicia (deceased), late of 37 Ballyfermot Avenue, Dublin 10. Would any person having knowledge

of a will executed by the above-named deceased, who died on 24 January 2009, please contact Geraldine Kelly & Co, Solicitors, 195 Lower Kimmage Road, Dublin 6W; tel: 01 492 1223, fax: 01 492 1821

Ennis, Moira (otherwise Moira Rita) (deceased), late of 30 Knocksinna Park, Foxrock, Dublin 18. Would any person having knowledge of a will executed by the above-named deceased, who died on 17 April 2009, please contact Joe Clancy Solicitors, 41 Main Street, Rathfarnham, Dublin 14; tel: 01 492 0464, fax: 01 492 0495

Gallagher, Daniel (deceased), late of The Square, Milford, Letterkenny, Co Donegal. Would any person having knowledge of a will executed by the above-named deceased, who died on 22 November 2001, please contact Hughes Murphy & Company, Solicitors, 13 Wellington Quay, Dublin 2

Lenihan, Patrick (deceased), late of Ballyea, Fedamore, Co Limerick. Would any person having knowledge of a will executed by the above-named deceased, who died on 9 October 1993, please contact Delores Lenihan, Ballyea, Fedamore, Co Limerick

McCarthy, Elizabeth (otherwise Betty) (deceased), late of Brookfield Care Centre, Leamlara, Co Cork and formerly of 'Bettyville', Marble Hall Park, Douglas Road, Cork. Would any person having knowledge of a will executed by the above-named deceased, who died on 12 January

2009, please contact Barry, Turnbull & Co, Solicitors, 33/34 Washington Street West, Cork; tel: 021 427 7071, fax: 021 427 5407, email: turnbull@securemail.ie

McCarthy, John (deceased), late of Knocknadiha, Tournafulla, Co Limerick, who died on 19 September 2008 at Knocknadiha, Tournafulla, Co Limerick. Personal representative: Hanora 'Nora' Lynn and Liam Wrenn. Would any person having knowledge of a will made by the above-named deceased please contact Dennison Solicitors, Dennison House, Main Street, Abbeyfeale, Co Limerick; DX 58006; tel: 068 31169, fax: 068 31614

O'Callaghan, John (deceased), late of 2 Clover Court, John Carew Park, Limerick city (having a former address at 202 Valley View, O'Malley Park, Limerick). Would any person having knowledge of a will made by the above-named deceased, who died on 15 March 2009, please contact William Donovan of Holmes O'Malley Sexton Solicitors, Bishopsgate, Henry Street, Limerick; tel: 061 445 504, email: william.donovan@homs.ie

O'Mahony, TC Gerard (deceased), late of apartment 3, Serpentine House, Serpentine Avenue, Dublin 4, who died on 15 November 2008. Any person having a claim against or interest in the above-mentioned estate are required to send particulars in writing to the executor, Ken Gannon, c/o O'Sullivan Barnicle, Solicitors, 48 South William Street, Dublin 2

Sexton, Mary (deceased), late of 92 The Cloisters, Terenure, Dublin 6W, who died on 17 February 2009. Would any person having knowledge of the whereabouts of any will made by Mary Sexton please contact O'Brien Ronayne Solicitors, 5A Main Road, Tallaght, Dublin 24; tel: 01 424 6200, fax: 01 424 6201

Shivnen, Thomas (deceased), late of 1 Woodview Park, Lahinch Road, Ennistymon, Co Clare, who died in April 2009 at Ennistymon. Would any person having knowledge of a will made by the above-named deceased contact M Petty & Co, Solicitors, 46 Abbey St, Ennis, Co Clare; tel: 065 707 1445, fax: 065 707 1785

Toland, James (deceased), late of 28 Ard McGill, Glenties, Co Donegal, obit 21 October 2004, and Bella Toland, late of 28 Ard McGill, Glenties, Co Donegal, obit 11 February 2009. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact O'Donnell McKenna Solicitors, Waterloo Place, Donegal Town, Co Donegal; tel: 074 974 0444, fax: 074 974 0455, email: ian@odmk.ie

Walker, Gordon (deceased), late of 41 Corrovorrin Drive, Ennis, Co Clare. Would any person with knowledge of a will executed by the above-named deceased, who died on 10 May 2009, please contact Desmond J Houlihan & Co, Solicitors, Salthouse Lane, Ennis, Co Clare; tel: 065 684 2244, email: lburke@djhoulihan.ie

LAW SOCIETY Gazette PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICE SECTION ARE AS FOLLOWS:

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

These rates will apply from January 2009 until further notice

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for July *Gazette*: 17 June 2009. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

Walsh, Mary (deceased), late of 36 Carrigwood, Firhouse, Dublin 24, who died on 8 December 2008. Would any person having knowledge of the whereabouts of any will made by Mary Walsh please contact O'Brien Ronayne Solicitors, 5a Main Road, Tallaght, Dublin 24; tel: 01 424 6200, fax: 01 424 6201

MISCELLANEOUS

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For sale - seven-day ordinary publican's licence. Contact Shane O'Neill, Sweeney McGann, 67 O'Connell Street, Limerick; tel: 0651 418 277, fax: 061 319 496

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 number 134 Richmond Road, Drumcondra, Dublin ('the property') and Maxol Limited ('the applicant')

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

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the free-

hold reversion in each of the aforesaid property are unknown or unascertained.

Date: 5 June 2009

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

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 Joseph O'Reilly

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises known as 11 Moore Lane in the parish of Saint Mary and city of Dublin, being part of the property comprised in a lease dated 7 November 1759 made between John Darragh of the one part and George Newton of the other part for a term of 900 years from 29 September 1759, subject to the yearly rent of £4.16.8 and sixpence in the pound receiver's fees (late predecimal Irish currency) thereby reserved.

Take notice that Joseph O'Reilly, being the person entitled to the lessee's interest in the said lease, intends to apply to the Dublin county registrar at Áras Uí Dhálaigh, Inns Quay, Dublin 7 for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 5 June 2009

Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2

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

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises known as 4-8 Henry Place in the parish of Saint

Mary and city of Dublin, comprised in folio DN176000F, held under a fee farm grant dated 23 June 1866, made between George Sams, Emily Sams, William Atkins and Fanny SS Atkins of the one part and Mary Fitzgerald of the other part, subject to the perpetual yearly rent of £2.15.4, late Irish predecimal currency.

Take notice that Joseph O'Reilly, being the person entitled to the lessee's interest in the said lease, intends to apply to the Dublin county registrar at Áras Uí Dhálaigh, Inns Quay, Dublin 7 for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the said property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 5 June 2009

Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2

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

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises known as 8A Henry Place in the parish of Saint Mary and city of Dublin, comprised in folio DN119958L and held with other property under a lease dated 21 June 1810 from George Daniel to Edward Mulligan for a term of 900 years from 29 September 1810, at the yearly rent of £100, since adjusted to €90, now €114.28.

Take notice that Joseph O'Reilly, being the person entitled to the lessee's interest in the said lease, intends to apply to the Dublin county registrar at Áras Uí Dhálaigh, Inns Quay, Dublin 7 for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned so-

licitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 5 June 2009

Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2

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

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises known as 9 Henry Place and 3 Moore Place in the parish of Saint Mary and city of Dublin, comprised in folio 175039F county of Dublin, held with other property under a fee farm grant dated 25 April 1900 made between Evan Lake, the Reverend Charles William Henry Reynolds, Emily Frances Daniel Reynolds, George Wood, Henry Exley Edwards and William Russell of the one part and the Everton and West Derby Permanent Benefit Building Society of the other part, subject to two perpetual yearly rents totalling £73.85 thereby reserved and to the covenants on the part of the grantees and conditions therein contained.

Take notice that Joseph O'Reilly, being the person entitled to the lessee's interest in the said grant, intends to apply to the Dublin county registrar at Áras Uí Dhálaigh, Inns Quay, Dublin 7 for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 5 June 2009

Signed: William Fry (solicitors for the applicant), Fitzwillton House, Wilton Place, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of premises situate at 20 Ringsend Road, Dublin 4, in the parish of Saint Mary and city of Dublin, and in the matter of an application by Joseph Cosgrave, Peter Cosgrave and Michael Cosgrave

Take notice that any person having any interest in the freehold estate of or any superior or intermediate interest in the hereditaments and premises situate at 20 Ringsend Road, in the parish of Saint Mary and city of Dublin, held under indenture of lease dated 25 April 1902 made between David Charles Courtney of the one part and Malcolm McNeill of the other part for the term of 250 years from 29 September 1901, subject to the yearly rent of £87.14s.02 for the first year-and-a-half of the said term and thereafter the yearly rent of £116 and to the covenants and conditions therein contained, should give notice to the undersigned solicitors.

Take notice that the applicants, Joseph Cosgrave, Peter Cosgrave and Michael Cosgrave, intend to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and all intermediate interests in the above-mentioned property, and any party asserting that they hold an interest superior to the applicants in the aforesaid property are called upon to furnish evidence of

title to same to the below-named solicitors within 21 days from the date hereof.

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

Date: 5 June 2009

Signed: Sheehan & Company (solicitors for the applicants), 1 Clare Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by the Dublin and Glendalough Diocesan Board of Education

Take notice that any person having any interest in the freehold estate of the following property: all that and those part of the lands of Stillorgan Deer Park situate on the west side of Carysfort Avenue, being premises commonly known as All Saint's School, Carysfort Avenue, Blackrock, in the county of Dublin, lately held under a lease dated 25 June 1878 made between Thomas Pim of the one part and the Right Honourable Hedges Eyre Chatterton and others of the other part for the term of 130 years from 1 May 1878 at an annual rent of £5.

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

In default of any such notice being received, the Dublin and Glendalough Diocesan Board of Education intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for

the city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversions of the aforesaid premises are unknown or unascertained.

Date: 5 June 2009

Signed: Maxwells (solicitors for the applicant), 19 Herbert Place, Dublin 2

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-1964; notice of intention to acquire fee simple pursuant to section 17 of the Landlord and Tenant (Ground Rents) Act 1967 and in the matter of an application by Catriona O'Reilly

Any person having the freehold estate or any intermediate interest in all that and those the dwellinghouse and

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premises at Barrack Street, Bansha, in the parish of Bansha and townland of Bansha and barony of Clanwilliam in the county of Tipperary, the subject of a lease dated 2 August 1869 and made between Margaret O'Meagher of the one part and Daniel Moloney of the other part for a period of three lives therein named and for a further term of 31 years from 1 May 1869, subject to the yearly rent of £13 thereby reserved.

Take notice that Catriona O'Reilly, being the legal personal representative in the estate of Theresa Roche, the person entitled to the lessee's interest in the said lease, intends to apply to the Tipperary county registrar, at the Circuit Court Office, The Courthouse, Clonmel, Co Tipperary, for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Catriona O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 5 June 2009

Signed: Kennedy Frewen O'Sullivan (solicitors for the applicant), St Michael Street, Tipperary

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and

in the matter of an application by Jillian Tripp

Take notice that any person having interest in the freehold estate of the following property: 7 Crosthwaite West, Dun Laoghaire, Co Dublin, more particularly described in an indenture of lease dated 10 August 1966 and made between the Consolidated Construction Company Limited of the one part, Joseph McMenamin of the other part, for a term of 200 years from 1 January 1966, subject to the yearly rent of £25 and subject to the covenants on the part of the lessee and the conditions therein contained.

Take notice that Jillian Tripp intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days of the date of this notice.

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

Date: 5 June 2009

Signed: Partners at Law, Solicitors, 8 Adelaide Street, Dun Laoghaire

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Thomas E Tripp

Take notice that any person having interest in the freehold estate of the following property: 5 Crosthwaite Park West, Dun Laoghaire, Co Dublin, more particularly described in an indenture of lease dated 10 August 1966 and made between Consolidated Construction Company Limited of the one part and Joseph McMenamin of the other part for a term of 200 years from 1 January 1966, subject to the yearly rent of £25 and subject to the covenants on the lessee's part and the conditions therein contained.

Take notice that Thomas E Tripp intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days of the date of this notice.

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

Date: 5 June 2009

Signed: Partners at Law, Solicitors, 8 Adelaide Street, Dun Laoghaire

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 Joseph O'Reilly

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises nos 8 and 9 Moore Street, including the properties formerly known as nos 11, 12 and 13 Henry Place, in the city of Dublin, being part of the lands comprised in folio 174479F county Dublin, held with other property under a fee farm grant dated 15 August 1859 made between (1) Anne Worthington and (2) Fanny Susanna Shury Daniel, Eliza Stanton Daniel and Emily Gould Sams, subject to the perpetual yearly rent of £13.16.11 thereby reserved with six pence in the pound receiver's fees (predecimal currency) and to the covenants on the part of the grantees and conditions therein contained.

Take notice that Joseph O'Reilly, being the person entitled to the grantee's interest in the said fee farm grant, intends to apply to the county registrar for the city of Dublin for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 5 June 2009

Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2

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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 Joseph O'Reilly

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises number 10 Henry Place, including the properties formerly known as 4 and 5 Moore Place, in the city of Dublin, being part of the lands comprised in folio 174479F county Dublin, held with other property under a fee farm grant dated 25 April 1900 made between (1) Evan Lake, the Reverend Charles William Henry Reynolds, Emily Frances Daniel Reynolds, George Wood, Henry Exley Edwards and William Russell and (2) the Everton and West Derby Permanent Benefit Building Society, subject to two perpetual yearly rents of £36.18.6 reserved thereby and to the covenants on the part of the grantee and conditions therein contained.

Take notice that Joseph O'Reilly, being the person entitled to the grantee's interest in the said fee farm grant, intends to apply to the county registrar for the city of Dublin for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application

before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 5 June 2009

Signed: William Fry (solicitors for the applicant), Fitzwillton House, Wilton Place, Dublin 2

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of an application by the Mater Private Hospital

Take notice any person having an interest in the freehold estate of the following property: all that and those the lands and premises known as 112 Lower Dorset Street, Dublin 1, being the lands demised in a certain indenture of lease dated 20 November 1971, made between Hardwicke Limited of the one part and John O'Brien and Kathleen Mary O'Brien of the other part and therein described as "all that and those the message and premises known as 112 Lower Dorset Street in the parish of St George in the city of Dublin", which lands are also held under indentures of lease and release dated 6 March 1806 and 7 March 1806 respectively, and made between Rebecca Strong of the one part and Patrick Camac of the other part.

Take notice that the applicant, being the party entitled under the above-mentioned acts, proposes to submit an application to the county registrar for Dublin for the acquisition of the fee simple and all intermediate interests

in the lands described in paragraph no 1, and take notice that any parties asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title thereto to the below named within 21 days from the date of this notice.

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

Date: 5 June 2009

Signed: O'Rourke Reid (solicitors for the applicants), Pepper Canister House, Mount Street Crescent, Dublin 2

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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*.

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