LAW SOCIETY
Gazette
€3.75 July 2010

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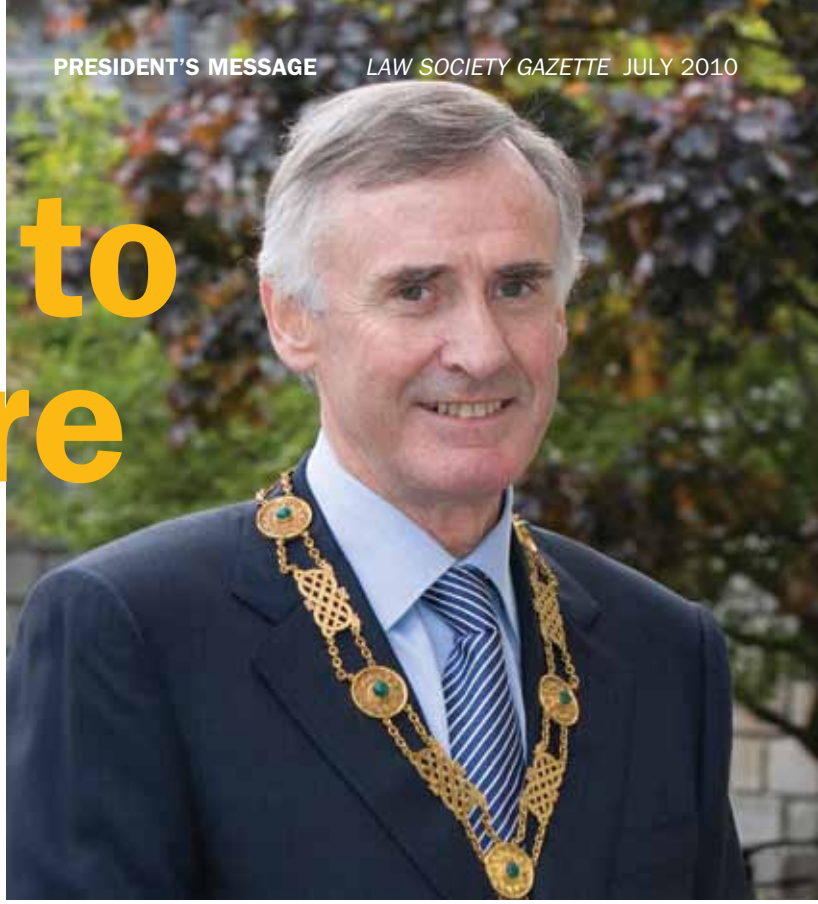
Looking to the future



As I write this, I am on my way to Tralee to meet with the Kerry Law Society. Last night, I had the pleasure of attending and speaking at a meeting of the Limerick Bar Association, with the director general. The key topics are remarkably similar, no matter where we go – professional indemnity insurance, commercial undertakings and the serious decrease in the amount of work are predictably the areas of most concern.

In relation to the Society's consultation with the profession about a proposed prohibition on commercial undertakings, the Society has been impressed with the large numbers of responses received from the profession. These have addressed, thoughtfully, both the content of the text of the draft regulations and the principles under consideration.

It is the individual members of the profession, involved at the coalface, who have had to deal with the giving of undertakings. It is on the shoulders of the individual practitioner that the burden of an undertaking falls. Accordingly, it is right and proper that the views of the profession should be sought and listened to on this important issue.

Employment improvement

On the employment front, I am heartened to report that there has been some improvement in recent weeks, particularly in relation to the employment of newly-qualified solicitors. The Society's Career Support Service informs me that, for the last three months, more solicitors have obtained employment than have left it, driving down unemployment within the profession.

Interestingly, there appears to have been a shift in the profile of the typical solicitor seeking employment, for a variety of reasons. In late 2009, as we approached the date for professional indemnity renewal, many solicitors with several years' experience were made redundant and newly-qualified solicitors were not being retained by their training firms. However, in early 2010, it seems that fewer newly-qualified solicitors than expected have been let go by their training firms on completion of their training contracts.

In order to deal with these challenges, the Career Support Service is currently surveying all those who have been registered with them, and is seeking to obtain an accurate picture of the current situation in relation to each individual, in order to establish exactly where opportunities are arising, both geographically and by sector. I would urge everyone who receives enquiries from Career Support regarding their current employment status to take the time necessary to provide this important information.

> *"On the employment front, I am heartened to report that there has been some improvement in recent weeks"*

Opportunities in Oz

In relation to jobs and opportunities, I would like to mention in particular a most interesting seminar that has been arranged by the Law Society for 14 July 2010, at which representatives from the Law Council of Australia will discuss opportunities for Irish solicitors in Australia. In this respect, we are reliably informed that there are significant opportunities for Irish solicitors.

While on this topic, I would also remind you that the recognition of our qualifications by the Solicitors Regulation Authority for transfer into the profession in England and Wales is due to come to an end on 1 September next. It may well be the subject matter of an application for judicial review by the Society in the courts in London, but the outcome of that course of action will remain unknown for some time. For all of those of you who are qualified and might ever consider practising in England and Wales, you are urged to consider making an application to be admitted as a solicitor in England and Wales as soon as possible, as the application process can take some time (see p5 of this *Gazette* for more information).

Happy 90th birthday Moya!

Finally, on behalf of the whole profession, I extend congratulations and best wishes to the remarkable and well-loved Moya Quinlan, who celebrated her 90th birthday on 27 June 2010. The Law Society of Ireland's first-ever woman president as far back as 1980, she has been an elected member of the Society's Council continuously for over 40 years – re-elected by the profession to a fourth two-year term as recently as last November. She sits directly opposite the president at every Council meeting and her interventions in debates are as acute, persuasive, insightful and invaluable as ever. G

Gerard Doherty
President

On the cover

The roof. The roof. The roof is on fire. The concept of a roof has puzzled philosophers for generations. Luckily, here's the High Court to the rescue

PIC: THINKSTOCK

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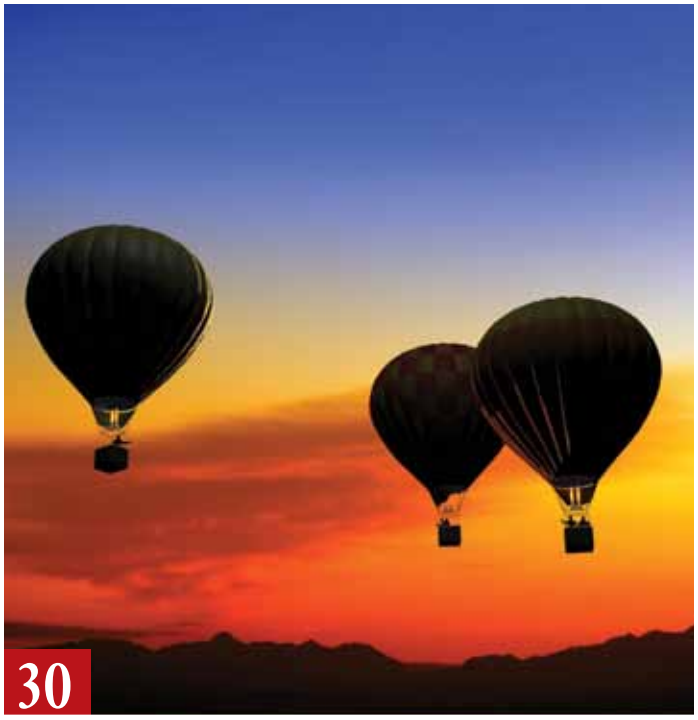

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LIMERICK

The legal community throughout Limerick was saddened by the recent death of David Punch, solicitor, of Glentworth Street. Says bar association president Elizabeth Walsh: "David was one of the longest-serving members of the legal profession and was much loved and greatly admired by solicitors and the public alike. He worked in the practice up to a few short weeks before his death. The recurring word on everyone's lips during the two days of the obsequies was that he was a gentleman." Working in the family practice is his wife Nancy, son Pat and daughter Ann. His son John is a senior counsel and practices in the South Western Circuit. *Ar dheis Dé go raibh a anam*.

The bar association held a barbeque on 28 May at the Strand Hotel, Limerick, the proceeds going to Special Olympics Ireland.

KILDARE

Colleagues throughout Kildare are angered at the further erosion, as they see it, of the public's access to justice. This arises from the threatened closure of the historic courthouse in Kildare town, where the Courts Service is currently considering a proposal to abolish the court and have it amalgamated with Naas.

"This will be of concern to all practitioners," says Athy solicitor David Osborne, "particularly those practicing in Kildare."

According to a Courts Service letter, seen by 'Nationwide', "The effect … will be the closure of Kildare courthouse and the transfer of the business currently heard in Kildare to Naas. It is proposed that this change will take effect from 1 October 2010." David suggests that any colleagues who are minded to make 'observations' should do so, in writing, to the Courts Service in Naas, or to easternro@courts.ie. He suggests that a concerted approach by all concerned would be very helpful.

Meehan Moroney Solicitors of Michael Street, Limerick, have opened a new office in Scariff, Co Clare. The office was officially opened by Taoiseach Brian Cowen on 11 June, with *(from l to r)*: Patrick Moroney (partner) Taoiseach Brian Cowen, Bridgette Meehan (partner), Michael Moroney (partner)

KILKENNY

The president of Kilkenny Bar Association, Owen O'Mahoney, accompanied by his wife Yvonne Blanchfield, solicitor, and Waterford Law Society president Bernadette Cahill, hosted a dinner in Kilkenny on Saturday 19 June for Judge James Flannery of Chicago, and his party who were on vacation in Ireland. Morette Kinsella, Waterford solicitor, also attended. Judge Flannery's predecessors hail from Kerry and Mayo. While in Kerry, he renewed his acquaintance with local solicitor Joe Mannix, who he had also met in Chicago and who shares his surname with the judge's maternal grandmother.

DUBLIN

John O'Malley also hosted Judge Flannery and took him to the Four Courts, where he introduced him to Mr Justice Quirke. A tour of the Four Courts' complex followed.

A dinner in the Trocadero was offered to all who serve on DSBA committees. The following day saw the DSBA cricket team, under the able captaincy of David Pigot, demolish our Southern Law Association colleagues from Cork. They were under the captaincy of Terry O'Sullivan and the umpireship of Mortimer Kelleher. The game was played in uncharacteristically brilliant summer sunshine in the melodious magnificence that is Phoenix Cricket Club. Aside from David the *maestro*, others to catch the eye included Stuart Gilhooly, David Bergin, Mark Bergin, William Aylmer, Kirby Tarrant and Robert Ryan. Yours truly found himself with a glorious opportunity to catch the *maestro* out, but flunked it! The Cork fellows were kind enough to infer I did it on purpose to save DRP's blushes!

John O'Malley also rose to the challenge of hosting the annual Tripartite, where the DSBA meets with colleagues from our sister associations in Liverpool and Belfast. A good gathering of colleagues met for dinner, where gifts were exchanged. The charms of Farmleigh and the Guinness Hops Store beckoned on Saturday, and we all winded up in the legendary Johnny Fox's for *ceol agus craic*.

WATERFORD

President of Waterford Law Society Bernadette Cahill was the guest speaker at the Waterford Rotary Club lunch at the Tower Hotel on 14 June. Speaking on the topical issue of enduring powers of attorney, the lunch was attended by solicitors and rotarians Marie Dennehy and Helen Bowe O'Brien.

Waterford solicitor Tom Murran has just taken over as president of Waterford Chamber of Commerce. One of his first functions was the annual summer barbecue of the chamber, held at the Athenaeum House Hotel on 18 June. In his speech, Tom welcomed the opening of the new House of Waterford Crystal showrooms, which have given a great boost to the city. He was joined on the night by family and friends, including his wife Ann, and colleague and partner Marie Dennehy and her husband, Maurice. Tom will be very busy with preparations for the return of the tall ships to Waterford in 2011. G

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

Seminar on opportunities in Australia

A plan to help Irish solicitors find career opportunities as solicitors in Australia will be unveiled at a special seminar in the Education Centre in Blackhall Place on 14 July 2010, at 5.30pm.

There is no charge for the seminar but, because space is limited, pre-booking is necessary. Those who would like to attend should communicate this by email to e.freyne@lawsociety.ie. Preference for places will be given to those whose names already appear on the Society's career support database.

The main speaker at the seminar will be a senior lawyer and member of the Immigration Law Committee of the Law Council of Australia, Anne O'Donoghue, who has practised immigration law in Sydney for many years.

The Society has been working for more than a year to strengthen its already existing ties with the legal profession in Australia, in recognition of the fact that circa 1,000 solicitors are unemployed here, while, in parts of Australia, practices currently do not have enough lawyers to serve their client base.

'Solicitor shortage in parts of Australia' headlined an article on page 9 of the March 2010 *Gazette*, which summarised the findings of a comprehensive Law Council of Australia survey in this regard.

PIC: LENSMEN

A warm summer's evening in Ireland
At a recent meeting in Blackhall Place were Law Society director general Ken Murphy, deputy CEO of the Law Council of Australia Margery Nicoll, President of the Law Society of Ireland Gerard Doherty, Law Society representative on Council and the International Bar Association Geraldine Clarke, President of the Law Council of Australia Glenn Ferguson, and senior vice-president John Costello

Biennial convention

In September 2009, director general Ken Murphy was a guest speaker at the biennial convention of the Law Council of Australia in Perth. He spoke at a number of plenary sessions and individual seminars, as well as to a special meeting of the Law Council of Victoria. He described the situation in Ireland whereby many hundreds of very bright, talented, young solicitors, with world-class legal and interpersonal skills, were shockingly without work due to the very sudden and severe economic crisis affecting the country.

He noted that Australia, by contrast, had not entered recession at any stage in the recent global downturn and was now growing strongly again, with an unemployment rate that was as low as 5%, by contrast with a rate of 12% in Ireland. More importantly, however, Australia was experiencing a chronic shortage of lawyers in remote and rural areas. By no means every unemployed Irish solicitor would wish to pursue a career in Australia, Murphy said, but a great many would be likely to find the lifestyle and, above all, the opportunity to pursue successful and well-rewarded careers as lawyers, very attractive.

Liberalisation of transfer tests

Murphy also met with senior figures who had a role in setting the qualified lawyer transfer tests, which are required for lawyers wishing to transfer into the profession in Australia. His purpose was to urge the liberalisation of these and he received warmly supportive signals from, among others, the Attorney General for Australia, Robert McClelland MP, who is the Australian counterpart of Ireland's Minister for Justice. However, it is recognised that changes of this kind should be viewed as a medium-term objective and will not be achieved in the very short term.

The best approach was thought to be for Irish solicitors to work in Australian law firms, to see if they enjoyed the experience and, indeed, if the firms liked them. Thereafter, the transfer tests could be taken without, it would be hoped, too much difficulty for solicitors who had already demonstrated the ability to qualify in as high a standard a jurisdiction as Ireland.

Enthusiastic support

The major challenge, however, would be to devise a system whereby Irish solicitors seeking opportunities in Australia could come in contact with law firms interested in them. In this, the enthusiastic support of the Law Council of Australia has been of critical importance.

On 24 May 2010, the President of the Law Council of Australia, Glenn Ferguson, who is a practitioner based on the Gold Coast of Queensland, made a special visit to Ireland to meet with Law Society of Ireland President Gerard Doherty and others in Blackhall Place, to move forward what has become a joint project of the two professional bodies at either ends of the globe.

Ferguson believes that the opportunities for Irish solicitors exist, not only in rural and remote parts of Australia, but in the major cities also. He has asked Anne O'Donoghue to head this project at the Australian end. Her address to Irish solicitors, together with PPCII students (if space permits), on 14 July 2010, is eagerly awaited.

'LAST CHANCE SALOON' TO QUALIFY FOR BRITAIN?

The latest news is that the facility whereby Irish qualified solicitors have full reciprocal rights to qualify in England and Wales will end this September.

With the process taking from two to three months to complete, anyone interested needs to get started without delay. (See story on p7 of the *Gazette*, April 2010.)

More information is available from the Society's Career Support service at tel: 01 881 5772, email: careers@lawsociety.ie.

Lawinfo.ie reaches out to consumers

A new consumer website – www.lawinfo.ie – has been launched by the Law Society. The new site is designed to provide the public with information on different areas of law and the legal system. It was launched on 1 June 2010.

Lawinfo.ie builds on information that was already available on the Society's website – but makes it easier to find and provides more links to useful legal websites.

The primary purpose of the new site is to act as a portal – an entry point to information located on other sites of legal interest. Information will be expanded and updated monthly in the 'News' section.

Practitioners are encouraged to email the web editor, Carmel Kelly (c.kelly@lawsociety.ie) about articles or notices that would be suitable for consumers. Also, she will be happy to hear about any changes to legislation or to website links provided on Lawinfo.ie.

For their involvement in this project, the Co-ordination Committee extends its thanks to Carmel Kelly (web editor), Peter Maxwell (IT), Emma-Jane Williams (policy development executive), and Colleen Farrell (committee executive).

Society confers first human rights certs

The first students to receive the inaugural Certificate in Human Rights from the Law Society were conferred on 19 May 2010. A total of 19 students, the majority of whom were solicitors, were presented with their certificates by US civil rights lawyer, Maurice Dees. Other suitably-qualified, non-legal professionals, including NGO non-lawyers with a human rights background, also participated.

The three-month course featured 'blended learning', allowing most of the learning to be done online, making it very attractive for students located outside the capital. Participants included students from Donegal, Clare, and even one based in Spain!

The course introduced participants to human rights from an international, national and regional perspective, and provided practical guidance on enforcing human rights in the legal arena. Participants were encouraged to:

- Identify human rights issues,
- Develop the skills necessary for pursuing human rights-based arguments, including practice and procedure, and
- The use of human rights legal databases.

The certificate will be offered again, commencing 3 November 2010. Those interested should contact the diploma team at the Education Centre, Blackhall Place, Dublin 7.

Autumn diploma programme revealed

The Law Society's Autumn 2010 Diploma Programme includes courses dealing with topical areas like corporate governance, environmental law, insolvency, and intellectual property and information technology.

Also being introduced is a Certificate in Capacity, Mental Health and the Law that will focus on legal issues relating to acting for vulnerable clients.

The autumn 2010 programme booklet is included with this issue of the *Gazette*.

In an effort to make our programme more accessible and student-centred, the Society is webcasting many of its courses. This innovation is particularly welcome for those outside Dublin who cannot readily travel to Blackhall Place for evening lectures.

The diploma fee is €2,150, while the fee for certificates is €1,160. A 20% discount applies to applications received from unemployed solicitors.

For further information on these courses, including the application process, visit the 'Diploma programme' pages at www.lawsociety.ie or email: diplomateam@lawsociety.ie, or tel: 01 672 4802.

DIPLOMA COURSES	START DATE (2010)
Diploma in Finance Law – webcast	Monday 4 October
Diploma in Corporate Law and Governance	Thursday 7 October
Diploma in Environmental and Planning Law – webcast	Tuesday 12 October
Diploma in Insolvency and Corporate Restructuring – webcast	Thursday 14 October
Diploma in Intellectual Property and Information Technology Law – webcast	Wednesday 20 October
Diploma in Civil Litigation – Cork	Thursday 14 October
Diploma in Family Law – webcast	Saturday 16 October
CERTIFICATE COURSES	**START DATE**
Certificate in Criminal Litigation	Saturday 2 October
Certificate in Human Rights	Wednesday 3 November
Certificate in Capacity, Mental Health and the Law	Tuesday 9 November
LEGAL LANGUAGE COURSES	**START DATE**
Diploma in Legal French	Wednesday 13 October
Certificate in Legal German	Tuesday 21 September

Employers should remember the Society's online job-seekers' register

There is simply no faster way of hiring a solicitor for a locum or contract position than through the job-seekers' register on the Law Society's website.

As many firms get increasingly busy, employers are reminded that the details of a wide range of solicitors are available for review on this facility. CVs can be considered and, with contact details provided, employers can speak directly to solicitors about work they need done.

A face-to-face interview can be organised. However, for short-term contracts especially, matters are often agreed between an employer and contractor by telephone. By operating this way, employers can often arrange for a contracting solicitor to start within 24 hours and, occasionally, even on the same day that contact is made.

Many employers use the job-seekers' register to recruit permanent employees – and it works well for that, too – but the facility is at its best in providing quick access to solicitors who are able and ready to take on short-term assignments.

There are a number of other facilities organised by the Society that employers can use to recruit staff. Vacancies can be advertised, free of charge, in the 'legal vacancies' section of the Society's website.

Another facility is the 'Update' electronic bulletin that the Career Support service sends out to 1,000 solicitors, at least weekly. Employers are welcome to have opportunities within their firm featured in this update. Contact Keith O'Malley at tel: 01 881 5772, or email: k.omalley@lawsociety.ie.

Also increasingly relevant to recruitment is the international business social networking site www.linkedin.com – especially for senior-level appointments. This is a facility of growing importance that solicitors should become familiar with. Keep an eye on how some of the bigger firms use Linkedin to fill positions and take on staff on an ongoing basis.

Make sure to join the Law Society of Ireland group when on linkedin.com. This group has over 400 members and is increasingly being used for information sharing.

CAREER SUPPORT TEAM GROWS

Two solicitors have joined Career Support at Blackhall Place to extend the capabilities of the team and better serve colleagues who face current career challenges. Emma Brogan and Eamonn Freyne report to career development advisor Keith O'Malley.

Emma, from Ballyhaunis in Co Mayo, did a law degree in UCD, followed by a Master's in European Law, and then trained with a firm in Galway, qualifying in 2009. She is also on the Roll of Solicitors in England and Wales. She particularly enjoys the training aspect of her Career Support responsibilities, and delivers seminars and workshops to solicitors at locations throughout Ireland. She has a keen interest in sailing and plans to take part in the New York City marathon in November.

Coincidentally, Emma's colleague Eamonn Freyne is also a native of Ballyhaunis. He originally trained as an electronic engineer and worked in the US before returning to Ireland to work for Intel and subsequently IBM. Eamonn decided to pursue a long-term interest in the law, qualifying in 2008. He never expected to find himself advising other solicitors about career options, but views it as an interesting role. He enjoys the odd round of golf, seeing it as a great way to relax and meet other people.

If you need help on any area of your career, you can contact Emma at 01 881 5772, or email: e.brogan@lawsociety. Eamonn can be reached at 01 672 4891, or email: e.freyne@lawsociety.ie.

Westport acclaims its native son

Law Society President Gerard Doherty has been honoured with a civic reception by Westport Town Council. The reception, held on 3 June 2010, was presided over by cathaoirleach of Westport Town Council, Councillor Myles Staunton – himself a solicitor.

Speaking on behalf of the people of Westport, the cathaoirleach said that Gerard should know that the town of Westport was proud of his achievement in becoming the president of a national organisation like the Law Society. As a result, he was being afforded a civic reception – the highest honour that Westport could bestow on one of its citizens.

He added that it was very clear that Gerard had not forgotten his roots and, indeed, at the recent annual dinner of the Law Society, he had ensured that the Presidents' Hall had been decked out in the Mayo colours.

"I am particularly pleased to welcome Gerard's sister Ann, and his sons Ronan and Kevin, to the chamber this evening," Councillor Staunton said, "and I know that your presence means a lot to Gerard. Indeed I know that Gerard's father, Charles, who was a chemist with his business at the clock in Westport, and his mother Lily who was a teacher, would be very proud of him today."

Since becoming president of the Law Society, the cathaoirleach said that the Society had faced what could only be described as an exceptionally difficult time. "Gerard has had to lead the Society through a situation where solicitors in practices all around the country have been held out as hostages to the insurance companies by the professional indemnity insurance.

"He has also had to deal with the reality of hundreds of solicitors all around the country becoming unemployed, where solicitors previously have taken a job for granted. Gerard deserves special commendation for emphasising that, as a profession, the solicitors' profession must do what it can for those solicitors who find themselves out of work through no fault of their own, and has emphasised the importance of career-support services being established by the Law Society."

Westport solicitors *(from l to r)*: Patrick Durcan, James Cahill (Castlebar), Elaine McCaffrey, Deirdre Ward, James Ward, President of the Law Society Gerard Doherty, Cathaoirleach Myles Staunton (solicitor), Mairead Bourke, James Hanley, Karen O'Malley, David Scott, Michael Browne, John Morahan and Gerry Morahan

He continued: "In my view, it is important, on an occasion like this, to recognise that, in our town of Westport, like all other towns around the country, for many years, firms of solicitors have run businesses and, by doing so, have given valuable employment in the town and also contributed to the success of the development of Westport, in particular by the payment of commercial rates. Westport firms, like all firms around the county are facing challenges. However, I have no difficulty in saying that, over many years, the Westport community has been served well, and continues to be served well, by Westport solicitors."

Cathaoirleach of Westport Town Council Myles Staunton, President of the Law Society Gerard Doherty, and Town Clerk of Westport Town Council Ann Moore at the presentation of a plaque to mark the civic reception held in the president's honour on 3 June 2010

Councillor Staunton concluded by reading from a letter, written in honour of the occasion by recently-appointed Judge Seamus Hughes, himself a Westport man: "This is a well-deserved honour, as Gerard served his apprenticeship on various committees over a number of years, and his organisational and leadership qualities have been properly recognised. Gerard assumed the matter of the presidency of the Society at a most difficult time, and since he has become president, he is making every effort in giving guidance and support to the many recently-qualified solicitors who now find employment opportunities very limited. As a fellow 'Covey', I am extremely proud of Gerard's achievements and, despite his elevation to high office, he has not forgotten his roots with his many visits to his home with his family at Rosmoney."

President Doherty then addressed the chamber, expressing his appreciation for the civic reception, saying that he was deeply touched to be so honoured by his native town.

Minister to get tough

The Minister for Justice and Law Reform, Dermot Ahern, took the opportunity of the Law Society's annual dinner to announce a 'rigorous focus on white-collar crime'. Mark McDermott reports

The Minister for Justice and Law Reform, Dermot Ahern, has issued a strong call for "reformed systems, strong laws and regulations to ensure that it is just not possible to play fast and loose with the economic and financial system".

During his keynote address at the Law Society's annual dinner on 21 May 2010, Minister Ahern said that the government would be initiating a number of reforms that would tackle white-collar crime head-on: "Part of that reform will mean a rigorous focus on white-collar crime – detecting it, deterring it and bringing to justice those who perpetrate it."

Announcing a series of moves to update and strengthen the government's approach to such crime, he said that he was:

- Formally requesting the Garda Commissioner to bring forward proposals for change in the criminal law in this area,
- Introducing blanket whistle-blower protection for reporting suspicions of corruption,
- Introducing a new consolidated *Corruption Bill*,
- Continuing a broad and comprehensive white paper consultation on white-collar crime, with the government seeking public and practitioner input.

Minister for Justice and Law Reform, Dermot Ahern

The minister said that he had asked Garda Commissioner Fachtna Murphy to bring forward proposals for changes to the criminal law that would enhance the ability of the force to investigate white-collar crime – similar to the approach adopted in updating and strengthening the law in relation to knife crime. In addition, he has asked the DPP to liaise with the Attorney General in order to provide his detailed views on reform in this area.

Whistle-blower protection

Announcing his intention to begin preparation for a consolidated *Corruption Bill*, which would bring all of the relevant anti-corruption measures together in a single statute, he acknowledged that the number and variety of laws dealing with corruption matters on the statute book was unsatisfactory and "understandably confusing for many people". The intention, he said, would be to make the law "clearer, easier to access and, where necessary, tougher".

The *Prevention of Corruption (Amendment) Bill* would be brought before the relevant Dáil committee with a view to securing its early enactment, he continued.

"Part of that bill, once enacted, provides protection to whistle-blowers in respect of all offences covered by all anti-corruption legislation dating back to 1889. Let me be clear what that means: it will provide protection to any person, in any sector, reporting suspicions of corruption in good faith."

The minister also said that work was continuing on the consultation *White Paper on*

on white-collar crime

Crime, due to be completed in 2011.

Directly addressing the legal profession, the minister said that it was customary at events such as the Law Society's annual dinner to set out the litany of reforms that are currently underway in the sector.

"I'm going to spare you that particular pleasure this evening," he quipped, "and instead simply focus on one area that is personally important to me. As you know, under the *Legal Services Ombudsman Act*, the ombudsman – who should be selected and appointed later this year following a public, competitive process – will report to me on admissions to practice as solicitors and barristers.

"The act also empowers me to seek reports of the ombudsman on other issues, as I direct. The first report I will seek from the ombudsman will relate to access to the legal profession, not to the issue of numbers, but to the issue of diversity – issues such as social class or ethnic minority access to the profession. All of our professions need to take a good look at this issue – I want the legal profession to lead, to set the bar for others."

The solicitors' profession had always attracted "the brightest and the best", he said. The past decade had witnessed a radical transformation in the scope and scale of legal education in the Law Society. "No one can claim that this Society is limiting the number of solicitors in training," he stated. "Similarly, the Bar Council has radically increased numbers in training. We need to take that effort to move to the next stage now."

It was now important to know "whether there were structural or financial impediments in the training regimes for barristers and solicitors, which prohibit the brightest and the best from less well-off backgrounds becoming lawyers. We need to isolate those impediments and remove them. Equally, we need to isolate the impediments for ethnic minorities or people with a disability, for example. I acknowledge that some of the changes that may need to be made might require government assistance."

PIC: LENSMEN

At the Society's annual dinner on 21 May were *(l to r)*: junior vice-president John P Shaw, Minister for Justice and Law Reform Dermot Ahern, President of the Law Society Gerard Doherty, senior vice-president John Costello and director general Ken Murphy

"Part of that reform will mean a rigorous focus on white-collar crime – detecting it, deterring it and bringing to justice those who perpetrate it"

He acknowledged the good work the Society was doing in this area through its access scheme. "It is only fair to stress that the paid trainee solicitor system means that the issue of potential social exclusion may probably be more pronounced for potential barristers than solicitors. I am certain that making the professions – every profession – more reflective of the society we serve can only be a good thing."

Internships for newly-qualified lawyers

Acknowledging the current "hard times" for members of the legal profession, and other professions, the minister said that he was well aware of the hard reality for many newly-qualified lawyers who were now without employment or work experience.

"In all of the departments I have worked in, I have been struck by the value of internships. These provide newly-qualified, talented people who come to work in a government department or agency, essentially, a chance to gain experience.

"I have been anxious to see where recently-qualified lawyers, who would otherwise be unemployed, could work with my department and agencies as temporary interns for experience purposes. We have already made placements with the Legal Aid Board and, subject to the acceptance of the terms of the Croke Park agreement, I would hope to be in a position to increase this number across all justice areas and agencies shortly."

The minister concluded by congratulating president Gerard Doherty, the Council, director general Ken Murphy and the staff at Blackhall Place "for all of their hard work … in running an excellent organisation in such difficult times". G

'Reverse discrimination'

The issue of 'reverse discrimination' against Irish nationals bringing non-EU-national family members into the state to reside with them is open to further argument, writes Hilkka Becker

In June 2008, Mrs Lihua Wang, the mother of a naturalised Irish citizen and grandmother of two Irish national children, came to Ireland from China to visit her daughter, her Irish-born son-in-law and her two grandsons. She sought to extend her permission to remain in the state on the basis that she was a dependent family member in the ascending line of her Irish citizen daughter and son-in-law, having lived with the family in the state for 15 months. The family provided evidence to the Department of Justice of their provisions of financial support to Mrs Wang and their ability to continue to support her. They showed that they had adequate accommodation available for her and took out private health insurance to ensure that, should a medical need arise on the part of Mrs Wang, she would be adequately covered without becoming an undue financial burden on the state. In all this, the family was guided by the belief that they should have the same entitlement to reside together as a unit in Ireland as the family of a Spanish or German or Polish worker in Ireland would have under the Irish regulations implementing Directive 2004/38/EC on the right of citizens of the union and their family members to move and reside freely within the territory of the member states.

Reverse discrimination

Currently, there are no provisions in Irish immigration legislation or administrative procedures for Irish nationals to bring non-EU-national family members into the state to reside with them as their dependants. This leads to the 'reverse discrimination' of Irish nationals when compared with other European Union nationals who have come to Ireland in the exercise of their right to move and reside freely within the EU and can therefore rely on European Community law to obtain certain rights.

Unfortunately for Mrs Wang and her family, the first Irish judgment on the issue of 'reverse discrimination' (*M & Ors v MJELR*, 23/11/2009; [2009] IEHC 500) did not lead to a finding that the treatment of Mrs Wang and her family was in breach of article 14, read in conjunction with article 8, of the *European Convention on Human Rights and Fundamental Freedoms* (ECHR), nor did it confirm that the difference in treatment between Mrs Wang and her family and other EU citizens who have exercised their right to free movement under Directive 2004/38/EC was such as to breach their rights under article 41 of the Constitution.

In dealing with the claim of 'reverse discrimination', Mr Justice Edwards came to the conclusion that, as "it is fundamental to the notion of discrimination that you have two persons who are in an equivalent situation and that one is treated differently from the other, notwithstanding this equivalence … the court is satisfied that [Mrs Wang's daughter's] situation is not equivalent to that of a non-Irish EU worker who travels to Ireland to take up a job and brings her non-EU-national mother with her to reside in Ireland". He considered further that "EU law has always recognised the principle of reverse discrimination, and that Ireland is entitled to treat the applicants less favourably than a national of another member state who is in a position to rely upon a specific treaty right that the applicants are not in a position to avail of".

ONE TO WATCH: NEW LEGISLATION

***European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010* (SI no 220 of 2010)**

On 20 May 2010, the *European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010* (SI no 220 of 2010) were published by the Minister for Enterprise, Trade and Innovation, giving effect in Ireland to Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.

Approval process

A competent authority may approve on application, as a statutory auditor or audit firm, a natural person or firm of good repute. A person or firm shall not act, describe or hold themselves out to be a statutory auditor or audit firm unless they have been approved in accordance with the provisions of the regulations.

A person who breaches these restrictions shall be held guilty of an offence and will be liable on summary conviction to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 12 months or both.

DCE powers

The Director of Corporate Enforcement has the power to demand the production of evidence of the person's approval under the regulations in respect of any period during which the person acted as a statutory auditor/audit firm or purported to have obtained approval to act as such. Failure to comply with these provisions within 30 days after the date of demand is an offence punishable by fines of up to €12,500.

Standards

A condition to an approval granted under these regulations is that the person takes part in appropriate programmes of continuing education in order to maintain his/her theoretical knowledge, professional skills and values at a sufficiently high level.

Statutory auditors and audit firms shall also be subjected to principles of professional ethics, which will, at a minimum, cover their public interest function, integrity and objectivity, and their professional competence and due care.

human rights watch

and Irish nationals

While it is certainly clear that EU nationals who have not made use of the right of free movement within the Union and find themselves in a so-called 'purely internal situation' cannot rely on EU law to obtain a right of residence for the members of their family in the member state of which these EU nationals hold the nationality, Edwards J also determined that Mrs Wang and her Irish family were not in fact protected by article 41 of the Constitution or article 8 of the ECHR.

He held in this regard that "for the applicants' rights under article 41 and/or article 8 to be engaged in the circumstances of the present case, [Mrs Wang] must necessarily be 'dependent' on the Irish-based family". He accepted the submissions of the respondent to the effect that "dependency means some level of handicap, incapacitation, some disqualifying factor which makes one a dependant not simply financially, but also socially, something that precludes one from completely independent living. Moreover, as per the judgment in *Mokrani*, there must be additional elements of dependence, other than normal emotional ties." He went on to clarify that "receipt of financial support could in itself constitute dependency, but subject to the following qualification. I believe that such support must be necessary as opposed to being merely welcome."

Edwards J concluded that

Reverse discrimination – no cause for celebration in Ireland

Confidentiality

The regulations provide that statutory auditors and audit firms shall comply with the rules of confidentiality and secrecy of the competent authority of which they are a member. (According to regulation 16(2): 'competent authority', where used without qualification, means a recognised accountancy body.)

Regulation 50 stipulates that nothing contained in the regulations compels the disclosure by any person of any information that the person would be entitled to refuse to produce by reason of legal professional privilege.

Transparency report

Where a statutory auditor or audit firm has carried out an audit of one or more public-interest entities, they shall be required to prepare and publish a report in relation to that financial year.

This report must be published within three months after the end of the financial year, and each subsequent financial year. (The financial year is the one ending on or after the date falling three months after the date of the making of these regulations.)

Public register

From the date falling three months after the date of the making of these regulations, the competent authority shall be required to maintain a register in relation to statutory auditors and audit firms, and third-country auditors and audit entries. The information to be contained within the register is set out in schedule 1 of the regulations.

Audit committees

From the date not falling six months after the date of the making of these regulations, the board of directors of a public-interest entity shall establish an audit committee in respect of the entity. The members of the audit committee shall include not less than two independent directors of the public-interest entity. G

Joyce Mortimer is the Law Society's human rights executive.

"the applicants' starting point, in terms of possibly persuading the court that they have substantial grounds for arguing that the respondent's decision ought to be quashed for breach of their rights under article 41 and/or article 8, must be to demonstrate that those provisions have been engaged. To do this, they must produce before this court *prima facie* evidence of the fifth-named applicant's dependency." He found that they had failed to do so.

The relationship between Mrs Wang and her grandchildren and the protection of the children's best interest through her continuous residence was not assessed as part of the judgment.

Scope for argument

It remains to be seen what the position of the Irish courts would be in relation to a case where 'dependency' is seen to have been properly established and where constitutional and convention rights of Irish families and their non-EU-national dependants will therefore have to be fully considered.

There certainly is scope for further argument that the 'reverse discrimination' of Irish nationals as an effect of the implementation of EU law in Ireland may be incompatible with the equality guarantees of article 40.1 of the Constitution and article 14 in conjunction with article 8 of the ECHR.

At EU level, it has been argued that "there does not appear to be a rational justification for requiring, as a matter of European law, a member state to respect and protect the human rights of union citizens who happen to have exercised their rights to free movement, whilst not having a similar obligation towards a union citizen who has not done so … The fact that some union citizens, without a valid justification, are excluded from the human rights protection that is made available by European law, will surely present problems in a polity which aspires to create a meaningful notion of union citizenship" (A Tryfonidou, 'Family reunification rights of (migrant) union citizens: towards a more liberal approach', ELJ 15(5), September 2009, p649).

'Reverse discrimination' as a result of the national implementation of EU law is an unjustified difference in treatment that seems in conflict with the community principle of equality between union citizens and the right to move and reside freely within the territory of the member states. All EU citizens, including those who find themselves in a purely internal situation, should be able to rely on the prohibition of discrimination based on nationality (article 18, TFEU) and they should also be able to invoke the right not to be obliged to migrate if they want to claim the status that applies to those EU citizens who have made use of the right to free movement.

If not resolved through the courts at national or European level, the national governments of the member states will need to follow the examples of the Belgian and Spanish governments and ensure coherence of the union by prohibiting 'reverse discrimination' in national law. G

Hilkka Becker is senior solicitor at the Immigrant Council of Ireland – Independent Law Centre.

letters

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

Regulation cannot be costless, says RIAI

From: John Graby, director, RIAI, 8 Merrion Square, Dublin 2

Brian Montaut of the Architects' Alliance had some interesting comments in his letter to the *Gazette* (April 2010) about registration of architects and the *Building Control Act 2007*; there are, however, a significant number of errors of fact.

The first error is the apparent belief that the operations of the Royal Institute of the Architects of Ireland (RIAI) would be subsidised by registration charges. As with any regulatory function, this is not costless and significant investment is required in IT, training, resources, legal advice, computer systems, boards and committees, and so on. The reality is, and this would be apparent to anybody involved in any regulatory organisation, that the costs of registration are and will have to be considerable, and for some time will be subvented by other RIAI income sources and not solely derived from registration charges. If this were not the case, the charges would be at such a level as to make the cost prohibitive for many architects. The entire process is required to be self-funding and no state funding is, or will be, available.

The second factual error is the statement that there is no 'grandfather clause' in the act. This is difficult to understand, as the act makes specific provision for the assessment of those who do not have listed, or indeed any, qualifications in architecture. It is open to any person who has worked

The triangles of Geezer

in the field of architecture, at the level of an architect, for ten years prior to 1 May 2008, to be assessed on the basis of a portfolio submission and verification of their work during the relevant ten-year period. This procedure is described as "practical experience assessment procedures" in the preliminary and general section of the act and is a 'grandfather' process.

The third factual error is the surprising assertion that Britain did not have regard to the *Qualifications Directive* (2005/36 EC) on mutual recognition of professional qualifications. The relevant legislation governing the British registration body for architects, the Architects' Registration Board, has been amended to fully transpose the directive in a statutory instrument. There is no difference between the transposition of the EU directive in either Irish or English law on the registration of architects, and the transposition in both countries has been neither over-zealous or restrictive.

The fourth factual error is a statement that consumer protection is diminished by the implementation of the *Building Control Act 2007*. All architects on the register, no matter what the entry route is, are required to meet a defined standard of competence and can be assessed against this standard, providing certainty for the consumer.

This standard guarantees consumers that those offering architectural services under the title 'architect' have demonstrated the minimum standard of knowledge, skill and competence required to deliver these services. Without a standard, the register would be meaningless in terms of consumer protection. The Statutory Professional Conduct Committee would have a real difficulty in assessing poor professional performance in the absence of such standards. As recommended by the Competition Authority, the Statutory Professional Conduct Committee is independent of the RIAI, with five persons nominated by the Minister for the Environment and one person nominated by the Minister for the Environment in consultation with the Minister for Enterprise Trade and Employment; all the minister's nominees are required to be non-architects. Five architects are to be nominated by the RIAI, and there is an independent chairman with a legal background. The Professional Conduct Committee comes to its own decisions without reference to the RIAI and it is a simple fact that this committee has the powers of a High Court judge, as provided for in the act.

Reference is also made in the letter to the option of an independent body to register architects. The government has decided to follow the prevailing model for the regulation of architects in the European Union, which is for one body to provide both regulatory and support of functions, but with an independent Admissions Board, Professional Conduct Committee, Appeals Board and Technical Assessment Board – all with non-architect majorities nominated by the state, which guarantees independence in accordance with the provisions of the *Building Control Act 2007* and as recommended by the Competition Authority. G

Risk assessment is key

Arguing that soft-information-based vetting affronts legal rights is to ignore the discourse there has been within child protection circles since at least the early 1990s, says Kieran Walsh

Fergal Mawe recently argued in these pages (*Gazette*, May 2010, p20) that the use of soft-information-based vetting for people seeking to work with children and other vulnerable groups should be opposed. He correctly points out that there are significant difficulties with the current vetting regime, which lacks statutory footing, and that any vetting system must protect the rights of vetted persons in order to have legal as well as moral legitimacy. However, to argue that vetting is an inherent affront to legal rights ignores the discourse that has been taking place in child protection circles since at least the early 1990s.

Soft-information-based vetting – indeed, any vetting system – operates on the basis of risk assessment, which has become a key concept in child protection. This approach argues that we should seek to minimise risks where they arise. It is playing an increasing role in how legislation is drafted and is increasingly influential in insurance and environmental law. Its relevance to child protection is clear. The publication of damning reports has highlighted child abuse as a serious and widespread problem. One of the most consistently shocking findings of the reports is the ineffectiveness of mechanisms designed to prevent abuse. Given these failings, we are now forced to change the child-protection system – and risk assessment presents a useful method of taking decisions that can lead to more effective child protection. While we cannot totally eliminate the risk of abuse occurring in the home or outside of it, we can reduce it as far as possible by using empirical evidence to ground a more effective child-protection system.

Legal duties to children

One of the key issues that must be addressed is the extent to which the state owes legal duties to children – as opposed to ethical or moral duties – to minimise the risks they face.

Let us narrow our focus to the dangers posed by physical or sexual abuse of children at the hands of people outside their families. Article 34 of the UN *Convention on the Rights of the Child* and articles 3 and 8 of the ECHR impose obligations to tackle child sexual abuse. The ECtHR decision of *Stubbings v United Kingdom* ([1996] 23 EHRR 213) saw the court say that children are entitled to state protection from sexual abuse. *Adamson v United Kingdom* ([1999] 28 EHRR CD 209) saw sex-offender notification requirements (which, like risk-based vetting, use personal information to prevent the commission of further sexual offences) upheld as a legitimate method of protecting the public from potentially dangerous individuals. Once safeguards are in place for limiting the flow and use of that information, its use will likely be deemed proportionate. This conclusion was reached in *Sidabras and Dziautas v Lithuania* ([2004] 42 EHRR 104). These decisions make clear that there is a state obligation to prevent child abuse and that information can be a key tool in fulfilling this obligation. It also demonstrates that careful safeguards have to be constructed in order to ensure that this information is used in a targeted way so as to achieve a balance between effective risk assessment and respecting the rights of vetted persons.

> ***"The Employment Equality Act 1998, although clearly not a vetting statute, does envisage that some information other than criminal prosecutions may be available and useful to a prospective employer, and can assist them in minimising the risk to children in their care"***

At a national level, section 3 of the *Child Care Act 1991* imposes obligations on the state, in the guise of the HSE, to identify children not receiving adequate care. The only Irish decision dealing with information-sharing in a manner somewhat approximating vetting is *MQ v Gleeson* ([1998] 4 IR 85). The applicant was enrolled on a social work course run by the VEC, which entailed a placement at a children's play centre. However, serious allegations of child abuse had been made against him over a number of years, yet no criminal prosecutions or care proceedings were initiated.

When the Health Board learned of his enrolment on the course, they informed the VEC of their concerns, leading to his suspension from the course. Barr J held that section 3 of the act imposed obligations on the Health Board to prevent harm to children based on "present knowledge or reasonable suspicion of potential harm", thereby vindicating the board's decision that MQ posed a risk to children. The basis for this decision came, not from criminal prosecution, but from the long-standing suspicions of social workers.

Employer responsibilities

There is some further legislative guidance on risk-based vetting in section 16(5) of the *Employment Equality Act 1998*. This allows an employer significant leeway in refusing to hire or retain in employment any person who – on the basis of conviction or other reliable information – they believe engages or has a propensity to engage in

viewpoint

to child protection

unlawful sexual activity. The following subsection makes especially clear that it applies to employment involving access to children and other vulnerable groups. The 1998 act, although clearly not a vetting statute, does envisage that some information other than criminal prosecutions may be available and useful to a prospective employer and can assist them in minimising the risk to children in their care.

This provision has been strengthened by the potential for an employer to be prosecuted for not meeting child-protection standards under section 176 of the *Criminal Justice Act 2006*. If a person who has control over an abuser – defined as a person believed to have harmed or abused a child – recklessly permits a child to be left in a situation that creates a substantial risk of harm, or fails to take reasonable steps to protect a child, they are guilty of reckless endangerment of a child. In employment or educational situations, the section clearly envisages the situation where an employer would have to prevent a known or suspected child abuser from working with children in order to avoid criminal liability, thereby imposing a duty of risk minimisation on a decision maker, fully in line with the idea behind vetting practices.

An example of how to achieve a balance between the competing rights is the *Safeguarding Vulnerable Groups Act 2006*, which regulates the use of soft information in Britain. The aim of using risk analysis in deciding what to do with carefully regulated information has been expressly supported by their Supreme Court in *R(L) v Commissioner of Police of the Metropolis* ([2009] UKSC 3) and reiterated in *R(F and Thompson) v Secretary of State for the Home Department* ([2010] UKSC 17).

Clearly, drafting a vetting statute is not going to be easy. Not only must the legal rights of children and other vulnerable groups be balanced with the rights of vetted persons, but the law must also take a leap in exploring the area of risk itself. To understand the legal choices we face in the coming months and years over how we construct child-protection statutes requires a deeper understanding of how risks influence societal governance and how social norms influence the perception of risks. G

Kieran Walsh is a barrister and lecturer. He is currently undertaking a PhD in the area of soft-information-based vetting as a child-protection mechanism.

Smoke gets

The thorny issue of what constitutes a roof in the smoking area of a licensed premises was dealt with emphatically by Mr Justice Peter Charleton recently. Sean O'Donnell slips outside for a quiet one

On 19 May 2010, Mr Justice Peter Charleton delivered what would be perceived as a very welcome decision for enforcement officers within the Health Service Executive – and what might be regarded as a beneficial decision for employees in licensed premises throughout the country – in the case of *Health Service Executive v Brookshore Limited*.

The decision is of interest to solicitors who act for licensed vintners, as they may well be contacted by their clients seeking advice in relation to the legal compliance of their smoking areas. Many public houses have smoking areas that are covered by canvas awnings; the question that arises in such circumstances is whether a canvas awning can be considered a 'roof' within the meaning of the *Public Health (Tobacco) Act 2002*, as amended.

This specific question arose in the recent District Court prosecution of Brookshore Ltd, the occupier of Grace's public house in Naas, Co Kildare. Environmental health officers inspected the premises in April 2008 and found people smoking in the designated 'smoking area' of the pub, which comprised an enclosed laneway between two buildings that was covered with a retractable canvas awning. The area was furnished with bar stools, had varnished wooden counters on which there were ample numbers of ashtrays, and had a flat-screen television on one of the end walls.

No smoke without fire

A prosecution ensued against Brookshore Ltd for an offence contrary to section 47 of the *Public Health (Tobacco) Act 2002*, as amended, which is the offence of "smoking in a specified place" (in this case, a licensed premises insofar as it is a place of work). A prosecution can be brought against the occupier, the manager, or the person smoking in the specified place. There are two exceptions to this rule that are relevant to licensed premises:

- It is permissible to smoke in an area that is wholly uncovered by a fixed or movable roof (section 47(7)(c)), and
- One can smoke in "an outdoor part of a place or premises covered by a fixed or movable roof, provided that not more than 50% of the perimeter of that part is surrounded by one or more walls or similar structures (inclusive of windows, doors, gates or other means of access to or egress from that part)" (section 47(7)(d)).

The second exception was described by Justice Charleton in the following terms: "One can smoke in an outdoor pagoda for smokers with a roof, but which has to have at least 50% of its walls missing."

MAIN POINTS

- **Smoking areas in licensed premises**
- ***Health Service Executive v Brookshore Limited***
- **When is a roof not a roof?**
- **Making an award of costs**

in your eyes

In the District Court, before Judge John Coughlan, Brookshore Ltd argued that the area that was the subject of the prosecution was not covered by a fixed or movable roof. In effect, their argument was that the canvas awning that completely covered the area was not, and could not be considered to be, a roof or moveable roof. They were later praised by Justice Charleton for their ingenuity in making this argument. Judge Coughlan inspected the area on the hearing date and agreed that the "awning in question, being made from canvas or other non-solid material, was not and could not be a roof or a moveable roof within the meaning of the act".

Smokescreen

On this finding, Judge Coughlan subsequently dismissed the prosecution and awarded costs to Brookshore Ltd. The Health Service Executive appealed the case by way of case stated to the High Court, in accordance with section 2 of the *Summary Jurisdiction Act 1857* and the *Courts (Supplemental Provisions) Act 1961*.

The following questions were asked of the High Court by Judge Coughlan:

1) Was I correct in determining that the covering – being made of canvas, rather than solid material – could not be a roof or a moveable roof within the meaning of section 47(7)(c) of the *Public Health (Tobacco) Act 2002*, as amended by section 16 of the *Public Health (Tobacco) (Amendment) Act 2004*?
2) Was I correct in determining that the material the covering is made from is a relevant and/or determining factor when deciding if the roof is a roof or moveable roof within the meaning of the act?
3) Was I correct in dismissing the case having regard to the aforementioned facts?
4) Was I correct to make an award of costs as against the HSE in the circumstances?

In the High Court, Mr Justice Charleton considered two sets of photographs of the smoking area, which had been submitted to the District Court judge by the HSE and by the defendants. The photographs taken by the HSE inspectors showed the area covered by the canvas awning. Justice Charleton noted that the sky was totally blotted out, and he also noted the presence of stools and ashtrays with actual cigarette butts in them. The defendants photographs showed the same area with the canvas awning retracted and without bar stools or ashtrays.

In his judgment, he considered that the relevant subsection of the act creating the exemption (section 47(7)(c)) requires very little in the way of statutory interpretation. He noted that the 2002 act was expressly passed in the interests of public health and uses the word 'roof' as an everyday expression, as opposed to a word that may have a slang meaning or one that has a technical implication for an expert. He considered the ill effects of smoking, such as lung cancer and other fatal diseases, which he took into account in interpreting the statute. Justice Charleton clearly stated: "It is not possible for an argument to be accepted that any membrane covering the upper surface of a room or premises which impedes the ready dispersal of tobacco smoke is anything other than a roof."

"It makes no difference if it is made of steel or slates, of canvas, of plastic or of glass. It is irrelevant if it leaks or if it provides little in the way of insulation. What matters is that a roof is overhead and that, effectively, or less than effectively, it assists in keeping off precipitation and keeping in smoke"

Smokey and the bandit

He went on to say that comfort and shelter were clearly the purpose of the awning, which was there to keep off the elements, and which, as a consequence, impeded the dispersal of tobacco smoke, and it was, therefore, a roof. More importantly, he said: "It makes no difference if it is made of steel or slates, of canvas, of plastic or of glass. It is irrelevant if it leaks or if it provides little in the way of insulation. What matters is that a roof is overhead and that, effectively, or less than effectively, it assists in keeping off precipitation and keeping in smoke."

Justice Charleton's answers to the questions raised by the district judge were that:

1) The part of the premises mentioned in the charge was covered by a moveable roof. It was not wholly uncovered by a roof or a retractable roof. The exception to the smoking ban, therefore, did not apply.
2) The material that makes up a roof is irrelevant. A roof is a roof.
3) The correct law is as stated in this judgment. Any further findings of fact as to whether the prosecution have proved their case beyond reasonable doubt is a matter for the district judge.
4) The district judge was not correct in making an award of costs against the HSE. This is a prosecution brought in the public interest. In consequence, the principles as to the award of costs are those as stated in *People (DPP) v Kelly*.

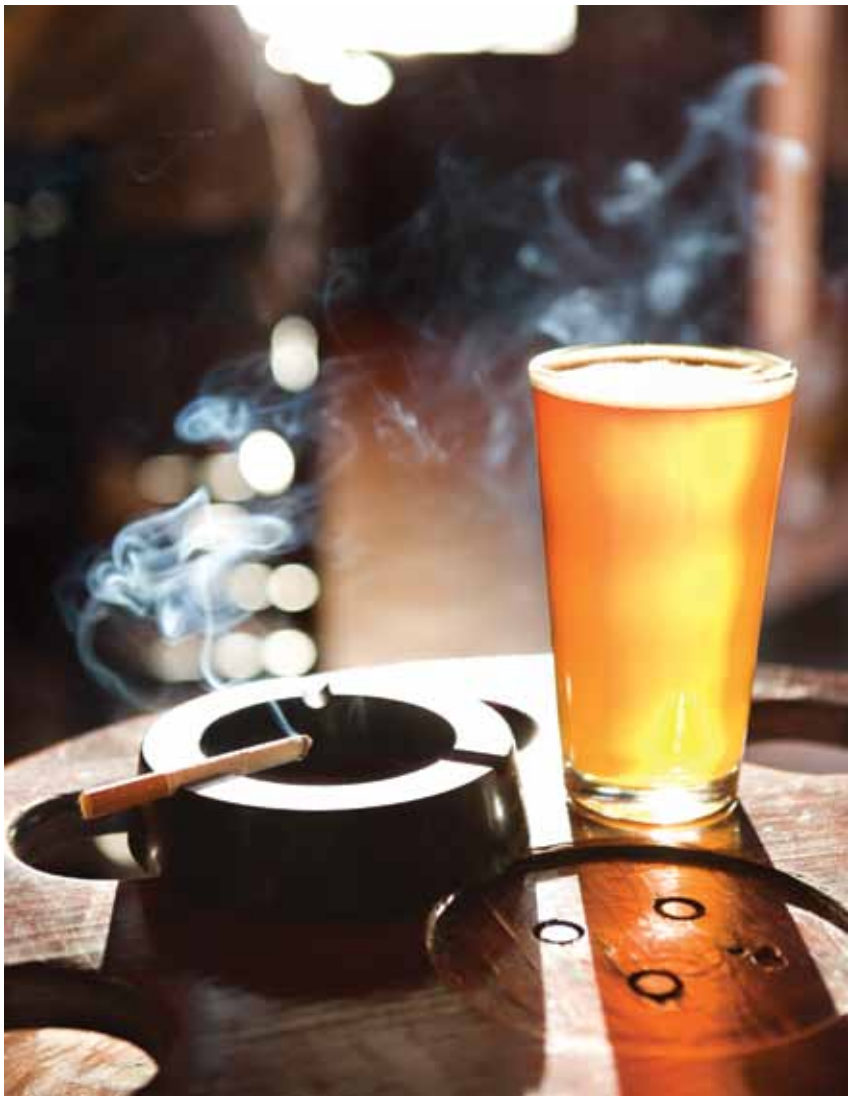
It might also be noticed that the level of costs awarded by the judge in this case was too high. This was a simple argument as to whether a prosecution could succeed on a charge carrying a monetary penalty of €3,000 or less. Any legal argument was centred on the definition of a roof. It would be very difficult for a judge in the District Court to justify costs exceeding €10,000 to a defendant succeeding in securing an acquittal on a minor charge and then succeeding in obtaining an award of costs. Even a figure of one tenth of that might be queried.

Up in smoke

Interestingly for practitioners, Mr Justice Charleton answered the question raised in relation to costs by saying that, because this case was prosecuted by the HSE in the public interest, the defendant is not entitled to its costs where the defendant was acquitted, unless he can satisfy the criteria set out in the *Kelly* case. Order 36 of the *District Court Rules* provides district judges with discretion to award costs in criminal cases, save against the DPP or a member of the Garda Síochána acting in discharge of their duties. The *Kelly* case relates to an application for costs by a person acquitted of a charge of murder in the Central Criminal Court. It was suggested that the trial judge might consider a number of issues when faced with an application for costs by a person acquitted of an offence.

One of the issues to be considered is whether the prosecution was justified in taking the case and whether it was founded on credible evidence. Other issues to be considered include whether any positive case was made by the accused that might reasonably be consistent with innocence, and whether the prosecution made any serious error in law or fact, whereby the case was presented on a wrong premise.

It seems that a very high threshold must be reached before an acquitted defendant can convince the trial judge that he should be entitled to his costs. Justice Charleton proceeded to make an *obiter dictum* reference to District Court costs, suggesting that, in a case such as this, a costs application by an acquitted defendant of €1,000 might be subject to query.



This judgment of Mr Justice Peter Charleton provides very clear guidance to vintners as to what is required of them to ensure compliance with the legislation should they choose to roof a smoking area. As is clear from his judgment, a roof is given a very broad meaning and is interpreted so as to ensure that the aim of the legislation to protect employees from the adverse affect of tobacco is achieved. It also provides clarity for enforcement officers inspecting premises.

It is the second seminal judgment in relation to this legislation, the first being *Malone Engineering Products Ltd v HSE*, in which it was confirmed by Mr Justice Hedigan that "a wall or similar structure", referred to in section 47(7)(d), has a very broad meaning. Both judgments assist greatly in the interpretation of the relevant provisions of the legislation and should assist practitioners in advising their clients in relation to compliance. G

Sean O'Donnell is a solicitor in the health services department of ByrneWallace.

LOOK IT UP

Cases:

- *HSE v Brookshore Ltd* [2010] IEHC 165
- *Malone Engineering Products v HSE* [2006] IEHC 307 (unreported)
- *People (DPP) v Kelly* [2007] IEHC 450 (unreported, High Court, Charleton J, 19 December 2007)

Legislation:

- *Courts (Supplemental Provisions) Act 1961*
- *Public Health (Tobacco) Act 2002*
- *Public Health (Tobacco) (Amendment) Act 2004*
- *Summary Jurisdiction Act 1857*

Use your

A recent judgment has said that the definition of 'client' in the *Solicitors (Amendment) Act 1994* must include the beneficiaries of a will where the solicitor is the executor. Albert Keating explains

Where a solicitor is appointed as executor, he will not only have a duty to administer the estate, but will also be rendered accountable to the beneficiaries as clients. This is as a result of a recent interpretation by Kearns P in *Condon v Law Society of Ireland* of sections 2 and 8 of the *Solicitors (Amendment) Act 1994*. Section 2 provides that "a client includes the personal representative of a client and any person on whose behalf the person who gave instructions was acting in relation to any matter in which a solicitor or his firm had been instructed; and includes a beneficiary to an estate under a will, intestacy or trust".

Section 8(1) of the 1994 act provides that, where the Law Society "receives a complaint from a client of a solicitor, or from any person on behalf of such client, alleging that the legal services provided or purported to have been provided by that solicitor in connection with any matter in which he or his firm had been instructed by the client were inadequate in any material respect and were not of the quality that could reasonably be expected of him as a solicitor or a firm of solicitors, then the Society, unless they are satisfied that the complaint is frivolous or vexatious, shall investigate the complaint and shall take all appropriate steps to resolve the matter by agreement between the parties concerned".

Section 8(1) goes on to provide that the Law Society, following investigation of the complaint, may, among other things, "direct the solicitor to transfer any documents relating to the subject matter of the complaint (but not otherwise) to another solicitor nominated by the client or by the Society with the consent of the client, subject to such terms and conditions as the Society may deem appropriate having regard to the circumstances, including the existence of any right to possession or retention of such documents or any of them vested in the first-mentioned solicitor or in any other person".

Beneficiaries as clients

Kearns P in *Condon v Law Society* considered the question of the accountability of solicitors as executors to beneficiaries as clients, and the protection afforded them under section 2 and section 8 of the *Solicitors (Amendment) Act 1994* respectively. In that case, the applicant sought judicial review of a determination made by the Law Society's Complaints and Client Relations Committee directing him to hand over a file in relation to an estate of which he was executor solicitor on foot of a complaint made by the beneficiaries.

Three beneficiaries named in the will made complaints to the Law Society, alleging that the applicant as executor solicitor provided inadequate professional services. One of the complaints related to costs, the choice of an auctioneer, and the asking price for the sale of a house. When the committee requested the applicant to furnish a section 68 letter and his bill of costs, he responded by saying that the beneficiaries were not 'clients' to whom a section 68 letter was owed. (Section 68 of the 1994 act provides that a solicitor on taking instructions to provide legal services to a client must provide the client with particulars in writing of the actual charges, or where the provision of particulars of the actual charges is not in the circumstances possible or practicable, an estimate (as near as may be) of the charges.)

The committee, having found that the professional services provided by the applicant were inadequate, directed him to hand over the entire file and pay a contribution towards the Society's costs. The applicant responded by stating that he was unable to produce a final account and, further, that the committee had acted without jurisdiction and had not afforded him a reasonable opportunity to be heard and to cross-examine witnesses.

It was submitted on behalf of the applicant that the definition of a client in section 2 of the 1994 act (which includes "a beneficiary of the estate") also includes the words "unless the context otherwise requires", and should be read in conjunction with section 8 of the act, which specifically grants jurisdiction to the Law Society to investigate a complaint about inadequate professional services only in connection with a matter in which he "had been instructed" by the client. The beneficiaries did not instruct him as solicitor. Only a client who had instructed a solicitor could make a complaint under the 1994 act. As executor of the will, he was the client, not the beneficiaries. He also submitted that

MAIN POINTS

- **Accountability of an executor solicitor to beneficiaries**
- **Beneficiaries as clients**
- ***Condon v Law Society of Ireland***

will-power

the decision of the committee was made in breach of natural and constitutional justice, as he was not present at the meeting where the adverse decision was given against him.

'Bizarre outcome'

It was submitted on behalf of the Law Society that the whole point of section 2 of the 1994 act was to ensure that a solicitor could not argue to be unaccountable to beneficiaries in respect of services provided to them. The applicant's interpretation would produce the bizarre outcome that the only person who could make a complaint about the services was the applicant himself. In addition, the fact that, in law, the beneficiaries were entitled to have the applicant removed as executor underlined the fact that he was acting on their behalf. The logic of defining beneficiaries as clients was that, for the purposes of the 1994 act, the applicant was taking instructions from them.

Kearns P commenced his judgment by stating that it was a basic principle of statutory construction that a statute be construed purposively and not in a manner that led to an absurd outcome. He found that the definition of 'client' in section 2 of the *Solicitors (Amendment) Act 1994* "not only addresses the usual position of a person who, by giving instructions to a solicitor, becomes a 'client', but, much more significantly, extends the definition to include a beneficiary to an estate under a will, intestacy or trust".

The provision in section 2 "is deliberately framed to cover situations where solicitors are acting in the dual role of executors and solicitors, because, absent such a provision, a definition confined to a 'normal

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client' would mean that an executor solicitor could not be held accountable to beneficiaries in respect of services which he provides to them".

The sole purpose of the work that the applicant was doing was to benefit the beneficiaries. In his view, "the clear and obvious purpose of section 2 – and the fact that a beneficiary is therein defined as a client – is to ensure that a beneficiary obtains all the protections under the act which any other client of a solicitor would obtain". It would be absurd to have a situation whereby the beneficiaries would be entitled to have the applicant removed as executor, but not to advance a complaint. They were the persons for whose benefit the professional services were provided. The act was designed to ensure that, where a solicitor was acting both as an executor of the will and as solicitor, he was not "in consequence to enjoy an immunity from the provisions of section 8 of the act of 1994".

Kearns P was satisfied that the Law Society sought merely to regulate the applicant's conduct as a solicitor, not *qua* executor. Therefore, any directions made or given by the Law Society against the applicant were made against him in his capacity as solicitor. He was also satisfied that the arguments advanced in support of the applicant's contentions that he was denied fair procedures were misconceived. In all the circumstances, he did not see how the applicant was disadvantaged in any way, and he therefore dismissed the applicant's claim.

"Beneficiaries of an estate are clients of the solicitor-executor and, as such, are afforded all of the protections under the act that any other clients of a solicitor would be entitled to ..."

Duty and accountability

Practitioners might note under section 2 of the *Solicitors (Amendment) Act 1994* that the definition of client includes "a beneficiary". Practitioners might also note that regulation 2(1) of the *Solicitors Accounts Regulations 2001* (SI no 421 of 2001) includes the same definition.

As a result of *Condon v Law Society of Ireland*, the High Court Judicial Review [2008 No 903 JR], Kearns P, in the High Court, has clarified the legal position of a solicitor who accepts the office of executor personally.

A solicitor who personally acts as an executor in an estate of which he, or his firm, are also solicitors for the executor owe a duty to beneficiaries of the estate to duly administer the estate, and is also accountable to them as clients. As such, beneficiaries of an estate are clients of the solicitor-executor and, as such, are afforded all of the protections under the act that any other clients of a solicitor would be entitled to, which includes the making of complaints regarding the provision of inadequate professional services to the Complaints and Client Relations Committee of the Law Society, under section 8(1) of the act.

The definition of a client in the regulations, which also includes a beneficiary, permits beneficiaries – and, in particular, residuary beneficiaries – to make a claim on the Society's compensation fund in addition to an executor. Before the enactment of the regulations, only an executor could make a claim.

Where the Law Society's Complaints and Client Relations Committee, in the exercise of its powers under section 8(1) of the act, directs a solicitor to hand over a file relating to the estate of which he is executor, it will sever the relationship of solicitor and client between him and the beneficiaries, but it will not, or indeed cannot, remove him as executor, as that is a matter for the courts to decide. But the effect of such a determination may so reduce an executor's participation in administering the estate, or may so curtail the exercise of his powers as executor, that he may end up an executor in all but name. This, however, it may be said, is much more preferable than instituting expensive proceedings seeking the removal of an executor.

The scope and operation of sections 2 and 8 of the 1994 act may also not be confined to solicitors as executors, as section 2 is also expressed to include "a beneficiary under a will, intestacy or trust" and, as a result, the decision in *Condon* may also be read to encompass solicitors as administrators. It may happen that the beneficiary entitled to apply for a grant of letters of administration with the will annexed or letters of administration intestate is also a solicitor, and that his accountability to fellow beneficiaries as clients may arise once he applies for, and is issued with, a grant. Once he voluntarily applies for a grant, it may be said that he accepts the dual role of administrator and solicitor and will be accountable under the 1994 act to his fellow beneficiaries as clients. An administrator has a duty to administer the estate in the same way as an executor and, as in *Condon*, a solicitor executor is accountable to beneficiaries as clients, and so also it may be inferred that a solicitor administrator is accountable to beneficiaries in the same way.

Of course, a solicitor executor or solicitor administrator is always free to renounce his right to a grant and disconnect himself completely from the estate, and in one fell swoop will end all matters surrounding the foregoing! G

Dr Albert Keating is the author of Keating on Probate, Irish Probate Precedents Service *and* Irish Wills Precedents Service *(published by Round Hall, Thomson Reuters).*

BAD AP

Injuries abroad involving incidents at theme parks, tourist attractions, hotels and other foreign destinations are legion. Domhnall O'Catháin and Conway O'Hara give some sound advice on what you should know if a client injured in the US comes calling

Janet (not her real name) was having a great trip to New York City with her friends. She, like approximately 300,000 other Irish tourists that year, grabbed a last-minute package deal. What followed was a whirlwind tour to New York that included Broadway, late-night restaurants, pre-Christmas shopping, Central Park and Times Square – a sample of the delights that New York City offers.

On the morning that Janet was due to return to Belfast, she and her friends set out to walk across 42nd Street from Bryant Park to Times Square. After crossing 6th Avenue, she walked past the subway entrance and, in a scene familiar to millions of people, the footpath was covered with erected scaffolding. Janet, mindful of the scaffolding, walked along with her friends until she suddenly tripped on a flagstone that was jutting out of the footpath. Janet had not seen the jutting flagstone because of the shadows created by the scaffolding. She was rushed to the hospital where she was diagnosed as having a subarachnoid haemorrhage after smashing her face against the footpath. Terrified of being alone in New York City, Janet insisted on returning to Ireland that night, where she was then hospitalised. Unfortunately, that was not the end of her bad luck with New York City.

Just shoot me

Ninety days after the accident, Janet visited a solicitor in Belfast for advice on the accident. The solicitor made a few phone calls to a friend in Pennsylvania, who created a contact with Janet's current lawyers in New York. What Janet and her solicitor in Belfast didn't know was that, if New York City had not received a notice of claim concerning the accident within 90 days of the accident, the claim would be barred against New York City as a defendant. However, this time limit does not apply in relation to private defendants, as we shall see.

MAIN POINTS

- Taking personal injury actions in the US
- New York's 90 days notice-of-claim rule
- Referring PI cases to US-based lawyers

PLE

New York City is a municipality and therefore, under New York law, must receive a notice of claim as a condition precedent to a lawsuit against it within 90 days of the accident. Nearly all states have a notice of claim requirement when a municipality is a likely defendant, and the time limit can vary from state to state.

In January of this year, a New York Supreme Court judge ruled that Janet's reliance on her solicitor's ignorance of the 90-day notice-of-claim rule was not enough to excuse her from that rule. Janet's claim is now proceeding against other liable private parties, including the construction companies that erected the scaffolding and the building that was being repaired, within the regular statute of limitations that applies to slip-and-fall cases in New York.

Losing a municipality as a defendant is a significant loss. In many personal injury cases, there might not be other defendants to sue, or those other defendants might be impecunious. However, a municipality will always have the means to pay, even though their exposure might be limited by the laws of state where the injury occurred.

Municipalities are, more often, proper defendants in actions where it might not be expected – particularly in places where tourists are injured, including amusement parks and other tourist attractions. You should not immediately assume from the facts that a municipality will not be a defendant. Often, experienced practitioners discover the liability of a municipality when it is already too late. Also, if time is running on a notice of claim or statute of limitations, you can insist that the American lawyer move by motion for a good-cause extension if the time has not already run.

Janet's case underlined the importance of an injured party contacting both their own solicitor immediately and the importance of retaining an American lawyer with experience in personal injury as soon as practicable.

Less than perfect

As previously stated, it is of the utmost importance that all necessary steps are taken by the Irish solicitor, as a matter of urgency, once there is the suggestion of a potential personal injury case originating from an incident in the United States. This is even more so where there is the potential for

Slips and the city

a municipality to be a defendant. The reasons for this are to protect both the client and the solicitor.

Once instructions are taken in a matter, a solicitor could be found jointly and severally liable for professional malpractice, both in terms of work carried out by him, but also in relation to work carried out by his American colleague on the case. This is the double-edged sword in accepting a potentially lucrative fee for referring the matter to an American lawyer. This also underlines the importance of retaining a competent and experienced American lawyer to handle the case. Solicitors should be mindful of any impact this may have on their professional indemnity insurance and consult with their insurers as appropriate.

Therefore, on receipt of instructions, all necessary details in relation to the client and the alleged incident should be taken immediately. This will facilitate the prompt and thorough briefing of the American lawyer and avoid any unnecessary delay in the filing of documents in the United States. A file should be opened in the normal manner and a careful record kept of all work carried out in relation to the case.

"It is of the utmost importance that all necessary steps are taken by the Irish solicitor, as a matter of urgency, once there is the suggestion of a potential personal injury case originating from an incident in the United States"

King of Queens

Typically, American lawyers who practice personal injury will specialise in personal injury. The most common resource for searching for personal injury lawyers is the American Association of Justice (www.justice.org). The American Association of Justice's website allows you to narrow your search by geography and by practice area.

While retaining a lawyer in the area where the accident occurred is the most obvious approach, you are not confined to those lawyers. It is possible for a New York firm to handle a personal injury case in Florida, for example, by bringing the case in federal court. Broadly speaking, under American law, if the plaintiff and defendant are from different states, the case can be brought in federal court. If your client is from Ireland, the case can be brought in federal court or state court. This might be a consideration if your client wants to retain an Irish lawyer based in America, because most Irish lawyers in America are based in either New York or California (see www.iabany.org and www.irishamericanbar.org).

When you have chosen the American lawyer to handle the case of an injured Irish tourist, there are a number of ground rules you must set to protect your client and yourself before you advise your client to retain that lawyer.

The odd couple

The retainer agreement is the agreement between the American lawyer and the client. It will calculate the fee for the lawyer if there is a recovery in the case. The general rule is that the lawyer is entitled to recover one-third of the sum recovered by the client. However, this can vary depending on the complexity of the case, the likelihood of recovery and the rules in the state.

Depending on the state, and using the following figures for convenience, the fee might be calculated as follows: a $200,000 recovery with $20,000 in expenses to prepare the case (for example, hiring experts) will give the lawyer one-third of $180,000, that is, $60,000, leaving the client with $120,000. Other states will calculate the one-third lawyer fee from the $200,000, that is, $66,666 for the lawyer, leaving the client with $113,333 ($133,333 minus $20,000 in expenses). You must be clear about these calculations.

More significantly, what is not stated in the retainer agreement is what makes the American system unique. In practice, the client is not responsible in the event that the client loses the case. This bears repeating, because it is the question most frequently asked by Irish clients – and what deters many potential Irish litigants. The 'American rule' states that the client will not be responsible if the client loses the case because the lawyer will cover the costs of litigation.

Diff'rent strokes

In America, personal injury lawyers are permitted to pay a percentage of their fee to another lawyer who referred the case, although a few states restrict the

LOOK IT UP

Actions:

- Notice of claims in New York State "against certain municipalities, public corporations or authorities" must be filed within 90 days: GML 50-e, 50-i; PAL 1212(2), 1276(2), 2980, 2981
- Personal injury actions (except (1) 'Agent Orange', and (2) intentional tort actions) must be brought within three years: CPLR 214(5)
- Tort actions (except (1) intentional torts, (2) tort actions against certain governmental entities, (3) 'Agent Orange', (4) certain toxic torts, and (5) wrongful death) must be brought within three years: CLPR 214

Literature:

- Website of the American Association of Justice – www.justice.org
- Website of the Irish American Bar Association of New York – www.iabany.org,
- Website of the Northern California Irish American Bar Association – www.irishamericanbar.org

payment to lawyers with specific qualifications.

The percentage paid for the referral will usually reflect the percentage used to calculate the lawyer's recovery. Assuming the US lawyer's fee was one-third of the recovery, the referring lawyer will usually be entitled to one-third of that fee. Applied to the calculations used earlier to compute fees of $60,000 or $66,000, the referring lawyer will receive either $20,000 or $22,000 for referring the case.

American lawyers are permitted to apply this arrangement to solicitors in Ireland who refer cases to them. Therefore, when you find the American lawyer that your client will retain, you should enter into an agreement with the American lawyer to calculate a fee for your referral. However, this will be a bargaining process that will depend on the likelihood of recovery, the value of a recovery, and the amount of work that will be required of the solicitor or barrister. If the case will amount to a small recovery, it might not be economically prudent for the American lawyer to take the case if one-third of the legal fee is paid out on a referral.

The American lawyer cannot charge any fee for legal services on top of the percentage he or she receives for bringing the case. Therefore, if the client succeeds, the lawyer gets the percentage reflected in the retainer agreement – nothing more. If the client loses, the lawyer loses, and the client is not obliged to pay the solicitor for legal expenses.

For the Irish solicitor, it would be prudent to send a variant of the standard section 68 letter to the client at this point, outlining that you are entitled to a percentage of any recovery for referring the case and for reimbursement of expenses.

Welcome back, Kotter

The ease of transatlantic tourism has brought a massive increase in the number of tourists injured in America. Injuries involve a myriad of incidents that have occurred at theme parks, tourist attractions, hotels, cruise ships, rental cars, tour guides, recreational vehicles, boating injuries, rifle ranges and many other places.

All of these occurrences have unique rules applying to them that might require the involvement of an American lawyer within a few weeks of the incident. The Irish solicitor must be mindful of the likelihood of these rules and move expeditiously to help the client retain an American lawyer that is equipped in that practice area. G

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TEN TIMES

Munro Moore is retiring after 11 years as an investigating accountant with the Law Society. Having driven the equivalent of ten times around the world in the course of his work, he offers his observations and tips for avoiding the dreaded accounting investigation

I retired at the end of June, having worked for the Law Society for almost 11 years. During that time, I drove the equivalent of ten times around the world (just under 250,000 miles), principally visiting practices in the northwest from my home in Westport. During that time, I met some fascinating people, including one solicitor who informed me that his hobby was shooting – targets and people!

I soon discovered that solicitors would rather not see me – the only time I was guaranteed a smile was when saying 'goodbye'!

As a chartered accountant, my primary interest is business management. I always regarded accounts as an essential management tool and hoped that, if I could convince solicitors to 'own' the accounts, it would be more likely that the books of accounts would be kept up to date and be more meaningful. Sadly, accounts often take a low priority.

AROUND THE WORLD

Accounting systems should be networked. The solicitor, at the push of a button, should be able to obtain extremely useful information, such as the source and type of income and how that compares with the forecast.

Cash flow is critical. The solicitor should be aware of his income stream. All staff should be given targets and should receive regular updates as to how they and their colleagues are performing.

At one four-fee-earner practice I encountered, there were many shortcomings in the books of account because the bookkeeper had gone on

MAIN POINTS

- Observations of an investigating accountant
- What solicitors should know
- Clients' expectations

maternity leave. The books were not written up. In some instances, fees were transferred twice, fees were not transferred, and clients were overpaid. The total cost of the mistakes alone was far greater than the cost of a temporary bookkeeper. Then there was the cost of putting it right.

I also encountered bookkeepers who thought the accounts were their personal property and would not let anybody near them – and solicitors who thought accounts had nothing to do with them.

The tempest

Solicitors' nervousness during investigations manifested itself in various ways. Some would hide away. Others would tell me of their every movement and would ask if I minded whether they popped out for five minutes to buy a newspaper.

Solicitors should have nothing to worry about, as the requirements outlined in the *Accounts Regulations* are nothing more than good practice. However, I can understand that nobody likes to be audited, especially as, ultimately, they may have to answer to their peers.

Prior to one meeting with a solicitor to discuss a difficult draft investigation report, there had been a thunder and lightning storm, like something out of *Macbeth*. The solicitor asked me how bad the report was and wondered whether the weather was an omen. In reply, I told him that I would not give him a pen and chequebook at the same time. We discussed what to do for the next two hours. By nine o'clock the next morning, the solicitor had taken action that ultimately ensured he remained in practice.

Comedy of errors

The seriousness of a mistake was, generally, in direct proportion to the amount of time it took to remedy it – as well as the frequency and timing of the error. I asked one solicitor why he transferred monies from the client account to the office account from time to time. He always transferred his costs as soon as they were due and never paid any outlays from the office account. Therefore, there should not have been any monies in his client account other than client funds. The solicitor said that he looked at his client account bank statement, worked out on the back of an envelope how much he owed clients, and assumed that the difference was due to him. It was probably more than coincidental that these transfers always coincided with occasions when his office account was under pressure.

I soon realised that most solicitors are confrontational. Some went through every word of a draft investigation report and contested everything, including the wording of the *Accounts Regulations*. At the end of an investigation, I always explained the next stages, underscoring that it was extremely important that they respond to the investigation report – in writing – within 14 days. Their letter should show the items in the report that had been rectified, or when they would be rectified, details of the procedures put in place to ensure that such matters were unlikely to arise again, and demonstrate that the solicitor had taken seriously the concerns referred to in the report.

Love's labours lost

It became apparent, too, that a number of solicitors regarded their clients as a nuisance – seeming to forget that clients pay the bills. The problem tended not to be the client, but poor communication. Far too often, clients' expectations are not met because they are too unrealistic to begin with – but solicitors fail to point this out. It should be remembered that clients' expectations are not just about the end result and the cost – they are about the whole experience of how the legal practitioner deals with them.

> "If the client is over-demanding or difficult, it is far better to cease acting, because it is likely that the client will ruin the solicitor's concentration for many more hours than are chargeable"

For many years, I have been advising solicitors to educate their clients. The Society's excellent terms of engagement are of great assistance if applied correctly (see the 'Precedents for practice' page on the Guidance and Ethics Committee's section of the Society's website). I have always advised solicitors to occasionally say 'no' to a client. If the client is over-demanding or difficult, it is far better to cease acting, because it is likely that the client will ruin the solicitor's concentration for many more hours than are chargeable.

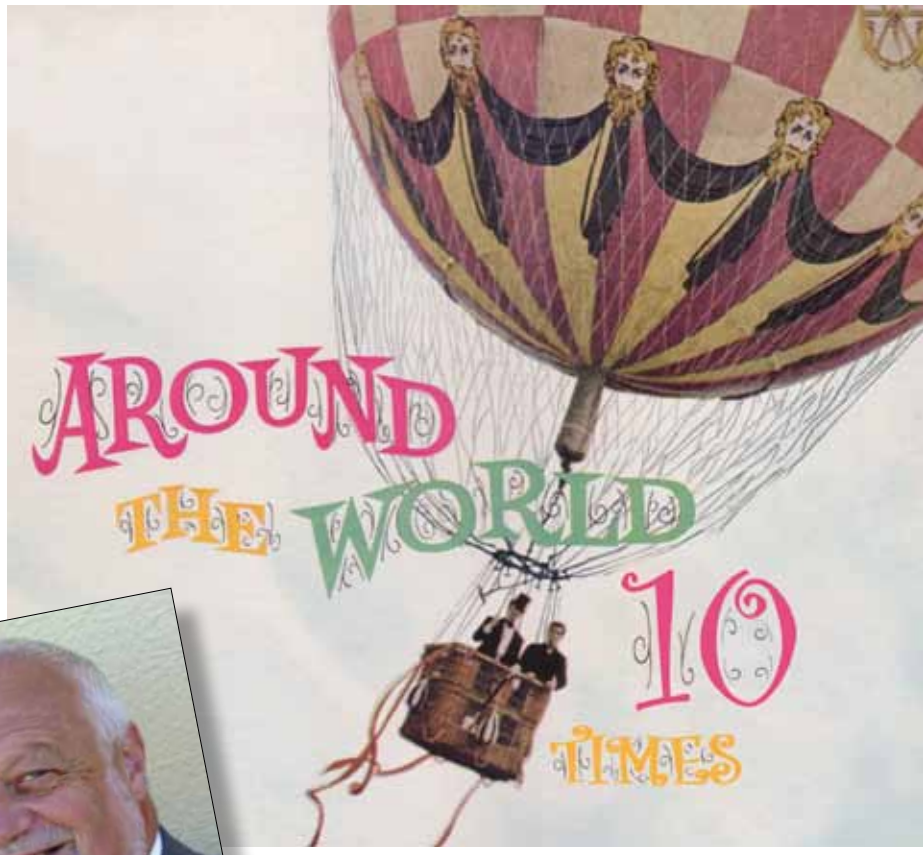
Very few clients bother to complain to the Law Society. A number of clients are disgruntled and just get on with it, which does not bode well when seeking recommendations. Solicitors should spend time learning their shortcomings from their clients. It is only by taking the time to ask that the solicitor can ensure that future clients don't feel the same. Some solicitors complain that they have a large number of complaints because they have difficult clients. I would suggest that they look at their own procedures and attitudes first, since that is where they are likely to find the sources of the problem.

Measure for measure

Solicitors are likely to be surprised when they embark on time costing. Most of the service provided is intangible – the client does not see what he is paying for. A very detailed bill is much more convincing.

I once asked a solicitor if he was embarrassed about discussing fees with his client. He was interested as to why I had come to that conclusion. I pointed out that he always gave the client a generous discount when he prepared the fee note, then generally gave another large discount when he sought payment. I believe solicitors should be proud of the quality of the service they provide and should only give a discount if the solicitor is embarrassed about the quality of the work done.

I am surprised at the number of sole practitioners in Ireland. I expect that there will be fewer in the future as they attempt to reduce overheads. There is likely to be a growth in group practices (it is my experience that partnerships work better with at least three partners), with solicitors specialising in niche markets. Niche markets are not simply in family law or employment law, for example, but include specialist work for airports, quarries, the food industry, internet businesses and foreign clients. Most clients fail to see a value in conveyancing; therefore they want it done as cheaply as possible. But when it comes to solving a particular problem, many clients would rather pay a specialist to ensure the best result. Owning a motorcar is similar. Having the car serviced is thought to be routine, but if the electronics fail, most people would rather take it back to the main dealer or to a specialist to ensure the best result, knowing that it may well cost more than being repaired by the local mechanic.



Munro Moore

As you like it

The best way of ensuring that a solicitor will receive a letter advising of an investigation is to file the annual accountant's report late, to file the accountant's report with adverse comments, or to have complaints made against them.

Solicitors should be careful when giving undertakings and should keep registers of these undertakings. They should attempt to minimise their number – both written and implied – and they should make sure that any undertaking is within their ability to fulfil. The principals of a firm should ensure that there is a written code of practice, because they will be liable for any undertaking issued by an employee. Undertakings are a slow-ticking time bomb.

Solicitors, look after your best asset – your client base. Improve your communications with your clients. Remember, a satisfied client is the best way to generate new clients. To be successful, it is important to know where you are going. Too many solicitors are unaware of what they want to achieve. In this economic climate, it is vital that solicitors have a vision of the future. It's no good waiting for the good times to return, because they will simply get left behind – while other solicitors will have pushed their practices forward. Some practices are in negative mode: they have cut costs but have done nothing to address the reduction in revenue. The solicitors that survive will be those who have adapted to change and who are willing to develop and embrace new business models.

I would recommend, also, that solicitors should create a good team spirit in their practices. This should include regular staff meetings. On too many occasions, I have talked to solicitors about where they see the future, only to find that they have never discussed their ideas with staff.

Most professions carry out routine quality audits. The Law Society should be no different; currently, its regulatory inspections primarily focus on client funds.

All's well that ends well

I retired on 30 June and, despite having travelled the equivalent of ten times around the world, I will be off travelling to see it for real with Rita. Thanks to everybody who has assisted me over the last 11 years, including all the solicitors and their staff, those at Blackhall Place, especially Christina and Yvonne, and my wife Rita for putting up with all the nights away.

If job satisfaction is measured by enjoyment, the position of investigating accountant was not fulfilling – but perhaps I am more of a teacher than a policeman! G

Munro Moore is a chartered accountant. He welcomes your comments at: munrom@anu.ie.

The nature of the business – as opposed to the practice – of law is changing. Gordon Smith talks to practitioners and business consultants to check out their perspectives on this brave new world

Few business sectors have escaped the effects of the economic crisis, and legal firms are no exception. Companies have responded to the recession in various ways, from the reactive (for example, freezing pay, cutting unprofitable departments or making redundancies) to the proactive – focusing on customer satisfaction, investing in staff training, or beefing up the sales and marketing function.

There were 402 insolvencies in Ireland during the first quarter of this year alone, according to the website insolvencyjournal.ie, with services firms featuring prominently on the list. In the face of such unfavourable conditions, legal firms of all sizes must think differently to survive. That's the view of Declan Tyrrell, formerly the financial controller with Matheson Ormsby Prentice. He joined MOP in 2003 with a remit to restructure the firm's approach to its financial performance, and he began by treating each practice area as a profit centre. "I helped move the firm from the practice of law to the business of law," he says.

Some legal practices have turned to business groups like the Small Firms Association for advice. Assistant director Avine McNally says it is vital for all companies to analyse their business and to take action where needed. "Some areas that need consistent focus are just areas of good business practice, including credit management, cost control, revisiting business strategy, focusing on opportunities in the marketplace and aligning performance and rewards for staff," she says.

McNally also advises firms to improve how efficiently they work. "Many firms are now using this time to fix the systems and procedures that may have been let slip during the period of growth," she adds.

Historical business model

That gets to the nub of the problem, in Tyrrell's view: "The historical business model of a legal firm – charging by the hour – means that any inefficiency in the process is automatically passed on to the client," he says. The upside to this is that, by eliminating inefficiency in the business,

CASE STUDY: 'GIVE THEM GOOD SERVICE'

When business started to slow down noticeably last year, Dermot McNamara & Co experimented by increasing investment in advertising and looking for new customers beyond its immediate surroundings of Rush, north county Dublin. "It wasn't a disaster, but it didn't justify the investment," says McNamara. "We heavily advertised outside our locality, on the internet and in newsletters, and the returns weren't great. We got responses, but the quality wasn't there. People were pricing the market, but were going with whatever suited them. Some queries would come to nothing. What it made us realise is that it's our own clients that we need to concentrate on – if we give them a good service, they will refer us to others."

Like many firms, McNamara was forced to make redundancies in his property practice last year, and the company also reduced its overheads in several areas. "We try to insist that clients correspond with us by email, so we are trying to reduce the amount of paper we use," he says.

In McNamara's view, a practice such as his works by word of mouth, keeping a local focus and being highly service driven – it has the ISO9000 Quality Mark. "It's not that we've just discovered this, it's something we've always done," he adds.

DOWN TO

MAIN POINTS

- The traditional business model
- The crucial role of marketing
- Embracing technology

Busyness comes naturally to beavers

BUSINESS

firms can price their services competitively while still retaining sufficient profit margins. Tyrrell acknowledges that raising the issue of cost control may cause resistance, but stresses that this is very different to cost cutting.

John Hogan, a partner with Leman Solicitors in Dublin, echoes Tyrrell's observations about treating legal practices as commercial ventures and says that more should be done to educate the profession about running a company. "Legal training puts very little focus on the business operations side, and that maybe deserves a little more attention. You've got to look at the bottom line and the top line," he says.

Lacking that expertise, some legal firms are looking to external consultants who can analyse the practice with a dispassionate eye and make recommendations about how it can be operated more effectively. A market research process with clients can be a useful way of getting valuable feedback that a firm can use to improve or change the service. "Sales-oriented organisations tend to instinctively find out what their customers want, and meet their needs. Legal firms don't always have that mindset," says Nicholas Martin, managing director of the business consultancy and mentoring firm Anchora Solutions.

Two years ago, Rochford Gallagher & Co, a firm with three offices in Sligo, used Anchora to review its business processes. The firm's partner, Eamonn Gallagher, says this was a useful process to undertake. "There isn't a specific model that's going to work for every single solicitor's firm, but it is very good for a business to have someone from outside compare your business against a general model," he says.

"The historical business model of a legal firm – charging by the hour – means that any inefficiency in the process is automatically passed on to the client"

Marketing is critical ...

Legal firms differ from many businesses in one crucial aspect: they cannot simply create business out of nothing, but must wait for clients to need them. That is why marketing takes on a critical role, and one that many firms may not yet be fully exploiting. Howard Kent, marketing specialist with Anchora, says that some form of engaging with customers is essential. "One option could be to host seminars for new and prospective customers, imparting knowledge in an area of interest, so they will associate your brand with that."

Even where there is no business to be won, marketing can help to keep a firm in people's thoughts, leading to more work in the future. "By maintaining contact with clients, you are reinforcing your company and reminding them that you exist. This contact could be in the form of a newsletter, e-zine or an update on a regular basis about legal issues," Avine McNally suggests.

Nicholas Martin has provided business improvement consultancy to more than 100 clients,

CASE STUDY: EMBRACING TECHNOLOGY

Could Dublin-based Leman Solicitors be a pointer to what the future of the legal sector will look like? The firm has invested heavily in technology to make its business processes run efficiently, and it has a strong focus on marketing.

In some respects, Leman had no choice but to be so commercially focused, since the firm was founded just three years ago. "We had no alternative but to go out and look for work," says partner John Hogan. "Every fee earner has a responsibility for marketing. It features in our annual plan and is reviewed at our monthly business meetings."

Marketing in the legal sector is, by Hogan's own admission, an "inexact science", but he insists it is vital. "If you're not doing it, nothing is going to happen. You have to take the long-term view." The firm regularly sends e-zines, writes articles for publication, meets regularly with clients and keeps up to date with their business sector.

The advantage of being a new firm means that it has been able to adopt technology without replacing a lot of legacy work or staff. "What we do as lawyers is charge for our time, and we have to make sure that it is valuable time for our clients. Any technology investment that increases that value is worthwhile; otherwise, by keeping both paper records and electronic information, all you're doing is doubling the time unnecessarily," says Hogan. "It means the quality of legal time that is spent is better. Rather than trying to file paperwork, everything is on-screen. We've been able to embrace technology without having baggage to get rid of. We were able to reduce certain expense overheads and passed that saving on to our clients."

While many firms may use case-management software, Hogan believes many are only using half of its capabilities and are not taking advantage of reporting features that can give real insight into a firm's performance. "If you're not up to date with your management information and your figures, you're working blind and you can be a busy fool," he says. "The technology should allow you to focus your marketing and development on the areas where you're making money."

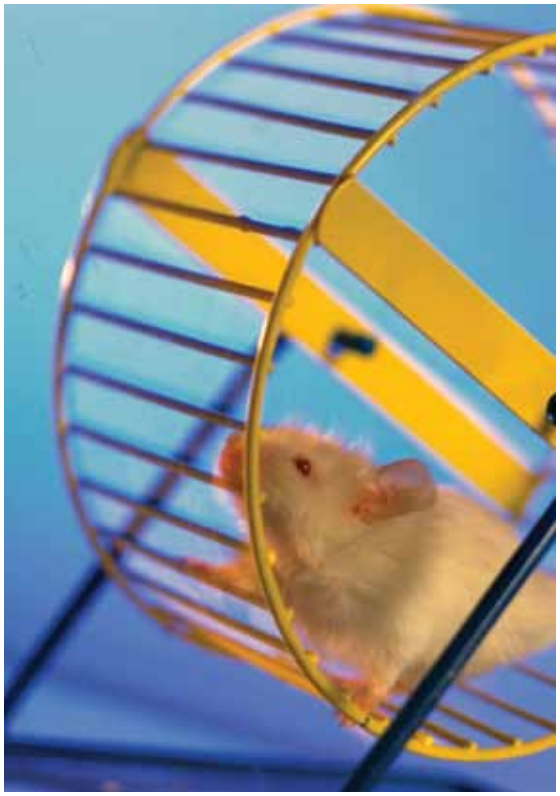
including many in the professional services sector. "Our experience has been exactly the same across the board – there is a need for better organisational management." He has found that many firms have not invested in technology to be able to exploit this capability. "You need systems and processes in place to do that, and you need a database developed in such a way to handle that. If the database is only set up for invoicing purposes, that's no good at all," he says.

And so is technology

Having access to the right data is essential in identifying where the profits are, but the manual work involved in compiling information from monthly reports means the information can take weeks to compile, and it could be out of date by then. "Firms are becoming leaner and meaner out of necessity. Efficiency is one of the main ways to ensure you make a profit. You need to be able to analyse matter profitability and client profitability," says Declan Tyrrell. His time in the legal sector led him to set up his new company, Lucid Solutions, which provides a reporting tool that links in to a practice's case management software and aims to provide some of that missing information.

Technology can also help to reduce costs in other ways, according to Robert Carty, business development manager with the technology services provider Itomic. "A lot of law firms are looking to move to hosted email services," he reports. Unlike traditional email, which requires a server computer located at the firm's premises, a hosted version means that the email is provided over the internet.

Carty says that this approach has several advantages: it reduces the cost and hassle of maintaining IT systems in-house, and it allows legal firms to work in a more flexible way. "It gives the facility to have email on the go. Whenever a solicitor opens their laptop, they have full functionality once they have an internet connection." Hosted email services also typically include IT security features as



standard, providing an additional cost saving.

An extra feature is the ability to archive emails, which Carty says is especially attractive to the legal sector because of obligations around storing client data for seven years, which can add to a firm's costs significantly. Online document management is one option to get around the problem of multiple versions of files. Programs such as Microsoft *SharePoint* can host a single version of each document, making it easier to audit at year-end, adds Carty.

"A document that is sent in by post can be scanned and then stored and indexed in a shared folder," he says. G

Gordon Smith is a freelance journalist.

Media awards showcase

The *Irish Examiner*, TV3 and RTÉ were the big winners at this year's Justice Media Awards, which are sponsored by the Law Society. Held on 3 June 2010, this year's awards marked the 18th year of their presentation. Justice Media Awards and Merit awards were presented by the past-president of the Law Society John D Shaw, while director general Ken Murphy was master of ceremonies.

Newspapers from the Thomas Crosbie Group, including the *Irish Examiner*, Cork's *Evening Echo* and the *Sunday Business Post* did particularly well, while TV3 journalists were well-pleased with their haul at this year's event.

The Society wholeheartedly congratulates this year's winners.

FACES IN THE CROWD

ALL PICS: LENSMEN

Winners at the Justice Media Awards 2010 were *(back, l to r)*: Noel Baker (*Irish Examiner*), John O'Donovan (producer, *Newstalk 106-108FM*), Brian O'Donovan *(TV3 News*) and John Cooke (presenter, *Clare FM*). *(Second row, l to r)*: Cormac O'Keeffe (*Irish Examiner)*, Barry O'Kelly (RTÉ's *Prime Time Investigates*), Mark Tighe (*The Sunday Times*), Paul Drury (*Irish Daily Mail*), Brian O'Reilly (solicitor, *Newstalk 106-108FM*), Kathy Donaghy (*RTE News*), and past-president of the Law Society John D Shaw. (*Front, l to r)*: Mark McDermott (PR executive, Law Society), Mary Kirwan (*Irish Independent*), Aisling O'Brien (*Radio Kerry*), Dil Wickremasinghe (*Newstalk 106-108FM*), Ann Murphy (*Evening Echo*, Cork), Ken Murphy (director general, Law Society), Dyane Connor (*TV3 News*), Colette Fitzpatrick (TV3's *Midweek*) and Sarah McInerney (*The Sunday Times*)

TV3 winners included *(front, l to r)*: Brian O'Donovan (TV3's *News at 5.30*), for his series of reports entitled 'Repossessed', Colette Fitzpatrick (TV3's *Midweek* for her documentary report 'Headshops', Dyane Connor (*TV3 News* for her series of reports 'The Eamonn Lillis trial', Ciara Doherty and Conor Tiernan (TV3's press office). (*Back, l to r)*: Law Society past-president John D Shaw, Andrew Hanlon (TV3 director of news), director general Ken Murphy and Patrick Kinsella (producer TV3)

Celebrating with RTÉ's winners of Justice Media Awards were (*from l to r)*: Law Society past-president John D Shaw, Barry O'Kelly of RTÉ 1's *Prime Time Investigates* (in the Television Features and Documentaries category) for his fly-on-the-wall documentary 'Crime and Punishment', Kathy Donaghy of *RTÉ News: Six One*, who received a Merit award in the TV News category for her report 'Community service' and Law Society director general Ken Murphy

best in legal journalism

Journalists from *The Sunday Times* were recipients of Justice Media Awards in the Sunday Newspapers category including *(l to r)*: Sarah McInerney who received a Merit award for her article on the Irish Constitution, entitled 'Rip it up and start again', Law Society past-president John D Shaw, Mark Tighe of *The Sunday Times* for his article 'Driving rings around the law', and Law Society director general Ken Murphy

Winners from the Thomas Crosby group of newspapers included *(l to r)*: Noel Baker (*Irish Examiner*) for his article 'Children on the margins' (Daily Newspapers' category), Law Society past-president John D Shaw, Ann Murphy (*Evening Echo*, Cork) for 'Ireland's future: our juvenile offenders' (Regional Newspapers), director general Ken Murphy, and Cormac O'Keeffe (*Irish Examiner*) for 'The John Kinsella case' (Court Reporting: Print Media)

A&L Goodbody appoints five new partners

A&L Goodbody has announced the appointment of five new partners across a range of legal practices areas. Pictured are *(l to r)*: Kenan Furlong (litigation and dispute resolution), Niamh Ryan (investment funds), A&L Goodbody managing partner Julian Yarr, Louise Bailey (banking and financial services), Alan Johnston (corporate) and Paul Fahy (corporate tax)

Beachcroft Dublin moves to new offices

Commercial law firm Beachcroft Dublin has celebrated its first anniversary with a move to new offices in Fleming Place, Dublin 4. Since its launch in 2009, Beachcroft Dublin has more than trebled in size, growing to 16 staff in the past year. The team includes senior partner Katie da Gama and Ann O'Driscoll. *(From l to r)*: Helen Faulkner (partner), Katie da Gama (Dublin partner), James Colville (associate), Ann O'Driscoll (Dublin partner), Nigel Montgomery, Tania Sless and Matthew McGrath (all Beachcroft partners)

ON THE MOVE

Catherine Cooney

Leman Solicitors has appointed Catherine Cooney to its litigation and dispute resolution team. A graduate of DePaul University, Chicago and University College Dublin, Catherine joined the firm from Arthur Cox and, latterly, Bank of Ireland Business Banking, where she worked on corporate and commercial issues, advising entrepreneurs and SMEs in a wide range of areas and sectors

MOP appoints new partner

Matheson Ormsby Prentice (MOP) has announced the appointment of Adrian Williams as a partner and co-chair of the firm's insurance practice. Adrian joins MOP from international insurers and reinsurers QBE, where he was head of legal for its European operations. He also worked for the insurance practices of Clifford Chance and Norton Rose

Californian bar

Belfast-based libel lawyer Paul Tweed has been appointed to the State Bar of California as a registered foreign legal consultant. Paul is the first and only Irish lawyer to be selected for this position. He is the managing partner at Johnsons Solicitors, has acted in the past for a significant number of high-profile US personalities, and will now be able to practice Northern Irish law at the California bar

Attending the parchment ceremony at Blackhall Place on 10 June 2010 were President of the Law Society Gerard Doherty, Circuit Court judge Petria McDonnell and Garda Commissioner Fachtna Murphy

Garda Commissioner Fachtna Murphy was the guest speaker at the parchment ceremony

ALL PICS: JASON CLARKE

At the parchment ceremony were director general Ken Murphy and Garda Commissioner Fachtna Murphy

President of the Law Society Gerard Doherty congratulates newly-qualified solicitor Sarah Lynam, from Dublin

At the parchment ceremony were *(l to r)*: Grainne Fahey (Ballina, Co Mayo), Niamh Murray (Firhouse, Dublin), Marie McGinley (Gweedore, Co Donegal) and Louise Butler (Tipperary)

Pictured at the PPCII careers evening held on 8 June were: Antoinette Moriarty (Law School), Michelle Lee (solicitor), Ciara Hanley (solicitor), Robert Connolly (recruitment consultant), Ken Murphy (director general), Keith O'Malley (Law Society), Niamh Connery (solicitor) and Michelle Nolan (Law School)

student spotlight

Italian job for Blackhall boys

Defying Icelandic ash that had threatened to cast a shadow over weeks of intense training, a party of 25 rugby players departed Dublin on 22 April for the long-awaited PPCII rugby tour of Lombardy in Italy.

Pavia was the squad's first destination. Its university, established in 1361, is one of the oldest in Italy – a fact not lost on the Blackhall lads who took to the pitch two hours before kick off! Having risen at 4am – unlike our university opponents – we could hardly have been described as 'freshmen'.

Being true sportsmen, there was no flare-up over the rock-hard pitch, the murky flood-lights or any of the 47 penalties awarded by a youthful referee whose two-game career will have benefited, no doubt, from Conal Keane's gentle sideline encouragement. Impressive tries from Michael Hastings and Conor Tracey put the first test beyond doubt – the winning margin, a handsome one point.

Sparkling 'Molly'

Having exhausted Pavia's supply of iodine and Savlon, the touring party departed for Milan. On the way, we visited Ca' del Bosco vineyard, described as "Italy's best sparkling-wine maker". Indeed 'sparkling' sums up some of the renditions in the bus en route, particularly Darren Phelan's delicious arrangement of *Molly Malone*, a special treat for the Munster contingent!

For the second test, the pitch resembled a desert, which seemed to suit our opponents, AS Rugby Milano – some of whom were experienced enough to have served with Monty in El Alamein. From kick-off, the Blackhall forces fought bravely but were unable to repel a *blitzkrieg* of tries, with a score of 16-0 at half time.

The second half burst into life, Simon Mahon's electrifying pace no match for a high-speed train on the adjacent track heading for Rome. While the Mahon express derailed inside the 22, a replacement locomotive in the shape of Niall Best was quickly on the scene, only to blow a gasket on being whistled up for a suspect forward pass. Before the final whistle, Rory O'Sullivan negotiated a level crossing to leave the final score standing at 19-5.

We are indebted to William O'Connor, the driving force behind the tour, to our host Yanni Guthrie of English Advantage (a canny Kiwi) and his partner Carly, whose combined efforts were appreciated by all. Thanks also to our team sponsors, Independent College Dublin and the *Law Society Gazette*. G

The Law Society's rugby team, prior to its first game against CUS Pavia, in Milan

Toy or tool? Suck it and see

"But where do I stick my floppy?" said a perplexed *Gazette* editor when confronted with Apple's latest genre-busting offering. Needless to say, our IT monkey swiftly stepped into the breach to suggest a solution.

Seeing an aficionado use the iPad in its natural habitat is indeed impressive, though. It turns on lickedy-split: no more waiting for the system to boot up. It's amazingly quick to get up and running from standby mode, and has no moving parts – so if you knock it about a bit, it'll keep coming back for more. It also has a long battery life. Our guy says that it will comfortably provide 12 hours of video without having to be recharged. Indeed, he only has to plug it in twice a week to keep it going.

First things first. The touch screen is great to use; video playback has amazing clarity; the e-book reader is among the best we've seen; and it essentially has a built-in iPod. That's the toy aspect.

In terms of tool, the touch-screen keyboard is a tad too sensitive (what – you still dictate? What generation are you?), but there are ways to plug in hardware peripherals like proper keyboards. The iPad's proprietary software can handle most applications you might need on a day-to-day basis, including spreadsheets, PDFs, and word processing – though there might be some slight compatibility issues, and Apple's *Pages* word-processor lacks some of the full functionality of *Word*. Not much that you'd really miss, though, and there seem to be – by all accounts – either work-arounds or updates to apps coming onstream daily.

Which brings us to a pertinent point. This thing doesn't come loaded with these office-friendly programmes: you'll have to download them from Apple and pay for the privilege.

Which brings us in turn to internet connectivity. This will depend on what type of iPad you buy: whether you tether it via Wi-Fi to your mobile phone or get one with an integrated SIM, you'll still need to negotiate your download allowance from a mobile provider.

That said, if you can get a decent deal, you'll be accessing email in the back of a taxi, reading the *Gazette* online (what – *never*?), and synching your calendar and contacts with your office like a good thing.

All in all, we think that it's the tool you'll play with most.

The iPad should be launched in Ireland in July, at an as yet undetermined price. Meanwhile, check out the 'iPad cat' on youtube.com.

Where do you go to, my lovely? Let me just check...

We'd never advocate the use of miniaturised surveillance equipment for stalking purposes. But who wouldn't want one of these – be you freaky ex or not?

We're talking about what is (apparently) the smallest digital video camcorder in the world.

The Veho Muvi Atom is only 4cm tall, but has 2MP of pure stalkerish recording image quality to be getting on with.

This little thing mounts almost anywhere with the help of a full array of clamping and fastening accessories.

It has a 640x480 VGA sensor to record footage with incredible quality and has an in-built micro SD card slot, so you can boost the memory.

Just buy one. And then post it to me. You psycho.

You can get this for stg£90 from www.gadgetshop.com, but we'll know if you do and report you to the appropriate authorities.

A good walk spoiled – no more

It had to happen. First they discriminate against women, and the High Court saw to that. Then they discriminate against the untalented. And this thing may put paid to that. In essence, it's a remote-controlled golf ball.

We're not sure if it's good for anything other than freaking out opponents on the green or at the tee, because we can't see these balls surviving a hard drive up into the rough, but sure 'tis a bit of the oul' craic. Be the hokey.

The Incred-A-Ball (yes, really) is only a tenner sterling from gadgetshop.com

SITES FOR SORE EYES

E-discovery made simple (www.wpg.ie/docstore.htm). E-discovery is a hot topic and Wood Printcrafts's DocStore Ltd is at the forefront. Described by a colleague as having CIA-level security features, their crew aims to support the legal community in cost-effectively delivering the best possible e-discovery service to their clients: they collect data in whatever format it is available and return it to the acting solicitor seven to ten days later in an orderly format that is ready for review (emergency services available where required).

How do I do that again? (www.tech-recipes.com). Simply put, this place tells you what to do when your fourth-generation *NanoGidget* won't interface with your *ProTools*-enabled *Cormorant Gobbler Extreme II* programme, leaving you unable to access the multilayered unidirectional functionality of the *Orange Goblin VII* feature of your Arple iPork. Or something like that. In *Gazette* speak: "Arrgh, techy boo-boo!" "Where monkey?" "Dunno. Go fixey site!" In other words, have a look when you're at a tech-related loss.

books

Medical Malpractice

John Healy. Round Hall, www.roundhall.ie. ISBN: 978-1-85800-476-1. Price: €425 (incl VAT; hardback).

The publication by Round Hall of John Healy's *Medical Malpractice* has finally provided practitioners in this specialised field with an authoritative and exhaustive text. Previously, recourse would have been made to McMahon & Binchy, or to Dr White's book, published more than 15 years ago, for a view on an issue of the legal principles of negligence, causation and *quantum*.

Mr Healy has dealt with the tort of negligence and all related issues in this work with specific reference to medical negligence proceedings. Not content with dealing with this extensive area, he also has authored chapters on more cerebral matters, such as the right to refuse treatment and euthanasia, among others.

This is not a short book, running to over 1,000 pages, nor is it a particularly cheap book, retailing at €425. It comes with a foreword from the President of the High Court, Mr Justice Nicholas Kearns, who has full regard for the tome and recommends it as "one of the finest legal text books I have ever read", and also is of the view that it will become to practitioners in this field what Archbold is to those in the field of crime. High praise indeed, but well justified.

The author traces the numerous and varying topics in this work, starting off with an overview in chapter 1 of the medical profession and the law, before moving on to the actual process of investigating, considering and preparing the civil process in mounting a claim for damages alleging negligence on the part of a medical professional or institution.

Mr Healy is as capable of explaining the practical difficulties of obtaining the correct expert in the face of the onrushing statute expiry date as he is in discussing the evolving jurisprudence of the Irish courts on complex and often misunderstood topics such as material contribution and loss of chance. The book would, therefore, commend itself to the library of any solicitor or barrister who has either just started out in the area or has been at the coalface throughout

their career. The maxims that are regularly recited by practitioners are all discussed in detail, and it does the reader well to read again the reasoning behind the legal principles, which can be taken for granted through regular everyday use.

Chapter 7 is devoted exclusively to birth-related injuries, which, as the author points out, regularly attract payments of high damages and much publicity. The cases of *Dunne v National Maternity Hospital*, *Fitzpatrick v National Maternity Hospital* and *Purdy v Linehan*, among others, are analysed in detail and helpfully demonstrate the range of obstetric management issues that can confront the court. Cases such as these are usually the exception and not the rule, and the reader may find more of the everyday application in chapters such as that discussing recovery for nervous-shock-type injuries.

In each chapter, Mr Healy is meticulous in examining the issues, with recourse to leading and historic authorities both in this jurisdiction and in Britain, as well as from other common law countries. Crucially, he highlights those areas where our jurisprudence has differed to that of those other jurisdictions.

It would be an impossible feat to provide a critique of every chapter in this review, such is the extent of the coverage of each topic. Notwithstanding the relatively high price, this book would be invaluable to any practitioner seriously interested in the area of medical negligence. G

Joice Carthy is a partner in the medical negligence group of Augustus Cullen Law, Solicitors.

Law of Child Care (second edition)

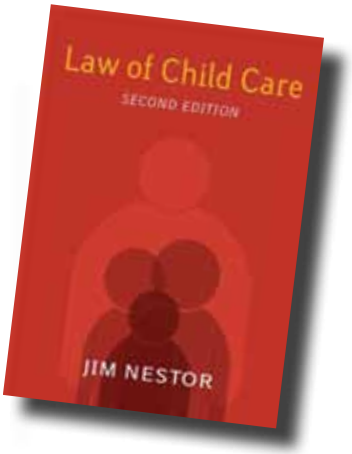
Jim Nestor. Blackhall Publishing, www.blackhallpublishing.com. ISBN: 978-1-84218-181-2. Price: €40 (paperback).

There has been rapid and accelerating growth in the area of childcare law and it is timely that Jim Nestor is issuing the second edition of his book – *Law of Child Care*. The book is a thorough and clear examination of the law as it relates to children. It takes into account the significant social developments and recent legislation and case law in the childcare area in the last five years.

The book deals with the state's response to sexual abuse, and it documents the findings and recommendations of two published reports, the *Report of the Commission to Inquire into Child Abuse* (the *Ryan Report*) and the controversial report of the Monageer Inquiry 2009.

Mr Nestor includes references to the *Child Care (Amendment) Bill 2009* and the *Adoption Bill 2009*. Both are key pieces of legislation and will be implemented imminently, and I do not anticipate substantial amendment in their transition to act status.

The author has dedicated an entire chapter to immigration and asylum-seeking children – an area of law that, hitherto,



simply did not feature. The author, in a user-friendly way, traces the development of the law using a clear language to explain the basics, before going on to bring the reader through the process of applying for refugee status. He deals comprehensively with the issue of age assessment and notes that it is not an exact science. It can be particularly difficult, as there is no statutory procedure or guidance set out for practitioners. He refers to the *Moke* case and notes that the High Court laid down some procedural minimum requirements for the conduct of an age assessment.

He also deals with circumstances where a separated child is removed from the state. He refers to case law from England and from the European Court of Human Rights and notes that, if adequate facilities are not likely to be available, there is a risk that the state may be in breach of its obligations under article 3 of the *European Convention on Human Rights*. He concludes, with regret, that there is no standard approach to the provision of care for separated children.

In terms of the day-to-day management of childcare matters, the book documents practical issues, such as the conduct of interviews with children where the objective is to establish whether there has been child abuse. Generally, if the purpose of the interview is to gather information, then less is more in terms of questioning. He notes that there is a direct correlation between the amount of help given to the child in answering the questions and the reliability of the evidence.

There is simply not enough space to review in detail all aspects of this book. Suffice to say, he has drawn together all of the relevant sources of information in a practical and accessible way. The author has carefully analysed the different approaches and has produced a useful, timely analysis of childcare law. It is a book that will be helpful to all working with or on behalf of children. G

Sinéad Kearney is a partner at Byrne Wallace.

The *Land and Conveyancing Law Reform Act 2009*: Annotations and Commentary

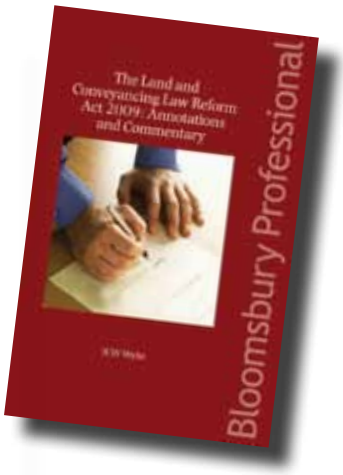
JCW Wylie. Bloomsbury Professional (formerly Tottel), www.tottelpublishing.com. ISBN: 978-1-84766-100-5. Price: €140 (hardback).

The most significant piece of reforming legislation in property law in over 130 years, namely the *Land and Conveyancing Law Reform Act 2009* has now been enacted into law. The act itself is the culmination of many years of research and work by dedicated property professionals and civil servants, most notably Professor John Wylie.

Professor Wylie is well known to all legal practitioners and, for many years now, has been to the forefront in the publication of seminal textbooks on land and property law. What I like about Professor Wylie is his unique style and his ability to marry his academic background with a pragmatic approach to the interpretation of law. Professor Wylie has the unique ability to unravel the mysteries of complex legal principles, such as the law on perpetuities, and yet explain the practical implications of these topics to the practitioner. When you read any of his textbooks, you get both a thorough insight into the intellectual side of the law and the principles involved, but Professor Wylie has the gift of imparting to the practitioner how these work in practice.

If I have to research a query on property law, I always enjoy referring to Professor Wylie's books, as I know that, after researching the issue, I will be able to write with authority to a client explaining the legal implications of the problem.

Professor Wylie's new book is essentially a commentary on the act. The sections of the act are set out in full, and, in a footnote to each, Professor Wylie gives a general commentary and informs the reader of the practical effect of the relevant section. Written in Professor's Wylie's unique style, I found the book easy reading and believe it to be an essential reference point for practitioners. While it is always useful to have a clean copy of the act before you when researching a legal point, I suspect that most practitioners



in future will use Professor Wylie's book as a primary reference point.

One of the underlying principles in introducing the new law was to update the law on property. The act itself is a modern and reforming piece of legislation, which, in due course, will lead to a fundamental change in the manner in which new developments are sold and transferred.

I can easily foresee a situation whereby apartments will be sold by way of freehold transfers, now that freehold covenants are binding on successors in title. Students will no longer have to grapple with outdated legal concepts such as fee tails, fee farm grants, and so on.

Indeed, many of the day-to-day problems encountered by legal practitioners have now been resolved due to the introduction of the new act. Clearly, the drafters of the act took on board many submissions made to them, as some very sensible provisions have been included, such as the repeal of the law on perpetuities and the abolition of the rule in *Tulk v Moxhay*.

Section 10 abolishes the concept of feudal tenure, but the concept of an estate is still retained. Section 12 prohibits the creation of a fee farm grant, while section 16 abolishes the rule against perpetuities.

In his footnote to each section, Professor Wylie gives a very useful insight into why such amendments were introduced and offers some

practical tips and suggestions. Section 67 states that words of limitation are no longer required in deeds, but, in a footnote, Professor Wylie sets out his recommendation for their retention. There are many useful suggestions for practitioners throughout the book.

Moving through the act, part 8, chapter 1, is of considerable relevance to practitioners. The law in relation to the acquisition of easements/rights by prescription or long use has been substantially altered. In future, in order to claim rights by long use, one must have been continuous user of a right for 12 years and, in turn, make an application to court. The court has power to make an order, which is then registered with the Property Registration Authority (PRA). Practitioners should familiarise themselves with this section, as there are transitional arrangements in force that require court proceedings to be instituted within a period of three years from the introduction of the act.

The law in relation to mortgages in part 10 of the act has been amended substantially. In future, a legal mortgage will be created by a charge rather than a conveyance or demise of the legal estate. All standard banking documents require amendment to give effect to the provisions of the act. Also, greater protections have been introduced for the holders of a housing loan, which, by definition, is restricted to a principal private residence. Lobbying by some of the financial institutions has clearly been effective, as the same protections are not available for the holders of commercial loans. Under the act, it is permissible for the financial institution to require the holder of a commercial loan to contract out of many of the protections that are available to the holder of a housing loan. Again, practitioners need to familiarise themselves with these sections when advising borrowers.

A welcome feature of this new legislation is the manner in which the act attempts to address some of the ordinary day-to-day problems with which most practitioners are familiar. The introduction of part 8, chapter 3, which deals with party structures, is a particularly novel aspect. This section provides welcome relief to neighbour disputes. Most practitioners are familiar with problems that emerge when a neighbour attempts to build on or use a party structure as a support or retaining wall for a new extension. The act provides a simplified procedure whereby an application can be made to the District Court to resolve a dispute or difficulty. An application can be made for a works order, but the sections are well drafted, as there are in-built protections against abuse by a difficult neighbour.

Professor Wylie's commentary on this section is very helpful. It provides a valuable insight into why the changes were introduced, and he proceeds to give an analysis of each section and the practical implications for the practitioner. A practitioner would be well advised to consult Professor Wylie's book before giving any advice to a neighbour on a dispute in relation to a party structure.

One of the most talked-about provisions in the act is section 132, which prevents a landlord from imposing an upwards-only rent review in a lease. Much discussion and debate has taken place on this section, but the minister is to be commended for introducing this section as of 28 February 2010.

There has been some criticism of this from valuers and property surveyors; however, I myself believe that the section simply reflects market reality.

The act itself is a most comprehensive reform of property law, and Professor Wylie's book goes some way to explaining the rationale behind the changes, while, at the same time, offering practical advice and suggestions to legal practitioners.

Another of the underlying principles in drafting the act was to promote simplification of the law and its language. I believe that the drafters of the act, and Professor Wylie in his commentary on the act, have achieved this objective. The book itself is easily readable and, I believe, an essential tool for the legal practitioner. Indeed, I can only hope that the drafters of the *Taxes Acts* take on board this principle. Promoting simplification of the law and its language should always be to the forefront in the mind of a drafter when preparing legislation.

Professor Wylie is to be commended for his efforts in preparing such a detailed and helpful commentary on the new act. It is an essential tool for any legal practitioner, and I highly recommend it to readers of the *Gazette*. Indeed, I will be placing my copy of the book on the shelf in my office alongside Professor Wylie's first major book, the 1975 edition of *Irish Land Law*. G

Thomas G Marren is a partner at Reddy Charlton McKnight, Solicitors, Fitzwilliam Place, Dublin 2.

council report

Law Society Council meeting, 21 May 2010

Motion: proposed prohibition on commercial undertakings

'That this Council approves the Solicitors (Professional Practice, Conduct and Discipline – Prohibition on Commercial Undertakings) Regulations 2010.'

Proposed: John D Shaw

Seconded: Michael Quinlan

John Shaw reported on the substantial response from the profession in relation to the Society's consultation on the proposed prohibition on the giving of commercial undertakings. A number of key points were summarised, as follows:

- There was general agreement that, in principle, undertakings over commercial property should be prohibited,
- There was a minority view that residential buy-to-let properties should be included in the definition of residential property, so that the ban on undertakings would not apply to residential buy-to-let properties,
- There was a similar view that the ban on undertakings for commercial properties should only apply over a certain limit,
- Many colleagues referred to difficulties in relation to relatively small loans, and it was argued that there should be an exception for small transactions, and
- There was a strong view that there should be a prohibition on solicitors acting for both borrower and lender in relation to the same transaction, because of the inherent conflict of interest.

As the last point had not formed part of the original consultation process, it was agreed to adjourn the matter and revert to the profession for their views on this item. In the meantime, the Society's task force would meet again with the Irish Banking Federation and would consult further with the professional indemnity insurance providers.

Special Council meeting – 25 June 2010

The Council agreed to hold a special Council meeting on Friday 25 June 2010, to consider the two issues of (a) commercial undertakings, and (b) professional indemnity insurance.

President of the Law Society of Northern Ireland

The president of the Law Society of Northern Ireland, Norville Connolly, addressed the Council. He noted the long association between the two societies and the similarity of issues facing the societies, both North and South. He outlined developments in the North following devolution of the justice and policing powers and noted, in particular, the emergence of a new category of solicitor – the solicitor advocate – who would have rights of audience in all of the courts. He confirmed that the use by solicitors of their advocacy rights was strongly encouraged by the Law Society of Northern Ireland. G

BRIEFING

practice notes

NOTICE TO ALL PRACTISING SOLICITORS – UNDERTAKINGS

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

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

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

A solicitor's undertaking is a professional conduct issue. Although an undertaking can be enforced by the court in the same way as a contract (specific performance, damages etc), it is important to remember that consideration is not required, and undertakings are not subject to any limitation period.

There is no obligation on a solicitor either to give or accept an undertaking, and a client cannot instruct you to do so. Likewise, you cannot avoid complying with an undertaking because you have been instructed to do so, or because it is no longer in your client's interests.

Undertakings should refer to a particular task or action that is clearly identified and defined. Do not give general undertakings, such as an undertaking to discharge "all outstanding mortgages on a property" or "pay costs on the conclusion of the case". Do not give "the usual undertaking", or think in terms of 'routine' or 'standard' undertakings. An undertaking to pay monies out of a fund should be qualified by the proviso that the fund comes into your hands, and that it is sufficient.

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

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

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

Litigation

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

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

Conveyancing

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

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

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

A solicitor cannot assign the burden of an undertaking (and claim to be released from its obligations) without the express agreement of the recipient of the undertaking. The recipient can assign the benefit of an undertaking, but you should be cautious of accepting such an

assignment unless there is a good reason why the original undertaking has not been complied with. For this reason, you should not accept a 'chain of undertakings', as these could prove to be unenforceable.

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

Good management

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

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

The recipient of an undertaking is entitled to make reasonable enquiries as to the discharge of the undertaking, and you must therefore ensure that such enquiries are not ignored. This specifically includes letters received from banks and other financial institutions.

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

Complaints and Client Relations Committee

ASSIGNMENT OF LIFE POLICY – CERTIFICATE OF TITLE (2009 EDITION)

It has been brought to the attention of the Conveyancing Committee that some lending institutions have a requirement that solicitors attend to an assignment of life policy in connection with a residential mortgage loan. Solicitors will be aware from the form of undertaking in residential mortgage loan cases that paragraph 2(d) provides that the solicitor undertakes to have the lender's standard form of life policy assignment executed by the borrower, if this is specified in the letter of offer, and provided that the standard form is furnished to the solicitor in the form in which it is to be signed prior to the drawdown of the loan.

The committee confirms that this means that solicitors are not required to insert the details of the policy in the assignment form and are merely required to attend to the execution of the life policy assignment itself. The attention of solicitors is directed to paragraph 15(a) and (b) of the *Guidelines and Agreement* (2009 edition) agreed between the Law Society and the IBF in relation to residential mortgage loans, which confirms the position:

15(a) Some Lenders may furnish Borrower's solicitors with deeds of assignment of life policy for execution at completion. Where this is done, the solicitor should ensure each relevant document is executed, witnessed and dated in order to comply with clause 2(d) of the Undertaking.

(b) It is the responsibility of the Lender to furnish the Borrower's solicitor prior to completion with the assignment of life policy in the form in which they wish to have it executed and with the relevant policy details inserted. Borrowers' solicitors are not obliged to insert the details of the life policy in the schedule to the life policy assignment.

The committee further confirms that it has not been agreed with any lending institution that solicitors who attend to the execution of the life policy assignment will thereafter notify any life assurance company of the assignment itself. The committee believes that this is purely an administrative matter for a lending institution to attend to itself.

Conveyancing Committee

CHANGE TO HIGH COURT PRACTICE RE BOOK OF PLEADINGS

Practitioners should note the introduction of SI 209 of 2010, which effects changes to order 36 of the *Rules of the Superior Courts* as from **10 June 2010**. The main change is the removal of the requirement to lodge a book of pleadings in the Central Office when setting a case down for trial in the High Court. Under the new rule, when setting a case down for trial, the only documents to be presented in the Central Office will be the duly stamped notice of trial (€22) with service indorsed, and the setting down docket (stamped with €120).

The President of the High Court has issued a practice direction (HC 53 – available in the practice directions section of the Courts Service website, www.courts.ie) to the effect that, when a case is assigned to a judge for hearing, the party who set the case down for trial is required to lodge with the registrar to that judge, **on the trial date**, a certified copy of the book of pleadings for transmission to the trial judge.

This book of pleadings must:

a) Contain a copy of the notice of trial and setting down docket,
b) Contain copies of all pleadings exchanged between the parties, any relevant orders, notices for particulars and replies thereto,
c) Be paginated,
d) Be indexed,
e) **Not** include a copy of a notice of lodgement or notice of tender or any reference thereto.

Litigation Committee

DISABILITY ACCESS CERTIFICATE

The Department of the Environment made the *Building Control (Amendment) Regulations 2009* (SI no 351 of 2009) last year. All of these regulations are in force since 1 January 2010.

These regulations introduced a completely new system to toughen the provisions dealing with access for people with disability.

The new provision imposes a prohibition on opening, operating or occupying buildings unless a disability access certificate (DAC) has been granted by the building control authority in respect of the building. A breach of this prohibition will be an offence and render a person in breach liable to prosecution under the *Building Control Act 1990* as amended.

The regulations apply to any new building (apart from new houses) and to an existing building where significant revisions or changes are made to it. There are exemptions, which are similar to those for a fire safety certificate.

While you do not need a DAC for a new house, Part M of the building regulations was extended to new houses in 2000: so, while you may not need a DAC, a new house must be designed and built so as to provide access for the disabled.

The procedure for making an application for a DAC is set out in the regulations and sensibly includes provisions for a revised DAC in the event that the design changes.

The procedure for applying for a DAC and the form of the certificate itself and provisions for appeals are broadly similar to those in relation to the fire safety certificate procedure. Oddly, it does not seem to be possible to apply for a DAC retrospectively.

It is the view of the committee that solicitors acting for tenants and purchasers of properties should treat DACs in the same way as fire safety certificates.

General Condition 36(b) of the Law Society *Conditions of Sale* (2009 edition) includes a warranty by the vendor that any development on the property that is the subject of the contract has been carried out in substantial compliance with the *Building Control Act 1990*. General Condition 36(d) provides that copies of, *inter alia*, all fire safety certificates should be furnished. A solicitor acting for a purchaser should ensure that, where appropriate, a special condition is included in a contract to provide that General Condition 36(d) shall be deemed to include a DAC. In any event, the architect or other party issuing one of the agreed forms of certificate of opinion on compliance with building control, required to be furnished under General Condition 36(e)(ii), will need to be satisfied that the DAC has issued where required, and that any conditions thereof have been complied with. In the same way that the agreed forms of certificate of opinion on compliance with building control do not make specific reference to fire safety certificates, they need not make specific reference to DACs. A solicitor acting for a tenant should ensure that the agreement for lease covers the production of a DAC in the same way as a fire safety certificate and the furnishing of an appropriate certificate of opinion on compliance.

Conveyancing Committee

LIMERICK DISTRICT COURT – IMPORTANT NOTICE

Limerick District Court now operates from **two** separate locations in Limerick City:

- Civic Buildings, Merchant's Quay, Limerick
- Gardner House, Michael Street, Limerick

See details below:

We now have two sections of Limerick District Court based in Gardner House since September 2009.

Tel: 061 414 300, ext nos 1, 3, 4 and 5. Fax: 061 316 046.

General office deals with:

- Civil/enforcement for Limerick City and county,
- Payment of fines/poor box,
- Cancellation of warrants for all areas in District nos 13 and 14,
- Reissue of warrants for District no 13 courts,
- Refunds of bail
- Driving licence endorsements,
- General enquiries,
- Licensing for Limerick County District no 13 (including licensing searches) and all county courts District no 13 – Kilmallock, Abbeyfeale and Rathkeale/Newcastlewest.

The Gardner House office deals with:

All family law for Limerick City and county.

Tel: 061 414 300, ext 2. Fax: 061 209 929.

Civic Buildings, Merchant's Quay office deals with:

- All Limerick City courts District no 14,
- Licensing for Limerick City (including licensing searches), which includes Cappamore, Clonlara, Ardnacrusha, Murroe, Pallasgreen, Oola and all areas within District no 14,
- Appeals for Limerick City and county District nos 13 and 14,
- Reissue of warrants for Limerick City courts. Tel: 061 410 645. Fax: 061 414 926.

We have issued notices to some solicitors to issue their post to each relevant office. Unfortunately, post is arriving in Civic Buildings every day for business that is being dealt with in either office in Gardner House and vice versa. This is causing a degree of difficulty. The cooperation of practitioners would be appreciated in this matter.

Peter Golden, chief clerk
Limerick District Court

CERTIFICATES OF DISCHARGE FROM CAPITAL ACQUISITIONS TAX

Section 147(1)(r) of the *Finance Act 2010* has deleted section 60 and section 61 of the *CAT Act* with effect from 3 April 2010 (the date of the passing of the *Finance Act 2010*). Section 60 of the *Capital Acquisitions Tax Consolidation Act 2003* (the *CAT Act*) had provided that tax due and payable in respect of a taxable gift or a taxable inheritance was and remained a charge on property. Conveyancing practice was that certificates of clearance from the Revenue Commissioners were obtained under the provisions of section 61 of the *CAT Act* as appropriate.

Therefore, from 3 April 2010, tax for gifts or inheritances is no longer a charge on property. The change to the legislation is retrospective, except where the Revenue Commissioners have instituted proceedings within the meaning of section 147(3) of the *Finance Act 2010* to recover gift or inheritance tax prior to 3 April 2010.

The Revenue Commissioners have written to the chairman of the Probate, Administration and Trusts Committee of the Law Society confirming that the Revenue Commissioners have not instituted any proceedings within the meaning of section 147(3) of the *Finance Act 2010*. A copy of this letter is published with this practice note (right).

Solicitors should no longer request production of certificates of clearance from gift or inheritance tax or enforce undertakings for the production of certificates of clearance from gift or inheritance tax.

It should be noted that a certificate of discharge must still be produced to the Property Registration Authority when applying for registration of property held by way of adverse possession and, accordingly, if making such an application or purchasing a property subject to such an application, a certificate of discharge must be obtained.

By way of transition, since April, the Revenue Commissioners had issued letters to solicitors specific to individual cases confirming that a clearance certificate was no longer required. These letters of comfort will no longer be issued by Revenue and therefore should no longer be requested.

Probate Administration and Trusts Committee, Conveyancing Committee

SECTION 147 OF THE *FINANCE ACT 2010*: CAPITAL ACQUISITIONS TAX AS A CHARGE ON PROPERTY

Section 147(1)(r) of the *Finance Act 2010* deletes section 60 and section 61 of the *Capital Acquisitions Tax Consolidation Act 2003* (the *CAT Act*) with effect from 3 April 2010, being the date of the passing of the *Finance Act 2010*. Section 60 of the *CAT Act* had provided that tax due and payable in respect of a taxable gift or a taxable inheritance was and remained a charge on property. Certificates of clearance were obtained from the Revenue Commissioners under the provisions of section 61 of the *CAT Act* as appropriate.

Under section 147(1)(r) of the *Finance Act 2010*, from 3 April 2010, tax is no longer a charge on property in respect of which a gift or inheritance tax is due to be paid. This change to the legislation is retrospective in this application, subject to section 147(3) of the *Finance Act 2010*, which provides that the provisions shall not apply retrospectively where the Revenue Commissioners have instituted proceedings to recover gift or inheritance tax prior to the passing of the act.

The Revenue Commissioners hereby confirm that no proceedings have been instituted within the meaning of section 147(3) of the *Finance Act 2010* and that the Revenue Commissioners understand that the Law Society will be circulating a copy of this letter to solicitor members of the Law Society who will be relying on this statement. In the circumstances, Revenue are not issuing any individual letters to solicitors confirming that proceedings have not been instituted within the meaning of section 147(3) of the *Finance Act 2010* in relation to specific gifts or inheritances.

As section 61 of the *CAT Act* has been deleted, there is no legal requirement on the Revenue Commissioners to issue certificates, and the practice of issuing certificates has been discontinued.

In the case of applications to the Property Registration Authority for adverse possession, clearance certificates are still required under section 62 of the *CAT Act*, and applications for such certificates should be sent to the applicant's local Revenue office.

Kevin Cashell, CAT Project Board, Office of the Revenue Commissioners

legislation update

14 May – 11 June 2010

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

ACTS PASSED

Euro Area Loan Facility Act 2010

Number: 7/2010

Contents note: Facilitates, in the public interest, the safeguarding of the financial stability of the euro area as a whole and enables payments to be made out of the Central Fund to enable effect to be given in the state to the *Intercreditor Agreement* regarding the pooled bilateral loans for the benefit of the Hellenic Republic made by member states and provides for related matters.

Date enacted: 20/5/2010

Commencement date: 20/5/2010

Fines Act 2010

Number: 8/2010

Contents note: Updates the value of all existing fines that a court may impose in respect of offences tried summarily and certain offences tried on indictment; provides that a court imposing a fine upon conviction of a person of an offence shall take account of a person's financial circumstances; provides for the payment of such fines by instalment in certain circumstances and provides for related matters.

Date enacted: 31/5/2010

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

Inland Fisheries Act 2010

Number: 10/2010

Contents note: Establishes a single national inland fisheries body, Inland Fisheries Ireland, to replace the Central Fisheries Board and Regional Fisheries Boards. Provides for the dissolution of these boards. Updates the penalties applicable for offences under existing inland fisheries legislation. Amends and extends the *Fisheries Acts 1959-2007* and provides for related matters.

Date enacted: 1/6/2010

Commencement date: Commencement order(s) to be made as per s5(1) of the act

Intoxicating Liquor (National Conference Centre) Act 2010

Number: 9/2010

Contents note: Provides for the issue of a licence authorising the sale of intoxicating liquor in certain circumstances at the National Conference Centre, Dublin.

Date enacted: 31/5/2010

Commencement date: 31/5/2010

SELECTED STATUTORY INSTRUMENTS

Rules of the Superior Courts (Order 75) 2010

Number: SI 208/2010

Contents note: Amends the *Rules of the Superior Courts*, order 75, by inserting new parts XI, XII and XIII regulating, respectively, the procedure in respect of proceedings under the *European Communities (Cross Border Mergers) Regulations 2008* (SI 157/2008), the *European Communities (Mergers and Divisions of Companies) Regulations 1987* (SI 137/2008) and the *European Communities (European Public Limited Liability Company) Regulations 2007* (SI 21/2007).

Commencement date: 12/5/2010

Rules of the Superior Courts (Trial) 2010

Number: SI 209/2010

Contents note: Amends the *Rules of the Superior Courts*, order 36, prescribing the arrangements for allocation of a trial venue for proceedings and revises the requirements for lodgement of documentation required when setting proceedings down for trial in the High Court.

Commencement date: 10/6/2010 G

Prepared by the Law Society Library

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 Michael Otobo, solicitor, of 59 Byron House, Slough SL3 8TS, England, formerly practising at 2nd Floor, 109 Lower Dorset Street, Dublin 1, and in the matter of the *Solicitors Acts 1954-2002* [10073/DT86/06]
Law Society of Ireland (applicant)
Michael Otobo (respondent solicitor)

On 9 March 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he was in breach of the provisions of the *Professional Indemnity Insurance Regulations* and, in particular, the provisions of SI no 312 of 1995, as amended by SI no 362 of 1999, having failed to obtain run-off cover for the year 2006 in accordance with the requirements of those regulations.

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

In the matter of Adam Suzin, a solicitor practising as Adam A Suzin & Company at 8 Annaly Court, Longford, and in the matter of the *Solicitors Acts 1954-2008* [10064/DT114/09]
Law Society of Ireland (applicant)
Adam A Suzin (respondent solicitor)

On 30 March 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2008 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001).

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

In the matter of Francis McArdle, a solicitor practising as McArdle & Associates, at 10 Roden Place, Dundalk, Co Louth, and in the matter of the *Solicitors Acts 1954-2008* [2472/DT113/09]
Law Society of Ireland (applicant)
Francis McArdle (respondent solicitor)

On 15 April 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2008 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001),
b) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €5,000 to the compensation fund,
c) Pay the whole of the costs of the Law Society of Ireland, as taxed by a taxing master of the High Court, in default of agreement.

In the matter of Patrick E Moran, a solicitor practising as Moran Solicitors, 33 Pearse Street, Dublin 2, and in the matter of the *Solicitors Acts 1954-2008* [10159/DT122/09]
Law Society of Ireland (applicant)
Patrick E Moran (respondent solicitor)

On 20 April 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2008 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001), in a timely manner,
b) Through his conduct, showed disregard for his statutory obligations to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €1,000 to the compensation fund,
c) Pay the whole of the costs of the Law Society of Ireland, to be taxed by a taxing master of the High Court, in default of agreement.

In the matter of Deirdre Fahy, a solicitor practising as D Fahy & Associates, Solicitors, at 28/29 Castle Yard, Dalkey, Co Dublin, and in the matter of the *Solicitors Acts 1954-2008* [5471/DT119/09]
Law Society of Ireland (applicant)
Deirdre Fahy (respondent solicitor)

On 27 April 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:
a) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2008 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001), having only filed same with the Society on 15 October 2009,
b) Through her conduct, showed disregard for her statutory obligation to comply with the *Solicitors' Ac-*

counts Regulations and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:
a) Do stand admonished and advised,
b) Pay a sum of €2,000 in respect of complaint (a) above and €1,000 in respect of complaint (b) above, totalling €3,000, to the compensation fund,
c) Pay the whole of the costs of the Law Society of Ireland, to be taxed by a taxing master of the High Court, in default of agreement.

In the matter of Elizabeth McGrath, a solicitor practising as O'Connell McGrath Solicitors, 5 Athlunkard Street, Limerick, and in the matter of the *Solicitors Acts 1954-2008* [11016/DT115/09]
Law Society of Ireland (applicant)
Elizabeth McGrath (respondent solicitor)

On 27 April 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor, in that she failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2008 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001).

The tribunal ordered that the respondent solicitor:
a) Do stand admonished and advised,
b) Pay a sum of €1,000 to the compensation fund,
c) Pay the whole of the costs of the Law Society of Ireland, to be taxed by a taxing master of the High Court, in default of agreement.

In the matter of Thomas K Murray, a solicitor practising as Ken Murray & Co, Solicitors, 3 Oliver Plunkett Place, Midleton, Co Cork, and in the matter of the *Solicitors Acts 1954-2008* [5418/DT120/09]
Law Society of Ireland (applicant)
Thomas K Murray (respondent solicitor)

On 27 April 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2008 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001).

The tribunal ordered that the respondent solicitor:
a) Do stand admonished and advised,
b) Pay a sum of €750 to the compensation fund,
c) Pay the whole of the costs of the Law Society of Ireland, as taxed by a taxing master of the High Court, in default of agreement.

In the matter of James M Sweeney, a solicitor practising as James M Sweeney at 14 New Cabra Road, Phibsboro, Dublin 7, and in the matter of the *Solicitors Acts 1954-2008* [3572/DT46/09]
Law Society of Ireland (applicant)
James M Sweeney (respondent solicitor)

On 27 April 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to reply to correspondence from the complainant solicitor, dated 22 May 2006, 11 October 2006, 22 January 2007, 1 March 2007, 3 July 2007 and 7 November 2007, and
b) Failed to reply to letters from the Society to him, dated 4 December 2007, 18 December 2007, 14 January 2008, 22 January 2008, 31 January 2008 and 12 February 2008.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €6,000 to the compensation fund,
c) Pay the whole of the costs the Law Society of Ireland, to be taxed by a taxing master of the High Court, in default of agreement. G

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Compiled by Bart Daly

CONSTITUTIONAL

Article 40.3.3

Contract – fertility – unborn – frozen embryos – consent – interpretation of article 40.3.3 of Constitution – harmonious construction – estoppel – private law grounds – constitutional law grounds – justiciability – role of the legislature and courts – whether frozen embryo protected within the meaning of article 40.3.3 – whether human life began at fertilisation or implantation.

The appellant and her husband were married in 1994 and had a son in 1997. Thereafter, the appellant and her husband had fertility treatment. A consent form was signed by the parties and the defendant signed a document entitled a 'husband's consent', where he acknowledged that he was the husband of the plaintiff and consented to the fertilisation of the plaintiff's eggs and the implantation of three embryos. Three other embryos resulted in the plaintiff becoming pregnant with a daughter in 2002. At the end of the pregnancy, marital difficulties arose and the plaintiff sought to have three frozen embryos implanted in her uterus, which the first defendant objected to. The primary issue in the case was whether the constitutional protection afforded to the life of the unborn, as provided in article 40.3.3 of the Constitution, extended to three fertilised embryos that had been frozen and been stored in a clinic. The issue also arose as to whether a contractual agreement had been entered by the parties and whether an estoppel arose on the facts. The High Court had rejected the claim of the appellant on both civil law and constitutional law grounds after hearing extensive evidence.

The Supreme Court dismissed the appeal on constitutional and private law grounds as pleaded by the appellant. Murray CJ (Denham, Geoghegan, Hardiman and Fennell JJ) held that a linguistic and case-law based approach led harmoniously to the same conclusion that the 'unborn' within the meaning of article 40.3.3 was the foetus *en ventre sa mere*, the embryo implanted in the womb of the mother. The embryo undergoing cryogenic preservation was not so implanted and was incapable of impinging in any way on the right to life of the mother. Denham J (Geoghegan and Hardiman JJ) held that the facts of the case did not establish that there was an implied consent by the husband to the use or implantation of the surplus frozen embryos. There was no contractual relationship between the plaintiff and the defendant. No question of estoppel arose and so the plaintiff was not entitled to succeed in her claim that the first-named respondent was estopped from refusing his consent to implantation (Murray CJ concurring). On the private law grounds raised, the appeal of the plaintiff would be dismissed. Murray CJ held that the protection of the fertilised embryo would lead to the outlawing of widely used methods of contraception. Fennelly J (Hardiman J concurring) held that it was disturbing that, four years after the publication of the *Report of the Commission on Assisted Human Reproduction*, no legislative proposal was ever formulated. The frozen embryo was entitled to respect (Murray CJ concurring). Geoghegan J held that the 'unborn' protected by article 40.3.3 was confined to the unborn within the womb. It had a single purpose and no more. Murray CJ held that the courts did not have at their disposal objective criteria to decide the question of when life began as a justiciable issue. It was not a justiciable issue for the court to decide that the frozen embryos constituted the life of the unborn within the meaning of article 40.3.3.

***Roche (applicant/appellant) v Roche, Walsh, Walsh & Sims Clinic Ltd (defendants/ respondents) and Attorney General (notice party)*, Supreme Court, 15/12/2009** [2009] 12 JIC 1501

CRIMINAL

European arrest warrant

Surrender – corresponding offence – fleeing – European Arrest Warrant Act 2003 – *whether the offence the respondent was convicted of corresponded with the offence of burglary in this jurisdiction – whether the respondent fled the issuing state.*

A judicial authority in Poland sought the surrender of the respondent, on foot of a European arrest warrant, so that the respondent could serve a sentence of 12 months' imprisonment that was imposed on him there on 21 November 2003. That sentence of imprisonment had been conditionally suspended, but execution of the sentence was ordered following the respondent's departure from Poland, as that amounted to a breach of the supervision condition. It was submitted on behalf of the respondent that he did not come within the provisions of s10 of the 2003 act, namely, that he did not flee from Poland, as he was not present in Poland when execution of the sentence occurred. It was submitted on behalf of the applicant that the corresponding offence here for the offence set out in the warrant was burglary. It was submitted in this regard, on behalf of the respondent, that the court could not simply infer from the facts recited in the warrant that the respondent entered the premises in question as a trespasser, as the warrant made no reference to him having entered as a trespasser.

Peart J granted the application, holding that the date on which the sentence was imposed was 21/11/03 and not the date on which the suspension was lifted. The wording of s10 was clear and unambiguous, providing that, where someone left the issuing state after a sentence was imposed and before he had served that sentence, it was clear that he must be regarded as having fled the issuing state before serving the sentence, regardless of the fact that the suspension was lifted after he left. The warrant in this case stated that the respondent broke into the premises in question and attempted to take goods. The fact that the word trespass was not used did not alter the fact that if the respondent had committed those acts in this jurisdiction he would have been guilty of the offence of burglary.

***Minister for Justice, Equality and Law Reform (applicant) v Dominik Slonski (respondent)*, High Court, 10/3/2009** [2009] 3 JIC 1002

EMPLOYMENT

Termination of employment

Fair procedures – Universities Act 1997 – *whether the termination of the respondent's contract of employ-*

ment was invalid having regard to the relevant legislation and the terms of the contract of employment.

The respondent previously held the post of associate professor in the School of Biotechnology at the appellant university. Following discussions with representatives from another university, the respondent informed the president of DCU that there was an offer of employment with that other university. Subsequently, the appellant dismissed the respondent from his employment. The respondent successfully brought proceedings before the High Court, contending that the purported termination of his contract of employment was invalid by virtue of 'tenure' that he held and the general terms of employment that he alleged were governed by the *Universities Act 1997*, and furthermore was invalid due to the fact that the notice of termination was served in breach of fair procedures. The appellant appealed against that decision.

The Supreme Court (Geoghegan J; Denham, Macken JJ concurring) dismissed the appeal and affirmed the order of the High Court, holding that the respondent, as an officer of the university and under the terms of the *Universities Act 1997* and the appellant's own statutes, was entitled to fair procedures before he could be lawfully dismissed. In the context of this case and having regard to the appellant's *Statement of Terms and Conditions of Employment* and Statute No 3 of 2001, that meant that the respondent had to be given a final warning and an opportunity to make submissions regarding any proposed notice of termination. The respondent was not afforded that opportunity and, consequently, in the absence of fair procedures, the termination was invalid. However, no final decision should be made as to the form of order without a further hearing preceded by written submissions from both parties as to the form of the order and any relief to be granted.

***Cahill (plaintiff/respondent) v DCU (defendant/appellant)*, Supreme Court, 9/12/2009**
[2009] 12 JIC 0901

IMMIGRATION AND ASYLUM

Deportation

Human rights – right to family life – level of consideration to be given to impact of deportation order on other family members of deportee – judicial review – certiorari – *proportionality of decision – whether adequate consideration given to right to respect for family life – whether decision to deport in breach of right to respect for family life – whether decision to deport proportionate* – European Convention on Human Rights, *article 8* – Immigration Act 1999, *section 3(6)* – European Convention on Human Rights Act 2003, *section 3*.

The applicant had allegedly been abandoned in the state by her parents from Nigeria, along with her half-brothers. There was a written statement before the minister, submitted in support of her application for leave to remain in the state pursuant to section 3(6) of the *Immigration Act 1999*, which was to the effect that she was, in essence, acting *in loco parentis* in respect of her half-brothers. The respondent, when making his decision to deport the applicant, found that the deportation would not have such grave consequences as to engage the operation of article 8 of the ECHR. The applicant was granted leave to seek an order of *certiorari* quashing the deportation order made in respect of her, on the grounds that the respondent had failed to consider properly the effect upon the family life of the applicant's two half-brothers, who were also living in the state, in breach of article 8. It was submitted that the respondent should have considered the half-brothers as potential victims.

Harding Clark J granted the relief sought, on the grounds that the respondent had failed to make a sufficiently considered assessment of whether the proposed deportation would breach article 8 of the *European Convention on Human Rights*, holding that the state could deport members of a family even if such deportation could rupture family relationships, and such deportations would generally be in compliance with article 8 of the *European Convention on Human Rights*. No inference could be drawn from the style of the written consideration relied upon by the respondent in support of the contention that he did not have regard to all the information before him on the possible impact of a deportation order on other members of the proposed deportee's family. In order to assess whether the proposed deportation of one

or more members of a family would breach article 8, it was necessary to ask whether the proposed deportation was: (a) in accordance with law, (b) in pursuance of one of the legitimate aims set out in article 8(2) of the convention, and (c) necessary in a democratic society – and that assessment had to be carried out on a case-by-case basis and would depend on the facts and circumstances of the case. The applicant and her half-brothers were, in essence, orphans, and there had been nothing in the written considerations leading to the decision to deport to indicate that those special facts had been appreciated, and therefore the respondent had not fully considered the effect on the younger brothers' separation from their sister, should she be deported.

***A(M) (applicant) v Minister for Justice, Equality and Law Reform (respondent)*, High Court, 26/5/2009** [2009] 5 JIC 2603

PRACTICE AND PROCEDURE

Delay

Application to dismiss proceedings on grounds of inordinate and inexcusable delay – whether delay inordinate and inexcusable – death of crucial witness during period of delay – whether delay irredeemably prejudicing right of defendant to fair trial – whether proceedings should be dismissed.

The plaintiff brought civil proceedings seeking damages against the defendant for alleged sexual abuse by him some 17 to 20 years previously, and some five years after she had attained majority. The defendant brought a motion seeking to have the proceedings dismissed on the grounds of inordinate and inexcusable delay. The defendant's wife, who was alleged to have been present on the relevant occasions, had since deceased.

Mr Justice Charleton dismissed the proceedings, holding that the difference in approach to pre-commencement and post-commencement delay is that, in pre-commencement delay, the proposed defendant could rarely do anything to affect the running of the case beyond the harm he may originally have done, whereas in adjudicating upon post-commencement delay, the *Rules of the Superior Courts*, entitling a defendant to set a case down for trial, and so on, could and should be sued by defendants making out a case of unfairness due to delay. The date on which the issue of unfairness in proceeding with a pre-commencement delay case was to be judged and the date upon which a post-commencement delay case was to be judged was that of the notice of motion seeking a dismiss. Where there was a clear and patent unfairness in asking a defendant to defend a case after a very long lapse of time between the act complained of and the trial, then, if the defendant has not himself contributed to the delay, irrespective of whether the plaintiff had contributed to it or not, the court may, as a matter of justice, have to dismiss the action (*Toal v Duignan (No 1)* [1991] ILRM 135 applied). An action for sexual abuse, even commenced within the limit of the *Statute of Limitations*, must still be dismissed for unfairness if that ground was proven. The unavailability of a crucial witness had been caused by the delay in instituting the proceedings and irredeemably prejudiced the right of the defendant to a fair trial.

***W(F) (plaintiff) v W(J) (defendant)*, High Court, 18/12/2009** [2009] 12 JIC 1801

SOLICITORS

Undertaking

Supervisory jurisdiction of court over solicitors – nature and purpose of jurisdiction – discretionary jurisdiction of court – whether solicitor should be ordered to pay compensation.

The plaintiff sought an order from the High Court that the defendant compensate the plaintiff for loss suffered as a result of the failure by the defendant to comply with the terms of his undertaking, whereby he undertook, among other things, not to release €250,500 paid to him by the plaintiff in his capacity as solicitor for a client, the borrower, without having first obtained a duly executed mortgage by the borrower in favour of the plaintiff over the property being purchased by the borrower and without the authority of the plaintiff. The defendant accepted that he was in breach of the undertaking, in that he had not perfected the borrower's title or the plaintiff's security. The plaintiff argued that, in those circumstances, the court, in exercising its quasi-disciplinary jurisdiction, should order the defendant to compensate it by requiring him to pay the full sum of €250,500 plus interest. The High Court took the view that construing the undertaking as a whole, the obligation of the defendant was to furnish the plaintiff with proper security on the mortgaged property in accordance with the offer letter, but refused to order compensation.

The Supreme Court (Geoghegan J; Fennelly and Finnegan JJ concurring) allowed the appeal and remitted the case back to the High Court to assess the losses suffered by the plaintiff as a result of the defendant's breach, holding that the inherent jurisdiction of the superior courts over solicitors' conduct as officers of the court – which was exercised not for the purpose of enforcing legal rights, but for the purpose of enforcing honourable conduct on the part of the courts' own officers – still existed, despite the passing of the *Solicitors Act 1960*. The order that the court made when this special jurisdiction was invoked was discretionary but, like all discretionary orders, the discretion had to be exercised appropriately. Further criteria applicable to the exercise of the jurisdiction were:

- Although the jurisdiction was compensatory and not punitive, it still retained a disciplinary slant,
- If a person had suffered loss, the court had power to order the solicitor to make good the loss occasioned by his breach of duty,
- Failure to implement a solicitor's undertaking was *prima facie* evidence of misconduct, even if he had not been guilty of dishonourable conduct,
- The supervisory jurisdiction was not ousted by defences that might be available to an action at law such as the *Statute of Frauds*, but the court could take these factors into account in deciding whether or not to exercise its discretion and, if so, in what manner,
- The summary jurisdiction involved a discretion as to the relief to be granted, and
- Where it was inappropriate for the court to make an order requiring a solicitor to perform his undertaking – for example, on grounds of impossibility – the court had a discretion as to whether it should exercise the power to order the solicitor to pay compensation.

(*Fox v Bannister* ([1987] 1 QB 925) applied; *IPLG Ltd v Stuart* (unreported, High Court, Lardner J, 19 March 1992) considered.)

***Bank of Ireland Mortgage Bank (plaintiff/appellant) v Coleman (defendant/respondent)*, Supreme Court, 5/5/2009** [2009] 5 JIC 0503 G

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

In-house counsel out of favour with the European court

In-house counsel play an extremely important role in their companies and organisations. Despite their valuable contribution, the Court of Justice of the European Union (ECJ) has long regarded the legal advice that such counsel give to their colleagues as not deserving of privilege.

This approach by the ECJ is unfair and contradictory. It is unfair because it does not recognise the in-depth, and often courageous, advice that they give. It is also contradictory, because the court has held that advice given by the in-house lawyers in the European Commission is privileged – such lawyers equally have just one client and may face the same pressures as their private counterparts – but the same advice rendered by a lawyer in a corporate setting is not privileged.

The ECJ recognises that advice given by outside lawyers (that is, lawyers in private practice) deserves the label of 'legal professional privilege'. The court is concerned with the independence of the advice given by in-house counsel, but it does not consider that a small firm that is heavily dependent on one client might be under the same, or even greater, pressures as the in-house counsel.

The issue is at its most pressing when the European Commission pays an unannounced visit to an undertaking – a so-called 'dawn raid' – when the company or entity being visited may wish to prevent commission officials from being given sight of documents on the basis that they are covered by legal professional privilege.

Clear position

The court laid down its position very clearly in 1982 in Case 155/79, *AM&S Europe Ltd v Commission* ([1982] ECR 1575). The correspondence was privileged provided it was: (a) prepared for the purpose of the client's rights of defence in relation to the commission's investigation, and (b) the correspondence was with an independent external lawyer who was qualified to practise in a member state within what is now the European Economic Area (EEA).

The 1982 judgment was viewed with alarm by in-house counsel. Incidentally, it was also viewed with alarm by non-EU/EEA regulated lawyers (such as US lawyers practising in-house in Europe), because their advice was definitely not covered by the privilege (by being both in-house and not regulated by an EU bar or law society).

A slight chink in the armour appeared when the Court of First Instance held that in-house documents that merely reported or summarised an external lawyer's advice were covered by legal privilege, provided the communication from the external lawyer would have been privileged if it had been written down (Case T-30/89, *Hilti v Commission* [1990] ECR 163). However, the general principle laid down in *AM&S* remained the law.

New opportunity

An opportunity presented itself in *Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd v European Commission* for the ECJ to revisit its earlier *AM&S* jurisprudence. The court is not bound to follow its own precedent and has occasionally reversed itself, for example, in the *Café Hag* litigation. Unfortunately, the General Court did not take the opportunity in *Akzo* to reverse itself (Case T-253/3, judgment of 17 September 2007). It looks like the ECJ might not take that opportunity either. The General Court's judgment in *Akzo* is under appeal to the ECJ and, while judgment is awaited, Advocate General Juliane Kokott delivered her opinion to the ECJ on 29 April, saying that legal advice from in-house counsel was not privileged in European Commission competition investigations.

This means that correspondence between a company executive and the company's in-house lawyer can be read and used by the commission, even if the correspondence is evidence of a breach of competition law. The same correspondence with an outside lawyer would be privileged and could not even be seen by the commission, unless the client waived the privilege.

The background to the case is straightforward. The commission dawn-raided the premises of Akzo and Akcros in Manchester, England, in 2003. The commission took copies of two documents that the companies regarded as privileged, but the commission did not. The documents were emails between the general manager of Akcros (a related company) and an in-house counsel of Akzo who had been admitted to the Dutch bar.

The companies objected to the commission's decision to take the documents and appealed to the Court of First Instance (now the General Court). In 2007, that court denied the claim of privilege and upheld the commission's decision to take the documents.

The General Court's judgment was then appealed to the ECJ. As is well known to readers of this column, an advocate general usually (but not always) gives an opinion to the ECJ after the hearing of oral argument and before the court deliberates on its judgment. Such an opinion is followed by the court in about 80% of cases. But if the ECJ follows Kokott's advice, it would – in an Irish context – be an injustice.

Organ of justice

The advocate general said that in-house correspondence was not privileged, even where the lawyer was a member of a bar association or law society. She believed that the lawyer's advice was not independent enough to justify privilege. A lawyer was an "organ of the administration of justice" who had to provide legal assistance with full independence and in the overriding interests of justice, she said.

The European Court of Justice: no in-house lawyers there, then

The advocate general contended that a salaried in-house lawyer did not enjoy the same degree of independence as an external lawyer, even when the in-house lawyer was a member of a law society or bar association. She believed that in-house lawyers were less independent because they were more dependent on the employer than an external lawyer would be on a client.

AG Kokott found no general trend towards privilege being granted to in-house lawyers who had been admitted to a bar or law society. She acknowledged that Ireland – as well as Britain and the Netherlands – had done so, but she concluded that this was not a trend among the 27 EU jurisdictions.

She noted that the law in this area was clear from the judgment in *AM&S* that, under EU law, legal professional privilege applies solely to communications between a client and an independent lawyer.

She noted that the EU had not altered the position when it adopted the so-called 'modernisation' Regulation 1/2003, which would have been a natural opportunity to review the issue.

Ireland had intervened in *Akzo* to support in-house counsel having privilege, but Kokott roundly rejected the Irish – and all other comparable – arguments.

We can only await the judgment of the ECJ and hope that it will be brave and recognise that privilege in the specifics of the case ought to be recognised. However, the trend of cases is now favourable to privilege being upheld.

As an aside, there may be a human rights angle, but it has not been explored fully. On 22 June 2001, the European Company Lawyers' Association (ECLA) submitted an *amicus* brief in a case before the European Court of Human Rights (Case no 56672/00, *Senator Lines v The Member States of the European Union*). The ECLA contended that the EU law's failure to recognise privilege in relation to in-house lawyers violates the right to a fair hearing under article 6 of the *European Convention on Human Rights*. Unfortunately, on 10 March 2004, the European Court of Human Rights declared this action inadmissible without considering the merits of the case.

Paradox

The *Akzo* case – and the issue generally – is full of paradoxes. Two examples demonstrate the point.

First, correspondence between the in-house lawyers of the European Commission and the commission is privileged.

Secondly, members of the Irish Competition Authority have said that it recognises in-house privilege where advice has been given by a solicitor or barrister. The absurdity is that the Irish authority would recognise privilege in any investigation into a breach of EU law but, if the same investigation were conducted by the European Commission, there would not be privilege.

It is probable, though not inevitable, that the ECJ will follow AG Kokott's opinion. So how can the issue be resolved?

There may well be unsupervised and partial in-house lawyers in parts of the EU, but regulated, independent in-house lawyers should not be shoehorned into a 'one-size-fits-all' approach. The EU could adopt a directive or regulation respecting in-house privilege where the lawyer was supervised by a regulatory authority (such as in Ireland or Britain).

Indeed, it is quite likely that legislation is the only way to resolve the issue, because we might be expecting too much from the ECJ, which is not a legislature, in having to address the issue and set out the rules. It may be better for the commission to propose legislation to recognise when and who would be able to give advice deserving of legal professional privilege. It would not be easy to adopt such legislation, because some in-house counsel would have to be excluded – for example, counsel who are not supervised or regulated by a bar or law society, and non-EU counsel might be excluded altogether in some circumstances. While hard choices may need to be made, legislation might be the only practical way of dealing with the issue.

This would help some in-house lawyers (and their in-house client) in the EU, including those in Ireland.

However the matter is solved, it needs to be resolved and it is unlikely that it could ever be resolved satisfactorily in the courts. G

Dr Vincent JG Power is a partner with A&L Goodbody.

Recent developments in European law

INTELLECTUAL PROPERTY

Case C-467/08, *Sociedad General de Autores y Editores (SGAE) v PADAWAN SL*, 11 May 2010, opinion of Advocate General Verica Trstenjak. Directive 2001/29 on copyright and related rights in the information society gives the reproduction rights for audio, visual and audiovisual material to authors, performers and producers. The directive permits private copying as long as the state ensures that there is 'fair compensation' for right holders. Spain permitted works that have already been circulated to be reproduced without the right-holder's permission for private use. It provides for lump-sum compensation of right-holders by means of a levy on private copies applied indiscriminately to digital reproduction equipment, devices and media. The levy is to be paid by manufacturers, importers or retailers to intellectual property rights management societies. SGAE is a Spanish intellectual property rights management society. PADAWAN is a company that markets electronic storage media in the form of recordable CDs and DVDs and MP3 players. SGAE claimed compensation from it in respect of its storage media. The Barcelona court raised the question of whether the Spanish levy is compatible with the directive and asked how the 'fair compensation' required by the directive should be organised. The advocate general had opined that the concept of "fair compensation" is an autonomous EC law concept that must be interpreted uniformly in all the member states. However, it is for each member state to determine, for its own state, the most appropriate criteria for ensuring compliance with the concept. There is a wide discretion conferred on the member states as to how their respective national systems implement such fair compensation. Member states are obliged to ensure a fair balance between the right-holders affected by the private copying exception, to whom compensation is owed, on the one hand, and the persons directly or indirectly liable to pay the compensation on the other. 'Fair compensation' is a payment to the right-holder that, taking into account the circumstances of the permitted private copying, is an appropriate reward for the use of his protected work. There must be a sufficiently close link between the use of the right and the corresponding financial compensation for private copying. Where a state, such as Spain, opts for a system of compensation in the form of a levy on digital reproduction equipment, devices and media, such a charge can only be regarded as a compensation scheme compatible with the directive where it may be presumed that the equipment, devices and media are used for making private copies. Remuneration that is granted to right-holders as a result of the indiscriminate application of such a levy to undertakings and professional persons who purchase digital reproduction devices and media for purposes other than private use is not 'fair compensation' within the meaning of the directive.

JURISDICTION

Case C-533/07, *Falco Privatstiftung, Thomas Rabitsch v Gisela Weller-Lindhorst*, 23 April 2009. The case concerned the interpretation of article 5(1)(b) of Regulation 44/2001. This sets out jurisdictional rules for contracts relating to the provision of a service. The Austrian applicants licensed the German respondent to market video and audio recordings of a concert in Austria, Germany and Switzerland in return for royalties. The applicants later brought proceedings seeking payment of royalties and an account of sales. The Austrian court asked the Court of Justice (ECJ) whether a contract, under which the owner of an intellectual property right grants the use of that right for payment, can be considered as a contract for the provision of services within the scope of article 5(1)(b). The ECJ considered the concept of services that had to be considered in the context of the regulation. Under a contract such as the one at issue, it cannot be inferred that the party to whom the right to use the intellectual property right has been granted will actually do so. The only obligation that the owner of the right undertakes is not to challenge the use of the right. The owner of an intellectual property right does not perform any service in granting a right to use that property and merely undertakes to permit the licensee to exploit that right freely. It is immaterial whether the licensee of a right is obliged to use the intellectual property right licensed. The court held that the contract fell within the general rules in article 5 on the place of performance of the obligation in question.

SERVICE OF DOCUMENTS

Case C-14/08, *Roda Golf & Beach Resort SL*, 25 June 2009. The case concerned the interpretation of Regulation 1348/2000 on the service in member states of judicial and extrajudicial documents in civil or commercial matters. On 2 November 2007, Roda Golf, a Spanish company, requested the clerk of a referring court in Spain to send, to the receiving agencies in Britain and Ireland, 16 letters addressed to recipients in those states. The purpose of the letters was to unilaterally terminate contracts for the sale of immovable property that had been concluded between that company and the recipients. The clerk of the referring court refused to transmit the instrument, as its service would not take place in the course of legal proceedings and therefore did not fall within the scope of the regulation. Roda Golf appealed, arguing that extrajudicial documents may be served in the absence of legal proceedings. The appeal court asked the ECJ whether the regulation is to be applied exclusively in the context of judicial cooperation and court proceedings in progress. The court looked at the definition of 'extrajudicial' within the meaning of article 16 of the regulation. It held that this must be regarded as a community law concept. Judicial cooperation referred to in the regulation is not confined to legal proceedings alone. The document concerned was drawn up by a notary and is an extrajudicial document within the meaning of article 16. G

WILLS

Blanchfield, Declan (deceased), late of 22 Windmill Park, Crumlin, Dublin 12. Would any person having knowledge of a will executed by the above-named deceased, who died on 21 January 2010, please contact Eamonn Blanchfield or Maria Stanger at 18 Osprey Avenue, Templeogue, Dublin 6W; tel: 01 456 7151 or 01 452 4363, email: eamonb@vodafone.ie

Bourke, Margaret (deceased), late of 5 Clancy Road, Finglas, Dublin 11, who died on 17 July 1986. Would any person having knowledge of a will made by the above-named deceased please contact Donal M Gahan, Ritchie & Co, Solicitors, 36 Lower Baggot Street, Dublin 1; tel: 01 676 7277, fax: 01 676 7395, email: info@dmg.ie; ref: BOM103005

Brough, John (otherwise John O or Ian), late of 27 Nutgrove Park, Clonskeagh, Dublin 14. Would any person having knowledge of a will executed by the above named deceased, who died on 17 January 2010, please contact Marcus Lynch, Solicitors, 12 Lower Ormond Quay, Dublin 1; tel: 01 873 2134, fax: 01 873 3548, email: info@lynchlaw.ie

Hynes, Christopher (deceased), late of apartment 46, Rathmines Town Centre, Lower Rathmines Road, Dublin 6, and formerly of 44 Elmwood Avenue, Ranelagh, Dublin 6. Would any person having knowledge of the whereabouts of a will purportedly executed by the above-named deceased in or about October 1999 please contact David Walsh & Co, Solicitors, 109 Ranelagh, Dublin 6; tel: 01 497 3611, fax: 01 496 4769, email: david@davidwalshlegal.ie

Murphy, Mary (deceased), late of Silver Grove Nursing Home, Main Street, Clonee, Co Meath, Ireland, formerly of St Mary's Hospital, Phoenix Park, Dublin 7, and formerly of 8 Dunsink Park, Finglas West, Dublin 11, who died on 18 November 2009. Would any person having knowledge of a will made by the above-named deceased please contact David Walley & Company, Solicitors, 54 Amiens Street, Dublin 1; tel: 01 836 3655, email: david@dwalleysol.com

Swan, Patrick (otherwise Jack) (deceased), late of 127 Saint Declan's Road, Marino, Dublin 3. Would any person having knowledge of a will made by the above-named deceased, who died on 15 November 2009, please contact John Fahy & Co, Solicitors, 6 Lower Kilmacud Road, Stillorgan, Co Dublin; tel: 01 283 2155, fax 01 283 3089, email: fahysolicitors@eircom.net

Woodbyrne, Leonard (deceased), late of 25 Churchview Drive, Killiney, Co Dublin. Would any person having knowledge of a will executed by the above-named deceased, who died on 9 January 2010, please contact Clarke Jeffers & Co, Solicitors, 30 Dublin Street, Carlow, Co Carlow; tel: 059 913 1656, fax: 059 913 2257

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICE SECTION ARE AS FOLLOWS:

- **Wills** – €144 (incl VAT at 21%)
- **Title deeds** – €288 per deed (incl VAT at 21%)
- **Employment/miscellaneous** – €144 (incl VAT at 21%)

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for Aug/Sept *Gazette*: 11 August 2010. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

MISCELLANEOUS

Busy established practice, Eastern region, requires purchaser or partner for heavy workload. Replies to **box 07/10/01**

Experienced solicitor seeking to relocate to West of Ireland looking for opportunity to join practice/share overheads or commence employment with view to partnership in medium term. Location sought: Co Galway/south Mayo/north Clare. Might suit solicitor looking to retire over next few years or solicitor struggling with workload. Reply to **box no 07/10/11**

TITLE DEEDS

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

Take notice that any person having an interest in the fee simple or in any superior interest in the property known as 8 Moore Lane, in the city of Dublin, held under a lease

PROFESSIONAL NOTICES

for lives renewable forever dated 16 January 1759 from the Right Honourable Charles Gardiner to Joseph Ryan Taylor, subject to the perpetual yearly rent of €6.15 (£4.84).

Take notice that the applicant, Joseph O'Reilly, intends to submit an application to the county registrar for the city of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the fee simple interest in the aforesaid property, and that any party asserting that they hold the said fee simple interest or any superior interest in the aforesaid property are called upon to furnish evidence of title to the under mentioned within 21 days from the date of this notice.

In default of any such notice being received, 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 the 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: 2 July 2010

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 Monica Gilligan re: Main Street, Ballycumber, Co Offaly

Take notice that Monica Gilligan intends to submit an application to the county registrar for the county of Offaly for the acquisition of the freehold interest in the aforesaid property, described as "all that and those the dwellinghouse, messuage or tenement fronting the main street in the town of Ballycumber, with the garden at the rear thereof, presently in the occupation of Miss Marie Cunningham and containing in front to said main street 92 feet and bounded on the north by the main street of Ballycumber and on the south by James Flynn's field and on the east by premises in the possession of Patrick Guinan and James Flynn and on the west by premises in the occupation of James Devery". Any party asserting they hold a superior interest in the aforesaid premises are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days of this notice.

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

Date: 2 July 2010

Signed: John C Walsh & Co (solicitors for the applicant), 24 Ely Place, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the premises situate and known as Caislean Carrig, Tivoli, in the county of Cork and in the matter of an application by Mary O'Byrne

Take notice that I, Mary O'Byrne, intend to apply to the county registrar upon the expiry of 31 days from 2 July 2010 for an order from the county registrar declaring myself, Mary O'Byrne, as the person entitled to the fee simple interest or any superior interest herein to be unknown and/or unascertained, as the county registrar may deem appropriate, based upon an indenture of lease dated 5 April 1973 between Heritable Securities Mortgage Investments Association Limited of the one part, Youghal Carpets (Yarns) Limited of the other part and Michael O'Byrne of the third part, whereby part of the premises situate at and known as Caislean Carrig, Tivoli, in the city of Cork, was demised for a term of 87 years from 1 June 1971.

If any person has any knowledge of any freehold or leasehold interest in the above property, or if any person has an objection to my above application, then they should make themselves known to the firm of solicitors of Donegans, 6 Union Quay, Cork, before the expiry of 31 days from 2 July 2010.

Take notice that, after the expiry of 31 days after the said date, I will bring the above application before the county registrar if no objections or no persons holding a superior interest make themselves known to me before then.

In respect of part of the premises situate at and known as Caislean Carrig, Tivoli in the City of Cork.

Date: 2 July 2010

Signed: Mary O'Byrne (applicant)

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 Regeneration Developments Limited of SCD House, Waterloo Road, in the city of Dublin

Take notice any person having an interest in the freehold estate or any superior interest or other estate in the properties, the details and address of which are set out below: (1) the building and premises known as St Michael's Business Centre/ the 'Workspace Centre', Michael Street, Limerick City; (2) the buildings no 3-9B Ellen Street, Limerick City; (3) 3 Patrick Street, Limerick City; (4) 4 Patrick Street, Limerick City; (5) 5 Patrick Street, Limerick City; (6) 8 Rutland Street, Limerick City; (7) 9 Rutland Street, Limerick City, in particular such persons who are entitled to the interest of Henry Teners Esquire, the then mayor of the city of Limerick, Henry Holland and Frederick Core Esquires, the then sheriffs of the city of Limerick (all deceased), and the Corporation of the City of Limerick, pursuant to a lease dated 25 March 1747 and made between (1) Henry Teners Esquire, the mayor of the city of Limerick and Henry Holland and Frederick Core Esquires, the sheriffs of the city of Limerick and the whole Corporation of the City of Limerick and (2) Mary Sexton, for a term of 999 years from 25 March 1747, should provide evidence of their title to the below named; (8) 6 Patrick Street, Limerick City; (9) 4 Rutland Street, Limerick City; (10) 5 Rutland Street, Limerick City; (11) 6 Rutland Street, Limerick City; (12) the land and building known as the 'Old Town Hall', Limerick City, in particular, such persons who are entitled to the interest of Andrew Sheppherd Esq, the then mayor of the city of Limerick, and Christopher Bridson and William Goggin Esqrs, the then sheriffs of the city of Limerick (all deceased) pursuant to a lease dated 5 September1758 and made between (1) Andrew Sheppherd Esq, the mayor of the city of Limerick, and Christopher Bridson and William Goggin Esqrs, the sheriffs of the city of Limerick and (2) John Vincent, for a term of 999 years from 25 March 1758, should provide evidence of their title to the below named; (13) the land and premises upon which the bonded store formerly in the occupation of Michael O'Brien was erected and known locally as 'Bogue's Yard', situated at the rear of Patrick Street and Rutland Street, Limerick City, including the store located at Watch House Lane, Patrick Street, Limerick City, in particular such persons who are entitled to the interest of George Thomas Warren Darley (deceased) pursuant to a lease dated 20 November 1950 and made between (1) George Thomas Warren Darley and (2) Joseph Bogue, for a term of 500 years from 1 March 1949, should provide evidence of their title to the below named; (14) 1 Patrick Street, Limerick City, and in particular such persons who are entitled to the interest of Mary Warren Daly (deceased) pursuant to a lease dated 3 June 1930 and made between (1) Mary Warren Darley, (2) Sir George Roche and (3) Mary Nestor, for a term of 700 years from 1 June 1930, should provide evidence of their title to the below named; (15) 2 Patrick Street, Limerick, in particular such persons who are entitled to the interest of Mary Warren Darley (deceased), pursuant to a lease dated 29 July 1930 and made between (1) Mary Warren Darley, (2) Sir George Roche and (3) Joseph Hartman, for a term of 700 years from 1 July 1930, should provide evidence of their title to the below named.

Take notice that the applicant, Regeneration Developments Limited, whose registered office is located at SCD House, Waterloo Road, Dublin 4, intends to submit an application to the county registrar for the county of Limerick for the acquisition of the freehold interest and all superior interests in the above-mentioned properties (set out above and numbered from 1 to 15 inclusive), and any party asserting that they hold a superior interest in any of the aforesaid properties are called upon to furnish evidence of title to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant, Regeneration Developments Limited, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the said county registrar for the county of Limerick for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests, including the freehold in the above-mentioned properties, are unknown and unascertained.

Date: 2 July 2010

Signed: A&L Goodbody (solicitors for the applicant), IFSC, North Wall Quay, Dublin 1

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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