

### Competition authority

The ABCs of current competition law – what you really need to know



### Mergers, he wrote

Top tips to keep in mind if you're considering a merger between law firms



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Thirteen years of the Calcutta Run's work for homelessness charities

LAW SOCIETY

# GAZETTE

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## PEIRCING INTELLIGENCE:

Exclusive interview with  
Gareth Peirce



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Left to right: Séamus Sadlier, Garrett Rice, Grace Kiernan, Carol Duffy & Rob McCann

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Dublin 4**

# NEVER CEASE TO BE PRISONERS OF HOPE

On Friday 25 February 2011, the people spoke. The outcome is a new coalition government of Fine Gael and Labour. On behalf of the profession, I wish Enda Kenny, as Taoiseach, and the new Government, every success and good luck as they strive to face the enormous challenges of our country and people.

Last year, research was commissioned to analyse the level of public trust in the Church, State, banks, professions and institutions. Not surprisingly, public trust has fallen dramatically in recent years. A serious amount of distrust in society can be corrosive of hope. But we should remember the words of Bishop Desmond Tutu: "The dilution of trust must make us never cease to be prisoners of hope." Accordingly, I was pleased when Mr Kenny, on his first day, said: "As Taoiseach, I am entering into a covenant with the Irish people: to tell them the truth of our situation always, however unwelcome, difficult or frightening it might be."

He said he wanted to promote "values of self-awareness, compassion, integrity, respect, dignity, kindness, courage, generosity, affection, authenticity and hope, and especially – the truth and trust". Such values should also apply to our profession in these very traumatic times.

I also want to congratulate and welcome the appointment of our colleague Alan Shatter as the new Minister for Justice, Equality and Defence. Having been first elected a TD in 1981, he thoroughly deserves this appointment, which is an enormous ministerial portfolio. I note that the defence portfolio has replaced the law reform portfolio of his predecessor, and I earnestly hope and expect that law reform will always be a priority for the new minister.

## Easier system to understand

In a recent interview in *The Parchment*, the minister said: "Insurance must remain mandatory. The conveyancing area is where a lot of problems arose. Solicitors who were less than expert in conveyancing were charging fees that had no economic reality and short-circuited the work they were doing."

In relation to legal costs, he said he wanted a system that is easier to understand for the consumer, but also one that punishes a vexatious challenge by a client. Regarding regulation, he acknowledged that "the Law Society regulates reasonably well". He believes that the proposed Legal Services Ombudsman may well be sufficient in terms of independent regulation, but wants to adopt a wait-and-see approach.

The new Government has recently published a new *Programme for Government*, which includes the following proposals under justice and law reform:

- 1) Establish a Constitutional Convention to make proposals for amendments to the 1937 Constitution,
- 2) Prioritise legislation arising from the recommendations made by the Law Reform Commission,
- 3) Reform and modernise aspects of family law,
- 4) Encourage and facilitate the use of mediation in disputes of all types,
- 5) Create the necessary steps to create a permanent civil Court of Appeal,
- 6) Make legal costs more transparent,
- 7) Establish a Judicial Council,
- 8) Enact legislation to strengthen the rights of victims of crime and their families,
- 9) Enact a new consolidated and reformed anti-corruption law to punish white-collar crime,
- 10) Enact legislation to strengthen the power of the Criminal Assets Bureau in relation to forfeiting the proceeds of crime, and
- 11) End the practice of imprisoning people who cannot pay fines and debts.

## Shared concerns

The Society hopes to meet Alan Shatter as soon as possible to discuss all the issues raised above and any other issues that are relevant to the solicitors' profession in these turbulent times.

Finally, I would like to encourage as many of you as possible to come to the Ritz Carlton Hotel in Powerscourt, Co Wicklow, for the annual conference of the Society on Friday and Saturday, 6-7 May. Peter Sutherland is the keynote speaker on the Saturday morning, and he will help to make it a memorable occasion. ©



***"A serious amount of distrust in society can be corrosive of hope"***

*John Costello*  
John Costello  
President





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# LAW SOCIETY GAZETTE

## REGULARS

### 1 President's message

### 4 News

- 4 Nationwide
- 11 Representation: news from Law Society committees

### 12 Analysis

- 12 News feature: the experiences of an Irish lawyer working with underprivileged children in the Philippines
- 14 News feature: 13 years of the Calcutta Run
- 16 Human rights watch: challenging the ban on deaf jurors

### 19 Comment

- 19 Viewpoint: the new Criminal Courts of Justice: a review

### 39 People and places

### 42 Student spotlight

### 44 Books

- 44 Book reviews: *Dispatches from the Dark Side*, *Intellectual Property Law in Ireland* and *Psychiatry and the Law*
- 45 Reading room: sourcing free online information

### 47 Briefing

- 47 Council reports: 21 January and 18 February 2011
- 48 Practice notes
- 50 Legislation update: 5 February – 9 March 2011
- 51 One to watch
- 52 Solicitors' Benevolent Association report and accounts
- 53 Regulation: Solicitors Disciplinary Tribunal
- 57 Justis update
- 59 Eurlegal: recent developments in European law

### 61 Professional notices

### 63 Recruitment advertising

### 64 Captain's blawg



64



41



42





## COVER STORY

### 20 Gentle champion

Gareth Peirce is one of the world's foremost human rights lawyers, well known for her groundbreaking work on the Birmingham Six and the Guildford Four cases. Colin Murphy speaks to her about her work, the 'universal crime' of torture, and her passion for the rule of law



## FEATURES

### 24 Competitive streak

Business clients should keep their friends close and their enemies closer – but they should keep their competition lawyer closest of all. Vincent Power outlines the five areas that legal advisors should be aware of

### 32 Time keeps on slipping

As more entities cease to trade and are not a viable mark for recovery in litigation, greater reliance is being placed on the principle of joint and several liability in relation to building claims. Fiona Forde checks her watch

### 28 Synergy symphony

The economic downturn has resulted in many practices looking very carefully at their costs in order to preserve profitability. However, a further strategy to consider is a merger. Brian Hyland mixes it up

### 36 Title fight

In the current economic climate, the insertion of a retention-of-title clause into a business's standard conditions of sale may be of comfort, especially where the creditworthiness of customers might be an issue. Colm O'Connor boxes clever



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You can also check out:

- Current news
  - Forthcoming events, including the **Law Society's annual conference in Powerscourt, Co Wicklow on Friday 6 and Saturday 7 May 2011**
  - Employment opportunities
  - The latest CPD courses
- ... as well as lots of other useful information

## Nationwide

Compiled by Kevin O'Higgins



*Kevin O'Higgins is junior vice-president of the Law Society and has been a Council member since 1998*

## Encouraging numbers at Mayo CPD seminars

### MAYO

A lot has happened in Mayo over the last month. Unquestionably, colleagues are encountering as many difficulties in practice here as anywhere else. Yet it was encouraging to see the healthy numbers turning up at the recent seminar on regulatory matters and most recently – just last week – on civil partnership and mediation.

The fact that president Evan O'Dwyer (despite whatever his own views might be) had the foresight just before Christmas to extend an invitation to the then leader of the opposition, and now Taoiseach Enda Kenny, to the Mayo Bar Association dinner was a significant coup and will long linger. The fervour with which the new Taoiseach was welcomed home to Castlebar was memorable for those of us lucky enough to have been there.

## Esteemed colleagues retire

### WEXFORD

Helen Doyle, president of the bar association, has advised me as to the retirement from practice of two esteemed and popular colleagues, Ann Gallagher and Eleanor Wardlaw. On her behalf and on behalf of colleagues throughout the county, we wish them all the very best.

John Garahy continues to put together an excellent CPD programme, and the recent seminars on the *Civil Partnership Act* and the *Multi-Unit Development Act*,

as well as Gavin Ralston's *tour de force* on prescriptive rights, was very well received by the very large attendance.

According to Helen: "We have a visit from the President of the Law Society, John Costello, to look forward to in April. Also, Law Care's Mary Jackson is coming to speak to us, to follow up on the presentation she made to us two years ago. Her advice was timely then and will be just as much so today."

## Congratulating the Taoiseach



Law Society President John Costello (left) and Council member Kevin O'Higgins congratulate new Taoiseach Enda Kenny within hours of receiving his Seal of Office from President Mary McAleese on Wednesday 9 March 2011

## Reach out and touch someone

### DUBLIN

President Stuart Gilhooly continues the DSBA theme of reaching out and meeting colleagues in their own localities. Recently, we met colleagues from Dublin 6 and 12, and plans are afoot to hook up with colleagues in Dublin 2 later on in the month.

Keith Walsh and his CPD team have been very busy, with a number of excellent seminars on mental health, practice management, family law mediation and the launch of the new DSBA residential tenancy agreement. An interesting seminar over the next few days in the Radisson Golden Lane will focus on dispute resolution clauses in commercial agreements.

Boston has been announced by Stuart Gilhooly as the venue for this year's DSBA conference in September, to which colleagues from far and wide are heartily invited. Stuart has managed to put together a most attractive package at amazingly good value, considering what is on offer, and full details can be obtained from the website.

The DSBA annual dinner dance is scheduled for mid-May in the St Helen Radisson Hotel in Booterstown. It takes place on 14 May – which is also the day of this year's Calcutta Run.

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

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## New state solicitor for Louth

### LOUTH

Fergus Mullen, the popular PRO of the Louth association, has lately been appointed state solicitor for Louth, following Gerry Daly's retirement. He is a partner in Woods, Ahern and Mullen, Market Square, Dundalk. The founder of that practice, the late Mr Peter

Woods, was state solicitor most successfully for many years. Fergus – a noted amateur actor and director – will be giving the boards a rest for a while as he eases into his new, and no-doubt starring, role of poacher turned gamekeeper.



## Bloomsbury Professional turns new leaf

From 4 April 2011, Bloomsbury Professional's Irish titles (excluding loose-leaves) will be distributed by Gill & Macmillan, Hume Avenue, Park West, Dublin 12. Bloomsbury Professional (formerly Tottel Publishing) says that it has achieved significant growth since it began trading seven years ago. It regards the move to its new distributors as "a continued sign of their commitment to their Irish customers".

## Classified list of legislation

All Irish legislation still in force has been classified under 36 subject headings in a consultation paper published recently by the Law Reform Commission (LRC CP-62).

For the first time, all legislation dealing with a particular area of law is grouped together. To identify all law dealing with divorce, for example, this can be found listed under 'Title 17, Family Law', at 17.6. All legislation dealing with civil liability and limitation periods is found under 'Title 6, Civil Liability (Contract and Tort) and Dispute Resolution'.

See it in action at [www.lawreform.ie/classified-list-of-extant-post-1922-acts-in-ireland.329.html](http://www.lawreform.ie/classified-list-of-extant-post-1922-acts-in-ireland.329.html).

## First act restatements now available

Restatements are administrative consolidations of acts as amended. For example, the restatement of the *Freedom of Information Act 1997* shows the act as amended by 35 acts. The first restatements prepared by the Law Reform Commission are available in pre-certified versions on the commission's website at [www.lawreform.ie/restatement/pre-certified-restatements.335.html](http://www.lawreform.ie/restatement/pre-certified-restatements.335.html).

### In News this month...

- |                               |                                       |
|-------------------------------|---------------------------------------|
| 7 Solicitors in the Dáil      | 9 Media spotlight – Cahir O'Higgins   |
| 7 New judge in District No 9  | 9 Drug Treatment Court                |
| 8 Life outside legal practice | 10 Solicitors contest Seanad election |
| 8 Working in other countries  |                                       |

## 'MUD' act will see surge in court applications

A long-needed, smoother path to resolving difficulties arising in residential apartments and multi-unit developments management is now on its way with the enactment of the new *Multi-Unit Developments Act 2011*.

Although the new act will introduce some much tougher measures, it will create a strong structure for the resolution of disputes in a fair, transparent and uniform fashion, a seminar held in Dublin by the Irish Property

and Facility Management Association (IPFMA) heard.

As a result of the act, no residential apartment or unit in a multi-unit development can be bought or sold legally after October 2011 where an owners' management company (which is formed by and made up of the actual owners of the apartments/units) is not in control and has ownership of all common areas.

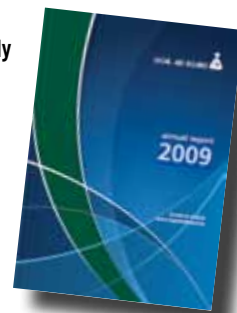
The act is expected to be passed into law in April.



Speakers at the IPFMA seminar on the new *Multi-Unit Developments Act 2011* were (l to r): Seamus Carroll (principal officer from the Department of Justice), Paul Mooney (chairman of the IPFMA Residential Sub-committee), Peter Moloney (IPFMA chairman), and main speaker, barrister Brian Walker

## Demand for civil legal aid

The Legal Aid Board's recently published annual report 2009 shows that the body received 14,073 applications for civil legal aid and



advice in 2009, up 18% on the previous year. Between 2006 and 2009, the number of applications increased by 45%. The rate of increase has shown no sign of abating for figures relating to 2010. Law centres processed 16,170 cases in 2009, up over 8% on 2008, while an additional 4,012 cases were referred out to private practitioners – up 34% on the previous year.

Two main factors have been identified for the increase:

- The economic downturn has led to greater numbers of applicants now satisfying the means test that allows them to avail of the legal services provided by the board, and
- Evidence points to a greater need for legal services during times of economic distress, particularly in areas such as family law, debt and employment.

The only area of the board's operations that witnessed a fall in applications in 2009 was the Refugee Legal Service, which provides legal services to asylum seekers. A drop of almost 29% in new clients was recorded in 2009 compared with 2008. This is consistent with the falling number of asylum applications in Ireland in recent years.

## Society's diploma courses in April 2011

Assisting practitioners to stay on top of relevant specialised topics, the Society's diplomas programme has provided some interesting learning options this spring. Courses are run in a 'blended-learning' format, giving practitioners a choice to attend on-site or to avail of the webcasting facility. These courses,

which are designed for solicitors by solicitors, include:

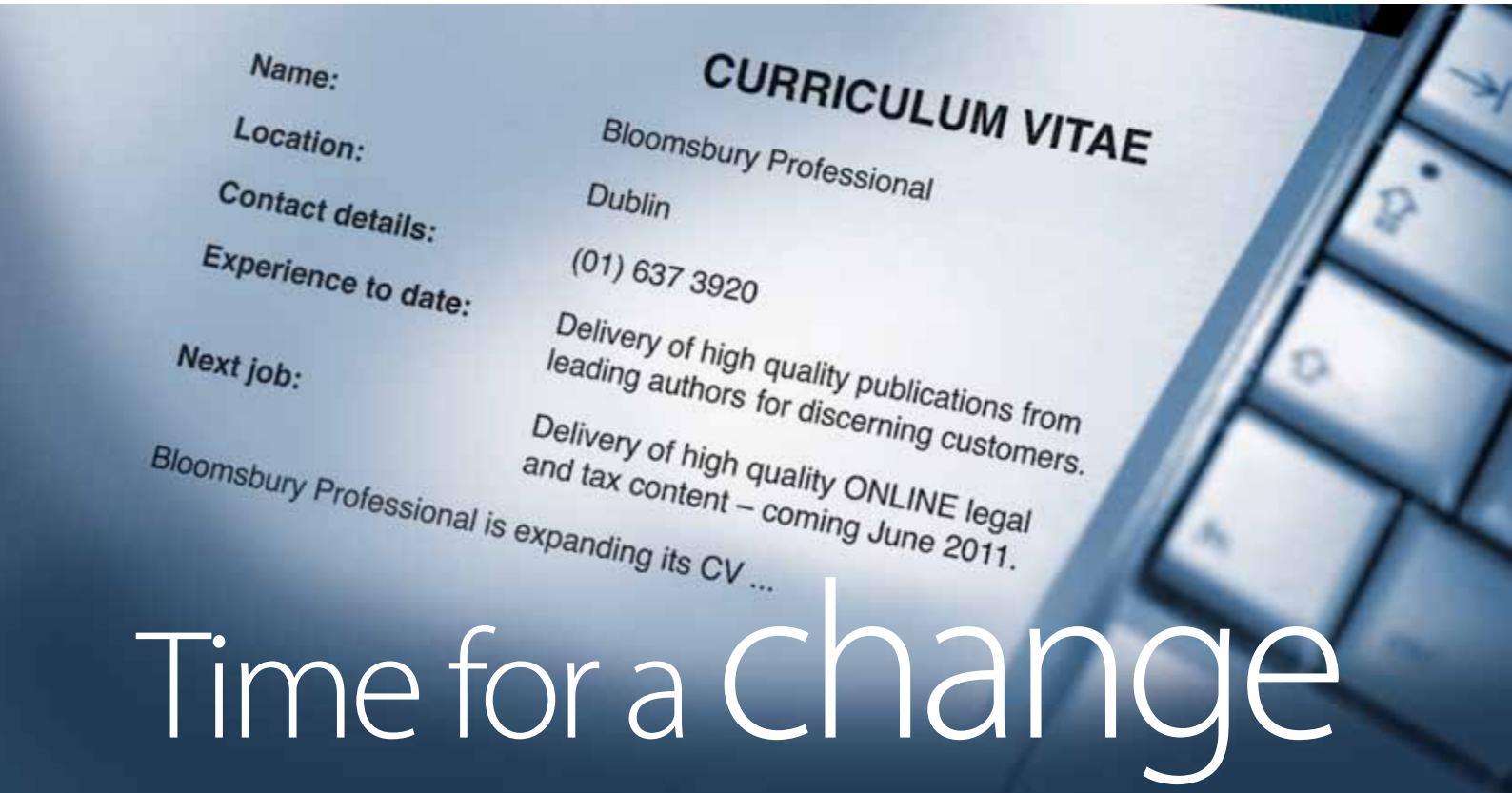
- Diploma in Civil Litigation (webcast), Monday 4 April, €2,150
- Diploma in Employment Law (webcast), Tuesday 5 April, €2,150
- Certificate in Investment Funds Law and Compliance (webcast),

Wednesday 6 April 2011, €2,150

- Certificate in District Court Litigation and Advocacy (blended-learning), Saturday 9 April 2011 €1,160.

For further information, visit [www.lawsociety.ie/diplomas](http://www.lawsociety.ie/diplomas), email [diplomateam@lawsociety.ie](mailto:diplomateam@lawsociety.ie), or phone 01 672 4802.





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## Big drop in number of elected solicitors in new Dáil

There has been a substantial reduction – from ten to four – in the number of solicitors elected to the 31st Dáil in the general election of 25 February 2011, compared with the 30th Dáil that preceded it.

Three of the most senior figures in Fianna Fáil-led governments over the last 14 years were solicitors. Two of these, the outgoing Taoiseach Brian Cowen and the Minister for Justice, Equality and Law Reform Dermot Ahern, chose not to contest the general election. The third, a previous holder of such senior offices as Minister for Justice and Ceann Comhairle, John O'Donoghue, was unsuccessful in a re-election bid in Kerry South.

Two other Fianna Fáil TDs, Minister of State Peter Power in Limerick and Thomas Byrne in Meath East, also lost their seats, with the result that the Fianna Fáil party, which had no less than five solicitor TDs in the last Dáil, has none in the new one.

### Most senior solicitor

By far the most senior solicitor member of the 31st Dáil is the newly appointed Minister for Justice, Equality and Defence Alan Shatter. He is the most senior for two reasons: he was first elected to the Dáil as far back as 1981, and he is now



Minister for Justice, Equality and Defence, Alan Shatter TD



Michelle Mulherin TD

the only solicitor who is a full Cabinet minister. Indeed, he is the third of the last four Ministers for Justice to be a



Charlie Flanagan TD



Joanna Tuffy TD

solicitor. He represents Dublin South.

Another solicitor who has been a TD for many years for

Fine Gael, comfortably returned again on this occasion in Laois-Offaly, is Charlie Flanagan. His Fine Gael constituency colleague in the previous Dáil, solicitor Olwyn Enright, chose not to run again, and the veteran Fine Gael TD and solicitor from Cork South-West, Jim O'Keeffe, who was first elected as far back as 1977, retired with the outgoing Dáil.

### Phenomenal success

Only one new TD from any party is a solicitor. Michelle Mulherin was part of the phenomenal success of Fine Gael in the Mayo constituency, in which the Fine Gael party leader and now Taoiseach, Enda Kenny, has been elected continuously since 1975. On this occasion, unprecedented in the history of the State, Fine Gael took four of the five seats in the constituency. One of these went to Michelle Mulherin, who qualified as a solicitor in 1995 and who practises in the firm of Denis M Molloy in Ballina.

Last but by no means least, solicitor Joanna Tuffy was very comfortably re-elected for the Labour Party in Dublin Mid-West.

The Society has written to all four solicitors, warmly congratulating them on their success in the general election.

## New judge expects less drink-driving cases in District No 9

Judge Seamus Hughes has formally replaced Judge John Neilan (retired) in Court District No 9. Judge Hughes sat in Longford on 8 March, following it with visits to Athlone District Court and Mullingar in subsequent days.

The former Fianna Fáil TD and state solicitor in his native Mayo was appointed a District Court judge in August 2009. He was originally appointed to cover the Donegal area in December the same year.

The *Athlone Advertiser* reported on 11 March that the



judge was welcomed to Athlone by solicitor Paul Connellan on behalf of the members

of the legal profession. He wished him "a long and happy tenure in Court District 9". Superintendent Aidan Glacken echoed his sentiments.

In reply, Judge Hughes said: "Today is not a day for long speeches, but I'm grateful for your words. I hope to be here for the next 11½ years, although you don't know. I had expected to be in District 1 [Donegal] for 13 years, but when the minister gives you your P45 you have to go," he said.

"However, I'm not expecting to deal with as many road traffic

accidents and drink-driving cases as I did in Donegal," he added.

From Westport, Co Mayo, Judge Hughes is a twin from a family of 13. He is married to Maria, with four children. He qualified as a solicitor in 1975 and initially served on Mayo County Council before being elected to Dáil Éireann in 1992, serving just one term until 1997.

In 1984, he ran the Dublin City Marathon with his seven brothers, which resulted in their entry in the *Guinness Book of Records*.

## OUTLAWS

## Life outside legal practice



**LINDA EVANS**  
**Recruiter**

Linda worked casually in recruitment for a while as a student in

Chicago on a J1 visa and enjoyed the experience.

She went on to train in a Dublin general practice firm and qualified in 2010.

With few practice opportunities available after qualifying, Linda decided to join Careers Register – the legal, accounting and financial recruitment firm that is part of CPL plc.

She specialises in legal appointments, recruiting for both private practice and in-house roles. Linda says her training and qualification assist her significantly within her new role, especially in providing information and advice to both candidate and employer clients.

She loves the general challenge and rewards that a career in recruitment provides.

Contact Linda on direct dial 01 500 5907, or email [linda.evans@careers-register.com](mailto:linda.evans@careers-register.com).



**NORMAN PRENDERGAST**  
**Retailing and property**

Jobs were in short supply when Norman

qualified in 1978 and decided to set up in private practice. His firm made solid progress – but times were very difficult. Two years later, Norman was still struggling to earn a decent income from the business.

On weekends, and during any other time available, he worked in Bargaintown – the furniture and carpet retailing business that his brothers and father were developing.

Norman ended up spending more and more time in that business. He also found he really enjoyed the cut-and-thrust of retailing. Eventually, he decided to join full time.

Over the last three decades, the Prendergast brothers have built Bargaintown into a significant business. They have also bought and developed an impressive portfolio of property.

However, carpet retailing is Norman's greatest passion in business and he gets greatest work enjoyment by continuing to be involved and doing deals with customers.



**CAROLINE LYNCH**  
**Poet and actor**

Studying law in UCC, Caroline got involved in student

theatre productions and was the inaugural winner of the Sean Dunne Poetry Competition.

After graduating, she worked as a professional actor for a while before returning to law and qualifying as a solicitor. Caroline says: "Realising the error of my ways, I returned to the arts and obtained an MA in writing from NUIG."

She won the Listowel Writers' Week poetry collection competition in 2007.

Subsequently, Salmon Poetry published her first collection *Lost in the Gaeltacht* in 2008.

Her poems have also appeared in *Poetry Ireland* and in an anthology of new writing, *The Incredible Hides in Every House*, edited by Nuala Ní Dhomhnaill.

Caroline is the recipient of an Arts Council literature bursary and is a founding member of the Galway-based Mephisto Theatre Company. Mephisto will produce *Grenades* at this year's Cuirt International Festival of Literature in Galway.

## Information evenings on working in other countries



The Society's Career Support service has organised a series of information evenings on working and qualifying in other jurisdictions. They will take place at Blackhall Place on Monday evenings during April.

At each information evening, attendees will hear, first-hand, the experience of colleagues who have worked in these

jurisdictions, as well as from people with specialist experience of the regulations in place.

All members are welcome to attend these events, but the spaces available are limited. Anyone who wants to attend should reserve a place without delay, by emailing [careersupport@lawsociety.ie](mailto:careersupport@lawsociety.ie).

These information evenings will be recorded and podcast so that all members of the Society can access the information presented. All documents distributed at the events will also be made available online.

### Social networking

Members should be aware of two useful sub-groups within the Law Society of Ireland group on the social networking site [www.linkedin.com](http://www.linkedin.com). Both the 'Working in Australia' and the 'Working in Britain' sub-groups aim to assist members interested in these options by sharing the latest information and facilitating people to link up with colleagues who have similar plans.

Solicitors should note too that the Law Society of Ireland group on LinkedIn is an increasingly important facility. Last month, membership of this group increased to over 1,000. Congratulations to Fred Logue who manages the group. Fred, based in Brussels, represents how Irish people can now stay linked to Ireland while living abroad.

**Monday 4 April:** will focus on North America. The visas that permit solicitors to live and work in Canada, USA and Caribbean islands will all be reviewed, along with the processes to be followed in order to qualify in these jurisdictions.

**Monday 11 April:** will deal with Australia and New Zealand. Short and long-term visa options will be examined. Recent changes, such as the Government of New South Wales' decision to include solicitors on the list of 'required professions', will be outlined. The process to be followed in order to qualify in both jurisdictions will also be reviewed.

**Monday 18 April:** will address work options in Britain and the rest of the EU. Details will be given on how EU institutions hire, and the whole process of registering as a European lawyer (REL) will be outlined.



## Mandatory disclosure of certain transactions

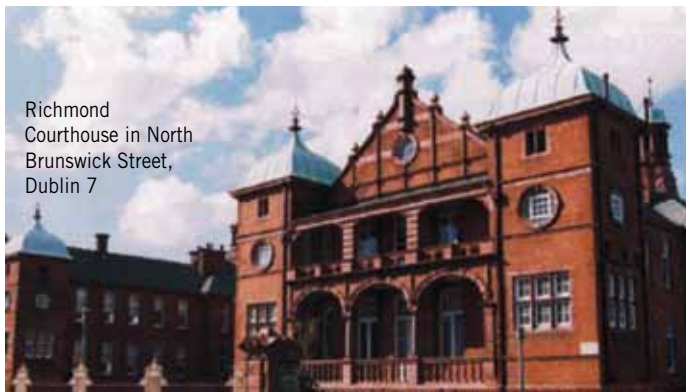
The Taxation Committee wishes to draw the attention of practitioners to regulations (SI No 7 of 2011) that have been introduced pursuant to section 149 of the *Finance Act 2010*, imposing an obligation on tax advisors to disclose to Revenue information in relation to certain classes of tax avoidance schemes that may be considered by Revenue to be aggressive or unacceptable. The disclosure provisions apply to users or promoters of such schemes and

are effective from 17 January 2011.

In order to allow tax advisors an opportunity to familiarise themselves with the regulations and to put compliance procedures in place, the earliest reporting date has been set at 15 April 2011.

The regulations, legislation and detailed guidance notes on the regulations are available on the 'tax practitioners' area of the Revenue website, [www.revenue.ie](http://www.revenue.ie), and also on the Taxation Committee pages of the Society's website, [www.lawsociety.ie](http://www.lawsociety.ie).

## Drug Treatment Court offers addicts hope for the future



Richmond Courthouse in North Brunswick Street, Dublin 7

The Drug Treatment Court is a specialised District Court that offers long-term court-monitored treatment as an alternative to a prison sentence. This includes career and education support to offenders with drug addictions. The court sits every Tuesday and Thursday in the Richmond Courthouse in North Brunswick Street, Dublin 7.

Tom Ward, chief clerk of the Dublin Metropolitan District Court, says: "The principal achievement over the past year has been the agreement of a new approach to determining the progress of participants."

Under the new system, participants continue to be tested as part of their treatment, and their progress measured. A greater weighting is given to positive behaviour. Participants receive credits for attending the in-house

support group, which is based on the '12 steps' approach to managing addictions.

"Those who achieve a 'silver' standard, but do not manage to attain 'gold', may be the subject of a report from the Drug Treatment Court judge to their sentencing judge," says Tom, "proposing a suspended rather than a custodial sentence."

The court encourages referrals for addicts based in Dublin 1, 3 or 7 but hopes to accept participants with addresses outside Dublin's north inner city in the near future.

Participants must be over 18, have pleaded guilty or been found guilty in the District Court of a non-violent criminal offence, and be dependent on prohibited drugs.

For more information, tel: 01 888 6294 or email: [drugtreatmentcourt@courts.ie](mailto:drugtreatmentcourt@courts.ie).

## In the media spotlight

### CAHIR O'HIGGINS

CAHIR O'HIGGINS & CO,  
PARKGATE STREET, DUBLIN 8

#### Case summary

A builder who drove a cement mixer at the gates of Leinster House last year was found not guilty of criminal damage and dangerous driving. Minor damage was caused to the gateway's paintwork, which cost less than €35 to fix. At Dublin District Court on 21 March 2011, the State argued that Mr McNamara had a case to answer in relation to criminal damage and dangerous driving because he had recklessly used a defective vehicle. The brake lines of the vehicle were also cut, which meant the lorry could only be towed away using specialist equipment.

Mr McNamara faced four charges: dangerous driving, criminal damage, having no licence, and having no DOE (essentially the NCT for trucks).

#### How you became involved

A barrister in Galway referred Joe to us and suggested that he instruct our office.

#### Your background

I've been a solicitor for seven years. I set up my own practice six years ago, concentrating mainly in the domain of criminal legal aid and criminal law.

#### Your thoughts on the case

Our argument was that it was unclear at what point the truck's brakes were no longer roadworthy and so rendered the vehicle unsafe. Our position was that this occurred after the vehicle had been brought to a standstill and, as a result, Mr McNamara couldn't be guilty of dangerous driving. The judge ultimately accepted that argument on the basis of the evidence before her. Of course, the burden of proof in a criminal case is beyond reasonable doubt.

Evidence was given that there was damage to the gates of Leinster



House, in effect, flaking of the paint from the gates. Our position was that there wasn't any damage caused by our side and, if there was, then it hadn't been intended.

In respect of the other two charges, the genesis of those offences was based on a lawful demand being made by the gardai for the client to produce a DOE, or a licence, within a certain period of time. The judge accepted our position that there was a doubt as to whether the lawful demand had been made or not. The same situation applied to both the DOE and the licence.

#### You dealt with this case on a pro bono basis?

Initially, it wasn't my intention to do so, but Joe took a view that he was taking an ideological stand against the institutions of the State, the mean-spirited approach being taken by the banking institutions, and the amount of public resources being expended in bailing out the banks. We took the view that if he didn't want to file for legal aid, I wasn't going to see him stuck for representation for lack of means.

#### Ramifications

I don't think any case has a twin brother. I think, in this instance, my client was very, very clear and held a consistent position all along that he wasn't interested in putting anyone in danger, in doing any criminal damage, or being in any way offensive.

# Five solicitors set to contest Seanad election in April

Five solicitors and four barristers are among those contesting the upcoming Seanad elections, *writes Mark McDermott*. Six nominees are elected by the graduates of two universities – three from the National University of Ireland (NUI) and three from the University of Dublin (Trinity College). Some 43 nominees to the 60-seat Seanad are elected through a number of vocational panels, while the remaining 11 are appointed by the Taoiseach.

Ballot papers were issued and posted to electors registered on the 2010 electoral register in the university constituency on 21 March. The poll will close at 11am on Wednesday 27 April 2011. The poll for the vocational panels closes at 11am on 26 April.

The Trinity College panel has an estimated electorate of 65,000. There is an electorate of about 100,000 for the NUI panel. The solicitors contesting the election are as follows:

## Conor Delaney



Cllr Conor Delaney is a Fine Gael town councillor for Nenagh, Tipperary. He has been nominated by the Law Society to

contest a seat on the Cultural and Educational Panel. "It's a huge honour to be selected and endorsed by the body that represents your profession, and I am humbled to get the nod ahead of so many other worthy nominees, that included recent general election candidates," he says.

Conor was admitted to the Roll of Solicitors in Hilary 2003, practising with a number of Dublin firms until 2008. Now a sole practitioner

in Nenagh, he is a former stagiaire with the Research and Documentation Division of the Court of Justice in Luxembourg, and also with the European Ombudsman (Jacob Soederman) at the European Parliament in Strasbourg.

Originally from Adamstown, Co Wexford, he is married to Mary Griffin from Silvermines and they have a seven-month-old son, Ben.

## Regina Mary O'Connor



Regina is a solicitor who trained and practised with A&L Goodbody Solicitors. She is now based in Brussels, where

she works as a political and legal advisor in the European Parliament. From Cork, she is a graduate of UCC, where she completed a BCL degree, and has a Diploma in International Commercial Arbitration (UCD). She holds a Master's in European Politics from the College of Europe.

Regina has served for the past six years in the European Parliament as advisor to two political groups, advising on environment, public health and food safety, as well as climate change, legal affairs and constitutional affairs.

She believes that her experience is unique, having worked in the three political arms of the EU – the council, commission and parliament. She says that Ireland needs experienced politicians who know their way around Brussels, are well networked there, and are familiar with the EU's legislative process in order to protect Irish interests.

well networked there, and are familiar with the EU's legislative process in order to protect Irish interests.

## Linda O'Shea Farren



Limerick-born UCC law graduate and solicitor Linda O'Shea Farren is a well-known social activist, member-

nominated independent director of EBS Building Society and NUI Senate member. Linda is running for election on the NUI panel.

She has served as a member of the NUI Senate since 2002. She was successfully re-elected by NUI graduates for a second five-year term in 2007. In addition to being appointed Chair of the Audit and Risk Committee of the NUI Senate and to the Finance Committee, she has also served as Chairman of Convocation of NUI for the past six years.

"I am asking NUI graduates to vote for me as a new voice with a proven track record across a broad spectrum of issues, so that I can make a valuable contribution in Seanad Éireann."

## Graham Thomas Quinn



Graham Quinn is standing for election to Seanad Éireann as an independent candidate for the Dublin University constituency.

From Templeogue in Dublin, he lives in Rathfarnham. He was educated at Clongowes Wood College and studied history at Trinity College, Dublin (1996-2000) and has a Master's in International Relations from DCU (2000-2001). He joined McCann FitzGerald as a trainee in March 2004 and has been a solicitor with the firm since 2007.

He is campaigning on the need for strong independent voices in the Oireachtas to ensure

that the issues that are most important to a generation of under-represented young people are kept to the forefront of the political agenda. Other issues to the forefront for Graham include the exorbitant cost of childcare in Ireland, negative equity and unsustainable long-term personal mortgage debt, support for small businesses, and the need to properly fund third-level education.

## Tony Williams



Tony is from Drogheda, Co Louth, is married and lives in Rathgar, Dublin. He was educated at TCD

where he completed a law degree (1986), in DIT (post graduate Diploma in Arbitration Law) and UCD (Postgraduate Diploma in European Law). He qualified as a solicitor in 1991. He is a Fellow of the Chartered Institute of Arbitrators and is a partner in Simon McAleese Solicitors, Dublin 2, specialising in media law, commercial litigation and employment law.

He is campaigning for reform of the Oireachtas's "old and corrupted political system" and promises to be a leading advocate on behalf of entrepreneurs.

He plans to introduce a private member's bill to expand radically the scope of the *Freedom of Information Act* to include NAMA, CIE and other protected bodies. He is keen to see legislation introduced to outlaw upwards-only rent reviews, and to force local authorities to reduce excessive commercial rates.

## Other legal candidates

Ivana Bacik (senator and barrister); Rónán Mullen (senator and lecturer); Donncha O'Connell (lecturer, NUI, Galway); and Dermot Francis Sheehan (barrister).

**"The poll for the university constituency closes at 11am on 27 April"**

## NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

## The cost-effective resolution of disputes

## ARBITRATION AND MEDIATION COMMITTEE

The Arbitration and Mediation Committee has submitted to the Guidance and Ethics Committee a draft insertion for chapter 2 (*The Solicitor and his Relationship with his Client*) of the 3rd edition of the *Guide to Professional Conduct of Solicitors in Ireland*, now in the final stages of production.

The guidance will highlight the importance of timely and cost-effective resolution of clients' disputes, the necessity for colleagues to be familiar with alternative methods of dispute resolution, the appropriate characterisation of mediation or negotiation in the spectrum of dispute resolution processes available to clients, and the role and importance of ADR clauses in commercial agreements.

The committee and the Society continue to support

the work and initiative of Arbitration Ireland – The Irish Arbitration Association. The association promotes Ireland to specialist international arbitration practitioners abroad, as an appropriate and preferable venue for international arbitrations. Ireland is very attractive as an English-speaking, neutral, common law jurisdiction

with highly skilled professionals and world-class facilities. It is supported by arbitration-friendly court procedures,

with an ethos of minimal court interference in arbitrations.

The committee, in

collaboration with the Business Law and ADR Committee of the Dublin Solicitors' Bar Association and Law Society CPD Skillnet, has produced a two-day training programme for solicitors advising and representing their clients in civil and

commercial mediation. The training is scheduled for June 2011 and will be launched by CPD Skillnet.

***"The guidance will highlight the importance of timely and cost-effective resolution of clients' disputes and the necessity for colleagues to be familiar with alternative methods of dispute resolution"***



## E-stamping difficulties

## TAXATION COMMITTEE

The Society is aware that some solicitors have encountered difficulties and anomalies in the system when filing stamp-duty returns and paying stamp duty electronically through ROS (Revenue Online System).

A list of issues is currently being compiled for discussion with Revenue, and members are invited to advise the Society of particular problems they have experienced, whether these were raised directly with Revenue by the solicitor concerned and Revenue's response to same.

Replies should be forwarded to c.carey@lawsociety.ie.

## Retention documents available

## CONVEYANCING COMMITTEE

The committee has recently finished its revision of the suite of documents for use in connection with the retention by a developer of a unit in an apartment development. The revised documents are again available in the members' area of the Society's website by following either the links for 'Best practice and guidance/ precedents' or for 'committees/ conveyancing/ precedent conveyancing/ documentation'.

## Observations sought on guide

## IN-HOUSE AND PUBLIC SECTOR COMMITTEE

The committee is undertaking a review of its *Guide for Solicitors Employed in the Corporate and Public Sectors* to include recent legal developments, such as in-house legal privilege in the area of competition law and, more generally, with regard to corporate compliance issues. The current version of the guide can be accessed on the Law Society website in the In-House and Public Sector Committee section.

Practitioners are invited to forward any comments or observations in this regard to

the committee secretary, Louise Campbell, email l.campbell@lawsociety.ie).

Please note that the committee's annual conference is scheduled for **Friday 25 November 2011**, from 1pm to 5.30pm.

It will be held in the main lecture theatre of the Education Centre, Blackhall Place, Dublin 7, and will include one hour's CPD in respect of regulatory issues.

Last year's conference was over-booked, so you are advised to book early to secure a place.

## IN-HOUSE AND PUBLIC SECTOR COMMITTEE

## ANNUAL CONFERENCE

**1pm to 5.30pm  
Friday 25 November  
2011**

**Education Centre,  
Law Society of Ireland  
Blackhall Place,  
Dublin 7**

**(includes one CPD hour)**

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# OUR MAN IN THE PHILIPPINES

**Not satisfied to remain in Ireland working in a low-paid job for which he was overly qualified, Fergal Mawe has taken his newly acquired legal skills and put them to work for the underprivileged children of the Philippines**



*Fergal Mawe is a solicitor working in the field of human rights*

Sold by their parents, trafficked under the cover of night to sex bars, and made entertain western paedophiles by pimps. This was the life for some 20 rescued girls who are now residing at a girls' home of the People's Recovery, Empowerment and Development Assistance Foundation (or PREDA) in Olongapo City in the Philippines. PREDA acts as a refuge for these girls, where they are provided with counselling, an education and, most importantly, free legal aid. In addition, PREDA also provides a home for 41 other girls who have been sexually abused in their communities, as well as a residence for 60 boys who have been rescued from the most appalling detention cells, allegedly having committed acts of petty crime.

Having signed a one-year extendable contract with PREDA to provide free legal-aid assistance, I am hoping, through this article, to encourage legal colleagues (currently at a loose end) to use their skills to enter the human rights arena, either here or elsewhere.

Having finished my apprenticeship last year with McCarthy, Looby & Co (Cahir, Co Tipperary), I was left with the same problem as any newly qualified solicitor – find a low-paid job that you're over-qualified for (if you're lucky) or find the nearest dole queue. Neither looking very attractive, I turned my attention to the human rights sector and, in particular, a sector that I feel passionate about – child protection. Realising that the funding for this sector in Ireland has been dramatically cut, I turned my attention abroad.

I enrolled with an organisation called Viatores Christi – a recruitment agency for development workers in the NGO/missionary sector. From there began a six-month weekend course, wherein I gave a commitment to provide at least one year's service to an NGO or mission. I would encourage anyone who wishes to seek work in this field to maintain a broad scope – look at

Viatores Christi and other similar organisations, such as Comhlámh, the Volunteer Missionary Movement and VSO (Voluntary Service Overseas), as well as Trócaire, which has a strong advocacy department.

I should point out that payment with any of these agencies is relatively low compared with Irish wages, but it will allow you, nevertheless, to live quite comfortably in the host country and permit some travel while there. On completing the Viatores Christi course, following vetting procedures, the agency began searching for suitable positions, one of which was the PREDA Foundation in the Philippines.

## Out of your element

So what can a solicitor do outside of his or her jurisdiction, and in a country where the first language is not English? Thankfully, the answer is 'plenty', as the Philippines is an ideal country for foreign legal workers.

The statute and court proceedings here are conducted through English, and are based upon the American judicial system, which is not completely alien to our own. This allows any solicitor, after an initial period of induction, to provide a high-quality service.

I have also learned from meeting other solicitors in the Philippines that, compared with lawyers from many other jurisdictions, Irish lawyers are trained to a very high standard and, as a result, perform exceedingly well when 'defending' clients in cases involving human rights violations. A note of warning however – expect curtailments, in the sense that Irish solicitors are not qualified as solicitors in the Philippines

and, as such, cannot represent clients in court, or witness affidavits.

I work in PREDA's legal department with two other paralegal staff. Between us, we share over 130 ongoing cases, half of which deal with the prosecution of paedophiles, the other half with the criminal defence of juveniles.

## Corruption is rife

In relation to prosecutorial work, I would, upon the request of the prosecuting lawyer, obtain a client's birth certificate, sworn statements and medico-legal reports, as well as various court documents to ensure effective case management. This may sound relatively easy, but when you're dealing with a judicial system where corruption is rife – to the point where it appears 'legitimised' – the day-to-day business becomes an uphill battle. This type of corruption is especially noticeable in cases against elected officials, where I

encounter a never-ending series of counter claims and procedural objections to which any learned judge would refuse to give the time of day.

Corruption is also borne out by the fact that it can take up to 12 years to secure a conviction against a paedophile – particularly a Western one – or that someone convicted of engaging the services of a trafficked person will receive a fine of Php50,000 (€850) and community service for six months. Even recently, a

judge removed a 14-year-old child from protective custody and returned her to her parents, who then sold her to a Western paedophile.

In relation to defence work, my time is chiefly taken up with assisting boys rescued from prisons by PREDA's juvenile prison team, who have been

***"It is not unusual to have 12 separate hearings listed to proceed over an 18-month period, with at least half a dozen adjournments, thereby prolonging the case and prolonging the boy's detention"***



In custody at Sangandaan Police Headquarters, Caloocan City, Manila, since mid February are (left): Annalyn Venus (aged 15) for the alleged theft of an MP4 player which was later recovered. Her parents are unaware of her whereabouts and she has not seen a social worker since her detention. She was unaware of her right to counsel, her right to silence or any other legal right. She doesn't know if she has a birth certificate, which could later pose a difficulty in court proceedings when trying to prove her minor status to the court. With her is Abelardo Arceo (17), who is being detained for the alleged crime of murder. He is familiar with his legal rights, his father is aware of his detention and he has a birth certificate

transferred to their home for boys. Most of these breadline bin-scavengers have stolen items like mobile phones, sandals or small amounts of cash, but who are nonetheless detained in cells that are the size of box rooms and contain up to six others (including adults, as seen in the accompanying photo) for periods of over six months. During their periods of detention, most of these boys will not have appeared in court and will have had to endure poor sanitary facilities, no exercise yard and no natural daylight – in simple terms, a living hell.

My work initially entails making contact with the complainants to see if the matter can be settled out of court, or to motion the court to have the matter dismissed on the basis of the defendant's minor status and the fact that he has

already completed a minimum service of 'sentence'. If both of these avenues fail, I would then take part in contesting the charge in court and, from there, would review the facts, research the law, draft affidavits and coordinate with the court-appointed solicitor. Again, relatively straightforward it would seem, but problems nonetheless persist at court level, where a case can take years to proceed. It is not unusual to have 12 separate hearings listed to proceed over an 18-month period, with at least half-a-dozen adjournments, thereby prolonging the case and prolonging the boy's detention.

#### Real protection

I would advise that if you are thinking of working as a human rights lawyer in a developing

country, you should rid yourself of any picturesque notions of sun, sand and – sea and replace it with one of career development. It should also be noted that this type of work is mentally, physically and emotionally demanding. If you are seeking a career move into this area, you should be prepared for a different type of challenge.

What attracted me to PREDA, and why I would advise anybody else to look into joining the team, is that the organisation not only provides legal services but also therapy, counselling, micro financing for families and human-rights training for the police, schools and local councils. PREDA also delivers real protection, and is strong

***“Recently, a judge removed a 14-year-old child from protective custody and returned her to her parents, who then sold her to a Western paedophile”***

on common sense and the growth of mutual trust.

PREDA's success model can be demonstrated by its 36-year commitment to the people of the Philippines and its numerous international human rights awards, none more notable than those presented to its founder and current CEO, Irish missionary priest Fr Shay Cullen, who has been nominated three times for the Nobel Peace Prize.

I would, therefore, urge any colleague who has fallen on hard times to consider the international human rights sector – if for no other reason than that there must be more to life than just living out a recession. **G**

*With thanks to Brendan Looby and Tim McCarthy.*



# A RUN FOR YOUR MONEY

It was a Late Late entry for Ryan Tubridy in 2002

The Calcutta Run celebrates its 13<sup>th</sup> year this May. It's been a massive success for the homeless charities that benefit – and for the legal profession that organises it



Denis Hickie and Brian O'Driscoll lent their support in 2002

**I**t's 1999 and a group of 500 solicitors, their colleagues, friends and family members take their positions at the starting line. Mr Justice Fergus Flood brandishes the starting pistol. These are the beginnings of the Calcutta Run. From that 'small step' – which in its first year raised IR£65,000 – the run has gone on to raise a total of €2.3 million for charity over the past 12 years.

The Calcutta Run has become an annual event, organised and supported by the legal profession. Its focus is to raise funds for two

charities that battle homelessness at home and abroad – the Peter McVerry Trust in Dublin, and GOAL's projects for street children in Calcutta.

In 2007, the Irish Homeless Agency launched an action plan aimed at eliminating, by 2010, long-term homelessness and the need for anyone to sleep rough in Dublin. That year has come and gone. Thousands of people are still homeless and hundreds sleep rough on the streets. The Peter McVerry Trust offers housing and support services to more than 500 young homeless people

in Dublin. As the demand for homeless accommodation and drug treatment increases, the trust continues to receive paltry State funding.

India is home to nearly 50% of the world's hungry. Roughly the same geographic size as Dublin, Calcutta (now known as Kolkata) is home to an estimated 300,000 street children, many of whom have been forced into child labour. GOAL has been working in Calcutta since 1977, aiming to



Bollywood bike – Comedian Neil Delamare gets cycling for the Calcutta Run in 2010



Rebel footballers get warmed up for a very successful 2010 campaign – not to mention the championship!



Eamonn Dunphy endorsed the event in 2001 – but did he run?!





Miriam O'Callaghan gets jogging for the 2009 run



Ruby Walsh in 2004 – a very successful year in Cheltenham



Senator David Norris provides some friendly encouragement to wavering runners!



The 2010 RBS Six Nations' 'Player of the Championship' Tommy Bowe shows off his Calcutta Run t-shirt



Past-president Alma Lynch with Ken Doherty and half of The Corrs



Past-president Gerard Doherty persuades Ireland manager Giovanni Trapattoni and Marco Tardelli to switch their Ireland jerseys for Calcutta run attire

feed, house and educate homeless children. Over the years, GOAL has taken over 100,000 children off the city's streets.

In recognition of the fundamental services provided by the Peter McVerry Trust and GOAL, a myriad of famous faces have lent their support to the Calcutta Run. Among the celebrities to don the Calcutta Run t-shirt in recent years include Matt Cooper, Gordon D'Arcy, George Hook, Senator David Norris, Brian O'Driscoll, The Corrs and Katie Taylor.

But it's not the celebrities, however, who have made the run such a success. It's the ordinary, hard-working, 'never-run-a-marathon-in-their-life' lawyers, their friends and families. In all, 13,000 people connected to the legal profession have taken part in Calcutta Run during its history. Many run, more walk and others simply open their wallets.

On that first morning on 19 May 1999, almost 500 people

followed a 10k course around the Phoenix Park in the hope of making a small difference in the lives of homeless people in Dublin and Calcutta. Thirteen years later, on 14 May 2011, over 1,000 people will follow in their footsteps with the same goal. This is something of which the original group and the entire legal profession can be proud. **G**



Get training or we'll send the boys around! Shoulder to shoulder for the Calcutta Run in 2003 were three of the Irish rugby squad



The Script in 2009 – the year they released *Before the Worst* – hopefully their Calcutta Run jaunt wasn't that bad!

# SIGN OF THE TIMES: NO PRACTICAL DIFFICULTY IN ALLOWING DEAF JURORS

Two recent cases have challenged the exclusion of deaf people from serving on juries. Can this discriminatory provision be sustained for much longer, asks Michael Farrell



Michael Farrell is the senior solicitor with FLAC and represented both Joan Clarke and Senan Dunne

“Who says blind people can’t serve on juries?” asks Herman Grimes at the start of John Grisham’s legal thriller *The Runaway Jury*. The judge who was empanelling the jury at the centre of the story had just told him that he was free to go home because he was blind.

Mr Grimes threatened to sue if he was excluded from the jury. The judge – probably worried about attitudes to disability discrimination in the higher courts – quickly changed his mind, and Mr Grimes ended up as foreman of the jury.

Galway woman Joan Clarke was not so lucky, and attitudes in Ireland to facilitating disabled persons were not as positive as in the US. When she was called for jury service at the Circuit Court in April 2006, she informed the county registrar that she was deaf and would need a sign-language interpreter. The county registrar wrote back, saying he was pleased to be able to excuse her from jury service.

But Ms Clarke had not asked to be excused. Unlike a lot of people who receive jury summonses, she wanted to serve. When she was refused, she felt she was being treated as inferior to hearing people, and she did sue. Represented by FLAC, she challenged her exclusion and the schedule to the *Juries Act 1976*, which described deaf people as “unfit to serve on a jury”. Blind people were not singled out in the act, but they have been excluded as well. This article concentrates on deaf

people, but the principles apply to the blind as well.

Four years after Joan Clarke’s rejection, Mr Justice O’Keeffe gave judgment in her case in July 2010. He quashed the county registrar’s decision as *ultra vires* and said there could not be a blanket ban on all deaf people. If there was an issue about the capacity of a deaf person to serve on a jury, it would have to be decided by the court.

But Judge O’Keeffe also expressed the opinion that no deaf persons could

serve if they needed the assistance of a sign language interpreter when the jury was considering its verdict. The presence of the interpreter, a “13th person in the jury room”, would infringe the “absolute confidentiality” of the jury’s discussions.

That was also the position in England, where the Central Criminal Court had held in *Re: Osman* in 1995

that the presence of an interpreter in the jury room would constitute an “incurable irregularity” in the proceedings.

Sign language interpreters had been used in Joan Clarke’s case and, unlike the *Osman* judgment, Judge O’Keeffe did not rely on arguments that, even with the assistance of a signer, a deaf juror could not fully catch all the nuances of oral evidence. Evidence for Ms Clarke had indicated that interpreters conveyed the inflection and tone of voice as well as the spoken words.

Joan Clarke won her case, but she

**“The situation in relation to having a 13th juror in the jury room can be met by an appropriate oath being taken by the signer”**



did not get to sit on a jury. How would she have fared if she had been in a US court, like Herman Grimes?

In real life, deaf and blind people do serve on juries in US courts with the assistance of signers and Braille translators for documents. In the keynote case of *People v Guzman* in the New York County Supreme Court in 1984, Judge Goodman dismissed objections to seating a deaf juror, including the ‘13th juror’ argument. He said: “The rule which excludes persons other than jurors from the jury room during deliberations in reality pertains to officers of the court such as bailiffs, judges or counsel. The presence of the signer is a different matter entirely ... The role of the signer ... is that of a communications facilitator, such as a telex or typewriter or telephone or hearing aid or microphone.”

He added: “In those jurisdictions where the deaf have been seated, interpreters accompanied the jurors into the jury room, and it is my understanding that there has never been a breach of confidentiality, nor problems with the





***“It is the commission’s view that the presence of an interpreter will not impinge upon the secrecy of jury deliberations”***



signer or lip-reader breaching the oath of non-involvement.”

Nine US states allowed deaf jurors in 1984. Since then, the *Americans with Disabilities Act* in 1990 has resulted in all courts in the US allowing deaf and blind persons to serve on juries and requiring them to provide whatever assistance is necessary to enable them to do so. Most provinces in Canada allow deaf and blind persons to serve as well, and the first deaf person served on a jury in New Zealand in 2006.

In England, there has been no substantial change since the *Osman* case, though in his *Review of the Criminal Courts of England and Wales* in 2001, Lord Justice Auld said that “accredited interpreters work[ing] to agreed professional standards” should not “intrude on or breach the confidentiality of

jury deliberations”.

Back in Ireland, the *Juries Act* was amended in 2008 to remove the specific reference to deaf people, excluding instead people with “an enduring impairment such that it is not practicable for them to perform the duties of a juror”, with the emphasis on practicability rather than a specific handicap.

And the Law Reform Commission, in its *Consultation on Jury Service* published last year, said that it “does not consider that the presence of a sign language interpreter or CART [Computer aided Real-time Transcription] operator would be an intrusive presence in the courtroom or at jury deliberations ... it is the commission’s view that the presence of an interpreter will not impinge upon the secrecy of jury deliberations.”

The commission’s final recommendations will be published later this year.

#### **No practical difficulty**

Following the decision in Joan Clarke’s case, Senan Dunne, a deaf man who is a secondary teacher and a former producer on RTE’s deaf programme *Hands On*, was summoned for jury service in the Central Criminal Court in November last. He wanted to serve and was assisted in putting his case by a signer and by FLAC.

Mr Justice Paul Carney said that he could see that the signing was working well and that there was no practical difficulty involved. There remained the ‘13th juror’ argument. He said: “The situation in relation to having a 13th juror in the jury room ... can be met by an appropriate oath being taken by the signer ... I would be entirely prepared to have the signer participate in this case as an

interpreter on taking, first of all, the ordinary interpreter’s oath and then going on to take a further oath of confidentiality.”

As it happened, the defence objected to Mr Dunne and he did not get to serve after all, but this was the first time any court in these islands had agreed to let a deaf person serve on a jury.

Jury service, like voting, is one of the key ways in which the citizen can participate in the governance of our society. Deaf people – and blind people as well – resent being excluded from it. Senan Dunne is unlikely to be the last deaf person to try to assert his right to serve on a jury, and this issue will not go away. Judge Carney may have shown the way to end this hurtful exclusion while preserving the integrity of the jury system. And if deaf people are allowed to serve, then blind people like Herman Grimes will surely follow. **G**



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*Law Society of Ireland*

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# ODE TO THE CRIMINAL COURTS OF JUSTICE

**The Criminal Courts of Justice have been operational for a year now. Aisling Kelly sings the praises of the 'new' building, saying that it's a better place in which to practise law**



*Aisling Kelly  
is a solicitor  
and a member  
of the Gazette  
Editorial  
Board*

Sometimes, when you look back on a past experience, you can become nostalgic – the 'remember when' syndrome that inspires the observation that 'things aren't as good as they were in the old days!' Thankfully this isn't the case with the new Criminal Courts of Justice.

No one could look back on the freezing criminal courts of the Bridewell in Dublin and the Four Courts and think that they were a better deal. The fact that we now have criminal courts where you don't see your breath as you exhale is a reason to celebrate.

The fact that the holding cells are functional and have toilets (and doors) are other reasons to say that the new premises are, without doubt, a better place in which to practise law than what we had before.

Yes, there have been some teething problems, such as telephone reception in the solicitors' room or access to prisoners in the cells. Access to the building is another issue that has yet to be resolved to the satisfaction of a number of solicitors.

One of the other downsides is that the judges' chambers on the eighth floor are quite far away from the courtrooms. It used to be the case that a judge could rise and resume on a moment's notice. Now, unless the judge decides to stay in the small anteroom off the courtroom, he or she retires to their proper chambers on the top

floor and it can take some time to get them back down (to earth!).

## **Vulnerable witnesses**


But having said all that, it's fantastic to say that there is, at last, a decent place to take vulnerable witnesses where they feel safe. The new videolink suite is so much better than the old cramped room in Áras Uí Dhálaigh ever was.

In addition, the fact that there is a multi-agency approach to the building is very helpful – the Probation Service, the Bar, the Office of the DPP, the gardaí, the Courts Service and the Prison Service all have branch offices in the building. It makes for a more integrated criminal justice system.

## **User friendly**

People have become used to the security screenings, and the cafés around the area are far from

shabby. The private section of the café is now open to all legal practitioners, so they can avail of a quiet area to grab a quick lunch in between consultations and cases. The existing public side to the café is often besieged at lunchtime, so this change is a welcome one. It perhaps goes some way to recognising that the building will change as the need of its users does.

All in all, it's a beautiful building in which you feel safe and comfortable. It's a pity the same can't be said for the homes or streets from which some of the users of the system come. Perhaps the legacy of the next boom, if there ever is one, should be to give these people as much support and as many resources as have been afforded to the Criminal Courts of Justice. And, for once, I'm not talking about the lawyers. 



# Gentle CHAMPION

**Gareth Peirce is one of the world's foremost human rights lawyers. Colin Murphy speaks to her about her work, the 'universal crime' of torture, and her passion for the rule of law**



*Colin Murphy is a journalist and documentary maker in Dublin, specialising in social and cultural affairs. His radio series From Stage to Street is currently being broadcast on RTÉ Radio 1 on Saturdays at 7.30pm. A selection of his work can be found at [www.colinmurphy.ie](http://www.colinmurphy.ie)*

**I**n London some years ago, an Egyptian dissident found himself threatened with deportation to his home country. He had agitated against the now-discredited Mubarak regime and had been tortured for his troubles. He had sought asylum in Britain but had been detained.

During a legal challenge to his detention, a memo from the Home Office to Tony Blair was disclosed. It noted that assurances given by Egypt that the man would not be tortured on his return were largely worthless; on the memo, Blair had handwritten: "This is a bit much. Why do we need all these things?" Across the memo, he had written: "Get them back."

The man's challenge was successful, but he has since been made the subject of an order freezing his assets, under which his family have to keep precise accounts for their household spending and his wife requires a licence to cook for him. In the House of Lords, subsequently, Lord Hoffman attacked "the meanness and squalor" of a state "that monitored who had what for breakfast".

If the first half of the story sounds like something from John le Carré, the second is more Monty Python. But it is clearly not funny for the man involved. For Gareth Peirce, solicitor on the case (who tells the story in a recent book, reviewed on p44), cases such as these have a far-reaching legacy: there is the oppression of the family involved, there is the undermining of the rule of law (through the attempt to subvert prior binding







#### FAST FACTS

- Working on miscarriages of justice and civil liberties issues
- The 'new security era' is a construct to suit what governments want to do
- Torture is a universal crime to which there's no defence
- The 'ticking bomb' excuse is a myth
- British system would be greatly strengthened by a written constitution

commitments or to make perverse laws), and there is the insidious impact on the Muslim population of Britain.

### Deceptively gentle

The chapter in which this story appears is called 'Was it like this for the Irish?'. Peirce, who worked on many of the key Irish miscarriage-of-justice cases in Britain, clearly thinks it was. Among the Muslim community, she has noted "that same sort of bleak cynicism" (as arose among the Irish in Britain previously). Young Muslims think that "this is how the state intends to treat us and this is how we've been demarked. Our voices, far from being heard, are being somehow pushed into no longer registering in the body politic of the state."

In person, Peirce at first appears deceptively gentle. She speaks so quietly that I strain to hear her, is polite to the point of timidity, and is so self-effacing as to clearly wish to disappear when the photographer arrives (perhaps more accurately, she wishes the photographer would disappear).

But there is no gentility in her rhetoric and nothing self-effacing about her arguments. She is scathing about the recent degeneration (as she sees it) of British justice and believes that the recent popular uprisings in Egypt and Libya have exposed the duplicity of British dealings with these regimes.

Under Tony Blair, the British government set out to 'woo' Mubarak and Gaddafi and was prepared to "deport or disable" those of the regimes' dissidents that had sought asylum in Britain, she believes. She traces the "*pas de deux*" between Britain and Libya directly to Libyan oil, pointing to the coincidence of dates between moves to deport (and later to control) Libyan dissidents and attempts to secure Libyan oil contracts by British firms. "You can map the connections quite closely," she says.

### A form of madness

It is now clear, she says, that Britain used information that had been obtained under torture in foreign states: cables from the US

embassy in Cairo, revealed by Wikileaks, said that "they were shipping out so-called intelligence from people tortured". The fact that Britain has recently settled each of the cases against it by British residents released from Guantanamo suggests further that this was the case, she says.

But why descend to the level of the ridiculous when imposing such control orders, as in the case of the Egyptian dissident, I wonder. "It's a form of madness. There is such an obsession for micro-management that nobody notices that it's all completely insane."

Of Tony Blair, she believes that, "at best, if one were as forgiving as it were possible to be," he could be accused of "total self-delusion". But, at worst, his actions demonstrate "the parallel assumptions of a dictator". "He's a lawyer", she says, "he should know that you don't mess with individual rights."

But are we not in a new security era, when the stakes have been raised so high that the rules of the game – including the rights of suspects – have changed? "No, no, no. That's nonsense. It doesn't hold water for a minute. That idea is a construct to suit what people want to do.

"Torture is a universal crime to which there's no defence. This is the concept of inalienable human rights – they attach to the individual for all time, against all comers. They're entrenched; they are treaty obligations we all entered into post World War II in order that that argument could never be entered into again. We have entered into universal pledges to guarantee them, but there is a constant tension to break them."

### Ticking bomb

The most extreme case of that tension comes in the form of the 'ticking time-bomb' argument – as popularised in the television

series 24, where security agent Jack Bauer regularly tortures suspects in order to extract information that is crucial to stop the destruction of Los Angeles.

Peirce is dismissive. "The ticking time bomb argument has never worked. After hundreds of years of torture being permissible, by the 19th century it had been acknowledged that what it produced was worthless in any event: on the whole, it just produced what the interrogator wanted it to produce. And it destroyed the moral integrity of the nation that permitted it. Tell me one incident that anyone can cite of

the ticking time bomb actually happening; nobody comes up with one; it's such a useful hypothesis, but it doesn't actually exist."

Peirce has been fighting these battles since the mid 1970s, representing Judith Ward, the Birmingham Six and the Guildford Four, among many others. Does she despair? "I think probably most defence lawyers despair every day; that's probably the

nature of it." But she is philosophical. "The more you see of how history unfolds, you see that it never achieves a smooth plateau – it can get up to a plateau of achievement, but then it starts to slide down again. That's what we learn from history – that it is, and ever will be, a constant battle."

Yet there is an argument that Peirce's successes in overturning wrongful convictions proves the integrity of the very system she has challenged. Is that the case? "That's what people sometimes like to think. I think when you observe how long and how accidental was the route to exposing or unravelling the worst examples, nobody could claim that gives you a triumphant system."

Many of these cases were "played out in the public eye," she notes, and yet "much that was mendacious and wrong and brutal was covered up for so long. I don't think that leaves you with a diagnosis that you have the most robust system in the world."

***"After hundreds of years of torture being permissible, by the 19th century it had been acknowledged that what it produced was worthless in any event"***

### PEIRCE'S IRISH WAR

I asked Peirce what had sustained her through the long years of the battle to have the Guildford Four and Birmingham Six freed.

"It's a joint endeavour," she explained. "You're in it with the men and their colleagues and their wives." Nonetheless, I surmised, there must have been periods when it seemed fruitless? "But it's an emergency," she said, simply. "They've got to be got out!"

She is hostile to any attempt to probe her personal experience: "No difficulty any lawyer might have experienced came close to what the defendants experienced."

Ultimately, success came about due to a combination of legal experiments and challenges, public campaigns, and political influence. Peirce has been told that Bill Clinton watched *In the Name of the Father* the night before he decided to grant Gerry Adams a visa to the US, against the wishes of Britain, in 1994.

"What you had to do," she says, "was to raise consciousness in order to raise political sensitivity, until eventually it became more embarrassing to keep them in than to release them."

### Information overload

In the period that Peirce has been championing human rights, society has changed greatly: communications technologies, in particular, have made it (in theory) much easier to challenge the mainstream consensus and to circulate information about abuses and cases of minority interest. Has this facilitated the fighting of her cases?

The opposite might be the case, she says: "Information overload." Over-exposed to stories of abuses, "we become callous to suffering". "We've become accustomed to taking in tiny bites of information, on a 24-





***“Much that was mendacious and wrong and brutal was covered up for so long. I don’t think that leaves you with a diagnosis that you have the most robust system in the world”***

hour basis, so that it becomes familiar without properly entering our consciousness. It’s difficult to take the time to get to know the details, and it’s the details that you need to get to know.”

Is there a solution? “Battle on – and be aware what not calling properly to account can mean.”

#### **Constitutional mindset**

The British system would be greatly strengthened by a written constitution, she believes. “We don’t learn about rights in school, don’t have a constitutional mindset, we don’t think in those terms, so when the rights we have are under attack, we don’t know we have them to defend them.

“I was in a taxi in Dublin once, and the driver had been in prison for a political conviction. He told me that, after he got out, he had found it difficult to get a taxi licence. But he had taken a case, argued the Constitution – that he had a right to work – and won. I thought that was bloody impressive. There’s no such concept here.”


In a broader sense, it is this passion for the law that animates her. “I think there is a beauty in constitutional philosophy, in the idea that

there is something to hang onto in the societies in which we live that is for all time, and for everyone.”

While writing this article, and doing some absent-minded research on our own constitutional history, I stumbled upon some thoughts that seemed to anticipate Peirce’s with uncanny precision.

In May 1936, on the day before the first Seanad was abolished, its chairman, Thomas Westropp Bennett, made a fine, short speech in praise of its role in helping to “build and strengthen this infant state” (The speech is online at: <http://bit.ly/hmLrAY>). He said: “If we, who are in the sere and yellow leaf, are approached for our counsel, I hope we shall

say: ‘Work for the law, by the law, and with the law.’ Thus only will democracy be preserved and strengthened.”

In the conclusion to her recent book, Peirce writes: “In age after age, societies look back and ask how it was that so many went along with what happened and with the consequences. Without knowing and accepting the truth in its entirety, how do we re-order the society in which we live? Nor is it possible to do so without an unqualified commitment to the principle fundamental to the rule of law: that it applies to all, without exception.” 

*Gareth Peirce will give the Law Society’s Annual Human Rights Lecture on 10 May 2011.*

#### **BEHIND THE SCENES**

A solicitor since 1978, Gareth Peirce joined the firm of pioneering human rights lawyers, Benedict Birnberg, as a trainee, and is now a partner in Birnberg Peirce and Partners.

She has been a lifelong champion of the falsely accused and made her name with her tenacious – and successful – challenges to the convictions of the Birmingham Six and Guildford Four.

She was portrayed by Emma Thompson in Jim Sheridan’s film about the Guildford Four, *In the Name of the Father*. In recent years, she has been a leading advocate for the rights of those caught up in Britain’s participation in the ‘war on terror’ and has represented some of the Britons detained in Guantanamo.



# COMPETITIVE STREAK

**Business clients should keep their friends close and their enemies closer – but they should keep their competition lawyer closest of all, writes Vincent Power**



*Dr Vincent Power is partner and head of EU and Competition Law at A&L Goodbody*

Competition law is everywhere – it is not just confined to big boardrooms. The first Competition Authority case involved a video rental shop in Belmullet. The first Supreme Court case related to a medical centre in Ballinderry, near Mullingar. Probably the biggest cartel investigation in Ireland to date centred around Tuam and the Galway area. Solicitors across the country have had to deal with civil and criminal competition cases involving car dealers, oil delivery companies, waste collectors and so on.

There is probably a competition law issue on most solicitors' desks right now.

The sale of a business often involves a competition law question as to whether the sale is compatible with competition law (that is, whether the acquisition would substantially lessen competition) and whether any post-term restrictive covenant is reasonable (typically, up to two years post-completion is seen as acceptable).

Distribution, franchising, purchasing and pricing agreements all potentially raise competition law issues. Discussions involving trade associations almost invariably raise competition law issues, because it could involve competitors discussing competitively sensitive issues. There have many stories in the media about state aid to banks over last few years, but all businesses can either receive state aid (for

example, through a discriminatory tax break) or face competition from a competitor abroad who is receiving state aid from its government. In fact, there is almost no end to the range of competition issues that can arise in practice.

So if there is so much competition law, then what does a solicitor need to know about?

Well, here is a 'five-point plan': it is useful to know about anti-competitive arrangements, abuse of dominance, mergers and acquisitions, state aid, and the enforcement of competition law.

## **Anti-competitive arrangements**

Competition theory posits that rivals should be just that: the competitors in a market should act independently, endeavouring to outdo each other. If there is sufficient competition in a market, then there should be increased choice, improved quality and lower prices for all consumers in a market (whether those consumers are end-users or businesses purchasing raw materials).

Competition law is therefore suspicious if there is some contact between competitors, or even non-competing market participants. It is very suspicious if there is contact between actual competitors – a so-called horizontal agreement, because the participants are at the same level of the economic chain. It is less suspicious but still concerned when the participants are at different levels of the economic chain – a so-called vertical agreement.

Yet market participants have to collaborate to some extent. Agreements such as joint ventures,

***"Solicitors are involved intimately in the enforcement of competition law. For example, hearings before the Competition Authority are invariably conducted by solicitors"***



#### FAST FACTS

- > There is probably a competition law issue on most solicitors' desks right now
- > Solicitors should know about anti-competitive arrangements, abuse of dominance, mergers and acquisitions, state aid, and the enforcement of competition law
- > Solicitors can ultimately help clients by helping them to have competition-compliance programmes



distribution agreements, franchises and so on can be beneficial. Therefore, solicitors need to be able to tell the difference between beneficial and harmful arrangements. One does this by considering the primary provisions – article 101 of the *Treaty on the Functioning of the European Union* (TFEU) and section 4 of the *Competition Act 2002* – but, moreover, by reviewing the guidelines of the European Commission and the Competition Authority, as well as reviewing the case law (all of these materials are available on the respective institutions' websites). There is a considerable amount of judgment involved in advising on this area, and it can never be entirely precise, but experience and expertise help.

The difficulty with getting it wrong is the enormous penalties that can be imposed on businesses (known as 'undertakings') that breach competition law. The stiffest penalties are usually reserved for anti-competitive arrangements: at the EU level, the fines are up to 10% of worldwide turnover and, at the Irish level, the fines are up to €4 million and/or 10% of worldwide turnover, but with the additional penalty of up to five years in jail for individuals. Usually these penalties are reserved for hardcore cartel offences (such as price-fixing and market sharing).

A more practical penalty is that, if one is advising on a contract or agreement and it is in breach of competition law, then it is void and unenforceable in whole or in part – the extent of invalidity depends on whether the provisions contrary to competition law can be severed. This is very important for the likes of distribution agreements. Therefore, solicitors need to check whether the agreements they are advising on comply with competition law. Since 1 May 2004, it has no longer been possible to notify arrangements (other than mergers and state aid) to the European Commission, so there

***"There is almost no end to the range of competition issues that can arise in practice"***

is an element of so-called 'self-assessment', which is more arduous on the parties and their advisors.

#### Abuse of dominance

Competition law can also be breached by an undertaking acting on its own (or with others) where it abuses any 'dominant position' that it has in the marketplace. If a business has the ability to act to an appreciable extent independently of its competitors (for example, it has the ability to sustain unilateral price rises), then it probably has a dominant position. However, having a dominant position is not a breach of competition law – the issue arises where it abuses that dominance.

There is no finite list of abuses, but they typically include predatory pricing,

unjustifiable refusals to supply, and certain forms of exclusionary behaviour. Helpfully, the European Commission has published some guidance on the application of the rules on abuse of dominance, but the language in the relevant provision (article 102 of the TFEU and section 5 of the 2002 act) is very elastic and can be easily adapted to new situations.

#### Mergers and acquisitions

Very large-scale mergers can be notifiable to the European Commission (for example, the acquisition by RBS and Anglo Irish Bank of Arnotts), but most mergers in the context of the practice of Irish solicitors would be reviewable under Irish competition law.

A merger is reviewable under either EU or Irish competition law but not both. If a merger is notified to either the EU or Irish authorities, then it can be referred to the other – but this is unusual: since 1990, when the EU merger control regime commenced, there has only been one referral of a merger notified to the EU to Ireland (the Heineken/Beamish & Crawford merger).

The thresholds in the EU's merger control regulation (Regulation 139/2004) and the Irish act (part III of the 2002 act) are somewhat involved. However, in essence, rules of thumb would be: (a) if the parties involved have very large turnovers (that is, at a starting point of €2.5 billion), then EU law applies; (b) if the parties have turnover of less than the EU thresholds but more than €40 million in the previous year, or one of



Competitive streak of a different kind

## LOOK IT UP

#### Legislation:

- *Competition Act 2002*
- Council Regulation 139/2004
- *Treaty on the Functioning of the European Union*

#### Books:

- Bellamy & Child, *European Community Law of Competition*
- Dunleavy, *Competition Law: A*

#### Practitioner's Guide

- McCarthy & Power, *Irish Competition Law: The Competition Act 2002*
- Power, *Competition Law and Practice*
- Whish, *Competition Law*
- 

#### Websites:

- Competition Authority: [www.tca.ie](http://www.tca.ie)
- European Commission: [http://ec.europa.eu/competition/index\\_en.html](http://ec.europa.eu/competition/index_en.html)



them is in the media sector, then the Irish merger control regime applies; and (c) even if the turnovers are very small but there is a risk that the deal would substantially lessen competition, then the parties might choose to voluntarily notify the Irish authority under the Irish regime.

### The state and competition

Solicitors acting for parties who believe that they have been injured by the actions (or inactions) of an EU member state (for example, restrictive practices or aid to a competitor) may be able to invoke EU competition law, whether before the Irish courts or the European Commission, to thwart the activities of the state in question. This is a very powerful tool and has been used to deal with illegal state aid as well as restrictive practices by states (such as preventing entry into a market by a putative competitor).

### Enforcement of competition law

Solicitors are involved intimately in the enforcement of competition law. For example, hearings before the Competition Authority are invariably conducted by solicitors, and they are the ones who prepare


and argue merger filings and notifications. Equally, they are the ones called out to assist clients on so-called 'dawn raids', when the European Commission or the Competition Authority arrive unannounced at businesses or private homes to find evidence of breaches of competition law.

The way in which competition law is enforced differs between the EU and Ireland. The European Commission has the power to decide on mergers and state aid, as well as impose fines and stop breaches of competition law. By contrast, the Irish Competition Authority may decide on mergers and pronounce on competition matters generally, but it must take a case to the courts to enforce competition civilly or institute a prosecution in criminal matters. Both the commission and the authority may conduct dawn raids, but the authority may do so only after receiving a District Court warrant. The courts play a very important part in the enforcement of Irish competition law, as is clear from the cartel convictions across the country.

***"Distribution, franchising, purchasing and pricing agreements all potentially raise competition law issues"***

The commission and the authority also hope to influence the debate on competition matters by conducting various studies (for example, the study on certain professions). The commission's and authority's views are always interesting, but they are not always implemented, because these institutions see everything through the prism of competition and may not see the wider picture, which society may prefer in a particular instance – one is reminded of the phrase "when all one has is a hammer, everything is a nail".

Solicitors can ultimately help clients by helping clients to have competition-compliance programmes. It is by this means that solicitors can minimise risk for clients and bring the 'value' clients require.

However, even the best compliance programmes cannot prevent breaches of law from occurring, so the motto for business clients is straightforward: keep your friends close, keep your enemies closer, but keep your competition lawyer closest of all! 



***Law Society of Ireland***

## **Course for those who wish to join the Irish Language Register (Law Society) – Clár na Gaeilge (An Dlí-Chumann)**

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For further details and an application form contact Alison Gallagher, Course Assistant, Law Society, Blackhall Place, Dublin 7. Email: [a.gallagher@lawsociety.ie](mailto:a.gallagher@lawsociety.ie) Tel: 01 672 4802

# SYNERGY

## SYMPHONY



*Brian Hyland is a partner in Baker Tilly Ryan Glennon, chartered accountants. He has acted as a forensic accountant and expert witness in High Court proceedings*

**The economic downturn has resulted in many practices looking very carefully at their costs in order to preserve profitability. However, a further strategy to consider is a merger. Brian Hyland mixes it up**

Many legal practices have seen a significant decline in their profits during this economic recession. Practices that had strong conveyancing businesses have seen an unprecedented level of decline in activity – hence their fee income has reduced accordingly. While some practices have witnessed an increase in commercial litigation, it is proving increasingly difficult to turn this increase in activities into cash, since many clients appear reluctant to pay the fees due.

Many practices that specialise in family law are also struggling, since the decline in residential property values has had an impact on the ability of separating or divorcing couples to properly deal with their situation.

This environment has seen the fee income of practices suffer. When fee income reduces – unless costs reduce by a similar amount – profit will fall. It can often be difficult to preserve profitability, as some costs are more difficult to reduce. While chargeable staff costs can often be reduced, some costs (such as rent and support staff) are more difficult to realign. A merger may be a way of spreading these costs across a wider income base.

Mergers can occur between firms of different sizes in what is sometimes called an ‘up’ or a ‘down’ merger, depending on which side of the fence you’re sitting on. Mergers can also take place between firms of similar size, in what is sometimes referred to as a ‘parallel merger’.

The advantages of a merger are numerous, including:

- Greater capacity and flexibility,
- A wider skills mix,
- Greater management of resources/economies of scale,
- The potential to attract a higher calibre of staff,
- Diversification, which will decrease the dependency on a specific area of law – for example, a conveyancing firm merging with a commercial litigation firm, and

- Specialisation, where partners specialise in a specific area of expertise rather than being generalists.

### Steps to be taken pre-merger

Proper planning is required well before any merger should be contemplated. It is very important to recognise succession at an early stage. A proper, well-thought-out strategic plan should be drafted that documents the key strategies over the next three to five years, which will shape the long-term direction of the practice. The key ingredients in the planning process are:

- Defining the future direction of the firm – devising a strategic plan,
- ‘SWOT’ analysis,
- Highlight the key strengths of partners and key staff,
- Highlight gaps in skills and client services, and
- Define the primary goals and objectives of the merger.

### Identification of a merger candidate

The need for compatibility or ‘culture fit’ is greater when two firms of a similar size come together. It is, therefore, not surprising that mergers that are completed simply for cost savings alone often tend not to be as successful as those that play to the strengths of the original practices. Defining partners’ roles as part of the merger process is essential, otherwise there is a danger that everyone will continue as before – being generalists rather than specialists.

For example, before this accountancy firm merged in 2007 to become Baker Tilly Ryan Glennon (previously PKF Ryan Glennon and Baker Tilly O’Hare), we spent a considerable amount of time looking at what roles the partners – the players on the pitch – would perform. The merger has served us well and afforded us the ability to invest in dedicated experts in areas such as insolvency and litigation support.





#### FAST FACTS

- > In difficult economic times, a merger may be a good way of increasing fee income and spreading costs like salary, staff, rent and rates across a wider income base
- > There are two types of merger – the ‘up’ or ‘down’ model, which takes place between two firms of different size, and the ‘parallel merger’, which occurs between firms of similar size
- > Proper planning is required well before any merger should be contemplated. A proper, well-thought-out strategic plan should be drafted that documents the key strategies over the following five years, which will shape the long-term direction of the practice
- > The need for compatibility or ‘culture fit’ is greater when two firms of a similar size come together. Mergers that are completed simply for cost savings alone often tend not to be as successful as those that play to the strengths of the original practices

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## A PRACTICAL EXAMPLE

A practical example of the impact a merger might have on the weekly profits of a newly merged firm is set out below:

	PRACTICE A	PRACTICE B	MERGED PRACTICE
	€	€	€
Sales	10,000	12,000	22,000
Rent and rates	1,000	1,100	1,200
Rates	250	350	450
Wages and salaries	2,500	3,000	4,750
Other overheads	5,250	6,050	10,600
Total overheads	9,000	10,500	17,000
Net profit	1,000	1,500	5,000

In this example, I have assumed the following:

- 1) Establishment expenses (moving to one premises),
- 2) Administration salaries savings, and
- 3) Savings in overheads, for example, professional indemnity and accounting fees.

In many cases, due to the decline in activity, practices have surplus space and therefore can 'absorb' the additional staff of the merged practices. This will be an obvious significant saving. In addition to these savings, most practices coming together will have savings in support roles. Some of these savings will take longer to identify and there may also be additional costs to be incurred, such as marketing, branding and investment in a new website.

### Exchange of information

During this process, key information on each firm will have to be exchanged:

- Historic financial information for the past two years,
- Analysis of fees by client and by service,
- Review of work in progress, debtors and creditors, including trends,
- Number of wills and age profile of clients,
- Review of Law Society compliance library,
- Review of tax compliance on all tax heads,
- Understanding the key accounting policies, including client outlay, billing procedures

and bad-debt provisions, and

- Comparison of salary scales and contracts of employment for key staff.

### Implementation issues

The following issues also need to be considered. In our experience, these can often be 'deal breakers' if not dealt with at an early stage in discussions:

- Deciding on a firm name,
- Deciding on a location,
- Defining partners' duties,
- Determining partner profit shares and level

of drawings,

- Deciding on a banking relationship,
- Determining the level of borrowings required and attitude to risk, and
- Determining the level of capital investment required.

In order to facilitate discussions around the attitude to risk and the level of investment required, a forecast covering the first year and, indeed, the first three years should be prepared. This should be carried out in conjunction with the forecasts for each firm, on a stand-alone basis, with a comparison of these so that synergies can be identified.


### Final steps

The final steps will also include the notification of all the stakeholders, that is:

- Clients,
- Staff, and
- Banks.

Mergers are not for every firm, and compatibility and 'culture fit' will be very important issues to consider. With a merger often bringing a feeling of loss or dilution of control, unless all partners embrace the merger, it will be difficult to achieve a positive outcome.

However, a well-thought-out merger that seeks to enhance skills and gaps in client services, while at the same time providing cost savings, is a strategy that is worthwhile adopting. The starting point of this process lies well before a merger is identified and has its origins in the strategic plan of the firm.

A merger of two firms can often achieve more than either firm can on its own and, therefore, two plus two can equal five. 

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As more and more entities cease to trade and are no longer regarded as a viable mark for recovery in litigation, greater reliance is being placed on the principle of joint and several liability in relation to building claims.

Fiona Forde checks her watch

# TIME

keeps on slipping...





Fiona Forde is a practising barrister specialising in the area of construction and building law

An unfortunate repercussion of the current economic climate is the scatter-gun approach that is being taken in relation to building claims. As more and more entities cease to trade and are no longer regarded as a viable mark for recovery in litigation, greater reliance is being placed on the principle of joint and several liability, established under the *Civil Liability Act 1961*.

Under the act, where two or more parties are responsible for the same damage, a plaintiff may pursue recovery against any of those parties as if each were liable for the entire damage. The paying 'defendant' is, however, entitled to seek contribution from other parties who have contributed to the loss.

The difficulty for the paying defendant is that it becomes their responsibility to pursue the other obligors for a contribution to their share of the liability. Therefore, while the plaintiff can seek to recover against the defendant who is the most viable mark, the paying defendant in a building claim can often be left in the unenviable position of seeking recovery from other members of the project/design team who have now ceased to trade or are incapable of adequately discharging their share of the liability.

Given the vulnerability of the parties when a building claim is taken against them, one of the first issues that arises when proceedings issue is the question of whether the claimant is within time to bring their claim. Under section 11 of the *Statute of Limitations Act 1957*, actions in tort or contract, other than actions arising from personal injury, shall not be brought after the expiration of six years from the date on which the cause of action accrued.

The question of when 'the cause of action accrued' is, therefore, fundamental in building claims. Although it concerns personal injury proceedings, the case of *Hegarty v O'Loughran* is regarded as the established leading legislation in this area.

The plaintiff in the case issued proceedings relating to unsuccessful surgery to her nose, carried out by the first-named defendant in 1973. In 1974, the second-named defendant performed a remedial operation, which subsequently began to deteriorate by 1976. Proceedings were instituted against both defendants in 1982, claiming damages for personal injuries. The defendants denied negligence and pleaded that the claim was statute barred by reason of the provisions of section 11 of the *Statute of Limitations Act 1957*. The High Court held that the date on which the cause of action accrued was the date on which the act causing the injury was committed and that, therefore, the plaintiff's claim was statute barred.

The decision was appealed and upheld in the Supreme Court. The Supreme Court held that the cause of action accrued at the time, when proven personal injury, capable of attracting compensation, occurred to the plaintiff and that time, for the purpose of the *Statute of Limitations*, began to run, whether or not the damage could have been discovered.

#### Recall the beginning

The case is of particular importance in relation to building claims, as the Supreme Court rejected the concept of a discoverability

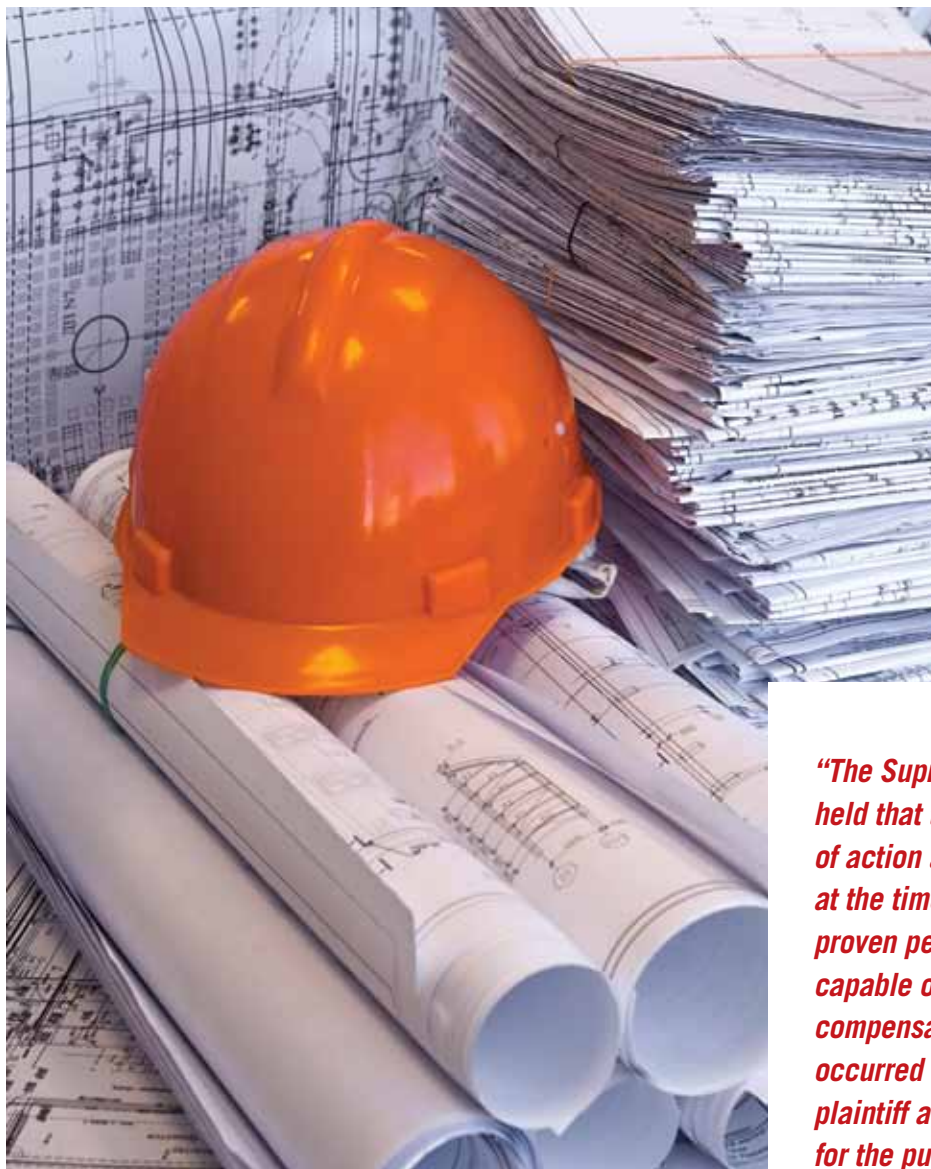
test and held that the *Statute of Limitations* runs from the date upon which the damage or defect has occurred and not the date upon which the damage or defect was discoverable.

*Hegarty and O'Loughran* follows the English case of *Pirelli General Cable Works Limited v Oscar Faber and Partners*, in which the House of Lords held that the accrual of a right of action in actions for negligence in the construction or design of a building was the date the damage came into existence – and not the date when the damage was discovered or should with reasonable diligence have been discovered. The *Pirelli* decision is one that has been characterised in the English courts as producing a result that is "harsh and absurd" and, no doubt, this would be a view reiterated in Ireland by a plaintiff who found themselves statute

#### FAST FACTS

- > In cases involving recovery arising from building claims, greater reliance is being placed on the principle of joint and several liability, established under the *Civil Liability Act 1961*
- > Where two or more parties are responsible for the same damage, a plaintiff may pursue recovery against any of those parties as if each were liable for the entire damage
- > The paying 'defendant' is entitled to seek contribution from other parties who have contributed to the loss
- > The paying defendant in a building claim can often be left in the unenviable position of seeking recovery from other members of the project/design team who have now ceased to trade, or are incapable of adequately discharging their share of the liability
- > One of the first issues that arises when proceedings issue is the question of whether the claimant is within time to bring their claim
- > The question of when 'the cause of action accrued' is fundamental in building claims

***"The statute of limitations runs from the date upon which the damage or defect has occurred and not the date upon which the damage or defect was discoverable"***



Builders often have big hard hats

barred from taking their claim, regardless of the fact they had only just discovered the defects or damage complained of.

In *Hegarty and O'Loughran*, Chief Justice Finlay commented on the issue as follows: "It is quite clear that what is sometimes classified as the harshness and injustice of the person failing to bring a cause of action to trial by reason of exceeding a time limit not due to his or her own particular fault, may well be counterbalanced by the harshness and injustice of a defendant called upon to defend himself at a time when, by the passage of years, his recollection, the availability of his witnesses and even documentary evidence relevant to a claim in contract or tort have disappeared."

#### Your saving grace

Of course, the difference between claiming damages for breach of contract and claiming damages for negligence must also be

considered. The tort of negligence is not complete until damage has been caused by the defendant's wrongful act. In the case of *O'Donnell v Kilsarin Concrete*, a decision of Mr Justice Herbert clarified that, in the case of a breach of contract, time for the purpose of the *Statute of Limitations* runs from the time of the occurrence of the breach and, in the case of negligence, time begins to run from the time of the occurrence of the damage.

*Hegarty v O'Loughran* was followed in the case of *Tuohy v Courtney*, in which the plaintiff sued his former solicitor for negligence and breach of duty in relation to the purchase of property. It transpired that the title to the property was in fact leasehold rather than freehold. There was no right to purchase the freehold, and the lease was subject to onerous covenants.

The property was purchased in 1978; however, the plaintiff only discovered the problem with the title to his property in 1985 and issued proceedings in 1986. The defendants pleaded that the action was statute barred by virtue of section 11 of the *Statute of Limitations Act 1957* and the plaintiffs challenged the constitutionality of the section.

While the Supreme Court acknowledged the potentially difficult situation in which a plaintiff might find themselves pursuant to the statute, it held that the cause of action accrued when the act complained of had occurred, and not when the damage was discovered. Chief Justice Finlay mirrored his earlier comments in *Hegarty v O'Loughran*: "It cannot be disputed that a person whose right to seek a legal remedy for wrong is barred by a statutory time limit before he, without neglect or fault on his part, becomes aware of the existence of that right has suffered a severe apparent injustice and would be entitled reasonably to entertain a sense of

grievance. So to state, however, does not of itself solve the question as to whether a statute which in a sense permits that to occur is by that fact inconsistent with the Constitution."

The Supreme Court upheld the constitutionality of section 11 – however, the door was left open to the suggestion of reform. Chief Justice Finlay stated: "For the Oireachtas to reach a decision either to add or not to add to the extensions of limitation periods contained in part III of the act of 1957 an extension relating to discoverability with regard to this particular time limit imposed by that act, is a decision which in view of this court can be supported by just and reasonable policy decisions and is

not accordingly a proper matter for judicial intervention."

In *Irish Equine Foundation v Robinson*, an action in negligence was taken against the architects and engineers who had advised on the design and supervision of the construction of the plaintiff's building. The various defendants were retained in late 1979, prepared plans and specifications in 1982, and issued a final certificate of completion in 1987. Water ingress through the ceiling was noted in 1991 and the employer commenced proceedings in 1996. The employer contended that time did not start to run until the leak occurred 1991.

***"The Supreme Court held that the cause of action accrued at the time when proven personal injury capable of attracting compensation occurred to the plaintiff and that time for the purpose of the Statute of Limitations began to run, whether or not the damage could have been discovered"***



Mr Justice Geoghegan J disagreed: "It is obvious from those dates that the action in contract is clearly statute barred. It is trite law that the limitation period commences on the date of the breach of contract and not when the damage is caused."

There has been little deviation from these principles in Ireland in more recent times. Ms Justice Dunne followed *Hegarty* in the more recent case of *Murphy & Murphy v McNerney Construction Ltd & Griffin*. The reluctance of the courts to move away from the principles set out in *Hegarty* coincides with the Supreme Court's view that any issue with the wording of the *Statute of Limitations* is a matter firmly for the legislators. As stated by Mr Justice McCarty in *Hegarty*:

"The fundamental principle is that words in a statute must be given their ordinary meaning and, for myself, I am unable to conclude that a cause of action accrues on the date of discovery of its existence rather than on the date which, if it had been discovered, proceedings could lawfully have been instituted. I recognise the unfairness, the harshness, the obscurantism that underlies this rule, but it is there and will remain there unless qualified by the legislature or invalidated root and branch by this court."

By comparison, the "harsh and absurd" decision in *Pirelli* in Britain has now been

superseded by the *Latent Defects Act 1996*. In Ireland, the Law Reform Commission has issued certain recommendations for development of the law in the area and, in particular, published a report in February 2001 entitled *The Statute of Limitations – Claims in Contract and Tort in Respect of Latent Damage (Other than Personal Injury)*. In the report, the commission recommended that the plaintiff may take action within either six years from the accrual of the cause of action, or three years from the date the cause of action is or ought to be discoverable to the plaintiff – whichever expires later. A long-stop period of ten years should, however, apply and should start at the date of accrual of the cause of action.

The commission recommended that, in the case of construction industry claims, a cause of action in contract should accrue for all the participants in the construction process at the date of completion or purported completion. The starting point of the long-stop for construction liability claims in both tort and contract should be the date of completion or purported completion.

Following a more recent review of the law in this area, the Law Reform Commission has now initiated a public consultation exercise regarding reform of time limits for the

bringing of civil actions and simplification of the law on limitation periods. The process, which commenced in early 2010, is still ongoing, following which formal recommendations will then be put to the Government. The effect, if any, this will have on the *Statute of Limitations*, in the context of claims for latent defects and damages, remains to be seen. **G**

## LOOK IT UP

### Cases:

- *Hegarty v O'Loughran* [1990] 1 IR 14
- *Irish Equine Foundation v Robinson* [1992] 2 ILRM 289
- *Murphy & Murphy v McNerney Construction Ltd & Griffin* [2008] IEHC 323
- *O'Donnell v Kilsarin Concrete* [2002] 1 ILRM 551
- *Pirelli General Cable Works Limited v Oscar Faber and Partner* (1983 2 WLR 6)
- *Tuohy v Courtney* [1994] 2 ILRM 503

### Legislation:

- *Civil Liability Act 1961*
- *Latent Defects Act 1996*
- *Statute of Limitations Act 1957*

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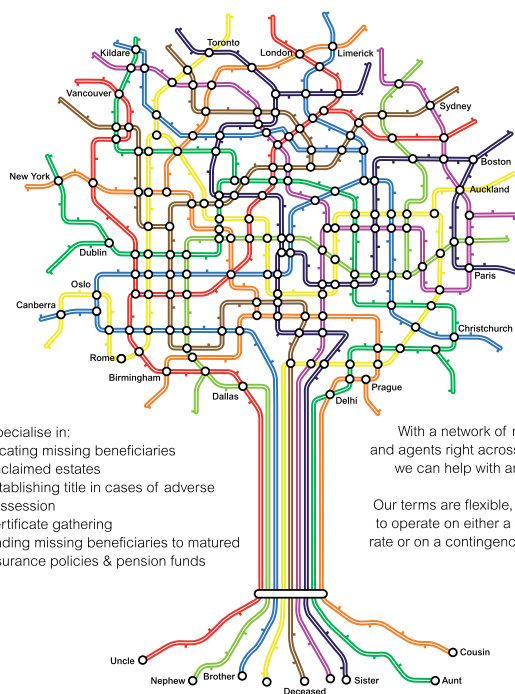
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# TITLE *fight*

**In the current economic climate, the insertion of a retention-of-title clause into a business's standard conditions of sale may be of comfort, especially where the creditworthiness of customers might be an issue. Colm O'Connor boxes clever**



*Colm O'Connor is an Irish solicitor practising in the corporate and commercial law department of Ganado & Associates, a Maltese member firm of Lex Mundi. This article has been written in a personal capacity and the author would like to thank Trevor Murphy and Gabriella Zammit for their review and comments*

A retention-of-title (or retention) clause is a provision in a contract relating to the sale of goods that delays the passing of ownership of the goods until payment has been made. Such a clause is normally effective, notwithstanding the fact that possession of the goods has already passed to the buyer. In the current economic climate, the insertion of a retention clause into a business's standard conditions of sale may be of comfort, particularly where there is increased uncertainty as to the creditworthiness of a customer or, indeed, where certain industries are concerned, customers *en masse*. This is especially the case where it is not commercially feasible for a business to request its customers to make advance payment, or even payment on delivery, for goods ordered.

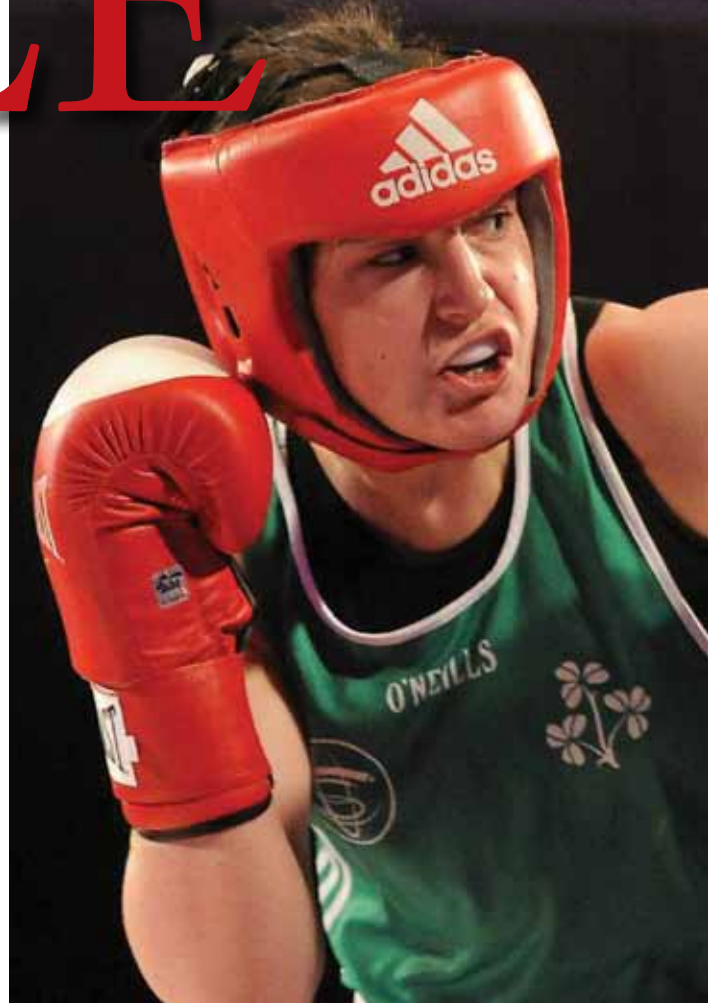
However, despite the usefulness of a retention clause, practitioners should take measures to ensure that their clients are aware of the issues affecting its scope and enforceability – not least because of the fact that actions outside a seller's

control may affect its validity. What follows are some particular considerations to bear in mind.

Retention clauses come in a number of different forms. The most simple, which is known as a 'specific-monies' retention clause, merely retains title to goods supplied until payment for them is made.

Another type, which is far more common, is referred to as an 'all-monies' or 'current account' retention clause. An all-monies retention clause is standard in a situation where the parties to an agreement for the supply of goods are to have an ongoing commercial relationship, as opposed to engaging in a solitary transaction. Its principal merit is that it allows a seller to retain title to all goods provided to a customer over a period of time, until payment has been made for them in full. In other words, even if part payment for certain goods has already been made, title for the goods as a whole will remain with the seller until all payment obligations have been discharged.

Other, less common, retention clauses include those that aim







Retention of title is right up there for Katie Taylor

#### FAST FACTS

- > Retention clauses may provide an additional safety net for businesses that operate in sectors of the economy where there is a culture of providing goods on credit
- > The ultimate ability of the seller to rely on a retention clause will boil down to whether or not it forms part of the legally binding agreement for the supply of goods entered into between the seller and buyer
- > Practitioners should take measures to ensure that their clients are aware of the issues affecting the scope and enforceability of retention clauses

to retain title over goods supplied following their subjection to manufacture by the buyer or, alternatively, the proceeds of the sale of goods supplied.

#### Below the belt

In certain circumstances a retention clause may unintentionally result in the creation of a charge (such as a floating charge, for instance) within the meaning of section 99 of the *Companies Act 1963*. This is particularly the case where a retention clause is drafted to retain an interest in property to which the seller's title has extinguished. This is because any attempt by a seller to obtain an interest in goods that are legally owned by the buyer has the potential to be treated as a transfer or assignment by way of a charge. A possible

example of such a scenario would be where a retention clause seeks to enable a seller to retain an interest in goods supplied to a buyer that have subsequently been subject to an irreversible manufacturing process that converts them into a new product (*Kruppsthall AG*). Likewise, the same considerations potentially apply to an attempt by a seller to retain an interest in cash paid, or debts owed, to a buyer following the re-sale of goods supplied to him by the seller.

If a retention clause does, in fact, operate as a charge, details of the charge will need to be registered with the Companies Registration Office within 21 days of its creation. Failure to register a charge within this time period will result in it become void and therefore unenforceable. The consequences of failure

to register such a charge could not be more serious for a seller.

Whatever the type of retention clause used, the ultimate ability of the seller to rely on it will inevitably boil down to whether or not it forms part of the legally binding agreement for the supply of goods entered into between the seller and buyer. In most cases, this may be done simply by inserting the appropriately worded retention clause in a seller's terms and conditions of sale. Ideally, these terms and conditions should then be referred to in all relevant forms relating to the supply of goods by the seller – for instance, order forms, invoices, receipts, and so forth. Taken together, these documents will normally constitute the final contract between the seller and the buyer.

Of course, a buyer may also have his own

standard contract documents, or forms, which he uses for buying goods. If the buyer's forms conflict with the seller's, the question arises as to whose forms shall determine the contractual relationship. Such a situation, referred to as the 'battle of the forms', occurs frequently in practice. In dealing with this scenario, the courts have generally decided on the rule that the 'last shot' – that is to say, the last set of contractual forms used prior to the performance of the contract – will be incorporated. Indeed, this is the position that was established in the landmark English case of *Butler Machine Tool Co.*

### Rumble in the jungle

In addition to proving that a retention clause has been successfully incorporated in a contract for the sale of goods, a seller wishing to rely on such a clause should also ensure that he is in a position to adequately identify the goods to which title is being asserted.

In normal circumstances, this should be relatively straightforward for a well-organised enterprise. Most businesses that are acquainted with how this area of the law operates will take steps to carefully record distinguishing features of goods delivered to customers on credit. Precautions, such as recording the serial number of products supplied in contract documentation, are common practice and always a good idea. So, too, is providing that goods supplied to a buyer should be boxed and stored separately until payment for them has been made in full.

However, not all goods supplied will be readily identifiable articles to which title may be asserted – even if precautions are taken. For instance, what happens if the goods supplied are raw materials that are indistinguishable when mixed by a buyer with other similar goods? Also, what happens if the goods supplied have been subject to a manufacturing process that has converted them into a new product?

Unfortunately, there are no hard-and-fast answers to these questions. Each case will turn on its own facts. Nevertheless, as a general rule-of-thumb, it is possible to make the following generalisations to aid the practitioner:

- *Mixed storage* – the mixed storage of a seller's goods by a buyer should not, in and of itself, cause the seller's title to lapse under a retention clause. By way of example, if the seller's goods can be easily identified and removed from the other goods they are stored with, then this may be done and title is retained. In circumstances where this is not possible (due to the fact that the articles supplied are indistinguishable from those that they are stored with), a seller may seek to argue that he has become a tenant-in-common over the mixed goods in their entirety, alongside those other

parties who have contributed to the mixture (*Glencore International*). If such an argument is successful, the exact share to which the seller is entitled will be proportionate to the amount he has contributed to the mixture.

- *Reversible incorporation* – the incorporation of a seller's goods into a new product will not, in and of itself, result in the seller's title lapsing under a retention clause. If the incorporation process is reversible and the seller's goods are still identifiable, then it is possible that a seller may still retain title to the goods he has supplied (*Hendy Lennox*). However, if the removal of a seller's goods would result in damage to the product that they are incorporated in, then it is likely that the retention clause would no longer be effective.
- *Consumption* – it is beyond doubt that, where goods supplied under a 'specific-monies' retention clause are irreversibly incorporated or consumed into a new product, a seller's ability to assert title to such goods under a retention clause is extinguished (*Somers v Allen and Borden (UK) Ltd*). In such circumstances, an attempt by a seller to create an interest in a product different to that which he has supplied will result in a charge being created.

### Raging bull

Certain circumstances will invariably trigger a seller's retention clause. Chief among these will normally be the appointment of an insolvency practitioner (such as a liquidator or receiver) over a buyer's business.

If such a scenario arises, a seller should put the insolvency practitioner on notice that certain goods held by the business are subject to a retention clause. (As an aside, an insolvency practitioner who improperly deals with goods that are subject to a retention clause may be personally liable in an action for conversion to the seller (*Clough Mill Ltd*.) In addition, an undertaking should be sought from the insolvency practitioner that he will not deal with the assets of the business until those of the seller have been adequately identified and put aside. If an insolvency practitioner refuses to grant such an undertaking, consideration should be given by the buyer as to whether or not an injunction is required. Of course, the commercial expediency of adopting such a course of action will ultimately depend on the value of the goods supplied under the retention clause.

Ideally, an on-site inventory of a business's stock should then be performed by both the seller and the insolvency practitioner. In the

course of such a process, the seller should clearly identify the goods to which title is being asserted and request the insolvency practitioner to either return the goods or, alternatively, pay for them.

Invariably, an insolvency practitioner will seek to maximise the pool of assets available for distribution to a creditor or creditors of a business and may contest a seller's retention clause. In such circumstances, a seller should consider the options available to him before deciding how to act. Litigation is costly and time consuming, and it may be desirable to strike a deal with an insolvency practitioner rather than resorting to legal means to resolve a dispute. Typically, a seller may opt to accept a discount on the invoice value of the goods supplied under the retention clause. A peaceful outcome should

be possible for both parties, provided a pragmatic approach is adopted.

### Sting like a bee

In these challenging economic times, retention clauses are an extremely useful weapon in a seller's armoury. While such clauses are no substitute for effective credit-control mechanisms, they may provide an additional safety net for businesses that operate in sectors of the economy where there is a culture of providing goods on credit. It is time that better use of such clauses was made in this jurisdiction. **G**

***"An insolvency practitioner who improperly deals with goods that are subject to a retention clause may be personally liable in an action for conversion to the seller"***

## LOOK IT UP

### Cases:

- *Borden (UK) Ltd v Scottish Timber Products Ltd* [1981] CH 25
- *Butler Machine Tool Co v Ex-Cell-O Corporation* [1971] All ER 965
- *Clough Mill Ltd v Martin* [1984] 3 All ER 982
- *Glencore International AG v Metro Trading International Inc* [2001] EWHC 490 (Comm)
- *Hendy Lennox (Industrial Engines) Ltd v Grahame Puttick Ltd* [1984] 1 WLR 485
- *Kruppsthall AG v Quitmann Products Limited* [1982] ILRM 551
- *Somers v Allen* [1984] ILRM 437

### Legislation:

- *Companies Act 1963*, sections 99, 100



## Garden county hosts Society visitors in March

At the Wicklow Bar Association meeting on 10 March were (*front, l to r*): Carl Kearney (PRO), Áine Hogan (treasurer), Ken Murphy (Law Society director general), John Costello (Law Society President), David Lavelle (president, Wicklow Bar Association), Barry Kenny (secretary). (*Back, l to r*): Catherine Balfe, Rachel Liston, Brian Robinson, Catriona Byrne, Laurence Cullen, Rory McGarry, Margaret Roche, June Green, Jonathan White, Bernard O'Beirne, Denis Hipwell, Richard Joyce, Michael Boylan, Patrick O'Toole, Maria Byrne, Ian Lavelle, Patrick Jones, Paddy McNeice, Joseph Buckley, Catriona Murray, Andrew Tarrant, Mairead Leyne, Carmel Rafter, Tom Honan, Josephine Sullivan, Fiona Roche, Darren Murphy, Bernadette Goff, Rory Benville



Wicklow Bar Association's new officer team (*back, l to r*): Barry Kenny, Richard Joyce, Paddy McNeice, Jonathan White, Bernard O'Beirne, David Lavelle, Carl Kearney and Brian Robinson. (*Front, l to r*): Áine Hogan and Maria Byrne



At the Parkview Hotel in Newtownmountkennedy were Bernadette Goff and Catriona Murray

The Wicklow Bar Association welcomed Law Society President John Costello and director general Ken Murphy on 10 March 2011 at a meeting at the Parkview Hotel, Newtownmountkennedy. The large attendance were given an informative and thought-provoking briefing by both men.

The association recently held its annual general meeting. The new committee is as follows: David Lavelle (president), Áine Hogan (treasurer), Carl Kearney (PRO), Barry Kenny (secretary); *social committee*: Brian Robinson, Conway O'Hara, Maria Byrne and Áine Hogan; *CPD committee*: Jonathan White, Paddy McNiece and Richard Joyce.



PIC: ROBBIE REYNOLDS/CPR

#### Winners of 'The Advocate' award

Two Trinity College Dublin students, Rebecca Russell-Carroll (*left*) and Bridget English, demonstrated their command of commercial law issues when they were announced as winners of 'The Advocate' – McCann FitzGerald's all-Ireland business law challenge – by Mr Justice Peter Kelly, John Cronin (chairman, McCann FitzGerald) and Rose Hynes (chairman, Bord Gáis Éireann). The prize is co-sponsored by the Courts Service and the Northern Ireland Courts and Tribunals Service



PIC: CONOR HEALY PHOTOGRAPHY

#### New NAMA reference guide

At the launch of a new reference guide to the *National Asset Management Act 2009* were authors Mark Kennedy, Máire R Whelan and Feargus Ó Raghallaigh. The guide was launched by NAMA chairman Frank Daly. The reference guide includes a summary of the events that led to NAMA, thought-provoking commentaries on key aspects of the legislation, and a comprehensive annotated text of the 2009 act. The foreword was provided by the former Minister for Finance, Brian Lenihan

#### ON THE MOVE



#### McDowell Purcell welcomes Rachel O'Connor

McDowell Purcell Solicitors has added solicitor Rachel O'Connor to its growing insolvency and restructuring unit (*l to r*): Linda Cruise (legal executive), Mark Woodcock (partner and head of insolvency and restructuring unit), Rachel O'Connor and Saranna Enraght-Moony (solicitor)



#### Emer Gilvarry reappointed

Mason Hayes & Curran has announced the reappointment of managing partner Emer Gilvarry for a second three-year term. Emer has held the position since 2007 and has provided legal counsel in some of the most significant arbitration cases over the past ten years. The firm has over 260 employees in their offices in Dublin, London and New York



#### New banking partner

A&L Goodbody has announced that Judith Brown has joined the firm's Belfast office as a partner in the banking and financial services team. Judith has extensive experience in corporate lending and security, syndicated loans, acquisition finance and structured finance, working with a wide range of clients

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# Waterford Law Society honours Tom Kiersey's career

On 25 February 2011, Waterford Law Society hosted a lunch in honour of local solicitor Tom Kiersey (retired) to celebrate his remarkable career. Tom celebrates his 100th birthday this year. Over 30 local solicitors attended the event, all of whom had practised with Tom down the years. Also present were Judge Tom Teehan (Circuit Court) and Tom's daughter Gillian.

Tom qualified as a solicitor in 1932 and is the founder and former principal of T Kiersey & Co, which is now run by Gillian. On behalf of Tom's friends and colleagues, Waterford Law Society President Gerard O'Herlihy presented him with a framed print of the legal personnel practising in Waterford in 1944. Congratulations, Tom, from all your colleagues in the Law Society!

Mark Keller, Helen O'Brien and Liz Dowling at the Waterford event



Waterford Law Society President Gerard O'Herlihy presents Tom Kiersey with a framed print of the legal personnel practising in Waterford in 1944



Among those attending the lunch in honour of Tom Kiersey were (l to r): Joe Curran, Morette Kinsella and Niall King



Members of Waterford Law Society attended the lunch to honour retired solicitor Tom Kiersey (*front, l to r*): John Goff Snr, Gerard O'Herlihy (President, Waterford Law Society), Gillian Kiersey, Tom Kiersey, Eamon King, Colin Chapman and Gerard O'Connor. (*Middle, l to r*): Myles O'Connor, Derry O'Carroll, Frank Heffernan, Pat Newell, Liz Dowling, Marie Dennehy, Bernadette Cahill, Helen O'Brien, Brian Chesser, Morette Kinsella and John Purcell. (*Back, l to r*): Mark Keller, Neil Breheny, Niall Rooney (county registrar), Tom Murran (President, Waterford Chamber of Commerce), Gerry Halley, Danny Morrissey, James Halley, Donal O'Connell, Frank Hutchinson Jnr (state solicitor for Waterford) and Niall King



## Plus ça change, plus c'est la même chose

The annual Student Ball 2011 for Blackhall's PPC I trainees took place on 24 February in the Shelbourne Hotel. In all, 335 students danced into the early hours, with entertainment provided by the ubiquitous cover band Spring Break.

A charity raffle was held on the night in aid of the Voluntary Services International Teenage Programme, which supports activities for 'young people with limited opportunities' in Dublin. The social committee thanks the following sponsors for their generous contributions: McNally Opticians, the Shelbourne Hotel, Tango Formal Wear, 1escape Health Club, Krystal Nightclub, MCD, *U Magazine* and Fresh.

Social representatives Anne McCarthy (Mason Hayes and Curran) and Jamie McGee (Walsh Warren & Co) are grateful to all who helped with organising the event.



Conall Geraghty, Sarah Capraini, Kate Ferguson, Elaine Traynor, Neal Murphy, Elizabeth Halpenny, Caroline Matson, Maebh Gogarty, Aine Quigely, Laura Kennedy, Anne McCarthy, Cillian McKenna, Ciara Murphy, Steve Duggan and Oliver Holohan



Rebecca McEvoy, Sarah McGrath, Kathryn Stapleton and Colm Maguire



Eibhlín Kerr and Niamh Maher



Mary Henderson, Karen Gayer, Elizabeth Halpenny, Susanna Caulfield, Elaine O'Gorman



Niamh O'Brien and Oonagh Fadden





Grainne Crimmins and Anna Murphy

Members of the Blackhall PPCI Rugby Team that beat Kings Inns in Old Belvedere Rugby Football Club on 18 February

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## Dispatches from the Dark Side

Gareth Peirce. Verso (2010), www.versobooks.com. ISBN: 978-1-8446-761-94. Price: Stg£9.99

Gareth Peirce is best known in Ireland as the solicitor whose determination and skill unravelled the cases against the Birmingham Six, Guildford Four and other innocent Irish prisoners wrongly convicted of IRA bombings in Britain in the 1970s. But she did not rest on her laurels after the big Irish cases.

For the last decade, she has represented young British Muslims held without trial in Guantanamo Bay or in Belmarsh prison outside London. And in the course of her work, she has helped to uncover a shocking underworld of secret CIA prisons

and the handing over of prisoners by the US to be 'tortured to order' by the secret police of various unsavoury regimes.

Britain, too, was complicit in this murky business. Evidence emerged that British intelligence personnel conducted or witnessed more than 2,000 'interviews' with suspects in Afghanistan, Iraq, Pakistan and Guantanamo, where most of the torture took place. And attempts were made to introduce evidence obtained by torture in British courts.

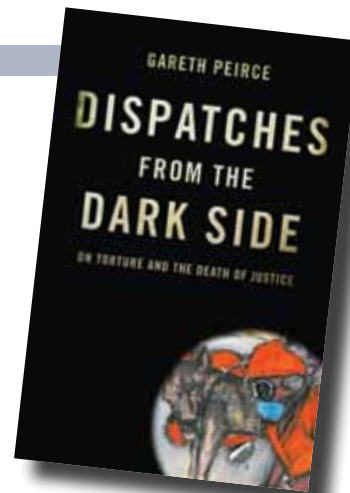
Gareth Peirce is a passionate believer in the rule of law. She was so outraged at the

degradation of the law that she saw happening in Britain and the US that she wrote a series of essays about torture and Guantanamo; Belmarsh and the equally cruel regime of 'control orders' that was applied to the Belmarsh detainees when they were released; and the flawed trial of Abdelbaset al-Megrahi, the Libyan convicted of the 1988 Lockerbie bombing.

*Dispatches from the Dark Side* brings together these essays in a short but deeply disturbing book. It is a frightening reminder of how fragile our system of justice and

protection of human rights can be in a time of crisis and fear. In Gareth Peirce's own words, it is an "urgent SOS" to defend the rule of law before it is fatally undermined.

Michael Farrell is senior solicitor at Free Legal Advice Centres.



## Intellectual Property Law in Ireland

Robert Clarke, Shane Smyth and Niamh Hall.

Bloomsbury Professional (3rd ed, 2010), www.bloomsburyprofessional.com. ISBN: 978-1-8476-636-65. Price: €180 (incl VAT).

and judicial developments since the second edition in 2004 – for example, the *Patents (Amendment) Act 2006*, the *Trade Marks (Amendment) Rules 2010* and the *Copyright and Related Rights (Amendment) Act 2007* – it comprehensively reviews the legislative cornerstones of IP law, including the *Copyright Act 1963*, the *Patents Act 1992* and the *Trade Marks Act 1996*, as well as remedies in tort.

Less obvious legislation does not escape the authors' eyes, for example, the *Consumer Protection Act 2007*, which is at the centre of a highly publicised prosecution by the National Consumer Agency against the *Irish Mail on Sunday*.

The differing experiences of the authors – a leading academic writer and solicitors in a major trademark and patent firm – gel so as to make this an important and practical text book.

Michael Kealey is chairman of the Gazette Editorial Board.

In 2009, the Working Group on a Court of Appeal, chaired by Mrs Justice Susan Denham, found that Ireland had the busiest court of last instance in the common-law world. Among the reasons for this was an increase in litigation, along with new legal issues, such as a breach of copyright via the internet.

When Facebook sought to change its terms and conditions, so that it would retain copyright of material even after subscribers had left the networking site, the internet was suddenly full of comment, informed and otherwise, about the law of copyright on the web.

That novel area of the law alone should ensure a welcome for this new edition of *Intellectual Property Law in Ireland*. It is a monumental tome of over 1,000 pages. As well as reflecting legislative

## Psychiatry and the Law

Patricia Casey, Paul Brady, Ciaran Craven and Aisling Dillon.

Blackhall Publishing (2nd ed, 2010), www.blackhallpublishing.com. ISBN: 978-1-8421-812-18. Price: €185 (incl VAT).

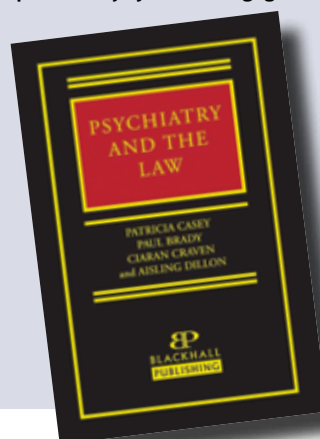
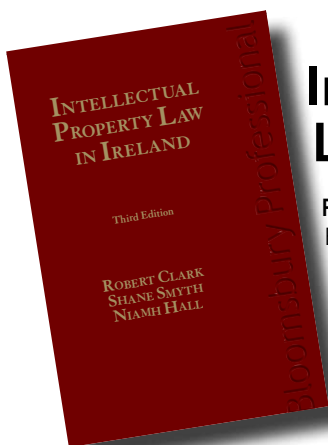
Medicine and the law often make very uneasy, and occasionally unfaithful, bedfellows. However, the two are necessarily intertwined, most particularly in the area of psychiatry, which both influences and is influenced by the law far more than any other area of medicine. This second edition, which comes some 12 years after the first, is especially welcome, particularly given the significant changes to the legal framework since the enactment of the *Mental Health Act 2001*.

The personal injury practitioner will gravitate to the chapters on emotional disorders following personal injury and the negligent

infliction of non-physical injury. The general and family law practitioner will be attracted by the examination of civil annulment, nullity, and testamentary capacity. And the criminal practitioner will turn first to the analysis of psychiatric disorders in crime, insanity and fitness for trial.

This is more than a textbook, however: it is also a good read! The first five chapters are a fascinating exploration of the origins and scientific basis of psychiatry, and of memory and the veracity of statements. While, as lawyers, we learn much about the legal rules of evidence, such a scientific analysis of the assessment of evidence is, unfortunately, rarely given such prominence in legal education. It is this wider perspective, brought to it by the differing backgrounds and experiences of its four authors, which makes it stand out from the crowd and highly recommends this book to the reader. ©

Dr Kevin Power is a solicitor in the healthcare and life sciences unit of A&L Goodbody.





# Don't forget your free online resources

When it comes to seeking out free online legal information, there are numerous websites available, writes Mary Gaynor



Mary Gaynor is head of library and information services at the Law Society of Ireland

There are numerous websites out there, but there are three long-established sites that solicitors and trainees should be very familiar with. If you have difficulty navigating your way around any of these sites, the library staff are available to help.

## Bailii.org

The British and Irish Legal Information Institute (www.bailii.org) is a non-profit-making charitable trust, established in 2000, which provides primary and secondary legal materials free of charge. The database contains Irish legislation, but solicitors and trainees will find it particularly useful for case law. Supreme Court cases are included from 1998 on, with some small numbers of landmark decisions for earlier years. High Court cases are available from 1997 on and, again, some earlier landmark decisions going back to 1933 can also be found. There are various options for searching: browsing alphabetically, browsing chronologically, or searching for words or phrases. The judgments are supplied to Bailii by the Irish Courts Service and are ideal for research purposes. However, for court purposes, they are not the authoritative version: this continues to be the hard copy version, which is available from the library.

You can now sign up for an RSS feed on the Bailii website at www.bailii.org/rss, so if you want to receive an alert for recent

additions (which may be items recently added to the database, though they may be of some antiquity) or recent decisions (which are judgments recently published) for a particular court, you can select the appropriate options and the RSS feed delivers updated content to your PC at frequent intervals. If you have difficulty finding an Irish case on Bailii, please contact the library staff, who will assist you in locating the case if it is on Bailii or, if it's not on Bailii, can provide a copy of the transcript or IR/ILRM reported version from the library's case law collection.

## IrishStatuteBook.ie

The electronic *Irish Statute Book* (eISB) comprises the acts of the Oireachtas (1922–2011), statutory instruments (1922–2011) and the legislation directory (1922–21 July 2010) (see the August/September 2010 *Gazette*, pp12–13, for a comprehensive description of the legislation directory content). Produced by the Office of the Attorney General, the eISB is not the official version of the

## BOOKMYNE APP AVAILABLE

On-the-go library users can now access the library catalogue via iPhone/iPad/iTouch with the BookMyne app, freely downloadable from the iTunes store. For further details and instructions on how to use the app, see the catalogue homepage in the members' area at [www.lawsociety.ie](http://www.lawsociety.ie) or email and request instructions from [library@lawsociety.ie](mailto:library@lawsociety.ie).



acts and statutory instruments, as the official version continues to be the printed version published by Government Publications. It does, however, serve as a very useful resource for preliminary research. There is a search option that allows searching by word or phrase in title or text, or you can browse by year. You can browse lists of documents either alphabetically or numerically and view documents in PDF format. There are also a range of links to other sources of Irish legislation on the Houses of the Oireachtas website and to the *Irish Oifigiúil* website, which contains an archive back to 2002. If you are looking

for very recent acts or statutory instruments, you may find that they are not yet available on eISB. The library continues to receive paper copies of all legislation as soon as it is available and can supply these to members by email or post.

## Europa.eu

The European Union produces vast amounts of documentation on many topics, and one might be forgiven for a reluctance to use this website, particularly when under time pressure to find a directive or regulation quickly. However, a small amount of knowledge can help to find legislation in just a few clicks. You might, for example, want to locate a copy of Directive 2005/14, which has been recently implemented by the *European Communities (Motor Insurance) Regulations 2010* (SI 657/2010). On the home page, select 'publications and documents' and then 'legislation and treaties', click on the radio button for 'directive', enter the year '2005' and the number '14' and click on 'search'. The results include both the text of the directive itself and any correcting or amending documents. You can also search by OJ (*Official Journal*) reference, or browse by topic. **G**

## JUST PUBLISHED

## New books available to borrow

- Carey, Peter, *Data Protection: a Practical Guide to Irish and EU Law* (2010; Round Hall)
- Copinger, WA, *Copinger and Skone James on Copyright* (16th ed, 2011; Sweet & Maxwell)
- Cousins, Edward F, *Cousins on the Law of Mortgages* (3rd ed, 2010; Sweet & Maxwell)
- Dawson, Katie, *Road Traffic Law Handbook* (2010; Bloomsbury Professional)
- Donovan, Dorothy, *The Irish Legal System* (2010; Round Hall)
- Garner, JF, *Garner's Law of Sewers and Drains* (10th ed, 2010; Sweet & Maxwell)
- Hollington, Robin, *Shareholders' Rights* (2010; Sweet & Maxwell)
- Kennedy, Mark and others (eds), *The National Asset Management Agency Act 2009: a Reference Guide* (2011; Gill & Macmillan)
- Lewis, Amanda, *Outsourcing Contracts – a Practical Guide* (3rd ed, 2009; City & Financial Publishing)
- Lindley, Nathaniel, *Lindley & Banks on Partnership* (19th ed, 2010; Sweet & Maxwell)
- Posner, Richard A, *How Judges Think* (2010; Harvard University Press)
- Sharples, John, *Land Licences* (2011; Jordans)
- Terrell, Thomas, *Terrell on the Law of Patents* (17th ed, 2011; Sweet & Maxwell)
- Webster, Thomas H, *Handbook of UNCITRAL Arbitration: Commentary, Precedents and Materials* (2010; Sweet & Maxwell)



# LAW SOCIETY

## PROFESSIONAL Training

**Winner of the 2011 Irish Institute of Training & Development (IITD) Awards – Networks & Groups Category**  
*This is awarded to the best submission from Networks or Groups who display excellence in training and development.*

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	TRAINING HOURS
15-16 April	Law Society Skillnet in partnership with the Arbitration and Mediation Committee of the Law Society and the Dublin Solicitors Bar Association present: two-day mediation skills training workshop	€395	€493	14 Management and professional development skills
15 April	Cohabitant agreements master class: drafting know-how and practice essentials: Dublin and via video link to Law Society office's in Cork	€158	€210	4 General (by group study)
28 April	Law Society Skillnet in partnership with the inter-professional task force on property boundaries – issues related to boundary mapping in Ireland	€135	€180	3 General (by group study)
28 May	Law Society Skillnet in partnership with the Federation of Irish Sports presents: ensuring sport is fit to meet modern challenges	€135	€180	3 General (by group study)
23 June	Law Society Skillnet: setting up in practice – a practical guide	€225	€285	5 Management and professional development skills plus 1 regulatory matters
23 June	Law Society Skillnet: setting up in practice	€225	€285	5 Management and professional skills plus 1 regulatory matters (by group study)
Ongoing	CIMA Certificate in Business Accounting in partnership with Law Society Skillnet (online course)	€670	€895	Full management and professional development skills requirement for 2011 (by eLearning)
Ongoing	Suite of eLearning courses <ul style="list-style-type: none"> <li>• Touch typing – €40</li> <li>• PowerPoint – all levels – €80</li> <li>• Microsoft Word – all levels – €80</li> <li>• How to create an eNewsletter – €150</li> </ul>	To register or for further information email: professionaltraining@lawsociety.ie		Full management and professional development skills requirement for 2011 (by eLearning)

For full details on all of these events visit our webpage [www.lawsociety.ie/lspst](http://www.lawsociety.ie/lspst) or contact a member of the Law Society Professional Training team on:

P: 01 881 5727 F: 01 672 4890 E: [professionaltraining@lawsociety.ie](mailto:professionaltraining@lawsociety.ie)

\*Applicable to Law Society Skillnet members/Public Sector Subscribers



# LAW SOCIETY

## > FINUAS Network

DATE	EVENT (INCLUDING SPEAKERS)	DISCOUNTED FEE	FULL FEE	TRAINING HOURS
11 April	CIMA, in association with the Law Society Finuas Network, presents "Islamic finance – the opportunities for Ireland"	€95	€125	3 General (by group study)
May – Dec	UCD Commercial Law Centre in partnership with the Law Society Finuas Network presents: post-graduate diploma in international financial services Law	€3,600	€5,750	Full general and management and professional development skills requirement for 2011

For full details on all of these events email: [finuas@lawsociety.ie](mailto:finuas@lawsociety.ie)

\*Applicable to Law Society Finuas members/Public Sector Subscribers



The Law Society Finuas Network is funded by member companies and the Finuas Networks Programme. This programme is managed by Skillnets Ltd and funded from the National Training Fund through the Department of Education and Skills



## Law Society Council meeting 21 January 2011

### Law school in Cork

The chairman of the Education Committee, Michelle Ní Longáin, outlined the background to the establishment of the Society's Law School in Cork in 2006 and its experience since then. From a high of 106 students in 2007, the course numbers had declined consistently, with only 44 students starting the course in 2010. If the Cork course remained open, it was anticipated that numbers could fall into the 30s. Ms Ní Longáin said that, from an educational perspective, a course of less than 44 students was questionable.

In addition, and despite drastic cost-cutting measures, the Law School in Cork had incurred significant losses in recent years and faced further losses of €1.2 million over the next four years. A Cork course was not financially self-sustaining and could only run with very heavy subsidies

from other educational activities. For these reasons, the Education Committee was proposing the closure of the Cork centre in July 2011. If numbers increased beyond the current capacity of Dublin, consideration could then be given to reopening a course centre in Cork.

On behalf of the Southern Law Association, Eamon Murray said that the educational enterprise of the Law Society had been profitable over recent years and it appeared excessive to discontinue the Cork operation entirely. The Law School in Cork was a focal point for solicitors in Munster, who used the facilities regularly. In addition, 270 solicitors had contributed to the work of the Law School, and there was a strong emotional attachment to the school. Kieran Moran said that the SLA believed that the matter should be examined more

closely and the figures should be 'stress-tested' further.

The Council agreed to adjourn the matter for one month to facilitate further consideration and discussion.

### Submission to the Oireachtas Joint Committee on the Constitution

The Council approved a submission to the Oireachtas Joint Committee on the Constitution in relation to its review of the parliamentary power of enquiry under article 15 of the Constitution.

### Solicitors' lien

The Council noted that the Supreme Court had invited the Society to make submissions on the issue of the solicitors' lien in the context of an appeal arising in a family law case. The Council agreed that it should accept the Supreme Court's invitation and

noted that the matter was likely to be heard within a matter of weeks.

### Appointments to other bodies

The Council approved the appointment of Michael Quinlan to the Irish Auditing and Accounting Supervisory Authority and John D Shaw to the Judicial Appointments Advisory Board.

### PII

The chairman of the PII Task Force, Eamon Harrington, briefed the Council on a proposed survey of the profession in relation to the recent professional indemnity insurance (PII) renewal process. The survey would be conducted on an anonymous basis, would be managed by Behaviour & Attitudes and would provide valuable information for the PII Task Force and the Council in terms of future decisions in relation to PII.

## Law Society Council meeting 18 February 2011

### Criminal legal aid

The Council noted a letter from the Department of Justice inviting the Society to contribute to a process examining all aspects of criminal legal aid in order to identify potential areas of saving.

The Council considered, and approved, a draft submission that addressed the proposed transfer of the Criminal Legal Aid Scheme to the Legal Aid Board, means testing, the proposed new system, the rationale for change, the proposed cut in the legal aid budget and a number of suggested savings that might be made across the criminal justice system.

The Council noted that there had been substantial cuts in fees under the criminal legal aid scheme in recent years and that the proposals made by the Soci-

ety provided an opportunity for the State to secure cost savings without affecting the standard of service or the ability of citizens to exercise their right of access to justice.

### Law school in Cork

The chairman of the Education Committee, Michelle Ní Longáin, reported that there had been further contacts between the Society and the SLA and the agreed outcome was that the Council should be asked to make a decision, reluctantly and with regret, to close the Law School in Cork. However, efforts would continue to explore alternative suggestions and the Education Department would make every endeavour to consider all and any viable and reasonable proposals.

### Tax relief for subscriptions to professional bodies

The Council noted the contents of a letter from the then Minister for Finance, Brian Lenihan, which supported the Society's view that the abolition of tax relief for subscriptions to professional bodies would not apply to a solicitor's practising certificate. In relation to the annual membership subscription to the Society of €85, it appeared that this amount might be subject to the new tax regime, but this matter would be clarified further.

### PII

The chairman of the PII Committee, Eamon Harrington, outlined some preliminary data from Behaviour & Attitudes in relation to the survey of the profession and

noted that they would make a full presentation of the results of the survey to the Council at its March meeting. A total of 770 responses had been received, which were very representative of the entire profession, both geographically and by size of firm. In due course, it was hoped to publish the results of the survey to the profession, possibly by means of a webcast of the presentation from Behaviour & Attitudes.

### Practising certificates

The chairman of the Finance Committee, Patrick Dorgan, reported that 8,007 solicitors had taken out practising certificates and it was expected that an additional 400 solicitors would take out practising certificates before the year-end.

## CONSULT A COLLEAGUE

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## BRIEFING

## Practice notes

## E-stamping compulsory from 1 June 2011

## CONVEYANCING COMMITTEE

The committee notes the circular below (in panel) from Revenue announcing that e-stamping filing and payment will be compulsory from 1 June 2011.

Any solicitor/firm not already registered with the Revenue Online Service (ROS) should arrange

to do so well in advance of that date (the registration process takes some time to complete).

Solicitors/firms may also wish to review their internal accounting procedures before that date. Although the circular states that all transactions from 1 June

must go through e-stamping, the committee understands that some transaction types cannot be accommodated on Revenue's system, and these will continue to be processed manually – Revenue is in the process of drawing up a list of those transactions.

## MANDATORY ELECTRONIC FILING

*eStamping Team, Dublin Stamping District, New Stamping Building, Dublin Castle, Dublin 2 (January 2011)*

### MANDATORY ELECTRONIC FILING AND PAYMENT OF STAMP DUTY – 1 JUNE 2011

Practitioners are advised that all stamp duty returns must be made online in respect of instruments executed on or after 1 June 2011.

All payments of stamp duty must also be made online from that date.

Please note that you must be registered for the Revenue Online Service (ROS) to use e-stamping.

Revenue will organise a series of nationwide

information seminars for practitioners during the spring, and this schedule will be published shortly.

For more information on mandatory e-filing, please go to [www.revenue.ie/en/practitioner/ebrief/index.html](http://www.revenue.ie/en/practitioner/ebrief/index.html).

For more information on e-stamping, please go to [www.revenue.ie/en/tax/stamp-duty/e-stamping/index.html](http://www.revenue.ie/en/tax/stamp-duty/e-stamping/index.html).

For more information on registering for ROS, please go to [www.ros.ie/PublisherServlet/info/setupnewcust](http://www.ros.ie/PublisherServlet/info/setupnewcust).

## Attendance of defendant's solicitor at infant rulings

## LITIGATION COMMITTEE

It has been brought to the attention of the committee that, in a growing number of instances, defendants' solicitors are not attending court, nor are they available by telephone, when infant cases are being ruled. The absence/non-contactability of the defendant's solicitor has been remarked upon by some members of the judiciary as being unhelpful and disrespectful to the court. The committee is of the view that attendance by the defendant's solicitor is to be preferred, but, in the event that that is not possible, it is recommended that, at a minimum, a letter of consent should be lodged in court.

## Misappropriation by employees in solicitors' practices

## REGULATION OF PRACTICE COMMITTEE

The Regulation of Practice Committee has noted an increase in cases involving misappropriation of client and office moneys by employees of solicitors' practices. While misappropriation by employees could not be described as widespread, nevertheless, the number of cases that have come to the attention of the committee has increased significantly.

Misappropriation by employees has occurred in large and small practices, in firms in Dublin and all over the country. The employees who have misappropriated the moneys include assistant solicitors, legal executives, office managers, bookkeepers and secretarial staff. Long-serving employees as well as recent appointments have been involved in the misappropriation. Employees with no direct access to the finances of the practice have misappropriated moneys, as well

as employees with direct access to practice moneys.

Many solicitors have had to dig deep into their own resources in order to make good deficits on the client account caused by misappropriation of clients' moneys by their employees. The employees have also misappropriated practice moneys.

One of the most common methods by which employees have misappropriated moneys from solicitors' practices is the withdrawal of moneys by way of cheques made payable to financial institutions. An employee has either drawn or requisitioned a cheque made payable to a financial institution, usually to redeem a mortgage with that financial institution or to acquire a bank draft to complete a transaction. Having obtained the signed cheque, the employee has lodged that cheque to their own bank ac-

count, very often held in a branch of the financial institution to which the cheque has been made payable.

Other methods of misappropriating clients' moneys have included the drawing or the requisition of a cheque made payable to the client, where the name of the client has been endorsed on the reverse of the cheque and that cheque has been cashed or lodged to the bank account of the employee. Third-party cheques made payable to the firm or to clients have been intercepted by employees, endorsed and lodged to the employee's own bank account. Employees have obtained cash directly from clients and did not disclose the receipt of these moneys to their employer.

In order to avoid detection, employees have misappropriated further moneys from the client account, using any of the methods described above, and lodged those

moneys back into the client account in order to make a payment to a client. False documentation has been placed on file to make it appear that moneys were received from, or paid to, a client on a particular date. Having managed to conceal the initial misappropriation, further misappropriation has occurred by the employee who, having found a method of misappropriating clients' moneys and concealing it from his or her employer, continued to do so for a number of years.

However, it is not just cheques that are susceptible to misappropriation. Misappropriation has occurred where employees have had access to the firm's online banking facilities. Employees have been able to transfer moneys from the bank accounts of the practice to their own personal accounts, often held in the same financial institu-



tion as the practice bank accounts.

Solicitors have also discovered that employees have issued undertakings to financial institutions in the name of the firm without the knowledge or consent of their employers in order to draw down loans for their own benefit. The signature of their employer has been forged on the undertakings and, on foot of those undertakings, financial institutions have released moneys to the employees. The employees have intercepted the post from the financial institutions enclosing the cheques, and the employer was unaware of the transaction. In some cases, the undertaking included an obligation to redeem an existing mortgage from another financial institution, but the employee did not do so. Employees have also obtained loans on property that the employee did not own on foot of a solicitor's undertaking. In other cases, loans have been obtained from credit unions on the basis of undertakings from the firm that the proceeds of a loan from another financial institution would be used to redeem the loan to the credit union. These letters were issued without the knowledge or consent of the solicitors of the firm.

It is important that solicitors are permanently aware that misappropriation can occur in any office, at any time, and be perpetrated by any employee. Solicitors should constantly review the procedures in their offices to prevent and detect misappropriation. It is an ongoing process, and it is not sufficient to rely on the reporting accountants to detect misappropriation, although the reporting accountants can advise the solicitor on methods of prevention and detection.


Attention is drawn to regulation 8(3)(b) of the *Solicitors' Accounts Regulations 2001*, which provides: "Where a solicitor withdraws moneys from a client account by means of a cheque drawn on that client account which is made payable to a bank in order to purchase a draft or other negotiable or non-negotiable instrument, the payee details, to be recorded on the client account cheque and the cheque stub or lodgement docket or other document of record in respect thereof maintained and kept by the solicitor, shall include the name of the person shown as payee on such draft or other negotiable or non-negotiable instrument."

The Regulation of Practice

Committee considers that, if this regulation is complied with fully, the opportunity for employees to lodge client account cheques made payable to financial institutions to their own bank accounts is reduced.

Solicitors should install internal controls appropriate to the size of the practice. It is not practicable in a practice note addressed to the whole profession to set out in detail all the controls a practice should have. The precise controls appropriate to each practice should be designed to meet the needs of the practice concerned. However, in general, measures that will assist solicitors in reducing the risk of misappropriation of clients' moneys and office moneys by employees include:

- Ensuring that cheques made payable to banks and other financial institutions to purchase bank drafts disclose the name of the intended beneficiary of the transaction,
- Ensuring cheques made payable to banks and financial institutions to redeem mortgages clearly identify the person and the account number of the person or entity whose mortgage is to be redeemed,

- Having procedures in place to ensure that a principal solicitor or a partner in the firm opens the post and, where possible, the person in charge of the post should be rotated,
- Obtaining confirmation of receipt from clients and other third parties to whom payments have been made,
- Issuing pre-numbered receipts for cash and cheques received directly from clients, and recording the receipt of those moneys in the books of accounts without delay,
- Keeping a register of undertakings and diligently managing the operation of the register, including periodic review,
- Regularly reviewing listings of client and office balances,
- Restricting access to the firm's online banking facilities,
- Restricting physical access to all cheque books,
- Refusing to sign blank cheques under any circumstances,
- Prohibiting employees from signing client and office cheques without a second signatory,
- Checking out the references of new employees and the circumstances under which they left their previous employer. 

## Is this your life?



Many people love being a lawyer, and that's sweet. However, for some it can be a struggle due to an impossible workload, bullying superiors, long hours or just uncertainty that this is how they want to spend their years. LawCare offers free and completely confidential support for those who are finding that life as a lawyer is not a bowl of cherries.

LawCare 1800 991801

Health Support and Advice for Lawyers

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

## BRIEFING

## Legislation update 5 February – 9 March 2011

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

**ACTS PASSED***Finance Act 2011*

**Number:** 6/2011

**Content:** Provides for the imposition, repeal, remission, alteration and regulation of taxation, of stamp duties, and of duties relating to excise, and otherwise to make further provision in connection with finance including the regulation of customs.

**Date:** 6/2/2011

**Commencement:** Various commencement order(s) required as per s84 of the act

**SELECTED STATUTORY INSTRUMENTS***Criminal Law (Insanity) Act 2010 (Commencement) Order 2011*

**Number:** SI 50/2011

**Content:** Appoints 8/2/2011 as the commencement date for all sections of the act.

*European Communities (Asylum Procedures) Regulations 2011*

**Number:** SI 51/2011

**Content:** Gives further effect to Directive 2005/85 (the *Asylum*

*Procedures Directive*) on minimum standards on procedures for granting and withdrawing refugee status.

**Commencement:** 1/3/2011

*European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011*

**Number:** SI 48/2011

**Content:** Updates and repeals existing regulations transposing Directive 2001/24 on the reorganisation and winding-up of credit institutions.

**Commencement:** 4/2/2011

*European Communities (Financial Collateral Arrangements) (Amendment) Regulations 2011*

**Number:** SI 49/2011

**Content:** Amends existing regulations transposing Directive

2002/47, which deals with financial collateral arrangements and the provision of financial collateral.

**Commencement:** 6/2/2011

*Multi-Unit Developments Act 2011 (Commencement) Order 2011*

**Number:** SI 95/2011

**Content:** Appoints 1/4/2011 as the commencement date for ss1-13, 15-31, 33, 34 and schedules 1, 2 and 3 of the act.

*Multi-Unit Developments Act 2011 (Section 3) (Prescribed Persons) Regulations 2011*

**Number:** SI 96/2011

**Content:** Prescribes the following classes of person in the context of s3 of the act: (a) persons whose names are on the register for architects maintained pursuant to

## Law Society of Ireland Annual Conference 2011

LAW SOCIETY SKILLNET BUSINESS SESSION



# LAW SOCIETY

## SKILLNET

### The Smart Economy in Action: Strategies for Growth in the Legal Profession

**Date:** Friday 6 May 2011 **Time:** 2pm – 5.30pm

**Venue:** Ritz-Carlton, Powerscourt, Co. Wicklow

## PROGRAMME

- |        |  |
|--------|--|
| 2pm    | <b>Address by President of the Law Society of Ireland: John Costello</b>   |
| 2.10pm | <b>Address by head of Law Society Professional Training/lead sponsor: Attracta O'Regan</b>   |
| 2.15pm | <b>Develop a global shop-front for your practice – on a budget:</b> <ul style="list-style-type: none"> <li>• How to create a professional website – need-to-know facts and jargon: <i>Ian Jackson, Go2web.com</i></li> <li>• Email – newsletters – growing clients, revenue and brand awareness: <i>Andrew O'Shaughnessy, Newsweaver</i></li> <li>• How to use LinkedIn and Facebook to promote your practice for free: <i>Killian Flanagan, Star Trawler</i></li> </ul> |
| 3.15pm | <b>Growing your practice through business networking: Gerald Kean, Kean Solicitors</b>   |
| 3.45pm | <b>NETWORKING BREAK – TEA AND COFFEE</b>   |
| 4.15pm | <b>Smart practice management – reduce time, costs and risk for your practice: Caroline Murphy, Legal Wise</b>  |
| 4.45pm | <b>Smart client relations – emphasis on elderly and vulnerable clients: Mary Condell, Solicitors for the Elderly</b>   |
| 5.15pm | <b>Question and answer session and closing remarks from the president of the Law Society</b>   |

*Law Society SkillNet is funded by member companies and the Training Networks Programme, an initiative of Skillnets Ltd funded from the National Training Fund through the Department of Education and Skills*



part 3 of the *Building Control Act 2007*; (b) persons whose names are on the register for building surveyors maintained pursuant to part 5 of the *Building Control Act 2007*, and (c) persons whose names are on the register of chartered engineers maintained pursuant to s7 of the *Institution of Civil Engineers of Ireland (Charter Amendment) Act 1969*.

**Commencement:** 1/4/2011

***Multi-Unit Developments Act 2011 (Section 30) (Prescribed Form and Fee) Regulations 2011***

**Number:** SI 97/2011

**Content:** Prescribes form to be used for the purposes of s30 (restoration to the register of a company struck off being an owners' management company) of the act. Prescribes a fee of €300 payable for the purposes of s30 of the act.

**Commencement:** 1/4/2011

***Pensions Insolvency Payment Scheme (Amendment) Scheme 2010***

**Number:** SI 687/2010

**Content:** Provides for the setting of the interest rate for the Pensions Insolvency Payment Scheme (PIPS) by the NTMA based on the long-term cost of borrowing to the State.

**Commencement:** 23/12/2010

***Personal Injuries Assessment Board (Fees) (Amendment) Regulations 2011***

**Number:** SI 41/2011

**Content:** Provides for a reduction in existing charges to be made by the Personal Injuries Assessment Board in respect of the processing of applications by the board under s11 of the *Personal Injuries Assessment Board Act 2003*.

**Commencement:** 1/2/2011

***Protection of Children (Hague Convention) Act***

***2000 (Section 15) Order 2010***

**Number:** SI 682/2010

**Content:** Enables the Minister for Foreign Affairs to make declarations and designations under the act.

**Commencement:** 1/1/2011

***Refugee Act 1996 (Asylum Procedures) Regulations 2011***

**Number:** SI 52/2011

**Content:** Gives further effect to Directive 2005/85 (the *Asylum Procedures Directive*) on minimum standards on procedures for granting and withdrawing refugee status.

**Commencement:** 1/3/2011

***Social Welfare (Miscellaneous Provisions) Act 2010 (Section 25) (Commencement) Order 2011***

**Number:** SI 89/2011

**Content:** Appoints 27/4/2011 as the commencement date for s25 (conditions of entitlement to the One Parent Family Payment, which restricts this payment to lone parents who have children under 14 years) of the act.

***Solicitors Acts 1954 to 2008 (Apprenticeship and Education) (Training Officer) Regulations 2011***

**Number:** SI 46/2011

**Content:** Provides for the designation by a firm of solicitors, comprising two or more partners, of a person in the employment of the firm as a training officer who would provide administrative assistance to a training solicitor in the firm in relation to, or consequential on, the service of the period of in-office training by his or her trainee solicitor or by each of his or her trainee solicitors, as the case may be.

**Commencement:** 1/3/2011

*Prepared by the  
Law Society Library*

ONE TO WATCH

## One to watch: recent judgment

### The *Test-Achats* judgment

On 1 March 2011, the European Court of Justice handed down its judgment in the case of *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des Ministres* (C-236/09) (see also p59). This case was brought by the Belgian consumers' association, questioning the legality of gender-based risk pricing in insurance contracts. The ECJ held, in conclusion, that article 5(2) of the *European Gender Directive* (004/113/EC) will be invalid from 21 December 2012, as it is contrary to the EU's fundamental principle of equal treatment between men and women.

### Background

According to the *Gender Directive*, discrimination on the basis of gender in the provision of goods and services is prohibited. However, article 5(2) of this directive contains a derogation to the prohibition, allowing member states to use sex where it is a "determining factor" in the assessment of risk and where it is "based on relevant and accurate actuarial and statistical data".

The derogation has allowed insurers to charge different premiums and to provide different insurance cover to men and women. (The argument was that because women drivers make fewer claims, they are a lower risk and could be charged less. The same applied to life insurance premiums for men and women.) The directive is silent as to the length of time during which difference may continue to be applied; therefore, a situation has resulted in which member states may be permitted to allow insurers to apply the unequal treatment without any temporal limitation. Accordingly, the ECJ pointed out that there was a risk that EU law may permit the derogation from the equal treatment of men and women, provided for in article 5(2) of Directive 2004/113, to persist indefinitely.

### Opinion and judgment


In September 2010, Advocate General Kokott opined that the derogation

contained in article 5(2) of the *Gender Directive* was incompatible with the fundamental principle of equal treatment between men and women, as enshrined in the *Treaty on European Union*. The ECJ based its judgment on the opinion of the AG and held that article 5(2) was invalid. The ECJ held that the derogation in article 5(2) must be considered invalid upon the expiry of an appropriate transitional period. The court therefore concluded that article 5(2) of Directive 2004/113 is invalid with effect from 21 December 2012.

### The effects?

The effect of the ECJ judgment will be significant and wide ranging. Member states may have to make amendments to domestic legislations to ensure gender neutrality. In 2004, when the *Gender Directive* was adopted, the use of actuarial and statistical data relating to gender differences was widespread in the assessment of risk and pricing of products. The effect of this decision will be a wide-ranging review of pricing structures to assess risk. It is commonly felt that this will mean a rise in premiums for women buying motor and life assurance. It remains to be seen whether there will be a reduction for men in the price of motor insurance. The ECJ has allowed for a transitional period up until 21 December 2012, which means the judgment will not have retrospective effect and governments of member states will have time to abolish the derogation in national law.

EU justice commissioner Viviane Reding welcomed the ruling as "an important step towards putting the fundamental right of gender equality into practice", and said she would convene a meeting with insurers in the coming months to discuss its implications.

She stated: "A modern insurance company should not distinguish between women and men. All customers should be treated equally. This is not only a matter of respect for fundamental rights. It is also a matter of good business practice." 

## BRIEFING

## Solicitors' Benevolent Association

147<sup>th</sup> report, December 2009 to 30 November 2010

The Solicitors' Benevolent Association is a voluntary charitable body, consisting of all members of the profession in Ireland. It assists members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, family and immediate dependants who are in need. The association was established in 1863 and is active in giving assistance on a confidential basis throughout the 32 counties.

The amount paid out during the year in grants was €710,847, which was collected from members' subscriptions, donations, legacies and investment income. Currently there are 61 beneficiaries in receipt of regular grants, and approximately half of these are themselves supporting spouses and children.

There are 18 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices at Blackhall Place. They meet at the Law Society of Northern Ireland, Belfast, every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and approving of new applications. The directors also make themselves available to those who may need personal or professional advice. The directors have available the part-time services of a professional social worker who, in appropriate cases, can advise on state entitlements, including sickness benefits.

The directors are grateful to both law societies for their support and, in particular, wish to express thanks to Gerard Doherty, past-president of the Law Society of Ireland; Norville Connolly, past-president of the Law Society of Northern Ireland; Ken Murphy, director general; Alan Hunter, chief executive, and the personnel of both societies.

I wish to express particular appreciation to all those who contributed to the association when applying for their practising cer-

## RECEIPTS AND PAYMENTS A/C FOR THE YEAR ENDED 30 NOV 2010

	2010	2009
	€	€
<b>RECEIPTS</b>		
Subscriptions	379,314	377,64
Donations	164,299	90,795
Investment income	21,167	36,396
Bank interest	783	4,981
Legacies	–	1,351
Currency gain	2,742	–
	568,305	511,116
<b>PAYMENTS</b>		
Grants	710,847	29,660
Bank interest and charges	640	7,929
Administration expenses	37,613	33,652
Currency loss	–	3,031
	749,100	674,272
<b>OPERATING DEFICIT FOR THE YEAR</b>	<b>(180,795)</b>	<b>(163,106)</b>
Profit/(loss) on disposal of investments	244,733	(89,592)
Provision for reduction in value of quoted investments	100,000	(222,000)
<b>SURPLUS/(DEFICIT) FOR THE YEAR</b>	<b>163,938</b>	<b>(474,698)</b>

tificates, to those who made individual contributions, and to the following: Law Society of Ireland, Law Society of Northern Ireland, Cavan Solicitors' Association, County Councils Solicitors' Association, Donegal Bar Association, Dublin Solicitors' Bar Association, Faculty of Notaries Public in Ireland, Irish Solicitors' Golfing Society, Irish Solicitors' London Study Group, Limavady Solicitors' Association, Local Authority Solicitors' Bar Association, Louth Bar Association, Mayo Solicitors' Bar Association, Midland Solicitors' Bar Association, Meath Solicitors' Bar Association, Monaghan CPD Association, Roscommon Bar Association, Sheriffs' Association, Southern Law Association, Tipperary and Offaly Bar Association, Waterford Law Society, and the Wexford Bar Association.

On behalf of my co-directors and myself, I would like to thank the present junior vice-president of the Law Society, Kevin O'Higgins, who successfully completed the Dublin City Marathon on 25 October last. He nominated our association as his charity for the event and, in doing so, raised much-needed funds, which

enabled our association to assist the dire needs of some of our unfortunate colleagues and their families.

The demands on our association are rising in almost direct proportion to the carnage that has taken place in the profession of late and, to cover the greater demands on the association, additional fundraising events are necessary. Additional subscriptions are more than welcome, as of course are legacies and the proceeds of any fundraising events. Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained at 73 Park Avenue, Dublin 4. I would urge all members of the association, when making their own wills, to leave a legacy to the association. You will find the appropriate wording of a bequest at p32 of the *Law Directory 2010*.

It should be noted that the surplus in the accounts is due to the enhanced value and sale of investments. I would like to thank all the directors and the association's secretary, Geraldine Pearse, for their valued hard work, dedication and assistance during the year.

*Thomas A Menton, chairman*

## DIRECTORS AND INFORMATION

## Directors

Thomas A Menton (chairman)  
John Sexton (deputy chairman)  
Robert Ashe (Carlow)  
Caroline Boston (Belfast)  
Thomas W Enright (Birr)  
Felicity M Foley (Cork)  
William B Glynn (Galway)  
John Gordon (Belfast)  
Colin Haddick (Newtownards)  
Dermot Lavery (Dundalk)  
Anne Murrin (Waterford)  
John M O'Connor (Dublin)  
John T D O'Dwyer (Ballyhaunis)  
Brian K Overend (Dublin)  
Colm Price (Dublin)  
Andrew F Smyth (Dublin)  
Brendan J Twomey (Letterkenny)  
Brendan Walsh (Dublin)

## Trustees

(*ex-officio* directors)  
John Gordon  
John M O'Connor  
John Sexton  
Andrew F Smyth

## Secretary

Geraldine Pearse

## Auditors

Deloitte & Touche, Chartered Accountants, Earlsfort Terrace, Dublin 2

## Investment advisors

Tilman Asset Management Ltd,  
3 Richview Office Park,  
Clonskeagh, Dublin 14

## Bankers

Allied Irish Banks plc,  
37/38 Upper O'Connell Street,  
Dublin 1

First Trust, 31/35 High Street,  
Belfast BT1 2AL

## Offices of the Association

Law Society of Ireland,  
Blackhall Place, Dublin 7

Law Society of Northern Ireland,  
Law Society House,  
96 Victoria Street,  
Belfast BT1 3GN

Charity number: CHY892



## 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 Aiden Barry, of Aiden Barry, Solicitors, Roche House, 8 Bank Place, Limerick, and in the matter of the *Solicitors Acts 1954-2008* [7243/DT112/10]**

***Law Society of Ireland (applicant)*  
*Aiden Barry (respondent solicitor)***

On 25 January 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure there was furnished to the Society an accountant's report for the year ended 31 August 2009 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001).

The tribunal ordered that the respondent solicitor:

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

**In the matter of Joseph Griffin, a solicitor practising as Joseph Griffin & Company, Solicitors, 93 O'Connell Street, Limerick, and in the matter of the *Solicitors Acts 1954-2008* [3474/DT98/10]**

***Law Society of Ireland (applicant)*  
*Joseph Griffin (respondent solicitor)***

On 25 January 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to ensure there was furnished to the Society an accountant's report for the year ended 31 October 2009 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001),

- b) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:

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

**In the matter of Padraig Duffy, a solicitor practising as Tully & Duffy, Solicitors, 49 Laurence Street, Drogheda, Co Louth, and in the matter of the *Solicitors Acts 1954-2008* [3935/DT101/09]**

***Law Society of Ireland (applicant)*  
*Padraig Duffy (respondent solicitor)***

On 22 April 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to honour an undertaking, dated 4 February 2001, given to the complainant under cover of letter dated 16 February 2001 to, as soon as practicable, complete and lodge with the respondent solicitor's client's branch of the bank a report and certificate of title in the bank's standard form, together with all documents constituting the bank's security, and also all the title documents or other documentary evidence evidencing the respondent solicitor's client's title to the property, including, in the case of regis-

tered land, the original land certificate and the original deed of charge with certificate of charge endorsed thereof under rule 156 of the *Land Registry Rules 1972*,

- b) Failed to honour an undertaking given to the complainant, dated 4 February 2001 and sent under cover of letter dated 16 February 2001, whereby he undertook, pending compliance with the above paragraph and where the bank was taking a first mortgage/charge, to hold the title documents in trust for the bank,
- c) Failed to honour an undertaking dated 4 February 2001, sent to the complainant under cover of letter dated 16 February 2001, whereby he confirmed he was in sufficient funds to cover stamp duty and all other necessary outlays for the transaction, and to confirm that he had obtained his client's irrevocable authority to give this undertaking,
- d) Failed to reply adequately or in some cases at all to the complainant's correspondence, in particular letters dated 4 March 2003, 15 April 2003, 1 May 2003, 12 May 2003, 21 May 2003, 10 September 2003, 22 March 2004, 30 August 2005, 13 September 2005, 21 September 2005 and 3 May 2006 respectively,
- e) Failed to reply adequately or in some cases at all to the Society's correspondence, in particular letters dated 28 September 2006, 27 October 2006, 5 February 2007, 14 January 2008, 15 February 2008, 16 June 2008, 2 July 2008, 15 July 2008 and 9 September 2008.

The tribunal directed that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €10,000 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland, including witness expenses, to be taxed by a taxing master of the High Court in default of agreement.

**In the matter of Niall Patrick King, solicitor, practising in the firm of JF Williams & Company, Solicitors, Main Street, Dungarvan, Co Waterford, and in the matter of the *Solicitors Acts 1954-2008* [4168/DT18/08]**

***Law Society of Ireland***

***(applicant)***

***Niall Patrick King (respondent solicitor)***

On 1 June 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to honour an undertaking given to the complainant by letter dated 17 July 2006, whereby he undertook to furnish a release of the existing Allied Irish Banks plc debenture registered as against Proform Construction Limited,
- 2) Failed to provide a written response to the Society during the course of its investigation into the complaint, and in particular in respect of correspondence dated 10 October 2007, 25 October 2007, 16 November 2007, 3 December 2007 and 3 January 2008.

The tribunal ordered that the respondent solicitor:

- a) Do stand admonished and advised,
- b) Pay a sum of €1,000 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland, and of any person appearing before them, as taxed by a taxing master of the High Court, in default of agreement.

**In the matter of Joseph Traynor, solicitor, formerly practising as Traynor & Company, Solicitors, 86 Clanbrassil Street, Dundalk, Co Louth, and in the matter of the *Solicitors Acts 1954-2008* [5554/DT102/09 and High Court record no 2010 no 53 SA]**  
***Law Society of Ireland (applicant)*  
*Joseph Traynor (respondent solicitor)***

## BRIEFING

On 26 January 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed, up to the date of referral to this tribunal, in a timely manner or at all, to honour an undertaking given to the complainant by letter dated 22 February 2008, whereby he failed to discharge the mortgage on title in favour of ACC Bank plc from the proceeds of sale of property at Tullydonnell, Ardee, Co Louth, and to furnish a mortgage vacate of the said mortgage, together with a cheque in the sum of €25, in respect of Land Registry fees as soon as possible thereafter.

The tribunal directed:

- a) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
- b) That the name of the respondent solicitor be struck off the Roll of solicitors,
- c) That the respondent solicitor pay a monetary penalty of €800,000,
- d) That the respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, to be taxed by a taxing master of the High Court in default of agreement.

The tribunal urged that the papers in respect of this application be forwarded to the Director of Public Prosecutions.

The tribunal directed that the matter be referred forward to the High Court and, on 5 July 2010, the President of the High Court ordered:

- 1) That the name of the respondent solicitor be struck from the Roll of Solicitors,
- 2) That the respondent solicitor pay the sum of €800,000 as restitution to a named client,
- 3) That the applicant forward the papers in respect of this application to the Director of Public Prosecutions,
- 4) That the respondent solicitor surrender his passport forthwith to An Garda Síochána,
- 5) That the respondent solicitor pay the applicant the costs of the High Court proceedings, together with the costs of the dis-

ciplinary tribunal proceedings, to include witness expenses, to be taxed in default of agreement.

**In the matter of Joseph Traynor, solicitor, formerly practising as Traynor & Company, Solicitors, 86 Clanbrassil Street, Dundalk, Co Louth, and in the matter of the Solicitors Acts 1954-2008 [5554/DT75/09 and High Court record no 2010 no 54 SA]**

*Law Society of Ireland (applicant) Joseph Traynor (respondent solicitor)*

On 26 January 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to honour an undertaking on 25 August 2006 to lodge the title documents relating to lands at Castlewarden, Naas, Co Kildare, immediately upon the sale being completed,
- b) Failed to honour an undertaking on 29 August 2006 to stamp and register the title documents relating to lands at Castlewarden, Naas, Co Kildare,
- c) Failed to honour an undertaking on 26 September 2006 to stamp the deed of transfer in respect of the sale of lands at Castlewarden, Naas, Co Kildare,
- d) Failed to honour an undertaking on 13 February 2007 to stamp the title documents relating to lands at Castlewarden, Naas, Co Kildare, and to arrange to have them lodged in the Land Registry within six weeks from that date,
- e) Failed to comply with the direction of the Complaints and Client Relations Committee on 11 February 2009 to reply to the Society by 1 March 2009 with a copy of the stamped deed, the dealing number and copy correspondence to ACC Bank plc informing them that the deed was stamped.

The tribunal directed:

- a) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
- b) That the name of the respondent solicitor be struck off the

Roll of Solicitors,

- c) That the respondent solicitor pay a monetary penalty of €630,000 to the Revenue Commissioners,
- d) That the respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, to be taxed by a taxing master of the High Court in default of agreement.

The tribunal urged that the papers in respect of this application be forwarded to the Director of Public Prosecutions.

The tribunal directed that the matter be referred forward to the High Court and, on 5 July 2010, the President of the High Court ordered:

- 1) That the name of the respondent solicitor be struck from the Roll of Solicitors,
- 2) That the respondent solicitor pay the sum of €630,000 to ACC Bank plc, who will remit said sum to the Revenue Commissioners if due in respect of stamp duty, or retain if not due,
- 3) That the applicant forward the papers in respect of this application to the Director of Public Prosecutions,
- 4) That the respondent solicitor surrender his passport forthwith to An Garda Síochána,
- 5) That the respondent solicitor pay the applicant the costs of the High Court proceedings, together with the costs of the disciplinary tribunal proceedings, to include witness expenses, to be taxed in default of agreement.

**In the matter of Joseph Traynor, solicitor, formerly practising as Traynor & Company, Solicitors, 86 Clanbrassil Street, Dundalk, Co Louth, and in the matter of the Solicitors Acts 1954-2008 [5554/DT124/09 and High Court record no 2010 no 57 SA]**  
*Law Society of Ireland (applicant) Joseph Traynor (respondent solicitor)*

On 18 March 2010, the Solicitors Disciplinary Tribunal found the

respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to honour an undertaking given to the complainant's clients, Start Mortgages Limited, in respect of his named clients, involving property at Rathcore, Enfield, Co Meath, in the solicitor's undertaking dated 4 March 2008, whereby he undertook to do the following:

- a) To ensure that the mortgage ranked as the first legal mortgage/charge on the property,
- b) As soon as practicable, to stamp and register the mortgage in the appropriate registry so as to ensure the lender obtained the first legal mortgage/charge on the property and, expeditiously, as soon as practicable thereafter, to lodge the following with the lender:
  - i) All deeds and documents to the property, stamped and registered as appropriate, including if applicable the assignment of the life policy, stamped collateral to the mortgage,
  - ii) The original mortgage (with certificate of charge endorsed thereon under rule 156 of the *Land Registry Rules 1972*, if Land Registry title),
  - iii) The Land Registry certificate or, if not issued, an up-to-date certified copy folio of the property showing the mortgage registered as a burden thereon, and
  - iv) Certificate of title in the Law Society's standard form.

- 2) Failed to adequately or at all respond to the complainant's correspondence, in particular letters dated 31 August 2008, 28 October 2008, 21 November 2008 and 18 December 2008 respectively.

The tribunal directed:

- a) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
- b) That the name of the respondent solicitor be struck off the



Roll of Solicitors,

- c) That the respondent solicitor pay the sum of €50,000 as restitution to Start Mortgages Limited,
- d) That the respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, 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 5 July 2010, the President of the High Court ordered:

- 1) That the name of the respondent solicitor be struck from the Roll of Solicitors,
- 2) That the respondent solicitor pay the sum of €50,000 as restitution to Start Mortgages Limited,
- 3) That the applicant forward the papers in respect of this application to the Director of Public Prosecutions,
- 4) That the respondent solicitor surrender his passport forthwith to An Garda Síochána,
- 5) That the respondent solicitor pay the applicant the costs of the High Court proceedings, together with the costs of the disciplinary tribunal proceedings, to include witness expenses, to be taxed in default of agreement.

**In the matter of Joseph Traynor, solicitor, formerly practising as Traynor & Company, Solicitors, 86 Clanbrassil Street, Dundalk, Co Louth, and in the matter of the Solicitors Acts 1954-2008 [5554/DT125/09 and High Court record no 2010 no 58 SA] Law Society of Ireland (applicant) Joseph Traynor (respondent solicitor)**

On 18 March 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to honour an undertaking given to the complainant, dated 17 November 2004, whereby he undertook to do the following:

- 1) Execute security documents in that, prior to negotiating the loan cheque or the proceeds thereof, he failed to ensure that the borrower had executed a mortgage deed/charge in the lender's standard form as produced by the lender over the property,
- 2) Ensure that the mortgage ranked as a first legal mortgage/charge on the property,
- 3) Register the mortgage in the appropriate registry so as to ensure that the lender/complainant obtained a first legal mortgage/charge on the property and, expeditiously, as soon as practicable thereafter, to lodge the following documents with the lender/complainant:
  - i) All deeds and documents to the property, stamped and registered as appropriate, including, if applicable, the assignment of the life policy, stamped collateral to the mortgage,
  - ii) The original mortgage (with certificate of charge endorsed thereon under rule 156 of the *Land Registry Rules 1972*, if Land Registry title),
  - iii) If Land Registry title, the land certificate or, if not issued, an up-to-date certified copy folio of the property showing the mortgage registered as a burden thereon,
  - iv) The complainant's certificate of title in the Law Society's standard form.
- 4) Hold all title documents of the property in trust for the lender/complainant.

- b) Failed to adequately or at all respond to the complainant's correspondence, in particular letters dated 18 July 2008, 6 October 2008 (twice), 22 October 2008, 7 January 2009, 9 January 2009 and 6 February 2009,
- c) Failed to adequately respond to the Society's correspondence, in particular letters dated 23 February 2009, 11 March 2009, 19 March 2009, 1 April 2009 and 3 June 2009 respectively.

The tribunal directed:

- a) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
- b) That the name of the respondent solicitor be struck off the Roll of Solicitors,
- c) That the respondent solicitor pay the sum of €45,275.94 to KBC Mortgages Limited,
- d) That the respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, 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 5 July 2010, the President of the High Court ordered:

- 1) That the name of the respondent solicitor be struck from the Roll of Solicitors,
- 2) That the respondent solicitor pay the sum of €45,275.94 as restitution to KBC Homeloans Limited,
- 3) That the applicant forward the papers in respect of this application to the Director of Public Prosecutions,
- 4) That the respondent solicitor surrender his passport forthwith to An Garda Síochána,
- 5) That the respondent solicitor pay the applicant the costs of the High Court proceedings, together with the costs of the disciplinary tribunal proceedings, to include witness expenses, to be taxed in default of agreement.

**In the matter of Joseph Traynor, solicitor, formerly practising as Traynor & Company, Solicitors, 86 Clanbrassil Street, Dundalk, Co Louth, and in the matter of the Solicitors Acts 1954-2008 [5554/DT126/09 and High Court record no 2010 no 59 SA] Law Society of Ireland (applicant) Joseph Traynor (respondent solicitor)**

On 18 March 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to honour an undertaking given to the complainant's clients, Start Mortgages Limited, in respect of his named client, involving property at Rosehill, Mullagh, Co Cavan, in a solicitor's undertaking dated 25 January 2008, whereby he undertook to do the following:
  - i) To register the mortgage in the appropriate registry to ensure that the complainant's clients, Start Mortgages Limited, obtained the first legal charge on the property,
  - ii) To, as soon as practicable thereafter, register the first legal charge on the property and to lodge with the lender, Start Mortgages Limited, all deeds and documents properly stamped and registered,
  - iii) As soon as practicable after registration of Start Mortgages Limited first legal mortgage of the property, to lodge the original mortgage with the lender, Start Mortgages Limited,
  - iv) To ensure the borrowers acquiring the property obtained good marketable title to it or, where the borrower already owned the property, to satisfy himself that such borrower had good marketable title to it.
- b) Failed to adequately or at all respond to the complainant's correspondence, in particular letters dated 9 December 2008, 9 January 2009, 28 January 2009, 16 February 2009 and 26 February 2009 respectively.

The tribunal directed:

- a) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
- b) That the name of the respondent solicitor be struck off the Roll of Solicitors,
- c) That the respondent solicitor pay restitution in the sum of €180,000 to Start Mortgages,
- d) That the respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, to be taxed by a taxing master of the High Court in default of agreement.

## BRIEFING

The tribunal directed that the matter be referred forward to the High Court and, on 5 July 2010, the President of the High Court ordered:

- 1) That the name of the respondent solicitor be struck from the Roll of Solicitors,
- 2) That the respondent solicitor pay the sum of €180,000 as restitution to Start Mortgages Limited,
- 3) That the applicant forward the papers in respect of this application to the Director of Public Prosecutions,
- 4) That the respondent solicitor surrender his passport forthwith to An Garda Síochána,
- 5) That the respondent solicitor pay the applicant the costs of the High Court proceedings, together with the costs of the disciplinary tribunal proceedings, to include witness expenses, to be taxed in default of agreement.

**In the matter of Joseph Traynor, solicitor, formerly practising as Traynor & Company, Solicitors, 86 Clanbrassil Street, Dundalk, Co Louth, and in the matter of the Solicitors Acts 1954-2008 [5554/DT11/10 and High Court record no 2010 no 55 SA] Law Society of Ireland (applicant) Joseph Traynor (respondent solicitor)**

On 11 May 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to honour an undertaking given to the complainant on behalf of a named client for property at Lislin, Mullagh, Co Cavan, dated 31 August 2007, in which he undertook to register the mortgage of the complainant in the appropriate registry and to ensure that the lender/complainant obtained a first legal mortgage on the property and, as soon as practical thereafter, to lodge with the lender/complainant all deeds and documents properly stamped and registered as appropriate together with the original mortgage,

- b) Failed to reply adequately to the complainant's correspondence and to the complainant's solicitors' correspondence, in particular letters dated 9 December 2008, 9 January 2009, 28 January 2009, 16 February 2009 and 26 February 2009,
- c) Failed to adequately respond to the Society's correspondence, in particular letters dated 5 May 2009 and 20 May 2009,
- d) Failed to attend or arrange representation before the Complaints and Client Relations Committee meeting on 9 October 2009, despite being directed to attend.

The tribunal directed:

- a) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
- b) That the name of the respondent solicitor be struck off the Roll of Solicitors,
- c) That the respondent solicitor pay the sum of €570,000 as restitution to Start Mortgages,
- d) That the respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, 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 5 July 2010, the President of the High Court ordered:

- 1) That the name of the respondent solicitor be struck from the Roll of Solicitors,
- 2) That the respondent solicitor pay the sum of €570,000 as restitution to Start Mortgages Limited,
- 3) That the applicant forward the papers in respect of this application to the Director of Public Prosecutions,
- 4) That the respondent solicitor surrender his passport forthwith to An Garda Síochána,
- 5) That the respondent solicitor pay the applicant the costs of the High Court proceedings, together with the costs of the disciplinary tribunal proceedings, to include witness expenses, to be taxed in default of agreement.

**In the matter of Joseph Traynor, solicitor, formerly practising as Traynor & Company, Solicitors, 86 Clanbrassil Street, Dundalk, Co Louth, and in the matter of the Solicitors Acts 1954-2008 [5554/DT01/10 and High Court record no 2010 no 56 SA] Law Society of Ireland (applicant) Joseph Traynor (respondent solicitor)**

On 11 May 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Caused or allowed a fictitious contract for the purported sum of €7 million in relation to the purchase of lands at Castlewarden, being a false and misleading contract as to the purchase price, as there was an existing contract for the sum of €4.6 million,
- b) Caused or allowed a fictitious contract for the purchase of lands at Castlewarden to bear the signature of the vendor and the complainant's signature as witness, when such signatures were not the signatures of the vendor and the complainant,
- c) Permitted or allowed a fictitious contract to be forwarded to the solicitors for a bank for the purchase of the site the bank placed reliance upon,
- d) Failed to progress the true contract for the purchase price of €4.6 million, leaving a capital balance outstanding of €1,140,000 plus interest, which entailed proceedings for specific performance being issued and served by the complainant,
- e) Failed to have the original deed of transfer signed by the purchaser dated, stamped and registered,
- f) Failed to explain why €3.4 million occurred on the client ledger account when he claimed that he had no money to stamp the deed,
- g) Failed to explain why there were two versions of a contract for the same lands,
- h) Released title documents held on trust to the order of the complainant pending payment of

the full amount of the purchase monies,

- i) Failed to explain why he had not brought the matter of the fictitious contract and purported fraud to the immediate attention of the gardaí,
- j) Failed to respond adequately or at all to the complainant's correspondence, in particular letters dated 1 November 2006, 7 November 2006, 11 December 2006, 15 June 2007, 9 August 2007, 22 August 2007, 19 October 2007, 20 December 2007, 13 June 2008, 3 April 2009, 15 April 2009, 22 April 2009 and 27 April 2009,
- k) Failed to respond adequately or at all to the Society's correspondence, in particular letters dated 20 August 2009 and 21 September 2009.

The tribunal directed:

- a) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
- b) That the name of the respondent solicitor be struck off the Roll of Solicitors,
- c) That the respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, 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 5 July 2010, the President of the High Court ordered:

- 1) That the name of the respondent solicitor be struck from the Roll of Solicitors,
- 2) That the applicant forward the papers in respect of this application to the Director of Public Prosecutions,
- 3) That the respondent solicitor surrender his passport forthwith to An Garda Síochána,
- 4) That the respondent solicitor pay the applicant the costs of the High Court proceedings, together with the costs of the disciplinary tribunal proceedings, to include witness expenses, to be taxed in default of agreement. ©



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Compiled by Bart Daly

### EMPLOYMENT

#### Redundancy

*Contract law – interlocutory injunction – whether the plaintiff demonstrated a strong case that he was likely to succeed at the hearing of the action.* These proceedings were initiated by a plenary summons claiming damages for breach of contract, misrepresentation, wrongful dismissal and negligence, together with, if necessary, interim and/or interlocutory relief. The plaintiff sought an order restraining the defendants from dismissing him, pending the trial of the action, from his position of employment and an order directing the defendants to continue remunerating the plaintiff pending the trial. There were severe conflicts of evidence in relation to, among other things, the identity of the plaintiff's employer. The plaintiff averred that he was employed by the Examiner Group and, in 2008, was called to a meeting with Mr Dinan, who at that time was the managing director of the Examiner Group. The nub of the plaintiff's case rested on that meeting, and the plaintiff averred that he was asked to agree to a substantial change in the terms of his employment, namely, assignment to inferior duties, and he accepted that change on the basis that Mr Dinan, on behalf of his employer, promised that, rather than being made redundant from Thomas Crosbie Holdings in the future, the plaintiff would be redeployed to Examiner Publications. In effect, the plaintiff submitted that he agreed a new term with his employer, which had contractual effect and which was categorised as a special condition that he would not be made redundant from the duties to which he was being assigned, but would be redeployed to Examiner Publications. The defendant denied that there was any such new special condition. On 10 August 2010, the plaintiff was informed that his position had become redundant, and he received a form RP50. It was submitted

on behalf of the plaintiff that the role that was sought to be made redundant had actually become redundant in 2008 and he had not occupied that position since then and, in that regard, a secondary argument was advanced on behalf of the plaintiff that the redundancy was not a genuine redundancy.

Laffoy J dismissed the application, holding that it was not possible to resolve the conflict regarding the identity of the plaintiff's employer. If, as was argued by the plaintiff, there was not a genuine redundancy situation and the dismissal was dressed up as a redundancy, then it was an unfair dismissal under the statutory code, and the only remedy available to the plaintiff was to seek redress in the manner provided in the *Unfair Dismissals Act 1977*, as amended. Consequently, if the plaintiff's primary argument was not successful, he would ultimately, at the trial of the action, be seeking redress for unfair dismissal, which this court could not provide. As the primary relief sought by the plaintiff was a mandatory injunction, the appropriate test to be applied was whether there was a strong case that the plaintiff was likely to succeed at the hearing of the action. Having regard to the evidence, the plaintiff failed to establish a strong evidential basis for the primary argument. He made assertions as to his understanding and belief in relation to the existence of an agreement with Mr Dinan, but did no more than that.

***O'Mabony (plaintiff) v Examiner Publications (Cork) Limited & Others (defendants), High Court, 5/11/2010 [2010] 11 JIC 0502***

### FAMILY

#### Property adjustment

*Sale of family home – orders of Circuit Court – conduct – delay – payments – whether court would make property orders for amount sought by respondent.*

The proceedings related to an appeal against an order of

the Circuit Court. The parties were married in 1992, and the relationship had broken down in 2004. The applicant was in a second relationship. There were two children of the marriage. The Circuit Court had made various orders as to joint custody and access. The wife had made repeated applications to court in the course of the sale of the family home, which had led to a delayed sale of the family home at a vastly reduced price. A dispute arose as to the proceeds of the sale of the home and the amount that had earlier been provided for. An available purchaser would have bought the house for €620,000, but the house had been sold ultimately for €355,000, and the respondent sought €500,000, which had been the stipulated minimum amount pursuant to the earlier Circuit Court order, in addition to maintenance.

MacMenamin J held that the respondent had engaged in conduct that had the effect of further obstructing the sale. The court would not make an order in the value sought by the respondent. The court directed that the applicant pay a sum of €80,000, together with the sum of €100,000 that he had offered to supplement the shortfall. In order to prevent the further dissipation of assets, the court directed that the applicant would be at liberty to apply to the Circuit Court the sum of €150,000 of the €155,000, which had already been transferred to the respondent, to be paid into court to prevent any further reduction. The court had an obligation to the children as well. When the respondent had identified a suitable home for purchase, application could be made to the Circuit Court for the payment out of that sum for the purchase of the new home.

***H(B)(Applicant) v H(P) (Respondent), High Court, 29/7/2010 [2010] 7 JIC 2905***

### IMMIGRATION AND ASYLUM

#### Judicial review

*Fear of persecution – journalist – blackmail – threats – Poland – Azerbaijan – whether the applicants had a fear of persecution.*

The husband and wife applicants, who were Azeri nationals, had applied for and obtained asylum in Poland in 2006. The husband applicant was a journalist and complained that, during his tenure as editor of a prominent newspaper in Baku in Azerbaijan, he was subject to assaults, threats and blackmail. The applicants claimed that his enemies had managed to locate him in Poland. The issue arose as to whether the applicants could realistically claim that they had a fear of persecution in Poland.

Hogan J held that, with regret, the court had to conclude that the applicants had no fear of persecution and the claims were doomed to failure. Poland was a member state of the European Union and a party to the *European Convention on Human Rights*. The court would conclude that the respondents were justified in refusing to investigate the complaints since, in the circumstances, the minister had no jurisdiction to grant them refugee status.

***AQS & KIS (applicants) v Refugee Applications Commission & Others (respondents), High Court, 23/11/2010 [2010] 11 JIC 2304***

### LAND LAW

#### Landlord and tenant

*Administrative law – judicial review – housing – arrears of rent – eviction process – deficiencies in warrant – order of possession – whether deficiencies in eviction process entitled applicants to relief – whether male fides on part of local authority – District Court (Ejectment) Rules 1999 – Housing Act 1966 – Housing Act 1970 – Landlord and Tenant Law Amendment Act, Ireland 1860 (Deasy's Act) – European Convention on Human Rights Act 2003.*

The applicants had been tenants

## BRIEFING


of the respondent local authority. A dispute had arisen relating to arrears of rent, which eventually culminated in the eviction of the applicants. The applicants brought judicial review proceedings, seeking an order of *certiorari* quashing the warrant for possession, a declaration that the eviction in question was unlawful, a mandatory injunction directing the respondent to restore the applicants to possession of the premises, and damages for breach of their constitutional right to the inviolability of their dwelling. It was contended that the warrant for possession was not in accordance with the relevant rules (*District Court (Ejectment) Rules 1999*), had been issued outside the relevant time limit, and that no order had been sought extending the time for issuing outside that period. Of issue was whether the sheriff was obliged to wait for at least one month to pass before evicting the applicants, according to the relevant rules. The applicants maintained that, had the respondent brought the correct application to the District Court for an extension of time to issue a

warrant for possession, they would have had an opportunity to make submissions to the District Court and explain their circumstances. On behalf of the respondent, it was contended that, even if no such application had been made regarding the extension of time, the court should look to the surrounding circumstances, such as the history of non-payment of rent, the efforts made by the council prior to eviction to reach agreement with the applicants, and the fact that the applicants could point to no real prejudice resulting from any of these features of the case. Regard should also be had to the responsibility that the council had to manage its public housing stock in an efficient and fair way, in the interests not just of the applicants but in the interests of all members of the public within its functional area. The court should not act in vain in quashing a warrant for possession that had already been executed. To do so, the court would be facilitating an unlawful occupation of the premises, in view of the fact that the applicants' tenancy had been lawfully determined by the notice

to quit, and they had no right to be there any longer.

Peart J refused the relief sought, holding that the warrant in question had complied with the statutory provision (section 86 of *Deasy's Act*, as amended by section 13 of the *Housing Act 1970*) and it was the relevant form (form 47.9) that contained incorrect wording. Consideration should be given by the District Court Rules Committee to amend this, so that it would be in accordance with the statutory provision. Possession had been obtained some 15 minutes earlier than the earliest time permitted by section 86 of *Deasy's Act* (8am), but in all the circumstances could be considered to be a *de minimis* departure from the statute. It could not be disputed that the eviction warrant was not one that was issued in accordance with law. The respondent, having obtained an order for possession, engaged with the applicants in the hope that some appropriate arrangement could be made in respect of the arrears of rent, and it was only after these engagements failed that the council decided to move in relation

to a warrant and the obtaining of possession. Regard could be had to the fact that quashing the warrant now would achieve no useful purpose, since it had already been executed. At the time that they were evicted and for a long time prior to that event, the applicants owed a considerable amount in respect of arrears of rent, and they had failed to address that issue in any timely or satisfactory way. There was no conscious and deliberate breach of the applicants' rights, as was clearly demonstrated by the manner in which the council continued to deal with the applicants after the order for possession was made, and no *mala fides* was demonstrated in any way. Given the circumstances generally, both before and since the making of the order for possession, and the conduct of both parties to these proceedings, refusing to grant the reliefs sought would not be disproportionate, and the court in its discretion would refuse the reliefs being sought by the applicants.

**Moore and Moore v Dun Laoghaire-Rathdown County Council, High Court, 29/11/2010** [2010] 11 JIC 2902 

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## GENDER DISCRIMINATION

**Case C-236/09, *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres*, 1 March 2011**

Directive 2004/113/EC on equal treatment prohibits all discrimination based on sex in the access to and supply of goods and services. There is a derogation in the directive for insurance. Member states may allow exemptions from equal treatment relating to premiums and benefits so long as they can ensure that the underlying actuarial and statistical data on which the calculations are based are reliable, regularly updated, and available to the public. Member states may allow such an exemption only if the gender discrimination ban has not already been applied by national legislation. Five years after the transposition, member states must re-examine the justification for those exemptions, taking into account the most recent data and a report to be submitted by the commission three years after transposition of the directive. The Belgian consumer association and two individuals brought an action before the Belgian Constitutional Court for annulment of the Belgian law transposing the directive. The Belgian court asked the Court of Justice to assess the validity of the derogation provided for in the directive in the

light of higher-ranking legal rules and, in particular, in the light of the principle of equality for men and women enshrined in EU law. The court pointed out that article 8 of the TFEU provides that the EU is to aim, in all its activities, to eliminate inequalities and to promote equality between men and women. In order to achieve such equality, it is for the EU legislature to determine precisely when action must be taken. Thus, the EU legislature provides in the directive that differences in premiums and benefits on a gender basis must be abolished by 21 December 2007. As the use of actuarial factors relating to gender was widespread in the provision of insurance services at the time the directive was adopted, it was permissible for the legislature to implement the rule of unisex premiums and benefits gradually, with appropriate transitional periods. The directive provided for a five-year review, but was silent as to the length of time during which those differences may continue to be applied. Thus, member states that have made use of this option are permitted to allow insurers to apply this unequal treatment indefinitely. This works against the achievement of the objective of equal treatment between men and women and must be considered as invalid upon the expiry of an appropriate transitional period.

Consequently, the court ruled that, in the insurance services sector, the derogation from the general rule of unisex premiums and benefits is invalid with effect from 21 December 2012.

## JURISDICTION

The *Lugano Convention*, which extends the rules on jurisdiction and enforcement of judgments found in the *Brussels I Regulation* to some EEA states, now applies in Switzerland. Switzerland ratified the convention on 20 October 2010 and it entered into force for Switzerland on 1 January 2011.

## LITIGATION

**Case C-283/09, *Artur Weryński v Mediatel 4B spółka z oo*, 17 February 2011**

Regulation 1206/2001, on cooperation between the courts of member states in the taking of evidence in civil or commercial matters, provides that, if a court of a member state asks the court of another member state to take evidence, the latter court is to execute the request in accordance with its national law. Under Irish law, witnesses are obliged to appear before a court only if they have first received a viaticum (payment for travel expenses). In 2009, the applicant took proceedings against the respondent in a court in Warsaw. He sued for damages arising from a non-compete agreement with

his former employer. In those proceedings, the Polish court asked the Dublin District Court to examine a witness. The Irish court made the examination of the witness conditional on the payment by the requesting court of witness expenses of €40, as Irish law requires. The Court of Justice stated that the possibility of refusing to execute a request for the taking of evidence should be confined to strictly limited exceptional situations. The grounds on which execution of such a request may be refused are those exhaustively listed in the regulation. These grounds do not include the payment of an advance for examining a witness. Therefore, the Polish court was not required to pay such an advance. The Court of Justice considered the reimbursement of witness expenses. It pointed out that the regulation provides that the execution of a request to take evidence is not to give rise to a claim for any reimbursement of taxes or costs. 'Taxes' are to be understood as meaning sums received by the court for carrying out its functions, whereas 'costs' are to be understood as the sums paid by the court to third parties in the course of proceedings, in particular to experts or witnesses. Expenses paid to a witness examined by the requested court are costs within the meaning of the regulation. 6

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Law Society of Ireland

NEWSLETTER



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Law Society of Ireland

2011

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## WILLS

**Doyle, Bridget (deceased)**, late of 78 Cremona Road, Ballyfermot, Dublin 10, who died on 28 February 2009. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Martin Solicitors, 1 Elmfield Rise, Clarendon, Dublin 13

**Glancy, Thomas (deceased)**, late of Knockalaughta, Castlereagh, Co Roscommon. Would any person having knowledge of a will made by the above-named deceased, who died on 18 March 2009 at the Sacred Heart Home, Roscommon, Co Roscommon, please contact Claffey Gannon & Company, Solicitors, Castlereagh, Co Roscommon; DX 72001 Castlereagh; fax: 094 962 0522, email: ivan@claffeygannon.com; reference: IM/G

**Hayes, Ellen C (deceased)**, late of St Patrick's Hospital, John's Hill, Waterford, formerly of Apartment 3, Grantstown House, Grantstown, Waterford, who died on 23 January 2008. Would any person having knowledge of the whereabouts of the original will, dated 12 October 2002, or any other will made by the above-named deceased, please contact Dobbyn & McCoy, Solicitors, 5 Colbeck Street, Waterford; tel: 051 874 087, fax: 051 855 249, email: dobbynmccoy@eircom.net

**Maher, William (deceased)**, late of Westgate, Thurles, Co Tipperary. Would any person having any knowledge of any will executed by the above-named deceased please contact Messrs Thomas F Griffin & Co, Solicitors, Parnell Street, Thurles, Co Tipperary; tel: 0504 21451, fax: 0504 23624, email: jjmgriffinsolr@eircom.net

**McGowan, Gerard, and Antoinette Phair (deceased)**, late of Cordery, Dromahaire, Co Leitrim, and formerly of 12 Garda Terrace, Phoenix Park, Dublin 8, who died on 22 January 2011 and on 30 November 2010. Would any person having knowledge of the will made by the above-named deceased please contact Kieran Ryan, solicitor, Kelly & Ryan, Manorhamilton, Co Leitrim; tel: 071 985 5034, email: kieran.ryan@kellyryanmanorhamilton.com

**McKennedy, Catherine (deceased)**, late of Clontarf, Union Hall, Co Cork, who died on 27 December 2008. Will any person having knowledge of any will executed by the above-named deceased please contact Wolfe & Company,

Solicitors, Market Street, Skibbereen, Co Cork, tel: 028 21177, email: maura.o'donovan@wolfe.ie

**O'Connor, William (Billy) (deceased)**, late of Moneyhore, The Leap, Enniscorthy, in the county of Wexford, and 22 Sean Browne Court, Enniscorthy, in the county of Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died on 3 January 2011, please contact Ensor O'Connor, Solicitors, 4 Court Street, Enniscorthy, Co Wexford; tel: 053 923 5611, fax: 053 923 5234

**Tanham, Joyce (deceased)**, late of Belmont House Nursing Home, Stillorgan, Co Dublin, and 121 Kincora Road, Clontarf, Dublin 3, who died on 26 February 2011. Would any person having knowledge of any will executed by the above-named deceased please contact Maxwells, Solicitors, 19 Herbert Place, Dublin 2, tel: 01 676 5473, fax: 01 660 7116, email: hferguson@maxwells.ie

## TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of no 31 Lower Drumcondra Road, Drumcondra, Dublin 9, in the city of Dublin, and upon an application being made by John McGrath and Margaret McGrath: Take notice that any person having any interest in the freehold estate of the following property: all that and those the premises demised by indenture of lease dated 25 May 1880 and made between Francis Butterlee of the one part and William Digges La Touche, Richard Johnson, the right honourable

Arthur Edward Barron Ardilaun, Henry Augustus Johnston, and the right honourable Michael Harrison of the other part for a term of 195 years, which premises are described as no 31 Lower Drumcondra Road, Drumcondra, Dublin 9, in the city of Dublin.

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

In default of any such notice being received, the applicants intend to proceed with the application before the county

registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for 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 above premises are unknown or unascertained.

Date: 1 April 2011

Signed: Mabon Sweeney (solicitors for the applicants), Main Street, Roscommon

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 45A Homefarm Road (otherwise 45 Homefarm Road) and 2A Clare Road, Drumcondra, Dublin 9: an application by Dosec Limited

Take notice any person having an interest in the freehold estate or any superior

## RATES

## Professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND**. Deadline for May Gazette: 20 April 2011. For further information, contact the Gazette office on tel: 01 672 4828 (fax: 01 672 4877)



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# NOTICES

interest of the following property: the shop and premises situate at no 45A Homefarm Road (otherwise 45 Homefarm Road) and 2A Clare Road, Drumcondra, in the city of Dublin, held under lease dated 3 October 1933 between James Joseph Hart of the one part and Joseph K Dargan of the other part for a term of 150 years from 1 September 1933.

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

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

Date: 1 April 2011

Signed: John O'Connor (solicitors for the applicant), 168 Pembroke Road, Ballsbridge, Dublin 4

**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 Niall Campbell and Catherine Burke**

Take notice that any person having an interest in the fee simple or in any superior interest in St Brendan's, 13 Arran Road, Drumcondra, Dublin 9, being the property *inter alia* comprised in a lease dated 24 June 1912 and made between Mathew Barrington Jellett of the one part and Joseph John Flanagan of the other part for the term of 180 years from 25 March 1910, subject to the yearly rent of £8 (€10.16), and in a lease dated 10 February 1922 and made between Joseph John Flanagan of the one part and Kathleen Neary of the other part for the term of 168 years from 29 September 1921, subject to the yearly rent of £5 (€6.35).

Take notice that the applicants, Niall Campbell and Catherine Burke, intend to submit an application to the county registrar for the city of Dublin at Aras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the fee simple and any intermediate superior interest in the aforesaid property, and that any party asserting that they hold the said fee simple or any such superior interest in the aforesaid property is called upon to furnish evidence of title to the under-mentioned within 21 days from the date of this notice.

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

Date: 1 April 2011

Signed: LawPlus Clifford Sullivan & Co (solicitors for the applicant), Carlisle House, Adelaide Road, Bray, Co Wicklow

**In the matter of the Landlord and Tenant Acts 1980-1994 and in the matter of the Landlord and Tenant (Amendment) Act 1980 and in the matter of premises situate and known as property at 8 and 9 Castle Street, Dunmanway, in the county of Cork**

Take notice any person having an interest in the following property: 8 and 9 Castle Street, Dunmanway, in the county of Cork.

Take notice that Jerry McCarthy of Dunmanway in the county of Cork intends to submit an application to the Cork Circuit Court for a reversionary lease in the aforementioned property, and any party ascertaining that they hold a superior interest and, in particular, the fee simple interest in the property are called upon to furnish evidence of the title to the below named.

In default of such notice being received, the applicant intends to proceed with the application before the Circuit Court and apply to the Circuit Court for a direction as maybe appropriate on the basis that the person or persons entitled to the superior interest and in particular the freehold interest thereon are unknown and unascertained.

Date: 1 April 2011

Signed: Collins Brooks & Associates, Solicitors, 6/7 Rossa Street, Clonakilty, Co Cork

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

Any person having any interest in the fee simple estate or any intermediate interest all that and those 1 Moore Lane, Dublin 1 (at the rear of 70 Parnell Street, Dublin 1) comprising part of folio DN186723F, the subject of a lease for lives dated 6 May 1776 from the Reverend Andrew King to John Elliott, which reserved a perpetual yearly rent of €3.17 (£2.50)

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

In default of any such notice being received, the said Joseph O'Reilly

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

Date: 1 April 2011

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

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

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the premises registered in folio DN140335L, known as 52 Upper O'Connell Street, in the parish of Saint Thomas and city of Dublin, the subject of a lease dated 28 February 1916 from John Hunt to Frank William Chambers (with an endorsement thereon dated 3 May 1934 made between one Thomas Hunt and the Carlton Cinema (Dublin) Limited) for a term of 250 years from 2 January 1914, which reserved a yearly rent of €336.48 (£265), and any person liable to pay a perpetual yearly rent registered in folio DN70S of €100.86 (£79.43) out of the said premises, 52 Upper O'Connell Street, to the applicant as successor in title to all the estate and interest of the grantor in a fee farm grant dated 21 January 1879, made between Charles Maturin and William Black of the first part, John Maturin and Harriett Maturin of the second part, and Matthew James Pollock of the third part.

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

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply

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to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

*Date: 1 April 2011*

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

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

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the premises comprised in folio DN140337L, known as 53 Upper O'Connell Street, in the parish of Saint Thomas and city of Dublin, the subject of a lease dated 27 August 1853 from Richard Gregory Scott to John Falconer for a term of 500 years from 1 May 1853, subject to the yearly rent of €328.18 (£258.9.2).

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

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

*Date: 1 April 2011*

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

## RECRUITMENT

### NOTICE TO THOSE PLACING RECRUITMENT ADVERTISEMENTS IN THE *LAW SOCIETY GAZETTE*

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

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

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## WILD, WEIRD AND WACKY STORIES FROM LEGAL 'BLAWGS' AND MEDIA AROUND THE WORLD



## Texas lawyers reject sex ban

Members of the State Bar of Texas have rejected a proposed change in the ethics rules that would have barred sex with clients, the *Texas Lawyer* reports. The rule would have banned sex between lawyer and client unless they were married, or engaged in a consensual relationship that began before the representation, according to a summary posted at the state bar website. The rule was rejected by 72% of the lawyers voting.

## The 'unspoken nerd defence'

It would appear that, increasingly, lawyers in the US are asking their clients to wear glasses during jury trials. Criminal defence lawyers apparently believe that juries are less likely to find criminal defendants guilty – simply because they wear glasses.

The *New York Daily News* spoke to lawyer Harvey Slovis, who said defendants don't look like they are capable of committing crimes

when they wear glasses. "I've tried cases where there's been a tremendous amount of evidence, but my client wore glasses, dressed well and got acquitted."

One prosecutor agreed, calling glasses "an unspoken nerd defence". The newspaper also cites a 2008 study, which found that eyeglasses lead to more acquittals because they make defendants look more intelligent.

## Dot, dot, dot... tut, tut, tut...

A Massachusetts lawyer has been publicly reprimanded for failing to include ellipses (those three dots ... when he omitted some words from a trial judge's statement of facts in his first-ever appeal.

According to the *ABA Journal*, lawyer Vincent Cragin had represented Pella Windows Inc in breach of contract litigation with homeowner Mary Burman, who had, in turn, sought double damages for what she deemed to be unfair and deceptive acts. The company's alleged wrongdoing had included making unauthorised charges on Burman's credit card (later refunded) and placing a call to her husband while he was in the hospital. When Cragin included findings of fact in the appeal, he omitted references to the hospital call and the credit card charge.



"In as brazen a piece of misrepresentation as we have ever seen, Pella deleted certain words, phrases, and sentences without use of an ellipsis, or any other indication of editing," the appeals court wrote.

"Defeating one's hope that the deletions were the result of sloppy copying and proofreading ... is the fact that all the information deleted is helpful to Burman, or harmful to Pella."

## Lawyer suspended over marriage to elderly client

In 2002, US attorney Linda Lowney drafted a will for her client, Thor Tollefsen, that provided for his estate to go to his sister and two nieces in Norway. But, by 2005, the 54-year-old Californian lawyer had become involved with Tollefsen (85). He gave her \$339,000, with his nieces' consent, and the two got married in January 2006, using a confidential licence, reports the *San Francisco Chronicle*.

Later that year, Tollefsen asked for a divorce, as the couple continued to live separately. In 2007, he moved into a nursing home and died. Now a State Bar Court judge is

calling the marriage a sham and has ordered Lowney – who has been licensed since 1978 and has no prior record of discipline – suspended from practice, the newspaper says.

In a ruling on 4 March, Judge Pat McElroy said Lowney "took advantage of a lonely, sick old man" and ordered her suspended.

Lowney's lawyer, Jonathan Arons, says McElroy misunderstood the relationship between the two, which was an actual marriage. He says Tollefsen's nieces were paid more than \$339,000 in settlement of a civil suit they filed against Lowney.

## 'Pulling a Sheen' defined

A new verb is starting to enter the public lexicon: 'sheening' or 'sheened'.

The *Urban Dictionary* website defined the term last year, after Charlie Sheen's meltdown at the Plaza in New York, the *New York Times* reports. The words connote partying, questionable decision-making and public humiliation, the story says.

On 1 March 2011, the creators of *South Park* used the

reference in an interview with David Letterman, admitting to "sheening our heads off" during the 2000 Oscars, when they dressed in drag.

The *Times* spoke to the editor of *Black's Law Dictionary*, Bryan Garner, about the use of 'sheening' as a verb. Garner came up with a related definition: "To pull a Sheen", which "could mean to ridiculously try to defend oneself in the public media."



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Ref: C2020

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This firm is looking to recruit an ambitious lawyer who has experience in the area of professional indemnity. This firm has an overall reputation of excellence in this area and is looking for a solicitor to take up and assist in the running of high profile, high value cases. You will be familiar with high court practice and procedure and will be comfortable in other arenas of dispute resolution including arbitration and alternative dispute resolution. You will also have sufficient experience to manage your client and provide advice as to the best possible outcome and the potential pitfalls including costs. You will defend professionals in various disciplines including engineers, architects, surveyors and solicitors. You will have gained experience within a well established law firm and have strong academics.

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## FUNDS

€Negotiable

Easily identified as a leading light in the field of investment funds, our client is actively looking to secure the services of a top tier partner/ team with exceptional experience within the investment funds market. Ideally the candidate will have retail, mutual, UCITs, ETFs or hedge fund areas. The successful applicant will be tasked with developing the Irish market, working closely with their colleagues to capitalise on their blue chip client base, you will demonstrate an ability to work as part of a team and have strong communication and technical skills. Having gained experience from a leading law firm or industry, you will have strong academic and commercial sense. A competitive salary and attractive bonus structure is on offer to the right candidate.

Contact carolmcgrath@makosearch.ie

Ref: C2025

## PSL

€100+Bonus+Benefits

This firm requires a barrister/solicitor to act as a PSL within the legal education and resources team, dealing with queries and research from across all practice areas and managing documentation and practice notes. You will be aware of developments in relevant areas, regulation and industry practice, collate precedents and co-ordinate group training and education, involvement in other support projects as may arise. You will have a strong academic background, excellent technical ability and a commitment to quality and accuracy of work produced. The successful candidate will interact and communicate well with all team members, thus insuring that the lawyers are adequately informed on a regular basis, this role offers the right candidate varied work within a collegiate environment.

Contact carolmcgrath@makosearch.ie

Ref: C2026

## COMPETITION

EXCELLENT

Our client is looking for a Competition Lawyer to expand its existing client services. Your experience should include a broad understanding of all areas of competition and an instinct for business development. You will have excellent academics and be experienced in M&A work, behavioural competition, state aids, trading agreements, public procurement and have well honed litigation skills. Our client's business model keeps it right at the heart of the business community, constantly exceeding expectations and proactively managing their client's needs. This is a truly unique opportunity to work in a fabulous practice with an enviable market pedigree. This role offers a varied client portfolio together with a highly competitive remuneration package.

Contact sharonswan@makosearch.ie

Ref: S2027

## TECHNOLOGY

EXCELLENT

An ambitious firm is looking to recruit a Commercial IT specialist to further build this practice area. Drawing on the firm's current client base you will have strong business development skills and have a strong reputation in the technology field. You will be working with other solicitors who are specialists in their respective areas of law, and have a history of success to date. This is a fantastic opportunity for a top commercial IT solicitor to join a growing firm and develop their own practice. The firm wishes to become a leader in commercial law, so wishes for a top solicitor with the gravitas and technical skills to entice new clients to work with the firm.

Contact sharonswan@makosearch.ie

Ref: S2028

# New Openings



## *Private Practice*

**Banking – Associate to Senior Associate:** A well respected Dublin practice is seeking a strong Banking lawyer to work with a small dedicated team with a well-established client base. You will be dealing with a range of transactions including acquisition finance, re-structuring and NAMA work for a number of clearing banks. The successful candidate will have experience of acting for both lenders and borrowers and be familiar with facility letters, negotiations, taking security, and security review (ideally with syndicated lending experience). There will also be the possibility of some insolvency work.

**Commercial Property/Banking – Associate to Senior Associate:** Our client is a leading full service Irish law firm with a first class client base and an enviable reputation. We are instructed to search for a solicitor with strong transactional experience in the sale/purchase of Commercial Property. The successful candidate will be dealing with a range of matters including security reviews and NAMA. A thorough understanding of the financial aspects of property transactions and the taking of security is an essential pre-requisite.

**Corporate/Commercial – Associate to Senior Associate:** An exciting opportunity has arisen for a strong Corporate/ Commercial practitioner to join this major legal practice. The team deals with a broad range of transactions spanning the corporate and commercial spectrum. You will be a strong all-rounder, ideally with exposure to FDI. An excellent academic record is essential.

**Intellectual Property/Technology – Associate to Senior Associate:** This highly regarded Dublin firm seeks to recruit an additional solicitor to join this specialist department. The successful candidate will have specialised in non-contentious IP and general commercial work.

**Professional Indemnity – Associate to Senior Associate:** A high calibre practice with an excellent client base is searching for a first class PI practitioner. Strong exposure to professional indemnity matters is essential. Candidates will need to demonstrate the drive and enthusiasm to market and develop the firm's services with existing and prospective clients.

**Projects Solicitor – Associate to Senior Associate:** This top-flight Dublin law firm seeks to recruit an experienced practitioner to join its expanding Projects Team. The work in the group is challenging, multi-disciplinary and varied, providing legal services to project sponsors, contractors, funders and other financial institutions. You will be a bright solicitor with a keen interest in this practice area. A practical understanding of the financial background to PPP transactions is essential.