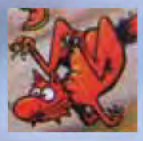
Elephants' graveyard
The internet can be a perpetual repository of embarrassing material

Medium rare
This year's Justice Media Awards produced a bumper crop



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LAW SOCIETY GAZETTE

€4.00 July 2012

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SILENCE IS NOT AN OPTION

As I write this message, we have just completed our meeting with the presidents and chief executives of the law societies of Northern Ireland, Scotland, and England and Wales. These meetings are held biannually and afford all concerned an opportunity to bring each other up to date on developments within our respective jurisdictions. This, in turn, helps to inform us about potential future developments in our own jurisdictions.

We updated our sister jurisdictions about the *Legal Services Regulation Bill*, and received briefings from them on alternative business structures recently rolled out in Britain (which include entities controlled by non-lawyers providing legal services); lender-panel management (by which lenders control the appointment of solicitors acting on behalf of clients in the purchase of property); accreditation and quality marks, and; how law societies might best improve representation of their members.

These meetings are an invaluable means of keeping current with developments; and enable the Society to anticipate and plan for the future.

International independence concerns

I recently represented the Society at an International Bar Association (IBA) meeting in The Hague. The theme of the conference was interference with the independence of the profession – but not as a result of developments here in Ireland. It was against the backdrop of developments in Holland, where the minister for justice in that country is proposing certain measures that might bring about government involvement in the regulation of the legal profession.

Although those measures are less far-reaching than those proposed in the *Legal Services Regulation Bill*, nonetheless they are anathema to the Dutch Bar and are a source of great controversy.

Any concerns that developed Western democracies might have in this regard, however, pale into insignificance when compared with the trials and tribulations experienced by colleagues in authoritarian regimes, or in countries where democracy is not fully developed.

The presentations from delegates from Malaysia, Iran and Zimbabwe were shocking. You could have heard a pin drop as these representatives gave an account of the difficulties experienced by lawyers in their jurisdictions in representing their clients.

The representative from Iran is now effectively in exile. She reported how, in her country, they first arrested the political activists, then their lawyers, and then the lawyers representing those lawyers. Now that there is no one left to arrest, they are purporting to take over the bar association and the legal profession. Her plea to the IBA was for it to become the voice of attorneys. In her words: "Defending attorneys is defending the right of the voiceless to have representation."

"Defending attorneys is defending the right of the voiceless to have representation"

The representative from Zimbabwe described how the state uses every means at its disposal to intimidate the legal profession, including every organ of the media, physical assaults, repressive laws and exclusion. Chillingly, he described how he could not be certain how he might be met when he stepped off the plane on his return home.

While it is obvious that the legal professions in these countries are suffering because of repressive regimes about which we can do little, nonetheless we should do what we can to offer support to our colleagues in these jurisdictions through the IBA, the Law Society and indeed our own local bar associations. Silence is not an option.

Improving communication

On a more mundane note, the Society is always striving to improve its electronic communication with members. Using the website, *eZine* and presidential e-bulletins, it continues to provide important information and services to support its members. I am happy to report that the average open rate of 39% for the *eZine* far exceeds benchmark standards, while visits to the Society's website are at an all-time high. Of course, having the right email address is essential, so please ensure that the Society's webmaster (webmaster@lawsociety.ie) has your current *direct* email address so you can receive updates directly to your desktop. With the proven benefit of these and alternative communication channels, we intend to build on, and further strengthen, the connection between the Society and its members.

Donald Binchy
President

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LAW SOCIETY GAZETTE

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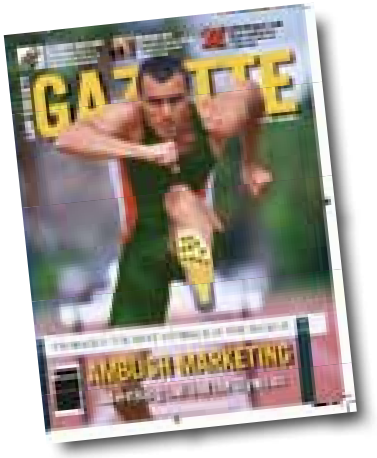

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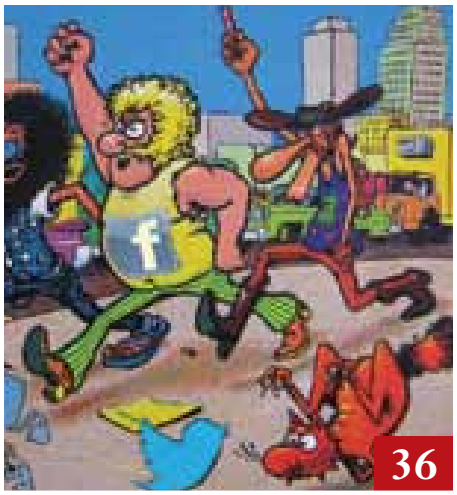

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Gazette readers can access back issues of the magazine as far back as Jan/Feb 1997, right up to the current issue at lawsociety.ie.
You can also check out:

- Current news
- Forthcoming events, including the **Property Law Conference on 27 and 28 September in Belfast**
- Employment opportunities
- The latest CPD courses

... as well as lots of other useful information

Nationwide

Compiled by Kevin O'Higgins

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

Having a ball

DUBLIN

This year's DSBA ball was a resounding success, held in the splendid Mansion House, where the guests of honour were Minister for Justice Alan Shatter and his wife Carole. The minister was warmly received and gave a light-hearted speech without dwelling too long on *that* bill.

The DSBA's 'Consult a Colleague' service held a training morning recently in order to better equip volunteers who assist colleagues in stress or difficulty. As lawyers, we can only offer solutions part of the way. Frequently, the assistance of other agencies is required, in particular from Law Care. A further meeting of the group is planned later in the year.

Stomping at the Savoy

LIMERICK

The Limerick Solicitors' Bar Association held its midsummer ball at the Savoy Hotel Limerick on 8 June. The association welcomed special guests Judge Henry Abbott, Minister for Finance Michael Noonan, Judge Carroll Moran, Judge Tom O'Donnell and his wife Jean, Judge Daniel O'Keeffe and his wife Patricia, Judge Eamonn O'Brien, Chief Superintendent David Sheahan and his wife Colette, and Brian McEnery and his wife Patricia. The ball, in aid of Our Lady's Hospital for Sick Children, was the chief beneficiary of the night's proceeds.

At the midsummer ball organised by the Limerick Solicitors' Bar Association on 8 June were *(l to r)*: Mr Justice Henry Abbott (High Court), Mr Justice Daniel O'Keeffe (High Court), Minister Michael Noonan, Donal Creaton (president, LSBA) and Judge Carroll Moran (Circuit Court)

Radio days

KILDARE

The Kildare Bar Association is participating in the local radio advertising campaign, with the assistance of the Law Society. From what we've heard, the slot is being well received. Other bar associations who have opted in to the campaign to date include Monaghan, Tipperary and Meath/Louth. The association held its golf outing in late June at Naas Golf Club. Veteran solicitor and golfer Pat Reidy took the Judge Patrick Smith Trophy.

Margaret Campbell, solicitor, and Tim Bracken BL have co-authored an excellent book, *The Probate Handbook*, and presented a CPD segment to the association recently.

Have a heart

GALWAY

That veritable tornado of energy, James Seymour, says a big 'thank you' on behalf of the Galway Bar Association to all colleagues for their generous support of the art exhibition at Galway Courthouse recently, in aid of the local cardiology foundation Croí.

The CPD programme will resume in September, with 13 hours of free CPD seminars on offer up to December. Membership of the association costs just €50, which entitles members to over 20 hours of free CPD.

Finally, you are invited to Galway for the Volvo Ocean Week and to the association's annual evening at the Galway Races on Monday 30 July 2012. Email: info@msmandco.ie for tickets.

Anyone for cricket?

CORK

The very personable Terry O'Sullivan reports to me from a partly flooded city with news that the annual cricket match between the Southern Law Association and the Cork Bar is in danger of falling by the wayside due to apparent apathy. The match is scheduled to take place on Friday 13 July at the Mardyke and is open to colleagues of any age or gender. You don't need to have played before – in fact, it might be a distinct advantage! Email Niamh at mail@sla.ie if interested.

If cricket is not your cup of Earl Grey, then how about hillwalking? David Clayton is coordinating walks for colleagues, which recently featured Glengarriff. He plans to begin evening walks, one evening a week, from now until August. All SLA members/trainees and members of the Cork Bar are welcome. For equipment requirements, contact David at dclayton@jrap.ie.

In other news, the SLA has pioneered a form of 'dating agency' for colleagues who wish to 'cohabit' – but solely for business purposes! Firms can share facilities and contribute to the cost of shared services, but each firm will carry out their business separately. SLA council member Terry O'Sullivan is the matchmaker in this instance – confidentiality for all parties is guaranteed. Contact Terry at tel: 021 422 3075.

Judicial celebrations

MAYO

President Evan O'Dwyer is delighted with the take-up for the climb of Croagh Patrick on Saturday 14 July. He says: "There has been a large uptake in the number committed to climbing. The barbecue in Campbell's at the foot of The Reek is now fully sponsored, and there has been a great response from the businesses of the county to the plea for support.

"We recently travelled (as did the DSBA) to join our Belfast Solicitors' Association colleagues for their annual ball, held in the splendid new Titanic Belfast building, complete with a full-size replica of the grand staircase from the original ship. And, of course, I am only too familiar with the Titanic connection with Mayo, and Lahardaun in particular."

Also, don't forget the summer golf outing at Westport Golf Club on 20 July, organised by Michael Keane. Evan points out that the MSBA enjoys a monthly CPD seminar in Mulranny, with exercise afterwards on the adjacent fairway.

A&L wins international recognition

A&L Goodbody has been named 'Irish Law Firm of the Year 2012' by Chambers and Partners at the Chambers Europe Awards for Excellence, held in Amsterdam

In News this month...

Winning women

William Fry has won the 'Best Irish Firm for Women in Business Law' award. The award took place at the *Euromoney* Women in Business Law Awards in London on 20 June 2012.

Winners are judged on their ability to support the development of women in the legal profession and provide work/life programmes to enable women to pursue legal careers.

Law firms were invited to submit details of tangible, women-friendly working practices and policies, such as gender diversity projects as well as biographical information about leading female lawyers.

A *Euromoney* Legal Media Group research team conducted a series of interviews with leading female practitioners across multiple areas of law and jurisdictions. The final list of individuals and firms was then discussed with senior editorial staff internally, as well as with a select group of advisors.

Managing partner at William Fry, Myra Garrett

Colm MacEochaidh nominated for High Court appointment

The Government has nominated Colm MacEochaidh SC for appointment by the President to the High Court. This nomination is to fill the vacancy on the High Court arising from the appointment of Mr Justice John MacMenamin to the Supreme Court.

The Government has taken the necessary steps to formally advise President Higgins of the nomination in accordance with constitutional procedure.

Mr MacEochaidh was born in 1963. He was educated at University College Dublin and King's Inns, was called to the Bar in 1987 and to the Inner Bar in 2009. He is a council member of the Irish chapter of Transparency International and is a former member of the council of An Taisce.

International legal business practice – the fundamentals

On Saturday 29 September, the International Bar Association (IBA) will present a day-long training programme immediately prior to the IBA 2012 annual conference, which takes place in Dublin from 30 September – 5 October.

Working with the Law Society of Ireland Finuas Network, the Dublin Solicitors' Bar Association and the Society of Young Solicitors, the topics will include:

- Upstream dispute management and international arbitration,
- An introduction to international intellectual property,
- Introduction to international commercial contracts, and
- An introduction to international mergers and acquisitions.

Date: 29 September 2012
Time: 10am to 4pm, followed by a reception to 6pm
Venue: Law Society, Blackhall Place, Dublin
Fee: €50
CPD hours: One management and professional development skills, and four general (by group study).

Home and away meets neighbours

At the meeting of the leaders of the law societies of Ireland, Northern Ireland, Scotland, and England and Wales at Blackhall Place were *(l to r)*: Michael Robinson (vice-president, LSNI), Patricia Greer (chief of corporate affairs, LSEW), Lucy Scott-Moncrieff (vice-president, LSEW), Bruce Beveridge (vice-president, LSS), Ken Murphy (director general), Donald Binchy (president), James McCourt (senior vice-president) and Mary Keane (deputy director general), John Wotton (president, LSEW), Lorna Jack (CEO, LSS) and Alan Hunter (CEO, LSNI)

To view our full programme visit www.lawsociety.ie/lspt

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
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For full details on all of these events visit our webpage www.lawsociety.ie/Lspt or contact a member of the Law Society Professional Training team on:

P: 01 881 5727 E: Lspt@lawsociety.ie F: 01 672 4890

*Applicable to Law Society Skillnet members/Public sector subscribers

New taxing master on cost reductions, myths and the bill

"I won't sugar-coat it. Costs have been reduced. They are being reduced."

The speaker was new taxing master of the High Court, Declan O'Neill. The audience was a near full-house of solicitors in the Education Centre in Blackhall Place on 26 June 2012. A dropped pin would have clanged loudly through the silent attention paid to all of his remarks, both scripted and unscripted, *writes Ken Murphy*.

The occasion was the first major lecture given by the new taxing master since he took up his appointment in December 2011, in succession to the retired taxing master James Flynn.

PIC: LENSMEN

At the legal costs seminar on 26 June were *(l to r)*: Michelle Nolan (Law Society), Declan O'Neill (Taxing Master of the High Court), Ken Murphy (Law Society Director General), Attracta O'Regan (Law Society), Eamon Harrington (Chairman of the Society's Litigation Committee) and Finuas Network committee member James O'Sullivan

Reductions

Master O'Neill cited an *obiter dictum* of the President of the High Court, Mr Justice Nicholas Kearns, delivered earlier this year in the *Bourbon* case where the president said: "Levels of costs allowed during years of prosperity may no longer be appropriate in times of grave hardship." But to emphasise the *obiter* nature of this remark, the president continued: "However, as this point was not argued in the case before me, it will have to be addressed in some other case."

Nevertheless, Master O'Neill made clear to his rapt audience at Blackhall Place that he found the president's words persuasive, even if not legally binding. He was also exercising his own discretion as a taxing master when he reduced individual bills of costs.

Myths

He described as a "myth", however, the notion that he was systematically reducing all bills of costs that came before him. He repeated with emphasis that this was simply not so. Many bills that had been taxed by him had not been reduced at all.

In response to probing questions on this, when he engaged very openly with the audience at the end of his lecture, he said that there was no question of any percentage reduction of costs being applied by him. However, there had been consistently applied reductions in relation to standby fees – an issue on which he had taken a particular view.

All bills of costs continued to be taxed by him on a case-by-case basis. Bills that were justified by supporting evidence were not being reduced by him and, insofar as he was prepared to make a general observation, it tended to be smaller bills of costs to date that had suffered reductions.

The cases in which solicitors were most likely to have their fees reduced by the taxing master were those "where the work was not readily ascertainable by reference to the solicitor's file and papers".

Attendance notes

"In the absence of a properly maintained solicitor's file, the task of ascertaining the true nature and extent of the solicitor's work is exceptionally difficult," he said. Among the items required to ensure that a solicitor's professional fees attributable to a case are fair and reasonable were proper attendance notes and time records – the invaluable nature of which, from a taxation point of view, the master emphasised again and again.

While correspondence will provide a sense or flavour of the work being carried out, "there is no substitute for a solicitor's first-hand, concurrent account of work undertaken."

Legal Services Bill

The seminar at which Master O'Neill spoke was chaired by Eamon Harrington, chairman of the Society's Litigation Committee, who outlined the Society's serious concerns about specific cost provisions of the *Legal Services Regulation Bill 2011*.

A major focus of concern is section 98 of the bill, as published. This makes provision for the awarding of costs of the adjudication, depending on whether the amount in dispute has been determined to be more or less than 15% lower than the amount set out in the bill of costs. The Society believes this provision is fundamentally unfair and would inevitably produce injustice.

From both scripted and unscripted remarks made by Declan O'Neill, it is clear that the taxing master fully shares this view of section 98, which, he said, was a provision that "really requires attention". Among a series of descriptions that he gave to it were "pretty heavy handed", "fundamentally unfair" and "draconian". He was assured that the Society was making submissions in relation to this provision, expressing identical views.

MASTER O'NEILL'S 'FUNDAMENTAL REQUIREMENTS'

- **Solicitors should maintain appropriately annotated files, setting out the basis upon which any particular work was undertaken,**
- **Attendance notes setting out work done should be on file,**
- **Any change in instructions received or in the particular direction of a case should be recorded,**
- **Up to date assessments of costs should be recorded, with the provision of such information to the client, and**
- **Records of the actual time spent on the matter should be available.**

This legal costs seminar was provided by the Law Society Skillnet and Finuas Network. It is available in audio-visual form online and via smartphone or iPad. To obtain a booking form, solicitors should email: lspt@lawsociety.ie.

The taxing master has promised an article to assist solicitors on legal costs issues, which will be published in the October 2012 issue of the *Gazette*.

OUTLAWS AND INLAWS

Lives less ordinary

WILLIAM KENNEDY
Medical Council
William Kennedy, who qualified in 1988, is head of professional standards and legal advisor at the Medical Council. Professional standards encompasses fitness to practise and ethics and incudes monitoring responsibilities.

William manages the processing of fitness to practise complaints and the hearing of these inquiries by the Fitness to Practise Committee and the other committees involved.

He also provides legal advice to the council and to other sections and represents the Medical Council in groupings such as Health Professionals Crossing Borders, which represents healthcare professionals across the EU/EEA.

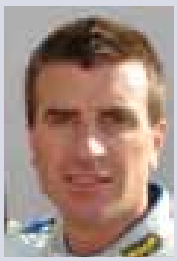
He is project leader on a body charged with getting recommendations of the Commission on Patient Safety and Quality implemented.

Before joining the Medical Council, William worked for a number of years in Britain and then moved back to Ireland to work with a mid-tier legal firm.

PATRICIA O'SHEA
Dublin Airport Authority
After qualifying, Patricia O'Shea did a *stage* (internship) in the EU Competition Directorate in Brussels. On returning to Ireland, she worked for a legal partnership in Co Clare before joining De Beers Industrial Diamonds in Shannon.

Patricia stayed with De Beers for three years, doing wide-ranging commercial work, before moving to Dublin to take up an opportunity with IBM. Several years were spent with the US multinational on international legal work, including outsourcing agreements, mergers and acquisitions, litigation, inward investment projects and company secretarial.

In the Dublin Airport Authority, Patricia heads up the legal team that manages a wide variety of legal and commercial matters for Dublin, Cork and Shannon Airports. Her work increasingly extends beyond traditional legal matters to include governance, regulatory and environmental responsibilities.



COLIN CARROLL
Adventurer
Having climbed some of the world's highest mountains and motor-biked around South America, Colin Carroll won the world championship in elephant polo in 2005 and became Ireland's first ever competitor in the Sumo World Championships in 2006.

He jointly holds the world record in the three-legged marathon and has established Irish branches of several off-beat sports, including Sumo Ireland and Synchro Ireland. Colin organised the 'Paddy Games' in Cork in 2008 as an alternative competition to the Olympics in Beijing.

Regularly featured on radio and TV programmes around the world, he has produced a TV series called *Colin and Graham's Excellent Adventures*. A book outlining many of his adventures *Mission Improbable* was published by Mercier.

Colin qualified in 2006 and, in so doing, ensured that the family tradition of producing solicitors has been continued for the fourth generation in a row. He is currently involved in film production, while another pet project in the pipeline is www.irishempire.com.

Bar associations tune in to radio campaign

Listeners to the main news slots on RTÉ, Newstalk and Today FM will no doubt have heard the latest Law Society radio advertisement:

"From time to time, everyone has to face difficulties in their life. If you're going through one of those times right now, talk to a solicitor. You'll get sound advice from someone who's in your corner, someone you know you can trust to protect your interests. And someone who can ensure that you're provided with access to justice. With unique knowledge and experience, it's just one of the many ways your solicitor can help you. Talk to your solicitor. From the Law Society of Ireland."

The campaign will operate in two bursts, from 11 June to 1 July and from 27 August to 9 September.

At the very successful 'communications day' event, held at Blackhall Place on 3 May, the Law Society offered bar associations the opportunity to piggy-back on the campaign. The Society would pay for the production of the adverts, including the cost of adding tag lines at the end of the advert that would refer to both the bar association and the Law Society. Bar associations interested in participating would pay for the cost of advertising on their local radio stations.

Target McConnells, the advertising agency that produced the advert, was tasked with negotiating rates with local radio stations on behalf of the bar associations. Associations were free, however, to negotiate directly with their local stations if they so wished. Several have decided to get involved during the first burst of activity, including Kildare, Louth and Meath (combined), Monaghan and Tipperary. Several more have indicated an interest in participating during the second burst at the end of the summer.

If your bar association would like to get involved, please contact Jonathan Conlon, Target McConnells at tel: 01 665 1900 or email: jonathan.conlon@targetmcconnells.com. Alternatively, contact the Society's PR executive, Mark McDermott, by email at mark.mcdermott@lawsociety.ie.

Belfast is buzzing for the property law conference

The Property Law Conference will take place on 27 and 28 September 2012 at the Riddel Hall, Queen's University Belfast, Northern Ireland.

Keynote speakers will include Lord Justice Kerr (British Supreme Court), Prof John Wylie (Cardiff University School of Law), Prof Liz Cooke (law commissioner, England and Wales) and Mr Justice McCloskey (chair of the Northern Ireland Law Commission).

Topics will include land tenure, urban development, planning for natural disaster, remedies for property contract breaches, property law and human rights.

This conference will immediately precede the IBA annual conference in Dublin, which commences on 1 October. The cost is Stg£250. Places are limited. Register your initial interest by emailing clabelfastpropertyconference@qub.ac.uk.

Moya honoured with lifetime achievement at Irish Law Awards

Law Society Council Member Moya Quinlan, was presented with a lifetime achievement award at the inaugural Irish Law Awards on 4 May for her outstanding contribution to the legal profession. The past-president was joined on the podium a short time later by colleague Colin Daly, who received the special merit award on behalf of the Northside Community Law Centre.

Moya's legal career spans more than 56 years since she qualified as a solicitor at her father's practice, Joseph H Dixon, in 1946. She was the first woman president of the Law Society, and still serves as an elected Council member.

The Irish Law Awards, sponsored by National Irish Bank, took place at the Shelbourne Hotel, Dublin. Encompassing 27 categories, their aim is to recognise excellence at all levels of the legal profession in Ireland. The adjudication panel was chaired by Dr Eamonn Hall.

Hosted by broadcaster Miriam O'Callaghan, the opening address was given by the Minister for Justice, Equality and Defence, Alan Shatter.

William Fry took the coveted law firm of the year award for demonstrating "exceptional achievements in 2011, offering high-quality legal services with an impressive depth of expertise throughout the firm".

Sonia McEntee of Sonia McEntee Solicitors in Dublin received the sole practitioner law firm of the year award. She received high praise for her "tireless work in establishing and promoting the Sole Practitioner Network – a forum for sole practitioner solicitors, countrywide, to discuss issues affecting them in practice".

Moya Quinlan with her lifetime achievement award

Moya De Paor and Colin Daly of the Northside Community Centre are presented with the special merit award by Stephen Foley (National Irish Bank)

LAW SOCIETY PERSPECTIVE

Law Society Director General, Ken Murphy, was there as a guest. He was called to the microphone at very short notice to give a tribute to Moya Quinlan, which he declared he was deeply honoured to do. In the course of the warmest of personal tributes, he described 92-year-old Moya as extraordinary for her longevity, legendary for her career and loved for herself.

He took the opportunity to congratulate those behind the Irish Law Awards for their initiative, which had helped the profession to feel good about itself. He explained that, for over a decade, the Law Society had considered many times whether it could organise such awards. However it had repeatedly been forced to conclude that, both as the profession's statutory regulator and as its representative body, it could not appear to declare some firms and solicitors superior to others. "We love all our members equally," he quipped.

IRISH LAW AWARDS – WINNERS

- *Law Firm of the Year* – William Fry
- *Sole Practitioner Law Firm* – Sonia McEntee (Sonia McEntee Solicitors)
- *Leinster Provincial Law Firm* – Augustus Cullen Law
- *Munster Provincial Law Firm* – Holmes O'Malley Sexton
- *Connacht Provincial Law Firm* – Callan Tansey Solicitors
- *Ulster Provincial Law Firm* – VP McMullin Solicitors
- *Lifetime Achievement Award* – Moya Quinlan (Dixon Quinlan)
- *Special Merit Award* – Northside Community Law Centre
- *Banking, Finance/ Restructuring Team/Lawyer* – William Prentice (Matheson Ormsby Prentice)
- *Commercial Law Team/Lawyer* – Dr Vincent Power (A&L Goodbody)
- *Criminal Law Team/Lawyer* – Michael J Staines & Company
- *Employment Law Team/Lawyer* – Michael Kennedy (Byrne Wallace)
- *Family Law Team/Lawyer* – Geraldine Shanley, Fiona Brassil, Emmajane O' Halloran (Daniel Spring and Co)
- *In-House Legal Team/Lawyer* – The Revenue Solicitors Office
- *Insolvency Law Team/Lawyer* – Barry O'Neill (Eugene F Collins Solicitors)
- *IP/IT Law Team/Lawyer* – Dr Robert Clark (Arthur Cox)
- *Junior Counsel of the Year* – Michael Lynn BL
- *Law Book of the Year* – Hilary Delany & Declan McGrath, Civil Procedure in the Superior Courts
- *Law Firm Innovation Award* – Anne Neary Consultants
- *Law Librarian of the Year* – Jennefer Aston (Law Library Consultancy)
- *Law School Debating/Mooting Team Prize* – UCD School of Law
- *Law School of the Year* – Law Society of Ireland: Diploma Programme (Law Society)
- *Legal Executive of the Year* – Veronica Duffy (An Post/The Irish Institute of Legal Executives)
- *Legal Secretary* – Ursula Nodwell (Donegan's)
- *Litigation Team/Lawyer* – The Medical Negligence Litigation Team (Ernest J Cantillon Solicitors)
- *Public Sector Law Team/Lawyer* – Philip Lee
- *Senior Counsel of the Year* – Ross McGuire SC

Chief Justice says she would like to see national replication of Dolphin House support and referral service

Chief Justice Susan Denham has praised the work of the Dolphin House Support and Referral Service for women who suffer domestic abuse, stating that she looked forward to the day when the model would be replicated nationwide, *writes Grace O'Malley.*

Chief Justice Denham was speaking at the launch of a project evaluation report into the service, which was also attended by the Minister for Justice Alan Shatter on 25 June 2012.

Women experiencing domestic violence can avail of this free and confidential drop-in service, which offers them emotional support and prepares them for court and onward referral to other domestic violence services.

The service was launched in March 2011 by the Courts Service, Women's Aid, Dublin 12 Domestic Violence Service and the Inchicore Outreach Centre.

In her opening remarks, Chief Justice Denham said that she appreciated the positive effects that the referral service was having on the Courts Service, adding that due to shrinking public service numbers, Courts Service staff did not have the time or training to provide the emotional and practical support required to victims of domestic violence. She added that she looked forward to the model being replicated in other locations around Ireland.

Launching the report, Minister Shatter said that during the service's evaluation period between March and August 2011, 107 women were seen. The success of the system was apparent by the number of women who had accessed it so far. He added that the work being done between services was a shining example of the cooperation and coordination that was taking place to assist victims of domestic abuse.

Concluding, the director of Women's Aid, Margaret Martin, said: "Dolphin House is the busiest family law court in the country, issuing 33% of barring orders and 41% of safety orders nationwide. This makes the presence of the Support and Referral Service so important".

Family law dispute changes

'Resolving family law disputes – alternatives to litigation' was the theme of the Legal Aid Board's annual Family Law Conference on 12 June 2012, *writes Grace O'Malley.*

The conference was addressed by a number of high-profile speakers, including Senator Ivana Bacik, Judge Petria McDonnell and the chief executive of Family Mediation UK, Jane Robey.

Senator Bacik indicated that the Justice, Defence and Equality Committee was able to provide early input into the development of the *Mediation Bill* due to a new procedure, brought about by current Minister for Justice Alan Shatter, that enables Oireachtas committees to review draft heads of bills.

The Legal Aid Board's chairperson, Muriel Walls, spoke about the success of the current initiative between the Court Services, the Family Mediation Service (FMS) and the Legal Aid Board in Dolphin House, through which clients are immediately given information about mediation and can gain early access to an FMS.

Judge Petria McDonnell addressed the issue of the suitability of the courthouse for dealing with family law – even from a logistical point of view. In her opinion, certain cases would be more suitable for alternative legal solutions, such as mediation.

Other topics raised during the conference included mediation developments in Britain, remedies in other jurisdictions such as New Zealand and Australia, and how models in the US could be used here in the future.

The papers presented at the conference are available on the Legal Aid Board's website, www.legalaidboard.ie.

Mentor programme for newly qualified solicitors

The Law Society's new Mentor Support Programme is now up and running. Its goal is to provide support to newly qualified solicitors by putting them in touch with more senior colleagues who provide guidance based on their own experience.

The programme has been designed to help new solicitors, less than three years qualified, to build their confidence and knowledge about the legal profession and further develop their professional skills. Mentoring can assist the new solicitor to:

- **Become more familiar with legal custom, best practice and core values,**
- **Plan in order to develop themselves and achieve their aspirations,**
- **Find direction in relation to career issues, and**
- **Become more active in their legal community.**

Initially, the programme will be provided on a pilot basis, with a limited number of mentors available.

Should a suitable match arise, the mentor and new solicitor will work together over a 12-month period to confidentially discuss issues by face-to-face meetings, telephone and/or email.

Full details, including the guide to the Mentor Support Programme and the new solicitor application form and agreement, are available on the members' area of the Law Society's website in the 'support services' section.

If you would like to be considered for the programme, please complete the New Solicitor Application Form and Agreement and post or email it to: Sarah McDonald, Law Society of Ireland, Blackhall Place, Dublin 7; email: s.mcdonald@lawsociety.ie.

NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

The benefits of mediation

ARBITRATION AND MEDIATION COMMITTEE

Solicitors can greatly increase the chances of their client achieving an acceptable outcome to a dispute by using the mediation process. There is sometimes a misunderstanding as to what mediation is. Mediation is not the same as negotiation. The role of the mediator is to facilitate and encourage the parties to truly understand the interests of the other party – to put themselves 'in the other party's shoes' – and not to adopt bargaining positions. Typically, the focus on understanding the interests of the other party's case will involve the mediator facilitating the following:

- Separating the people from the dispute,
- Focusing on interests and not positions,
- Searching for options for mutual gain, and
- Insisting on the use of objective criteria.

A crucial aspect of mediation is that the parties own the process. It is *their* process. Using techniques such as looking for options for mutual gain, the mediation process facilitates the parties in achieving a durable, mutually acceptable agreement.

Each party to a mediation wants to reach an agreement that satisfies his/her interests. Such interests can consist of not only substantive interests, but also their relationship with the other party – the ongoing relationship can be far more important for the parties than the outcome of the mediation.

Often, the relationship tends to become entangled with the problem – people draw unfounded inferences, which they then treat as facts about that person's intentions and attitudes towards them. Clearly, in the context of mediation, misunderstandings between parties as to what is meant or intended by a party's comments on substance need to be put right.

In order to encourage the parties to separate the relationship from the substance, it can be useful for the mediator to try to steer the mediation process to facilitate:

- Accurate perceptions,
- Clear communication,
- Appropriate emotions, and
- A forward-looking, purposive outlook.

It can be very useful for the mediator to ask and develop questions that can facilitate achieving the above in the mediation process. For example, after allowing a party to express their views on the dispute – together with any emotional baggage that may be attached – and then simply asking that party what they want to achieve now, can be a powerful tool: the party is forced to focus not on what has happened, but on where they want to be in the future.

Similarly, a further skill that can be developed by the mediator/solicitor is developing an awareness of when to suggest that the mediation session be paused, so that the mediator can discuss where the parties are at on an individual basis. Meeting each party on their own can assist that party in understanding where they are – and avoid any premature position taken in the mediation session when the other party is present.

In addition to the above suggestions, it may be useful for the mediator/solicitor(s) involved to suggest to their clients before conducting the mediation itself that they each think about his/her interests in advance of the mediation session. A party should go into a mediation process, not only with one or more specific options that would meet their legitimate interest(s), but also with an open mind. An open mind is not an empty one, which, it is suggested, is exactly what the mediation process should be – open. G

USEFUL READING:

- **Roger Fisher and William L Ury, *Getting to Yes***
- **William L Ury, *Getting Past No***

JUSTICE MEDIA AWARDS YIELD A VINTAGE CROP

This year's Justice Media Awards set the highest standards in legal journalism. Mark McDermott decants the produce of a very fine year

Mark McDermott is editor of the Law Society Gazette

A rich harvest of entries in this year's Justice Media Awards (JMAs) – now in their 20th year – will see 2012 go down as a vintage year. The country's longest running media awards were held at the Law Society's headquarters on 7 June 2012.

The aim of the awards is to celebrate journalism that helps to inform and educate the general public on the role of law in society. This year's entries showed that the JMAs are succeeding in their aim. Articles ranged across a broad spectrum of topics in nine categories, covering both the print and broadcast media.

There were entries that examined the legal quagmire surrounding baby surrogacy, Ireland's draconian asylum and immigration system, the process of judicial appointments, the cost of journalistic error in the courts, the dispute between Anglo Irish Bank and the Quinn family, not to mention the whistling donkey that left the court in tears of laughter!

In his address to guests, Law Society President Donald Binchy commented that the role of the media in our justice system should not be underestimated. "The media clearly influences how the public views the justice system and the regard in which it is held by the public. It is obviously important that the public should hold the system of justice in high regard and, by and large, I think that it does.

"But we who work in the administration of justice, and those who report on it, must never take this for granted and we must all strive for the highest standards. If we fail to achieve these standards and public confidence in the system is undermined, then our democracy may falter – so we must always be on our guard."

The president congratulated all who had entered and praised the high standard of this year's entries: "This high standard made certain choices extremely difficult – but choices, nevertheless, that the judges relished having to make." He encouraged the journalists present to continue their excellent work.

"The media clearly influences how the public views the justice system and the regard in which it is held by the public"

The dangers of 'cut-and-paste'

Referring to the judging panel's remarks that, overall, the provincial newspaper and national radio categories had been somewhat weaker than in previous years, he said that this was "most likely due to reduced resources and a cut in staffing levels that have had a consequent impact on journalists who have less time to spend on the crucial research that forms such an important aspect of any journalist's written or broadcast work".

Quoting the opinion of former newspaper editor and current Labour Senator John Whelan, the president said that, at a time when newspapers were in need of strong local management and a regional strategy, they were being deprived of resources and were shrinking further. The result was more 'cut-and-paste' journalism and less coverage of council meetings and local courts.

"It is highly important," the president said, "that valuable information on the decisions taken in council chambers throughout the country, and the decisions taken in our courts, are properly reported to local readers. The Society would encourage provincial newspaper editors to support their journalists in delivering quality coverage of all such legal matters. Some of you continue to set high standards in this regard and you are to be congratulated for that."

Mr Binchy concluded by stating that, given the

Carol Coulter of *The Irish Times* took the Overall Winner award in the Justice Media Awards 2012 for her series of articles titled 'The Legal System'. She is pictured with Donald Binchy (Law Society President) and Ken Murphy (director general)

Winning ways! The winners of this year's Justice Media Awards 2012, pictured in the Law Society's Council Chamber, with Law Society President Donald Binchy and director general Ken Murphy

extremely high standard this year, the judging panel had decided to present an 'Overall Winner' for the first time in three years. The award was presented to Carol Coulter of *The Irish Times* for her outstanding five-day series, titled 'The Legal System'.

"This newspaper series was one of the best we have encountered in recent years," the president said. "These articles represent the best of journalism in the legal sphere. The writer and newspaper are to be congratulated for devoting the time, energy and space in bringing these important and highly significant legal issues to the attention of their readers."

THE WINNERS

OVERALL WINNER 2012
Carol Coulter of *The Irish Times* for her five-day series, titled 'The Legal System'.
***What the judges said:* "This outstanding entry was balanced but contained justified criticism of many aspects of the Irish legal system; it drew attention to the challenges being faced by the legal system on so many fronts; it contained informed suggestions about the most pressing issues that need to be addressed to ensure access to justice for all."**

DAILY NEWSPAPERS
Carol Coulter of *The Irish Times* for her series 'The Legal System'.
Merit certificates were awarded to Colette Browne of the *Irish Examiner* for her article 'Draconian asylum and immigration system needs reform, Mr Shatter'; Carl O'Brien of *The Irish Times* for his series of three articles, titled '21st century baby surrogacy'; and Paul Drury of the *Irish Daily Mail* for his article, 'The power of judge and jury over all of us'.

SUNDAY NEWSPAPERS
Mark Tighe of the *The Sunday Times* for his feature 'You're hired'.
Merit certificates were awarded to Niall Brady of *The Sunday Times* for his article 'Hey presto! All your debts are gone'; and Sheila Flynn of *The Irish Mail on Sunday* for her article 'The garda duty-of-care legal quagmire'.

REGIONAL NEWSPAPERS
David Looby of the *Wexford Echo* for his article 'Hung jury marked final chapter in 18-day trial'. No merit certificate was awarded.

COURT REPORTING – PRINT MEDIA
Declan Brennan (freelancer) (for the *Sunday Independent* and *The Irish Mail on Sunday*) for his article 'Forensics face crisis as court insists on cocaine purity test'.
Merit certificates were awarded to Conor Gallagher of the *Sunday Independent* for his article 'Gang-rape woman arrested during trial, following overdose'; Carol Byrne of *The Clare Champion* for her article 'The cost of journalistic error in the courts'; and Marisa Reidy of *The Kerryman* for her article 'Whistling donkey leaves court in tears of laughter'.

COURT REPORTING – BROADCAST MEDIA
Dyane Connor of *TV3 News@5.30* for her television news report 'Justice for Shane Geoghegan'.
Merit certificates were awarded to Orla O'Donnell of RTÉ news for her *News at One* radio report, 'Commercial Court judge slams failure to investigate and prosecute white-collar crime'; and Trudy Waters of Clare FM for her report on the 'Clare school abuse case'.

LOCAL RADIO
Louise Byrne of 98FM News for her report '21st century rule – Ireland's new Criminal Courts of Justice'.
A merit certificate was awarded to John Cooke (presenter) and Niamh McNamara (producer) of Clare FM's *Morning Focus* for the radio slot 'Free legal advice'.

NATIONAL RADIO
No Justice Media Award was presented in the national radio category.
A merit certificate was awarded to Cian McCormack of RTÉ's *Morning Ireland* for his report, titled 'Suicide and the coroner's court'.

TELEVISION NEWS
Caitríona Perry of RTÉ news, for her *Six-One News* report 'The gates to nowhere'.
A merit certificate was awarded to Brian Daly of TV3's *News@5.30* for his series of reports: 'Priory Hall – defending your home'.

TELEVISION FEATURES AND DOCUMENTARIES
Ian Kehoe (reporter) and John Corcoran (producer) of RTÉ's *Prime Time* for their report 'The indebted'.
A merit certificates was awarded to Colette Fitzpatrick (presenter) and Patrick Kinsella (producer), with Ciara Doherty, of TV3's *Midweek* for their programme, titled 'Defending your home'.

GET THE SKILLS – AND THE JOB YOU'VE ALWAYS WANTED!

The legal profession is facing into an uncertain future. However, acquiring new skills can kickstart your career in a totally new legal – and non-legal – direction, write Gordon Smith

Gordon Smith is a freelance journalist who has focused on business and technology for more than 15 years

If all of life is a constant education, as Eleanor Roosevelt once said, then increasing numbers within today's workforce are taking the lesson to heart. Like many other sectors affected by the adverse economic headwinds, the legal profession faces a future in flux. For many solicitors, that is likely to involve at least one career change and, with it, the need to acquire new skills to adapt.

The Law Society Professional Training Section has supports in place to make those transitions easier. It promotes two initiatives specifically designed to address solicitors' future skills needs: the Law Society Skillnet and the Law Society Finuas Network programmes.

The Law Society Skillnet is a solicitor-training network comprising hundreds of member firms from every part of Ireland. Promoted by the Law Society of Ireland, it is funded by Skillnets Ltd from the National Training Fund, by the Department of Education and Skills, and by member firms. Its aim is to develop skills in each member firm to improve their competitiveness.

The training network programme designs training for qualified solicitors in areas of law, management, professional development and regulation. Attracta O'Regan, head of the Law Society Professional Training Section (which incorporates the Law Society Skillnet and Law Society Finuas Network), emphasises that this scheme exists to serve its members – they can identify the training they need, and it will be designed and delivered for them. More than 70 different training events were designed and delivered through the training network programme in 2011.

Another aspect to the scheme is a jobseekers' support programme (JSSP), which is also funded under the Law Society Skillnet. This trains unemployed solicitors in sustainable practice areas, either in the legal sector or in new areas, potentially outside of law, where demand for jobs is strong, and then make those people available to employers in that sector.

"We identified where there is growth in the legal sector, such as civil litigation, particularly in the medical negligence and personal injury areas. In addition, many companies recognise the need to employ an in-house legal officer, either in private or public sector organisations," says O'Regan. In non-governmental

SELF-STUDY – A FOIL TO FURTHER YOUR CAREER

Dermot O'Reilly had been working in a law office but, having seen the economy crash and the subsequent decline in legal fees, he had been seeking other opportunities when he heard about the CIMA diploma course in Islamic finance (IF) offered by Law Society Finuas Network JSSP.

He took the course between August and December 2011. It is a 'self-study' course, which obliges students to read four assigned books and attend monthly tutorials where the authors – world-renowned IF experts – join via Skype from Dubai or Kuala Lumpur. Study time is around 60 hours per manual. "The exam itself is a multiple-choice exam, which is a lot harder than you think. You can do the exam on any day that suits you," says O'Reilly.

Having completed the course, he expected to emigrate for work, but an opportunity arose at the international finance division in IDA Ireland, which, along with its industry partners, is looking to support the Government's strategy by positioning Ireland as a European hub for IF expertise.

Kieran Donoghue, who heads IDA Ireland's international financial services division, says O'Reilly has become the organisation's IF subject-matter expert. "He's brought his legal expertise to bear, in terms of offering advice in various issues we encounter. He has prepared a draft value proposition that we propose to stress test in the Gulf and Malaysia before the end of the year in an effort to attract investment into this space. He has created a network of contacts within Ireland that are active or interested in the Islamic finance space in Ireland," says Donoghue. The work looks set to bear fruit, as the IDA is close to adding the first IF client to its portfolio.

O'Reilly's role in the IDA is unpaid, but Donoghue says it creates opportunities to meet and work with companies – and this could lead to employment offers.

For his part, O'Reilly considers the diploma course as time well spent. He wouldn't have heard of the IDA role otherwise and it will advance his career. "I think it makes me more employable. IF is not something you're just going to get by reading an article, and it isn't something you can make a mistake in and survive. You need a firm grasp of what exactly you're doing," he says. "Nothing's going to fall out of the sky – you need to work for it. The courses offered by Skillnets and Finuas are a free tool to progress your career."

Even if that career is beyond the legal sector, O'Reilly contends that solicitors can make the leap easily. "People may not realise it, but our skills are very transferable. The ability to read a document quickly and explain it to someone – that's precious everywhere. Plus, solicitors are adaptable – in one day, we could be handling conveyancing, probate and commercial litigation. That level of versatility is quite useful."

Follow the yellow brick road...

organisations, solicitors' skills are in demand in areas like social policy research, development and advocacy.

Financial services

The second support, the Law Society Finuas Networks programme (www.finuas.ie), focuses specifically on providing specialised training for international financial services. Jointly funded by the Government and members' legal firms, it aims to maintain Ireland's position as a leading international financial services location by investing in the development of specialist expertise in growth areas, such as aviation finance or Islamic finance.

To put the financial services opportunity into context, there are 32,700 people directly employed by more than 500 IFSC companies, earning an average salary of €60,100. The business transacted amounts to 5% of all of the EU's cross-border financial services activity.

The Finuas network also has a JSSP, which has up-skilled unemployed solicitors and led to work placements and full-time employment. Keith O'Malley, head of career support at the Law Society, says solicitors' grounding makes them desirable recruits. "We find the employers are generally very interested in this proposal because we're talking about somebody who has a legal qualification and training, so they know the law and have good commercial understanding. Then, once they get training within compliance and regulation or funds, they tend to take it on board and can be assimilated very quickly within a compliance function, for example."

Every year, some 600 solicitors qualify and, as recently as five years ago, 90% chose to remain in general practice. However, that level of work no longer exists. O'Malley says the goal of the JSSP is to have 30% of newly qualifieds moving into commercial or non-practice roles within 12-18 months of qualifying. There is "huge demand" for in-house counsel roles, he adds.

"There aren't enough opportunities in general practice, but that doesn't mean there aren't enough opportunities for solicitors: they just need to start looking at their careers in a more expansive way"

"There aren't enough opportunities in general practice, but that doesn't mean there aren't enough opportunities for solicitors: they just need to start looking at their careers in a more expansive way. The JSSP facilitates that and makes it easier to take up roles outside of the general practice environment," he says.

In 2011, a total of 128 people undertook JSSP training and, of that number, 18 moved into paid jobs directly, 58 moved into work experience, seven went into further study and two emigrated. Of the 58 who progressed into work experience, 15 obtained jobs, 42 are still involved in work experience, and one has since emigrated.

The work experience option is a fruitful route into new areas for solicitors. Host companies take trainees for work placement of up to nine months' duration, pairing practical experience with academic knowledge gained from the course.

O'Regan says this is a successful model and encourages more solicitors to think creatively about where their career might lead. What's more, training can now be delivered via smartphone, through an award-winning application, so that distance is no longer an obstacle to furthering a career beyond general practice. G

STRIKING THE BALANCE

This year's human rights lecture focused on the changing relationship between the judiciary, the executive and the legislature in Northern Ireland since the incorporation of the ECHR, writes Sarah McDonald

Sarah McDonald is the Law Society's human rights executive

The Law Society hosted its eighth Annual Human Rights Lecture on Thursday 10 May, and guest speaker Sir Declan Morgan, Lord Chief Justice of Northern Ireland, delivered a stimulating and topical lecture entitled 'Finding the equilibrium'.

His lecture discussed rights, responsibilities, and the changing relationship between the judiciary, the executive and the legislature in Northern Ireland since the incorporation of the *European Convention on Human Rights* (ECHR) into law. This changing relationship, according to the Lord Chief Justice, "has inevitably shifted the balance", making it necessary for the governing powers to "try to identify how to achieve a point of equilibrium" when dealing with rights and responsibilities.

To secure a balance, the Lord Chief Justice suggested that it is necessary to "remember that the principal objective is to secure public confidence in the administration of justice". This, he said, means that "the individual is protected from interference by the state other than in accordance with law" and that this "applies to everyone, regardless of their position in society".

As well as this, achieving public confidence also means that an independent judiciary is entitled to expect its role and position be respected by ministers and legislators – and also that the judiciary must "show proper respect for the role that others play in our justice system".

Finding the equilibrium: participants and guests

Trial and error

Since the incorporation of the ECHR into British law, the Lord Chief Justice said that finding a new point of equilibrium has been "a matter of trial and error, with some outcomes being better than others".

He continued: "This is, however, a process that is well known to common law, with its roots grounded in pragmatism. It is also well suited to – and maybe even a core characteristic of – a jurisdiction that does not have a written constitution."

He also pointed out that the "concept of balance" lies at the very heart of the ECHR. This is illustrated in how unqualified rights "strike a balance between the individual and the state" and how qualified rights require a "balance between the rights of different individuals and the interests of the public".

Prior to the enactment of the *Human Rights Act 1998*, he said that obtaining a balance between rights and responsibilities was largely a function of the executive, subject to "Wednesbury unreasonableness" – a standard of unreasonableness used in assessing an application for judicial review of a public authority's decision.

However, now, "in many cases, it is for the courts to determine the proportionality of the decision" and, in so doing, to determine "what is necessary in a democratic society". This leads to more questions about where the community's shared values come from and, more importantly, who decides them, he added.

> ***"Law works when it is used to do what law is meant to do, and difficulties are inevitably found when people try to make it do more than that"***

"Rights protected by the convention are designed to strike a balance between the individual and the state. They are not designed to define a moral code, and they are certainly not intended to oust the obligation of a citizen to honour his/her personal moral responsibility. Law works when it is used to do what law is meant to do, and difficulties are inevitably found when people try to make it do more than that."

Public policy on privacy

In looking at how the courts have responded to the challenges of the 1998 act, the Lord Chief Justice discussed the right to privacy, including the "wave of so-called super-injunctions" that have hit the courts. He said that these cases have led to unanswered questions about who determines public policy on privacy.

The Lord Chief Justice told the audience that, by choosing to focus on super-injunctions in his lecture, "it clearly demonstrates how the *Human Rights Act* has played a role

"Rights protected by the convention are designed to strike a balance between the individual and the state. They are not designed to define a moral code, and they are certainly not intended to oust the obligation of a citizen to honour his/her personal moral responsibility"

in the courts and other institutions of the state trying to develop the law to meet a new, and initially not a fully understood, social problem". The emergence of super-injunctions in British courts is an example of where "the judiciary grappled with the legal issues, applying existing statutes and developing the law to meet the new situation".

It also illustrates how "other institutions (and indeed the public, through internet forums) joined the debate as the points of controversy became clear". He further commented that the emergence of super-injunctions was "an unfinished example of how the constitutional conversation allows a solution to be developed". It is an "example of where parliament feared to tread and the courts were left to plough their own furrow". The "endgame", he also added, will not be known until the report of the Leveson Enquiry is published, and the executive determines any legislative response.

To conclude, the Lord Chief Justice said his lecture had "sought to demonstrate how the *Human Rights Act 1998* has imposed responsibilities on the judiciary to strike a balance between the individual and the state".

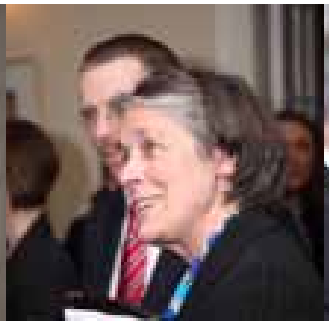
Throughout his lecture, he provided examples of relevant case law, which showed that each new matter started with a social change to which the various law-making arms of the state have had to respond. The response, he said, illustrates the common method, "which is to evolve a response over time in a back-and-forth discussion between the legislature, judiciary and ministers".

It is through this process and conversation that a "new equilibrium is found that meets the social challenge", he concluded.

However, while the Lord Chief Justice stated that "at the time, the conversation may seem messy and even bad tempered", he pointed out that "with patience and good faith, a new equilibrium will be found".

"The judiciary, as I often say, is independent – but it is not isolated. We participate and we listen willingly to the other voices in the conversation. For my part, I will do all that I can to ensure that the difficult issues we face as we establish our devoted justice institutions are determined in an atmosphere of mutual respect. At the end of the day, we are all working towards the same goal of ensuring our justice system has the full and deserved confidence of the public." G

For the Lord Chief Justice's full paper, see the 'resources' section of the Human Rights Committee's page at www.lawsociety.ie.


HERE'S THE SCIENCE BIT – BECAUSE YOU'RE WORTH IT

When it comes to medical matters – and, in particular, litigation settlements following personal injuries – the term 'scientifically proven' needs close scrutiny. James Colville takes out his intramedullary kinetic bone distractor

James Colville is a consultant orthopaedic surgeon

We are all very familiar with advertisements for health and dietary products that imply or state that the benefits of taking them have been 'scientifically proven'.

Where health and dietary products are concerned, although it may be misleading, it does not impact significantly on the general well-being or financial situation of the observers. In certain cases, misleading advertisements have been withdrawn and the company concerned instructed not to broadcast the advertisement again in its original form (see the ASA adjudication on Danone UK Ltd). However, when it comes to medical matters – and, in particular, litigation settlements following personal injuries – the term 'scientifically proven' needs closer scrutiny.

Peer review

Traditionally and ideally, assessment of injuries and their outcomes/prognosis is based on personal clinical experience supported by published outcomes in peer-reviewed medical and surgical journals.

These publications are readily accessible and free. MedLine has a database of more than 18 million records taken from 5,000 selected medical publications covering all aspects of medicine and health dating back to 1950. These can be accessed via the website PubMed. Luckily, 88% of them are published in English.

Unfortunately, however, the volume of information is frustrating for the non-medical reader. For example, a common condition known as 'frozen shoulder', if entered in the PubMed website, will turn up more than 500 papers. Clearly, unless research is being undertaken into that particular topic, to analyse these in any realistic way is not a practical proposition. On the other hand, if a non-medical website such as Google is used, the number of citations for this particular problem is well over 2 million.

If a general accepted contemporary analysis of a particular condition is needed, accessing the Cochrane database will save significant time in research. These Cochrane reviews explain their findings in plain, unambiguous language (see www.cochrane.org).

The reviews summarise their conclusion as follows:

- 'Likely to be beneficial',
- 'Likely to be harmful', or
- 'Does not support either benefit or harm'.

> **"Longer-term prognosis, which is relevant to personal injuries settlements, is not easily categorised or classified"**

The Cochrane reviews are published in the Cochrane Library, which is an online detailed analysis of a particular problem/condition. The results, published in peer-reviewed papers, are subjected to critical statistical analysis by acknowledged experts in the field.

To date, there are more than 4,600 Cochrane reviews, covering a vast array of subjects. If, however, a specific paper/publication is being quoted in support of an opinion, that particular paper needs to be critically scrutinised, looking for:

- The number of patients included in the study,
- The length of follow-up,
- Percentage of patients followed up, and
- Whether the study was randomised prospectively or not.

Randomised control studies have been known for many years, as long ago as 1948, comparing streptomycin with previous treatment methods for tuberculosis. The term 'evidence-based medicine' (EBM) was first coined by Guyatt.

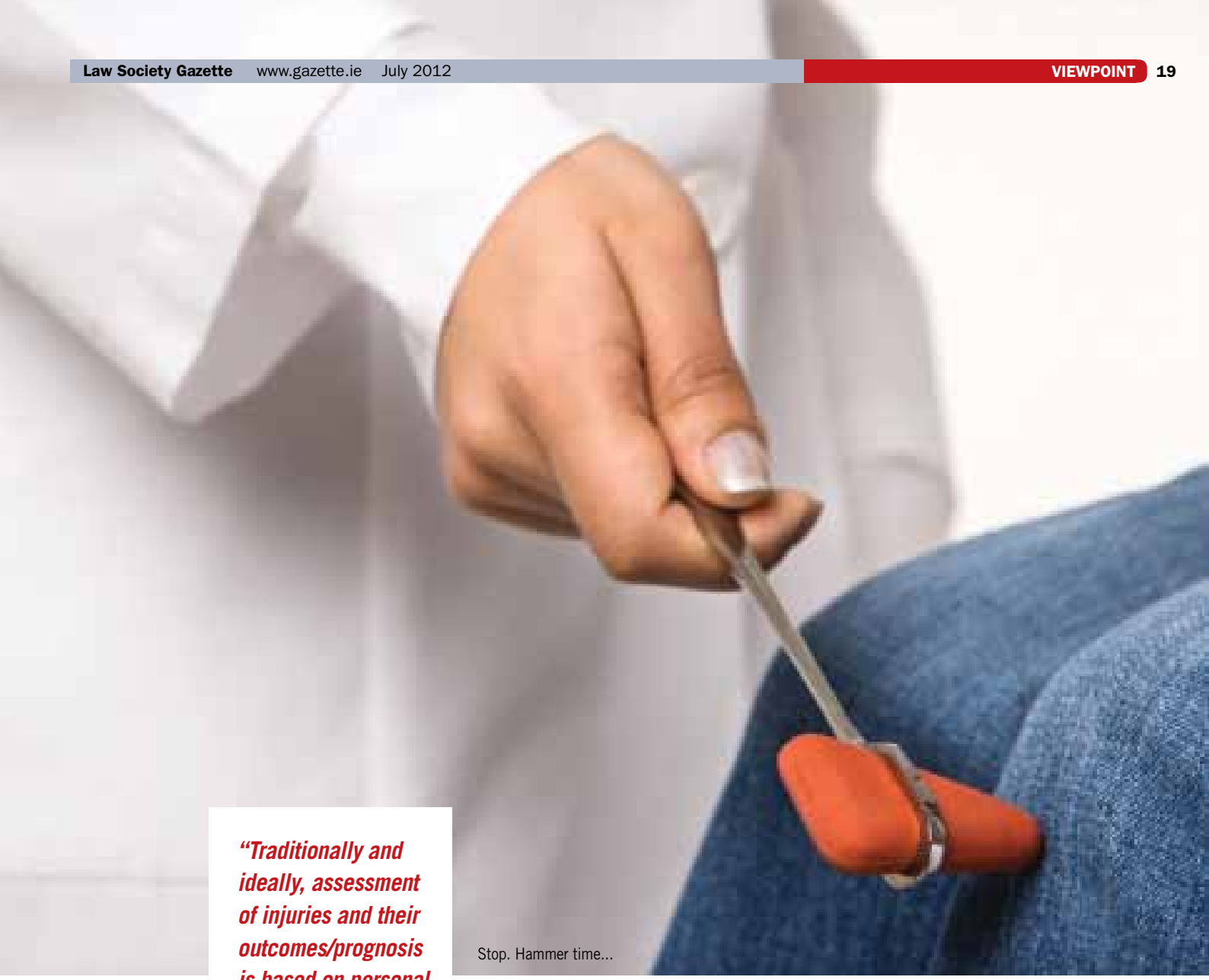
One of the best examples of a well-designed randomised trial resulting in significant clinical benefit has been the improvement in survival rate in paediatric oncology. Multiple randomised trials have resulted in improvement in the survival rate from 10% to 90% (see 'A practical guide to assigning levels of evidence', *Journal of Bone and Joint Surgery* (American) 2007).

Level of evidence

From an orthopaedic point of view, the *Journal of Bone and Joint Surgery* (American edition) has applied a 'level-of-evidence rating' to all published papers since 2003, the editorial stating at that time that the "higher level of evidence should be more convincing to surgeons attempting to resolve clinical dilemmas".

It is clear, therefore, that any paper referred to in support of an opinion should be from a peer-reviewed journal with the highest level of evidence, preferably level 1 or 2. The Oxford Centre for Evidence-Based Medicine (see 'Levels of evidence', March 2009) outlines one system to categorise a particular clinical study.

Levels 1 and 2 require the study to



Stop. Hammer time...

"Traditionally and ideally, assessment of injuries and their outcomes/prognosis is based on personal clinical experience supported by published outcomes in peer-reviewed medical and surgical journals"

be prospective, with greater than 80% of patients followed up. Unfortunately, many injuries do not lend themselves readily to such analysis.

Longer-term prognosis, which is relevant to personal injuries settlements, is not easily categorised or classified.

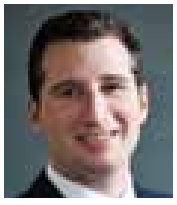
For example, the severity of the force of impact, although reflected to some extent in the radiological analysis at the time of the accident, is still to some extent speculative, even when a bone/joint fracture has occurred, as it does not take into account the soft tissue aspect of the injury. MRI does, of course, give the best assessment we have available today for assessing the soft tissue aspect of the injury.

Two clinical examples are worthy of mention:

- *Scaphoid fractures* are well known injuries and, if the exact nature of the fracture is identified, for example, waist (centre) of scaphoid, then EBM regarding treatment can be applied. Six clinical trials involving more than 257 patients showed that conservative and operative treatment produced similar results, with 90% union of the fracture. However, even in this well-documented large series, the authors opinions varied when it came to assessing the medium to long-term results. Long-term level 1 multicentre study trials are needed.
- *Soft-tissue injury* – fractures around the shoulder have been well classified (see CS Neer II (1970), *Journal of Bone and Joint Surgery*) and the outcome of the bone/joint injury not too debatable. But what *is* debatable is the concomitant soft-tissue injury. It is well known and reported in the literature that age-related changes in the soft tissues do occur and are reflected in arthritic change of the shoulder joint. When injury occurs, MRI scans can give very accurate information regarding the presence of pre-existing, age-related changes and hence what, if any, additional injuries/changes have taken place; however, level 1 and 2 studies are lacking.

In conclusion, therefore, peer-reviewed, evidence-based medicine reports can be helpful in backing up or supporting an expert opinion based on clinical experience, provided that careful scrutiny of the published literature (with particular attention to the above level of evidence) is carried out and, if possible, supported by the findings of an expert analysis, such as the Cochrane database. G

LET THE *games* BEGIN



Larry Fenelon is a partner in Leman Solicitors, sports law specialists based in Percy Place, Dublin 4

London's litigators are lying in the long grass, ready to pounce on any unsuspecting marketing quarry that happens to flout the law applying to advertising at the 2012 Olympic Games. Larry Fenelon goes for gold

There's more than a whiff of excitement in the air for athletes and global sponsors alike, with just over two weeks to go to the London 2012 Olympic Games. The sideshow to the 100-metre sprint is the sprint that teams of lawyers are primed to make to the Royal Courts of Justice to take on any would-be 'ambush marketeers'.

The dream of every athlete is to compete and win at the Olympics. Similarly, the dream of global sponsors is to be tied to the hip of the Olympic circus. Make no mistake, the Olympic show costs big bucks. British Labour MP and Shadow Olympics minister Dame Tessa Jowell projects the games will cost the British taxpayer Stg£9.3 billion. Corporate partners of the games will ensure some return on that investment.

The aim of the British Olympic Association is that 'official sponsors' will pick up 40% of the cost of the games. Behemoths McDonalds, Coca Cola, Visa, British Airways, Lloyds TSB and Cadbury are among the 53 official sponsors, suppliers and providers to the 2012 games. For the corporate 'partners', London 2012 will, no doubt, be one of the greatest opportunities this year to gain exposure for their brands to the projected 70% of the human race expected to watch the Olympic Games globally.

FAST FACTS

- The aim of the British Olympic Association is that 'official sponsors' will pick up 40% of the cost of the games, estimated to be a staggering Stg£9.3 billion
- Corporate 'partners' at London 2012 will gain exposure for their brands to the projected 70% of the human race expected to watch the Olympic Games globally
- Global brands wish to protect their investment of being associated with the Olympic Games – in some cases amounting to hundreds of millions for brand association, advertising and broadcasting rights
- Corporate sponsors are protecting their brand investments at the Olympic Games, using legislation and the zeal of London's 'Magic Circle' lawyers to do so
- Ambush marketeers indulge in such advertising because it creates headlines and exposure for a small investment – and some are very adept in evading the legislation that now ring-fences the rights of official sponsors

Linford Christie – the eyes have it

Big business clearly has the ear of government, as British Minister for Sport Hugh Robertson announced: "Like many other sporting events, the London Olympic and Paralympic Games could not go ahead without its sponsors, so it is important that we protect their investment as well as creating a welcoming and unobtrusive atmosphere for people arriving at venues."

Understandably, global brands wish to protect their investment to be associated with the Olympic Games, where in some cases they have invested hundreds of millions for brand association, advertising and broadcasting rights. So, in tandem with the British government, Olympic corporate sponsors have adopted a 'belt and braces' attitude in protecting their brands by using legislation and the zeal of London's 'Magic Circle' lawyers.

In the long grass

Ambush marketeers indulge in such advertising because it creates headlines and exposure for a small investment. Certain corporates are more amenable to this type of brand exposure than others – and some are very creative in evading the legislation that now ring-fences the rights of official sponsors. It's worth going down memory lane to see what creative marketing stunts London's litigators can expect.

It's hard to remember which camera film (remember that?) company sponsored the 1984 Olympic Games in Los Angeles. Apparently, Fuji was the official sponsor of the games, but rival Kodak was the sponsor of ABC's broadcasts of those games and was the 'official film' of the USA track team – thereby becoming synonymous with the Olympics that year rather than the official sponsor.

At the 1996 Olympic Games in Atlanta, Linford Christie wore Puma-embossed contact lenses at the press conference before the men's 100 metres, despite the official sponsor being Asics.

Likewise Nike set up a 'Nike Village' opposite the Olympic athletes' village at Atlanta in 1996, where they handed out Nike merchandise to spectators entering the event and bought up most of the advertising space in the city of Atlanta. Rivals Reebok understandably felt hard-done-by, having had exclusive rights to advertise within the stadium.

"At the 1996 games, Linford Christie wore Puma-embossed contact lenses, despite the official sponsor being Asics"

Puma scored it big again at the Beijing Olympic Games in 2008, when Usain Bolt held up his winning gold Puma running spikes following victory in the men's 100-metre final.

Official sponsor Adidas was usurped by a little known Chinese sportswear company called Li-Ning in the 2008 Beijing Olympic Games. The eponymous sportswear company was named after 'The Prince of Gymnastics' Li Ning, who lit the Olympic cauldron at the 2008 opening ceremony in Beijing. Most Chinese people thought that the official sponsor of athletic footwear for the 2008 games was Li-Ning rather than Adidas.

Readying itself for London 2012, Nike is building a 9,182 square feet store in the London Designer Outlet, which is situated close to Wembley Stadium – one of the venues that will host Olympic events. Although the store is not going to open until 2013, development will have progressed enough by the time the Olympics commence to display prominent Nike signage.

LYING IN WAIT

The legislators have created a presumption of infringement of the London Olympic association right (that is, the right to be associated with the Games). Certain words or combinations of words are not permitted in any advertisement by unsanctioned companies. See the table below, where words from List A cannot be used with other words from the same list, and words from List A cannot be used with any word(s) from List B. So a local butcher might need to think twice about sending a flyer around his local community with 'Order your 2012 Bronze turkey with Weymouth butchers now' printed on it. Likewise, a local brewery advertising on a local bus 'Enjoy the Games this summer with our gold beer' might also be infringing the 'right'.

LIST A	LIST B
Games	Gold
Two thousand and twelve	Silver
2012	Bronze
Twenty twelve	London
	Summer
	Sponsor

SHOT IN THE BACK

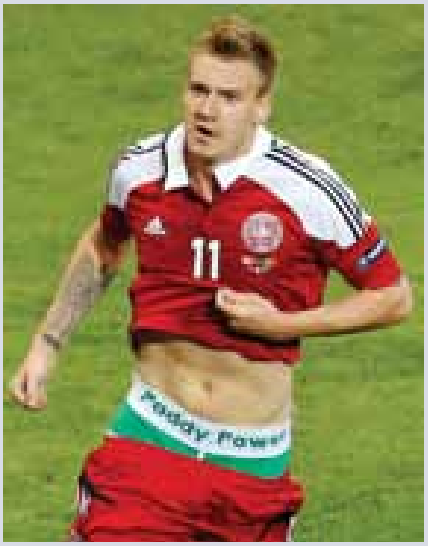
Nicklas Bendtner – Euro 2012: **The Danish striker was fined €100,000 and received a ban from playing in the next competitive fixtures for Denmark after he exposed a Paddy Power waistband after scoring a goal against Portugal in the recent European Championships.**

Bendtner's actions were all the more controversial from a marketing viewpoint, as Ladbrokes are the official sponsor of the Danish national team.

In contrast, the Russian Football Federation was fined €30,000 after their fans threw fireworks and displayed illicit banners during their match against Poland.

Bavaria bombshells – World Cup 2010: **It was hard to miss the 36 blond bombshells dressed in orange 'discreetly' advertising Dutch brewery Bavaria at the Holland v Denmark match at the 2010 soccer World Cup in South Africa. Budweiser, the official beer sponsor of the 2010 World Cup, was less than pleased. The orange-clad sirens were ejected from the Soccer City stadium.**

Two of the participants who were singled out as the ringleaders were arrested under South African legislation, which prevents companies benefiting from an event without paying for advertising. Ultimately, the criminal charges were dropped as part of an out-of-court settlement.



The media frenzy that accompanied the incident presented the actions of the event organisers in a dim light, and the legal charges brought against the women attracted further media attention. An effective campaign, then?

Our own Sonia O' Sullivan has even fallen foul of official Olympic sponsorship agreements. The Cobh runner was contracted in a personal capacity to Reebok and was preparing for her heat in the 5,000 metres event in Atlanta 1996 in her Reebok gear when she was confronted by Olympic officials demanding to know why O'Sullivan was not wearing the official Asics-sponsored Team Ireland gear. She was forced to change in the tunnel before the race.

London 2012 battle lines

The battle lines are drawn between the ambush marketeers and the event organisers – the International Olympic Committee and the corporate sponsors. The event organisers are armed with the *London Olympic Games and Paralympic Games Act 2006*. The initial bill was published for its first review just two weeks after London was given the nod to be the host city for the 2012 Olympic and Paralympic Games.

Schedule 4 of the act deals specifically with the 'London Olympic association right'. This sets out that a person is guilty of an offence if he infringes the London Olympic association right by, in the course of trade, making any representation (of any kind) in a manner likely to suggest to the public that there is an association between the London Olympic Games and the goods or services, or a person who provides the goods or services, when such a representation is untrue.

> ***"Spare a thought for the Offaly GAA man wearing his Carroll Meats-sponsored jersey to the games on 27 July, who faces the risk of a writ"***

The act differs from previous Olympic legislation by placing greater onus on individuals to prove their innocence if accused of violating the rules on their company s behalf. A company or individual attempting ambush-marketing campaigns may face fines of Stg£20,000 or even imprisonment.

The *Advertising and Street Trading Regulations* for London 2012 also aim to define zones of controlled advertising around Olympic venues in order to create a 'safe zone' within a geographical area around the Olympic stadia, so that event organisers can relax, safe in the knowledge that no unofficial sponsors can spoil the corporate party.

Businesses along the route of the Olympic torch relay were warned against unauthorised advertising. The London Organising Committee of the Olympic and Paralympic Games strictly forbids ambush marketing. Stewards are even being employed on the relay route to move on any unauthorised businesses trying to cash in on the event.

The British government has even gone so far as to impose a 'no-fly' zone over the Olympic Park from two weeks before the opening ceremony of the Olympic Games until the end of the Paralympics – to prevent both the threat of terrorist attacks and ambush marketeers seeking to promote their products from the sky.

A further approach taken by the event organisers to protect the official sponsors was to purchase 99% of the advertising space surrounding the Olympic venues. Official sponsors of the games were then given the option of first refusal for such space.

Olympic sausage fest

There is a real danger that the zeal of the organising committee will isolate the public from the games. Who could blame them, when they hear of the sausage factory in Weymouth that was forced by the British Olympic Association to remove a sign on its shop with a picture of sausages in the shape of the Olympic symbol because Weymouth was to be the host town for the sailing competition? Or the florist in Hanley who was ordered to take down a tissue-paper window display featuring the Olympic rings? Maybe sausages are not the official pork product of the games, and Kleenex is not the official tissue?

Even the great democratiser, Facebook, has been forced to drop all advertising around its official Olympic pages. This means that all pages that carry official Olympic logos, such as the Olympic rings and the London 2012 logo, will carry no adverts.

If that's not enough, even the Olympic Stadium itself will be a 'clean venue', which means that no advertisements are allowed in the stadium. So, spare a thought for the Offaly GAA man wearing his Carroll Meats-sponsored jersey to the games on 27 July, who faces the risk of a writ from London's litigators for breaking the law as he enters the stadium – you have been warned! G

LOOK IT UP

Legislation:

- *Advertising and Street Trading Regulations* (London 2012)
- *London Olympic Games and Paralympic Games Act 2006*

Literature:

- *Intellectual Property and the London 2012 Olympic Games – What Businesses Need to Know* (www.ipo.gov.uk/ipinsight-200911-4.htm)

CHANGE OF DIRECTION?

Mark McDermott is editor of the Law Society Gazette

In the second part of the *Gazette's* exclusive interview, Claire Loftus, the first solicitor to serve as DPP, speaks to Mark McDermott about what she hopes to achieve

In his foreword to the Office of the DPP's annual report in 2010, then director James Hamilton referred to the encroachment of certain elements of the media in terms of their coverage of legal cases, suggesting that on occasion there had been "considerable pressure from some elements of the media, occasionally driven by a sensationalist and populist approach to crime".

Has the new DPP felt any similar pressure? "I'm not conscious of that. Because we are independent, and that's there on a statutory footing, we do our business without feeling conscious of those sorts of factors."

How does she react to media criticism in relation to the perceived slow pace of prosecutions being brought in certain white-collar crime cases, compared with similar cases in the United States?

"Well, there are lots of reasons why the US system is very different to the Irish system. I think it would be more appropriate to compare the system in Ireland to other common law jurisdictions, like Britain, like Australia, rather than the American system, which is very different. On the media side, I suppose we're just getting on with doing what we have to do. There's no doubt that the Irish system does require that we prove every document that we're going to put into evidence and, really, we have to be satisfied that we have sufficient evidence before we go down the road of prosecution. So, these things do take time."

"There is no doubt that cases do take a long time to get on and there's very little incentive for defendants to state their position at an early stage"

In terms of justice being seen to be done, are people starting to lose faith in the justice system due to the delay in cases making it to the courts?

"Well that's really for other people to comment on. We're here to do a job and we're doing it. One of our objectives as an office is to foster public confidence, but that's done in a number of ways. Making sure that we prosecute when it's appropriate to do so is one way of ensuring that confidence is maintained. So really, as I say, it's for others to take a view.

"In the context of white-collar cases, the *Criminal Justice Act 2011* that came in last year has some quite helpful provisions in relation to the giving of information and cooperation with investigations, and that has been a very useful development."

Delays within trials

"A couple of committees at the moment, which we're involved in, are looking at ways of making the system more efficient. There is no doubt that cases do take a long time to get on and there's very little incentive for defendants to state their position at an early stage. Now, one of the problems that I would be concerned about, and that I would like to see addressed, is the length of trials. For instance, there's the fact that so many issues are left until the trial itself, and quite apart from anything else, juries are inconvenienced while lawyers have lengthy legal arguments in front of the judge.

"I think myself it's going to require legislation. The Supreme Court seems to have said that, too, but there are efficiencies that could be achieved without legislation. Of course, it would have a knock-on effect hopefully in relation to costs and fees, which is another consideration."

What kind of efficiencies is she referring to? "That trials would take less time; that issues would crystallise sooner; that defendants would consider whether they are going to plead guilty or not guilty at an earlier stage; and that the courts wouldn't be revisiting issues on mention dates – that people's minds would be concentrated earlier in the process.

"It's something that was addressed by a commission on the criminal courts [the Fennelly Working Group] ten years ago, which I was on, and some recommendations were made at that stage. It seems as if, in the current

FAST FACTS

- One of the DPP's objectives is to foster public confidence – and making sure that they prosecute when it's appropriate to do so is one way of ensuring that confidence
- Dealing with delays within trials might require legislation, but there are efficiencies that can be achieved
- If there was more incentive to address issues and decide on a plea earlier in the process, it could take the pressure off hearing dates and mean that trials would get on quicker

climate, there might be an impetus to make those changes. At the moment, for example, the lead-in period for trials in the Circuit Court in Dublin is nearly a year, as of May 2012. So, from the time of return for trial, it could be ten months before you get a trial date – and even longer for lengthier cases. In the Central Criminal Court, it's approximately a year. And if there was more incentive to address issues and decide on a plea earlier in the process, it would, hopefully, take the pressure off hearing dates and mean that trials would get on quicker. Because, obviously, in most of those cases, victims are waiting for their cases to come to court."

The cost of running the DPP's Office was €41 million in 2010. According to the most recent annual report, 36% went to counsel fees, 29% went to staff salary, and 15% went to paying legal costs awarded by the courts. Would she like to see those ratios moving in different directions?

"Well, it's no surprise, given our business, that counsel fees and staffing costs are significant proportions of our costs. On the law-costs side, we've actually made quite a bit of headway in reducing the level of awards. The annual report for 2011 – it's not published yet – will show a significant reduction. The courts, the High Court in particular, are making rulings that are helpful in this area in relation to costs.

Counsel fees have been reduced periodically in line with Government policy, and we've said before that we feel we get good value in terms of the brief fee that we pay to counsel for the amount of work involved in prosecuting serious cases. Again, staff costs have been reduced as well, so

we've done what has been asked of us."

"In the area of judicial review, we have a large judicial review section and there will be cases where there'll be a challenge by a defendant seeking prohibition, for example. What we've done is to become very proactive in assessing those cases at a very early stage, deciding whether there is any point in opposing them, or whether there are grounds for opposition, or whether the grounds are strong – and taking a decision as to whether we're going to actually oppose the application.

"So, the earlier you do all that, the less costs have been incurred by the other side, and we've certainly done a lot of work in the area of *quantum* as regards the amount of costs. We've been very proactive in trying to reduce those costs because the alternative is that an order is made by the High Court, with costs in default of agreement to be taxed by the taxing master. Now that, apart from anything else, involves a lot of further time spent going through that process. So we've tried to be proactive on this."

Explaining decisions

Are there any plans to expand the 'Reasons Project', whereby the DPP's Office explains why it decides not to prosecute in certain cases?

"There are some things that are going to simply happen anyway, by virtue of outside forces. There's an EU directive dealing with victim's rights under negotiation at the moment. We have no direct involvement in the negotiations – it's the Minister for Justice and his staff that do these things at EU level – but what it means is that victims will be guaranteed a range of rights in this directive, including being given sufficient information about their cases, including reasons.

"It's still uncertain as to the amount of detail that those complainants – where we decide not to prosecute – will receive. But over the course of the next couple of years, that is something that will be introduced and will impact on this office.

"We have already started giving reasons in fatal cases, but this directive will affect practically every case. Now, again, it's under discussion at the moment, so nothing is settled. But if it's implemented, it will mean that we will be expected to give reasons in most cases. So we have to gear up for that.

"Certainly, it will be quite resource intensive and that's one of the things that we will have to assess: what the impact will be on resources. Whenever this directive comes through, if it is introduced – and it seems as if it will – that will have an impact. We will have to be very thoughtful and careful in our explanations, whatever level of explanation that we give – that these are comprehensible from a victim's point of view, because they don't necessarily understand the legal issues involved – and that the explanations given are sensitive to victims' particular positions.

"As the head of the Directing Division, I was very involved in this project, where reasons given were restricted to fatal cases. We're still looking at the question of sexual offences. Obviously it's not straightforward. They're very sensitive cases, and we have to weigh up very carefully what it is that we could usefully say in those cases and the level of detail that we would give. That's under consideration at the moment."

"It's no surprise that counsel fees and staffing costs are significant portions of our costs. On the law-costs side, we've actually made quite a bit of headway in reducing the level of awards"

The right direction

Finally, does she have any regrets about her career choice?

"I most certainly do not. I really don't, because it's been fascinating from the start. When I was involved in case work in the '90s, I had the opportunity to do the first money-laundering cases, the first fatal health-and-safety cases and, of course, I worked on the Tribunal of Inquiry into the Blood Transfusion Service Board, which was fascinating in itself. So, no – I've no regrets.

"That tribunal was chaired by former Chief Justice Thomas Finlay. I have to say it was a privilege to work with him. To have that opportunity was just fantastic. The establishment of the tribunal was announced in October 1996 and he published his report on 6 March the following year."

It is also on the record that, in the late 1990s, Claire was involved in the prosecution of former Taoiseach Charles Haughey arising out of the McCracken Tribunal (the Dunne payments inquiry).

Has she now done it all – or is there anything left to achieve?

"I'm only six months in this job and, as far as I'm concerned, there's a huge amount to achieve just within this job, never mind anything else. So I'm not really thinking about where I'll be in ten years time. It may come as a surprise, but I've never really thought about a career path. As I say, I've gone for jobs not really expecting that things would work out. So I didn't expect to be at this point at this particular time."

Thinking back to that painting hanging on her office wall, you could say that Claire Loftus has just taken an interesting bend in the road.

NEW DIRECTIONS

"One of the things we started doing while I was Chief Prosecution Solicitor was to have some cases decided on by the solicitors in the Solicitors' Division, rather than being sent over to the Directing Division for directions. At the moment, that's confined to cases in the drugs area, but there is certainly scope for expanding it out.

"This is one of the things we would like to pursue because, obviously, we're in a time of constraint. We're being asked by the Croke Park Agreement and by the Government, generally, to work within our existing resources and, in fact, to reduce them somewhat. One way of managing to do more with less is by having the first lawyer that sees the file over in the Solicitors' Division make the decision in certain cases, rather than having duplication of effort."

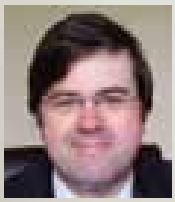
"The lawyers dealing with these cases in the Solicitors' Division have the necessary experience and will be well able to handle this work," she adds. "Indeed, the majority of lawyers currently directing prosecutions have previously worked in the Solicitors' Division. We encourage mobility by staff in both directions. I was involved personally in recruiting the majority of the lawyers in the office and have seen, at first hand, how very committed and able they are."

Does she perceive any dangers due to the lack of involvement by the Directing Division in some of these cases?

"Well there are no dangers as such. The most important thing is to ensure that consistency of approach is maintained. It's my job to guard against any dilution of consistency, and obviously it's something that we have to be careful about. What we envisage is that there would be further decision making in a discrete number of categories of case, reasonably straightforward, that don't require a lot of time and don't necessarily require, for example, a second opinion.

"Now, there are caveats in all these things, and the guidelines that solicitors in the Solicitors' Division have at present require that, if there is an issue in a case that they would like further opinion on, they can seek it. It will be a major project for the next Chief Prosecution Solicitor, Peter Mullan (who was appointed on 11 June), to manage that process and ensure that consistency is maintained as far as possible."

Just like elephants, the internet never forgets, and someone's online postings can impact upon their life in the real world. What is said online may have a substantial effect on an individual's reputation. Denis Kelleher logs on



Denis Kelleher is a barrister and the author of Privacy and Data Protection Law in Ireland, *the second edition of which is due to be published in spring 2013*

PHOTO MANIPULATION: NUALA REDMOND

THE *elephant* IN THE ROOM

FAST FACTS

- What is said on a site such as Facebook may have a substantial impact on an individual's reputation
- Given such a potential impact, it is inevitable that some will try to control what is said about them online
- One approach to doing so is to seek injunctive relief from the courts – but is the internet too big for that?

Mrs M had a problem. Her marriage had disintegrated, and she brought a child maintenance application before the Northern Ireland courts. Her husband now worked as a pilot in the Middle East. He claimed to be earning substantially less than when he was employed by Easyjet in Britain, but Mrs M was not so sure. She pointed out that his current expenditures were inconsistent with such a reduction in income, printing out data from his Facebook page that indicated that he had been holidaying in Spain, Poland, and Jordan. On foot of these and other submissions, the court held in her favour.

Mr M may never have considered that his holiday postings from the Middle East would impact upon his court case in Northern Ireland (he may not have cared, since he didn't turn up in court). But he is one example of how someone's online postings can impact upon their life in the real world. Online social networking sites such as Facebook are a relatively recent phenomenon, but they are already huge. Facebook itself is no more than eight years old, but it already has some 900 million users, 400 million of whom use it almost everyday.

This activity generates a lot of data: users post some three billion 'likes' and comments daily; they upload some 300 million photos as well. What is said on a site such as Facebook may have a substantial impact on an individual's reputation. This is already apparent in the USA, where college students are increasingly wary of being seen holding alcoholic beverages in public, for fear of finding that they cannot get a job after college because someone has posted their picture, drink in hand, online. Given such potential effects, it is inevitable that some will try to control what is said about them online. One approach to doing so is to seek injunctive relief from the courts.

Such an approach was adopted by Eoin McKeogh, who sought to injunct various websites such as Facebook, Google and YouTube in January 2012. Mr McKeogh had been falsely accused on various social networking sites of running off without paying his taxi fare (in fact, he was in Japan at the time). He had successfully sought an interim injunction preventing those sites from hosting or linking to video images that supposedly depicted him. But to do so, he had to go to court. Article 34.1 of *Bunreacht na hÉireann* created a significant hurdle to his efforts to preserve his reputation, providing as it does that

It's cloud computing, Dumbo

"justice … shall be administered in public". Since the court proceedings had to be held in public, the facts of his case were fully reported in the press. Mr McKeogh sought to have the press restrained from mentioning his name in their reports of his case, but failed.

Baby elephant walk

The courts of England and Wales have proven more accommodating, developing 'super-injunctions' that restrict mention of even the fact that such an injunction has been applied for. Such injunctions had proven highly effective tools to control what is said in the press, TV and radio. There was no reason to believe that they would not also prove effective in controlling what is said on Facebook, which is reported to delete about 20,000 profiles a day for spamming, posting inappropriate content, and violating age restrictions. The problem is that, while Facebook may be huge, it's still just one tiny part of the internet, which is an immense network, containing many, many sites in many jurisdictions, any of which can be used to invade someone's privacy or damage their reputation.

The courts of England and Wales seem unintimidated by the internet's size. In *AMP v Persons Unknown*, they issued an injunction against 'persons unknown', restricting them from distributing certain digital images of the plaintiff. The images had apparently been taken from a mobile phone that had been stolen from the applicant. They were described as including "images of an explicit sexual nature, which were taken for the personal use of her boyfriend at the time". The plaintiff "was informed by strangers on Facebook that the images had been uploaded and that her name and Facebook profile had been attached to them". In response, she contacted Facebook, which removed the images "promptly".

However, the images were then uploaded to BitTorrent. BitTorrent is quite different from Facebook. It is a 'peer-to-peer network', described by the English High Court in the following terms: "Rather than downloading a file from a single source server … the BitTorrent protocol allows users to join a 'swarm' of users to download and upload from each other simultaneously." The lack of a 'single source server' means that nobody controls what is available to download at any one time. The disadvantage to such a network is that there is nothing substantive enough to be valued at €100 billion or more in an IPO; the advantage is that there is nobody to sue – or rather, there may be too many of them. Millions of people are using BitTorrent at any one time; it is simply not possible to sue them all. This creates very real practical difficulties for the enforcement of court orders against such networks, but this did not stop the English High Court issuing an injunction in *AMP v Persons Unknown*.

Whether there was any point to it doing so was open to question, as is illustrated by the Ryan Giggs case. Mr Giggs, a well-known footballer in England, had successfully sought a super-injunction restricting mention of certain information concerning his family life. The super-injunction proved effective against the press, but not Twitter, where his name leaked out.

Tusk

The Irish courts are similarly struggling to control what is said online. They appear to be considering two approaches. One is to minimise the effect of such speech. This is the approach taken by the Irish courts to jury trials, such as that reviewed by the Court of Criminal Appeal in *DPP v David Timmons*. The applicant's lawyers had undertaken an internet search that had "discovered a large amount of material concerning the case, which was highly prejudicial to the applicant". They complained to the trial judge, who warned the jury not to undertake equivalent searches. The applicant was convicted and appealed, but the Court of Criminal Appeal held that the trial judge had dealt with this issue "in an appropriate way".

"Upholding the internet freedoms of Syrians may conflict with the data protection rights of Europeans. It remains to be seen which of these will be considered more important by the EU"

An alternative approach is to endeavour to control the speech itself. This more robust approach is illustrated by the judgment of the High Court in the 'Rate Your Solicitor' case (*Tansey v Gill*). The case was brought by a solicitor from Sligo. Peart J accepted that the site had published material that "wrongly meant he had committed criminal acts, engaged in dishonest appropriation of clients' property, lied to clients, engaged in corrupt conduct, engaged in unprofessional conduct, and failed to act in accordance with the highest standard".

The judge went on to grant mandatory injunctions that effectively closed down the site.

This does not mean that the Irish courts are more effective than those of England and Wales. What distinguished the 'Rate Your Solicitor' case from *AMP v Persons Unknown*

is that, in the former, the defendants had been identified, whereas in the latter "the number of potential defendants and the need to move rapidly" militated against identifying individual defendants.

At least one of the defendants in the 'Rate Your Solicitor' case, the US-based server that hosted the site, is now challenging the order in that case.

Pink elephants on parade

An even more robust approach is currently being considered by the EU. This is the 'right to be forgotten', which was brought forward by the EU Commission as part of its proposal for a *Data Protection Regulation* in January 2012. Article 17 of this proposal provides for a 'right to be forgotten and to erasure', which provides that individuals have "the right to obtain from the controller the erasure of personal data relating to them and the abstention from further dissemination of such data". This right may "especially" be invoked in respect of "personal data which are made available by the data subject while he or she was a child". It may be invoked in certain circumstances: where it is no longer necessary to process the data; consent has been withdrawn or has expired; the processing is in breach of data protection law; or where the subject objects to the continuing processing of his data on the grounds such as that it is in the public interest or the legitimate interests of the controller.

"The Irish courts are similarly struggling to control what is said online. They appear to be considering two approaches. One is to minimise the effect of such speech"

The EU Commission proposal promises more than a right to demand the deletion of personal data from one particular site. If enacted, then sites such as Facebook will have to "take all reasonable steps, including technical measures … to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data".

If the commission's proposal is enacted, then a future Eoin McKeogh would have an explicit right to object to processing of his personal data by Facebook or other sites. This would extend to data uploaded by others to Facebook, not just data that he himself has uploaded. The future Eoin McKeogh would not have to go to court and see his name repeated in reports of the hearing. All he would have to do would be write to Facebook and other service providers, point out that, as the data relating to him was inaccurate, it was being processed in breach of data protection law; invoke his rights under article 17; and request the erasure of his personal data. Should he encounter any difficulties, he would not have to go to court, just complain to the Data Protection Commissioner, who will have greatly enhanced supervision and enforcement powers, including the issue of orders preventing the processing of personal data and the imposition of fines of up to €1 million or 2% of an undertaking's worldwide turnover.

Colonel Hathi's march

If enacted, this proposal will greatly enhance the controls that individuals may impose upon the discussion of their personal data online. But the commission's approach is not without its disadvantages. Enforcement may remain a problem. Facebook will comply with EU law, but others may not be so compliant, as illustrated by the continuing inability of the record industry to control the copying and distribution of its online music.

Europe could develop technology to assist enforcement but, in doing so, it might find itself in the company of some deeply unsavoury regimes. EU member states are required to be democracies bound by the rule of law. The citizens of other states, such as Syria, are not so fortunate. Notwithstanding their oppression, Syrians can use the internet to communicate, both with fellow Syrians and with international audiences. In February 2012, the EU Council decreed that exports of equipment and software intended for use in the monitoring of internet communications by the Syrian regime would be banned. Earlier, in December 2011, the EU Commission promised to assist the citizens of states such as Syria to bypass such surveillance and censorship measures" The EU Commission explained that doing so "depends on two basic conditions: availability of appropriate technologies, and knowledge of the techniques used by authoritarian regimes to spy on citizens and of the appropriate counter-measures to use".

Of course, if the EU is to make such technologies and knowledge available to Syrians, then it will have to make them available to Europeans. And what is used to evade the Al-Assad regime in Syria may be used to evade data protection in Europe. And so, upholding the internet freedoms of Syrians may conflict with the data protection rights of Europeans. It remains to be seen which of these will be considered more important by the EU. G

LOOK IT UP

Cases:

- *AMP v Persons Unknown* [2011] EWHC 3454 (TCC)
- *DPP v David Timmons* [2011] IECCA 13
- *M v M (Child Maintenance)* [2009] NIMaster_65 (4 March 2009)
- *Mc Keogh v John Doe 1 & Ors* [2012] IEHC 95
- *Tansey v Gill & Ors* [2012] IEHC 42

GET OFF MY cloud

It's all about 'cloud computing' these days, but solicitors using online storage providers need to take reasonable care to protect confidential information. Réamonn Smith rocks the firewall

Réamonn Smith is vice-chair of the Law Society's Technology Committee and a partner in the Dublin firm Smith Foy & Partners

Various companies offer online computer data storage systems that are maintained on an array of internet servers located around the world. This array of internet servers is often called the 'cloud'.

A practitioner may consider it beneficial to use one of these online 'cloud' computer data storage systems to store client confidential information. The solicitor's aim is to ensure that his clients' information will not be lost if something happens to the solicitor's own computers. In the scenario considered, the online data storage system is password-protected and the data stored in the online system is encrypted.

A solicitor is under various obligations of confidentiality, as set out in the second edition of the *Guide to Professional Conduct of Solicitors in Ireland*.

Generally, a solicitor has duty to keep all client information, including the existence of the solicitor/client relationship, confidential unless the client has given consent to the disclosure of the information or a court has ordered such disclosure.

The obligation to keep client information confidential extends beyond merely prohibiting a solicitor from revealing confidential information without client consent.

A solicitor must also take reasonable care to affirmatively protect a client's confidential information. A solicitor must diligently preserve the client's confidences, whether reduced to digital format, paper, or otherwise.

"A solicitor must also take reasonable care to affirmatively protect a client's confidential information. A solicitor must diligently preserve the client's confidences, whether reduced to digital format, paper, or otherwise"

All down the line

Even when a solicitor wants a closed client file to be destroyed, simply placing the files in the refuse would not suffice. Appropriate steps must be taken to ensure that confidential and privileged information remains protected and not available to third parties. As set out in the Law Society's practice note on the retention and destruction of files, previously issued jointly by the Technology Committee and the Guidance and Ethics Committee: "In arranging for the destruction of a file (whether in paper or electronic format), solicitors are reminded of the need to preserve client confidentiality. Old paper files should be shredded in a manner which will completely obliterate their content. Any such destruction should take place under the supervision of the solicitor ... Care should also be taken to dispose of electronically stored material in a manner which preserves client confidentiality."

It follows, as a matter of course, that a solicitor must exercise reasonable care to prevent others whose services

FAST FACTS

- Solicitors may use online data storage systems to store and back up client confidential information, provided they take reasonable care to ensure that confidentiality will be maintained in a manner consistent with their obligations to their client
- Solicitors should stay abreast of technological advances or should procure relevant services from an IT consultant to ensure that the storage system remains sufficiently advanced to protect the client's information
- They should also monitor the changing law of privilege to ensure that storing the information online will not cause loss or waiver of any privilege

are utilised by the solicitor from disclosing or using confidential information of a client, except to the extent disclosure is permitted in accordance with the solicitor's professional and ethical obligations.

Accordingly, a solicitor must take reasonable affirmative steps to guard against the risk of inadvertent disclosure by others who are working under the solicitor's supervision or who have been retained by the solicitor to assist him in providing services to the client.

The practice note further states: "Material in electronic storage format should also be secured and safeguarded against destruction or theft in the same way as materials stored in paper format."

It is the Law Society's view that the solicitor's obligations in this regard are limited to exercising reasonable care, and that exercising such 'reasonable care' does not mean that the solicitor guarantees that the information is secure from any unauthorised access.

Send it to me

In relation to communication by email, it is the Law Society's view that solicitors may transmit confidential information by email, but solicitors must always act reasonably in choosing to use email for confidential communications. The exercise of reasonable care may differ from one case to the next.

Accordingly, when a solicitor is on notice that the confidential information being transmitted is of such an extraordinarily sensitive nature that it is reasonable to use only a means of communication that is completely under the solicitor's control, the solicitor must select a more secure means of communication than unencrypted internet email. A solicitor must take reasonable precautions to prevent information coming into the hands of unintended recipients when transmitting information relating to the representation, but is not required to use special security measures if the means of communicating provides a reasonable expectation of privacy.

Where a solicitor uses an online data storage system for the purpose of preserving client information – a purpose both related to the retention and necessary to providing legal services to the client – using the online system is consistent with conduct that the Law Society has deemed ethically permissible.

So, a solicitor may use an online 'cloud' computer data backup system to store client files, provided that the solicitor takes reasonable care to ensure that the system is secure and that client confidentiality will be maintained. 'Reasonable care' to protect a client's confidential information against unauthorised disclosure may include consideration of the following issues:

- Does the online data storage provider have an enforceable obligation to preserve confidentiality and security, and to notify the solicitor if served with any notice, demand or order requiring the production of client information?
- Does the online data storage provider employ adequate security measures, policies, recoverability methods, and other procedures?
- Does the online data storage provider employ available technology to guard against reasonably foreseeable attempts to infiltrate the data that is stored?
- Does the solicitor's contract with the cloud computing service provider ensure that data will be stored in accordance with data protection laws?
- Will the solicitor be able to recover and

remove data from the online data storage provider's systems so that the data is permanently deleted from the remote system?

Don't hang around 'cause two's a crowd

Fingerprint file

It is recommended that practitioners consider including in their standard terms of engagement a clause stipulating that it is a condition of their engagement by their client that their client consents to the client's data and information being stored on remote systems owned by third parties, wherever such systems might be located. The clause should disclose the practitioner's current cloud computing services arrangements and what they might be in the future, in generic terms, if the practitioner switches to a different supplier. The client would be required to acknowledge that these arrangements are satisfactory to him or her.

"The duty to exercise reasonable care to prevent disclosure of confidential information may, in some circumstances, call for the solicitor to stay abreast of technological advances and the potential risks in transmitting information electronically"

The clause might further note that any limits on the liability on the cloud provider for breaches of its terms of service shall apply *mutatis mutandis* between the practitioner and the client.

A properly drafted clause should function as consent for the purposes of the *Data Protection Acts* and should also serve as a consent to such limited disclosure of confidential information as may be involved in the use of such cloud computing services by the solicitor and to such reasonable risk of unintended disclosure of confidential information as may be involved when such systems are used.

Practitioners should also be aware of their obligations under national and EU data protection legislation. Such consent may be necessary where the data may be stored on servers located outside the EU. A client's formal written consent may be the most effective method of avoiding any non-compliance with data protection laws.

Start me up

Technology and the security of stored data are changing rapidly. Therefore, even after taking some or all of these steps (or similar steps), the solicitor should periodically reconfirm that the provider's security measures remain effective in light of advances in technology. If the solicitor learns information suggesting that the security measures used by the online data storage provider are insufficient to adequately protect the confidentiality of client information, or if the solicitor learns of any breach of confidentiality by the online storage provider, then the solicitor must investigate whether there has been any breach of his or her own clients' confidential information, notify any affected clients, and discontinue use of the service, unless the solicitor receives assurances that any security issues have been sufficiently remediated.

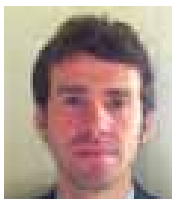
Not only technology itself, but also the law relating to technology and the protection of confidential communications is changing rapidly. Solicitors using online storage systems (and electronic means of communication generally) should monitor these legal developments, especially regarding instances when using technology may waive an otherwise applicable privilege.

The duty to exercise reasonable care to prevent disclosure of confidential information may, in some circumstances, call for the solicitor to stay abreast of technological advances and the potential risks in transmitting information electronically. G

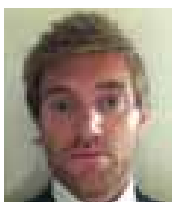
The Law Society would like to thank the New York State Bar Association for their kind permission to reproduce parts of Opinion 842 (9/10/10) of the Committee on Professional Ethics of the New York State Bar Association. For further reference, see the article 'Cloud computing – advice for the legal profession' on the Law Society of Scotland's website, www.lawscot.org.uk.

Children of the REVOLUTION

E-discovery has proven to be an expeditious and cost-effective method of reviewing documents during the litigation process. Richard Greene and Dan Fox look at its development since the introduction of new rules in 2009



Richard Greene is a practising barrister and the co-founder and business development officer of Prime Legal Discovery Limited, Ireland's first electronic staffing agency



Dan Fox is a practising barrister and the co-founder and managing director of Prime Legal Discovery Limited

There is no doubt that the growth of e-discovery has coincided with the advancement of the digital age. The proliferation of social media sites such as Twitter and Facebook, together with the widespread use of email as a means of communication, has increased the volume of potentially relevant documentation and this, in turn, has significantly shaped the necessity for the implementation of a speedier method of document review.

The traditional method of discovery has, therefore, become increasingly impractical and unrealistic in situations where time is of the essence and resources are becoming more limited. Processes and technologies, which e-discovery solution technicians are providing, are now revolutionising the discovery process and helping to create a more efficient and effective litigation process. While in the past, the hard-copy discovery process sufficed, the demands of this modern, digital age have necessitated a departure from this form of discovery to cope with the increase in documentation. It is now essential that documents are produced as early as reasonably possible by the effective use and implementation of technology.

> ***"The traditional method of discovery has become increasingly impractical and unrealistic in situations where time is of the essence and resources are becoming more limited"***

Tiger feet

Prior to the introduction of the 2009 amendment, the issue of e-discovery was first explored in detail in *Dome Telecom Limited v Eircom Limited*. The plaintiff in that matter was seeking large-scale discovery of certain documents from the defendants. This particular request for discovery would have necessitated the extraction of data analysis and the collation and analysis of phone records from a large database.

While the High Court initially allowed for the discovery sought, the order was vacated by the Supreme Court, where it was held that it was not necessary that the defendant make such discovery. In essence, the court was of the view that proportionality should be exercised to prevent costs from spiralling out of control.

However, Geoghegan J, in dissenting, was of the opinion that electronically stored information (ESI) should be discoverable: "It is common knowledge that a vast amount of stored information in the business world, which formerly would have been in a documentary format in the traditional sense, is now computerised. As a matter of fairness and common sense, the courts must adapt themselves to this situation and fashion appropriate analogous orders of discovery."

More recent decisions in this jurisdiction seem to highlight a shift from the majority decision reached in *Dome Telecom* towards a system that is looking increasingly willing to implement and utilise e-discovery, while still having regard to proportionality. This has been highlighted in the case of *Hansfield Developments Ltd & Ors v Irish Asphalt Ltd & Ors*. The defendants in this case wished to dismiss the plaintiff's claim for failure to make proper discovery. It emerged that a number of emails pertinent to the litigation had not been discovered by the plaintiff due to insufficient communication between the two sides. The court was of the opinion that the basic principles of identifying, collecting, and processing potentially relevant data to enable a search filter to be applied were not carried out. While the defendants were not successful in dismissing the claim, the court stated that both parties should set out a programme outlining the main areas of the e-discovery process, which should include scope, search terms, and collection parameters.

The most recent case in this area, within Ireland, is *Thelma International Fund PLC v HSBC Institutional Trust Services (Ireland) and Thelma Asset Management Limited*

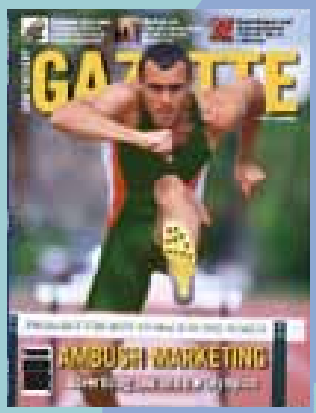
Discovery turned contentious in *Fat Freddie's Cat v The Man*

FAST FACTS

- The 2009 amendment to order 31, rule 12 of the *Rules of the Superior Courts* has helped the move away from the previously laborious traditional discovery process
- Technology is revolutionising the discovery process and helping to create a more efficient and effective litigation process
- There is clearly a trend being established by the Irish judiciary in favour of the use of e-discovery

and 2020 Medici AG. This case formed part of the 'Madoff'-related litigation still ongoing in the Irish commercial courts. This specific case related to an application on the part of the plaintiff for an extension of time to make discovery. This was the first case where the Irish judiciary conveyed an understanding of e-discovery. In his judgment, Mr Justice Clarke outlined certain principles that parties should adhere to when conducting e-discovery in complex litigation. Furthermore, it was suggested that the rules needed to be changed to refine the scope of discovery, having regard to proportionality and costs, and that parties who failed to employ e-discovery might fail in recovering additional costs. A reference was also made to a number of principles that should be set out when employing the use of e-discovery.

Relying on the precedent value of these more recent decisions on e-discovery within the Irish jurisdiction, it seems that the views



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contained within the dissenting judgment of Geoghegan J in *Dome Telecom* seem to be more and more accepted by the Irish judiciary. We now see that, since the introduction of the 2009 rules, there is a greater recognition and understanding surrounding the necessity of e-discovery. Given its potential to locate vital documentation from seemingly unending data sources, and in circumstances where the litigation process may ultimately be expedited, it is easy to see why there has been a shift in judicial thinking towards the utilisation of e-discovery technologies.

Leader of the gang

The principles referred to by Mr Justice Clarke are often referred to as the 'electronic data reference model'. This is the basic standard that should be adhered to when carrying out e-discovery.

While the introduction of new rules in relation to electronically stored information (ESI) has led to less ambiguity in this area, the problem, as highlighted in the *Hansfield* and *Thelma* cases, is that the rules fail to specify any specific guidelines as to the scope and the extent that ESI is discoverable. In 2010, the English jurisdiction introduced a new practice direction (PD31B), which sets out specific guidelines in relation to e-discovery. These guidelines include, among other things, a questionnaire on the scope, extent, and most suitable format for disclosure of electronic documents in proceedings. The introduction of these new rules in Britain has led to more consistency in this area.

"There is a common misperception that e-discovery is unattainably expensive and is a tool that only the bigger law firms can afford to implement"

The English courts have also indicated that they will not tolerate substandard e-discovery. This was demonstrated in the recent case of *West African Gas Pipeline Company Limited and Willbros Global Holdings Inc*. In this matter, the plaintiff's electronic disclosure was determined to be "wholly inadequate", arising out of a number of failures and inefficiencies on their behalf while carrying out their discovery obligations. The effect of the plaintiff's failure in this regard resulted in a costs order being made against them for a significant sum of money.

Simon Collins, who heads forensic technology and discovery at Ernst & Young Ireland, has created new guidelines, set to be published soon, outlining the procedural steps that should be taken to ensure that an effective e-discovery review is carried out. These guidelines are based on the electronic data reference model, which is the global standard for e-discovery. Collins believes that Ireland can learn from the mistakes of other jurisdictions and create rules that will lead to effective and efficient discovery.

Ballroom blitz

Since the introduction of rules governing electronically stored information in 2009, there has been much change in the area of discovery in this jurisdiction. There is clearly a trend being established by the Irish judiciary in favour of the use of e-discovery. Furthermore, e-discovery is being increasingly employed by many of the bigger law firms, replacing the hard-copy discovery process, to meet the demands of the ever-increasing electronic data being produced. Unfortunately, there is a common misperception that e-discovery is unattainably expensive and is a tool that only the bigger law firms can afford to implement. In fact, the use of e-discovery could facilitate smaller to mid-tiered firms in challenging the larger commercial law firms for some of the higher-end commercial work, which traditionally might have been out of their reach due to restraints on resources. Furthermore, in circumstances where the cost of purchasing, running and maintaining e-discovery software platforms is becoming increasingly affordable, we may see, in the near future, more and more smaller sized law firms employing the use of the various technologies currently available. This should, in turn, enable these firms to compete against the larger firms when a large discovery order is made by the courts.

LOOK IT UP

Cases:

- *Dome Telecom Limited v Eircom Limited* [2008] 2 IR 726
- *Hansfield Developments Ltd & Ors v Irish Asphalt Ltd & Ors* [2010] IEHC 32
- *Thelma International Fund PLC v HSBC Institutional Trust Services (Ireland) and Thelma Asset Management Limited and 2020 Medici AG* [2011] IEHC 496
- *West African Gas Pipeline Company Limited and Willbros Global Holdings Inc* [2012] EWHC 396

Legislation:

- *Civil Procedure Rules* (Britain), practice direction 31B
- *Rules of the Superior Courts (Discovery) 2009*, amendment to order 31, SI no 93 of 2009

ALL THE YOUNG DUDES

The difficulty that a lot of Irish law firms are faced with today is choosing the most appropriate software platform to review documents in an already saturated software market. In the United States alone, the e-discovery industry is worth in excess of $1.2 billion. There are over 100 e-discovery software providers. However, developments in recent months mean that this might be changing, with the recent acquisition of a number of e-discovery vendors by larger providers. Such acquisitions include the sale of De Novo Legal to Epiq Systems, and Guidance Software's acquisition of CaseCentral for $50 million.

However, the most significant development in this area is Google's entry into the e-discovery fray. In March, Google launched its own e-discovery software, *Apps Vault*. The software is a 100% web-based, so it can be "deployed in a matter of minutes". This provides a significant advantage, as it means that an external server is not required to host the software and is very cheaply priced from $5 per user per month. Google's entry into the market does not mean the end for other e-discovery vendors, as the software is only available to existing Google customers and will only retain data on Google applications. However, it is Google's intention to enter into the market that will give rise to concern for many vendors, especially given Google's track record of dominating markets it has entered in the past.

PIC: LENSMEN

The Law Society held a special function to mark the retirement of Mr Justice Joseph Finnegan from the Supreme Court. He was President of the High Court from 2001-2006. *(Back, l to r)*: Gerard Doherty, James MacGuill (both past-presidents), Paul O'Higgins SC (Chairman of the Bar Council), James McCourt (senior vice-president), Ken Murphy (director general), Ritchie Bennett and Simon Murphy (junior vice-president). *(Front, l to r)*: Mary Keane (deputy director general), Mr Justice Joseph Finnegan, Donald Binchy (Law Society President), Kay Finnegan and Charlotte Finnegan BL

Miriam meets...

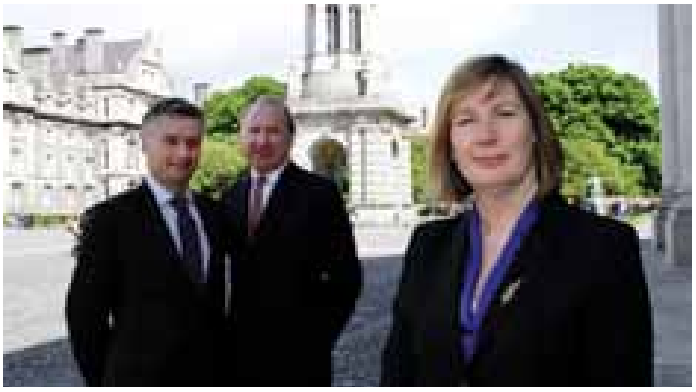
PICS: JASON CLARKE PHOTOGRAPHY

Ken Murphy (director general) and Miriam O'Callaghan share a joke at the 17 May parchment ceremony at Blackhall Place

At the Law Society's parchment ceremony for newly qualified solicitors on 17 May 2012 were *(l to r)*: Law Society President Donald Binchy, Michelle Ní Longáin (chairman, Law Society Finuas and Skillnet Networks Steering Committees) Miriam O'Callaghan (RTÉ), and District Court Judge Tim Lucey

'Tipp top' as Ursula garners Client Choice award

Ursula Tipp, a partner in ByrneWallace and head of the firm's tax department, has been awarded the International Law Office Client Choice Award 2012 for her work in the corporate tax sector



Chair of Corporate Law

Trinity College Dublin has named Prof Blanaid Clarke as McCann FitzGerald Chair of Corporate Law. TCD's law school aims to become a global centre of excellence in corporate law, specifically in the fields of corporate accountability and regulation. Pictured are Dr Patrick Prendergast (Provost of Trinity College), John Cronin (chairman of McCann FitzGerald) and Prof Blanaid Clarke

At the recent British and Irish Association of Law Librarians annual conference in the Hastings Europa, Belfast, were *(l to r)*: John Furlong (Matheson Ormsby Prentice), Niamh Burns (Bar Library, Belfast) and Attorney General of Northern Ireland, Mr John Larkin QC

Web connections at internet conference

The Irish Internet Association's annual conference in May attracted over 200 industry professionals. Keynote speakers included Taoiseach Enda Kenny, Sean O'Sullivan (Avego, OpenIreland), Neil Leyden (IDSC) and Sharon Walsh (Heineken Ireland). *(From l to r)*: Michael Shelley (RSM Farrell Grant Sparks), Wendy Hederman (Mason Hayes and Curran), Sean O'Sullivan, (Avego) and Michael McGivern (RSM Farrell Grant Sparks)

Two Law Society trainee solicitors have won a place in the semi-finals of the International Environmental Moot Court Competition. *(From l to r)*: Avril Mollaghan (Mason Hayes & Curran), team coach TP Kennedy (director of education) and Aideen O'Driscoll (James Riordan & Partners)

Injuries claims made simple

Sligo-based solicitor Michael Monahan has launched a new book, *Injuries Board Claims Made Simple*. The book is a layman's guide to the Injuries Board process.

DIT postgraduate cert in learning, teaching and assessment

Celebrating the conferring of the Law Society Skillnet and DIT Postgraduate Certificate in Learning, Teaching and Assessment included *(front, l to r)*: Sinéad Marron (president, IITD), Attracta O'Regan (head of Law Society Professional Training), Prof Brian Norton (president, DIT), Michelle Ní Longáin (chairman, Law Society Finuas and Skillnet Networks Steering Committees). *(Back, l to r)*: Antoinette Moriarty (Law Society), Tracey Donnery (Skillnets Ltd), Brian Hutchinson (director of the UCD Commercial Law Centre), Michelle Nolan (Law Society), Vincent Farrell (DIT), Prof Philip Nolan (president, NUIM), Sinéad Heneghan (CEO, IITD) and Dr Jen Harvey (DIT). *(Conferees)*: Eithne Deane, Deirdre Flynn, Olga Gaffney, Bridget Kiernan, Pauline McHugh, Fiona McKeever, Louise Murphy, Sharon Oakes, Fiona O'Keeffe, David Soden, Elaine Walsh

NUIM postgraduate cert in mediation and conflict intervention

At the conferring of the Law Society Skillnet and NUIM Postgraduate Certificate in Mediation and Conflict Intervention on 26 May 2012 were: Tracey Donnery (Skillnets Ltd), Sinéad Marron (president, IITD), Attracta O'Regan (head of Law Society Professional Training), Julie McAuliffe (NUIM), Delma Sweeney (NUIM), Mary Condell (first class honours prize winner), Michelle Ní Longáin (chairman, Law Society Finuas & Skillnet Networks Steering Committees) and Prof Philip Nolan (president, NUIM). *(Conferees)*: Ann Bacon, Mary Condell, Cathleen Dolan, Karl Fitzmaurice, Eleanor Hannon, Sarah Hayes, John Keaney, Gerald Meagher, Doirin Mulligan, Catriona Murray, Jonathan O'Mahony, Teresa O'Sullivan, Sheila Ryan, Lucinda Shaw, Dairine Walsh

Knightsbrook Golf Course – home to the Junior Solheim Cup 2011

'I'm a lady, don't you know' – the Solheim challenge

The autumn outing of the Lady Solicitors' Golf Society – Captain's Day – will be held in Knightsbrook, Trim, Co Meath, which was home to the Junior Solheim Cup in 2011.

The overall winner will receive the Quinlan Rose Bowl, donated to the society by Moya Quinlan in 1981. Higher handicaps will also compete for the Sheila O'Gorman Trophy, presented by Geraldine Lynch in memory of her late sister and our erstwhile colleague. This promises to be a fantastic outing on a great course and will be an ideal opportunity to meet up with familiar and new colleagues.

It helps, of course, that our resident haruspex predicts that the weather will be splendid!

Membership information and details of the outing are available from Anne Delaney at amdel@eircom.net or 086 828 9094.

Newly qualified solicitors at the presentation of their parchments on 15 December 2011

ALL PICS: JASON CLARKE PHOTOGRAPHY

President of the High Court Mr Justice Nicholas Kearns, Law Society President Donald Binchy and Ken Murphy (director general) were guests of honour at the parchment ceremony for newly qualified solicitors on 15 December 2011: Catherine Ardagh, Denise Biggins, Tony Comiskey, Sean Cronolly, Timothy Doyle, Sinead Durkan, Mernan Femi-Oluyede, Ryan Ferry, Oliver Fitzgerald, Rowena Fitzgerald, Fionnuala Flanagan, Anne Foley, Mary Foley, Rebecca Foley, Laura Graham, John C Jermyn, Ann Kilbane, Ruth Linnane, Martina Lyons, Annamarie MacCarthy, Richard McNamara, Katie Mannion, David Mullins, Edel Ní Chnaimhsi, Kate O'Brien, Shane O'Donnell, Catherine-Ellen O'Keeffe, Deirdre O'Sullivan, David Phelan, Eimear Russell, Domhnaill Small, Conor Treacy, Cormac Wilde and Áine Wright

Newly qualified solicitors at the presentation of their parchments on 23 February 2012

President of the High Court Mr Justice Nicholas Kearns, Minister for Justice, Equality and Defence Alan Shatter TD, Law Society President Donald Binchy and Ken Murphy (director general) were guests of honour parchment ceremony for newly qualified solicitors on 23 February 2012: Sophie Brookes, Nicola Cahill, Nuala Clayton, Aisling Clohessy, Elaine Corcoran, Laura Creagh, Charles Cunningham, Michael Doyle, Cassandra Egan-Langley, Blathnaid Evans, Neil Farragher, Eimear Finan, Edel Finn, Aoife Gallagher-Watson, Linda Gordon, Caroline Gormley, Ciara Hayes, Nicola Heffernan, Sabina Hegerty, Marc Hickey, Julia Hussey, Lauren Kellett, Thomas Kelly, Eleanor Leane, Gillian Long, Laura Lynch, Sinead Manning, Kate Marrey, Joseph McCarthy, Cian McElhone, Julie McEvoy, Danielle McGarry, Stephen McGrath, Michelle Mulcahy, Clare Murphy, Valerie Nevin, Mairead Ní Ghabhain, Eadaoin O'Donnell, Karen O'Donovan, Rory O'Halloran, Gráinne O'Hara, Ali O'Reilly, Catherine Power, Michelle Power, Caroline Quigley, Sorcha Rooney, Cathal Ryan, Laura Sharkey, Geraldine Stack, Eleanor Sullivan, Laura Sweeney, David Thompson, Yvonne Tyndall, Gillian Walsh, Veronica Walsh and Matthew Wilson

Newly qualified solicitors at the presentation of their parchments on 8 March 2012

Mr Justice Michael Peart (High Court), Law Society President Donald Binchy and Ken Murphy (director general) were guests of honour at the parchment ceremony for newly qualified solicitors on 8 March 2012: Geraldine Arthur-Dunne, Seán Barrett, Áine Bhreathnach, Edel Bourke, Jonathan Brady, Shane Carroll, William Claffey, Caoimhe Clancy, Dorothy Cleary, Emily Corkery, Nicola Daveron, David Dennehy, Mark Devane, Mary Drennan, Ronan Faherty, Rachel Fox, Hazel Hatton, Denise Healy, Fiona Healy, Anna Hickey, Danielle Hogan, Lisa Hyland, Rachel Kealy, Richard Kelly, Rachel Kevans, Joseph Kiely, Amy Lawless, Emer Lumsden, Anna Lynch, Aoife McCluskey, Emma McDonnell, Eoin Thomas McGuinness, Margaret Maguire, Corrine Molloy, James Newman, Eimear O'Brien, Grace O'Connor, Fiona O'Dea, Seán O'Hanrahan, Colman O'Loghlen, Lorna Osbourne, Timi Oyewo, Aideen Pendred, Cliona Quillinan, Sinead Ronan, Jill Shaw, Sharon Smyth, Padraig Twomey, Jerry Twomey, Paula Woolfson and Gillian Young

Newly qualified solicitors at the presentation of their parchments on 26 April 2012

President of the High Court Mr Justice Nicholas Kearns, Law Society President Donald Binchy and Ken Murphy (director general) were guests of honour at the parchment ceremony for newly qualified solicitors on 26 April 2012: Stuart Anderson, Ursula Atueyi-Nwosu, Emma Bell, Julie-Ann Binchy, Marie-Therese Bolger, Gareth Bourke, Michael Buckley, MJ Clery, Thomasina Connell, James Crinion, Ailbhe Cunningham, Auveen Curran, Anne Marie Cusack, Celine D'Arcy, Deirdre Fallon, Ruth Fanning, John Farrell, David Fitzgerald, Majella Galligan, Kate Gorey, Emma Heffernan, Karl Howe, Yvonne Hurley, Hironobu Ino, Rachel Jordan, Paul Kelly, Simon Keogh, Niall Kiernan, Conor Kiernan, Emma Leahy, Aisling Lonergan, Yurishan Lowry, Tracey Ann McDermott, Gillian McGough, Nicola McGuinness, James McKnight, Douglas McMahon, Edel Mullins, Amy Murphy, Kate Murray, Toni Nolan, Angeline O'Connell, Robert O'Driscoll, William O'Keeffe, Brian O'Malley, Nichola O'Reilly, Fiona O'Riordan, Jennifer O'Sullivan, Brian O'Sullivan, Colm Ó hUiginn, Elaine Punch, Niamh Regan, Leonard Ryan, Naomi Tamblyn, Paul Thompson, Ceanna Walsh, Clodagh Walsh, Josephine Weldon, Iseult Whelan and Christine Woods

Newly qualified solicitors at the presentation of their parchments on 17 May 2012

Mr Justice Paul JP Carney (High Court), Miriam O'Callaghan (RTÉ), Law Society President Donald Binchy and Ken Murphy (director general) were guests of honour at the parchment ceremony for newly qualified solicitors on 17 May 2012: Kate Ahern, Sally Alford, Siobhan Byrne, Sean Coleman, John Cooke, Bernadette Costello, Majella Crennan, Liam Crowley, Alan Cusack, Michael Cusack, Colm Dawson, Anne-Marie Dempsey, Aimee Dillon, Suzann Dundon, Eve Dunne, Jamie Enright, Deirdre Farrell, Catherine Fleming, Elizabeth Flynn, Fergal Griffin, Daisy Hanahoe, David Hanlon, Nicola Hannigan, Clifford Healy, Brid Heffernan, Fiona Hehir, David Heneghan, Kate Henry, Niamh Hill, Neal Horgan, Louise Keane, Damien Kenneally, Jane Kenneally, Sinead Keogh, Kirsten Kingerlee, Stephen Loftus, Grainne McDonagh, Joanne McHugh, Gearoid McKernan, John McShane, Lisa Mansfield, Alexandra Moore, Amanda Moore, Louise Moore, Heather Murphy, Aoife Ní Fhártharta, Deborah O'Flaherty, Lisa O'Callaghan, Katie O'Connell, Edel O'Connor, Una O'Donnell, Laura O'Halloran, Frances O'Hara, Cian O'Leary, Ciara O'Loughlin, Thomas O'Mahoney, Rachel O'Regan, Claire O'Sullivan, Eoghan O'Tuama, Ann Phelan, Katie Reidy, Siobhan Reidy, Emer Rohan, Chan Shi, Robert Simmons, Sarah Ann Tully, Michael Ward and Angela Woulfe

Judicial Review of Criminal Proceedings

Derek Dunne. Round Hall (2011), www.roundhall.ie. ISBN: 978-1-8580-062-46. Price: €325.

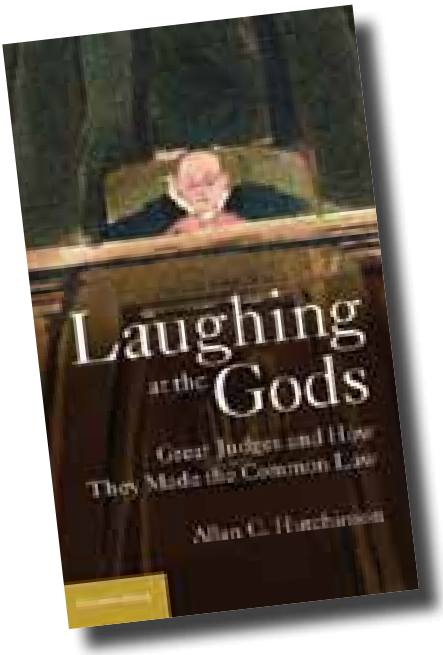
This book is an impressive and comprehensive aide to practitioners wishing to make an application for judicial review of criminal proceedings. It neatly sets out grounds for review, remedies in judicial review proceedings, and the defences available to judicial review applications. It efficiently summarises the types of cases that may be taken.

In addition, the book deals in detail with the jurisdiction of the courts in criminal cases. It contains a wealth of information that will allow you to inform the court of the limits of its jurisdiction and thereby help you to avoid having to take a judicial review application.

The book is very effectively laid out, with a straightforward and detailed table of contents, an impressive table of cases and, most importantly, an expansive index. From a practitioner's point of view, this is of vital importance when dealing with an issue in the District Court in particular, where time can often be of the essence. This book will be a good starting point for any practitioner who meets an issue in a criminal case where a procedural point may arise.

The book is due to be supplemented as a result of significant changes to the *Rules of the Superior Courts*, which were introduced on 1 January 2012.

Thomas Coughlan is principal of Thomas Coughlan & Co, Anglesea St, Cork.



Laughing at the Gods: Great Judges and How They Made the Common Law

Allan C Hutchinson. Cambridge University Press (2012), www.cambridge.org. ISBN: 978-1-1076-627-66. Price: Stg£19.99.

In *Laughing at the Gods*, Allan Hutchinson chooses eight judges from the common law world whom he considers merit the title of greatness. He gives a brief biographical background for each judge and presents short, readable accounts of their major cases.

He begins with Lord Mansfield, recounting how he grappled with the common law to accommodate it to the emerging market economy of his day. Lord Atkin is recalled for his humble background and his concern for the ordinary man and woman. Lord Denning's concern for fairness over precedent is remembered in cases such as *Candler* and *High Trees House*.

From the American tradition, Hutchinson chooses John Marshall, who established the foundations of US constitutional law in judgments such as *Marbury v Madison* and Oliver Wendell Holmes Jr, whose controversial philosophy shaped his judgments.

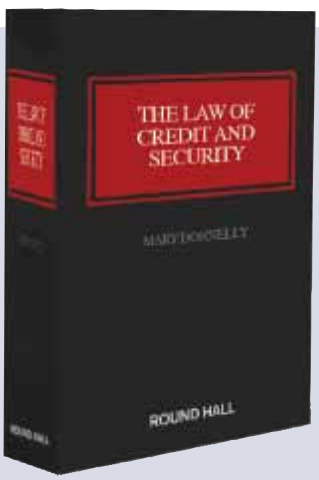
Hutchinson's last three great judges are Thurgood Marshall, who rose from poverty and segregation to be the first black judge on the US Supreme Court, Bertha Wilson, the first woman on Canada's Supreme Court and, lastly, Albie Sachs who guided South Africa in its transition from a racist police state to a country governed by the rule of law.

Hutchinson's biographical sketches and his accounts of major cases and their backgrounds are very readable and make for an entertaining book.

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

The Law of Credit and Security

Mary Donnelly. Round Hall (2011), www.roundhall.ie. ISBN: 978-1-8580-063-69. Price: €385.



This very comprehensive work on a hugely topical area of practice is a timely and welcome publication.

Ms Donnelly divides her work into four distinct parts. Part 1 details the regulation of credit providers and is written against the backdrop of the Irish and global financial crisis. Part 2 moves on to the process and regulation of a bank's decision to lend both commercially and to consumers.

From a practitioner's point of view, however, the most relevant and topical parts of the book are part 3 on security and part 4 on the enforcement of security and personal debt. It scarcely needs to be commented on how live these areas of practice are, and Ms Donnelly has provided a hugely beneficial guide to all aspects of the security-taking process, dealing not only with real and company property, but also with the particular security requirements in the areas of tangible and intangible personal property, including over intellectual property. The very current area of the enforceability of personal guarantees is also visited and highlighted. Part 4 provides a detailed synopsis of the current system of bankruptcy and also the enforcement abilities of a lending institution, examining the powers and duties of a receiver and the ability of lenders to proceed on the basis of possession.

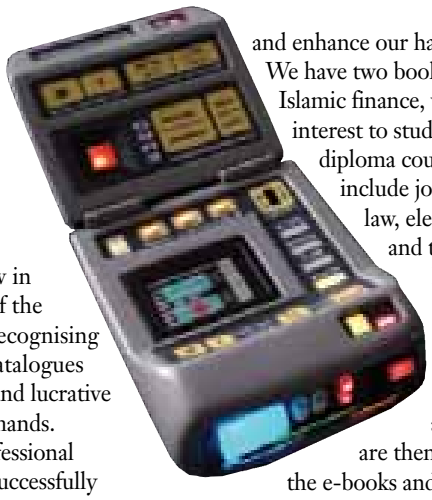
This is a work that could not be more relevant in the current climate.

Kieran Oliver is a solicitor with Sweeney McGann Solicitors, O'Connell Street, Limerick.

The final frontier

The library is piloting a new e-book lending collection, which members are invited to browse online or download, writes Mairead O'Sullivan

Mairead O'Sullivan is executive assistant librarian



E-books continue to grow in popularity, with many of the major legal publishers recognising the trend and digitising their catalogues in order to tap into a growing and lucrative market and to satisfy reader demands.

LexisNexis, Bloomsbury Professional and Sweet & Maxwell have all successfully reproduced select titles in an electronic format, making them available to readers across multiple platforms such as laptops, smartphones and tablets. In addition, Sweet & Maxwell have produced a new iPad app called 'ProView', which they describe as being "custom built for legal professionals".

Unfortunately, due to licensing constraints, lending libraries are unable to lend on these e-books, as the majority have single user licences. It is a significant obstacle, but one that we are keen to overcome.

With this in mind, the library has purchased a small collection of e-books that it is licensed to lend on and make available to members. Many of the texts selected are on niche or specific subjects, purchased to complement and enhance our hardcopy collection. We have two books, for example, on Islamic finance, which may be of interest to students undertaking the diploma course. Other topics include journalism, charity law, electronic signatures and trade marks.

In order to access the e-books, members need to contact the library for their username and password. They are then free to borrow the e-books and read them online for a three-week period. During this time, they also have permission to print 5% and copy 5% of the book. Alternatively, members can also download the e-book to a laptop or memory stick for offline reading, but printing or copying will not be available offline. The e-book can be downloaded in a PDF format for a maximum of seven days.

An e-books collection is an exciting new venture for our library. There are numerous benefits, with one of the key advantages being that more than one member can borrow the digitised book at the same time. It is vital that libraries keep up with the digital evolution and it is our hope that even more law books will become available to lending libraries in the future.

ELECTRONIC LIBRARY

New e-books available to borrow

- *Ask No Questions: An International Legal Analysis on Sexual Orientation Discrimination*, Anne-Marie Mooney Cotter (Ashgate Publishing, 2010)
- *Commercial Dispute Resolution*, Michael Waring (College of Law, 2012)
- *Contract Damages: Domestic and International Perspectives*, Djakhongir Saidov and Ralph Cunnington (Hart Publishing, 2008)
- *Education, Law and Diversity*, Neville Harris (Hart Publishing, 2007)
- *Electronic Signatures in Law*, Stephen Mason (Cambridge University Press, 2012)
- *Enhanced Dispute Resolution through the Use of Information Technology*, Arno R Lodder and John Zeleznikow (Cambridge University Press, 2010)
- *Expert Privilege in Civil Evidence*, Paul England (Hart Publishing, 2010)
- *Inquests* (Criminal Law Library, vol 9), John Cooper (Hart Publishing, 2011)
- *Islamic Finance: a Practical Guide*, Rahail Ali (Globe Law and Business, 2008)
- *Journalism Ethics and Regulation*, Chris Frost (Pearson Education, 2010)
- *Modernising Charity Law: Recent Developments and Future Directions*, edited by M McGregor-Lowndes And K O'Halloran (Edward Elgar Publishing, 2010)
- *Quick Win Media Law Ireland: Answers to your Top 100 Media Law Questions*, Andrea Martin (Oak Tree Press, 2011)
- *Sitting in Judgment: The Working Lives of Judges*, Penny Darbyshire (Hart Publishing, 2011)

BRIEFING

Law Society Council meeting 11 May 2012

The Council extended congratulations to John O'Connor (Council member), Colin Daly (former chairman of the Society's Human Rights Committee) and Mary Larkin (solicitor) on their recent appointments to the District Court bench.

In addition, the Council congratulated Mrs Moya Quinlan on her lifetime achievement award at the inaugural Irish Law Awards and the Law School Diploma Team on their award for law school of the year.

Appointments to other bodies

The Council approved the reappointment of Niall Farrell to the Courts-Martial Rules Committee, the reappointment of Mark Pery-Knox-Gore to the Company Law Review Group, the appointment of Mark Ryan as director of the Irish Takeover Panel and the appointment of Paul Egan as alternate director of the Irish Takeover Panel.

PII renewal process

Stuart Gilhooly briefed the Council on the findings of the members' survey on the 2012 PII renewal. He noted that 225 responses had been received, which equated to 10% of all of those surveyed. The survey confirmed that there had been a series of improvements to the PII process over the past 12 months. Only 11% of firms claimed that they had any difficulties in the PII application process, in comparison to 49% who encountered difficulties for the 2011 renewal process.

Mr Gilhooly noted that 88% of firms had indicated that the common proposal form allowed them to access various insurers more efficiently. In relation to cost, there was a reduction in the total premium pool from €45m in 2011 to €32m in 2012, approximately 30%. Overall, the results disclosed a much more positive experience for practitioners in the most recent renewal process.

The Council agreed that, while the results of the survey were positive, insurance costs were still very expensive and the idea of a master policy should not be removed as an option. The Council agreed that the matter should be discussed again at the Society's February 2013 Council meeting.

Motion: conveyancing conflicts report

"That this Council approves the report and the recommendations of the Conveyancing Conflicts Task Force."

Proposed: Gerard Doherty

Seconded: John P Shaw

Gerard Doherty outlined the background to the establishment of the Conveyancing Conflicts Task Force and the decision to secure the involvement of Ms Catherine Treacy as the independent chair of the task force. John P Shaw outlined the current law and guidelines, the task force's research and consultation process, its reasoning and its conclusions. He noted that, following many months of detailed consideration, it was the view of the task force that the Society should introduce a rule:

- Prohibiting a solicitor or firm from acting for both sides in voluntary or below-market-value transfers, subject to one exception (the transfer of the family home or shared home as provided for in legislation), and
- Prohibiting a solicitor or firm from acting for both sides in transfers for value, subject to two exceptions – (a) where both sides are associated companies/an individual associated with a company, and (b) where both sides are 'qualified parties', as defined.

Mr Shaw noted that the task force saw very good reasons why the Society should pass the proposed rule. In relation to voluntary transfers, there were inherent risks, and the only exception was based on a statutory provision that underpinned a desired social policy – that is, transfer of the family home or shared home to joint tenancy. In relation to transfers for value, there had been considerable adverse judicial commentary, it would open up competition, and some solicitors were already refusing to act. In relation to PII considerations, while acting in a conflict situation was not currently a head of negligence, it compounded a claim in negligence and effectively reversed the burden of proof. Finally, it was clear that 'light touch regulation' in relation to the issue had not worked.

Mr Shaw emphasised that the proposed rule:

- Would provide clarity and certainty,
- Was based on objective criteria and did not require subjective judgements by solicitors,
- Would introduce a level playing field,
- Was an opportunity to be proactive as opposed to being reactive,
- Was an opportunity for the Law Society to lead common law jurisdictions on the topic, and
- Would bring benefits of independence and transparency that would outweigh any possible downside.

Mr Shaw noted that the task force had considered an independent report, co-published in 2010 by the HSE and UCD, showing the results of a national survey of the prevalence of abuse of older people in the community. In this regard, Mr Shaw noted that 94% of financial abuse against the elderly was carried out by family members and that there was a 91% level of house ownership among elderly Irish people.

Brendan Twomey outlined the relevant case law and also explained the 'qualified parties' exception, which would have relevance to the clients of larger firms. Dan O'Connor said that he believed the recommendation went too far in relation to the scope of the restriction in respect of 'qualified parties'. He continued to believe that, where two clients requested a firm to act on their behalf, the firm should be permitted to do so, subject to the use of proper ethical barriers.

The Council agreed that the report should be circulated to the profession, with a specified time limit for receipt of their views, in order that the matter could come back to the Council for final determination at the July Council meeting.

Radio advertising campaign

The Council approved the text of a new advertisement as part of the Society's radio advertising campaign. It was noted that bar associations were being given the opportunity to use the advertisement locally, with the inclusion of their name at the conclusion of the advertisement. A very successful 'communications day' for local bar associations had also been organised by the Society's PR Committee during the previous week.

Practice notes

Electronic privacy and the use of 'cookies'

TECHNOLOGY COMMITTEE

The *E-Privacy Directive* (2009/136/EC) was transposed into law in Ireland with the enactment of the *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011*, which took effect on 1 July 2011. Regulation 5(3) deals, among other things, with the storage and retrieval of information on 'terminal equipment', most commonly a computer user's browser.

Modern browsers have different mechanisms of data storage on a visitor's machine, the most common method being via the use of 'cookies'.

A cookie is a small file on the computer's hard drive that stores pieces of text. A browser can set and collect information from this text file when a visitor enters a website. A cookie might report back to the originating website details of when you last visited their site, or the number of times you visited, or details of your browser's history.

Many law firms facilitate the implementation of cookies on their websites when using the Google Analytics system of tracking visitors to their home page. Social media widgets also are known to set cookies.

The 2011 regulations require that consent to the placing of cookies should be obtained and that a website should offer "clear and comprehensive information" in connection with the information being collected. The 2011 regulations do not specify that prior consent needs to be obtained.

Therefore, we would recommend that if your website uses cookies, you should, at a minimum:

- Include a link to your privacy policy on all pages,
- Explain in that policy document how and why you use cookies, stating, for example, that the firm uses cookies to count visitors to your website (if that is the case),
- Detail how, if a visitor chooses to accept cookies, they also have the ability to later delete cookies that they have accepted. For example, in *Internet Explorer 9*, cookies can be deleted by selecting 'internet options' and, under the 'general' tab, selecting the heading 'browsing history' and then selecting the 'delete' button. Finally, tick the 'cookie option' and click 'delete'.

IMPORTANT NOTICE

eStamping changes from 7 July 2012

Revenue has advised of changes in relation to the stamp-duty regime with effect from 7 July 2012, when a self-assessment regime will be introduced. Returns for instruments executed prior to that date will continue to be treated as heretofore. Also, a new late-filing surcharge will apply to instruments executed on or after that date.

The *Finance Act 2012* provides for the removal of adjudication and the treatment of all stamp-duty returns on a self-assessed basis. Any stamp-duty return filed for instruments executed on or after 7 July 2012 will be subject to the new self-assessed regime. Returns for instruments executed prior to this date will continue to be treated as heretofore.

Practitioners will continue to file eStamping returns as at present. The eStamping system will ensure that returns for instruments executed on or after 7 July will be treated automatically on a self-assessed basis. Practitioners filing a return will see the following changes to the eStamping screens (and associated paper returns) for instruments executed on or after 7 July only:

- **The option to select adjudication will not be available,**
- **The 'summary and calculation' screen will show the heading 'self-assessed summary and calculation'.**

The screens presented for, and the Revenue treatment of, instruments executed before 7 July will remain unchanged.

The introduction of self-assessment means that, for instruments executed on or after 7 July, Revenue will no longer examine instruments prior to stamping and the stamp certificate will issue immediately after the return is lodged, provided all charges are paid.

In addition, for instruments executed on or after 7 July only, a new late-filing surcharge regime will apply and new rules will be introduced for submissions under the 'expression of doubt' facility. Revenue intends publishing comprehensive information on the changes under self-assessment on its website shortly.

BRIEFING

Legislation update 9 May – 8 June 2012

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

ACTS PASSED

Social Welfare and Pensions Act 2012
Number: 12/2012
Provides for the implementation of a number of changes to social welfare schemes announced in Budget 2012, including changes to the one-parent family payment to reduce the age limit applying to the youngest child in the family on a phased basis from 14 to seven years. In addition, provides for a number of miscellaneous amendments to the *Social Welfare Consolidation Act 2005*. Also provides for a number of amendments to the *Pensions Act 1990* in relation to the funding standard that applies to defined benefit pension schemes. The changes require defined benefits pension schemes to hold a risk reserve to meet the scheme funding requirements.
Commencement: Commencement order(s) to be made for sections 9, 12, 14, 15, 16, 17 and 19 (per s1(4) of the act). Other sections come into force on 1/5/2012 or on specific dates referred to in the act

Protection of Employees (Temporary Agency Work) Act 2012
Number: 13/2012
Gives effect to Directive 2008/104/EC of 19/11/2008 on temporary agency work so as to give equal treatment in terms of basic working and employment conditions for temporary agency workers as if they were recruited directly by the hirer to the same job; for that purpose, amends certain enactments and provides for connected matters.
Commencement: 5/12/2011 for all sections, except ss13, 15, and part 4 (ss21-25), which come into operation on 16/5/2012 (per s1(2) of the act)

Education (Amendment) Act 2012
Number: 14/2012
Provides for the amendment of the *Education Act 1998* and the amendment of the *Teaching Council Act 2001* in relation to a number of education matters. Repeals the *Scientific and Technological Education (Investment) Fund Act 1997* and the *Scientific and Technological Education (Investment) Fund (Amendment) Act 1998*.
Commencement: by order(s) as per s1(2) of the act

Electricity Regulation (Carbon Revenue Levy) (Amendment) Act 2012
Number: 15/2012
Amends the *Electricity Regulation Act 1999* (as amended by the *Electricity Regulation (Amendment) (Carbon Revenue Levy) Act 2010*) to end the charging of the carbon revenue levy from the date of the enactment of this act.
Commencement: 25/5/2012

Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012
Number: 16/2012
Provides for the reform of the commercial vehicle roadworthiness (CVR) testing system. Provides for the functions of local authorities in relation to CVR testing being assumed by the Road Safety Authority (RSA). It will also provide revised administrative arrangements for the processing and management of driving licences. This administrative change will provide the necessary supports for the introduction of a plastic card driving licence to Ireland and for the driver licensing function to move from the local authorities to the RSA. Amends the *Road Traffic Acts 1961-2011* and provides for related matters.
Commencement: by order as per s1(2) of the act

SELECTED STATUTORY INSTRUMENTS

Circuit Court Rules (Enforcement of Certain Decisions of Rights Commissioners and Determinations of the Labour Court or Employment Appeals Tribunal) 2012
Number: SI 151/2012
Amend order 57 of the *Circuit Court Rules* to provide for a standard form of procedure for applications under provisions of various enactments for enforcement of certain decisions of Rights Commissioners and certain determinations of the Employment Appeals Tribunal or the Labour Court, for which provision is not already included in the rules.
Commencement: 31/5/2012

Civil Law (Miscellaneous Provisions) Act 2011 (Sections 6 and 12) (Commencement) Order 2012
Number: SI 146/2012
Appoints 10/5/2012 as the commencement date for ss6 (definition of 'installer of security equipment') and 12 (temporary licences for providers of security services) of the act.
Commencement: 10/5/2012

Energy (Miscellaneous Provisions) Act 2012 (Commencement) Order 2012
Number: SI 122/2012
Appoints 16/4/2012 as the commencement date for the act, with the exception of ss17, 18 and 19

Private Security (Licensing and Standards) Regulations 2012
Number: SI 144/2012
Prescribe categories of licences and the standards to be observed by licensees in the provision of security services under the *Private Security Services Acts 2004-2011*.
Commencement: 10/5/2012

Private Security (Miscellaneous Provisions) Regulations 2012
Number: SI 147/2012
Prescribe the application forms, categories of persons, and particulars to be included in the register of licensees and other procedures under the act.
Commencement: 10/5/2012

Private Security Services Act 2004 (Commencement) Order 2012
Number: SI 145/2012
Appoints 1/10/2012 as the commencement date for s37 (installation and maintenance of security equipment) of the act.
Commencement: 10/5/2012

Property Services (Regulation) Act 2011 (Compensation Fund) Regulations 2012
Number: SI 183/2012
Specify the level of contribution that successful applicants for licences must make to the Property Services Compensation Fund before being issued with a licence.
Commencement: 30/5/2012

Property Services (Regulation) Act 2011 (Licensing) Regulations 2012
Number: SI 180/2012
Prescribe the classes of licence under the act and the fees payable in respect of applications.
Commencement: 30/5/2012

Property Services (Regulation) Act 2011 (Professional Indemnity Insurance) Regulations 2012
Number: SI 182/2012
Requires providers of property services under the act to maintain a prescribed level of professional indemnity insurance coverage. The regulations only apply to licensed property services employers and independent contractors.
Commencement: 30/5/2012

Property Services (Regulation) Act 2011 (Qualifications)

Regulations 2012
Number: SI 181/2012
Specify the minimum qualifications necessary for the grant of a licence to provide property services under the act.
Commencement: 30/5/2012

Rules of the Superior Courts (Arbitration) 2012
Number: SI 150/2012
Amend order 56 by inserting a new rule 6A to provide, in applications to set aside or remit an arbitration award, for the giving of directions and making orders for the conduct of such proceedings, including the exchange between the parties of points of claim or defence, memoranda as to issues of fact or law, determination of the proceedings by way of plenary hearing, and furnishing of written submissions to the court.
Commencement: 9/5/2012 G

Prepared by the Law Society Library

ONE TO WATCH

One to watch: new legislation

Protection of Employees (Temporary Agency Work) Act 2012
The *Protection of Employees (Temporary Agency Work) Act 2012* was signed into law on 16 May 2012. The act transposes into law the provisions of the EU *Directive on Temporary Agency Work* (Directive 2008/104/EC), the purpose of which is to introduce protections for temporary agency workers. The protections provide for equal treatment between temporary agency workers and directly recruited employees regarding the basic terms and conditions of employment.

Although some protections did exist for agency workers in the areas of health and safety and unfair dismissals, it could be argued that their entitlements were an area of considerable uncertainty. The directive's aim was to remove this uncertainty by harmonising the current irregularities and inconsistencies across member states as regards agency workers and, furthermore, to ensure that the working and employment terms and conditions of agency workers are on a par with those of an employee engaged by the employer directly.

The deadline for implementation of the directive was 5 December 2011. The Government only published the *Protection of Employees (Temporary Agency Work) Bill* on 16 December 2011. The bill had been subject to much criticism and concern amongst employers who use agency workers and employment agencies who provide them. The primary concern with the initial bill was the proposed retrospective effect of its provisions. When the bill was originally enacted, it provided that, with the exception of provisions relating to offences or the instigation of legal proceedings, all other provisions of the bill would have retrospective effect to 5 December 2011. Arguments were made that this was unconstitutional. Practical concerns were also raised that the enforcement of non-pay elements covered by the basic working and employment conditions set down in the directive (for example, working time, rest breaks, access to job vacancies, and so on) on a retrospective basis would be almost impossible.

In an effort to address these concerns, amendments were made at the Seanad stage. These amendments limited the application of retrospective cover, insofar as it impacts on the basic working and employment conditions, to the element of pay only. In the context of the other non-pay elements covered by the basic working and employment conditions set down in the directive, these only come into effect from the day following the enactment of the legislation. This is reflected in section 1 of the act.

Application of the act
The act applies to all agency workers temporarily assigned by an employment agency to work for or under the "direction and supervision" of the hirer.

Agency workers are defined by the act as "an individual employed by an employment agency under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person other than the employment agency".

Working conditions
The act provides that an agency worker is entitled to the same basic working and employment conditions as those to which he/she would have been entitled had he/she been employed by the hirer under contract at the same time. The same working and employment conditions relate to pay, working time, rest periods, rest breaks during the working day, night work, overtime, annual leave, or public holidays.

'Pay' under the act means basic pay, shift premium, piece work rates, overtime premium, unsocial hours premium, and Sunday premium.

The definition of pay in the act does not include occupational pension schemes, sick pay, bonuses, maternity pay or benefit in kind. The right to equal pay is backdated to 5 December 2011.

In respect of pay only, if an agency worker is employed by an employment agency under a permanent contract of employment and is paid by the employment agency between assignments, equal treatment as regards pay does not apply.

Right of access to employment
Section 11 of the act provides that, when a hirer is informing his/her employees of any vacant position of employment, the hirer is required to inform any agency worker that is assigned to the hirer of the vacancy, to enable the worker apply for the position if he/she wishes to do so.

Collective facilities and amenities
Temporary agency workers must have equal access to collective facilities and amenities, such as canteen and childcare facilities or transport services, providing there is no "objective justification" in treating the agency worker less favourably.

Liability under the act
Depending on the particular contravention, either the employment agency or the hirer can be exposed under the act.

The employment agency is liable for any failure to provide equal treatment in respect of pay and/or basic working and employment conditions. However, section 15 of the act provides that there is an obligation on the hirer to provide all the information reasonably required by the employment agency in order for the agency to comply with the obligations provided for by the act.

The hirer is liable for any failure to provide access to collective facilities and amenities and/or access to information on job vacancies that arise.

Offences, prohibitions, and redress
The act creates certain offences that come into effect from the date the act is signed into law (see sections 13, 22, 23 and 24 of the act).

Schedule 2 of the act sets out the provisions in relation to redress. Agency workers can make complaints in relation to any alleged contravention of their rights under the act to the Rights Commissioner Service within six months of the date of the alleged breach (12 months if the agency worker can prove reasonable cause for delay). Potential remedies available to the Rights Commission include a declaration that the complaint was or was not well founded, reinstatement, re-engagement or compensation (not exceeding two years' remuneration). 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 Matthew Breslin, solicitor, practising as Donal J O'Neill & Co, Solicitors, 3 Denny Street, Tralee, Co Kerry, and in the matter of the *Solicitors Acts 1954-2008* [7159/DT123/09 and 2011 no 49 SA]

Law Society of Ireland (applicant)
Matthew Breslin (respondent solicitor)

On 24 March 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed in a timely fashion or at all to honour an undertaking contained in a letter dated 4 April 2006 to the complainant, whereby he undertook to lodge with the complainant the net proceeds of sale of residential units from a development in Co Laois when the sales were completed,
b) Failed to adequately respond to the complainant's letters to him and, in particular, letters dated 1 May 2008, 5 June 2008, 1 July 2008, 27 August 2008 and 2 September 2008 respectively,
c) Failed to adequately respond to the Society's correspondence, in particular, letters dated 6 October 2008, 26 November 2008, and 16 January 2009.

The tribunal made the following recommendations:

1) That the respondent solicitor was not a fit person to be a member of the solicitors' profession,
2) That the name of the respondent solicitor be struck off the Roll of Solicitors,
3) That the respondent solicitor pay the whole of the costs of Society, to include witness expenses, to be taxed by the taxing master of the High Court in default of agreement.

On 16 May 2011, the High Court made an order in the following terms, on foot of an application by the Society to bring the report and order of the disciplinary tribunal to the President of the High Court:

1) That the name of the respondent solicitor be struck from the Roll of Solicitors,
2) That the Society do recover the costs of the proceedings, to include witness expenses, before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

In the matter of Niall E Murphy, solicitor, of Niall Murphy & Co, Solicitors, Joyce House, Office Campus, Ballincollig Town Centre, Ballincollig, Co Cork, and in the matter of the *Solicitors Acts 1954-2008* [8043/DT96/10]

Law Society of Ireland (applicant)
Niall E Murphy (respondent solicitor)

On 19 July 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Caused or allowed deficits of €173,047, in breach of regulation 7(2)(a) of the *Solicitors' Accounts Regulations 2001*, to arise during the practice year 2008, due to overpayments to clients and fees transferred twice from ledgers,
b) Transferred fees to the office account from an arbitration award that he had received for his client, despite not having being paid such fees, in breach of regulation 7(2)(a) of the *Solicitors' Accounts Regulations 2001*,
c) Transferred funds of €41,180 from ten client ledgers to his office account, when it was not proper to do so, in taking over the practice of a named firm of solicitors on 8 October 2008,
d) Transferred outlay of €14,636 from client account to office account on 8 October 2008 after closing the Homelaw Direct franchise on 7 October 2008, at which point the balance of funds held in Homelaw Direct had been transferred to the client account,
e) Debited the Homelaw Direct file fees of €1,334 twice from the ledger, once when it was a Home Law ledger and again when it was a Niall Murphy & Co, Solicitors, ledger, in breach of regulation 7(2)(a) of the *Solicitors' Accounts Regulations 2001*,
f) Paid personal expenditure and outgoings from the office account of €10,859 per month, when this could not be supported by the fee income,
g) Failed to maintain proper books of account, in breach of regulation 12 of the *Solicitors' Accounts Regulations 2001*,
h) Failed to furnish a bill of costs in all instances to clients, as required by regulation 11(1) of the *Solicitors' Accounts Regulations 2001*.

The tribunal made the following order:

1) The respondent solicitor stand advised and admonished,
2) The respondent solicitor pay a sum of €1,000 to the compensation fund,
3) The respondent solicitor pay a sum of €3,500 inclusive as part of the costs of the Society.

In the matter of Kieran Quill, a solicitor of J Hodnett & Son, Emmet Place, Youghal, Co Cork, and in the matter of the *Solicitors Acts 1954-2008* [4513/DT182/11]

Named client (applicant)
Kieran Quill (respondent solicitor)

On 26 April 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he delayed in completing an estate, causing delay in a related estate.

The tribunal ordered that the respondent solicitor:

a) Do stand advised and admonished,
b) Pay a sum of €500 to the compensation fund,
c) Pay a sum of €100 to the applicant as a contribution towards her expenses in respect of her attendance at the hearing.

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/DT60/11]

Law Society of Ireland (applicant)
Alexander M Gibbons (respondent solicitor)

On 1 February 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to apply €63,000 received from his client in January 2008 for stamp duty on a named property and instead withdrew same from the client account and lodged same to his personal bank account,
b) Placed a letter on the said purchase file dated 22 December 2005, which he later admitted was a fabricated letter,
c) Furnished a letter dated 15 August 2009 addressed to the Property Registration Authority to his client on 5 October 2009, suggesting that an application for registration of the dealing in relation to a named folio in Co Cork was pending at a time when there was no such dealing pending and where it subsequently transpired that the dealing was not lodged until March 2010,
d) Failed to complete the registration of a bank charge in respect of a named folio in Co Cork until 2009 in a timely manner, the property having been purchased in 2004,
e) Failed to conclude the registration of a bank mortgage in respect of a named folio in Co

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Cork in a timely manner, having only completed same in late 2009,

f) Delayed in completing the registration of his clients' title to three separate named properties until after the complaints had been made to the Society,

g) Accused his clients of not paying stamp duty and fees in respect of a named property, when in fact the bill of costs, including stamp duty, was furnished to them in January 2008 and paid in January 2008,

h) Failed to respond to the Society's three requests for copies of his letters pursuant to section 68(1) of the *Solicitors (Amendment) Act 1994*, bills of cost and ledger cards in respect of the various complaints made.

The tribunal ordered that the Society bring the matter to the High Court and, in proceedings entitled *Law Society of Ireland v Alexander M Gibbons* (2012 no 19SA), the President of the High Court on 21 May 2012 ordered:

a) That the respondent solicitor's name be struck off the Roll of Solicitors,

b) That the respondent solicitor pay all of the costs of the Society, including witness expenses, for the proceedings before the tribunal and the High Court proceedings, to be taxed in default of agreement.

Justis update

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Compiled by Bart Daly

ADMINISTRATIVE

Judicial review

Defence Forces – practice and procedure – drug testing – discharge – amenability to consideration – whether decision to discharge would be quashed.

The applicant/appellant joined the Defence Forces in September 2006 and was subjected to a random drug test, for which he tested positive. He sought to restrain his discharge by way of injunctive proceedings, and the High Court refused the reliefs sought to quash the decision to discharge him from the Defence Forces. It had been contended by the applicant/appellant in the High Court that there was no evidence that any consideration had been given to his passive inhalation as the cause of any positive test. The High Court had found that it was reasonable and rational for the respondent to decide that his account did not amount to innocent or inadvertent ingestion or inhalation. The question arose as to whether the correct question had been asked in the High Court as to why the applicant/appellant's case had been lost.

Clarke J (Fennelly, MacMenamin JJ concurring) held that the appeal would be allowed and the decision to discharge would be quashed. It was not the sort of case where the court could safely infer that the correct question was asked as to the process developed or the materials that were before the decision maker. It was a matter for the authorities in the Defence Forces to decide whether the issues raised should be considered again.

***Rawson v Minister for Defence*, Supreme Court, 1/5/2012**

CONSTITUTIONAL

Referenda

Referendum Commission – whether juristic entity – role of courts in referendums – public statements by commission – whether public statements of commission amenable to judicial review – whether statement by commission ultra vires – Bunreacht na hÉireann, *articles 5, 6, 29, 40, 46 and 47.*

Section 3 of the *Referendum Act 1998*, as amended, provides that the respondent has the power, among other things, to "prepare one or more statements containing a general explanation of the subject matter of the proposal and of the text thereof in the relevant bill and any other information relating to those matters that the commission considers appropriate". The applicant applied for judicial review of certain public statements made by the respondent in the course of the campaign for the referendum in respect of the *Thirtieth Amendment of the Constitution (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) Bill 2012*. He contended, among other things, that, inasmuch as the respondent had made a statement on the issue of whether Ireland could veto the ratification of the European Council decision of 25 March 2011, it was *ultra vires* its powers under section 3 of the 1998 act.

Mr Justice Hogan dismissed the application, holding that, from the terms of the *Referendum Act 1998*, the Oireachtas intended that the Referendum Commission should have legal personality. The very fact that the commission was established by statute carried with it the inevitable corollary that it was a juristic person created by statute. The commission's statements should not be parsed or analysed for the absolute precision and complete accuracy of discussion or analysis that would be expected in, for example, an authoritative constitutional law textbook. This meant in practice that the commission must be given a wide freedom to communicate its message to the wider public. The references by the respondent to the ESM treaty constituted "other information relating to those matters that the commission considers appropriate", within the meaning of section 3 of the 1998 act, and it followed that the commission was fully entitled to publish the information concerning the ESM treaty that it did. Given that the respondent was publicly funded, it could not deviate from the principle of strict neutrality, since this would be to violate the constitutional principle of equality in the referendum process. *McKenna v An Taoiseach (No 2)* ([1995] 2 IR 10) applied. Statements made by the respondent were capable of review by the courts, and they did not present an entirely non-justiciable matter. The court could only interfere with a statement made by the respondent where the statement was plainly wrong or manifestly inaccurate or misleading (*R v Environment Secretary, ex p Greenwich LBC* (*The Times*, 17 May 1989) considered). It would also be necessary to demonstrate such an erroneous statement was likely to materially affect the outcome of the referendum. The Government retained the right not to accept or approve a particular international treaty, in the stages leading up to the ultimate ratification, by depositing the instruments of ratification by virtue of the dualist nature of the State and the assignment of the foreign affairs power to the executive by article 29.4.1 of the Constitution. It was impossible for the court to express a definitive view on the ultimate question raised – namely, whether the Government could, of its own motion, refuse to approve the European Council decision – without an immediate reference of those questions to the Court of Justice, pursuant to article 267 of the *Treaty on the Functioning of the European Union*. The respondent's analysis was a considered, thoughtful, measured and legitimate analysis of complex legal issues. In the circumstances, the court was not in a position to pronounce that its statements were clearly wrong or likely to affect the referendum result.

***Doherty v Referendum Commission*, High Court, 6/6/2012**

COMPANY

Shares

Minister subscription – ordinary shares – ex parte *application – extraordinary measures* – Credit Institutions (Stabilisation) Act 2010.

The minister applied for a direction order pursuant to section 9 of the *Credit Institutions (Stabilisation) Act 2010* to facilitate and enable

an investment to be made by the minister by way of subscription in ordinary shares in Irish Life and Permanent Group Holdings plc. The application was made *ex parte*. The court had to determine a claim by the minister that both the third-named applicant, Piotr Skoczylas, and the applicant, Horizon, had no standing to bring an application as neither of them was a member of the relevant institution, pursuant to section 11(1) of the 2010 act. The court considered the definition of a member and whether the *Companies Act 1963* provided interpretative guidance in this regard. The minister contended, among other things, that the legal title to the shares was held by a trustee or custodian. The applicants claimed, among other things, that the 2010 act was an extraordinary executive measure and that the definition of a member could not be straitjacketed by reference to the 1963 act.

Feeney J held that the definition of a member in section 31 of the *Companies Act 1963* did not dictate or identify the meaning of the word 'member' in section 11(1) of the 2010 act of. Uncertainty would result otherwise, as the challenge had to be made within five working days and adverse impact on economic rights had to be established otherwise. Both Piotr Skoczylas and Horizon were the holders of the beneficial interest in shares on 26 July 2011 and the date on which the application was made. The application by the minister would be refused.

***Dowling & Others (applicants) v Minister for Finance (respondent) & Others*, High Court, 2/3/2012**

FINANCIAL SERVICES

Practice and procedure

Oral hearing – error – setting aside – conflict of evidence – burglary – remitting to ombudsman – Financial Services Ombudsman – Central Bank and Financial Services Authority of Ireland Act 2004.

The applicant had suffered a burglary and was in a dispute with his insurers. The applicant sought to have the respondent investigate the claim. He had engaged himself an electrician to state an opinion on the state of the alarm system. The applicant submitted that the respondent should have exercised his power to direct an oral hearing and sought to set aside the decision of the respondent. The applicant complained, among other things, that the findings of the respondent were vitiated by serious and significant error and that the oral hearing would have resolved the conflict of professional opinion. The court considered the provisions of section 57CM of the *Central Bank and Financial Services Authority of Ireland Act 2004*.

Peart J held that the court would make an order setting aside the finding of the ombudsman and remitting the proceedings to the ombudsman. Fair procedures required that the applicant be afforded an opportunity to hear details of the report and have an opportunity to cross-examine it.

***Murphy (applicant) v Financial Services Ombudsman (respondent) & Other*, High Court, 21/2/2012**

PLANNING AND DEVELOPMENT

Judicial review

Referral – value works – contributions – quantum meruit *– whether board had exceeded its jurisdiction.*

The applicant sought an order of *certiorari* quashing the decision of the respondent in a referral of the applicants made pursuant to section 34(5) of the *Planning and Development Act 2000*. The applicants sought to challenge the determination of the respondent as to contributions payable under the permissions. The applicants contended that the determinations were outside of its jurisdiction and that it had not entitlement to value works. It was argued that the board had arrogated to itself a right to determine a *quantum meruit* contractual dispute and that the board had greatly undervalued works. The applicants claimed that they did not have sufficient notice of the board's intention to use the traffic generation methodology.

Hedigan J refused leave for judicial review. In relying on the inspector's decision, the board was exercising its expert judgement. The time to appeal had long gone. The challenges made out were far from the standard of irrationality required to overturn the decision of an expert tribunal. The arguments as to methodology could not be sustained.

***Dunne & Mulryan (applicants) v An Bord Pleanála (respondent) & Others*, High Court, 30/3/2012**

PRACTICE AND PROCEDURE

Lay litigant

Practice and procedure – Supreme Court appeal – solicitor – blame – investigation of allegations – whether appeal would be dismissed.

The plaintiff/appellant lay litigant sought damages against his former solicitor arising out of work done in respect of litigation taken to obtain default planning permission. He complained of a failure to seek discovery by senior counsel, a delay in filing affidavits, and a failure to investigate a claim that a bribe had been demanded. Limited evidence was before the Supreme Court from the proceedings below.

O'Donnell J (Hardiman, Clarke JJ concurring) held that, in the circumstances, the appeal had to be dismissed. It was impossible to see how any blame could attach to the defendant or how any investigation of the allegation was warranted.

***Tighe (plaintiff/appellant) v Burke (defendant/respondent)*, Supreme Court, 15/5/2012**

SOLICITORS LAW

Disciplinary tribunal

Judicial review – promptness – negligence – failures – evidence – witnesses – relationship – penalties – time limits – whether case would be remitted.

The applicant solicitor had acted on behalf of individuals, Mr and Mrs Gunton, in relation to a gift of a site. They made a complaint to the Law Society against the applicant, relating to his alleged failings and conduct in the matter. The question had arisen before the respondent as to the nature of the relationship between them and the applicant. The applicant sought to judicially review a decision of the respondent, whereby the tribunal recommended that the applicant not be permitted to practice for six months and not be permitted to practice as a sole practitioner or in partnership. The tribunal was alleged to have imposed an extremely severe penalty and it was argued that the charges had been formulated on the basis that Mr and Mrs Gunton were not in fact clients of the applicant but had been allowed to believe as much. He alleged that he had no prior notice of this case and that there was a breach of fair procedures. The respondent objected to the lateness of the application for judicial review outside of order 84 of the *Rules of the Superior Courts*.

Kearns P held that the newly revised order 84 had come into existence weeks after the applicant had brought his application. The court was minded to dispose of the matter by remitting it back to the disciplinary tribunal for further consideration on penalty only. The court was fortified by the express statement of counsel for the applicant that he would abide by such course.

***Condon (applicant) v Solicitors Disciplinary Tribunal (respondent)*, High Court, 27/4/2012** G

BRIEFING

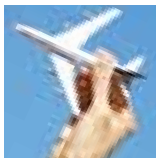
Eurlegal

Edited by TP Kennedy, Director of Education

Recent developments in European law

AIR TRAVEL

Case C-22/11, *Finnair Oyj v Timy Lassooy*, opinion of Advocate General Bot, 19 April 2012



Regulation 261/2004 provides that, where an air passenger is denied boarding, the carrier must provide him with assistance and flat-rate compensation. Denied boarding is defined as the refusal to carry passengers on a flight even though they have presented themselves for boarding, except where there are reasonable grounds to deny them boarding, such as for reasons of health, safety, security or inadequate travel documents.

Following a strike at Barcelona Airport on 28 July 2006, a Finnair flight at 11.40 had to be cancelled. Finnair decided to reschedule its flights so that the passengers for the cancelled flight should not have too long to wait. Those passengers were taken to Helsinki on the 11.40 flight the following day and on a specially arranged flight at 21.40 that day. As a consequence, some passengers who had booked tickets for the 11.40 flight on 29 July had to wait until 30 July to fly on the scheduled 11.40 flight and a specially arranged 21.40 flight.

Some passengers, such as Mr Lassooy, who had bought their tickets for the 11.40 flight on 30 July and presented themselves for boarding, had to wait until the special 21.40 flight. Mr Lassooy argued that Finnair had denied him boarding and brought an action in Finland seeking an order for that air carrier to pay him the flat-rate compensation of €400 provided for by European legislation in respect of intra-community flights of more than 1,500 kilometres.

The Finnish Supreme Court sought a ruling from the Court of Justice of the European Union (CJEU) on the interpretation of 'denied boarding'. Advocate General Bot stated that the concept of 'denied boarding' must be interpreted broadly and cannot be limited to overbooking. The objective of the regulation is to ensure a high level of protection for air passengers. To limit the concept of denied boarding to situations of overbooking would have the effect of depriving passengers in the same situation as Mr Lassooy of all protection.

The flight for which he had a reservation departed at the time and on the day scheduled. It he was not regarded as having been denied boarding, he could not rely either on the provisions applicable to the cancellation of a flight or on those relating to delay. The air carrier would not be obliged to pay him compensation for the damage suffered or to cater for his immediate needs. He would be totally abandoned to this fate, which is contrary to the objective of the regulation. It would also enable certain air carriers to avoid their obligations. They could use a rescheduling of their flights or any reason other than overbooking as an excuse to deny a passenger boarding and avoid paying him compensation or assisting him.

'Denied boarding' cannot be justified by grounds relating to the rescheduling of flights as a result of extraordinary circumstances, such as a strike at an airport. The denial of boarding to passengers can be justified solely on grounds relating to the personal situation of those passengers.

Denied boarding is an individual measure taken by the air carrier arbitrarily against a passenger who has nevertheless satisfied all the conditions for boarding. That measure loses its arbitrary character only if the passenger himself commits a fault (such as presenting invalid identity documents, or by his behaviour he endangers the safety of the flight and/or the other passengers). In those cases, the decision not to allow the passenger to board is attributable to the passenger himself.

On the other hand, the decision to deny boarding based on reasons that are wholly unrelated to the passenger concerned cannot have the effect of depriving him of all protection. Moreover, as the airport strike cannot be attributed to Finnair, it has the right to seek compensation from the persons responsible, in accordance with the applicable national law.

EMPLOYMENT

Case C-337/10, *Georg Neidel v Stadt Frankfurt am Main*, 3 May 2012

The *Working Time Directive* (2003/88) imposes an obligation on member states to take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks. This minimum period of paid annual leave cannot be replaced by an allowance in lieu, except where the employment relationship is terminated.

Mr Neidel worked with the city of Frankfurt as a fireman from 1970. From 12 June 2007, he was unfit for service on medical grounds and retired at the end of August 2009. As the regular weekly working time for firemen is different from the five-day working week, his annual leave entitlement from 2007 to 2009 was 26 days. In addition, firemen are entitled to compensatory leave for public holidays.

According to German law, Mr Neidel had to take his leave within the year (though it did allow for a carry-over period of nine months). He argued that, between 2007 and 2009, he had accumulated an entitlement in respect of leave of 86 days. He requested that his former employer pay him an allowance in lieu of leave not taken. His request was rejected on the basis that German civil and public service law makes no provision for financial compensation for leave not taken. He then brought an action.

The Frankfurt Administrative Court asked the CJEU whether the *Working Time Directive* applies to public servants. It also asked whether the entitlement to an allowance in lieu extends only to the minimum annual leave of four weeks, or whether it extends also to the additional leave for which the national law provides.

The CJEU pointed out that the directive applies, in principle, to all sectors of activity – both public and private – in order to regulate certain aspects of the organisation of workers' working time. The directive does provide for exceptions to its scope. These were adopted purely for the purpose of ensuring the proper operation of services essential for the protection of public health, safety and order, in circumstances where the gravity and scale are exceptional. Consequently, the court held that the directive applies to a public servant carrying out the activities of a fireman in normal circumstances.

It is clear from the directive that every worker is entitled to be paid annual leave of at least four weeks. On termination of an employment relationship, it is no longer possible to take paid annual leave. It is because of that impossibility that the directive entitles the employee to an allowance in lieu.

In this case, the retirement of a civil or public servant terminates the employment relationship. Thus, the court held that a public servant is entitled, on retirement, to an allowance in lieu of paid annual leave not taken because he was prevented from working by sickness. The directive simply lays down minimum health-and-safety requirements for the organisation

of working time, which do not affect member state's right to apply provisions of national law more favourable to the protection of workers.

Provisions of national law may give entitlement to more than four weeks' paid annual leave granted under conditions imposed by national law. It is for member states to decide whether to confer on public servants an entitlement to further paid leave in addition to the entitlement to a minimum paid leave of four weeks.

Member states may provide for an entitlement, for a public servant who is retiring, to an allowance in lieu if he was prevented from working by sickness. It is also for member states to lay down the conditions for the granting of that entitlement. The directive precludes a provision of national law that restricts – by a carry-over period of nine months on expiry of which the entitlement of paid annual leave lapses – the right of a public servant who is retiring to cumulate the allowances in lieu of paid annual leave not taken because he was unfit for service.

Any carry-over period must ensure that the worker can have, if needs be, rest periods that may be staggered, planned in advance and available in the longer term, and must be substantially longer than the reference period in respect of which it is granted.

FREE MOVEMENT OF PERSONS

Case C-40/11, *Yoshikazu Iida v Stadt Ulm*, 15 May 2012, opinion of Advocate General Trstenjak

Mr Iida is a Japanese national who married a German national in 1998. Their daughter was born in the USA in 2004 and holds German, Japanese and US nationality. In 2006, he secured a full-time job in Ulm. He separated from his wife in 2008. She then moved to Vienna with their daughter, where she accepted a position.

Mr Iida is lawfully resident in Germany, although his national residence permit is linked to his employment in Germany. He argued that he had a right of residence in Germany under EU law by virtue of his right of custody, which he exercises in respect of his daughter living in Austria. However, the city of Ulm dismissed his application for a residence card of a family member of an EU citizen.

The German court referred the matter to the CJEU. It asked whether a third-country national, who is a parent with a right of custody of a child who is an EU citizen, has a right to remain in the member state of origin of his child in order to maintain a personal relationship and direct personal contact on a regular basis, if the child moves from here to another member state.

Advocate General Trstenjak took the view that no such right can be derived from Directive 2004/38 on free movement. The directive governs only the right of residence of EU citizens and the members of their family in member states other than that of which the EU citizen in question is a national. No right of residence for Iida in Germany can be derived from previous cases of the CJEU.

The advocate general was of the view, however, that Mr Iida may have a right of residence to effectively safeguard the child's fundamental right to maintain, on a regular basis, a personal relationship and direct contact with both parents and to respect family life (as enshrined in the *Charter of Fundamental Rights*). The charter is only applicable if there is a sufficient connection with the implementation of EU law. Such a connection may be assumed in this case.

Refusal of the residence permit under EU law, while not constituting interference with the substance of the rights conferred by virtue of the status of EU citizen, does constitute a less serious restriction of the right to free movement on the part of the EU citizen who is a minor. The father's insecure future residence in Germany may potentially deter his daughter from further exercising her right to free movement as an EU citizen.

Whether this is so is a matter to be determined by the German court. If it found that there was a restriction of the daughter's right to free movement, the *Charter of Fundamental Rights* would apply. The national court would then have to examine whether the refusal of a right of residence for the father under EU law actually interferes with the fundamental rights of the daughter. Such interference could be found to exist if a denial of a right of residence would make it impossible to maintain a personal relationship on a regular basis.

HUMAN RIGHTS

Case C-617/10, *Åklagaren v Hans Åkerberg Fransson*, 12 June 2012, opinion of Advocate General Cruz Villalón

Mr Fransson is self-employed. In 2004 and 2005, he failed to provide tax information in Sweden. He was fined by the Swedish tax authorities for VAT-related infringements committed in 2004 and 2005. No appeal was lodged against the penalties for 2004 or 2005 and they then became final.

In 2009, criminal proceedings were brought against Mr Fransson. He was accused of tax evasion in 2004 and 2005. The offence he was charged with is punishable by up to six years' imprisonment. The facts on which the charge, brought by the public prosecutor, is based are the same as those that formed the basis for the administrative penalty imposed in 2007.

The Swedish District Court asked the CJE whether the principle set out in the *EU Charter of Fundamental Rights* – that no-one is be tried or punished twice in criminal proceedings for the same offence (*ne bis in idem* principle) – precludes a member state, when faced with an infringement of VAT legislation, from imposing both an administrative and a criminal penalty in respect of the same facts.

The advocate general noted that the member states are affected by the provisions of the charter only when they are implementing EU law. The EU is required to ensure that fundamental rights are protected in actions taken by the member states.

In this case, the advocate general considered that the degree of connection between EU law being applied and the actions of Sweden is not a sufficient basis for a clearly identifiable interest on the part of the EU in assuming responsibility for guaranteeing the *ne bis in idem* principle. The Swedish tax-penalty system is not based directly on EU law. The VAT directives do not regulate penalties for VAT-related infringements. Sweden has made its tax-penalty system merely an adjunct to the levying of VAT.

However, in the event that the CJEU were to decide that it did have jurisdiction to give a ruling on the substance of the case, the advocate general examined the scope of the principle under EU law. He noted that the charter provides that the meaning and scope of the rights contained in it were "the same" as the corresponding rights laid down in the *European Convention on Human Rights*.

In interpreting the convention, the European Court of Human Rights precluded measures that imposed both an administrative and a criminal penalty in respect of the same facts, thereby preventing new proceedings from being brought – whether administrative or criminal – if the first penalty had become final.

Nonetheless, the *ne bis in idem* principle laid down in the ECHR had not been unanimously accepted by the state signatories to the ECHR, including a number of EU member states. That being the case, the advocate general considered that the requirement that the charter was to be interpreted in light of the ECHR must be qualified when a fundamental right

recognised by the ECHR had not been incorporated fully into national law by all EU member states.

In such a situation, the advocate general was of the view that the obligation to place the level of protection provided for in the charter on an equal footing to that provided for in the ECHR was not as effective. Thus, there was nothing in the wording of the charter that led to the conclusion that the intention was to prohibit the accumulation of an administrative and a criminal sanction for the same conduct.

Moreover, the language used in the charter stressed the criminal law dimension of the *ne bis in idem* principle. The advocate general pointed out that the principle of proportionality and the principle of the prohibition of arbitrariness, which is inherent in the rule of law, required that, in criminal proceedings, account be taken that the facts at issue in the proceedings had already been the subject of an administrative penalty.

He concluded that the charter did not preclude the member states from bringing criminal proceedings relating to facts in respect of which a final penalty had already been imposed in administrative proceedings, provided that the criminal court was in a position to take into account the prior existence of an administrative penalty for the purposes of mitigating the criminal penalty to be imposed by it. It is for the national court to assess whether such 'offsetting' is permitted under its national law. G

NOTICES

WILLS

Duffy, Bernard Patrick (deceased), late of 5610 Laffitte Avenue, Galveston, Texas 77551, USA, who died on 31 March 2002. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact James Cahill of Cahill & Cahill, Solicitors, Ellison Street, Castlebar, Co Mayo; tel: 094 902 5500, fax: 094 902 5511, email: info@jamescahill.com

Duffy, Kevin (deceased), late of 5 Furlong Grove, Spollenstown Road, Tullamore, Co Offaly, who died on 14 March 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Patrick J Farrell & Company, Solicitors, Newbridge, Co Kildare; email: niall.farrell@pjf.ie

Flynn, Mary Frances (deceased), late of 60 Upper Main Street, Rush, and also late of 7 Ceol na Mara, Rush, who died on 25 April 2012. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact John O Plunkett, Plunkett Kirwan & Co, 175 Howth Road, Killester, Dublin 3; tel: 01 833 8254, email: john.plunkett@plunkett-kirwan.com

Fogarty, Nicholas (deceased), late of Bohermore Street, Cashel, Co Tipperary, who died on 13 March 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Declan J O'Connell & Co, Solicitors, St Mary's House, Old Lucan Road, Lucan, Co Dublin; tel: 01 621 3333, email: info@djoc.ie

Forde, Patrick (deceased), late of 19 Westway Close, Corduff, Blanchardstown, Dublin 15, formerly of no 81 Tom Kelly Road, Charlemont Street, Dublin 2, who died on 3 May 2012. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Sean Ferriter, solicitor, of Seamus Maguire & Company, Solicitors, 10 Main Street, Blanchardstown, Dublin 15; tel: 01 821 1288, email: christinerock@seamusmaguire.ie

Forman, Robert (deceased), late of 7 Seaview Court, Clontarf, Dublin 3, who died on 12 May 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased after 17 August 1995 please contact Paul Brady & Co, Solicitors, 3 Railway Street, Navan, Co Meath; tel: 046 902 8011, email: info@paulbradysolicitors.ie

Hannaford, Richard (deceased), late of 2 Annesley Park, Ranelagh, Dublin 6, who died on 12 October 2011. Would any person having knowledge of any will executed by the above-named deceased please contact Karen M Clabby, solicitor, Bridge Street, Longford; DX 29016; tel: 043 335 0558, fax: 043 335 0559

McCarthy, Walter, (deceased), late of 86 Jervis Place, Abbey Street Upper, Dublin 1, and 77 Villa Park Gardens, Navan Road, Dublin 7. Would any person having knowledge of a will made by the above-named deceased, dated 29 September 2004 executed by the above-named deceased please contact Mary McKeever of Eugene F Collins, Solicitors, Temple Chambers, 3 Burlington Road, Dublin 4; tel: 01 202 6400, fax: 01 667 5200, email: mmckeever@efc.ie

Hayes, John (deceased), late of 65 Preston Brook, Rathangan, in the county of Kildare, who died on 25 April 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Kevin M Houlihan & Co, Solicitors, Main Street, Blessington, Co Wicklow; tel: 045 865 569, email: khlaw77@yahoo.ie

Judge, Francis (orse Frank) (deceased), who died on 28 April 2012, late of Kilfaul, Partry, Claremorris, Co Mayo, and 31 Racecourse Gardens, Ballybrit, Co Galway. Would any person having knowledge of any will executed by the above-named deceased please contact Karen M Clabby, solicitor, Bridge Street, Longford; DX 29016; tel: 043 335 0558, fax: 043 335 0559

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%)
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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for Aug/Sept *Gazette*: 22 Aug 2012. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

NOTICES

who died on 4 November 2011, please contact O'Gorman Begley, Solicitors, Kincora, Athy Road, Carlow; tel: 059 914 0999, email: ogormanbegleysolrs@eircom.net

McDonagh, Kenneth (deceased), late of 35 Cill Ard, Bohermore, Galway, formerly of 2A William Street West, Galway; and also 221 Corrib Park, Newcastle, Galway; and Tuam, Co Galway, who died on 8 December 2011. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Susan McLoughlin of Berwick Solicitors, 4 St Brendan's Road, Woodquay, Galway; tel: 091 567 545, email: susanmcloughlin@berwick.ie

Meaney, Richard (deceased), late of Kilcross, Inistioge, Co Kilkenny, who died on 15 December 2010. Would any person having knowledge of any will executed by the above-named deceased please contact Coghlan Kelly, Solicitors, Trinity Chambers, South Street, New Ross, Co Wexford; tel: 051 429 100, fax: 051 422 793, email: info@coghlankelly.com

Noonan, Michael Francis (deceased), late of 39 Malahide Road, Clontarf, in the city of Dublin. Would any person who has any knowledge of any will executed by the above-named deceased, who died on 13 July 1973, please contact ME Hanahoe, Solicitors, Sunlight Chambers, 21 Parliament Street, Dublin 2; tel: 01 677 2353, fax: 01 671 2660, email: info@hanahoe.ie

O'Dea, Judith (otherwise Judith Maria) (deceased), late of 162 Charlesland Wood, Greystones, Co Wicklow, who died on 21 April 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Rosemary Scallan & Co, Solicitors, Menlo, Church Road, Greystones, Co Wicklow; tel: 01 287 2905, email: rosemary@rosemaryscallan.ie

O'Rourke, John (deceased), late of 7 St Martin's Park, Lower Kimmage Road, Dublin 12, who died on 5 August 1992. Would any person who has any knowledge of the whereabouts of any will made by the above-named deceased please contact Peter Doyle, Solicitors, 5 Rathfarnham Road, Terenure, Dublin 6W; tel: 01 490 0500, fax: 01 490 0501, email admin@peterdoylesolicitors.ie

O'Rourke, Terence (deceased), late of 1 Mooretown, Ratoath, Co Meath, who died on 22 March 2012. Would any person who has any knowledge of the whereabouts of any will made by the above-named deceased please contact Peter Doyle, Solicitors, 5 Rathfarnham Road, Terenure, Dublin 6W; tel 01 490 0500, fax: 01 490 0501, email: admin@peterdoylesolicitors.ie

Ryan, Laurence (otherwise Lawrence) John Oliver (deceased), late of 124 Tolka Road, Dublin 3, and formerly of 7 Ginchy Terrace, Cahir, Co Tipperary, who died on 9 June 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Albert C O'Dwyer & Co, Solicitors, Barrack Street, Cahir, Co Tipperary; tel: 052 744 1280, email: albertcodwyer@eircom.net

Walsh, Martin Anthony (deceased), late of 5 Sion Hill Road, Drumcondra, Dublin 9, who died on 3 April 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Sighle Duffy, Murray Flynn Maguire, Solicitors, 4 Pembroke Road, Dublin 4; tel: 01 660 0622, email: sduffy@murrayflynn.ie

Westropp, Julia (deceased), late of 33 Dunsink Green, Finglas, Dublin 11, who died on 1 October 2003. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Ursula Geraghty, solicitor, of Doyle Geraghty & Co, Solicitors, 61 Lower Baggot Street, Dublin 2; DX 129; tel: 01 662 0499, email: ursula@doylegeraghty.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*; premises: 42 North Strand, Dublin 3; applicant: P Boyle (Builders) Limited

Notice to any person having any interest and all intermediate interests of the following property: "all that and those the hereditaments and premises known as number 42 North Strand in the city of Dublin."

Take notice that the applicant, P Boyle (Builders) Limited, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest

NOTICES

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 applicant intends to proceed with the application before the county registrar for the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the above premises are unknown or unascertained.

Date: 6 July 2012

Signed: Taylor & Buchalter (solicitors for the applicant), 45/47 Cuffe Street, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by An Óige (Irish Youth Hostel Association) and in the matter of the property known as 1 and 2 Redclyffe, Western Road, Cork, Co Cork

Take notice that any person having any interest in the freehold estate or any intermediate interest in the following properties:

1) All that messuage or tenement with the out offices, gardens and yard, known as number 1 Redclyffe, Western Road, Cork, being part of the lands known as the Rough Marsh, situate in the parish of Saint Finbarr and barony and county of Cork, held under an indenture of lease dated 28 May 1929 and made between John Frederick McKiernan, Alan Wiley, Reverend William James Bruce-Little and Thomas Damery of the one part and Abraham Moses Sayers of the other part for the term of 750 years from 24 June 1929, subject to the yearly rent of £10 thereby reserved and to the covenants and conditions therein contained.

2) All that messuage or tenement with the out offices, gardens and yard known as number 2 Redclyffe, Western Road, Cork, being part of the lands known as the Rough Marsh, situate in the parish of Saint Finbarr and barony and county of Cork, held under an indenture of lease dated 13 February 1931 and made between John Frederick McKiernan, Alan Wiley, Reverend William James Bruce-Little and Thomas Damery of the one part and Thomas Francis Doyle of the other part for the term of 750 years from 25 December 1930, subject to the yearly rent of £10 thereby reserved and to the covenants and conditions therein contained.

Take notice that An Óige (Irish Youth Hostel Association) (herein 'the applicant') intends to submit an application to the county registrar for the county/city of Cork for the acquisition of the freehold interest and all intermediate interests in the aforesaid properties, and any party asserting that they hold the freehold interest or any intermediate interests in the aforesaid property (or any of them) are called upon to furnish evidence of the title to the aforementioned property (or any of them) to the below-named solicitors within 21 days from the date of this notice.

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

Date: 6 July 2012

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

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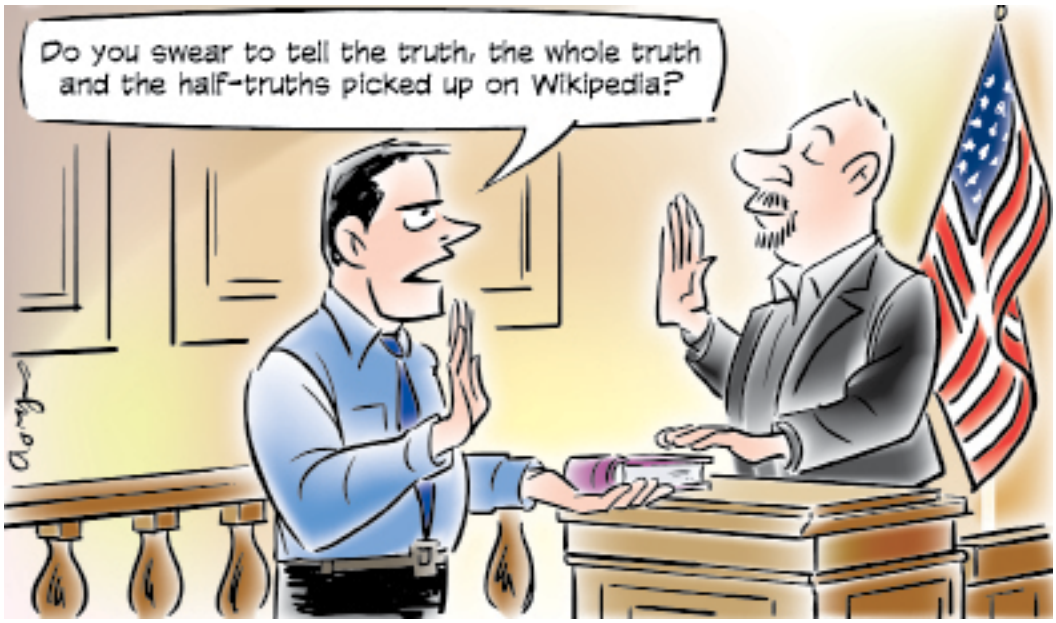
Please note that, as and from the August/September 2006 issue of the *Law Society Gazette*, **NO recruitment advertisements will be published that include references to years of post-qualification experience (PQE).**

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



Wikipedia wonder warrants worry

More and more, federal appeals courts in the US are citing the reader-edited online encyclopaedia Wikipedia – widely acknowledged as a far-from-perfect reference source. Rather worryingly, federal appeals courts have cited Wikipedia about 95 times in the last five years, according to a search by the *Wall Street Journal's Law Blog*. The *Law Blog* found that the Chicago-based 7th US Circuit Court of Appeals cited Wikipedia 36 times – more than any other federal appeals court. Next was the San Francisco-based 9th US Circuit Court of Appeals, which cited the website 17 times.

Catch-all for catchphrases

Creators of a controversial new venture in the Channel Islands hope that it will make the rich even richer, according to *The Guardian*. By the end of 2012, Guernsey hopes to have the world's first-ever image rights registry. This will allow celebrities to earn a fortune from not just their face, but also their catchphrases, mannerisms and gestures.

Intellectual property experts are worried, however. Techdirt.com's Glyn Moody argues that, though the law promises to "define the rights of an individual to protect their own image and balance those against the freedom of news reporting and the public interest", it could give "those with deep pockets a powerful weapon against the media".

Grey geese in the green grass grazing?

In *US v Byrnes*, the defendant was convicted of making false statements to a grand jury investigating illegal trafficking in exotic birds, reports *lawhaha.com*. The case involved the matter of whether some illegally imported swans and geese were dead or alive when the defendant received them. To bolster its case, the government called a collector of Australian parrots, who testified that the defendant had delivered some swans and geese to her in the past. Defence counsel cross-examined the witness, an immigrant from Germany who had difficulty speaking English, in an apparent effort to challenge her credibility as a bird expert. Here's what transpired:

Q. Mrs Meffert, do you recall testifying yesterday about your definition of birds?
A. Yes.
Q. And do you recall that you said that the swans and geese were not birds?
A. Not to me.
Q. What do you mean by that, "not to me?"
A. By me, the swans are waterfowls.

Shortly thereafter, Mrs Meffert was cross examined as follows:
Q. Are sparrows birds?
A. I think so, sure.
Q. Is a crow a bird?
A. I think so.
Q. Is a parrot a bird?
A. Not to me.
Q. How about a seagull, is that a bird?
A. To me it is a seagull, I don't know what it is to other people.
Q. Is it a bird to you as well or not?
A. To me it is a seagull. I don't know any other definition for it.
Q. Is an eagle a bird?
A. I guess so.
Q. Is a swallow a bird?
A. I don't know what a swallow is, sir.
Q. Is a duck a bird?
A. Not to me, it is a duck.
Q. But not a bird.
A. No, to other people maybe.

The government stipulated that swans and geese are birds.

Keystone KKK in crass county clean-up

A North Georgia chapter of the Ku Klux Klan (KKK) has applied to 'adopt' a stretch of highway in Union County, Georgia, according to CNN. The application would allow the white supremacy group to receive state recognition for cleaning up a one-mile portion of a highway. It was filed by the International Keystone Knights of the KKK.

A similar request in Missouri set off a legal battle that stretched for years and went all the way to the US Supreme Court. However, the Missouri Department of Transportation eventually kicked the KKK out of the programme because members were not picking up trash as agreed.

The Southern Poverty Law Centre, which monitors hate groups, lists the KKK as "the most infamous – and oldest – of American hate groups".

"We're not a hate group," a spokesman insisted. "We don't hate anybody. We're just white people that want to stick with white people."

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Our Client, a leading law firm, has openings for a junior and senior Regulatory Lawyer. This firm has experienced substantial growth in the past year and has further plans for rapid expansion over the coming year. The successful applicants will advise on all financial regulation matters as well as all related compliance issues. Candidates must have had experience in dealing with the Regulator and be comfortable dealing with money laundering issues, market abuse and regulatory matters relating to general lending transactions.

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IP/IT: Associate

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