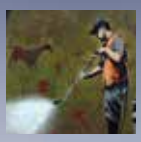


PRICE OF EVERYTHING
Solicitors need to be aware of the 'black art' of property valuation

HOW TO SUCCEED
The EU *Regulation on Succession Law* has created certain ambiguities

A SHAW THING
New Law Society President John P Shaw outlines his plans

LAW SOCIETY
GAZETTE
€4.00 **December 2013**

A GIANT STEP?

The IDA's CPO powers have been used for the first time

12
9 771393 695029

Two new criminal titles from Bloomsbury Professional

Evidence in Criminal Trials

by Liz Heffernan with Úna Ní Raifeartaigh SC

The first Irish textbook devoted exclusively to the subject of criminal evidence

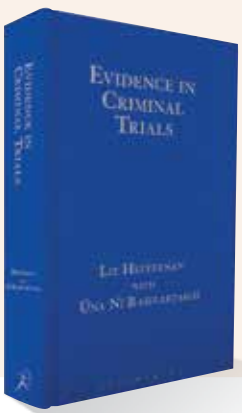
This new title will provide you with comprehensive, detailed coverage of law and practice on the admissibility of evidence, the presentation of evidence in court and the pre-trial gathering and disclosure of evidence.

Wide-ranging coverage

The work combines analysis of traditional evidentiary doctrine with discussion of its application in practice. The topics covered include:

- The examination of witnesses
- Expert evidence
- Custodial statements
- Unlawfully obtained evidence
- The rule against hearsay
- The testimony of children

You'll also find coverage of developments such as the cross-examination of the accused, previous witness statements and DNA evidence.



ISBN: 978 1 78043 420 9
Publication Date: Jan-14
Format: Hardback
Price: €165

Police Powers in Ireland

by Garnet Orange

Irish policing law and practice has seen great reform over the past 20 years.

Police Powers in Ireland is a new, hands-on guide that will help you keep abreast of developments in this area. It explains and explores the powers that are available to the Gardaí for the investigation of serious offences.

Covers the following key areas:

- Judges' Rules and the questioning of suspects
- Adverse inference
- Police powers to enter property and powers to search that property
- Stop and search of vehicles
- Observation, surveillance and phone-tapping and interception
- The seizure and retention of evidence
- Forensic evidence
- Visual ID
- Entrapment
- Trial and remedies
- Garda Ombudsman

ISBN: 978 1 78043 477 3
Publication Date: Dec-13
Format: Hardback
List price: €175

TO ORDER A COPY OF THESE BOOKS

Contact Jennifer Simpson, Bloomsbury Professional. **Tel:** 01 (353) 6373920 **Fax:** 01 (353) 6620365
Email: jennifer.simpson@bloomsburyprofessional.com **Web:** www.bloomsburyprofessional.com

DATE FOR YOUR DIARY

25th/26th April 2014

Law Society of Ireland

Law Society Annual Conference

Dromoland Castle, Co Clare

BOOK ONLINE: **www.lawsociety.ie/annual-conference**

Law Society Gazette
Volume 107, number 10
Subscriptions: €60/€90

Editor: Mark McDermott FIIC
Deputy editor: Dr Garrett O'Boyle
Art director: Nuala Redmond
Editorial secretaries: Catherine Kearney, Valerie Farrell

Commercial advertising:
Seán Ó hOisín, tel: 086 811 7116,
email: sean@lawsociety.ie

For professional notice rates (wills, title deeds, employment, miscellaneous), see page 61.

**Published at Blackhall Place, Dublin 7,
tel: 01 672 4828, fax: 01 672 4801.
Email: gazette@lawsociety.ie
Website: www.gazette.ie**

Printing: Turner's Printing Company Ltd, Longford

Editorial board: Michael Kealey (chairman), Mark McDermott (secretary), Mairéad Cashman, Paul Egan, Hilary Forde, Richard Hammond, Mary Keane, Aisling Kelly, Teri Kelly, Tracy Lyne, Patrick J McGonagle, Aisling Meehan, Heather Murphy, Ken Murphy, Andrew Sheridan

LAW SOCIETY GAZETTE

REGULARS

COVER STORY

FEATURES

HOW TO REACH US: *Law Society Gazette*, Blackhall Place, Dublin 7.
Tel: 01 672 4828, fax: 01 672 4877, email: gazette@lawsociety.ie

PROFESSIONAL NOTICES: send small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: gazettestaff@lawsociety.ie.
All cheques should be made payable to: Law Society of Ireland.

COMMERCIAL ADVERTISING: contact Seán Ó hOisín, 10 Arran Road, Dublin 9, tel: 01 837 5018, fax: 884 4626, mobile: 086 811 7116, email: sean@lawsociety.ie

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

Get more at gazette.ie

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

- Current news
- Forthcoming events, including a **lecture on the International Criminal Court with Justice Susan Denham in the Royal Irish Academy, Dawson St on 16 December.**
- Employment opportunities
- The latest CPD courses

... as well as lots of other useful information

Nationwide

Compiled by Kevin O'Higgins

Kevin O'Higgins is the Law Society's senior vice-president

City of the Tribes' family gathering

GALWAY

A CPD event has been organised to take place on Friday 13 December 2013 at 2pm in Galway Courthouse (three hours' general and one hour of regulatory). Those presenting will include the Law Society's Family Law Committee and Lowes Legal Costs Accountants. This will be followed by the Galway Bar Association annual general meeting (to include the president's report, treasurer's report and the election of the new committee).

Meanwhile, a Mass was held on 20 November 2013 at Galway Cathedral for the deceased members of Galway's legal profession, the judiciary and the Courts Service.

Cabinet guest at Mount Falcon

MAYO

All roads will most certainly be leading to Mayo this week for the Mayo Solicitors' Bar Association dinner, which is being held in the beautiful Mount Falcon near Foxford. Charlie Gilmartin and his team are expecting a great night. Not to be outdone by his predecessor, he will be presenting someone of eminence who also sits at the Cabinet table as guest of honour!

Having a ball at Rathsallagh

WICKLOW

The Wicklow Bar Association (WBA) held a very successful biannual ball recently, Damian Conroy tells me. The black-tie dinner-dance was held at the beautiful location of the Rathsallagh House Hotel. The night began with a champagne cocktail reception, followed by a delicious meal and live music entertainment. WBA president Paddy McNeice thanked special guests Judge Patrick McCartan and county registrar Mary Delehanty. A floral bouquet was presented to organiser Maria Byrne (CJ Louth Solicitors).

At the recent biannual ball of the Wicklow Bar Association were *(back, l to r)*: Barry Kenny (secretary), Maria Byrne (committee member) and Paddy McNeice (president); *(front, l to r)*: Mary Delehanty (county registrar) and Judge Patrick McCartan (Circuit Court)

Fundraiser for Robert

DUBLIN

The Council of the Dublin Solicitors' Bar Association and many of its past presidents met last week at a social event to commend John Glynn following his dedicated year as president. His successor, Keith Walsh, and his new council are gearing up for the challenges ahead, particularly with the impending *Legal Services Regulation Bill*.

A recent fundraiser was held in Marlay Park in aid of Robert Montgomery, the three-year-old son of Denise and Nicholas Montgomery (a Dublin solicitor). The aim of the fundraiser was to help bring Robert to one of the leading therapy centres in the world, based in Chicago. Robert was born perfectly healthy. However, at nine days old, he contracted Strep B septicaemia and meningitis.

He has undergone 17 life-saving operations. As a result of all the trauma he endured in the first seven months of his life, he sustained a stroke on his left side, is brain blind, suffers from epilepsy and is developmentally delayed.

Unfortunately, the treatment is very expensive, €75,000 for a three-month stay. Therefore, fundraising needs to begin straight away. Anyone wishing to assist should contact me or Julie Doyle, and we will put you in touch.

Jazzing it up for Judge Lyster

ROSCOMMON

In the north-west, colleagues came together to honour popular colleague William Lyster, who has since gone on to greater things. Mary Rose McNally (Padraig Kelly Solicitors) tells me that the Roscommon Bar Association hosted a function to mark the appointment of William as a judge of the insolvency courts.

Says Mary Rose: "Over 60 practitioners from Roscommon, Leitrim, Longford and Sligo bar associations, as well as from Roscommon's Courts Service offices, enjoyed a wonderful dinner that concluded with a jazz session into the small hours."

Judge Lyster was joined by his wife Mary and his two daughters, Ita and Helen, both of whom are practising solicitors. Presentations were made on behalf of the bar association to both Judge Lyster and Mary.

Retail revolution in Donegal

DONEGAL

The Donegal Bar Association's CPD coordinator, Alison Parke, reports that the association held a useful seminar at the Radisson Blu Hotel, Letterkenny, on 22 November 2013. A total of 25 lawyers attended the session by Sinead Travers (Law Society) on the topic of information, the retail revolution, how some law firms are responding, and the proposed Court of Appeal. Karl Dowling BL provided an update on probate, Daragh O'Sullivan (managing partner from Lowes Legal Cost Accountants) tackled taxation and legal costs, while Rochford Brady focused on the topic of law-searching services. G

Time to tweet

Law Society Professional Training has launched five new online 'how to' guides to enable members engage fully with social media platforms. Each course deals with setting up online profiles through to using the most popular social media tools to promote solicitors' businesses.

Completing each courses allows members to claim five hours of management and professional development skills. The course include:

- Tablet devices for business and lifestyle,
- Twitter for lawyers,
- LinkedIn for lawyers, and
- Facebook for lawyers.

Prices range from €55 to €136. Find out more by contacting the Professional Training team on lspt@lawsociety.ie.

New Year rings in changes at the *Gazette*

The *Gazette* is getting a facelift from the January/February 2014 issue, *writes Mark McDermott*. As part of the redesign, the electronic version of the magazine, available at www.gazette.ie, will be significantly revamped.

Expect to see a more user-friendly, searchable digital magazine that will feature responsive design – meaning that whether you're viewing the *Gazette* on a tablet, smartphone, laptop or desktop, it'll look great, regardless of the medium. The printed version will reflect the same exciting design changes. All members will continue to receive their hard copy as usual.

Handy features

For the first time, the digital version will offer useful hyperlinks wherever website or email addresses are included in articles. This will be a handy reference feature, for instance, when seeking to link to judgments or legislation referred to in articles Or indeed, our occasional music themed cross-heads. Readers will be able to email their comments on articles to the editor directly from each story, to suggest relevant articles, submit letters by email or make submissions to the Society's committees in the 'Representation' section.

Social media

In addition, readers will be able to order annual subscriptions, individual copies of the *Gazette* as well as magazine folders, using the online shopping-cart, while advertisers will be able to avail of added-value features that will make their ads more interactive.

While both the hardcopy and digital versions will look the same – the interactivity of the online version is sure to prove popular with tech-savvy readers. In due course, additional material, such as radio and TV interviews with the president and director general will be added. The *Gazette* will also start using social media to flag significant news and *Gazette*-related topics. The magazine's quirky style will also continue to feature, of course!

The *Gazette* is making these changes to ensure that it keeps up to date with the latest publishing developments – and to provide our readers with the digital formats they require to stay informed while on the move. Finally, during 2014, keep an eye out for the launch of the *Gazette app.*

We'll be looking for readers' feedback on all of these developments, to ensure that the *Gazette* continues to deliver the information – how, where and when you want it. Email: gazette@lawsociety.ie or tweet your comments to @edlawgazette.

In separate news, the *Gazette* has once again been shortlisted in this year's Magazines Ireland awards – the national awards for consumer and business-to-business publishers. For the fourth year running, the *Gazette* has been nominated in the 'Best Business-to-business' and 'Best cover' categories. (The magazine won the award in 2010.) Congratulations, too, to the DSBA's *Parchment*, which has been nominated in several categories.

DFA for Chief Justice

Chief Justice Susan Denham was conferred with a Distinguished Fellowship Award on 13 November 2013 by Griffith College at its annual graduation ceremony. Candidates are selected for the award based on "their contribution to making Ireland a better society". President of Griffith College, Prof Diarmuid Hegarty, commented: "In her work and life, Chief Justice Denham has always been a steadfast flag-bearer in the cause of justice and ensuring that our system of justice protects the basic human rights of our citizens."

Past recipients of the award include Peter Sutherland, President Mary McAleese and Nobel Laureates John Hume and Seamus Heaney.

The *Companies Bill* – be prepared

As the *Companies Bill 2012* moves to report stage in the Dáil – and is expected to be enacted in the course of 2014 – a conference of the Irish Corporate Law Forum will focus on the practical ramifications of changes to the structure and internal governance of private companies.

'Preparing private companies for the *Companies Bill*: new company forms and drafting company constitutions' will be held on Friday, 10 January 2014, in Dublin Castle. Key matters for consideration will include:

- **The company form options under the *Companies Bill 2012*,**
- **Obligations for existing private companies and the consequences of failing to take action,**
- **The implications of 'Table A' model articles being withdrawn,**
- **Best practice considerations in drafting a new constitution, and**
- **Getting to grips with the balance of mandatory and default rules for corporate governance in the *Companies Bill*.**

The conference is designed around expert panel-based discussion and a practical learning format in order to maximise the benefits for legal practitioners and company secretaries.

Further details of this CPD event are available on www.iclf.ie.

McDOWELL PURCELL

Pictured above (L to R): Barry Walsh, Thomas O'Malley (Managing Partner) and Killian O'Reilly.

Partner Appointments

As part of McDowell Purcell's continued expansion, we are delighted to announce the appointment of two new partners. Barry Walsh joins as Head of the Employment and Benefits team and Killian O'Reilly joins as Head of Dispute Resolution and Litigation team.

CONTACT:
Barry Walsh - *bwalsh@mcdowellpurcell.ie*
Killian O'Reilly - *koreilly@mcdowellpurcell.ie*
Thomas O'Malley - *tomalley@mcdowellpurcell.ie*

www.mcdowellpurcell.ie

MEDICINE FOR LAWYERS

Three-hour evening seminar

Tuesday 11 March
Registration Fee: €50

FOR DETAILS CONTACT:
Medico-Legal Chambers Ireland
Tel: 01 293 7863
Email: medleg@eircom.net
www.medicolegalchambersireland.ie

GLENNON
Insurance Brokers & Consultants

Professional Indemnity for Solicitors

Call our experienced Team on **01 7075800** or email: **solicitorspi@glennons.ie** for a quotation

Glennon provides a competitive insurance facility for Solicitor's Professional Indemnity Insurance

Our dedicated, experienced Professional Indemnity team with over 30 years experience will provide you with:

- An alternative Professional Indemnity solution designed to meet the specific requirements of your practice at competitive rates.
- Insurance placed with experienced Professional Indemnity Insurers with strong credit ratings.
- A local claims handling and advice service.
- A policy wording that is Law Society approved.

Glennons will provide you with positive assistance in the renewal process which we appreciate can be difficult and time consuming.

Please visit our website at solicitors.glennons.ie for further information.

Frank Glennon Ltd trading as "Glennon" and "Glennon Insurances" is regulated by the Central Bank of Ireland

John P Shaw elected Society President for 2013/14

John P Shaw began his term as president of the Law Society from 8 November 2013. He is joined at executive level by senior vice-president Kevin O'Higgins and junior vice-president Michael Quinlan. John (54) is a partner in the Ennis law firm Michael Houlihan & Partners.

Upon his election, Mr Shaw said: "During my term in office, I will oversee the implementation of many of the recommendations of the *Future of the Law Society Task Force Report*. This will include improvements in how the Society represents its members. Of course, the Society will continue to uphold the profession's core values, namely honesty, integrity, independence, confidentiality and the avoidance of conflicts of interest." (See profile, p28).

PIC: LENSMEN PHOTOGRAPHIC AGENCY

Law Society president John P Shaw, with senior vice-president Kevin O'Higgins *(left)* and junior vice-president Michael Quinlan

COUNCIL ELECTION 2013

The scrutineers' report of the results of the Law Society's annual election to the Council shows that the following candidates were provisionally declared elected. The number of votes received by each candidate appears after their names: Paul Egan (1,662), Stuart Gilhooly (1,632), Kevin D O'Higgins (1,627), Valerie Peart (1,440), James Cahill (1,396), James B McCourt (1,355), Liam Kennedy (1,323), Paul Keane (1,253), Michele O'Boyle (1,250), William Aylmer (1,222), Catherine Tarrant (1,219), Aisling Kelly (1,175), Bernadette Cahill (1,157), Justine Carty (1,149), Alan Gannon (1,108), Martin G Lawlor (1,058)

Financing scheme

The Law Society has partnered with Bank of Ireland Group to provide this annual financing scheme for 2013 professional indemnity insurance premia and 2014 practising certificate fees.The rate is an attractive 6.74% APR repayable over 12 months. Further details at www.lawsociety.ie

Appointments to the Circuit and District Courts

Judge Catherine A Murphy

Deirdre Gearty, solicitor

The Government has nominated Judge Catherine A Murphy for appointment by the President to the Circuit Court and Deirdre Gearty, solicitor, for appointment by the President to the District Court. The vacancies arise from the retirements of Judge Patrick Moran from the Circuit Court and of Judge Patrick McMahon from the District Court.

Judge Murphy was enrolled as a solicitor in 1973. She was a partner in the firm of JG O'Connor and Company, Dublin, from 1981 to 1994. She was appointed a judge of the District Court in 1996 and has served in the Civil Court, Family Law Court, Child Care Court, Drugs Court, Juvenile Criminal Court and Criminal Court.

Deirdre Gearty was enrolled as a solicitor in 1983. She practised with FJ Gearty & Co, Longford.She has been a member of the Free Legal Aid Centre since 1995 and became an accredited mediator in 2010.

Survey on career assistance

The Society's Support Services section will be carrying out a survey of solicitors who are less than six years' qualified in the coming weeks. The aim is to discover what these members require from the Society in terms of career development and networking assistance. They will also be asked to indicate how they prefer to receive communication from the Society – whether by email, LinkedIn, Twitter, Facebook or the website.

As this survey will be electronic, anyone wishing to take part should ensure that the Society has their most up-to-date email details. The survey is short and will take only a few minutes to complete. Its success depends on members' participation. Members are encouraged not to miss out on this opportunity to advise the Society of what they require in terms of career development and networking assistance.

For further information, contact Sinead Travers at s.travers@lawsociety.

Local Property Tax – 'first-time buyer' exemption explained

The *Finance (Local Property Tax) Act 2012* (as amended) provides for two different exemptions from the payment of local property tax (LPT) for residential properties that are purchased from 1 January 2013, *writes Vivienne Dempsey (Local Property Tax project manager at the Revenue Commissioners)*. The qualifying purchase period ends on either 31 December 2013 or 31 October 2016, depending on whether the property is second-hand or new, respectively. These exemptions are described below.

Properties purchased from a builder or a property developer: Section 9 of the *Finance (Local Property Tax) Act 2012* (as amended) provides for a temporary exemption from the payment of LPT for new and unused residential properties that are purchased from a builder or a property developer in the period 1 January 2013 to 31 October 2016. Where such a property is purchased and subsequently re-sold in this period, the new owner also qualifies for the exemption. Therefore, as new and unused properties held by builders/property developers on the introduction of LPT are already exempt, the exemption applies for the duration of the first LPT valuation period, that is, from 1 July 2013 up to the end of 2016.

Properties purchased by 'first-time buyers': Section 8 of the *Finance (Local Property Tax) Act 2012* (as amended) provides for a temporary exemption from the payment of LPT for any residential property that is purchased in the period 1 January 2013 to 31 December 2013. The exemption does not distinguish between new and second-hand properties. However, in view of the exemption for new and unused properties purchased from a builder or a property developer, this exemption effectively applies to second-hand properties. This exemption differs from the exemption for new and unused properties in three respects, that is:

- The qualifying purchase period ends on 31 December 2013,
- To retain the exemption, the purchaser must occupy the property as his or her sole or main residence (and continue to do so), and
- If the property is subsequently resold in the period between 1 January 2014 and before the end of the first valuation period – that is, on or before 31 October 2016 – the exemption does not pass to the new owner.

It was intended that this exemption would be restricted to 'first-time buyers', as is clear from the head note to section 8 ('exemption for first-time buyers') and the explanatory memorandum to the *Finance (Local Property Tax) Act 2012*. However, read literally, the exemption applies to any purchaser and not just a first-time buyer. Having reviewed the legislation, Revenue has concluded that, notwithstanding the fact that the intention was clear, the legislation does not impose a liability to LPT on a non-first-time buyer of a second-hand house.

It is important to note that Revenue regards a property as having been purchased when the new owner is entitled to actually occupy the property, and not at any earlier stage in the purchase process, such as the exchange of contracts. Therefore, to qualify for the exemption, a purchaser of a second-hand property must have concluded the purchase of the property and be entitled to occupy it on or before 31 December 2013.

Refunds of LPT

Revenue are engaged in the process of identifying purchasers who may be impacted by this, and we will be writing to these individuals shortly to advise them that they may qualify for an exemption, subject to meeting the conditions of the exemption. The purchaser must make a claim for the exemption under section 8, and we will be detailing these requirements in our correspondence to them.

We have concentrated on trying to identify certain groups of people in order to contact them and give them the opportunity to either claim the exemption or pay their liability:

- Those who bought on or after 1 January 2013 and before 1 May 2013 and may have wrongly paid the 2013 LPT, and who will not have a liability for 2014, 2015 or 2016, and
- Those who bought after 1 May and before 1 November 2013, who will not have a liability for 2014, 2015 or 2016 (the vendor in these cases would have been liable to the 2013 charge),
- Those who bought in the period on or after 1 January 2013 and before 1 May 2013, but did not file a LPT1 return or pay the LPT and are now obliged to do so (in these cases, the purchaser will either claim an exemption or pay the liability for 2013 and 2014, depending on whether they are entitled to claim the exemption under section 8),
- Those who bought after 1 November 2013 and on or before 31 December 2013 will either claim an exemption or pay the liability for 2015 and 2016. The vendor in these cases will be liable for the 2014 charge.

Solicitors may wish to bring to their clients' attention that only properties purchased in the period 1 January 2013 to 31 December 2013 and occupied as the purchasers' sole or main residence qualify for the exemption under section 8 of the legislation.

Law firm launches blawg to discuss online liability

Matheson has launched a new blawg (legal blog) dedicated to online legal and liability issues. *Crossfire*, which went live on 14 October, aims to be a forum for discussing the latest legal developments in the online world.

Contributors will include Alistair Payne (head of the firm's intellectual property group) and John O'Connor (head of the technology and data protection). The duo is encouraging comment and 'lively debate' on online legal developments.

The blawg can be found at crossfire.matheson.com.

'Highly competitive market for legal costs' in Ireland

In a series of broadcast interviews in November, director general Ken Murphy insisted that legal costs had declined hugely due to the recession and were a product of a market he described as 'cut-throat'.

In addition, he dismissed media commentary that the Law Society was somehow responsible for the Government's lengthy delay in the passage of the *Legal Services Regulation Bill*, as "baseless" and the product of "journalistic paranoia".

He explained to viewers of *Prime Time* on 7 November that "the legal fees that are paid in Ireland are a matter of negotiation and agreement between clients and their solicitors in a highly competitive market with 2,200 firms seeking the work. It was highly competitive before the recession came. It's been cut-throat ever since."

On the same programme, responding to a journalist's claim that legal-profession lobbying was

Murphy: media commentary 'baseless' and the product of 'journalistic paranoia'

delaying the reforms planned in the bill, Murphy's exasperation found expression: "We can't pass legislation," he pointed out. "Only the Oireachtas and the Government can pass legislation, and it's really a matter for them now to progress this bill to completion."

Earlier the same day, he told Mary Wilson on RTÉ radio's *Drivetime* that "there was a time when maybe, in years gone by, it was suggested that the solicitors' profession was somehow immune to recession, but that's certainly not the case now. The profession suffered a collapse in income over the last four or five years. Mainstays of the profession's income, such as residential and commercial conveyancing, have collapsed – have almost completely disappeared – and other forms of commercial transactions have also declined greatly."

"There's undoubtedly been a significant drop in the cost of legal services," he added. "Whether that can continue or not is really for market forces."

In a separate radio interview, on *Saturday With Brian Dowling* on 23 November, he made his quip about "journalistic paranoia" and put it clearly on the record that "the Law Society has been as frustrated as everybody else that the bill has not been moving forward".

He was pleased to note that another contributor to the programme, Charlie Flanagan TD, had the same information he had, namely that the minister's amendments would be published before Christmas and the Dáil committee stage of the bill would resume on 15 January 2014.

Moya retires undefeated after 45 years of electoral success

The remarkable Moya Quinlan decided this year – at the age of 93 – that she would not present herself for re-election to the Council of the Law Society. She was re-elected comfortably for yet another two-year term in 2011, so no one saw her seat as being in even the slightest danger.

However, independent-minded as ever, she simply chose not to go forward this time. In doing so, she has ended something utterly extraordinary – an unbroken 45 years as an elected member of the Council.

Moya's voice, experience and wisdom will not be lost to the Council, however. Like all former presidents (she was elected the Society's first female president in 1980), she is entitled to attend and speak for three years after she ceases to be elected. After that, if she so chooses at the age of 96, she can run for election again. No one who knows her would bet against her running again then – or against her being elected again by a profession, the great majority of whom were not born when she first entered the Council Chamber, which in those days was in the Four Courts.

Key figure

She was first elected to the Council in 1968 and is credited, along with the late Peter Prentice, with being a key figure in the acquisition of the Blackhall Place premises in 1970.

Moya often remarks that the reason she originally joined the Council was "for the students – they were scattered everywhere". The acquisition of Blackhall Place and the creation of the Society's Law School put an end to that sorry state of affairs.

In 2012, Moya was honoured with receipt of

Moya Quinlan with the inaugural 'Lifetime Achievement Award', which she received in 2012

the inaugural 'Lifetime Achievement Award' at the Irish Law Awards. As with Peter Prentice, her portrait hangs in the Council Chamber in Blackhall Place. Director general Ken Murphy observes: "From time to time, I have the experience of showing visiting representatives of law societies and bar associations from all over the world around Blackhall Place. They are usually green with envy that the solicitors' profession in Ireland has such an extraordinarily beautiful building as its home.

"I show them the portrait of Moya Quinlan, mention her age, and inform them not only that she is a currently elected Council member, but that her interventions in Council debates reveal her as incisive and passionate about the profession as ever. They are utterly astonished. I am satisfied, from many enquiries, that there is no one at anything approaching Moya's age anywhere in the world who continues to serve the legal profession on its governing Council. She is utterly unique and we are privileged to have her."

Welfare of the child is paramount in groundbreaking case

The recent judgment of Mr Justice Henry Abbott in *MR v SB* is a very important precedent for those practising in the area of guardianship law, *write Yvonne Walsh (O'Leary Maher Solicitors) and Dónall Ó Laoire BL*.

The judgment paves the way for a man with no biological connection to a child, but acting *in loco parentis*, to be given guardianship of a child in certain 'exceptional' circumstances – despite the opposition of the natural unmarried mother – in proceedings held in courts of local and limited jurisdiction.

The respondent, SB, was the natural mother of two children, J (aged 14) and C (11). The children had two different fathers, neither of whom was married to the mother and neither of whom had sought guardianship or exercised access to their child.

The applicant, MR, who was not the biological father of either child, sought to be appointed guardian of both children, of whom he had been held to be *in loco parentis* by the District Court and had custody by reason of orders of both the District Court and – under *Hague* proceedings – the courts of England and Wales. The latter incorporated

Mr Justice Henry Abbott: seminal judgment in *MR v SB*

undertakings by the applicant and respondent relating to the return of the children from England to Ireland in 2010, including that the children, who were Irish citizens, would not be removed from the jurisdiction without the consent of the applicant.

Parental duties

The application for guardianship in the High Court followed separate proceedings seeking similar orders in the District Court, the latter giving rise to concern that the District Court did not have jurisdiction to grant the orders sought by the applicant.

While section 6(4) of the *Guardianship of Infants Act 1964* provides that, where the mother of a child has not married the child's father, she, while living, shall alone be the guardian of the child, attention was also drawn to the other provisions of the act of 1964, which dealt with the circumstances under which a court could decide not to return a child to a parent.

Section 16 of the 1964 act provides that where a parent has: "(a) Abandoned or deserted an infant, or (b) Allowed an infant to be brought up by another person at that person's expense, or to be provided with assistance by a health authority under section 55 of the *Health Act 1953*, for such a length of time and under such circumstances as to satisfy the court that the parent was unmindful of his parental duties, the court shall not make an order for the delivery of the infant to the parent unless the parent has satisfied the court that he is a fit person to have the custody of the infant."

Implied power

Finding that the children had been abandoned by the respondent, that the respondent had allowed the children to be brought up by the applicant at his expense, and in circumstances where the respondent had failed to satisfy the court that she was a fit and proper person to have custody, the judge decided to make the applicant and the respondent joint guardians.

The court, he found, had an implied power to appoint another appropriate person as a guardian where the court had decided that it should not return the children to the mother. This implied power arose under section 16 of the 1964 act "having regard to the general imperative of the *Guardianship of Infants Act 1964* that the welfare of the child shall be paramount. The circumstances in which the court refuses to make an order for delivery of the infant must be looked at and considered in the context of this imperative … The person who has resisted an application for delivery under section 16ff is, in effect, the parent of such a child and it would be a dereliction of the duty of the courts not to treat him as such to the detriment of the interests of the child."

Desired consequences

In making its decision, the court found that, although an order for custody might be framed so as to give a person all the powers and rights of a guardian, in practice such a custody order when produced to various organisations, for example, schools, passports offices and hospitals, among others, might not bring about the desired consequences in the interests of the child. That being so, an order for guardianship was appropriate.

By reason of its determination that this order arose by implication of the act, the court then found that it is an order that could, in future, be made by any court of local and limited jurisdiction where exceptional circumstances, such as those that existed in the present case, warranted it.

Solicitor appointed to PIP complaints panel

Bill Holohan, of Holohan Solicitors and Notaries Public, has been appointed by the office of the Minister for Justice to the panel from which Personal Insolvency Practitioners Complaints Committees will be convened.

The appointment is for a period of five years until 31 December 2018. Under the act, at least seven people must be appointed to the panel, at least one of whom must be a solicitor and at least one of whom must be a barrister.

Every committee that will be constituted to consider any individual complaint will have to include a solicitor or a barrister.

A PIP Complaints Committee will only be convened if and when the Insolvency Service of Ireland (ISI) appoints an inspector, under section 180(1)(b) of the *Personal Insolvency Act 2012*, to carry out an investigation into alleged improper conduct by a PIP.

Following the appointment of an inspector, the ISI will request the minister to appoint a complaints committee from the panel to consider the inspector's investigation of the PIP concerned and to make a determination.

NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

Appeal Commissioners' reform

TAXATION COMMITTEE

The Law Society welcomes Minister Michael Noonan's announcement in relation to reform of the tax appeals system in his budget speech. This is a matter on which the Taxation Committee has carried out considerable work and on which it has made a number of submissions to the Department of Finance seeking reform.

A consultative document (*Reform of the Appeal System for Tax Matters*) has now been published by the Department of Finance. This contains a number of reform proposals with regard to the appointment, structure, operation and jurisdiction of the Appeal Commissioners, and appeals from the Appeal Commissioners.

The Taxation Committee intends to make a detailed submission in relation to the reform proposals and would welcome any comments or observations from practitioners. The closing date for the submission is 16 January 2014.

Comments or observations should be emailed as soon as possible to the Taxation Committee secretary, Rachael Hession, at: r.hession@lawsociety.ie.

New land registration and registration of deeds rules

The new *Land Registration Rules 2013* and the *Registration of Deeds Rules 2013* have come into operation. According to the Property Registration Authority, the effective date for these rules is 1 November 2013.

They are published on the Irish Statute Book website, currently in the 'latest statutory instruments for 2013' section (please note that these have not yet been filed in the relevant 'year' section). The link to the Attorney General's site for SI 389 of 2013 – *Land Registration Rules 2013* is: www.attorneygeneral.ie/esi/SI389.pdf.

These rules amend rule 46 of the *Land Registration Rules 2012* on the acquisition of easements and profits by prescription. They also amend the provisions for the registration of judgment mortgages, pursuant to section 116 of the *Land and Conveyancing Law Reform Act 2009*, to specifically include judgments of the Supreme Court, provide for the registration of judgment mortgages in execution of judgments of the courts of member states of the European Community, with the exception of Denmark, that are recognised and enforceable pursuant to the *Brussels I Regulation*, or as a European enforcement order, and for an amended form 60 and new forms 60A and 60B.

These rules also amend forms 3, 17, 37, 38, 39, 64, 84 and 96 in the *Schedule of Forms of the Land Registration Rules 2012*. (See SI 387 of 2013 – *Registration of Deeds Rules 2013* – at www.attorneygeneral.ie/esi/SI387.pdf.)

In addition, the new rules amend the provisions for the registration of judgment mortgages pursuant to section 116 of the *Land and Conveyancing Law Reform Act 2009* to specifically include judgments of the Supreme Court, and provide for the registration of judgment mortgages in execution of judgments of the courts of member states of the European Community, with the exception of Denmark, that are recognised and enforceable pursuant to the *Brussels I Regulation*, or as a European enforcement order and for an amended form 16 and new forms 16A and 16B.

Society's website more 'sticky' than Spiderman!

The Law Society website continues to be an increasingly important channel of communication for the Society, its members, trainees and the public, *writes Carmel Kelly (web editor)*. In the past year, there have been close to 7.5 million page views on the Society's website, which represents an 8% increase over the same period in 2012.

While the site is full of useful information for solicitors, trainees and the general public, the most visited sections during the past 12 months have been:

- Legal vacancies, where new jobs are uploaded daily,
- The 'find a firm' search of firms and organisations that employ practising solicitors (this is updated daily),
- Practice notes on a wide range of areas, which are published online every month, and
- The 'become a solicitor' section, which includes information on the steps involved in the training process.

'Find a solicitor' goes live

To complement the 'find a firm' and 'find a mediator' facilities, a new 'find a solicitor' search service went live on 1 November. The online service lists the contact details for solicitors who hold a current practising certificate and are covered by professional indemnity insurance. In the first two weeks since its launch, 'find a solicitor' has been used over 28,000 times – which augurs well for the future.

What next? The web team is currently updating the Society's website design, systems and content structure, which is due for release early in the New Year. The site will be designed for optimal viewing on smartphones and tablets to meet the increasing demand from those using handheld devices. The revamped site will include a new, more powerful search facility and a fresh, modern look.

Feedback or queries on the website should be emailed to webmaster@lawsociety.ie.

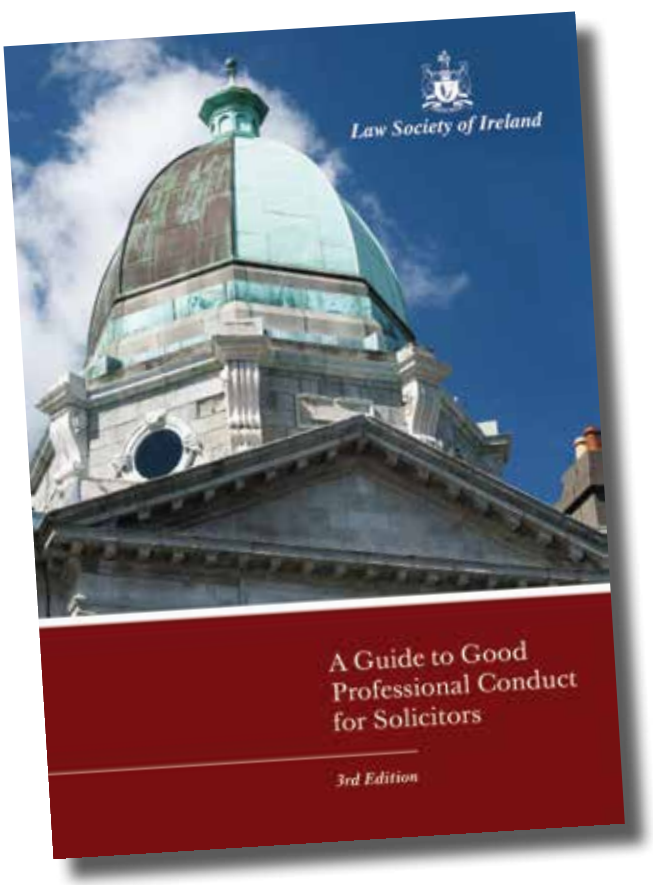
NEW PROFESSIONAL CONDUCT GUIDE LAUNCHED

Mark McDermott is editor of the Law Society Gazette

Minister for Justice Alan Shatter says that the *Guide to Good Professional Conduct for Solicitors* contains the accepted principles of good conduct and practice for solicitors. Mark McDermott reports

The third edition of *A Guide to Good Professional Conduct for Solicitors* was launched at Blackhall Place on 4 November 2013, and the guest speaker was Justice Minister Alan Shatter.

Minister Shatter warmly welcomed the publication, saying the guide was "about ensuring that individual members of the profession behave in a manner that ensures the profession is in good standing with the general public, that people feel that they can approach their solicitor with a sense of trust and confidence and a sense that their lawyer will give them, not just the right advice, but will always act in their best interests".



Comparing the first and second editions of the *Guide to Professional Conduct of Solicitors* (published in 1988 and 2004 respectively), the minister commented that the third edition was noticeably different, in that the title referred pointedly to *good* professional conduct for solicitors.

"Now, I assume that the first and the second editions were about 'good' professional conduct as well," he said, "but 'good' was missing and, of course, it's good professional conduct that is crucial to clients and to maintaining the reputation of the profession."

Looking to the future, he commented: "It may be that when you come to write the fourth edition of this particular book, you're going to have to address some interesting issues. Are there some different or new principles to be prescribed for multidisciplinary practices? How do we deal with limited liability partnerships? What might be the position when you have solicitor and barrister partnerships? Will we have the type of alternative business structures that are developing in Britain?"

> ***"The guide is about ensuring that individual members of the profession behave in a manner that ensures the profession is in good standing with the general public"***

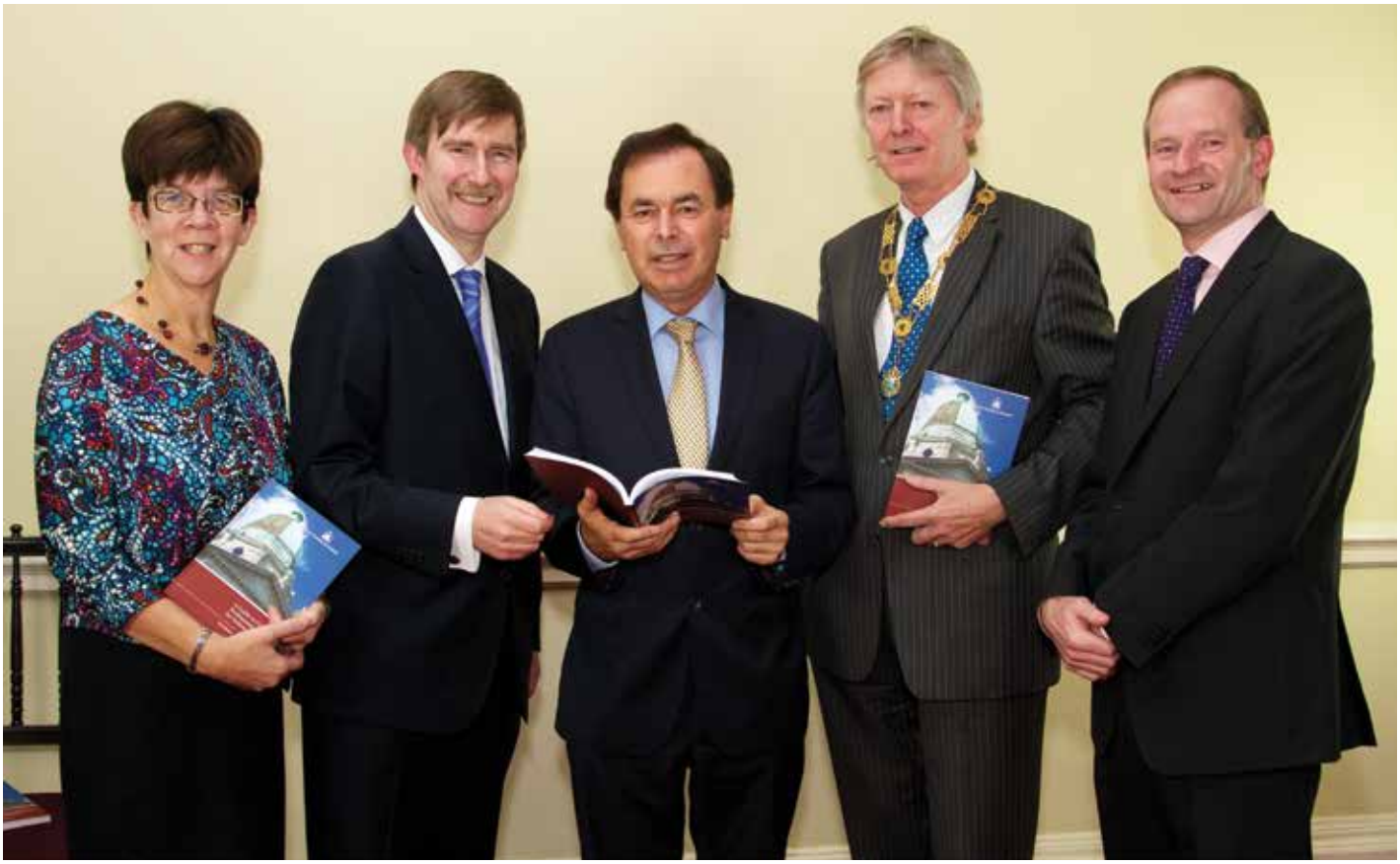
Cyberspace

The minister referred to a recent visit to England, where he had been briefed by the Solicitors Regulatory Authority and other legal groups there, including Co-operative Legal Services, which runs an alternative business structure to provide legal advice and assistance.

"One thing that became absolutely clear is that, unless we embrace the possibility of alternative business structures to deliver legal services, we are going to be substantially left behind, and we need to further embrace – and this might be another issue for your fourth edition – the provision of legal advice and assistance basically through cyberspace.

"There are now virtual lawyers' offices where people are operating and providing advice through email and talking to their clients through Skype. The expense of running an office isn't incurred when you have niche approaches to individual areas of law. And this is where the future is going and it's the future that we need to embrace."

On the issue of the *Legal Services Regulation Bill*, he said that he expected that, by the end of November, the committee stage of the bill would recommence. "We will very shortly, in advance of that, be publishing the impact assessment that you've been waiting anxiously to see. I don't believe we'll complete committee stage before Christmas. I think it'll travel into the New Year. I hope the Society will see some of the changes that we've already made – and some of the changes we're



At the launch of *A Guide to Good Professional Conduct for Solicitors* were *(from l to r)*: Therese Clarke (secretary to the Guidance and Ethics Committee), Ken Murphy (director general), Justice Minister Alan Shatter, then President of the Law Society James McCourt and Brendan Dillon (committee chairman)

making to the bill – as being truly in the public interest and in the interests of clients and in the interests of the profession."

Ethical dilemmas

Guidance and Ethics Committee chairman Brendan Dillon pointed out that the guide detailed the accepted principles of good conduct and practice for solicitors. While the guide was not a statement of law, he said that it stood as a reminder to the profession about the standards and ethics that should govern how solicitors carried out their duties to clients, to each other and to third parties on a daily basis.

"One of the most fundamental changes to the new guide relates to the issue of conflicts of interest," he said. The deliberations of the Conveyancing Conflicts Taskforce, he said, had brought about important and much needed change, introducing very limited exceptions for solicitors acting on both sides of a conveyancing transaction.

> ***"One of the most fundamental changes to the new guide relates to the issue of conflicts of interest"***

Switching to the issue of solicitors' relationship with their clients, new material had been added, he said, which dealt with the importance of solicitors issuing terms and conditions to their clients on all instructed matters.

"The Guidance and Ethics Committee has published a template set of terms and conditions, which is available on the Society's website. I want to take this opportunity to urge all members of the profession to use these terms and conditions on a consistent basis," he said.

It was the committee's earnest hope, he concluded, that the guide would send a strong signal to the profession of the importance of commitment to the highest standards of behaviour and ethics in the conduct of business.

MORNING IRELAND

Speaking on RTÉ'S *Morning Ireland* on 5 November 2013 in relation to the launch of the *Guide*, Ken Murphy said: "As members of the solicitors' profession, solicitors have a series of obligations both to their clients, to the courts and to the public. And there are complexities within this. But it's normal for the legal profession in every country to have guides to good conduct, to encourage people – a touchstone in many ways where complexities arise or when dilemmas arise to make sure that the right thing is done."

He said that the updated guide was "explaining again to the solicitor's profession the principles that underpin good conduct for solicitors in all of their obligations".

This was a positive story, he added: "This is talking about what solicitors do to uphold the best principles of the profession and the best interest of their clients and the public."

CHANGING LEGAL LANDSCAPE

A recent conference focused on the changed legal and commercial landscape five years after the bank guarantee. Colin Murphy reports

Colin Murphy is a journalist and radio documentary maker in Dublin, specialising in social and cultural affairs

"Do we want to go down the road of seeking to define some form of criminally sanctioned obligation not to act in a grossly incompetent or negligent way?" So asked Mr Justice Frank Clarke during an engaging – if cautious – keynote speech at a conference hosted by Griffith College Law Faculty on 18 October.

"We have not traditionally in Ireland treated gross negligence in the management of institutions as a criminal matter," he observed. "I'm not suggesting that it should, but perhaps it's an issue that should be considered.

"Our legal model to date has been that, if you operate within the rules and don't break any specific rules, then the fact that things go badly wrong does not constitute a criminal wrong. Maybe that's something that just needs to be put into the debate."

Lax standards

He proceeded to take a closer look at the institution most identified with gross incompetence or negligence in recent years: the banking sector. "The public perception of extremely lax practice in assessing the creditworthiness of loans" was "very well founded," he suggested. In "far too many cases", loans had been justified with arguments such as "he's the kind of guy that we need to be lending money to" or "if we don't lend it to him, the guys up the road will".

In some cases, he said, the bank's sole evidence that a borrower was a high net-worth individual was a statement by the borrower himself. These statements had a "big round figure at the end", Judge Clarke said, but it was "not particularly obvious" whether the bank had conducted any investigation of whether the statement was true.

Competition between the banks had led to "very lax standards" in lending, Judge Clarke said. He speculated that this might have been related to the practice of awarding bonuses based on lending. While there was "broad acceptance that the regulatory system didn't work", that wasn't the same as "understanding the nuts and bolts of what should have been done to make it better". The risk in this situation was that the model put in place to repair the damage "will solve the last crisis rather than the next crisis". He warned of the "sticking plaster" approach to the law, where "we have the law, it's seen not to work, and someone goes away to think of a solution to that issue without having the time or inclination to consider a more fundamental approach".

However, he also cautioned (citing the late Judge Declan Costello) against letting the best be the enemy of the good. "New legislation will never get everything right first time … See what works, see where the teething marks are, and readdress it." The aim should be to get new law "good but not perfect" and to be open to amending it in the light of experience.

"New legislation will never get everything right first time … See what works, see where the teething marks are, and readdress it"

Culture shift

Dr Mary Donnelly, a senior lecturer in UCC, looked in more detail at regulatory failure and, in particular, its legacy for the consumer. She noted that the Central Bank's mandate contained a potential conflict between "the public interest" and "the interests of consumers" in cases where reductions in costs for consumers could result in an increase in the cost base for the banks – and therefore for the public purse.

She cited the example of the putative basic payment account, a "cheap, basic account" designed to address financial exclusion. This had "disappeared off the agenda", she said, because "for banks that have to make money in the public interest, it's a loss leader, so it's off the table".

She welcomed a change in culture in the Central Bank, with a "move away from the woolliness and

Mr Justice Frank Clarke: 'The public perception of extremely lax practice in assessing the credit worthiness of loans was very well founded'

generality of principles, back to rules" that are "very distinct and very easy to enforce". Though, as she noted during a discussion later, "principles-based regulation isn't necessarily a bad thing – it's when the people don't have principles that we run into trouble". And she applauded the new approach to enforcement, with a "huge jump" in reviews and inspections since the crisis.

She cautioned on the need to maintain vigilance, however: "Cultures change to become more rigorous, but it could go the other way."

Prof Blanaid Clarke of Trinity suggested a change in corporate governance culture could be valuable. After the experience of Enron, she said, there had been a shift in corporate governance to emphasise independence on boards. "There was so much focus on independence that we lost track of expertise", she said. "In a country as small as this, it is difficult to get independence." Independence had typically been viewed as dealing with potential conflicts of interest, but it "didn't deal with independence of mind". We need diversity on boards, she said, "not just in terms of gender diversity, but in terms of background, knowledge, experience".

Minister Brian Hayes: 'Dáil needs to assert its independence'

NEED FOR DÁIL INDEPENDENCE

As a junior minister in the Department of Finance, Brian Hayes sits on the edge of the executive: not a member of cabinet, but with a high level of access to cabinet ministers, and firmly in the queue for when a place at the cabinet table becomes available. So when he makes a comment that could be interpreted as a criticism of how that executive conducts itself, it is worth noting.

"The Dáil needs to assert its independence over the executive," he told the conference, "and the executive needs to be far less centralised in its approach to policy decisions." He also called for the Dáil to be involved "more directly in the budgetary process from start to finish".

This was nothing radical. The Fine Gael/Labour *Programme for Government* set out this agenda: "We believe that in recent years an over-powerful executive has turned the Dáil into an observer of the political process rather than a central player and that this must be changed." But, in practice, their government has done nothing to empower the Dáil, continuing to wield the legislative guillotine with abandon and concentrating executive power even further in the hands of the Economic Management Council, provoking regular criticism from the opposition benches as well as from within their own ranks. Hayes's comments could be seen as adding to the pressure for more substantial parliamentary reform.

His comments came in an overview of the breakdown of trust that has afflicted Irish institutions in recent years. The crisis had "exposed major weaknesses and failures in politics, public administration and regulation," he said. Many of our institutions "were not fit for purpose".

"We made a serious mistake in Ireland when we gave so much unfettered power to so many people and institutions," he said. Irish people were "too trusting, too loyal, too unwilling to question". Citizens had a responsibility to "actively engage in the civic and public life of our country" and to have a "questioning attitude."

LAW SOCIETY PROFESSIONAL Training

To view our full programme visit **www.lawsociety.ie/Lspt**

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
10 Dec	How to use Blogging, Facebook, LinkedIn and Twitter in the legal sector. *Places are limited – early booking advised*	€180	€240	7 Management & Professional Development Skills (by Group Study)
11 Dec	Efficient Reading Techniques - in collaboration with MaST Ireland. *Places are limited – early booking advised*	€165	€220	6 Management & Professional Development Skills (by Group Study)
18 Dec	Delegation and Feedback Skills for Professionals - in collaboration with MaST Ireland. *Places are limited – early booking advised*	€165	€220	6 Management & Professional Development Skills (by Group Study)
2014				
6 & 7 Feb	Certificate in English & Welsh Property Law and Practice	€441	€588	9 General (by Group Study)
Starting 4 March	Certificate in Adjudication (Law Society of Ireland Certified Adjudicator)	€960	€1,280	Full CPD Requirement for 2014 (provided relevant sessions attended)
8 Mar	Judicial Review - Recent developments and challenges	€102	€136	3 General (by Group Study)
Starting April	Post-Graduate Certificate in Learning Teaching and Assessment in partnership with DIT and Law Society Skillnet	€960	€1,280	Full CPD Requirement for 2014 (provided relevant sessions attended)
Starting April	Diploma in Legal Practice & Risk Management	€1,695	€2,260	Full CPD Requirement for 2014 (provided relevant sessions attended)
ONLINE COURSES: To Register for any of our online programmes OR for further information email: Lspt@Lawsociety.ie				
Online	How to use an iPad for business and lifestyle	€136		Approx. 5 hours M & PD Skills (by eLearning)
Online	How to use a Samsung for business and lifestyle	€136		Approx. 5 hours M & PD Skills (by eLearning)
Online	Twitter for Lawyers	€55		Approx. 5 hours M & PD Skills (by eLearning)
Online	The LinkedIn Lawyer: The How To Guide	€55		Approx. 5 hours M & PD Skills (by eLearning)
Online	Facebook for Lawyers: The How to Guide	€55		Approx. 5 hours M & PD Skills (by eLearning)
Online	How to create an eNewsletter	€90		Approx. 5 hours M & PD Skills (by eLearning)
Online	**eRegulation:** New Terms of Business – Contract Precedent	€45		Approx. One Hour Regulatory Matters (by eLearning)
Online	Legal Costs Seminar: Recent Decisions and Pending Legislation	€55		Approx. 1 Hour General (By eLearning)
Online	Microsoft Word – all levels, Powerpoint – all levels. Touch Typing & Excel	From €40		Approx. Up to 5 Hours M & PD Skills (by eLearning)

For full details on all of these events visit webpage www.lawsociety.ie/Lspt or contact a member of the Law Society Professional Training team on:
P: 01 881 5727 **E:** Lspt@lawsociety.ie **F:** 01 672 4890
*Applicable to Law Society Skillnet members. **Please note FIVE hours on-line learning is the maximum that can be claimed in the 2013 CPD Cycle**

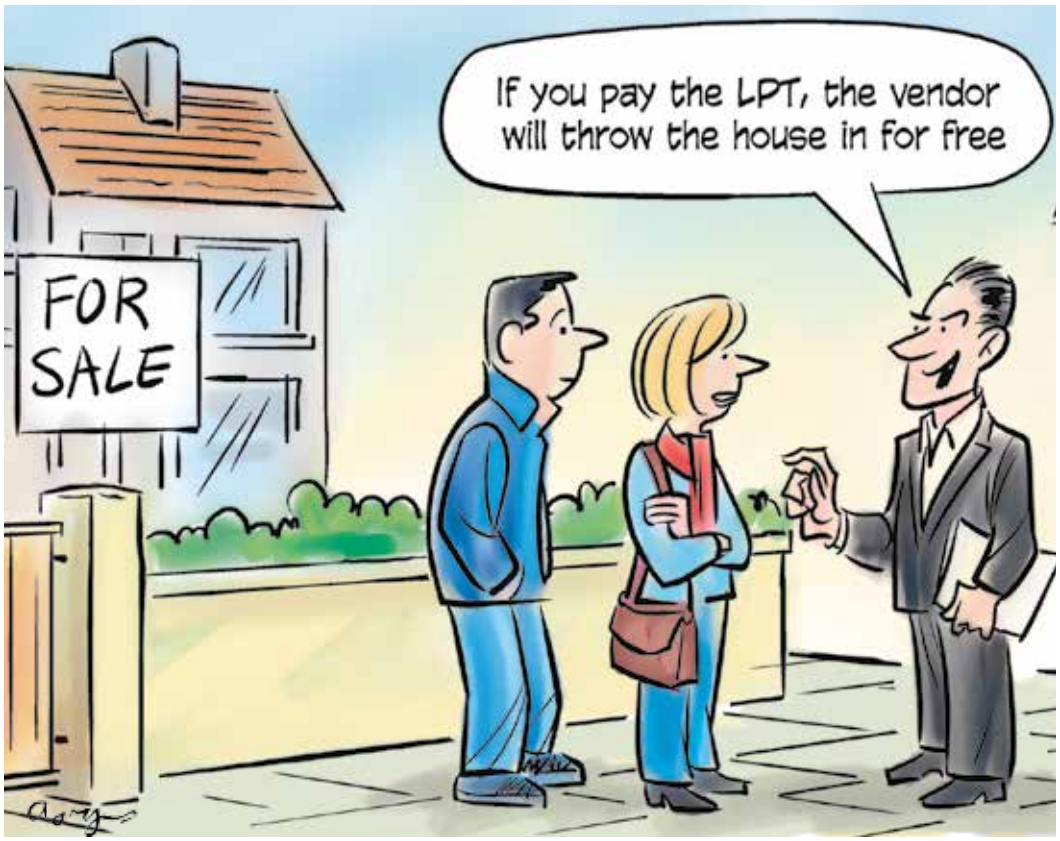
LPT anomalies need to be addressed

From: Rory O'Halloran, solicitor, Thomas J O'Halloran Solicitors, Ashe Street, Tralee

I believe there is a consequence in the drafting of the Local Property Tax legislation that affects members involved in conveyancing. The act has determined that the person who is the registered owner of a property on 1 November is liable for the LPT in the subsequent year. This affects any person who sells their property in November and December, as they must pay the tax for the subsequent year.

Revenue will also not refund any person their LPT on the basis that they have paid the LPT and sold their property. The Law Society published a practice note in June regarding the appropriate special condition to be inserted in the contract regarding payment of the LPT by a vendor.

Many councils in Britain operate a system whereby a person who sells their property in a calendar year is entitled to a refund of their council tax for the remainder of the year. This will not apply in Ireland, according to the Revenue Commissioners.



It is not clear why the Government chose 1 November as its valuation date and, in view of anomalies now arising, it should be altered to 1 January. Submissions should be made by the Law Society to the Government to amend the act in relation to the valuation date or, alternatively, to introduce the common-sense approach of Britain.

(Editor: see Revenue's response on p8.)

Thanks to an 'enormously supportive' SMDF

From: Ken J Byrne, solicitor, Main Street, Blackrock, Co Dublin

I have just completed the harrowing experience of five years of being a defendant in an action requiring the assistance of my professional indemnity insurer.

The case was settled recently after almost two weeks at hearing in the High Court, with a further four weeks to go had it run to its conclusion. There were three defendants to the action – two non legal professionals.

Aside from the level of claim, the legal costs of four full legal teams can only be imagined. My ability to afford the legal costs from the outset to self-defend would have been in serious doubt.

I was insured by the SMDF who, throughout, have been enormously supportive and I was, without doubt, saved from serious financial difficulty by them, with my ability to continue in practice and to earn a livelihood at risk.

I would firstly like to thank the former directors of the SMDF who stood firm and worked endless hours to battle to save the insurer.

A meeting of the profession was convened by the Law Society and held in the City West Hotel three years ago. It was called to consider the future of the SMDF (which was, by then, technically insolvent) and the fact that, were it to be liquidated, all reinsurance (90% of total insurance) would have been renounced by the reinsurers, thereby leaving all those insured by it (about one-third of the profession) open to uninsured claims.

I attended that meeting and spoke, acknowledging that I was one of the many SMDF members the subject of a claim.

A vote of the members of the Law Society as to the future of the SMDF was subsequently taken, it having been indicated that, for the cost of €100 (net of tax) per annum per solicitor for the next ensuing ten years, it could survive.

To my disappointment, as high a proportion as 37% of the voting members voted against saving the SMDF; but with approximately 63% voting in favour, it did survive – those voting 'yes' saving their many colleagues, such as me, from the potential disaster of having to personally defend – uninsured – claims of varying magnitude and cost.

For that, I heartily thank those 63% of my colleagues for their kind thoughtfulness.

I would also like to thank the current officers of the SMDF who have carried on and will continue to carry on the work of winding down what was once a proud organisation.

Finally, many thanks to all who currently work for the SMDF and from whom I, personally, was shown so much courtesy in difficult times.

CHILD CARE REPORTING PROJECT LIFTS SECRECY VEIL

Launched just over a year ago, there are now over 100 case reports on the Child Care Law Reporting Project website. Carol Anne Coolican assesses the project's work

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

The *Child Care Act 1991* imposes a duty on the HSE to promote the welfare of children who are not receiving adequate care and protection. There are provisions whereby the gardaí and/or the HSE are empowered to remove children who are at immediate risk. The legislation further imposes an obligation on the HSE to apply for care orders for children who are or have been at risk of assault, ill treatment, neglect, or sexual abuse, or where the child's health, development or welfare is or has been impaired or neglected.

Cases under this legislation have been held *in camera* to protect the privacy of the parties and their children in these sad cases. The *Child Care (Amendment) Act 2007* permitted the attendance and preparation of reports in the child care proceedings by specified persons. However, it was not until 2012 that the regulations permitting such attendance and reporting were made. Since then the *Courts and Civil Law (Miscellaneous Provisions) Act 2013* provides for further amendments to the *in camera rule*, but this has yet to be commenced.

Minister for Children Frances Fitzgerald launched the Child Care Law Reporting Project (CCLRP) on 6 November 2012. The aims and objectives of the project are to:

- Provide information to the public on child care proceedings in the courts,
- Conduct research on these proceedings in order to promote debate and inform policymakers,
- Make recommendations to address any shortcomings in the child care system identified by the research,
- Assist in the implementation of these recommendations, and
- Promote confidence in the child care system.

Chief Justice Susan Denham launched the first interim report of the CCLRP on 5 November 2013, which she referred to as "a snapshot in time" and as providing an "opportunity to begin an informed debate about the difficult matters in legal proceedings where the welfare of the child is concerned". This is the real benefit of an evidence-based report. Too often, debate and discussion has occurred in the wake of an inquiry or report following tragic circumstances – after the event.

"The interim report seeks to encourage debate as to 'how to break the cycles of poverty, social exclusion, mental health problems and addictions that are affecting some of our children.' Families and society will pay the cost unless this is addressed"

Hearings were attended primarily in Dublin, and also in Cork, Waterford, Letterkenny, Westport, Limerick, Galway, Tralee, Listowel, Navan, Drogheda, Clonmel and Wexford. Outside of Dublin, HSE cases can be heard on the same day as other family law cases. It is too early to draw any inferences about any perceived differences in the conduct or outcome of these cases between Dublin and the rest of the country.

In the majority of cases attended, the "primary reason children are taken into care is neglect … often compounded by problems of drug and alcohol abuse and mental illness". The chief justice noted that the interim report shines a light on these problems and the distressing impact on children.

The report questions whether lack of education and material resources further disadvantages vulnerable families. It points to possibly different ideas of child-rearing by immigrant families. In addition, in cases "where the issue of consent did arise, the parents consented to the order being sought in two-thirds of the cases". In 2011, there were nearly as many children in voluntary care (2,797) as were placed in care as a result of a court order (3,358). However, there was a lack of court scrutiny of the services provided, care plans, or how well-informed the consent was – or whether any legal advice was obtained in such cases.

The use of guardians *ad litem* as documented in the interim report is considerable, but may not reflect the position nationwide. The criteria for appointment, the role and qualifications are uncertain. The Chief Justice indicated that when cooperation between "the HSE and families, between families and lawyers, and between all in the professional arena and the court … is secured … an environment exists within which the voice, concerns and wishes of a child can be heard and assessed". Judicial studies have commenced "and will be built upon" to develop judicial knowledge in hearing the voice of the child.

Further investigation

Some observations may require further investigation, such as:

- The prevalence of mental illness or disability,
- The over-representation of African

families – "20 times more likely" to be involved than other members of Irish society,
- The high proportion of children with special needs (with the challenges of finding, training and supporting foster carers),
- The lack of involvement of foster carers in the proceedings, even where the application relates to access to the children in their care,
- Supervision orders, including conditions obliging the parent's "to engage in treatments or to desist from certain behaviour", and
- The high percentage of single parents (10.2% were married).

Statistics are not available in a uniform or cohesive manner at present. The Courts Service statistics document the number of court events, not "the number of children or families involved". The project will, hopefully, collect more meaningful data in this regard.

Dispelling myths

The interim report of the CCLRP achieves the stated aim of providing information in child care cases. It has already promoted debate. The very fact of the project's existence – and the reporting of 100 cases in its first year – assists in removing the veil of secrecy in these cases. Promoting confidence in how these cases are dealt with and making recommendations that can be implemented will be the next phase, when more evidence has been garnered.

Attempting to identify a primary cause for care proceedings may be problematic, because of the complex nature of challenges facing vulnerable children and families. It may be useful to interlink the causes of vulnerability. The interim report seeks to encourage debate as to "how to break the cycles of poverty, social exclusion, mental health problems and addictions that are affecting some of our children". Families and society as a whole will pay the cost unless this is addressed. G

"The very fact of the project's existence – and the reporting of 100 cases in its first year – assists in removing the veil of secrecy in these cases"

TRANSFORMING THE ROLE OF THE IRISH PAROLE BOARD

The prospect of transforming the Irish Parole Board from its current administrative status to a full statutory body has been on the horizon for many years. But there may be progress soon, says Shane McCarthy

Shane McCarthy is a member of the Council of the Law Society and is undertaking a doctorate on the role and function of the Parole Board

Parole has not been legally defined in Ireland and, due to the current non-statutory nature of the Parole Board, there is no legislation to which practitioners can turn for guidance. In practical terms, parole is the discretionary, conditional, supervised release of a prisoner. This discretionary release follows an examination of the prisoner's behaviour and conduct while serving their sentence, together with a risk assessment of their case. The Parole Board has stated that, when formulating its recommendations to the minister, its paramount concern is the potential risk to members of the community posed by the possible release of the prisoner.

Parole should not be confused with a pardon or commutation of sentence. Parolees are still considered to be serving their sentences and may be returned to prison if they violate the conditions attached to their parole.

> ***"In the event of legal representation being permitted before a statutory Parole Board, demands for a legal aid system to fund such legal representation will inevitably follow"***

On parole

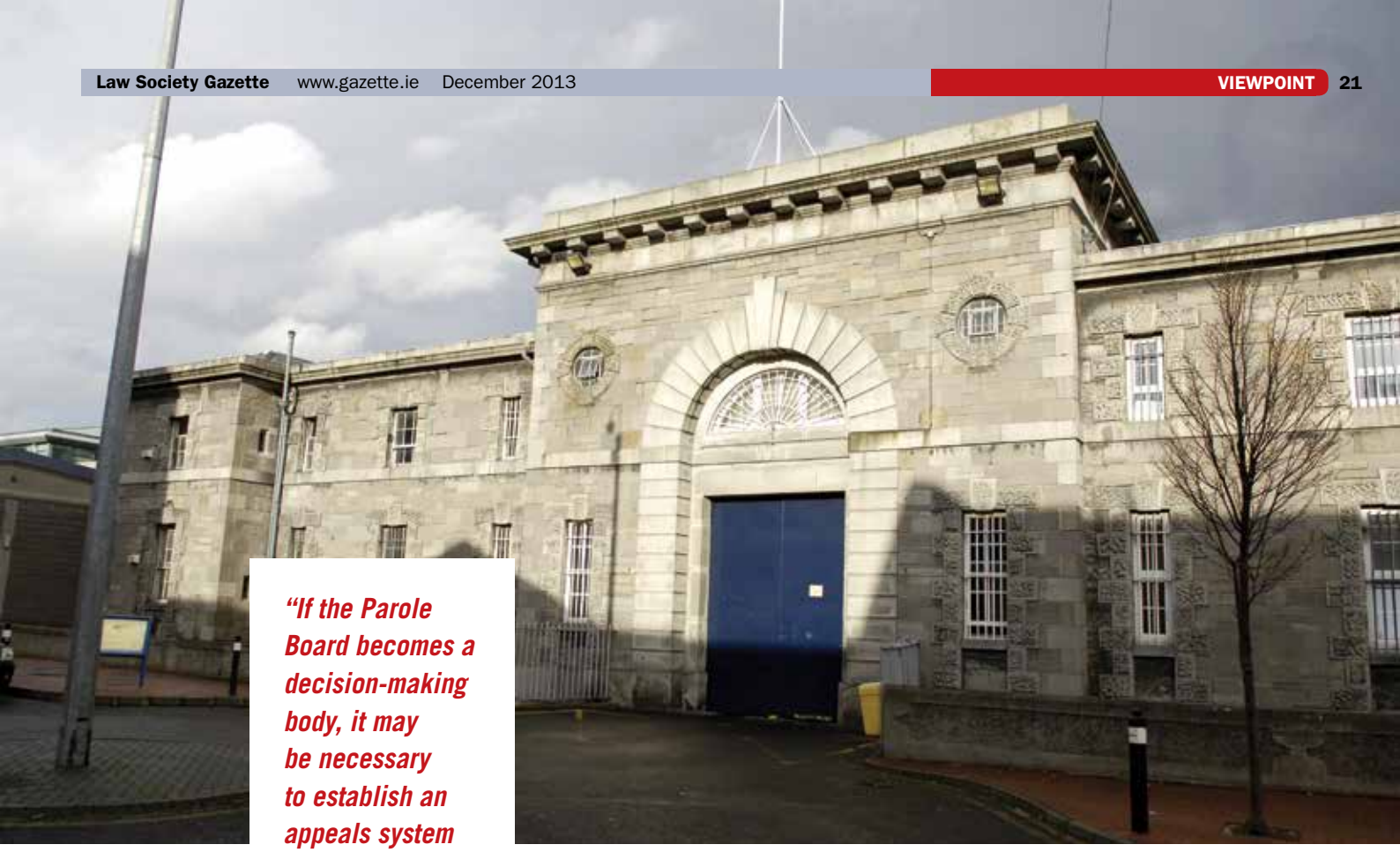
Currently, the granting of temporary or early release to life-sentenced prisoners almost invariably takes place on foot of the recommendations of the Parole Board. In relation to such prisoners, the conditions attached to their release remain active for the rest of their lives.

The parole decision-making process comprises a number of distinct stages, the first of which is the minister referring the particular prisoner's file to the Parole Board for review. The minister generally considers the recommendations of the Parole Board for the first time in cases where the prisoner has served either seven years' imprisonment or half of the sentence imposed upon them. As the Parole Board is limited to considering the cases of prisoners who have been sentenced to terms of imprisonment in excess of eight years, this means that no prisoner's detention is reviewed by the board until they have served a minimum of four years of their sentence. To enable the Parole Board to make recommendations in relation to the reviews of these prisoners, the minister refers the prisoner's file to the board approximately 12 months before the prisoner's review date. In the event of a prisoner not being released following their parole review, their case is adjourned for further review for a maximum period of three years, although many cases are adjourned for a much shorter period of time.

Review process

When a case is referred by the minister to the Parole Board, the board contacts that prisoner and invites them to participate in the review process. The board will only review the cases of those prisoners who accept this invitation. It is worth noting that as many as 30% of the prisoners who are invited to partake in the parole process decline the invitation to participate. When a prisoner accepts the invitation to participate in the review process, the Parole Board proceeds to assemble a review dossier, which will include reports from the prison governor and the Prison Review Committee. The reports will generally detail the behaviour of the prisoner, their disciplinary record, and the various educational milestones that the prisoner has achieved. The Probation Service will also often provide a report with the probation officer's observations on a prisoner, often including a risk assessment analysis and a home circumstance report discussing where the prisoner on temporary release would be able to live. The Psychology Service will, where appropriate, also provide reports setting out the progress of the prisoner in addressing their offending behaviour. In each and every case considered by the Parole Board, a report is also sought from An Garda Síochána, requesting their views on the advisability of temporary release being granted.

Once the reports (and any other material) have been obtained, they are assembled into a review dossier and a copy is sent under sealed cover to the prisoner, who must sign a disclosure form to indicate that they have received the dossier. On receipt of the dossier from the Parole Board, all prisoners are afforded an opportunity to submit written comments on the content of the review dossier to the board, as well as providing any other information that they may feel that the board should consider. While prisoners are not entitled to legal representation or legal aid at their interviews, they on occasion engage solicitors to make written submissions on the dossier disclosed to them, and the Parole Board have been quite cooperative in facilitating this,



"If the Parole Board becomes a decision-making body, it may be necessary to establish an appeals system for prisoners who are dissatisfied with the result of their review or indeed with the conditions attached to their temporary release"

often furnishing a second copy of the dossier to the prisoner to enable them to forward this to their solicitor.

When the prisoner has acknowledged receipt of the review dossier and submitted their written comments in respect of same, if necessary, arrangements are made for them to attend an informal interview with two members of the Parole Board. It has always been Parole Board practice for there to be an interview for a first review, and the board exercises its discretion as to whether or not to have an interview on the occasion of subsequent reviews. These interviews take place in the institution in which the prisoner is detained. At the interview, the prisoner has an opportunity to make submissions in person to the board, comment on the contents of the dossier, and to also raise any queries or concerns they may have regarding the parole process. The prisoner is also afforded the opportunity to draw to the attention of the Parole Board any positive features supporting their case for temporary release.

Following the interview, a summary note of the interview is prepared, and the prisoner has an opportunity to comment on it. The next stage is a meeting of the Parole Board where all of the members review the dossier that had been prepared on the prisoner and discuss the interview that took place. At this stage, the board will agree a recommendation to be provided to the Minister for Justice, who will ultimately take the decision on the file. The board's role is advisory only and, even though the minister accepts the vast majority of the board's recommendations, parole is a matter that remains within the minister's discretion".

Statutory basis

At the First Annual Parole Board lecture, hosted by the Law Society in October, the Minister for Justice spoke of well-advanced plans to transform the nature of the board. The placing of the Parole Board on a statutory basis may utterly change the manner in which parole is processed in Ireland. In the course of his speech, the minister stated that the issue of legal representation at parole interviews before a statutory parole board is a matter that is currently being considered by his department. It appears that the likely change in nature of the Parole Board from an advisory body to a decision-making body may necessitate this.

Appeals system

In the event of legal representation being permitted before a statutory Parole Board, demands for a legal aid system to fund such legal representation will inevitably follow. If the Parole Board becomes a decision-making body, it may be necessary to establish an appeals system for prisoners who are dissatisfied with the result of their review or indeed with the conditions attached to their temporary release. Furthermore, it will be necessary to set out clear eligibility criteria as to which prisoners (if not all) will be able to participate in the parole process. In this regard, it has also been suggested that the length of sentence a prisoner must be serving before being eligible to be considered by the Parole Board may be reduced from eight years to five years.

Yet a further issue to be considered is whether the Minister for Justice will retain the power to grant release to prisoners who have not participated in the statutory parole process, or indeed in respect of those who are dissatisfied with the result of the Parole Board process. It must also be considered whether the operation of such a parallel system is advisable.

It is clear that there are many issues that will require careful deliberation to ensure that the implementation of any proposed changes to the Parole Board will vindicate the rights of all interested parties. In this regard, the Department of Justice has invited submissions and suggestions in relation to proposed developments in this area. G

And now for something completely DIFFERENT

The IDA recently decided to invoke its compulsory purchase powers in the vicinity of the M4 corridor. Judicial review proceedings followed in the High Court, with the action failing on all counts. The Supreme Court awaits. Nora Pat Stewart explains

Nora Pat Stewart is a Dublin-based barrister. She wishes to thank James Connolly SC for reviewing this article

Some 25 years after the enactment of the *Industrial Development Act 1986*, which gave the Industrial Development Agency (IDA) the power to compulsorily acquire land where it considers industrial development will or is likely to occur, the relevant provisions have been invoked for the first time. This resulted in a compulsory purchase order being made for a historic family home – a protected structure dating back to 1760 in which the same family has lived for over a century – together with 72 acres of surrounding farmland situated close to the so-called M4 corridor. The decision of the IDA was made known on 23 November 2012.

The validity of the decision was subsequently challenged by way of judicial review proceedings in the High Court last June (*Thomas Reid v The Industrial Development Agency*). The applicant sought an order of *certiorari* quashing the IDA's decision and also challenged the constitutionality of the legislation underlying the decision, contending that it was in breach of section 3 of the *ECHR Act 2003*. This was the first time that the powers and procedures for compulsory purchase orders have been tested through the prism of European convention rights. The action failed on all counts.

I wish to register a complaint

Section 16 of the *Industrial Development Act 1986*, as amended, establishes that, for the purposes of providing or facilitating the provision of sites for the establishment, development or maintenance of an industrial undertaking, the IDA may, among other things, acquire land either by agreement or compulsorily, where it considers industrial development will or is likely to occur. This is not a stand-alone provision: the IDA must also be

FAST FACTS

- The relevant provisions relating to the IDA's compulsory purchase order powers have been invoked for the first time, in a decision that was challenged in the High Court
- The applicant sought an order of *certiorari* quashing the IDA's decision and challenged the constitutionality of the legislation underlying the decision
- The case is the first where the *European Convention on Human Rights* has been used to test the powers and procedures for compulsory purchase orders

satisfied that such an industrial undertaking conforms, or will conform, to the criteria set out either in section 21(3) and (4) or section 25(2) of the 1986 act.

While section 21(3) criteria include, for example, that the industrial undertaking will produce products for world markets and, in doing so, utilise local materials or agricultural products, or produce advanced technological products, or that it is a service industry, section 21(4) criteria in essence provides that the industrial undertaking must satisfy the IDA that the proposed investment is commercially viable and will provide new employment or maintain employment in the State. Section 25(2) sets out similar conditions for an undertaking involving the service industry.

Life's gristle

Unlike section 213 of the *Planning and Development Act 2000*, which provides that, in the event of local authorities seeking to compulsorily acquire land, An Bord Pleanála will hear arguments for the acquisition as an independent arbiter and will then either agree or refuse to grant a compulsory purchase order, the powers of the IDA under the 1986 act are considerably more robust. The IDA only has to satisfy itself that an acquisition is necessary in order to proceed with purchase. Once it decides to acquire the lands, it finalises its decision in a 'record of decision' and then notifies the party concerned.

"The powers of the IDA under the 1986 act are considerably more robust. The IDA only has to satisfy itself that an acquisition is necessary in order to proceed with purchase."

In this case, the applicant was approached in 2011 with a view to selling his house and lands. Since he was not prepared to enter into negotiation, the IDA entered into the compulsory purchase process and served a notice of intention to acquire in March 2012. An inquiry was then established to look into the proposed acquisition by the IDA. Headed up by a senior counsel, the inquiry ran for five days and gave the applicant the opportunity to make representations. Two preliminary hearings were held in June 2012, and the substantive hearing then took place in July 2012, where the applicant was given the opportunity to raise objections and made representations. Notwithstanding such hearings, the IDA proceeded with its compulsory acquisition of the applicant's house and lands.

Oh, it makes me mad

In *Reid v IDA*, the applicant submitted that there should be positive evidence that there was going to be a development on the land before the IDA could move to acquire land compulsorily pursuant to section 16 of the 1986 act. Section 25(2) had no application in relation to this power under the 1986 act, he argued, but in order to satisfy the criteria set out under section 21, the IDA had to know that an industrial undertaking was going to occupy the land purchased. The applicant drew an analogy specifically with section 213(3) of the 2000 act, which deals with acquisition of land by local authorities for future use: if the local authority has no purpose in mind at the time of purchase, it can buy land only by agreement – not compulsorily.

The court responded that, on plain reading, the 1986 act was to be interpreted as meaning that industrial development would likely occur as a result of compulsory purchase – not the other way round. The inclusion of the word 'likely' supported the case that the power was not limited to circumstances where a particular enterprise had been identified. This interpretation supported the broader meaning of the 1986 act and the strategy underlying it, the court held, in that it allowed the IDA to compete successfully in the international marketplace to attract industrial enterprise to Ireland.

Always look on the bright side of life

The applicant's second argument was that the IDA had failed to evaluate the site before deciding to acquire it. The site is adjacent to Carton House and Rye Valley lies to its north, which is designated a candidate special area of conservation. If the IDA had obtained expert studies indicating the possibility of obtaining zoning, as well as ecology and conservation reports indicating there were no problems in advancing towards acquisition, so be it, he argued, but the evidence relied upon was not sufficient to support the idea that development was likely to occur.

In reply, Mr Justice Hedigan said that the IDA was an expert body nationally to determine whether industrial development is likely or not and that it must be a function of its own enterprise. For the court to intervene, it must be satisfied that there was no relevant material before the IDA's board when it made its decision to acquire these lands, per *O'Keeffe v An Bord Pleanála*. Furthermore, section 16 and section 25 required substantial criteria to be fulfilled by the IDA before it could exercise its power of compulsory purchase.

The third argument raised by the applicant was that the decision of the IDA was vitiated by objective bias. This was based on the fact that the chairman of the IDA had taken part in the original decision to acquire the site based on a selection process that had been carried out by a consulting firm of which he was a non-executive director.

In response to this argument, the court rehearsed the test for objective bias: the perception of likelihood of bias on the part of the reasonable person, as opposed to actual bias, as set out in *Bula v Tara Mines*. Applying the test to the facts in this case, the applicant's argument failed.

Ello, ello, ello!

The fourth argument grounding the applicant's submission was that the IDA had failed to give reasons for its decision. Among the case law he relied upon was *Meadows*

Rye Valley: a special ara of conservation

v Minister for Justice, where Murray J had commented: "An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken."

Hedigan J held that, in light of all steps taken by the IDA since 2011, including a hearing where the applicant was fully represented, he had to have been fully aware of the reasons behind the decision and furthermore he could not establish any prejudice caused by the form of the decision.

Flying circus

Central to the applicant's challenge was that the particular legislation provisions of the 1986 act were constitutionally frail. The IDA's power to compulsorily purchase sites in such a manner breached articles 40.3, 40.5 and 43 of the Constitution by allowing the IDA to satisfy itself as to orders being made without judicial oversight. With no independent arbiter, this made the IDA a judge in its own cause, thus offending against the principle *nemo judex in causa sua*. The legislation should provide for a legitimate contradictor, the applicant submitted.

The applicant argued that, although the Supreme Court in *O'Brien v Bord na Mona* in 1983 had held that Bord na Mona's power to compulsorily acquire bog land was constitutional because the decision to exercise it was administrative and not judicial, and that the principle of *nemo judex in causa sua* did not prevent Bord na Mona from making a decision to purchase compulsorily, and so there was need for a third party arbiter, the Oireachtas had progressed since then. The applicant pointed to the 2000 act, which makes an independent arbiter mandatory for local authorities where the issue of compulsory purchase orders arise.

In this case, the complete removal of the applicant's home was at stake, he argued. The fact that he might later be able to appeal or object to any planning application was inadequate, because at that stage he would no longer be in possession of his home.

> ***"In weighing the national interest against that of the applicant, the national interest had to outweigh the individual interest, notwithstanding the heavy loss that was to be borne by the applicant"***

The court responded by first noting that the onus lay on the applicant to rebut the presumption of constitutionality. The power of the State to acquire land compulsorily had been put beyond doubt in *O'Brien* and that was not in question here. It was the lack of an independent arbiter to evaluate the decision that was the issue.

The court noted that the *O'Brien* judgment had in fact addressed this very issue. The *Turf Development Act 1946* gave Bord na Mona the power to acquire compulsorily bog land if it was in the common good, noted O'Higgins CJ in *O'Brien*. Since this was deemed an administrative function, the obligation on Bord na Mona was to act fairly and properly, but not necessarily be inhibited from deciding whether to acquire bogland or not. The task of acquiring land for industrial development was also in the common good,

Law Society of Ireland

DIPLOMA CENTRE

Continuing professional education for the way you learn

onsite, online or on the move…

SPRING 2014 PROGRAMME	START DATE	FEE
Diploma in Employment Law *(iPad)*	Friday 28 February	€2,520
Diploma in In-House Practice	Wednesday 19 March	€2,200
Certificate in Data Protection Practice *(online)*	Thursday 30 January	€1,200
Certificate in Conveyancing and Property Law *(new)*	Tuesday 11 February	€1,200
Certificate in Pension Law and Practice *(new)*	Thursday 13 February	€1,200
Certificate in Child Law	Wednesday 5 March	€1,200
Certificate in Commercial Contracts *(iPad)*	Thursday 20 March	€1,520

Contact details
Email: diplomateam@lawsociety.ie Tel: 01 672 4802 Fax: 01 672 4803 Web: www.lawsociety.ie/diplomas

held Hedigan J, and since the function of the IDA was similar to that of Bord na Mona's under their respective legislative powers, the IDA was also exercising an administrative function, not a judicial one. Therefore, the IDA had an obligation to act with due fairness, with consideration for the rights of the applicant, and from proper motives, and if it did this the court could not intervene. No right of appeal from the decision to acquire nor the absence of an external authority to confirm such a decision by the IDA therefore constituted a breach of the applicant's constitutional rights, reasoned Mr Justice Hedigan.

The court concluded that the IDA was fully aware and fully committed to the fairest possible procedures, which had allowed the applicant to test the IDA's rationale for acquiring the land and also to propose his own alternatives. The obligation to act fairly encompassed an obligation to act proportionately. This meant, the judge noted, that the IDA had to act for a legitimate purpose, that any interference with rights had to be the minimum necessary to achieve its purpose, and it must act in accordance with law. On the evidence before it, the court held that the IDA did act fairly and for a legitimate purpose and that the interference with the applicant's rights to his property was the minimum necessary to achieve its purpose. As to whether those actions were proportionate, Hedigan J left that issue to be dealt with when addressing the applicant's final argument: that the IDA's powers and procedures under the 1986 act were in breach of his rights under the ECHR.

> **"Compulsory acquisition of the applicant's lands was, therefore, proportionate to the objective sought"**

Nobody expects the Spanish Inquisition

Section 3 of the *ECHR Act 2003* provides that, subject to any statutory provision or rule of law, every organ of state shall perform its functions in a manner compatible with Ireland's obligations under the provisions of the ECHR. In his final submission, the applicant contended that the decision to compulsorily acquire his lands was subject to the requirements of section 3. He asserted that, in circumstances where a person is to be deprived of his home, article 8 of the ECHR requires that he has, in principle, the opportunity to have the proportionality and reasonableness of the decision-making and the decision determined by an independent tribunal. In support of this, the court was referred to a number of ECHR cases, namely *Yordana v Bulgaria*, *Bjedov v Croatia*, and *Buckland v United Kingdom*.

In response to this submission, the court agreed that the IDA's decision-making process could not be regarded as an independent process in the context of article 8 issues, as envisaged by the ECHR, because the IDA had its own particular interest in its perception of which land was most suitable in light of its industrial development policy.

As to whether a court of judicial review had the jurisdiction to consider the reasonableness and proportionality of the IDA's powers and procedures to purchase compulsorily, Hedigan J made two observations: first, following *O'Brien*, the IDA was required to act with due fairness of procedure for the rights of the applicant, and only in the event of not doing so could the court intervene.

Secondly, he noted that the Supreme Court in *Meadows* had held that the proportionality of any decision that interfered with constitutional rights was something a court of judicial review could examine. Drawing on the approach taken in *Meadows* in assessing the proportionality of decisions, Hedigan J posited the same questions referred to in *Meadows*, albeit in the context of compulsory purchase powers:

1) Is the compulsory purchase provided for by law and thus connected to the objective of the legislation? Is it arbitrary, unfair or based on irrational considerations?
2) Are the applicant's rights as little impaired as possible?
3) Are the effects on his rights proportionate to the objective?

The court answered in the affirmative as to all considerations that arose in the first question. The fact that the lands, in the view of the IDA, had been most suited for the purpose was a value judgement. However, it was a value judgement of an expert body and, in that respect, the court could not interfere, save for irrationality, which was plainly not present. The decision had been made on the basis of ample evidence for and against; therefore, it was neither arbitrary nor unfair.

In relation to the second question, Hedigan J held that the rights of the applicant had been considered. He noted that, as an arrangement had been made to defer taking the house for a transitional period to be agreed, the IDA was attempting to minimise the impact on the applicant's rights in light of the ultimate objective, which was to take the lands. This was the most that could practicably be done to minimise the effects of the compulsory purchase.

Thirdly, the court noted that it had to consider the proportionality of the purchase. It acknowledged the significance of the house being a family home and the fact that it was a historic and protected structure. It noted that the applicant was to be fairly compensated. The unlikelihood of industrial development as alleged by the applicant was not something the court could consider, since the term 'likely' was the criterion, and that was something within the expertise of the IDA to assess. However, on the basis of what had been put before it, the court could not intervene in the IDA's decision.

Ministry of silly walks

Hedigan J then went on to assess the Irish economy in terms of the importance of attracting foreign direct investment, noting that, in order to do this, the IDA had to compete at the highest level internationally. In weighing the national interest against that of the applicant, the court concluded that the national interest had to outweigh the individual interest, notwithstanding the heavy loss that was to be borne by the applicant. Compulsory acquisition of the applicant's lands was, therefore, proportionate to the objective sought, having taken into account his property rights and article 8 ECHR rights.

Costs were not awarded, on the basis that this was the first time an examination of compulsory purchase powers pursuant to section 16 of the *Industrial Development Act 1986* had come before the courts. The case has been appealed to the Supreme Court. G

LOOK IT UP

Cases:

- *Bjedov v Croatia* (ECtHR, application no 42150/09)
- *Buckland v United Kingdom* (ECtHR, application no 40060/08)
- *Bula Ltd v Tara Mines Ltd & Ors (No 6)* 4 IR 412
- *Meadows v Minister for Justice, Equality and Law Reform* [2010] 2 IR 701; [2010] IESC 3
- *O'Brien v Bord na Mona* [1983] IR 255
- *O'Keeffe v An Bord Pleanála* [1993] 1 IR 39
- *Thomas Reid v The Industrial Development Agency (Ireland), Ireland and Attorney General* [2013] no 16 JR
- *Yordanova v Bulgaria* (ECtHR, application no 25446/06)

Legislation:

- *ECHR Act 2003*
- *Industrial Development Act 1986*
- *Planning and Development Act 2000*
- *Turf Development Act 1946*

A Shaw THING

Mark McDermott is editor of the Law Society Gazette

John P Shaw, the Law Society's new president, talks to Mark McDermott about the balancing act between regulation and representation, the removal of complaints handling from the Society, and the Troika's overinflated opinions on legal costs

John P Shaw and Pope Francis may appear to be poles apart – but they do share something in common. It's no secret that Pope Francis is trying to make the Catholic Church less Vatican-centric – and it could be argued that new Law Society President John Shaw is seeking to make his Society somewhat less Blackhall-centric. He laughs at the analogy: "That's the first time I've ever been compared with Francis – and probably the last!" He's anxious to correct my initial observation. "I don't think the focus during my presidential year is so much about making the Society less Blackhall-centric, but more about communicating everything about the Society that's relevant and available to our members. This is something that we will definitely address during my term."

Having served for 15 years on Council, John knows the organisation inside out. So what does he think of the Society? Is it vibrant or a dinosaur?

"I've always found it to be dynamic. There's a huge amount going on. I mean, any day you come in here, there's something relevant or interesting going on. People come here on a daily basis to learn, to participate, to contribute to what's going on.

"We're facing a largely hostile media that feels it's not good news to promote solicitors. It's newsworthy if a solicitor does something wrong, but it's certainly not going to sell newspapers if you are promoting solicitors in a positive light"

"One of the biggest problems we face, however, is communicating to the membership how much actually goes on at Blackhall Place. And having chaired the Future of the Law Society Task Force for the last year-and-a-half and delivered our report, I see that as one of our biggest challenges.

"There's an element of *re*-presenting what we do – presenting it better to the members. I'm interested in looking at the level of service offered by the Society, which perhaps needs tweaking. Everybody who comes here – be it a member, a student or member of the general public – should be treated as any client would expect to be treated in a solicitor's office. It's a question of getting that right."

What does 'better' mean?

Referring to the Millward Brown survey that was carried out at the behest of the Future of the Law Society Task Force, he focuses on one of its chief findings – that the membership considered the Society to be too focused on the regulation of the profession at the expense of representation.

"I think everybody is on board in terms of saying 'Let's get better representation'. It's just that I'm tired of hearing it. When you ask people who say that they

FAST FACTS

- Rebalancing the mix of regulation and representation
- One of the biggest challenges facing the Society is how to effectively communicate to members what Blackhall Place does for them
- Surprising outcomes from the Future of the Law Society Task Force report
- His fears that removing complaints handling from the Society will see it suffer as a result
- On the Troika's opinion that legal costs in Ireland are inflated

want better representation, what does 'better' mean? The survey indicated that there were no new ideas as to how better representation could be achieved."

When asked about what *he* understands as 'better representation', he responds: "It's a combination of communicating to the members what the Society is doing on their behalf. For instance, the facilities we have here and that members can avail of – the excellent committees, the library, member services, career support – all of the help that is at hand. The Law Society should be the first port of call for members who want to improve their legal skills or to seek help with solving problems.

"I'd like to see the committees – and I hope I'm not being unfair here – becoming more responsive in alerting their services to our members. I'd like to see a service delivery programme being implemented also, to include response times and a written complaints procedure. I believe that when you put something like that in place, even the very fact that it's in place says something about what you're trying to achieve for people. And I include the Law School students in this. I would include all of the members, members of the public and complainants who contact us, to ensure that all are treated in a proper fashion."

Particular outcome?

Did he have any preconceived notions about what the Future of the Law Society Task Force Report would discover – and did anything surprise him?

"If I had any preconceived ideas, it wasn't what we ended up with. That, in itself, was certainly an educational process for me. I thought the drive towards reducing costs was going to be a major issue with the membership at the time, but it wasn't. Members were more concerned with the quality of representation and the manner in which they were being represented. That came across everywhere we went.

"Neither was it about the practising certificate fee – perhaps 4% or 5% raised that in the quantitative survey – which was quite surprising. A few people had been making a lot of noise about costs, but that didn't turn out to be the overall view of those who responded. In the face-to-face meetings we had with the bar associations for over two months, the outcome was to produce a list of matters that they felt needed to be addressed. Although we had about 7,500 answers available to us, not one new idea came out. Not one.

"Now, while this was great from a verification point of view, it was somewhat disappointing from an enlightenment perspective. What it said to us was that the model wasn't broken and so, if it wasn't broken, then we simply needed to tweak it and address our members' desires to improve representation.

"A lot of money is spent by the Society on regulation – quite rightly so – and I am a proponent of good regulation. I agree with the attitude that the best representation you can give the profession is good regulation. I don't believe that the Society has been in any way at fault in relation to regulation, and particularly the handling of complaints."

John is in a strong position to comment on how complaints are handled by the Law Society – he was a member of the Complaints and Client Relations Committee for six years and chaired it for two.

"The public takes the view, the minister takes a view that complaints-handling should be removed from the Society. So be it. There's nothing we can do in terms of the perception. I am confident when I say, however, that the actual handling of complaints will not be improved by the transfer of the function to another authority. I'm pretty sure of that, due to the rigour with which current complaints are handled by the Society. I disagree that by removing complaints handling from within this organisation that it's going to improve dramatically. I just don't see that happening. The perception will be that it has improved, but I believe that actual complaints handling is likely to suffer. Is that in the interest of the public? I don't think so."

"I am confident when I say, however, that the actual handling of complaints will not be improved by the transfer of the function to another authority. I'm pretty sure of that, due to the rigour with which current complaints are handled by the Society"

Disparity

He points out that around €10 to €11 million is spent on regulation by the Society – and another €3 million on representation.

"If you take the result of the Millward Brown survey on board, I think the profession was quite surprised at the disparity of the ratio between the two. Clearly, we have been focusing on regulation, perhaps at the cost and expense of representation, whereby members of the profession feel that they are not being as sturdily, or forcefully, represented as they might like.

"If you think about it, members want biased representation, which is extremely difficult to achieve! A law society, however, can't solely be on the side of its members. There's a certain train of thought that what's in the public interest is in the members' interest – and it's not always easy to get that across.

"Also, it's not that easy just to go out and produce what our members would regard as 'good representation'. We're facing a largely hostile media that feels it's not good news to promote solicitors. It's newsworthy if a solicitor does something wrong, but it's certainly not going to sell newspapers if you are promoting solicitors in a positive light. That will probably be one of the functions of the new director of representation and member services, Teri Kelly. She has represented IBRC, the successor to Anglo Irish Bank. So if she can sell Anglo as a good news story, she can sell anybody as a good news story!"

In terms of the rebalancing exercise then, how much will be spent on representation? "The promise we've made is that we'll

SLICE OF LIFE

John P Shaw began his presidential term on 8 November. He is a partner in Michael Houlihan & Partners in Ennis, Co Clare.

From Dundalk, he is the son of Austin and Kathleen Shaw and comes from a family of eight siblings. He is married to Mary Nolan, also a solicitor, and they have three daughters, Hannah, Ellen and Julie.

He graduated with a BCL from UCD. Apprenticed to Pearts, John qualified as a solicitor in 1984. Since then, he has practised in Ennis, where he is county solicitor to Clare County Council, being contracted to them by Houlihan's. He specialises in planning, environmental and litigation matters.

John became a Council member in 1998. He has served on many of the Society's most senior committees, including the Regulation of Practice, the Complaints and Client Relations, the Professional Indemnity Insurance, and the Finance Committees.

He is the current chairman of the Future of the Law Society Task Force, which issued its report earlier this year and which will significantly determine the future direction of the Society in the years ahead.

do it within budget and within the current practising certificate fee structure. We have the new director in place. There'll be a small increase – probably less than 25% of the €3 million that's currently being spent on representation. This is about turning the ship to try and rebalance the focus to some degree. If we can start to redirect it, then it will ultimately carry its own momentum in the right direction."

Matter of public record

John is already on public record for expressing very strong views on the Troika's opinion that legal costs in Ireland are inflated. In fact, he believes that legal costs can't get any cheaper, citing the cut-throat competition that currently exists in the marketplace.

"The market is dictating," he says, "and it's starting to hurt. In my own town, Ennis, four law firms have closed in the past 15 months. You can't tell me that legal costs are too high, that solicitors are overcharging, or that they aren't feeling the sharp effects of competition.

"Also, the Government's own public procurement process has seen a reduction of over 50% in the value of public contracts compared with what they were five years ago."

> ***"You can't tell me that legal costs are too high, that solicitors are overcharging, or that they aren't feeling the sharp effects of competition"***

John adds that criminal legal aid fees have been reduced to such a degree that it is now extremely difficult for legal aid practitioners to continue to run viable practices solely on the proceeds of their legal aid work. "The top legal firms in the country might be doing well, but rural practitioners are struggling to survive now. The bottom has fallen out of conveyancing, family law and probate – traditionally the bread-and-butter work of rural practices."

Impressive response

Does anything scare him about the challenges he'll be facing during his presidential year?

"Maybe it's a sign of ignorance, but no. The main item that's going to come up is the implementation of the *Legal Services Regulation Bill*. I didn't chair that particular Society task force but I've read all the submissions that have been made. Certainly, the substantive response has been impressive from the Society. Will it be enacted during my year? Who knows?"

What does taking on the office of president mean to him?

"I think that anybody who gets involved in the Council presumably does so to make a difference. I've been fortunate. Put it this way: I got the driving licence without having to do the test, courtesy of the then Minister for Transport; I got into the profession without doing the FE1s; and I got the pleasure and privilege of chairing a task force looking at the future of the profession for a year-and-a-half before I became president. So I've had a lead-in during that time, thinking about and listening to people talking about what should be done within the profession.

"At times, I might feel a bit fazed by it, but there's no point in worrying about issues that are out of your control."

UNIVERSITY OF LIFE

College life began for John in 1976 when he took Commerce in UCD – specifically Management Information Systems. "That bamboozled me! I thought I understood it but decided 'this isn't for me'. So I switched over to law – I had done reasonably well in business law in accountancy – and it progressed from there."

He completed his law degree in 1980 and headed for Blackhall Place.

He had met his wife-to-be, Mary, during their second year in UCD. They started going out together, a relationship that continued into Blackhall Place and beyond. Impressively, he still remembers their first date – 16 May 1979. (Who says that men don't remember birthdays and wedding anniversaries?)

John was one of the first batch of trainee solicitors to operate under the new traineeship scheme, which had just been introduced. He was sent to Pearts to get practical experience.

During the daytime, John did court deliveries and attended the Four Courts. At the weekends, he worked in the Swiss Chalet in Stillorgan. Having received their parchments in 1983, John and Mary headed for Atlantic City in the US on a J1 visa. All their legal expertise paid off – John took to working as a chef while Mary waitressed in another restaurant!

"When applying for the job, the restaurant owner asked me to cut three steaks – of 13, 13-and-a-half, and 14 ounces. My dad was a butcher and I had always worked in the shop at the weekends, so it was an easy ask. I was hired. It was as simple as that. I also told them that I had worked in the Swiss Chalet Restaurant – as a pot-washer – though I didn't tell them that!"

After four months, they travelled to New York. "At the time, I was offered $37,500 to stay as manager. Going home, I would be working for IR£7,000 as a solicitor! We had a brief discussion overlooking a cliff outside San Francisco – Mary won! I don't think either of us was all that enthusiastic about starting work as lawyers – although we'd spent a lot of time qualifying. I think it was probably the call of home in many ways. Mary also felt that I was becoming too American too quickly!"

Is there anything he can bring to his presidential role from his experience in the US and the skills he learned at his father's side as a butcher?

"I still have a steak knife!" he jokes.

Succession SLALOM

Aileen Keogan is a solicitor, tax consultant, and the author of the Law of CAT *(ITI annual publication) and* The Law and Taxation of Trusts *(Tottels 2007)*

Most of the *'Brussels IV' Regulation on Succession Law* will not apply until August 2015. It is relevant now, however, for making wills that could come into effect after that. Aileen Keogan tackles the black slopes of succession planning

As Irish solicitors, we can advise on Irish succession law while being conscious that the law of succession and the method of administering estates can be significantly different in other jurisdictions.

Does this matter to us? It does if a deceased has cross-border connections, whether he had personal connections abroad or had assets abroad.

When cross-border issues arise in determining succession law, private international law (PIL) rules for each country are applied. These are known as conflict-of-law rules. Unfortunately, PIL rules differ between jurisdictions. Some, like Ireland, use the concept of domicile as the basis of determining which jurisdiction's succession law applies. Others use the concept of habitual residence, or the deceased's residence, or the deceased's nationality.

Some, like Ireland, distinguish between moveables and immoveables – others do not. Even if a state recognises the law of another state, it may only recognise the internal and not the PIL of that state. The courts in one state might not recognise a decision made by the court of another state, or might consider the other court to be more appropriate, yet the other court might refuse to take jurisdiction.

The EU *Regulation on Succession Law* (no 650/2012), also known as '*Brussels IV*', seeks to resolve the concern that, to date, different member states of the European Union apply different PIL conflict-of-law rules for succession purposes. Unfortunately though, it has created ambiguities of its own.

> ***"Unfortunately, it is not clear if Ireland, Britain and Denmark are considered to be a 'third state' under this part of the regulation. This leads to uncertainty in relation to the impact of the regulation on Ireland, Britain and Denmark"***

Moveable feast

The regulation seeks to apply a uniform system of recognition of succession laws broadly based on the habitual residence of the deceased, and with no distinction between moveables and immoveables. The regulation will govern the PIL for succession (testate and intestate) in the participating member states. All assets should, therefore, pass based on the succession laws of the member state in which the deceased was habitually resident.

Ireland, Britain and Denmark, however, have opted out of the regulation, somewhat frustrating its purpose. Nevertheless, the regulation is still very relevant for Irish practitioners because a testator can elect to choose the law of his nationality to apply to the succession of his assets, even if that state is not a participating state.

Therefore, it is possible for an Irish national to elect to apply Irish law for the succession of his assets, which will be binding on the EU signatory members of the regulation.

While the regulation came into force on 17 August 2012, most of it will not apply until 17 August 2015. Notwithstanding this delay, the regulation is relevant for practitioners now, as clients have the opportunity to

Slippery slope...

FAST FACTS

- When cross-border issues arise in determining succession law, private international law (PIL) rules for each country are applied
- The EU *Regulation on Succession Law* seeks to resolve the concern that to date different member states apply different PIL conflict of law rules for succession purposes
- When dealing with cross-border estates, care will need to be taken to account for the *Succession Regulation*, as it will affect Irish practitioners in succession planning

POSSIBLE EFFECTS ON IRISH PRIVATE INTERNATIONAL LAW

SCENARIO 1

Deceased dies habitually resident in Ireland holding a French domicile and nationality and holding French assets, both moveable and immoveable. No choice of law. Ireland applies Irish PIL so that the *lex domicilii* (French) applies to the moveables and the *lex situs* (French) to the immoveables.

French law, however, applies Irish law to all assets under the habitual residence rules. If Ireland is a third state under the regulation, France would accept the *renvoi* (see page 25) to it under Irish PIL, and French succession law would apply to all the assets. If Ireland is not a third state under the regulation, the internal (not PIL) laws of Ireland should apply, so that Irish law would apply to all the assets.

This doubt should be reduced if the deceased elected to apply the internal law of his nationality, where France would then apply its law to the whole estate.

SCENARIO 2

Deceased dies an Irish national, habitually resident and domiciled in Germany. Irish law will apply to immoveables situate in Ireland, as Ireland is not a party to the regulation.

However, Germany will account for that division in determining the administration of the assets worldwide under German law – that is, the assets will be taken into account in dividing up the remaining estate under German law.

SCENARIO 3

Deceased dies domiciled and habitually resident in Ireland, an Irish national holding Spanish immoveable property. Without a choice of law under Irish PIL rules, the Irish courts would apply the *lex situs* and seek for Spanish law to apply.

Assuming Ireland is a third state, Spain must accept the PIL of Ireland, as the deceased was habitually resident there – but this is not without doubt. Prior to the regulation applying, Ireland would have considered accepting the *renvoi* from Spain, and so the regulation appears to provide an opposite outcome than before. A choice of Irish law would be helpful here, whereby the choice would be for the Irish internal law to apply to allow Ireland accept jurisdiction over Spanish immoveables.

Local Property Tax Exemption for Owner Occupiers of Properties Purchased in 2013

Section 8 of the Finance (Local Property Tax) Act 2012 provides for an exemption for buyers of a residential property in 2013, whether new or second-hand, where the property is occupied as the buyer's sole or main residence.

It was intended that this exemption would only apply to first time buyers in 2013, however, the legislation does not have this effect. The exemption applies to any owner occupier who purchases a property in 2013.

Revenue is currently identifying property owners who have paid LPT and may be due a refund. We will be in contact with them as soon as possible.

You should advise your clients that, in order to avail of the exemption, property sales must be completed i.e. purchaser actually entitled to occupy the property, before 1 January 2014.

www.revenue.ie LPT Helpline 1890 200 255

Local Property Tax
LPT

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

www.revenue.ie

IRISH CORPORATE LAW FORUM

Preparing Private Companies for the Companies Bill: New Company Forms and Drafting Company Constitutions

Friday 7 February 2014, Dublin Castle
3 CPD Points

Expert practitioner panels and a practical scenario-driven format examining:

- Options and procedures for moving to new corporate forms
- Steps to be taken during the Transition Period
- Significance of the abolition of Table A model articles
- Drafting considerations for company constitutions

For more details and to book,
see **www.iclf.ie**

NOTICE

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
ALL THAT AND THOSE that plot or piece of ground situate on the South side of Eyre Street in the town of Newbridge Barony of Connell and County of Kildare more commonly known as 6 Lower Eyre Street, Newbridge, Co. Kildare.

Take Notice that Maurizio Riozzi

Intends to submit an Application to the County Registrar for the County of Kildare for acquisition of the Freehold Interest in the aforesaid properties and any party asserting that they hold a Superior Interest in the aforesaid premises (or any of them) are called upon to furnish evidence of Title to the aforementioned premises to the below named within 21 days from the date of this Notice.

In default of any 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 of Kildare for directions as may be appropriate on the basis that the persons beneficially entitled to the Superior Interest including the Freehold Reversion in each of the aforesaid premises are unknown or unascertained.

Dated the day of November 2013.

Signed: Patrick J. Farrell & Co.
Applicant/Solicitor for Applicant
Newbridge, Co. Kildare

make wills now that could come into effect on a death after 2015.

Why are conflicts of law relevant?

The determination of where a deceased's estate passes is relevant in determining:

- If forced heirship provisions are to apply,
- If the matrimonial regime or survivorship provisions under a joint tenancy is to be accounted for, and
- If the clawback provisions for gifts made during a deceased person's lifetime is applicable.

'Forced heirship' is the term used where a state provides that specified persons automatically have rights to the succession of a portion of a deceased's estate, taking precedence over any will of the deceased. We are already familiar with the Irish fixed and discretionary based forced heirship provisions under section 111 of the *Succession Act 1965*, giving a spouse a right to elect to take a legal right share; and under section 117, which provides children with the right to claim for a share.

Succession should not be considered in isolation to matrimonial property regimes. Before applying any inheritance rules to the estate of a deceased, it is first necessary to determine exactly what the estate includes. This process includes consideration of the matrimonial property regime and joint tenancies where the asset may pass outside of the succession under matrimonial contract law or by survivorship.

Clawback provisions often feature in forced heirship regimes. These provide that, where a statutory heir is not able to received his correct share on the death of the deceased because the assets are eroded, assets given away during the deceased's lifetime can be brought back into account for the purposes of calculating the share of the statutory heir. We are familiar with this in Ireland under section 121 of the *Succession Act 1965*.

The regulation only deals with assets passing under a deceased person's will or intestacy, and so assets passing by survivorship are still dealt with under local law. Nor does the regulation affect the taxation that may arise in any member state on the death of a person (the EU is currently reviewing harmonisation of inheritance tax, but this is still at an early stage). Nonetheless, the impact of the regulation on where assets are to pass will inevitably impact on the tax payable.

Choice of law

When it comes to ascertaining which law should apply to the estate of a deceased, different jurisdictions look to different connecting factors and apply their PIL rules accordingly. The connecting factor for Ireland is the domicile of the deceased. Irish law provides that the *lex domicilii* determines the succession of moveable property; whereas the succession of immoveable property is determined by the law of the country where the property is situate (the *lex situs*). In contrast, the regulation provides that, between the participating member states generally, the habitual residence of the deceased will determine the forum that applies the succession law of that deceased.

However, the regulation recognises that a person may wish the law of his nationality to apply, even if the person has acquired a habitual residence in another state. The effect of a choice of law is that the internal law of the nationality applies and not its PIL, and so the national court should accept jurisdiction. Irish practitioners with Irish national clients who have cross-border issues should therefore consider whether to elect to apply Irish law to the entire estate to avoid foreign forced heirship provisions to apply in contrast (or possibly in addition) to Irish forced heirship provisions.

> ***"The regulation is still very relevant for Irish practitioners because a testator can elect to choose the law of his nationality to apply to the succession of his assets, even if that state is not a participating state"***

Doctrine of *renvoi*

The doctrine of *renvoi* occurs in the process by which a court adopts the rules of a foreign jurisdiction with respect to any conflict of laws that arises. In some instances, the rules of the foreign state might refer the matter back ('*renvoi*') to the law of the forum where the case is being heard or on to another jurisdiction.

Where Irish courts have jurisdiction – for example, the deceased died domiciled in Ireland or there are Irish immoveable assets – the Irish courts, as the forum court, will apply Irish PIL in determining whether Irish law or foreign law should apply.

When, following the application of the Irish PIL rules, it is decided that a foreign law governs the matter, the decision is made by the Irish court as to whether to apply the law of the foreign country and send the matter to that jurisdiction. However, where the Irish court applies the whole of the law of the foreign country, it also should apply that country's PIL. In such a case, the foreign country's rules of conflict of laws may refer the matter back (*renvoi*) to the law of Ireland. If so, the Irish courts must decide whether to accept the *renvoi* and so apply Irish internal law.

Under the regulation, *renvoi* is abolished between participating member states. If the applicable law is that of a 'third state', the PIL rules of that third state are included, insofar as they make a *renvoi* to the law of a participating member state or to the law of another third state.

Unfortunately, it is not clear if Ireland, Britain and Denmark are considered to be a 'third state' under this part of the regulation. This leads to uncertainty in relation to the impact of the regulation on Ireland, Britain and Denmark.

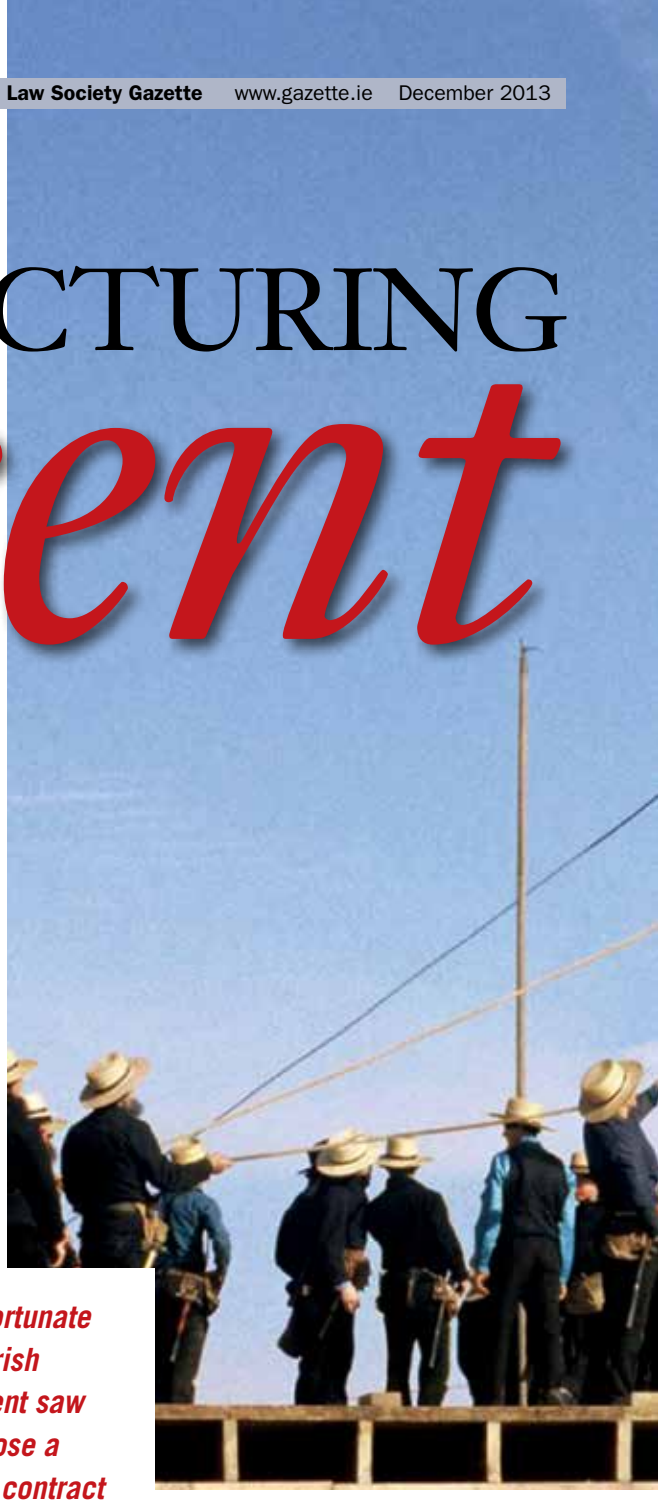
Succession planning

When dealing with cross-border estates, care will need to be taken to account for the *Succession Regulation*, even though Ireland is not a party to it, as it will affect Irish practitioners in succession planning. With careful planning and the consideration of the use of the choice of law based on nationality, there may be opportunities to minimise complications later. A valid choice of law now will be effective in 2015. G

MANUFACTURING Consent

The *Construction Contracts Act 2013* will apply after such day as the Minister for Public Expenditure and Reform appoints. A number of steps must first be taken by Government before then however, as Anthony Hussey points out

Anthony Hussey is a member of the Alternative Disputes Resolution Committee and is a partner in Hussey Fraser



The *Construction Contracts Act 2013* gives statutory force to adjudication in relation to disputes in the construction industry. Adjudication requires disputes to be resolved within 28 days of the appointment of the adjudicator. The essence of adjudication is that, not only does it require that disputes be resolved extremely quickly, but the adjudicator's determination is implemented immediately. Therefore, if the adjudicator determines that a sum of money is payable by one party to the other, that sum of money must be paid immediately – notwithstanding that the losing party is entitled to have the dispute determined finally by arbitration or litigation (depending on the terms of the contract).

Rough justice

There is no limit on the complexity of a dispute that can be referred to adjudication. The requirement that the dispute be dealt with very quickly of necessity carries the risk of rough justice and of mistakes being made.

The courts in England have recognised that, if the system is to work, the courts must enforce the adjudicator's award, even where it is clear that mistakes have been made by the adjudicator. In the case of *Bouygues UK Limited v Dahl-Jensen (UK) Limited* ([1999] All ER (D) 1281) an obvious mistake on the part of the adjudicator led to a determination being made in favour of the wrong party. Nonetheless, the court held the determination to be valid.

Dyson J in that case stated that it is "inherent in the scheme that injustices will occur because, from time to time, adjudicators will make mistakes. Sometimes, those mistakes will be glaringly obvious and disastrous in their consequences for the losing party."

"It is unfortunate that the Irish Government saw fit to impose a minimum contract value of €10,000 given that the primary purpose of the legislation was to help small sub-contractors"

It is to be noted that the Irish act, under section 6(13), does allow the adjudicator to correct his or her decision so as to remove a clerical or typographical error arising by accident or omission.

Opportunities for solicitors

The opportunities are twofold. Firstly, solicitors are eligible to be appointed as adjudicators. Secondly, solicitors will be very much involved in preparing disputes for, or defending disputes in, adjudication.

Section 8 of the act requires the minister to set up a panel of adjudicators. Those eligible to become

Once they cloned ZZ Top, there was no stopping them

adjudicators include solicitors, although the minister in making any appointment to the panel must "have regard to their experience and expertise in dispute resolution procedures under construction contracts". The minister may also appoint barristers, architects, engineers and surveyors to the panel.

The process of adjudication is more similar to fast-track arbitration than to any other form of dispute-resolution process. It is thought that, initially, those appointed to the panel will be arbitrators rather than conciliators or mediators, but that even arbitrators will have to receive some form of accreditation in adjudication prior to being appointed to the panel.

As of now, it is unclear as to how arbitrators and others will become accredited adjudicators. Obviously, some form of training will be required. The issue is whether the training will be provided by a central, recognised institution or whether each of the professions will provide its own training for its own members.

Whereas adjudication does offer new opportunities for solicitors, it will adversely affect the number of arbitrations that take place and, accordingly, will diminish another source of work for solicitors.

Adjudication has been available in Britain since 1998. As a result, the number of arbitrations in construction has been reduced

FAST FACTS

- **The *Construction Contracts Act 2013* gives statutory force to adjudication in relation to disputes in the construction industry**
- **Disputes that are adjudicated must be resolved within 28 days of the appointment of the adjudicator**
- **The adjudicator's determination must be implemented immediately**
- **There is no limit on the complexity of a dispute that can be referred to adjudication**
- **Solicitors are eligible to be appointed as adjudicators and will be very much involved in preparing disputes for, or defending disputes in, adjudication**

CHRISTMAS CARDS

IN AID OF THE SOLICITORS' BENEVOLENT ASSOCIATION

Card A
MADONNA AND CHILD
Antonio Correggio

This is an opportunity to support the work of the Solicitors' Benevolent Association, whose needs are particularly acute at Christmas time

GREETING PRINTED INSIDE EACH CARD:

With Best Wishes for Christmas and the New Year

Card B
THE CHRISTMAS EVE BALL

ORDER FORM

Firm: _____ Contact: _____

Address: _____

DX: _____ Tel: _____ Fax: _____

Each card sold in packets of 50 costing €125 (including overprinting of your firm's name). Minimum order 50 cards. Add €7.00 for postage and packaging for **each** packet of 50 cards.

I wish to order _____ pack(s) of card A @ €125, _____ pack(s) of card B @ €125. _____

Text to be overprinted: _____

SAMPLE OF OVERPRINTED TEXT WILL BE FAXED FOR CONFIRMATION BEFORE PRINTING.

I enclose cheque for € _____ payable to Santry Printing Ltd **(€132 per pack)**.

SEND ORDER FORM AND CHEQUE TO:
SBA Christmas Cards, Santry Printing Ltd, Unit 5, Lilimar Industrial Estate, Coolock Lane, Dublin 9. Tel: 842 6444. Contact: Paul.

BRITISH PROCEDURE

In Britain, about 70% of disputes resolved through adjudication are dealt with on a documents-only basis. In cases reviewed by the Glasgow Caledonian University, there was a full hearing of the issue in only 11.5% of cases.

Obviously, the more complex the dispute, the less likely it is that time will permit for a full hearing. It is to the credit of adjudicators in Britain that not only do they manage to deal with the disputes in a reasonably fair and thorough manner within the time allowed, but they usually provide reasoned determinations similar to an arbitrator's award.

by about 75%. In the vast majority of cases, the parties accept the adjudicator's decision on the basis that there is no reason to believe that they would fare any differently in arbitration. In any event, once the losing party pays the amount determined, the dynamics are altered and the desire for arbitration or litigation is diminished.

The British experience

An interesting study was carried out by the Glasgow Caledonian University as to the state of adjudication in Britain in 2011. In the early years, close to 2,000 appointments per annum were made. In recent years, this has dropped to about 1,200 appointments, according to the published statistics.

Part of the reason for the diminution in appointments is thought to be a change in culture. The British legislation (and indeed the Irish legislation) not only introduced adjudication, but also introduced provisions whereby contractors and subcontractors (in particular) must be paid promptly for the value of their work. It is not possible to contract out of these provisions.

Once contractors came to terms with the fact that they were not going to be able to delay the entitlement of their subcontractors to payment in full, they tended to meet their obligations and, accordingly, a very large element of the cause for construction disputes was removed. To a lesser extent, the same is true in relation to disputes between employers and main contractors.

Contracts under €10,000

There are a number of important differences between the British and Irish legislation. There is no minimum limit applicable in Britain. There is a minimum limit of €10,000 applicable in Ireland – that is, adjudication does not apply where the contract value is less than €10,000. Initially, the Irish legislation anticipated a minimum contract value of €200,000. This would have been quite absurd. In Britain, the majority of disputes involve sums of less than £100,000, and about 10% of all adjudications involve sums of less than £10,000. Given that the main purpose of the legislation is to improve cash flow by allowing for an immediate dispute resolution process in respect of monthly accounts, it is not surprising that the average value of disputes is relatively low.

"Whereas adjudication does offer new opportunities for solicitors, it will adversely affect the number of arbitrations that take place and, accordingly, will diminish another source of work for solicitors"

It is unfortunate that the Irish Government saw fit to impose a minimum contract value of €10,000, given that the primary purpose of the legislation was to help small subcontractors – although it is to be noted that, while the minimum contract value is €10,000, no minimum value is set for the size of the claim. Therefore, a claim for €2,000 is covered by the act where the contract value was in excess of €10,000. The converse is that a claim for €20,000 is not covered if the value of the contract out of which the claim arises was only €9,000.

The time limit

The primary time limit provided by the legislation is 28 days. However, this can be extended to 42 days with the consent of the party who made the referral, and by such longer period as the parties may agree. About 40% of determinations made in Britain are made within the 28-day period, with another 35% made within 42 days.

Payment disputes

Section 6(1) provides: "A party to a construction contract has the right to refer for adjudication in accordance with this section any dispute relating to payment arising under the construction contract (in this act referred to as a 'payment dispute')."

The legislation in Britain covers all disputes and is not confined to payment disputes. The definition provided by section 6(1) is extremely wide. Most commentators anticipate that it will be interpreted widely by the courts, to the extent that even extension-of-time claims will be capable of being referred to adjudication, provided, as is invariably the case, that some monetary compensation is sought in respect of the extension of time.

Almost all disputes under construction contracts are related to payment. Disputes can arise, however, in relation to other issues, such as the entitlement of the employer to appoint a particular person as the contract administrator in the event of the administrator appointed under the contract ceasing to act.

Constitutional implications

The courts in England have accepted that, provided that the principles of natural justice have been applied, and provided that the adjudicator has acted within jurisdiction, the adjudicator's awards must be upheld, even where this involves an obvious injustice to a party.

Without a written constitution, the courts had no option but to apply the law in this way, as this would appear to have been what was intended by Parliament. Whether the Irish courts would take the same approach is open to debate. The majority view appears to be that the courts will adopt the same attitude as the English courts, notwithstanding the Constitution, on the basis that the adjudicator's award is not final and can be overturned through litigation.

Bearing in mind that it may prove impossible to recover moneys paid on foot of an incorrect decision of an adjudicator, it could be argued that a decision of an adjudicator is potentially more final in its effect than decisions of the District or Circuit Courts. Payment is not made on foot of decisions of the District or Circuit Courts if decisions are appealed. G

WHO WILL BE APPOINTED?

It is anticipated that most disputes referred to adjudication will relate to the contractor's or subcontractor's monthly account. The sum in dispute in most cases will be relatively small and the exercise, in most cases, will largely be one of number crunching.

As monthly accounts are usually valued by quantity surveyors, it is likely that adjudicators on these issues will be quantity surveyors. In larger disputes, where legal and complex issues are likely to arise, persons with legal expertise (although not necessarily practising lawyers) are more likely to be appointed.

Value JUDGEMENTS

Maggie Armstrong is a journalist

In Britain, most solicitors' and insurance firms will only accept valuations from registered valuers. In Ireland, valuation can be more of a 'black art', leading to obvious problems down the road. Maggie Armstrong assesses her options

There is a memorable scene in the film *A Streetcar Named Desire*, when Stanley roots through his sister-in-law Blanche's "treasure chest of a pirate" to find out where the family money has gone: "Pearls! Ropes of them! What is this sister of yours, a deep-sea diver? Bracelets of solid gold, too ... I have an acquaintance that works in a jewellery store. I'll have him in here to make an appraisal of this." If Blanche had sought guidance as to the value of her assets, the tragic heroine might have been in a better position – and the same goes for us.

The recession has seen more and more people selling personal property assets to pay off debts, which means it's a good time to buy pieces of second-hand jewellery or art. But a careful purchaser might want that piece professionally valued before committing. Most jewellery and art valuations are undertaken for insurance purposes, but formal valuations are also required in handling probate matters, inheritance and gifts, and in some family division and divorce cases. The *Gazette* sought the views of jewellery and art valuers about what drives and underpins their work in the current difficult market.

Carol Clarke is a goldsmith and member of Britain's National Association of Goldsmiths' Institute of Registered Valuers (IRV). In her shop in the Royal Hibernian Way, she provides valuations of everything from jewellery with a sentimental or antiquity value, to jewellery boxes containing up to 60 pieces. "I'm just astounded by how much jewellery people have. Irish people like jewellery. It's seen as a nice item to pass down. In some nations in Asia, however, it's seen as bad luck!" she adds.

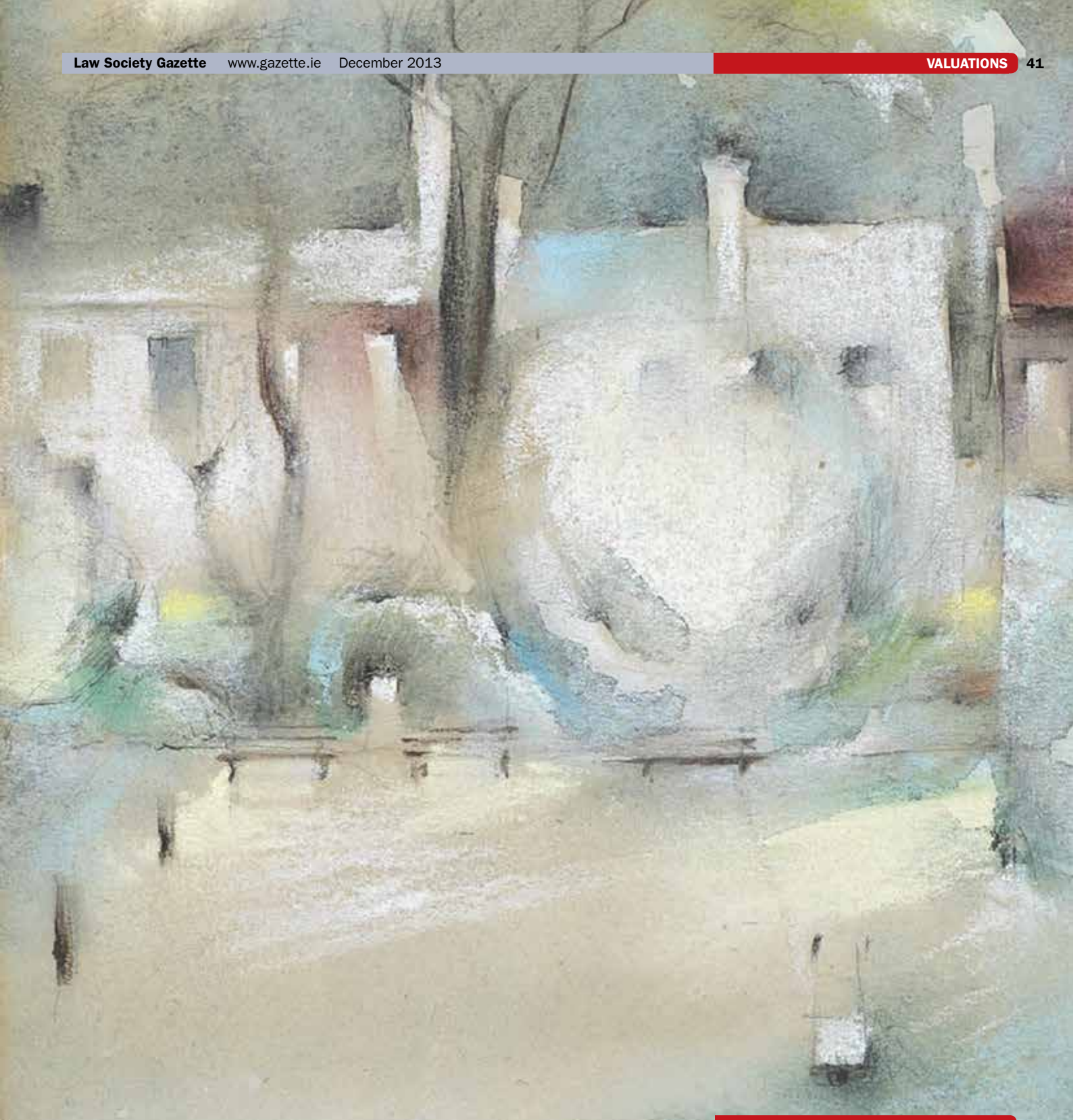
> ***"Most jewellery and art valuations are undertaken for insurance purposes, but formal valuations are also required in handling probate, inheritance and gifts, and in some family division and divorce cases"***

Clarke has seen an increasing number of women parting with their cherished diamond rings. "For people who have lost their businesses or their homes, jewellery might be the only strong asset they have left, so they're pushed to sell it. In the last two years, it's got worse."

People have to reduce their expectations if they want to sell but, says Clarke, "it's an excellent time to buy big pieces second-hand. A ring might be valued at €30,000 and we're selling it for €12,000."

Crusade

Clarke, who charges between €50 and €300 for the service, says she is on a "crusade" to have the valuation profession recognised in Ireland. "In Britain, most solicitors' and insurance firms will only accept valuations from registered valuers," she says. Here, anyone working in the jewellery trade can call themselves a valuer, and jewellery is often casually valued.



Tennis Courts in May, Kenilworth Square, Dublin, 1944 by Louis le Broquy, which failed to sell recently

FAST FACTS

- A recession is often a good time to buy pieces of second-hand jewellery or art
- Careful purchasers should get pieces professionally valued before committing to a purchase
- Most jewellery and art valuations are undertaken for insurance purposes. Formal valuations are also required in handling probate matters, inheritance and gifts, and in some family division and divorce cases

'I have an acquaintance that works in a jewellery store. I'll have him in here to make an appraisal of this'

So why should we seek a registered valuer? With property, if a building is unique or 'period', its owner is advised to have it valued, and this applies to all jewellery. An IRV member has gemmological and diamond-grading qualifications and, without this training, subtleties are lost. When Clarke draws up a valuation, ring details including dimensions, shank width and mount height determine the figure she arrives at.

"One of the biggest problems is gemstones. Unless you've studied the subject, you don't know if they are real, synthetic or imitation. So a number of people valuing jewellery out there call something red a ruby, even though it might not be a ruby."

Modern enhancements carried out on jewellery will lessen an item's value. "It's like cosmetic surgery," says Clarke. Because of the dramatic increase in the price of gold, Clarke includes the current price of gold in a valuation, so that people can watch the market themselves.

Life is a rollercoaster

It is more challenging to monitor movements in the art world. Ian Whyte, of Whyte's on Molesworth Street, says the past few years have been a "rollercoaster" for the Irish art market.

"Art prices tend to follow property prices, especially in this country. So when the property boom ended in 2007, the art boom also ended," he told the *Gazette*. The international art market is booming, but here, even Louis le Brocquy's works have fallen by up to 60% in value. In November, a Christie's auction of NAMA-seized paintings saw a le Brocquy valued at Stg£30,000 compared with Stg£60,000 in 2011.

Whyte's value everything from notes, coins and medals to antiquarian books and rock memorabilia, but their major area is art. Their more prominent clients include NAMA and the Revenue Commissioners but, with regard to private clients, these days Whyte's are busy with retired couples downsizing their homes, people raising money to pay off debts, and collectors selling off paintings they have tired of. "As tastes change in music, it's very similar [in art]," says Whyte.

A valuer who takes a long-term view and understands the primary market (of living artists) can have a very positive effect on a client's fortunes. So who are the artists to watch, if one was of a mind to invest?

Whyte doesn't believe there are any. "There are very few in the last ten years whom you could say are stand-out artists. There's lots of good talent, but it's not extraordinary. In Britain, the most stand-out artist is this chap Banksy. So you're looking for another Banksy, another Francis Bacon, another Damien Hirst." He cites Sean Scully as the Irish artist of the moment, and anyone with a Gerard Dillon, Dan O'Neill, or a Basil Blackshaw stashed away should fear not.

Conflicting values

The valuer is often presented with a difficulty in divorce cases, when two valuers have been engaged. A couple could have a vast amount of property with conflicting values described on two inventories. O'Halloran advises both parties to agree on one valuer, as valuations are, by their nature,

GUIDING PATTERNS

Valuing art and antiques is a broad specialty and, while there are rules and guiding patterns, the basis for valuations is still mysterious. According to James O'Halloran of Adam's Art Auctioneers (who handled the infamous €150,000 Anglo Irish Bank auction in August): "It's not a science, it's more of a dark art." The collections they value reflect what he calls the "catholic tastes" of the Irish and include antique furniture, silver, china, vintage wine, and paintings. Each piece is valued on the basis of comparables, on the sum fetched by the last similar example. With a painting, the quality, its size, where it's been exhibited, the condition it's in and its provenance are all considered. But, O'Halloran adds: "You also need to know what you don't know. That's very important, to be able to say, look, I don't know – we need to ask somebody else."

With the value at the whim of a volatile market, experience is needed to enable sound judgement. Most art valuers have studied art history and have been accredited as chartered surveyors. Total immersion in the art world is needed too. Because an auctioneer takes a percentage of what is fetched for one client, there could appear to be a conflict of interest in the prescribing of values for another, but there is also no more qualified individual than an auctioneer to provide valuations. They will have a close eye on developments. "If I value a painting today at €50,000 and a similar one in my next auction goes for €70,000, I'll phone up the client and tell them I have changed the value on that, because there's suddenly been a demand," says Whyte, who has been doing this since he was 15.

The word 'integrity' comes up a lot in the valuations world. In the winding up of an estate, a pliable valuer could help a person avoid a heavy tax bill by keeping the figure down. O'Halloran says that ethical standards are kept high, not least so the valuation holds up in court.

"You might find people trying to influence us on occasions, particularly if it's a probate valuation. We can be told: 'It would be great if you kept this low'. But it goes in one ear and out the other. You never know when you might have to justify a particular valuation, whether that's in front of a judge or with the Revenue Commissioners. We don't buckle when somebody wants us to do anything."

'A wall is a very big weapon. It's one of the nastiest things you can hit someone with' – Banksy

subjective. "You're better off just having one valuer, one figure and one fee. At the end of the day, things often get sold and the market decides what they are worth. And if they're not going to get sold, what's the point in fighting over values that are notional?"

Ian Whyte suggests that, in a family division of valuables, a fair system is to put a value on each picture, piece of furniture or tea set, and let each member of the family take their pick. That allows for equal division.

He adds that public auction is better than private auction for estate handling, because there is a public consensus of price. "Everyone can see it's fair and square. You can't say it was sold for too little."

A client must also be aware that insurance replacement value will be considerably higher than market value. To 'replace' a painting takes account of going to a dealer, who will charge base price, VAT, profit and overheads.

The legal profession has, perhaps, greater day-to-day familiarity with the valuation of land and buildings. Having seen the property market crash so spectacularly, one might legitimately ask what has happened to the valuer's authority. Barry Smyth of deVere Whyte and Smyth believes that things got out of hand when banks asked borrowers to handle their own valuations.

"A lot of subprime lenders got very cheap valuations done. It can come back to haunt you. That's frankly part of the reason we're in the trouble we're in. Valuation is complicated, insofar as a valuer is only as good as his job on that last parcel of land. A lot of those values were unsustainable."

In the case of most residential property, however, he acknowledges that "the grapevine and the local gossip often give people a guide as to what a house is worth".

> ***"You never know when you might have to justify a particular value, whether that's in front of a judge or with the Revenue Commissioners. We don't buckle when somebody wants us to do anything"***

In those instances where a professional valuation is needed, Colin Smyth, head of residential valuations at Sherry FitzGerald (a role created in 2007 due to demand) says the main considerations are location (a prime house in a poor location is referred to in the trade as a 'Rolls Royce badly parked'), accommodation (number of beds), presentation, garden and the way it faces, and amenities (in some areas, strong prices are paid due to proximity to a particular school).

Smyth's interaction with the legal profession includes a steady stream of family law and probate cases, which throw up capital gains tax and capital acquisitions tax issues. Since the market turned upwards in 2012, valuations are often being sought in situations where people want to transfer property to children in order to keep within CAT thresholds. "At the moment, there are an awful lot of people out there with cash to buy," he concludes.

Monaghan CPD event attracts stellar line-up

Monaghan Bar Association ran a highly successful CPD event on 11 October 2013, in the Glencarn Hotel, Castleblayney. The organisers were Justine Carty (Barry Healy & Co) and Lynda Smyth (Coyle Kennedy McCormack). Over 250 solicitors from all over the country attended.

The impressive line-up of speakers included Director of Public Prosecutions Claire Loftus, who spoke about her role as DPP; Brendan Watchorn SC on the registration of rights of way, buying property from a receiver, judgment mortgages and receivers, and the *Multi Unit Development Act 2011*; Ross Aylward BL who addressed the issue of the relocation of children from one country to another, as well as a general update on family law; James E Finn (registrar of wards of court) who dealt with enduring powers of attorney and the new *Capacity Bill 2013*; Dublin-based criminal lawyer Dara Robinson, who provided an update on developments in criminal law; Charlie Bird (former chief RTÉ news correspondent, who spoke passionately on his experiences in the courts in relation to defamation cases; Simon McAleese, a solicitor and expert in defamation law; Declan O'Neill (taxing master) on the taxation of costs and legal costs in 2013; local District Court judge, Sean McBride, who gave an excellent presentation on indictable offences in the District Court; and high-profile commercial lawyer Rossa Fanning BL, who dealt with recent cases on the enforcement of personal guarantees and voluntary transfers between spouses and children.

Each speaker gave of their time freely to travel to Castleblayney and all profits from the event were donated to the Solicitors' Benevolent Fund. MC for the day was Dundalk solicitor Doc Lavery.

Dinner followed afterwards, with dancing to country and western star Johnny Brady later on. Most speakers stayed on to mingle with local solicitors and barristers. Others attending the dinner included Circuit Court judge John O'Hagan, barristers Frank Martin, Ken Connolly and Oliver Costello, and the county registrar for Cavan/Monaghan, Joe Smith.

Rossa Fanning BL, Lynda Smyth (Coyle Kennedy MacCormack), Simon McAleese (Simon McAleese & Co), Justine Carty (Barry Healy & Co), Ross Aylward BL, Ken Connolly BL, Judge Sean McBride, Judge John O'Hagan and Dermot Lavery (Dermot Lavery & Co)

Cyril's country solicitor observations

There was a great turnout at the recent Kildare Bar Association (KBA) biannual dinner in the Keadeen Hotel, Newbridge, *writes Helen Coughlan*. It was a special occasion for veteran Athy solicitor Cyril Osborne, to whom a presentation was made by Law Society President John P Shaw (pictured above) to mark his years of service as a solicitor. Cyril qualified in 1965 and still practises in Athy, Co Kildare, in the family firm, RA Osborne & Son, which was founded by his father Robert. The tradition continues with Cyril's son David also in the practice. David is honorary secretary of the KBA. Cyril, in his usual gentlemanly fashion, had the audience enraptured with his observations on changes in the life of a country solicitor from the time he started as an apprentice, to the present day. Mr John P Shaw, newly elected President of the Law Society, was warmly welcomed to one of his first official functions in his capacity as president. Kildare Bar Association president Sharon Murphy welcomed all attendees and paid special tribute to husband and wife duo, Andrew Cody and Eva O'Brien, for their hard work and dedication to the local bar association

Rachel heads for pastures new after three years with IRLI

Previous Law Society President James McCourt hosted a dinner in October for members of Irish Rule of Law International (IRLI) to thank Rachel Power for her hard work and commitment during her three years as IRLI coordinator.

During this time IRLI became a registered charity and expanded its interventions to include, among others, an access to justice project in Malawi and a visit to Vietnam where Irish solicitors provided workshops on clinical legal education. Rachel is now working for the Public Interest Law Alliance, a project of FLAC. Emma Dwyer assumed the role of charity coordinator in August.

IRLI is a joint initiative of the Law Society of Ireland and the Bar Council of Ireland and seeks to use the skills of Irish lawyers to promote and strengthen the rule of law in developing countries. Projects include a commercial law training programme, which is undertaken in partnership with the Law Society of South Africa. South African lawyers from historically disadvantaged communities undertake placements in Irish firms to gain skills and experience in the practice of corporate law. Placements were undertaken this year in Matheson, Whitney Moore and McDowell Purcell Solicitors in Dublin.

Educate together! Four law societies collaborate

PIC: CIANREDMOND.COM

The Law Society hosted the Joint Legal Education Forum 2013 on 4 November. This brings together representatives of the law societies of Ireland, Northern Ireland and Scotland with the English Solicitors' Regulatory Authority to discuss educational developments and issues of common concern. Present were *(from l to r)*: Valerie Peart (vice-chair, Education Committee, TP Kennedy (director of education), Geoffrey Shannon (deputy director of education), Carol Plunkett (chair, curriculum development unit), Simon Murphy (chair, Education Committee), Rob Marrs (senior policy and development manager, Law Society of Scotland), Liz Campbell (director of education and training policy, Law Society of Scotland), David Meighan (accreditation officer, Law Society of Scotland), Richard Henderson (member, Education and Training Committee, Law Society of Scotland), Brian Speers (chair, Education Review Working Group, Law Society of Northern Ireland), Julie Brannan (director of education and training, Solicitors' Regulatory Authority), Anne Devlin (assistant secretary, Law Society of Northern Ireland), Christina McLintock (convenor, Education and Training Committee, Law Society of Scotland)

IWLA honours newly appointed Supreme Court judges

(Front, l to r): Ms Justice Mary Laffoy (Honoree), Ms Justice Maureen Clark (president, IWLA) and Ms Justice Elizabeth Dunne (Honoree). *(Back, l to r)*: Maura Butler (chairperson, IWLA) and keynote speaker Dearbhail McDonald (associate editor and legal editor, Irish Independent)

Two Supreme Court judges were honoured by the Irish Women Lawyers' Association (IWLA) at its annual gala dinner on 16 November. Honorary lifetime membership of IWLA was conferred on Ms Justice Mary Laffoy and Ms Justice Elizabeth Dunne by IWLA's president, Ms Justice Maureen Clark.

The IWLA's annual 'Women Celebrating Women Lawyers' gala dinner in the Presidents' Hall at Blackhall Place was held in collaboration with Law Society Skillnets and the Bar Council. HRM Recruit's legal selection practice sponsored a welcome reception.

One of IWLA's founder members, Judge Patricia McNamara, represented the President of the District Court on the evening and made a presentation to both Supreme Court judges on behalf of the members of the District Court bench.

Keynote speaker on the night was Dearbhail McDonald, associate editor and legal editor of the *Irish Independent*.

Special guests included the Attorney General Máire Whelan SC, Judge of the European Court of Human Rights Judge Ann Power-Forde, Director of Public Prosecutions Claire Loftus and former judge of the Supreme Court, Mrs Justice Catherine McGuinness – all of whom are existing IWLA honorary members.

Collaborations for the 2014 gala dinner are already afoot, together with plans for delivering the association's calendar of networking and educational events.

Calcutta Run raises €120,000 for worthy causes

On 6 November, the Calcutta Run's legal fundraising committee handed over €120,000 shared between its two nominated charities, the Peter McVerry Trust and Goal. The reception was hosted by the event's main sponsor, Bank of Ireland.

Pat Doyle, CEO of the Peter McVerry Trust, explained that the funds would go towards making extra beds available to homeless people in the Dublin area when the temperatures drop during the winter months. Foldable beds would be set up in their accommodation facilities to make sure that as many people as possible would be taken off the streets.

The funds raised will go a long way in Calcutta, according to Jonathan Edgar, chief operations officer of Goal, who will use the funds to provide child-minding services for the children of sex workers, and will also go towards providing water and sanitary hygiene units for children living in the slums.

Then President of the Law Society James McCourt extended his thanks to all the firms who had signed up as supporters of the initiative. Next year's Calcutta Run will take place on 17 May. Save the date in your diary!

Marathons 4 Muireann a major success

Declan (foreground) taking part in the Dublin marathon – his fourth in two days

Muireann sports her dad's Dublin marathon medal

Following our article in the October *Gazette* on the efforts of Declan O'Flaherty (Tormey's, Athlone) to raise funds for three nominated charities that care for children with severe special needs, we are delighted to report that 'Marathons 4 Muireann' received a significant level of support from both branches of the legal profession – both in terms of fundraising and participants along the route of the four marathons.

Readers will remember that Declan's two-and-a-half-year old daughter Muireann suffers from an extremely rare neurological disorder and she is unable to walk, talk or feed herself. She and the family receive vital support from all three charities.

The main running event for solicitors and barristers took place from Tyrrellspass, Co Westmeath, to Kinnegad on Sunday 27 October 2013. Conditions were atrocious but that did not deter the 19 hardy souls who covered that half-marathon distance with Declan, who was engaged in completing four marathons in two days.

In addition, solicitors from as far apart as Tyrone and Donegal in the north, to Cork in the south, ran with Declan on other half-marathon legs, while others took part in the Dublin marathon on 28 October 2013 – all contributing funds to help meet the target of €100,000. In fact, Marathons 4 Muireann far exceeded expectations by raising more than €175,000 for Temple Street Children's University Hospital, The Jack and Jill Foundation and the Brothers of Charity.

Speaking to the *Gazette*, Declan O'Flaherty said: "We are enormously grateful for the support we have received from all branches of the legal profession. The entire experience has shown the legal profession is populated with many decent and hardworking people who freely give of their time and money to support others when called upon. The entire experience was really quite humbling."

For the record, the following ran a half marathon in aid of Marathons 4 Muireann: Fergal Logan (solicitor, Logan & Corry, Omagh), David Dunning (Behan & Associates, legal costs accountants), Niall Collins (partner, Mason Hayes & Curran), Victoria Cummins BL, Alexis Mina BL, Peter Bland SC, John P Shortt SC, Niall Flynn BL, Elaine Hanniffy BL, Sarah Phelan BL, Dermot Hewson BL, Elaine Finneran BL, Shane Geraghty BL, Sandra Carroll and Emer Kilroy (both solicitors with EC Gearty in Longford), Rory Hannify BL, Hugh Mohan SC (and his wife Sinead Mohan), Ross Maguire SC, Lorna Kennedy (partner, Dillon Eustace), Maura Dineen (Mason, Hayes & Curran), Brian McMullin (partner, VP McMullin, Donegal), Avril Birmingham and Barbara Conway (legal executives, Byrne Wallace), Patrick Flynn (legal costs accountant, Athlone) and Rob Lowe BL.

The following ran the Dublin marathon on 28 October 2013 in support of the cause: Richard Stapleton (Smyth Stapleton & Co, Tullamore), Aoife Byrne (Law Centre Cork) and Kate Sexton (legal executive, TK Madden & Co, Longford).

International Financial Services Law

Pictured at the conferring ceremony for the UCD and Law Society Finuas Network Post-Graduate Diploma in International Financial Services Law, held in Newman House on 22 October, were (from l to r): Vivion Gill (former director of the Commercial Law Centre, UCD), Michelle Nolan (Law Society Finuas Network), graduates Ciara Daly (Central Bank) and Julia Carmichael (Aviva Insurance), Attracta O'Regan (head of Law Society Professional Training), Brian Hutchinson (director, Commercial Law Centre UCD) and Professor Colin Scott (Dean of the Sutherland School of Law, UCD)

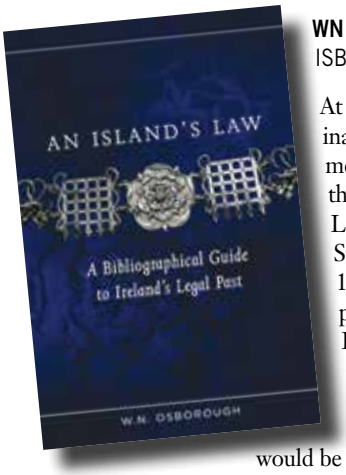
Newly qualified solicitors at the presentation of their parchments on 4 July 2013

Niall Collins TD, President of the High Court Nicholas Kearns, Law Society President James McCourt and Ken Murphy (director general) were guests of honour at the parchment ceremony for newly qualified solicitors on 4 July 2013: Neil Bourke, Caoimhe Boyce, Martin Brennan, Olivia Browne, Eimear Buckley, Katie Callinan, Paul Canavan, Kevin Cassidy, Angela Cleary, Jenny Colfer, Edel Corry, Stephanie Corry, Ruairi Culleton, Laura Daly, Jennifer Darcy, Sharon Devereux, Brian Dolan, Hazel Doyle, Niall Doyle, Sarah Duffy, Patrick FitzGerald, Karen Gallagher, Thomas Gillespie, Aileen Gittens, Maebh Gogarty, Claire Gormley, William Hanly, Maeve Sharpley, Rachel Harvey, Jaella Henry-Robinson, Elizabeth Herron, Liam Heylin, Laura Hurley, Brian Johnston, Paddy Jones, Susan Joyce, Angela Keane, Kelly Ann Keegan, Allan Kennedy, Karen Kilgallen, Róisín Magee, Deborah McConway, Aimee McCumisky, Niamh McDermott, Aisling McGowan, Amy McMahon, Eimear McNamara, Claire McQuillan, Daniel Moore, Emer Murphy, Aisling Murphy, Helen Murphy, Niamh Murphy, Cillian O'Boyle, Mairin O'Boyle Finnegan, Karen O'Brien, Catherine O'Callaghan, Aoife O'Callaghan, Shane O'Doherty, Laura Lee O'Driscoll, Karina O'Leary, Louise Phelan, Maria Phelan, Allison Quinn, Nicola Quinn, Conor Quinn, Laura Rattigan, Stephen Reilly, Fiona Reynolds, Monica Rowley, Eoin Ryan, Andrew Sherlock, Orla Shevlin, Sarah Sreehan, Regina Szymanska, Emma Thompson, Sinead Treacy, Garry Wynne (All photos: Jason Clarke Photography)

Newly qualified solicitors at the presentation of their parchments on 26 September 2013

Mr Justice Michael Peart, David Nolan SC (chairman of the Bar Council), Law Society President James McCourt and Ken Murphy (director general) were guests of honour at the parchment ceremony for newly qualified solicitors on 26 September 2013: Linda Anderson, David Barry, Christopher Boylan, Alison Brennan, Peter Brennan, Sarah Bruen, Catherine Canavan, Eoin Carroll, William (Billy) Casserly, Iseult Cody, Louise Cresham, Thomas Dalton, Leona Divilly, Ciaran Doyle, Charlotte Egan, Catherine Fahy, Andrea Gleasure, Katherine Glynn, Mark Gorman, Fergal Hand, Susan Harrison, Martin Hayden, Jennifer Heffernan, Oliver Holohan, Graeme Hughes, Daniel Kelly, Thelma Kelly, John Kennedy, Garreth Kennedy, Eibhlinn Kerr, Caitriona Lawlor, Bill Lonergan, Gráinne Loughnane, David Lynch, Afreen Malik, Michelle Martin, Eoghan McCarthy, Patrick McCormack, Claire McGinn, Aoife Mitchell, Derek Nolan, Kyle Nolan, Daniel Nolan, Deirdre O'Hanlon, Dara O'Loghlin, Hayley Purcell, Áine Quigley, David Stafford, Siobhan Tighe, Clíodhna Walsh

An Island's Law: A Bibliographical Guide to Ireland's Legal Past



WN Osborough. Four Courts Press (2013), www.fourcourtspress.ie. ISBN: 978-1-84682-416-6. Price: €35.

At the inaugural meeting of the Irish Legal History Society in 1988, its progenitor, Prof WN Osborough, said that its aim would be "to seek to preserve a little longer from total oblivion the memory of the legal past of this island". The fact that the society has spectacularly delivered on this objective and that Irish legal history has become a growth sector in academic research has much to do with Osborough's efforts.

This slim but indispensable volume has been published to commemorate the 25th anniversary of the foundation of the society. It catalogues, in a very accessible manner, the scale and depth of research in the area. It will also undoubtedly assist the work of researchers into Ireland's legal past for generations to come.

The book comprises three bibliographical essays by the indefatigable Osborough, which together form a complete bibliography of this island's legal history. The task of documenting Irish legal history has been severely hampered by the disastrous destruction of the main depository of the country's legal records (at the Dublin Public Records Office in the Four Courts complex) during the Civil War in 1922. In an emerging postcolonial society, the fact that much of Ireland's legal history is the history of English law in Ireland may also have negatively impacted on scholarship until recent times. As Osborough notes, "it may still be a difficult matter to arouse enthusiasm and money for the expenditure of time and effort on recapturing an indubitable portion of the cultural heritage which risks nonetheless being dismissed – by some, if not by the more discerning – as the unfortunate legacy of an alien imposition".

Ironically, research into Irish legislation between the 12th and 20th centuries has been greatly enhanced by an important recent initiative aimed at repealing all of it. Attorney General Rory Brady launched a wide-ranging statute law revision programme aimed at conferring democratic legitimacy on the Irish statute book by cataloguing and repealing tens of thousands of pre-independence statutes. That commendable project continues, despite Mr Brady's premature death.

Major advances in chronicling Ireland's legal history have been made over the last quarter of a century. Osborough's extensive bibliographical research highlights this progress and is an essential guide for anyone wishing to learn more about our legal past. G

Brian Murphy has recently submitted his PhD thesis in the School of History and Archives, University College Dublin.

READING ROOM

New books available to borrow from the library

- Christou, Richard, *Drafting Commercial Agreements* (5th ed; Sweet & Maxwell, 2013)
- Clarke, Robert, *Contract Law in Ireland* (7th ed; Round Hall, 2013)
- King, Jeff et al, *Current Legal Problems 2013* (OUP, 2013)
- Forde, Michael and David Leonard, *Constitutional Law of Ireland* (3rd ed; Bloomsbury Professional, 2013)
- Galligan, Eamon and Michael McGrath, *Compulsory Purchase and Compensation in Ireland* (2nd ed; Bloomsbury Professional, 2013)
- Hogan, Daire and Colum Kenny (eds), *Changes in Practice and Law: a Selection of Essays by Members of the Legal Profession to Mark 25 Years of the Irish Legal History Society* (Four Courts Press, 2013)
- Mathijsen, PSRF, *A Guide to European Union Law* (11th ed; Sweet & Maxwell, 2013)
- O'Nolan, Caroline, *The Irish District Court: a Social Portrait* (Cork University Press, 2013)
- Round Hall, *Offences Handbook 2013: Criminal and Road Traffic* (Round Hall, 2013)
- Tolaney, *Sonia et al, Key Authorities in Banking Law 2011-2012* (Sweet & Maxwell, 2013)
- Waters, Malcolm, *Retail Mortgages: Law Regulation and Procedure* (Sweet & Maxwell, 2013)
- Woodroffe & Lowe, *Consumer Law and Practice* (9th ed; Sweet & Maxwell, 2013)

Law Society Council meeting 8 November 2013

The president extended a warm welcome to all of the newly elected and newly nominated Council members – Justine Carty, Paul Keane, Aisling Kelly, Catherine Tarrant, Peter Groarke and Aine Hynes.

Taking of office

Outgoing President James McCourt thanked the Council for their unstinting support and encouragement during the previous 12 months. He noted that the past number of years had been difficult for the profession, although there might now be some positive and hopeful signs of renewal. Nevertheless, issues in relation to PII, financial institutions, and aspects of the *Legal Services Regulation Bill* would remain on the Council's agenda. The implementation of the report of the Future of the Law Society Task Force had commenced, and he welcomed the recent appointment of the new director of representation and member services, Teri Kelly.

Mr McCourt thanked vice-presidents John P Shaw and Stuart Gilhooly for their assistance and support. He also thanked the director general and all the staff of the Society for their courtesy and kindness throughout the year. He wished the incoming president and officers every success for the coming 12 months. He recorded his particular appreciation for the support and commitment of his wife Barbara and his children Lucy, Ally and Jeff.

John P Shaw was then formally appointed as president. He paid tribute to Mr McCourt for the enthusiasm, energy, diplomacy and good humour that he had brought to the role. He had worked tirelessly to a very demanding schedule and had set a very high standard for his successor. Mr Shaw looked forward to working with the incoming vice-presidents, Kevin O'Higgins and Michael Quinlan, and with Ken Murphy and the staff of the Law Society to progress the recommendations of the report of the Future of the Law Society Task Force. He welcomed the new members of the Council and urged them to participate fully in the work of the Society. He thanked the Council for nominating him as president, and he promised to do all in his power to ensure that their trust was not misplaced.

Senior vice-president Kevin O'Higgins and junior vice-president Michael Quinlan then took office and expressed their commitment to the Council and the president for the coming year.

Motion: *PII (Amendment) Regulations 2013*

"That this Council approves the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2013."

Proposed: Stuart Gilhooly
Seconded: Michael Quinlan

The Council approved the draft regulations, which had been circulated. The purpose of the regulations was to (a) to amend a number of definitions for clarification purposes, (b) ensure that solicitors acting as personal insolvency practitioners could avail of the existing PII of their firm to carry out such services, and (c) amend the 'double trigger' provisions so that specific rules would apply to the notification of claims where a firm had continuous cover with the same insurer.

Motion: *Solicitors (Compensation Fund) Regulations 2013*

"That this Council approves the Solicitors (Compensation Fund) Regulations 2013."

Proposed: Martin Lawlor
Seconded: Christopher Callan

The Council approved the draft regulations, which prescribe the time limit and appropriate application form where a claim is being made on the Society's compensation fund.

Motion: *Solicitors (Delivery of Documents) Regulations 2013*

"That this Council approves the Solicitors (Delivery of Documents) Regulations 2013."

Proposed: Martin Lawlor
Seconded: Christopher Callan

The Council approved the draft regulations, which prescribe the form of notice to be used when the Society requires a solicitor to deliver up the files and documents of his/her practice.

Legal Services Regulation Bill 2011

The Council noted the speech given by the minister at the launch of the *Guide to Good Professional Conduct* on Monday 4 November and his indication that the bill would resume committee stage before the end of November. The Council also noted, with approval, a submission to the minister expressing concerns about the negative implications of sections 15 and 17 of the proposed bill for client confidentiality.

District Court Rules

Stuart Gilhooly briefed the Council on a meeting of Society representatives with the District Court Rules Committee to discuss amendments to the rules arising from the impending increased jurisdiction of the District Court, including a meaningful review of the District Court scales to reflect the increased complexity involved in cases of a much higher jurisdiction.

AGM and annual report

The Council discussed a number of initiatives to increase the level of attendance at the AGM and the level of voting in Council elections. Feedback in relation to the online annual report for 2012/2013 suggested that it had been received positively by the profession and should be developed further for future years.

Pay-and-file deadline

The Council noted the Government proposal that the pay-and-file deadline for the self-employed should be brought forward from 31 October to either June or September. The Council agreed that the change would have a devastating economic impact on self-employed solicitors, who would have to pay tax several months in advance of receipt of payment from clients, thereby impacting cash flow in what is a very tight lending environment. It was agreed that the Society should make an urgent submission in opposition to the proposal. G

BRIEFING

Practice notes

Practising certificate 2014: notice to all practising solicitors

It is professional misconduct and a criminal offence for a solicitor (other than a solicitor in the full-time service of the State) to practise without a practising certificate. A solicitor shall be deemed to practise as a solicitor if he or she engages in the provision of legal services. 'Legal services' are services of a legal or financial nature provided by a solicitor arising from that solicitor's practice as a solicitor.

It should be noted that, as set out in the practice note 'Prohibition on practising as a solicitor without a practising certificate: solicitors cannot be "legal executives" or "paralegals"', as published in the *Gazette* in July 2009 and again in February 2012, it is not permissible for a firm to classify a solicitor employed by a firm as a 'legal executive' or 'paralegal' with a view to avoiding the requirement to hold a practising certificate, if the solicitor is engaged in the provision of legal services.

The actions that can be taken against a solicitor found to be practising without a practising certificate include a referral to the Solicitors Disciplinary Tribunal, an application to the High Court, and a report to An Garda Síochána.

Practising certificate application forms

Application forms for solicitors in private practice will be forwarded to the principal or the managing partner in each practice, rather than each solicitor. Please note that practising certificate application forms and the practising certificate fees will not be available until after 17 December 2013, as both must be approved by Council at its December meeting.

When you must apply

A practising certificate must be applied for on or before 1 February in each year in order to be dated 1 January of that year and thereby operate as a qualification to practise from the commencement of the year. It is therefore a legal requirement for a practising solicitor to deliver, or cause to be delivered, to the Registrar of Solicitors, on or before 1 February 2014, an application in the prescribed form correctly completed and signed by the applicant solicitor personally, together with the appropriate fee. The onus is on each solicitor to ensure that his or her application form and fee is delivered on or before 1 February 2013. Applications should be delivered to the Regulation Department of the Society at George's Court, George's Lane, Dublin 7; DX 1025.

It should be noted that 1 February 2014 falls on a Saturday.

Please note that any incorrectly completed application forms or applications without full payment will be considered to be incomplete applications, cannot be processed, and will be returned. Therefore, solicitors are strongly advised to read and take full account of the practising certificate application form guidelines when completing the form.

What happens if you apply late?

Any applications for practising certificates that are received after 1 February 2014 will result in the practising certificate being dated the date of actual receipt by the Registrar of Solicitors, rather than 1 January 2014. There is no legal power to allow any period of grace under any circumstances whatsoever.

Please note that, as mentioned above, you cannot provide legal services as a solicitor without a practising certificate in force. Therefore, solicitors whose practising certificate application forms are received after 1 February 2014 and whose practising certificates are therefore dated after 1 February 2014, who have provided legal services before that date, are advised to make an application to the President of the High Court to have their practising certificates backdated to 1 January 2014.

The Regulation of Practice Committee is the regulatory committee of the Society that has responsibility for supervising compliance with practising certificate requirements. A special meeting of the committee will be held on a date after 1 February 2014, to be decided at a later date, to consider any late or unresolved applications for practising certificates. At this meeting, any practising solicitors who have not applied by the date of the meeting for a practising certificate will be considered for referral forthwith to the Solicitors Disciplinary Tribunal and will be informed that the Society reserves the right to take proceedings for an order under section 18 of the *Solicitors (Amendment) Act 2002* to prevent them from practising illegally.

If you are an employed solicitor

Solicitors who are employed should note that it is the statutory obligation of every solicitor who requires a practising certificate to ensure that he or she has a practising certificate in force from the commencement of the year. Employed solicitors cannot absolve themselves from this responsibility by relying on their employers to procure their practising certificates. However, it is the Society's recommendation that all employers should pay for the practising certificate of solicitors employed by them. It should be noted that the practising certificate remains the property of the solicitor, regardless of who has paid for the practising certificate.

Some of your details are already on the application form

The practising certificate application forms will be issued with certain information relating to each solicitor's practice already completed. Such information will include the relevant fees due by each solicitor, including allowance for solicitors of 70 years or over, as they will not be covered under the provisions of the Solicitors' Group Life Scheme.

Payment by electronic funds transfer (EFT)

All practising certificate application forms sent out will include an EFT payment form. Any solicitor wishing to pay the practising certificate fee by EFT must complete and return the EFT payment form with their practising certificate application form. Failure to do so will result in the application form being returned as incomplete.

Each EFT payment must have an easily identifiable specific reference, such as the firm or company name, the solicitor's name, or the solicitor's number. General references such as 'Law Society' or 'practising certificate' will not be accepted and may result in a significant delay in the issuing of the practising certificate. The payment reference used must be included in the EFT form. Failure to include this information will result in the application form being returned as incomplete.

Law Directory 2014

It is intended that the *Law Directory 2014* will note all solicitors who have been issued with a practising certificate by 21 February 2014. Practising certificates can only be issued following receipt of a properly completed application form together with full payment, with no outstanding queries raised thereon. It should be noted that only those solicitors with practising certificates issued by 21 February 2014 will be included in the *Law Directory*, not every solicitor who has submitted an application form by 21 February 2014.

Therefore, in order to ensure that your practising certificate is-

sues by 21 February 2014 to enable you to be included in the *Law Directory*, you should ensure that the application form you return to the Society is completed correctly and includes full payment of fees due. If the form is not completed correctly, or fees have not been paid in full, it will be necessary for the Society to return the form, which may result in delaying the issue of your practising certificate, despite the fact that you had applied for the practising certificate prior to 21 February 2014.

The details of any solicitor whose practising certificate issues after 21 February 2014 will not be included in the *Law Directory*, but will be included in the 'find a solicitor' search facility on the Society's website, provided the solicitor is a practising solicitor. A practising solicitor is a solicitor with a current practising certificate and either professional indemnity insurance in place or an exemption from holding professional indemnity insurance as a solicitor employee of a non-solicitor employer.

What can you access on the website (www.lawsociety.ie)?

A blank, editable application form will be available in the members' area of the Law Society's website soon after 17 December 2013, which can be completed online prior to printing a copy for signing and returning to the Society with the appropriate fee. This area is accessible using your username and password.

If you require assistance, please visit www.lawsociety.ie/help. In addition, you may request a form to be emailed to you by emailing pc@lawsociety.ie.

If you did not hold a practising certificate for 2013

If you did not hold a practising certificate for 2013 and apply for a practising certificate in 2014, you may be required to make a 'section 61' application, in accordance with section 49 of the *Solicitors Act 1954* as substituted by section 61 of the *Solicitors (Amendment) Act 1994*, setting out in writing how you have kept up to date with legal matters since you were last issued with a practising certificate. Further information on section 61 applications will be available in the practising certificate application guidance notes.

Change of practising status

If you held a practising certificate in 2013 and do not intend to practise for some or all of 2014, including the following situations, you should notify the Society in writing with the relevant details before 1 February 2014:

- You recently ceased practice or are intending to cease practice in the coming year,
- You will not be practising in 2014 for any reason, including unemployment, career break, change of career, emigration, sick leave or maternity leave,
- You will not be providing legal services – and will therefore not be applying for a practising certificate – until after 1 February 2014 for any reason, including unemployment, career break, sick leave and maternity leave.

You should provide the Society with a current correspondence address and email address to allow the Society to communicate with you while you are not practising.

If there is any change in your practising status during the year, you should immediately notify the Society in writing with the relevant information to ensure that your practising status is up to date.

Change of practice

If you have changed firms during the year and have not previously notified the Society in writing, you must do so immediately, in accordance with the provisions of section 81 of the *Solicitors Act 1954*. You should include the date you left your former practice and the date you joined your new firm, together with the name and address of the new firm.

Failure to provide this information before 17 December 2013 may result in your practising certificate application and information being sent to your former practice, as the Society will not have your up-to-date contact information.

Acknowledgment of applications

Please note that it is not the Society's policy to acknowledge receipt of application forms. If in doubt that your application form will arrive on time, or at all, send by recorded post, tracked DX or courier.

Duplicate practising certificate

Please note that there is a fee of €50 in respect of each duplicate practising certificate issued for any purpose.

John Elliot,
Registrar of Solicitors and Director of Regulation

Practising certificate fee waiver for solicitors participating in Skillnet, JobBridge or WPP schemes

Solicitors providing legal services through a work experience initiatives, such as Skillnet, JobBridge or WPP schemes, are required to hold a current practising certificate, just as any solicitor employed on a paid basis is required. However, the Law Society has put in place an arrangement whereby solicitors on formalised work experience schemes will be provided with a practising certificate free of charge for the duration of the placement.

Solicitors applying for such a waiver must complete and return the relevant application for waiver to the Society and must meet the following criteria:

- They are registered with the Law Society's Career Support service as participating in a Skillnet, JobBridge or WPP scheme,
- They are providing legal services by participating in the Skillnet, JobBridge or WPP scheme,
- They are providing legal services to and for the firm or organisation providing the work experience through the Skillnet, JobBridge or WPP scheme only, and not to any other third party,
- They are receiving no salary, wage or other remuneration from the firm or organisation providing the work experience, other than that prescribed by the Department of Social Protection, and
- They have no contract of employment with the firm or organisation providing the work experience.

The waiver, if granted, shall apply only so long as all of the above provisions continue to apply to the solicitor. If any of these provisions cease to apply, the solicitor is required to notify the Regulation Department and the Career Support service of the Society in writing with immediate effect, and is liable to pay the due amounts *pro rata* for the practising certificate for the remainder of the practice year. Any practising certificate granted under the scheme must be returned at the end of the placement.

Solicitors seeking to avail of this waiver under one of the approved schemes listed above should contact the Society's Regulation Department at pc@lawsociety.ie. The application for the waiver is available for download from the members' area of the Society's website.

Succeeding practice rule

PROFESSIONAL INDEMNITY INSURANCE COMMITTEE

The purpose of this practice note is to provide guidance to the profession on the succeeding practice rule for the 2013/2014 indemnity period. This information is intended as general guidance and does not constitute a definitive statement of law.

Ceasing firms

Where a firm ceases practice, valid professional indemnity insurance (PII) claims made against the firm are covered in one of two ways:

1) If the ceased firm has a succeeding practice or succeeding practices, the insurance of any succeeding practice(s) covers the risk.
2) If the ceased firm does not have a succeeding practice or succeeding practices, the firm enters the Run-off Fund, which covers the risk.

Whether or not a firm is a preceding practice or a succeeding practice in relation to any other firm will depend on a detailed analysis taking account of the facts of the particular case. No generalised practice guidance can be given, and each case must be individually examined with reference to the definitions of preceding and succeeding practice as set out in the regulations.

Definitions

'Preceding practice' means a practice that has ceased and has a succeeding practice or succeeding practices.

'Succeeding practice' means a practice that satisfies any one or more of the following conditions in relation to another practice (with such other practice being a preceding practice for these purposes):

1) The practice is held out as being a successor to the ceased practice, or part thereof,
2) The practice is conducted by a partnership where half or more of the principals are identical to the principals of any partnership that conducted the ceased practice,
3) The practice is conducted by a sole practitioner who was the sole practitioner conducting the ceased practice,
4) The practice is conducted by a sole practitioner who was one of the principals conducting the ceased practice,
5) The practice is conducted by a partnership in which the sole practitioner conducting the ceased practice is a partner and where no other person has been held out as a successor to the ceased practice,
6) The partnership that, or sole practitioner who, conducts the practice has assumed the liabilities of the ceased practice.

Notwithstanding the foregoing, a practice shall not be treated as a succeeding practice pursuant to conditions 2 to 6 above if another practice is or was held out by the owner of that other practice as the succeeding practice.

Regulation amendments

In the *Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2013*, the definitions of succeeding practice and preceding practice have been changed from the definitions set out in the *Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011* as follows:

1) The definition of preceding practice was amended to clarify that a preceding practice must be a ceased firm.
2) The succeeding practice definition was amended to state that a practice held out as being a successor to the ceased practice, or part thereof, would be considered to be a succeeding practice. Under the previous definition, the practice had to 'expressly' hold itself out as a successor.
3) The succeeding practice definition was amended to state that any firm conducted by a partnership where half or more of the principals are identical to the principals of any partnership that conducted the preceding practice would be considered a succeeding practice. Under the previous definition, a majority, rather than half or more, of the principals were required to be identical.
4) The succeeding practice definition was amended to include any firm being conducted by a sole practitioner who was one of the principals conducting the preceding practice as a succeeding practice. This type of firm did not fall under the previous definition of succeeding practice.

Any firm that ceases practice on or after 1 December 2013 will be subject to the 2013 regulations, including the new definition of succeeding practice.

Any firm that ceased practice on or before 30 November 2013 will fall under the previous definition of succeeding practice as set out in the 2011 regulations. Further information on this definition of succeeding practice can be found in the 'other PII resources' section on the Society website at www.lawsociety.ie/PII/.

Multiple succeeding practices

Depending on the precise circumstances, more than one firm can be a succeeding practice, and a number of factors may need to be taken into account to identify the succeeding practices that meet the definition in the regulations.

For example, the definition of succeeding practice refers to the practice being held out as being a successor to the ceased practice or any part thereof. In this context, the 'part' of the practice that the succeeding practice is being held out as a successor of may mean a recognisable part of the practice, such as all the conveyancing or litigation or probate files, or all of the residential conveyancing or personal injury or debt collection or family law files, or all the files of a branch office, depending on the context and structure of the practice. However, this is not an exhaustive list. Therefore, the preceding practice could be broken into a number of succeeding practices holding themselves out as specific parts of the preceding practice.

It should be noted that firms may take on the files of a ceased practice without being deemed to be a succeeding practice so long as they do not meet any of the conditions in the definition of succeeding practice, including holding themselves out as a successor to all or part of the ceased practice.

Determination of whether a firm is a succeeding practice

It is clear from the definition of succeeding practice that the determination of whether a firm is or will be a succeeding practice depends on the particular circumstances in question. While the Society will seek to assist firms in the general definition of preceding and succeeding practices, the Society will not and cannot provide advice, declaration, or ruling as to whether a firm would be considered to be a succeeding practice. The Society would also consider that it is best practice for the relevant firm to liaise with its broker and/or insurer with a view to ascertaining its views on whether the firm would be considered to be a succeeding practice and to discuss generally the impact on its PII.

Further information

Further information on the succeeding practice rule, including guidance on when a firm is not a succeeding practice, liability for files taken over, what is meant by a practice being 'held out' as a successor and how to avoid this, and what to say to clients of the ceased firm can be found in the *Run-off Fund Guidelines* (2013/2014) on the Society's website at www.lawsociety.ie/PII/.

VAT treatment of party and party costs

TAXATION COMMITTEE

The VAT treatment of party and party costs in litigation has been a cause of confusion to some practitioners. This practice note is designed, without setting out the statutory references, to outline the VAT position via bullet points.

- Plaintiff (P) v Defendant (D).
- P successful in action.
- P recovering costs from D.
- D to pay same to P.
- P's solicitor should issue VAT invoice for services supplied to P, and accounts to Revenue for VAT on fees invoiced to P.
- D's solicitor should issue VAT invoice for services supplied to D, and accounts to Revenue for VAT on fees invoiced to P.
- Assuming P is registered for VAT, and the costs incurred by P relate to his VATable business, P is entitled to recover this VAT.
- P should pay the VAT invoiced to him to his solicitor and recover same in his VAT return.
- D must cover the VAT exclusive cost to P on the basis that this is the actual cost to P, as P can recover the VAT on these costs from Revenue.
- P's solicitor gets paid the VAT on his/her fees by P and remits same to Revenue in the normal way.
- However, just because P is registered for VAT does not automatically mean P is entitled to recover all or any of the VAT on to his solicitor's fees.
- The costs must relate to a VATable business activity for P to be entitled to deduct same.
- If P is not entitled to deduct VAT on such costs, then the VAT thereon is a cost to P and should be recoverable from D, to be paid over to P's solicitor as part of the costs.
- P's solicitor should clarify with his/her client the position as regards the recoverability of VAT on costs by his/her client.
- The Revenue Commissioners have commented as follows: "A practising solicitor is remunerated from two sources only, that is, either by his own client under contract or by legal aid under statute. If by agreement or court order one side bears the other side's costs, the sum involved is a financial transaction between the parties and it is not liable to VAT. The 'winning' solicitor will issue, in the normal way, an invoice to his own client for the value of his services and the 'losing' solicitor will do likewise in relation to his client. If both clients are registered for VAT and the action concerned a business matter, for example, a disputed trade debt, each client may claim input VAT invoiced to him on his solicitor's services. The winner's solicitor will have performed no service whatever for the loser and there can be no question of the loser claiming on his VAT returns for VAT other than that correctly invoiced to him. If the 'winning' client is registered for VAT purposes and his solicitor's services are supplied for business purposes, he will be able to claim the VAT payable to his solicitor and, in this event, there should be no recovery of this VAT from the losing side. It is a matter for the losing or paying party to raise the query whether or not the winner is correctly seeking VAT recovery, and Revenue staff should stand aside from any disputes of this nature."
- "If by agreement or court order one side bears the other side's costs, the sum involved is a financial transaction between the parties and it is not liable to VAT" that is, the payment by D to P of P's costs is seen by Revenue as a financial transaction, and P will not charge VAT to D on same.
- It does not mean the services supplied by P's solicitors are not liable to VAT.
- If D is indemnified by an insurer for P's costs, the position remains as outlined above.
- Where a person is indemnified under a policy of insurance in respect of any amount payable in respect of services of a solicitor, those services are deemed for the purposes of VAT legislation to be supplied to such person and not the insurer.
- It might be noted that, in the context of business litigation, if a business has ceased prior to incurring costs that were related to the business and the business was entitled to full VAT recovery, VAT on such costs may be recovered in the normal way, notwithstanding that the business has ceased.

The above summary is perhaps best illustrated by an example. Take the scenario of P v D, where P is successful, is awarded costs, and D is covered by an insurer including indemnity for D's legal costs. The insurer instructs the solicitors who act for D. P is entitled to recover VAT in full on his legal costs. In this scenario, P's solicitor issues a VAT invoice to P and accounts for VAT on same. P recovers the VAT on this invoice. Thus the net cost to P is the VAT exclusive amount invoiced by P's solicitor. The solicitor instructed by the insurer issues a VAT invoice to D, not to the insurer, and accounts for VAT on same. VAT recovery by D depends on whether the expense relates to D's VATable activities or not. P recovers his net costs from D/D's insurer. The payment of this amount by D/D's insurer to P has no VAT consequences.

Deposit moneys in conveyancing transactions

Where deposit moneys in the normal course of a conveyancing transaction are paid by a purchaser to a vendor's solicitor, those funds are held by the vendor's solicitor:

1) As a trustee for the purchaser pending the coming into being of a binding contract for sale (where so requested by the purchaser). While holding the deposit in trust for the purchaser, a vendor's solicitor, as trustee for the purchaser, cannot pay the deposit monies to the vendor or to any other party without the consent of the purchaser.
2) When a binding contract for sale has come into being, as stakeholder for both the vendor and the purchaser. According to Wylie's *Irish Conveyancing Law* (2nd edition), "a stakeholder is a person whose duty it is to hold money in his hands not for one or other of the parties to a transaction, but for both, until some event occurs upon the happening of which it becomes his duty to hand over the money to one or other of the parties, [for example] to the vendor if the sale goes through or to the purchaser if it does not. Pending that event, he must hold onto the money and must not release it to one of the parties without the consent of the other." It is clear, therefore, that a vendor's solicitor, as stakeholder for both vendor and purchaser, cannot pay the money to either party until the contract proceeds to completion, or it comes to an end through rescission or otherwise, or the deposit is forfeited by the vendor in accordance with the terms of the contract.

Until a conveyancing transaction has actually completed, it is not certain that it will complete, or when it might complete, or who the ultimate owner of deposit moneys (held by a solicitor in trust or as stakeholder) will be. It is therefore never permissible for a solicitor to deduct fees prior to completion of a sale from deposit monies held by the solicitor in any of those capacities, whether or not so authorised by the solicitor's client.

John Elliot, Registrar of Solicitors and Director of Regulation

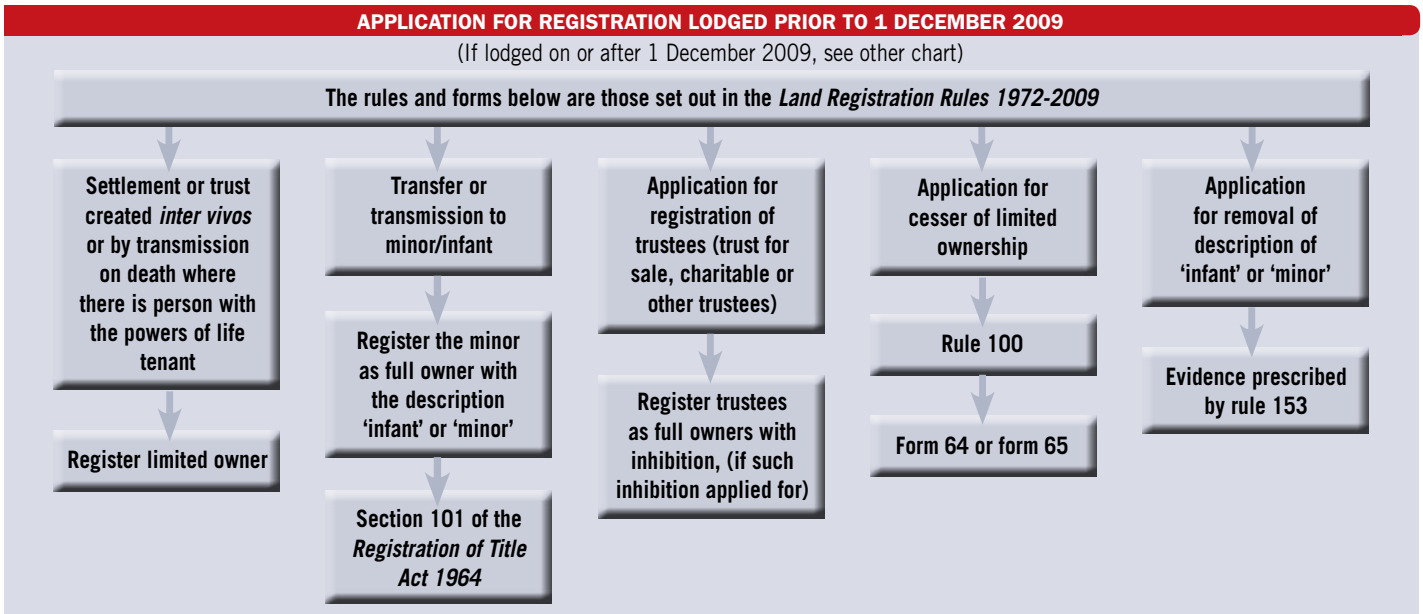
BRIEFING

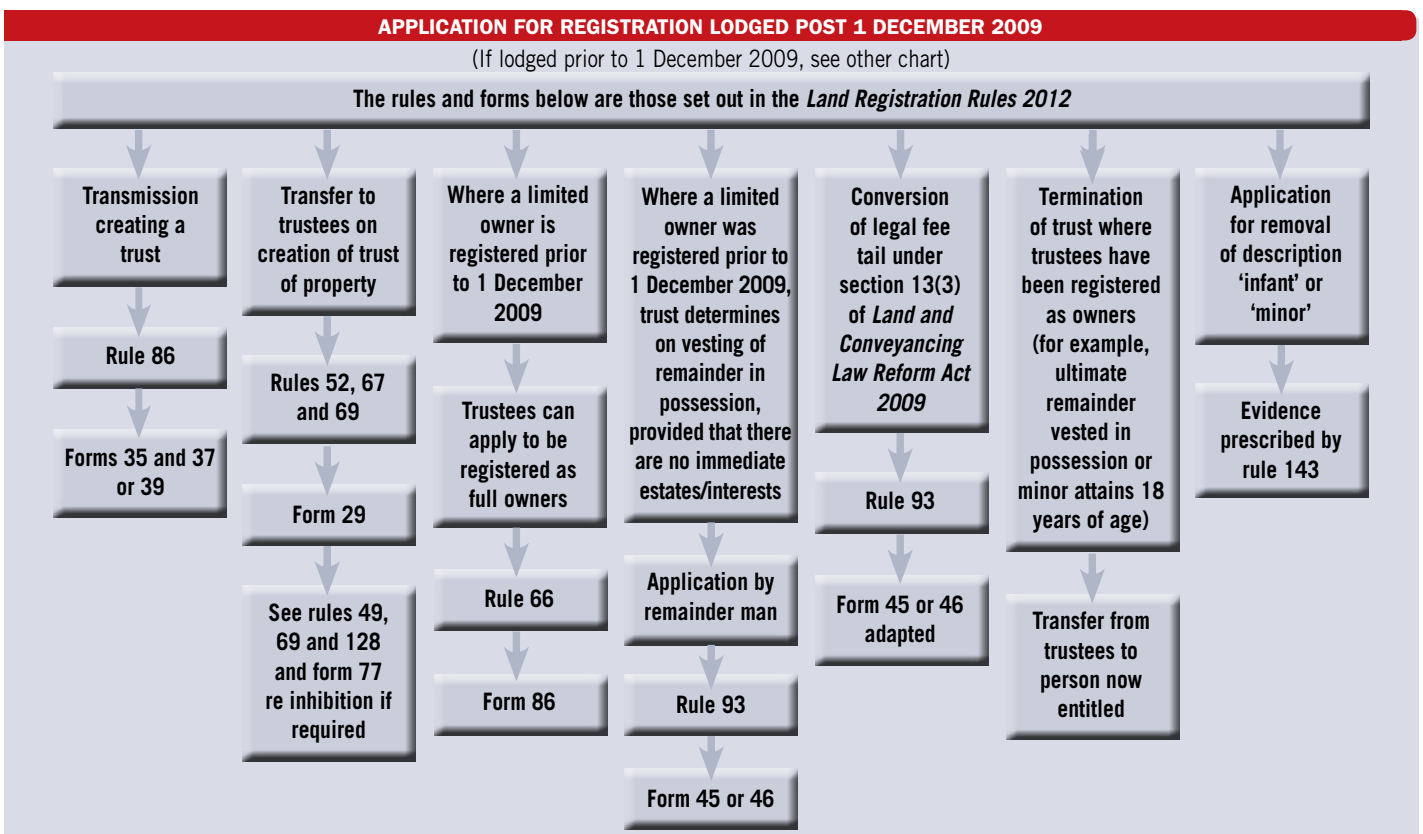
Registration of trusts and settlements

CONVEYANCING COMMITTEE

The Conveyancing Committee receives many queries from practitioners indicating uncertainty about the procedures and forms necessary to register trusts and settlements in the Land Registry. The committee has taken the matter up with the Property Registration Authority (PRA). With thanks to the PRA for giving permission to republish their flowcharts, and acknowledging the work of the staff of the PRA's Training and Development Unit in producing them, the Conveyancing Committee would like to draw the attention of the profession to the two flowcharts below.

The PRA has confirmed that these charts are accessible on their website, www.prai.ie, in the practice direction on trusts of lands. That practice direction was updated to include these flowcharts. The 'legal practices and procedures' link on the home page will bring practitioners into the 'practice directions' and 'legal office notices'.





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 Brendan MacNamara, solicitor, formerly practising as a partner in the practice of Devitt Doorley MacNamara, The Valley, Roscrea, Co Tipperary, and in the matter of the *Solicitors Acts 1954-2011* [10447/DT44/10 and High Court record no 2011 86 SA]

Law Society of Ireland (applicant) Brendan MacNamara (respondent solicitor)

On 21 July 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Conducted a conveyancing transaction in relation to a named client in a manner that fell so far below what could be regarded as prudent standard conveyancing practice that his client obtained no title to the property,
b) Breached his solicitor's undertaking to Roscrea Credit Union,
c) Left his client with a liability to repay a loan and interest to Roscrea Credit Union, notwithstanding that he obtained no title to the property that was the subject matter of the loan from the credit union,
d) Conducted a conveyancing transaction in relation to another named client in a manner that fell so far below what could be regarded as prudent standard conveyancing practice that his client obtained no title to the property,
e) Breached his solicitor's undertaking to Bank of Ireland in respect of a loan of €170,000,
f) Left his client with a liability to repay a loan and interest to Bank of Ireland, notwithstanding that he obtained no title to the property that was the subject matter of the loan from the bank,
g) Conducted a conveyancing transaction in relation to another named client in a manner that fell so far below what could be regarded as prudent standard conveyancing practice that his client obtained no title to the property.

The tribunal made an order that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €12,000 to the compensation fund,
c) Pay the whole of the costs of the Society, including witness expenses, as taxed by a taxing master of the High Court in default of agreement.

The matter on appeal came before the President of the High Court on 21 January 2013. The President acceded to the Society's appeal and ordered that:

1) The name of the respondent solicitor be struck off the Roll of Solicitors,
2) The order of the tribunal censuring the respondent solicitor and directing him to pay a sum of €12,000 to the compensation fund of the Society be rescinded,
3) The respondent solicitor pay to the Society the costs of the tribunal and the High Court proceedings, to be taxed in default of agreement.

In the matter of Adam A Suzin, a solicitor previously practising as Adam A Suzin & Company, Solicitors, at 6 Keons Terrace, Longford, Co Longford, and in the matter of the *Solicitors Acts 1954-2008* [10064/DT102/11]

Law Society of Ireland (applicant) Adam A Suzin (respondent solicitor)

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

a) Failed to comply expeditiously, or within a reasonable time, or at all with an undertaking given by him to KBC Homeloans,
b) Failed to respond adequately or at all to the complainant's correspondence and, in particular, letters dated 10 October 2008, 3 February 2009, 27 April 2009, 30 July 2009, 12 November 2009, 25 February 2010, 9 March 2010, 14 May 2010 and 10 June 2010,
c) Failed to respond adequately or at all to the Society's correspondence and, in particular, letters dated 21 June 2010, 12 July 2010, 26 July 2010 and 17 December 2010,
d) Failed to respond to the Society's correspondence, resulting in the committee directing the Society to make an application to the High Court pursuant to section 10A of the *Solicitors (Amendment) Act 1994* (as amended by substitution),
e) Failed to comply with a direction of the committee meeting of 7 September 2010, whereby he was directed to pay the sum of €450 as a contribution to the Society's costs of the investigation due to his failure to correspond to the Society,
f) Failed to attend a meeting of the committee on 14 December 2010, despite being required to do so,
g) Failed to attend a meeting of the committee on 16 February 2011, despite being required to do so.

The tribunal recommended that the matter be sent forward to the President of the High Court and accordingly, on 15 April 2013, in High Court proceedings entitled record no 2013 no 16 SA, *Law Society of Ireland v Adam A Suzin*, the President of the High Court ordered that:

a) The respondent solicitor should be suspended from practising as a solicitor until further order,
b) The respondent solicitor do pay to the Society the whole of the costs of the Society, to be taxed in default of agreement.

The solicitor was subsequently struck off the Roll of Solicitors on 8 July 2013 in High Court proceedings 2013 no 59SA.

In the matter of Adam A Suzin, a solicitor previously practising as Adam A Suzin & Company, Solicitors, at 6 Keons Terrace, Longford, Co Longford, and in the matter of the *Solicitors Acts 1954-2008* [10064/DT168/10]

Law Society of Ireland (applicant) Adam A Suzin (respondent solicitor)

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

a) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2009 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001),
b) Through his conduct, showed disregard for his statutory obligations to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

NOTICE: THE HIGH COURT

Record no 2013 no 85 SA
In the matter of Mark Cronin, a solicitor, and in the matter of the *Solicitors Acts 1954-2011*

Take notice that, by order of the High Court made on Monday 14 October 2013, it was ordered that the name of Mark Cronin, solicitor, be struck off the Roll of Solicitors.

John Elliot,
Registrar of Solicitors,
25 November 2013

The tribunal recommended that the matter be sent forward to the President of the High Court and accordingly, on 15 April 2013, in High Court proceedings entitled record no 2013 no 16 SA, *Law Society of Ireland v Adam A Suzin*, the President of the High Court ordered that:

a) The respondent solicitor should be suspended from practising as a solicitor until further order,
b) The respondent solicitor do pay to the Society the whole of the costs of the Society, to be taxed in default of agreement.

The solicitor was subsequently struck off the Roll of Solicitors on 8 July 2013 in High Court proceedings 2013 no 59SA.

In the matter of James O'Mahony, a solicitor previously practising as James O'Mahony, Solicitors, at 16 Stoneybatter, Dublin 7, and in the matter of the *Solicitors Acts 1954-2008* [4831/DT05/12]
Law Society of Ireland (applicant)
James O'Mahony (respondent solicitor)
On 12 March 2013 and 30 May 2013, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. On 30 May 2013, the tribunal found the respondent solicitor guilty of professional misconduct in that he:

a) Failed to comply with an undertaking furnished to a complainant, dated 8 November 2007, in respect of his named clients and property in Glasnevin, Dublin 9, in a timely manner or at all,
b) Failed to respond to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 10 June 2011, 7 July 2011, 19 August 2011 and 20 September 2011.

The tribunal ordered that the respondent solicitor:

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

In the matter of James O'Mahony, a solicitor previously practising as James O'Mahony, Solicitors, at 16 Stoneybatter, Dublin 7, and in the matter of the *Solicitors Acts 1954-2008* [4831/DT06/12]
Law Society of Ireland (applicant)
James O'Mahony (respondent solicitor)
On 12 March 2013 and 30 May 2013, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. On 30 May 2013, the tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

a) Failed to comply with an undertaking furnished to a named bank, dated 5 October 2000, in respect of his named clients and property at Cabra, Dublin 7, in a timely manner or at all,
b) Failed to respond to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 10 June 2011, 7 July 2011, 19 August 2011 and 20 September 2011.

The tribunal ordered that the respondent solicitor:

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

In the matter of James O'Mahony, a solicitor previously practising as James O'Mahony, Solicitors, at 16 Stoneybatter, Dublin 7, and in the matter of the *Solicitors Acts 1954-2008* [4831/DT07/12]
Law Society of Ireland (applicant)
James O'Mahony (respondent solicitor)
On 12 March 2013 and 30 May 2013, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. On 30 May 2013, the tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

a) Failed to comply with an undertaking furnished to a named bank, dated 23 September 2008, in respect of his named clients and property at Ashbourne, Co Meath, in a timely manner or at all,
b) Failed to respond to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 10 June 2011, 7 July 2011, 19 August 2011 and 20 September 2011.

The tribunal ordered that the respondent solicitor:

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

In the matter of James O'Mahony, a solicitor previously practising as James O'Mahony, Solicitors, at 16 Stoneybatter, Dublin 7, and in the matter of the *Solicitors Acts 1954-2008* [4831/DT08/12]
Law Society of Ireland (applicant)
James O'Mahony (respondent solicitor)
On 12 March 2013 and 30 May 2013, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. On 30 May 2013, the tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

a) Failed to comply with an undertaking furnished to a named bank, dated 16 June 2006, in respect of his named clients and property in Dublin 15 in a timely manner or at all,
b) Failed to respond to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 10 June 2011, 7 July 2011, 19 August 2011 and 20 September 2011.

The tribunal ordered that the respondent solicitor:

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

In the matter of James O'Mahony, a solicitor previously practising as James O'Mahony, Solicitors, at 16 Stoneybatter, Dublin 7, and in the matter of the *Solicitors Acts 1954-2008* [4831/DT09/12]
Law Society of Ireland (applicant)
James O'Mahony (respondent solicitor)
On 12 March 2013 and 30 May 2013, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. On 30 May 2013, the tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

a) Failed to comply with an undertaking furnished to a named bank, dated 9 January 2003, in respect of his named clients and property at Inchicore, Dublin 8, in a timely manner or at all,
b) Failed to respond to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 10 June 2011, 7 July 2011, 19 August 2011 and 20 September 2011.

The tribunal ordered that the respondent solicitor:

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

In the matter of James O'Mahony, a solicitor previously practising as James O'Mahony, Solicitors, at 16 Stoneybatter, Dublin 7, and in the matter of the *Solicitors Acts 1954-2008* [4831/DT10/12]

Law Society of Ireland (applicant) James O'Mahony (respondent solicitor)

On 12 March 2013 and 30 May 2013, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. On 30 May 2013, the tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

a) Failed to comply with an undertaking furnished to Bank of Ireland Mortgages, dated 23 January 2007, in respect of his named clients and property at Customs House Harbour, IFSC, Dublin 1, in a timely manner or at all,
b) Failed to respond to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 10 June 2011, 7 July 2011, 19 August 2011 and 20 September 2011.

The tribunal ordered that the respondent solicitor:

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

In the matter of Jeremy Paul O'Reilly, a solicitor previously practising as JP O'Reilly & Company, Solicitors, Church Street, Ballyconnell, Co Cavan, and in the matter of the *Solicitors Acts 1954-2011* [10298/DT139/12]

Law Society of Ireland (applicant) Jeremy Paul O'Reilly (respondent solicitor)

On 14 March 2013 and 24 July 2013, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. On 24 July 2013, the tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure there was furnished to the Society a closing accountant's report as required by regulation 26(2) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001) in a timely manner or at all, having closed his practice on 16 March 2010.

The tribunal ordered that the respondent solicitor do stand advised and admonished.

Legislation update 8 October – 11 November 2013

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

Industrial Development (Science Foundation Ireland) (Amendment) Act 2013

Number: 36/2013

To extend the remit of Science Foundation Ireland to enable it to fund applied research in addition to its existing remit to fund oriented basic research. Oriented basic research is an internationally recognised category of research and is defined as research that is carried out with the expectation that it will produce a broad base of knowledge likely to form the basis of the solution to recognised or expected current or future problems or possibilities. Applied research, on the other hand, is research directed primarily towards a specific practical aim or objective. Also makes provision for a new function to enable the foundation to promote and support awareness and understanding of science, technology, engineering and mathematics. Amends the *Industrial Development (Science Foundation Ireland) 2003*, amends the *Science and Technology Act 1987*, amends the *Industrial Development Act 1993*, amends the *Industrial Development Act 1986*, amends the *Freedom of Information Act 1997*, and provides for connected matters.

Commencement: Commencement order(s) to be made as per s11(3) of the act.

Taxi Regulation Act 2013

Number: 37/2013

Provides for the revision of the regulation of the small public service vehicle industry and for those purposes provides for mandatory disqualification for drivers of small public service vehicles convicted of certain offences and a demerit scheme relating to drivers of small public service vehicles, repeals the *Taxi Regulation Act 2003* and section 84 of the *Road Traffic Act 1961*, amends part 3 of the *Road Traffic Act 2010*, and provides for related matters.

Commencement: Commencement order(s) to be made as per s1(2) of the act.

SELECTED STATUTORY INSTRUMENTS

European Union (Term of Protection of Copyright and Certain Related Rights) (Directive 2011/77/EC)

Number: SI 411/2013

Transposes Directive 2011/77/EU, amending Directive 2006/116 by extending the term of copyright for performers and for producers of sound recordings from 50 to 70 years. Introduces new measures to benefit performers in sound recordings in the later stages of their career, such as a 20% fund for session musicians to obtain additional payments during the extended 20 year term; a provision whereby performers can reclaim their rights from producers if, in the extended period, a record company does not market a recording; and a 'clean slate' provision, whereby producers will not be entitled to make deductions from the contractual royalties due to featured performers during the extended term of protection. The regulations also implement harmonised rules governing the term of protection of copyright in musical compositions with words – that is, where the lyricist and the composer are different persons.

Commencement: 1/11/2013

Rules of the Superior Courts (Winding-up of Companies: Forms) 2013

Number: SI 395/2013

Substitutes forms 3 and 4 in appendix M (petition by unpaid creditor on simple contract debt and petition for order where the powers of the directors are being exercised in a manner oppressive to a member, respectively) to incorporate in those forms a full listing of the recitals required to facilitate the operation of Council Regulation 1346/2000 on insolvency proceedings.

Commencement: 11/11/2013

Rules of the Superior Courts (Payments into Court) 2013

Number: SI 396/2013

Amends order 22, rule 7 and rule 14(3) of the *Rules of the Superior Courts* to remove the need for reference in a defence or replying affidavit to a payment into court having been made and applying such provisions to a tender offer as they apply to a lodgment.

Commencement: 11/11/2013

Prepared by the Law Society Library

Eurlegal

Edited by TP Kennedy, Director of Education

Making its mark: the *Construction Products Regulation*

The EU *Construction Products Regulation* (CPR), which became fully operational on 1 July 2013, aims to lay down harmonised conditions for the marketing of construction products in the EU. It repeals the *Construction Products Directive* (CPD) (89/106/EEC), which had the same aims of overcoming technical barriers to trade that arise where different countries have different standards and approaches to the same products. The CPR has replaced the CPD in order to simplify and clarify the framework put in place by the CPD and to improve the transparency and effectiveness of the existing measures.

The CPR aims to do this by using four key instruments:

- A system of harmonised technical specifications,
- An agreed system of conformity assessment,
- A framework of notified bodies, and
- The use of the CE marking.

Where a product is not covered by a hEN, this may lead to an ETA for that product

While these instruments are not new, the CPR introduces some new requirements that will create new obligations for manufacturers, importers and distributors when placing a construction product on the market. It also has implications for designers, specifiers and builders, as they must understand the new requirements and marking regime in order to assess whether certain products are appropriate for their intended use.

Harmonised specifications

Under the CPR, harmonised standards will be established (hENs), which will provide the methods and the criteria for assessing the performance of construction products in relation to their essential characteristics. Where a product is not covered by a hEN, European assessment documents may be produced by the European Organisation for Technical Approvals, which may lead to the issue of a European technical assessment (ETA) for that product. Both hENs and ETAs will form the basis for harmonised technical specifications.

The harmonised technical specifications provide EU-wide methods of assessing and declaring all the performance characteristics that affect the ability of construction products to meet seven basic requirements:

- Mechanical resistance and stability,
- Safety in case of fire,
- Hygiene, health and environment,
- Safety and accessibility in use,
- Protection against noise,
- Energy economy and heat retention, and
- Sustainable use of natural resources.

Conformity assessment

The system of assessment and verification of constancy of performance will involve third parties assessing the conformity of a product to the relevant technical specification. The system(s) will be agreed collectively by the member states and the commission, and this will be decided on the basis of the implications of the product on health and safety and on the particular nature and production process for the product.

Notified bodies

Notified bodies are those bodies that are considered competent to carry out the conformity assessment tasks under an agreed system of assessment and verification of constancy of performance. These can include product certification bodies, factory production control certifiers, and testing laboratories approved by member states for these purposes and then notified to the commission and other member states.

CE marking

From 1 July 2013, all construction products placed on the internal market that are covered by a hEN or an ETA (subject to certain exceptions) must be accompanied by a declaration of performance (DOP) and have the CE marking.

A DOP is produced by the manufacturer and provides information about the essential characteristics of the product based on the relevant technical specification(s). In making a DOP, the manufacturer assumes legal responsibility for the conformity of the product with its declared performance. Once the CE mark is affixed to the product, this indicates that

the product is consistent with its DOP. It is important to note that the CE mark is not a quality mark, and it does not necessarily mean that the product will be suitable for end uses in all member states. Member states are free to set their own minimum requirements on the performance of building works and construction products incorporated into such works. Therefore, the responsibility for ensuring that a particular product has the correct characteristics for a particular application rests with the designers, contractors, and local buildings authorities.

Health and safety

In the context of the CPR, it is worth highlighting section 16 of the *Safety, Health and Welfare at Work Act 2005*. This creates general duties for all designers, manufacturers, importers, and suppliers of articles and substances and makes specific reference to the obligation to comply with any relevant EC directives. Notwithstanding the provisions of the CPR, designers, manufacturers, importers and suppliers of construction products in Ireland will have to ensure that they are, so far as is reasonably practicable, designed and constructed so that they can be used safely and without risk to health at work. Further, suppliers must provide relevant information to the person to whom the product is supplied, which must include information on safe installation, use, maintenance, cleaning, dismantling and disposing of the product.

The CPR will entail new obligations for manufacturers and suppliers in relation to the information supplied with construction products and in respect of CE marking. The fundamental tenet of the CPR is to remove barriers to trade for such products within the EU market and, as such, end users such as construction professionals and contractors should be cognisant that their duties remain in respect of the specification, application and use of construction products. Member states are free to set their own minimum requirements on the performance of building works and construction products incorporated into such works, and end users must ensure that construction products comply with these requirements.

Martin Cooney is an associate with the Construction and Engineering Group of Arthur Cox.

Recent developments in European law

LITIGATION

Case C-59/12, *Salzgitter Mannesmann Handel GmbH v SC Laminorul SA*, 26 September 2013

Laminorul is established in Romania. It brought an action against Salzgitter (a German company) seeking payment for a delivery of steel products in the Romanian courts. Salzgitter argued that suit should have been brought against the actual party to the contract, Salzgitter Mannesmann, rather than against it. On this basis, the Romanian court dismissed the case. Shortly afterwards, Laminorul initiated new proceedings against Salzgitter before the same court for the same cause of action. Proceedings were served on its legal representative, whose authority to act for the company had been limited, according to Salzgitter, to the first proceedings. No one appeared on Salzgitter's behalf before the local court and Laminorul obtained a judgment in default for €188,330. Salzgitter made a number of applications in Romania to review or set aside the second judgment, and these were all dismissed. Laminorul then sought to enforce this judgment in Germany.

Article 34(4) of the *Brussels I Regulation* precludes the enforcement of two irreconcilable judgments. The CJEU was asked to rule whether it could apply to two irreconcilable judgments given by courts of the same member state. It held that to interpret article 34(4) as applying to irreconcilable judgments given in the same member state is inconsistent with the principle of mutual trust between EU member states. Such an interpretation would allow the court in the member state in which recognition is sought to substitute its own assessment for that of the court in the member state of origin. Choosing which judgment to enforce amounts to reviewing the substance of a judgment – this is expressly excluded by article 45(2) of the regulation. Such a possibility of review as to the substance would be an additional means of redress against a judgment that has become final in the member state of origin.

NOTICES

WILLS

Boosey, Betty (deceased), late of Keernaun, Headford, Co Galway, who died on 4 February 2004. Would any person having knowledge of a will made by the above-named deceased or if any firm is holding same, please contact Higgins Chambers & Flanagan, Solicitors, Headford, Co Galway; tel: 093 35656, fax: 093 35741, email: info@hcfsolicitors.com

Carey, Patrick (deceased), late of 36 Convent Street, Listowel, Co Kerry, who died on 29 November 1987. Would any person having knowledge of a will made by the above-named deceased please contact Maura E Hennessy & Co, 12 Edward Street, Tralee, Co Kerry (ref: MH/1739); tel: 066 712 8700, fax: 066 712 7541, email info@hennessysolicitors.ie

Greene, Laurence P (deceased), late of Ivy Nook, Roscrea, Co Tipperary. Would any person having knowledge of any will made by the above-named deceased, who died on 3 September 2013, please contact Michael J Breen & Co, Solicitors, Main Street, Roscrea, Co Tipperary; tel: 0505 22155/22747, fax: 0505 22747, email: law@mjbreensolicitors.ie

Hooks, James Francis (deceased), late of Knockfarnaught, otherwise Cashel, Lahardane, Ballina, Co Mayo. Would any person having any knowledge of the whereabouts of any will made by the above-named James Francis Hooks, who died on 8 July 2012, please contact Mr James Cahill, Cahill & Cahill, Solicitors, Ellison Street, Castlebar, Co Mayo; DX 33002 Castlebar; tel: 094 902 5500, fax: 094 902 5511, email: solicitor@jamescahill.com

Jennings, Stephen Noel (deceased), late of 8 Dufferin Avenue, South Circular Road, Dublin 8, formerly of 4 Roseville Terrace, Dundrum, Dublin 14, and also formerly of 39 Merville Avenue, Stillorgan, Co Dublin, who died on 25 August 2013. Would any person having knowledge of any will executed by the above-named deceased please contact Patrick J Neilan and Sons, Solicitors, Golf Links Road, Roscommon; DX 90 004 Roscommon; tel: 090 662 6115, fax: 090 662 6990, email: pjneilan@securemail.ie

Kelly, Michael (deceased), late of Clooncallow, Ballymahon, Co Longford, who died on 29 July 2013. Would any person having knowledge of a will made by this deceased please contact NJ Downes & Co, Solicitors, Dominick Street, Mullingar, Co Westmeath; tel: 044 93 48646, fax: 044 93 43447, email: jwallace@njdownes.ie

Killen, Patricia, (deceased), late of 9 Seafield Court, Malahide, Co Dublin. Would any person having knowledge of any will made by the above-named deceased, who died on 16 February 2000, please contact Devaney & Partners, Solicitors, Main Street, Malahide, Co Dublin; DX 107003 Malahide; tel: 01 845 1212, fax: 01 845 2880, email: info@devaney.ie

Nolan, Marie (deceased), late of Mill Lane, Carnew, Co Wicklow. Would any person having knowledge of a will made by the above-named deceased, who died on 3 September 2013, please contact Pauline O'Toole & Co, Solicitors, Main Street, Carnew, Co Wicklow; tel: 053 942 3596, fax: 053 942 3598, email: info@otoolesolicitors.com

Purdue, Francis (deceased), late of 34 Watermill Park, St Anne's, Raheny, Dublin 5. Would any person having knowledge of a will made by the above-named deceased, who died on 13 September 2009, please contact Gwen Bowen of Bowen & Co, Solicitors, Pound Street, Sixmilebridge, Co Clare; tel: 061 713 767, email: gwen@legalsupportservices.ie

Roberts, Daniel (deceased), late of Charter Road, Corrig, Stradbally, Co Laois. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 20 October 2013, please contact Rollestons, Solicitors, 4 Wesley Terrace, Port-

RATES

Professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for Jan/Feb 2014 *Gazette*: 22 Jan 2014. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

NOTICES

laoise, Co Laois; tel: 057 862 1329, email: info@rollestons.ie

Wall, John Joseph (deceased), late of Clatterstown, Garristown, Co Dublin. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 12 November 2013, please contact Smyth & Son, Solicitors, Rope Walk, Drogheda, Co Louth; ref: PRS/SS/OBR039/001; email: psmyth@smythandson.ie

MISCELLANEOUS

Westside Bookkeeping Services Need a bookkeeping/accounting Service? Check out our website, www.westsidebookkeeping.ie.

Specialising in all aspects of solicitors' book-keeping/accounts/payroll. Experienced personnel available on a contract basis – on site. Excellent references available. Contact Michelle Ridge; tel: 087 293 0347, email: mridge@indigo.ie

Considering retirement or going part time? If you are interested in selling your practice, please contact sconnolly@moranryan.com in strictest confidence

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Sheila Norton
Re: nos 4 and 4A Rosedale Terrrace, Lower Clanbrassil Street, Dublin 8, and no 7 Rosedale Terrace, Lower Clanbrassil Street, Dublin 8, and which said application is being made on behalf of Sheila Norton of *Tinode*, Main Street, Blessington, Co Wicklow.

Take notice that any person having any interest in the freehold estate of the properties now known as no 4 (comprising 4 and 4A) and no 7 Rosedale Terrace, Lower Clanbrassil Street, Dublin 8, being part of the premises more particularly described as "all that and those the seven dwellinghouses with gardens attached thereto, six in rear and one in front thereof, situate on the east side of Lower Clanbrassil Street (formerly New Street) in the parish of St Peter and barony of St Sepulchres, formerly in the county but now in the city of Dublin, numbered in the said street respectively twenty eight and a half, twenty nine thereof, thirty one, thirty two, thirty three, and thirty four (late sixty eight, sixty nine, seventy, seventy one, seventy two and seventy three New Street) with the passage to the rear of said houses adjoining the said house number twenty nine Lower Clanbrassil Street (late in New Street)", in the parish of St Peter and barony of St Sepulchres and city of Dublin, being part of the premises described by indenture of lease dated 13 March 1935 and made between Esther Barron of the one part and Patrick J Bermingham of the other part for a term of 200 years from 24 June 1871, subject to the yearly rent of £20 thereby reserved, should give notice of their interest to the undersigned.

Further take notice that the applicant intends submitting an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in such properties are called upon to furnish evidence of the title to the same to the below signed within 21 days from the date of this notice.

In default of notice as referred to above being received, the applicant intends to proceed with the application before the county registrar at the expiry of the said period of 21 days and will apply to the county registrar for the city of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversionary in the said premises are unknown or unascertained.

Date: 6 December 2013.
Signed: Joe Clancy Solicitors (solicitors for the applicant), Main Street, Rathfarnham, Dublin 14

RECRUITMENT

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

Please note that, as and from the August/September 2006 issue of the *Law Society Gazette*, **NO recruitment advertisements will be published that include references to years of post-qualification experience (PQE)**. The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998* and *2004*.

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

Man alive! The walking dead appear in court

An Ohio judge has ruled that a man who appeared in court is legally dead, *TheCourier.com reports*.

Donald Miller Jr was declared dead in 1994, eight years after he disappeared from his home.

Miller, 61, told the court he was an alcoholic and left town because he lost his job and was unsure what to do. He wants to reverse the death ruling so he can get a driver's license and reinstate his social security number.

However, Judge Allan Davis said Miller is still legally dead because a death ruling cannot be changed after three years have passed.

Miller's former wife opposed his application. She has been receiving social security death benefits for her children and says she can't afford to repay the money.

"We've got the obvious here," said the judge. "A man sitting in the courtroom, he appears to be in good health."

But the three-year time limit on the death ruling is clear, Davis said. "I don't know where that leaves you, but you're still deceased as far as the law is concerned."

Man banned from every pub in city

A man has been banned from every pub in Dublin after running into a bar while trying to avoid gardaí, reports the *Evening Herald*.

David Lee (30) struck a pursuing garda over the head with an object he picked up off a bar table. He knocked over tables and stools after he and a garda got into a struggle.

Lee was ordered by a judge to stay out of every pub in the Dublin area for the next 12 months.

Judge Alan Mitchell also imposed a four-month sentence suspended for one year. Lee admitted before Swords District Court to threatening and abusive behaviour and assaulting the garda.

Mistaken identity pays off

In 2008, Kimberly Fossen was told that she had been a victim of identity theft by an officer from the Clackamas County sheriff's office: a woman arrested in Las Vegas had a Florida driver's license in Fossen's name.

But in 2009, police came to her home again, to arrest her on a New York warrant charging her with theft. Knowing that her identity had been stolen, Fossen asked the officers to run her fingerprints to confirm that she was not the woman they sought, *The Oregonian* reports. Instead, they took her to jail, where she spent the night before being publicly arraigned the next day, shackled and wearing prison garb.

Fossen was released a few hours after her arraignment. She brought a false imprisonment civil suit against the county and was awarded $105,000.

Calling Captain Justice!

In a recent case in Tennessee, assistant district attorney general Tammy Rettig asked the judge to make the defence attorney stop calling her 'the government', claiming that the term was derogatory and prejudicial. She suggested the alternative title of 'General Rettig'.

In a formal written motion, defence lawyer Drew Justice (really) responded with alternate acceptable terms for their side. First, the defendant should be referred to by his full name.

"Alternatively, he may be called simply 'the Citizen Accused'. This latter title sounds more respectable than the criminal 'defendant'. The designation 'that innocent man' would also be acceptable.

"Moreover, defence counsel does not wish to be referred to as a 'lawyer', or a 'defence attorney'. Rather, counsel for the Citizen Accused should be referred to primarily as the 'Defender of the Innocent'. This title seems particularly appropriate, because every Citizen Accused is presumed innocent. Alternatively, counsel would also accept the designation 'Guardian of the Realm'.

"Further, the Citizen Accused humbly requests an appropriate military title for his own representative, to match that of the opposing counsel. Whenever addressed by name, the name 'Captain Justice' will be appropriate. While less impressive than 'General', still, the more humble term seems suitable. After all, the Captain represents only a Citizen Accused, whereas the General represents an entire state."

Read more at www.loweringthebar.net/2013/11/captain-justice.html. G

JOBS BORED.

HRM Recruit's Legal Selection Team works with Partners and Solicitors at all levels to identify the next step in their highly successful legal careers.

FUNDS PARTNER Ref BD31

This high profile firm, which has had considerable success in growing its funds market share, seeks to appoint an additional partner to its funds practice. Existing partners dealing with Irish regulated funds OR senior level funds associates with a high career ambition level will both be considered for this position. A robust and compelling financial package will be on offer for the successful appointee into the role.

LITIGATION PARTNER Ref BD32

Market leading, Tier 1, progressive and dynamic; whichever formula of words you chose to apply, the litigation department of this firm has it. Due to sustained growth across the litigation practice, the firm now seeks to appoint an additional partner to the team. Existing partners, or associates on the cusp of partnership, coming from a leading litigation team in Dublin will both be considered for this opportunity.

M&A ASSOCIATE Ref BD33

The corporate department of this top tier firm seeks to appoint a talented associate with a high ambition level to its booming practice. The team deals with a wide range of work including M&A, high profile FDI into Ireland, takeovers, privatisations, JVs, corporate reorganisations in addition to advising on ongoing corporate, company law and governance issues. The appointee will have a partnership career trajectory. (5+ years relevant experience)

STRUCTURED FINANCE ASSOCIATE Ref BD34

One of the top ranked structured finance teams in Dublin seeks to appoint an additional associate to its specialist team. Working closely with the tax, capital markets and banking groups, the appointee will advise major financial institutions on securitisations, fund-linked structured products, repackagings, securities lending & repos. Applicants will have a high career ambition level with partnership as their end goal. (5+ years relevant experience)

JUNIOR QUALIFIED | PROPERTY Ref NQ01

One of Ireland's largest law firms seeks to recruit an entry level solicitor into its market leading commercial property department. The successful candidate will deal with the full spectrum of transactional & advisory property work including sale and acquisition, L&T, investor properties and some cross over into property finance. Suitable candidates must have trained with a Big 6 Irish firm/leading London firm and have excellent academics. Salary Scale: Newly Qualified Level.

JUNIOR QUALIFIED | BANKING Ref NQ02

This firm's banking practice, which enjoys an enviable position in the Irish market, deals with the full spectrum of finance law for domestic/international financial institutions and corporate borrowers. As a result of growing work levels, the partners seek to hire an entry level solicitor into the financial services group. Suitable candidates must have trained with a Big 6 Irish firm/leading London firm and have excellent academics. Salary Scale: Newly Qualified Level.

COMMERCIAL CONTRACTS | IN-HOUSE Ref JS01

In-house legal counsel sought by this multinational financial service provider, to work on a diverse range of agreements including confidentiality and non disclosure agreements, third party contracts, intellectual property and corporate compliance. In this role you will be involved in reviewing, analysing and amending existing agreements, and also providing high level guidance and interpretation on contracts to senior management. (5+ Years Relevant Experience)

SECURITIES | IN-HOUSE Ref JS02

In this renowned financial institution you will advise on legal aspects of complex portfolios and commercial lending including; negotiation and drafting of amended loan agreements, advising on high value portfolios, debt restructuring, security and strategy review. Expertise in commercial banking, commercial property, insolvency or restructuring is required, with a proven track record of providing legal advice on significant transactions. (3+ Years Relevant Experience)

To arrange a confidential discussion on any of these opportunities or other non-advertised appointments please contact:

Bryan Durkan
Principal Consultant Legal Selection
t: +353 1 632 1852
e: bryan.durkan@hrmrecruit.com

James Steele
Legal Selection Consultant
t: +353 1 632 1881
e: james.steele@hrmrecruit.com

www.hrmrecruit.com

HRM RECRUIT

Recognising talent's one thing...
finding the truly successful
fit is another

Talk to the Irish Legal Recruitment Specialists

A new year beckons and we have significant fresh opportunities for practitioners across many practice areas from Recently Qualified to Partner level. The following are examples of the roles our clients are seeking to fill. Please make sure to visit our website for other positions.

Banking/Financial Services: Recently Qualified to Assistant level
Our client is a top-flight Dublin law firm. Candidates will need to exhibit excellent academics and communication skills. Applicants must have strong exposure to Banking/Financial services work during their training contract.

Corporate/Commercial: Recently Qualified to Assistant level
Our client is a leading Irish legal practice with a first class client base. In addition to high calibre academics, applicants will have trained with a firm recognised for its expertise in this field.

Commercial Property: Assistant level
A top ranked law firm requires one, possibly two, Assistant Solicitors to deal with high quality Commercial Property work on behalf of an established suite of clients. Candidates must have prior experience of challenging Commercial Property matters. You will advise on all aspects of property work, including landlord and tenant, investments, acquisitions and disposals.

Private Client/Commercial (Munster):
Associate to Senior Associate

Commercial Property: Senior Associate to Partner level
A leading Dublin based law firm is seeking a very experienced Commercial Property solicitor. Candidates will need to demonstrate excellent technical expertise coupled with the drive and personality to market the firm's services to existing and potential clients whilst leveraging their own contacts/clients.

Insolvency: Associate to Senior Associate level
Our client's restructuring team works with a wide client base including debtors, financial institutions, secured creditors, unsecured creditors, investor committees, insolvency practitioners, equity holders and management. The team advises on all sizes and complexities of engagements. You will have strong exposure to restructuring issues coupled with good negotiating skills.

Commercial Litigation: Associate to Senior Associate level
We have a number of openings for high calibre solicitors required for leading practices whose client bases range from individuals and domestic financial institutions to international plcs. Candidates must be working with a highly regarded law firm and have experience of dealing with a variety of challenging and complex commercial litigation cases in the Commercial Court.

Regulatory/Compliance(Banking/Financial Services): Associate to Senior Associate
Our client is a top law firm. Candidates will already possess extensive experience in this practice area. You will be advising inter alia on the practical implications of new regulatory developments and keeping abreast of all regulatory matters that might affect the firm's client base.

For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.
T +353 (0) 1 670 3997 E mbenson@benasso.com
www.benasso.com

Benson & Associates
Legal Recruitment Specialists