McCOURT IN THE ACT
New president James McCourt speaks about his plans for his year in office

NO ROOM AT THE INNS
...but the Law Society has dramatically revamped its rooms at the Four Courts

CITIZEN SMITH?
Will the Constitutional Convention turn out to be a missed opportunity?

LAW SOCIETY

GAZETTE

€4.00 **December 2012**

DARK HORSES?

Racing's turf war against performance-enhancing drugs

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… 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

All aboard the train to Mosney, so!

DUBLIN

John Glynn has hit the road running since he took up the mantle just a few weeks ago from Geraldine Kelly – a president who has certainly put it up to poor John.

But it's a challenge he'll take in his stride. His council has already set out a busy agenda, and while those in the Dublin profession who are looking forward to the pleasures of the annual conference may have to wait somewhat longer for the eagerly awaited announcement, I have no doubt that the venue will be grand. Just grand.

It's the end of the world as we know it

GALWAY

Mayan prophesies aside, 2012 is nearly over and, accordingly, James Seymour and his committee have already run two four-hour CPD seminars in November on the *Personal Insolvency Bill*, practice and procedure in the master's court, VAT, creditors' meetings, and the *Solicitors' Accounts Regulations*.

They also had the annual Mass for deceased members of the legal profession, courts service and judiciary for the city and county of Galway. The AGM is scheduled for Thursday 6 December, and James would be obliged to hear from colleagues interested in joining the committee for 2012/13. Says James: "We will have our annual Christmas social following the AGM." (Anything to attract a crowd, I guess!)

Continual professional developments

MONAGHAN

At Monaghan Solicitors' Bar Association's annual CPD day in Castleblayney recently were *(l to r)*: Frank Martin BL, Helen Mc Govern, Paul Boyce and Gabriel Toolan

DPP guests at Mount Falcon

MAYO

Charlie Gilmartin, the newly installed president in Mayo, presided over the usual superb annual dinner in the Mount Falcon last weekend. The dinner was very well supported by local colleagues, and I was delighted to get down to it in what is now my fifth year in a row.

Guest of honour was DPP Clare Loftus, which was especially fitting given her Bonniconlan roots. Circuit Court President Ray Groarke, together with Judges Mary Devins and Patrick Durcan, also attended and Law Society President James McCourt and director general Ken Murphy were also there. Music and dancing was provided by Holly and the Go Lights until the early hours.

It was also great to see the leaders of other bodies, including Northern Ireland, the Belfast Solicitors' Association, James Seymour of the Galway Bar Association, and John Glynn of the Dublin Solicitors' Bar Association all at the event.

Alien communications?

KILDARE

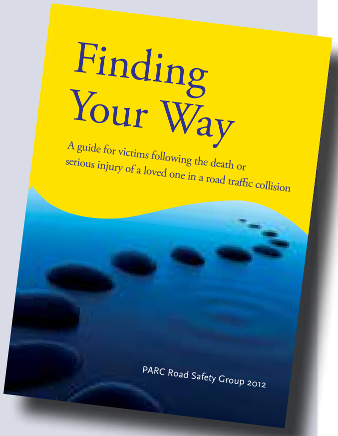
"The single biggest problem in communication is the illusion that it has taken place," wrote George Bernard Shaw, and this aphorism heads up the flyer for a most interesting CPD offering from the Kildare Bar Association in the Killashee House in Naas on Thursday 6 December.

It will deal with a subject alien to most of us lawyers: namely, how to communicate – both orally and in writing – in plain English and in a manner that is clear, concise and comprehensible. It's a dreadful indictment on us all, I suppose, but very necessary nonetheless.

The talk will also deal with 'business speak' and what would be the critical components of business communication. Don't settle for low-hanging fruit – be a proactive team player going forward and upskill your core competencies by actioning some blue-sky thinking outside the box to impact the big picture and take ownership of your mission-critical outcomes.

If you didn't flinch at that, you're part of the problem.

PARC life



Finding Your Way **– a guide for victims following the death or serious injury of a loved one in road traffic collisions – has been launched by PARC Road Safety Group.**

This incredibly useful guide is written from the perspective of people who have been involved in accidents or have experienced the loss of a relative. It outlines the steps involved in garda investigations, inquests, post-mortems and civil and criminal cases and provides links to further information. It aims to help victims ask the right questions, know their rights and where to go to seek information. The important role of the solicitor in assisting victims is highlighted throughout. The *Gazette* strongly recommends that solicitors' offices throughout the country should carry copies of this publication for clients who are victims of road traffic accidents.

The guide can be downloaded at www.parcroadsafety.ie.

In News this month...

First judge convicted and imprisoned in Ireland

Former District Court judge Heather Perrin has been sentenced to two-and-a-half years in jail for inducing a client to leave half his estate to her two children when she practised as a solicitor.

It is the first time a judge has been convicted of such a serious offence in Ireland.

Judge Ring said that the act of deception by a solicitor would have a profound effect on a profession that operates primarily on trust, and that the deception was carried out when she knew she was to be made a judge of the District Court.

Interviewed on the day of the sentencing by RTÉ, director general Ken Murphy said that he was: "not surprised" at a custodial sentence in this case. He pointed out that the case demonstrated that nobody – whether a judge or anyone else – was above the law.

Interviewer Sharon Ní Bheoláin put it to him that, while Perrin had resigned as a judge, she remained on the Roll of Solicitors. Murphy responded: "I can tell you that, as of today, the Law Society has initiated a process that will review her conduct and everything that's happened with a view to the determination being reached, ultimately by the President of the High Court, as to whether she should be struck off and removed from the Roll of Solicitors. This process will happen," he said, "without any delay."

The awards keep coming for Holohan

The firm Holohan Solicitors and Notary Public has won the 'Irish Mediator of the Year 2012' – hot on the heels of its earlier award this year for 'Irish Insolvency Law Firm of the Year'. Both awards were sponsored by Acquisition International Magazine. Bill Holohan, principal of the firm, told the *Gazette*: "We are delighted at this recognition. We believe strongly in alternative dispute resolution, and mediation in particular, as a cost-effective business tool."

Find a firm

From January 2013, the 'Find a Firm' search facility on the Society's website will be expanded to include each firm's current professional indemnity insurance information, as available on the public register, including the name and address of the qualified insurer providing the PII cover. It should be noted that firms provided cover by the Assigned Risks Pool will be listed as such.

HLJ tackles privacy v publicity conflict at annual lecture

The *Hibernian Law Journal's* annual lecture took place on 7 November in the Law Society's Education Centre. The panel of experts included Mr Justice Michael Peart, Hugh Mohan SC and Michael Kealey (in-house counsel at Associated Newspapers), who discussed the conflict between privacy and publicity – and the future of defamation in an online society.

Shatter supports new rules on conveyancing conflicts

Minister: 'The new regulation affords better protection'

The Minister for Justice Alan Shatter, in a written response to a Dáil question on 16 October 2012, came out strongly in support of the decision of the Council of the Law Society to adopt the new *Conveyancing Conflicts of Interest Regulation*.

The new regulation, which comes into effect on 1 January 2013, prohibits the same solicitor or firm of solicitors from acting for both vendor and purchaser in a conveyancing transaction.

The minister noted the extensive research and analysis contained in the Conveyancing Conflicts Task Force report, the consultation with relevant parties and stakeholders, and the taking into account, among other things, of the November 2010 joint HSE and UCD report *Abuse and Neglect of Older People in Ireland*.

In relation to additional costs, Minister Shatter said: "I would expect the relevant costs to even out on the basis of the actual work being done for each party concerned". He continued: "I also have to acknowledge the lessons of previous litigation in this area and of our last property boom, which point to the fundamental need to avoid conflicts of interests in the conduct of conveyancing transactions – be that on the part of solicitors or on the part of their clients, including where multiple, elderly or otherwise vulnerable family members may be concerned."

He concluded: "There can be no doubt that the new regulation affords better protection – both to solicitors and to their respective clients – from any claims, now or in the future, that the issue of undue influence arises in relation to any conveyancing transaction concerned.

"Similarly, in non-family conveyancing transactions, the interests of seller and purchaser would seem better represented and protected in their own right under the new regulation."

The practical implications of the recent Children's Referendum examined

The newly named Family and Child Law Committee is inviting members to the first in a series of information and discussion forums starting in Dublin on Monday, 10 December, at Blackhall Place, from 5 to 7pm. The two-hour sessions will be chaired by Carol Anne Coolican (Chairman of the Family and Child Law Committee). Other speakers will include Donagh McGowan, Sinead Kearney and Noeline Blackwell. John McDaid (Head of Civil Operations, Legal Aid Board) will have an input into areas of mutual concern.

The focus will be on the implications of the Children's Referendum, forthcoming legislation and on the practical approach to hearing the voice of the child. Attendance is free and refreshments will be served after the event. Two CPD points are on offer to those attending.

To register your attendance, please email Colleen Farrell (secretary of the Family and Child Law Committee) at: c.farrell@lawsociety.ie.

Arthur Cox is 'Irish Law Firm of the Year'

Arthur Cox has been named 'Irish Law Firm of the Year' at *The Lawyer* European Awards recently, beating off competition from all of Ireland's largest firms. McCann FitzGerald was 'highly commended' in the same category. *The Lawyer* commented on Arthur Cox's "commitment to excellence across the board and a clear strategic vision".

Other winners at the awards were Portolano Cavallo Studio Legale, Italy (European Specialist Firm of the Year); Watson, Farley & Williams, Germany (International Law Firm of the Year); Florentin Tuca, Tuca Zbârcea & Asociatii, Romania (European Managing Partner of the Year); and Noerr, Germany, various European offices and New York (European Law Firm of the Year).

James McCourt elected president of the Society for 2012/13

James McCourt has begun his term as President of the Law Society of Ireland for the year 2012/13, with effect from 2 November 2012. He is joined at executive level by senior vice-president John P Shaw and junior vice-president Stuart Gilhooly.

James (56) is a partner in the law firm O'Mara, Geraghty, McCourt Solicitors, Northumberland Road, Dublin 4. He lives in Sandymount in Dublin. He is the eldest son of Jim and Moira McCourt and has three sisters and one brother. Married to Barbara Cotter (a partner in A&L Goodbody), they have three children, Lucy, Ally and Jeff.

James was educated in Belvedere College, Dublin. He graduated in 1978 with a degree in politics and economics from UCD. He qualified as a solicitor in 1981, having served his apprenticeship with Pearts Solicitors. His first solicitor position was with George D Fottrell & Sons. In 1995, with Ciaran O'Mara and the late Anita Geraghty, he set up the law firm O'Mara, Geraghty, McCourt Solicitors.


PIC: LENSMEN PHOTOGRAPHIC AGENCY

The Law Society's new president for 2012/13, James McCourt, with senior vice-president John P Shaw *(left)* and junior vice-president Stuart Gilhooly

Mr McCourt has been an active member of the Law Society Council since 1993. He has served on Council every year since and has chaired many of the Society's most senior committees, including the Regulation of Practice Committee, the Complaints and Client Relations Committee, and the Litigation Committee. He has been involved in a representative capacity with various bodies, including the Society of Young Solicitors and is a past-president of the Dublin Solicitors' Bar Association.

COUNCIL ELECTION 2012

The scrutineers' report of the result of the Law Society's annual election 2012 shows that the following candidates were provisionally declared elected. The number of votes received by each candidate appears after their names: John P Shaw (1,361), David Lavelle (1,308), Christopher Callan (1,255), Michael Quinlan (1,244), Michelle Ní Longáin (1,207), Patrick Dorgan (1,188), Brendan Twomey (1,165), Maura Derivan (1,146), Daniel E O'Connor (1,117), Eamon Harrington (1,115), Deirdre O'Sullivan (1,100), Sonia McEntee (1,082), Barry MacCarthy (1,049) and Simon Murphy (979).

***Provincial elections* – as there was only one candidate nominated for each of the provinces of Leinster and Ulster, there were no elections. The candidate nominated in each instance was returned unopposed: *Leinster* – Andrew J Cody; *Ulster* – Garry Clarke.**

***Nominations* – the scrutineers wish to remind all members of the Law Society that it is the responsibility of each candidate for election as a member of the Council of the Law Society to ensure that their nomination is in order. Candidates must ensure that their nominators have nominated no more than two candidates – see bye-law 6(7)(c).**

Panel workshop focuses on run-off PII cover and closure

The annual workshop for members of the panel that assists solicitors in difficulty with the Law Society was held in late October. This year, the workshop focused on the new provisions for run-off professional indemnity insurance cover for solicitors who are retiring. This is relevant to panel members, not only in the context of helping other solicitors, but also for themselves when planning for retirement. Sorcha Hayes, the Law Society's practice regulation manager, spoke on this topic. Therese Clarke (senior solicitor, Regulation Department) spoke about the *Close of Practice Guidelines*.

The panel members assist solicitors with their initial response to the Law Society, following notice to the solicitor of a complaint or other difficulty in relation to their practice. Panel solicitors often find that they are also asked to become involved in the regulatory process.

Panel work, within the ambit of the scheme itself, is on a voluntary basis. However, if a solicitor is taken on as a client later in the regulatory process, it will be presumed that he will be charged a fee and that the solicitor in difficulty will be a client of the panel member's practice.

Ireland's human rights protections examined at conference

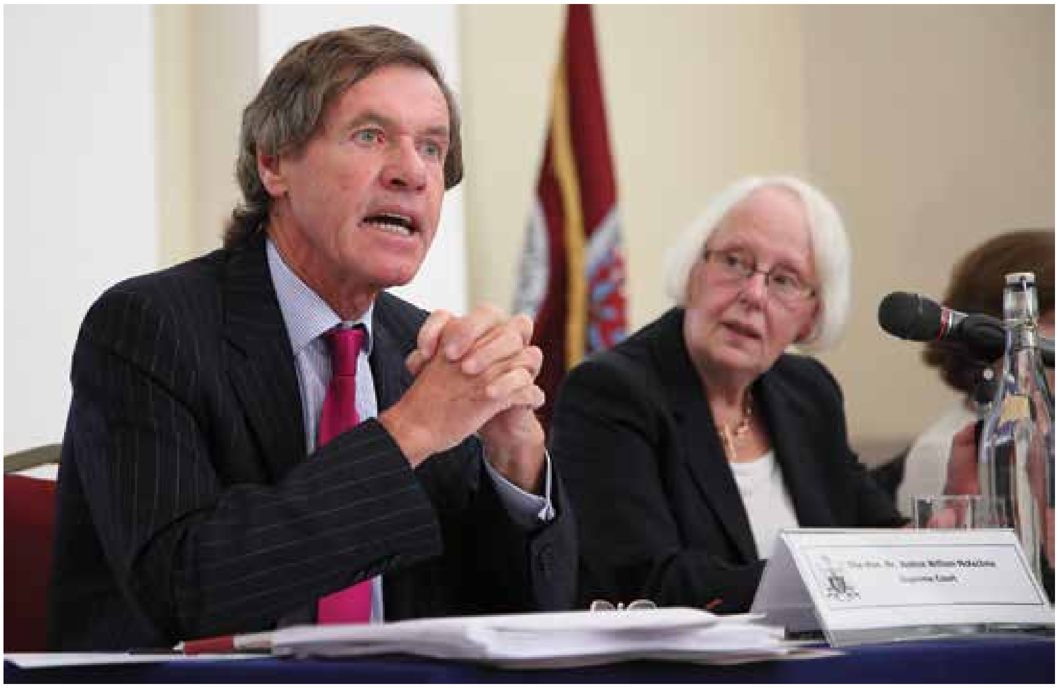
The Law Society of Ireland and the Irish Human Rights Commission (IHRC) hosted their tenth Annual Human Rights Conference on Saturday 13 October, *writes Sarah McDonald*.

Over 240 people attended the event, which was held in the Presidents' Hall at Blackhall Place. The conference examined the effectiveness of the Irish Constitution, the *European Convention on Human Rights*, and the law of the European Union in advancing human rights protections in Ireland.

The role of the courts, quasi-judicial and administrative bodies in protecting fundamental rights were also considered.

The main aim of the conference was to stimulate discussion and debate, enrich understanding of human rights and encourage deeper consideration of how human rights can be further promoted and better protected in Ireland.

Some of the papers are now available to view on the websites of the Law Society (www.lawsociety.ie) and Irish Human Rights Commission (www.ihrc.ie).



Mr Justice William McKechnie of the Supreme Court addresses the audience at the annual Human Rights Conference

AISLING PENS HUMAN RIGHTS ESSAY WINNER

The winner of the Annual Human Rights Essay Prize 2012 is Aisling Dillon LLM, a student in child and family law at University College Cork. She was presented with her prize at the Annual Human Rights Conference in October. The annual prize identifies a specific aspect of human rights law that the Society's Human Rights Committee believes will have significance for Irish law. The competition is open to all law students, trainee solicitors, students of the King's Inns, undergraduates and postgraduates.

Aisling's winning essay was entitled 'The Law Concerning Voluntary Patients Under the *Mental Health Act 2001* Is In Need of Reform.'

Four courts fail to make the grade – now face the chop

Achill, Ballyhaunis, Swinford and Westport courthouses are all facing the axe – which could leave Mayo with just three: Castlebar, Ballina and Belmullet.

Solicitors in Mayo were informed by the Courts Service last June that the county's courthouses would be subjected to a "detailed evaluation", in consultation with each court and local authority.

Each court building was scored under eight headings, including caseload, physical condition of the building, distance from an alternative venue, disabled access and technical facilities.

Any courthouse scoring less than 23 points is being considered for closure. The courthouses that have fallen short of the cut-off point include: Ballyhaunis (8), Swinford (10), Achill (14) and Westport (19).

Charlie Gilmartin, president of the Mayo Solicitors' Bar Association, said that the association's members believed that, if the proposed closures went ahead, it would diminish the services in the affected towns.

He added: "When I started practising in 1990, there were 15 courts in Mayo.

"Today there are seven, and if these closure plans go ahead, that would be reduced to three.

"There are about 100 solicitors in Mayo and we have been campaigning against these closures, because a District Court is just that – a court for the district.

As for the criteria used for the closures, has the Courts Service considered, for example, whether there is a public transport to the nearest remaining court? Every time a courthouse closes down, it further diminishes the services in a local town," he said.

REPRESENTATION:
NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

eConveyancing Task Force seeks change to the *Electronic Commerce Act 2000*

eCONVEYANCING TASK FORCE

One of the objectives of the eConveyancing Project is to eliminate, as much as possible, the use of paper and its associated costs and inefficiencies. Currently, the *Electronic Commerce Act 2000* does not apply to the law relating to the transfer of land. The execution of deeds and statutory declarations still must be evidenced in traditional forms of writing.

Legislative change is required in order to extend digital signatures to property transactions and to confirm the legal standing of such electronic agreements. A combination of primary and secondary legislation may be required.

Ministerial regulations are needed to extend the application of the *Electronic Commerce Act 2000* to property transactions, affidavits, statutory and sworn declarations.

Primary legislation may also be required to amend or delete sections 14 and 16 of this act.

Members of the Society's eConveyancing Task Force recently made an approach to Government setting out the benefits of the project and the need to remove the legislative barrier to implementation. A response is expected from Government shortly.

MEDIA

In the media spotlight

GERARD O'DONNELL
PRINCIPAL, O'DONNELL WATERS, MERCHANT'S DOCK, GALWAY

Why he's in the news
O'Donnell represents Praveen Halappanavar, whose wife Savita died on October 28 of septicaemia following a miscarriage at University College Hospital, Galway. Praveen Halappanavar has said that both he and his wife had requested that her pregnancy be terminated, once she knew the foetus wouldn't survive, but that this was refused.

How did you become involved in this case?
I do a lot of work before the Medical Council of Ireland, representing doctors from outside the EU who are seeking registration in the Specialist Register in order to work here as consultants. A client from India referred Praveen Halappanavar to me.

I had some experience of working with the media. I have always had an interest in human rights and in the equal treatment of all persons. I realised this case would benefit from sustained exposure in the media rather than a one-off media 'storm', and so we chose to release information to the media more slowly in order to ensure that the case would have continued momentum. This certainly worked.

The case has gained both national and international exposure with networks, both in terms of television and print media across the globe having a very keen interest in the story. TV network crews from around the world have arrived in Ireland to meet with both my client and me to document for their listeners the tragedy that has befallen him, having lost his wife and unborn daughter so tragically.

Your background
My father was a solicitor and was the county registrar in Galway from 1959 to 1979. I did a BA in economics and law, and then a postgraduate degree in LLB at University College, Galway. I qualified as a solicitor from Blackhall Place in 1984. I commenced practice in a partnership in 1987 and have been working in Galway ever since.

Thoughts on the matter
Firstly, this is a very tragic case that has attracted worldwide attention. It was disappointing that some politicians sought to coerce my client to partake in a process in which he had absolutely no faith or trust. As his solicitor, I was cognisant of my client's difficulties and the tragedy that had befallen him, his family and his late wife's family, and gave him advice.

I am following what are his instructions regarding the type of inquiry which he feels should be set up, and to which I feel he is entitled by virtue of the Constitution and the *European Convention on Human Rights*.

"Such stories constitute a breach of basic human rights and deserve to be properly investigated"

Ramifications
A case such as this highlights just how important the media is in society. The interest in this case could not be achieved simply by writing letters. The significant media coverage has helped place the spotlight on the Government and the issue of the vindication of the rights of its citizens.

I would have hoped that the Government would have responded promptly and efficiently to my client's request for a full public inquiry, but unfortunately, this has not yet happened.

Sadly, there may be many more cases out there that have not and will never attract such publicity. Such stories constitute a breach of basic human rights and deserve to be properly investigated so that we can ensure that, as a democracy, the rights of its citizens are properly upheld.

THE CAT'S WHISKERS: NEW READING AND WRITING ROOMS

The Solicitors' Writing Room in the Four Courts has undergone "a facelift so radical, it would make Joan Rivers blush (if she still could)". Stuart Gilhooly makes himself comfortable

Stuart Gilhooly is junior vice-president of the Law Society

He was like a cat curled up on a chair. Asleep for over an hour at this point, no one dared disturb him. It was *his* chair after all. The room was filled with polite chit-chat, files opening and closing without much work actually being done, while solicitors fell over each other's brief cases and tried to find their overcoats. And all the time he slept.

The Solicitors' Writing Room in the Four Courts building was a refuge, a home from home, a place where we could seek diplomatic immunity in a land dominated by the Bar. There are a number of places that a solicitor dare not tread in the Four Courts building. The sacred halls of the Law Library, where only counsel may place their slippered feet, and the barristers' dining room, where a mere disdainful glance from a bencher has greater power than a locked door, are the most elitist forms of the Bar's stranglehold on exclusivity. But the Writing Room was ours. The Embassy of the Law Society, where the sign 'Solicitors Only' means just that.

Except this paragon of tradition has undergone a transformation, a facelift so radical, it would make Joan Rivers blush (if she still could). A little like an alien from a made-for-TV movie, the writing room has been severed in two but has now grown legs and recovered to become two rooms, a reading room and a writing room. Unlike its poor relation, New York, which was only named twice, the Writing Room is now double the facility and two times as useful.

Beside the square hall, outside the Law Library, a room that used to house the most sought-after consultation room in the Four Courts, the Solicitors' Reading Room has made its long-awaited debut. It is undoubtedly smaller than its singularly functioned predecessor, but it is a 'Ronseal' room. It does exactly what it says on the tin. It is for reading, squire. This, of course, may take the form of a file, a newspaper, an iPad, a laptop or, God forbid, a book. Free WiFi for all solicitors means that the Reading Room has opened its DeLorean doors, slap bang in the middle of the 21st century. Any barristers thinking of 'borrowing' the Law Society WiFi should watch out for the IT police, whose virtual, unmarked vehicles are prowling the airwaves seeking internet smugglers in fancy dress.

Which is not to say that working is banned in the Reading Room. Indeed, the existence of a desk, in addition to the four wonderful, high-backed leather chairs, means that even writing is permitted in the Reading Room. Which is not to say that anything goes in this little piece of paradise. We already know that barristers are forbidden to set foot over the threshold, but the same applies to all non-solicitors. The clue is in the title: the Solicitors' Reading Room. Equally, meetings and consultations are banned, while mobile phone conversations are frowned upon. That's what the corridor is for. We'd rather you didn't bring your fish and chips fresh from Burdock's in either, and alcohol is allowed only in hip flasks. The last bit may not be true.

NEW PRESIDENT LAUNCHES NEW CONSULTATION ROOMS

James McCourt, the Law Society's new president, completed his first official engagement on 9 November, when he launched the newly refurbished consultation rooms at the Four Courts, *writes Belinda O'Keeffe*.

While the courts were taking a summer break, the 26 rooms and reception area were a hub of activity. Foremen, builders, electricians and painters all worked incredibly hard on what was one of the most important building projects undertaken by the Law Society since the refurbishment of Blackhall Place in the 1970s.

In his address, the president highlighted that this project represented a direct investment in an important member service in order to radically improve the working environment for solicitors and their clients. There are over 12,000 uses of the rooms per annum, with an average of five people per meeting, meaning that, at a minimum, 60,000 people will benefit from the new facility.

All rooms have been redesigned to capitalise as much as possible on natural light, which is supported by the latest in artificial light and air

ALL PICS: FEARGAL WARD

Law Society President James McCourt cuts the tape on the Law Society's refurbished consultation rooms at the Four Courts

"The rooms are completely free to use, so please join me. I'll be in the Solicitors' Reading Room, curled up in a chair. I may or may not be sleeping"

But this, my friends, is not the end of our tale. For the Writing Room is not dead – it has merely moved house. Immediately opposite the new shop premises, a long, narrow room with tables fully mounted along both walls containing a number of computer terminals and plenty of sockets, has an aura of hard graft. The antithesis of the Reading Room, this is where the sweat and grind of the modern solicitor takes hold and makes the Dickensian nomenclature, 'Writing Room', appear simultaneously archaic and amusingly comforting. While the name conjures up images of fountain pens, quills and parchments, the computer screen merely provides a more efficient, if less aesthetically pleasing, method of achieving the same ends.

And it's right that the titles 'Reading Room' and 'Writing Room' proudly hang on the doors. They may be a throwback, and they certainly couldn't be accused of being progressive, but do we really want some faux postmodern title that will feel good for a few years but become tired and outdated before long? No – tradition and history remain cosy bedfellows of the solicitors' profession and that's as it should be.

Meanwhile, back in the 21st century, the two new rooms are open to all members of the Law Society, who are encouraged to use them. They, along with the spectacular new consultation rooms, were built for your use and comfort. Unlike the consultation rooms (which are nonetheless cracking good value), they are completely free to use, so please join me. I'll be in the Solicitors' Reading Room, curled up in a chair. I may or may not be sleeping.

President McCourt meets the friendly consultation rooms' staff *(l to r)*: Dolores Maguire, James McCourt, Mary Bissett and Paddy Caulfield (Four Courts manager)

conditioning. Other improvements include free WiFi throughout, a separate reading room and IT/writing room, video-conferencing facilities, remote printing, phone recharging facilities, and assistive hearing loops for those hard of hearing.

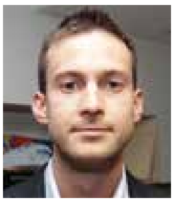
Since the rooms opened on 1 October, the Society has received hugely positive feedback from members. President McCourt thanked everybody who had worked so hard to deliver on a very tight deadline.

He also launched the online booking system – a project that has been in development for three years. The online system is already adding significant efficiency to the booking process. Users can book, amend or cancel their rooms and catering with just a few clicks of a mouse.

Finally, the president paid special thanks to Paddy Caulfield (Four Courts manager), Mary Bissett and Dolores Maguire, who man the reception desk. Members will continue to benefit from their pleasant, efficient and courteous service. To mark over 20 years of service with the Society, President McCourt presented Mary with a bouquet.

RUSSIA FOUND RESPONSIBLE FOR TRANSNISTRIA VIOLATIONS

The European Court of Human Rights has ordered Russia to pay damages to 170 Moldovan applicants after they were forced to educate their children illegally. Ruaidhri Giblin reports



Ruaidhrí Giblin is a journalist reporting from Dublin's Four Courts

The European Court of Human Rights has agreed with arguments put forward by an Irish lawyer that Russia bears responsibility for human rights violations carried out against ethnic Moldovans in a breakaway state.

Padraig Hughes, who works for London-based human rights advocates Interights, was acting for a group of children, parents and schoolteachers in a case taken against the Republic of Moldova and the Russian Federation.

Both states denied they had human rights obligations to the population of Transnistria – a region within the sovereign territory of Moldova but currently under the control of separatists with strong ties to Russia.

In 1991, the Moldovan Republic of Transnistria (MRT) administration proclaimed independence for the small strip of land in eastern Moldova. The MRT's overall political objectives are separation from Moldova and uniting with Russia.

In 1994, the MRT – which has never been recognised by the international community – banned the written form of the Moldovan language from all public fields of life. It imposed a requirement that the Moldovan language, spoken by the large ethnic Moldovan population, must be written with the Cyrillic rather than the Latin alphabet.

Padraig Hughes, speaking at the European Court of Human Rights

"The applicants in this case were faced with an impossible choice: to educate their children illegally or submit them to an educational system that provided children with functional literacy in no recognised language at all," a statement from Interrights read.

A number of schools were established where education was provided in the Moldovan language written in its natural form, with the Latin script.

Orchestrated policy of persecution

As a result, the applicants were subjected to an orchestrated policy of persecution. Latin-script schools were stormed and shut down. Teachers were detained, while children and parents were threatened, harassed and intimidated.

According to the court, the MRT's language policy, as applied to these schools, was intended to enforce "the Russification of the language and culture of the Moldovan community living in Transnistria," in accordance with the MRT's overall political objectives of unification with Russia.

The court noted that there was no evidence of any direct participation by Russian agents in the measures taken against the applicants. Nonetheless, by virtue of its continued military, economic and political support for the MRT, which could not otherwise survive, Russia had incurred responsibility under the *European Convention on Human Rights* for the violation of the applicants' rights to education.

"The applicants in this case were faced with an impossible choice: to educate their children illegally or submit them to an educational system that provided children with functional literacy in no recognised language at all"

The court also found that Moldova was obliged to use all legal and diplomatic means available to it to guarantee the rights of the applicants, as the MRT was part of Moldovan national territory.

However, the court did not find the Republic of Moldova responsible for human rights violations, as the Moldovan government had made considerable efforts to support the applicants.

The court ordered Russia to pay each of the 170 applicants €6,000 compensation for violations of their right to education. Irish lawyer Padraig Hughes said that the damages awarded in this case would mean a lot to the applicants, considering what they have gone through for the past 15 to 20 years.

Welcome signal

According to Hughes, the decision of the Grand Chamber was a welcome signal that 'legal black holes' would not be tolerated by the European Court of Human Rights.

Ethnic Moldovans living in Transnistria have been in limbo this whole time, he said. They had

nowhere to go to seek justice and could not construct a case before a court that was capable of implementing its own decision.

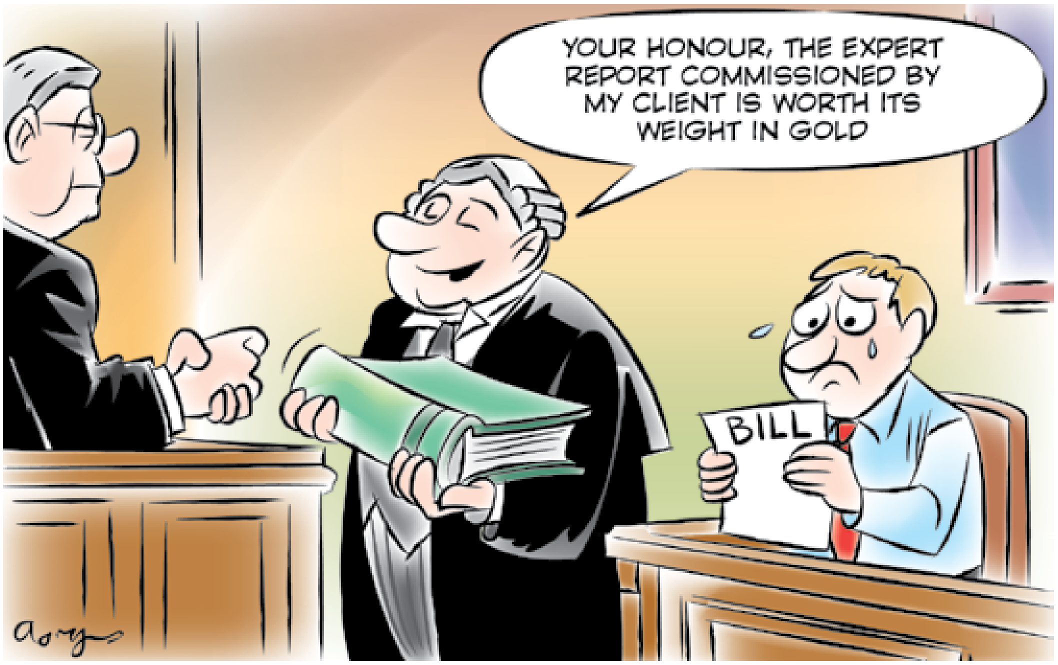
Part of Interights' argument, Hughes said, was that you cannot have a territory that is unaccountable to any international convention like the *European Convention on Human Rights*. He added that the situation had improved for ethnic Moldovans living in Transnistria, but there was still an undercurrent of intimidation and discrimination.

Hughes, who joined Interights in 2008, said much of his experience was gained while working at the Bar in Ireland. Interights was fairly unique, he said, in that the organisation frequently goes to court, compared with other human rights advocates. "We're always happy with good results," Hughes added, "especially when we get a decision which resonates beyond just that case. When we get a result that impacts the way in which countries implement a national standard and ensures those standards are adhered to, that is important for us at Interights." G

LOOK IT UP

- *Catan and others v The Republic of Moldova and Russia* (application nos 43370/04, 8252/05 and 18454/06)

When is a principle not a principle?



From: Richard E McDonnell, Richard H McDonnell, Solicitors, Ardee, Co Louth

Is the central tenet of the law of tort not still that the innocent victim of a tort is entitled to be put back into the situation in which he or she would have been, but for the commission of the tort in the first place? If so, why does such a victim have to pay from his/her own resources the increasingly substantial shortfall between the fee allowed by a taxing master for an (essential) medico-legal report, or court standby and court attendance fees – and, in fairness to a consultant, the payment of a court attendance fee could not possibly compensate for what must be the huge disruption of his/her practice and, perhaps, cancellation of other people's operations caused by having to attend court – and the fee charged by the relevant consultant for that report or court standby or attendance?

It is all very well complaining that medico-legal report fees of up to €1,000 are excessive, but the reality of it is that, if such a fee is charged by a consultant for a report, that report will simply not be released unless and until that fee is discharged (and guess who has to fund that payment in most cases until the case is concluded?). The result is that the innocent victim must pay that shortfall.

It is all very well for a taxing master to take the view that €300 is a reasonable fee for such a report, but there is no practical reality to such a position. Can nothing be done about this (one of an increasing plethora of examples of victims of tort and, indeed, their solicitors, having to subsidise insurance companies and/or the State in accident cases)?

The most absurd example of all is the refusal by some insurance companies to refund a plaintiff the fee paid for lodgement of his claim with the Injuries Board (an institution set up after years of pressure from the insurance industry to alleviate the costs of litigation).

The quality of the legal professions must be upheld

From: Mark Jordan, Bohola, Co Mayo

As a result of the *Legal Services Regulation Bill 2011*, the question of amalgamating the legal professions appears to shimmer on the horizon of reform. Yet it is seldom considered that the very same issue acutely occupied the attention of the Irish legal profession throughout the 1880s. My observations draw heavily upon the collection of the *Irish Law Times* and *Solicitors' Journal* available at the Hardiman Library NUI Galway and present a historical perspective on the enduring question of amalgamation.

On 11 January 1884, an extraordinary meeting of the Incorporated Law Society of Ireland was held at the Four Courts, Dublin. The meeting was convened to consider amalgamation of the professions of solicitor and barrister. The proposal for amalgamation was brought by Mr William Clay (solicitor). At the outset, the issue was framed as one of the utmost public and professional importance. Initially, Clay focused on the US, citing the high "status of the legal profession in America in which the barrister and solicitor are represented by one man". The arrangement, he contended, reduced costs and facilitated commerce.

Clay continued, noting that, "as the present system stands, a suitor has to employ a solicitor, who, under the present practice, cannot appear on behalf of his client before a superior court judge. The client, therefore, has to pay for – first, the solicitor; second, his clerk; third, the scrivener; fourth, the printer; fifth, the barrister; and sixth, interest on the capital which the solicitor employs in his profession". Amalgamation, he concluded, would obviate the need for a barrister, which, he adduced, represented one-half of the solicitors outlay. Further duties of the clerk and printer would only be required in more complex cases.

Clay concluded that the public perceives that the distinction within the legal profession commands "an excessive price for which they do not get value in the shape of legal assistance". Mr Rosenthal (solicitor) seconded the resolution, inquiring whether having all tasks carried out by one professional would allow for economies of scale and implicit efficiencies that would reduce costs. He concluded, noting that if the solicitor is "equal in training, experience, ability, and learning to the barrister, would not the suitor save by having his business transacted by the one class of persons"?

In response, Mr Dix (ex-president and solicitor) argued that amalgamation did not reduce the fact that "while one member of a legal firm attended the courts, and did the advocacy, another member remained in the office and did the chamber work". Dix concluded that the division of labour "was a matter of necessity, arising from the diversity in the nature of the duties they had to discharge". Amalgamation, he posited, would be retrogressive as it would reduce the deeper study of the law.

Mr Cronheim (solicitor) set out that: "It was the solicitor's business to collect and investigate the facts and prepare the brief.

He was not paid for the advocacy of the case, as was the barrister; the solicitor's was a totally different function. The barrister was paid for bringing his legal mind to bear upon the facts, for examining and cross-examining the witnesses, and for addressing the court. Where was the fee which a solicitor got that would compensate him for doing like work?" Cronheim concluded, stating that: "It was a fallacy to suppose that the same work was paid for twice because a solicitor and counsel appeared in the case."

Addressing the issue of costs, Mr Scallan (solicitor) inquired whether Clay considered that "that composite article called a lawyer … would be able to be perform all those different functions, that he would be able to be at once a barrister, solicitor, clerk, and all the rest"? He added that unless the lawyer went without the fee for carrying out the advocacy, the same costs would remain, as the division of labour was a natural one that would not be reduced with amalgamation.

Scallan then referred to contributions from Canadian practitioners that "pointed to the same thing – that under such system, the division of labour existed as it does here, and that where a lawyer got into a large practice, he simply becomes a barrister, and he is employed by other firms who perform solicitors' work". Scallan's proposal that the issue be referred to a reform committee was passed.

The report of the committee appointed to consider the subject of legal reform focused on 28 jurisdictions and concluded, after two years, "that it is undesirable that steps should be taken by the Incorporated Law Society to promote an amalgamation of the professions of barrister and solicitor".

The report, having considered that "the professions of barrister and solicitor were amalgamated in 24 countries, states or colonies, while the system of separate professions exists in only four countries, states, or colonies", proposed both greater ease of transfer between the professions and the promotion of greater opportunities for solicitors.

The report provoked vigorous discourse. Mr Scallan drew on contributions from US practitioners that set out that "the constant personal contact between counsel, parties, and witnesses is prejudicial to the elimination of truth" and "that the functions [of solicitor and barrister] require different training, different characteristics, different temperaments".

Another US attorney set out that "the exclusiveness which appertains to the position of a barrister in Ireland" would "vastly aid in the control of my time and detract nothing from my knowledge of the case".

Mr Toomey (solicitor) proposed a gradual amalgamation of the professions and argued that "amalgamation did not mean breaking the division of labour"; rather, "it would allow that division to run in a natural rather than in an artificial course. It would not bind a man by artificial divisions to a class of work for which, perhaps, he was not suited."

This dramatic and uniquely comprehensive debate, which laid bare the state of the Irish legal sector during a period of tumultuous political, societal and cultural change, provides a historical overview of what is certain to, once again, become a pressing contemporary issue.

While the records gather dust, the vigorous discourse contained within offers a unique perspective on an issue that strikes at the heart of reform of the legal sector. That is, with each reform, the professional quality of the legal sector must be uppermost in the mind of the reformer.

In this regard, the 1884 to 1886 discourse undoubtedly provides much food for thought for the proposed authority when considering the issue of unification of the solicitors' and barristers' professions. G

CHILDREN'S AMENDMENT – POST-REFERENDUM QUESTIONS

In the aftermath of the Children's Referendum, Carol Anne Coolican warns that exceptional cases require exceptional responses – necessitating exceptional resources

Carol Anne Coolican is chairman of the Law Society's Family and Child Law Committee and managing solicitor at the Law Centre, Tralee. The views expressed are personal and do not reflect those of the Legal Aid Board or the Law Society

The campaign in the recent Children's Referendum never seemed to ignite the public's interest – at least not until the Supreme Court decided that the Government's information booklet and website was "not fair, equal or impartial".

One of the reasons for public confusion in listening to the debates in the media was that the distinction between information and opinion became blurred. If there were greater public awareness of the nature of, and the decisions made in family law cases, the public engagement might have been different. Notwithstanding the low turnout, the public have voted, so where to now for children and their 'rights'?

Acknowledging that children have rights was heralded by some as the most important aspect of this referendum. The statement that children have 'natural and imprescriptible' rights that are now recognised and have been explicitly inserted into the Constitution raises the question as to what difference that will make on the ground?

State intervention, or the lack or inadequacy of it, has been the subject of reports and debates for years. The difference now is that, regardless of their parents' marital status, the focus will shift from blaming parental failure to making decisions based on the 'safety or welfare' of children.

> ***"The statement that children have 'natural and imprescriptible' rights that are now recognised and have been explicitly inserted into the Constitution begs the question as to what difference that will make on the ground?"***

It is still the case that the State must promote the welfare of children "who are not receiving adequate care and protection" (section 3(1) of the *Child Care Act 1991*), while recognising the principle clearly stated in section 3(2)(b)(ii) of the *Child Care Act 1991* that "it is generally in the best interests of a child to be brought up in his own family".

It is the necessary supports that those families in difficulty require that should now be the focus of our attention. These 'exceptional cases'; require exceptional responses, which will necessitate exceptional resources.

A second chance

The articles relating to adoption met with more popular approval than the other proposed changes, on the basis of providing abandoned children and their foster families a 'second chance'.

The proposed changes in adoption law are set out in the legislation published in tandem with the referendum proposal. This provides for the voluntary placement for adoption and the adoption of children, whether their parents are married or not. The parents must have effectively abandoned the child for a period of three years, and, in such cases, the High Court must consider what is in the best interests of a child before making an adoption order.

Best interests of children are now paramount in adoption, family and child-care cases. Like motherhood and apple pie, most people are in favour of protecting children and prioritising their welfare. This was clear from both sides of the debate. The argument seemed to be about how to protect and provide for children's welfare. How many children would have been saved the hurt caused by Jimmy Saville and others if there had been a culture of listening to children and considering their welfare?

Views of children are heard in family and public law proceedings on a daily basis – but not in all cases, and not in a uniform manner. The difficulty has been that, to date, the views have been articulated, interpreted and presented through their parent(s), a social worker, a solicitor or guardian *ad litem* (or a combination of both), or an expert/professional on their behalf.

Occasionally, a child's view is expressed by the child personally. There are also many cases where the views of children have not been heard. The child has a right to be heard – this is a matter of child protection and access to justice. The challenge now is to establish how, where and who hears the child in these cases. This is the debate that needs to take place.

Secret courts

'Secret courts' met with much criticism during the referendum campaign. The Government has given a commitment to produce legislation to address the *in camera* rule. The privacy and identity of parents and children must still be protected. The lack of transparency as to how and why decisions are made in family and child-care

cases has given rise to suspicion and has fuelled opinion based on incomplete information.

These are sensitive, emotional and sometimes traumatic cases. The public would benefit from being better informed as to what happens and why – based on accurate facts. Practitioners would benefit from having reasoned decisions available by way of precedent. This would lead to a more uniform approach, which would assist in advising and settling these cases, where appropriate.

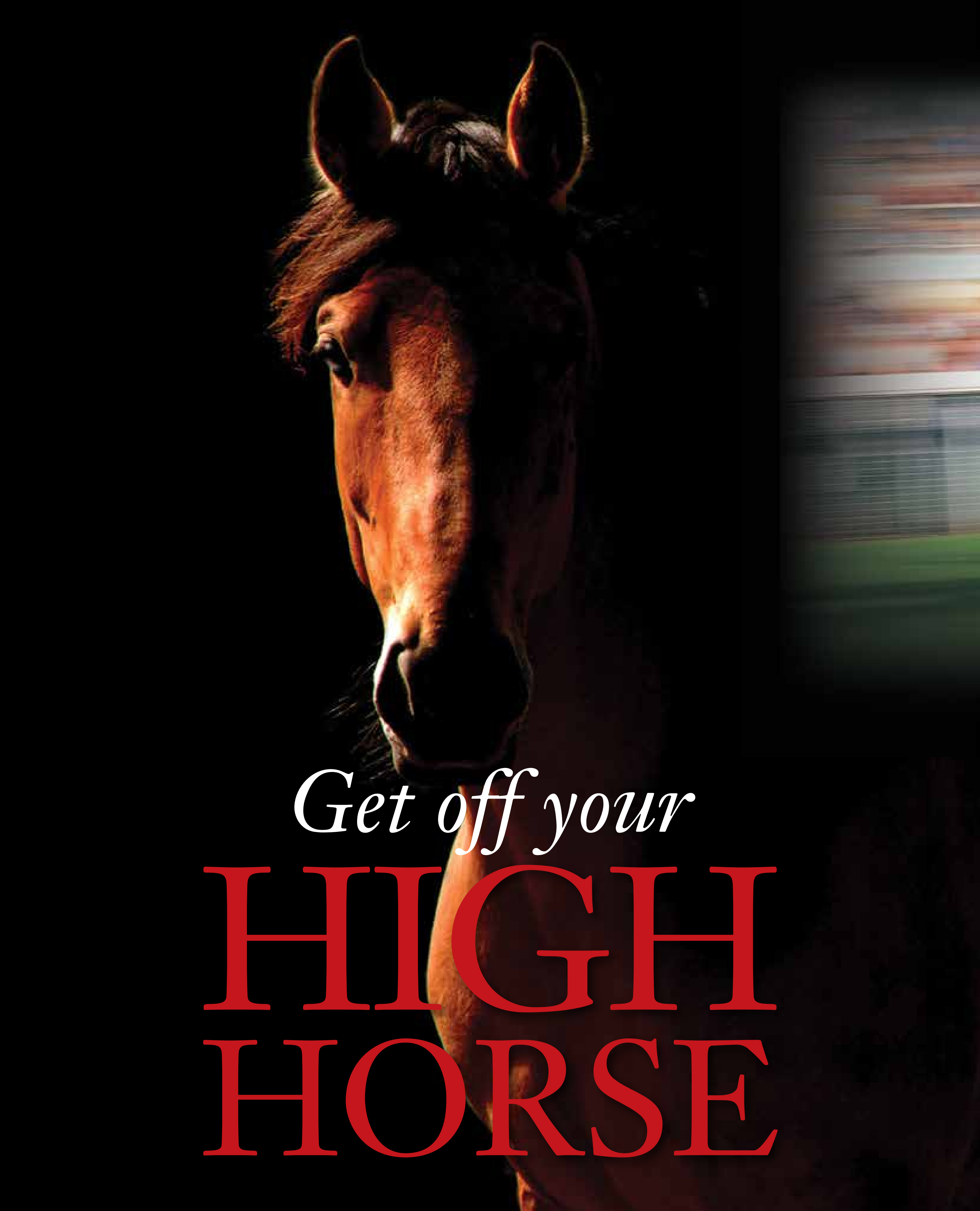
> ***"The child has a right to be heard – this is a matter of child protection and access to justice. The challenge now is to establish how, where and who hears the child in these cases. This is the debate that needs to take place"***

Resources are scarce. When I first started working in this area, I was under the mistaken impression that teachers were best placed to identify 'troubled children'. Those who were coming to school with inadequate clothing/lunch, no homework done, coupled with aggressive/passive behaviour or falling asleep in class, or displaying or verbalising sexual behaviours inappropriate to their age, could be identified. An assessment of the causes for presenting in this manner could result in the resources or intervention required being put in place.

After some time, I realised that the children who may be the subject of abuse or neglect could be identified in maternity wards, where mothers presented with little or no pre-natal care, were addicted to drink or drugs, were subject to domestic violence, or were homeless.

Resources need to be concentrated on supporting mothers and families from birth to address the problems that make children born in these circumstances vulnerable to abuse or neglect. If children are only identified to be at risk at the age of six or seven, there may be younger siblings, all of whom may have gone through a period of abuse or neglect that was preventable if the appropriate supports and structures had been put in place at birth. Surely this is a better use of resources than courts – and the consequent economic, emotional and social cost of the present system.

The public, the judiciary, practitioners, Courts Service, HSE, guardians *ad litem* and other professionals and experts all have a part to play. Let us seize the opportunity to rationally debate how best to use scarce resources to better the lives of children in the future.



Get off your HIGH HORSE

As with most other sports, the horseracing industry is fighting a constant turf war with those who use illegal performance enhancing or inhibiting substances to cheat. Hilary Forde takes the reins

Hilary Forde is anti-doping/compliance solicitor at the British Horseracing Authority

The realm of doping conspiracies and testing of high performance competitors isn't just limited to athletes and cyclists.

For centuries, doping in horseracing has been a contentious topic, with the study of performance-enhancement practices in horseracing originating from as early as 1140.

Coincidentally, just as the details of one of the most sophisticated, professionalised and successful doping programmes in cycling has emerged, and the capability of sports governing bodies' ability to promote and police their sport is being called into question, doping in horseracing has also come under the spotlight.

The latest and most exotic doping scandal has 'leapfrogged' its way into horseracing, thanks to the South American waxy monkey tree frog (*Phyllomedusa sauvagei*), in the form of a substance called demorphin, which is secreted by the amphibian. Demorphin blocks pain while increasing feelings of excitation and euphoria – all of which would cause a horse to run faster and harder, despite injuries.

For months, racing regulators in the United States heard rumours of this powerful performance-enhancing substance being administered. However, allegations of a painkiller far stronger than morphine could not be confirmed from the post-race sampling analysis until a laboratory in Denver upgraded

FAST FACTS

- The study of performance-enhancing practices in horseracing goes back as far as 1140
- The most recent doping scandal is from the US, where a substance called demorphin (secreted by the waxy monkey tree frog) has led to more than 30 horses from four states testing positive for the substance
- Racing authorities are engaged in a constant battle to introduce and enforce stringent regulations concerning anti-doping and medication control for both horses and jockeys
- The burden of proof falls on the 'subject' – the owner or jockey. There is a presumption of negligence on the subject based on his or her active duty to avoid breaching the relevant regulations
- In instances where a medication or doping violation has taken place, liability must be strict, as a subject has an active, not a passive, duty to ensure racing regulations of the authority in question are adhered to

"In instances where a medication or doping violation has taken place, liability must be strict, as a subject has an active, not a passive, duty to ensure racing regulations of the authority in question are adhered to"

its testing procedures and, in recent weeks, over 30 horses from four states in America have tested positive for the substance.

Champion the wonder horse

Demorphin, nevertheless, is just the latest in the long list of illegal performance-enhancing or inhibiting substances that have been introduced to horseracing. Consequently, racing authorities must ensure and enforce stringent regulations concerning anti-doping and medication control to counteract this.

The misuse of medication and doping practices in horseracing has brought with it a plethora of concerns for the integrity of the industry and remains an issue of continuous contention for the regulators of the sport.

One of the first documented accounts of doping in horse racing is recorded in 1901, in a *New York Times* article entitled "'Dope" an American term – its uses and abuses on the world's race tracks'. An extract from the article reads: "The first use of the 'dope' went unnoticed by the winter track officials and attracted little more than passing attention among the frequenters of the tracks. The betting men regarded the gossip they heard as only idle chatter and it was not until 'doped' horses had actually run races, and their several followings had taken enough money out of the betting ring to make the layers feel that a new influence was at work among them, that the idea that drugs could bring about such results was considered seriously."

For a sport that bases its integrity and public acceptance on the concept of fair and safe racing, the misuse of doping and medication control to alter the outcome of a race represents a serious threat to the reputation of the sport. This is of particular concern in light of the historic links between horseracing and gambling – it is an industry that relies to some extent on the money generated from gambling in order to finance the sport.

The best horse should win, having competed in compliance with the rules of its national governing and regulatory body. To be valid and meaningful, competition results must be achieved fairly. Doping and the misuse of medications defeat this premise by giving competitors an unfair advantage – while jeopardising the welfare of horses.

Horse of a different colour

As a solicitor working in the Legal and Compliance department for the British Horseracing Authority (BHA), I apply the principle of strict liability where an alleged breach of the medication or doping rules occurs.

Therefore, the burden of proof shifts to the 'subject', and there is a presumption of negligence on the subject based on his or her active duty to avoid breaching the relevant regulations. In instances where a medication or doping violation has taken place, liability must be strict, as a subject has an active, not a passive, duty to ensure racing regulations of the authority in question are adhered to.

If a laboratory reports that a prohibited substance has been found in a blood or urine sample, it is an absolute finding. This means that each subject (usually the horse trainer) is strictly liable in respect of any substances found in a sample taken from one of their horses.

A man called horse

A prohibited substance is any substance that originates externally to a horse, whether or not it is endogenous and is listed in the categories specified in the rules of racing. Therefore, it is irrelevant whether the subject unintentionally or intentionally administered a prohibited substance that is capable at any time of acting on one or more of the mammalian body systems, since, according to the BHA rules of racing, a breach will still have occurred.

The subject will not be excused following a positive sample, except in instances where the BHA invalidates the result of the analysis in cases where there has been a material departure from the procedures set out in the rules relating to the taking and analysing of samples, or where the opinion expressed as to the nature of the substance is wrong.

MY LITTLE PONY

There are over 60 national horseracing regulatory authorities listed with the International Federation of Horseracing Authorities (IFHRA). The IFHRA sets out common objectives for member authorities to follow in order to ensure coordination and harmonisation of each country's rules. Irish horseracing is regulated by the Irish Turf Club. The main racing jurisdictions that commonly cross paths in their regulatory and governing infrastructures are:

- **Australia-Racing Victoria,**
- **The British Horseracing Authority,**
- **The California Horse Racing Board,**
- **Emirates Racing Authority in UAE,**
- **France-Galop,**
- **The Hong Kong Jockey Club,**
- **Irish Turf Club,**
- **Racing New South Wales, and**
- **The Singapore Turf Club.**

All of these authorities endeavour to operate robust systems of zero tolerance to doping, while still recognising that a percentage of positive drugs samples result from inadvertent failures in medication control when caring for a horse in training.

The investigation of doping offences involves the following two phases:

- Analysis (where the sample is taken and tested), and
- Sanctioning (inquiry before a disciplinary panel).

The role of the disciplinary panel (none of whom are employees of the BHA) is to meet to hear appeals against decisions made on the racecourse and to hold inquiries in a court constituted by the racing authority into investigations carried out by BHA officials into possible breaches of the rules of racing.

As stated above, the analysis phase is the first stage in the investigative process. This is a highly scientific process, which involves the taking and analysing of samples from the horse and/or jockey. Usual fair procedures are observed during this phase, such as offering the subject the opportunity to have a 'split' sample tested.

Following the analysis phase and the completion of the investigation into the circumstances surrounding the medication or doping violation, a disciplinary inquiry is ready to convene in order to determine the appropriate sanction.

Legal representation is not always required but is sometimes advisable, depending on the seriousness of the alleged breach. At inquiry, the disciplinary panel will hear submissions from the authority and subject (or their legal representative and expert witness, if the case requires) before deliberating on the appropriate penalty to impose. This would normally start at an entry point of Stg£1,000, depending on the range set by the authority in question, and disqualification of the horse from that race.

"For a sport that bases its integrity and public acceptance on the concept of fair and safe racing, the misuse of doping and medication control to alter the outcome of a race represents a serious threat to the reputation of the sport"

The disciplinary panel members will consider all the circumstances pertaining to the medication or doping violation, and reduce or increase the sanction depending on mitigating or aggravating factors presented in evidence at the inquiry. An experienced disciplinary panel with an equine background will ensure that consistent and proportionate penalties are imposed.

Closing the door...

Throughout my experience in presenting numerous cases before disciplinary panels, it is important to approach things on a case-by-case basis. Seldom will you be presented with an investigation where two cases arise from the same set of circumstances.

Prosecuting anti-doping offences requires a solicitor to be resourceful and innovative when preparing a case for inquiry. Before presenting a case, you will need to be certain that any scientific or procedural questions that may arise at inquiry have been systematically researched, and any other issues individual to each case have been clarified.

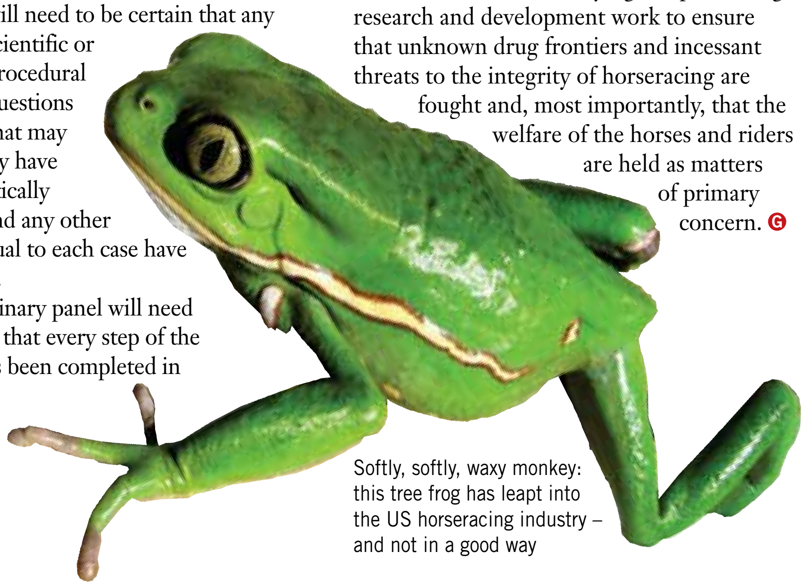
The disciplinary panel will need to be satisfied that every step of the procedure has been completed in accordance with the rules set out by the relevant authority before they can impose a penalty. Furthermore, the varying circumstances that arise in each case involving medication or doping violations enable the authority's equine science and welfare departments to continuously educate themselves on new spectres of medications and doping agents or methods of administration – in order to lessen the risk of similar breaches occurring. In addition, sanctions imposed by an authority must act as an effective deterrent to any persons who engage in the inappropriate use of medication and doping agents.

Flogging a dead horse?

Working in a disciplinary role in horseracing has afforded me the opportunity to use my legal qualifications in a very exciting industry, which is challenging yet extremely rewarding. I have prosecuted a wide range of medication and doping offences in relation to both horses and jockeys. I am continuously presented with cases arising from straightforward medication and doping offences, such as anti-inflammatory and analgesic therapeutic agents, to more complex and unusual cases where drugs not licensed for use on horses are found, such as anti-depressants or oxytocic drugs.

The disciplinary cases I have prosecuted against jockeys are less common and will usually be the result of any product that is performance impairing (for example, alcohol, cocaine and cannabis). Unlike some sports, where the use of a proprietary nasal decongestant could result in a lengthy suspension, the focus is on providing a safe arena for competition in one of the most dangerous professional sports.

By and large, although most substance breaches detected in horse and jockeys are prosecuted successfully, scientific and drug research advances mean that those willing to cheat can manipulate the system more and more. It is vital that national racing authorities work continuously with those laboratories who are carrying out pioneering research and development work to ensure that unknown drug frontiers and incessant threats to the integrity of horseracing are fought and, most importantly, that the welfare of the horses and riders are held as matters of primary concern. G



Softly, softly, waxy monkey: this tree frog has leapt into the US horseracing industry – and not in a good way

MARATHON *man*

PICS: LENSMEN PHOTOGRAPHIC AGENCY

The Law Society's new president, James McCourt, is a veteran when it comes to pacing himself. Mark McDermott joined him on a training run – and if you believe that...

Mark McDermott is editor of the Law Society Gazette

James McCourt has a reputation for enormous stamina and for enjoying the cut and thrust. "I enjoy the fight. I enjoy the challenge. I enjoy the uniqueness of each case. I enjoy using the skills that I have developed and was born with, I suppose, to cajole and persuade clients and opponents alike. That's whether I am a prosecutor, a defender, a mediator or an arbitrator."

And it's these skills that James will be bringing to the role of president, and he's looking forward to it: "It's a huge challenge, but I wouldn't do it if I didn't look forward to it. I wouldn't do it if I wasn't able to give it my full attention. I'm happy that I can do it, knowing that I have got the full support of my colleagues in the office."

James's stamina was evident, too, back in his days as a student and as a trainee. He loved college life, he says, and his years as a trainee solicitor continued in a similar vein. He got the work done, but he knocked a lot of fun out of shuttling between Dublin and London as a working student. "I knew then that, as soon as I qualified, I was going to be shackled!"

The graduate

"Like many students coming out of school in those days, I didn't know what I wanted to do. So I did a degree in politics and economics in UCD. I loved college life. And I can remember one of my sisters going to UCD afterwards and hating every minute of it and I thought – 'How could that be?' But I loved every minute of it.

"Particularly, I enjoyed the politics. I don't remember much about the economics, only that I do know that after every boom there's a bust. Maybe there's not an awful lot more to it than that!"

FAST FACTS

- > UCD nursing ground
- > Cutting his teeth as a litigator
- > His years with the DSBA and on the Society's Council
- > Main goal – to improve the public perception of lawyers
- > The city and rural divide
- > What the future holds

Very early in his UCD days, he became friendly with Prof Maurice Manning, who would later go on to become chancellor of the National University of Ireland and president of the Irish Human Rights Commission. They're still friends.

"I also met the Society's future director general, Ken Murphy, for the first time in '74. We sat beside each other on our first day in college. I don't know if it was in a lecture or in the coffee shop!

"I never had any desire coming to the end of my degree to pursue a career in politics, although I probably have, in a funny kind of way. I basically saw my primary degree as a stepping-stone, as many students do today."

His move into law "wasn't out of any innate desire to change the world. It just seemed to be a good fit for the sort of things that interested me".

Kramer vs Kramer

During his apprenticeship, his master was Michael Peart, now a High Court judge.

"I have huge time for Michael. He was an unusual kind of solicitor because of the nature of the firm as a town agency, but there were certain things that he liked to do that interested him. He was attracted to the idea of the 'solicitor advocate'. I don't know if he had defined what he was trying to do, but he ultimately did some advocacy on behalf of clients who couldn't afford barristers. He excelled at it and was complimented for his thoroughness and his abilities in no less a forum than the Supreme Court.

James qualified as a solicitor in 1981, landing his first job in a well-regarded firm, George D Fottrell & Sons. "George Drevar Fottrell & Sons had a rich history and acted for lots of landowners and others from Kildare, Meath, Dublin and beyond. The person who was the driving force behind the firm, before my time, was Gerard Sweetman, a Fine Gael TD and former Minister for Finance."

The young McCourt stayed with Fottrells for the best part of 13 years, establishing himself in defence litigation. "I enjoy litigating. Other stuff scares the wits out of me though!"

Would he describe himself more as a 'persuader' or a 'persecutor'?

"I'm more a persuader. I look for consensus. When it comes to politics and things like that, I get my way. But I don't bully. I don't bully something through that I want to get through. I will do it in a way that enables the others in the room to walk out of the forum thinking that it was their idea."

James eventually left Fottrells and moved to a new firm with two other colleagues. "I didn't want to set up on my own. That was something I was never going to do. I always wanted the support of others around me and I was prepared to compromise on the rewards. I never wanted to be a 'jack of all trades'. I wanted others who would complement whatever skills I had, or whatever skills I brought to the party. So we had an employment law specialist – the best in the business – in Ciaran O'Mara, and an extraordinarily gifted family lawyer and persuader in Anita Geraghty, who sadly passed away a number of years ago. Initially, it was the three of us in O'Mara, Geraghty & McCourt." He never regretted the move.

"I worry about the future of the sole practitioner, though. I worry about the viability of the sole practitioner in this world, where the demands to give advice on specifics grow bigger every day"

"The difference between Fottrells and my move to the new firm was that we were three people who were like-minded and of similar age. We were very much a partnership of equals. There was a lot of satisfaction in that."

Family business

James is something of an enigma. Now a died-in-the-wool Sandymounter, the neo-city boy has his roots firmly implanted in the country. He hails originally from St Margaret's, near Dublin Airport in the north of the county. He's the son of a market farmer, "because you couldn't have livestock".

"If you had livestock, you were too close to the 'cowboys'. They would ride your cattle into a ditch. So it was market gardening."

As a child, James worked on the farm, but never harboured any desire to be a farmer – "even though all of my relations, bar one or two, were in farming". His mother's family came from Moynalvey in Co Meath. "I used to spend my summers down there, driving tractors from around the age of eight. I loved that bit of it. In the summer time it was great, bringing in the hay and all that.

"Market farming in North County Dublin was not sexy, though – it was tough. The margins were very tight in that business in the 1960s, '70s, and are probably even tighter now."

James is a Belvedere man who, to get to school each morning, used to catch the 40B bus: "I could stand at my bedroom window and see it coming. You'd run down the stairs and across the road. If you did that now, you'd be mown down by traffic!"

When at Belvedere, he pulled on the rugby jersey, but describes himself as "a poor back-row or second row. I wasn't first team material when it came to rugby, I was awkward.

"Now I sort of dip in and out of the game in terms of club rugby. I enjoy Leinster and have traipsed all over Europe following them with some great friends of mine over the last ten years. Myself, my partner Ciaran O'Mara and my mates Richie Bennett and Pat O'Neill were in the vanguard when the whole Leinster thing was starting off. It was at a time when we would be as happy to go and see Munster playing in a European game in Castres, and then go up the next day to see Leinster playing away to Toulouse. Some of these mates are lawyers and some aren't, which gives some variety to life."

Finding neverland

Despite James's love affair with life, it hasn't been all fun. He has given significant amounts of his personal time to the legal profession through his service with the Dublin Solicitors' Bar Association and the Law Society's Council.

"I have been on Council since Michael O'Mahony was president (1993/94). So I'm 18 years on Council – and sometimes it seems like 180 years!"

SLICE OF LIFE

James McCourt's one-year term as president of the Law Society began on 2 November. He is the eldest son of Jim and Moira McCourt. He has two sisters who live in Dublin and another who lives in the States. His brother John is a Joycean scholar who lives and works in Trieste, in north-eastern Italy.

His mother, Moira 'Maura' Coleman, was someone who broke the mould. James speaks of her very fondly. "She was an almoner – a medical social worker – and she worked in Holles Street and elsewhere. She studied in Trinity, which in her time was most unusual. She had to get a special dispensation from the Archbishop of Dublin as a Catholic to go to Trinity. Sadly, she got sick and died nine years ago."

His dad Jim, who is still alive, suffered a stroke – "a bad one" – 25 years ago, so that he now suffers from a variant of locked-in syndrome. "When Moira got sick, he went into a nursing home, moving location only once. That's where he has been ever since."

Closer to what is now home in Sandymount, James's wife Barbara Cotter is a partner in the banking division of 'top-five' legal firm A&L Goodbody. "She never stops. It's a full, hands-on role in a very busy division. On top of that, she looks after our three wonderful children: Lucy (18), Ally (16) and Jeff (13¾)."

His first foray onto the Council was as a nominee of the DSBA, which he describes as "an excellent breeding ground for future Council members and presidents. I mean, if you look back, you've had Shields, Lynch, Clarke, Griffin, Doherty and finally McCourt serving as Law Society presidents. It gives you some idea of the association's success."

How has his family reacted to his becoming president? "I say, with tongue in cheek, my family are 'quietly pleased'. Again, it imposes a challenge there because, you know, we are all hands-to-the-pumps.

"I know, however, that it will go 'blink'… and the year will be gone. I just want to be able to look back on it and not regret that I didn't give it my best.

"I don't see it as a year for pronouncing some great big wish list, other than to arrest a race to the bottom and encourage people to restore proper standards of operating and ethics. I firmly believe that solicitors should not be afraid to stand over proper fees. They carry out very important work for their clients. They should properly charge for their time and should not be forced to cut corners."

All the president's men

Asked about his goals, he appears somewhat hesitant: "I have been asked this before, and I struggle to answer it. I would like to do what every president in the world before me would wish to achieve, and that's to improve the public perception of the lawyer and to underline the enormous importance of the lawyer for the public good.

"I want lawyers to hold their heads high and take credit for so much good that they do that's unrecognised, and that they daren't shout from the rooftops because it would be seen as self-serving.

"I worry about the future of small practices, though. I worry about the viability of these practices, including sole principals' offices, where the demands to give advice on specifics grow bigger every day."

Has the city boy forgotten his rural roots, then? How would solicitors down the country, operating in smaller practices, feel about such views?

"Many rural and urban colleagues proffer advices in relation to areas of law about which I know nothing. I know nothing, for instance, about agricultural law, patent law, banking law.

"I firmly believe that solicitors should not be afraid to stand over proper fees. They carry out very important work for their clients"

"I'm not 'dissing' rural practitioners. I like the idea of lawyers achieving a reasonable work/life balance. I like the idea of them being able to go to work knowing that they have some good support systems, either in the next room or in the next building with their competitors. That they can sleep at night when they go home and that they can enjoy watching their kids growing up – the usual stuff.

"I suspect there are too many 'big guys' in the cities who sacrifice their lifestyle and their home life almost entirely because of the constraints imposed upon them to bring in fees at whatever cost, and to charge out their billable hours. Funny enough, the same demands can be placed on the sole practitioner who is running to stand still – maybe at the cost of his or her marriage or health.

"From my observations, I think some women have a better handle on it, in that they have stood aside from the rush or the whirlwind of life so that they can have a life outside of the law. The monetary rewards won't be as great, but they seem to have a happier time. They probably live longer and they have better relationships with their children. Their male counterparts should be striving for the same."

Striving for change in the personal lives of solicitors leads to talk about changes in the offing for the profession, in particular the likely impact of the *Legal Services Regulation Bill*.

"We'll have to wait for the report of the Task Force on the Future of the Law Society. The report hasn't been written, and it would be wrong of me to pre-empt it in any way. Obviously, we have amassed a lot of information and we have engaged with the bar associations. We have received, as usual, diverse views and comments from around the country – and that's a good thing.

"We have also engaged with our colleagues in England and Wales, and in Scotland. The Scottish model, in particular – in terms of its size and scale – is a good comparator. I have to give great credit to both administrations in England and Wales, and in Scotland, in that they sent out their 'A Teams' on each occasion to meet us. Our engagement with them has been very useful."

Confidence

How is the Law Society of Ireland likely to look, then, in five or ten years' time?

"I would like to see a Society that is regarded by the members as something that can enhance and improve their lot. I hope that, when the bill finally goes through – when that uncertainty is removed – we will be able to refocus and renew the organisation and its relevance for members, whether those members are from large city firms or small rural ones.

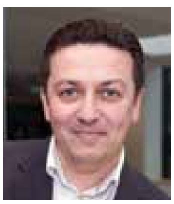
"But I think we all have to change. During my years as a solicitor, which is over 30 years now, we have evolved and morphed almost beyond recognition in how we work. It's not all to do with electronics and computers, but do bear in mind that when I first started work, there were no desktop computers. In fact, I didn't have a computer on my desk until I moved firm."

James is strong in terms of wanting to engage more with the Minister for Justice, with the banking federations, and all those with whom the Society engages regularly on behalf of its members and the general public.

What does he look forward to most about working with the minister? Is it the challenge, the fight, wanting to win?

"I don't regard it as a fight," says James. "I just look forward to engaging with Minister Shatter in a constructive manner that, hopefully, will bring about some necessary changes to the first draft of the bill. That may have occurred already, but we won't know that until we see the revisions. I think that the bill will be an ongoing challenge for the Council, for the next year and maybe beyond that."

Constitutional CRUSADE



Donncha O'Connell is a lecturer in law at NUI Galway. This article is extracted from a paper he presented at the MacGill Summer School in Glenties in July 2012. The views expressed in this article are personal

The proposed Constitutional Convention is a missed opportunity for radical appraisal of the 1937 Constitution by Irish citizens, says Donncha O'Connell, arguing that it's time to move from unthinking to thinking nationalism

The story of the 1937 Constitution, and its emergence from the messy dispensation that existed from 1922, illustrates that it is now time to move on from unthinking nationalism and fossilised values, although it would be churlish not to acknowledge that the drafting of the Constitution was a borderline visionary moment. De Valera seized the opportunity of the Abdication Crisis in Britain to hasten the creation of a context requiring a new Irish Constitution that was, in many respects, similar to its predecessor.

There was minimal innovation, with the cabinet or executive remaining at the centre of power and answerable, in theory, to a Dáil and a restored but weakened Seanad. The list of recognised fundamental rights was extended, and natural or 'higher' law language was used in various parts of the text of the Constitution. The practical consequences of including such language – which became very apparent in controversial cases in the 1960s, '70s and '80s – may have been unintended.

De Valera's fond hopes of territorial reintegration and Irish language revival were also, of course, inserted as suspended realities – assertions about an imagined future written in the present tense. God was given more than one decent mention and, critically, popular sovereignty was made more meaningful than it had been under the previous dispensation by providing that the text of the Constitution could only be amended by popular referendum with simple majority voting.

It would seem, according to Mr Justice Gerard Hogan's magisterial study on the history of the 1937 Constitution, that De Valera did intend that the explicit power of judicial review of legislation would be used and that, despite concerns expressed by civil servants, he even considered establishing a constitutional court to give greater effect to this intention.

A bare majority of the people voting in 1936 approved De Valera's Constitution and most women voting did not. Seventy-five years later, it remains the Constitution of this State – it is as enigmatic as *Ulysses*: everyone knows about its existence, but few people know anything about it.

"The Constitution of this State is as enigmatic as Ulysses: everyone knows about its existence, but few people know anything about it"

Constitutional illiteracy

At a critical stage in the evolution of the State, we failed to use our educational system to address the question of constitutional illiteracy when it might have developed the capacity of citizens to engage critically with their State. We opted for different versions of unthinking nationalism when we might at least have opted for thinking nationalisms.

Even if this has since been addressed in curricular reform – however imperfectly and, arguably, at the expense of good education in history – the earlier neglect has had an enduring adverse implication, particularly for people of my own generation. Our political spectrum is crowded in the middle, with left-wing Christian democrats and right-wing social democrats all competing for ownership of a confused and, at times, incoherent centrism.

The 'party of government' has almost always been Fianna Fáil, with Fine Gael (until recently) acting as its ideologically indistinguishable understudy. Of course, smaller parties have played a disproportionately important


Lend me your ears

FAST FACTS

- The 1937 Constitution has been subjected to various forms of review that usually coincide with its significant anniversaries
- Much of the commentary about the proposed Constitutional Convention has been negative or sceptical
- The proposed agenda of the convention is disappointingly narrow and shallow, and the time allowed for it to deliberate is inadequate
- A citizens' assembly could be especially worthwhile in considering models of radical reform of local government and, perhaps connecting such reforms to a reconstituted Seanad
- The convention needs to broaden its agenda so as to subject the 1937 Constitution to a more radical appraisal

role, but the consistent pattern in Irish elections – albeit with diminishing numbers – has been that Irish people largely favour centrist parties. This pattern is confirmed if Labour is viewed as a centrist party – a debate, perhaps, for another occasion.

And yet we remain happy to acquiesce in the mythology of the Irish as 'a politically sophisticated race'. This is nonsense. We may be politically cunning, but we are demonstrably incapable of big political thinking or visionary politics. We are operators rather than thinkers, pragmatists who adapt and sometimes subvert political systems rather than design them. The 'amoral localism', so well described by the late Prof Peter Mair, defines Irish politics in a way that simply cannot be excused or explained away as a feature of politics in any small country.

Significant anniversaries

The 1937 Constitution has been subjected to various forms of review that usually coincide with its significant anniversaries. Thus, having reached its 30th birthday, it was reviewed by an all-party Oireachtas committee that made worthy recommendations, some of which were well ahead of their time.

It was subjected to a more forensic review in 1996 by the Constitution Review Group, chaired by TK Whitaker, just prior to its 60th birthday. The report of that group spawned numerous reports by the Oireachtas Committee on the Constitution, many of which made sensible recommendations, most of which were ignored.

Its 70th birthday was marked by some academic conferences and, now, on the occasion of its 75th anniversary, the Constitution is to be subjected to the scrutiny of a Constitutional Convention made up of politicians and citizens. The convention starts with the formidable challenge of dealing with the following items of potential constitutional reform within a tight timeframe:

- Reducing the term of the presidency to five years,
- Reducing the voting age to 17,
- Same-sex marriage,
- Reviewing the Dáil electoral system,
- Blasphemy, and
- The position of women in the home.

There are also 'fringe events' that rather dwarf the birthday celebrations represented by the establishment of the convention – including the referendum held in November

to insert an explicit reference to children's rights in article 42 of the Constitution, as well as a possible referendum (or, presumably, referenda) to abolish Seanad Éireann.

Breaking records

As if that weren't enough, Justice Minister Alan Shatter floated in July the possibility of further constitutional referenda on the establishment of a Court of Civil Appeal; an enabling provision to allow for the establishment of, among other things, family courts; various changes to the procedure whereby the President may refer legislation to the Supreme Court to test its constitutionality, including, controversially, provision to allow the Supreme Court to refuse to accept such references; and provision to allow the Government to refer international agreements to the Supreme Court prior to ratification to ascertain – by way of an advisory opinion – their compatibility with the Constitution.

Bearing in mind that four referenda have already been held in the term of this Government since it came to power in 2011, we can, presumably, expect every record of attempted constitutional amendment to be broken by this administration before it leaves office in 2016. The late Garret Fitzgerald would not even have dreamed of such a constitutional crusade!

Much of the commentary about the proposed Constitutional Convention has been negative or sceptical and has focused on both process and substance. For some people who are keen on the idea of citizens' assemblies and deliberative democracy as a supplement to representative democracy, the inclusion of politicians in the membership of the convention is a distortion. For others, the proposed agenda of the convention is disappointingly narrow and shallow, and the time allowed for it to deliberate is inadequate.

There are, of course, people who are just dismissive of the whole project – people who view most deliberative processes as wasteful or pointless indulgences. While what has emerged by way of concrete proposal is a compromise between both parties in government following some consultation with opposition parties, it falls short of the rhetorical promise held forth by Fine Gael and Labour prior to their coming into office. This is a serious matter for those who believe in political renewal by means of constitutional reform.

Citizens' assembly

My own view is that a serious effort at a citizens' assembly could be worthwhile. I think it could be especially worthwhile in considering models of radical reform of local government and, perhaps, even connecting such reforms to a reconstituted Seanad.

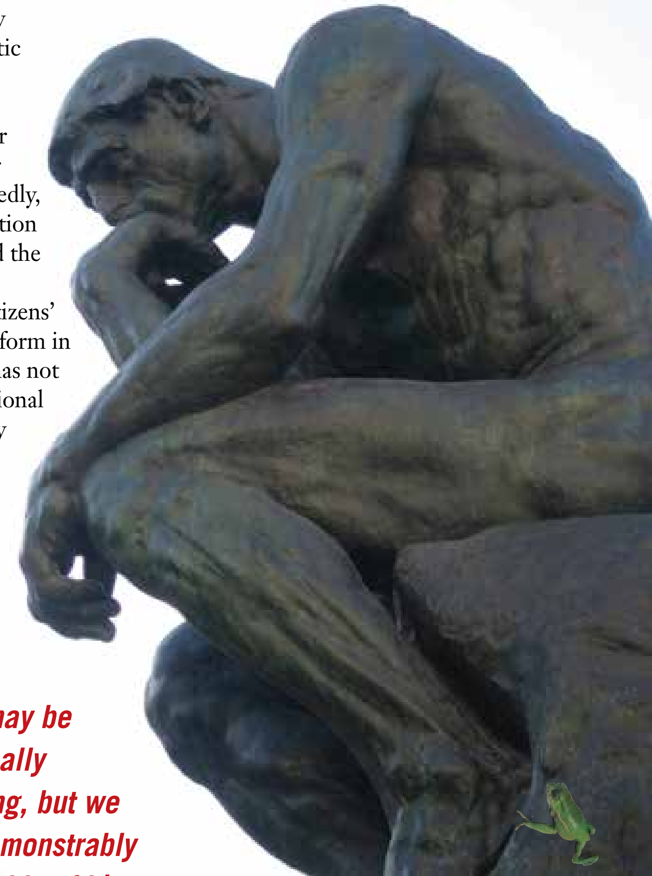
Whether or not the citizens' assembly model is suited to the subject of holistic constitutional reform is questionable. The Constitution cannot be avoided as an instrument of political reform or state rebuilding, but it can be a rather technical part of that process. Admittedly, much could be done by way of legislation alone to reform local government and the Seanad.

If the view has been taken that a citizens' assembly can handle constitutional reform in the broad sense, it seems odd that it has not been asked to consider 'big' constitutional questions like executive accountability and parliamentary power, as well as fundamental questions concerning what we call, rather quaintly, distributive justice, but which everyone else calls socioeconomic rights. Perhaps the omission of these 'big' topics is because the citizens' views might be quite noticeably out of step with Establishment views?

It might be possible for citizens to engage with the complexities known and understood better by the politicians participating in the convention, who deal with the challenges of accountability and realising socio-economic rights in the real world of politics. That may sound patronising, but it is no more so than the omission of such issues from the remit of the convention.

Broadening the agenda

The exclusion of experts and civil society groups from membership of the convention, but not from its processes, has also contributed to some of the disappointment attending the announcement of the convention. A pragmatic way of dealing with this might be to view the many 'official' reports on reform of the Constitution – particularly the *Report of the Constitution Review Group 1996* – as a starting-point for an expert knowledge base. This will require some work on the part of whatever secretariat is put in place to resource the convention, so as to provide an accessible synthesis of the various reform recommendations that have been made since the late 1960s. If nothing else, this would focus the deliberations of the convention and provide a familiar basis upon which civil society groups and individual experts might choose to engage with the convention in a positive and productive manner.



"We may be politically cunning, but we are demonstrably incapable of big political thinking or visionary politics. We are operators rather than thinkers, pragmatists who adapt and sometimes subvert political systems rather than design them"

However, unless the convention can broaden its agenda so as to subject the 1937 Constitution to a more radical appraisal – even if the ultimate assessment resulting therefrom is, as it might well be, conservative – it will amount to little more that a gimmick that genuflects mockingly at the idea of citizen engagement, deliberative democracy, and renewal through radical reform. The damage to public trust that would result from such an exercise is very real.

In undermining the power of deliberative democracy offered by a citizens' assembly by imposing a strong representative democracy element in the membership of the Constitutional Convention; in limiting its agenda away from the radical and excluding something as vitally important as the abandonment a two-chamber parliament; in sidelining experts so as to avoid 'capture', while capturing quite a slice of the action for politicians; and in depriving the process of sufficient resources, we have created a convention that seems like a compromise too far.

WILLING TO *settle?*

A 2010 High Court decision considered how proceedings under section 117 of the *Succession Act 1965* might be compromised, thus giving rise to professional risks for practitioners settling such claims. Robert Grimes and Karl Dowling walk the line

Robert Grimes and Karl Dowling are barristers and are authors of the Irish Probate Practitioner's Handbook, *publishing in January 2013 by Thomson Round Hall*

Section 117 of the *Succession Act 1965* provides a discretionary avenue of relief for children to apply for proper provision from the estate of a deceased parent, where the deceased has failed in their moral duty to provide for that child during the course of their lifetime or under the terms of their will. Proceedings pursuant to this section are commonplace. However, recent case law has considered how those proceedings might be compromised, and this gives rise to professional risk for practitioners settling such claims.

The *Succession Act 1965* bestows upon an executor a broad power to compromise proceedings on behalf of an estate. Section 60(8)(e) of the act provides that "the personal representatives of a deceased person may … compromise, compound, abandon, submit to arbitration, or otherwise settle, any debt, account, dispute, claim or other matter relating to the estate of the deceased".

The power of the personal representative to compromise proceedings brought specifically pursuant to section 117 was considered by the High Court in *In the Matter of the Estate of MK (Deceased)*, a decision of Ms Justice Mary Laffoy (16 April 2010). In this case, the personal representatives brought an application seeking the directions of the court, and its approval of settlement terms, in light of the fact that one of the plaintiffs was a person of unsound mind, and another beneficiary was not consenting to the said terms.

The application was contested on the basis that the personal representatives did not have the jurisdiction to settle the plaintiff's section 117 claim to the detriment and contrary wishes of an objecting beneficiary.

The decision affirms that it is beyond doubt that personal representatives have the power to settle proceedings brought pursuant to section 117, once all of the applicants are of full age and capacity and all of the beneficiaries who are of full age and capacity consent to the settlement terms, subject to the ruling of the court.

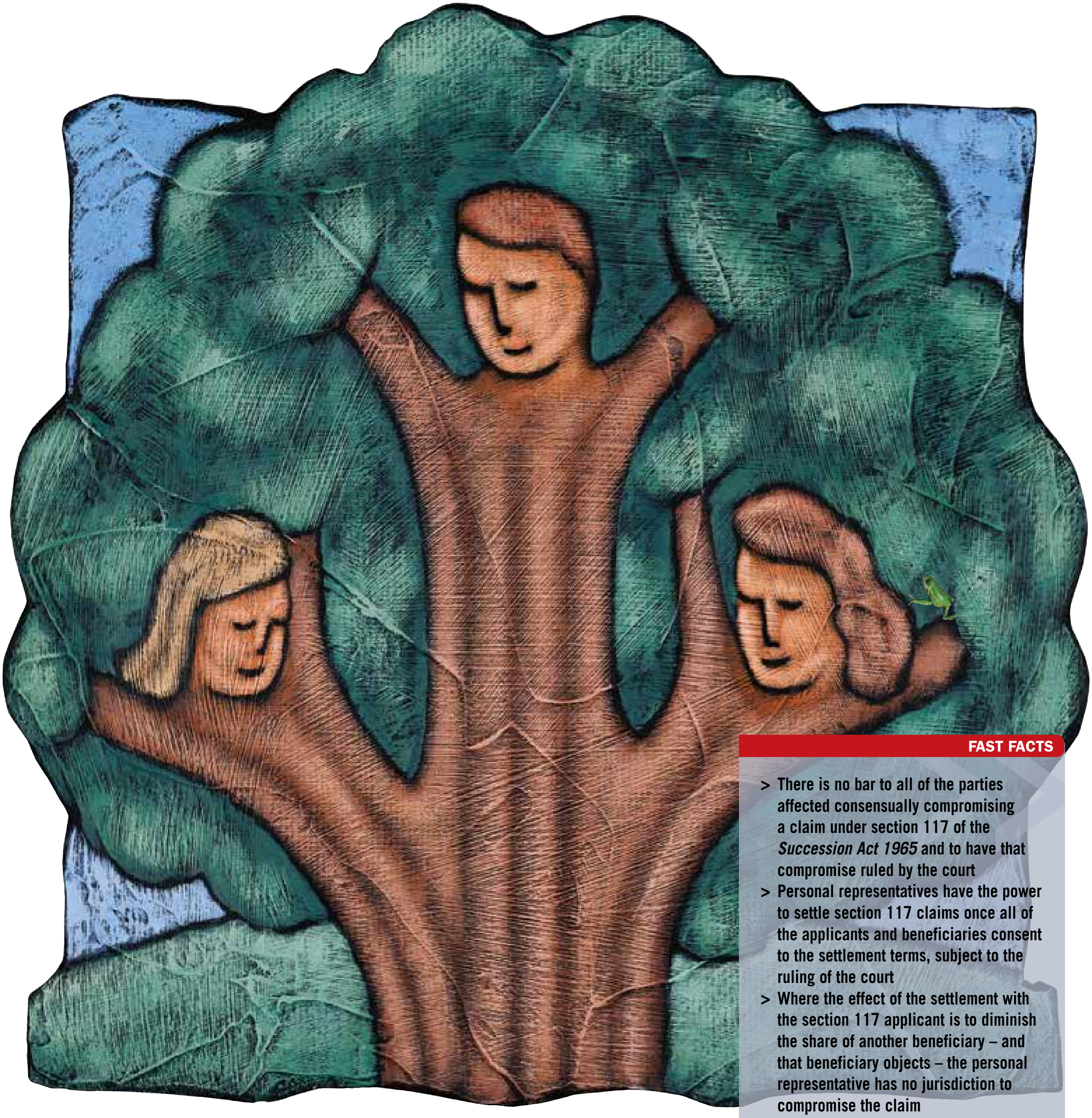
"The application raised a very fundamental issue as to the powers of personal representatives to settle a section 117 application. The court further noted that this issue had not previously been considered by the courts"

It was the view of the court that, where the effect of any settlement is to diminish the share of any of the beneficiaries, and such a beneficiary objects, the personal representative does not have the power to compromise the action in such circumstances.

Fundamental issue

Ms Justice Laffoy also noted that it was not the court's function to mediate a settlement between the parties – and that the application raised a very fundamental issue as to the powers of personal representatives to settle a section 117 application. The court further noted that this issue had not previously been considered by the courts.

Ms Justice Laffoy framed the crucial question at issue as: "Whether, in the light of the manner in which the court's statutory obligation under section 117 must be



performed, a claim by a child under section 117 can be regarded as a 'claim or other matter relating to the estate of the testator', which may be compromised by the executors in accordance with section 60(8)(e)."

The court also observed that the issue of whether personal representatives had the power to compromise a section 117 claim to the detriment, and against the wishes of, a beneficiary turned principally on the proper construction of section 117.

It was also at the sole discretion of the court

FAST FACTS

- **There is no bar to all of the parties affected consensually compromising a claim under section 117 of the *Succession Act 1965* and to have that compromise ruled by the court**
- **Personal representatives have the power to settle section 117 claims once all of the applicants and beneficiaries consent to the settlement terms, subject to the ruling of the court**
- **Where the effect of the settlement with the section 117 applicant is to diminish the share of another beneficiary – and that beneficiary objects – the personal representative has no jurisdiction to compromise the claim**
- **Section 60(8)(e) of the *Succession Act 1965*, which deals with the powers of the personal representative, has no application to a claim under section 117**
- **The court's function does not extend to mediating a settlement between the parties**

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> ***"The personal representatives' function is to administer the estate in accordance with the testator's wishes – not to override them"***

to determine whether the testator has failed in his moral duty to make proper provision for the child in accordance with his means. Ms Justice Laffoy stated that the personal representatives had no discretion in that regard and commented: "When considering the principles which govern the application of the exercise of the discretion under section 117 … it is immediately apparent that their [the personal representatives'] application involves the exercise of the types of discretion which it would be inappropriate to repose in personal representatives, whose function is to administer the estate in accordance with the testator's wishes, not to override them."

Ms Justice Laffoy did, however, explicitly state that there was no bar to all of the parties affected consensually compromising a claim under section 117 and to have that compromise ruled by the court. The court remarked that it frequently happens that when a personal representative (with the approbation of the beneficiaries affected) settles the claim of a section 117 applicant and then applies to the court to rule the settlement, invariably the court will rule the settlement. In circumstances where the applicant is not of full age, Ms Justice Laffoy stated that the court will review the facts and will usually wish to hear the views of the next friend on the settlement.

THE HARD FACTS

The judgment of Ms Justice Laffoy, given on 16 April 2010, only dealt with the question of an executor's power to compromise a claim made pursuant to section 117 of the 1965 act. A judgment was delivered in respect of the substantive claim by Birmingham J on 21 January 2011 (*K & Ors v D & anor*).

Key aspect of the decision

The key aspect of the decision is found at paragraph 30 where, crucially, it was held that "where the effect of the settlement with the section 117 applicant is to diminish the share of another beneficiary *and that beneficiary objects*, in my view, the personal representative has no jurisdiction to compromise the claim. Only the court has the discretion to make provision for a child which will interfere with the entitlement of another beneficiary under the will" [emphasis added].

Ms Justice Laffoy further clarified the court's position by stating: "While I would not go so far as to construe section 60(8)(e) as being limited to external disputes, insofar as the power extends to internal disputes, that is to say, disputes among the beneficiaries, the personal representatives may not exercise the power in a manner which has the effect of varying the trusts created by the will, so as to adversely affect a beneficiary without his consent. But that does not prevent a beneficiary relinquishing or surrendering a beneficial interest with a view to facilitating a compromise … because the personal representatives of the testator have no discretion to compromise a section 117 claim, as distinct from bringing a settlement which has been agreed by all parties, being of full age and capacity, affected to the court for ruling. In the absence of such consensus, only the court can exercise the discretion conferred by section 117, and it must do so in accordance with the principles identified in the jurisprudence to date."

Additionally, it was definitively stated by Ms Justice Laffoy that "given that the discretion under section 117 is given to the court solely, section 60(8)(e), which deals with the powers of the personal representative, has no application to a claim under section 117".

Practical considerations

It is clear from this decision that the personal representatives of the estate of a deceased person have no jurisdiction to settle a claim under section 117 where two conditions are present:

- The effect of the settlement is to diminish the share of another beneficiary, and
- That beneficiary objects to that settlement.

Practitioners should exercise caution when embarking upon settlement negotiations in section 117 claims and should only conclude settlement agreements having considered the implications of the above decision of Ms Justice Laffoy, or potentially face professional consequences. G

LOOK IT UP

Cases:

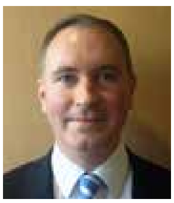
- *In Re Earl of Strafford, Decd* [1980] 1 Ch 28
- *In the Matter of the Estate of MK (Deceased)* (*A & Ors v TD & Ors*) 2010 [IEHC] 530
- *K & Ors v D & anor* [2011] IEHC 22
- *Public Trust v Cooper* [2001] WTLR 901
- *Re Houghton, Hawley v Blake* [1904] 1 Ch 622
- *Richards v Mackay* (1987) (11 Tru LI 23) (Trust Law International, Volume 11, 1997)
- *Saunder v Vautier* (1841) Cr & Ph 240
- *X v A* [2006] 1 WLR 741
- *XC v RT* [2003] 2 IR 250

Legislation:

- *Succession Act 1965*, sections 60(8)(e) and 117

HOUSE *rules*

In-house counsel provide advice on a wide range of legal and non-legal fields, and heavy workloads mean that they regularly turn to their private-practice colleagues for much-needed support. James Kinch and Brian Connolly open the door to in-house life



James Kinch is a solicitor with the Law Department of Dublin City Council. He is vice-chair of the Law Society's In-house and Public Sector Committee and Arbitration and Mediation Committee

Brian Connolly is director of legal services (regulatory and compliance operations – North America, UK and Ireland) with Accenture and is a member of the Law Society's In-house and Public Sector Committee

Any views expressed are personal to the authors.

One of the trends that has become increasingly evident in Ireland and other countries in recent years is the growth in the number of solicitors who are employed internally by private and public organisations to provide legal advice and support. This sector has grown to the point where in-house counsel in Ireland now make up 14% of the number of all practising solicitors. When asked, organisations will give a number of reasons for this – cost management, knowledge of the organisation, tailored advice, breadth of experience and perspective.

Once in their role, in-house counsel are called upon to provide advice and support in a wide range of areas, both legal and non-legal. Given the range of these areas and the sheer volume of work they are asked to undertake, in-house counsel regularly turn to their private-practice colleagues to provide much-needed support.

Since it appears likely that organisations' use of in-house counsel will increase in the future, the requirement for private-practice support by in-house counsel should be seen as an opportunity for the entire profession to work together in a collaborative and dynamic way. This can, in turn, help organisations, the broader economy, and indeed the solicitors' profession in Ireland to grow and develop.

> *"In-house counsel are expected to provide timely, high-quality advice in a way that allows the organisation to understand that advice and use it in its decision-making process"*

Complex landscape

The growth in the use of in-house counsel in organisations mirrors a similar development in other jurisdictions, particularly in the United States and Britain, but increasingly in Europe also. Larger organisations have assembled internal legal departments to help them understand and navigate the increasingly complex landscape of local, regional and global legislation that specifically applies to their operations.

This has been accelerated by the huge increase in regulatory and compliance obligations created in the wake of developments, such as recent corporate scandals and the difficulties faced by the financial services industry.

There are several advantages to in-house counsel that organisations commonly identify:

- Cost management – with the ever-increasing focus on costs, organisations often consider that using in-house counsel helps them better manage and control their legal costs. This is done both by bringing legal support inside the organisation, where management is better able to control its cost, and, in turn, by making in-house counsel responsible for managing the cost of external legal advisers.
- Knowledge of the organisation – in an increasingly complex world, modern organisations need advice tailored to their own specific needs, particularly where the law and their particular business interests intersect. With their in-depth knowledge of the workings and needs of the organisation, this is where in-house counsel are able to carry out the ongoing risk assessment and preventative actions that the organisation needs on the ground, in order to operate effectively and avoid legal and business pitfalls.
- Experience – in-house counsel who have gathered valuable experience during their careers, both within other organisations and in private practice, can bring

Tree house rules

additional perspective and independence to their role and the advice they give within an organisation.

Added capacity

As they develop their role as trusted advisor to the organisation, in-house counsel are expected to advise on a wide range of issues. As well as being expected to cover any and all legal topics that affect the organisation, areas beyond the strictly legal sphere will also be included, such as compliance, government relations, human resources and public relations activities, corporate citizenship, ethics and others.

When this is combined with the ever-increasing volume of work they are expected to take on, in-house counsel often look to their private-practice colleagues for help in providing specific legal expertise, as well as added capacity, which might not be available to the in-house counsel.

Some examples are set out below of specific points of interaction between in-house counsel and private-practice solicitors that could be to their mutual advantage. The types of legal service required by a public body or a private organisation can vary considerably, depending on its needs, but can typically include some or all of the following:

- Debt collection services,
- Public liability claims,
- Conveyancing,
- Regulatory,
- Procurement,
- Construction,

FAST FACTS

- In-house counsel make up 14% of all practising solicitors in Ireland
- The requirement for private-practice support by in-house counsel is an opportunity for the legal profession to collaborate in a dynamic way
- The huge increase in regulatory and compliance obligations has made the roles of internal legal departments particularly valuable
- In-house legal teams help their parent organisations to understand and navigate their way through complex landscapes of local, regional and global legislation that specifically applies to their operations
- Cost management, knowledge of the organisation, and experience are the main advantages identified by organisations that decide to establish in-house legal counsel

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DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
13 Dec	Tactical Negotiation Skills	€105	€140	2.5 Management & Professional Development Skills (by Group Study)
ONLINE COURSES: To Register for any of our online programmes OR for further information email: Lspt@Lawsociety.Ie				
Online	Legal Costs Seminar: Recent Decisions and Pending Legislation	€72	€96	1 hour General (By eLearning)
Online	The LinkedIn Lawyer	N/A	€55	Full Management & Professional Development Skills requirement for 2012 (by eLearning)
Online	Regulatory Matters	N/A	€45	Full Regulatory Matters requirement for 2012 (by eLearning)
Online	How to create an eNewsletter	N/A	€90	Full Management & Professional Development Skills requirement for 2012 (by eLearning)
Online	Touch typing	N/A	€40	Full Management & Professional Development Skills requirement for 2012 (by eLearning)
Online	Powerpoint – All levels	N/A	€80	Full Management & Professional Development Skills requirement for 2012 (by eLearning)
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Online	Excel for beginners	N/A	€80	Full Management & Professional Development Skills requirement for 2012 (by eLearning)
PRELIMINARY NOTICES 2013				
16 Feb/ 2 March	Procurement Workshop in partnership with the Irish Society for European Law (ISEL) *Procurement Law Forum*	Full details available early 2013		
21 Feb	Social Welfare Law	€90	€120	2 hours General (by Group study)
1/2 March	English and Welsh Property Law and Practice Certificate course	€441	€588	9 hours General (by Group study)
March	Criminal Litigation in partnership with the Dublin Solicitors Bar Association (DSBA)	Full details available early 2013		

For full details on all of these events visit webpage www.lawsociety.ie/Lspt
or contact a member of the Law Society Professional Training team on:

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*Applicable to Law Society Skillnet members

Please note three hours on-line learning is the maximum that can be claimed in the 2012 CPD Cycle


Yeah, he rules!

- Litigation, and
- Areas of special expertise, for example, intellectual property.

Given the differing levels of service requirements attaching to each of the above areas, innovative and practical selection criteria and weighting systems that reflect that particular service should be applied when choosing a legal services provider. For example, certain relatively standard service types, such as debt collection, public liability claims and certain conveyancing transactions, may be more amenable to a 'fixed-price-per-transaction' structure rather than ongoing advices that may be required arising out of a major construction project.

Striking a balance

Similarly, ensuring that there is an efficient working relationship between in-house counsel and the firm dealing with the outsourced work is important – clearly, if an inordinate amount of time is required of the in-house counsel to manage the outsourced work, that could be a reason not to outsource that particular work in the future.

In that context, any proposals that would serve to strike the right balance between the need of in-house counsel to be informed, and the legal service provider doing so without taking up an inordinate amount of time of in-house counsel, would be mutually beneficial.

Further, the in-house counsel is required by his or her organisation to be the 'face' of legal services within that organisation, so it is important for the private-practice firm to recognise and respect that role. Therefore, the private practice firm should always provide advice to, and deal directly with, the in-house counsel who will, in turn, provide the legal advice to the organisation. Similarly, the external firm and the in-house counsel should always work together to provide a united front to the organisation in terms of advice given – this will require prior preparation and alignment between them.

"Private-practice firms can provide invaluable support to in-house counsel by taking the time to understand the specific contexts within which the legal advice it provides will be considered and used"

Race to the bottom

More generally, while it is obviously important to obtain the best value for money, it is suggested that any procurement process for legal services be structured so as to minimise the risk of a 'race to the bottom' in terms of price at the expense of quality.

In this regard, sufficiently high weightings should be allocated to the quality and related criteria in the procurement process. Clearly, the quality requirement may be highest in those areas where the work is highly complex and the corresponding financial risk is higher for the organisation. Given that organisations are increasingly looking to their in-house counsel to manage and reduce the cost of legal services, private-practice firms should work in a creative and collaborative way to agree approaches to fees to take account of this. In addition, they should show a clear link between the level of fees charged and the value gained by the organisation from the legal advice provided.

Because you're worth it

Increasing demands are being placed on in-house counsel to prove their worth to their employing organisations in the provision of legal services. In-house counsel are expected to provide timely, high-quality advice in a way that allows the organisation to understand that advice and use it in its decision-making process.

Private-practice firms can provide invaluable support to in-house counsel by taking the time to understand the specific contexts within which the legal advice it provides will be considered and used. As a result, they should tailor their advice to maximise the ability of in-house counsel to apply that advice in a meaningful way to the operations and decisions of the organisation.

By embracing the growing trend of organisations using in-house counsel and by working together and being seen to work together for the benefit of both public and private organisations, in-house counsel and private-practice firms can improve the standing and reputation of the profession within those organisations and more generally within the broader economy and society. G

Mayo Solicitors' Bar Association

PIC: JOHN O'GRADY PHOTOGRAPHY

Mayo Solicitors' Bar Association held its AGM on 25 October at the Harlequin Hotel, Castlebar, after which it met with the Law Society's president and director general. Attending were *(front, l to r)*: Patricia Horan, Evan O'Dwyer, Brendan Donnelly, James Ward, Louise Cresham, Donald Binchy (president, Law Society), Charlie Gilmartin (president, MSBA), Ken Murphy (director general), Sandra Murphy, Lorraine Gannon, Eayna Egan and Pat O'Connor. *(Middle, l to r)*: James Cahill, Terri Mullen, Alan Ganon, Myles Staunton, Mona Jackson, Ita Feeney, Elaine Silke, Laura Glennon, Nicola Daly, Mary O'Brien, Samantha Geraghty, Eileen Lydon, Carmel Duggan, Caroline Barry, Edel McCool and Ian Dodd. *(Back, l to r)*: Kevin Bourke, John Deasy, Dermot Morahan, Patrick Moran, Conor O'Dwyer, Gary Mulchrone, Katherine Killilea, David Scott, Mark Fitzgerald, Dermot Hewson, Adrian P Bourke, Peter Loftus, Deputy Vincent Deane, Fintan Morahan and Stephen Lydon

Monaghan CPD is a country and western hit

Justine Carty (Barry Healy & Co) and Lynda Smyth (Coyle Kennedy McCormack) were the moving forces behind the Monaghan Solicitors' Bar Association's annual CPD day, held in Castleblayney recently. Over 200 solicitors attended. The social aspect of the day included dinner, followed by dancing to country and western star Declan Nerney. The impressive line-up of speakers included Mr Justice Peter Kelly (Commercial Court), Frank Buttimer (Frank Buttimer & Co), Michael Comyn (The Fearless Organisation), DJ Hegarty SC, William Johnston (Arthur Cox), Des Peelo (forensic accountant), Ercus Stewart SC and Muriel Walls (McCann FitzGerald). MC on the day was the irrepressible Doc Lavery.

Ercus Stewart SC, Justine Carty, Judge Peter Kelly, Lynda Smyth, Frank Buttimer, Muriel Walls and William Johnston

Diploma Team launches Certificate in Child Law

The Law Society's Diploma Team launched the Certificate in Child Law on 6 November. The guest of honour was President of the District Court, Rosemary Horgan. Over 70 participants have signed up for the four-month certificate programme. At the launch were *(front, from l to r)*: Miriam Walsh, Lucy McRoberts, Muriel Walls, Geoffrey Shannon, Rose Forrest, Judge Rosemary Horgan, Carol Anne Coolican and Aisling Parkes. *(Back, l to r)*: Deirdre Flynn, Pól O'Murchú, Nuala Egan, Freda McKittrick, Ciara Farrell, Sinead Kearney, David Ruddy and Brian Horkan

Mary celebrates china anniversary at Four Courts

Mary Bissett of the Law Society's consultation rooms at the Four Courts recently celebrated 20 years of service. She was presented with a bouquet to mark the occasion by the Society's new president, James McCourt

Is it a bird, is it a plane?

Aer Lingus CEO Christoph Mueller attended the launch of the Diploma in Aviation Leasing and Finance on 23 October. Over 70 students and their lecturers attended the event – some from as far afield as Britain, France and the United States. Mr Mueller noted that the diploma would provide an urgently needed supply chain of talent for the continued success of the Irish aviation industry. Irish and international experts will be lecturing on the course, with many students participating in their studies via webcast. Students will be treated to some of the technical aspects of aircraft maintenance, as well as a much anticipated, day-long simulation of running an airline. Attending the launch were *(from l to r)*: diploma course designer Nikki Foley (Matheson), Robert Murphy (Freshfields), Freda Grealy (diploma manager), Dick Forsberg (Avolon), Catherine Deane (McCann FitzGerald) and Christoph Mueller (Aer Lingus)

Happy hearts as table quiz hits target

Recruitment agency Careers Register recently held a 'solicitors v accountants' table charity quiz at Fallon & Byrne. A total of €2,685 was raised, with the proceeds being split evenly between the Law Society's charity of choice (GOAL) and the Institute of Chartered Accountants (Irish Heart Foundation)

Diploma conferrals at Blackhall Place

At the conferral of the Certificate in Banking Law and Practice were *(front, l to r)*: Geoffrey Shannon (deputy director of education), Freda Grealy (diploma manager), William Prasifka (Financial Services Ombudsman), Michelle Ní Longáin (then chairman of the Education Committee), James McCourt (Law Society President), Judge Iseult O'Malley and Judge Colm MacEochaidh. *(Recipients included)*: Adrienne Bergin, Andrea M Carroll, Aine Coghill, Celeste MA Evans, Emma Fee, Ailbhe Finegan, Edel Finn, Diana Jamieson, Frances M Kennedy, Marcus Kennedy, Michelle Linnane, Shane MacNamara, Patricia McSparran, Anna Murphy, Mairead Ní Ghabhain, Maire Ní Mhaoldhomhnaigh, Sarah Pickering, David O'Brien, Deirdre O'Sullivan, John Reid, Ali Reilly and Lena Marie Savage

At the conferral of the Certificate in Capacity, Mental Health and the Law were *(front, l to r)*: Geoffrey Shannon (deputy director of education), Freda Grealy (diploma manager), William Prasifka (Financial Services Ombudsman), Michelle Ní Longáin (then chairman of the Education Committee), James McCourt (Law Society President), Judge Iseult O'Malley and Judge Colm MacEochaidh. *(Recipients included, from l to r)*: Aoife Counihan, Patricia Holohan, John David Lavelle, Evelyn MacKenzie Smith, Zoe Richardson and Margaret McCann

At the conferral of the Diploma in Finance Law were *(front, l to r)*: Geoffrey Shannon (deputy director of education), Freda Grealy (diploma manager), William Prasifka (Financial Services Ombudsman), Michelle Ní Longáin (then chairman of the Education Committee), James McCourt (Law Society President), Judge Iseult O'Malley and Judge Colm MacEochaidh. *(Recipients included)*: Sarah Breen, Frances Buckley, David Carroll, Paul Carroll, Chloe Culleton. Eimear Curtin, Peter Dempsey, Leonora Doyle, Alice Gibbons, Joseph Mitchell, Rachel Mullery, Thomas O'Rourke, Ciaran O'Shaughnessy, Colm O'Shaughnessy, Ronan McGoldrick, Elisa McMahon, Edel Sheppard and Grainne Webb

Bright future for McEvoy Partners

McEvoy Partners, of Lower Hatch Street, Dublin, celebrated ten years in business by hosting an exclusive invite-only party in Dax Restaurant, Pembroke Street, on 8 November. Partners Orlaith O'Brien, June Hynes and David Lynch treated clients to drinks, canapés and a specially designed gavel-and-hammer inspired cake to mark the milestone. The firm scooped the *Finance Monthly* award for 'Corporate Law Firm of the Year Ireland', was shortlisted as finalists at the Irish Law Awards in May, and is on the shortlist in the upcoming 'Irish IPO Law Firm of the Year' awards. The future looks bright!


Orlaith O'Brien and June Hynes


Niall O'Farrell, Frances Clune and Kieran Killen


Marian Kernan and Edel Conway


Susan Noone and David Lynch


Former solicitor Patrick O'Riordan was called to the Bar in October, having practised as a solicitor for almost ten years. Patrick trained with Lavelle Coleman, qualifying in 2003. In 2007, he moved to Healy Crowley Solicitors, Fermoy. He served on the Law Society's Litigation Committee from 2007 to 2012. Patrick's parents, Timothy and Violet O'Riordan, and girlfriend Rena Manley, joined in the celebrations


Ballymun Community Law Centre (BCLC) celebrated its tenth anniversary celebration with a cake-cutting ceremony on 16 November. BCLC has been delivering legal advice, information, representation, legal education and mediation in Ballymun since 2002. *(From l to r)*: Dessie Ellis TD, Cllr Andrew Montague, Roisín Shorthall TD and Paul Kane (director, BCLC)

PATRICK O'RORKE MARKEY 1929 – 2011

The first anniversary of the death of Patrick O'Rorke Markey will take place on 21 December 2012. Known to all as Pat Markey, he was born in Ballycastle, Co Antrim, in 1929 and was educated at Clongowes and Trinity College. Following graduation, he joined the firm of Eugene F Collins, where he worked with the firm's principal Desmond J Collins and qualified in 1952.

As that firm grew, he became a partner specialising in conveyancing and probate and practised there for upwards of 20 years. The abiding memory of his colleagues from that time was his extraordinary attention to detail and his good nature and friendliness. Pat then joined the practice of his father, PC Markey, at South Quay, Drogheda, in the mid 1970s. PC himself qualified in 1909 and earned the accolade at one point of being the oldest practising solicitor in Ireland and Britain. He died in 1976 at the age of 90, after 67 years in practice.

Longevity ran in the family, and Pat continued working until he was forced to retire through illness a few weeks prior to his death at the age of 82, after 59 years in practice. Pat was held in the highest regard by his colleagues in Drogheda and further afield. For many years, he was a leading member of the Drogheda Bar Association.

He always had an intuitive perspective on many issues and was known for giving sound, sensible advice to clients and colleagues. He was a respected authority on probate matters and was often engaged to act as an expert witness.

Pat always considered himself a country solicitor. He had a great knowledge, love and understanding of the land and a special affinity with the farming community. In his trademark tweed jacket, with a fresh flower in his lapel, he was contented standing in a muddy field taking instructions on a disputed ditch or a contentious right of way. Wellingtons were optional! He was widely respected for his professionalism, honesty and integrity. When not in the office, he farmed livestock and mixed crops, and also kept an assorted menagerie of rescued donkeys, goats, fowl and bees.

Pat had great pride in his community. He was a generous and charitable man who gave freely of his time to many local causes and, in particular, St Vincent de Paul. He was not a man who stood on formality, and happily accommodated all those who called to his office and his home. While he undoubtedly excelled in his career, he was foremost a devoted family man. He was predeceased by his wife Mary in 1993 and is survived by his eight children and 16 grandchildren.

He loved to travel but preferred to ramble off the beaten track, which sometimes left him 'missing' until he would reappear to recount his adventure, discoveries and characters he had met along the way. He also enjoyed fishing and horse racing, particularly at Bellewstown, where many an enjoyable office outing was held.

Pat Markey was often described as nature's gentleman. In his funeral homily, his brother-in-law, Fr Celestine Cullen of Glenstal Abbey, reflected on his style of life, both as a solicitor and a man, by reference to the Psalms: "He who walks without fault, he who acts with justice and speaks the truth from his heart … such a man will stand firm forever."

Such a man was Pat Markey: husband, father, grandfather, brother, uncle, staunch friend and colleague. He will be fondly remembered by all those who had the honour of working with him and the pleasure of knowing him.

MCM and FM

JAMES O'SULLIVAN 1957 – 2012

It was with great shock and sadness that we heard of the very sudden and untimely passing of our friend and colleague, James (Jim) O'Sullivan.

Jim was born in Cork in 1957 and grew up in the Douglas area of Cork City. His early education was at St Anthony's, Ballinlough, while his secondary schooling was at Douglas Community School, Cork.

Jim was the eldest of four children and, when his own father passed away at the very young age of 50, Jim at the age of 17 found himself in the position of having to grow up fast – to be the tower of strength and support he was to his mother and his younger siblings.

Immediately after leaving school in 1975, he joined the law firm then known as Ronan Daly Hayes – now Ronan Daly Jermyn – as a law clerk. Very quickly, Jim made a name for himself as being a very solid pair of hands in the area of litigation.

In the early 1980s, during the course of my own apprenticeship, I first encountered Jim outside the county registrar's office waiting to go in for a taxation of costs – against each other. Jim extracted from me that it was my first taxation of costs and, during our wait, he proceeded to talk me through what to expect, what to say and how to conduct myself before the then county registrar, who had his own way of dealing with things! With Jim's help and advice, I got through the procedure satisfactorily which, of course, was to his own detriment, and from that day I have always regarded him as the very best of colleagues.

As the 1980s progressed, I was party to many a conversation between solicitors and barristers in Cork as to whether Jim would ever take the bull by the horns and go on to qualify as a solicitor. The universal consensus at the time was that, if he did, he would make a very fine solicitor – and better than most of us. He obliged and qualified in 1993. All the forecasts and predications were correct, as Jim made a very fine, efficient and competent practitioner.

Several years after he qualified, his interest in the profession he loved drew him towards his local bar association – the Southern Law Association (SLA). From 1996 onwards, he served on the council for many years, culminating in his being elected president of the association in 2004.

Jim ran the council as one would run the board of a large corporation. If you were given a job to do, you made sure you did it by the next council meeting. He himself was so efficient that it was not an option to let yourself down.

In 2003, Jim first became a member of the Council of the Law Society as an SLA nominee. He was subsequently elected in his own right and, with the exception of one break, remained on Council until his death.

During that time, he moved from being a good colleague to many of us to becoming a great friend. In his time on Council, he was an excellent contributor.

True to form, he proved to be an outstanding member of all the Society committees on which he sat and went on to become an exceptional chairman of the Education Committee and vice-chairman of the Complaints and Client Relations Committee. He was popular, friendly, well liked and encouraging of both his fellow Council colleagues and Law Society staff.

We were also privileged down the years to witness Jim's outstanding advocacy skills, and his cross-examinations could be as clinical and surgical as the best senior counsel!

Jim voluntarily gave enormous time and commitment to his profession and a trail was blazed, both on the road and on the train tracks, between Cork and Dublin.

His demise is undoubtedly a huge loss to his partner Catherine, and to his family, to whom we extend our sincere sympathy. Jim's passing has left a large void, both in the Council of the Law Society and in the profession generally. We have lost a colleague of the highest calibre and a great friend, whose qualities as a man and as a lawyer will be greatly missed.

SM

Newly qualified solicitors at the presentation of their parchments on 28 June 2012

PIC: JASON CLARKE PHOTOGRAPHY

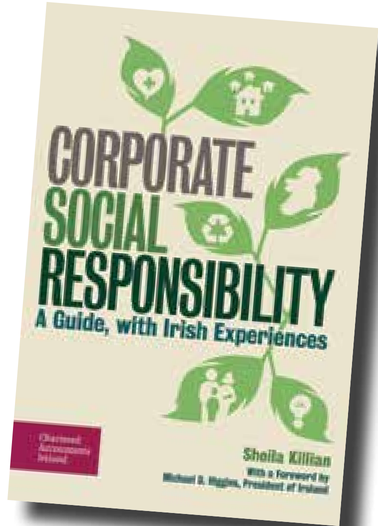
Mr Justice Joseph Finnegan, Donald Binchy (President of the Law Society), Ms Justice Maureen Clarke (High Court) and Ken Murphy (director general) were guests of honour at the parchment ceremony for newly qualified solicitors on 28 June 2012: Robert Barrett, Laura Barry, Colm Bellew, Christopher Bollard, Domhnall Breatnach, Aedin Brennan, Aoife Byrne, Thomas Canavan, Melanie Carroll, Kevin Clarke, Brochan Cocoman, Jillian Conefrey, Darach Connolly, Orla Crowe, Lisa Crowley, Edel Curry, Patrick Daly, Mark Dillon, Bébhinn Dunne, Ross Forde, Sophie Frederix, Grace Gannon, Enda Garvey, Ryan Gibbons, Karl Gormley, Sinéad Greene, Cathal Grennan, Lisa Griffin, Seán Groeger, Andrea Hannon, Shane Harron, Jacqueline Ho, Gerard James, Angela Keigher, Amy Kelly, Susan Kenefick, John Kennedy, Josephine Lawton, Jennifer Lee, Ruth Lillis, Majella Lynch, Ruth Lynch, AnnMarie Lynch, Proinsias Lyne, Barry Lysaght, Annaleen Mackin, Madeline Maguire, Joseph Marrinan, Cian Martin, Aonghus McCarthy, Edward McDonagh, Lisa McEllin, Síle McHugh, Emma McMahon, Ian McNamee, Mairead McTague, Ciara Meskell, Cian Monahan, Claire Morgan, Elaine Morrissey, Maurice Moynihan, Ciana Mulchrone, Rachel Mullery, Mairead Murphy, Leo Murphy, Peter Murphy, Justine O'Connor, John O'Donoghue, Kate O'Donohoe, Neil O'Gorman, Caroline O'Gorman, Áine O'Hara, David O'Mahony, Morgan Pierse, Patrick Rath, Ciara Ruane, Elaine Shannon, Imelda Shiels, Pauline Taaffe, Lauren Theodoulou, Maria Tuffy, Philip Tully, Sarah Twohig, Brendan Wallace, Erc Walsh, Noelle White, Evelyn White, Maria Wylie and Jean-Anne Young

Newly qualified solicitors at the presentation of their parchments on 12 July 2012

Paul O'Higgins SC, Donald Binchy (President of the Law Society), Mrs Justice Elizabeth Dunne (High Court) and Ken Murphy (director general) were guests of honour at the parchment ceremony for newly qualified solicitors on 12 July 2012: Jessica Boucher, Andrea Broderick, James Brogan, Shauna Bruder, Henry Carpendale, Edmund Carter, Siobhán Carty, Caitriona Carty, Yvonne Coleburn, Don Collins, Deirdre Conneely, Gillian Cotter, Fiona Coughlan, Michael Crowley, Laura Deignan, Eoghan Doolan, Helen Doyle, Donal Fingleton, Sinead Garnett, Amanda George, Brian Glancy, Fiona Hammond, Deirdre Hennelly, Shane Hickey, Paul Ivers, Eleanor Kearon, Mary Kelly, Callaghan Kennedy, John J Kerin, Douglas Lappin, Fiachra Lennon, Paul Maguire, Sarah McCabe, Niall McDowell, Kevin McKeon, Emma Meagher, Deirdre Mooney, Carmel Morris, Regina Mullen, Áine Murphy, Niamh Murray, Philip Murray, John Neeson, Emmet O'Byrne, Orla O'Connell, Evelyn O'Donnell, Caitriona O'Donnell, Síle O'Hanrahan, Aoife O'Rourke, Amanda Jane Sweeney, Emma Timoney, Catherine Tolan and Michael Ward

Corporate Social Responsibility: a Guide with Irish Experiences

Sheila Killian. Chartered Accountants Ireland (2012), www.charteredaccountants.ie. ISBN: 978-1-907214-63-9. Price: €25.



The conclusion from Sheila Killian's book is that those who volunteer their time and expertise at Free Legal Advice Centre clinics around the country or who sign up to do *pro bono* work for the Public Interest Law Alliance are exercising their corporate social responsibility, whether they know it or not. The same applies to those lawyers who sign up to Irish Rule of Law International or the Bar Council's Voluntary Assistance Scheme.

This book helpfully describes the many ways in which business can engage in corporate social responsibility. It's notable that there is no single agreed definition of what that means. For some businesses, it involves donation of their firm's skills for the public good. For others, it is when they sponsor local community endeavours. For others, it will be better employee practices or more ethical purchasing. Many combine several elements.

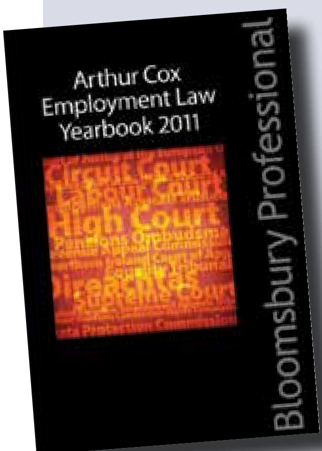
Killian makes a persuasive case that this good behaviour is valuable in itself, but also that it is good business. It promotes a firm's distinct profile in their community, while at the same time benefiting the wider community. She maintains that this is useful to companies of all sizes, and the second half of the book just profiles the corporate social responsibility of a number of disparate Irish enterprises. The consequence of the examples is that the reader is clear that corporate social responsibility can be exercised in a wide variety of cases.

For firms trying to come to grips with the increasingly popular concept of corporate social responsibility, or for those who want to be able to recognise and name their existing socially responsible behaviour, this book is a good general guide.

Noeline Blackwell is director general of Free Legal Advice Centres Ltd.

Arthur Cox Employment Law Yearbook 2011

Arthur Cox. Bloomsbury Professional (2012), www.bloomsburyprofessional.com. ISBN: 978-1-84766-983 4. Price: €75 plus VAT.



It can be challenging for busy practitioners to keep abreast of recent developments in case law and legislation. Reference books have their place, dealing with the principles of a particular area of law, but as case law evolves and legislation is enacted or amended, a current review is an essential requirement for any practitioner.

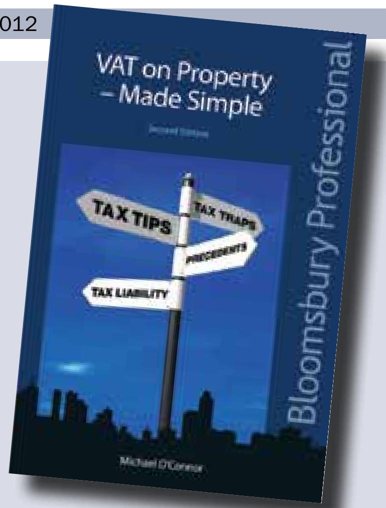
This is where the *Arthur Cox Employment Law Yearbook 2011* is invaluable. To call it a snapshot may be somewhat of a misnomer, as the publication can be used flexibly as either a reference guide or, alternatively, as an in-depth resource, as the hard copy is accompanied by an e-book containing all relevant statutes and cases.

In terms of content, all of the major areas of interest to the employment law practitioner are covered: legislative developments during 2011; synopsised decisions of the Irish superior courts, Labour Court, Employment Appeals Tribunal and Equality Tribunal; together with relevant English case law and EU law arising during 2011. Cases that have been appealed are noted in the course of the book. There are also helpful chapters dealing with data protection, pensions, and taxation in the employment law context. A number of HR-focused pieces in the appendix to the book also make for some interesting reading.

With a further yearbook in the pipeline for 2012, this is not just a once-off publication. It can be anticipated that the title will become a useful annual resource for the employment law practitioner.

Áine Curran is a partner in O'Mara Geraghty McCourt Solicitors, Northumberland Road, Dublin 4.

VAT on Property – Made Simple (2nd edition)



Michael O'Connor. Bloomsbury Professional (2012), www.bloomsburyprofessional.com. ISBN: 978-1-84766-987-2. Price: €130.

This book is a valuable source of information regarding the application of the VAT regime to property transactions and will be of great use to conveyancing practitioners, tax consultants and accountants. This edition contains updates to reflect changes introduced by the *Value Added Tax Consolidation Act 2010*.

The book certainly achieves its stated aim of explaining Irish VAT on property legislation "within a reasonable compass in a form which will be intelligible". The useful glossary of terms and abbreviations at the start of the book sets the tone in giving quick-reference explanations of the concepts and terminology fundamental to the system of VAT on property transactions. The detail of the legislation is laid out in the book in an extremely logical fashion.

Practitioners will find Part C (which analyses the various concepts introduced under the new VAT system) and Part F (dealing with lettings, assignments, surrenders, grants and supplies of services) of particular use, as these are areas that cause much confusion in practice. I was very pleased to note that in Part A of the book, Mr O'Connor puts the VAT system into context by giving a brief description of property law. Worked examples throughout the book illustrate the concepts being explained, and a variety of tables also assist in making the application of the legislation to specific situations more accessible.

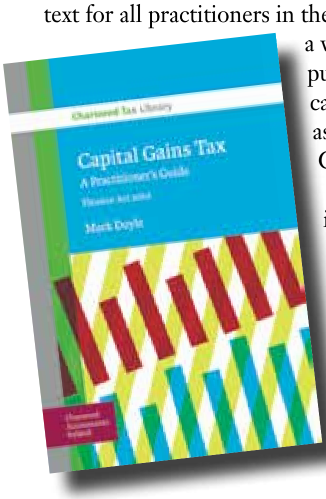
The various 'tax tips' dotted throughout the book will be of assistance to practitioners in advising their clients. The book is rounded off by three useful appendices, which collate both Revenue publications and Law Society publications on this topic and also offer useful precedents for practice. This is a well-thought-out and informative book that achieves its aim of shedding light on an extremely complex area of law.

Deirdre Fox is the principal solicitor of Deirdre Fox & Associates, Aughrim, Co Wicklow, and is chairman of the Law Society's Conveyancing Committee.

Capital Gains Tax: a Practitioner's Guide

Mark Doyle. Chartered Accountants Ireland (2012), www.charteredaccountants.ie. ISBN: 978-1-907214-54-7. Price: €85 (incl P&P).

This new book is the latest in Chartered Accountants Ireland's library of tax books and, although it is marketed as a text on capital gains tax in Ireland from the accountant's perspective, it is a valuable text for all practitioners in the area, as it is a very readable publication that captures all aspects of the CGT legislation.



The author is not afraid to observe and guide the practitioner where there may be alternate interpretations of the legislation and practice. It is clear that he has had practical experience in matters, evidenced by useful examples that are provided in a clear and straightforward fashion. The author is able to explain relatively difficult concepts in a plain English fashion – he does not merely replicate what the legislation already provides, but interprets it in a user-friendly manner.

This book is similar to, though shorter than, the Irish Taxation Institute's book on the same subject (which, though priced the same, also includes an e-book). The more commentary available to practitioners, the better to empower the tax practitioner in difficult interpretative situations, and so this book is a welcome addition to any tax practitioner's library. G

Aileen Keogan (www.aileenkeogan.ie) is a solicitor and tax consultant specialising in capital taxes and estate planning.

BRIEFING

Law Society Council meeting 7 September 2012

Motion: *Conveyancing Conflicts Regulations 2012*

"That this Council approves the Solicitors Acts 1954 to 2011 (Conflict of Interest) Regulations 2012.*"*

Proposed: John P Shaw

Seconded: Brendan Twomey

The president noted that the Council had considered and approved the recommendations of the Conveyancing Conflicts Task Force at its meeting held on 11 May 2012, following which the report of the task force had been circulated to all members of the profession for their observations. At its meeting on 13 July 2012, the Council had approved the report of the task force by 25 votes to four, and the profession had been notified by *eBulletin* on the same day. The motion before the Council was to approve the regulations giving effect to that report.

He noted that, since mid August, an email campaign had been undertaken by a number of Council members, urging members to express their concerns about the proposed regulations, and urging support for a number of amendments to the proposed regulations. A total of 240 letters or emails had been received by the Society in response to this campaign, all of which had been collated and brought to the meeting.

The president indicated that the Council would first discuss the motion, following which Council members could raise any issues they wished, including requests for an adjournment. Following presentations by John P Shaw and Brendan Twomey urging approval of the regulations, a number of Council members expressed their reservations about a number of aspects of the regulations, referred to proposed amendments that had been circulated, and urged an adjournment of the matter for further consideration and consultation. Other Council members expressed the view that each of the matters addressed by the proposed amendments had already been considered and debated thoroughly by the task force and the Council and that the matter should proceed. The request for an adjournment was defeated by 18 votes to 17.

The Council discussed the substance of the proposed regulations, with a number of members speaking in favour and others speaking against their adoption. After a lengthy debate, the Council approved the *Conveyancing Conflicts Regulations* by 21 votes to 8.

Motion: CPD regulations

"That this Council approves the Solicitors (Continuing Professional Development) Regulations 2012.*"*

Proposed: Michelle Ní Longáin

Seconded: Valerie Peart

Michelle Ní Longáin outlined the content of the draft regulations and noted that they replicated the existing regulations, but with the addition of one hour per annum in terms of the CPD requirement, so that solicitors would be required to complete 14 hours of CPD in 2013, 15 hours in 2014, and 16 hours in 2015. The three mandatory management and one mandatory regulatory hours remained the same, with some minor flexibilities in relation to other categories. The Council approved the *Solicitors (Continuing Professional Development) Regulations 2012*, as circulated.

Legal Services Regulation Bill

The Council noted that, because of the current legislative programme and Ireland's presidency of the EU from January to June 2013, it was unlikely that the committee stage of the bill would proceed before Christmas.

Future of the Law Society Task Force

John P Shaw reported on the ongoing work programme of the task force, including detailed consideration of the likely impact of the *Legal Services Regulation Bill* on different operational areas of the Society; a meeting with Millward Brown Lansdowne to progress the survey of the profession; and onsite visits to the Law Societies of England and Wales, and Scotland, to consider the manner in which they discharge their representative functions.

Society representatives on other bodies

The Council approved the appointment of John D Shaw as the Society's representative on the International Bar Association, the appointment of Stuart Gilhooly as the Society's representative on the Superior Courts Rules Committee and the reappointment of James MacGuill as the Society's representative on the CCBE, each with effect from November 2012.

Practice directions

Dublin Circuit Criminal Court – new pre-trial procedures

The following practice direction has been issued by the President of the Circuit Court in relation to new pre-trial procedures, which are being introduced on a pilot basis in the Dublin Circuit.

Circuit Criminal Court: Dublin Circuit – county of the city of Dublin

1. With a view to avoiding unnecessary delays in criminal proceedings, identifying cases in which pleas may be entered in advance of a trial date, and facilitating the commencement of trials in criminal proceedings in the Circuit Court at the time and date appointed, the practice referred to in this direction will be introduced on a pilot basis in respect of all cases listed for trial in this circuit from 1 December 2012 and all new cases returned to the court for trial in this circuit from 1 January 2013.

2. A pre-trial hearing will be held on a Friday at least four weeks prior to the trial date fixed. This shall be attended by the accused and a legal representative of both prosecution and defence (where applicable).

3. At this hearing, the accused will be required to enter a formal plea before the court. If it is intended to proceed to trial at that stage, a plea to one count without prejudice will suffice.

4. The prosecution will be required to be in a position to specify the following matters to the court:

a) *Proof by written statement (section 21,* Criminal Justice Act 1984*)*

- Whether any signed written statement(s) has/have been served by the prosecution proposing to tender it in evidence for the purposes of section 21 of the *Criminal Justice Act 1984*. If so, a list should be furnished with reference to the person making each statement and the date of the statement, together with any notice of objection being served on the prosecution within the prescribed period.
- Whether the parties or their solicitors have agreed that any written statement(s) be tendered in evidence under section 21, and/or whether application is being made to require a person(s) making a statement for the purpose of section 21 to attend to give evidence in court. If so, details of the relevant statement(s)/witness(es) should be furnished.

b) *Proof by formal admission (section 22,* Criminal Justice Act 1984*)*

Whether any admission(s) as to fact has/have been made by the prosecution for the purposes of section 22 of the *Criminal Justice Act 1984*. If so, a list of admissions and the date of the making of admission should be furnished.

c) *Video-link, video-recorded and CCTV evidence*

- Whether it is intended to apply for leave to have a witness give evidence through a live television link in accordance with section 39 of the *Criminal Justice Act 1999*.
- Whether it is intended that any person give evidence through a live television link under part III of the *Criminal Evidence Act 1992*.
- Whether it is intended to seek the appointment by the court of an intermediary through which questions would be put to a witness under part III of the *Criminal Evidence Act 1992*.
- Whether it is intended to have admitted as evidence a video recording of any evidence.
- Whether an application will be made to allow the use of tape or disk playback equipment during the trial, or if it is it proposed to seek to use any other courtroom technology at the trial.
- If any of the above applies, details must be provided, and it must be confirmed that the hardware and software concerned will be tested in advance.

d) *Legal representation for complainant (section 4A,* Criminal Law (Rape) Act 1981*)*

Whether it is anticipated that legal representation for the complainant will be required.

e) *Witnesses*

- A list of witnesses and addresses intended to be called by the prosecution at the trial (for jury panel information purposes) should be provided.
- Confirmation should be provided that all witnesses have been contacted and have indicated availability for the trial date. If not, known details of any potential witness difficulty must be specified to the court at this stage.
- Any particular requirements or details pertinent to the likely order of evidence at trial should be identified.

f) *Interpreters*

Whether the prosecution require the use of an interpreter(s) and, if so, to document the witness(es) for whom and language for which interpretation is required.

g) *Prosecution disclosure*

On the basis of the information available at the date of the hearing, confirmation should be provided that the prosecution is in compliance with disclosure obligations, and that no defence requests are outstanding at that time;

h) *Interviews (please note: this item is confined to the specific contents of the interview and is not concerned with general issues of admissibility)*

Where the papers served by the prosecution include a memorandum/memoranda of an interview/interviews with the accused and/or voluntary or cautioned statement/statements by the accused, confirmation should be provided that the memorandum/memoranda and/or statement/statements have been reviewed by the prosecution with a view to editing and producing an agreed version of the contents of same and/or identifying issues which may require subsequent determination by the court. If a review has not taken place, an explanation for this will be required.

Please note: the court requires that:

- Discussions between the defence and the prosecution on any such issue be completed before the date fixed for trial, and
- Agreed memoranda and/or statements be available for use without delay, or issues arising be identified and ready for immediate determination.

5. The defence will be required to be in a position to notify the court as to:

- Whether any factors exist affecting the ability of the trial to proceed on the date fixed,
- Whether any disclosure or other pre-trial issues are outstanding,
- Whether the defence require the use of an interpreter(s) and, if so, to document the witness(es) for whom and language for which interpretation is required, and
- Whether there are any requirements for the running and presentation of the defence case that need to be addressed by the court or the Courts Service in advance.

In the absence of such notification, it will be assumed that the defence has completed all necessary preparations for trial by that time. The defence are under the same obligation as the prosecution as set out above to ensure that any technology to be used has been or will be ready for use on the trial date.

6. The solicitor and counsel for the prosecution and defence shall be obliged to consult with and obtain the necessary instructions from their respective clients for the purpose of complying fully with paragraphs 3, 4 and 5 of this direction (as applicable).

7. Where a date has been fixed for trial, to enable the defence to prepare for trial, the prosecution shall, save for good and sufficient reason, furnish an indictment to the defence within four weeks of the fixing of a trial date.

Cases returned to the Circuit Court and first listed for trial after 1 January 2013

8. In addition to the foregoing provisions, these cases will be processed in the following manner:

- On the day of return for trial from the District Court, cases will be assigned a specific first mention date for a Friday not less than three weeks later, to which the accused will be remanded from the District Court.
- Guilty pleas will be accepted on the first mention date. On that date, the court will fix a date for arraignment not less than eight weeks later, by which time all usual pre-arraignment matters must be dealt with and plea must be entered or a trial date requested.
- A longer period before arraignment will be assigned only where required by specific and usual circumstances, such as the complexity of the case, where an appropriate additional period will be allowed. No further mention dates or adjournments will be permitted, save in exceptional circumstances.

9. The effectiveness of the practices aforementioned will be reviewed after 1 January 2014, in consultation with representatives of practitioners, the Chief Prosecution Solicitor, the Office of the Director of Public Prosecutions and the Courts Service.

Raymond Groarke,
President of the Circuit Court,
17 October 2012

Circuit Criminal Court: pre-trial procedure – Midland Circuit

CRIMINAL LAW COMMITTEE

With a view to avoiding unnecessary delays in criminal proceedings, identifying cases in which pleas may be entered in advance of a trial date, and to facilitate the commencement of trials in criminal proceedings in the Circuit Court at the time and date appointed, a practice direction has been issued setting out new procedures that will be introduced on a pilot basis in respect of all cases listed for trial in this circuit from 1 January 2013.

1. A pre-trial questionnaire shall be completed and signed (i) by counsel and the solicitor for the prosecution in the form annexed to the direction (Form 1*), and (ii) by counsel and the solicitor for the accused in the form annexed to the direction (Form 2*).

*(*Available by accessing the practice direction on the Courts Service website and on the Criminal Law Committee pages on the Law Society's website.)*

2. The completed questionnaires shall be returned to the Circuit Court Office for the county in which the proceedings are listed for trial and a copy served on the other side not later than one month before the date fixed for trial.

3. The solicitor and counsel for the prosecution and defence shall be obliged to consult with, and obtain the necessary instructions from, their respective clients for the purposes of completing fully the applicable questionnaire.

4. The effectiveness of the practice aforementioned will be reviewed after 31 December 2013, in consultation with representatives of practitioners, the State Solicitor and the Office of the Director of Public Prosecutions.

NOTICE: COMMITTEE FOR JUDICIAL STUDIES CONFERENCES 2013

District Court conference and national conference

Please note that the date for the 2013 District Court conference held under the auspices of the Committee for Judicial Studies has been provisionally set as below and will take place on Friday 17 May 2013.

No cases should be listed for the District Court on Friday 17 May 2013, save on the instruction of the judiciary.

The 2013 national conference for all judges held under the auspices of the Committee for Judicial Studies will be held in Dublin Castle on Friday 15 November 2013.

No cases should be listed for any court on this date, save on the instruction of the judiciary.

Information regarding the dates for the Supreme and High Court and the Circuit Court conferences and updates will issue in due course.

The Courts Service asks legal practitioners to take whatever action is deemed necessary in relation to the above information.

Practice notes

Conveyancing conflicts regulation 2012 (SI no 375 of 2012)

With due regard to the special circumstances of conveyancing transactions in respect of which a contract has been executed prior to 1 January 2013 and the public interest in both the objective of enabling continuity of service for clients involved in conveyancing transactions who have entered into contractual commitments and in the proportionate enforcement of regulations, the Law Society has decided to issue this practice note.

It is the policy of the Law Society, where a contract in relation to a conveyancing transaction has been executed by both the vendor and the purchaser prior to 1 January 2013, not to treat a solicitor continuing to act for both the vendor and the purchaser in that conveyancing transaction as being in breach of the *Solicitors (Professional Practice, Conduct and Discipline – Conveyancing Conflict of Interest) Regulation 2012* (SI no 375 of 2012), provided that there is no actual conflict between vendor and purchaser.

It is recognised that often in voluntary transactions there is no contract. Therefore, to avail of the transitional arrangements set out in this practice note, if there is a voluntary transaction in progress, it will be necessary for the vendor and the purchaser to sign, for example, a memorandum that will serve as the contract.

In this practice note, the expressions 'conveyancing transaction', 'solicitor', 'vendor' and 'purchaser' are used with the same meanings as in the regulation.

John Elliot, Registrar of Solicitors and Director of Regulation

Issues with e-stamping

CONVEYANCING COMMITTEE

The Conveyancing Committee notes from the volume of correspondence and calls it receives from solicitors that practitioners are still having difficulties with e-stamping. Solicitors' concerns have been raised by the Conveyancing Committee and the Taxation Committee with Revenue. If you continue to experience problems with e-filing and self-assessment matters, please forward evidence of these difficulties to the committee and it will take the matter up with Revenue.

Closed firms and the Land Registry

From the date of cessation of a firm, no legal work may be carried out on any file, no matter how urgent. This includes making applications to the Land Registry or answering Land Registry queries. Once the firm has closed, even if a solicitor in the firm still has a current practising certificate, no legal work can be done in the name of the firm. Such work can only be carried out by a solicitor with a practising certificate in a firm with professional indemnity insurance in place.

Therefore, firms should try to ensure that all such matters are finalised prior to the date of cessation of the firm. Alternatively, clients must be informed that the firm cannot finalise matters and that they should nominate another firm of solicitors to deal with the matter. In cases where the client has already paid the firm to complete the work, the client may insist that the firm pays the relevant fees to the client's new solicitor to complete the work outstanding at the date of cessation of the firm.

The Land Registry holds a current list of all live firms, with updates provided weekly by the Society. In cases where an application is made by a ceased firm, or the ceased firm submits a response to a query raised by the Land Registry on an application, even if the firm was open when the application was first made, the partner/principal of the ceased firm will be written to by the Land Registry and informed that the application will be frozen until such time as the client nominates a new firm of solicitors to deal with the matter. The Society will also be informed by the Land Registry in cases where a ceased firm, or a solicitor without a practising certificate, attempts to lodge an application with or answer queries from the Land Registry.

It should also be noted that only a solicitor with a practising certificate in a firm with professional indemnity insurance in place may certify title as a practising solicitor. Solicitors without a practising certificate and solicitors from ceased practices may not certify title as a practising solicitor, even if the certificate is, as usual, backdated to the date of closing of the sale, when the firm was open and the solicitor had a practising certificate.

It should be noted that:

- Section 56(1) of the *Solicitors (Amendment) Act 1994* provides that no solicitor shall practise as a solicitor unless a practising certificate in respect of him or her is in force.
- Section 56(2) of the *Solicitors (Amendment) Act 1994* provides that a solicitor shall be deemed to practise as a solicitor if he or she engages in the provision of legal services, whether as a sole practitioner or as a partner in a solicitor's practice, or as an employee of any solicitor or of any person or body, or as a solicitor in the full-time service of the State.
- 'Legal services' are services of a legal or financial nature provided by a solicitor arising from that solicitor's practice as a solicitor.
- It is professional misconduct and a criminal offence for a solicitor who does not hold a practising certificate to act as a solicitor.

John Elliot, Registrar of Solicitors and Director of Regulation

Deadline for registration of prescriptive easements

CONVEYANCING COMMITTEE

Practitioners are reminded that the deadline for registration of easements (which includes rights of way) and profits *à prendre* was extended, following representations made by the Law Society, by section 38 of the *Civil Law (Miscellaneous Provisions) Act 2011* by substituting 'within 12 years' for 'within three years' in section 38(b) of the *Land and Conveyancing Law Reform Act 2009*.

This means that applicants for registration have until 30 November 2021 to register (instead of 30 November 2012, as had been the case prior to the 2011 amending legislation). Practitioners are referred to the committee's note on p12 of the July 2011 *Gazette*.

For full details on how to make an application for registration, practitioners should consult the PRA practice direction 'Registration of easements and profits *à prendre* acquired by prescription under section 49A', available on its website, www.prai.ie.

Legislation update 6 October – 9 November 2012

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – www.lawsociety.ie (members' and students' areas) – 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 available in PDF at www.attorneygeneral.ie/esi/esi_index.html

ACTS PASSED

Ombudsman (Amendment) Act 2012
Number: 38/2012
Amends the *Ombudsman Act 1980* to extend the number of reviewable agencies coming within the remit of the ombudsman and provides for related matters.
Commencement: Commencement order(s) to be made as per section 1(3) of the act

SELECTED STATUTORY INSTRUMENTS

European Union (Environmental Impact Assessment) (Planning and Development Act 2000) Regulations 2012
Number: SI 419/2012
Gives further effect to Directive 2011/92, article 3, on the assessment of the effects of certain public and private projects on the environment.
Commencement: 31/10/2012

Rules of the Superior Courts (Robes of Bench) 2012
Number: SI 400/2012
These rules replace the existing official costume of the Supreme Court (that is, a coat and vest of the kind worn by senior counsel, gown and bands) with a gown and neck tab.
Commencement: 23/10/2012

Prepared by the Law Society Library

ONE TO WATCH

One to watch: new legislation

Ombudsman (Amendment) Act 2012
Under the *Ombudsman (Amendment) Act 2012*, an 'eligible person' means (a) a person other than a reviewable agency or an exempt agency, and (b) a person (being an individual who constitutes, or is a member, officer, employee or agent of, a reviewable agency or an exempt agency) in that person's private capacity. Section 3 states that 'entity' means a person, body of persons, organisation or group, including, in particular, an organ of government, or an element of an organ of government, at national or local level.

Reviewable agency
According to section 4, the minister may, after consultation with the ombudsman, the ombudsman for children and such committee of the Houses of the Oireachtas as he or she considers appropriate, and with the consent of such other minister (if any) as appears to the minister to be responsible for the entity in question, and having regard to the need to ensure appropriate accountability and oversight of entities referred to (in this subsection), may by order declare a reviewable agency to be:

a) An entity, being (i) a company established under the *Companies Acts* in pursuance of powers conferred by or under another enactment, or (ii) any other entity, whether financed wholly or partly or directly or indirectly by means of moneys provided, or loans made or guaranteed, by a minister or the issue of shares held by or on behalf of a minister,
b) Any other entity on which functions in relation to the general public or a class of the general public stand conferred by any enactment,
c) A subsidiary of a company to which (a)(i) above relates,
d) An entity (other than a subsidiary to which (c) above relates), that is directly or indirectly controlled by an entity to which (a)(ii) or (b) relates.

Section 4(2) provides that an order made under subsection 1 may exclude certain elements of that entity from review. In this regard, section 4(3) states that, where an order is proposed to be made under 4(1) and such order excludes certain elements of an entity from review, the proposed order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

Functions of the ombudsman
Section 4 of the *Ombudsman Act 1980* is amended by section 6 of the 2012 act, which provides that the ombudsman may investigate any action taken by or on behalf or a reviewable agency in the performance of administrative functions where, having carried out a preliminary examination of the matter, it appears to the ombudsman that:

a) The action has or may have adversely affected an eligible person, and
b) The action taken was or may have been (i) taken without proper authority, (ii) taken on irrelevant grounds, (iii) the result of negligence or carelessness, (iv) based on erroneous or incomplete information, (v) improperly discrimina-tory, (vi) based on an undesirable administrative practice, (vii) a failure to comply with section 4a, or (viii) otherwise contrary to fair or sound administration.

Section 6(3) states that the ombudsman shall not investigate an action unless (a) a complaint in relation to the action has been made to the ombudsman by or on behalf of an eligible person, or (b) it appears to the ombudsman, having regard to all the circumstances, that an investigation under this section into the action would be warranted.

Duty on reviewable agencies
Section 4(A) is added to the principal act, which states:

1) This section applies when an action taken by or on behalf of a reviewable agency in the performance of administrative functions affects (a) rights, privilege or other benefit to which an eligible person is or may be entitled, or (b) an obligation, liability, penalty or other detriment to which an eligible person is or may be subject.
2) The agency shall, consistent with the resources available to the agency (a) give reasonable assistance and guidance to that person in any dealings of the person with the agency in relation to the action taken by the agency, having particular regard to the needs of the person as a result of any disability, (b) ensure that the business of the person with the agency in relation to that action is dealt with properly, fairly, impartially and in a timely manner, and (c) provide information to the person on any rights of appeal or review in respect of that action and on the procedures for, and any time limits applying to, the exercise of those rights. G

Solicitors Disciplinary Tribunal

Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*

In the matter of Alexander M Gibbons, a solicitor of Gibbons & Company, Riverside, Kent Street, Clonakilty, Co Cork, and in the matter of the *Solicitors Acts 1954-2008* [5839/DT52/10 and High Court record no 2011 no 89SA]
Law Society of Ireland (applicant)
Alexander M Gibbons (respondent solicitor)

On 18 January 2011, 5 April 2011, 14 June 2011 and 30 June 2011, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. The tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to comply with an undertaking, given on 27 June 2005 to Bank of Ireland on behalf of his clients, to stamp and register the borrower's title to the property and the lender's mortgage in a timely manner or at all,
b) Failed to ensure that the borrower would acquire good title in accordance with his indemnity of 27 June 2005,
c) Failed to ensure that a deed of transfer and a mortgage deed were executed to ensure that title was acquired,
d) Failed to respond to correspondence from the Society and, in particular, the Society's letters of 8 May 2009 and 22 May 2009 in a timely manner or at all,
e) Failed to comply with the direction of the committee at its meeting on 24 June 2009 to furnish to the Society, by 20 July 2009, a copy of the stamped transfer deed, copy of the stamped mortgage deed, Form 17 and a dealing number,
f) Failed to comply with the direction of the committee made on 30 July 2009 to provide a full history of the property transaction with supporting documentation by 10 September 2009, having only furnished the Society with part of his file on 9 September 2009.

The tribunal ordered that the Society bring the report of the tribunal to the President of the High Court, and the President of the High Court, on 13 February 2012, ordered that the respondent solicitor should not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Society.

Take note that, subsequently, by order of the High Court made on 21 May 2012 in record no 2012 no 19SA, the respondent solicitor's name was struck off the Roll of Solicitors.

In the matter of Angela Farrell, a solicitor practising as Farrell Solicitors, 28 North Great Georges Street, Dublin 1, and in the matter of the *Solicitors Acts 1954-2008* [6102/DT65/11]
Law Society of Ireland (applicant)
Angela Farrell (respondent solicitor)

On 20 October 2011, 9 February 2012, 3 May 2012 and 19 June 2012, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. The tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that, up to the date of referral to the tribunal, she:

a) Failed to comply with an undertaking, furnished to the complainant on 7 March 2008, to furnish the complainant with the partial discharge of an Ulster Bank mortgage, together with the appropriate registration fees, as soon as possible after closing,
b) Failed to comply with an undertaking dated 7 March 2008 to furnish a receipt for the financial conditions of the planning permission and, if applicable, to discharge same from the proceeds of sale in a timely manner or at all,
c) Failed to respond in a timely manner to the Society's correspondence in the investigation of the complaint and, in particular, the Society's letters of 4 August 2010, 17 August 2010, 26 October 2010, and 9 November 2010 in a timely manner or at all,
d) Failed to respond satisfactorily to 13 letters and numerous telephone calls from the complainant.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €5,000 to the compensation fund,
c) Make restitution to the named complainant in the sum of €1,539.23,
d) Pay the whole of the costs of the Society, including witness expenses, as taxed by a taxing master of the High Court in default of agreement.

In the matter of Angela Farrell, a solicitor practising as Farrell Solicitors, 28 North Great Georges Street, Dublin 1, and in the matter of the *Solicitors Acts 1954-2008* [6102/DT66/11]
Law Society of Ireland (applicant)
Angela Farrell (respondent solicitor)

On 20 October 2011, 9 February 2012, 3 May 2012 and 19 June 2012, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. The tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that, up to the date of the referral to the tribunal, she:

a) Failed to comply with an undertaking, furnished to the complainant on 7 March 2008, to furnish the complainant with a partial discharge of an Ulster Bank mortgage, together with the appropriate registration fees, as soon as possible after closing,
b) Failed to comply with an undertaking, furnished to the complainant on 7 March 2008, to furnish a receipt for the financial conditions of the planning permission and, if applicable, to discharge same from the proceeds of sale in a timely manner or at all,
c) Failed to respond to the complainant's letters of 4 June 2008, 21 October 2010 and 9 November 2010.

The tribunal ordered that the respondent solicitor:

NOTICES: THE HIGH COURT

Record no 2012 no 56 SA
In the matter of Aiden Barry, practising as Aiden Barry, solicitor, Roche House, 8 Bank Place, Limerick, Co Limerick, and in the matter of the *Solicitors Acts 1954-2011*

Take notice that, by order of the High Court made on Wednesday 19 September 2012, it was ordered that the respondent solicitor shall be suspended from practising as a solicitor until further order of the court.

John Elliot, Registrar of Solicitors, 24 September 2012

Record no 2012 no 64SA
In the matter of Gabrielle M Dalton, a solicitor, and in the matter of the *Solicitors Acts 1954-2011*

Take notice that, by order of the High Court made on 8 October 2012, it was ordered that the name of Gabrielle M Dalton, solicitor, formerly practising as Dalton & Associates at 21 Otteran Place, South Parade, Waterford, be struck off the Roll of Solicitors.

John Elliot, Registrar of Solicitors, 19 October 2012

a) Do stand censured,
b) Pay a sum of €5,000 to the compensation fund,
c) Make restitution to the named complainant in the sum of €936.11,
d) Pay the whole of the costs of the Society, including witness expenses, as taxed by a taxing master of the High Court in default of agreement.

In the matter of Louis McDonough, a solicitor practising as ML O'Connell & Company, Solicitors, The Square, Listowel, Co Kerry, and in the matter of the *Solicitors Acts 1954-2008* [4962/DT106/11]
Law Society of Ireland (applicant)
Louis McDonough (respondent solicitor)
On 28 June 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 January 2011 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001).

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

In the matter of John F Condon, a solicitor practising as McMahon & Tweedy Solicitors, Merchant's House, 27/30 Merchant's Quay, Dublin 8, and in the matter of the *Solicitors Acts 1954-2008* [3127/DT/96/11]
Law Society of Ireland (applicant)
John Condon (respondent solicitor)
On 17 July 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to hand over an original will to the complainant, notwithstanding the fact that an authority was sent to him on 17 December 2010 signed by the client,
b) Failed to respond to letters sent to him by the complainant, including the authority of 17 December 2010, the request of 7 January 2011, 16 February 2011, 12 April 2011 and 23 May 2011 in a timely manner or at all,
c) Failed to respond in a timely manner to the Society's correspondence and, in particular, the Society's letters of 30 May 2011 and 21 June 2011.

The tribunal ordered that the respondent solicitor:
a) Do stand admonished and advised,
b) Pay a sum of €2,000 to the compensation fund,
c) Pay a contribution of €2,000, to include witness expenses, towards the costs of the Society.

In the matter of Greg (otherwise John G) Casey, a solicitor formerly practising in the firm of Casey & Co, Solicitors, North Main Street, Bandon, Co Cork, and in the matter of the *Solicitors Acts 1954-2008* [5355/DT50/09]
Law Society of Ireland (applicant)
Greg (otherwise John G) Casey (respondent solicitor)
On 25 July 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to reply to multiple correspondence from the Society,
b) Failed to comply with a direction of the Complaints and Client Relations Committee made on 28 November 2007 that he hand over files of the complainant within one week.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €5,000 to the compensation fund,
c) Pay €5,000 to the Society as a contribution towards their costs in respect of the proceedings herein and €400 witness expenses.

In the matter of Michael Browne, a solicitor practising as Garvey Smith & Flanagan Solicitors at Mountain View, Castlebar, Co Mayo, and in the matter of the *Solicitors Acts 1954-2008* [2072/DT53/10]
Law Society of Ireland (applicant)
Michael Browne (respondent solicitor)
On 4 October 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to comply with his undertaking dated 11 April 2001 and subsequently assigned to the complainants on 4 March 2008 in a timely manner or at all,
b) Failed to comply with his undertaking to the Society to furnish an up-to-date report within 14 days, given by letter dated 28 January 2010,
c) Failed to comply with the direction of the Complaints and Client Relations Committee at its meeting on 29 January 2010 to attend to the following matters within 21 days:
   i) Deed of release of way leave and right of way to be furnished to the county council and a copy of the deed and the letter to be furnished to the Society,
   ii) Deed of transfer of common areas to be executed and lodged with the Registry of Deeds and a copy of this deed and letter to be lodged to the Society,
   iii) Arrears of rent to be discharged and a copy of the letter to the Chief State Solicitor in that regard to be forwarded to the Society,
   iv) Application for first registration to be lodged in the Land Registry and a copy of the application and the letter to the Land Registry to be lodged to the Society,
d) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 20 April 2009, 6 May 2009, 14 May 2009, 5 June 2009, 15 June 2009, 22 July 2009, 21 August 2009, 2 September 2009, 1 October 2009, 9 December 2009, 21 December 2009, and 3 February 2010 in a timely manner or at all,
e) Failed to discharge the costs of €1,000 levied by the Complaints and Client Relations Committee at its meeting of 29 January 2010 in a timely manner or at all.

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

In the matter of Michael Browne, a solicitor practising as Garvey Smith & Flanagan Solicitors at Mountain View, Castlebar, Co Mayo, and in the matter of the *Solicitors Acts 1954-2008* [2072/DT12/10]
Law Society of Ireland (applicant)
Michael Browne (respondent solicitor)
On 4 October 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to comply with his undertaking given on 22 February 2007 to the complainants to comply with condition 21 of a planning permission in a timely manner or at all,
b) Failed to respond to the Society's correspondence in the time specified and, in particular, failed to reply to the Society's letters of 27 April 2009, 14 May 2009, 16 June 2009, 29 June 2009, 10 July 2009, 20 July 2009, 13 October

2009, and 1 December 2009 in a timely manner or at all,
c) Failed to comply with the direction of the Complaints and Client Relations Committee issued at its meeting on 9 October 2009 that the solicitor provide an up-to-date report on the matter on or before 12 November 2009.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay the whole of the costs of the Society as taxed by a taxing master of the High Court in default of agreement.

In the matter of Myles D Gilvarry, a solicitor practising as Gilvarry & Associates at Unit 9, N5 Business Retail Park, Moneen Road, Castlebar, Co Mayo, and in the matter of the *Solicitors Acts 1954-2011* [4903/DT33/12]
Law Society of Ireland (applicant) Myles D Gilvarry (respondent solicitor)
On 4 October 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2010 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001).

The tribunal ordered that the respondent solicitor:
a) Do stand admonished and advised,
b) Pay the whole of the costs of the Society as taxed by a taxing master of the High Court in default of agreement.

In the matter of Gabrielle M Dalton, a solicitor formerly practising under the style and title of Gabrielle Dalton & Associates, 21 Otteran Place, South Parade, Waterford, and in the matter of the *Solicitors Acts 1954-2008* [S5330/DT06/11 and 2012 no 64SA]
Law Society of Ireland (applicant) Gabrielle M Dalton (respondent solicitor)
On 2 February 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:
a) Caused or allowed a deficit to arise on her client account as at 31 March 2008,
b) Caused or allowed monies totalling in or about €68,970 to be improperly withdrawn from the client account between 15 November 2007 and 30 January 2008, in breach of regulation 7 of the *Solicitors' Accounts Regulations 2001* by posting fees in that amount to the 'dummy' ledger card and drawing same to the office account,
c) Caused or allowed a deficit to arise on her client account totalling in or about €68,970 as of 30 January 2008 as a result of the drawing of fees through the 'dummy' ledger card,
d) Caused or allowed monies totalling in or about €27,830 to be improperly transferred from the client account to the office account between 3 April 2008 and 21 April 2008, in breach of regulation 7,
e) Failed to maintain accounting records that showed the true financial position in relation to her transactions with the client monies of a named company, in breach of regulation 12,
f) Failed to maintain accounting records that showed the true financial position in relation to her transactions with the client monies of a different named company, in breach of regulation 12,
g) Failed to draw professional fees in the client matters of a named client company in accordance with the regulations,
h) Improperly drew fees totalling in or about €8,711 from the client monies of a named client, received in the purchase of an apartment in Kilkenny, in breach of regulation 7,
i) Improperly caused or allowed fees of €8,772 to be drawn twice in a named client matter,
j) Failed to maintain accounting records that showed the true financial position in relation to her transactions with the client monies of a named client, in breach of regulation 12,
k) Caused or allowed fees to be improperly drawn from the client account on 1 October 2007 by debiting fees totalling €3,630 (€1,815 plus €1,815) to the client ledger accounts of two named clients, where there were no funds available in the client ledger accounts at that date,
l) Caused or allowed fees to be improperly drawn from the client account on 21 June 2007 by debiting fees of in or about €1,028 to the client ledger account of a named client, when there were no funds available at that date on the client ledger,
m) Failed to complete stamping of the deed in the matter of a named client in a timely manner,
n) Caused or allowed a deficit to arise on her client account as at 31 May 2008 and at 4 June 2008,
o) Caused or allowed a deficit on the client accounts as at 31 May 2008, in respect of a named client, of in or about €101,604,
p) Caused or allowed a further deficit on the client accounts as at 31 May 2008, in respect of other client matters, of in or about €44,671,
q) Misappropriated client funds of a named client in the amount of €30,539 from monies of €44,355 received to pay stamp duty, Land Registry fees and outlay in respect of the purchase of a premises in Waterford,
r) Misappropriated client funds of a named client in the amount of in or about €8,711 received to pay stamp duty, outlays and Land Registry fees in respect of the purchase of an apartment in Kilkenny,
s) Failed to stamp the purchase deeds of clients, despite having been put in funds of in or about €5,332 to do so, and instead drew fees from the amount received so that there were insufficient funds remaining to complete stamping,
t) Demonstrated a gross disregard for client funds,
u) Failed to maintain proper books of account, in breach of regulation 12 of the 2001 regulations, over a continued period of time and, in particular, from in or about November 2007 to November 2008 such that it was not possible to determine from her accounting records a true and accurate statement of client affairs,
v) Breached regulation 7 by withdrawing monies from the client account that were not properly available to be so withdrawn in accordance with the provisions of that regulation,
w) Caused or allowed debit balances to arise on client ledger accounts in breach of regulation 7(2),
x) Transferred monies between clients' ledger accounts other than in circumstances permitted by the regulations, in breach of regulation 9,
y) Failed to maintain and keep in respect of transfers between clients' ledger accounts such accounting records and other documents as would enable such transactions to be appropriately vouched, in breach of regulation 9(a),
z) Breached regulation 11 by failing to furnish bills of costs to clients prior to drawing fees.

The tribunal ordered that the matter go forward to the President of the High Court, and the President of the High Court, on 8 October 2012, made an order striking the name of the respondent solicitor from the Roll of Solicitors and ordering that the respondent solicitor pay the costs of the Society, to be taxed in default of agreement.

Brief cases

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ARBITRATION

Contract

Arbitration clause – sub-contract – intention of parties – jurisdiction – competence of arbitral tribunal to rule on jurisdiction – whether binding arbitration clause – whether matters in dispute fell outside sub-contract – whether separate agreement – whether clause applied to works in dispute – whether clause applied to all works carried out by applicant at respondent's site – whether arbitrator had jurisdiction to decide dispute – whether court had jurisdiction to determine issue.

Anglo-Irish Banking Corporation v Tolka Structural Engineering [2005] IEHC 239, (unreported, Gilligan J, 8/7/2005); *A&B v C&D* [1982] 1 Lloyds LR 166; *Lynch Roofing Systems v Bennett & Son Ltd* [1999] 2 IR 450 and *McCrory Scaffolding Ltd v McInerney Construction Ltd* [2004] IEHC 346, [2004] 3 IR 592 considered. *Arbitration Act 1954* (no 26) – *Arbitration Act 2010* (no 1), s3(1) and schedule I, article 16(3) – *Rules of the Superior Courts 1986* (SI 15/1986), order 56, rule 3.

Application dismissed (2011/87 MCA – Laffoy J – 22/6/2011) [2011] IEHC 249.

Winthrop Engineering and Contracting Ltd v Cleary & Doyle Contracting Ltd

COMPANY LAW

Liquidators

Official liquidator – proposed arrangement – court sanction – liquidator's duties – whether liquidator entitled to sell property without sanction of court – whether gross proceeds of sale must be paid into liquidation account – whether the court has inherent jurisdiction make orders modifying rules relating to sales of assets – whether the court may authorise liquidator to enter agreement – rights of secured creditor – whether secured creditor entitled to rely on security – obligation on official liquidator to distinguish between proceeds from assets subject to fixed charges and floating charges – whether official liquidator should be remunerated from liquidation assets if doing significant work for exclusive financial benefit of charge holder – whether court sanction required for any agreement reached for remuneration for work done on behalf of secured creditor – conflict of interest – fiduciary obligations and general rules applicable to liquidator's remuneration – whether court sanction required where Revenue Commissioners underwrite liquidation costs and remuneration.

Re McCairns (PMPA) plc (In Liquidation) [1992] ILRM 19 followed. *Companies Act 1963* (no 33) s228(d) – *Rules of the Superior Courts 1986* (SI 15/1986) order 74, rule 38.

Directions given (2010/185 COS – Finlay Geoghegan J – 25/7/2011) [2011] IEHC 307.

In re DR Developments (Youghal) Ltd

Seizure

Extension of time – material obtained on foot of warrants – sixth application for extension of time – direction that court be apprised of progress in investigation – matters being investigated – affidavit evidence regarding progress – complexity of investigation – unsatisfactory nature of delay.

Kelly v Byrne [2011] IEHC 174, (unreported, Clarke J, 13/4/2011) considered. *Companies Act 1990* (no 33), s20.

Limited extension granted with requirement for more detailed information on next occasion (2010/323COS – Kelly J – 10/5/2011) [2011] IEHC 164.

Director of Corporate Enforcement v Anglo Irish Bank Corporation Limited

CONSTITUTIONAL

Fair procedures

Autrefois acquit – double jeopardy – injunction – restraining prosecution – previous conviction for offence arising out of same facts – legitimate expectation of no further prosecution – delay in bringing subsequent prosecution – due process – public interest – integrity of trial process – whether prosecution abuse of process, oppressive and unfair – whether violation of constitutional right to trial in due course of law – whether real risk of unfair trial – whether legitimate expectation – whether failure to disclose could amount to adoption of position, promise or representation – whether delay excusable.

S(D) v Judges of the Cork Circuit Court [2008] IESC 37, [2008] 4 IR 379; *People (DPP) v Quilligan (No 2)* [1989] IR 46; *Z v DPP* [1994] 2 IR 477; *D v DPP* [1994] 2 IR 465; *Connolly v DPP* [1964] AC 1254; *O'N(L) v DPP* [2006] IEHC 184, [2007] 4 IR 481; *Reg v Beedie* [1998] QB 356; *Henderson v Henderson* [1843] 3 Hare 100; *Arklow Holidays Ltd v An Bord Peanála* [2007] IEHC 327, (unreported, Clarke J, 5/10/2007); *A(A) v Medical Council* [2003] 4 IR 302; *Glencar Exploration plc v Mayo County Council (No 2)* [2002] 1 IR 84; *People (DPP) v Finnamore* [2008] IECCA 99, [2009] 1 IR 153 and *McFarlane v DPP* [2008] IESC 7, [2008] 4 IR 117 considered. *Electoral Act 1997* (no 25), s25 – *Public Bodies Corrupt Practices Act 1889* (52 & 53 Vict, c69) – *Rules of the Superior Courts 1986* (SI 15/1986), order 84, rule 20 – *Constitution of Ireland 1937*, article 38.1 – *European Convention on Human Rights*, article 6.

Relief refused (2011/211JR – Hedigan J – 28/7/2011) [2011] IEHC 312.

Cosgrave v DPP

CONSUMER LAW

Financial services

Serious and significant error – oral hearing – whether serious and significant error – whether respondent erred in accepting notice party's evidence – whether too much weight attached to evidence – whether respondent should have conducted oral hearing – whether respondent fulfilled statutory obligations – whether infirmity in respondent's reasoning – whether decision within jurisdiction.

J&E Davy t/a Davy v Financial Services Ombudsman [2010] IESC 30, [2010] 3 IR 324; *Ulster Bank Investment Funds Ltd v Financial Services Ombudsman* [2006] IEHC 323, (unreported, Finnegan P, 1/11/2006); *Galvin v Chief Appeals Officer* [1997] 3 IR 240 and *Molloy v Financial Services Ombudsman* (Unreported, HC, 15/4/2011) considered. Central Bank Act 1942 (no 22), s57CM(2)(B) and (2)(C) – *Central Bank and Financial Services Authority of Ireland Act 2004* (no 21), s16.

Relief refused (2010/320MCA – Hedigan J – 12/7/2011) [2011] IEHC 285.

Caffrey v Financial Services Ombudsman

CRIMINAL

Sentence

Application for leave – culpability of accused – joint venture – parity – distinction between co-defendants – whether sentence excessive and disproportionate – whether due to consideration given to aggravating and mitigating factors – whether appropriate disparity between co-defendants.

Non-Fatal Offences Against the Person Act 1997 (no 26), ss3 and 4.

Appeal allowed (53/2010 – Denham J – 10/2/2011) [2011] IECCA 3.

People (DPP) v Dowling

Undue leniency – error in principle – whether sentence unduly lenient – whether error in principle that led to unduly lenient sentence.

Criminal Justice Act 1993 s2.

Application refused (104/2010 – CCA – 11/3/2011) [2011] IECCA 11/

People (DPP) v Hutch

Undue leniency – plea of guilty – no previous serious offences – involvement in offence – whether sentence unduly lenient – whether judge had regard to all evidence.

People (DPP) v McC [2007] IESC 47 (unreported, SC, 25/10/2007) considered. *Criminal Justice Act 1993* (no 6), s2.

Application refused (97/2010 – CCA – 11/3/2011) [2011] IECCA 10.

People (DPP) v O'Driscoll

EMPLOYMENT

Dismissal

Unfair dismissal – redundancy – burden of proof – redress – quantum of damage – whether genuine redundancy – whether dismissal disguised as redundancy – whether procedures followed.

St Ledger v Frontline Distribution Ireland Ltd [1995] ELR 160; *Campbell v MGN Ltd* [2004] UKHL 22, [2004] 2 AC 457 and *MGN Ltd v UK* [2011] ECHR 66 considered.

Unfair Dismissals Act 1977 (no 10), ss6 and 7 – *Redundancy Payments Act 1967* (no 21) – *Redundancy Payments Act 1971* (no 20), s4 – *Redundancy Payments Act 2003* (no 14), s5.

Damages awarded (2010/125CA – Charleton J – 27/7/2011) [2011] IEHC 279.

JVC Europe v Pasini

LAND LAW

Landlord and tenant

Lease – termination of lease – forfeiture – application for possession – breach of covenant – non-payment of rent – terms of lease – sublease – whether sublease automatically terminated by virtue of forfeiture of head lease – whether sublease survived – whether third defendant entitled to issue subleases.

Pennell v Payne [1995] 2 All ER 952; *Carr v Phelan* [1967] ILRM 149; ICS v *West Bromwich BS* [1998] 1 WLR 896 and *PW & Co v Milton Gate Investments* [2004] Ch 14 considered. *Landlord and Tenant (Amendment) Act 1980* (no 10), s78 – *Landlord and Tenant (Ground Rents) Act 1967* (no 3) – *Conveyancing Act 1882* (45 & 46 Vic, c 39), s4.

Relief refused (2010/5702P & 11697P – Hedigan J – 29/7/2011) [2011] IEHC 322.

Stone v Red Valley Ltd

Enforcement

Private Residential Tenancy Board – jurisdiction – interim direction and determination order – jurisdiction to act where dispute referred pre-registration of tenancy – validity of determination order – civil proceedings brought directing appellant comply with interim direction – criminal proceedings initiated for breach of final determination order – whether board had power to enforce interim direction – whether determination order valid where signed by one member only – whether points raised formed basis to prevent criminal prosecution – whether board jurisdiction to act where dispute referred pre-registration – whether board jurisdiction to initiate criminal proceedings where no civil proceedings issued – whether alleged failure to affix seal to order affected power to institute criminal proceedings.

Dillon v Dunne's Stores Ltd [1966] IR 397 applied. *Residential Tenancies Act 2004* (no 27), ss83, 103, 109, 115, 117, 121, 123, 124, 126, 173 and 189.

Appeal dismissed (191/2007; 425/2010 – SC – 19/7/2011) [2011] IESC 28.

Canty v Private Residential Tenancies Board

NEGLIGENCE

Duty of care

Fall – in-patient in psychiatric facility – patient unsteady and complaining of dizziness – whether one-to-one nursing would have prevented fall or otherwise improved patient safety – whether removal of one-to-one nursing was negligent – definition of negligence – failure to prove causation.

Dunne v National Maternity Hospital [1989] IR 91 followed.

Claim dismissed (2007/4483P – Irvine J – 22/7/2011) [2011] IEHC 305.

Corrigan v Health Service Executive

Medical negligence

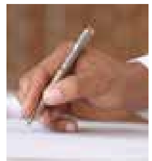
Standard of care – management of labour – lack of ordinary care – rushed labour – instrumental birth – obligation to be kept reasonably up to date on medical developments – guidelines regarding commonly occurring injury – date of knowledge – whether lack of ordinary care – whether procedures in place to deal with injuries – whether fault in hospital management – whether hospital required to have procedures in place – whether proceedings commenced in time.

Dunne v National Maternity Hospital [1989] IR 91; *Elliott Construction Ltd v Irish Asphalt Ltd* [2011] IEHC 269, (unreported, HC, Charleton J, 25/5/2011); *Gough v Neary* [2003] 3 IR 92; *Fortune v McLoughlin* [2004] IESC 34, [2004] 1 IR 526; *Naessens v Jermyn* [2010] IEHC 102, (unreported, HC, Dunne J, 26/3/2010); *Spargo v North Essex Health Authority* [1997] 8 Med LR 125 and *Halford v Brookes* [1991] 1 WLR 428 considered. *Statute of Limitations Act 1957* (no 6), s2(1) – *Statute of Limitations (Amendment) Act 1991* (no 18), ss3 and 5 – *Civil Liability and Courts Act 2004* (no 31), s7.

Damages awarded (2008/4355P – Charleton J – 20/7/2011) [2011] IEHC 339.

M(H) v Health Service Executive

PRACTICE AND PROCEDURE



Contribution

Claim for contribution or indemnity – breach of contract – proceedings in relation to structural defects in property – claim against construction company – third party notice in relation to engineer set aside due to delay – claim that claim for contribution and indemnity sought on same basis as third party notice – whether issue of delay *res judicata* – whether facts changed – prejudice to defendant – whether exceptional circumstances existed justifying claim for contribution notwithstanding setting aside of third party notice.

ECI European Chemicals Industries Ltd v Mc Bauchemie Muller GmbH [2006] IESC 15 (unreported, SC, 14/3/2006) considered. *Civil Liability Act 1961* (no 41), s27.

Proceedings dismissed (2010/6472P – Hedigan J – 28/6/2011) [2011] IEHC 258.

Atlantic Distributors Limited v Brennan

PRISON

Prisoner

Transfer between prisons – applicant sentenced under section repealed post-offences – whether conviction invalid – whether applicant appeared before trial judge in respect of charges in bill of indictment – complaint warrant of conviction included order not made by trial judge – whether relevant to question of validity of detention – appropriate forum to raise such complaint – whether detention invalid.

Criminal Justice Administration Act 1914 (4 & 5 Geo V), c 58 – *Criminal Law Amendment Act 1935* (no 6), s6 – *Criminal Law (Rape) Act 1981* (no 10), ss10 and 13 – *Constitution of Ireland 1937*, article 40.2.

Release refused (2011/1246SS – Irvine J – 18/7/2011) [2011] IEHC 295.

Brady v Governor of the Midlands Prison

BRIEFING

Eurlegal

Edited by TP Kennedy, Director of Education

European Court clarifies rules on selective distribution systems

Earlier this year, the CJEU issued its judgment in Case C-158/11, *Auto 24 SARL v Jaguar Land Rover France SAS*, 14 June 2012. This case clarifies the application of competition rules to selective distribution systems.

Article 101 of the *Treaty on the Functioning of the EU* (TFEU) generally prohibits agreements between undertakings, decisions by associations of undertakings, and concerted practices that have the object or effect of restricting competition in the EU. However, restrictive agreements may be exempted where their overall effect is to promote competition. The European Commission has thus issued various block-exemption regulations, pursuant to article 101(3), specifying the conditions under which certain types of agreements are exempted from the prohibition of restrictive arrangements contained in article 101(1). When an agreement fulfils the conditions set out in a block-exemption regulation, the agreement is automatically valid and enforceable. Recognising the importance of this industry both to individual consumers and the wider economy, the motor vehicle sector has its own block exemption. At the relevant time, these rules were contained in Commission Regulation (EC) no 1400/2002 of 31 July 2002 on the application of article 81(3) to categories of vertical agreements and concerted practices in the motor vehicle sector.

Motor vehicle block exemption

This regulation contains a safe harbour that exempts certain motor vehicle distribution and repair agreements from the prohibition laid down in article 101(1). The rationale behind these rules is that the efficiency-enhancing effects of certain vertical agreements will outweigh any negative impact on competition in the motor vehicle sector. For example, an agreement for the sale of new motor vehicles under a quantitative selective distribution system may benefit from the block exemption, provided the supplier has a relevant market share of less than 40%. In addition, a qualitative selective distribution system will be viewed pro-competitive, irrespective of the supplier's market share.

Article 1(1)(f) of regulation 1400/2002 generally defines a selective distribution system as where a supplier agrees to sell products to resellers on the basis of 'specified criteria' and where these resellers agree not to sell the relevant products to unauthorised distributors. Regulation 1400/2002 identifies two types of selective distribution systems: quantitative and qualitative. Under the first category, a supplier uses criteria that directly limit the number of distributors. In the second category, the supplier uses purely qualitative criteria applied in specified ways while not fixing a ceiling on the number of distributors.

Termination of agreement

Jaguar Land Rover France (JLR) imports new motor vehicles and Land Rover-branded products into France. In 1994, JLR appointed Auto 24 as its exclusive distributor for the town of Périgueux, located in the Dordogne region in the southwestern France. This agreement was terminated in September 2002 but took effect two years later in accordance with the relevant contractual terms. In January 2006, JLR refused Auto 24's application to be reappointed as the Périgueux distributor, on the basis that the former's April 2005 '*numerus clausus*' did not provide for the appointment of a Land Rover dealer in that town. Later that year, an authorised JLR distributor, taking advantage of article 5(2) of Regulation 1400/2002, which states that a supplier cannot prevent an authorised member of its distribution network from opening additional places of business, opened a secondary outlet in the outskirts of Périgueux.

Reference to the CJEU

Accordingly, Auto 24 sued JLR for damages arising from the loss caused by the latter's refusal to reappoint it as a Land Rover distributor. The case eventually reached the Paris Court of Appeal, which upheld the Bordeaux Tribunal de Commerce's decision to dismiss Auto 24's claims. Interestingly, the Paris Court noted that JLR's *numerus clausus* provides for 72 authorised distributors over 109 sites, excluding Périgueux. Auto 24 appealed to the French Cour de Cassation (the equivalent of our Supreme Court), claiming that the Court of Appeal had infringed Regulation 1400/2002 by failing to require JRL to justify the reasons for its establishment of a selective distribution system. According to Auto 24, in authorising members of a quantitative selective distribution system, a supplier must use criteria that are specific, objective, proportionate to the aim pursued, and implemented in a non-discriminatory manner. Under article 267 of the TFEU, the Cour de Cassation thus sought, in spring 2011, a preliminary ruling from the CJEU on the correct interpretation of the term 'specified criteria' contained in article 1(1)(f) of Regulation 1400/2002 regarding quantitative selective distribution.

Specified criteria

The CJEU found that, in both quantitative and qualitative selective distribution systems, dealers must be selected on the basis of 'specified criteria'. This term must be viewed as interpreted as referring to criteria whose precise content might be verified. However, the court found that the relevant criteria need not be published, since this might require the disclosure of confidential information and/or might facilitate market collusion.

Qualitative and quantitative

The court then continued by examining the relevant definitions of both quantitative and qualitative selective distribution systems. Article 1(1)(h) of Regulation 1400/2002 defines a qualitative selective distribution system as a system where the relevant selection criteria are qualitative, laid down uniformly for all distributors, but do not apply in a discriminatory fashion nor limit the number of distributors. By contrast, the definition of a quantitative distribution system, contained in article 1(1)(g), does not address how the relevant selection criteria might be applied. Accordingly, the court found that the legislator (that is, the commission) sought to provide for differing exemption criteria for quantitative and qualitative selective distribution systems, respectively. Therefore, while a quantitative distribution system must be established on the basis of specified criteria, such criteria need not be objectively justified nor applied in a uniform and non-discriminatory manner across all potential applicants for inclusion.

Reform of the exemption

While Auto 24's challenge to its exclusion from JLR's distribution network was proceeding through the French courts, DG Competition was reviewing the overall application of competition rules to the motor vehicle sector. In May 2010, the commission, satisfied that competition in the market for the sale of new vehicles was healthy, decided to align rules in this area with general competi-

tion rules on vertical agreements contained in Commission Regulation (EU) no 330/2010. However, Regulation 1400/2002, which was due to expire on 31 May 2010, will continue to apply to the sale of new vehicles until next year to allow dealers to adapt to the new regime. The forthcoming application of general competition rules on vertical agreements to the sale of new motor vehicles is welcome, not least because it clears up the current anomaly between Regulation 1400/2002 and Regulation 330/2010 in terms of pure qualitative selective distribution systems. Under the latter, such networks fall outside the scope of competition rules, provided the relevant objective criteria are applied uniformly and without discrimination, whereas, under the former, such systems fall under article 101 benefit from the block exemption, irrespective of the supplier's market share.

By contrast, the commission, noting that competition on the markets for repair and maintenance of motor vehicles is less intense, has adopted a specific block-exemption regulation for this sector, Commission Regulation (EU) no 461/2010. The main reform is that agreements between vehicle manufacturers and their networks of authorised repairers/spare part distributors will no longer benefit from automatic exemption, because such networks normally have a market share of over 30%. Similarly, contracts forcing authorised repair shops to purchase spare parts from vehicle manufacturers are also unlikely to benefit from the block exemption, since manufacturers usually have 30% or more share of the downstream markets.

Wider implications

The CJEU's decision in *Auto 24* leaves open the issue of what information a supplier should supply to would-be members of a selective distribution system. That said, a member of a qualitative selective distribution network will necessarily need to know the relevant criteria, otherwise it would not be possible to maintain the requisite standards. Regarding quantitative selective distribution networks, the French government had argued in *Auto 24* that a manufacturer should supply a dealer excluded from such systems with the rationale for its decision. However, this argument cuts across the principle that, in the absence of dominance, a supplier should be able independently (*a fortiori* without giving reasons) to decide its own route to market.

In addition, the court reaffirmed the principle that, even if the relevant agreement falls outside the block exemption, this does not oblige a supplier to accept an applicant, nor does it give entitle the latter to claim damages. On the whole, *Auto 24* is probably good news for suppliers and bad news for resellers. In the absence of dominance, it allows manufacturers to revamp their distribution networks, thus potentially ceasing to supply long-standing customers. From a reseller's perspective, provided the relevant contractual provisions (including notice periods) are followed, the most obvious other way of challenging such rationalisations is to claim that the supplier is abusing its dominant position.

This will require the complainant/plaintiff to grapple with the potentially thorny issue of market definition, among other challenges. G

Cormac Little is a partner in the Competition and Regulation Unit of William Fry, Solicitors.

Law Society of Ireland

Diploma Programme

New Year and Spring 2013

Law Society of Ireland
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At the recent launch of the Certificate in Child Law were Amy Shorten and Andrew Sheridan.

NEW YEAR 2013	START DATE	FEES *
Diploma in Insolvency and Corporate Restructuring *(incl iPad2 16 GB)*	Saturday 12 January	€2,490
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Diploma in Technology Law *(new)*	Tuesday 16 April	€2,150
Diploma in Commercial Litigation	Wednesday 17 April	€2,150
Diploma in Employment Law *(incl iPad2 16 GB)*	Saturday 27 April	€2,490
Certificate in District Court Advocacy	Saturday 13 April	€1,160
Certificate in Human Rights	Saturday 20 April	€1,160

(*) Fees quoted are for solicitors. Non-legal personnel are subject to an application process and supplemental fee.

Please note discounts are available for trainees, out-of-work solicitors and multiple applications.

For further information:
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P: 01 672 4802

Recent developments in European law

CONSUMER LAW

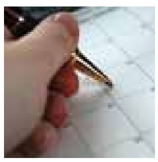
Case C-428/11, *Purely Creative and Others v Office of Fair Trading*, 18 October 2012

Britain's Office of Fair Trading (OFT) took proceedings against five British undertakings responsible for mailshots to consumers. They sent individually addressed letters, scratch cards and other advertising inserts in magazines and newspapers, by which the consumer was informed that he had won a prize. The value of the prize could be considerable or merely symbolic. The consumer was offered a number of options in order to discover his prize. He could call a premium rate telephone numbers, use a text service, or obtain the information by post (the latter method being given less prominence). The consumer was informed of the cost per minute and the maximum duration of the telephone call, but was unaware that the company responsible for the promotion took a certain amount from the cost of the call. The OFT argued that these practices were in breach of Directive 2005/29 on unfair consumer practices. This prohibits companies from creating the false impression that a consumer has won or will win, on doing a particular act, a prize or other benefit, when in fact taking any action in relation to claiming the prize or benefit it is subject to the consumer paying money or incurring a cost.

On a reference to the CJEU, it held that EU law prohibits aggressive practices that give the consumer the impression that he has already won a prize, while he is obliged to pay money or incur a certain cost in order to be informed of the nature of that prize or to take certain action to acquire it. Such practices are prohibited even if the cost imposed on the consumer is minimal (such as that of a stamp) compared with the value of the prize or where it does not procure the trader any benefit. Those aggressive practices are prohibited even if a number of methods are offered to the consumer in order to obtain the prize and even if one of those methods is free of charge. National courts must assess the information provided to consumers targeted by those practices by reference to its clarity and comprehensibility.

EMPLOYMENT

Joined cases C-302/11 to C-305/11, *Rosanna Valenza and Others v Autorità Garante della Concorrenza e del Mercato*, 18 October 2012



A number of employees, including Ms Valenza, had been recruited by the Italian Competition Authority under successive fixed-term employment contracts. They then obtained permanent contracts from that authority and were placed on its permanent staff. Italian law confers on certain workers (based on criteria concerning the length of employment and recruitment) the status of a civil servant. The initial salary is fixed, without any regard for length of service accrued in employment under fixed-term contracts. The Italian authority thus refused to take into account the periods of service previously completed by Ms Valenza and her colleagues under fixed-term contracts. They then contested that refusal.

The Italian Council of State asked the CJEU whether the EU framework agreement on fixed term work, annexed to Directive 1999/70, precluded that Italian legislation. The CJEU held that fixed-term workers must not be treated in a less favourable manner than permanent workers, unless different treatment is justified on objective grounds. In this case, the purpose of the Italian legislation was to promote the experience accrued with the employer. It is for the referring court to determine whether the employees, when they were working under fixed-term contracts, were in a situation comparable to that of career civil servants employed on a permanent basis. The nature of their duties and the quality of their experience are criteria to be used in making such an assessment. If the duties of fixed-term and permanent worker correspond, it had to be ascertained whether there is an objective ground justifying the complete failure to take account of length of service accrued. The mere fact that periods of service are completed on foot of a fixed-term contract is not such an objective ground. To hold otherwise would make the objectives of EU law meaningless and would be tantamount to perpetuating a situation that is disadvantageous to fixed-term workers. A difference in treatment in public service could be justified if it takes account of objective requirements relating to the post that the recruitment procedure is intended to fill, and which are unrelated to the fixed-term nature of the employment relationship. The objective – as claimed by the Italian government – of preventing reverse discrimination against career civil servants recruited after passing a general competition may constitute an 'objective ground'. However, the Italian legislation is disproportionate, in that it completely prohibits all periods of service completed under fixed-term contracts being taken into account to determine length of service and thus remuneration. Such a complete and absolute prohibition is based on the mistaken idea that the permanent nature of the employment relationship of certain public officials in itself justified a difference in treatment with respect of public officials employed on a fixed-term basis, thereby rendering the objectives of the directive and of the framework agreement meaningless.

LITIGATION

Case C-190/11, *Daniela Mühlleitner v Ahmad Yusufi, Wadat Yusufi*, 6 September 2012

Regulation 44/2001 provides that a consumer can sue a trader with

whom he has concluded a contract in the courts of his home state. However, the contract must be a consumer contract and the trader must either conduct commercial or professional activities in the member state where the consumer resides or direct such activities to that state (such as by the internet). The Austrian Supreme Court asked the CJ whether, for it to be possible to sue in the national courts, the contract between the consumer and the trader must also be concluded at a distance.

Ms Mühlleitner is an Austrian national. She bought a car from Autohaus Yusufi, a firm based in Germany. She had come across the German company by an internet search. She then travelled to Hamburg to sign the contract of purchase and take delivery of the car. On her return to Austria, she discovered that the car was defective. The German company refused to repair it. She then brought proceedings in the Austrian courts seeking to rescind the contract. The CJEU held that the consumer's possibility of bringing proceedings before the courts of his member state against a trader domiciled in another member state is not subject to the condition that the contract was concluded at a distance. The *Brussels Convention* had required the consumer to take, in the member state of his domicile, the steps necessary for the conclusion of the contract. That condition was removed by Regulation 44/2001. The purpose of the amendment was to ensure better protection for consumers. The essential element of the new provision is that the trader is directing activities to the state of the consumer's domicile. The consumer is then free to bring proceedings before the courts of his own member state against the trader, even if the contract was not concluded at a distance, because it was signed in the member state of the trader.

NOTICES

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 Jan/Feb 2013 *Gazette*: 16 January 2013. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

WILLS

Beirne, Francis (deceased), late of Cloonmorris, Bornacoola, Carrick-on-Shannon, Co Leitrim. Would any person having knowledge of a will made by the above-named deceased, who died on 29 July 2012, please contact Deirdre Fox & Associates, Solicitors, Market Square House, Aughrim, Co Wicklow; tel: 0402 36955, email: info@foxsoliciitors.ie

Corcoran, Olive (deceased), late of 63 Willowfield, Sandymount, Dublin 4. Would any person having knowledge of a will made by the above-named deceased, who died on 2 August 2012, please contact Rory Benville of Benville & Robinson, Solicitors, Riverview House, Seapoint Road, Bray, Co Wicklow; tel: 01 276 1330, fax: 01 276 1336, email: rory@benvillerobinson.com

Coyle, John (deceased), late of 113 Cherryfield Road, Walkinstown, Dublin 12, who died on 15 July 2011. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Ms Sara Horan of Patrick J Durcan & Co, Solicitors, James Street, Westport, Co Mayo; tel: 098 25100, email: admin@patrickjdurcan.ie

Dorman, Mary (deceased), late of Glenbawn, Borrigone, Askeaton, in the county of Limerick. Would any person having knowledge of a will executed by the above-named deceased, who died on 25 February 2012, please contact Michael B O'Donnell, Solicitors, Main Street, Rathkeale, Co Limerick; tel: 069 64600, email: mbodonnell@eircom.net

Finan, Canon Thomas (deceased), late of Ballymoghany, Enniscrone, Co Sligo, who died on 10 June 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Bourke Carrigg & Loftus, Solicitors, Teeling Street, Ballina, Co Mayo; tel: 096 21455, email: bernice@bcllaw.ie

Fitzgerald, Mary A (née Moran), (deceased), late of no 5 Tober Bride, Loughglynn, Castlerea, Co Roscommon, who died on 20 April 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Messrs Conleth Harlow & Company, Solicitors, Saint Alban Place, The Square, Roscommon, Co Roscommon; tel: 090 662 5939, email: conlethharlow@eircom.net

Johnson, Elizabeth Patricia (deceased), formerly of 27 Garden Village, Kilpedder, Co Wicklow, and late of Aisling Nursing Home, Sea Road, Arklow, Co Wicklow. Would any person having knowledge of a will made by the above-named deceased, who died on 4 October 2012, please contact CJ Louth & Son, Solicitors, Ferrybank, Arklow, Co Wicklow; tel: 00353 404 32809; fax: 00353 402 31126; email: info@cjlouthandson.ie

Kelly, John Brendan (deceased), late of Corr, Ballycrissane, Portumna, Co Galway and/or late of Corr, Ballycrissane, Ballinasloe, Co Galway, who died on 25 September 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Noonan & Son, Solicitors, 2 Bedford Place, Navan, Co Meath

O'Connor, Jeremiah Francis (otherwise known as Frank) (deceased), late of 1 Victoria Terrace, Rock Lane, Kenmare, Co Kerry, formerly of Bonane, Kenmare, Co Kerry, and formerly resident in the USA, who died on 22 September 2012 at Marymount University Hospice, Curraheen Road, Cork. Would any person having knowledge of a will executed by the above-named deceased please contact Denise Kelleher & Associates, Solicitors, Unit 4, Gleann Alainn, Ballygarvan, Co Cork; tel: 021 488 8777, fax: 021 488 8778; email: bob.costigan@dksolicitors.ie

O'Dea, Donal (also known as Domhnall O'Degaid(h), also known as Daniel Edward O'Dea) (deceased), late of 38 Lisbon Avenue, Twickenham, TW2 5HP, London, United Kingdom, and formerly of Ballygannor, Kilfenora, Co Clare, who died on 20 March 2012. Would any person having knowledge of a will made by the above-named deceased please contact Martin Linnane & Co, Solicitors, 3 Bank Place, Ennis, Co Clare, tel: 065 682 404/25, email: mglinnane.ennis@eircom.net

O'Donovan, Thomas Martin (a ward) (deceased), late of 2 Coolamber Close, Cobh, Co Cork, and formerly of Farranlea House, Farranlea Road, Cork, and St Finbarr's Hospital, Douglas Road, Cork. Would any person having knowledge of a will made by the above-named deceased, who died on 17 October 2012, please contact Frank Kelleher, solicitor, of Frank Kelleher & Co, Solicitors, 1 Pearse Square, Cobh, Co Cork

Renwick, James William (deceased), late of 8 Margaret Place, Bath Avenue, Sandymount, in the city of Dublin, who died on

3 November 1974. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Joseph Burke, solicitor, McCartan & Burke, Solicitors, Iceland House, Arran Court, Smithfield, Dublin 7; tel: 01 872 5944, email: jburke@mccartanandburke.ie

Sheridan, Frances (deceased), late of 84 Lourdes Road, Dublin 8, who died on 29 January 1995, would any person having knowledge of a will made by the above-person please contact Eithne Doyle, HJ Ward & Co, Solicitors, 5 Greenmount House, Harold's Cross Road, Dublin 6W, in the county of Dublin; tel: 01 453 2133, fax: 01 453 3461

White, Frederick (deceased), late of 29 Knockmeenagh Road, Clondalkin, Dublin 22, who died on 5 July 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Rosemary Ryan, solicitor, Roseville, Lavarna Grove, Terenure, Dublin 6W; tel: 01 492 4800, fax: 01 492 4820, email: rosemaryryan@eircom.net

MISCELLANEOUS

Ordinary seven-day publican's licence for sale. Contact: DP Barry & Co, Solicitors, Bridge Street, Killybegs, Co Donegal; tel: 074 973 1174

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises 'Cruachan', Clonskeagh Road, Dublin 14; applicant: Eileen O'Higgins

Take notice that any person having an interest in the freehold estate or any other estate of the following property: all that the piece or plot of ground being part of the lands of Roebuck, Clonskeagh, in the parish of Taney, barony of Rathdown and county of Dublin, being the property more particularly described in a lease dated 25 July 1930 between James F Cherry of the one part and Mary Casey of the other part.

Take notice that the applicant, Eileen O'Higgins, intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said applicant intends to proceed with the application before the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the above premises are unknown or unascertained.

Date: 7 December 2012

Signed: Mick O'Shea (solicitor for the applicant), O'Shea Barry, Solicitors, 4 Wellington Road, Dublin 4

In the matter of section 17 of the *Landlord and Tenant (Ground Rents) Act 1967* and in the matter of section 8 of the said act of 1967 and in the matter of premises situate at Main Street, Carrigaline, Co Cork and in the matter of an application by Rosemary Duane

Take notice that any person having an interest in the freehold estate or any intermediate interests of the property known as the dwellinghouse and premises situate at Main Street, Carrigaline, in the townland of Kilmoney, barony of Kerricurrihy and county of Cork, and as more particularly delineated and described on the map attached to the deed of lease dated 15 June 1966 and made between Dorothy Newey and Catherine Archer of the one part and Michael Byrne and Mary Tobin of the other part.

Take notice that Rosemary Duane intends to submit an application to the county registrar sitting at the Cork Circuit Courthouse, Washington Street, Cork city, for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property are called upon to furnish evidence of title to the said property to the below-named solicitors within six weeks from the date of this notice.

In default of any such notice being received, Rosemary Duane intends to proceed with the application before the county registrar at the end of this notice and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the intermediate interests, including the fee simple in the aforesaid property, are unknown and/or unascertained.

Date: 7 December 2012

Signed: Coakley Moloney Solicitors (solicitors for the applicant), 49 South Mall, Cork City

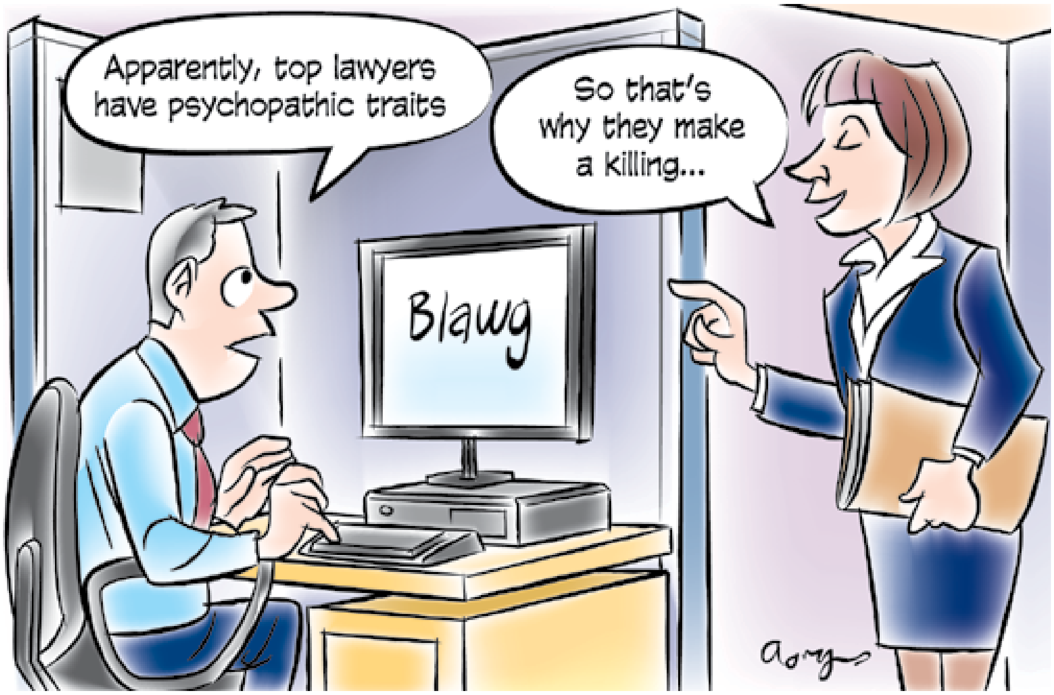
RECRUITMENT

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



So what about lawyer CEOs, then?

The professionals who possess the most 'psychopathic' tendencies are CEOs – and lawyers. According to Oxford research psychologist Kevin Dutton, the evidence suggests that psychopathic traits aren't all bad. It's a matter of degree, Dutton argues in his book, *The Wisdom of Psychopaths: What Saints, Spies and Serial Killers Can Teach Us About Success*.

At the high end of the scale, somewhat obviously, are serial killers. But some psychopathic traits apparently pave the way to success and help people deal with the stresses of living, reports the *ABA Journal*. The author lists 'seven deadly wins' in getting to the top: ruthlessness, charm, focus, mental toughness, fearlessness, mindfulness and action.

The Washington Post quotes one successful lawyer who spoke to Dutton: "Deep inside me there's a serial killer lurking somewhere, but I keep him amused with cocaine, Formula One … and coruscating cross-examination."

Dutton's top ten most psychopathic professions are: (1) CEO, (2) lawyer, (3) media (TV/radio), (4) salesperson, (5) surgeon, (6) journalist, (7) police officer, (8) clergyperson, (9) chef, (10) civil servant.

Troops, a tax!

A solicitor from Cornwall, England, has been saving the families of war veterans millions of pounds in inheritance tax by proving that veterans' causes of death are linked to their original wartime injuries – even if their deaths occurred many decades later.

Philip Reed, a partner with Stephens Scown LLP (himself a former Royal Navy pilot), has undertaken painstaking research into military and medical records to help families make use of the little-known inheritance tax exemption for 'death on active service'.

He has acted for the families of a number of ex-service personnel who were injured in World War II. In his most recent case, a client injured in the war suffered a lower-leg amputation. The family was saved Stg£400,000 in inheritance tax. Philip was also able to preserve the double tax relief for the veteran's widow, which will save a further Stg£130,000 from her estate when she dies.

The tenacious lawyer has worked on many similar cases, where he has successfully saved clients amounts of up to Stg£1 million.

Drivers stuff poor box

Drivers appearing in courts in Westmeath for various driving offences were able to escape convictions by donating a total of €35,000 to the court poor boxes last year.

According to Shannonside radio station, motorists caught speeding, with no insurance, or who failed to stop for gardaí are being given the option of making a donation to the court poor box in lieu of having a conviction recorded against them.

The figures provided by the Courts Service for the amounts paid into poor boxes last year show that the option is not as widely used in neighbouring Longford, which had

a total of just over €10,000 paid into its boxes. It's used even less in Roscommon and Leitrim courts, where the amount paid into their poor boxes was just over €1,000 each.

Bayes' theorem given the boot

A mathematical equation used in court cases to analyse statistical evidence, called Bayes' theorem, got the boot recently when a British appeals judge ruled that it should no longer be used unless the underlying statistics were "firm".

The *Guardian* reports that a convicted killer, 'T', took his case to the British Court of Appeal in 2010, which hinged on shoeprint evidence from a pair of Nike trainers, which had seemed to match a pair found at his home.

His appeal was successful, because the judge held that a footwear expert had made poor calculations about the likelihood of the match. The judge complained that he couldn't say exactly how many of one particular type of Nike trainer could be found in Britain. National sales figures for sports shoes are just rough estimates.

More importantly, as far as mathematicians are concerned, the judge also ruled against using Bayes' theorem again, unless the underlying statistics were solid. The decision could affect drug traces and fibre-matching from clothes, as well as footwear evidence – although not DNA.