Tweety Pie
Unverified social media communications and the democratic process

The Sisyphus effect
Being indispensable in your current role can hold you back

Flying solo
The future of the small practitioner in recessionary times

LAW SOCIETY

GAZETTE

€4.00 April 2012

RISING IN THE EAST:

Has the day dawned for Islamic finance?

RESILIENCE IN THE FACE OF ADVERSITY

Since my last 'President's Message', Director General Ken Murphy and I have had the pleasure of attending meetings with the bar associations of West Cork, Limerick and Kerry. In addition, by the time you receive this *Gazette*, we are scheduled to have also visited, spoken and listened to colleagues at bar association meetings in Donegal, Leitrim and the Midlands.

Unsurprisingly, colleagues, for the most part to date, have reported that their main concern remains the state of the economy, with little or no relief in sight. Nonetheless, it is heartening to witness, at first hand, the resilience and good humour of the profession in the face of adversity.

Colleagues remain concerned and apprehensive about the *Legal Services Regulation Bill*. You are probably all aware that this recently passed its second stage in the Dáil and it is expected that the committee stage will commence after the Easter break. You will all have received your own hard copy of the Society's very detailed 100-page submission to the minister.

As a further element in the Society's constructive engagement to seek many amendments to the bill as published, copies of the Society's submission have also been sent to every member of the Oireachtas Joint Committee on Justice, Defence and Equality.

On the afternoon of 21 March 2012, that committee met in Leinster House with representatives of the Free Legal Advice Centres, the Law Society, the King's Inns, the Bar Council, the Competition Authority and the Mandate trade union who (in that order) made five-minute statements to the committee. I gave the statement to the committee on behalf of the Society. Following that, the director general and I answered questions from committee members. The entire meeting lasted some two-and-a-half hours.

It is expected that the committee stage of the bill will not commence until late April at the earliest. Whether or not the minister, at the Society's annual conference, will be in a position to outline the many changes that he has indicated he intends to make to the bill may depend on whether or not he has, by then, received the necessary approval for these changes from the Cabinet.

IBA conference

For the first time since 1968, the conference of the International Bar Association will come to Dublin in the first week in October 2012.

This is an enormous and extremely prestigious event – the legal equivalent of bringing the Olympics to Dublin! It is estimated that it will bring more than 5,000 visitors to the city – indeed, it is thought that this will be the biggest IBA conference yet. It seems certain that hotel accommodation in Dublin will be very difficult to obtain in the week beginning Sunday 30 September 2012.

It will obviously be a great boost to the Irish economy and the profession should take great pride that Dublin has been chosen for the event. These things do not, of course, happen by chance, and great credit is due to Michael Greene, Geraldine Clarke and John F Buckley in helping to secure the conference for Dublin.

"Copies of the Society's submission on the bill have been sent to every member of the Oireachtas Joint Committee on Justice, Defence and Equality"

The IBA holds a mesmerising array of events and seminars at its conferences. While these would usually only be open to members, the Law Society is hoping to persuade the IBA to make a certain number of day passes available for events. The position in this regard will not become clear until just two weeks before the event. But if you are interested in attending, then perhaps the best way to ensure that you can attend is to join the IBA!

Finally, you will have seen from the last *Gazette* that the next Calcutta Run is scheduled to take place on 26 May. The event has been hugely successful in raising funds for inner-city children in Dublin and Calcutta over the years. If you can at all, please participate. If not, please try to sponsor somebody taking part in the event, for whatever amount you can afford. As you know, the day concludes with a barbecue at Blackhall Place, and all are welcome.

Donald Binchy
President

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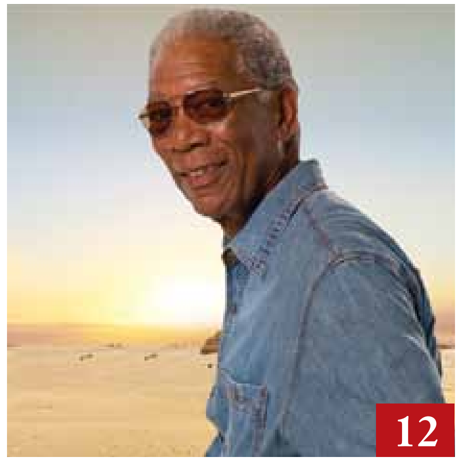

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HAVE YOU MOVED? Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie

Get more at lawsociety.ie

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

- Current news
- Forthcoming events, including the **Law Society's annual conference in the Castlemartyr Resort Hotel, Co Cork, on 13 and 14 April 2012**
- Employment opportunities
- The latest CPD courses

… as well as lots of other useful information

Nationwide

Compiled by Kevin O'Higgins

Kevin O'Higgins has been a Council member of the Law Society since 1998

Meet your Colleagues Day: Thursday 24 May

DUBLIN

Now is the time to start thinking about how the solicitors in your locality will mark 'Meet your Colleagues Day' on Thursday 24 May. This is the opportunity to get to know your colleagues a little better.

Geraldine Kelly and her DSBA colleagues hosted a wonderful social night for a large gathering of colleagues stretching from Rathgar to Terenure and out as far as Walkinstown recently. As Geraldine pointed out, the event is purely social, with no other agenda, and is now in its sixth year. It is a credit to her and other colleagues in the DSBA, such as Keith Walsh, Stuart Gilhooly and John Glynn.

But this is happening all over the place and is an example of colleagues helping each other. It doesn't have to have a business aspect to it – but it can – and for two years now, sole practitioners in Dublin, under Sonia McEntee's guidance, have been getting together every few months for an after-work chat on office management matters and anything else of concern, with colleagues gathering from all over the city.

On a more local level, where I practice in Blackrock, we have about nine firms in the village, and we meet over lunch or coffee, either by arrangement or impromptu on a nearby daily basis. It is always a mutually beneficial experience if approached with a collegiate spirit.

If you don't know who your colleagues are, you can quickly identify them by using the Law Society's online 'find a firm' search: use only the second search box ('location') on the find-a-firm page, enter your exact criteria (for example, 'Dublin 14' or 'Drogheda'), and you will then get a list of firms or other bodies in which solicitors are employed for that location, along with their contact details. It will then be an easy matter to get the names of individual solicitors.

Make a few enquiries to check if an event is already being planned. If not, you could link up with one or two others to organise a get-together. Arrange to gather solicitors together locally on the day, maybe for lunch or a drink after work. Decide on the venue and let other solicitors know what is happening.

Some groups might decide to nominate a charity of their choice to benefit from the occasion. If this event passed you by in previous years, make sure that this year is different! We hope you have a successful event, and be sure to send the pictures to gazette@lawsociety.ie.

New bar association team elected at AGM

KILDARE

Newbridge solicitor Sharon Murphy was elected president of the Kildare Bar Association at its AGM on 15 March last. Sharon takes over from Bernadette Hanahoe.

The AGM was very well attended and, prior to the election of officers, Mr David Rowe of Outsource gave a very informative talk on risk management and the opportunities and challenges facing solicitors in the current economic climate.

The issue of long delays in getting cases on for hearing in the Circuit Court was discussed and the bar association is actively seeking ways to reduce the logjam, where civil matters can wait up to three years to get a hearing date after a notice of trial has issued. There are also serious delays in family and criminal matters.

Also elected were David Osborne (secretary), Eva O'Brien (treasurer), Helen Coughlan (PRO), Andrew Cody (CPD), Luke Hanahoe (social secretary) and Conal Boyce (court users rep).

Retirement of Judge Murrough Connellan

WICKLOW

The Wicklow Bar Association marked the retirement of Judge Murrough Connellan at a presentation ceremony in Bray Courthouse on 27 February, presenting him with a silver and mahogany engraved gavel. *(Front)*: Paddy McNeice and Judge Murrough Connellan. *(Back, l to r)*: Mark Felton, Alan Donlon, Paul McKnight, Eilish Bradshaw, Conway O'Hara, Darren Murphy, Rory McGarry, Patrick O'Toole, Brendan Maloney, Jonathan White, Sharon McKenna Murphy, Jean Connors, Richard Joyce, Fiona Roche and Jo Maguire

Another President MacGuill takes the helm in Louth

LOUTH

Conor MacGuill is the new president of the bar association and will be assisted during his year by Elaine Connolly as secretary, with Richard MacDonnell and John McGahon as PRO and treasurer respectively. Conor has asked me to mention a function that took place last week to mark the retirement of Brendan Cleary from the District Court office. Mairead Ahern, Louth county registrar, also arranged a get together at the courthouse to mark Helen Lennon's retirement from the court office.

A woman of influence

Maura Butler, a course manager in the Law School, has been named by *Irish Tatler* magazine as 'a woman of influence' in the 'professional and public life' category.

Maura is a solicitor and serves on the board of the National Women's Council of Ireland. She is vice-chair of the Irish Women Lawyers' Association and is pioneering a mentorship programme for newly qualified woman lawyers. In addition, she is chairperson of the Association for Criminal Justice Research and Development, and is involved with the European Women's Lobby.

In News this month...

7 Training programme awards
8 Cork firm doubles in size
9 Five solicitors nominated for judicial appointments
9 Members' Airport Club discount
10 Upturn in PC numbers in 2011
11 News from the Society's committees and task forces

Arbitration round-table event

Mason Hayes & Curran has inaugurated a monthly round-table event. In all, 95 people attended its 5 March meeting to discuss the '*Arbitration Act 2010*: two years on'. Attending were *(l to r)*: Declan Black (partner and head of the Litigation Practice, Mason Hayes & Curran), John Tackaberry QC, Dermot Ahern (former Minister for Justice) and John Gordon SC

Promissory notes void?

David Hall, a key member of the New Beginning group, is challenging the Government's decision to issue €30 billion worth of promissory notes to the former Anglo Irish Bank, the EBS and the Irish Nationwide Building Society. Mr Hall, of College Grove, Castleknock, Dublin 15, has brought the legal challenge to declare the promissory notes void. The New Beginning group is not involved.

Mr Hall claims in his High Court action that the Government's decision to issue €30 billion worth of promissory notes to the financial institutions is unlawful. The decision was never approved by the Dáil, he claims. The Dáil was never consulted or had the right to vote or express an opinion on the matter. In addition, he argues that the provisions of two acts that allowed the Government to issue the notes are unconstitutional.

He also claims that the Irish people are being asked to honour a deal made in flagrant breach of the Constitution, which has no democratic legitimacy and is in breach of the treaty for the functioning of the EU.

His proceedings are against the Minister for Finance, the Attorney General, the Central Bank and the Irish Bank Resolution Corporation.

Judge orders closure of 'shebeen'

A District Court judge in the Midlands gave gardaí ten minutes to shut down a shebeen and threatened to make a report to the Garda Ombudsman if it was not done immediately.

At Edenderry District Court on 26 March, Judge John Coughlan said it was a disgrace that The Long Bar, Edenderry, Co Offaly, had been trading without a licence and continued to trade while its owner stood before him.

He ordered gardaí to immediately close the premises and initially threatened to jail the tenant, Michael Iancu, who has been leasing the premises.

Judge Coughlan adjourned all cases to June and ordered gardaí to check the legality of Mr Iancu's status in Ireland, due to information elicited during questioning in court.

'Hidden Victorian treasures' lecture at King's Inns

'Hidden treasures in the *Irish Law Times* of the late Victorian period' is the title of a lecture to be delivered by Mr Justice Hugh Geoghegan (retired judge of the Supreme Court) on Wednesday 25 April 2012.

The venue is the Library, Honorable Society of King's Inns, Henrietta Street, Dublin, at 5pm. The chairman is Charles Lysaght (honorary Bencher of King's Inns), while the sponsors are Bart Daly BL, Dr Eamonn G Hall (solicitor), Brian J Roche (solicitor).

To reserve your place, contact Hugh M Fitzpatrick, 9 Upper Mount Street, Dublin 2; tel: 01 269 2202, fax: 01 661 9239, email: hmfitzpa@tcd.ie.

Patricia Rickard-Clarke retires

Patricia Rickard-Clarke retired as a commissioner with the Law Reform Commission on 29 February 2012. Formerly a partner in McCann FitzGerald solicitors, she was the lead commissioner for the commission's work on vulnerable adults and the law (which includes the reform of the law on capacity).

She is chair of the Law Society's Mental Health and Capacity Task Force and is a member of the Society of Trust and Estate Practitioners.

Society training programmes bear the mark of excellence

The Law Society Skillnet and Law Society Finuas Network have won two outstanding achievement awards from the Irish Institute of Training and Development (IITD). The awards were presented by IITD President Sinéad Marren at the Kilashee House Hotel on 9 March.

Recognising the excellence and innovation of the Law Society in the design and delivery of its training programmes, the awards were made in the categories for 'Most innovative use of technology' and 'Work placement – graduate and non-graduate'.

In July 2011, the Law Society Skillnet and Law Society Finuas Network received grant funding from Skillnets Ltd JSSP. The target was to design and deliver the first educational programme of its type to up-skill unemployed solicitors in order to assist them to pursue employment in sustainable and new growth sectors.

Celebrating two IITD outstanding achievement awards are *(back, l to r)*: Tom Blennerhassett (IT manager), Michelle Nolan (communications executive, Law Society Skillnet and Finuas Networks), T P Kennedy (director of education) and Cillian MacDomhnaill (director of finance and administration). *(Front, l to r)*: Paul Mooney (IT co-ordinator, education), Attracta O'Regan (head of Law Society Professional Training) and Keith O'Malley (career advisor)

A total of 162 unemployed solicitors were provided with jobseekers' training. To date, 18 have secured full-time employment, 55 are currently taking part in work placements, while 34 are completing training and/or applying for work placements.

The solicitors had a choice of two training options – on-site learning or e-learning. The latter programme was developed and delivered using existing educational resources, workplace resources and cloud computing software. The e-learning platform was further developed to allow trainees to get access to the training programme by smartphones, ipads and personal computers. This initiative led to the IITD award for the most innovative use of technology.

Kudos for the achievement is due to the combination efforts of the Law Society Skillnet and Finuas Network Steering Committees, the teaching and learning teams, the Society's career support services team, its IT section and education department, network member firms, Skillnets Ltd, public and private sector bodies, input from other professional organisations and, most importantly, the committed participation of job-seeking solicitors.

Law Society Networks have received funding from Skillnets Ltd to continue these successful programmes in 2012 and look forward to building on current successes. For details of the 2012 programme, contact jssp@lawsociety.ie.

A&L Goodbody announces signing of Chinese agreements

Taoiseach Enda Kenny attended the signing of agreements between A&L Goodbody and a number of China's top law firms and universities on 27 March 2012 in Beijing. The signings formed part of the official announcement event for the A&L Goodbody Chinese Lawyers' Programme. The placement programme is the first of its kind and is designed to be a long-term collaborative initiative.

The programme was devised in 2010, and began in earnest when the firm welcomed its first set of Chinese lawyers on six-month placements in September 2011. A further seven lawyers are currently working in A&L Goodbody's Dublin office, servicing clients and gaining frontline exposure to the firm's international client base, global advisory partners and Irish State agencies involved in inbound and outbound investment.

At the official announcement of A&L Goodbody's Chinese Lawyers' Placement Programme were Julian Yarr (Managing Partner, A&L Goodbody), John Given (Head of the A&L Goodbody's China Group) and four of the Chinese lawyers who have already completed their placements in Dublin

Julian Yarr, Managing Partner of A&L Goodbody, says: "We believe this programme will significantly enhance our ability to service Chinese clients interested in setting up operations in Ireland and Europe, as well as offering Irish firms doing business in China unique expertise and insight through our Chinese lawyers, who are sitting with us in Dublin."

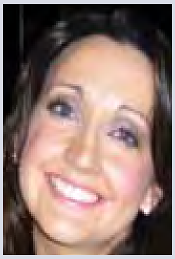
John Given, corporate partner and head of the firm's China Group, spearheaded the initiative with the participating Chinese law firms and the Chinese and Irish Governments.

The first four participants in the programme were present at the Beijing launch. The Taoiseach stated: "I have no doubt that these first alumni … have returned from Ireland with a wealth of experience that will benefit them personally and will benefit their firms. I hope as well that it will benefit Ireland. Having spent a little time on our green island, I hope that you will have returned with an understanding of our passion for work, our passion for innovation and our passion for excellence."

All costs of the legal programme, estimated to run to several million euro, are being borne by A&L Goodbody. In addition, the law firm has been assisting a number of other Irish corporate bodies looking to introduce similar programmes in their areas of expertise.

OUTLAWS AND INLAWS

Life outside legal practice



LOUISE JENNINGS
Dubai

Working overseas for a time struck Louise Jennings as an attractive option when she qualified in Eversheds in 2009.

She decided, however, that she wanted to move somewhere warm, with a large ex-pat community and not too far away from home. She targeted Dubai, investigated the legal job market there and made contact with recruiters and with employers directly.

Quite quickly, Louise was offered a unique opportunity within the Dubai government Legal Affairs Department. Her role consisted of licensing and regulation of legal firms, litigation, and the investigation of professional negligence complaints.

In May 2011, she moved to an in-house role as legal and business affairs manager with Gulf Intelligence – a media and strategic corporate communications company focused on the energy sector.

She also serves as vice-chair of the Dubai Irish Society and, associated with this role, has close contact with Enterprise Ireland, the Irish embassy in the UAE and the Irish Business Network.

DAVID BELL
The HR Department

David runs a successful HR consultancy business. He qualified in 1993 and moved quickly out of practice into in-house solicitor roles, working for different businesses, including a start-up company and a major food concern that was listed on the Dublin and London stock exchanges. In his work as an in-house solicitor, David got more and more involved in personnel issues and, over time, developed into a specialist in HR matters.

Aware that most employers cannot afford a full-time HR function, David decided to establish The HR Department as a service that employers can outsource and use, as required, to access support.

His business supplies employers with up-to-date handbooks and contracts. It helps employers stay compliant and supports them with HR challenges. They assist employers to develop a strategic HR approach and to develop their systems. The company can also audit HR processes.

EMER LAVIN
Diversity Potential

Emer Lavin qualified as a solicitor in 1996. She moved from Belfast to Galway after graduating with an LLM in human rights law from Queen's University in 2000 and has lived in Galway ever since.

In 2004, she trained in business executive and personal coaching and has run a coaching business on a part-time basis since then – combining this with parenting responsibilities.

She has always retained a deep personal interest in human rights and, in particular, in the area of diversity. In 2010, she established an organisation called Diversity Potential, aimed at encouraging and facilitating principles of diversity.

In September 2011, she was accepted to do a PhD at the Department of Equality and Social Justice at University College Dublin. She has now begun her PhD studies, through which she plans to critique the criminal legal system from an equality perspective.

RDJ celebrates on the double

Law firm, Ronan Daly Jermyn (RDJ) has taken on five new solicitors and more than doubled the size of its Galway offices. The law firm has offices in Cork and Galway, and its office in the 'City of the Tribes' has been enjoying significant growth of late. The firm has appointed new solicitors in the areas of banking, commercial law, healthcare, and litigation and dispute resolution.

The combined staff of RDJ and RDJ Glynn now stands at 140 – positioning it in the top ten law firms in the country. RDJ managing partner, John Dwyer, says: "To continue our strategic expansion, in line with our clients' requirements, we have carried out an extensive refurbishment and more than doubled the size of our office space at Aengus House in Galway. Recruiting experienced solicitors in key areas is a priority for the firm and we will be looking to further expand our team in the near future."

Good news in these recessionary times!

PIC: MIKE SHAUGHNESSY

Galway law firm, RDJ Glynn, celebrated its expansion of staff numbers and offices on 1 March 2012 *(from l to r)*: John Dwyer (managing partner), Declan Dooley (President of Galway Chamber of Commerce) and Padraic Brennan (partner)

Anyone for a Refresher?

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

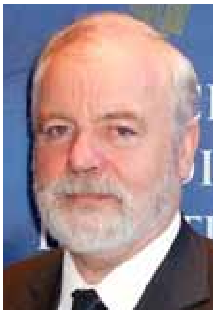
If the answer to any of these questions is yes, the Essentials of Legal Practice course from 13 to 31 August 2012 inclusive (weekdays only) is for you.

This course will cover the core essentials of legal practice: professional conduct, *Solicitors' Accounts Regulations*, conveyancing, probate and tax. Intensive in its nature, the course will bring professionals up-to-speed in these areas in a concise and condensed manner. There is no examination; however, attendance at all elements is mandatory. The course fee is €2,825.

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

For further details, contact Rachael Hession (Law School) by email: r.hession@lawsociety.ie.

Five solicitors are nominated by Government for judicial appointment to the Circuit and District Courts


David Riordan


Keenan Johnson


Michael Walsh


Alan J Mitchell


Eugene O'Kelly


Marie Quirke

The Government has announced seven nominations to the Circuit Court and five nominations to the District Court. The Circuit Court nominees are Judge David Riordan (judge of the District Court), Keenan Johnson (solicitor), Sarah Berkeley BL, Pauline Codd BL, Barry Hickson SC, Mary Ellen Ring SC and Carmel Stewart SC.

Former and current practising solicitors include Judge David Riordan and Keenan Johnson. Judge Riordan was educated at UCC (BA, PhD), Kings Inns, TCD (MSc) and was called to the Bar in 1977. He was admitted as a solicitor in 1984 and was appointed as a judge of the District Court in 1995. He is a member of the District Court Rules Committee.

Keenan Johnson was born in 1958 and was educated at the Law Society. He operates a mixed practice, focusing on family and criminal law and civil litigation. He has been an arbitrator since 1994 and a mediator since 2009.

Those permanently assigned to the Circuit Court are Sarah Berkeley BL, Mary Ellen Ring SC and Carmel Stewart SC, who were assigned to the Dublin Circuit; and Judge David Riordan who was assigned to the Cork Circuit.

Pauline Codd BL, Barry Hickson SC and Keenan Johnson (solicitor) will serve as unassigned judges of the Circuit Court.

District Court nominees

Those nominated for appointment to the District Court include four solicitors: Alan J Mitchell, Eugene O'Kelly, Marie Quirke and Michael Walsh, while Kevin Staunton is a barrister based in Co Wicklow.

Alan J Mitchell was born in 1964. He was educated at UCD and at the Law Society. He is principal of Alan Mitchell and Co.

Eugene O'Kelly was born in 1964. He was educated at UCD, UCG, the Law Society and University College London. He was solicitor to the Commission of Investigation into the death of Gary Douch.

Marie Quirke was born in 1964. She is a graduate of the Law Society and was a Law School tutor from 1988-2007. She was a member of the Law Society's Regulation of Practice Committee from 2005 to 2007, and is managing solicitor at Finglas Law Centre.

Michael Walsh was born in 1955 and was educated at the Law Society. He is principal of Walsh Warren and Co, solicitors.

These appointments arise mainly from judicial retirements between September 2011 and February 2012, as well as the death last summer of Judge Con Murphy (Circuit Court), and the promotion of Judge Michael White to the High Court in October 2011.

Three further nominations to the District Court will be made by the Government following permanent assignments to District Court districts in the coming weeks.



The President has appointed Mr Justice Frank Clarke *(left)* and Mr Justice John MacMenamin to the Supreme Court

Airport Club offers discount for Law Society members

Airport Club at Dublin airport offers the business/frequent flier greater speed, comfort and discounts on key services when travelling through Dublin Airport. Members of the Law Society can now enjoy a preferential rate on membership.

Depending on your choice of plan you can avail of the following:

- **A fast-track service, which allows members to transit through the fast-track security boarding entrance, avoiding the regular queues,**
- **Discount in short-term car parks,**
- **Discount in a selection of The Loop retail outlets and in DAA-operated lounges.**

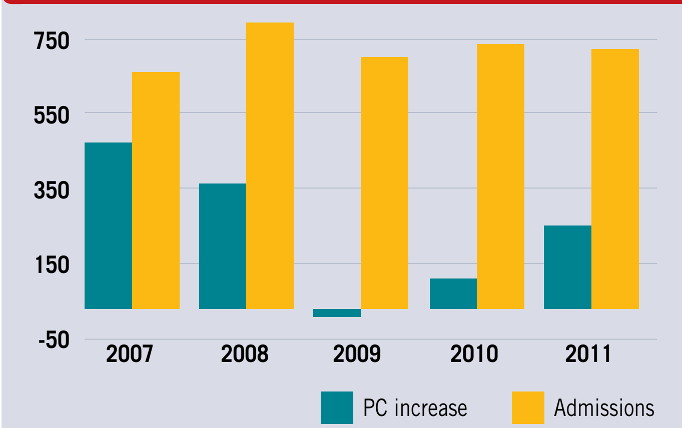
	LSAC5 rate	Regular
Green Plan	€135	€150
Silver Plan	€212.50	€250
Gold Plan	€400	€500

To register, visit www.airportclub.ie, choose your preferred plan and go to 'join now'. Complete the registration form and enter your exclusive discount code in section 3 of the form (the code for Law Society members is LSAC5, which is case sensitive.) To find out more, or to register, simply login to the Airport Club website, www.airportclub.ie; tel: 01 814 4898, email: airportclub@daa.ie.

Heartening upturn in 2011 practising certificate numbers

There was a modest but heartening net increase of 236 in the number of practising certificates taken out by solicitors in the calendar year 2011 over the previous year, *writes Ken Murphy*. The previous year had itself seen an increase of 110 practising certificates over the disastrous year 2009, when the number of practising certificates actually fell.

PRACTISING CERTIFICATE INCREASE VERSUS ADMISSIONS



Significant indicator

Although it represents by no means the full picture, the number of practising certificates each year is a significant indicator of confidence and activity within the solicitors' profession. Measured in these terms, 2009 has been by far the worst year of the recession to date for solicitors. In that year, the number of practising certificates contracted, in shocking contrast to the net increase of 355 in the still buoyant previous year of 2008. But even the year 2008 was significantly down from the massive 460 new practising certificates in the peak year of confidence and activity in the profession – 2007 – the year in which Ireland's property bubble reached its most massive and grotesque inflation.

All of the figures quoted are for the number of practising certificates on 31 December in the year in question. Accordingly, the figures are 'hard' and the comparisons are on a completely valid, like-with-like basis.

A lot can be learned about the profession over the last decade by examining the ten years of statistics in the table (below). For example, in the course of that ten years, the number of solicitors on the roll has leapt from 8,278 in 2002 to 13,440 in 2011 – an increase over the decade of 62%. The increase in the number of practising certificates between the 6,195 of 2002 and the 8,571 in 2011 was 2,376, or 38%.

Big divergence

As the table shows, there has always been a big divergence between the number of solicitors admitted to the roll in any given year and the net increase in practising certificates over the previous year. Many solicitors have always followed careers outside of private practice in Ireland. A solicitor without a practising certificate is not necessarily unemployed. For example, if we take 2007 as the peak year of the boom, even though there was a net year-on-year increase of 460 practising certificates that year, this represented only 71% of the 642 new solicitors admitted to the roll in 2007.

Turning back to the most recent year for which we have full statistics – 2011 – the 718 new admissions to the roll last year produced only a net year-on-year practising certificate increase of 236, which is just 33% of the new admissions. However, that is still a massive improvement on the nadir year of 2009, when there were 705 admissions, but the year-on-year practising certificate comparison number was minus six. Viewed in purely statistical terms, not a single one of the 705 new solicitors in 2009 took out a practising certificate.

"Lies, damn lies..."

However, in the phrase popularised by Mark Twain, "there are lies, damn lies and statistics". Of course, many of the solicitors who came on the roll in the course of 2009 did find employment in the practising profession. Sadly, however, an enormous number of the solicitors who had been at work with practising certificates in 2008 found themselves without either work or a practising certificate by the end of 2009. It is from both sources, both the newly qualified and the experienced, that the estimated 1,000 or more currently unemployed solicitors are drawn.

Let us hope that the profession never experiences another 2009 and that the current modest but welcome year-on-year improvements of 2010 and 2011 continue and strengthen.

Admissions will drop

While the number of new admissions to the profession in the four years from 2008 to 2011 inclusive exceeded 700 in each year, that is scheduled to drop substantially from now on. The number annually entering this profession – viewed by most solicitors as already massively overcrowded – is set to reduce. We know this because the number of trainees on professional practice courses has dropped by about 40% from the peak intake level, reflecting market forces at work.

And one final statistic – given that the figure of 13,440 solicitors on the roll on 31 December 2011 has since been added to by new admissions in 2012, the number of solicitors on the roll as this April 2012 *Gazette* goes to press has already passed a new record of 13,500. A profession of 14,000 solicitors is not far away.

PRACTISING CERTIFICATE, ADMISSIONS AND ROLL NUMBERS ON 31 DECEMBER FROM 2002 TO 2011

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
PCs	6,195	6,436	6,746	7,037	7,416	7,876	8,231	8,225	8,335	8,571
PC inc/dec	282	241	310	291	379	460	355	-6	110	236
Admissions	404	422	443	420	536	642	777	705	729	718
Roll	8,278	8,700	9,143	9,563	10,111	10,753	11,288	11,993	12,722	13,440

NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

Proprietary secure email – secure for whom? Beware certain types of 'secure' email

TECHNOLOGY COMMITTEE

Several banks and government agencies have introduced a type of secure email that requires correspondents communicating with them by email to use their own dedicated email systems. Some of these systems may be secure, indeed very secure, as far as the bank or agency is concerned – but may not be so secure or satisfactory for the solicitor or other party dealing with them.

Most of these systems do not involve true email as a method of conveying information, but rather hold the message on their system and then send an email to the recipient advising him that there is a message awaiting his attention. The email invites the recipient to register on the institution's system and then log on and read the message.

These systems may be fine for filing tax returns or viewing bank statements, but they can have problems when used for ordinary email. They are very secure for the controlling institution, in that the message never leaves its system and can only be read by a recipient after they have verified their identity. However there can be major problems for the recipient, including:

- The recipient may have no copy of the message on his/her (electronic or paper) file.
- The institution's system often invites the recipient to respond, in which case the response is recorded on the institution's system – not on the recipient/sender's. This may mean that the recipient has no copy of the message 'sent' to him, nor a copy or record of his response.
- Some systems have very basic or non-European character sets, and some do not permit attachments. This may limit or even alter the information that it is possible to transmit, or is actually transmitted to, and received by, the recipient.
- Such systems often only permit the typing-in of text and do not facilitate attachments, the pasting of text, or the use of prepared forms or text. This can be very inefficient, especially as it does not permit interaction with case-processing systems.

Queries to some of the banks and agencies concerned about obtaining copies of what was sent have been met with: "You can always log on again and see what we sent you, and your response" – however, this is far from satisfactory.

Solicitors are obliged to keep proper files, including copies (paper or electronic) of correspondence. It is unlikely that relying on copies on a third party's system would be considered a proper record, as it is quite outside the control of the solicitor.

It is recommended that solicitors only agree to use these systems with great care and after ensuring that their obligations – both regulatory and to their clients' and others – are fully complied with. If the system does not provide adequate facilities to ensure compliance, then solicitors should decline to use it in favour of ordinary email (subject to the usual constraints) or to use traditional methods of communication, such as fax or post.

Finance Bill 2012 and discretionary trust tax

PROBATE, ADMINISTRATION AND TRUSTS COMMITTEE

The *Finance Bill 2012* introduces significant changes to the discretionary trust tax (DTT) regime, in particular in relation to such trusts arising under estates.

The committee has been concerned that the amendments could be interpreted in a manner that would lead to an accumulation of the annual 1% charge to DTT in a case where a discretionary trust is preceded by an interest in possession.

We also sought clarification that no charges would be payable until the discretionary trustees had assets out of which the charge could be paid.

These concerns were raised by the committee with the Revenue Commissioners, and Revenue has reassured us on the matter through the TALC forum. While the legislation will remain unchanged for this year, Revenue has indicated that it will issue an eBrief on these and other DTT issues by way of comfort.

The committee will continue to update practitioners in relation to the significant changes to the DTT regime as they arise.

In-house and public sector panel discussion in May

IN-HOUSE AND PUBLIC SECTOR COMMITTEE

A panel discussion for in-house solicitors will take place on 16 May 2012, from 4pm to 6pm, at Blackhall Place, Dublin 7.

Speakers will include David O'Hagan (retired chief state solicitor) and Bryan Sheridan (group law agent of AIB plc). Interactive discussions will provide an excellent opportunity for in-house solicitors to share their views and make contacts with colleagues.

The theme of the panel discussion is 'Managing the recession: the evolving role of in-house lawyers.'

Every in-house lawyer in the country has been dealing with the impacts of the recession over the past three or four years and will continue to do so in the coming years. Examples of the change this environment has demanded include:

- Successfully responding to a changing workload,
- Achieving value for money for your organisation, including payments to external legal advisors,
- Providing effective support and leadership,
- Managing change within the organisation,
- Achieving efficiencies in legal operations, and
- Motivating and developing staff.

This panel discussion represents a unique opportunity to learn from your in-house colleagues on their approach to today's difficult environment and, perhaps, come away with ideas on how best to equip your organisation to meet the challenges ahead, legal or otherwise.

Full details of the panel discussion, including the booking form, will be made available on the In-house and Public Sector Committee's section of the website at www.lawsociety.ie in the coming weeks.

LAND OF THE FREE, HOME OF THE DELUDED

The 'Freemen on the Land' ideology may appear harmless in many respects, but Keith Rooney argues that its delusional approach to legal issues is a growing cause for concern

Keith Rooney is a practising barrister working in debt receovery, personal injuries and company law

On 24 February, Ben Gilroy, 'star' of the YouTube video 'Constitution halts sheriff', appeared on TV3's *Ireland AM* speaking about how he had 'defeated' the sheriff of Portlaoise and how others could do the same. The methods he used are common strategies of a group known as the Freemen on the Land. This was not the first appearance of this movement on the national stage. On 10 August 2011, Judge David Anderson, presiding over Wexford District Court, was challenged to produce his oath of office by a person holding himself out to be 'Bobby of the Family Sludds'. When Sludds eventually signed a bond to keep the peace, following a suspended sentence on condition that he tax and insure his motor vehicle, the *Enniscorthy Guardian* (17 January 2012) noted that: "He signed the paperwork, but the judge was not happy with the first attempt at a signature, noting that it was different to that used on the application for the extension. The judge also wanted the phrase 'all rights reserved', which Sludds had written in, to be removed."

The Freeman movement is one based on a number of conspiracy theories, such as the belief that birth certificates create a legal fiction in your name. They believe this fictional entity to be a corporation that is literally owned by the State and that the government trades this 'bond' as collateral for loans. The requirement to print your name in block capitals on government forms is supposed proof of this, as is the fact that birth certs are printed on 'bond paper'.

There is also a belief that the Bar is an acronym for 'British Accredited Registry' and that all barristers swear an oath of fealty to the English Queen. While this is the tip of a quite substantial iceberg, it may be more valuable to look here at the court approach of the Freemen in a practical context.

"There is also a belief that the Bar is an acronym for 'British Accredited Registry' and that all barristers swear an oath of fealty to the English Queen"

The basic premise of the Freemen comes from a literal belief that "no man may be governed without his consent" – therefore, if I do not consent to a law, it does not apply to me. They believe that 'statute law' is actually admiralty or maritime law and does not apply to people or civil matters (proof for this comes from apparent maritime phrases in courtrooms, such as 'dock'– the word actually derives from the Dutch 'dokke', meaning an animal pen), and that 'common law' is the law of the 'flesh and blood human being', or law of the land.

If a Freeman finds himself in court, he is likely to take one of the following approaches:

- Not turn up at all and write to the appropriate clerk or other officer of the court,
- Question the judge as to his standing, or
- Attack the jurisdiction of the court.

From our own correspondent

While simply not turning up may not appear a novel strategy in itself, it is the manner in which the Freeman does it that makes it worthy of note. This particular approach is most often taken for various forms of on-the-spot fines or fixed-penalty notices. Typically, the Freeman will engage in some form of correspondence, usually with the authority issuing the original fine and/or the District Court clerk for the appropriate area. This correspondence will dispute the validity of the fine, normally stating that no valid contract had been entered into by the Freeman, and

'THE STRAW MAN'S STATUTORY OBLIGATIONS'

The *Freeman Guide* states: "As the Government/Country is operating in Bankruptcy, they are actually using You, the living Soul, as collateral and take loans on the back of this Bond (created at birth). This is due to the expectation that You will generate revenue in your life, work and pay tax, which contributes to the National Debt. The Birth Cert is evidence of the Bond as it is created on Bond paper. Your PPS number can be likened to an employee number. And, just like any other job, you can leave whenever you like and, as soon as you do, Company rules such as 'dress codes' or 'no hot drinks on desks' no longer apply to You: you're free from obligation. You're no longer Contracted! As a Freeman on the Land of Ireland, you will enjoy all your Rights and Freedoms. You cannot be held liable for any of the Straw Man's debts or Statutory obligations."

In this last statement, we find the crux of the Freeman position: they believe that, simply by declaring themselves to be 'free men on the land', they are removing any vestiges of consent to be governed by the Government of Ireland, thus obviating the necessity of obeying statute-based law.

Youtube star Ben Gilroy confronts 'a policy enforcer'

> ***"One can only hope that an equally strong declaration from the Superior Courts in this jurisdiction will soon be forthcoming to put an end to this farcical and dangerous movement and their delusional approaches to the law"***

that any further correspondence will result in the Freeman charging the relevant authority for their time.

In one case, involving another member of 'the Family Sludds', the defendant, Kenny Sludds, informed the gardaí that "if they proceeded with the matter, he would be charging them rates of €100, €1,000 or €2,000 per hour, depending on the level to which they imposed on him" ('Man questions garda's right to prosecute him', *Wexford People*, 15 September 2010.) Should a Freeman actually appear, it is common practice to question the judge at the outset about his oath of office, asking him to produce a written copy of it in open court.

The Freeman asks the judge to produce his oath of office based on a misreading of article 34.5.3 of the Constitution, claiming that the judge must make the declaration of their oath before entering upon his duties – in the Freeman reading, this means every day before the court begins its business. This is combined with article 34.5.4, which states: "Any judge who declines or neglects to make such declaration as aforesaid shall be deemed to have vacated his office."

Bizarre approach

In this way, the Freeman believes that if the judge has not produced his oath or refuses to do so, that the judge has, in fact, vacated his position. Oddly, the Freeman does not seem to follow this road too often, preferring an utterly bizarre approach whereby the Freeman *accepts* the oath of the judge (whether one is forthcoming or not). This, in the Freeman's world, forces the judge to uphold common law, disregard statute law completely, and to protect the Freeman from the 'policy

UNDER WHOSE AUTHORITY?

It may be instructive to look at the approach taken by Stephen Sutton on 20 May 2010 before Kilcock District Court.

Mr Sutton began, as is the norm with Freemen, by denying that he was the "legal fiction Stephen Sutton" and asking that he be addressed as "Stephen of the Family Sutton".

He then questioned the legality of the fixed-penalty notice system before questioning whether the garda had acted lawfully when he had stopped Mr Sutton.

He then informed Judge Zaidan that he had committed no crime, as he had not hurt anyone. Mr Sutton was before the court on charges of speeding, driving without insurance, and driving without a licence.

Mr Sutton was stopped by gardaí, having registering 76km/h in a 50km/h zone. This does not constitute a crime in the Freeman ideology (Freemen believe that 'victimless' crimes such as these are actually commercial transactions between legal fictions). Mr Sutton then cited article 41 of the Constitution but, as he said, "the Gaelic version of it, not the blue book masquerading as the true text in all outlets".

Finally, Mr Sutton questioned under which authority the District Court was operating, asking if it was under "maritime admiralty" or "common law" jurisdiction.

The *Leinster Leader* article that appeared the following morning (24 May 2010) recorded that, as Mr Sutton was escorted out of the courtroom, he said: 'You are breaking the law here'."

enforcers'. (This is a term often used in Freeman literature, usually referring to An Garda Síochána, any agency seeking payment of a fixed-penalty notice, or any other State body. It can also include debt collection departments in banks or any other body seeking to enforce a contract, debt or legal obligation.)

In line with their ideas on contracts, the Freeman may, if he has 'accepted' the judge's oath, now refuse to plead. The Freeman sees the invitation to plead as an offer, in the contractual sense, from the judge. The Freeman will refuse to enter into this contract by saying that he does not understand. The word 'understand' seems to have a rather specific meaning for Freemen. If he were to say that he 'understands' what the judge is saying, then the Freeman believes he is accepting the judge's authority over him – he is literally 'standing under' the judge and is thus in his power.

The third common tactic taken by a Freeman is to attack the jurisdiction of the court itself. Normally, this is done by asking if the court is operating under admiralty or common law and, when the judge inevitably answers in a manner other than the one the Freeman desires, he simply refuses to acknowledge the jurisdiction of the court.

Delaying tactics

It is tempting to see the Freemen as harmless in many respects but, in March 2010, about 300 Freemen surrounded a court in Merseyside while a number of 'activists' attempted to arrest a judge who had previously declared a local Freeman bankrupt (see *Gazette*, November 2011, p64). The intervention of the police avoided any serious issue, although the gradual escalation of Freeman activity, as well as the echoing of this mob action in some Irish cases, is a cause of some concern.

Morgan Freeman on the land

As recently as 5 March 2012, a Freeman has appeared in an injunction application before the High Court. Indeed, it appears that the case of *Wellstead v Judge White* ([2011] IEHC 438) involved a Freeman argument over securitisation of loans. The lag from the District Court and the delaying tactics of Freemen mean that there have been no decisive judgments in this jurisdiction.

Canadian Courts (*R v Klundert*), however, have already been forced to deal with this ideology, and one can only hope that an equally strong declaration from the Superior Courts in this jurisdiction will soon be forthcoming to put an end to this farcical and dangerous movement and their delusional approaches to the law. G

GREEK LAWYERS FEEL 'UNDER SIEGE' BY TROIKA

Director General Ken Murphy represented the Society at a special meeting of Greek Bar Presidents in Thessaloniki, Greece, in early March. He provides this insight to the Greek 'Troika' experience

At the meeting of the Council of the Law Society on 24 February 2012, it was agreed that the Society should send a speaker – as had been requested by the Greek Bar – to participate in the special meeting with representatives of European Bar Associations in Thessaloniki on 2 and 3 March 2012.

The Law Society of Ireland had received substantial support from international colleagues when we requested it and, accordingly, we should reciprocate in turn when our support was sought. As director general, I was chosen to represent the Society.

There are 45,000 lawyers in Greece and each is a member of one of the 63 individual local Bars. The conference was a two-day meeting of the 63 presidents of these local Bars. In ways, these Bars seem to operate like the separate and rival city states of Greek antiquity. The Greek legal profession lacks any strong national organisation and this, in my view, is one of its many problems.

Anger, bewilderment and despair

As everyone knows, although Greece and Ireland are both 'Troika countries', the approach to and experience of dealing with the Troika has been very different in the two countries, reflecting, probably in large measure, their different economic circumstances. Ireland's economic situation is very bad – but that of Greece is much, much, worse.

The title of the conference was 'Troika – justice and the legal profession under siege' and the Greeks truly do see themselves as being 'under siege' from the Troika. They are being hit by a tidal wave of enforced change in an extremely short period of time. The mood among the leaders of the profession seemed to me to be a volatile cocktail of anger, bewilderment and something close to despair.

"Ireland's economic situation is very bad – but that of Greece is much, much, worse"

There were pickets outside the conference centre on our arrival, mounted by representatives of more radical political forces who were promoting a general strike throughout Greece.

At one stage during the conference, members of this faction burst in and took over the microphone to read a statement in English addressed primarily to the foreign guests on the subject of how democracy had been extinguished in Greece (where democracy had been invented) and urging international solidarity for resistance to the anti-democratic actions of the Troika.

The Greek legal profession has already been on strike (which appears to consist primarily of refusing to attend courts and thereby causing the courts to be suspended) on and off for many months. There is tension between the lawyers and the notaries, as the latter did not appear to be sufficiently supportive of the former.

However, there is also dissent within the ranks of the profession, as some speakers pointed out (there was simultaneous translation into English for the guests, although sometimes the speakers deliberately spoke in English for our benefit), that absolutely nothing had been achieved to date through the many weeks of strike action. One of the major effects of withdrawing their services, from the profession's point of view, was that

A troika of international speakers in Thessaloniki *(from l to r)*: Jean-Marie Burguburu (former Batonnier of the Paris Bar and now Vice-President of the Union International des Avocats), Dr Marcella Prunbauer-Glaser (President of the CCBE) and Ken Murphy

Interviews on Greek television do not faze the director general – provided he has a translator beside him

"The Greek legal profession is facing the imposition in about three months of a tsunami of change that the Irish legal profession has adjusted to gently over 30 years or more"

the lawyers could make no living when they were on strike.

All of the international guest speakers gave their addresses in the morning session of the conference. There was particular interest in the Irish experience (from a fellow 'Troika country') and I was placed as the next foreign speaker after the President of the Council of Bars and Law Societies of Europe, Dr Marcella Prunbauer-Glaser, who had spoken, in a very different conference, at the Convention Centre in Dublin on 5 December 2011.

Advice based on Irish experience

Following my description of the apparently Troika-inspired changes that had been introduced in Ireland, and the campaign we were fighting against a number of them (with at least some encouraging signs of success), I was asked by the president of a Bar from a Greek island why the lawyers in Ireland had not gone on strike. I said that I also was from an island, but it was a very different island. The cultural attitudes to strike action by the legal profession in the two countries were about as different as they could possibly be.

Insofar as I could offer advice to Greek colleagues, based on our experience in Ireland, it was that they should not seek to oppose all of the Troika-generated change but, on the contrary, should engage with and seek to shape the change. They should distinguish between what was truly a core value of the legal profession and the rule of law, on which they should fight uncompromisingly to protect the public interest, and what was not. They should not automatically and uncritically oppose all change. Other international speakers echoed this theme.

I expressed great sympathy for the Greek legal profession which, it seemed to me, was facing the imposition in about three months – by force and without either consultation or explanation – of a tsunami of change that the Irish legal profession had adjusted to gently over 30 years or more.

Although our Greek hosts overwhelmed us with the warmth of their welcome and hospitality throughout our stay, and clearly found what we had to say not merely surprising but interesting, I am not sure how much influence we had.

We subsequently heard that, at a closed meeting of the Greek Bar presidents the following day, after a major debate, the decision was taken that the legal profession throughout Greece should go on indefinite strike!

GREECE IS VERY DIFFERENT

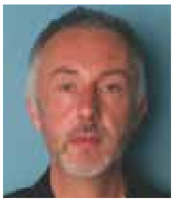
Following lunch, we spent between two and three hours answering questions from the floor of the conference. It quickly became apparent that there was a huge difference in culture between the legal profession in Greece and that of the countries from which the international speakers were drawn. For example, in Greece:

- **Up to relatively recently (until pressure from the Troika intervened) a lawyer from one of Greece's 63 Bars could not practise in any Bar outside his or her own. Lawyers' practices had been confined to their own towns or districts. The shockwaves from the recent change were still being felt and assessed.**
- **Again, until recently, there had been an almost complete ban on lawyer advertising.**
- **Minimum fee tariffs operated by lawyers, prohibited as anti-competitive in Ireland for decades, had also been abolished only recently.**
- **There are almost no 'law firms', in that practically every Greek lawyer is a sole practitioner. When I expressed astonishment at this, I was informed that this was what the Greek people wanted.**
- **There was an acknowledgement by some speakers that corruption in the Greek justice system was a problem, in contrast with most other EU member states.**
- **The single biggest, most immediate and most shocking change that was being imposed by the Troika was the forced introduction of VAT on legal services. This was being resolutely opposed by the profession on the grounds that it would fundamentally undermine access to justice by rendering the cost of legal services completely beyond the public's capacity to pay for them. (One lawyer told me privately that he believed that one of the Troika's objectives in introducing VAT was to make the profession much more tax compliant.)**

It was both very surprising and informative to Greek colleagues when I told a questioner that VAT on legal services had been introduced in Ireland as far back as 1981 and that the current rate was 23%. Each of the other foreign guests gave similar information from their countries.

‘BASIC RIGHT TO HAVE RIGHTS’

A top advisor from the Council of Europe’s office of the Human Rights Commissioner recently addressed an Oireachtas committee on the issue of legal capacity. Lorcan Roche speaks with Lori Sivonen



Lorcan Roche is a writer and freelance journalist

Ireland has yet to ratify the UN *Convention on the Rights of Persons with Disabilities*. While Justice Minister Alan Shatter has repeatedly stressed his commitment to the principles of the convention, he has also identified the lack of human rights-friendly capacity law as the “stumbling block” – most recently at last October’s Universal Periodic Review hearing at the UN in Geneva.

The incompatibility of our *Mental Health Act 2008* has also been identified as an obstacle. The Oireachtas Justice Committee held a series of hearings in late February 2012 to entertain the views of relevant organisations (among others, Amnesty International, the Centre for Disability Law and Policy, the Law Reform Commission, the Mental Health Commission and Inclusion Ireland). They also heard from Mr Lori Sivonen, an experienced advisor from the Council of Europe’s office of the Human Rights Commissioner.

The appearance before the Oireachtas Committee of Mr Sivonen – a very assured, practical, no nonsense Finn with a background in international law, anthropology and social sciences, and with more than 16 years’ experience of the commission – has been warmly welcomed by Irish organisations with an interest in seeing the convention promptly ratified and the *Mental Health Act 2008* appropriately redressed.

After his Oireachtas appearance, Mr Sivonen professed himself “impressed” with the positive will, and “happy” with the amount of thought and deliberation the committee was giving to the concept of legal capacity. When it was indicated to him that that a clear definition of the term is difficult to pinpoint, even among the very many pages of the UN *Convention on the Rights of Persons with Disabilities*, Mr Sivonen nods sagely, pauses briefly, then concurs: “Agreed. But I would say that it is so important, so fundamental, that it is actually the key to many other rights as well. It is really at the ‘beating heart’ of the UN convention, as it goes to the legal recognition of persons with intellectual disabilities. Legal capacity is about a basic fact concerning one’s ability to be a rights bearer, about the person having human rights, and about the fact that the state recognises the person as an active agent able to take legally binding decisions. And that the will and preference of the individual take precedence, and that the individual is allowed even to make mistakes, or alternatively, to change their minds.”

He continues: “The concept is contained in article 12 of the convention – ‘equal recognition before the law’. And that, by the way, is very much the idea §on which the commissioner’s latest paper is based. It starts from the assumption that all individuals with intellectual disabilities must be able to enjoy legal capacity on an equal basis with all other peoples” – and here he pauses for effect – “in all areas of life”.

“Legal capacity is about a basic fact concerning one’s ability to be a rights bearer, about the person having human rights, and about the fact that the state recognises the person as an active agent able to take legally binding decisions”

No comment

Mr Sivonen is too politically astute to be drawn on the specifics and negative impacts of the 140-year-old Irish ‘ward’ system and attendant *Lunacy Act*. “Of course, I would not comment directly on how it is in Ireland, because that is something that we have not analysed in detail, but nevertheless the current trend in Europe – and indeed throughout the world, via the UN convention – is that legal capacity has to be assumed, and then persons who may need assistance must have supports available – if they wish to avail of those supports – so that they can exercise legal capacity and enjoy human rights in a fuller way.”

When it is suggested that persons with mental health problems or intellectual disabilities have previously been denied legal capacity in Ireland, he nods, then diplomatically leads the conversation – in a polite, quietly forceful, very European manner – into dealing with solutions rather than problems: “I think what you are asking is ‘how can we ensure that their decision making will be respected in law in future?’ And the answer, quite simply, is we will achieve this through the UN convention and through the recommendations of the Council of Europe Commissioner for Human Rights. There is now a shift in perspective regarding legal capacity, which means that now we should first start assuming that people *do* have legal capacity, not the other way around.”

Legal capacity, in his view, amounts to nothing less than “the basic right to have rights”. It is, he says, through legal capacity that one exercises one’s rights, frames one’s personality, one’s identity, one’s legal standing. There is, he says, no clear


PIC: SIOBHAN BYRNE

knowledge of how many persons may be "thus deprived", but in reality it may run to hundreds of thousands, it may even be millions across Europe: "When a person is deprived of legal capacity, they are most often put under a guardianship regime. There is a guardian appointed for the person, who takes decisions on behalf of the person. There are gradations to that – in some countries, for instance, there still exist systems where there is a totally plenary guardianship, meaning that the person under guardianship does not have any legal capacity rights whatsoever. Again, across Europe there are different terms applied – 'people with intellectual disabilities', people with 'psychosocial disabilities' or, as it is termed here, people with 'mental health problems'. But, effectively, this is the very large group we are talking about. But in the new systems, we are aiming to create situations where we should not have guardianship systems at all; rather, we should aim to allow people decide for themselves."

But doesn't that mean providing new support mechanisms? "Yes, they may need help and supports, and those supports may again need some legal safeguards, so that they are applied in ways that the 'will and preference' of the person concerned can be adhered to. Most definitely, yes."

On the back burner?

When asked whether Ireland and the six other countries (France, Hungary, Latvia, Portugal, Slovakia, and Slovenia) that have failed to ratify the convention should be embarrassed, he once again plays the role of Euro diplomat: "In Ireland, I think it is the legal capacity situation that is causing the delays. I am informed that the legal impediments derive from legislation and enactments that are now more that 100 years old, so there is clearly a need for reform, and the Human Rights Commissioner has clearly stated, in his report from last year, that such reform is needed. But it is my clear understanding that reform is on the way here. But, for the record, more than half of the 47 member states of the Council of Europe have ratified the UN convention."

In his experience, do fundamental human rights issues such as legal capacity sometimes get put on the 'back burner' because of things like the Europe-wide fiscal crisis? "No, I would not say so necessarily. Perhaps on a practical economic level there will be concerns about how precisely the supports and practicalities will be developed, but even there it is not always a question of money and, currently, in the commissioner's issue paper, we have identified about a dozen member states who are currently in the process of reforming legislation. So it is not on the 'back burner', as you say, it is actually happening as we speak."

> **"We should first start assuming that people do have legal capacity, not the other way around"**

He stresses the need to move from the "paternalistic" system of putting people under guardianship into "a new system where we assume that people have legal capacity and that, if they want, they can use supports to maximise their legal capacity. Of course, the commission also recommends that all member states ratify the UN convention and that they examine their current legislation to see that it is in compliance."

Many observers say that our 2008 *Mental Health Act* does not go far enough in its compliance? "I think there is wide recognition in your Oireachtas – where I was in attendance this morning – that the quickly shifting international requirements need to be taken into account in any new bill and that the 2008 scheme may therefore no longer be adequate. But there is also real recognition of the importance of the need for supports for people with intellectual disabilities, and recognition for the need for legal safeguards for those supports."

After 16 years at the coalface of European human rights legislation, does he feel we are merely getting better at talking about progress rather than actually achieving it?

He smiles: "Of course, there is, and always has been, the implementation gap – the difference between what is sought after and what is actually achieved. But one also encounters enormous will to change, which is very positive, and what I have witnessed here in Ireland in your parliament is an enormous will to bring legislation up to best international standards and practices." G

TWEETERING ON THE BRINK

By rebroadcasting an unverified 'tweet', Pamela Cassidy argues that RTÉ compromised the democratic process and rendered the outcome of the 2011 presidential election vulnerable to legal challenge

Pamela Cassidy, of Cassidy Law Solicitors, Dublin, represented Sean Gallagher in submissions to the Broadcasting Authority of Ireland and is co-author, with Kieron Wood, of Contempt of Court *(Clarus Press)*

The unspoken question arising from last month's decision by the Broadcasting Authority of Ireland (BAI) on Seán Gallagher's complaint is whether RTÉ compromised the democratic process and rendered the outcome of the 2011 presidential election vulnerable to legal challenge.

The adjudication concerned the introduction of an unverified tweet by RTÉ during the crucial *Frontline* presidential election debate, broadcast 57 hours before the commencement of polling in the presidential election and, crucially, less than 40 hours before the moratorium on media coverage. RTÉ's failure to verify was compounded by the failure to broadcast a corrective tweet (sent to RTÉ's own feed *#rtefl* 26 minutes before the end of the live broadcast) either during the live broadcast, or during a radio programme that repeated the unverified tweet the following day. On the day of the broadcast, Seán Gallagher's poll ratings were 40%, making him the front runner. His next rival was at 25%.

While the adjudication was a decisive victory for Seán Gallagher on the crucial issue of fairness, the BAI did not deem it appropriate to consider "the impact of the programmes" on his presidential campaign. It was, however, a matter of very real concern to RTÉ, who had argued that Mr Gallagher's complaint should be rejected because, otherwise, the "historical record" of the 2011 presidential election would be "distorted".

Unfairness of treatment

In response, Mr Gallagher submitted that the consequences, perceived or actual, were immaterial: the basis of his complaint was the unfairness of his treatment during the course of the broadcasts, *simpliciter*.

An analogy could be drawn with contempt of court restrictions, where the issue is not whether a publication had actually prejudiced the legal proceedings, but whether it had the *potential* to do so. "Contempt of court is committed ... when a person publishes material which is calculated to interfere with the course of justice: it is not a necessary ingredient of the offence that it results in such an interference" (Supreme Court, *Kelly v O'Neill* [2000] 1 IR 354).

"The programmes' failures were sufficiently serious to affect the course of the election. They could hardly be more serious"

The BAI agreed, and its decision was based, quite properly, entirely on whether, at the time in question, the broadcaster had complied with its statutory duties of fairness, objectivity and impartiality under section 39(1)(b) of the *Broadcasting Act 2009*. The outcome of the presidential election was not an issue for the Broadcasting Authority.

Apart from the historical dimension, any question of *legal* challenge to the outcome is academic. Seán Gallagher made it clear from the outset that he would not challenge the outcome of the election, and offered his full support to President Michael D Higgins.

Had his decision been otherwise, a challenge could have been brought under section 57 of the *Presidential Elections Act 1993*. Application to petition to the High Court must be made within seven days of the result. The petitioner must satisfy the High Court that there was a *prima facie* electoral abuse or "irregularity" that, if established, is likely to have "materially affected the result of the election". An application can only be made by the DPP, an election candidate or election agent.

Electoral abuses

Electoral abuses are detailed in part XXII of the *Electoral Act 1992*. It does not appear that the Oireachtas ever contemplated a situation where an

"Some commentators had argued that Twitter is self-correcting. That, of course, did not help Mr Gallagher, because the correcting tweet was not broadcast by RTÉ, and so the failure to verify was compounded by the failure to correct"

electoral abuse by a third party, unconnected to any candidate, could 'void' the election of an innocent candidate.

An electoral abuse led to the first attempt to overturn a general election result in England in 1911. More recently, a Parliamentary Election Court declared void the 2010 election to Westminster of a candidate, as he personally had approved leaflets stirring up racial divisions against a rival candidate. The declaration was upheld on judicial review – *R (on the application of Woolas) v The Parliamentary Election Court* [2010] All ER(D)60 (Dec).

An electoral irregularity was the basis of a failed challenge to the result of the 1973 general election in East Mayo. The petitioner, an unsuccessful candidate, argued that the failure of the returning officer to seal the ballot boxes on the day of the count breached the constitutional requirement of ballot secrecy. The court found as a matter of fact that failure to seal did not result in a secrecy breach. Additionally, the petitioner claimed that a recount failed to comply with statutory requirements. The court found that the recount would not have assisted the petitioner, as he had been eliminated in an earlier recount. Both irregularities were "electorally ineffective".

The petitioner appealed to the Supreme Court. Upholding the decision of the High Court, Henchy J ruled that the courts would not allow an electorally ineffective breach of ballot secrecy "to be used to set aside the correctly exercised constitutional right of the rest of the citizens forming the electorate to select their representative" (*Dillon-Leetch v Calleary*, Supreme Court, unreported, 31 July 1974).

Similar constitutional and public policy considerations are likely to influence a court in respect of any challenge to the election of a presidential candidate who was himself innocent of any 'distortion', and who received 39.6% of the vote. In 1976, Chief Justice O'Higgins observed, in the *de Búrca* case, that "the overriding requirements of an ordered society" would prevent the courts invalidating thousands of jury verdicts reached through an unconstitutional process, namely jury selection under the *Juries Act of 1927*.

Case for a full inquiry

While any legal challenge is academic, there is certainly a case for a full inquiry. Seán Gallagher had asked the BAI to "consider an oral and/or public hearing ... and the broadcaster should be compelled to attend such hearing and to provide all relevant records ... in order that the Compliance Committee can ascertain precisely what occurred and why the broadcaster acted with such reckless disregard for considerations of fairness at a decisive point in an election campaign". The BAI declined, as it "was of the view that the complaint was not of such a serious nature to warrant an investigation or public hearings".

This aspect of the authority's decision was criticised by an *Irish Times* editorial on 8 March as "illogical. The programmes' failures were sufficiently serious to affect the course of the election. They could hardly be more serious." A *Sunday Times* editorial of 11 March argued that "it is illogical to give RTÉ a clean bill of health without a thorough scrutiny of the editorial process". The consensus for an independent inquiry is growing, particularly following claims in the *Sunday Independent* of 11 March that RTÉ may have influenced audience questions.

There are many unanswered questions, one of which is why *Frontline*'s presenter was not made aware of the corrective tweet sent to RTÉ's feed 26 minutes before the end of the live broadcast, either during this crucial period or at any time before the second broadcast.

A more fundamental issue is why the RTÉ production team did not take any steps to verify the bogus tweet with the McGuinness campaign team who were present in the studio. It would have taken less than a minute. They had the tweet at 10.34pm. They put it to Seán Gallagher at 10.49pm, after a five-minute commercial break. The McGuinness campaign team were on the ball, and sent the corrective tweet to RTÉ at 11.02pm. The live broadcast finished at 11.28pm.

The Broadcasting Authority's decision provoked an immediate debate in the media about the urgent necessity for guidelines on the use of social media, and Twitter in particular. Some commentators had argued that Twitter is 'self-correcting'. That, of course, did not help Mr Gallagher, because the correcting tweet was not broadcast by RTÉ, and so the failure to verify was compounded by the failure to correct.

Most commentators agree, however, that the 'never wrong for long' argument does not justify a departure from the usual journalistic norms requiring the verification of material before publication. As long ago as 1999, the House of Lords, in the Albert Reynolds/*Sunday Times* case, urged that the verification process must reflect the seriousness of the allegation: "The more serious the charge, the more the public is misinformed and the individual harmed if the information is not true."

RTÉ is now urgently putting in place new social media protocols.

THERE IS NOTHING TO FEAR BUT FEAR ITSELF

The legal profession is facing huge change as a result of the *Legal Services Regulation Bill,* but Kieran Moran makes the case that the profession has nothing to fear from independent regulation

Kieran Moran is President of the Southern Law Association

Imagine you are afraid to take on a client because of his or her political persuasion, or because they have a dispute with some arm of the State. Imagine you were that client.

As you will all be aware, the legal profession, both nationally and internationally, has expressed serious concern that the regulatory proposals outlined in the *Legal Services Regulation Bill 2011* constitute a real threat to the independence of the legal profession.

The Competition Authority believes these proposals are normal in any democratic country. One wonders why the Competition Authority has any view on the matter other than insofar as it affects competition. Then again, it is an arm of the State.

The editor of *The Irish Times*, in an editorial dated 29 December 2011, described the concerns raised by the profession as "such a wild allegation … designed only to obfuscate and to protect vested interests". Perhaps if he had taken the time to ask Geraldine Kennedy, his predecessor, as to her opinion on the use of powers by members of Government, he might be a little less steadfast in his convictions.

Debate and discussion on this very point has and continues to take place in many jurisdictions. England, Australia, South Africa, Namibia, even Zimbabwe have all debated this very issue in the last number of years. A succinct and clear description of the principle and its importance appeared in a report in Namibia by Kavendjii and Kore, as follows: "The independence of the legal profession is not accorded to lawyers for their own benefit or to shield them from being held accountable in the performance of their duties; the purpose of independence is to protect the people by affording them a platform from which to pursue, ultimately exercise and protect their constitutional rights."

The extent of the divergence between the stand of the legal profession (in its view, a principled stand in the public interest) on the one hand, and public perception on the other (as represented by *The Irish Times*' 'self-interested' editorial) is so stark that it presents a clear indication of the scale of the challenge ahead.

Challenge

We are, in my opinion, in the midst of three major influencing factors in relation to the way in which we do business and the economic prospects for the profession. The challenge is in how we address these factors and, more importantly, in how we see ourselves. If we as a profession do not see the value in what we do, then we cannot expect anybody else to do so.

"If we as a profession do not see the value in what we do, then we cannot expect anybody else to do so"

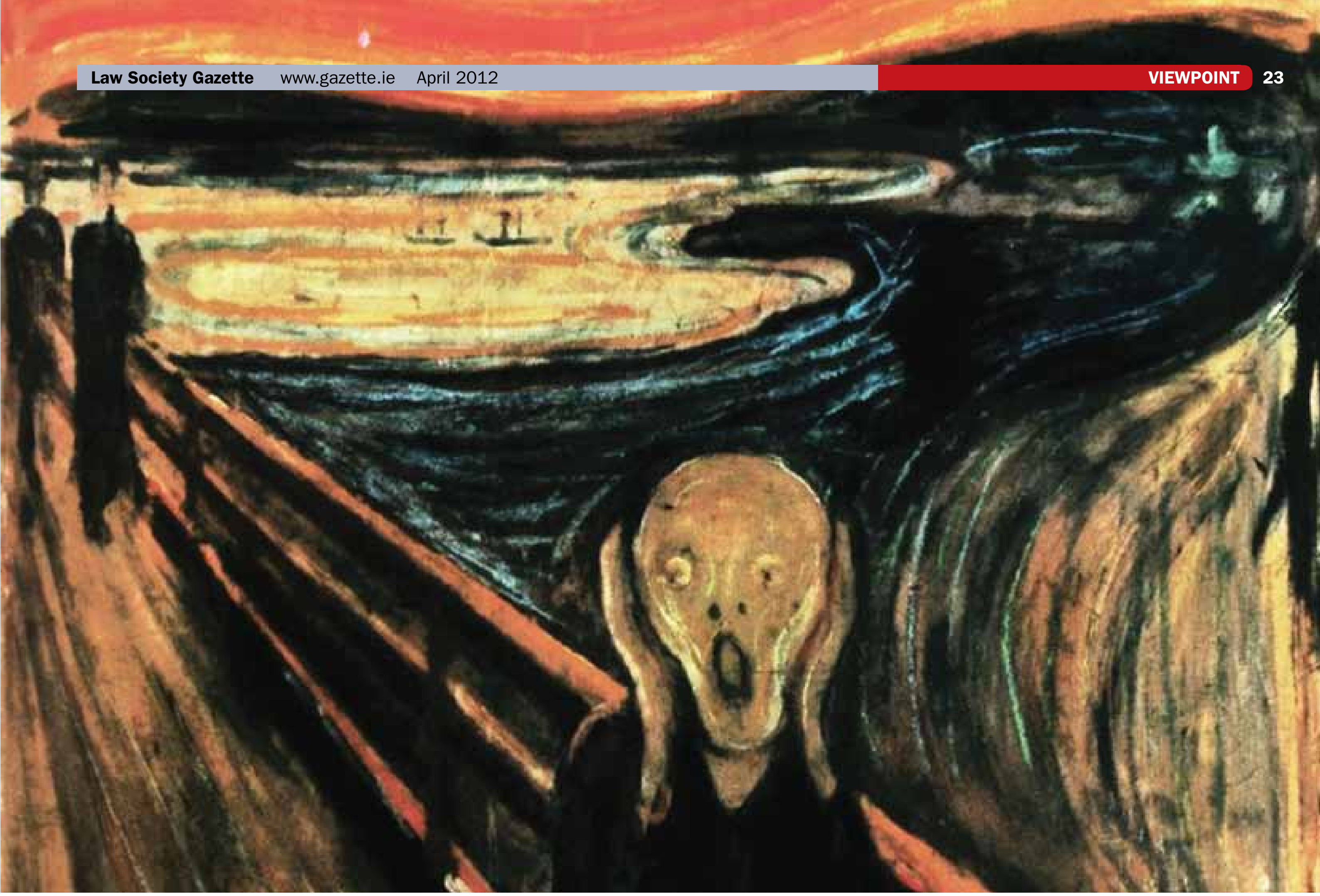
The first factor – the bill itself – promotes, as government policy, a downward pressure on the cost of legal services, seen as a barrier to access to the law. While this is a worthy public-interest issue, it is not one that the legal profession can or should be obliged to address in isolation from society at large, or without debate as to the nature of the legal system that society wants and can afford.

Government itself is probably the largest purchaser of legal services in the country. The Government, through its handling of fees for tribunals and the fees it pays for its own advices, has significantly contributed to the fee inflation that has occurred over the last 15 years. That irony seems to have been lost on all media commentators – as has the principle of responsibility that comes with this position of influence that the Government exercises in the market.

The second factor, clearly, is the recession – world and domestic. Perhaps the most significant change that this recession has wrought is that people are not only extremely reluctant to spend money at any time, and in any circumstance, but they question the value of everything. If the value of your house has dropped by 60%, then it is understandable that you would question the value of everything else – legal fees are no exception.

There are, in my opinion, however, reasons to be quietly positive. Firstly, we have survived those four years of sustained recession, albeit not without pain. We have kept our businesses going, we have continued to employ staff, we have continued to provide legal services to assist our clients in their hour of need (even where payment was less than certain). We have continued to contribute to the unheralded domestic and local economy in which we are deeply rooted, fully invested and wholly committed. The change brought on by the recession is already here – we have and will continue to adapt and meet the challenges presented.

The third factor – and, in the long run, the most important factor – is



the instant access of the general public to all and any information. The effect of such instant accessibility is that the general public does not want to pay for information and places far less value on information that, in the past, lawyers effectively controlled.

Way forward

While any change brings uncertainty, there is a common thread running through each of these factors that leads to the positive opportunity that I see for the profession, both as individuals and collectively.

More than we might have done in the past, we must show greater transparency and communicate more effectively with our clients regarding the likely costs of fees, in advance, and as the transaction or case progresses. The *Legal Services Regulation Bill* now legislates for it and will require this to be a standard operating procedure. The bill forces us all to change together.

The positive opportunity is that this will allow solicitors to consistently prove the real value of their services.

Under the combined pressures of these influencing factors, we do need to be careful not to allow legal services to become categorised as a commodity. We are not selling Microsoft packages where 'one size fits all'. When a doctor signs a prescription, it is no longer a piece of paper, it is a medical opinion. Every time we sign a letter, we are not just signing our names, we are lending our experience, our training, our reputations and our professional indemnity insurance in support of a legal position on which our clients act.

Real value

The work we do is important. It remains important for the individual and for society at large. This is one of the very reasons Government feels the need to regulate it.

The move from being perceived by clients as merely furnishers of information to furnishers of advice (informed, timely, cogent and strategic) can only assist in demonstrating the real value that we, on a day-to-day basis, deliver to our clients.

Respect based on delivery of quality service and proven value, respect for our clients and the work we do for them, respect for our colleagues (not for the purpose of shielding them from being held accountable in the performance of their duties, but for the purpose of upholding high standards of professional duty and what we do best – the sourcing of solutions for problems for the benefit of our respective clients) – that is the kind of respect that will endure. We ourselves hold the answer.

I am hugely positive about the ability of our members, individually and as a profession, to meet these challenges – to adapt as required while maintaining the highest standards of professional practice and conduct; to survive as profitable functioning businesses in order to ensure access to the law by offering a choice of lawyer and a real choice of legal services; all the while playing a pivotal role in the development of society.

I welcome very much the change of Law Society policy to support independent regulation and the clear message it sends to the public that the general body of the profession not only has nothing to fear from independent regulation, but welcomes it insofar as it gives confidence to the public at large. G

This article is an abridged version of the speech given by Kieran Moran, President of the Southern Law Association, at the annual SLA dinner on 24 February 2012, and is used with his permission.

Prophet MOTIVE

Islamic Shari'a law presents a positive vision – based on principles of equity – as to how business should be carried on. We should do all we can to help Islamic finance flourish in this country, argues John King

John King is a partner in Ivor Fitzpatrick & Company, where he specialises in commercial law

In the West, we have, over many years, created a range of financial instruments to meet the needs of business, of investors, and of the man and woman in the street. In the recent past, practitioners of Islamic finance (IF) have developed a parallel set of instruments that fulfil those needs in a way that is consistent with Shari'a law.

The *Finance Act 2010* contained provisions that were designed to ensure that, where Irish taxation is concerned, IF can compete with conventional finance on a level playing field – and the *Finance Bill 2012* continues this policy. Against this background, the Taoiseach told the annual conference of the Irish Fund Industry Association last June that his government was committed to promoting Dublin as an international centre for Islamic finance.

In the decades that followed the 'Reagan revolution', we became used to the idea that, by and large, markets – including financial markets – could look after themselves. Light-touch regulation became the order of the day. Since the onset of the global financial crisis, many in Europe and America have come to believe that we need to apply a new ethic to the conduct of financial markets. However, in the West, where public morality is divorced from private religious belief, there is as yet no consensus as to what form this should take.

In the Islamic world, the problem is different. To pious Muslims, it is self-evident that financial markets should be organised in accordance with Shari'a law, which reflects the truths revealed in the Qur'an and the example set by the Prophet in the Sunnah. The challenge for them, in a changing world, is to fashion and refine instruments that respect those truths and that example.

Shari'a and the sharing of risk

Most of us are aware that Islam prohibits usury, and few would be surprised to learn that a Muslim should not profit from the sale of alcohol or from the distribution of pornography.

What most of us do not know is that Shari'a presents a positive vision, based on principles of equity, as to the how business should be carried on.

In a financial transaction, the person who brings the money should share risk with the person to whom he brings it. An investment should normally be backed by a tangible underlying asset. One should make an investment only if it reasonable to suppose that it will bring a return.

But how are these principles put into practice?

Muslim scholars have worked with financial institutions to develop a range of compliant instruments. An Islamic financial institution may have a Shari'a board that will advise the directors as to the acceptability of a particular product or practice.

The *murabahah* contract, for instance,

is used in asset financing transactions. A bank buys goods from a third party supplier at the request of its customer. It then sells the goods to the customer at a price that includes a mark-up. The customer must pay for the goods within an agreed period, possibly by way of a series of instalments.

A *musharakah* arrangement comes into play where a financier takes an equity interest in a project in exchange for its investment. The financier will share the profits and losses of the venture, and may take a role in its management.

Such a contract may provide an exit mechanism for the financier. In a diminishing *musharakah*, the investor can progressively reduce its exposure over the financing period.

Under a *mudarabah* contract, investor and

"A major opportunity exists, for example, in the area of fund management. In its 2010 paper, the department cited estimates that Dublin already had 20% of the Islamic funds market outside the Middle East"

FAST FACTS

- **Standard & Poors have forecast that the Islamic finance industry could grow to control assets with a value of $4 trillion**
- **The *Finance Act 2010* contained provisions designed to ensure that, where Irish taxation is concerned, Islamic finance can compete with conventional finance on a level playing field**
- **The Government believes that Islamic financial institutions can be attracted to establish their EU headquarters in Dublin, and that a wide range of products can be provided from this country**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investee share the profits derived from an investment. The financier follows the fortunes of the project, and loses his investment if it fails. The investor may prescribe how the funds are to be employed, but he will not have a role in managing the venture.

A customer may deposit money in a bank under a *mudarabah* agreement. The deposit is treated as an investment: the bank uses it to generate profits, which it then shares with the investor.

A *sukuk* resembles a conventional bond. An asset, which may or may not be tangible, is securitised. An investor acquires an interest in the asset, and becomes entitled to a share in the revenue that it generates. Using an instrument of this kind, one can now issue the Islamic equivalent of a fixed-interest bond, which can be traded in the secondary market.

Ireland's role

Islam dates its foundation to the year 622 CE, when the Prophet travelled from Mecca to Medina in the incident that Muslims celebrate as the Hijra. However, Islamic finance has a much shorter history: it began to develop in its modern form in the post-World War II world.

"Since the onset of the global financial crisis, many in Europe and America have come to believe that we need to apply a new ethic to the conduct of financial markets"

In a 2010 paper, the Department of Finance estimated that, in 2007, the global Islamic finance market was worth approximately $700 billion. About a quarter of the world's population was Muslim, but less than 1% of financial assets were Shari'a compliant. Standard & Poors had forecast that the industry could grow to control assets with a value of $4 trillion.

The Irish government believes that Islamic financial institutions can be attracted to establish their EU headquarters in Dublin and that a wide range of IF products can be provided from this country.

A major opportunity exists, for example, in the area of fund management. In its 2010 paper, the department cited estimates that Dublin already had 20% of the Islamic funds market outside the Middle East. The industry here, which employs the talents of over 11,000 professionals, is in a position to expand its market share in a rapidly growing sector.

The Government has highlighted the Gulf region as an area of growth for Irish businesses and investors. The region is home to sovereign wealth funds and powerful regional banks. In an era of buoyant oil prices, those institutions have access to very significant assets.

We have already seen that a conventional financial instrument may have an Islamic counterpart. The *Finance Act 2010*, in provisions that deal with credit, deposit and investment transactions, has sought to extend to the Islamic instrument the tax treatment that applies to its conventional equivalent.

The State is working hard to build out its network of double tax treaties with Muslim nations. For example, Ireland has ratified a new treaty with Kuwait, and a new agreement has been signed with Saudi Arabia.

An Islamic finance house wishing to establish a presence in Ireland must be authorised to do so by the Central Bank. The bank can and does authorise Shari'a compliant funds. It goes without saying that an Islamic financial institution that is present in Dublin will always be subject to the jurisdiction of Irish law and of the Irish courts.

The filter

Christians and Muslims have been neighbours for almost 1,400 years. At some times and in some places, they have lived together in harmony, as they did in Muslim Spain; however, this has not always been the case.

In the Christian West, Islam can resonate negatively. We frequently think in terms of a 'clash of civilisations', and we tend to filter the information that is available to us about the Islamic world. We often focus on aspects of that civilisation that are foreign, and threatening to us – and ignore features of Muslim life and beliefs that we might consider more benign.

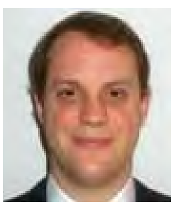
Opinion in the West is often suspicious of, or antagonistic towards, Shari'a. Is it right then that our law should accommodate practices that are informed by that code?

In considering this issue, we should look at all the relevant information, including positive information that might be filtered out. Islamic teachings about credit, investment and commerce, emphasising as they do prudence, partnership and risk sharing, are remarkably unthreatening. We should not be surprised that, on the other side of the civilisational divide, many Muslims feel that, in the era following the collapse of Lehman Brothers, we might consider taking a leaf out of their book.

In the decades that have passed since our then government accepted Ken Whitaker's First Programme for Economic Expansion, we have learned that we can best promote prosperity on this island when we abandon preconceptions and take on new challenges. On that basis, it seems clear that we should do all we can to help Islamic finance to flourish in this country. G

CASE: DISMISSED

Valuing unfair dismissal compensation claims can be fraught with difficulty. Darach MacNamara clears out his desk



Darach MacNamara is a barrister in general practice and appears regularly before the various statutory tribunals and the courts in contentious employment law matters

In claims for compensation for unfair dismissal (whether heard before a Rights Commissioner, the Employment Appeals Tribunal or the Circuit Court), the art of valuing a case is complicated by a number of factors arising out of the unfair dismissals legislation that do not arise in other forms of litigation. This is because, in the latter case, the court is usually constituted by a single judge who has previously heard similar claims and so it is possible to estimate with some accuracy the spectrum of damages that might be awarded and to advise the client accordingly.

So how do you go about putting a value on an unfair dismissal case, given the complexities associated with the unfair dismissals legislation?

Irrespective of the forum, the amount of compensation awardable will be calculated in much the same way. For instance, a claimant's weekly pay and any financial loss incurred must be calculated – and certain practical matters must also be borne in mind in the valuation of claims. In addition, the practitioner will need to be aware of the maximum jurisdiction of the tribunal in each particular case, while being conscious that tribunals have huge discretion to increase or decrease awards.

Pay slip

Wherever a claim is initiated, or whichever party a practitioner represents, it is important to take detailed instructions as to the gross and net weekly pay amounts earned by the claimant while employed. These figures must be inserted into the relevant claim forms when proceedings commence.

Gross weekly pay is calculated by reference to a claimant's average weekly basic pay, overtime, bonus payments, employer's pension contributions, share options, employer's health insurance contributions, and benefits in kind. Net weekly pay is then calculated by deducting tax and the other common deductions from the gross weekly figure. If a claimant was on reduced hours prior to the dismissal, it is the weekly hours he normally worked prior to that reduction that are relevant in calculating the weekly figures. The regulations enacted under the primary legislation should be consulted in performing this task.

> ***"The tribunal does not have jurisdiction to award a sum that exceeds a figure representing 104 weeks of the claimant's gross weekly pay"***

The tribunal's jurisdiction

The tribunal can award compensation where the employee has been unfairly dismissed and has "incurred any financial loss attributable to the dismissal". The maximum amount of compensation awardable is a figure representing 104 weeks' remuneration (the 'jurisdictional ceiling'). Therefore, the tribunal's jurisdiction will vary from case to case, depending on what a particular claimant was earning pre-dismissal. It is only where the claimant's loss exceeds the jurisdictional ceiling that the tribunal will be prevented from compensating him or her for the entire loss sustained.

Let us take the example of a claimant, 'X', who earned €1,000 per week gross before he was unfairly dismissed from his employment. The maximum amount of compensation that the tribunal could award would be

Boom, boom – out go the lights

FAST FACTS

- Irrespective of the forum, the amount of compensation awardable in unfair dismissal cases is calculated in much the same way
- The practitioner should be aware of the maximum jurisdiction of the tribunal in each particular case
- The EAT has wide discretion when deciding the compensation to be awarded
- Unfair dismissals legislation provides for the other remedies of reinstatement or re-engagement

€104,000, being 104 times his gross weekly pay, and so €104,000 is the jurisdictional ceiling. However, that figure is unrelated to his actual financial loss, which is calculated by reference to his net pay as outlined below.

Calculating financial loss

Once the gross and net weekly pay figures have been arrived at, and the jurisdictional ceiling calculated, the next step is to consider the claimant's financial loss. The legislation defines 'financial loss' as any actual loss or estimated prospective loss of income attributable to the dismissal, to include any loss in value to the claimant's pension rights or under the *Redundancy Payment Acts*, although this article will not deal with the latter. Compensation for distress or personal injuries, even if attributable to the dismissal, is not awardable by the tribunal. However, it has recently been decided that, in constructive dismissal cases, where the employer's conduct not only caused the employee to resign, but also caused, wholly or in part, the illness that prevented the employee from mitigating his or her loss, then the financial loss occasioned as a result can still be compensated by the tribunal.

In calculating financial loss, the first step is to look at the notice, if any, that the claimant should have received. A claimant is entitled to a minimum period of notice prior to the termination of the contract of employment. The amount of notice depends on whether the period is expressly stated in the contract or implied into it by the minimum notice legislation.

If a claimant is unfairly dismissed without notice or payment in lieu thereof, then he or she will also have a claim for the loss incurred during that period of notice. A claim under the minimum notice legislation should, therefore, always be made alongside the substantive unfair dismissal claim and needs to be valued too in order to maximise the overall amount awardable.

Post-dismissal income

The next step is to consider the claimant's income post-dismissal. Payments made to a claimant under the social welfare and income tax codes between the date of dismissal and the date of hearing are not regarded in calculating financial loss. Where a claimant finds work, albeit on lower pay, appropriate calculations will need to be made that take into account the difference between the net pay received in the new employment, compared with the old.

Where a claimant sustains no financial loss after the unfair dismissal, the tribunal has discretion to award up to four weeks' remuneration. This provision envisages a situation where a claimant is immediately re-employed on equal or more pay, with the result that he sustains no financial loss, or a situation where he is unable to work on account of illness or incapacity. If a claim for unfair dismissal is brought nonetheless, it should be noted that, while it might be worthwhile as a matter of principle to obtain a finding of unfair dismissal, such claims are usually not very cost effective.

As regards any estimated prospective loss sustained by the claimant, this is a speculative element to the calculation. It effectively involves estimating whether the claimant is likely to continue to sustain a loss of earnings into the future, which, again, must be "attributable to the dismissal". A claimant's employability in the current marketplace is therefore relevant. Where the position was likely to have been made redundant anyway, this will be taken into account in reducing the compensation for prospective loss, although the tribunal has also previously factored in the redundancy lump sum that would have been received in those circumstances. If the claimant was unfairly dismissed for gross misconduct, he or she might be less likely to

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** The programme covers travel, accommodation and subsistence expenses* obtain employment on account of reputational damage and this, too, will be a factor in the tribunal's assessment of prospective loss.

Effect on pension rights

Finally, it is necessary to consider whether the employee's pension rights have been affected as a result of the financial loss due to the dismissal. This is a very complex task, which will not be dealt with in detail here. If significant pension contributions were made into a work scheme either by the claimant, former employer, or both, then it is wise to seek actuarial advice to ascertain what loss has been, or will be, sustained. A report should be prepared and, if possible, agreed with the other side for submission to the tribunal. If not, the actuary will be necessary to testify at the hearing. So, if that claimant subsequently finds a job that does not have a pension scheme, or has one that provides reduced benefits compared with the previous pension scheme, there may be a serious loss that requires calculation.

To continue with the example of 'X' above, let us say that his net weekly income before termination was €500, that he was unemployed for 156 weeks after his dismissal, and that he was entitled to four weeks' notice. His net weekly pay is multiplied by the number of weeks he was unemployed, resulting in a figure of €78,000. The social welfare payments received by X during those 156 weeks of unemployment are not deducted from that figure. X is also entitled to €2,000, representing his compensation for the four weeks' notice he never received from his employer. Here, the tribunal would have jurisdiction to award €80,000 in compensation to X, as that amount does not exceed the jurisdictional ceiling of €104,000 calculated above.

Alternatively, if 234 weeks of unemployment had passed between the date of dismissal and the date of hearing, then the claim is worth €119,000, being 234 times €500 plus €2,000 for the notice compensation. In those circumstances, despite the loss actually incurred, the maximum amount awardable by the tribunal would be €104,000.

"It is rare to have two separate cases heard before an identically constituted tribunal, which means that it is not easy to predict what type of compensation a particular division might award on a given day"

The tribunal's discretion

Once the jurisdictional ceiling and the amount of financial loss sustained have been calculated, it will be necessary to consider the tribunal's wide discretion in deciding the amount of compensation to award.

This discretion is clear from the legislation, which states that the tribunal can award "compensation that is just and equitable having regard to all the circumstances". However, the legislation also contains more explicit instructions to the tribunal as to how it should exercise this discretion when awarding compensation. So, the tribunal must have regard to:

- The extent to which the financial loss is attributable to the acts, omissions or conduct of both the employer and the employee,
- The extent to which the claimant mitigated his loss,
- The extent to which the employer, in dismissing the claimant, followed its own dismissal procedures or those approved by the Minister for Jobs, Enterprise and Innovation,
- Whether the employer notified the claimant of its dismissal procedures,
- Whether the employer provided to the claimant, in writing, the principal grounds for the dismissal after being requested to do so, and finally
- The extent to which the acts, omissions or conduct of the employee contributed to the dismissal.

Therefore, if X made no effort to find a job post-dismissal, his failure to mitigate his loss could be taken into account by the tribunal in awarding compensation. Likewise, if the evidence showed that he was guilty of misconduct, but that the resulting disciplinary investigation hearing was flawed, which, in turn, rendered his dismissal unfair, then X could expect to have his award lowered on the basis that his conduct contributed both to the financial loss arising out of his dismissal and to the dismissal itself.

On the other hand, had his employer failed to provide him with a written disciplinary procedure on commencement of his employment, and subsequently failed to follow any procedure at all in reaching its decision to dismiss, these would both be factors that should be taken into account by the tribunal. G

OTHER CONSIDERATIONS

Claimants should also be made aware of a number of other considerations that are not set out in the legislation, but that arise in practice and could make a settlement offer more or less attractive.

The first such consideration concerns the variation in approach of each division of the tribunal. Each division is made up of a chairperson, an employer's representative and an employee's representative – of which there are many of each. It is, therefore, rare to have two separate cases heard before an identically constituted tribunal, which means that it is not easy to predict what type of compensation a particular division might award on a given day, or whether it will even make a finding of unfair dismissal. This situation can be contrasted with the courts, where cases are usually heard by judges whose attitudes become slightly more predictable given the similarity and volume of claims litigated before them.

When running unfair dismissal cases in the Circuit Court on appeal from the tribunal (or indeed in the High Court on appeal from the Circuit Court), another important consideration is the fact that full legal costs can be awarded by the court. This is an added significant sanction for an unsuccessful party, which might render a settlement offer more attractive than might have been the case at the original hearing.

Finally, it should be noted that a successful claimant might have a very long time to wait for his or her compensation to arrive. This is because of the labyrinthine appeals system open to an unsuccessful party, combined with unwieldy enforcement mechanisms, both of which can be used as delaying tactics.

LOOK IT UP

Cases:

- *Allen v Independent Newspapers (Ireland) Ltd* [2002] ELR 84
- *Branigan v Collins (Godolfin Gallery)*, UD 28/1977 (EAT determination)
- *Bunyan v United Dominion Trust (Ireland) Ltd* [1982] ILRM 404
- *Carney v Balkan Tours Ltd* [1997] 1 IR 153
- *McDermott v AIB*, UD 166/1978 (EAT determination)
- *O'Meara v AIBP (Nenagh) Ltd*, UD 1099/1993 (EAT determination)
- *Parnell v McCullough Piggott*, UD [1990] ELR 17

Legislation:

- *Minimum Notice and Terms of Employment Act 1973*, section 12
- *Redundancy Payment Acts*
- *Unfair Dismissals Act 1977*, section 7, as amended
- *Unfair Dismissals (Calculation of Weekly Remuneration) Regulations 1977*, SI 287 of 1977

Extinction OF THE SPECIES?

Changes in the legal profession over the past five years have threatened the existence of the sole practitioner – are they in danger of becoming an extinct species? Mary Frances Fahy goes a-huntin'

Mary Frances Fahy is a sole practitioner and the principal of Fahy Neilan and Company, Solicitors, in Ballaghaderreen, Co Roscommon

The recession, reduced volumes of business, increased costs of professional indemnity insurance (PII), more expensive cost bases, and the new *Legal Services Regulation Bill* are making the future of the sole practitioner less viable. Will we cease to exist in the future?

David Rowe of Outsource, a company that offers advice on practice management, believes it is increasingly difficult for the sole practitioner to survive. There are a number of key issues they have to contend with, the first being the difficulty of trying to be a specialist in all practice areas. David sees the legal firm becoming more specialised in the future and believes that it is very difficult for a sole practitioner to keep up to date on all areas of practice.

Increased regulation of the profession is also a challenge, combined with the fact that professional indemnity insurers do not regard single-person practices as the ideal business arrangement. From an insurance perspective, they are considered higher risk.

The increased costs of case-management systems, financial systems, premises and labour costs all threaten the future of the single-person practice.

"The sole practitioner needs to look at running their business in a different way and embrace new technologies"

Two heads are better than one

"For the sole practitioner, these costs tend to be fixed," says David. "Economies of scale dictate that practices of three to four solicitors are more viable. It does not cost much more to install new systems in these practices. Premises cost, utilities and other overheads are shared. Two solicitors might be able to use one secretary, for example. With practices of three to four solicitors, you tend to have people with different areas of expertise. You could, for example, have one person who is good at bringing in the work and another who gets the work done. You have a wider type of skill sets and, in practice, even two is better than one."

Rowe believes that the future of the profession lies with larger practices. Mergers will become more common when PII rules change. "The current arrangements for

FAST FACTS

- It may be becoming increasingly difficult for the sole practitioner to survive
- The future of the profession may lie with larger practices and mergers may become more common when PII rules change
- However, there were 200 new start-up practices in 2010 and more in 2011 – and many of these were sole practitioners
- A new type of sole practitioner has emerged, running their practice in a completely different way for a fraction of the cost

provision of run-off cover are welcome, as they will allow practitioners to retire but, unfortunately, they will not affect firms that wish to merge. More change is needed in this area. I think we will see change, as we seem to be beyond the worst at this stage," he adds.

He has, however, seen the emergence of a new type of sole practitioner, running practices in a completely different way for a fraction of the cost.

"There were 200 new start-up practices in 2010 alone, and more in 2011. Many of these were sole practitioners who could not get jobs or had been let go. In some cases, they have no staff and therefore no wage bill. They have virtual offices. They are outsourcing dictation and other services and they can therefore afford to take on work at a lower cost than traditional firms. There is continuing pressure on existing sole practitioners to reduce their cost base. It will be interesting to see what happens to this new type of sole practitioner in the future. I can see them merging with other firms. I think the future of the legal profession is in the merging of firms."

Dramatic effect

James Cahill, a sole practitioner based in Castlebar, Co Mayo, is a member of the Law Society's Council and has carried out a lot of research into sole practitioners and the future for their practices. He believes that the *Legal Services Regulation Bill 2011* poses a new threat to the future of the sole practitioner.

"I think this bill will have a dramatic effect. There will be increased regulation of the profession, which sole practitioners, due to a lack of resources, will find very difficult to deal with. In the past, a lot of regulation auditors dealt with the issue of client funds but, in the future, they will be looking to see whether your office is run as efficiently as it should be and whether, for example, estates are being dealt with quickly enough. There will be increased costs for sole practitioners as a result of the *Legal Services Bill*. There will be less autonomy in the profession. It is a major threat and one that the sole practitioner in particular should be concerned about."

Mr Cahill believes that PII premiums are no longer the greatest threat to the sole

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SERVICE WITH A SMILE

Maura Hurley is a sole practitioner based in Dublin who specialises in criminal, family, immigration and personal injury law. She rents a serviced office and, for her monthly rent, gets a spacious office, utility bills, internet and a reception service where calls are taken and messages forwarded.

"I think it would be difficult to continue in business without a serviced office being available to me," says Maura, who does all her own paperwork and does not employ a secretary.

She believes that some sole practitioners will go out of business if PII costs increase and is concerned about this. However, she has no plans to amalgamate in the future and enjoys working as a sole practitioner.

practitioner. "Research that I have carried out indicates that, in some cases, premiums have dropped from anywhere between 30% to 50%. I think the insurance companies have realised that it is not the sole practitioners who have caused the greatest problems but the larger firms, some of whom have huge claims against them."

He argues that a limited number of cases that led to claims where sole practitioners acted for developers and were unable to comply with undertakings have now washed through.

"I think we will see a lot of people retiring from the profession this year, as the issue of run-off cover has now been dealt with. A lot of small offices will close as older sole practitioners retire and welcome the opportunity to be able to get out, as the cost of run-off cover is now being shared between all practitioners. Some of these practices will be amalgamated with existing ones in towns around the country."

Strategic alliances

Mr Cahill does not see the amalgamation of practices as the future for the sole practitioner and thinks that, while this may work in Dublin, it will not work in rural towns like Castlebar or Ballaghaderreen.

"A number of solicitors in Castlebar met to discuss this issue, and we could not reach agreement to amalgamate. A few major issues arose that were perceived to be a barrier. One of them was staff. Another was conflicts of interest – amalgamations would lead to some solicitors losing 30% of their business due to conflicts of interest. Then there was the issue that many of us own our offices. Why would we walk out of the offices we own and pay rent for another? It may be different in Dublin, where a lot of people rent office space. Things are completely different in the country, however. Then you have the personality issues. How long would it take before people started rowing among themselves? No one wants to lose their independence. Many people enjoy being sole practitioners. Amalgamation is a huge ask in small towns, which tend to have small corporate personalised businesses."

"I think the Legal Services Regulation Bill will have a dramatic effect. There will be increased regulation of the profession, which sole practitioners, due to a lack of resources, will find very difficult to deal with"

Cahill argues that the way forward for sole practitioners could be through strategic alliances between offices without the loss of independence: "The sole practitioner needs to look at running their business in a different way and embrace new technologies. We will have to change our 'shopkeeper' attitude. For example, 100 offices could work off the same computer system. Sole practitioners with specialisations could be available to provide interactive interviews on the net. In that way, we could retain our existing clients and call on specialists when we needed them. If the Irish Farmers' Association, for example, want to get advice on EU law or agricultural policy, they will tend to engage one of the larger firms. There is no reason why an alliance of sole practitioners could not serve them just as well. We tend to focus on three or four core areas of business, and I think this should change."

He also believes that there are opportunities for sole practitioners to use the same accountants, auditors and other services, and, in this way, make savings while still retaining their independence.

"We could all run our offices in a more efficient way. I am of the view that a number of like-minded sole practitioners should get together and set up a pilot project. We should get funding for it and run it over a 12-month period. People need to open their minds to the possibility of change and new work practices if we are to survive."

Sole practitioners, then, appear to be facing difficult times ahead. Their survival appears to depend on how they will adapt to changes in the profession and how they embrace technological advances. They will need to keep a close eye on the new *Legal Services Bill* and take a proactive role in their own futures. G

The paradox of being INDISPENSABLE

While the desire to feel indispensable is compelling, it is also dangerous. It paralyses organisations with unnecessary, thoughtless work and micro-managing, bottlenecking managers. Delegation is the cure, writes Keith O'Malley

Keith O'Malley is the Law Society's career development advisor and heads the Society's Career Support service

What brings success early in your career can ultimately trap and leave you unable to reach your full potential, argues Richard Jolly, professor of organisational behaviour at London Business School, in a recent article in *Business Strategy Review*.

In what he calls "the paradox of indispensability", Jolly outlines why he believes many high-fliers fail to rise to the top of their organisations, despite stellar performances.

Establishing yourself as indispensable is a smart strategy early on in your career, especially during difficult economic times. But Jolly has identified indispensability as a regular cause of "executive derailment" over the longer term – and something that can compromise both the employee and the organisation for which they are working.

Jolly outlines how career development is a relatively simple matter early in a person's career. Ambitious people work hard, demonstrate expertise, and seek to carve out an area of activity as their niche area. In some professions, including law, building strong relationships with clients is a pivotal part of all of this.

For the first few years, high achievers make progress based largely on exceeding expectations and a desire and ability to control operations under their responsibility. Organisations rely on this type of dynamism from staff, supervisors and junior managers.

Daedalus and Icarus

A few years on, your team is performing well and is regularly heaped with praise from above. You ask your boss about a promotion. She's flattering: "You are fantastic, indispensable." However, over time, you get to properly appreciate your situation – you are not going to be promoted. You are depended on too much in your current job.

Meanwhile, being responsible for subordinates who regularly let you down has turned out to be a much greater hassle than you ever expected. Are your subordinates intentionally trying to screw things up? Why can't they properly do what is required of them? What has gone wrong? And what can you do about it?

Producing high-quality work, exceeding expectations and carefully controlling matters are all of huge importance in the workplace. However, people who overly focus on such matters are often not very good at delegating.

"The officers that Metternich was most interested in were the smart, lazy ones. They knew what needed to be done but didn't want lots of work. So they found short cuts and generally approached their work creatively"

Jolly sums up the conundrum with the observation: "When you're fighting off alligators, it's hard to remember you were trying to drain the swamp." He goes on to note that beating off alligators can feel good. You are busy and can see achievements that you are heroically and often single-handedly responsible for. But Jolly notes that the more senior you become in work, the less that success depends on your ability 'to do' and more on your ability to 'get done'.

An instinct to control, initially an asset, can end up a liability. This is because, as you take on more senior-level roles, the quantity of work you're responsible for increases and quickly extends beyond what you can personally accomplish and daily stay on top of.

Judgement of Paris

The 19th century Prince von Metternich of Austria apocryphally categorised military officers on two dimensions: (a) how intelligent they were, and (b) how hard working.

He got rid of the stupid, lazy ones. The stupid, hardworking officers he viewed as very useful – as long as

FAST FACTS

- What brings success early in your career can ultimately trap you and leave you unable to reach your full potential
- An instinct to control – initially an asset – can end up as a liability
- People with the potential to perform effectively in a senior management role need to embrace delegation

they were supervised effectively. The smart, hardworking ones he also considered useful – for relatively junior positions.

However, the officers that Metternich was most interested in were the smart, lazy ones. They knew what needed to be done but didn't want lots of work. So they found short cuts and generally approached their work creatively.

Jolly acknowledges that the Metternich formula is not one that a business should use today in selecting and promoting managers, but he points out that it raises an important question about the amount of unnecessary work carried out in organisations.

While a leap of faith was always required in promoting someone into a senior management role, Jolly argues that this issue is now more challenging than ever – because senior-level roles are increasingly very different to similar junior level ones.

Jolly says that nowhere is this challenge greater than in law firms. He notes that law firms have attempted many things, including codifying necessary competencies, but identifying people who have the potential to make good partners remains difficult. This is because the roles of associate solicitor and partner are so different.

"Beating off alligators can feel good. You are busy and can see achievements that you are heroically and often single-handedly responsible for"

Labours of Hercules

If indispensability is constraining, then what is the answer – dispensability?

Jolly argues that this strategy is exactly what is best. He acknowledges it has risks, particularly in a challenging economic climate, but argues that indispensability compromises both the person and their organisation. He contends that, while the desire to feel indispensable is compelling, it is also dangerous. It paralyses organisations with unnecessary, thoughtless work and micro-managing, bottlenecking managers.

Jolly argues that the cure is delegation and helping subordinates become more involved and responsible. He contends that people with the potential to perform effectively in a senior management role need to embrace delegation – and everything that it involves – wholeheartedly.

Managers need to learn that there is a spectrum of different degrees of authority that can be delegated. Understanding where along this spectrum is appropriate for different situations is a really important skill that managers need to learn.

If managers don't want to be compromised in career development by indispensability, they need to stand back from day-to-day tasks, to think, and delegate. They need to fight against their instincts to control.

Alfred P Sloan of General Motors put it well when he said: "The most important thing I ever learned about management is that the work must be done by other people."

Richard Jolly concludes his article by noting that delegation is not just another management skill. It is, he says, the principal way you build a business. G

TAKING *charge*

New land registration rules will require solicitors to modify their approach when putting security in place over registered land. What, then, are the practical implications of the rules? William Prentice and Frank Treacy explain

William Prentice, solicitor, is a consultant to Matheson Ormsby Prentice solicitors. He advises on banking and structured finance transactions

There is no doubt that the new land registration rules will require solicitors to modify their approach when putting security in place over registered land. What, then, are the practical implications of the rules?

When drafting a security document that seeks to charge registered land, the practitioner now has two choices. First, he can use a charge in Form 114 and prepare and incorporate a set of terms and conditions that are physically separated from, but which are incorporated by reference into and form part of, that charge. A good example of this approach is the standard housing loan mortgage of the Irish Banking Federation, which has been in use since the coming into force of the 2009 act. When that form is used, the chargor executes a one-page charge

Changes IN RELATION TO CHARGES

Frank Treacy, barrister, is deputy registrar of the Property Registration Authority

The *Land and Conveyancing Law Reform Act 2009* simplifies the methods of creating a legal mortgage along the lines of the Land Registry system of a simple charge.

Section 89(1) provides that a legal mortgage of land may only be created by a charge by deed. The old method of creating a legal mortgage over unregistered land, by conveyance or demise in the case of freehold land, or by sub-demise or assignment in the case of leasehold land, are abolished.

The increasing size and complexity of instruments of charge had become an issue in the past 20 years for the Land Registry, both in terms of storage and interpretation difficulties for staff. Deeds could vary in length between four and in excess of 100 pages, with the relevant charging clauses arbitrarily dispersed in the document, often without the benefit of an index. For a number of years prior to 2009, the Land Registry, and latterly the Property Registration Authority (PRA), had endeavoured, without success, to reach agreement with the lending institutions on a simple compact form of charge for registration purposes. The PRA had the dual aims of shortening and standardising deeds, as well as paving the way for the introduction of e-conveyancing at some future date. When the act was being drafted, the PRA took the opportunity to request that suitable enabling provisions be inserted to facilitate these aims.

Schedule 1 of the act introduced a number of changes in relation to charges over registered land. Section 62(2) of the *Registration of Title Act 1964* had provided that a charge over registered land must be "in the prescribed form (or an instrument in such other form as may appear to the Registrar to be sufficient to charge the land, provided that such instrument shall expressly charge or reserve out of the land the payment of the money secured)". The act deleted the words in brackets.

In response, a new draft prescribed form of present and future charge, to replace the previous Form 68 in the *Land Registration Rules 1972*, was published in the *Land Registry (No 2) Rules 2009*. The deed is one page only, with any mortgage conditions filed on a separate document. The existing form of charge for principal sums, Form 67 of the 1972 rules, was not altered. The lending institutions were not satisfied that the new form fully met their needs. A compromise form was agreed with the Irish Banking Federation (IBF) in respect of residential security – and the vast majority of lending institutions, including banks, building

Casper found that his splendid moustache was an inspiration to the troops

FAST FACTS

- Rule 5 of the *Land Registration Rules 2011* prescribes two new charge forms
- The rule and forms will apply to all charges, residential and commercial, executed on or after 1 March 2012

OVER REGISTERED LAND

societies, credit unions and local authorities have based their residential mortgages on this IBF template since December 2009.

In relation to debentures and commercial mortgages, a standard form of mortgage deed could not be agreed and there has been no prescribed form to date. Deeds are presently pre-approved, in accordance with rule 52(2) of the 1972 rules, based on electronically submitted drafts that are published on the PRA website. This was always intended as a temporary measure.

Rule 52 of the *Land Registration Rules 1972* provides:

1) The forms of transfer, charge and other dispositions prescribed by these rules shall be used in all transactions to which they refer or to which they are capable of being applied or adapted, with such alterations and additions as the transactions may require and the authority allows,
2) Instruments for which no form is prescribed shall be in such form as the authority shall direct or allow, the scheduled forms being followed as closely as circumstances will permit.

Rule 5 of the *Land Registration Rules 2011*, published in SI 559 of 2011, now prescribes two new charge forms, namely Forms 114 and 115. The rule and forms will apply to all charges, residential and commercial, executed on or after 1 March 2012. A prescribed form of present and future charge is included, to which Form 114 refers. The deed must be one page only, with any mortgage conditions filed on a separate document. This is based on the IBF form referred to above and gives statutory validation thereto. This form is principally intended to be used for residential mortgages, but may be used for commercial mortgages also.

In respect of debentures and commercial mortgages executed on or after 1 March 2012, where a specific charge on registered land is intended to form part of the security, Form 115 has been designed as a simple one-page document, intended as supplemental to the principal deed. The mortgagor will be required to execute both documents, but only the one-page Form 115 will be lodged with the authority – the debenture/commercial mortgage to be retained by the lending institution.

Both new forms may be adapted by individual lenders in accordance with rule 52(1) of the above-mentioned rules and, being only of one page, will facilitate the introduction of e-registration/e-conveyancing in due course. Any significant amendments would require prior approval of the authority, pursuant to rule 52(1).

Practitioners and lending institutions should note that, while the above requirements apply to registered land only – there being no forms prescribed for unregistered land – the new forms facilitate charging unregistered land also, the mortgagor charging as ‘beneficial owner’ rather than as ‘registered owner’.

that incorporates by reference the IBF's *General Housing Loan Mortgage Conditions*, which contain all the detailed provisions that are desirable in a mortgage.

Secondly, he can prepare a security document in exactly the way he would do so at present and also prepare a one-page charge in Form 115, which is supplemental to that security document. The chargor executes both and they sit alongside each other, the main security document providing all the detailed provisions that are not in form 115.

Practical approach

Where it is applicable, the IBF mortgage can continue to be used in its current form. No doubt, over time, banks and law firms will prepare other suitable mortgage conditions for use with Form 114 charges but, at least in the short term, the second approach is going to be the most practical where the IBF form is not applicable. Adopting this approach, there is no need to re-draft security documents that are currently used as long as, in addition, a Form 115 charge is also executed by the chargor.

When using the second (Form 115) approach, it is suggested that the paragraph of Form 115 headed 'mortgage conditions' is reworded as shown in the panel on page 41. The panel sets out the full text of Form 115 with this suggested wording and some other minor modifications. Some limited latitude is allowed in adapting the forms, and the PRA has indicated that these are acceptable modifications.

Although not necessary, it would be desirable to insert a provision along the following lines in the main security document as part of the more general further assurance covenant, which is found in well-drafted security documents: "Without prejudice to the generality of clause [general further assurance clause], the Chargor hereby covenants with the [Secured Party] that the Chargor will, at the cost of the Chargor, if and when requested by the [Secured Party], execute a charge in the form [of Land Registry Form 115/set out in schedule ... hereto] (with such modifications as the [Secured Party] may require) over all land which is, or is intended to be, charged by this [Debenture/Mortgage/Charge] and which is registered or in the course of being registered in the Land Registry and will provide all appropriate assistance to the [Secured Party] to have the same duly registered in the Land Registry as a burden on the land thereby affected."

"The increasing size and complexity of instruments of charge had become an issue in the past 20 years for the Land Registry, both in terms of storage and interpretation difficulties for staff"

This clause would act as a fallback where due to oversight the Form 115 is not executed at the same time as the main security document. It would also be useful where the security document charges future acquired land. The covenant would oblige the chargor to execute a Form 115 for any registered land within its scope acquired at a later date and, if coupled with the usual power of attorney found in security documents, would enable the secured party (should the chargor refuse or neglect to execute a charge in Form 115) to execute a Form 115 on behalf of the chargor and to register it in the Land Registry to perfect the charge.

Problematic issue

This leads to one problematic issue – what Companies Registration Office (CRO) registrations are required when the chargor is a company?

Section 99 of the *Companies Act 1963* requires that most, but not quite all, types of charges created by a company must be registered at the CRO by lodging a Form C1 (or a Form 8E in the case of an overseas company). Among the types of charge that must be registered are charges over land. If the first (Form 114) approach is used, it would appear that only one Form C1 (or 8E) need be lodged. Under this approach, there is one charging instrument, which is in two parts: the charge in Form 114 and the accompanying mortgage terms and conditions, which are, by reference, incorporated into and form part of the Form 114 charge. It is likely, as is the case with the IBF standard form, that the mortgage conditions will contain additional ancillary charges over items such as rents, insurance proceeds and the like, but as they form a single instrument, all the charges so created could be recorded in one Form C1 (or 8E).

EXECUTING A DEBENTURE AFTER 1 MARCH 2012

In summary, a practitioner who is preparing, for example, a mortgage debenture that is intended to create security over all the present and future property, undertaking and assets of a company (including registered land) should adopt the following steps where the debenture is to be executed on or after 1 March 2012:

- **Prepare a mortgage debenture in the same form as in use prior to 1 March 2012. This should include all relevant registered and unregistered land.**
- **If desired, add a further assurance clause to the debenture along the lines outlined above and append as a schedule a specimen supplemental charge over registered land charge in the form of Form 115 (modified, if desired, as suggested in the panel on page 41).**
- **Prepare a supplemental charge in Form 115 (modified, if desired, as suggested in the panel on page 41). This need only charge any registered land.**
- **Arrange to have both the mortgage debenture and the Form 115 executed by the charging company.**
- **Prepare two Forms C1 (or 8E) – one for the debenture and the other for the Form 115 charge – and lodge both of those Forms C1 (or 8E) in the CRO within the 21-day time limit.**
- **If the debenture also mortgages unregistered land, register the debenture in the normal way at the Registry of Deeds. Also register it at any other applicable registry – for example, patents, shipping, and so on.**
- **Lodge the Form 115 charge for registration at the Land Registry. There is no need to include an original or a copy of the debenture with that application.**

Similar steps, suitably adapted, would apply to any other security document (such as a mortgage over land), which adopts the Form 115 approach.

If the Form 114 approach is used (as would be the case where, for example, the IBF standard housing mortgage is used), it is suggested that the following steps be adopted:

- **Prepare a charge based on Form 114. This should include both registered and unregistered land.**
- **Ensure that the chargor gets and understands the general mortgage conditions that are incorporated by reference in the Form 114 charge.**
- **Have the chargor execute the Form 114 charge.**
- **If the chargor is a company, prepare a Form C1 (or 8E) and lodge it for registration at the CRO within the 21-day time period. This should include particulars of the charges created by the Form 114 charge and all ancillary charges created by the mortgage conditions.**
- **If the charge includes unregistered land lodge the Form 114 charge for registration in the Registry of Deeds.**
- **Lodge the Form 114 charge for registration at the Land Registry. Provided the general mortgage conditions that are incorporated by reference into the Form 114 have previously been filed with the Land Registry (such as is the case with the IBF standard mortgage), there is no need to include a copy of the general mortgage conditions with that application. If the general conditions are new or once off, they will need to be filed.**

SPECIFIC CHARGE FORM

SPECIFIC CHARGE

Date: ______________________

Secured Party: ______________________

Mortgagor: ______________________

Mortgaged Property subject to specific charge: ______________________

The property comprised in Folio ______________ County ______________

ALL THAT the property known as ______________________

(use a continuation sheet if necessary)

Mortgage conditions

This Charge is supplemental to the [debenture/mortgage/charge] made on or about the date hereof between the parties hereto (the 'Principal Security') and all the provisions, stipulations and powers contained in, and subsisting under, the Principal Security shall apply to the security hereby created as if the same were set out in full herein with such modifications only as are necessary to make the same applicable to the security hereby created. The terms 'Secured Liabilities' has the meaning given in the Principal Security.

Specific charge

As security for the payment and discharge of the Secured Liabilities, the Mortgagor as beneficial owner (and also in the case of registered land as registered owner or as the person entitled to be registered as registered owner) hereby charges in favour of the Secured Party the Mortgaged Property with the payment of the Secured Liabilities, and assents to the registration of this charge as a burden on the Mortgaged Property.

The Mortgagor acknowledges that the charge hereby created forms one transaction with the security created in the Principal Security for payment of the Secured Liabilities.

Signatures

Signed and Delivered as a deed:

____

Signature of witness:

____

Name of witness:

____

Address of witness:

____

Occupation of witness:

____

(use a continuation sheet for additional signatories)

Present when the common seal of the Mortgagor was affixed hereto:

____

Director

____

Director/Secretary

On the other hand, if the second (Form 115) approach is taken, two separate documents are executed, which, although supplemental to each other, do not form the one instrument. This raises the question whether two Forms C1 (or 8E) should be lodged.

There appears to be a good argument that the words: "The Mortgagor acknowledges that the charge hereby created forms one transaction with the security created in the aforesaid Mortgage/Debenture of even date for payment of the Secured Liabilities", which appear in Form 115, mean that only one Form C1 is required and this is the view taken by the CRO in a recent note. However, unfortunately, the CRO does not have power to rule definitively on the matter and, given that the consequences of non-registration are drastic, I have, somewhat reluctantly, come to the conclusion that it is better to err on the side of caution. Until there is a clear judicial ruling or legislative provision in favour of a single filing, it is probably wise to lodge two Forms C1 (or 8E) when adopting the Form 115 approach. Section 99 requires that particulars of a charge "are delivered to" the CRO. If the CRO decides not to register the second C1, that is a matter for the CRO – the important point is that, by presenting it for filing, the relevant particulars have been "delivered". G

LOOK IT UP

Legislation:

- *Companies Act 1963*, section 99
- *Land and Conveyancing Law Reform Act 2009*
- *Land Registration Rules 1972*
- *Land Registry (No 2) Rules 2009*
- *Land Registration Rules 2011*
- *Registration of Title Act 1964*, section 62(2)

The Kerry Law Society met on 14 March in the Grand Hotel, Tralee. Special guests included President of the Law Society Donald Binchy and Director General Ken Murphy. At the meeting were *(front, l to r)*: Vivian O'Shea (Listowel), Ken Murphy, John Galvin (chairman, Kerry Law Society), Donald Binchy, Patrick Mann (president, Kerry Law Society), Carmel Sreenan (Kenmare), Donal Browne and Nuala Liston (Tralee). *(Centre, l to r)*: James Morris (Kerry County Council), Brian O'Regan (Tralee), Liam Ryan (Killarney), Tom O'Halloran and Katie McCarthy (Tralee), Rosemary Cronin (Kerry County Council), Miriam McGillicuddy (Tralee), Mary Twomey (Castleisland), Fionnuala Murphy, Helen Fitzgerald and Joe Mannix (Tralee), Michael Moore (Listowel) and Philip O'Sullivan (Tralee). *(Back, l to r)*: Patrick O'Connell (Castleisland), Rory O'Halloran and Damien Cashell (Tralee), Tommy Granville (Kenmare), Niall Lucey, Canice Walsh and Patrick Whelehan (Tralee) and Frank O'Connor (Dingle)

PIC: SEÁN CURTIN, PRESS 22

At a meeting of the Limerick Solicitors' Bar Association on 14 March were *(from l to r)*: Elisa McMahon (secretary, LSBA), Antoinette Cusack, Elizabeth Walsh, Donal Creaton (president, LSBA), Cathal Minihane, Gerard O'Neill, Donald Binchy (president, Law Society), Frances Twomey, Mark Murphy, Ken Murphy (director general), Gary Keogh, Jerry Twomey and Jennifer O'Riordan

PIC: LENSMEN PHOTOGRAPHIC AGENCY

Law Society Professional Training played host recently to the International Bar Association (IBA). Attending the seminar 'Looking to the future – practising law in Ireland' were *(l to r)*: Geraldine Clarke (Gleeson, McGrath, Baldwin), Rob Millard (law firm strategy consultant, USA), Martín Carrizosa (Prietocarrizosa, Colombia), Tarja Wist (Waselius & Wist, Finland), Norman Clark (Walker Clark LLC, USA), Lisa Walker Johnson (Walker Clark LLC, USA), Donald Binchy (President, Law Society of Ireland), Stephen Denyer (Allen & Overy, Germany), Michael Greene, David O'Donnell (both Mason Hayes & Curran), Attracta O'Regan, Michelle Nolan (both Law Society Professional Training) and Dovile Burgiene (IBA)

Midlands conference boosts SYS attendance figures

A record number of young solicitors descended on Athlone recently for the Society of Young Solicitors Ireland (SYS) conference. Theevent drew twice as many participants as previous years to the Radisson Blu Hotel.

Bank of Ireland and Brightwater Recruitment were the key sponsors, with welcome drinks provided courtesy of Maples & Calder.

Speaking on the theme of 'When the alternative becomes the mainstream' were Michael Kealey (in-house counsel, Associated Newspapers), Jenny Lynch (in-house counsel, Ryanair), William McAuliffe (sports arbitrator, Lévy Kaufmann-Kohler, Geneva), Denise McPhillips (in-house counsel Abbey Capital) and Catriona O'Dwyer (Brightwater Recruitment).

Over 280 attended the black-tie ball. SYS thanks Cyril O'Neill (cost accountants) and local business Oliver Carty Ltd for sponsoring this event. Delegates vied for the chance to win a signed Leinster jersey, provided by Bank of Ireland, as well as a host of other prizes, before kicking their heels up to the sounds of Déja Boo and Glenn Tector (DJ).

The SYS committee welcomed Ronan Brennan (Bank of Ireland), Catriona O'Dwyer and Eileen Moloney (Brightwater), and representatives from the Northern Ireland Young Solicitors Association (including chairman Conor Houston). SYS chair, Jane McCluskey, extended her gratitude to her committee for their hard work and enthusiasm.

Planning is already underway for the 2012 event. Keep an eye on the SYS Facebook page for details.

PICS: STEPHEN SHERIDAN

Jane McCluskey (SYS chair) and Conor Houston (NIYSA chair), with their respective committees

Niamh Moore (Maples & Calder), Helens Walsh (Thomas J Walsh Solicitors) and Louise Harrison (William Fry) at the drinks reception, sponsored by Maples & Calder

(From l to r): Mary Greaney, Ciara Ruane, Jill Shaw, Elaine Morrissey and Aidan Gleeson (SYS committee, all from William Fry) ensured a smooth-run event

(From l to r): Claire McLoughlin (SYS vice-chairperson), Catriona O'Dwyer and Eileen Maloney (Brightwater recruitment)

Micheál Grace (SYS immediate past chair), Jane McCluskey (SYS chair) and Ronan Brennan (Bank of Ireland, SYS key sponsor)

Southern comfort and southern belles at SLA annual dinner

ALL PICS: DEIRDREBAUMANN@EIRCOM.NET

At the SLA annual dinner on 24 February 2012 were *(l to r)*: Judge James O'Donohoe (Circuit Court), Kieran Moran (SLA President), Judge Patrick Moran and Judge Sean O'Donnabháin (both Circuit Court)

(From l to r): Fergus Long (immediate past-president, SLA), Kieran Moran (SLA President) and Jonathan Lynch (vice-president, SLA)

(From l to r): Jean Paul Adams, Dan Twomey, Audrey Annette, David Galvin and Barry Galvin

(From l to r): Mary O'Callaghan and Orla O'Connell (from Eamonn Murray Solicitors)

(From l to r): Jane Kennedy and Karen Bohane

(From l to r): Meg Burke, David Cowhey, Grainne O'Loughlin and Diane Halloran

At the SLA annual dinner were *(l to r)*: Tom Callaghan, Joyce Good Hammond and Richard Hammond

(From l to r): Darren Fitzgerald, Linda Harney and Simon Kelly

Seamus bows out after 35 years in the Waterford Circuit office

Attending the function to mark the retirement of Seamus McGrath (chief clerk of the Waterford Circuit Office) after 35 years of service were *(from l to r)*: Johnny Walshe (junior counsel), Gerard O'Herlihy (president, Waterford Law Society), Seamus McGrath (chief clerk, Waterford Circuit Office), Judge Alice Doyle and Judge Tom Teehan

Helping Seamus celebrate his retirement were *(from l to r)*: Liz O'Dea, Finola Cronin, Liz Dowling and Gillian Kiersey in Waterford Golf Club in January

PICS: GARRETT FITZGERALD PHOTOGRAPHY

Lady Solicitors' Golf Society – important diary dates

The Heritage Golf Club

The spring outing of the Lady Solicitors' Golf Society will take place in the Heritage Golf Club, Killenard, Co Laois on 20 April. The tee is reserved from 12 to 1.30pm and the cost for golf and dinner is €80. For those wishing to stay, the cost is €149 pps, which includes bed and breakfast, dinner and golf. All lady golfers with a current handicap are very welcome. Annual membership of the society is €10.

This promises to be a great day out on an excellent course. Early booking is advised as this is expected to be a very popular venue. Details and tee reservations are available from Anne Delaney (captain), at amdel@eircom.ie, or mob: 087 828 9094.

The society's autumn outing is scheduled for 7 September at Knightsbrook Golf Club, Trim, Co Meath. Details later.

Diploma in Legal French

At the conferring ceremony for the Diploma in Legal French on 16 November were *(front, l to r)*: Claire Bourgeois (Directrice, Alliance Francaise), Minister Phil Hogan (Department for the Environment, Community and Local Government), Donald Binchy (Law Society President), Pat Cox (President of the Alliance Francaise), Patricia Rickard-Clarke (Commissioner, Law Reform Commission), John O'Connor (Vice-Chairman, Education Committee), Freda Grealy (Law Society), François-Christophe Crozat (Alliance Française) and Louise Stirling (Alliance Francaise) *(standing)*; *(conferees)*: Daragh Burke, Peter Flynn, Niamh McEvilly, Doireann Ní Mhuirheartaigh, Ciaran O'Neill, Brendan McDonald and Patrick Hume

Diploma in Civil Litigation

At the conferring ceremony for the Diploma in Civil Litigation on 23 November were *(front, l to r)*: Rory O'Boyle (Law Society), Freda Grealy (Law Society), Minister John Perry (Department for Small Business), Mr Justice Matthew Deery (President of the Circuit Court), Michelle Ní Longáin (Chairman, Education Committee), Ms Justice Mary Laffoy; Elaine Grier (lecturer) and Deirdre Flynn (Law Society); *(conferees)*: Michelle Cunningham Gilbourne, Aaron Flynn, Jenny Foley, Olga Gaffney, Noelle Kenny, Timothy Leddin, Caroline Lindsay, Emmajane O'Halloran, Padraic Ó Huigínn, David Rafferty, Patrick Sheehan, John Tarpey, Oliver Tighe, Gergana Toromanova and Emma Woodlock

Certificate in Capacity, Mental Health and the Law

At the conferring ceremony for the Certificate in Capacity, Mental Health and the Law on 16 November were *(front, l to r)*: Freda Grealy (diploma manager, Law Society), Minister Phil Hogan (Department for the Environment, Community and Local Government), Donald Binchy (Law Society President), Pat Cox (President of the Alliance Francaise), Patricia Rickard-Clarke (Commissioner, Law Reform Commission), John O'Connor (Vice-Chairman, Education Committee); *(conferees)*: Scott Barry, Deborah Birmingham, Sarah Campbell, Anthea Coll, Joan Crawford, Aileen Curry, Brian Duncan, Barbara Egan, Margaret Horan, Marie Keane, Sinead Keavey, Avril Mangan, Maria Mulligan, Aoife Nally, Audrey O'Reilly, Andrea Reynolds, Mairide Woods and Maebh Ní Mhaoileáin

Trainees' winning ways move them to the next level


Kerrie Fortune and Michelle Moran

The winners of the Education Centre's Negotiation and Client Consultation Competitions were named at a special awards ceremony at the Education Centre on 28 February. The seven trainees received their winners and runners-up prizes at the event, which was attended by supporters, training solicitors and judges.

The winning PPCI trainees in the Negotiation Competition were Brendan Hayes (Ronan Daly Jermyn, Cork) and Cian Moriarty (Padraig J Sheehan, Cork); while Deirdre Toner (GJ Moloney, Dublin) and Frank Wall (Holmes O'Malley Sexton, Limerick) were runners-up.

This competition pitted two teams of two trainees against each other, with each team negotiating an international transaction or working to resolve an international dispute for their clients. These trainees beat ten other teams over three rounds to clinch the top two spots. They will now progress to the national competition, competing against teams from King's Inns and NUI Maynooth.

Trainees Kerrie Fortune (AIB Bankcentre, Dublin) and Michelle Moran (O'Carroll & Co, Galway) beat 25 teams to win the national Law School client consultation competition. They pipped Cian Moriarty and Rebecca Keatinge (Brophy Solicitors, Dublin).

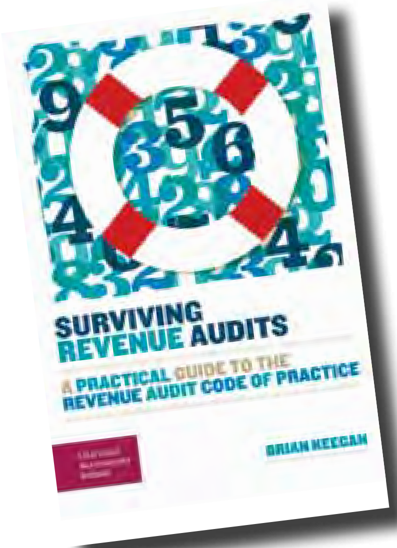
This competition simulates a law-office consultation in which two trainees, acting as lawyers, are presented with a client matter. They conduct an interview with a virtual client and explain how they would proceed in the hypothetical situation. Throughout the competition, the judges praised Kerrie's and Michelle's well-structured approaches, capability, friendliness and their ability to develop a rapport with their clients.

They now go forward to represent Ireland at the International Client Consultation Competition, which will be hosted by the Law Society at Blackhall Place from 18-21 April. Approximately 25 teams from around the world – including Australia, Cambodia, Canada, China, Jamaica, Nigeria and the USA – will compete.


Winners and runners-up, with supporters, training solicitors and judges

Surviving Revenue Audits

Brian Keegan. Chartered Accountants Ireland (2010), www.charteredaccountants.ie. ISBN: 978-0-9038-547-88. Price: €40.00 (paperback, incl VAT).



Under our system of taxation, returns filed by compliant taxpayers are accepted as the basis for computing tax liabilities.

The receipt of the brown envelope with the Revenue logo can be a source of anxiety, even for many of those who would consider themselves to be tax compliant. Where the communication indicates that Revenue wishes to delve further into a taxpayer's affairs, the level of anxiety will no doubt be increased.

In most situations, the best solution is to stay calm, decide what Revenue is looking for and to cooperate in full. In many situations, the issue will be manageable and difficulties will be avoided if the correct steps are taken.

This book provides useful background information and source material on the procedures involved, including the making of a qualifying disclosure, agreeing a settlement, appeals and supplies and essential checklists.

The book also reproduces the *Code of Practice for Revenue Audit*, published by Revenue in September 2010, and essential legislation. In March 2011 (after this book's publication date) Revenue published a revised *Code of Practice for Revenue Audit*.

Most solicitors will have received calls from clients who are alarmed to find that Revenue proposes to enquire into their tax affairs. For any solicitor who feels that he or she is likely to receive such calls, this book is one to buy, read and profit from.

Michael O'Connor is a consultant with William Fry Tax Advisors.

The Law of Defamation

John Maher. Thomson Reuters (2011), www.roundhall.ie. ISBN: 978-1-8580-063-76. Price: €195 (incl VAT).

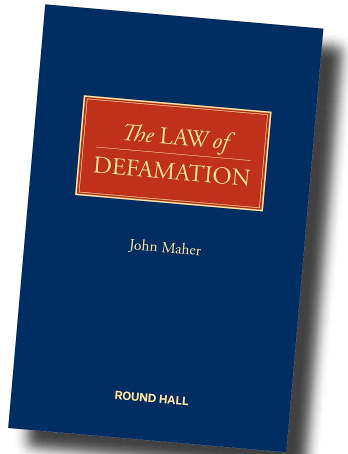
John Maher is not the first journalist to venture into the dangerous waters of the legal profession. I do not know if his time as a news and opinion editor at *The Irish Times* piqued his interest in the law of defamation, but it has certainly helped him to write a clear, concise and interesting book.

Unsurprisingly, it is structured around, and draws heavily upon, the *Defamation Act 2009*.

While admirably up to date – the use of recent British and Irish authorities is especially impressive – the fact is that there are very few Irish authorities (and no Supreme Court decisions) on the 2009 act. Consequently, Mr Maher's conclusions on a number of potentially controversial provisions in the legislation are necessarily speculative.

This is not a criticism of the book – more a plea to Round Hall to facilitate subsequent editions as the landscape under the legislation becomes clearer.

As well as being perspicacious, Mr Maher shows prescience. He warns of the danger that "anyone with a computer linked to the internet has the capacity to initiate a libel with a reach and effect which even



the most powerful press barons of previous centuries would have envied". He did so last October, well before the case of the unfortunate Eoin McKeogh, an innocent student traduced anonymously on the internet with false allegations that he had failed to pay a taxi fare.

The progression or defence of most defamation claims will now be under the 2009 act. If practitioners want a raft to help them through these dangerous waters, they would do much worse than to cling to Mr Maher's admirable work.

Michael Kealey is in-house counsel at Associated Newspapers.

Medicine, Ethics and the Law

Deirdre Madden. Bloomsbury Professional (2011), www.bloomsburyprofessional.com. ISBN: 978-1-8476-667-03 Price: €165 (incl VAT).

Deirdre Madden, who is undoubtedly one of the leading Irish experts in the area of medical ethics and the law, has produced a second edition of her much acclaimed book *Medicine Ethics and the Law*, first published in 2002.

This edition updates many chapters and also contains two additional chapters, one of which deals with property rights in the human body, to include the legal and ethical issues that arise out of the storage of human body parts. The other new chapter deals with medical research and clinical trials.

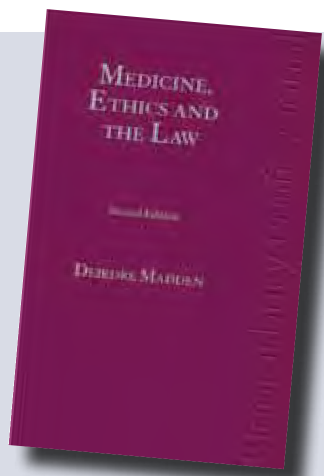
The reader is provided with an in-depth and up-to-date analysis of how the law, in various jurisdictions, is grappling with the legal complexities that are presented by modern medicine, particularly in the areas of assisted reproduction, IVF and surrogacy.

Since the publication of the first edition, there have been several ground-breaking reports and Supreme Court rulings in Ireland that have served to guide the legal profession on how the Irish courts deal with such contentious issues in the absence of any guiding legislation.

From the *Donnelly Commission Report* in 2005 and the publication of the new *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* issued by the Irish Medical Council, Madden also details the Supreme Court rulings in the 2009 frozen embryos case of *MR v TR* and the rights of a sperm-donor father in *McD v L*.

It is refreshing to find an Irish book analysing such complex and controversial legal and ethical issues, such as assisted human reproduction, IVF, stem-cell research and surrogacy in such depth.

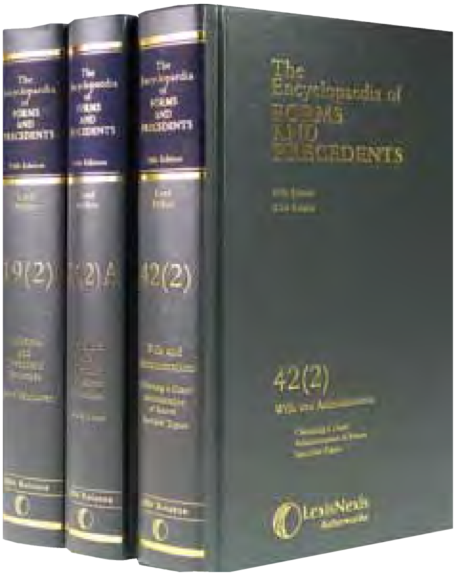
As the book is aimed at medics and lawyers, technical, medical and legal terms are explained in a comprehensive way without being



too simplistic. The book is very well presented and, in my view, should be the first point of reference for every doctor and every lawyer practising in this area. G

Fiona Duffy is a partner at Patrick F O'Reilly & Co Solicitors.

Precedents from Lexis Nexis



The library has a licence to supply Microsoft *Word* versions of individual precedents from the LexisNexis *Encyclopaedia of Forms and Precedents*

Recently requested precedents include joint venture agreements, medical partnerships, assignment of life policy, hire of concert hall and sale of goodwill.

If you require a precedent, contact the library for further information about pricing and terms and conditions.

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Further information on mobile access is available from the library.

JUST PUBLISHED

New books available to borrow

- Andrews, Geraldine Mary, *Law of Guarantees* (6th ed) (London: Sweet & Maxwell, 2011)
- Butler, Pat, *Rating Law in Ireland* (Haywards Heath: Bloomsbury Professional, 2012)
- Conway, Heather, *Co-ownership of Land: Partition Actions and Remedies* (2nd ed) (Haywards Heath: Bloomsbury Professional, 2012)
- Cummings, Scott L, *The Paradox of Professionalism: Lawyers and the Possibility of Justice* (Cambridge: CUP, 2011)
- Frase, Dick, *The Law and Regulation of Investment Management* (2nd ed) (London: Sweet & Maxwell, 2011)
- Hauck, Felix, *Practitioner's Manual for Trademark Prosecution and Litigation in the EU* (London: Sweet & Maxwell, 2011)
- Hooper, Andrew, *Outcomes-Focused Regulation* (London: Law Society, 2011)
- Houseman, David, *Houseman's Law of Life Assurance* (14th ed) (Haywards Heath: Bloomsbury Professional, 2011)
- Law Reform Commission, *Legal Aspects of Professional Home Care* (Dublin: Law Reform Commission, 2011)
- Loughrey, Joan, *Corporate Lawyers and Corporate Governance* (Cambridge: CUP, 2011)
- Mynors, Charles, *The Law of Trees, Forests and Hedges* (London: Sweet & Maxwell, 2011)
- Pacelle, Richard L, *Decision-making by the Modern Supreme Court* (US: CUP, 2011)
- Paterson, Alan, *Lawyers and the Public Good: Democracy in Action?* (Cambridge: CUP, 2012)
- Relis, Tamara, *Perceptions in Litigation and Mediation: Lawyers, Defendants, Plaintiffs and Gendered Parties* (US: CUP, 2009)
- Roberts, Harry, *Riley on Business Interruption Insurance* (9th ed) (London: Sweet & Maxwell, 2011)
- Thomson Reuters Round Hall, *Planning and Environmental Law Conference 2011* (Dublin: Round Hall, 2011)
- Zucca, Lorenzo, *Law, State and Religion in the New Europe: Debates and Dilemmas* (Cambridge: CUP, 2012)

Law Society Council meetings 20 January, 10 February and 24 February 2012

Legal Services Regulation Bill 2011

The *Legal Services Regulation Bill* dominated discussions at the January and February Council meetings.

In January, the Council considered all aspects of the bill and approved its policy positions on a range of key provisions. Most significantly, it decided that it would not seek to retain control of the handling of client complaints – not because of any inadequacies in the existing system, but because of the need to address the public perception that the Society should not adjudicate upon complaints against its own members.

At a special Council meeting on 10 February, the Council considered, and approved, the 100-page submission of the Society to the Minister for Justice and Equality, which was also circulated to the profession. (For a summary of the contents of the submission, see the March *Gazette*, pages 12-13.)

At its scheduled Council meeting on 24 February, the Council noted the contents of the minister's speech in Dáil Éireann at the conclusion of the second-stage debate, in which he outlined a number of matters in relation to which he proposed to bring forward amendments.

The Council welcomed the minister's comments on proposed amendments, subject to sight of the detail. However, the Council deeply regretted the fact that the bill, as published, made no provision for the relevant staff to have their employment transferred to the new authority and that the minister had given no reassurance that this would occur. The Council agreed that the Society would continue to press the argument and to make the case for the transfer of the staff affected. G

Practice notes

Communication with the client of another solicitor: an in-house or public sector solicitor

GUIDANCE AND ETHICS COMMITTEE

Clause 7.7 of the *Guide to Professional Conduct of Solicitors in Ireland* states: "A solicitor should neither interview nor otherwise communicate with the client of another solicitor except with that solicitor's consent."

Proper professional conduct requires that a solicitor's client should not be contacted directly by another solicitor. This is sometimes overlooked by solicitors in private practice when dealing with in-house or public sector solicitors. It should be remembered that the employer of the in-house solicitor is usually that solicitor's client. However, other personnel in an organisation are sometimes contacted directly, despite ongoing correspondence with the in-house solicitor and despite that solicitor being on record in proceedings.

When this happens, it is no less frustrating for the in-house solicitor involved than it would be for a solicitor in private practice whose client is contacted directly by another solicitor. This action can affect the proper involvement of the in-house solicitor in a case, and the result can be that the case cannot be properly handled by that solicitor.

All solicitors are urged to abide by proper professional practice and to avoid having a complaint made against them in this context.

Compulsory registration and family law related assurances

CONVEYANCING COMMITTEE

As a result of orders made by the Minister for Justice and Equality under section 24 of the *Registration of Title Act 1964* from time to time, most recently under SI no 516 of 2010, registration of ownership of land has become compulsory throughout the state:

a) In the case of freehold land, upon conveyance on sale,
b) In the case of a leasehold interest, on the grant or assignment on sale of such an interest.

Subsection (3) of section 24 provides that 'conveyance on sale' and 'assignment on sale' mean an instrument made on sale for money or money's worth, by virtue of which there is conferred or completed a title in respect of which an application for registration as owner may be made, and include a conveyance or assignment by way of exchange where money is paid for equality of exchange and also include any contract, agreement, condition or covenant affecting the property comprised in the conveyance or assignment and entered into or made as part of, or in association with, such conveyance or assignment.

In divorce or separation cases under the *Judicial Separation and Family Law Reform Act*, where orders are made by the court that include property adjustment orders (PAOs) providing for transfers of unregistered property from one party to another, or to a third party, it would be unusual for particular monetary considerations to be applied to the transfers.

PAOs will normally be found in composite orders dealing with other matters, such as maintenance, custody of children, and so on, the composite order being a package. Assurances of property implementing such PAOs should recite that they are being made in implementation or in pursuance of the court order, and should go on to say that the property is being assured "in consideration of the premises". This would seem to take the assurances out of the category of "conveyance on sale", which would trigger compulsory first registration.

If the order did, in fact, provide that a particular property was to be transferred in consideration of the payment of a specific sum of money, then that sum ought to be set out as the consideration in the subsequent assurance, and that would presumably lead to the categorisation of the assurance as a 'conveyance on sale' and trigger first registration.

Similarly, where a separation has been agreed but no proceedings have been issued, or proceedings have issued and have been compromised without an order being made, and there is an agreement that one party will pay the other for the transfer of an interest in property, that agreement can only be implemented and documented by an assurance of the property in consideration of the payment of the sum of money, and is clearly caught by the "conveyance on sale" rule. If, in such circumstances, no payment is contemplated, the assurance should recite the agreement to transfer, and the property should be assured "in consideration of the premises."

Practice and procedure: notice – lodgment with defence

COURTS SERVICE (ACCOUNTANT'S OFFICE, RESOURCE MANAGEMENT DIRECTORATE)

Pursuant to order 64A of the *Circuit Court Rules*/order 12A of the *District Court Rules* and further direction of the presidents of the Circuit and District Courts, all lodgment with defence cases in the Circuit and District Courts should be lodged in the Accountant's Office, Dublin 7, from Monday 16 April 2012.

The Accountant's Office is on the third floor of Phoenix House, 15/24 Phoenix Street North, Smithfield, Dublin 7. Lodgments can be made in person, by post or by DX no 263004.

Details of the Accountant's Office requirements in processing such lodgments are available on the Courts Service website, www.courts.ie.

Please ensure that cheques/money orders/bank drafts are made payable to: 'Accountant of the Courts of Justice'.

Note – notice of tenders shall continue to be lodged with Circuit and District Court offices. Only cases where funds are being paid into court shall be accepted by the Accountant's Office.

NOTICE – PAYMENT TO MINORS OF FUNDS IN COURT

From Monday 16 April 2012, all applications to the Accountant's Office for payments of funds held in court on behalf of minors must contain the PPS number of the minor.

Update on Household Charge

CONVEYANCING COMMITTEE

It has been confirmed to the Conveyancing Committee by the Department of the Environment that the Local Government Management Agency (LGMA) is centrally managing the household charge for all local authorities. The LGMA will issue:

- Receipts for any payment made to it,
- All certificates of discharge,
- All certificates of exemption, and
- All certificates of waiver.

Local authorities will issue receipts for any payment made directly to it.

Local authorities will **not** issue certificates of discharge, exemption or waiver.

Clients who are selling their houses may pay the household charge either:

- Online to the LGMA – the declaration and payment can be made online. A receipt will be issued/can be printed off online.
- By post to the LGMA – send a completed declaration, together with payment by way of cheque/postal order/bank draft, made payable to 'Household Charge', by post to Household Charge, PO Box 12168, Dublin 1. The LGMA will issue a receipt by post.
- In cash to the relevant local authority – lodge a completed declaration, together with payment, with the local authority. The local authority will issue a receipt for payment.

Declaration forms are being made available to clients:

- In local authority offices, libraries, citizens' information centres and post offices, or
- By calling LoCall 1890 357 357, or
- They can be printed off the LGMA website www.householdcharge.ie).

Following payment, clients may apply **in writing** to the LGMA for a **certificate of discharge**. Write to:

- Household Charge, PO Box 12168, Dublin 1, **or**
- By email to support@householdcharge.ie.

It may assist matters if a copy or reference number of the receipt is furnished with the application. It may also assist matters if it is indicated that the discharge is needed by a particular date in order to close the sale of the property.

Clients may **apply in writing** to the LGMA under section 9(1) of the *Local Government (Household Charge) Act 2011* for a **certificate of exemption** in respect of a certain year or years if the relevant circumstances outlined in section 4(1), (2) or (3) are met; broadly speaking:

1) If, on the liability date, the property is held in a discretionary trust, or the owner is a body corporate and an approved body under section 848A of the *Taxes Consolidation Act 1997*,
2) If, on the liability date, the owner is not residing in the property due to long-term mental or physical infirmity (and other conditions are met),
3) Where a sole owner is deceased and the liability date falls after the date of death and before the date of issue of a grant of representation to the estate.

Clients may **apply in writing** to the LGMA under section 9(2) of the said act for a **certificate of waiver** if the circumstances outlined in section 4(4) of the act are met; broadly speaking:

a) A waiver relating to a year where, on the liability date, the applicant is entitled to payment of a supplement under section 198(5) of the *Social Welfare (Consolidation) Act 2005* towards the amount of mortgage interest payable in respect of that property, or
b) A waiver relating to the year 2012 and the year 2013 if, on the liability date for the relevant year, the property is situated in an unfinished housing estate.

Ulster Bank's requirement that borrowers sign/approve banks' solicitors' certificate of title

CONVEYANCING COMMITTEE

A number of practitioners have written to the Conveyancing Committee in relation to Ulster Bank's requirement in commercial lending cases that borrowers sign/approve the bank's solicitor's certificate of title in cases where the bank's solicitor has carried out a full investigation of the title. The committee is of the view that borrowers should not be asked to confirm that what the bank's solicitor has derived from the title to the property is or is not correct. The committee confirms that certificates of title were originally designed for the purpose of solicitors giving certificates of title to a third party. They were not designed for use by a solicitor giving a certificate of title to his/her own client. It appears to the committee that certain parts of the certificate of title in use by Ulster Bank Limited's solicitors have been taken from a third party certificate of title.

The committee confirms that neither a borrower nor a borrower's solicitor should confirm that the bank's solicitor's interpretation of title matters is correct.

EBS confirms its position on redemption figures

CONVEYANCING COMMITTEE

The committee has been in correspondence with EBS concerning the format of letter used by EBS to provide redemption figures to solicitors in relation to clients' loans. The background to this matter is that the Conveyancing Committee had received a number of complaints from solicitors to the effect that EBS was issuing qualified or conditional redemption figures. This was on the basis that the standard EBS letter stated that "these figures will change in the event of an interest rate alteration, a returned payment or a further lodgement being made prior to the redemption of the loan(s)". When the committee took the matter up with EBS, it was confirmed to the committee that: "If an event takes place which affects the amount quoted, as a direct result of action taken by a customer such as a cancelled direct debit, the solicitor is protected under 5(d) of the agreement, which states that: 'If, after redemption, the redemption sum quoted by the Lender is found to be inadequate to redeem the loan(s), the Lender shall not withhold the release/discharge/vacate (see paragraph 23 below) but shall be free to pursue any other remedies against the Borrower that are available to the Lender'."

Practitioners should therefore note that, while the standard EBS letter may continue to make reference to matters such as "the redemption figure stated below is valid for … days and is subject to all payments received to date being honoured, including direct debit payments which are credited to customers accounts by EBS on the call date", the lending institution has confirmed it will, nonetheless, observe the terms of the 2009 certificate of title agreement between the IBF and the Law Society and will not withhold issuing a vacate to a solicitor on account of any discrepancy between the redemption sum quoted by EBS and the sum required to redeem the loan.

If any practitioners still continue to encounter difficulties in obtaining vacates/discharge/releases from EBS, please write to the committee and forward copies of relevant documentation. G

BRIEFING

Legislation update 4 February – 8 March 2012

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

Bretton Woods Agreements (Amendment) Act 2012
Number: 5/2012
Makes provision in respect of the acceptance by the Government of the amendment of the articles of agreement of the International Monetary Fund approved by the board of governors of the fund on 15/12/2011 and provides for related matters.
Signed: 5/3/2012
Commencement: 5/3/2012

Health (Provision of General Practitioner Services) Act 2012
Number: 4/2012
Enables a wider range of registered medical practitioners to provide medical services to eligible persons under the General Medical Services Scheme, provides for modifications to the operation of that scheme, and provides for related matters.
Signed: 28/2/2012
Commencement: Commencement order(s) to be made as per s8(2) of the act

Energy (Miscellaneous Provisions) Act 2012
Number: 3/2012
Provides for the promotion of energy efficiency. Revises, consolidates and expands energy legislation in areas such as the theft of electricity and gas and the safety of liquefied petroleum gas in order to reflect the structure and needs of the energy sector. Provides for the pension entitlements of employees of Bord Gais Éireann who transfer to Gaslink and of employees of Electricity Supply Board who transfer to Eirgrid Plc and ESB Networks Ltd. Amends the *Energy (Miscellaneous Provisions) Act 1995* and the *Electricity Regulation Act 1999*. Repeals certain provisions of acts relating to gas or electricity and provides for related matters.
Signed: 25/2/2012
Commencement: Commencement order(s) to be made as per s1(2) of the act

Water Services (Amendment) Act 2012
Number: 2/2012
Inserts a new Part 4A into the *Water Services Act 2007*. This is in order to ensure Ireland's compliance with a European Court of Justice ruling against Ireland on 20/10/2009 in Case C188-08. The court found that Ireland had failed to fulfil its obligations under the *Waste Directive* (75/442/EEC) regarding domestic waste waters disposed of through septic tanks and other individual wastewater treatment systems.
Signed: 2/2/2012
Commencement: Commencement order(s) to be made as per s5(3) of the act

SELECTED STATUTORY INSTRUMENTS

Occupational Pension Schemes (Revaluation) Regulations 2012
Number: SI 48/2012
As statistics released by the CSO state that the 2011 average annual percentage increase in the Consumer Price Index was 2.6%, in accordance with the *Pensions Act 1990*, s33, these regulations confirm that there will be a 2.6% increase in the revaluation of preserved benefits for 2011.
Commencement: 13/2/2012

Social Welfare and Pensions Act 2010 (Sections 12 and 13) (Commencement) Order 2012
Number: SI 42/2012
Appoints 13/2/2012 as the commencement date for ss12 and 13 of the act. Sections 12 and 13 provide for the introduction of a Partial Capacity Scheme and for consequential changes to the *Social Welfare Consolidation Act 2005*.
Commencement: 13/2/2012 G

Prepared by the Law Society Library

ONE TO WATCH

One to watch: new legislation

Water Services (Amendment) Act 2012

The *Water Services (Amendment) Act 2012* was enacted on 2 February 2012. The act – which will amend the *Water Services Act 2007* (the principal act) – provides for the regulation of waste-water discharges from all homes not connected to public sewer networks. The amendment will introduce a registration and inspection regime for domestic waste-water treatment systems. It will also ensure Ireland's compliance with a European Court of Justice (ECJ) ruling against Ireland on 29 October 2009, in Case C-188/08.

The ECJ ruled that Ireland was in breach of the *Waste Directive* (75/442/EEC) – revised by directive 2008/98/EC – over its failure to legislate for the disposal of domestic waste water from septic tanks and other individual waste-water treatment systems in an environmentally safe manner. The ECJ judgment required that Ireland introduce legislation to provide for the registration, monitoring and inspection of septic tanks.

Who does this affect?

The ruling has implications for waste-water treatment systems serving single houses in Ireland. The *Water Services (Amendment) Act 2012* introduces registration and inspection checks on all on-site septic-tank systems and domestic waste-water treatment systems, not connected to the main sewage system.

Registration

The registration scheme commences on 31 March 2012. The septic-tank registration charge is set at €50, but as an incentive to register early, the Minister for the Environment has set the charge at €5 for registrations made in the scheme's first three months. All septic-tank owners will be required to register by March 2013.

After registration, the relevant Water Services Authority (WSA) will issue a certificate of registration, which shall remain valid for a period of five years from the date issued. On the expiry of the certificate, the owner is required to renew it with the WSA concerned. It is unclear whether there will be a renewal fee.

When the registration system is in place, and a house that is served by a domestic waste-water system is sold, the seller must provide evidence to the buyer that the system is registered. The buyer will then be required to notify the relevant WSA of the change of ownership.

Inspection

Inspectors appointed and approved by the Environmental Protection Agency (EPA) will carry out inspections. Either the EPA or the WSA concerned may instigate inspections. Inspections will be carried out on a risk basis and in accordance with the national plan to be drawn up by the EPA.

The inspection plan must take account of the relevant available information in relation to specific types and locations of domestic waste-water treatment systems. The inspections will assess if the systems endanger human health or the environment, including water, air and soil, the countryside and places of special interest.

The plan will include inspection target numbers and it must be reviewed at least once every five years. The WSA will be obliged to implement the plan.

The inspectors will have the power to inspect all aspects of a domestic waste-water system, monitor domestic waste water, take photographs and obtain information regarding the maintenance, servicing or operation of a domestic waste-treatment system. The inspector will not have the power, however, to enter a private dwelling without the permission of the occupier.

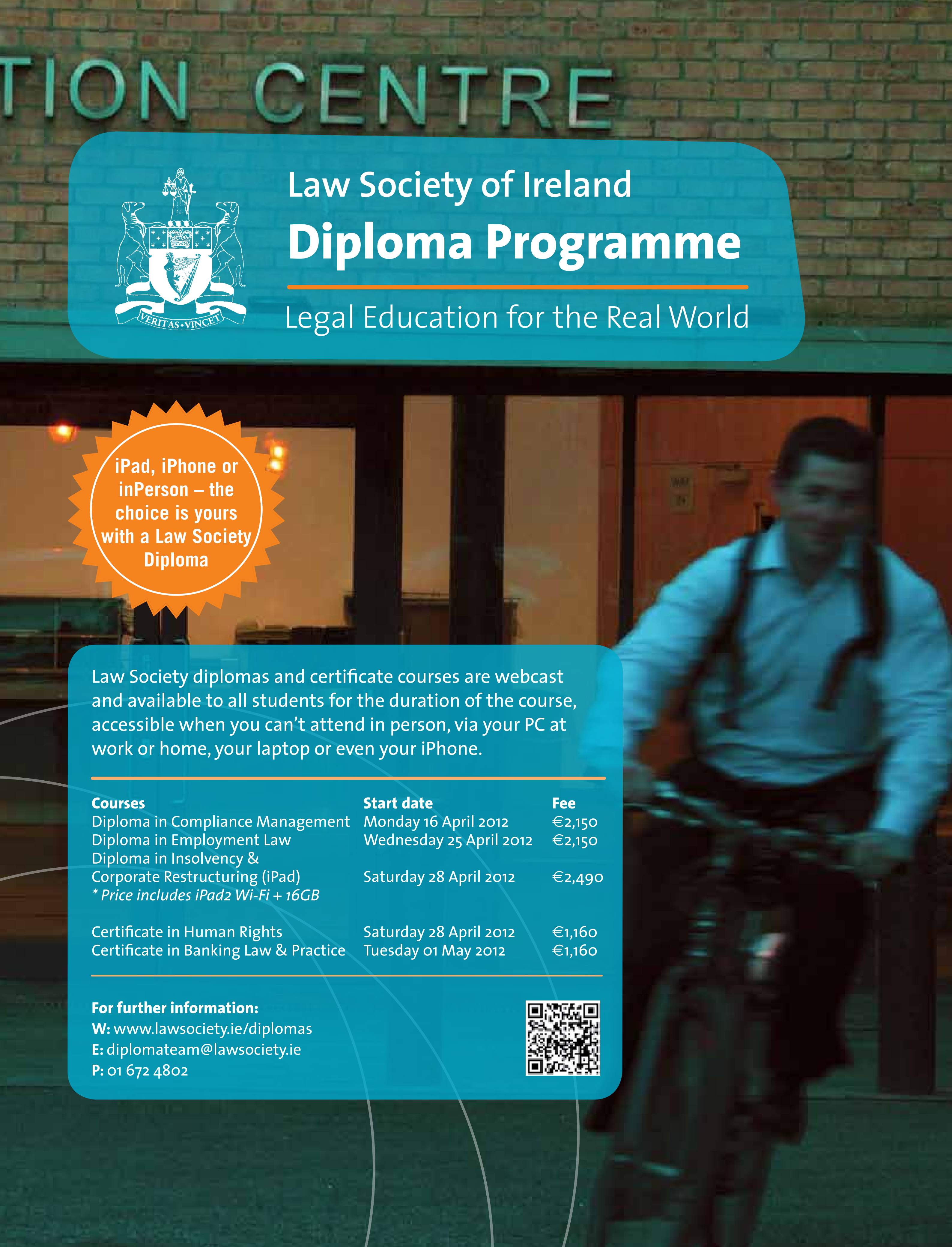
If the inspector considers that the system is not operating in accordance with the regulations, the WSA will issue an advisory notice to the owner. This notice will order the owner to rectify the problem within a specified time. The owner may appeal against this notice within 21 days, where there will be a fee of up to €20 for an appeal. The WSA must then arrange for the re-inspection of the system. The fee is refundable if the appeal is successful. If the appeal is not successful, the owner may make a further appeal to the District Court, but only in respect of procedural issues.

The act gives the EPA power to issue directions to the WSA to ensure that they are carrying out their functions under the act in an effective manner.

Obligations on owners

The *Water Services Act 2007* already requires owners to ensure that their treatment systems do not cause risk to human health, the environment or a nuisance through odours. This obligation is made more specific with the introduction of the amended act. Owners are obliged to ensure that the system does not constitute, and is not likely to constitute, a risk to human health or the environment, and does not:

- Create a risk to water, air or soil, or to plants and animals,
- Create a nuisance through noise and odours,
- Adversely affect the countryside or places of special interest (including special areas of conservation, special protection areas and natural heritage areas). G



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W: www.lawsociety.ie/diplomas
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Solicitors' Benevolent Association

148th report, 1 December 2010 to 30 November 2011

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

The amount paid out during the year in grants was €743,528, which was collected from members' subscriptions, donations, legacies and investment income; this was €98,573 more than our income for the year and, accordingly, all grants had to be reduced in November. The directors were only in a position to pay out additional grants at Christmas to those with young children as a result of a very generous donation from the Dublin Solicitors' Bar Association. Currently, there are 63 beneficiaries in receipt of regular grants and approximately one half of these are themselves supporting spouses and children.

There are 19 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices at Blackhall Place. They meet at the Law Society, Belfast, every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and approving new applications. The directors also make themselves available to those who may need personal or professional advice. The directors have available the part-time services of a professional social worker who, in appropriate cases, can advise on State entitlements, including sickness benefits.

The directors are grateful to both law societies for their support and, in particular, wish to express thanks to John E Costello (past-president of the Law Society of Ireland), Brian Speers (past-president of the Law Society of Northern Ireland), Ken Murphy (director general), Alan Hunter (chief executive) and the personnel of both societies.

I wish to express particular appreciation to all those who contributed to the association when applying for their practising certificates, to those who made individual contributions, and to the following:

- Law Society of Ireland,
- Law Society of Northern Ireland,
- County Louth Solicitors' Bar Association,
- Donegal Bar Association,
- Drogheda Bar Association,
- Dublin Solicitors' Bar Association,
- Faculty of Notaries Public in Ireland,
- Irish Solicitors' Golfing Society
- Kildare Bar Association,
- Limavady Solicitors' Association,
- Limerick Solicitors' Bar Association,
- Medico-Legal Society of Ireland,
- Midland Bar Association,
- Meath Bar Association,
- Monaghan Bar Association,
- Sheriffs' Association,
- Southern Law Association,
- Tipperary Solicitors' Bar Association,
- Waterford Law Society,
- West Cork Bar Association, and the
- Wexford Solicitors' Association.

The demands on our association are rising due to the present economic difficulties. To cover the greater demands on the association, additional fund-raising events are necessary. Additional subscriptions are more than welcome as, of course, are legacies and the proceeds of any fundraising events. Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained, at 73 Park Avenue, Dublin 4. I would urge all members of the association, when making their own wills, to leave a legacy to the association. You will find the appropriate wording of a bequest at page 33 of the Law Directory 2011.

I would like to thank all the directors and the association's secretary, Geraldine Pearse, for their valued hard work, dedication and assistance during the year.

Thomas A Menton, chairman

RECEIPTS AND PAYMENTS A/C FOR THE YEAR ENDED 30 NOV 2011

	2011	2010
RECEIPTS	€	€
Subscriptions	**374,368**	379,314
Donations	**165,108**	164,299
Investment income	**39,390**	21,167
Bank interest	**4,836**	*783*
Currency gain	–	2,742
Repayment of grants	**10,000**	–
	593,702	568,305
PAYMENTS		
Grants	**743,528**	710,847
Bank interest and charges	**773**	640
Administration expenses	**37,510**	37,613
Currency loss	**166**	–
	781,977	749,100
OPERATING DEFICIT FOR THE YEAR	**(188,275)**	(180,795)
(Loss)/profit on disposal of investments	**(32,298)**	244,733
Provision for write down of quoted investments in priorperiods no longer required	**122,000**	100,000
(DEFICIT)/SURPLUS FOR THE YEAR	**(98,573)**	163,938

DIRECTORS AND INFORMATION

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

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

Secretary
Geraldine Pearse

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

Financial consultants
Tilman Brewin Dolphin Limited, 3 Richview Office Park, Clonskeagh, Dublin 14

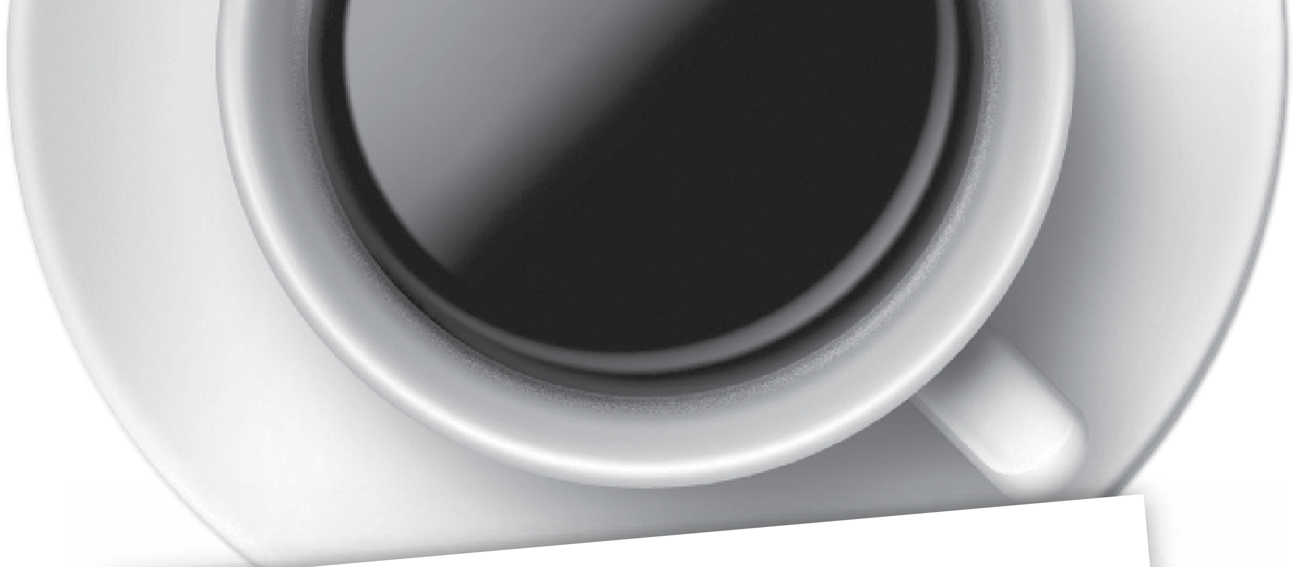
Bankers
Allied Irish Banks plc, 37 Upper O'Connell Street, Dublin 1

First Trust, 31/35 High Street, Belfast BT1 2AL 3

Offices of the association
Law Society of Ireland, Blackhall Place, Dublin 7

Law Society of Northern Ireland, Law Society House, 90/106 Victoria Street, Belfast BT1 3JZ

Charity number: CHY892



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

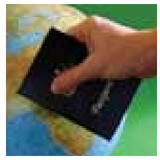
COMPANY

Liquidation

Insurance payments – fire – payments to directors – liquidator – solicitors – cheques – Companies Act 1963, *as amended.*

The company that was the subject of the liquidation operated a hardware business. A fire in the premises had occurred, which had severely damaged the building. The company claimed €3 million under its insurance policy and had received an interim payment of €1.3 million. The dispute was settled, and cheques in the amount of, firstly, €700,000 were made payable by the insurers to Gerry Bredin Hardware Ltd & AIB Bank, crossed 'a/c payee only', and another cheque for €125,000 was made out to the company's solicitors for their fees. The solicitors negotiated the cheque drawn in favour of the company through their client account and withheld a sum, disbursing the remaining amount to two directors of the company in a personal capacity. A liquidator was appointed to the company thereafter, and he claimed that the payment of the insurance money to the two directors was invalid pursuant to section 286 of the *Companies Act 1963*, as amended. The liquidator sought the return of the money, on the basis that the company was insolvent at the time of the payment and that the payment was a fraudulent preference as a result.

Ryan J held that the company was the owner and was at all material times entitled to possession of the insurance money, subject to legitimate claims. The court could not sanction a cavalier approach to the assets of insolvent companies. It was not permissible for directors or advisors to intercept and divert monies en route to the insolvent company's account. It was not competent or legitimate for the insolvent company's accountant to validate the claim by the director to money destined for the company. The claim to the insurance settlement should have been made in a proper and regular manner. It was still open to the directors to put forward their claim. ***In the matter of Gerry Bredin Hardware Limited (in liquidation)*, High Court, 29/11/2011**



IMMIGRATION

Judicial review

Assessment of credibility – whether conclusions as to credibility flawed – whether obligation to reconvene oral hearing – European Communities (Eligibility for Protection) Regulations 2006 – Illegal Immigrants (Trafficking) Act 2000.

The applicant, a national of the DRC, sought leave to challenge a refusal of a decision of the respondent. The applicant alleged that she had been tortured as a result of activities she had engaged in while working in the presidential offices in her country. The applicant had claimed fear of persecution by reason of her political opinion. A number of negative credibility findings were made, and it was found that her evidence was contradictory in several respects. Ultimately, it was held that the applicant had not established a well-founded fear of persecution nor had she given a truthful account of the facts relating to her application. The applicant contended that the tribunal member had failed to properly apply the relevant regulations (*European Communities (Eligibility for Protection) Regulations 2006*) and not accorded the applicant fair procedures.

Clark J refused leave for judicial review. Although the application was late, it was accepted that the delay was a short one and included the Christmas period, when offices were closed. The *Protection Regulations* had given effect in Irish law to Council Directive 2004/83/EC: they did not change existing procedures, but expressed minimum standards to be applied in the EU in the assessment of whether an applicant was a refugee. The assessment of the applicant's evidence and the weight attached to that evidence was a matter for the tribunal member, who had the advantage of being able to observe the applicant give her evidence. The tribunal member had previously outlined the very many inconsistencies in the applicant's evidence and the various negative credibility findings. All of the tribunal member's findings were supported by the evidence. ***O(E) (applicant) v Refugee Appeals Tribunal (respondent)*, High Court, 8/10/2009**

Eurlegal

Edited by TP Kennedy, Director of Education

EU 'Energy Roadmap 2050' – choosing the route to decarbonisation

An Irish bog – a first-rate example of carbon capture and storage

The European Commission's communication 'Energy Roadmap 2050', adopted on 15 December 2011 (COM(2011) 885/2), reminds us that the energy infrastructure that will power our homes, industry and services in 2050 is now in design and being built. The EU's decarbonisation objective and commitment to reduce greenhouse gas emissions (GHG) to 80-95% below 1990 levels by 2050 brings challenges that the roadmap examines within the context of ensuring security of energy supply and competitiveness.

Even though the 2020 goals will help to reduce emissions they are insufficient to achieve the EU's decarbonisation objective. At the current rate, less than half of the decarbonisation level will be met by 2050.

The roadmap investigates possible routes towards the energy system's decarbonisation. All routes indicate major changes in carbon prices, technology and networks. Various scenarios are examined, including those of member states and stakeholders. Uncertainty is associated with the results due to timelines and difficulty in anticipating factors, such as the occurrence of an oil peak, and commerciality of carbon capture and storage (CCS) (see Directive 2009/31/EC on the geological storage of carbon dioxide).

The scenario analysis is, therefore, only of an illustrative nature. Unsurprisingly, uncertainty is a major barrier to investment. However, there is evidence of a number of clear trends, challenges, opportunities and structural changes to design policy to create a framework for investors. While not seeking to replace national, regional and local efforts to modernise energy supply, the roadmap nevertheless seeks to develop a long-term European technology-neutral framework, within which such policies become more effective. A European approach to the energy challenge is viewed as increasing security, solidarity and lowering costs.

Competitive and decarbonised

The energy sector itself is the greatest producer of GHG. Therefore, the need to reduce GHG lies heavily on its shoulders. If global energy markets become more interdependent, the EU's neighbours and global energy trends will have an impact on the progress that the EU can make. The roadmap outlines seven scenarios categorised into what are termed as 'current trend scenarios' and 'decarbonisation scenarios'.

The current trend scenarios are a 'reference scenario' and 'current policy initiatives' (or CPI). The reference scenario comprises current trends and long-term projections on economic development, as well as adopted policies, such as the 2020 targets and the *Emissions Trading Scheme (ETS) Directive* 2003/87/EC (as amended). On the other hand, the CPI update measures adopted, for example, subsequent to the nuclear incident at Fukushima, and proposed actions regarding the Energy Efficiency Plan 2011 (COM(2011) 109 final), and the new *Energy Taxation Directive* (COM(2011) 169 final).

Decarbonisation scenarios are: high energy efficiency; diversified supply technologies; high renewable energy sources (RES); delayed CCS; and low nuclear. The high energy-efficiency scenario includes more demanding minimum requirements for appliances and new buildings, as well as high renovation rates of existing buildings and energy savings obligations on energy utilities.

Regarding diversified supply technologies, the focus is on decarbonisation by carbon pricing, assuming public acceptance of both nuclear and CCS. In terms of high RES (see Directive 2009/28/EC on the promotion of the use of energy from renewable sources), strong support measures for RES should lead to a 75% share (in 2050) of RES in gross final energy consumption.

Delayed CCS would lead to higher shares of nuclear energy, with decarbonisation pushed by carbon prices. Low nuclear (that is, should no new nuclear be built) is forecasted to result in a higher penetration of CCS.

Strategies to deliver future goals

Combined, the scenarios illuminate possibilities that can help shape decarbonisation strategies today that are predicted to deliver full effects by 2020, 2030 and beyond. In this regard, ten factors are presented:

1) The scenarios confirm that decarbonisation is possible, and in the long run, without the cost associated with current policies,
2) All decarbonisation scenarios demonstrate a transition to an energy system founded on higher capital expenditure and lower fuel costs,
3) All scenarios also indicate that a greater role will be played by electricity, which will need to contribute to decarbonisation of transport and heating/cooling; and for this to occur, the power generation system requires structural change,

4) Most scenarios suggest an increase in the price of electricity up to 2030, but it then begins to decline,
5) Expenditure on energy and energy-related products (including transport) will increase for households, and will be significant for SMEs; over time, however, the rise in investment costs on appliances, vehicles and insulation becomes less significant than the reduction of expenditure on electricity and fuels,
6) In all decarbonisation scenarios, very significant energy savings are required to be reached, which requires a stronger decoupling of economic growth and energy consumption,
7) In all scenarios, the RES share increases substantially, achieving at least 55% in gross final energy consumption by 2050,
8) If commercialised, CCS will contribute significantly in most scenarios,
9) In the member states where nuclear energy is pursued, it is expected to contribute significantly in the energy transformation process, as it is a key source of low carbon electricity generation,
10) As a result of greater renewable generation, decentralisation of the power system and heat generation will increase, but the decentralised systems will increasingly have to work with centralised large-scale systems (for example, nuclear and gas power plants).

It should be noted that the scenario results for decarbonisation scenarios assume that climate action is taken at global level. Consequently, in implementing the roadmap, the EU has to be mindful of progress and action in other countries, and also take account of international developments.

From 2020 to 2050

The challenges and opportunities in moving from 2020 to 2050 are many. With respect to transforming the energy system, a number of factors come into play. These are highlighted in the roadmap as:

- Energy saving and demand management being a responsibility that everyone bears, with a prime focus on energy efficiency,
- Switching to RES, so that there is a higher share of renewable energy beyond 2020,
- The key role of gas in the transition (as a substitution for coal and oil),
- The transformation of other fossil fuels, that is, their adaptation to changes in demand resulting from the switch to RES and alternative fuels,
- The important contribution of nuclear energy, given that it is a large scale, low-carbon option, as well as
- Smart technology, storage, and alternative fuels such as bio fuels, methane and liquefied petroleum gas.

Rethinking the energy markets requires consideration of several elements, most notably:

- New ways to manage electricity (for example, given the need for flexible resources in the power system),
- Integrating local resources and centralised systems (for example, developing a smarter distribution grid and having a more integrated view on transmission, distribution and storage),
- Mobilising investors,
- Engaging the public (as the transition will affect employment and jobs, and vulnerable consumers may need support to finance necessary investment to reduce energy consumption), and
- Driving change at the international level, with particular focus on North Africa.

Sense of urgency

The roadmap demonstrates the feasibility of decarbonisation, but a greater sense of urgency and much greater political ambition is called for. The European Commission is to regularly update the roadmap, reassessing it, and envisages an iterative process between member states, through their national policies, which achieves an energy system transformation that delivers decarbonisation, greater security of supply and increased competitiveness.

According to the commission, ten conditions require to be met to achieve the new energy system: immediate prioritisation of the EU's Energy 2020 strategy (that is, all existing legislation to be applied, and current proposals to be adopted quickly); a dramatic increase in energy efficiency; continued special attention to development of renewable energy; increased investment in R&D and technological innovation; resolving regulatory and structural shortcomings that prevent an integrated market; a better reflection of costs within energy prices; new energy infrastructure and storage; strengthening of the safety and security framework; a broader and more coordinated approach to international energy relations; and the establishment of concrete milestones, as well as definition of the 2030 policy framework.

On this basis, the commission is to bring forward further initiatives, commencing with proposals on the internal market, renewable energy and nuclear safety – all of which are expected in 2012.

Diane Balding is a member of the Law Society's EU and International Affairs Committee.

Recent developments in European law

EMPLOYMENT

Case C-586/10, *Bianca Kücük* 26 January 2012

EU law is based on the premise that contracts of indefinite duration are the general form of employment relationship. Member states are obliged to adopt measures aimed at preventing any abusive use of successive fixed-term employment contracts. Under Directive 1999/70/EC, there must be "objective reasons" that justify renewal of such contracts.

Under German law, the temporary replacement of an employee is such an objective reason, including cases of replacement to cover maternity or parental leave. Where there is no objective reason for renewing a fixed-term employment contract, under German law that contract becomes a contract of indefinite duration.

The applicant was employed as a clerk in the court office of the Cologne District Court for 11 years on the basis of 13 fixed-term employment contracts. She was replacing permanent court clerks who were on temporary leave (such as paternal leave).

Before the Labour Court of Cologne, she argued that her contract had become a contract of indefinite duration in the absence of any objective reason justifying its being limited in time.

The Federal Labour Court made a reference to the CJEU concerning the interpretation of the relevant provisions of EU law. The court held that a temporary need for replacement staff – as provided for under German law – may, in principle, be an objective reason under EU law justifying both fixed-term contracts being concluded with replacement staff and the renewal of those contracts.

In the assessment in a specific case of the issue of whether the renewal of a fixed-term contract is justified by an objective reason, such as temporary replacement of staff, the national authorities must take account of all the circumstances of the case, including the number and cumulative duration of the fixed-term contracts concluded in the past with the same employer. G

NOTICES

WILLS

Archer, Marian (deceased), late of Fintramore, Spanish Point, Co Clare, who died on 25 November 2011. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Lorraine Burke, of Houlihan Burke & Company, Solicitors, Salthouse Lane, Ennis, Co Clare; tel: 065 684 2244, email: lburke@houlihanburke.ie

Duncan, Samuel (deceased), late of The Commons, Raphoe, Co Donegal, who died on 21 October 2010. Would any person having knowledge of a will made by the above-named deceased please contact Shauna McSorley, John Fahy & Company, Solicitors, 8 Bowling Green, Strabane, Co Tyrone, Northern Ireland; tel: 0044 287 138 2356

Gallagher, John (deceased), late of 63 Foxfield Road, Raheny, Dublin 5, in the county of Dublin, who died on 9 September 2011. Would any solicitor holding or having knowledge of the whereabouts of an original will, executed on 16 October 2007 by the deceased, please contact Colin Morris, solicitor, Moroney Barron Solicitors, 49a Donaghmede SC, Donaghmede, Dublin 13, in the county of Dublin; tel: 01 832 7899, fax: 01 851 2085

Hehir, Philomena (deceased), late of 3 Island Road, Assumpta Park, Limerick, who died on 18 April 1994. Would any person having knowledge of an original will made by the above-named deceased on 8 January 1992 please contact Frances Twomey & Co, Solicitors, 80 O'Connell Street, Limerick; tel: 061 316 191, fax: 061 316 567, email: enquiries@twomeysolicitors.ie

McAnallen, Gertrude D (deceased), late of The Diamond, Clones, Co Monaghan and formerly of 13 Grange Park, Rathfarnham, Dublin 14. Would any person having knowledge of the whereabouts of a will made on 25 August 1998 by the above-named deceased, who died on 24 August 2001, please contact Morgan McManus, Solicitors, The Diamond, Clones, Co Monaghan; tel: 047 51011, fax: 047 51679, email: law@morganmcmanus.ie

Reddington, Anthony (deceased), late of Keelogues, Ballyvary, Castlebar, Co Mayo, who died on 28 November 2011. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact James Cahill of Cahill & Cahill, Solicitors, Ellison Street, Castlebar, Co Mayo; tel: 094 902 5500, fax: 094 902 5511, email: info@jamescahill.com

Slee, Bridget Mary (otherwise Breda) (deceased), late of Middleton Nursing Home, Courtown, Gorey, Co Wexford, and formerly of 9 Cluain Oir Monamolin, Gorey, Co Wexford, who died on 9 December 2011. Would any person having knowledge of the whereabouts of any will by the above-named deceased please contact O'Doherty Warren & Associates, Solicitors, Charlotte Row, Gorey, Co Wexford; tel: 053 942 1587, fax: 053 942 1313, email: info@odohwar.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by the Sisters of the Holy Faith Trust Company

Any person having a superior interest or any intermediate interest in all that and those the hereditaments and premises known, among other things, as Silverstream and portion of St David's Secondary School, Marine Road and Kimberley Road, Greystones, in the county of Wicklow, being the subject of a lease dated 18 May 1904 from Susanna Doyle, Margaret Copley, George David Beggs and others to Samuel Lundie, and therein described as all that plot or parcel of lands of Lower Rathdown, containing one acre, three roods and 24 perches statute measure therein, particularly described and situate in the parish of Greystones and half barony of Rathdown and county of Wicklow (the area of land affected by the present application is 2,200 sq meters or 0.5584 acres).

Take notice that the Sisters of the Holy Faith Trust Company, being the person currently entitled to the lessees interest in the said lands and premises under the lease, intends to apply to the county registrar for the county of Wicklow for the acquisition of the lessor's and all superior interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the Sisters of the Holy Faith Trust Company intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Wicklow for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests up to the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 5 April 2012

Signed: Corrigan & Corrigan (solicitors for the applicant), 3 St Andrew Street, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (Number 2) Act 1978* and in the matter of the property known as and situate at Bridge House, Main Street, Celbridge, Co Kildare, and in the matter of an application by Fergal Reidy

Take notice that any person having any interest in the fee simple estate or any intermediate interest in all that and those hereditaments

RATES

Professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €147 (incl VAT at 23%)
- **Title deeds** – €294 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €147 (incl VAT at 23%)

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for May *Gazette*: 18 April 2012. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877) and premises known as and situate at Bridge House, Main Street, Celbridge, Co Kildare, held by the applicant under a yearly tenancy made between Castletown Estate Company Limited of the one part and Mary Jane Brennan of the other part in or about the year 1890 for the yearly rent of £12.50 (old currency) or €15.90 (new currency).

Take notice that Fergal Reidy, being the person entitled to the lessee's interest in the tenancy, intends to apply to the Kildare county registrar at Circuit Court Office, The Courthouse, Naas, Co Kildare at 11.30am on Friday 11 May 2012 for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interests in the said property is called upon to furnish evidence of their title thereto to the undermentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Fergal Reidy intends to proceed with the application before the said county registrar on 11 May 2012 at 11.30am.

Date: 5 April 2012

Signed: Peter O'Connor & Son (solicitors for the applicant), Wyse House, Adelphi Quay, Waterford

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-1989* and in the matter of an application pursuant to **section 4 of the *Landlord and Tenant (Amendment) Act 1967*: an application by William Ryan and Carmel Ryan – to whom it may concern :**

Description of the lands and the applicant's leases to which this notice refers: all that and those the premises now known as 7 Upper William Street, Limerick. The applicants are the assignees of a lease for 99 years, dated 24 October 1899, between Georgina Blackham of 22 Beacon Road, Loughborough, Leicestershire (landlord) and Joseph Roches of Upper William Street, Limerick (tenant), subject to the yearly rent of stg£19.

Take notice that William Ryan and Carmel Ryan, of 7 Upper William Street, Limerick, being persons who we believe to be entitled under the above acts, propose to purchase the fee simple in the lands described in paragraph 1. Any party asserting that they are a successor in title to the above landlord or that they hold a superior interest in the said property is called upon to furnish evidence of title to the aforesaid property to the below named within 21 days from the date of this notice.

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

Date: 5 April 2012

Signed: Michael Tynan & Co (solicitors for the applicants), 16 William Street, Limerick

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by the Irish Business and Employers Confederation in respect of Knockrea House, Douglas Road, Co Cork

Take notice that any person having any interest in the freehold estate of the following property: all that and those the dwellinghouse and premises known as Knockrea House, Douglas Road, in the county of Cork, held, among other things, under an indenture of lease dated 23 February 1912 and made between Barclay Joseph Clibborn, Charles Edward Clibborn, Rebecca Harvey Clibborn, Susanna Clibborn, William Goff Clibborn of the one part and Leonard Dobbin of the other part, for the term of 168 years from 25 March 1912, subject to the yearly rent of £100 thereby reserved and to the covenants and conditions therein contained.

Take notice that the Irish Business and Employers Confederation (herein 'the applicant') intends to submit an application to the county registrar for the county/city of Cork for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property (or any of them) are called upon to furnish evidence of the title to the aforementioned property to the below within 21 days from the date of this notice.

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

Date: 5 April 2012

Signed: Orpen Franks (solicitors for the applicant), 28-30 Burlington Road, Dublin 4

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*.

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

Honolulu judge shows admirable restraint

A judge in Honolulu had to resort to a chokehold restraint when a man jumped onto his bench and broke a flagpole bearing the state flag. Department of Public Safety spokeswoman Toni Schwartz told the *Honolulu Star-Advertiser* that District Judge Lono Lee knocked down Steven Michael Hauge and restrained him after the man caused a ruckus in Lee's courtroom on 19 March.

Hauge had been going from courtroom to courtroom in the Honolulu District Court building, screaming. State Sheriff Shawn Tsuha said: "He was quite upset about something."

Hauge was arrested and charged with disorderly conduct, obstruction of government operations and fourth-degree criminal property damage. Tsuha said Hauge allegedly broke the flag's staff while swinging it.

Amish 'beard cutting' trial

The alleged ringleader in beard-cutting attacks on fellow Amish in Steubenville, Ohio, cannot rely on taxpayers to pay his legal bills, a federal judge has ruled. According to *The Huffington Post*, Mullet and 11 followers are charged in five beard- and hair-cutting attacks on other Amish last year. They have pleaded not guilty. A feud over church discipline allegedly led to attacks in which the hair of men and women were cut – an act considered deeply offensive in Amish culture. The Amish believe the Bible instructs women to let their hair grow long and men to stop shaving and grow beards once they marry.

US District Court Judge Dan Polster ruled that Samuel Mullet Sr (66), who has an 800-acre farm with oil and gas leases, can afford to pay his defence attorney. Mullet had been represented by a public defender, Edward Bryan, but now must pay the going court rate of $125 hourly if he wants to keep him, the judge ruled. Other defendants have received court-appointed attorneys.

One party, one oath

The Justice Ministry in China has ordered Chinese lawyers, for the first time, to take an oath of loyalty to the Communist party in a move that has drawn condemnation from lawyers worried about the government's attempts to rein them in.

According to the BBC and *The Guardian*, the ministry said on 21 March that all lawyers obtaining or renewing their professional licence would have to pledge their loyalty to the country and the leadership of the party.

The oath was necessary, the ministry said, to "firmly establish among the vast circle of lawyers faith in socialism with Chinese characteristics … and effectively improve the quality of lawyers' political ideology."

Muslim juror dismissed for wearing veil

A British judge has dismissed a Muslim woman from a Blackfriars Crown Court jury in London for wearing a veil, in clear violation of official guidelines from judicial authorities on the wearing of veils by jurors.

According to *The Siasat Daily*, Judge Aidan Marron QC claimed that the veil prevented him from seeing the female juror's facial expression. "In this particular case, it is desirable that your face is exposed, so I'm going to invite you to stand down," the judge told the woman.

The 2007 guidance from the Judicial Studies Board's Equality Advisory Committee says: "If a person's face is almost fully covered a judge may have to consider if any steps are required to ensure effective participation and a fair hearing – both for the woman wearing a niqab and for other parties in the proceedings."

Whistleblowers blow loud and shrill!

Company informants tempted by the prospect of multimillion dollar payouts are rushing to US regulators with audio recordings and internal documents to take advantage of a new programme that can make whistleblowing on wrongdoing lucrative, lawyers and regulators say.

The *Financial Times* said that many of the complaints involve allegations of accounting fraud and foreign bribery at financial and industrial companies. Others

include allegations of market manipulation or other crimes by hedge funds and private equity firms.

Under the programme, created by the 2010 Dodd-Frank law, any person who reports a credible tip or complaint can qualify for 10-30% of the amount that the Securities and Exchange Commission recovers through the courts or a settlement.

That could result in a big payday for an informant who uncovers a fraud that leads to a multimillion dollar settlement.

MetLife Legal Appointments

MetLife

MetLife, Inc. is a leading global provider of insurance annuities and employee benefits programs serving 90 million customers in over 60 countries. MetLife companies offer insurance, retirement and savings products to individuals and customized pension administration and benefits funding solutions for employers in addition to first class benefits packages to help attract and retain valuable employees.

Head of Legal Western Europe

The Role

Our client is seeking to appoint a senior lawyer who will be responsible for managing the lawyers and paralegals who provide legal services for the company and its international affiliates in connection with its business operations in the Western Europe Region. Your key responsibilities will include the provision of a full range of legal advice to the Western Europe Region management team and relevant company boards in addition to supporting major corporate transactions and overseeing legal support by country lawyers within the region.

The Candidate

- You will be a solicitor with at least 10 years relevant experience in both private practice and in-house corporate environments.
- A thorough knowledge of and experience in the financial services industry coupled with experience in dealing with regulators is essential. Strong exposure to life insurance operations will be a distinct advantage.
- You must be a team player demonstrating exceptional interpersonal, organisational and management abilities as well as strong communication skills.

Assistant to Head of Legal Western Europe

The Role

Reporting to the Head of Legal, you will provide support to MetLife's growing businesses in the Western Europe Region. You will be exposed to the full life cycle of the business from new business opportunities to delivering on projects to marketing/other review of existing business literature and items.

The Candidate

- You will be a solicitor with at least 5 years' relevant experience either in private practice or in-house.
- You will be expected to advise on a wide range of matters, including, for example: Contracts (review, drafting, negotiation); Insurance (including reinsurance) and Pensions; and Cross-border financial services product development and distribution (including bancassurance).
- Excellent interpersonal as well as written and verbal communications skills are essential.

A first class salary and benefits packages will be provided.
Both positions will require some travel to Continental Europe.

Want to find out more?

For more information, and/or a discussion in strict confidence, please contact our recruitment consultant, Michael Benson BCL Solicitor at Benson & Associates who has been exclusively retained for this assignment.

Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.
T: +353 (0) 1 670 3997 E: mbenson@benasso.com W: www.benasso.com

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