

# LAW SOCIETY **Gazette**

€3.75 March 2010

## **CRIME WATCH:**

**Flanagan on  
law and order**



INSIDE: SOLICITORS' UNDERTAKINGS • LOOKING AFTER THE BOTTOM LINE • KNOWING NAMA • LETTERS



Law Society of Ireland

# LAW SOCIETY ANNUAL CONFERENCE

9<sup>th</sup>/10<sup>th</sup> April 2010

Book online at [lawsociety.ie](http://lawsociety.ie)

## LYRATH ESTATE HOTEL Kilkenny



### CONFERENCE PACKAGE (DELEGATES): €275

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

### CONFERENCE PACKAGE (ACCOMPANYING PERSONS): €175

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

### FRIDAY 9 APRIL 2010

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

### SATURDAY 10 APRIL 2010

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

### CONFERENCE BUSINESS SESSION KEYNOTE SPEAKERS



Dermot Ahern, Minister for  
Justice, Equality and Law  
Reform



Mr Justice Nicholas Kearns,  
President of the High Court

SPONSORED BY



# Helping hand

**O**n 12 February, I informed you by e-bulletin that 7,457 solicitors had taken out practising certificates for 2010 – an increase of 30 on the same date in 2009. The figures represent a reduction to 0.4% in the annual rate of increase in the numbers of solicitors practising, compared with an annual rate of increase of 4.5% in 2006. It is beyond doubt that the depth and persistence of the economic recession has caused this reduction. And, while the actual numbers taking out practising certificates was not as low as had been feared, it is undoubtedly the case that significant numbers of qualified solicitors, many newly admitted, are having difficulty securing employment within the profession.

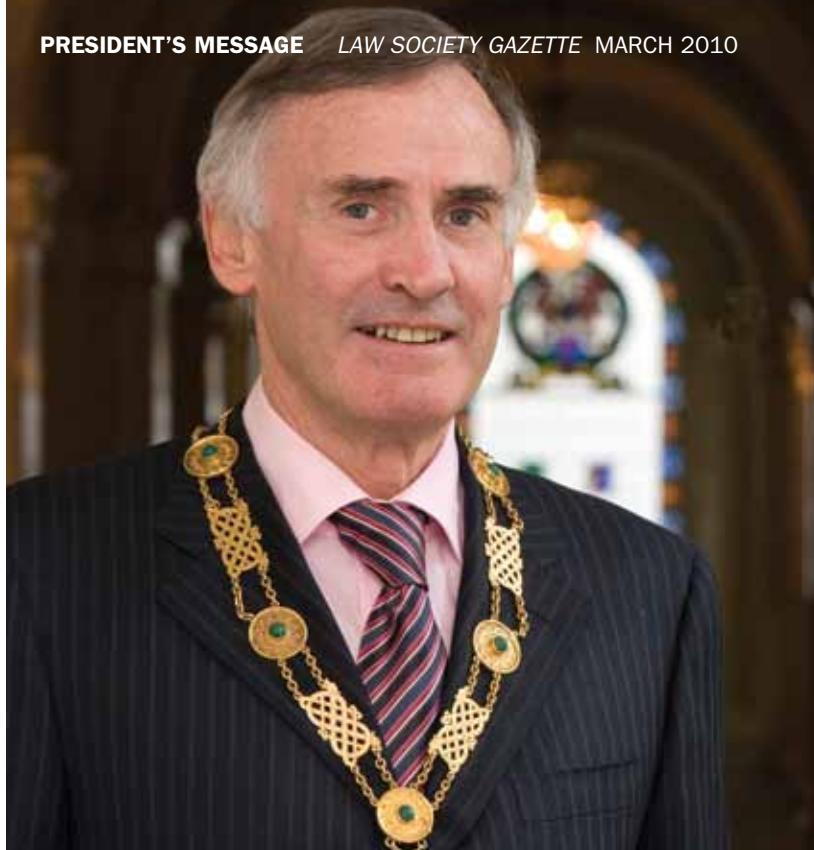
The Society continues to provide support and assistance to those of our colleagues who are out of work. As you will be aware, the Society appointed Keith O'Malley as its career support advisor at the beginning of May 2009. In the nine months to end-January 2010, over 700 solicitors have made contact with the career support service. By the end of its first year, the service will have provided one-to-one consultations to over 250 solicitors, responded to circa 2,300 email enquiries and 1,600 telephone enquiries from members, provided feedback on 1,000 CVs and provided training in career matters to over 150 colleagues.

## Increased demand

While I am pleased to report that a significant number of those solicitors who were registered with the Society's career support service during 2009 have secured employment, the service has encountered increased demand since Christmas, as some trainees are not being kept on by firms when they qualify. These newly qualified colleagues are strongly encouraged to register with career support to avail of the various strategies that have proved successful for their predecessors during 2009. In addition, a repeat of the series of career seminars on interviewing, CV preparation and networking commenced in Dublin on 3 February 2010 and in Cork on 25 February 2010. I am hoping that Blackhall Place will remain an important focal point for these colleagues, both as a resource for information and support, and as a vital communication link with the rest of the profession.

In recent weeks, each member of the Society will have received a copy of the Society's new *Support Services Directory*, which summarises the support services on offer to all members in one user-friendly booklet. I would encourage all members to make Law Society membership work for them by taking

***"The Society has strongly recommended that solicitors should not issue undertakings in relation to commercial loans"***



advantage of the broad range of services outlined in the directory to support their professional growth, career development and personal needs.

## Commercial undertakings

Before Christmas, I issued an e-bulletin to the profession in relation to the matter of commercial undertakings. While some solicitors' firms have secured separate insurance cover for commercial undertakings, the Society has strongly recommended that solicitors should not issue undertakings in relation to commercial loans.

Where solicitors have obtained additional cover for commercial undertakings, the terms of such cover are a matter between the insurer and the solicitor. Where there are no universally-agreed terms of cover, problems will inevitably arise in seeking to match the terms of insurance with the specific undertakings in any individual transaction. In addition, a system without agreed documentation is almost impossible to regulate, both for the Society and for the Financial Regulator. The legal, business and political communities in Ireland are only now starting to comprehend the enormity of the consequences of a decade of reckless lending. An essential part of any banking system is to ensure that proper security is in place where loans, particularly of a substantial nature, are advanced.

All of these issues were discussed at the most recent meeting of the Council held on 19 February, and the Council has agreed that regulations should be drafted to prohibit the giving of undertakings in commercial transactions. Obviously, the 'devil will be in the detail' of such regulations – all aspects of which will be thoroughly debated by the Council. In the meantime, practitioners are again recommended not to provide undertakings in the case of commercial loans.

**Gerard Doherty**  
President





### On the cover

A week is a long time in politics, or so they say, so who knows what may have happened by the time this *Gazette* hits your desk? In the meantime, we talk to Charlie Flanagan TD, solicitor and Fine Gael spokesman on justice

PIC: LENS MEN AND ASSOCIATES



Volume 104, number 2

Subscriptions: €57



# LAW SOCIETY Gazette

March 2010

## REGULARS

1 **President's message**

4 **News**

10 **Analysis**

10 **News feature:** revised *Compendium to the Solicitors Acts*

12 **Human rights watch:** assisted human reproduction

12 **One to watch:** *Companies (Miscellaneous Provisions) Act 2009*

15 **Comment**

15 **Letters**

36 **People and places**

40 **Obituaries**

42 **Student spotlight**

45 **Book reviews**

*Judicial Review* (2nd edition)

46 **Briefing**

46 Council report – 22 January 2010

47 Practice notes

49 Legislation update: acts passed in 2009

52 Solicitors Disciplinary Tribunal

55 Firstlaw update

57 Eurlegal: *Services Directive*

62 **Professional notices**

**Editor:** Mark McDermott. **Deputy editor:** Dr Garrett O'Boyle. **Designer:** Nuala Redmond.

**Editorial secretaries:** Catherine Kearney, Valerie Farrell. For professional notice rates (lost land certificates, wills, title deeds, employment, miscellaneous), see page 63.

**Commercial advertising:** Seán Ó hOisín, 10 Arran Road, Dublin 9; tel: 01 837 5018, fax: 01 884 4626, mobile: 086 811 7116, email: sean@lawsociety.ie.

**Printing:** Turner's Printing Company Ltd, Longford.

**Editorial board:** Michael Kealey (chairman), Mark McDermott (secretary), Paul Egan, Richard Hammond, Simon Hannigan, Mary Keane, Aisling Kelly, Patrick J McGonagle, Aaron McKenna, Ken Murphy.

## Get more at lawsociety.ie

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

You can also check out:

- **Current news**
- **Forthcoming events**, including information on the Law Society's Annual Conference in Kilkenny in April
- **Employment opportunities**
- **The latest CPD courses**

... as well as lots of other useful information

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

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

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

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



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

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



## FEATURES

### 16 COVER STORY: Charlie's angles

Charlie Flanagan TD, solicitor and Fine Gael's justice spokesman, says he's up for the job, given the opportunity. Mark McDermott met him on the day that Willie O'Dea's affidavit came up for discussion in the Dáil

### 20 Keep me covered

A recent spate of claims against solicitors for breach of undertakings has led to a hardening of the professional indemnity insurance market and a relaxation of the mandatory minimum terms for PII. Stephen Chessher and Michelle Kilroy survey the land for solicitors found at the wrong end of commercial property transactions

### 24 The bottom line

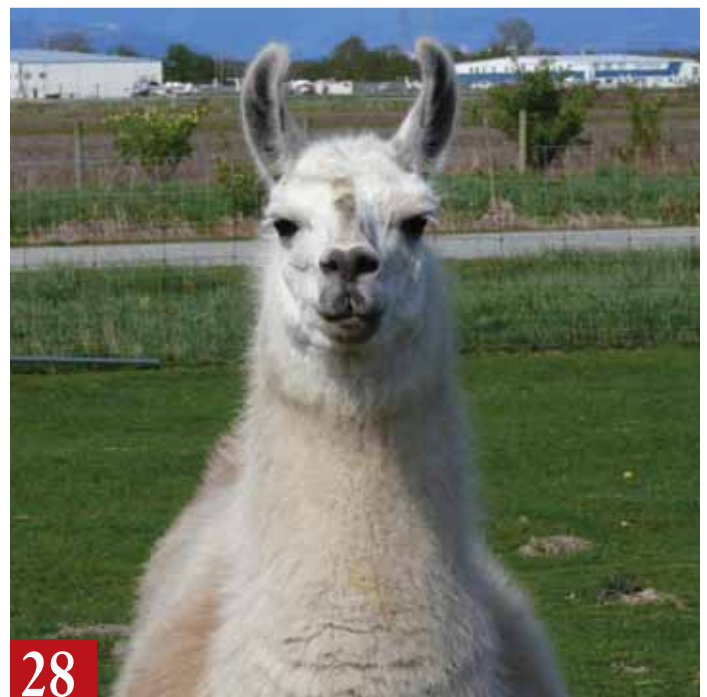
Inadequate profits lead to insufficient investment in your practice and in pension provision and, ultimately, will be reflected in an inadequate retirement income. It's time to get with the programme, says Yvonne McCormack

### 28 NAMA drama ding dong!

Given that no assets have yet been transferred to NAMA, it remains to be seen how effective it will be in achieving its purposes. Hugh B Byrne and Louis McEntagart give an overview of some of the parts of the *NAMA Act* that may be relevant to practitioners

### 32 Suits you, sir

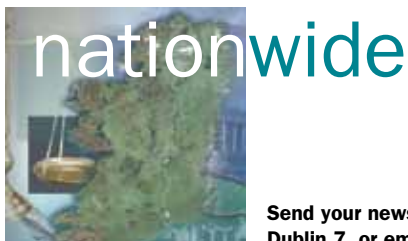
There has been much recent discussion of mortgages and borrowers defaulting on them. A series of new legal measures have introduced significant changes to the way mortgage enforcement suits are run. Neil Maddox explains



The Law Society of Ireland can accept no responsibility for the accuracy of contributed articles or statements appearing in this magazine, and any views or opinions expressed are not necessarily those of the Law Society's Council, save where otherwise indicated. No responsibility for loss or distress occasioned to any person acting or refraining from acting as a result of the material in this publication can be accepted by the authors, contributors, editor or publishers. The editor reserves the right to make publishing decisions on any advertisement or editorial article submitted to this magazine, and to refuse publication or to edit any editorial material as seems appropriate to him. Professional legal advice should always be sought in relation to any specific matter.

Published at Blackhall Place, Dublin 7, tel: 01 672 4800, fax: 01 672 4877.  
 Email: [gazette@lawsociety.ie](mailto:gazette@lawsociety.ie) Website: [www.lawsocietygazette.ie](http://www.lawsocietygazette.ie)





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

## ■ MIDLAND

This page was so busy last month that we were unable to mention the very special dinner held before Christmas in honour of the Midland's finest. The occasion honoured colleagues who have attained that special place – 50 years in practice – and unscathed, too! President of the Midland Bar Association Mary Ward and her colleagues were delighted to honour the immense contributions to their legal communities of three stalwarts – Tom Shaw, Denis Johnston (both from Mullingar) and Michael O'Carroll (Athlone). The special guests were honoured by the attendance of so many of their colleagues and members of the judiciary, who included Judge Henry Abbot of the High Court; Circuit Court judges Anthony Kennedy, Raymond Groarke and Desmond Hogan; and District Court judges, including retired Judge John O'Donnell. It was especially pleasing to see the *galáticos* from the Midland Circuit Court from yesteryear – senior counsel Harry Whelehan and Edward Walsh.

Mary Ward also organised a successful seminar on legal costs in late January with Paul Conlon of Paul Behan & Associates (legal cost accountants), Elizabeth Sharkey (county registrar for Westmeath) and Verona Lambe (county registrar for Offaly) and Patrick Flynn (legal cost accountant of Tormey Solicitors, Athlone). The question and answer session proved very beneficial. Mary was chuffed to note the record attendance of 81 solicitors, which just goes to show that solicitors are always interested in costs!

The association held its AGM on 10 February in the Park Hotel



At the presentation of the Cork City Council 'Better Buildings Awards', legal firms took the top three prizes in the 'Commercial Business Premises' section. The prize-winners were (l to r): John Purcell (representing Barry M O'Meara & Son, which took first place), Eamon Murray (Eamon Murray & Company, Solicitors, who came second), and Mary Dorgan (Mary Dorgan & Company, Solicitors, who took third)

Mullingar (see report in *'People and Places'*, p38). John D Shaw also outlined the up-to-date position on certificates of title with lending institutions.

Plans are underway to arrange a seminar in April or May on criminal law, the paper to be presented by a leading criminal lawyer from Dublin and, hopefully, a barrister to deal with drink-driving offences. A mid June seminar will focus on probate and administration of estates, which will be presented by Ann Stephenson, solicitor and probate lecturer.

## ■ DUBLIN

The opening of the new Criminal Courts of Justice in the middle of the month by An tUachtarán was a huge event for the legal community. What a building to grace our capital! Every bit as iconoclastic as the other Gandon masterpieces and a huge confidence boost to the city, to be augmented all the more shortly with the completion of the city's new conference centre.

Congratulations to Stephen Walker, who replaces Gerard

Carroll as incoming managing partner in Whitney Moore, and also to Julian Yarr in A&L Goodbody, who will soon succeed Paul Carroll. An array of seminars is being scheduled throughout March. First up is a look at the new *Defamation Act 2009*, with libel experts Simon McAleese, Paula Mulooly and James MacGuill. This legislation will be of huge significance, as it radically changes the way defamation cases have been managed in the past and alters the *Statute of Limitations* and other pivotal changes. NAMA gets an outing on 4 March, when Mark Barr and Cliona Rogers, as well as a leading property valuer, will analyse what it means for both clients and the professionals involved, the type of litigation that might ensue, the likely timetable and its overall impact on the property market.

In addition, the council of the DSBA organised members' open-forum meetings during the past month to look at the commercial undertakings issue and the overlap with the new *Professional Indemnity Insurance Regulations*.

A full commentary of the frank exchange of views will be carried in the *Parchment*.

## ■ LIMERICK

The Limerick Bar Association had a very successful and enjoyable Law Ball on Friday 27 November 2009 in the Dunraven Arms Hotel, Adare. Special guests were Judge John Edwards, Judge Carroll Moran, Judge Tom O'Donnell, Judge Aeneas McCarthy and Judge Eamon O'Brien. A welcoming speech was made by the president, Elizabeth Walsh, and a reply on behalf of the guests was made by Judge John Edwards, who offered timely words of encouragement and advice to the profession in these difficult times.

## ■ MEATH

At the Meath Bar Association AGM in January, Phil Brady of Brady & Co in Trim was elected the new president of the association. Katie Barbour of Keaveny Walsh & Co in Kells continues in the roles of honorary secretary and honorary treasurer, while Miriam Regan of Regan McEntee & Partners in Trim remains on as PRO. Helen McGovern represented the bar association at the official opening of the new Criminal Courts of Justice building in Dublin in January 2010.

## ■ CORK

As we go to press, colleagues are looking forward to the annual dinner. 'Nationwide' looks forward to hearing from SLA president Eamonn Murray on proceedings. **G**

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

PIC: COURTESY EVENING ECHO

# 'Fragile security' of undertakings

**M**r Justice Peter Kelly of the High Court expressed astonishment that AIB handed out €550 million in loans to five companies formerly controlled by Liam Carroll with only a solicitor's letter of commercial undertaking and the deposit of title deeds as security. He was speaking in the Commercial Court on 18 January 2010.

As reported in the *Irish Independent*, Mr Justice Kelly said it was "astonishing" and "extraordinary", given the vast sums involved, that AIB's only security for the borrowings was letters of undertakings from a solicitor's firm and the deposit of the title deeds. The bank's security was described by the judge as "fairly fragile" and "a far cry from a legal mortgage".

It follows that a security relying on a solicitor's letter of undertaking only, without deposit of title deeds, must be even more fragile.

## Growing concern

Mr Justice Kelly was echoing the growing concern in many quarters about the system whereby solicitors give letters of undertaking in commercial property transactions. During

the boom years, solicitors were pressurised to do so both by borrowers and by lenders. This has frequently led to situations where the undertakings have not been complied with and many substantial loans have not been properly secured.

The system contributed to the reckless lending of the boom years and is one that the Council of the Law Society believes should be discontinued in the public interest.

It is essential to any sound banking system that proper security is put in place where loans, particularly of a substantial nature, are advanced. The frailties of the commercial undertakings system have facilitated reckless lending and fraud, with massive losses to lenders, as in the Lynn and Byrne cases.

The conflict of interest in which solicitors can find themselves, acting both for the borrower and the lender, is at the heart of the problem.

## No agreed system

Commercial undertakings are a substantial source of client complaints to the Law Society about solicitors. They are also



Mr Justice Peter Kelly

a major source of claims on the Society's compensation fund. In addition, they have given rise to so many substantial professional negligence claims that, last autumn, the professional indemnity insurers insisted that the Law Society must take commercial undertakings out of the Society's minimum terms and conditions for PII or they would cease to insure the profession.

The fact that there has never been an agreed system of documentation for the giving of undertakings or certificates

of title in commercial loan transactions (in stark contrast to the position in relation to residential loan transactions) has made the giving of such undertakings impossible to regulate.

The Society has recommended that best practice in commercial lending transactions is for each party – the vendor, the purchaser and the borrower – to retain separate legal advice to protect the three different legal interests concerned. In the great majority of large commercial transactions, the lenders have always insisted on retaining their own solicitor to ensure that their security is put in place. This is because it is implicitly recognised by all parties, including the lenders, that this is, self-evidently, a superior system.

At its meeting on 19 February 2010, the Council of the Law Society heard that the Society's Regulation Department is drafting regulations to prohibit solicitors giving the commercial undertakings that have proved so detrimental to the public interest.

# FAI flags significance of corporate entertainment

**A**nyone who has driven through Dublin 4 recently will have noticed the impressive new addition to the skyline, the Aviva Stadium. The stadium is jointly owned by the FAI and the IRFU and will be completed in May 2010. The first international football game kicks off against two-time world champions, Argentina, on 11 August. General admission seats for international games have already sold out and the tightness to the pitch and impressive design will make it a real cauldron.



The new home for Irish football will host modern conference facilities and a variety of options for corporate

entertainment on match day through the FAI Vantage Club, with restaurants and bars to cater for every taste. When

key accounts and business contacts are becoming more important to retain, corporate entertainment, even for small law firms, can play an important role in growing and maintaining business.

International research has consistently flagged the value of corporate entertainment to small and medium-sized businesses across a range of sectors. To find out more about what Aviva stadium could offer your practice, including new opportunities for premium seats and boxes, call 1890 202 010.

#### ■ NOTICE – SBA AGM

Notice is hereby given that the 146th AGM of the Solicitors' Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7, on Friday 16 April 2010 at 12.30pm to consider the annual report and accounts for the year ended 30 November 2009, to elect directors, and to deal with other matters appropriate to a general meeting.

#### ■ SILENT REVOLUTION

Mayo County Council has won the 'eGovernment Local Ireland' award for its online services website, which was described as "a model in cutting costs and time in the processing of planning submissions via online planning applications. Submitting a planning application has dropped from two hours to just a few minutes. At the announcement on 19 February, co-host of the awards, the managing director of Elucidate, Maeve Kneafsey, said that there has been "a silent revolution going on at quite a rapid rate within the state sector in moving so much of their activities online". She referred to the recent collaboration between the Property Registration Authority (PRA), the Law Society of Ireland, the Irish Banking Federation, the Revenue Commissioners and the Companies Registration Office, which has seen the processing of online applications by the PRA jump by 800% "from just 35 to 350 cases a day".

#### ■ NEW OMBUDSMAN

The chairman of the Competition Authority, William Prasifka, has resigned from his position to take up the role of financial services ombudsman. A graduate of Columbia University School of Law, he previously was the Irish commissioner for aviation regulation. He practised as a lawyer, first in New York and then in Dublin, advising in the areas of Irish, Euro-pean and American competition law.

#### ■ BUILDING BLITZ

The Niall Mellon Trust is currently recruiting volunteers to participate in its house-building programme in the townships of South Africa. See [www.nmtownshiptrust.com](http://www.nmtownshiptrust.com).

## CPD changes flagged

The *Solicitors (Continuing Professional Development) Regulations 2009* came into operation on 1 January 2010. Solicitors are advised to familiarise themselves with the revised 2010 CPD scheme booklet, which will be posted on the Law Society website in March 2010.

The annual requirement for the 2010 cycle (1 January 2010 to 31 December 2010) is 11 hours' CPD. Of these 11 hours, a minimum of three hours must comprise management and professional development skills, and at least one hour must comprise regulatory matters.

#### Changes to the scheme

The new regulations introduce a number of changes to the CPD scheme, all of which are detailed in the 2010 scheme booklet. The main change is the introduction of a new category of CPD on 'regulatory matters', which refers to matters of accountancy and the general regulation of solicitors.

Further changes provided for in the new regulations relate to modifications of the minimum CPD requirement. The revised scheme booklet details the particular circumstances in which the minimum CPD requirement may be reduced.

A newly-qualified solicitor



is entirely exempt from the requirement to undertake CPD for a period of 12 months following his or her admission to the Roll.

A senior practitioner (that is, a solicitor over 40 years in practice) is required to undertake a minimum of three hours CPD during the 2010 cycle.

A solicitor who holds a practising certificate (or is in the full-time service of the state) for only part of the 2010 cycle is entitled to reduce his/her requirement in proportion to the number of weeks actually worked.

In maternity/parental/ carers/

adoptive leave cases, a solicitor who does not practice for a period of not less than one week during the 2010 cycle is entitled to have his/her minimum CPD requirement reduced in proportion to the number of weeks actually worked.

In cases of certified illness, retirement and unemployment, a solicitor who does not practise for a period of not less than eight weeks during the 2010 cycle, may have his/her minimum CPD requirement reduced in proportion to the number of weeks actually worked.

A solicitor who works part-time hours (that is, is remunerated only for working less than five days a week) by reason of domestic necessity, or because employment can only be provided to the solicitor on a part-time basis, may also have his or her requirement reduced in proportion to the number of days worked.

Full and detailed explanations of the above modifications, together with clarification on all aspects of the new scheme will be provided in the revised 2010 scheme booklet.

Further details may also be obtained by contacting the CPD scheme unit on 01 672 4802 or email [cpdscheme@lawsociety.ie](mailto:cpdscheme@lawsociety.ie).

## The essentials of legal practice

**A**re you a solicitor returning to the workplace and seeking a refresher on the essentials of legal practice? Are you a barrister with three years' experience in practice who wishes to transfer to the solicitors' profession? Are you a registered European lawyer or Qualified Lawyers Transfer Test candidate?

If the answer to any of these questions is 'yes', the Essentials of Legal Practice course

from 5-23 July 2010 inclusive (weekdays only) is for you.

This course will cover the core essentials of legal practice:

- Professional conduct,
- *Solicitors' Accounts Regulations*,
- Conveyancing, and
- Probate and tax.

Intensive in its nature, the course will bring professionals up to speed in these areas in a concise and condensed manner.

There is no examination; however, attendance at all elements is mandatory. The course fee is €2,800.

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

For further details on this course, contact Michelle Nolan in the Law School, email: [bltransfer@lawsociety.ie](mailto:bltransfer@lawsociety.ie).



# 'Trap' names date for Calcutta Run

Republic of Ireland football manager Giovanni Trapattoni took time out from announcing the Irish team to play against Brazil to name the start date for this year's Calcutta Run. In a joint press conference with Law Society President Gerard Doherty, Trapattoni encouraged runners and walkers to line up for the annual fundraising event at the Society's headquarters at Blackhall Place on 15 May 2010.

The Calcutta Run is organised by the Law Society and the legal profession to raise funds for the upkeep of homeless children in Dublin and Calcutta. The charities that will benefit are GOAL and the Peter McVerry Trust. In typically animated style, 'Trap' encouraged participants to "Give it a go and get running!"

Gerard Doherty added: "With the Irish manager, I am delighted to start the ball rolling on this year's Calcutta Run. We urge all members of



PG: LENS MEN

Launching the Calcutta Run 2010 were (l to r): Republic of Ireland manager Giovanni Trapattoni, President of the Law Society Gerard Doherty and Republic of Ireland assistant manager Marco Tardelli

the profession, trainees, families and friends to get behind it in whatever way they can. The run has been a great fundraising success since its inception and has received fantastic support from solicitors, the length and breadth of the country.

"This year, more than ever, there is a desperate need for funds for both charities," he continued. "Members of the profession can support the event by taking part on the day or making a donation – thus playing their part in making this

year's run what we hope will be a stellar success."

Everything you need to know about the run is available at [www.calcuttarun.com](http://www.calcuttarun.com), where would-be participants can register for a sponsorship card and newsletter.

## Taxing course for taxing times

Issues about taxation law are an inherent and increasing part of all practice areas. It doesn't matter whether you are advising on commercial transactions, property transfers or estate planning.

A new certificate course in taxation law, being run by the Education Centre in April, hopes to demonstrate the relevance of the area for all practitioners. Core course topics will include a review and application of legal issues focusing on capital gains tax, capital acquisitions tax, VAT and stamp duty.

The course begins on Wednesday 21 April and lectures will run weekly from 6-8.30pm in Blackhall Place, with a workshop scheduled for

the evening of 2 June. This will enable those attending to apply what has been learned in lectures to case-study scenarios, facilitating a deeper learning experience. The course will conclude with an examination of taxation issues relevant to insolvencies, which, given the economic climate, is an increasing area of practice.

### When to offer tax advice

All too often, practitioners are reluctant to get involved in the area of tax law, possibly unnecessarily referring clients elsewhere for tax advice – even though comprehensive advice might have been offered to the client on all other legal matters.

This course will enable practitioners to readily identify

areas where they are competent to provide taxation advice and, of equal importance, enabling them to confidently identify aspects of file work where more specific advice might be required.

The course will provide professionals who have not yet specialised in taxation with an understanding of key issues and concepts. It will also interest practitioners who have a working knowledge of the area, and will seek to enhance and develop their expertise.

For further information on these and all other diploma programme courses, visit the diploma programme pages at [www.lawsociety.ie](http://www.lawsociety.ie) or email [diplomatteam@lawsociety.ie](mailto:diplomatteam@lawsociety.ie) or tel: 01 672 4802.

## An dlí trí Gaeilge

Any practitioner who wishes to practise law through Irish must take the PPCII Advanced Legal Practice Irish (ALPI) course and pass an end-of-course examination. There will be 12 hours of direct contact time, with other hours for online course tasks and interaction. The course contact hours will run on six consecutive Thursdays from 6pm-8pm, starting on 13 May. The fee is €600. Application closing date is 29 March 2010. This course will fulfil your full CPD requirement for 2010.

For further details and an application form, contact Maura Butler, course manager, Law Society, Blackhall Place, Dublin 7; email: [m.butler@lawsociety.ie](mailto:m.butler@lawsociety.ie), tel: 01 672 4802.

# HLJ explores 'Three Courts'



At the HLJ annual lecture were (front, l to r): Mrs Justice Fidelma Macken (chair of this year's lecture), Mr Justice Kevin O'Higgins (guest speaker), Julia Emikh (editor) and Rosemary Wall. (Back, l to r): Peter McKeown-Walley, Alan Burns, Regan O'Driscoll, Emer O'Connor, Avril Mangan, Alice Lanigan, Roberta Guiry and Mary Forde

The *Hibernian Law Journal's* annual lecture was held at Blackhall Place on 4 February, writes Peter McKeown-Walley. Titled 'The Three Courts', Mr Justice Kevin O'Higgins spoke about his experience working as a judge in the Circuit Court, High Court and the Court of First Instance in Luxembourg, now known as the General Court.

He struck a perfect balance between the academic and the anecdotal in a speech that was as informative as it was entertaining. As well as his recollections of a career spanning more than four decades

(24 years of which have been spent as a judge), he gave an insightful perspective on the inner workings of the General Court. In particular, he described the integral role played by his research team, known as 'referendars', in the formulation of a judgment at the General Court, resulting in his own role becoming similar to, as he put it, "an office manager".

During the questions session that followed, Mr Justice O'Higgins and Mrs Justice Macken agreed that experience of Europe, followed by a return to the bench in Ireland, created

a better understanding of, and forged closer ties with, the European Courts of Justice.

The publication date of this year's *Hibernian Law Journal* (HLJ) will be announced shortly. This year's edition will contain articles covering competition law, private international law, human rights law, intellectual property, constitutional law, international law, family law and criminal law. Contributors range from trainee solicitors to law firm partners, thus ensuring a diverse range of topics, opinions and styles.

For more information, see [www.hibernianlawjournal.com](http://www.hibernianlawjournal.com).

## Your country, your call!

'Your Country, Your Call' is a national competition to find and reward two proposals that could help secure prosperity and jobs for Ireland. The winning proposals are expected to help change the way Ireland does things, allow businesses to grow, employment to be created and prosperity to flourish.

The competition will award the two winning proposals with a prize of €100,000 each. Both will be implemented with the support of an independent working group – and a development fund of up to €500,000 for each project.

'Your Country, Your Call' is about helping to create future prosperity while generating hope, confidence and a positive outlook. Its aim is to get everyone in the country to look at what he or she can do to get creative, be more imaginative and generate fresh thinking. A special website – [www.yourcountryyourcall.com](http://www.yourcountryyourcall.com) – has been set up and includes details about how to apply. Visitors will be able to see who is entering, what ideas are being proposed and seek possible collaborations. Website visitors are invited to leave messages of support or link to discussion groups on other social networking sites.

Entries should be submitted by 30 April 2010, after which they will be reviewed, assessed and filtered to a point where two winning entries will be selected in mid September.

The Law Society is encouraging its members, trainee solicitors and their families and friends to get involved in 'Your Country, Your Call'. The competition is open to everyone – so visit the website and get thinking, talking and proposing!

## Inheritance Enquiry Unit established

A new Inheritance Enquiry Unit has been set up by the Department of Agriculture, Fisheries and Food to assist the legal representatives of deceased farmers to secure outstanding payments to the estate of the deceased. Where applicable, the new unit will arrange for the transfer of single payment entitlements.

Launching the unit, Minister for Agriculture Brendan Smith said that the centralised unit would assist the legal representatives of the deceased to:

- Identify those schemes in which the deceased person participated and establish whether there are

any outstanding payments due to the estate of the deceased,

- Assist legal representatives in contacting various sections of the department,
- Advise on which legal documents are required,
- Make arrangements for the issue of any outstanding payments due to the estate of the deceased and for the transfer of single payment entitlements (if any).

The unit will act as a single repository for legal documentation submitted by representatives of the deceased – thus removing the necessity of forwarding duplicate copies

to several sections within the department.

A short information leaflet outlining the functions of the Inheritance Enquiry Unit is available on the department's website, [www.agriculture.gov.ie](http://www.agriculture.gov.ie), and from local department offices.

As soon as is practicable, the executor of the estate of a deceased farmer and/or the legal representative should contact: Inheritance Enquiry Unit, Department of Agriculture, Fisheries and Food, Eircom Building, Knockmay Road, Portlaoise; tel: 1890 200 560; email: [inheritance@agriculture.gov.ie](mailto:inheritance@agriculture.gov.ie).

# Solicitor shortage in parts of Australia

**S**erious shortages of solicitors in parts of rural Australia may present real opportunities for the hundreds of Irish-qualified solicitors who, very sadly, have found employment very hard, if not impossible, to obtain in Ireland.

A comprehensive report published in July 2009 by the Law Council of Australia has identified a serious problem of lawyer shortages in 'Rural, Regional and Remote (RRR) areas of Australia'. The report is based on a major survey of practitioners in these areas. Referring to RRR areas as "facing a crisis in the area of access to justice", the report finds that "a large number of legal practices in Australia do not have enough lawyers to service the legal needs of their communities. Overall, 43% of principals surveyed indicated that their practice currently does not have enough lawyers to serve their client base."

And the report finds the situation to be deteriorating. "A large number of legal practitioners, many of them sole practitioners, will retire in the next five to ten years. Overall, 42% of the legal practitioners who responded to the survey do not intend to practise law in five

years' time. It is necessary to find skilled practitioners to fill these gaps, or else many legal businesses may close for want of successors."

## Growing strongly

The Australian economy has one of the highest growth rates and lowest levels of unemployment of the world's developed economies. Although Australia has not been untouched by the global economic and financial crisis, it did not technically enter economic recession at any stage and is now growing strongly again. China's almost insatiable demand for Australia's vast mineral resources is one of the economy's main drivers.

Director general Ken Murphy made a presentation on the RRR report to a well-attended seminar of young solicitors in Blackhall Place on 24 February 2010. The seminar was organised by the Society's Career Support Service. He emphasised three things to his Irish solicitor audience: first, that the word 'remote' has a vastly different meaning in geographical terms in Australia than it does in Ireland – quite apart from the differences of climate. Second, the legal



Once a jolly Irish solicitor camped down by a billabong

work in RRR Australia can be very interesting. Third, while Irish solicitors would be very welcome and likely to fit in easily in Australia, the firms who would seek to recruit them would wish them to put down roots in Australia and stay indefinitely – not just for a couple of years while waiting for the Irish economy to recover.

## Transfer test arrangements

Murphy has been using his contacts at the highest levels of law societies in the capital, Canberra, and in the different states in Australia to lobby for a liberalisation of the

Qualified Lawyers' Transfer Test arrangements to ease the way for Irish solicitors seeking to requalify in Australia. The desirability of liberalisation has been raised by Murphy personally with the attorney general for Australia, Robert McClelland MP. He is the Australian counterpart of Ireland's minister for justice. McClelland was warmly supportive, but made it clear that the Council of Australian Chief Justices has a key role in the process and that policy in the area is not entirely under the control of the attorney general. The director general also met some of the individuals in the Law Council of Australia and Law Institute of Victoria who were involved in the production of the RRR report.

A full copy of the report can be obtained on the Law Council of Australia website, [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au). There are uniform principles for assessing qualifications of overseas applicants for all Australian states. These can be accessed on [www.lawlink.nsw.gov.au/lpab](http://www.lawlink.nsw.gov.au/lpab). Applications are decided on a case-by-case basis. Information in relation to Australian visa requirements can be obtained on [www.immi.gov.au](http://www.immi.gov.au).

# Career Support 'goes country' in March

**T**he Society's Career Support Service has scheduled career management and job-seeking skills training at regional locations in March.

Training courses will be delivered over one full day and will cover all aspects of job seeking, including self-appraisal, how to draft an effective CV, the hidden market of unadvertised jobs, and interview performance.

On Wednesday 10 March, the venue for training will be the Harbour Hotel in Galway.

Training moves to Limerick on 24 March, and to Sligo on 31 March. Further venues and dates will be publicised in March.

The seminars will qualify for CPD group-study credits. They will be free of charge to solicitors registered with the Career Support Service as either out of work or facing job loss. A charge of €40 will apply for other attendees.

Capacity will be limited. As a result, it will not be possible to

admit anyone to these seminars who has not booked a place in advance. Training begins at 9am sharp each day and concludes at 5pm, with one hour off for lunch from 1-2pm.

For full details on these training events and to book your place, visit [www.lawsociety.ie/en/pages/careersupport/](http://www.lawsociety.ie/en/pages/careersupport/) or email [careers@lawsociety.ie](mailto:careers@lawsociety.ie).

Career Support is a Law Society initiative, set up to assist solicitors who are faced with career challenges. A range of

supports are in place that can be accessed countrywide, including the 'EXPAND' programme, a CV review and feedback service, email and telephone support, as well as information provision.

Solicitors who are not working are entitled to other supports too – such as free membership and discounts on diploma courses and on CPD Focus training. For information on any of these concessions, contact Career Support at [careers@lawsociety.ie](mailto:careers@lawsociety.ie).



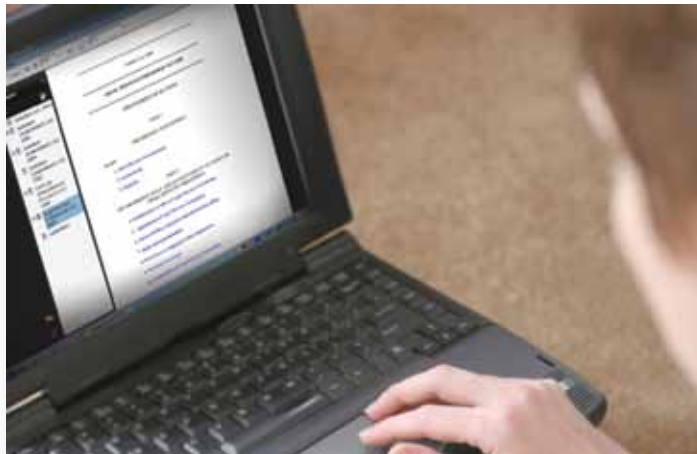
# Society launches 'new and

**The Society has just published its revised *Compendium to the Solicitors Acts and the Legal Services Ombudsman Act 2009*, with an online version that's a dream to use, writes Emma-Jane Williams**

A compendium to the *Solicitors Acts 1954 to 2008* and *Legal Services Ombudsman Act 2009* has just been published by the Law Society. This is a unique product, designed to enable solicitors to access the law relating to the profession and the Society in a user-friendly and comprehensive manner. If you have paid your practising certificate for 2010, you will have received your free copy with this issue of the *Gazette*. If you are a member of the Society, your free copy is downloadable in the members' area of the website at [www.lawsociety.ie](http://www.lawsociety.ie).

## What is it?

The *Compendium* contains the full texts of the 1954, 1960, 1994 and 2002 *Solicitors Acts* and the *Legal Services Ombudsman Act 2009*. Relevant sections of the *Civil Law (Miscellaneous Provisions) Act 2008* are also reproduced,



together with an addendum that refers to provisions of the *Investment Intermediaries Act 1995* and the *Investor Compensation Act 1998*, insofar as they relate to solicitors.

## How will it help?

This publication will assist practising solicitors by locating, in one single place, all legislation governing the

profession. In addition, the extensive cross-referencing (by section and compendium page number) will assist solicitors in identifying the provisions that have been amended or substituted, by reference to the provisions of the subsequent act(s) effecting such amendments or substitutions.

While the 1994 and 2002 acts now contain most of the

statutory provisions relating to solicitors, important provisions in both the 1954 and 1960 acts remain in force. Indeed, important amendments to the 1994 and 2002 acts have been enacted by the 2008 act. Therefore, it is important that solicitors can trace the evolution of a particular statutory provision from the 1954 act through the 1960 act to the 1994 act and/or the 2002 and 2008 acts. The *Compendium* is designed to assist in this task.

The new CPD scheme for the 2010 cycle requires solicitors to complete a minimum of one hour on education/training in regulatory matters and the *Compendium* will provide a key resource in this regard.

## How to use it?

Where the text of an earlier act has been amended or substituted by a later act, the relevant

## HISTORY AND DEVELOPMENT OF THE SOLICITORS ACTS

The 1954 act was the result of over ten years of lobbying by the Law Society – the Society's first submission was made in 1943. The act was developed from legislation dating back as far as 1866 and 1898. Concerns about the constitutionality of certain provisions of the 1954 act were recognised by the courts and were remedied by the 1960 act.

The 1994 act introduced provisions relating to solicitors' dealings with their clients. The most well-known provisions include sections 8 and 9 in relation to complaints, and section 68, which introduced statutory obligations into the

solicitor/client relationship. The 1994 act also gave the Society increased powers regarding complaints and contained provisions on education. All practising solicitors were conferred with the powers of a commissioner of oaths relating to the administration of oaths and the taking of affidavits.

The 2002 act restricted advertising by solicitors. It also dealt with Solicitors Disciplinary Tribunal matters, the obstruction of investigations, and expanded the Society's powers to attend solicitors' offices.

The *Civil Law (Miscellaneous Provisions) Act 2008* revised rules for membership of Law

Society committees, particularly with reference to lay membership. Amendments were also made clarifying the Society's powers to investigate and initiate the investigation of complaints against solicitors, hearings by the High Court in relation to solicitor disciplinary matters, and directions for solicitors to pay compensation for inadequate legal services provided to clients.

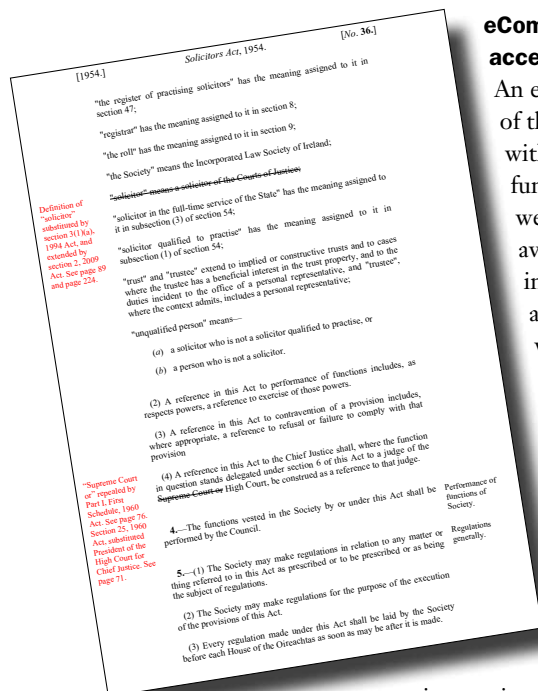
The Society successfully lobbied for a provision to be included whereby a solicitor could contract with a client to limit their liability, but not below the minimum insurance cover that solicitors, generally, are required to carry.

## Legal Services Ombudsman

Upon implementation of the act, the ombudsman's primary role will be to oversee the handling by the Law Society and the Bar Council of complaints by clients of solicitors and barristers. The key functions of the role will be:

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

# improved' compendium



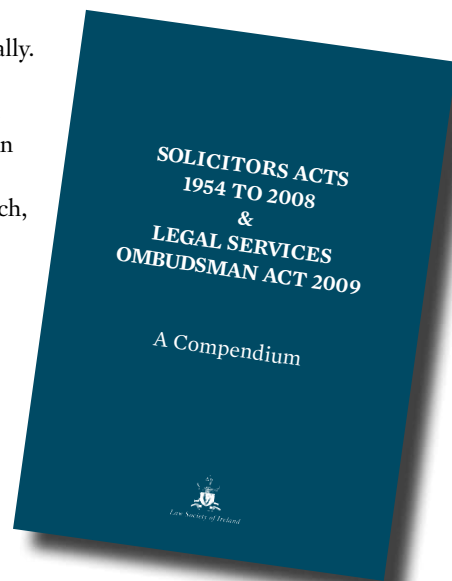
## eCompendium – how to access it

An electronic version of the *Compendium* – with the increased functionality that the web provides – is available to download in the members' area of the Society's website. Using the online version, members can click on cross-references, which will link directly to the relevant amending legislation. Solicitors should simply follow the online

*Compendium* will be published electronically.

The *Solicitors Acts 1954 to 2008* form the basis of the regulation of the solicitors' profession and, as such, it is imperative that solicitors are aware of their statutory obligations, as well as the powers and duties of the Law Society. The Society believes that the *Compendium* will play an important role in assisting members with understanding the legislative environment in which they operate.

Additional copies of the *Compendium* may be purchased, priced at €30 (plus postage and packing), from the Society.



Telephone 01 672 4912 or email [e.mccormack@lawsociety.ie](mailto:e.mccormack@lawsociety.ie).

*Emma-Jane Williams is the Law Society's policy development executive.*

reference to the text of the later act(s) is indicated in red in the left-hand margin.

instructions. As and when additional relevant legislation is enacted, it is intended that an updated edition of the

# CALCUTTA RUN 2010

www.calcuttarun.com

**RAISED €2.2M  
IN 11 YEARS**

**RAISED €170K  
IN 2009**

**DATE FOR 2010 – 15 MAY – SO KEEP IT FREE!**



[www.calcuttarun.com](http://www.calcuttarun.com)

Tel: 01 672 4846



# Judges call for legislation on ass

The lack of legislation to govern pre-implantation embryos could see Ireland becoming, by default, an unregulated environment for practises that may prove controversial, writes Joyce Mortimer

On 15 December 2009, the Supreme Court decided the case of *Roche v Roche* ([2009] IESC 82). The court ruled on the constitutional status of three embryos created by Mary Roche and her husband through IVF treatment in 2002. The embryos were frozen at this time and never implanted. The applicant (Ms Roche) sought to have these frozen embryos made available to her for implantation. She argued that the right to life of the embryos should be vindicated by their implantation. Her estranged husband had, however, withdrawn his consent for the use of the embryos.

In July of 2006, the High Court decided that there was no enforceable contract between Ms and Mr Roche entitling the former to make use of the spare embryos. The court also held that the embryos did not have the constitutional protection

afforded to the 'unborn' by way of article 40.3.3. Ms Roche appealed the decision to the Supreme Court. Three years later, the Supreme Court unanimously dismissed the appeal.

The five judges presiding in this case made references in their judgments to the need for appropriate legislation regulating the complex issue of assisted human reproduction. While the appeal was dismissed unanimously on the grounds that article 40.3.3 of the constitution does not apply to pre-implantation embryos, the Supreme Court agreed that the latter ought to be respected and protected.

## Moral status

Murray CJ examined the moral status of embryos and the protection that society feels they should be owed. The

Chief Justice concluded that the latter was a different issue to the matter at hand, which was whether the frozen embryo is human life within the meaning of article 40.3.3. The Chief Justice opined that it was not for a court of law to ultimately decide when human life begins. Murray CJ stated: "... it is for legislatures in the exercise of their dispositive powers to resolve such issues on the basis of policy choices.

"The trial judge quoted from the report of the Constitution Review Group of the Oireachtas, published in 1996, to the following effect: 'Definition is needed as to when the 'unborn' acquires the protection of the law. Philosophers and scientists may continue to debate when human life begins but the law must define what it intends to protect.'

"Therefore, in the context of this case, there is uncertainty or no consensus as to when human life begins. The choice as to how life before birth can be best protected, and therefore the point at which in law that protection should be deemed to commence, is a policy choice for the Oireachtas.

"The courts do not have at their disposal objective criteria to decide this as a justiciable issue. [...] The onus rests in the Oireachtas, to make the initial policy determination so as to define by law when 'the life of the unborn' acquires protection. The other alternative is an amendment to the Constitution."

## 'Novel issues'

Justice Hardiman described the issues at hand as "novel issues in our jurisprudence". He stated: "Science will not stand still

## ONE TO WATCH: NEW LEGISLATION

### Companies (Miscellaneous Provisions) Act 2009

On 23 December 2009, the Minister for Trade and Commerce signed into law the *Companies (Miscellaneous Provisions) Act 2009*. This act introduces new provisions to deal specifically with the re-domiciling of investment funds to Ireland.

The minister stated: "This act introduces some important new provisions into the *Companies Acts* and includes a number of initiatives introduced as a response to new business opportunities recently identified by industry." He added: "These

measures include allowing certain companies continue on a temporary basis to use US *Generally Accepted Accounting Principles* (US GAAP) in the preparation of their accounts. The act also introduces a mechanism to allow certain types of collective investment fund to migrate their activities into and out of Ireland without firstly having to wind up in their current jurisdictions."

### Company law amendments

*The use of US GAAP*: section 1, regarding transitional accounting standards, provides for the use of US *Generally Accepted Accounting*

*Principles* (GAAP) by certain parent companies during the transitional period of moving the company to Ireland, to the extent that the use of those principles does not contravene any of the provisions of the *Companies Acts* or any regulations thereunder.

This section applies to the accounts of a relevant parent undertaking for the first four financial years after it is incorporated in the state or ends not later than 31 December 2015.

*Continuation of foreign investment companies*: the 2009 act makes provision for a new section 256F to be inserted into

the *Companies Act 1990*. This section provides that a body corporate, which is established and registered under the laws of a relevant jurisdiction (outside of Ireland) and which is a collective investment undertaking, may apply to the registrar to be registered as a migrating company in Ireland by way of continuation.

The registrar shall not register the migrating company as a company in the state unless all of the requirements of the *Companies Acts* in respect of the registration and of matters precedent and incidental thereto have been complied with.



## human rights watch

## isted human reproduction



waiting for us to update our laws.” He highlighted the very serious considerations that arise upon an analysis of the legal status of embryos. The judge stated: “The fact that difficulties are raised does not absolve the legislature from the obligation to consider the degree of respect due to fertilised embryos and to act upon such consideration ‘by its laws’. There has been a marked reluctance on the part of the legislature actually to legislate on these issues: the court simply draws attention to this. That is all it can do.”

Justice Hardiman drew attention to the urgency of the issue, stating: “... scientific developments in the area of embryology and the culturing of stem cells will not stand still. It has been very recently suggested that it may shortly be possible to develop human sperm from such cells.

“If the legislature does not address such issues, Ireland may become by default an



unregulated environment for practices which may prove controversial or, at least, to give rise to a need for regulation.”

#### ‘Treated with respect’

Justice Geoghegan opined that while the pre-implantation embryo does not have the constitutional protection afforded to the unborn, this

does not alleviate the need for legislation to regulate the issue. He stated: “I want however to make it clear at this stage that I am in agreement with the often expressed view that spare embryos, being lives or at least potential lives, ought to be treated with respect. The absence of a statute or statutory regulations indicating how

that respect should be given is undesirable and arguably contrary to the spirit of the Constitution.”

The moral and ethical dimensions to this issue are manifold. The judge emphasised the complexities involved, stating: “Since most of the problems are of an ultra modern nature, I rather doubt that there is a constitutional solution to them, but that does not mean that there cannot and indeed should not be regulation by the Oireachtas.”

#### ‘Relationship of carriage’

Justice Denham held firmly that the constitutional protection for the right to life of the unborn does not apply to pre-implantation embryos. Her argument is based on the focus in article 40.3.3 on the special relationship between a mother and the child she carries. She stated that constitutional protection does not begin before this relationship of carriage

Section 3(j) provides the list of registration documents required by the registrar. An application signed by a director of the migrating company must also be furnished.

**Overseas market purchase:** section 3 of the act introduces the ‘overseas market purchase’. Section 3(a) amends the definition of ‘recognised stock exchange’ as provided for by section 215 of the *Companies Act 1990*. The new definition is as follows: “A recognised stock exchange for the purposes of any provision of the *Companies Acts* is an exchange or a market, whether within or outside the state, prescribed by the

minister for the purposes of that provision.”

An overseas market purchase is defined as a purchase by a company that issues shares, or by subsidiary of that company, of the first-mentioned company’s shares, if the shares are purchased on a recognised stock exchange outside the state. The company that has issued the shares subject to an overseas market purchase shall publish on its website, for a continuous period of not less than 28 days beginning on the day that next follows the overseas market purchase concerned and is a day on which the recognised stock

exchange concerned is open for business, the following information:

- The date of the overseas market purchase,
- The price at which the shares were purchased,
- The number of shares that were purchased,
- The recognised stock exchange on which the shares were purchased.

If a company defaults in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence.

**IAASA committee membership:**

section 27 of the *Companies (Auditing and Accounting) Act 2003* is amended by way of section 4 of the 2009 act. This section provides that a committee established by the Irish Auditing and Accounting Supervisory Authority under section 27 of the 2003 act (prior to the commencement of the 2009 *Companies Act*) shall be deemed to have been properly constituted and shall be deemed to have all the necessary powers to perform its functions accordingly. **G**

*Joyce Mortimer is the Law Society’s human rights executive.*

commences. Having reached this conclusion, she went on to address the issue of spare embryos and their use, saying: "Some states have taken steps to prohibit the keeping of surplus embryos. Other states make specific provision in legislation for surplus embryos. There is no legislation in Ireland on the issue, nor any other form of regulation on assisted human reproduction."

She drew attention to the *Report of the Commission on Assisted Human Reproduction* (2005). The commission recommended that a regulatory body should be established by an

act of the Oireachtas to regulate assisted human reproduction, and that appropriate guidelines should be put in place.

Justice Denham stated that it was clearly a matter for the Oireachtas to regulate this sensitive and important area.

#### Wide abyss of ambiguity

Finally, Justice Fennelly's judgment, albeit concise, also addressed the wide abyss of ambiguity existent in the area of assisted human reproduction in Ireland. The judge stated: "It is disturbing, to use no stronger word, that some four years after publication of the *Report*

*of the Commission on Assisted Human Reproduction*, no legislative proposal has even been formulated. Counsel for the attorney general argued before us that there is no law or public policy regarding the protection of frozen embryos, in short that they have no legal status."

Subsequent to the *Roche* case, Minister for Health Mary Harney assured that proposals would be brought to government in the coming year to assist in the drafting of legislation to govern assisted human reproduction (AHR). A statement from the

Department of Health said that the development and use of AHR technologies "raise legal, social and ethical issues that are complex and profound".

It is decidedly objectionable that there is no legislation to govern this multifaceted issue. It is neither fair nor right that the courts are being called upon to decipher matters of this nature. It is hoped that, five years after the *Report of the Commission on Assisted Human Reproduction*, this important subject will finally attain legal clarification. **G**

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



## CPD FOCUS SKILLNET

### CPD FOCUS training events – March and April 2010

DATE	EVENT	SKILLNET/PUBLIC SECTOR FEE	FULL FEE	CPD HOURS
1 March	Current trends in civil litigation	€84	€112	2 general
1 March	Current trends in civil litigation - Cork via videolink	€84	€112	2 general
10 March	Mortgages and judgment mortgages (following on from the <i>Land and Conveyancing Law Reform Act 2009</i> )	€147	€196	3.5 general
10 March	Mortgages and Judgment Mortgages – Cork via videolink (following on from the <i>Land and Conveyancing Law Reform Act 2009</i> )	€147	€196	3.5 general
15 March	Tactical negotiation skills	€126	€168	3 management
20 March	Sport and the law – joint conference with the Federation of Irish Sport	€95	€125	3.5 general
5 April	Tactical negotiation skills	€126	€168	3 management
21 April	The <i>Land and Conveyancing Law Reform Act 2009</i> : New Circuit Court rules and new PRA rules	€140	€105	2.5 general
23 April	<i>Arbitration Bill 2008</i> and developments in ADR	€112	€84	2 general

## ALSO

SETTING UP IN PRACTICE WILL RUN ON 12 JUNE 2010

THE LAND AND CONVEYANCING LAW REFORM ACT 2009 – DVD AND MATERIALS AVAILABLE FOR PURCHASE: €55

For full details on all of these events visit our webpage [www.lawsociety.ie/cpdfocus](http://www.lawsociety.ie/cpdfocus)  
or contact a member of the CPD FOCUS team on:  
P: 01 8815727. F: 01 672 4890. E: [cpdfocus@lawsociety.ie](mailto:cpdfocus@lawsociety.ie). W: [www.lawsociety.ie/cpdfocus](http://www.lawsociety.ie/cpdfocus)

## letters



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

## Nervous about commercial mediation

*From: John Doyle, secretary, Irish Commercial Mediation Association, c/o Dillon Eustace, 33 Sir John Rogerson's Quay, Dublin 2*

In the course of a recent council meeting of the Irish Commercial Mediation Association (ICMA), it was noted that, despite the increasing acceptance of the

benefits of mediation, many solicitors continue to show a distinct nervousness about using the process. ICMA believes that solicitors, as the first port of call for clients with a dispute, should be conversant with the process of mediation, as its use should be given consideration in all dispute situations.

Mediation is an accepted

feature of Commercial Court cases and similar provisions now apply in certain cases in the Circuit Court by virtue of SI 539 of 2009, which came into effect on 1 January 2010. As colleagues will know, this SI amends the rules of the Circuit Court and introduces a new order 19A, rule 7, which provides for the possibility of

cases being adjourned while mediation or other forms of alternative dispute resolution are considered. The council of ICMA includes a number of solicitors and we would urge colleagues who have any queries regarding mediation to contact any member of the ICMA Council. Their contact details are available at [www.icma.ie](http://www.icma.ie).

## Where's the Golf Enterprise Trophy, 1953?

*From: Brian D O'Brien & Co, Solicitors, 23 Main Street, Swords, Co Dublin*

I have been doing some research in the *Gazette* regarding solicitors and golf.

The Enterprise Trophy originally was for an interprovincial team contest but, in recent history, has been played for by teams from Northern Ireland and Ireland. I have played in this competition since the late '70s and the actual trophy was never produced at any match! A replacement trophy made up of an old cigar tube and golf ball was presented instead, until the competition was suspended with the commencement of the quadrangular competition between Ireland, Northern Ireland, Wales and the Ontario Bar from Canada. A photo of the Enterprise Trophy appeared in the November 1953 edition of the *Gazette*, which would appear to be the only evidence that the trophy actually existed. Rumour has it that this was last seen flying in the air over the lakes of Killarney, having been jettisoned by some disgruntled



Inauguration of the Enterprise All-Ireland Golf Competition: Joseph Barrett (Dublin), AJ Walmsley (Belfast), and CJ Daly (Cork), with the Enterprise Trophy

golfer. However, in any event, it has gone missing. Could I ask that you publish this photo in your *Gazette* in the hope that it is sitting in some solicitor's office? It would be great to get it back to be presented again at interprovincial contests in the future.

*From the Law Society Gazette, November 1953:*

"Following upon the very successful and enjoyable interprovincial meeting held at Little Island Golf Club, Co Cork last year on the invitation

of the Southern Law Association, a similar meeting was held this year on Saturday 17 October at Balmoral Golf Club under the auspices of the Belfast Solicitors' Association.

In the interprovincial team contest (Stableford), Ulster won with a total of 166 points, Leinster being second with 154 points. Some of the Leinster players sportingly opted to play for Connaught to make up the full team for that province. A very handsome trophy was presented by the Southern Law Association for annual

competition in this event, namely a silver replica of the Enterprise engine, to be known as the Enterprise Trophy. The inscription on the plinth reads 'A chose in action presented by the Southern Law Association for annual competition between solicitors from the several jurisdictions of Munster, Ulster, Leinster and Connaught'.

The individual championship was won by Mr J Boston, Belfast, with a score of 37 points, the runner-up being Mr AJ Walmsley, Belfast with 35 points. The prize for best score by a visitor was won by Mr MT Neary with 33 points and Mr GJ Moloney won the special prize in respect of the score for four sealed holes. All visitors were entertained to dinner by the Belfast Solicitors' Association on the night prior to the competition – this date having been arranged so as to facilitate their return journey on the Saturday afternoon. The dinner was a most successful and enjoyable function and there was a large and distinguished attendance to greet the visitors." **G**



# CHARLIE'S ANGLES

**Charlie Flanagan TD, solicitor and Fine Gael's justice spokesman, says he's up for the job, given the opportunity. Mark McDermott met him on the day that Willie O'Dea's affidavit came up for discussion in the Dáil**

**W**hy did you go into law? I was a great believer in process and in reasoning and ensuring that there was a logic or process attached to every decision. I felt that being engaged in legal practice allowed me to advise members of the public in a private capacity on that process.

I worked at the time as a rural general practitioner, engaged in the day-to-day business of law, serving as a lawyer in rural Ireland in the early 1980s. I would have cut my teeth in the District Court in places like Portllington, Portlaoise, Abbeyleix and Rathdowney. Almost all of these court venues have now been amalgamated into Portlaoise. So legal practice has changed quite considerably. I was a general legal service practitioner in rural Ireland until 1987, when I was asked by Fine Gael to put my name forward for a selection convention. My father had been a TD for many years, representing the people of Laois/Offaly. He became ill in 1987. I was asked by the party if I would stand. I did, and I was successful.

## MAIN POINTS

- Life as a solicitor
- Organised crime and mandatory sentencing
- Bankers behind bars?

**Fine Gael has been the main opposition party for quite some time now – what makes you get up and go into work every day?**

I think it is the excitement and variety in public service, the fact that every day brings something different. Mind you, there are remarkable similarities between practising law and practising politics in the day-to-day activity. One's best laid-out diary can be upset by a sudden phone call early in the morning that can have a huge consequence on one's diary.



**Nothing like that this morning?**

No, but last week we had George Lee. Today, we have Willie O'Dea and his statements that I will be asking questions about in the afternoon. But I suppose the schedule and timetable of a TD is endless, insofar as every day brings something completely different. I have to marry the legislative functions of engaging in the legislative process here – the making of the rules and regulations, the processing of the legislation here in Dublin on the one hand, with, say, the constituency representative function of a rural TD on the other, and it is a question of having a balance.

**At the beginning of February, Fine Gael was very critical of the government with regard to tackling criminal gangs and organised crime. How would your party tackle these problems?**

Well, from the criminal justice point of view, what we need is a greater level of coordination. We have a number of almost independent republics. We have



ALL PICS: LENSEMEN AND ASSOCIATES

the gardaí, we have the Courts Service, we have the prison system, and we have the probation and welfare services. There is not, if you like, a great level of coordination or pulling together of all these agencies within the criminal justice system. I think there is a duty on government to make sure there is a more coordinated approach. It seems to me to be a little unfair on the Garda Síochána that we would expect the guards to clean up our streets of drug-taking when, for example, our ports and small airstrips are such a soft touch in terms of the illegal importation of drugs into the state.

**In the past 12 months, much legislation has been introduced specifically to deal with gangland issues. Is this legislation being used to good effect?**

We in Fine Gael, when I was appointed as spokesman, said we would support the government in its introduction of robust legislation that would make a difference. We supported the criminal justice legislation package of last year. But really, you can have all the legislation in the world, but unless you have the resources and the enforcement procedures to go with it, that legislation is pretty useless. For example, we have not had any

gangland hearings in the Special Criminal Court to date. We have not seen the benefits that were heralded by the new legislation, so it is important that we look at more than legislation, that we look at procedure and that we look at resources, and that needs to be done in a coordinated way.

We spend so much on our prison system that we need a root-and-branch policy review of our prisons, because clearly it is not working. Our prisons are full to capacity. We have serious problems with drugs within our prisons and we have the totally unacceptable scenario where people have been convicted by the courts and sent down – many of them convicted of very serious criminal offences and sentenced to long periods of incarceration – but there are reports and evidence that they are continuing to run their evil empires from behind prison bars. There are reports that gangland murders have been ordered from within prisons. That is bringing the whole role and function of prison very much into disrepute if people can continue to engage in crime from within prison, and it is very difficult for any minister for justice to convince the people that [the government] is going to clean up the streets if we have this occurring behind bars within our prisons.



One thing that Fine Gael would do – and I would be anxious to see – would be an end to automatic remission. Obviously, down the years, we have enjoyed the concept of remission for prisoners *ab initio*. It is my belief that remission should be earned, either through education, literacy, working, certificates or preparation for life after prison and reintegration [to society]. I would bring an end to automatic remission.

**Would that not put further pressure on the prison system as it currently stands?**

It would not necessarily, because we have thousands of people in prison on an annual basis for non-payment of a civil debt, or for non-payment of fines, and that should be stopped. I don't believe there is any role or function for [prison sentences for] non-payment of a civil debt. I would look more towards attachment of earnings or community service, or both. I think prison should be reserved for serious criminals convicted of serious crime who pose a threat to society and communities. The jailing of 62 people last year for non-payment of a TV licence fee to my mind is wrong.

As well as ending remission, I believe there are

very strong arguments in favour of having a minimum mandatory life sentence of not less than 25 years for gun murders, save in exceptional circumstances.

**Why stop at gun murders? Why not include knife murders ... any murder?**

Because a life sentence is the most serious sentence that can be handed down by the courts when a jury convicts somebody of murder. The judge has no choice but to sentence the person to a mandatory life sentence. However, if one looks at the length of time that murderers serve in prison, we can see that it is not anything like a life sentence.

Recently we had the unacceptable spectacle in the High Court where a witness gave evidence in a murder trial that a person – the defendant, who was ultimately convicted and is now spending time in jail – was reported as having said: “Listen, if you are going to commit a murder, Ireland is the place to do it, because you will be out after eight or ten years.” I mean, that to my mind is a sad reflection on aspects of the criminal justice system.

Just to speak about mandatory sentencing for a moment, I am not a great fan of mandatory sentences, but I do believe that there is grave disquiet in

## SLICE OF

### Home place

From Mountmellick, Co Laois, originally, but lives in Portlaoise. Married to Mary, they have two daughters, Olwen (20), studying business and economics in Trinity, and Sorchá (13), boarding in King's Hospital School in Dublin – “both of whom are interested in politics, but neither terribly interested in law”.

### Education

“I was educated in Knockbeg College, Carlow, and boarding school. I did history and politics in UCD. I studied in Blackhall Place and qualified in 1982.”

### Most influential person

“My father was a public representative, or actually ‘public servant’ in the strict sense. While

he may be a long time dead, I think the values that he embraced are valid for me, and I often look to them, insofar as being open and hard working, and maybe not having all the answers, but being committed to the task.”

### Chilling out

“I do no more than walk with my big dog, Ernie, a half elkhound.

He and I go off on a Saturday and Sunday morning to the woods and we reflect on the week that has gone by and the week to come.”

### Reading?

“I am reading Myles Dungan's *Conspiracy*, which is a fantastic read of criminal trials in the 19th century. I am getting through it slowly but it is a great read.”





communities at the lack of consistency among the judiciary in terms of sentencing. Now, of course, I recognise the separation of powers and the need to ensure that we, as legislators, don't interfere with the discretion of judges, but I do believe that it is incumbent on the judiciary to introduce an element of consistency that is not there currently.

**What about white-collar crime? Do you think that there are bankers in Ireland who should be behind bars?**

I do, I do. On the face of it, yes, there is undoubtedly a *prima facie* case against a number of senior bankers, and I would form the view that, again, public opinion may well be that, because of it, there is a two-tier system – that white-collar crime is not treated within the criminal justice system in the same way as other criminal offences. I think it is wrong that people who are clearly in breach of both company law and criminal law have not yet been brought to court.

**Do you think Fine Gael would have made any difference had it been in power?**

I think it is important that there be certain targets. I mean, it is a year now since the Director of Corporate Enforcement announced his investigation into banking, and I don't think when that announcement was made that people felt that a full year would elapse without any files arriving at the office of the DPP, or without the DPP taking any action – that we have criminal charges. Now, the director did state himself that there was a resource issue, but I think that was dealt with, and had it been dealt with in a more rapid manner by the government, maybe action would have been taken by now. But I think it is essential that both the Director of Corporate Enforcement and the Director of Public Prosecutions act on what, on the face of it, appears to be a breach of the criminal law.

I think it is important that there would be certain time limits and targets placed on, for example, the Director of Corporate Enforcement. I would have thought that perhaps he might have published an interim report that would indicate what exactly he has done to date, or what he proposes to do, but a scenario [exists] where people who may have a case to answer

are enjoying the high life in more sunnier climes and away from the economic hardship that families are suffering by their actions. To my mind, that again is a poor reflection of our criminal justice system.

**How do you react to rogue solicitors and their effect on the image of the profession?**

Some high-profile cases have undoubtedly let down the profession in a way that is unfair to the 99% of hard-working members of the profession who are engaged in what is the essence of public service – serving the public, serving the needs of the citizen, albeit for the most part in the private sector. I think that the high-profile cases have damaged the profession, but the profession has responded by changing its structures and not being resistant to change, and I think a major component of that change will be the Legal Services Ombudsman, whose appointment is somewhat overdue.

**Are any names being whispered?**

I don't know. If their names are being whispered, I am not sure, but I think the delay is somewhat undue.

Another challenge that the Law Society faces is on the matter of, I would say, the sole practitioner. It is a well-hackneyed phrase that the sole practitioner represents the backbone of the profession, but being a sole practitioner has become a lonely and fraught endeavour for many. I think there is a lot to be said – having practised myself, albeit for a very short period as a sole practitioner – for the pooling of resources. I think there is a lot to be said for being in a position to have a cup of coffee with colleagues on a daily basis, to talk about a difficult file or a problem.

I think sole practitioners should not be reluctant to embrace amalgamations, particularly in smaller practices, and particularly, but not exclusively, the rural general practice, because we are moving more and more now towards [the role of] specialist advisor. Sometimes I feel that the debate is being stifled with the hackneyed answer about the sole practitioner being the backbone of the profession. In other words, it is untouchable, and sometimes I feel for sole practitioners, of which there are many. **G**

***“In many cases, particularly in criminal drug cases, what we as legislators laid down to be a mandatory sentence is not being adhered to by the courts, who appear to be opting for the ‘exceptional circumstances’”***

# THE BOTTOM LINE

**Inadequate profits lead to insufficient investment in your practice and in pension provision and, ultimately, will be reflected in an inadequate retirement income. It's time to get with the programme, says Yvonne McCormack**



**T**his year is set to be one of the most challenging trading times of the last decade. Our business management skills are being tested to the limit, and the year ahead will clearly highlight those who took the glamorous route of surfing on the crest of the 'Celtic Tiger' wave and those who battled and ripped through the breakers. Anyone can manage a business during a boom; however, it requires skill, determination and real entrepreneurship to manage through a recession. With cash flow crucial for the survival of many businesses, you must monitor and manage all aspects of your practice: cash collection and billable and controllable overheads, to name some of the key areas.

## **Profit motive**

Most people enter business to make a profit. It is simple business economics: profit = survival. Business owners across all sectors fall into two categories when it comes to making profits, taking either a passive approach or an active approach. A passive approach means you are happy to rely on whatever profits are left after paying all the overheads – surprisingly, the majority of people settle for this option. A passive style of managing your practice does not involve setting goals or preparing any business development plans. You merely accept whatever is left over after you clear all the overheads and, as a result,

you tailor your lifestyle to suit the profits remaining at the end of the year. It is a real '*que sera sera*' approach and will not get you through the difficult year ahead.

The alternative is to take an active approach to business management. This will be a hard approach to take given the economic outlook, but will be the only option to ensure business survival. This approach means you decide how much is needed to cover salary, tax, pension and overheads and then strive to achieve this amount. Too few people adopt this approach, despite the fact that it's the preferable of the two options. You must strive to make enough profit to enable you to achieve both business survival and your overall goals.

Profit is critical for working capital and retirement planning. Inadequate profits will result in an inadequate investment in your practice, pension provision, and ultimately an inadequate retirement income. To use a cliché 'turnover is vanity, profit is sanity and cash is reality!' Think profit at all times. You must adapt an active approach to profit *now*. Don't leave it too late to plan your business/future – *act now*.

## **Man with a plan**

The majority of solicitors focus their energies predominantly on providing a service to their clients. However, this is often done to the detriment of their own practices. The majority of your time will

## **MAIN POINTS**

- **Monitoring and managing your practice**
- **Devising a business plan**
- **Reviewing your overheads**
- **Timely and accurate billing**



obviously be spent working *in* the business, but you must also set aside time to work *on* the development of the business. The most profitable legal practices are the ones that have devoted the time to plan and review their operation.

Step one is to formulate a business plan. Identify where you are now, decide what you want from your business, and establish a mission. Decide where you want to be five, ten or 20 years from now. Once you have set aside time to answer the above questions, you can then start to document your business plan and set your goals for the next five years. Your practice will not survive if you continue to do the same thing as you have been doing, but expect to achieve different results. Setting aside time to manage your business will be the key to survival. The recession has had a serious negative impact across all business sectors. However, it has brought some positives too. Business managers/owners are now examining their overheads and identifying areas of waste and inefficiency, which in the boom went unnoticed. You must review all your overheads in detail. Key overheads for most practices are:

- Staff salaries,
- Rent,
- Professional indemnity insurance,
- Advertising,
- Printing and stationery, and
- Telephone.

*Staff salaries.* As a rule of thumb, your wage costs should be about a third of your total turnover. Some practices struggle to achieve this goal. Solicitors' practices seem to be very reluctant to implement wage cuts or redundancies. Most other business sectors have all implemented pay cuts from 5% to 20% across all staff levels. You need to address this issue as soon as possible. A lot of practices are overstaffed, and you need to ask yourself whether yours should be a profitable one-solicitor practice or a struggling two-man show. The luxury of deciding what work you would like or not like to do is now gone – for example, litigation may not be your cup of tea, but it could be the difference between a profit and loss in your accounts.

*Rent.* This is an overhead that, if applicable to your practice, also requires examination. Are you paying too high a rent given the current economic climate? Meet with your landlord and discuss the possibility of a rent reduction. Every saving made will increase the profitability of the practice.

*Professional indemnity insurance.* Cover rocketed this year, but it's a necessity that you have very little control over. You should, however, budget for this cost and ensure you have adequate finance available to pay for it when the time comes. Ensure you spend time completing the form and detail the services provided correctly.

*Advertising.* This is a necessary overhead if you are



# Gwen Malone!

Stenography Services

Commercial & Civil Litigation Specialists

## Capturing the Spoken Word

- Real-Time Transcript Streaming
- Digital Audio Transcription
- Disciplinary Hearings
- AGM & Board Meetings
- Public Inquiries & Confidential Meetings
- Tribunals
- Video Conferencing Facilities
- Secure Transcript Web Casting
- Same Day, Door-To-Door Transcript Delivery

Tel: +353 1 878 2000

Gwen Malone Stenography Services The Law Library, 145-151 Church Street, Dublin 7.  
Fax: +353 1 878 2058 After Hours: +353 872 491 316 +353 1 845 4456 gmalone@gmss.ie

DX1071

Gwen Malone  
Stenography Services

www.gmss.ie

## The National Asset Management Agency Act 2009: Annotations and Commentary

By Hugh B. Byrne and Louis McEntagart

**This publication will assist legal practitioners, academics and other professionals navigate their way through this complex piece of legislation.**

The National Asset Management Agency Act 2009, establishes the National Asset Management Agency (NAMA) and is one of the most significant pieces of legislation enacted in the history of the State.

One of the primary purposes of NAMA is to address the serious threat to the economy and the need to maintain and stabilize

the financial system in the State. The Act also provides for the facilitation of the restructuring of credit institutions of systemic importance to the economy.

### Key Features

- Detailed definitions of both legal and financial terminology
- The opportunity to cross reference financial terms with academic financial text books.

- A section by section commentary which will inter alia cross reference the section under review to other relevant sections within the Act and to other pieces of relevant legislation
- A section by section commentary on the meaning or suggested intention of the section will facilitate readers in determining the impact of the legislation



### About the authors

Hugh B. Byrne B.L. was called to the Bar in 2004. He has lectured in finance with U.C.D. and is now a practicing barrister.

Louis McEntagart B.L. has practised almost exclusively in commercial law and has a depth of experience covering the areas of banking law, finance and company law.

ISBN: 978184766 5041

Price: €95.00

Pub Date: February 2010

Bloomsbury  
Professional

### To place your order simply:

Visit: [www.bloomsburyprofessional.com](http://www.bloomsburyprofessional.com)  
or call Bloomsbury Professional on: (01) 637 3920. Fax to: (01) 662 0365  
Email: [direct.orders@marston.co.uk](mailto:direct.orders@marston.co.uk) Post to: Jennifer Lynch, Bloomsbury Professional,  
The Fitzwilliam Business Centre, 26 Upper Pembroke Street, Dublin 2



Now that's  
what we call  
turnover

serious about growing and developing your business, but spending should be monitored very closely. There are many ways of advertising at minimum cost to the business. Consider guest speaking at seminars, or writing articles in trade magazines or for national/local newspapers. If your business is to thrive in today's highly competitive environment, then everyone employed within your practice needs to be involved in marketing, from the receptionist to the senior partner. Ensure your receptionist is enthusiastic and positive when dealing with clients on the telephone. Consider sending emails/flyers detailing services offered by your firm. For example, a lot of your clients may not realise that solicitors deal with employment law issues and can help with day-to-day problems arising with staff. Referrals are the key to growing your business. Remind your clients that you are always looking for new business and ask them to refer you whenever possible. When a client makes a successful referral, thank them and acknowledge the referral made.

#### *Printing and stationery/telephone.*

The area of printing and stationery is notorious for high profit margins. You should seek out alternative suppliers and try to obtain the best deal possible. Recycle paper where possible. There are savings to be made by simply switching your telephone service provider and ensuring you have the right business package to suit your needs.

#### **Surviving the recession**

Fee income for all solicitor practices is dropping – in some cases between 10% and 30%. Despite best efforts in saving and cutting costs, if the top line is reducing, the pressure on the bottom line will not be overcome.

Timely and accurate billing is of utmost importance, given that all predictions indicate that economic growth will be slow and that there is a high level of uncertainty surrounding the current economic situation. Cash is king, and is crucial if your practice

is to survive the difficult year ahead. If your practice is engaged in litigation, then insist on payment up front for medical reports. Consider setting a limit on outlays expended on behalf of clients and, if it reaches a certain level, then seek payment from the client immediately.

Prompt billing will inevitably lead to prompt payment, as clients have a clear sense of what the bill relates to. If you issue a client a bill months after the work has been carried out then, in some cases, the value of the work done is lost to the client. This can lead to arguments over the fee and discounts being issued. Try to resolve any issues surrounding fees as soon as possible and respond quickly to missing bill enquiries.

#### **When the going gets tough**

It will be a tough task to grow your business in 2010. Clients are looking at the cost of fees. Past loyalties no longer mean you will retain the client and, as a result, clients will be on the move to and from other practices.

You could also consider the possibility of buying another practice. A merger or an acquisition may be a good way of securing your future. When considering buying another practice, ensure you engage the services of suitably qualified professionals to carry out a due diligence on the target practice. Select a practice with a similar client base or perhaps a practice that has a specialised niche area of the market. Synergy of costs by merging a practice may turn a non-profitable practice into a profitable one by saving on rent, salaries and so on. Despite general opinions, a number of the financial institutions are prepared to back a merger or acquisition, particularly within the legal sector.

Consider other areas of expertise that may be within your firm that have not yet been exploited. Perhaps one of your solicitors has developed a particular field of expertise that has gone unnoticed due to the high level of conveyancing undertaken over the past few years. It may now be time to capitalise on this expertise and promote this in the year ahead.

In summary, if you fail to plan, you plan to fail. Take the time to consider your business and know exactly where you need to be in 12 months' time. The good times are over for the foreseeable future, and it is now essential to work at making a profit.

The passive approach to profit making is not an option. Take control of your business and take an active approach to profit making. Profits are still there to be made, but the right approach must be taken. Remember: the bottom line is the bottom line. **G**

*Yvonne McCormack is a partner in the audit and accounts services section of Haydon Chartered Accountants.*

***“Clients are  
looking at the  
cost of fees.  
Past loyalties  
no longer mean  
you will retain  
the client”***

# NAMA drama

**Given that no assets have yet been transferred to NAMA, it remains to be seen how effective it will be in achieving its purposes. Hugh B Byrne and Louis McEntagart give an overview of some of the parts of the *NAMA Act* that may be relevant to practitioners**

**T**he *National Asset Management Agency Act* was signed into law on 22 November 2009, and 21 December was the establishment day for the purposes of section 8 of the act.

Part 1 of the act comprises seven sections. Section 2 contains the purposes of the act, while section 7 sets out the offences under the act and provides, among other things, that it is an offence to disclose confidential information.

It is also an offence if a person intentionally, recklessly or through gross negligence provides false or inaccurate information to NAMA. Furthermore, various offences are specified in relation to a person that intentionally withholds information. A credit institution that commits an offence is liable on summary conviction to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €20,000,000.

A person other than a credit institution that commits an offence is liable on summary conviction to a fine not exceeding €5,000, or imprisonment for a term not exceeding 12 months, or both; or, on conviction on indictment, to a fine not exceeding €5,000,000, or imprisonment for a term not exceeding five years, or both. Section 7 also deals with offences that have been committed by a body corporate and, in certain circumstances, exposes a director, manager, secretary or other officer to the latter set of sanctions.

## **Acquisition of bank assets**

Part 6, sections 80 to 111, deal with acquisition of bank assets and impose certain obligations on participating institutions. The applicant credit institution or participating institution must produce for inspection credit facility documentation, books and records kept in connection with an eligible bank asset. NAMA can make an application to the High Court in the event of non-compliance. A debtor, associated debtor, guarantor or surety of a credit

facility that has been notified that the credit facility is an eligible bank asset must cooperate and must, in good faith, promptly furnish to the participating institution such information relating to the eligible bank asset as the participating institution requests. The participating institution may apply to the High Court for an order directing the person to comply with the requirement. In both instances, the court may make any interlocutory order it considers necessary in the circumstances. These hearings may be conducted otherwise than in public.

NAMA may acquire an eligible bank asset of a participating institution, although it is not obliged to acquire any particular, or any eligible bank asset on any grounds.

## **Powers in relation to assets**

Chapter 2 of part 9 facilitates the disposal of assets by NAMA by transfer, assignment, conveyance, sale or otherwise, notwithstanding a legal or equitable restriction on such sale and notwithstanding a contractual or statutory impediment, requirement for notice to, or documentation from, a third party or any other statutory restriction on sale (section 139). NAMA can discharge prior charges in accordance with their terms (section 140). It can apply to the District Court to enter onto land secured by an acquired charge in order to carry out works to preserve the asset (section 141). In executing a deed of conveyance with regard to its interest in land, NAMA effects an extinguishment of all charges to which it has priority, and those chargees only have recourse to the proceeds of sale (section 142). NAMA, in executing a conveyance of its legal estate in land, brings to an end any equitable interest in the land, so that the purchaser (with or without notice) takes the land clear of that interest (subject to certain exceptions). The equitable interest thereafter attaches to the proceeds of sale (section 143).

## **MAIN POINTS**

- Acquisition of bank assets
- Powers in relation to assets
- Legal proceedings





# ding dong!

We said 'NAMA', not 'llama'

Pursuant to chapter 3, NAMA is given the power to appoint statutory receivers where either a power of sale or a power of appointment becomes exercisable (section 147). These receivers are not subject to certain restrictions imposed under the *Land and Conveyancing Law Reform Act 2009*, they are the deemed agent of the chargor, they are not displaced by the appointment of a liquidator or examiner, and they are not obliged to sell charged property at any particular time or at all.

Pursuant to chapter 4, NAMA can apply to court for a vesting order where the sum secured by its charge is unlikely to be recovered in a sale within three months and the power of sale is exercisable. On such application, a court shall make an order vesting the land in NAMA if satisfied that there is no reasonable prospect of redemption and if satisfied that the sum secured would not be recovered on sale within three months. On the making of the order, the court will order payment by NAMA to prior charge holders of the lesser of the value of their charge or the value of the land, and payment of the value of the charge or the value of the land or the remainder of it in the case of multiple charge holders. This order extinguishes the chargors equity of redemption, vests title in NAMA, and extinguishes the interest of other

chargees (section 155).

Chapter 5 facilitates the compulsory acquisition of land by NAMA where it can satisfy the conditions as set out in section 158. The right to acquire is subject to first making a reasonable attempt to acquire the land by agreement. The acquisition must be on application to court and must be on notice to interested parties, and the court is obliged to consider objections from persons claiming an interest or estate in the land. The order will be made if the court is satisfied that either the conditions in section 158(1) or (2) apply. Following the making of an acquisition order, NAMA may serve a notice to treat on interested parties and may, prior to conveyance or ascertainment of price, enter into possession. NAMA may apply for an order vesting the land in it prior to the fixing of compensation and prior to the conveyance of estates or interests to it where such vesting is necessary in connection with the purpose for which it has been authorised to acquire the land. Compensation in default of agreement shall be assessed in accordance with the *Acquisition of Land (Assessment of Compensation) Act 1919*. The effect of the transfer order is to vest the fee simple free from encumbrances in NAMA, together with all estates, rights, titles and interests from the date

# Headaches over Missing Beneficiaries? Here's the Remedy!

- Fixed or Contingency Fee.
- Full Report for Indemnity Insurance.

**MASSEY & KING LTD.**  
Specialist Legal Genealogists  
& Probate Researchers

Specialist Legal Genealogists  
& Probate Researchers

[www.masseyandking.com](http://www.masseyandking.com)

tel: 01 492 8644 email: [info@masseyandking.com](mailto:info@masseyandking.com)

# CHARLTONS

HONG KONG  
SOLICITORS

CORPORATE FINANCE

HONG KONG SHANGHAI BEIJING

Charltons invites applications from solicitors with junior to intermediate post-qualification experience for a corporate finance practice Hong Kong solicitors firm based in Hong Kong.

Charltons' practice covers a range of corporate transactions including corporate finance, restructurings, capital markets, securities, funds and M&A, frequently with a cross-border or mainland China focus.

Please apply with full CV to :

CHARLTONS

10/F Hutchison House

10 Harcourt Road

Hong Kong

Telephone : (852) 2905 7888 Fax : (852) 2854 9596

Email: [enquiries@charltonslaw.com](mailto:enquiries@charltonslaw.com)

[www.charltonslaw.com](http://www.charltonslaw.com)

## MOON BEEVER

SOLICITORS

### UK PROBATE AND PRIVATE CLIENT SERVICES

Moon Beever is a long established Law Firm based in central London and we can offer you and your clients specialised services including:

- Extracting UK Grants of Probate/ Administration and re-sealing Irish Grants in the UK
- Administration of UK Estates
- Advice on UK Inheritance Tax and domicile
- Wills for non UK domiciled individuals dealing with UK situs assets
- Purchase and sale of properties and businesses

Contact Julian Hay on 020 7612 7743 or

Email: [jhay@moonbeever.com](mailto:jhay@moonbeever.com)

**Moon Beever Solicitors**

24-25 Bloomsbury Square, London, WC1A 2PL

Tel: 020 7637 0661 Fax: 020 7436 4663

Email: [info@moonbeever.com](mailto:info@moonbeever.com)

Website: [www.moonbeever.com](http://www.moonbeever.com)



**SPECIAL OFFER**  
FOR YOUR PRINTED STATIONERY  
FOR THE MONTHS OF  
FEBRUARY, MARCH & APRIL

Same price for single, two or full colour  
letterheads on guaranteed laser paper

LETTERHEADS (A4: 210x297mm)	FREE Memo Pads Customised with your Company Details (A5 - 100 sheets per pad)	PRICE
5,000	10 Pads FREE	€ 242.00
10,000	20 Pads FREE	€ 320.00
20,000	40 Pads FREE	€ 480.00
30,000	60 Pads FREE	€ 649.00

Price includes nationwide delivery to your door

Prices for additional quantities or letterheads on  
watermark paper\* are available on request.

(\*Free memo pads not available if order is on watermark paper)

**Print 10,000 Letterheads on  
100gsm Guaranteed Laser Paper**

and  
**SAVE  
€460**

Samples on Request

**CONTACT OUR SUPPORT TEAM TODAY**

**ON 043 33 50500**

**OR EMAIL [sales@turnersprinting.com](mailto:sales@turnersprinting.com)**

Visit our company website [www.turnersprinting.com](http://www.turnersprinting.com)

And our template based commercial website for  
business cards & compliment slips [www.swift2print.ie](http://www.swift2print.ie)

[www.turnersprinting.com](http://www.turnersprinting.com) | [www.swift2print.ie](http://www.swift2print.ie)

Turners Printing, Earl Street, Longford, Co. Longford

Telephone: + 353 (0)43 3350500 Email: [sales@turnersprinting.com](mailto:sales@turnersprinting.com)



specified in the order. All rights of way, easements and wayleaves in, on, relating to or over the land shall vest in NAMA. Persons so affected will be entitled to compensation.

Pursuant to Chapter 6, a person who owns charged land and other relevant land (or where he holds an option with regard to, or interest in, other land) cannot deal with it without reasonable notice to NAMA, where the fact that such relevant land or interest or option is not owned by NAMA gives rise to it not being able to realise the full value of the charged land. Failure to comply with this restriction can render a transfer voidable at NAMA's option, save as against a purchaser in good faith for value.

A debtor, associated debtor or a person who is a person on whose behalf the debtor or associated debtor acts as nominee or trustee in relation to an acquired bank asset shall not, if such person is in default in relation to an acquired bank asset, acquire a legal or beneficial interest in any property comprised in the security forming an acquired bank asset (section 172(3)).

The minister may also prohibit or restrict the acquisition by certain persons in a prescribed class of debtor, or persons connected with those persons, of any legal or beneficial interest in property comprised in the security forming an acquired bank asset, where that person is in material default of any payment obligation to NAMA or a NAMA group entity for which a satisfactory arrangement to remedy the default has not been made. The minister can regulate the requirements that such a person would have to meet in order to acquire property forming part of the security comprised in an acquired bank asset or bank assets of a specified class of acquired bank assets.

### Legal proceedings

Chapter 2 of part 10 relates to legal proceedings commenced on or after 30 July 2009 and applies to legal proceedings commenced by a person who is a debtor, associated debtor, guarantor or surety in relation to a bank asset, or a participating institution in connection with a bank asset if the bank asset is specified (whether at the commencement of the proceedings or afterwards) in an acquisition schedule.

A claim to which chapter 2 applies gives rise only to a remedy in damages or other relief that does not in any way affect the bank asset, its acquisition, or the interest of NAMA or the NAMA group entity or any property the subject of any security that is part of such bank asset. It is possible to apply for an order that a person may apply for a remedy other than or in addition to the aforesaid remedies, although the leave of court is required to make such an application.

In effect, in order to apply for a remedy other than damages or a relief that does not in any way affect the bank asset, a two-stage mechanism is in place. Firstly, the applicant must apply for leave to apply for such a remedy. This application may be made on an *ex parte* basis. If leave is granted, the application for an order permitting a person to apply for an additional remedy is made. The court will only make the latter order if it is satisfied that, if the claim were established, damages would not be an adequate remedy.

Chapter 3 of part 10 deals with legal proceedings generally and applies to all legal proceedings to which NAMA or the NAMA group entity is or becomes a party, relating to a designated bank asset or acquired bank asset, or otherwise relating to NAMA. The act provides, among other things, that:

***“It is also an offence if a person intentionally, recklessly or through gross negligence provides false or inaccurate information to NAMA”***

- NAMA may elect to be substituted as plaintiff for a participating institution,
- NAMA may elect to be substituted as a counterclaimant for a participating institution,
- A judgment obtained by a participating institution shall be taken to have been assigned to NAMA or the NAMA group entity concerned,
- The court shall make orders for costs in relation to any interlocutory applications and measure same.

Limitations are also provided on the power to grant injunctive relief and in relation to judicial review.

Where an interlocutory application has been made, the court shall make orders for costs and, having heard submissions from the parties in relation to the level of the costs, the court shall measure the costs. These costs are enforceable against the party directed to pay the costs. If the costs are not discharged within 30 days, any party to the proceedings can apply to court, or the court can, of its own motion, impose such terms as to the continuation of proceedings pending the discharge of the costs.

This mechanism ensures that costs are discharged on an ongoing basis and may provide parties to the proceedings with comfort against costs incurred in proceedings involving a party with solvency issues. A different procedure is in place in relation to costs arising from a review of whether or not a bank asset is an eligible bank asset (see section 118).

Given that no assets have yet been transferred to NAMA, it remains to be seen how effective NAMA will be in achieving the purposes of the act. **G**

*Hugh B Byrne and Louis McEntagart are practising barristers and the co-authors of The National Asset Management Agency Act 2009: Annotations and Commentary (Bloomsbury Professional).*

## LOOK IT UP

### Legislation:

- *Acquisition of Land (Assessment of Compensation) Act 1919*
- *Land and Conveyancing Law Reform Act 2009*
- *National Asset Management Agency Act 2009*



# Suits you,

**There has been much recent discussion of mortgages and borrowers defaulting on them. A series of new legal measures have introduced significant changes into the way mortgage enforcement suits are run. Neil Maddox explains**

In the current economic climate, there has been much discussion of mortgages and, more particularly, the defaulting of borrowers on such mortgages. It is not, then, surprising that a number of new measures have been introduced, changing not only the law in relation to the enforcement of such securities, but also the manner in which they are created. In particular, the *Land and Conveyancing Law Reform Act 2009* has created a new legal regime, the effects of which will be felt for many years to come. In tandem with this major piece of law reform are changes to Circuit Court rules that will streamline the operation of such suits in practice.

## Conceptual and procedural changes

The mortgage provisions contained in the new act came into effect on 1 December 2009. Parts 10 and 11 of the act re-enact many of the provisions relating to mortgages contained in the *Conveyancing Acts 1881-1911*. For the most part, these changes are a restatement of the existing law, but there are some conceptual and procedural changes introduced that are of significance.

The first point of note is that parts 10 and 11 apply to all mortgages created after the commencement date – that is, mortgages created prior to that date would seem to be subject to the old legal rules, with only new mortgages being governed by the act.

Secondly, most of the provisions can be ‘contracted out of’, as was the case under the *Conveyancing Acts*, and most lending institutions already have standard mortgage documentation in place to take account of this. However, the provisions of part 10 may not be contracted out of for new mortgages for residential premises, described as ‘housing loan mortgages’. A ‘housing loan mortgage’ is broadly defined by the act as a credit agreement on the security of a mortgage to enable a person to buy, construct, improve or refinance a house to be used as the principal residence of the borrower or one of his dependants, or to construct a dwelling where the borrower is dealing as a consumer.

It will not be possible for a lender to exercise their rights of possession and sale over properties secured

by a housing loan mortgage without a court order, unless they obtain the written consent of the borrower. This latter requirement is particularly onerous, as the consent must be given within seven days of the taking of possession or sale of the property, a hugely impractical requirement. The mortgagee in possession will no longer be in adverse possession of the property, and will not extinguish the borrowers’ rights after 12 years.

## Further changes

Further changes have been introduced to reflect the fact that a mortgage is security for a loan. As such, all of a mortgagee’s remedies in event of default by the mortgagor must now be exercised to realise the security or protect the mortgaged property, and this must be averred to in evidence. A particularly useful provision has been introduced for summarily taking possession of abandoned property in order to protect the mortgaged property. This is independent of the mortgagee’s right of possession and does not in any way affect that power.

Furthermore, a mortgagee who takes possession in these circumstances is relieved of having to account strictly as a mortgagee in possession would normally be obliged to do. The application can be made (one would assume in a summary manner) before either the District Court or any other court seised of proceedings relating to the mortgaged property. If enforcement proceedings were already in being and the mortgagee wished to seek such an emergency order, it can be done as part of those proceedings. The mortgagee must satisfy the court that the property is abandoned and, as a matter of urgency, an order should be granted to prevent deterioration, damage or the entry of trespassers (for example, the presence of squatters on the land). The court is granted a broad discretion as to the terms of the order and, in particular, may specify the length of the period of possession, the works that are to be carried out, and the costs allowable to the mortgagee. It seems clear that the costs of taking possession of and repairing the property, as well as those incurred in making it fit for sale, will be allowed to the mortgagee in any account.

## MAIN POINTS

- Procedural changes in mortgage enforcement suits
- Judgment mortgages
- Land and Conveyancing Law Reform Act 2009

# sir



The creation of legal mortgages over unregistered land is now brought into line with the law for registered land and will in future operate by way of charge. A mortgagee's remedies will now vest on the execution of the mortgage, but they will become exercisable in the same manner as before. Also, much of the court's discretion to deal with mortgage suits has been given statutory expression, and a number of archaic and unused doctrines have been abolished or substantially amended.

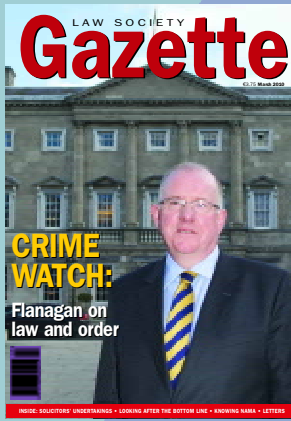
The distinction between the power of sale arising and becoming exercisable has also been abolished. After the commencement of this part, a mortgagee's remedies vest as soon as the mortgage is created, and are no longer dependant upon some default occurring. A mortgagee may now have the power to sell the property, free from the equity of redemption, irrespective of whether the power of sale has become exercisable. He is still not concerned to inquire if there is any irregularity in the exercise of the power of sale. Prior to the commencement of this chapter, it was extremely important for a purchaser of mortgaged

lands from the mortgagee to discover if the power of sale has arisen (normally after some default had occurred) in order to pass good title to a purchaser. This is no longer the case, and a purchaser from such a mortgagee need no longer be concerned to see if some default had occurred, as was previously the case.

Part 10 also introduces a requirement, much followed in practice, that the mortgagee give 28 days written notice to the mortgagor before any of the rights become exercisable. This gives the mortgagor time to redeem the situation before the matter is brought to court.

#### **New Circuit Court Rules**

Part 10 of the 2009 act indicates that, where a mortgage is a 'housing loan mortgage', the Circuit Court has exclusive jurisdiction to hear enforcement claims on foot of it – that is, jurisdiction has been removed from the High Court to hear such claims. Part 10 applies prospectively, to all mortgages created after 1 December 2009, and this prohibition does not apply to all existing mortgages as of that date.



Whose copy of the  
Gazette are you reading?

Why not  
subscribe ...

€57  
FOR  
10 ISSUES

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

I enclose my cheque for €57

Please charge my ☐ Access ☐ Visa ☐ Mastercard ☐ Eurocard

Credit card number:

Expiry date:   
MONTH/YEAR

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

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



However, there has been an agreement among the Irish lending institutions that they will pursue these cases in the Circuit Court. It should be noted, however, that a plaintiff moving on foot of one of these 'old' mortgages may still be called upon to prove that the court has jurisdiction by virtue of the rateable valuation of the property, as the 2009 act does not grant it to mortgages created prior to its commencement.

In anticipation of the increase in mortgage suits that will be processed by the Circuit Court, procedural changes have been introduced to the *Circuit Court Rules* by virtue of SI 264 of 2009.

First, a new form of civil bill is introduced (a possession/well-charging civil bill) and added to the SI. The hearing will now be on affidavit evidence (as it currently is in the High Court) unless there is an issue that requires determination at plenary hearing. The civil bill is returnable to the county registrar, who is given wide powers to make directions in relation to how the matter may proceed. If no appearance or defence is filed, or if no replying affidavit is filed that reveals a *prima facie* defence to the claim, the county registrar may make an order of possession of the property. These are far more extensive powers than those vested in the master of the High Court. If such an affidavit is filed, the matter is sent forward to the circuit judge for hearing.

#### **Registration of Deeds and Title Act**

The 2006 act abolished land certificates and certificates of charge. They were still of legal effect, however, for three years after the commencement of the act. As such, a chargeholder who retained the land certificate could prevent the registration of further encumbrances. As of 1 January 2010, the transitional period has ceased, and these certificates are worthless. It will be possible to register encumbrances against a folio without the production of the land certificate. Any person or body who held a land certificate by way of security and who has not registered that interest as a lien under the 2006 act should do so immediately, as they risk losing priority to another encumbrancer who registered their interest in the interim.

#### **Judgment mortgages**

Part 11 of the 2009 act abolishes many of the archaic requirements in relation to the registration and enforcement of judgment mortgages contained in the *Judgment Mortgages Acts 1850-58*, and all judgment mortgages registered from its commencement must be done under the new legislation. It appears that all judgment mortgages registered prior to 1 December 2009 will be subject to the old law, as a 'judgment mortgage' is defined in the act as a mortgage registered pursuant to part 11 – that is, the 2009 act does not

apply to judgment mortgages registered under the old legislation. It is thus conceivable that the validity of such a mortgage may still be challenged for failing to comply with the 1850-58 acts, but this will no longer be possible for 'new' judgment mortgages.

In particular, section 6 of the 1850 act, which required a highly detailed judgment affidavit, is repealed by this section. A much simpler form of affidavit is now used and is available on the Property Registration Authority website. This signals the death knell for the 'technical defence' to the enforcement of a judgment mortgage, whereby a minor inaccuracy or omission in the judgment affidavit could invalidate it.

However, much of the old law relating to the position of a judgment mortgagee as a volunteer for the purposes of priority, the effect of registration, and so on, remains unchanged by these new provisions. Nevertheless, it is of significance that all judgment mortgages will now operate by way of charge, and

all judgment mortgagees who have registered their mortgages pursuant to the terms of part 11 will be given statutory power to apply for possession and sale of premises. This part also cures the difficulty caused by the judgment of Laffoy J in *Irwin v Deasy*, whereby a judgment mortgage was unenforceable against registered land held on a joint tenancy unless all co-owners were also subject to the judgment.

All judgment mortgages registered pursuant to section 116 are now specifically empowered to apply, among other things, for an order for sale in lieu of partition under this act. A court will then have a discretion as to how the interests of the other co-owner(s) are discharged, and this may include a sale

of the property with a division of the proceeds between the judgment creditor and the co-owners.

#### **Welcome changes**

It is essential that practitioners dealing with such securities familiarise themselves, not just with the provisions of the 2009 act, but also with the new court and Land Registry rules that follow from it. It will be a necessity for many banking and conveyancing lawyers to be familiar with both the old law and the new for many years to come, which will create a complication in the medium term for the practitioner. Overall, though, these changes are to be welcomed as simplifying many of the old and impractical rules in this area **G**

---

*Dr Neil Maddox is a Dublin-based barrister and lecturer at NUI Maynooth and is the author of Mortgages: Law and Practice (Round Hall, 2007) and The Land and Conveyancing Law Reform Act 2009: A Commentary (Round Hall, 2009).*

***"It will be a necessity for many banking and conveyancing lawyers to be familiar with both the old law and the new for many years to come"***



**Newly admitted in Northern Ireland**

At the admission ceremony for newly-admitted solicitors in Northern Ireland on 12 January 2010 were (*l to r*): Ken Murphy (director general of the Law Society of Ireland), Barry Finlay (past-president of the Law Society of Northern Ireland), Norville J Connolly (president of the Law Society of Northern Ireland), the Lord Chief Justice of Northern Ireland Sir Declan Morgan, Gerard Doherty (president of the Law Society of Ireland), John D Shaw (past-president of the Law Society of Ireland) – both newly-admitted – and Alan Hunter (chief executive of the Law Society of Northern Ireland)

## Midlands' meeting in Mullingar



PIC: EYNSPHOTOSERVICE.IE

At the annual general meeting were (*front, l to r*): Anne Marie Kelleher (secretary), Gerard Doherty (Law Society president), Mary Ward (MBA president) and Ken Murphy (director general). (*Back, l to r*): Rhona Kelly, Charlie Kelly, Aidan O'Carroll, Brian O'Meara (treasurer), Dermot Scanlon and Susan Fay (PRO)

The AGM of the Midland Bar Association was held on 10 February. Mary Ward has begun her second year at the helm, ably assisted by Anne Marie Kelleher (secretary), Brian O'Meara (treasurer) and Susan Fay (PRO). President of the Law Society Gerard Doherty and director general Ken Murphy were present and solicitors were updated on professional indemnity

insurance, commercial undertakings and the Law Society's loan guarantee to the SMDF. The director general also advised of the threat to the reciprocal recognition of qualifications with England and Wales. The incoming president advised of upcoming seminars and said that it was bar association policy to run seminars locally at a low cost in these straitened times.



**Michael MacNamara Scholarship winner**

Peter Mannion from Tuam, Co Galway, is the winner of the Michael MacNamara Scholarship, sponsored by RDJ Glynn Solicitors (*l to r*): Pádraic Brennan (RDJ Glynn Solicitors), Dr James J Browne (NUI Galway president), Peter Mannion and Dr William Golden (dean, College of Business, NUI Galway). RDJ Glynn Solicitors established the scholarship, which is a competition open to all applicants for the LLM in Law, Technology and Governance in NUI Galway



**New Galway merger**

Matthew Molloy & Company, Solicitors, of Woodquay, Galway, and Seymour & Company, Solicitors, of Knocknacarra, Galway, have merged. The new firm, Molloy Seymour & Company, will operate from the Woodquay offices and will continue to operate and develop its branch offices in Knocknacarra and Nenagh



**Class of '59 – revisited**

Following the publication of our Class of '59 photo in the January/February 2010 issue (see page 42), Michael Connellan Solicitors has contacted us to say that the photo featured those solicitors who were admitted in the Michaelmas term. There was an earlier admission in the Trinity term of 1959, a photo of which we are very happy to publish here. (Front, l to r): Neasa Gibbons, Jill Greensmith, John Halpin (Law Society president), Louise O'Connell and Rosaleen Walsh. (Back, l to r): Michael Hogan, Kevin McGilligan, Dominic Mockler, Fionnuala Duane, Noelle Maguire, Michael Fitzsimons, Michael Connellan and Barry Cusack

## ON THE MOVE

**Gallen Alliance expands**

Irish law firm Gallen Alliance Solicitors has expanded with new offices in London, located in Broadgate Tower, London, which will be jointly managed by John Gallen (managing director, Dublin) and Susan Atkinson (previously of Sidley Austin LLP, London). This follows a threefold growth of the firm's Ireland practice during 2009, and the recent appointment of new senior team members Susan Atkinson, Fiona Patten, Claire Trinder, Andreas Carney and Rod O'Rourke

**Leman corporate appointment**

The partners of Leman Solicitors have appointed Simon Hollywood to lead the firm's corporate unit. A graduate of DePaul University, Chicago and University College Dublin, Simon joined the firm from A&L Goodbody, where he worked for five years on corporate and commercial issues, advising entrepreneurs and SMEs in a wide range of areas and sectors. (L to r): Larry Fenelon, Simon Hollywood and John Hogan



**New partner for Beale and Co**  
Beale and Company Solicitors LLP has appointed new partner John Sheils to their Dublin office



**New York appointment for MOP**  
Matheson Ormsby Prentice has appointed Pat English as resident counsel to its New York office



# Southside solicitors cruise

**O**n the south side of Dublin Bay lies Dun Laoghaire – one of the grandest maritime harbours in the world. The waterfront is graced by a number of fine Victorian buildings, one of which is home to the Royal St George Yacht Club.

Each year, 'the George'

witnesses an assembly of judges, solicitors, barristers, notaries and guests who congregate for the Southside Solicitors' annual dinner. The entire event has been organised annually for a remarkable 25 years by prominent Dun Laoghaire solicitor and member of 'the George' Justin McKenna.



Eric Farrell, Sharon Scally and Gerard Doherty



Rory O'Riordan, Judge Vivian Lavan and Justin McKenna



Dr Stephen Murphy and Aisling Crowley



The Partners at Law Team (l to r): Ethna Ryan, Eoghan O'Mahony, Susan Gray, Andy Vallely, Ann Foley, Alan McGill, Karen Brennan and Cilian McKenna

# over to 'the George'



Denise McNulty and Deirdre McDermott



Sharon McElligott and Vincent McDonagh



Karen Brennan, Ann Foley and Ethna Ryan



Emer O'Malley and John O'Malley



Yvonne Chapman and Fionnuala Monks



Colm Allen SC and Judge Vivian Lavan



Yvonne Eames and Geraldine Kelly



Pat Coady and Fiona Duffy Coady



Pat Coady, Ken Byrne and Kevin O'Higgins



Karl O'Connor, Jonathan Dunphy and John O'Doherty



## PP Ryan (1918 – 2009)



“A great oak is fallen” and “the whole locality is orphaned” were two of the comments heard on the streets of Rathdowney as this community of south-west Laois reflected on the death of Paul (PP) Ryan. A solicitor in the town for 67 years, he served rich and poor, country people and townspeople, with equal commitment and skill. Lengthy consultations facilitated good counsel. Smaller farmers recalled how, in the difficult 1940s and ’50s, Paul Ryan helped them with advice, encouragement and a strategic word with the bank manager (or Land Commission inspector) to acquire life-enhancing additional acres. He consistently endeavoured to further the welfare of the town. He was involved in developing Rathdowney Mart (1958); in the 1960s, he tried with others to prevent the closure of Perry’s Brewery and was instrumental in having the Dutch-owned Harp Textiles factory established. Behind the involved citizen was a private, reflective and devout individual.

Paul was born on Rathdowney Square, where his parents James Ryan and Margaret (O’Grady) had a thriving business. One of the happiest periods of his life was as a boarder in Rockwell College in the 1930s. Right to the end, he remembered his inspiring teachers. He loved to revisit his *alma mater*, most recently in 2008. An outstanding scholar, he was the winner of the ‘Gold Medal for General Excellence’ in his final year. Gifted on the playing field, he captained Rockwell to Senior Munster Schools honours in 1937 and was selected as hooker on the Munster Schools rugby team in the same year. Later, he played for St Mary’s and was a stalwart of Rathdowney Rugby Club in its heyday.

A scholarship winner, he studied in UCD under George O’Brien, Dan Binchy and Paddy McGilligan for his BA (Law) degree. He was one of the first to carry out postgraduate research on the new 1937 Constitution, with his Master’s thesis *Fundamental Rights* (1941) quoted to effect in later publications. After qualifying as a solicitor, he took his LLB (1949). This Dublin phase was characterised by an active intellectual life involving such friends as David Bell, Seamus Henchy, Desmond and Peig Roche and Desmond Williams. He returned to Rathdowney in 1942 to begin his solicitor’s practice.

Yet despite his academic expertise, perhaps his deeper instincts came to focus on the farming life. He valued the rigours and relaxation of the fields and the caring for cattle that took him away from the stresses of office life. He had a real

interest in the natural world, whether in bird or fish on the Erkina River, and in trees and their cultivation. These interests merged in his love of good conversation, language, literature and history.

The award of first place in Ireland in Leaving Certificate French in 1937 anticipated his life-long devotion to literature. He loved to quote from a wide range of poets. Keats, Verlaine, Rupert Brooke and local poet Paddy Campion were particular favourites. On one occasion, when he was defending a publican (a habitual offender) for out-of-hours opening, and knowing the weakness of his case, Paul slipped in the following lines:

*‘Then those who stood without the tavern,  
Cried open thou the door...  
We have but a little while to stay,  
And when departed shall return no more.’*

The bemused judge joined in, then briskly, yet sympathetically, administered the minimum fine.

Paul’s knowledge of local, regional and national history was immense. A devotee of hurling, he told numerous stories of the All-Ireland finals of his youth, when he and his friend Mick Meehan would often cycle 50 miles or more to championship matches. He knew most families within a 20-mile radius, and others well beyond. That knowledge was at least three generations deep. To journey with Paul Ryan was to see and hear the lore of every townland, street, castle and farm recounted in depth and with sympathy. He belonged to a long line of Irish historians – the keepers of the *seanchas*. His going has left a great void in the knowledge-cum-memory bank of this region.

He married Kathleen Kirwan from nearby Donaghmore in 1951 and theirs has been a great love affair. Fully supportive of him in his long public life, Kathleen provided a haven of rest in their home and tended Paul there to the end. Committed to education, he saw their seven offspring established in rewarding careers. Continuity in the practice of law and farming has been achieved. At the wake in the house, at the church and in the graveyard, Kathleen, their four sons, three daughters, 18 grandchildren and numerous friends saw and felt the honour and affection that so many people held and felt for PP Ryan.

*Go ndéana Dáa trócaire ar a anam dílis.*

WJS



## Ruairí Dunne (1981 – 2009)



**T**he untimely death of Ruairí Dunne on 31 December 2009 has deprived our legal community of a most talented, professional and respected colleague.

Ruairí was born on 4 May 1981 at Rock Cross, Cavan. Having attended St Patrick's College, Cavan, he graduated from Trinity College Dublin and DIT before opting to become a solicitor, the profession of his sister Sinéad and uncle Cormac, a member of the judiciary since 2002. He was indentured to Garrett J Fortune & Co, Cavan and studied at Blackhall Place. He was within months of qualifying but, unfortunately, became extremely ill in 2009. He was a person with cystic fibrosis and had been on the active list for a double-lung transplant at the Freeman Hospital, Newcastle-upon-Tyne, England, but regrettably the Lord called him home before he could have the life-giving transplant.

Ruairí was always composed and in good humour. He had a great zest for life and met the challenge of his illness with great courage. Even when he was very unwell, he raised the spirits of us all with his good-natured banter. He had something to complain about, but never did.

As an apprentice solicitor, his work experience was diverse and extensive. He attended on counsel in many courts, travelled to prisons, met various defendants and drafted varied court documents. Most importantly, he met with clients on a regular basis. All clients, without exception, commented on his courteous manner, his attentiveness to the brief and, most importantly, his willingness to listen and give them time and respect. On several

occasions, he had to leave his studies to attend on counsel during High Court personal injury actions, as clients had specifically requested his guidance.

Ruairí packed more into his short life than many of us do in a full lifetime. He travelled worldwide, attending a variety of sporting events, including British Opens, the Ryder Cup, world snooker at the Crucible, the Rugby World Cup, Heineken Cup finals, the French Tennis Open, Wimbledon, cricket at Lords and many GAA matches. He was an avid supporter of his local football club, Cavan Gaels, and acted as assistant secretary to the club.

While interested in several sports, his greatest sporting love was golf. Ruairí probably felt that his greatest sporting achievement was being a member of the County Cavan Golf Club team that won the Ulster Jimmy Bruen Shield in 2008. However, it was his winning of the Brendan Mulhall Memorial Golf Tournament in 2008 that gave him boasting rights over his local legal golfing colleagues.

Ruairí bore his illness with dignity and considerable fortitude, particularly in the latter months of 2009. To his parents Ray and Maura, his sisters Sorchá and Sinéad, his brothers Fergal and Joseph, his classmates in Blackhall Place, and to his wide circle of friends, we offer our deepest condolences.

Let us hope that the greens are true and the fairways wide on the golf courses that Ruairí now strides.

GJF

# Get more at [gazette.ie](http://gazette.ie)

*Gazette* readers can access back issues of the magazine as far back as Jan/Feb 1997 right up to the current issue at [gazette.ie](http://gazette.ie). You can also check out current news, forthcoming events, employment opportunities and the latest CPD courses, as well as lots of other useful information at [lawsociety.ie](http://lawsociety.ie).



## student spotlight

# Mission of mercy

**A**cross from the Judges' Yard at the Four Courts on Chancery Place, there is a red-brick Victorian building that looks as if it has had little done to it since Victorian times. A sign above the door, which would be cheery were the paint not so faded, says 'After School Klub'. Inside is a draughty corridor and, at the end, a narrow staircase that leads to a dark basement. At the bottom of the stairs, surrounded by murals of *The Simpsons*, a shutter is pulled down from ceiling to floor, locked.

Declan Keenan gestures to it. "That's the tuck shop," he says. "Four of the boys run it. At the end of each term, they make a corporate decision on what to do with the profits – whether to reinvest them or take a dividend. They took €42 each home last Christmas. Not a jelly leaves that shop without being paid and accounted for."

In the next room over, a boy is playing pool. He looks up. "Can I work in the shop next year?" he asks Keenan.



Declan Keenan, who runs ASK, has worked at the mission for nearly 20 years



Attending the After School Klub (ASK) of the Dublin Christian Mission are (l to r): Jordan O'Reilly, Sean Grouse, Scott Fitzsimons (behind), Dylan O'Neill (in front) and Arron McKenna, from St Paul's CBS, North Brunswick Street

This is the Dublin Christian Mission, and the boys are members of the mission's After School Klub, which is one of the local initiatives supported by student volunteers from the Law Society at Blackhall Place, which the *Gazette* has been reporting on in recent issues. Alongside this club is another homework club, in the nearby St Paul's CBS on North Brunswick Street.

Though the tuck shop is closed when I visit, it aptly captures the philosophy and spirit of the clubs run at the mission.

### You're important

"Everything we do," says Keenan, "we try and emphasise to the children: you're important. You have a role to play in this life. You can either sit back – or get up and get involved."

The school system, he feels, fails to promote the children's self-worth, or to encourage ambition. Keenan himself



Sean Grouse (11), Arron McKenna (12) and Scott Fitzsimons (11)

dropped out of school aged 14, "convinced I was stupid", before returning to education as a mature student and qualifying as a social worker. (He started working at the mission soon after qualifying, and has been doing so for nearly 20 years.)

"I see a lot of my own attitude from [back] then in these kids. That makes it easier for me to challenge them."

Despite being badly in need of a coat of paint, and more, the mission is a hive of activity on a Tuesday afternoon. Volunteers

are preparing soup for the children. A computer room brimming with donated old PCs is humming. Boys are playing football on an improvised indoor court in the mission's hall. A Law School trainee is supervising children doing their homework.

### Longest-running picket

The mission itself is an extraordinary, if somewhat eccentric, place. Founded in 1828, the second-oldest Protestant city mission in the world, it bore close witness to the Civil War action at the Four Courts: a Free State soldier was shot there while taking up a position that overlooked the Four Courts, and the visitors' book from the period, which Keenan shows me, bears marks from where it was grazed by bullets.

The mission entered the history books again – or, more accurately, the record books – when it was subjected to the longest-running picket ever. A picket by the Legion of Mary lasted for some 65 years, from 1923 to 1989, and did much to inhibit the mission's integration with the local community.

That has all changed, however. Today, it is a non-denominational facility where children can get support without preaching, Keenan says. And with 120 members from the local community – up to 65 of whom attend on any one day – the After School Klub is clearly a much-valued local facility, with the Law Society volunteers a key part of it. **G**

*Colin Murphy is a freelance journalist.*

ALL PICS: COLIN MURPHY



## Cork chase ball



Members of the victorious Cork 2009 PPCI soccer team against Dublin were (front, l to r): David Cowhey, Gearoid McKernan, Colm Dawson, Tom O'Mahoney, Neal Horgan and Wayne O'Sullivan. (Back, l to r): Fergal Griffin, Liam Crowley, Stephen Loftus, Paul Crowley and Eoghan O'Tuama

**T**he third annual soccer clash between Dublin and Cork's 2009 PPCI soccer teams took place at Garyduff Sports Grounds, Cork, on 22 January 2010, *writes Liam Crowley*. The day after the Cork Law Ball, it was always going to be a demanding fixture for the men from the South.

Dublin was the stronger team in the first half, securing two goals. The half-time team pep talk from Eoghan

O'Tuama injected some badly-needed life into his team-mates. The result? Four goals from the Leesiders in the second half!

After the soccer, both teams, as well as 30 or more supporters, watched the Munster v Northampton Rugby game in Bob Foxes. Plans are afoot for the Cork crew to visit their Dublin counterparts before the end of the PPCI in March.

## Moot court students



Semi-finalists in the Moot Court Competition 2010 are (l to r): Cathal Grennan, Amy Lawless, Chris Bollard, Sean O'Reilly and Clifford Healy

**R**ound one of the Trainee Solicitor Moot Court Competition took place at the end of 2009, *writes Trina Murphy*. Six PPCI students from Dublin travelled to Cork to compete at the semi-final stage with their Cork counterparts.

This in-house competition promotes advocacy skills and assists students in developing the confidence to represent clients in court when they qualify as solicitors.

Dublin's six semi-finalists were Christopher Bollard, Amy Lawless, Nicola McGuinness, Cathal Grennan, Cian Martin and Sarah Tully.

Cork's six semi-finalists were: Brid Heffernan, Aoife Byrne, Claire O'Sullivan, Clifford

Healy, Sean O'Reilly and Liam Crowley.

Judge Seán Ó Donnobháin adjudicated and was assisted by Eamon Murray (president of the Southern Law Association), Geoffrey Shannon (Law Society deputy director of education), Louise Crowley (UCC law faculty) and Katherine Kane (course leader, Law Society, Cork).

The moot court final showdown took place in Blackhall Place on 23 February 2010 (full report in April). The qualifying finalists were Christopher Bollard (Dublin), Amy Lawless (Dublin), Sean O'Reilly (Cork) and Clifford Healy (Cork). First-sub: Cathal Grennan (Dublin).

## Cork students have a ball



Enjoying the ball in the Vienna Woods Hotel, Glanmire, Cork, were (l to r): Proinsias Lyne, Brian O'Connor, Wayne O'Sullivan and Stephen Loftus



Getting together at the 2009 PPCI ball in Cork were (l to r): Siobhan Reidy, Amanda Moore and Lisa Mansfield



Attending the Law Society student 2009 PPCI ball on 21 January 2010 were (l to r): Proinsias Lyne and Neal Horgan



## Law Society of Ireland Diploma Programme Spring 2010

The Law Society's Diploma Team is pleased to announce their programme for Spring 2010. There are four courses to choose from: -

- Diploma in Employment Law – **webcast** **17 April 2010**
- Diploma in Commercial Litigation – **webcast** **20 April 2010**
- Certificate in Taxation Law **(NEW)** **21 April 2010**
- Certificate in District Court Advocacy **(NEW)** **24 April 2010**

.....

**Both the Diploma courses will be delivered using blended learning via webcasting resource.** All lectures will take place in the Education Centre in Blackhall Place. However to facilitate those students unable to attend Dublin on a weekly basis, lectures will also be webcast 'live' on our secure internet site. This means that students can decide to attend the onsite lecture or, alternatively, to access the lecture online via the course website. In addition, lectures will be archived within the course website for the duration of the course and can be viewed at a later date on demand by all students.

**The fee for Diploma courses is €2,160 and for Certificate courses is €1,180.**

For further information on these courses, webcast information and application forms, visit the Diploma Programme pages of our **website:** [www.lawsociety.ie](http://www.lawsociety.ie); contact us by **email:** [diplomateam@lawsociety.ie](mailto:diplomateam@lawsociety.ie) or **telephone:** 01 672 4802.

## books

## Judicial Review (2nd edition)

**Mark de Blacam.** Bloomsbury Professional (formerly Tottel), [www.tottelpublishing.com](http://www.tottelpublishing.com).

ISBN: 978-1-84766-143-2/978-1-84766-143-2. Price: €250 (€225 online at [www.tottelpublishing.com](http://www.tottelpublishing.com)).

**T**his book is a welcome and up-to-date publication on judicial review. The need for a publication that keeps practitioners up to date in this area is clear. By de Blacam's own description, this book represents the largest project of this kind undertaken by him.

The book commences with a brief and adequate explanation of the meaning of the term 'judicial review' and continues with what the author describes as the modern history of the remedy of judicial review, quickly bringing the reader up to the present by outlining the merging of the various traditional remedies formerly available – that is, *certiorari*, *mandamus*, prohibition and *quo warranto* – into a single remedy by way of an application for judicial review. While the merger of the traditional remedies has yet to be formally established, de Blacam clearly demonstrates that the unification of the remedies has, in his own words, tended to impel the courts towards a standardisation of the rules and a rejection of the anomalies.

In the following chapters, the book helpfully categorises the justification for review, making reference to the *European Convention on Human Rights* and other international agreements. It later contains an examination of the application of the

*European Convention on Human Rights* and incorporation of the *European Convention on Human Rights Act 2003* in the context of judicial review. De Blacam conducts an interesting analysis of the application of the ECHR in practice to date in the context of judicial review, citing the fact that the ECHR has had its most profound impact on claims regarding immigration law.

*Judicial Review* continues with the defences to an application, the remedies available, the scope of those remedies and the procedure, which includes a practical guide for practitioners in respect of time limits and the papers required for such applications. The following chapters take the reader from the pre-leave stage to the post-leave stage and right up to the costs stage. De Blacam sets out clearly those decisions that are subject to review, the principles of review and the effect of the review.

He proceeds to deal with procedure in special cases under statute. As an asylum practitioner, I was particularly interested in the chapter regarding the procedure in immigration and refugee cases, given the fact that the restrictions to challenges by way of judicial review in this area and the time limits available are so radically different to those in other areas of law. Given the



constantly changing landscape of judicial review in this area, it would have been impossible for de Blacam to give a full, up-to-date account of recent cases in this area. He summarises the *Immigration and Protection Bill* in the context of judicial review, which was before the Dáil at the time of writing. It will certainly be interesting to see how this controversial proposed legislation will impact on judicial review in this area.

Possibly the best thing about the book is the clear and concise manner in which it is written, making the book a really handy reference tool for practitioners and providing them with the necessary in-depth analysis for further research. For example, parts 2-6 of the book contain the very useful headings of judicial review as a remedy in respect of error, unfairness, breach of fundamental rights, unreasonableness, abuse of

power, and breach of European law – allowing the reader to quickly access the relevant sections. In the final chapters, the author deals in a practical manner with the procedures in respect of case stated, *habeas corpus*, statutory appeals and article 234 reference.

In summary, I had initially expected this mere 700-page edition to be academic, comparative and unlikely to be of any major practical use. On the contrary, however, *Judicial Review* (2nd edition) contains a comprehensive review of this area of law in Ireland. Because of the manner in which the book is structured, practitioners can use it serially and to good effect in their work. It is reasonable to assume that almost every practitioner will, at some point, be furnished with a decision – be it planning, immigration, public procurement or otherwise – that would warrant an enquiry as to whether judicial review would be an option. The book is an excellent guide, as it is written logically and with clarity. It would certainly be a welcome addition, if not a must, for every solicitor's practice. **G**

*Carol Sinnott is a solicitor at Sinnott & Company, Solicitors, Rathmines, Dublin, and a member of the Refugee and Immigration Practitioners' Network.*

## Could You Help?

LawCare needs more volunteers. People who could care for a lawyer in need based on their own experience.

If this is you please call 00 44 1268 771333

[www.lawcare.ie/volunteers](http://www.lawcare.ie/volunteers)





## council report

# Law Society Council meeting, 22 January 2010

### Professional indemnity insurance

Eamon Harrington reported that, as of close of business on the previous day, 2,261 firms had provided the Society with confirmation of professional indemnity insurance (PII) cover. A further five firms had confirmed that they had arranged cover and were seeking finance to enable payment of the relevant fees. Twenty-three firms had been referred to the Law Society-appointed broker for assistance.

Mr Harrington confirmed that a complete review of all matters pertaining to the PII process was being conducted and no aspects were being omitted. It was intended to collate information from the profession in relation to their experiences in the course of the most recent renewal process. The task force also intended to explore risk-management issues, PII systems operating in other jurisdictions, possible improvements to the renewal process, and a range of other procedural items, including standard proposal forms and variable renewal dates.

### Commercial undertakings

John D Shaw reported on the work of the working group that had been established to consider the Society's response to the actions taken by the insurers and the financial institutions, following the exclusion of commercial undertakings from the minimum terms of cover.

The Council noted that, since the Lynn and Byrne cases, it had been recognised that the system of undertakings and certificates of title was far from perfect. Following an appearance before an Oireachtas committee, the Law Society had given a commitment

to review all matters in relation to undertakings. The only agreed system related to residential property, and this had been comprehensively examined and various amendments had been made to the documentation.

The Council noted that, historically, where a commercial property was involved, banks tended to retain their own solicitor to either investigate the title and/or to perfect the security. However, many banks had unilaterally applied the agreed residential system to commercial property. With the crash in property values, it had become apparent that, in a significant number of cases, the security had not been perfected and this had potentially serious consequences for clients, solicitors and the state. It was now being suggested that the Society should introduce regulations to prohibit solicitors from giving undertakings in commercial loan transactions.

The Council noted that a number of public interest factors were pertinent to the matter:

- Unlike the residential property system, where a solicitor specifically did not act for the bank, in commercial property transactions the solicitor was required to act for the bank when providing the undertaking or certificate of title. This *prima facie* caused a conflict of interest with the solicitor's own client.
- The country was only now coming to grips with the enormity of the cost of reckless lending. An essential part of any banking system was to ensure that proper security was in place where loans, particularly of a substantial

nature, were advanced. Best practice would require banks to retain their own solicitor to ensure that this happened. Had this been done at the time of the Lynn and Byrne cases, it was arguable that the losses incurred by the banks would have been substantially less.

- It was in the public interest that solicitors were insured and, therefore, the stability of the PII market was critical. Insurers were naturally wary where there was a potentially unquantified risk, which was the case when solicitors provided commercial undertakings.
- PII for commercial undertakings was not part of the minimum terms and conditions and, where such insurance was available, the terms were specific to each insurer and solicitor. The terms of the insurance might contain exclusions or other conditions that would restrict cover.
- There was no guarantee that insurance for commercial undertakings would be available in the future. Insurance must be in place at the time the claim is made, not just when the work is done.
- There was no agreed system or documentation for commercial undertakings or certificates of title. Where there was no universal cover, problems would obviously arise in matching the terms of insurance to the specific undertakings in any individual transaction.
- The Society was acutely conscious of introducing any change that might impose additional costs on business but, at the same time, obvi-

ous flaws in the registration of securities for banks must be addressed.

The Council noted that discussions with the Irish Banking Federation and with the principal commercial lenders would continue and that the matter would be considered further at the next Council meeting.

### Solicitors Regulation Authority

The director general reported that, following contacts made by the Society, the EU commissioner for the internal market, Charlie McCreevy, had written to Lord Mandelson of the British government expressing unease about the proposals made by the Solicitors Regulation Authority to restrict the automatic recognition of Irish solicitors' qualifications in England and Wales.

### Criminal legal aid fees

The Council discussed a proposal from the Department of Justice, Equality and Law Reform to reduce criminal legal aid fees by a further 8%. The Council noted that criminal lawyers had already suffered a reduction in fees of 8%, and that this had been applied in circumstances where an agreed increase had been resisted and delayed for ten years or more, so that current criminal legal aid fees were already completely out of date. Also, criminal lawyers were being expected to do additional work, for example, reviewing videotapes, without any payment. The Council urged that these points would be strongly reiterated to the department in the Society's forthcoming meeting. **G**



## practice notes

**LAND AND CONVEYANCING LAW REFORM ACT 2009**

**S**olicitors advising clients in relation to trusts, including will trusts, should be aware that, since 1 December 2009, the *Land and Conveyancing Law Reform Act 2009* is in force.

**Existing will trusts and settlements**

It is not necessary to update wills or trusts already made by clients to reflect the act. For instance, reference in existing wills to the *Settled Land Acts* (which have been repealed since 1 December 2009) or to perpetuity periods

(which are no longer necessary after 1 December) will not be invalid.

However, in the event that a client is reviewing his will for other reasons, continuing to make reference to these provisions is now outdated. Therefore, it will be best practice to update an existing will to reflect the act at such an appropriate opportunity.

The act applies to all will trusts and settlements currently in force. Practitioners should be aware that the act therefore now applies in the interpretation of the provisions

of such existing will trusts and settlements.

**New will trusts and settlements**

The main provisions of a standard will and trust precedent will likely require some amendment to reflect the changes introduced by the act. Practitioners should fully understand the provisions of the act so that appropriate advice can be given to clients and their precedents can be updated. Particular attention will be required in advising clients on trusts of

land, life interest trusts and discretionary trusts, whether made under a will or *inter vivos*.

The Law Society held a CPD event on 25 September 2009 that included details of these issues. The DVD and notes can be purchased directly from the Law Society. Both the Law Society and STEP will be providing further CPD courses in 2010. It is understood that various third-party publications will be updating their will and trust precedents in the early part of next year.

*Probate, Administration and Trusts Committee*

**TAKING OVER UNDERTAKINGS FROM CLOSED PRACTICES**

**M**any firms have closed in recent months and, in this context, the issue of whether undertakings given by a firm that is now closed can, or should, be taken over by the new solicitors nominated by clients of the former practice often has to be considered.

When a firm closes, the original undertakings furnished on behalf of that firm fail, because the solicitor or solicitors who gave those undertakings no longer have control of the matter and cannot achieve compliance.

A solicitor should be aware that the view of the Guidance and Ethics Committee is that, when a file is transferred in any circumstances from one firm to another, a solicitor should not take over any undertaking given on behalf of the first firm without as full an investigation of the matter as they would carry out if they themselves had been giving the undertaking in the first place. This is even more important where the undertaking was given by a solicitor who has now ceased practice, particularly where

the practice closed following regulatory action taken by the Law Society.

In conveyancing transactions, where the undertaking relates to a mortgage and the second solicitor cannot immediately satisfy him/herself in respect of the title, a better option might be for the deeds on the file to be returned to the lender. The lender itself always has the option of calling for the deeds on foot of the original undertaking.

The second solicitor cannot be forced by the lender, or

any other recipient of an undertaking, to assume the burden of work left unfinished by another solicitor, nor can (s)he be forced to give a straight replacement undertaking in substitution for the undertaking given by the first solicitor. The first solicitor may have done something in relation to the title that makes it impossible for the new solicitor to certify the title or to give an unqualified undertaking in respect of it.

*Guidance and Ethics Committee*

Will you be  
home to tuck  
us in tonight?



86% of lawyers say long hours are damaging  
their relationship with their children.  
Are you one of them?



Free and Confidential Health Support  
and Advice for Lawyers

Freephone 1800 991801  
[www.lawcare.ie](http://www.lawcare.ie)

## VIES RETURNS FOR SOLICITORS

**A**VIES (VAT information exchange system) is a return outlining details of overseas supplies made by VAT-registered businesses. Prior to 1 January 2010, a VAT-registered business was obliged to submit a VIES return only where it made supplies of goods above a certain threshold to other EU member states. From 1 January 2010, all Irish VAT-registered businesses providing services to customers in other EU member states must submit VIES returns where the

customer is a business customer (such supplies are referred to as 'business-to-business' ('B2B') supplies).

**Example:** On 9 February 2010, ABC Solicitors, an Irish-established solicitors' firm, invoices F Schmitt GmbH, a German company located in Hamburg, for €10,000 in relation to Irish legal services supplied. ABC Solicitors must submit a VIES return outlining the name of the German company ('F Schmitt GmbH'), the company's German VAT registration number, and the

total value of the services supplied to F Schmitt GmbH during the quarter ending 31 March 2010.

There is no threshold amount for filing returns for service suppliers. Supplies to private customers ('B2C' supplies) do not have to be included on the VIES returns.

If a solicitor's firm has not previously completed VIES returns and is supplying B2B services to an EU client, it must register immediately with the VIMA office. All firms that are required to submit VIES returns

in respect of services must do so electronically and within specified time limits to avoid the imposition of penalties. Returns will include details of the value of services provided, the name of the customer, and the customer's VAT registration number. VIES returns must be made quarterly, with the option to elect to file monthly.

Further information can be obtained from the VIES Section, Government Offices, Millennium Centre, Dundalk, Co Louth; tel: 042 935 3700.

Taxation Committee

## SOLICITORS ON FIRMS' HEADED NOTEPAPER MUST HOLD PRACTISING CERTIFICATE

**T**he attention of all solicitors' firms is drawn to the provision of the *Solicitors (Practice, Conduct and Discipline) Regulations 1996* (SI no 178 of 1996), in regulation 6(iv) of those regulations, which provides that all solicitors who are listed on the

professional notepaper of the professional practice of a solicitor shall hold a current practising certificate issued by the Society.

Therefore, it is prohibited for a solicitors' firm to list on its notepaper the name of any person on the Roll of

Solicitors who does not hold a practising certificate. This prohibition includes the listing of consultants or retired partners not holding a practising certificate.

Firms' notepapers are monitored on a regular basis by the Society's Regulation

Department, and any apparent breaches of this provision may be subject to investigation and, if appropriate, regulatory and/or disciplinary action and/or legal proceedings.

John Elliot,  
Registrar of Solicitors and  
Director of Regulation

## THE NEXT TIME YOU ARE IN TOWN WHY NOT AVAIL OF THE LAW SOCIETY'S B&B FACILITY

**SINGLE ROOMS**, OF WHICH THERE ARE THREE, ARE CHARGED AT A RATE OF **€45 PER NIGHT**, WHILE **TWIN AND DOUBLE ROOMS**, OF WHICH THERE ARE ALSO THREE IN TOTAL, ARE CHARGED AT A RATE OF **€65 PER NIGHT**

- ⇒ ALL ROOMS HAVE BEEN FULLY RENOVATED TO THE HIGHEST STANDARD
- ⇒ ALL ARE EN-SUITE
- ⇒ TV IN EVERY ROOM
- ⇒ TEA AND COFFEE MAKING FACILITY
- ⇒ FREE CAR PARKING



Tel: 01 672 4800



Law Society of Ireland

# legislation update



## Acts passed in 2009

Commencement date information is up to date to 10/2/2010. Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – [www.law-society.ie](http://www.law-society.ie) (members' and students' area) – with updated information on the current stage a bill has reached and the commencement date(s) of each act. The full text of recent acts is on [www.irish-statutebook.ie](http://www.irish-statutebook.ie) and on [www.oireachtas.ie](http://www.oireachtas.ie).

### **Anglo Irish Bank Corporation Act 2009**

Number: 1/2009  
Date enacted: 21/1/2009  
Commencement date: 21/1/2009

### **Appropriation Act 2009**

Number: 42/2009  
Date enacted: 20/12/2009  
Commencement date: 20/12/2009

### **Aviation (Preclearance) Act 2009**

Number: 16/2009  
Date enacted: 8/7/2009  
Commencement date: Commencement order(s) to be made (per s 21(2) of the act): 5/8/2009 for all sections of the act other than section 19 (repeal of *Air Navigation and Transport (Preinspection) Act 1986*) (per SI 315/2009)

### **Broadcasting Act 2009**

Number: 18/2009  
Date enacted: 12/7/2009  
Commencement date: 12/7/2009; 1/10/2009 appointed as the establishment day for the Broadcasting Authority of Ireland for the purposes of part 2 (ss 5-38), s 49, s 157 and part 12 (ss 174-179) of the act (per SI 389/2009)

### **Charities Act 2009**

Number: 6/2009  
Date enacted: 28/2/2009  
Commencement date: Commencement order(s) to be made (per s 1(2) of the act): 1/9/2009 for ss 1, 2, 5, 10 (other than subsections 3 and 4) and 99 (per SI 284/2009)

### **Companies (Amendment) Act 2009**

Number: 20/2009  
Date enacted: 12/7/2009  
Commencement date: 12/7/2009

### **Companies (Miscellaneous Provisions) Act 2009**

Number: 45/2009  
Date enacted: 23/12/2009  
Commencement date: 23/12/2009 for ss 1, 2, 3(a) to (h) and 4; commencement order(s) to be made for other provisions (per s 6(2) of the act)

### **Courts and Court Officers Act 2009**

Number: 36/2009  
Date enacted: 24/11/2009  
Commencement date: 4/12/2009 for all sections of the act (per SI 477/2009)

### **Criminal Justice (Amendment) Act 2009**

Number: 32/2009  
Date enacted: 23/7/2009  
Commencement date: 23/7/2009

### **Criminal Justice (Miscellaneous Provisions) Act 2009**

Number: 28/2009  
Date enacted: 21/7/2009  
Commencement date: Commencement order(s) to be made (per s 1(3) of the act): 27/7/2009 for s 28 (per SI 293/2009); 1/8/2009 for the following provisions: (a) part

1; (b) ss 25 to 27; (c) ss 29 to 33; (d) ss 35, 37 and 39; (e) s 40 (insofar as it inserts ss 9A and 9B of the *Firearms and Offensive Weapons Act 1990*); and (f) ss 41 to 44; 1/1/2010 for s 34 (per SI 310/2009); 25/8/2009 for the following provisions: (a) part 2 (ss 4-20); (b) ss 45 and 46; (c) s 48 (other than para (c)(iii)); (d) ss 49-51 (per SI 330/2009)

### **Criminal Justice (Surveillance) Act 2009**

Number: 19/2009  
Date enacted: 12/7/2009  
Commencement date: 12/7/2009

### **Defamation Act 2009**

Number: 31/2009  
Date enacted: 23/7/2009  
Commencement date: 1/1/2010 for all sections of the act (per SI 517/2009)

### **Defence (Miscellaneous Provisions) Act 2009**

Number: 35/2009  
Date enacted: 24/11/2009  
Commencement date: 24/11/2009

### **Electoral (Amendment) Act 2009**

Number: 4/2009  
Date enacted: 24/2/2009  
Commencement date: 24/2/2009

### **Electoral (Amendment) (No 2) Act 2009**

Number: 9/2009  
Date enacted: 25/3/2009  
Commencement date: 25/3/2009

### **Enforcement of Court Orders (Amendment) Act 2009**

Number: 21/2009  
Date enacted: 14/7/2009  
Commencement date: 14/7/2009

### **European Parliament (Irish Constituency Members) Act 2009**

Number: 17/2009  
Date enacted: 8/7/2009  
Commencement date: First day of the parliamentary term beginning in 2009 (per s 10(2) of the act)

### **European Union Act 2009**

Number: 33/2009  
Date enacted: 27/10/2009  
Commencement date: 27/10/2009 for s 8 (continuation in force of certain statutory instruments); 1/12/2009 for all other sections – ss 1 to 7 and s 9 (per SI 451/2009)

### **Finance Act 2009**

Number: 12/2009  
Date enacted: 3/6/2009  
Commencement date: 1/1/2009 for part 1, except where otherwise expressly provided in part 1 (per s 32(8) of the act); 3/6/2009 for other sections, except where otherwise expressly provided or where commencement order(s) are to be made. See act for details

### **Financial Emergency Measures in the Public Interest Act 2009**

Number: 5/2009  
Date enacted: 27/2/2009  
Commencement date: 27/2/2009

### **Financial Emergency Measures in the Public Interest (No 2) Act 2009**

Number: 41/2009  
Date enacted: 20/12/2009  
Commencement date: 21/12/2009 for all sections of the act (per SI 590/2009)

### **Financial Measures (Miscellaneous Provisions) Act 2009**



**Number:** 14/2009

**Date enacted:** 26/6/2009

**Commencement date:** 26/6/2009 for all sections other than section 17 (amendment of section 6 of the *Credit Institutions Financial Support Act 2008*), which came into force on 1/12/2009 (per SI 455/2009)

**Financial Services (Deposit Guarantee Scheme) Act 2009**

**Number:** 13/2009

**Date enacted:** 18/6/2009

**Commencement date:** 18/6/2009 for all sections except s 4, for which a commencement order shall be made (per s 12(2) of the act)

**Foreshore and Dumping at Sea (Amendment) Act 2009**

**Number:** 39/2009

**Date enacted:** 15/12/2009

**Commencement date:** 15/12/2009 for part 1 (s 1, 'Preliminary and general'); 15/1/2010 for part 2 (ss 2-27, 'Foreshore') and schedule 1 (per s 1(4) of the act); 15/2/2010 for part 3 (ss 28-38, 'Dumping at sea') and schedule 2 (per s 1(5) of the act)

**Forestry (Amendment) Act 2009**

**Number:** 40/2009

**Date enacted:** 20/12/2009

**Commencement date:** 20/12/2009

**Gas (Amendment) Act 2009**

**Number:** 3/2009

**Date enacted:** 17/2/2009

**Commencement date:** 17/2/2009

**Harbours (Amendment) Act 2009**

**Number:** 26/2009

**Date enacted:** 21/7/2009

**Commencement date:** 21/7/2009

**Health Insurance (Miscellaneous Provisions) Act 2009**

**Number:** 24/2009

**Date enacted:** 19/7/2009

**Commencement date:** 19/7/2009

**Health (Miscellaneous Provisions) Act 2009**

**Number:** 25/2009

**Date enacted:** 21/7/2009

**Commencement date:** Commencement order(s) to be made (per s 1(4) of the act): 1/8/2009 for part 1 (ss 1-3) and s 65; 1/9/2009 for part 2 (ss 4-14, dissolution of the National Council on Ageing and Older People) (per SI 288/2009); 1/10/2009 for part 3 (ss 15-25) (dissolution of the Women's Health Council) (per SI 401/2009); 1/1/2010 for part 6 (ss 48-59, dissolution of the Crisis Pregnancy Agency) (per SI 543/2009)

**Houses of the Oireachtas Commission (Amendment) Act 2009**

**Number:** 44/2009

**Date enacted:** 21/12/2009

**Commencement date:** 1/1/2010 (per s 15(3) of the act)

**Housing (Miscellaneous Provisions) Act 2009**

**Number:** 22/2009

**Date enacted:** 15/7/2009

**Commencement date:** Commencement order(s) to be made for all sections, except s 100 (per s 1(4) of the act). Section 100 (amendments to the *Residential Tenancies Act 2004*) came into force on 15/7/2009, the date of enactment; 1/12/2009 for various sections of the act – see SI 449/2009 for details. SI 449/2009 commences most of part 1 (ss 1-9, 'Preliminary and general'), all of chapter 1 (ss 10-13, 'Housing services') of part 2, and section 35 ('Anti-social behaviour strategy'); 1/1/2010 for part 3 (ss 43-49, 'Incremental purchase arrangements'); 1/2/2010 for chapter 6 (ss 36-42, homelessness action plans) of part 2 and for s 8 and schedule 2 insofar as they apply to the amendments to the *Housing (Miscellaneous Provisions) Act 1992* as set out at item 5 in part 4 of schedule 2 (per SI 540/2009)

**Industrial Development Act 2009**

**Number:** 11/2009

**Date enacted:** 19/5/2009

**Commencement date:** 19/5/2009

**Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009**

**Number:** 7/2009

**Date enacted:** 5/3/2009

**Commencement date:** 5/3/2009 for s 3(d) and (e); 30/3/2009 for all other sections of the act (per SI 102/2009)

**Labour Services (Amendment) Act 2009**

**Number:** 38/2009

**Date enacted:** 9/12/2009

**Commencement date:** 20/1/2010 (per SI 12/2010)

**Land and Conveyancing Law Reform Act 2009**

**Number:** 27/2009

**Date enacted:** 21/7/2009

**Commencement date:** 1/12/2009 for all sections except s 132 (relating to review of rent in certain cases) (per SI 356/2009); 28/2/2010 for s 132 (per SI 471/2009)

**Legal Services Ombudsman Act 2009**

**Number:** 8/2009

**Date enacted:** 10/3/2009

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

**Local Government (Charges) Act 2009**

**Number:** 30/2009

**Date enacted:** 21/7/2009

**Commencement date:** 24/7/2009 for all sections of the act (per SI 279/2009)

**National Asset Management Agency Act 2009**

**Number:** 34/2009

**Date enacted:** 22/11/2009

**Commencement date:** 21/12/2009 for all sections of the act (per SI 545/2009); 21/12/2009 appointed as the establishment

day for the National Asset Management Agency (per SI 547/2009)

**Nursing Homes Support Scheme Act 2009**

**Number:** 15/2009

**Date enacted:** 1/7/2009

**Commencement date:** Commencement order(s) to be made (per s 2 of the act): 3/7/2009 for the following provisions: (a) the definitions of 'approved nursing home' and 'long-term residential care services' in section 3, insofar as these definitions relate to section 40 and the *National Treatment Purchase Fund Board (Establishment) Order 2004* (SI 179/2004) (as amended by section 41 of the *Nursing Homes Support Scheme Act 2009*), and (b) ss 40 and 41 (per SI 256/2009); 5/10/2009 for ss 3, 21, 22 and 36 (per SI 381/2009); 28/9/2009 for s 44 (per SI 394/2009); 27/10/2009 for all remaining provisions of the act (per SI 423/2009)

**Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices Act 2009**

**Number:** 29/2009

**Date enacted:** 21/7/2009

**Commencement date:** Various dates – see act

**Public Health (Tobacco) (Amendment) Act 2009**

**Number:** 23/2009

**Date enacted:** 16/7/2009

**Commencement date:** 16/7/2009

**Public Transport Regulation Act 2009**

**Number:** 37/2009

**Date enacted:** 27/11/2009

**Commencement date:** 27/11/2009, apart from the following provisions of the act for which commencement order(s) are to be made: part 2 (ss 5-28, 'Licensing of public bus passenger services') (per s 5 of the act); s 29 ('Amendments to name and functions of Dublin Transport

Authority') (per s 29(2)); s 44 ('Amendment of *Planning and Development Act 2000*') (per s 44(2)); s 46 ('Measures to enhance public bus services – traffic calming measures') (per s 46(9)); 1/12/2009 appointed as the appointed day for the purposes of s 30, date on which the name of the Dublin Transport Authority is changed to the National Transport Authority (per SI 467/2009). Dissolution day order to be made for the dissolution of the Commission for Taxi Regulation (per s 31 of the act). The following commencement orders have been made: 1/12/2009

for ss 5, 23, 29(1)(b), (c) (other than paragraphs (e) and (f) of the amendment effected by that paragraph), (e), (g), (h), (i), (j), (k) and 29(2) (per SI 466/2009); 4/1/2010 for s 44 (per SI 575/2009)

**Residential Tenancies (Amendment) Act 2009**

Number: 2/2009

Date enacted: 28/1/2009

Commencement date: 28/1/2009

**Social Welfare and Pensions Act 2009**

Number: 10/2009

Date enacted: 29/4/2009

**Commencement date:** 29/4/2009 for part 5 (ss 14-23, 'Provisions relating to pension schemes'); 1/5/2009 for most other sections – see act for details

**Social Welfare and Pensions (No 2) Act 2009**

Number: 43/2009

Date enacted: 21/12/2009

**Commencement date:** 21/12/2009 for part 1 (ss 1-3, 'Preliminary and general'); various commencement dates for part 2 (ss 3-20, 'Amendments to *Social Welfare Acts*') – see act for details; commencement order(s) to be made for part 3 (s

21, 'Amendment to *Pensions Act 1990*') (per s 1(4) of the act)

**Statute Law Revision Act 2009**

Number: 46/2009

Date enacted: 23/12/2009

Commencement date: 23/12/2009

**Twenty-Eighth Amendment of the Constitution (Treaty of Lisbon) Act 2009**

Date enacted: 15/10/2009

Commencement date: 15/10/2009 **G**

*Prepared by the  
Law Society Library*



*"As a society, perhaps the most sensitive measurement of our maturity is the manner in which we care for those who are facing the ultimate challenge – the loss of life."*

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

## QUALITY HOSPICE CARE FOR ALL



Over 6,000 people use hospice care each year.

Hospice care involves the total care of patients and their families at the stage in a serious illness where the focus has switched from treatment aimed at cure, to ensuring quality of life. It seeks to relieve the symptoms of illness and cater for a person's entire needs – physical, emotional, psychosocial and spiritual.

The demand for hospice care is growing. While the service has expanded in recent years, much more needs to be done to ensure quality end-of-life care for all.

Please remember the Irish Hospice Foundation when drafting a will.

Irish Hospice Foundation, Morrison Chambers, 332 Nassau Street, Dublin 2

Tel: 01 679 3188; Fax: 01 673 0040

[www.hospice-foundation.ie](http://www.hospice-foundation.ie)

No-one should have to face death without appropriate care and support.

# BRIEFING

## 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 Ambrose Steen, a solicitor, and in the matter of the Solicitors Acts 1954-2002 [2851/DT39/08 and 2009 no 13SA]**

*Law Society of Ireland (applicant)*

*Ambrose Steen*

*(respondent solicitor)*

On 2 December 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

- a) Delayed in initially complying with the complainant's instructions to perfect the complainant's title to lands in Co Meath,
- b) Subsequently delayed in the handing over of documentation in relation to those lands to the complainant's new solicitors as requested,
- c) Failed to respond to correspondence from the Society, and in particular the Society's letters dated 17 July 2006, 2 August 2006, 14 August 2006, 21 September 2006, 4 January 2007, 15 January 2007, 19 February 2007,
- d) Failed to comply with the direction of the Complaints and Client Relations Committee at its meeting on 20 September 2006 that he provide the complainant within the next 14 days all documentation required by her,
- e) Failed to comply with the direction of the Complaints and Client Relations Committee at its meeting on 20 September 2006 that he pay €550 towards the cost of the investigation in the light of his failure to correspond with the Society,
- f) Failed to comply with a notice pursuant to section 10

of the *Solicitors (Amendment) Act 1994* dated and served 2 April 2007 requiring delivery to the Society of all documents in relation to the complainant's complaint within ten days of the notice.

Having made the findings of misconduct, the Solicitors Disciplinary Tribunal recommended that the matter be brought forward to the High Court.

On 13 July 2009, the President of the High Court made an order that:

- 1) The respondent solicitor should not be permitted to practise as a sole practitioner, that he be permitted only to practise as a solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
- 2) The Law Society do recover the costs of the proceedings herein and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

**In the matter of Rita Hamilton and Aine Sheahan, solicitors, carrying on practice as Hamilton Sheahan & Co, Solicitors, at Main Street, Kinnegad, Co Westmeath, and in the matter of the Solicitors Acts 1954-2008 [6522-6587/DT51/09]**

*Law Society of Ireland*

*(applicant)*

*Rita Hamilton*

*(first-named respondent solicitor)*

*Aine Sheahan*

*(second-named respondent solicitor)*

On 28 October 2009, the Solicitors Disciplinary Tribunal found the respondent solicitors guilty of misconduct in their practice as solicitors in that they:

- a) Caused or allowed a deficit of approximately €7,600 to arise in the client account,
- b) Failed to maintain proper books of account,
- c) Caused or allowed debit balances to appear in the clients' ledger,
- d) Failed to keep files in a proper order so that documentation supporting entries in the books of accounts could be appropriately vouched without delay or difficulty,
- e) Lodged certain settlement cheques payable to clients to the client account without the clients' written endorsement or written authority, in breach of section 76(17) of the *Solicitors (Amendment) Act 1994*,
- f) Failed to comply with the provisions of section 68(1) and section 68(6) of the *Solicitors (Amendment) Act 1994* in many cases,
- g) Caused or allowed numerous fake section 68(1) letters to be fabricated in the weeks after the investigation letter was received, which were not sent to the clients,
- h) Caused or allowed numerous fake section 68(1) letters to be placed on clients' files,
- i) Caused or allowed numerous fake letters that gave the impression of compliance with section 68(6) to be fabricated in the weeks after the investigation letter was received, which were not sent out to the clients,
- j) Caused or allowed numerous fake letters that gave the im-

pression of compliance with section 68(6) to be placed on clients' files,

- k) Caused or allowed up to 17 apparently genuine copy letters to be altered in the weeks after the investigation letter was received, to give the impression of compliance with section 68(6),
- l) Created other fake letters, which were reproduced in appendix 6 of the investigation report.

The tribunal ordered that the respondent solicitors:

- a) Are hereby censured,
- b) Jointly and severally pay a sum of €7,500 to the compensation fund,
- c) Jointly and severally pay the whole of the costs of the Law Society of Ireland, including witness expenses, as taxed by a taxing master of the High Court, in default of agreement.

**In the matter of Hilary Fitzpatrick, a solicitor carrying on practice as HL Fitzpatrick & Company, Solicitors, at Church Street, Ballyconnell, Co Cavan, and in the matter of the Solicitors Acts 1954-2008 [4253/DT76/09]**

*Law Society of Ireland*

*(applicant)*

*Hilary Fitzpatrick*

*(respondent solicitor)*

On 17 November 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Altered a deed of transfer from the date of actual transfer in November 2005 to a date in May 2007,
- b) Altered a family home decla-



ration by dating it 31 August 2007, although it had been supplied for the purposes of completion of a transaction in November 2005,

- c) Retained monies for stamp duty where the transaction was exempt from duty,
- d) Gave the Society an assurance by letter dated 8 June 2009 that he had no difficulty in relation to the stamping or registration of documents on files when in the file the subject matter of the complaint alone this confirmation was untrue,
- e) Failed to respond to the Society's correspondence and in particular the Society's letters of 29 November 2007, 17 December 2007, 16 April 2008, 12 September 2008, 2 February 2009, 17 February 2009, 17 April 2009.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) 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 Hilary Fitzpatrick, a solicitor carrying on practice as HL Fitzpatrick & Company, Solicitors, at Church Street, Ballyconnell, Co Cavan, and in the matter of the Solicitors Acts 1954-2008 [4253/DT77/09]**

*Law Society of Ireland (applicant)*

*Hilary Fitzpatrick (respondent solicitor)*

On 17 November 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Updated a deed from May 2003 to 28 May 2007, thereby avoiding the payment of interest and penalties on the deed,
- b) Failed to respond to the Society's correspondence

and, in particular, the Society's letters of 20 December 2007, 4 February 2008, 16 April 2008, 11 August 2008, 29 August 2008, 28 October 2008 and 12 January 2009,

- c) Failed to comply with the direction of the Complaints and Client Relations Committee at its meeting of 13 May 2009 that he, within four weeks, furnish to the Society a letter confirming that he had not outstanding difficulties in relation to stamping and registration of documents on any of his files.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) 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 Eamon P Comiskey, a solicitor formerly practising as principal of Eamon Comiskey & Company, Solicitors, at Ballycarnan, Portlaoise, Co Laois, and in the matter of the Solicitors Acts 1954-2008 [7337/DT84/09]**

*Law Society of Ireland (applicant)*

*Eamon P Comiskey (respondent solicitor)*

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

- a) Failed to comply with an undertaking dated 23 July 2007 to discharge and to furnish discharges in respect of a named bank covering the property purchased by the named complainant's client and, in particular, a named premises in Co Offaly in a timely manner or at all,
- b) Failed to reply to the Society's correspondence, and in particular to the Society's letters of 12 February 2009, 18

March 2009 and 31 March 2009 in a timely manner or at all,

- c) Failed to attend at the meetings of the Complaints and Client Relations Committee on 13 May 2009 and 24 June 2009, despite being required to do so,
- d) Failed to attend at a meeting of the Complaints and Client Relations Committee on 30 July 2009, despite being directed to so attend by order of the High Court made on 13 July 2009.

The tribunal ordered that the respondent solicitor do stand censured.

The tribunal made no order in respect of costs.

**In the matter of Kathryn Monaghan, a solicitor carrying on practice as Kathryn Monaghan & Associates, Tuam Road, Galway, and in the matter of the Solicitors Acts 1954-2008 [8202/DT66/09]**

*Law Society of Ireland (applicant)*

*Kathryn Monaghan (respondent solicitor)*

On 11 December 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- a) Updated a deed from 17 February 2008 to 8 December 2008, thereby avoiding the question of interest and penalty on stamp duty of €24,600,
- b) Updated a deed from August 2006 to 18 December 2008, thereby avoiding interest and penalty on stamp duty of €8,750,
- c) Failed to advise the lender that the entire proceeds of the mortgage was not going to be applied in accordance with the stated purpose set out in the letter of loan sanction in respect of the property identified at paragraph

2.4(h) and (i) of the investigation report,

- d) Acted for six clients in relation to the purchase of four investment properties in a development and failed to advise the lender prior to the investigation of her practice that the purchase price informed to the lender was greater than the actual purchase price in respect of each of the properties as set out in paragraphs 2.5, 2.6, 2.7 and 2.8 of the investigation report,
- e) Failed to protect the clients' interests in a situation where the lender was misinformed about the true purchase price of the properties,
- f) Updated the four deeds in respect of four named properties from 22 June 2007 to dates in August and September 2007, thereby avoiding interest and penalties on stamp duty due.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €2,500 to the compensation fund,
- c) Pay 50% 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 Michael Gleasure, a solicitor formerly practising as Michael Gleasure & Co, Solicitors, 7 Maine Street, Tralee, Co Kerry, and in the matter of the Solicitors Acts 1954-2008 [6697/DT80/08 and High Court record no 2009 no 107 SA]**

*Law Society of Ireland (applicant)*

*Michael Gleasure (respondent solicitor)*

On 8 October 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Misappropriated client funds

- by improperly transferring monies from the client account to the office account and, in particular, improperly transferred monies from the client account to the office account in circumstances where he had failed to furnish fee notes and where there was no evidence of work done to justify the transfer of funds in respect of fees,
- b) Misappropriated monies totalling in or about €18,150 from the client ledger account of a named client by improperly transferring monies in or about that amount to the office account,
- c) Misappropriated monies totalling in or about €42,670 from the client account of named clients by improperly transferring monies in or about that amount to the office account,
- d) Misappropriated monies totalling in or about €50,820 from the client deposit account of a named client by improperly withdrawing monies in or about that amount from the client deposit account,
- e) Improperly withdrew monies totalling in or about €11,154 (or a part thereof) from the client account of a named client,
- f) Failed to apply monies received to the credit of named clients for the purpose for which they were received, namely, failed to discharge the balance due to redeem capital on an outstanding loan and misapplied the said monies, or a part thereof, by improperly transferring the sum of in or about €7,865 from the client account to the office account,
- g) Misappropriated the sum of in or about €8,470 from the client account of named clients by improperly transferring monies in or about that amount to the office account,
- h) Misappropriated monies from the client account of named clients by converting monies received for payment of stamp duty and land registry fees to his own use by transferring monies totalling in or about €3,628.79 from the client account to the office account,
- i) Misappropriated funds of in or about €3,630 from the client ledger account of named clients by way of an allocation of a payment previously made out of the client account in the amount of €1,210 to the client ledger account of the above named clients, together with a further transfer from their client ledger account to the office account of €2,420,
- j) Misappropriated monies from the client account of a named client by improperly transferring monies to the office account such that the sum of in or about €95,462 remained on the client ledger as at 29 August 2006, in circumstances where a balance of in or about €100,519 was due to the client,
- k) Misappropriated monies totalling in or about €3,025 from the client account of a named client by improperly transferring monies in or about that amount to the office account,
- l) By his acts, caused a deficit in funds payable to and/or on behalf of clients of his former practice, by the compensation fund of the Society, as at 28 August 2008, of in or about €116,112.66,
- m) Improperly transferred monies from deposits received in conveyancing matters from the client account to the office account,
- n) Breached regulation 7 of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001) by withdrawing monies from the client account that were not properly available to be so withdrawn in accordance with the provisions of that regulation,
- o) Breached regulation 11 of the *Solicitors' Accounts Regulations 2001* by failing to furnish bills of costs in accordance with the provisions of that regulation.
- The tribunal directed that:
- The respondent solicitor is not a fit person to be a member of the solicitors' profession,
  - The name of the respondent solicitor be struck off the Roll of Solicitors,
  - The respondent solicitor 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.
- The tribunal directed that the matter be referred forward to the High Court and, on 14 December 2009, the President of the High Court ordered that:
- The respondent solicitor is not a fit person to be a member of the solicitors' profession,
  - The name of the respondent solicitor shall be struck from the Roll of Solicitors,
  - The Law Society do recover the costs of the proceedings herein and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained. **G**

Publication of advertisements in this section is on a fee basis and does not represent an endorsement by the Law Society of Ireland.

## ENGLISH LAW AGENCY SERVICES

**Fearon & Co**

**SOLICITORS**

*Established 1825*

Fearon & Co specialise in acting for non-residents in the fields of Probate, Property and Litigation. In particular:-

- Obtaining Grants of Representation for Estates in England, Channel Islands, Isle of Man and elsewhere
- Administering English Estates
- Buying and selling homes and business premises
- Recovering compensation for accident victims
- Litigation including Debt Recovery and Matrimonial

Our offices are within easy reach of the London Airports and Central London Stations

**VISIT OUR WEBSITE**  
[www.fearonlaw.com](http://www.fearonlaw.com)

Westminster House, 6 Faraday Road,  
Guildford, Surrey GU1 1EA, United Kingdom  
Tel: 00 44 (0)1483 540840 Fax: 00 44 (0)1483 540844  
General Email: [enquiries@fearonlaw.com](mailto:enquiries@fearonlaw.com)

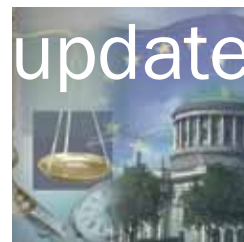
**LITIGATION**  
Martin Williams  
00 44 (0)1483 540843  
[mw@fearonlaw.com](mailto:mw@fearonlaw.com)

**PROPERTY**  
John Phillips  
00 44 (0)1483 540841  
[ajp@fearonlaw.com](mailto:ajp@fearonlaw.com)

**PROBATE**  
Francesca Nash  
00 44 (0)1483 540842  
[fn@fearonlaw.com](mailto:fn@fearonlaw.com)

*Regulated by the Solicitors Regulation Authority of England and Wales*

## firstlaw update



News of Irish case law information and legislation  
from FirstLaw's awareness service on Justis  
Compiled by Bart Daly

## CRIMINAL LAW

**European arrest warrant**

*European Union law – surrender – statutory interpretation – contra legem – purposive approach – literal approach – two warrants – moot point – Case C-105/03, Pupino [2005] ECR I-5285 – statutory presumption – European Arrest Warrant Act 2003 – Interpretation Act 2005 – whether the surrender of the respondent on two warrants was possible.*

The judicial authority in Poland had issued two separate warrants on which surrender of the respondent was sought. The High Court refused surrender on the basis of an interpretation of s22 of the *European Arrest Warrant Act 2003*, as amended, implementing the *Framework Decision* and the rule of speciality. The minister appealed against the judgment of the High Court and contended that the trial judge had erred in law in interpreting s22 as requiring the court to refuse the surrender of the respondent and in holding that only a literal interpretation of s22 was appropriate. The minister contended that s18 of the *Interpretation Act 2005* applied to s22 of the act of 2003.

The Supreme Court (per Denham J; Fennelly J concurring) held that, while the second warrant was withdrawn, it was an exceptional case, enabling the court to consider whether to hear a point of law in circumstances that had rendered the matter moot. By s22, the Oireachtas intended to implement the *Framework Decision* and the words of the section were clear. Section 22 provided for a specific statutory presumption and there was nothing

before the court to rebut that presumption. A purposive approach was also possible as to s22 and the rule of speciality. The court had to follow the decision in Case C-105/03, *Pupino* ([2005] ECR I-5285). No issue of *contra legem* applied to s22. The court could order the surrender of a person on more than one arrest warrant. The facts of the case had altered and the respondent was no longer sought as to one offence. The respondent would be surrendered on one warrant only.

*Per Macken J:* There existed the distinct possibility that more than one judicial authority might issue an arrest warrant in respect of the same person. **Minister for Justice, Equality and Law Reform (applicant/appellant) v Gotszlik (respondent), Supreme Court, 19/2/2009 [FL16323]**

## IMMIGRATION AND ASYLUM

**Judicial review**

*Unreasonableness – deportation – subsidiary protection – reasons for decision – O'Keefe unreasonableness – anxious scrutiny – Nigeria – human sacrifice – persecution on religious grounds – country of origin information.*

The applicant sought leave for judicial review to quash a decision of the respondent to make deportation orders against the first and second-named applicants. They alleged, *inter alia*, that they fled Nigeria, where the family of the husband of one of the applicants sought to make a human sacrifice of her children. Documents were exhibited in country-of-origin information that had been relied upon to demonstrate these

practices, subsequent to the initial interview. The applicant was informed, upon the refusal of her application for asylum, that she might make an application for subsidiary protection, against which a determination was subsequently made. It was alleged that the minister should have supplied reasons for his rejection of the documents. The issue arose as to the appropriate test to be applied and whether O'Keefe unreasonableness or anxious scrutiny was applicable.

McCarthy J held that the O'Keefe test was the appropriate one to be applied and that the reliefs sought would be refused. No substantial grounds had been advanced by the applicants for leave. There was no suggestion that the minister erroneously sought to balance the right in question against the entitlement of the state to maintain immigration control. **O(H) and O(E) (a minor) and (O)(CA) (a minor), both suing by their mothers and next friend O(H) (applicants) v Minister for Justice, Equality and Law Reform (respondent), High Court, 28/11/2008 [FL16506]**

## PRACTICE AND PROCEDURE

**Security for costs**

*Inability to meet costs in event that plaintiff should lose – existence of prima facie defence on part of moving party – discretion not to make order sought – whether special circumstances made out – whether plaintiff's inability to discharge defendant's costs flow from wrong allegedly committed by moving party – whether security for costs should be ordered – Companies Act 1963 (No 33), section 390.*

The plaintiff instituted proceedings seeking damages from the defendant in relation to an alleged breach of a construction contract. The defendant denied the allegations made by the plaintiff in its pleadings and brought an application for security for costs pursuant to section 390 of the *Companies Act 1963* against the plaintiff.

Mr Justice Clarke directed that the defendant pay security for costs, holding that:

- 1) In order to succeed in obtaining security for costs, an initial onus rested upon the moving party to establish:
  - a) That he had a *prima facie* defence to the plaintiff's claim, and
  - b) That the plaintiff would not be able to pay the moving party's costs if the moving party be successful.
- 2) In the event that the above two facts are established, then security ought to be required unless it could be shown that there were specific circumstances in the case that ought to cause the court to exercise its discretion not to make the order sought.
- 3) The court retained a discretion not to order security for costs where the plaintiff could establish, on a *prima facie* basis, that his inability to pay the costs of the defendant was due to the wrongdoing of the defendant that he asserted in his proceedings. In order for a plaintiff to be correct in his assertion that his inability to pay stemmed from the wrongdoing asserted, four propositions must necessarily be true:



- i) That there was actionable wrongdoing on the part of the defendant (for example, a breach of contract or tort),
- ii) That there was a causal connection between that actionable wrongdoing and a practical consequence or consequences for the plaintiff,
- iii) That the consequence(s) referred to in (ii) had given rise to some specific level of loss in the hands of the plaintiff, which loss was recoverable as a matter of law (for example, by not being too remote), and
- iv) That the loss concerned was sufficient to make the difference between the plaintiff being in a position to meet the costs of the defendant in the event that the defendant should succeed, and the plaintiff not being in such a position.

**Connaughton Road Construction Ltd (plaintiff) v Laing O'Rourke Ireland Ltd (defendant), High Court, 16/1/2009 [FL16306]**

## TAXATION

### Income tax

*Reliefs – restrictions – statutory interpretation – principles governing interpretation of taxation statutes – words and phrases – ‘limited partner’ – taxpayer’s status – whether expression ‘general partner’ in statute expressly*

*and in clear and unambiguous terms encompasses person who is partner under partnership established in foreign jurisdiction whose liability is limited and who has no implied authority to bind firm but who is entitled to participate in management of partnership business – whether taxpayer limited partner – Limited Partnership Act 1907, sections 3, 4, 5, 6 – Investment Limited Partnerships Act 1994, section 43 – Taxes Consolidation Act 1997, section 1013.*

Section 1013(2) of the *Taxes Consolidation Act 1997* provides that “(a) Where, in the case of an individual who is a limited partner in relation to a trade, an amount may apart from this section be given or allowed under any of the specified provisions – (i) in respect of a loss sustained by the individual in the trade ... in a relevant year of assessment, or (ii) as an allowance to be made to the individual for the relevant year of assessment either in taxing the trade or by means of discharge or repayment of tax to which he or she is entitled by reason of his or her participation in the trade, such an amount may be given or allowed ... where the individual is a limited partner in relation to a trade by virtue of paragraph (d) of the definition of ‘limited partner’ ... only against income consisting of profits or gains arising from the trade, and only to the extent that the amount given or allowed or, as the case may be, the aggregate amount in

relation to that trade does not exceed the amount of his or her contribution to the trade at the relevant time.” Section 43 of the *Investment Limited Partnerships Act 1994* provides that “in any proceedings involving a limited partnership established under, or by its terms governed by, the law of another state, the liability of the partners, its organisation and internal affairs shall be determined according to the law of that state.” The appeal commissioner determined that the taxpayer was a general, and not a limited, partner. The inspector of taxes appealed that determination by way of case stated to the High Court, asserting that, to qualify as a limited partnership, the partnership must not display any of the indicia of a general partnership. The taxpayer argued that his tax status as a limited partner was governed by the law of the foreign jurisdiction where it was based and not Irish law, by virtue of section 43 of the act of 1994, and that he did not come within the ambit of section 1013 of the act of 1997.

Ms Justice Laffoy answered the question posed to the effect that the taxpayer did not fall within paragraph (d) of the definition of limited partner in s1013(1) of the 1997 act, as amended, holding that the determination of whether the taxpayer was a limited partner by reference to paragraph (d) of the definition in section 1013(1) of the act of 1997, so

as to be subject to the restrictions on the availability of relief imposed by s1013, was a two-stage process. The first stage was to determine the characteristics, rights and obligations of the taxpayer *qua* partner under the partnership by reference to the law of the foreign jurisdiction. That approach was mandated by common law and by section 43 of the act of 1994. The second stage was to determine whether, applying Irish law, the characteristics, rights and obligations of the taxpayer *qua* partner matched the characteristics, rights and obligations of a general partner within the meaning of paragraph (d) in the context of section 1013 as a whole, to the extent that one could conclude that the expression ‘general partner’ in paragraph (d) clearly and unambiguously captured the taxpayer.

The definition of ‘limited partner’ in section 1013(1) of the 1997 act did not incorporate the definitions of general partner and limited partner contained in the act of 1907 or the corresponding definitions contained in the act of 1994 by reference, because those definitions were statute specific.

**Quigley (Inspector of Taxes) (appellant) v Harris (respondent), High Court, 28/11/2008 [FL16304] G**

*This information is taken from FirstLaw’s legal current awareness service, published every day on the internet at [www.firstlaw.ie](http://www.firstlaw.ie).*



## CONSULT A COLLEAGUE

The Consult a Colleague helpline is available to assist every member of the profession with any problem, whether personal or professional

# 01 284 8484

THE SERVICE IS COMPLETELY CONFIDENTIAL AND TOTALLY INDEPENDENT OF THE LAW SOCIETY



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

## The Services Directive

**T**he purpose of this article is to alert practitioners to the general provisions of directive 2006/123/EC, the *Services Directive*. Solicitors may well need to be broadly familiar with the provisions of the directive and the Irish implementing regulations when acting on behalf of clients in the following circumstances:

- Advice relating to the rights of service providers based in another member state who wish to provide services either by establishing in Ireland or by way of providing such services from his or her own member state,
- Preliminary advice for Irish clients who wish to provide their services in the same manner as above in another member state,
- Advice to Irish professional bodies and competent authorities in regard to their obligations when dealing with incoming applications, especially when the incoming service provider is not subject to regulation in his or her own home member state.

The current directive, which was adopted as long ago as 12 December 2006, was due for implementation not later than 31 December 2009. Although Ireland has not met this deadline (and it is not alone in this regard), the Department of Enterprise, Trade and Employment published a consultation paper in August 2009, which somewhat unusually contains a draft set of regulations tracking the provisions of the directive. As stated above, the purpose of this

article is to describe in broad terms the thrust of the directive. For more detailed information, practitioners should refer to the draft proposed regulations attached to the consultation paper, which hereafter will be referred to as 'the proposed regulations'.

Further information as to the ongoing implementation process can be obtained from the department's website, [www.en-temp.ie](http://www.en-temp.ie). Although the proposed regulations are unlikely to depart significantly from the current draft, the manner of their implementation may change. It is understood that some of the provisions of the directive, for example, those relating to the establishment of single points of contact (of which see later in this article), may be implemented by way of administrative action rather than by way of regulation as such.

### Main objectives

The primary aim of the directive is to make it much easier for service providers established in another member state to provide services in Ireland. This will be achieved by enabling service providers to exercise a right to freely establish and to provide such services. In addition, the directive aims to facilitate the provision of cross-border services in Ireland to clients and customers of the service provider without the need to go so far as establishing.

### To whom does it apply?

The directive applies to an extremely wide range of services. In fact, the directive has not attempted to set out a definitive

list, but has simply listed those services to which the directive does *not* apply. Those excluded are listed as follows:

- Non-economic services of general interest,
- Financial services,
- Electronic communication services and networks,
- Services in the field of transport,
- Services of temporary work agencies,
- Healthcare,
- Audiovisual and radio broadcasting services,
- Gambling activities,
- Activities that are connected with the exercise of official authority,
- Private security services,
- Services provided by notaries and bailiffs who are appointed by an official act of government.

Furthermore, the directive does not apply to the field of taxation.

The proposed regulations set out in greater detail the kind of services that are included in the above general list of non-applicable services.

The commission has also published a handbook that attempts, without being exhaustive, to describe some of the likely services that will be covered. By way of example, these would include the activities of most of the regulated professions, such as legal and fiscal advisers, architects, engineers, accountants and surveyors, as well as many of the well-known service-related fields of activity relating to business activities, craftsmen, advertising, distributive trades, tourism, construc-

tion services, and real estate services, to mention but just a few.

This handbook is available on the commission website at [http://ec.europa.eu/internal\\_market/services-dir/proposal\\_en.htm](http://ec.europa.eu/internal_market/services-dir/proposal_en.htm).

### Conflict with other directives

In order to avoid any conflict that might arise between the provisions of the directive and any other community legislation, the directive specifically provides that the provisions of such other community legislation shall prevail. Although such other community legislation would take precedence, such precedence would not arise in regard to provisions of the directive not in conflict with other community legislation.

This will be of particular interest to the legal professions, as the existing *Lawyers Directives* cover the rights of lawyers to establish or provide services in another member state. However, it should be borne in mind that, where a matter is dealt with in the directive but not covered in the *Lawyers Directives*, then the relevant provision in the directive would apply.

### Achieving its aims

The directive envisages that member states will be under an obligation to simplify existing administrative procedures. Member states will be obliged to:

- Set up 'single points of contact' through which persons wishing to obtain relevant information can do so,
- Make information on national requirements easily acces-

sible, and

- Provide for the availability of information by electronic means.

Member states will be under a general obligation to examine the procedures and formalities that enable a service provider to provide services either by way of establishment or by means of providing services from his own member state. If the procedures and formalities are not sufficiently simple, then the member states are under an obligation to simplify them. It should be noted that the commission reserves the right to introduce harmonised forms at community level. A unique and practical feature of the directive will be the requirement for member states to establish single points of contact.

#### Single points of contact

Member states will be required to ensure that all information to enable a service provider to complete the necessary procedures and formalities to access the relevant service market in a member state shall be made available through a single point of contact in that member state. It may well be the case that, in some if not all member states, such information can be obtained through one single point of contact for all professions, although some member states may elect to have such points of contact for individual professions.

The explanatory notes to the proposed regulations provide that the national single point of contact (NSPC) in Ireland will be based, initially, in the Internal Market Unit of the Department of Enterprise, Trade and Employment.

In any event, the point of contact will set out:

- All procedures and formalities needed and,
- In particular, all declarations, notifications, or applications necessary for authorisation from the competent authori-

ties, including

- Applications for inclusion in a register, a roll, or a database, or for registration with a professional body or association, and
- Any applications for authorisation needed to exercise service activities.

#### Information to be made available

In addition to the information that must be made available through single points of contact, member states will also be required to ensure that further information is easily accessible to providers and, it should be noted, to recipients of those services, namely:

- Information relating to the requirements applicable to providers established in the relevant member state, in particular the procedures and formalities to be completed,
- Contact details of the competent authorities,
- The means of, and conditions for, accessing public registers and databases,
- The means of redress generally available in the event of disputes,
- Details of relevant associations and organisations, other than competent authorities.

Competent authorities will continue to be responsible for supplying information, in particular where an authorisation is required.

#### Electronic means

A further significant feature of the directive is that member states will be obliged to ensure that all procedures and formalities may be easily completed at a distance and by electronic means through the relevant point of single contact and, it should be noted, with the relevant competent authority.

#### Freedom of establishment

In relation to the right of a service provider to establish in a

member state other than his own and to provide services in that member state, the directive deals with conditions relating to authorisation schemes and requirements, which are either prohibited (and which I have described in this article as 'the black list') or are subject to evaluation.

The following definitions in the proposed regulations should be noted:

- 'Authorisation scheme' is defined as meaning any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof,
- 'Establishment' is defined as meaning the actual pursuit of an economic activity for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out.

#### Authorisation scheme conditions

Clearly, in many instances, the right to establish in a member state will be subject to the service provider obtaining an authorisation or licence from a competent authority.

The directive contains extensive provisions in regard to such schemes that, among others, provide that:

- Authorisation schemes are only permitted provided they are not discriminatory, are justified in the public interest, and the objectives cannot be obtained by other means,
- Such schemes are based on criteria that preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

The criteria upon which authorisation schemes must be based are:

- Non-discriminatory,
- Justified by an overriding interest in the public interest,
- Proportionate to that public-interest objective,
- Clear and unambiguous,
- Objective,
- Made public in advance, and
- Transparent and accessible.

#### Duration of authorisations

The directive prohibits authorisations for limited periods of time. However, there are exceptions in cases where:

- The authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements,
- The number of available authorisations is limited by an overriding reason relating to the public interest, or
- A limited authorisation period can be justified by an overriding reason relating to the public interest.

#### Authorisation procedures

In general, such procedures must be clear and made public in advance. Other points to note are that:

- The application will be dealt with objectively and impartially,
- Procedures shall not be dissuasive, unduly complicated, or delay the provision of the service,
- Procedures shall be easily accessible,
- Charges will be reasonable and proportionate, and
- Applications will be processed as quickly as possible.

The relevant provision contains a warning that, failing a response by the competent authority within a set time period or as extended in justified circumstances, the authorisation shall be deemed to be granted.

#### 'Black list' for establishment

A central feature of the directive is that it sets out a list of requirements that are prohibited and that, again, for the purposes of



this article, are described as the 'black list'.

Member states are prohibited from making access to, or the exercise of, a service activity in their territory subject to a number of requirements. These are as follows:

- 1) Discriminatory requirements based on nationality,
- 2) In the case of companies, a requirement as to the location of its registered office,
- 3) Also in the case of companies, nationality requirements in regard to holding shares, management or supervision,
- 4) Residential requirements within the territory for the persons at (3) above,
- 5) A prohibition on establishment in more than one member state,
- 6) A prohibition on being entered in the registry or enrolled with more than one professional body or association of more than one member state,
- 7) Restrictions on the freedom to choose between a principal or secondary establishment,
- 8) A restriction to have its principal establishment in the territory,
- 9) A restriction to choose between the form of an agency, branch or subsidiary,
- 10) Conditions as to reciprocity,
- 11) The granting of authorisations subject to economic needs or market demands,
- 12) The direct or indirect involvement of competing operators,
- 13) An obligation to provide or participate in a financial guarantee or to take out insurances from a provider established in their territory,
- 14) An obligation to have been pre-registered in the territory.

Please note that the foregoing is a short summary of detailed requirements. Readers should consult the specific provisions of

the directive and the proposed regulations.

#### Requirements to be evaluated

Apart from the list of prohibited requirements, the directive also imposes an obligation on member states to examine whether or not, within their legal systems, certain non-discriminatory requirements are compatible with conditions laid down in the directive.

These requirements are identified as follows:

- Quantitative or territorial restrictions,
- Obligation on a service provider to take a specific legal form,
- Requirements that relate to the shareholding of a company,
- Requirements that reserve access to particular providers,
- A ban on having more than one establishment in a member state,
- Requirements fixing a minimum number of employees,
- Fixed minimum/maximum tariffs,
- An obligation to supply other specific services jointly.

These requirements must then be evaluated in accordance with the following conditions:

- The requirements must not be discriminatory according to nationality or, in the case of companies, according to the location of the registered office,
- The requirements must be justified by an overriding public interest,
- The requirements must not go beyond what is necessary to attain the objective.

In the event that the requirements are not compatible with the specified conditions, then member states are under an obligation to adapt the relevant laws.

#### Free movement of services

Before summarising the main

provisions in the directive relating to the freedom to provide services, it is worth bearing in mind the distinction between 'establishment' and the provision of services. The commission handbook, previously referred to, deals with this distinction at some length. The following quote may be helpful: *"Establishment involves the actual pursuit of an economic activity through a fixed establishment for an indefinite period. By contrast, according to the case law of the ECJ, the freedom to provide services is characterised by the absence of a stable and continuous participation in the economic life of the host member state."*

The directive then specifies the steps that member states are obliged to undertake in order to ensure that service providers established in a member state can provide services in another member state.

#### Freedom to provide services

In some respects, the provisions relating to the freedom to provide services for service providers mirror the provisions relating to the rights of establishment. Apart from specifying that member states shall not make access to or the exercise of a service activity subject to compliance with certain principles, the directive also sets out, as in the case of establishment, a 'black list' of requirements.

#### What principles must be observed?

The principles referred to above are as follows:

- The requirements must not be discriminatory with regard to nationality nor, in the case of legal persons, with regard to the member state in which they are established,
- The requirement must be justified on grounds of public policy, public security, public health or the protection of the environment,
- The requirements must be proportional, in that they

must be suitable for the attainment of the objective pursued.

#### 'Black list' for services

Member states are prohibited from imposing any of the following requirements:

- An obligation for the provider to have an establishment in the territory of the member state,
- An obligation to obtain an authorisation from a competent authority in the territory of the member state,
- A ban on the provider setting up a certain form or type of structure in the territory,
- The application of specific contractual arrangements between the service provider and the recipient that prevent or restrict service provided by the self-employed,
- An obligation on the provider to possess an identity document issued by a competent authority,
- Requirements that affect the use of relevant equipment and material,
- Restrictions on the freedom of recipients to services.

#### General

Other provisions of the directive relate to such matters as the rights of recipients to services, professional liability, mutual assistance between member states, codes of conduct, and some interesting provisions relating to multidisciplinary activities.

Finally, it should be noted that, according to the notes to the proposed regulations, the Department of Employment, Trade and Employment is screening all existing services that come within the scope of the directive for compatibility with the directive. As a result of this screening process, a number of existing pieces of legislation and other rules are being changed to bring them in line with the directive. **G**

*John Fish is a solicitor.*

## Recent developments in European law

### FREEDOM OF ESTABLISHMENT

Case C-531/06 and joined cases C-171/08 and C-172/07, *Commission v Italy, Apothekerkammer des Saarlandes and Others*, 19 May 2009. These cases related to whether EC law precludes provisions in Italian and German legislation that provide that only pharmacists may own and operate a pharmacy. The ECJ held that excluding the possibility for pharmacists to operate pharmacies or to acquire stakes in companies or firms operating pharmacies is a restriction on the freedom of establishment and the free movement of capital. The restriction can be justified by the objective of ensuring that the provision of medicinal products to the public is reliable and of good quality. Where there is uncertainty as to the existence or extent of risks to public health, it is important that a member state should be able to take protective measures without having to wait until the reality of those risks becomes fully apparent. A member state may take measures that reduce, as far as possible, a public health risk, including a risk to the reliability and quality of the provision of medicinal products to the public. If medicinal products are consumed unnecessarily or incorrectly, they may cause serious harm to health. Overconsumption or incorrect use of medicinal products leads to a waste of financial resources. The financial resources that may be available for health-care are not unlimited. Member states may require that medicinal products be supplied by pharmacists enjoying genuine professional independence. A pharmacist pursues the objective of making a profit. However, as a pharmacist by profession, he is presumed to operate the pharmacy not with a purely economic objective, but also from a professional viewpoint. His private interest connected with the making of a profit is

thus tempered by his training, by his professional experience, and the legal and professional responsibility he owes. Non-pharmacists lack training, experience and responsibility equivalent to those of pharmacists. Thus, they do not provide the same safeguards as pharmacists. A member state may, therefore, take the view that the operation of a pharmacy by a non-pharmacist may represent a risk to public health, in particular to the reliability and quality of the supply of medicinal products at retail level. The court also found that it was not established before it that a measure less restrictive than the exclusion on non-pharmacists would make it possible to ensure just as effectively the level of reliability and quality in the provision of medicinal products to the public that results from the application of that exclusion. Having regard to the discretion that it is allowed, a member state may take the view that there is a risk that less restrictive rules designed to ensure the professional independence of pharmacists, such as a system of controls and penalties, would not be observed in practice, given that the interest of a non-pharmacist in making a profit would not be tempered in a manner equivalent to that of self-employed pharmacists and that the fact that pharmacists, when employees, work under an operator could make it difficult for them to oppose instructions given by him. Freedom of establishment and the free movement of capital do not preclude national legislation that prevents persons not having the status of pharmacist from owning and operating pharmacies.

### FREE MOVEMENT OF GOODS

Case C-531/07, *Fachverband der Buch und Medienwirtschaft v LIBRO Handelsgesellschaft mbH*, 30 April 2009. Austrian law provides that German language

books are to be sold at a fixed price. The publisher or importer is to fix and publish a retail price, and the importer is not to fix a price below the retail price fixed or recommended for the state of publication, less any value added tax comprised in it. The applicant is the trade association of the chamber of commerce for the book and media trade. It is given the power to publish the retail prices to which the booksellers are subject for the sale in Austria of German language books. LIBRO operates 219 shops in Austria, and 80% of the books it sells come from outside the state. From August 2006, it advertised books published in Germany for sale in Austria at prices that were lower than the minimum set for Austria on the basis of German prices. The applicant applied to the Austrian court seeking an order directing LIBRO to cease such advertising. The court of first instance granted the order, holding that, even if the price scheme restricts the free movement of goods, it is "justified for cultural reasons and by the need to maintain media diversity". An appellate court asked the ECJ whether the Austrian rules on the price of imported books are compatible with EC law. The ECJ referred to settled case law that all trading rules enacted by member states that are capable to hindering intra-community trade are to be considered as measures having equivalent effect to quantitative restrictions. In this case, the court found that, even if the Austrian provisions concern selling arrangements, they do not, by prohibiting importers from fixing a price below that of the state of publication, affect in the same manner the marketing of domestic books and those from other member states. German language books from other member states are treated less favourably than domestic books. Austrian importers and foreign publishers are

restricted from fixing minimum retail prices, whereas Austrian publishers are free to fix, for domestically printed books, retail prices for the national market. There is, therefore, a restriction on the free movement of goods. The ECJ found that the restriction was not justified. The protection of books as cultural objects can be considered to be an overriding requirement in the public interest capable of justifying measures restricting the free movement of goods. Such measures must be appropriate for achieving the objective fixed and cannot go beyond what is necessary to achieve it. In this case, the objective of the protection of books as cultural objects could be achieved by measures less restrictive for the importer. For instance, the importer or the foreign publisher could be allowed to fix a retail price for the Austrian market that takes the conditions of that market into account.

### LITIGATION

Case C-180/06, *Renate Ilsinger v Martin Dreschers*, 25 May 2009. In August 2002, Ms Ilsinger received a letter addressed to her from Schlank & Schick. The letter gave the impression that she had won a prize of €20,000. As requested by the letter, she tore off a coupon containing an identification number and attached this to the "prize claim certificate" and returned it to Schlank & Schick. She argued that she also placed a trial order at the same time. This was contested by the respondent, and it argued that she had not ordered any goods. The award of the prize did not depend on such an order. By December 2002, she had not received the prize claimed and brought proceedings in Austria under consumer protection legislation. She also relied on article 16 of regulation 44/2001, which allows a consumer to bring proceedings against the other party to a contract where the con-

sumer is domiciled. The ECJ held that a contract must exist within the meaning of article 15 for it to apply. There must be a firm offer, which is sufficiently clear and precise with regard to its object and scope, to give rise to a link of a contractual nature. The mail order company must have declared itself to be unconditionally willing to pay the prize at issue to consumers who so request. It is for the Austrian court to decide whether that requirement is fulfilled. If there was no contractual undertaking to pay the prize, article 15 cannot apply. In that case, article 15 will only apply if the misleading prize notification was followed by conclusion of a contract by the consumer with the mail order company evidenced by an order placed.

Case C-420/07, *Meletis Apostolides v David Charles Orams & Linda Elizabeth Orams*, 28 April 2009. Following the invasion of Cyprus by Turkish troops in 1974,

it was partitioned into two areas. In the northern part of the island, the Turkish Republic of Northern Cyprus was established, recognised by no state other than Turkey. The Republic of Cyprus, which acceded to the EU in 2004, has *de facto* control only over the southern part of the island. The application of EC law in the northern part of the Republic of Cyprus has been suspended by a protocol annexed to the *Act of Accession*. The Orams had purchased land in the northern part of Cyprus to build a holiday home on it. Mr Apostolides sued in the Republic of Cyprus, arguing that he was the rightful owner – his family had been forced to leave the land at the time of partition. The court initially gave judgment against the Orams in default of appearance, ordering them to return the land and pay compensation. They appealed the decision, but the appeals court also held against them. Mr Apostolides then sought to enforce the judgment in Eng-

land using the *Brussels I Regulation* (44/2001). The Court of Appeal referred to the ECJ a number of questions concerning the interpretation and application of the regulation. The ECJ found that the suspension provided for in the *Act of Accession* of Cyprus is limited to the application of EC law in the northern area. However, the judgments concerned were given by a court sitting in the government-controlled area. The fact that the judgments concerned land in the northern area did not preclude the application of the *Brussels I Regulation*. The court found that the dispute fell within the scope of the regulation. The fact that the judgments cannot, as a practical matter, be enforced where the land is situated does not preclude the recognition and enforcement of those judgments in another member state. The court then considered whether the English court could refuse to enforce the judgment as being contrary to English public policy. A court of a

member state cannot, without undermining the aim of the *Brussels I Regulation*, refuse recognition of a judgment emanating from another member state solely on the ground that it considers that national or EC law was misapplied. The national court may refuse recognition only where the error of law means that recognition or enforcement of the judgment is regarded as a manifest breach of an essential rule of law in the legal order of the member state concerned. In this case, the Court of Appeal had not referred to any fundamental principle within the British legal order that the recognition or enforcement of the judgments in question would be liable to infringe. The fact that Mr Apostolides might encounter difficulties in having the judgments enforced cannot deprive them of their enforceability. Therefore, that situation does not prevent the courts of another member state from declaring such judgments enforceable. **G**



Law Society of Ireland

## WEDDING CEREMONY AND RECEPTION IN ELEGANT BLACKHALL PLACE



Full catering and bar services for up to 200 people • Private grounds with extensive car parking  
Attractive location for photographs, both inside and outside • Centrally located and easily accessible  
Prestigious premises designed by Thomas Ivory • Available to solicitors' families and friends

CONTACT OUR CATERING MANAGER

Tel: 01 672 4800, fax: 01 672 4801, e-mail: [a.gilhooly@lawsociety.ie](mailto:a.gilhooly@lawsociety.ie), website: [www.lawsociety.ie](http://www.lawsociety.ie)



## LOST LAND CERTIFICATES

### Registration of Deeds and Title Acts 1964 and 2006

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

Property Registration Authority, Chancery Street, Dublin 7 (published 5 March 2010)

Regd owner: Eileen Kelly; folio: DN5336; lands: property situate in the townland of Baldoyle and barony of Coolock; **Co Dublin**

## WILLS

**Carthy, John (deceased)**, late of Ballinamona (and also Ballyknockan), The Ballagh, Enniscorthy, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died on 4 September 2008, please contact Ensor O'Connor, Solicitors, 4 Court Street, Enniscorthy, Co Wexford; tel: 053 923 5611, fax: 053 923 5234

WPG DocStore's professional e-discovery support service from €500 per GB. ISO 27001 certified; tel: (01) 2454800, email: [crogan@wpg.ie](mailto:crogan@wpg.ie) or website: [www.wpg.ie/docstore.htm](http://www.wpg.ie/docstore.htm)



A Caring Legacy: bequests to The Carers Association (CHY10962) help to support home-based family care in Ireland.

For information: Emma at 057 9370210. [fundraising@carersireland.com](mailto:fundraising@carersireland.com) or [www.carersireland.com](http://www.carersireland.com).

## IMPORTANT NOTICE: Abolition of land certificates and certificates of charge

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

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

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

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

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

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

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

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

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

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

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

**Garvey, Liam (deceased)**, late of 5 Greenlands Terrace, Rosses Point, Sligo, who died on 11 January 2010. Would any person holding or having any knowledge of a will made by the above-named deceased please contact Donncha O'Connor, Johnson & Johnson, Solicitors, Ballymote, Co Sligo; tel: 071 918 3304, fax: 071 918 526; DX 241001 Ballymote

**Moran, Joseph (deceased)**, late of 2 St Patrick's Terrace, Inchicore, Dublin

8. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, who died on 20 December 2009, please contact Maurice E Veale & Co, Solicitors, 6 Lower Baggot Street, Dublin 2; tel: 01 676 4067

**Murphy, Brendan (deceased)**, late of 1195 Piper Hall, Crosschapel, Blessington, Co Wicklow. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, who died on 4 December 2009, please contact Peter Benson, O'Connor Solicitors, 8 Clare Street, Dublin 2; email: [pbenson@oconnorsols.ie](mailto:pbenson@oconnorsols.ie), tel: 01 676 4488

**Murphy, Dorris (deceased)**, late of Talbot Lodge Nursing Home, Malahide, Co Dublin, and formerly of 30 Kilnamanagh Road, Walkinstown, Dublin 12, who died on 14 January 2009. Would any person having knowledge of a will made by the above-named deceased please contact Dominic Dowling, Solicitors, 37 Castle Street, Dalkey, Co Dublin; tel: 01 284 9778, fax: 01 284 9780, email: [john@dalkeylaw.com](mailto:john@dalkeylaw.com)

**O'Beirne, Padraic (deceased)**, late of Carroward, Four Mile House, Co Roscommon. Would any solicitor holding or having any knowledge of a will made by the above-named deceased, who died on 2 December 2002, please contact Peter H Jones & Co, Solicitors, Goff Street, Roscommon; tel: 090 662 6925, email: [pjones@iol.ie](mailto:pjones@iol.ie)

**Pidgeon, Hannah (deceased)**, late of 38 Kilmore Avenue, Artane, Dub-

lin 5. Would any person having any knowledge of a will made by the above-named deceased, who died on 29 December 2009, please contact Ciaran O'Donohoe, solicitor, Miley & Miley, 35 Molesworth Street, Dublin 2; tel: 01 678 5122, fax: 01 661 9935, email: [ciaran.odonohoe@mileyandmiley.ie](mailto:ciaran.odonohoe@mileyandmiley.ie)

**Vanston, Richard (deceased) (ward of court) (hospitalised for 50 years)**, date of birth: 9 October 1920. Would any person having knowledge of a will made by the above-named deceased, who died on 13 October 2009 at St Dymphna's Hospital, Carlow, please contact Joseph P Farrell, Solicitors, no 1 Maryborough Street, Graiguecullen, Carlow; tel: 059 917 3247, fax: 059 917 3267

**Woods, Ann (deceased)**, late of 6 Lady's Residence, Mount St Vincent, O'Connell Avenue, Limerick, who died on 11 October 2009. Would any person having knowledge of a will made by the above-named deceased please contact Eamonn Carolan, Patrick J Carolan & Co, Solicitors, Kingscourt, Co Cavan; DX no 184001 Kingscourt; tel: 042 966 7433

## MISCELLANEOUS

**For sale: seven-day ordinary publican's licence.** Please contact Johnson & Johnson, Solicitors, Ballymote, Co Sligo; tel: 071 918 3304, fax: 071 918 3526, email: [johnson.johnson@secure-mail.ie](mailto:johnson.johnson@secure-mail.ie). Reference: C001860100

**Selling or Buying  
a seven-day liquor  
licence  
Contact 0404 42832**

## STRESSED?

**Do you want to hide away,  
relax and rejuvenate?**

Robin Hill has two accommodation options, self-catering and B&B.

Set in tranquil beautiful surroundings overlooking Cork Harbour. Huge selection of massage, holistic & beauty therapies, acupuncture, homeopathy, Chinese herbal medicine, NLP, Colonic Hydrotherapy & retreat packages available.

**Tel: 021-4812222**  
[www.robinhillclinic.com](http://www.robinhillclinic.com)

**Robin Hill Clinic**  
Lake Road  
Rushbrooke, Cobh, Co Cork

## 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 Hurstgreen Limited and in the matter of 51 Upper Leeson Street, Dublin 2

Take notice that any person having any interest in the freehold or leasehold estate of the following property: all that and those the hereditaments and premises known as 51 Upper Leeson Street in the city of Dublin, held under lease dated 15 February 1957 made between John Berkeley, Knox Moses and Henry Derek Hurley of the one part and Harold Spiro of the other part for a term of 94 years at a rent of £20 per annum.

Take notice that Hurstgreen Limited, being the person currently entitled to the lessee's interest under the said lease, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

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

Date: 5 March 2010

Signed: Dundon Callanan (solicitors for the applicant), 17 The Crescent, Limerick

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

## PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICE SECTION ARE AS FOLLOWS:

- **Lost land certificates** – €144 (incl VAT at 21%)
- **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 April Gazette: 16 March 2010. For further information, contact the Gazette office on tel: 01 672 4828 (fax: 01 672 4877)

matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Patrick Kerins and in the matter of premises situate at Strand Street, Tralee, Co Kerry, known as The School, Strand Street, Co Kerry

Take notice that Patrick Kerins intends to submit an application to the county registrar for the county of Kerry for the acquisition of the freehold interest in the property known as The School, Strand Road, Tralee, Co Kerry, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below-named solicitors within 21 days from the date of this notice.

In particular, such persons who are entitled to the interest of Patrick Donovan, pursuant to a lease dated 20 September 1879 and made between Patrick Donovan of the one part and Sir Henry Donovan of the other part for a term of 35 years from 25 March 1879, subject to the annual rent of one shilling, in the property known as dwellinghouse numbers 92, 93 and 94

Strand Street and subsequently comprising a schoolhouse property, should provide evidence of their title to the below-named solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Patrick Kerins intends to proceed with the application before the county registrar at the end of the 21-day period from the date of this notice and will apply to the county registrar for the county of Kerry for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are un-

known or unascertained.

Date: 5 March 2010

Signed: Gerald Baily & Co (solicitors for the applicant), Church Place, Church Street, Tralee, Co Kerry

## RECRUITMENT

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

## NOTICE TO THOSE PLACING RECRUITMENT ADVERTISEMENTS IN THE LAW SOCIETY GAZETTE

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

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

## FREE JOB-SEEKERS' REGISTER

For Law Society members seeking a **solicitor position**, full-time, part-time or as a locum.

Log in to the new self-maintained job-seekers' register in the employment opportunities section on the members' area of the Law Society website, [www.lawsociety.ie](http://www.lawsociety.ie), or contact Trina Murphy, recruitment administrator, at the Law Society's Cork office, tel: 021 422 6203 or email: [t.murphy@lawsociety.ie](mailto:t.murphy@lawsociety.ie)



Law Society of Ireland

## FREE EMPLOYMENT RECRUITMENT REGISTER

For Law Society members to advertise for all their legal **staff requirements**, not just qualified solicitors.

Log in to the new expanded employment recruitment register in the employment opportunities section on the members' area of the Law Society website, [www.lawsociety.ie](http://www.lawsociety.ie), or contact Trina Murphy, recruitment administrator, at the Law Society's Cork office, tel: 021 422 6203 or email: [t.murphy@lawsociety.ie](mailto:t.murphy@lawsociety.ie)



Law Society of Ireland



# GLOBAL SPECIALISTS IN LEGAL RECRUITMENT

## Dublin

### IN-HOUSE

#### Head of Legal - IFSC Bank

An international bank in the IFSC is currently recruiting for a senior banking lawyer to take responsibility for all legal and regulatory matters in which the entity operates. The successful candidate will provide professional, independent and appropriate legal advice to support the commercial operation of the businesses. Significant experience in financial services and detailed knowledge of relevant statutory, regulatory and common law is required. **Ref: 1155300**

#### Senior Solicitor - Debt Capital Markets

This large Dublin based financial institution is seeking to recruit a banking and corporate finance lawyer. The successful candidate will have particular experience in debt restructuring, capital markets and/or financial services regulation. Excellent academic and technical expertise and an ability to devise clear legal solutions to complex business issues and establish professional credibility throughout the institution will be key. **Ref: 1153410**

#### Senior Solicitor - Commercial Litigation

This large Dublin based financial institution wishes to recruit a commercial litigation lawyer with particular experience in commercial litigation and advising on contentious corporate and banking matters. The successful candidate will be highly motivated and demonstrate initiative and an ability to effectively prioritise and manage workload and deadlines in a dynamic and changing environment. **Ref: 1154450**

#### Senior Legal Advisor - Funds Law

A leading financial services company based in Dublin is currently recruiting for a senior legal advisor for its fund administration and trustee company. The role requires a qualified solicitor or barrister with a number of years' post qualification experience in the funds industry. The successful candidate will work closely with senior management and play a key strategic role within the business. **Ref: 1147390**

#### Senior Lawyer - Aircraft Finance

A leading aircraft leasing organisation, headquartered in Dublin, wishes to recruit a senior aviation finance lawyer to manage a legal team. Primary responsibilities will include: in-house legal advice, management, guidance and support to the company in the execution and administration of aircraft acquisitions and sales, operating leases and associated finance transactions. The successful candidate will have relevant aviation leasing and finance experience, either in-house or within a law firm which has an industry recognised aviation leasing and finance practice. **Ref: 1134270**

To apply for any of these legal roles interested candidates should forward their Curriculum Vitae, in the strictest of confidence to **Claire Dunwoody** at [claire.dunwoody@robertwalters.com](mailto:claire.dunwoody@robertwalters.com) or call +353 (01) 633 4111.

### COMPLIANCE

#### Senior Compliance Officer

A leading domestic financial services organisation seeks to recruit a compliance and regulatory professional. Responsibilities will include interpreting legal and regulatory requirements and advising the business on compliance obligations. There will be a focus on FSA standards in addition to Irish Financial Regulator requirements. Experience in financial services compliance, particularly wealth management and a knowledge of Irish and UK requirements is sought. **Ref: 1149350**

To apply for the compliance role interested candidates should forward their Curriculum Vitae, in the strictest of confidence to **Suzanne Feeney** at [suzanne.feeney@robertwalters.com](mailto:suzanne.feeney@robertwalters.com) or call +353 (01) 633 4111.

[www.robertwalters.ie](http://www.robertwalters.ie)

AUSTRALASIA ASIA AFRICA EUROPE NORTH AMERICA

ROBERT WALTERS



## Walkers Group

From our offices around the globe, the Walkers Group provides legal and management services to FORTUNE 100 and FTSE 100 global corporations and financial institutions, capital markets participants, investment fund managers and growth and middle market companies.

Widely recognised as a leader in the offshore legal industry, Walkers' industry awards include:

- » Offshore Law firm of the Year – The Lawyer
- » Law Firm of the Year: Offshore - PLC Which Lawyer? Awards
- » Offshore Law Firm of the Year - ALB Hong Kong Law Awards
- » Top Hedge Fund Service Provider (Offshore Law Firm) - Institutional Investor/Alpha Awards
- » Offshore Legal Team of the Year - STEP
- » Cayman Islands Law Firm of the Year - Who's Who Legal
- » Client Choice Award (Cayman Islands) - International Law Office
- » Best Cayman Islands Law Firm - FundDomiciles.com

## Partnership Opportunities

Our commitment to our clients and people distinguishes our ability to grow businesses and we are now set to establish a significant presence in Ireland. We are seeking a number of innovative partners to join our Dublin operations in the following areas:

Asset Finance | Corporate | Finance | Investment Funds | Litigation | Tax

Applications from partners specialising in associated fields where they can demonstrate a strong business case will also be considered.

These roles represent significant opportunities for individuals to leverage their respective experience and make excellent career moves.

If you would like know more about these outstanding opportunities please contact our exclusively retained advisor Sharon Swan at [sharonswan@makosearch.ie](mailto:sharonswan@makosearch.ie) or 01 685 4017.



All third party applications will be forwarded to MAKO Search.

# True Pedigree



## Private Practice

**Commercial Litigation-Assistant :** Our client is a Top Tier law firm with an enviable client base searching for exceptional candidates to deal with a broad mix of Commercial Litigation. You will have a first class academic background coupled with excellent communication skills.

**Corporate Finance-Assistant/Associate:** Leading Dublin practice requires a high calibre lawyer to deal with corporate advisory work including mergers and acquisitions, joint ventures, management buy outs, reverse takeovers and debt and equity financings as well as advising on flotations and fundraisings.

**Intellectual Property-Assistant:** First rate Dublin law firm is seeking a strong junior lawyer to join its IP department. Candidates must have a science degree. .

**EU/Competition-Assistant:** Our client is a first class legal practice whose client base includes prestigious public service and private sector organizations operating both in the domestic market and internationally. You will be a Solicitor or Barrister with excellent exposure to EU and Competition Law, gained either in private practice or in-house.

**Funds-Assistant/Associate:** Top ranking law firm requires excellent Funds specialists at all levels. You will advise investment managers, custodians, administrators and other service providers of investment funds on establishing operations in Ireland.

**Projects/PPP – Senior Associate/Partner - Belfast:** One of Northern Ireland's leading Commercial law firms has a superb opportunity for an innovative, highly motivated individual with vision and energy to quickly create a strong, separate practice area. You must have significant experience of major projects and a track record of PPP work on both procurement authority and bidder sides. An excellent package commensurate with the role, which will include imminent entry to Partnership, will be available to the successful candidate.

## In House

**Telecoms-Assistant:** A major player in the Telecoms industry is looking for bright solicitors with outgoing personalities to work with its international sales team focusing on opening up new markets. Fluency in either Spanish or French is an essential pre-requisite.

**Legal Counsel- Senior Associate/Salaried Partner level:** Our client is a major player in the tobacco industry and requires a senior lawyer to advise the Irish market on all legal matters affecting the business. You will be a Solicitor or Barrister. Prior in house experience whilst desirable is not essential.

## Partnership

Our clients include the leading Irish legal practices. Significant opportunities exist in the following areas:  
**Employment; Funds; Insolvency; Litigation**