ABA's greatest hit
The president of the American Bar Association talks to the *Gazette*

Early to rise
With dawn raids on the increase, here's what every person should know

Great train robbery
What does the law actually say about using the train without a ticket?

LAW SOCIETY

GAZETTE

€3.75 November 2011

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CONCERNS OVER *LEGAL SERVICES BILL*

The much publicised *Legal Services Regulation Bill 2011* was published on 12 October 2011. In his press statement, Minister for Justice Alan Shatter mentioned that the bill would provide three key entities:

a) A new independent Legal Services Regulatory Authority with responsibility and oversight of both of the legal professions.
b) An Office of the Legal Costs Adjudicator, to assume the role of the existing Office of the Taxing Master, which will be conferred with enhanced transparency in its functions. The legal cost regime will be brought out into the open with better public awareness and entitlement to legal cost information.
c) An independent complaints structure to deal with complaints about professional misconduct – this will be supported by an independent Legal Professions Disciplinary Tribunal.

Under the bill, the new Regulatory Authority will:

a) Keep under review admission, education, and training,
b) Promote and assimilate information,
c) Deal with complaints of misconduct,
d) Conduct inspections of solicitors' practices,
e) Manage professional indemnity insurance,
f) Receive accountants' certificates,
g) Make regulations on solicitors' accounts, interest on clients' money, PII and advertising.

The minister can request the authority to prepare or approve a code of practice or professional code, and the authority shall do so. The minister's consent is also required for the authority to amend, revoke or withdraw approval for a code of practice or professional code.

'Justified misgivings'

The Council of the Law Society debated the new provisions contained in the draft bill at a special Council meeting on 14 October. In summary, the Council agrees with the editorial contained in *The Irish Times* of Saturday 15 October, which stated as follows: "There are justified misgivings about the model chosen by the minister, which gives the government the power to appoint the new Regulatory Authority, which will then report to the Minister for Justice. This authority will have wide powers, including the drawing up and approval of codes of professional conduct. This is not the model recommended by the Competition Authority, nor the one followed in other jurisdictions, where normally a buffer exists between the executive and the legal profession, offering the form of oversight by the judiciary, to guarantee the independence of the regulatory machinery."

In addition, the President of the American Bar Association, Bill Robinson III, was in Dublin on 11 October last, and he stated that any perceived reduction of the independence of the legal profession could have a negative impact on investment by multinational corporations. The Council agrees with this statement.

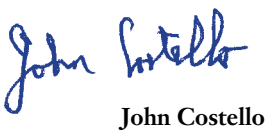
"The Council is concerned that any increase in the cost of regulation would have to be passed on to clients, which is contrary to the whole tenor of the bill"

The Council is also concerned about the increased costs of regulation that could arise under the new Regulatory Authority. There was also a concern that any increase in the cost of regulation would have to be passed on to clients, which is contrary to the whole tenor of the bill.

The Council of the Society also fully supports a move to a much more modern, transparent and predictable system for the assessment of costs in civil litigation. It welcomes many of the recommendations relating to costs contained in the bill.

Minister Shatter wrote to me on 12 October last, stating the following: "I would value the opportunity to meet with representatives of the Law Society to discuss any issues arising from the bill as the Society would like to raise. Similarly, I would be delighted to receive any written submissions on the bill as the Society might wish to make. There are also a number of issues that I wish to raise as well, and look forward to a constructive dialogue with the Society with regard to the bill."

We look forward to meeting the minister, shortly. The Council has also decided to appoint a *Legal Services Regulation Bill* Task Force, and this task force will be meeting urgently to assess the implications of the bill in detail. I would also like to receive, and would welcome any comments that colleagues might have, in relation to the bill. Finally, we will also be discussing the bill at the AGM on 10 November next.



John Costello
President

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- Current news
- Forthcoming events, including **the seminar 'Getting the best return from your technology' in the Silver Springs Hotel Cork on 18 November**
- 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

DSBA elects new president

DUBLIN

The new president of the DSBA is Geraldine Kelly. Geraldine qualified in 1988 and practises in Kimmage. The DSBA is the largest bar association in Ireland and Britain, with close to 4,000 members – predominantly in Dublin. (The DSBA points out that it is not affiliated to the newly formed grouping of the Solicitors' Bar Associations of Ireland.)

Geraldine was elected president at the association's recent AGM, which also elected its new council of ten. These include four newcomers, namely Tony O'Sullivan (Maples and Calder), Joe O'Malley (Hayes), Diego Gallagher (Byrne Wallace) and Gregg Ryan, who practises in Kilmacud. John Glynn becomes the new vice-president and Aaron McKenna becomes secretary.

In her address at a packed AGM, Geraldine spoke of the challenges that members are facing and reassured them that her focus, and that of the council, would be to ensure that colleagues' concerns are addressed by the Law Society and/or the newly proposed Legal Services Regulatory Authority. She also stated that the DSBA would be marshalling very closely the *Legal Services Regulation Bill* and would be making detailed submissions to Government in relation to same.

The outgoing president and council were warmly commended by several speakers for the significant amount of voluntary work carried out by them throughout the year on behalf of DSBA members.

Record numbers at bar association CPD day

MONAGHAN

There was a record turnout for the CPD day organised by the Monaghan Bar Association on 14 October 2011.

More than 200 solicitors from Monaghan, the surrounding counties – and from as far afield as Cork and Wexford – attended the event, which was held in the Glencarn Hotel in Castleblayney.

The not-for-profit seminar was organised for the third successive year by Justine Carty (Barry Healy & Company, Monaghan) and Lynda Smyth (Coyle Kennedy MacCormack, Castleblayney).

Speakers included Constance Cassidy SC, who spoke about updates on liquor licensing law; Elizabeth Gormley BL, who gave a presentation on the new *Multi-Unit Development Act 2011*; renowned criminal lawyer Michael Staines, who spoke on advising clients in custody; and Evan O'Dwyer (Crean O'Cleirigh & O'Dwyer, Mayo) who focused on drink-driving and the law.

Cavan's county registrar Joe Smyth and Louth county registrar Mairead Ahern dealt with the subject of the taxation of costs, probate law and case progression. Colin Borland looked at tendering for legal contracts.

The Law Society was represented by Seamus McGrath and Linda Kirwan, who spoke on regulatory matters. President of the Dublin Solicitors' Bar Association, Stuart Gilhooly, gave his insights on the new *Legal Services Regulation Bill 2011*.

Judge John O'Hagan concluded the evening with a practical presentation for solicitors on advocating on family law matters in the Circuit Court.

The master of ceremonies was Dundalk solicitor, Doc Lavery, who ensured that the event ran hitch-free. The day concluded with a superb dinner, followed by country and western dancing for the more vigorous attendees.

Moving tribute to Padraic Gearty

LONGFORD

PIC: COURTESY DECLAN SHANLEY, LONGFORD LEADER

Longford lost ones of its favourite sons on 5 October with the passing of local solicitor Padraic Gearty on 5 October at the age of 77. The *Longford Leader* reported that crowds turned out in their thousands to honour him and pay their respects to his wife, Brenda, his daughters Deirdre, Naoimh and Liadhan, his brother Gerard and the extended Gearty family.

"Huge crowds flocked to St Joseph's Care Centre in Longford on Friday evening where family members met with sympathisers for over six hours.

"The following day [8 October], thousands of people attended Mr Gearty's funeral Mass, which took place in St Mel's Cathedral Centre in the heart of his beloved Longford town."

Padraic had been involved in many Longford associations, organisations and clubs, evidenced by the large number of people who lined the route on the day of his funeral. The Midland Bar Association and local solicitors formed the guard of honour for the funeral cortege, while many other organisations provided guards of honour along the route, including Co Longford Social Services, Slashers GAA, Longford County Board, Co Longford Golf Club and Longford Town FC.

Although he never sought the limelight, his Trojan work was recognised and many honours were awarded to him. He was the Longford 'Person of the Year' in 2000, an accolade bestowed on him by the Longford Dublin Association, and he was also honoured by Longford GAA. (See appreciation, page 47.)

Solicitor appointed as DPP

The chairman of the Society's Criminal Law Committee, Claire Loftus, has been appointed the next Director of Public Prosecutions. She is the first solicitor and the first woman to be appointed to the post.

Loftus will succeed James Hamilton on 7 November. Her appointment means that, for the first time, the three most senior legal officers in the State – DPP, Chief Justice and Attorney General – are all women.

Educated in UCD and Blackhall Place, Loftus qualified as a solicitor in 1992 and has close to two decades of criminal law experience, most recently as the head of the directing division in the DPP's office.

Welcoming the appointment, Law Society Director General Ken Murphy said: "Everyone in the Law Society who knows her will be delighted, as I am, by her well merited appointment to one of the most senior legal offices in the State. We wish Claire every success and happiness in her challenging new role."

In News this month...

Head shop products face ban

The minister with responsibility for Ireland's drugs strategy, Róisín Shortall, has announced that the Government has given approval to notify the EU of its intention to make an order declaring a further range of so-called 'legal highs' to be controlled drugs under the *Misuse of Drugs Acts*. The application is being made to the EU Commission in order to use an urgency procedure so that the legislation can be introduced in a three-week period, rather than a three-month timeframe.

In May 2010, approximately 200 substances were placed under the control of under the *Misuse of Drugs Acts*. In August 2010, the *Criminal Justice (Psychoactive Substances) Act 2010* made it a criminal offence to sell substances that have psychoactive effects. Due to these concerted legislative actions, there has been a significant reduction in the number of headshops operating throughout the country, from over 100 to approximately ten.

25th Hugh Fitzpatrick Lecture

The 25th Hugh M Fitzpatrick Lecture in Legal Bibliography, in association with the RDS Speaker Series, will be delivered by Dr Angus Mitchell on 'Roger Casement's Speech from the Dock and the Archive of Inhumanity'.

The lecture takes place on Wednesday 16 November 2011 at 6pm. The venue is the library at the Royal Dublin Society, Merrion Road, Ballsbridge, Dublin 4. The chairman will be Frank Callanan, SC, with the welcome coming from the chairperson of RDS Speaker Series, John Holohan. Refreshments will be provided afterwards. The RDS is offering free parking, via the Merrion Road entrance, to those who attend.

Replies to Hugh M Fitzpatrick, solicitor/library and information consultant, Lectures in Legal Bibliography, 9 Upper Mount Street, Dublin 2; tel: 01 269 2202, fax: 01 661 9239, email: hmfitzpa@tcd.ie.

Swinford Courthouse no longer under threat

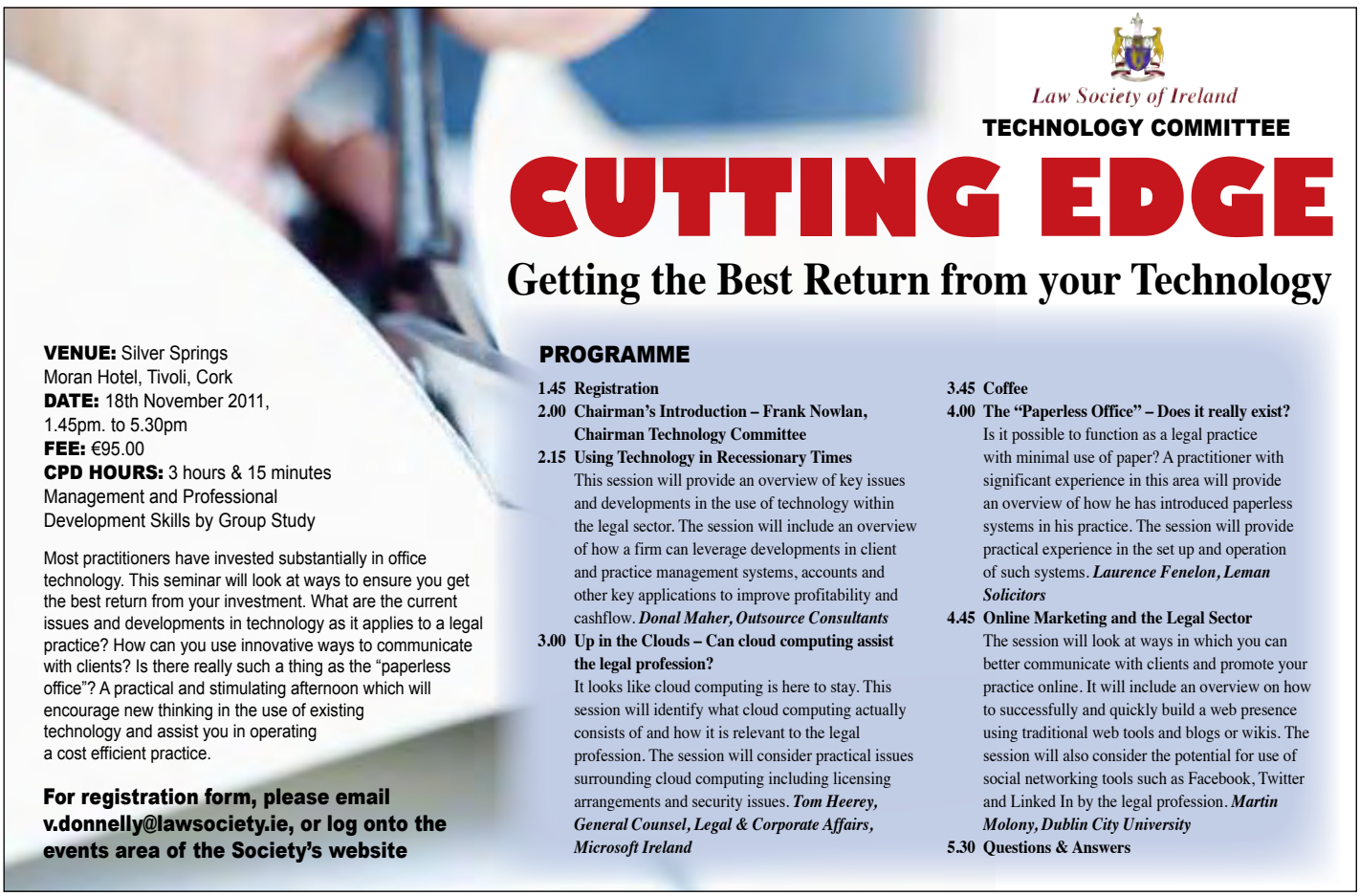
Swinford Courthouse is no longer under threat of possible closure, according to a recent report in *The Connaught Telegraph*. However, the transfer of court business from Kiltimagh and Claremorris to Castlebar remains under review.

Under draft proposals, the three areas of Castlebar, Claremorris and Kiltimagh would be amalgamated into one – generating estimated savings of €17,700 a year based on 2010 expenditure. The newspaper reported a Courts Service spokesperson as saying that this proposal would be expected to free up judicial and staff time to deal with more cases over full days in Castlebar, saving time, reducing waiting lists to have cases heard – more easily facilitating specific family law days, children's hearings and licensing courts.

'Genetic discrimination' conference in Galway

The Centre for Disability Law and Policy in NUI Galway is co-hosting (in conjunction with the Burton Blatt Institute, Syracuse University, USA) a one-day conference entitled 'Genetic Discrimination – Transatlantic Perspectives on the Case for a European Level Legal Response'. The conference is taking place at NUI Galway on Saturday, 19 November 2011.

The purpose of this conference is to examine the case for a European-level legal and policy response to protect the privacy of genetic information and to prevent genetic discrimination, particularly in the employment and insurance contexts. To register, visit www.conference.ie/Conferences/AddRegistration.asp?Conference=139; or email info.cdlp@nuigalway.ie.



Law Society of Ireland

TECHNOLOGY COMMITTEE

CUTTING EDGE

Getting the Best Return from your Technology

VENUE: Silver Springs
Moran Hotel, Tivoli, Cork
DATE: 18th November 2011,
1.45pm. to 5.30pm
FEE: €95.00
CPD HOURS: 3 hours & 15 minutes
Management and Professional
Development Skills by Group Study

Most practitioners have invested substantially in office technology. This seminar will look at ways to ensure you get the best return from your investment. What are the current issues and developments in technology as it applies to a legal practice? How can you use innovative ways to communicate with clients? Is there really such a thing as the "paperless office"? A practical and stimulating afternoon which will encourage new thinking in the use of existing technology and assist you in operating a cost efficient practice.

For registration form, please email v.donnelly@lawsociety.ie, or log onto the events area of the Society's website

PROGRAMME

1.45 Registration

2.00 Chairman's Introduction – Frank Nowlan, Chairman Technology Committee

2.15 Using Technology in Recessionary Times
This session will provide an overview of key issues and developments in the use of technology within the legal sector. The session will include an overview of how a firm can leverage developments in client and practice management systems, accounts and other key applications to improve profitability and cashflow. ***Donal Maher, Outsource Consultants***

3.00 Up in the Clouds – Can cloud computing assist the legal profession?
It looks like cloud computing is here to stay. This session will identify what cloud computing actually consists of and how it is relevant to the legal profession. The session will consider practical issues surrounding cloud computing including licensing arrangements and security issues. ***Tom Heerey, General Counsel, Legal & Corporate Affairs, Microsoft Ireland***

3.45 Coffee

4.00 The "Paperless Office" – Does it really exist?
Is it possible to function as a legal practice with minimal use of paper? A practitioner with significant experience in this area will provide an overview of how he has introduced paperless systems in his practice. The session will provide practical experience in the set up and operation of such systems. ***Laurence Fenelon, Leman Solicitors***

4.45 Online Marketing and the Legal Sector
The session will look at ways in which you can better communicate with clients and promote your practice online. It will include an overview on how to successfully and quickly build a web presence using traditional web tools and blogs or wikis. The session will also consider the potential for use of social networking tools such as Facebook, Twitter and Linked In by the legal profession. ***Martin Molony, Dublin City University***

5.30 Questions & Answers

Ireland could save €120m a year by embracing mediation

At the CEDR launch were *(l to r)*: Eileen Carroll (deputy chief executive, CEDR), Patrick Hanratty SC, Mr Justice Peter Kelly and Aoife Gaughan (Fishburns LLP)

Over €120 million of savings a year in management and legal costs could be made by using alternative dispute resolution more effectively, says Dr Karl Mackie, chief executive of the Centre for Effective Dispute Resolution (CEDR).

Dr Mackie was speaking at the official opening of the Ormond Meeting Rooms in Dublin – the new base of CEDR Ireland – on 18 October. The event was the culmination of a series, where CEDR Ireland officially launched its full panel of 35 mediators, along with new low-cost mediation and arbitration services for legal claims under €125,000 (or £125,000 in Northern Ireland).

Dr Mackie said that the estimate of €120 million a year in savings for the Republic of Ireland was based on CEDR's existing calculations on the current saving to the British economy from the use of commercial mediation. That figure had been extrapolated for the Irish economy. In addition to the management and legal costs savings through mediation rather than litigation, the State would also make "substantial savings by this change in practice".

Guest of honour at the event was Mr Justice Peter Kelly of the High Court, who admitted to being a strong supporter of mediation. "I have become a convert, because I have seen how effective it is as a way of resolving disputes. I have seen what appeared to be the most intractable of disputes being resolved very effectively."

He expressed his desire that mediation would be embraced, not merely by lawyers but by those in other disciplines. Mediation would be useful, he continued, not merely in the context of litigation, but also in other disputes – "in the engineering field, in the architectural field, the accountancy field".

Details on the panel and CEDR's mediation and arbitration services can be found at www.cedrsolve.ie.

New mentor programme

During his inaugural speech to Council in November 2010, Law Society President John Costello spoke about the most vulnerable in the solicitors' profession, including newly qualified solicitors. He spoke about his desire to extend the Society's existing mentor programme to this sector of the legal profession.

"Newly qualified solicitors are extremely vulnerable," he said, "because their career paths start off very rocky in a lot of cases, and so they may need the advice of a mentor quite independent of their firm."

The existing mentor programme, established by the Society in 2001, is a nationwide register of 68 solicitors, over ten years' qualified, willing to act as mentors. It is provided on request to solicitors who intend to set up in practice on their own account, or who have recently established a practice for the first time, who can then make contact with a mentor of their choice.

The president has worked with Society staff to design a new mentor programme to help new solicitors, less than three years' qualified, find direction in relation to career issues, and to build their confidence and knowledge about the legal profession, and to further develop their professional skills.

The goal of the programme is to put new solicitors in touch with more senior colleagues so that they receive the value of their experience. The programme's success depends on experienced solicitors of good standing who are willing to commit their time to volunteer as mentors.

Many senior professionals derive a strong sense of purpose from the mentoring process. Not only does it give satisfaction in terms of passing on their hard-won knowledge and experience, but mentoring can provide more seasoned practitioners with insights from their younger colleagues about the future direction of the legal profession.

Before solicitors' names can be placed on the register of mentors, they must complete an induction training programme, through e-learning. This helps to ensure that mentors have the relevant knowledge, skills and competencies to effectively mentor new solicitors. CPD credits are awarded for successful completion of induction training.

Once the Society has established a database of trained mentors, it will invite new solicitors to apply to be matched with a mentor. Once matched, the mentor and new solicitor will work together, over a 12-month period, to confidentially discuss issues through face-to-face meetings, telephone and email.

Full details, including the guide to the mentor support programme, and the mentor application form and agreement are available on the members' area, in the 'support services' section, at www.lawsociety.ie.

A solicitor who wishes to be considered as a mentor should complete the mentor application form and agreement, and submit it to Louise Campbell, support services executive, Law Society of Ireland, Blackhall Place, Dublin 7; tel: 01 881 5712, email: l.campbell@lawsociety.ie.

Second bite of spaghetti

Readers of the *Gazette's* cover story in October, 'Spaghetti Junction', will be interested to know that all the *Road Traffic Acts* have been recently restated (administratively consolidated). They are available as pre-certified restatements on the Law Reform Commission's website.

Alma Clissmann, project manager for statute law restatement at the Law Reform Commission, has contacted the *Gazette* to say that, when these restatements have been certified by the Attorney General, they will have standing as *prima facie* statements of the law under the *Statute Law (Restatement) Act 2002* and be entitled to judicial notice. They will then be published on the electronic *Irish Statute Book* website.

This goes some way towards answering Robert Pierse's call for consolidation of the *Road Traffic Acts 1961-2011* (50 years' worth of legislation) – obviously a very good idea!

Gradual recovery in legal recruitment in third quarter of 2011

The legal recruitment market continued to recover gradually during the third quarter of 2011, according to recruitment agency Robert Walters, which has just published its market update. Its findings in the 'legal and compliance' sector indicate that recruitment within the financial services sector increased slightly, with asset management and fund administration companies adding to their in-house teams. Larger financial institutions sought senior candidates with strong experience in restructuring and insolvency. Successful candidates came from established in-house positions or top-tier private practices. Demand for candidates with experience in funds law remained steady. There was an increase in financial services clients seeking qualified solicitors with compliance/regulatory experience.

Commercial in-house positions remained highly sought after in the third quarter – though few roles were advertised. A minimum of six years' post-qualification experience (PQE) for candidates with both private practice and in-house experience were essential in order to be considered, though some exceptional candidates with less

experience were hired.

Trends show that a minimum of three interview stages were observed for the majority of roles as more stakeholders became involved. As businesses gained budget approval to recruit, companies focused on permanent rather than contract hires.

Competition at the newly-qualified to three years' PQE level remained high, though corresponding salaries remained subdued.

Compliance recruitment activity occurred primarily within life and pensions, insurance, fund administration, asset management and advisory firms.

During the third quarter, a number of 'approved person status' positions were created, predominantly within the cross-border life and general insurance sectors. For the most part, these were a result of *Solvency II* requirements and overall increased regulatory supervision. Hiring in the banking sector remained relatively stagnant, although a number of contract compliance roles were created due to the implementation of regulatory projects.

A number of anti-money-laundering specialist roles were advertised, although these remained concentrated in international organisations with a multi-jurisdictional remit.

Within the company secretarial market, there was a steady increase of permanent and contract positions in both practice and funds service providers.

There was a slowdown in compliance recruitment processes in August as many key decision makers took annual leave, with the pace of short-listing and interviewing being notably slower than previous quarters. Counter-offers remained prevalent at senior levels as organisations sought to retain their most experienced staff. For contract recruitment in compliance, there was an increase in the number of completion bonuses being offered as part of the retention package.

Salary increases offered by new employers are described as "largely conservative". At the junior end of the spectrum, candidates moving roles secured marginal increases in basic salary, with the main focus being on longer-term career opportunities. At the mid level (five to eight years' PQE), candidates maintained slightly stronger bargaining powers as the emphasis on industry-specific knowledge remained key.

ROLE	PERMANENT SALARY p/a €
LEGAL – PRIVATE PRACTICE	
10 yrs' PQE	€110 - 150k
5 - 8 yrs' PQE	€75 - 110k
3 - 5 yrs' PQE	€60 - 70k
1 - 3 yrs' PQE	€45 - 60k
IN-HOUSE – BANKING AND FINANCIAL SERVICES	
10 yrs' PQE	€100 - 150k
5 - 8 yrs' PQE	€70 - 100k
3 - 5 yrs' PQE	€60 - 70k
1 - 3 yrs' PQE	€45 - 60k
IN-HOUSE – COMMERCE AND INDUSTRY	
10 yrs' PQE	€90 - 140k
5 - 8 yrs' PQE	€70 - 90k
3 - 5 yrs' PQE	€65 - 75k
1 - 3 yrs' PQE	€45 - 65k
COMPLIANCE	
Head of compliance	€110 - 130k+
Senior compliance manager/compliance officer (5-8 yrs' exp)	€75 - 95k+
Compliance manager/compliance officer (3-5 yrs' exp)	€40 - 75k
Compliance assistant (1-3 yrs' exp)	€28 - 42k
Company secretarial	
ICSA qualified (5+ yrs' exp)	€60k+
ICSA qualified (3-5 yrs' exp)	€35 - 60k
ICSA qualified (1-3 yrs' exp)	€25 - 40k

Late bloomers for autumn

The Law Society's autumn 2011 diploma programme is well underway. It's not too late, however, to sign up for the course of your choice. November courses include the Diploma in Trust and Estate Planning, which starts on 12 November. The diploma is offered jointly with the Society of Trust and Estate Practitioners and will assist practitioners in advising clients on all aspects of the creation of wills, the operation of trusts, associated tax implications and overall estate planning for clients.

The Certificate in Criminal Litigation starts on 19 November. This will provide in-depth exposure and practical knowledge on some of the main areas of criminal litigation in Ireland. It will focus on the 'typical' life cycle of a criminal case, from an analysis of the basic criminal law of detention, custody and attendance at garda stations, through to the procedural requirements of running cases in the District and other courts.

For further information on the full autumn 2011 programme, including course fees, application process and entry criteria, visit www.lawsociety.ie/diplomas, email: diplomateam@lawsociety.ie, or phone: 01 672 4802.

Lawyer app offer for DSBA members

Law Society Council member John Glynn has made a leap forward in 'app' technology and is offering his expertise to Dublin-based colleagues for next to nothing. A number of months ago, John developed an app for personal use, but due to demand, customised it for some colleagues.

John claims to be able to have any firm up and running with their own app "within ten minutes". Initially, he is making the app available solely to members of the Dublin Solicitors' Bar Association (DSBA) – free of charge.

To learn more about the app, DSBA members can register online by visiting the website www.lawyerapps.co. If this process seems too daunting, members are invited to contact Eoin Glynn at 1800 236 347. He will do the necessary administrative work to get your app up and running.

John describes the benefits of his app as follows:

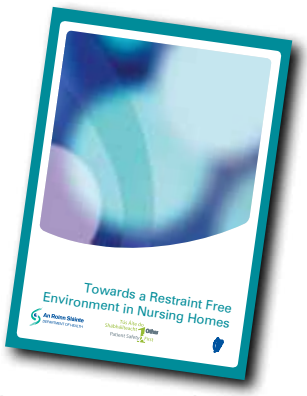
- The participating solicitor is given a code that he can give to clients, or which can be used in marketing material,
- It's free to clients to download,
- Information on accidents can be recorded via a user-friendly interface,
- Photographs at the scene of an accident can be easily included,
- Sound recordings can be made,
- Clients' records of accident events can be emailed directly to the participating solicitor, who then receives instructions so that a file can be opened,
- This user-friendly interface can have positive benefits for the client/solicitor relationship.

Are there any catches? Only one – while a participating firm is not required to include their logo, there is a cost of €75 (plus VAT) for those who do.

Restraint-free policy for nursing homes

The Government has published a new national policy to eliminate the use of restraint in nursing homes, except for "exceptional emergency situations where it is absolutely necessary". The document, which is titled *Towards a Restraint-free Environment in Nursing Homes*, was completed following public consultation.

One of the key objectives in publishing the document is "to ensure the dignity, safety and well-being of older people in residential care". The policy's fundamental aim is to eliminate the use of restraint. The Minister for State for Older People, Kathleen Lynch, said: "Where the application of an episode of restraint



is deemed necessary, it should only be applied in accordance with the law and best professional practice."

Copies are being circulated to the person in charge of each nursing home. It can be downloaded at www.dohc.ie/publications.

Life outside legal practice

MARY MULCHRONE
Parenting support

Mary qualified in 1985 and specialised in plaintiff litigation. She enjoyed this work and had good success in it for 20 years.

A mother of six children, Mary became increasingly interested in psychology through parenting. While still working as a solicitor, Mary attended courses in child and adult psychology and also in conflict resolution.

A two-year certificate course in counselling followed. Then, in 2005, Mary completed a diploma in parent mentoring, with clinical psychologist Dr Tony Humphreys. She followed this with a higher diploma in adult relationship studies.

Mary provides a ten-week parenting and adult relationship certificate course to groups of 12 to 14 people at a time. Hundreds of people have completed these courses to date. She also does workshops and one-on-one mentoring sessions.

Mary says: "The best way I can help children is through helping parents."

DEREK GATELY
eBrief

eBrief is a service that provides lawyers with a significant opportunity to reduce costs, while also improving effectiveness in litigation work, says solicitor Derek Gately.

Derek set up eBrief in early 2010, in partnership with a technology expert. He also set up in a legal partnership the same year and has been busily involved in running both businesses since.

eBrief is a secure, encrypted facility that facilitates the storing and sharing of briefs. It delivers savings through reduced postage, courier and storage costs.

For an annual license fee of €250 plus VAT, eBrief users get instant access – anywhere, anytime – to an online store of their briefs, secured with latest technology.

Through eBrief, the client can share partial or complete briefs with other users. The service also provides a diary facility to track and inform lawyers about how cases are progressing.

NOELINE BLACKWELL
FLAC

Noeline set up a legal firm in Dublin and successfully ran it for over 20 years, all the time increasingly focusing on family law and refugee and immigration rights.

At the same time, she became increasingly involved as a volunteer in human rights organisations. Noeline served on Amnesty International's board for six years – including two years as chairperson – and was also part of the International Human Rights Trust.

For the last decade, Noeline has served on the boards of the Immigrant Council of Ireland and Front Line – an organisation that seeks to protect defenders of human rights who are at risk around the world.

The natural progression for Noeline was to take on a more central involvement in a human rights organisation. In 2005, she was appointed to the full time post of director general with FLAC, the organisation working to promote equal access to justice in Ireland.

Electronic discovery doesn't have to be expensive

Gathering digital evidence through the discovery process has a reputation for being expensive – but that doesn't have to be the case, a recent conference heard. 'E-discovery Ireland 2011' which was held in Dublin on 6 October, is the first such event in this country to look at the growing area of digital evidence in civil and criminal litigation, *writes Gordon Smyth*. The event was organised by Cernam, a Dublin-based start-up technology company that specialises in online evidence and investigations.

The conference heard how the massive volumes of electronic documents that could potentially come under e-discovery have created the impression that the process is a costly one. In the opening address, Mr Justice Frank Clarke spoke of the risk that overly broad discovery "becomes so expensive that it becomes a barrier to access to the courts". The potential return from taking such a case also needed to be considered, he said.

Barrister Ronan Lupton pointed to *EMI v Eircom*, a case about internet users who had been illegally downloading music. "The amount spent on discovery was €700,000 and the amount recovered was €70,000," he said.

Liam Kennedy, head of dispute resolution at A&L Goodbody, put the issue in context, saying that there are very few cases that are not influenced by material produced in discovery. "We create so much digital information: email, BlackBerry, text messages, blogs and Twitter … all of it constitutes a record. All of it could be caught within the discovery net," he said. Whereas people tended to think before putting pen to paper, they were usually less guarded when writing electronically. "That can be very significant in litigation," Kennedy added.

Lying eyes

Examples abound. What became known as the 'Lying Eyes' case against Sharon Collins hinged on evidence recovered from computers to prove that she had used that alias to send emails soliciting a hitman to murder her husband and his two sons.

In the civil arena, the 'pyrite' case has become a watchword for how not to handle e-discovery, where arguments about the process took months, in a case that took almost two-and-a-half years to be resolved. The case arose from a dispute over structural defects in north Dublin houses, between housing developer Menolly Homes and Irish Asphalt, part of the Lagan Group.

"The *Lagan Holdings* case shows the dangers of going into e-discovery badly prepared," Kennedy said. While there are provisions to ask the court for a variation on a discovery order, it's better to have this option in reserve than to be relying on it, he added. "Best practice is to get it right at the start."

That involves identifying who the most important custodians of the data are – and the range of data to be included, such as what email correspondence needs to be included in the order? The process should also look to narrow down the search terms and identify which key words are to be included and which can be excluded. Kennedy advised strongly against taking shortcuts. "They result in long delays, huge prejudice and huge expense," he said.

Liam Kennedy, head of dispute resolution at A&L Goodbody

Consultants Ernst & Young produced a report earlier this year showing the extent of electronic evidence use in Ireland. It found that electronic evidence is most used by litigation practitioners, then by competition and, finally, by employment lawyers.

The report surveyed solicitors at the 14 leading law firms in Ireland. It found that every case involving digital evidence relied on email, closely followed by laptop and desktop PCs (95.2%). Shared file servers are investigated in 85.7% of cases. Just two-thirds of cases involve a mobile device like a BlackBerry or iPhone, and backup systems containing historical data are only checked 61.9% of the time.

There is still a tendency to print out electronic documents, cited by 33% of respondents, which makes them far harder to search and filter. This makes reviews less efficient, Ernst & Young said. Most reviews of digital evidence don't use filtering to reduce the number of documents to be reviewed, which consequently pushes up the cost and time involved.

Ernst & Young also downplayed the perceived cost of e-discovery and IT forensics, and dispelled the notion that these techniques are only appropriate in very large cases. "That, in my experience, is definitely not the case," said Simon Collins, a senior manager at the firm's fraud investigation and dispute services team. The hardware and software needed to run the e-discovery process is not expensive, and using keyword filters smartly can substantially reduce the number of documents that need to be reviewed, he said.

"The cost of the technology to do efficient search and review has come down a lot in recent years: 50% of cases can be done on a laptop with an annual licence for the software. If you get the right tools and technology for each case, it can save you money," Collins said. "For law firms, being on top of this issue can be a competitive advantage if you can tell a client: 'I can cut your discovery costs in half by taking a structured approach'."

See the next issue of the Gazette *for an in-depth feature on this topic.*

NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

Child Care (Amendment) Act 2011

FAMILY LAW COMMITTEE

The Family Law Committee would like to draw the attention of practitioners to the recent passing of the *Child Care (Amendment) Act 2011*.

The primary purpose of the 2011 act is to provide a legislative basis for the making of special-care orders to allow for the care of children by the HSE in special-care units. Special-care orders are designed to replace the practice that had arisen whereby the High Court made orders for the detention of troubled children in secure residential accommodation. Those orders were based on the exercise by the High Court of what the court viewed as its inherent jurisdiction in cases where detention was viewed as the only way to provide protection and care for certain children. The 2011 act essentially provides a statutory framework for such High Court orders and includes transitional provisions in respect of previous High Court orders.

Special-care orders may be made by the High Court in respect of a child who has attained the age of 11 years and whose behaviour requires that special care, as defined in the 2011 act, be provided. The HSE has an obligation to provide special-care units for the provision of this specialised care. These units are defined as premises, comprising of secure residential accommodation, where care is provided to children the subject of special care, or interim special-care, orders.

The act grants specific powers to the High Court to make orders and directions to the gardaí for the execution of special-care orders, in particular in relation to searching for, locating and taking children into special care who are the subject of interim special-care or special-care orders. The 2011 act also provides for criminal offences for a refusal to comply with such orders, in addition to the court's inherent contempt jurisdiction.

The 2011 act also abolishes the *Children Acts* Advisory Board and provides for the transfer of the rights and liabilities of the board to the Minister for Health. The 2011 act also makes certain limited amendments to the *Adoption Act 2010*.

In-House and Public Sector Committee Annual Conference

IN-HOUSE AND PUBLIC SECTOR COMMITTEE

The In-House and Public Sector Committee's annual conference will take place on Friday 25 November at the Law Society's headquarters in Blackhall Place. This event will provide invaluable guidance and networking opportunities for all solicitors, including those working in-house in private industry and in the public sector.

The committee has selected speakers with extensive practical experience from a variety of industries, including the financial, sports and leisure, public relations and regulatory sectors. Topics covered will include:

- 'Corporate governance code and beyond' (speaker: Kevin Doherty, director of Compliance Ireland),
- 'Influencing outcomes – reputation strategies and tactics' (speaker: John Keilthy, partner at ReputationInc),
- 'Life as head of legal affairs with the International Rugby Board' (speaker: Susan Ahern, head of legal affairs, IRB),
- 'How to deal with a Central Bank inspection – the dos and don'ts' (speaker: Geraldine McAlinden, solicitor, Central Bank),
- 'Regulation – the implications for the in-house and public sector solicitor' (speaker: John Elliot, Registrar of Solicitors and director of regulation, Law Society of Ireland).

The conference will take place from 2pm to 5.30pm, with CPD hours comprising two management and professional development skills, plus one regulatory matters (by group study). The fee is €180 per person (with a discounted fee of €135 per person for Skillnet/public sector subscriptions only). Prompt booking is essential in order to secure your place, as this event was oversubscribed last year.

Full details, including booking form, are available on the LSPT pages of the Law Society's website. Enquiries can be directed to the Law Society Professional Training team, Blackhall Place, Dublin 7; tel: 01 881 5727, email: lspt@lawsociety.ie.

Update your *Law Directory 2012* details

An email or letter was sent to all members of the Society on 27 October 2011, inviting them to update their solicitor details for the *Law Directory 2012*. The email and letter highlighted that the following details will not be published unless you specifically request the Society to do so:

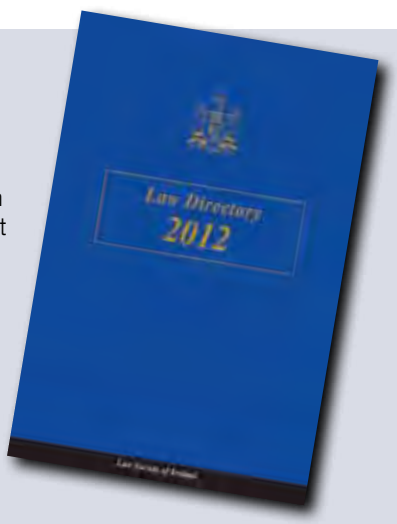
- **Direct office telephone number, and/or**
- **Mobile number.**

If you wish to have these contact details published, or make any other changes, go to www.lawsociety.ie/lawdirectory2012 (login required). If you received a letter, please amend your details on it and return same. You can also access the online form through the 'News' section of the Society's website.

Any previous notification to the Society in relation to publishing this data will not be taken into account for the publication of the *Law Directory 2012*.

The deadline for submitting amendments is **Monday 14 November 2011.**

The *Law Directory 2012* will only include solicitors who have a practising certificate and/or hold membership for 2012. Any change to your practising status that is known to the Society at the time of going to print will be reflected in your *Law Directory 2012* entry.



'NOT EVEN ZIMBABWE HAS A MODEL LIKE THIS'

It's not just the legal profession that has grave reservations about the model for regulation of the profession proposed in the *Legal Services Regulation Bill 2011* – as the *Gazette* finds out

'Independence of the legal profession is under threat' was the headline in the opinion piece in the *Irish Independent* on 14 October 2011, written by that paper's legal editor, Dearbhail McDonald. "This is not just about lawyers and their fees," she wrote. "The public good requires lawyers and judges who can act without fear of political retribution."

The lead editorial in *The Irish Times* the following day opined: "There are justified misgivings about the model for regulation chosen by the minister. This is not the model recommended by the Competition Authority, nor one found in other jurisdictions, where there is normally a buffer between the executive and the legal profession to guarantee the independence of the regulatory machinery."

It is not just the legal profession, therefore, that has grave reservations about the model for regulation of the profession, proposed in the *Legal Services Regulation Bill 2011*, the text of which was published by the Minister for Justice, Equality and Defence, Alan Shatter, on 12 October 2011.

Ken Murphy: "An independent legal profession is a hallmark of democracy"

International concern

Concern was felt internationally, with the result that the leadership of the CCBE (the umbrella body for all the national bars and law societies of Europe) raised the issue at a meeting in Brussels with the EU Commissioner for Justice, Viviane Reding.

The regulatory model proposed in the bill would almost certainly be unconstitutional in Canada, as one senior Canadian lawyer pointed out. He quoted the Supreme Court of Canada, which said in a decision in 1982: "The independence of the bar from the state in all its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of the members of the law profession by the state must, in so far as human ingenuity can so design, be free from state interference."

Law Society President John Costello wrote to all solicitors on 19 October 2011, following the special meeting of the Council in relation to the bill, saying: "We believe that the regulatory model for the legal profession proposed in the bill is unknown in any democracy and threatens the independence of the legal profession, which is a hallmark of any free society."

> ***"This is independent of the profession, certainly – but it is not independent of Government – and our concern is that this new Authority will be a glove puppet of the Minister for Justice, and that's not in the public interest"***

The Society's director general, Ken Murphy, has been constantly engaged with the broadcast and print media, articulating the Society's concerns about the bill – particularly in relation to the potential undermining of the citizen's right to obtain advice from an independent legal profession, and, also, the likelihood of greatly excessive and uncontrolled cost in the regulatory model proposed.

In studio with Brian Dobson on RTÉ's *Six One News* on 4 October 2011, immediately following the minister's publication of his news release about the bill, the director general said: "I'd just like to put on the record that, contrary to what people may think or sometimes allege, the legal profession, the solicitors' profession is by no means opposed to all change, for example, the changes which are being introduced now to make legal costs – the costs of going to court – much more transparent and predictable and modern. When the report recommending that came out several years ago, we welcomed it. We still welcome it – subject to sight of the details."

Unprecedented

However, he continued, "In the Competition Authority's report in 2006, they recommended a particular type of Legal Services Authority – an independent regulator. The minister has chosen something completely different, something really quite fundamentally different without any consultation or explanation.

"The legal profession in any free, democratic society is, to some extent, independent of government for the reason that people can get advice which they know is independent of the Government. This model, which the minister is introducing, is unprecedented in North America, anywhere in the EU, anywhere in Australia. We have concerns about it for this reason."

On RTÉ's *Prime Time* on 13 October 2011, Murphy told the interviewer, Donagh Diamond: "There is no evidence whatsoever that the manner in

which complaints are handled will have the least effect on legal fees. There is no evidence for that, and I don't think that that's even asserted by the Competition Authority. I would say that this model is something that people should be concerned about. The legal profession stands in the gap between the relative powerlessness of the individual and the overwhelming power of the state. The individual must have confidence that there is not improper influence coming from the state on them."

On *The Frontline* programme on RTÉ television on 17 October 2011, in a programme in which Minister Shatter was also a contributor, the director general said: "To call something independent doesn't make it independent, and all of the indications are – we could go through them again: all of the powers of the minister, all of the powers of the Government in relation this Authority – suggest to me, in fact make it clear, that the ultimate decision-maker in this entire system will be the Minister for Justice – not the Authority."

Effective sanction

Challenged by the presenter, Pat Kenny, on whether he accepted that lack of effective sanction from the Law Society over the years had led to this state of affairs, Murphy responded: "First of all Pat, that's your assertion – that's not true. There has been plenty of effective sanction over the years and, in fact, even currently, the complaints-handling committee has a lay majority.

"But we are now talking about a model being put in place for the regulation of the profession that has no precedent in any democratic system across the world. I'm involved with a group of chief executives of law societies all over the world. I sent this model out to 80 international jurisdictions. Nowhere, frankly, not even Zimbabwe, has a model like this."

He continued: "This is a model of regulation of the profession which, as I say, is unprecedented in any democracy. It was seriously considered and analysed in a report, the *Clementi Report*, in England and Wales and it was rejected. And one of the reasons it was rejected was because it was so inimical to an independent legal profession. This is independent of the profession, certainly – but it is not independent of Government – and our concern is that this new authority will be a glove puppet of the Minister for Justice, and that's not in the public interest."

"The independence of the bar from the state in all its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of the members of the law profession by the state must, in so far as human ingenuity can so design, be free from state interference"

Another voice of concern in relation to the proposed changes was that of the President of the American Bar Association, Bill Robinson, who was in Dublin for the Fall Meeting of the International Law Section of the 400,000-strong lawyer association. Mr Robinson stated to *The Irish Times*: "When multinational corporations move around the world, they are looking for stability and predictability, in the rule of law as well as operational manufacturing facilities.

"They have to be sure of independent counsel who are not controlled by government, not conflicted, not afraid of standing up to government when issues arise – as they will, for example, with employment law, environmental law, tax law, immigration law."

According to the ABA president, any perceived reduction of the independence of the legal profession could have a negative impact on investment by multinational corporations. G

IRELAND CELEBRATES 'MOST SUCCESSFUL' ABA MEETING

The first visit to Dublin of the American Bar Association's Section of International Law took place from 11 to 14 October. Over 1,100 delegates attended from 60 countries – the largest turnout ever for a Fall Meeting, writes Micheál Grace

Micheál Grace is a senior associate in the financial services department of Mason Hayes & Curran

The American Bar Association (ABA) is the largest voluntary-membership professional organisation in the world, with over 400,000 members. Its Section of International Law boasts about 26,000 global members, including many from Ireland.

Proceedings began on 10 October with a very successful Belfast module, which culminated with a dinner at Stormont Castle addressed by First Minister Peter Robinson. During the days that followed, conference delegates were based at the National Convention Centre in Dublin, where more than 70 CLE (CPD) accredited programmes were on offer, as well as numerous social and networking events each evening.

The programme included topics on cutting-edge issues in international law, spanning five fields, including corporate/transactional, dispute resolution/litigation, public international law/rule of law, regulatory, and young lawyers.

Highlights

One of the highlights was the opening plenary session with President Mary McAleese, who delivered the keynote speech to a packed auditorium on 11 October. Later in the afternoon, Mary Robinson, former President of Ireland and former UN high commissioner for human rights, addressed a lunchtime gathering on issues surrounding ethical globalisation.

> ***"Taoiseach Enda Kenny spoke of the role that Irish emigrants had to play in the development of the United States and reminded them of President O'Bama's Irish lineage!"***

At lunchtime on Thursday, the main speaker was Supreme Court judge and former Chief Justice John L Murray. Friday's lunch saw Kingsley Aikens, former president and CEO of the worldwide Ireland Funds, provide a light-hearted yet informative exploration of what Ireland needs to do to exploit its diaspora for the country's benefit, and the importance of Ireland reconnecting with all those who claim Irish ancestry or heritage.

At the end of each day, social events were organised to provide ample networking opportunities for delegates. On Tuesday night, the offices of Matheson Ormsby Prentice hosted a 'welcome to Dublin' reception, followed on Wednesday by the section's committees' reception and dinner at the Mansion House.

The social highlight of the week, however, was the reception and dinner held at the Guinness Storehouse, which was addressed by Taoiseach Enda Kenny. In step with what all Irish attendees were stressing to their international colleagues throughout the week, Mr Kenny noted that Ireland was "open for business" and encouraged the invited guests to return to Ireland again and to sample all that the country has to offer. He spoke of the role that Irish emigrants had to play in the development of the United States and reminded them of President *O'Bama's* Irish lineage! The closing reception on Friday night took place in the beautiful rotunda at City Hall,

The co-chairs at the Fall Meeting met the President of Ireland *(l to r)*: John Costello (Law Society President), Kieran Cowhey, Gabrielle Buckley, Michael Burke (section chair), President Mary McAleese, Mark O'Sullivan, Tony Burke and Elisa Kearney

PIC: ERIC LUKE, COURTESY THE IRISH TIMES

"One of the highlights was the opening plenary session with President Mary McAleese, who delivered the keynote speech to a packed auditorium on 11 October"

before the after-hours' reception in Buck Whaley's brought the curtain down on a thoroughly successful Fall Meeting.

Do no harm

The presence of the ABA in Ireland coincided with the publication of the *Legal Services Regulation Bill 2011*. Sharing the views of most solicitors in Ireland, ABA President Bill Robinson III was quick to comment: "As a matter of core constitutional democratic values, do no harm to the independence of the profession and do no harm to the independence of the judiciary. History has shown these are in the best interests of the public for its protection. Human rights were often advanced against what was, at the time, popular opinion." He continued: "Where will we go if not to independent courts – which have to be properly funded – and an independent legal profession?"

At one of the Friday sessions, Law Society President John Costello noted his appreciation that the ABA supported the Law Society's views in respect of the *Legal Services Bill*, and the impact it could have on the profession as a whole.

Organising an event of this magnitude required significant input from a large number of individuals from around the world. The section chair for 2011-2012, Michael E Burke, was its chief planner, ably assisted by five meeting co-chairs: Gabrielle M Buckley (Vedder Price PC, Chicago), Tony Burke (Mason Hayes & Curran), Kieran Cowhey (Dillon Eustace), Elisa Kearney (Davies Ward Phillips & Vineberg LLP, Toronto) and Mark O'Sullivan (Matheson Ormsby Prentice).

Commemorative plaque

At Friday night's closing ceremony in City Hall, Michael presented each of the co-chairs with a special commemorative plaque, marking their outstanding contribution to what had been a hugely successful week. Praise was also lavished on the International Practice Boot Camp – a daylong programme targeted at younger practitioners. This was co-chaired by Russell Dombrow (Legal Aid Society of Mid-New York Inc), Nancy H Matos (Baker & McKenzie, Amsterdam) and Paul Kennedy (Dillon Eustace), and me.

Apart from the work of the section's full-time staff (many of whom decamped to Dublin for the week), the section's largest ever volunteer steering/planning committee for a seasonal meeting was established, with representatives from many Irish firms and members of the Law Library taking part at various levels. Each contributor should be rightly proud of their involvement in what most delegates considered to have been the most successful ABA seasonal meeting ever. G

'FACE-BOOKED': ANTI-SOCIAL NETWORKING AND THE LAW

A landmark prosecution of a man accused of inciting hatred against the Traveller community on Facebook was the first in Ireland to address incitement to hatred online. Its dismissal calls into question the efficacy of our criminal law in dealing with online hate speech, argues Siobhan Cummiskey

Siobhán Cummiskey is managing solicitor with the Irish Traveller Movement Independent Law Centre

A landmark prosecution under the *Prohibition of Incitement to Hatred Act 1989* of a man accused of inciting hatred against the Traveller community on Facebook, by creating a page entitled 'Promote the Use of Knacker Babies for Bait', was dismissed at Killarney District Court on 30 September 2011. The prosecution was the first in Ireland to address incitement to hatred online. Its dismissal calls into question the efficacy of our criminal law in dealing with online hate speech.

In October, just two weeks subsequent to the failed prosecution in Killarney, a football fan was handed an eight-month prison sentence at Glasgow Sheriff Court for religiously and racially motivated comments he posted on a Facebook page, entitled: 'Neil Lennon [manager of Celtic football team] Should Be Banned'. The comments he posted included: "Hope they all die. Simple. Catholic scumbags ha ha" and "Proud to hate Fenian tattie farmers". In handing down the sentence, the sheriff stated: "The use of modern communications to spread or support abuse or target groups of people because of their ethnic or racial background has no place in our modern society."

Last year, a British court found 'tweeter' and trainee accountant Paul Chambers guilty of sending a "menacing message" for posting the following on Twitter in anticipation of the cancellation of his flight: "Robin Hood airport is closed. You've got a week and a bit to get your s*** together, otherwise I'm blowing the airport sky high!!"

These prosecutions indicate quite clearly that comments and messages posted to social networking sites are subject to the criminal law.

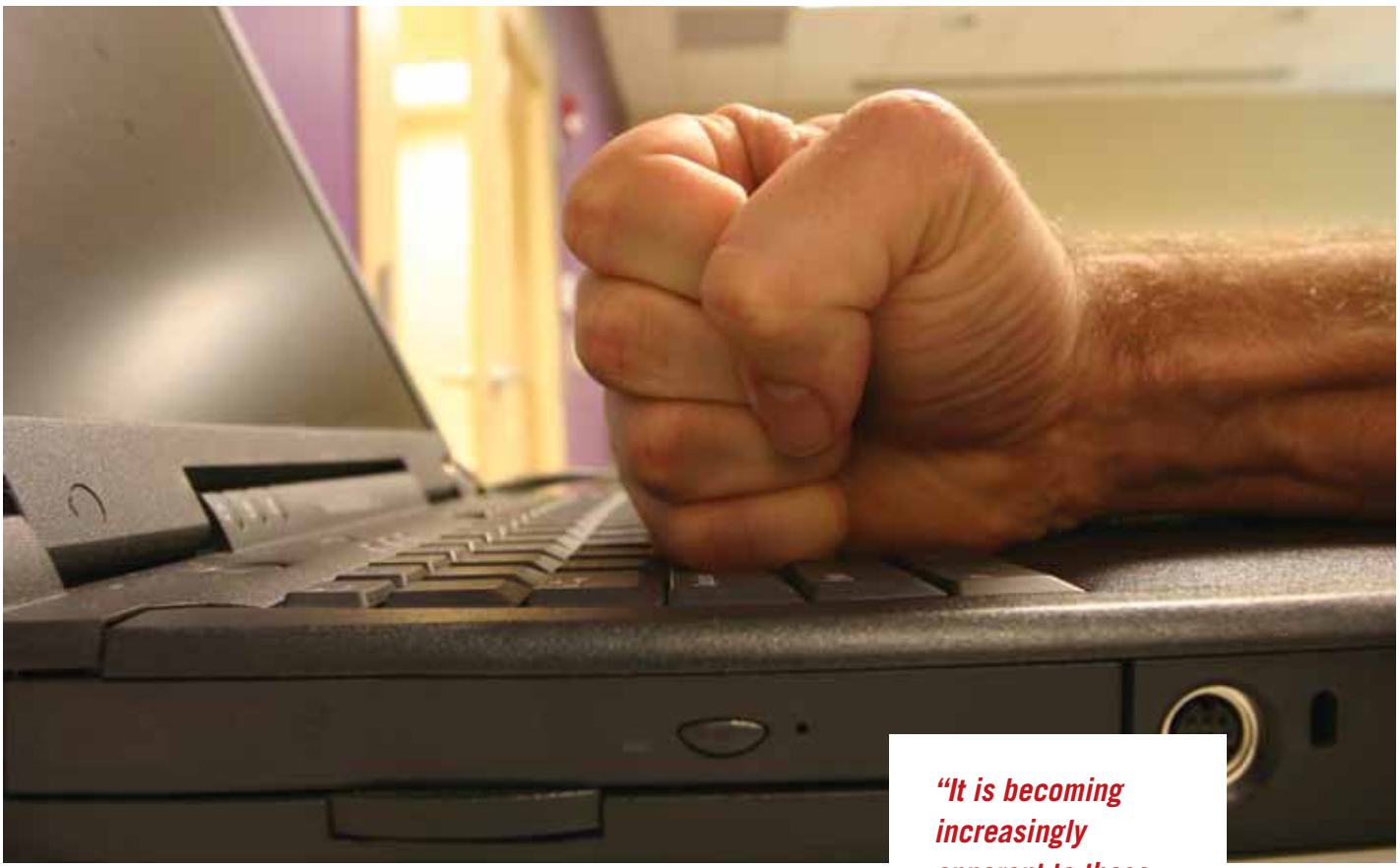
'Promote the Use of Knacker Babies for Bait'

Killarney District Court heard that the accused set up the Facebook page on a date between October and November 2009. Under 'Information/description' on the page, he wrote: "Instead of using animals for shark bait, they could use knack babys [sic]. Also as food at feeding time in the zoo. And for testing new drugs and viruses." The accused sent the page to three of his friends and, eventually, the page had 644 members.

The court heard evidence from the accused that he set up the page after a negative encounter with a group of Travellers, who became aggressive after he refused to serve them after hours in the pub in which he worked. The judge indicated that this was an important element of the defence regarding intention to incite hatred, though the court pointed out that it had not been verified by gardaí. The court also heard testimony from two witnesses from the Traveller community living locally, who told the court that they felt frightened for themselves and their children after coming across the page and reported it to their local garda station. They stated that they had no evidence that they had been subjected to any threat or hate as a result of the page.

Targeting hate speech

Modern international human rights law sought to target hate speech in the aftermath of the Holocaust. The



enactment of Ireland's hate speech legislation arose as a direct result of Ireland's ratification of the *International Covenant on Civil and Political Rights* and the *International Convention on the Elimination of All Forms of Racial Discrimination*. Both conventions require member states to prohibit hate speech by law.

Section 2(1) of the *Prohibition of Incitement to Hatred Act 1989* states: "It shall be an offence for a person to publish/distribute/display written material … if the written material is threatening, abusive or insulting and [is] intended or, having regard to all the circumstances, [is] likely to stir up hatred."

According to the act: "'hatred' means hatred against a group of persons in the State … on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation".

There were, therefore, three hurdles for the prosecution to clear in this case, namely that:

- The material had been published,
- It was threatening, abusive or insulting to the Traveller community, and
- It was intended or likely to stir up hatred against the Traveller community.

It is the third hurdle that the prosecution failed to overcome in this case.

'Incitement to hatred'

Remarkably, the phrase 'incitement to hatred' is used in the title of the act but does not appear in the body of the act, which instead uses the words 'stir up hatred'. Neither of these phrases is defined in the act. Furthermore, as 'hatred' is not a standalone crime, this offence is a curious animal, in that it criminalises the incitement of a non-criminal wrong. It thus falls outside of the more familiar definition of the general inchoate offence of 'incitement' (inciting or encouraging a crime).

In dismissing the case, the judge ruled that there was reasonable doubt that there was an intention to incite hatred towards members of the Traveller community. The court relied on the fact that the accused had not added to, or commented on, the page after creating it in deciding that the remarks were a 'once-off'. The court concluded that the once-off insertion of material could not be deemed to be an incitement to hatred.

It may be argued that this analysis neglects to recognise the ubiquitous nature of online hate speech. While it may have been a once-off insertion, the material endured for several months. While the page may have been sent to just three people, the page was set up under 'privacy type' as 'open: all content is public'. It was therefore made open to hundreds of millions of people to view. It is unknown how many viewed the page. What is known is that 644 people joined the page by becoming members of it. In other words, people responded and contributed to the material published on the page by the accused. One such contribution read: "They should all be shot in there [sic] f***ing ugly inbred faces".

> ***"It is becoming increasingly apparent to those who use these sites that they inhabit the real, and not the virtual world, and are subject to real laws – both civil and criminal"***

'Likely to stir up hatred'

While the 'likely to stir up' aspect of the offence has been criticised as being too broad, it does not appear to stray from the well-settled concept

of 'recklessness' in criminal law. Indeed, other common law jurisdictions have adopted similar definitions of the offence. For example, under the Queensland *Anti-Discrimination Amendment Act 2001*, it is an offence to "knowingly or recklessly incite hatred towards [protected groups]". Other jurisdictions, on the other hand, have rejected the 'recklessness/likely' element of the offence. Following much controversy on the matter in Britain, the inclusion of the wording 'possibility of incitement' in the *Racial and Religious Hatred Bill* was rejected by the House of Commons in 2006, and the law, as enacted, requires an intention to incite in order to secure a prosecution.

The extremely broad reach of the Facebook page at issue in this case, which remained openly accessible to anyone worldwide for the several months of its existence, cannot be overstated in the context of the 'likely to stir up' test. It is also clear that, given the requirement of the offence that the publication is 'likely' to stir up hatred – not that it did stir up hatred – it would appear that no weight should be attached, in this context, to the evidence of the two Traveller witnesses that the material did not result in hatred or threats against the Traveller community.

The jurisdiction of England and Wales updated its laws relating to hate speech with the *Racial and Religious Hatred Act 2006*. Further legislation aimed at behaviour deemed to "incite religious, racial or other forms of hatred" in and around football grounds, and on the internet, is also currently making its way through the Scottish parliament. In contrast – and despite announcing a review of the law in September 2000 – Ireland's legislation has not been reviewed or updated since its enactment 20 years ago.

> **"Remarkably, the phrase 'incitement to hatred' is used in the title of the act but does not appear in the body of the act, which instead uses the words 'stir up hatred'. Neither of these phrases is defined in the act"**

Ireland recently informed the first meeting of the Expert Group on Council Framework Decision 2008/913/JHA, on combating certain forms and expressions of racism and xenophobia by means of criminal law (on 22 February 2010 in Brussels), that its legislation protecting minority groups having hatred incited against them was more than 20 years in existence, but was still sufficiently robust to continue to provide that protection. The government went on to state that, following a detailed examination of Irish legislation, Ireland is satisfied that it is in compliance with the framework decision by virtue of the act.

It seems that we have just started to prise open the Pandora's Box of troubles that can arise from comments posted on social networking sites. It is becoming increasingly apparent to those who use these sites that they inhabit the real, and not the virtual world, and that the comments posted on them are subject to real laws – both civil and criminal. Despite the assertions of Government, and in light of this recent failed prosecution under the *Prohibition of Incitement to Hatred Act*, it is clear that the capacity of our hate-speech laws to deal with this emerging area is now gravely in doubt.

MENTAL HEALTH ACT 2001 IS IN

Amnesty International's Colm O'Gorman welcomes the Government's review of the *Mental Health Act 2001*, but says that the law should be updated to support a cultural shift in how mental health services are managed and delivered

Colm O'Gorman is executive director of Amnesty International Ireland. The organisation has been campaigning in the area of mental health in Ireland since late 2003

The Minister of State for Mental Health, Kathleen Lynch, launched the Government's review of the *Mental Health Act 2001* last month. The Government has committed to a full and thorough review – which is urgently needed, as the act is not human rights' compliant and must be updated and amended.

The act sets out the circumstances in which a person may be admitted to, detained and treated in a hospital against their will, and was introduced to ensure Ireland was compliant with the *European Convention on Human Rights*. However since then, there have been a number of developments – both domestically and internationally – which make the case for review all the more urgent.

These include the publication of new mental health policy in 2006, *A Vision for Change*, and the introduction of the *UN Convention on the Rights of Persons with Disabilities* (CRPD) in 2007, which includes people experiencing mental health problems. The European Court of Human Rights itself has made decisions in relation to other countries, which raise doubts about whether the Irish act complies with certain aspects of the European convention.

> **"The act as it is currently framed means that Ireland's mental health service is overly focused on inpatient care"**

International human rights bodies have also highlighted the urgent need to reform the act. In June, the UN Committee Against Torture told the Irish Government that the *Mental Health Act 2001* was not human rights compliant, and made a series of recommendations about how it should be updated.

Amnesty International Ireland welcomes the Government's review of the act and believes that this opportunity must be used not only to update the law, but to support a cultural shift in how mental health services are managed and delivered. We can really change the out-of-date attitudes and promote the understanding, championed in the CRPD, that the whole of society will benefit if people with mental health problems have their rights fully respected and are given the opportunity to recover within their communities.

Deprivation of liberty

At the most fundamental level, the act can deprive people of their liberty because of a severe mental health problem. Such powers need to be carefully monitored and must meet international human rights standards. Inpatient treatment must be a last resort.

To assist the process, Amnesty has conducted its own detailed review of the act. As part of this review, the organisation has heard from a number of individuals who have faced appalling situations under the act, including allegations from voluntary patients that they were told they would be made involuntary patients should they choose not to comply with treatment, highlighting the lack of protections for voluntary patients.

The 2011 report from the European Committee for the Prevention of Torture also highlighted the lack of protection for voluntary patients. Amnesty believes that the definition of 'voluntary' under the act is problematic, and should be amended to include only those persons who have the capacity to make such a decision and who have genuinely consented to their admission to an approved centre and continue to consent. Voluntary patients should have the right to leave the approved centre at any time.

The committee also highlighted the need to amend the act in relation to the use of electro-convulsive therapy and the lack of an independent capacity assessment.

'Best interests'

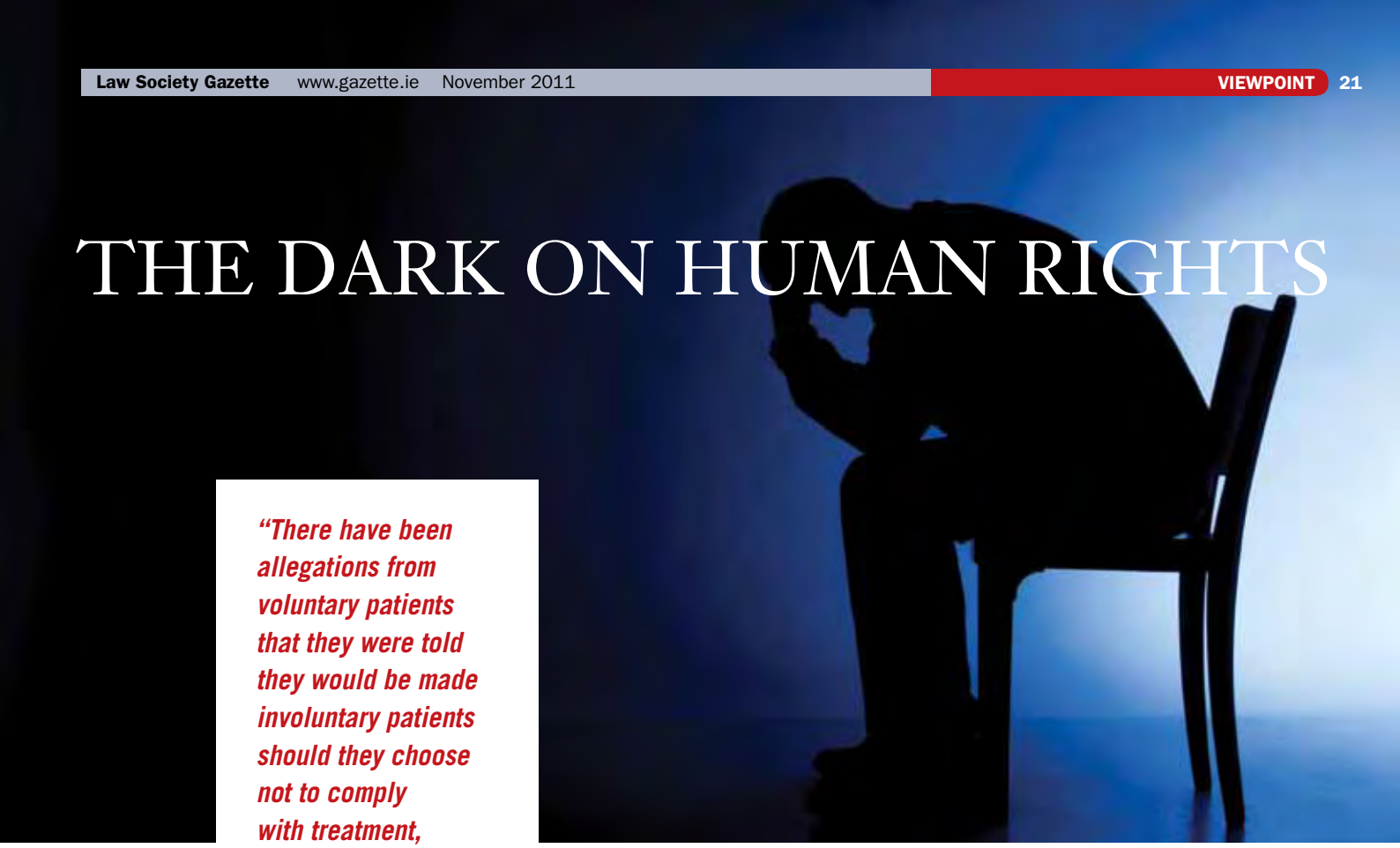
Another key issue is that the term 'best interests' is not defined within the act. This has led to overly paternalistic interpretations and to inadequate protection of the right to respect for individual autonomy.

The use of tribunals – which independently assess whether the correct procedure for admission and detention under the act has been followed, and accordingly whether detention should continue – also needs to be examined and updated, because there are many reported inconsistencies in their application. There needs to be much stricter guidelines controlling the administration of treatment against people's will. Amnesty believes that the act should be extended to cover the use of chemical restraint, as there is clearly a risk that medication is being used to control people, rather than to aid recovery.

More generally, the act as it is currently framed means that Ireland's mental health service is overly focused on inpatient care. This, despite successive Mental Health Commission reports pointing to the fact that the over-reliance on hospital-based care and medication in Ireland is not the best approach for recovery.

With the review underway, now is the time to take into consideration the wider mental health context. It is acknowledged that our mental health system needs a radical overhaul. While

THE DARK ON HUMAN RIGHTS



"There have been allegations from voluntary patients that they were told they would be made involuntary patients should they choose not to comply with treatment, highlighting the lack of protections for voluntary patients"

there has been significant progress in certain important areas, such as closing old institutions and building new child and adolescent facilities, there remains much that urgently needs to change.

We need a system where people can be treated in their own community wherever possible, by teams that include a cross-section of disciplines, including, for example, social workers, occupational therapists and psychologists, in addition to medical staff. Yet fully staffed, multidisciplinary community mental health teams have not been developed across the country, despite this being Government policy since the early 1980s.

Major role for legislation

The World Health Organisation has recognised that legislation can play a major role in promoting community-based care for people with mental health problems and reducing involuntary admissions. The latest report from the Independent Monitoring Group of *A Vision for Change* also recommended that consideration should be given as to how legislation would assist with implementation of our mental health policy as part of the planned review.

The Programme for Government promises action on mental health. A progressive review and ensuring that community services are realised can be a central part of this change.

Ultimately, people experiencing mental health problems must be supported when they need it. They need autonomy to make decisions about their own healthcare, and they need to have no fear about the treatment they might receive. Fundamentally, in Ireland, we need a response to mental health that fully respects the human rights of people with mental health problems. G

To read Amnesty International Ireland's full review of the Mental Health Act 2001 *and its submission on the* Mental Capacity Bill, *log onto www.amnesty.ie/mentalhealth.*

CAPACITY LEGISLATION NEEDS TO ADDRESS 'BEST INTERESTS'

The introduction of capacity legislation is proposed to bring Irish law into line with the *Convention on the Rights of Persons with Disabilities* (CRPD), and to enable ratification of the convention, which the Irish Government signed in 2007. While Amnesty International Ireland welcomes the work being undertaken to introduce a *Capacity Bill* that is in line with the CRPD, it is, however, concerned that the current scheme of the *Capacity Bill* does not adequately adopt the changes required by article 12 of the CRPD.

Modern capacity legislation must emphasise the supports people should get so that they can make decisions themselves, and relegate substitute decision-making to a last resort. Such a move would ensure compliance with the CRPD.

Among our concerns is the application of the term 'best interests'. We believe the new law should, instead, focus on bringing a person to a position where they would be able to make a decision themselves. And where a decision is taken to administer treatment or provide medication to someone who has been found to lack decision-making capacity, stringent safeguards need to be in place.

Amnesty also believes that the law needs to more fairly reflect an 'ordinary' decision-making process and cover more informal and formal supports that a person relies on when making decisions. It also believes that the law should provide for binding 'advance directives' – instructions given by individuals specifying what actions should be taken for their health in the event that they are no longer able to make decisions due to illness or incapacity.

The development of this bill is an important opportunity, and Amnesty International would strongly welcome new law that fully recognises the supports that people need in order to enjoy legal capacity.

A long time ago, in a galaxy far, far away – or England in July – the British Supreme Court gave welcome clarification to the definition of 'sculpture' under English copyright law. Point five past light speed Glen Gibbons makes

Glen Gibbons is a barrister and author of Trade Marks Law, *published by Oak Tree Press*

In a battle reminiscent of the confrontation between the Rebel Alliance and the Galactic Empire, British prop designer and father-of-two Andrew Ainsworth proved to be the eventual victor – employing the Force of the British legal system against the might of Lucasfilm. The recent British Supreme Court judgment *in Lucasfilm Limited v Ainsworth* dealt with the issue of whether the defendants had infringed the plaintiffs' copyright in the helmets of the Imperial Stormtroopers that featured prominently in the first *Stars Wars* film.

Ainsworth was commissioned by George Lucas to produce several prototype vacuum-moulded helmets. Given the huge commercial success of the *Stars Wars* films, Ainsworth in 2004 designed further helmets and other artefacts using his original tools. This resulted in US litigation by the plaintiffs and a default judgment of $20 million against the defendants.

Thereafter, the plaintiff commenced litigation against the defendants in the English High Court. Mann J in the High Court held that the defendants had not infringed English copyright law, as the helmet was not a work of sculpture for the purpose of copyright protection under the *Copyright, Designs and Patents Act 1988*. A copyright counterclaim was also dismissed. The US judgment of $20 million was held to be unenforceable. However, Mann J held that English courts had jurisdiction to hear US copyright claims and further held that the defendants had infringed US copyright law.

"The High Court held that the defendants had not infringed English copyright law, as the helmet was not a work of sculpture for the purpose of copyright protection"

The Court of Appeal agreed with Mann J on the interpretation of sculpture under the 1988 act, but disagreed with the analysis confirming that English courts had jurisdiction to hear US copyright claims. The Court of Appeal allowed these issues as points of appeal to the Supreme Court.

The phantom menace

The majority and combined judgment in the Supreme Court was provided by Lord Walker and Lord Collins. Phillips and Hale LJJ concurred with the combined judgment. Lord Mance agreed with the majority judgment on the interpretation of the term sculpture, but reserved his position, in part, on the jurisdiction of the English courts to hear foreign intellectual property disputes.

Under section 4(1) of the 1988 act, an 'artistic work' is defined as including a sculpture. Under section 4(2), 'sculpture' is defined as including a cast or model made for the purposes of sculpture.

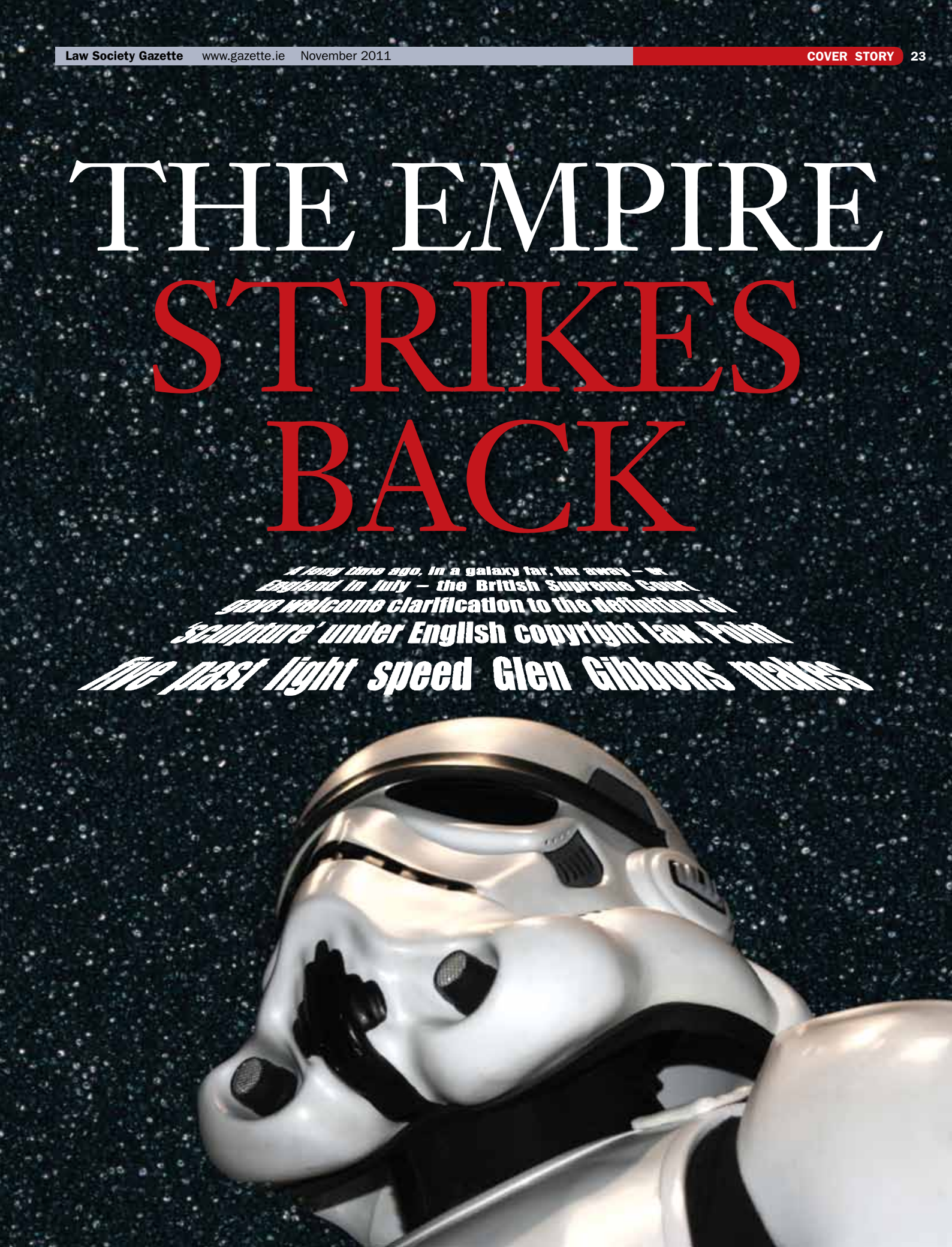
The legislative history and defences to artistic work copyright under section 51 (design documents and models) and section 52 (regarding the industrial exploitation of an artistic work) were outlined by Lords Walker and Collins. In seeking a definition of sculpture under the 1988 act, the court referred to comparative jurisprudence, including *Wham-O Manufacturing Co v Lincoln Industries Ltd*, *Wildash v Klein*, and the earlier English decisions of *Breville Europe Plc v Thorn EMI Domestic*

FAST FACTS

- Did the defendants infringe the plaintiffs' copyright in the helmets of the Imperial Stormtroopers?
- The court held that the helmets were utilitarian in nature and not a sculpture for the purpose of the 1988 act
- There is no reported interpretation of 'sculpture' under Irish copyright law at present, and it is likely that the ratio in *Lucasfilm* will be strongly persuasive on Irish courts
- You are part of the Rebel Alliance and a traitor. Take her away.

THE EMPIRE STRIKES BACK

A long time ago, in a galaxy far, far away – UK, England in July – the British Supreme Court gave welcome clarification to the definition of 'sculpture' under English copyright law. From five past light speed Glen Gibbons reports



Appliances Ltd and *Metix (UK) Ltd v GH Maughan (Plastics) Ltd*.

The court held that the helmets were utilitarian in nature and not a sculpture for the purpose of the 1988 act. Lord Walker and Lord Collins stated (at paragraph 44), in relation to an analogy with helmets used for other films, "the *Star Wars* films are set in an imaginary, science fiction world of the future. War films set in the past (*Paths of Glory*, for instance, depicting the French army in the First World War, or *Atonement*, depicting the British Expeditionary Force at Dunkirk) are at least based on historical realities. The actors and extras in the trenches or on the beaches may be wearing real steel helmets or (because real steel helmets of the correct style are unobtainable in sufficient numbers) they may be wearing plastic helmets painted khaki. In either case, the helmets are there as (in the judge's words) 'a mixture of costume and prop' in order to contribute to the artistic effect of the film as a film. They are part of a production process, as Laddie J said in *Metix* at p721, citing Whitford J in *Davis (J&S) (Holdings) Ltd v Wright Health Group Ltd* [1988] RPC 403, 410-412. In this case, the production process was the making of a full-length feature film."

"The court also rejected the 'elephant test', as set out in the Court of Appeal's judgment – that is, if its looks like a sculpture, then it is one"

The court also rejected the 'elephant test', as set out in the Court of Appeal's judgment – that is, if its looks like a sculpture, then it is one. Instead, the court held, at paragraph 48, that a multi-factorial approach must be employed – simply because an item looks like a sculpture does not make it a sculpture under copyright law – a court should read and hear evidence (including expert evidence), consider submissions, and then reach a conclusion on the issue.

The court added another factor, not addressed by the Court of Appeal, in bolstering its view that the Stormtrooper helmets were not sculptures. Clear policy reasons dictate shorter time periods for designs rather than copyright. The court stated (at paragraph 49): "There are good policy reasons for the differences in the periods of protection, and the court should not, in our view, encourage the boundaries of full copyright protection to creep outwards."

Attack of the clones

In Ireland, section 2 of the *Copyright and Related Rights Act 2000* defines a sculpture in similar terms to its English statutory equivalent. It states that an 'artistic work'

THE FORCE IS STRONG IN THIS ONE...

Despite Lucas being backed by directors Steven Spielberg, James Cameron and Peter Jackson, the British High Court and Court of Appeal found in Mr Ainsworth's favour, with the Supreme Court following suit.

Incidentally, the 27-year-old designer was paid £20 per helmet and £385 per armour for his *Star Wars* work in 1976 – objects he sells today for around £500 and £1,000 respectively. The *Star Wars* commission, "on a handshake and word of mouth", also led to work on *Superman*, *Alien* and *Flash Gordon*.

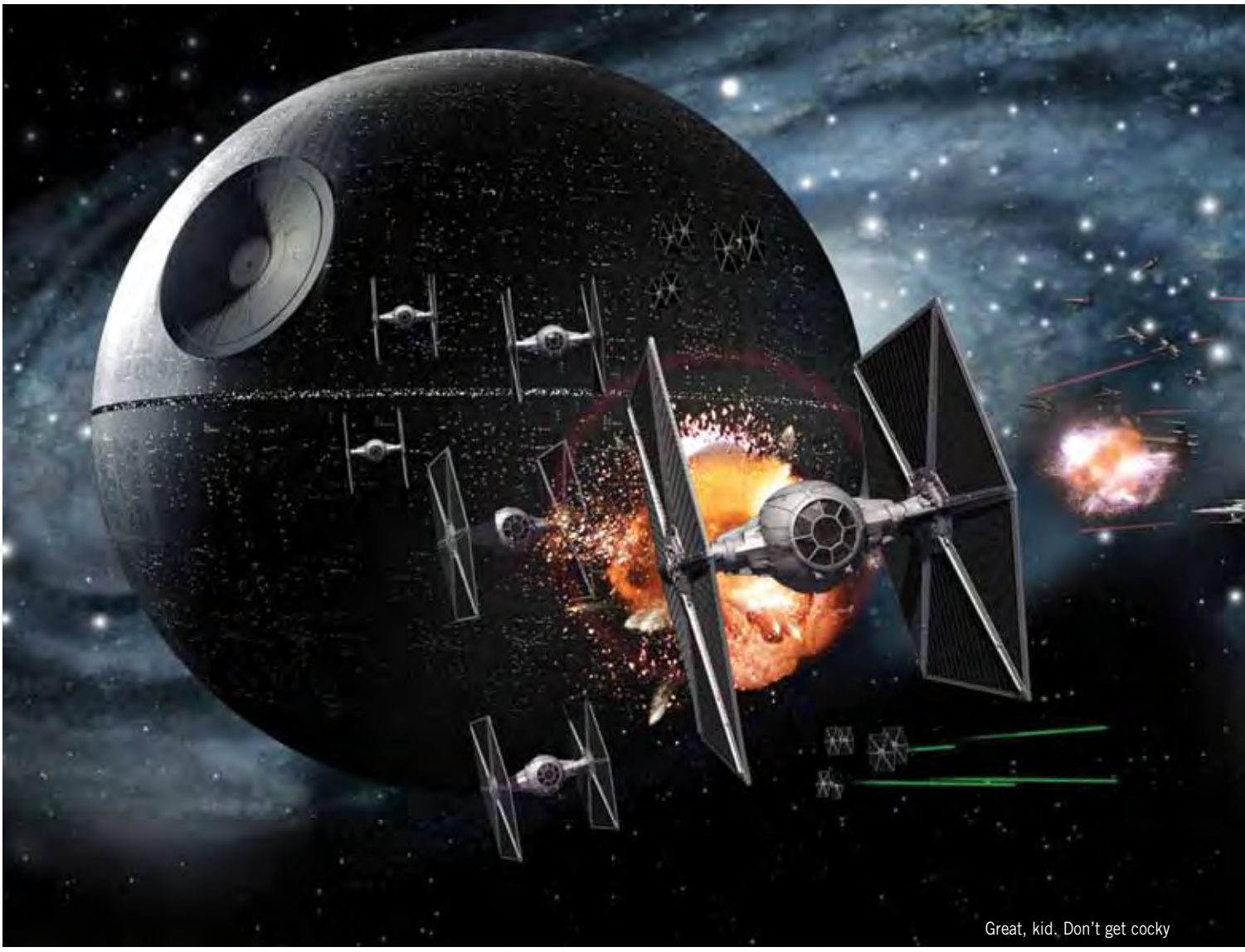
The Supreme Court ruling means that Andrew Ainsworth is free to continue his business of making and selling *Star Wars* helmets and suits. According to his lawyer, Seamus Andrew, it opens a Pandora's Box for George Lucas, since anyone is now free to make models outside of the US. Other prop makers encouraged by the ruling may now decide to take advantage. The lawyer believes that the director pursued his client so hard because of the "authenticity of the product".

George Lucas has always argued that Britain should offer full copyright protection to the works of art. A Lucasfilm spokeswoman said: "We believe the imaginative characters, props, costumes, and other visual assets that go into making a film deserve protection in Britain. The UK should not allow itself to become a safe haven for piracy."

George Lucas and his Hollywood supporters have also argued that the ruling poses a "significant threat" to the British film industry, as filmmakers would be deterred from using British prop makers for fear of copyright infringement.

Somewhat ironically, Andrew Ainsworth says that, had it not been for his Stormtrooper sales, he would not have been able to fund the case.

"The way we've funded [the case] is to make the characters, which is the ironic thing about it. It's really the Empire striking back," he joked. "During the period of the court case, I've made about 2,000 and sold them around the world."



Great, kid. Don't get cocky

THE DROIDS YOU'RE LOOKING FOR

The *Lucasfilm* judgment is also noteworthy for its clarification of the law surrounding the jurisdiction of the English courts to hear foreign intellectual property disputes and, in particular, a claim brought in England against the defendants for breach of US copyright law. In effect, the British Supreme Court deems such actions justiciable in England. However, the judgment should not be construed as a total acceptance of litigating all types of foreign intellectual property disputes in England (for example, the validity of a US patent).

includes, among other things, irrespective of their artistic quality, "sculptures (including any cast or model made for the purposes of a sculpture)". There is no reported interpretation of 'sculpture' under Irish copyright law at present, and it is likely that the ratio in *Lucasfilm* will be strongly persuasive on Irish courts.

The restrictive interpretation of *Lucasfilm* places strong emphasis and concern on 'jurisdiction creep' by copyright over design rights and on utilitarianism as a principal interpretative factor. A standard definition of the utilitarian is "designed to be useful rather than decorative or luxurious, severely practical".

While the helmets designed for the *Stars Wars* film were undoubtedly utilitarian, other cases facing the courts in the future may be more problematic, and the use of this interpretative factor may only be of limited assistance. G

LOOK IT UP

Cases:

- *Breville Europe Plc v Thorn EMI Domestic Appliances Ltd* [1995] FSR 77
- *Lucasfilm Limited & Ors v Ainsworth & Anor* (High Court) [2008] EWHC 1878 (Ch) [2009] FSR 2; (Court of Appeal) [2009] EWCA Civ 1328, [2010] 1 Ch 503, [2010] EMLR 12; (Supreme Court) [2011] UKSC 39
- *Metix (UK) Ltd v GH Maughan (Plastics) Ltd* [1997] FSR 718
- *Wham-O Manufacturing Co v Lincoln Industries Ltd* [1985] RPC 127, [1984] 1 NZLR 641
- *Wildash v Klein* (2004) 61 IPR 324

Legislation:

- *Copyright and Related Rights Act 2000*
- *Copyright, Designs and Patents Act 1988* (Britain)

KNOWING ME, KNOWING YOU

Lorcan Roche is a writer and award-winning freelance journalist

President of the American Bar Association – and recent Irish citizen – William Robinson was in Dublin in October at the organisation's Fall Meeting. Lorcan Roche took the opportunity to talk to him about the role of the lawyer in society

There are those who practise law almost as a means to an end. They didn't want it be thus, but daily exigencies somehow overwhelmed. Part of a production line, these individuals engage, at best, fitfully. Then there are those for whom a career in the law is and always will be a 'vocation'. These ones relish the chance to advocate, to represent – even after 40 years.

The president of the American Bar Association, William T Robinson III, belongs in the latter camp. Squarely. So much so, he might have been dispatched from 'central casting' for a screen adaptation of a Grisham novel: the slow-talkin' but fast-thinkin', fly-fishin', God-fearin', one-woman-lovin' Kentuckian, whose sense of justice is as resolute as the hatred in the hearts of the good ol' boys he encounters (and so on, as per Hollywood cliché).

Take a chance on me

In reality, the notion of the law as a vocation did not derive from Hollywood, or even from exposure to an influential legal figure – Robinson's genuinely humble background (his father, a WWII veteran, was a janitor) dictated that he was well into his 20s before he clapped eyes on, let alone spoke with, a member of the exalted legal profession. Instead, the notion of "higher service" was a "logical next step" for a youngster who at 14 had, of his own volition, already enrolled in the local seminary. It was a residential programme, with little else to do but study and pray. Robinson says he spent "five wonderful years" there, before realising it was "not for me".

How did that realisation come about? "I explain it this way: we choose our best friend; we choose the person we marry; the way we pray to God. It is all done intuitively, at an inner level. Sometimes it is not much related to intellect – there is just that conviction, inside, and so we accept it. It was in this manner I realised it was not for me. But from that moment on, I realised what I really wanted to be was … a lawyer.

"There is no profession that provides a more positive opportunity to make a difference in the lives of others; that is the definition of success that I have always adhered to. The profession *is* a vocation in that it is a call to serve others, so going from the seminary to the practise of law was, for me, a logical next step consistent with my background and training."

Does he ever get disappointed with the selfishness of other lawyers, those who feel no need to 'give back'? "Well, no one is perfect. If everyone were, I'd be in some other line of work! But I can only speak about lawyers in America where, apart from *pro bono* work, it is virtually impossible to find a legitimate non-profit organisation that does not have at least one lawyer giving time, money, leadership or service."

I have a dream

Robinson is an "eternal optimist". His belief in the intrinsic goodness of his fellow human (and the generosity of his fellow professionals) emanates from a deep faith. But there is, he argues, a historical context to his convictions: "It really goes back to the beginning of our country. To something

"Far too great a percentage of the public at large does not appreciate, or even understand, the role of the courts"

that has been called 'habits of the heart'. There has always been, in the legal community in America, an exceptionally high level of what is now termed 'dedicated volunteerism'. For example, John Adams, the second president of the United States – and in his own right a tremendous lawyer who, controversially, and at great risk to his reputation, defended numerous wounded British soldiers – out of his own pocket, paid his way back and forth from Europe to garner support for the American effort to become independent. That, for me, defines the volunteer aspect of American lawyers. Do they occasionally make mistakes? Of course: they are human beings."

Robinson believes dedicated volunteerism needs to be highlighted, if only to counter the deficit in credibility the profession can so readily suffer. People, he says, need to know, that lawyers can offer leadership – both in and out of a courtroom.

When he took up office in August, one of the key areas Robinson was determined to highlight was the lack of diversity in the US legal system – women make up just over half of the US population, and half of the numbers entering law schools, but they represent only a third of the lawyer population.

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WHEN ALL IS SAID AND DONE

The ABA is the largest voluntary membership professional association in the world. It is also among the most powerful. It has almost 400,000 members, over 900 staff, over 3,500 separate operating units, as well as offices in Chicago (over 700 employees) and Washington DC (over 200 employees). It is funded primarily by membership dues.

According to Bill Robinson, the association advocates to "preserve the independence and effectiveness of the profession" and is the national bar advocate for "a fair and impartial judiciary, providing guidance for state and local bars in responding to infringements on the courts, and promoting public awareness of the need for an independent, adequately funded, third, co-equal branch of government".

The ABA has a Governmental Affairs Office in Washington DC, which consists of eight non-partisan lawyer lobbyists. This unit is responsible for coordinating all of the association's advocacy efforts before Congress. The ABA "consistently and vigorously" opposes federal legislation that would undermine traditional state court regulation of lawyers, interfere with the confidential attorney/client relationship, or otherwise impose excessive federal regulations. The ABA recently "helped persuade" Congress to include language in the legislation forming the Consumer Financial Protection Bureau (the *Dodd-Frank Act*) to exclude thousands of practising bankruptcy lawyers, litigators, tax lawyers and other lawyers holding client trust accounts from expanded federal oversight.

It was also successful in the passage of legislation to clarify that lawyers are exempt from a Federal Trade Commission rule requiring creditors to develop costly programmes to detect and report any 'red flags' of identity theft of their clients. (Although this burden does not exist in the lawyer/client relationship, the 'Red Flags Rule' "would have imposed upon lawyers millions of dollars in compliance costs and subjected them to a measure of federal regulation that does not now exist," says Robinson).

With one notable exception, every US president since Dwight Eisenhower has requested that the ABA, through its Standing Committee on the Federal Judiciary, evaluate the professional qualifications of individuals being considered for nomination to the lower federal courts. The standing committee's vetting process was "designed to shield presidents from pressures to repay political debts by appointing individuals who might be lacking in the professional qualifications to exercise the important responsibilities of the federal judiciary". During the administration of George W Bush, however, the ABA provided this service only after each nomination had been submitted to the Senate.

The Obama administration has since requested the ABA standing committee to carry out its "historic pre-nomination function".

SUPER TROUPER

William T ('Bill') Robinson III is a graduate of Thomas More College and the University of Kentucky College of Law, where, in 2004, he was inducted into the Alumni Hall of Fame. He is member-in-charge of the Northern Kentucky offices of Frost Brown Todd LLC, practising civil litigation at trial and appellate levels, medical malpractice defence, environmental litigation and product liability defence.

Throughout his 40-year career, Robinson has been a volunteer leader in his profession and his community, working with organisations such as Bridges for a Just Community and The United Way.

An ABA member since 1972, he has served as president of the Kentucky Bar Association, president of the Kentucky Bar Foundation, founding chair of Kentucky's Interest on Lawyer Trust Accounts and president of the National Caucus of State Bar Associations. He is the 135th president of the ABA.

He is a fellow of the American Academy of Appellate Lawyers, sustaining attorney member of the Product Liability Advisory Council, sustaining member of the American Law Institute, a founding board member of the Appellate Judges Education Institute at Southern Methodist University, fellow of the Litigation Counsel of America, member of the International Association of Defence Counsel, fellow of the International Society of Barristers, and a life member of the US Sixth Circuit Court of Appeals.

Racial and ethnic minorities make up approximately one-third of the population, but represent only 10% of the lawyer population, and less than 16% of judges. "Diversity enriches our society, our profession, and our ability to be competitive," he adds.

Money, money, money

He also resolved to tackle the very real crisis of court underfunding: "In New York alone, there was a $178 million cut in the state court system budget. That means, almost immediately, that almost 500 people were laid off from that state's court system. We now have six separate states closing court for one day a week, and we have one state where courts were closed for single jury cases for more than a year due to a lack of funds. This is not acceptable. Courts are inherently important to the quality of freedom and justice. People fought and died for that freedom. This goes to the heart and soul of America's constitutional democracy, and we are letting it slip away … and that is why the ABA is stepping up."

"Courts are inherently important to the quality of freedom and justice. People fought and died for that freedom"

Why has the issue of state underfunding of courts been so under-reported? "Essentially, due to lack of awareness. Even in the profession itself, there is now only an awakening – an appreciation for how dire the situation has become. We have not really had civics taught in the States for more than a generation and a half. Far too great a percentage of the public at large does not appreciate, or even understand, the role of the courts." (Robinson is on record as being dismayed that so many young people can name all the judges on *American Idol* but not one member of the US Supreme Court.)

He continues: "There is also an increasingly smaller percentage of lawyers in the state legislature; we think that is something to do with the situation. But editorial support is growing. I believe we will see progress on this issue. We have already seen restoration of funding in some states."

Robinson's maternal grandmother hails from Tuam, Co Galway. Asked why he took out Irish citizenship last year, he replies: "Essentially to remind myself, my family and my extended family of the fact that we are immigrants. That, in America, we are all immigrants. I believe it is important to remember that, especially when a sense of entitlement might begin to develop."

THE CRACK OF DAWN

Joe Kelly is a partner in A&L Goodbody

Advising on regulatory/criminal law in a corporate environment is no longer an unusual thing for a solicitor to have to do – and with the explosion in the numbers of 'dawn raids', prevention is better than cure. Joe Kelly kicks the door in

It seems a long time since corporate law firms, or indeed any other law firm, disclaimed any knowledge of criminal law because it was an area in which the firm chose not to provide advice to its clients. Responding to increasing regulation, increasing regulatory activity, and client demand, solicitors everywhere are putting more resources into providing top-line advice and assistance that clients require and value in these changing and challenging times.

One obvious example of how this area of law has been evolving is in the sphere of unannounced visits by the gardaí or regulators to clients' premises, colloquially known as 'dawn raids'. While dawn raids were once an uncommon feature of the Irish legal landscape, there was an explosion in unannounced visits by regulators to clients' premises two to three years ago, to the point where this firm was responding to client calls on an average once every five or six weeks over a period of approximately 12 months.

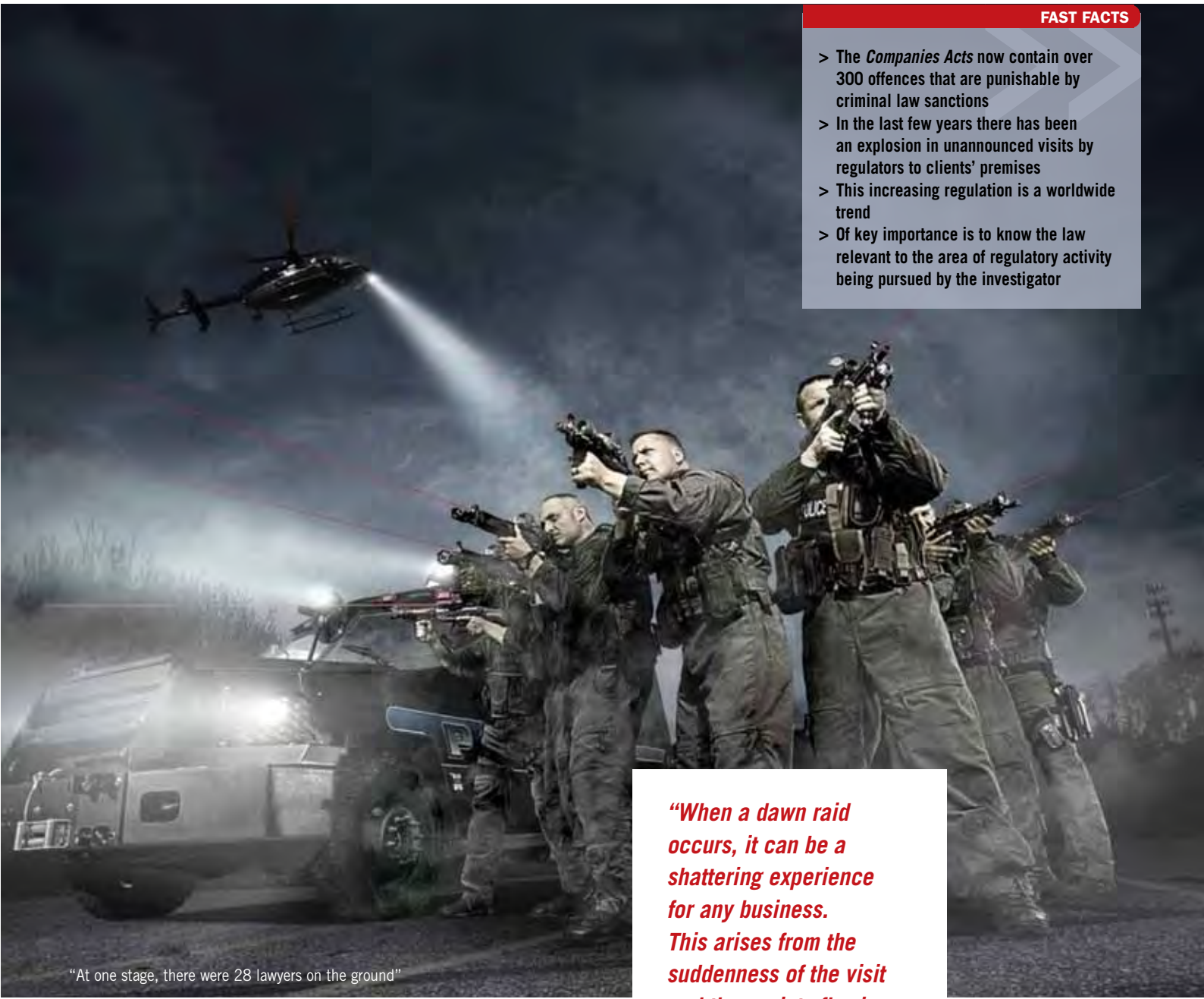
A significant feature of the dawn-raid activity was that it was not confined to agencies or regulators typically thought of as being at the sharp end of law enforcement, like the Criminal Assets Bureau or the Garda Bureau of Fraud Investigation. Among the regulators encountered in dawn raids of clients' premises were the Competition Authority, the Office of the Director of Corporate Enforcement, the Financial Regulator, the Data Protection Commissioner and the Environmental Protection Agency. That regulatory activity necessarily required a response from the businesses under investigation and their solicitors. As dawn raids usually involved the absence of any warning, the most enormous pressure was put on the resources of clients and their solicitors to manage the response to a raid.

One particular case comes to mind, where there was a contemporaneous visit by a regulator to four different client locations spread around Dublin city. To effectively respond required the firm to dispatch a separate legal team to each location. At one stage, there were 28 lawyers on the ground – engaging with the regulator, advising the client, recording the investigator's activities, managing and recording the flow of data/documents to the regulator from the client, and ensuring that appropriate cooperation was being provided in accordance with the legislation governing the activity of the particular regulator. The firm also had to ensure that the client did not inadvertently breach its private law obligations and its obligation to keep confidential sensitive commercial information.

When a dawn raid occurs, it can be a shattering experience for any business. This arises from the suddenness of the visit and the anxiety flowing from the knowledge that your business is under investigation. Without very tight management of all of the circumstances, there can be detrimental effects on staff morale and on customer and trading relationships.

International dimension

Ireland is not unique in terms of increased regulation, legislation and regulatory activity. This increasing regulation is a trend that has occurred worldwide, and particularly in those countries that represent our major trading partners, the US, Britain and other countries in the EU. Solicitors know from their interaction with lawyers in other jurisdictions that a white-collar criminal law practice has been a feature of most full-service US law firms for the last couple of decades. It is also now an embedded feature of British law firms, and it has become



"At one stage, there were 28 lawyers on the ground"

FAST FACTS

- The *Companies Acts* now contain over 300 offences that are punishable by criminal law sanctions
- In the last few years there has been an explosion in unannounced visits by regulators to clients' premises
- This increasing regulation is a worldwide trend
- Of key importance is to know the law relevant to the area of regulatory activity being pursued by the investigator

"When a dawn raid occurs, it can be a shattering experience for any business. This arises from the suddenness of the visit and the anxiety flowing from the knowledge that your business is under investigation"

visible in the Irish market over the last decade or so.

Over 15 years ago, I recall being approached to advise and assist a client who was struggling to cope with an investigation initiated in the US, but which included a number of other countries in which were located subsidiaries of the parent US company. The subject matter of the investigation related to deaths/injuries sustained by US citizens and the claim that those deaths/injuries were in some way related to defective products produced elsewhere in the world, including Ireland. As one can imagine, engaging with US investigators – and bearing in mind the very significant criminal law penalties attaching to a US conviction – was an enormously worrying prospect for the employees of the Irish subsidiary.

Great care had to be taken in advising individual employees, separate and distinct from their corporate employers; advising but not alarming people about their engagement with US investigators (the FBI in that case); and balancing the requirement for voluntary cooperation, where necessary, with invoking the protections afforded by Irish law, including the privilege against self-incrimination. The obligation of the employee to provide cooperation in line with the request of its employer, and

the voluntary nature of the engagement with the FBI, made this quite a tricky assignment. While all employees wanted to preserve their jobs and knew that, in order to do so, they should provide the cooperation requested by their employer, nevertheless, employees were nervous about engaging with a foreign investigator. People needed to have compete confidence in their Irish legal advice and be reassured that their Irish solicitors would take whatever protective measures were deemed necessary should the investigators stray into territory where the employee became uncomfortable with the questioning.

Since the conclusion of that investigation, this firm has had experience of dealing with other US regulators, including the Securities and Exchange Commission, on a wide variety of issues, particularly involving the Irish subsidiaries of US parent companies. In some cases, the employees of Irish subsidiaries have chosen not to cooperate with US regulatory investigators, and the consequences of that have had to be borne by those employees. Suffice it to say that the US is not a popular holiday destination in those circumstances. In the last few years, the UN 'Oil for Food' investigation was active in Ireland and demonstrated the international reach of investigations and regulators linking corruption alleged to have emanated from Iraq with the supply of product originating in Ireland.

Where are we now?

The stream of regulatory legislation shows no sign of drying up. The *Criminal Justice Act 2011* seeks to enhance the powers of enforcement authorities and, in particular, creates a new offence of 'withholding information', which places an obligation on individuals to disclose information to the gardaí that may be of material assistance in preventing white-collar crime or apprehending those involved. This legislation poses some interesting challenges for solicitors and was the subject of a recent article in *The Irish Times* by my colleague Kenan Furlong.

Another topical piece of legislation (at least in the regulatory sphere) is the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*. This legislation requires banks and financial institutions to be very vigilant in relation to money laundering and related activity. Banks and financial institutions have become very wary and mindful to ensure that they fully discharge their obligations pursuant to this and other legislation, requiring transaction reporting in the event of there being any unusual activity on an account. This can result in the gardaí seeking and obtaining freezing orders in relation to accounts, sometimes locking up tens of millions of euro that cannot then be accessed by a client.

From dusk to Dawn

In particular, I recall spending much of the time last Easter in trying to unlock monies in frozen accounts for a trading company. The company found it extremely difficult to persuade its bank that there was a rational commercial explanation for the unusual activity that had prompted the bank to freeze account activity. While the monies in the accounts were eventually unfrozen, that did not happen before the Easter vacation period had disappeared in a welter of telephone calls, emails and short-term financing activity required to tide the company through a very difficult situation.

This seems to be an area of increasing activity for both financial institutions and regulatory authorities, and it will not be long before the issues arising from such investigations and freezing orders will be the subject matter of court hearing.

Relationships with regulators

In our experience, regulators and the gardaí usually try to behave reasonably when conducting an investigation. Often it is possible to come to an agreement with investigators that will facilitate a client conducting its business activity, while allowing investigators to press on with their investigation. The most obvious manifestation of this (which will resonate with other solicitors) is the willingness of investigators to go to a private room when conducting an unannounced visit rather than remaining in the public reception area.

However, sometimes it can be perceived that a solicitor is 'getting in the way' of an investigation, and tensions can and do arise as a consequence. I have been in the situation where an investigator openly and insistently repeated to an employee of my client that he would be in contact subsequently to "follow up". In practical terms, my client and its employees were very constrained in what they could say in response to queries that were not in relation to the client's own business, but in relation to another business with which the client was trading. Keeping on the right side of the line in terms of abiding by private law obligations enshrined in contract, while at the same time providing the cooperation necessary to comply with its public law obligations, has been and continues to be a tricky balancing act for a trading company and its solicitor to perform.

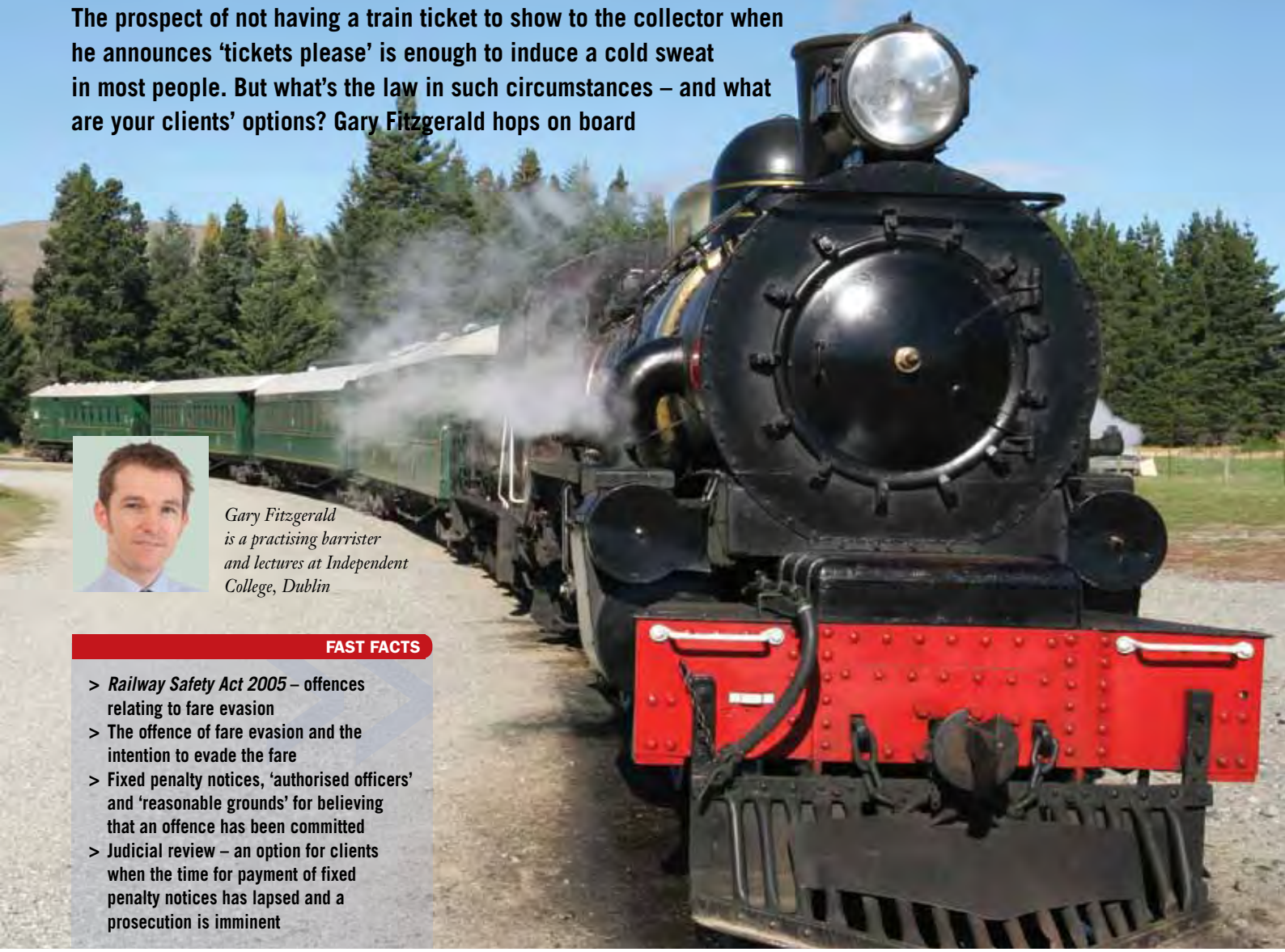
> ***"At one stage, there were 28 lawyers on the ground – engaging with the regulator, advising the client, recording the investigator's activities, managing and recording the flow of data/documents to the regulator from the client, and ensuring that appropriate cooperation was being provided"***

Advising corporate Ireland

Advising on regulatory/criminal law in a corporate environment is no longer an unusual thing for a solicitor to have to do. Of key importance is to know the law relevant to the area of regulatory activity being pursued by the investigator and to marry that to a knowledge of the client's business and a knowledge and experience of what the investigator needs to achieve in the course of his investigation. It is salutary to remember that the *Companies Acts* now contain over 300 offences that are punishable by criminal law sanctions and that that legislation is just part of an overall legislative framework that seeks to penalise transgressions by invoking criminal law sanctions.

Increasingly, the management of risk and policies of prevention are on the agenda of companies anxious to avoid, or at least minimise, regulatory activity. Regulatory investigations are very distracting and, on many levels, are bad for business. The longstanding advice that prevention is always better than cure has never carried more sway than it does today. G

The prospect of not having a train ticket to show to the collector when he announces 'tickets please' is enough to induce a cold sweat in most people. But what's the law in such circumstances – and what are your clients' options? Gary Fitzgerald hops on board



Gary Fitzgerald is a practising barrister and lectures at Independent College, Dublin

FAST FACTS

- *Railway Safety Act 2005* – offences relating to fare evasion
- The offence of fare evasion and the intention to evade the fare
- Fixed penalty notices, 'authorised officers' and 'reasonable grounds' for believing that an offence has been committed
- Judicial review – an option for clients when the time for payment of fixed penalty notices has lapsed and a prosecution is imminent

TICKET TO RIDE

In recent years, Irish Rail has been quite proactive in tackling fare evasion on its services. In 2005, the *Railway Safety Act* updated the law in relation to fare evasion and introduced a system of fixed-penalty notices (FPNs). In almost every station, Irish Rail has posters saying that fare evaders will be prosecuted and warning passengers that they must have a ticket when travelling from stations. The company's information leaflet boldly proclaims: 'no ticket, no travel, no excuse'.

But is this a correct statement of the law in the area? Are there circumstances when it is possible to board a train without a ticket? In particular, can a passenger running late buy a ticket on the train, or are they obliged to catch the next train?

All aboard

The most important statutory provision in relation to fare evasion is section 132 of the *Railway Safety Act 2005*. This section creates two offences. Firstly, where an employee of Irish Rail asks for a ticket, and a passenger does not have one, the passenger must do one of three things:

1) Pay the standard fare,
2) Pay another fare as determined by Irish Rail, or
3) Give the employee his name and address.

Failure to do one of these things is an offence, with a maximum fine of €1,000 (section 132(2)). Secondly, under section 132(3), where a passenger attempts to travel on a train without paying a fare, and "with intent to avoid such payment", he is guilty of an offence. Again, the maximum fine is €1,000.

This second offence is the most important one and goes to the core of the issue. In order to have committed the offence, the passenger must be on a train without a ticket (the *actus reus*) and *intend* to avoid paying the fare (the *mens rea*). The implications of this will be discussed below. Both of these fines are in addition to the requirement to pay a standard fare for the journey.

These offences have to be read in conjunction with statutory instrument 109 of 1984, enacted under section 22(4) of the *Transport Act 1950*. Bye-law 3 of that SI states that no person shall travel on a train without a valid ticket. It is unclear what the impact of this is, as it is expressly stated that bye-law 3 is not an offence. Bye-law 4 states: "Where any person is instructed by an authorised person to board a train at a station without purchasing a ticket at the booking office so as not to delay the departure of the train from the station, any person not in possession of a valid ticket entitling him or her to travel may enter a vehicle at that station for the purpose of travelling, but that person must obtain a ticket or other authority from an authorised person on the train as soon as practicable after entering any vehicle, or from an authorised person on arrival at the station to which such person is travelling by the train".

The SI defines an authorised person as "any officer, employee or agent of the board acting in the execution of his or her duty upon or in connection with the railway".

There does not appear to be any contradiction between these two provisions. Under section 132 of the 2005 act, the fare evader must have the intention to evade the fare in order to commit the offence. Bye-law 4 give express authority to an authorised person to allow a passenger onto a train without a ticket. The passenger must then buy a ticket as soon as practicable. In these circumstances, the passenger does not have an intention to evade paying a fare, and, therefore, has a defence under section 132, even without the help of bye-law 4.

Crazy train

Central to the success of Irish Rail's fare evasion policy is the fixed-penalty system. This operates in a manner similar to road traffic offences and is set out in section 133 of the 2005 act. If an 'authorised officer' has reasonable grounds for believing that an offence under section 132 has been committed, then he may serve a fixed-penalty notice on the passenger. The passenger has 21 days to pay the fine of €100. If the fine is paid, there will be no prosecution, but if the fine is not paid, then a prosecution may follow. Again, this fine is in addition to the requirement to pay a standard fare.

The term 'authorised officer' is not clearly defined in the act. Section 22A of the 1950 act (inserted by the 2005 act) gives the board of CIE power to appoint individuals as authorised officers, and then gives these individuals powers similar to the powers of arrest and detention given to the gardaí. These powers only relate to specific railway offences. But the phrase is used in a much wider sense in section 133. Section 133(5) states that authorised officers include those appointed under section 22A of the 1950 act. In section 133, the phrase probably refers to those individuals authorised under a different section to carry out an act.

Section 132 authorises every employee of Irish Rail to ask to see a ticket – therefore, every employee of the company is probably an authorised officer for the purposes of issuing a FPN in relation to an offence under section 132.

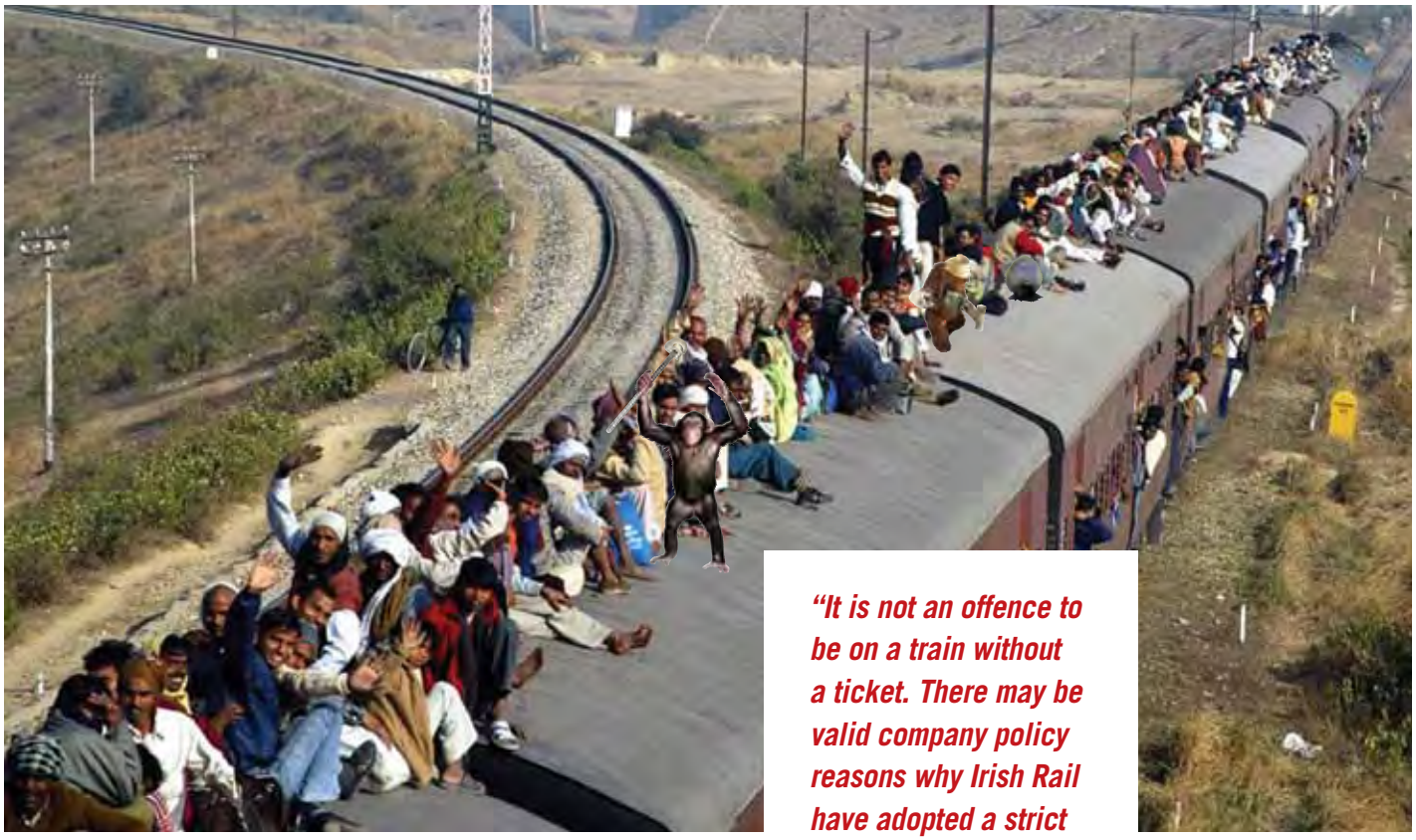
The FPN must be in a prescribed form, and the most recent form is SI 576 of 2006. The only relevant section of the form is the information given about the offence under section 132, which is summarised as being "avoiding payment of fare". This would appear to be a very brief, but accurate, description of the offence. It is not an offence to be on a train without a ticket, but it is to be on a train without a ticket with the intent of avoiding a fare. There is no express right to appeal the issuing of an FPN under the 2005 act, but Irish Rail does allow appeals in writing to the Revenue Protection Unit (RPU) in Dublin.

"In order for an FPN to be validly issued, the officer must reasonably believe that the passenger intended to avoid the fare"

The Fat Controller: look out, he's behind you

Irish Rail's most recent customer information leaflet on fixed-penalty payments states that, if a customer boards a train without a ticket, then they will be charged with a fixed-penalty payment. This is an incorrect statement of the law. An FPN can only be issued if the officer has "reasonable grounds" for believing that an offence under section 132 has been committed. Since the offence is not one of strict liability, the officer must examine the intention of the passenger. In order for an FPN to be validly issued, the officer must reasonably believe that the passenger intended to avoid the fare. It is clear that the officer has a decision to make and can exercise a discretion in relation to the making of this decision.

That is not to say that a passenger will be able to easily rely on this lack of intention as a defence to a prosecution. Any passenger in default will need to explain why they did not buy a ticket before travel. Irish Rail RPU officers now receive automatic updates on whether the ticket office was open, how many vending machines were in operation, and whether those machines accepted credit cards or issued change. If a passenger jumps a barrier in order to catch a train, this might be a sign of a lack of intention to buy a ticket. But even this might not show a lack of intention. It could merely be that the passenger was running late and there was a real reason why he needed to catch a particular train.



"It is not an offence to be on a train without a ticket. There may be valid company policy reasons why Irish Rail have adopted a strict approach to this issue, but this strict approach does not reflect the legislative scheme in the 2005 act"

I would suggest that central to this question of intention are the actions of the ticketless passenger once they board the train. In order to show that they intended to buy a ticket, there may be some obligation on the passenger to seek out the RPU officer, explain the situation, and buy a ticket. If a ticketless passenger merely waits for an RPU officer to ask for their ticket, then it will be much harder to prove that there was no intention to evade.

Chattanooga choo-choo

It may seem heavy-handed to discuss judicial review in the context of a €100 fine. In almost every case involving judicial review as an option, clients would be happy if the outcome was payment of a €100 fine. But there may be a client who, on a point of principle, decides not to pay the fine. More likely is a client seeking advice after the 21 days for payment of the FPN have lapsed, with a prosecution imminent.

The general rule is that any decision of a public body exercising a discretion under statute is open to judicial review. There are two decisions that might be open to judicial review. The first is the decision by the authorised officer under section 133 of the 2005 act to issue the fine. The standard grounds for judicial review are probably available. When deciding to issue an FPN, the authorised officer must have reasons for that decision and must communicate those to the passenger. The authorised officer must not behave in an unreasonable manner, cannot act outside their powers, and cannot be biased in making the decision.

The second is the decision to proceed to a prosecution once the penalty has not been paid. Again, the standard grounds of judicial review are likely to be available. In particular, any appeal must be fair and comply with natural and constitutional justice.

Train running low on soul coal

The best advice is to buy a ticket before travel. But that does not always happen. If a passenger is on a train without a ticket and has the intention of evade, then they have committed a criminal offence. The District Court trial is a standard criminal trial and Irish Rail needs to prove both elements of the offence beyond a reasonable doubt. If a passenger alleges that the decision to issue the FPN or the decision to prosecute was incorrectly made, then those decisions may be open to judicial review. It might be better to just deal with any potential issues at the District Court trial itself.

It is not an offence to be on a train without a ticket. There may be valid company policy reasons why Irish Rail have adopted a strict approach to this issue, but this strict approach does not reflect the legislative scheme in the 2005 act. Therefore, it is possible for a passenger to board a train and seek to buy a ticket on board.

In order to convince the court that they did not have an intention to evade a fare, the passenger would need a good reason for not pre-purchasing a ticket, and probably needs to seek out an RPU officer as soon as he has boarded the train.

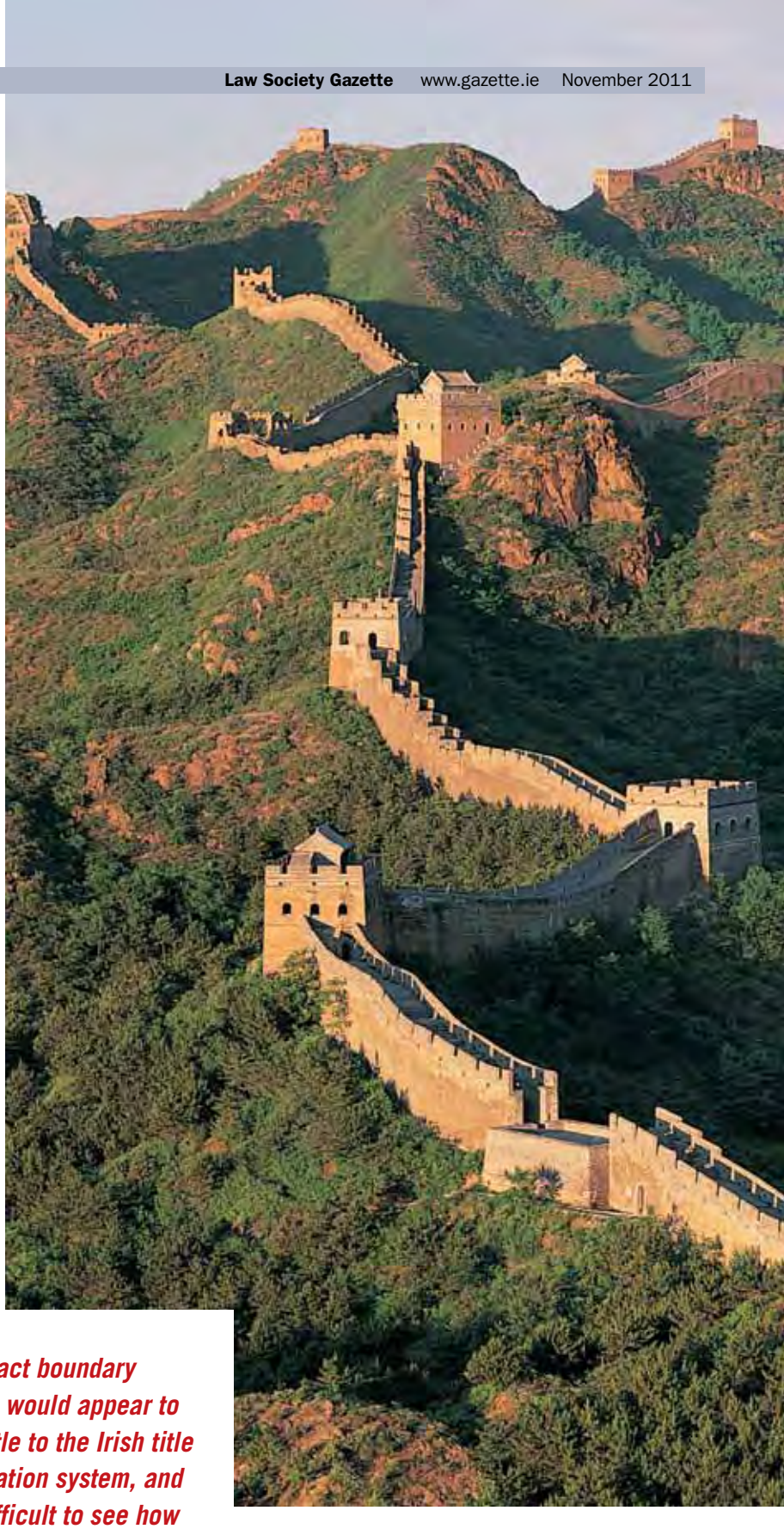
The RPU officer has to determine if the passenger has an intention to evade paying a fare. Even if this is the case, the RPU officer has discretion as to whether or not to issue an FPN. The difficulty for clients fighting an FPN is that the payment of €100 ends the threat of legal proceedings, and the costs of legal advice would almost certainly equal, if not exceed, this amount. It is only if a passenger has not paid the penalty, and Irish Rail are proceeding to prosecution, that it might it be worth a passenger's while paying for legal representation. G

LOOK IT UP

- *Railway Safety Act 2005*
- Statutory instrument 109 of 1984
- Statutory instrument 576 of 2006
- *Transport Act 1950*

The Property Registration Authority's digital mapping project has come to a successful conclusion. John Deeney, John O'Sullivan and Shay Arthur consider the system of 'non-conclusiveness' of boundaries that operates in Ireland

John Deeney is deputy registrar, John O'Sullivan is head of corporate affairs, and Shay Arthur is mapping advisor at the Property Registration Authority



The Land Registry map is not, except as provided by legislation, conclusive as to boundaries or extent, and a note to that effect appears on the register (section 85 of the *Registration of Title Act 1964*, as substituted by section 62 of the *Registration of Deeds and Title Act 2006* and rule 9 of the *Land Registration Rules 1972* refer).

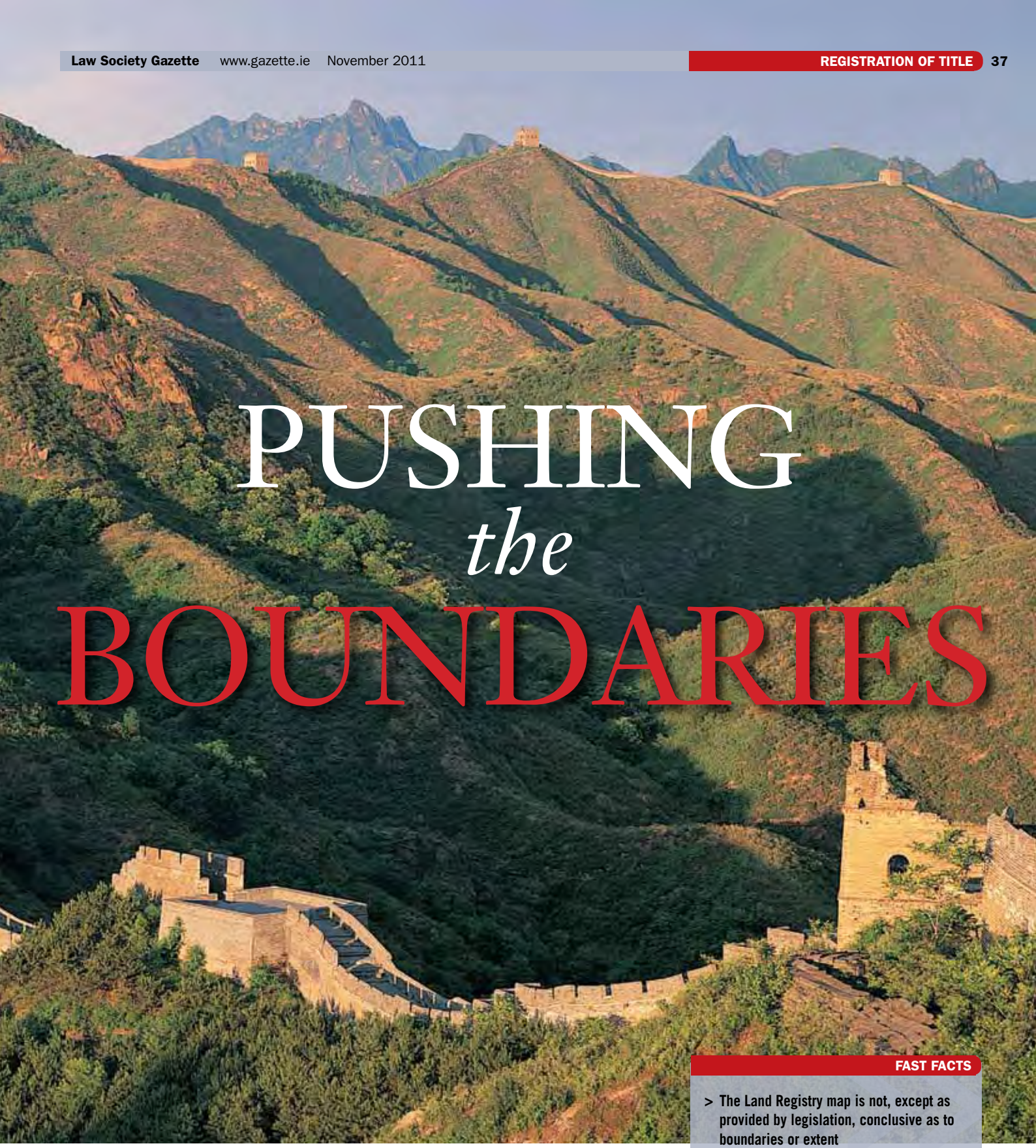
This has been the position since the inception of the title registration system in 1891, as provided by section 55 of the *Local Registration of Title (Ireland) Act 1891*. This is colloquially known as the 'general boundaries rule'. This means that, in any case where the boundary is not stated to be conclusive or defined, evidence other than the register or registry map is admissible to determine the correct boundary and extent of the land. The rule has its origins in the commencement of the title registration system in England.

The opinion of the Royal Commission, which considered the English *Land Registry Act 1862*, cited by McAllister (1973, p58), was that a legal requirement to have defined boundaries would have two immediate 'mischievous' consequences: "First, notices would need to be served on all adjoining owners, occupiers, next of kin of deceased registered owners, which may and sometimes do amount to an enormous number ... The second [mischief] is that people served with notices immediately begin to consider whether some injury is not about to be inflicted on them. In all cases of undefined boundaries, they find that such is the case, and a dispute is thus forced upon neighbours who only desire to remain at peace."

In Ireland, a review of the failure of the *Records of Title Act 1862*, which required exact boundaries, found that the requirement for maps and plans in a title registration system to show fixed boundaries would "interfere with the course of business, and cause neighbour disputes. In addition, the difficulty and expense of making exact surveys would make all registration impossible" (McAllister, 1973).

"An exact boundary system would appear to add little to the Irish title registration system, and it is difficult to see how it could be justified on cost grounds"

Under present arrangements, whether the title to land is registered or unregistered, the primary source of the boundary line between any two adjoining

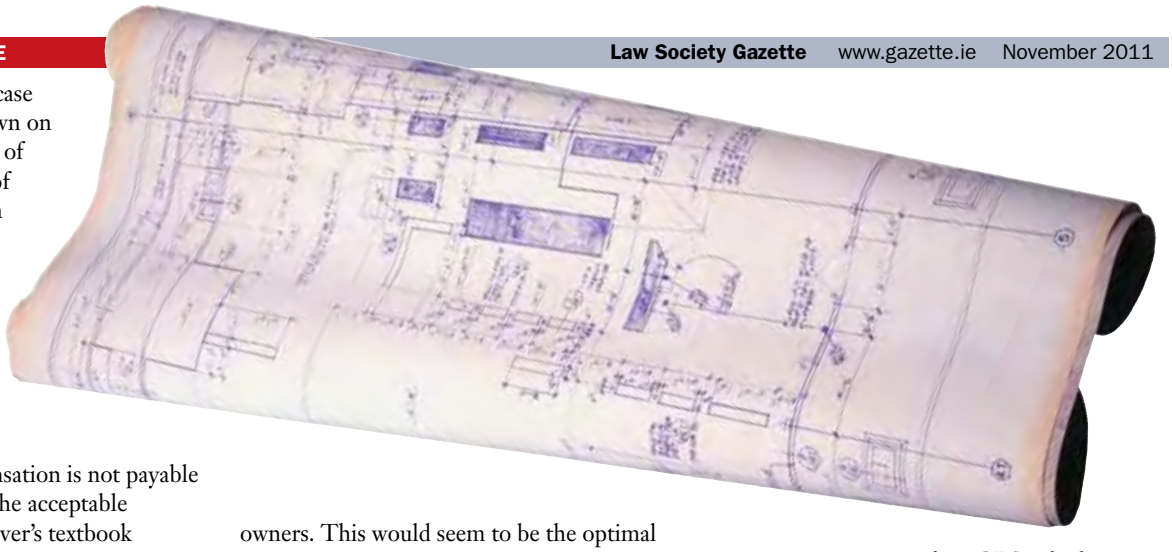


PUSHING *the* BOUNDARIES

FAST FACTS

- The Land Registry map is not, except as provided by legislation, conclusive as to boundaries or extent
- The primary source of the boundary line between any two adjoining properties is the original deed whereby the ownership is divided
- The accuracy and amount of information that can be represented on the map is primarily dependent on the scale of the base map

properties is the original deed whereby the ownership is divided. On first registration, this might comprise the descriptions contained in a deed, or a map endorsed on such deed, or a prior deed, or both deeds and maps read together. These matters, together with possession, the contract map, the application map, use and occupation, other deeds, features, witnesses, inferences and presumptions can all be taken into account if the issue of the precise position of a boundary line falls to be determined by the court (Woods, 2010).



However, it is not the case that the boundary as shown on the Land Registry map is of no relevance in the case of a neighbour dispute, as in the absence of any other evidence, it may well prove conclusive.

An effect of the rule is that the State guarantee does not apply in the case of non-conclusive boundaries; thus, compensation is not payable for discrepancies within the acceptable margins of error (see Glover's textbook *A Treatise on the Registration of Ownership in Ireland* (1933, p25), as approved by Laffoy J in *Boyle v Connaughton*).

It is to be noted that whether or not a discrepancy is substantial or minor in nature may not necessarily depend on the extent of the discrepancy, but might well depend on the significance to the title of the portion involved.

The general boundary rule was reviewed by the Oireachtas in 2006. Section 85 of the 1964 act, substituted by section 62 of the 2006 act, sets out that, except as provided by the 1964 act, neither the description of land in a register nor its identification by reference to a registry map is conclusive as to its boundaries or extent. To copper-fasten the position, rule 9(2) of the *Land Registration Rules 2009* requires an entry to such effect to appear on the register, where applicable.

Entry of boundaries

However, it is possible for registered owners to have their boundaries exactly fixed if desired. Section 87 of the 1964 act provides the necessary flexibility, allowing boundaries on the Land Registry map to be defined and an entry to this effect entered onto the register with the agreement of adjacent owners. This would seem to be the optimal approach, allowing registered owners who desire a higher degree of accuracy, and who are prepared to meet the surveying costs involved, to enter their boundaries as conclusive. In such instances, the parties instruct a land surveyor to carry out a ground survey, prepare a precise map, and lodge it for registration, together with the consents in writing of the relevant registered owners. The application refers to the plan, stating the physical boundary of the property to be along a specified line on the Registry map as, for instance, that the face or centre of the fence or wall, or the centre or a specified side of a stream or drain along the line shown on the map is the boundary and is conclusive as between the adjoining owners. Such applications are rarely made.

Non-conclusive boundaries

There has been some debate in recent years as to the merits of the non-conclusive system as opposed to an exact boundary system. A main driver for the debate has been technological progress, and in particular the precision afforded by commonly used surveying systems such as GPS, which are based on global navigation satellite systems.

Some commentators – for example, Sperling (2008), Prendergast *et al* (2011) and O'Brien and Prendergast (2011) – have advocated that Ireland should move towards a system of fixed or exact boundaries as part of a move to a numerical cadastre, and this may seem attractive at first glance.

While the 'general boundary' approach avoids defining boundaries precisely, it does provide the registered owner with an accurate plan based upon the national framework provided by OSI maps and addresses most, if not all needs, and in particular is fit for the purpose of land registration.

On the other hand, an exact boundary system, as in Germany (with precision less than the width of a two-inch wooden fence) would require constant maintenance and a new agency of cadastral surveyors, either funded by the taxpayer or by individual registered owners at a significant cost.

It is to be noted that registration of exact boundaries does not obviate

> ***"Whether or not a discrepancy is substantial or minor in nature may not necessarily depend on the extent of the discrepancy, but might well depend on the significance to the title of the portion involved"***

the potential for boundary-related disputes. A dissatisfied neighbour would be still entitled to seek legal redress through the courts, as at present.

It must be also remembered that there are many other factors that can contribute to uncertainty as to where a boundary lies. A map is only a two-dimensional model of the real world, and the accuracy and amount of information that can be represented on the map is primarily dependent on the scale of the base map. Other relevant factors include the map scale, the accuracy of the original survey, and the variable quality of the maps presented for registration since the establishment of the Land Registry in 1892.

Furthermore, the cost of surveying, determining, monumenting and re-registering the boundaries of some 2.8 million land parcels would be very significant and unlikely to be welcomed in the current fiscal climate. It has been estimated that the legal, surveying and registration costs of introducing and maintaining a cadastral system in England and Wales would be in the region of £1,000 per property (Powell, 2009, 2011) and, based on the experience of jurisdictions that maintain such a system, subsequent ongoing maintenance costs would also be significant.

Powell (2009) also addresses the argument that defined boundaries would assist more accurate valuation: "Then there is the notion that it would be better for land valuation and land-use assessment for a cadastre to exist. This, again, is incorrect, because the current general boundaries system enables land areas to be calculated to within OS accuracy limitations, which are constantly improving."

Accordingly, on the face of it, an exact boundary system would appear to add little to the Irish title registration system, and it is difficult to see how it could be justified on cost grounds.

A land register based on 'non-conclusive' boundaries is long-standing public policy in Ireland, and changes to this would require fundamental changes to the system of conveyancing and land registration that has been in place since 1892, necessitating wide-ranging amendment of recently enacted legislation such as the *Registration of Deeds and Title Act 2006* and *Land Registration Rules*.

Finally, as regards the debate in relation to boundary systems, we leave the last word to Powell (2011): "I would like to state my view that the precise cadastre system belongs back in the 20th century; the 21st century has thrown up new realities, in that everything must be assessed not just by its theoretical/technical worth but by its financial implications and its benefit for society … There is the more important moral aspect of spending trillions of pounds/euros/dollars that could be better spent elsewhere or not even spent at all." G

LOOK IT UP

Cases:

- *Boyle v Connaughton* [2000] IEHC 28 (21 March, 2000)

Legislation:

- *Land Registration Rules*
- *Local Registration of Title (Ireland) Act 1891*
- *Registration of Title Act 1964*
- *Registration of Deeds and Title Act 2006*

Literature:

- Glover (1933), *A Treatise on the Registration of Ownership in Ireland* (John Falconer, 2 Crow Street, Dublin)
- McAllister, DL (1973), *Registration of Title in Ireland* (Incorporated Council of Law Reporting in Ireland, Four Courts, Dublin)
- O'Brien, D and P Prendergast (2011), "To gauge an understanding of how boundaries are perceived in Ireland by landowners", paper presented at FIG Working Week 2011, Marrakech, 18-22 May 2011 (available at www.fig.net/fig2011)
- Powell, DJ (2009), "Property boundaries in England and Wales: Cadastre? – no thank you!", paper delivered at 'The Boundary' conference in Bergen, Norway, April 2009. (available at www.theboundary.no/ep_tmp/files/130566233449a6449170fc0.pdf)
- Powell, DJ (2011), "General boundaries v precise cadastre: recording (private property) boundaries in England and Wales" (available at www.maney.co.uk/index.php/david_powell)
- Prendergast, WP, G Brennan and C Horgan (2011), "Issues related to boundary mapping in Ireland", paper presented at FIG Working Week 2011, Marrakech, 18-22 May 2011 (available at www.fig.net/fig2011)
- Sperling, D (2008), *Property Registration in Ireland: The Role of the State Guarantee* (Dublin: Dublin Institute of Technology)
- Woods, U (2010), "Adverse possession of boundary land – lessons from abroad", paper presented at COBRA 2010 Legal Research Symposium, Paris, September 2010 (available at www.rics.org/site/download_feed.aspx?fileID=8055&fileExtension=PDF)

EXAM PAPERS

Sinead Morgan is an experienced solicitor who has specialised in commercial litigation and employment law

As examinership law moves from a position of obscurity to front-page news, Sinead Morgan highlights the law as it currently stands, recent decisions made by the courts, and the focus of those cases

One effect of the recession is the changing focus towards different areas of law. In particular, examinership law has moved from a position of obscurity to front-page news, with an increasing number of individuals and companies making applications to the courts to buy time to put their businesses on a stable financial footing. Years ago, these applications were granted relatively perfunctorily, but changes to examinership legislation via the *Companies (Amendment) (No 2) Act 1999* raised the bar for an application to be granted. However, the biggest move we have seen in this area of late is the changing attitude of the courts in the application of those new legislative rules, with judges taking it upon themselves not only to refuse applications, but to specifically comment on the behaviour of company directors – as seen in the 2010 *Residence* case.

The process of examinership was established by the *Companies (Amendment) Act 1990*. The legislation set out the conditions under which an insolvent company would be given the protection of the court for a specific period of time. Court protection meant that no proceedings could be commenced on winding up the company, and no receiver could be appointed during that time. In addition, no steps could be taken to enforce charges against the company.

Chance of survival

Initially, the legislation (as interpreted by case law) required the applicant to prove that there was "some chance of survival" for the company (see section 2(2) of the *Companies Amendment Act 1990*; *Re Atlantic Magnetics*). That act was amended by the 1999 act, which changed the test to "a reasonable prospect of survival" (see section 5, *Companies Amendment (No 2) Act 1999*). Even if the test was met, the court had discretion to refuse an application if it felt it was not in the best interests of the company and its creditors (see section 24 of the act). The 1999 act also established an obligation to furnish an independent accountant's report confirming that there was a reasonable prospect of the survival of the company and the whole or part of its undertakings (see section 7).

The independent accountant's report should identify

FAST FACTS

- The attitude of the courts to applications for examinership is changing
- Recent cases prove that being granted an examinership application is now far from a 'sure thing'
- Judges have also become vocal in their views on the companies seeking protection
- Judges will seek to balance the interests of the creditors and shareholders of the company

investment that can be secured or a scheme that can be put in place that will be more advantageous to both the creditors and shareholders than winding up the company. It should establish that there is no deficiency in the company's finances and that the company has money to trade during the protection period. It should also contain projections for future business, to prove the business is viable.

The first written judgment after the 1999 act was *Re Tuskar Resources* (a company that was involved in mining operations in Nigeria). An interim examinership order had been made, relying on the independent accountant's report. Later, the application for examinership was refused because the judge deemed the report "overly optimistic". Circumstances had changed since the interim application was made, and it became clear that the company was in a dispute with a third party to obtain a licence and would be unable to operate without that licence. The court was furnished with no information regarding the Nigerian subsidiary company nor the liabilities of the company in Nigeria.

The *Fergus Haynes* petition involved a construction company that was in the process of completing two developments. Works had halted due to lack of funds. The independent accountant's report confirmed there was a reasonable prospect of survival. Laffoy J did not agree with the assumptions upon which the report was based. She determined that there was no evidence to support the contention that investment would be forthcoming, especially in light of the current attitudes of the creditors. She also felt it was unlikely that the suppliers would continue to support the company. Finally, she criticised the estimates used, which were furnished by the director rather than by an independent professional, for example, an accountant.

The infamous Zoe Developments cases then came before the courts. In the first case, *Re Vantive Holdings*, Justice Kelly reconfirmed the discretionary nature of the power to appoint an examiner. He then looked behind the assumptions in the independent accountant's report and found them to be lacking. He observed that the purpose of this application appeared to be to protect the shareholders, which was not the purpose of the act. Secondly, the creditors were banks and had other ways to proceed against the company. Finally, he felt that, on examination, the actual perceived threat to jobs was significantly less than that presented.

"It should be noted that, once a company becomes insolvent, its directors' duties change. Rather than having an obligation to protect their shareholders, they become obliged to protect their creditors"

The application failed. It was appealed to the Supreme Court, where Murray CJ reaffirmed this decision.

Abuse of process

A further examinership application was allowed by Cooke J. The basis of the appeal was that, in making its decision, the Supreme Court had determined that there was no evidence of future financing of a business plan. It was submitted that this evidence was now available. This final application came before Clarke J, which also failed. In making his decision, the judge looked at the timescale within which the group might have a reasonable prospect of survival. He found that the company, in their business plan up to 2011, had assumed interest rates would not rise from 2009 rates (in light of the extremely unusual market conditions in 2009). This was a fatal flaw. This decision was appealed to the High Court, and again rejected on 6 October 2009, when it was decided that the appeal was an abuse of court process.

The *Laragan* examinership application involved a petition by another construction company to the courts. An interim examiner had been appointed when the case came before Clarke J to approve the scheme of arrangement. That application was refused, and a number of criticisms were levelled at the company. It transpired that Laragan Developments Limited was a wholly owned subsidiary of Laragan (Holdings) Limited, the majority shareholding of which was owned by Mr Alan Hanly and the balance by a Mr Joseph Hanly. Alan Hanly also owned a range of other related companies, which were involved in similar ventures. An examination of the relationship showed that Laragan Developments Limited was merely a "vehicle of convenience" rather than an arms-length relationship. Questions were raised as to whether the application should have also related to other companies within the group. Ultimately, the application was refused.

"It has become clear that directors can no longer use the independent accountant's report as a shield to protect them in relation to their behaviour pre-insolvency"

Far from a 'sure thing'

These cases proved beyond any doubt that being granted an examinership application is now far from a 'sure thing'. Judges have also become vocal in their views on the companies seeking protection. Kelly J put it on the record in the *National Crafts Limited/Penn Castle Limited* cases that he was growing increasingly reluctant to grant protection to companies, as investment was becoming as scarce as "hens' teeth". He also indicated that the Commercial Court was being confronted on an almost daily basis with applications for examinerships based on "almost formulaic" reports from independent accountants. He highlighted the fact that examinerships should not be entered into lightly, as they were expensive processes carried out at the expense of the creditors of the company in question.

The judiciary has gone even further by commenting on the intent of underlying applications. In the *Residence* case, Kelly J openly criticised the behaviour of the directors in the manner in which they managed the company in advance of the examinership application, and refused to extend protection. As the company had failed to comply with its company and Revenue obligations, he would not allow them to rely on the self-same legislation to protect their interests. He was particularly critical of the company's decision to retain employees' PAYE payments to fund the company's ongoing operations, which he described as a "form of thieving". He made it clear that, in light of the company's behaviour, one must view the independent accountant's report with a degree of scepticism. It should be noted that, in the independent accountant's report, the retained PAYE monies were described rather inaccurately as "working capital".

Since then, an application has been brought to the High Court by the liquidator of Auldcairn Limited (one of the directors' companies), who determined after investigation that the directors had not acted "honestly and responsibly" and had traded for a number of years while insolvent. On 8 March last, the two directors consented to section 150 restrictions orders being made against them in the High Court. Another set of restriction proceedings are also pending against the brothers in respect of a related company.

Reviewing assumptions

An analysis of case law makes it clear that the court will not only look to the test of a "reasonable prospect of survival" as supported by the independent accountant's report, but will also look behind that report, reviewing its underlying assumptions – and, if those assumptions are unrealistic, they will apply their discretion to refuse an application.

It has also become apparent that judges will seek to balance the interests of the creditors and shareholders of the company. It should be noted that many of the cases that have come before the courts have, in fact, been supported by major creditors of the insolvent company. Historically, close links can often be found between major creditors and shareholders of companies and, therefore, the intent of the underlying application has been viewed with suspicion by the courts.

It should be noted that, once a company becomes insolvent, its directors' duties change. Rather than having an obligation to protect their shareholders, they become obliged to protect their creditors. Directors must be cognisent of these duties if a company is on the cusp of insolvency. Given that judges have shown a willingness to refer applications directly to the Office of the Director of Corporate Enforcement, this has become a very real risk for directors who could be disqualified or restricted as result.

Liquidators of insolvent companies also have a statutory duty to take restriction proceedings against directors if they have acted recklessly. It has become clear that directors can no longer use the independent accountant's report as a shield to protect them in relation to their behaviour pre-insolvency. G

LOOK IT UP

Cases:

- *Fergus Haynes (Developments) Limited v the Companies Act* IEHC 327 (2008)
- *Missford Limited t/a The Residence v Companies Act 1990* (2010, 2 COS), High Court, 5 January 2010
- *Re Atlantic Magnetics* (Supreme Court, unreported, 5 December (1991, 1993 2IR pp572-573)
- *Re Tuskar Resources* (2001) [IEHC 27], High Court, unreported, 26 February 2001
- *Re Laragan Developments Limited* (2009) IEHC 390
- *Vantive Holdings Limited v the Companies Acts* (2009) IEHC 384; *Re Vantive Holdings Limited* (2009) IESC 68 and 69; and *Vantive Holdings & Ors v the Companies Acts* (2009) IEHC 409

Legislation:

- *Companies Amendment Act 1990*
- *Companies Amendment (No 2) Act 1999*

Literature:

- *Irish Independent*, 19 February, 2009, "Judge reluctant to prop up struggling firms as buyers now 'scarce as hen's teeth'"
- *The Irish Times*, 8 March 2010, "Cafe brothers' €146,000 spending revealed in court"

Monaghan Solicitors' Bar Association CPD event

At the Monaghan Solicitors' Bar Association CPD event on 14 October were *(from l to r)*: Justine Carty (Barry Healy & Co), Doc Lavery (Lavery & Co) and Judge John O'Hagan

Dermot Monahan (Monaghan & Co Drogheda), Michael Staines (Dublin) and Justine Carty (Barry Healy & Co, Monaghan) were at the Glencarn Hotel, Castleblayney, for the CPD event

Justine Carty, Brendan McDonald (Coughlan White & Partners), Ross McPhillips (HG Donnelly & Son) and Maeve O'Connor (Harry McCullagh & Co) were among the 200-strong turnout for Monaghan's CPD day

At the not-for-profit seminar were Elizabeth Gormley BL and Daniel Gormley

Organisers of the CPD event in Castleblayney were Justine Carty (Barry Healy & Co) and Lynda Smyth (Coyle Kennedy MacCormack)

Meeting up at the highly successful Castleblayney event were *(l to r)*: Judge O'Hagan, Justine Carty and Stuart Gilhooly

Young solicitors slip between the covers at House of Lords

The Society of Young Solicitors Ireland (SYS) welcomed past chairpersons, members and friends to the former House of Lords on College Green on 7 October 2011 to celebrate the publication of *The Society of Young Solicitors Ireland – Scholars, Youth and Success since 1965*.

The book, which was over a year in the making, is sponsored by Bank of Ireland and provides a light-hearted and informal account of the history of the society.

The SYS was established in 1965 by a number of young solicitors, including Bruce St John Blake, John Buckley and Richard Neville, and had the principal aim of improving the standard of education of young solicitors at that time. Since then, the society has continued to provide education on legal developments and an invaluable social network for younger members of the profession.

Ms Justice Mary Finlay Geoghegan, who was chairperson of the SYS in 1978/79, has written the foreword to the book and was a guest speaker at the launch, along with the first chairperson of the society, Bruce St John Blake.

The committee would like to thank Bank of Ireland, the guest speakers, and everyone who attended for making the morning such a success.

(Front, l to r): Joanne Joyce (secretary of the SYS), Jane McCluskey (chairperson of the SYS) and Bruce St John Blake (first chairperson of the SYS in 1965). *(Middle, l to r)*: Stephen Fuller, Ms Justice Mary Finlay Geoghegan and Niamh Moore. *(Back, l to r)*: Paul Kennedy, Andrea Flynn, Claire McLoughlin (vice-chairperson of the SYS), Aidan Gleeson, Micheál Grace, Lisa Joyce, Michael Keaveney (treasurer of the SYS) and Alina Prendergast

(From l to r): William Aylmer, Stuart Gilhooly (president of the DSBA) and Ken Murphy (director general of the Law Society of Ireland)

(From l to r): Kieran Cowhey and Michael Carrigan

(From l to r): Professor John Wylie, John Buckley and Derek Greenlee

(From l to r): Stuart Gilhooly (president of the DSBA) and Paul Marren

Moot court reception

A special reception was held at Blackhall Place on 21 September to mark the achievements of three teams of Irish trainee solicitors who achieved various degrees of success in two international moot court competitions.

One team comprised Denise Daly, Maeve Larkin and Clare McQuillan, who returned from Baltimore, USA, as winners of the International Environmental Moot Court Competition. A second team of Sarelle Buckley, Aileen Gittens and Conall Geraghty won through the preliminary rounds to make it to the quarter finals in the same competition.

The reception also marked the achievement of Maedbh Gogarty, Orlaith Sheehy, Stephen Gardiner and Daniel Kelly, who qualified for the regional final of the European Moot Court Competition in Heidelberg.

PIC: JASON CLARKE PHOTOGRAPHY

The winners of the International Environmental Moot Court Competition – Denise Daly, Clare McQuillan and Maeve Larkin – pictured with Law Society President John Costello

Visit of the President of the Constitutional Court of Kosovo

PIC: LENSMEN

The President of the Constitutional Court of Kosovo, Dr Enver Hasani, visited Ireland recently. He was accompanied by Irish lawyer and chief legal advisor to the Constitutional Court, Michael Bourke. The president joined a panel discussion on human rights violations and state succession at the American Bar Association conference in Dublin. He also met with Law Society President John Costello to discuss ongoing work by Irish Rule of Law International, which recently ran a training course for lawyers in Kosovo in partnership with Kosovo Chamber of Advocates. (See www.irishruleoflaw.ie.)

Attorney General launches Disability Legal Information Clinic

Attorney General Máire Whelan recently launched the Disability Legal Information Clinic at NUI Galway.

At the launch, the AG spoke about the importance of student engagement and community involvement in clinical legal education.

The clinic is a free, confidential, drop-in legal information service on issues related to disability.

It is staffed by trained student volunteers who will be supervised by a legal practitioner and a staff member of the university's Centre for Disability Law and Policy. The clinic is a partnership between the university's student-run Free Legal Advice Centre and the Centre for Disability Law and Policy.

At the launch of the clinic was Attorney General Máire Whelan, with some of the volunteers who will staff the facility

PADRAIC GEARTY 1934 – 2011

An appreciation

On 5 October last, Padraic Gearty passed away, eventually succumbing to an illness that he had both ignored and fought, but never gave in to, for many years.

First and foremost, Padraic was a wonderful family man. Married to Brenda for over 50 years, they had a wonderful life together. Brenda was both his soul mate and his rock. He took enormous pleasure in her achievements, and he was so proud of his three daughters and his nine grandchildren.

Padraic, the third son of Frank and Rose Gearty, was born in 1934. He attended St Mel's College in Longford from 1947 until 1952. He then studied law in UCD, graduating with BA and LLB degrees before qualifying as a solicitor in 1957. Upon qualifying, he returned to Longford to commence practice, with his late brother Enda, in his father's firm in Church Street. Such was his capacity for hard work, long hours and his tireless tenacity on behalf of his clients that they quickly built the practice of FJ Gearty & Co into one of the largest in the Midlands. He loved the practice of law, not least because it brought him into daily contact with people. He was a people person – always engaging with others and enjoying their company.

A wonderful colleague, Padraic was an outstanding solicitor of the old school. He was a man of honour who was always proud of his calling. He had a clear incisive mind, which he brought to bear with great success on the many legal issues presented to him over his long career. He had no interest in personal financial gain. While always a formidable opponent, he was unfailingly fair, his word was his bond, and he would never take a colleague short. He was always available to give sound advice to colleagues as well as to clients.

PIC: WILLIAM FARRELL PHOTOGRAPHY

While he excelled as a solicitor, that was far from his only area of excellence. He was a sportsman, who both played many sports to a very high standard and who had a lifelong interest in and support for all sports. His first love was the GAA and his career started in St Mel's College, Longford, winning a Leinster Senior medal in 1951. He then played Sigerson Cup football for UCD for four years and was chosen to play on the combined universities team against Ireland. He played on the Leinster team in 1962 and had the honour of scoring the first ever televised point on live television when Telefís Éireann covered the Railway Cup final between Leinster and Munster in that year. He had a legendary love of the GAA, but that did not prevent him from being one of the first people to formally seek the abolition of Rule 27, which prevented members of the GAA from playing so called 'foreign' games.

But that was the essence of Padraic – identify what cannot be justified and then fearlessly work to change it. His love for, and commitment to, the GAA was recognised when he was presented with the Longford GAA 'Hall of Fame' award in 2008. Moreover, at the time of his death, he was honorary vice-president of Longford GAA.

While Padraic was a Longford man, born and bred, he was much more than that. His vision and imagination were not limited in any way. He was a man with an enormous enthusiasm for life. He had the mindset and the energy to make things happen. Even in later years, he never let his illness get the better of him. He never gave in. Indeed, he even went to the All Ireland football final in Croke Park last September. As Monsignor Tim Hannigan said as he officiated at Padraic's funeral Mass – "If God wanted him – he was going to have to catch him" – such was the speed at which Padraic lived life.

His was an inquisitive and questioning mind, which he used to benefit the lives of so many in Co Longford. But, most of all, he had an enormous heart. He was actively involved in every community endeavour. He was a founding member of Co Longford Social Services and served as chairperson for over 30 years. He was legal adviser to St Christopher's Services from its foundation. He was also a founding member of Longford Citizen's Information Service. Each of those organisations benefitted enormously from his vision, commitment and energy.

He was a kind and generous man whose many acts of charity were never public. He never counted the cost to himself, nor did he seek compliments or thanks. His lifelong purpose and ambition was to improve the lives of others. It is a tribute to his selfless dedication and tenacity to the many causes he espoused that he realised that ambition. What a wonderful epitaph.

Brenda, Deirdre, Naoimh and Liadhan, together with the extended family, have lost such a central figure in their lives. They will find comfort by remembering the many features of Padraic's full life together with his long list of achievements (which, of course, he never saw as such) and, above all else, the unique and permanent legacy that he has left to the people of Longford. As solicitors, we have all lost a wonderful and loyal colleague and friend.

Ar dheis Dé go raibh a anam dílis.

PG

Administrative Law in Ireland

Gerard Hogan and David Gwynn Morgan. Thomson Reuters/Round Hall (4th ed, 2010), www.roundhall.ie. ISBN: 978-1-8580-057-20. Price: €425 (incl VAT).

It is the very extent of the reach of public and administrative law, and the number of public bodies to which its principles apply, coupled with the uniquely authoritative, clear and comprehensive nature of this work, that caused this fourth edition to be so eagerly awaited.

While there have been some changes to the contents and their location within the book, much will be familiar to readers of the third edition in terms of navigation of the work. What will not be familiar, of course, is what the authors have now woven in by way of updated citations of case law and references to new legislative materials, together with commentaries on trends and possible future developments in – and influences on – Irish administrative law.

This infusion of material from 1998 onwards represents a considerable amount of work on the parts of the authors. To appreciate this, one need only consider the number of legislative instruments of relevance that have been enacted between 1998 and 2010, as well as the number of important authorities that have been handed down by the courts in that period. Without wishing to place any particular emphasis on materials by virtue of mentioning them to the apparent exclusion of others, one might note that the fourth edition deals with important recent legislation in relation to local government, valuation, planning and development, health, social welfare and human rights.

It is as hard to imagine a topic that does not receive at least some consideration in the book as it is to imagine a core set of law books in an Irish law or public administration library without *Administrative Law in Ireland* as a necessary shelf-companion.

Niall Michel is a public law partner in Mason Hayes & Curran.

Corporate Fraud

Andrew Brown. Chartered Accountants Ireland (2010), www.gillmacmillan.ie. ISBN: 978-1-9072-142-26. Price: €40 (incl VAT).

The topic of corporate fraud has been an undercurrent in the national psyche for the past number of years. In this book, the author helpfully reminds the reader that corporate fraud can be a difficulty, from the smallest community organisation to the largest multinational corporation. Any misconception that corporate fraud is the concern solely of large organisations is dispelled and, in making the book relate to organisations of all sizes, the author makes the book relevant to legal advisors from solicitors' firms of all hues.

In the first part, the author guides the reader to develop an understanding of the nature, volume, causes and impact of corporate fraud in an engaging and concise manner, with helpful examples from past occurrences.

Preventing corporate fraud is the theme of the second part, illustrating various means by which an organisation can take proactive steps through the use of data analysis, accounting controls and ethics policies to minimise or eliminate the possibility of corporate fraud arising within their organisation.

Finally, the author provides insight into the investigation of corporate fraud, and it is perhaps this section that the legal reader will find most interesting.

It is most likely that this is not a book that a solicitor will ever need to open before a High Court judge. Nonetheless, it would be a very useful book on the shelf of any solicitor who regularly advises companies or voluntary organisations of any size. When such a client calls to the office with a suspicion that corporate fraud has occurred and asks "what now?", the reader will have the answer.

Richard Hammond is a partner at Hammond Good Solicitors, HG Legal Chambers, Main Street, Mallow, Co Cork.

Quick Win Media Law Ireland

Andrea Martin. Oak Tree Press (2011), www.oaktreepress.eu. ISBN: 978-1-9048-874-61. Price: €14.95 (paperback, incl VAT. Also available as an e-book, for Kindle, and as an iPhone app).

Quick Win Media Law Ireland **is "aimed at those who work in the media industry seeking quick and practical answers to legal questions they encounter day-to-day". Priced at €14.95 (less than a tenth of the cost of many legal textbooks), it would also be a useful addition to the library of non-specialist lawyers.**

Unsurprisingly, the *Defamation Act 2009* (in force since 1 January 2010) features heavily. There are concise sections on, among other things, limitation periods and correction and declaratory orders and on procedural points such as information for juries on damages, lodgements and verifying affidavits. The regulation of broadcasters and of the press is set out in impressive detail.

Some of the areas covered are less obvious and are all the more welcome for that. Thus, the book touches upon vicarious liability for an employee's defamatory statements and gives helpful advice on the question of what a business can do to protect its website and social networking site from defamation claims. As someone who deals with journalists daily, I was both amused and impressed by the author's debunking of the myth that using the word 'alleged' can avoid legal liability.

As many defamation cases are decided by juries and are, thus, unreported, the inclusion of the details of several unreported cases alone makes the modest outlay on this book well worthwhile. I would recommend it for lawyers and non-lawyers alike. G

Michael Kealey is chairman of the* Gazette *Editorial Board.

Tracing solicitor ancestors

Queries for information on genealogical history are a welcome diversion from everyday legal requests, writes Mary Gaynor

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

The library occasionally receives requests for genealogical information about solicitor ancestors, often by way of an email from abroad that takes the form of an introductory potted history of what is known about the family member, along with a request for further information about when the solicitor might have qualified, where he worked, and any other biographical details that might be gleaned from the Law Society's archival resources. The summer months also bring occasional visitors wishing to trace their Irish roots. Sadly, due to the Four Courts fire in 1922, the Society's archives for the 19th and early 20th centuries are sparse, consisting mainly of a collection of *Law Directories*, roll books and published material in the *Gazette* and other sources.

Knowledgeable genealogical researchers would, of course, also use other sources, such as church records, registers of births, deaths and marriages, street directories, and so on. Legal history textbooks (see panel) describe how solicitors were educated, and this is helpful when trying to find appropriate archival sources.

Dublin almanacs

The *Gentleman's and Citizen's Almanack* was published in Dublin from 1729 until 1837, with some breaks in between. It was compiled and published successively by John Watson, Samuel Watson and, from 1800, by John Watson Stewart. The Law Society Library has an incomplete set of these almanacs covering various years between 1773 and 1817. From 1751 on, the *Almanack* also contained Peter Wilson's trade directory, which contained lists of merchants and traders, judges, barristers and attorneys for Dublin City. The 1791 *Almanack* contains a 12-page list of attorneys, with details of name, address in Dublin, and an indicator of the court in which the attorney practised. An example with some local flavour, in the context of the current location of the Law Society's premises, is the entry in the 1795 *Almanack* for "Breton (George) K (King's Bench), E (Exchequer), Blackall St".

In cases where the attorney held a state office, further information is also given, so, in 1791, there can be found an entry for "Pollock (John), KCE, Solicitor to the Trustees of the Linen Manufacture, Clerk of the Report Office of the Court of Chancery, Transcriptor and Foreign Appot of the Court of Chancery, Jervis St." A more comprehensive collection of these almanacs is held by the National Library of Ireland.

The Society's roll books date back to 1840 and contain signatures of individuals, the date of signature, and the year of academic qualification. As the entries up to 1898 are handwritten by the individual attorney signing, some of them are quite difficult to decipher. There is no further biographical information available in this source. A full list of solicitors on the roll from 1952 to 2001 is included in appendix 4 of *The Law Society of Ireland, 1852-2002: Portrait of a Profession*, published by the Law Society in 2002 to mark the 150th anniversary of the charter. This book also gives a comprehensive account of the history of the profession from before the 1852 charter to the 1960s in the first three chapters, by Daire Hogan.

Law Directories

The (then) Incorporated Law Society of Ireland started publishing an annual *Law Directory* in 1886. There were two earlier volumes of *The Law Directory for Ireland and Law and Equity Court Guide*, edited by Alexander Edward McClintock and Cheyne Brady and printed in Dublin in 1846 and 1847. These earlier volumes contain lists of solicitors who had taken out licenses for the year prior to the year of publication. The lists give very little biographical information and merely list names and addresses, with indicators as to whether the solicitor was a member of the Law Club, an elector of Trinity College Dublin or a member of the Society of Attorneys and Solicitors. They also list local crown solicitors. In 1886, the first *Law Society Directory* was published, containing the register of solicitors, including names, addresses, academic degrees, term and year of qualification, and indicators as to membership of the Law Club of Ireland, the Incorporated Law Society, the Solicitors' Benevolent Association. It also indicated which solicitors were not practising in Dublin. As well as the alphabetical sequence, there was a list of local solicitors arranged by town. This format was more or less continued on through the years to the present time.

The King's Inns

In the years prior to 1866, the education of solicitors was regulated by the King's Inns, so if the subject of the genealogical query started their legal education before this date, the library staff can consult the *King's Inns Admission Papers 1607-1867*, which is a very useful index, giving details of lineage, location and year of entry. Copies of the actual admission papers listed in the index contain further biographical information, and these are available from the King's Inns Library.

Gazette

Biographical information relating to exam results, medal winners and obituaries can be found in the early issues of the *Gazette* and also in the *Irish Law Times and Solicitors Journal*.

GOLDILOCKS AND THE FOREBEARS

- Hall, Eamonn G and Daire Hogan (eds), *The Law Society of Ireland, 1852-2002: Portrait of a Profession* (Dublin: Law Society of Ireland, 2002),
- Plunkett, Eric A, "Attorneys and solicitors in Ireland", *Record of the Centenary of the Charter of the Incorporated Law Society of Ireland, 1852-1952* (Dublin: Incorporated Law Society of Ireland, 1953) pp38-74,
- Gamble, Charles, *Solicitors in Ireland 1607-1921* (Dublin: Maunsel and Roberts, 1921),
- For the historical distinction between the term 'attorney' and 'solicitor', see Daire Hogan, *The Legal Profession in Ireland 1789-1922* (Dublin: Incorporated Law Society of Ireland, 1986) p6,
- Keane, Edward, P Beryl Phair and Thomas U Sadleir, *King's Inns Admission Papers 1607-1867* (Dublin: Stationery Office, 1982)

Law Society Council meetings 23 September and 14 October 2011

Appointments to other bodies

The Council approved the appointment of Fiona Duffy as the Society's nominee to the Circuit Court Rules Committee, the appointment of Joan O'Mahony as the Society's nominee to the National Steering Committee on Violence against Women and the appointment of Gerard Doherty as the Society's representative on the Courts Service Board. The Council noted that the minister had appointed Deirdre Fox to the Property Registration Authority, having sought a recommendation from the Society.

Professional indemnity insurance

The Council noted, with approval, two e-bulletins and a guide to the profession in relation to a series of issues pertaining to professional indemnity insurance (PII), including a common proposal form. Eamon Harrington reported that the PII Helpline had re-commenced and would be promoted to the profession as a service to members. In addition, the indications were that the market conditions for PII for the forthcoming renewal period were good, with JLT filling the gap created by the departure of the SMDF, together with a number of other insurers expressing an interest in writing business. It appeared that no existing provider was intent on withdrawing from the market.

Legal Services Regulation Bill

At a special meeting of the Council on 14 October, the Council considered the contents of the *Legal Services Regulation Bill*, which had been published on 12 October. The Council approved a summary of the bill for circulation to the profession and agreed that the director general should participate in the RTÉ1 television programme *The Frontline*, to be broadcast on the following Monday.

The Council expressed deep reservations about the bill and, in particular, the manner in which the new regulatory authority was answerable in so many respects to the Minister for Justice. The Council noted that the regulatory model for the legal profession proposed in the bill was unknown in any democracy and threatened the independence of the legal profession, which is a hallmark of any free society.

The Council also expressed concerns in relation to the costs that would be associated with the establishment of the proposed new regulatory authority – costs that would be borne by the profession and which, under the model of regulation chosen by the minister, would be significantly increased and disproportionate to the perceived benefits of the new system.

It was agreed that a special task force should be established by the Council to consider the provisions of the bill in detail, to identify additions or amendments, and to make recommendations to the Council in relation to same. It was agreed that all practitioners should be invited to submit their suggestions by email for consideration by the task force.

The Council noted that the Society had been invited to meet with the minister in the coming weeks to discuss the *Legal Services Regulation Bill* and related matters. The Council agreed to engage constructively with the minister and his officials in all stages of the legislative process.

Proposed constitutional amendments

The Council considered the two forthcoming constitutional referenda and expressed concerns regarding the extent to which powers were being transferred from the judicial system to the executive, and the resulting imbalance that was being created in the carefully balanced separation-of-powers system that applied in any true democracy. It was agreed that a press release should be issued on the matter. G

Practice notes

Effect of the *Multi-Unit Developments Act 2011* on existing developments

CONVEYANCING COMMITTEE

The committee has received a number of queries as to the effect of the act on sales of existing apartments and houses that are covered by the act ('units') and is satisfied that the position of the owners has been strengthened by the new legislation.

Sections 4 and 5 of the act require the developer to transfer the ownership of relevant parts of the common areas in a multi-unit development to the owners' management company (OMC), within six months of 1 April 2011, save where the common areas have already been transferred.

Neither of these sections nor any other section of the act provides for any sanction for non-compliance with these sections. The fact that the deadline of 30 September 2011 may have passed without the transfers having taken place does not remove the obligation to transfer, which must remain a continuing obligation.

The benefit of the obligations rests with the OMC. An OMC would appear to have two means of ensuring the transfer of the common areas: (1) by seeking an order for the performance of the provisions in the contract that would normally have been entered into between the developer and the OMC at an early stage in the development, whereby the developer would have contracted to transfer the common areas to the OMC on completion of the development or when all the units had been sold; and (2) by invoking the provisions of the act.

The first of these courses will not be available where the development has not been completed or where some of the units remain unsold and, in the current financial climate, there must be many developments where some of the units have not been sold.

Under section 24 of the act, an OMC may apply to the Circuit Court for an order to enforce the obligation on the developer to transfer the common areas to it. Unfortunately, it is possible that the OMC may still be under the control of the developer, either because it holds a majority of the membership or it controls the board of directors. In residential-only developments, section 15 of the act, which imposes a 'one unit, one vote' rule for OMCs, empowers members of OMCs to take voting control of developments where more than 50% of the units have been sold. Where the unit owners do not have control of the OMC, an individual unit owner can, as a member of the OMC, make the necessary application. Even if such a unit owner has never been given membership of the OMC, the court may, under section 25(1)(f), permit them to bring the application. Such proceedings are likely to be expensive and represent a heavy burden on the unit owner if they have to be brought by an individual. In an ideal world, other unit owners might be expected to join in such applications, but experience suggests that this is not always achievable. The court has, of course, power to award costs against the developer, but the unit owner may well be asked to provide initial funding for the action.

If, as is commonly the case, the OMC has been struck off the Register of Companies, usually for failing to make returns, section 30 of the act makes special provision for applications to the Registrar of Companies for restoration of such companies to the register. An alternative, which also covers the position where the developer has also been struck off, is for the unit owners to form a new OMC and apply to the High Court under section 26 of the *Trustee Act 1893* to have the common areas vested in the new OMC. This procedure was approved by the High Court (Laffoy J) in the case of *In the Matter of Heidelstone Company Ltd* ([2006] IEHC 408), in which it was decided that, where all the units had been sold, the developer held the common areas in trust for the owners of the apartments and the townhouses in the development.

There may well be a case for coupling, with the application for the transfer of the common areas, a claim for damages for breach of the statutory duty imposed by section 4 and 5, which may have the effect of persuading the developer to devote attention to the underlying need to effect the transfer.

It is being suggested that the effect of the legislation is to render residential units in multi-unit development unsaleable where the common areas have not been transferred. The basis for this view is not obvious. This would be true in the case of units coming within section 3 – that is, those where no residential units were sold prior to 1 April 2011 and where there is a statutory restriction on selling such units before the transfer of the common areas to the OMC has taken place. Prior to the introduction of the act, the titles to both new and second-hand residential units in multi-unit developments were regarded as good and marketable, on the basis that there was an enforceable contract to transfer the common areas to the OMC at the appropriate stage of the development, and many thousands of such sales were completed.

The 2011 act does nothing to detract from or weaken the position of a unit owner in a development governed by sections 4 and 5. Indeed, as mentioned above, the sections provide the OMC and individual unit owners with additional statutory rights to ensure that the common areas are transferred to OMCs and, indeed, that the transfers should be effected earlier than would have been the position under the contracts to transfer the common areas. There is no suggestion that transfer of common areas should be delayed just because the position of unit owners will not be weakened by failure to do so. There remains a statutory obligation to transfer the common areas, and the transfer should be implemented as soon as practicable.

The committee has also been asked whether it is necessary to establish a new OMC for existing developments. It appears clear that sections 15 and 16 apply to existing OMCs, so there would not appear to be any need to set up a new OMC. The relevant provisions of the act will apply automatically to such existing OMCs.

Solicitors' invoices and VAT

TAXATION COMMITTEE

Practitioners should note that a solicitor should furnish invoices or bills for services and VAT only to his own client or in the name of his own client. A solicitor should not make out an invoice to a person who is not his client, even if his costs are being paid by that person – for example, a plaintiff's solicitor should not make out an invoice in the name of the defendant, and a lender's solicitor should not make out an invoice in the name of the borrower.

BRIEFING

Applications under section 106 of the *Companies Act 1963*

LITIGATION COMMITTEE

Practitioners may wish to note that Ms Justice M Laffoy has recently directed that (as from 10 October 2011), in every application under section 106 of the *Companies Act 1963* (to extend time to register a charge), the court will require reference to the specific mortgage deed by way of date and parties, among other things. Also, a full certified copy of all pages of the relevant mortgage deed will be required to be produced with the papers.

Tax clearance certificates – Criminal Legal Aid panel 2011-2012

CRIMINAL LAW COMMITTEE

Members who wish to retain their name on the Criminal Legal Aid panel for the legal aid year 1 December 2011 to 30 November 2012 are required to hold a tax clearance certificate with an expiry date later than 30 November 2011.

Applications for tax clearance certificates can be made in writing (Form TC1) to local district offices of Revenue or via Revenue's online tax clearance application facility (www.revenue.ie). Please note that solicitors who are in the PAYE system cannot apply online for tax clearance.

Whether the application has been made in writing (Form TC1) or online, the taxpayer can avail of Revenue's electronic verification system, whereby the taxpayer may permit a third party to electronically verify the taxpayer's tax clearance status by providing his/her tax clearance certificate number and either his/her tax registration number or, in the case of a PAYE taxpayer, his/her PPS number, to the third party. This obviates the necessity for solicitors to send the original of their tax clearance certificate to the county registrar for each of the counties in which the solicitor wishes to be eligible for legal aid assignments, as the registrar will be able to view the certificate online and print it down for his/her file if necessary.

Where a solicitor does not wish to avail of the electronic verification system, he/she must submit the original tax clearance certificate to the county registrar for each of the counties in which the solicitor wishes to be eligible for legal aid assignments. Copy certificates are not acceptable.

Members should note that no fees will be paid to a solicitor who accepts an assignment to a case if his/her name is not, at the time of assignment, on the relevant solicitors' panel.

DMD District Court sittings

CRIMINAL LAW COMMITTEE

The President of the District Court has issued the schedule of District Court sittings for the Dublin Metropolitan District (DMD) for 2012, as set out below.

Not all dates are currently available, and determination orders will be issued in due course in relation to the courts that will sit for urgent business during the Easter vacation 2012, the month of August 2012 and the Christmas vacation 2012.

SCHEDULING OF DISTRICT COURTS IN THE DMD FOR 2012

Tuesday 3 January 2012:

- **Court no 2, Criminal Courts of Justice (CCJ),**
- **Court no 3, CCJ,**
- **Court no 41, Dolphin House,**
- **Court no 55, Smithfield,**
- **Cloverhill,**
- **Blanchardstown,**
- **Dun Laoghaire.**

Easter vacation (Thursday 5 April to Tuesday 10 April 2012 – six consecutive days, commencing on Holy Thursday): **nearer the time, a determination order will issue regarding what courts will sit for urgent business for the above period.**

From Wednesday 11 April to Friday 13 April 2012: **no cases to be listed for the DMD and all outlying Dublin courts, with the exception of the following, which will sit for urgent business:**

- **Court no 2, Criminal Courts of Justice,**
- **Court no 3, Criminal Courts of Justice,**
- **Court no 41, Dolphin House,**
- **Court no 55, Smithfield,**
- **Cloverhill,**
- **Blanchardstown,**
- **Dun Laoghaire.**

August 2012: **nearer the time, a determination order will be made regarding what courts will sit for urgent business for this month.**

Monday 1 October 2012: **Court no 2, Criminal Courts of Justice, will commence at 10.30am.**

To enable judges of the District Court to attend church service on Monday 1 October 2012, no cases will be scheduled until 2pm in any of the remaining Dublin Metropolitan Courts, and this includes all outlying Dublin Courts.

From Wednesday 19 December 2012 to Friday 21 December 2012: **no cases to be listed for the DMD, with the exception of the following courts sitting for urgent business:**

Wednesday 19 December 2012:

- **Court no 2, CCJ,**
- **Court no 3, CCJ,**
- **Court no 41, Dolphin House,**
- **Court no 55, Smithfield,**
- **Cloverhill,**
- **Blanchardstown,**
- **Dun Laoghaire.**

Thursday 20 December 2012:

- **Court no 2, CCJ,**
- **Court no 3, CCJ,**
- **Court no 41, Dolphin House,**
- **Court no 55, Smithfield,**
- **Cloverhill,**
- **Blanchardstown,**
- **Dun Laoghaire.**

Friday 21 December 2012:

- **Court no 2, CCJ,**
- **Court no 3, CCJ,**
- **Court no 41, Dolphin House,**
- **Cloverhill.**

Christmas vacation (Sunday 23 December 2012 to Monday 31 December 2012 – nine consecutive days commencing 23 December 2012): **nearer the time, a determination order will be made stating what courts will sit for urgent business for the above period.**

On the following Bank Holidays, Court no 44, Chancery St, shall sit:

- **Monday 19 March 2012,**
- **Monday 7 May 2012,**
- **Monday 4 June 2012,**
- **Monday 29 October 2012.**

Note – Bank Holidays: see also paragraphs 2, 4 and 7 re: court sittings at Easter, in August, and in December 2012. G

Legislation update 10 September – 10 October 2011

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

ACTS PASSED

European Financial Stability Facility and Euro Area Loan Facility (Amendment) Act 2011
Number: 25/2011
Content: To further facilitate, in the public interest, the financial stability of the European Union and the safeguarding of the financial stability of the euro area as a whole and for those purposes: (a) to enable effect to be given to the amendment to the European Financial Stability Fund Framework Agreement; (b) to enable effect to be given, insofar as it relates to the State, to the amendment to the €80 billion loan facility agreement done in Brussels on 14/6/2011 and in Athens on 10/6/2011; (c) to amend the *Euro Area Loan Facility Act 2010* and the *European Financial Stability Act 2010*; and (d) to provide for related matters.
Enacted: 23/9/2011
Commencement: 23/9/2011

Insurance (Amendment) Act 2011
Number: 26/2011
Content: Amends the *Insurance Act 1964* to change the scope of the Insurance Compensation Fund from one which covers the risks of policyholders of Irish authorised companies to one that covers all insured risks in the State, except for specific excluded risks, which include health insurance and life insurance. Except for these specified excluded risks, all insurance policies taken out in relation to risks in the State come within the remit of the scheme. Insured risks outside the State are no longer covered by the scheme, where an insurance company is being liquidated. The moneys will be recouped by a 2% levy on the insurance industry, and provides for related matters.
Enacted: 30/9/2011
Commencement: 30/9/2011

SELECTED STATUTORY INSTRUMENTS

Child Care (Amendment) Act 2011 (Commencement) Order 2011
Number: SI 453/2011
Content: Appoints 8/9/2011 as the commencement date for parts 1, 4 and 6 of the act.
Commencement: 8/9/2011

Child Care (Amendment) Act 2011 (Commencement) (No 2) Order 2011
Number: SI 497/2011
Content: Appoints 30/9/2011 as the commencement date for ss4 and 26 of the act.
Commencement: 30/9/2011

Competition Act 2002 (Section 10) (Commencement) Order 2011
Number: SI 491/2011
Content: Appoints 3/10/2011 as the commencement date for s10 of the act, under which a trial judge may order that copies of certain evidentiary documents and information be given to a jury.
Commencement: 3/10/2011

Protection of Employees (Employers' Insolvency) Procedures Regulations 2011
Number: SI 504/2011
Content: Prescribes the procedures for making claims under ss6 and 7 of the *Protection of Employees (Employers' Insolvency) Act 1984*.
Commencement: 30/9/2011

Road Traffic (Licensing of Drivers) (Amendment) (No 2) Regulations 2011
Number: SI 483/2011
Content: Amends the driver licensing regulations to comply with the requirements of Directive 2006/126.
Commencement: 19/1/2013

Social Welfare and Pensions Act 2010 (Part 4) (Commencement) Order 2011
Number: SI 471/2011
Content: Appoints 22/9/2011 as the commencement date for part 4 of the act. Part 4 enables the transfer of the Community Welfare Service of the Health Service Executive to the Department of Social Protection.
Commencement: 22/9/2011

Social Welfare and Pensions Act 2010 (Section 10) (Commencement) Order 2011
Number: SI 494/2011
Content: Appoints 1/10/2011 as the commencement date for s10 of the act, which provides for amendments to the Supplementary Welfare Allowance Scheme in order to facilitate the transfer of responsibility for the administration of that scheme from the Health Service Executive to the Department of Social Protection.
Commencement: 1/10/2011

Social Welfare and Pensions Act 2010 (Sections 18(2), 18(3) and 18(4)) (Commencement) Order 2011
Number: SI 495/2011
Content: Appoints 1/10/2011 as the commencement date for ss18 (2), (3) and (4) of the act, which provides for amendments to the Supplementary Welfare Allowance Scheme in order to facilitate the transfer of responsibility for the administration of that scheme from the Health Service Executive to the Department of Social Protection.
Commencement: 1/10/2011

Social Welfare and Pensions Act 2008 (Sections 18(2), 18(3) and 18(4)) (Commencement) Order 2011
Number: SI 496/2011
Content: Appoints 1/10/2011 as the commencement date for ss18(2), (3) and (4) of the act, which provides for amendments to the Supplementary Welfare Allowance Scheme in order to facilitate the transfer of responsibility for the administration of that scheme from the Health Service Executive to the Department of Social Protection.
Commencement: 1/10/2011 G

Prepared by the Law Society Library

BRIEFING

Justis update

News of Irish case law information and legislation is available from FirstLaw's current awareness service on www.justis.com
Compiled by Bart Daly

ADMINISTRATIVE

Constitutional law

Citizenship – fair procedures – disclosure – discretion – good character – meaning – statutory interpretation – certification – ability to respond – Irish Nationality and Citizenship Act 1956, *as amended.*

The applicant applied for a certification of naturalisation to acquire Irish citizenship but was refused on good character grounds. The applicant was originally from Pakistan and had lived in Ireland since 2000. Section 15 of the *Irish Nationality and Citizenship Act 1956*, as amended, accorded to the minister powers to grant a certificate of naturalisation in his absolute discretion if he was satisfied, among other things, as to the good character of the applicant. The applicant was refused on the basis that he had come to adverse garda attention. There was alleged to be a failure of the applicant to make disclosures about a search warrant issued against him that had not resulted in any charges. The issue arose as to whether the minister had violated the constitutional right of the applicant to fair procedures by relying on material not previously disclosed to the applicant, which he had no opportunity of dealing with.

Hogan J held that the applicant could not be disqualified for section 15 purposes merely because he had come to adverse garda attention. The minister's decision would be quashed on two separate grounds. First, there was no basis for the suggestion that the applicant had failed to make appropriate discourse in the manner required by the actual language of the form. Secondly, the minister inadvertently breached fair procedures, in that, in the special circumstances of the case, he was obliged to bring the content of the garda report to the applicant's attention.

***Hussain (applicant) v Minister for Justice, Equality & Law Reform (respondent)*, High Court, 13/4/2011**

Judicial review

Fair procedures – constitutional rights – reputation – Child Care Act 1991 *– whether the respondent breached fair procedures in the manner in which it investigated an allegation of abuse against the applicant.*

The applicant sought, among other reliefs, an order of *certiorari*, by way of judicial review, quashing the respondent's undated final report, which was forwarded to the applicant by letter dated 2 October 2009. The applicant also sought an order quashing the respondent's decision to notify the gardaí of a complaint against her without first properly or adequately assessing or investigating the reliability of the complaint. The applicant was an audiologist and, at the time of applying for leave to bring this application, asserted she was an employee of the respondent. The respondent denied that she was an employee. In October 2008, the applicant, having finished working for the respondent, submitted a proposed work schedule for a new post. The applicant was in receipt of training to use new equipment but, in December 2008, senior management informed her that her training was being stopped, as the respondent was required to obtain garda clearance for staff. The applicant was subsequently informed that an allegation of abuse had been made against her in a particular region. The applicant was later informed that the complaint was one of inappropriate contact and was being investigated. She was not informed of the identity of the complainant until she attended a meeting in February 2009. Correspondence was ongoing between the applicant's solicitors and the respondent during the course of the investigation, and concern was expressed at the failure of the respondent to allow the applicant any input into the investigation. The final report concluded that the complainant gave a credible account of inappropriate contact by the applicant on a number of occasions during a stated period, and it recommended that the respondent formally notify the gardaí of the complaint. By letter dated 16 October 2009, the applicant's solicitors again requested that the applicant be permitted to exercise her right to be heard, and judicial review proceedings were threatened. The application for judicial review was dated 3 March 2010. It was submitted on behalf of the applicant that fair procedures had not been followed, and the applicant's constitutional right to reputation and good name was invoked. The applicant also relied on the decision of Barr J in *MQ v Robert Gleeson & Ors* ([1998] 4 IR 85). The respondent submitted that the applicant was guilty of unreasonable delay in not making the application promptly or within the timeframe of the *Rules of the Superior Courts*.

O'Keeffe granted *certiorari*, holding that it was clear that there was continuing correspondence between the parties, with the applicant anxious to resolve the matter by agreement. In all the circumstances, the applicant did not fail to bring the application promptly. It was not possible from the affidavits to resolve the issue as to whether the applicant was at the time of the investigation an employee of the respondent. The initial report was a one-sided presentation of the facts. For the purposes of preparing the final report, the respondent ought to have engaged fully with the applicant, as she had requested, to protect her good name and as part of the investigation process. Having regard to the fact the applicant was the subject of a pre-screening process prior to employment, the principles set out by Barr J in the *MQ* case were applicable. The respondent had a duty before the interview to furnish the applicant with notice of the allegations and to give her a reasonable opportunity to carry out such further investigations as might appear appropriate in light of information furnished by the applicant in response to the complaints. The applicant was not afforded fair procedures. She was also entitled to have her right to her good name and right to earn a livelihood protected. The court was not prepared to make an order of *certiorari* quashing the respondent's decision to notify the gardaí of the complaint against the applicant.

***Phil Cooke (applicant) v HSE (respondent)*, High Court, 18/11/2010**

JUDICIAL REVIEW

Road traffic offences

Practice and procedure – tendering of evidence – garda evidence – whether garda obliged to memorise precise words of section – whether prosecution flawed – Road Traffic Acts 1961-2006.

The applicant had been observed by An Garda Síochána driving his vehicle in an erratic manner on a public road. The applicant was arrested and cautioned and charged with having committed an offence contrary to section 49(1), (2), (3) or (4) of the *Road Traffic Acts 1961-2006*. The applicant gave a breath sample at a garda station and was given a warning under section 13(1)(a) of the *Road Traffic Act 1994*. When the case came on for trial, the solicitor for the applicant took objection to the manner in which one of the gardaí gave his evidence. It was contended that the garda was reading from a document other than his notebook when recalling the evidence in relation to the warning given under section 13(1)(a). The applicant's solicitor withdrew, the case continued and the applicant was convicted. Judicial review proceedings were initiated seeking to quash the conviction on the basis that the evidence given by the prosecution did not comply with the statutory requirements and that the applicant was denied fair procedures. It was contended that, since evidence was given by the garda by reading a text of the statutory warning from a typed precedent, it could not be

concluded that the garda was certain as to the precise words that he had used.

Peart J refused the relief sought. The applicant had not sworn any affidavit in support of the application in which he might have denied that any proper warning was given to him by the relevant garda at the garda station prior to his providing a sample of his breath. Neither did he give that or any other evidence in the District Court. There was no denial that this warning was given. There was no reason why the garda witness should be required to memorise the precise words of the section and recite that by heart when giving evidence. Once a garda had stated that at the station he gave the warning prescribed in the section, it seemed perfectly reasonable that he should then be allowed to read it from the text of the act.

***Aidan Bailey (applicant) v Judge Geoffrey Browne (respondent) and the Director of Public Prosecutions (notice party)*, High Court, 14/3/2011**

PLANNING AND DEVELOPMENT

Unauthorised works

Section 160 remedy – unauthorised development – proportionality – onus of proof – discretionary relief – Planning and Development Act 2000.

The applicants sought to appeal the judgment of the Circuit Court, where the court had refused an order pursuant to section 160 of the *Planning and Development Act 2000* to restrain the respondents from carrying or continuing the development of lands, in particular substantial structural works on a former ruin. The question arose as to the onus of proof, the alleged unauthorised use, the alleged unauthorised works, the discretionary nature of the section 160 remedy, and the question of abandonment. The respondents submitted that the reliefs sought would be unduly harsh in all the circumstances and that it would put disproportionate hardship upon them for works innocently carried out.

Edwards J held that the court would, of its own motion, simply declare that the respondents and each of them had engaged in unauthorised and non-exempt development. The court was not disposed to make any orders pursuant to section 160. There was no deliberate attempt to flout the law, and the consequences of demolition would be disproportionate for the respondents. The costs of the proceedings would be awarded against the respondents.

***Wicklow County Council (applicant) v Jessup & Smith (respondents)*, High Court, 8/3/2011**

PROPERTY

Solicitors' law

Contract law – partnership – repayment of loans – financing arrangements – authorisation not to pay – undertaking breached – wrongdoing – pressure from law firm – damages – whether was partnership between parties – whether was direction not to repay loan – whether was wrongdoing entitled party to resist order.

The Law Society had closed the practice of the defendant solicitor, Mr Byrne, in 2007. The proceedings related to two large property transactions handled by Mr Byrne for Mr Kelly. Mr Byrne, the defendant, asserted that Mr Kelly was as much a part of the wrongdoing as himself. A refinancing arrangement entered into for a significant property in James Street, Dublin, was at issue. Mr Kelly sought declaratory relief concerning his ownership of Oilgate and damages in the sum of €6,118,690, being the amount Mr Kelly said Mr Byrne should have repaid to EBS but did not. The proceedings related then to the use of monies to discharge an existing loan, whether there was a partnership between the parties, and whether the defendant was authorised not to repay the EBS loan

Clarke J held that the court was satisfied that there was no partnership involving Mr Kelly and Mr Byrne. On the balance of probabilities, Mr Kelly did direct Mr Byrne not to repay the EBS loan. Mr Kelly was prepared to allow the EBS payment to be delayed, on the understanding that some attempt would be made to pay it when pressure came from BCM Hanby Wallace, the *modus operandi* practiced by the parties. Mr Kelly was entitled to the declaration sought as to the ownership of Oilgate. Mr Kelly directed Mr Byrne to breach his undertaking to BCM Hanby Wallace in respect of the repayment of the EBS mortgage loan, and so entitled Mr Byrne to resist an order that he compensate Mr Kelly for the monies in question.

***Kelly (plaintiff) v Byrne, trading under the style and title of Byrne & Company, Solicitors (defendant)*, High Court, 13/4/2011**

PRACTICE AND PROCEDURE

Costs

Settlement agreement – whether the plaintiffs were entitled to their costs.

This judgment concerned a settlement agreement dated 7 July 2008 made between the parties in three sets of proceedings and, in particular, the costs of those proceedings. The proceedings concerned employees of the defendant who had been seconded and, in particular, concerned issues regarding their level of remuneration. The plaintiffs were successful in the High Court on all but one issue, which they successfully appealed to the Supreme Court. The Supreme Court ordered that the matter be remitted to the High Court for the assessment of the monies owing to the plaintiffs. The second set of proceedings had travelled with the first set of proceedings, and the third set of proceedings concerned events that transpired between the delivery of the Supreme Court judgment and the making of the perfection of the order of that court in the first-mentioned proceedings. Essentially, it was alleged that the defendant failed to honour the contractual entitlements of any of the plaintiffs as regards their then current remuneration. The defendant's position was that they understood the Supreme Court order remitted this issue to the High Court for determination. The issues were ultimately settled between the parties on 7 July 2008. The plaintiffs submitted herein that they were entitled to the costs of all three sets of proceedings. The defendant submitted that only one order for costs should be made in one of the sets of proceedings and that, as regards the other two sets of proceedings, only the costs of pleadings and outlay should be awarded, because there was only one issue arising from the same set of facts. Essentially, the defendant disputed the plaintiffs' solicitors' and counsels' entitlement respectively to three instruction fees and three brief fees.

Laffoy J awarded costs against the defendant, holding that the stance adopted by the defendant after the making of the order of the Supreme Court necessitated the bringing of the third set of proceedings in order to protect the plaintiffs. Those proceedings concerned the plaintiffs' current and future entitlements to remuneration, which it was appropriate to pursue by way of fresh proceedings. Consequently, the plaintiffs were entitled to the costs of those proceedings. In addition, the plaintiffs were entitled to the costs of the determination of the assessment of the monies owing by the defendant to the plaintiffs in the first set of proceedings, pursuant to the order of the Supreme Court. The costs of those proceedings would also provide for the costs of the determination of the assessment of monies owing to the plaintiffs in the second set of proceedings on the same basis, together with the costs of the prosecution of those proceedings until they were stalled. There was no basis for awarding costs of the second set of proceedings as if they had been separately set down for, and gone to, trial to the plaintiffs in those proceedings. In respect of the third set of proceedings, the plaintiffs were also entitled to the costs of two motions.

***King and Others (Plaintiffs) v Aer Lingus Plc (Defendant)*, High Court, 14/2/2011** G

BRIEFING

Eurlegal

Edited by TP Kennedy, Director of Education

Recent developments in e-commerce law

This article examines the effect of recent case law of the Court of Justice on the interpretation of the exemptions from liability set out in the EU's *E-Commerce Directive*.

The *E-Commerce Directive* (Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market) was implemented in Ireland by the *European Communities Regulations 2003* (SI 68 of 2003).

Section 4 of the directive provides for certain exemptions from liability for providers of services on the internet, referred to in the directive as information society service providers (ISPs). Articles 12 to 15 provide exemptions from liability for ISPs where they are acting as mere conduits of information (article 12); or where they are engaging in the automatic, intermediate and temporary storage of information to facilitate onward transmission (caching, article 13); or where they are storing information for the recipient of a service (hosting, article 14). Article 15 prevents member states imposing a general obligation to monitor information that they transmit or store on ISPs.

The exemptions rarely came before the court for interpretation for ten years after the directive was passed, but it is a sign of the growth of e-commerce that the court has recently issued its second substantial judgment on their interpretation, and these judgments and associated advocate generals' opinions clarify a number of aspects of the exemptions. Advocate General Maduro delivered his opinion in joined cases C-236/08, C-237/08 and C-238/08, *Google France, Google Inc v Louis Vuitton Malletier*, *Google France v Viaticum Luteciel*, *Google France v CNRRH Pierre-Alexis Thonet Bruno Raboin Tiger, a franchisee of Unicis* on 22 September 2009, and the court delivered judgment on 23 March 2010 (*AdWords*). The advocate general delivered his opinion in case C-324/99, *L'Oréal SA, Lancôme Parfums et beauté & Cie SNC, Laboratoire Garnier & Cie, L'Oréal (UK) Ltd v eBay International AG, eBay Europe SARL, eBay (UK) Limited* on 9 December 2010, and the court delivered judgment on 12 July 2011 (*eBay*). In this article, I will try to explain the effect of these recent cases on the interpretation of the exemptions.

Factual backgrounds

AdWords concerned Google's search engine and AdWords services. Google's standard search engine services are familiar to all users of the internet and involve users entering a word or phrase into Google's search engine and asking Google to search its record of the internet for the word or phrase and return the search results to the user. The AdWords service allows advertisers purchase certain words – called keywords – from Google, in return for which advertisements linked to the advertiser's website will appear as sponsored links when the purchased keyword is entered on Google's search engine. The keywords are chosen by the advertiser and accepted and stored by Google.

Google offered advertisers using AdWords the chance to select keywords corresponding to the plaintiff's trademarks and, in the case of Louis Vuitton, such keywords in combination with expressions denoting counterfeits. If a user of Google then searched for such a keyword/trademark, Google's search engine triggered the display of advertisements for sites offering, in the case of Louis Vuitton, counterfeit versions of Louis Vuitton products and, in the other cases, products identical or similar to the other plaintiffs' products.

In addition to considering whether such use constituted illegal use of the plaintiffs' trademarks, the court had to consider the applicability of the hosting exemption under article 14 to Google in the provision of its search engine and AdWords services.

eBay concerned claims by perfume manufacturer L'Oréal against online auction site operator eBay. L'Oréal claimed that eBay was jointly liable for infringements of its trademarks by users of eBay illegally selling L'Oréal products or imitations, and that eBay was primarily liable for the use by eBay users of L'Oreal trademarks on eBay's website. L'Oreal's other claims against eBay did not relate to eBay as an intermediary and so are not relevant to this topic.

Scope of the definition of ISP

In *AdWords*, Advocate General Maduro considered, first, whether Google's search engine and AdWords services came within the term 'information society services' to which the directive relates.

Article 2 of the directive provides that the term 'service provider' means any natural or legal person providing an information society service and provides that 'information society services' are services within the meaning of article 1(2) of Directive 98/34, as amended by the Directive 98/48 (*Transparency Directive*). The meaning of services within that directive, as amended, is any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. The Irish implementing legislation makes identical provisions.

The obvious difficulty is that, while the definition requires the service to be normally provided for remuneration, Google's search engine is provided free of charge. However, Advocate General Maduro noted that Google supported its search engine with income from AdWords and on that basis concluded that, even though the search engine service was provided free of charge, it was provided in the expectation of remuneration under Google's AdWords service, a service that was provided for remuneration as part of the search engine service. Therefore, he took a wide interpretation of the meaning of information society service to hold that both Google's search engine service and its AdWords service should be considered as coming within the meaning of that term.

The neutrality requirement

Article 14 of the directive sets out the hosting exemption and is implemented in Ireland by regulation 18 of SI 68 of 2003. It provides that an ISP that hosts information on behalf of a third party will not be liable for that information, provided that the ISP does not have actual knowledge of illegal activity or information and, as regards claims for damages, that the ISP "is not aware of facts or circumstances from which the illegal activity or information is apparent" (constructive knowledge). The exemption is conditional on the ISP, on obtaining such knowledge, acting expeditiously to remove or disable access to the information.

AdWords

Citing recital 46 to the directive, Advocate General Maduro set out his belief that the directive's aim is to create a free and open public domain on the internet by limiting the liability of ISPs who transmit or store information to instances where they were aware of an illegality. He viewed article 15, which prohibits the imposition on ISPs of general obligations to monitor information, as key to this aim and as the very expression of an underlying principle – ISPs who seek to benefit from the exemption should remain neutral as regards the information they carry or host. He said that, while Google's search engine retains this

neutrality, as although it has an interest in showing the most relevant sites in response to a query, it has no interest in bringing any particular site to a user's attention, Google's AdWords is not neutral, as Google has a direct interest in internet users clicking on the ad's links. On this basis, he concluded that Google's AdWords service should not benefit from the hosting exemption from liability in the directive.

In its judgment, the court noted that recital 42 required that the activity of the ISP be of "a mere technical, automatic and passive nature", implying the ISP "has neither knowledge of nor control over the information which is transmitted or stored". The CJ interpreted this as meaning that the ISP's role must be neutral.

In determining neutrality, the court held that the fact that the referencing service is subject to payment, that the ISP sets the payment terms, or that the ISP supplies general information to its clients cannot deprive Google of the exemptions. The CJ held that concordance between the search term and the keyword does not mean the ISP has knowledge or control of data stored. However, the court held that Google's role in drafting the commercial message was relevant, but left it up to the national court to decide whether that role is neutral or active.

eBay

Advocate General Jääskinen in his opinion challenged the reasoning of the CJ in *AdWords*. He argued that the hosting exemption should not be conditional and limited by reference to recital 42. He argued that recital 42 is not relevant to hosting and referred, instead, to recital 46, which suggests that the exemption should only be lost if an ISP acquires actual knowledge or awareness of illegal activities and fails to act expeditiously to remove the information or disable access to it.

He also argued against a requirement of neutrality, noting that it would deprive operators such as eBay of the exemption if they intervene and guide the contents of listings on their website by technical means.

Notwithstanding the challenge of the advocate general, the CJ in its judgment maintained its position that a service provider will lose the benefit of the exemptions if it does not provide the "service neutrally by a merely technical and automatic processing of the data provided by its customers but plays an active role of such a kind as to give it knowledge of, or control over, those data". The court then gave a practical example of where an ISP should no longer be considered as acting neutrally: when it optimises the presentation of offers for sale. However, the court acknowledged that an ISP that stores offers for sale on its server, sets the terms of its service, is remunerated for that service, and provides general information to its customers cannot thereby lose its neutrality.

Thus, both advocates general seem to be of the view that recital 42 is irrelevant to hosting and that the article should be interpreted in the light of recital 46 and not recital 42. Advocate General Jääskinen rejects the need for a neutrality test regarding article 14, whereas Advocate General Maduro argues for such a test derived from recital 46 and article 15. The court, on the other hand, both agrees with Advocate General Maduro that a neutrality test is required and differs from both advocates general in basing that test on recital 42.

Actual and constructive knowledge

Article 14 distinguishes between actual knowledge and constructive knowledge. An ISP can lose the benefit of the exemption where it has actual knowledge and, as regards claims for damages, where it has constructive knowledge of illegal activity or information.

Advocate General Jääskinen concentrated on the question of actual knowledge and stated, in regard to the question of when the ISP has actual knowledge of an infringement for the purpose of article 14 and is thus unable to avail of the hosting exemption, that such knowledge can only be gained from past or present infringements and not from future infringements. However, the advocate general went on to suggest that an ISP would have actual knowledge of an infringement by a user if the ISP knew that the user had previously infringed the same trademark, and characterised such circumstances as a continuing infringement rather than two separate infringements. The advocate general expressly excluded actual knowledge arising from the same user infringing a different trademark or a different user infringing the same trademark.

The court held that, since the sanction in the main proceedings was for damages, the question was whether eBay had constructive knowledge. It held that, if an ISP was acting neutrally and therefore could avail of the exemption in principle, the ISP could nonetheless lose the benefit of the hosting exemption if it was aware of "facts or circumstances on the basis of which a diligent economic operator should have realised that the offers for sale in question were unlawful". The court thus set the standard against which an ISP will be measured in determining if it has constructive knowledge as that of a diligent economic operator.

Scope of injunctions available

In *eBay*, the question also arose of whether L'Oréal, having established trademark infringements by users of eBay, is entitled to an injunction under article 11 of Directive 2004/48 (*Enforcement Directive*) against eBay to prevent the same or similar infringements in the future.

eBay accepted that article 11 required that an injunction be available against an ISP whose services have been used to commit a *specific* infringement of a trademark, but submitted that the imposition of a more general requirement to prevent illegal acts would amount to imposing a general obligation to monitor, contrary to article 15 of the *E-Commerce Directive*.

The advocate general opined that the requirement of proportionality under EU law would exclude an injunction against an ISP to prevent *any* further infringements (author's emphasis), but would not prevent an injunction to prevent the continuation of a specific act of infringement, nor the prevention of repetition of the same or a similar infringement in the future, provided that it "does not impose impossible, disproportionate or illegal duties like a

general obligation to monitor".

The advocate general explained that by 'same or similar infringement', he meant the same kind of infringement of which an ISP could have actual knowledge – that is, infringement of a certain trademark by a certain user. The court endorsed this view.

Thus, the judgment has clarified the kind of injunction that is available against ISPs to prevent further infringements. The judgment leaves scope for injunctions to prevent other, further infringements, so long as those injunctions do not breach requirements such as proportionality and don't amount to a general obligation to monitor.

Conclusion

The European Commission remains unsatisfied with the extent of cross-border online trade within the EU and has launched a public consultation on the *E-Commerce Directive* to analyse why this is so. Presuming the commission's efforts to increase such trade succeed, solicitors can expect to see an increase in commercial clients operating online. These judgments clarify the nature and scope of the exemptions provided by the *E-Commerce Directive* and will assist in advising clients operating as ISPs in Ireland and throughout the EU

Brian McMahon is a solicitor based in San Jose, Silicon Valley, California.

Recent developments in European law

ENVIRONMENTAL

Case C-120/10, *European Air Transport SA v Collège d'environment de la Région de Bruxelles-Capitale and Région de Bruxelles-Capitale*, 8 September 2011

Directive 2002/30 permits member states to adopt restrictive measures known as 'operating restrictions' in order to reduce noise pollution generated by aircraft using EU airports. Operating restrictions can be adopted only where noise levels measured at the aircraft are exceeded. Brussels-National Airport is located in the Flanders region, although the flights operating from it also overfly the Brussels capital region. On 19 October 2007, an administrative penalty of €56,113 was imposed on the airline European Air Transport (EAT) for exceeding, during the night, the limit values laid down in the rules of the Brussels capital region. The Belgian Conseil d'État referred a number of questions to the CJ. It asked the court to clarify whether the rules of the Brussels region that sanction noise pollution caused by air traffic may be regarded as an 'operating restriction' subject to the requirements of Directive 2002/30 and, in particular, to the policy of measuring noise pollution at source. The CJ observed that, in addressing aeroplane noise, the EU adopts a balanced approach. This has been defined by the International Civil Aviation Organisation. It requires careful assessment of all different options to mitigate noise, including reduction of aeroplane noise at source, land-use planning and management measures, noise-abatement operational procedures and operating restrictions. The balanced approach presupposes that operating restrictions are applicable only when any other noise-management measures have failed to achieve the objectives of Directive 2002/30. An 'operating restriction' within the meaning of the directive is a prohibition, absolute or temporary, that prevents the access of an aeroplane to an EU airport. Environmental legislation imposing limits on maximum noise levels, as measured on the ground, to be complied with by aircraft overflying areas located near the airport, does not itself constitute an operating restriction as long as it does not prohibit access to the airport in question. Measuring on the ground the noise produced by an aircraft in flight may constitute an element of a balanced approach. However, it cannot be ruled out that environmental legislation, such as that at issue in this case, can in view of the relevant economic, technical and legal contexts, have the same effect as prohibitions on access to an airport. Where limits imposed by national legislation are as restrictive as very clearly to force aircraft operators to forgo business, such legislation would amount to a prohibition of access and would constitute therefore, an 'operating restriction'. It is for the Belgian court to determine whether the measures adopted by the Brussels capital region have such effects.

HUMAN RIGHTS

Opinion of Advocate General Juliane Kokott, case C-17/10, *Toshiba Corporation and Others*, 8 September 2011

A cartel composed of European and Japanese companies had divided the worldwide gas insulated switchgear markets among themselves from 1988 until 2004. In 2007, the European Commission and the Czech competition authority imposed fines of many million Euros on the cartel members. The Czech authority initiated proceedings after the commission and also adopted its decision after the commission's. In its decision, the Czech authority penalised the effects of the cartel in the Czech Republic prior to 1 May 2004, the date on which it acceded to the EU. It also applied solely its national competition law on cartels. Toshiba and other members of the cartel brought proceedings in the Czech courts against the Czech competition authority's decision. They argued that the anti-competitive consequences of the cartel in the Czech Republic before its accession to the EU had already been penalised by the commission's earlier decision. The separate fine imposed by the Czech authority infringed the prohibition against punishing the same offence twice. Advocate General Kokott noted that this principle is recognised at EU level as a general principle of law and now enjoys the status of a fundamental right of the EU under article 50 of the *Charter of Fundamental Rights*. In accordance with that principle, no one may be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted within the EU in accordance with the law. The issue in this case is the question of the criteria to be used in determining whether the undertakings concerned were prosecuted or punished again for the same anti-competitive conduct for which the Czech competition authority imposed a fine on them. Due account must be taken of the case law of the European Court of Human Rights. It is solely the identical nature of the facts that is relevant and not the identical nature of the protected legal interest. It depends on the identical nature of the material acts, understood as the existence of a set of concrete circumstances that are inextricably linked together. She considered whether, in the present case, the commission decision and that of the competition authority relate to the same material acts. She concluded that, although both decisions have as their subject matter infringements by the same

international cartel, they are otherwise based on different facts. In cartel offences, the material acts necessarily always include the time period and the territory in which the cartel agreement had anti-competitive effects or could have had those effects. More than one competition authority or court cannot impose penalties for the anti-competitive consequences of the same cartel within the EU in relation to the same territory and time period. In this case, the decision of the commission and the Czech authority did not relate to the same territories. The commission did not penalise any infringements of competition in the Czech Republic before its accession to the EU. The commission referred specifically to the effects of the cartel within the EU and referred to the member states at the time. Article 81 (now article 101) of the treaty, the legal basis for its decision, was not applicable on the territory of the Czech Republic before 1 May 2004.

INTELLECTUAL PROPERTY

Joined cases C-4/10 and C-27/10, *Bureau national interprofessionnel du Cognac v Gust Ranin Oy*, 14 July 2011

Regulation 110/2008 protects geographic indications for spirit drinks. It allows for the registration as a geographical indication of the name of a country, region or locality from which a spirit drink originates, where a quality, reputation or other characteristic of that drink is essentially attributable to its geographical origin. The registration is made upon application by the member state of origin of the drink. The application is accompanied by a technical file listing the specifications that the drink must meet if it is to be able to be designated by the protected geographical indication. The regulation prohibits the registration of trademarks that may adversely affect a protected geographical indication. Where such a mark has already been registered, it must be invalidated. 'Cognac' has been registered as a geographical indication identifying wine spirits originating from France. Gust Ranin Oy is a Finnish company. It applied in Finland to register two figurative marks bearing description of the spirit drinks containing the term 'cognac' and its Finnish translation. The Finnish authorities accepted the application, but the Bureau national interprofessionnel du Cognac contested the legality of that registration before the Finnish courts. The Finnish Supreme Administrative Court asked the CJ whether it is permissible under the regulation to register national trademarks containing the term 'cognac' for products that do not meet the requirements set for the use of the geographical indication. The CJ held that the Finnish authorities must invalidate the registration of the contested marks. It found that the use of a mark containing the term 'cognac' for products not covered by that indication is a direct commercial use of the protected indication. The regulation prohibits this use insofar as concerns comparable products. Spirit drinks are comparable products and run the risk of consumer confusion. G

NOTICES

WILLS

Broe (otherwise Browe), Brian (known as Brendan), 14 Church View, Sixmilebridge, Co Clare. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 5 January 1989, please contact Bowen & Co, Solicitors, Pound Street, Sixmilebridge, Co Clare; tel: 061 713 767, fax: 061 713 642, email gwen@legalsupportservices.ie

Cole, Michael F (deceased), late of 55 Trimbleston Gardens, Booterstown, Co Dublin, and formerly of 4 Glenart Avenue, Blackrock, Co Dublin, who died on 9 April 2005. Would any solicitor holding or having knowledge of the whereabouts of an original will, executed on 3 February 1949 by the deceased, please contact Mark O'Kelly, solicitor, LKG Solicitors, The Forum, 29-31 Glasthule Road, Glasthule, Co Dublin; tel: 01 231 1430, fax: 01 231 1417, email: mark@lkgsolicitors.ie

Dolan, James Anthony (deceased), late of Tullyattin, Mullagh, Kells, Co Meath, and also of 15 William Street, Holyhead, Gwynedd LL6 51 RN. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 6 June 2011, please contact Nathaniel Lacy & Partners, Solicitors, Kenlis Place, Kells, Co Meath

Doody, Michael (deceased), late of 91 St Mary's Lane, Ballsbridge, Dublin 4. Would any solicitor holding or having knowledge of any will made by the above-named deceased, who died on 3 July 2011, please contact Gallagher Shatter Solicitors, 4 Upper Ely Place, Dublin 2, tel: 01 661 0317, fax: 01 661 1685, email: moh@gallaghershatter.ie

Drury, Mary Salome (deceased), late of Glengara Park Nursing Home, Glenageary, Co Dublin, and formerly of 8 Gilford Park, Sandymount, Dublin 4. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 28 August 2011, please contact James D Aitken & Co, Solicitors, 107 Trees Road Upper, Mount Merrion, Co Dublin; tel: 01 288 2772, fax: 01 288 8204, email: jamesdaitken@eircom.net

Gaffney, Professor Ethna (deceased), late of 2 Castle Court, Booterstown, Co Dublin, and formerly of Stillorgan Road, Donnybrook and Belmont Gar-

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NOTICES

dens, Donnybrook, Dublin 4. Would any person who has any knowledge of any will executed by the above-named deceased, who died at St Vincent's Private Hospital, Elm Park, Dublin 4 on 29 September 2011, please contact Manus Sweeney & Co, Solicitors, Suite 226, Capel Building, Mary's Abbey, Dublin 7; tel: 01 874 6984, fax: 01 878 3565, email: info@manussweeney.com

Gambo, Bola (deceased), late of 58 The Paddocks Grove, Lucan, Co Dublin. Would any solicitor holding or having knowledge of a will being made by the above-named deceased, who died on 11 November 2009, please contact Miriam Tighe & Co, Solicitors, 3 The Village Centre, Lucan, Co Dublin; tel: 01 628 1755, fax: 01 628 0997

Harden, Joseph Lloyd (otherwise Paddy) (deceased), late of 3 Oak Lawn West, Leixlip, Co Kildare (formerly of Cahir, Co Tipperary). Would any person having knowledge of any will executed by the above-named deceased please contact Messrs Malone & Potter, Solicitors, 7 Cope Street, Dublin 2; tel: 01 671 2644, fax: 01 671 2735, email: office@maloneandpotter.ie

Landy, Margaret (deceased), late of 36 Sarto Road, Naas, in the county of Kildare. Would any person having knowledge of a will executed by the above-named deceased, who died on 3 May 2006, please contact Niamh Moriarty & Co, Solicitors, Parnell Road, Enniscorthy, Co Wexford; tel: 053 923 7666, fax: 053 923 7643

Manton (née O'Reilly), Amanda (deceased), late of 4 Minnowbrook, Terenure Road West, Terenure, Dublin 6W, who died on 28 March 2011. Would any person having knowledge of a will made by the above-named deceased please contact Sean Wallace, ByrneWallace, Solicitors, 2 Grand Canal Square, Dublin 2; tel: 086 823 7344, email: swallace@byrnewallace.com

McDonald, Francis (o/w Frank) (deceased), late of 82 Huband Road, Bluebell, Dublin 12, who died on 3 October 2011. Would any person having knowledge of any will executed by the above-named deceased please contact Marion Sweeney, Giles J Kennedy & Company, Solicitors, 81 Eccles Street, Dublin 7; tel: 01 830 5321, email: marion.sweeney@gilesjkennedy.com

Wynne, William (deceased), late of Carlow Gate, Castledermot, Co Kildare, who died on 21 June 2011. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, please contact PJ Byrne & Company, Solicitors, Athy Road, Carlow; DX 18009 Carlow; tel: 059 914 0888, fax: 059 913 2391, email: info@pjbyrne.ie

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*.

LEGAL COUNSEL

Alere Inc., listed on the New York Stock Exchange, is a global leader in medical diagnostics and healthcare, employing more than 11,000 people, in 25 countries. Having announced its decision to establish its international business hub in Galway, the organisation now seeks to appoint a Legal Counsel to play a key role in delivering the commercial and legal strategic objectives for the international business.

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

Cyberloafing helps work

Workers who do a little internet surfing during a work break are more productive on the job, a new study has found.

According to *The Wall Street Journal*, researchers at the National University of Singapore found that workers allowed to visit internet sites during a break were more productive than workers who responded to personal email, and those who worked straight through. The study 'Impact of cyberloafing on psychological engagement' was presented at the annual meeting of the Academy of Management.

Bum steer? The law's an ass

A Manhattan judge is so fed up with saggy pants in his courtroom that he has taped a reminder on the defence table. The sign reads, 'Pull Up Pants', the *New York Post* reports. Judge Eduardo Padro explained in an interview with the newspaper that he offers teens a chance to avoid jail, but he expects them to act and dress appropriately. "It's about respect," he said.

Padro offered a verbal admonition to a 16-year-old boy recently. "I have no interest in seeing your behind," the judge told the youth. According to the *Post*, the boy's jeans "perched at such a distance from his waist that it would have been noticeable even if his briefs had not been a bracing shade of chartreuse".

Boston lawyer's donor shock

Boston lawyer Ben Seisler used to pick up extra money while attending law school at George Mason University – by donating to a Virginia sperm bank. The *Boston Globe* reports that Seisler earned US$150 per donation.

In 2005, he used his donor number to register with an online tracking site called the Donor Sibling Registry. Seisler learned he has at least 75 children. The 33-year-old lawyer expects the number to grow from between 120 to 140 children. Apparently, he uses an *Excel* spreadsheet to keep track of them all.

Understandably, his wife is a tad miffed. "What if they all come knocking?" she asks angrily, in a TV documentary that chronicles the issues. "Did you think of the consequences that would come out of this?"

George Washington University law professor Naomi Cahn is calling for more regulation. Experts fear the explosion in half siblings could result in accidental incest or spread genes for rare diseases.

The rule of 'Oleron law'?

Captain's Blawg has recently become aware of a video of the attempted arrest of an English judge by followers of the so-called 'Freemen on the Land' movement. *BBC News* reported the incident in March (we're nothing if not quick off the mark!) as follows: "Intruders have tried to arrest a judge after storming into a courtroom on Merseyside. The activists went into the room at Birkenhead County Court, while about 300 protesters gathered outside the building."

A leaflet handed out by the demonstrators said they were trying to seize the building "in defence of our freedoms and liberties as provided for under section 61 of Magna Carta".

The intro to the video is notable for its, er, idiosyncratic legal concepts: "Watch as sovereign beings of the Divine with blood that flows and flesh that lives take control of an unlawful Maritime Admiralty Court and arrest an unlawful judge. Both the Court and the Judge are working under Oleron Law, which is controlled by the Rule and Code of The Crown Templar, commanded at the very top by the Knights of Malta since the destruction of the Templars in the 14th Century." Indeed.

Lady Gaga goes 'Goo Goo'

'De Do Do Do, De Da Da Da' went the old Police tune … one we couldn't help but hum when we came across this story, reported in *The Lawyer*, of pop superstar Lady Gaga's success in obtaining an injunction preventing a computer game company from releasing a single by a cartoon character. Lady Gaga's rights-holding vehicle, Ate My Heart, sought the injunction against gaming company Mind Candy after it created a character called 'Lady Goo Goo' in an online game called Moshi Monsters. In the game, Lady Goo Goo performed a song called 'Peppy-razzi', which Mind Candy released in videos on YouTube and planned to sell on iTunes. Lady Gaga claimed that Mind Candy had infringed her trademark, and that there was a real risk of confusion between herself and Lady Goo Goo, particularly by children. G

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Ballsbridge, Dublin 4.

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E: admin@makosearch.ie
W: www.makosearch.ie

PARTNER OPPORTUNITIES - DUBLIN

GENERAL PRACTICE ACQUISITION

Our client, a leading firm, is looking to open discussions with a general practice firm with an established reputation in the private client arena. The purpose of this acquisition is to manage the firm's current portfolio while bringing additional clients to the firm. **Contact Sharon Swan Ref: S2001**

COMMERCIAL LITIGATION — Team

This established firm is looking to hire a commercial litigation team. You will come from a recognised commercial practice where you are acting for top quality clients. Your relationships and reputation will be such that you will expect clients to continue to instruct you when you move. **Contact Sharon Swan Ref: S2004**

INTELLECTUAL PROPERTY — Partner

Our client is seeking to appoint an intellectual property partner with an established practice in a leading firm. The firm continues to go from strength to strength in terms of standing, profile in the market and financial performance. Excellent opportunity for ambitious partner to join this firm. **Contact Sharon Swan Ref: S2002**

LIFESCIENCES/PHARMA — Partner

This firm is looking to grow their life science/ pharma practice. They are looking to recruit an individual with an exceptional reputation in the market. This is an excellent opportunity for the right candidate to be able to develop a practice while utilising the support of the wider firm.

Contact Sharon Swan Ref: S2005

INVESTMENT FUNDS — Team

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 you will have UCITS or hedge funds experience. Excellent remuneration on offer. **Contact Sharon Swan Ref: S2003**

PROJECTS — Partner

Due to an increasing demand for the services of the projects team, our client is looking to expand the practice through the acquisition of a projects partner. The firm specialises in large scale global projects across the major sectors, such as oil and gas, nuclear, waste, mining and renewables. **Contact Sharon Swan Ref: S2006**

INTERNATIONAL OPPORTUNITIES

BANKING LAW — Dubai

Head of Regulatory Banking Law is required for leading local firm based in Dubai. Ireland or UK qualified. Compliance experience necessary.

Contact Carol McGrath Ref: C2007

ASSET FINANCE — Paris

Asset Finance Associate required for leading international firm in Paris. Aviation, shipping or general banking experience essential.

Contact Carol McGrath Ref: C2009

CORPORATE ASSOCIATE — BVI/Guernsey

Corporate Associate required for leading off –shore firm in Guernsey. You will have general banking, finance, funds or corporate experience.

Contact Carol McGrath Ref: C2008

CORPORATE ASSOCIATE — London

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